Competition Policy & Pro-poor Development

L-R: **Rubens Ricupero,** Secretary-General, UNCTAD, Geneva; **Pradeep S Mehta,** Secretary General, CUTS, India; **Frederic Jenny,** Vice President, Conseil de la Concurrence, Paris; and **Allan Asher,** Campaigns Director, Consumers' Association, London (At present Chief Executive Officer, Energywatch, London, UK) at the Symposium on Competition Policy & Pro-poor Development, February 19, 2003, Geneva

– A report of the Symposium on Competition Policy & Pro-poor Development

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कट्स CUTS
Twenty Years of Social Change
1984 to 2003

Competition Policy & Pro-poor Development

– A report of the Symposium on Competition Policy & Pro-poor Development

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कट्स CUTS

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PREFACE

This is not the report of yet another seminar on competition policy that is organised every other day. This document covers the deliberations at a one-day symposium looking at how competition policy and law relate to pro-poor development. Thus it has dealt with some tricky questions, and will help the reader to grasp some intricacies about the beneficial effects of implementing an effective competition law in a developing country. In the words of Rubens Ricupero, the Secretary General of UNCTAD, who spoke at the closing session in the symposium, "poverty reduction has normally been seen as a specific measure and always remained at the sidelines of economic policy making but competition policy is an element that can mainstream development and poverty reduction and put them at the centre of economic policy regimes".

The three sessions at the symposium featured papers addressing three vital questions which are often asked when one is looking at any issue of policy response in the area of economic governance. In the instant case, we looked at competition law & policy. More importantly, the questions were addressed on the basis of empirical evidence garnered in a first of its type of project, which examined the implementation of competition laws in seven developing countries.

The project popularly called the 7-Up project was implemented during 2000-2002 in India, Kenya, Pakistan, Sri Lanka, South Africa, Tanzania and Zambia in partnership with local research institutions and advocacy groups. It was supported by DFID, UK as a part of its own agenda of "making markets work for the poor".

The symposium addressed the following three questions:

- How does competition policy and law help the poor;
- What type of competition policy and law should a country have; and
- How do developing countries deal with competition problems with international dimensions.

The report carries the papers which were produced and presented at the three sessions by young researchers associated with the project. The proceedings carry the rich debates, involving many of the experienced and highly recognised experts from all over the world, which were held around the three presentations.

The event was just not the end of a project which is now considered to be one of the biggest in the area of competition policy. It also marks the beginning of a new journey. Competition policy experts and civil society represetatives who gathered for the symposium in Geneva launched a global movement called International Network of Civil Society Organisations on Competition (INCSOC), whose mission is "to promote and maintain a healthy competition culture around the world by coalition building among civil society and other interested organisations".

Thus, for CUTS, this report is another milestone in our quest to promote a healthy competition culture around the globe. For more on our work under this project and our work generally in the area of competition policy and law, please see our website: www.cuts.org.

Jaipur
September, 2003

Pradeep S Mehta
Secretary General

Brief Proceedings

Symposium on Competition Policy & Pro-poor Development

A one-day symposium on "Competition Policy and Pro-poor Development" was organised on February 19, 2003 at Geneva by Consumer Unity & Trust Society (CUTS), an India-based research and advocacy group. The purpose of the symposium was to disseminate the findings of the 7-Up project, a study of competition regimes in seven developing countries of Asia and Africa, conducted by CUTS Centre for Competition, Investment and Economic Regulation (C-CIER) and supported by the Department for International Development (DFID), UK.

DFID Chief Economist, Adrian Wood, released the final project report, "Pulling Up Our Socks", while Chairman, World Trade Organisation (WTO) Working Group on Interaction between Trade and Competition Policy, Frederic Jenny chaired the inaugural session.

The event was attended by nearly 100 people from about 50 countries all over the world. Dignitaries, who spoke at the inaugural session, included Rufus Yerxa, Deputy Director-General, WTO; Phillip Lowe, Director-General, Competition, European Commission (EC); and Hardeep Puri, Ambassador of India to the United Nations at Geneva; Rubens Ricupero, Secretary-General, UNCTAD.

The deliberations at the symposium revolved around three questions:

- *How does competition policy and law (CPL) help the poor;*
- *What type of CPL should a country have; and*
- *How do developing countries deal with competition problems with international dimensions.*

One aspect that came out very clearly during the discussions is that the level of awareness on competition problems, whether purely domestic or those with international dimensions, is extremely low in developing countries. People in developing countries do not know the extent to which they are suffering due to the absence of an effective competition regime. During the deliberations, it emerged very clearly that the civil society has an inalienable role in furthering regulatory reforms and pursuing implementation of policy regimes.

The foregoing is a brief report of the proceedings of the symposium.

Inaugural Session

The inaugural session witnessed a wide variety of views and a debate, as it comprised excellent and authoritative speakers. The debate was around the necessity of a domestic competition regime in developing countries, and got intense when discussing the same in the context of a multilateral arrangement.

To begin with, Pradeep S Mehta, Secretary-General of CUTS, spoke about the 7-Up Project and how the project was implemented. He also highlighted the major findings and achievements of the project.

One of the main findings, he noted, was the lack of financial and human resources, which affected the implementation of competition law in most of these countries. In general, the problem is more pronounced in the Asian than in the African project countries. For example, the budgetary resources in the three Asian countries was much below that of South Africa and Zambia.

Another crucial aspect that was flagged is the lack of consumer movement, which affected the implementation of competition law (CL). Except in India and to some extent in Pakistan, the consumer movement is generally weak. In some countries, of course, dedicated consumer activists are struggling without resources and other support. Mehta mentioned the recent announcement by Mario Monti, the European Union (EU) Competition Commissioner, to involve European consumer groups in the competition law enforcement process. Monti has also promised to provide financial support to such groups, if they require it.

The consumer movement being weak in developing countries, there is a need to involve other civil society organisations. He announced that a beginning has already been made in this direction and a network called International Network of Civil Society Organisations on Competition (INCSOC) has been launched, which was scheduled to have its first general body meeting the next day (February 20). In an impassioned plea, he urged the international community to realise the huge value of strengthening civil society, which can act as an important factor in pursuing economic reforms and implementing regulatory policies.

Frederic Jenny, presiding over the inaugural session, spoke of his own experiences with the path-breaking project. He noted that CPL has assumed greater significance because of the ongoing process of globalisation. However, the usefulness of CPL is not very clear to all the stakeholders, especially policymakers and implementers. One of the major problems in this regard is the language that economists speak. For example, it would be difficult for politicians or the common people to understand when it is said that competition policy will improve allocative efficiency or enhance consumer surplus. However, they would be in a better position to relate if it is said that competition policy will keep inflation under check.

The project has helped in bridging the gap between the economists on one side and the policy makers, enforcement officials and other stakeholders on the other, commented Jenny.

DFID, UK's Chief Economist, Adrian Wood, started his speech by observing that it took him eight long years to grasp the usefulness of CPL. In developed countries, like the UK and the US, competition is a norm and people take it as given. One may cite the example of British Gas, being a private monopoly. But those are just a few aberrations and the CPL can be used to take care of such aberrations.

During a visit to China, Wood observed that competition was an exception rather than the norm in the market and got convinced of the usefulness of CPL. The report, "Spine-Chilling Experiences of Anti-Competitive Practices in Malawi", produced by CUTS and Consumers Association of Malawi (CAMA) depicts a similar picture. One may wonder if the situation is the same in most if not all the developing countries. Thus, a well-crafted CPL is of greater significance in the developing countries. For example, prevention of bid rigging in public contracts alone can make a significant difference for the poor by reducing wasteful expenditure or enhancing public services at lower costs.

Wood noted that the DFID white paper (policy paper) on "Making Markets Work for the Poor" has recognised this and DFID is working towards improvement of competition at all levels. In this regard, DFID has supported research on competition issues by Consumers International and by the Commonwealth Business Council. It co-funding work is being done by the Common Market for Eastern and Southern African countries (COMESA) on the establishment of a regional competition policy and a research project on the development of Caribbean Community's (CARICOM's) regional competition policy. It has also established a development research centre, namely Centre on Regulation and Competition at the University of Manchester, which is doing research work in this area in many developing countries.

Wood expressed his satisfaction that over the last few years, there has been an increasing recognition of the importance of CPL. As a result, the number of countries, having a competition law, has more or less doubled over the last one decade or so.

The present project has been implemented in the countries of South Asia and Southern and Eastern Africa — the two regions, where majority of the poor of the world live. These two regions also happen to be regions of particular concern to DFID. Thus, the project assumes a special significance in DFID's work programme.

Rufus Yerxa of WTO observed that the project has given an opportunity to bring together national officials and WTO officials dealing with competition policy issues. Robert Anderson of WTO has been in the advisory committee of the project and hence, the people at WTO knew about the project.

It is more or less recognised that there is a relationship between trade and competition policy, yet there are wide-ranging views and positions on the issue of competition at the WTO, observed Yerxa. However, a consensus may be reached. But the big question remains, even if countries decide to negotiate on the issue at Cancun, how modalities would be drawn up.

The four elements identified in the Doha agenda for a multilateral agreement at the WTO are: core principles, hardcore cartels, voluntary cooperation and long-term capacity building.

A proposal has also been made to recognise special and differential treatment as one of the core principles. The Working Group on the Interaction between Trade and Competition Policy also had initial but penetrating discussions on the relevant issues. Much of this will, of course, depend on what happens in the preparatory process in the run-up to the Cancun Ministerial.

Yerxa also mentioned the importance of civil society organisations for building effective competition regimes. Advocacy has an important role to play in this regard, he asserted.

The next speaker of the session, Philip Lowe of EC, observed that competition has been an important element in bilateral and regional cooperation in the European Union (EU) context. Accession of new members in the EU places a conditionality on them for the adoption of a competition framework compatible with the Treaty of Rome. No wonder that the EU imposed highest fines on its own companies in the vitamins cartel case.

Lowe emphasised the need for application of best practices throughout the world. He spoke at length on the role of International Competition Network (ICN) in this regard, which also intends to facilitate technical assistance and capacity building in developing countries. ICN is doing further work in this regard. ICN is an informal network, comprising of competition agencies as its members, with NGOs like CUTS, working with it in the working groups on advocacy and capacity building.

Problems may come up when a competition case has repercussions beyond national borders. EC did not have any problem when two German companies, EON and Ruhrgas, decided to merge. But that may not always be the case. British Gas continues to be a monopoly even after its privatisation.

For the developing countries, transfer of knowledge and experience from the developed country is extremely important for their capacity building. However, one needs to be careful and ensure that experiences shared should be relevant and practical, he said.

The potential benefits of an effective competition regime are not very obvious and hence, advocacy has an important role. Apart from promoting consumer welfare, CPL can also promote predictability in the business environment, thus, benefiting business as well.

Theoretically, the case for CPL and development is fairly well established. There is a view that liberalised trade may be sufficient to promote competition. But that is not necessarily the case. In many countries, CPL has been adopted without general support to it, thus, failing to make any significant progress in achieving the objectives. This aspect has to be kept in view while implementing CPL in a country.

Hardeep Puri began his speech by clarifying that he was speaking in his personal capacity, as competition policy had become an issue at the WTO, to which he was not accredited. He emphasised that he could not ignore the international dimensions of competition policy, as a reference to the issue in the context of the WTO had already been made by other speakers in the inaugural session.

He pointed out that the issue was not a new one in international trade negotiations. Competition was an integral part of the Havana Charter, being negotiated by the nations prior to the signing of General Agreement on Trade and Tariffs (GATT). However, the Charter could not be adopted, as it was not ratified at the US Congress. The GATT was signed by taking out Chapter IV of the Havana Charter. Thus, GATT addressed only tariffs and related measures.

The subsequent history of trade negotiations in the post-GATT era has also seen the strengthening of trans-national corporations (TNCs) and attempt to discipline governments only, commented Puri. However, nothing was done to regulate TNCs. A Set of principles to regulate restrictive business practices (RBPs) was adopted under the auspices of the UN. But the Set remained voluntary and worked more as a guideline for countries for formulating their national competition laws. Cross-border RBPs of the TNCs continue to remain unabated and unchecked.

Referring to his paper he wrote with Philippe Brusick of United Nations on Conference on Trade and Development (UNCTAD) more than a decade ago, Puri pointed out that the Uruguay Round of trade negotiations further reduced the capacity of national governments to deal with RBPs of TNCs. He emphasised that some of the trade-related investment measures could successfully deal with some of the RBPs indulged in by the TNCs. For example, one can use the 'manufacturing requirement' measure to prevent the practice of 'refusal to deal'. However, the Trade-Related Investment Measures (TRIMs) Agreement has outlawed such measures and, therefore, governments are left without many tools to tackle RBPs of TNCs.

Even at a theoretical level, there is a debate going on as to what kind of competition law a developing country should adopt. Even a G-24 paper published by Harvard University suggests that development dimensions need to be taken into consideration while adopting a competition law, especially in a developing country. The debate on "Static versus Dynamic Efficiency Implications of a Competition Policy" is not adequately settled. In such a situation, standardisation or harmonisation of competition laws across the world would not be a good idea.

He also pointed out that even though countries, like India, have a long experience of having a competition law, the same may not be relevant in today's context or in that of a multilateral contract. The basic objective of the competition law of 1969 in India was to control monopolies, where size (not even the structure) was the most important factor. But the new law is focused entirely on conduct, thus in fact taking a leap. Obviously India does not have any experience in implementing a modern competition law.

In response to the previous speakers, Puri gave his views on different aspects of implementation of competition law in developing countries. On the issue of the South Asian countries receiving meagre funds for implementing competition law, as reported in the 7-Up report, he said that when a new law is adopted, that gives some signals to different actors and some autonomous corrections take place. The law serves a large part of its purpose even in the absence of strong financial support. He, however, expressed hope that the new competition authority in India will receive adequate financial support.

On the issue of low salaries in the competition authorities, leading to inefficiency, lethargy and corruption, he observed that corruption and inefficiency are not necessarily linked. He gave the example of Korea, where two presidents, who presided over the miraculous development in the country, were convicted by courts. Similarly, cronyism did not prevent economic development in Italy.

He expressed doubt if pure competition would be good for developing countries. Japan used both competition and cooperation in a healthy way to promote development. The same approach may be better suited for developing countries.

Session I: How Competition Policy and Law help the Poor?

The session was chaired by Beatriz Boza, former chairperson of the Peruvian Competition Authority (PCA), who briefly shared her own experiences of implementing a competition law in her own country. The issue was highlighted through various anecdotes, both in the context of macro dimensions and policy and providing access to justice to the poor to exercise their rights when violated. Beatriz kicked off the discussions by expressing a few observations on how CUTS manages to always spring some delightful surprises. For example, getting a Pakistani and an Indian researcher to do a joint paper and make a joint presentation, when the two countries are having such a hostile relation.

Mahvash Qureshi of Sustainable Development Policy Institute (SDPI), Pakistan and Anjali Bansal of CUTS made a joint presentation based on their paper, co-authored with Pradeep S Mehta. Peter Holmes of Sussex University and Menzi Simelane, South African Competition Commissioner, were the discussants at the session. At the outset, the presenters identified the key questions concerning competition policy and the poor:

- What are the welfare impacts of competition on the poor?
- How do anti-competitive practices affect the poor?
- How does competition law and policy help?
- What challenges confront the developing world?

They argued that competition policy and law have become necessary in view of the changing global environment and the concomitant deteriorating market culture. In this context, the policies that enhance competition in national and local markets, such as a liberalised trade policy, relaxed foreign investment and ownership requirements, and economic deregulation assume critical significance.

Competition policy can enhance overall welfare in the economy through increased efficiency within enterprises, optimum allocation of resources, technical progress, economic growth and stability. The direct implications of these for the poor are lower prices, higher quality of products and better market information, while indirect implications may include the 'trickle down effect', equity, social impacts, economic freedom and opportunities.

They went on to explain how different types of anti-competitive practices, namely, abuse of dominance and monopolies, anti-competitive agreements between firms and mergers and acquisitions (M&As)—distorting or restricting competition—affect the poor. They picked up examples of such practices from developing countries and explained how these have helped perpetuation of poverty.

They argued that a well-designed competition law and policy can effectively address market imperfections and failures, ensuring efficient allocation of resources and adequate supplies at lowest-possible costs. It can also create an enabling environment for new entrepreneurs to launch their business, thereby making significant contribution to growth and employment generation in the economy.

However, they observed, there are a few challenges as well that need to be tackled to enable competition policy and law play the desired role, particularly in developing countries. The benefits of competition and law, not being so obvious, are indeed difficult to convince policymakers, especially the political class. Advocacy and public awareness generation can play an important role in this regard. Bringing consistency in the design and implementation of CPL is another challenge. A huge amount of capacity building effort will be required for that. This should involve all the relevant stakeholders.

Peter Holmes commended the kind of network that the project has been able to create. This, he emphasised, will go a long way towards promoting a healthy competition culture throughout the world. It is quite clear now that a developing country needs competition policy and law, probably more than a developed country would need. If one takes the example of Pakistan, one dollar means a lot to their poor consumers. The poor with a meagre one-dollar income a day can benefit a lot if the dollar in the hands of a poor man can buy more goods and services. That can be done through orderly market arrangements, which can be achieved through an effective CPL.

Menzi Simelane shared his experiences as to how they are trying to bring the pro-poor dimension in the implementation of the competition law in their country. He observed that there is a clear case of competition law potentially benefiting the poor; but implementing it in a developing country is a big challenge. Transfer of knowledge and experiences from developed to developing countries is not so easy.

However, the South African Competition Commission (SACC) has been able to make some progress in breaking anti-competitive practices that were affecting the poor. Sometimes even the companies concerned refrained from anti-competitive practices, as adverse publicity made them wary of using such tactics.

Comments and suggestions came from many of the participants. Suzyo from Zambia Consumers Association (ZACA) commented that even though the 7-Up project reveals that the Zambia Competition Commission (ZCC) is relatively better resourced, people at the grassroots are yet to see any substantial benefits coming out of competition enforcement in the country. Anti-competitive practices are rampant in many sectors and consumers are suffering.

There was a concern expressed that even though CPL can potentially benefit the poor as well, in reality it has served only the middle class and upper middle class people. Seldom have the poor benefited. The poor need to be empowered by providing access to justice, so that they can take advantage of the CPL. It was pointed out in this context that in India, consumer courts are working at the grassroots level. They also deal with many competition-related cases at retail level. This can be a good model for taking the CPL to the grassroots level.

Concern was expressed that implementing CPL in developing countries in the right manner is quite difficult. That even a big country like India could not (or did not) take any action on the vitamins cartel clearly shows the dimensions of the problem.

In many developing countries, the issue is not so much about competition but about regulation and bringing orderliness in the market. Thus, consistency in designing and implementing the CPL with other national objectives and coordination with other regulators are of paramount importance.

It was also opined that the topic of competition policy and the poor is very interesting. But not much work has been done in this area. Some sort of cost-benefit analysis might be very useful. DFID and other donors were urged to take up the issue.

Session II: What Type of Competition Policy and Law Should a Developing Country Have?

The session on the need for a competition law and the type came up with some excellent debates. Firstly, one-size or one-type-will-not-fit-all approach on competition policy and law was dwelt upon at length, where it was felt that public interest dimensions need to be wrought into any such law. However, the need for having a CPL was reiterated by both the speakers and the three discussants.

Malathy John, Institute of Policy Studies (IPS), Sri Lanka, and Ratnakar Adhikari, South Asia Watch on Trade, Economics and Environment (SAWTEE), Nepal, presented highlights from their paper, "What type of Competition Policy and Law should a developing country have?" The session was chaired by Heba Nassar of Cairo University, Egypt, while Dr. S. Chakravarthy, formerly a member of the Indian Competition Authority, Grazyna Rokicka of the Polish Consumer Association and a member of the Government Committee on Competition and Gesner Oliveira, economist and former chairman of the Brazilian Competition Authority, were the discussants.

The presenters began by emphasising the need for a competition law and policy to be relevant and appropriate to national objectives and conditions. It is now generally agreed that a "one-size-fits-all" approach will not be effective. They noted the different objectives of competition laws in the 7-Up countries. Most of them contain a broad notion of the public interest, but the meaning of this varies across countries. These differences are the result of historical conditions, such as apartheid in South Africa, which has created the need for affirmative action to promote Black-owned businesses. Broad objectives may be needed to meet social and developmental needs, but they may also create opportunities for rent seeking and lobbying by businesses.

Most of the competition authorities in the project countries rely mainly on structural, rather than behavioural interpretations of the term competition. Behavioural interpretations may be preferable, but the competition authorities may lack the technical capacity or resources to conduct this type of investigation. Structural measures may be used as benchmarks to guide the authorities. Resource constraints are also a problem in merger review, but again threshold limits can guide the authorities when considering whether a merger may have anti-competitive effects. The authorities have so far focused on horizontal rather than vertical mergers, but the presenters questioned whether the authorities had the capacity to distinguish between efficiency-enhancing and efficiency-restricting mergers.

The importance of competition in the market varies across countries. In Japan and South Korea, for example, export competitiveness has been a higher priority than competition, and competition policy has been subordinated to sectoral industrial policies. In the US, on the other hand, there is a strong emphasis on competition, with heavy penalties for offenders, including criminal sentences.

The presentation emphasised the importance of implementation. Problems include rent seeking, regulatory capture and political interference. Complete independence is not possible, therefore, 'workable' independence should be the aim. Financial independence is one aspect of this. It is better if the authority is not completely dependent on the government for finances. However, it may also not be desirable for them to charge very high fees from users and so a balance needs to be struck. Lack of financial resources is a serious problem for competition authorities, as they have difficulty in attracting and retaining skilled staff.

Competition in the economy is affected by a range of policies, including trade policies and intellectual property laws. Attention should be given to the links among the policies to ensure consistency. In most countries, the responsibilities and jurisdictions of competition authorities and sectoral regulators may overlap. A clear demarcation between them is very important.

The presenters examined the concept of the development dimension, including exceptions for small and medium-sized enterprises, dynamic, export-oriented sectors or sectors of cultural significance. The use of such exemptions may be justified but they should be limited, transparent, subject to frequent reviews and conditional on performance standards.

The presenters concluded with the following points:

- The competition law should be preventive rather than curative, and litigation should be avoided where possible;
- A "structure-plus" approach is most suitable for developing countries;
- Competition rulings should be subject to an appeal mechanism; and
- Competition advocacy needs to be conducted to build a constituency of support.

In his remarks, Dr. Chakravarthy argued that the objectives of competition policy should be social and economic development. At the moment, 'fair' competition is often not achieved, but is badly needed for development reasons. Many public policies will have an effect on competition and these will need to be married to the competition policy, which will be a great challenge. As far as the competition abuses are concerned that the authority investigates, size should not be the only criterion. He noted that in India, large businesses have been regarded with suspicion, albeit it is necessary for domestic businesses to grow in order to compete in international markets.

There has been much discussion about whether developing-country competition authorities should examine mergers. Although it is costly in terms of resources, it is a necessary task, as smaller number of firms in the market means less choice for consumers and a potential for the exploitation of monopoly power. There is no other law that can deal with these effects.

The investigative, prosecutorial and adjudicative activities of competition authorities should be separated out to ensure confidence in the institutions. To carry out the investigative functions effectively, the authority needs to have adequate in-house research capacity. Furthermore, its independence from the government needs to be ingrained. A new competition law can be implemented gradually, as is the case with the new Indian Competition Law that was enacted at the beginning of 2003. Phasing in allows new institutions to build up their capacity. He concluded by saying that the consumer interest should be the over-riding principle guiding competition law and policy.

Grazyna Rokicka commented on the basis of Polish experience with the Competition Law. In Poland, there is strong support for the principles of competition in the public, despite the history of state control of the economy. A major achievement has been the integration of consumer and competition concerns in a combined law. This ensures that attention is devoted to practices that undermine the collective interest of consumers.

Gesner Oliveira proposed that a model for the treatment of competition cases can be useful, but it needs to be modified according to different parameters in each country. These parameters include:

- Size of the market;
- Potential for increased efficiency (the potential for improving efficiency through mergers tends to be much higher in developing countries than in the advanced industrialised countries); and
- Greater importance of public policy in developing countries.

Although competition policy may require scarce resources, developing countries will benefit from economies of scale and of learning that competition will generate for regulation in general. Competition is a public good, and some financial support should come from the government. Authorities should go for low fees to users.

A national coalition for supporting competition policy needs to be set up. One way to do this is to combine the consumer protection and competition authority functions. But the speaker questioned about the optimal institutional arrangement for combining the two areas of governance. Consumer protection can be integrated into the regulatory process very successfully, as in the power tariff-setting process in Brazil. On exceptions and exemptions, the agenda should be a positive one.

In the discussion that followed, the case of Indonesia was raised, where support for the competition law has been low because the law was implemented under external pressure and therefore does not have local/national ownership.

Session III: How do Developing Countries deal with Issues of International Dimensions?

This session addressed the third crucial issue of the symposium as to how resource-starved developing country authorities will deal with cross-border issues, which are increasing day-by-day. The fact is that they can deal with them, provided:

(a) their laws have the effects doctrine embedded;
(b) have the capacity to pursue such cases; and
(c) they are able to get cooperation from agencies of the rich world, where the root of the problem lies.

The session was chaired by Suman Bery of the National Council of Applied Economic Research (NCAER), India, where Nitya Nanda of CUTS and Vani Chetty, Director, Edward Nathan & Friedland, and Consultant, Institute for Global Dialogue, South Africa, made their presentations. Philippe Brusick of UNCTAD, Simon Evenett of World Trade Institute and Saleem Asghar Mian, former chairman of the Competition Authority of Pakistan, were the discussants in the session.

In his opening remarks, Bery drew attention to the harmful effects of restrictive business practices in the airlines and shipping industries and the impact of trade liberalisation and suggested that consumer groups might want to devote more attention to these areas.

Nitya Nanda made a presentation based on his paper, co-authored with Pradeep S Mehta, on “Competition issues with international dimensions: How do developing countries deal with them?”

He illustrated the different types of competition problems that are faced by developing countries. Most important of them emanate from market power in global or export markets. The commonest form, in which such market power is exercised, is through international cartels. To give an idea of the extent of the problem, he informed, developing countries have imported \$81.1bn worth of goods from industries, in which price-fixing conspiracies have been discovered during the 1990s. Vitamins and heavy electrical equipment are among the sectors that have been affected.

Export cartels are another form of market power. These are generally exempt from the domestic law of the exporting country. The country importing the goods can use the ‘effects doctrine’ but developing countries have not yet really pursued this. The example of the US soda ash export cartel—American Natural Soda Ash Corporation (ANSAC)—demonstrates the difficulties of using the effects doctrine, and in India, the judgment against the cartel was overturned by India’s Supreme Court.

According to Nitya Nanda, M&As with international dimensions may take two forms: the merger of parent companies and the merger of subsidiaries. When parent companies merge, developing countries may be affected even if the companies do not have subsidiaries in that market. So far, developing countries have not tackled mergers taking place outside their borders and have taken a lenient approach to the merger of subsidiaries within. For instance, in Sri Lanka, the Authority did not review the merger of two subsidiaries, because they considered this to be outside their jurisdiction.

The sheer size of multinational companies makes it possible for them to engage in a variety of anti-competitive practices.

Another type of cross-border competition problem concerns barriers to import competition. These may be the result of cartels among importers or retailers. A well-known example is the Fuji-Kodak dispute between the US and Japan.

Foreign investment, which has seen a phenomenal increase in the recent years, can also cause competition problems. Takeovers by foreign investors may increase competition in the domestic market in the short run, but there is a possibility that over time, such take-overs may make the market increasingly concentrated.

Intellectual property rights-related issues also raise cross-border competition concerns. Microsoft provides a good example of such a globally dominant company.

Developing countries face a number of problems when dealing with cross-border cases. The 7-Up research has shown that competition authorities were not able to deal with them because of lack of legal constraints on extra-territorial jurisdiction, lack of knowledge, resources and the power of the large multinationals.

The way ahead could take a variety of forms, from bilateral and regional agreements to multilateral efforts. Cooperation and coordination at the regional level are being pursued by several groups and provide a way for developing countries to pool their resources. At the international level, the International Network of Civil Society Organisations, a recently-launched initiative, will enable the contribution of the civil society perspective to the international debate.

In her presentation on the same topic, Vani Chetty began by noting the way in which hardcore cartels and unchecked mergers stifle development. Competition law may not be high on the agenda of governments in Southern African countries but is important nevertheless. Developing countries should have credible domestic laws. Being over-ambitious will reduce the credibility of the laws for businesses. A good law will serve as a deterrent to anti-competitive practices by businesses.

Because enforcement mechanisms are weak in developing countries, international competition issues pose extra problems. In South Africa, the extra-territorial question is dealt with explicitly in the law, which allows for the authorities to take action on activities having an effect on the South African economy.

In the rest of her presentation, Chetty focused on cooperation as a way for developing countries to deal with international competition issues. Experience shows that cooperation between competition authorities can be very effective. Constructive cooperation at high levels—*i.e.* between the heads of competition agencies—works better than contacts between individual investigators. In the case of South Africa and the EU, trust has been built up over time, which has been very useful to the South African authorities. For example, in the case of the Glaxo-Wellcome and SmithKline Beecham merger, the South African authorities drew heavily on the European Commission's (EC's) investigation.

Binding cooperation between authorities may not be appropriate, as it would put too much burden on them. At the same time, developing countries should not miss out on the benefits of cooperation by insisting on the exchange of confidential information. Non-confidential information about the investigation process can be very valuable. Initially, cooperation can start at the regional level.

The first discussant, Philippe Brusick, responded to the presentations and paper. He pointed out that people in developing countries very often do not realise that they are suffering from anti-competitive practices, both domestic and cross-border. Once these are recognised, there may not be any serious objection in adopting multilateral rules on competition.

Simon Evenett was in full agreement with the content of Nitya's presentation except the policy recommendations. He suggested that since voluntary cooperation is at the top of the agenda, the issue could be discussed in more detail. He also suggested that the paper could examine if too many fora are being promoted. They can be prioritised in order of importance. He also suggested that the option of establishing a global competition agency may be examined.

The other discussant, Saleem Asghar Mian, drew on his experience in Pakistan in his comments, saying that government support for the activities of the competition authority was the most important thing in determining its effectiveness. The government may prevent the authority from investigating the anti-competitive effects of an acquisition of a foreign company, as they think that this will discourage foreign direct investment (FDI), making multinationals effectively exempt from the competition law. In Pakistan, the competition law was even amended without the knowledge of the head of the Competition Authority.

The discussions that followed took a positive tone that developing countries are not helpless in the face of multinationals and that a global Competition Authority could eventually be the ideal way to deal with the cross-border competition abuses that were the subjects of the session. CARICOM, the Caribbean economic grouping, was held up as an example of how regional approaches to competition policy can work. The relations and roles between competition authorities and sectoral regulators raise problems, which participants felt, has not been adequately resolved anywhere. This is an area on which further work needs to be conducted.

Closing Session

The closing session was also chaired by Frederic Jenny, while the Conference Rapporteur, Allan Asher summarised the conference deliberations. He noted that the path-breaking study—the 7-Up Project—involved evaluation of the competition law and its implementation in seven developing countries of the Commonwealth. He noted that the project was called "7-Up Project", because it involved seven countries and also because it had seven goals.

The objectives of the project included the evaluation of the existing competition law and its implementation on a few basic principles: budgets, autonomy, composition and structure of the competition regime and authority; identifying typical problems and suggest solutions, including on the basis of good practices elsewhere; assess capacity building needs of the government, its agencies and the civil society; and create an advocacy group at national and international levels to pursue the necessary and required reforms.

During the research, an attempt was made to analyse the effectiveness of competition policy, but it was found to be difficult. It is not an easy thing to do. Every speaker at the Symposium, all concerned with the project and its publications spoke about the failures of the competition policy and law in these countries. Similar criticisms have arisen elsewhere also. But it is not the right thing to be done. It is not the right approach to just measure what competition policy and law has done or not done without knowing and analysing the reasons for the action or inaction.

For example, Asher pointed out, the UN General Assembly had adopted the Guidelines for Consumer Protection in 1985. These guidelines were implemented partially in countries, but it took around 15-17 years before these could actually make an impact.

It is the need of the hour to have a healthy competition culture in developing countries, and for this, it is valid and required to continue to demand urgent action and be impatient. At the same time, it is equally important to keep in mind that it will take a while before we are able to make our way. To give an interesting instance, while the new competition law was underway in South Africa, the Ministry of Trade was of the view that the new law would be rushed through and gave the impression that a competitive economy would emerge the next day itself! This is an absolutely wrong approach and needs to be checked because one starts analysing the results on the basis of such expectations that gives a very wrong picture.

Consumers look for such changes, which affect their daily lives and it is the responsibility of the policy makers to ensure that such issues are considered on a priority basis, Asher noted.

There are a few assumptions, which economists generally make without knowing what is going on in consumers' minds, he cautioned. The eight consumer rights are the principles, which drive consumer organisations and the consumer movement. In a similar manner, the policy-makers should be driven by the goals of economic development and welfare.

In his concluding remarks, he gave a brief summary of the presentations made at the symposium and said that based on the research that has been done, it can be very well deciphered that many developing countries have now realised the importance of competition policy and law, and have either adopted a competition law or are in the process of doing so. Some profound change is occurring globally and there is a vast potential to shape the competition regimes for economic welfare, consumer welfare and poverty alleviation.

As chair of the closing session also, Jenny mentioned that CPL has vast potential to bring positive changes in the lives of the poor people, especially in the developing world. However, lack of political support, both within and outside the government, is working against the realisation of the potentials. It is indeed difficult to convince a politician that competition will improve the employment situation in the long run. He has to face another election soon and has to show the results rather quickly.

Thus, advocacy has an important role. In Australia, one man (referring to Hilmar's report) convinced the entire nation of the usefulness of CPL. He could touch the people's pulse by focusing on the malpractices of lawyers and bankers, who were exploiting people through their anti-competitive conduct.

Rubens Ricupero, Secretary-General, UNCTAD delivered the valedictory address at the symposium. He observed that poverty reduction has normally been seen as a specific measure and always remained at the sidelines of economic policy making. But, competition policy is an element that can mainstream development and poverty reduction and put them at the centre of the economic policy regimes. However, for common people, there is a difficulty in understanding how it can help development, as the results of such a policy cannot be observed immediately and that is the challenge, added Ricupero.

In many countries, the issue of consumer protection is understood better and is more popular than CPL. But both have similar objectives and function as complementary to each other.

Despite significant liberalisation in different sectors of the economy, some countries use different rules for agriculture. One needs to examine whether that constitutes a good competition policy.

Expressing concern that developing countries are suffering more due to increasing incidence of anti-competitive practices, Ricupero wondered: "How many countries are able to mount a case against the might Microsoft or how many developing countries are able to break the vitamins cartel?"

He mentioned that in the Free Trade Area of the America's (FTAA) negotiations, there are nine groups and one of them is on competition. Interestingly, the US is a proponent there even as they have been rather opposed to a competition agreement at the WTO. At the FTAA, the US objective behind pushing for competition is to dismantle the state monopolies in several countries.

He also talked about the role that UNCTAD has been playing in promoting a competition culture around the world. He observed that since the adoption of the UNCATD Set, it has provided technical assistance to many developing countries in designing and implementing a competition law. UNCTAD will continue and if possible reinforce its efforts in this regard, he added.

At the end, Pradeep S. Mehta spoke briefly while proposing a vote of thanks. He emphasised that the lack of consumer movement in developing countries is working as a hindrance to promoting a competition culture. He urged that UNCTAD and other inter-governmental organisations should include consumer organisations as well in their capacity building programmes. In this regard, he once again referred to Mario Monti's announcement promising a greater role for consumer organisations in enforcing competition in EU and their capacity building.

Mehta urged Ricupero to provide more resources to the Competition and Consumer Policy Branch of UNCTAD to expand their work on consumer protection issues, which was otherwise heavily focused on competition policy work only.

He then expressed sincere gratitude for all those present at the symposium. He expressed special thanks for the donor—DFID, partners and the members of the project advisory committee, who provided their whole-hearted support throughout the implementation of the project.

1

Competition Policy and the Poor

*Pradeep S. Mehta, Mahvash Saeed Qureshi & Anjali Bansal**

This paper is about the relationship between competition policy and law, and the poor. It is generally understood that competition policy is a need for industrialised countries and that developing countries have other priorities. That is a mistaken notion, because well-regulated markets also protect the interests of the poor by various means.

It is not easy to determine a single-most important factor leading to poverty around the globe. The numerous economic, political and social barriers, that have blocked the access of poor to resources and opportunities, create a sense of powerlessness, deprivation and hopelessness, and make it extremely difficult for them to break the vicious circle of poverty.

An important approach to poverty alleviation is to empower the poor, provide them with productive employment and increase their access to land, capital and other productive resources. A step forward in this regard would be achieved by linking poor to the markets and making markets work for the benefit of the poor people. This would open economic vistas for them, providing them with economic empowerment and freedom that is so crucial for their survival and well-being.

As stated in the World Development Report 2000-01,

> *"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."*

"Well-functioning" implies markets that work efficiently and without distortions, i.e. competitive markets. In the world of economics, competitive markets, characterised as markets with a large number of buyers and sellers, where all traders act as price-takers, are considered to be virtually synonymous with welfare maximisation. They create economic efficiency, encourage innovation and make good quality products available at lower prices by ensuring survival of only the most efficient firms with prices reflecting their marginal cost of production. However, "competition" is often less understood and easily distorted by the players in the market, even when there are a large number of them. Therefore the governments enact competition laws to regulate the distortions.

This paper presents some empirical evidence and arguments to show how a well-drafted and implemented competition policy and law can help regulate market failures, buttress economic development, aid poverty reduction efforts and protect the interests of consumers as well as the poor. The experience has been garnered from the 7-Up Project[1], a comparative study of competition regimes in seven developing countries, implemented over 2000-2002. This project has examined both domestic competition problems and abuses due to cross-border phenomenon.

The paper begins with the introduction and then contextualises the fundamental issues of poverty, competition policy, changing global environment and the deteriorating market culture. It then traverses through questions on what a competition policy and law can do to deal with some of the problems, replete with examples, and ends in the challenges ahead, with crucial steps briefly outlined to establish an effective pro-poor competition regime.

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1. Poverty Scenario

As we step into the 21st century, poverty continues to be the single-most daunting and important problem faced by the world at large. With liberalisation of trade in goods and services, poverty is no longer a concept confined to specific nations and countries; but a global phenomenon, for which the world collectively struggles and aims to find a solution. Poverty—synonymous with lack of opportunities, lack of access to resources, and lack of freedom and empowerment—poses a grave threat to the prosperity and sustainability of nations. It is for this reason that "poverty alleviation" and "poverty reduction" seems to be the front and centre on the agendas of international organisations and the developing country governments today.

The world's poverty scenario is quite bleak. Most current estimates suggest that two billion people will be added to the world's population over the next 30 years and another billion in the following 20 years. Virtually, all of this increase will be in developing countries, the bulk of it in urban areas. In these countries, 2.5 billion to 3 billion people now live on less than $2 a day[2].

Though there has been a drop in the percentage of people living in extreme poverty (that is, living on less than $1 per day), the fact that a majority of people in developing countries still remain below the poverty line cannot be ignored.[3] Since 1993, there have been encouraging signs of renewed poverty reduction in India, whereas sub-Saharan Africa, by contrast, has seen its number of very poor people increase steadily. In 1998, East Asia and South Asia accounted for two-thirds of the world's very poor people and sub-Saharan Africa for one-quarter of the same.

Inequality, which is mainly caused by poor governance and market distortions, has also been rising within and across most of the countries since the early 1980s. According to the Atlas of Global Inequality, global inequality has never been greater than it is at the beginning of the twenty-first century. The richest one percent of the people in the world have huge wealth, which exceeds the total wealth of the bottom 57 percent. The ratio between the average income of the top five percent in the world to the bottom five percent increased from 78 to 1 in 1988 to 114 to 1 in 1993 and there is no indication that the growth of the gap is slowing down.[4]

2. Why Competition Policy is Necessary?

The Changing Global Environment

Trade liberalisation is considered to be an important tool to induce competition in the economy. However, there is a widespread apprehension that the ongoing process of globalisation will aggravate global inequality and have serious negative impact on human development and the poor, especially because the present spate of globalisation is more pervasive in nature. It is not confined to economic arena as in the earlier case, but encompasses the social and cultural arenas. When the market goes too far in dominating social and political outcomes, the opportunities and rewards of globalisation spread unequally and inequitably, concentrating power and wealth in a select group of people, nations and corporations, thereby, marginalising the others.

While the ongoing process of globalisation and deregulation of markets has the potential to improve the entitlements of consumers in many countries, they pose major challenges when markets fail to protect consumers and their access to redress mechanisms. It has been observed that consumers in developing countries, especially the illiterate and the poor, suffer the most from market failures and asymmetry of information. A common man is unable to cross the '$2 per day' income level because of the various resource constraints, lack of literacy, lack of entrepreneurial culture, unfair and deteriorating terms of trade, lack of political will, institutional corruption and distortions in governance. These factors work as hurdles in pursuing the objectives of economic development, empowerment of the masses and distributive justice.

The World Bank's Poverty Reduction Strategies source book rightly points out that even though a liberal trade policy is necessary for growth and poverty reduction, it alone is not sufficient for growth of the economies. Trade liberalisation is not an end in itself, but a means to an end — the reduction of poverty and the promotion of sustainable development. If trade reforms are implemented in unstable economic environments, in the absence of strong trade-related domestic institutions and appropriate complementary policies, they are either reversed or fail to stimulate growth.[5] To reap the potential benefits offered by trade liberalisation, "behind the border" reforms that promote investment and competition are required, along with other macro-economic policies that keep prices and the real exchange rate competitive and stable.

Global Policy Trends

We have also seen 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, liberalisation of trade in goods and services, liberalisation of capital movements and deregulation. Reduction in the licensing and other regulatory requirements are the other trends that the firms have to comply with.

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, the International Monetary Fund (IMF), World Bank and Regional Development Banks (RDBs). Some of these policies have been badly designed or implemented, as they were acted upon before going into the details of the conditions. This has led to a situation detrimental to the interests of the poorer and more vulnerable groups. One of the policies that was often not in place and would have helped protect these groups is competition policy.

Joseph Stiglitz has argued for this in *Globalisation 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 the government, they were often more efficient in exploiting their monopoly position; consumers suffered as a result."

Policy-induced Distortions and Regulatory Capture

Many of the developing countries adopted reforms in the 1990s, moving from a command and control economy to a market-driven economy. But the pace is slow due to various factors, and entrenched vested interests are one of the important ones. Thus, many of the reform measures are adopted half-heartedly. For example, even though Thailand enacted a competition law and set up the enforcement system, it has not been functional due to strong counter-influence by business lobbies. In Malawi, the new competition law has not yet been implemented due to counter-lobbies.

On the other hand, many government policies also create anti-competitive situations. An interesting example of policy-induced distortion of market can be found in Bangladesh. The country has made substantial progress in liberalisation and deregulation. However, government still does not allow further entry into certain industries known as reserved, regulated or over-saturated. In a competitive market, firms are not required to be told whether any particular sector is over-saturated. Currently, edible oil, electric, corrugated iron sheets, etc. are considered to be over-saturated and entry of new firms is restricted. This is against the spirit of a competitive environment. It is widely believed that in the name of over-saturated sectors, government is providing protection to the inefficient firms.[6]

The question regarding the issue of regulation of markets is not whether it is required or not. Indeed, it is inconceivable to find a country where there is no regulation. The question is: "What is the optimum type or amount of regulation?" If a country does not have a well-designed regulatory or competition framework, chances are that existent rules and regulations may do more harm than good.

In the absence of a comprehensive competition policy and law, the government tends to regulate different markets in piecemeal and *ad hoc* manner. Regulatory capture by particular business interests or even vested interests within the government becomes easier. A good example of this came up in the case of Tanzania. The Fair Trading Commission (FTC), which works under the Ministry of Industry and Trade, challenged the exclusive distribution by the leading brewery. It did not succeed, because the Permanent Secretary of the Ministry of Industry and Trade serves on the Board of the Brewery[7].

Deteriorating Market Culture

Market-oriented reforms, which should increase competition and serve consumer interests, do not do so in many cases, making the situation worse for the consumers, in general, and the poor, in particular. The introduction of economic reforms has allowed the ingress of good quality and optimally-priced goods and services, and it has also opened the door to supply of poor-quality goods and provision of sub-optimal services in developing countries.

Foreign firms often take advantage of the liberalisation of trade and foreign direct investment to dump sub-standard products with hazardous consequences for consumers. In other instances, including privatisation, firms take advantage of weak governments to exploit the market. And often it is the poor who suffers the most.

While opportunities for anti-competitive behaviour may be limited in many sectors, most of the time market conditions change constantly and, therefore, it cannot be guaranteed that a particular market will remain competitive and hence less vulnerable to anti-competitive practices in the long run. In the absence of any public policy to restrict anti-competitive behaviour, it may significantly and consistently affect the price levels in an economy through various anti-competitive practices. Super normal profits are the major incentives for these firms to indulge in anti-competitive practices and this empowers the firms to erect entry barriers to thwart competition and thus make maximum profits. All this is, of course, done at the cost of the poor consumer, who has no control over market forces and is, therefore, forced to bear the negative effects of market failures.

What is Competition Policy?

Broadly speaking, competition policy refers to various government policy measures and actions by private sector firms and individual entrepreneurs that affect the structure and performance of markets in the provision of goods and services. The World Bank defines it as consisting of two elements:

1. A set of policies that enhances competition in local and national markets — a liberal trade policy, relaxed foreign investment and ownership requirements, deregulation and privatisation.
2. Legislation, *i.e.* competition law designed to prevent anti-competitive business practices and unnecessary government intervention. It provides teeth and legal backing to the competition policy.

An effective competition policy seeks to maintain and encourage the competitive process in order to promote economic efficiency and consumer welfare. This is done by ensuring that individual business firms independently strive for the patronage of customers, and the process of competition results in lower prices with greater consumer choices. An important dimension of competition is that it reduces distortion in prices, profits and outputs, which act as signals for allocating resources more efficiently, and results in greater information to consumer about the value of different goods and services.

For competition (or perfect competition, as it is generally known) to occur in the true spirit of the word is rather unusual in real life. In imperfectly competitive markets, profit-maximising firms may engage in strategic behaviour to restrict the opportunities available to their rivals and enhance their own profits. This strategic behaviour that distorts markets, exploits consumers and gives rise to market power is known to impose various economic and social costs on societies, hitting hard the poor, in particular, and adversely affecting welfare, in general. To rule out this kind of strategic behaviour and ensure that markets remain competitive with the benefits trickling down to all segments of the society, a sound competition policy, complemented by other macro-economic policies, is a must for a society.

3. Welfare Impacts of Competition Policy

"By a perpetual monopoly, all the other subjects of the state are taxed very absurdly in two different ways, first by the high price of goods, which, in the case of a free trade, could be bought at much cheaper rates and, secondly, by their total exclusion from a branch of business, which it might be both convenient and profitable for many of them to carry on".

— Adam Smith
The Wealth of Nations
(1776)

Competitive markets have wide ranging benefits on both micro and macro levels, having direct and indirect implications for the poor. These benefits include efficiency within enterprises, adjustment of the whole economy towards optimum allocation of resources, economic stability, growth and technical progress. Their direct implications arise from the lower prices and more accurate information about the goods and services being provided. Individuals and families with lower incomes have to spend a greater proportion of their income on goods and services, and therefore, high prices arising from anti-competitive practices will have a greater impact on them than other segments of the society. Also, the poor tend to be less educated and generally more vulnerable to fraudulent or deceptive advertising and related business practices, which also create artificial needs and distort their consumption patterns.

Indirect implications arise, as competition is positively associated with lower levels of poverty and income inequality, increased economic growth and development. A good example would be to, perhaps, analyse the impact of competition in the infrastructural facilities on the poor. World Bank (2003) notes that "*Improvements in infrastructure services can help promote competition in other markets, and there is evidence that infrastructure has a positive impact on growth and poverty reduction*".

Empirical work on the telecommunications industry demonstrates that competition in this sector is extremely successful in improving telephone penetration.[8] Apart from having a direct effect on the consumers in the form of lower tariffs, the increased availability and low price can also benefit poor farmers or small-scale manufacturers. Fast communication enables them to keep up-to-date with the market and price trends and deal directly with the buyers instead of dealing with middlemen. Similarly, increase in competition (either domestic or import) even in cases of products that are generally beyond the reach of the poor, may have an indirect "trickle-down" effect on the poor. This would enhance their productivity and increase their welfare.

The equity and social impacts of competition on an economy, including fairness and equality of opportunities available to the people, can also be quite strong. Monopoly power may deny equal opportunities to all groups of the society. The monopolist being the sole utiliser of the inputs may discriminate among people on the basis of their racial and ethnic characteristics. Such behaviour would probably remain unobserved in competing firms due to the likelihood that it imposes extra costs on firms but is a possibility in case of monopolies.

The ultimate goal of competition policy is to protect consumers from the adverse effects of market power and to help disperse power and income fairly besides expanding entrepreneurial opportunities. A competitive market provides people the freedom and opportunities to start their own businesses, become self-sufficient and improve their circumstances by offering new and good quality products at competitive rates.

In countries, where competition laws are absent or the regulatory authorities are weak, corruption and inefficiency flourish and rent-seeking behaviour is widely prevalent among individuals and organisations. Thus, while a stable macro environment, appropriate trade and investment policies and good governance are necessary conditions to create a favourable investment climate in the country, a sound and complementary competition policy is a must to ensure the productivity of the new investment.[9]

Empirical evidence, though focusing mainly on the experience of developed countries, has confirmed that barriers to competition within an economy, whether due to governmental or private restraints, lead to welfare losses. A survey of 46 firms found a significantly negative relationship between the level of per capita income and the size of mark-up ratios in 1985.[10] Another study carried out for the Australian economy estimates the expected benefits from a package of competition promoting and deregulatory reforms to incur an annual gain in real Gross Domestic Product (GDP) of about 5.5 percent, or $23bn, where consumers would gain by almost $9bn besides having an increase in real wages, employment and government revenue.[11]

In the context of developing countries, there is a shortage of systematic analyses regarding the benefits of adopting a competition policy and law. However, a relevant study of the Peruvian competition agency, Indecopi, found that in the first seven years of its operation, the economic benefits due to its operations amounted to $120mn against operating costs of $20mn.[12]

Apart from these two, there are several other studies that confirm a positive relationship between competition—whether induced by local or foreign firms—and economic growth.[13]

4. How Anti-competitive Practices Affect the Poor: Evidence from Developing Countries

The anti-competitive practices that competition policy addresses exist at all levels in any economy, *i.e.* local, national and international, and can be broadly categorised into three kinds:

- Abuse of dominance and monopolies;
- Anti-competitive agreements between firms; and
- Mergers and acquisitions, which may have the effect of distorting or restricting competition.

This section presents evidence on how anti-competitive practices employed by producers exploit the poor and have direct and indirect repercussions for their welfare. This is being done with the help of examples drawn from actual cases in the project countries, and also using interesting cases from other developing countries.

1) Abuse of Dominance**:** With the authority and control over the market, a dominant firm can restrict new entry into the market or foreclose the commercial opportunity of weaker traders or create barriers in economic freedom of its probable competitors. This includes predatory behaviour, restricting supply and limiting access to essential facilities/networks and other vertical restraints, like resale price maintenance.

Unlike the bigger economies, which can accommodate large number of firms, in small and developing countries, firms operate either in a monopolistic or an oligopolistic market structure. Therefore, in order to preserve their dominant position, they may drive out competitors by reducing their prices to an unreasonably low level.

(i) *An interesting example of a policy-induced monopolistic situation* was reported from Malawi. There is high market concentration, particularly in the plantation, agriculture, manufacturing, financial and other services. Empirical evidence has shown that this is a result of increased government participation in the economy, mainly through three para-statals: the Agricultural Development and Marketing Corporation (ADMARC), Malawi Development Corporation (MDC) and the Press Corporation Limited (PCL). Their participation has typically been associated with the creation of monopolies in industries, such as cement, matches, meat products, textiles and shoes. The reliance on the trio has retarded development of the private sector through the implicit discouragement of entry into the respective sectors, which has led to higher prices of these goods in the market.

The government started implementing the Market Liberalisation Policy (MLP) and the Privatisation Act to check monopolies and promote competition. But this did not help to a very large extent, as ADMARC, MDC and PCL were not immediately privatised. As a result, the newly entering private firms found it difficult to compete with the trio that was already enjoying economies of scale and some government subvention.

Apparently, the opportunities to inject competition and lower prices through liberalisation and privatisation was lost due to badly designed and improperly implemented government policies. In many cases, where privatisation was done, it was virtually the transfer of government monopoly to private monopoly[14], a situation best described as "jumping from the frying pan into the fire".

(ii) *Predatory behaviour* is often resorted to by firms in order to drive out their competitors from the market by reducing prices. Once the motive is achieved and a dominant position attained, prices rise unreasonably and firms take consumers for a ride.

To cite an example, a large poultry firm in Zambia lowered its prices to such an extent that smaller firms and roadside tiny poultry sellers had to face ruination. Thus, the poor self-employed poultry sellers would have become bankrupt, though the smaller firms would have moved on from the poultry business to some other. The Zambia Competition Commission (ZCC) checked this action. Later, as a strategic move, the large firm bought out most of the smaller firms, though did not indulge in predatory pricing. Tiny self-employed entrepreneurs continued to operate, thus protecting their livelihoods. Otherwise, they would have slided back into the poverty trap.

(iii) *Resale price maintenance* is another such vertical restraint, which may run from the manufacturer to the ultimate seller. These agreements take the form of recommended retail price or resale price maintenance. The minimum price (mostly very high), at which the product can be sold, is specified to the seller. This makes conditions very bad for a consumer, particularly when a high price is fixed for essential commodities like drugs and pharmaceuticals.

For example, in South Africa, all the retailers of a particular type of pharmaceutical tablets were complying with the condition of resale price maintenance, *i.e.* selling at prices determined by the manufacturer. But the practice was noticed by a staff member of the Competition Commission and investigated. Consent of the manufacturers was secured and all anti-competitive price labels were removed from the product.[15]

But not many consumers in developing countries are aware of the provisions of the law and many, even if aware, will not voice their grievances.[16]

***2) Anti-competitive agreements between firms*:** This category includes cartels, bid rigging, tied sales, refusal to supply, etc.

a) *Cartels* have been found to operate at local, national and even global levels. In a case, two photography studios located in a small rural Indian town, Rashmi, Rajasthan, overcharged the local consumers and failed to supply them photos in time until they were faced by a series of court cases brought by consumers, who were being supported by local consumer groups.

The two studios were involved in collusive practice of overcharging and there was deficiency in service. The untimely delivery of photos created a lot of problems for the consumers, particularly in times of urgency like loan applications, etc. In such cases, they had to get the needful done from other towns or at the district headquarters, which meant additional and high transportation costs, adding to their misery and wasting their precious resources.

At the national level, cartels are the order of the day, particularly in sectors, which are saturated or have excess manufacturing capacity. In India, cement cartels have been investigated against over three times in the past 40 years. However, it could never be prosecuted due to a strict evidence requirement.

Besides making the cement price unaffordable, cement cartel affects the poor from another aspect as well. Any price increase in cement due to cartel formulation hits the construction industry, which is a source of employment for the numerous workers working on daily wages, hard and further exacerbates the unemployment and poverty problems in a country. For example, in a recent incident, when the cement manufacturers in India hiked the prices unreasonably, even when a cartel enquiry was on, the Builders Association of India went on a strike and boycotted the cement manufacturers. The action succeeded, but hundreds of daily-wage workers did not have any employment during the period of the strike.

Another example is of the vegetable oil cartel in Pakistan. Vegetable oil is an important ingredient for cooking and is used extensively in the country. In 1998, the Monopoly Control Authority (MCA) of Pakistan noticed a simultaneous price increase in different brands of vegetable ghee and cooking oil, whereas, the prices of imported edible oil had decreased in the international market and the government had also reduced regulatory duties on it.

The inquiry found that the Ghee (oil) Manufacturers Association provided a platform to its members to take collusive action and set out to obtain relevant information from individual firms.[17] In this case, MCA noticed that the government, instead of directing the undertakings to set a reasonable price, fixed the price of ghee and oil through negotiations with the manufacturers' association.

This resulted in the companies, which were charging lower prices prior to the negotiations, raising their prices, while the companies, which were charging higher prices, did not lower their prices. Thus, the benefit of reduction in the market prices of imported edible oils was not passed on to the consumers, in general, and the poor, in particular, who continued to pay a higher price.

International cartels are at the other extreme. Developing countries face double jeopardy in such situations; on one hand, they 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 are stifled.

The case of the international vitamin cartel is quite relevant here. This cartel operated from 1990 to 1999 and involved leading bulk vitamin manufacturers of America, Europe, Japan and Canada. The overcharging in 91 countries, where the cartel operated has been estimated at $3bn, of which the estimated losses in the project countries have been as follows: $25.71mn in India, $36.82mn in Pakistan, $1.79mn in Kenya, $99.93mn in South Africa, $0.16mn in Tanzania and $0.06mn in Zambia.

The financial impact of these cartels is much more than the dollar value, when we compare, taking the purchasing power parity (PPP) ratios. In the case of India, the PPP ratio is 8.7, thus the figure of $25.71mn translates to a whopping $223.68mn. Assuming the per capita income of India on a PPP basis to be $2450mn, this translates into 913,000 person-years of employment lost.

This cartel was prosecuted in the US, Europe, Canada and Australia but hardly any action has been taken in the developing countries. In fact, in India, the competition agency did not show any interest in investigation even when CUTS collected and provided them the preliminary information.

On an average, international cartels have maintained higher prices in developing countries than the developed countries. The poor—directly or indirectly—bear the cost of this unlawful conduct in higher prices and reduced choices. The estimated annual overcharges imposed by international cartels in heavy electrical equipment, steel and aluminium have been reported at $44mn for Zimbabwe, $33.5mn for Kenya and $272mn for the South African Customs Union[18].

The electrical cartel in order to be successful also indulged in bid rigging and predatory pricing. Every member was allotted a potential project and others put in supporting bids. If a non-member entered the fray, the cartel members outbid it by lowering their prices to levels, below which the non-member could not operate. Thus, many new members also wound up, leaving the field open as an exclusive preserve of the cartel members.

It is the poor, who suffer most from costly electric power. It is astonishing to note that in a country like Tanzania, the price of a basic amenity, like electricity, is one of the highest in the world! It is nearly twice as high electricity prices as prevailing in neighbouring Kenya and Uganda.

Further, overcharging is not the only repercussion. There is more to it. For instance, heavy electrical equipment is an item that almost all developing countries require for installation of electricity generation plants in order to meet their growing energy demands. Since most of these purchases are by government/public bodies, higher prices result in greater than necessary expenditure on these items and less tax payer funds remain available for other socio-economic development expenditures, *e.g.* schools, roads, etc.

b) *Syndicate system*: This is a cartel of the transport entrepreneurs and is very much prevalent in developing countries. This system prevents an outsider to enter the road network and ensures that the consumers are made to pay what the syndicate wants, thus robbing them of their right to a reasonable price. The Zambian example, in which ZCC intervened to promote competition, is quite illuminating.

ZCC intervened in the passenger transport sector and investigated the alleged anti-competitive practices of the United Transport and Taxis Association (UTTA), which appeared to be in violation of the law. In consultation with other stakeholders, the Commission addressed the cartel behaviour of the UTTA in pricing, approval of fare by the Road Traffic Commission and use of callboys at bus stops. Though the cartel behaviour has not been completely eliminated, there are signs that bus operators are beginning to set fares independently for different services, in defiance of the UTTA recommended fares[19].

In another similar case in India, the Monopolies and Restrictive Trade Practices Commission (MRTPC) took action against a truckers union in Alwar district of Rajasthan, India. The union would not allow incoming non-member trucks to pick up return freight, thus making them return empty and jacking up their operating costs. On the other hand, they would dictate prices to shippers in the district to pay unreasonable freight prices for the shipment of their goods to outside destinations. All this has an impact on the costs of transportation and, thus, hikes up prices of goods artificially.

In the instant case, the district administration could not implement the order, because the truck unions operate under the protection of the local mafia and politicians. This type of governance failure is typical of developing countries' policy ineffectiveness.

c) *Tied or clubbed sales*: This is another ubiquitous anti-competitive practice in developing countries, and once again it is the poor, who have to pay more. This happens particularly, when the market is imperfect and artificial scarcity is created through hoarding or limiting supply. By way of such sales, consumers are forced to pay for a product they are not interested in and hence, spend more money than their needs.

A most interesting example was reported from India. The Government operates a Public Distribution System (PDS), which provides for food security to the poor by making available essential commodities (such as, wheat, rice, sugar and kerosene oil) at a subsidised price. The PDS operates throughout the country through licensed Fair Price Shops. In one case, some policy-maker whimsically decided to add razor blades, matchboxes, etc., to the basket of commodities sold through PDS. Corruption was at the root of this decision. These additional commodities were never in short supply and the prices, at which they were procured, resulted in a consumer price, which was higher than the market prices.

The PDS Fair Price Shops were stuck with non-moving goods. They cleverly resorted to tied sales, by forcing consumers to buy razor blades and matchboxes, along with short-supply commodities like sugar. Once again, it is the poor, who suffered, because they form the bulk of the PDS clientele. Over time, consumers resisted these tied sales and this lead to exposure of the scam.

3) Mergers & Acquisitions (M&As)**:** Competition concerns do not necessarily arise in all merger cases but only when such merger results in a monopoly or a dominant position. Problem arises when large multinational firms establish themselves in the developing countries and there is no law or policy to regulate their conduct. Big multinational corporations (MNCs) merge or take over smaller domestic businesses to acquire a dominant position, which is exploited according to their corporate strategies. This adversely affects the welfare of the poor consumers.

The merger of two UK-based pharmaceutical giants, Glaxo-Wellcome and SmithKline Beecham, is a case in point. Glaxo-Wellcome and SmithKline Beecham were two large research-based pharmaceutical firms, with worldwide operations that merged in December 2000. The European Commission (EC) had approved the merger conditionally and only after agreeing upon certain undertakings with the parties. However, the competition authorities of majority of the developing countries could not take a stand when the local subsidiaries of the firms merged their operations as well.

Evidence obtained in Sri Lanka and Pakistan clearly indicates that the merger was considered to have significant impact on the welfare of consumers. However, the investigation—initiated by the competition authorities—did not go beyond the preliminary stages.[20] The way the case has been wrapped up in both the countries indicates bureaucratic and/or corporate pressure on the competition authorities, who themselves lack the power and support from the government to take action against multinational firms.

The demand for medicines is generally inelastic, thereby, making the poor extremely vulnerable to exploitation at the hands of drug manufacturers. Thus, ultimately the burden and the price of having a weak and inefficient competition regime is borne by the poor, who have limited choice and exposure to deal with the abusive practices of large firms.[21]

5. What can Competition Policy and Law do?

This section sums up the above discussion by illustrating with examples, various situations where competition policy and law have made a difference in improving lives of the ordinary people in the developing world. It also highlights the crucial steps that are necessary to effectively design and implement competition laws in these countries.

Addressing Market Imperfections and Failures

The various market imperfections and failures add to the conundrum of the existing state of poverty in the developing countries and feature as one of the many hurdles to achieve a breakthrough in poverty reduction. It is evident that a set of policy tools is required to overcome these hurdles. Competition policy and law is one such instrument, which can go a long way in achieving this objective.

The benefits of a competition policy and law are certainly diffused. It is very difficult to assess these benefits, but it can be said with assertion that at the macro level, the design and implementation of a competition policy and law will enable the enhancement of the welfare of poor consumers. At the micro level, an effective competition regime and/or a consumer law can prevent consumer abuses both at the industry level as well as in a village or locality, where one shopkeeper can cheat the whole community. On the other hand, it can protect the livelihood of small and tiny entrepreneurs from market distortions created by bigger businesses.

The main objective of competition policy and law is to preserve and promote competition as a means to ensure the efficient allocation of resources in an economy, resulting in growth, equitable distribution, and adequate supplies at the lowest prices to consumers. For a developing economy, handicapped by resource constraints, efficient allocation of resources is absolutely essential for optimum utilisation of limited resources. By removing entry barriers, competition policy helps create an enabling environment for entrepreneurial development, an essential prerequisite for a vibrant economy.

To give an example, where competition policy has helped improve condition of poor consumers is in Bhutan, a small landlocked country north of India, with a population of about 700,000 and a GDP of $0.40bn. Here Hindustan Lever Ltd. (HLL), India, a subsidiary of the large multinational, Unilever, was operating through just one distributor, Tashi Group of Companies. As it is, consumers in upcountry Bhutan pay much more than their counterparts in the valley, even more than that as compared to adjoining India, where the firm faced competition from other rival enterprises.

HLL did not appoint a parallel distributor despite a request from the Ministry of Trade and Industry (MTI), under a direction of the King of Bhutan to regulate monopolies in the tradeable sector. It refused to comply on the grounds *inter alia* that they were unable to find another firm with adequate experience and capital. However, the MTI took a bold step and threatened HLL that it would cancel Tashi's licence to operate as its distributor. The threat worked and HLL soon appointed the state-owned Food Corporation of Bhutan (FCB) as its second distributor. This not only benefited the consumers by promoting competition in the market but also benefited HLL. FCB multiplied HLL's business in Bhutan three fold, because it had a better distribution network in the country.

Regulating IPR Abuses

Another area where competition policy—to be precise, competition law—can be beneficial to the poor is by mitigating the abusive and exploitative use of a strong intellectual property rights (IPR) regime. It is considered that stronger IPRs increase technology transfer and FDI inflow to a country. However, if firms abuse their dominance and power and engage in practices that severely limit competition, it would not only have detrimental consequences on the welfare of the society but also adversely affect innovation and diffusion of technology. Dealing with the IPR-Competition Policy interface and striking a balance between the two poses a strong challenge to the authorities of the developing world, especially as they struggle to formulate appropriate responses to the Trade Related Intellectual Property Rights Agreement (TRIPs).

Two sectors, *viz*. pharmaceuticals and agriculture, are very important in this regard. By using the compulsory licensing provision or by allowing parallel imports, an exploitative situation in life-saving drugs can be curbed. In this context, an interesting example is of the Treatment Action Network (TAN), South Africa. It organised the AIDS victims and petitioned the Competition Commission against the restrictive business practices by the patent-owning pharma companies. Action was taken on the complaint and the poor AIDS/HIV victims obtained relief from their exploitative practices. Earlier, TAN had successfully fought against the same pharma companies in the High Court of South Africa on the right of the poor to buy cheaper and generic AIDS/HIV medicines, imported from India and other developing countries.[22]

The Challenges Ahead

Markets benefit societies when they work efficiently and without distortions. Prices are kept low and qualities are maintained, as sellers compete with each other to sell their products and devise ways to lower cost of production. Opportunities are available to the common man, as there are no artificial barriers or constraints. For alleviating poverty and promoting economic development, emphasis should be on raising productivity of the poor and providing them with basic facilities like food, water, shelter, health and education. When governments fail in providing economic self-sufficiency to their masses, political and economic trends that are dangerous for the social well being and order of the country are created.

There is no doubt that social costs of market power are enough to merit attention and intervention of policy-makers. Competition laws and policies enable countries to ensure that distortions that occur in the market are curbed. These include the distortions created deliberately or naturally, to increase profit margins, limit the choice of products and exploit consumers. A competitive order in an economy is an end in itself to foster economic efficiency, safeguard economic freedom and put an end to distortive, deceptive and fraudulent practices.

Governments of the developing world have so far remained unsuccessful in their fight against poverty and the inequality of income distribution. The provision of resources and basic infrastructure facilities to the poor, and the development and exploration of innovative techniques is minimum in most of the developing countries. A majority of them have realised the importance of competition and are now in the process of revising or formulating competition laws for their economies. Nevertheless, there are still many regulatory restrictions on competition in developing countries and countries in transition. The issue now for these countries is to determine the optimal path to follow in order to continue competition-promoting reforms. The biggest challenge today is how to convince the policy-makers in developing countries that competition policy and law are helpful to the poor and work towards the overall welfare and development of the country.

The effectiveness of competition policy in relation to the poor significantly depends upon the actual reach of competition law *vis-à-vis* retail level competition abuses. Generally, consumers at the grassroots are handicapped to bring forward complaints before a Competition Authority, as the same may not be easily accessible. In India, the Consumer Protection Act, which has district-level fora all over the country, provides a good means of bringing forward retail-level competition abuses before the forum for adjudication. The hierarchy of consumer courts includes a State Commission at the state headquarters, with an apex body at the national capital, the National Commission. These can entertain appeals from the lower fora and take up original complaints in a graded monetary jurisdiction[23] .

Such a model is good for a country of any size, because usually the Competition Authority is located at the national capital and therefore, all consumers, especially the poor, cannot approach it. Besides, the competition agency is usually busy in industrial organisation issues and anti-competitive practices by corporate houses.

Other than what has been stated just above, in order to ensure that a country formulates and implements a competition policy and the enforcement of the law remains pro-poor, the following steps can go a long way:

- Consistency in the design and implementation of competition policy and law with other national objectives;
- Anchoring political support;
- Advocacy and public awareness generation;
- Strengthening institutions and building capacity;
- International co-operation; and
- Friends of Competition — building coalitions with various allies, which will appreciate and foster a healthy competition culture.

To sum up, a well-drafted competition law and policy can be one such empowerment tool in the hands of the consumers, which can help them get access to basic needs and justice. It would also ensure that they are not exploited at the whims and fancies of both big and small business houses due to the latter's anti-competitive behaviour. At the same time, it is equally important to ensure that the law is implemented *effectively* in order to meet the objectives of such a law in its true spirit.

Notes

1 A Comparative Study of the Competition Regimes of Seven Developing Countries of the Commonwealth, implemented by CUTS, India. The countries in this study are India, Kenya, Pakistan, South Africa, Sri Lanka, Tanzania and Zambia. For more please visit website: www.cuts.org/7Up.htm.

2 The International Bank for Reconstruction and Development/The World Bank (2003)

3 According to World Bank's estimates, extreme poverty declined only slowly in developing countries during the 1990s and the share of people living on less than $1 a day fell from 28 percent in 1987 to 23 percent in 1998. However, the number of poor people around the globe remained roughly constant as the population increased. (Source: www.worldbank.org/poverty/data/trends/income.htm).

4 Source: http://www2.ucsc.edu/atlas

5 http://www.worldbank.org/poverty/strategies/chapters/trade/trade.htm

6 CUTS (2003), "Approaches to Competition Policy in South Asian Countries", CUTS, Jaipur, India.

7 CUTS (2003) "Pulling Up Our Socks", CUTS, Jaipur, India

8 Source: World Bank Global Economic Prospects, 2003.

9 This argument is further reinforced by the statement, "countries that do not change their investment policies and do not exercise well the powers and responsibility of the state – such as regulating privatised industries, providing education, or enforcing conditions of competition – will forgo poverty reducing growth opportunities." (World Bank Global Economic Prospects, 2003)

10 http://www.unctad.org/en/docs//c2em_d10.en.pdf

11 http://www.unctad.org/en/docs//c2em_d10.en.pdf

12 See Caceres, A (2000), "Indecopi's first seven years" in Beatriz Boza, ed., *The Role of the State in Competition and IP Policy in Latin America: towards an academic audit of Indecopi*, Lima.

13 For example, Dutz (2000) empirical analysis for a number of developing and developed countries indicates a strong correlation between the effectiveness of competition policy and growth and suggests a complementary role for competition policy in stimulating growth beyond trade liberalisation and international openness.

14 "Spine chilling experiences of anticompetitive practices in Malawi", CUTS and Consumers Association of Malawi (CAMA) 2003.

15 TD/B/COM.2/CLP/26

16 It may however be noted that resale price maintenance is not necessarily anti-competitive. In the UK, RPM is allowed for drugs and books so as to ensure that small independent pharmacies and news shops can exist and are not driven out by large firms.

17 MCA also found that six producers controlled 35 percent of the market and their prices were nine percent higher on an average than the other brands.

18 SACU comprises of South Africa, Botswana, Namibia, Swaziland and Lesotho.

19 Adhikari, Ratnakar (2002), Competition Policy in Small Economies, Discussion Paper, SAWTEE, Kathmandu and CUTS, Jaipur

20 For a detailed analysis, see the 7-Up Project Phase II case studies for Sri Lanka and Pakistan.

21 However, a different picture emerges in case of South Africa where the Competition Commission approved the merger after an agreement was reached that GWSKB would out-license products in the therapeutic categories where they have market power.

22 Similarly, in the agriculture sector, government interventions by the judicious use of competition law, including cooperation with competition law authorities in other countries, can help in checking exploitation by large agri-businesses who control most of the patents in the area of either seeds or biotechnological products. Importantly, a major spin-off of such a coordinated action can culminate into pro-poor technology development and innovation.

23 For obtaining a copy of India's Consumer Protection Act, please visit website: www.fcamin.nic.in

References

Adhikari, R. (2002) *Competition Policy in Small Economies,* Discussion Paper, SAWTEE, Kathmandu and CUTS, Jaipur.

Dutz, M. A and Hayri, A. (2000) *Does more intense competition lead to higher growth?* World Bank Policy Research Working Paper No. 2320; Washington D.C.

Smith, A. (1776). *An Inquiry into the Nature and Causes of the Wealth of Nations,* two volumes (London, W. Strahan & T. Cadell, 1776) second edition, revised, 1778, third edition with "Additions and Corrections, three volumes (London, A. Strahan & T. Cadell, 1784), fourth addition (London, A. Strahan & T. Cadell, 1786), fifth edition, 1789 (Philadelphia, Thomas Dobson, 1789).

UNCTAD (1997) *Empirical Evidence of the benefits from applying competition law and policy principles to economic development in order to attain greater efficiency in international trade and environment.* TD/B/COM.2/EM/10, Report by UN Secretariat, Geneva.

UNCTAD (2002) *Recent important competition cases in developing countries*, TD/B/COM.2/CLP/26, Report by the UNCTAD Secretariat, Geneva.

World Bank (2001) *World Development Report 2000-01.* Washington D.C.

World Bank (2003) *Global Economic Prospects.* Washington D.C.

2

What Type of Competition Policy and Law Should a Developing Country Have?

*Ratnakar Adhikari and Malathy Knight-John**

Competition policy is by no means a recent phenomenon in international policy and academic circles, as is evident by the ill-fated charter of the International Trade Organisation (ITO), the UNCTAD Set of Multilaterally Agreed Equitable Principles, Rules for the Control of Restrictive Business Practices (RBPs) and the extensive work carried out by international organisations, such as the Organisation for Economic Cooperation and Development (OECD) and the World Bank, on the subject.

However, it is only in recent years that formal competition laws have been enacted in most developing countries. For instance, as documented in Singh (2002), till 1990, only 16 developing countries had a competition law, 50 countries completed legislation in the 1990s and another 27 are currently in the process of adopting these laws.

Whilst competition policy was not a priority for most developing nations in an era of widespread state intervention in economic activities, subsequent developments—both internal and external—to these economies have demonstrated the need for specific legislation.

Internally, adoption of liberalisation policies, rise in developing country privatisations and the fact that most privatised entities in the utilities sector are natural monopolies, highlight the importance of a solid competition policy framework to elicit the most favourable efficiency and welfare effects of liberalisation and privatisation.

Externally, the massive international merger wave and its potentially negative impact on market contestability posit a case for competition law to equip developing countries with the tools to deal with the increased market power of multinational companies and their possible abuse of dominance.

More recently, the inclusion of competition policy in the Doha Ministerial Declaration of the World Trade Organisation (WTO) and its possible inclusion as a negotiating issue at the Cancun Ministerial Conference later this year, underscored the importance for developing countries to understand both the domestic and the international ramifications of the competition policy and to plan their negotiating positions internally, so as to avoid repeating the grievous mistakes committed during previous rounds of multilateral trade negotiations.

Although there are some basic provisions, which ought to be a part of any competition law — such as the ability to deal with anti-competitive behaviour by privatised firms and with abuses of dominant market power by huge corporations spawned by the merger wave, for example — the vast socio-economic, political and cultural differences between and amongst advanced and developing nations, makes it clear that there is no universally applicable formula for competition law and policy and that a one-size-fits-all approach is not viable.

The principal variable that has to be taken into consideration in determining the contours of national competition law and policy is the development dimension, the stage of development that an economy is at, its specific development needs and its institutional endowment, including effectiveness of government and governance mechanisms to control corruption and rent-seeking behaviour.[1] This is borne out in the findings of a survey, highlighted in World Bank (2002), that point to inter-country variations in the definition of dominance, treatment of cartels and

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enforcement. From an international perspective, these inter-country differences in the approach and implementation of competition law illustrate the national and developmental objectives that any multilateral commitment on competition policy must take into account, if it is to be useful for the developing countries.

In this paper—where we address a crucial policy question and what sort of a competition law and policy should a developing country have—the underlying thesis that we embrace is that the development dimension is a key. Whilst most of the examples we refer to in our analysis are drawn from the 7-Up project experience[2]*, we consider some other developing and advanced country experiences, which are relevant for the purpose of illustration and comparison.*

The next section of this paper looks at the objectives of competition law and policy across countries, followed by a discussion of key competition policy concerns – such as the desirability of domestic competition policy, structure versus conduct approaches, threshold limits and merger control, implementation problems, position of competition policy with respect to other areas of public policy, link between the competition authority and sector-specific regulators, exemptions and exceptions and the benchmarks for enforcement. The next section looks at the international perspective of the competition policy issues.

1. Objectives of Competition Law and Policy: a Cross-Country Experience

As noted in the introductory section of our paper, there is a significant inter-country variation in the contours of competition law and policy. These differences are also reflected in the stated objectives of competition legislation across countries. The two most common objectives, applied with varying emphasis in different countries, are those of economic efficiency, consumer welfare and "public interest", defined broadly.[3]

The varying emphasis given to these objectives relate to the country-specific historical and politico-economic determinants of competition law and policy and the balance between competition policy and other public policies, such as industrial and trade policies. For instance, historically, anti-trust policy in the US was motivated by the need to protect consumers from price-fixing trusts, while the European Union's (EU's) competition policy is linked to the goal of a common European market.

Japan's competition law was enacted under pressure from the US and Indonesia's competition law was put in place after the Asian currency crisis of 1997/1998. Drawing from the 7-Up experience, Pakistan's competition law and policy is linked to the peculiar nature of corporate sector growth in the 1960s that led to an undue concentration of wealth amongst 22 families, and South Africa's competition legislation, which aims to increase the spread of ownership, particularly amongst historically-disadvantaged people, stems from a move to address the legacy of apartheid.

The fact that competition legislation in most developing countries must be viewed not in isolation but as one component of a country's overall public policy is also illustrated in the objectives of competition law in some of the 7-Up project countries. For instance, the Zambian Competition Law includes the need to encourage innovation, ensure fair distribution and reduce unemployment, while merger control in Tanzania has to take account of factors—such as competitiveness in export markets and the ability to face import competition—and the South African legislation is unique in that it explicitly emphasises the development dimension, linking competition policy with other public policies.[4]

Singh (2002), in his refreshing analysis of new concepts for competition policy and economic development, suggests that the standard objectives of competition law and policy be reconsidered to bring in notions, such as *inter alia*, an "optimal" degree of competition as opposed to maximum competition, an optimal combination of competition and cooperation between firms (*a la* Japan), dynamic rather than static efficiency and to ensure consistency between competition and industrial policies.

Whilst it is important that developing countries take note of these issues and the need to address them within their competition policy framework, the difficult political economy trade-offs, that some of these objectives involve, could pose a significant challenge for countries that have weaker institutional and governance capacities. For example, to what extent could the "cooperation" culture, which has worked well in Japan, be replicated in a South Asian economy, where rent-seeking and corruption are rampant; or, how successful would a weak state be in coordinating competition and industrial policies. Clearly, there are no easy answers. A multiplicity of developmental objectives, though seemingly laudable, might also give rise to lobbying and rent-seeking behaviour that could, in turn, undermine economic development.[5]

2. Competition Law and Policy: Some Key Concerns

2.1. Desirability of Domestic Competition Law and Policy

The issue that we will consider in this section is the extent, to which domestic competition law and policy is required to address the development needs of an economy. Experiences from a wide spectrum of countries tell very different stories. Amongst those that have implemented domestic competition policies, the more advanced nations count competition policy amongst their more useful policy instruments, while the developing countries portray mixed messages; and, amongst countries that have yet to enact a national competition law, those, such as Singapore and Hong Kong, show a higher level of economic performance than those like Vietnam and Russia[6].

According to Naim (1998), there is mounting evidence that competition law and policy are relatively impotent instruments for economic development, as their effectiveness depends on a country's institutional endowment, which is rather weak in most developing countries. Similarly, it is argued—see for instance Adhikari (2002)—that strong political will can substitute for a formal competition law, as evidenced in the case of Bhutan, where Hindustan Lever, the Indian subsidiary of the multinational corporation, Unilever, was forced to widen its wholesale dealership network even in the absence of a national competition law. Moreover, from an international perspective, it is often the case that national laws are not sufficient to deal with most anti-competitive practices of an extra-territorial nature and almost surely not adequate to fight against hardcore cartels.

Having said this, however, it is also the case that a national competition law is a *necessary* (though not *sufficient)* tool of development. First, governments are better equipped to address competition abuses, whether of domestic or foreign origin, when legislation is in place. Second, given the possibility of a multinational competition framework, or even of multilateral negotiations on the prospects of such a policy, it is imperative that national governments are pro-active and ensure that their domestic competition policy "house" is in order. Even in the case of hardcore cartels for instance, which are best handled at a multilateral level, some basic domestic law provisions that define and prohibit such practices, are essential.

2.2. Structure versus Conduct

The 7-Up experience indicates that whilst the project countries adopted a behavioural or conduct approach to investigate monopolies and dominant entities, they relied heavily on a structural approach to determine the existence of dominance—with the major determinant of dominance being market share. These competition authorities also use market share as the most important variable in their analysis of mergers. The definition of market dominance reflects significant inter-country and inter-regional variation, as illustrated in Table 1 from Singh (2002), citing World Bank (2002).

The structural approach is, however, ill-suited to most developing countries given the size of their markets. There are also several difficulties linked to the determination of dominance based on market power, such as the definition of the relevant market. On the other hand, a move towards a conduct approach will require a significant increase in the capacity of competition authorities, which is often lacking in developing countries. Moreover, the conduct approach also involves 'rule of reason' analysis, which requires providing considerable discretionary power to competition authorities — a practice that could

Table 1: Benchmarks of product market dominance in competition laws around the world

Country group	Market share of the firm (%)
Developing and transition countries	
East Asia	50-75
Eastern Europe and Central Asia	30-40
Africa	20-45
Industrial countries	
United States	Two-thirds or more
European Union	40-50

Source: World Bank (2002)

very likely result in rent-seeking activities in economies characterised by poor governance. In sum, the balance between the structure and conduct approaches in developing country competition policy will depend on key features, such as the size of the market and institutional endowment.

2.3. Threshold Limits and Merger Control

The debate with regard to mergers goes from the basic question of whether merger control ought to be included in competition law and policy to issues, such as the types of mergers that ought to be controlled, if any, and the determination of threshold limits to trigger action by competition authorities. In countries like Japan, South Korea and Taiwan, where export competitiveness and the need to foster innovation are key developmental objectives, merger control is not an accepted practice, while the Caribbean Community (CARICOM) Competition Policy does not include merger regulation on the basis that small economies, such as those in the CARICOM region, are largely made up of micro-firms that need to achieve critical mass to be competitive.

On the other hand, however, there is a potential problem in situations, where huge multinationals gain a foothold in smaller economies – perhaps because of some natural resource or human resource-based comparative advantage – and the absence of merger control legislation together with "national treatment" requirements render these countries helpless in the face of any abusive business practices on the part of these mega-firms.

Given these considerations, it is perhaps advisable to adopt a more flexible approach to merger control that would, for instance, distinguish between mergers that are efficiency-enhancing and pro-competitive and those that could lead to abusive business practices. This approach would be less stringent on vertical mergers, which could be pro-competitive, than on horizontal mergers. This is also the practice in the case of the competition policy framework of Kenya, Tanzania and Zambia that requires all horizontal mergers to be notified, while exempting most vertical mergers from its ambit. A significant practical problem with this approach, however, is that most developing countries lack the skill and the capacity to distinguish between efficiency-enhancing and anti-competitive mergers, thus *ex-post* dismantling of a merger is often a costly and long-drawn process.

Another option that could conceivably reduce the workload of the competition authority is to set a threshold limit for triggering action, such as in the case of South Africa, where merger notification is confined to those mergers above a particular threshold. The Minister of Trade and Industry sets the thresholds in consultation with the Competition Commission, with mergers being grouped into intermediate and large categories, based on the combined annual turnover or assets of the acquiring and target firm in the Republic of South Africa. In contrast to this, both Pakistan and Sri Lanka require pre-notification of all mergers. A useful rule of thumb would be to set the threshold level, high enough to cover only large deals but not too high as to create a problem with possible *ex-post* unscrambling. One concern with regard to this approach, as discussed in section 3.2 of this paper, is its structural flavour, which could be somewhat problematic in the case of smaller economies.

2.4. Implementation Problems

As emphasised in the previous sections of this paper, the enactment of competition legislation does not by itself ensure a favourable competition policy outcome; institutional endowments matter. Implementation and enforcement are key in the area, where developing countries flounder. Whilst all the 7-Up project countries have a competition law framework in place, they experience tremendous problems in effectively implementing and enforcing the law and carrying out the tasks assigned to the competition authority. The most common problems are the resource and capacity constraints, lack of political will, absence of an independent competition authority and the absence of competition culture.

2.4.1.Resource and Capacity Constraints

The related issues of resource and capacity constraints are perhaps some of the most significant problems the competition authorities are facing in the developing countries. Whilst the dismal resource base is linked to the fiscal crunch that confronts most developing economies and the need to balance and prioritise competing demands on the government budget, it is also a reflection of an absence of political backing for competition policy. Given these factors, two questions arise: first, should competition authorities depend on state funds for their activities? And, is it possible for these authorities to be financially independent?

It is not practicable to rely entirely on government funding as was reflected very clearly in the experiences of the 7-Up countries. With the exception of South Africa and Zambia, all the project countries showed extremely small budgets when measured as a percentage of total government expenditure. Depending exclusively on state funds has a disastrous impact on the capacity of the competition authority in terms of quality and quantity of staff, opportunities for training and human resource development, support facilities and infrastructure, whilst it also undermines its independence to a large extent, as gathered from the experiences of the 7-Up countries.

Again, the South African Competition Commission stands out as the best-equipped among the project countries with respect to support facilities and infrastructure, while the facilities of the Zambian authority are adequate given its small staff size. The Indian authority, on the other hand, has the largest staff size with relatively weak infrastructure and support facilities.

Moreover, in India as well as in Pakistan, the number of support staff exceeds that of professionals in contrast to the situation in South Africa and Kenya. The money available to remunerate the staff is a crucial determinant of the skills and expertise that the authority can attract. With the exception of South Africa and Zambia, the salaries paid to employees of the competition authorities are lower than the levels in the private sector; in Sri Lanka, the staff of the Commission are paid salaries that are even lower than those in the public sector.

As discussed earlier in this paper, competition agencies require a considerable degree of skill and competence to address complex issues, ranging from how to determine dominance or at what level to set threshold limits to evaluate competition cases using a "rule of reason" approach. However, in several of the project countries, competition agencies struggle with these issues and are unable to handle their caseload because of a lack of qualified staff. In Sri Lanka, for instance, the Fair Trading Commission (FTC) only investigated two mergers and 23 restrictive trade practices in the 1996-2000 period, while India's Monopolies and Restrictive Trade Practices Commission (MRTPC) has had to struggle with an enormous backlog of cases with only seven professional staff members.

The apparent problems, while depending exclusively on the government budget for funding the activities of the competition agency, bring us to the related issue of whether and how the authority can become financially independent. Adhikari (2002) provides some useful thoughts on this. First, it is suggested that resources could be raised by way of fines. While this option has been challenged on the grounds that it could create an incentive for the competition agency to charge unduly high fines to function as a financially sustainable unit, the establishment of an appellate mechanism would allow a party to contest not only the decision of the authority but also the amount of the fine.

A second alternative would be for the competition agencies to charge fees for the services they provide to the government and business associations, while a third choice would be to introduce a system similar to a court fee whenever firms file complaints against their competitors. The advantage of this approach is that it would deter frivolous complaints.

A final option identified in this study is to look at bilateral and multilateral donor agencies for funding and technical assistance. In sum, the most practical solution would perhaps be a mix between the state and other sources of finance, with the former option forming less of the agencies resource base than the latter.

2.4.2. Lack of Political Will and Independence

A common feature in most developing economies is the absence of political ownership and support for competition policy. This also translates, as is evident in several of the 7-Up examples, to political interference in the activities of a competition agency, undermining its independence as a professional "watch-dog" of competition. *CUTS (2003)* lists some of the criteria that define independence: legal independence, where the competition agency is not a part of any government department and where members cannot be removed without proper justification; financial independence; and *de facto* independence, where it would have the cooperation of other government agencies in enforcing its decisions.

All the 7-Up countries, with the exception of Kenya, Tanzania and Sri Lanka, have legally independent competition agencies. The Sri Lankan case is particularly worrisome, as the Act stipulates that the Minister, under whose auspices the competition agency functions, can remove any member of the Commission without providing a reason and that this decision cannot be challenged in a court of law. Legal independence does not, however, provide for *de facto* autonomy, as is evidenced in the case of Pakistan, where the government interfered in several cases, most notably that of the cement cartel. The Indian tale of the soda ash and cement cases that set a strong lobby group made up of a few big industrial houses against an association of small builders and ordinary consumers, also indicates the threat to independence from strong business lobbies.

The reasons for the lack of political support relate to private-interest, maximising the behaviour on the part of politicians – where they protect the interests of those industries, from which they derive their votes and with whom they often have mutually beneficial rent-sharing arrangements at the expense of a widely-dispersed consumer population. The absence of political backing for competition policy could, from a more benevolent perspective, also stem from the need to prioritise public policy to meet a country's development needs. In the case of Japan and Taiwan, for instance, industrial policy takes precedence over competition policy, while in Sri Lanka the civil war that has ravaged the economy for over three decades, put all else on the back-burner.

Given our premise that some degree of competition policy that is tailored to the specific development needs of an economy, is necessary in the context of liberalisation, privatisation, international merger wave and possible negotiations at the multilateral level. It is important that developing countries evolve a strategy to convince the national political leadership of the benefits of competition law and policy.

As suggested by Adhikari (2002), some practical options for enhancing the independence of the competition agencies would be to stipulate that the agency should be accountable to the legislature or to a Parliamentary Committee. For instance, to fix the term of Commissioners, so as to enable them to receive adequate exposure and experience, but not too long so as to avoid the risk of political or regulatory capture, and to provide for start-up funds from the government budget whilst leaving the responsibility for generating more funds to the agency through fines, fees or donor support, etc.

2.4.3. Absence of Competition Culture

A significant problem confronting most developing nations is the absence of a national constituency to support competition policy work. Whilst a bottom-up approach—pressures from groups, such as consumer and other civil society organisations that operate outside the government—is particularly relevant in countries that lack the political commitment to competition policy, this appears to be sadly lacking in these countries, as evidenced in the 7-Up study.

An interesting feature of the 7-Up study was the setting up of National Reference Groups (NRGs), comprising a variety of stakeholders in each of the project countries. While discussions within this group raised awareness about competition law and policy in these nations, they also revealed the extent to which competition culture needs to be beefed up if competition policy is to make any difference to these economies. A questionnaire on the international dimensions of competition abuses that was circulated amongst the groups indicated the appalling level of knowledge on these issues.

As these examples point out, the mere enactment of a competition law will not suffice to develop a competition policy framework that is tailored to suit the development needs of an economy. It is also not enough to prevent undue political interference and regulatory capture, as analysed in the previous section. What is required is a broad-based awareness and advocacy work, activities that would speak of the benefits of competition law and policy and that would highlight the development dimensions of competition policy. Given the strained budgets of developing country competition authorities, such activities need to be carried out in tandem with civil society entities, such as consumer organisations. Moreover, donor assistance is also an option to finance advocacy programmes or to bring competition issues into tertiary education curricula.

2.5. Position of Competition Policy vis-à-vis other Areas of Public Policy

This section looks at the position of competition policy *vis-à-vis* other areas of public policy based on the objectives of competition policy and rigorousness, with which it is implemented in various countries. Finally, it looks at this issue with normative focus.

Developing competition policy and law is one thing but holding its supremacy over other is entirely a different thing. Supremacy of policy and law depends not only on economic and political significance a country attaches to the issue, but also on a host of other factors. For example, the USA pursues anti-competitive conduct more vigorously than any other country. It has included the provisions of treble penalty for some anti-trust violations and regarded some violations as criminal offence. Similarly, the means applied to check anti-trust abuses are so rigorous that competitors are not even allowed to verbally discuss about price.

But Japanese Competition law has intentionally included weak provisions on some of the competition issues, including merger, cartels and collusive conduct. Japan has recognised the primacy of its 'industrial policy' over the application of competition rules. Indeed, Japan's powerful Ministry of International Trade and Industry (MITI) never flinched from ignoring the basic tenets of anti-trust regulations if they interfered with the export-oriented industrial policy, for which it became famous (Mioses, 1998:17). Similarly, Taiwanese Fair Trade Law (Competition law) contains a clause that gives explicit precedence to other laws, where they conflict with competition law (Lloyd, 2001:5).

Often the significance any government assigns to competition policy and law can be seen from the budgetary allocation to the competition authority provided by the government. While a small country like Zambia has provided 0.05 percent of the total government budget to its competition authority, a large country like India provided 0.0009 percent of its total Union Budget to its erstwhile competition authority — Monopolies and Restrictive Trade Practices Commission (MRTPC). Even after the passage of the new Competition Law by the Indian Parliament recently, scrapping the old Monopolies and Restrictive Trade Practice Act of 1969, the budget has increased only negligibly. It now stands at 0.001 percent of the total annual budget of Rs. 4 tr (Mehta, 2003).

It is entirely up to the countries concerned to decide as to where they would like to position their competition policy and law *vis-à-vis* other areas of public policy taking cognisance of their political economy. They should decide, for example, whether the policies of poverty alleviation, employment generation and ensuing distributive justice should receive primacy over the competition rules.[7] However, they should keep in mind that competition policy is a potent tool not only to enhance efficiency of the enterprises and protection of consumers at the micro level, but also an effective means to achieve equity concerns, such as de-concentration, distributive justice and poverty alleviation from a macro perspective.

2.6. Competition Authority vs. Sector Specific Regulators

Despite massive changes in technology, several segments of infrastructure in the developing economies will remain natural monopolies, because of the limited size of the market and lack of entrepreneurial zeal to take up risky investment in sectors with high gestation period. Therefore, sector-specific regulators will continue to play a major role trying to ensure that natural monopolies do not abuse their position in the market. One of the responsibilities of the sector-specific regulators is to maintain price cap in the sectors under their jurisdiction. In doing so, some regulators have to conduct such activities that impinge on competition. While simultaneous jurisdiction is not uncommon even in developed countries, this is a source of tension in most of the developing countries, mainly because of the lack of clear-cut demarcation of authorities and responsibilities. Some of the tensions, as documented by Basant (2001:24-25), in some developing economies are presented below.

In Zambia clear overlap exists between the tasks of the Zambian Competition Commission (ZCC) and the Securities Exchange Commission (SEC). In a case, where ZCC required the shares of the acquired entity to be floated in the stock exchange in order to prevent the concentration of stock in the hands of the acquirer, the SEC allowed the acquirer to offer the share to the minority shareholders. This resulted in acquirer having the total control over the company with negative implications for competition, but ZCC could not prevent this since SEC's decision prevailed.

The case of Tanzania is interesting as the sector-specific regulation was initially under the purview of the competition authority. Subsequently, some other sector specific regulatory authorities were created. The conflicts between competition authority and Tanzania Communication Commission (TCC) became obvious when the former filed a complaint against the latter for permitting dominance of two cellphone companies (Mobile and Tritel) in the country. The TCC had to provide detailed explanations for its conduct and subsequently registered other cellphone providers, *e.g.* Vodafone.

In Sri Lanka, too, there is a considerable overlap of power and jurisdiction between Fair Trade Commission (FTC), on the one hand, and Telecom Regulatory Commission (TRC) and National Transportation Commission (NTC), on the other. The Sri Lanka Telecommunication Act (SLTA), which established the TRC, does not clearly set out the powers of the TRC and the FTC, and neither does the FTCA. The FTCA does not exclude telecommunications from its scope, while the SLTA provides for the regulation of telecommunications without excluding such power from the FTC. However, in practice, the exercise of powers of the FTC and the TRC do not overlap. This is so because the FTC refers all matters that come before it regarding telecommunications to the TRC. The FTC has not established steady links with the TRC, but they interact if any related matter arises during the functions of the TRC (De Zoysa and Wickramaratne, 2001).

It is impossible to completely eliminate such a tension even in developed economies. What they have done is to make a clear-cut demarcation of roles and responsibilities of the two authorities, which has led to easing of tensions. According to UNCTAD (2001:8-7): "…Competition law and policy and regulation aim at defending the public interest against monopoly power. Although both provide a government with tools to fulfil this objective, they vary in scope and types of intervention. Competition law and policy and regulation are not identical."

2.7. Development Dimension

The question of development dimension is largely a Southern phenomenon, notwithstanding the fact that this issue has received considerable attention during the policy-making process of the developed countries as well. All the sectors in economies in the developing countries may not be equally capable to face competition, especially from the foreign companies. The role of small and medium enterprises may not be that high in generating export revenue, however, their contribution in terms of providing employment opportunities is enormous. If we expose such enterprises to foreign competition, the vital nerve of the national economy may collapse. Therefore, one has to be extremely sensitive while devising a competition law, so as to ensure that development dimension is properly taken into account.

Some examples of taking development dimension into consideration while designing competition law, *inter alia*, include: a) exempting small- and medium-size enterprises, when the impact of their RBPs is insignificant in the relevant market (*e.g.*, EC's example of five percent *de minimis* market share rule)[8] ; b) Granting exemptions to certain specific dynamic and growth-oriented sectors, which are deemed to need temporary shielding from full-fledged competitive forces; and c) safeguard in favour of socio-cultural values protecting certain specific cultural sectors (Brusick, 1999:107).

Some countries keep selected sectors of the economy out of the purview of competition law. For example, in Tanzania, limited exemptions are provided to the areas of sovereign acts of the state and the labour market, in particular, the trade unions' collective bargaining rights (Musonda, Mbowe and Sampson 2001). In India, the erstwhile MRTP Act of 1969 used to exclude public sector enterprises from its purview. As per the Sri Lankan Fair Trade Commission Act, companies and ventures registered under the Board of Investment (BOI) and professional conduct do not come within the purview of the FTC.

Infant industry argument calls for sheltering nascent sectors of the economy from outside competition. Even the developed countries of the day had made use of such mechanism in the past. For example, in Japan, between 1961 and 1973, close to 1,000 cartels per year on an average were exempted from anti-trust law. However, providing indiscriminate and perennial protection without any checks and balances to the infant industries could be dangerous. Therefore, in order to help them become significant economies of scale and become globally competitive in true sense of the term, such protection should be applied selectively, made conditional upon meeting performance standards, transparent, time-limited, digressive and involving minimum discrimination, apart from being subjected to regular reviews.

Some argue that labour market-regulated industries, agricultural sector, cooperative institutions, energy sector, media and pharmaceutical sector should also be exempted from competition. However, blanket as well as eternal protection to all sectors mentioned above could prove counter-productive. Therefore, there is a need to make selective protection, based on the contribution of the sector in question to the social, cultural and economic sphere of any given country at any point of time. It has to be also recognised that providing protection to domestic sector, especially the infant industries, is the second best option. It is, therefore, illuminating to observe the following conclusion of Lachmann (1999:37):

"We can draw the conclusion that history and economic theory seem to support the view that at the beginning of economic development (industrialisation), companies in developing countries need temporary aid. Free trade is the first best solution in a world of perfect competition. Yet, in the light of the existing disadvantages of developing countries and the reality of existing trade barriers, free trade is insufficient to enhance competitiveness. Governments need to be enabled to give short-term, digressive, limited waivers (second-best solution) in order to help their industries become competitive on national and international levels. These waivers must be reviewed continuously. It has to be ensured that [they]…do not continue for too long.

Also, the procedure, period of validity and size of waivers must be transparent, so that the recipients are informed and can, thus, take long-term decisions and have an incentive to 'grow up' quickly in order to be competitive. Government protection might otherwise become an incentive for infants to grow up too slowly! Although the theoretical benefits are convincing, there are technical problems in implementing optimal infant industry protection. The institutional capacities of many developing countries are too weak to follow such a policy successfully, and the power of interest groups and danger of rent-seeking should not be underestimated. Hence, wherever possible, one should stick to free trade.

2.8. Benchmark for the Enactment of Competition Law and its Enforcement

There is no hard and fast rule on what should be considered as the benchmark for the enactment and enforcement of competition rules, as this is largely a subjective issue and depends on a number of factors already elucidated above; for example, development dimension, position of competition *vis-à-vis* other public policy issues, implementation problems and competition culture influence the benchmark to be set. However, at a bare minimum, the following factors should be considered while putting in place a mechanism for the enforcement of competition law.

2.8.1. Preventive as Opposed to Curative Measures

Rather than focusing on the curative measures (*i.e.*, penalising the wrongdoers after the offence has been committed), competition law should be such that would facilitate prevention of the offence itself. The requirement to register all the potential anti-competitive practices with the competition authority, as done under the India's erstwhile MRTP Act is something worth emulating by all competition law enforcement agencies. While competition authorities around the world have been moving towards "conduct" as the criteria to trigger action, focus on "structure" could help them adopt preventative measures. The existence of "market power" in itself and by itself is not anti-competitive, but if the same is not properly watched, market power is a potent tool for "market exploitation". For smaller economies, therefore, focus on "structure" is a better tool to prevent the anti-competitive practices from taking place.

In order to deter firms from engaging in anti-competitive practices, fines and penalties should be considerably larger than the extra profits that firms anticipate earning through their illegal behaviour. Some countries have even found that deterrent effects of penalties is enhanced considerably if the anti-competitive acts are characterised as criminal and if individuals as well as enterprises are liable (World Bank and OECD, 1998:149).

2.8.2 Separation of Investigative and Adjudicatory Powers

In order to promote specialisation and to make an impartial judgement on the existence or non-existence of anti-competitive practices, it is necessary to separate the investigative powers and adjudicatory powers. Otherwise, competition agency may become investigator, prosecutor, judge and jury — all rolled into one. Moreover, if both powers are given to one agency, there is a tendency among the competition commission to be biased in favour of the investigation report and the judgement could invariably go against the business enterprises, which have been seen as conducting anti-competition practices as per the report of the investigative agency. Should this happen, business groups will always be against the very existence of competition authority.

If competition authority does not receive cooperation from all the stakeholders, including government, private sector and consumer groups, it cannot perform its tasks effectively. Even in the case of adjudication, litigation should be used as the last resort and other mechanisms of alternative dispute resolution should be used as extensively as possible. Litigation is not only costly but also adversarial in nature.

2.8.3 Triggering an Investigation

Competition law requires a mix of structural and behavioural criteria to touch off an investigation. There must be clear criteria, by which cases or investigations would be triggered. Otherwise, the law will create business uncertainty and undermine the competitive market process (Khemani, 1995: 45). While, too strict application of competition rules may impede the ability of firms to attain critical size and tax their efficiency, too lax an approach may lead to entrenched position of the monopolistic enterprise in the market.

The problem is further compounded by the fact that there are a number of gray areas in the administration of competition law. For example, merger may not be bad as long as it does not result in providing "market power" to a business enterprise. It is therefore advisable to specify the threshold level of "market power" for triggering investigation at the time of designing the law itself. Likewise, while some of the business practices (such as cartel) are regarded illegal in virtually all jurisdictions and hence prohibited, some other practices (such as exclusive dealing or merger) should be examined on a case-by-case basis, applying rules of reason approach.

2.8.4 Appeal Mechanism

In order to enhance credibility of the competition authority and provide a fair opportunity for the parties to get access to justice, there should be an effective appeal procedure, whereby any party not satisfied with the decision of the competition authority on points of fact and/or law can appeal to a higher authority. Competition authority can also commit some error of law and/or interpretation. Existence of appeal mechanism makes the competition authority exercise utmost caution while delivering judgement against any business groups or enterprises. A system of checks and balances ensures prevention of deliberate or otherwise abuse of authority by the competition commission, and thereby losing its credibility as an institution.

2.8.5 Private as well as Public Enforcement

Good competition law will include mechanism for consumers and firms if they suffer due to unjust anti-competitive practices.[9] In some countries, private action for the redressal of injury resulting from violations of the competition law may be instituted before an appropriate court or tribunal by the aggrieved parties (both private firms and consumers). Such private action has at least two benefits — they supplement and reinforce public enforcement of the competition law and they free competition authority from having to obtain such redressal on behalf of private parties (World Bank and OECD, 1998: 148).

2.8.6 Prohibition and Remedial Orders

The appropriate remedy for many types of anti-competitive practices is to simply demand that the offending party stops engaging in the conduct or take other actions to eliminate the effects of the unlawful practices. Punishment is also appropriate if the conduct is egregious. But some competitive harms are not readily apparent to the business people, who may have engaged in the conduct initially in good faith. The competition law should empower the competition agency to prohibit the conduct or redress the harm from it.

2.8.7 Protection of Confidential Information and Avoidance of Conflict of Interest

If the competition authority were to receive cooperation from the business sectors while conducting investigation for a potential competition abuse case, they should institute a system of protecting the confidentiality of private information, which was acquired during the process of investigation or proceeding. Such information, if handed over to competitors, could cause enormous losses to the holder of such information. Moreover, there is every possibility that the competitors would try to acquire and use such information for furthering their own profit motives by using the officials of the competition authorities. Such activities should be legislated as illegal.

2.8.8 Competition Advocacy

Since policy formulation is a dynamic and evolving process, government is constantly involved in revising, reviewing and updating its policy space. While some of the policy decisions, such as tariff reduction or removal of non-tariff barriers, could contribute towards enhancing competition in the marketplace, some other decisions, such as granting exclusive dealership for the distribution of petroleum products to a public enterprise, could contribute towards reducing competition. Competition authority should, therefore, have the power to make recommendations or presentations and in some situations to intervene when government bodies are making decisions detrimental to competition policy (World Bank and OECD, 1998). This makes government and competition authority more accountable, increases awareness of the costs and benefits of alternative policies and helps ensure that government policy objectives do not work at cross-purposes.

However, of late, concerns are being expressed about the narrow-tailoring of the existing definition of competition advocacy, since it solely focuses on the role of competition authority. There is a demand from consumer organisations to expand the definition of competition advocacy to include the roles of other interested parties (such as, consumer groups), which have a significant stake in fostering competition.

3. International Perspective

According to Lloyd (1998:71), the fundamental problem is that global markets and national jurisdiction co-exist and there is a need for mechanisms to cover cross-border competition problems. National legislation is seen to have some inherent shortcomings, in the sense that it is designed to control only those restrictive practices that occur in and affect the domestic economy (*Cf* Steward, 1999).

Developing countries and, in particular, least developed countries (LDCs) are vulnerable to anti-competitive practices of an international dimension. It will be extremely difficult for them to uncover and prosecute violators of competition rules at the multilateral level, if they were to solely rely on the domestic competition policy instruments. Therefore, there are some *prima facie* arguments to suggest that multilateral discipline helps the weaker nations too. They include, *inter alia*, a) ease in tackling cross-border competition abuses; b) attaining coherence with other agreements of the WTO, wherein provisions relating to competition are already existing; and c) benefiting from international cooperation.

However, the antagonists of having multilateral rules on competition within the WTO feel that such a discipline could have deleterious impact on the developing countries' economies mainly because of their inability to cope with the regime itself. The major problem is the lack of competition culture among the stakeholders.

Other difficulties stem, *inter alia*, from: a) the possibility of competition policy being used as a market access device by the developed countries; b) impossibility to harmonise competition across the globe; c) shrinkage in policy space of the national governments to take care of development dimension; d) lack of competence of the WTO in dealing with competition issues; and e) lack of resources and capacity among the developing countries to handle multilateral rules on competition (Adhikari, 2002).

The dust is yet to settle on the debate concerning the feasibility and desirability of mutliateral rules on competition. However, it is advisable even for those countries, which do not want any such multilateral rules to pro-actively analyse the following factors and explore other avenues of attaining cooperation at the multilateral level before preparing their positions.

3.1. Tackling Cross-border Abuses

Globalisation and liberalisation have increased opportunities for firms to participate in price-fixing and territory dividing cartels, undermining the benefits of healthy competition, which can help consumers, small businesses and economies. Cartels can also maintain their position with high barriers to entry for other producers, which is particularly effective in thwarting competition from developing country producers, who are either new or struggling into international trading arena.

There is an evidence that the cartels prosecuted by the competition authorities in OECD countries have had a significant negative impact on the trade and welfare of developing countries. A background paper for the "World Bank 2001 World Development Report" contains five case studies of international cartels (bromine, citric acid, graphite electrodes, steel tubes and vitamins) and analyses their impact on the developing countries. Participants in the cartels were almost exclusively large firms of the OECD countries. The paper concludes that in 1997, developing countries imported $81.1bn of goods from the industries, which had seen a price-fixing conspiracy during the 1990s and that these imports represented 6.7 percent of the total imports and 1.2 percent of GDP in the developing countries.

Moreover, in many of the affected industries, there were emerging exporters from developing countries, which did not participate in the cartel and whose exports may well have been affected. It should also be noted that so far, there have been very few successful prosecutions by competition authorities in developing countries against such cartels and that actions by OECD competition authorities only address the impact of such cartels in their markets (Mehta and Kumar 2001; WTO 2001).

The need for international cooperation has been often highlighted in the cases of cross-border mergers, too. In not so distant past, differing decisions in the GE-Honeywell merger case led to a spat between the US and the EU, who otherwise have been in quite a co-operative mode for some time in the area of competition policy enforcement. The conflict has now been resolved to a great extent. They have agreed in principle for simultaneous review of mergers, so that the merging companies do not have to face uncertainties in one jurisdiction after getting clearance in another. This was achieved when officials from both sides of the Atlantic met at the sidelines of the first annual conference of the International Competition Network (ICN), held at Naples, Italy on September 28-29, 2002 (Mehta, 2003).

3.2 Cooperation and Sharing of Information

The issue of international cooperation cannot be overstated. Since most developing and least developed countries do not have necessary expertise, experience, human resources, legal tools and technological ability to ensure competition in the marketplace, it has to seek cooperation from other countries at three levels: first, learning from their experience in the implementation of law; second, sharing of information and devising mechanism to curb cross-border anti-competitive practices; and third, the consumers of the smaller economies be given access to the competition laws of the bigger neighbouring countries, in case the former do not have a competition law of their own.[10] However, this issue might raise some sovereignty concerns and there could be the possibility of extra-territorial applicability of other legislation, competition law having set the precedence.

There are other ways through which the potential of international cooperation could be harnessed without having to agree to multilateral rules on competition within the WTO.

3.2.1 Bilateral and Tripartite Tracks

The US, European Union (EU) and Canada have signed a number of agreements with other countries to cooperate in the areas of application of competition law. While the US has signed such agreements with Australia, Brazil, Canada, the EU, Germany, Israel, Japan and Mexico, the EU has concluded such agreements with the US and Canada. Similarly, Canada has signed bilateral agreements with Chile and Mexico. It has also entered into a tripartite cooperation agreement with Australia and New Zealand. The following points represent the characteristic features of most of these agreements:

- Notification of enforcement activities affecting the other party's important interests;

- Commitments to take into account the other party's significant interests when investigating or applying RBPs (traditional comity);
- Consultations to resolve conflicts between the parties' respective laws, policies and national interests;
- Coordinated action in respect of related RBPs occurring in both countries;
- Requests for assistance in investigations when RBPs on the territory of the party requested are adversely affecting the significant interests of the requesting party;
- Requests for enforcement of an order by one party in the territory of another party; and
- Commitments (subject to compatibility with national laws and important interests and to the availability of resources) to give serious consideration to such requests for investigatory assistance or enforcement, including by providing non-confidential information and in some cases, confidential information (subject to safeguards) (UNCTAD, 2002).

Some recent agreements, for instance, provide for "positive comity", under which requests by one country's competition authority to another country's authority to initiate or expand proceedings against RBPs originating in the latter's territory, which adversely affect the first country's important interests, should be seriously considered by the authority so requested. The response to such requests remains voluntary; conversely, the requesting country retains the right to initiate or re-institute its own enforcement. It is also expressly recognised in such agreements that parallel investigations may be appropriate, where both markets are harmed (UNCTAD, 2002).

Some of the developing countries having little expertise and resources have immensely benefited from bilateral and tripartite agreements with the OECD countries. For example, when the vitamin cartel was busted in the OECD countries, most developing countries could not prosecute the cartel due to lack of substantive evidence owing to their resource and capacity constraints. However, since Brazil had a bilateral agreement with the US, it was able to muster the support of the US to gather evidence and prosecute the companies involved in the cartel. Remarks Mehta (2003), "The latter helped the Brazilian competition agency obtain important information, enabling it to launch sure-footed action."

3.2.2 Regional Track

Though regional competition regimes emanating from regional economic integration arrangements, such as free trade, customs unions or economic unions, are evident in the case of a number of economic groupings, it is yet to gain universality in its application. Regional competition regime could have strikingly different objectives. While the objective of regional competition policy within the EU[11] is to use it as a vehicle to further the goal of common market, the main objective of CARICOM regional competition policy is to apply competition rules in respect of anti-competitive cross-border business conduct, promote competition in the Community and coordinate the implementation of the Community Competition Policy.

Competition law and policy is addressed more extensively in African sub-regional agreements, often on the basis of the model of the Treaty of Rome. The 1964 Brazzaville Treaty, Establishing the Central African Customs and Economic Union (UDEAC), already provided that means should be found to achieve the progressive elimination of RBPs in trade among member States. The Treaty, Establishing the Economic and Monetary Community of Central Africa (CEMAC), which, when in force, will replace the UDEAC treaty, provides for the establishment of common competition rules to control both RBPs and government activities—two draft regulations dealing respectively with these two subjects—are currently being elaborated (UNCTAD, 2002).

Since developing countries, relatively smaller in size, do not have much experience of having a competition law and they do not have required resources to have their own law, a regional competition law could be a better alternative. In this regard, the CARICOM and African arrangements could serve as an effective model to begin with.

Regional competition law has also been recognised by the EU in its communication to the working group on the interaction between trade and competition policy titled, *A WTO Competition Agreement and Development*. As per the document, "In some cases, a commitment may be assumed to introduce a competition regime at the regional level rather than the national level." (WTO, 2001). Similarly, Singal (n.d) argues, "One should take into account the specific situation of certain countries, such as small economies participating in a regional integration agreement. In this case, it may make more sense for competition rules to be developed at the regional level rather than the national level."

Some of the neighbouring countries of relatively smaller economies already have a competition law because of the size of their economy itself, and some of them have their own competition law (*e.g.*, Zambia, Tanzania, Sri Lanka). There is a significant scope for information sharing and learning from others' experience. While smaller economies, like Nepal, Bhutan and Maldives can learn from the implementation experience in India, Pakistan and Sri Lanka, Lesotho, Mozambique and Swaziland can learn from competition regime in South Africa and Zimbabwe.

Such cooperation and pooling of resources become all the more important if smaller economies choose to be able to punish the global 'mega-cartels'. Taking the example of vitamin cartel once again, one finds that it is only the OECD countries, which have successfully prosecuted this cartel. It has to be noted that none of the developing countries, except for Brazil, have been able to prosecute it so far despite the existence of a *prima facie* case. This is because each competition authority has to conduct its own investigation to reach to the finding on the violation of the relevant laws and calculate the extent of damage. Resource-strapped small economies will not be able to do it alone. Therefore, there is a strong case for establishing a regional competition authority by pooling resources and expertise.

3.2.3 Multilateral and Plurilateral Tracks

The only known model for multilateral instrument to promote competition is the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (Set), negotiated under the auspices of UNCTAD (UNCTAD, 2002). An Inter-governmental Group of Experts (IGE) on RBPs meets annually to monitor the application of the Set as well as UN Conferences "to review all aspects of the Set"(Brusick, 1999: 106). The meetings conducted so far have come to the conclusion that the Set is still fully valid and should be fully implemented.

Important aspects of such implementation concern the ban of all types of cartel agreements, including export cartels; the requirement for all countries to adopt a national and/or regional level effective competition law and to ensure effective implementation; facilitate the control of RBPs through exchange of information, holding of consultations and implementation of technical cooperation programmes in the field of competition (Brusick, 1999: 106).

Similarly, the numerous instruments formulated by the OECD that cover competition law and policy apply only to a restricted group of countries, although the recommendation concerning effective action against hardcore cartels states that it is open to non-OECD member countries to associate themselves with this recommendation and to implement it (UNCTAD, 2002).

It seems that realising the insufficiency of the existing arrangements, a push has been made by the European Union, together with its allies to include competition policy in the WTO proscenium. Negotiations on this issue is likely to start after the fifth Ministerial Conference of the WTO to be held in Cancun in September this year, after an explicit consensus is reached on the modality of negotiations. Whatever may be the outcome of the negotiations, which no one should prejudge at this stage, it is necessary for the developing countries to have a positive agenda on the same.

3.3 Technical Assistance

Realising the lack of capacity within the developing countries and LDCs to handle competition issues, as early as in 1980, the Set, recognising the significance of technical assistance called on "the States with greater expertise in the operation of system for the control of RBPs upon request to share their experience with, or otherwise provide technical assistance to, other States wishing to develop or improve such systems" (*Cf* Brusick, 1999: 107).

For the developing countries and LDCs, technical assistance requirements too are quite significant. If these countries are required to formulate and enact competition policy and law, the following forms of technical assistances will be required:

- Scholarships for academic/professional training;
- Internships at competition authorities to gain experience;
- Visiting staff from experienced agencies to guide and assist, particularly in procedural matters in the early years of new competition agencies;
- Resource persons/financial assistance for training workshops targeted at specific groups, such as lawyers, economists, and judges;
- Assistance in facilitating workshops for product and consumer groups;
- Guidance to develop an information database system in new competition agencies (Steward, 2000);
- Imparting strategies for facilitating better cooperation and coordination with other competition authorities, especially the ones with better knowledge, experience and outreach; and
- Providing knowledge on conducting investigations and making determinations in a conduct paradigm through rule of reason approach in an impartial manner.

4. Conclusion

It is proven beyond doubt that "one-size-fits-all" approach to competition policy and law is a fallacy, given the vast difference in the level of economic development, socio-cultural and political realities of various countries. Competition policy should be *sui generis* suited to the domestic environment of each country. However, this is not to suggest that the policy-makers involved in formulating competition policy and legislators involved in enacting competition law should not take cognisance of the regional and international factors. Indeed, due to the increased globalisation and regionalisation of economies, it has become all the more necessary for each and every country to factor in possible influences of these developments while designing and implementing competition policy and enacting and enforcing competition law.

While the objective of competition policy is the guiding principle to make a decision on the contours of a competition policy and legislation, other factors, such as size of the market, commitment of the government to the cause of fostering competition, political economy factors, such as influence of the lobby groups, and above all, resource and capacity constraints affect the decisions of the governments on what type of competition policy and law they would like to have.

Notes

1 *Levy and Spiller (1994, 1996)* present an excellent comparative analysis of the interactions between institutional endowment, regulatory processes, investment and industry (in this case telecommunications) performance.

2 The countries studied under this project are Kenya, South Africa, Tanzania, Zambia, India, Pakistan and Sri Lanka.

3 The range of specific objectives included under the ambit of "public interest" includes: protection of small firms, equality of economic opportunity and freedom of economic action, regional development, promotion of employment, etc.

4 The stated objectives of the South Africa Competition Act of 1998 are: a) to promote the efficiency, adaptability and development of the economy; b) to provide consumers with competitive prices and product choices; c) to promote employment and advance the social and economic welfare of South Africans; d) to expand opportunities for South African participation in world markets and to recognise the role of foreign competition in the Republic; e) to ensure that small- and medium-sized enterprises have an equitable opportunity to participate in the economy; and, f) to promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons.

5 The South African experience suggests that the goal of economic efficiency has taken precedence over all other objectives, regardless of the multiple goals that are stated in the Act.

6 Although it must be acknowledged that Russia and Vietnam could be counted as special cases in that they had centrally planned economies for decades.

7 The authors do not intend to give the impression that other policy objectives run counter to the objectives of competition law. They are in no way mutually exclusive in all instances. In fact, in some cases they are mutually supportive and complementary to each other.

8 EC has prepared a Green Paper to amend its competition regime for cases relating to vertical restraints. It is extending the Block Exemption Rule (BER) to firms having up to 30 percent market share. See Leone, Velia M (1999).

9 Many complaints made to competition offices in industrialised countries are raised by business firms. See Khemani (1995:46).

10 Mehta, Pradeep S (2001), *Taming Unilever in Bhutan!*, Mimeo, CUTS-CITEE, Jaipur.

11 The EU has supranational competition rules (relating to RBPs, to public undertakings and undertakings granted special or exclusive rights and to subsidies), which are linked by the Treaty of Rome to the fundamental objective of establishing a common market. These rules apply to practices affecting trade between member States, even if they occur within a single European Union country or an area within a country. See UNCTAD (2002:11)

References

Adhikari, Ratnakar. 2002. "Imperatives of Competition Policy" in The Kathmandu Post, March 11.

Adhikari, Ratnakar. 2002. Competition Policy in Small Economies. Kathmandu: SAWTEE and Jaipur: CUTS-CITEE

Brusick, Philippe. 1999. "Competition Policy in A Global Economy: Towards A New Multilateral Framework" in Pradeep S. Mehta and Raghav Narsalay (eds.) *Analyses of the Interaction between Trade and Competition Policy*, Jaipur: CUTS-CITEE.

CUTS. 2003. Pulling Up Our Socks- A Study of Competition Regimes from Seven Developing Countries of Africa and Asia: The 7-Up Project. Jaipur: CUTS.

De Zoysa, Thushari and Pubudini Wickramaratne. 2001. "1st Phase Report – Sri Lanka," Comparative Study of Competition Regimes of Select Developing Countries (7-UP Project), Jaipur: CUTS-CITEE.

Khemani, R.S. 1995. "Competition Law: Some Guidelines of Implementation" in *Liberalised Trade and Fair Competition*, Calcutta: CUTS.

Lachmann, W. 1999. "The Development Dimension of Competition Law and Policy", *UNCTAD Series on Issues in Competition Law and Policy*, New York and Geneva: United Nations.

Leone, Velia M. 1999. "Self-Assessment as Policy: Vertical Restraints and the Block Exemption Draft" in *EuroWatch*, August 15, 1999.

Levy, Brian and Pablo Spiller. 1994. "The Institutional Foundations of Regulatory Commitment: A Comparative Analysis of Telecommunications Regulation", Journal of Law, Economics & Organisation, Vol. 10, No.2, pp.201-246.

Levy, Brian and Pablo Spiller. 1996. "A framework for resolving the regulatory problem" in Levy and Spiller (eds.) in Regulations, Institutions and Commitment: Comparative Studies of Telecommunications. Cambridge: Cambridge University Press.

Lloyd, P.J. 1998. "Globalisation and Competition Policy" *Review of World Economics*

Mehta, Pradeep S. 2001. Taming Unilever in Bhutan!, Mimeo, Jaipur: CUTS-CITEE.

Mehta, Pradeep S. 2003. "Competition without Bound" in *The News*, 19 January.

Mehta, Pradeep S. 2003. "New Competition Regime – Better resources, and will, called for" in *The Business Line*, 10 January.

Mehta, Pradeep S. and Ujjwal Kumar. 2001. "Let's Be Proactive On Multilateral Competition Policy", *Viewpoint Paper*, Jaipur: CUTS-CITEE.

Musonda, Flora, Wilfred Mbowe and Faye Sampson. 2001. "The Competition Regime in Tanzania" Comparative Study of Competition Law Regimes of Select Developing Countries (7-Up Project), Jaipur: CUTS-CITEE.

Naim, Moises. 1998. "Does Latin America Need Competition Policy to Compete?" in Naim, Moises and Joseph S. Tulchin (eds.) Competition Policy, Deregulation, and Modernisation in Latin America. London: Lynne Rienner Publishers.

Paudel, Madhav. 2001. "Law Relating to Competition and Market Protection in Liberal Economic Framework and its Necessity in the Context of Nepal" (in Nepali), paper presented at a seminar on Competition Law organised by Nepal US Chamber of Commerce and Ministry of Industry, Commerce and Supplies, September 28, 2001, Kathmandu.

Shingal, Anirudh. nd. "The WTO and Competition Policy" (to be published)

Singh, Ajit. 2002."Competition and Competition Policy in Emerging Markets: International and Developmental Dimensions", G-24 Discussion Paper No.18, September 2002.

Steward, Taimoon. 1999. "Globalisation, Competition Policy and International Trade Negotiations" in Pradeep S. Mehta and Raghav Narsalay (eds.) *Analyses of the Interaction between Trade and Competition Policy*, Jaipur: CUTS Centre for International Trade, Economics & Environment (CUTS-CITEE).

Stewart, Taimoon. 2000. *Developing and Implementing Competition Regime: Challenges Faced by Small Open Economies*, *Mimeo*.

The World Bank and OECD. 1998. A Framework for the Design and Implementation of Competition Law and Policy. Washington D.C: The Word Bank and Paris: Organisation for Economic Cooperation and Development.

The World Bank. 2002. World Development Report 2002: Building Institutions for Markets. Washington D.C.: The World Bank

The World Bank. 2003. Global Economic Prospects. Washington D.C.: The World Bank

UNCTAD. 2001. "Model Law: The Relationships between Competition Authorities and Regulatory Bodies, including Sectoral Regulator" Commission on Investment Technology and Related Financial Issues, Intergovernmental Group of Experts on Competition Law and Policy, Third Session, Geneva, 2-4 July.

UNCTAD. 2002. "Experiences Gained So Far on International Cooperation on Competition Policy Issues and the Mechanisms Used", *Revised Report By The UNCTAD Secretariat*, TD/ B/COM.2 /CLP/21/Rev.1, 19 April 2002, Geneva: United Nations Conference on Trade and Development.

WTO. 2001. "Communication for the European Community and its Members: A WTO Competition Agreement and Development", Working Group on the Interaction between Trade and Competition Policy, WT/WGTCP/W/175, 26 July 2001, Geneva: World Trade Organisation.

3

Competition Issues with International Dimensions

How do Developing Countries Deal with them?

*Pradeep S. Mehta & Nitya Nanda**

Over the past two decades or so, most developing countries have extensively liberalised their trade regimes and have opened up their markets to foreign trade. With this opening up, the countries have also become increasingly sensitive to anti-competitive practices that originate outside their own territory. Trans-national corporations (TNCs) have entered developing country markets or increased their activity within these countries. The entering of TNCs can have many positive effects on developing countries' economies. It can bring in much-needed investments and, thus, help the development of a country. It can also increase the number of players in a market, which will have a resultant positive effect on competition.

At the same time, there is a serious concern among these nations that competition would suffer because of the entry of TNCs. Their ability to deal with cross-border competition problems is, therefore, of vital importance to the level of competition in their domestic markets. The TNCs feel freer to engage in across-the-border anti-competitive behaviour when the countries, to which they export, do not have an effective competition regime and can neither individually nor through cooperation with foreign competition authorities challenge their market behaviour.[1] A recent study on the infamous vitamins cartel has validated this, as it was found that the extent of overcharges by the cartel was relatively more in countries without any anti-cartel enforcement.[2]

When TNCs enter a particular market by taking over a potential competitor in a developing country rather than trying to compete with that same company, competition does not increase but potentially suffers. Similarly, the international merger trend leading to the consolidation of businesses worldwide can have serious implications for competition in a developing country. As enterprises hold different market shares in different countries, the implications of a merger between two TNCs might also differ.

The process of trade liberalisation is often accompanied by the privatisation of public monopolies, especially in the utilities sector such as telecommunications, energy and public transport. Although this can possibly lead to an increase in competition as well as improved performance standards, often it has meant that public monopolies turn into private monopolies. In many cases, such monopolies have fallen in the hands of foreign-based TNCs. This in itself is not more detrimental to competition in a particular market than the monopoly held by a domestic private enterprise. But it could cause further complications in enforcing a competition policy and law vis-à-vis that particular sector/enterprise.

How do competition authorities in developing countries deal with these cross-border (international) challenges? This is clearly a difficult task. As Karel van Miert, former European Union (EU) Competition Commissioner, observed, national or even regional authorities are ill-equipped to grapple with the problems posed by commercial behaviour occurring beyond their borders.[3] When competition authorities from highly developed countries/organisations, like the EU face difficulties in handling cases with a cross-border dimension, it is clear that the authorities in developing countries face even more problems.

The next section discusses the sources and types of cross-border competition cases that affect developing countries. The third section will take a close look at the kinds of problems that developing countries face in tackling cross-border competition problems. This section will more or less be based on the findings that came out of the 7-Up project[4]. The fourth and last section will explore the option available to developing countries to deal with such cases.

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1. Sources and Types of Cases: Experiences of Developing Countries

The types of cross-border anti-competitive practices are quite similar to those in purely domestic cases. The difference only lies in the cross-border (international) dimension of the anti-competitive behaviour. A number of areas, where enterprise behaviour is perceived to give rise to competition concerns with international dimensions, are discussed here. These issues can broadly be classified into four groups:

- Market power in global or export markets: anti-competitive practices that fall under this category are international cartels, export cartels and related arrangements, international mergers or mergers with international spill-overs, abuses of dominance in overseas markets, cross-border predatory pricing and price discrimination;
- Barriers to import competition: import cartels, vertical market restraints creating import barriers, private standard setting activities, abuse of monopsonistic dominance (dominance of a buyer) etc. may fall under this category;
- Foreign investment (FI); and
- Intellectual property rights (IPRs).

1.1 Exercising Market Power in Global or Export Markets

1.1.1 International Cartels

There is a long history of price fixing cartels, in which multinational companies carve up the world into areas of control. However, recently there has been a sharp increase in global cartel activity. Simultaneously, enforcement agencies have slapped multi-million dollar fines against vitamin companies, food additive makers, steel manufacturers etc. To date, only a handful of countries have taken action to penalise transgressing companies or to recover compensation. No developing country, except Brazil, has taken any action on these cartels.

A World Bank study has shown that in 1997, developing countries imported $81.1bn of goods from industries, in which price-fixing conspiracies have been discovered during the 1990s. These imports represented 6.7 percent of imports and 1.2 percent of Gross Domestic Product (GDP) in developing countries. There might have been several other price-fixing conspiracies that remained undiscovered. Moreover, all of these cartels are made up of producers, who are mostly from industrialised Organisation for Economic Co-operation and Development (OECD) countries.

The vitamins cartel alone has cost the developing countries more than $3bn in the 1990s. The additional cost that India had to incur due to this cartel is estimated to be $25mn in the 1990s. These are absolute figures. If analysed on a purchasing power basis (PPP), the impact is five times as high for India or $125mn.

Some other important international cartels that hit the developing countries very hard are those in heavy electrical equipment, steel and aluminium. The first two of them were never prosecuted, but their existence and their rules were exposed by the US House of Representatives and at OECD. Neither of the first two operated in the US but were involved in products vital for development. The aluminium cartel was set up with the active support of the US and the EU governments and it operated worldwide. Steel being one of the basic goods for different industries and most of the developing countries without indigenous capacity, had to suffer because of high prices.

Heavy electrical equipment is another item that almost all developing countries require to install electricity generation plants to meet their growing energy demand. But higher prices of heavy electrical equipment due to cartelisation have significantly raised the cost of installing electricity-generating plants and, thereby, made energy more expensive. Available records suggest that several developing countries were the victims of bid rigging by the heavy electrical equipment cartel members.

The cartel members used their excessive profits to engage in predatory pricing against newcomers, particularly from developing countries. For example, predatory pricing drove the independent local manufacturers in Brazil to bankruptcy. However, on an average, the cartels maintained higher prices in developing countries than the developed countries. The estimated annual overcharges imposed by these three cartels (based on 1995 trade figures) are $44mn for Zimbabwe, $33.5mn for Kenya and $272mn for the countries of Southern African Custom Union. In all these countries, budgets of the competition authorities are substantially lower than the overcharges.

Looking at it differently, in Kenya, where the per capita income is $340, the overcharge amounted to an annual loss of about 100,000 person-years. If 100,000 people lose their jobs due to closure of factories, it would become a national issue but the overcharge over a time period did not agitate anyone in the country.

1.1.2 Export Cartels

Export cartels have generally been ignored or often even encouraged as their activities affect other countries. For instance, the US Foreign Trade Anti-trust Improvements Act of 1982 provided that foreign firms and consumers cannot invoke US law against US firms for acts that lessen competition only in foreign countries. On the other hand, the Export Trading Company Act of 1982 establishes a procedure for the US exporters to obtain a limited immunity from US anti-trust laws for export acts and collaborations, as long as they do not distort competition in the US.

Dealing with such practices through the application of the "effects doctrine" is quite prevalent in the developed world, but developing countries have not really used such options. In India, the competition authority tried to deal with such cases through the application of "effects doctrine", especially in the controversial soda ash case. But enforcing the competition authority's decision in the case was not so easy. The case was made on the basis of an allegation that American Natural Soda Ash Corporation (ANSAC) was acting as a cartel and that it was charging lower prices to eliminate Indian competitors as it had done in a few other countries in the past. The Monopolies and Restrictive Trade Practices Commission (MRTPC) granted an injunction on imports from ANSAC as a cartel. In response to ANSAC's appeal challenging the MRTPC's interim order, the Supreme Court upheld the same.

ANSAC however, preferred to lobby with the US government while filing an appeal in the Supreme Court of India. It was quite successful in this as United States Trade Representative (USTR) took up the issue with the Indian government and even threatened that up to $1bn of India's duty-free imports under the Generalised System of Preferences (GSP) into the US could be jeopardised over the embargo on US soda ash.[5] However, realising that it was not possible for the Indian government to do anything as the case was still pending with the Supreme Court, ANSAC shifted the focus of its complaints towards the level of the import tariffs on soda ash. It was successful in its attempts. In its 2001-2002 budget, the Government of India reduced the import tariff on soda ash from 35 percent to 20 percent, while retaining the duty rate at 35 percent for other chemical products.[6] The reason that soda ash was singled out for this special treatment has commonly been attributed to external pressure from ANSAC and the US Government. In its final verdict in the case, the Supreme Court impugned the order and held that Commission could not deal with the case as it was beyond its jurisdiction. It also raised doubt if there was actually a case of predatory pricing.

A similar case came before the South African competition authority as well, involving the ANSAC. Here also ANSAC argued that the Competition Commission did not have jurisdiction over its activities. After its investigation, the Competition Commission found that the ANSAC agreement and/or concerted practices and/or decisions constituted economic activity having *effect* in the Republic of South Africa and, thus, fell within the scope of the Competition Act, 1998.[7] It also found that the decisions made by ANSAC's Board of Directors constituted restrictive horizontal practices as prohibited by section 4(1)(b) of the Act and that the determination of prices and trading conditions by the Board of Directors was in contravention of section 4(1)(b)(i).[8]

Apart from substantive defences, ANSAC raised various points of law, including jurisdictional issues relating to the question whether the South African authorities can exercise jurisdiction over what is considered to be a legitimate export association under the US law. However, according to South African Competition Commissioner, Menzi Similane, the termination of ANSAC's cartel activities in South Africa has been agreed upon in principle. The members of ANSAC have undertaken to dismantle their arrangement (with regard to SA) and will either cease operating in SA or sell as individual companies.[9]

1.1.3 M&As with International Dimensions

Large companies merge in the developed world and consequently, their subsidiaries and associates in developing countries too end up in a new combination. This can result in unhealthy concentration of the market and create a position of dominance for a firm that may later be abused. Moreover, developing countries may also be affected by merger and acquisition (M&A) activity that takes place outside their territory without any local presence. These companies can also adversely affect developing country markets because they operate in multiple markets.

Developing countries, to our knowledge, have dealt only with the first type of cases, *i.e.*, subsidiaries of multinational companies (MNCs) in these countries merged as a result of merger of the parent companies in the home countries. However, even in such cases, the competition authorities have shown a lenient attitude towards such mergers. The Zambian competition authority allowed the merger of Coca Cola and Cadbury Schweppes, even after observing that the merger could raise competition concerns in some of the product categories.

In Pakistan, the Monopoly Control Authority (MCA) took the initiative to investigate the merger of Glaxo Laboratories Pakistan Limited and Wellcome Pakistan Limited. But the MCA failed to take any action and the case was abandoned halfway, because the MCA did not have qualified and trained staff for analysing such cases. In Sri Lanka, the competition authority did not even take up the case of merger between Glaxo Wellcome and SmithKline Beecham, saying that it did not have the jurisdiction, even though both the companies had commercial presence in the country!

The merger between Glaxo Wellcome and SmithKline Beecham formed GlaxoSmithKline (or GSK). This merger created a leading global pharmaceutical company with sales of £18.1bn in the year 2000. Headquartered in the United Kingdom, GSK supplies products to 140 markets in the world. In South Africa, the merger was allowed on the condition that it licence out the product categories where competition concerns could arise.

It is another matter that the Sri Lankan authority considered even the subsidiaries operating from its own soil to be outside its jurisdiction. But even stopping the subsidiaries from merging would not have served any purpose in Sri Lanka, because none of them had manufacturing facilities in Sri Lanka and they were operating mostly as repackaging and distribution centres. Blocking of the merger would have meant that they would have maintained separate entities, but essentially would have been selling the products coming from the same company. Thus, the issue could possibly be dealt with only through the application of the "effects doctrine" and regulating the merger in the home country.

But the million-dollar question is whether Sri Lanka could enforce any such action on the parent companies in the home country? The question remains valid not only for Sri Lanka, but for most developing countries, even though similar actions are quite common in the developed world. For example, the EU blocked the merger between GE and Honeywell, both US-based corporations. Similarly, in the Philip Morris-Rothmans case, a merger between US and British/South African companies was prohibited by Germany.

1.1.4 Anti-competitive Practices by Foreign-based Dominant Companies

Other than collusion or combinations, the size and scope of TNCs makes it possible for them to engage in a variety of anti-competitive practices to the detriment of developing economies and consumer welfare. These could include unconscionable pricing, resale price maintenance, exclusive dealing and so on. Microsoft is a case in point. The company has been hauled up for indulging in anti-competitive practices time and again in the US and the EU. But, by and large, it has not faced such action in other jurisdictions. On the face of it, it is quite clear that some of them were relevant for other countries as well. Moreover, it is difficult to believe that a globally dominant company, like Microsoft, did not indulge in such practices elsewhere, particularly when the regulatory framework in most other jurisdictions is much weaker.

Dominance of foreign companies is very often a hard reality in small economies. For example, in Nepal and Bhutan, Indian companies are dominant in many markets due to inaccessibility of these countries. Indian companies very often engage in exclusive distribution arrangements with local distributors, particularly in Bhutan. This affects competition in that country. The experience of Bhutan in dealing with such a situation is worth mentioning.

The government initiated a process of "de-monopolisation" as early as in 1992. Under this scheme, the government required any principal company supplying goods to Bhutan to have more than one wholesaler in the country in order to bring about greater competitiveness and provide better services for consumers. This involved, by and large, dealing with Indian companies or the Indian subsidiaries of some TNCs.

The issue, in all likelihood, did not involve any real clash of interests with the companies, as the wholesalers were exploiting their monopoly position without any benefit to the companies. But they were just happy to deal with one wholesaler in Bhutan and hence required a change in their mindset only. Yet it was not so easy for the Royal Government of Bhutan to deal with the issue, although it prevailed upon the companies at the end. Ironically, the companies concerned also benefited from the drive.[10]

1.1.5 Cross-border Predatory Pricing

Cross-border predatory pricing can also lead to market distortions. The issue here is whether an enterprise or a group of enterprises (cartel) is attempting to capture a particular market by driving their competitors out of business by selling at prices below the cost of production, so that subsequently prices can be raised in such a way that the cost incurred due to low selling prices can be recovered. Such practices are considered to be anti-competitive in most jurisdictions. Due to some striking similarities, cross-border predatory pricing is very often equated with dumping and, thus, actions are taken under the anti-dumping laws. Anti-dumping action is primarily a trade remedial measure and usually operated by the trade ministries or authorities rather than by the competition authority.

However, the principle underlying the anti-dumping is different from that underlying the competition law. It seeks to protect competitors and not competition. Dumping is, in fact, welfare enhancing unless it is predatory. Thus, even though anti-dumping laws are considered necessary to combat cross-border predatory pricing, it is not clear how many anti-dumping cases that have been taken up by several countries would meet the tests of predation that competition principles would require. In this context, the parallel anti-dumping and competition law cases relating to the sale of Japanese television sets in the US is interesting.

Beginning in the 1960s, US producers sought relief from low-priced imports of Japanese television sets and other consumer electronics products initially under anti-dumping and subsequently under competition and other trade remedy laws. As a result, the US decided to impose anti-dumping duties on Japanese TVs in 1971 and subsequently entered into an Orderly Market Agreement (OMA) with Japanese producers in 1977, which limited Japanese exports to the US. The competition law case was finally decided by the US Supreme Court in 1986, where, in a split decision, a majority of the Court expressed the view that the market for electronics products in the US was fundamentally incapable of being successfully monopolised through a predatory pricing conspiracy. The Court held that this was due to:

- the number of firms competing in the market (including other foreign firms);
- the relative ease of entry; and
- the nature and extent of change and innovation in the market.

However, the situation in most developing countries would be quite different due to the small size of markets and low levels of market contestability. Hence, there would be more convergence between anti-dumping and anti-predation actions. But, ironically, until recently, the main users of anti-dumping laws were developed countries, though increasingly developing countries are taking recourse to these laws.

Initiations of anti-dumping investigations have steadily increased since 1995. About a half of all investigations initiated by developed countries between 1995 and 1999 were targeted at developing countries, while 25 percent were targeted at other developed countries and 25 percent at transition economies. Among the investigations initiated by developing countries during the same period, roughly an equal proportion was targeted on each of the three groups of countries. Among the developing countries, India and South Africa are the two most frequent users of anti-dumping measures.

1.2 Barriers to Import Competition

Import cartels formed by domestic importers or buyers and similar arrangements (such as boycotts of, or collective refusals to deal with, foreign competitors) are of concern and may be a threat to maintaining competition in a market. The best-known example in this regard is the dispute between Japan and the US relating to consumer photographic film and paper, where a national firm effectively prevented imports by controlling the distribution channel. The case, in addition to issues concerning business practices, involved related government measures as well.

In principle, a national competition law may generally be able to tackle such market access barriers to foreign supplies and suppliers, resulting from exclusionary effects of vertical restraints in the jurisdiction in question. These practices are easier to deal with as the offenders are based in the country as against the cases relating to exercising of market power in global or export markets, where the offenders are typically foreign based.

However, the issue is not so simple as it may appear. Import cartels, whose function is solely to attempt to exercise monopsony power in order to get a better price from foreign suppliers, may be viewed more favourably from a national efficiency and welfare perspective than cartels that also exercise market power within the country. But it may be difficult to make such a distinction or to separate the two types of activities. Moreover, many such activities may be against the long-term interests of the country, but yet the competition authorities might find it difficult to take appropriate action due to strong domestic lobbies. Developing countries are, however, relatively less prone to such practices as their national firms are weak compared to the TNCs.

Another related concern in this regard is inadequate domestic enforcement of competition law against import cartels in markets for a country's exports. In the early 1990s, such concerns prompted a revision of US guidelines regarding international enforcement to permit application of the US anti-trust laws to foreign-based activities, such as import cartels, that restrict US producers' access to foreign markets. However, such an approach is much more intrusive than the application of the "effects doctrine", which in effect means "encroachment upon foreign jurisdiction". This kind of approach may be dangerous for the international order and the issues are better resolved through negotiations and cooperation. To date, however, the revised US guidelines have never been employed.

1.3 Foreign Investment

Foreign direct investment (FDI) has now become an important way for companies to supply foreign markets. Indeed, the WTO General Agreement on Trade in Services considers the supply of services through commercial presence of a foreign supplier as a form of trade. A very rapid increase in FDI in the recent years, coupled with an increasing share of FDI coming through merger or acquisitions (M&As) of existing firms in the host country, means that increasingly FDI related competition issues are becoming more important.

A synergy exists between investment liberalisation and the effective application of competition policy. Not only that, an effective competition policy can remove obstacles to entry, it also facilitates foreign investment flows by providing a predictable legal and regulatory environment that reduces the scope of arbitrary decision-making. On the other hand, the effect of foreign direct investment will be to increase competition in local market, particularly in the investments of greenfield type. The takeover and rejuvenation of local enterprises can also have such effects.

However, there is a possibility that over time, such takeovers may make the markets increasingly concentrated and become characterised by one or a small number of dominant players. The takeover of a well-established brand Indian cola drink, Thumps Up, by Coca Cola in India is a classic example of such a phenomenon. It brought FDI to the country that the country was desperately seeking for but at a very high cost of substantial lessening of competition in the market.

Cross-border acquisitions may seem to be competition neutral when looked at from a narrow perspective. Looking at it from a narrow national market perspective, a cross-border acquisition may seem to have no effect on competition. But if the acquirer has been a major exporter to the country, then the acquisition may lead to lessening of effective competition in the market. Such acquisitions may be aimed at regional or global consolidation by the TNCs concerned.

In the past few years, the cement industry has seen such M&A activities and consolidation. The French multinational, Lafarge S.A., has been particularly active. In recent years, it has expanded to Southern and Eastern Africa by acquiring many local firms and hence becoming a dominant market power in the regional market. Similarly, consolidation has taken place in the beer market worldwide due to several acquisitions by foreign companies. There are several other examples too.

1.4 Intellectual Property Rights

Intellectual property rights (IPRs) may generate or contribute towards a position of market power. Anti-competitive practices involving the use of intellectual property rights are usually addressed by competition law within the basic framework relating to horizontal and vertical restraints. The issue has important international dimensions as many corporations seek and get IPR protection in multiple countries. The IP holders also typically engage in licensing arrangements with firms in different countries. The territorial nature of property rights in such agreements means that frequently national law enables them to be used by rights holders to prevent parallel imports. In many cases, it has also been observed that cartels were built around patent cross-licensing schemes and, thus, foreclosing competition.

Some developing countries have relied upon special transfer of technology law or regulations as a means of preventing abuses in connection with the licensing of intellectual property rights. Such laws and regulations have differed from the competition law approach, especially in their focus on transactions involving foreign companies, the application of criteria and objectives perceived to be related to development and not competition. The emphasis was on *ex ante* screening for approval of technology transfer transactions. However, the adoption of more open and market-oriented economic policies meant that countries have abandoned or diluted these laws and regulations.

Weakness of both competition and IPR regimes in most developing countries means that there are not many instances of competition cases with international dimensions and related to the IPR, which have come up before the competition authorities.

One such case came up in India recently at one of the High Courts in the country. As a response to the removal of quantitative restrictions on import of consumer goods in the country and prevailing lower prices due to a weak currency, some traders in India imported the Unilever brands of soap from Indonesia. However, Hindustan Lever Limited, the Indian subsidiary of Unilever and licence holder of the brand, approached the High Court in Mumbai and successfully stopped such parallel imports.

In India, a case was filed against Microsoft (India) Pvt Ltd for indulging in restrictive trade practice of imposing restrictions on the buyers in the form of an end-user license agreement (EULA). EULA forbids the use of software by the licensee unless the buyer acquires an Access Licence for each computer attached to the server, on which the software is loaded. The MRTPC found the conditions contrary to Section 52 of the Copyright Act, which permits making copies as “adaptation” of a computer programme by lawful possession of a copy[11] .

An interesting case came up before the South African competition authority. In October 2001, Cipla-Medpro (Pty) Ltd (Cipla) lodged a complaint with the Competition Commission alleging that certain brand-name pharmaceutical companies had abused their dominant position in the market by engaging in excessive pricing of their products and entering into certain exclusionary licensing and/ or agency arrangements, in violation of legal restrictions on vertical and horizontal market arrangements.[12] In essence, Cipla wanted to be granted compulsory licences to import and market some generic drugs.[13] The case is still under investigation.

The issue of IPR, as mentioned before, also came up in the case of the merger of Glaxo Wellcome and SmithKline Beecham in South Africa. Upon prohibition of the merger by the Commission, the merging parties volunteered to out-license some of their products identified by the Commission to be the cause of the competition concerns. The merging parties and the Commission reached an agreement and the merger was allowed.

2. Problems in Dealing with Cross-border Cases

All the problems encountered by the competition authorities (CAs) in handling domestic competition cases are also applicable in their handling of cross-border competition cases. But they encounter some additional problems while dealing with cross-border cases. There are large differences among the countries on how (or whether) the cases were handled by the competition authorities. While some authorities handled some of the cases very seriously (regardless of whether they were successful in the end), others have not acted at all or only with limited interest or only in few of the cases. Although several problems are caused by the special nature of such cases, sometimes the authorities' own lack of action or interest is also an important factor.

Broadly, competition laws everywhere (including developing countries) deal with three main subject areas: (i) restrictive trade (business) practices (RBPs); (ii) abuse of dominance or monopoly power; and (iii) mergers and acquisitions (M&As). There is no difference whether these acts are international or domestic; as a matter of subject, the law covers them. The most important legal problem, when it comes to dealing with cross-border issues *vis-à-vis* domestic competition concerns, lies in the realm of "jurisdiction".

2.1 Extra-territorial Jurisdiction

The whole question of jurisdiction is complex. Jurisdiction is a vital and indeed central feature of state sovereignty. It follows from the nature of the sovereignty of states that while a state is supreme internally, that is, within its own territorial frontiers, it must not intervene in the domestic affairs of another nation. International law tries to set down rules dealing with the limits of a state's exercise of governmental functions. Although the expanding scope of the United Nations has limited the extent of the doctrine of domestic jurisdiction,[14] the concept does retain validity in recognising the basic fact that state sovereignty within its own territorial limits is the undeniable foundation of international law, as it has evolved, and of the world political and legal system.[15]

Although there is a general presumption against the extra-territorial application of legislation, a number of states, particularly the United States, seek to apply their laws outside their territory in the context of economic issues. On the basis of the so-called "effects doctrine", they have assumed jurisdiction even though all the conduct complained of takes place in another state.

Although the 'effects doctrine' could theoretically be applied to all kinds of activities, it has been most energetically maintained in the area of anti-trust or competition regulation, particularly by the United States. In the famous *Alcoa* case[16] , 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".[17]

The wide-ranging nature of this concept aroused considerable opposition outside the US, as did American attempts to take evidence abroad under very broad pre-trial discovery provisions in the US law.[18] Especially, the European Community has taken a strong stance against the US approach.[19] However, it is generally accepted now that the Community competition law subscribes to the "effects doctrine" for determining the reach of Articles 81 and 82. Under this doctrine, judicial jurisdiction exists to apply Community competition law to restraints or abuses of dominant positions occurring outside the EU, provided that there are effects within the EU between Member States.[20]

Competition laws of most developing countries are silent on whether they have extra-territorial reach, but the wordings of the Acts' provisions do not prevent them from applying the "effects doctrine". The South African Competition Act of 1998 has adopted the "effects doctrine", as it unequivocally states that the Act applies to all economic activity within, *or having effect within*, the Republic of South Africa.[21] Thus, the South African competition authorities and courts would assume jurisdiction in all cases that had affected the South African market, regardless of where the practice had taken place and regardless of where the companies involved were based.

The old competition law in India does not have any explicit provision in this regard. However, the competition authority has taken action on cross-border cases by applying the "effects doctrine". In two recent judgements,[22] the Supreme Court of India interpreted the MRTPA, stating: "The competition authority could exercise jurisdiction only over that part of the practice that takes place in India."

It is not very clear in most jurisdictions whether they have extra-territorial jurisdiction or if they can apply the "effects doctrine". Another confusion is whether to apply the *per se* rule or the rule of the reason in case of extra-territorial application of the law. This issue came to the fore also with the ANSAC case that the South African Competition Commission was handling. The South African authority preferred to use the *per se* rule, as it was an export cartel and cartels should be prohibited *per se*. However, the argument put forward by the ANSAC in this regard also needs serious consideration.

Another important legal issue that came up for debate in the context of the ANSAC case in South Africa is whether foreign companies can lodge a complaint. In a globalising world, it may be a good idea to allow foreign companies with a clear *locus standi* to lodge a complaint. Moreover, in some situations, especially in small economies, there may be no domestic players and only foreign suppliers. For example, most of the goods supplied in Nepal and Bhutan are from India. Thus, Indian companies should be able to lodge complaints with Nepalese or Bhutanese authorities, most probably against their Indian rivals, for anti-competitive practices in Nepal or Bhutan. On the other hand, it may also be logical to allow Nepalese and Bhutanese companies and/or consumers to bring forward complaints before the Indian competition authority to maintain competition in their markets.

2.2 Research & Investigation Capacity

Investigative capacity of the competition authority is one of the important aspects of competition law enforcement in a country, more so in case of handling of cross-border cases. However, it seems to be quite inadequate in most of these countries. Investigative capacity has both quantitative and qualitative dimensions. However, the existence of good strength in professional staff does not guarantee that the authority has good investigative capacity. The professionals in most competition authorities (CAs) are not trained well. It is difficult to recruit well-trained people in these countries. Hence, the need for training can hardly be over-emphasised. However, it is sad to note that even the business of recruitment in the CAs is not taken seriously. This is reflected in the inadequate research and investigation capacity of the CAs.

The lack of research and investigation capability became evident also in the ANSAC case. The case was handled without adequate investigation and proper argumentation and interpretation of the legal provisions in the country. The decision of the MRTPC was mainly based on the decision of the EU in a similar case involving ANSAC.

The question of extra-territorial jurisdiction that became important in the case was not given due consideration by the MRTPC. The Indian law is not very clear on the issue and open to a variety of interpretations. The argument that similar actions are being taken in other jurisdictions cannot hold much water. The MRTPC did not do enough homework and it could not be proved whether the activities that ANSAC indulged in India amounted to a restrictive trade practice (predatory pricing). As a result, the Supreme Court finally went against the order of the MRTPC, causing embarrassment to it.

In Pakistan, the Monopoly Control Authority (MCA) took an initiative to investigate the merger of Glaxo Laboratories Pakistan Limited and Wellcome Pakistan Limited. But MCA failed to take any action and the case was abandoned halfway. The reason provided by the MCA for this abandonment was that calculating market shares of individual products with the identification of their substitutes, as required in the case, was a complicated case and the MCA did not have qualified and trained staff for this exercise.

Similarly, the Kenyan CA found it difficult to identify the relevant market and dithered into sub-optimal decisions. For example, SmithKline Beecham Limited notified the CA about its plan to acquire Sterling Health Limited. The acquisition was allowed by the CA, as their combined share in the pharmaceutical market was 12 percent. However, the CA failed to recognise that the acquisition could raise competition concerns in some product categories. In fact, *prima facie*, there was enough evidence to think so.

The Zambian authority is relatively better placed in this regard. However, the reason behind the decision of the authority to allow the merger of Coca Cola and Cadbury Schweppes was not very clear. There are indications that the merger could raise competition concerns in some of the product categories.

Amidst this relatively discouraging scenario, the record of the South African authority seems to be quite encouraging. Despite being quite new, it has already developed substantial capability. The fact that the CA could make a breakthrough even in the complicated ANSAC case, speaks volumes for its capability.[23]

The handling of the merger of Glaxo Wellcome and SmithKline Beecham case is also quite remarkable. Interestingly, the conclusion of the Commission in making its recommendations to the Tribunal was substantially the same as the conclusions of the EC in so far as the overlap of products was concerned. This may partly be due to the fact that the Commission sought and received extensive cooperation from both the US and the EC. However, it may be noted that the Commission completed its investigation much before the case was decided by the EC.

2.3 External Influence and Lobbying

It is well recognised that the autonomy of the CA is an important determinant of its efficiency and effectiveness. In most developing countries, this is not given serious consideration. Thus, in many countries, the CAs may be *de jure* autonomous, but *de facto* governments and other vested interests may influence them. There might be other kinds of external influence on the CAs as well. Public opinion is one such factor. Sometimes competition authorities get swayed by public opinion/emotions or national sentiments and take decisions that may not be the best or required to promote competition.

Any case involving a foreign company has a tendency to draw greater public attention and the public opinion in such cases goes against the foreign company, irrespective of the ground reality. The Chilanga Cement case in Zambia and the takeover of East Kenya Bottlers Co. Ltd by Coca Cola in Kenya are testimony to such situations. The CAs have to be very careful in dealing with cross-border cases involving foreign companies. If they get swayed away by public mood or nationalistic rhetoric, then competition may suffer.

In Zambia, the Chilanga Cement case became a national issue and Zambia Competition Commission (ZCC), even though initially swayed by the public mood, finally allowed the takeover with some conditions, which was probably the best option before it. However, still many people in Zambia feel that ZCC should not have allowed the takeover.

On the other hand, the Kenyan authority decided to block the acquisition by Coca Cola Holdings Limited of its acquisition of East Kenya Bottlers Co. Ltd., which was its own franchisee bottling plant. This was part of the company's global strategy to acquire its bottling plants all over the world. However, it was to be blocked on the ground that it had already crossed the 33.3 percent (threshold) control of production in the soft drink market even though the supplier was not competing in the market and that there was no impact on competition in the market.

The CA also argued that Coca Cola had given a prior undertaking not to take over more bottling plants, and the Commission saw the new application as a violation. However, it is not clear as to why such a prior undertaking was sought from the company. The decision of the CA was, therefore, rightly overruled by the Minister. Public opinion is believed to have played a substantial role in the CA's decision. However, such inept handling of a case can cause serious credibility problems for the CA.

Lobbying by different interest groups can also make a difference in many jurisdictions. In India, for example, the MRTPC was found to be quite active in one case but exhibiting complete silence in the other case. In the soda ash case, the domestic soda ash lobby, AMAI, lobbied for the case, which was backed by a few big industrial houses of the country. On the other hand, the ANSAC case also sufficiently illustrates the influence that powerful foreign companies may exert on the domestic decision-making process and the kind of difficulties developing countries may face in dealing with anti-competitive practices with international dimensions.

Public perception on competition may not be necessarily correct. CAs need to take decisions based on merit (of promoting and maintaining competition) and not popular perception. Sometimes, CAs devote much of the regulatory resource in a case that may not be important from the competition viewpoint, but on public mood, which may be created due to media attention managed by some interested party. But conserving regulatory resources, which are scarce, is very important. Prioritising the cases on merit may help in this regard.

2.4 Attitude of the Authorities

The lackadaisical attitude of the people in the CAs is quite common in developing countries. This partly explains that the cases take an unusually long time to be disposed of. This may be because the competition authorities in some countries are not manned by the right kind of people. Very often, officials from other government departments are transferred against their own will. Sometimes, appointments are made on purely political grounds, which breeds corruption.

Moreover, they have no intention to learn. Since these countries have inadequate experience in competition law enforcement, they have to be on a rapid learning curve. For example, they can look at how similar cases are being handled in other jurisdictions. But such efforts could be seen only in a few developing countries like Brazil, South Africa and Zambia.

More importantly, it is necessary to ensure that well-informed and dynamic people head the CAs. This can be seen in South Africa and Zambia, where personality has played an important role in raising the profile of the CA within a very short time. This kind of dynamic leadership can bring dynamism in the CA as a whole and can instil a positive attitude in the people.

Lack of information can hamper the functioning of the CAs. But, in an age of information revolution, this should not be a problem if people have the right attitude. Of course, it has to be accompanied by availability of minimum resources, but that cannot be an excuse. For example, the Indian CA does not have access to the Internet. Is it because of lack of financial resources? Of course not! It does not require huge financial resources, but an initiative. This just shows the lack of right attitude. After all, most government offices in India now have Internet access and also their own websites.

CAs are not aware of many of the international cartels that have been penalised in developed countries. A lot of information on many of the cross-border cases (especially international cartels) handled by the developed countries is in public domain, which these CAs can make use of, but do not make any attempt. Even if they are aware of, they are not sure whether they can take similar actions. Moreover, they do not make any effort to get cooperation from the developed countries. This was done by Brazil in the vitamins cartel case by seeking information from the US authorities, which helped under a cooperation agreement.

Another problem in dealing with cross-border cases, as was found in some of these countries, is the defeatist attitude of the CAs. Many CAs feel that they are unable to enforce their decisions in cross-border competition cases even if they take them up. Pakistan abandoned the case of merger of Glaxo and Wellcome and Sri Lanka did not even take up the merger of Glaxo Wellcome and SmithKline Beecham, partly because of such an attitude.

In contrast, South Africa allowed the merger of Glaxo Wellcome and SmithKline Beecham on the condition that they licence out the products, in which there could be heavy dominance in the post-merger scenario. Even in a least developed country like Zambia, without much of economic might, the CA has shown much courage to approve merger of TNC subsidiaries only after they undertook to abide by some conditions stipulated by the CA. Other countries probably could not even think about such an option.

2.5 Coordination with other Regulators

One important requirement for maintaining competition in the economy is to ensure that there is a good amount of coordination between the CA and other sectoral regulators. A failure to achieve that leads to sub-optimal regulatory outcomes. Some evidence of such outcomes could be found in many developing countries.

In Kenya, for example, the case of acquisition of ABN AMRO Bank by Citibank was handled entirely by the Central Bank of Kenya (CBK). But competition concerns were not a factor in evaluating the case by the CBK, nor was the CA consulted. After the merger, the combined entity became the fourth-largest bank in the country with a market share of eight percent. However, the market for financial services being segmented product-wise, customer-category-wise and geographically, it is quite possible that the transaction might have raised competition concerns in the relevant market.

Similarly, in Pakistan, under the Banking Companies Ordinance 1962, the State Bank of Pakistan (SBP) is fully authorised to regulate and supervise banks and financial institutions. However, the SBP's supervisory policy does not take cognisance of restricting competition in the sector. Thus, the acquisition of ANZ Grindlays by Standard Chartered Bank in Pakistan was evaluated only by the SBP and the CA was not at all involved. As a result, the deal had a smooth sail even though it has significantly lessened competition in the corporate banking segment in the market. Even in the Glaxo-Wellcome merger case in Pakistan, one of the reasons for the CA abandoning the case halfway was that the Ministry of Health looks after the issues relating to drug policy formulation and the CA thought it might not be appropriate for it to interfere in a Government-regulated industry.

3. The Way Ahead

Whether to deal with anti-competitive practices that occur at national level or that have international dimensions, having a strong and well-oiled competition regime, is the bare minimum. This requires that CAs in developing countries must have adequate funds and a group of competition law enforcement officials, who are technically competent. But, unfortunately, both funds and such competent professionals are in extremely short supply in these countries. One alternative frequently suggested to overcome such shortcomings is to adopt a regional approach to competition enforcement. Pooling of resources can indeed be beneficial in this regard. Such an approach for the small countries has been recognised even in the UNCTAD Set. In this regard, the example of CARICOM (Caribbean Community) arrangements is frequently quoted as a model to follow.

However, a strong competition regime at national levels may not be enough to tackle the cross-border anti-competitive practices that are affecting developing countries. Indeed it would be a good idea to have provisions for extra-territorial jurisdiction on the basis of the "effects doctrine" to legally empower the CAs to deal with such cases. However, most of the developing countries do not have enough muscle to actually enforce such provisions. Therefore, there are some *prima facie* arguments to suggest that multilateral discipline can help the weaker nations too. In this context, the setting up of a global competition agency could possibly be the best solution. However, this may be a utopian idea given the existing geo-political situation.

The need for a multilateral approach to the competition policy was recognised even in the Havana Charter, which unsuccessfully tried to set up an International Trade Organisation just after the World War II. The General Agreement on Tariffs and Trade (GATT), which emerged instead, was based on the Havana Charter. Yet competition issues took a backseat. The issues came up for discussions at multilateral fora time and again, and eventually, the "Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices" was adopted in 1980 under the auspices of UNCTAD.

The issues pertaining to competition and measures to deal with restrictive business practices were raised in the Uruguay Round of negotiations and finally entered the WTO arena through the Singapore Ministerial Declaration in 1995. However, five years after its introduction, WTO members have recognised the case for competition policy at the WTO. There are possibilities that the negotiations may be launched after the Fifth Ministerial to be held by the end of 2003. Many countries are still sceptical about the benefits and rationale of such an agreement. The main objection of developing countries, in this regard, is that they do not have adequate experience.

However, there is much uncertainty regarding the final adoption of a multilateral instrument on competition policy at the WTO. People also question whether the proposed agreement will have the desired effectiveness even if it is finally signed: firstly, because there is no proposal to have binding global rules and the proposed commitment for cooperation is only voluntary; and secondly, even if the agreement is signed, it will be an outcome of power politics and may lack the mutual trust among nations, which is the primary requirement for meaningful cooperation to tackle the cross-border competition issues. Thus, parallel initiatives are urgently required to curb anti-competitive practices of international dimensions irrespective of whether a multilateral framework at the WTO is evolved or not.

3.1 Bilateral and Tripartite Tracks

The US, the European Union (EU) and Canada have signed a number of bilateral agreements with other countries to cooperate in the area of application of competition law. While the US has signed such agreements with Australia, Brazil, Canada, Germany, Israel, Japan and Mexico, the EU has concluded such agreements with Canada. Similarly, Canada has signed bilateral agreements with Chile and Mexico. It has also entered into a tripartite cooperation agreement with Australia and New Zealand. Similarly, there is a tripartite agreement among Denmark, Norway and Iceland. France has an agreement with Germany. China has bilateral agreements with Russia and Kazakhstan. Taiwan has such agreements with Australia and New Zealand. Papua New Guinea has an agreement with Australia. It makes tremendous sense, as it is heavily dependent on its trade with Australia.

Some of the developing countries having little expertise and resources have immensely benefited from bilateral and tripartite agreements with the OECD countries. For example, when the vitamin cartel was busted in the US and the EU, most developing countries could not prosecute the cartel due to lack of substantive evidence owing to their resources and capacity constraints. However, since Brazil had a bilateral agreement with the US, it was able to take action, as it did have a cooperation agreement with the US.

3.2. Regional Approach

As mentioned before, there is a strong case for establishing a regional competition authority by pooling resources and expertise. But this approach can also be of immense help in tackling cross-border competition problems, as very often they are more pronounced among neighbouring countries. The case for a regional competition authority or at least adequate measures to cross-border anti-competitive practices within a region has been recognised in most regional economic integration arrangements. However, in most regions, no substantive progress has been made.

Such cooperation and pooling of resources become all the more important if smaller economies would like to be able to tackle the mighty TNCs or global "mega-cartels". Small countries are not adequately capable on their own to take action in such situations. If countries with a small market want to take action against the big TNCs, they might blackmail by threatening to pull out of the country or the market. This is also because each competition authority has to conduct its own investigation to detect and prove the violation of the relevant laws and calculate the extent of damage. Resource-constrained small economies will not be able to do this alone.

A comprehensive regional approach to the competition policy was first adopted by the EU and then by CARICOM. While the primary objective of adopting a regional competition policy within the EU was to use it as a vehicle to further integrate the common market, the main objective of CARICOM regional competition policy is to apply competition rules in respect of anti-competitive cross-border business conduct, promote competition in the Community and coordinate the implementation of the Community Competition Policy. Such an approach is at various stages of discussion/ adoption in many other regional groupings, like Mercosur, Common Market for Eastern and Southern Africa (COMESA), Southern African Development Community (SADC), East African Community (EAC), Economic and Monetary Community of Central Africa (CEMAC), etc. All of them need to accelerate their efforts in this regard.

3.3 Global Initiatives

Over the last few years, several global initiatives have been taken up to deal competition problems, especially those that have international dimensions. Some are by government or government agencies, while others are at non-governmental level. None of them are, of course, to deal with competition-related international disputes, but to promote cooperation. However, if cooperation and coordination could be promoted in an appropriate manner, then international competition disputes can be avoided or even resolved.

However, considering that there exist a number of forums at the global level, it is imperative that proper coordination among them is maintained. Failure to do so may create confusion and may even add to the problems surrounding competition issues with international dimensions. However, it may be noted that multiple forums are not necessarily bad, as, collectively, they might bring a balance in the system. The following paragraphs give brief outlines of the existing global initiatives.

3.3.1 OECD's Global Forum

The OECD is an influential organisation with 30 member-states, the rich countries of the world. It has a Standing Committee on Competition Policy and Law, which has regular 30 countries as its members, other than five observers, Argentina, Brazil, Israel, Lithuania and Russia.

The OECD has been regularly cooperating with a variety of non-OECD countries to provide capacity building. With the advent of the OECD's Global Forum on Competition, it claims, its cooperation with non-OECD countries will extend beyond capacity building to include high-level policy dialogue to build mutual understanding, identify 'best practices', and provide informal advice and feedback on the entire range of competition policy issues. The forum can also be used to promote cooperation among countries. In this regard, OECD needs to reinforce its interface with developing countries, which at present is at the minimum.

3.3.2 International Competition Network

The concept for International Competition Network (ICN) has evolved from the recommendations of the International Competition Policy Advisory Committee (ICPAC), a group formed in 1997 by the US Anti-trust Division. ICPAC was commissioned to think broadly about international competition in the context of economic globalisation and focused on issues like multi-jurisdictional merger review, the interface between trade and competition, and the future direction for cooperation among competition agencies.

ICN is intended to encourage the dissemination of competition experience and best practices, promote the advocacy role of competition agencies and seek to facilitate international cooperation. ICN is not intended to replace or coordinate the work of other organisations, nor will it exercise any rule-making function. However, it can work as an informal platform for promoting cooperation and exchange of information among the CAs.

The ICN has agreed to adopt a common set of guiding principles for merger notification and review. A study group of the ICN has already identified the possible set of principles and there is almost a consensus on the set, except on the principle of non-discrimination. The view expressed in this regard was that countries, especially the developing and the least developed ones, might treat domestic and foreign companies differently on grounds of national/public interest and promotion of national champions. Similar initiatives are likely to be taken in other areas of competition enforcement as well.

The ICN also played a catalytic role in the US and the EU agreeing to simultaneous review of mergers when officials from both the sides of the Atlantic met at the sidelines of the first annual conference of the ICN, held at Naples, Italy, on September 28-29, 2002. In pursuance of this agreement, the US and the EU released guidelines on "best practices" for co-ordinating future merger reviews between the US and the EU anti-trust agencies. What is missing is that such a co-operative effort does not include other countries, where the merging firms operate.

3.3.3 Track-II Initiatives

In most jurisdictions, consumer organisations are nearly absent in competition policy discourse or its implementation. This is despite the fact that the primary objective of competition law in all jurisdictions is to protect and promote both economic and consumer interests. Other civil society organisations (CSOs) have not been too enthusiastic about competition issues either. However, recently there has been much curiosity on the issue among the CSOs, due to its inclusion in the WTO discussions.

However, things are changing. The recent announcement of Mario Monti, the EU Competition Commissioner, to involve European consumer groups in the competition enforcement process is a pointer. He has also promised to provide financial support for such groups, if they require it. Monti's announcement should be an eye-opener for many other competition authorities, especially in developing countries.

In the changing scenario, when the corporations are getting more global in nature and anti-competitive practices are also more global, there has to be a consumer-oriented competition advocacy at the global level. However, it needs to be recognised that the consumer movement itself is not so strong in many countries, especially in the developing world. At the same time, it has also been observed that other CSOs are taking more and more interest in economic issues in general and competition policy issues in particular. Thus, international cooperation on competition issues at the civil society level can play a significant role in tackling cross-border competition problems.

There already exists a Global Competition Forum (GCF) of the competition lawyers under the auspices of the International Bar Association.

3.3.4 INCSOC

A beginning has been made at the level of CSOs. A network namely, International Network of Civil Society Organisations on Competition (INCSOC), has been formed recently. INCSOC brings together consumer organisations and other CSOs interested in economic issues in general and competition issues in particular. INCSOC intends to work in coordination with ICN, GCF and the other relevant international bodies.

The concept of INCSOC has evolved from the 7-Up project, much in the same way as the concept of ICN evolved from the recommendations of the ICPAC. The need for such a network came out as one of the recommendations of the 7-Up project. It was articulated in different seminars/conferences, organised as part of implementation of the project as well as other international level meetings, where findings of the project were discussed.

Hence, the concept of the network was floated by CUTS. Several consumer organisations, other CSOs and competition experts, both academics and practitioners, showed overwhelming interest in the idea. As a result, the INCSOC was formed and it was decided to formally launch the network on February 19, 2003 at the final meeting of the 7-Up project at Geneva.

The goal of the network is "to promote and maintain healthy competition culture around the world by coalition-building among civil society and other interested organisations". The activities of the network will revolve around the objective of building capacity on competition issues, primarily of the civil society organisations, but secondarily of other stakeholder groups. These will be achieved through sharing of information and experiences. In due course, INCSOC intends to play a catalytic role in promoting cooperation even among the CAs, especially in the developing world. This is quite important, as such cooperation does not take place automatically due to institutional inertia in most of the developing countries.

The network will work mainly through working groups. All committees and working groups will have a balance of representation from the North and the South, besides from among regions. Initially, there will be greater emphasis on capacity building and advocacy on competition issues.

Notes

1 See Jenny, Frederic (2000). Globalisation, Competition and Trade Policy: Convergence, Divergence and Cooperation (Paper presented at the WTO Regional Workshop on Competition Policy, Economic Development and the Multilateral Trading System: Overview of the Issues and Options for the Future, Phuket, Thailand, July 6-8).

2 Clarke, J. and Evenett, S. J (2002), The Deterrent Effects of National Anti-Cartel Laws: Evidence from the International Vitamins Cartel, World Trade Institute.

3 Jones and Sufrin, *EC Competition Law*, Oxford (2001), page 1040.

4 The project involves a comparative study of competition regimes in seven developing countries, namely, India, Kenya, Pakistan, Sri Lanka, South Africa, Tanzania, Zambia and Zimbabwe.

5 Business Standard, 29.01.02

6 Alkali Manufacturers Association of India, (2000).

7 Section 3(I) of the Competition Act, 1998, reads that the Act applies to all economic activity within, or having *effect* within, the Republic (of South Africa).

8 Competition Act, 1998, Section (4)(1) An *agreement* between, or concerted *practice* by, *firms*, or a decision by an association of *firms*, is prohibited if - (b) it involves any of the following *restrictive* horizontal practices: (i) directly or indirectly fixing a purchase or selling price or any other trading condition.

9 *Business Day*, Friday April 26th 2002, *Competition Body Strikes Three Deals.*

10 Mehta, Pradeep S (2001), *Taming Unilever in Bhutan!*, Mimeo, CUTS-CITEE, Jaipur..

11 ReguLetter, No.2 March 2001

12 Cipla-Medpro (Pty) Ltd is a joint venture between Cipla Ltd, an Indian generic pharmaceutical company, and its South African partner, Medpro Pharmaceutica.

13 Jonathan M. Berger, "Litigation Strategies to Gain Access to Treatment for HIV/AIDS: The Case of South Africa's Treatment Action Campaign", *Wisconsin International Law Journal*, Vol. 20, No. 3, 2002.

14 This is mainly because, for instance, humanitarian concerns are increasingly prevailing over the respect for each nation's right to manage or mismanage its affairs and its subjects. Also see e.g. R. Higgins, *The Development of International Law Through the Political Organs of the United Nations*, Oxford, 1963.

15 Malcolm N. Shaw, *International Law*, fourth edition, Grotius Cambridge University Press, page 455.

16 *United States v. Aluminium Co. of America,* 148 F.2nd 416 (1945).

17 Ibid., page 443.

18 See e.g. the statement of the UK Attorney-General that 'the wide investigating procedures under the United States' antitrust legislation against persons outside the United States who are not United States citizens constitute an 'extra-territorial' infringement of the proper jurisdiction and sovereignty of the United Kingdom', *Rio Tinto Zinc v. Westinghouse Electric Corporation* [1978] 2WLR 81; 73 ILR, page 296.

19 This stance has mainly been against other extra-territorial extension of US laws such as the Helms-Burton Act.

20 http://www.antitrust.de/kartellrecht.htm

21 No. 89 of 1998: Competition Act, 1998, Government Gazette, volume 400, Cape Town, 30 October 1998, Section 3(I).

22 See Soda Ash and floatglass cases (SC judgements on Civil Appeal Nos. 2330 of 2000, 3572 of 2000, 76 of 2002 and S.L.P.(C)No. 22549 of 2001).

23 *Business Day*, Friday April 26th 2002, *Competition Body Strikes Three Deals.*

4

Cross-border Competition Concerns

Perspectives from Southern African Region

*Vani Chetty**

Research has shown that cross-border activities involving mergers, cartels, abuses of dominance and other restrictive business practices (RBPs) have the potential to, among other consequences, distort trade to the advantage of the perpetrators, eliminate weaker domestic trading partners, stifle entrepreneurship, and ultimately, retard economic development. It is widely acknowledged that anti-competitive practices with a cross-border effect can adversely affect trade flows, thereby, undermining the benefits, which would be otherwise delivered, by trade liberalisation and open markets.[1] In this regard, developing countries are most vulnerable to the effects of such anti-competitive behaviour.

The afore-given situation is compounded by the fact that developing countries, unlike their counterparts in the developed world, do not have the necessary competition regimes and framework in place to deal with anti-competitive behaviour of trans-national companies (TNCs). National competition laws, to the extent that they exist and are implemented in a very limited number of developing countries, often lack the necessary extra-territorial reach to counter such anti-competitive practices on global level.

1. Major Cross-Border Concerns

Major cross-border competition concerns include the activities of:

- hardcore cartels;
- various restrictive business practices and abuse of dominance;
- vertical restraints; and
- unchecked merger activities.

Activities of "hardcore" cartels (although not the only form of cartel that causes concern) are generally acknowledged to be the most destructive form of anti-competitive behaviour. Hardcore cartels are generally understood to include agreements among competitors involving price-fixing, bid-rigging, output restrictions or customer allocation and market restrictions. Developing countries are especially vulnerable to cartel activities since the risk of detection is often minimal due to the developing countries' weak legal structures and enforcement capacity[2]. Furthermore, developing countries lack access to international co-operation with the competition authorities of the countries, in which the cartel participants may be incorporated.

While hardcore cartels are clearly a priority, cross-border mergers, on the other hand, if unchecked may result in a reduction in competitiveness or contestability of a market if too much market power is concentrated in a single, merged firm. While many cross-border mergers may have little or no effect in developed countries, because their markets are so competitive, the merger of two TNCs could create severe problems for developing countries, where the merged firm could result in a monopoly. A strategy that foreign firms often adopt to penetrate an export market is to establish a physical presence in that market. Transnational mergers and acquisitions as a mode of entry into a foreign market can also raise issues of:

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- reduction in competitiveness or contestability of a market if too much market power is concentrated in a single, merged firm; and
- a loss of national sovereignty and control over domestic enterprises.

2. Co-operation as a Means of Dealing with Anti-Competitive Behaviour with International Dimensions

Most damaging anti-competitive conduct with cross-border effects are hardcore cartel agreements between multi-national companies (MNCs) from the US, Europe and Japan. These cartels increasingly target developing countries, because such activities will not be tolerated in developed jurisdictions due to the increased stringent enforcement activities in developed countries, while the lack of competition institutions or weak enforcement in developing countries enable perpetrators to operate in the Third World with impunity.

Many developing countries are not only blissfully unaware of cartel activity and RBPs adversely affecting their economy, they are also powerless to investigate and successfully prosecute such perpetrators. It is, therefore, imperative that developing countries receive the co-operation of other jurisdictions (especially developed countries) to obtain information located outside their national territory in a case affecting their market.

Various forms of co-operation can range from voluntary co-operation and exchange of publicly available information, consultations and peer review mechanisms. Modalities for co-operation can take place in a number of ways and can include–

- exchange of information and evidence;
- exchange of relevant information and views among competition authorities and cases affecting the important interests of another country; and
- application of appropriate comity principles.

A major stumbling block on the issue of co-operation is the frequently cited position of developed countries that maintain that their laws do not allow for confidential information to be shared. This position is understandable for a variety of reasons, including the fact that various leniency programmes confer confidentiality on information provided by whistle blowers. Furthermore, there is no guarantee to the provider of the confidential information that the information provided to a developing country will be used by that country to prosecute perpetrators.

Although the issue of confidentiality often raises its ugly head and proves to be a stumbling block in cases of co-operation, certain studies have, however, shown that the type of information needed for investigating hardcore cartels is not strictly business secret or proprietary and sensitive business information. The primary information sought normally constitutes evidence of collusion in the form of meetings between cartel members and the like. The issue of what exactly constitutes "confidential information" in the context of hardcore cartels must be analysed more closely. Enforcement authorities often co-operate on issues involving tax, customs and other criminal activities. A similar level of co-operation should be provided to competition authorities while investigating hardcore cartel activities.

The chief concern raised by developing countries is that developed countries require developing countries to change their laws to suit changes in the global environment, but are only prepared to offer very loose and superficial co-operation at a multilateral level. A further concern reiterated by developing countries is that the very information, which will enable competition agencies (to the extent that such competition agencies exist) to prosecute anti-competitive behaviour, will not be available since the very information they require is "confidential".

Whilst it is true that the aforesaid is a concern, this need not always be the case, as other forms of "constructive co-operation" can also be very useful. This view does not in anyway detract from the fact that confidential information, if shared, may not in circumstances be determinative to help prove certain anti-competitive behaviour. However, developing countries should also not be misguided into thinking that their own pro-active efforts in the following direction is of no value, namely:

- investigating whether those cartels prosecuted internationally may also have detrimental effects on the local economy. Certain industries are notorious for collusive behaviour and when a developed jurisdiction prosecutes a cartel, this should often signal a "red flag" for a developing country;

- building mutual trust and respect with the foreign authorities, especially with those countries, whose firms conduct business in the jurisdiction of the developing country;
- obtaining technical expertise from foreign authorities; and
- maintaining the credibility of the enforcement agency, which by itself is a deterrent.

In particular, competition agencies should be considering far more effective alternatives and options of cooperation, which is intended to avoid the parallel handling of cases. Developing countries can obtain particular benefits by co-ordinating their investigations with their foreign counterparts by talking to investigators dealing with a similar case, obtaining technical expertise, notwithstanding that all of such information can be obtained without the sharing of non-confidential information.

For developing countries, the aforesaid options may appear to be expensive and they may be costly and burdensome, but it would appear that those authorities, where competition agencies are credible and have formed good relations with other developed countries, their prospects of obtaining co-operation have been better. A good example of this is South Africa, where co-operation involving non-confidential information was obtained from the European Union (EU) in the cases of American Natural Soda Ash Corporation (ANSAC) export cartel and the merger of Glaxo Wellcome and SmithKline Beecham, as found in the 7-Up project.

Co-operation can, therefore, be a very effective tool to developing countries in dealing with anti-competitive cross-border behaviour; however, a reciprocal commitment by developing countries to developed countries can be a double-edged sword. It must be noted that the players involved have unequal resources. Developing countries will need special and differential treatment in view of their scarce resources. It can hardly be expected that developing countries should be obliged to comply in a similar manner to a developed country. For example, a very detailed and complicated request for information from a developed country could potentially use up all the resources of a developing country in order to comply with such a request in the spirit, in which the commitment was intended.

Although there is much hype at international level regarding a multilateral agreement on competition, a multilateral agreement should in no way preclude the possibility of countries establishing closer co-operation links on the basis of bilateral or regional agreements. South Africa's Free Trade Agreement, concluded with the EU in 1999 (EU/SA-FTA), has provisions concerning co-operation in the context of competition. The provisions on co-operation are modest but have the possibility of requesting each other to take enforcement action, and each signatory must take into account each other's important interests in the course of their enforcement activities. However, co-operation between the European Commission (EC) and the South African competition authorities has not taken place as a result of the EU/SA-FTA, but has instead been voluntary.

For instance, co-operation between a developed and developing jurisdiction is demonstrated in at least two cross-border cases in the South African context, which formed part of the 7-Up Project case studies. The South African competition authorities obtained co-operation from the EU in the international merger of SmithKline Beecham PLC and Glaxo Wellcome PLC and a case involving an export cartel (comprising an association of five US soda ash producers) namely, American Natural Soda Ash Corporation (ANSAC).[3] The ANSAC case is an appropriate example of an export cartel, whose anti-competitive behaviour will not be tolerated in the domestic US market[4], but it may operate with impunity in the markets of other countries, which include South Africa and India. A multilateral ban on hardcore cartels will, it is hoped, nip such anti-competitive practices in the bud. The ANSAC case in South Africa is being investigated and prosecuted since 1999 at great expense to the South African competition authorities and it is unclear at this stage whether the case will conclude soon.

In the Southern African region, the benefits of co-operation may emerge at a regional level for countries in the Southern African Development Community (SADC) region, through the current initiative of the South African competition authorities in the formation of the Southern and Eastern African Competition Forum (SEACF). Countries involved in the initiative include Kenya, Malawi, Mauritius, Mozambique, Seychelles, Swaziland, Tanzania, Zambia, Zimbabwe and the Secretariats of SADC and Common Market for Eastern and Southern African countries (COMESA).

The objective of a SEACF in the SADC region is to create a coherent group of countries in the region to assist countries in the development of competition policies and establishment of competition agencies. Experiences gained from co-operation at a bilateral and/or regional level will be very important and useful for developing countries entering into appropriate co-operation arrangements with their developed counterparts. Such collective experiences gained on a bilateral or regional basis pave the way for a broader agreement as envisaged at the multilateral level. The SEACF has a vital role to play where members can promote and defend common African positions on issues of competition in their member states.

3. Some Developing Country Concerns

3.1 Lack of Competition Law or Policy in Small and Lesser Developed Economies

Some form of competition policy or law in and by itself can operate as a deterrent. The latter would be preferred to having no competition law, where there will be some mechanism for smaller and lesser developed economies to discipline multinational corporations. Least developed countries (LDCs) should have the opportunity to deal with the most prominent forms of anti-competitive conduct in their economies.

It is therefore important that even if the most basic but prioritised competition policies are adopted, the competition laws and policies of developing countries should be modest and not over-ambitious about the scope of competition policy or legislation and the implementation thereof. This is very important in order to ensure credibility. The general idea is to start on a basis, which is workable, and to ultimately work towards full enforcement of competition law to the extent necessary.

While it is not disputed that competition law is useful for small and lesser-developed economies, a major concern is the opening up of markets completely to foreign direct investment and imports. The effect of opening up such markets can destroy certain industries in small economies and, therefore, developed country norms may not be the most appropriate for developing countries as well.

3.2 No "One-Size-Fits-All" Policy

Developing countries have very specific concerns that are often not found in more developed jurisdictions and, therefore, the competition policies and laws of developed countries cannot be imparted without qualification. In particular, a distinction must be made between competition policy, as it is conceptualised and practised in developed countries, compared to the developing countries. In developed countries, competition policy emerges as a competition policy model, which focuses almost exclusively on consumer welfare. This is currently the US model and the evolving Western European model.

The model of competition policy that is emerging in developing countries is one where competition authorities have a more complicated task — of balancing various interests, namely, those of owners, workers and consumers while adjudicating over issues involving competition. Achieving these objectives whilst simultaneously promoting consumer welfare can often be very difficult in practice. [5]

3.3 Priorities

Many developing countries do not have a competition policy in place, as it is perceived that there are too many other priorities and competition policy may not be at the top of the list.

It is perceived amongst the SADC region that issues, such as housing, education, poverty and AIDS, require higher priority and take precedence over other more long-term goals of implementing competition policy. Furthermore, developing countries do not have the resources that would be necessary to establish a common supranational authority as in the EU. However, if countries in the region pool their resources, it may be a worthwhile priority in their attempts to deter and get rid of the region of cartels and monopolies, which inevitably have the effect of distorting competition and/or stifling entrepreneurial activity and ultimately development.

4. Regional Cross-Border Concerns: The Southern African Context

In the spirit of starting small and expanding gradually, it is worth considering whether some developing countries prefer a regional policy before progressing towards a multilateral arrangement. In the context of Africa, particularly the SADC region, many cross-border competition concerns have arisen.

The cross-border effect of a merger in the developing country context is illustrated in a case in Zambia. The case involved take-over of Tate and Lyle's shares in Zambia Sugar Plc (Zambia Sugar) by Illovo Sugar Limited (Illovo).

The acquirer, Illovo, was a leading sugar producer in Africa and a significant manufacturer of downstream products with agricultural, manufacturing and other interests extending over six Southern African countries, namely Malawi, Mauritius, Mozambique, South Africa, Swaziland and Tanzania. The target firm was Tate and Lyle, a British multinational company listed on the London Stock Exchange with business interests in Africa and globally. In Africa, Tate and Lyle operated in the sugar and sugar-packaging businesses in Botswana, Kenya, Zambia and Zimbabwe, and had business interests in Zambia Sugar of 50.87 percent. Zambia Sugar was listed on the Lusaka Stock Exchange and was the largest sugar manufacturing and refining company in Zambia with approximately 96 percent market share.

The takeover involved the acquisition by Illovo from Tate and Lyle of 50.87 percent shares in Zambia Sugar. The transaction was a domestic one, occurring within Zambia. However, in assessing the takeover, the Zambian Competition Commission reviewed the regional impact of the merger because of the likely anti-competitive effects of the merger at the regional level. The Zambia Competition Commission assessed whether the proposed transaction was likely to restrict, distort or prevent competition to an appreciable extent or substantial part of the market in violation of the Competition and Fair Trading Act in Zambia.

The Zambian competition authority found that the takeover was itself not likely to lead to the prevention, distortion or restriction of competition in the relevant market, namely Zambia. In the domestic market, Zambia Sugar was a *de facto* monopoly and the takeover of the major shareholding in the company was not likely to change its monopoly status in the market. However it was noted that the takeover by Illovo had the likely effect of creating a regional dominant firm because of its current regional status. Since Illovo had manufacturing and other interests extending over six Southern African countries namely, Malawi, Mauritius, Mozambique, South Africa, Swaziland and Tanzania, the addition of Zambia meant that Illovo became a regional player, controlling a significant share of the region's market. The acquisition of Zambia Sugar consolidated Illovo's regional market share, believed to be 35 percent prior to the transaction and 39 percent post the transaction.

The acquisition, while having no anti-competitive effect on the domestic Zambian market, resulted in the removal of a potentially vigorous and effective competitor in the regional market. The impact of the takeover at a regional level had no legal basis for regulation because of the absence of a regional competition policy. Thus, it was found that there was no basis for rejecting the takeover.

The aforesaid case illustrates the growing need for a mechanism to deal with regional competition concerns.

In the spirit of starting small and expanding gradually, it may be worth considering the need for competition policy that regulates activity not just at a domestic level, but at a regional level as well. The growth in cross-border mergers and the value of such activity strongly signifies the need for such a policy.

The countries comprising the SADC region did, however, recognise the need for competition policy to deal with anti-competitive behaviour at a national level. On the issue of competition, Article 25 of the Protocol on Trade in the SADC region entitled, "Competition Policy", stipulates that "Member States shall implement measures within the community that prohibit unfair business practice and promote competition". Notwithstanding the intentions expressed in Article 25, very few countries in the SADC region have a clearly defined competition policy and most have no competition policy at all.

5. Should Cross-Border Concerns be Addressed at a Multilateral Level?

With regard to the damage caused to developing country consumers and producers by international hardcore cartels, as has been acknowledged in the World Development Report 2001 background paper, the fight against hardcore cartels can be best addressed to in the form of an international commitment to ban such practices. The multilateral ban on hardcore cartels should be implemented by means of corresponding domestic legislation and policies.

As for the fact that national laws are often ineffective where the proof lies outside a country's borders, it is becoming urgent for domestic competition rules to be supplemented by international avenues of co-operation. A commitment on hardcore cartels in a multilateral agreement would need to lay down the essential elements that domestic law provisions on this issue should contain. Domestic law provisions on this issue should ideally contain certain basic provisions, which include a clear prohibition on hardcore cartels, a definition of what constitutes hardcore cartels and deterrence measures—either in the form of administrative fines and/or criminal sanctions.

The treatment of hardcore cartels (or indeed any other anti-competitive practice) at the multilateral level must be dealt with carefully by the developing countries. It is proposed that fundamental to any undertaking by developing countries, at a multilateral level, should be the principle of special and differential treatment and a constructive policy on the technical means and practicality of implementation of such special and differential treatment. In this regard, the necessary co-operation modalities and capacity-building elements are crucial. It is suggested that certain WTO principles of non-discrimination (national treatment and most favoured nation), transparency and due process be clarified and adapted to the competition laws and policies for the developing countries. Without this flexibility, most developing countries will be reluctant to provide such commitment.

An unqualified adoption of existing WTO principles will not only have impact on a developing country's national sovereignty but may also be in direct conflict with the industrial policies of a particular country. It is, therefore, important for any multilateral commitment to have the necessary derogations and exceptions for public and developmental objectives, which accommodate the different national regimes in terms of its laws and policies. Special and differential treatment must be guaranteed to developing countries since the latter are not on a "level playing field" in the international environment and adoption of a "one-size-fits-all approach" will not take account of the existing asymmetries between developing countries. Furthermore, it is the perception of developing countries that existing multilateral agreements reflect the concerns of sophisticated economies and pre-suppose an existing institutional, human and financial base that is often lacking or even non-existent in developing countries.

6. Conclusion

Unlike the developed world, developing countries have other pressing national issues, which may be perceived as requiring higher priority, example HIV-AIDS, housing, poverty, education and the likes. Developing countries should, therefore, be in a position to introduce competition policy to the extent that it may be required, without utilising its scarce resources to make competition policy a higher priority than it needs or deserves to be.

It must be noted, however, that without the initial step of introducing a competition law, which is effectively enforced, cross-border competition concerns will not be addressed. Without the introduction of such a law that can be enforced, co-operation at a multilateral level will also be academic. It is submitted that political will and pro-active action on the part of the developing countries is urgently required to begin to address competition concerns at a cross-border level.

Notes

1 The world economy is increasingly being shaped by globalisation and liberalisation of trade. The effects of the aforesaid changes in the world economy have not spared developing countries; the changes are unlikely to be reversed in the foreseeable future. Developing countries therefore risk being marginalised unless they can adapt and adjust to a new competitive international environment in a constructive manner, which benefits their interests.

2 Professor Simon Evenett conservatively estimates the annual loss for developing countries from a few known international cartels to be about 1.7 percent of these countries' GDP. Furthermore, according to a presentation by Simon J Evenett of the World Trade Institute at WTO symposium on 22 April 2002, the effect of merely 16 cartels on developing country imports was an estimated US$81.1bn, which is likely to be an underestimate. Furthermore, in terms of comparison with international aid flows to developing countries, the harm done by cartels to developing economies was three to six times of the recent increase in US aid and that overcharges by cartels were equal to at least one-third of aid received by developing countries.

3 This matter is currently still being considered by the South African authorities. One of ANSAC's grounds of defence is that it is a legitimate export trade corporation according to the law of its country of incorporation. ANSAC was successfully prosecuted in the EU and was banned from operating as a cartel in the EU. ANSAC was also prosecuted by the Indian competition authorities with somewhat different results.

4 ANSAC's activity is exempted in the US in terms of the provisions of the Webb Pomerene Act.

5 South Africa, for example, has in its competition legislation various public interest criteria. In the context of mergers, regardless of the outcome of the evaluation of the competition impact of the merger a public interest test must be administered. The public interest criteria include black empowerment, international competitiveness and employment. This model fundamentally differs from the efficiency models used in more developed jurisdictions.

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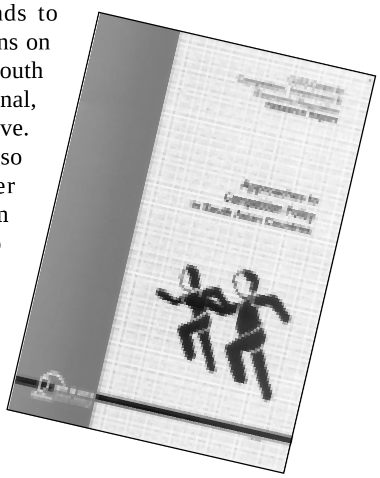
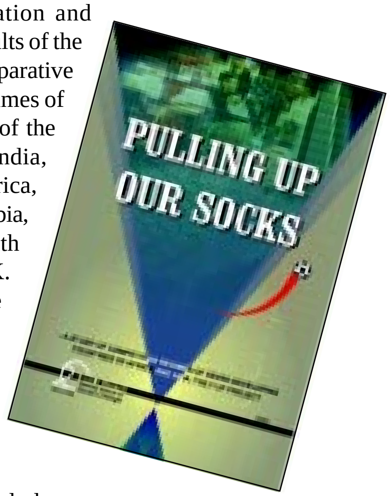
Our Publications

Approaches to Competition Policy in South Asian Countries



This research report intends to trigger debate and discussions on competition policy in the South Asian Countries from national, regional and global perspective. At the same time, it will also help the EU and other proponents of competition policy at the WTO to appreciate the concerns and constraints of the South Asian countries, in particular and developing countries, in general.
(Price: Rs.100/US$25)

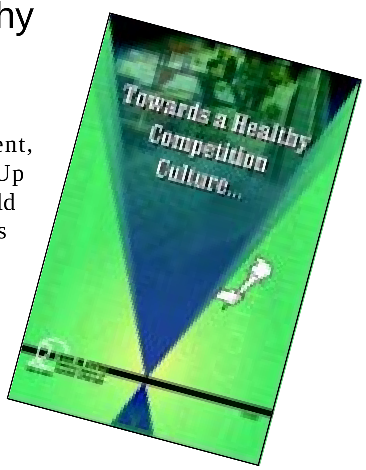
Pulling up Our Socks



This report is the compilation and synthesis of the research results of the 7-Up Project, which is a comparative study of the competition regimes of seven developing countries of the Commonwealth, namely, India, Kenya, Pakistan, South Africa, Sri Lanka, Tanzania and Zambia, implemented by CUTS, with the support of the DFID, UK.

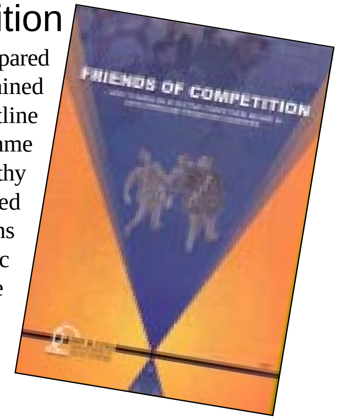
The report compares the institutional framework in the project countries and analyses important issues like legal provisions, autonomy of the institutions, financial and human resources, etc. It concludes with suggestions and recommendations for strengthening the competition regimes in these countries.
(Price: Rs.500+20% Packing/Postage)

Towards a Healthy Competition Culture…



This advocacy document, prepared under the 7-Up Project, is intended to build awareness in policy-makers and negotiators and stimulate debate on competition policy in the national and international contexts. It presents action points for key stakeholder groups in order to promote a healthy competition culture.
(Price: Rs. 50/US$5)

Friends of Competition



This handbook, which has been prepared on the basis of the experiences gained from the 7-Up Project, aims to outline an ideal capacity-building programme for promoting an effective and healthy competition regime in the targeted countries. With necessary variations to suit the socio-politico-economic environment, this would be applicable to most developing and transition countries.
(Price: Rs. 100/US$10)

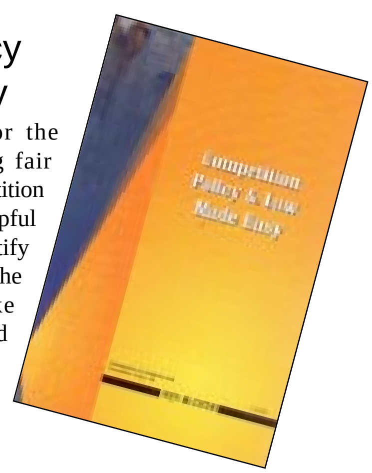
Competition and Consumer Protection Scenario in African Countries

In this series of studies, seven African countries have been selected. The extensive account of market practices in the select countries provides a wealth of information not only for policymakers but also for consumer groups and other reform-minded interest groups. The studies delve deep into competition- and consumer-related issues in different sectors of these African economies. Especially, they outline what types of anti-competitive behaviour are observable in the markets of these countries and what actions the selected states have taken in response.

Three of these seven studies have been published, which include –

1. Competition and Consumer Protection Scenario in Uganda.
   (Price: Ush4000 INR100/US$5)
2. Why is a Competition Law Necessary in Malawi?
   (Price: MWK150/INR100/US$5)
3. Market Practices in Zambia: Where do the consumers stand?
   (Price: ZK5000/INR100/US$5)

Competition Policy & Law Made Easy



This publication meant for the activists aims at generating fair amount of awareness on competition law and policy. It could be helpful for a common person to identify anti-competitive practices in the market place and take appropriate action. Hindi and Spanish versions are also available. (Price: Rs.50/US$10)

CUTS Centre for Competition, Investment & Economic Regulation

Mission

To be a centre of excellence on regulatory issues

Goals

Develop healthy competition regimes in developing countries through research and advocacy.	Strengthen capacity of state and non-state actors on relevant issues, particularly in developing countries.	Foster an enabling environment for the economy and promote effective regulatory frameworks.

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