



## Ongoing Projects

# India Competition and Regulation Report (ICRR) – Second Cycle



### Introduction

India has been following a policy of market oriented economic reforms for the past one and a half decades. However, as yet there is no periodic review of the functioning of markets and related regulatory mechanisms which can provide relevant inputs to the policy community. This vacuum ought to be filled through a review which highlights various market related distortions in the economy, and provides relevant inputs to the policy community as well as other stakeholders to ensure well-functioning markets.

CUTS has been implementing a biennial project to assess the functioning of markets, highlight various market-related distortions in the economy that impede competition and regulation and provide relevant inputs to the policy community and other stakeholders to promote well-functioning markets would be stimulated. The project is supported by the British High Commission, New Delhi (India). The first issue of the biennial report, “*Competition and Regulation in India 2007*” was published and released in October 2007.

In continuation, a second research cycle was initiated in 2008 with the tentative theme “Competition Assessment in India”. The broad objective of the report is to familiarise the policy community with competition assessment methods and suggest alternative policy options for better outcomes. The report would be released in 2009.

### Sectors for Study:

**Emerging Sectors:** The competition and regulatory aspects of the emerging sectors – civil aviation, water and oil & gas sector, are very distinct from those in most other markets. These are sectors in which regulation is in its infancy and there is no history to analyse trends etc. While deregulation has spurred multiple private carriers to enter the civil aviation market but the issue remains whether so many airlines are sustainable in the Indian market. In water sector, there is need for a regulatory environment. The performance of oil & gas sector and the new developments in the regulatory arena also require attention.

**Ports:** The Tariff Authority for Major Ports (TAMP) is an important regulatory body to regulate tariffs in major ports for facilities provided, property used and services rendered. Regulation by TAMP is incomplete as it does not have the

mandate to regulate performance, selection of private parties for contracts and other services.

**Power:** The idea behind power sector reforms in India was to build up the confidence of the private sector with regard to its entry into the sector. This was done through the Central Electricity Regulatory Commission (CERC) and State Regulatory Commissions (SERCs). It is important to determine the best possible environment to provide competition in transmission, generation and distribution.

**Agricultural Markets:** Agricultural markets in India are regulated, fragmented and rudimentary, which is the result of myopic government policies like minimum support prices, procurement at a pre-determined price and banning of futures market. The farmer needs to get a higher proportion of the price paid by consumers. This will require decreasing the number of intermediaries in the supply chain.

**Higher Education:** Higher education is at a crucial juncture: it is undergoing rapid transformation with rising professionalisation and privatisation of courses and declining importance of traditional courses. It is essential to evaluate the quality of regulation and competition in this sector in India.

**India Competition Perception Index:** Like the first cycle, this index will be computed to summarise the perception of various stakeholders on competition and regulation scenario in the country. A perception survey will be carried out among identifiable group of stakeholders (business, CSOs, regulators, government officials, professionals, service providers, media, experts and practitioners) in the country.

### NRG Meeting

Recently, meeting of the National Reference Group (NRG) constituted to guide the project implementation was held in New Delhi, to review the first drafts of the various chapters (above-mentioned sectors) of the report. The draft version of various chapters were presented and discussed with the NRG members. The purpose of organising the meeting was also to provide the opportunity to the NRG members to provide their inputs/suggestions for finalising the chapters.

For further details on the project, please visit <http://www.cuts-ccier.org/icrr09/icrr09.htm>

## India's Investment Environment

Economic reforms and liberalisation of foreign direct investment (FDI) policy has been a dynamic process in India that has led to the country having emerged as a global investment 'hotspot'. Various obstacles to FDI approvals and implementation have been removed substantially at the Centre. But the procedures at the State level are still fairly cumbersome and time consuming which leads to delay in project implementation.

The reforms have created a conducive environment for FDI and market oriented policies are boosting various economic activities. India welcomes FDI in virtually all sectors except lottery business, gambling and betting, retail trading (except Single Brand Product retailing) and atomic energy. In sectors like road and port infrastructure, mining of gold and minerals, and pharmaceuticals, foreign investors can own up to 100 percent equity without government approval. The restrictions to FDI at the sectoral level are regarding investment caps and foreign ownerships.

However, the Government is continuously eliminating FDI limits in various sectors to increase flows and stimulate transfer of technology.

The country is certainly an attractive destination for FDI especially given its huge consumer base but there are certain factors, which have prevented it from realising its true potential. More can be achieved through continued reforms that strengthen institutions, improve economic policies, ease administrative hurdles and create an environment conducive for private investment.

CUTS International has completed a study for Organisation for Economic Cooperation and Development (OECD) to analyse certain aspects of India's investment environment; and has been periodically tracking developments that aim to achieve investment policy reforms. As a follow up, CUTS has been preparing monthly updates on FDI policy changes in India.

## Taking a Fresh Look:

### *National stakeholders meetings on competition issues in West Africa*

CUTS has been implementing a project entitled, 'Strengthening Constituencies for Effective Competition Regimes in Select West African Countries' (also referred to as the 7Up4 project) in seven countries of West Africa: Burkina Faso, The Gambia, Ghana, Mali, Nigeria, Senegal and Togo. The project would highlight the relevance and need for an effective competition regime for economic development and poverty reduction in these countries/region, and set in motion the process of evolution and implementation of competition regimes and enable stakeholders to engage appropriately in the process of competitive reforms.

As a first exercise to familiarise themselves of the prevailing competition scenario in the project countries, the partner organisations have been busy in preparing preliminary country papers (PCPs) in each project country. The draft version of these papers were discussed with a select group of national stakeholders (referred to as the National Reference Group, NRG) through half day meetings organised in the capital of each project country during September-October, 2008.

There were mainly three purposes of these meetings:

- to introduce the project (objective, outcome, outline) to a select group of key national stakeholders;

- to organise these stakeholders into the National Reference Group (NRG) by sharing ways in which they could contribute to the project and benefit from it; and
- to get their views on a preliminary paper on the state of competition prepared for each project country.

Before familiarising these stakeholders of the findings as captured in PCPs; the partners briefly introduced the project to them, elaborating its activities and expected outcomes. This endeavour sensitised these stakeholders of the overall goal of the project, motivating them to contribute meaningfully in shaping its implementation schedule. The project provides an opportunity for these stakeholders (referred as NRG members) to review research outcomes/findings and provide inputs for undertaking policy advocacy at the national and regional levels.

The meetings were quite successful in all the project countries in raising the level of interest of key stakeholders/institution on national competition issues. In some countries certain amount of enthusiasm was also noted in the government to transform the NRG into a formal group/think tank on competition at the national level.

*Details of the project are available at:  
<http://www.cuts-ccier.org/7up4/>*



## Enhancing Development Through a Competition Culture

CUTS in association with the International Network of Civil Society Organisations on Competition (INCSOC) organised a seminar entitled, “Enhancing Development Through a Competition Culture” in New Delhi, on August 14, 2008.

The seminar drew over 40 participants from civil society organisations (CSOs), business associations and the legal fraternity both from within the country and outside. It provided an opportunity for the participants to get acquainted with new approaches that have been developed by the international competition community to help enhance understanding on competition issues.

The linkage between Competition Policy and Economic Development was discussed at length in a panel comprising of international competition experts. Practitioners and scholars discussed technical issues like Abuse of Dominance; Cartelisation; and Mergers & Acquisitions, and tried to simplify the concepts to ensure better appreciation to suit the heterogeneity of the participants.

International Development Research Centre (IDRC), Canada released their recent publication, ‘Competition & Development: The Power of Competitive Markets’. The Department for International Development (DFID), UK provided an orientation of the ‘Consumer Assessment Framework’ (CAF) developed by them.

An advanced copy of the ‘Competition Toolkit for India’ prepared by CUTS was also released by Amitabh Kumar, Director General, Competition Commission of India.



<http://www.incsoc.net/past-event.htm#event01>

### Publications



- **Comparative Study of Regulatory Framework in Infrastructure Sector: Lessons for India**

Analyses and compares the regulatory framework in seven countries with respect to institutional and governance aspects, and identifies lessons for India.

<http://www.cuts-international.org/pdf/CCIER-9-2008.pdf>

- **Competition and Regulation in Indian Retail Sector**

Describes the structure of the retail sector in the country, including its diverse components. It looks at the main challenges faced by the retail sector, and analyses the nuances of regulation and competition for the sector.

[http://www.cuts-international.org/pdf/2-2008Comp\\_Reg\\_in\\_Indian\\_Retail.pdf](http://www.cuts-international.org/pdf/2-2008Comp_Reg_in_Indian_Retail.pdf)

- **National Competition Policy for India**

Questions type of platforms that Competition Policy Council (CPC) can create to coordinate with all relevant stakeholders in implementing the National Competition Policy (NCP) and the best ways for providing incentives

to state and sub-state governments to encourage them to carry out pro-competition reforms keeping in mind the principles of the NCP.

[http://www.cuts-international.org/pdf/3-2008National\\_Comp\\_Policy\\_In\\_India.pdf](http://www.cuts-international.org/pdf/3-2008National_Comp_Policy_In_India.pdf)

- **Using Competition Policy to Regulate MNC Behaviour in Namiblaw** regime can be effective in controlling unfavourable behaviours of multinational corporations (MNCs) operating in the country.

<http://www.cuts-ccier.org/7up3/pdf/BriefingPaper04-2008.pdf>

- **Privatisation Initiative in Botswana: Any Bearing on Competition?**

Examines the relationship between privatisation and competition, highlighting implementation of the privatisation policy in Botswana and its likely impact on competition in the market.

<http://www.cuts-ccier.org/7up3/pdf/PolicyBrief6.pdf>

- **Competition Law and Intellectual Property Rights: Controlling Abuse or Abusing Control?**

Examines the interface between competition issues and protection of Intellectual Property Rights (IPRs); complementarities and conflicts.

[http://www.cuts-international.org/pdf/CompetitionLaw\\_IPR.pdf](http://www.cuts-international.org/pdf/CompetitionLaw_IPR.pdf)

- **Enforcing Competition Law in India: A Toolkit**

This toolkit looks at different types of anti-competitive practices in light of the competition law of India and juxtapose it with examples from the country and of similar cases from other jurisdictions, in particular from other developing countries.



## Representations

**Rajesh Kumar** participated in the Public Hearing on 'Measures for Restraining the Prices of Electricity in Short Term Sale/Trading', organised by the Central Electricity Regulatory Commission, in New Delhi, on September 29, 2008.

**Siddhartha Mitra** participated at the CESifo Venice Summer Institute workshop on 'Reforming Rules and Regulations: Laws, Institutions and Enforcement' in Venice on July 18-19, 2008. He made a presentation on 'How Vital Is Regulatory Independence: The Telecom Sector in Developing Countries'.

**Pradeep S Mehta** attended the ninth session of the United Nations Conference on Trade and Development's (UNCTAD) Inter-governmental Group of Experts on Competition Law and Policy in Geneva, on July 15-18, 2008.

**Mehta** made a presentation on 'Competition Policy: Institutions and Procedures', at the 'Third European Conference on Competition and Regulation' in Greece, on July 04-05, 2008.

## Media Outreach

### Cap Credit Card Interest Rates?

*Economic Times, September 12, 2008*

**W**ithout doubt, there should certainly be a cap on credit card interest rates. The usual interest rate is high enough but where card holders 'revolve' credit or pay the 'minimum amount' the interest is about four times more than that on housing loans. Why? Credit cards have become a vehicle for credit expansion at extremely attractive rates for the card issuers.

The card users are first lured to spend money, which they cannot repay due to exorbitant rate of interest that leads them into a debt trap. Later they are encouraged to convert the outstanding into a loan. The banks do so to avoid an increase to their non-performing assets, which dents their balance sheets. CUTS has been trying to convince RBI otherwise for over five years now by citing examples from around the world. Banks should charge interest as applicable to an unsecured advance.

<http://www.cuts-international.org/cutsinmediaSeptember08.htm#me01>

### Lifting India's Competitive Spirit

*The Hindu Business Line, July 22, 2008*

**A**ccording to a recent survey conducted by the United Nations Industrial Development Organisation (UNIDO), India has been placed in the 41<sup>st</sup> position in competitiveness among 100 countries, even lower than Thailand, Malta, Mexico and Malaysia.

CUTS has been praised for its innovative efforts to develop, for the first ever time within the country, an India Competition Perception Index to assess the perceptions of a sufficiently large sample of a broad range of stakeholders comprising parliamentarians, officials, regulators, business persons, civil society organisations, academia and media on the status of the competition and regulation regime in the country.

<http://www.cuts-ccier.org/ccier-meJuly08.htm#me03>

### The Promise of Cheaper Power for All

*The Financial Express, September 09, 2008*

**By Rajesh Kumar**

**T**he Ministry of Power in India has once again failed to fulfill the target for new generation capacity for the financial year 2007-08. The current power famine in the country can create a hurdle not only for the attainment of universal access to power by 2012, but also the continuation of the general surge in affluence seen over the last two decades.

The nation must continue to make steady progress towards universal access to power. This is still a distant dream, with 55 percent of the country's population without access to electricity. Therefore, the unfinished task is considerable. Public-Private Partnership (PPP) in the power sector is a possible solution to this. Its success will determine whether an India pregnant with unfulfilled promises will deliver.

<http://www.cuts-ccier.org/ccier-arSep08.htm>

### 'Curb Hoarding, Black Marketing to Control Inflation'

*The Hindu/Outlook Money, July 28, 2008*

**C**UTS has suggested the Government to curb hoarding and black marketing instead of blaming external factors for the persisting high rate of inflation. It has submitted a memorandum to the Prime Minister Man Mohan Singh and Chief Ministers of various states pointing that inflation should be the first priority for the Government.

"The Centre cannot do much about curbing hoarding and black marketing. It is the states who have to implement the laws", said Pradeep S Mehta, Secretary General, CUTS. He suggested that unless the Centre rewards better performing states, the will to crack down on black marketers will remain merely on paper. He said the objective of the Government should be to remove barriers that prevent consumers from enjoying the lowest possible prices and the highest quality.

<http://www.cuts-ccier.org/ccier-meJuly08.htm#me04>