

CUTS CCIER ACTIVITIES REPORT



Ongoing Projects

CUTS Competition, Regulation and Development Research Forum (CDRF)



Functioning of competition and regulatory regimes in developing countries reveal that, while good laws are being drafted, intent gets diminished when it comes to their implementation, especially due to peculiar political economy and governance constraints.

Against this backdrop, CUTS CCIER has initiated a research programme entitled “Competition, Regulation and Development Research Forum (CDRF)”, to stimulate research and deliberations on competition and regulatory implementation issues in developing and least developed countries.

The project is being implemented through biennial research cycles comprising of writing research papers, presentation in a biennial symposia and publication of a research volume. Each research cycle will select some problem areas as its theme. Based on findings, views and experiences of the first research cycle, the theme of subsequent cycle(s) would be chosen.

The first research cycle as proposed during 2005-07 on the theme “Institutional Issues in Implementing Competition and Regulatory Regimes in Developing World” is being supported by the International Development Research Center (IDRC), Canada and Department for International Development (DFID), UK.

It is anticipated that the following objectives would be met through this initiative:

- Undertake and popularise policy-oriented evidence-based research on competition policy and regulatory issues concerning the developing world.
- Strengthen research capacity in developing countries to work on competition and regulation issues.
- Provide a platform to the research community, particularly from the developing world to undertake and showcase their research work on issues concerning developing countries, and establish a network.
- Assist developing countries in designing competition and regulatory laws as per their development needs and considering the various political-economy factors.
- Build and sustain capacities of stakeholders concerned from developing and least developed countries, for an effective competition and regulatory regime.

As part of CDRF, a Research Symposium is being organised on March 22-24, 2007 at New Delhi, India to deliberate on research findings that emerge in the first cycle. Research papers focusing on political economy and governance constraints that developing countries face in implementing their competition and regulatory regimes would be discussed at the Symposium. *(Please refer <http://www.cuts-ccier.org/cdrf-overview.htm> & www.circ.in/cdrfsymp.html for further details)*



India Competition and Regulation Report (ICRR)



Economic reforms should stimulate greater competition resulting in best possible choice of quality, lowest prices, and adequate supplies to consumers and businesses. Now that India has been following a policy of economic reforms for the past one and half decades, there is a need to assess the perception of stakeholders on competition and regulation prevailing in the country.

CUTS CCIER is being supported by the Foreign & Commonwealth Office through the British High Commission based in Delhi, India, to develop a ‘India Competition and Regulation Report 2007’. One of the constituents of the report is a survey to assess perception of stakeholders on the

benefits accruing from the prevailing competition and regulatory regime prevailing in the country. Accordingly, a questionnaire has been designed to get feedback from stakeholders on the following three broad issues:

- Awareness/knowledge on Competition and Regulatory Issues.
- Opinion on Level of Competition that prevails in the country.
- Opinion about the Nature and Impact of government policies/measures.

(Please refer <http://www.cuts-international.org/icrr.htm> for further details)

Capacity Building on Competition Policy in Select Countries of Eastern and Southern Africa (7Up3 Project)



Project Progress

The first phase of the 7Up3 project implemented by CUTS CCIER is over and country partners have completed the Country Research Reports (CRRs) on competition regimes in the project countries (Botswana, Ethiopia, Malawi, Mauritius, Mozambique, Namibia, and Uganda), the findings of which have been collated into a Synthesis Report.

The *Synthesis Report* bears key findings of Stage-I (Research and Dialogue) of the project, which have been condensed below:

- There is a need to explore the possibility of hybrid agencies administering competition and consumer protection legislations, instead of having separate agencies for the purpose in small countries (a case in point being *Malawi*).
- Political economy issues play a vital role in matters related to competition policy and law administration (as witnessed especially in *Mauritius* and *Uganda*).
- *Botswana* presents a good example of evolving the right regulatory environment for competition administration. The country drafted a Competition Policy, and then embarked on the process of developing a competition law.
- Building greater public awareness is necessary – especially by demonstrating to various stakeholders the benefits from an effective competition legislation, which helps protect the interest of consumers as well.
- It is imperative to develop the capacity of civil society to complement the efforts of the competition authority in a country.

- Competition Authorities should have an elaborate ‘Public Relations/Communications Strategy’ to garner public support for implementing the competition law.
- A process of dialogue between ‘government – civil society – businesses’ is crucial for developing a healthy competition regime.
- Independent regulators need to be promoted, where the regulators could function independent of their respective line ministries. Putting a regulator and the relevant state owned enterprises under the same line ministry must be avoided.

A *Country Advocacy Plan* has been developed capturing the activities proposed for the Stage-II (Advocacy and Training) of the project, which has been shared with country partners for their views.

Inception Meeting of Stage-II

In order to look back at the outcomes of Stage-I of the project, which marked the culmination of the research phase of the project and chalk out the future course of action for activities in Stage II (Advocacy & Capacity Building), the 7Up3 project management team of CUTS would meet with project partners for a one-day planning meeting at Nairobi on November 25, 2006.

This meeting would help partners understand their roles and responsibilities in their home countries to raise the ante for evolving a healthy competition culture to policymakers and also identify the ‘training needs’ in their respective countries on competition policy and law issues.

(Please refer <http://www.cuts-international.org/7up3.htm> for further details)

Study of Cartel Case Laws under the MRTP Act: Learnings for the CCI

Cartels are difficult to unearth. Despite this, several cases were tried under the MRTP Act (1969), of India with mixed results. While in some cases cartelisation was established and a ‘*cease and desist*’ order passed, other cases were either stayed by high courts or Supreme Court, or dropped.

CUTS CCIER is implementing a project to study cartel cases that have been tried under the MRTP Act and similar cases of cartels investigated in other countries (viz., Brazil & the US) to derive relevant learnings for the Competition Commission of India (CCI) to develop an approach for dealing with cartels in the light of the provisions of the new Competition Act 2002 of India. The project is being supported by DFID and FIAS (the World Bank group). CUTS is executing the project in partnership with the National Law University, Jodhpur (India).



CUTS HANOI RESOURCE CENTRE

CUTS Hanoi Resource Centre (CUTS HRC) has been established in Hanoi, Vietnam as an offshoot of the CUTS project, “Advocacy and Capacity Building on Competition Policy and Law in Asia”, to carry forward research and advocacy on public policy areas in the lesser-developed countries of Southeast Asia.

The rationale for setting up this office has been to address the following:

- Enhance the role of civil society in the development process and fill the vacuum existing in many Southeast Asia countries;
- Further the implementation of the ‘Trilateral Development Co-operation’ (TDC) model envisioned by CUTS ; and
- Catalyse the ongoing process of public policy reform in Southeast Asia nations.

CUTS HRC will be working in policy-related fields, with two major thrusts:

- Promoting effective public policy reforms in the larger framework of poverty alleviation and sustainable development; and
- Promoting effective regional and international integration of economies and civil societies.



Need for Regulating the Pharma Industry and Health Delivery Systems in India



Pharmaceuticals & Health Sector Study in India

Through a project supported by the Ministry of Health and Family Welfare, Government of India and the World Health Organisation (WHO), CUTS CCIER assessed the extent of anti-competitive practices in the Indian pharmaceutical industry and health delivery systems. The project advocated for having an appropriate regulatory regime in the pharmaceutical and health delivery sectors in India.



The Hindustan Times

Competition concerns in the pharmaceutical industry and the health delivery system ranged from being cross-border in nature to those that existed at the local level. An analysis of India's experience with respect to addressing these concerns was done, studying the working of the MRTP Act, Indian Patents Act, Drug Prices Control Order, functioning of the National Pharmaceutical Pricing Authority (NPPA) Based on the experience of India and those of other countries, the Competition Act 2002, the Patents (Amendment) Act 2005, other related Acts and policy documents such as the Pharmaceutical Policy, 2002 were examined to develop an implementation strategy for India to ensure increased access to medicines and health delivery system.

National Workshop

In order to share the findings of the above project, with various stakeholders consisting of consumer organisations, health and competition experts, academia, NGO activists and representatives of business associations, CUTS organised a national workshop on September 8, 2006 at India International Centre, New Delhi.

Discussions emphasised that the pharmaceutical and health delivery system is a peculiar case of market failure as consumers are not the decision makers.

It is for doctors who decide the kind of treatment as well as the medicines, diagnostic testing etc. Some of the doctors are found colluding with pharmaceutical companies and other market players, neglecting the interest of consumers.

Second Meeting of the Pharmaceuticals Advisory Forum

CUTS was invited to the second meeting of the Pharmaceuticals Advisory Forum (PAF) held on September 23, 2006 at New Delhi.

The meeting was organised by the Ministry of Chemicals and Fertilisers which also anchors the PAF. Apart from representatives of state governments, other government agencies and the pharmaceutical business, the PAF also includes representatives of NGOs.

CUTS utilised this meeting to share its findings of the project with various government officials and academicians.

Creating Regulators is not the end, the key is Regulatory Process!



CUTS has undertaken a research study with support from Agence Francaise de Developpement (AFD), France to review the regulatory environment in select developing countries in Asia (India, Indonesia, Vietnam and Cambodia) and Africa (South Africa, Kenya and Zambia). The study was undertaken against the background that developing countries pose unique challenges in the implementation of regulatory regimes and experiences of developed countries are not directly transferable to the developing world.

Key Issues emerging from the study are summarised below:

- An important feature of regulatory reform relates to separation of policy-making, regulation and operation functions.
- When it comes to regulating the state-owned incumbent or taking measures that could impact its interest, cases of micro-management by the minister are observed, and independent regulators are perceived to be ineffective or powerless.
- An important objective of regulation is to protect consumer interest and involve stakeholders in the decision-making process.
- Resources, both financial and human, at the disposal of a regulator help in effective implementation of its mandate.

- An important requirement of good regulation is to have the right people on board. This requires having in place proper mechanisms to ensure appointment of experts as regulators.
- It is argued that regulatory institutions need to enjoy a certain degree of autonomy. Yet, autonomy should not come at the price of less co-ordination or conflict between policymaker and regulator.
- Autonomy should be accompanied by appropriate mechanisms to make independent regulatory agencies accountable.
- Another mechanism to make regulators accountable is by having provisions for appeals against decisions of the regulator.
- The study brings out that while countries have taken measures to establish regulatory bodies, not much effort has gone to imbibe the principles of regulation in the regulatory process.

Standing Committee on Finance

On September 18, 2006, Pradeep S Mehta was invited to appear before the Parliamentary Standing Committee on Finance (India) to put forth views on 'Amendments to Competition Act 2002' Bill.

Of virus, seeds, patents, competition

November 17, 2006, Business Line,

By Pradeep S Mehta

The contentious area of TRIPs Agreement about patenting of seeds, which relates to food security, and medicines, impacting the health sector, has not been addressed yet.

India is facing a series of public health disorders due to dengue, chikungunya and other diseases for which the doctors have only one answer: Virus. What virus and why, is a question that begs answers. One of the crucial issues resolved at the Doha meeting of the World Trade Organisation was about flexibility in the TRIPs (Trade Related Aspects of Intellectual Property Rights) Agreement. That is, the power of a government to order compulsory licensing when medicines are required to deal with public health problems.

Another contentious area of TRIPs is patenting of seeds, which relates to food security. But that has not been addressed as yet, because it is not sensational. But a related issue cropped up in the Indian courts in the recent past, when some State governments actioned Monsanto, the US biotech company, for charging what they call very high prices for patented seeds. The battle is not yet over. This raises the larger question of intellectual property rights and competition.

Monsanto owns 90 per cent of the GM seed patents in the world. To protect its rights, Monsanto has filed hundreds of suits against farmers in North America on a variety of violations. It has been awarded over \$15 million, with one payment of \$3.05 million against one farmer. This does not include the millions of dollars it collects from farmers for out-of-court settlements, when the farmers are faced with expensive litigation.

Consumer Body Against Bouquets Under CAS

July 24, 2006, Business Standard
New Delhi, India

Bundling of TV channels in bouquets should be banned in the CAS regime, and every channel should carry a maximum retail price, consumer organization Consumer Unity and Trust Society (CUTS) has said.

“By introducing the concept of bouquet, we are moving away from the very rationale of introducing CAS, which seeks to provide consumers with a tool to choose individual channels”, CUTS said. It said the introducing of bouquet system will result in several complexities.

“First, the maximum allowable discount has to be determined to ensure that bundling of channels through bouquets does not nullify the individual choice”, CUTS said. In such a scenario, broadcast regulator TRAI would need to determine an “acceptable” maximum allowable discount, it added.

On July 20, Delhi High Court had directed the Centre to implement CAS in Delhi, Kolkata and Mumbai before December 31. “To avoid any unrealistic fixing of individual price of popular pay channels, there should be a maximum retail price for pay channels and price should be determined on the basis of a channel’s carriage cost”. CUTS said in a statement.

Representation

Pradeep S Mehta, Secretary General, CUTS International, attended the second and third meeting of the Planning Commission Working Group on Competition Policy held on July 28, 2006 and September 5, 2006 respectively at New Delhi. Mehta also participated in a Hearing before the Parliamentary Standing Committee on Finance for the Competition Amendment Bill and presented CUTS views on the Bill.

Nitya Nanda, Policy Analyst, CUTS CCIER, attended the second meeting of the Pharmaceuticals Advisory Forum (PAF) held on September 23, 2006 at New Delhi. The meeting was organised by the Ministry of Chemicals and Fertilisers which also anchors the PAF. Apart from representatives of state governments, other government agencies and pharmaceutical business, the meeting also drew representatives from NGOs to deliberate on issues related to the proposed pharmaceutical policy of India, among other things.

Vinayak R Pandey, Assistant Policy Analyst, CUTS CCIER, represented CUTS on a round-table, organised by the Planning Commission of India to discuss its approach paper on infrastructure regulation on September 25, 2006 at New Delhi.

Rijit Sengupta, Co-ordinator, CUTS CCIER, participated in a seminar organised by the Indian Council of World Affairs and The India Central Asia Foundation on ‘India – Tajikistan in International Affairs’, held in New Delhi on August 8, 2006. A delegation of high profile government officials and businessmen led by the Tajik President Emomali Sharifovich Rahmanov discussed important socio-economic and political issues with Indian academicians, government officials, and other stakeholders.