

CUTS-CIRC Vth Biennial Conference on Competition, Regulation & Development

Jaipur, 9–11 November, 2017

FOSTERING INNOVATION FOR SUSTAINABLE DEVELOPMENT

Revisiting Intellectual Property Rights, Competition from the lens of Optimal Regulation

Object

There is a broad consensus that innovation is central to the long-run performance of an economy. From this follows a need to strengthen the foundation of the innovation ecosystem in the developing world with an objective of achieving sustainable development. The CUTS-CIRC Fifth Biennial Conference on Competition, Regulation & Development aims to discuss the role of regulation and competition in creating the appropriate incentives for fostering innovation for sustainable development.

Context

Harnessing an innovation system that addresses development challenges-through an appropriate policy and regulatory framework -is an extremely complicated exercise and has to be guided by evidence. In this context, this conference aims to bring research and empirical evidence on two seemingly contentious issues-which are far from being settled- a) the interface between competition and intellectual property rights (IPR); and b) the role of competition and regulation vis-à-vis disruptive technologies.

1. Revisiting Competition and IPR

- 1.1 Innovation, competition and IPR are intrinsically related to each other. Robust competition ensures that present competitors and upcoming market entrants constantly innovate to attain better returns from product differentiation. On the other hand, IPR aims at incentivising innovators by rewarding them for their effort and providing legal protection to their intellectual yield. Absence of adequate IPR protection may discourage firms to invest in R&D and may negatively impact their incentive to innovate.
- 1.2 Although competition and IPR aim to achieve the same goal – that is – innovation – some apparent contradictions between the two and their disparate application across jurisdictions tend to cause several policy and regulatory ambiguities, which may hinder the natural progress of innovation. More often than not, jurisdictions might choose a model which is "strong on IPR and soft on competition" or "strong on competition and soft on IPR". Therefore, where does the balance lie if the aim is to achieve sustainable development and inclusive growth through an innovation-based eco-system? The objective of policy and regulation should be to find the right balance, as tilting the balance might result in adverse development outcomes. This exercise has to be guided by evidence both theoretical and empirical.

2. Disruptive Technologies and the Imperative of Optimal Regulation

2.1 The drivers of an innovation-based eco-system – network industries, technological advancements and emerging business models based on aggregation – are disrupting traditional market transactions across almost all sectors. These developments are posing challenges for the regulators to catch pace growing changes in the market dynamics. In this fast changing eco-system, are economic regimes appropriately regulating without adversely affecting the broader goals of an innovation-based eco-system?

2.2 Therefore, it is important to deliberate on the importance of an optimal regulatory regime that can preserve incentives for innovation. A holistic and forward looking understanding of the changing dynamics of a particular market (including inter-related markets) can guide regulatory action. This is possible through cross-learning and debate amongst stakeholders which this conference sets to achieve.

3. Structure of the Conference

3.1 Thus, keeping in mind its overarching theme – innovation for sustainable development – this conference will provide a multi-stakeholder platform for policy-makers, industry, regulators, development organisations, lawyers, civil society, media, academia and other practitioners to discuss these subjects over a period of three days.

3.2 The conference includes four plenaries (excluding the opening and closing sessions) based on the chosen themes and associated issues; and three parallel sessions dealing with sector-specific issues and/or focussed topics. The sectors chosen for the theme “Revisiting IPR and Competition” include: (a) telecommunications, (b) pharmaceuticals, and (c) agriculture. Similarly, sectors chosen for the theme on disruptive technologies and optimal regulation include: (a) finance/payments (b) transport and (c) e-commerce.

AGENDA OUTLINE

DAY 1	
Time	Session Details
17:30 to 18:00	Registration
18:00 to 20:00	<p>Setting the Context: Role of Innovation for Sustainable Development</p> <p><i>Asking the right questions underlying an innovation-based ecosystem</i></p> <ul style="list-style-type: none"> • What constitutes an innovation based ecosystem? • What are the challenges to achieve an innovation based ecosystem? How can this ecosystem aid in sustainable and inclusive development? • Does the ecosystem require a multilateral trade and competition policy arrangement? • How to balance competition principles and intellectual property rights to foster an innovation-based ecosystem? • How to achieve an enabling regulatory framework that promotes growth of disruptive technologies without disregarding the risks, thus fostering an innovation based ecosystem?
20:00	Dinner

DAY 2	
Time	Session Details
9:00 to 9:30	Registration
9:30 to 11:00	<p style="text-align: center;">Plenary 1</p> <p>Revisiting IPR and Competition</p> <p>In order for innovations to sustain and aid developmental process, finding the right balance between its two major policy pillars viz. IPR and competition is necessary.</p> <ul style="list-style-type: none"> • What are the practical implications and challenges posed due to the overlap between the two policies transgressing into each other’s jurisdictions? How to resolve them? • What are the hindrances caused to the broader innovation ecosystem due to this overlap? • What is the “best” institutional mix required to achieve a good balance? • What is the individual role of different stakeholders in ensuring a good balance is achieved? • What are the possible approaches that can facilitate consolidation and realignment of the two policies? • Should there be a distinguishable approach between socially relevant sectors, such as agriculture, healthcare and others?
11:00 to 11:30	Tea Break
11:30 to 13:00	<p style="text-align: center;">Parallel Session 1</p> <p>1.1 Telecommunications</p> <p><i>Licensing of Patents and Standard Essential Patents (SEPs)</i></p> <ul style="list-style-type: none"> • How to foster an innovation-based ecosystem through utilisation of the IPR regime without distorting market competition? • What are the potential harms to competition emanating from licensing of SEPs? Is there sufficient economic evidence to establish them? • How to efficiently govern licensing of SEPs so that the balance between innovation [incentives to a) invest in R&D, and b) out-competition] and access to IP is maintained? Is the system in place sufficiently robust? • How should competition law principles and pragmatic policy approach to licensing of SEPs promote innovation and how the reverse can be impeding? • Does competition enforcement offer an appropriate legal framework to address the underlying issues of SEP licensing in entirety? Are there other effective approaches or models which could help tackle the underlying problems?

DAY 2	
Time	Session Details
	<ul style="list-style-type: none"> • What implications does SEP licensing have on emerging economies? <p>1.2 Pharmaceuticals <i>Questionable patent strategies and divergent IP regimes</i></p> <ul style="list-style-type: none"> • How can patent regimes deal with nuances like ever-greening, patent thickets, broad patent claims, inadequate disclosures, pay for delay etc., which not only have anti-competitive effects but can also create barriers for new R&D ventures in the pharmaceutical sector? Can these be tackled by the patent regulation regime alone? • What role can competition policy play in dealing with such nuances, consequently finding a balance to optimise ‘access’ and ‘innovation’? What is the emerging jurisprudence in the developed world? • How to tackle global market distortions from differences in approaches by different jurisdictions with various aspects of IPR and competition interface in pharmaceutical sector? Is harmonization of policies even desirable? <p>1.3 Agriculture <i>Global Consolidation of agriculture input market</i></p> <ul style="list-style-type: none"> • Have patents/plant breeder’s rights contributed to global concentration in the seed market, particularly GM Seeds? Could there be a more balanced approach? • Is there a need to revisit the ‘scope’ of gene-patenting, particularly in light of the mandated review of Article 27.3(b) of Agreement on TRIPs? • Is there a need for enforcing FRAND terms in patent licensing related with seeds? • How to deal with increasing global consolidation in already concentrated agriculture input market and the likely consequent adverse effects?
13:00 to 14:00	Lunch Break
14:00 to 15:30	<p style="text-align: center;">Plenary 2</p> <p>Disruptive Technologies and Economic Regulations</p> <p>Emerging disruptive technologies and their increased global significance have raised challenging questions which strike at the foundation of the recognised approaches of prevalent regulations across the globe. Hence, it is essential to deliberate upon these complicated disruptive technologies and how regulation needs to address their impact on competition without regulating competitors.</p> <ul style="list-style-type: none"> • Should emerging and traditional models of business be

DAY 2	
Time	Session Details
	<p>accorded similar regulatory treatment?</p> <ul style="list-style-type: none"> • How should competition and regulatory authorities deal with disruptive technologies, which are creating value for consumers at the expense of traditional modes of business? • How can regulations deal with emerging risks that disruptive technologies bring with them? • How should optimal regulation for sustainable applications of disruptive technologies be designed?
15:30 to 16:00	Tea Break

DAY 2	
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16:00 to 17:30	<p style="text-align: center;">Parallel Sessions 2</p> <p>2.1 Finance/Payments <i>Innovation in Regulation to Manage Disruption</i></p> <ul style="list-style-type: none"> • Should digital financial services be regulated differently from traditional financial services? • How to optimally regulate sharing of infrastructure between traditional and digital service providers? • What are the emerging models of regulations? (e.g. Regulatory sandbox, Regulatory Impact Assessment, and RegTech) • How to effectively deal with data protection, privacy and grievance redress related risks? <p>2.2 Transport <i>Fair Regulation for Urban Mobility</i></p> <ul style="list-style-type: none"> • Are traditional modes of urban transport fairly regulated? • Should regulations impose costs on emerging service providers just because incumbents were subject to such costs? • Should taxi aggregators be regulated as platforms or taxi service providers? • How to deal with consumer risks in urban modes of transport? <p>2.3 E-Commerce <i>Effectively Regulating Different Business Models</i></p>

DAY 2	
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	<ul style="list-style-type: none"> • Should e-commerce be differently regulated than traditional retailers? • Is there a level playing issue between domestic and multinational e-commerce companies? • How can regulators effectively regulate cross-border e-commerce which goes beyond the scope of domestic laws? • In a GST enabled world, how would taxation of e-commerce work? • When service providers are beyond jurisdictions, how to address grievances and refunds etc.? • How would accountability of e-tailers be ascertained?
20:00 onwards	<p style="text-align: center;">Dinner speech by an eminent speaker <i>Political Economy Challenges in Facilitating Innovation</i></p> <ul style="list-style-type: none"> • Why do politicians often support incumbents over innovators? • What incentives are required for policymakers to support innovation? • How to ensure that innovation based ecosystem is a product of a “fair” regulatory regime that does not promote individual champions? Is there a need to promote national champions • How to effectively address risks of failed innovations.

DAY 3	
Time	Session Details
9:00 to 9:30	Registration
9:30 to 11:00	<p style="text-align: center;">Plenary 3</p> <p>Building Organisational capacities for tackling policy and regulatory uncertainty</p> <p>Most components of a country's business environment are influenced by its regulatory and policy architecture. Consequently, uncertainty in country's regulatory and policy architecture could weaken its business environment, thereby discouraging potential innovations and investment, both from within the country, and outside. As developing nations shift to an increasingly investment friendly growth model, the regulators have to protect the ability of new firms to enter the markets and ensure that their incentives to invest are not derailed. Hence, in order to tackle policy uncertainty and regulatory challenges posed by disruptive technologies, jurisdictions must invest time and money to build organisational capacities.</p> <ul style="list-style-type: none"> • What is policy and regulatory uncertainty? • Why haven't economies been able to deal effectively with policy and regulatory uncertainty? • What are the challenges being faced by policy makers and regulators vis-à-vis disruptive technologies? • How to train and build organisational capacities to efficiently deal with emerging challenges? • How does policy and regulatory uncertainty impact investments and growth of a sector? • Are sector specific economic reforms the key to address policy and regulatory uncertainty? • What other reforms, in addition to sector specific reforms, are necessary?
11:00 to 11:30	Tea Break
11:30 to 13:00	<p style="text-align: center;">Parallel Session 3</p> <p>3.1 PPPs and Open Innovation for Sustainable Development</p> <ul style="list-style-type: none"> • How to optimise the use of available knowledge and resources through PPPs? • How can PPP business models be developed for innovation and sustained growth by putting people first? • How to build and implement multi-stakeholder models for R&D to move towards sustainable development? • Challenges to the IP structure and management of PPP

DAY 3	
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	<p>models.</p> <p>3.2 Innovation, IPR and Technology Transfer</p> <ul style="list-style-type: none"> • What is the effect of diverging IPR approaches on global innovation? • How can emerging innovations aid in global growth and access to important technologies? • How is growing global consolidation of big corporations affecting Innovation, IPR and technology transfer? • What are the methods for enabling fair technology transfer for emerging economies? • What policies can promote technology absorption? • How do IPR regimes of the host country have an impact on FDI flows and technology transfer?
13:00 to 14:00	Lunch
14:00 to 15:30	<p style="text-align: center;">Plenary 4</p> <p>Challenges and Opportunities of Development Financing for Fostering an Innovation based Ecosystem</p> <p>While the need for optimal regulation and competition has never been more important than now, development financing for promoting better regulation and competition appears to be limited. In this context:</p> <ul style="list-style-type: none"> • What is the role and importance of development financing in promoting better regulation? • Why have the avenues of development financing of regulatory and competition reforms become limited? • What are the challenges to finance competition and regulatory reform work? • What would be the key issues/areas which development partners find attractive for fostering an innovation based ecosystem?
15:30 to 16:00	Tea Break
16:00 to 17:30	<p style="text-align: center;">Concluding Observations and Key Takeaways</p> <p>Optimal Regulation and Competition for Innovation and Inclusive Growth: Building an actionable agenda for promoting an innovation ecosystem</p> <p>In light of the three day deliberation, an action agenda will be drafted. This will include substantial sector specific action points towards developing a holistic innovation-based ecosystem. A programme of action will be developed to promote research and</p>

DAY 3	
Time	Session Details
	advocacy on regulatory and competition reforms. This will include case study-based projects on capacity building to address the perceived conflict between competition & IPR, and regulation & disruptive technologies.