

**NATIONAL SEMINAR ON
“NEED FOR NATIONAL COMPETITION POLICY FOR INDIA:
HOW TO OVERCOME CHALLENGES?”**

TUESDAY, 18TH FEBRUARY, 2014; NEW DELHI

Opening Remarks

Pradeep S Mehta, Secretary General, CUTS International

Competition policy is required for general economic welfare. To maintain and sustain the economic welfare that competition policy brings in it is important that there are suitable legislations and institutions in place which are effective in implementing /administering law. Further, it is envisaged that there is a competition law that is accompanied by a competition policy.

Over the last decade or so there has been a considerable interest in developing countries for adopting competition laws, either at the behest of external pressures or as a result of internal developments. It can be inferred from analysis of motivations that in most of the cases, adoption of competition policy has been because of pressure from external agencies (bilateral, multilateral, advisers, etc.) rather than internal policy reforms. Having employed such a reactive approach to evolving competition regimes, governments in the developing world have failed to support the process of competition law adoption through concurrent policy measures and practices that support competition in the market, contributing to economic growth and development.

Mehta also highlighted the ill effects of vested interest and natural monopolies and how it affects the fiscal deficit. He further stated that CUTS ComPEG project focuses on undertaking assessment of certain key sectors, such as pharmaceutical, agriculture produce marketing committee reforms and electricity sectors in terms of competition distortion and in terms of revenue what does it cost, if these impediments are removed and how it will benefit the overall economic growth through economic gains. The emphasis on competition policy is inevitable because it brings in positive welfare gains at large. DFID and British High Commission has been a continuous supporter of CUTS in its initiatives to promote the awareness on the need for competition policy reforms globally.

Claire Tynte-Irvine, First Secretary, Economic and Trade Policy, British High Commission, India

Competition is the driver for economic growth; it brings in equality, efficient resource allocation, reduction in price, increases productivity, investment and rewards innovation. Areas and countries where competition policy is not being considered everyone will be most adversely affected and deprived of economic welfare. Competition brings in prosperity and sustainable growth.

Irvine emphasised that in the UK, Competition Law reforms have brought about a huge change in the pattern of revenue generation. In the year 2007, it was estimated that 42% productivity through reallocation of firms was achieved. OECD countries have estimated that there is a 10% increase in trade by openness in trade, which means increase in by 4% in each person's revenue. Such kind of productivity, market and revenue gains cannot be ignored when the world at large is going through an economic down turn .It was also pointed out that in the UK by deregulation of the telecom industry; there has been a drop in prices of telephone calls by 90% over the last 10 years. Irvine shared evidence of competition reforms and resulting benefits to the UK consumers and producers and builds the argument for the adoption of national competition policy in India. She further advocated for competitive business practices by promoting competition policy, transparency and predictability of the market in an economy to achieve higher economic growth

Ajoy Kumar, Member of Parliament (Lok Sabha)

Kumar emphasized three major points which is engagement with policymakers, getting businesses started quick and easy and do away with subordinate legislations. He further deliberated on what can be done in order to ensure effective adoption and implementation of national completion policy. He highlighted the point that there is a huge disconnect between what is being discussed in the parliament and what happens on the ground. People who should change it are hardly in connection with those people who need the change and this result in ineffective laws from being implemented. The reason why good policies fail for there is no engagement between the political class and the people. For the political class does not understand how a national competition policy will help the people and thus, it is important to engage with the political class and sensitise them on such issues.

Kumar emphasises that it's only by engaging with the political class, can things move and the disconnect be bridged. If business get easily started in India and subordinate legislations are dealt with or done away with, it will be a huge contribution to ensure competitive practices

emerging in the markets and create an environment for effective adoption of national competition policy.

Pronab Sen, Chairman, National Statistical Commission

Sen stated that policies are not richly debated or discussed amongst the relevant stakeholders therefore the advantages are never tapped into. The much neglected approach towards policy results in their non-performance to a large extent. It is important that they are debated well and a concerted effort is taken to bring in the interest of all the stakeholders. States do not benefit as they have a very limited role in conveying policy. The speaker closed his comments by stating that policies shall be debated and brought to the public domain so that larger good can be achieved e.g. state VAT debate.

The opening session closed by taking inputs from the participants of the seminar which were:-

- 1) Need for national competition policy needs to be presented to the parliamentarians through data showing revenue generation and employability, as a result of adoption of the policy.
- 2) Tailor to create political pressure through public domain use.
- 3) Implementation mechanism needs to be made more effective for existing laws and policy.

SESSION I: INTERNATIONAL EXPERIENCE IN IMPLEMENTATION OF NATIONAL COMPETITION POLICY: AUSTRALIA AND BOTSWANA

Matt Crooke, Minister-Counselor (Economic), Australian High Commission, India

At the start of the presentation, Crooke mentioned that Australia has three levels of government. This means that setting the agenda across those three levels can require extensive negotiation, as each has different responsibilities which overlap with and impact one another. The Australian economy of the 1970s and 1980s was vastly different to today's. Crooke emphasised that our institutions were different; our approach to regulation was different; and we had fragmented domestic markets, relatively high levels of industry protection, and much higher levels of government involvement in commercial activities than now. In 1974 the government introduced the *Trade Practices Act* ('the TPA'), but this was largely focussed on laws dealing with the anti-competitive conduct of firms, rather than the broader promotion of competition as a guiding policy principle; and only applied to incorporated businesses.

So by the early 1990s, we had lived through six recessions in two decades (1971 – 1991), and a balance of payments crisis (in the early 1980s). But that first wave of reforms from the 1980s paid dividends. Australia recognised that an overhaul of competition policy arrangements and broader microeconomic reform was critical to sustaining economic growth and improving living standards. At a Special Premier's Conference in July 1991, government leaders agreed

that competitive national markets would benefit Australia, and that a national approach to rolling out a competition policy would be important for boosting productivity. In 1992, an independent inquiry into a national competition policy for Australia was announced – known as the Hilmer Inquiry.

One of the important issues that the Hilmer Report focussed on was the application of principle of Competitive Neutrality. Key features of competitive neutrality mentioned are:

- **Debt neutrality** – cost of credit should reflect the risk of the business activity.
- **Regulatory neutrality** – government businesses should operate in the same regulatory environment as competitors.
- **Commercial rate of return** – prices of goods and services should be sufficient to earn a commercial rate of return.
- **Tax neutrality** – government businesses should pay tax or tax equivalent payments.

Competitive Neutrality policy is a key consideration whenever the Commonwealth or a State or Territory government develops a new business entity for the delivery of government services. Competitive neutrality applies only where the entity is carrying on a business, and therefore does not restrict the government in the delivery of essential public services. Where legislation can restrict competition, the concept of ‘where the benefits outweigh the costs’, was one of the more contentious areas of National Competition Policy. This is because there has been a lack of understanding about what a ‘public benefit’ means.

The National Competition Policy agreements outline that, when assessing benefits and costs to the community, the seven factors listed above should be taken into account. Many vested interests and industry groups consider that if a regulation benefits themselves or their industries, there is a public benefit. While there may be some benefits for these groups, the real test is whether all of the benefits outweigh all of the costs. Issues arise where different groups give different weightings to the costs and benefits.

Components of Australia’s experience from which India can learn

There are opportunities to pursue ambitious reforms are rare; but as public policy professionals we must be ready to help governments take them. The situation of a weak Australian economy at the time, some strong and creative political leadership, and striking the right balance between competitive tension and cooperation among jurisdictions, were all important factors behind in the success of our NCP. Ultimately the case was made that reform was necessary to sustain improvements to living standards and boost national competitiveness.

There is no perfect model or pathway; or put another way several feasible solutions typically exist. In Australia, a comprehensive independent review and inclusive public consultation process produced a model which Australian leaders were able to prosecute. Obsessing over the best can be the enemy of the good, and what matters more is getting gaining some early momentum and then rolling out the detail in a collaborative fashion. Reform is not an event, but an ongoing process and we never seem to get it quite right the first time around in any case. Crooke emphasised that strong institutions are vital to drive the reform process. Older ones tend to suffer from inertia and inflexible thinking; new ones can be positive vehicles for change. Where necessary create new institutions, give them clarity of purpose and appropriate resources, and let them become key drivers of the reform process.

One such vision which has guided the process in Australia is to create well-functioning national markets. Taking a whole of economy or cross-cutting approach to reform helps to overcome and work through industry-specific concerns and vested interests. It also gives jurisdictions some flexibility to find solutions most appropriate to their circumstances. The strongest voices against reform will typically be from insiders and those affected by change. That is to be expected. Financial incentives or compensation can help smooth the transition for those experiencing the worst adverse consequences. But remember the fruits of reform are productivity gains, which drive a larger overall economy and higher average standard of living.

In Australia's experience, it was pivotal to have a bipartisan and cross-jurisdictional commitment. The financial incentives embedded within the NCP were important in helping to secure this. So were opportunities for state governments to provide strong leadership in the process. This was particularly the case in reforming Australia's electricity and gas markets.

Thula G. Kaira, CEO & Secretary to the Commission, Competition Authority of Botswana

At the start of the presentation, Kaira mentioned that the Government of Botswana adopted the National Competition Policy for Botswana in July 2005, which was preceded by an Economic Mapping for Botswana (2002) that noted high levels of structural impediments to industrial growth. Almost at the same time, a Legislative Inventory of Botswana Laws vis-à-vis competition principles were undertaken to identify legislations that result in competition distortions.

Kaira emphasises that the very genesis of the Botswana National Competition Policy can be traced back to the turn of the century, when Government of Botswana realised that industrial growth was not as expected and the economy largely dependent on mining. In order to overcome this dependency on a single sector or resource, an initiative was carried out to

identify the key constraints on competition in all sectors of the economy the Government, in conjunction with UNCTAD and Botswana Institute for Development Policy Analysis (BIDPA) to map out the economic structure of Botswana. The Economic Mapping brought to light the fact that Conditions in the economy were not conducive to sustainable growth & development, there was absence of competitive market structure, with high entry barriers in key economic sectors in Botswana. Hence, there was need for a broad-based economic reform and the need adopt competition reforms.

Kaira shared with the audience some of the key challenges that were identified during the implementation of reforms in Botswana i.e. general resistance to review policies, laws and regulations that have been working well for a large or small powerful group of citizen-owned businesses. It is also important to note that public expects tangible results from any reform process and this may not be easy to show in the short-term. In order to overcome these challenges, Thula emphasised that the National Competition Policy should clearly and deliberately fuse into other policies, laws and regulations that impacts on competition and industrial growth. A policy and legislative inventory of all polices and laws that have a negative impact on competition and create barriers to growth and development must be undertaken. A national support base must be created for the NCP to be successful. Civil society involvement in advocacy is an important pre-requisite to ensure effective implementation of economic reforms in any country. .

Kaira mentioned that CSO's such as CUTS can promote and create a platform for better process of deliberation with people, negotiation about different point of view and more communication between public and ministries. Its only by improving the level of engagement can the gap of disconnect can be removed between different stakeholders and their interest.

To mark an end to the session, Chair Mr Arun Maira emphasized the need of consultations. He mentioned that effective implementation of laws and policies, there is a need to build consensus by engaging with all relevant stakeholders.

SESSION II: ROUNDTABLE DISCUSSION ON “IMPLEMENTATION OF NATIONAL COMPETITION FOR INDIA: HOW TO OVERCOME THE CHALLENGES?”

Opening

Pursuant to sessions on need for National Competition Policy (NCP) and International Experience in implementation of NCP: Australia and Botswana, the third session focused on how to overcome challenges for effective implementation of NCP. The roundtable was

chaired by Pradeep S Mehta with Ajay Shankar, Amit Kapur, V. Ranganathan, Manas Kumar Chaudhri and S. Chakravarthy being the panel members for the session. Pradeep S Mehta opened the session by introducing the theme. He although raised concern over time constraint and requested the panellist to keep their submissions short.

Panel Discussion

Ajay Shankar, Member Secretary, National Manufacturing Competitiveness Council

India has progressed with competition law and its practices. He said that the country has accepted the need for having a robust competition law and now emphasis has been made to implement national competition policy. However, as India is a democratic country, we at the end are driven by public opinion and rest of system including the civil servants, regulators, etc. respond to these public opinions/pressures. The primary challenge for implementing NCP is that the level of policy debate is thin. He raised concern over our tendency to debate effects of policy at macro level but not at the micro level. Debate at micro level, he said, cannot be achieved unless depth of understanding of the competition policy at micro level is increased. The policy should be understood sector wise and at a grass root level and then a gradual process for change can be initiated. Sometimes policy decisions are against the public populism for example the excise policy in Uttar Pradesh. And therefore, he proposed that the State Government must work hard towards bringing awareness about NCP and its benefits, so that this paves way for its easy implementation and effective compliance.

Pradeep S Mehta appreciated the submissions made by Ajay Shankar. He responded to his submissions by saying that Government of Rajasthan has been taking such initiatives and has been successful too. Civil Societies and other consumer empowered groups are working alongside State Government to bring in awareness about the competition regime and its benefits for grass root players and consumers too. He then invited Amit Kapur to lead further with his submissions.

Amit Kapur, Partner J. Sagar Associates

He began his submission by quoting Ronald Regan “If it moves, tax it. If it keeps moving, regulate it.” He said that the government’s attitude towards law and policy making is trending for regulation, however development premise for effective regulations, we lack engagement. He said that the real challenge for implementing NCP is consultation process. He said that we must learn from Botswana and the policies should be developed with ‘bottom up’ approach, where the idea is involved amongst the masses and players and it is then evolved into a policy. He then raised a concern over having a NCP in the Indian market. According to him first the markets should be nationalised i.e. have uniform guidelines and only then

national competition can be brought in those markets. He urged the need for removing barricades and need for re-looking the way the market functions and is governed by the policies. National objective should be looked into while developing these policies and engagement with civil societies should be made to have their effective implementation. During the regulatory process, consultations should be made and a forum should be made having economists, technocrats, lawyers, academia, etc. to rattle opinions and form conducive environment for effective implementation of such policies. He also said that even courts of law should be engaged in the economic policy making, the age old concept of *functus officio* should be given away and by making them part of the process we can expect better implementation through judiciary in case of any dispute.

Mehta thanked Amit Kapur for his submissions and suggested that there is need for developing Policy Coherence Units in the Governments both at the State and Central level. He supported the opinion of Amit Kapur that there are entry barriers for professional in government policy making. Ajay Shankar also contributed his view that there are lot of ministries, regulators and other bureaucrats who have been making policies, passing office orders, developing by-laws, but none, or rather rarely any analysis is done to know if these decisions are competitive or anti-competitive, and thus there is immediate need to look into that aspect also.

V. Ranganathan, Professor, IIM Bangalore

Prof Ranganathan raised three questions and said that the solution for overcoming challenges for implementation of NCP lies within these questions only. He asked that *first*, were do we locate competition policy and law? The convergence between Ministry of Corporate Affairs and Ministry of Economic Affairs doesn't provide good breeding ground for the NCP as it is an economic policy and less for the jurisdiction of Ministry of Corporate Affairs. *Second* question that needs to be addressed is that who should drive the policy? The Policy should be driven by the stakeholders; however it has been observed that policy making is governed by vested interests. And *lastly* he said Competition Law & Policy should be an indicator for improving productivity by competitiveness. The government should pick winners and make them national champions. According to him India has failed in manufacturing, foreigners have come, technology is there but we haven't exported. Thus, we must look for harnessing our service sector which should be aptly supported by the competition policy.

Manas Kumar Chaudhari, Partner, Competition Law Practices, Khaitan & Co.

He pointed out three clear issues and probable solutions for effective implementation of NCP. *First*, awareness should be made about the provisions of competition law. Government must

let players know as to what is cartelization, abuse of dominance, etc. Policy should be “Refrain from this”, and that’s how it will fetch attention by the players. *Secondly*, common minimum program amongst economic ministries of union- with state- judiciary should be achieved and involvement of all at the appropriate stages should be made to bring in clarity and avoid future discourse. And *lastly*, he said that let the laws evolve; policy should have those facets that people can follow on their own.

S. Chakravarthy, Adviser/Consultant on Competition Policy & Law

He brought forward few highlighted points, such as, competition policy should be regarded as one single document rather than legal terminology digest. He said that no matter what you call it, competition policy or competition law, the idea should be that the terms should be made for labour, manufacturers, procurement officers, etc. and they should be made clear as to what are their do’s and don’ts. If we are able to achieve this, we can itself say that the task of implementation is complete as now no outside enforcing agency is needed, people will follow and people will implement this policy. And then the only task left is of competition advocacy, i.e. educate parliamentarians, academia, industrialist, and people at large as NCP implementation cannot be made unless these are being told to all.

Mehta thanked both the panellist for their views and emphasized on the need for competition advocacy. He pointed out that before the Competition Act, 2002 came into effect, and advocacy initiatives were taken by the government and by CUTS too. But while doing so, it was felt that we need education for absorption of policy in our working. Engagement is crucial and civil societies and other empowered groups should be brought in for effectuating the policy initiatives.

Among the questions asked during floor discussion following are the main issues that were discussed

- How can we educate political class?

Mehta answered the question by saying that engagements through such conferences is one way of making them aware of the effects and causes surrounding the NCP. Ajay Shankar further added that as also discussed in first session, political class can only be lured into understanding of NCP by disguising it into a solution based mechanism for effective economic growth.

- How can we build effective engagement?

Mehta and Amit Kapur answered that an engagement has to be initiated at the behest of the government, even when Think Tanks, empowered consumer groups and Civil

Societies are ready to bring in their respective knowledge on the dais for discussion; government is still reluctant to hear them out and develop a forum wherein policy can be mooted and any future discourse can be developed accordingly.

- Competition Law is now in effect and States have learned its implementation process, however still no uniformity in its enforcement and compliance is seen among the States. Why is it so?

Amit Kapur answered that the baring few states, state's participation has always been reluctant. States don't learn from each other, he quoted an example of that single window system which has turned into a laughing stock. He reiterated that uniformity has to be bought in the market first and only then NCP can have uniform enforcement and compliance throughout.
