

Approaches to Competition Policy in South Asian Countries

There has been a growing concern, both at the international and the domestic level, more particularly among the developing countries, about the need to develop a comprehensive legal framework to deal with the anti-competitive practices in order to promote an orderly market growth. Discussions on the “Interaction between Trade & Competition Policy” have been catalysed recently. This happened due to the setting up of a Working Group on Trade and Competition under the aegis of the World Trade Organisation following the Singapore Ministerial and the possibility of negotiations following the Doha Ministerial Declaration. This can also be felt in the South Asia region, which is probably of greater intensity than many parts of the world.

Of the seven South Asian countries, India, Pakistan and Sri Lanka are categorised as developing countries while Nepal, Bhutan, Bangladesh and Maldives are least developed countries (LDCs). All the three developing countries have specific legislations dealing with anti-competitive practices.

It is interesting to note that Bangladesh, which adopted in general all the legislations of erstwhile East Pakistan, when the former got independence, has not notified the one on competition. It is not known why the same has never been implemented. But the Bangladesh Government is believed to be considering a competition law for the country.

Similarly, Nepal is also considering the enactment of a competition law. Bhutan on the other hand is contemplating a simple legislation on consumer protection. It includes in the same, certain provisions to deal with competition abuses.

It is interesting to see that all the three countries in the region who have a fairly long history of competition law, felt, at around the same time, that their existing law was inadequate in view of the wide-ranging changes that have taken place in the domestic economic environment following the globalising effect. An important element of the changing global environment was the signing of the WTO agreements.

India has already passed a new legislation, while new Bills to this effect are at different stages of discussions in Pakistan and Sri Lanka. The new Indian competition law seems to be quite good as enacted. Its effectiveness will however depend on how honestly and efficiently it is implemented. The regulatory policies and actions in several specialised sectors and their coordination (or lack of it) with the competition regime will also have an important bearing.

Any discussion on competition policy and law however inevitably brings the issue of competition policy at the WTO in its fold. For example, while discussing the new Competition Bill in India a group of people wanted to postpone its adoption as it was thought that this could reduce the strength of its arguments at the WTO where it is opposing the inclusion of a multilateral competition agreement.

Despite scepticism within India and many other developing countries, the possibility of the negotiations on competition being launched at the WTO cannot be ruled out.

Thus debate and discussions on the issue among the stakeholders is an imperative in all countries including those in South Asia to make significant contributions into the process even if they finally refuse to sign or even negotiate.

Moreover, even if there is no unanimity among the countries on the issue of a multilateral competition regime, especially at the WTO, the issue of competition policy is getting increasing importance in all regional trade arrangements. It started with the EU, but now competition is an important issue, in other regional arrangements like CARICOM, MERCOSUR, COMESA, SADC, EAC and even ASEAN. A similar initiative has not been taken up by SAARC, may be because the regional body itself is not making any progress at present. However, if it starts moving, the inclusion of competition policy in the agenda cannot be ruled out.

It may be noted in this context that, even though there has been no systematic study, prima facie it seems that cross-border competition abuses within the South Asian region are quite significant. Their relative importance is more in the smaller countries of the region. For example, the road transport cartels operating at the India-Bangladesh and Nepal-India borders. Thus a regional approach to competition policy can be of help, especially to smaller countries. This is of course not to say that the smaller countries do not need to have a national competition regime. There are examples, even within EU, of smaller countries managing only with a regional competition regime.

However, the research done by CUTS shows that a bottom up approach is indeed helpful. This experience comes from 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 Department for International Development, UK. An important factor that determines effectiveness of a competition regime is the level of awareness among the stakeholders. Even common sense shows that a small country without much of a manufacturing base may not require a sophisticated competition law, but a simple one to effectively deal with competition abuses at the retail level is necessary.

Given this context, the present paper is intended to trigger debate and discussions on competition policy in the South Asian countries from national, regional and global perspectives. 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.

This paper has been written mainly by Ralf van de Beek, with contributions from Kishwar Khan, Nitya Nanda and Manleen Dugal.

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