

Advocacy and Capacity Building on Competition Policy and Law in Asia (7-Up2 Project)

C-CIER
ACTIVITIES



The CUTS Centre for Competition, Investment and Economic Regulation (C-CIER) is continuing its campaign for propagating and building a healthy competition culture in developing countries, through the series of research and advocacy studies it has undertaken under the umbrella of the 7-Up Project. Currently, the 7-Up2 Project is being implemented in select countries of Asia.



Following the launch of the 7-Up2 Project in late April at Hanoi, all the project partners in the Mekong region (Cambodia, Lao PDR, Nepal and Vietnam) engaged themselves in project activities as outlined in the Operational Strategy Note (OSN), (available at www.cuts-international.org/7upOSN.doc). As had been reported earlier, draft Preliminary Country Papers (PCP) were presented at the Launch Meeting by the partners. Subsequently, the partners were involved in polishing them up with comments received during the meeting, and used the same as a base paper for the subsequent, detailed Country Report.

Visit to Mekong countries

A representative of the Project Coordination and Management Unit (PCMU) paid visits to each of the three Mekong countries and had extensive discussions not just with the project members, but also with other experts, especially selected members of the National Reference Group (NRG). In Vietnam, the people met were experts at the Institute of State and Law, the Prime Minister's Research Committee, the Hanoi Union of Association of Industries and Commerce, representatives of consumer associations and other legal and economic research institutes. All of them showed interest and confidence in the project. In Cambodia, Sok Siphana, Secretary of State for Commerce, felt that the project was relevant in the country's prevailing socio-economic context. Representatives of the Faculty of Economics and

Management at the National University of Lao PDR were happy to learn about the project, and assured that they were willing to associate with it. In all of these three countries, the PCMU have also been able to establish contacts with the UNDP and the Mekong Private Sector Development Facility (MPDF), who have reciprocated to CUTS's intent of building a cooperative relationship.

The PCMU is constantly interacting with the Project Advisory Committee (PAC) members, and recognises contributions made by them to guide the project through.

Partners' Activities

In the Mekong region, all the partners are currently busy preparing the 'Country Report' – a document presenting a general overview of the status of competition in each of the countries, and then assessing its nature in some of the sectors. The report is being drafted on the basis of field surveys and interviews undertaken earlier by the partners.

In Nepal, SAWTEE has been undertaking very effective and innovative advocacy activities viz. consultation meeting with economic journalists on the role of media in promoting competition culture in Nepal; and a (regular) radio programme on competition related issues affecting consumers, being aired every Friday. A quarterly newsletter – Fair Competition (in Nepalese) is also circulated with the objective of raising the level of awareness on competition issues of various stakeholders in Nepal.

Project Partners

July brought some good news, when the Asia Regional Poverty Fund of the Department for International Development (DFID), UK agreed to support the activities of this project in Bangladesh and India. Therefore, the project is now being simultaneously implemented in six project countries, and has two components segregated

merely on geographical basis - the Southeast Asia component consisting of Vietnam, Lao PDR and Cambodia and the South Asia component consisting of India, Nepal and Bangladesh.

Bangladesh Enterprise Institute (BEI) are the 7-Up2 project partner in Bangladesh.

Regional Launch Meeting of 7-Up2 Project at Dhaka

CUTS, in collaboration with the Bangladesh Enterprise Institute (BEI), Dhaka, organised the Regional Launch Meeting of the project on 22-23 September in Dhaka, Bangladesh. The project to be implemented in Bangladesh by BEI, aims to further CUTS's commitment to facilitate a healthy competition culture around the world, especially in the developing and least developed countries. This meeting provided an opportunity for the project partners of the 7-Up2 Project to get acquainted with each other, and to discuss project implementation strategies.

Speaking at the inaugural session of the meeting, the Commerce Minister of Bangladesh, Air Vice Marshal (Retd.) Altaf Hossain Chowdhury, upheld the commitment of the Bangladesh government to promoting effective and well-functioning markets. The minister expressed his hope that the project would bring out significant learnings, helping Bangladesh in shaping its policies on market regulation.

Pradeep S Mehta, Secretary General of CUTS emphasised that a competition policy and law is not a luxury for the developing world but a necessary governance instrument for all countries. Mr. Farooq Shobhan, President of Bangladesh Enterprise Institute

(BEI) highlighted the need for competition policy and law especially in the era of globalisation and liberalisation as the country is engaged in market-oriented reforms. "Markets cannot take care of everything and the government needs to ensure that appropriate regulatory frameworks are in place so that market failures do not thwart the efforts of the government to ensure better standards of living for

the people", reasoned Sobhan. Frank Matseart of the Department for International Development (DFID) Bangladesh expressed the commitment of DFID in



promoting competition policy and law as a component of their private sector development strategy, which has an important bearing on growth and poverty reduction in developing countries. He also noted that the current project was imperative to permeate the achievements of the 7-Up1 project implemented earlier by CUTS in seven developing countries (with support from DFID), to other parts of the developing world.

The event was well covered both by the electronic and print media. The Press Release can be found in the 'Advocacy' section of the 7-Up2 project webpage: www.cuts-international.org/7-Up2

Reconnaissance visit to Dhaka

In continuation of the trip to Dhaka for the purpose of launching the project there, a member of the Project Coordination and Management Unit extended his visit for a week in order to make contacts with some key people in the capital, and tried to assess the perception of the various stakeholder groups towards the concept of competition policy there.

Though the acting Chairman of the Bangladesh Tariff Commission thought that competition is a 'dead issue', as it was no longer being discussed under the WTO, he admitted that the implementation of competition law

would help protect the interest of the domestic companies (especially the myriad SMEs). Representative of the Industrial Promotion and Development Company, a financial institution of Bangladesh thought that some policies of the government were actually creating entry barriers for businesses and needed to be appropriately pruned to create an enabling environment for the private sector to flourish. Meetings with people from the business community and the press were also useful, as instances of anti-competitive practices prevalent in Bangladesh could be garnered from these meetings.

Towards a Functional Competition Policy for India (FunComp)

The country report entitled 'Towards a Functional Competition Policy for India' is being readied now. Individual chapters are contributed by experts of the country, which after review by commentators, will get finalised.

The Steering Committee of the project, consisting of experts from the academic circle, media and government officials, met on 3rd July 2004 to review the progress of the FunComp Project and finalise the future course of action. It also took stock of various other emerging issues such as the (United Progressive Alliance)

Government's stand on Competition, and the ongoing case in the Supreme Court regarding the controversial appointment of the Chairperson of the Competition Commission of India. Some other topics relevant in the prevailing economic regime of the country were also discussed viz. the proposal to establish a national steel regulatory commission, Government intervention vs. privatisation, and lessons in competition policy from other countries' like UK, Singapore, Australia, Brazil and South Africa.

The third Steering Committee

meeting was held on September 4, 2004 at New Delhi, and detailed discussions were held on the progress of the report. Vinod Dhall, Member of the Competition Commission of India was present as a special invitee in this meeting. Apart

This is a flagship project of CUTS C-CIER in India involving a detailed assessment of the competition regime in the country. Several experts in the country, working on the topic and on associated regulatory issues, have been roped into the project through a National Consultation Group – entrusted with drafting the report of the project. FunComp project is incorporated in the 7-Up2 Project and the project report constitutes the India chapter of the 7-Up2 Project.

from taking stock of the progress of the project in detail, several regulatory issues pertaining to the infrastructure and utilities sectors were discussed.

It was informed that CUTS was organising a one-day seminar on Functional Competition Policy for India on October 5, a day before the WTO-ESCAP Seminar on Competition Policy for Asia-Pacific in Hyderabad. The agenda would include current issues in competition policy of national concern, the Indian perspective on competition policy

and consumer protection interface and international experiences on competition policy including instances of cross-border abuses - and lessons to be learnt for India.

It was also reported to the participants that a 2-day project review meeting would be held on 30-31 October 2004 in Jaipur to critically analyse the detailed FunComp project report. This meeting would focus on each chapter individually and the outcomes of the discussions from the meeting would be suitably incorporated.

Starting next February, one-day outreach seminars (a series of meetings) would be organised in select Indian cities to initiate exercises aimed at building awareness about the subject at the micro level. The start to this end would be marked by releasing the project report locally. The seminar would consist of two sessions - morning session, which would be an exclusive media session and evening session, an interaction with local participants to make them understand the subject and obtain their feedback.

CUTS critique of the Unified Licensing Regime proposed by TRAI

The Telecom Regulatory Authority of India (TRAI) is finalising its recommendations on unified licensing regime (ULR).

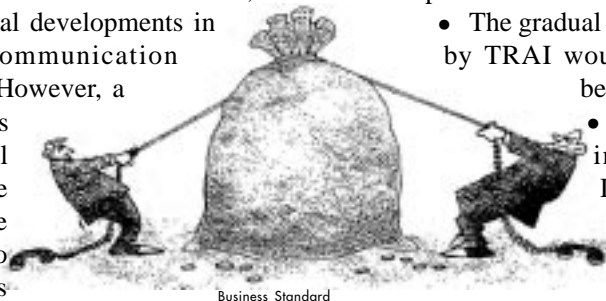
The main objective of the ULR is ensuring unhindered growth of new applications and services, leveraging on technological developments in the information and communication technology (ICT) sector. However, a closer look at TRAI's recommendations reveal that some features of the regime that encourage efficient small operators to cover less-developed areas in terms of telecommunication facilities; provide easy entry for new operators and encourage adoption of new technology have taken a back seat in the process.

CUTS has extracted certain points of concern from

the recommendations prepared by the government agency that are presented here:

- The proposed entry fee of over US\$24mn for unified licence would be a huge *entry barrier* for new operators.
- The gradual reduction in the entry fee proposed by TRAI would affect competition and deny benefits to consumers.
- The proposal is heavily loaded in favour of the National Long Distance (NLD) and International Long Distance (ILD) operators.

CUTS believes that the ULR gave the regulatory agency (TRAI), an opportunity to address all anomalies in the system and encourage growth of new technologies. Unless the above concerns are addressed appropriately, there is little possibility that the objectives of the regime would be fulfilled.

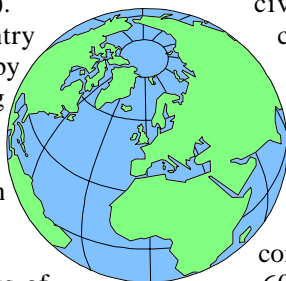


Citizen's report on the state of competition law in the world (CiRComp)

C-CIER has built up a dynamic coalition of organisations working on competition and regulation issues and developed an interactive forum INCSOC. Members of INCSOC (www.incsoc.net), representing 53 countries from various parts of the world, are currently engaged in contributing to the 'Citizen's report on the state of competition law in the world' (CiRComp).

This report would comprise of country papers on competition regimes prepared by members of INCSOC, representing different countries. The report would consist of the following chapters:

- Introduction: History of Competition Policy and Law (CPL)
- Countries with CPL
- Countries in the Queue: in the process of enacting a competition law
- Countries without a CPL and not in the queue: without any plan of enacting a competition law.
- Regional and other international arrangements: focusing on existing/proposed competition frameworks in various regions including European



Union, Caribbean Community (CARICOM), Common Market for Eastern and Southern Africa (COMESA), North Atlantic Free Trade Agreement (NAFTA), Southern African Development Community (SADC) etc.

- Way Ahead: suggestions and recommendations (from civil society perspective) for strengthening competition regimes, mainly at national and supra-national (regional) levels.

The country-specific chapters would provide basic information about the macroeconomic situation, prevailing legal and institutional structures and the history of competition law (including what triggered the enactment of the competition law in each country).

60 country papers have been received with commitments from 40 more researchers to file in their country reports soon. C-CIER plans to launch the CiRComp report in early 2005. This exercise is considered to be a dress rehearsal for the dream project that the members of INCSOC would be engaged in starting from 2005: the World Competition Report (WCR).

Frederic Jenny appointed Judge in the French Supreme Court



History was created on 1st September, when Frederic Jenny, former Vice-chairman of the French competition authority (Conseil de la concurrence) was sworn in as a judge of the French Supreme Court (Cour de cassation) in its chamber on matters covering Commerce, Economics and Finance.

This is not only a first in France, but perhaps elsewhere in the world, when a non-judicial person has been appointed as a judge of a country's apex court. It is worthwhile to mention that Professor Lewis Evans, an expert on competition and a non-judicial person is presently a judge in the New Zealand High Court.

(Appointment of a non-judicial person to head the new Competition Commission of India is already a matter of debate before the Indian Supreme Court, and CUTS has intervened in the matter, proposing recommendations that experts should be allowed to head the Commission, which has to carry out functions requiring expertise on the subject of competition and regulation)

Jenny, an economist and competition expert of global repute, has been appointed on the bench ostensibly to deal with cases with significant economic aspects, such as competition and market regulation.

In his present dispensation, Jenny will continue to work on competition issues. He has been the chairman of the WTO Working Group on Trade and Competition, and continues as the Chairman of the OECD Competition Committee.

At CUTS, we are proud of the fact that he continues as the founder Chairman of the Advisory Board of the CUTS Centre for Competition, Investment and Economic Regulation (C-CIER).

Competition and pro-poor regulation

Pradeep S Mehta, Secretary General of CUTS International was invited to attend the IIIrd International Conference titled "Pro-poor regulation and Competition: Issues, Policies and Practices", organized by School of Public Management and Planning, University of Stellenbosch in association with the Centre on Regulation and Competition of the University of Manchester, UK. This international conference was held from 7-9 September in Cape Town, South Africa.

The conference was organised to provide a forum for the policy makers, regulators, practitioners and academicians working on the following themes and related areas of competition and regulation: competition, innovation and development, competition, policy institutions and practice, regulation and the poor, regulatory impact assessment etc.

Mehta presented a paper on 'Competition policy and law, economic development and the poor' in the conference.