

# CUTS CCIER ACTIVITIES REPORT

CUTS<sup>®</sup>  
International

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## Digital Economy

Hitting the reset button on competition  
and regulatory governance (ICRR 2019)



To launch its flagship biennial report “Competition and Regulation in India, 2019” (ICRR 2019), CUTS International and CUTS Institute for Regulation & Competition (CIRC) organised an event “Digital Economy: Hitting the reset button on competition and regulatory governance” at New Delhi on February 05, 2020. Over 100 participants representing all stakeholders benefited from the rich discussions by high profile speakers.

The inaugural session on the theme “Inclusiveness in Digital Economy” commenced with the welcome address by Pradeep S Mehta, Secretary General, CUTS International, which was followed by addresses by Gopal Krishna Agarwal, National Spokesperson, Economic Affairs, Bharatiya Janata Party (BJP); Ashok Kumar Gupta, Chairman, Competition Commission of India (CCI) and Injeti Srinivas, Secretary, Ministry of Corporate Affairs, Government of India. This was followed by a

*tête-à-tête* between Nitin Desai, President–Governing Council, CIRC and Shashi Tharoor, Member of Parliament, Lok Sabha and Chairperson, Parliamentary Standing Committee on Information Technology.

It came out that though the digital economy is on the priority for the government, to fuel innovation the protectionist measures need to be abandoned. Also, timely detection and appropriate intervention to correct anti-competitive practices in technology markets are of key importance so that they remain contestable. With digitalisation fuelling the growth of the Indian economy, it is imperative to ensure that there is no digital divide in the economy to prevent it from causing income inequalities and leave an adverse impact on employment opportunities. It is necessary that good regulatory practices, such as a repository of regulations, structured public consultation, cost-benefit analysis, regulatory sandbox, etc.

are put into use effectively.

Concerning the potential impact of digitalisation of the economy on inequality, Shashi Tharoor opined that digitalisation of the economy presents a paradox – creating opportunities to bring equality at some level, while also widening inequality at other levels. In recent times inequality has risen in India, but not as bad as in some other parts of the world.

Sharing his views on the importance of privacy and data protection, Tharoor said that owing to the rise of digital markets, there is a dire need to protect individual's data from any kind of misuse. The person who generates the data should be owners of their data, who surrender the same for specific purposes and for a limited duration of time. The government, at times, can have legitimate and authorised reasons to access individual's data for national security, but they should not be given unfettered and unconditional power to access data. The purpose has to be specifically defined and due process must be followed to access data of individuals.

The second session on the theme “New Age Competition & Regulatory Challenges and the Way Forward” was chaired by Arvind Mayaram, Former Finance Secretary, India and Chairman, CIRC and the panellists were Payal Malik (Economics) & Head of Economics Division, CCI; Ashutosh Chadha, Vice President Public Policy, MasterCard; V. Sridhar, Professor, International Institute of Information Technology, Bangaluru; and Arun Maira, Former Member, Planning Commission of India.

From the session, it came out that a whole-of-government approach is mooted to deal with various concerns arising due to digitalisation of the economy, as competition enforcement alone may not be able to deal with them. Also, a threshold based on deal value can bring in most M&As of digital players to bring them within the CCI scrutiny is mooted. Also, it needs to be ensured that algorithms are unbiased, ethical and trustworthy algorithms, first through self-regulation or, if it fails, by co-regulation or hard regulation.

For more details, please visit: <https://cuts-ccier.org/pdf/report-digital-economy-hitting-the-reset-button-on-competition-and-regulatory-governance-feb5-2020.pdf>



## Advocacy

# CUTS Comments on the Draft Competition (Amendment) Bill, 2020

Following the recommendations of the Competition Law Review Committee, the Ministry of Corporate Affairs (MCA) released a Draft Competition (Amendment) Bill, 2020 (Draft Bill) for public comments. Responding to the call, CUTS International has submitted its comments on some of the most significant issues in the Draft Bill.

Of the provisions of the Bill, critical concerns were raised on the creation of a Governing Board which would see participation from the Central Government, a model, unlike any other competition regime. Re-emphasising CUTS' long-standing demand for a National Competition Policy, the issue was again highlighted in response to the Draft Bill. Additionally, the flaws in the structure of settlements and commitments provision require the parties to offer commitment without knowing the nature of allegations, potential contravention and the evidence collected against them.

Additional gaps that the Bill missed out on were also brought up in the comments. Most significantly, the need to revive Competition Appellate Tribunal was questioned. Despite judicial directive to include a Judicial Member in the Commission at the time of hearings and the final decision, the Draft Bill did not include any such provision.

CUTS' comments further highlighted the need for the CCI to engage with relevant stakeholders before the drafting of any rules or regulations. Additionally, the need for mandatory inter-sectoral consultation between the CCI and other sectoral regulators was also mentioned.

# Civil Society Coalition for Power Sector



CUTS International and Bask Research Foundation are implementing a project on 'Capacity building of Electricity Consumers' to enhance and leverage the regulatory participation of consumers to improve the service quality in electricity sectors. As part of various initiatives within the project, Six Consumer Assistance Cells (CONASCs) have been established in four districts of Rajasthan that assist consumers on grievance redressal, organise awareness workshops on the themes of rights and responsibility and act as a bridge between electricity department officials and consumers. Training and developing modes for collaboration between civil society organisations (CSOs) are other key components of the project that are undertaken to improve the capacity and voices of these organisations for better participation in the sector.

As part of the above-mentioned activities, a one day workshop was organised at Jaipur on March 06, 2020, with a focus on power sector issues and inefficiencies that impact electricity consumers, the potential role of civil society in improving accountability and efficiency in the sector (electricity distribution). The key objective of the workshop was to form a coalition of CSOs for collective advocacy and mobilize grass-roots

resources for capturing evidence for issues that could be utilised through appropriate platforms. Some key tools that could help collect ground evidence/data for commonly faced issues were also released for the same during the workshop.

Simran Grover, CEO, Bask Research Foundation provided the opening remarks and highlighted the objectives of various sessions during the workshop. Thereafter, key issues concerning the Power distribution sector were discussed in detail. It was highlighted that even after close to 20 years of power sector reforms, the power sector is aggrieved with various challenges.

The session focused on issues related to accountability, inclusivity, transparency of policy design and data and independence of consumer-facing institutions in the distribution sector. The inefficiency and performance of distribution companies and their apathy towards consumers were also highlighted. Grass-root work conducted during the project suggests that there are considerable issues to grievance redressal, VCR filing, power quality, safety and infrastructure, and metering and billing, especially in rural areas. While at the distribution company level, there are issues such as passing on costs of DISCOM non-performance to consumers, increasing

accidents, the poor state of grid infrastructure, etc.

The second session on 'Role of Civil Society for ensuring accountability and delivering reforms in Power Sector' discussed various channels that exist for engaging key actors in the power sector, resources, and capacity required for the same. It was unanimously agreed that all civil society actors need to come together on a common platform to deliberate concerns of consumers and jointly participate in at the Regulatory Commission level to improve the presence and voices of consumers. An innovative idea proposed was to organise workshops with CSOs before submissions and hearings on key consumer-related petitions and bills.

A panel discussion followed the two sessions where consumer activists from

various jurisdictions in Rajasthan were invited to share their first-hand experience of interaction with the power sector. Liaqat Ali, an activist from Jodhpur shared his experience of working on regulatory reforms through participation and filing petitions with RERC. Manish Mehta, a consumer activist from Boondi shared his experience from filing 125 cases against JVVNL which have been litigated at CGRF and the Ombudsman levels. Hari Prashad Yogi, a consumer advocate from Sawai Madhopur, briefly spoke about his experience about fighting for consumer rights and the suitability of various legal options available to consumers. Rakesh Parmar, an activist from Dholpur, spoke about the potential of RTI ensuring accountability. 22 representatives from various CSOs in Rajasthan participated in the workshop.



## Publications

### Competition and Regulation in India, 2019

This 2019 Report on Competition and Regulation in India is very timely because the theme is '*Digital Economy – Hitting the reset button on competition and regulatory governance*'. The Report throws light on some very important facets of regulation and competition that are still not settled in the emerging digital economy. The insights from this report can help optimise gains from the economy.



#### BRIEFS

### Notice and consent framework

The Personal Data Protection Bill (PDPB) misses an opportunity to create adequate mechanisms to generate awareness and build user capacity on privacy policies. It also fails to tackle notice and consent fatigue. In this regard, we recommend the creation of the Data Protection Awareness Fund to be used exclusively for awareness generation and capacity building. We also suggest prioritising innovation for user-friendly consent frameworks in the regulatory sandbox.

### Grievance redress

The PDPB fails to create an effective and practical mechanism for grievance redress and limits transparency and disclosure in case of the data breach. We recommend recognising a right of users to seek judicial remedy and creating user-friendly mechanisms for seeking redress in a time bound manner. Users should be notified immediately in case of a data breach and should be able to claim adequate compensation.



## Exemptions

The PDPB gives broad exemptions to the government without laying down appropriate legal tests and time limits for processing, which creates the risk of surveillance and threat to free speech. In this regard, we recommend that the government should lay down the test of legality, proportionality and legitimate aim in exercising the exemptions. Further, exemptions must be provided to only select provisions and such data should not be retained after the purpose of the exemption is complete.

## Key Definitions

Certain key terms in PDPB like 'personal data', 'sensitive personal data', 'critical personal data' and 'harm' are not adequately defined in the bill leading to ambiguous and vague interpretations. For this, we recommend that the definition of personal data and sensitive personal data must consider user perspectives of 'identifiability' and perceived risks. Further, the definition of harm must be linked to data breaches under the PDPB and specifications must be provided about critical personal data.

## Data Protection Authority

The PDPB does not provide adequate independence and transparency in the functioning of the DPA. Further, the powers of DPA are diluted and transferred to the central government. In this regard, we recommend that DPA must be appointed by the unbiased and neutral selection committee and should be independent and transparent in its functioning. Further, it should retain its power to make an important decision from the Central Government.

## Overreach of the Bill

The PDPB goes beyond its mandated objective of 'personal data protection' by providing access to non-personal data and anonymised data by the government. Further, it aims to solve the problem of inappropriate post/information through voluntary verification, which is also beyond its objective. We recommend that both these provisions must be removed from the PDPB.

## Data Localisation

Data localisation requirements under the PDPB puts the burden on service providers for the segregation of data and can lead to an adverse impact on the adoption of data-driven services by consumers and the digital economy. We recommend that regulatory impact assessment must be conducted before making decisions that lead to data localisation, at the same time the government should aim to strengthen their bilateral and multilateral relationships for cross border data flows.

## Representations



- Bipul Chatterjee, Kapil Gupta and Sidharth Narayan participated in a closed-door event to discuss and present *How Cross-Border Data Drives Growth: An analysis of data flow regulations & their impact on India's digital economy* organised by US-India Business Council (USIBC) in New Delhi on March 06, 2020.
- Sidharth Narayan participated in an event on 'Digital Platforms – The Current Landscape and Future Trends', organised by Analysis Group, in New Delhi on March 05, 2020. The primary objective of the event was to discuss existing and emerging competition issues in the digital economy.



- Bipul Chatterjee, Prashant Tak and Sarthak Shukla participated in CPR Dialogues, 2020: Policy Perspectives for 21<sup>st</sup>-century India organised by Centre for Policy Research in New Delhi on March 02-03, 2020. The objective of the event was to discuss policy challenges faced by India in the backdrop of social, economic, technological & political transitions across the globe.
- Anurag Mishra participated in Electric Mobility Initiative Workshop organised by Shakti Sustainable Energy Foundation in New Delhi on February 13-14, 2020.
- Ujjwal Kumar and Kapil Gupta participated in the USAID ProICT Webinar organised by Digital Frontiers and USAID on January 09, 2020.



## Advocacy through Media

### The promotion of competition is vital to the Indian economy

Mint, March 23, 2020

By Pradeep S Mehta

Speaking at an event staged by a media house and held at the beginning of March, Prime Minister Narendra Modi *inter alia* spoke about working on fair competition as one of the four pillars to achieve India's target of a US\$5tn economy. To attain such an ambitious goal, it is clear that the government needs to design and adopt laws and policies that deliver economic democracy and competitiveness.

<https://cuts-ccier.org/the-promotion-of-competition-is-vital-to-the-indian-economy/>

### The current state of cooperative federalism in India

Mint, March 04, 2020

By Pradeep S Mehta

Amid the growing rhetoric of strengthening cooperative federalism in India, it is useful to pause from time to time and review the actual progress. The ongoing budget season is the right time to carry out a realistic assessment. After the Union budget for 2020-21 was presented on 1 February, at least four state governments have released their budgets: Odisha, Tamil Nadu, Rajasthan, and Uttar Pradesh.

<https://cuts-ccier.org/the-current-state-of-cooperative-federalism-in-india/>

### Initiate expenditure reforms for budgetary credibility

Mint, January 22, 2020

By Pradeep S Mehta

The gross domestic product (GDP) of the state of California in the US is around US\$3tn. Bigger than India's GDP, it has been growing steadily for a decade now. On January 10, 2020, California's governor released his budget proposals for the year. Reforms and investments in education, health and housing have been prioritised, and the budget documents put forth in great detail the sources of finance, manner of expenditure and process of reforms.

<https://cuts-ccier.org/initiate-expenditure-reforms-for-budgetary-credibility/>

### Geopolitics & the rollout of 5G: The way forward

Deccan Chronicle, January 18, 2020

By Pradeep S Mehta and Sidharth Narayan

The first phase of the US-China trade deal that has recently been signed breaks the two-year trade confrontation between the two nations. However, word has it that the partial deal may not offer much relief to Huawei. In a bid to block China's ambitions of dominating the tech industry, including the crucial 5G technology, the US had earlier called for restricting Chinese companies from participating in 5G trials not only in the US but in its allied countries as well. Citing security concerns, the move endeavoured to create a China-free 5G alternative.

<https://cuts-ccier.org/geopolitics-the-rollout-of-5g-the-way-forward/>