

Myanmar Report

Capacity Building Workshop on Competition Policy and Law for Government officials and Private Sector Representatives, Myanmar

27th -31st, October, 2014

Background

Myanmar is currently drafting a law on competition as part of its commitments to the Association of Southeast Asian Nations (ASEAN). The next steps are critical for effective implementation of the law so that a culture of competition can be nurtured for reaping the fruits of competition. There are two critical steps required at this stage.

- *First*, relates to the capacity building of the staff of competition authority and the persons involved in the establishment of such authority. The most important factors underpinning the development of successful national competition institutions are: technical competence, enforcement capability, credibility, independence, and capacity preparedness.
- *Second*, it is critical to create awareness amongst the businesses and the private sector about the benefits of competition. With the implementation of the Competition Law and the establishment of the competition authority, an important question arises: how can the competition authority build its image among the people of the country and related stakeholders, and create a better public buy-in.

About the Workshop

It is against this background that CUTS International in partnership with CIRC has developed and delivered a five-day training workshop on Capacity Building and Awareness Programme on Competition Policy and Law for government officials (Competition Authority) and members of the private sector of Myanmar.

The following below mentioned are the key resource persons of the workshop

1. Pradeep S Mehta, Secretary General, CUTS International
2. Kaushal Kumar Sharma, Formerly Director General and Head of Merger Control & Antitrust Divisions, Competition Commission of India
3. Udai S Mehta, Director, CUTS International
4. Alice Pham, Director, CUTS – Hanoi Resource Centre

The training programme was divided into two parts, the first part was focused on the capacity building of government officials (the Competition Division within the Department for Competition and Consumer Affairs (DCCA) within the Ministry of Commerce of Myanmar) and

judges (of the Supreme Court of Myanmar) held from 27th -29th, October at Nayi Pi Daw. Whereas, the second part was a two-day training programme held from 30th – 31st, October at Yangon, aimed at building the capacity and to raise the level of awareness of the private sector players.

SECTION I: COMPETITION POLICY & LAW FOR GOVERNMENT SECTOR

(THREE DAY- NAYI PI DAW)

The workshop began with a welcome speech by **Mr. Pradeep S. Mehta, Secretary General, CUTS International**, who presented a brief introduction about the training programme and also clarified the objectives behind it. Other eminent speakers in the opening session were **Mr. U Soe Win, Deputy Director General of the DCCA** and **Mr. Siegfried Herzog, Regional Director of Southeast and East Asia, FNF**, both of whom spoke about the significance of competition, and competition policy and law towards increasing consumer welfare and promoting free markets and economic development.

Session I was based on the theme of **Competition Policy & Law: Need and Importance**, a presentation was delivered by **Udai S Mehta**. He provided the participants with a brief introduction on competition policy and law. Competition is a process of rivalry between firms striving to gain sales and make profit. Moreover, it promotes productive efficiencies, innovation, consumer welfare, good governance and economic democracy. Canada is the first country to adopt competition law in 1889 although, over the last twenty-five years; more and more countries have given a greater impetus to promote competition through various public policies.

While underlining the economic and consumer centric benefits through market competition, the challenges were also exposed, which can create a hurdle in the journey of competition adoption in Developing Countries. Here, dearth of political will and stakeholder's awareness along with other major challenges were highlighted. However, there is a need of realizing the importance of competition reforms by competition agencies, government, policy makers and national stakeholders of Developing Countries and Least Developing Countries for achieving the target of consumer welfare.

Pradeep S Mehta initiated Session II and delivered a presentation covering the **Lessons from other countries**. He briefly diverted the discussion towards the lessons that can be learnt from the experience of other countries existing with competition policy & law. Australia, being first nation of having federal dealing with restrictive practices has introduced its competition policy in year 1906. Whereas, in the case of Malaysia, competition agency was established in the year, 2010 as an independent body under Competition Commission Act, 2010 to ensure the proper enforcement of the Competition Act. However, the idea of having competition law was proposed way before in year, 1993.

The case is the same with other developing countries like India and South Africa. Hence, the case studies from the countries can prove to be best way of learning and can help the DC/LDC to cover up the loopholes of policy and law while doing competition reforms. Henceforward, the few of highlighted lessons from these countries were firstly, the regulatory authority should be innovative in nature to tackle the various forms of anti-competitive practices and consumer abuses. Secondly, the resource constraint is a key challenge that developing countries are facing in establishing competition authority. Third and last, the focus should be on raising stakeholder's awareness by publishing the anti-competitive reports in media.

He continued his hold on the stage for Session III as well and delivered a presentation on **'Creating an Effective Competition Authority'**. Mehta talked about the pillars necessary for building effective competition regimes where, crafting an effective competition law appropriate in relation to the country's economic circumstances, regional commitments, legal environment and the socio-cultural situation at one part and ensuring the robust institutional building on second part, plays an important role. Building a healthy competition culture is also considered an important aspect, which can be achieved through public education activities, doing or getting research done into possible areas of economic governance.

Competition authority should keep a watch on the activities which reduces competition and diminishes consumer welfare. Consequently, they should undertake other measures that enhance transparency and public appreciation of competition policy and actions, including a media strategy which can reach out to a large audience.

'Competition Advocacy' was the subject line for Session IV delivered by **Udai S Mehta** on day 2 of the workshop. He initiated by introducing competition advocacy, refers to those activities conducted by the competition authority related to the promotion of a competitive environment for economic activities by means of non-enforcement mechanisms, mainly through its relationships with other governmental entities and by increasing public awareness of the benefits of competition. He stressed on advocacy that it not only reduces anticompetitive practices but also substantially reduces enforcement action, thus saving costs.

Further, he talked about the participation of the competition agency in regulatory reform and privatisation processes, long experience with competition policy, and resolution of cases with significant media coverage, etc. as an few of reasons responsible behind strong CA. The lack of resources: human and financial, lack of experience by courts , lack of acceptance of competition principles by authorities and lack of competition advocacy efforts in raising awareness were also highlighted by him as an few of the major reasons responsible for having weakness in CA.

Session V on **Anticompetitive Agreements** was delivered by **Alice Pham**. She began with a brief overview regarding anti-competitive agreements, i.e. an agreement in respect of production, supply, distribution, shortage, acquisition or control of goods or services, which can cause an appreciable adverse effect on competition. Later, she explained the different types of anti-competitive agreements.

Anti-competitive agreements may be between firms which are horizontal relationship (all parties are at the same level in production or marketing and are in chain to bring the products or the services to the consumers) or in a vertical relationship (all parties are at different levels of production or marketing). Also, she highlighted some parts of the draft competition law of Myanmar on horizontal agreements.

Abuse of Dominant Position was Session VI, delivered again by **Alice Pham**. She explained the whole approach behind abuse of dominance in the market to the participants. She also explained the meaning of relevant market and businesses under dominant position. Later, she also took and discussed on the parts related to relevant market, abuse of dominance and market power under the draft competition law of Myanmar.

Kaushal Kumar Sharma, prominent resource person in Session VII on '***Understanding Relevant Markets***'. He explained the concept of relevant market: basically it identifies products and services on one part which are close substitutes to the products or services offered by the parties under investigation and therefore provide an effective competitive constraint. Also, it identifies the competitors on second side for undertakings involved that are capable of constraining their behavior in the market. Later, he taught about the different benefits and dimensions about relevant market under competition.

Mergers & Acquisitions was the theme of Session VIII, delivered by **KK Sharma** to explain the effects of mergers & acquisitions on market competition and what are the different types of M&A, including horizontal, vertical and conglomerate. He also focused on case studies from other countries to give some practical examples on the floor.

SECTION II: COMPETITION POLICY & LAW FOR PRIVATE SECTOR REPRESENTATIVES

(TWO-DAYS - YANGON)

The second part of the training workshop was initiated by a welcome speech by Alice Pham, Director, CUTS – Hanoi Resource Centre and Ms. Aye Aye Win, Deputy Director General, SME Department, Ministry of Industry of Myanmar.

Session I on ***Competition Policy & Law: Definition and Scope*** has presentation delivered by Alice Pham. She outlined the session as per above mentioned session I for government sector by Udai S Mehta and explained the importance of competition policy and law in favor of private sector players. Further, she elucidated consumer welfare and economic growth as an object of competition in the market. Also, she spoke about the scope of the competition law & policy, which proves to be beneficial for the private players in the market.

'Benefits of Competition Policy & Law for businesses' was the subject for session II, delivered by **KK Sharma**. He started his session with a brief introduction regarding competition policy & law for private sector. Further to this, he highlighted the assurance of lower prices, better quality, more choices and product innovation as benefits of competition policy. He talked about the pronged approach while adopting competition policy and law that competition should extend to all sectors and secondly, the reach of competition regulation should be strengthen and widen. While concluding the session, he suggested ten lessons that Myanmar regarding competition policy and law.

'Understanding Relevant Markets' was the subject theme for session III delivered by **Kaushal Kumar Sharma**. He elucidated the whole concept regarding relevant markets for businesses to maintain competition in the market. It also identifies the competitors on second sidefor undertakings involved that are capable of constraining their behavior in the market. Later, he taught about different benefits and dimensions about relevant market under competition

'Understanding Anticompetitive Agreements' was the theme of session IV, presented by speaker **Alice Pham**. She initiated the session with discussing main prohibitions under competition law, where anti-competitive practices is considered to be one of the major part others being abuse of dominant position or monopoly and anti-competitive mergers. Later, she explained the reasons like, for achieving economy of scale and scope, to improve planning of production and distribution, to undertake R & D and at last to reduce risks behind firms entering in to agreements. Different types of vertical and horizontal agreements were explained to the participants.

Further to this, she explained the different types of prevailing 'cartels' in the market and how they affect the benefits of consumers and other market suppliers. Also, she illustrated the approaches adopted by Competition Authorities while judging vertical agreements. She concluded by highlighting the sections of vertical and horizontal agreements under the draft competition law of Myanmar.

Session V was focused on *'Mergers & Acquisitions'*, which includes the presentation delivered by **Kaushal Kumar Sharma**. He started the session with diverting participant's attention towards the effects of mergers & acquisitions on businesses in the market. Diversification of trade and service activities, achieving optimum size of business, enhance profitability, economics of scale and pooling resource were few of majorly covered incentives taught by him for businesses under M&A. Also, he highlighted the case study of U.S. Standard Oil CO., explaining the range of benefits this company had from M&A. Apart from benefits he also explained the disadvantages of global mergers to the participants.

The last session, session VI, was on *'Understanding Abuse of Dominance'*, which includes a presentation delivered by **Alice Pham**. She initiated the session by defining relevant markets and later on explaining the possible benefits along with anticompetitive dimensions of the RPM.

Examples of some market cases were also presented to help the participants regarding practical understanding on abuse of dominance in the market.

While concluding the five day training programme, CUTS representative along FNST representative expressed the gratitude towards the participants for their active participation in the workshop.