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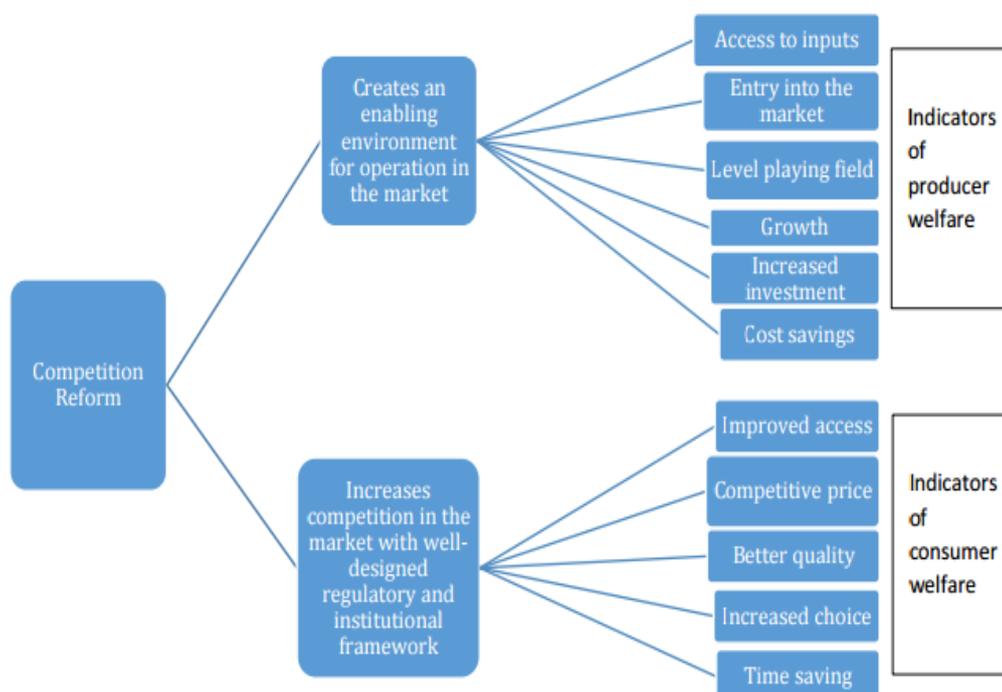
## *Overcoming Challenges to Create Competition Culture in Small and Developing Countries: Enforcement:*

-- CUTS\* --

### Setting the Context

1. It has been widely recognised that free and fair competition is one of the most important pillars of a market economy. With the intention of unlocking the potential of open and liberalised market forces, policy makers have espoused several pro-competitive measures, including the adoption of a competition policy and law. The important role of effective competition in ensuring consumer and producer welfare (Refer to Figure I) has been recognised by institutions worldwide, which gave impetus to the implementation of competition reforms in the developing world in the last two decades.

**Figure 1. Relation between competition reforms and welfare**



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2. Although most of the developing countries are moving towards adoption of competition policy and law, evidence suggests there is a gap between adoption of the policy or law and its effective implementation.<sup>1</sup> While agencies and institutions might be cognisant of the socio-economic benefits of competition policy and law, they might not always be in a position to view and treat competition reforms on priority basis. This is particularly true for small and young agencies, owing to the fact that they face several unique challenges which hinder sustained and effective implementation of competition law and policy.<sup>2</sup>

3. In this regard, the existence of an effective competition advocacy framework plays an extremely important part in cultivating and refining the ability of a competition agency to tackle some of the most exigent challenges, especially at the initial stages of institutional activity.<sup>3</sup> More importantly, it enables the agency to create an overarching competition culture, thereby, resulting in several benefits such as market efficiencies, effective enforcement of competition law, consumer and producer welfare and increased competitiveness of industry players.

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<sup>1</sup> Rodriguez A.E. and Menon Ashok, The Causes of Competition Agency Ineffectiveness in Developing Countries, 79 *Law & Contemp. Probs.* 37 (2016)

<sup>2</sup> Dina I. Waked, Competition Law in the developing world: The why and how of adoption and its implications for international competition law, *Global Antitrust Review*, 77 (2008), available at <<http://www.icc.qmul.ac.uk/docs/gar2008/144726.pdf>> accessed 02 November 2017

<sup>3</sup> Mehta Pradeep, Competition Culture Key to Successful Competition Regime, available at <[http://www.cuts-ccier.org/pdf/Competition\\_Culture\\_Key\\_to\\_Successful\\_Competition\\_Regime.pdf](http://www.cuts-ccier.org/pdf/Competition_Culture_Key_to_Successful_Competition_Regime.pdf)> accessed 31 October 2017

**Figure 2. Important facets of Competition Culture**



4. As elucidated in this paper, CUTS’s efforts in building strong and effective competition regimes across several African and Asian countries reflects that nurturing competition culture is absolutely critical for an agency to overcome adversity and attain long-term success.

5. Against this backdrop, **Chapter I** covers discussion specific to socio-economic and political challenges *vis-à-vis* the implementation of competition policy and law which are unique to small and developing countries.

6. Keeping in mind these challenges, the discussion in **Chapter II** highlights the unique position and role of Civil Society in supporting competition agencies in their quest to engender a holistic competition culture and overcome prevalent adversities. The manner and methodologies of support advanced through civil society efforts are also demonstrated by elucidating specific initiatives by CUTS in this regard.

7. **Chapter III** provides certain key recommendations and tries to frame a laundry list of essential factors which small and young competition agencies should keep in mind while they’re trying to scale the uphill road towards developing competition culture. The paper ends by raising important questions *vis-à-vis* protectionism and its impact on international cooperation towards building a culture of competition and highlights the need for recalibration of strategies.

## 1. Chapter I – KEY Challenges

8. Competition reform is often a long drawn and arduous process. Despite global proliferation in the adoption of competition policies and laws, experiences suggest that there are numerous challenges which competition agencies have to tackle while carrying out implementation of policies, laws and regulations to promote/protect competition.<sup>4</sup> In small and developing countries, some of the most persistent challenges include *inter alia* lack of competition culture, scarcity of resources, lack of experience, bureaucratic and political resistance, vested interests, etc.<sup>5</sup> It is often extremely tough for young agencies to single-handedly address these issues and simultaneously ensure that they successfully carry out the assigned mandate of protecting markets from anti-competitive practices and policies.

9. Moreover, experience from select competition advocacy efforts<sup>6</sup> led by consumer organisations in developing nations suggests that the road towards developing an effective competition regime through engendering a rich competition culture is ridden with political-economy obstacles such as:

- Lack of prioritisation of competition issues in political milieu leading to a slow or lacklustre movement of competition reforms processes
- Lack of background knowledge, stakeholder engagement and support for competition reforms engagement
- Lack of continuity with the competition reforms agenda
- Low technical capacity and little experience on competition administration.<sup>7</sup>

10. Furthermore, experts suggest that there are other challenges which hamper the design and effectiveness of competition policy institutions which are listed below:

*“(1) vested interests that dominate economic policy making, either through legal means (party financing, lobbying, influence in the nomination of the government, senior officials, or the council of the national competition authority (NCA) or illegal means (corruption, abuse of public service power, or cronyism); (2) inefficient public administration and regulatory systems that limit the capacity and effectiveness of public bodies, including the NCA”.*<sup>8</sup>

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<sup>4</sup> Maher M. Dabbah, Competition Law and Policy in Developing Countries: A Critical Assessment of the Challenges to Establishing an Effective Competition Law Regime, 457–475 (2010), 33 World Competition, Issue 3 ; Dina I. Waked, Competition Law in the developing world: The why and how of adoption and its implications for international competition law (n.2) ; Mehta Pradeep, Competition Culture Key to Successful Competition Regime (n.3)

<sup>5</sup> Mehta Pradeep, Competition Culture Key to Successful Competition Regime (n.3)

<sup>6</sup> See [www.cuts-ccier.org/7Up1](http://www.cuts-ccier.org/7Up1) ; [www.cuts-ccier.org/7Up2](http://www.cuts-ccier.org/7Up2) ; [www.cuts-ccier.org/7Up3](http://www.cuts-ccier.org/7Up3) and [www.cuts-ccier.org/7Up4](http://www.cuts-ccier.org/7Up4)

<sup>7</sup> Mehta and Sengupta, Did We Make a Difference? 28-32, (2012), available at <[http://www.cuts-ccier.org/pdf/Reforming\\_Competition\\_Law\\_Regimes\\_in\\_the\\_Developing\\_World\\_through\\_the\\_7Up\\_Programme.pdf](http://www.cuts-ccier.org/pdf/Reforming_Competition_Law_Regimes_in_the_Developing_World_through_the_7Up_Programme.pdf)> accessed 30 October 2017

<sup>8</sup> Rodriguez A.E. and Menon Ashok, The Causes of Competition Agency Ineffectiveness in Developing Countries at p.59 (n.1)

11. These challenges if not carefully addressed, might completely impede the deployment of effective institutional mechanisms *vis-à-vis* competition policy and law or might inadvertently lead to emergence of mechanisms which are not designed optimally. This makes designing effective enforcement institutions and implementation of competition policy and law a particularly challenging task from the perspective of small and developing countries.<sup>9</sup>

12. The limitations that some of these challenges *vis-à-vis* the design and functioning of small and emerging agencies, will be discussed in detail with the help of country-specific examples.

### 1.1. Challenge 1: Political Economy Push-back and Governance Constraints

13. At the early stages of adoption of competition policy or law, political will and sensitivity towards competition reform turns out to be a key factor that determines its successful adoption and subsequently, implementation.<sup>10</sup> While working towards reforming competition regimes in several developing countries of Asia and Africa, CUTS's experiences reveals that several governments neither had concrete plans nor showed strong political commitment towards the encouragement of competition in the market.<sup>11</sup> This was also witnessed during international fora meetings such as the World Trade Organisation Ministerial Conferences wherein developing nations continued to oppose (in consonance with the outright opposition of the United States) the introduction of competition rules (beyond voluntary cooperation mechanisms within the WTO), following which competition was removed from the Doha Agenda at the 2003 Cancun Ministerial Conference.<sup>12</sup> Despite the exclusion from the multilateral framework, CUTS has been an ardent supporter of building competition culture in developing nations.

14. Regardless, the challenge of political economy is a real one and the current status of the Competition Commission of Bangladesh and past experience of the Zambian & Thailand competition regime are three cases particularly worth mentioning in this regard.

#### 1.1.1. Bangladesh

15. Bangladesh represents one of the most incipient competition jurisdictions of the South Asian region. At the time Bangladesh became independent in 1971, it inherited a broad economic policy of import substitution which entailed protectionist measures in favour of its infant industries.<sup>13</sup> Bangladesh's economy also has a history of predominant

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<sup>9</sup> For a detailed insight into the practical interrelationship between politics and regulatory/institutional development, see Pradeep S Mehta and Simon J Evenett, *Politics Triumphs Economics?* (CIRC, 2009)

<sup>10</sup> Mehta Pradeep, *Competition Culture Key to Successful Competition Regime* (n.3)

<sup>11</sup> Sengupta Rijit and Dube Cornelius, *Competition Policy Enforcement Experiences from Developing Countries and Implications for Investment*, 10 (2008), available at <<http://www.oecd.org/investment/globalforum/40303419.pdf>> accessed 31 October 2017

<sup>12</sup> Billy A. Melo Araujo, *The EU Deep Trade Agenda, Law and Policy*, Oxford University Press, 188 (2016)

<sup>13</sup> Atiur Rahman and Mohammed Abu Eusuf, *Competition Regimes In the World: Bangladesh, CUTS International*, 20 (2007), available at <[http://competitionregimes.com/pdf/Book/Asia\\_Pacific/4-Bangladesh.pdf](http://competitionregimes.com/pdf/Book/Asia_Pacific/4-Bangladesh.pdf)> accessed 28 July 2017

competition distortions like cartels, arbitrary rise in the prices of essential goods and services, abusive and exclusionary practices by dominant entities etc.<sup>14</sup> This resulted in substantial harm to the consumers and has endangered market efficiency.<sup>15</sup>

16. Owing to slowdown in economic growth and staggering exports, the country was finally forced to engage in economic policy reforms and a more liberalised trade policy was adopted. In furtherance of this policy, Bangladesh enacted the Competition Act in June, 2012 in a bid to “prevent, control and eradicate collusion, monopoly and oligopoly, abuse of dominant position in the market and other anti-competitive practices”. Before the enactment of this statute, the Government of Bangladesh in 2011 formed the ‘Bangladesh Competition Commission (BCC)’ under the Ministry of Commerce. The BCC is designed to maintain healthy competition in the market.

17. Although it has been almost four years since the formation of the BCC, it has still not started functioning properly and all this while, competition-related issues were being handled by the World Trade Organisation (WTO) cell of the Ministry of Commerce.<sup>16</sup> It seems that push-back from the bureaucracy and strong opposition from business conglomerates have been successful in delaying the implementation of the law.<sup>17</sup> The Commission has had to face several political economy constraints which have negatively affected its actual deployment and it is yet to become a fully functional institution.<sup>18</sup>

18. Given its resource constraints and the immense need for capacity building, competition advocacy and collaboration with the civil society is a tried and tested methodology to break free from such adversarial conditions. It is important to note that advocacy requires building internal capacities first, and the BCC can take the help of Civil Society Organisations (CSOs) based in Bangladesh or India, or even contact neighbouring competition authorities. Regardless, the current situation of Bangladesh portrays the potential negative impact which an adverse political economy environment can create, thereby hampering the disposition and functioning of a small and young competition agency.

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<sup>14</sup> Mehta Udai and Ghuman Parveer, Turning Competition Commission into a quasi-judicial body, The Financial Express, August 12, 2017, accessed 27 September 2017.

<sup>15</sup> Rahman Atiur and Mohammed Abu Eusuf, Competition Regimes In the World: Bangladesh, (n 12)

<sup>16</sup> US Department of State, 2015 Investment Climate Statement – Bangladesh, Bureau of Economic and Business Affairs, May (2015), <http://www.state.gov/e/eb/rls/othr/ics/2015/241475.htm#10> accessed 28 September 2017.

<sup>17</sup> Asif Showkat Kallol, No Commission, no enforcement, The Dhaka Tribune, (3 Sept 2013), <<http://archive.dhakatribune.com/business/2013/aug/01/no-commission-no-enforcement>> accessed 31 October 2017.

<sup>18</sup> Competition Commission yet to be fully functional, The Financial Express (14 June 2016), <<http://www.thefinancialexpress-bd.com/2016/06/14/34049/Competition-Commission-yet-to-be-fully-functional>> accessed 29 July 2017.

### *1.1.2. Zambia*

19. Zambia's experiences in implementation of competition law have been ridden with political economy and governance constraints.<sup>19</sup> Zambia's Competition and Fair Trading Act was enacted in 1994 and the competition authority of Zambia was operationalised after three years, in May, 1997.<sup>20</sup> However, as noted above, the successful implementation of competition law requires a supporting political ecosystem and freedom from restrictive governance mechanisms, which the Zambian authorities failed to provide, especially in the time period between 1991 and 2001.<sup>21</sup>

20. Some of the political economy constraints which frustrated effective implementation of the competition law included weak policy formulation, exemption of State-owned enterprises (SOEs) from application of laws and regulations, competition distortionary provisions and broad public interest exemptions etc.<sup>22</sup> In addition to these, several governance constraints have also been recognised.<sup>23</sup> Largely, these included lacunae in legal frameworks; design related obstructions diluting independence of the authority and presence of political influence over adjudicators.<sup>24</sup>

### *1.1.3. Thailand*

21. Thailand has had a quasi-competition law since 1979, known as the Price Control and Anti-Monopoly Act. At its inception, the law's objective was to protect consumers from inflationary pressures and from widespread collusive practices among businesses that had led to excessive pricing. The provisions concerning anti-competitive practices were incomplete, as they did not cover mergers and many important vertical restrictive practices.<sup>25</sup>

22. Implementing a price control mechanism was easy, but the Department of Internal Trade, a part of the Ministry of Commerce, hardly enforced the anti-monopoly provisions. This limited enforcement situation existed because the law required that the Department of Internal Trade officially declare a business accused of anti-competitive practices a "controlled business" before the law could be enforced. During the two decades that the law was in effect, the competition authority only declared one such business, an ice manufacturing company, a "controlled business" because there were no clear rules or guidelines for officially classifying such anti-competitive businesses as "controlled businesses".<sup>26</sup>

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<sup>19</sup> Kaira Thula, *Identifying and Overcoming Political Economy and Governance Constraints to the Effective Implementation of Competition and Regulatory Law, Politics Triumphs Economics?*, 403 (CIRC, 2009).

<sup>20</sup> *Ibid.* at 413

<sup>21</sup> *Ibid.* at 417

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.* at 434

<sup>24</sup> *Ibid.*

<sup>25</sup> Deunden, N (2006), "Political Economy of Competition Law: The Case of Thailand, The Symposium on Competition Law and Policy in Developing Countries", *Northwestern Journal of International Law & Business*

<sup>26</sup> *Ibid.*

23. Thailand's experience illustrates that having a competition law may prove futile if enforcement cannot withstand political hurdles. Discriminatory and arbitrary implementation of the law may also serve to distort rather than promote effective competition in the market.

## 1.2. Challenge 2: Resource and Capacity Constraints

24. It is often the case that competition agencies in emerging and transition economies find a daunting presence of numerous anti-competitive practices cutting across several sectors of the economy.<sup>27</sup> Expecting the agencies to tackle all of these practices would be impractical, especially bearing in mind the general budgetary constraints that they face. More often than not, the agencies are required to make difficult choices/decisions while allocating scarce resources for various functions ranging from enforcement, to advocacy and regulation of market players.

25. In order to optimally allocate resources, prioritisation is critical and a balanced approach which simultaneously focuses on tackling anti-competitive practices, building a holistic environment of competition compliance amongst businesses, and generating awareness amongst other stakeholders becomes extremely perplexing. In addition, it also requires a substantial level of financial autonomy and to some extent, independence from political control. The combination of all these factors is really hard to find, even in the legal design and governance structures of developed and experienced agencies.

26. The experience of Pakistan's competition agency is a good case in point. Since its inception the Competition Commission of Pakistan (CCP) has witnessed a severe lack of requisite financial support.<sup>28</sup> This includes the lack of funding from other regulatory institutions, despite it being statutorily provided for.<sup>29</sup> This indicates that generating momentum in favour of competition policy among governmental institutions is an additional task that a competition agency can expect to face, especially in emerging economies. Despite financial constraints, CCP has made commendable efforts through pro-active initiatives *vis-à-vis* competition advocacy.

27. Being aware of the challenges which developing nations face while developing a competition culture, Pakistan's Competition Commission has pursued the advocacy agenda quite vigorously and has come up with several initiatives, such as the formulation of a Competition Consultative Group (CCG) which is essentially an informal 'think tank' and sounding board for the Commission.<sup>30</sup> Pakistan's focus on competition advocacy is a

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<sup>27</sup> Zoghbi Valentina, *Strategic Priorities of Competition and Regulatory Agencies in Developing Countries, Politics Triumphs Economics?*, 93 (CUTS International, 2009).

<sup>28</sup> UNCTAD, *Voluntary Peer Review of Competition Law and Policy: Pakistan*, UNCTAD/DITC/CLP/2013/14, 3 (2013).

<sup>29</sup> The News International, *Lack of funds major challenge for CCP*, (8 July 2017 ) <<https://www.thenews.com.pk/archive/print/310496-lack-of-funds-major-challenge-for-ccp>> accessed 28 October 2017.

<sup>30</sup> The CCG meets quarterly to discuss matters related to competition and consists of several regulatory bodies such as The Oil and Gas Regulatory Authority (OGRA); Pakistan Electronic Media Regulatory Authority (PEMRA) , National Energy & Power Regulatory Authority (NEPRA) , Pakistan Telecommunications Authority (PTA) , State Bank of Pakistan (SBP) , Civil Aviation Authority (CAA), and the Securities and Exchange Commission of Pakistan (SECP). See Competition Commission of Pakistan, *The Competition Consultative Group*,

great example of a nascent jurisdiction giving equal importance to advocacy in addition to focussing on enforcement actions.<sup>31</sup>

28. In addition to budgetary constraints, the lack of institutional capacity also impedes the spreading of competition culture.<sup>32</sup> This is particularly the case in small and young jurisdictions wherein competition laws and policies are entirely fresh concepts or where they are adopted due to external pressures.<sup>33</sup> Lack of capacitated staff increases the likelihood of committing errors in adjudication (especially Type I errors) and while conducting underlying economic analysis. Some solutions *inter alia* include optimal resource allocation in recruitment, arranging for relevant training with assistance from external experts, and development of an internal knowledge management system. Some of these solutions will be discussed in detail in Part II of this paper.

### 1.3. Challenge 3: Lack of prioritisation, awareness and other challenges

29. CUTS' experience in select Asian and African countries strongly suggests that awareness generation about competition and its benefits through evidence-based research is crucial for building competition culture within a developing or small jurisdiction.<sup>34</sup> This is primarily because at initial stages, key stakeholders do not fully comprehend the benefits of competition and often lack understanding of the important links between competition and other neighbouring policy areas. Those key stakeholders generally include politicians, bureaucrats, the business and legal communities, sectoral and other regulators, academics and the media.

30. The lack of understanding about benefits associated with greater competition, or scepticism about the prospects for those benefits to materialise within an acceptable timeframe can make the transition towards more competitive markets susceptible to frictions and might make it difficult for competition agencies to single-handedly address external adversities.<sup>35</sup> This calls for increased collaboration and dialogue between various government agencies and also requires tackling the general lack of awareness through competition advocacy activities.

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<[http://www.cc.gov.pk/index.php?option=com\\_content&view=article&id=176&Itemid=50&lang=en](http://www.cc.gov.pk/index.php?option=com_content&view=article&id=176&Itemid=50&lang=en)> accessed 27 October 2017.

<sup>31</sup> For all competition advocacy initiatives, visit <[http://www.cc.gov.pk/index.php?option=com\\_content&view=article&id=64&Itemid=130&lang=en](http://www.cc.gov.pk/index.php?option=com_content&view=article&id=64&Itemid=130&lang=en)>.

<sup>32</sup> Mehta Pradeep, Competition Culture Key to Successful Competition Regime at p.7 (n. 3).

<sup>33</sup> See Dina I. Waked, Competition Law in the developing world: The why and how of adoption and its implications for international competition law, (n.2) and Mehta Pradeep, Competition Culture Key to Successful Competition Regime (n.3).

<sup>34</sup> Mehta and Sengupta, Did We Make a Difference? (n.7).

<sup>35</sup> Mehta Pradeep, Competition Culture Key to Successful Competition Regime, at p.7 (n. 3).

## 2. Chapter II – Exploring the role of civil society and strategies involved in overcoming challenges and creating competition culture

### 2.1. Role of Civil Society

31. Considering the aforementioned challenges, it is often seen that competition agencies require external supports to be able to implement competition law effectively and create a competition culture amongst various stakeholders. Civil Society Organisations (CSOs) which include independent research institutions play a critical role in this regard. There are several factors which provide a distinct character to CSO initiatives and set them apart from competition agencies' efforts.

32. *First*, CSOs capacitated in conducting competition advocacy activities are seen as non-threatening entities by the potential beneficiaries and stakeholders. Initiatives of competition advocacy led by CSOs exert a certain level of influence to convince diverse stakeholder groups and generate receptiveness towards competition principles. This sets them apart from unilateral initiatives of competition agencies, which can be viewed by stakeholders as prejudiced efforts (which might not be the case in reality), given the inherent quasi-executive nature of these institutions.

33. *Second*, as CSOs tend to rely on objective, evidence-based criteria to put forth public-welfare arguments, their advice is generally considered to be unbiased and well-grounded. This provides proof and credibility to complex theoretical arguments generally put forth in support of competition policy and law. Moreover, if methodologies of competition advocacy projects are constructed with care, political economy challenges can also be factored in and complex economic arguments can be tested on the ground by linking competition reforms to consumer and producer welfare.<sup>36</sup> This generates trustworthiness amongst stakeholders and also helps to create champions or individuals who can take the reforms agenda forward. Some of these features are missing in agency-led advocacy initiatives.

34. *Third*, CSO initiatives are not bound by legislative, political and regulatory constraints. These can be optimally designed keeping in mind specific socio-economic conditions and needs of a jurisdiction. Additionally, CSOs can be critical and mindful about political economy setups. In small and developing nations, competition enforcement agencies do not necessarily enjoy such a liberty.

35. These and other miscellaneous factors make the CSO community an integral participant in the competition reforms milieu. At the initial stages of development of a competition regime, the role of CSOs is even more critical to overcome early challenges and prevent push-back from vested market interests and archaic political setups.

### 2.2. Specific strategies to overcome adversity and create competition culture

36. As proposed above, the role of CSOs in nurturing competition culture is an indispensable one. However, due to the fact that creating a holistic pro-competitive environment requires long-term dedication and sustained efforts, CSOs have to frame and implement robust strategies which can help complement the efforts of competition agencies. They also ought to be mindful of the fact that their efforts alone will not be able

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<sup>36</sup> CUTS' project on Competition Reforms in Key Markets for Enhancing Social & Economic Welfare in Developing Countries' (CREW) was one such initiative which inculcated these factors

to generate the requisite momentum to generate and sustain competition culture in the long-run. In order to address these and many other challenges in developing and small economies, a carefully designed approach, which is based on Research, Advocacy, Networking and Capacity Building (RANC), is required.

37. This approach was followed in the series of multi-country 7Up projects, implemented by CUTS. CUTS' 7Up projects which started in 2000 played a very important part in the movement toward better understanding of the benefits of competition in several Asian and African developing countries.

38. Until now four rounds of the (multi-country, multi-year) 7Up projects<sup>37</sup> have been implemented. The following model depicts the strategy undertaken across all countries to achieve the intended outputs and outcomes:

**Figure 3.**

### The 7UP Model for Competition Reforms



39. To successfully implement the model on the ground, the following actions were necessary:

- Partnering with local CSOs in project countries and engaging a wide range of local stakeholders (including business, polity, consumer groups, NGOs, media,

<sup>37</sup> 7Up1 Comparative Study of Competition Regimes in Select Developing Countries of the Commonwealth (2000-2003) [www.cuts-ccier.org/7Up1](http://www.cuts-ccier.org/7Up1) ; 7Up2 Advocacy and Capacity Building on Competition Law and Policy in Asia (2004-2006) [www.cuts-ccier.org/7Up2](http://www.cuts-ccier.org/7Up2) ; 7Up3 Capacity Building on Competition Policy in Select Countries of Eastern and Southern Africa' (2005-2008) [www.cuts-ccier.org/7Up3](http://www.cuts-ccier.org/7Up3) ; 7Up4 Strengthening Constituencies for Effective Competition Regimes in Select West African Countries (2008-2010) [www.cuts-ccier.org/7up4](http://www.cuts-ccier.org/7up4).

academia, lawyers, etc) for developing background knowledge (research) about challenges in evolving competitive markets.

- This knowledge was subsequently utilised in undertaking advocacy and capacity building to promote a culture of competition in these countries – and to identify reforms champions therein. Benefits of such a multi-country approach that have been witnessed over the process of implementation of 7Up projects are, mainly: comparability across jurisdictions, peer-learning, and inputs to regional (integration) processes/institutions.

40. The model was localised for each country or region and several outcome oriented activities were held which led to extremely positive results. These are illustrated below and have been linked to specific aforementioned challenges:

**Table 1. Strategic activities and illustrations**

Challenge	Activities/specific actions	Result	Supporting Illustrations
Lack of prioritisation, awareness	Awareness Generation events for National Stakeholders on Competition issues	<ul style="list-style-type: none"> <li>- Increase of competition and consumer protection related news/articles/features in local media</li> <li>- Enhancement in the ability and confidence of national stakeholders (all stakeholders were collectively made part of a national stakeholder group called the National Reference Group or NRG) to contribute to the competition reforms agenda.</li> </ul>	<ul style="list-style-type: none"> <li>- This was observed in a number of countries including Mauritius, Uganda and Nigeria. Some of them were even contributed by project partners/researchers.</li> <li>- Partners and NRG members have continued their mission of competition reforms beyond the life-span of the project by developing and implementing independent initiatives on competition issues in Kenya, Sri Lanka, Nepal, Mozambique, and The Gambia.</li> </ul>
Political Economy Push-back and Governance Constraints	National dialogues on Competition and Consumer protection issues	<ul style="list-style-type: none"> <li>- Initiation of a discourse on competition reforms, involving key stakeholders/actors/institutions, led to the emergence of a conducive climate</li> </ul>	<ul style="list-style-type: none"> <li>- National Reference Group (NRG) acted as the platform to raise the ante on competition issues in the country. In some countries like Pakistan and The Gambia – there was even some progress in transforming the NRGs into National Committee/Working Groups on Competition and Consumer Protection.</li> </ul>
Resource and Capacity Constraints	Building capacity of national stakeholders to advocate for competition reforms through seminars and training	<ul style="list-style-type: none"> <li>- Technical assistance provided to competition agency professionals</li> <li>- University courses on competition policy and law initiated in a number of countries</li> </ul>	<ul style="list-style-type: none"> <li>- Competition agencies and staff of competition authorities improved their ability to enforce competition legislation, in Namibia, Mauritius, Zambia, etc.</li> </ul>
Political Economy Push-back and Governance Constraints Sluggish movement and uptake of competition reforms	Contribution towards policy and administrative reforms on competition by identification of partners	<ul style="list-style-type: none"> <li>- Project partners/ contacts rising to 'positions of influence' in the national competition circuit</li> <li>- Refinements in competition law undertaken in line with the view expressed by stakeholders.</li> <li>- Fast-tracking/ forward movement with the process of competition reforms</li> </ul>	<ul style="list-style-type: none"> <li>- Project partners from The Gambia, Senegal and Nepal took up positions in the Competition agencies as senior officials</li> <li>- In countries like India, Kenya, Zambia and Vietnam, project was closely associated with the process of development of the national competition legislation, including its refinement.</li> <li>- In countries like The Gambia and Mauritius, the process of competition reforms gained momentum. Even in countries like Bangladesh, Nigeria and Ghana there has been some forward movement (in spite of strong political economy challenges)</li> </ul>

### 3. Chapter III: Key Recommendations

41. From the aforementioned process which was primarily aimed at providing momentum towards building a competition culture, there were several lessons which the organisation learnt. Young agencies and those which are currently at the initial stages of implementation can refer to these lessons as a “go-to” list of recommendations in case they face similar challenges.

42. **Prioritisation:** It is important that competition agencies adopt a gradual approach towards implementation of competition law, prioritising areas in line with scarcity of resources.

43. **Assessment of the country’s political economy situation:** in order to build a culture of competition, agencies and policy makers can undertake certain fundamental steps such as conducting an assessment of the country’s political economy situation, gauging the appetite and scope of specific interventions and understanding the most basic needs and priorities in relation to competition. Such an assessment should cover three principal areas:

- An evaluation of the level of understanding of the benefits of competition, its strong links to other policy areas, and the level of commitment to competition among key constituencies in the country;
- The nature and extent of institutional and governance restrictions on competition; and
- The design and effectiveness of any regime that may exist for addressing anticompetitive conduct, or, in the absence of any such regime, what necessary prerequisites would need to be fulfilled to establish one.<sup>38</sup>

44. **Focus on creating awareness and understanding on competition reforms:** to tackle the issue of lack of awareness and prioritisation and to raise awareness and understanding on competition reforms, collaboration with partner organisations and dissemination of information through the local media is essential. One good method of creating public awareness is through media interaction, advertising and publicity. Besides, publication and distribution of literature through various targeted means is also desirable. This is a dynamic process that needs to be ratcheted as and when the authority decides cases, which helps to put the issues in the right perspective. Publicity without examples is quite dry, and people do not understand the issues. Writing regular periodical columns can also be very helpful. This was done in some of the countries like India, Kenya, Nigeria, Vietnam, and Zambia.

45. A collaborative approach also enhanced the understanding of partner organisations. As a result, various partners and NRG members in several project countries were appointed at senior levels and assisted the government in shaping and implementing their respective competition regimes. Increased awareness also resulted in improved business compliance and assisted in generating industry-wide acceptance towards competition law.

46. Thus, it is important to identify a raft of institutions (vehicles) who can carry out awareness activities. The competition agency alone cannot do it. For example, bar associations, consumer organisations and advocacy groups, business chambers,

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<sup>38</sup> Mehta Pradeep, Competition Culture Key to Successful Competition Regime at p.4 (n.3).

professional associations etc should be roped in to assist the awareness generation programme.

47. **Capacity Building of Government Personnel:** it is integral to build the capacities of government personnel in order to reap long term benefits of competition policy and law, and to break the shackles of excessive political intrusion. Experiences suggest that investing in increasing the technical know-how of government personnel improves long-term acceptability towards competition policy and especially supports the agencies in effectively enforcing the law.

48. **Celebration of International Competition Day:** International days are observed to focus attention of the society at large on certain specific and relevant aspects of contemporary human development. Increased awareness and informed public opinion have been formed on a number of issues, once public attention on these issues were focused by dedicating a certain date of the calendar year on them. World Environment Day, World Women's Day, World Aids Day, World Consumer Rights Day, etc. are some examples. One of the tools for enhancing competition culture and gaining mass attention is through observation of UN Days, which cover a variety of public welfare issues.

49. Brazil observes the Anti-Cartels Day every year on 8th October, while the European Union observes European Competition Days around member states on random days in the year. Similarly, CUTS is advocating for a **World Competition Day**<sup>39</sup> to be celebrated on 5th December every year. On this day in 1980 the UNCTAD Set on Competition Policy was adopted by the UNCTAD Conference on RBPs. Many countries have already supported the Day, while The Philippines has declared it as National Competition Day through an Official Proclamation.

50. **Networking:** to support the growth of young competition agencies, considerable efforts through research, effective networking and continuous engagement are necessary. This helps to ensure that internal core competencies are built and the law is enforced *sans* economic and legal errors which can otherwise do more harm than good. Building the capacities of other stakeholders such as the media, academia and civil society also creates an external support system which the competition agency can rely on in the future and helps to facilitate cooperation amongst all relevant stakeholders.

51. As one will notice, partnership and local ownership was a common essential thread running throughout the 7Up initiatives, irrespective of the region of implementation. Expert collaboration and cooperation towards building competition culture cut across regions and jurisdictions and also led to the creation of a civil society coalition to promote healthy competition, namely the International Network of Civil Society Organisations on Competition.<sup>40</sup>

52. However, bearing in mind the current wave of protectionist measures adopted by several major jurisdictions, the scope for international cooperation on competition matters seems to have dwindled. This has not only led to the emergence of national policies reflecting protectionist principles, but has also resulted in resource re-prioritisation and reallocation. As the international competition reforms agenda takes a backseat, it is getting increasingly challenging for CSOs to look for financial and technical support

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<sup>39</sup> [http://incsoc.net/World\\_Competition\\_Day.htm](http://incsoc.net/World_Competition_Day.htm).

<sup>40</sup> <http://incsoc.net/>.

which can help small and developing nations to overcome adversities *vis-à-vis* competition policy and law.

53. As a result, the creation of competition culture in present circumstances will understandably get tougher and there is a need for recalibration of prevalent systems. This involves rethinking *vis-à-vis* different existing strategies and the international community ought to find innovative methodologies which can help develop competition regimes, despite the presence of inward looking policy ecosystems.