



**Seminar on
Enhancing Development through a Competition Culture
August 14, 2008, New Delhi, India**

Proceedings

I. Introduction

A seminar on ‘*Enhancing Development through a Competition Culture*’ was organised jointly by CUTS International and the International Network of Civil Society Organisations on Competition (INCSOC) on 14th August 2008 at the India International Centre, New Delhi (India). The purpose of the meeting, attended by over 50 participants from across 20 countries was to orient the participants on new approaches and tools of understanding competition issues, from the perspectives of economic development in the third world. The speakers included the most respected international competition experts and Indian scholars and practitioners. Below, is a brief proceeding of the seminar.

II. Opening Session

1. The meeting started with welcome remarks from Pradeep S Mehta, Secretary General, CUTS, who welcomed all participants. He also mentioned that the meeting is a sequel to the previous 2-day international conference on ‘Global Partnership for Development’ that was organised by CUTS, jointly with FICCI as a part of the silver jubilee celebration of CUTS.
2. Mehta also emphasised on the importance of regulation in controlling market failure and behaviour. He pointed out that CUTS has been working with various national governments and international organisations (including the International Development Research Centre, Canada and the Department for International Development, UK) over the years on competition policy and law issues, among other subjects. He asserted that one of the objectives of this workshop was to showcase new approaches to linking competition issues with public (development) policy discourses, through publications by DFID and IDRC. Mehta apologised for the absence of the Honourable Minister of Corporate Affairs, India Mr P.C Gupta, who could not make it to the seminar. He also informed the participants that CUTS would launch an ‘Advance Copy’ of a “Competition Toolkit for India” towards the end of this meeting.

III. Integrating Competition into public policy discourses: New Approaches

Speaker I: Dr. Stephen McGurk, Director, IDRC South Asia and China Office, India

3. Stephen McGurk, Regional Director, South Asia Office, IDRC pointed out that IDRC’s research portfolio for India is the largest in the world, and that the



organisation is committed to supporting researchers in developing countries. The world focus is generally shifting from trade in commodities to trade in services and cross border issues such as trade liberalisation, labour market, competition policy etc. Thus IDRC started about eight years ago, to look at competition policy and law issues, particularly its linkages and institutional aspects.

4. IDRC's aim is to bolster the capacity of competition authorities (especially in the developing countries) by equipping them with resources to address constraints faced in enforcing competition rules. Sometime ago, IDRC launched a global competition on competition issues, which has brought to the fore certain interesting findings. Firstly, it became evident that there was a need for forging an alliance between competition authorities, government, civil society, media, research institutions etc. to assist competition authorities. Further, that there was a need for networking and cooperation between competition authorities – especially since there were significant anticompetitive practices taking place beyond borders but affecting local markets, worldwide.
5. One of IDRC's strategies is to produce publications regularly to reach out and help in policy debate. One such recent publication, co-authored by Phil Evans and Susan Joeques, entitled 'Competition and Development: The Power of Competitive markets' (http://www.idrc.ca/in_focus_competition/ev-122751-201-1-DO_TOPIC.html), was showcased before the participants.

Speaker II: Pradeep S Mehta, Secretary General, CUTS International, India

6. He briefly highlighted the main recommendations from the book which included discussions on the following aspects:
 - The need to enact competition legislation that is strong and effective;
 - Establishment of a competition agency to implement the legislation;
 - Recruit expert staff to implement it;
 - Need for Judges to receive specialised training in competition law;
 - Need to understand that there will be opposition to competition law;
 - Need for alliances between competition authority and various stakeholders;
 - Need for leniency provision to bust cartels;
 - Role of civil society in monitoring markets.

Speaker III: Roger Nellist, Acting Head, Growth and Investment Group, DFID, UK

7. Roger Nellist made a presentation in which he introduced the Competition Assessment Framework (CAF, <http://www.dfid.gov.uk/pubs/files/caf-2008.pdf>), produced by DFID, UK – a recent approach to shaping national competition regimes by considering the contours of various government policies. His presentation further elucidated the role of competition policy as well as DFID's support of work on competition, including technical support and research on competition issues. This included four major projects that DFID has supported CUTS in implementing in 26 African and Asian countries, till date.



8. Roger observed that the CAF was prepared in response to the realisation that there are big distortions in markets, especially in poor countries, which are not obvious and have to be ‘dug out of each market’. This includes barriers to competition which are often overlooked or ignored. CAF is a tool that is expected to improve the process of evolution of competition regimes. CAF can be used by policy makers and other stakeholders in developing countries, is built on ‘good practices’ and recognises existing limitation with respect to data availability, capacity and experience. It can be used to identify relevant markets, competitors and market structures, as well as barriers to entry and government policies or institutions that may hinder competition.
9. Examples where CAF has been used include in India, Bangladesh and Vietnam. In association with the Overseas Development Institute (UK), DFID is planning to implement the same in additional countries of Africa and Asia.

Floor Discussion

10. After the presentations, the floor was opened up for discussion. Issues raised from the floor which were responded to included:
 - extent to which concerns from the flooding of commodities of inferior quality from China can be assessed through CAF;
 - whether CAF can also be extended to services sector such as education, etc.?
 - extent to which government, which can be the biggest anticompetitive player, can be controlled by a competition law

IV. Competition Policy and Economic Development: Is the link obvious?

Speaker I: Amitabh Kumar, Director General, Competition Commission of India, India

11. Amitabh Kumar was the first speaker of this session. The importance of competition in putting pressure and providing incentives to make enterprises competitive was explained. Competition helps productive and more efficient enterprises to enhance their market share at the cost of less competitive ones, which either exit or become more efficient (and hence competitive) to remain in the market. Such contestability enhances competition in the market, and brings benefits by offering better products at lower prices, ushering in new demand and facilitating economic development.
12. The importance of market driven economies, which competition policy aims to promote is also evident from India, where the 1991 market reforms resulted in more than 286 million Indians enjoying the benefits of low tariff mobile telephone and a much larger number of Indians being able to fly today than earlier. All this could be attributed to increased competition in the sectors. During the same



period, GDP had also grown from 3.5% to 6.5% in the late 1990s and further to 7.8% during the Tenth Five Year Plan, as shown by the Economic Survey 2007-2008.

13. The importance of competition policy to supplement the competition law has already been recognised in India, as the government has already put in place the process for the adoption of a National Competition Policy, with the expectation that it would bring about a competition culture, maximise economic efficiency, protect consumer interest and improve international competitiveness. The success of competition law however depends upon its acceptance by the consumers, producers and policy makers, all of which points towards the need for competition advocacy.

Speaker II: *Philippe Brusick, Former Head, Competition and Consumer Policy Branch, UNCTAD, Switzerland*

14. Philippe Brusick elaborated on benefits of competition policy and law including static efficiency gains (low prices, better quality and more choice) and dynamic efficiency gains (efficient allocation of resources, management, processing and technological improvements and product innovation). Competition is also important in achieving efficiency in infrastructure sector, utilities, distribution, tourism, mining and agriculture, he observed.
15. Developing countries suffer most from anticompetitive practices due to inadequate infrastructures, low capital formations, asymmetric information and low enforcement capacity. Given that most developing countries have embarked on market oriented reforms, there is need for competition rules to monitor the process of privatisation, trade liberalisation and safeguard against international cartels, abuse of dominance by larger firms and mergers and take-overs monopolising markets.
16. It is also important that developing countries adopt a gradual approach towards implementation of competition law, prioritising areas in line with scarcity of resources. It is also important for competition authorities to build credibility by publishing reports, explaining actions and seeking public opinion and support from the media.

Speaker III: *R Shyam Khemani, MICRA, USA*

17. R Shyam Khemani, renowned competition expert and formerly an Adviser on Competition Policy to the World Bank spoke about certain commonly observed industrial characteristics of developing countries which necessitate the need for competition policy such as high concentration, conglomeration, close connections between government and business. An explanation on what constitutes an effective competition policy was also provided, which include a competition law and other policies that foster inter-firm rival and entry.



18. Practical research results, demonstrating the relationship between competition policy and economic growth were presented in the form of graphs. The results demonstrated a positive relationship between competition, entry and growth as well as a positive correlation between GDP per capita and intensity of local market competition. This demonstrates that there is a link between competition and economic development.
19. In conclusion, Shyam talked about constraints to promoting competition, such as lack of political will, underdeveloped capital and financial markets, weak legal frameworks, institutional capacity and lack of resources, skills and staff turnover.

Floor Discussion

20. The floor was opened up and various issues were raised. These included:
 - extent to which competition can curb corruption;
 - the rationale for the regional approach to competition
 - whether competition policy can really directly improve livelihoods; and
 - how competition policy can address the ability to compete in addition to the opportunity to compete

V. Appreciation of relevant competition issues

Speaker I: Dr. S Chakravarthy, Former Member, MRTP Commission, India

21. Dr S Chakravarthy presented on dominance and its abuse, where dominance was defined as position of strength in the relevant market, enabling the holder to operate independently of competitive forces in the market. In determining dominance, the tools and procedure for defining relevant market, such as substitutability, physical characteristics, consumer preferences and barriers to entry were discussed.
22. Examples of abuse of dominance, such as discriminatory pricing, predatory pricing, tie-in rebates, exclusionary practices and refusal to deal were given. Practical examples on unfair pricing, discriminatory rebates, tie-ins, and predatory pricing were given and described in detail.
23. Dr Chakravarthy pointed out that abuse of dominance militates against economic development and may kill innovation. Moreover, it militates against consumer interests. Thus benefits in “gunning down” abuse of dominance were discussed, such as lower prices, more choice through new entrants and better products through innovation. This would also result in optimum allocation of resources and enhancement of efficiency in enterprises.



Speaker II: *Simon Evenett, Professor, University of St. Gallen, Switzerland*

24. Prof Evenett's presentation was on the harm done by international cartels to developing countries and focused on types of cartels, effects of cartels, examples of cartels and what developing countries can do about them.
25. Cartels were defined and listed as belonging to four categories, namely price fixing, market sharing, allocating quotas and bid rigging cartels. It was also pointed out that the nature of the agreement need not be written and that cartels can also be national or international. Effects of cartels such as higher prices, redistribution of income from customers to suppliers, reduction and elimination of benefits of domestic reforms and limiting transfer of technology to third parties were discussed.
26. Some benefits of busting cartels were given through practical examples, which include some significant savings of US\$12 million and \$17.7 million in Mexico and Lima respectively after stopping a milk and poultry cartel. Other countries such as India, Sri Lanka, Pakistan, South Africa, Tanzania and Zambia benefited significantly by deterring cartels through simply establishing competition agencies without necessarily taking any action against the cartels.

Speaker III: *Jyoti Sagar, Founder Partner, J Sagar Associates & Co., India*

27. Jyoti Sagar provided a presentation on mergers and acquisitions, where he started with the definition of mergers and acquisitions, and then outlined why it was important to regulate them. He also described the three types of mergers, namely vertical mergers, where firms in a supplier-customer relationship merge, horizontal mergers, involving companies in the same line of business and conglomerate mergers, where companies are in different markets.
28. The various competition concerns associated with each merger were also discussed. It was pointed out that horizontal mergers are normally regarded as the most harmful to competition as they directly result in a decrease in the number of players.
29. The provisions on mergers and acquisitions in various competition laws was also discussed, ranging from both developed countries such as in UK, US and Australia, and developing countries like India.

Floor Discussion

30. The following interesting issues were discussed:
 - whether the cost benefit approach used in cartels can also be used in abuse of dominance cases;
 - rationale and concept of the leniency programme on busting cartels



- whether monopoly was really bad, given that there are alternative schools of thought, one of which says monopoly is good for innovation

Closing remarks

31. Closing remarks were given by Pradeep Mehta, who thanked all participants for the lively discussion at the workshop. He also thanked the presenters for taking some time off their busy schedules to share their experiences at the workshop. He was also pointed out that there was a need for more similar workshops, in which participants are informed of the basics of competition policy and law especially how it impinges on development issues, and he hoped that international development partners like IDRC and DFID and others would continue to support this cause.

'India Competition Toolkit' released

CUTS released an 'Advance Copy' of a Competition Toolkit for India. This document is expected to serve as a guidebook for practitioners and scholars on issues related to the enforcement of the Competition Act 2007 in India. While releasing the Toolkit, Pradeep Mehta opined that he expected the toolkit would not only help the department and the Competition Commission of India in enforcing the competition law of the country, but would also serve as an inventory of information on competition enforcement issues (collated from across the world) for other stakeholders like academicians, civil society organisations, business, legal fraternity, etc. He added that the Toolkit explains complicated competition issues in simple yet comprehensive language and draws reference from illustrations across mostly other developing countries of how they have enforced their respective competition laws in specific cases



Pradeep S Mehta and Amitabh Kumar with the Indian Competition Toolkit

Ends.