

Action Taken Report

CUTS CCIER International Advisory Board Meeting

1. BACKGROUND

CUTS International's, Centre for Competition, Investment & Economic Regulation (CUTS CCIER, www.cuts-ccier.org) has regularly held meetings of its International Advisory Board members (IAB) on the sidelines of international conferences that are either organised by CUTS and/or other organisations, where a critical mass of IAB members participate. The last meeting of the IAB was held on the side-lines of the International Conference on Reviewing the Global Experience with Economic Regulation A Forward Looking Perspective April 18-20, 2011, New Delhi, India. A report of this meeting was prepared and circulated.

We are happy to share that Mr. William Kovacic, Former Commissioner of the Federal Trade Commission, USA accepted our invitation to join the IAB. Further, this is also to bring to the notice of the IAB Members regarding the change of guards at CCIER. Rijit Sengupta has moved on to become Regional Director (Africa) and has been replaced by Udai Mehta, as the Centre Co-ordinator, CUTS CCIER.

This is an Action taken Report (ATR) that summarises the suggestions received from the members of the IAB over time, and corresponding actions that were taken. The ATR starts with a section briefly describing ongoing projects of CUTS CCIER – and their current status.

2. ONGOING PROJECTS *VIS-À-VIS* PROGRAMME AREAS

Competition Policy & Law

- 2.1 India Competition and Regulation Report (ICRR 2011)** – The draft general and sectoral chapters were presented at the international conference organised by CUTS on 18-20 April 2011 in New Delhi. On the basis of the comments received during the international conference, comments of the National Reference Group (NRG) members and external blind reviews, the chapters were finalised by the Authors and submitted to CUTS. At present, on the basis of the chapters, an overview chapter is being drafted. A perception survey was carried out, based on a structured questionnaire and covered important categories of stakeholders from across eleven states in India and more than 900 respondents, as compared to the requirement of covering 500 respondents to gather perception of various stakeholders about the prevailing competition regime in the country. The Ministry of Foreign Affairs (Norway) is supporting this project as part of the PROSAIG programme. (<http://www.cuts-ccier.org/icrr2011/>)
- 2.2 Evolving Effective Cooperation Between Competition Authority and Sector Regulators--Lesson From Indian and International Contexts:** CUTS has undertaken a study with support from the Ministry of Corporate Affairs, Government of India, which would focus (among other things) on the history behind conflicts in select jurisdictions of the world and analyse the factors that led to their solution. The objective of the study is to develop

a structured, systematic and sustainable process of interactions/dialogue between the authorities and finally, develop a framework for conflict resolution (ex-post). The study would focus on an in-depth analysis of the approaches followed in India and four major countries: South Korea, Brazil, South Africa and Spain. The key sectors chosen for detailed analysis are banking and telecommunications. In addition to this, other utility sectors have also been studied on the whole. The draft country chapters are available on the project webpage - <http://www.cuts-ccier.org/IICA/>. On the basis of the country chapters, an overview chapter is being prepared by Cezley Samson and Faye Samson.

- 2.3 Second Laws project (Non-Funded)** – The book ‘Evolution of Competition Laws and their Enforcement: A Political Economic Perspective’ has been published by Routledge (UK) and it will be released during the OECD GCF in Paris. This book is a collection of (nine) country essays highlighting the motivations in various countries that led to repeal of an old law and adoption of a new one. Countries at different levels of economic growth were chosen for this analysis, so that a set of criteria (for adopting new competition laws) could emerge from the analysis. The country essays were contributed voluntarily by various CUTS friends/partners/fellows.
- 2.4 World Competition Day (Non-Funded):** International days are observed to draw the attention of the society at large on issues that are extremely important for human development in the present and particularly for the future. CUTS called on the international competition community to voice the need for adopting a World Competition Day on 05th December with the purpose too reach out to the people with the message that 'healthy competition helps people'. In order to mark the day as significant, competition authorities, CSOs, development organisations such as DFID, UK and individuals around the world organised a range of activities that included seminars/roadshows, publishing newspaper articles/press releases, press conference on ‘WCD’. In USA, the American Antitrust Institute marked the day by calling on the US Government to set penalties at a level to more optimally deter cartels. Many competition agencies (viz. Fiji, Kazakhstan, Namibia, Pakistan, Russia, The Gambia, UK, Zambia and Zimbabwe) have also made a clarion call to UNCTAD in a form of a letter towards formal adoption of the Day. <http://www.facebook.com/WorldCompetitionDay>
- 2.5 7Up Assessment Report (Non-Funded):** CUTS is publishing a report entitled, ‘Did we make any difference?’ The report is an assessment of ‘7Up Projects’ on competition policy and law issues undertaken in developing countries of Africa and Asia by CUTS. The 7Up Projects which have spanned for over 8 years was started with the purpose to evaluate how countries enacted and implemented a competition law, and how effective they have been.
- 2.6 Preliminary Information Reports (Competition Commission of India):** CUTS filed Preliminary Information Report to the Competition Commission of India regarding Google and Facebook against their potential engagement in anticompetitive practices which might have a negative effect on competition in the Indian markets.

Economic Regulation

- 2.7 Capacity building of CSOs to demand DSM/RE in India** – The project is being supported by ClimateWorks Foundation (USA) through Shakti Sustainable Energy Foundation

(SSEF), India and has been implemented in two states of India (Gujarat and West Bengal) to develop understanding and awareness of CSOs, so that they mobilise greater consumer demand for renewable energy products/services in India. The State-level launch meetings were organised for both the states and reports of the same have been uploaded on the project website. Further, a consumer perception survey was undertaken in both the States and in total 1000 respondents was covered. At present, the survey findings and literature review are being compiled in form of a State Level Base Paper (SLBP). On the basis of the SLBP, an overview chapter would be prepared. (<http://www.cuts-ccier.org/DREC/>)

- 2.8 Quality of Regulation:** CUTS implemented the project to demonstrate the use of a general model for assessing the quality of regulation which can be utilised by developing/developed countries in the near future. Three country papers were commissioned --one each for Asia (India), Africa (Kenya) and Latin America (Brazil) to provide a comprehensive picture of the state of regulation in these regions. These papers will assess the quality of regulation in selected sectors (petroleum & natural gas, and electricity) and the findings have been collated and major lessons from these have been presented in a synthesis report. We are in process of identifying a suitable publication house for the purpose of publication and dissemination of the report.
- 2.9 Campaign on Regulatory Reform Bill (Non-Funded):** The regulatory environment in India which has developed over a period of time does not appear to be homogeneous across sector or states. An important step towards achieving a homogeneous approach is the drafting of the Regulatory Reform Bill by the Planning Commission of India. The Centre has been proactively engaged in promoting and creating awareness about the importance of the reform bill in India. ([http://cuts-ccier.org/event-Regulatory Reforms in India-A Roundtable.htm](http://cuts-ccier.org/event-Regulatory_Reforms_in_India-A_Roundtable.htm))
- 2.10 Working Group on Business Regulatory Framework (WG BRF):** The Planning Commission of India, in the process of developing the Twelfth Five Year Plan (XII FYP) for the country, had formed a Steering Committee on Industry to deliberate upon the ways and means of creating an enabling business ecosystem in the country. For making an in depth enquiry into various subjects, the Steering Committee divided its work into ten cross-cutting and fourteen sectoral Working Groups. One such cross-cutting group has been the Working Group on Business Regulatory Framework (WG BRF). CUTS served as the Knowledge Partner for the WG BRF and facilitated its various deliberations. This work was undertaken during the months of May-October 2011 and the deliberations got converted into a synthesis report of the WG BRF. It took the opportunity to spread awareness about the promising nature of RIA for dealing with regulatory burdens. Of the other recommendations that have been accepted in principle, the ones dealing with RIA have received widest acceptance by the different stakeholders gathered in a national conclave organised by the Planning Commission of India in New Delhi during the month of October 2011. CUTS have also submitted an operational strategy note over how RIA can be adopted in the country. Thus, RIA has finally made inroads into the National Manufacturing Plan of the country.

Consumer Protection

- 2.11 Consumer Protection Regimes in the World (Non-Funded):** A first volume of this book is being readied and would contain essays about the state of consumer protection regimes from about 40 countries (analysed, using the UN Guidelines for Consumer Protection).

Investment Climate

2.12 Exploring the Interplay between Business Regulation and Corporate Conduct (BRCC Project) – A project that CUTS has initiated in cooperation with the Norwegian Institute for International Affairs (NUPI), is to assess how industrial development in India can occur in a sustainable manner through enabling policy reforms and appropriate practice changes. After the project was formally launched in April 2011, two regional dialogues were organized during July 2011 and one strategy dialogue was organized during November 2011 at different locations within the country. The inputs received during such gatherings were utilised for finalising the two sectors: Healthcare and Pharma and zeroing down to the choice of eight states for field work. As the nature of the inquiry is complex, it has taken considerable time to finalise the approach and research methodology. It is expected that by February end, the research methodology would get finalised and accordingly the next sets of activities will be carried out with the support from local partners from the target states. The Ministry of Foreign Affairs (Norway) is supporting this project as part of the PROSAIG programme. (<http://www.cuts-ccier.org/BRCC/>)

3. ACTIONS ON IAB SUGGESTIONS

This section summarises the comments received from the IAB members and corresponding actions taken by CUTS and/or those in the pipeline.

Sl. No.	Suggestion received	Specific Issues raised	Actions taken/planned
1.	Analysis of 7Up projects	<p>The countries (7Up) where CUTS has undertaken work on competition issues should be re-visited in order to analyse how the 7Up project (research and awareness/advocacy) helped the process of competition reforms.</p> <p>CUTS should maintain close contact with the partners/CSOs/NRG in these countries</p>	<p>CUTS has completed an assessment (internally) to understand how the ‘7Up Projects’ have contributed towards domestic competition reforms in the countries. The assessment has been captured in a report entitled, ‘Did we make any difference?’ which is planned to be released at side event at OECD GFC, Paris on 16-17 February 2012. (Refer to point no. 2.5, as given above)</p>
2	Interface between competition and sector regulation	<p>(i) Empirical research on the interface between competition and sector regulation</p> <p>(ii) An important research question would be ‘What kind of Sectoral decisions impinges on Competition Commissions?’</p> <p>(iii) Assess the compatibility between competition and sectoral legislations</p>	<p>The suggestion by the IAB has already been implemented. As mentioned above, CUTS is undertaking a study on the overlap issue with support from Ministry of Corporate Affairs, India. (Refer to point no. 2.2, as given above)</p>
3	Competition Policy and Consumer Welfare	<p>CUTS should focus on the plight of poor consumers while planning such research</p>	<p>i. CUTS has also prepared a monograph on <i>Why should Consumer be interested in Competition Policy and Law</i>, which demonstrates through case-studies/evidence of how competition enforcement can assist consumers (especially the poor)</p> <p>ii. Proposal to DFID (Competition Reforms to Enable Social and Economic Welfare for DC Consumers (CREW) Project): A proposal has been prepared and submitted to DFID, UK for their comments. The project is aimed at developing a framework to enable better understanding of how competition reforms can lead to long-term, measurable impacts on the ground. This project will be</p>

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		<p>A case study approach should be undertaken to assess welfare impacts of competition law enforcement</p>	<p>implemented in three stages, and over a period of 3 years. DFID, UK is keen to start implementing this project from the financial year 2011-12 and also have started to write to other donors for co-funding. NORAD is also interested but their main concern is that the project should cover issues pertaining to the electricity sector and be implemented in African countries.</p> <p>CUTS is implementing a project to study Unfair Trade Practices (UTPs) in South East Asian countries, which is being supported by IDRC (regional office South East Asia). The project is implemented in five countries of the ASEAN region, namely Indonesia, Malaysia, the Philippines, Thailand and Vietnam by HRC in cooperation with research partners in respective project countries.</p>
4	Regulatory Impact Assessment (RIA)	It was suggested that the work that CUTS could carve out for itself in this area (RIA) could be to assess 'How use of RIA can stimulate regulators to focus on more competitive and consumer-friendly reform actions?'	RIA forms an integral part of the Business Regulatory Framework conceived under the National Manufacturing Plan developed by the Planning Commission of India while formulating the Twelfth Five Year Plan (2012-17) (Refer to Para 2.10, as mentioned above)
5.	Governance of Regulation	Develop understanding about the concept of 'Regulatory Failures'. Also, to persuade agencies like the World Bank to assess 'Regulatory Failures' caused as fallout of their advice/policies.	CUTS has concluded a project on <i>Quality of Regulation</i> in select countries – India, Brazil and Kenya. The issue of 'regulatory failure' has been addressed (to a certain extent) in the research methodology. (Refer to Para 2.8, as given above)
6.	Competition and Economic	This is a 'hot' area, especially for an organisation like CUTS.	i. A discussion paper and a viewpoint paper have been prepared to guide CUTS future work on this issue.

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	Growth	<p>Experiences from Latin America, Egypt and India should be studied to develop better idea about factors leading to informalisation. There is also a need to study specifically governance factors related to informalisation.</p> <p>Projects would need to assess if competition can be introduced in the informal sector in developing countries – and what benefits would accrue to consumers and producers</p>	ii. Further, CUTS has prepared a Concept Note to seek support from DFID, UK.
7.	Competition and Corruption	<p>Explore the nexus between big business and government.</p> <p>An issue that has not been studied much, CUTS holds an advantageous position as far as undertaking research and advocacy in this area is concerned</p>	CUTS would explore the interface between competition and corruption in the utility sector; and also in case of public procurement (covering the issue of bid-rigging). Not much progress in this.
8.	Interface between competition and corporate social responsibility (CSR)	One of the issues to be explored would be how competition compliance can help firms better achieve CSR objectives. Further, firms have also adopted CSR practices to gain market power/dominance – which needs to be looked at.	CUTS would study these aspect under the project ‘Exploring the interplay between business regulation and corporate conduct’ in India.
9.	Opportunity in West Africa	Huge potential to implement competition policy related projects in francophone countries, and this is something that CUTS should capitalise. Both the ECOWAS and the WAEMU Commissions were reforming their regional competition regimes, and this was an opportunity for CUTS. Especially, the possibility to provide technical assistance and capacity building support, on the basis of the experience of having worked across Sub-Saharan Africa and South and South-East Asia.	<p>i. We have been in touch with Amadou Dieng (the officer in Charge of Competition at WAEMU) and he has indicated that the Commission would approach CUTS in 2012, for assistance on issues relating to competition. CUTS would need to pursue the matter.</p> <p>ii. Further, a briefing paper titled ‘Promoting Competition Reforms for Development - How to proceed in West Africa’, has been prepared and uploaded on the webpage.</p>