

Increase Political Awareness about the Linkages between Independent and Neutral Regulation and Economic Development

A Report of the Roundtable on Developing Infrastructure through an Ideal Regulatory Framework

Introduction

CUTS Institute for Regulation & Competition (CIRC) organised a Roundtable on Developing Infrastructure through an Ideal Regulatory Framework at the Russian Culture Centre, New Delhi, on January 16, 2009.



C Rangarajan, MP and President, Governing Council of the newly minted CIRC presided over the Roundtable. The event started with welcome remarks by Pradeep S Mehta, Founder Secretary General of CUTS and Trustee, CIRC followed by Rangarajan's address as Chair of the Roundtable (see Annexure for full text). Rangarajan also released the CIRC Policy Document and Souvenir on this occasion, a document which combines the twin purposes of raising finances for this Centre (by carrying advertisements) and celebrating its creation through articles elaborating on the many facets of infrastructure regulation, competition law and their crucial linkages to economic development. These articles have been authored by a wide cross-section of eminent personalities – policy makers, bureaucrats, business leaders, regulators etc. from India and abroad.

Rangarajan's address was followed by a panel discussion moderated by Vinayak Chatterjee, Chairman, CII National Council on Infrastructure and Chairman, Feedback Ventures Ltd. The following panellists participated:

- Pramod Deo, *Chairman, Central Electricity Regulatory Commission (CERC)*
- Arvind Mayaram, *Additional Secretary, Government of India*
- Vikram S Mehta, *Chairman, Shell Group of Companies in India*
- Nripendra Misra, *Chairman, Telecom Regulatory Authority of India (TRAI)*
- Nandan Nilekani, *Co Chairperson, Infosys Technologies Limited*
- N K Singh, *Member of Parliament, Rajya Sabha*

Welcome Remarks



Pradeep S Mehta traced the evolution of CUTS from a consumer protection organisation at its initiation in 1983-84 to a Southern non-governmental organisation (NGO) working on a wide gamut of issues from the empowerment of women to international trade and regulatory issues. According to Mehta, it was only natural then that this involvement in international trade and regulatory issues would result in a corresponding interest in competition and regulation, which showed that there was a huge need for building capacity of all

stakeholders. Thus, the long experience culminated in the establishment of CIRC in 2005.

He emphasised on the positive contribution that this Centre could make to the regulatory climate in the country, thereby helping to attract much needed resources to the infrastructure sectors which form the backbone of the economy. He added that the financial meltdown had made such resources scarce and increased the urgency of developing appropriate regulatory systems.

Mehta informed the audience that this Centre would engage in training and research in three fields: infrastructure and economic regulation; competition law & policy; and commercial & economic diplomacy. He expressed great happiness over the former Commerce Secretary, Dipak Chatterjee assuming office as the Director General of CIRC and that his CUTS' colleague, Bipul Chatterjee has moved to CIRC as its first Director.

The Chair's Address

Rangarajan's address set the basis for the panel discussion that was to follow. He started off by introducing the subject – the features that a regulatory framework needed to display to promote infrastructure sectors that constituted the drivers of economic development.



Elaborating on the need for regulation, he stressed the rising importance of competition law and enforcement in the light of the transformation of the Indian economy from a highly regulated economy in the 1970s to one in which productivity and performance are of prime importance.

Rangarajan stressed the importance of skilled regulators: both over-regulation (regulation in the absence of any market failures); and under-regulation (failure to correct market failures) are associated with serious adverse consequences. According to him, “a regulator is required to wield the tools at his disposal with precision, accuracy and promptness”.

Rangarajan opined that in infrastructure sectors regulation assumed added importance because of the direct linkage between infrastructure availability and economic development, the high incidence of market failures in infrastructure sectors and the massive commercial stakes which encouraged anti-competitive practices. He also identified three major objectives of infrastructure regulation: investment generation, consumer protection and efficient production of services.

He also expressed his support for multi-sector regulators as too many sector regulators could add to problems of friction and overlap. Finally, he went on to the lessons that could be gleaned from the financial meltdown: the need to avoid soft regulation and ensure that regulation keeps up pace with sector-specific innovation.

The Panel Discussion



Moderating the discussion, Vinayak Chatterjee, Chairman, CII National Council of Infrastructure cited various steps taken by the United Progressive Alliance (UPA) Government in developing general and then sector-specific regulatory norms. His provocative address clearly pinpointed to the non-achievement of the various goals which the new Government had set out for the development of a regulatory framework for the Indian economy, in general, and Indian infrastructure, in particular. He asked

the panellists to respond to some of the points that he had made, as well as to debate the points made by other panellists.

N K Singh, Member of Parliament was the first panellist and raised several important issues in his speech. He opined that the major barrier to change in the regulatory climate of the country was the antiquated political mindset which continued to lag far behind the literature on regulatory issues.



According to Singh, delineation of functions among the executive, legislature and judiciary was also important as problems of overlap and lack of coordination often affected the effectiveness and timeliness of regulation. The cultivation of an arm's length relationship between the line ministry and the regulator through norms and laws was also emphasised by him as political capture of regulation was one of the primary reasons for regulatory failure. Finally, human capital formation for regulatory purposes was deemed to be a key factor by him, echoing Rangarajan's view that regulation was a high skill job.



Nandan Nilekani, Co-chairperson, Infosys Technologies, brought to bear his considerable experience as a practitioner as well as observer in the corporate sector in making some original remarks about the nature of regulation in India. First, he stressed that regulatory design in each sector should be determined by the specifics of both market structure and the network structure of supply. For example, certain sectors were characterised by natural monopolies, and therefore, regulation had to ensure that these did in fact remain monopolies.

In contrast, in other sectors such as telecommunications, new developments in technology have implied that competition enhancement is associated with productivity improvement. In such sectors regulation is needed to facilitate much needed competition. In yet another category, network infrastructure industries, larger networks imply lower costs and therefore overall monopoly in ownership is recommended. Yet efficiency could be maximised by vertical unbundling of the production process and introduction or simulation of competition in select parts.

Nilekani was also of the opinion that regulatory systems all over the country had to evolve from being providers of indirect subsidies to that of direct benefits. He justified his recommendation by pointing to the difficulty in targeting such subsidies to people who needed them – the poor and the destitute. Such targeting was far easier in the case of direct benefits such as cash transfers. Moreover, unlike subsidies these did not interfere with the functioning of the market mechanism. Thus, according to Nilekani, a system of providing direct benefits would be consistent with profitability of investment and yet serve redistributive goals.

Nripendra Misra, Chairman, Telecom Regulatory Authority of India (TRAI), stressed that regulatory powers allocated to regulators by the Government are a key determinant of economic outcomes. Thus, he too felt that political capture of Government policy had rendered regulators and their sound recommendations ineffective.



Such political capture of regulatory policy on the ground was dictated by the presence of powerful vested interest groups which lobbied for their own narrow interests at the expense of the broader national interest. Misra pointed out how many technologically progressive steps such as ‘number portability’ and ‘3G reforms’ recommended by the TRAI had been stalled because of the influence exerted by these powerful vested interest groups.



Vikram S Mehta, Chairman, Shell Group of Companies in India, focussed on the issue of regulatory mandate and opined that the regulator was a law keeper rather than a policy maker. He felt that there was a strong need to delineate policy making and law framing, which were the functions of the Government and legislature respectively, from the task of interpreting these laws and ensuring law abiding behaviour which was the domain of the regulator. These seemed to be consistent with opinions expressed earlier about the separation of functions among the executive, legislature and judiciary.

Finally, in keeping with Rangarajan’s remarks about the high skill requirements for regulation and Singh’s underlining of the importance of human capital formation, Mehta called for greater specialisation among regulators.

Arvind Mayaram, Additional Secretary, Government of India focussed on sectors which are often ignored by media and politicians alike. These are urban and rural infrastructure sectors with a strong social welfare dimension with access to these sectors often essential for dignified human existence – rural/urban infrastructure such as water/sewerage/roads. These have to be regulated in a manner different from other infrastructure sectors so that these become a sustainable driver of development – the most essential regulatory function here is to ensure competitive outcomes without open competition. Regulation by contract which helps form public-private partnerships (PPPs) is the tool that needs to be used here.





Pramod Deo, Chairman, Central Electricity Regulatory Commission (CERC), drew attention to the limitations faced by regulators, particularly those in the electricity sector, in preventing the flouting of regulatory laws. Thus, he urged for provision of punitive powers to regulators to deal with illegal behaviour.

Interaction and Final Address

The initial speeches by the panellists were followed by a lively interaction session and a succinct summary by Dipak Chatterjee, Director General, CIRC, in the concluding address. While capturing the essence of the contributions made by all the panellists he singled out “reorientation of the political mindset to modern day regulatory needs” as the pressing need of the hour.

Chatterjee ended with a vote of thanks to the chair and all the panel participants, and expressed his gratitude to L Mansingh, Chairman, Petroleum and Natural Gas Regulatory Board (PNGRB) for agreeing to participate as a member of the audience. He also thanked the patient and attentive audience and lauded the efforts of Pradeep S Mehta and Nitin Desai (Chairman, CIRC Management Committee) in organising the Roundtable and making CIRC a reality.



Contributions of the Roundtable to the Discourse on Regulation

In summary, the deliberations of the afternoon were very fruitful and quite successful in highlighting the intricacies of competition and regulation of infrastructure, a much misunderstood subject in this country.



The single biggest contribution of the Roundtable has been the generation of awareness of competition and regulatory issues both directly and through related media reports. CUTS and CIRC websites and various e-forums/newsletters have also carried releases about the Roundtable. Thus, the wisdom gained from these deliberations has been disseminated widely.



The following are the recommendations emerging out of the deliberations in a nutshell:

Recommendations about content of regulation

- Avoid both over-regulation and under-regulation at the sector level
- Ensure that sector regulation keeps up with sector-specific innovation
- Develop multi-sector regulators where feasible to minimise tensions and frictions among regulators
- Replace subsidies with direct benefits to facilitate redistribution with minimal disturbance of the market mechanism
- Tune regulation to market characteristics

Recommendations for improving regulatory systems

- Increase political awareness about the linkages between independent and neutral regulation and economic development so that politicians cease to act as champions of vested interest groups
- Develop a class of well trained, skilled and specialised regulators
- Ensure that regulators stick to their assigned role of being guardians of regulatory laws and do not dabble in policy making
- Encourage independent regulation through advocacy as well as legislation
- Simulate competition through regulation by contract in rural/urban infrastructure sectors with strong social welfare linkages
- Provide power to the regulator to punish flouting of regulations