

NATIONAL COMPETITION POLICY: SECOND WAVE OF REFORMS IN INDIA

Thursday, October 10, 2013, New Delhi

Minutes of the Meeting

Background

The CUTS project, National Competition Policy & Economic Growth in India (ComPEG project) aims to take forward the agenda of adoption of the draft National Competition Policy. As part of the first phase of the project (18 months) CUTS deepened the research based on the preliminary work done by CIRC/IICA, and covered three sectors: Pharmaceutical, Electricity and Agriculture Product Marketing to identify existing gaps against the touchstone of competition and measure the benefits of correcting the same on the entire Indian economy.

Based on the outputs of the first phase, during the second phase of the project (April-February 2013), CUTS has prepared a Memorandum on the 'Need to adopt NCP in India' to be submitted to the Prime Minister of India including Ministry of Corporate Affairs, Government of India. The memorandum will reflect the benefits of having a NCP in India and based on experience of other countries and evidence from the first phase, build the argument for the need of NCP in India. It will be followed by the rigorous advocacy seminars at the zonal and national level to involve and sensitise relevant stakeholders.

Objective

The purpose of the seminar was to impress upon industry champions the need for adoption and effective implementation of National Competition Policy (NCP), which would require among other things, harmonisation of government policies at both levels (Centre and State) with principles of competition. Further, the purpose of the seminar was to take on board comments/inputs on the draft memorandum from a larger group of industry players and other stakeholders. On the basis of the discussion during the meeting, the Memorandum will be finalised and submitted to the Prime Minister of India including Ministry of Corporate Affairs, Government of India to build pressure for adoption of NCP.

Opening Session

Pradeep S Mehta, Secretary General, CUTS International provided an overview of a recent study that CUTS has undertaken to highlight issues that have implications for evolving a level-playing field in three key sectors of the economy: pharmaceuticals, electricity and agriculture product marketing.

CUTS started with a note that the project would be another milestone of the journey of last 15 years to implement competition policy. In this aspect, he elaborated on the evolution of the competition law to check anticompetitive practices in the market and the journey of drafting the NCP of India. A Committee was framed under the chairmanship of Dhanendra Kumar, Former Chairperson, Competition Commission of India (CCI) to frame the NCP and Related Matters in June 2011. The Committee noted the earlier steps towards a NCP in India which included

recommendations of the Raghavan Committee, commitment of the government in the Parliament/ Standing Committee of the Parliament, Planning Commission's Working Group on NCP and CCI's Advisory Committee on NCP. CUTS played a vital role in forming the draft NCP and Mehta was the active member of the Committee.

In the continuation, he spoke about the motivation and the purpose of the current project. The project is motivated by the objective of bringing markets in compliance with the principles of competition such as effective prevention of anticompetitive conduct; institutional separation between policymaking, operations and regulations; fair market process; competitive neutrality etc. He also spoke about the value addition of the project by emphasising the usefulness of the developed methodology as a template of future studies. He further highlighted that the CUTS study advocates for certain interventions that can help remove competition distortions that exist in some of the mentioned sectors, thereby deriving benefits for producers and consumers.

Andrew Soper, Counsellor (Prosperity), British High Commission, indicated that their interest in this project and specifically in the competition reforms agenda stems from their interest on trade and investment issues as part of the larger economic reforms agenda. Soper added that UK firms are increasingly interested in India from a trade and investment perspective, and hence it was necessary for British High Commission to get a better understanding of the prevailing business environment in some of these key economic sectors.

Arun Maira, Member, Planning Commission of India, emphasised on political-economic challenges in implementing a policy. He said that redesigning of institutions is needed to address these challenges and generating growth which is what the Planning Commission of India is attempting at the moment.

Maira emphasised the need for minimal number of rules/regulations, while referring to regulatory burden and cost of doing business in India. He also mentioned that in order to improve the quality of coordination and implementation of the Plan, they have recently constituted the Indian Backbone Implementation Network (IBIN). IBIN proposes to deal with contentious issues through a wide consensus building approach. Maira added that many policy reforms do not happen because of confusion and ignorance, and therefore the need to use innovative tools to move the reforms agenda forward.

Ashok Chawla, Chairman, Competition Commission of India, emphasised that the competition law is an essential tool for enforcement against anti-competitive practices but the policy has a much larger objective. It is important for countries such as India, where States play a major role in the economic sectors and the policy still tilts towards State control, it is important to adopt National Competition Policy (NCP) for India. According to Mr Chawla, competition policy is important to tackle entry barriers that are inbuilt in the system and leads to more robust economic welfare and provide governance to the country. However, there are challenges to adopt the NCP and the reasons are not difficult to seek, because the baggage that we are carrying i.e. policies prior to 1991 have been institutionalised and it is difficult to demolish such institutions. Thus, we need independent agencies to review such policies to make them competition compliant and more relevant for today's time.

Presentation on 'Need and Importance of National Competition Policy in India'

The presentation delivered by Pradeep Mehta was followed by a brief round of questions. The first question was whether competition policy caters to social welfare and how does it deal with a case where the efficient people are penalized by the virtue of them being the most efficient amongst the lot? In response, Mr. Mehta explained that the policy is not blind to any flexibilities and is applied with due regard to socio economic policies.

Address by Mr. Dhanendra Kumar:

He opened the discussion session, by welcoming the Panellists and the august gathering and congratulated CUTS International for the work done in the field of competition law and policy. He gave a brief background of the National Competition Policy (NCP) stressing that it is a much needed reform and its significance was anticipated historically. He further explained that the policy which mirrored an agreement between its various stakeholders is an overarching framework, laying down competition principles, corrective measure to out throw anti-competitive regulations and policies, curb monopolies, collusions and abuse of dominance, thereby, instituting a culture of inventions, innovations, reduced prices, wider choices to consumers, competition impact assessment activities and achieving economic democracy. He exhorted the need for the state governments to have their own competition policies for better governance and asserted that infusing competition law in the economy will have a positive residual impact. Agreeing with Pradeep Mehta, he responded to the above question by explaining that any policy has to be in accordance with the socio-economic scenario and ended a note hoping that the policy sees the light of the day.

Panel Discussion:

Mr. Mukesh Gulati was the first speaker whose discussion focused on the policy and the negative impacts it may have on the MSME's. He evinced that the policy largely benefitted the big enterprises and the concerns of the MSME's have not been given adequate attention. He was unclear whether the policy caters to the sector in areas such as high prices of fossil fuel which in turn affects subsidies, labour intensive competition within the sector, litigation costs which may deter the small enterprises, labour costs in case of free entry and exit and linking of global policies such as FTAs with regional cooperation. He sought for suggestions for the above and also suggested few mechanisms such as having benchmarks for quality based competition, group based litigation to avoid heavy cost burdens, etc.

Mr. Anil Bhardwaj, highlighted the laxity of competition law in delivering to the needs of the SMEs, in terms of costs, collective filing, public procurement etc. He recollected that a few years ago when the discussion for a new competition regime in the country began, he was one of its protagonists. He emphasized that the need of the hour is an activist approach and exemplary judgments in the field of competition law to be precedents for the future of the SMEs.

Mr. Atindra Sen punctuated the reforms in the economic policy in India but at the same time shifted the focus to markets, being central to competition law and the real arbiter of policy. He opined that this would pacify the issue of access to capital in a free and fair manner, with a level playing field to the smaller players in the markets as well. He also urged that there is lack of

information flow due to which there is no level playing field between the consumers and the providers.

Mr. S.P Sharma was of the view that there are many factors which hinder the prosperity of business in India and block our approach forward; such as procedural rigidities, high business costs, poor growth rates of the manufacturing sector, structural problems, administrative hiccups and labour rigidities, to name a few. He stated that competition policy should also address the concerns of low exports and higher imports etc. In response, Mr. Dhanendra Kumar subtly explained that the rationale behind the policy was overall growth with adherence to competition. He emphasized that the focus should be on the 'doable' in India and the approach should be to pick the best from all the states, without placing too much reliance on facts, figures and statistics.

Mr. Sameer Gandhi opined that the same brush cannot be used to paint everything. Therefore, one competition policy cannot suffice for all sectors nor it addresses the non-competition issues such as competition between local vegetable vendors in the market etc. He stressed the need to have different assessment standards for low value deals. According to him, competition law can only create a good competitive environment for business. Mr. Dhanendra Kumar very rightly explained that the policy targets 'Indian' consumers and therefore, the socio-economic factors bear primacy.

Ms. Seems Gaur very briefly explained that every Ministry should have a small unit for competition but, it will need capacity building, understanding of markets, laws, competition policies etc. In view of MSMEs, she said that the NCP is competitively neutral and does not specifically confer any advantage to MSMEs. And, in cases of anti-competitive practices, they are free to approach the Competition Commission of India for redressal. Mr. Kumar endorsed this view.

Mr. Pronab Sen was of the view that market economy should be the default option for the economy and without that competition advocacy would not gain currency. Mr. Atindra Sen also subscribed to the same views.

In response to the above discussions, Mr. Pradeep Mehta stated that any policy is a soft law and does not have enforcement abilities. The framework has to be tailored for each sector. Addressing the concerns of Mr. Gandhi on the issue of IPRs he said that it is covered under abuse of dominance principles. The issues of overlap are dealt under provisions of mandatory consultations. On capacity building he stated that at this point in time, there should be more consensus building. He further spoke about the principles of competition policy, in particular competitive neutrality which is derived from OECD competition checklist. He pointed out some challenges of the project to be addressed would be the open access issues in the power sector – why state hesitate to implement it, dealing with the political economy issues, inertia and status quo. Pointing on the issues of agricultural sector that would be one of the key areas of the project, he adverted that the Agricultural Produce Marketing Committees (APMC) Act is a state concern issue that creating anticompetitive practices at the state level. As farmers are not that organised like traders, implementation of APMC will enhance the competition of the sector. This is one of the areas where the project is going to focus on.
