



Competition Advocacy is a Key to take the Reform Agenda Forward

CUTS with support from British High Commission organised the launch meeting of its project entitled, 'National Competition Policy and Economic Growth in India' in New Delhi, on August 21, 2012. M Veerappa Moily, Minister for Power and Corporate Affairs while addressing the meeting stated that there should be a holistic approach to take the economic reforms agenda forward. He expressed hope that the Cabinet will approve the National Competition Policy (NCP) soon.

Welcoming the participants, Pradeep S Mehta, Secretary General, CUTS spoke about studies which were conducted for 13 sectors as part of the work done under the Committee on framing the NCP and related matters constituted under the Ministry of Corporate Affairs, Government of India.

Andrew Jackson, Counsellor (Knowledge Economy) of the British High Commission in New Delhi said that the main reason for supporting this project is to enable a more informed debate on India's reform agenda and learn from the same.

Ajay Chhibber, Assistant Secretary General, United Nations Development Programme and Regional Director for Asia and the Pacific, opined that there are several hurdles in starting business in India, taxation policies, etc. serve as bottlenecks in its path to growth and many of them can be tackled by an effective competition policy.



L-R: Dhanendra Kumar, Andrew Jackson, Nitin Desai, M Veerappa Moily, Pradeep S Mehta, Ajay Chhibber and Baijayant Panda

Baijayant Panda, Member of Parliament, opined that the need of the hour is to modernise our polity and what we need right now is new and good politics.

Arun Maira, Member, Planning Commission of India further emphasised on political-economic challenges in implementing a policy. Dhanendra Kumar, Principal Adviser, Indian Institute of Corporate Affairs (IICA) and former Chairman, Competition Commission of India, said that it is necessary to proactively promote competition in the Indian economy.

Concluding the event, Nitin Desai, President, CUTS Institute for Regulation & Competition and former Under Secretary General, United Nations, said that quantification of gains from competition reforms will set the agenda for competition advocacy.

The Multilateral Trading System in the 21st Century

Interactions between trade and competition could not be more intimate as they are today when countries world over are getting severely affected by the volatility of trade in primary commodities. The major commodity spike of 2007-08 sent alarm bells ringing when the prices of many primary goods doubled from what they had been not so long ago. Much of this is attributable to trade related competition distortions (e.g. export restrictions) and competition related trade distortions (e.g. export cartels) that continue to operate in these markets making the trade and competition policy interface in world markets a priority on the global policy agenda.

CUTS International took the opportunity to host a session at the WTO Public Forum to draw attention to this extremely significant issue. The event was held at Geneva, Switzerland on September 24, 2012. The welcome address was delivered by Pradeep S Mehta, Secretary General, CUTS. The list of panellists comprised of experts in the field, such as Carlos Braga (Evian Group), Eduardo Perez Motta (International Competition Network), Ambassador Tim Yeend (Australia), Ambassador Otabe (Japan), Hassan Qaqaya (UNCTAD), Robert Anderson (WTO) and Pradeep S Mehta (CUTS International).

The main issues for discussion centred around how trade and competition policies interact with one another; what are the externalities of such market distortions; can a multilateral rule help and what will be the implementation challenges that countries would face if such a rule were to be enforced.

Promoting Business Responsibility in Pharma and Private Healthcare Sectors



CUTS in association with the IICA organised a National Policy Forum on Promoting Business Responsibility in the Pharmaceutical and the Private Healthcare Sectors at New Delhi, on October 08, 2012. The event was part of a project which CUTS has been implementing entitled “Exploring the Interplay between Business Regulation and Corporate Conduct” since 2011.

The forum was privileged by the participation of various luminaries from diverse backgrounds ranging from the government, representation from sectoral collectives, civil society organisations and media.

Bhaskar Chatterjee, Director General, IICA, welcoming the gathering to the occasion, was confident that the project will show the way to implement the National Voluntary Guidelines on Social, Environmental and Economic Responsibility of Business (NVGs) in the pharmaceuticals and private healthcare sectors.

Arvinn Gadgil, Ministry of Foreign Affairs, Norway opined that appropriate regulation and appropriated conduct is the remedy to the inequality in the society referring to the agenda of the project. On the other hand, Arun Maira, Member, Planning Commission of India, was of the opinion that policy as well as regulation should be people-oriented.

Preliminary findings of the four states (Himachal Pradesh, Gujarat, West Bengal and Andhra Pradesh) were



L-R: Pradeep S Mehta, Arun Maira, Eivind S Homme, Arvinn Gadgil and Bhaskar Chatterjee

shared during the conference which commonly highlighted that state level multi-stakeholder forums are necessary to identifying lacunas in existing regulatory regime leading to irresponsible conduct in key sectors at the level of the state. Sectoral associations need to understand that they can play an active role in monitoring the performance and behaviour of members to help develop a ‘roadmap for promoting business responsibility’ in them.

All the participants unanimously agreed that there is a need for better and more responsible healthcare facilities and pharmaceutical provisions.

Evolving Consumer-friendly Policies for Energy Efficiency



CUTS with the support of Shakti Sustainable Energy Foundation (SSEF), India has implemented an initiative, ‘Demand Side Management and Renewable Energy in India: Capacity building of CSOs’ over two years (2011-2012) in two states of India (Gujarat and West Bengal) to better prepare CSOs to carry out need-based advocacy to demand for Renewable Energy (RE) and Demand Side Management (DSM) and participate in the associated policy and regulatory processes.

During the period, CUTS in collaboration with West Bengal Electricity Regulatory Commission (WBERC) organised a Roundtable discussion on ‘Evolving Consumer-friendly Policies to Enhance Access to Renewable Energy and Energy Efficiency’ in West Bengal at Kolkata, on August 22, 2012 to engage policymakers and share key advocacy issues that emerged from the project. This was also to initiate a multi-stakeholder dialogue to facilitate effective implementation of the recently adopted RE policy for West Bengal, which CUTS has also been advocating, as part of the Project.



L-R: Keya Ghosh, Sunil Mitra and Malay Kumar De

The discussion was attended by diversified group of stakeholders, such as Department of Power, West Bengal; West Bengal Renewable Energy Development Agency WBERC, Utilities, Business Houses, Media, CSOs, SSEF etc. Also,

Secretary, Gujarat Electricity Regulatory Commission attended the meeting to share his experience and cross learning from Gujarat.

Several recommendations related to RE policy emerged out of the discussion, which was compiled and disseminated to the relevant departments and the Ministry by CUTS as a Memorandum to identify challenges in effective implementation of RE policy and suggest solutions to overcome the same.

CUTS Memorandum to CCI on Anticompetitive Practices in Healthcare & Pharma

Healthcare and Pharmaceutical are two sectors providing considerable 'social services and public goods' for the society. However, both sectors are characterised by multiple imperfections which often lead to proliferation of market malpractices at various levels resulting in poor market outcomes.

Strict enforcement of competition law is all the more necessary, given the high private participation in these sectors which is likely to remain high to meet the ever burgeoning demand of the increasing populace. The two sectors are interlinked and cannot be looked in isolation. Their interface also offers many avenues for in depth enquiry. The CCI, although in a fledging state now, has a mammoth task ahead and is expected to establish a vibrant competition regime.

There are a number of issues in these sectors that may curb competition. Anticompetitive practices, especially horizontal and

vertical collusion in the supply chain, practices on the part of doctors, hospitals, and pharmaceutical firms which can take the form of tied selling, exclusive supply and distribution agreements, market allocation and even cartelisation can often be to the detriment of consumers. Such misconducts in healthcare are abetted by a weak regulatory environment coupled with structural factors.

The informational asymmetry in the healthcare sector makes it difficult to identify whether the practice is anticompetitive or not. However, a closer look at the Competition Act, 2002 shows that several practices in fact attract the provisions of the competition law. However, the hurdle is in identifying these at the micro level.

Some of the common competition concerns in these sectors include: market failure due to information asymmetry; international cartels such as vitamin cartels; vertical and

horizontal collusion is common across players in the medical supply chain; ownership of an IPR grants the company exclusive rights to produce and sell their drugs in the market for a limited period of time; recent controversy over M&As and FDI in pharma where MNC acquisition would threaten the availability of affordable generic medicines.

CCI has perhaps been given the responsibility of regulating pharma FDI M&As; absence of an adequate regulatory framework for maintaining quality and standards of service provided; entry barriers and rent seeking in the medical education sector; and issues in medical insurance sector – lack of regulation or control over providers' behaviour.

To tackle the above mentioned practices, the Competition Act, 2002 typically focuses on: anticompetitive agreements (Section 3); abuse of dominance (Section 4); combination regulation (Sections 5 & 6); and competition advocacy (Section 49).

New Project

Unfair Trade Practices in India: An Analysis



CUTS with the support of GIZ (India office), an international enterprise owned by the German Federal Government is working on a project to investigate and analyse the status of unfair trade practices (UTPs) in India, to highlight issues and to recommend a way forward to address such issues within the framework of Indian law. The Ministry of Corporate Affairs (MoCA) seeks to establish an enforcement agency on consumer protection in India to investigate cases like UTPs. The outcome of the project will be a report of CUTS recommending the structure and powers of such agency, inter-linkages to other state agencies and the legislation process of the agency's implementation, to help MoCA arrive at a well-informed decision.

As a first activity, the prevailing social and legal scenario of UTPs in India is being assessed. CUTS along with the international expert (Antonia Bakardjieva-Engelbrekt, appointed by GIZ) met various stakeholders in Delhi in this respect. It is expected that through this project, CUTS will be able to highlight various capacity gaps existing in dealing with UTPs in India. The report is sought to be finalised by December 15, 2012.

Representations

Pradeep S Mehta participated in the ASSOCHAM Roundtable Conference on the Cross Media Ownership in New Delhi on July 27, 2012. He spoke on the relevance of cross media ownership in India.

Pradeep S Mehta, R Badrinath, Rashid S Kaukab and **Udai S Mehta** participated in the UNCTAD Intergovernmental Group of Experts (UNCTAD IGE) meeting on July 09-11, 2012; and Ad Hoc Expert Meeting on Consumer Protection on July 12-13, 2012 at the Palais de Nations, Geneva (Switzerland).

Pradeep S Mehta participated in the 39th Annual Conference on International Antitrust Law & Policy organised by Fordham Competition Law Institute at New York on September 20-21, 2012. He was a Panellist in the session: 'Antitrust Developments in India and Mexico'.

CCI will remove policy hurdles that distort markets and hurt economic growth

Economic Times, September 20, 2012

Pradeep S Mehta

Every new policy proposal is greeted by apprehension coupled with ignorance and turf issues. The proposed National Competition Policy (NCP) formulated by the Ministry of Corporate Affairs too may become a victim of this phenomenon. The Department of Industrial Policy and Promotion (DIPP) has reportedly picked holes in the draft policy when it should, in fact, be the strongest supporter. Looking at our dismal economic scenario, one of the contemporary and important policy prescriptions by the government is to adopt competition reforms through an NCP.

www.cuts-ccier.org/Article-CCI_will_remove_policy_hurdles_that_distort_markets_and_hurt_economic_growth.htm

Green implications of compulsory licensing

Financial Express, September 10, 2012

Pradeep S Mehta

The Rio+20 summit was a disappointment for many, but it is pertinent to keep repeating its larger sustainable development agenda for the safe future of humankind. Nation states need to continue taking steps to mitigate adverse environmental effects, and learn about successes and failures from each other, from different fields. One such learning is from the recent grant of a compulsory licence to a cancer drug in India. One of the three grounds on which compulsory licence was granted to Natco for the drug Nexavar was that Bayer, the patentee, had failed to 'work the patent' in India.

www.cuts-ccier.org/Article-Green_implications_of_compulsory_licensing.htm

CUTS approaches CCI against global potash cartel

Business Line, August 29, 2012

CUTS has approached the Competition Commission of India against a global potash cartel operated by seven companies abroad. In its preliminary report submitted to CCI on August 25, CUTS said India is dependent on imports for its potash nutrient requirement. It imports entire requirement of over six million tonnes. Indian companies have been bargaining hard for reduced prices for potash. Potassium is a one of the key fertilisers used in food production and is therefore severely impacted by the high prices of potash determined by the global cartel.

www.cuts-ccier.org/Media_CUTS_approaches_competition_panel_against_global_potash_cartel.htm

Cross the red tape Rubicon

Economic Times, August 23, 2012

Pradeep S Mehta

The origin of the term 'red tape' lies in an old British Indian practice of tying all files with red tape while being carted on mules and donkeys from Delhi to the summer capital Shimla. Now, Prime Minister Manmohan Singh has called for unleashing animal spirits to spur growth, promising ad nauseam to create transparency and cut down corruption. That can be done only when irrational regulatory barriers are removed.

www.cuts-ccier.org/Article-Cross_the_red_tape_Rubicon.htm

SFIO fights on

Business Standard, August 01, 2012

SFIO, currently a non-statutory body, was established in 2003 on the basis of recommendations of the Naresh Chandra committee on corporate governance. Pradeep S Mehta, Secretary General, CUTS says "The increasing economic activity led to a rise in economic crimes in the country. Therefore, you require a beefed-up, well-equipped SFIO." However, SFIO's role is not limited to policing companies. Besides corporate governance and financial frauds, SFIO also monitors the public interest in terms of monetary misappropriation or the number of people affected.

www.cuts-ccier.org/Media_SFIO_fights_on.htm

'Good citizen' IKEA turns its back on SMEs

Business Standard, July 22, 2012

Rijit Sengupta

The story about IKEA's discussions with the government for relaxing the "local sourcing" clause for it to invest in India has come as a surprise to many of us. IKEA, the Swedish home-furnishing multinational — the world's largest — wants to enter the Indian market with an investment worth euro 1.5 billion (₹10,500 crore). At a time when the government's coffers are strained, it is quite likely that it will give in to IKEA's demand over reducing dependence on local small and medium enterprises (SMEs) in the first 10 years of its operation.

www.cuts-ccier.org/Article-Good_citizen_IKEA_turns_its_back_on_SMEs.htm