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An Imperative for Promoting Inclusive Growth

Despite the existence of a competition law, a competitive environment might not be established due to the inconsistency between the orientation of competition law and restrictions imposed by other regulations — here arises the necessity of National Competition Policy

As part of the economic governance system of a country a competition policy is aimed at improving economic democracy and thereby push equitable growth and help the poor. Competition policy should be more than a technical intervention in markets when competition challenges vested interests. As Joseph Stiglitz has observed: “Strong Competition Policy is not just a luxury to be enjoyed by rich countries, but a real necessity for those striving to create democratic market economies.”

The Planning Commission has laid out a road map for the 11th five year plan (2007-2012) and prepared a policy docu-

ment: “Inclusive Growth”. This was adopted by the National Development Council in December, 2007. One of its recommendations was to prepare and adopt a National Competition Policy. Competition policy is one of the four pillars of the macro economic framework — others being fiscal policy, monetary policy and trade policy. This is yet to happen though the government continues to say that it will do so at the earliest. The delay is part of the policy drift that we see in many areas of our economic governance, which seems to be overloaded with governance failures of all types.

In spite of the shrinking of their commitment to promote competition, the

government should revisit the same to ensure that inclusive growth is promoted, and poverty reduced. Promoting competition is not only important as a principle in itself for providing a just environment for all businesses, big or small, the fair race that it initiates among rival firms, including small producers, drives sustained growth. It also keeps prices low by ruling out collusive pricing and the erection of barriers associated with monopoly pricing as firms compete for the attention of consumers by minimising costs and associated marked up prices through efficient production.

Competition Law Not Enough

In 2002, India adopted a new competition law to give a boost to the forces of competition in the economy. Now implemented after much wait, it replaced the vastly ineffective Monopolies and Restrictive Trade Practices Act enacted earlier in 1969. This earlier law was more of a licencing law, and in terms of anticompetitive practices, it involved a mechanical approach for dealing with them: firms came under the scanner only if they acquired a certain large share in the market. Thus, it was the magnitude of market shares that was important, not how such market shares had been engineered.

Be that as it may, it is important to realise that a competition law cannot by itself ensure that the competitive spirit and culture permeates deep into the economy. It should be complemented by a National Competition Policy (NCP) which pushes structural and legislative reforms to promote competition in markets where it is restricted.

Competition law only focuses on the conduct of firms and ensures that such conduct is consistent with the spirit of

competition. On the other hand, there could be competition distortions either due to another law or policy. There are many such incongruities. For instance, the mineral policy places restrictions on quantitative extraction of minerals and that the licensee can sell only as per government diktats. Unless there are valid social or environmental reasons, such policy conditions maybe against the spirit of competition.

Cartelisation Due to Restrictive Policy

A highly publicised spat between the Planning Commission and the Roads Transport & Highways Ministry has highlighted one vital aspect, that of possible cartelisation of road builders due to the stiff norms of qualification of bidders, which promotes collusion among a limited number of firms. A similar case was once commented upon adversely by a parliamentary committee on Indian Rail-

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ways for its patronising a limited number of concrete sleeper suppliers to bid for contracts without allowing the sale of tender documents to any new parties. After that the problem was set right, but should it have arisen at all. Use of trade policy instruments like anti-dumping or safeguard measures, without examining their deleterious effects on downstream

industries, on the basis of complaints from domestic lobbies is another such recurring phenomenon.

Cartelisation or other types of anti-competitive practices can be actioned against under the Competition Act, 2002. But, in such cases if the same has emerged due to a government policy or praxis, action can hardly be taken or if taken, chances of success are remote. The case of Jindal Steel complaining under the competition law against Railways for not allowing it to offer rails is a case in point. Actually, the Railways should have simply allowed Jindal to quote through an informed policy rather than face unnecessary litigation, and garner the fruits of competition. It is therefore to deal with such quirks, that governments adopt a competition policy which can inform all branches of the government on how they should ensure that competition principles are followed in whatever they do.

To stimulate discussion and awareness on competition impacts of various policies, a natural precondition for the effective implementation of a competition policy, CUTS has been coming out with a Competition Distortions Dossier (CDD) since March 2009 (http://cuts-ccier.org/Competition_Distortions_India.htm).

Trade Policy Distortions

Let me illustrate. A policy measure with vast implications for competition is the imposition of an anti dumping duty (ADD), which has been called a toxin by respected trade economists like Bhagwati and Srinivasan. When imposed correctly, such duty helps prevent predatory or below cost pricing by a powerful foreign competitor to eliminate competition from domestic or other suppliers and gain monopoly control of the market. Such im-

sition thus helps maintain contestability among players and hence competition in the relevant market.

When imposed incorrectly, ADD serves to insulate domestic suppliers from competition from abroad. In effect, this may do away with the compulsion for domestic producers to hone efficiency and remain competitive by international standards. In the short run, end users and consumers suffer because they consume the product levied with duty at an enhanced price, though domestic producers and their input suppliers gain as these augment their market shares. In the long run, such suffering is compounded as ADD, by building a protective cocoon around producers, restricts the downward/upward movement of price/quality resulting from efficiency improvements born out of competition.

A government recommendation in October, 2010 for imposition of ADD on radial truck and bus tyre imports from China and Thailand and the resulting debates, captured in detail through the CDD, highlight all the dilemmas mentioned above. Such imports at low prices obviously benefit household consumers and end users providing transport services but they result in the contraction of sales of domestic rubber growers supplying Indian tyre manufacturers. The recommendation for imposition of ADD has been perceived in certain circles as an outcome of the demands of domestic rubber growers voiced through the Rubber Board.

Thus, there is a very real danger that the pulls and pressures from potentially benefiting and losing stakeholder groups might lead to hasty decisions taken without an adequate and systematic scrutiny of sector realities and associated, potential welfare costs and benefits from im-

sition of ADD. Note that ADD helps to enhance competition in the long run and is justified only if there is predatory or below cost pricing by the supplier. The scrutiny process, which constitutes the core of competition policy, thus necessar-

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ily has to compare import prices with costs corresponding to efficient production – this may be done directly or by ascertaining the parity of international prices with import prices.

Similar comparisons are needed when safeguard duties are demanded by well organised producers with consumers and end users standing to lose as in the case of aluminium products and antibiotics in India; when government contemplates continuation of its efforts to artificially render public sector enterprises viable through subsidies, at the expense of competitiveness of the private sector, with the overt objective of maximising employment; or while evaluating a draft anti monopoly policy, as in the case of the Indian port sector, which tries to clip the wings of powerful but efficient players in a declared attempt to boost competition.

Systematic Appraisal Needed

Given that industrial, trade, labour and other government policies too might have competition reducing/enhancing impacts,

a systematic appraisal of all such important government policies is in order.

A competition policy allows the government to weigh the competition distorting/enhancing effects of every important government policy against positive/negative impacts in regard to other issues which are in the public interest — employment, poverty alleviation, equality in income distribution, bridging of the gender divide, promotion of infant industry etc.

Given the vastness, diversity and complexity of the Indian economy and the varied policy interventions being undertaken by the government to promote development, a competition policy which undertakes distinct appraisals of different policies is imperative and would help maximise the overall welfare impact of government policy.

The well elaborated case of ADD on tyre imports and other cases touched on above, all captured through various issues of the CDD, illustrate the advantages of policy choice based on scrutiny of diverse welfare impacts including competition rather than the pressures imposed by poorly matched stakeholder groups. It is hoped that such efforts will help prepare the Indian stakeholder community and government for introduction and effective implementation of a formal competition policy.

Promoting Competition Principles

Some sector specific regulators would also be implementing their own sector laws which may not adhere to the competitive spirit. Despite the existence of a competition law, a competitive environment might not be established due to this inconsistency between the orientation of competition law and restrictions imposed by other regulations. This is where the

need for a NCP (*National Competition Policy*) arises.

NCP tries to ensure consistency of all or most national and state laws with the principles of competition. Viewed in this manner, a competition policy helps to further the objectives of a competition law — to foster competition in all sectors of the economy and thereby induce efficiency, innovation and growth

For a successful NCP extensive advocacy and stakeholder consultation are needed. This requires the cooperation and coordination of institutions such as the competition authority, civil society organisations, sector regulators and government. The primary motivating factor behind NCP is however political will and priority accorded to growth as a political objective, which no one doubts.

Ensuring competitive neutrality is another crucial part of the NCP, which ensures that government businesses do not get any undue advantage over private businesses, like making it mandatory for government travellers to use only Air India. Competitive neutrality is necessary for ensuring competition within and across public and private enterprises. It not only boosts the performance of utilities but also increases private sector participation, which is crucial for innovation and overall economic efficiency.

Assessing Impact

The Planning Commission's working group on the NCP in 2007 examined its various facets and came up with policy recommendations to move the agenda forward. This working group had raised concerns over some policies, statutes and regulations at the levels of the central and state government that limit competition and had recommended review of such



policies through the tool of competition impact assessment.

Australia has undergone such an assessment in depth. Their approach towards competition policy can be useful in the Indian context. Like India, in Australia the competition law came before the adoption of competition policy. However, the competition policy was preceded by an extensive review of all legislations from the competition perspective and all laws and measures which had provisions (*over 2000 in number*) violating the spirit of

competition were repealed or amended. One study done by the Australian Productivity Commission showed that the economy gained by as much as 5.5 percent over time, creating many more jobs and promoting consumer welfare.

Equitable and Consistent Application

The envisaged NCP approach would ensure the equitable application of competition rules to all economic agents in the Indian economy. It works on the principle



that social welfare is best served by promoting competition in the economy. Once adopted, the central government in coordination with the state governments should ensure that implementation of the NCP is uniform across the country, particularly in respect of structural reform of public monopolies, review of anti-competitive legislation and regulation and the elimination of undue advantages enjoyed by government businesses where they compete with the private sector. In this regard the need for cooperation from state

and local bodies to ensure effective implementation cannot be overemphasised.

The NCP is an important step forward in establishing a consistent national economic framework to promote and maintain competition in all sectors of the economy. This, however, is clearly only an initial step in initiating wide ranging reforms for generating a culture and spirit of competition in the economy. While paying due attention to the implementation of this step, it is important to develop a long term perspective for the promotion

of competition through the synergy of competition policy and law as well as the evolution of effective institutions and engagement of multiple stakeholders in this regard. [IER](#)

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The views expressed in the write-up are personal and do not reflect the official policy or position of the organization.)