Competition Policy Reform, Growth and Poverty Reduction

Executive Summary

Many countries in Asia are now adopting and implementing new competition policy regimes.

Competition policy is recognised as a crucial component of a good business environment, and is a priority area for reform in Asia. Its importance for stimulating further growth was a key focus of the Asian Development Bank’s flagship publication, Asian Development Outlook 2005. Competition policy was also highlighted as a key plank in a good investment climate in the recommendations of the Asia 2015 Business Action in Asia conference in 2006.

Competition policy sets a more consistent framework within which the business sector operates. More effective competition creates a level playing field, and reduces opportunities for corruption and rent-seeking. It creates more space for entrepreneurs and small and medium-sized enterprises. Effective competition enhances innovation and promotes investment and growth. Competition policy can also contribute directly to poverty reduction by reducing prices and improving access to services.

This paper builds on DFID’s experience in supporting competition policy reform in Asia and elsewhere, and outlines best practice in the design and operation of competition law and policy. The need for developing a ‘culture of competition’, that reflects and requires a whole-hearted pro-market commitment from the highest levels of government, appropriate supporting policies, and support from an informed civil society, media and judiciary is highlighted.

The paper addresses a number of key issues being considered by the Conference, including all three of the Conference themes. It identifies

1 The principal authors are John Preston, Roger Nellist, Max Everest-Phillips and Tony Polatajko.
Cartels (both domestic and international), and the abuse of dominance, impose a substantial burden on national economies. The paper notes the need for wider understanding of the beneficial impact of effective competition policy on an economy, and for appropriate supporting policies. It records the importance for developing effective competition policy of the existence of an active civil society, an informed and open media and an informed judiciary. The importance of political economy issues, including the need to recognise the potential role of vested interests in blocking reforms and competition law enforcement, is outlined.

The paper recommends that donors can give greater support to governments seeking to introduce or improve competition policy by:

- supporting the application of a bottom-up, advocacy-based approach to building a culture of competition, and a wider understanding of the benefits of competition.

- assisting efforts to build the evidence base on the state of competition across the economy, and in particular sectors.

- engaging with governments, competition authorities and regulators to design competition policy frameworks and laws that are suitable for the country context.

- encouraging the provision to competition authorities of adequate financial and human resources, by improving the capacity of these authorities through staff development, and by funding training for the media and the judiciary.

- facilitating cooperation between competition authorities, including the exchange of information on anti-competitive practices, and on procedures for investigation and analysis.

- funding the participation of developing country representatives in international competition policy fora.
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1. Why is competition policy important for Asia?

1.1 Effective competition can play an important role in economic growth and poverty reduction. Where competition is vigorous, producers will seek the most efficient methods of production, innovation will be encouraged and resources will be used to produce the goods and services society values most highly. Consumers will benefit from lower prices, better quality and a wider range of goods and services.

1.2 Within the right framework, markets work to society’s advantage, but can fail. One cause of market failure is anti-competitive practices by firms. Another is inappropriate policies or regulations that restrict entry to or exit from markets, and/or limit the exercise of competition. Competition policy seeks to help markets to work well; it does not second-guess or replace them.

1.3 As economies liberalise, deregulate and privatisate, they should be concerned to see that the removal of formal barriers is not followed by re-monopolisation by dominant private actors.

1.4 Much of Asia has made impressive strides in economic growth in recent times. But hundreds of millions of people in the region still live in poverty. Achieving the Millennium Development Goals, in Asia as elsewhere, requires rapid and sustained growth. It is now widely accepted that the private sector must be the engine of growth, and that governments must create environments that allow the private sector and markets to flourish.

1.5 In 2005, the need for competitive markets was emphasised in flagship publications of the World Bank and the Asian Development Bank. The ADB observed that:

“...the importance of competition for achieving a higher rate of innovation and adoption of new technologies over time is critical for sustaining Asia’s rapid growth. Yet competition is not automatic, and is not the same as laissez faire.”

1.6 Cartels can have significant impacts on price levels. An estimate for Japan was that cartels increases prices by an average of 16.5%, while, as the following box indicates, higher increases have been reported from studies in other jurisdictions.

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2 Competition is the process of rivalry between firms that are striving to gain sales and to make profits. Free entry and exit of firms is needed to keep markets competitive. While the motive for competition is self-interest, the effects are mostly beneficial for society, an outcome noted by Adam Smith in his Wealth of Nations in 1776, and more recently by economists including Michael Porter.


4 Quoted by V. Dhall, International Bar Association Conference on Competition Policy, New Delhi, 3-4 November 2006.
Box 1

The Cost of Cartels

At the Regional Cartel Workshop in Seoul in April 2006, an OECD Senior Economist observed that: “The worldwide economic harm from cartels is clearly very substantial, though difficult to pin down precisely. Conservative estimates indicate it to be many billions of US dollars annually.” He noted a study showing that in 1997 alone, developing countries imported goods costing $51 billion from industries that had seen some cartel activity in the 1990s. While some cartels are short-lived, others last for many years.

A study of 674 cartel cases by John Connor of Purdue University found the median overcharge by cartel members to be 25%. For international cartels the median overcharge was 32%, and was 18% for domestic cartels. This suggests that international cartels are stronger than domestic cartels. However, an OECD survey of the experience of 15 member countries in 1996 to 2000 found that domestic cartels greatly outnumbered international cartels.

1.7 Because effective competition is not automatic, Asian countries need to ensure that their policies will create the conditions for competition that will allow the private sector to flourish, to increase growth and to help reduce poverty. As the ADB pointed out

“competition policy is complementary to other policies. Consequently, liberalisation and privatisation policies cannot be expected to automatically contribute to economic growth if competition policy and institutional infrastructure are lacking."

1.8 International competitiveness has many determinants, but firms are unlikely to become internationally competitive if they do not operate in a competitive domestic environment.

2. Competition policy in Asia

Laws and policies

2.1 In recent years, several Asian countries have introduced a competition law, or have made major changes to their existing law. Vietnam and Singapore have new laws, while Malaysia plans to introduce a law in the

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5 Kenneth Danger, Senior Economist, Competition Division, OECD, “Cartel Harm and Factors that Facilitate Cartel Formation”, Regional Cartel Workshop, Seoul, 5 – 7 April 2006
6 J. M. Connor, Purdue University, Staff Paper No 04-17, 27 April 2006
current 9th planning period, possibly as early as 2007. India introduced a new competition law in January 2003 (though full implementation requires an amendment by Parliament, expected shortly), while Pakistan is currently working to replace its existing law. In June 2006, China’s State Council approved a draft anti-monopoly law for submission to the National Peoples Congress for discussion and possible adoption by late 2006 or early 2007.

2.2 Korea, which enacted a competition law in 1980, has taken a prominent role in the promotion of competition law. It was a founding member of the International Competition Network (ICN), and, in April 2004 Korea hosted the ICN’s third annual conference. In May 2004 the Seoul Regional Centre for Competition was opened as a joint venture between the Korea Fair Trade Commission and the OECD. The Centre’s object is to help competition officials from Asian countries meet regularly to exchange experiences and to deepen their capacities in competition law and policy through workshops, seminars and other events. The Centre’s activities are focused on Cambodia, China, India, Indonesia, Malaysia, the Philippines, Singapore, Korea, Chinese Taipei, Thailand and Vietnam.

2.3 Provisions for increased cooperation on competition issues were included in the ASEAN Free Trade Area agreement, and in the Agreement on the South Asian Free Trade Area. However, the competition aspects of these agreements appear not to have been developed to any significant extent.

2.4 As noted by S. Evenett in *Competition policy and Development in Asia*,

“The side effects – or in some cases, unintended consequences – of certain liberalizing reforms in the 1990s have helped propel dealing with anticompetitive practices up the policy agenda. Officials and analysts in developing countries, including in the Asia-Pacific region, have rightly given greater attention to competition law and its associated principles.”

2.5 An encouraging finding of the ADB’s review of six Asian countries in *Asian Development Outlook 2005* was that the role of competition laws appeared “supportive of their national development objectives”.

2.6 In February 2006, the “Business Action in Asia” conference was held in London, with 225 participants from 21 countries, drawn mainly from the business sector. The objective was “to work towards “Building Partnerships for Sustained Economic Development”. Seven areas for action were identified. One, on legal and regulatory systems, emphasised the role of competition policy “to address restrictive practices both by dominant companies and by governments e.g. in Government procurement (which must be open and transparent)”.

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9 “Asian Development Outlook 2005”, p. 244
10 Organised by the Commonwealth Business Council, with support from the Department for International Development (DFID). The Conference produced recommendations for consideration by those attending “Asia 2015” on 6-7 March 2006. The Asia 2015 Conference,
2.7 The international vitamins cartel resulted in fines of $900 million in the US and €855 million in the EC. Box 2 contains some findings on this cartel.

**Box 2**

**The Vitamins Cartel**

The vitamins cartel, which involved the prices of 12 vitamins, operated from 1989 until its detection in 1999. Following are estimates by Simon Evenett\(^{11}\) of the resulting overcharges to some Asian countries.

<table>
<thead>
<tr>
<th>Country</th>
<th>US$million (rounded)</th>
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<tbody>
<tr>
<td>Singapore</td>
<td>245</td>
</tr>
<tr>
<td>Hong Kong (China)</td>
<td>179</td>
</tr>
<tr>
<td>Thailand</td>
<td>79</td>
</tr>
<tr>
<td>China</td>
<td>78</td>
</tr>
<tr>
<td>Indonesia</td>
<td>45</td>
</tr>
<tr>
<td>Philippines</td>
<td>30</td>
</tr>
<tr>
<td>India</td>
<td>26</td>
</tr>
<tr>
<td>Malaysia</td>
<td>22</td>
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</tbody>
</table>

Dr Evenett found also that participants in the vitamins cartel charged higher prices in countries lacking active enforcement against cartels. In Asia for example, such countries were charged 40% more on average that those with active enforcement. The latter were charged prices significantly lower than might have been expected.

<table>
<thead>
<tr>
<th>Region</th>
<th>Countries without active anti-cartel enforcement: Excess Price %</th>
<th>Countries with active anti-cartel enforcement: Excess Price %</th>
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</thead>
<tbody>
<tr>
<td>Western Europe</td>
<td>52.1</td>
<td>17.4</td>
</tr>
<tr>
<td>Latin America and Caribbean</td>
<td>53.0</td>
<td>38.1</td>
</tr>
<tr>
<td>Asia</td>
<td>40.1</td>
<td>-13.9</td>
</tr>
</tbody>
</table>

which was organised by the Asian Development Bank, the World Bank and DFID, brought together key policymakers from Asia and elsewhere. The Conference was opened by the British Prime Minister, Tony Blair, and keynote speeches were given by the Prime Minister of Pakistan, the Minister of Finance of Bangladesh, the Minister of Economy and Finance and Economy of Cambodia and the Vice Minister for Foreign Affairs of Japan.

\(^{11}\) Both tables in Box 2 are from a presentation by Simon Evenett at the WTO Regional Workshop on Competition, Bangkok, January 2003, on www. evenett.com.
**Anti-competitive practices in Asia**

2.7 Studies of the work of a number of competition authorities have shown that the great majority of anti-trust cases relate to inputs purchased by business firms from other firms. Anti-competitive practices by suppliers raise the cost of doing business, and reduce the competitiveness of the victims. Action against such practices means that business will be the main immediate beneficiary, and that consumers will benefit more broadly.

2.8 Another common anti-competitive practice involves public procurement cartels. As noted by a speaker at a recent conference in New Delhi, such cartels constitute a universal tax that robs every citizen. These cartels mean, for example, that the state can construct only three hospitals, or three schools, instead of four\(^{12}\). Cartels can be very large; in Japan big-rigging cartels involving over 100 participants have been identified\(^{13}\).

2.9 Two in-depth projects that undertook comparative research and advocacy on competition in Asia, 7-Up 1 and 7-Up 2\(^{14}\) found reports of widespread anti-competitive practices in the countries studied. Examples of alleged practices noted in the 7-Up 2 report\(^{15}\) include the following:

**2.9.1 Collective Price Fixing**

- Bangladesh – road transport and private bank lending.
- Cambodia – inland water passenger transport.
- India – cement, steel, transport, banking.
- Lao PDR – drinking water, trishaw passenger transport.
- Nepal – construction, brick making.
- Vietnam – commercial bank lending, pharmaceutical products.

**2.9.2 Bid-rigging**

- Cambodia – “reportedly common in government contracts”.
- India – “believed to be present in government contracts”.
- Lao PDR – “reported to exist in privatization deals and the logging industry”.
- Nepal – “most prevalent in contracts for infrastructure construction”.
- Vietnam – “most prevalent in government contracts for infrastructure construction”.

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\(^{12}\) Presentation by William Kovacic, Commissioner, US Federal Trade Commission, at International Bar Association Conference on Competition Policy, New Delhi, 3 and 4 November 2006

\(^{13}\) Presentation by K. Takeshima, Chairman, Japan Fair Trade Commission at International Bar Association Conference on Competition Policy, New Delhi, 3-4 November 2006.

\(^{14}\) 7-Up 1 (Pakistan, India and Sri Lanka, plus four sub-Saharan Countries) concluded in March 2003. 7-Up 2 (Bangladesh, Cambodia, Lao PDR, India, Nepal and Vietnam), concluded in June 2006. The 7-Up projects were undertaken by the Consumer Unity and Trust Society (CUTS) of Jaipur, India. 7-Up 1 was funded by DFID, while 7-Up 2 was funded by DFID, the Swiss State Secretariat for Economic Affairs and the Swiss Competition Commission.

\(^{15}\) CUTS, 2006, pp. 35 - 36
2.9.3 Tied Selling

Bangladesh – health sector.
India – school uniforms and health sector.
Lao PDR – education (uniforms), health, agricultural products, fuel.
Nepal – education (text books and uniforms), health sector.
Vietnam - education (text books and uniforms), diagnostic health tests.

2.9.4 Resale Price Maintenance

Vietnam – “use of floor and ceiling prices is observed in several industries”.

2.9.5 Abuse of dominance

Bangladesh, Nepal and India – the construction of ‘extra-legal’ barriers to entry through the existence of transport ‘syndicates’ which impose compulsory membership on prospective new entrants.
Lao PDR – agricultural products, air transport, plastic water pipes.
Vietnam – beer, life insurance, telecommunications, internet service.

2.10 Some examples of alleged anti-competitive actions reported by other sources include the following:

- Bid rigging, e.g. in tenders for school construction in China, for water pipes in Nepal and for highway construction in Japan.
- Cartels for basic commodities in Bangladesh, e.g. for rice, sugar and potatoes.
- Collusion between local ferry service operators in Malaysia.
- Mergers reducing competition by cement producers in India.
- Exclusive dealing in steel and in sheet glass in Thailand.
- Tied sales and dumping of bottled water and alcoholic beverages in Thailand.
- Predatory pricing of alcoholic beverages in Vietnam.
- Airline fuel surcharges in India.

2.11 The 7-Up 2 report\textsuperscript{16} included examples of government regulations that impose barriers to competition. Some of these are:

a) “Private cement producers of Vietnam have to get the approval of the General Cement Corporation, a state-owned enterprise and their competitor, to import clinker for producing their final products.”

b) In the Preah Vihear province of Cambodia, “the Governor issued a regulation authorising only one person to conduct trading in eggs.”

c) In Bangladesh, some industries have been designated as ‘saturated’, and “special permission is required to create or expand capacity in

those industries”, even though “many in Bangladesh believe the private business is in a much better position to assess if the industry is indeed saturated.” The policy “only helps the vested interests.”

d) More general barriers exist in many countries because of time-consuming or costly requirements for new entrants. In Cambodia, “business registration itself costs more than four times the per capita national income, while in Lao PDR it takes 198 days to get a business registered”.

2.12 The ADB found that, in Thailand, “many state rules and regulations pose barriers for entry to certain industries”. In addition to protection against imports for industries with high market concentration, there are cases of “stringent licensing conditions making new entry difficult”. The ABD noted that exclusive rights had been given to bus operators on main routes by a cabinet decision, rather than through legislation.

2.13 In Vietnam, the ADB found that price controls and quantitative restrictions on many goods “created barriers to entry and led to high concentration in affected sectors” with the result that “firms operating in protected industries reap high prices but remain inefficient…” The ADB noted that, while the overall level of protection in Vietnam is declining, the “consequences of protection remain visible”.

2.14 In Vietnam a provision of the Companies Law, that has now been removed, required a reviewing committee to decide if a business model proposed by anyone wishing to establish a company was good or not.

2.15 Anti-competitive policies can be applied by governments below the national level. In China, some local governments banned exports of certain materials to other regions of China. In mid 1998, the Shanghai Municipal Government and the Hubei province imposed large fees, levies and taxes to protect their regional car production. These were removed in 2000.

2.16 In Korea the role of the domestic car industry in approving motor vehicle distribution channels is said to limit the types of cars imported.

**Benefits from changed policies**

2.17 An example of simplifying regulations to allow increased competition is provided by Korea’s action in relation to the broadband Internet market. The entry policy for ISPs was relaxed, the only requirement being to file a simple report. “By balancing the technical advantages of network infrastructure with

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19 W. Kovacic, International Bar Association Conference on Competition Policy, New Delhi, 3-4 November 2006.
the efficiency advantages of competition, Korea has achieved one of the highest rates of broadband penetration at competitive prices.21

2.18 Another example was Vietnam’s decision in 1998 to abolish quotas on rice exporters and to allow private firms to export. This led to the emergence of new rice traders, increased competition and better prices for rice growers.

2.19 A study in 2004 showed that the entry of foreign banks in Thailand “appears to have broken the domestic banking cartel, bringing about a remarkable improvement in service.”22

2.20 The introduction of competition in air services in Indonesia in the late 1990s has transformed the industry. “A wave of increased competition…has swept through the airline business as new low cost carriers attack the big incumbent network carriers such as Garuda”. Increased competition by airlines has also benefited people elsewhere in Asia, and has allowed them to travel much more frequently than only a few years ago.23

2.21 In India, the introduction of competitive tendering for bus services led to savings of one to two-thirds of previous levels.

3. Competition policy globally

3.1 While the United States has had a competition (‘antitrust’) law for over 100 years, the introduction of competition law by other nations was a slow process until fairly recently. As late as 1990, only about 30 countries had a competition law. There was a blossoming of competition law in the 1990s, when over 50 competition laws were added. The reasons for the upsurge in interest since 1990 include fundamental changes in national economic policy, including trade liberalization, privatization and de-regulation, as well as the requirements of bilateral investment treaties and policy changes related to applications for WTO membership. The most recent issue of UNCTAD’s list of competition authorities, (January 2006), includes 103 counties and regions. In addition, draft competition laws are at various stages of the legislative process in a number of other countries.

3.2 In addition to national competition laws, several regions have, or are seeking to introduce, regional competition law. Regional competition laws can deal with cross-border competition problems that are beyond the jurisdiction of national competition authorities and that can hold back the growth of trade between member states, such as international cartels.

3.3 Competition policy is a well-known cornerstone of the EC, and the success of the EC’s competition policy in helping to bring about market integration has encouraged countries in developing regions to seek to apply it.

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23 “The Jakarta Post”, 26 October 2006
The EC enforces its competition law very actively, and has imposed some high penalties, the largest to date being the 497 million Euro fine ($613 million) imposed on Microsoft in 2004 for abuse of dominance.

3.4 COMESA (the Common Market for Eastern and Southern Africa) has adopted a regional competition law, and is now working on its implementation. A regional competition law is in the early stages of implementation by UMEOA (the West African Economic and Monetary Union). The Treaties that established CARICOM and MERCOSUR each provide for a regional competition law, although these provisions have not yet been put into effect.

3.5 The link between growth and poverty reduction was recognised by the World Bank in its *World Development Report 2005*, which emphasised the importance of competition for investment, and which noted how competitive pressure leads to innovation, new products and new technology.\(^\text{24}\)

3.6 The work of Michael Porter has drawn attention to the role of competition in enhancing national competitiveness. Porter found that firms that face strong domestic competition perform best in international markets,\(^\text{25}\) and his later work on Japan found compelling examples of this. Officials in Japan have also acknowledged that competition has been a driving force for international competitiveness,\(^\text{26}\) and that sectors where domestic competition in Japan has been intensive, such as automobiles, are the most internationally competitive.\(^\text{27}\)

3.7 A study undertaken by Simon Evenett of over 1,200 reports of UN agencies on issues related to the Millennium Development Goals (MDGs)\(^\text{28}\) found numerous references to competition. The reports that were examined included country-specific, region-specific and sector-specific reports that had been prepared from an MDG perspective, rather than from the writings of experts sympathetic to promoting competition. Professor Evenett found a total of 1,577 statements concerning competition-related factors, with 876 of these containing credible links between these factors and some of the key MDGs.

4. **Principles that should underpin a competition policy framework**

4.1 DFID’s approach to the principles that should underpin a competition policy framework is influenced both by the contribution competition can make to growth and poverty reduction, and by the 2006 UK White Paper on

\(^24\) World Bank (2005), p 29  
\(^25\) Porter, M. (1990)  
\(^26\) Ueno, H. Deputy Secretary General, Japan Fair Trade Commission, March 2003  
\(^27\) Submission by Japan to WTO Working Group on Competition, 2001  
“First and foremost, the fight against poverty cannot be won without good governance. We need to help governments and citizens make politics work for the poor.”

4.2 The governance model in the White paper suggests three key elements are needed to build better governance and state legitimacy: capability, accountability and responsiveness. Capability is the extent to which public institutions have the money, the people, the will and the legitimacy to get things done. Accountability is the process by which people are able to hold government to account, while responsiveness is the degree to which the government listens to what people want, and acts on this.

4.3 These principles have relevance for competition policy. Capability requires the capacity to identify clearly the nature of competition problems, including the extent to which separate treatment might be necessary for particular sectors. Capability also requires being able to select the approaches that will be most appropriate for dealing with these issues, taking account of both the economic and political dimensions. Policy selection should be through transparent processes, including cost/benefit studies.

4.4 Accountability includes the legal and political processes required for transparency in all regulatory systems, including the competition law regime.

4.5 Responsiveness implies that there is a political context of concern by the government to deliver a competitive economy that will achieve economic growth that will benefit the whole population, and over the longer term. A responsive competition policy regime will react appropriately as new competition problems emerge.

4.6 The legitimacy of policy formulation in developing countries may require broadening the process of social and political consensus by encouraging oversight by civil society, the media and the legislature. Together, these can contribute greatly to the development of a strong and legitimate state. In such a context, competition policy has a natural place as part of a broad commitment by government to tackle growth and poverty reduction.

4.7 The analysis of the experiences of six Asian countries presented in Competition Policy and Development in Asia disclosed “the importance of administrative, judicial and political-economy factors as well as economic considerations in the design and use of competition law”29.

4.8 Another important contribution of effective competition was noted by the ADB. It observed that, in addition to helping to achieve economic efficiency, “competition also serves to diffuse socioeconomic power, broadening

participation in economic, social and political advances while ensuring opportunities for new entrepreneurs."30

4.9 DFID’s approach to competition policy frameworks recognises four key pillars: (a) competition policy; (b) competition law; (c) competition authorities; and (d) competition culture.

4.9.1 Competition Policy.

While the term ‘competition policy’ is sometimes used narrowly to refer to competition law, it is more appropriate to use the term in a broad sense. One definition of competition policy is that it is:

“the set of policies and laws which ensure that competition in the marketplace is not restricted in a way that is detrimental to society.”31

The broad definition of competition policy encompasses all public policies that impact on competition.

Some countries have adopted a comprehensive national competition policy. India provides an example of how such a policy can be developed. On the advice of the Government, the Competition Commission of India has formed an Advisory Committee to prepare a consultation paper for a national competition policy. The Planning Commission of India has set up a Working Group on competition policy which is tasked to:

“…recommend a set of comprehensive policy instruments and strategic interventions to effectively generate a culture of competition in the domestic market with all the stakeholders’ involvement. The Group would also recommend ways to enhance the role of competition in Government policy making and suggest ways to harmonise relations between the competition authority and sector regulators.”32

As a prominent authority recently pointed out33, competition law is at the crossroads of:

- Law and economics.
- Public law and private law.
- Administrative action and legal process.
- Law and politics.
- Many legal systems (e.g. civil vs. common law).

30 “Asian Development Outlook 2005” p. 239
33 Commentary by Sir Christopher Bellamy, President, UK Competition Appeal Tribunal, at the International Bar Association Conference on competition policy, New Delhi, 4-5 November 2006.
4.9.2 **Competition Law**

Competition law should be a general law of general application. While all existing competition laws include some exceptions, these should be kept to a necessary minimum, to allow a consistent policy to be applied to the use of the nation’s resources. In particular, the trading activities of state-owned enterprises should not be exempted from the scope of the law. A common exception, or partial exception, is the regulation of sectors in which markets cannot readily function because of the existence of natural monopolies or of important social policies.

While the details of competition laws vary between countries, the core elements deal with (i) collusive agreements leading to restrictive trade practices (such as cartels, collusion and bid rigging, and (ii) the abuse of market dominance (such as hindering the entry of new competitors or the expansion of existing small competitors, tied sales and predatory pricing). About two-thirds of competition laws also include provisions to allow the review of mergers and acquisitions. Some competition laws include provisions on unfair trading (such as misleading and deceptive conduct).

Competition laws typically distinguish conduct that is subject to a *per se* prohibition (i.e. conduct that, once proved, is considered so serious that no proof of the extent of harm caused is required), and conduct that is judged by *rule of reason* analysis (i.e. the harm caused by the conduct is weighed against any benefits that might have resulted.)

4.9.3 **Competition authorities**

Competition authorities are created to enforce competition law by identifying competition problems, selecting priorities for attention, investigating and analysing competition problems, and identifying and applying remedies where required. Sometimes a separate competition appeal authority is created, while in some other cases the courts are responsible for the imposition of penalties or for hearing appeals. Sector regulators may have power to deal with competition issues in their sectors.

Competition authorities may also be required to undertake competition advocacy. This can involve both advising their government on the impact of existing or proposed laws and regulations on competition, and acting more widely to promote competition in the economy in various ways. Examples of effective advocacy in Asia are China’s campaign against bid-rigging for public utilities, and against sector monopolies and regional blockades, and Korea’s promotion of the deregulation and privatization of SOEs.
4.9.4 Culture of Competition

The need for ‘a culture of competition’ was appropriately described in a paper prepared by the International Competition Network for its 2006 Conference\textsuperscript{34}.

“A culture of competition among stakeholders and the wider business community is necessary for the effective enforcement and promotion of competition law and policy. A culture of competition in this context refers to the awareness of the business community, governmental agencies, non-governmental agencies, the media, the judiciary, and the general public, of the rules of competition law, and their overall responsibility to ensure that such rules are observed in the interest of competition and overall economic development…The lack of such a culture has plagued practically all young agencies.”

It takes time to build the national coalitions and political and commercial ‘buy-in’ that is necessary for successful reform. The aim in seeking to build a culture of competition is to make the principles of competition policy a natural part of the background to decisions by firms and by policy makers in government.

Societal attitudes can influence the level of competition. Situations still exist where there is scepticism about the value of markets, including a lack of consensus that cartels are bad. Consumers are often unaware of the rights they have or should have. If civil society is weak, and there is no effective consumer movement, the interests of consumers in having access to competitive markets for the goods and services they need may be ignored.

DFID support for competition policy in Asia

4.10 DFID supports a number of initiatives at the national, regional and international levels. This is done in conjunction with key partners – international and regional organisations, national governments, other donors, with civil society (CUTS), and with the research community. DFID has been active in the work of the Network on Poverty Reduction (POVNET) of the OECD Development Assistance Committee (DAC). The recent OECD publication Promoting Pro-Poor Growth: Private Sector Development includes a chapter contributed by DFID on “Implementing Competition Policy in Developing Countries”.

4.11 Since 2000, DFID has provided support for several competition policy projects in Asia, as outlined below.

The ‘7-Up’ Projects

4.12 The two ‘7-Up’ projects that investigated competition policy and law in Asia were noted earlier\textsuperscript{35}. These two-year research and advocacy projects

\textsuperscript{34} “Lessons to be learnt from the experiences of young competition agencies”, Competition Policy Implementation Working Group, International Competition Network, Annual Conference, Cape town, South Africa, 3 – 5 May 2006
were carried out by CUTS in close cooperation with country partners in each participating country. The first year of each 7-Up project was devoted to research on the state of competition in each participating country, while the second was devoted to advocacy. Each local research partner formed a ‘national reference group’ made up of key national stakeholders, with the intention that these networks would continue to have an impact after the formal conclusion of the project.

4.13 National reports were prepared by the local partners in each country, and CUTS compiled a synthesis report comparing experiences and drawing cross-cutting policy conclusions.

4.14 One of the findings of 7-Up 2 was that the surveys undertaken for the project suggested that business is receptive to the introduction of competition law. The 7-Up 2 report concluded that, provided governments take the business sector into their confidence, there should not be any major problem about the introduction of competition law.

**Bangladesh**

4.15 Bangladesh does not have a competition policy or a competition authority. However, a large long-term Private Sector Development Support Project funded and supported by a group of development partners including DFID, is being introduced. In relation to competition, efforts will be directed at gaining a full understanding of competition policy issues in Bangladesh, in determining appropriate policy and regulatory responses and in other interventions to encourage competitive practices in Bangladesh to build the competitiveness of the economy, to increase growth and to reduce poverty.

**India**

4.16 DFID and The World Bank are also working with the Competition Commission of India to support studies by experts in India on competition issues in key sectors, including energy, telecommunications and food grains. These studies should assist the Competition Commission in its advocacy role, in helping it formulate policy advice to the Indian Government, and in setting its enforcement priorities.

**Pakistan**

4.17 Pakistan is in the process of preparing a new competition law. The World Bank and DFID are providing assistance in this process.

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35 7-Up 1 included India, Pakistan and Sri Lanka, while 7-Up 2 covered Bangladesh, Cambodia, Lao PDR, India, Nepal and Vietnam.
4.18 DFID has funded the Business Environment Survey undertaken by the Commonwealth Business Council (CBC). The survey is designed to identify private sector views on the environment for business and investment in Commonwealth countries. The 2005 survey included five Asian countries: Bangladesh, Pakistan, Sri Lanka, India and Malaysia. The surveys use 17 parameters, grouped under three dimensions: ‘openness and accountability’, ‘business enablers and outlook’ and the ‘policy framework’. Each parameter is surveyed to ascertain the extent to which the private sector regards it as an incentive or disincentive for doing business in each country. Competition policy is one of the five policy framework parameters that are measured.

4.19 DFID is working to develop a generic framework that will provide guidance to developing countries that propose to undertake studies to investigate the nature and extent of competition in significant sectors of their economies. Sector studies now being undertaken in India, as well as the approach of the OECD and competition authorities such as the UK’s Office of Fair Trading, will help inform this work.

5. Effective competition policy reform – lessons from DFID’s experience

5.1 A fundamental requirement for an effective competition policy is a wholehearted pro-market commitment from the highest levels of government. CUTS’ 7-Up 2 report noted that, while all of the six countries studied had been pursuing market-oriented policies for many years, “markets or the private sector for that matter are far from being developed in these countries”, including in areas where competition appears feasible.

5.2 Support for competition from senior levels of government needs to be supported by bottom-up advocacy, to help build a national culture of competition which is only just developing in many countries. An active civil society and an open press can help considerably in building a culture of competition. While active consumer movements exist in some countries in Asia, they appear to be absent from some others, such as Cambodia and Lao PDR.

5.3 The design of a national competition policy and law must take account of the country’s economic and social development. One conclusion of 7-Up 2 was that “competition policy and law...have to necessarily work in conjunction with the political, economic and social background of a particular country” because their combination constitutes the competitive structure of the market. None of the Asian countries studied in the 7-Up projects has a national

36 CUTS (2006) p. 39
competition policy (although India is working towards this) but such a policy could provide considerable benefit. It would set out the government’s objectives for competition and competition policy, and its strategy for achieving these.

5.4 7-Up 1 found that the way in which some competition laws were drafted, such as in Sri Lanka, created problems for case handling by the relevant competition authorities. Limitations in some competition legislation included an over-emphasis on market structure, rather than on conduct.

5.5 Adequate financial and human resources should be available to the organisations that will apply the law. One of the findings of 7-Up 1 was that constrained budgets were hindering the function of the competition authorities, including through a lack of research and investigation capacity. Another 7-Up 1 finding was that a difficulty in attracting and retaining competent and qualified staff was a common problem for competition authorities.

5.6 Competition authorities need to have operational independence for their day-to-day activities. 7-Up 1 found situations where government interference in the workings of some competition authorities was evident. In Sri Lanka, “political influence within the workings of the FTC is pervasive”. In Pakistan the Ministry of Commerce intervened in a cement cartel case that was being investigated by the competition authority.

5.7 A significant political-economy issue that competition authorities are likely to encounter is the power of vested interests, which invariably seek to block reform and prevent competition.

5.8 As competition policy and law is still relatively new in much of the developing world, certain issues are frequently discussed. They include:

a) In a liberalised, globalised world, the question of whether every country needs a competition law. Openness to trade and investment can have large and beneficial impacts on competition, although foreign investment can bring heightened concern about competition. However, some goods and services cannot be traded internationally, or even nationally, and cartels can exist even where there are no legal barriers to imports. As the ADB noted (quoting Anderson and Jenny):

“...there are reasons for believing that less mature markets tend to be more, rather than less, vulnerable to anticompetitive practices than the markets of developed countries. The reasons include: (a) high “natural” entry barriers due to inadequate business infrastructure, including distribution channels and (sometimes) intrusive regulatory 

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37 CUTS (2003) p. 35. It should be noted that later in 2003, Sri Lanka adopted a new competition and consumer protection law (the Consumer Protection Authority Act) to replace the then existing legislation.
regimes; (b) asymmetries of information in both product and credit markets: and (c) a greater proportion of local (non-tradable) markets.³⁸

b) Recognition that not all competition laws need to address all aspects of competition policy initially, and of the need to plan the appropriate sequence of implementing competition provisions.

c) Recognition of the need for a new competition authority to pick its early cases carefully, and to follow-through effectively.

d) The question of the relationship between competition law and sector regulators. Regulated sectors generally include major public utilities that are important for consumer welfare. While no single model is appropriate in all circumstances, it is highly desirable that decisions affecting competition in regulated sectors should reflect pro-competition principles, to avoid introducing distortions in the use of the country’s resources and of harming consumers, including the poor. The ADB noted the role for competition policy, even where the technical characteristics of an industry, such as the existence of a network structure, limit the feasible number of suppliers.³⁹

e) The question of whether having a competition law means developing countries cannot have an “industrial policy”. Every national competition law includes some allowances for specific national priorities, and well-designed policies can be complementary.

f) The need to sensitise the media and the judiciary.

6. Conclusions on competition policy reform

6.1 Competition policy and law is a priority area for reform in Asia, both because it is a crucial component of a good business environment and because it is an avenue for poverty reduction. Our conclusions are:

6.1.1 There is a need for a wider understanding at policy levels in government, in the business sector and by consumers, of the beneficial impact of effective competition and of competition policy on an economy.

6.1.2 Where competition policy is part of an open and well-regulated economy, it can help encourage both domestic investment and FDI, because it encourages investor confidence⁴⁰ by setting a consistent framework within which the business sector operates. An effective competition policy allows

⁴⁰ As the ADB observed, “…appropriate enforcement of competition law both enhances the attractiveness of an economy as a location for foreign investment and is important for maximising the benefits that flow from such investment “Asian Development Outlook 2005”, p. 270
innovative new entrants an important role in the development process, and promotes growth.

6.1.3 More effective competition reduces opportunities for corruption and rent seeking, and creates more space for entrepreneurs and small and medium sized-enterprises.

6.1.4 Having a good law is not enough. The introduction of a competition law needs appropriate supporting policies, and effective enforcement. Governments must show support for market economies and must recognise adequately the impact of other legislation and regulations on competition.

6.1.5 The existence of an active civil society, (and particularly a vigorous consumer movement), an informed and open media and an informed judiciary are needed if competition policy and law are to be fully effective.

6.1.6 Political economy issues matter, including the need to recognise the potential role of vested interests in blocking reforms and competition law enforcement.

6.1.7 Donors should give greater support to governments seeking to introduce competition policy, or to improve their existing competition regimes, especially by:

- supporting the application of a bottom-up, advocacy-based approach to building a culture of competition, and a wider understanding of the benefits of competition. This can be done by working with civil society organisations seeking to build national reference groups.

- assisting efforts to build the evidence base on the state of competition across the economy, and in particular sectors. This could include support for competition assessment studies.

- engaging with governments, competition authorities and regulators to design competition policy frameworks and laws that are suitable for the country context. Appropriate policy frameworks require recognition of the relevant political economy factors, including the level of economic development attained, the structure of the economy, and the country’s constitution and culture.

- encouraging the provision to competition authorities of adequate financial and human resources, by improving the capacity of these authorities through staff development, and by funding training for the media and the judiciary.

- Facilitating cooperation between competition authorities, including the exchange of information on anti-competitive practices, and on procedures for investigation and analysis.

- Funding the participation of developing country representatives in international competition policy fora.
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