

Research Design Meeting

Report

**NATIONAL COMPETITION POLICY AND
ECONOMIC GROWTH IN INDIA
(ComPEG Project)**

**New Delhi
November 09, 2012**



The Research Design Meeting to span the one and half year project entitled "National Competition Policy and Economic Growth in India" (ComPEG) was held at CUTS Institute for Regulation & Competition (CIRC) New Delhi on November 09, 2012. The meeting was attended by select Project Advisory Committee (PAC) members, key researchers of the project and CUTS representatives. The following is the brief proceeding of the meeting.

A. Background

Competition in a market ensures enhanced allocative, productive and dynamic efficiency through optimum utilisation of resources. Competition enhances economic welfare through industrial growth, product variety and innovation. Further, it offers social benefits in the form of lower prices, improved accessibility and employment generation.

Competition law in India was put in place to check the anticompetitive practices of market players, while the competition distorting provisions of various policies were left unchecked. In order to resolve this conflict, the National Competition Policy (NCP) of India has been drafted. Such a policy encompasses more fundamental aspects of economic policy and aims to promote the market principles in the economy.

With assistance from CUTS Institute for Regulation & Competition (CIRC), the Indian Institute of Corporate Affairs (IICA) supported a set of diagnostic studies of 10 sectors and three cross-cutting issues.¹ The findings and recommendations of the IICA studies helped in constituting an “advocacy agenda” by reviewing competition-distorting provisions in sector-specific policies, laws, regulations, practices, etc.

With the objective of carrying forward the “advocacy agenda” for effective adoption of the NCP, CUTS International, with support from the British High Commission (BHC), New Delhi is implementing a project entitled “National Competition Policy and Economic Growth in India” (ComPEG, www.cuts-ccier.org/CoMPEG/index.htm). Over a period of 18 months (July 2012-December 2013), this project will be implemented in two phases. In the first phase (up to March 2013), specific studies will be undertaken covering select sectors, such as Pharmaceuticals, Electricity, and Food & Agricultural Marketing Sector.

The rationale for selecting these sectors lies behind their significance to the Indian economy. Sectors, such as pharmaceuticals and infrastructure (electricity) are the backbone of an economy and a propeller of socio-economic growth. The Food & Agricultural Marketing sector, on the other hand, aside from being significant from the point of sustenance, is the base intermediate sector which has a significant linkage effect with all other sectors of economy.

B. Objectives of the Meeting

The meeting was conducted to address the following objectives:

- Review the progress of the research in the three select sectors and map the direction of the research progress with the project objectives
- Discuss and fine-tune the research methodology and facilitate discussion amongst participants

¹ www.iica.in/SectorStudies.aspx

- Introduce the newly developed *Competition Impact Assessment Toolkit* for undertaking legal and policy analysis in select three sectors

C. Opening Session

In his opening remarks and Chair of the session, **Bipul Chatterjee**, Deputy Executive Director, CUTS adduced on the relationship between competition and economic growth and the need for adoption of NCP to achieve higher growth in India. He also enunciated the relevance of the issue from the point of view of the three select sectors of study especially since the NCP is in its final phase of its adoption.

The members present in the meeting were a perfect composition of select PAC members who were subject and sector experts, researchers of the sector studies and CUTS representatives (Refer to Annexure 1 for List of Participants).

Competition Impact Assessment Toolkit

Government policies in developing countries like India are not free from competition distortions due to its protectionist attitude towards domestic industries. According to Lewis (2005), if countries eliminate distortion induces policies, it could result in higher growth for a nation.² Further, these policies induced anticompetitive outcomes hinder the market forces to play freely and fairly, thus resulting in market failure. Now to address the market failure, a new/amended set of regulatory and/or policy measures take place to resume the free market forces. Thus, the system hits to a vicious circle of regulatory failure.

Under such circumstances, to put the economy back on track it is imperative to develop a *Competition Impact Assessment Framework* in the context of a developing economy. Chatterjee mentioned the purpose of the toolkit, i.e. to review the existing government policies, regulations etc. from a competition perspective and to align it with the competition principles. Competition Assessment Framework as prepared by Department for International Development (DFID), UK and Competition Assessment Toolkit of Organisation for Economic Cooperation and Development (OECD) are two already existing toolkits to analyse market structure and assess the impact of government policies on competition. Thus, the toolkit³ as developed by CUTS has been particularly designed to suit the requirements of a developing country. The external researchers are expected to make use of the toolkit, while undertaking assessment of competition distortions caused by government policies in the select three sectors. The experience of using the toolkit would provide CUTS with the opportunity to fine-tune and finalise the toolkit towards the end of the project and it would be widely distributed among the research/practitioners community.

As described in the toolkit, the competition distortions can be assessed in the light of few questions under the following heads:

² William W. Lewis, — Power of Productivity: Wealth, Poverty and the Threat to Global Stability, University of Chicago Press, 2005.

³ www.cuts-ccier.org/CoMPEG/

- A. Distorts the Level Playing Field between Competitors
- B. Creates Entry Barriers
- C. Limits Free and Fair Market Process
- D. Promotes Monopolies and their Abuse
- E. Limits Scope to Introduce New Products or Supply Existing Ones in New Ways
- F. Limits Institutional Independence
- G. Is a Distortive Subsidy/State Aid
- H. Driven by Vested Interests Promoted by the Government
- I. Does Not Effectively Prevent Anti-competitive Conduct

If the answer to any of the nine questions posed above is in the affirmative, the policy requires deeper analysis. Finally, the last question to be posed before concluding analysis within the prescribed framework is as below:

- J. Balancing Interests: Public notification and justification of deviations from competition principles, i.e. there can be justifiable cases of deviations from competition keeping in view specific context.

D. Presentation of the Research Work and Methodology

Measuring Benefits of Competition in Food and Agricultural Marketing Sector

The Food and Agricultural Marketing Sector presentation was delivered by **Anusree Paul**, Senior Policy Analyst, CUTS. In her presentation, she focused on the purpose, scope and the research methodology of the sector study.⁴ As explained, the purpose of the study is to promote effective implementation of NCP by advocating for legislative changes identified in the select sector.

The steps of the analysis in compliance with the purpose of the project are:

- Agricultural marketing structure: identification of structural rigidities, imperfections and competition distortions
- Review of the laws, policies and institutions that are responsible for competition distortion
- Identify and study the political economy challenges, in implementation of competition reforms in the sector
- Relevant legislative changes can be proposed to promote competition in the sector
- If the proposed legislative changes are accepted, that what would be the economic gains (revenue gains to the government) would be discussed using a hypothetical economic model
- Advocacy agenda to ensure implementation of identified legislative changes in order to promote competition in the sector

⁴ www.cuts-ccier.org/CoMPEG/pdf/Agricultural_and_Food_Sector_Study.pdf

While elaborating on the first step of the analysis, Anusree threw light on the existing agricultural value chain and the associated institutions that were regulating the different components of the marketing chain. As she pointed out, existing literature also revealed that the sector was over regulated, resulting in risk and uncertainty with high marketing cost and hence dampening growth.

In this regard, **Aradhna Aggarwal**, Senior Fellow, National Council of Applied Economic Research (NCAER) and **Geeta Gouri**, Member, Competition Commission of India (CCI), advised to develop a clear interpretation regarding the interconnection of the agricultural marketing value chain and the agricultural marketing institutions and how the functions of the institutions were leading to competition distortions in the agri-marketing sector (practice related issues).

The PAC members suggested undertaking a survey for ground level observations as the marketing structure varies with each product in India. It was further suggested to select product/s for the study from the vast list of agricultural products, on the basis of their universal applicability, for example, tomato, for ground level observation. Tomato is a food product which is having a universal applicability in terms of its non-seasonal production behaviour with horizontal and vertical marketing linkage as an end product to consumers as well as primary product to food processing industries. The PAC members suggested considering a single representative market of the concerned product from each state to study the value chain.

Under the proposed legislative analysis, Anusree identified and pointed out various relevant Central and state level laws associated with agricultural marketing that had scope for distorting competition and explained the nature of impediments arising from each. She mentioned about the Agricultural Produce Marketing (Regulation) Act, a prime Act, under which the Agricultural Produce Marketing Committee (APMC) had been formulated to regulate the market and marketing activities. **Shamnad Basheer**, Ministry of Human Resource Development (MHRD) appointed Chair Professor of Intellectual Property Law at National University of Juridical Sciences (NUJS), suggested undertaking a state-level comparative analysis of the amended APMC acts to get a holistic view and existing ambiguities (if any) which give a scope for anticompetitive practices.

For the purpose of economic analysis, Anusree prepared and presented a hypothetical model that attempted to quantify the consumer and producer surplus in a competitive scenario. Bhattacharjea and Agarwal advised her to incorporate different scenarios regarding the demand and supply side movements to refine the model.

Anusree also elaborated on the structure and objectives of the state-level perception survey and the secondary data research of her study. The objectives of the perception survey are to explore the current status of the APMC acts at the state-level *vis-à-vis* the practices on the ground, to identify political economy constraints and to gauge the perspective of stakeholders with respect to reforms. The survey would be conducted on the basis of a structured questionnaire to understand the inefficiencies related to the institutional involvement and the concerned political economy issues or the socio-political factors that hindering competition in the sector. For the

perception survey, it was suggested to interview representative stakeholders involved in the value chain starting from farmers to retailer, if possible.

Measuring Benefits of Competition in the Pharmaceuticals Sector

The presentation on the Pharmaceutical sector was delivered by **Aditya Bhattacharjea**, Professor, Delhi School of Economics and his PhD scholar **Fiyanshu Sindhwanī**⁵

Bhattacharjea and Sindhwanī made a joint presentation where they flagged competition issues in the Indian Pharmaceutical industry (IPI). They tried to assess the market structure through Price Cost Margin (PCM), Herfindahl-Hirschman Index (HHI) and entry and exit of firms using Centre for Monitoring Indian Economy (CMIE) firm level data. The period that they considered for the study was from 1990-2011 and confined their analysis at the aggregate level. Their analysis revealed a declining trend of PCM since 2007 signifying increasing competition. But due to the fragmented and segregated nature of the pharmaceutical sector, it would be rather difficult to explain further why and where the competition was taking place. Hence, a drug segment-wise analysis of market structure is required to be carried out as suggested by the PAC members.

Further, they also conducted an econometric analysis to study the determinants of PCM in the light of structure-conduct-performance analysis using panel data from 1990-2011. They took 609 pharma firms listed in the *Prowess* database. The possible explanatory variables could be – Market Share, Market Share Squared, Advertising and Marketing Expenditure, Research and Development Expenditure, Export Intensity of the firms and Trade Related Aspects of Intellectual Property Rights (TRIPs) period (using dummies). They further used the HHI to measure competition in the pharmaceutical industry. They also looked at the trends in the Merger and Acquisitions in the IPI and the role of CCI. Agarwal pointed out regarding the missing data of CMIE *prowess* and suggested researchers to be careful while refining the panel data set as it might produce a bias result. It was also suggested to undertake the economic analysis according to drug segments along with aggregative level.

In their proposal for future work, they would like to use Natasha Nayak's paper on the Competition in the Pharmaceutical Sector⁶ for a deeper analysis as it was flagging some important issues like recent Intellectual Property Right (IPR) cases, state of play in Comprehensive Economic Partnership Agreement (CEPA) negotiations with regard to TRIPs-Plus conditions, the debate on prohibition of branded generics, public procurement and distribution of generics (based on Tamil Nadu experience) etc. All these legislative review/legal analysis would need to be classified according to the Competition Impact Assessment Toolkit which complements the OECD checklist.

Basheer's expertise in this domain was instrumental in refining the approach for carrying forward the legal analysis. He pointed out that the various laws and policies should be reviewed to find out whether the emerging distortions were the outcome of definition of the law which gave

⁵ www.cuts-ccier.org/CoMPEG/pdf/Competition_Issues_in_the_Indian_Pharmaceutical_Industry.pdf

⁶ www.iica.in/images/Pharmaceuticals%20Sector.pdf

wide powers to regulators, or whether it was the case of ambiguities in the act that amplified the scope for anti-competitive practices.

Measuring Benefits of Competition in the Electricity Sector

The presentation was made by **Sangeeta Singh**, Principal Economist and Nandita Jain, Senior Economist from Nathan Associates.⁷

As introduced by Singh, the scope of the study under the ComPEG project was to see whether existing policies and laws were in line with the NCP, what could be the possible challenges in the sector due to the identified challenges, what would be the possible political economy constraints and how could they be addressed and how consumer welfare could be maximised with competition. The proposed work-plan comprised of an analysis of the electricity market with the perspective of NCP.

She and her team at Nathan proposed a sub-sector analysis within the electricity sector: fuel (coal), generation, transmission, distribution and retail. With regard to electricity generation sector, Nathan proposed to study the following, i.e. installed capacities, production decisions, pricing strategies, distribution patterns, recent growth and projections of players in public and private sectors. For the purpose of case studies, Torrent, Tata Power and Adani Power (unique model of sunk cost transmission) would be analysed.

Regarding the legislative/legal analysis to be undertaken by analysing the relevant regulations, acts e.g. Electricity Act 1910, 1948, 2003, National Electricity Policy 2005, National Tariff Policy 2006 etc. in the light of OECD and/or CUTS Competition Impact Assessment Framework. The electricity sector study outline was thorough in terms of various business models related to the markets for electricity generation, transmission and distribution. It was, however, felt by the PAC members that the study needed some more work on the economic analysis front.

Towards the end, Chatterjee summarised the discussion and suggested that there should be an overview chapter in the final report which should focus on ‘How Competition is contributing to Indian Economic Growth’ and discuss the provisions of and enumerate the benefits from the introduction & adoption of the NCP in the Indian Economy.

E. Key Points

The following are the key points of the suggestions of members of the meeting extracted from the discussion:

- *Competition Impact Assessment Toolkit* as developed by CUTS is suitable for researchers based in developing economies and the PAC Members/External Researchers were asked to review the same and provide their comments to CUTS.

⁷ www.cuts-ccier.org/CoMPEG/pdf/A_study_of_the_Electricity_Sector_by_Nathan_India.pdf

- It was suggested to consider the IICA sector studies as the base to undertake deeper analysis for legislative and competition issues.
- For the ***Food and Agricultural Marketing Sector***, it was advised to take a single product for ground level analysis as the marketing structure varies from product to product. Further, the product should be chosen keeping its universal acceptability in mind. PAC members had suggested taking ‘tomato’ as a product due to its non-seasonal product behaviour and horizontal and vertical linkages in the value chain.
- To assess the political economy challenges, representative stakeholders should be interviewed from the entire value chain of the product.
- In the ***Pharmaceutical Sector*** study, it was advised by the PAC members to undertake the market analysis according to the drug-segments which might reveal a different competition scenario in the sector.
- In the ***Electricity Sector***, it was advised to undertake state level studies as mentioned in the PAC meeting and also in the Terms of Reference (ToR) of the sector study.

F. Concluding Remarks

The meeting was mainly conducted to discuss, brainstorm and fine-tune the research methodology and the design of the entire sectoral analysis. The researchers associated with three sector studies presented their literature review, proposed methodology, sources of data and challenges of the study. The discussion that took place during their presentations provided valuable inputs and comments regarding their study to proceed further.

The timeline of the submission of the report (as per the ToR of studies) was reiterated at the end of the meeting so that the researchers were able to meet and maintain deadlines:

- First round of analytical and narrative research will be completed by first week of December 2012. Based on that, sector-specific structured questionnaires will be prepared for conducting interviews in December 2012.
- The first draft of the study will be completed by the end of January 2012. These will be anonymously reviewed in February 2013 and its result will be shared with researchers.
- The final draft of the study will be completed by the end of March 2013.

The presentations related to the chosen sectoral studies have revealed different approaches undertaken by researchers as the sectors are representing three diversified areas of concern for an effective implementation of NCP. Thus, this meeting has rendered them a thread of convergence keeping in mind the broader objective of the project.

LIST OF PARTICIPANTS

PAC Members

1. Geeta Gouri, Member, Competition Commission of India (CCI)
2. Aradhna Aggarwal, Senior Fellow, National Council of Applied Economic Research (NCAER)
3. Menu Chandra, Joint Director, FICCI- Corporate Law & Corporate Governance
4. Shamnad Basheer, Ministry of Human Resources Development (MHRD) appointed Chair Professor of Intellectual Property Law, National University of Juridical Sciences (NUJS)

Researchers (External and Internal)

1. Aditya Bhattacharjea, Professor, Delhi School of Economics
2. Fiyanshu Sindhwani, PhD Scholar, Delhi School of Economics
3. Sangeeta Singh, Principal Economist, Nathan Economic Consulting
4. Nandita Jain, Senior Economist, Nathan Economic Consulting
5. Anusree Paul, Senior Policy Analyst, CUTS

CUTS and CIRC Representatives

1. Bipul Chatterjee, Deputy Executive Director
2. Hari Prasad C G, Associate Fellow
3. Swati Thapar, Research Assistant
