

Promoting Competitive Neutrality in Government Using Advocacy

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Advocacy Working Group, International Competition Network

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Consumer Unity & Trust Society (CUTS), which began as a consumer organisation 40 years ago, has graduated into a global policy think-cum-action tank over time. Realising that ‘competition’ is the best friend of ‘consumers’, CUTS got involved with promoting competition culture in its early days, including the promotion of ‘competitive neutrality’.

‘Advocacy’ has been the soul of CUTS’ endeavours since its formation. It has had numerous successes on this account, which includes, among other things, the enactment of the Indian consumer protection law in 1986, the enactment of new competition law in 2002 (that has a ‘competition advocacy’ provision), and the draft National Competition Policy in 2012.

Almost all of CUTS’ projects and campaigns – funded or non-funded – have strong advocacy components. CUTS has been working closely with relevant stakeholders for competition advocacy, including competition agencies, policymakers and regulators, civil society, academia, industry, legal fraternity and media. It has been using various advocacy tools in such endeavours. This note highlights the use of some of such tools by CUTS International towards competition reforms, including the promotion of competitive neutrality.

Publications

Competition Distortion in India – A Dossier

We have been producing a unique dossier, called [Competition Distortions in India](#) (or CDD – competition distortion dossier), every quarter since 2009. CDDs are short and precise publications focusing on policies and practices that can distort and/or promote competition in India. The main objective of the CDD is to showcase instances where the government’s well-meaning interventions in India could end up distorting the process of competition and, in the process, compromise consumer welfare.

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This publication series has reported several cases where the principle of competitive neutrality was violated. For instance, there was a directive in 2009 by the Indian government to use only Air India (then a public sector; now privatised) for all official travel. The rationale was that Air India was making losses, and there was a need to boost patronage so that the performance would improve. However, the airline losses could be induced by other inefficiencies; thus, diverting patronage to an inefficiently-run airline would not only distort competition but also pass on the burden of inefficiency to consumers.

Similarly, a competitive neutrality issue raised in 2011 related to the government policy of requiring all public sector units to ensure that at least 80 percent of their resources are banked with public sector banks. This created an uneven playing field tilted in favour of public sector banks.

There have also been instances of government notifications whereby mergers and acquisitions within public sector units have been 'exempted' from the application of the competition law, i.e. pre-merger scrutiny by the Competition Commission of India (CCI). The Competition Act of 2002 allows government notifications.

In 2017, two such exemption notifications were issued by the government, first for the nationalised (public sector) banks and second for the public sector operating in the oil and gas sector. While the first aimed at fast-tracking consolidation in the public sector banking space, the second was for the creation of a 'National Champion' fuelled by consolidating public sector oil companies.

Several such stories have been covered in the CDD series. However, as per our observation, the instances of policy-induced breaches of competitive neutrality are on the decline. Throughout the transition (from a controlled to liberalised economy), policies are, in general, becoming more pro-competition.

India Competition and Regulation Reports

The [India Competition and Regulation Report](#) (ICRR) series is a flagship biennial publication of CUTS since 2007, presenting a compendium of policy-relevant research on the status of competition and regulation in India, spanning across the sector and cross-cutting contemporary issues.

The ICRR editions do contain, in full or in parts, chapters related to competitive neutrality. For instance, the first edition contained chapters like "Policy Induced Anti-competitive Outcomes" and "The Nine Principles of Competition Policy", including competitive neutrality. Similarly, the chapter "Competition and Regulatory Issues in Coal Sector in India" in the 2013 edition had a prominent undertone of competitive neutrality.

Certain sectors like coal, steel, oil & gas, banking etc. (which have had either monopoly of the public sector or had its significant presence) have particularly been frowned upon for violation of the competitive neutrality principle. Relevant chapters on such sectors in different ICRR editions have raised the issue of competitive neutrality. The last two editions, devoted to the digital economy, have raised issues related to platform neutrality and net neutrality that are of the same genre.

Opinion Pieces in Newspapers

Opinion pieces (Op-eds) in leading newspapers have been a prominent advocacy tool adopted by CUTS. Apart from op-eds flashing competitive neutrality issues in the narrative, there have been at least two op-eds which had ‘competitive neutrality’ as the main theme.

In 2011, “[Competitive Neutrality in Public Policy](#)” was published in a leading business *daily*, which raised issues, such as providing subsidies to public sector banks on agriculture loans. It also flagged the issue of ‘reverse competitive neutrality’ where private sector players have been helped against public sector units, citing the example of closing public sector vaccine manufacturing units to promote private sector players.

In 2015, an op-ed titled “[Government policies hamper competitive neutrality](#)” advocated for the adoption of a National Competition Policy (NCP). The article raised the matter of collusion among public sector general insurance companies, which was induced by a government diktat mandating them to coordinate their marketing and also not to poach each other’s clients. The article also cited other examples from coal mining and banking to make a case for NCP.

Apart from the above-said publications, there are other publications in the form of briefing papers, research reports, discussion papers, policy briefs etc., on competition issues, which have also flagged the issue of ‘competitive neutrality’.

Projects

7Up projects

CUTS has implemented multi-country projects in select African and Asian countries to advocate, build capacities and strengthen constituencies *vis-à-vis* competition law and policy, popularly named as 7Up projects. Between 2000 and 2010, four such projects were implemented, details of which can be found at www.cuts-ccier.org/7Up1, www.cutsccier.org/7Up2, www.cuts-ccier.org/7Up3 and www.cutsccier.org/7up4.

Competition advocacy was the prime focus in the project countries, where competitive neutrality breaches were quite frequent then. Using a bottom-up approach was central to 7Up projects. Domestic constituencies, comprising civil society, consumer groups, academia,

industry, competition agencies and relevant government officials within each country, were created to advocate for competition reforms to their governments. We called it the National Reference Group (NRG).

The main aim of the 7Up projects was to reform competition regimes and to ensure consumer welfare through a bottom-up approach. The steps involved: evaluation of existing competition law, assessing capacity building needs of competition agencies, and spreading awareness and building capacities. The 7Up model was quite successful and was instrumental in either introduction of a competition regime or overhauling the existing ones in around 30 countries of Africa and Asia.

Following were some of the **realisations** as far as competition advocacy is concerned:

- Competition enforcement actions are not enough (need for *ex- ante*/preventive approach)
- Competition can be promoted in key markets through advocacy measures –leading to desirable outcomes for beneficiaries (consumers and producers)
- Advocacy to government officials – leads to well-designed government policies, effective competition regime and sector regulation.
- Different stakeholders need to be engaged in the reforms process, civil society being an important one (Bottom-up approach)

There were also several **challenges**, which needed to be flagged, and also what actions were taken to deal with such challenges.

- i. Lack of political will – To deal with it, national dialogues on competition were initiated by the NRG. In some countries like Pakistan and the Gambia, NRG was transformed into National Committees/Working Groups on Competition and Consumer Protection.
- ii. Lack of prioritisation of competition issues – More awareness generation events on competition issues for stakeholders led to more media coverage, which in turn helped raise the profile of competition issues among polity. NRG members continued their mission of competition reforms beyond the project.
- iii. Lack of capacity – The organisation of capacity-building workshops and updating university courses on competition policy and law helped enhance the basic capacity of local competition professionals.
- iv. A slow movement towards reforms – the fact that some of the local project partners rose to ‘positions of influence’ helped in continuing the competition reform agenda. For instance, partners from the Gambia, Senegal and Nepal took up senior positions in their respective competition agencies.

The project also helped in framing “CUTS’ Competition Impact Assessment Toolkit – A Framework to Assess Competition Policies in the Developing World”.²

CREW Project

Between 2012 to 2015, CUTS International implemented a project called “Competition Reforms in Key Markets for Enhancing Social & Economic Welfare in Developing Countries (CREW Project)” in four countries: Ghana, India, The Philippines and Zambia and across two common sectors: i) Staple Food and ii) Passenger Transport.

Compromises on ‘competitive neutrality’ were found in a couple of countries in the transport sector. Also, a need was felt to move away from government monopoly while maintaining city bus transport as a ‘public welfare’.

One of the outputs from this project was “Framework for Competition Reforms – A Practitioner’s Guidebook”.³

National Competition Policy

In 2011-12, CUTS, in association with the Indian Institute of Corporate Affairs, Ministry of Corporate Affairs (nodal Ministry for Competition Law and CCI), designed and conducted several (12) sector studies, which highlighted prevailing practices, policies and regulations that inhibit competition within respective sectors. These were done to produce evidence to advocate for the adoption of a National Competition Policy (NCP).

Earlier, the Ministry of Corporate Affairs had constituted a Committee for framing of National Competition Policy, with Pradeep S Mehta of CUTS as one of its members. The Committee submitted a draft NCP, which is still featured on the Ministry’s website.⁴ We are still advocating for its adoption.

CUTS with CCI

CUTS is an Empanelled Institution to conduct competition assessments of laws, policies or regulations and to conduct market studies. CUTS has conducted two such assessments till now – (1) APMC Model Law related to agriculture market reforms, and (2) Laws governing the transport sector – based on OECD tool kit and tool kits developed by CUTS.

World Competition Day

² https://cuts-ccier.org/pdf/CUTS_Competition_Impact_Assessment_Toolkit-A_Framework_to_Assess_Competition_Distortions_Induced_by_Government_Policies_in_the_Developing_World.pdf

³ https://cuts-ccier.org/pdf/FCR_Practitioners_Guidebook.pdf

⁴ https://www.mca.gov.in/Ministry/pdf/DraftNationalCompetitionPolicyForIndia-28th_July2011.pdf

In 2010, CUTS initiated a campaign to celebrate 5th December as World Competition Day. Till 2022, the campaign had support from 62 countries, including 58 competition agencies from around the world. The Philippines has even adopted 05 December as National Competition Day.

Efforts by the Competition Commission of India

‘Government departments’ (with certain exceptions) are included in the definition of ‘enterprises’ in the Competition Act of India. The applicability of the Act is, therefore, independent of the nature of the enterprises. There is no special treatment for public sector entities.

The CCI, in the past, has proceeded against public sector undertakings, such as Coal India; Indian Railways; Haryana Urban Development Authority; Department of Agriculture and Farmers Welfare, Haryana; Insurance Regulatory and Development Authority; several public sector insurance companies etc. for alleged violation of the Competition Act.⁵

In addition, the CCI is also using advocacy to promote competitive neutrality. It has developed its own Competition Assessment Toolkit. At least two rounds of competition assessment exercises have been undertaken involving various sectors, policies, rules and regulations.

The CCI has also introduced the State Resource Person Scheme (SRPS) to sensitise departments of state governments on competition matters, especially public procurement. There is a mention of competitive neutrality in the ‘Diagnostic Toolkit Towards Competitive Tenders’ meant for public procurement officers.

Need to Expand the Scope of ‘Competitive Neutrality’

In the traditional sense, competitive neutrality means non-discriminatory treatment between public sector undertakings and private enterprises. However, the concept needs to also apply between two private players, including based on foreign vs domestic. Regulatory or policy distinctions between firms can lead to anti-competitive outcomes.

Further, in the digital or platform economy, maintaining ‘net neutrality’ and ‘platform neutrality’ is very important from a competition perspective, hence should also be included in the concept of ‘competitive neutrality’.

⁵ [https://one.oecd.org/document/DAF/COMP/GF/WD\(2021\)28/en/pdf](https://one.oecd.org/document/DAF/COMP/GF/WD(2021)28/en/pdf)