

# POLICY BRIEF

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## Competition & Regulatory Scenario in South and Southeast Asia

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It is well-recognised, nonetheless, that in order to achieve targeted policy objectives and to make reforms succeed, competition laws and policies in developing countries must be well-adapted to their national development circumstances, taking into account all the local economic, social, and cultural dimensions, etc. and by no means a copy or derivative fashioned after the developed-country style. Towards such policies and concomitant institutions, it is necessary, at the first instance, for developing countries to foster public acceptance as well as widespread participation and contribution of various national stakeholders into the policy-making process; build up the capacities and skills of the [future] competition authority and complementary institutions. In the whole process, it is important for them to learn from their own experiences. Externally, sharing and comparing the learnings with other developing countries' experience will also help them overcome the impediments to having an effective competition regime.

Taking into account select countries in South and Southeast Asia, viz. Bangladesh, Cambodia, India, Lao PDR, Nepal, and Vietnam – one can well perceive that all are pursuing market-oriented reforms, which entail an explicit need for an effective competition law and policy. Given the local capacity and resource constraints, technical assistance is needed. The need has been underscored by the integration and co-operation process of these countries into regional and multilateral economic systems.

### 1. Regional Level Initiatives Ensuring Free Trade & Competition

The countries under the 7Up2 , (code name for the project “Advocacy and Capacity Building on Competition Policy and Law in Asia”, implemented by CUTS CCIER), are part of two major regional groupings. While Cambodia, Lao PDR, and Vietnam are members of Association of South East Asian Nations (ASEAN), Bangladesh, India, and Nepal are members of South Asian Association for Regional Cooperation (SAARC). Both groups have adopted frameworks for establishing a free trade area with provisions for adopting regional competition rules. None of the trade agreements in the above mentioned regional groups have competition binding rules. ASEAN is still discussing the issue and has not made any progress even after 14 years have passed.

Concurrently, SAARC is not even discussing the issue, though only two years have passed since the signing of the Free Trade Agreement (FTA) – which came into effect only in 2006. In sum, all of the countries in the 7Up2 project have made major leaps forward in liberalising their economic regimes, brought down the role of the state, and provided commanding heights to the markets.

However, such a transition is not an easy process, especially in countries that followed a centrally planned

economic management. Moreover, efficient markets are not automatically created; they need to be nurtured and developed by appropriate legal and institutional framework. The task is particularly challenging for former centrally planned economies, as the institutional framework created there was to support a totally different kind of economic policy regime. The task has been made even more complicated due to the fast changing global economic and legal environment in the era of rapid globalisation.

The policy and institutional frameworks at the national level not only have to take consideration of the opportunities and challenges created by globalisation, but also have to take note of the commitments made by the nations in different global and regional forums as well as bilateral agreements, as increasingly, such agreements are touching upon issues that had hitherto been left to national governments only.

### 2. Trade, Investment and Industrial Policy

All of the six countries have liberalised their trade policy regimes during the last few years. Among the six, only Bangladesh and India are founding members of the World Trade Organisation (WTO). Cambodia and Nepal joined the global trade body in 2003 at the Cancun Ministerial Conference, with substantial commitment on trade liberalisation. Vietnam is in the process of joining the WTO.

Lao PDR is also in the queue to join the WTO, but it will take some time for the country to join the body. Though Vietnam and Lao PDR are yet to become members of the WTO, they had to open up their markets substantially, as they joined the ASEAN. They are also pursuing reforms in several areas in their preparation for joining the WTO. In terms of industrial policy, most of these countries have undergone drastic changes over the last couple of decades or so. The winds of change started blowing from the mid-1980s, though visible changes took place much later in

some of these countries. 1986 was a landmark year in terms of economic policy changes in Bangladesh, Vietnam and Lao PDR, and even to some extent in Cambodia and Nepal.

### 3. Competition Scenario in 7Up2 Countries

India is the only country in the group with a long history of a competition law, which is at the threshold of a major change. India is also considering adopting a competition policy. Among other countries, Vietnam and Lao PDR have recently adopted competition legislations. Cambodia and

**Table 1: Landmark Changes in Trade & Industrial Policy from 1985 onwards**

Country	Major Reforms	Comments
<b>Bangladesh</b>	Imports licensing abolished. Customs tariff brought down drastically in 1992.	The number of tariff slabs and the rate of import tariffs reduced to promote competition in internal market.
	Industrial Policy 1986. Requirement of prior clearance for setting up industry abolished in 1991	However, clearance is required in some sectors including some manufacturing industries considered as saturated.
<b>India</b>	New Economic Policy, 1991	Lowering of trade barriers and devaluation of currency, finally making it fully convertible on current account. Industrial licensing abolished for most sectors. Number of areas reserved for public sector was also reduced from 17 to six which had strategic and security concerns. Liberalising FDI inflows. Automatic approval of FDI in 34 industries.
<b>Cambodia</b>	Import Liberalisation	In 1994, Cambodia eliminated all quantitative restrictions, except for certain commodities. Tariffs were drastically reduced in 2001; tariffs system was simplified by reducing number of trade bands.
	New Investment Law, 1994 (modified in 2003).	No restrictions on foreign investments except for certain sectors. No discrimination against foreign investors, guaranteed compensation in case of expropriation.
<b>Lao PDR</b>	Liberalisation, restructuring of the tariff system and other reforms in 1993, 1995 and 2001-2002.	Tariff structure was rationalised to a great extent, import duties were drastically reduced, restrictive export licensing to protect domestic customers has now been abolished and import-licensing system has been simplified and relaxed.
	Business Law, 1994.	Law classified four types of businesses - private enterprise, state owned enterprise, and union owned enterprise, joint venture. All are treated equally under law.
<b>Nepal</b>	Trade liberalisation	Reduction and restructuring of import duties, elimination of most quantitative restrictions and import licensing requirements and introduction of full convertibility for current transactions.
	1990, shift towards liberalisation and privatisation.	Private sector was also allowed in power generation and telecom sector in 2003.
<b>Vietnam</b>	Schedule to phase out quantitative restrictions given in 5-year Import-Export Programme (2004-2005).	Reduction in the use of non-tariff barriers (NTBs), including import and export restrictions, quotas and licensing requirements. Quantitative restrictions on exports eliminated with exception of textiles, garments, and a list of sensitive items.
	<i>Doi Moi</i> process in 1986 and regrouping of State-owned Enterprises (SOEs) in 1994.	<i>Doi Moi</i> made the shift towards market oriented economy and
	Phased out the dual pricing policy in areas such as air, rail transportation, seaport charges, electricity, water etc.	This system was regarded as discriminatory against foreigners; hence the government is gradually eliminating the system.

Nepal made a commitment to adopt a competition law at the time of their accession to the WTO, in 2003. However, none of them has fulfilled the commitment so far. Bangladesh, as of now, does not seem to be considering a competition law in the near future. The following paragraphs provide further details about the status of competition law scenario in the six countries.

**3.1 Bangladesh:** Presently, Bangladesh has no competition policy or law. When it separated from Pakistan in 1971, it did inherit all the laws of Pakistan, which were notified on a selective basis for domestic implementation. One law, which was not notified, was the Monopolies & Restrictive Trade Practices (MRTP) Ordinance, 1970, which is the current competition law in Pakistan. However, the law was not repealed either. Thus, technically, Bangladesh does have a competition law in its statute book. Nevertheless, fresh initiatives had been taken to adopt a competition law in Bangladesh, following discussions at the 1996 WTO Ministerial Conference in Singapore, though abandoned after the Cancun Meeting.

**3.2 Cambodia:** In realising the country's commitment to adopt a competition law in its accession to the WTO, a concept Sub-decree on Trade Competition has been recommended in Cambodia (hereinafter referred to as 'the concept bill'). This concept bill was drafted with inputs from the Consumers International (CI) and the United Nations Conference on Trade and Development (UNCTAD). It has not yet been accepted by the government for submission to the Parliament. Some other discussions are also going on in the direction of drafting a comprehensive competition law for Cambodia, instead of a subordinate legislation, as in this case.

**3.3 India:** The first competition law of India, the MRTP Act, was enacted in December 1969. It came into force in June 1970 and the MRTP Commission was set up in August of the same year. However, with the passage of time, it was noticed that the MRTP Act was not in conformity with the prevailing economic policy environment. Thus, a need for a new competition law was felt. Consequently the Competition Act 2002 was enacted in January 2003. It provides for the establishment of the Competition Commission of India (CCI), which, like its predecessor – the MRTPC – is a quasi-judicial body. As per the new law, the CCI has been established. However, the functioning of the CCI has been affected by a writ petition filed in the Supreme Court, which challenged the appointment of a non-judicial person as its chairman, asserting the doctrine of the separation of the powers of the executive and the judiciary. In response, the Government of India has suggested that the Act will be modified and the CCI will be split into two bodies: one, a regulatory body to be headed by an expert, and the other, an appellate body to be headed by a judge.

**3.4 Lao PDR:** The initial cornerstones of an evolving competition policy have been set. The most recent landmark is the Prime Minister's Decree on Trade Competition adopted in February 2004, supposed to

become effective from August 2004. The Decree was drafted and promulgated as a subordinate legislation to the Business Law 1994 of Lao PDR. The Decree, amongst other things, defines the concept of market dominance, monopoly, mergers & acquisitions (M&As), and unfair trade practices and provides for the establishment of a Trade Competition Commission, which will be responsible for the implementation and enforcement of the Decree. The Trade Competition Commission is to be chaired by the Minister of Commerce, consisting of relevant parties of the trade sector and a number of persons with relevant experience appointed by the Minister of Commerce. However, so far, no further progress has been made in this regard.

**3.5 Nepal:** During negotiations with members of the WTO on accession, Nepal made a voluntary commitment to enact a competition law by July 2004. Accordingly, the Ministry of Industries, Commerce and Supplies prepared a draft competition bill. The objective of the draft bill, as highlighted in its preamble, is to ensure healthy competition in the economy by restricting anti-competitive behaviour. The draft bill prohibits price and market fixing, and puts restrictions on the production and sale of goods or services that have a negative impact on competition, collusive bidding, syndicates, cartels, predatory pricing, refusal to deal, tied selling, and misleading advertising. The draft bill also has provisions to curtail the abusive power of monopolies, and proposes to bring M&As under the scrutiny of the future competition authority. It further empowers the government to control monopolistic and unfair trade practices and calls upon the government to prepare a work plan to monitor, prevent, and control such activities.<sup>1</sup> However, enforcement of the Act has never been taken seriously.

**3.6 Vietnam:** Passed in December 2004 by the National Assembly of Vietnam, the Competition Law of Vietnam is a result of a four-year drafting process, with reference to the statutes of nine nation-states and territories, and the model laws promoted by international institutions like the UNCTAD and the World Bank, as well as enforcement practices and experiences of other countries. It was notified on July 1, 2005. The Law prohibits five broad types of anti-competitive practices: (1) agreements that substantially restrict competition; (2) abuse of dominant or monopoly position; (3) 'concentrations of economic power' that substantially restrict competition; (4) acts of unhealthy competition; and (5) anti-competitive behaviour/ decisions by officials or State administrative agencies, taking advantage of their authority.

#### 4. Regulatory Reforms & Sectoral Policies

Regulatory reforms happened rather late in all 7Up2 project countries, owing to the slow pace of the general reforms, the small and backward industrial base of the economies, and in some cases, due to political reasons.

It is also because of the same set of reasons that the reforms undertaken are not of very far-reaching nature, and that

even until present, the regulatory systems in these countries remain to be fully developed. In many cases, the line ministries are still exerting traditional control over more than one public utility service sector, as in the case of the electricity, telecommunications, and pharmaceutical sectors in Lao PDR, and in the telecommunication sectors in Cambodia and Vietnam.

**4.1 Bangladesh:** Although the history of reform in Bangladesh dates back to the late 1970s and many of the reforms came out as government initiatives, major reforms in Bangladesh came out mainly as implementation of a package of structural adjustment policies under the auspices of the World Bank and the International Monetary Fund (IMF) in 1980s and early 1990s. Privatisation and public enterprise reforms, in particular improvement of the operational performance of public utilities, constituted an integral part of the reform process, which gained momentum during the 1990s but slowed down in recent years. The regulatory framework in the country, however, is yet to be developed. Only very recently, a regulatory commission has been set up for the telecommunication sector. Nevertheless, it is still in its infancy and yet to acquire any teeth. Bangladesh has also established a Securities and Exchange Commission to regulate the capital market, and is in the process of restructuring the electricity sector with an energy regulator, in place only since last year.

**4.2 India:** Regulation is not a new issue in India, as several sectors have been under regulation since its planned economic development. However, autonomous regulatory authorities started coming up only in the 1990s. Thus, though price regulation for pharmaceuticals has been a long practice, it was exercised by the relevant government department. The autonomous regulatory body, National Pharmaceuticals Pricing Authority, was established in 1995. Next to be established was the Telecom Regulatory Authority of India (TRAI) in 1997. The same year the Tariff Authority for Major Ports (TAMP) was also established. In 1998, the electricity sector also came under regulation, as the Central Electricity Regulatory Commission was established. The sector is regulated at the state (sub-national) level as well, and by now most states have State Electricity Regulatory Commissions (SERCs). Meanwhile, the Securities and Exchange Board of India (SEBI), to regulate the capital market, and the Insurance Regulatory and Development Authority (IRDA), to regulate the insurance sector, have also been established. The government is also considering some more regulators for some other sectors.

**4.3 Cambodia:** The Royal Government of Cambodia (RGC) has been working earnestly on a very ambitious reform programme and it recognises that markets cannot develop without the right regulatory and political environment, which includes the development and effective implementation of a suitable tariff policy, tax policies, trade policy, competition and regulatory policy, and corporate governance<sup>2</sup>. This vision, however, is yet to be achieved to date. The regulatory regime in Cambodia remains very

sketchy, with only one regulator in place for the electricity sector. The state continues to play the triple roles of a policy-maker, regulator, and market operator at the same time in several sectors.

**4.4 Lao PDR:** Under the New Economic Mechanism (NEM) adopted in 1986, privatisation started on a large scale, and market participation by the private sector was allowed. However, the State retains its control over the large SOEs or sectors deemed 'strategic'. Sectoral economic regulation continues to be the responsibility of several line ministries. The Department of Electricity under the Ministry of Industry and Handicrafts handles electric power development and regulation of the sector. The telecommunication sector is regulated by the Ministry of Communication, Transport, Post, and Construction. Banking is the only sector where some sort of a regulator exists i.e. the Bank of Lao, though the Ministry of Finance continues to exercise a significant power over this sector.

**4.5 Nepal:** The economic stabilisation programme was put in place in 1985. Nepal also went for a Structural Adjustment Facility (SAF) programme with the IMF in 1986 for three years. Accordingly, various components of economic policy reforms were carried in Nepal during the last one and half decade. This is true in the case of regulated industries as well. Many public enterprises have been privatised and several others are in the pipeline. Sectoral regulations are being laid out and independent regulators have been set up for almost every sector.

**4.6 Vietnam:** Vietnam adopted a comprehensive reform programme in 1986 called *Doi Moi* towards building a market-oriented economic regime, in which the private sector's role was recognised and encouraged. Nevertheless, the respective roles of the State, the private sector, and the non-State sectors still lack clarity and the government's intervention in the market remains intensive. Most regulated sectors in Vietnam are still under the control of line ministries, such as the Ministry of Post and Telematics' regulatory power over the telecommunication sector, etc. which have caused no small grief to the private sector players, who cannot compete on a level playing field with SOEs due to political favouritism, excessive intervention, and so on. Vietnam, however, is moving towards building up a more transparent and accountable regulatory framework, starting with the adoption of the Electricity Law 2004, which provides for the establishment of an independent Electricity Regulator.

## 5. Market and Competition

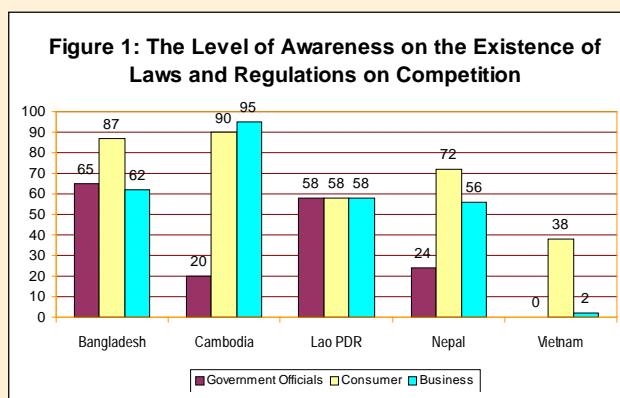
Markets in five among the six countries are relatively small in size, particularly so in Cambodia, Lao PDR, and Nepal. This makes introducing and maintaining competition a difficult proposition, as the small size of the markets cannot sustain too many firms, particularly in industries where economies of scale is an important factor.

Moreover, a large part of the Gross Domestic Product (GDP) involving a large section of the population comes from the subsistence sector, even today. This is more so in smaller

countries like Cambodia, Lao PDR, and Nepal where the share of agriculture in GDP is quite high compared to bigger countries like India and Bangladesh. Arguably, in small economies, competition can be enhanced and maintained by allowing free imports. However, this may not always be possible or desirable due to several reasons. Moreover, in small economies, even high import duty can be competition-neutral, particularly in industries where there is not enough domestic manufacturing capacity and the demand is met largely through imports. This is true for three of these countries: Cambodia, Lao PDR, and Nepal. Thus it can be seen that trade openness is pretty high in these countries compared to India and Bangladesh.

### 5.1 Level of Awareness

The level of awareness on competition issues is generally very low in most developing countries of the world. However, the survey results are quite encouraging. Vietnam has introduced its competition law only very recently. Yet, all the government officials interviewed were aware of existence of the law. The level was quite high among the business people as well.



The awareness is not of course so high in civil society. It should however be noted in this context that the survey was not conducted on a random sampling basis and relatively more aware respondents were chosen. When one goes to Lao PDR, the picture is quite different. Although it already has a competition legislation, more than half of the respondents cutting across groups expressed their ignorance about it. Bangladesh and Cambodia do not have a competition law and hence not much can be said about the level of awareness in these countries. Nepal does not have a competition law, but its consumer law has several competition provisions. However, the law is hardly ever implemented. Obviously, the level of awareness in the country was found to be quite low.

### 5.2 Barriers to Competition

Due to low level of awareness and reportage on competition issues in the 7Up2 countries, it is indeed difficult to get a fair picture of the existing entry barriers, especially those erected by existing market players. Nevertheless, several policy-induced barriers can be observed in these countries.

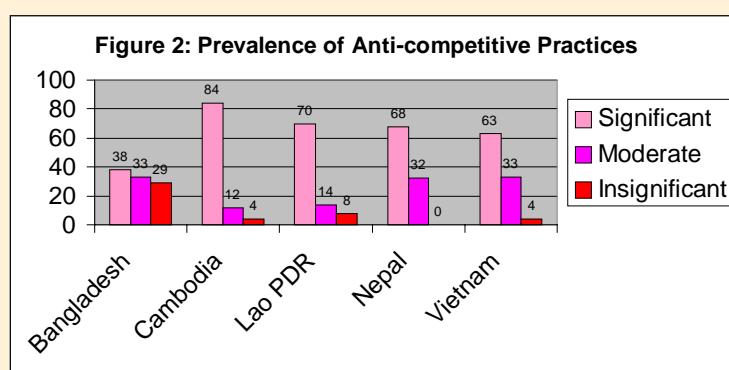
There are several industries that are reserved for the SOEs, especially in the former centrally planned economies. Despite significant progress made in terms of liberalising the business environment, several approvals are required to start a new business and they often take substantial time and costs, acting as a major obstacle for a new business operator to enter the market. In Cambodia, for example, business registration itself costs more than four times the per capita income of the country, while in Lao PDR it takes 198 days to get a business registered. In some countries, the cost involved is more than that in the US or Singapore, even in absolute dollar terms. The policy-induced entry barriers are not limited to those imposed by the national governments only; often, regulations at sub-national and local levels can have the same effects, though they are much less pronounced in smaller countries.

### 5.3 Anti-competitive Practices

The deeply rooted legacy of the old command and control economic mechanism in 7Up2 project countries, notwithstanding recent reform efforts, has consequently led to the existence of an inefficient administrative system, which, among other externalities, hampers entrepreneurship and competition in the market.

These administrative obstacles, created by various government policies or actions, have real costs to the economy, which means that even potentially competitive firms often cannot compete because any efficiency advantages they may have are consumed by the costs of administrative hassles. However, a more troubling fact is that even if policy barriers to competition are removed, competition in the market in these countries can still be distorted or limited by several anti-competitive practices of firms, such as colluding to fix prices, discouraging new entries, or abusing market power or monopolies to prevent entries by competitors in order to keep prices and profit high, etc.

Evidence from the 7Up1 and 7Up2 projects also suggests that developing country markets are prone to anti-competitive practices and unfair trade practices, and that these practices not only tax consumers heavily, but also affect the business environment negatively. Since the 7Up2 project countries, with the exception of India, did not have a competition law, the anti-competitive practices discussed here are suspect in nature and cannot be considered as clear cases of such practices, as there were definitive



investigation or adjudication into the cases, and are based primarily on media reports.

#### 5.4 Prevalence of Anti-competitive Practices

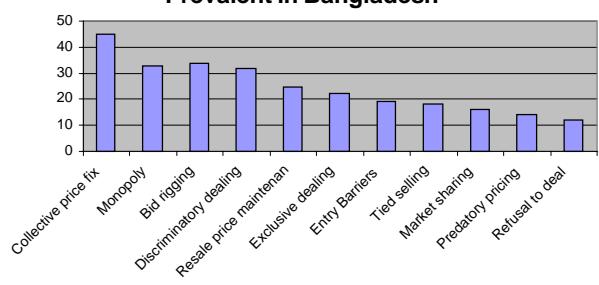
Except in Bangladesh, a huge majority of respondents in all countries thought that prevalence of anti-competitive practices is quite significant. In all countries, the people thinking it to be significant constituted the largest group followed by the people who thought it moderate. Obviously, the respondents who thought such practices to be insignificant constituted the smallest group in all the countries.

It was only in Nepal where people thought prevalence of anti-competitive practices was significant or moderate and nobody thought it was insignificant. Interestingly, in Bangladesh, the majority of consumer respondents thought that the prevalence of anti-competitive practices is quite significant. The majority of policymakers thought it to be moderate, while majority of business respondents considered it to be insignificant. Such information, however, is not available for other countries.

#### 5.5 Most Prevalent Anti-competitive Practices

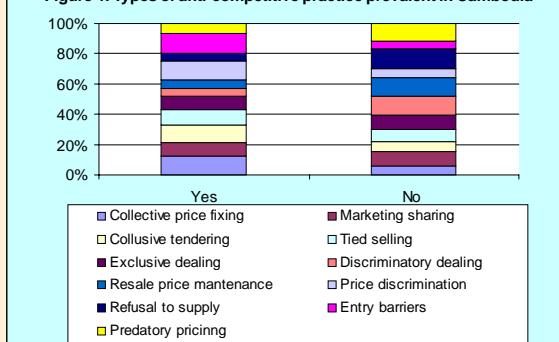
Abuses of market dominance should rank among the most common anti-competitive practices in 7Up2 project countries. The traditional State direct ownership of many firms and industries, notwithstanding the mass privatisation wave recently, has resulted in the existence of a huge State sector, comprising of many dominant enterprises in several key sectors, in these economies.

**Figure 3: Anti-competitive Practices Prevalent in Bangladesh**

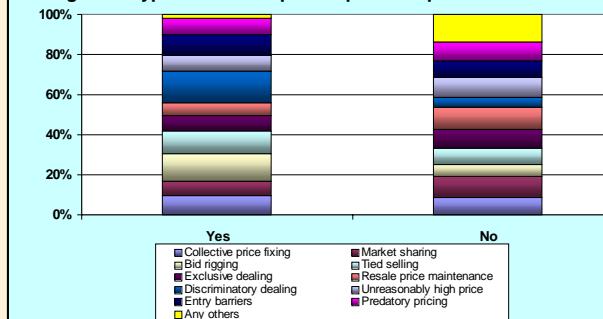


Abuse of dominance, nonetheless, is not the only way firms can engage in anti-competitive practices. Vertical restraints between manufacturers or suppliers and downstream distributors in the form of exclusive dealing

**Figure 4: Types of anti-competitive practice prevalent in Cambodia**

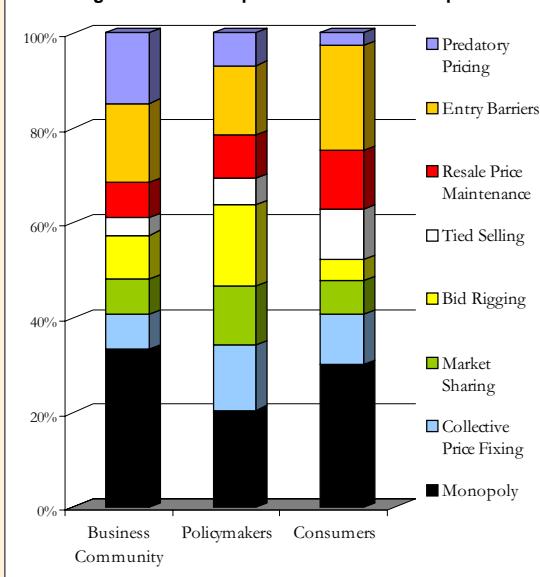


**Figure 5: Types of anti-competitive practices prevalent in Lao PDR**



and geographic market restrictions can also raise significant entry barriers. In addition, firms that would be price-takers individually and unable alone to control any significant part of the market can work together to control the market, thus increasing prices and discouraging entry. Collusive behaviour is not uncommon, and several cases of price-fixing have been uncovered and reported in all 7Up2 project economies. The cartels very often worked under the sham covers of business or trade association. Individual enterprises, in these cases, did not seem to have any choice other than doing likewise with the whole ‘family’; otherwise they would have faced serious trouble including danger to their lives.

**Figure 6: Anti-Competitive Practices in Nepal**



Other anti-competitive practices, which are also prevalent and troubling in the 7Up2 countries, are collusive tendering and tied sales. Almost all cases of collusive tendering happened in the market for government contracts for infrastructure construction. The main reasons behind this high incidence of bid-rigging, besides firms' own incentives to seek extra rents, are believed to be the generally low economic management capacity of the governments and poor governance practices in project countries, in particular, the prevalence of corruption, bribery, and nepotism.

In the absence of a comprehensive legislation on competition, all these anti-competitive practices generally escaped the scrutiny of the law, or were addressed in an *ad hoc* manner, through administrative decisions, under

sectoral regulations or other piecemeal rules and regulations. Of all the anti-competitive practices reported above, only a few of them have been properly dealt with, judged in a court of law for instance, to set precedent for any future violators. In some cases, some warnings were the only measures undertaken to stop the violators.

## 6. Perspectives on Competition Policy

The effectiveness of any law in a country depends on the extent to which the law has actually evolved in that country, in tandem with the socio-economic and historical developments. It is necessary that there be some amount of acceptability and ownership of the law among stakeholders.<sup>3</sup> This is possible only if their expectations are taken into consideration while drafting the law. This was one of the most important findings of the 7Up2 project that came out with the suggestion of a bottom-up approach to the formulation and enforcement of a competition regime.

The three broad groups of stakeholders whose behaviour and interests are important for the competition culture in a country are:

- the consumers;
- the business;
- the government; and
- the political class.

### 6.1 Need for Competition Law

In Bangladesh, Lao PDR, and Nepal all the business people interviewed agreed that there is need for a comprehensive competition law. In Cambodia and Vietnam also, an overwhelming 95 and 90 percent of business people respectively agreed for the same.

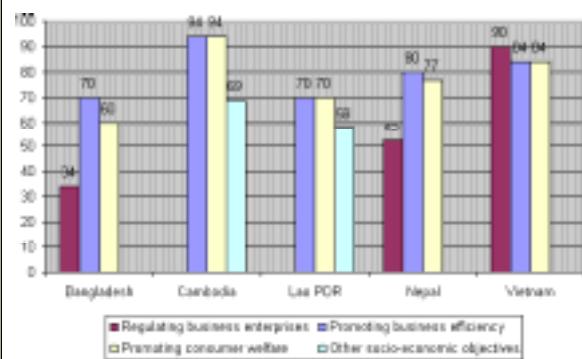
While most of them agree that ideally there should be a competition law, many of them also feel that given the attitude of the government officials who invariably control enforcement mechanism as experiences have shown, such a law may not be desirable. All the policymakers in all the 7Up2 countries opined that there is a need for a comprehensive competition law. Among all the countries, only Bangladesh and Cambodia had consumer respondents, all of whom felt the need for a competition law. In Nepal, Lao PDR and Vietnam, 92, 90, and 60 percent of the consumer respondents respectively, were in favour of a comprehensive competition law.

### 6.2 Objectives of Competition Law

Historically and across nations, the objectives of competition policy have been varied in nature. The most common objectives are to maintain and encourage competition in order to promote efficient use of resources and consumer welfare. However, other ‘public interest’ objectives are also included within the ambit of competition policy. These may include equity/fairness, protection of small businesses, equality of opportunity, freedom of economic action, decentralisation of economic decision making/power and so on.

In Cambodia, Vietnam and Lao PDR, the stakeholders put equal weight on promoting business efficiency and consumer welfare as the objectives of competition law, at

**Figure 7: The Opinions on the Desired Objectives of Competition Law**

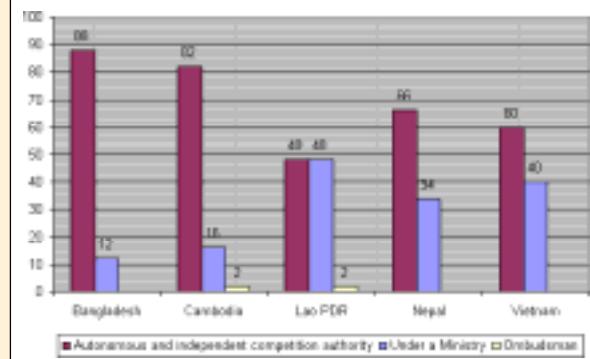


94 percent, 84 percent and 70 percent, respectively. However, in Vietnam, 90 percent of them also talked about regulating business enterprises, while in Cambodia and Lao PDR, a significant proportion of them, at 69 percent and 58 percent respectively, also mentioned about other socio-economic objectives. In no other country did the stakeholders talk about other socio-economic objectives. In Bangladesh and Nepal, the stakeholders put business efficiency above consumer welfare, despite the fact that there were more consumer respondents than business respondents in both the countries. Such a low rating for consumer welfare was probably covered by them, when 52 percent of them in Nepal and 34 percent of them in Bangladesh also wanted the law to regulate business enterprises.

### 6.3 Status of Competition Authority

The status of the authority in charge of enforcing a competition law is also an issue that gets mention quite often.

**Figure 8: Perceptions on the Structure of Competition Authority**



In the 7Up2 countries, however, the stakeholders expressed their opinion in favour of an independent authority in all countries except in Lao PDR, where they were divided in two equal groups of 48 percent; and while one group supported an independent authority, the other supported the idea of a department under a government ministry. In Vietnam also support for a government department is reasonably high at 40 percent with the rest supporting an independent authority. It may be noted in this context that in both Lao PDR and Vietnam, competition legislation is in place and the enforcement of the same has been left to government departments.

## 7. Conclusion

An appropriate regulatory framework is important not just for the sake of markets but as a development requirement. However, the state of the regulatory framework that exists today in most of these countries is not very encouraging. Out of the six countries, only three – India, Vietnam and Lao PDR – have competition legislations.

In India, despite its rather long history, the current state of affairs regarding the competition regime is quite discouraging. In Vietnam, it has become effective very recently and the competition authority seems to be gearing up to face the challenges ahead. In Lao PDR, however, no such movement is taking place. In Nepal, though a draft is ready, nobody knows when the law will see the light of the day. In Bangladesh, though the government has often admitted that there is a need to have a competition law, there has been no concrete progress in this regard. In Cambodia too, no serious progress could be achieved, despite the fact that it was to enact a competition law by the end of 2005 in view of its commitment while entering the WTO, and the deadline has already been missed. Thus, there is a real fear that it will adopt a competition law hurriedly without much debate and discussion and the law adopted may not be appropriate for the country.

Development of sectoral regulation is also quite inadequate. Many sectors that require regulation urgently remain unregulated or under-regulated or inappropriately regulated. It is extremely important to identify the sectors that need regulation and put an appropriate regulatory framework in place. In many cases, regulation is still in the hands of line ministries themselves or some agencies under them. This lack of sufficient autonomy not only affects proper functioning, but also creates problems of conflicts of interests.

Governments in many developing countries of the world are reluctant to adopt and implement a competition law with the pretext that the business is not yet ready for it. However, our survey in the 7Up2 countries indicates that this may not be the case. Businesses in these countries seem to be willing to accept competition law. Hence, if the governments adopt and implement competition law taking them, along with other stakeholders, into confidence, there should not be any major problem.

The regulatory reforms policies in these countries seem to have been an amalgam of regulation, administrative intervention, and political decision with the business lobby working as a strong pressure group. Consumer lobby is almost non-existent or has by and large been bypassed in the process, except in relatively fewer cases where consumer concerns have been highlighted by the media. The problem is exacerbated by the fact that the capacity of other stakeholder groups is also limited. As we have seen in our survey, consumer and other civil society groups are generally less aware in these countries compared to policymakers and businesses. Such asymmetric power equations may lead to political capture of regulation or capture by producers group.

The challenge, therefore, lies in making the markets more competitive and in creating independent effective regulatory institutions that address market failures, fairness and distributional objectives. The response to such challenges lies, to a great extent, in adequate capacity building of the regulators, policymakers, and other stakeholders.

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- 1 Nepal Consumer Protection Act, 1997, Section 8(1)(b).
- 2 Country Presentation by the RGC at the 3rd UN Conference on Least Developed Countries, at Brussels, 14-20, May 2001 (<http://www.unctad.org/en/docs/aconf191cp40cam.en.pdf>).
- 3 See Pistor, K (2000), The Standardisation of Law and its Effect on Developing Economies, G-24 Discussion Paper No. 4, United Nations, New York & Geneva.

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Valuable comments were received from experts in the Project Advisory Committee and the International Advisory Board of CUTS C-CIER and other country researchers. The Policy Brief is an abridged version of the findings of CUTS' unique initiative, codenamed "the 7Up2 Project", which endeavoured to accelerate the process towards a well-suited competition law and policy, in select developing countries spanning South to Southeast Asia, *viz.* Bangladesh, Cambodia, India, Lao PDR, Nepal and Vietnam. Refer to the Research Report "Fairplay Please" for detailed project findings and outcomes.

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