

Roundtable on
“The Political Economy of Regulation in India-What do we need to do?”
and Release of the Report
“Competition and Regulation in India 2009”

March 28, 2009, New Delhi

A Brief Report

Introduction

CUTS International and CUTS Institute for Regulation & Competition (CIRC) organised a Roundtable on “The Political Economy of Regulation in India-What do we need to do?” moderated by Nitin Desai, Former Under Secretary General of the United Nations. It was organised as part of its work on India Competition and Regulation Report project which was supported by the British High Commission in India.

The panelists included Pradip Baijal, Former Chairman of Telecom Regulatory Authority of India; R. C. Srinivasan, Principal Adviser, Department of Economic Affairs, Ministry of Finance, Government of India; Subir Gokarn, Chief Economist, Standard & Poor’s Asia Pacific; Dhanendra Kumar, Chairman, Competition Commission of India; and V. K. Mathur, Former Chairman, Airports Authority of India. Other than these panelists there were a number of designated respondents. There were more than 60 participants from the government, regulatory bodies, civil society, research community and media.

Pradeep S. Mehta, Secretary General of CUTS International welcomed the panellists and stated that regulatory structure is required both for investment in infrastructure and consumer welfare. He then handed over the proceedings to Nitin Desai who thanked the British High Commission not only for its support to this project but also for its guidelines for various work on competition and regulatory issues. He invited Creon Butler, Deputy High Commissioner of UK to India to speak.

Mr. Butler thanked Pradeep S. Mehta for his work and looked forward to the work of CUTS and CIRC. He highlighted a tendency to set-up ‘multiple regulators’. He cited experience of the UK where initially a lot of regulatory bodies were set-up and a phase of consolidation followed to improve regulatory effectiveness. He pointed out that there was a lot of legislation in regulation but had not been implemented fully. He further dealt with three-pronged issues relating to competition and regulation:

- overall balance between a regulator and competition authority;
- ways to guard against regulatory inefficiency such as a regulator missing-to-regulate/under-regulate/over-regulate an area; and
- interaction amongst national regulatory bodies.

He cited examples from different countries to clarify specific issues in the broader debate of regulatory reforms. In the Indian context, he particularly noted that the experience of DFID and British High Commission in supporting CUTS to undertake regulatory research and advocacy has been very fruitful.

Montek Singh Ahluwalia, Deputy Chairman of the Planning Commission of India released the report entitled “Competition and Regulation in India 2009.” This report looks at regulatory issues in some specific sectors and impediments in their implementation.

Mr. Ahluwalia recalled how due to public-private partnership projects, the Planning Commission took greater interest in regulatory affairs. He pointed out that whether or not there is competition in a sector, such as Railways, an independent regulator is needed. Citing the difference in a regulator and a government department, he emphasised the role of detailed procedures in implementation of regulations which are to be found in the case of a regulator. There are many well-meaning laws that point in the right direction but implementation is weak. In this context, he noted that the biggest deficiency is in terms of ‘involvement of consumer groups’. He said that consumer organisations should more intensively interact with regulatory authorities.

Speaking about mechanisms to ensure accountability of regulators, he noted that the government can issue minimum guidelines which are to be further elaborated and used by a regulator. However, misuse of the power to issue guidelines to regulators has also been observed in certain cases, he added. Commenting about overall direction of regulatory reforms in India he observed that the process is moving in the right direction and he does not see it being reversed in future.

Concluding his address, Mr. Ahluwalia hoped that the above-mentioned report, the Roundtable and the activation of interest in this area would lead to some solid action in the future. He suggested that it would be very useful if a detailed and methodical exercise of ranking the state-level electricity regulators can be undertaken by an independent agency. Such an effort will strengthen the direction of regulatory reforms particularly at the sub-national level.

The Roundtable

Pradip Baijal stated that regulatory authorities were created when the Indian polity felt that political ministers could not deliver. Therefore, the rationale of the creation of regulatory authorities was in an inevitable conflict with political ministers. The government should distance the regulatory authorities from their political ministers.

Dhanendra Kumar congratulated CUTS on taking the initiative in competition and stated that the report released would be an important milestone in the debate. He then mentioned that awareness regarding the Competition Commission of India (CCI) and its functions needs to be raised. Since industry is not only a producer but also a consumer of goods and services, it benefits from competition. Regulation should be done in a measured fashion and a greater space for competition is required. He concluded by congratulating Pradeep S. Mehta for the report.

S. Chakravarthy, former Member of the Monopolies and Restrictive Trade Practices Commission, thanked CUTS for bringing out this report. He then touched upon the independence, autonomy and accountability of regulators. The first two flow out of the law creating a regulator but accountability is absent in the statute more often than not. Independence and autonomy have financial and functional aspects. There is very little financial autonomy to a regulator. Functional autonomy exists and Competition Commission of India can give decisions but Competition Act 2002 states that the government can supersede the CCI. Regarding accountability, he stated that most statutes authorise the government to give policy directives to regulatory authorities but this should be done in substantive areas and accountability oversight should be exercised by a Parliamentary Committee.

R. C. Srinivasan emphasised that the mandate of the government is to improve business environment and post higher growth. The regulations that the government contemplate should promote growth. Major sectors that need regulation are infrastructure, finance and services. We need to see if government policies encourage stakeholders to invest.

Talking about telecommunications, Mr. Srinivasan applauded the autonomy of TRAI and its consultative process. It was pointed out that TRAI started dealing with a new sector and did not have to deal with established legacies. Since there were no existing players in mobile telephony, the regulation process was quite smooth.

Subir Gokarn congratulated CUTS for bringing out this report. He then touched upon the financial sector when he stated that the Securities and Exchange Board of India has succeeded because its mandate is related more to change of practice and mindset instead of concentrating on market structure.

T. L. Shankar of Administrative Staff College of India spoke from his experience of having designed the Central Electricity Regulatory Commission. He said that since power sector was a public sector, discriminatory pricing could be used in favour of the public but that did not happen. Subir Gokarn said that in the power sector there is a vertical conflict of jurisdiction between Centre and State.

V. S. Ailavadi stated that there was a political consensus on the need for power sector regulation when he became the first Chairman of the Orissa Electricity Regulatory Commission. Earlier, the government had control over the finances but the Electricity Act of 2002 has brought financial and functional autonomy to the regulatory commissions. They continue to be a part of the executive apparatus of governance but have arms length relationship with the political part. The regulatory authorities should realise that people want service at reasonable charges and the political class has also been saying that the regulator should be in tune with public needs and interest.

V. K. Mathur said that we need to come up with something concrete that could be fed into the wider public debate to educate the common man on issues such as how can competition help him. Also we should think about how to make regulators because one cannot be a good regulator unless one takes it up as a professional career. He gave an example of the importance of informing the public. Taking an example from the aviation sector, he stated that Delhi and Bombay airports generate surplus and

therefore, subsidise other airports favoured by ministers. We must inform the public so that they know what's happening on the ground.

The Discussion

After the Roundtable many questions on diverse issues were raised.

A question was raised as regards the success of competition in sectors with huge demand and supply imbalance such as the power sector. Pradip Baijal replied that there are central and state regulators in the power sector and competition has to be simulated. One question was related to whether or not there will be speculation on the power sector trading exchange. Subir Gokarn replied that the exchange was for a market for power that does not exist in a true sense and which could only be operational once there is effective open access. There was no speculation since there was no open access on state grids. Bhanu Bhushan, a former Member of the Central Electricity Regulatory Commission stated that they tried not to let speculators come into this business. Since power scheduling is done a day ahead, transactions have to be known by the afternoon of the previous day. Thus, there can be no speculation because once a transaction is settled, it is scheduled and one cannot retract from it.

On the role of the civil society, V. K. Mathur stated that we need to speed up dissemination of information. Pradeep S. Mehta pointed out how CUTS is disseminating information in peoples-friendly language and in this manner it has been successful in making useful interventions in the process of power sector reforms in Rajasthan and West Bengal. Nitin Desai reminded the audience of the importance of the Right to Information Act in this respect.

R. C. Srinivasan in response to one of the queries regarding augmenting SEBI's powers to avoid Satyam type problems said that empowerment of the SEBI with search and seizure powers would require a change in the law. Given that many of its officers are taken from the Income Tax Office, search and seizure powers to the SEBI are not necessary. As regards the need for a regulator in the field of micro finance institutions, he said that these being non-banking financial institutions they are governed by the Reserve Bank of India. As such, self financing micro credit groups do not require a separate regulator.

In response to a question regarding envisaging a regulator for government spending in rural areas, Nitin Desai stated that the RTI had done good work in this respect and therefore, we need more transparency than a new regulator.

A question was raised on the effectiveness of a competition policy and law given the strong nexus between polity, industry and market forces in India but Subir Gokarn replied that such a nexus exists everywhere. Regulation is an inclusive and balancing phenomenon which may or may not work.

Conclusion

Nitin Desai summarised the discussion. He stated that regulators in India were functionally independent but issues had been raised about their financial independence and policy directives. He also emphasised that independent regulators

would be more effective when issues of accountability are sorted out. Even though we must uphold the notion of consumer protection, regulatory authorities must also keep in mind the environment for growth and investment. They should also keep in mind the impact of their action on other sectors.

Dipak Chatterjee, Director General of CIRC emphasised on the need for more engagement with the parliamentarians on the virtues of competition and regulation for the Indian economy to grow faster and better. He thanked everyone for their participation and the British High Commission in India for its support.