

Annual Report 2012-13

**CUTS Institute for
Regulation and
Competition**



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**Nitin Desai,
President, Governing Council**



As conceptualised by its founding members, CIRC was envisaged as a High Performing Knowledge Institute (HPKI) to develop research based products for capacity building and be a multi-stakeholder institute catering to, *inter alia* utilities, regulatory bodies, policy makers, legislators, academia, students and, most importantly, civil society in the area of competition policy and law. I am glad to see CIRC moving forward in this direction.

The enforcement of competition law and its pervasive presence across the sectors and businesses has created a high demand for trained competition professionals. In India, there is a dearth of such professionals. To fill this gap, CIRC's initiative to launch two long term courses viz. Certificate/ Diploma Courses in Competition Policy and Law, accredited to National Law University, Delhi during the year is laudable. I am sure that this initiative would open new employment avenues in law firms, business houses, research organizations, regulatory bodies etc. It was anticipated that the appointment of various regulators would require trained staff. However, many regulators are not building in-house capacity perhaps due to lack of a serious research agenda. The quality research work of the CIRC should feed into capacity building and training agenda and to reach out to our target audience. There is need to recognise infirmities in the regulatory system in India. Equally important is the need to address the issue of non-acceptance of regulators by the political system. There is latent demand for capacity building in various important areas like PPPs, public procurement, sector specific regulations and business ethics etc. As a civil society organisation, CIRC should continue to deliver fresh courses based on intensive research and need - assessment to bridge the gap.

I am confident that CIRC would build on the ground work done so far and continue to identify capacity building needs of relevant stakeholder groups, conduct research in the verticals that it is working so as to create a good stock for capacity building. In conclusion CIRC will have to overcome these challenges adequately so as to become a self-sustained entity.

Nitin Desai



Pradeep S. Mehta,
Chairman, Managing Committee

I am happy to share the Annual Report for a very eventful year in CIRC. The Institute has made steady progress in achieving its goals and objectives. Increasing number of long and short term courses offered by CIRC amply demonstrate it. CIRC-National Law University, Delhi (NLUD) Course on Competition Policy and Law received very good response. With the recent developments in information technology and its popularity, we have successfully launched our first on-line course on Competition Act, 2002.

Globally, online education is becoming essential for imparting knowledge, and therefore we will explore this medium to reach out to prospective client community in and out of India.

The short online course on competition law in India has been well received and soon we will be launching similar courses for other countries as well.

Though we have also launched a new course on Law and Economics of PPPs in partnership with Jindal Global University (JGU), it needs to be further fine-tuned to meet extant aspirations. We will re-launch it in the form of a short on-line course.

With CIRC's registration under FCRA, opportunities to access foreign funding and undertake capacity building and research in its programme areas have increased manifold. However, the environment for a developmental institute such as CIRC is an increasingly difficult one. There are only a few individuals and organisations who understand the importance of such institutions for overall economic welfare and making this world a better place to live in. I am happy to mention that CIRC has been receiving tremendous support from some understanding officials, well-wishers, media and friends that keeps it motivated notwithstanding the apathy and indifference it receives from some quarters at times.

Looking at the future, an important aspect of CIRC's work agenda is going to be to: (a) increase the number of both long and short-term courses, (b) increase the geographic outreach of CIRC to other developing economies particularly in Asia and Africa, where a lot of capacity building is needed in the areas of Competition Policy & Law and Economic Regulation, and c) improve the discourse on the interstice of law and economics in the country, where there is a vacuum. This would mean buttressing our research capacities in house and through outsourcing.

I extend sincere thanks to all friends and supporters of CIRC and deep appreciation particularly to its devoted and untiring staff and management. The Governing Council has provided ever helpful and positive support, for which I am grateful. I look forward with confidence in continuing our work to improve the regulatory regime and impart training to others in understanding and appreciating a better world order.

Pradeep S Mehta

Annual Report, 2012-13

Highlights

- a. Long and Short-term Capacity Building Courses:**
- Long-term courses on Competition Policy and Law
 - Certificate Course on Law & Economics of Public Private Partnerships (PPPs) and Economics for Competition Law
 - On line Course on Competition Act, 2002
 - Competition Law Workshop for Public Sector Enterprises (PSEs)
 - Competition Law Workshop for Marketing Professionals
 - CIRC & PHD Seminar on "Competition Law Enforcement and Business Strategy"
 - A Special Academic Lecture on Convergence and Divergence of Competition Laws Across Jurisdiction-EU, US and Others
 - Special Academic Lecture and Panel Discussion on Emerging Issues in Competition Law
- b. Research:**
- India Competition and Regulation Report, 2011
 - Project on Business Regulation and Corporate Conduct (BRCC)
 - Sector Studies on Competition Policy
 - Research Study on Public Procurement
 - Research Study of website Owners allowing Third Party Advertisement
- c. Conferences and Outreach Events:**
- Panel Discussion on Mainstreaming Public Private Partnership
- d. Other Important Achievements:**
- Reconstitution of CIRC Governing Council
 - Registration of CIRC under Foreign Contribution (Regulation), Act, 2010
 - Allotment of Plot for Campus at Jaipur
- e. Publications:**
- Regtracker
 - CirCular
 - CirComp Weekly
 - Working Paper Series

The year has witnessed CIRC moving forward to achieve the objectives envisaged by its founding members and the individuals and institutions, which felt the need for a dedicated institute to carry out research-based capacity building activities in the area of competition and regulation, and provided financial support. Since its operationalisation in 2008, CIRC has been making strides to come out with innovative capacity building efforts. This year marks a positive turning point.

Following are the main activities and achievements of CIRC in the year 2012-13:

1. Long and Short-term Capacity Building Courses

1.1. Long-term courses on Competition Policy and Law:

Under a Memorandum of Understanding (MoU) signed in December, 2011 between CIRC and National Law University, Delhi (NLUD), two six-months Certificate and a one-year Diploma courses, as detailed below have been conducted by CIRC:

1.1.1. First Batch (April, 2012):

This batch had 44 participants from different backgrounds as indicated below:

Background	Students	Professionals
Law	14	14
Economics/Finance	04	04
Management/Finance	02	02
Natural Sciences	01	03

1.1.2. Second Batch (October, 2012):

This had 52 participants from the diverse professional backgrounds as detailed below:

Background	Students	Professionals
Law	17	13
Economics/Finance	01	03
Management/Finance	07	05
Natural Sciences	01	00
Social Sciences	03	02

This Course, duly accredited by National Law University, Delhi (NLUD) is designed to impart knowledge and skills relating to Competition Policy and Law to the participants and open up new employment avenues in Competition Authorities, Regulatory Bodies, Law Firms, Business Houses, Research Bodies etc.

To enhance the efficacy of the courses, CIRC's endeavour has been to revise the course modules and to incorporate latest case studies therein from time to time.

These Courses will continue to be conducted as an on-going activity of CIRC in future.

1.2 Certificate Course on Law & Economics of Public Private Partnerships (PPPs) and Economics for Competition Law:

Considering the importance and need for a professional course on PPPs, CIRC signed an agreement with O.P. Jindal Global University (JGU), Sonapat (Haryana) for launching of a six-month Post Graduate Course on Law & Economics for PPPs. Training modules were prepared and last date for receipt of applications was extended thrice but it was felt that the offer of the regular course needs a review, as the market is inclined to pursue such courses.

It is now proposed to conduct this course online in a capsule after incorporating suitable amendments in the course curriculum. The work is already in hand and an online 8 weeks (2 months) course titled “CIRC On-line Certificate Course on Law and Practice of PPPs” will be announced next year.

1.3 Online Course on Competition Act, 2002:

CIRC conducted an eight-week online “Certificate Course on Competition Act 2002 in India” in March, 2013. The objective was to acquaint participants to the provisions of the Competition Act, 2002 in India and its enforcement. Total 22 participants were enrolled for the first batch of this course, out of which two were from Nigeria. All the candidates passed the examination and were awarded a Certificate by CIRC.

Keeping in view the satisfactory response and the need for more trained manpower in this area, and to meet future requirements, this course will be held as a regular on-going activity in future.

2. Competition Law Workshop for Public Sector Enterprises (PSEs):



A specially tailored one-day workshop was conducted on April 27, 2012 for PSE officials to provide them insights relating to their peculiar competition issues. Major competitive issues relating to PSEs, namely, anti-competitive agreements, abuse of dominance and combinations, competitive neutrality and efficient public procurement were emphasised upon the participants. The discussions were made attractive by highlighting latest case laws pertaining to PSEs. At the end of each session, the floor was thrown open for comments/questions for clarifying doubts and seeking clarifications. The workshop was well received by the participants.

3. Competition Law Workshop for Marketing Professionals:

CIRC organised another one day Competition Law Workshop on July 6, 2012 for Marketing Professionals. Senior executives from Hindustan Petroleum Corporation Ltd (HPCL), Western Union, India Today, GAIL (India) Ltd, Indian Oil Corporation Ltd (IOCL), Indian Rare Earths Ltd (IREL), Engineers India Ltd (EIL) etc. attended the workshop.



The workshop covered the areas of competition law enforcement including anti-competitive agreements, abuse of dominance, penalties, etc. The following competition issues were discussed:

- exchange of information in informal meetings;
- role of trade associations in marketing decisions and anti-competitive agreements; and
- role of trade associations in marketing decisions and abuse of dominant position.

The workshop also had group activities wherein participants engaged in the analysis of relevant case laws to understand the application of legal concepts in the marketing field.

At the end of each session, the floor was kept open for comments/questions and for allaying doubts. The participants appreciated the workshop and found it of immense utility in their day-to-day functioning.

4. CIRC & PHDCCI Seminar on "Competition Law Enforcement and Business Strategy"



CIRC in association with PHD Chamber of Commerce and Industry conducted a Seminar on "Competition Law Enforcement and Business Strategy" on November 29, 2013 in New Delhi. The seminar covered (i) three years of Competition Commission of India: Success and Challenges; (ii) cross border M&As in pharmaceutical sector in developing countries: issues and challenges; (iii) a competition issue in platform markets/network industries; and (iv) roundtable discussion on "Experience from other countries: Lessons for India." Secretary General CUTS International and experts from Pakistan, the US, Competition Commission of India and other important dignitaries participated.

5. A Special Academic Lecture on Convergence and Divergence of Competition Laws Across Jurisdiction-EU, US and Others:

A special academic lecture on "**Convergence and Divergence of Competition Laws across jurisdiction-EU, US and Others**" by the prominent antitrust and comparative law scholar – **Dr. Eleanor M. Fox** from New York University School of Law was organized on March 02, 2012 in New Delhi. The lecture was attended by the students of CIRC-NLUD Course on Competition Policy and Law as well as Faculty members of the Course.

Dr. Fox presented a careful analysis of the Competition Law regimes in the US and EU encompassing the convergences and divergences in the laws and practices between the two jurisdictions. This interaction with Dr. Fox helped the students to understand the competition law practices in the developed nations, while he also addressed the changes that the developing nations like India need to make to have more robust and prolific competition law regime. The session also saw a fruitful discussion between the participants and academicians regarding on-going cases such as Google case and a case study of the retail sector.

Dr. Fox highlighted the challenges facing the competition authorities across emerging and mature jurisdictions and also international policy think tanks to facilitate convergence of competition law. She held that divergences among varied jurisdictions exist only on account of material difference in approaches to the antitrust law violations. She concluded that though seemingly a daunting task, any goodwill efforts towards convergence should be more sympathetic to integration and beget cooperation and regard for compatible outcomes.

6. Special Academic Lecture and Panel Discussion on Emerging Issues in Competition Law

CIRC organized a Special Academic Lecture and Panel Discussion on Emerging Issues in Competition Law on March 16, 2013 for the benefit of CIRC-NLUD Competition Policy and Law students.

Mr Eduard Perez Motta, President of Federal Commission on Competition (CFC), Mexico; Mr. Amitabh Kumar, former Commissioner of Income Tax, India presently practising in areas of Regulatory & Policy, Competition Law & Taxation; Mr. K.K. Sharma, founder of K.K. Sharma Law Offices and formerly Director General & Head of Merger Control in Competition Commission of India (CCI); Mr. Vipul Puri, Deputy Director, CCI and Mr. Avinash Dadhich, a Senior Law Expert, CCI participated in the panel discussion.

The discussion centred around the manner competition authorities should address issues when a dominant enterprise has global presence and its abuse is impacting global consumers; issues and challenges faced by the competition authorities in combating overseas cartels; rationale for Intellectual Property Rights (IPRs) exemption in Indian Competition Act, 2002; harmonising competition laws across jurisdiction to address Cross Border Issues and synergies between Competition Law and Business Strategies. The discussion enriched the participants.

7. Research

7.1 *India Competition and Regulation Report, 2011*

CIRC in association with CUTS Centre for Competition, Investment and Economic Regulation (CUTS CCIER) published the 3rd biennial report on the state of competition and regulation in India. This was done in partnership with the Norwegian School of Management (BI), Oslo and supported by the Norwegian Embassy in Delhi. The purpose of these biennial reports is to assess the importance and effectiveness of regulatory institutions, and generate awareness among consumers and other stakeholder groups on the need for and status of regulation and competition in India. The earlier two reports of 2007 and 2009 were supported by the British High Commission, New Delhi.

As part of the project, research was carried out to evaluate and improve the quality of regulation and competition in six emerging sectors: retail distribution, natural gas, micro finance, telecommunications, residential real estate and road transport. The Project has since been completed and the Report titled “Competition and Regulation in India-2011” was released in October, 2012.

The 4th biennial report for 2013 has also been taken in hand in association with CUTS CCIER and Norwegian School of Management in continuum. It is expected to be published in November, 2013.

7.2 **Project on Business Regulation and Corporate Conduct (BRCC):**

CIRC assisted CUTS Centre for Competition Investment and Economic Regulation (CUTS CCIER) in the implementation of this project during 2012-2013. BRCC project is being implemented to explore the interplay between business regulation and corporate conduct to understand about the roles various stakeholders need to play in promotion of responsible business practices. Intervention through the project was made in the pharmaceutical and private healthcare sectors across the states of Andhra Pradesh, Gujarat, Himachal Pradesh and West Bengal.

The research used the framework of National Voluntary Guidelines on Social, Environmental & Economic Responsibilities of Business (NVGs) and applied its nine principles and core elements in both the sectors. NVGs were

adopted by the Government of India in July 2011 and present the most contemporary definition of responsible business in India

The final research report titled 'Rethinking Business Responsibility in India: A review of Pharmaceutical and Private Healthcare sectors' was later released by Shri Arun Maira, Member, Planning Commission. The project report has mapped the institutional context of the two sectors, gathered data from different stakeholders to understand the realities and challenges and presented findings on different facets of regulation and implications for business behaviour in the two sectors. The report can be accessed at http://www.cutscier.org/BRCC/pdf/Rethinking_Business_Responsibility_in_India.pdf.

7.3 Sector Studies on Competition Policy

CIRC assisted the Indian Institute of Corporate Affairs (IICA) under the Ministry of Corporate Affairs, Government of India, in 13 sector studies through various subject experts. These sectors are:

- Agriculture Sector
- Health Sector
- Civil Aviation Sector
- Coal Sector
- Education Sector
- Electricity Sector
- Government Procurement
- GST & Single National Market
- Pharmaceuticals Sector
- Public Sector Enterprises
- Railways Sector
- Real Estate Sector
- Road Transport Sector

A competition assessment tool kit designed for developing countries was also drafted as part of the project.

CIRC has also prepared a **synthesis report** which captures the findings from sector studies and presents a competition policy agenda for the government. The report released on October 8, 2012 and submitted to the IICA, offers key recommendations viz. creating a single market, achieving policy coherence,

coherence in approach to competition amongst regulators, enabling market entry and exit and sustaining enabling conditions to competition.

This synthesis report entitled, “Infusing Competition through Appropriate Policy Responses” is culmination of the sector studies process which was initiated by the Ministry of Corporate Affairs along with setting up the Committee for National Competition Policy and Allied Matters. The findings from various sector studies are now expected to provide inputs to different ministries/departments when they start implementing the NCP. It will also set in motion similar studies across other sectors, which were not covered in this edition. This report would provide valuable inputs to various Ministries/Departments of the Govt. of India when they implement National Competition Policy (NCP) after it is approved.

The NCP is yet to be adopted and is being discussed at the higher levels in the government.

7.4 Research Study on Public Procurement:

CIRC has undertaken a study on competition and regulatory issues which adversely affect efficiency and effectiveness of public procurement in health and primary education sectors. The study covers procurements by the Government of India and Government of Rajasthan. As part of the study, the tendering process and related competition distortions have been mapped in the focus sectors. Importantly, both the sectors have a high social welfare quotient and affect human development very significantly. It is aimed that, given the limited budgetary allocations, infusing competition in government procurement in these two sectors can yield greater public welfare. The study report was submitted to Indian Council of Social Science Research (ICSSR) towards the end of 2012 and has since been accepted by ICSSR for publication.

7.5 Research Study of website Owners allowing Third Party Advertisement

CIRC conducted this study with the assistance of Initiative for a Competitive Online Marketplace (I Comp), United Kingdom. The scope of the study included: 1) dynamics between small scale enterprises such as website owners and large enterprises such as advertising service providers in India from consumer and competition perspectives; 2) nature of advertising contracts between website owners and third party service providers; and 3)

unfair conditions, if any, in the commercial relationship between website owners and third party service providers. The study was completed in September, 2012.

The main findings were:

- a. Websites are still working as a support function for many companies and hence revenue generated from advertisement on these websites is very low relative to total revenue. On the other hand, a company for whom website is the primary business, like e-commerce etc. revenue share generated from website advertisement is very high in comparison to total revenue.
- b. Number of clients going to websites directly is less. Service providers act as mediators between clients and websites and charge both clients and websites but majorly they charge websites. This way of charging website is prime source of income for service providers.
- c. Increasing competition in market has forced websites to be competitive in terms of advertisement charges also; they do not want to lose advertisement due to high charge quoted by the service provider. Hence they want revenue share to be specifically mentioned in the contract.

8. Conferences and Outreach Events

8.1 Panel Discussion on Mainstreaming Public Private Partnership:



CIRC conducted a panel discussion on mainstreaming PPPs on October 08, 2012 in which Dr. Arvind Mayaram, Secretary, Department of Economic Affairs, Government of India, was the chief guest. He affirmed the need for trained manpower for growing number of PPPs in Indian economy as legal agreements in the form of Concession Agreements and other related agreements such as Substitution Agreements and Service Level Agreements form the basis for transactions under PPPs. He asserted that CIRC is ideally equipped to create an army of educated PPP practitioners and it should endeavour to undertake research and capacity building initiatives in this area accordingly.

On this occasion, a CIRC policy document entitled “Infusing Competition through Appropriate Policy Response” was also released. The report was prepared by CIRC for IICA/Ministry of Corporate Affairs to build awareness on competition distortions due to various laws and policies.

9. Other Important achievements:

9.1 Reconstitution of CIRC Governing Council:

CIRC reconstituted its Governing Council. Noted Economist and former United Nations Under Secretary-General, Mr. Nitin Desai took over, on April 08 , 2012 as President of the Governing Council from Dr. C Rangarajan, Chairman, Prime Minister's Economic Advisory Council. He led CIRC for past four years. Dr. Rangarajan kindly agreed to be associated with CIRC as the President Emeritus.

Mr. Vikram Singh Mehta until recently Chairman of the Shell Group and now Chairman of Brookings India also took over as Vice-President of CIRC Governing Council from Mr Desai.

9.2 Registration of CIRC under Foreign Contribution (Regulation) Act, 2010:

Based on the application submitted to Ministry of Home Affairs, CIRC has been allotted FCRA registration number: 231661339 under Foreign Contribution (Regulation) Act, 2010. This would help to bid for funding opportunities from foreign countries and enhance CIRC's geographical outreach.

9.3 Allotment of Plot for Campus at Jaipur :

CUTS have been allotted a piece of land measuring about 5000 sq. m. in village Shrikishanapura, Jaipur for construction of its campus to house the CUTS Institute for Regulation & Competition. CIRC has supported CUTS for this purpose and has also donated funds towards its campus. Once it is built, CIRC will be able to conduct regular residential courses in Jaipur.

10. Publications

10.1 CIRC continued to bring out its quarterly “**RegTracker**”. This publication tracks policy changes and proposals on economic regulation in the country. This quarterly magazine is now being circulated electronically. It does not just track the current policy developments but also raises points to ponder for deeper analysis by policy makers and researchers. This e-magazine has been well received by the readers and people have appreciated our efforts.

10.2 “CIRCular”- A hard copy newsletter updates CIRC’s activities on quarterly basis.

10.3 CIRComp Weekly updates CPL course participants about the recent developments in the area of competition policy and law in India and in other major international competition law jurisdictions. It also provides information about happenings in CPL and intends to function as an interface between CIRC and CPL course participants.

10.4 As part of its work on outreach on issues relating to law and economics, CIRC is planning to launch working paper series in 2013.

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