

## UNCTAD Intergovernmental Group of Experts (IGE) Meeting Palais de Nations, Geneva, 09<sup>th</sup>–11<sup>th</sup> July, 2012

*CUTS participated in the UNCTAD IGE Meeting held on the above dates at the Palais de Nations, Geneva and prepared daily dispatches that were circulated extensively among government officials, practitioners, civil society, development partners, etc. CUTS feels that it is the organisation's duty to keep such stakeholders informed of discussions on global competition policy issues, especially given the fact that not many of them the opportunity to participate in these events.*

### **CUTS Dispatch: Day I**

The first day of the meeting of the Intergovernmental Group of Expert on Competition Policy and Law (IGE) organised by the United Nations Conference on Trade and Development (UNCTAD), here in the UNCTAD SG, Supachai Panitchpakdi speaking about the voluntary peer review of the competition regimes of Tanzania, Zambia and Zimbabwe, he noted that this is a soft approach for building a multilateral consensus on competition policy.

Substantive discussions took place on the voluntary peer review of the three African countries, which offered a good insight on competition regimes in developing countries. A number of points were raised by the speakers and debated at length over the course of the discussions, as has been summarised in the following paragraphs.

- One of the key challenges faced by competition agencies is very little **political will** for competition reforms. It was also echoed by Zambian delegation, as the agency is provided with very limited resources. On the other hand, the Tanzanian experience has been quite positive, which was also evident from the presence of the Trade and Industries Minister in the conference.
- Certain key aspects pertaining to the foundation of an effective competition agency emerged. One of the important aspects that was raised was the need for **knowledge management**. Young competition agencies require knowledge to build capacity, thus there is a need to ensure implementation of effective knowledge management systems for the purpose of preserving institutional memory.
- There was also agreement that an agency needs to **prioritise** its tasks. The agency's limited resources should be focused on high-impact or high-significance projects and sectors. But this does not mean that an agency should not completely neglect the sectors or areas that are not high priority for the moment.
- Need and importance of **competent and motivated staff**. Providing the staff with quality training, opportunity to engage in academic work, etc could be offered to motivate and retain staff by competition agencies, as they cannot compete in terms of salary with private sector employers.
- It emerged from the discussions that competition agencies are confronted with a number of **challenges** (investigation, information, decisions and penalties) and should make incremental progress in addressing them. One of the critical challenges that most of the competition agencies face are of **political economy** in addition to absence of sound

understanding regarding competition issues among government officials, which often leads to ineffective implementation of competition laws.

- Much discussion was focussed on the issue of **overlap between sectoral regulators and competition agencies**. Some regulators were very hesitant to cooperate, while others willingly sign MoUs with their country's competition authority. In principle, the need for cooperation between agencies was echoed loudly in the session.
- Competition enforcement cannot happen in isolation, and it is critical also to focus on the need to **mainstream competition reforms** in the economic governance systems in a country.
- Key recommendations that emerged from the peer reviews:
  - **Tanzania** (Need to develop a code of conduct for the Competition Tribunal; Training of investigators and case handlers; Training on conducting dawn raids, etc)
  - **Zambia** (Need for review of the Competition Law; Establishment of protocols for undertaking dawn raids; media campaigns as part of competition advocacy, etc)
  - **Zimbabwe** (Need to undertake an inventory of laws having an effect on competition; Need to adopt Competition Policy and also revise the existing competition law; prepare and disseminate advocacy material, etc)

## ***CUTS Dispatch: Day II***

The second day of the meeting of the Intergovernmental Group of Expert on Competition Policy and Law (IGE) organised by the UNCTAD, started with certain general statements made by representatives of various agencies, followed by discussions on Public Procurement and Cross border anti-competitive practices.

There was substantive support for the CUTS proposal to observe December 5th as the World Competition Day from several country delegates, while the Philippines government has officially proclaimed the date as the National Competition Day.

Given below are few key points, as raised:

### **‘Interaction of competition and trade underscores that both are mutually reinforcing and important instruments for well-functioning markets’**

The representative from the WTO insisted that competition policy was still part of their agenda, although not part of the work-programme, citing that all WTO trade policy reviews discuss competition policy measures and competition considerations form an interesting component of the international trading system as many WTO agreements contain provisions on competition policy.

- One delegate highlighted the importance of advocacy programmes for a newly established agency, reporting that they had carried out a number of such programmes, targeting mainly businesses. Further remarks included the preparation of institution

building instruments, such as guidelines on procedures and core competition law concepts including the definition of the relevant market.

- One delegation spoke of initiating a stocktaking of legislations that may compromise competition enforcement. In the context of success stories, gender issues were mentioned and one delegate reported about the gender balance achieved at the level of commissioners and staff of the respective competition authority.
- Further, delegates highlighted the importance of multilateral support, especially when faced with a lack of domestic expertise. In this context, support provided by UNCTAD, OECD, ICN, CUTS, etc, on competition issues were praised by a number of delegates, including Mr. George Lipimile, CEO, Comesa Competition Commission.
- Considering the economic importance of public procurement, competition for public contracts does not only protect the financial interests of the procuring state, but also economic opportunities for bidders. In fact, it is reported that public procurement accounts for up to 25-30 per cent of GDP in developing countries and for approximately 15 per cent of GDP in OECD countries.
- SMEs may face the challenge that their capacity does not allow participating in public tenders of larger volumes. Therefore, strategies aiming at facilitating the participation of SMEs in public tenders aim also at broadening the number of potential bidders and thereby stimulating competition.

**CUTS Views:** It is important to include explicit clauses on competition in the Public Procurement Law, which has been done in India in the draft Public Procurement Law. Speaking on behalf of CUTS, Pradeep Mehta said, it is important for competition agencies to co-operate with national audit offices, as it would help in uncovering anti-competitive practices in public procurement. The importance of IT and e-procurement to curb corruption was highlighted by Dhanendra Kumar, Principal Adviser, IICA.

### **‘Is there a need for a Multilateral Agreement on Competition?’**

- With globalization and liberalization, the boundaries between national and international markets have become blurred, traditional distinctions between national and international competitiveness thus becoming redundant. Given this, the definition of relevant market is becoming much more difficult and does build a case for active international co-operation among competition agencies.
- There were extensive discussions on merger regulation and how agencies can cooperate to deal with cross border mergers. The contentious issues included the problem of sharing confidential information. However, there was mention of several bilateral cooperation agreements which were helping agencies to deal with them. It was also emphasised that young competition agencies have to first develop their own capacities to deal with domestic mergers, which was often a greater priority.
- An important point was raised by OECD with regards to the need for international co-operations among competition agencies to tackle unilateral conduct i.e. abuse of dominance. Hilary Jennings of OECD said that such cooperation should not only be on merger regulation but also unilateral conduct and cartels.
- Problems on export cartels were also raised, particularly in the primary goods sector, where many domestic competition laws exempt export cartels.

**CUTS Views:** In today's globalised era where the practices of one country have externalities beyond its own borders, it is necessary to re-visit multilateralisation of competition rules which would effectively address the negative externalities caused by anticompetitive practices of a country beyond its borders. The appropriate forum for this should be a joint initiative between the WTO and UNCTAD in order to have both the developed and the developing countries on board.

The session concluded with recommendations from various competition agencies to UNCTAD, to adopt the World Competition Day on 5<sup>th</sup> December, when the UNGA had adopted the Set more than 30 years ago. It was mentioned by the Philippines delegate that the Government of Philippines (<http://www.gov.ph/2012/05/18/proclamation-no-384-s-2012/>) recently adopted 05<sup>th</sup> December, as the National Competition Day to recognise the need and importance of World Competition Day.

### ***CUTS Dispatch: Day III***

The final day of this year's Intergovernmental Group of Experts on Competition Law and Policy (UNCTAD IGE) meeting started with a keynote presentation highlighting the importance of **Knowledge Management (KM)** and **Human Resource Management (HRM)** in the effective functioning of competitive agencies. Given below are few key points, as raised:

**A well-developed flow of information ensures that the knowledge stays with agency; institutional memory is developed and prevents the agency from 'reinventing the wheel'**

- A key and frequently mentioned point is the supreme importance of **knowledge flow** within the competition authorities. The authorities rely heavily on the knowledge and expertise of its staff, especially due to high turnover. Poor knowledge management means that the information becomes contained in individual staff members. If the staff member leaves, they take the information with them.
- Numerous measures need to be put in place to ensure that the **staff communicate** with one another, that knowledge is organized and easily accessible, including through use of IT tools, all staff have vertical and horizontal channels of access to other staff and departments, etc.
- Human resource management is central to effective implementation of the laws. Procedures need to be in place to **facilitate smooth flow of communication** among all staff, vertically and horizontally. Such procedures include frequent positive recognition of staff behaviour and the development of an open culture.
- Regarding the issue of proper staff management, presenters frequently emphasised the importance of effective **performance evaluations** that takes special note of the contributions the staff has offered and rewards any efforts they have made in discharge of their duties.
- Compensation policies need to be designed to ensure good recruitment in the organization and staff retention. Pay structures should be merit based and opportunities should be made available for staff to realize career progression without leaving their area of expertise.

- **Clear institutional goals and targets** is another area crucial for successful operations. Everything else flows from this. When a clear goal is framed right in the beginning, management can design a much more concise framework and operating procedure in realizing these goals.
- Another area of widespread agreement was the necessity for **team work**. There needs to be an organization wide approach to induce a culture of collaborative work among staff members. Relevant project teams should be multi-disciplinary to ensure a wide range of perspective and every member of the team should be assigned a role where they can feel as though they are contributing. Included in this point is to continually train staff and other measures to enhance their individual capacities.

In the event keynote speakers and panellists were allowed limited time to make their presentations. Most importantly the floor interveners were allowed just five minutes to make their views known. Thus the discipline followed resulted in very interesting discussions and larger participation. Not only that the first presentation was on the process aspects of human resources management and knowledge management by agencies rather than on content. It was a very fresh approach and offered critical knowledge on how to run a competition agency with effectiveness. This was more relevant in ways for agencies in developing countries.

**CUTS Views:** It is very important to involve and include inputs from NGOs on this topic. Organizations such as CUTS bring important and credible insights on the topics discussed. Some of them, such as CUTS have decades of experience, are similar to many of the challenges faced by these young organizations. Their key suggestions were as follows:

- On the topic of HRM, it is important to conduct exit interviews and keep former staff members in the loop. Thus they become good will ambassadors for the organization
- It is vital to build ownership of organization among employees, which is facilitated by a strategic business plan prepared in consultation with all staff members. This is revisited annually and occasionally through frequent informal meetings. Most importantly the leadership has to provide 'adrenaline' to the staff.
- On the topic of KM, CUTS follows the practice in drafting minutes which act as good institutional memory. On the other hand whenever a staff member participates in external meetings prepare and circulate back-to-office-reports to everyone in the organization. After returning to headquarters, the staff members also organise short debriefing sessions to inform others.
- Furthermore, every case has to be treated as a project whether it succeeds or fails and discussed transparently within the organisation for better performance and capacity building.
- Competition agencies are not necessarily like police stations but economic regulators, which should encourage maximum participation of its staff in appreciation of the challenges. For this purpose, staff should be encouraged to do research and to present it internally and externally.

Other than the morning session on processes, the second half was devoted to voluntary peer review of the Mongolian competition regime. Earlier on the first day, three African countries

peer review were presented, which were Tanzania, Zambia and Zimbabwe. Through such peer reviews, not only the countries reviewed learn but other countries also learn, as many of the problems are quite similar.

### Peer Review of Mongolia

- Since 2003 Mongolia has enjoyed average GDP growth rates of 7 % and has seen as high as 17% this year. However, this growth has not benefited the wider economy and competition has been identified as an area of concern. Although Mongolian law had some mention of competition in its laws for some time, a Competition Authority did not appear until 2005.
- Central challenges include improving the legal environment. Currently, adjudication is handled by the state judiciary, which does not have any expertise in competition. Staff requires further training and capacity building. Lastly, further work needs to be done to develop addition competition rules.
- The panel discussion brought certain clarifications and issues into light. For example, Mongolia's competition authority does not have any experience in communication and coordination with other country's authorities but they are exploring mechanisms to establish a legal framework for information sharing with other competition agencies. There is no mechanism for determining the value of penalties beyond arbitrary decisions by the agency's board. Furthermore, Mongolia did not have clear definitions of what constitutes anti-competitive behaviour, market dominance, etc.
- The UK offered some very interesting advice in terms of overlap between competition and sectoral regulator, which remains a challenge for Mongolia too. It was suggested that there should be regular meetings between the authorities and a "pick up the phone approach." In other words, they should always be available for one another.

#### **The following issues are some of the salient points of the conclusion formally adopted by the IGE 2011 (Twelfth Session):**

- Reaffirming the fundamental role of competition law and policy for sound economic development and the need to further promote the implementation of the Set of Principles and Rules.
- UNCTAD XIII meeting at Doha in April, 2012 focussed on addressing the opportunities and challenges of globalisation for development.
- Recognised that an effective enabling environment for competition and development may include both national competition policies and international cooperation.
- Emphasises on the importance of applying competition law to public procurement and underlines the importance of knowledge management as a tool for enhancing agency effectiveness
- At the end, the thirteen session of the IGE recommended consideration of the following issues:
  - The impact of Cartels on the poor;
  - Prioritisation and resource allocation as a tool for agency effectiveness;

- Modalities and procedures for international cooperation in competition cases involving more than one country; and
- Voluntary peer review on the competition law and policy of interested countries.

CUTS released a report on the Status of Consumer Protection and Competition in MENA countries on 10th evening, which was attended by several participants, while Ashok Chawla, Chairman, Competition Commission of India; Mona Yassine, former Chairman of the Egyptian Competition Authority, Hassan Qaqaya, Head of the UNCTAD's Competition Law and Consumer Policy, and Philippe Brusick, Hassan's immediate predecessor did the honours.