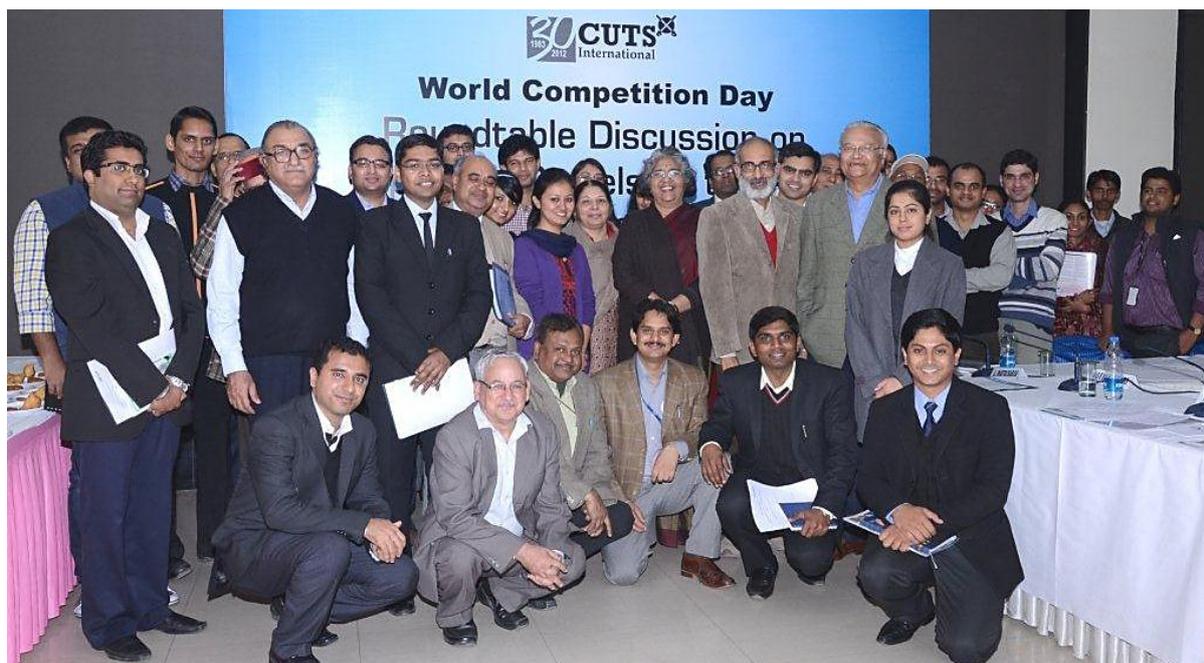


World Competition Day

Roundtable Discussion on 'Impact of Cartels on the Poor'

Wednesday, 05th December, 2012; New Delhi



Opening Session

Effective Competition Regime Increasing Consumer Welfare and Economic Growth

Pradeep S Mehta, Secretary General, CUTS speaking on the reason behind celebrating World Competition Day on 5th December every year flagged off the discussion. He mentioned that on 5th of December 1980, the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (UN Set), have been approved by the UN Conference on Restrictive Business Practices. Therefore, CUTS has been running the campaign for adoption of 5th of December every year as the World Competition Day.

Quoting the definition of Organisation for Economic Cooperation and Development (OECD) on cartel "as the most serious violation of Competition Law" he opined that it harms consumer by raising

prices unnecessarily and thus making goods expensive for the poor consumer. Citing examples of various other products *viz* cement, bread, electrical equipment, liquor, transportation etc. he mentioned that cartels are capable of directly affecting the daily life of the poorest of the society and undermining the efforts of the government to provide social security to this section of society. Therefore, in order to sharpen measures for protecting consumers from cartels, this year on the World Competition Day the dedicated theme is “Impact of Cartel on the Poor”, as mentioned by Mehta.

Ganguly, MP, Rajya Sabha defining cartelisation as a process “which benefits who cartelise but hampers against whom they cartelise” discussed cartelization from business as well as national perspective and said that apart from business cartelisation there are few other cartelisation which are inter-linked or have equally cascading impact on the poor, i.e. political and non-state cartelisation. He stated that the discussion on World Competition Day cannot be complete until these peripheral issues are not unfolded.

Geeta Gouri, Member, Competition Commission of India (CCI) mentioned that cartels are most vicious anticompetitive practice. With special emphasis on the agriculture market, she opined that cartelisation in this sector is impacting consumers and farmers who are not getting a fair price for their products. She suggested that a topic that needs to be further studied is the agriculture market and the primary level *mandi* which are cartels controlled by a particular class of traders all over the country.

E M Sudarsana Natchiappan, MP, Rajya Sabha, who joined the session late, echoed the same sentiments as Geeta Gouri, when he cited the example of the *mandi* traders of Tamil Nadu, who buy tomatoes collusively for a price as cheap as Rs 2 but sell it to the vendors at Rs 25 at other place in Tamil Nadu. In this context, he commented that the negative impact of the cartelisation is felt by the producer and the consumer, as because on the one hand the producer does not get a fair price for his produce while consumer, on the other hand, does not have a choice but to pay high price for products and the intermediaries between the two pocket the entire profit in the process. In his closing remarks, he referred to the burning issue of the day, i.e. Foreign Direct Investment (FDI) in Retail and said that, the consumers will get better fair price and quality if FDI in Retail is allowed.

Roundtable Discussion

‘Impact of Cartels on the Poor’

Aditya Bhattacharjea, Professor, Delhi School of Economics initiated the discussion by elucidating the genesis of modern competition law regimes in the world, i.e. the Sherman Act enacted by the US. Later on it was pointed out by Mehta that the first country to adopt a Competition Law was Canada

(1889). The statute was highly debated and deliberated upon before it was passed, therefore garnering support from legislators as well as consumers and businesses.

He further elucidated that cartels were called 'Trusts' and it was understood that trusts caused the prices of products to be hiked and therefore affected the standard of living of citizens. Other jurisdictions followed, and in the decade from 1980-1990, many developing countries including South Africa, Zambia, Peru, etc. enforced formal Competition Law legislations. He mentioned that cartels which directly affected the common consumer, such as bread and chicken cartels were effectively tackled in South Africa, and paved the way for protection of the poor citizens from the adverse impact of cartels.

Bhattacharjea touched upon the Indian scenario, and mentioned that the Indian Competition Act was passed in 2002 unfortunately without much deliberation and debate by the Parliament and legislators. The CCI was finally established in 2009 after a delay of almost seven years and unfortunately the first few cases that were adjudicated upon by the CCI had little far reaching effects, as the businesses and cartels that were targeted, catered only to the elite class of the society. As per Bhattacharjea, only recently has the CCI started coming down on cartels which would affect even the poor of the country, e.g. the cement cartel. Also, the informants of the CCI who bring cases are not common consumers, but public sector enterprises, which cause the benefit of orders to be wholly absorbed by the informant themselves, preventing the poor consumers from receiving the benefit of CCI orders. It is empirical therefore, Bhattacharjea deliberated, to empower the poor consumers directly so they can be complainants too and not only bring cases which affect them, but also directly derive the benefits of the orders of CCI.

Sri Ram Khanna interpreted the issue in an interesting way and shared his view that until and unless all the aspects of the Competition Law regime in place in India are not perfected; cartels would exist and continue to affect poor consumers. He was of the opinion that the CCI must be given more powers for it to be more effective than its predecessor, the Monopolies and Restrictive Trade Practices (MRTP) Commission which was unable to combat and tackle cartels during its tenure. He mentioned that the challenge is with the nature of the offence, as in cartel agreements there is not a lot of tangible evidence that can be gathered or found. He emphasised that the investigation must be done in a more systematic and professional manner. He also raised the issue of finality of orders of the CCI. Appeals against the orders of CCI are allowed to the Competition Appellate Tribunal (COMPAT) and to the Supreme Court (SC) thereafter. The magnitude of fines being levied by the CCI are in themselves a guarantee that the matter would be appealed and fought till the highest court by the businesses, thus one would need to wait and watch, the effectiveness of the CCI order. As he rightly elucidated, cartels affect the rich as well as the poor and every measure must be taken to combat this evil.

Hariprasad C G, Associate Fellow, CIRC eloquently provided his views about the possible positive effects of cartels on the poor. He reasoned that due to increased competition in the market, the smaller businesses are not able to sustain themselves, therefore leading to unemployment for the poor employees as well as employers. As India is an agrarian economy, farmers must look after their welfare and form unions so as not to be exploited by the union of the middlemen. Even though their forming a union would be equivalent to behaving on the lines of a cartel, it might be necessary for the protection of rights of the poor in the country.

Geeta Gouri further elaborated that what is of importance, is to make sure that cartels once broken do not recur, the possibility being high as cartels are very beneficial to businesses that are part of cartels. She also suggested that a strong leniency programme is vital to the competition regime in India as with the passage of time and constant increase in liberalisation; cartelisation and the tendency to form cartels are also steadily on the rise.

Pradeep S Mehta gave his closing views by reiterating the importance of a strong enforcement authority with systematic functioning and proper documentation. He also discussed the need to staff the CCI with professionals who are capable and efficient, while citing the examples of the Competition Commission of Pakistan and Italian Competition Commission. He summed up the day's proceeding by stating that all kinds of cartels – macro or micro – have an effect on the poor, and need to be tackled strongly.

AGENDA

Date: Wednesday, 05th December 2012

Venue: The Deputy Chairman Hall, Constitution Club of India, Rafi Marg, New Delhi

1500 – 1530 Registration

1530 – 1630 Opening Session, “Effective competition regime – increasing consumer welfare and economic growth”

- Pradeep S Mehta, Secretary General, CUTS
- Dr. E. M. Sudarsana Natchiappan, MP, Rajya Sabha
- Dr. Ashok S Ganguly, MP, Rajya Sabha
- Geeta Gouri, Member, Competition Commission of India

1630 – 1730 Roundtable Discussion on „Impact of Cartels on the Poor“

Speakers (10mins)

- Aditya Bhattacharjea, Professor, Delhi School of Economics
- Geeta Gouri, Member, CCI
- Prof. Sri Ram Khanna, Managing Trustee, VOICE
- Hariprasad C.G., Associate Fellow, CUTS Institute for Regulation & Competition

Chair: Pradeep S Mehta, CUTS

1730 – 1830 Tea/Coffee & Snacks