



Interface between Competition Authority and Sector Regulators

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To

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Structure of the presentation:



- I. Respective roles of competition authority and sector regulator: complementarity and conflict (**slides 3 to 11**)
- II. International experiences in interface between competition authority and sector regulator (**slides 12 to 17**)
- III. India: some options for consideration (**slides 18 to 21**)

Why have competition law?



Competition

- Promotes efficiency, innovation, higher productivity and growth in the economy
- Is in consumer interest - offers wider choice, abundant availability, lower prices
- Is also in the interest of competitors and other market players
- Competition law enables action against deviation from principles of competition in markets and restores contestability in markets.

Why have sector regulators?



- Sector specific technical expertise necessary to determine access, maintain standards, ensure safety, determine tariffs, ensure USO
- Sectors that have
 - natural monopolies - economies of scale/scope
 - network industries

How does a competition authority achieve its objectives?



- It is an ‘off-market’ regulator and intervention is usually *ex-post*
- Maximum impact through minimum intervention; relies on market forces
- **Independent and objective – not prone to influence of market players: Limited likelihood of ‘capture’**
- Specialized forum for deciding competition issues
- **Applies competition principles uniformly across all sectors**
- Four basic elements of a modern competition law – anti-competitive agreements, abuse of dominant position (*ex ante*) combinations (*ex post*) and advocacy

How does a sector regulator achieve its objectives?



- **It is an 'in-market' regulator; intervention is mainly *ex-ante***
- **Sets 'rules of the game' – entry & exit conditions, performance parameters, technical details, tariff, safety standards, access, etc**
- **Direct control – price/quantity/quality**
- **Provides a specialized dispute redressal mechanism**

Complementarities



- Sector regulation seeks to prevent inefficient use of resources through regulation
- Competition law seeks to do it through market forces
- Both aim to protect consumer interest

Relationship - Overlap/Conflict



Conflict/overlap can arise on account of

- **Legislative ambiguity/overlap/omission**
- **Interpretational bias**
- **Conflicting approaches – market vs. regulation.** Regulatory intervention itself may generate or protect anti-competitive situation
- **Can be spurred by turf warriors**
 - **Market players-regulatory capture**
 - **Enforcers**



Relationship - Overlap/Conflict

Negative results

- Regulatory confusion
- Forum shopping
- Costly delays
- Adverse effects on investments, mergers & acquisitions
- Lessening of effective competition resulting in decrease in productivity, efficiency, economic growth and consumer welfare.

Can we do without either?



- Concept of ‘sunset’ clauses
- Role & focus, as well as expertise, of either is unique and cannot be acquired easily by the other
- Competition law enforcement can overcome insufficiencies in regulations – e.g. predatory pricing, cartels, mergers
- Sector regulator has ability to determine tariffs, set standards, etc. which are outside competition law

Relationship management



- **Informal approach**
 - **contacts, meetings, joint working groups**
 - **exchange of officials**
 - **exchange of information**
- **Formal approach**
 - **right to participate in proceedings before the other**
 - **formal referrals - optional or mandatory**
 - **appeal to a common authority**
 - **abstention –do not interfere in the other’s territory**
 - **delineation of jurisdiction –by statute**
 - **competition authority represented on sector regulator board**

International experience - 1



- In **Australia**, the competition authority (ACCC) incorporates industry-specific regulators, e.g. telecom, electricity, gas
- The **Canadian Competition Bureau** is statutorily empowered to intervene before federal and provincial regulatory bodies in policy determination. Regulatory forbearance where competition prevails.
- In **Germany**, laws recently amended to minimise parallel competencies and enhance coordination. Cartels and mergers exclusively in jurisdiction of competition authority (FCO). Mandatory consultation by law.

International experience - 2



- 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 **South Korea** – head of competition authority is given Cabinet rank-helps in pushing pro-competitive agenda within Government
- In **South Africa**, sector regulations were initially exempted from the jurisdiction of competition authority, but later the exemption was withdrawn
- In **Zambia**, competition authority is represented on other regulatory boards. In addition, all sector regulators are required to consult the competition authority

International experience - 3



- In **France**, a new law provides for mandatory consultation between radio & television sector regulator and competition authority. The sector regulator provides technical inputs while the competition authority applies competition law on the basis of given technical inputs. Competition authority retains full jurisdiction on competition issues.
- In **UK**, the OFT and the sector regulators have concurrent jurisdiction. Appeals lie to Competition Appellate Tribunal (UK CAT)

International experience - 4



- In **Japan**, cooperation between JFTC and sector regulators is not statutory but is guided by government diktat. **JFTC relies heavily on its advocacy role** with regulators to prevent anti-competitive policies.
- In **Finland**, the competition authority signed an MoU in 2003 with the telecom regulator defining ways to eliminate overlaps

International experience - 5



- The jurisdictions of the competition authorities and sector regulators are blurred in **Sri Lanka**, **Botswana**, **Kenya** and **Pakistan**. Conflicts are left to be resolved by courts
- If status quo is maintained, India will be in this league

Some observations on international best practices



- Regulators have strength in technical areas
- Competition authorities have strength in economic/competition matters; principles set by them apply across all sectors
- Regulation should forbear 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

Indian situation



The **Competition Act, 2002** provides that:

- Any statutory authority
 - **may make a reference to CCI**
 - **CCI to give opinion in 60 days**
- Opinion of CCI is not binding –But standing order needed
- 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**

Options for interrelationship -1

■ Mandatory Consultation provisions:-

Example:

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

Options for interrelationship -2



- Right to intervene - in sector regulation

Example –

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 views to which sector regulator must respond

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

Options for interrelationship -3



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

Examples :

Mexico – competition authority's opinion about absence of competition and determination of market power of an enterprise is the condition precedent for regulation of prices or of that enterprise by the sector regulator, e.g. civil aviation, railroad, gas

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



THANK YOU

