



**MEMORANDUM
TO
PLANNING COMMISSION
GOVERNMENT OF INDIA
ON
DRAFT REGULATORY
REFORM BILL**

INTRODUCTION

Good economic democracy helps economic management and growth by making active participation by a large number of actors in the market possible and averting market failures. A sound regulatory policy and a competition policy are important pillars of economic democracy. Much has been debated on both policies, and views have been expressed in government documents such as the Policy Document on the 11th Five Year Plan entitled “Inclusive Growth”. Such debate has led to policy responses through new laws and/or administrative measures, but more needs to be done.

For example, the regulatory environment in India, which has evolved over a period of time, does not appear to be homogeneous or coherent across sectors or states. An important step towards achieving such homogeneity is the drafting of the Regulatory Reform Bill by the Planning Commission of India. The Bill has been placed in the public domain for eliciting views and opinions on the nature and extent of legislative action necessary for reforming the regulation of key infrastructure services.

CUTS International and CUTS Institute for Regulation and Competition (CIRC) organised a Roundtable for purposes of consultation on 18th May 2010 in New Delhi. Experts and stakeholders such as government representatives, current and former regulators, and representatives from academia, legal community, civil society organisations (CSOs), media, etc participated actively and expressed their views on the Bill. The event was supported by the Planning Commission of India.

On the basis of the discussion during the roundtable and CUTS’ own understanding/experience, we have prepared a Memorandum to present key issues and recommendations for consideration of the Planning Commission of India in finalising the Bill.

Overall, one major point of discussion was whether the policy recommendations should be made through a statute or a directive. Many felt that Ministries are extremely protective of their turfs and also ridden with inertia, and therefore they would not heed soft law recommendations for a uniform approach on independent regulation by enacting new or modified regulatory legislations unless compelled by a statute i.e. a hard law. Thus the need for an overarching legislation that would apply to all regulatory commissions, as well as the Competition Commission of India, where applicable, cannot be over emphasised.

Further, it is also equally important to repeal/amend contradictory provisions in the existing sector specific regulatory laws and Competition Act, 2002 or any other law or administrative measure that might contravene the provisions mentioned in the Bill.

The recommendations as mentioned below have been clubbed under pertinent heads to reflect the broad consensus of participants, experts, etc. who participated in the Roundtable, but each and every recommendation is not based on unanimity.

Out of the many recommendations made, six have been highlighted below for consideration:

Issues	As covered in the Bill	Recommendations
1. Notification of Provisions/Powers within a stipulated time period	Government is empowered to issue the notifications, but time period has not been specified	<ul style="list-style-type: none"> • Delay on part of the Government to notify sections of acts or powers of the Regulatory Commission needs to be checked. For example, PNGRB cannot issue licenses for oil and gas pipelines, as a particular section (16) on these powers in the Act has not been notified as yet. • The draft bill must provide for notification by the Government of all sections in the Act, as passed by the legislature, at one go and within a stipulated time period. This provision has been made in the Right to Information Act.
2. Selection and appointment	The proposed composition of the Selection Committee is marked by an imbalance in the form of large presence of bureaucrats (Section 4)	<ul style="list-style-type: none"> • The selection committee should also include non-government representatives from academia, civil society and professional bodies and should preferably account for half of the total number of members to ensure neutrality. • Secondly, the retirement age for members of regulatory bodies should be the same as that for the civil service to prevent these from becoming parking lots for retired bureaucrats and judges. Such a recommendation is not motivated by the observation that a person's ability gets diminished by age but that sinecures are vigorously pursued by poor quality bureaucrats and judges through compromises on integrity as a means to ingratiate themselves towards the end of their careers with those in power. • The provision of the Bill that an outgoing member cannot take up employment for a certain length of

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		<p>time after demitting office is too restrictive and should be removed. However, the related provision that an outgoing member of a commission cannot henceforth appear before that Commission should be retained.</p> <ul style="list-style-type: none"> • In the Bill, there is a time limit provided for appointment of chairperson/members but there is no consequence for inaction. The Bill should provide for certain time limitation within which the Ministry should appoint the Chairperson and Members and if there is a delay, then the Bill should provide for certain penalties for non-action on part of the Secretary of the Ministry. This principle of penalizing the relevant staff persons has been established by evolved jurisprudence in both civil and criminal cases.
3. Regulatory Autonomy and Accountability	The Bill wants Commissions to submit annual plans to government. The government would table the copy of plans before Parliament (Section 16)	<ul style="list-style-type: none"> • Maintaining an arm's length distance between the regulators and the concerned line-ministry is desirable to ensure that the latter does not influence the former unduly. Hence, a mechanism needs to be developed whereby the annual plans of the regulatory commission are submitted to the Parliament by a Ministry such as Planning or Personnel or Finance rather than the line Ministry. • Transfer of funds and relevant budget approvals should be channelled through a Parliamentary Committee and not through the concerned line ministry so that curbs on regulatory autonomy and independence can be avoided. Thus, there is a need to create a special Parliamentary Committee which should be empowered to approve the budget and plans of the regulatory commissions and

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		<p>Competition Commission of India.</p> <ul style="list-style-type: none"> • Autonomy should be provided to regulatory commissions to manage their budgets independently, subject to audit by C&AG.
4. Anti-competitive practices	<p>The Bill provides for provisions relating to anti-competitive behaviour and empowers the Regulatory Commission to deal with the same. The Bill has also proposed that it is the Regulatory Commission's discretion to refer relevant matters to Competition Commission of India (CCI) for opinion, investigation, or adjudication.</p>	<ul style="list-style-type: none"> • One important aspect that needs attention is the identification of specific and delineable roles for regulatory commissions and the Competition Commission of India (CCI). Interface between the regulatory commissions and CCI needs to be formalised in legal terms and cannot be left to an ad-hoc manner. • It is best to leave the determination of behavioural/conduct issues to CCI and structural issues to the regulatory commissions, as is the practice in European Union member states. • As in EU member states, the Bill should provide for mandatory consultation between the sectoral regulator and the CCI, when specified issues coming under either's jurisdiction are being investigated and determined by the other.
5. Consumer Protection	<p>Part VII of the Bill deals with issues relevant for consumer protection, but it should also provide for a sustainable funding mechanism – the Consumer Advocacy Fund -- to support the consumer movement.</p>	<p>There is no provision in the Bill that can empower consumer organisations and other civil society groups to appear before the Regulatory Commission. The Bill must provide for creation of a Consumer Advocacy Fund through a small cess on charges for service to support select and capable consumer organisations so that these can maintain a sustained watch, educate consumers and effectively represent consumers before the regulatory commissions/competition authority, and do all other things necessary to promote consumer interest.</p>

THE WAY FORWARD

The Draft Regulatory Reform Bill makes useful recommendations for the institutional framework underlying regulatory commissions, their role and functions, accountability to the legislature and interface with the market and people. The proposed statute would facilitate sound regulatory principles and practices in concerned sectors better, provided the issues, concerns and options mentioned in the Memorandum are given due attention before the enactment of the Bill.

In terms of the way forward, the Planning Commission should facilitate further wider consultations with key stakeholders for their inputs on the draft bill and these recommendations. The stakeholders include, but are not limited to, parliamentarians, civil society, media, business, regulatory bodies, state governments etc.

The need is to go beyond the political boundaries of Delhi and consult key stakeholders such as media, consumer organisations, regulatory commissions, business houses, state government representatives, etc in four metropolitan cities to factor their views into finalisation of the Bill. The Planning Commission could also engage with state governments through the National Development Council or Chief Ministers' Conference. It would ensure a better buy in from the stakeholders and thus expedite the process of adoption of the Bill and render its implementation more effective.

We would also propose the following time line to prevent further delays:

- Further consultations with stakeholders and state governments to be completed by August, 2010.
- Revised draft bill to be circulated to various ministries and their views sought by October, 2010.
- Bill moved in the Parliament during the winter session in 2010 and possibly referred to the Standing Committee on Finance and/or Planning which can then be expected to deliberate on the bill and complete the process before the budget session of 2011 is over.
- President and the Finance Minister mentioning this bill in their speeches to the Parliament in 2011 so as to get the desired support.
- Given the attainment of the listed milestones, probable adoption of the bill as Act in the summer of 2011.

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