

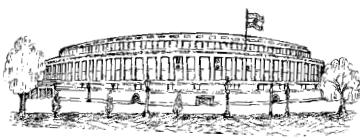
# Issues for Parliamentarians

To facilitate informed discussions among Indian Parliamentarians on key economic policy issues



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## Good Economics is Good Politics



Parliamentarians' Forum on Economic Policy Issues (PAR-FORE)

## National Competition Policy for India

### INTRODUCTION

In India, there is a consistent need for a functional competition regime that comprises of both a competition policy and a competition law. The Competition Act, 2002 fills the need for a law, though it still has to be implemented in full. However, there are many distortions in the economy, which cannot be regulated by a competition law and hence the need arises for a holistic competition policy.

Following successful advocacy by CUTS, the Planning Commission took up the task of preparing a competition policy in 2007, which now finds a place in the Eleventh Five Year Plan Policy Document: "Inclusive Growth", as a strong recommendation. It was adopted by the National Development Council in December 2007.

### COMPETITION POLICY & LAW

Competition policy broadly refers to government measures, policies and regulations aimed at controlling the behaviour of enterprises and structure of markets. Competition law, on the other hand, refers to the framework of rules and regulations designed to foster the competitive environment in a national economy. Typically, these laws provide remedies to deal with a range of anti-competitive practices, including cartel arrangements, abuses of dominance or monopolisation, mergers that limit competition, and agreements between suppliers and distributors (vertical agreements) that foreclose markets to new competitors.

### OBJECTIVES OF COMPETITION POLICY

**1) Economic efficiency:** In principle, competitive markets provide strong incentives for achieving economic efficiency. Fair competition ensures that goods and services consumers need are produced in the quantities they want, using the most efficient production methods and are marketed and distributed to consumers who wish to purchase them in the most efficient means possible.

**2) Consumer welfare:** Competition law/policy ensures that consumers enjoy greater benefits in terms of wider choices and better quality goods and services at competitive prices.

### ELEMENTS OF COMPETITION LAW AND POLICY

**1) Policy towards monopoly and dominant firms** tries to prevent abusive behaviour by monopolistic and dominant firms, such as imposition of unfair prices, limitation of production, tie-in sales and restriction of technology transfer.

**2) Policy towards mergers** is now a balanced consideration of two factors: competitive risks and efficiency advantages. A merger leading to a monopoly position is no longer automatically considered as a monopoly abuse. Greater emphasis is now placed on analysis of the potential effects of mergers on competition.

**3) Policy towards anti-competitive agreements** refers to agreements between firms having an effect of reducing competition or activities undertaken by the competitors who restrict, distort or prevent competition. Examples of these practices are price agreements, market-sharing agreements, and tie-in sales, uncompetitive discount prices, predatory pricing, and forcing the customers to stock the entire product range.

**4) Policy towards state entry barriers** covers all measures aimed at removing government-imposed obstacles (deliberate or unintentional) to the

operation of competitive process. This includes support (grants, loans, guarantees or tax concessions) given by a country to its domestic firms. This policy is hard to implement unless economies voluntarily disclose their aid payments. However, aid and assistance to research and development (R&D) of generic technologies are not a violation of this policy. State activities, such as education, health services and public utilities are likewise outside the scope of this policy.

**5) Policy towards consumer protection** includes all laws and regulations that ensure truthful advertising about products, cost of credit, risks of injury associated with consumer products and the workplace, and about protection of the environment in general.

### Why National Competition Policy?

- 1) Free and fair competition is the essence of economic progress of any country.
- 2) Free and fair competition is the need of a country towards a comprehensive competition policy.
- 3) A country needs a National Competition Policy for a harmonious exchange between competition and other sector specific economic policies.
- 4) National Competition Policy will facilitate creation of a national market. It will help integrate the national market and create a uniform playing field across the country.

- Trade Policy
- Industrial Policy
- Privatisation (Disinvestment) Policy
- Regulatory Reform Policy
- Investment and Tax Policy
- Intellectual Property Policy
- Regional Development Policy
- Labour Policy
- Consumer Policy
- Environment Policy

Therefore, National Competition Policy (NCP) is a policy to achieve harmonisation in various government policies, which influence competitive behaviour and competition environment in the economy. It works on the principle that public welfare is best served by promoting competition in the economy.

The objectives and principles of NCP, as per the Eleventh Five Year Plan, are as follows.

#### Objectives:

- 1) Preserve the competitive process and encourage competition in the domestic market so as to optimise efficiency;
- 2) Promote innovation and maximum welfare;
- 3) Promote, build and sustain strong competition culture within the country;
- 4) Achieve harmonisation in policies, laws and procedures regarding competition dimensions at all levels of governance;
- 5) Ensure competition in regulated sectors;
- 6) Establish an institutional mechanism for synergised relationship between the competition commission and sectoral regulators; and
- 7) Strive for a single national market.

#### Principles:

- 1) There should be effective control of anti-competitive conduct which undermines competition in markets in India;
- 2) There should be competitive neutrality or level playing field among all players, whether these are private enterprises, public enterprises or government departments engaged in non-sovereign commercial activity;
- 3) The producers should be rule bound, transparent, fair and non-discriminatory;
- 4) There should be institutional separation between policy making, operations and regulation;
- 5) Where a separate regulatory arrangement is set up, it should be

### NATIONAL COMPETITION POLICY FOR INDIA

There are complex inter-relationships between competition policy and other public economic policies. This has a direct bearing on the extent to which competition policy objectives can be pursued without being constrained by or conflicting with other public policy objectives. Different government policies that may encourage or adversely affect competition and hence consumer welfare, particularly, in context of present globalising environment would include, though not be limited to:

- consistent with the principles of competition;
- 6) Third party access to essential facilities on fair terms should be available;
- 7) Any deviation from the principles of competition should only be to meet desirable social, environmental, developmental or other national objectives, which are clearly defined, transparent, non-discriminatory, rule based and having the least competition restricting effect; and
- 8) The above principles of competition should be applicable across all sectors of the economy and be incorporated in policies, which govern them.

### HISTORICAL PERSPECTIVE

India pursued the strategy of planned economic development since the early 1950s. In the industrial sector, the main objective of the strategy was the development of a broad industrial base with a view to achieve speedy self-reliance and promote social justice.

Under the Industrial Policy, the commanding heights of the economy were to be in the public sector. The Industrial Development and Regulation Act, 1951 and the Monopolies and Restrictive Trade Practices Act (MRTPA), 1969 *inter alia*, gave State the comprehensive control over the direction, pattern and quantum of investments. There were also extensive reservations and concessions in favour of small scale industries.

The Industrial Policy Statement of 1980 focused attention on competition in domestic market, technology upgradation and modernisation. The reforms were taken on higher scale in 1991. The Industrial Policy Statement of 1991 emphasised the attainment of technological dynamism and international competitiveness. It liberalised industrial licensing, dispensing with requirement of prior government approval before effecting expansion of undertakings, registered under the MRTPA. The common thread running through the economic reforms, particularly those since 1991, has been to free the economy and sector from governmental controls and allow market forces to determine economic activity.

An Expert Group established by the Union Ministry of Commerce in 1997 to study issues relating to the interaction between trade and competition policy,

including anti-competitive practices and effect of mergers and amalgamations on competition had suggested the need for a new competition law.

Subsequently, a high level committee on competition law and policy, which was known as the 'Raghavan Committee', was set up in 1999 to recommend a suitable legislation framework relating to competition law and policy. The Committee report stressed the need to harmonise conflict between competition policy and other government policies. The report also highlighted that the MRTPA has its own limitations and fails to satisfy all the requirements of competition law. The Committee recommended enactment of a new competition act and an enforcement authority.

A need for drafting NCP was recognised in the mid-term appraisal of the Ninth Plan. It was emphasised in the plan that the NCP is important in protecting and promoting consumer's interest and society's welfare and improve competitiveness of domestic industry.

As a result of recommendations of the Raghavan Committee and recognised need for NCP in the mid-term appraisal of the Ninth Plan, the Competition Act, 2002 was enacted during the Tenth Plan period. The Competition Act, 2002 established the Competition Commission of India (CCI) to eliminate practices having adverse effects on competition, promote and sustain competition in markets, protect the interest of consumers and ensure freedom of trade. Later the Competition Act 2002 was amended in 2007, which was called the Competition (Amendment) Act, 2007.

The Planning Commission in the context of the formulation of Eleventh Plan, constituted a Working Group on Competition Policy. The Working Group suggested a need for the Government to adopt a broad-based, overarching and comprehensive NCP to promote coherence in the reform process; establish uniform competition principles across different sectors; and harmonise all other policies keeping in view the competition dimensions.

### IMPORTANT ISSUES<sup>1</sup>

- I) Different sectoral policies followed in different states are not in uniformity; therefore, it can have significant bearing on competition. These sectoral policies

<sup>1</sup> This section is based on the Report of the 'Working group on Competition Policy' and 'Eleventh Five Year Plan (2007-2012)', Planning Commission of India.

by design or often by ignorance adversely affect competition process and competition culture in the economy. Therefore, such issues can only be addressed through successful adaptation and implementation of a national level competition policy by establishing uniform competition principles across sectors.

- 2) Striving for single national market would be another crucial aspect of successful adaptation of NCP. For this to happen, the Government should try to build a strong competition culture in the country. To achieve harmonisation of various sectoral policies, competition friendly law and procedures at all levels of governance, and to ensure institutional mechanisation for synergies between CCI and sectoral regulators, it would be critical in creating a single national market in the country.
- 3) Interface between CCI and sectoral regulators is critical. The basic premise to be recognised is that sectoral regulators have domain expertise in their relevant sectors. The CCI has been established with broad mandates to deal with competition for which certain specific parameters have been laid out in the Act. Therefore, a formal mechanism of coordination between CCI and sectoral regulators is critical for effective implementation of NCP in India.
- 4) CCI needs to be autonomous and independent, without being subjected to annual budgetary constraints and uncertainties by providing initial corpus by way of a grant. The CCI should be run professionally, so as to attain the highest standards.
- 5) Present policies and regulations, which undermine competition, need to be reviewed carefully to form competition promotion perspective. Any other proposed policy should be subject to competition impact assessment and proposed regulation should be subject to regulatory impact assessment.
- 6) State government and the sub-state authorities should encourage reviewing their existing policies and regulations to make them competition-friendly. Competition impact assessment and regulatory impact assessment should be undertaken wherever necessary.
- 7) A Competition Policy Council (CPC) could be set up, which would be advisory, non-statutory and autonomous in its functioning. Task of such a council would be to review the progress in implementation of the NCP that include review of policies, regulations and practices, and the competition impact assessment of new laws, regulations and policies.
- 8) Key to successful implementation of NCP would depend upon its acceptance by the people. The Indian business community is not yet acquainted with the importance and concept of competition. Thus, there is a great need for awareness generation about benefits of competition policy and law.

### ISSUES FOR DISCUSSION

- ◆ What would be the best mechanism to bring harmony between all facets of Government policies?
- ◆ How does one ensure the financial and functional independence to be granted to Competition Policy Council (CPC) and also the need to make them accountable?
- ◆ What role could CPC play in creating a competition culture in the country with the support from CCI?
- ◆ What type of platforms can CPC create to coordinate with all relevant stakeholders in implementing the NCP?
- ◆ What are the best ways CPC could provide incentives to state and sub-state governments to encourage them to carry out pro-competition reforms keeping in mind the principles of the NCP?
- ◆ On the one hand, competition policy and law and consumer policy and law have great commonality between them. On the other, the competition authorities have to make sure that these are mutually re-enforced. What can CPC do to make sure that these two are mutually re-enforced?
- ◆ Whether formal and informal exchanges between various sectoral regulators and CCI should be encouraged?

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