5

*Bhutan**

A tiny landlocked country sandwiched between India and the Tibetan region of China, Bhutan[1] controls several, key Himalayan passes. Its population consists of three main ethnic groups: Bhotes comprise 50 percent; ethnic Nepalese, 35 percent; and indigenous migrant tribes 15 percent. Of the total, 75 percent of the population practice Lamaistic Buddhism and the remaining 25 percent practice Nepalese influenced Buddhism.

The official language of Bhutan is Dzongkha, with a number of Tibetan and Nepalese dialects spoken across the country.

The capital of Bhutan is Thimphu, and the country is divided into 18 administrative districts. Bhutan has a monarchical democracy headed by the King who is the head of the state. The National Assembly, the Royal Advisory Council, the Council of Ministers, the Central Secretariat and the Judiciary are the five organisations that play crucial roles in the governance of the country. However, at the district and village levels, there are established mechanisms that ensure people's active participation in the decision making process.

Due to its geographical position, size and level of economic development, the country is highly dependent on imports for consumer goods. As the country is landlocked, trade and transit arrangements with India play a critical role in its economic life.

Economy

The economy is based on agriculture and forestry, providing the main livelihood for more than 90 percent of the Bhutanese population. Agriculture consists largely of subsistence farming and animal husbandry. However, only about eight percent of the Bhutanese land territory is cultivated. Rugged mountains dominate the terrain and make the building of roads and other infrastructure difficult and expensive. The economy is closely aligned with that of India, through strong trade, monetary links and the country's dependence on financial assistance. Most of the production in the industrial sector is of the cottage industry type.

PROFILE	
Population:	874 thousand***
GDP (Current US$):	645 million***
Per Capita Income: (Current US$)	660 (Atlas method)*** 1969 (at PPP.)
Surface Area:	47 thousand sq. km
Life Expectancy:	63 years**
Literacy (%):	47 (of ages 15 and above)**
HDI Rank:	134***

Sources:
- World Development Indicators Database, World Bank, 2004
- Human Development Report Statistics, UNDP, 2004

(**) For the year 2002
(***) For the year 2003

A great many development projects, such as road construction, rely on Indian migrant labour. Bhutan's hydropower potential, and its tourist appeal are key resources. The exact magnitude of Bhutan's mineral resources is still unknown but it has huge water resources, and the river system of the country has the potential to generate about 20,000MW of electricity. Electricity contributes to a large part of Bhutan's total export revenue. Yet, not even five percent of the potential is being actually utilised.

Education, social, and environmental programmes are in progress, with support from multilateral development organisations. Each economic programme takes into account the Government's desire to protect the country's environment and cultural traditions. For example, the Government, in its cautious expansion of the tourism sector, encourages the visits of upscale, environmentally conscientious visitors.

* Original paper done by Nitya Nanda of CUTS in February 2005. Revised in February 2006

1 http://www.cia.gov/cia/publications/factbook/geos/bt.html

Competition Evolution and Environment

The GDP of the country is growing at a rate in excess of six percent per annum. Bhutan is in the process of liberalising its economy to foster competition and take advantage of developments happening around the world. The State provides a range of social services to its people free of cost, whilst the public sector delivers most of the essential utility services at nominal prices. The latest Human Development Report of the United Nations Development Programme (UNDP) lists Bhutan as one of the *medium human development* countries.

As was the case in most other South Asian countries, the Bhutanese economy was dominated by the State. However, with the country queuing up to join the WTO, Bhutan is in the process of liberalising its economy to foster competition and private sector development.[2]

During 1990s, the involvement of the State was progressively reduced in the commercially viable areas of the economy, limiting its role to the provision of social services and infrastructure. Many public sector enterprises have been privatised (e.g. public transport, construction, tourism), or corporatised (telecom, electricity, postal services).

Bhutan is trying to attract foreign investment as part of its economic liberalisation programme. It is in the process of putting in place the required institutional and legal framework to regulate foreign investments.

Competition Law and Anticompetitive Business Practices

At present, the country does not have a competition law in place. Nevertheless, the Ministry of Trade and Industry (MTI) and other government departments have taken some steps to increase competition to protect consumer interests. However, one does not need a sophisticated competition law in a country where there is hardly any industrial base. Bhutan is such a country. Whilst the competition law in rich and big developing countries is preoccupied with mergers, acquisitions, takeovers and the like; in developing, especially the small, economies, this is a minor issue. In a small economy, competition policy and law is required to cover potential marketplace abuses, due to dominance through monopolistic or oligopolistic behaviour by traders.

To this end, the Government initiated a process of 'de-monopolisation' as early as 1992. Under this scheme, the Government requires any principal company supplying goods to Bhutan to have more than one distributor in the country, in order to bring about greater competitiveness

Box 5.1: Taming Hindustan Lever in Bhutan

Over 80 percent of goods sold in Bhutan come from India. All Indian companies operate through local wholesale distributors in Bhutan, who are licensed by the Bhutanese Government to operate as such. In 1994, the King of Bhutan directed the MTI to regulate the dealership of Indian companies.

Following this, a regulation was promulgated to de-monopolise the wholesale distribution trade in Bhutan. The regulation had two main provisions. Firstly, any trader would not hold more than 10 agencies, thus widening the scope of trade and opportunity. Secondly, no single firm would be the sole agent for any company selling goods in Bhutan.

In its first action, the MTI asked Hindustan Lever Ltd (HLL - Indian subsidiary of Unilever) to appoint a second wholesaler for distributing its goods in Bhutan. At that time, HLL was operating through the Tashi Business Group as its sole distributor. Tashi is the biggest business group in Bhutan, with varied interests from hotels to cooking gas, etc, and its owners are related to the royal family.

In response to the MTI's directive, the HLL responded by saying that, since the market in Bhutan is too small, it does not feel the necessity of appointing another agency. The turnover of HLL in Bhutan, at that time, was in the range of Rs 15 million or US$326,000 per annum.

The MTI insisted that HLL should appoint another agency, but the firm's response was evasive. HLL dodged MTI by claiming that either the new applicant party has little capital, or that it has no experience of trading in consumer goods, and so on.

Finally, the MTI suggested the name of the Food Corporation of Bhutan (FCB), a government company, which has both capital and a distribution network. Yet, HLL did not respond positively.

This time, the MTI sent an ultimatum to HLL that it would cancel Tashi's licence to operate as HLL's wholesaler. This threat was effective and HLL soon appointed FCB as its second wholesaler.

FCB rose to the occasion and soon multiplied HLL's business in Bhutan to nearly Rs 40-45mn (US$1mn), by aggressive marketing through its 75 depots situated in 18 districts in the whole country. Today, HLL is happy that its business has nearly tripled by creating new markets, where Tashi could never have reached, or was too complacent to make the efforts. In another similar situation, Nestle India Ltd heeded MTI's advice and it has more than two distributors.

2 *See* Communication submitted by Bhutan, UNCTAD Intergovernmental Group of Experts on Competition Law and Policy, Fourth Session, Geneva, 3-5 July 2002.

and provide better services to consumers. As a result, the prices of the commodities supplied by these companies have reduced, and consumer choice in products has increased.[3] Exclusive dealing is a problem in all countries, and many competition authorities do not even frown on it. Yet, in the case of Bhutan, it was the King who realised that monopolistic traders could actually exploit consumers, by manipulating the prices or by not catering to their demands.

Consumer Protection

The country is currently debating a legislation (Bhutan Consumer Protection Bill, 2001) that would promote both competition and consumer welfare. The proposed Bill aims at filling the gaps in the existing set of laws. It is widely recognised that the privatisation process would benefit consumers by bringing greater choice, but without regulation, privatisation would be more generous to businesses at the cost of the consumer.

The Bill thus proposes an umbrella law, under the MTI, with rules and regulations to protect the interests of consumers in all sectors of the economy. The Bill provides for the handling of consumer complaints regarding defects, deficiency, shortcomings, etc, in the goods/services as well as covering the UTPs and RTPs that harm consumers, by reducing or eliminating competition in the market through price-fixing, market allocation, exclusive dealing, refusal to supply, tied selling, etc.

To enforce this legislation, the Bill envisages the establishment of two separate bodies: the Consumer Welfare Council and the quasi-judicial Fair Trade Commission. The Consumer Welfare Council would comprise of representatives from all the relevant stakeholders, and would develop overall policy guidelines, whereas the Fair Trade Commission would be charged with implementing the legislation.

Sectoral Regulatory Institutions

The country has created some sectoral regulators, and is in the process of creating some more. In 1999, the Bhutan Telecommunications Act was passed for promoting the efficient functioning and management of the telecommunications sector. With the adoption of the Act, the Telecom Department became a State corporation and a regulatory authority called the Regulatory Authority for Communications was established to foster competition, and to look after the interests of consumers. Plans are afoot for the opening of the sector, to private players, at an appropriate time. It is interesting to note that a regulatory authority was established long before embarking upon privatisation.

Similarly, the former Department of Power was split up to create three separate agencies to handle the planning (Department of Energy); regulation (Bhutan Electricity Authority); and transmission, distribution and supply (Bhutan Power Corporation, or BPC).

In 1995, the MTI introduced a new rule, providing for the enforcement of the maximum retail price (MRP) throughout Bhutan in respect of commodities imported from India, as the Indian packaged products normally bear an MRP. Special arrangements ensuring the sellers' profit margins were negotiated with the manufacturing companies in India, from where the country imports most of its consumer goods.

A new agency was established under the Ministry of Agriculture, in 2000, to test, and certify products, and also for the consumer to know the ingredients and the percentage of chemicals used in food products. The Quality Control and Regulatory Services (QCRS), is responsible for this task.

The financial sector of the economy is at a developing stage. The Royal Monetary Authority (RMA) regulates the banking business in Bhutan. The public sector Royal Insurance Corporation of Bhutan (RICB), still holds monopoly in the life and general insurance business, and its services leave room for improvement, especially to satisfy its customers. Still there is no regulatory authority, for insurance, in existence.

The Royal Government of Bhutan has adopted the Road Safety & Transport Act, 1999, to deal with registration & licensing regulations, commercial and passenger vehicles regulations, traffic control and enforcement mechanisms.

Box 5.2: Cable Operators Banned from Broadcasting on TV

The Ministry of Communication has banned private cable operators from broadcasting audio-visual material and advertisements on their free channels.

Both *Sigma* and the *K.C. Cable Network,* the two private cable operators in Thimphu, began airing a wide variety of materials ranging from items for sale, publicity, employment notices and video films to modern Bhutanese songs on their channels.

In a notification, the ministry says that by Article 6 Section 6.1 of the terms and conditions of the operation licence of cable television services, the cable operator must adhere to the National Programming Code of Conduct issued by the Royal Government. All programmes, broadcast through local channels, must first have the prior approval of the National Film and Television Review Board.

Source: Kuensel, Bhutan

3 *Ibid.*

The regulations also provide the appropriate guidelines and procedures for the enforcement agencies, with a view to provide better services to the people. The Road Safety and Transport Authority (RSTA) has been established to co-ordinate these activities.

Concluding Observations and Future Scenario

Currently, the Bhutanese Government is considering the feasibility of the institutions proposed in the Consumer Protection Bill. Considering the weak institutional framework and lack of capacity on these issues, as well as the complexity of the process of introducing a competition policy and law, the Government is aware that it requires considerable technical assistance for capacity building and institutional strengthening.[4]

Efforts should be made to further widen the bilateral cooperation between India and Bhutan, for the mutual advantage of both the countries. This is of particular significance as, with India being the main exporter of goods in Bhutan, a great deal of anticompetitive/anti-consumer conduct and practices may originate in India, which may have adverse effects on the Bhutanese people. The cooperation should include provisions for empowering the Bhutanese Government to be able to use the Indian legal system, in order to seek redress of grievances, caused to consumers or businesses in Bhutan, due to the improper conduct of the business firms in India.

4 *See* Communication submitted by Bhutan, UNCTAD Intergovernmental Group of Experts on Competition Law and Policy, Fourth Session, Geneva, 3-5 July 2002.

Suggested Readings

Paper presented at the CUTS Partnership Conclave: '*Governance and Its Relationship With Poverty Eradication*', New Delhi, 2003.

Bhutan Consumer Protection Bill, MTI, Royal Government. of Bhutan