Report of the CUTS-OECD seminar
On

Regulatory Reform and Building Governance Capacities in India

3rd December 2009, New Delhi, India

The OECD in co-operation with CUTS International organised a seminar on "Regulatory Reform and Building Governance Capacities in India". The purpose of the seminar was to discuss regulatory reforms in India and promote an open exchange and sharing of OECD experiences about the practicalities of implementing regulatory reforms. The focus of the seminar was on developing a better understanding of modalities and extent of implementation of regulatory reforms so as to remove unnecessary burdens imposed upon business and thus stimulate adequate and diverse investment for sustaining the growth momentum.

To achieve this objective, the seminar relied on Indian case studies and OECD country studies as well as presentation of overviews of the Indian regulatory scenario. It was felt that the exchange between OECD staff and Indian stakeholders, including government officials could help point out how OECD best practices could be appropriately tailored to India's conditions, needs and priorities.

Opening remarks were made by Richard Boucher, Deputy Secretary General of OECD, Arun Maira, Member, Planning Commission of India and Geeta Gauri, Member, Competition Commission of India (CCI). Richard Boucher pointed to the need for fine tuning regulation to achieve improved economic growth as both over and under regulation are dangerous. He highlighted the long tradition of the OECD in undertaking work on regulatory issues with a view to improving welfare in various countries and expressed OECD's intentions to undertake such work in close cooperation with the Indian government.

Arun Maira emphasised that the development of regulatory bodies has to be preceded by a careful identification of the potential beneficiaries of such regulation. He said that practitioners in India are in the process of learning by doing in their efforts to make regulation more effective through various available tools, keeping in mind the needs of the Indian society. Korea, China and Japan, he said, had reaped rich dividends from such an approach. He emphasised that replication of regulatory models implemented in other countries is not the answer. However, learning from such models and adapting them to local needs would be beneficial. He concluded by stressing on the need for developing a good regulatory structure and evolving a coordination mechanism between this structure and the CCI

Geeta Gauri echoed Richard Boucher's views on the need for fine tuning regulation but also stressed on the identification of economic agents that need to be regulated. She laid stress on rationalising regulatory structures through a single bill covering all regulators in the infrastructure sector. She opined that there were too many infrastructure regulators in place and pointed to the relevance of initiating a debate on the need for a super regulator.

Session 1: Regulatory Reform and India's Regulatory Environment

This session was focused on enhancing understanding of the context and issues that influence the success of regulatory reform, examining the Indian regulatory environment, and assessing where and how regulatory barriers need to be reduced.

Siddhartha Mitra of CUTS International made a presentation on “Regulatory Management and reform in India”. This was based on a paper written by CUTS International for OECD as ‘background paper’ for the seminar.

Mitra explained the rationale for regulation and the institutional landscape for regulatory governance and business in India. He pointed out that changes in the regulatory environment in India were a product of the trajectory of economic reforms which however had not impacted various sectors homogenously. India therefore still ranks very low in terms of the enabling nature of its business environment and certain unnecessary regulatory burdens on business and investors were still in place. He however pointed out that India had significantly liberalised its investment environment through elimination of industrial licensing requirements, dereservation of areas hitherto reserved for the public sector, liberalisation of foreign exchange control, rationalisation of tax rates and simplification of tax laws. He also drew attention to the fact that simplification on paper of the process underlying approval of investment projects by state governments had not been implemented in practice.

Mitra emphasised the need for better coordination between regulation and policy and between competition authority and sector regulators. He also identified important regulatory areas needing attention: inventorisation of licenses and regulations; better implementation of single window systems; enhancement of financial and administrative autonomy as well as accountability of regulators; deepening of consultations with stakeholders; and improvements in the redressal mechanism. He also emphasised on the need for work on assessment of regulatory quality through methods such as Regulatory Impact Analysis (RIA) and Consumer Impact Assessment (CIA).

Nick Malyshev of OECD made a presentation on “Regulatory Performance in OECD Countries and their Relevance to India”. He explained that success of policy depends on how well it is adapted to the relevant environment. He identified four areas where the implementing environment of India differed considerably from that of OECD countries: access priority, affordability constraints, administrative and regulatory capacity, and economic and regulatory risk. He pointed to the need for the Indian government to carefully consider reform experiences in OECD countries before drawing lessons.

The subsequent discussion emphasised that understanding the interrelationship between regulatory reform and good governance is important. The discussants pointed to the need for evaluating the degree to which reform programmes have involved assessment of government capacity and intra-government communication in determining relevance and appropriateness of different regulatory tools and approaches.

Representatives from OECD opined that the civil society plays an extremely important role in ensuring regulatory reforms. The need for political will and, thus, adoption of suitable means for its stimulation was highlighted. People’s participation was flagged as a crucial medium in this regard. But meaningful participation, it was felt, had to be preceded by capacity building and education as well as appropriate awareness generation among the civil society, business associations and media.

It was also emphasised during the discussion that regulators need to ensure increase in competition in markets characterised by its absence or weak presence. It was also highlighted that Indian regulators do have clearly defined role and suffer from continuous government interference. The issue of multi-sector regulation was also discussed and it was felt that multi-sector regulation can give better outcomes as it is less prone to capture.

Session II: Identifying strategies for improving regulator performance

This session focused on identifying specific challenges to the delivery of quality regulatory outcomes in India. The objective was to discuss evidence based approaches to policy development, ways and means for reducing regulatory burdens on business, and the potential for change in institutional frameworks for improving regulatory outcomes. Sector specific experience was reviewed to identify areas needing improvement in regard to regulatory processes.

Gregory Bounds of OECD made a presentation on "An overview of OECD Strategies for Improving Regulatory Performance". He pointed out that all governments find it difficult to control the quality and quantity of regulation due to various factors. However, to promote regulatory quality, efficiency and effectiveness, systematic use of tools is important and one such tool is RIA. He explained the experience of OECD countries in regard to RIA and flagged important issues for Indian regulatory regimes: political will and support for regulatory reform, and the existence of clearly defined roles for regulators

Mukesh Kacker of CIRC made a presentation on "Competition and Regulatory Deficit in the Civil Aviation Sector in India". He discussed the importance of civil aviation for India's growth, the need for investment in this sector and competition and regulatory issues in the sector. He pointed out that the civil aviation sector in India is in its transitional phase: while competition has increased in this sector with the entry of private airlines there are many barriers to competition such as public monopoly in fuel supply and the artificially sustained geographical monopoly of airports.

Payal Malik of Delhi University made a presentation on the Indian telecom sector. She drew attention to the various landmark achievements of the very visible regulatory reforms in this sector: growth in the cellular network and tariffs falling across the board. Moreover, she opined that success through regulatory facilitation of competition has been achieved despite the tussle between the government and the telecom regulator.

During discussion it was highlighted that the huge investment requirement of the infrastructure sector called for an articulation of the objectives of regulating the infrastructure sector so that divergent mandates for sector regulators could be eliminated. It was felt that a primary objective of regulation in the infrastructure sector was to make it more suitable for competition. Regulation should, therefore, generally be light handed and tariff setting could be left to competitive markets. However, there was a need to regulate sectors with natural monopoly characteristics closely.

In his closing remarks, Rolf Alter of OECD emphasised the need for a 'coherent whole of government approach' in creating a regulatory environment favourable to the creation and growth of firms, investment and international trade. He opined that design of regulation needs to take account of market conditions and the public interest. Here, he felt, the OECD experience could be beneficial for India.