

REPORT OF THE LAUNCH MEETING

NATIONAL COMPETITION POLICY AND ECONOMIC GROWTH OF INDIA

(ComPEG Project)

August 21, 2012



BACKGROUND

Competition in a market is to ensure optimal allocation of resources for addressing structural rigidities and achieving dynamic efficiency over time. Competition enhances economic welfare, both producer and consumer welfare, by lowering prices, of inputs as well as final products, of other costs of doing business, and by ensuring more choice of better quality goods and services.

While a legal framework (competition law) exists in India, there is no documented policy on competition principles necessary to build a better competition culture across the country. The Government of India has, therefore, drafted a National Competition Policy (NCP), which is expected to be adopted soon.

In June 2011, the Ministry of Corporate Affairs, Government of India constituted a Committee on NCP and Related Matters. In December 2011, the Committee submitted its report. In order to develop a strategy for competition advocacy, the Committee sought inputs to undertake evidence-based advocacy. With assistance from CUTS Institute for Regulation & Competition (CIRC), the Indian Institute of Corporate Affairs (IICA) conducted a set of diagnostic studies of 10 sectors and on three cross-cutting subjects.

They reviewed competition-distorting provisions in sector-specific policies, laws, regulations, practices, etc. and suggested recommendations to address them, constituting an “advocacy agenda”. Relevant policies, laws, provisions, etc. *vis-a-vis* these select sectors were analysed on the basis of a checklist of factors impacting competition and a synthesis report based on identified competition principles was prepared.¹

With the objective of carrying forward the “advocacy agenda” of the NCP of India, CUTS International, with support from the British High Commission (BHC) in India under its Prosperity Fund, is implementing a project entitled “National Competition Policy and Economic Growth in India” (ComPEG).

INAUGURAL SESSION

Importance of Effective Implementation of NCP in India – Mapping Challenges

Welcome Address

The meeting started with the inaugural address of **Nitin Desai**, President, CIRC, who chaired the session by welcoming the Chief Guest of the session, **Veerappa Moily**, Hon’ble Union Minister for Power & Corporate Affairs, India and followed by his elocution on the scope and the purpose of the ComPEG project. To take forward the agenda of NCP and identify the existing gaps against the touchstone of competition and measure the benefits of correcting the same on the entire Indian economy, CUTS has initiated this project. He further spoke about the purpose of NCP which will effectively generate and enhance the culture of competition in domestic markets. It will also recommend ways to enhance the role of competition and

¹These studies and the synthesis report are available at www.iica.in/SectorStudies.aspx.

competitive markets in the government policy making at the Central and state levels. He also enunciated the importance of NCP for growth and development of a nation.

Special Address

Pradeep S Mehta, Secretary General, CUTS started with a note that the project would be another milestone of the journey of last 15 years to implement competition policy. In this aspect, he elaborated on the evolution of the competition law to check anticompetitive practices in the market and the journey of drafting the NCP of India. A Committee was framed under the chairmanship of Dhanendra Kumar, Former Chairperson, Competition Commission of India (CCI) to frame the NCP and Related Matters in June 2011. The Committee noted the earlier steps towards a NCP in India which included recommendations of the Raghavan Committee, commitment of the government in the Parliament/ Standing Committee of the Parliament, Planning Commission's Working Group on NCP and CCI's Advisory Committee on NCP. CUTS played a vital role in forming the draft NCP and Mehta was the active member of the Committee.

In the continuation, he talked about the motivation and the purpose of the current project. The project is motivated by the objective of bringing markets in compliance with the principles of competition such as effective prevention of anticompetitive conduct; institutional separation between policymaking, operations and regulations; fair market process; competitive neutrality etc. He also spoke about the value addition of the project by emphasising the usefulness of the developed methodology as a template of future studies.

Andrew Jackson, Counsellor (Knowledge Economy), BHC in New Delhi talked about rationality of BHC working in India and the negotiations between British and Indian economies' working. He further mentioned that to make and enable the debate on competition issues and gather the learning experience from the debate that will generate through the project, BHC has been interested to fund this project on competition policy and economic growth.

He pondered on the changing system of the competition in last two decades where we still continued to improve the competitiveness of the market by promoting competition policy. He further advocated for competitive business practices by promoting competition policy, transparency and predictability of the market in an economy to achieve higher economic growth.

Ajay Chhibber, Assistant Secretary General, UN and United Nations Development Programme (UNDP) Regional Director for Asia and Pacific started his speech by thanking the Chair and the Chief Guest. He put forth his views on different factors responsible for the slowdown of Indian economy since 2008. "Other developing economies also showed slowdown but the extent of slowdown of Indian Economy is much sharper..." he said. According to him, some of the micro and meso factors also attributed to macro-economic issues along with global factors. Fiscal deficit, currency decline etc. are contributing to this slowdown along with the global factors. Elaborating on the issues of European crisis, he opined that we are finding series of factors to fix the problem but the global factors are unlikely to prove effective.

Further, he showed an account of India's global competitive situation with respect to 'Global Competitiveness Index' (GCI) which is a comprehensive assessment of countries' economic

competitiveness, produced by the Global Competitiveness Network (GCN) of the World Economic Forum (WEF). The index includes micro and macro factors. The GCI provides a weighted average of over 100 different variables, where each variable is considered to reflect one aspect of competitiveness. According to the Index, India ranks 56th in comparison with China (21st), Indonesia (46th), Thailand (39th) and Malaysia (31st) out of 168 countries.

Talking on the debate of FDI in retail issue, he said that it is a debate in many countries where no clear solution is visible. Phased approach would be a necessary step to be considered. Pointing on the importance of competition policy, he argued that focus is required on macro along with micro areas and factors to promote competition culture.

Baijayant 'Jay' Panda, Member of Parliament, Lok Sabha deliberated on possible hurdles in the implementation of competition policy. Sectoral competitiveness is one of the major challenges. Citing the example of telecom sector, he argued cronyism has taken places in the sector. One of the major hurdles to overcome implementation challenges of the economic reform agenda lies in local politics, he said. As the regionalism has developed, to spell out the benefits of the reforms to region and states, marketing of reforms is required. This will be possible with a new and good politics. Hence, the need of the hour is to modernise our polity and what we need right now is new and good politics to enhance competitiveness for achieving higher growth.

Arun Maira, Member, Planning Commission of India adverted on the challenges on the implementation of competition policy. "Different institutions are tying and working together to deal with the macro issues in India" he said. Hence, a system analysis is required for good practices. Mistrust is there from the peoples' side on the calibre of our institutions. Hence institutional building is required to be developed and redesigning of institutions is inevitable for a better competition environment. Further, he advocated that re-architecting of institutions would enhance the growth of the nation. Adverting on the Planning Commission's involvement on the issue, he mentioned that Planning Commission is attempting to address the agenda of current challenges related to institutional building scenario to foster grow that the moment.

In the inaugural address, **Veerappa Moily**, Hon'ble Union Minister for Power & Corporate Affairs, India enumerated that in the current economic scenario Competition Policy and the reform agenda must be taken as priority. He mentioned that fiscal issue, governance, reforms etc. all should go side by side to take a holistic approach of reforms irrespective of government and private sector. He stressed on advocacy which is very important to take the economic and reform agenda of the nation forward. The current problematic issue that India is the spillover effect of reform from one sector to another sector. The reform is not percolating to other sector from one sector and hence overall growth is hindered.

"The benefits of competition law is known but without advocacy the effects will not percolate" said by Moily to emphasise on the advocacy agenda to fan out the reform effects. He argued that there is need for effective implementation of competition policy since anticompetitive forces cause hurdles to growth. Looking for an effective competition policy to create a conducive business environment is essential.

He further encouraged CUTS for its action-based research and advocacy agenda in the line of promoting an effective competition and urged to take it forward at the regional level. To move

this competition and reform agenda forward and percolate at the state level he suggested involving chief ministers of the state.

Dhanendra Kumar, Ex-Chairman, CCI, Principal Adviser, IICA, Ministry of Corporate Affairs, spoke about the proactive promotion of competition policy to achieve higher growth. The concept of competition and competition policy are required to be considered with much attention and are required to be promoted as they are not come of its own. According to him, anticompetitive practices are unintended outcome of government policies, rules and regulations, the issues that are need to be reviewed.

He further pointed out that to bring reforms; it is required to develop common agreed agenda at state level advocated by the Central Ministry. State can also imbibe the culture of competition so that the benefits of competition should also be reached to ultimate consumers. Pointing out on the capacity building agenda, he argued that capacity building of ministers, departments at Central and state level could be undertaken so that they can themselves foresee the benefits and positive effects of competition.

SESSION I

NCP and Economic Growth in India – Introduction to CUTS Project

The project overview presentation was made by **Natasha Nayak**, CUTS.

In her presentation, she substantiated the links between competition policy and growth in the context of the project. Examples were cited from the relevant literature e.g. a study done by *Australian Productivity Commission* on expected benefits of competition reforms. The study reveals that the annual gain in real GDP was 5.5 percent and consumer gains by A\$9bn due to competition reforms in the nation. She also gave glaring examples of developing countries along with the sectoral evidences to show that the competition as a driver to economic growth.

She also delivered a brief presentation on the purpose, objectives, implementation, research plan, methodology and the advocacy plan of the project. The purpose of the project is to create necessary and sufficient conditions for adoption of legislative changes to enhance competition in select sectors: pharmaceuticals, electricity, petroleum and natural gas. The objectives of the project are to:

- ensure that government policies are aligned with the principles of competition,
- translate benefits of enhanced competition to realisation of the objective of sustained economic growth,
- formulate a template/methodology for similar studies for other sectors subsequently.

The implementation of the project will be done in two phases: Stage I will comprise research and advocacy for legislative reforms. The tentative time frame is June 2012-March 2013. The second stage will be on advocacy and monitoring implementation of NCP where the study on the progress of implementation of NCP will be done along with the advocacy with the stakeholders on adoption of proposed reforms. The time frame will be April-December 2013.

She further deliberated the research plan of the stage I of the project. As a part of it, a Project Advisory Committee (PAC) has been formulated for guidance and assistance through the project tenure. A Research Review Group (RRG) will also be formulated to review the research output. To identify the competition distortions in the select sectors, competition impact assessment will be done on the basis of OECD competition assessment toolkit. Further, suggested corrective measures through legislative reforms will be done on the basis of literature survey and perception surveys, i.e. by one to one interviews and stakeholder consultations. To map the political economy challenges in implementing reforms in select sectors, literature review and structured questionnaires and stakeholder consultations methodology will be adopted. Quantification of economic gains from enhanced competition as an outcome will be measured through market structure analysis, concentration, entry barriers, conditions, firm behaviour etc.

As a part of the advocacy plan of the project, regular engagement with the sectoral associations and stakeholders viz. industry associations, relevant ministries, departments, academics, media, consumer groups (electronic as well as in person) will be carried out. Sensitisation of Parliamentarians through various fora, such as PARFORE and national dialogue with stakeholders to disseminate all research and survey findings will also be the part of the advocacy agenda.

She also adduced the changes proposed by PAC in the project. The focus of the project will be on three sectors viz. Electricity, Pharmaceuticals and Food & Agricultural Marketing. She mentioned that the Petroleum and Natural Gas sector, the previously decided sector, has been replaced by the food sector as per advice of PAC members.

SESSION II

Roundtable Discussion on ‘An Effective Policy Framework of NCP – Agenda for Action’

Amitabh Kumar, Partner, J Sagar Associates; spoke on the issue of overlapping of sectoral regulators. Citing instances from the telecom sector, he enumerated about the overlapping regulatory and functional issues of Department of Telecommunication (DoT) and Telecom Regulatory Authority of India (TRAI). For instance, TRAI is dealing with competition issues to promote competition in sector and DoT deals with merger issues. Hence, there is an overlapping of functions of the two regulatory bodies. Speaking on the electricity sector, he called attention to the Electricity Act 2003 which mainly involves generation, distribution, transmission and trading in power. Section 60 of the Electricity Act deals with anticompetitive practices of the sector. Referring to the examples, he denoted that NCP should resolve the anticompetitive matters by addressing comprehensively and forwarding the competition agenda in our country.

Ashok Lavasa, Additional Secretary, Ministry of Power articulated the regulatory and structural issues in the power sector. Structurally the sector exhibits vertically integrated monopoly. Legislation alone is not enough to implement or enhance competition in the sector. Unless monopoly of fuel supply is dealt with, power sector will never become competitive in chain effect. According to him, there are issues which go beyond the creation of laws and that are

needed to be addressed in general and sectoral level. Whether the states have enough capacity to deal with competition issues are also required to be investigated. Distribution is a matter of state concern, hence to bring efficiency and competition private participation should be allowed to the sector. He mentioned about the Private-Public Partnership (PPP) model of distribution to improve the situation.

On his note, **Dilip G Shah**, Secretary General, IPA, lucidly spoke on the study outline of the pharma sector. Impact of macro policies and practices on competition is required to be assessed. Regulatory infrastructure and its policy framework, intellectual property right (IPR) regime, pricing policy in the context of universal healthcare, marketing practices, role of policy on trade channels etc. are some issues that are required to be pondered upon in the sector. The proposed outcome of the study would be to provide safe, effective and quality medicines by ensuring access and availability of the medicines and promote innovation to bring new medicines and treatment.

Floor Discussion

The panel discussion was followed by a floor discussion. **Pradeep S Mehta** asked panel's opinion on the overlap issue that lead to anticompetitive outcome and about a cognate regulator in energy sector. In reply, **D Kumar** admitted that overlapping does have an anti-governance outcome rather than anticompetitive and the issue would be addressed in NCP and implementation of a particular provision. He further emphasised on the policy coherence and institutional redesigning aspect to combat the overlapping problem.

Ashok Lavasa enumerated on the importance of the role of regulator in the power sector as it serve the consumers. Elaborating on the pricing policy of the electricity sector, he pointed out that the retail price of electricity is regulated whereas none of the input prices are regulated. This lead to a high fuel/energy cost almost around 90 percent.

In the context of open access in electricity, **V.K Allawadi** pointed out that regulation is required to provide electricity through open access. Regulators, distributors, state government and surprisingly consumers are reluctant to go for open access. There is a conflict at the regulator level regarding the anticipated revenue loss due to open access and this is where consumer groups are required to be active to favour open access.

CLOSING SESSION

The session was chaired by Nitin Desai. The two other speakers of the session were Pradeep S Mehta and Dhanendra Kumar.

In his closing session speech, **Nitin Desai** summarised the major points that was discussed in the meeting. He enumerated that along with macro issues micro economics is also key part of growth issue. In the context of competitive environment of India, he emphasised that the worst area is the procedure and CUTS has chosen three sensitive areas/sectors for their study where the procedural bottlenecks are widely prevalent. Pointing out on the power sector problem, he

remarked that as market is failed to create, private participation is less. Losses are mounting as coal price has gone up along with a messy tariff structure.

D Kumar in this concluding speech shared three thoughts. According to him, concept of accountability of all regulatory bodies is required to be built in – there should be some mechanism to evaluate it on economy and consumers. Further, objectives of formation of those regulatory bodies are required to be clearly mentioned. Finally he pondered on the issue of consumers’ choice. He emphasised towards building a system keeping the consumers’ choice in mind.

Pradeep S Mehta spoke about the principles of competition policy, in particular competitive neutrality which is derived from OECD competition checklist. He pointed out some challenges of the project to be addressed would be the open access issues in the power sector – why state hesitate to implement it, dealing with the political economy issues, inertia and *status quoism*. Pointing on the issues of agricultural sector that would be one of the key areas of the project, he adverted that the Agricultural Produce Marketing Committees (APMC) Act is a state concern issue that creating anticompetitive practices at the state level. As farmers are not that organised like traders, implementation of APMC will enhance the competition of the sector. This is one of the areas where the project is going to focus on.

KEY ISSUES

The launch meeting provided right opportunity to initiate a discourse on issues pertaining to competition, competition policy and economic growth among policymakers, researchers, industry associations, relevant ministries and academia in India. Some of the key aspects that arose during the meeting are, as follows:

- Proactive promotion of competition policy to achieve higher growth.
- Market compliances with the principals of competition are required to create competition culture.
- Advocacy is important to foster the spillover effects of reforms.
- Advocacy agenda should be a forwarded to State and regional level to promote effective competition.
- Re-designing of the regulatory institutions is inevitable to promotion economic growth.
- Development of common agreed agenda at the state level advocated by central ministry so that benefits of competition should reach to ultimate consumers.
- Overlapping lead to anti-governance outcome, hence there is a need of cognate regulators.
- Capacity building of the ministers, departments at the Central and state level is important to apprehend the benefits of competition.

ANNEXURE-I

LIST OF PARTICIPANTS

S. no.	Name	Designation & Organisation
1.	Aarti Kapoor	Programme Manager, British High Commission
2.	Aditya Bhattacharjea	Professor, Delhi School of Economics, University of Delhi
3.	Ajay Chhibber	Assistant Secretary-General, United Nations, and United National Development Programme (UNDP) Regional Director for Asia and Pacific
4.	Amitabh Kumar	Partner, J Sagar and Associates
5.	Amitava Banerjee	Deputy Director – Corporate Governance & Regulatory Affairs, Confederation of Indian Industry (CII)
6.	Andrew Jackson	Counsellor, Knowledge Economy, British High Commission
7.	Aneesh Jain	Research Assistant, ICF International
8.	Anil Bhardwaj	Secretary General, Federation of Indian Micro and Small & Medium Enterprises (FISME)
9.	Anku Sharma	Lawyer, LL.B. Campus Law Center
10.	Ankush Sharma	Research Assistant, ICF International
11.	Anoop Singh	Associate Professor, Indian Institute of Technology, Kanpur
12.	Anushree Paul	Senior Policy Analyst, Consumer Unit Trust Society (CUTS) International
13.	Archana G Gulati	Financial Advisor, National Disaster Management Authority
14.	Arun Maira	Member, Industry, Planning Commission
15.	Arvind Kumar	Advisor (TR) Transport Research Wing, Ministry of Road Transport & Highways
16.	Ashish Sharma	Principal, Booz and Co
17.	Ashok Lavasa	Additional Secretary, Ministry of Power
18.	Atindra Sen	Director General, Bombay Chamber of Commerce & Industry
19.	Awantika Manohar	Associate, J Sagar Associates
20.	Baijayant ‘Jay’ Panda	Member of Parliament, Lok Sabha
21.	Bharat Waklu	Resident Director, TATA

S. no.	Name	Designation & Organisation
22.	Bhaskar Chatterjee	Director General, Indian Institute of Corporate Affairs (IICA) , Ministry of Corporate Affairs
23.	Bipul Chatterjee	Deputy Executive Director, Consumer Unit Trust Society (CUTS) International
24.	Caitlin Wiesen	Country Director, United Nations Development Programme (UNDP) India
25.	Carlos Duarte	Ambassador of Brazil, India
26.	Cherian Thomas	CEO – Infrastructure Development Finance Co. Ltd (IDFC)Foundation
27.	D Sengupta	Senior Adviser, Confederation of Indian Industry (CII)
28.	Deepika Rajpal	Associate, Vaish Associates
29.	Dev Chopra	Deputy Director, US Peace Corps-India
30.	Dhananjay Modgalya	Consultant (Intellectual Property)
31.	Dhanendra Kumar	Ex-Chairman, CCI & Principal Adviser, Indian Institute of Corporate Affairs (IICA), Ministry of Corporate Affairs
32.	Dilip G Shah	Secretary-General, IPA & CEO, Vision Consulting Group
33.	G R Wadhwa	Advisor, Competition Commission of India (CCI)
34.	Gaurav Shukla	Research Assistant, Consumer Unit Trust Society (CUTS) International
35.	Gauri Shankar	Professor, Shri Ram College Of Commerce, Delhi University
36.	Geeta Singh	Senior Manager - Corporate Affairs Genesis Economic Consulting Pvt. Ltd.
37.	Girish Kumar Pande	Regional Finance Controller, Gyproc Saint-Gobain
38.	Harkripal Singh	Chief Representative, Travel Agents Association of India
39.	John Elliott	Contributor, The Economist
40.	Joymala Dutta	Research Assistant, CUTS Institute for Regulation & Competition(CIRC), New Delhi
41.	Kailas Karthikeyan	Regulatory and Public Policy Manager, Legal & Corporate Affairs, Microsoft Corporation India (Pvt) Ltd
42.	Kamal Sharma	Chief Operating Officer, CUTS Institute for Regulation & Competition(CIRC), New Delhi
43.	Lise Grande	Resident Coordinator, United Nations & Resident Representative, United Nations Development Programme

S. no.	Name	Designation & Organisation
		(UNDP) India
44.	M M Sharma	Head-Competition Law and Policy, Vaish Associates
45.	Mahendra Mehani	Legal Consultant & Advocate
46.	Manoj Rammohan.	Journalist, Press Trust of India
47.	Matt Crooke	Minister - Counsellor (Economic) Australian High Commission
48.	Natasha Nayak	Policy Analyst, Consumer Unit Trust Society (CUTS) International
49.	Nitya Nanda	Fellow, The Energy and Resources Institute (TERI)
50.	O P Shemar	Adviser, Ministry of Road Transport & Highways
51.	Pankaj Batra	Chief (Engineering), Central Electricity Regulatory Commission (CERC)
52.	Pankaj Kumar	Legal Officer – IPR Federation of Indian Micro and Small & Medium Enterprises
53.	Pawan Chopra	Director, Dua Consulting
54.	Poonam Pande	Project Associate, GTZ Project Consumer Protection & sustainable Consumption in India
55.	Pradeep S. Mehta	Secretary General, Consumer Unit Trust Society (CUTS) International
56.	Pranav Mehra	Lawyer
57.	Pranav Mehra	Consultant Knowledge Centre, OSC Services Ltd.
58.	Prithvi D	Newswire 18
59.	R Sudarshan	Dean, Jindal School of Government and Public Policy & Director, Centre for the the Study of Poverty & Inequality
60.	Raghav Narsalay	India Lead, Accenture Institute for High Performance, Accenture
61.	Rajiv Bansal	Secretary, Central Electricity Regulatory Commission (CERC)
62.	Rajnish Shekhar	Advocate, Rajnish Shekhar & Associates (R.S.A. Law Firm)
63.	Rakesh Kacker	Secretary, Ministry of Food Processing Industries Government of India
64.	S Chakravarthy	Adviser/Consultant, Competition Policy and Law
65.	S L Rao	Member, Board of Governors, Institute for Social and

S. no.	Name	Designation & Organisation
		Economic Change (ISEC)
66.	S. Majumdar	Principal Correspondent, Bloomberg TV India
67.	Saket Sharma	Former CUTS Colleague
68.	Sangeeta Singh	Principal Economist, Nathan Economic Consulting India Pvt Ltd
69.	Satvik Varma	Independent Law Chambers
70.	Saurabh Malhotra	Legal Counsel, Intel Corporation
71.	Seema Gaur	Advisor, Competition Commission of India (CCI)
72.	Seema Sangita	Economist, Global Development Network (GDN)
73.	Soumya De Mallik	Amarchand & Mangaldas & Suresh a. Shroff & Co.
74.	Tarique Anjum	Associate Director, Nexus Capital Advisors
75.	Thoralf Stenvold	Counsellor, Royal Norwegian Embassy
76.	Ujjwal Narayan	Senior Correspondent, Zee Business
77.	V S Ailawadi	Ex-Chairman, Haryana Electricity Regulatory Commission
78.	Veena Agarwal	Fellow, The Energy and Resources Institute (TERI)
79.	Vijay Chhibber	Special Secretary & Financial Adviser, Ministry of Road Transport & Highways Government of India
80.	Vikram Raj	Project Consultant, UNICET