

Report on International Conference on
Political Economy of Competition & Regulation in Developing Countries
Wednesday, 24 June 2009, Jaipur, India

Organizers	<i>CUTS International with support of The Commonwealth Secretariat, UK</i>
Conference Agenda	<i>Annexure 1</i>
List of Participants	<i>Annexure 2</i>
Venue	<i>Hotel Country Inn and Suites, Jaipur</i>

Objective

To sensitise a select groups of civil society organisations (CSOs) from Africa and Asia about political economy constraints in enforcing competition and regulation regimes in order to enable these to act as pressure groups in their own countries to catalyse the reforms process.

Background

This conference explored issues pertaining to the interplay of stakeholders associated with regulatory issues and the associated climate of competition in business. The conference reiterated that competition policy and appropriate regulation are important for efficiency in resource allocation and thus high output, low prices and good quality of products, and also for effective trade liberalisation. However, quite often effective formulation and implementation of competition policy and regulation is frustrated by pressures from small but powerful vested interest groups, and structural factors such as overlap in the domains of sector regulators and the competition authority, and lack of synchronisation among regulatory reforms in different sectors. Such problems caused by political economy factors and associated challenges of institutional design were addressed by the conference.

Apart from a listing of primary recommendations made by the body of participants at the conference and the conference proceedings, Annexure 1 provides the session wise agenda of the conference while Annexure 2 lists out the participants.

Primary Recommendations

- Regulatory reforms should be gradual and not ad-hoc. An international body of experts should advise all developing countries regarding formulation and enforcement of competition policy regimes.
- Prevention of regulatory capture can be facilitated through various methods for promoting independence and accountability of regulatory authorities: better pay for personnel, appropriate staff mix in terms of in-house staff and consultants, carefully designed appointment procedures for personnel, terms for members of regulatory authorities which are neither too short nor too long, auditing mechanisms, parliamentary oversight etc.

- Concurrent jurisdiction of sector regulators and competition authority would have to be supported by means for institutionalising interface between the two, and a law or a memorandum of understanding (MOU) setting down the view that would be binding in the case of conflict.
- Strengthening of civil society movements as interlocutors was recognised as a must thing in order to ensure that competition and regulatory regimes function properly.
- Advocacy for regulatory reforms should involve stakeholder analysis, dissemination of stories of impact, creation of mass awareness independent of literacy and the use of agencies such as competition authorities, advocacy groups, donors, and business associations. It should target parliamentarians, bureaucracy and common citizens differently for maximum impact.
- Deeper studies on the quality of regulation and related issues in the developing countries must be done to get better understanding of the situation and see what works and what does not.

Proceedings

Session 1

1. The conference began with Pradeep S Mehta, Secretary General CUTS International welcoming the participants. He said that research and advocacy on the political economy of competition and regulation is one of the priority areas of CUTS, and hence this event is being organised. He went on to deliver the keynote address on the theme entitled “Identifying and Overcoming Political Economy and Governance Constraints to the Effective Implementation of Competition and Regulatory Laws”. The panellists for the theme session were M A Razzaque, of the Commonwealth Secretariat, UK, V K Mathur of Inapex Limited, India and former Chairman, Airport Authority of India; Matthew Morris of DFID India and Rohit Singh of ODI, UK.
2. Introducing the theme, Mr Mehta informed the audience that his presentation is based on the output of a CUTS research project “Competition, Regulation and Development Research Forum (CDRF)” funded by DFID, UK and IDRC, Canada. The purpose of the project was to undertake research and deliberate on substantive issues concerning implementation of regulatory regimes in the developing world. He acknowledged the support of DFID and IDRC is doing the studies as well as the Commonwealth Secretariat in supporting this event. He added that further research and outreach projects have been planned for which funding support is being sought from various development partners.
3. Mr Mehta emphasised that appropriate regulation and competition policy and law are fundamental requirements in a market oriented economy. Developing countries pose unique challenges in their enforcement. Their low level of economic development which is often accompanied by peculiar political-economy consideration such as institutional design problems and complex

government regulation and bureaucracy, create real-world challenges. Such handicaps impair effective implementation of competition and regulatory regimes in developing countries. He was of the opinion that there is a strong need to address and overcome these problems and find solutions. The study done by CUTS through contributions from scholars around the world throws up both good and bad examples and can be used by the developing world in formulating and implementing their competition policy regimes.

4. Highlighting the constraints that frustrate the adoption and implementation of competition and regulatory regimes, he emphasised on lack of political will, non conducive government policies, conflicting objectives of stakeholders, public interest considerations and overlapping jurisdictions of competition and regulatory authorities. He expressed that public interest is a slippery slope and it has its own meaning and understanding. Also there is unsynchronised regulation as there is no coherence in how the regulation needs to be implemented. Lack of basic institutional infrastructure and politicians' commitment to growth and development further add to the situation.
5. He expressed that as consequence to these constraints either there is over regulation or under regulation depending upon the pressure exerted by interest groups. Those who are powerful get benefits at the expense of weaker socio-economic groups.
6. As solution to overcome the above mentioned problems Mr Mehta emphasised on alignment of competition policy outcomes and creation of basket of incentives for all stakeholders, political will and consensus for reforms and developing mechanism to synchronise regulatory activities. He was of the opinion that one of the solutions to the problem of overlapping jurisdiction can be to allocate structural issues to regulatory authority and behavioural issues to competition authority. He said that pursuit of public interest and efficiency as an important policy objective are equally important.
7. At end of his presentation he provided recommendations for future. He recommended that creating a culture of competition is important as competition does help growth which in turn creates employment and reduces poverty. He also emphasised on better understanding of the nexus among regulation, politics and markets. At last he emphasised on consumer advocacy and empowerment as means to ensure effective implementation. He suggested that advocacy requires solid evidence and this is what CUTS has been doing for years.
8. V K Mathur expressed that entry barriers are the key concern in developing countries. Differentiating between developing and developed countries he highlighted that developing countries face certain entry barriers in the form of poor literacy, lesser independence, and poor quality of reach to public institutions. He expressed that with the expansion of media reach, illiteracy is no longer a barrier to awareness in developing countries like India. He suggested that there is need to customise the institutional structure according to the needs. He also emphasised on creating separate awareness campaign to address the common people, bureaucracy and politicians.
9. M A Razzaque emphasised on the need to protect the consumer interest. He expressed that we should be looking for responses to the following questions:

(i) What are the political economy factors that affect the efficient functioning of markets?

(ii) What are the political economy and governance constraints to the implementation of competition and regulatory laws?

(iii) How to make use of existing policy space while enforcing the competition and regulatory laws? and,

(iv) What measures can be taken to tackle the political economy factors for ensuring a competitive environment friendly to pro-poor development outcomes.

10. Rohit Singh threw light on political economy factors affecting the efficient functioning of markets. He expressed that in many instances in developing countries, the existence of an economic elite, having close relationship with government, itself prevents the development of competition as it may weaken their dominant position. Similarly, competition is also affected by the government to meet its own electoral objectives. Government influences price at which business sells its produce or business may simply be requested by the government to hold prices down at certain times. Business has no choice but to meet the requirement as government has various tools to force the business. On contrary, business by behaving as helpful partner of government can also secure themselves certain advantages such as degree of protection from competition. Thus competition itself becomes a bargaining chip in a power game between the government and business. He explained this by giving various examples from Ghana, Zambia and Kenya.

11. Mathew Morris emphasised on the importance of evidence, advocacy and assessment of impact of political economy factors on the economy. He also emphasised on campaign for competition and evidence to show impact of political economy factors. For ensuring effective advocacy he suggested for better targeting of stakeholders as the resources for advocacy are limited. He exhorted the meeting to use the Competition Assessment Framework developed by DFID.

12. Overall, the session discussed issues pertaining to the interplay of interests of diverse stakeholder groups. A course of action was suggested for pushing through appropriate regulatory reforms – identifying stakeholders for, against and neutral to such reforms; followed by strengthening support by winning over those stakeholders who can be easily and positively influenced such as people in the neutral category. Thus, the idea, according to the presenters and discussants, was to score quick wins in mobilising support for appropriate regulatory reforms.

13. After the views expressed by the panellists the floor was opened for questions. After a fruitful discussion the following points were emphasised:

(i) Gradual evolution of competition law and institutions is important for developing countries

- (ii) The role of Media is important in creating awareness but needs to be sensitised
- (iii) Economic nationalism can hamper competition
- (iv) Enforcement of competition law & policy is critical
- (v) Political will is essential for institutional reforms.

14. The following means were recommended in order to mobilise support for appropriate regulatory reforms:

- Good stories of impact of competition policy and regulation
- Creation of mass awareness in a way that is independent of literacy -- a constraint in developing countries
- Awareness programmes customised to the constituency addressed – parliament, bureaucracy or common citizens
- Use of competition authorities, CSOs, donors, and business associations as the primary agents for advocacy; and creation of good public institutions such as universities
- Modernising changes (regarding enforcement of competition policy and law and bringing in more appropriate regulation) should be gradual, not ad-hoc and allow affected stakeholders room for adjustment.
- Advocacy efforts should highlight the benefits of enforcement of competition regimes and more appropriate regulation.
- An international body of experts should advise all developing countries regarding enforcement of competition regimes.

Session 2

1. The second session on “Curbing Regulatory Capture by Vested Interests through Institutional Reforms” started with Stephen Thomas, PSIRU, University of Greenwich, UK as the speaker, Matthew Morris of DFID India as the moderator and Kibre Moges, Ethiopian Economics Association, Ethiopia; Payal Malik, University of Delhi, India and Fouzal Kabir Khan, North South University, Bangladesh as the panellists. The session addressed regulatory capture both from a developed and developing country perspective highlighting issues of regulators appointment mechanisms, independence, accountability, representativeness among others. Regulatory capture was defined in the conference as ‘discretion less accountability’. Asymmetry of information, it was pointed out, was a major reason for regulatory capture. In other words, major stakeholder groups such as consumer groups or small and medium enterprises suffer from lack of information about the content and consequences of regulations. As a result, some better informed groups can distort regulatory consequences in their favour.
2. Stephen Thomas opened the session with a note on regulatory capture, sharing examples of three major regulatory failures- railway, banking and energy sectors-

in the UK. He pointed out the need for regulators to be independent from the industry, however, mentioned that this is difficult to carry out in practice. It is crucial to have a pay structure that incentivises regulators to remain independent, while some degree of turn-over is also desired to reduce the risk of capture. Stressing on the need for allocating funds to recruit high quality consultants compared to those operating in the industry, he also emphasised the need for independence of regulators from the government.

3. While in theory, governments set policy and regulators interpret policy, the demarcations are blurred in reality with regulators taking on a greater decision making role than required. Moreover, separation of politics and regulators is difficult as it is the politicians that appoint the regulators. With regards to the question of whether elected government officials or unelected regulators have legitimacy as public representatives, it was opined that regulators at times have more power than the government officials. Also, there is no systematic way to make regulators accountable for their decisions. The viability of public engagement in this context was questioned due to the need for technical expertise and resources for making detailed arguments.
4. He added that historically British policy has following the mantra of ‘less regulation’ or ‘regulation only when necessary’ as being ‘better regulation’, when in reality, such norms could be one of the reasons for contributing to the financial crisis worldwide. He opined that better regulation is ‘sufficient regulation’ rather than minimal regulation and there is a need for consumers to be part of the process when setting up regulators.
5. Responding to the query of how to avoid regulatory capture, Kibre Moges opined while regulatory capture can be exposed through CSO involvement and media, regulatory bodies are not accountable to any entity. He elaborated that regulatory capture is likely to exist in developing countries with no proper election systems, via the dominance of vested interest groups. In such systems donors have a better chance of addressing such regulatory capture issues than the general public.
6. Payal Malik pointed out that regulatory capture is usually associated with industry interests in theory, but in a broader sense, such capture can also be attributed to consumers, politicians, trade unions, etc. She emphasised the role of institutional reforms in curbing such capture and democratic institutions facilitating and addressing such reforms.
7. In addition, sectors where competition is thriving, regulation has been successful; hence competition is a valuable tool for regulation. Citing some sectors like steel and petroleum where effect of government policies have not promoted a culture of competition, she emphasised on the need for a coherent framework on regulatory environment and separation of powers which allows for institutional bargaining. As long as electoral processes are transparent and fair, election of regulators are a superior mechanism than appointment. She emphasised that incentive regulation is superior to cost plus regulation and recommended exerting pressures/pulls on the political class and increasing involvement of consumer groups as a way forward.
8. Fouzul Kabir Khan elaborated that while the marriage of industry and regulators is an inherent tendency, the relationship between the two entities is also

synonymous to the principal-agent problem. He mentioned that independence of regulators can be a double edged sword, as too much independence is also not desirable. Citing an example of regulatory inaction from Bangladesh, where tariff orders were only imposed on consumers and not on retailers due to political interests involved, he opined that regulators may also become bureaucratic at some point. He pointed out that the issue of regulation comes only after sectoral deregulation while transition into market oriented economies require re-regulation as well.

9. Following the panel discussion, views from the floor raised some pertinent points and some remedies were suggested by the speakers and the participants. One of these was the promotion of better functioning of markets. Independence of the regulatory authority, it was suggested would also go a long way in preventing regulatory capture. The facilitating factors in this regard were a higher level of education; better pay for regulatory staff and members of regulatory authorities resulting in improved quality of regulation; limited terms for members of regulatory authorities and other staff which would be long enough for them to get used to their job requirements and provide quality service of reasonable duration, and yet not long enough for them to get aligned with affected parties; appropriate division between in-house and out-house people (consultants) so that the latter would not be able to distort regulatory outcomes in favour of vested interest groups; carefully designed appointment processes which take into account qualifications and track record regarding integrity; and appropriate design of funding mechanisms which do not compromise the ability of regulators to take independent decisions.
10. Another recommended step for preventing regulatory capture was the promotion of accountability of regulatory authorities. This, according to the conference, could be done through audit commissions and parliamentary oversight which, however, should be general in nature and not extend to specific cases.

Session 3

1. The speaker for the last session was Cezley Sampson, Principal Legal and Regulatory Practice, from CPSC Transcom Jamaica. He made his presentation mainly focusing on the interface between competition authorities and electricity and telecommunication sector regulators. He mentioned how regulation has evolved with time, where historically the sectors were characterised by monopolies, with the job of the regulator being to keep out competitors from the market under the economies of scale and scope arguments. However, since the early 1990s, this changed, seeing the establishment of the UK Telecoms Act, where the functions of the regulator included facilitating competition in the sector. Hence, the competition in the electricity and telecom sectors has received buy-in among stakeholders at present.
2. The common feature about the competition scenario in the electricity sectors is that the generation and retail segments are now competitive and subject to competition law, while the transmission and distribution segments remain a natural monopoly. The competitive part is now the source of tension between the

competition authorities and the sector regulators. In the telecoms sector, connection to the home is no longer a natural monopoly due to the existence of wireless on the loop, fibre optic, cable etc. The role of the regulator includes the issue of interconnection among service providers, which is also a competition issue, hence tension.

3. Competition regulation is generally an *ex-post* exercise, while sector regulation is an *ex-ante* one, given that competition laws generally define conduct after the fact, while regulators define rules for price setting, investments and service standards. Regulations therefore tell markets what they should do while competition law tells them what they should not do. In Jamaica, the CEO of competition authority also sits on the Board of the Office of Utilities Regulation.
4. The problem comes when the rules are not clear as to which legislation takes precedence or which authority has jurisdiction, thereby creating an environment for excessive litigation. At times the courts are left to determine the application of the respective law, an example being in South Africa where the court had to determine that the competition authority has jurisdiction over bank mergers.
5. Alternatives to solving the problem include giving primacy to the sector regulator on competition law matters in the regulated sector or giving precedence to the competition authority, where the sector regulator has to refer competition issues in the sector to the competition authority for a decision. Giving concurrent jurisdiction approach, such as in the UK, or requesting consultation between the two bodies is also an alternative. The other approach is also to use a single agency for competition and sector regulation, such as is the case in Australia, New Zealand and Barbados. However, each approach has its own advantages and disadvantages.
6. Allowing the sector regulator to carry precedence exposes the system to different judgements being handed down by the sector regulators on competition matters, creating lack of confidence in competition law, especially given that different sector regulators may come up with different interpretations of the competition law. Concurrency may also lead to duplication of efforts as well as disagreements, for example the competition authority might think 30% market share is market while the sector regulator regards 10% in the telecom as market power. Having one agency to handle competition and sector regulation issues is also very costly in a large country, requiring an environment where the judiciary has a long tradition of dealing with competition matters. This approach works well for Barbados, with a small population of around 250,000. Requesting sector regulators to refer all competition matters to the competition authority may also slow down the regulatory process, even though it ensures consistent application of competition issues.
7. In conclusion, Mr Sampson pointed out that there might be a need for seriously considering whether competition regulation should replace sector regulation in sectors where competition has developed, such as in telecommunications. This is especially so given that the job of sector regulators has been reduced, they no longer fix prices and restrict entry as competition has significantly reduced prices and increased choices and options. He also pointed out that that regulation

- should not be seen as intrusion but as necessary for limiting monopoly power and policing conditions for effective competition.
8. The first panellist of the session, David Ong'olo, a competition expert from Kenya. He pointed out that it is important to look at institutional factors surrounding the issue of interface. In that regard, he pointed out five approaches in use around the world as follows:
 - a. Combining technical and economic regulation in a sector regulator and leave competition enforcement exclusively in the hands of the competition authority;
 - b. Combining technical and economic regulation in a sector regulator and give it some or all competition law enforcement functions;
 - c. Combining technical and economic regulation in a sector regulator and give it competition law enforcement functions which are to be performed in coordination with the competition authority;
 - d. Organizing technical regulation as a stand-alone function for the sector regulator and include economic regulation within the competition authority;
 - e. Relying solely on competition law enforced by the competition authority for all aspects of regulation.
 9. Determinant factors guiding the approach to be used include interest groups, who would try to intervene at all times to alter regulatory policy and in competition cases. Thus how to tackle the tyranny of vested interest and balance needs of consumers and producers becomes important. One of the ways to do this is to institutionalise the operational framework by making it legalised, i.e to put it down on paper.
 10. The Competition Bill, 2009 of Kenya puts some measures that try to pin down the relationship, but fails to deal with the issue; it applies to government but exempts government from being fined. There is also a need to limit ministerial discretions, given that in many countries, sector regulators are part of the government, which makes it difficult to limit the scope for articulation of other powerful government and political clientele. The direct representation of pressure groups within the competition authorities should also need to be controlled, an example of which is available in Kenya where the Bill mentions some specific five groups that are supposed to be represented. To allow for proper awareness generation and debate, it might also be important to ensure that the media and civil society organisations' role be institutionalised, for example, by having a representative of the Media Council in the Board of the competition authority.
 11. Selim Raihan, from Dhaka University, Bangladesh was the second panellist. His contribution was with respect to the current position in Bangladesh, where there is no formal competition policy or law, although there have been attempts to have it for many years now. However, trade, industry, privatisation, sector regulation policies, etc are already in place. He also mentioned the Draft Competition Bill, which is likely to be in place before the end of the year. Anticompetitive practices exist in Bangladesh, with little attempts being made to

control them in the absence of a competition law. Examples include in the edible oil sector, where cartels are alleged while there is no law or authority to break it. The trucking sector is also another example, where trucking associations influence route prices. Millers and wholesalers in the rice sector are also alleged to be engaged in price fixing behaviour.

12. The regulatory authority in the telecom sector, Bangladesh Telecommunication Regulatory Commission, has done a lot to ensure many benefits by promoting competition in the sector. However, the biggest challenge in Bangladesh is the lack of information and coordination among regulatory authorities, which could affect the issue of interface. There is also constant by-passing of regulatory authorities by policy makers, with the regulatory authorities not independent are also issues of concern.
13. Kasturi Moodaliyar, from the University of Witwatersrand, South Africa was the third panellist. She pointed out that sector regulators and competition authorities share the same goal of ensuring economic welfare. However they also have different mandates, which necessitate the need to draw benchmarks about their operational framework. She reiterated the issue of behavioural versus structural issues as well as how the concurrent jurisdiction approach in the UK works, before giving the South Africa experience.
14. An example is a MoU signed between the Competition Commission of South Africa and the Independent Communication Association of South Africa (ICASA), which would decide which institution is better equipped to handle competition issues. However, the MoU was vague and resulted in forum shopping. It also gave ICASA powers to handle competition issues, which resulted in ICASA copying the relevant provisions of the Competition Act into their own legislation. However, complainants noted that if they file cases with the competition authority, they can appeal to the Tribunal if aggrieved, while the decision of the sector regulator is binding with no appeal. This was also breeding forum shopping.
15. An example was when Telkom sold its 15% stake in Vodacom to Vodafone, which the competition authority approved but trade unions were not happy. The Tribunal upheld the competition authority's decision and trade unions lobbied ICASA to block it. ICASA then applied to the High Court, which also refused and upheld the Tribunal's decision.
16. In conclusion she pointed out that while it is important for countries to try and learn how issues are handled in other countries, it is important for each country have its own framework.
17. The last panellist was S Chakravarthy, former member of the MRTP Commission, India. He started by repeating the five approaches to the interface which David has mentioned, before pointing out some of the weaknesses that frameworks give. As an example he pointed out the situation in India, where unfair trade practices are handled under both the MRTP Act as well as other avenues provided under the Consumer Protection Act, 1986 (COPRA). Thus the MRTP Commission refused to consider applications which have also been filed under COPRA to discourage forum shopping. He also pointed out that it would be difficult to ensure consistency in rulings if competition laws are handled by

sector regulators, especially due to regulatory capture. He made reference to the Competition Act, 2002 of India, which requires sector regulators to consult the competition authority on competition issues, even though the decision of the competition authority is not binding.

18. He also pointed out the need for explicit definition of the relationship in the laws governing competition authorities and sector regulators. However, independence of the regulatory authorities is crucial for a better framework, and he gave an example of the Indian competition law which has some supersession provisions which governments can use to undermine its autonomy.
19. Other issues were also discussed when the floor was opened up for discussion. It was pointed out that in Mauritius the competition law requested for MoU to be signed between the Mauritius Competition Commission and the sector regulators, one such was executed between the competition authority and the Financial Services Commission. It was also pointed out that it would be difficult for frameworks to work if the regulators themselves are not independent. It was also pointed out from the floor that mandatory consultations provisions in both competition and sector regulatory laws would reduce the interface problems. Consistency in ruling of competition authorities is also crucial to avoid confusion, an example was given where the MRTP Commission in India ruled in September 2008 that it would not pass any order on electricity regulation when the electricity regulator is there, but then in January 2009 it passed an order in a regulated sector with an active sector regulator. It was also pointed out that given that the competition law is broad, it is important that the sector regulations should have provisions on interface rather than the competition law. It was also pointed out that the salary issue affects tension as the competition authority gets funding from government while regulatory authorities get funding from fees and levies.
20. In response to questions raised by the floor, Cezley Sampson pointed out that a MoU should be the second option in resolving problems of interface but the preference should be given to the law which should state a position as to which authority takes precedence. Kasturi pointed out that in South Africa, both competition authorities and sector regulators get funding from government, but the competition authority managed to get more funding as they got more active, imposing huge fines on violations of competition law.

Roundtable on the Way Forward & Closing

1. The session started with the Rapporteur's Presentation, in which Siddhartha Mitra, CUTS International, gave a wrap up on the day's proceedings. He pointed out that generally the conference was about regulation, which can be defined as action by authorities impinging on markets. Such action could be pro markets or constraining them. The purpose of regulation is to enhance efficiency, maximise output and to buttress other regulations such as trade liberalisation etc. Appropriate competition policy can be constrained by two issues, namely interplay of vested interests and structural issues.
2. Powers that vested interest exercise on regulatory authorities may be different, producers may be stronger than consumers. One way of controlling vested interest is to

identify stakeholders for and against regulation and strengthen the voice of those who are pro-regulation as well as those who are indifferent to the regulation being passed. This can be done by telling good stories on impacts and people would then take steps, hence there is need to create mass awareness on regulation. This could be through separate awareness programmes for parliament, the bureaucracy, etc. It is also important to have a gradual implementation of the law to avoid violent reaction.

3. He also pointed out the two avenues of regulatory capture, such as capture by one or two pressure groups not representing the majority, simply due to asymmetric information, especially from the time the law is decided to the time it is implemented. Regulatory capture is also due to history of regulation in protecting state owned enterprises.

4. Greater independence, more training, long enough but limited office terms for regulatory authority members are some of the means of controlling regulatory capture. Accountability is the mechanism which makes the entire mechanism visible, while the composition of the Board should be representative enough to capture industry knowledge and diverse groups.

5. Dr Mitra summarised the discussion on the interface between sector regulators and competition authorities. He pointed out that while regulators enforce/facilitate competition in an ex-ante manner through acts/agreements, competition authorities do so in an ex-post sense by punishing/penalising anti-competitive behaviour. This distinction sometimes becomes blurred in certain cases. For example, violation of interconnect agreements – which calls for ex-post punishment of an ex-ante arrangement – might lead to tussles over turf between competition and regulatory authorities, or in other cases might not see remedial action by either

6. He also summarised the differences between competition and sector regulation that had been highlighted and the approaches to resolving conflicts that had been outlined by the presenters. Another distinction between competition and regulatory authorities is that the latter tells players/firms what to do while the former points out what not to do.

7. Further contributions from the floor followed. Pradeep Mehta, pointed out that even if legislation specifies what should be done, the wording can still be interpreted differently, hence specifically targeted awareness programmes are important. Stephen Thomas pointed out that he had been encouraged by the response the UK concurrency approach had generated in the discussion, which showed that it had largely worked. Cezley Sampson pointed out that regulatory endowment should be taken into consideration, such that even though the concurrent approach works in UK, it may not work in a country like Nigeria. Payal Malik pointed out that if the judiciary is not independent, then all norms cannot be achieved and the regulatory situations become hopeless.

8. Yaduvendra Mathur, former Energy Secretary, Government of Rajasthan and Secretary PHED, also pointed out the importance of right to information in the regulatory system. He hoped that a time will come when more information will be shared with consumers, such as returns sent to Electricity Regulatory Commission being seen by the public. He also pointed out the concern relating to political will, which should complement the technical issues raised during the conference. It was also mentioned that it is important to create political will itself through giving incentives for regulation, for example, politicians are more likely to act if the need for regulation can be traced to alleviation of poverty or to the poor.

9. In conclusion, the presentations pointed out that conflict between competition authorities and sector regulators arises from the ambiguity in rules for demarcating the domains of the two. Various alternative ways, already in place, to resolve such conflicts were highlighted:

- precedence given to the sector regulator in regard to structural issues relating to the sector
- precedence to the competition authority in regard to behavioural issues
- concurrent jurisdiction under which decisions are made on the basis of consultations between the competition authority and the sector regulator
- combining the competition authority and sector regulators into a single authority

The third method is often being used. However, the discussion concluded that in this case institutionalising the interface is very important. Various means were suggested:

- limiting the scope for discretion
- controlling the direct influence of pressure groups
- institutionalising the role and voice of civil society and media

However, above all it was stressed that it is essential to stipulate by law or a MOU as to which authority's view would be binding in the case of a disagreement.

Annexure I: Conference Agenda

0830 - 0915	Registration
0915 - 0930	Welcome and Introduction by Pradeep S Mehta, Secretary General, CUTS International
0930 - 1130	Session I: Theme Session: Identifying and Overcoming Political Economy and Governance Constraints to the Effective Implementation of Competition and Regulatory Laws
<i>Speaker</i>	Pradeep S Mehta, Secretary General, CUTS International
<i>Panellists</i>	V K Mathur, Inapex Limited, India Matthew Morris, DFID India Rohit Singh, ODI, UK
<i>Moderator</i>	M A Razzaque, The Commonwealth Secretariat, UK
1130 - 1145	TEA BREAK
1145 - 1330	Session II: Curbing Regulatory Capture by Vested Interests through Institutional Reforms
<i>Speaker</i>	Stephen Thomas, PSIRU, The University of Greenwich, UK
<i>Panellists</i>	Kibre Moges, Ethiopian Economics Association, Ethiopia Payal Malik, University of Delhi, India Fouzul Kabir Khan, North South University, Bangladesh
<i>Moderator</i>	Matthew Morris, DFID India
1330 - 1430	LUNCH BREAK
1430 - 1615	Session III: Institutional determinants of poor interface between regulatory and competition agencies
<i>Speaker</i>	Cezley Sampson, Privatisation & Regulatory Consultant, Jamaica
<i>Panellists</i>	David O'ngolo, Spellman & Walker Co. Ltd., Kenya Selim Raihan, Dhaka University, Bangladesh Kasturi Moodaliyar, University of Witwatersrand, South Africa

S Chakravarthy, Adviser/Consultant on Competition Policy and Law, India

Moderator Stephen Thomas, PSIRU, The University of Greenwich, UK

1615 - 1630 **TEA BREAK**

1630 - 1730 **Roundtable on the Way Forward & Closing**

Rapporteur's Presentation

Siddhartha Mitra, CUTS International

Moderator Pradeep S Mehta, Secretary General, CUTS International

Closing Remarks

Pradeep S Mehta, Secretary General, CUTS International

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Annexure 2: List of Participants

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