

Did we make any difference?

Reforming Competition Law
Regimes in the Developing World
through the 7Up Programme

Pradeep S Mehta and Rijit Sengupta

Reflections

CUTS 7Up projects...played a very important part in the movement toward a better understanding of the benefits of competition in developing countries. These projects have a number of interesting features which make them particularly relevant for developing countries...7Up project design was very pragmatic in trying to identify the ways in which progress could be achieved in each country both from an institutional and a substantive point of view in the areas of competition law enforcement and competition advocacy...7Up projects have been challenging and exciting competition advocacy projects and the evaluation of their effectiveness undertaken by CUTS is both welcome and courageous. But we have to remember...that even in countries which have a long tradition in competition law enforcement, the development of competition institutions took a long time and the emergence of a competition culture is painfully slow. Towards this direction, CUTS has also triggered the African Competition Forum...to develop their capacities and sell competition reforms to other agencies in their governments.

Frederic Jenny

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Judge, Supreme Court, France (Cour de Cassation)
Chairman, OECD Competition Law and Policy Committee, and
Chairperson, International Advisory Board, CUTS CCIER*

7Up, in my view has been a movement. Conceived intelligently and logically, 7Up projects have proved a major disseminator of the benefits of competition to consumers, stakeholders and the public. I was associated with the projects at different levels. Interaction with governments of Asian and African countries was a rich experience for me. Even though I was a resource person, I learnt a lot at the seminars, conferences and training classes. The fact that many countries have either enacted their competition laws for the first time or shaped them from an extant one into a new one is ample testimony of the success of 7Up. I wish CUTS more and more successes.

S Chakravarthy

*Former Member, Monopolies and Restrictive Trade Practices
Commission, New Delhi*

CUTS never disappoints...This document is an excellent resource for all those who are concerned with the development and application of competition policy and law in developing countries and who want to understand the dynamics of competition and market forces. CUTS has emerged from a local grassroots advocacy body to be widely recognised internationally for its empirical and scholarly studies on competition and sector regulatory issues par excellence. Its work in some 27 Asian and African developing countries; the 7Up countries, has impacted the economic institutional structures of these countries well beyond what could have been imagined in 1991.

Cezley Sampson

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Yes! CUTS 7Up projects in Africa and Asia did make a difference. The 7Up programme was in many ways innovatively designed and implemented. Rather than a top down approach, it engaged stakeholders at all levels — those in favour of adopting and/or strengthening competition law and policy and those that had doubts, mis-conceptions or were outright opposed to competition law and policy. The widespread media attention the 7Up programme attracted, the realisation on part of policy makers of the role and importance of competition law and policy in fostering economic efficiency and consumer welfare, the catalytic role CUTS sponsored research and policy dialogue played in getting countries to re-examine the effectiveness of their laws and effectiveness of the institutions, forming of national reference groups, and shaping the work and priorities of donor agencies with respect to competition as part of the investment climate, the production of competition toolkits to guide implementation of the law, case examplesare but “few” of the tangible outcomes of the 7Up project. It also sets out areas where further actions need to be taken at the individual country level. This assessment of CUTS 7Up programme is a MUST read for those working in the international development field, especially in regards to address competition policy issues.

R S Khemani

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Did we make any difference?

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Law Regimes in the Developing
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Foreword

In the early 2000, discussions on whether competition should be included in the multilateral trade negotiations agenda were intense in the WTO Working Group on Trade and Competition. A number of developing countries were skeptical of the benefits of competition law for their economies and therefore suspicious of the idea of including competition in the Doha Development Round. Part of the lack of support of developing countries for competition was due to the fact that these countries were not familiar with competition laws and did not understand clearly the benefits that free and competitive markets could bring in terms of national economic development. Most unfortunately, the issue of competition was dropped from the agenda of the trade negotiations at the Cancun WTO Ministerial conference.

Seven years have passed and a large number of least developed or developing countries have adopted a competition law and/or have started to enforce such a law in a meaningful way. In some cases the driving force behind this development was the trade agenda. This was, for example, the case when the adoption of a competition law was one of the requirements set by developed countries to enter into bilateral trade agreements with a developing country. While the trade agenda contributed to the adoption of competition laws in many developing countries, it did not necessarily contribute to the development of a competition culture or to the establishment of strong competition authorities.

But in many developing countries, over the last decade, there has been significant progress in the appreciation of the potential benefits of competitive markets and of competition law enforcement. Furthermore many developing countries which had

a token competition law have upgraded or adopted a new competition law, to strengthen their competition authorities and/or to make their law more effective.

CUTS 7Up projects which started in 2000 played a very important part in the movement toward a better understanding of the benefits of competition in developing countries. These projects have a number of interesting features which make them particularly relevant for developing countries.

In the first place these projects are promoted by a civil society organisation from a developing country and therefore are seen as non-threatening initiatives by the potential beneficiaries.

Second, CUTS is a consumer organisation and its promotion of competition law enforcement and policy lends credibility to the (abstract) claim by economists that competition promotes consumer welfare. Indeed, one can presume that a consumer organisation would not promote competition unless it was convinced that it made a real difference for consumers in developing countries. Thus, CUTS competition advocacy work in the context of the 7Up projects was likely to be more effective than the advocacy of economists or competition authorities of the developed world.

Third, the analysis conducted by CUTS in various countries which were part of a 7Up, started with a detailed assessment of the country's economic and legal environment and its level of economic and institutional development. CUTS 7Up projects were not restricted to studying the specific technical features of the local competition law (where such a law existed) or of the competitive situation of local markets or of the strength and weaknesses of competition authorities, even if in the end suggestions were made on how to strengthen the institutional capacities of local competition authorities or ways to increase the awareness of the benefits of competition. This whole of government approach was both useful and appreciated by developing countries which were keenly aware of the fact that policies relevant for developed countries could not always be

transplanted easily or even successfully in their domestic environments.

Fourth, CUTS, when designing its 7Up projects, tried in each country to secure the widest possible participation of stakeholders whether academics or consumer organisation or government or business representatives. In so doing CUTS facilitated the emergence of local networks of like-minded pro-competition advocates who could support the local competition authority when it existed or push for the adoption of a competition law when it did not yet exist.

Fifth, 7Up projects also had a precious regional dimension. Each project included several countries, in the same region. This regional dimension contributed to facilitating the exchange of experience between competition advocates in countries facing somewhat similar challenges. It allowed them both to find solace in the fact that the difficulties they experienced were not necessarily due to their own failures and to find comfort in exploring ways to overcome these difficulties.

Finally the 7Up project design was very pragmatic in trying to identify the ways in which progress could be achieved in each country both from an institutional and a substantive point of view in the areas of competition law enforcement and competition advocacy.

Altogether 7Up projects have been challenging and exciting competition advocacy projects and the evaluation of their effectiveness undertaken by CUTS is both welcome and courageous. But we have to remember, as we start reading this evaluation, that even in countries which have a long tradition in competition law enforcement, the development of competition institutions took a long time and the emergence of a competition culture is painfully slow. Towards this direction, CUTS has also triggered the African Competition Forum, an alliance of competition agencies in Africa, to enable them to develop their capacities and sell competition reforms to other agencies in their governments.

When assessing the value of 7Up projects we should not only look at the changes which took place in the countries involved during or after 7Up projects but also realise that CUTS, with infectious enthusiasm, thoughtfulness, boundless energy and a keen sense of the challenges facing developing countries planted seeds which may take a long time to mature but will hopefully allow those countries to reap the rewards of a freer and more effective market economy. At a personal level, I was glad to be an important player in this unique programme, for it also educated me hugely.

Frederic Jenny

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Acknowledgement

This report is an assessment of ‘7Up projects’ on competition law and policy issues undertaken in developing countries of Asia and Africa by CUTS over the period 2000-2010 aimed at empowering national stakeholders to stimulate the process of national competition reforms.

We acknowledge the contribution of Kshitiz Sharma, Aparna Shivpuri, Udai S Mehta, Cornelius Dube, Pham Thi Que Anh (“Alice”) and Ashutosh Soni in preparing this report and that of Madhuri Vasnani and Mukesh Tyagi in editing and layout.

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Words alone cannot convey our gratitude to those that have contributed in every big and small way to this volume. Yet, the world thrives on words.

1

Prologue: How and Why we Began?

Established in 1983 as a voice of local consumers in Jaipur (capital of the state of Rajasthan in India), Consumer Unity & Trust Society (CUTS, www.cuts-international.org) has today evolved into a leading *southern* voice of consumers. Through its *rights-based* approach and *evidence-based policy advocacy* initiatives, CUTS has been able to contribute significantly to the process and content of inclusive growth and sustainable development in many developing countries of Africa and Asia.

CUTS started off from a modest beginning of a local consumer rights organisation in Jaipur, India working on consumer issues mainly in the State of Rajasthan, while also being involved in certain national issues. CUTS today has expanded its scope and interventions to complex economic and public policy areas such as trade and development, economic and business regulations including competition, investment and corporate governance issues, and good governance and social accountability. The organisation has realised that all these issues impact consumers, especially in the developing world, and need to be analysed, debated and integrated into the policy-making processes.

The organisation's work programme stems from its Vision, which reads as: *Consumer sovereignty*. It conducts policy research and evidence-based advocacy to facilitate policy and practice changes, which would ultimately help achieve consumer

sovereignty. A multi-stakeholder approach enables greater possibilities for public support and buy-in for suggested policy changes, and related recommendations. The organisation has been particularly active across 50 developing countries of Africa and Asia, with parallel advocacy at international levels and partnerships with donor countries and research organisations all over the world.

CUTS headquarters and three programme centres are located in Jaipur, India. In India, CUTS has a fourth Programme Centre based in Chittorgarh (state of Rajasthan) to work on rural and grassroot issues. It also has a liaison office in New Delhi and a Resource Centre in Calcutta. Overseas centres of the organisation are located in Lusaka (Zambia), Nairobi (Kenya), Hanoi (Vietnam) and Geneva (Switzerland).

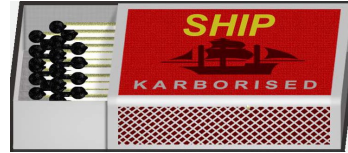
Today, after three decades of work on these issues (pursuing an approach of linking grassroots with policy), the organisation is well-recognised in the international policy circuit and international development community. It has created and is part of several networks cross-fertilising ideas and mobilising other like-minded individuals/organisations to foster equity and accountability in the process of economic governance involving both state and non-state actors.

Tryst with Competition Issues

One of the drivers of the formation of CUTS was an amendment in 1984 in the Monopolies & Restrictive Trade Practices Act (MRTPA), 1969 in India to cover unfair trade practices (UTPs, which mainly include misleading advertising and other deceptive practices) which are broadly understood as consumer protection issues. The MRTPA itself was enacted to deal with monopolistic (abuse of dominance) and restrictive trade practices (anticompetitive practices). However, the law was more of a licencing law as it regulated business houses to cap their size, under the assumption that big can be bad. That has changed now.

CUTS brought forward many complaints before the Monopolies and Restrictive Trade Practices Commission

(MRTPC) on UTPs and succeeded in many cases which resulted in policy changes, such as the malpractice of packing the right number of matchsticks in



matchboxes. The overall impact on either the economy or the consumer was not large, but because the issue affected the richest and the poorest consumers, the issue had a wide popular support. This complaint was filed in 1988.

One large Swedish match manufacturer: WIMCO Ltd did not oppose the petition and carried out necessary rectifications. Being the market leader with 25 percent share of the market, their reputation was at stake. The balance 75 percent of the market is shared by one big company which got match boxes manufactured in its own brand name, while most of the manufacturing was done by micro industries. This case caught the fancy of the common man as she or he could relate to the issue easily. Many in the consumer movement spread the message wide and far and thus built up consumer support.



One other complaint in 1989 was against cigarette manufacturers for selling the same brand at two different prices, by adopting a deceptive practice of labelling. This resulted in a radical change in the

excise policy on tobacco products.

We were mindful of the fact that smoking itself was not to be promoted, but we could not just sit back and remain oblivious to this practice as consumers were being cheated. After due consultation among our board members, we decided to intervene on this issue. Excise on cigarettes was levied on the maximum retail prices and even though the consumer was paying the same price for two similar brands, the manufacturer was paying excise duties on a lower price, which was declared at the factory gate. The policy change was made to levy excise on the length of the cigarette thus defeating the malpractice of charging the consumer

but not passing on the correct revenues to the treasury. The revenue gains were huge.

Other than UTPs, CUTS was also involved in filing complaints on anticompetitive practices against business, on anticompetitive practices such as *bait and switch* and others. In pursuance of this type of work, CUTS staff even had to face physical and legal threats from the affected parties, and in some cases offer of allurements to not to pursue the matter. The same had also happened in our consumer litigation work, but we had realised that the cause will be hurt if we succumb to either to threats or allurements. Thus over time, we were able to build up a strong reputation, which also had a deterrent effect on bad business. This enabled us to often resolve issues without resorting to litigation.

One consumer case that we are very proud of is getting a compensation of ₹50,000 from Otis Elevator Co Ltd for a lift accident victim, a school teacher in Don Bosco School, in Calcutta in 1987, *without going to court, but only by dialogue and persuasion*. This case was again a landmark case of asserting consumer rights, particularly on the principle of strict liability.

In 1991, the MRTPA was amended to dilute the merger provisions, as part of the reforms agenda, which in any case had never had any significant impact on the restructuring scene in India. In few merger cases that they did recommend to the government no action was ever taken because of either strong lobbying by the affected parties or just plain ignorance. On anticompetitive practices, the MRTPC could not pass any strong order, as it only had powers to order 'cease and desist'. Compensation claims could be made once the conduct was held to be violative of the law, but no significant order was ever passed.

Along with VOICE, another consumer group, CUTS filed a complaint before the MRTPC in 1991 against the takeover of TOMCO Ltd. by Hindustan Lever Ltd, because it was felt that



the synthetic detergents and soap markets would get highly concentrated. The merged entity would have nearly **77 percent share of the organised detergents market and 90 percent of the organised soaps market**. Alas, the complaint fell because the merger rules were repealed. It was a case of throwing out the baby with the bathwater.

As all mergers also have to go before the Companies bench of the High Court for approval, CUTS also challenged the same before the Bombay High Court. Here too, we failed, because the treatment of public interest under the Companies Act and related jurisprudence did not favour our petition. However, the High Court did entertain our petition rather than dismissing it *in limine*.

Another not so insignificant reason was that Hindustan Lever Ltd had roped in a leading consumer organisation, Consumer Education and Research Centre, Ahmedabad to sign an Memorandum of Understanding (MoU) that a committee will be established by both to monitor the prices and availability of TOMCO's popular brands after the merger. Apparently, the MoU was suspect and condemned by all other consumer groups in the country. Perhaps, the High Court was also not impressed by it, but the MoU had a huge publicity value, which HLL flogged. This issue created an unrest in the consumer movement in India and they submitted a joint petition to the Prime Minister (then holding charge of Consumer Affairs) condemning the same. It later transpired that CERC had received funding from the Lever Research Foundation in India.

The whole purpose of narrating the above history was to situate the same in the context of this report, as to why we were engaged in competition reforms in India so avidly for over 28 years. We derived the following lessons:

1. Markets cannot work fairly on their own...they need to be policed by authorities and watchdog groups like ours.
2. Business will try and do everything possible to gain an extra mile or make that extra buck, without caring for government regulations or consumer welfare.

3. There are good businesses also and one cannot paint everyone with the same brush. Simultaneously, there are bad civil society organisations (CSOs), or are bad at least on some issues, when they succumb to allurements. We also felt that on occasions such allurements may not be for personal enrichment but for sustaining resource-starved CSOs.
4. It is important to understand and analyse how policy is formulated and that advocacy matters, rather than just seeking redressal of grievances. Quite often bad policy results in market failures.
5. In order to develop the capacity to do policy research and advocacy, voluntarism has its limitations. One has to professionalise the efforts and seek funding from non-partisan sources to sustain it. This is not an easy task.
6. Consumer organisations have to play a watchdog role in an honest manner, to see that consumers are not ripped off.
7. Building alliances is crucial if changes have to be brought about and sustained.

The above seven lessons has become the base of our working philosophy in not only the area of competition and regulation but also trade and governance (the other two areas of our work agenda). Our tryst with competition reforms in other developing countries in fact began with the launch of the WTO in 1995. However, our work on the processes leading to the establishment of the WTO began earlier.

At the 13th World Congress of IOCU (now Consumers International) in Hong Kong in July, 1991, there were heated discussions on a failed UN Code of Conduct on Transnational Corporations and the Uruguay Round of Trade Liberalisation, among other issues. We lobbied hard on the UN Code of Conduct but could not succeed because of strong opposition from the US.



The Uruguay Round was wrapped up in April, 1994 and resulted in the establishment of the WTO in January, 1995. Two of the issues, among several others, which were not settled during the Uruguay Round negotiation were investment and competition policy. They were part of the built-in agenda under the Agreement on Trade Related Investment Measures (TRIMs).

Both issues reverberated with the global consumer movement, with the thinking that both good business behaviour and healthy competition regimes can be promoted in the member states of the WTO through these two instruments.

At the first Ministerial Meeting of the WTO at Singapore in December, 1996 it was *inter alia* agreed to establish working groups to study the relationship between investment and trade, and trade and competition policy. The narrative and discourse arising out of these discussions on competition policy triggered our work in 1996.

The second driver which resulted in expanding our work in Africa and Asia was: a) the formation of the South Asia Watch on Trade, Economics and Environment (SAWTEE), a network of CSOs in South Asia in 1994 to build capacity to cope with the



India-Nepal National Summit cum Training Seminar in Nepal on October 13-15, 1995

pains of transition arising from globalisation and the WTO; and b) demand made by African CSOs at UNCTAD IX in Midrand, South Africa in June, 1996, to replicate the SAWTEE model there. Firstly, SAWTEE was made possible due to strong support of the Friedrich Ebert Foundation, and secondly, the equally strong support of Department for International Development (DFID), UK to transfer our skills on competition policy and trade to other developing countries of Africa and Asia, and build capacities among civil society groups there. Among others, International Development Research Centre (IDRC), United Nations Conference on Trade and Development (UNCTAD), World Bank, WTO, Norway, Switzerland, Sweden and too extended their support to our work on trade, investment and competition issues in two continents. There were many individuals within these organisations, outside and at CUTS who lent their shoulders to our work. They are numerous to be named here.

The first 7Up project proposal was discussed at Jaipur when UNCTAD organised the 'Asia Pacific Regional Seminar on Competition Law and Policy', in association MRTPC and CUTS in April 2000. Representatives of DFID, World Bank, UNCTAD and WTO got together and agreed to support CUTS in its first ever major overseas project on assessing competition law reforms



Asia Pacific Regional Seminar on Competition Law and Policy in Jaipur on April 13-15, 2000

in seven countries of Asia and Africa: India, Pakistan, Sri Lanka, South Africa, Kenya, Zambia and Tanzania.

One reason to select these countries was that while they were at different levels of development, all of them had a competition law with a common law background and English as the official language.

Our proposal was designed in a scientific manner, though we had no significant experience of working in all these countries, except India. However, we were aware of the situation and had some contacts in all these countries. Perhaps it was our ardent will and bold vision, and the subject (being a hot issue at WTO), which convinced DFID to invest in the project to be implemented by CUTS. What also mattered is that to guide us, we had the

Table 1: Summary of Objectives and Outcomes of 7Up Projects	
OBJECTIVES	OUTCOMES
Evaluate the existing competition law and its implementation on a few basic principles: budgets, autonomy, composition and structure of the competition regime and authority	Consensus among key stakeholders that greater importance need to be accorded to competition reforms, with more budget/resources allocated for operationalising competition regimes
Identify typical problems and suggest solutions, including on the basis of good practices elsewhere	National Reference Group (NRG) created under the project expressed interest to work further on the issue, and even raised the demand in some countries (Pakistan) to be converted into a formal entity (Consultative Council) to advice the national government on competition issues.
Suggest ways forward to strengthen existing legislation and institutions dealing with competition and consumer protection issues	Civil society actors (researchers and CSO partners of CUTS) from Sri Lanka, Pakistan, Kenya incorporated

Contd...

Assess capacity building needs of the government, its agencies and the civil society	competition and consumer protection issues in their work programme
Develop strategies for building expertise among the competition agency officials, practitioners and civil society to deal with anti-competitive practices, including cross-border abuses more effectively	Foreign Investment Advisory Service (FIAS of the World Bank) realised the need to work on Investment Climate issues in Tanzania, and initiated a programme in the country Southern CSOs expressed an interest to liaise and create a network on competition issues. INCSOC (www.incsoc.net) was created as an outcome and continues to be a platform for collective learning and exchanges on competition issues
Help build constituencies for promoting competition culture by actively involving civil society and other influential actors during this exercise	Keeping in view the demand/response received from the developing countries, CUTS decided to start its Africa offices – in Lusaka (Zambia) and Nairobi (Kenya)

advantage of creating an advisory committee with experts on competition law and policy issues both from outside and within the region, who were a great help.

The 7Up1 (www.cuts-ccier.org/7Up1) programme was designed to be implemented in seven countries with seven objectives, and the goal of the programme was to pull up their competition regimes, hence we chose the title: 7Up, though we were aware that this is the name of a popular soft drink, but that had nothing to do with the project. Everyone liked the name and that has now been institutionalised by CUTS for all such projects (involving research based advocacy and capacity building on competition policy and law issues across the developing world), which this report will revisit. Subsequently, CUTS was able to implement sequels of 7Up1 programme in other parts of the developing world and refer to them as 7Up2, 7Up3 and 7Up4.



Launch of 7Up1 in Jaipur on December 20-21, 2000

Table 1 summarises the objectives of these projects and some of the outcomes achieved:

A critical aspect of the project was to create local ownership and build their capacity to carry on with the agenda after the project was over. We did succeed in realising this vision, which has been analysed in this report. The final report of the 7Up1 project was presented at Geneva in 2002 in front of an international audience, where the Secretary General of UNCTAD, Rubens Ricupero was the chief guest. Thus, the 7Up stream of projects arrived on the global trade and economic landscape.

One immediate outcome was the interest shown by the Swiss Ministry of Economic Affairs, which subsequently agreed to



Symposium on Competition Policy and Pro-Poor Development in Geneva on February 19, 2003

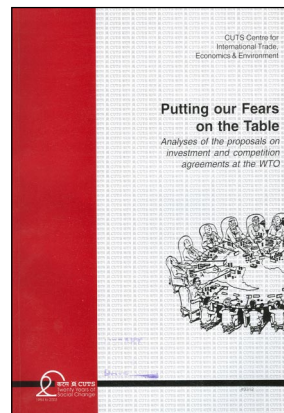


Launch of 7Up2 in Hanoi, Vietnam on April 23-24, 2004

support the Mekong component (Vietnam, Cambodia and Lao PDR) of the 7Up2 project, with DFID supporting it in India (second time, but deeper work), Bangladesh and Nepal. This project had only six countries, but the name 7Up remained. More about it and the other 7Up projects would follow in this report.

As a sequel to this Prologue, it must be said that since the WTO members were discussing trade-related competition policy issues for being incorporated into the text of agreements, CUTS was pandering to the western donors' desire to garner evidence to support their push. Looking at the large number of cross border competition abuses, CUTS was convinced that there is a need of a multilateral competition policy. However, most developing countries were opposed to the incorporation of competition into the WTO agenda, and hence felt that CUTS was playing to their tune.

On the other hand, CUTS was quite convinced that competition reforms is more a domestic imperative to cope with trade



liberalisation agenda and not necessarily an international agenda, and hence needs to be pursued vigorously. Simultaneously, CUTS did an analytical project on looking at the multilateral agenda and advocated the need to have a multilateral competition policy but not an investment agreement, because the latter would be very intrusive and curb the policy space of developing countries to govern investment issues.¹

Pradeep S Mehta

Postscript: The 7Up programme has now been undertaken in Eastern, Southern and Western Africa; and South and South East Asia. It is our ambition to reach out to stakeholders in other parts of the developing world, for ‘promoting functional competition regimes’ using a bottom-up approach.

Pursuing this interest, CUTS undertook a ‘scoping mission’ in 2010-11 to test the environment for competition policy (and consumer protection) projects in select MENA countries, supported by IDRC. Discussions with key stakeholders and development partners in these countries, and the findings of this mission suggest a need for focused work on this issue. CUTS is planning to develop a project for competition related research and advocacy in this region on the basis of our scoping study findings – and take the process forward.

CUTS also feels that in order to facilitate a second wave of competition reforms nationally in developing countries (focused on implementation of national competition laws through an active and alert enforcement agency/institution), it is imperative to sensitise policymakers of the benefits from competitive markets. In order to accomplish this goal, we are working at two levels. First, is to help build a network of Competition Agencies in Africa, which can sell competition reforms to their policy makers.

1. “Putting our fears on the table” (www.cuts-ccier.org/pdf/Putting_Our_Fears_on_the_Table.pdf)

Secondly, CUTS is developing a framework for measuring tangible impacts of national competition reforms process in DCs through a project entitled: Competition Reforms for Enhancing Social and Economic Welfare in Developing Countries, referred to as the CREW project.

The CREW project would come up with a framework that helps measure these benefits in DCs, who have embarked on the process of competition reforms. The focus will be on essential goods and services which impact the poor.

Other than the CREW and the MENA projects there are others too which will be pursued. Discussions are on with several development partners, governments and civil society organisations to work in Asia and Africa. Clearly, we have miles to go and we will continue to traverse the journey assiduously so that markets function better and deliver welfare outcomes for peoples of the world.

2

Relevance of Competition to Developing Countries

Increased competition can improve a country's economic performance, open business opportunities for its citizens and reduce the cost of goods and services throughout the economy. Jobs are an important route to poverty reduction. Well-functioning markets generate investment, wealth and employment opportunities.¹ This is because competition creates an enabling environment to unleash creative energies of entrepreneurs and productive forces of society, and thereby expand opportunities for gainful employment.

Further, competitive markets facilitate wider choice of goods and services for consumers at low prices without compromising on quality.

Competition creates environment for firms to minimise their costs and pass on the cost reductions to consumers. It also helps to spur innovation, which also leads to public welfare outcomes. In this way, consumers, especially the poor, can get value for money.

Competition, therefore, empowers the poor, creates opportunities for new firms, including small businesses, to enter markets and grow, puts pressure on existing firms to innovate,

1. *Better Regulation for Growth*, Investment Climate Advisory Services, World Bank Group, 2010 (<https://www.wbginvestmentclimate.org/uploads/CompPolicyRegRef.pdf>)

ensures lowest possible prices for consumers and better quality products.

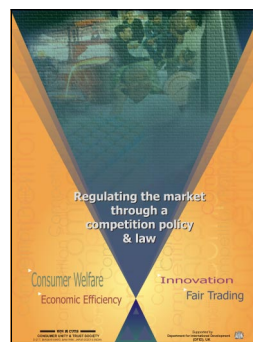
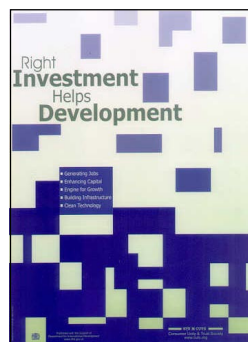
The process of trade and economic liberalisation in developing and least developed countries (LDCs) has often been accompanied by exploitative practices resorted to by large firms. An effective competition law (enforced by a competition authority) curbs such exploitative practices (referred to as anti-competitive practices) and disciplines market players, thereby protecting the interest of both the country's economy and also consumers.

As the 2001 Nobel Prize winner Joseph Stiglitz has rightly observed that “Strong competition policy is not just a luxury to be enjoyed by rich countries, but a real necessity for those striving to create democratic market economies”.

A number of developing and LDCs have adopted a competition law in the last decade or so.

In 1995 only about 35 countries had a competition law, while today the number exceeds 120 and more are in the process of adopting one.

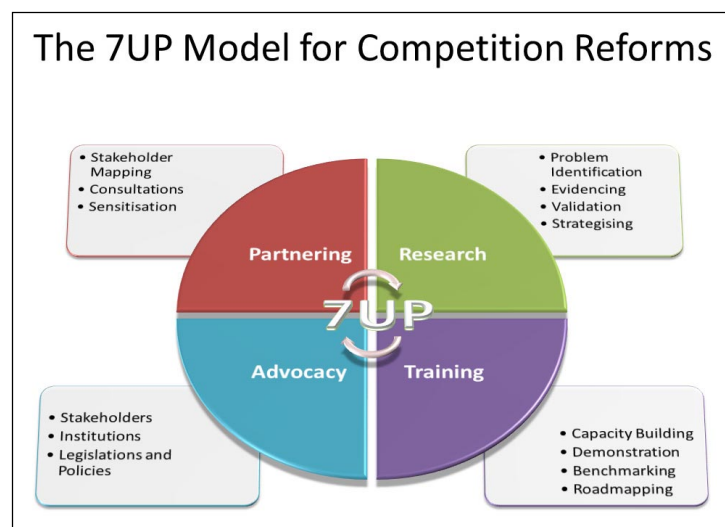
However, when it comes to their implementation, only a handful have been able to implement them effectively. Given the universal acceptance that an effective competition regime is a necessary economic instrument, the focus of competition regimes now in developing countries should be on their effective implementation.



3

7Up Projects

The effectiveness of competition law depends on the extent to which the law has actually evolved in a country in tandem with the socio-economic realities and historical dimensions of that country. It is necessary that there is a certain degree of acceptability and ownership of the law among the stakeholders, to ensure its effectiveness. This is possible if stakeholder expectations and concerns are taken into consideration while drafting and implementing the law, and if their capacity is built in the process to actively participate in the enforcement process. This is essentially the inspiration for the bottom-up approach of CUTS (referred as the 7Up model).





Launch of 7Up3 in Entebbe, Uganda on March 22-23, 2005

Until now four rounds of the (multi-country, multi-year) 7Up projects have been implemented by CUTS. The model involves partnering with local CSOs in project countries and engaging a wide range of local stakeholders (including business, polity, consumer groups, NGOs, media, academia, lawyers, etc.) for developing background knowledge (research) about challenges in evolving competitive markets.

This knowledge is subsequently utilised in undertaking advocacy and capacity building to promote a culture of competition in these countries – and to identify reforms champions therein. Benefits of such a multi-country approach that have been witnessed over the process of implementation of 7Up projects are, mainly:

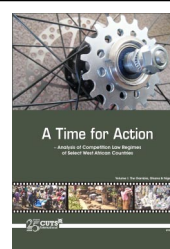
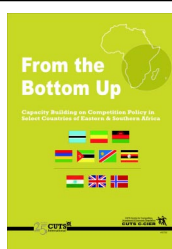
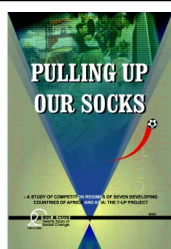
- (i) comparability across jurisdictions,
- (ii) peer-learning, and
- (iii) inputs to regional (integration) processes/institutions.



Launch of 7Up4 in Accra, Ghana on June 19-20, 2008

CUTS has implemented competition reforms projects, with the support of various development partners,¹ in 26 countries across Africa and Asia, listed in Table 2:

Table 2: Competition Reform Projects at a Glance		
Project	Project Countries	Project Title
7Up1 (2000-2003)	South Africa, Kenya, Zambia and Tanzania in Africa, & Pakistan, Sri Lanka and India in Asia	Comparative Study of Competition Regimes in Select Developing Countries of the Commonwealth (www.cuts-ccier.org/7Up1)
7Up2 (2004-2006)	Bangladesh, Cambodia, India, Lao PDR, Nepal and Vietnam	Advocacy and Capacity Building on Competition Law and Policy in Asia (www.cuts-ccier.org/7Up2)
7Up3 (2005-2008)	Botswana, Ethiopia, Malawi, Mauritius, Mozambique, Namibia and Uganda	Capacity Building on Competition Policy in Select Countries of Eastern and Southern Africa' (www.cuts-ccier.org/7Up3)
7Up4 (2008-2010)	Burkina Faso, The Gambia, Ghana, Mali, Nigeria, Senegal and Togo	Strengthening Constituencies for Effective Competition Regimes in Select West African Countries (www.cuts-ccier.org/7up4)



1. DFID (UK), IDRC (Canada), SECO (Switzerland), NORAD and Ministry of Foreign Affairs (Norway), Ministry of Foreign Affairs (Sweden)

4

Motivation & Methodology

There is a growing emphasis on the need to evaluate impacts achieved even from policy work, among international development partners. CUTS has also been asked on various occasions by its development partners (who have supported its work on competition policy and law issues, worldwide) and its International Advisers¹ to assess extent to which the 7Up projects (implemented over a decade from 2000-10) have been successful and made a difference in the project countries and for its stakeholders.

This report tries to assess the impact of the 7Up projects especially in terms of *raising the ante on competition policy and law issues in the project countries*, since that was the main goal envisaged by CUTS 10 years ago when the 7Up model was conceived. It also endeavours to assess the extent to which the projects were able to generate background information/knowledge on the subject, and enhance capacity of national stakeholders on competition issues – as these were the anticipated outcomes of these projects. Further, a stock-taking of the state of competition regimes in 7Up countries has also been done in this exercise.

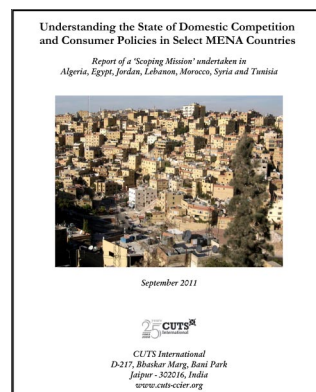
There were mainly three reasons for undertaking the analysis presented in this report: (i) to understand where the country stands

1. CUTS work on competition policy and law is undertaken with the guidance of an International Advisory Board comprised of 17 experts and practitioners from across the world (refer: www.cuts-ccier.org/Advisors_Index.htm)

at the moment *vis-à-vis* its national competition regime, (ii) to ascertain (using anecdotes, etc.) contribution of the 7Up projects to this current status, and (iii) to develop an agenda for future work on competition issues in these countries (and beyond, in new territories).² It presents analyses of responses received from stakeholders in the project countries on how the projects contributed to the national competition reforms process, and the lessons that emerge.

A number of factors contribute towards the process of evolution and enforcement of a competition and regulatory regime in a country, and it would be naive to attempt a direct cause-and-effect relationship between certain activities (of the 7Up projects) and progress with competition reforms in the project countries. A number of factors are in play, and a scientific methodology is necessary to segregate their effects. Such a methodology is currently not available for assessing impacts of competition policy work in developing countries. However, a certain level of attribution does emerge from the (qualitative) evidence gathered during this assessment.³

Questionnaires (refer to Annexure-II) were developed (also in French for the Francophone countries that were part of the 7Up⁴ project) and sent to the competition authority and relevant



2. One such territory is the Middle East and North Africa region – where CUTS has undertaken a *Fact Finding Mission* in end-2010 (report available at: www.cuts-ccier.org/pdf/Understanding_the_State_of_Domestic_Competition_and_Consumer_Policies_in_Select_MENA_Countries.pdf)
3. CUTS has noted the lack of availability of a methodology/analytical framework that helps in assessment of domestic competition regimes, especially their effectiveness. It is necessary to identify certain indicators for evolving this framework. CUTS believes that the current (estimation) exercise would help in strengthening the organisations' understanding of such 'indicators'
4. Burkina Faso, Mali, Senegal and Togo were the four francophone countries covered under the 7Up4 project

ministries, NRG⁵ members and project partners. Based on their inputs and recommendations, a short note on each country has been prepared and used as the basis for the analyses. Apart from this, information that CUTS was able to gather from secondary sources related to the national competition regimes has also been utilised here.

5. *National Reference Group (NRG)* – is a select group of national stakeholders who are engaged very closely with all the various activities of the project and are consulted from time to time to get their views of the various project activities/reports during the implementation of the project, etc. Over the course of the project, they become the ambassadors of competition reforms in their countries.

5

Status of Competition Regimes – Some Emerging Issues

Table 3 provides a summary of the status of competition law in the project countries.

Table 3: Status of Competition Law in the Project Countries		
Draft Law ☑	Competition Law ☑ Competition Division/Agency ☑	Competition Law ☑ Competition Division/Agency ☑
Ghana	Botswana ¹	Burkina Faso
Bangladesh		Ethiopia
Cambodia		The Gambia
Lao PDR		India
Mozambique		Kenya
Nigeria		Malawi
Uganda		Mali
		Mauritius
		Namibia
		Nepal
		Pakistan
		Senegal
		South Africa
		Sri Lanka
		Tanzania
		Togo
		Vietnam
		Zambia

1. Botswana did not have a Competition Commission when the assessment was undertaken, but do have one now (early 2011)

Of the countries covered under 7Up projects, the following still do not have a competition law: *Ghana, Bangladesh, Cambodia, Lao PDR, Mozambique, Nigeria and Uganda*. Botswana has a law, but not an agency to implement the same (the Competition Authority of Botswana was however established over the course of drafting of this report). The remaining countries (18 of them) have a law and either a department within the relevant Ministry or a dedicated agency to implement the law.

It is noteworthy to mention here that adoption of the national competition law and/or establishment of the agency in some project countries occurred either during the lifetime of the 7Up projects (and associated spin-off activities), or within a year or two after the conclusion of the project. These countries are: *Botswana, The Gambia, Mauritius, Nepal, Namibia and Vietnam*. As indicated earlier, it is not possible to ascertain the exact degree of influence of the 7Up programme on these milestones, but definitely, from anecdotal evidence and testimonials (see box 1)² it can be inferred that the project did contribute towards fast-tracking the process of a national competition regime in these countries.

The countries that do not have a draft law or have one but have not been able to enact it face various challenges. In most cases, it is the business sector which opposes competition reforms. However, there are also some other factors that deserves special attention, especially to facilitate competition reforms processes in these countries. In the following section we discuss how the 7Up programme has been able to contribute towards addressing some of these challenges faced by countries in operationalising effective competition regimes.

Table 4 summarises the present status and implementation of the national competition regimes in some of the 7Up countries, based on the feedback gathered from the assessment.

2. Letters of Appreciation are available at: <http://www.cuts-ccier.org/pdf/Appreciation-Letters.pdf>.

Box 1: Relevance of CUTS work on Competition Reforms

“...I wish to recognise the support and assistance that the Ministry has received from other Ministries and stakeholders such as the University of Namibia, NEPRU and the Consumer Unity & Trust Society (CUTS) in India during the drafting of the competition law and the process leading to the establishment of the Competition Commission. I am counting on their continued support to the Commission when so required in future...”

*Hages G. Geingob (2010)
Minister of Trade and Industry, Namibia*

“I am writing to introduce myself as the new Executive Director of the Competition Commission of Mauritius (CCM). The concept, if not the precise name, of the Commission should be very familiar to CUTS, as your own work through the 7Up3 project especially has played such a critical role in getting Mauritius to the point where it has an independent institution applying competition policy...”

*John Davies (2009)
Executive Director, Competition Commission of Mauritius,
Mauritius*

“...there could not be a more appropriate time for this volume to be published. As a matter of fact I am not aware of any other study that has given such a comprehensive treatment to the issue of competition policy in India. It is a path breaking project.... The government at the centre has made competition a serious policy issue, therefore one hope that the policy- makers will take this volume as seriously as it deserves.”

*Vijay L. Kelkar (2005)
Former Advisor to the Finance Minister, Government of India,
[while commenting on a path-breaking CUTS report on market
competition in India (Towards a Functional Competition Policy
for India)]*

Contd...

This is to acknowledge the significant contribution of CUTS in fostering a competition culture in Kenya through its advocacy, training and networking activities. In this area they have worked with Monopolies & Prices Commission, Kenya in various ways and assisted the Commission and its Staff by providing competition related literature regularly to the Commission, which has helped its staff in building their capacity.

Peter M Njoroge (2005)

Commissioner, Monopolies & Prices Commission, Kenya

“...As the Vietnam Competition Law will become effective since July 2005, we are now channelling huge efforts to introduce the implementation regulations for the law. Thank to your sponsorship and technical supports, we have obtained valuable contributions to draft the Regulations...”

Dinh Thi My Loan

*Director, Vietnam Competition Administration Department
Vietnam*

Table 4: Status and Implementation of the National Competition Regimes in 7Up Countries					
Countries	STRUCTURAL ELEMENTS			FUNCTIONAL ASPECTS	
	Civil Society involvement Enshrined	Consumer Protection Provisions Present	Robust Framework for Enforcement	CA Functioning Independently	CA effective and visible
Burkina Faso	✓	✓	✓	✗	✗
Ethiopia	-	✓	✓	✗	✗
Gambia	✓	✓	✓	✓	✗
India	✓	✗	✓	✓	✗
Kenya ³	✓	✓	✓	✗	✗
Malawi	✓	✓	✓	✗	✗
Mauritius	✓	✗	✓	✓	✓
Namibia	✓	✓	✓	✗	✓
Nepal	✓	✓	✓	✓	✗
Pakistan	✓	✗	✓	✗	✗
Senegal	✗	✓	✓	✗	✗
South Africa	✓	✗	✓	✓	✓
Sri Lanka	-	-	✗	✗	✗
Tanzania	✓	✓	✓	✓	✓
Vietnam	✓	✓	✓	✗	✓
Zambia	✓	✓	✓	✓	✓

3. Here we refer to the new regime in Kenya (Competition Authority of Kenya)

6

Challenges in Competition Promotion and 7Up Impacts

Evidence gathered from the 7Up countries about some of these *challenges/impediments* are presented in this section, along with evidence of how the 7Up programme contributed towards addressing them:

Challenge I: Lack of prioritisation of competition issues leading to a slow movement forward with competition reforms processes

- Adoption of the national competition law and/or establishment of the agency in some project countries occurred either during the life of the 7Up projects (and associated spin-off activities), or within a year after the conclusion of the project. These countries are: *Botswana, The Gambia, Mauritius, Nepal, Namibia and Vietnam.*
- Considerable efforts involving research, effective networking, awareness, capacity building and continuous engagement has resulted in facilitating some *forward movement for enactment of competition laws in Bangladesh, Nigeria and Ghana* – even though the process has still been slow and erratic, due to political-economy challenges.

Challenge II: Lack of background knowledge, stakeholder engagement and support for competition reforms

- Significant *media attention has been drawn on competition and consumer protection issues* and resulted in increased coverage of competition, consumer protection and related news items in the local media. Partner organisations, representatives of the NRG and CUTS project staff have often contributed through the local media (FM Radio, TV channels, newspaper articles, etc.) to raise awareness and understanding on competition reforms in some of the countries like *India, Kenya, Nigeria, Vietnam, and Zambia*.
- *Understanding of partner organisation* has been enhanced considerably on the issue of competition policy and law in most countries. This has resulted in the partners and NRG members in some countries being attached at various senior levels to help the government in shaping and implementing its competition regime.

In Nepal, CUTS project partner, SAWTEE network member and the General Secretary of Forum for Protection of Consumers Rights, Jyoti Baniya has been appointed the member of the Competition Promotion Board.

Omar Jobe, representative of the CUTS partner organisation (Pro-PAG) in The Gambia of the 7Up4 project was appointed as a Commissioner of the Gambia Competition Commission.

In Senegal, Mbissane Ngom – who was the researcher at CRES (CUTS partner organisation in the country) for the 7Up4 project was selected as the Vice-Chairman of the Senegalese Competition agency (CNC)

Mauzinho Nicols' (representing CUTS partner organisation in Mozambique, DECOM) from the 7Up3 project represented the country (as the sole delegate) at the UNCTAD 6th Review Conference on Competition Policy (held in November 2010) at Geneva (Switzerland).

- Many partners (*Kenya, Senegal, Ghana, Nigeria*) have included research and advocacy on competition and consumer protection in their institutional work programme. After their engagement with the 7Up projects, they have been engaged in projects and processes related to competition and regulatory issues in their countries.
- In Mauritius, Bangladesh, Nepal, Vietnam, Cambodia, Kenya, The Gambia, Zambia, etc. 7Up partner organisations were either members of formal groups/committees, or were regularly consulted in the run up to drafting the competition law and/or its enforcement.
- CUTS was able to create *national champions* on competition issues in countries like Kenya, Uganda, Sri Lanka, The Gambia, Mauritius, Ethiopia – by identifying practitioners/scholars who had an interest in the subject, and exposing them to various international processes/events, etc. In turn these champions have made considerable contribution to the process of national competition reforms in their respective countries. Some of them became pioneers on competition research and are constantly consulted by the national competition agency, while others were even appointed in senior positions to the national competition enforcement agencies.

Challenge III: Lack of continuity with the competition reforms agenda

- CUTS has been able to forge and maintain a close relationship/network with partners, NRG members and other stakeholders through a virtual network called INCSOC (International Network of Civil Society Organisations on Competition, www.incsoc.net). Knowledge and information on competition issues in the form of reports, articles, events and other resources has been circulated within this



Launch of INCSOC announced at Geneva on February 20, 2003

community – thereby keeping their interest alive on competition issues.

- In 2010, INCSOC called for the adoption of *World Competition Day* on 5th December. Many members and competition authorities have supported this call – and urged the United Nations to adopt this date for popularising the relevance of competition to developing country consumers. Ultimately the adoption of the World Competition Day would help increase popularity on competition issues across the world, and give it the importance that it deserves.
- CUTS moderates an electronic forum (CompetitionOnLineForum, or COLF) which regularly disseminates our publications, project report, papers, articles, event information, etc. to over 5,000 recipients (scholars, experts, practitioners, civil society members with an interest in competition and regulatory policy issues) from across the world. Continued willingness of stakeholders/partners to collaborate with CUTS on competition issues shows that the efforts made through the 7Up projects were in the right direction.

- CUTS and many of its partners have continued to work on competition issues in their respective countries and emerged as pioneers, even enhancing interest among their respective national government on this policy matter.

Challenge IV: Low capacity and little experience on competition administration

- Technical understanding of government personnel have also been improved through various practical training programmes, international events and other capacity building initiatives undertaken by CUTS – especially to assist in enforcement of the law. Further, on the side-lines of these events officials from developing country competition agencies were encouraged by CUTS to interact and network with their counterparts from advanced jurisdictions.

In Namibia between 2004 and 2008, the process of establishing the Namibia Competition Commission received fillip by the CUTS 7Up3 project. The NRG was in a strong position to influence the pace of establishing the Competition Commission, especially due to the fact that some of the senior officials were part of the NRG established during the project life cycle.

In Pakistan the knowledge gained through meetings facilitated by CUTS was used as background information during presentations at various fora comprising stakeholders e.g., businesses, consumer groups, etc. The partner organisation of the 7Up1 project in Pakistan (SDPI, Pakistan) was associated closely with the competition reforms process in Pakistan, and provided inputs to high level policy makers (such as the Adviser to the Prime Minister and for the Cabinet as well).

CUTS was also involved from the forefront in the process of evolution of the law in Cambodia, though the law has still not been adopted.

In India, CUTS has contributed substantially towards the process of development of a modern competition regime – by providing research based advocacy inputs to relevant policy processes.

- Competition Toolkits were produced for a number of countries including Botswana, India, Namibia, Malawi, Mauritius, Uganda and Vietnam and have helped officials in competition enforcement agencies (and even line Ministries) to understand the complex process of competition enforcement, better.



- In countries like Nepal, Namibia, Vietnam and Mozambique, the NRG members were sensitised to a great extent on competition issues and their understanding/knowledge about benefits from competitive markets helped motivate the government (through their interactions in their individual capacities within the countries) and other key stakeholder to initiate a discourse on competition reforms.
- In many countries like India, Vietnam, Kenya and Bangladesh, CUTS has undertaken sectoral studies (over and above the 7Up research work) that has generated background knowledge information for the Government/ Competition agency pertaining to that sector.

Challenge V: Limited support from the international development community on competition reforms

- A number of development partners (donors) have worked together on competition issues for supporting CUTS 7Up

projects, including DFID (UK), SECO (Switzerland), NORAD (Norway), IDRC (Canada) and Ministry of Foreign Affairs (Sweden). Donor coordination is becoming an extremely important issue in the area of development finance – and the 7Up programme provided an opportunity to these donors to cooperate towards achieving a common goal.

- OECD DAC has recognised the 7Up programme as an effective method of engaging on competition issues in the developing world.
- Relevance of the 7Up projects has also highlighted by development partners at international meetings/platforms. John Preston of DFID, UK made a presentation at the International Competition Network meeting in 2003 (available at: www.internationalcompetitionnetwork.org/uploads/library/doc506.pdf), where he highlighted how the projects have been “....useful in raising onto another plane the competition policy agenda in developing countries”.
- CUTS has been associated with other intergovernmental and regional bodies/initiatives on competition issues – like the UNCTAD, World Bank, OECD, ICN, Asian Competition Forum and Africa Competition Forum.
- The 7Up programme revealed the need for supporting investment climate reforms work in Tanzania, which motivated the FIAS (of the World Bank) to initiate an Investment Climate Reforms programme in the country. TradeCom initiated a programme for supporting the development of the Nigerian competition regime, after it was revealed as a ‘need of the hour’ in the 7Up4 project.

Considerable efforts were made by CUTS in the process of developing and implementing these projects (7Up projects) to achieve outcomes that would have long-term impacts on the

Outputs	Indicators/Outcomes	Supporting Illustrations
Awareness Generation of National Stakeholders on Competition issues	<ul style="list-style-type: none"> - Increase of competition and consumer protection related news/articles/features in local media - Enhancement in the ability and confidence of national stakeholders (NRG members) to contribute to the competition reforms agenda 	<ul style="list-style-type: none"> - This was observed in a number of countries including Mauritius, Uganda and Nigeria. Some of them were even contributed by CUTS partners/researchers. - CUTS partners and NRG members have continued their mission of competition reforms beyond the life-span of the 7Up project by developing projects that they have implemented independent of CUTS on competition issues in Kenya, Sri Lanka, Nepal, Mozambique, The Gambia.
National dialogues on competition and consumer protection issues	<ul style="list-style-type: none"> - Initiation of a discourse on competition reforms, involving key stakeholders/actors/institutions, led to the emergence of a conducive climate 	<ul style="list-style-type: none"> - National Reference Group (NRG) acted as the platform to raise the ante on competition issues in the country. In some countries like Pakistan and The Gambia – there was even some progress in transforming the NRGs into National Committee/Working Groups on Competition and Consumer Protection - In Zambia, National Competition Day was celebrated for a few years. This really made the Zambia Competition Commission visible among the government agencies and one that had a direct link with the people (consumers)

Contd...

Building capacity of national stakeholders to advocate for competition reforms	<ul style="list-style-type: none"> - Technical assistance provided to competition agency professionals - University courses on competition policy and law initiated in a number of countries 	<ul style="list-style-type: none"> - Competition agencies and staff of competition authorities have acknowledged CUTS help is improving their ability to enforce the competition legislation, in Namibia, Mauritius, Zambia, etc. - This has already been done in Bangladesh, The Gambia and Vietnam. Some advancements are planned in countries like Ghana and Burkina Faso
Contribute towards policy and administrative reforms on competition	<ul style="list-style-type: none"> - CUTS partners/ contacts rising to 'positions of influence' in the national competition circuit - Refinements in competition law undertaken in line with the view expressed by stakeholders - Fast-tracking/ forward movement with the process of competition reforms 	<ul style="list-style-type: none"> - CUTS partners from The Gambia, Senegal and Nepal have taken up positions in the Competition agencies as senior officials - In countries like India, Kenya, Zambia and Vietnam, CUTS has been closely associated with the process of development of the national competition legislation, including its refinement based on the findings of the 7Up project - In countries like The Gambia and Mauritius, the process of competition reforms gained momentum due to CUTS engagement in the same. Even in countries like Bangladesh, Nigeria and Ghana there has been some forward movement (in spite of strong political economy challenges)

national competition reforms process in the project countries. On an average, the 7Up projects were implemented over a period of two years, and sometimes the anticipated outcomes/impacts were registered outside the life of the project. However, CUTS was able to maintain a close working contact with its partners in these projects, for them to keep sending information of how some of the actions/outputs of the project might have led to these outcomes/impacts.

On the basis of the feedback received from the countries, an attempt has been made to link the outputs with the outcomes achieved by the 7Up projects, with illustrations provided to support the point.

Some factors like *political will* still pose towering challenges for operationalising national competition regimes, and CUTS would need to evolve strategies and processes to address these challenges.

- Inconsistency in government thought process/priorities has deferred the process of adoption of the competition law in *Cambodia*. This is in spite of the fact that Cambodia had made this commitment when entering the WTO as a member.
- Lack of political consensus and turf issues have also affected the process of adoption of the national competition legislation in *Nigeria*.
- Changing government priorities (especially in the event of a change in government) has caused delay in the passage of the competition law in *Ghana*. Significant resources and time have been devoted in crafting a number of competition bills over the past years in the country, but none has seen the light of the day.
- Political climate in some countries like *Nepal* have made it difficult for the competition enforcement process to move forward. There has been very slow movement, since the law was adopted in 2007 and a Competition Board established.

7

Epilogue: Future Issues for Strengthening Competition Regimes in Developing Countries

From the preceding analysis, the following broad areas emerge and would be considered by CUTS to be included under its competition policy and law agenda not only as a follow-up in the 7Up countries but also in other developing and least developed nations that are struggling to operationalise competitive markets:

- **Technical Assistance in Drafting/Refinement:** In a number of countries competition laws are still not in place, and this is a need that should be met at the earliest. CUTS has experience of having closely watched competition regimes mature in developing countries, and understanding what makes adoption and implementation of competition laws work. Such features can be immersed in the process of drafting/refinement of competition legislations, to ensure their effectiveness.

A process of developing understanding of government officials on benefits for competition reforms should also be carried out, in parallel – so that the adoption of laws is expedited, and the resources spent in the drafting law do not go waste.

- **Reforming Existing Legislations:** The overall goal of this process should be to make the law more comprehensive (including a robust and effective competition agency), to enable effective enforcement. One of the ‘missing elements’ as has been witnessed in some countries is engagement of civil society. It is well-appreciated that in developing countries, the competition agency will not be able to implement the law effectively on its own – and therefore needs to build strong relations with civil society actors.

This has been witnessed in a number of countries like The Gambia, Mauritius, Vietnam, India, Kenya, Pakistan, South Africa, and Zambia – some of which are today the most competent competition regimes across the developing world.

- **Awareness Generation:** A continuous, long-term process of awareness generation and sensitisation should continue at all levels to garner public support for competition reforms. In addition to undertaking multiple stakeholder initiatives, focus group discussions would also be necessary to identify group-specific issues, and align them with the enforcement process.

Communicating with the stakeholders is a key – and this needs to be effectively managed by modern, developing country competition agencies. In addition to stakeholders, it is also necessary to sensitise the development partners. CUTS has been doing this consciously over the years that it has been involved with competition reforms work.

- **Building Coalitions & Linkages:** Coalitions (within and across borders) need to be developed and maintained, especially to advocate enforcement of competition laws, highlighting benefits that would accrue to both the economy and the consumers. Agencies are often constrained by capacity and understanding, and can develop linkages with researchers in universities, think-tanks, etc.

In addition to being closely engaged with the Competition Commission of India for undertaking market studies, CUTS has also been involved (both directly and through its partners) in undertaking such assignments in Kenya, Vietnam, Zambia, etc.

- **Capacity Building of Competition Agencies:** This is also critical for building capacity and confidence among other regulatory agencies and departments in the country. Agencies should closely monitor behaviour of firms in *key markets*, rather than spreading them too thin. Market monitoring mechanisms have been, or are being, developed by some competition agencies and is an extremely important function of a modern competition agency. Competition agencies can take the assistance of national experts (viz. university professors/departments) to develop such a mechanism.

Choice of sectors is critical in competition enforcement, and there should be based on some criteria such as – availability of data/information, interface with consumers/public interest, presence of regulator, political interference, etc. A process of exchange visits between developing country competition agencies can also be considered. The Zambian government offered this service to Botswana just before Botswana finalised its competition law and established the authority. Other developing country competition authorities should extend such assistance to less experienced developing countries' competition agencies.

- **Enhancing Competition Knowledge:** Capacity development of young professionals on competition policy and law issues is critical and can be achieved by developing courses on competition policy and law issues in universities. Many countries can even look at the possibility of developing such courses jointly with universities in advanced economies that have been offering such courses.

Universities in Ethiopia, Bangladesh, and Vietnam have already started offering such courses, and the response is encouraging. Discussions in some other countries like India, and Kenya are in the pipeline. CUTS has also established the CUTS Institute for Regulation & Competition (www.circ.in) in New Delhi to strengthen capacities and enhance knowledge. It proposes to cover developing countries in Asia and Africa.

- **Parliamentary Outreach and Sensitisation:** This activity holds the key to a successful competition reforms process, and providing stimulus to and attention to competition issues as a priority. One way of achieving this, is to identify key parliamentarians (Friends of Competition) and sensitise them about benefits of competition, both to the consumers and producers. One of the reasons that the competition reforms process in The Gambia was fast-tracked was the keen interest of the Minister of Trade and Industry himself, a former UN economist, on the subject.
- **Cooperation with Other Regulators/Institutions:** Often competition issues have huge implications for other regulators and institutions. Competition enforcement cannot happen in isolation, and should be viewed as part of this complex system/process. In addition to Sector Regulators, other such institutions like the Public Procurement Authority, Investment Promotion Agency, National Auditor etc. would also need to be taken into confidence by the competition regulator to ensure efficiency in the process of competition enforcement.

Annexure I:

Feedback Received from Stakeholders¹

1. Bangladesh



Status: A draft Law is in place along with provisions on consumer protection. This legislation has provision on advocacy – a role that some of the country’s CSOs can carry forward as well. Proposed Competition Agency will be largely an independent commission

Highlights

- Partner played a catalytic role in raising interest and developing interest of senior policymakers, including civil servants on the subject
- Studies and advocacy programme on issues like pro-poor growth, impact of trade liberalisation included competition issues as a component
- Undertaken ‘spin-off’ project on competition issue independently, after the completion of the 7Up2 project
- Training programme for Master-level students in various universities was developed on competition policy and law issues

¹ This section has been developed by summarising the feedback received from partners and stakeholders who were contacted and asked to provide information. We were unable to get adequate information from Lao PDR, Mali, Senegal and Togo to provide in this section. Whatever information was received from these countries is referred in the main report.

- Some other organisations are also engaged in capacity building for bureaucrats, researchers/NGOs, inspired by the work of CUTS and its partner in the country
- Due to sustained efforts through sector-specific research, training programmes, policy advocacy, etc. some traction on the Competition law has been noted

Action area for future: There is interest among policymakers on competition issues but very little capacity. CUTS partner organisation (Unnayan Shamannay) is also interested to develop a programme by bringing key stakeholders into the discourse and do awareness activities like: TV talk shows, alliance-building, policy fora, parliamentarians' briefing, etc. Articles are also being published in English and Bengali *dailies*.

2. Botswana

Status: A National Competition Policy was developed in 2005, after an economic and legislative assessment was undertaken. The law was enacted in 2008 and incorporates consumer protection provisions (for instance, UTPs like tied selling, false claims, misleading advertisements etc.). The Competition Agency was established in end-2010, and is in the process of developing its structure, staffing, etc.

Highlights

- With support received from CUTS, the profile of BOCONGO as a CSO working on competition and consumer issues was raised – subsequently, the organisation was engaged by the government in the process of finalising the Act
- Through various engagements, the government was able to build understanding and consensus and move the competition bill quickly

- Media covered debates and created awareness on the subject
- Partner's (BOCONGO) capacity was built for competition issues, negotiations and networking

Action area for future: Once the Competition Agency is established, a number of activities including the following would need to be undertaken:

- Training for Competition Agency staff, policy makers, stakeholders and CSOs
- Nation-wide awareness and capacity building campaign on the benefits of competition
- Politicians should be aware of laws they make, which will have an impact on competition

3. Burkina Faso



Status: The current framework for competition enforcement is provided by the Ordinance No. 07-025/P-RM of July 18, 2007. The law was originally passed in August 1998 and led to the establishment of the National Commission on Competition and Consumption (*Commission Nationale de la Concurrence et de la Consommation*, i.e. CNCC), an autonomous body responsible for competition regulation in Burkina Faso.

CNCC's independence seem to be undermined by the financial dependence and direct linkages with the Ministry of Commerce.

Highlights

- The project helped develop interest among many stakeholders on the subject. The 7Up methodology was found to be quite effective in getting people interested on the subject
- Stakeholders (members of the NRG, economic operators, regulators, consumer associations, journalists, managers, Ministry of Commerce have received basic training on

competition issues. However, it was felt that the training process should be continuous over a period of time

- It has increased the interest on the subject among the CUTS partner (CEDRES) to work on the issue of competition policy. They are keen to undertake sector studies and also develop a module on Competition Policy at the University of Ouagadougou

Action area for future

- Huge efforts are still needed in the field (training of judges, introduction of modules on competition in universities, etc.)
- Results achieved should be consolidated and made visible
- Build capacity on competition issues across stakeholders
- 7Up4 report filled the gap of awareness at the level of government officials

University module would help training young professionals and enable them to work either in the government or private sector on the subject. It would also help address the capacity constraint of the CNCC

4. Cambodia



Status: A draft competition law is in place thanks to the support of a number of development partners and donor agencies. There is, however, not much forward movement towards the adoption of the law and establishment of an agency to implement the law.

Highlights

- Cambodia participated in various activities related to the competition regime at the Association of Southeast Asian nations (ASEAN), as well as sub-regional (CLV countries) levels

- Stocking-taking of the legal and institutional framework as well as market situation has been undertaken, and will act as useful background information when it comes to enforcement of the law

Action area for future

- More advocacy (including peer pressure) and awareness raising activities are needed to strengthen the political will at the national level and garner public support for the adoption of the law
- More critical in the case of Cambodia is the building of an effective and independent competition agency once the law has been adopted. Therefore, follow-up technical assistance and continued advocacy and public scrutiny is needed

5. Ghana



Status: The draft law needs to be adopted. The government now is in the process of developing a National Competition Policy, and subsequently plan to push the law forward.

Highlights

- Preparatory work has been done by CUTS and others for the passage of the law
- Through the national dialogues, CUTS was able to create awareness and interest among key stakeholders, including regulators like PURC, NCA, etc. on the subject matter

Action area for future

- The delay in passage of the law calls for greater advocacy efforts from all stakeholders
- Local organisations/development partners should get together and gather support for advocacy and lobbying for passage of the law

- CUTS and stakeholders should engage with the Parliamentary Select Committee on Private Sector Development to facilitate this process

6. India



Status: The Competition Commission of India (CCI) has been operational since 2008. It has been involved with advocacy activities with various stakeholders – civil society, business, regulators, etc. Appointments of key officials have been made, and the agency has started investigations, though the pace is a bit slow according to some observers. The country is also developing a National Competition Policy, which is expected to be adopted in 2012.

Highlights

- The political environment in the country has been conducive for developing an enabling business environment, and an effective competition regime would go a long way in ensuring that
- Civil society has been engaged right from the period of developing the new (modern) competition regime in the country.
- CUTS has been at the forefront of developing the country's competition regime.
- CUTS has organised seminars jointly with CCI or with their resource persons
- The government has recognised the need for competition reforms by incorporating it in subsequent national development plans of the country (Five Year Plans)

Action area for future

- CCI needs to establish sound working relations with other regulators in the economy

- Given the size of the country, it is necessary to undertake large-scale, continuous awareness and capacity building programmes, focussed on various key stakeholders
- University level courses on competition policy and law for training young professionals on the subject
- Market monitoring mechanism in key markets is necessary to be developed – to equip the CCI adequately to investigate

7. Kenya



Status: A new competition law has been adopted in Kenya, and is operational since August 01, 2011. The Competition Authority of Kenya (CAK) has been entrusted with the responsibility to enforce this new law. The Monopolies and Prices Commission (the erstwhile competition agency in the country) had been implementing the older competition legislation in the country (The Restrictive Practices, Monopolies and Price Control Act, 1989) before it was re-christened as the CAK.

Highlights

- A process of public consultation was held preceding the adoption of the revised law. CUTS Nairobi participated in these meetings/consultations along with the other select 'key stakeholders'
- CUTS Nairobi and Institute for Economic Affairs (IEA) are the two main CSOs who have done considerable amount of research and public education on competition issues (especially its implications in sectors like food, energy, telecom, etc.) that affect consumers

Action area for future

- Cooperation with other government departments and regulators to ensure effective enforcement of the law

- Need for the new competition agency (CAK) to spread awareness about the new law and why should consumers get involved with its implementation

8. Malawi



Status: Malawi has both a competition policy and later a law. The law incorporates consumer protection provisions as well. The Malawi Competition & Fair Trade Commission has a secretariat now, but has not been fully functional owing to resource constraints. The new law pertaining to the financial sector regulation has a bearing on the competition law but does not deal with competition issues in an elaborate manner. A CSO representative has been appointed in the competition agency. Competition agency is not an independent entity and housed within the Ministry of Trade and Industry.

Highlights

- The work done by CUTS has promoted the consciousness and discourse on competition issues
- The competition toolkit provided by CUTS was very useful for various stakeholders, including the competition agency staff
- CUTS conducted research along with CSOs, universities and individuals which enhanced their capacity and also enhanced their interest to work on this issue
- Meetings, workshop and study on competition regime enhanced the capacity of the officers of competition agency
- The officers who were in CA left hence gap in information sharing
- Capacity building of partner on various skills and knowledge of competition issues

Action area for future

- When the competition agency becomes fully active it will work on awareness, building competition culture and reviewing the competition law where necessary
- There is need for sustainable partnership among civil society, sector regulators and competition and Fair Trading Commission
- Efforts need to be made to raise awareness in private sector circles about benefits of strong competition regime in context of regional integration and integrating into global economy

9. Mauritius



Status: The Competition Commission of Mauritius (CCM) is a statutory body established in 2009 to enforce the Competition Act 2007. This Act established a competition regime in Mauritius, under which the CCM can investigate possible anti-competitive behaviour in the markets. The CCM has considerable powers to compel businesses and others involved to provide information. If it decides that a business's conduct is anti-competitive, it has powers to intervene and If violations are found, impose fines.

Highlights

- CUTS partner organisation (Institute for Consumer Protection, ICP) is recognised as one of the most active CSOs on competition issues in the country, even by the CCM.
- The process of adoption of the competition law was also fast-tracked by building support and understanding on competition issues – especially through active involvement of the media.

Action area for future

- Need to have regular interaction with the civil society and consumer organisations.
- Laws for sectors does not include provision for competition, however the competition agency has embarked on developing a MoU with some of the regulators
- No involvement of consumers in the consultation process seems to be a weakness that needs to be amended

10. Mozambique



Status: Mozambique does not have legislation pertaining to competition law, even though it is a signatory to the Treaty establishing the Common Market for Eastern and Southern Africa (COMESA), which mandates member states to adopt a national competition law. The Mozambican government approved a Competition Policy in July 2007 but it is now being revised; but there is no certainty at the moment about the future of the Competition Law in the country. Mozambique had sought assistance of the Zambian Competition Commission to help establish a competition law regime.

Highlights

- CUTS partner (DECOM) has been recognised as a premier consumer organisation working on competition issues. The partner also sits on the Government Committee that developed the Competition Policy and a draft Law
- DECOM has also initiated a project independently on consumer protection and competition issues with support from IDRC Canada, as a spin-off after the successful implementation of the 7Up3 project as a partner of CUTS

Action area for future

- There are cases for competition violations but no body to take it up with
- DECOM is keen on initiatives in the areas of competition and consumer issues
- Dissemination of information to consumers, especially about the benefits of a competition regime is weak and needs to be enhanced
- Consumer protection and competition law should be promoted jointly

11. Namibia



Status: Namibia passed the Competition Act 2003 (Act No. 2 of 2003), whose objective is to safeguard and promote competition in the Namibian market and make provision for the Namibian Competition Commission to carry out its duties and functions as the competition enforcement agency.

After quite some time, the Competition Authority was finally established in 2009. There is proper institutional framework in place now, but the agency lacks independence as it reports to the Ministry of Trade and Industry. The Competition Authority has investigated 34 cases so far and there is high demand for its intervention.

Highlights

- Between 2004-2008 the process of establishing competition regime was fast-tracked as a result of the CUTS' 7Up3 project
- The NRG was in the strong position to influence the pace of establishing the competition commission, especially due to the fact that competition commissioners were part of NRG
- As a result of publicity competition reforms became a key topic of discussion in the media

- CUTS Competition Toolkit for Namibia has been used by the Commission when assessing competition cases
- CUTS conferences and meetings have enhanced knowledge and understanding on the subject

Action area for future

- Expertise is quite limited among policy makers but they want to learn and protect consumers
- In future the Competition Authority will be strengthened, including widening the coverage of competition law and possibility of introducing leniency programme for cartel investigation
- Need to focus on strengthening the Commission as well as the consumer movement
- Need for information sharing between the Namibia Competition Commission and other competition authorities from across the world

12. Nepal



Status: In February 2007, the Nepal government unveiled the Competition Promotion and Market Protection Act 2007. The law deals at length with anti-competitive practices and prescribes stringent actions against practitioners of undue business nexuses and unethical practices. But, the implementation is very weak hence there are many cartel and syndicates. Interest and expertise on competition issues is limited in the country.

Highlights

- The research finding of CUTS partner (SAWTEE) helped shape the competition regime in the country

- SAWTEE's network member and the General Secretary of Forum for Protection of Consumers Rights Jyoti Baniya has been appointed as a member of the Competition Promotion Board

Action area for future

- Detailed research and lobbying efforts are required in the country
- Competition culture has to be developed for the competition policy and law to serve the intended purpose
- Efforts to building capacity of the different stakeholders' viz., competition authority, business community, consumers and civil society at large

13. Nigeria



Status: A number of draft competition bills exist today in the country and there has been considerable rivalry between three government agencies: Finance Ministry, Trade Ministry and Attorney General to situate the competition law/agency in them.

The Nigerian Communications Act has provisions to regulate anti-competitive practices in the telecom sector; the Nigerian Electricity Regulatory Commission Act has similar provisions. However, these have not been enforced. The Consumer Protection Council (CPC, Nigeria) has been operating for a long time; and some observers have even suggested it to be rechristened into a Competition and Consumer Protection agency.

Highlights

- The coalition formed out of the NRG is working for the passage of the national competition law.

- The partner (CEON) and other CSOs have gained a noteworthy position on competition issues in the country
- 7Up4 project has contributed a great deal to raise the awareness of the private sector on the benefits of a competition law for businesses and the economy as a whole
- The project has done very well in terms of raising awareness but failed to do so for politicians who are key to the passing of the law, which should be addressed in future projects
- The researcher who was engaged from Nigeria in the project has been working closely with the Ministry of Commerce to push the agenda forward on the competition law
- The partner organisation (CEON) has been engaged with a few follow-up initiatives on both competition and consumer protection issues

Action area for future

- Strengthen the process for adopting the Competition Act as soon as possible
- Developing the environment for effective enforcement of the Competition Act

14. Pakistan



Status: Competition Commission of Pakistan (CCP) was established on October 02, 2007 under the Competition Ordinance, 2007, which was legislated as the Competition Act, 2010. Major aims of this law are to provide for a legal framework to create business environment based on healthy competition aimed at improving economic efficiency, developing competitiveness and protecting consumers from anti-competitive practices.

The agenda of CCP is broad-based and focuses on education of a wide range of stakeholders including the government, industry,

media, undertakings and the civil society. All available resources are being used to build a competition culture in the country.

It has turned out to be an excellent example of an effective competition regulator in a developing country due to the foresight of its first Chairman. The momentum continues.

Highlights

- The 7Up project was useful since it highlighted the issues particularly the limitations of the Monopolies & Restrictive Trade Practices Ordinance of 1970 and created awareness about competition regimes in other developing countries
- The knowledge gained through meetings and experts facilitated by CUTS was used as background information during presentations at various fora comprising stakeholders e.g., businesses, consumer groups, etc.
- The partner was associated closely with the competition reforms process in Pakistan, in that capacity gave inputs and prepared presentations for high level policy makers – such as adviser to the prime minister and for the cabinet as well this was aided by the information from CUTS
- The knowledge from CUTS experience was used extensively and effectively for advocacy purpose – and it showed the results too

Action area for future

- Advocacy is an ongoing process and it takes a central position in the overall competition policy of Pakistan. With limited resources at hand, CCP is trying to seek out programmes that require little spending and ensure widespread influence
- Future projects can be used to address challenges like: How to make agencies administratively effective? How to make enforcement effective?
- Possibility of a joint activity of CUTS and Competition Commission of Pakistan can also be explored

15. South Africa



Status: The Competition Act (Act. No.89 of 1998) was passed by the Parliament in September 1998. Certain provisions of the Act came into effect on November 30, 1998 to allow for the establishment of the institutional framework. Competition Amendment Bill was signed into Law (September 2009). The Competition Act makes provisions on complex monopolies and also allows for criminal sanctions against those found guilty of cartel activity. The competition law does not incorporate consumer protection provisions.

The Competition Commission has played a pivotal role in the development of the South African economy. It has contributed considerably in creating an environment where an efficient business sector can become internationally competitive and where small businesses can participate more effectively in the economy. Most importantly, it ensures that consumers can obtain most competitive prices and a greater product choice.

Highlights

- Pradeep S Mehta, Secretary General, CUTS played an Advisory role to the Department of Trade and Industry on a number of competition and consumer policy issues and attended the ten year review celebrations of the South African Competition Authorities in 2009
- While the competition authorities are committed to giving CSOs more voice in the proceedings – this does not happen very often as legal proceedings can be costly – however efforts have been made to make the processes more accessible to them, and CUTS contribution has been instrumental to some extent

Action area for future

- Given that the CCSA is considered as one of the most effective competition agencies in the developing world, the Commission could provide assistance and advisory services to other developing and least developed countries to take their competition regimes forward
- The Consumer Protection Act has become operational from mid-2011 in South Africa, and the CCSA would need to build a process of communication to enable coordination with this agency
- CSOs would need to engage with the CCSA more closely

16. Sri Lanka



Status: Competition enforcement has progressively deteriorated in Sri Lanka. In addition to regulatory capacity problems which have also had an impact on the various *ex-ante* sector regulators – the entity responsible for administering competition policy faces unique problems. The undermining of the entity with the dilution of competition legislation is an extremely worrisome precedent. Reportedly it was done under pressure from the US, because its business did not want to entangle with the authorities which may not have allowed their rent seeking practices. The Competition and Fair Trading Commission is not very effective.

Highlights

- Institute for Policy Studies (IPS) researchers have been directly involved in the conceptualisation and operationalisation of competition policy in Sri Lanka at every phase –from the origins of the policy and law to the various evolutionary stages
- CUTS provided IPS researchers with the technical training – by way of the numerous international and regional

workshops, facilitating knowledge sharing amongst researchers and practitioners from diverse jurisdictions around the world – required to provide sound policy advice on competition policy

- Raised awareness amongst local stakeholders through various formal and informal group discussions on competition policy, law and practice held by CUTS-IPS in Sri Lanka
- Raised awareness amongst policy makers and the private sector by way of policy briefs and case studies on anti-competitive behaviour and practices in particular sectors of the economy
- Provided IPS with an evidence-based reference point to pitch their Policy Memo to the Head of State in 2001 on the importance of retaining provisions governing Monopolies & Mergers in the law

Action area for future

- Given that CUTS has years of expertise in the area of advocacy one very important area that CUTS can help with is on developing and institutionalising effective consumer groups; possibly piloting at one or two local government levels

17. Tanzania



Status: The Fair Trade Practices Act, 2003 was established to promote and protect effective competition in trade and commerce, to protect consumers from unfair and misleading market conduct and to provide for other related matters). Fair Competition Commission was established by the Fair Competition Act No. 8 of 2003 which became effective in May 2004. Commissioners were appointed in 2005. The Commission becomes fully operational in May 2007.

Tanzania has modernised its competition law and employment of personnel in the competition policy and law implementing institutions. Tanzania's Fair Trade Practices Act is comprehensive. The Commission is largely independent; decisions of the Commission are not influenced or interfered by other organs of the government or any other interested party.

Highlights

- Development partners have started considering competition policy as an issue of great importance to Tanzania's business enabling environment
- Ability of consumer organisations to involve in the process of competition reforms has enhanced
- CUTS partner (ESRF and Tanzanian Consumer Organisation) has undertaken research on competition policy and law issues

Action area for future

- Tanzania's competition system still needs the following: capacity building for a competition culture, law enforcement and competition advocacy
- There have been capacity building activities at the Fair Competition Commission. In 2009 commissioners and staff of the Commission were trained by foreign consultants. Commissioners and staff have also visited competition authorities in South Africa, UK, Australia and US to learn about various operational issues
- CUTS could increase awareness campaign for the public so that they can voluntarily comply with competition law rather than enforcement of the law



18. The Gambia

Status: The Competition Act was enacted and passed in 2007. Under Section 25-28 of the Act, the law incorporates consumer protection provisions (for instance, provisions dealing with UTPs, tied selling, false claims, misleading advertisements etc.).

A Competition Commission (GCC) has been set up and the professional staff is gradually coming on board. The Commonwealth Secretariat has helped in the development of the guidelines. There is difference of opinion on the independence of competition authority and it is not adequately resourced.

Some of the other laws and act also have provisions to deal with competition related issues, some of these acts are: The Public Utilities Regulatory Act, the Central Bank Act, The Public Procurement Act; The GIEPA Act, The Gambia Investment and Export Promotion Act (GIEPA Act).

Highlights

- CUTS International has played a prominent role in building the capacity of Gambian stakeholders via the 7Up4 Project over a the period 2008-2010
- Through the project, stakeholders have developed a better understanding of competition issues and they now know the ferry services, the international gateway and electricity production should be opened up to competition
- A reform agenda is in the pipeline, thanks to the 7Up4 project
- Omar Jobe (of the partner agency: Pro-Poor Advocacy Group, The Gambia) was first introduced to competition policy, law and regulatory issues through this project. He was invited to 7Up conferences in Mauritius and Gaborone well before 7Up came to West Africa. Through those interactions, he garnered much information, which he was

constantly sharing with the then Minister, the Permanent Secretary, the sector regulators etc. So when the Ministry was scouting for Commissioners after the enactment of the Competition Act, he became an obvious choice. He has since then been appointed by the President as a Commissioner of the GCC

Action area for future

- There are obvious institutional and capacity constraints among sector regulators dealing with Competition issues. The Gambia needs technical assistance from countries and institutions that are well grounded in competition law and reform issues
- 7Up4 project has helped in highlighting areas where further (deeper) research and information gathering should be undertaken. This includes some of the markets that have direct implications for the consumers

19. Uganda



Status: Uganda has no legal regime that governs competition law, even though it is a signatory to the COMESA, which has also adopted a COMESA Competition Law. Furthermore, Uganda is also a member of the East African Community which too has adopted a regional competition law. A Competition Bill has been drafted in 2004, but there is no news in the public domain about its adoption and establishment of a Competition Agency. When the draft Competition Bill is finally enacted, it will foster competition and protect consumer interests.

Highlights

- Provided the motivation and awareness to include consumer concerns in both the competition policy and competition law in the making

- Competition and consumer protection issues better articulated through media articles, etc.

Action area for future

- Sensitisation of Policymakers about the benefits from a competition regime needs to be undertaken
- CUTS should provide information, resources to its civil society partners in the country to undertake large-scale awareness generation and sensitisation processes
- With the operationalisation of the COMESA and EAC competition regimes Uganda would need to prepare for embracing a national competition law at the earliest

20. Vietnam



Status: In parallel with the process of creating a healthy competition environment in Vietnam, the Competition Law was passed by the tenth Congress of National Assembly at its sixth session on November 09, 2004. The law took effect from July 01, 2005.

With 6 chapters and 123 articles this Competition Law consists of regulations on rights of competition, control of anti-competitive behaviours, economic concentration, handling of unfair competition behaviours, competition administration agency, competition handling council.

The structure for implementing the law is now well in place and the competition agencies have started to deal with cases, and passed orders/decisions. here is now plan to review the law and amend the same, if found necessary by the review results.

Highlights

- CUTS has established an office in Hanoi, which has not only been providing support for the national competition regime, but also to the other countries in the sub-region (Cambodia and Lao PDR)
- The work done by CUTS helped by building guidance documents on the Competition Law is indispensable and especially important in the course of competition enforcement
- At the time of Competition Law taking effect, this issue was really new so advocacy activities played a significant role in increasing awareness of business community, academics, relevant governmental bodies so as to protect competitive environment across the country
- The benefits of having competitive markets and competition law to watch over the process and the behaviours of all market players are now being appreciated by many members of the society. The media has also started to take interests in highlighting competition issues in their coverage
- University courses on competition law and industrial organisations are being introduced, with contributions from CUTS by training the trainers

Action area for future

- The future agenda of the Competition Authority comprises of plans to revise the Competition Law to keep it updated and amend the loopholes
- Upgrade the Vietnam Competition Authority to the status of an independent competition authority
- Putting competition law more at the heart of the intellectual development discourse in the country (national debate, formal training in academic institutions, etc.)

21. Zambia



Status: A new Competition and Consumer Protection Law was passed in 2010, to replace the earlier law of 1994. The competition agency, renamed as Competition and Consumer Commission of Zambia, has encouraged CSO participation in its activities. The agency is largely independent, and considered one of the effective agencies in the African continent.

Highlights

- A conducive environment for competition was established with contributions by CUTS and its partners – through awareness and capacity building of stakeholders
- CUTS was also involved in gathering perspectives/inputs of various stakeholders and relaying it to the government to incorporate into the new law
- One of only countries from Africa to celebrate a National Competition Day – CUTS designed posters, etc. for it

Action area for future

- Extensive capacity building of stakeholders (SME associations, CSOs) on the provisions of the law and how can it benefit them.
- Advocacy and sensitisation across the provinces in the country – so that consumers can get connected to the national competition regime more easily
- Undertaking market studies in key sectors

Annexure II:

Questionnaires

A. Set of Questions - Competition Authority or Relevant Government Department

1. What is the current status of the competition regime (law or process towards adopting the law)?
2. Does the competition law also incorporate consumer protection provisions (for instance, provisions dealing with UTPs, tied selling, false claims, misleading advertisements etc.)
3. Does the current competition regime (law/process) promote interaction with the civil society? If so, how?
4. What is the level of independence of the Competition Authority?
 - Largely Independent
 - Slightly Independent
 - Not Independent

Please substantiate your answer with reasons

5. What is the future agenda for developing or reforming the competition regime?
6. Are you aware of the project that CUTS implemented on competition issues in the country? What do you remember from that project?
7. Did the CUTS project on competition issues benefit the country? Can you explain how (in brief)?

B. Set of Questions for NRG members

1. What is your current level of interaction with CUTS?
Please elaborate
2. What is the current status of competition regime/law in your country?
3. Have the work that CUTS has done in the country benefited the competition enforcement process?
4. How have you personally benefited from the project? Have you used some of the knowledge gained elsewhere? (please describe)
5. Would you like to make any recommendations/suggestions on how CUTS should engage on competition in the future in your country?

**C. Set of Questions for 7Up Partner Organisations
(COUNTRIES WITH NO COMPETITION LAW)**

A. Competition Regime-related

1. What is the current status of the competition regime (law or process towards adopting the law)?

B. Competition Agency-related

2. Please provide an account of 1 or 2 recent (resolved or unresolved) cases?
3. Has there been any capacity building activity that has been initiated? If so, what and who are the beneficiaries?

D. Competition policy/law related activities of partner

4. What are the on-going/future competition related projects of your organisation? Is any related or derived from the earlier work done with CUTS?
5. Have any key staff from your organisation moved to or appointed as a member of the competition or regulatory authority?

6. Have any findings of your research or lobbying on Competition Law/Regime been incorporated by the government in its agenda on competition reforms?
7. What is your current level of interaction with CUTS? Please elaborate
8. Would you like to make any recommendations/suggestions on how we should proceed in the future on our work on competition?

**D. Set of Questions for 7Up Partner Organisations
(COUNTRIES WITH A COMPETITION LAW, NO AGENCY)**

A. Policy-related

1. Has any recent policy been put in place which will have an impact on the competition law?
2. Is there any regulatory law introduced for a particular sector which includes provisions to deal with competition in that specific sector?
3. What is level of interest/expertise among policy makers on competition law/reforms?

B. Competition Regime-related

4. What is the current status of the competition regime (law or process towards adopting the law)?
5. Does the competition law also incorporates consumer protection provisions (for instance, provisions dealing with Unfair Trade Practices,- tied selling, false claims, misleading advertisements etc.)?
6. Does the current competition regime (law/process) promote interaction with the civil society? If so, how?

C. Competition Agency-related

7. Is there any discussion on establishing a Competition Authority?

8. Please provide an account of 1 or 2 recent (resolved or unresolved) cases?
9. Has there been any capacity building activity that has been initiated? If so, what and who are the beneficiaries

D. Competition policy/law related activities of partner

10. What are the on-going/future competition related projects of your organisation? Is any derived from the earlier work done with CUTS?
11. Have any key staff from your organisation moved to or appointed as a member of the competition or regulatory authority?
12. Have any findings of your research or lobbying on Competition Law/Regime been incorporated by the government in its agenda on competition reforms?
13. What is your current level of interaction with CUTS? Please elaborate
14. Would you like to make any recommendations/suggestions on how we should proceed in the future on our work on competition?

**E. Set of Questions for 7Up Partner Organisations
(COUNTRIES WITH A COMPETITION LAW& AN
AGENCY)**

A. Policy-related

1. Has any recent policy been put in place which will have an impact on the competition law?
2. Is there any regulatory law introduced for a particular sector which includes provisions to deal with competition in that specific sector?
3. What is level of interest/expertise among policy makers on competition law/reforms?

B. Competition Regime-related

4. Does the competition law also incorporate consumer protection provisions (for instance, provisions dealing with Unfair Trade Practices,- tied selling, false claims, misleading advertisements etc.)?
5. Does the current competition regime (law/process) promote interaction with the civil society? If so, how

C. Competition Agency-related

7. When was the Competition Agency established?
8. Has a proper institutional framework for the CA been developed? (i.e. clearly defined guidelines, structure and functions being in place)
9. Please provide an account of 1 or 2 recent (resolved or unresolved) cases?
10. Has there been any capacity building activity that has been initiated? If so, what and who are the beneficiaries?
11. What is the level of independence of the Competition Authority?
 - Largely Independent
 - Slightly Independent
 - Not Independent

Please substantiate your answer with reasons

12. Does the Competition Agency have a long-term strategic plan for the future?

D. Competition policy/law related activities of partner

13. What are the ongoing/future competition related projects of your organisation? Is any related or derived from the earlier work done with CUTS?
14. Have any key staff from your organisation moved to or appointed as a member of the competition or regulatory authority?

15. Have any findings of your research or lobbying on Competition Law/Regime been incorporated by the government in its agenda on competition reforms?
16. What is your current level of interaction with CUTS?
Please elaborate
17. Would you like to make any recommendations/suggestions on how we should proceed in the future on our work on competition?

Annexure III:

List of Respondents

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CUTS 7Up projects...played a very important part in the movement toward a better understanding of the benefits of competition in developing countries...7Up project design was very pragmatic in trying to identify the ways in which progress could be achieved in each country both from an institutional and a substantive point of view in the areas of competition law enforcement and competition advocacy...even in countries which have a long tradition in competition law enforcement, the development of competition institutions took a long time and the emergence of a competition culture is painfully slow...CUTS has also triggered the African Competition Forum...to develop their capacities and sell competition reforms to other agencies in their governments.

Frederic Jenny

*Professor of Economics, ESSEC Business School, Paris
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Chairman, OECD Competition Law and Policy Committee, and
Chairperson, International Advisory Board, CUTS CCIER*

7Up, in my view has been a movement. Conceived intelligently and logically, 7Up projects have proved a major disseminator of the benefits of competition to consumers, stakeholders and the public. I was associated with the projects at different levels. Interaction with governments of Asian and African countries was a rich experience for me. Even though I was a resource person, I learnt a lot at the seminars, conferences and training classes. The fact that many countries have either enacted their competition laws for the first time or shaped them from an extant one into a new one is ample testimony of the success of 7Up.

S Chakravarthy

*Former Member, Monopolies and Restrictive Trade Practices Commission
New Delhi*

CUTS never disappoints...This document is an excellent resource for all those who are concerned with the development and application of competition policy and law in developing countries and who want to understand the dynamics of competition and market forces. CUTS has emerged from a local grassroots advocacy body to be widely recognised internationally for its empirical and scholarly studies on competition and sector regulatory issues par excellence. Its work in some 27 Asian and African developing countries; the 7Up countries, has impacted the economic institutional structures of these countries well beyond what could have been imagined in 1991.

Cezley Sampson

*Senior Economist, Oxford Policy Management, and
Infrastructure Institutional and Regulatory Specialist, Asian Development Bank in India*

... 7Up projects in Africa and Asia did make a difference. The 7Up programme was in many ways innovatively designed and implemented...it engaged stakeholders at all levels...The widespread media attention the 7Up programme attracted, the realisation on part of policy makers of the role and importance of competition law and policy in fostering economic efficiency and consumer welfare, the catalytic role CUTS sponsored research and policy dialogue played in getting countries to re-examine the effectiveness of their laws. This assessment of CUTS 7Up programme is a MUST read for those working in the international development field, especially in regard to address competition policy issues.

R S Khemani

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