

India Competition & Regulation Report (ICRR)
Report of Launch brainstorming meeting of National Reference Group
Saturday 13 May 2006, New Delhi

Background and Introduction (About ICRR)

CUTS International has received financial support from the British High Commission, New Delhi for a project on "India Competition & Regulation Report" (ICRR). This would be a biennial report to review competition and regulation scenario in the country. The support is for the first two biennial issues of ICRR. Nevertheless, CUTS intends to make it a regular exercise.

A National Reference Group (NRG) comprising of eminent experts and economists (listed at end) in the country has been constituted to guide in the implementation of this project. Former Under-Secretary General of UN, Shri Nitin Desai is the chairman of the NRG.

The first meeting of NRG was organised on 13 May 2006 at New Delhi to brainstorm on the structure and contents of ICRR. A brief note on ICRR along with the methodology to compute India Competition Perception Index was already sent to all the invitees.

Nitin Desai, Chairman, welcomed all the participants and requested Pradeep S Mehta (PSM) of CUTS to inform all participants about the project.

PSM informed that CUTS has undertaken the project on ICRR against the background that while India has embraced market-oriented economic reforms, there is, as yet, no periodic review to assess functioning of markets in the country. This is desirable given the existence of distortions in economic management of the country that impede realisation of competitive outcomes. Considering the important role of market forces in a liberalised economic regime, there is a need to do periodic assessment of competition and regulation scenario in the country. ICRR is an attempt to fill this vacuum. It would highlight various distortions in economic management of the country and provide inputs on a periodic basis to policy community as well as other stakeholders for taking necessary actions to promote well-functioning markets. PSM informed that the first issue of ICRR is targeted for January 2007.

Manish Agarwal of CUTS, project manager, made a presentation on proposed structure and contents of ICRR. This was followed by intense discussion among participants. Follows a brief report of the proceedings with key outcomes.

1. Structure of the Report

1.1 Following sections were initially proposed:

- I. Theme section
- II. Government policies/practices and competition
 - a. Central Government policies/practices
 - b. State Government policies/practices
- III. Market regulatory laws and competition
 - a. Competition law of India
 - b. Competition issues in regulated industries and sector regulatory laws
 - c. Interface between Competition law and sector regulation
- IV. Competition issues at sectoral level
 - a. Agriculture and commodity markets
 - b. Manufacturing (consumer goods, intermediates, capital goods)
 - c. Services (financial sector, professional services, retail distribution)
- V. Competition regime and stakeholders
 - a. Competition regime and consumer welfare

- b. Competition regime and business welfare
 - c. India Competition Perception Index
- VI. Conclusion

1.2 It was observed that the proposed structure could be looked at as consisting of three broad parts: *one*, theme section, which is in the nature of an impact assessment of competition regime prevailing in India; *second*, sections II-IV, which propose to do a descriptive evaluation and stock-taking of current state of competition and regulation scenario in India and; *third*, the section on perceptions of stakeholders.

1.3 In response to a query on the linkage between theme section and other sections, it was clarified that the theme would be a special chapter in the beginning of the report written independently of other sections. Further, for each issue of ICRR a different theme would be selected. It was suggested that the thematic section should assess the theme in terms of ground realities, at regional or state level, and by assessing working of relevant government policies, laws, etc. In this way, each issue would analyse one important dimension of competition in detail, independent from other sections and draw specific policy recommendations.

1.4 Following concerns were, expressed with respect to the proposed structure, primarily relating to second part (sections II-IV):

- Given the description of sections, the information contained in each of them would be highly repetitive and this needs to be avoided.
- Section on government policies/practices does not specify which policies/measures would be reviewed and what would be the basis for selecting government policies. This needs to be clearly specified, as the domain of government policies is itself quite wide. Secondly, with reference to state governments' policies, a query was raised whether ICRR would look at all state governments or some selected state governments? This could again be quite wide depending on the number of state governments selected.
- It was observed that the section on market regulatory laws presently focuses only on competition law and sector regulatory laws, whereas there are several other laws that impede the market process. These regulatory laws can be identified in three areas: entry/exit, price regulation and market distortion including access issues, and quality of supply and performance. It was suggested to expand coverage of regulatory laws and include all laws that affect the market process otherwise the analysis would be partial and incomplete.
- The relevance of a concluding chapter was raised. It was observed, if the theme is not running through all sections, it would be difficult for a conclusion chapter to bring together all issues, as the approach/issues covered in various sections would be different, and ICRR is being envisaged as a report and not a book. In this context, it was suggested that the concluding chapter should come out with specific prescriptions or implementable recommendations for the government that emerge from the report. Another suggestion was that concluding chapter should map out progress made between two issues of ICRR relating to competition and regulation scenario in India.
- It was observed that the perception survey (section V) and stock-taking/descriptive evaluation (sections II-IV) might throw different results, which need to be reconciled. It was suggested that the concluding chapter should bring together all divergent findings from other sections of the report and analyse them appropriately.

1.5 An observation made was that the report should not be an exercise similar to a standard ministry annual report, which records changes in government policies, laws, etc. Instead, the report should be an evaluatory exercise with in-depth analysis of issues rather than repeating what is already available in government documents.

1.6 Given the concerns expressed on overall structure of the report, following suggestions emerged:

- i. One suggestion was that the report could have three parts: *one*, theme section, *second* part looking at competition issues at sectoral level, and *third* the section on

perception index. The analysis in second part could include discussion on relevant laws, their implementation, government policies/practices, etc. It was suggested that one or two sectors could be picked up for the second part to carry out required analysis. This was considered to be a useful suggestion where the report, instead of starting with government policies, laws, etc, would start at industry end and within that, discuss all relevant government policies, laws, barriers to doing business, etc.

- ii. Another suggestion was that the report could have four parts: *one*, theme section, *second*, evaluation of working of regulatory regime by looking at cross-cutting issues rather than analyse working of each regulatory law individually *third*, competition issues at sectoral level by bringing together sections on government policies/practices and sectoral issues. This section will pick up two or three sectors and cover analysis of all enabling laws, policies, etc, *fourth*, perception of stakeholders.

1.7 Reconciling the two suggestions, it was suggested that *first* part would look at a specific theme and be in the nature of an impact assessment. The *second* part could be sub-divided into two sections: *one*, evaluation of regulatory system with reference to a regulated industry, and *second*, evaluation of competition issues in competitive industries. The first section would look at issues from regulators perspective and analyse regulatory regime by looking at cross-cutting issues including interface issues. The second section would analyse issues from industry perspective and identify constraints to functioning of industries including working of government policies/ measures, and all other enabling laws. This way the *second* part of ICRR would be a descriptive evaluation of competition and regulation issues at sectoral level. The *third* part would assess perception of stakeholders with respect to both impact and process of competition and be in the nature of subjective evaluation. This structure would help avoid repetitions and ensure in-depth analysis of selected industries.

1.8 With this backdrop, following structure was finalised:

- I. Theme section
- II. Sectoral Analysis
 - A. Evaluation of regulatory regime (with reference to a regulated industry)
 - B. Competition issues in competitive sectors
- III. Competition regime and stakeholders (including perception index)
- IV. Conclusion

1.9 Besides, it was suggested to include an introduction chapter for the first issue of ICRR. This would provide an overview of competition management in India, covering sectors where there is legislative or natural monopoly and sectors where competition was restricted during erstwhile control regime and is now being introduced. By bringing out role of competition policy in Indian context, this chapter would serve a useful precursor to subsequent issues of the report.

2. Part One: Theme Section

2.1 The theme initially proposed was "Competition & Regulation for pro-poor Growth".

2.2 Following concerns were raised with respect to this theme:

- It was observed that the term 'pro-poor growth' is vague and it's meaning not clear. Instead, it should to be turned into something tangible i.e. employment generation or enhancing access for poor, etc. Moreover, due to different interpretations, use of the term 'pro-poor growth' is often controversial, and the report should avoid such terminologies.
- Another concern was that notion of 'poor' in India is itself quite complex. For instance, the definition of poor used in National Sample Survey (NSS) is different from the below poverty line (BPL) definition. Therefore, use of the term 'pro-poor growth' could lead to definitional problems.
- In view of these concerns it was suggested to avoid usage of the term 'pro-poor growth'.

2.3 It was observed that the proposed theme seeks to focus on two issues: employment generation, and improving access/availability of goods and services. Examples of telecom sector (where competition has led to increased access of telecom services) and courier services (where operation of courier companies has led to increased employment opportunities) were mentioned in this respect. It was suggested that the terminology in the theme should be such that it reflects this focus and is also acceptable.

2.4 Following suggestions were made with respect to the theme:

- "Competition and welfare": this was found to be vague and not precise, and hence dropped. Similarly "Competition and consumer welfare" was found to be too broad. Moreover, there is already a section on competition and consumer welfare, which would analyse 'consumer welfare' in terms of eight consumer rights as laid down by the UN, hence this theme was also not considered. It was observed that the theme should consider one or two attributes of the impact of competition that reflects precise outcomes e.g. employment generation, access/availability, price, etc.
- There was a suggestion to focus on "Access and Employment". However, the two terms were considered to be different, and requiring separate analysis. Another suggestion was on: "Competition Regime and Widening Access", which was found acceptable. In the context of 'access', it was suggested to look at all related issues such as availability, price, quality and complaints redressal.

2.5 It was suggested that the theme should do an overall review of how competition regime is expected to impact on access and how it is actually impacting, with examples from certain sectors: pharmaceuticals, telecom, oil & gas, transportation, electricity, and water supply (urban and rural). In response to a concern that focusing on certain sectors would duplicate the analysis in part two (sectoral level), it was clarified that the theme is in the nature of impact assessment (i.e. analytical review of impact of competition on access, across various income groups, classes, etc) whereas analysis at sectoral level would focus on the process of competition and not its impact.

2.6 It was suggested that the theme should analyse the question: at what price is access worthwhile? In this context it was suggested that the issue of 'access' should be analysed on the principle that it is provided in an efficient way and is inherently justifiable. Another suggestion was that the analysis should bring out both success as well as failure stories. Besides, experiences of other countries should be considered.

2.7 For second issue, it was suggested that the theme could be on regional or sub-national impact of competition regime. This could cover issues relating to regional imbalance, inequality. Another suggestion was to look at competition and price differentials.

3. Part two: Sectoral Analysis (regulated and competitive industries)

3.1 It was suggested that sectors chosen should be such that there is an immediate public perception of benefits of competition and regulation. For example, petroleum, water supply, and transportation. This would be useful in building a political constituency for the report.

3.2 In the context of evaluation of regulatory regime in regulated industries, following observations and suggestions were made:

- It was observed that there are regulatory bodies established outside the government as well as government-housed regulators, which need separate treatment and should be appropriately considered in the analysis.
- There was a suggestion to have a general section that evaluates regulatory regime with reference to certain principles: transparency, accountability, predictability, and stakeholder engagement. This would help in mapping the progress made between two issues of ICRR. This could then be followed by an in-depth analysis of regulatory regime in a selected sector.

- Another suggestion was that the working of regulatory system should be analysed with reference to a particular sector. This would facilitate in-depth evaluation of working of regulatory system rather than confining to just stock-taking of existing scenario. Sectors that were suggested for analysis included energy, transportation, water & solid waste. The group was informed that TERI is already doing a study on competition issues in energy sector for the Competition Commission of India and to avoid duplication of efforts, this should not be chosen. It was suggested that ICRR could draw on the findings of TERI study on energy.
- Given these suggestions it was suggested that there could be a general part that deals with working of regulatory system with respect to certain benchmarks such as transparency, predictability, and stakeholder engagement. This could be followed by an in-depth analysis of some specific regulated sector to evaluate how regulatory system has worked in the selected sector including interface issues.

3.3 With reference to evaluating competition issues in sectors that are competitive in nature, following observations and suggestions were made:

- The section should carry out analysis from an industry perspective. It should identify constraints to functioning of markets in selected sectors and focus on issues: entry/exit, freedom to invest, compliance modalities and costs relating to investment and running a business, freedom to buy and sell, freedom to determine price, differential impact across units within an industry or across industries, resulting from government policies/regulations.
- There was a suggestion to include distortions that arise from labour laws, for instance, those arising in relation to contract labour. It was pointed that now there is a trend where regular employees are sub-contracting their work to a contract labourer and in the process getting paid for contributing virtually nothing. This is a disciplinary issue but impacts on the overall productivity of affected units. It was observed that labour laws are in itself quite wide an area and could be dealt with as a separate study. Nevertheless, market distortions that arise from labour laws could be considered while conducting sectoral analysis.
- It was suggested to review all enabling legislations (including working of competition law), government policies/practices with respect to identified sector and do an in-depth analysis. Further, the analysis should visualise issues that could come up in future and make suitable recommendations.
- Certain suggestions were made in terms of sectors that could be chosen for first issue: retail distribution (this was considered to be too large); pharmaceuticals (this sector was a unanimous choice).

4. Part three: India Competition Perception Index

4.1 The group was informed that perception survey would seek responses from five broad stakeholder groups: business and their associations; civil society organisations; government officials and regulators; academia, researchers, and consultants; and media. It was observed that this categorisation of stakeholders would target informed and knowledgeable intermediaries rather than general public. This would be useful and help in identifying perception of key intermediaries between consumers and regulatory system, between business and regulatory systems, and between consumers and business.

4.2 On the issue of whether to have separate sets of questions for consumers and business, it was suggested that a single questionnaire should be prepared targeting all stakeholders. This would help in getting perception of all stakeholders on common issues. It would be interesting to see the responses that one gets from both sides of the value chain.

4.3 The group was informed about the broad parameters identified for perception survey. These are: awareness on competition on regulatory issues; impact of competition and regulation on consumer welfare and business welfare; impact of

government policies on market process; effectiveness of regulatory laws in ensuring free and fair markets.

4.4 In the context preparing questions to capture these parameters, following observations/ suggestions were made:

- Survey should seek perception not on policy but its implementation and impact. Precise questions should be framed to judge impact/implementation, rather than asking straightforward and general questions.
- There was a suggestion to design questionnaire focusing on issues/sectors covered in the first issue. It was, however, observed that this approach would lead to variations in questionnaire (hence perceptions) in each issue of ICRR, which is not desirable. It was suggested that the purpose of perception survey should be to judge working of entire system rather than focus on any particular issue/sector. And this principle should be considered while designing the questionnaire.
- Specific questions should be asked by referring to real life examples or by creating hypothetical examples and ask if stakeholders are aware of a given situation and what would they do about it. Some examples that came up: if a soap manufacturer can charge between Rs.10 and Rs.100, is this a problematic situation, can something be done about it? Will stakeholders prefer prices of telecom services fixed by a regulator? How easy it is for consumers to get a particular service? Do consumers face any problems with respect to particular goods/services in terms of quality, price, and other attributes? Is there a problem of entry/exit? Are there any constraints to freedom of choice?
- Perception should be sought on whether competition is considered to be a positive issue, i.e. degree to which enhanced competition is considered of value to stakeholders.
- Reference could be made to 'Cost of Doing Business' study carried out by the World Bank and the private sector development website of World Bank.

4.5 It was suggested that CUTS prepare a draft questionnaire and circulate to NRG for comments and as a pilot survey for testing.

5. Timelines for first issue of ICRR and involvement of NRG

5.1 It was observed that given the nature of analysis and issues being considered, producing the report in January 2007 would be overly ambitious. Sufficient time is required to write the first issue including time for consultations, revisions, etc. Accordingly, the group felt that target for releasing the report should be revised to June 2007, giving a full year time for its preparation.

5.2 On measures to engage the NRG, it was suggested that the next meeting should be organised in late November or early December, by which time first draft of report should be ready. Secondly, electronic means should be used to continuously engage the group, for example by creating a blog on CUTS' site through which members can interact. The questionnaire and introductory chapter could be starting points for engaging the group. Further, draft sections of the report could be circulated to the group for comments.

Revised Structure of ICRR,07

- O. Introduction (Role and tasks of competition policy in India)
- I. Theme section ("Competition regime and widening access")
- II. Sectoral Analysis
 - A. Evaluation of regulatory regime with reference to a particular industry (suggested industry: Transportation or water supply and solid waste)
 - B. Competition issues in competitive sectors (suggested sector: Pharmaceuticals)
- III. Competition regime and stakeholders
 - A. Competition regime and consumer welfare
 - B. Competition regime and business welfare
 - C. India Competition Perception Index
- IV. Conclusion

Revised Timeline for ICRR,07

Sl. No.	Activity	2006								2007					
		M	J	J	A	S	O	N	D	J	F	M	A	M	J
1.	Formation of National Reference Group (NRG)														
2.	First meeting of NRG to deliberate on structure/ contents of ICRR,07; methodology for computing Perception Index														
3.	Finalisation of structure/contents of ICRR,07														
4.	Identification of writers/paper reviewers														
5.	Preparation of outline of sections/TORs														
6.	Creation of separate webpage of ICRR on CUTS site including Blog														
7.	Preparation of questionnaire for perception survey and sending to NRG for comments														
8.	Revising questionnaire, methodology for perception index based on comments of NRG														
9.	Identification of local partners for carrying out perception survey														
10.	Identification of stakeholders for perception survey														
11.	Pilot Survey to test questionnaire with identified stakeholders and finalisation of questionnaire														

Sl. No.	Activity	2006								2007					
		M	J	J	A	S	O	N	D	J	F	M	A	M	J
12.	Collection and compilation of primary information for computing Index														
13.	Computation of Index														
14.	First Draft of sections from writers														
15.	Inviting comments on draft sections from paper reviewers and NRG														
16.	Second meeting of NRG to review first draft of ICRR,07 (including presentation by writers)														
17.	Revision of draft sections														
18.	Third meeting of NRG to review revised draft of ICRR,07														
19.	Finalisation of report based on comments of NRG														
20.	National Seminar in New Delhi (public release of ICRR,07; presentation of key findings and recommendations)														
21.	Press Releases / Articles in media														
22.	Activities on FunComp Forum/Blog on ICRR webpage														

Participants

NRG Members Present:

Nitin Desai, in chair
K. Sachan
Amit Kapur
Navroz Dubash
Pradeep S Mehta
Rajiv Kumar
Reena George
S. M. Jharwal

S. Sundar
Shrawan Nigam
Shubhabrata Bhattacharya
Suman Bery
T. C. A. Anant
T. C. A. Srinivas Raghavan
V. K. Mathur
V. S. Ailawadi

In attendance:

Manish Agarwal, CUTS
Mansoor Shoket, J Sagar Associates

Stuti Jha, British High Commission
Vishnu Sudarsan, J Sagar Associates

NRG Members who could not attend:

Bibek Debroy
Mahesh Misra
N. S. Mathur
S. Chakravarthy
S. L. Rao

Sharad Joshi
Veena Jha
Vijay Kelkar
Pronab Sen
HAC Prasad (as special invitee)