

Minutes of the CUTS CCIER International Advisory Board Meeting

August 13, 2008, New Delhi

Time: 08.00-09.30 hrs

1. Participants

IAB Members

Philippe Brusick (PB), S Chakravarthy (SC), S L Rao (SLR)
R. Shyam Khemani (SK), Pradeep S Mehta (PSM)

Absentees

Allan Fels, Allan Asher, Cezley Sampson, David Lewis, Eleanor Fox, Frederic Jenny
George K Lipimile, Gesner Oliveira, Mona Yassine, Robert Anderson
Simon J. Evenett, Scott Jacobs, Taimoon Stewart, Wang Xiaoye

Special Invitees

Roger Nellist (RN)

In Attendance

Alice Pham (AP), Cornelius Dube (CD), Clement Onyango (CO), Rijit Sengupta (RS)
Rajesh Kumar (RK), Siddhartha Mitra (SM), Udai Singh Mehta (USM), Angela
Mwape Mulenga (AMM)

2. Working Agenda

A rough working agenda (as presented below) had been constructed to ensure that the discussions follow a specific sequence and direction.

- I. Specific Suggestion from Advisers (*On how to take certain key initiatives of the Centre, forward*)
 - a. Competition Policy and Sector Regulation
 - b. Competition Policy and Consumer Protection
 - c. Regulatory Governance
 - d. Competition Case/News stories Database
- II. New Areas (*To collate suggestions from Advisers for better clarity for planning initiatives*)
 - a. Trade and Competition Policy
 - b. Investment and Competition Policy
 - c. Competition Policy and Economic Development
 - d. Corruption and Competition Policy
 - e. Competition and Informal Sector (including SMEs)
- III. Brief update on ongoing projects
 - a. Competition Toolkits
 - b. 7Up project in West Africa (7Up4 project)
 - c. Consumer Participation in Electricity Reforms in South Asia (RESA) project
 - d. Competition Regulation and Development Research Forum (CDRF)
 - e. India Competition and Regulation Report (ICRR)

- IV. Some planned projects (*Introduce these projects briefly to the advisers*)
- a. Trade and Regulatory Governance in Africa and Asia
 - b. EPAs and Competition Policy in Africa
 - c. 7Up Central Africa & 7Up MENA projects

3. Proceedings

3.1 The meeting of the CCIER International Advisory Board (IAB) was held on the sidelines of an international conference, “Global Partnership for Development: Where do we stand and where do we go?” organised by CUTS on 12-13 August 2008 in New Delhi. The meeting was held over breakfast on 13th August, 2008 at the Le Meridien Hotel, New Delhi.

3.2 At the outset, Pradeep S Mehta (PSM) extended a warm welcome to all the IAB members and the special invitee. The ‘Action Taken Report’ (ATR) describing specific action taken by CUTS CCIER in response to the suggestions received from the advisers over the previous advisory board meetings, was tabled and formed the basis for the discussions. The other document that was also referred to at this meeting was the minutes of the last quarterly retreat of CUTS CCIER (held on August 02, 2008).

3.3 The discussions were moderated by PSM in such a way that the issues discussed followed the sequence as indicated in the agenda. He went through the ATR and opening up the floor for the advisers to intervene (provide comments, observations, etc.) and the discussions to proceed. In the following section, a summary of the discussions on certain key aspects (as indicated in the agenda) is presented:

3.3.1 Interface between competition and sectoral regulation

A brief update on what has been undertaken on this subject was narrated, especially how to deal with issues that require the cooperation of the competition agency and the sector regulator. CUTS have developed a viewpoint paper on the same, emphasising the benefits of a cooperation mechanism modelled on the European competition laws, wherein behavioral issues are dealt by the competition authorities and technical issues by the sectoral regulators; and that there is mandatory consultation between them. There is much work done in this regard, and CUTS proposes to do some empirical work in this area to deepen the discourse.

3.3.2 Competition Policy and Consumer Protection Policy

This issue has been explained in a viewpoint paper, which was expounded through a paper presented at the OECD Global Competition Forum (GCF) held in February, 2008. CUTS proposes to do further work on how hybrid agencies and/or laws will be more easier for smaller countries to handle. In India, CUTS views on this topic has been included in the 11th Five Year (National Development) Plan (for the period 2007 to 2012) prepared by the Government.

3.3.3 Regulatory Impact Assessment (RIA)

CUTS has developed the capacity to use this technique (infact CDRF II has a component on quality of regulation which uses the RIA method) and we could implement this method as and when it was required in a project. CUTS has also

developed a methodology for doing a Consumer Impact Assessment and will be testing its effectiveness in some sectors in India.

3.3.4 Governance of Regulation

There is a need to develop a theoretical framework for assessing the quality of regulatory and competition agencies/policies in developing countries. Progress in this regard is being steadily made by CUTS, especially by gleaning broad and generalisable lessons from commissioned research papers under the auspices of the CDRF project. As a part of the CDRF II cycle, CUTS plans to develop an integrated and holistic framework for assessing the quality of regulation in developing countries by undertaking empirical research covering India, Kenya and Brazil.

PSM also spoke about a project to assess ‘Trade and Regulatory Governance in select developing countries of Africa and Asia’ which has been developed by CUTS. It did not go through to DFID, UK for support under its ‘Global Transparency Fund’ (GTF), so other donors are being approached. RN advised that CUTS should copy him and his team on any bids that are being submitted to DFID, UK in the future. He also suggested that PSM should at some point of time meet the ‘Civil Society’ department head of DFID, UK in London. DFID’s research budget has been fixed at GBP 1 billion to be used for the next 5 years, and CUTS should explore the possibility to get some support from DFID, UK from its research budget.

3.3.5 Competition Toolkits

CUTS has developed ‘Competition Tool Kits’ under the 7Up3 project (for 5 countries) and also for Vietnam and India. These toolkits are a simple handbook for competition practitioners to help them in the process of implementation of respective national laws, drawing reference from the experience of other countries, etc. PSM mentioned that an ‘Advance Copy’ of the India Competition Toolkit is going to be released on 14th August 2008.

3.3.6 Database of competition cases/stories

By search it was found that there is no such comprehensive database being maintained by any other organization. Thus CUTS has embarked on the process of developing one. This is an ongoing process, comprising assembling news stories and classifying them under various categories for easy reference. Efforts are being made to get as many news stories as possible from the developing and least developed countries. In order to ensure this, contacts have also been established with national competition agencies in some of these countries. SC suggested that there is a need to classify the news/cases under specific heads, such as cartels, AOD, etc. He further suggested that a handful (say a dozen) of important cases could be selected and then have them together in a booklet (as a public education material). It was also suggested that the activity could generate revenue; we could put it up on the webpage for viewing on payment.

3.3.7 Consumer Protection measures as safety nets

After some initial discussion on this aspect, it was suggested that work on this aspect could not be initiated at the moment and should be put on the backburner.

3.3.8 Trade Liberalisation and Competition Policy

PSM mentioned that liberalisation is necessary but with safety nets. One of the safety nets is the adoption of competition policy, an argument that is still opposed by some theorists. SK responded that he would be happy to contribute to ideas that CUTS have to undertake work linking trade liberalisation and competition policy.

3.3.9 Competition Policy and Economic Development

PSM mentioned about the CUTS research proposal on ‘Competition Policy and Economic Development’. Various members of the IAB expressed an interest in seeing the proposal. SK suggested referring to his own paper on this topic which can be accessed on the internet (www.fias.net). RN also highlighted DFID’s strong interest in this area.

3.3.10 SMEs/Informal Sector and Competition Policy

A study of the impact of competition on the informal sector emerged as an outcome of exchanges among PSM, PB, SK and SM. It was pointed out that the informal sector is very important as it is directly linked to livelihoods and poverty alleviation. The study, it was suggested, could look at the incentives (or lack of these) which encourage/could encourage enterprises in the informal sector to move into the formal sector. PB mentioned that UNCTAD has done some preliminary work but it would be a path breaking study if CUTS takes it up. Some references were made to the Arjun Sengupta Informal Sector Commission’s report on India’s’ experiences in the sector and an article by Ahmed Galal of Egypt.

3.3.11 Investment policy and Competition policy

It was pointed out that the focus on this area should be on specific case studies rather than general issues which have been dealt with elsewhere. Research should be undertaken to look at both *pros* and *cons*.

3.3.12 Corruption and Competition policy

It was also pointed out that CUTS may look at this issue, particularly with respect to government procurement policies. Issues related to competition in the informal sector (as indicated in para 3.3.10) could also have a bearing on corruption.

4. Specific Comments/Suggestions from Advisers

4.1 SLR inquired whether CUTS has reacted to the India National Knowledge Commission report on the issue of regulation in the higher education sector. To this, PSM mentioned that we have captured the same in a discussion paper, which is on our website. SLR requested for a copy of the same.

4.2 PSM spoke about the possibility of applying the ToR of the FunComp report (detailed assessment of the competition regime in India as captured in the report ‘Towards a Functional Competition Policy for India’) in some other countries. Institute for Economic Analysis (IEA), Kenya is taking up a study in the country and CUTS (is a part of the technical committee which is entrusted with

developing the methodology) would suggest IEA to emulate the FunComp report ToR. He also indicated that a similar exercise is also being planned in Bangladesh. PSM requested SK to inquire if a RIA approach was being taken in the process of evolving the competition law of Bangladesh (given that SK is involved on this issue in the country).

- 4.3 SK suggested that future assignment by CUTS to assess the impact of the lack of competition should be undertaken especially for poor consumers.
- 4.4 Regulatory Failures: The discussion focused on certain issues as observed by SLR, SK, PB and PSM including:
- Standards/criteria for appointment of regulators (including transparency in the selection process)
 - Analysis of regulatory failures in the electricity sector across countries (Nigeria, South Africa, Vietnam, etc.)
 - What are the attributes of an ‘Independent Regulator’ (*everyone talks about independent regulators, but what does it encompass*) PSM mentioned that we have already done it and the same has been captured in the papers submitted during the CDRF first cycle. SM further added, that for a conference in Venice, we have drafted a paper analysing why independence is important, wherein we have captured the attributes of independence. SK requested the said paper to be sent to him.
 - Persuade World Bank to assess regulatory failures, caused as fallout of their advice or policies (*PSM asserted that CUTS would write a letter to Bob Zoellick, President of the World Bank very soon in this regard*)
- 4.5 SK spoke about an interesting piece of legislation i.e. Lobby Registration Act passed in Canada and the USA, which makes the schedule of appointments of a Minister, a public document. It also helps establish a stringent ‘conflict of interest’ guideline. These help counter possible favoritism in appointments/interactions by the Minister. PSM assured that CUTS would advocate for the adoption of such a law in India, given an existing close proximity in the country between business and the government.
- 4.6 With regards the possibility to initiate more activities in Asia (South and South East Asia), advisers observed that certain donors could be specifically approached (eg., Nordic donors, The Netherlands, Japan, Korea, etc.). SK suggested that studying ‘regulatory failures’ in Japan could be a good starting point.
- 4.7 The issue of starting work in MENA region with the same being hosted at CUTS GRC was also discussed. MoFA, Spain seem to be interested and could be persuaded.

5. Other Issues

- 5.1 PSM mentioned a project entitled, ‘Analysis of selected state electricity regulatory commissions (SERCs) in India’, wherein CUTS proposes to carry out a research study to analyse the performance of some select SERCs in India. PB suggested that the project/approach could even be expanded into an

international project. There is enough knowledge available for undertaking objective analysis with an international perspective.

5.2 Education and Health Vouchers

PSM mentioned that CUTS has mooted these schemes in the study entitled, 'India Competition and Regulation Report, 2007'. As an outcome of the report, some states in India have implemented education vouchers. Further, we need to study how it has been implemented in other countries. Surely, the World Bank must have also done some work which needs to be studied.

- 5.3 At the close of the meeting, RN suggested that ideally the meeting should take place for half a day for a more serious discussion. He mentioned that there are some bright ideas that CUTS has come up with and that DFID would be happy to support some of them.

Since there were no further comments, PSM thanked all the participants and closed the meeting.