

Inaugural Address at the Online Certificate course on Regulatory Governance organized by FOIR and SCOL, IICA October 23, 2021

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Distinguished Participants

1. Good morning to all present at this inaugural session of the 3 months Online certificate course on Regulatory Governance, organized by the Forum of Indian Regulators and the School of Competition Law and Market Regulation. I congratulate the organizers for coming up with this excellent capacity building initiative. This course is of great importance to improving economic governance outcomes in an economy that has altered and evolved over the past 30 years.

2. During this period, there has been a progression from reliance on planning towards markets as an instrument of growth. Various state controls have been gradually withdrawn to liberate economic agents. State responsibility for the provision of services is no longer synonymous with state ownership. The command and control mode of governance that relied on state ownership of services has gradually yielded space. A new mode of regulatory governance has emerged, wherein public-private partnerships and private-sector participation require governmental priorities to be achieved through independent regulation and the law of contract. This has necessitated a change in the approach to economic regulation. The centrality of regulation in the development paradigm is the cornerstone of modern public economics. It emphasizes the 'public interest' theory of regulation and is based on the assumption that governments are capable of correcting these market failures through regulation.

3. While earlier policymaking, framing legislation, rulemaking and the ownership of enterprises all converged in the relevant government department/ministry, in the new regulatory environment, independent regulatory agencies were created to provide the necessary institutional framework for economic regulation for diverse sectors of the economy. The establishment of the Competition Commission as a market regulator with overarching reach across different sectors of the economy has supplemented and complemented these regulatory institutions.

4. This shift indicates not only a shrinking of government; it also reflects a changing role of the government. The State is now a facilitator in the economic development process, and businesses have substantial freedom to make commercial decisions. Economic regulation in India is viewed as an instrument of liberalization, and regulatory bodies are entrusted with the statutory mandate of sectoral governance in areas perceived to be at greater risk of market failures.<sup>1</sup>

5. Sectoral regulators are vested with specific statutory mandates, depending on the specificities and complexities of the respective sector. Within their overarching sectoral mandate, the regulators aim to promote competition and facilitate evolution towards sustainable and well-functioning markets. The Telecom Regulatory Authority of India Act, 1997, provides for a Telecom Regulatory Authority of India to, *inter alia*, 'facilitate competition and promote efficiency'. Similarly, the Petroleum & Natural Gas Regulatory Board Act, 2006, provides for the oil and gas regulator to protect the interest of consumers by 'fostering free trade and competition'. The Electricity Act, 2003, also mandates the Regulatory Commissions to ensure that competition is maintained in markets. It is thus evident that regulators in India have been established to open up these markets to competition.

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<sup>1</sup> Approach to Regulation – Issues and Options, Consultation Paper, Planning Commission, Government of India 2006

6. Regulation and antitrust aim towards similar goals: low and economically efficient prices, innovation and efficient production methods. Regulation, however, seeks to achieve them directly by orchestrating the structure of the market and through regulation of prices and access, quality of service, production technology, etc. On the other hand, antitrust law seeks to achieve them indirectly by promoting and preserving a competitive process that tends to achieve these common objectives.

7. However, regulated sectors are not impervious to the anti-competitive behaviour of market participants, and the role of market regulator in such regulated sectors hardly needs any emphasis. CCI intervenes to remedy the anti-competitive behaviour of enterprises *ex post*, under its enforcement mandate. Further, CCI engages with businesses and with sector regulators as part of its advocacy mandate, with a view to prevent antitrust infringement and advocate pro-competition regulatory reforms. Thus, arguably, the roles of regulators and CCI are envisaged to be complementary in nature, in their common pursuit of preserving competitive markets. This also creates room for interpretation and debate with respect to the perceived overlapping jurisdictions of CCI and sector regulators in some instances. This has time and again required judicial intervention, as is borne out from the rich harvest of case laws on this aspect during the otherwise short history of competition regime in the country.

8. As in many countries, legislative ambiguity/overlap/ omissions, interpretational biases, conflicting approaches to competition regulation and a lack of clear delineation of jurisdiction may result in some points of conflict in the emerging regulatory architecture between the sectoral and competition regulator. Proposals to replicate the statutory mechanism as provided under competition law to deal with conduct that can be addressed by competition tools may lead to unintended consequences, including affecting comity amongst various regulators in discharge of their respective mandate. While overlapping

jurisdictions between institutions cannot be eliminated, it ought to be harmonized through improved lines of communication.

9. The Competition Act has enabling provisions, sections 21 and 21A, which allow for mutual consultation between the Competition Commission and other statutory authorities. In cases relating to a regulated sector, CCI may make a reference to the concerned regulator to obtain its opinion before issuing an order. Concomitantly, the sectoral regulators may also seek the CCI's opinion during the course of their proceedings.

10. To widen the scope of inter-regulatory consultations, the Competition Law Review Committee recommended changes in the Statute Book to lower the thresholds that trigger such consultations. This would help evolve a harmonious and inter-sectional approach in the regulatory ecosystem, thereby engendering coherent and symmetrical approaches to regulation.

11. In the last twelve years since the notification of the provisions of the Act relating to anti-competitive conduct, the Commission has received over 1100 antitrust cases. Several of these cases pertained to sectors regulated by sector regulators, including banking and finance, electricity, telecommunications, civil aviation, insurance etc. Acknowledging the existence of regulatory oversight in these sectors as well as benefit from the expertise of the sector regulator, the Commission has engaged with sector regulators when deemed prudent.

12. The key is to ensure consistency and continuity in our approach towards competition and regulation to avoid any unintended and undesirable conflicts and provide a stable and predictable regulatory environment to the industry and well-functioning markets to consumers.

13. It is easier said than done; institutional maturity develops overtime, but the sooner the better, as regulatory diarchy should not lead to regulatory chaos that derails the growth process, with market participants exploiting this by forum

shopping. The Commission believes in a consultative and harmonious approach so that the goal of well-functioning markets can be achieved in conjunction with the sector regulator while leaving no room for confusion for stakeholders.

14. Before I conclude, I would like to make an observation on the impact of the quality of regulatory institutions on competitiveness and growth. In general, a regulatory framework that enforces property rights creates a level playing field and encourages investments in new technologies and skills, which is more conducive to economic growth. The link between sound regulation and economic development could not be more causal. To strengthen this link, a major task is to build capacities and evolve knowledge-centric institutions which keep pace with the exponential changes taking place in the market. I am confident that such courses will provide the essential ingredients for strengthening capacities and the participants will benefit and apply the learnings to make informed choices in their spheres of work. With these words, I once again compliment the Forum of Indian Regulators & the School of Competition Law & Market Regulation for organising this course & wish the participants all success.

Thank you.

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