

Competition Commission of India



Interface Between Competition Commission of India(CCI) and Sector Regulators

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Structure of the Presentation

- ◆ Regulatory framework
- ◆ Why sector regulation
- ◆ Why competition regulation
- ◆ Need for synergy
- ◆ Grey Areas
- ◆ Advantages of coordination or otherwise
- ◆ Possible modalities
- ◆ In brief



Why Regulation

- ◆ Economic regulations influence the private sector to improve efficiency in society's resource allocation towards optimization
- ◆ Good regulation-independent of Government and industry- crucial for an efficient market economy
- ◆ Opening of utility networked sectors- sector regulators-to control anticipated market failures



Economic Regulations

- ◆ Public constraints on market behaviour or structure
 - ▶ e.g. laws, subordinate legislation, formal and informal orders, regulations issued by institutions created by the government
- ◆ Regulatory framework
 - ◆ Sector regulators and
 - ◆ competition regulator



Why Sector Regulators-I

- ◆ Technical requirement: Expertise necessary to determine access, maintain standards, ensure safety, determine tariffs, ensure Universal Service Obligation (USO)
- ◆ Structural requirements: Natural monopolies - economies of scale/scope , network industries



Why Sector Regulators-II

- ◆ '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 promote efficient use of resources, meet USO and protect consumers



Commonly Present In

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

Examples:

Water, Electricity, Telecom etc.



Why Competition Regulation

- ◆ Society should maximize welfare
 - Allocative efficiency
 - Productive efficiency
 - Dynamic efficiency
- ◆ Promotes efficiency and innovation
- ◆ Ensures abundant availability of quality goods and services at affordable / lower prices
- ◆ Offers wider choice to consumers
- ◆ Enhances overall social welfare within limited resources



Regulation by CCI

- ◆ Anti-competitive agreements
- ◆ Abuse of dominant position
- ◆ Combinations
- ◆ Also competition advocacy

Constraints in competition regulation



- ◆ Natural Monopolies
- ◆ Standards
- ◆ Access
- ◆ Civil Society
- ◆ Market Failures- are free markets free enough to escape failures ?
- ◆ Technological advancements
- ◆ Natural Progression
- ◆ Free run to competition?



Features of Competition Authority

- ◆ 'Off-market' regulator ; Usually *ex-post*
- ◆ Referee ; Relies on market forces
- ◆ Independent and objective – detached
- ◆ Specialized forum for deciding competition issues
- ◆ Applies competition principles uniformly across all sectors
- ◆ Uniform competition outcomes across sectors
- ◆ Maximum impact with minimal intervention



Synergy -I

- ◆ Sector regulation: Emphasis on price regulation, performance/quality standards, aim at more efficient use of resources and protecting consumers



Synergy -II

- ◆ Competition law: Emphasis on economy wide intervention, based on macro-economic considerations, aims at ensuring that competition is not restricted and markets function, and thus ensuring efficiency and enhancing consumer welfare
- ◆ Sector and competition regulators are complementary
- ◆ Maximize societal welfare-in synergy¹³



Grey Areas

Potential for disagreements/conflict on account of

- ◆ Legislative ambiguity/overlap/ omission
- ◆ Interpretational bias
- ◆ Conflicting approaches
- ◆ Likely in the absence of clear delineation of jurisdiction and effective coordination
- ◆ May be spurred by market players/lawyers



Potential consequences of inadequate coordination

- ◆ Dilution in quality of economic regulation
- ◆ 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



Advantages of coordination-I

- ◆ Expertise available with either is unique and cannot be acquired easily by the other – healthy respect for each other
- ◆ Competition law enforcement can overcome inadequacy in market regulation e.g. predatory pricing
- ◆ Sector regulator can respond to specific requirements of the sector e.g. price fixing in public interest, setting standards etc.

Advantages of coordination-II



- ◆ With effective coordination, each can play a distinct and non-conflicting role vis-à-vis the other, resulting in better overall economic regulation



General Interface Mechanisms-I

◆ Informal

- An attitude of cooperation and consultation
- contacts, meetings and exchange of information, including at working levels
- exchange of officials
- setting up of joint working groups



General Interface Mechanisms-II

◆ 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



Competition Act, 2002

- ◆it shall be the duty of the Commission to....., promote and sustain competition, protect the interest of consumers and ensure freedom of trade carried on by other participants, in the markets in India(S 18)
- ◆ 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
- ◆ Referrals by Central / State Govt. – S 49



The Electricity Act, 2003

- ◆ S 79 Functions of Central Commission-
 - (1) The Central Commission shall....
 - (2) The Central Commission shall advise the Central Government on all or any of the following matters, namely:-
 - (i)..
 - (ii) Promotion of competition, efficiency and..

[S 86(2) says the same for state Commissions]



The TRAI Act, 1997

◆ S 11 Functions of Authority:

- (1),the functions of the Authority shall be to-
- (2) Make recommendations, either suo motu or on a request from the licensor, on the following matters, namely:-
 - (iv) measures to facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services;



The PNGRB Act, 2006

- ◆ S 11 Functions of the Board- The Board shall-
 - (a) Protect the interest of consumers by fostering fair trade and competition amongst entities;



Common Thread

- ◆ Promotion/facilitation of competition
- ◆ Promotion of efficiency
- ◆ Protect the interest of consumers by fostering fair trade and competition
- ◆ In the sector



Possible Modalities-I

- ◆ Sector regulators may keep competition considerations in mind while formulating policies and taking decisions
- ◆ Specific competition issues in a case may be referred to CCI
- ◆ CCI may consult sector regulators on issues impinging on competition in a case (already being done)



Possible Modalities-II

- ◆ May consider evolving any further appropriate modalities required for handling cases involving both sectoral and competition issues



In Brief

- ◆ Economy needs both
- ◆ Law recognizes this
- ◆ Common /harmonious understanding of respective roles
- ◆ In case of doubt- consult
- ◆ Effective coordination



THANKS

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