

5th Biennial Competition, Regulation and Development Conference

Fostering Innovation for Sustainable Development

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

09-11 November, 2017
Jaipur, Rajasthan

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 and Development aims to discuss the role of regulation and competition in creating 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. Alongside this, the imperative scope of open innovation, collaboration, knowledge sharing and optimal resource allocation between different stakeholders, private and public will be discussed.

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 format includes Plenary as well as Parallel Sessions. A total of five plenary sessions (excluding the opening and closing sessions) will be held based on the chosen themes and associated issues; and two parallel sessions (exclusively on Day Two) dealing with sector-specific issues and/or focussed topics.
- 3.3. The sectors chosen for the theme “Revisiting IPR and Competition” include: (a) Information and Communication Technology and (b) Pharmaceuticals & Agriculture. Similarly, focussed topics chosen for the theme on disruptive technologies and optimal regulation include: (a) Digital Finance/Payments and (b) Multi-sided platforms (Transport and E-Commerce).
- 3.4. The discussions on “Building Organisational capacities for tackling policy and regulatory uncertainty” and “PPPs and Open Innovation for Sustainable Development” will be held as separate Plenary Sessions on Day 3.

AGENDA OUTLINE

DAY I: THURSDAY, NOVEMBER 09, 2017

Opening Session 18:00 – 20:00 **Setting the Context: Role of Innovation for Sustainable Development**

Asking the right questions underlying an innovation-based ecosystem

- What constitutes an innovation based ecosystem?
- What are the challenges to achieve an innovation based eco-system? 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?

DAY II: FRIDAY, NOVEMBER 10, 2017

Plenary 1 09:30 – 11:00 **Finding the Right Balance between IPR and Competition**

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.

- What are the broader issues, implications and challenges posed due to the overlap between the two policies?
- What are the hindrances caused to the broader innovation ecosystem due to this overlap (e.g. on investment and access to technology)?
- 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?
- How can IPR and Competition law frameworks be realigned to work in the same direction i.e. towards ensuring consumer welfare and sustained innovation?
- Should there be a distinguishable approach between socially relevant sectors, such as agriculture, healthcare and others such as telecommunications?

Tea | **11:00 – 11:30**

Plenary 2 11:30 – 13:00 **A Comparative perspective to IPR and Competition: Lessons and experiences from across the globe**

With diverse policy approaches and practices emerging in different jurisdictions, a comparative perspective can aid in identification of current challenges and future opportunities.

- How have jurisdictions across the globe tried to tackle issues arising from the apparent conflict between IPR and Competition law? How have emerging economies in particular (such as India and China) addressed these issues?
- What procedural challenges have institutions faced due to this conflict?
- What are the lessons that can be drawn from the ongoing practices and policies vis-à-vis IPR and Competition at a global level?
- What other innovative approaches have emerged that look to facilitate consolidation and realignment of the two policies? What role have competition agencies played in this regard?
- With diverse approaches emerging, is there room for multilateral understanding and cooperation?

Lunch | 13:00 – 14:00

Parallel Session 1 14:00 – 15:30

1.1 Information and Communication Technology: Licensing of Patents and Standard Essential Patents (SEPs)

- 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) outrival 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?
- What implications does SEP licensing have on emerging economies?

1.2 IP Competition Interface in Pharmaceuticals and Agriculture

- WTO/TRIPS Agreement provides more flexibility with respect to pharmaceuticals and seeds, which also reflects in domestic IP laws of various countries. Whether these differences under IP laws affect emerging IP-Competition interface issues?
- Are patent regimes per se sufficient to deal with nuances like ever-greening, patent thickets, broad patent claims, inadequate disclosures, pay for delay etc., having upstream and downstream anti-competitive effects in pharmaceutical sector? What role can competition policy play in dealing with such nuances, consequently finding a balance to optimise 'access' and 'innovation' of drugs?
- How to use competition law/policy to deal with increasing global consolidation in already concentrated agriculture input market? 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 for enforcing FRAND terms in patent licensing related with seeds? 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?

Tea | 15:30 – 16:00

Plenary 3
16:00 – 17:30

Disruptive Technologies and Economic Regulations

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.

- Should emerging and traditional models of business be accorded similar regulatory treatment?
- 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?

Parallel Session 2
17:30 – 19:00

2.1 Digital Payments

Innovation in Regulation to Manage Disruption

- Should emerging payment service providers (fintechs) and other service providers (non-banks) regulated differently from traditional service providers (banks), in terms of services they can offer and critical infrastructure they can access? Is there a need for risk based regulation?
- Is there is a need to separate regulation, operation of payments platform, and offering of payments services? What is the role of a retail payments organisation?
- How to ensure structured stakeholder consultation during regulation making for payments? What are the good practices in this regard?
- What is the international experience (Canada, EU, Australia) and emerging models for regulating payments (e.g. Regulatory Sandbox, Regulatory Impact Assessment, and RegTech)? What can India learn from such practices/ models?
- How to effectively deal with emerging risks in payments, such as, lack of informed and express user consent, inadequate data protection, invasion of privacy, fraud, sub-optimal grievance redress?

2.2 Regulating Multi-Sided Platforms (Transport and E-Commerce)

- Should regulations impose costs on emerging service providers just because incumbents were subject to such costs?
- Should multi-sided platforms be treated differently from the incumbent businesses?
- How can regulators deal with possible consumer risks and security problems emanating from online platforms without impeding the incentives to innovate?
- Is there a level playing issue between incumbents and multi-sided platform businesses, especially in sectors such as urban transport and e-commerce?
- How can multi-sided platforms be optimally regulated to ensure innovation, competition and consumer protection?

Dinner Speech
20:00 onwards

Dinner speech by an eminent speaker
Political Economy Challenges in Facilitating Innovation

- 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 III: SATURDAY, NOVEMBER 11, 2017

Plenary 4
09:30 – 11:00

Building Organisational capacities for tackling policy and regulatory uncertainty

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.

- 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?

Tea | 11:00 - 11:30

Plenary 5
11:30 - 13:00

PPPs and Innovation for Sustainable Development

UNECE in its conceptual note describes "PPPs as critically important in meeting challenges of sustainable development; since PPPs are complex, they require skills of the private sector". Hence, innovation is the key: innovation in PPPs could be undertaken institutionally, by exploiting synergies in the use of resources, application of management knowledge, structuring public-private funds, implementing partnerships and/ or developing projects of technological innovation¹. For sustainable development, it would be crucial to understand innovative models of PPPs such as those in the ICT sector like bundling, vertical integration, take-or-pay etc. that deviate from traditional models². With the world needing \$94 trillion for infrastructure investment by 2040³, an environment is essential for fostering innovation in infrastructure, given how the sector is not an early adopter. However, both innovation and infrastructure have been infused in SDG 9, stating how important innovation is going to be for infrastructure in the coming times.

Keeping this in view, the aim of the session would be to discuss "innovation" with regard to PPPs that have responded to crucial development challenges in the areas of social, human and sustainable development. The experts would share their views on the following:

- Factors that have lead to the emergence of creative PPPs in the recent years
- Successful and failed cases of:
 - Concepts and examples of innovative PPPs
 - Large-scale and R&D projects undertaken on PPPs
 - Geographies and sectors which have been more experimental with innovative PPPs
- Discuss how innovative collaboration between governments and private actors has improved i) quality of public goods and services or ii) contributed to sustainable development
- Share innovative mechanisms by public authorities, private institutions and civil societies including social policies and funding methods that have lead to improved performance of PPPs
- Cite innovative community-level PPP practices that have led to reduction of poverty and inequality

¹ Jomo, K. S., Chowdhury, A., Sharma, K., & Platz, D. (2016). *Public-Private Partnerships and the 2030 Agenda for Sustainable Development: Fit for purpose?*. United Nations, Department of Economic and Social Affairs.

² Silva H. D. (2007) Building PPP for the provisioning of ICT access, available [here](#)

³ Global Infrastructure Hub

**Concluding
13:00 – 14:00**

**Concluding Observations and Key Takeaways
Optimal Regulation and Competition for Innovation and
Inclusive Growth: Building an actionable agenda for
promoting an innovation ecosystem**

In light of the three day deliberations, 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 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.

Lunch and departure

14:00 onwards
