

CUTS IN ACTION

25 years
1982-2007
CUTS
International

April-June 2007

When Politics Trumps Economics



A host of political, economic and governance constraints frustrate the implementation of regulatory laws in developing countries.

Since economic liberalisation started, there have been considerable policy changes in many developing nations, with increased reliance on market forces. Several transitional economies adopted competition laws as a follow up to market-oriented reforms. Additionally, many opened up for private players sectors until then reserved for the public sector. This focus on competition and regulatory laws in developing economies reflects the substantial changes happening in their governance systems.

What implication has this new form of economic governance had for the developmental objectives in various countries? The answer is patchy. China, for instance, approved a competition law in June 2006, almost 30 years after it began economic reforms, yet the country has moved rapidly from low to middle-income status. Neither of the two major growth stories, Botswana or Mauritius, had a formal competition law, until the latter passed its Competition Act in April 2003.

'Political will' turns out to be the key factor that determines the effective implementation of competition laws. In Malawi, though the Government claimed to support competition, it took the country eight years to establish the Competition Commission! In Bangladesh, the Monopolies and Restrictive Trade Practices Ordinance remains only in the statute book.

In Zambia, the political will to get rid of the financially-drained state-owned enterprises overshadowed other economic priorities. Though the Competition and Fair Trading Act was passed in May 1994, following donor insistence, the competition authority itself was operationalised only in May 1997.

Regulatory Strength

The political will to create a strong regulatory agency from the outset is crucial, as only a strong regulator can balance the demands of various interest groups, among other challenges. Unfortunately, in most cases, the state may try to further its interests, by creating a weak regulator, over which it can exert control.

Since regulatory reforms are largely concentrated in public utilities, where there is a strong public interest factor, it is difficult to envisage how regulatory reforms would be insulated from overriding political considerations.

In South Africa, the competition law puts public interest objectives alongside efficiency objectives, raising the profile of these imperatives, which seek to ensure coherence across diverse policy areas. Nonetheless, governance challenges are likely to arise when competition authorities assess non-competition criteria, without a transparent processes for doing so. In such cases, administrative discretion in interpreting concepts such as 'fair' competition is often the starting point for corruption in developing countries.

Politicians often stall the implementation of competition principles, for fear of losing certain powers, which they use to satisfy vested interests. However, little effort has been made to identify the potential gains for politicians from promoting competition measures, including how it can help them retain/enhance their public image/support-base.

Other Obstacles

Implementation of competition and regulatory laws also faces other roadblocks. Civil servants consider competition/regulatory law an attempt to reduce their prerogatives. Businesses generally oppose competition regimes, as they feel that it would reduce their market share and profits. Hence, the adoption and the implementation of a competition regime may easily be hijacked by powerful vested interests.

Competition law may covertly protect politically well-connected companies from 'fair' competitive forces, guaranteeing monopoly rents and killing innovation.

While the cornerstone of the current development paradigm is a private-sector-led growth strategy, implementing economic reforms in developing countries is challenging, because of the disregard for the rule of law, weak judicial institutions and ineffective commercial codes and bankruptcy laws.

A host of political, economic and governance constraints frustrate the implementation of regulatory laws in developing countries. Despite this, most developing countries have gone beyond contemplating whether they want a competition or regulatory law or not and are debating how to structure their laws and how best to implement an effective enforcement regime, within the constraints.

Pradeep S. Mehta

Pradeep S Mehta, Secretary General

Combating Corruption in Rajasthan

CUTS Centre for Consumer Action, Research & Training (CUTS CART), in association with Partnership for Transparency Fund (PTF), organised the launch meeting of the project entitled, 'Combating Corruption in Rajasthan State, by Applying Right to Information (RTI) Act as a Tool' in Jaipur, on April 18, 2007. The project is being implemented in two administrative districts of Rajasthan state, viz., Jaipur and Tonk, with a rural community-based approach. Its overall objective is to generate awareness and provoke/encourage the common citizens towards the application of RTI Act.

Delivering the inaugural address, Wajahat Habibullah, the Chief Information Commissioner (CIC) of India, said "RTI Act is a tool, not a weapon". He opined that RTI Act should be used in a cordial manner that could address corruption and ensure transparency and accountability. He further added that there is an ardent necessity to



Wajahat Habibullah delivering the inaugural address

orient public as well as public servants toward RTI Act so that it can be collectively used for the development of the country. He responded to a number of questions raised by the participants. C D Arah, CIC Andhra Pradesh, pointed out the need to build capacity of general public regarding the usage of RTI Act.

(www.cuts-international.org/pdf/ReportofLaunchMeeting-RTI.pdf)

Identifying Precise Policies

CUTS Africa Resource Centre (CUTS ARC), Nairobi, with support from Friedrich Ebert Stiftung (FES-Kenya), organised an Economic Roundtable, entitled 'An Enabling Environment for Socio-Economic Development: Identifying Precise Policies and Legal Framework for Kenya' in Nairobi, on June 07, 2007.

The objective of the Roundtable was to enable participants to interrogate Kenya's national development imperatives against the existing legal and policy framework, so as to explore and determine what appropriate policies and legal framework would be needed for the country to achieve development.

Status of Competition

CUTS Centre for Competition, Investment & Economic Regulation (CUTS C-CIER) organised the fourth National Reference Group Meeting (NRG) under the project, 'India Competition & Regulation Report' (ICRR), in New Delhi, on May 14, 2007.

The meeting was organised to review the first draft of the report. Nitin Desai, Chairman ICRR NRG, welcomed all the participants and invited them to give their comments on the report.

Following the discussion, the proceedings focused on the topics:

Competition Regime and Widening Access; the Agenda for Competition Policy and Law in India; Regulatory Issues in Transportation; Competition Issues in Pharmaceuticals; Competition Issues and Business Welfare; Competition Regime and Consumer Welfare; and India Competition Perception Index.

EPA: Boom or Doom

CUTS ARC, Lusaka, in collaboration with the Service Centre for Development Cooperation (KEPA) Zambia, Civil Society Trade Network of Zambia (CSTNZ), Participatory Ecological Land Use Management (PELUM) and Jesuit Centre for Theological Reflection (JCTR), organised a National Conference, entitled 'EPA: Boom or Doom for Zambia' in Lusaka, on May 23, 2007.

The workshop aimed at building consensus on the ongoing Economic Partnership Agreement (EPA) negotiations between Eastern and Southern Africa and the European Union (EU).

Toolbox Analysis Session

CUTS Centre for International Trade, Economics & Environment (CUTS CITEE), Jaipur, organised the toolbox analysis session under the Grassroots Reachout & Networking in India on Trade & Economics

(GRANITE) project in Kolkata, on May 28-29, 2007.

Representatives of the project partners from eight states across India attended the conference apart from representatives from Oxfam Novib, The Netherlands and Oxfam India, New Delhi.

The objective of the conference was to provide a discussion forum to deliberate various aspects of the implementation of the GRANITE project Phase II and decide on its outcomes.

(www.cuts-citee.org/pdf/Report-GRANITEPhaseII-May07.pdf)

Enhancing Competition

CUTS Institute for Regulation and Competition (CIRC), jointly with the Institute of Company Secretaries of India and the Centre for Corporate Research & Training (ICSI-CCRT), organised a half-day lecture on 'Competition Law and Policy in India' in Mumbai, on April 18, 2007.

Surendra Kanstiya, Former President of Consumer Guidance Society of India (CGSI) addressed the lecture, which was attended by 45 participants including budding professionals, like company secretaries, lawyers, chartered accountants, etc., from Mumbai and elsewhere. (www.circ.in/pdf/ALS-07.pdf)

Aid for Trade: One Year on

Gideon Rabinowitz of CUTS London Resource Centre (CUTS LRC) participated in a conference, entitled 'Aid for Trade: One Year on – How Much, for Whom, and the Institutional Challenges?', organised by the Overseas Development Institute (ODI) in London, on May 24, 2007.



He made a presentation on 'Diagnosing TRA Needs: Are We Asking the Right People? Are We Asking the Right Questions? Are We Listening?' He also highlighted the potential danger of commitments being made in the Doha Development Agenda (DDA), based on what countries will receive on Aid for Trade, rather than on their true perspectives on trade needs.

Peer Review of Competition

Alice Pham of CUTS Hanoi Resource Centre (CUTS HRC) attended the 4th East Asia Conference on Competition Law and Policy, hosted by the Vietnam Competition Administration Department, in collaboration with the Japan Fair Trade Commission (JFTC) and the Asian Development Bank Institute (ADBI) in Hanoi, on May 03, 2007.

The two main themes of the conference were to present the recent

developments of competition policy and law in East Asian economies and conduct a trial peer review of the Vietnam Competition Law 2004.

The conference helped in breeding an atmosphere of inter-agency cooperation in the region and provided a valuable forum for exchange of views and information.

Trade in Services

Pranav Kumar of CUTS CITEE was invited by the Institute of Policy Studies (IPS), Sri Lanka, and the Friedrich-Ebert-Stiftung (FES) to participate in the international conference on 'Trade in Services in South Asia: Opportunities and Risks in Liberalisation', in Colombo, on April 04-05, 2007. In one of the sessions, he spoke on services liberalisation in South Asia.

Task Force Meeting

Rajeev D Mathur, Executive Director of CUTS, attended the first Greater Mekong Sub-region (GMS) Task Force meeting organised by the Institute of World Economics and Politics (IWEP) in Hanoi, on April 26, 2007.

He presented the advocacy document of the project entitled 'South-South Economic Cooperation: Exploring GMS India Relationship'. The project was supported by the Swiss Agency for Development & Co-operation, Berne, Switzerland.

Warwick Commission on World Trade

Pradeep S Mehta attended the first overseas meeting of the Warwick Commission, UK as one of its 16 Members on 'The Multilateral Trading System after Doha' in Toronto, on June 15-16, 2007.

During the two-day session, the Commission considered the results of its survey of 250 experts on the future of trade liberalisation and covered issues such as the role of the WTO, challenges to the WTO's Dispute Settlement Mechanism, equity in the trade system and the impact of preferential trade agreements.

The Warwick Commission is examining the future of the world trade system and brings together trade experts from around the globe in addition to making practical recommendations about how the trade system can be improved.

To know more about the Commission, please visit: www2.warwick.ac.uk/research/warwickcommission/news/

SHORT CUTS

- Suprita Jayaram of CUTS CITEE participated in a Symposium on 'Agriculture Crisis and Farmer's Commission: Response from the States', organised by the Institute of Development Studies, Jaipur, in collaboration with Oxfam International in Jaipur, on June 26, 2007.
- Madan Giri Goswami of CUTS Centre for Human Development (CUTS CHD) attended the training programme on 'Formation of Cluster and Federation for Voluntary Organisation Promoting SHGs for Women's Empowerment', organised by the National Institute of Public Co-operation and Child Development, at Indore during June 18-20, 2007.
- Pradeep S Mehta was the only Indian delegate to participate in the Sixth Annual Conference of the International Competition Network, in Moscow from May 29-June 01, 2007.
- George Cheriyan of CUTS CART, as a member of the International Resource Team on Social Accountability of the World Bank Institute on Sustainable Development (WBISD), facilitated the Training of Trainers on 'Social Accountability and Community Scorecard', in Dhaka from May 09-18, 2007.
- R K Sharma of CUTS CART attended the 3rd Civil Society Review Meeting of the National Common Minimum Programme (NCMP), organised by *Wada Na Todo Abhiyan* in New Delhi on May 23, 2007.
- Masheta Musamai of CUTS ARC, Lusaka, attended the workshop on the review of the Draft Competition and Consumer Protection Act, Chapter 417, of the Laws of Zambia, organised by the Zambia Competition Commission in Lusaka from May 07-10, 2007.
- Pradeep S Mehta, as the Luncheon Speaker at the Australia India Business Council (AIBC) 2nd India Conference 2007, presented a paper on 'India Is flat – A Few Thoughts', in Melbourne on May 10, 2007.
- Vladimir Chilinya of CUTS ARC, Lusaka, attended the Interface WTO Doha and EPA Negotiations Workshop/CSO Planning Meeting, in Lusaka, on April 26-28, 2007.

CUTS Delegation to the EPA Negotiations

The Eastern and Southern Africa countries and the EU have been negotiating for an EPA. Since the launch of this negotiation, in September 2002, the Regional Negotiation Forum (RNF) has been held, including a series of dedicated technical sessions on issues such as agriculture, fisheries, and services.

The final round of the ESA-EPA RNF will be held in Mauritius, from July 03 to August 25, 2007. Vladimir Chilinya of CUTS ARC, Lusaka, has been invited by the Ministry of Commerce, Trade and Industry (MCTI), Government of Zambia, to represent the civil society group in this round of negotiations.

The Mauritius meeting will include dedicated technical sessions on market access, trade-related issues and developmental dimensions of the proposed agreement.

CUTS has participated in the first ESA-EPA Non-state Actors meeting held in Addis Ababa, in November 2006, and at the 11th RNF, held in Bujumbura, in February 2007. The participation of the CUTS representative in the Official Zambian Delegation to the final round of ESA-EPA RNF will involve providing technical inputs to the negotiators during the RNF and the ESA-EPA negotiation text during the technical sessions.

DFID Values its Partnership with CUTS

Gareth Thomas, Parliamentary Under-Secretary of State, Department for International Development (DFID), UK, appreciated CUTS for presenting a concise analysis for the Warwick Commission on the Future of the Global Trade Regime. We very much value our partnership with CUTS, and the close and regular contact you maintain with us. I am aware, for example, that staff in International Trade Department recently participated in your excellent conference on Civil Society Organisations (CSOs) and Aid for Trade in Nairobi. (www.cuts-citee.org/images/gareth.gif)

VISITORS

Name	Comments
Selim Raihan University of Dhaka Bangladesh	This is my first visit to CUTS Jaipur office. I am very impressed by seeing CUTS conducting so many important and effective research activities. Bipul and his staff are doing great work. All my best wishes to CUTS.
M A Razzaque Commonwealth Secretariat London, UK	I am very happy to be able to visit CUTS Headquarters. CUTS is currently implementing one important project for the Commonwealth Secretariat and I am impressed with the progress made so far and with the way project activities are coordinated. Particularly, I would like to congratulate Bipul Chatterjee and his staff at CUTS CITEE. I look forward to have further contact between our two organisations.

Launch of Vidhayak Samvad

CUTS CART organised the launch of the *Vidhayak Samvad* in a meeting at the Legislative Assembly premises, on April 27, 2007. Sumitra Singh, the honourable speaker of the Rajasthan Legislative Assembly launched the forum and delivered the inaugural address. She said that in keeping with the demand of present time, Members of Legislative Assembly (MLAs) of all political parties should work on important issues like water and electricity by rising above the party politics.



L to R: Pradeep S Mehta, C P Joshi, Sumitra Singh and Nathu Singh Gurjar

About 25 MLAs representing all the political parties participated in the meeting. Among others, Mohan Lal Gupta, Surendra Pareek, Brij Kishore Sharma, Raj Kumari Sharma, Rao Rajendra Singh, Dr Suresh Choudhary and Bharat Singh presented their viewpoints and suggestions on issues related to water and electricity.