

**Competition Commission of India**



# **COMPETITION AND REGULATION**

*by*

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# Need of Competition

- ◆ Promotes efficiency and innovation
- ◆ Ensures abundant availability of goods and services of acceptable quality at affordable / lower prices
- ◆ Offers wider choice to consumers



# Economic Regulations

- ◆ Are constraints on market behaviour or structure by public authorities

## Examples:

- laws, subordinate legislation, formal and informal orders, regulations issued by institutions created by the government



# Need of Sector Regulators

- ◆ Technical expertise necessary to determine access, maintain standards, ensure safety, determine tariffs, ensure USO
- ◆ Structural compulsions
  - natural monopolies-economies of scale/scope
  - network industries



# Sector Regulator

- ◆ 'In-market'
- ◆ Usually ex-ante
- ◆ Sets 'rules of the game'
- ◆ Entry conditions, technical details, tariff, safety standards, access, etc
- ◆ Direct control on price/quantity/ quality
- ◆ To prevent inefficient use of resources, meet USO and protect consumers



# Commonly Present

- ◆ Sectors having monopolies
- ◆ Sectors needing USOs
- ◆ Network industries
- ◆ Infrastructure sectors
- ◆ Utilities

Examples:

Water, Electricity, Telecom etc.



# Competition Authority

- ◆ 'Off-market' regulator
- ◆ Usually *ex-post*
- ◆ Referee
- ◆ Relies on market forces
- ◆ Independent and objective – less prone to influence of market players 'capture'
- ◆ Specialized forum for deciding competition issues
- ◆ Applies competition principles uniformly across all sectors



# Competition Oversight

- ◆ Maximum impact with minimal intervention
- ◆ Uniform competition outcomes across sectors
- ◆ Independent and objective – not prone to influence of incumbents





# Synergy

- ◆ Sectoral regulations prevent inefficient use of resources and protect consumers
- ◆ Competition law aims at prevention of market power and thus ensures efficiency and enhances consumer welfare



# Comparison

- ◆ While sectoral regulation is ex-ante, competition law is enforced ex-post
- ◆ Competition law consists of negative commands while industry-specific regulations provide positive commands
- ◆ Sectoral regulations are more direct and concerned with structure while competition law is indirect and more concerned with conduct and behaviour



# Overlap / Conflict

Can arise on account of

- ◆ Conflicts in Laws (legislative ambiguity/overlap/omission)
- ◆ Interpretational bias (bureaucratic bias)
- ◆ Conflicting approaches – market vs. regulation. Regulatory intervention itself may generate or protect anti-competitive situation
- ◆ Inevitable in the absence of clear delineation of jurisdiction
- ◆ Spurred by turf 'warriors'
  - Market players
  - Enforcers
  - Legal arbitrators



# Harms of Overlap / Conflicts

- ◆ Loss of neutrality – “regulatory capture”
- ◆ Delay in delivery – “forum shopping”
- ◆ Adverse effects on investments, mergers & acquisitions
- ◆ Lessening of effective competition resulting in decrease in productivity, efficiency, economic growth and consumer welfare



# Possible Solutions

- ◆ 'Sunset' clauses
- ◆ Expertise available with either is unique and cannot be acquired easily by the other – healthy respect
- ◆ Competition law enforcement can overcome insufficiencies in regulations – e.g. predatory pricing
- ◆ A sectoral regulator can do what a competition authority cannot- e.g. situations might warrant price fixation in public interest, setting standards etc.



# Conflict Resolution

## ◆ Informal

- contacts, meetings and exchange of information
- exchange of officials
- setting up of joint working groups

## ◆ Formal

- right to participate in proceedings before the other
- formal referrals - optional or mandatory
- appeal to a common authority
- no interference in the other's territory
- delineation of jurisdiction –by statute



# Australia & Japan

- ◆ In Australia, the competition authority incorporates industry-specific technical regulators e.g. telecom, electricity, gas
- ◆ In Japan, cooperation between JFTC and sectoral regulators is not statutory but is guided by government diktat. JFTC relies heavily on its advocacy role with regulators to prevent anti-competitive policies



# EU & Germany

- ◆ In EU, competition guidelines/directives issued by EU provide that *ex-ante* rules apply only in absence of competition, and specify how relevant market to be determined
- ◆ In Germany, there is division of labour between the competition authority (FCO) and the Regulatory Authority for Telecommunications and Posts (RegTP). Laws were amended to minimize parallel competencies





# UK & France

- ◆ In UK, the OFT and the sectoral regulators have concurrent jurisdictions with a common appellate tribunal (UK CAT) – appeals from sectoral regulators lie to the UK Competition Commission in the first instance
- ◆ In France, a new law provides for mandatory consultation between radio & television sector regulator and competition authority. The sectoral regulator provides technical inputs while the competition authority applies competition law on the basis of given technical inputs



# Canada & Finland

- ◆ The Canadian Competition Bureau is statutorily empowered to intervene before federal and provincial regulatory bodies in policy determination
- ◆ In Finland, the competition authority signed an MoU in 2003 with the telecom regulator defining ways to eliminate overlaps



# Africa

- ◆ In South Africa, sectoral regulations were initially exempted from the jurisdiction of the competition authority but later the exemption was withdrawn
- ◆ In Zambia, the competition authority is represented on other regulatory boards. In addition, all sectoral regulators are required to consult the competition authority



# Others

- ◆ The jurisdictions of the competition authorities and sectoral regulators are blurred in Sri Lanka, Botswana, Kenya and Pakistan. Conflicts are left to be resolved by courts
- ◆ As on date, India may be in this league



# Relative Roles

- ◆ Regulators have strength in technical areas
- ◆ Competition authorities have strength in economic/competition matters; principles set by them apply across all sectors
- ◆ Regulation should fade away or minimise as competitive markets emerge
- ◆ Appropriate coordination mechanisms at working level are important. Respect and consideration for each others' roles/strengths
- ◆ As far as possible, laws may delineate jurisdictions, and provide for consultation/coordination procedures



# Competition Act 02

- ◆ Formal referrals – S 21 & 21A
- ◆ Any statutory authority
  - may make a reference to CCI
  - CCI to give opinion in 60 days
- ◆ Opinion of CCI is not binding
- ◆ CCI may also refer to statutory authorities
- ◆ Reference is not mandatory
- ◆ No provision for CCI to take up *suo motu*
- ◆ No corresponding provision in sectoral regulatory laws
- ◆ Referrals by Central / State Govt. – S 49



# Consultation Provisions

## ◆ Mandatory

**France** – legislation enabled co-operation – sector regulator must consult competition authority

**Ireland** – formal co-operation agreements in accordance with law

**Germany** – formal consultation by law

**Zambia** – statutory requirement on regulators to consult

## ◆ Non-mandatory

**India** – sector regulator may refer a matter and then pass an order 'as it deems fit' – no reciprocal provision in competition law



# Right to Intervene

- ◆ Right to intervene - in sector regulation

**UK** - competition authority has statutory right to study existing as well as proposed sector regulations and issue a public statement - government responds within 90 days

**Italy** - opportunity to competition authority to air their views to which sector regulator must respond

**Canada** - competition authority can intervene in a case before any federal regulator





# Concurrence & Convergence

## ◆ Concurrent power

**UK** – sector regulators in electricity, gas, telecommunication, water and railways have concurrent jurisdiction with OFT – Concurrence Working Party (CWP) decides which authority is best suited to deal with the matter – disputes resolved by Secretary of State – regulation guided

## ◆ Appellate Convergence

**UK** – appeals lie to a common body UKCAT – uniformity in approach



# Statutory Powers

- ◆ Giving statutory powers to the competition authority for some aspects of sector regulation

**Mexico** – competition authority's determination of market power of an enterprise is the condition precedent for regulation of that enterprise by the sector regulator.

**EU** – Competition authority plays significant role in identification of the relevant market and then the telecom regulator determines market power using competition benchmark before ex ante obligations can be imposed on identified enterprise



# High Status

- ◆ High status of head of competition authority

**South Korea** – given Cabinet rank – useful when government retains control over economic decisions – hierarchy helps in pushing pro-competitive agenda



***THANKS***

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