

Workshop on
Competition Assessment and Regulatory Impact Analysis:
Instrument for Competition Advocacy

Draft Inaugural Address of

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17 March, 2006

Free markets have come to be regarded as the most efficient form of delivery of products and services. Increasingly, countries are migrating to the free market systems to spur economic growth and enhance consumer welfare. This includes those countries that have traditionally had state controlled economic delivery systems. These market based reforms have generally delivered the expected outcomes and have improved the economic condition of the citizens in many countries, both developed and developing. Several researchers as well as authorities have produced research findings that bear testimony to the benefits that accrue from fair competition in the market.

India followed a closed door policy for many years after independence, influenced probably by the prevailing economic thought as well as circumstances created by acute poverty, narrow manufacturing and technology base, low levels of literacy and scarcity of foreign exchange. In the 1980s, however, it began to be realized that this policy, though it had produced some positive outcomes, had outlived its utility and was now

confining the country to what came to be dubbed as the 'Hindu rate of growth'.

Commencing early 1990s, wide ranging economic reforms were undertaken covering areas such as industrial licencing, public sector, small scale industries, foreign trade, foreign investment and technology transfer, and the financial sector. These reforms allowed greater competition in the market. The benefits from these reforms have been there for all to see in the shape of higher economic growth, increased availability of goods and services, lower prices and wider choice to the consumer. The competitiveness of Indian industry has also been enhanced.

One of the obstacles to the economic reforms was identified in certain provisions of the Monopolies and Restrictive Trade Practices Act, 1969. While the most offending portions were deleted in 1991, the Government felt the necessity of having a review of the legislation that controlled industry structure. A High Level Committee, set up in 1999, after deliberating upon the possibilities of revamping the existing law, preferred to have a new legislation incorporating the concepts of a modern competition law regime. The Competition Act, 2002 was enacted soon thereafter and the Competition Commission of India was established in October 2003.

In his speech, Shri Dhall has briefly outlined the provisions of the Competition Act and the role of the Competition Commission. Unfortunately, the Competition Commission could not begin its enforcement work because

the concerned sections of the Act could not be notified so far. I am glad to note, however, that the Commission has utilized its time to undertake competition advocacy and the intense professional ground work that would facilitate its functioning as a specialized body after the relevant portions of the law have been notified.

It is important for any competition authority to understand the structure of markets and have an update on the state of competition prevailing there in. Structure influences conduct, and many economists still recognize this as valid theory. I am glad to note that the Competition Commission has embarked on studies of the markets through renowned institutions and scholars. I observe that the Commission has a high level advisory committee on market studies/research projects headed by Dr. Vijay Kelkar, to advise and guide the Commission on the selection of the projects and of the institutions and research scholars. These studies cover a broad spectrum from the manufacturing sector in general to specific sectors, and their stated objective is to carry out competition assessment and regulatory impact analysis in the concerned areas.

I am told that the Commission intends to use the outcomes of these studies and research projects to underpin its competition advocacy with the central government and the state governments as well for awareness creation in industry associations and chambers. The findings and observations from these studies would lend more weight to the advocacy and awareness creation initiatives of the Commission. It is likely that certain policies of the

governments have an unintended adverse impact on competition. Also, one can not rule out the possibility of certain policies and laws having become outdated. There may be need for review of some legislations against the benchmark of competition principles. I understand that the Competition Commission has been requested by Government to prepare a discussion paper for a National Competition Policy and the Commission is working on this policy with the advice of group of very eminent economists and other professionals. I would be happy to see the progress of this important initiative.

Mr. Raghuram Rajan, Chief Economist of the IMF is reported to have remarked during his recent visit to India that the licence raj created privileged classes. On the other hand, a competition structure creates opportunity, and equality of access – to the market, to education, to capital. And if you have get all that then you have the best ability to make use of the opportunity. Thus, one of the main objectives of competition law is to provide a level playing field to all economic agents.

Competition law also visualizes that no incumbent should have unfair advantage over new entrants merely on the basis of ownership of the infrastructure required to provide a particular product. Replication of infrastructure facilities, in the short run, is not easy and is sometimes, almost impossible especially, in natural monopolies. Denial of access to infrastructure facilities can prove the biggest barrier to entry and thus seriously impede competition. In a developing country particularly, it can also

mean that an essential infrastructural facility may remain under utilized or utilized less efficiently. Many competition regimes recognize the *doctrine of essential facility*, which was first enunciated by the US Supreme Court way back in 1912. Providing Third Party Access, following the *doctrine of essential facility*, is one of the key implicit ingredients of most modern competition laws. Australia has, in fact, incorporated this provision explicitly in a generic form in its competition law. It may be worthwhile to have a similar generic formulation in India as well, since it would also result in optimal use of resources while guaranteeing fair competition.

Now I touch upon another issue, i.e. the interrelation between sectoral regulators and the competition authority. Sectoral regulators have been established in India in the capital market, insurance sector, telecommunications, electricity sector and ports. With the opening up of some other sectors having state monopolies, more regulators are on the anvil. The existence of a large number of regulators, together with the Competition Commission, may raise issues of overlaps with unintended problems of forum shopping and delayed decision making. It will be particularly vexatious for industry due to uncertainty of outcomes in view of many regulators with blurred jurisdictions. It is important to resolve the issue at this stage itself. While the ideal situation would be to legislate clear mandates for the regulators and the Competition Commission, a solution is feasible even in the present scenario. If all regulators were to recognize that competition principles should prevail across all sectors, the chances of conflicts in laws would get vastly reduced. The determination of competition principles should

be left to the Competition Commission of India, as is usually done in many parts of the world, like in the European Union and Mexico.

Another issue that arises out of the process of liberalization is granting of concessions in the infrastructure sector. Concession instruments are designed and prepared by the line Ministries, often without paying adequate attention to the competition principles, which have now been incorporated in the Competition Act. Typically, the concessionaire enjoys rights for long periods of time and is in a position to erect entry barriers using its monopoly status. In my opinion, it is important for the line ministries to incorporate competition principles in all concessions to be granted henceforth and, wherever possible, even review already granted concessions. The specialized knowledge of the Competition Commission should be used to assist the line Ministries in this regard.

Setting up a competition authority is only half the job done. The enormity of the task before the Competition Commission requires that it be vested with adequate resources. Given the Commission's crucial role in the economic development of the country, I hope that sufficient funding would be provided to the Commission on an assured basis so as to ensure its financial independence and autonomy.

Human resources will be equally important for the effectiveness of the Commission; staffing it with professionally qualified people, not necessarily from the Government, will be necessary. This may require taking professional

economists and people from the legal profession from outside the Government, even on contractual basis, in order to attract the required talent. Enforcement of a complex law requires people with the right skills and adequate training. It would be necessary for the Commission to identify training programmes and training institutions for building the capacity of its staff, wherever such training facilities are available.

I am extremely glad to see this august gathering of professionals and academic and research institutions. The Competition Commission is to be complimented for developing such a network of institutions and researchers, and for providing a platform for deepening the understanding of the intricacies of competition assessment and regulatory impact analysis. I wish to congratulate DFID and the World Bank group, including FIAS and IDF, for supporting the Commission's efforts in this area. I am confident this workshop will contribute substantially towards strengthening this network and sharpening the available research skills in this key area which is of crucial importance to our economy.

I wish this workshop all success.