

INDIA COMPETITION AND REGULATION REPORT (ICRR) IIIrd Research Cycle: First NRG Meeting Report January 29, 2011, New Delhi

1. The first meeting of the ICRR III National Reference Group (NRG) was organised in New Delhi, on January 29, 2011. The meeting was held under the chairmanship of Nitin Desai, Vice President, CIRC Governing Council and moderated by Pradeep S Mehta, Chairman, Managing Committee, CIRC. Mehta welcomed the participants and briefed the congregation about the earlier cycles of the ICRR in 2007 and 2009 respectively. Subsequently Desai made the observation that the Project aims to capture the existing regulatory deficit in the country and expressed that the purpose of the Report is to encourage both knowledge-based public discussion and set the stage for future work.

2. Review of Questionnaires for the ICRR III Perception Survey

- 2.1 Following the briefing about the scope and motivation for the perception survey (based on a structured questionnaire), the discussion from the floor focused on the methodology of perception survey, especially the need for targeting the relevant stakeholders in order to ensure randomness of the sample and on how to make the survey as broad-based and inclusive as possible.
- 2.2 The NRG members were of the view that the questionnaires should be redrafted and restructured, preferably in consultation with a social scientist experienced in designing the questionnaires and choosing the sampling methods, in order to ensure that (a) a proper mix of informed-public opinion/knowledge and expert inputs is collected through the survey, and (b) the information is gleaned from direct surveys of consumers rather than merely banking on feedbacks from consumer organisations.
- 2.3 Towards the end of this session, the Chair recorded that the questionnaires would be reframed and an informed opinion survey will be conducted. A random survey of consumers may be considered separately as it is not in the present scope of the ICRR III Report.

3. Presentations of Research Plans by Authors

3.1 Political Economy of Regulation, Sunil Jain, Financial Express

- 3.1.1 The chapter would begin with the evolution of regulation in India, examining whether the regulators are sufficiently empowered by the government or not. Relevant issues pertaining to their selection, functional/operational independence from the line ministries and their performance will be discussed. The viability of solutions (Approach Paper to Regulation and the

Draft Regulatory Reform Bill) suggested by the Planning Commission of India will also be examined. Cases related to Airport Regulation, Electricity Regulation in Delhi and Telecom Regulatory Authority of India (TRAI) will be discussed to explain the state of regulation in India.

- 3.1.2 The NRG suggested that the paper could also (a) assess the performance of the regulators in improving quality, access, efficiency and bringing down prices more than focus on judgments related to the structure of regulation on a few instances of corruption, political intervention etc.; (b) examine the need for institutionalising independent regulators across-the-board as less regulation has proved beneficial in some sectors; (c) examine whether the regulatory efficiency/inefficiency impacts the regulatory outcome in different sectors; (d) discuss the issue of regulatory capture by stakeholders/industry; (e) address the issue of complementarities between regulatory bodies and the Competition Authority, and the overlap between policy issues and regulatory issues; and (f) make recommendations on the selection of regulators and financial and functional independence of the regulator from the government.
- 3.1.3 The group reached a consensus that current state of regulation with a thrust on regulatory performance should be the focus in the chapter and issues related to corruption, criteria for selection of heads etc. need not be reflected in the subject matter.

3.2 Financial Sector Regulation, Anupam Rastogi, NMIMS, Mumbai

- 3.2.1 The chapter will cover the tariff and regulatory reforms in the sector in the light of rapidly growing Indian market. The paper will focus on the prevalent financial sector regulation in India and discuss the recommendations of The Percy Mistry Committee 2007, The Raghuram Rajan Committee 2009, the UK Sinha Committee 2010, and Capital adequacy as per Basel norms. The Securities and Exchange Board of India (SEBI) is the regulator having complete transactional efficiency in the Capital market but problems exist in Commodities market in the Forward Markets Commission. The paper will analyse the pros and cons of these and other regulatory failure/limitations issues, and in particular discuss the issues/policy impediments affecting the growth of infrastructure financing in India.
- 3.2.2 The paper would bring out India's perspective on the how to regulate: the Indian regulatory framework is rule-based rather than principle-based, and the paper will examine inconsistencies and overlaps to work out a standard principle-based financial regulation in India. The question 'Do we want independent regulators for all markets' will also be dealt within this section. Finally, the international perspective will be provided in terms of investment banking and its role, along with a discussion on how the systemic risks should be monitored by the national governments.
- 3.2.3 Comments and suggestions from members: (a) highlight the distinguishing features of financial sector regulation and non-financial sector regulation like infrastructure in India; (b) discuss how to neutralise interconnections among various regulators and their inability to deal with/ignore broader systemic risks on other institutions outside their purview if their objective is mainly to

operate for investor protection, and where does the consumer fit into this scheme; (c) address whether the fragmented system of regulation actually accentuate systemic risks or insulates the system from them; and (d) discuss if we are over-regulating ourselves/overreacting to the 2008 crisis.

- 3.2.4 The house agreed that the idea of this paper is to also set an agenda for future CIRC work in the sector, and especially to set the context for the Micro Finance chapter that follows in this volume. The paper should be focussed on Indian concerns, and the G20/global financial regulatory issues may be discussed in passing or to draw an analogy.

3.3 Managing Foreign Competition, Sharad Bhansali, Managing Partner, APJ-SLG Law Office, New Delhi

- 3.3.1 The Author was initially asked to look at the problem from a Chinese competition prism. The areas of competition that was proposed to be addressed in the paper area were: Competition from China in India, and competition faced by India in the Chinese market as well as in third country markets. The regulatory framework in the mentioned three areas and its viability was the primary area of study. The issues to be examined are viability of the current safeguard mechanism as a part of regulatory mechanism to address and whether the Competition Act 2002 is competent to deal with competition from China. The operability and contours of extraterritorial effect of Competition Act 2002, and more specifically, the regulatory aspects therein will be dealt with in the paper.
- 3.3.2 The participants suggested that: (a) this topic should be seen from the regulatory aspect rather than seeing competition from China as a threat to Indian manufacturers; (b) one should not only look at issue of Chinese competition but identify the specific issues making Chinese trade to be competitive; and (c) examine/recommend the process in India which justifies imposition of safeguard measures as a regulatory mechanism.
- 3.3.3 The house felt that the Terms of Reference (ToR) should be redrafted to redirect focus away from the Chinese competition aspect to the broader management of foreign competition and competitiveness aspects, in order to make the paper more relevant with the thrust of the rest of the Report. The Project coordinator and the Author agreed to work together to devise a new research plan as per advice above.

3.4 Regulatory Independence & Accountability – Are They Really Ensured?, Udai S Mehta, Asst. Director, CUTS International, Jaipur

- 3.4.1 The paper proposed to give an overview of Economic Regulation in India, especially regulatory bodies in India, their status and challenges. The issues therein which would be addressed comprise of (a) regulatory independence, i.e. the analysis across sectors regarding institutional, functional and financial independence and selection mechanism for their heads; (b) regulatory accountability mechanisms to make these bodies accountable *vis-à-vis* their performance are to be addressed; and (c) the questions that remain, viz. What measures should the government take to ensure coherence in regulatory frameworks across various sectors? What is the appropriate relationship

between line-ministry and regulatory agency? How can the selection process be made transparent and based on market salaries so as to attract younger talent? As a measure to reduce vulnerability of regulatory institutions should these agencies be encouraged to become financially self-sustainable? How can the regulator be made accountable? Should consumer organisations be resourced to perform the role of a watchdog?

- 3.4.2 The NRG view was that to add value, authors of the political economy chapter should collaborate and write a combined paper. Regulatory independence is a political economy issue, and most of these aspects mentioned would be covered in the first paper. However, there is a value in reworking this chapter to provide a laundry list of how the regulatory independence and accountability mechanisms are being implemented/operationalised in this country. The paper/section should also address the aspect 'how accountability fosters regulatory independence'. By way of example, it was suggested that an enumeration of how regulators in different regulated sectors in India are operating, their independence, accountability and transparency will add to the value of the Report.

3.5 Natural Gas Regulations, Shyamal Sarkar, DoPT, Government of India

- 3.5.1 The paper will cover the issues related to deficit in the sector in demand-supply, structural framework and policy issues of New Exploration Licensing Policy (NELP), gas utilisation, pricing as well as subsidies. The regulatory issues; upstream and downstream side, provisions of Petroleum and Natural Gas Regulatory Board (PNGRB) Act will be discussed in detail. Also, the distinguishing features of NELP IX, the competition and enabling position of these policies and their impact/effectiveness till now will be covered. Issues of NELP-Tax holiday, infrastructure status issues and Supreme Court's ruling on pricing and allocation of gas would be captured.
- 3.5.2 The paper will analyse the issues of entry barriers and clearances required as far as competition enabling provisions are concerned and the regulatory provisions laid down in the 2006 Act, which will be discussed in terms of allocated powers. The paper will also address issues related to design, process, pricing (cost + regulation) and whether or not the basic norms of independent regulation have been adhered to in this Act. A special emphasis will be on interface/overlapping issues between PNGRB Act and the Competition Act 2002, and the recent controversies of Reliance Industries Ltd., and the remedial measures are to be suggested taking examples from UK, Australia etc. Issues pertaining to common carrier and open access will also be covered.
- 3.5.3 The NRG suggestions for the paper were as: (a) the issues of provisions on new investments need to be addressed; (b) individual examples are important in this Report: natural gas pricing by government/bids by private player like Reliance in a limited bid offer. How are the prices/tariffs arrived upon and by whom? Should a gas/oil company be allowed to own a pipeline e.g. Reliance's ownership is unfair?; (c) the Author may consider citing anecdotes and incidents like court cases which have some bearing on policy; (d) address issues of import and distribution of Liquefied and Natural Gas (LNG) with a

focus on competition and regulation as in PNRGB; and (e) the paper should trace the evolution of the PNRGB Act.

- 3.5.4 The house agreed that in the above areas, the paper will need to address all relevant competition and regulatory issues. Since the issue of impact of the essential facilities doctrine on implementation of open access provisions was brought up in the discussions, a request was made to proposer Payal Malik to volunteer with CIRC for writing the Essential Facilities Doctrine paper.

3.6 Regulation and Competition: Microfinance Institutions in India, Justin Oliver and Santadarshan Sadhu, CMF-IFMR

- 3.6.1 The paper will address the topic holistically and look at justification for regulation as the sector serves the poor, who are not integrated with the formal financial sector in the country. The study will address: (a) problems of different types of regulation, the legal forms that Micro Finance Institutions (MFIs) adopt, regulation of company MFIs, global experience (non-prudential regulation and global best practices); (b) performance of MFIs (growth and coverage of sector), their major concerns, important issues relating to current regulatory framework of Non-Banking Financial Institutions (some are regulated by RBI); (c) trace the Andhra Pradesh crisis, regulatory issues to be addressed and conduct an assessment of proposed regulations (eg: Malegaon Committee Report and Micro Finance Regulatory Bill), among other issues. Lastly, the paper will draw out recommendations on the basis of the current regulatory framework and the issues arising out of it.
- 3.6.2 The expert group suggested that the paper should: (a) focus on the lending practice side, as it affects the consumers the most, and since the issues differ for the borrowing practice and the lending/credit practices; (b) bring out the fact that Micro Finance is a vehicle for financial inclusion; (c) competition and regulation in the sector – what and how to regulate for predatory pricing practices and high fees and interest rates (so that the sector is not choked off) when the sector has free entry and multiple service providers; and (d) bring out the political economy dimension of the Andhra Pradesh case – was the issue blown up for political benefits?
- 3.6.3 It was agreed that all the above mentioned issues though important are broader from the purpose of the current paper. The regulatory/competition issues and current practices should be the focus of the chapter. The authors agreed to focus their analysis more on the lending price aspects and related issues.

3.7 Real Estate Regulations, Rohan Sharma, Jones Lang LaSalle India

- 3.7.1 On behalf of Abhishek K Gupta, Rohan Sharma made a detailed PPT presentation on the research, proposing to look into the existing regulations pertaining to real estate, but limited to assessing whether they promote the growth of the commercial, retail and residential segments. The paper's focus on changes/suggestions to benefit the end customer, consumer, and highlight the need for transparency, enforcement, inclusivity and the need to make the sector more investor-friendly was stressed.

- 3.7.2 The Chairman and other group members, however, felt that the paper should focus more on the pain of the public due to regulations in the sector, rather than analysing the growth prospects and promoter concerns. Authors were asked to focus mainly on competition and regulatory aspects, and particularly with regard to protecting consumer interests. It was noted that this paper would need to focus separately on the emerging topics highlighted in the presentation e.g. The broad issues of land-market development/real estate development; Issues on real estate transactions – buying-selling, financial aspects of real estate-foreign investments, accounting standards; and affordable housing. Given the vastness of the scope, for the purposes of the Report, the paper should just focus on the housing problems and how to address it.
- 3.7.3 The Author agreed to the house’s suggestion of focusing on housing sector regulations only. A recommended trick was to customise the study in light of the existing scenario in the sector and incorporating the anticompetitive practices in the real estate market with respect to housing.

3.8 Road Regulations, Mamuni Das, The Hindu Business Line

- 3.8.1 The Author suggested that the paper should focus on both supply constraints and adherence of law by the road users, like overloading enforcement etc. Also, she proposed that the gamut of issues *vis-à-vis* tolling be captured in the paper, in addition to examining the decision making process with reference to roads. Key documents to be referred to and processes to be employed in road construction will be discussed. The turf issue will be highlighted by way of referring to anecdotes. Also, implementation of the contractual norms will find mention in this paper.
- 3.8.2 The NRG stressed that for the purpose of this Report, the real critical issue is of regulations in terms of rules related to road use and transport and their adherence. However, most of the issues are in the realm of public policy concerns/issues in tolling and the management of the toll roads. Instead, it was suggested, that the paper should focus on the pure regulatory aspects of the road sector and its antecedent competition issues.
- 3.8.3 It was agreed that an emphasis be on defining the market structure of Road Transport sector with reference to regulatory issues in the sector should be the focus of the paper for the ICRR III Project. Accordingly, the ToR and a suitable resource person will need to be identified.
4. The concluding remarks were made by Mehta. It was mentioned that the idea in the ‘India Competition and Regulation Report, 2011’ is to capture the competition and regulatory deficit of the economy and selected sectors and not the performance and productivity issues. These authors were requested to share their revised research plans with CIRC/CUTS.
- 5 In all, 23 participants attended the Project Launch meeting and the 1st NRG meeting. (See Annexure for participant details)

*Annexure**List of Participants*

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23	Bul Bul Sen	Chief Commissioner of Income Tax, Delhi

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