

World Competition Day 2016

5th December

03:30-06:00pm | Cypress Hall, India Habitat Centre | New Delhi, India

Theme 2016: "Linkages between Competition and Intellectual Property"

Overview – Keeping up with the tradition, CUTS Institute for Regulation & Competition (CIRC) in collaboration with CUTS International hosted the World Competition Day celebrations on 5th of December 2016. The theme for this year's event was *Linkages between Competition and Intellectual Property*. Way back in 1980, on December 5th the UN Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices came into being. Although there are no multilateral rules on competition law, there are about 130 countries in world having a competition law regime.

The event had three important highlights i.e. a keynote address by the Former Chairperson Competition Commission of India, Mr. Dhanendra Kumar followed by the release of an e-publication by CUTS International on the same theme as the event. Third, a panel discussion titled "Promoting Innovation and dissemination of technology for increased economic growth through Intellectual Property and Competition". The panel consisted of IP practitioners, competition law experts and representative from Competition Commission of India (CCI), and was chaired by Mr Pradeep S Mehta, Secretary General, CUTS International. A narrative agenda is attached as an annexure to this document.

Proceedings – The opening remarks for the event were given by Mr. Saket Sharma, Associate Fellow CIRC wherein he gave an introduction to the theme of the event and the agenda for discussion. He briefly gave an overview of the importance of promoting competition and the need for generating more awareness about the benefits of competition, while highlighting the role of CUTS in playing an instrumental role globally in bringing various actors and stakeholders together to bring competition reforms. He then requested Chairman of CIRC, Dr. Arvind Mayaram (Former Finance Secretary, GOI) to give the welcome remarks.

Dr. Mayaram in his welcome address commented on how 'competition' has become increasingly important in this technical world. Competition is at the heart of economic growth and allows free play of economic forces. In this rapidly evolving technology driven economy, there is a need for balance between competition laws and Intellectual Property Rights. He concluded by saying that under the garb of innovation monopolies should not breathe. He thanked the varied audience comprising of advocates, law students, researchers, professionals, consumer organisations, academicians, representative from CCI and other dignitaries for participating in the World Competition day celebration.

Mr. Dhanendra Kumar in his key note address thanked CUTS for the invite and congratulated their regular enthusiasm in celebration of World Competition Day every year. Recollecting the time when he was chairing the Competition Commission, Mr. Kumar said that Mr Mehta had first proposed the idea of celebrating World Competition Day in India. He said that the Indian competition law jurisprudence is still evolving. The objectives behind the Indian Competition Law lie in the preamble of the Act. Intellectual Property creates temporary monopoly and is needed to reward the innovator for his contribution the field. To let this new start-up ecosystem evolve, digital economy schemes and programs to play well, Indian brains and inventors need to be rewarded for their effort. And simultaneously the market and industry interests also must be protected. Fair competition is the sine qua non for growth and innovation is necessary for to give the economy's growth an excelling edge.

Abuse of these rights may cause distortion in the market. Mr. Kumar said that Competition and IPR Laws are not at cross with each other but the Competition Act is in fact in addition to but not in derogation of any other laws while praising the Justice Bakhru's judgement of 30th March, 2016. He said the judgment had dealt at length about the genesis and scope of both laws and their interaction. IP rights should be subject to the rights of public at large and state holds the trust of that larger public.

Mr. Pradeep Mehta thereafter, drew the audience's attention towards the release of CUTS's e-publication on "Interface between Competition and Intellectual Property Rights" which is a collection of around 20 articles. This compendium has contributions from the global scholars and experts in the field of IP and competition law. CUTS efforts in this regard were appreciated from all the participants and the distinguished speakers.

Mr. Mehta chairing and moderating the panel discussion gave opening remarks. He urged the panellists to join him on the dais and introduced them to the audience. The objective of the panel discussion was to facilitate deliberations amongst important stakeholders about the current challenges at the interface of intellectual property (IP) and competition law. Panel touched upon intricate issues including challenges in implementing National IPR Policy, need of National Competition Policy, need for guidelines by CCI and jurisdictional issues being faced at the interface of IP and competition law in India.

Mr Mehta stated that the TRIPs agreement governing the multilateral framework on IP enshrines flexibilities which are helpful to the policy makers in tailoring the competition law to address the challenges raised by the IP in light of the specific economic conditions in a country. He said that apart from the Competition Act many provisions under the Patents Act promote the control of abusive practices and thereby promote fair competition e.g. compulsory licensing provisions in the Patents Act.

Mr. Amitabh Kumar, Partner J. Sagar Associates and Member, Governing Council of CIRC started with the discussion. He said that The Competition Act 2002 can neither take away nor add to any existing laws. He also commented that the provision in the Competition Act dealing with IP law is not very happily worded and thus add to already existing complexity in clearly defining the interface between IP and competition law.

Mr. Anil Kumar Bhardwaj, Advisor Economics, CCI commented on the absence of a National Competition Policy document. The Commission is also trying to achieve fair competition through its own competition assessment programs and guidelines for competition assessment have been formulated by CCI. Urging the audience, he said we have long been defensive proponents of Competition, why not be proactive in our endeavour to promote fair competition in the market. The Commission looks forward to let the status quo remain until an act impedes fair competition. He said that there is no clash between the sector regulators and that they have been interacting more than before, and trying sort out jurisdictional issues.

J. Sai Deepak, Founder member of Law Chambers of J. Sai Deepak also commented on the draft National IPR Policy. He said the policy document seems to be a melange of many recommendations but with no core idea on what the policy is directed towards. He said if there be such a policy, it should be focussing on capacity building, generating awareness and advocacy. He stressed that there is a need to train the State and National Judicial Academies in dealing with patent issues. He commented that J. Bakhru's judgement only dealt with jurisdictional issues and nothing else and should not be quoted in any other reference. There are new entrants beyond Ericsson for example Dolby in the picture of SEP litigation in India. Generally, the Courts focus only on the legality and settling of suits and not the impact of such judgment on the industry. He concluded by saying that there is a need to bring attention to balancing of interests of both the parties.

Santanu Mukherjee, Partner, Luthra & Luthra Law Offices said that a statute is implementable only when rules and guidelines are set for the executive implementing it on the ground level. The policy is needed to give guidelines for the government implementing bodies. In the case of IP and Competition Law interface, there are guidelines as they exist for US and EU and few newer jurisdictions. It needs to be considered that whether the idea to have such guidelines is to be adopted or adapted. An innovator would look from his own perspective and will thereafter chose the forum he feels will decide in his interest, and others will look at their interests before approaching a forum in a dispute. Therefore, with adjudicators having expertise in their own field feel that their forum has the jurisdiction over the same issue and thus the conflict.

Mr. Mehta opened the floor for questions and comments from the floor. Questions relating to the national competition policy, industry view in drafting of

such a policy and functioning of CCI in contrast with that of the Patents Authority were put by the participants and enthusiastically/satisfactorily answered by the panellists. Mr. Mehta gave the closing remarks for the event and invited everyone for a high tea.

Annexure- Narrative Agenda

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December 5th is the day when United Nations Conference on Restrictive Business Practices approved the UN Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices in 1980. Motivated by the interest and support of many competition agencies and other stakeholders to the cause, the International Network of Civil Society Organisations on Competition (INCSOC) announced the first World Competition Day on 5th December 2010. One of the important advocacy campaigns spearheaded by CUTS International since 2010 is the observance of the World Competition Day on 5th December. The aim of the campaign is to ensure that consumers from across the world realise the potential benefits from an effectively implemented competition regime, and also play their role in making competition regimes work worldwide.

Given above background, this seminar is being organised by CUTS International in collaboration with CUTS Institute for Regulation & Competition (CIRC) to celebrate the World Competition Day 2016. This year, the theme for WCD 2016 is "Linkages between Competition and Intellectual Property".

5 th December 2016	
03:30–04:00pm	Registration & Networking Tea
04:00–04:10pm	Welcome Remarks: Dr. Arvind Mayaram, IAS(R) , (Former Finance Secretary of India), Chairman, CUTS Institute for Regulation & Competition (CIRC)
04:10–04:30pm	Key Note Address: Dhanendra Kumar , Former Chairperson, Competition Commission of India
	CUTS E-Publication release: Interface between Competition and Intellectual Property Rights
04:30–05:45pm	Panel Discussion: “Promoting Innovation and dissemination of technology for increased economic growth through Intellectual Property and Competition” In this knowledge economy, innovation is a leading factor to ensure competitiveness, economic growth, and job creation. Technology plays a pivotal role as it facilitates access and makes networks more valuable for consumers. Technology sectors can also raise regulatory challenges because they often rely on patented technologies. Keeping in view objective of patents, a tension can arise because patents protect the owner’s exclusionary right to exploit an innovation, while technology is meant for widespread use. Technology dissemination and access will promote access and will help in building new interfaces for producers

and consumers to interact. Contemporary challenges faced by India will be deliberated by the following panellists.

Chair and Moderator:

- **Pradeep S Mehta**, Secretary General, CUTS International

Panellists:

- **Amitabh Kumar**, Partner, J. Sagar Associates and Member, Governing Council, CIRC
- **Anil K Bhardwaj**, Advisor Economics, Competition Commission of India
- **J Sai Deepak**, Law Chambers of J. Sai Deepak
- **Santanu Mukherjee**, Partner, Luthra & Luthra Law Offices and Chairman IP & Policy Regulatory Section of Indian National Bar Association (INBA)

05:45–06:00pm High Tea