

# **Competition and regulation: Interface Issues**

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November 17, 2006

*Indian Institute of Public Administration*

*New Delhi*



# Presentation outline

- Conceptual issues
- Competition and sector regulatory legislative provisions
- Select International experiences/Issues

# Competitive market

- Numerous buyers and sellers
- Free entry and exit
- Homogenous product
- Perfect information
- Efficient outcome
- Consumer welfare maximized
- Applies to specific sector or the economy as a whole

# Regulation

- Regulation mimics competitive market where there are natural monopoly service providers
- Other rationale for regulation
- Applies to specific sectors

# Types of regulation

- Economic regulation – regulation of specific industries or sectors with a view to influencing supply, prices, quality, etc.
- Social regulation – regulation of industries across the board to achieve social objectives such as health, safety, labour, welfare etc.

# **Need for regulating utilities**

- They involve significant sunk assets
- Natural monopolies: the risk of opportunistic behaviour
- Economies of size and scope make competition difficult

**Regulation calls for balance of seemingly conflicting interests**

# What does regulatory reforms mean

- Deregulation: to reduce state control, increase reliance on market forces and facilitate entry of new players
- Regulation or re-regulation: a package of controls created through legislation and exercised to structure and alter particular markets
- This paradoxical combination of deregulation and re-regulation is what is usually meant by regulatory reform (Majone)

# **Economic Regulation: Different regulatory routes**

- Regulation by contract
- Regulation through license
- Regulation by commission



# Regulation by Commission – institutional design issues

- Legal framework
- Structure
- Jurisdiction
- Scope and powers
- Transparency
- Autonomy
- Accountability

# **Trends of South Asian regulatory developments**

- Regulatory reforms is a world wide phenomenon
- In South Asia, telecom sector (Sri Lanka) took the lead, followed by power sector
- In India, regulatory reforms first in power sector (Orissa 1996), followed by telecom sector (1997), ports sector (1997), water sector (2005 in Maharashtra), oil and gas sector (2006)
- Regulatory reforms refined in power sector in 2003

# **Competition and Regulation: Institutional approach[1]**

- Approach 1: Utility regulators-either industry specific or multi sectoral-deal with competition issues, and competition authority has little or no role ( eg Bolivia)

# Competition and Regulation: Institutional approach [2]

- Approach 2: Competition authorities have oversight over all competition issues, including infrastructure sectors, and utility regulators have little or no role ( eg Australia, New Zealand)

# **Competition and Regulation: Institutional approach[3]**

- Approach 3: Hybrid approach-either approach 1 or approach 2, with a distinct relationship between utility regulators and competition rule making bodies (eg UK, Zambia)

# **Indian Competition Act, 2002 – Main features**

- Prohibits Anti-competitive Agreements
- Prohibits abuse of dominant position
- Provides for regulation of combinations
- Enjoins competition advocacy

[Sections 3,4,5,6 and 49]

# **Competition provisions in sector legislation: Electricity [1]**

Section 60: Market domination in the Electricity Act, 2003 empowers the appropriate commission to deal with abuse of dominant position or combinations which are likely to cause an adverse effect on competition in the electricity industry. (These, indeed, are the functions of the Competition Commission under sections 4 and 6 of the Competition Act, 2002.)

Section 174 of the Electricity Act 2003 also gives overriding powers to the said Act and makes no reference, whatsoever, to the Competition Act, 2002

## **Competition provisions in sector legislation: Telecom [2]**

The Telecom Regulatory Authority of India Act, 1997, as amended in 2000, empowers the Authority to make recommendations either suo-moto or at the request of the licensor, which is the government, on “measures to facilitate competition and promote efficiency in the operation of telecom services so as to facilitate growth in such services”



## Competition provisions in sector legislation-Oil&Gas [3]

The Petroleum and Natural Gas Regulatory Board Act 2006 empowers the Board to:

- Protect the interests of consumers by fostering fair trade and competition amongst the entities
- Regulate, by regulations:
  - Access to common carrier or contract carrier so as to ensure fair trade and competition amongst entities and for that purpose specify pipeline access code
  - Access to city/local natural gas distribution network so as to ensure fair trade and competition amongst entities as per pipeline across code

This Act also contains no reference to the Competition Act 2002 nor does it provide for any consultation between the Board and the Competition Commission



# Interface issues: legislative gap[1]

The TRAI Act 1997, as amended in 2000, excludes monopolistic, restrictive and unfair trade practices that are subject to the jurisdiction of the erstwhile MRTPC from the jurisdiction of the Telecom Dispute Settlement and Appellate Tribunal (TDSAT).

On similar lines the possibility of excluding appeals on competition issues from the sector appellate tribunals and making them lie only to the Competition Appellate Tribunal should be considered

## **Interface issues: legislative gap [2]**

Clause 53T (proposed amendment) of the Competition Act provides for appeals against the orders of the appellate tribunal to the Supreme Court.

Appeals to the Supreme Court should be restricted to one or more the grounds specified in Section 100 of the Code of the Civil Procedure 1908 on the lines of Section 125 of the Electricity Act 2003

## **Interface issues: legislative gaps [3]**

- Section 49 of the Competition Act ( dealing with competition advocacy), does not specifically require the Competition Commission to carry forward its advocacy role to participate in the proceedings before sectoral regulators on competition matters and advise the sectoral regulators

# UK experiences[1]

The regulators are mandated to:

- Consider complaints about possible infringement of Article 81 (agreements that restrict competition) and 82 (abuse of dominant position) of the EC Treaty
- Conduct enquiries on own initiative or on receiving complaints.
- Impose financial penalties, with due consideration to statutory guidelines on penalties issued by the OFT
- Publish written guidance in the form of 'Opinion' on unresolved questions about the application of Article 81 and Article 82 of the EC Treaty

On the other hand, Office of Fair Trading (OFT) alone is responsible for issuing guidance on penalties and for amending procedural rules (the OFT's rules). However, in executing these tasks, the OFT is required to consult the regulators

## UK experience [2]

- The Competition Act (Concurrency Regulations) 2004 allows for the following provisions:
- The OFT and the Regulators shall exchange information for determining which authority has jurisdiction in a particular case.
- This is determined based on parameters like sector knowledge, scope of regulation and recent experience in dealing with similar issues.
- The agreement on competent authority for particular case is generally reached within one month of the receipt of a complaint. In case each agreement is not reached within the stipulated time period, the matter is referred to the Secretary of State for final decision
- Concurrency Working Party (1997)

# South Africa experience[1]

- Competition Commission (CC) responsible to negotiate agreements with regulatory authorities
- CC Participate in proceedings of regulatory authority
- CC to advise and receive advice from regulatory authority

## South Africa experience[2]

- Concurrent oversight between sector regulators and CC through agreements or MOU
- Agreements specify procedures for promoting cooperation, exchange and protection of confidential information
- CC has agreements with regulators in electricity, telecommunications and broadcasting sectors



# Way forward

- Need for consensus on dealing with interface issues, and minimizing potential conflict
- Need for Legislative amendments
- Advocacy and capacity building

**Thank you**

