

Report of the Symposium

Political Economy Constraints in Regulatory Regimes in Developing Countries

March 22-24, 2007, New Delhi

Competition, Regulation and Development Research
(CDRF) Project



Contents

I. Background	4
II. Outcomes from the 1st Cycle	5
III. Recommendations for Future Research.....	6
IV. Proceedings of the symposium.....	7
4.1 Inaugural Session.....	7
4.2 Session I: “Political Economy Constraints in Competition and Regulatory Regimes and Constraints faced by Competition and Regulatory Agencies”	7
4.3 Session II: Constraints faced by Competition and Regulatory Agencies.....	9
4.4 Session III: Efficiency and Effectiveness of Competition & Regulatory Agencies	11
4.5 Session IV: Competition and Regulatory Regimes in Small Economies	12
4.6 Session V: Experiences from Different Countries.....	13
4.7 Session VI: Sectoral Case Studies	13
4.8 Concluding Session.....	14
4.9 Cross cutting Issues	15
4.10 The Next Step.....	15
4.11 Lessons Learnt.....	15
V. Speeches/Observations	16
<i>Inaugural Session</i>	16
1. Roger Nellist, DFID	16
2. C. Rangarajan, Chairman, Economic Advisory Council to Prime Minister of India	17
3. Supachai Panitchpakdi, Secretary-General of UNCTAD.....	18
4. Nitin Desai, Former Under Secretary General, UN.....	19
<i>Closing Session.....</i>	19
1. Bimal Jalan, Former Governor, Reserve Bank of India	19
2. Evan Due, IDRC.....	20
3. Simon Evenett, University of St. Gallen.....	20
4. Frederic Jenny, Cour de Cassation (Supreme Court of France).....	21
5. William Kingsmill, DFID.....	22
Annexure 1: Symposium Evaluation Report.....	24
Annexure 2: Programme Agenda.....	32
Annexure 3: Proceedings of Project Advisory Committee meeting	38
Annexure 4: List of Participants.....	41

I. BACKGROUND

- 1.1 The rationale of the Competition, Regulation and Development Research (CDRF) project is that mere adoption of competition and regulatory laws is necessary but not a sufficient condition for it to be part of the market reform agenda especially in developing countries. Implementation is equally important. The working of competition and regulatory regimes in developing countries shows that while good laws are being drafted, the intent gets diminished in their implementation due to peculiar political economy and governance constraints.
- 1.2 Against this backdrop, CUTS International has undertaken a research programme entitled “Competition, Regulation and Development Research Forum (CDRF)”, to stimulate research and deliberations on competition and regulatory implementation issues in developing countries.
- 1.3 The project was launched by CUTS in September 2006 with the resource support of the Department for International Development (DFID) and International Development Research Centre (IDRC). The project has the objective of undertaking focused research, and advocacy on political economy constraints in implementing effective competition and regulatory regimes in developing countries. The project is carried out through a research cycle comprising of call for research abstracts, commissioning of research papers upon approval of research abstracts, reviewing and quality checking process, organising an international symposium to discuss the research papers and publication of research volume.
- 1.4 This first research cycle has been organised on the theme *‘Institutional Issues covering Political Economy and Governance Constraints in Implementing Competition and Regulatory Regimes in the Developing World’*. Following research areas are being considered in this cycle:
- Identifying and Overcoming Political Economy and Governance Constraints to the Effective Implementation of Competition and Regulatory Laws.
 - Independence of Competition and Regulatory Agencies: Feasibility, Practicality, and Necessity.
 - What should be the Priorities of Competition and Regulatory Authorities?
- 1.5 Several of the contributions have come from researchers based in developing countries and in this way the programme has provided a platform for developing country researchers to showcase their research and deliberate on political economy and governance constraints issues. The focus is on policy-oriented evidence-based research grounded on theoretical underpinnings. Furthermore, the research papers cover experiences of wide-range of developing countries and transition economies including Kenya, South Africa, Zambia, India, Brazil, Chile, Turkey, Caribbean Community (CARICOM) countries, Malta, etc.
- 1.6 *The Research Symposium* entitled “Political Economy Constraints in Regulatory Regimes in Developing Countries” on 22-24th March 2007 organised to deliberate on research findings that emerged in the first cycle. Research papers focusing on political economy and governance constraints that developing countries face in implementing their competition and regulatory regimes were discussed at the symposium. The symposium facilitated deliberations on the above issues and helped in identifying better solutions, suitable to the requirements of developing countries. The event was used to identify a research agenda from the perspectives of developing countries, which could be taken up in future.

The symposium provided an opportunity for the reflection of a wide range of views, and helped in identifying remaining shortcomings in the completed papers before they are finalised and subsequently published.

- 1.7 This project provides an important platform for generating substantive knowledge for better implementation of competition and regulatory policies and laws in developing countries. The project will also provide an opportunity to test the various hypotheses concerning the implementation of competition and regulatory regimes in developing countries and analyse the various misconceptions that exist in these countries.

II. OUTCOME FROM THE 1st CYCLE

- 2.1 While market friendly reforms have become common across almost all developing countries, so have market failures. In order to address these failures, a sound competition and regulatory policy needs to be put in place along with efficient enforcement mechanisms.

- The first step is to design a sound and robust competition and regulatory policy that goes beyond being ‘business friendly’ to being ‘stakeholder friendly’. It should explicitly recognize and incorporate consumer interests and unambiguously include advocacy as a tool for promoting awareness among consumers.
- Institutional endowment is central to the design and success of regulatory framework, thus it is equally important to put in place appropriate institutional mechanisms for enforcement and review.
- However, if competition law and policy is to yield all the envisaged benefits, political will and consensus for reform is necessary. Changing the law by itself will not help.

The government’s commitment to growth as a political objective, political maturity and overall political climate in a country matters. Competition policy outcomes and incentives for politicians are to be aligned properly so that adoption of competition/regulatory law gets a political buy-in.

- 2.2 In addition, creating a culture of competition, and the simultaneous involvement of the consumers in the entire process to successfully leverage the advantages of market-based competition is essential. The reconciliation of the perceptions of various players is essential and developing countries should adopt competition/regulatory laws that are in accordance with their special characteristics and requirements. However, media can play an educative role to help create ‘competition culture’. But in countries where there is severe lack of understanding about the nuances of competition regimes, it may not be that effective. Competition Law can also be promoted as a safety valve to garner support from its most fierce opponents.

- 2.3 It may be difficult to coordinate between the government’s objective of promoting public interest and regulatory authority’s objective of promoting efficient markets. Here the issue remains that how to balance the trade-offs between efficiency and public interest objectives, which may not be specifically mentioned in the law. Regulatory authorities may not be able to do much in situations that call for change in government policy/rules. In such cases the Authority has to differentiate between public interest and the vested interest and strike the right balance, and ensure that the best decision is taken.

- 2.4 For small economies, institutional design should be rooted in the specificities of the local conditions. Adopting US or UK style governance structures are being questioned in smaller jurisdictions. One of the objectives of competition law is to promote competition. But this may not be possible in small economies because of the limiting size of the market. Therefore it is better to apply competition law in

a less stringent manner. Since, institutional indivisibilities and high fixed costs preclude adopting large country regulatory models, regional agreements are optimal as they allow sharing of the 5 Es i.e. Expertise, Evidence, Enforcement, Externalities and Education in the design of multifunctional or multinational institutional arrangements.

2.5 There appears to be no correlation between development level and independence of regulatory agencies. Independence is influenced by several historical factors and therefore, national and sectoral studies may reveal important characteristics of regulatory agencies. The tripod of independence (autonomy), expertise, and accountability is a *sine qua non* for the effectiveness and efficiency of the regulator in the larger interest of the consumers at large. Thus, while principles of independence, accountability and capacity are universally accepted by regulatory institutions, how they evolve in a particular jurisdiction, will to a large extent be determined by the genesis and the politics of that particular country. The extent of restraints that are put on autonomy of regulators will also depend upon the larger environment of public opinion that exists in that country i.e. it is very country/culture specific. Thus the importation of ‘cookie cutter’ approach to institutional design for developing countries is subject to scepticism.

2.6 There is a clear need to be cautious and make distinction between regulation and control and ensure that the former does not degenerate into the latter. In this spirit, regulation should be the exception and not the rule. It may be a good idea to introduce competition law at the same time as market-oriented reforms to avoid giving impression to the private sector that what the State has liberalised is now again being placed under State control.

2.7 Another attribute of good regulation is accountability and transparency of the regulator and in this context the Reserve Bank of India (RBI) can be cited as example where certain standards of disclosure are prescribed. Similarly transparency laws, like the Right to Information Act (RTI) in India, might play an important role in enhancing transparency and therefore accountability of regulators and the process. It is also important to create a set of universally accepted standards for regulators across different sectors along the lines of Basel norms created by the Bank of International Settlements, an international organisation that fosters international monetary and financial cooperation and serves as a bank for central banks.

III. RECOMMENDATIONS FOR FUTURE RESEARCH

3.1 It is important to know, how agencies use or could use their discretion in the design of good rules. External constraints or commitments can foster good domestic policies, by providing guarantees against the reversal of current policies or lending credibility to promise of future returns. Such pre-commitments could help strike a balance between the reluctance to unleash competition immediately and the desire not to be held hostage to vested interests or weak domestic institutions. While this line of inquiry is standard in the public choice literature, it would be interesting to extend and examine whether it could be useful in the ‘optimal’ design of regulatory regimes in developing countries.

3.2 Another area of inquiry could be the ranking of policy options for developing countries and related to this is the additional question of what constitutes good policy advice. Since ‘one size or type does not fit all’, the next logical step would be to attempt to find sets of policies that work under different contexts and cultures. The underlying idea is not to develop policy options that are unique to each and every country, but to map broad set of policy options that have been known to work in a certain context and to investigate whether and to what extent these are scalable and replicable.

- 3.3 Analyses of deeper political economy issues, including the nature of entrenched vested interest is also important. For this purpose empirical studies at the ground level/micro level can be taken up. It is equally important that future research should focus on probing the diverse pattern in evolution of the political economy of competition and regulatory regimes across select countries.
- 3.4 Further, it is essential to focus further research on quality and efficiency aspects of regulation and regulatory regimes in developing countries. Future work could inter alia address questions such as:
- Do regulators do what they are supposed to do?
 - Whether what they are supposed to do is right?
- 3.5 Perceived successes and failures could be studied as cases to learn from such experiences. The domain of regulatory outcomes also require further research i.e. whether the regulatory agencies are giving ‘value for money’ or whether they are merely another bureaucratic process.

IV. PROCEEDINGS OF THE SYMPOSIUM

4.1 Inaugural Session

- 4.1.1 The two and a half day symposium began with a high profile opening session in which the speakers included Dr Supachai Panitchpakdi, Secretary General, UNCTAD; Dr. C. Rangarajan, Chairman, Economic Advisory Council to the Prime Minister of India; Dr Fredric Jenny, Judge French Supreme Court; Dr Nitin Desai, Former Under Secretary General, United Nations; Roger Nellist, DFID and Pradeep Mehta, CUTS. (Please see Annexure for their speeches/observations). This session highlighted the need for developing countries to create effective and distinctive institutional mechanisms for successfully implementing competition and regulatory policy. While market friendly reforms have become common across almost all developing countries, so have market failures. In order to address these failures, a sound competition and regulatory policy needs to be put in place along with efficient enforcement mechanisms. This is however not an easy task at the best of times. In certain developing countries the problem gets exacerbated as a result of weak institutional foundations.
- 4.1.2 The first step is to design a sound and robust competition and regulatory policy that goes beyond being ‘business friendly’ to being stakeholder friendly. It should explicitly recognize and incorporate consumer interests and unambiguously include advocacy as a tool for promoting awareness among consumers. The session also stressed that the mere adoption of competition and regulatory laws is not sufficient. It is equally important to put in place appropriate institutional mechanisms for enforcement and review. For this, the value of ‘political will’ was underscored. In addition, the speakers emphasized the importance of creating a culture of competition, and the simultaneous involvement of consumers in the entire process to successfully leverage the advantages of market based competition.

4.2 Session I: “Political Economy Constraints in Competition and Regulatory Regimes and Constraints faced by Competition and Regulatory Agencies”

- 4.2.1 The first technical session covered issues of “Political Economy Constraints in Competition and Regulatory Regimes and Constraints faced by Competition and Regulatory Agencies”. In all three papers were presented. The objectives of enacting competition law were discussed and the

potential conflicts between promoting efficiency and public interest objectives were highlighted. There should exist political will to implement competition policy and law. Competition policy is not neutral but economic competition can be used to further the aims of economic democracy. Political capture is likely, as evidence from even developed countries has shown. But what matters is the institutional context. In developed countries the coexistence of a sound institutional framework has helped in the implementation of competition policy.

- 4.2.2 The paper from Zambia highlighted how a weak institutional structure can cramp the process. The Competition Act was adopted in 1994, even as the state retained control in certain key industries such as telecommunications. These entities were exempted from the application of competition law thus obstructing the benefits of competition to become broad based. The Indian paper showed that a peculiar application of the erstwhile competition law, the Monopolies and Restrictive Trade Practices Act (MRTPA), had resulted in it degenerating into a 'licensing law'. Combined with very little competition in and for the market, the consequence was predictable. Prices were high, quality was poor and the waiting lists huge as one would expect from unfettered monopolies. Thus, when the new competition law was proposed it received immediate support from consumers, while businesses were ambivalent about it. The previous experience with MRTPA and the risk of bureaucratic high handedness in its application (such as penalizing overproduction) needed to be addressed for businesses to buy in to the new proposal. Eventually business supported the new competition law after concessions were made in the 'Merger and Acquisitions' provisions that raised the threshold for initiating an investigation.
- 4.2.3 The discussion that followed focused on the ways of tackling the 'tyranny of vested interests' while enacting competition policy and law, especially in the developing country context. It was pointed out when economic vested interests dominate political power they also limit growth dynamics and curtail economic opportunities for poverty reduction in developing countries. Competition policy should be judged explicitly against its contribution to tackling 'the tyranny of vested interests' for poverty reduction outcomes. The issue with competition is that consumers are not organised while producers/sellers are organised to influence the policy makers. Thereby, competition benefits are often directed to well connected and entrenched. It was pointed out that vested interests among entrenched producer groups are not homogeneous and that the nexus between business and government may be difficult to break. Invoking the 'public interest' objective to deal with vested interests requires a precise definition of the former, including the trade off, if any, between public interest in the short run versus the long run. Economies change only with pain and it is critical not to underestimate the role of the Social Order in this process. The 'rising tide lifts all boats' paradigm works only with the existence of a social order that has a social security system in place and a large middle class. Therefore the success of implementing competition law in most developing economies will depend upon how the gains are distributed, rather than on growth per se.
- 4.2.4 Whether enactment of competition policy and law will result in growth and/or poverty reduction was a question that most agreed required an empirical basis. If such a linkage exists it should be made explicit. The example of Australia was given, where one of the stated objectives of competition law is to raise the welfare of Australians. Therefore if competition policy and law is to be used as an instrument for poverty reduction, this should be enshrined in the law.
- 4.2.5 On the other hand, the session generated a common understanding that competition policy and law would enhance opportunities for larger participation in the economy, of groups that had previously been disenfranchised. In addition, the law would create a predictable regulatory environment for both producers and consumers. The role of consumer advocacy and the media

were underscored as necessary allies/constituents to improve governance and create the right checks and balances in the system. Media often plays an important role as a countervailing force against the nexus between government and business, though it can be compromised on occasions. In this context, the role consumer movement is vital. Finally, if competition law and policy is to yield all the envisaged benefits, political will and consensus for reform is necessary. Changing the law by itself will not help.

4.3 Session II: Constraints faced by Competition and Regulatory Agencies

4.3.1 It was recognized that regulatory agencies in developing countries may be susceptible to regulatory capture by the regulated industry, or to, political capture by the government. Four papers were presented in the session. The session discussed such constraints faced by regulatory authorities and explored appropriate strategies for regulators in the developing world.

The session highlights:

- i) Enactment of the law is not enough;
- ii) Regulatory Authorities face several constraints in developing countries;
- iii) That 'independence' as a concept is hard to pin down;
- iv) There should be a clear division of powers between the Regulatory agency and the Competition Authority; and
- v) Regulatory Agencies in developing countries should have clearly defined strategic priorities.

4.3.1 A survey of Competition Authorities across 21 developing countries highlighted the challenges faced by them. These included low level of development, lack of expertise and financial resources, lack of transparency in appointment of staff to the agencies and lack of a culture of competition. In some cases, financial resources and lack of a legal framework were also impediments. Finally, the survey also showed that lack of clear jurisdiction between regulatory agencies leads to stakeholder uncertainty. No clear solutions were advanced, but a recommendation to benchmark with international experience was made. To minimize conflict between regulatory agencies, it was emphasized that the mandate needs to be clear and that formal communication mechanisms should be available between the agencies. The Turkish telecommunications experience demonstrated the advantages of this and further recommended that ex-ante regulation be entrusted to the sectoral regulator and ex-post competitive investigations to the jurisdiction of the Competition Authority. This would serve to enhance the effectiveness of the institutions.

4.3.2 With regard to independence of regulatory authorities, the recommendations were not clearly spelt out. The metaphor used to describe independence was quicksand; the more you try to be independent, the less likely it will happen in practice. While that is debatable, independence does have two dimensions, 'formal' independence and 'real' independence. The existing literature has focused on formal independence i.e. the ability of the regulatory authority to take decisions that are free from the interest of the agents. Although it has been difficult to establish the effects of independence on the performance of the agencies or the sector, the hypothesis has been that there are benefits from the presence of this characteristic. Thus measurement of independence is a valuable exercise. The paper on independence of regulatory authorities attempts to develop an independence indicator through a structured questionnaire across a sample of 117 countries. The results are preliminary and show that the degree of independence varies across the sample, but the model does not capture what the authors had sought to capture at the outset, an indicator of 'real' independence. Nevertheless the implication is that a more refined indicator could be developed that includes variables that capture not only formal but also 'real' independence. The other interesting piece of evidence presented was that there appears to be no correlation between the

development levels of a country and independence of regulatory agencies. Independence is influenced by several historical factors and therefore, national and sectoral studies may reveal important characteristics of regulatory agencies. It was argued that accountability is the flip side of independence and accountability of agency is equally important. Independence without accountability would not work.

- 4.3.3 In terms of effectiveness of Competition Authorities, especially young ones, the dilemma relates to the choice of nature and types of cases to address from the many that may be awaiting disposal. This choice will be determined by the goals the Authority has set for itself. These could be either one or more of the following:
- a) to promote efficiency,
 - b) to be well known;
 - c) to be accepted;
 - d) to be understood; or
 - e) to maximize social impact.
- 4.3.4 It is impossible for Competition Authorities to simultaneously handle all the anti competitive cases that come up for before them and prioritising them is not an easy task. The Authorities could end up choosing cases that are important, but perhaps require more time, and therefore the trade off could be a long waiting list of cases. The choice depends upon the Authorities' objective, but the vital message for young competition authorities is that this choice will have to be made. It was argued that Competition Authorities should focus on cases with strong public interest element so as to build the credibility of the agency, rather than focus on economic impacts. The paper from South Africa demonstrated that public interest objectives could not be ignored especially in their socio-economic context. The new Competition Act of 1998 in South Africa articulates public interest objectives along side the goal of economic efficiency. Thus black empowerment and employment generation are development objectives incorporated in all policy initiatives, including competition law.
- 4.3.5 The discussion that followed granted that independence is important in itself but that it might be difficult to capture empirically in a quantitative measure. Nevertheless it is important to create a database of studies at national and sector levels in order to understand how regulatory agencies behave under different situations and contexts. It was pointed out that prosecutorial discretion will always exist since complaints are going to be more and therefore the competition authority will need to strategise. In Brazil, a simple method based on expertise and evidence is adopted. The choice naturally will differ across jurisdictions, and it was pointed out that the choice confronting an authority between tackling easy cases versus those with the most harmful impact would itself require scarce resources. In addition, between the consumer advocacy role of the authority and enforcement, the consensus was to promote advocacy on priority. It is important to create a culture of competition in the country. Opinion on whether to use competition law and policy for public interest objectives was divided; one set of discussants preferring its use for promoting efficiency only, while suggesting that public interest concerns be addressed by other measures of policy. The example of the US was given where enforcement of the law has been deliberately weakened to allow enterprises to compete on world markets. This view did not however generate much support.

4.4 Session III: Efficiency and Effectiveness of Competition & Regulatory Agencies

- 4.4.1 Several factors exist that have a varying degree of influence on the functioning of regulatory agencies in developing countries and affect their efficiency and effectiveness. This session dealt with such issues and identified appropriate measures to enhance efficiency and effectiveness of regulatory agencies. In all four papers were presented.
- 4.4.2 Using data from Latin American countries with meaningful privatisation programmes in their main infrastructure sectors, the research suggests that quality of regulation matters. While this seems to be an accepted position, there is lack of empirical evidence in this regard. Therefore one contribution of this research paper is to add to the scant empirical evidence available as of now on the benefits of sound institutional design for regulatory agencies. In the paper, regulatory quality is proxied by legal solidity, financial strength and decision-making autonomy while outcomes are analysed on the basis of the role of regulation to align prices with cost, on its effect on productivity and on reducing renegotiating opportunities. Another conclusion is that the impact of the regulator is stronger in weak governance environments.
- 4.4.3 In infrastructure sectors, market failure is likely be pervasive and lasting. Therefore in a sector such as water, regulation is essential if private participation exists. The options include regulation by agency, regulation by contract or a hybrid model. The existing theoretical literature has focused on the polar cases, while existing regulatory systems in several developing countries fall in between these two poles. The paper uses four case studies from the water sector in four South East Asian countries to establish that welfare outcomes from public-private contracts are superior in the presence of a regulatory agency. The conclusion is especially applicable when other institutional arrangements are not adequate to constrain opportunistic behaviour by parties to the contract.
- 4.4.4 There has been a proliferation of competition policy and competition law regimes in developing countries in the 1990s. Building capacity of young antitrust institutions in developing countries is a means to improving policing capabilities against anti competitive conduct by entities. Many countries have augmented their capacity with Technical Assistance (TA) from developed countries. Undoubtedly TA is necessary for countries that are financially constrained to establish credible regulatory regimes. The paper uses responses from 38 competition agencies to identify factors that increase the effectiveness of TA and therefore the effectiveness of the recipient agency. Timing of TA comes out to be a significant variable, as does the absorptive capacity of the recipient. “Over involvement” of the donor is considered good for the objective at hand. However a strong message remains that there are no ‘recipes for success’ and that each TA programme has to be designed keeping the unique issues and challenges in mind. In the larger context, the paper reminds us that an effective competition law regime requires supportive institutions such as an independent judiciary, political will and effective enforcement.
- 4.4.5 Effectiveness and efficiency of competition policy was estimated quantitatively using a two-step procedure. The effectiveness of domestic enforcement is measured by the index assigned to each country by the World Economic Forum (WEF) Index and the effectiveness of the competition policy regime is established by a positive link between the WEF index and ratio of FDI to national income.
- 4.4.6 The discussion that followed suggested that institutional design is fairly complex and idiosyncratic. Accordingly general conclusions are likely to be at a very high level of aggregation and therefore not useful in providing implementable recommendations. In addition to statistical evidence presented during the session, use of anecdotes and experiences as a basis for better understanding

of the underlying issues was recommended. In regard to TA, it was mentioned that it is most effective when set to the recipient's needs and not to donor's desires or donor standards.

- 4.4.7 It was generally accepted that a well-managed regulatory system is going to be subject to intense criticism by most groups because of the trade offs it involves. However, unless models that seek to measure regulatory effectiveness capture the consequences on variables that are most important to consumers i.e. price, quality of service and access, till then these models are not going to be attractive for the consumers. Further, it is important to disengage the regulatory impact on market outcomes from the impact that other variables may have on that outcome. For example, FDI that was chosen as an outcome variable in one study could be influenced by the competition regime but it is also likely to be influenced by the macroeconomic environment.
- 4.4.8 On the efficiency of regulatory agencies, it was agreed that this is a difficult variable to estimate. Benchmarking could be a solution but it also suffers from a similar infirmity i.e. who should one benchmark with. The session highlighted the need for further research in this area, especially the need to develop country and sector specific case studies that could provide lessons for the future.

4.5 Session IV: Competition and Regulatory Regimes in Small Economies

- 4.5.1 This session focused on institutional issues in implementing competition and regulatory regimes in small developing economies, where economies of scale make it difficult to finance and sustain several agencies. Implementing large country prescriptions for small developing countries may be counterproductive; other policy instruments could be considered complementary to establishing regulatory regimes.
- 4.5.2 If the size of the market makes it inefficient to establish single sector or single country regulators, two possibilities exist. Either one could have a multi sector regulator in a small country like Barbados or a multinational, single sector regulator through regional cooperation arrangements as in the Caribbean. The other problem in a small economy is that the community is small and people know each other making it difficult to enforce the mandate of competition law.
- 4.5.3 Both the papers presented in the session emphasized the regulatory endowment effect i.e. institutional design should be rooted in the specificities of the local conditions. Adopting developed country style governance structures are being questioned in smaller jurisdictions. One of the objectives of competition law is to protect and promote competition. But this may not be possible in small economies like Malta because of the small size of the market. Therefore the proposal is to apply competition law in a less stringent manner, for example, while evaluating mergers and also use complementary instruments such as trade policy to promote competition in the local market. For the Caribbean, institutional indivisibilities and high fixed costs preclude adopting large country regulatory models. In this situation, regional agreements are optimal since they allow sharing of the 5 Es i.e. Expertise, Evidence, Enforcement, Externalities and Education in the design of multifunctional or multinational institutional arrangements.
- 4.5.4 The discussion that followed largely agreed with the conclusions advanced in the session that small developing countries need to craft regulatory institutions based on the situation that obtains in each context. A suggestion was made to further examine the question whether size matters or whether it is the combination of size and isolation that matters.

4.6 Session V: Experiences from Different Countries

- 4.6.1 The session discussed experiences of select developing countries in implementing competition and regulatory regimes and examined institutional issues in this context. The emphasis was on discussing peculiar economic and social problems the selected countries face and to identify appropriate lessons for effective implementation of competition and regulatory regimes in developing countries. An interesting question posed by the chair of the session was whether and how much latitude developing countries should have in designing their institutional architecture for competition. This echoes the paradigm adopted in the WTO to give ‘Special and Differential Treatment’ to the developing countries. It must be remembered that when countries like Canada, UK and the US adopted competition regimes, they too were evolving their economic governance regimes.
- 4.6.2 The issues that country based studies brought out with respect to developing countries did not come as a surprise. The concerns related to independence (autonomy), expertise and accountability of competition and regulatory authorities. A deeper investigation of independence revealed concerns related to funding of regulatory agencies and their hiring (and firing) practices. The studies revealed how difficult it is for governments not to get involved in funding and in hiring decisions of regulatory agencies. The Kenyan study highlighted the need for capacity building particularly in the area of enforcement and case handling. The Indian example reinforced the view and also recommended that appointments to the Commission should be based on a collegial approach. It emphasized that the tripod of independence (autonomy), expertise, and accountability is a *sine qua non* for the effectiveness and efficiency of the regulator in the larger interest of the consumer and the public. What was surprising, however, was that the paper from Belgium echoed similar concerns for developed countries and interestingly stated that as far as the institutional framework for regulation is concerned, Belgium is like a developing country.
- 4.6.3 The key message from this session was that the while principles of independence, accountability and expertise are universally accepted by regulatory institutions, how they evolve in a particular jurisdiction will to a large extent be determined by the genius and the politics of that particular country. The extent of restraints that are put on autonomy of regulators will also depend upon the larger environment of public opinion that exists in that country i.e. it is very country/culture specific. The session brought out skepticism about the importation of ‘cookie cutter’ approach to institutional design for developing countries.

4.7 Session VI: Sectoral Case Studies

- 4.7.1 This session focused on discussions on constraints faced in introducing competition and implementing regulatory regimes in the following sectors: Electricity, Telecommunications and Financial Services. All the issues that were discussed in the earlier sessions affecting the quality of regulation in developing countries were in fact confirmed by the sector studies. Hiring practices and expertise, asymmetric information between the multiple stakeholders, accountability, weak institutional structure and political interference were documented in the sector case studies as important barriers to the creation of competitive markets. The electricity sector posed the biggest challenge, largely due to the monopoly characteristics of the industry and the associated difficulties in introducing competition in the sector. Another issue emphasized in the Electricity session, although germane to other sectors as well, was the distance between ‘regulators’ and the consumers. It is crucial to know the nature of complaints and quality of service issues affecting the consumer for the regulator to do a good job. Thus, the Consumer Affairs agencies and the Regulator would be advised to work closely on such matters. A related issue is the weak consumer

participation in the regulatory process. Consumer Organizations are not well organized and or not well presented. A regulator is more likely to succeed when it is pressured from all sides, rather than by only one side. In the case of the latter, the regulator is most likely to be captured by the group, which is exerting the maximum pressure. The solution lies in building the consumer movement and consumer advocacy to ensure that their interests are well articulated and presented before the authority.

- 4.7.2 In the financial sector in India, the evolution of the mutual fund industry provides a lesson for the banking industry in promoting competition. MFs have been successful because of the sound regulatory system established by the Securities & Exchange Board of India (SEBI) and if banking in India is to see increased competition, entry barriers must be reduced. However, the efficiency objective of promoting entry has to be traded off against public interest concerns in the Banking sector. These concerns relate to universal service i.e. rural banking and the overwhelming role of public sector in fulfilling this objective.
- 4.7.3 In the telecom sector, the issues are similar to electricity in promoting competition, such as open access, mandatory provision of interconnection, unbundling of network elements etc. with the important distinction that technological progress in the telecom sector across the world has made it easier to camouflage regulatory failures than in electricity.
- 4.7.4 Dr. Bimal Jalan, Governor, RBI delivered the key note address at the concluding session. He underscored the important distinction between regulation and control and hoped that the former does not degenerate into the latter. In this spirit, his recommendation was that regulation should be the exception and not the rule. Another attribute of good regulation is accountability and transparency of the regulator and in this context Dr. Jalan gave the example of RBI where certain standards of disclosure are prescribed for RBI. Similarly he appreciated the role that Right to Information Act (RTI) in India might play in enhancing transparency and therefore accountability of regulators and the process. He also advised creation of a set of universally accepted standards for regulators across different sectors along the lines of Basel norms created by the Bank of International Settlements, an international organisation that fosters international monetary and financial cooperation and serves as a bank for central banks.

4.8 Concluding Session

- 4.8.1 A part of the concluding session was devoted to recommendations for future research. While there was wide-ranging discussion of political economy constraints affecting the conduct of regulators, there was almost no discussion on how agencies use or could use their discretion in the design of good rules. External constraints or commitments can foster good domestic policies, by providing guarantees against the reversal of current policies or lending credibility to promise of future returns. Such pre-commitments could help strike a balance between the reluctance to unleash competition immediately and the desire not to be held hostage to vested interests or weak domestic industries. While this line of inquiry is standard in the public choice literature, it would be interesting to extend and examine whether it could be useful in the 'optimal' design of regulatory agencies in developing countries.
- 4.8.2 Another area of inquiry could be in the area of ranking of policy options for developing countries and related to this is the additional question of what constitutes good policy advice. Since 'one size or type does not fit all' is a stated outcome of the symposium, the next logical step would be to attempt to find sets of policies that work under different contexts and cultures. The underlying idea is not to develop policy options that are unique to each and every country, but to map broad

set of policy options that have been known to work in a certain contexts and to investigate whether and to what extent these are scalable and replicable. The research should develop the idea generated in the symposium that country specificity matters and therefore customisation is necessary. A useful analogy would be the business strategy of Dell Computers, which provides customized products to its clients based on certain 'givens'. Dell does not and cannot supply a 'unique' computer to each customer.

4.9 Cross cutting Issues

The cross cutting themes that emerged at the symposium were as follows:

- i) Political will is a necessary condition for establishing good competition regimes
- ii) Consumer advocacy and empowerment is crucial as it can provide countervailing force to existing producer interests
- iii) It is important to create a culture of competition
- iv) Developing countries context is different from developed countries and therefore customisation is necessary.

4.10 The next step

As a next step after the symposium, the authors of all the papers presented would review them taking into the account the discussion and comments they received at the symposium. The revised paper after editing will be collated in a research volume published by well-known publishing house.

Policy briefs would also be prepared summarizing the key issues/research findings that emerged out of the research papers in the first cycle which would later be used for dissemination to generate awareness on these issues.

4.11 Lessons Learnt

- The information about the live internet webcast should have been advertise well before the symposium so that maximum number of interested audience could watch the proceedings live.
- The sessions should have optimum number of panelsits/chairs/discussants so that they can speak or present their opinion efficiently.
- There should be ample time for floor discussion and so that the sessions become more interactive.
- The feedback evaluation form should be designed simple and efforts should be made to ensure maximum responses

V. SPEECHES/OBSERVATIONS

Inaugural Session

1. Roger Nellist, DFID

UK Government participation at this event demonstrates the importance we attach to ‘fair competition’ and to ‘better regulation’, as part of the overall policy environment for delivering higher sustainable rates of inclusive growth and for poverty reduction.

The private sector needs a good overall investment climate in which to operate. If the investment climate is poor, as it still is in many countries and in some states in India, the extra costs and risks to business are inevitably passed on to the consumers. An essential element of a good investment climate is a sound, transparent regulatory regime and an effective competition policy framework is an important component of a good overall regulatory environment.

Fair competition is important for development. A good business regulatory regime matters. And competition policy has a role to play, in helping to establish and maintain a level playing field. Yet, we all know that anti-competitive practices abound - to the detriment of many. In recent years, we have come to appreciate two things:

First: the public sector-- government, and its agencies -- is as much to blame for this as are private businesses and individuals. There are many policies, laws, regulations and administrative practices that thwart fair competition, at both the national and sub-national levels; and

Second: in order to get to grips with the problem we have to recognise that it is not just technical, legal or economic matters that have to be addressed, but there are wider - and sometimes fundamental - institutional, political economy considerations that matter just as much. In some cases, strong vested interests have to be overcome - whether commercial, institutional or private individuals. In recent times, DFID has been paying increasing attention to these sorts of governance issues. In 2006, DFID published a third White Paper - on the theme of “Eliminating World Poverty: Making Governance Work for the Poor”. This White Paper emphasises the three pillars of Public Capability, Accountability and Responsiveness. It also highlights the role of vested interests in blocking reforms and holding back development. These governance concepts apply to the regulatory and competition policy worlds, just as much as they do in other areas.

In recognition of the above two themes, DFID has been developing a ‘Competition Assessment Framework’ (CAF). This will help senior policy makers with responsibility for economic and competition issues in developing countries, to identify and address anti-competitive arrangements and practices in both the private and public spheres; and to recognise governance issues as well as more technocratic ones. The CAF should also be of interest to others - including consumer-oriented NGOs like CUTS - who are concerned about the impact of anti-competitive practices.

CUTS have been doing a lot of good competition advocacy work in recent years, not only in India but elsewhere in Asia and in Africa. DFID has been supporting a number of their larger programmes, especially the ‘7Up’ ones and would continue to support several other regulatory reform and competition policy programmes in Africa and Asia, often in partnership with the World Bank and other bilateral donors.

2. Dr C. Rangarajan, Chairman, Economic Advisory Council to Prime Minister of India

The economic landscape is undergoing significant changes in developing countries. It may be recalled that in the 1950s and 1960s, the dominant view in the literature on development economics was that the government has an important role to play and that it should undertake activities that would compensate for “market failure”.

In the past, developing economies were characterised by significant government involvement marked by dominance of large state-owned enterprises. Many of these countries embarked on the path of economic reforms during 1980s and 1990s by shifting to market-driven economic policies.

In any economic system, state can play many roles of which three can be identified as important.

- as a producer of marketable goods and services,
- as a regulator of the system, and
- as a supplier of “public goods” and “merit goods” like primary education and public health.

The decreasing role of state as a producer of marketable goods and services and the increasing role of market in such areas simultaneously enhances the role of state as a “regulator” and “facilitator”. The regulatory role comes into play in order to maintain competitive conditions in the market and to ensure that every one follows the basic rules of the game.

Since the advent of economic reforms in developing economies, there have been considerable changes in their policy arena, with increased reliance on market forces. Along with policy changes, many of these economies have adopted competition laws as a follow up to their market oriented economic reforms.

While competition authorities exist to maintain competition, regulatory authorities for various sectors have also come to occupy an important place. Such regulatory authorities are established in sectors where competitive markets cannot exist. In such a situations, regulatory authorities seek to mimic competitive outcomes to the extent possible.

Apart from political interference, the existence of large number of sectoral regulators together with a competition authority may raise issue of overlap and friction. The ideal solution could be to legislate clear mandates for regulators and the competition authority. It is best to leave the determination of competitive principles to competition authorities. Across sectors, some common principles of competition must prevail.

Establishment of competition authority by itself does not resolve all problems relating to the creation of competitive conditions. Unless there is a strong political will, even the competition authority may not be able to function effectively. However, in order that competition may prevail, competition laws need to be supplemented by an appropriate competition policy, which will ensure a full play of competitive forces.

Efficiency is associated with competition. In order to maintain competitive conditions, three things are needed. First, there should be appropriate competition laws to prevent market abuse. This is preventive in character. Second this must be supplemented by competition policy, which will ensure that all government policies tend to promote competition. This has a positive dimension. Third, sectoral regulation becomes important in areas where there are natural monopolies. Under such circumstances, it is necessary to establish appropriate relationship between sectoral regulators and the competition authority. The political economy constraints need to be taken into account while framing competition laws and more importantly in drafting competition policy.

3. Dr. Supachai Panitchpakdi, Secretary-General of UNCTAD

The political economy of regulation has been thoroughly dealt with in recent literature from both the theoretical and empirical standpoints. In essence, economists claim that market failures can be corrected simply by assuming the existence of total welfare maximization institutional mechanism.

Theoretical conclusions therefore postulate that good regulatory mechanisms and a favourable international environment are critical ingredients for the provision of essential services. This is, for instance, in the case of water and sanitation, education, health care, telecommunications, transport and other services that are primary determinants of progress towards the Millennium Development Goals.

But reality is unfortunately more complicated. In reality, policy makers are faced with many constraints in their efforts to address market failures and maximize national welfare. In reality, the sheer magnitude of regulatory challenges facing developing countries is overwhelming.

On water and sanitation, despite renewed international commitments and efforts, half the population in developing countries still lacks access to improved sanitation. If current trends persist, this MDG objective will most likely not be met by 2015 in sub-Saharan Africa, Southern Asia, Oceania and Asian members of the Commonwealth of Independent States. In sub-Saharan Africa, only 56% of the population has access to safe drinking water. Furthermore, some 100 million children around the world have no access to primary school education.

These numbers show that there is still a huge gap to be addressed when it comes to the political economy constraints of regulation. Bridging this gap between theoretical predictions and harsh realities on the ground in developing countries is one of the major tasks.

There is no uniform prescription or recipe that would work in all countries. But the international community has already endorsed some guiding principles. First and foremost, it is for each government to evaluate the trade-offs between the benefits of international rules and the constraints posed by the loss of policy flexibility at national level. This is particularly important for developing countries as they become bigger global players and have to balance national policy space and international disciplines and commitments.

UNCTAD helps developing countries on the negotiations on domestic regulation in order to ensure that their developmental and institutional needs are adequately reflected in any disciplines that might be adopted. Going back to the alarming figures, this means that in all essential services sectors, strong national leadership to formulate and implement country strategies must be backed by international donor assistance.

Other opportunities arise in the field of competition policy, an area where UNCTAD has been at the forefront of international debate since the 1970s. The activities have helped bring about the current situation, whereby most developing countries and their regional groupings have passed the stage of contemplating whether or not they want to have a competition or regulatory law. Instead, they are now at the stage of working out how to structure their laws or, if they already have laws, how best to enforce them, given the constraints.

Based on our experience, the process of adoption and effective implementation of competition and consumer protection legislation is by no means an easy task. As the theme of this symposium clearly suggests, there are many political economy considerations at stake. And indeed, having the "political will" to move forward with market-oriented reforms does play a crucial role. Yet as the background documents for this meeting suggest, political will is not created in a vacuum. International efforts, including

UNCTAD's own advocacy work of the past decades, do make a difference. As a result of these efforts, some countries have adopted or amended competition laws, while others are making significant progress in their implementation record.

But aside from the domestic and international levels, there is another dimension to political economy constraints: the regional dimension. By joining forces at the regional level, developing countries have an additional opportunity to improve their regulatory regimes.

4. Dr Nitin Desai, Former Under Secretary General, UN

The ambitious growth goals that India has set in the past 4-5 years and achieved them is not because of the accumulation factors but because of the increase in productivity.

It is because of the continuous effort of technological dynamism and a competitive environment in all key sectors of economies and the growth that we have achieved is mainly because of the sharpness of the edge of competition in many crucial sectors. In the absence of a sound competition policy it will be difficult to sustain that sort of growth over a long period of time. The government has started to revisit the policies for private sector for better regulation and competitive environment and the main reason behind this is the changes that took place in earlier years

There exist the two models one is the business-friendly model in which the government promotes preferred activities in a variety of ways and would like to keep a cozy relationship with the industry. The other model is the market-friendly model where the government's role is that of establishing rules and to establish competitive environment with relevant freedom of entry and exit.

There is virtually no role for competition authority to play in a business friendly model, as the government would like to play god here and not promote a competitive environment. It is essential that the whole idea of competition culture is to move onto a market friendly environment.

On the issue of political economy, it is usually seen in many developing countries that the bureaucrats do not want deregulation to happen. In many federal countries there may be non-discriminatory political environment at national level but at the state level there may be a business friendly environment.

Business by and large is happy with the competition in their own industry but they would like to see more competition among their supplier industries. Business group will always be extremely reluctant for competition in market for corporate control and it is the consumer that suffers most.

It is very important for a better economic growth and complete environment and also to safeguard the consumer that the government should go for both political democracy and economic democracy together.

Closing Session

1. Bimal Jalan, Former Governor, Reserve Bank of India

Mr. Jalan underscored the important distinction between regulation and control and hoped that the former does not degenerate into the latter. In this spirit, his recommendation was that regulation should be the exception and not the rule. Another attribute of good regulation is accountability and transparency of the regulator and in this context Dr. Jalan gave the example of RBI where certain standards of disclosure are prescribed for RBI. Similarly he appreciated the role that Right to Information Act (RTI) in India might play in enhancing transparency and therefore accountability of regulators and the process.

He also advised creation of a set of universally accepted standards for regulators across different sectors along the lines of Basel norms created by the Bank of International Settlements, an international organisation that fosters international monetary and financial cooperation and serves as a bank for central banks.

2. Evan Due, IDRC

The last two days have been very interesting and now the time has come where we would need to think forward, future activities, forward looking. This particular project deals with political economy of regulatory regimes, that it self sets the project apart and there is a real gap, which needs to be filled by empirical research. However, there is a need to undertake research and disseminate the findings, but there is also the need to engage actively with the concerned officials in the political arena. The involvement of CUTS is beneficial as the findings of the project would be shared with other NGOs and also used in advocacy work.

There is a need for greater transparency in the working of the agencies, as reflected in some of the papers, greater accountability of the regulatory agencies, by having access to information. There is a need for capacity building of the members of the regulatory agencies; researchers and that would help them in engaging with regulatory agencies in developing countries. There is also a need for capacity building of media, which is very important.

Another important aspect that could be derived from the papers is the issue about public interest. The papers covered the element of public interest and vested interest. It is a very important element of this particular work.

The next step is to undertake more engaging research with the policy makers and the communities. It also means to take stock from what we have heard today and taking stock of the material available outside the research and mapping the way forward, what are the implications of policy makers.

Thus to end, this project should enable consumers to have greater choices, greater access to information, access to make those choices and this should be the goal of further work.

3. Simon Evenett, University of St.Gallen

The meeting began with a fantastic opening session with the UNCTAD Secretary General, including others luminaries coming to encourage us to undertake this particular research project and their comments were very inspiring as we went forward.

We had about 20 presentations over the last day and a half and keeping in mind the number of discussants and the presenters, it was tough keeping in mind the time restrictions to indulge in detailed discussions over each of the paper. Thus one thing that we should keep in mind to maximise benefits from such kinds of meetings in near future is to give the presenters some more time to explain their findings.

One important aspect of the meeting was the discussion on issues concerning countries across the globe; we had roughly in depth discussions over at least 12 countries. This proved to be very beneficial and the project is very strong in representing South Asia and Africa. However, keeping in mind the theme of the said project, we missed having representation from Latin America and East Asia, which could have been a value addition to the whole project. Some case studies from these regions would have been helpful in shedding some lights on the importance of economic political dimensions.

One important question, we all can ask ourselves is that why does the world need another edited volume on Regulation in Developing Countries, what's the value addition? Thus to prove the need for the said edited volume, we would need to work on the following three things:

1. ***We need to think about the regulatory agencies, competition agencies and the discretion and choices they have.*** Too much of the discussion, which we had over the last two days, has emphasised on political economy constraints, that are bearing down on constraining or frustrating the workings of these agencies. But we seem to forget, that agencies that often have some discretion and the question is, how do they use that or how can they use that in different types of political context? How do regulatory agencies facing political economy constraints in their own homes use external or international standards to enhance their position at home or to defend themselves by saying that we are emulating international standards? How do the domestic regulatory agencies use external groups, external advisors to help them in enhancing their position domestically? How do they join such external groups, which can enhance their position? How do they use external assistance as provided to them, through capacity building, etc? For example, certain competition agencies join the ICN to argue at home that their regulations need to be brought in line with international standards. Thus one area, where we can create uniqueness about this project, is to see the discretion the agencies have and how can they creatively use them.

2. ***We need to take quantifications of these political economy considerations much more seriously.*** We need to look at quantifications more narrowly? We need to document many other ways in which political economy factors impinge upon the performance of agencies and then move a step forward to understand how activities of those agencies or performances are influenced by political economy factors.

3. ***We need to think more deeply as to what are the real implications for policy making here.*** Many of the studies usefully pointed out the constraints that might arise in a political process or in relationships (informal or formal) between regulators and political masters. But one thing that was missing in most of the papers was the number of different policy options. We ought to be thinking about how can we rank different kind of policy options, policy choices and what lessons we can learn. The importance of thinking about different policy choices is highlighted by the following example, i.e. if one does not think that independence is not the recipe for a successful regulatory agency than what is? Thus we would need to analyse the different alternatives?

When we talk about country specificity matters i.e. One Size Does Not Fit All, then we need develop various sets of policy recommendations that takes account of national circumstances.

4. Dr. Frederic Jenny, Cour de Cassation (Supreme Court of France)

There was particularly an original angle to this conference, was that we were discussing the political economy of regulation. Thus one question that arises here is that where do those problems come from or where do those organisations i.e. regulators come from? They come from market-oriented reforms of the last 15 years, de-regulation, etc. Then a further question that comes to mind is that why did we engage into this movement at a world wide level. One reason was higher trust in market mechanism to promote efficiency and growth and we were instructed by the failures of economies in 70s and 80s. Thus to draw economic lessons from the failures of the market in 70s and 80s i.e. de-regulation movement was one part of the reason, for us to undertake market oriented reforms. The second part was more something like economic democracy or desire to promote economic democracy, where states were seen as dominant and were behaving in a strategic way and unfair way to the rest of the society.

The future research on this area should focus on quality aspects of regulation and regulatory regimes in developing countries. Future work could inter alia address questions such as:

- Do regulators do what they are supposed to do?

- Whether what they are supposed to do is right?
- Perceived successes and failures could be studied as cases to learn from such experiences.

We started from poor market reforms, which is a crucial public policy instrument in 1990s not only in the developing countries but in many developed countries as well. During 90s very important changes took place in developing countries for two main reasons: first, the desire and hope that the efficiency of production system increases which in turn promotes economic growth and second, is the desire to prevent the expectation of weak economic actors such as the small developing countries, small or medium size firms, small farmers or the consumers. For those dreams to be realized, market oriented reforms were necessary but not sufficient. Some kind of re-regulation is required so that the market works to the benefit of everyone.

The market reforms agenda in developing countries and in some developed countries is tough to deal with. First thing it requires is the 'political will' which is often most difficult part of it even though the changes have been undertaken but not always as systematic and comprehensive and often with compromises.

Political will is important but more important is that some kind of regulatory regimes need to be established to function effectively to tackle issues such as inconsistency, bad institutional design, lack of political will etc.

The competition authorities after 15 years tend to be very isolated in many countries, as they do not have the full political support they deserve to be more effective. One of the main reasons behind is the political support is usually transferred into other channels.

In a question thrown to economists, he asked whether goal of efficiency and consistency congruent with the political goal of economic growth in developing countries or are those two different policies addressing two different political issues.

The mere adoption of competition and regulatory laws is a necessary but not a sufficient condition for it to be a part of the market reform and poverty reduction agenda. Implementation is equally important. Fulfilling development objective while implementing competition and regulatory laws in developing countries is not an easy task. This requires understanding and knowledge of how to do it, which is presently absent.

5. William Kingsmill, DFID

Poverty reduction is one of DFID's major objectives. It is, in fact, one of the main reasons for the organisation's existence.

The only significant route to poverty reduction is robust growth in which poor people participate. The jargon we use is 'shared growth' or 'inclusive growth' How does growth happen? It is partly the result of capital accumulation and investment, but, more importantly, it is about productivity. Peoples' livelihood will improve only if productivity improves.

What is it that brings about an improvement in productivity? The main answer is that it is competition, which is the fundamental mechanism or the driver of growth. If markets are not competitive, and if the state's policies do not foster competition, growth and development will fall well below what could be achieved.

It is important that poor people are able to participate in the growth process, and competition policy has an important role to play in this. Competition policy should seek to remove the causes of market failure. Markets may fail for a variety of reasons, but we must recognise the importance of the political economy

dimension. The relationships between governments, markets and citizens can be complex, and we need to be pragmatic about how we move forward, to be sure that we are improving the world.

Another very important principle that has been referred to in this Symposium is that basic economic theory tells us that there can be failures of collective action. Civil society organizations like CUTS fill an important need when they give voice to the citizens, the consumers and society in this complex world. Through the collective efforts of civil society organizations, the concerns of society are voiced.

Technological advance and change is evident almost everywhere in the world today. Many of the regulatory issues that arise, for example in the telecommunications sector, reflect the revolutionary changes that are taking place in technology. Technological change will often alter the organizational structure of an industry, and the nature of monopolistic or oligopolistic practices in it. We need to be ready to adapt to such changes in a technology driven sector.

Another issue to be taken care of is climate change. The wide range of activities based on the need to react positively to climate change will constitute a huge industry in the future. We need to consider carefully how we are prepared to regulate our society better to cope with the whole issue of climate change.

One of the themes of the British Government's most recent White Paper on international development, published last year, was that the challenge for the immediate future for all of us is to look at how we can help governments around the world become more capable, more accountable and more responsive to deliver the things that only government can deliver. It has emerged clearly at this Symposium, that it is civil society organizations, with their convening power and ability to deliver collective actions, that are going to be important in delivering on that agenda.

Annexure 1

Symposium Evaluation Report

Summary

An evaluation of the deliberations, emerging issues, recommendations and outcomes of the Research Symposium was important. With the twin objective of eliciting participant's views on the issues addressed during the symposium and conducting an exercise in self-evaluation to know as to where we at CUTS have stood, a feedback survey was conducted.

The survey was undertaken through a Symposium Evaluation Form, divided into four parts: *Symposium Quality, Quality of Sessions, Views about CDRF Programme and General feedback about Event Management*. All the sessions at the symposium were well attended and evaluation is based on the overall responses provided by the participants through the duly filled feedback evaluation form.

- Part I of the feedback evaluation form, dealt with the evaluation of the symposium and essentially elicited responses on: the quality of the event, the contribution of the symposium to the field of political economy of competition and regulatory regimes in developing countries. Majority of the responses received indicated that the contribution made by the programme to the field of political economy of competition and regulatory regimes has been good. The symposium has been successful in stimulating the developing world on the subject of political economy of competition and regulatory regimes. High percentage of the participants' responses, rating the quality of discussions and deliberations held as being good or excellent is in conformity with the quality (rating) of the symposium. This indicates that the symposium provided an interactive platform for all participants to present and exchange their ideas on the given subject.
- Part II of the feedback evaluation form, dealt with evaluating the sessions in terms of the quality of papers presented. The feedback in all the six sessions reflects that the quality of majority of the papers are either good or excellent.
- Part III of the feedback evaluation form, aimed at drawing out ideas and thoughts of participants about CDRF project. In response to whether the research programme provided a platform to research community from the developing world to showcase their research and facilitate peer review of their work by renowned experts, most of the participants opined that it indeed offered a good platform to researchers from developing world to share their research and experiences on the issues. To sum, the responses reflecting CDRF programme being a unique initiative is overwhelming and motivating.
- In response to, whether the CDRF programme generated good substantive knowledge for better implementation of competition and regulatory regimes in developing countries, more than half of the participants opinions were affirmative, while some found the knowledge generated as being excellent. Though, few participants found the information generated as being only satisfactory.
- Part IV of the feedback evaluation form, was general in nature and aimed at eliciting response from participants on overall management of the symposium. Majority of the people found their attendance at the symposium worthwhile and overall symposium management was found to be good.

Purpose

In principle, evaluation is the first step towards improvement. It helps provide vital statistical information about what is missing – an information, which is crucial and which forms a base for the effectiveness of all future events and activities of an organisation. Evaluation is not all about taking a snapshot of outcomes at the end of a programme to measure its success or failure. Instead, it is a continuous process of learning, improving and performing efficiently. It was with this purpose that an Evaluation of the Symposium organised as part of a research programme entitled “*Competition, Regulation and Development Research Forum*” (CDRF), was undertaken.

Background

On March 22-24, 2007 CUTS International organised an International Research Symposium titled “*Political Economy Constraints in Regulatory Regimes in Developing Countries*” as part of the research programme entitled CDRF. CUTS International has undertaken this programme to stimulate research and deliberation on competition and regulatory implementation issues in developing countries.

Dignitaries from around the globe, who adorned the symposium with their presence included Dr Supachai Panitchpakdi, Secretary General, UNCTAD, Dr C Rangarajan, Chairman, Economic Advisory Council to the Prime Minister of India, Dr Fredric Jenny, Judge French Supreme Court; Bimal Jalan, MP and Former Governor of Reserve Bank of India (RBI), Dr Nitin Desai, Former Under Secretary, UN, Roger Nellist, DFID, UK and Pradeep S Mehta, Secretary General, CUTS International.

Methodology

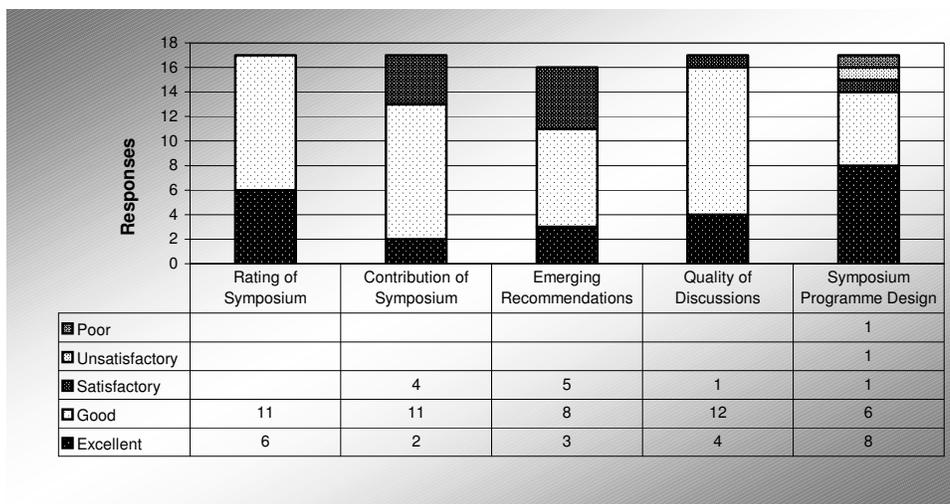
The survey was conducted through a Symposium Evaluation Form, divided into four parts: each carrying questions specifically eliciting responses about symposium quality, quality of sessions, views about CDRF programme and general feedback about event management. The forms were distributed during the symposium along with other conference materials and the duly filled in forms were subsequently collected at the end of the symposium. A total of 17 completed forms were received and this evaluation is based on the overall responses provided. One wishes that more forms were handed over, but that did not happen. Therefore the responses may not reflect the whole picture. However, from personal discussions and brief remarks made on the sidelines, the results can be assumed to be fairly reflective of the whole. The term “Participant” used in this report refers only to those who submitted the feedback forms rather than the total number of attendants. The figures have been designed and prepared based on an in-depth analysis of the number of responses received. A Sample of the Symposium Evaluation Form is available at:

<http://www.circ.in/SymposiumFeedback.htm>

Part I: Symposium Evaluation

The Evaluation Form was divided into four parts. Part I deals with the evaluation of the symposium and essentially elicited responses on: the quality of the event, the contribution of the symposium to the field of political economy of competition and regulatory regimes in developing countries; the recommendations emerging from the symposium in terms of their usefulness in understanding issues regarding the implementation of competition and regulatory regimes in developing countries; the quality of discussions held in terms of their interactiviveness; and whether the programme was well designed or not. Figure 1 portrays an idea about the responses received.

Figure 1: Symposium Evaluation



- It is evident from Figure 1, that in response to the item that measured quality of the symposium (rating of the symposium), majority of the participants i.e. 64.7 percent found the symposium as being good, while 35.2 percent of the participants rated the symposium as excellent.

Key Message: *Such a healthy response indicating the overall rating of the symposium is indeed a motivation booster for the organisation to continue to be innovative and deliver excellence as far as performance is concerned.*

- While rating the contribution that the symposium made to the field of political economy of competition and regulatory regimes in the developing world, as many as 64.7 percent of the responses found it to be good, while 23.5 percent of the participants rated the contribution as being satisfactory.

Key Message: *That majority of the responses indicating that the contribution made to the field of political economy of competition and regulatory regimes has been good, is indicative of the fact that the symposium has been successful in stimulating the developing world on the given subject, which was very crucial for the research symposium.*

- On the parameter of emerging recommendations, about 68.7 percent of the participants rated it as being good, while 29.4 percent found the recommendations as being satisfactory. The rating was given in terms of usefulness of the recommendations in understanding issues regarding implementation of competition and regulatory regimes in developing countries.

Key Message: *Majority of responses favouring the recommendations emerging as being good is reflective of the fact that the CDRF programme has been successful in meeting its objective of creating awareness and*

developing understanding of issues with regard to implementation of competition and regulatory regimes in developing countries.

- The highest rating is reflected in the responses on the quality of discussions and exchange of knowledge and experiences, as about 70.5 percent of responses rated as being good while 23.5 percent rated the discussions as excellent. A mere six percent respondents found them as being satisfactory.

Key Message: *Overall, 94 percent of the participants’ responses rating quality of discussions and deliberations held as being good/excellent is in conformity with the quality (rating) of the symposium. This indicates that the symposium provided an interactive platform for all participants to present and exchange their ideas on the subject. This is also reflective of the fact that the symposium has been able to meet its objective. The only respondent who rated the quality of discussions as being satisfactory seems to be unhappy with the time management.*

- For any programme to be a success, what is crucial is its design. The final item in this section attempts to educate participant’s views on how well the symposium programme was designed. It was found that about 47 percent of the respondents rated the programme design as excellent, while 35 percent rated it as being good. However, 5.8 percent each found it as being either satisfactory, unsatisfactory or poor.

Key Message: *About 12 percent responses, which rated the programme design as being unsatisfactory or poor, were in particular not happy with the time allotted to each presentation. They were of the view that the allotted 10 minutes for the presenters was rather short and insufficient to deliberate issues in depth. This is an important point for the organisation to bear in that improper time management can seriously impair the very purpose of organising such events.*

Part II: Sessions Evaluation

The next section of the feedback form dealt with evaluating the sessions in terms of the quality of papers presented. For this the respondents were asked to rate the papers presented in all six sessions on a scale of 1 to 10, where 1 is equivalent to Poor and 10 is equivalent to Excellent. The papers were rated in terms of their content. In all, 20 papers were short-listed under the first phase of the research cycle. In addition to these 20 papers there were 2 standalone/independent presentations. Figure 2 provides an analysis of participant’s view on the quality of papers (20 papers plus 2 stand-alone presentations) presented during the symposium.

Figure 2: Sessions Evaluation – Average Rating of all Papers

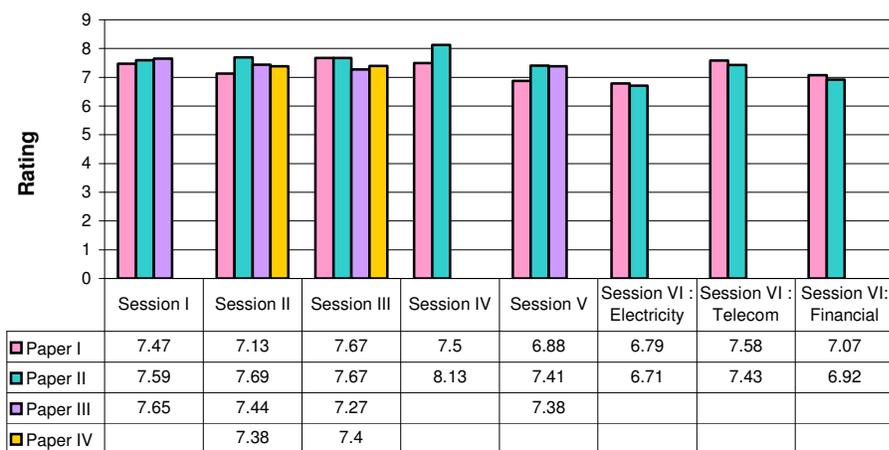


Figure 2 shows that on the whole, majority of the papers presented received a rating of above 7, on a scale of 1 to 10 (1 being Poor and 10 excellent). This is indicative of the fact that participants who submitted their feedbacks found the quality of majority of the papers as either good or excellent.

The paper with highest rating is Paper II on “Competition and Regulatory Institutional Structures in Micro-states:

the Case of the Caribbean”, with an average rating of 8.1, presented in Session IV.

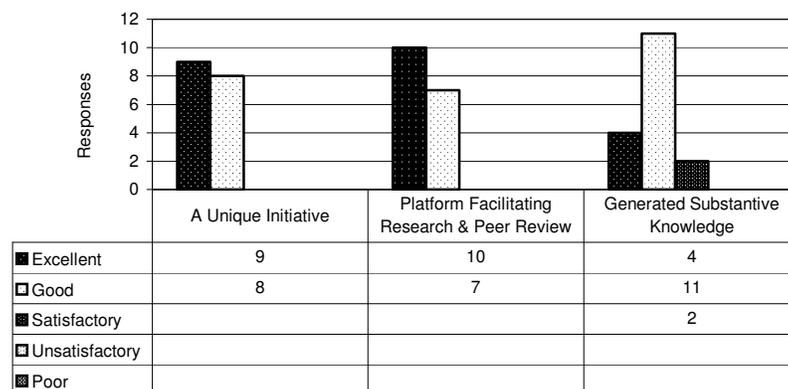
Part III: Thoughts on CDRF

The Part III of the Evaluation Form aimed at drawing out ideas and thoughts of participants about CDRF project. The section in particular sought to know what the participants in general felt about the CDRF programme in terms of its uniqueness, it being a platform facilitating research and whether the symposium was able to generate any substantial knowledge in the field of political-economy of competition and regulatory regimes. Figure 9 gives an idea about participant’s responses under this category.

- In response to ‘CDRF being a unique initiative’ about 53 percent respondents rated it as such that seeks to fill the vacuum that exists in the research on political economy of competition and regulatory regimes in developing countries. While 47 percent believed that the symposium is a good initiative undertaken by CUTS.

Key Message: *Such response as regards CDRF Programme being a unique initiative is overwhelming for the organisation and in particular is in conformity with the ideas that the organisation had in mind while conceptualising the research programme*

Figure 9: Thoughts on CDRF (Based on Responses)



- In response to whether the research programme provided a platform to research community from the developing world to showcase their research and facilitate peer review of their work by renowned experts, as many as 58.8 percent of the participants believed that it offered an excellent platform while 41.1 percent opined that it indeed offered a good platform to researchers from developing world to share their experiences and knowledge on the issue.

Key Message: *One of the objectives we had in our mind while organising the symposium was to set a stage for experts from the developing world to showcase their research on the subject. The response received is indeed in agreement with this objective*

- In response that the CDRF programme generated good substantive knowledge for better implementation of competition and regulatory regimes in developing countries, about 65 percent respondents said in affirmative, while 24 percent responses found the knowledge generated as being excellent for the purpose. A mere 11 percent found the information generated as being only satisfactory (Please see Figure 9).

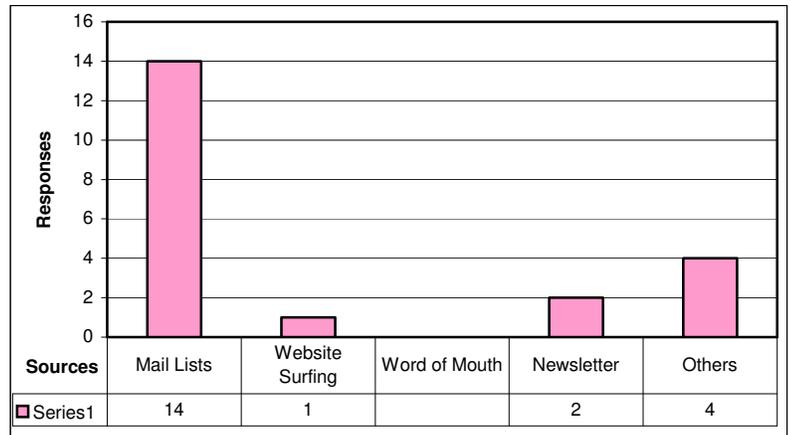
Key Message: *While undertaking the research programme, an important objective was that the programme must generate substantive knowledge on issues of better implementation of competition and regulatory regimes in developing countries. The response from the participants is in conjunction with this objective. The reason why about 11 percent of the responses found the knowledge generated as only satisfactory in this context could be attributed to the fact that there was time constraint for each presentation to be discussed and deliberated in detail and as such was not able to generate substantial knowledge as per the standards of these participants.*

Part IV: General Feedback

The Part IV of the Evaluation Form was general in nature and aimed at eliciting response from participants on overall administration of the symposium.

- The first item under this section asked participants the source from where they came to know about the symposium.
- It was found that majority (14) of the participants came to know about the symposium via CUTS mail lists.
- A few others became aware about the event by website surfing and through CUTS newsletters.

Figure 10: Source of Information

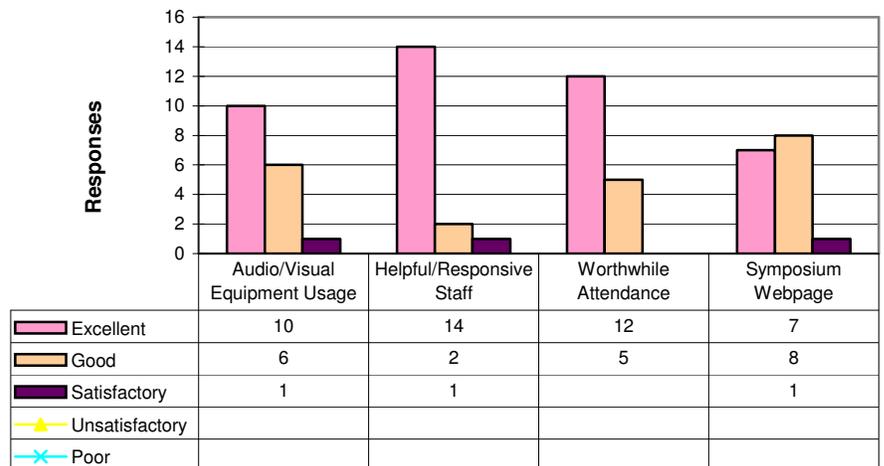


- There were a few participants who marked “others” as their response to this item. The other sources included: direction from superiors to attend the event, or became aware of the symposium, while present during other events/workshops/seminars hosted by CUTS (Please see Figure 10).

Key Message: The responses under this section indicates that CUTS mailing list has been an important source for disseminating information and could be used as a main medium of information dissemination for all future events and activities.

- Overall the symposium administration dealt with questions like how well were the audio/visual equipments used, whether CUTS staff were helpful and responsive and whether information on the symposium web page was of any use or not. Figure 11 provides information on the responses under this section.

Figure 11: General Feedback



- It was found that about 94 percent of the respondents felt that the audio/visual equipments were either excellent or good, while only six percent respondents found the usage as being satisfactory.

Key Message: *That about six percent responses rated the use of audio/visual equipments as being satisfactory is due to the fact that a few participants observed that collar mikes could have been a better option rather than fixed mikes. Power outage on the last day for a few minutes was also one of the reasons. .*

- In response to whether CUTS' staff was helpful and responsive 82 percent of the respondents found them to be excellent, while about 12 percent found them to be good. Only six percent noted CUTS' staff as being satisfactorily helpful and responsive.
- Information on the Symposium web page was found to be very useful by as many as 94 percent of the respondents. (44 percent found information on web as excellent and 50 percent found it as being good), while six percent felt the web page was satisfactorily informative and useful.

Key Message: *That about six percent respondents favoured the information on symposium web page as being satisfactory is indicative of the fact that while organising future events, proper coverage of information on the web page in terms of content, layout, design and attractiveness should be kept in mind.*

- There was a strong consensus among the respondents regarding the attendance at the symposium. As many as 71 percent of the respondents believed that their participation/attendance at the symposium was excellently worthwhile and was quite fruitful.

Suggestions on Issues to be taken up for Future Research Cycles

A multitude of suggestions were received from respondents regarding various issues that should be taken up for future research cycle. These have been categorised under the following headings.

A. Competition and Regulatory Issues

1. Public interests from a competition law and policy perspective *vis-à-vis* public interests in general
2. 'One-size does not fit all' Concept: From a Competition law and policy perspective with a worldwide view
3. Competition and regulation in different phases of growth with varied country experiences
4. How to balance between competition and regulation – industry experiences across different countries
5. Are technical and financial assistance bottlenecks for competition and regulatory regimes?

B. Regulatory Issues

1. How to define autonomy and independence in developing world?
2. Does the institutional design matter for competition and regulatory regimes?
3. In view of the fact that the typical sectoral regulator in a developing country is responsible from a natural monopoly owned by the state, could the jurisdictional tug of war between sectoral regulators and competition agencies be a manifestation of a wider jurisdictional definition that exempts state enterprises and state actions from competition law?
4. How to create more innovative market design (pro-competitive) in infrastructure privatisation? (Especially in transport – roads, ports)?
5. How to achieve effective enforcement of competition and regulatory regimes?

C. Advocacy and Capacity Building Issues

1. How to ensure stakeholders participation in competition and regulatory regimes?
2. How to find ways to provide dialogue between competition and regulatory agencies and judiciary in developing countries?

3. How to measure the effectiveness of advocacy vs. enforcement of competition and regulatory agencies?
4. How to analyse the advocacy experiences of different countries?

D. Other Issues

1. How to provide economic approach to the judiciary in developing countries?
2. How to identify the determinants of relative efficiency of various state ERG in India
3. How to evaluate the contract between donor agency and recipient state, e.g. drinking water?
4. How to introduce credible (scientific) structured, quantitative method which is also “practitioner friendly” to measure priority/effectiveness/performance? (It needs to be able to deal with intangibles considering benefits, costs, opportunities, risks. The proposed methodology/theory for this is available in “The Analytic Hierarchy/Network Processes” by Thomas L. Saaty).

Annexure 2

Annexure 2 Programme Agenda

THE PROGRAMME

DAY ONE (Thursday, 22nd March)

1800 – 1930 Inaugural Session

1800 – 1810 *Welcome* by Pradeep S. Mehta, CUTS International, India

1810 – 1820 *Observations* by
Roger Nellist, DFID, UK

1820 – 1930 C. Rangarajan, Chairman, Economic Advisory Council to Prime Minister of India
Frederic Jenny, Judge, French Supreme Court (*Cour de Cassation*), France
Nitin Desai, Former Under-Secretary General of United Nations, India
Supachai Panitchpakdi, Secretary General, UNCTAD

1930 Reception and Dinner

DAY TWO (Friday, 23rd March)

0730 – 0830 Registration

0900 – 1100 Session I: Political Economy Constraints in Competition and Regulatory Regimes

Developing countries have been striving to implement market-oriented economic reforms, of which competition law and regulatory law are key constituents. However, some countries are still struggling to adopt competition laws and regulatory laws, while several others have not been able to take steps towards their effective implementation. This session would focus on political-economic constraints that affect adoption and effective implementation of competition law and regulatory law in developing countries. The discussions would explore measures to integrate and address political economy concerns in the design and implementation of regulatory and competition laws in the developing world.

Chairs Pierre Jacquet, Agence Francaise de Development, France
R. Shyam Khemani, The World Bank Group, USA

Papers

- *Tackling the ‘Tyranny of Vested Interests’: Competition Policy as Political Governance*
- Max Everest-Phillips, DFID, UK

- *Identifying and Overcoming Political Economy and Governance Constraints to the Effective Implementation of Competition and Regulatory Laws in Zambia* – Thula G Kaira, Zambia Competition Commission, Zambia
- *Journey of India’s New Competition Law through a Practitioner’s eye* – Pradeep S Mehta, CUTS International, India

Discussants
 Peter Muchoki Njoroge, Monopolies and Prices Commission, Kenya
 Pranab Bardhan, University of California, Berkley, USA
 Scott Jacobs, Jacobs and Associates, USA
 Thankom Arun, University of Manchester, UK

1100 – 1130 **Tea/Coffee**

1130 – 1330 **Session II: Constraints faced by Competition & Regulatory Agencies**

Regulatory agencies in developing countries may be susceptible to ‘regulatory capture’ by the regulated industry, or to ‘political capture’ by the government. Both types of capture undermine the role of a regulator and affect its independent functioning. Potential for capture may be more acute for young regulatory agencies, which may not have been able to build up their capacity. Literature on institutional design suggests that the regulatory agencies should be independent from any influence. The other side of the concern is that independence must go hand in hand with accountability and this raises the issue of identifying the right balance between independence and accountability. Another challenge faced by regulatory authorities in developing countries relates to prioritising cases, given their limited resources and capabilities and the type and nature of cases that exist in the developing world. This requires regulatory authorities to select cases very carefully, taking into account various factors, particularly the political and economic challenges they face. The session would discuss the constraints faced by regulatory authorities in implementing their mandate and explore an appropriate strategy for regulators in the developing world

Chairs
 Frederic Jenny, French Supreme Court (*Cour de Cassation*), France
 Urmila Bhoola, Competition Tribunal, South Africa

Papers

- *Strategic Priorities of Competition and Regulatory Agencies in Developing Countries* - Valentina Zoghbi, International Bar Association, UK
- *Conflict between Regulation and Competition Agencies: Lessons from Experience of Turkey* - Ussal Sahbaz, Turkish Competition Authority, Turkey
- *Aspects of Independence of Regulatory Agencies and Competition Advocacy* - Eduardo Luiz Machado, Institute for Technological Research, Brazil
- *In the Public Interest: Implementing South Africa’s Competition Policy in the Broader South African Policy Context* – Trudi Hartzenberg, TRALAC, South Africa

Discussants
 Camila Safatle, Secretariat for Economic Law, Brazil
 Mona Yassine, Egyptian Competition Authority, Egypt
 Santiago Roca, Universidad ESAN, Peru
 Sitesh Bhojani, Barrister and Solicitor, Australia

1330 - 1430 **Lunch**

1430 – 1630 **Session III: Efficiency and Effectiveness of Competition and Regulatory Agencies**

Regulatory agencies face several obstacles while implementing their mandate. These range from the environment in which they function, the powers given to them by law, and their ability to implement their mandate. These and other factors have varying degree of influence on the functioning of regulatory agencies and affect their efficiency and effectiveness. Under the circumstances, there is a need to analyse enforcement practices of jurisdictions in the developing world to assess how they cope with such obstacles; and to assess the effectiveness of technical assistance programmes in enhancing efficiency of regulatory agencies in the developing world. The session deals with such issues and identifies appropriate measures to enhance efficiency and efficacy of regulatory agencies

Chairs George Lipimile, Zambia Competition Commission, Zambia

Papers

- *Does Regulation and Institutional Design Matter for Infrastructure Sector Performance?* - J. Luis Guasch, The World Bank, USA
- *The Role of Regulatory Agencies in Developing Countries: A Game Theoretic Approach to the Regulation of Public-Private Contracts* – Olivia Jensen, London School of Economics, UK
- *Technical Assistance for Law and Economics: An Empirical Analysis in Antitrust/Competition Policy* - Michael W Nicholson, University of Maryland, USA
- *A Quantitative Evaluation of Effectiveness and Efficacy of Competition Policies across Countries* – Serdar Dalkir, Principal, Microeconomic Consulting and Research Associates, Inc. (MICRA), USA

Discussants Allan Asher, Energywatch, UK
Eleanor Fox, New York University School of Law, USA
Joseph Seon Hur, Yoon Yang Kim Shin & Yu, S. Korea
Simon Evenett, University of St. Gallen, Switzerland

1630 – 1645 **Tea/Coffee**

1645 – 1800 **Session IV: Competition and Regulatory Regimes in Small Economies**

The liberalisation and privatisation movement which started in the UK and New Zealand in the 1980s was intended to remove detailed government control from otherwise competitive markets. In promoting reform of infrastructure industries, country institutions and sector governance play an important role. Most reforming developed and larger developing countries have tended to adopt USA or UK institutional frameworks, especially for the management of competition matters and the regulation of utility industries. These governance structures are now being called in to question, particularly as to their suitability for small developing countries, where problems of economies scale make it difficult to finance and sustain several agencies. This session discusses the institutional problem of implementing competition and regulatory regimes in small economies and explores appropriate solutions

Chair Nitin Desai, Former Under-Secretary General of United Nations, India

Papers

- *Competition Policy In Small Jurisdictions* - Lino Briguglio, University of Malta
- *Competition and Regulatory Institutional Structures in Micro-states: the Case of the Caribbean* - Cezley Sampson, Regulatory Governance Adviser to the Government of Jamaica

Discussants Colin Kirkpatrick, University of Manchester, UK
Michal S. Gal, University of Haifa, Israel

DAY THREE (Saturday, 24th March) Country/Sectoral Case Studies

0900 – 1100 Session V: Experiences from Different Countries

The session would discuss country experiences in implementing competition and regulatory regimes with a focus on institutional issues. The case study on Kenya discusses the performance of regulatory regime in the country in the context of its peculiar economic and social problems and institutional characteristics and examines institutional issues in the effectiveness of competition and regulatory regimes. The case study on Fiji, India and Belgium discuss issues relating to regulatory autonomy and accountability and their impact on regulatory efficacy in the countries. The study on Belgium shows how the country is battling with such problems and brings out useful lessons for developing countries that too are facing similar problem. The case study of Namibia discusses the inter-relationship between competition policy and other government policies and shows how lack of recognition of this inter-relationship serves as an impediment to effective implementation of competition policy. The case study on Turkey studies the interaction between competition authority and sector regulators and shows the impact of this institutional tension in promoting competition in these industries. The session would discuss these issues and identify appropriate strategy to ensure effective implementation of competition and regulatory regimes.

Chairs

Pranab Bardhan, University of California, Berkley, USA
Suman Bery, National Council of Applied Economics & Research, India

Papers

- *Institutions and the Effectiveness of Competition Policy and Regulatory Regime in Kenya* - Norman Litigu Shitote, Kenya
- *The Tripod of Independence, Expertise and Accountability of A Regulator - An Analysis Of The Indian Competition Law* – S Chakravarthy, Adviser, Competition Policy and Law, India
- *Credibility and Independence in Belgian Competition and Regulatory Policies* - Frank Naert, Hogeschool Gent, Belgium

Discussants

Cassey Lee, Nottingham University Business School, Malaysia
John Preston, DFID, UK
Marwan Kardoosh, Jordan Centre for Public Policy Research & Dialogue, Jordan

1100 – 1130 Tea/Coffee

1130 – 1330 Session VI: Sectoral Case Studies (combined session)

Political Economy of Regulation in Electricity Sector (I)	Financial Services Regulation (II)	Political Economy of Regulation in Telecom Sector (III)
Electricity sector in India is in the concurrent list of the Constitution; hence both federal and provincial governments are responsible for its development. Separate regulatory	Financial market does not itself function efficiently without some regulations. The session would discuss relevant aspects of competition and regulation issues in	The session would discuss issues relating to implementation of regulatory reforms in the telecom sector in developing countries: problems face by governments in

bodies have been set up at the federal as well as at provincial levels. The session would discuss constraints faced in introducing competition and implementing regulatory regime in Electricity Sector in India including: analysing different possibilities of introducing retail competition in Indian electricity and problems and prospects that might be encountered; and assessing the nature of regulatory capabilities at the Federal and State regulatory commissions	the banking sector in South Asian countries. The session would also discuss whether government ownership is essential for proper regulation of financial sector.	dealing with divestiture/privatisation process when faced with large multi national companies; problems encountered by newly established regulators in regulating the incumbent state-owned service provider; regulatory capture; intervention by line ministry. The discussion focuses on experiences of Uganda, Jamaica and India.
<i>Chair</i> A K Basu, Central Electricity Regulatory Commission, India	<i>Chairs</i> D R Mehta, Former Chairman, Securities and Exchange Board of India, India	<i>Chairs</i> B K Zutshi, Former Deputy Chairman, Telecom Regulatory Authority of India, India
<ul style="list-style-type: none"> ▪ Competitive Electricity Markets in India: A Regulatory Challenge - Devendra Kodwani, The Open University Business School, UK ▪ Introducing Competition in the Indian Electricity: Is Micro-Privatisation a Possible Way? – Ashwini Swain, Univeristy of York, UK 	<ul style="list-style-type: none"> • Regulation, Corporate Governance and the Banking Sector - A Political Economy perspective from Bangladesh – Thankom Arun, University of Manchester, UK • Regulation, Competition & Government Ownership: A case study of Banking Sector in India – M K Datar, IDBI Bank, India 	<ul style="list-style-type: none"> • Reforming and Privatising the Telecommunications Sector in Jamaica: Experiences of a Small Developing Country - Cezley Sampson, Regulatory Governance Adviser to the Government of Jamaica • The Political Economy of Telecom Regulation in India – Rajat Kathuria, Professor of Economics, International Management Institute, India
<i>Discussants</i> <ul style="list-style-type: none"> • Anton Eberhard, University of Cape Town, South Africa • Ashley Brown, Harvard Electricity Policy Group, Harvard University, USA • Steve Thomas, Public Services International Research Unit (PSIRU), UK 	<i>Discussants</i> <ul style="list-style-type: none"> • Ajay Shah, Former Consultant, Ministry of Finance, India 	<i>Discussants</i> <ul style="list-style-type: none"> • Malathy K John, Institute of Policy Studies, Sri Lanka • Mahesh Uppal, Telecommunications & Computer Information System, India • S L Rao, Institute for Social and Economic Change (ISEC), India

1330 – 1430 **Lunch**

1430 – 1700 **Closing Session:**

1430 – 1500 Presentation by Rapporteurs
Ajay Shah, Former Consultant, Ministry of Finance, India
Rajat Kathuria, Professor, Institute of Management Development, India
Simon Evenett, University of St. Gallen, Switzerland

1500 – 1600	Floor Discussion on Future Research Agenda
1600 – 1645	Keynote addresses by Bimal Jalan, Member of Parliament, India Frederic Jenny, Judge, French Supreme Court (<i>Cour de Cassation</i>), France
1645 – 1700	Closing Remarks by Evan Due, IDRC, Singapore William Kingsmill, DFID, UK Pradeep S Mehta
1700	High Tea

Annexure 3

Proceedings of Project Advisory Committee meeting

The CDRF Project Advisory Committee Meeting was organised to inform the members about the progress made so far of the first research cycle and discuss issues for second research cycle of the CDRF project. Given below is the summary of the proceedings:

1. Manish Agarwal gave a brief about the background of the CDRF project and progress made as on date. He mentioned that twenty-two good quality research papers have been finalised for the first cycle of the project. Deliberations at the symposium would further help in identifying the research issues and themes for developing countries in the context of implementation of competition and regulatory regimes. Further he mentioned, that a research volume comprising of the said research papers, would be published in June 2007.
2. Mehta mentioned that there is a proposal to create a working group on 'Political Economy of Competition and Regulation'. The objective is to promote the main findings of the research cycle. He also stated that as part of the outreach activities, policy briefs would be drafted highlighting key issues and recommendations emerging out of the final papers. The policy briefs would be distributed to enable better understanding of issues related to better implementation of competition and regulatory regimes in developing countries. The distribution of policy briefs will utilise the extensive CUTS networks as well as other media.
3. Fredric Jenny congratulated CUTS for taking the first ever initiative to organise a symposium to deliberate on political economy aspects of competition and regulatory regimes. He emphasised that further research should focus on quality aspects of regulation and regulatory regimes in developing countries. Future work could *inter alia* address questions such as:
 - i) What is the purpose of regulation?
 - ii) Do regulators do what they are supposed to do?
 - iii) Whether what they are supposed to do is right?
 - iv) How do they perform?
 - v) Perceived successes and failures could be studied as cases to learn from such experiences.
4. Cezley Sampson highlighted the political economy aspects of regulators and regulation and suggested that studies in the domain of regulatory outcomes i.e. what is the value of regulators work to the political economy or whether they are merely another bureaucratic process, needs to be analysed. There is a need to undertake Regulatory Impact Analysis to assess the effectiveness of regulators in certain sectors.
5. Pranab Bardhan suggested that second cycle should give emphasis on analysing deeper political economy issues, including the nature of entrenched vested interest. He recommended empirical studies at the ground level/micro level should be taken up.
6. Thankom Arun and Ajay Shah had a few comments on the financial sector regulation in India. Ajay questioned the intrusive role of financial sector regulation, while Arun suggested that research in this area presented at the symposium includes both qualitative and quantitative dimensions. Ajay also questioned the basic goal behind the establishment of a regulator and how effective was the implementation. S. L. Rao suggested a study on regulation of the Indian electricity sector, especially

leadership related issues. However it was stressed in the meeting by Mehta that since this is an international project, diversity in sector and country selection is crucial in meeting its goals.

7. William Kingsmill pointed out that Competition Policy and Regulatory Policy are two separate issues and questioned the prudence of combining these while investigating political economy aspects. In his response, Mehta clarified, that the purpose of the project is to look into the political economy aspects and that the emphasis is on institutional issues. In both cases these are common.
8. Evan Due suggested that future research should focus on probing the diversity in the patterns during evolution of the political economy of competition and regulatory regimes across select countries.
9. Eleanor Fox suggested that for the IIInd cycle, we should concentrate on massive failures and try to get to the root of why the massive failures occur and as the next step, how to counteract the problem. We might select one regulatory agency, the head of which appears to be an “independent” expert but nonetheless could not do the job. The researchers might approach the problem with a list of hypothesis, factors and questions, such as,
 - how old is the agency,
 - how were the chairman and the commissioners chosen,
 - how long are the terms, turnover etc,
 - what level of funding and support,
 - what are the mandates of the agency and how do they balance tensions,
 - what moral/political support is offered by the government,
 - does the agency benchmark,
 - problems of corruption, etc.
10. Drawing out key messages from the above discussion:
 - CDRF being an international project, diversity in sector and country selection is crucial in meeting its goals. It cannot be an Indo-centric project.
 - Creating a working group on ‘Political Economy of Competition and Regulation’ to promote the main findings of the research cycle.
 - Second cycle should give emphasis on analysing deeper political economy issues
 - Future research should focus on probing the diverse pattern in evolution of the political economy of competition and regulatory regimes across select countries
 - Undertake further research to derive lessons from Regulatory Failures.
11. In addition, given below are broad research areas for second cycle derived from discussions between the CDRF team members:
 - Resolving Conflicts between Competition and Regulatory Authorities
 - Addressing Conflicting Objectives of different Stakeholders for better implementation of Competition and Regulatory Regimes
 - Protection of Public Interest vis-à-vis Promotion of Efficient Markets
 - Does the quality of regulation matter?

12. While the research in the first three will follow the same methodology as in 1st cycle, the last (Does the Quality of Regulation matter) would need to be done by CUTS itself through an international team. Following key questions could be the starting point for research:

- What is the purpose of regulation?
- Do the regulators do what they are supposed to do?
- Whether what they are supposed to do is right?
- How do they perform?
- Perceived successes and failures could be studied as cases to learn from such experiences.

Present:

Urmila Bhoola, (*In Chair*)

Ajay Shah

Bipul Chatterjee

Cezley Sampson

John Preston

K. S. Sajeev

Max Everest-Phillips

Manish Agarwal

Peter Muchoki Njoroge

Pradeep S Mehta

Pranab Bardhan

Rajat Kathuria

Roger Nellist

Eleanor Fox

Evan Due

Frederic Jenny

George Lipimile

S L Rao

Santiago Roca T

Simon Evenett,

Thankom Arun

Thula G Kaira,

Vijay Veer Singh

Vikash Batham

William Kingsmill

Annexure 4
List of Participants

S No	Name/Organisation
1.	Abhay Kantak CRISIL, Mumbai, India
2.	Aditya Bhattacharjea Delhi School of Economics, India
3.	Ajay Shah, National Institute for Public Finance and Policy, India
4.	Allan Asher Energywatch, UK
5.	Anton Eberhard Management Programme in Infrastructure Reform & Regulation (MIR) Cape Town, South Africa
6.	Ashley Brown Harvard Electricity Policy Group, Kennedy School of Government, Harvard University, USA
7.	Ashutosh Bajpai DHL Express, India
8.	Ashwini K. Swain University of York, UK
9.	B. K. Zutshi Former Indian Ambassador to the GATT/WTO and Deputy Chairman, TRAI, India
10.	Bimal Jalan Member of Parliament, Rajya Sabha, India
11.	C. Rangarajan Economic Advisory Council to the Prime Minister of India
12.	Camila Safatle Merger Division, Secretariat of Economic Law, Ministry of Justice Brasilia, Brazil
13.	Cassey Lee Nottingham University Business School University of Nottingham Malaysia Selangor, Malaysia
14.	Cezley Sampson National Energy Efficiency, and Regulatory Governance Adviser to the Government of Jamaica Jamaica
15.	Colin Kirkpatrick Institute for Development Policy and Management (IDPM), UK

S No	Name/Organisation
16.	Devendra Kodwani The Open University Business School, UK
17.	Eduardo Machado Institute for Technological Research Sao Paulo –SP, Brazil
18.	Eleanor Fox New York University School of Law, USA
19.	Evan Due IDRC, Singapore
20.	Frank Naert Department of business studies and public administration Belgium
21.	Frederic Jenny Commercial, Economic & Financial Law Chamber, French Cour de Cassation Supreme Court, France
22.	George Lipimile Zambia Competition Commission Lusaka, Zambia
23.	Heba Shahein London School of Economics, UK
24.	Iftekar Ahmed Bangladesh Enterprise Institute, Bangladesh
25.	Kirti Peniwati YLKI, Jakarta Indonesia
26.	Indah Suksmaningsih YLKI, Jakarta Indonesia
27.	J S D Kwesigabo Electricity Regulatory Authority Kampala, Uganda
28.	J. Luis Guasch Regulation & Competition Finance, Private Sector and Infrastructure, The World Bank, USA
29.	Jamil Zayed Jordanian Competition Directorate Jordan
30.	Jerome Adam Agence Francaise de Development Direction de la Strategie
31.	John Preston DFID, London, UK
32.	Joseph Seon Hur

S No	Name/Organisation
	Yoon Yang Kim Shin & Yu, Korea
33.	Joseph Wilson Lahore University of Management Sciences Lahore, Pakistan
34.	Kishwar Khan Monopoly Control Authority Islamabad, Pakistan
35.	Kwame Owino Institute of Economic Affairs Kenya
36.	Lino Briguglio University of Malta Malta
37.	M.K.Datar IDBI, India
38.	Malathy Knight John Institute of Policy Studies, Sri Lanka
39.	Marwan Kardoosh Jordan Center for Public Policy Research & Dialogue Jordan
40.	Max Everest-Phillips DFID, London, UK
41.	Michael Nicholson IRIS Center Department of Economics University of Maryland, USA
42.	Michal Gal Law and MBA Program Faculty of Law, University of Haifa Israel
43.	Mona Yassine Competition Authority, Cairo Egypt
44.	D. R. Mehta SEBI, India
45.	Mubashar Jamal Monopoly Control Authority, Pakistan
46.	Muhammad Ajaib Khan Monopoly Control Authority, Pakistan
47.	Ndungu G Kimani Institute of Economic Affairs, Kenya
48.	Nitin Desai UN for Economic and Social Affairs, India
49.	Norman Shitote Atlas Economic Links Nairobi, Kenya
50.	Olivia Jensen

S No	Name/Organisation
	London School of Economics, UK
51.	Peter Muchoki Njoroge Monopolies & Prices Commission, Kenya
52.	Pierre Jacquet Agence Francaise de Development, France
53.	Pranab Bardhan University of California, USA
54.	Prembeshaul Persaud Guyana
55.	R S Khemani Competition Policy Private Sector Development The World Bank Group, USA
56.	Rajat Kathuria International Management Institute (IMI), India
57.	Rimantas Stanikunas Competition Council of the Republic of Lithuania, Lithuania
58.	Roger Nellist DFID, London, UK
59.	S Chakravarthy Hyderabad, India
60.	S L Rao Institute for Social and Economic Change (ISEC), India
61.	S Sundar TERI, India
62.	Santiago Roca T Universidad ESAN, Peru
63.	Scott Jacobs Jacobs and Associates The International Trade Centre, USA
64.	Serdar Dalkir Micra, Inc., USA
65.	Shailesh Pathak IDFC, India
66.	Simon Evenett Universität St. Gallen, Schweiz.
67.	Sitesh Bhojani North Lyneham ACT, Australia
68.	Steve Thomas University of Greenwich, UK
69.	Suman Bery NCAER, India
70.	Supachai Panitchpakdi UNCTAD, Switzerland

S No	Name/Organisation
71.	T L Sankar ASCI, India
72.	T.C.A. S Raghavan Business Standard, India
73.	Taffere Tesfachew UNCTAD, Switzerland
74.	Taufik Ahmed Competition Policy KPPU (Indonesia)
75.	Thabelo Masithulela Competition Tribunal (SA)
76.	Thankom Arun University of Manchester, UK
77.	Thula G Kaira Zambia Competition Commission Lusaka, Zambia
78.	Urmila Bhoola Competition Tribunal, South Africa
79.	Ussal Sahbaz Turkish Competition Authority Rekabet Kurumu Bilkent Ankra
80.	Valentina Zoghbi International Bar Association, UK
81.	Vinod Dhall Competition Commission of India (CCI), India
82.	William Kingsmill DFID, London, UK
83.	Wulan Hastaningsih KPPU (Indonesia)
84.	Usha Narayanan SEBI, India
85.	Vidoahar Persaud Guyana
86.	Sumit Malik TERI, India
87.	S Deepa British High Commission, India
88.	D J Rao British High Commission, India