Towards a Healthy Competition Culture...

कट्स CUTS
Twenty Years of
Social Change
1984 to 2003

0304

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Preface

Why a Competition Law & Policy?

Even though the field of competition law and policy is evolving rapidly and includes many different viewpoints on specific issues, it is being increasingly recognised that effective competition policy and law is important in regulating the market. It promotes growth and economic development, aiding government's efforts to reduce poverty, curb corruption and improve governance. To understand the significance of competition policy for a developing economy, it is very important to know what do we actually mean by the term competition policy.

Governmental measures that directly affect the behaviour of enterprises and the structure of industry constitutes competition policy. It covers a whole raft of public policies and even approaches, whereas the law is a piece of legislative enactment to regulate the marketplace, which can be enforced in a court of law.

Competition policy is an instrument to achieve efficient allocation of resources, technical progress, consumer welfare and to regulate concentration of economic power detrimental to competition. It has different objectives in different countries but some major themes stand out. In most of the countries, it aims at promoting competition by discouraging anti-competitive behaviour. Freedom of trade, freedom of choice, access to markets, and achievement of economic efficiency to maximise consumer welfare are the other commonly expressed objectives of competition policy. The role of competition policy has also expanded in the last two decades to include regulation of government intervention in the marketplace.

While opportunities for anti-competitive behaviour may be limited in many sectors most of the time by fierce competition between firms, market conditions are constantly changing. It cannot be guaranteed that a particular market will remain very competitive and hence less vulnerable to anti-competitive practices in the long term. By being comprehensive, competition policy provides a ready-

made, consistent framework for dealing with anti-competitive behaviour in any sector of the economy.

Introduction of a comprehensive competition policy can lead to significant advantages to business as well as consumers. For business, such a policy means fairness as it acts against anti-competitive practices that can drive efficient and well-run companies out of business. It ensures consistency because it is applied by a single authority working to a single set of published rules and a reduction in regulation since it is proactive, efficient and effective which avoids the need to commit manpower and time to devising new rules when new products or markets emerge.

For consumers, an effective competition policy& law leads to lower prices and improved services. An improvement in the coverage of competition law and a reduction in the time taken to remove barriers to competition means a lot for the consumer, in particular the poor.

"Markets work for the poor because poor people rely on formal and informal markets to sell their labour and products, to finance investment, and to insure against risks. Well functioning markets are important in generating growth and expanding opportunities for poor people". World Development Report, 2000-2001:

"Well-functioning" implies markets that work efficiently and without distortions i.e. competitive markets where everyone has the opportunity to participate. However, "competition" is often less understood and easily distorted by the players in the market, even when there are a large number of them. It is therefore that governments enact competition laws to regulate the distortions.

In 1995, when the WTO came into being only about 35 countries had a competition regime. Today nearly 100 countries have a competition regime, with about 40 more in the queue to draft and implement a competition law. Since the 1990s the world has witnessed a closer integration of the global market through liberalization processes. This phenomenon is accompanied by market failures or other distortions, which can happen in any one country, but its effects transcend into other economies. This causes great harm to their economies with the poor suffering the most.

However, it becomes very important to consider certain issues while drafting a competition policy because the high probability of even a desirable competition

law & policy being implemented ineffectively by the competition agency due to various factors such as:

- Lack of political will,
- Lack of expertise,
- Inefficiency,
- Corruption
- Regulatory capture, and
- Resource constraints.

The pre-drafting process should focus first on the key problems in the economy. The most important bottlenecks that create impediments for the growth in domestic and export markets should be identified. A realistic assessment of the availability of financial and human resources should guide the purview of the law and the nature of the enforcement policies.

Furthermore, without a domestic competition law & policy, it may be difficult to control international anticompetitive practices like cartels etc, which restrict trade and adversely affect economic development. Developing countries may be hit doubly by the international cartels: on one hand, they may pay more for certain inputs than they would if the international market was competitive and on the other hand, their efforts to build a competitive industrial sector may be stifled.

Institutions and their independence, separation of functions, adequate staffing and resource availability, and transparency are crucial for adequate competition law enforcement in any country. An agency that has little money and few people but an ambitious set of responsibilities should be careful in identifying its initial priorities. It is also significant to develop cooperative links with other agencies at the regional and the global level. Competition laws should be allowed to evolve and change to suit changing economic circumstances, while preserving the core objectives of competition policy.

Developing countries should take positive action and build their internal capacity in the area of competition policy; fostering the adoption of best practices; making full use of the expertise accumulated by established competition agencies and taking advantage of technical assistance, advisory and training services provided by multilateral institutions. A multilateral framework for cooperation on competition issues would better serve the interests of developing countries than the absence of such an agreement.

This publication has resulted from actual experiences and understanding gained from a comparative study project which looked at the competition regimes in seven developing countries: India, Pakistan, Sri Lanka, Kenya, South Africa, Tanzania and Zambia. The project entitled: 7-Up was supported by Department of International Development, UK. The research report: *"Pulling Up Our Socks"*, including the seven country reports and various other publications under the project are available on our website: www.cuts.org and can be ordered too. In particular, a manual on capacity building *"Friends of Competition"* is highly recommended.

This document has been mainly written by Olivia Jensen and has been further improved on the basis of comments received from DFID and members of the Project Advisory Committee.

Jaipur	**Pradeep S Mehta**
February 2003	**Secretary General**

I
Background

The 7-Up project is a two-year research and advocacy project conducted by the Consumer Unity & Trust Society in collaboration with local partners and supported by the Department for International Development of the UK. 7-Up, which was launched in December 2000, has conducted groundbreaking comparative research in the area of competition law and policy in seven developing countries of the Commonwealth, namely India, Kenya, Pakistan, South Africa, Sri Lanka, Tanzania, and Zambia and helped to bring these issues to the attention of policy-makers and opinion-shapers in the project countries and across the world.

The project aims to:

- Evaluate the existing competition law and its implementation
- Identify typical problems and suggest solutions
- Suggest ways to strengthen existing legislation and institutions for competition and consumer protection
- Assess capacity-building needs
- Develop strategies for building expertise among practitioners and civil society
- Help build constituencies for promoting competition culture with the active involvement of civil society
- Set up national and international advocacy groups.

The project has surpassed many of the initial expectations. The seven country reports[1] and their synthesis, entitled, "Pulling Up Our Socks", describe and

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1
- Reorienting Competition Policy and Law in India;
- Promoting Competitiveness & Efficiency in Kenya – The Role of Competition Policy & Law;
- Competition Regime in Pakistan – Waiting for a Shake-Up;
- Competition Policy & Law in South Africa – A Key Component in New Economic Governance;
- Towards a New Competition Law in Sri Lanka;
- Competition Law & Policy – A Tool for Development in Tanzania; and
- Enforcing Competition Law in Zambia

evaluate in detail the existing competition laws in the project countries and how the laws have been implemented. The research revealed a number of common problems; in particular, problems of drafting, inadequate resources and political support and how difficult it can be for developing countries to deal with international competition concerns.

The advocacy elements of the project have been extremely successful. In all countries, stakeholders are now active in debates about competition law & policy and how to make them more effective. Several 7-Up countries are in the process of amending or redrafting their competition legislation to meet the needs that the project has revealed. Civil society groups, practitioners and many others have become strong advocates and strategies to develop expertise and capacity are already underway.

The issue of competition came to the fore at the international level in November 2001, when World Trade Organisation members agreed to include competition in the organisation's work programme. This has given an extra impetus to debate and discussion on the subject in WTO member countries, even those where information and experience in the area of competition is very limited and has increased the urgency of capacity-building. The 7-Up project has helped to identify capacity-building priorities and these are described in detail in a separate document *(See CUTS, 2003, Friends of Competition: How to Build an Effective Competition Regime in Developing and Transition Countries).*

This document draws primarily on the results of this project, but also on other sources, to provide a concise overview of competition law and policy in developing countries. It is intended to build awareness of policy-makers and negotiators and to stimulate debate on competition policy at the national and international levels. The document makes a strong and comprehensive case for the wider and better use of competition policy and law to meet national development objectives. Laws need to be carefully drafted and adequately implemented to meet the specific needs of that country, but countries at any stage of economic development can benefit.

The 7-Up project is oriented towards action. This document concludes with detailed recommendations for key stakeholders, an agenda for action to promote a healthy competition culture and hence stimulate growth and development and to share the benefits of growth.

II
What are Competition Law and Policy?

Competition policy encompasses governmental measures that affect the behaviour of enterprises and the structure of industry. It covers the broad spectrum of economic policies that have a bearing on competition in the economy, such as trade policy, sectoral regulation, privatisation etc. At the heart of competition policy in many countries is a competition or anti-trust law, which sets down the legal principles and institutions that govern the behaviour of firms in competitive markets including restrictive trade practices, merger scrutiny, provisions to deal with cartels etc. Competition law can therefore be seen as a legal tool that allows competition principles to be enforced in the governance system.

The need for competition law is founded upon economic theory, which demonstrates that overall welfare is greatest when there is 'perfect competition' in markets. Perfect competition is a theoretical concept and it is not achieved in the real world. However, the closer the market gets to perfect competition, the greater the gains in welfare. This is because competition directs resources in the economy to their most productive uses, and motivates firms to adopt the most efficient processes of production. Competition also ensures that the benefits of improved efficiency do not just lead to increased profits for firms, but reach the consumer as well. Economic theory demonstrates clearly that when a company is a monopoly, it receives higher profits at the expense of its customers.

These theoretical foundations are backed up by evidence of the way competition policy and law operate in the real world. Competition laws are regularly used to reduce the power of monopolists and to make sure they provide goods and services at fair prices; to make it possible for more efficient rivals to enter markets dominated by a few large firms; and to prevent firms from cooperating with each other to raise prices at the same time or to restrict their supply. Competition also motivates firms to develop new products that will meet consumer needs ahead of their rivals, which contributes to dynamism and growth

in the economy and helps firms as well as consumers by ensuring that upstream and downstream businesses operate fairly.

Objectives of competition policies vary across countries: they tend to include economic efficiency and the prevention of anti-competitive or monopolistic behaviour. Other objectives that are sometimes included are: the protection and promotion of consumer welfare; and, recently, to drive the transformation of the economy from state control to a market-based structure.

Competition policy and law aim to prevent the following types of behaviour by firms:

- Using a monopoly position to boost profits at the expense of the consumer by raising prices, lowering quality or restricting supply to drive a price rise; or preventing the entry of new potential competitors to the market, for example by denying access to key inputs or driving out existing firms by similar means.
- Forming a cartel with other industry members. The cartel may fix prices and restrict supply, as the monopolist does, and may also divide up markets so that one firm is the sole supplier in any region. The customer then has little choice.
- Merger control: competition policy aims to prevent the creation of dominant entities through mergers and acquisitions that are likely to create competition concerns in the future.

III
Do Developing Countries Need Competition Policy & Law?

Developing country economies are often characterised by the following features:

- High levels of public ownership and government intervention in the economy.
- Importance of agricultural and, increasingly, services sectors in the economy, with a comparatively small industrial sector. Concentration of production in one or a small number of commodities.
- Small formal private sector and a large informal sector
- Dependence on imports for manufactured goods

Of course, not all of these characteristics apply to all developing countries. Of the 7-Up project countries, for example, both India and South Africa have highly diversified economies and well developed manufacturing sectors.

It is sometimes thought that countries with these characteristics do not need competition policy or law, but in fact many competition problems occur in sectors like retail, distribution and utilities, which are significant even in the least developed economies. It is also interesting to note that when the US, Canada and others introduced competition legislation, their economies were at a lower stage of industrial maturity.

Competition problems may occur in some of the sectors listed below. These sectors are some of the most important in the economy. Low quality of service and inefficiency in these sectors will have significant knock-on effects for growth, efficiency and productivity for the economy as a whole.

Box 1: Sectoral Competition Problems

Sector	Cases
Retail/Distribution. Even the smallest economies have retail and distribution sectors, and these are all the more important for countries that have a sizable rural population for whom urban centres are inaccessible. Often long distances and poor transportation mean that distribution costs are high and a single retail outlet will service a large area. Regulation of the competition in these areas is crucial to ensure that retailers and distributors do not exploit poor rural consumers.	Distribution was a concern in the consideration of the CocaCola-Cadbury-Schweppes merger in Zambia. The ZCC was concerned that the merger would lead to concentration in distribution networks that might have anti-competitive effects. In India, Coca Cola acquired brands, distribution networks and bottling facilities from local soft drinks manufacturer Parle in 1993. Coke tried to phase out several of the acquired brands but reintroduced them due to consumer demand. In any event, it benefited hugely from the distribution network in challenging rival Pepsi which had a head start over Coke in the Indian market.
Professional Services. The development of professional services (medical, legal, accounting etc.) is crucial for the development of the private sector. These sectors are often dominated by professional associations which maintain prices and restrict supply, to the detriment of the ordinary consumer and businessman.	7-Up research in Kenya and Tanzania revealed concerns about the behaviour of professionals in the business services sectors. Sectoral representatives groups have long had self-regulatory powers which have allowed them to stifle competition in price and quality by creating barriers to entry like licensing and qualifications.
Utilities. Power, water and telecommunications are the backbone of the economy and essential needs for all consumers. But because of their nature as network industries they give rise to difficult competition questions and debates over public and private	The liberalisation of telecommunications in India has led to significant price reductions and improved quality and access to services. The distribution of licenses for mobile telephony in urban areas, however, has been less successful as competition was initially limited to only two firms for each metropolitan area.

Contd...

Sector	Cases
ownership. However, whether utilities are provided by the public or private sectors, fair prices and good reliable service is crucial to overall economic development.	In Tanzania, the telecommunications sector was liberalised during the 1990s, which has led to a rapid increase in the number of telephone lines in the country and the digitalisation of 95 percent of the network has led to a jump in quality. However, there are concerns about the dominance of incumbent Tanzania Telecommunications Company.
Transport. This is a sector which is prone to abuse of dominance in developing and developed countries alike. Inefficiency and overcharging in this sector raise prices across the economy, harming consumers and businesses supplying home and export markets.	In most countries trucking unions exercise restraints over road transportation, driving up prices, which in turn undermines the competitiveness of tradable goods being transported by road. Shipping is a sector that is well known for anti-competitive practices including forming cartels. In Pakistan, the Competition Authorities addressed the case in which shipping companies all imposed a 'security' surcharge on shipments to Pakistan. Companies reduced the charge after the Competition Authority threatened to investigate the case.
Finance. Inefficiencies in the banking sector discourage savings and investment and lead to misallocation of capital. Healthy competition coupled with adequate regulation is therefore essential but rapid transitions from public to private control of banks and a wave of takeovers by foreign firms give rise to potential problems in this sector. In many countries, the financial sector has a separate regulator, and the Competition Authority may not be involved.	In the last few years, Citibank has taken over ABN Amro's operations in Kenya, while in Pakistan there has been a flurry of activity with the acquisition of ANZ Grindlays, which was the largest foreign bank in Pakistan, by Standard Chartered, the Acquisition of Bank of America by Union Bank, the acquisition of Prudential Commercial Bank by Saudi Pak, as well as several other acquisitions and mergers.

Competition problems are also associated with particular types of productive structures.

- **Transnational companies**.
  TNCs enjoy advantages over domestic firms because of their size, reach and control over intellectual property (technologies, brands, copyright etc). Competition policy is necessary to prevent these firms from unfairly exploiting these advantages.

- **State-owned enterprises**.
  Although there has been a prominent shift towards privatisation and the private sector, the public sector in developing countries still accounts for a large proportion of national income. SOEs are generally not subject to competitive pressures as monopolists or with advantages over potential competitors like easier access to finance and approvals and this has resulted in poor quality products and services.

IV
Global Policy Trends

We have seen above the kinds of sectors and industries in which competition problems can hold back economic development. Competition policy and law are even more important in the light of policy trends in developing countries in the last decade. These include:

- **Privatisation**
  The transfer of ownership and management responsibility from the state to the private sector.

- **Liberalisation of trade**
  This has exposed protected domestic goods and services industries to competition from abroad. However, there may also be unfair competition from foreign producers.

- **Liberalisation of capital controls**
  The most relevant aspect of this for competition is the liberalisation of regulations on foreign direct investment.

- **Deregulation**
  With the shift towards the market economy, regulations like price controls and institutions like marketing boards have been phased out in many countries. This has given companies more freedom in their decisions over pricing and production.

Many of these changes have been driven forward by economic necessity in the face of unsustainable levels of national debt, government budget deficits, high inflation, trade imbalances and low growth. Liberalisation policies were also imposed as conditions for loans from the international financial institutions, such as the International Monetary Fund (IMF), World Bank and Regional Development Banks. Some of these policies have been badly designed or implemented before conditions, other flanking policies and institutions were

in place. This has meant that poorer and more vulnerable groups have suffered. One of the policies that was often not in place and would have helped to protect these groups is competition policy.

Joseph Stiglitz has argued for this in *Globalization and Its Discontents:*

> The IMF argues that it is far more important to privatise quickly; one can deal with the problems of competition and regulation later. But the danger is that once a vested interest has been created, it has an incentive, and the money, to maintain its monopoly position, squelching regulation and competition, and distorting the political process along the way. …Whether the privatised monopolies were more efficient in production than government, they were often more efficient in exploiting their monopoly position; consumers suffered as a result.

Privatisation and liberalisation open up great opportunities for development, but also open up opportunities for the abuse of markets by private sector operators. The next chapter gives some examples of the kinds of competition problems that arise.

V
Competition Concerns Associated with Liberalisation

V.1 Privatisation of Utilities

Utilities pose special competition concerns because they often have a monopoly structure. In one sense, this may be economically efficient for 'natural monopolies', as it avoids the duplication of network infrastructure, but at the same time it generates a risk that the monopoly operator will take unfair advantage of its market power. This can have a devastating effect on productivity across the economy, as utilities are a vital input in many sectors. It was this concern for the public welfare that led to a wave of utility nationalisations in the 1950s.

However, state owned enterprises are also prone to inefficiency, albeit for different reasons. Governments are therefore shifting management control and ownership of these businesses to the private sector to improve productive efficiency and using regulation to protect the public welfare. A common solution is to have a sectoral regulator that sets and enforces targets for quality, price, investment, health and environmental standards for 'natural monopolies'. The information requirements to perform these tasks are extremely high, which is why a dedicated regulator is often set up to cover each industry. However, the close relationship between the regulator and the industry may sometimes lead to concerns over its ability to make objective judgements about the industry.

The Competition Authority can therefore play an important, beneficial role in utility sectors. In the first instance, the Authority can advise the government on how maximum structural competition can be achieved in the sector and how the privatisation should be conducted before the privatisation takes place. Governments may prioritise the price they receive for the enterprise – which will of course be higher if there are no competitors – above long-term consumer welfare. The Competition Authority can act as a counterweight to this, arguing for public monopolies to be split up into competing elements and for the privatisation to be conducted using a transparent and competitive bidding process.

In industries where public and private enterprises both operated, there has been a tendency for governments to sell assets to the dominant private enterprise, again in order to secure maximum revenue at the expense of competition in the sector. This has been the cause of great controversy in privatisation programmes in India and elsewhere.

The relationship between competition authorities and sectoral regulators is the subject of much discussion. In many places, the responsibilities of the institutions are not clearly delineated which has created tensions if the competition authority has begun to investigate anti-competitive practices in the regulated sector and a risk that the institutions may act as rivals. Some more recent legislation spells out the respective responsibilities of the bodies clearly, requiring them to cooperate and provides mechanisms through which information can be shared. One solution could be for the sectoral regulator to concentrate on setting prices and standards while the competition authority looks at the bigger structural picture but the ideal balance will vary from case to case.

V.2 Liberalisation of Foreign Direct Investment

Countries have been keen to attract foreign capital and so have relaxed/removed most regulations applying to FDI. However, not all FDI has an equally positive effect on the host economy. For example, much FDI comes in the form of acquisitions of domestic firms which can have the effect of reducing competition in the market. As direct regulation of FDI is phased out, competition policy can be used to review the effects of such acquisitions in terms of the effects they will have on competition in the national market, and may impose conditions on the transaction to protect consumers. In Zambia, for example, the takeover of the local cement manufacturer, Chilanga Cement, by global cement major Lafarge, was challenged by the Competition Commission on the grounds that the takeover would lessen competition in the regional market because Lafarge has also acquired a dominant market share in neighbouring countries. This in turn could restrict competition in domestic market as well.

V.3 Phase-out of Price Controls

In many developing countries, governments protected the consumer from unexpected price increases through a direct price control regime. In liberalised markets, prices should be determined automatically by the interplay of demand and supply and so price-control mechanisms have been dismantled. However, the risk is that the market will not operate efficiently: a dominant player or cartel may fix prices and impose unjustified price increases on the consumer. In the market, competition policy is the appropriate mechanism to protect the consumer and ensure efficient pricing. The price control origin is reflected in the names of policies. In Kenya, for example, the law is called the Restrictive Trade Practices, Monopolies and Price Control Act.

VI
What are the Aims of Competition Policy?

We have illustrated above many of the ways in which competition policy can help in a developing economy. Broadly, the purpose of competition policy can be summed up as:

- **Protecting the interests of consumers.**
  And businesses are consumers, too. They purchase the products of other firms as their inputs, and the price and quality of these inputs partly determine their own competitiveness and profits that they are able to make.

- **Stimulating efficiency and competitiveness across the economy.**
  Competition helps to achieve efficient allocation of resources and stimulates dynamism through the free entry and exit of firms into markets, raising productivity.

- **Preventing unfair competition.**
  Businesses have a strong interest in ensuring that their competitors do not have an unfair advantage, and that their suppliers and customers are also operating in competitive markets. A large proportion of complaints of anti-competitive practices in firms are raised by other businesses.

It is through these routes that competition policy relates to poverty reduction. Many of the sectors which are prone to anti-competitive behaviour affect the poorest most, like water and electricity. These take up a much higher proportion of the budget of poorer households. Furthermore, the poor benefit by the indirect route of economic growth and job creation. Of course, many other policies need to be in place if the poor are to benefit from economic growth, but under the right conditions it will help them.

There is very little data on the social and economic costs of anti-competitive behaviour in developing countries. One example is the costs for the consumer of the international vitamins cartel which amount to $2.7bn for developing

countries, according to Simon Evenett of the World Trade Institute, Berne. His study also found that the cartel was more ‘effective’ in countries without a competition law. While it is intuitively likely that the costs are high, more research needs to be done to quantify the costs and thus also the potential benefits of implementing an effective competition law.

VII
Who Benefits from Competition Policy?

Competition policy is sometimes seen as a weapon for businesses to use against each other. Rulings of the competition authority are seen as a redistribution of profits between businesses at different stages in the production chain or between horizontal competitors. However, it is the consumer who can and should be the ultimate beneficiary of competition law and policy. For the consumer to truly benefit, several requirements have to be met, both in the provisions of the law itself as well as an active well-organised and informed consumer movement. These requirements are discussed in depth below.

Partly as a result of the global economic and policy trends highlighted above, there is a growing interest in competition policy in many developing countries. There are now around 100 countries in the world with a competition law. Many more are drafting or debating such a law in their national legislative systems. The seven countries in which this research was conducted all have a competition law.

Table 1: Competition Law in the 7-Up Project Countries

Country	Year of Enactment	Name of the law	Status
India	1969 2002	Monopolies and Restrictive Trade Practices Act Competition Act	To be repealed one year after the new law is implemented
Pakistan	1971	Monopolies and Restrictive Trade Practices Act (Control & Prevention) Ordinance	New bill has been drafted
Sri Lanka	1987	Fair Trading Commission Act	New Bill has been drafted
South Africa	1998	Competition Act	
Tanzania	1994	Fair Trade Practices Act (no.4)	New bill: Fair Competition Bill is due to be passed in 2003
Kenya	1989	Restrictive Trade Practices, Monopolies and Price Control Act	Revision of the legislation is being considered
Zambia	1995	Competition and Fair Trading Act	

Source: CUTS (2003) "Pulling Up Our Socks – A Study of Competition Regimes of Seven Developing Countries of Africa and Asia under the 7-Up Project".

Table 2: Competition Law Status in Developing Countries

2.1 Developing Countries with a Competition Law		
Algeria	Gabon	Nicaragua
Albania	Georgia	Pakistan
Argentina	Ghana	Panama
Azerbaijan	Guatemala	Paraguay
Belarus	Guinea	Peru
Bolivia	India	Senegal
Brazil	Indonesia	South Africa
Bulgaria	Jamaica	Sri Lanka
Burkina Faso	Kazakhstan	Tajikistan
Cameroon	Kenya	Tanzania
Central African Republic	Kyrgyzstan	Thailand
Chile	Lebanon	Trinidad & Tobago
China	Macedonia	Tunisia
Colombia	Mali	Ukraine
Costa Rica	Malawi	Uzbekistan
Cote d'Ivoire	Mexico	Venezuela
Croatia	Moldova	Zambia
Estonia	Morocco	Zimbabwe
Fiji		
2.2 : Developing Countries Where Competition Law is Under Preparation		
Bolivia	Jordan	Nigeria
Ecuador	Malaysia	Philippines
Egypt	Mauritius	Turkmenistan
El Salvador	Mongolia	Viet Nam
Honduras	Nepal	
Source: World Investment Report UNCTAD 1997 (updated)		

VIII
Concerns about Competition Policy

While the benefits of competition policy for developing countries are becoming increasingly obvious, groups and individuals still have a number of concerns. These concerns include:

- **"Competition policy undermines the objectives of industrial policy."**
  The development of the industrial sector is a key objective in the economic policies of many developing countries and it is sometimes thought that competition policy could undermine this by forcing firms into cut-throat competition with each other, perhaps going out of business to the detriment of the sector and the economy as a whole. This need not be the case: competition can instead act as a spur for all firms to improve their competitiveness, by developing new products or employing new processes, without leading to the number of players in the market decreasing.

- **"Competition policy undermines the objectives of social policy."**
  Job creation is a high priority in almost every developing country and the creation of employment is a key to the reduction of poverty. In some cases, the competitive pressures acting on firms after the liberalisation and introduction of competition into a sector has led to job cuts. Efficiency-related job losses come about particularly in cases of merger or acquisition but may happen for many other reasons.

  However, a competition policy need not disregard the economic and social impact of a merger or acquisition. Some competition laws require the authorities to take into account these broader considerations when assessing whether or not the merger should go ahead. These 'exceptions and exemptions,' usually references to the public interest, will be discussed in greater depth below. Over the long term, competition policy will promote efficiency in the economy and stimulate the creation of employment. The South African law, for example, specifically notes the objective of employment creation, while EU policy aims to stimulate the creation and growth of small and medium-sized enterprises.

- **“Competition policy holds back technological development.”**
  Competition law often contains provisions that restrict the kinds of agreements that can be made between firms. These restrictions are intended to prevent unfair competition through collusion. However, it may be beneficial for firms to cooperate with each other in technological research and development in order to upgrade productive capacities. The fear is that the competition law would prevent such agreements being made between firms, but again this is not necessarily the case.

  Competition laws, as in the EU, may exempt whole classes of technical collaboration policies, while competition laws generally also allow for a ‘rule of reason’ approach when investigating cases. In other words, each case is judged on its own merits, with any negative effects on competition being weighed against any positive effects, for example, in stimulating technological improvements.

- **“Competition policy allows foreign firms to come in and undermine domestic firms.”**
  Competition policy has sometimes been seen as a tool to force developing countries to open up their markets to foreign firms. This is because many governments have used industrial policies like reservations, subsidised inputs, access to credit, lower tax rates and export assistance to create ‘national champions.’ Despite the liberalisation of trade and foreign investment regimes across the world, foreign firms have sometimes found that they are not able to enter foreign markets. They argue that domestic firms are exploiting unfair advantages and see a strong competition policy as a way to challenge the dominance of these firms and the preferential policies that support them.

  In the last decade, the reduction of barriers to foreign trade and investment has allowed multinational firms to enter markets in developing countries. This phenomenon is sometimes viewed with hostility and suspicion, especially in sensitive sectors like utilities and the media. In this context, it is important to note that competition policy, and trade and foreign investment controls are distinct and independent. A government can introduce a competition law, while limiting the entry of foreign firms into a particular sector, as competition laws apply only to established firms.

  Competition policy can also be beneficial in regulating the behaviour of foreign firms that are allowed to enter the market. While it may be true that the entry of foreign firms will initially lead to more competition, this gain

has to be weighed against potential losses: firstly, TNCs enjoy other advantages over national firms and could come to dominate the market themselves; secondly, strong and large national enterprises may form a key part of the national development strategy and there may be good reasons to use public policy to support such firms. However a judicious approach is required to pursue this policy. The same concerns are also raised in developed countries. Competition policy therefore plays the essential role of ensuring that foreign firms which have entered the domestic market do not unfairly exploit their advantages to the detriment of consumers and domestic firms.

- **"Competition policy prevents domestic firms from attaining sufficient scale to compete in international markets."**
  In capital-intensive industries, firms have to be large enough to enjoy economies of scale before they can compete with established businesses. In a developing economy, the domestic market might only be large enough to support a single firm of this size. The concern is sometimes expressed that competition laws would prevent the creation of large, dominant firms capable of competing in international markets through its merger control provisions.

  This concern is only partly justified. When a merger is considered, competition authorities may be mandated to assess the benefits of a merger in terms of raising efficiency, economies of scale, use of technology etc. with any negative impact on competition. There are many examples of competition authorities allowing the creation of a dominant firm through a merger to go ahead because of other benefits that the merger brings. For example, in New Zealand when the country's two large dairy farms were allowed to merge, leaving no rivals in the domestic market and in Brazil when consolidation was allowed in the brewery sector to raise its competitiveness against bigger foreign brewing companies.

IX
The Creation of a Competition Culture

IX.1 What is a "Competition Culture"?

A competition culture promotes a well regulated market; efficient allocation of resources and efficient production processes in the economy. It stimulates firms to compete with one another in price, quality and through the innovation of new products. It ensures that the benefits of this efficiency do not just accrue to firms, but lead to greater value and choice for consumers, environmental protection and sustainable development. It is made up of a number of elements, of which laws form only one part. All stakeholders have a role to play in creating this culture of competition. Among the most important elements are:

- **Active Consumers**
  Consumers can be the key beneficiaries of competition policy. But in order for them to reap these benefits, they need to take an active part in implementation of the law. This can be done by identifying product markets of concern, providing information to the competition authorities and perhaps bringing cases against offending businesses. Despite their numbers, consumers are often not well organised. The strengthening of consumer organisations and representative groups is therefore extremely important to raising the profile of consumers.

- **Responsible Business**
  For a competition culture to thrive, businesses need to respect certain standards of behaviour. This does not just mean refraining from cartelisation and the restrictive business practices that competition law is concerned with, but also maintaining standards of transparency, corporate governance, accounting practices and combating corruption as well as respecting social and environmental regulations. This respect for rules is at the heart of fair competition.

- **Sensitised Media**
  As we have seen above, public awareness and support is necessary for competition laws to be implemented effectively. The media has an extremely important role to play both in drawing attention to particular concerns and helping competition institutions and officials to demonstrate their role and public support when dealing with other public and private sectors institutions.

- **Institutional Cooperation**
  In any country, there are a large number of institutions that influence the competition culture. All these institutions and the people that work in them need to be sensitive to competition concerns and to cooperate with each other. Otherwise, the competition culture is in danger of being over-run by a bureaucratic culture and rent-seeking behaviour.

X
The Competition Law

X.1 Introduction

Best practice in the field of competition law and policy is constantly being redefined as competition practitioners become more sophisticated and experienced and have to deal with new challenges from globalisation. This vibrant academic and professional debate is feeding through into legislation, with many countries in the developed and developing worlds redrafting or amending existing laws to take account of new developments. Five of the 7-Up countries have recently introduced or are considering a new law. South Africa and India have already introduced a new law, while Pakistan, Tanzania and Sri Lanka are mulling over a new law.

In the past, the level of competition in a market was judged by its static characteristics: the number of firms in the market and their market shares. This is reflected in legislation which banned monopolies outright, as was the case in Indonesia, and used market share proportions as triggers for investigations, as in Pakistan, India and many other countries.

However, there may be strong competition in a market with a small number of firms. Competition between Boeing and Airbus, for example, the two companies that dominate the world's passenger jet market, is very vigorous. It is even possible for a monopoly to be competitive, if other firms are able to enter the market easily. Competition analysis has therefore moved away from static market shares to a notion of the 'contestability of the market,' – an assessment of whether entry and exit to the market is free and whether price increases would motivate other firms to enter the market.

Firms do not necessarily compete simply in terms of price. They also compete by trying to distinguish their products from those of their rivals – for example, through branding and advertising. They will also try to innovate, improving styles and quality of existing products and developing new products, which is very much in the consumer's interest. Competition practitioners now also take

this into account when they are analysing the behaviour of firms. The emphasis in competition law enforcement is therefore moving toward a dynamic notion of competition that looks at how firms respond to each other, not simply at profit levels.

Before any analysis is conducted, the product market must first be defined. This may be a complicated exercise but the eventual conclusion of an investigation may hinge on this issue. [See BOX 2: Defining the Relevant Market].

Box 2: The Relevant Market

Defining the Relevant Market	**Case study: South African Competition Tribunal Analysis of the Glaxo-Wellcome Smithkline Beecham Merger**
The relevant market is defined by a product or group of products and a geographic area. The challenge for the competition analyst is to assess whether consumers, or producers using an input, would be able to shift their demand to another product or to a different supply location if the price went up. Analysts frame this problem by thinking about what would happen if there was a small price rise. If the price rise is very big, people would almost certainly switch away, even if all other commodities are bad substitutes. At first glance, this might seem a simple exercise, but it is worth thinking about an example more closely, like soft drinks. Two different brands of cola, like Pepsi and CocaCola, are pretty good substitutes for each other. Even	***The relevant product market*** It is first necessary to define the products in which two merging firms overlap and to identify the other competitors and their relative strength in these markets. In this case, the Tribunal used a classification system for pharmaceutical products developed by the European Pharmaceutical Marketing Research Association. Products are classified according to their therapeutic use. ***The relevant geographic market*** Depending on the product, consumers will be willing to travel a certain distance in order to purchase a product. In the case of pharmaceuticals, consumers would generally purchase products locally. However, because the sale of pharmaceutical products tends to be influenced by administrative procedures and

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Defining the Relevant Market	Case study: South African Competition Tribunal Analysis of the Glaxo-Wellcome Smithkline Beecham Merger
though some might prefer the taste of one brand, they would probably switch to the other if there was a sustained price rise for one. But what if there was only one producer of cola? Would consumers react to a price rise by switching to lemon-ade or another carbonated soft drink? Should we think of water, fruit juices and even milk as substitutes, because they are all refreshing cold drinks? The question is addressed by examining and trying to predict consumer behaviour. The geography of competition also needs to be judged carefully. If there is only one village shop within a 50km radius, it is clear that consumers have no choice to switch their consumption away. But in the case of supermarkets, it is more difficult to define how close two outlets would have to be to constitute genuine competition.	purchasing policies determined at the national level, the relevant market in this case was defined as the national market. ***The relevant customer market*** Different categories of customers face different conditions. In pharmaceuticals, the government is generally a large and powerful buyer. Other customer categories are the medical profession and the public, for 'over-the-counter' medicines. *Source: South Africa 7-Up Phase II Case study: The Glaxo-Wellcome Smithkline Beecham Merger*

The increasing sophistication of competition policy is reflected in a tendency away from 'per se' regulations, for example, laws that prohibit certain types of agreement between firms in all circumstances. Instead, Competition Authorities are increasingly adopting a 'rule of reason' approach. This involves examining all positive and negative effects of the activity to assess whether it should be permitted or prosecuted.

This trend is a positive one: both consumers and firms will benefit from broader and deeper analysis. However, there are also two problems associated with this:

- Competition Authorities have more discretion which raises the possibility of bias and the potential for particular interest groups to try to influence the process
- The demands on Competition Authorities to carry out the analysis are much greater. Developing country agencies may not have adequate resources.

Transparency, independence and resources are all discussed in greater depth below. A further area of debate in the area of competition is whether vertical and horizontal agreements should be treated with equal importance. Horizontal agreements are those between firms at the same stage in the production process of a commodity, while vertical agreements are between firms at different stages in the production process of the same commodity. Horizontal agreements give rise to the most obvious concerns as they directly reduce competition in that market. However, drawing on the earlier discussion, vertical agreements can raise prices to competitors by raising prices or reducing access to inputs or customers or can stifle competition in an upstream or downstream market. One example is exclusive selling agreements when firms prevent retailers from selling competitors' products by refusing to supply them or raising the price to retailers that do not comply.

X.2 Drafting the Competition Law

X.2.1 Content

A competition law generally covers three areas: abuse of dominance, anti-competitive agreements between firms and mergers and acquisitions. The Table below provides examples of these categories of competition concerns.

Table 3: Competition Concerns

1	**Abuse of dominance**
	This category includes: • raising prices, artificial lowering of prices (predatory pricing) • restricting supply • limiting access to essential facilities/networks and other vertical restrictions • abuse of intellectual property rights.

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	Examples Tanzanian Breweries, which had 80% of the national beer market, prevented independent wholesalers from stocking competitors' brands and raised the supply price to wholesalers that did not comply. The Competition Commissioner issued directives against these practices but the company did not comply with them. The telecoms sector in Tanzania gave cause for concern as privatisation created a private monopoly out of a public monopoly. The sectoral regulator has the power to approve tariffs, but a better solution in the long run would be to structure the industry in such a way that firms put competitive pressure on each other.
2	**Anti-competitive agreements between firms (collusion)**
	This category includes: • cartels, • bid rigging, • agreements to share markets/customers, • agreements to limit production or investment • vertical agreements e.g. refusal to supply, exclusive selling agreements, tied selling
	Examples Cartels operate from the level of the village right up to the global markets. In a case that has been documented by CUTS, residents of a village in the state of Rajasthan in India, were overcharged by two studios acting in collusion, and failed to supply photos to local consumers. Their RBP was stopped when they faced by a series of court cases brought by customers with the support of a local consumer group. The cost of such an anti-competitive practice would perhaps be in the range of $1000-5000 p.a. At the other extreme is the international vitamins cartel that operated from 1990 to 1999 and involved American, European and Japanese companies in a global price-fixing conspiracy. Overcharging in 91 countries where the cartel operated has been estimated at $2.7bn. The cartel has been prosecuted in the US, EU, Canada and Australia. The US-based American Natural Soda Ash Corporation has been investigated and prevented from operating as an export cartel in Japan, the EU and other countries. The cartel has also been investigated in two of the 7-Up countries, South Africa and India. In India, a case was brought by the domestic soda ash industry while in the South

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	African case the complainant was Botash, a soda ash producer in Botswana. The complaint was that Ansac acted as a cartel and engaged in predatory pricing that was driving domestic players out of business. Ansac defends itself by saying that it is a legitimate export association for the sector. In India, the MRTPC ruled against Ansac, but its decision was overturned by the Supreme Court which ruled that the MRTPC did not have jurisdiction over an agreement that was concluded outside the national territory. In South Africa, Ansac is employing the same jurisdictional defence. Progress is being made in the case and Ansac may agree not to operate as a cartel in the South African market.
3	**Mergers and acquisitions**
	In this category, the competition authority is only usually concerned with companies of a certain size operating in concentrated product markets.
	Examples The Zambia Competition Commission imposed conditions on the merger of CocaCola and Cadbury Schweppes because of competition concerns including distribution networks. There is a strict compliance programme including education and investment in which the executives of the merged company meet with the Zambia Competition Commission regularly to ensure that they are fulfilling their commitments. The merger of Glaxo Wellcome and Smithkline Beecham was considered in South Africa and Sri Lanka. In South Africa, the merger was allowed through on the condition that production of certain drugs that caused competition concerns was licensed out. In Sri Lanka, only the initial stages of the investigation were carried out, as the companies did not respond to requests for information. However, there was also a fear that the Authority would have no clout with the TNCs. There may also have been political resistance to the investigation.

Box 3: The Cement Sector

Focus on the Cement Sector
The cement industry has been prone to anti-competitive practices all over the world, partly because there is excess capacity and the industry is currently restructuring and consolidating globally to deal with this. This is also related to the nature of cement production in which the costs of transport constitute a large proportion of overall costs.
In Pakistan, an investigation of the cement industry was initiated after a coordinated price hike in 1998. The national authority, the MCA, imposed a fine on the companies and a price reduction but dropped the case after the Government intervened. In India, manufacturers halted dispatch of cement supplies and then introduced a uniform price increase in 2000. The companies refused to cooperate in the subsequent competition enquiry and it was not pursued. The Indian Government, however, has reduced duties on imports which will increase competition. The Government also plans to increase spending on housing and infrastructure which will raise demand in the sector.
In 2001, Lafarge became the world's largest manufacturer of cement when it took over Blue Circle. Lafarge and other cement multinationals are continuing to pursue a strategy of global expansion. Lafarge is currently negotiating acquisitions in Kenya, South Africa, Zimbabwe and Kenya, and has already acquired production facilities in Malawi and Burundi. In 2001, Lafarge took over Chilanga cement, Zambia's only domestic cement producer. The Zambia Competition Commission considered the case as it raised national and regional competition concerns and the acquisition was allowed with some conditions.

X.2.2 Mergers and Acquisitions

In order to deal with the kinds of competition problems noted above, it is useful for the law to contain provisions that cover all three of these areas. However, there has been considerable debate over the inclusion of provisions regarding mergers and acquisitions. In India, for example, the existing law does not cover mergers and acquisitions. However, they will be covered under the new legislation that has been passed by the Parliament. Pre-notification is voluntary under the new law. The competition laws of the other countries where research was conducted contain provisions for the pre-notification of mergers. [See BOX 4]

Box 4: Mergers and Acquisitions

The M&A debate	Competition Legislation in India
Arguments against the inclusion of M&A screening point out that it is very resource intensive. Collection and analysis of information on the impact of a merger on product markets (many product markets may be affected in the merger of large, diversified corporations) takes up large amounts of staff time. Developing country competition authorities are mostly resource-constrained and pre-merger assessments could prevent the authority from investigating cases of actual competition abuse. On the other hand, it is much easier and less costly to prevent or impose conditions on a merger before it takes place than it is to unravel a merger once it has taken place. This will be possible when there are brands or production lines that can be divested and there is a potential buyer for the assets. If this is not the case, then divestiture will not lead to greater competition. Furthermore, anti-competitive behaviour will have to be proved before any restructuring can be imposed and in the meantime consumers and the economy will suffer. In order to avoid the over-burdening of the Authority, countries can restrict the kinds of mergers that they investigate, for example, only those with a certain market value or when the level of concentration exceeds a defined limit. Notification to the Authority by firms that intend to merge can be made voluntary. In theory, firms will prefer to notify and face possible restrictions on the merger than to be forced to reverse the merger once it has taken place.	Over the last couple of years, there has been much discussion and debate on the drafting of a new competition law. The old law, the Monopolies and Restrictive Trade Practices Act, was considered inadequate to meet the country's current competition concerns. Some of the differences between the old and new laws are noted here, and demonstrate the changing perception of the purpose and nature of competition law in developing countries. Mergers: Since an amendment in 1991, the MRTPA has not contained any provision for the pre-notification of merger or any investigatory or other powers for the MRTP Commission, the implementing authority. This will be changed under the new Bill which will include voluntary merger notification. Approach: the MRTPA takes a static approach to determining the dominance of a firm in a market. The new law defines a dominant firm as one that can operate independently of the competitive forces in the market Stronger penalties, a leniency programme providing amnesty for companies cooperating in investigations of cartels did not exist in the old law but are all included in the new law to make it easier to crack cartels.

X.2.3 Model laws

UNCTAD and OECD-World Bank have developed model competition laws to assist in the dissemination of good practice. However, these models are only a starting point and competition experts agree that "one size or type does not fit all" in terms of competition law.

The two model laws are similar in many ways and they cover the three categories of competition concerns mentioned in the Box above. However, they have a different emphasis.

Comparison Between Model Laws	
UNCTAD Model Law	**World Bank-OECD Model Law**
Objectives	
To control or eliminate restrictive agreements or arrangements among enterprises, or mergers and acquisitions or abuse of dominant positions of market power, which limit access to markets or otherwise unduly restrain competition, adversely affecting domestic or international trade or economic development.	To maintain and enhance competition in order ultimately to enhance consumer welfare.
Scope - Extra-territorial Jurisdiction & Cross Border Abuses	
Not explicitly mentioned	The law is applicable to all matters specified in having substantial effects in the country, including those, that results from acts done outside the country
Coverage - Monopolisation & Dominance	
A prohibition on acts or behaviour involving an abuse or acquisition and abuse of a dominant position of market power: • Where an enterprise, either by itself or acting together with a few other enterprises, is in a position to control a relevant market • Where the acts or behaviour of a dominant enterprise limit access to a relevant market or otherwise unduly	A firm has a dominant position if it can profitably and materially restrain or reduce competition in a market for a significant period of time. The position of a firm is not dominant unless its share of the relevant market exceeds 35 percent. It prohibits abuse of dominance including creating obstacles to the entry of competing firms or to the expansion of existing competitors or eliminating competing firms from the market.

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restrain competition, having or being likely to have adverse effects on trade or economic development • Acts or behaviour considered as abusive • Predatory pricing • Discriminatory pricing • Resale price maintenance including in exported and imported goods Restriction on parallel imports where the purpose of restrictions is to maintain artificially high prices	However, it does not prohibit actions by a firm that creates obstacles to the entry of new firms or reduce the competitiveness of existing firms solely by increasing the efficiency of the firm taking those actions or that pass the benefits of greater efficiency on to the consumers. In case of no other remedy available the competition authority would be able to reorganise or divide the abusing firm provided that the resulting entities would be economically viable
Coverage - Restrictive Trade Practices	
Prohibition of restrictive agreements between rival or potentially rival firms, regardless of whether such agreements are written or oral, formal or informal. • Agreements fixing prices or other terms of sale including in international trade • Collusive tendering • Market or customer allocation • Restraints on production or sale, including by quota • Concerted refusal to purchase or supply • Collective denials of access to an arrangement, or association, which is crucial to competition.	It prohibits agreements between firms, among other things, that are principally meant for: • Fixing or setting prices, tariffs, discounts, surcharges, or any other charges. • Fixing or setting the quantity of output • Fixing or setting prices at auctions or in any other form of bidding • Dividing the market by any means • Eliminating from market actual or potential sellers or purchasers • Refusing to deal with actual or potential sellers or purchasers An agreement other than those mentioned above is also prohibited if it has or would likely to have as its result a significant limitation of competition.
Coverage – Mergers and Acquisitions	
Should be prohibited when: • The proposed transaction substantially increases the ability to exercise market power • The resultant market share will result in a dominant firm or in a significant reduction of competition in a market dominated by very few firms.	Concentrations that will probably lead to a significant limitation of competition are prohibited.

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Structure of the Competition Authority	
No specific suggestion	• An independent and autonomous and accountable competition agency • Specialized court to hear competition cases • Competition court could adopt procedures and rules of evidence specially suited to competition cases • Composition of the court could be tailored to the requirements of competition cases.

Countries may make use of these laws as well as advice and assistance from international experts in the design of their competition laws. However, it is clear that the law must fit in with the socio-cultural milieu and institutional structures of the country as well as with other specific pieces of legislation that have an impact on competition. The law and institutions must also be consistent with the level of resources available for implementation. An over-ambitious plan for a large and powerful Competition Authority may even be counterproductive if the public is not convinced that it has the capacity to carry out its mandate.

Institutional frameworks that are already in place may constrain the legal structure of competition law. For example, there may be restrictions on whether public agencies are able to fund themselves outside the regular government budget approved by the legislature, or the creation of a double track legal system with separate competition courts. This may work well in some countries, but may not be possible or practical in others.

X.2.4 Objectives

Any competition policy needs to be consistent with national development objectives and priorities. This is necessary for the policy to be supported by policy-makers and the public and for it to be successfully implemented. Some countries have made this connection between development objectives and the competition policy explicit, as in South Africa [see box below]. However, in other countries the policy as been implemented as part of a larger package of reforms which do not have wide domestic support and there has been little effort to make the law fit with existing legislation and broad national objectives. Some people disagree with the approach of integrating non-competition

concerns in competition law, arguing that social and development considerations should be covered in other laws. They identify a number of drawbacks:

- Competition Authorities have to deal with the difficult and politicised task of adjudicating between incompatible objectives. Balancing objectives is the responsibility of the elected government.

- Creates uncertainty and ambiguity in the competition regime

Others point out that the development considerations may not be given much weight in the implementation of the competition law and so should be backed up with other legislation to meet these objectives.

Table 4: Objectives of Competition Laws

India 1969	Prevention of concentration of economic power that is or may lead to the common detriment. Specifically: control of monopolies; monopolistic trade practices; restrictive trade practices; unfair trade practices
2003	Establishment of a Commission to: prevent practices having adverse effect on competition; promote and sustain competition in markets; and protect the interests of consumers and to ensure freedom of trade
Pakistan	To take measures against undue concentration of individual economic power; monopoly power; restrictive trade practices
Sri Lanka	Control of monopolies, mergers and anti-competitive practices; to formulate and implement national price policy
Kenya	To encourage competition in the economy by prohibiting restrictive trade practices; controlling monopolies, concentration of economic power and prices
South Africa	To promote and maintain competition in order to: Promote efficiency, adaptability and development of the economy; Provide consumers with competitive prices

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	and product choices; Promote employment and advance the social and economic welfare of South Africans; Expand opportunities for South African participation in world markets and to recognise the role of foreign competition; Ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy; Promote a greater spread of ownership, in particular to increase ownership stakes of historically disadvantaged person.
Tanzania	To encourage competition in the economy by prohibiting restrictive trade practices, regulating monopolies, concentration of economic power and prices; Protect the consumer
Zambia	Encourage competition in the economy by prohibiting anti-competitive trade practices; Regulate monopolies and concentration of economic power to protect consumer welfare; Strengthen the efficiency of production and distribution of goods and services; Secure the best possible conditions for the freedom of trade and expansion of entrepreneurship base

X.2.5 Coverage

The scope of competition law and the framework for implementation vary widely across countries, as is demonstrated by the project countries. Legislation varies in the types of enterprise that are covered. Many competition laws, for example, exempt state-owned enterprises from the purview of the law. This may be justified on the grounds that the government enterprises are providing public goods and may do so more efficiently as monopolies. On the other hand, it can be argued that government enterprises competing in liberalised markets with firms in the private sector should be subject to the same set of rules as other firms in the market. [See Table 5]

Table 5: Coverage of Competition Law

India	Covers the public sector EXCEPT enterprises classified as important for national security or the public interest/ that perform a sovereign function/practices or agreements under the obligation of an international treaty or agreement. Intellectual property was EXEMPT from the old law, but has now been COVERED under the new law.
Pakistan	The public sector is EXEMPTED from the Act
Sri Lanka	Current law covers all types of enterprises. Proposed new law EXEMPTS government institutions or government-sponsored transactions.
Kenya	Government agencies and professional associations MAY BE EXEMPTED by an Act of Parliament. These exemptions include professional services such as lawyers.
South Africa	EXEMPTIONS for activities of labour such as collective bargaining, collective agreements, rules of professional associations, acts subject to or authorised by public regulation, concerted conduct to achieve a non-commercial socio-economic objective
Tanzania	Government agencies and professional associations MAY BE EXEMPTED by an Act of Parliament. Services such as doctors, engineers and lawyers are currently EXEMPT from competition enforcement.
Zambia	The law does not contain exemptions for classes of enterprises or occupations

In terms of the way that they treat restrictive business practices, laws tend to reflect one of two approaches, the ‘per se’ approach or the ‘rule of reason.’ The former refers to outright restrictions on certain types of behaviour, while the latter suggests a process in which any positive benefits of the practice for consumer welfare are taken into account when making a judgement about the legality of a practice. Most of the project countries list some restrictions and

mention other restrictive trade practices for which each case needs to be considered on its own merits.

In Pakistan, for example, certain RTPs are classified as 'unreasonable' and are outlawed. However, despite the presumption that the act is unlawful, they may be permitted if they can be shown to contribute substantially to efficiency, technical progress or exports. By contrast, under the Sri Lankan law, the onus is on the competition authority to demonstrate that an RTP is against the 'public interest'.

X.3 Implementation

X.3.1 Introduction

The effectiveness of competition law depends, of course, not just on careful drafting of the legislation itself, but on the implementation and enforcement of the law. Most of the 7-Up countries have very limited experience of competition-related regulation and institutions face the challenge of getting up to speed quickly. At different stages of institutional development, the Authority will be able to handle some activities adequately. An over-ambitious institutional set-up may undermine respect for the Authority. The table below sets out a scheme for institutional development.

Table 6: Stages of Institutional Development

I. START	II. ENHANCEMENT	III. ADVANCEMENT	IV. MATURITY
1. Competition advocacy and public education	5. Merger control		10. Second-generation international agreements
2. Control of horizontal restraints	6. Vertical constraints	9. International cooperation agreements	11. Proactive competition advocacy
3. Exceptions and exemptions, including on public interest grounds	7. Development of the effects doctrine		
4. Technical assistance			

Source: "Friends of Competition" (CUTS, 2003) adapted from a paper by Gesner Oliveira, "International Cooperation and Competition Policy," presented at CUTS Seminar, Jaipur, India, November 2002

Effectiveness of implementation and enforcement depends on a number of factors including:

- Legal powers invested in the Authority
- Independence from political interference
- Political support for competition goals
- Availability of resources

X.3.2 Independence

Competition authorities may take one of a number of different structures. The most independent institutions are not only administratively separate from the government, they are staffed by competition professionals and do not rely on the government for a budget allocation. The least independent authorities are those that form part of a government Ministry and are also therefore subject to civil service restrictions on recruitment and on central budget allocations for the administrative services. However, these authorities may have larger budgets and greater political support than those that have more theoretical independence.

In the 7-Up countries, only the Kenyan Authority is part of a Ministry. The Tanzanian authority is also under the Ministry. However, the proposed amendment would make it autonomous. The other authorities all have at least notional independence from the government, although the Commissioners or Directors may be appointed by the government. However, the main issue—on paper–is whether the Authority needs government approval to implement its decisions, although the government may have a de facto veto power even if this provision is not in the law.

In India, the new law contains a provision by which the Government may issue policy directions to the Competition Authority. This did not exist under the old law, and has been done to prevent any excesses by the Authority. Similar provisions exist under other laws too.

The question of political interference clearly cannot be analysed by looking at the structures of the institutions. To take one example, the Monopoly Control Authority of Pakistan appears to have extensive powers on paper, but in reality, its effectiveness has been severely constrained by political intervention. When the Authority investigated cement companies for cartelisation, the Authority has intended to pursue prosecution but instead made an “amicable” settlement with the Cement Manufacturers Association at the behest of the government. Political interference is common, especially in sectors with powerful interest groups or where ‘greater’ national interests are considered to be at stake. Another example from the project is the investigation of breweries in Tanzania. The Authority found that Tanzania Breweries was abusing its dominant position. However, the Permanent Secretary in the Ministry of Trade and Industry, who

served on the company's board, intervened to support the company and the company was not able to comply with the order.

X.3.3 Powers

For the competition authority to function properly, it is important that it has the right powers. These may be broadly divided into investigative and adjudicatory. In South Africa, there is a clear separation of powers: investigation is the prerogative of the Commission, while adjudication is reserved for the Tribunal. At the other extreme is the Monopoly Control Authority of Pakistan, which has sole enforcement power for the competition law, with both investigative and adjudicatory powers. Its decisions may be appealed at the High Courts and the Supreme Court.

In India, Tanzania and Zambia, the Competition Authorities have a judicial role: their judgements have legal force. In Kenya, this power is vested with the Minister. In South Africa, on the other hand, the Competition Commission plays the investigative role while a separate institution, the Competition Tribunal, adjudicates cases. Appeals against the Tribunal lie before a Competition Appellate Tribunal, a permanent bench of the apex court.

In most of the 7-Up countries, appeals of competition cases are dealt with in the ordinary legal system. While it may be very costly to set up a parallel court system to deal with competition matters, this structure can be advantageous. Judges build up competition expertise, particularly developing knowledge and experience in dealing with the economic aspects of cases. This 'self-contained' legal system is recommended in the OECD-World Bank model law but may conflict with constitutional restrictions, as would be the case in India.

Separating powers helps to establish trust in the fairness of competition law enforcement. But having to go to the courts in every case is time and resource intensive and so might limit the number of cases that a split-power competition structure is able to handle.

An important set of powers for a developing country competition authority is the power of advocacy. In order to create a competition culture, awareness of competition issues and how they affect various groups needs to be created among businesses, consumers, policy-makers and the media. The Authority will need to allocate resources to these activities. In order to conduct these activities effectively, advocacy should be specifically included in the mandate of the Authority. In Sri Lanka, for example, the proposed unified competition-consumer protection authority will have broad powers to tackle these areas together.

The new law in India has divorced all powers to curb unfair trade practices, which will stand transferred to the consumer fora under the Consumer Protection Act, 1986. As regards advocacy, this has been specifically provided for under the new law with a Competition Fund to support such activities. The Fund will be filled up by fines etc charged by the Competition Authority, and can also include grants. Interestingly, the new Indian law provides for advocacy during the first year of its operation, following the UK model. The old law will run concurrently during this period of advocacy/outreach phase.

X.3.4 Resources

In order for the competition authorities to function effectively, they clearly need adequate resources. The level of financial support available and the way that it is used is important, but equally important are human resources.

Competition constitutes a tiny proportion of government spending in all the 7-Up countries, ranging from 0.0009 per cent of the public budget in India to 0.04 per cent in Zambia. Looking at the annual budgets of the Authorities, it is clear that the only country where the Authority is comfortably financed is South Africa, where the competition institutions have an annual budget of almost US$9mn. In the other countries, the budgets range from less than $70,000 in Tanzania to $81307mn in India. For those authorities that have only recently been established, the budget allocations can be expected to rise in coming years.

Basic resources such as office space, communications and information technology equipment and information resources greatly influence the effectiveness of the Authority. The ZCC (Zambia Competition Commission) has well tailored facilities for its size, with telephones, computers and Internet access. The ZCC subscribes to several periodicals and maintains databases of firms operating in the country. By contrast, the MRTPC, the Indian Authority, has no Internet access and no access to business databases, despite a budget almost four times that of the ZCC. Most of that goes to paying salaries of non-professional staff.

Finding and retaining professional staff is a challenge for competition authorities. In many developing countries, there is only a small pool of persons with knowledge of competition-related law or economics and a small body of professionals with any regulatory experience. The professional staff of the 7-Up country authorities tends to be small, ranging from 32 in South Africa to just three in Tanzania, though this number may rise as the competition institutions are strengthened.

XI
The International Dimension

XI.1 International Competition Concerns

Integration into the global economy raises a number of other competition problems which may need to be covered explicitly in the law. These concerns include:

- **International cartels**.
  According to a World Bank study, the value of "cartel affected" imports to developing countries was US$81.1bn from just 16 cartels during the 1990s. This demonstrates what an important issue this is, yet one of the only examples of a developing country trying to prosecute such a cartel was Brazil in the case of the vitamins cartel. Other countries have not attempted to follow.

- **Trade cartels**.
  These include both export and import cartels. In most competition laws, export cartels are exempted because they do not have an effect on the domestic market. This means that the importing countries need to tackle the anti-competitive practices using their own national legislation. Both South Africa and India have tried to do this in a case involving the American Natural Soda Ash Corporation but in the Indian case the Supreme Court overturned the judgement on grounds of legal infirmity. Export cartels often involve local partners for distribution and retailing so the Competition Authority can target these domestically registered companies. However, export cartels may sometimes be sanctioned by governments or encouraged by certain trade policies.

- **Cross-border M&As**.
  When developed country competition authorities consider whether to let through a merger involving a company or companies based in its jurisdiction,

they do not consider the impact of the merger in other markets. Recent mergers in the financial and pharmaceutical sectors have had significant effects in developing countries, but often have gone through without consideration by the Competition Authority in question. Other mergers and acquisitions take place between firms based in developing countries. South African companies have been particularly active in buying up businesses on the continent. Competition problems are exacerbated if a dominant domestic firm merges with a dominant firm in a neighbouring country whose exports had previously provided competition.

- **Anti-competitive practices by transnationals**.
  Transnationals may exploit their advantages over domestic firms through practices such as tied selling, division of markets, licensing conditions and restriction of supply by their subsidiaries. For example, it is common for MNCs to prevent their subsidiaries from selling products outside a particular region or country. For example, an Indian subsidiary would not normally be able to export to Pakistan, even if it can produce the goods at a lower cost. The MNC effectively grants a regional monopoly to each of its subsidiaries. In a recent dispute, Hindustan Lever, the Indian subsidiary of Unilever, successfully brought a case against the Indonesian subsidiary of Unilever which had been exporting its products into the Indian market. These kinds of arrangements are likely to be confidential and would be difficult to pinpoint.

- **Abuse of dominance**
  Transnationals or large firms with virtual monopolies or oligopolies can dominate the world market because of their stock-in-trade or business practices and abuse their position. For example, Microsoft, with a virtual hold on computer operating systems, does indulge in rent seeking behaviour but cannot be challenged due to their position. Or food and agro or pharmaceutical giants dominate the market due to their intellectual property rights and do not even licence developing country firms to compete.

- **Dumping and anti-dumping actions**.
  The relationship between trade and competition is complex but is an increasingly important issue as more countries lift their trade barriers. Under World Trade Organisation rules, dumping involves selling goods in another country below "normal value." Defining the normal value is a key element in these cases. Dumping also involves a notion of harm to domestic industry. It arises when demand and supply conditions differ in domestic and import

markets, making it profitable to charge different prices to the two different types of customers, known as 'price discrimination'. In some circumstances, it may arise because of dominance in the home market, but more often it is the result of healthy competition in the export market which the exporter is trying to break into.

Under the rules of the international trading system, governments can respond to suspected cases of dumping by taking anti-dumping actions, raising tariffs on the good to bring prices into line with the 'normal price.' In theory, "anti-dumping actions" protect the afflicted industry from unfair competition. In practice, however, they may be misused to protect inefficient domestic industries, in cases when foreign producers are more efficient than domestic ones and are able to produce goods at a lower price. In this case, consumers and producers using imported inputs are penalised by the 'anti-dumping' tariffs that are imposed.

The fact that global markets and national jurisdiction coexist raises extra complications, notably whether a Competition Authority can take action against an anti-competitive practice that is taking place outside national boundaries but is having a harmful effect in the domestic market. One possibility is for the Competition Authority to invoke the 'effects doctrine'. Most of the competition laws in the 7-Up countries have no specific provisions relating to this and there is no jurisprudence to draw on to see how the laws have been interpreted. The only country with a clear reading in the jurisprudence is India, where, in a judgement relating to the soda ash case, the Indian Supreme Court clarified that the law did *not* apply to agreements made outside the national territory. However in the new law, effects doctrine has been covered explicitly. In South Africa, on the other hand, it is clearly spelt out in the law that it applies to activities having *an effect* in the national market.

Box 5: The 'Effects Doctrine'

Normally, national laws apply only within the territory of that state. In the case of competition law, this territorial restriction could prevent authorities from taking action against anti-competitive agreements or practices made outside the country, which would normally be the case with an export cartel. But if part of the practice takes place within the territory, for example an agreement began outside the territory is concluded within it, then the standard territoriality principle applies. A standard defence used by TNCs in cartel cases is that the competition authority does not have jurisdiction over the agreement because it was concluded outside the territory in question.

However, a number of countries, particularly the United States, apply some laws outside their territory on the basis of the so-called 'effects' doctrine. In a 1945 judgement, the US Supreme Court declared that 'any state may impose liabilities, even upon persons not within its allegiance, for the conduct outside its borders that has consequences within its borders which the state reprehends.' The EU has contested extraterritoriality in US law in relation to actions by US firms with an effect outside the US. At the same time, the European Commission has upheld the effects doctrines. The effects doctrine could be useful to Competition Authorities in tackling harmful practices of firms outside their borders. On the other hand, if the companies in question do not have assets and production facilities in the affected countries, the Competition Authority will have to innovate to enforce its ruling when the Effects Doctrine is applied.

XI.2 Methods of Addressing International Competition Concerns

There has been much discussion recently about international approaches to competition problems. This could take a number of forms:

- *Ad hoc solutions*. One possibility is to submit evidence for cases that are being brought in other countries. Developing countries could be allowed to make a special submission on the impact in their market, of a merger, for example, to avoid the case being considered all over again in another jurisdiction. In the case of a cartel, the harm caused to another country could be included in the calculation of fines to be paid by the cartel members.

- *Informal cooperation*. This kind of cooperation would take place at the level of the Authorities in two countries. Authorities can make requests to each other for information and technical advice in relation to cases that they

have pursued. No agreement is necessary for this to take place and it could be very beneficial as was the case for cooperation between India and the European Union and South Africa in relation to the soda ash and pharmaceuticals cases.

- *Formal cooperation*. Formal cooperation agreements generally exist only between the competition authorities of developed countries. Brazil and Costa Rica are the only two developing countries to have signed such agreements with the US and Canada respectively. These agreements may not make much difference at the practical level but can strengthen such informal cooperation as already exists by raising its profile and providing an institutional framework.

The level of cooperation appropriate may vary according to the level of development of the country and its experience with competition law. The Diagram below illustrates this, drawing on the stages of institutional development discussed above. Some types of cooperation, like technical assistance, will be asymmetric, in the sense that they are more likely to be provided by a developed country for a developing one, while others, like the sharing of confidential information will almost certainly have to be symmetric.

Table 7: Stages of Institutional Development

Activities of the Competition Authority	Cooperation Agenda	Content
Competition advocacy Horizontal and vertical agreements, merger control	Technical assistance Informal cooperation	Training and drafting of legislation and procedures in line with due process
Regulation International cooperation agreements	Simple cooperation agreements	Cooperation in selected cases with exchange of public information
Deeper international cooperation	Advanced cooperation agreements	Systematic cooperation with exchange of confidential information

Source: Gesner Oliveira, "International Cooperation and Competition Policy," paper presented at CUTS Seminar, Jaipur, India, November 2002

- Regional approaches. As noted above, regional competition policy may be necessary to ensure that a regional trade agreement operates successfully. Many regional groupings like the East African Community, COMESA, SADC in Africa, Mercosur and Caricom in the Americas and ASEAN in Asia are working on developing some kind of coordination on competition. This may take a number of forms depending on the homogeneity of economies within the trading bloc and the level of development of their competition regimes.

- Global approaches. While many competition concerns are best tackled at the national level, there are other cases in which the international dimension to the problem makes it difficult for a developing country to tackle it, even with a strong and effective domestic competition authority. This is caused by limited experience and the high level of resources needed to collect and analyse evidence in cartel and merger cases, especially when the companies concerned are based in a different country. There may also be jurisdictional difficulties (see BOX 5). New institutions or mechanisms therefore need to be developed at the multilateral level that will allow the effects on developing country markets of a merger, collusion or restrictive business practices to be taken into account in the consideration of the case by a body that will also have the strength to enforce its rulings.

Any multilateral effort should include development provisions to protect the interests of poor countries, including:

1. Provisions for technical assistance and capacity-building. In order to get to the stage where all developing and least-developed countries can make full use of multilateral competition efforts, they will need assistance in building up skills and knowledge, getting access to information and building up databases of information about businesses at the national level, acquiring and equipping premises, especially with adequate communications facilities. Developed country support, both financial and advisory, is crucial for other countries to establish a competition culture.

2. Mechanisms for cooperation/Information sharing without strict reciprocity. Countries are concerned that an agreement requiring sharing of information would lead to their authorities being inundated with requests for information. This would use up limited staff time and resources. At the same time, information and advice from well established competition authorities on both content in particular cases and methods of investigation and analysis in others could be extremely useful. A multilateral agreement could therefore contain asymmetric obligations for developed and developing countries.

3. No obligatory implementation of competition policy; no harmonisation of competition laws; no restrictions on the provisions of competition laws at the national level. Developing countries need to be free to draft laws that fit in with their development strategies, existing institutions and public policy frameworks. Because the economic, social and institutional conditions are so different in developed countries, their competition policies and laws would also be inappropriate.

XII
Conclusions

The challenges facing developing countries in creating appropriate and effective structures to engender competition in their economies are enormous. Underestimating the size of the challenge will only lead to disillusionment. A concerted political effort is necessary to meet these challenges along with real involvement of the stakeholders who will ultimately be bound up in the implementation of the government's policies.

The 7-Up research has shown clearly that as countries develop and globalise, their competition policy needs change. It follows from this that developing countries' needs are distinctly different from those of developed countries, addressing the kinds of problems that arise from small markets and transition from state control to free markets. It also follows from this that each country needs to develop a competition law that is appropriate to its own institutional, social and political context. Careful drafting of the law will greatly enhance its effectiveness, while the involvement of a range of stakeholders will help to ensure its effectiveness.

The law itself should cover the range of competition concerns comprehensively and should take into account the interaction with other laws and policies, especially those relating to trade, privatisation, intellectual property and sectoral regulation. The latter is proving to be a difficult issue, not just for poorer countries, and needs to be dealt with carefully if these bodies of law are not to undermine each other. In several of the project countries, inadequate laws are now being redrafted or amended. Competition law needs a strong and adequately resourced authority to be implemented effectively. The most common problems that have been exposed in the research are inadequate human resources, without the experience and expertise necessary to carry out their work. Implementation has often been hampered by political neglect or interference. This can be countered by ensuring the independence of the Authority – not just on paper, but in practice.

The challenges for developing countries are also different because they face a new and challenging international context. Globalisation has made the task of governing more difficult in a number of ways, as national governments are no longer able to make truly independent policy choices. Competition has become an issue in these countries before other institutions of the market have become deeply rooted. When developed countries implemented competition policy, it was in an environment of vigorous private sector expansion, rapid innovation and economic growth. In many respects, the competition culture already existed in these economies and the competition law was a formal expression of values and beliefs held by the public and endorsed by the government.

The developing countries of today faced a very different backdrop. Many, if not most of the countries experienced a period of deep and broad government control of the economy. Where private businesses did exist, they were heavily regulated, sometimes working within a regime of price control by the state. Licenses were required for numerous aspects of normal business operations, in particular those relating to external trade. Now, these economies are liberalising fast, phasing out barriers to the private sector, domestic or foreign, trade and capital flows. But the culture of dynamic competition in which private companies try to gain markets with innovation and competitive pricing is only starting to develop. The task of developing country competition institutions, therefore, is not to sustain or support competitive markets, but to create them.

Rapid policy changes in developing countries provide an excellent opportunity for competition institutions to play a valuable role in shaping the structure of economies to benefit consumers and stimulate growth. They can also provide a crucial safeguard against some of the risks of liberalisation. On the domestic front, this is vitally important during privatisation, when governments may face incentives to constrain competition, at the expense of the consumer. In utilities sectors, these consumers may be the poorest in the face of incentives that are not always in line with those of the consumer.

We have seen a number of ways in which effective competition in markets stimulates growth – not just by keeping prices low, but also by providing firms with a constant incentive to innovate to improve the quality of what they produce and how they produce it. This project has demonstrated the overwhelming need for competition policy and law at the national level for developing countries to grow and thrive. The civil society organisations, including and research institutions have taken part have become firm advocates. Along with them CUTS will continue to push forward this important agenda at all levels.

XIII
The Way Ahead

All stakeholders have a role to play in creating a competition culture, taking part in the development of policies that fit the particular needs of the country and ensuring that this law is effectively implemented. At the same time, progress needs to be made in exploring the most effective forms of cooperation and assistance that can take place at the multilateral level in order to address pressing global competition problems which are causing great harm to consumers and businesses.

XIII.1 Civil Society

- Create, stimulate and sustain an active consumer movement. Almost all of the public meetings that took place in the 7-Up countries during the course of the project adopted this as a recommendation. Without such a movement, competition policy and law will not be so effective in raising the welfare of the consumer or regulating the market.
- Consumer organisations should have the right to bring forward a case to the Competition Authorities as representatives of consumers. Where such a right does not exist, consumer organisations will need to work towards this. Where it does, organisations should use it actively, carrying out preliminary investigations and being a catalyst for action. This could be very useful for a resource starved CA.
- Use their own knowledge and networks to assist the competition authorities in identifying restrictive practices and collusion and gathering information in order to make a case.
- Civil society organisations should be aware of the competition dimension of the policies that they are concerned with. For example, in utility regulation, which is a high priority in many developing countries, ensuring that several companies are competing for business in the market may be more effective and efficient than a policy of price control.
- Build international alliances with other consumer organisations and track cross border abuses with a national impact.

XIII.2 National Governments

- Draft new legislation/amend existing legislation to meet current competition concerns. These concerns have changed enormously as a result of liberalisation and globalisation and existing laws may no longer be adequate.
- Shape the law according to national needs. Each country has a different institutional structure and set of public policies which need to be taken into account. Model laws may provide a useful starting point.
- Consider carefully the objectives of the law. This will affect the character of the institutions that implement the law. Putting consumer welfare as a key objective of the law may help to spread the benefits of competition policy most widely.
- Consider the usefulness of provisions concerning international dimensions of competition policy, such as the legitimacy of the 'effects doctrine.'
- Include the relationship between competition law and intellectual property rights. Engage a wide range of stakeholders in the development of new law and policy on competition. For the policy to be truly effective, it must have support from different groups: consumers need to be convinced that competition policy is a tool for their welfare, while business must be satisfied that policies will not create an environment of uncertainty, over-regulation and arbitrariness.
- Examine closely any exceptions and exemptions from a public welfare standpoint. There may be persuasive reasons to include many publicly owned enterprises within the remit of the law because their corporate strategies may equally—and often do—harm consumer welfare.
- Harmonise laws regarding sectoral regulation and the competition law. Provide for mutual consultation and exchange of information between the institutions responsible for the implementation of these policies.
- Build competition policy dimensions into the formation of public policy by providing a consultative role for the competition authority in the development of any new legislation with a competition dimension.

XIII.3 Competition Authorities

- Conducting advocacy is one of the most important ways in which the Authority can strengthen itself. A good outreach programme, provision of materials and information to groups at different levels, good relations with the media to highlight and draw attention to cases with an obvious impact on consumer welfare, a focus on dealing with consumers and internal transparency can all help to boost the Authority's reputation as well as to create solid foundations for a competition culture.
- Build strong relations with consumer organisations and other groups in civil society. This will help to build a community or 'lobby' for competition in

the national political system. Certain vested interests may want to suppress the Competition Authority and so it is necessary to build up a constituency that can counter this. Consumer groups can also help in the identification of cases and collecting evidence.

- Build strategic alliances with other economic actors/key stakeholders in the country, such as sectoral regulators, government agencies, legislators, academia, bar associations, businesses and business chambers. Conduct public meetings for stakeholders.
- The need to be vigilant, i.e. watch out for the signs of cartels and monopolies in the domestic market. Information about cartels prosecuted in other countries and review of mergers is available on the web. This can provide clues for where to look to uncover anti-competitive practices.
- Build the reputation of the institution by following standards of transparency in the budgets and activities of the agency; respond to information requests and queries from the public promptly to encourage the public's engagement in the implementation of competition policy.

XIII.4 The International Dimension

- Further research is needed on the impact of competition policy in developing countries at all levels of economic development, especially on the international competition problems that affect them. The project has demonstrated that there is a very low level of awareness about the international dimension of competition in many countries.
- Objective analysis of the pros and cons of possible international initiatives for each developing country needs to be conducted outside the heated environment of trade negotiations. Various possibilities were suggested above for international approaches. The desirability of these possible solutions for developing countries needs to be made clear, so that these countries can make informed choices.
  - An international agreement signed by states with a powerful international body capable of enforcing the agreement;
  - Bilateral and regional cooperation and harmonisation of the principles upon which competition laws is based;
  - Harmonisation of international legal procedures;
  - Formal or informal cooperation directly between competition authorities;
  - Extension of the jurisdiction of developed country laws to take into account the impact on developing country markets.
- International actors–including developed country negotiators and international institutions–should respect and promote development considerations in relation to any potential international agreement. Such considerations include greater flexibility in the timeframe and provisions of

any agreement for developing countries, such as asymmetric arrangements for cooperation and no requirement for all countries to have a competition law.

- Technical assistance and capacity-building. Developed, and some developing, countries have built up considerable expertise and experience in the area of competition law and policy, while the 7-Up project has consistently demonstrated how great the needs of developing countries are to build up the necessary skills and the institutional framework to implement competition laws. Generous technical assistance—and suitably tailored—should therefore be directed towards all stakeholders in developing countries that are committed to creating a competition culture, especially to consumer activists, practitioners, legal professionals and economists. Such efforts could include seminars and workshops and exchange of personnel. To ensure their effectiveness, all efforts should be carefully designed to meet real needs and to avoid duplication.
- Advice and cooperation is not only necessary in the initial stages: information about how certain types of cases are handled, how a particular case was approached and public information that was collected as evidence needs to be shared between competition authorities on a regular and ongoing basis. This could include development of guidelines etc.
- In addition to practical assistance, financial support for the development of competition rules and institutions in developing countries is desperately needed. The 7-Up project revealed that many young competition authorities are severely resource-constrained which prevents them from implementing policies effectively and that even small improvements, like access to the international media, can make a huge difference. Resources need to be channelled according to a thorough assessment of country needs.

FURTHER READINGS

1) CUTS, 2002, Challenges in Implementing a Competition Policy and Law: An Agenda for Action
2) CUTS, 2002, Reorienting Competition Policy and Law in India
3) CUTS, 2002, Promoting Competitiveness & Efficiency in Kenya – The Role of Competition Policy & Law
4) CUTS, 2002, Competition Regime in Pakistan – Waiting for a Shake-Up
5) CUTS, 2002, Competition Policy & Law in South Africa – A Key Component in New Economic Governance
6) CUTS, 2002, Towards a New Competition Law in Sri Lanka
7) CUTS, 2002, Competition Law & Policy – A Tool for Development in Tanzania
8) CUTS, 2002, Enforcing Competition Law in Zambia
9) CUTS, 2003, Friends of Competition – How to Build An Effective Competition Regime in Developing and Transition Countries
10) CUTS, 2003, Pulling Up Our Socks – A Study of Competition Regimes of Seven Developing Countries of Africa and Asia under the 7-Up Project.