

## **Speaking notes of Pradeep S Mehta**

### **South Asia Economic Summit, Dhaka (October 2011)**

This presentation is segregated into two parts: (i) Linkage between competition policy and investment issues; and (ii) Status of the national competition legislations in South Asia.

#### **A. Linkage between Competition Policy and Investment issues**

Literature is replete with evidence that an effective competition regime contributes to investment and catalyses progress towards economic development. The World Development Report 2005 (*A Better Investment Climate for Everyone*), suggests removing barriers to competition as one of the prime considerations for governments, while taking investment climate improvement decisions. The World Investment Report 2003 (*FDI policies for Development: National and International Perspectives*) had earlier asserted – ‘How to ensure competition, including the control of restrictive trade practices, by foreign affiliates of TNCs’ – to be a ‘key question’ for national governments to address, while shaping policies in response to international investment scenario.

The 'OECD Policy Framework for Investment' (PFI) highlights the following key elements of a competition policy:

- Promotion of consumer welfare;
- Preventing excessive concentration levels and resulting structural rigidities;
- Addressing anti-competitive practices of enterprises;
- Reinforcing the benefits of privatisation and regulatory reforms;
- Establishing the institutional focal point for the advocacy of pro-competitive policy reforms and a culture of competition; and
- Increasing an economy's ability to attract and maximize the benefits of investment.

CUTS experience of working on competition law & policy across nearly 30 developing countries of Asia and Africa, and on investment policy in few developing countries in Asia and Africa, demonstrates that certain factors frustrate the potential of a competition regime in enhancing investment and growth in an economy. These factors can be classified broadly into the following five themes:

- i. Policy induced barriers (lack of political will, protectionist approach)
- ii. Absence of competitive neutrality
- iii. Nexus between government and big firms

- iv. Poorly evolved business environment/Entry barriers
- v. Inter-institution relationships.

***i. Policy induced barriers to competition***

This factor has been treated under the following subcategories on the basis of the available evidence:

**a) Lack of political will**

In many countries, governments are seen not to have any plans or commitment to the promotion of competition in the market. Such apathy could be a result of a pre-determined approach to developing the market, or merely a lack of understanding or appreciation of the economic benefits of competition.

**b) 'Protectionist' approach**

Absence of an enabling business environment can stifle the process of promoting competition in key markets. Developing country policymakers are also faced with the crucial task of protecting local firms against foreign firms in critical sectors. Such provisions can negatively affect foreign investment flows.

***ii. Absence of competitive neutrality***

Government policies (trade policy, industrial policy, labour policy procurement policy and various sectoral policies) and practices have often been found to

favour state owned enterprises, to the disadvantage of private firms. This is referred to as absence of competitive neutrality. The playing field therefore does not remain levelled, and can shy away investment.

### ***iii. Nexus between Government and Big Firms: Crony capitalism***

Vested interests and rent seeking behaviour often cast an influence on the implementation of public policies. Under such circumstances, lack of good governance and transparency compounds implementation problems. Governments are often alleged to provide extra benefits to certain companies or players at the cost of the others. This dampens the spirit of investment, due to the lack of fairness and transparency in the system.

### ***iv. Poorly evolved business environment and/or entry barriers***

Despite significant progress made in terms of liberalising the business environment, several approvals are required to start a new business. These approvals often take substantial time and costs and thus constitute major obstacles to entry by a new business operator into the market, thus hampering private sector development. Various types of entry barriers are often erected whether by policies or practices (of local firms) which restricts entry of firms.

Another important dimension of this is the lack of a predictable legal environment for investors to feel confident in bringing in their investments.

***v. Inter-institutional relations***

The overlap of functions between the competition authority and the investment promotion agency is often not well developed in many developing countries. It is important to point out that both these agencies play important roles in investment regulation, and therefore need to cooperate and coordinate. What is lacking is a process (formal/informal) that allows for interaction between these institutions.

***B. State of Competition Regimes in South Asian countries***

The table below provides a summary of the current status of national competition regimes in the SAARC countries.

<b>SN</b>	<b>Country</b>	<b>Competition Law</b>	<b>Current Status of Law</b>
1.	Afghanistan	No competition law yet in force	A draft law has recently been drafted by an Indian law firm
2.	Bangladesh	The Competition Act, 2008 ( <b>Draft</b> )	The Cabinet has recently (August 2011) approved the draft Competition Act prepared by the Ministry of Commerce. It is now with the Law Ministry for review/scrutiny.
3.	Bhutan	Draft Competition Law	The Ministry of Trade and Industry (MTI) and other government departments have

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			<p>taken some steps to increase competition to protect consumer interests. A draft law was prepared with support from CUTS, which has been stalled. With UNCTAD's advice – the Government now plans a new Competition Policy in the country to be followed by a law.</p>
4.	India	The Competition Act, 2002, as amended by the Competition (Amendment) Act, 2007	<p>Competition Commission of India is the enforcement agency, with a Competition Appellate Tribunal to hear appeals. The country is set to adopt a National Competition Policy by the end of 2011, which will address policy-induced anticompetitive practices.</p>
5.	Maldives	No Law	No effort in making the law or policy
6.	Nepal	Competition Promotion and Market Protection Act 2007	<p>In February 2007, the Nepal Government unveiled the Competition Promotion and Market Protection Act 2007. A Competition Promotion Board was also constituted, but, the implementation is very weak.</p>

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7.	Pakistan	Competition Act, 2010	The Competition Commission of Pakistan (CCP) was established on 2 October 2007 to enforce the Competition Ordinance, 2007 which was later transformed into Competition Act 2010. Very active because the foundations are very strong.
8.	Sri Lanka	<p>The Consumer Affairs Authority Act No.9 of 2003</p> <p>The new act repealed the following acts.</p> <ul style="list-style-type: none"> <li>• Consumer Protection Act No.01 of 1979</li> <li>• Fair Trading Commission Act No.01 of 1987</li> <li>• Control of Prices Act (Cap 173)</li> </ul>	<p>Consumer Affairs Authority (CAA) is the apex government organisation mandated to protect consumers' interests and ensure fair market competition in Sri Lanka. It has been established under the Consumer Affairs Authority Act No.09 of 2003.</p> <p>This law was a dilution of the earlier act, which happened due to US pressure (!)</p>