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Reviewing the Global Experience on Economic Regulation

“The major thrust of the new economic policy is to improve the productivity and efficiency of the system by injecting a greater element of competition. Hence, the need for competition laws and regulatory oversight to ensure that competitive conditions prevail in every market,” said C Rangarajan, Chairman, Prime Minister’s Economic Advisory Council while delivering the inaugural address at the International Conference on *Reviewing the Global Experience with Economic Regulation: A Forward Looking Perspective*, held at New Delhi,

during April 18-20, 2011. He further stated that unnecessary regulations of well-functioning markets and the lack of such interventions in the case of market failures are both associated with serious consequences. Importance of sectoral regulations are highlighted for those sectors where public policy considerations are dominant and where quasi monopolies emerge because of the nature of the products supplied.

Arun Maira, Member, Planning Commission stated that it is important to identify indicators of market failure and do necessary readjustment in the system of economic governance. An effective regulatory mechanism is an essential requirement for that to happen smoothly.

Frederic Jenny, Judge, French Supreme Court, and Chairman of OECD’s Competition Committee laid emphasis on regulation of the economy. He stated that the financial and economic crisis and the responses that the crisis has elicited have contributed to renewal of the debate on the role

and effect of regulation of financial and assessment and implementation. He stressed on the mechanism to ensure the accountability of regulators and also the appropriate design to ensure independence, responsiveness, relevance and quality of regulators in the financial and real sectors.

The conference attempted to forge agreements on a number of issues by putting on display different approaches for rationalising and evaluating regulation as well as defining stakeholder participation in such regulation, and generated discussion and debate among stakeholders and experts from different parts of the world. Papers were invited both from targeted experts and through an open competition judged by an international panel for presentation and deliberation in the conference.

Nearly 100 participants, including experts and scholars from around the world took part in deliberations on diverse issues of economic regulation. Areas covered during the conference included, among others, competition assessment, consumer impact assessment, regulatory impact assessment and frameworks and approaches for achieving regulatory coherence.

This conference on reviewing the global experience on economic regulation was another milestone in CUTS’ and CIRC’s continued emphasis on the importance of competition and economic regulation in the emerging global scenario.

www.cuts-ccier.org/CONF_Reviewing_Global_Experience_Economic_Regulation.htm



The panel of the inaugural session of the conference. (Standing L to R) Patrice Coeur-Bizot, Frederic Jenny, Pradeep S Mehta, C. Rangarajan, Atiur Rahman and Arun Maira

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Events

Facing Competition While Staying Within Boundaries

In India, the public sector enterprises (PSEs) account for more than one-fifth of the gross domestic capital formation and have been applauded for their contribution in “nation building”. But a lot has changed since they were initially established. From sectors with natural monopolies to newly created markets such as telecom, oil and gas, airports, power, seaports, highways, public transport, technology goods, heavy engineering, chemicals and fertilisers etc., PSEs now face altogether different competitive compulsions. These competition threats largely emanate from the evolving regulatory and competition regimes in India.

PSEs are said to be in an advantageous position in the market *vis-à-vis* private players. However, the changing rules of the game posit greater challenges before PSEs. On the one hand, there are allegations that PSEs' incumbent position provides them unjustified advantage in the market place and on the other, there is a concern that in some sectors, PSEs complain to receive unfair competition from their private counterparts.



G. R. Bhatia, Partner, Luthra & Luthra addressing the participants at the workshop

Needless to say, in both the sides – defensive and offensive, an improved understanding of competition law can be the only way forward. It is with this objective in view that a half day workshop on Competition Law for public sector enterprise personnel was conducted. The workshop began with a brief overview of the Competition Act given by Navneet Sharma, Director, CIRC. In the second session GR Bhatia, Partner, Luthra & Luthra Law Offices threw light on the competition issues affecting PSEs which included abuse of dominance and anti-competitive agreements with regard to PSEs. In the concluding session, Manas Kumar Chaudhuri, Partner, Khaitan & Co. dealt with the remaining set of competition issues affecting PSEs that covered procurement issues and competition law and regulation of combinations.

www.circ.in/pdf/Competition_Law_for_PSEs.pdf

Open Access in Electricity Sector

CUTS Institute for Regulation & Competition (CIRC) organised an interactive meeting on *Activating Open Access in Electricity Sector* under the chairmanship of Gajendra Haldea, Adviser to DCH, Planning Commission and Pradeep S Mehta, Chairman, Managing Committee, CIRC as the moderator at New Delhi, on January 07, 2011.

Gajendra Haldea opined that open access existed even before the Electricity Act 2003. He also pointed out that the Act contemplates distribution and supply, but the intent was that supply has to be seen different from distribution. He referred to open access being practiced in the US and the UK. In London consumers could choose between 12 suppliers over the same wires and that ironically India does not have a single open access consumer till date. In that context, Geeta Gouri, Member, Competition Commission of India, said that there is legislative intent which was an impediment as Section 42 (3) said that same wires cannot be used.

Sunil Wadhwa, Managing Director, North Delhi Power Limited said that consumers should be allowed to contact the suppliers and then should talk to discoms to buy the content for them. Harish K Ahuja, Joint Secretary, Department of Power, Government of Delhi, argued that the Act was very clear regarding open access and cited the example of West Bengal Electricity Regulatory Commission. V S Ailawadi, Ex-Chairman, Haryana Electricity Regulatory Commission, opined that both open access and competition were clearly embedded in the Act. He further said that open access provided a big opportunity to promote bulk consumers of one megawatt and above, who have the right to choice under sections 42 (3) and 49.

Haldea said that sections 42 (3) & (4) have imposed a duty on the electricity regulator to ensure that any consumer who chooses supply from other than a particular distribution company must not only be encouraged but be backed up by enabling procedures to ensure that choice is effectively exercised.

The consensus, which seemed to have emerged in the meeting, is that cross-subsidy surcharge has been a dampener to open access, and, if open access has to be successful, all customers above one MW should face an unregulated tariff. Deregulation of electricity supply to high use customers was the only solution to incentivise open access. This will also address the problem of distribution licensees being left with low value customers as every customer will pay the cost of supply.

[www.circ.in/pdf/Report-](http://www.circ.in/pdf/Report-Interactive_Meeting_on_Activating_Open_Access_in_Electricity_Sector.pdf)

[Interactive_Meeting_on_Activating_Open_Access_in_Electricity_Sector.pdf](http://www.circ.in/pdf/Report-Interactive_Meeting_on_Activating_Open_Access_in_Electricity_Sector.pdf)

Understanding Fundamentals of Competition

Notwithstanding the significance of competition law across business functions, marketing professionals, due to their nature of job and market-facing placement, require an improved understanding of competition law issues. In the process of driving sales, they need to not only counter competitors, which may on several occasions be dominant players, but also remain compliant *vis-à-vis* their own conducts.

Further, they are involved in a large number of market-facing decisions related to pricing, discounts, rebates, storage, distribution, franchising, dealer networks, promotion, product tying and bundling, etc. most of which need to be visited through competition law lenses.

In the mentioned context, CIRC organised a half-day workshop for Marketing Professionals at New Delhi, on March 11, 2011. Professionals from diverse sectors such as Tyre, Chemical, Automobile, and Power participated in the workshop. Two business sessions were conducted by Samir Gandhi, Partner, Economic Laws Practice and Navneet Sharma, Director, CIRC.

www.circ.in/pdf/Competition_Law_for_Marketing_Professionals_Brochure.pdf

India Competition and Regulation Report (ICRR III), 2011



CIRC in association with CUTS Centre for Competition, Investment and Economic Regulation (CUTS CCIER) and the Norwegian School of Management (BI), Oslo, is implementing this project to assess the importance and effectiveness of regulatory institutions, and generate awareness among consumers and other stakeholder groups about the need for and status of regulation and competition in the country. This ongoing project is the third in the series of biennial reports by the same name; the previous editions were published in 2007 and 2009. The project is being supported by the Norwegian Ministry of Foreign Affairs, Oslo.

The project undertakes research to evaluate and improve the quality of regulation and competition in six emerging sectors – retail distribution, natural gas, microfinance, telecommunications, real estate (residential) and road transport. The research report will review the state of competition and regulation in some thematic issues in addition to the focus on the above mentioned six selected service sectors. The partner organisations would embark on a process of dialogue and advocacy (based on the research findings) and share the outcomes of their research with relevant stakeholders across India and Norway.

The first meeting of the ICRR III National Reference Group (NRG) was organised in New Delhi, on January 29, 2011. The meeting was held under the chairmanship of Nitin Desai, Vice President, CIRC Governing Council

and moderated by Pradeep S Mehta, Chairman, Managing Committee, CIRC. Mehta welcomed the participants and briefed the congregation about the earlier cycles of the ICRR in 2007 and 2009 respectively.

Subsequently, Desai observed that the Project aims to capture the existing regulatory deficit in the country and expressed that the purpose of the report is to encourage both knowledge-based public discourse and set the stage for future work. The NRG consists of representatives from government, academia, industry, international organisations and media and thus brings forth a wide spectrum of opinion on the issue.

Two stakeholder consultation meetings were held for retail and real estate sectors, with participants from the NCR region and their comments have been received as inputs for the finalisation of the report.

As a part of the project, a perception survey is being conducted, to assess the perceptions of people about the state of competition and regulation in the country; it will also examine the temporal change in the perception of people in this regard over the past five years ever since the project was launched. 11 states participated in this survey, viz. Karnataka, Tamil Nadu, Uttar Pradesh, Andhra Pradesh, Madhya Pradesh, Orissa, New Delhi, West Bengal, Maharashtra, Gujarat and Bihar. The report is scheduled to be completed by December 2011. www.cuts-ccier.org/icrr2011

CPL Certificate Course

With the passage of the Competition Act 2002 (as amended), business strategy decisions such as pricing, agreements across value chains and between competitors, mergers and acquisitions, usage of intellectual property rights etc. are likely to be impacted.

Companies and their executives today are faced with fresh challenges to comply with the new Competition Law of India. This course is especially designed to help such executives and students of business management, economics, law, chartered accountancy and company secretary ship, acquire relevant professional skills and gain the first-mover advantage.

The certificate course will be delivered through 14 written modules, designed, written and reviewed by well-known competition experts. 30 hours of rigorous classroom interactions are tailored to meet needs of the industry.

Teaching Methodology

An interactive and intensive teaching methodology comprising lectures, syndicate work, case studies, structured group discussions and presentations from experts in the field will be employed.

All participants will receive 14 modules before the course commences. These modules are written in a reader friendly way to help participants understand the issues and will also serve as handy-toolkits in their careers.

Classroom interactions and activities are designed in a way to facilitate maximum interaction between the participants and resource persons. Maximum usage of real-life cases has been made in the modules. In addition, participants will be given case exercises to apply the learnt skills.

www.circ.in/cpl

Policy Highlights

NEAMA to Monitor Environment

As a part of the larger agenda of environmental regulatory reforms and to improve the environmental governance in the country, particularly in the fields of environment impact assessment and coastal zone management, the Ministry of Environment & Forests has initiated a proposal to establish a National Environment Assessment and Monitoring Authority (NEAMA).

An amendment to the Environment (Protection) Act, 1986 is proposed to establish the NEAMA and also to take care of certain other pressing needs in environmental management in line with global best practices. The penalties provided under the Act for contravention of its provisions are proposed to be hiked upwards. In addition, a civil administrative adjudication system is envisaged to ensure fast tracking of the imposition of penalties on environmental offenders. The government is currently inviting feedback from interested parties on the draft proposal for the structure of the NEAMA.

<http://moef.nic.in/OutcomeBudget2011-12/Chapter%20III.pdf>

Micro Finance Bill Awaiting Parliamentary Nod

The Micro Finance Bill defines microfinance services broadly as financial services in small amounts including microcredit, collection of thrift, remittances, and pensions, insurance and so on, and brings all organisations other than cooperatives accepting only deposits from their members under the purview of one regulator, viz., the Reserve Bank of India.

Two advisory councils are being created. The first, the Microfinance Development Council, will advise the government on policies and other measures required for the orderly growth and development of the microfinance sector. The second, State Advisory Councils will monitor field level conduct of the microfinance institutions (MFIs) and bring these to the attention of the Central Government. The Bill is awaiting Parliament's approval.

http://finmin.nic.in/the_ministry/dept_fin_services/micro_finance_institution_bill_2011.pdf

Food Security for All

An Empowered Group of Ministers (EGoM) has recently approved the draft Food Security Bill 2011, which will provide highly subsidised wheat and rice to the poor as a matter of legal right. The ministers' panel headed by Finance Minister Pranab Mukherjee cleared the flagship proposal of the UPA government which will provide food grains at a nominal rate to 75 percent of the rural population and 50 percent of those living in cities.

The draft bill follows a life cycle approach and introduces a number of other universal guarantees, including nutrition support and maternity entitlements for pregnant women, nutrition support to children both in pre-school centres and in school, and also to all out of school children; destitute feeding and affordable meals for the homeless and other needy urban populations; and special guarantees for starvation and emergencies. The draft bill is awaiting tabling in the Parliament.

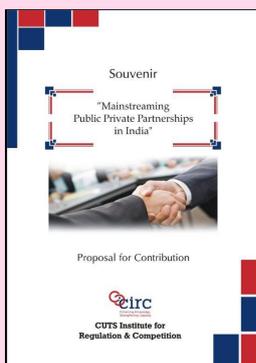
http://nac.nic.in/foodsecurity/nfsb_final.pdf

Land Acquisition Bill in Public Domain

The government has unveiled the Draft National Land Acquisition and Rehabilitation & Resettlement (LARR) Bill, putting in place a transparent, legal framework aimed at giving adequate compensation to land owners and ensuring rehabilitation of those displaced.

The draft Bill seeks to balance the need for facilitating land acquisition for various public purposes including infrastructure development, industrialisation and urbanisation; and addressing the concerns of the farmers and those whose livelihoods are dependent on the land being acquired.

It puts in place a new institutional mechanism to ensure that resettlement and rehabilitation provisions are implemented effectively as an integral part of land acquisition. It suggests that under no circumstances should multi-cropped and irrigated land be acquired. The draft Bill is now in the public domain as part of the pre-legislative consultative process. <http://www.rural.nic.in/Final.pdf>



Policy Souvenir on PPPs

In his 2011-12 Budget speech, Pranab Mukherjee announced Central Government's intent to come out with a comprehensive policy for developing Public Private Partnerships (PPPs). In this context CIRC will be coming out with a Policy Souvenir on 'Mainstreaming Public Private Partnerships in India' through which it envisages: a) providing inputs for the National PPP policy in the form of policy choices facing regulatory and operational dilemmas; and b) generating resources for development of short and long term professional courses on PPPs suiting different stakeholders.

Deadlines

Contribution of Articles: October 10, 2011

Contribution of Advertisements: October 28, 2011



CUTS Institute for Regulation & Competition

R-75, Greater Kailash I, New Delhi 110048, India

Phone: +91-11-26463021, TeleFax: +91-11-40535921

Web: www.circ.in • Em: circ@circ.in

