

Competition Policy and Law in Eastern and Southern African Countries

Setting the Stage for Competition to Flourish

The Second Phase of the project entitled, “Capacity Building on Competition Policy in Select Countries of Eastern and Southern Africa” (7Up3 project) was formally initiated on March 14, 2007, with support from the Norwegian Agency for Development Cooperation (NORAD), Norway. This phase of the project would concentrate specifically on advocacy and capacity-building (including training) activities, designed on the basis of the outcomes of the research and dialogues undertaken in the First Phase of the 7Up3 project.

Phase One of the 7Up3 project culminated in an international conference – “Competition Policy, Private sector Development & Poverty Reduction in Africa”, organised in Mauritius on March 29-30, 2007 by CUTS International. This conference was held in partnership with the Mauritius Ministry of Industry, SMEs, Commerce & Cooperatives.

Attended by participants representing multiple stakeholders from the region and outside, this conference provided an opportunity for the project partners to share the results of the research on competition and outcomes of the national dialogues. One of the goals of this conference was to develop the road map for further engagement in the Phase Two of the project. Papers, presentations and the report of this workshop can be downloaded from the event web page www.cuts-international.org/Mauritius/index.htm.

Advocacy and Public Education

It is crucial to maintain the momentum with which the need (and benefits) for a functional competition regime has been propagated, not only in the project countries, but also in the region through this initiative. And, in order to do so, it would be critical to garner a wider public support.

One of the means that the project envisage in achieving this is through developing briefing papers which presented in simple language while illustrating the linkages between competition and other public policy issues – in order to make the subject of competition more tangible. Some topics that have been identified for developing these briefing papers are as follows:

- Competition Policy and Economic Development
- Impact of Privatisation on Competition
- Competition Policy and Consumer Protection
- Business Welfare Aspects of Competition Policy
- Competition Law as a Tool to Regulate MNC Behaviour
- Competition and the SMEs Sector
- Anti-competitive Practices and Corruption

Further, certain advocacy points have been identified during the project implementation period. These advocacy points would be pursued in each of the project countries – not only within the next 12 months of the project, but also after the completion of the project. In addition, these points



Participants in Discussion during the International Conference

would also appropriately be taken up with intergovernmental organisations, donor agencies and regional authorities. The following are the ‘advocacy points’:

- Proper sequencing in the process of evolving the competition regime;
- Need for hybrid laws/agencies in small economies;
- Avoid wasting too much time to develop a ‘Perfect Act’;
- Strengthening the capacity of competition authority staff (investigators, members, commissioners, etc.);
- Catalysing establishment of ‘National Think Tanks’ on competition;
- Channel of communication between government – civil society – business community on competition issues; and
- Educating and engaging the media as a ‘watchdog’, along with consumer organisations – wherever they are active and capable.

For more, please visit:

www.cuts-international.org/7Up3.htm

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Training Workshops

Participants (representing multiple stakeholders from the region) in this conference agreed that in order to operationalise competition regimes in the project countries (and indeed the region), it was necessary to develop a culture of competition. Pursuing this goal it was decided to organise National Training Workshops on Competition Policy and Law in each of the project countries (i.e., Botswana, Ethiopia, Malawi, Mauritius, Mozambique, Namibia and Uganda).

These 3-day training workshops would target representatives from multiple stakeholder groups (civil society, business community, legal fraternity, government departments, regulatory agencies, and media) in the project countries as trainees.

The training workshops would be undertaken between July to September, 2007 in all the seven countries. In addition to providing an overall understanding on basic aspects of competition policy and law issues, these training workshops would also provide a chance to the participants to undertake first-hand competition assessment exercises, with guidance from the Resource Persons. Presentations, papers and Case Works used in each of the training workshops would be uploaded on the 7Up3 project webpage – for future references and use.

Competition Tool-kit

CUTS has realised from its interventions on competition policy and law issues in the developing world, that the competition authorities/line ministries primarily entrusted with the responsibility of implementing the competition law of a country – often do not possess the requisite knowledge, understanding or capacity to administer the competition law in the country. This is compounded by the general lack of understanding and public awareness on competition issues.

There is also often lack of resources/guidance for developing country competition administrators to draw reference from in order to deal with specific competition related situations. In order to counter this, CUTS has embarked on an endeavour to develop country specific 'Competition Tool-kits' for various countries. Once completed, these would act as reference books/materials for the competition administrators to draw reference from (mostly containing references gathered from the developing world, and some from developed countries), in order to deal with specific competition issues.

India Competition & Regulation Report

How Far are we in Evolving Fair Markets



CUTS International has undertaken a research project to prepare the first of its kind titled 'Competition and Regulation in India – A Status Report 2007'. The project, supported by the British High Commission, New Delhi, India has been undertaken against the background that while India has embraced market-oriented economic reforms for the past 15 years, there is, as yet, no periodic review to assess competition and regulation scenario in the country. India Competition & Regulation Report (ICRR) is an attempt to fill this gap.

The ICRR report would be prepared on a biennial basis and provide inputs to policy community and other stakeholders to take necessary actions to promote well-functioning markets. The first version of the said report, is expected to be ready sometime in September-October 2007.

National Reference Group (NRG) Meeting

A National Reference Group (NRG), comprising of eminent experts, academicians and practitioners have been constituted to guide the process for preparation of the said report. The fourth meeting of the NRG was held in New Delhi on May 14, 2007, to review the first draft of the report. Nitin Desai, Chairman of the NRG, presided over this meeting.

At the meeting, participants stated that the report overall articulates issues of regulation and competition from consumer's perspectives, which comes out very clearly. However, it was felt that the overall framework of the chapters of this report would require a certain amount of modification.

Further discussions elaborated the key outcomes of the topics dealt with in the report. They included, among others; Competition Regime and Widening Access; The Agenda for

Competition Policy and Law in India; Regulatory Issues in Transportation; Competition Issues in Pharmaceuticals; and Competition Issues and Business Welfare. Another important point of discussion in the NRG meeting was the India Competition Perception Index that is aimed at gauging the perception of 'informed' stakeholders on competition and regulation scenario prevalent in the country.

The revelation was that on a scale of 0 to 100, the overall competition perception index returns a score of 54-75. This implied that perception on competition in the country, from a carefully selected targeted group of informed people, is neither too good nor too bad; it is, by all accounts, fair. As such, there is certainly room for improvement.

At the meeting, there was also discussion on the second cycle of the project. Pradeep S Mehta, Secretary General, CUTS International, gave a brief on the project, mentioning that as an outreach activity, CUTS CCIER would be publishing policy briefs, which would also be utilised in the Parliamentary Forum on Economic Policy Issues (PARFORE) meetings.

Mehta suggested that, in the second cycle, a Competition Impact Assessment of the power sector could be undertaken. Accordingly, certain sectors were suggested for the second cycle. They are:

- Agricultural markets;
- Education sector;
- Real estates; and
- Linking competition policy with other policies such as export policy, fiscal policy etc.

For more, please visit:

www.cuts-international.org/icrr.htm

Competition, Regulation and Development Research Forum – Second Research Cycle

Call for Papers

CUTS invite submission of theoretical, empirical and policy-oriented research papers for the second research cycle of the biennial Competition, Regulation and Development Research Forum (CDRF). CUTS Institute for Regulation and Competition (www.circ.in) has envisioned this long-term research programme on competition policy and regulatory regimes in the developing world, with a strategy of motivating developing country researchers to undertake research on issues relating to problems that developing countries face in implementing their competition and regulatory regime.

The first cycle provided a platform for experienced as well as budding researchers from developing countries to showcase their research and deliberate on political economy and governance constraints issues. The focus was on policy-oriented evidence-based research grounded on theoretical underpinnings.

An International Research Symposium was organised at New Delhi in March, 2007 for the researchers to present the findings of their papers to an audience comprising of various international experts, political economists, academicians,

representatives of competition and regulatory authorities and others, facilitated deliberations on the above issues and helped in identifying better solutions, suitable to the requirements of developing countries. Event web page: www.circ.in/cdrfsymp.htm;

Webcast: www.24framesdigital.com/cuts

Theme and Research Areas for 2nd cycle

The theme for the second cycle is 'Institutional Issues covering Political Economy and Governance Constraints in Implementing Competition and Regulatory Regimes in the Developing World'. Following research areas have been identified under this theme:

- Do Conflicting Objectives of Stakeholders Act as Hindrance to Effective Implementation of Competition and Regulatory Regimes?
- Resolving Conflict between Competition and Regulatory Authorities
- Protection of Public Interest *vis-à-vis* Promotion of Efficient Markets

Details about the Second Research Cycle, including guidelines for authors is available at:

www.circ.in/cdrf.htm

Advocacy

Politics Trumps Economics

Lessons and experiences on competition and regulatory regimes from developing countries

Most developing countries have adopted market-oriented reforms as part of the globalisation and liberalisation process but due to various reasons, distortions arise in the working of the market process.



There are a host of political economy and governance constraints that frustrate successful implementation of regulatory laws in developing countries. At present, most developing countries have passed the stage of contemplating whether they would want to have

competition or regulatory laws or not, and have reached the stage where the debate focuses on how to structure their laws and how best to implement an effective enforcement regime within given constraints.

This Monograph suggests that mere adoption of regulatory laws is a necessary but not a sufficient condition to be part of the market reform agenda. Implementation is equally important. It analyses that proper design and implementation of competition and regulatory regime is suitable to the needs of developing countries.

www.cuts-international.org/pdf/Politics_Trumps_Economics.pdf

Vague & Dodgy Responses

Whither to go from Here?

Questions raised in the Parliament serve a very important process of democracy, whereby the people are able to know what the government is doing and what it intends to do.

Alas, often the way these questions are responded to by the Minister concerned, appear to be lackadaisical and/or incomplete, thus negating the very purpose and ethos of the system.



This Issue Note is the latest one in the series being generated by CUTS to assist parliamentarians in discharging their solemn duty to the nation. In the present context, this Issue Note assumes a greater significance, in particular, with the Right to Information (RTI) Act coming into effect, whose main purpose is to promote greater transparency. The Note focuses on whether Right to Information is more apt or Right to correct Information.

www.cuts-international.org/pdf/PAR-FORE-1-2007.pdf

Representation

Pradeep Singh Mehta attended the Sixth Annual Conference of the International Competition Network (ICN), held in Moscow from May 29, 2007 to June 01, 2007. He was the only Indian to participate in the conference.

Pradeep Singh Mehta attended UNCTAD Intergovernmental Group of Experts (IGE) Meeting on Competition Law and Policy, held in Geneva, on July 17-19, 2007.

Pradeep Singh Mehta, as the Luncheon Speaker at the Australia India Business Council (AIBC) 2nd India Conference 2007, presented a paper on 'India is flat – A Few Thoughts', in Melbourne on May 10, 2007

Alice Pham attended the fourth East Asia Conference on Competition Law and Policy hosted by the Vietnam Competition Administration Department in collaboration with the Japan Fair Trade Commission and the Asian Development Bank Institute on May 03, 2007, at Hanoi, Vietnam.

Media Outreach

Vested Interests Mar Sound Competition Policy

The Financial Express, May 27, 2007

By Pradeep S Mehta

Good intentions of the government in pushing reforms anywhere are often thwarted by vested interests. Thus any policy to be adopted for accelerating growth must concomitantly identify the opposition, their concerns and solutions.

Dealing with opposing interests would depend largely upon the political climate. This needs to be buttressed by the government's commitment to growth as a political objective, which exists. However, growth on its own cannot lead to equity. The Prime Minister has acknowledged this recently by expressing some concern on crony capitalism—a few firms leading to an oligopolistic situation. How will the government deal with them over time, will depend upon how the political arrangements underpin the process.

In developing countries, including India, adoption and implementation of competition and regulatory laws is politically charged, as its objective is to constrain concentrated political and economic power while helping the more diffused interests of ordinary, often poor, consumers and producers. Generally, economic vested interests, which dominate political power, limit economic growth by curtailing economic opportunities which help in poverty reduction. Benefits of competition only reach the well-connected and entrenched parties, rather than the deserving ones.

Speak to the People

The Economic Times, April 14, 2007

By Pradeep S Mehta

A cursory look across, would suggest that weak communication and a lack of public understanding and consensus about reforms have been the key impediments to successful economic reforms in many countries. Major reform failures have resulted from closing eyes to the political, social and cultural context within which the reforms take place and not from a failure to put in place the right policy environment.

The multi-purpose Narmada Valley project highlights how lack of proper attention, resources, and seriousness to public communication about the benefits significantly impair a reform process. The Narmada dam, which has remained a subject of controversy and protest since the late 1980s, is a good example in this context.

Had the authorities recognised the importance of engaging the affected stakeholders, early in the process, the situation would have been entirely different today.

A closed and secretive process to reform is counter-productive. The key to success is realising the importance of right flow of information and listening to people. In a nutshell, irrespective of the canvas of a reform and its importance to a country's economy, what is crucial is to: speak to the people!

Cement Cartels: Flavour of the Day

The Financial Express, June 10, 2007

By Pradeep S Mehta

Currently, we are witnessing cartel-type behaviour in cement prices with everyone in the government, including the Prime Minister crying foul. All admit that we need a competition law, which can bite. The Parliamentary Standing Committee has gone through the proposed amendments in December, 2006.

The MRTPC too has woken to push the cement cartel case pending before it for several years. It has not succeeded in the past and thus there is little hope that it will do so in future. Both then and now the government has used import tariffs as the competition-promoting instrument. However, the cement industry is typical and imports may not always help.

Colluding firms do not record their agreements, which are always oral, often facilitated by their trade associations. On the other hand, courts do not accept evidence of implicit cartels based on parallel price movements. The new law in India has amnesty provisions, which allow a colluder to spill the beans, and are thus the best way through which competition authorities uncover damning evidence and action cartels.