TOWARDS A SOUTH ASIAN COMPETITION NETWORK

TRADE RELATED TECHNICAL ASSISTANCE PROGRAMME

Competition Commission of Pakistan
Creating a level playing field

International Trade Centre

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DEVELOPMENT THROUGH TRADE

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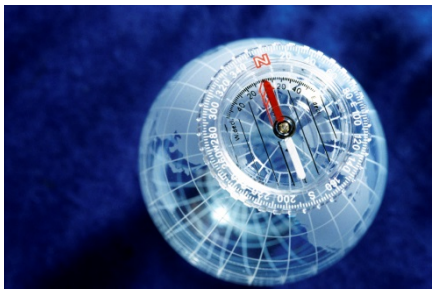
TOWARDS A SOUTH ASIAN COMPETITION NETWORK

PROMOTING THE BENEFITS OF COMPETITION AND CONSUMER PROTECTION FOR ALL IN SOUTH ASIA



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INTRODUCTION

UNCTAD's initiative, Competition and Consumer Protection for All (COMPAL) has been successful in making competition policy a central tenet in Latin America's economic policies. Given the brand recognition of COMPAL and the support of UNCTAD, it is time for countries in South Asia to have their COMPAL programme so that the region can benefit from competitive markets and consumer protection.

Pakistan is one country in SAARC that has competition and consumer protection integrated in the Competition Act, 2010. It has handled cases in both competition and consumer protection areas and is ideally situated to share its experiences with SAARC competition agencies.

COMPETITION REGIME BREAKDOWN AND COMPARISON OF ACTS

Abuse of dominance

The first competition legislation in Pakistan was the Monopolies and Restrictive Trade Practices Ordinance (MRP-TO) of 1970, with the Monopolies Control Authority (MCA) acting under its authority.[1] Due to an incomplete legal framework and ineffective enforcement of legislation, notwithstanding the absence of expert staff, the MRTPO proved to be unsuccessful in the implementation of what it aimed. Moreover, the Government at the time also played a restrictive role in restraining the capabilities of MCA in fear of its effects on investment. The spill-over effects of these factors required a substantial change in the competition legislation of Pakistan.

After the introduction of a Competition Ordinance in 2007, the Competition Act was then promulgated in October 2010. The Act is at par with the international competition laws and has based its legislation on the likes of the OECD and UNCTAD models. It has incorporated 'Abuse of Dominance', 'Prohibited Agreements', 'Mergers and Acquisitions' as well as 'Deceptive Marketing Practices' in its Act. Pakistan is said to have one of the best competition regimes in the developing world.[2]

As opposed to the MRTPO, the Competition Act 2010 covers a broader spectrum of competition related issues; creating a level playing field in all spheres of economic activity, improving overall economic efficiency and protecting consumers from anti-competitive behaviour. The Act is divided in 6 chapters and 62 sections. The enforcement departments include Cartels and Trade Abuse, Mergers and Acquisitions and the Office of Fair Trade. With the aim of the SAARC region to integrate and form a competition network, it is imperative to compare and contrast each competition act of member states.

In comparison of the competition acts, it is duly noted that the core concept of "Abuse of Dominance" is similar in all member states. In Pakistan, the abuse of dominance is defined as: "An abuse of dominant position shall be deemed to have been brought about, maintained or continued if it consists of practices which prevent, restrict, reduce or distort competition in the relevant markets." The terms "practices" and "relevant market" are formally defined. Practices that have a tendency to prevent, restrict, reduce or distort competition are defined as:

1) Limiting production, sales and unreasonable increase in price or other unfair trading conditions,

2) Price discrimination by charging different prices for the same goods or services from different customers in the absence of objective justifications that may justify different prices,

3) Tie-ins; where the sale of goods or services is made conditional on the purchase of other goods and services,

4) Conclusions of contracts subject to acceptance by other parties of supplementary obligations which by their nature or according to commercial usage, have no connection with the subject of the contract,

5) Applying dissimilar conditions to equivalent transactions on other parties, placing them at a competitive disadvantage,

[1] UNCTAD, Voluntary peer review of competition law and policy: Pakistan (2013)
[2] Fordham Competition Law Institute, annual proceedings, International Antitrust Law & Policy (2013)

6) Predatory pricing; driving competitors out of a market, prevent new entry and monopolize the market,

7) Boycotting or excluding any other undertaking from the production, distribution or sale of any goods or the provision of any service,

8) Refusal to deal.[3]

The act defines the relevant market as "the market which shall be determined by the Commission with reference to a product market and geographical market. A product market comprises all those products or services that are regarded as interchangeable or substitutable by the consumers by reason of the product's characteristics, prices and intended uses. A geographic market comprises the area in which the undertakings concerned are involved in the supply of products or services and in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighbouring geographic areas because, in particular, the conditions of competition are appreciably different in those areas.[4]"

Moreover, in relation to abuse of dominance, the Competition Commission of Pakistan also provides General Enforcement Regulations (2007) which provide guidelines that assist in the determination of whether a party is involved in any violation of the Act. The general enforcement regulations state that the following factors may be considered in abuse of dominance cases.

1) Market share

(i) Market share of the concerned undertaking and for this purpose may use information from a variety of sources including the main parties, other competitors, customers, buyers, suppliers, trade associations and market research reports.

(ii) Market share can be measured in terms of revenues, volumes, production capacities or outputs, depending on the markets concerned and in-formation available.

2) Concentration Measures

(i) May generally look at measures of the degree of concentration as an indicator of the ability of leading undertakings of a market to exercise market power

(ii) Other competitive constraints will need to be considered before finding that these undertakings have such market power.

3) Structural Factors

(i) There may be other structural factors which may also provide an indication of current competitive conditions within the market.

4) Other Factors

(i) The Commission may have regard to such other factors on case-by-case basis.[5]

Similar to Pakistan, India had also introduced the Monopolistic and Restrictive Trade Practices Act, 1969 (MRTP) to protect consumers against anti-trust practices. However, in the wake of rapid liberalization and privatization, the need for a befitting competition law was recognized. The MRTP Act was replaced by the Competition Act which was enacted in 2002, amended in 2007 and became fully functional in May 2009.

[3] Pakistan, Competition Act 2010, Section 3.

[4] Pakistan, Competition Act 2010, Section 1 (k)

[5] ompetition Commission of Pakistan, Competition Commission (General Enforcement) Regulations (2007): http://www.cc.gov.pk/images/Downloads/regulations/updated/general_enforcement_regulations.pdf

The key provisions of the Competition Act 2002 include prohibition of abuse of dominance, prohibition of anti-competitive agreements (cartels) and regulation of mergers and acquisitions. This Act has yet to incorporate deceptive marketing practices as part of its regulation. The abuse of dominance section of the Indian competition act is very similar to that of Pakistan's;

"There shall be an abuse of dominant position under sub-section (1), if an enterprise.—-

a) directly or indirectly, imposes unfair or discriminatory—

    (i) Condition in purchase or sale of goods or service; or

    (ii) Price in purchase or sale (including predatory price) of goods or service,

b) limits or restricts—

    (i) Production of goods or provision of services or market therefore; or

    (ii) Technical or scientific development relating to goods or services to the prejudice of consumers; or

c) indulges in practice or practices resulting in denial of market access; or

d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or

e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.[6]

Additionally, this act has also provided a definition for 'relevant market' which is almost identical to the one use in Pakistan. According to the Indian competition commission the factors that determine a dominant position are market share, size and resource of enterprise, size and importance of competitors, economic power of the enter-prise, vertical integration, dependence of consumers on the enterprise, extent of entry and exit barriers in the market, countervailing buying power, market structure and size of the market, source of dominant position, social costs and obligations and contribution of enterprise enjoying dominant position to economic development.

The consequences of abuse of dominance in India may lead to the Commission passing an order which may direct the enterprise to discontinue such abuse and secondly, impose a penalty not exceeding 10 percent of the average turnover of the last three preceding financial years. In addition the Competition Appellate Tribunal can be approached for award of compensation to be paid for any loss or damage shown to have been suffered by any applicant.

When comparing the two Acts, i.e. that of Pakistan and India, it can be easily concluded that both Acts are parallel in terms of the concept and enforcement of abuse of dominance.

We now move on to the abuse of dominance in Bangladesh and Sri Lanka. Bangladesh is still under the process of enacting its competition law. However a draft version of the law is available. The draft was completed in 2010 and is congruent to that of India and Pakistan's competition acts. The abuse of dominance section follows the same precedent as that of India and Pakistan.

While consumer protection and competition policies share a common goal – the promotion of consumer welfare – the two policies address this goal from different perspectives, and there are important differences in how the two policies are executed.[7] Sri Lanka however is an example of where a separate competition law does not exist; it has a Consumer Affairs Authority Act which was enacted in 2003. The Act repealed the Fair Trading Commission Act, which had previously

[6] India, Competition Act 2002

[7] UNCTAD, Model Law on Competition, Chapter VIII (2010), available at: http://unctad.org/en/Docs/tdrbpconf7L8_en.pdf

administered the implementation of competition. The Fair Trade Commission Act had contained separate provisions relating specifically to monopolies, mergers and anti-competitive practices, respectively. Section 8 of the current Act covers the primary functions linked to abuse of dominance:

(8) The functions of the authority shall be –

(a) Control and eliminate –

i) Restrictive trade agreements amongst enterprises

ii) Arrangement among enterprises regarding price

iii) Abuse of dominant position with regard to domestic trade or economic development

iv) Any restraint of competition adversely affecting domestic or international trade or economic development.

Nepal began to liberalize its trade and investment regime in 1992 and became the first least developed country (LDC) to join the WTO through the full accession process in April 2004. Despite being under this umbrella, Nepal has not been able to produce the growth results it aimed to achieve. Factors that hinder growth of GDP include political instability, shortage of energy and weak infrastructure. Albeit the slow rate at which it's moving, Nepal recognizes the importance of trade-related benefits to economic growth and is transitioning towards an open business environment to promote competition.[8]

The abuse of dominance section in the Competition Promotion and Market Protection Act (2007) is as follows;

Prohibition on abuse of dominant position:

1) No enterprise holding dominant position shall abuse, or cause to be abuse, such position with intent to control competition in the production and distribution of any goods by that enterprise or through its affiliation.

2) With prejudice to the generality of Sub-section (1), if an enterprise holding dominant position does any of the following acts in the State of Nepal or any area of the State of Nepal, it shall be deemed to have abused its dominant position:

    a) preventing or restraining any goods or services produced or imported by another person or enterprise that produces or distributes identical or similar goods or services from entering into the market of its goods or services;

    b) limiting or controlling the production or distribution of any goods or services which is likely to decrease the market supplies for any reasonable cause or limiting or controlling investment to be made for the development of technology related to the production or distribution of such goods or services;

    c) without any reasonable cause, fixing different prices in purchase or sale of any goods or services in the market of the same geographical area or prescribing additional terms and conditions of sale or purchase of such goods or services;

    d) prescribing the price of the goods or services produced by it in such a manner so as to pre-vent competition in the market, directly or indirectly; Provided that nothing contained in this clause shall be deemed to be prejudicial to the fixation of the price of such goods or services or alteration in the price of such goods or services by the concerned enterprise, by obtaining prior approval of the Government of Nepal or the competent authority under the laws in force.

[8] WTO, Nepal Trade Policy Review, WT/TPR/S/257, available at https://www.wto.org/english/tratop_e/tpr_e/s257_sum_e.pdf

e) Without any reasonable cause, reducing the quantity of the goods or services that it produces or distributes or reducing the quality of such goods or services in a manner to be prejudicial to the consumers;

f) In the production or distribution of any goods or services, prescribing any terms and conditions which are unnecessary or irrelevant with such goods or services.

In Afghanistan, the Law of Competition Protection was passed in January 2009. Members of Afghanistan's new competition authority have participated in a training workshop run by the Competition Commission of Pakistan designed to provide guidance on the implementation of the new Afghan competition law. This law has 35 articles which are divided into 5 chapters. Chapter 2 looks at "Anti-competition Methods." All provisions related to abuse of dominance, prohibited agreements and deceptive marketing practices are combined together and come under the title of "Anti-competition Methods."

As compared to other countries, Afghanistan also has adopted the same stance on abuse of dominance. There are 7 clauses associated with abuse of dominance which prohibit limiting supply, price discrimination and aggressive pricing, applying dissimilar conditions as well as tie-ins.

It is hereby evident that member states of the SAARC consortium have an agreeable outlook towards the interpretation and enforcement of abuse of dominance. Each act focuses on the fact that dominance in itself is not a violation, but engaging in any activity that curtails the competitiveness amongst businesses is where the problem lies.

Prohibited agreements

The policy behind prohibited agreements is almost identical in Pakistan, India and Bangladesh. The foundation of this concept is built upon the fact that if entities engage in any kind of settlement that results in the distortion of competition, there is a violation.

In Pakistan, Section 4 of the Act prohibits undertakings or associations from entering into any agreement or making any decision in respect of the production, supply, distribution, acquisition or control of goods or the provision of services, which have the effect of preventing, restricting, reducing, or distorting competition within the relevant market. Such agreements include, but are not limited to, market sharing and price fixing of any sort, fixing quantities for production, distribution or sale; limiting technical developments; as well as collusive tendering or bidding and the application of dissimilar conditions. The Commission is authorised, however, to issue either individual or block exemptions under Section 5-9 of the Act.

Section 3 of the Indian competition act prohibits agreements that directly affect the production, supply, distribution, storage, acquisition or control of goods or services. These agreements may result in direct or indirect determination of price, limit production, supply, markets, technical development, investment or provision of services, share the market or cause bid rigging. The Competition Act of Bangladesh, Section 15 states:

> *"No person shall enter into any agreement, directly or indirectly, in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an adverse effect on Competition or creates monopoly or oligopoly in the market."*

Since a separate competition law does not exist in Sri Lanka yet, a small section of the Consumer Affairs Authority Act caters to prohibited agreements. It is stated that the functions of the authority shall be to control and eliminate 'restrictive trade agreements among enterprises' and 'arrangements amongst enterprises with regard to prices.'

Nepal's Competition Promotion and Market Protection Act has incorporated the international perspective on prohibited agreements to the likes of Pakistan, India and Bangladesh.

Afghanistan accounts for prohibited agreements through the following clauses un-der section 3 of its act:

3. (1) All agreements between enterprises or association of enterprises, including decisions of trade associations which have as their object or effect prevention, restriction or distortion of competition in the relevant market in Afghanistan shall be prohibited.

(2) In particular, agreements between enterprises engaged in identical or similar trade of goods or provision of services, which:

(i) directly or indirectly determine purchase or selling prices or any other trading conditions;

(ii) limit or control production, supply, markets, technical development, investment or provision of services, including by way of boycotts; 8

(iii) share the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;

(iv) directly or indirectly result in bid rigging; shall be prohibited and automatically cancelled.

Mergers and acquisitions

Competition agencies around the world have taken steps to coordinate the rules and methods used for merger analysis.

In Pakistan, Section 11 of the Competition Act pertains to merger analysis. In addition, the CCP provides Competition (Merger Control) Regulation as well as merger guidelines. The Merger Regulation gives specifications of the thresholds, exemption conditions and merger procedures, including details of pre-merger applications.

The CCP has adopted a similar approach for mergers as that of the legislation provided by the European Commission. The guidelines for merger analysis provided by the European Commission state that in assessing the competitive effects of a merger, the Commission compares the competitive conditions that would result from the notified merger with the conditions that would have prevailed without the merger. In most cases, the competitive conditions existing at the time of the merger constitute the relevant comparison for evaluating the effects of a merger. However, in some circumstances, the Commission may take into account future changes to the market that can reasonably be predicted. It may, in particular, take account of the likely entry or exit of undertakings if the merger did not take place when considering what constitutes the relevant comparison.[9] The Commission's assessment of mergers normally entails: (a) definition of the relevant product and geographic markets; (b) competitive assessment of the merger. The competitive assessment of a merger is then dependant on the following factors;

a) The approach of the Commission to market shares and concentration thresholds

b) The likelihood that a merger would have anticompetitive effects in the relevant markets, in the absence of countervailing factors

c) Increase in market power resulting from the merger

[9] European Commission notice, Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, available at http://ec.europa.eu/competition/mergers/legislation/nonhorizontalguidelines.pdf

d) The likelihood that entry would maintain effective competition in the relevant markets

e) The likelihood that efficiencies would act as a factor counteracting the harmful effects on competition which might otherwise result from the merger

f) The conditions for a failing undertaking defence.

Section 11 prohibits undertakings from entering into a merger that will substantially lessen competition by creating or strengthening a dominant position in the market. Undertakings are required to apply for clearance from the Commission of the intended merger. The pre-merger application is accompanied by a fee which is decided by the Commission. In Phase I the Commission investigates the case and is expected to issue an approval decision in 30 days. If the commission fails to make a decision within 30 days for the phase I review, it implies that there is no objection on the intended merger. For Phase II, the Commission shall review the information and determine its decision within 90 days. Similarly, if no decision is made within this time frame, it means there is no objection on the transaction. Moreover, there may be scenarios where the Commission may decide that a particular merger transaction will lessen competition but nonetheless approval for merger is granted on the following grounds

a) it contributes substantially to the efficiency of the business,

b) such efficiency could not reasonably have been achieved by a less restrictive means of competition,

c) the benefits of such efficiency clearly outweigh the adverse effect of the absence or lessening of competition, or

d) it is the least anti-competitive option for the assets of the failing undertaking, if it is a case of actual or imminent financial failure.

If the Commission decides that the transaction under investigation does not qualify for approval, it may:

a) prohibit the consummation of the transaction,

b) approve it subject to conditions,

c) approve it given that the undertakings involved enter into agreements specified by the Commission.[10]

The in-depth analysis of transactions qualifying for a merger include for example, level and trends of concentration, level of import, ease of entry, degree of counter-vailing power, characteristics of the market under consideration, vertical integration, failing firm and the removal of effective competitors.

The CCP Merger Control Regulations (2007) provide thresholds that determine whether an undertaking requires pre-merger notification. These thresholds are as follows;

a) the value of gross assets of the undertaking, excluding value of goodwill, is not less than three hundred million rupees and/or the combined value of the undertaking and the undertaking(s) the shares of which are proposed to be acquired or the undertakings being merged, is not less than one billion rupees; or

b) annual turnover of the undertaking in the preceding year is not less than five hundred million rupees and/or the combined turnover of the undertaking and the undertaking(s) the shares of which are proposed to be acquired or the undertakings being merged is not less than one billion rupees; and

[10] Competition Commission of Pakistan, Merger Guidelines, available at: http://www.cc.gov.pk/images/Downloads/guidlines/merger_guidlines_dated_23_06_08.pdf

c) the transaction relates to acquisition of shares or assets of the value of one hundred million rupees or more; or

d) in case of acquisition of shares by an undertaking, if an acquirer acquires voting shares, which taken together with voting shares, if any ,held by the acquirer shall entitle the acquirer to more than 10% voting shares;

e) in the case of an asset management company carrying out asset management services, its collective exposure for itself and in all of its collective in-vestment schemes in a single entity is more than 25% of total voting rights; or

f) the value of total assets under management of an Asset Management Company is one billion rupees or more.

It is also provided that the Commission may change the thresholds from time to time. Moreover, the Regulations also provide a list of scenarios where undertakings may be exempted from pre-merger notifications. These include a merger of a company with its subsidiary, if shares are acquired by succession, inheritance, gifted or through a will. A transaction in which a bank or an insurance company or an investment company deals in trading of shares for its own account for the purpose of earning dividend income and capital gains and not with the intention of acquiring controlling interest in the investee company is also exempted. If an undertaking ac-quires property or goods in the ordinary course of business if the person who in-tends to acquire does not end up holding all or a substantial amount of property as a result. Additionally where an undertaking, the normal market activities of which include the carrying out of transactions and dealings in securities for its own ac-count or for the account of others, acquires securities of another undertaking and sells back the acquired securities on pre-determined price within a period of 6 months from the date of such acquisition.[11]

When mergers and acquisitions were introduced in Pakistan, a trend of horizontal mergers amongst multinationals was more prominent. The financial sector was observed to be the first to engage in merger activity. Gradually leasing and insurance companies followed suit. In 2003 the National Development Leasing Corporation (NDLC) in Pakistan proposed to amalgamate its business with International Finance Investment & Commerce Bank (IFIC Bank) of Bangladesh. The State Bank of Pakistan approved the merger resulting into NDLC-IFIC Bank Ltd. However later in the year NIB Bank of Singapore started its operations in Pakistan through NDLC-IFIC Bank. The bank grew exponentially and further acquisitions took place. The Pakistan operations of Crédit Agricole Indosuez were acquired in April 2004 and in 2007 PICIC Commercial Bank Limited merged with the bank. Temasek Holdings of Singapore is the largest single investor in NIB Bank to date.[12]

Currently, Pakistan reviews mergers for a variety of sectors in the economy; the last annual report produced by the CCP shows mergers in the following sectors; large conglomerates, the food industry, textile, cement, pharmaceuticals, the automobile sector, steel, power and energy, chemical products and electronics. A total of 51 mergers were reviewed in this period and all were cleared in the initial review, given their minimal impact on competition.[13]

In India, merger regulation began in June 2011. Section 6 of the Competition Act incorporates provisions for merger analysis. In comparison with Pakistan, the principal concept of merger analysis is very similar in India. Although Pakistan breaks down the investigation into Phase I and Phase II, in India, the act prohibits any merger from coming into effect until two hundred and ten days have passed from the date on which an undertaking notifies the commission. The second difference in the treatment of mergers between India and Pakistan is that of thresholds. The Act also instructs for the revision of these thresholds every two years, (Pakistan has not specified a time line for changes) based on the changes in Whole Price Index (WPI) or fluctuations in the Indian rupee.

[11] Competition Commission of Pakistan, Competition (Merger Control) Regulations (2007), available at: http://www.cc.gov.pk/images/Downloads/regulations/updated/merger_control.pdf

[12] NIB Bank, http://nibpk.com/about-us/#!/about-us/?page_id=6

[13] ompetition Commission of Pakistan, Annual Report, Protection against anti-competitive behaviour (2012), available at: http://cc.gov.pk/images/Downloads/annualreport_2012.pdf

Vide notification S.O. 480 (E) dated 4th March, 2011, the Government of India enhanced the value of assets and turnover mentioned in section 5 of the Act, by fifty percent. The current thresholds for the combined assets/turnover of the combining parties are as follows:

a) Individual: Either the combined assets of the enterprises would value more than (INR) 1,500 crores in India or the combined turnover of the enterprise is more than (INR) 4,500 crores in India. In case either or both of the enterprises have assets/turnover outside India also, then the combined assets of the enterprises value more than US$ 750 million, including at least (INR) 750 crores in India, or turnover is more than US$ 2250 million, including at least (INR) 2,250 crores in India.

b) Group: The group to which the enterprise whose control, shares, assets or voting rights are being acquired would belong after the acquisition or the group to which the enterprise remaining the merger or amalgamation would belong has either assets of value of more than (INR) 6000 crores in India or turnover more than (INR) 18000 crores in India. Where the group has presence in India as well as outside India then the group has assets more than US$ 3 billion including at least INR 750 crores in India or turnover more than US$ 9 billion including at least INR 2250 crores in India.

The exemption clauses in India are also very similar to those in Pakistan. However, some differences do exist. For example, in India, exact percentages of increase in shares are given; one of exemption clauses provide “An acquisition of shares or voting rights, referred to in sub-clause (i) or sub-clause (ii) of clause (a) of section 5 of the Act, solely as an investment or in the ordinary course of business in so far as the total shares or voting rights held by the acquirer directly or indirectly, does not entitle the acquirer to hold twenty five per cent (25%) or more of the total shares or voting rights of the company, of which shares or voting rights are being acquired, directly or indirectly, or in accordance with the execution of any document including a share holders’ agreement or articles of association, not leading to acquisition of control of the enterprise whose shares or voting rights are being acquired.[14]”

Reflecting on factors that are considered while determining whether a merger will result in appreciable adverse effects on competition; both CCP and CCI have provided a list of factors that help establish possible lessening of competition. The following factors are close to identical in India and Pakistan;

a) the actual and potential level of import competition in the market

b) the ease of entry into the market, including tariff and regulatory barriers

c) the level and trends of concentration, and history of collusion, in the market

d) the degree of countervailing power in the market

e) the dynamic characteristics of the market, including growth, innovation, and product differentiation

f) the nature and extent of vertical integration in the market

g) whether the business or part of the business of a merger party or merger has failed or is likely to fail

h) whether the merger situation will result in the removal of an effective competitor.

In addition, India has included the following considerations;

a) likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins

[14] Competition Commission of India, Notice u/s 6(2) of the Competition Act, 2002 (2014), available at: http://www.cci.gov.in/sites/default/files/C-2014-07-192_0.pdf

b) extent to which substitutes are available or are likely to be available in the market

c) market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination

d) relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition

e) whether the benefits of the combination outweigh the adverse impact of the combination, if any.

In the early stages after independence, mergers took place in sectors such as jute, cotton, textiles, sugar, banking, insurance, electricity and tea plantation. However, the number of transactions was deterred due to a lengthy and difficult procedure under the Monopoly Control Act (MRTP) of 1969. However, due to rapid economic changes in the 1990's India companies faced major competition challenges not only on a national level but also because of foreign competition. Cut-throat competition led to mergers and acquisitions which became a medium through major expansion took place.

During the period of 1st April, 2013 - 31st March, 2014, the Competition Commission of India (CCI) received 47 notices under sub-section (2) of Section 6 of the Act. Out of these notices the CCI made its final decision on 46 notices till 31st March, 2014.[15]

Moving on to merger control in Bangladesh, the draft Act provides a brief treatment of mergers and acquisitions. Section 7 states that any merger that consequences in substantial lessening of competition is prohibited. Secondly, clause two of section 7 explains that matters related to mergers; inquires, notifications and decision making shall be dealt via regulations.

The Competition Promotion and Market Protection Act in Nepal also has a small section linked to merger control. Prohibition on merger or amalgamation with in-tent to control competition: No enterprise that produces or distributes any goods or services shall, with intent to maintain monopoly or restrictive trade practices in the market ,merge or amalgamate with another enterprise that produces or distributes the similar or identical goods or services or purchase, either singly or jointly with its subsidiary enterprise, fifty percent or more of the shares of such enterprise or take-over the business of such enterprise.

Explanation: For the purposes of this Section, where a merger, amalgamation, share purchase or takeover of persons or enterprises that produce or distribute any goods or services of a similar nature results in more than forty percent of the production or distribution of the total production or distribution of such goods or services within the State of Nepal, such merger, amalgamation or takeover shall be deemed to have been made with intent to control competition.[16]

Deceptive marketing practices

Deceptive marketing practices cover the consumer protection aspect in competition law. Out of all SAARC member states, Pakistan, Nepal, Sri Lanka and Afghanistan have incorporated deceptive marketing practices as part of their law. The competition laws of India and Bangladesh do not cater to deceptive marketing practices.

In Pakistan, Section 10 provides insight to deception in terms of false and misleading representations of products or services via advertisements. The misleading information specifically refers to the nature, characteristics or quality of goods and services. Section 10 prohibits all undertakings from entering into deceptive marketing practices. According to the Act, a deceptive marketing practice shall be deemed to have been resorted to or continued if an undertaking resorts to

[15] Competition Commission on India website, available at: www.cci.gov.in

[16] Nepal, Competition Promotion and Market Protection Act, 2063 (2007).

a) the distribution of false or misleading information that is capable of harming the business interest of another undertaking

b) the distribution of false or misleading information to consumers, including the distribution of false or misleading information lacking a reasonable basis, related to the price, character, method, or place of production, properties, suitability for use, or quality of goods

c) false or misleading comparison of goods in the process of advertising

d) fraudulent use of another's trade mark, firm name or product labeling or packaging.

In Nepal, a similar approach towards deception is adopted; Section 10 of the Act prohibits undertakings from misleading advertisements. The clauses in this section are parallel to the clauses of those in Pakistan's competition act; however the difference is that Nepal has not implemented any clauses relating to misleading comparisons of goods and fraudulent use of trademarks.

Moreover, Sri Lanka's Consumer Affairs Authority Act also enforces prohibition of deception in Section 30 and 31. This section is more detailed as compared to that of Pakistan and Nepal's. Clauses in this section include:

§31: Any trader who in the course of a trade or business in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services –

a) falsely represents that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model,

b) falsely represents that goods are new

c) represents that goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits they do not have

d) represents that such trader has a sponsorship approval or affiliation he does not have

e) makes false or misleading statements concerning the existence of, or amounts of price reduction or price increase

f) makes false or misleading statements concerning the need of any goods, services, re-placements or repairs or

g) makes false or misleading statements concerning the existence or effect of any warranty or guarantee.

Section 5, Article 8 of the Law of Competition Protection in Afghanistan caters for deceptive marketing;

"Misleading remarks, whether in written or oral, or suspicious behaviour, that include the following results:

a) falsely pretending that one's goods or services are better in terms of quality, quantity, level, description, model or a particular standard, or downplaying the goods or services of one's competitors

b) claiming that old, repaired (renovated) or second hand properties are new

c) making a commitment to offer after sales services, exchanging, maintaining, repairing properties or any pars of them or repeating and continuing services until a specific result is achieved despite the fact that there are no such facilities

d) deceiving people concerning the prices of goods or services that are offered.

In comparison of the provisions put forward by other acts as analysed above, Afghanistan has an interesting amalgamation of clauses pertaining to deception. The clauses put forward by Afghanistan are much more specific in terms of violations as compared to other countries who have adopted a more general take on the kind of violation that can be regarded as deception.

COMMON SECTORS INVESTIGATED IN SAARC

Considering that SAARC member countries have relatively new or somewhat sedentary competition authorities, it would be pertinent to highlight the experiences of Pakistan and India as suitable examples of common sectors that have been investigated. There are a number of industries operating in various sectors which are highly regulated by governments in both India and Pakistan. In certain cases, prices for goods and services are regulated and fixed by specialized regulators and statutory bodies. It has been observed that sectors such as cement, sugar and the automobile industry are more prone to competition law infringements in Pakistan and India.

CEMENT

Following the Economic Reforms Order, 1972, the State Cement Corporation of Pakistan (SCCP) was established as the cement industry was nationalized in 1972. As a result of nationalization, a total of 10 cement units with an installed capacity of 2.8 million tonnes per annum were transferred to the SCCP. Effective price control was also under the ambit of the SCCP and the industry operated under a regime of strict regulation. However, in 1992 the government implemented its deregulation policy and many cement plants were privatized. Due to privatization, SCCP lost its control over the industry.

In 2009, the Competition Commission of Pakistan began its investigation on cement and noted that cement units, some of which were owned by political families, had formed a cartel. According to the commission's detailed judgment, the penalties were imposed after examining a seven-month record of the cement manufacturers recovered from the premises of their association. It was observed that the percentage share of each unit between 2003 and 2008 closely matched with the percentage share of member undertaking in the total production capacity, validating the existence of an agreement, closely adhered to by individual units. The CCP imposed a fine of over Rs6.35 billion (approximately USD 80 million) -the highest-ever in the country's history on 20 leading units.[17]

The Indian cement industry traces its history back to 1914, at a time when the industry was dependent on imports. The Indian Cement Manufacturers' Association (ICMA) was set up in 1925 in order to encourage local manufacturers and to place tariffs on imported cement. The Cement Manufacturers' Association (CMA) adopted a more mod-ern approach in 1961; however, the time period between 1945 and 1956 witnessed tight price controls and strict regulation by the Government of India. Moreover, it became increasingly obvious that regulated prices from central government could not provide the cement that the country was demanding. The controls eventually de-creased resulting in a free market from 1989 onwards. As a result of de-regulation, the cement industry was on the rise and a huge expansion in capacity took place, which has accelerated the industry and developed India’s economy.

In July 2012, the Competition Commission of India (CCI) found cement manufacturers in violation of the provisions of the Competition Act, 2002. The CCI imposed a penalty on eleven cement manufacturers at the rate of 0.5 times their profit for the year 2009-10 and 2010-11. The total penalties amounted to more than 60 billion rupees (more than USD 1 billion). The CCI also imposed a penalty on the Cement Manufacturers Association. The cement companies under scrutiny were engaged in parallel and coordinated behaviour on price, dispatch and supplies in the market. In addition to the fines, the Cement Manufacturers Association was asked to disengage and disassociate itself from collecting wholesale and retail prices through the member cement companies and also from circulating the details on production.[18]

SUGAR

[17] Competition Commission of Pakistan, decision F.No. 4/2/Sec.4/CCP/200.8, show cause notices issues to all Pakistan cement manufacturers association and its member undertakings, available at: http://www.cc.gov.pk/images/Downloads/Cement%20(final%20order)%2027-08-2009.pdf

[18] Jones Day, Antitrust Alert: Competition Commission of India Imposes US$ 1.1 Billion Penalty in Cement Cartel Case (2012), available at: http://www.jonesday.com/antitrust-alert--competition-commission-of-india-imposes-us-11-billion-penalty-in-cement-cartel-case-07-09-2012/

The sugar industry in Pakistan is the second largest agro based industry after textiles. In terms of acreage, Pakistan is the sixth largest producer of sugarcane and 12th largest producer of refined sugar amongst global players.

The CCP after search and inspection of the Pakistan Sugar Mills Association (PSMA) offices in September 2009 had conducted an enquiry under section 37 of the Act. It observed that members of PSMA appeared to have entered into an agreement regarding fixing the price of refined sugar and the terms of production and supply of refined sugar in the market. The inquiry report also said that PSMA members appeared to have participated in, or entered into an agreement for collusive bidding to offer a uniform price to the Trading Corporation of Pakistan for sale of refined sugar, thereby prima facie violating the Competition Act. The confiscated documents indicated that the sugar mills, rather than competing in the open market prefer a closed and protected market which is managed collusively and collectively by PSMA. In April 2011, PSMA was fined the maximum penalty of Rs75 million (approximately USD 900,000) by CCP.[19]

The sugar industry in India is an integral sector of the Indian economy and similar to Pakistan, it is the second largest agro-based industry after textiles.

The CCI took note of a news article that indicated an allegation that certain sugar mill associations had indulged in anti-competitive practices; more precisely cartelization. The Commission directed the investigations department conduct an investigation into alleged cartelization by sugar mill associations. Letters were issued to various parties and an investigation was conducted by the Director General. It was thereby concluded that the sugar mills through their association had formed a cartel to fix the price of sugar.

As a result of the ongoing investigations, it became clear that the sugar industry was a highly regulated industry with governmental control playing a significant role. The Central and state governments had safeguarded farmers, mill owners and the consumers by ensuring payment of fair price to the cane growers, adequate returns to sugar mills and supply of sugar to consumers at reasonable price.

The Commission observed that sugar was under control either through a mechanism of control over prices or control over supply and that the industry was not operating within the free market. Market dynamics were not able to drive the industry because of excessive governmental control and regulations.

The Commission concluded that in a regulated sector such as sugar industry, a possibility of effective cartelization is remote. However, at the same time, the Commission has also ruled that albeit the sugar industry being regulated, it would still be under the mandate of the Competition Act.[20]

AUTO INDUSTRY

The Competition Commission of Pakistan (CCP) has recommended that the government should open domestic markets to the import of new cars at reasonable tariffs. It has made a case for allowing foreign competition in the sector, which will in tur benefit consumers in terms of new technology and more choices.

CCP found that Pakistan's automobile industry is inward-looking and tries to protect itself through the use of regulatory instruments. It was recommended that Pakistan's automobile industry needs to be developed. The following short and long-term propositions were put forward;

a) Remove barriers to entry and lower import tariffs and make them uniform across all automobile categories.

[19] Competition Commission of Pakistan, Enquiry Report on Collusive practices in the sugar industry, (2009), available at: http://www.cc.gov.pk/images/Downloads/enquiry_reports/enquiry_report_october_2009.pdf

[20] Competition Commission of India, Suo-Motu, Case No. 1 of 2010 (2011), Sugar Mills, available at: http://www.cci.gov.in/sites/default/files/SUGAR%20CASE%20NO.%201-2010%2030.Nov%202011_0.pdf

b) The import of used cars, currently allowed under the gift, personal and bag-gage schemes, should be reopened

c) A recently-implemented measure that lowers the depreciation allowance for imported used cars needs to be reconsidered, as it may reduce consumer welfare by increasing the price of imports.

In India, the CCI received a complaint regarding three carmakers — Honda, Volkswagen and Fiat — claiming the abuse of their position in the market by follow-ing a restricted policy on auto parts. Spare parts and technical manuals were only available through their dealers and not in the open market, and were also influencing their auto component suppliers. Hence these car companies were making hefty margins through controlling the supply of parts.

After an initial inquiry, in April 2011, CCI expanded the probe to all automobile manufacturers in India — which amounted to a total of 14. It was hereby concluded that car manufacturers were indeed in control of supply of spare parts and were making extraordinary profits. The CCI came out with an order and fined each of the 14 companies 2 per cent of their respective average revenues of the past three years and gave them 60 days to comply with the order.[21]

[21] Competition Commission of India, Case No. 3/2011 (2014), Shri Shamsher Kataria, available at: http://www.cci.gov.in/sites/default/files/032011_0.pdf

EXISTING SPECIFIC REGIONAL CO-OPERATION AGREEMENTS IN THE SAARC REGION AND LESSONS LEARNED

Technical co-operation agreements are not new or unknown to South Asia. Under the umbrella of SAARC, the region has seen specific regional co-operation agreements take place to enhance the regulatory framework. The more important of these are:

SAARCFINANCE

BACKGROUND

At the 10th SAARC Summit of the Head of the States held in Colombo on 29 July 1998, it was agreed, in principle, to establish a "Network of Central Bank Governors and Finance Secretaries of the SAARC Region (SAARCFINANCE)" to encourage dialogues on macroeconomic policies of the region and for the sharing mutual experiences and ideas.

Accordingly, SAARCFINANCE[22] was established on 9 September 1998 as a regional network of the SAARC Central Bank Governors and Finance Secretaries. It is a permanent body as it got formal recognition at the 11thSAARC Summit, held in Kathmandu, Nepal in January 2002.

As per the decision of the Summit, Chairperson of SAARCFINANCE is invited to the sessions of the SAARC Council of Ministers to make a presentation on SAARCFINANCE activities.

SAARCFINANCE comprises of the eight members – (i) Bangladesh Bank (ii) Central Bank of Sri Lanka (iii) Da Afghanistan Bank (iv) Maldives Monetary Authority (v) Nepal Rastra Bank (vi) Reserve Bank of India (vii) Royal Monetary Authority of Bhutan and (viii) State Bank of Pakistan.

At the 29thSAARCFINANCE Group Meeting held in Washington D.C., on 9 October 2014, the SAARCFINANCE Chairmanship was transferred from Nepal to Pakistan.

OBJECTIVES OF SAARCFINANCE

The basic objective of establishing the SAARCFINANCE Network was to promote co-operation among central banks and finance ministries in SAARC member countries and to learn from shared experiences among member countries on the macroeconomic policy challenges facing the region.

The broader objectives of the SAARCFINANCE Network, however, encompass the following:

- To promote co-operation among central banks and finance ministries in SAARC member countries through staff visits and regular exchange of information;
- To consider and propose harmonisation of banking legislations and practices within the region;
- To work towards a more efficient payment system mechanism within the SAARC region and strive for higher monetary and exchange cooperation;
- To forge closer co-operation on macroeconomic policies of SAARC member states and to share experiences and ideas;

[22] SAARC finance website, available at: http://www.saarcfinance.org/index.html

- To study global financial developments and their impact on the region including discussions relating to emerging issues in the financial architecture, IMF, World Bank, and other international lending agencies;
- To monitor reforms of the international financial and monetary system and to evolve a consensus among SAARC countries in respect of the reforms;
- To evolve, whenever feasible, joint strategies, plans, and common approaches in international forum for mutual benefit, particularly in the context of liberalisation of financial services;
- To undertake training of staff of the ministries of finance, central banks and other financial institutions of the SAARC member countries in subjects relating to economics and finance;
- To explore networking of the training institutions within the SAARC region specialising in various aspects of monetary policy, exchange rate reforms, bank supervision and capital market issues;
- To promote research on economic and financial issues for the mutual benefit of SAARC member countries; and,
- To consider any other matter on the direction/request of the SAARCFINANCE, Council of Ministers or other SAARC bodies.

ACTIVITIES

SAARCFINANCE has been very active since its inception. The network has seen many activities take place that have been classified as seminars, workshops, governors' symposiums, and research studies.

Each central bank has established a SAARCFINANCE Cell in its Research Department to coordinate the activities of SAARCFINANCE. Member central banks also appoint a Coordinator. The Coordinator of the central bank holding Chair of the SAARCFINANCE acts as the central Coordinator (currently Pakistan). It is this process of change in institutional structure that has encouraged and helped SAARCFINANCE maintain such an active role since its inception.

The 30thSAARCFINANCE meeting took place in Dhaka in June 2015, where the Chair-person, Governor of the State Bank of Pakistan, spoke some of the initiatives taken by the network. These included the availability of short-term liquidity facility for member countries; the capacity building programmes under the scholarship scheme; the creation of a regional database; and collaborative research studies.

More recently, the 22nd meeting of SAARCFINANCE's co-ordinators took place in August 2015 in Islamabad. The meeting was primarily aimed at reviewing the progress of SAARCFINANCE activities and to prepare the draft agenda for the forthcoming 31stSAARCFINANCE Group Meeting, which will be held alongside the annual meetings of the IMF, World Bank in Lima, Peru during 9-11 October 2015.

SAARCFINANCE Co-ordinators and Alternate SAARCFINANCE Co-ordinators from SAARC Central Banks and focal points from ministries of finance of the region, Pakistan's Ministry of Foreign Affairs and the State Bank of Pakistan attended the meeting. This is indicative of the importance SAARCFINANCE has managed to create and maintain for itself.

The Chairman (Governor of the State Bank of Pakistan) shared the decision of the 30thgroup meeting of the SAARCFINANCE, in which five areas for cooperation were identified as a roadmap for the network.

The areas of co-operation, he said include reducing the transaction costs of cross-border remittances in the SAARC region, cross-border trade in the region, capacity building of staff, creation of a SAARCFINANCE statistical database, and collaborative research studies to assess issues of common interest.

The Chairperson expressed hope that these areas for mutual cooperation would help build a clear mandate for future co-operation among the members.

The Chairperson highlighted some initiatives of the SAARCFINANCE Network, such as the availability of short-term liquidity for members under the SAARC Swap Arrangement, capacity building programmes for officials of members under the SAARCFINANCE Scholarship Scheme and the dialogue and exchange of knowledge on issues of mutual interest through SAARCFINANCE Portal. These are in themselves conducive to fostering engagement between the Central Banks.

He emphasised the importance of these initiatives as beneficial for fostering closer relationships and building human capability in practical fields of central banking amongst SAARC partners.

CONCLUSION

SAARCFINANCE has gained traction in South Asia because of the importance of the banking and monetary sectors for the regional economies. It has also benefitted from institutional support in that most central banks have established formal SAARCFINANCE support units under the supervision of senior officers (in the case of the State Bank of Pakistan, a Director).

The South Asian Securities Regulators' Forum

BACKGROUND

There exists a South Asian Federation of Exchanges (SAFE) to co-ordinate between the bourses of the region and as a consequence, the region's securities regulators decided to establish a regional forum.

Thus, SAFE, in its fifth Annual General Meeting held in May 2005 in Islamabad, pushed for the establishment of a South Asian Securities Regulators' Forum (SASRF). The purpose behind the establishment of the SASRF was to attain support of the regional securities regulators for the developmental projects of SAFE, particularly for the projects like encouraging cross border listing and trading in the region. It was necessary to have the necessary regulations in harmony with each other.

MEMBERSHIP

In May 2005, the Prime Minister of Pakistan chaired the signing ceremony of a Memorandum of Understanding (MoU) between the securities regulatory bodies of Bangladesh, Bhutan, Mauritius, Nepal and Pakistan. The MoU established a voluntary and cooperative body, the SASRF, for increasing mutual cooperation and ex-change of information among the member countries.

The first meeting of the SASRF was subsequently held in Islamabad at that time. During the meeting, Dr. Tariq Hassan, the then Chairman of the Pakistan Securities and Exchange Commission, and Mr. Deepak Raj Kaflé, Chairman of the Securities Board Nepal, were elected as the chair and vice-chair of the SASRF, respectively.

India and Maldives became signatories to the SASRF MOU in December 2005 while SEC Sri Lanka joined the forum in 2006.

Subsequent to this, there is no evidence of any activity by SASRF. Much of the in-formation on the SAFE website has not been updated to reflect the current composition of the representatives' details.

Important lessons learned from the experience of SAARCFINANCE and SASRF

SAARCFINANCE has seen considerable success in terms of ownership and activities. SASRF has remained virtually invisible.

SAARCFINANCE has benefitted from institutional support; SASRF has not. Unlike the State Bank of Pakistan, which assigned specific SAARCFINANCE responsibility to a senior officer and adjusted its internal structure to give prominence to this work, the Securities and Exchange Commission of Pakistan made no such change in structure nor did it assign specific responsibility to an individual. Lack of ownership of the SASRF at the institutional level in Pakistan is apparent. It would be relatively safe to surmise that it would be a similar situation in the other countries.

Institutional change and structural support would be essential requirements for a SACN to remain a viable entity. In addition, an early set of regional activities that can be implemented under a project management approach will help expedite the establishment of regional connections between agency personnel and a common purpose.

OTHER REGIONAL COMPETITION CO-OPERATION AGREEMENTS

The European competition network

Pakistan's competition law is inspired by the Treaty of Rome (1957) that led to the formation of a European Economic Community (EEC), so it is appropriate to make some mention of the source of the country's law.

The Treaty affirmed in its preamble that signatory States were "determined to lay the foundations of an ever closer union among the peoples of Europe." Member States, thus, specifically affirmed the political objective of progressive political integration.

In fact, the EEC was a customs union, and as a consequence, became known as "Common Market." Member countries agreed to dismantle all tariff barriers over a 12-year transitional period. In view of the economic success that freer commercial exchanges brought about, the period was shortened and in July 1968 all tariffs among the EEC States were abrogated. At the same time, a common tariff was established for all products coming from third countries.

The common market initially meant exclusively the free circulation of goods. Free movement of persons, capitals, and services were subject to numerous limitations until the Single European Act, in 1987, when a definitive boost was given to establish a genuine unified market. This brought about the European Union Treaty in 1992.

The European Commission and the national competition authorities in all EU Member States co-operate with each other through the European Competition Network (ECN).[23]

This creates an effective mechanism to counter companies which engage in cross-border practices restricting competition. As European competition rules are applied by all members of the ECN, the ECN provides means to ensure their effective and consistent application. Under the co-ordinating mechanism of the ECN, the competition authorities inform each other of proposed decisions and take on board comments from the other competition authorities.

Within the ECN, groups of experts in specific sectors (banking, securities, energy, insurance, food, pharmaceuticals, professional services, healthcare, environment, motor vehicles, telecommunications, media, IT & information & communication, and railways) discuss competition problems and promote a common approach. In this way, the ECN allows competition authorities to pool their experience and identify best practices that can have regional application. This allows for a consistency in the application of the law in all the member countries.

The Joint Statement of the Council and the Commission on the Functioning of the Network of Competition Authorities[24] says in §9, "The Commission, as the guardian of the Treaty, has the ultimate but not the sole responsibility for developing policy and safeguarding efficiency and consistency. Therefore, the instruments of the Commission on the one hand and of the NCAs on the other hand are not identical. The additional powers the Commission has been granted to fulfil its responsibilities will be exercised with the utmost regard for the cooperative nature of the Network."

This last point is a unique characteristic of the EU competition law regime. As the EU is made up of independent member states, both competition policy and the creation of the European single market

[23] The list of countries is available at http://ec.europa.eu/competition/ecn/competition_authorities.html

[24] European Union, Joint statement of the Council and the Commission on the functioning of the network of competition authorities, available at http://ec.europa.eu/competition/ecn/joint_statement_en.pdf

could be rendered ineffective if member states were free to support national companies as they saw fit.

An important aspect of the European Competition Network is the merger working group that was established in 2010 to foster increased consistency, convergence and cooperation among EU merger jurisdictions. The group's mandate is to identify areas of possible improvements regarding issues in mergers with cross-border im-pact, and explore possible solutions focusing on what is feasible within the existing legal frameworks and drawing from agency practices and experience.

CARICOM

Caribbean community or CARICOM came into effect in 1973 after the Treaty of Chaguaramas. Its member states include Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent & the Grenadines, Suriname, Trinidad and Tobago. The establishment of CARICOM took place as a result of efforts made by political leaders for greater economic integration and cooperation among the islands, after the end of British West Indies Federation in 1958.

CARICOM received the status of a single market economy following the Revised Treaty of Chaguaramas (RTC) in 2011. The single market structure was expected to foster business growth through competition. Furthermore, CARICOM Competition Commission was established to support the CARICOM single market economy and to ensure that anti-competitive practices do not hinder its growth.

The commission is headquartered in Suriname and headed by an Executive director who is supported by a professional staff with legal, economics, registry, finance and administrative skills. Ministry of trade, Suriname, provides the support staff under the protocol of transfer.

The commission has the power to monitor, investigate, detect, make determinations and impose penalties regarding anti-competitive cross-border transactions affecting the single market structure. The Community Competition Law is stated in the Competition law of all the member states. The law requires national competition authorities to cooperate with the Commission and gives it the power to con-duct investigations in case of any anti-competitive cross-border offence. Enactment of the competition legislation is facilitated by the CARICOM Model Competition Bill. Countries that do not have a competition law or an enforcement body are not exempt from investigations by the Commission.

COMPETITION AND CONSUMER PROTECTION FOR ALL - COMPAL

Introduction

COMPAL[25] is a UNCTAD- led programme that began in Latin America for strengthening institutions and capacities in the area of competition and consumer protection policies. Countries assisted by this programme were Bolivia, Colombia, Costa Rica, Ecuador, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Paraguay, Peru and Uruguay.

When it started, only Costa Rica and Peru had competition law and authorities in place and by the end of COMPAL, all beneficiary countries had these laws and institutions. COMPAL III has recently been launched in Latin America to build upon earlier successes in the region.

At its outset, COMPAL's focus was Latin American countries; countries that shared similar economic, social and cultural backgrounds. In 2015, COMPAL believes that countries in other regions of the developing world can greatly benefit from lessons that have been learned and products and practices that have been developed to aid the efforts made in the area of competition and consumer protection. There has been a willingness from a large number of countries to join COMPAL.

The level of success of COMPAL in Latin America has led to the programme's approach being adopted by UNCTAD as the organisation's general strategy for technical co-operation on competition and consumer protection worldwide.

Thus far two programs have been launched in the ASEAN region and Middle East and North Africa. These regional initiatives aim to build a self-sufficient programme that builds and then consolidates the acquired capacities of the stakeholders and strengthens regional co-operation on competition and consumer protection policies.

Global COMPAL, a self-sustained programme, thus will function beyond 2018 and will be made available to a large number of United Nations member states, including South-East Asia, the Balkans, and Southern and Western African sub-regions. What is conspicuous by its absence is South Asia, at this stage.

Nature of technical assistance provided

Global COMPAL provides technical assistance to countries facing anti-competitive issues such as prohibited agreements, abuse of dominance by entities with market power, merger review and clearance, and distortions in the economy by state-owned enterprises, to highlight a few.

COMPAL's main aim is enhancing the capacity of these countries to successfully tackle these issues. Although COMPAL also works to help introduce competition and consumer protection policy frameworks in national legislation, this important first step has been taken by all countries in the SAARC region.

Institutional capacity-building (including establishment of consumer agencies where there are none), training and upgrading skills of enforcers to provide effective and affordable redress to consumers; combating unfair trade practices such as misleading advertising, fraud, data protection and counterfeit products, and regional co-operation initiatives across these areas.

[25] UNCTAD, COMPAL documents available at: http://unctad.org/SearchCenter/Pages/Results.aspx?k=compal

Global COMPAL also aims to assist the private sector, especially small and medium enterprises, in partner countries so that they can build sustainable capabilities by meeting international norms and standards – in a word, compliance. For this purpose, UNCTAD does advocacy for understanding competition law and holds training workshops and awareness raising activities.

MAKING THE CASE FOR A SOUTH ASIAN COMPAL

The South Asia region can benefit immensely from a COMPAL programme. All eight countries in the SAARC region are members of UNCTAD, which facilitates the role of the United Nations. UNCTAD, thus, provides an incentive and an umbrella under which all SAARC competition agencies can co-ordinate and collaborate on activities, something that may not happen on its own initiative for various reasons. Second, the level of activities done under COMPAL would be useful to all agencies regardless of their stage of competition law development and implementation. These activities fall into two broad categories (with relevant sub-activities given under each):

1) Improving the Policy and Legislative Environment.

    a. Advising on legal and regulatory changes that can open markets to competition;

    b. Drafting new laws and regulations for effective competition policies;

    c. Carrying out (peer) reviews to identify regulatory gaps and inconsistencies with national and regional laws;

    d. Providing technical advice in the implementation of competition policies, including State aid regulations, public procurement issues, and competition advocacy initiatives;

    e. Mainstreaming principles of competition policy within broader trade and investment climate reforms, and

    f. Building the capacity of the judiciary to improve its understanding and application of competition and consumer protection regulations, expediting the judicial review process.

2) Building the Capacity of Competition and Consumer Protection Agencies.

    a. Strengthen agencies' substantive and corporate functions. Substantive support will build agencies' capacity in areas such as investigative processes for cartel prosecution and identifying anti-competitive agreements, etc. Corporate support will improve agencies' capacity in areas such as strategic planning, performance evaluation, communications& outreach, and knowledge management, etc. that are essential for the agencies to operate effectively. Both types of support have the ultimate aim of enabling the agencies to better investigate and resolve anticompetitive practices and defend the rights of consumers. Support for communications will also assist agencies to raise awareness of (and confidence in) their services among businesses and the public.

    b. Assist SAARC competition agencies to produce essential tools and information products to tackle anti-competitive behaviour. These include market studies, guidance manuals, guidelines, and knowledge management tools, such as competition impact assessments that identify factors constraining competitive markets.

    c. Interaction with key stakeholders such as consumer groups and trade associations. COMPAL will develop the capacity of competition agencies to strategically work with these bodies to help raise their awareness of competition and consumer protection law and of their rights and responsibilities.

COMPAL has provided an opportunity for a large, thematic global strategy in com-petition and consumer protection. The experiences of COMPAL in other regions had demonstrated that a large, long-term intervention provided a level and continuity of support that delivered considerable change

across regions. There is, a significant opportunity for replicating and scaling up this approach in other regions, especially South Asia, given the size of the region and the cumulative number of consumers that should reap the benefits of competitive markets for economic development and poverty reduction.

How will COMPAL be Implemented?

It is important that the COMPAL programme engender a strong sense of partner-ship, ownership of objectives, peer learning, co-operation, and leadership. Similar to SAARCFINANCE, it is proposed that the Chairmanship of COMPAL be rotated among Member countries every two years. This will give every country a chance to contribute. The COMPAL secretariat, for the sake of consistency and managing his-tory and knowledge, can be retained by Pakistan, given that Pakistan's competition law has both competition and consumer protection elements.

COMPAL project teams will be nominated in each competition agency and commit-tees dealing with particular issues will be established by consensus. Given excellent networking infrastructure, it is expected that virtual meetings will take place frequently, allowing teams to interact comfortably and cost-effectively.

SCOPE OF WORK

Global COMPAL works at three different levels: National, Regional, and Global. We find that these three stages have relevance for the South Asia region as they will help develop relationships between competition agencies initially, and trade and business associations, and then governments.

NATIONAL

One reason behind COMPAL's success in Latin America was the flexible, demand-driven approach it took to suit each country's specific developmental needs and local circumstances.

We envision that South Asia will follow a similar strategy. Following a similar approach in Global COMPAL, a needs assessment will be done to determine each country's specific needs. This process will be done in collaboration with the local competition and consumer protection agencies, the people who have valuable knowledge. The analyses will also see how business conduct and government policies may distort competition in specific sectors and to what degree. Based on the findings, each country will adopt its own action plan that will be aligned with the competition and consumer protection agencies for greater coherence. UNCTAD will help execute the partner countries' action plans under technical assistance projects.

REGIONAL

The regional component will build on the findings and requirements from the needs-assessment done at the national stage. From this point on, COMPAL will focus on encouraging peer-peer learning, identifying regional competition and consumer protection issues that require regional collaboration, and involving non- partner countries for greater impact and exposure to other practices. Regional is-sues will have possible regional solutions at this stage and the sharing of this information will help develop South-South co-operation, mutual learning, and transfer of knowledge.

Peer-peer learning will bring national and regional competition and consumer protection agencies and networks together to enable learning from past experiences and transfer of knowledge. Peer-peer learning will be an important tool to help open channels of communication and knowledge sharing in the region and hopefully, build sustainable relationships at the institutional level that will outlive COMPAL's technical assistance.

In addition, regional activities may (depending on context and need) provide an effective avenue for involving other non-partner countries, for example, competition agencies in ASEAN. Involving additional countries in the regional component adds momentum and visibility to COMPAL, broadens its impact, and leads towards the (second) global component.

GLOBAL

The global component will bring together competition and consumer protection agencies from different regions to identify and deliberate on issues with an international dimension. COMPAL, and by extension, UNCTAD, will work with other multi-lateral institutions to build consensus on best practices for competition law and pol-icy. It will also work extensively with World Bank, OECD, and the International Competition Network on specific projects of common interest.

Emerging global issues will be identified during discussions between partner agencies. COMPAL will promote deliberations on specific problems with an international dimension and, in response to demand from participating countries, conduct investigations to provide information to inform these debates. COMPAL will also seek to link competition and consumer protection agencies from different regions with are-as of common interest to promote collaborative initiatives.

As SAARC countries adopt sound competition principles and enforcement techniques, there will be a “soft” convergence towards best current practices in the region. This will reduce the costs of compliance with increasingly harmonised enforcement standards and encouraging trade for the benefit of the countries. UNCTAD will facilitate partnership with other multilateral institutions to continue to build consensus on appropriate competition law and policy principles for the South Asian Competition Network under COMPAL. The World Bank and OECD will be the most recurrent agencies with which UNCTAD will constantly find synergies and common interests to work together on specific projects and/or activities. Having a single focal point for the region in COMPAL makes sense rather than each SAARC country approaching these institutions individually. For the donors, a single point of contact – i.e., a project management office – makes project implementation, monitoring, and evaluation easier.

CONCLUSION

Regional integration in South Asia is and continues to be a slow moving process but it is receiving the necessary impetus as a result of harsh global economic realities. Regionalisation and the creation of the necessary environment for economic growth and development in Asia is more imperative than ever. It is hoped that COMPAL's programmatic activities to develop capacity and its integrative objective can be achieved through creating an environment that promotes domestic, cross-border, and foreign investment, adoption of common policies and programmes, and the adoption of common positions with regards to the international economic development agenda.

Competition policy is important for preventing non-tariff barriers to trade. Promoting competition is a vital tool for enhancing economic and market efficiency and thus creating an enabling environment for achieving the integration objectives.

A sound regional competition framework needs to take into account the complex interrelationships in today's globalised economy. International business transactions nowadays involve interests at the national, regional and international level.

A sound regional competition policy framework therefore not only requires clarity especially in terms of its jurisdictional reach, but also an adequately harmonised national framework between the Member States to be properly implemented and also function efficiently at the international level. This research on the comparison of the existing competition framework in South Asia makes a simple point: taking advantage of collaboration between the Central Banks in the regions under the umbrella of SAARCFINANCE, the time for a South Asia Competition Net-work has arrived.

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The International Trade Centre implemented the Trade Policy Capacity Building Component of the European Union funded TRTA II programme. It is aimed at the Ministry of Commerce and Government of Pakistan in developing a coherent trade policy and attendant regulations for export competitiveness. Specifically, it will aim to reinforce the skills of government officers working in trade related ministries and implementing agencies on issues related to trade policy, commercial diplomacy and regulatory reform. The main way in which to achieve this through the institutional capacity building of key local training institutes, which is intended to have an immediate effect on the capacity of government officers working on trade policy issues.

In addition, Component 1 promotes comprehensive, regular and well informed public-private dialogue among the government, private sector and civil society for trade policy development, monitoring and evaluation. To promote local ownership and legitimacy of the dialogue, a steering committee comprising equal representation of the public and private sectors has been established with the formal approval of the Ministry of Commerce of Pakistan. Its mandate is to oversee the planning, implementation and monitoring of public-private dialogue on key issues. To better inform the public-private dialogue process, research studies are commission and internationally peer reviewed before dissemination to stakeholders. After extension of the TRTA II programme, Component 1 was assigned the additional responsibility of building the institutional capacity of the Competition Commission of Pakistan (CCP).

The targeted interventions of Component 1 to achieve these goals constitute the following:

Result for Component 1: Coherent trade policy and regulatory reform for export competiveness

1. The Pakistan Institute for Trade and Development (PITAD) institutional capacity is strengthened.
2. PITAD's and other research institutes' expertise on trade policy strengthened.
3. Government officers' capacity on specific trade policy and international trade negotiations strengthened.
4. Research studies contributing to the development of a national export strategy conducted.
5. Public-private dialogue for a coherent national export strategy is fostered.
6. Institutional Capacity of CCP is strengthened.

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