

# **COMPETITION IMPACT ASSESSMENT TOOLKIT**

RESEARCH DESIGN MEETING

NATIONAL COMPETITION POLICY AND ECONOMIC GROWTH IN INDIA

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# Outline

1. BACKGROUND

2. RELEVANCE FOR COMPEG

3. COMPETITION IMPACT ASSESSMENT:

Does the policy have any of the following effects?

A. Distorts the Level Playing Field between Competitors

B. Creates Entry Barriers

C. Limits Free and Fair Market Process

D. Promotes Monopolies and their Abuse

E. Limits Scope to Introduce New Products or Supply Existing Ones in New Ways

F. Limits Institutional Independence

G. Is a Distortive Subsidy/State Aid

H. Driven by Vested Interests Promoted by the Government

I. Does Not Effectively Prevent Anti-competitive Conduct

If Affirmative, deeper analysis required

J. Conclusion: BALANCING TEST

# INTRODUCTION

- Competition policy a critical goal
- *“If countries eliminate policies that distort competition, could grow rapidly”*

William Lewis, Power of Productivity

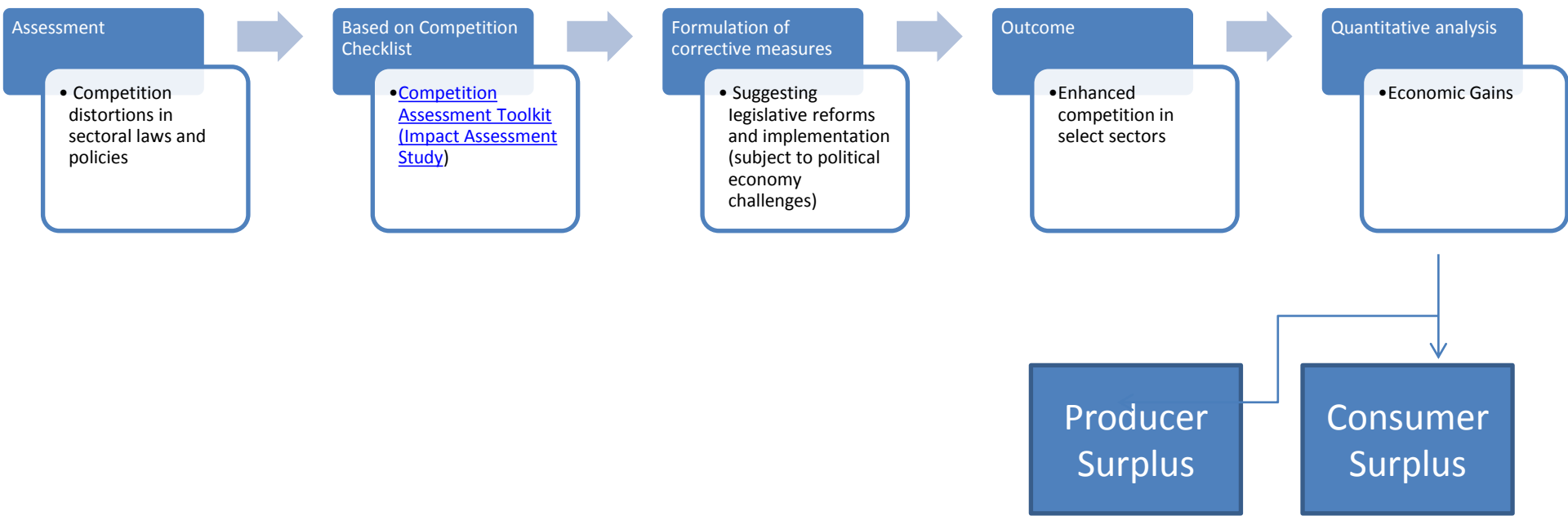
- Distortion caused by:
  - a. Practices (Firms)
  - b. Policies (Government)

# BACKGROUND

- Complements Regulatory Impact Assessment
- OECD Competition Assessment Toolkit
- DFID Competition Assessment Framework
- Other Country experiences available in competition assessment handbooks .e.g. Spain, UK, Korea, Australia
- Planning Commission Recommendation (XI Plan): Review of policies, statutes and regulations from the competition perspective so that remedial action can be taken to remove or minimize their competition restrictive effects.
- C-NCP's draft National Competition Policy recommendations on legislative review for competition impact
- 14 Sector Studies by IICA

# Relevance for ComPEG

## STAGE I: EVIDENCE BASED ADVOCACY FOR REFORMS



# **COMPETITION IMPACT ASSESSMENT**

**DOES THE POLICY HAVE ANY OF THE  
FOLLOWING EFFECTS?**

# A. Distorts the Level Playing Field between Competitors

## ✓ **Competitive neutrality and the reverse**

e.g. RBI's preferential treatment to public sector banks over private, treatment of state transport buses over private are some examples. Similarly, reverse seen when vaccine producing PSUs shut down on curious grounds and all government purchase requirements met by private players thereafter until recent oppositions when suspensions were revoked.

## B. Creates Entry Barriers

- ✓ Limits entry of foreign players into domestic markets
- ✓ Procedures are not rule and time bound, transparent, fair and non-discriminatory?  
Licensing conditions onerous/arbitrary?
- ✓ Standards set for product quality provide unfair advantage to some suppliers over others?
- ✓ Grandfather clause that treats incumbent firms differently from new ones?  
e.g. The 'grandfather' rule followed in India for the purpose of slot allocation prefers the allocation of airport slots to incumbent air carriers over new air carriers. This creates a barrier to entry for new carriers and reduces the incentive to compete.
- ✓ Denies third party access to essential facilities  
Ministry of Railways asks private container operators to build their own Inland Container Depots (ICDs). Cost of procuring land from the Railways to build ICD, an essential facility, is a major entry barrier for private players. In order to access ICD from CONCOR, incumbent monopolist, they have to pay prohibitively high access charges.
- ✓ Creates geographical barriers  
e.g. Denying parallel importation



## C. Limits Free and Fair Market Process

- ✓ Limits flow of goods and services  
e.g. Taxation policies, APMC Act etc. create artificial barriers

## D. Promotes Monopolies and their Abuse

- ✓ Grants exclusive rights to select suppliers for a particular good
- ✓ Allows for firms to use incumbency advantages to create strategic entry barriers for new players
  - e.g. incumbent players in utility sectors enjoy advantages in terms of economies of scale and can use and have used this to undercut costs and indulge in predatory pricing creating barriers for new players that do not enjoy the same advantages
- ✓ Encourages exchange between suppliers or publication of information on prices, costs, sales or outputs
  - e.g. In May 2012, the Finance Ministry passed an order asking 4 dominant PSU companies to share all information regarding premium, claims etc. for avoiding competition between them thus giving way to a cartel within the industry. The order also includes a clause of not quoting lower prices at time of renewal by any company to attract a client of another company.

## **E. Limits Scope to Introduce New Products or Supply Existing Ones in New Ways**

- ✓ IPR policy: length and breadth of patent protection crucial
- ✓ Restriction on products to be supplied
- ✓ Restriction on production process/means of supply

## F. Limits Institutional Independence

- ✓ Lack of separation between regulation, policy-making and operation  
e.g. The lack of factual separation between policymaking (DOT), regulation (TRAI) and the incumbent operator has partly contributed to potentially distortionary interventions or regulatory practices. The competition distorting impact of this regulatory deficit has been borne primarily by the customer

## G. Is a Distortive Subsidy/State Aid

- ✓ Disproportionate to what is required to achieve the intended objective?
- ✓ Offers unfair advantage to beneficiary vis-à-vis its rivals?
- ✓ Promotes soft budget constraints and operational inefficiencies?

e.g. bail-outs by government to loss making Air India over and over, the recent plea of BSNL, MTNL for bail-out package to fund one time spectrum fee burden opposed by private players rightly

## H. Driven by Vested Interests Promoted by the Government

- ✓ Government enjoying benefits from opposing reforms
- ✓ Government sharing the high profits that dominant players are able to make if allowed to maintain such position in the market?

e.g. The government backed monopoly in the case of liquor in the Indian state of Uttar Pradesh after it decided to abolish the system of multiple wholesale dealers on grounds of controlling the trafficking of spurious alcohol from neighbouring states and giving it all to just one seller of alcohol popularly known as Ponty Chadha presents a good example.

# **I. Does Not Effectively Prevent Anti-competitive Conduct**

Anti-competitive conducts include anti-competitive agreements (Section 3), abuse of dominance (Section 4) and combinations (Sections 5 and 6) of the Competition Act.

If the answer to any of the above nine questions is in the affirmative, further analysis is required.



## J. BALANCING TEST

Public notification and justification of deviations from competition principles

- ✓ Benefits of restriction to community as a whole outweigh the costs and
- ✓ Objectives of legislation can only be achieved by restricting competition

## **Guiding principles for analysis:**

- Stated policy objective clearly defined
- Policy necessary to achieve stated objective
- Identify nature of restriction on competition
- Analyse likely effect of restriction on competition and on economy
- Policy decided in a transparent and non-discriminatory manner
- Assess and balance costs and benefits of restriction
- Look for alternative means that are less restrictive

## **Guiding principles for implementation:**

- Introduction of sunset clause
- Monitoring and review of implementation of the policy

**THANK YOU**