

**Training for central & state government officers  
on  
'Competition Policy and Law'**

**Competition and Regulation**

**Case Study on Indian Telecom**

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# Competition

- Is “a situation in a market in which firms or sellers independently strive for the buyers’ patronage in order to achieve a particular business objective for example, profits, sales or market share” (World Bank, 1999)
- Is “an essential hand maiden to efficient trade.”
- The ultimate *raison d’etre* of competition is the interest of the consumer.

# Competition

- **Is the foundation of an efficient working market system, which has several advantages over a planned economy and constitutes the pre-condition which prevents freedom of decision and action of self interested individuals or entities from leading to anarchy or chaos but rather to economically optimal socially fair and desirable market results. (Report of High Level Committee on Competition Policy, Deptt. of Company Affairs, 2000).**
- **Competition leads to greater dynamic efficiency in the economy by bringing about innovation, technological development, lower price and better quality and service for the consumer.**

# Economic Regulations

- **New legislation and regulations to promote competition and to bring about restructuring of major industrial sectors is essential. Legislation to aim at separating natural monopoly elements from potentially competitive activities, and the regulatory functions from commercial functions, and also create several competing entities through restructuring of essential competition activities and to create a competitive environment in following sectors.**

## Examples

- **Electricity sector**
- **Telecommunications sector**
- **Ports**

# Market

- **Role of Market?**
- **Allocation of resources**
- **Does it perform the role effectively?**
- **If so under what conditions?**

# What is Market Failure?

Market failure exists when one or more of the market efficiency conditions are not satisfied.

In case of Market Failure we need *Regulation*.

# Causes of Market Failure

- Public Goods
- Asymmetric Information
- Market power (Monopoly, Oligopoly etc.)
- Distributional Failure
- Externalities

# Cause of Market Failure in Telecom

- **All of the above!**

- **But mainly market power**



# EXTERNAL DISCIPLINE ON INDUSTRY ACTORS

Only two types of External Discipline:

- ▣ *Competition*

- ▣ *Regulation*

- ▣ More competition allows relaxation of regulation

- ▣ Less competition requires stronger regulation

- ▣ Case of MICROSOFT \_How to Regulate?

# **Difficulties in Promoting Effective Competition in India**

## **Two Policy Documents**

**National Telecom Policy, 1994 objective, among others to build a world class telecom infrastructure**

**Private participation permitted on grounds that investment needs in this sector are beyond the availability of public investment alone**

**Since then private participation has taken place**

**New Telecom Policy (1999)**

**It envisages introduction of competition in many service segments**

## **National Telecom Policy, 1994**

- **Objective, among others to build a world class telecom infrastructure**
- **Private participation permitted on grounds that investment needs in this sector are beyond the availability of public investment alone**
- **Envisaged creation of a Regulatory Authority**

# The Beginning of Liberalisation

- Implementation of Policy by DoT, who is also a Service Provider
- Litigation well before Regulator is created
- Once created, battles to establish itself

# The Telecom Regulatory Authority Of India Act, 1997

## *Functions Of The Authority*

- **Notify rates at which telecommunication services shall be provided**
- **Regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services**
- **Facilitate competition and promote efficiency**

## *Functions Of The Authority (Contd.)*

- Protect the interest of the consumers of telecommunications services
- Monitor the quality of service
- Settle disputes between service providers;
- Ensure effective compliance of universal service obligations

# Functions Of The Authority Related To Interconnection

*According to TRAI Act 1997*

- Ensure technical compatibility and effective inter-connection between different service providers
- Regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services



# Cases

- DoT increases PSTN to Mobile rate 24 times
- By 1998 20 cases pending in TRAI
- DoT issues Mobile License to MTNL
- TRAI declares MTNL license invalid
- Question of legitimacy of TRAI

# CPP or does she?

- CPP sought to be introduced in Nov 1999
- Telecom Watchdog challenges the PSTN: Mobile revenue sharing of 1:2 citing it to be anti consumer and anti Public sector
- MTNL pleads TRAI has no right to alter license conditions
- DoT argues TRAI has no power to specify revenue sharing arrangements
- CPP Order struck Down

# Successive Court Decisions Established

- that the government was not required to seek a recommendation from the TRAI before issuing additional telecom licenses
- that the TRAI did not have the power to adjudicate disputes between the licensor and licensee
- that TRAI did not have the power to alter provisions in the license agreements
- that the TRAI could not make regulations on revenue sharing, without these being negotiated between service providers.

# TRAI –ing Times

- TRAI dissolved in January 2000
- TRAI ACT Amended in March 2000

# Functions Of The Authority Related To Interconnection (Contd.)

As amended by TRAI (Amendment) ACT, 2000

- Notwithstanding anything contained in the terms and conditions of the license granted before the commencement of the Telecom Regulatory Authority (Amendment) Ordinance, 2000, fix the terms and conditions of inter-connectivity between the service providers
- Ensure technical compatibility and effective inter-connection between different service providers
- Regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services

# TESTING THE BOUNDARIES OF REGULATION!

- Recommendations on WLL(M) by TRAI in Jan 2001
- Mobility seen as a supplementary or value proposition to the central feature of enhanced penetration using cheaper technology
- Overlap between Cellular sought to be corrected by concessions
- Mobility restricted to SDCA

# WLL(M)

- Difficult to police mobility restrictions
- Innovative methods to circumvent restriction, while remaining within the letter of law
- Unified Access License Introduced

# Competition for the Market Increases

- **Unlimited competition introduced in access services**
- **Competition in NLD and ILD segments**



# ASSESSMENT OF COMPETITION IN THE MARKET

- In the beginning, tariff regulated through standard tariff package
- As competition increased greater flexibility given
- Tariff Forbearance introduced

# TELECOMMUNICATION TARIFF ORDER 1999 (Contd.)

- Cellular Service Tariffs de-regulated in 2002
- Basic Service tariffs except Rural fixed lines also de-regulated in 2003.

# Intervention by Exception

- Only if Tariffs are anti Competitive
- Vertical Restraints disallowed

# Outcomes of the Process

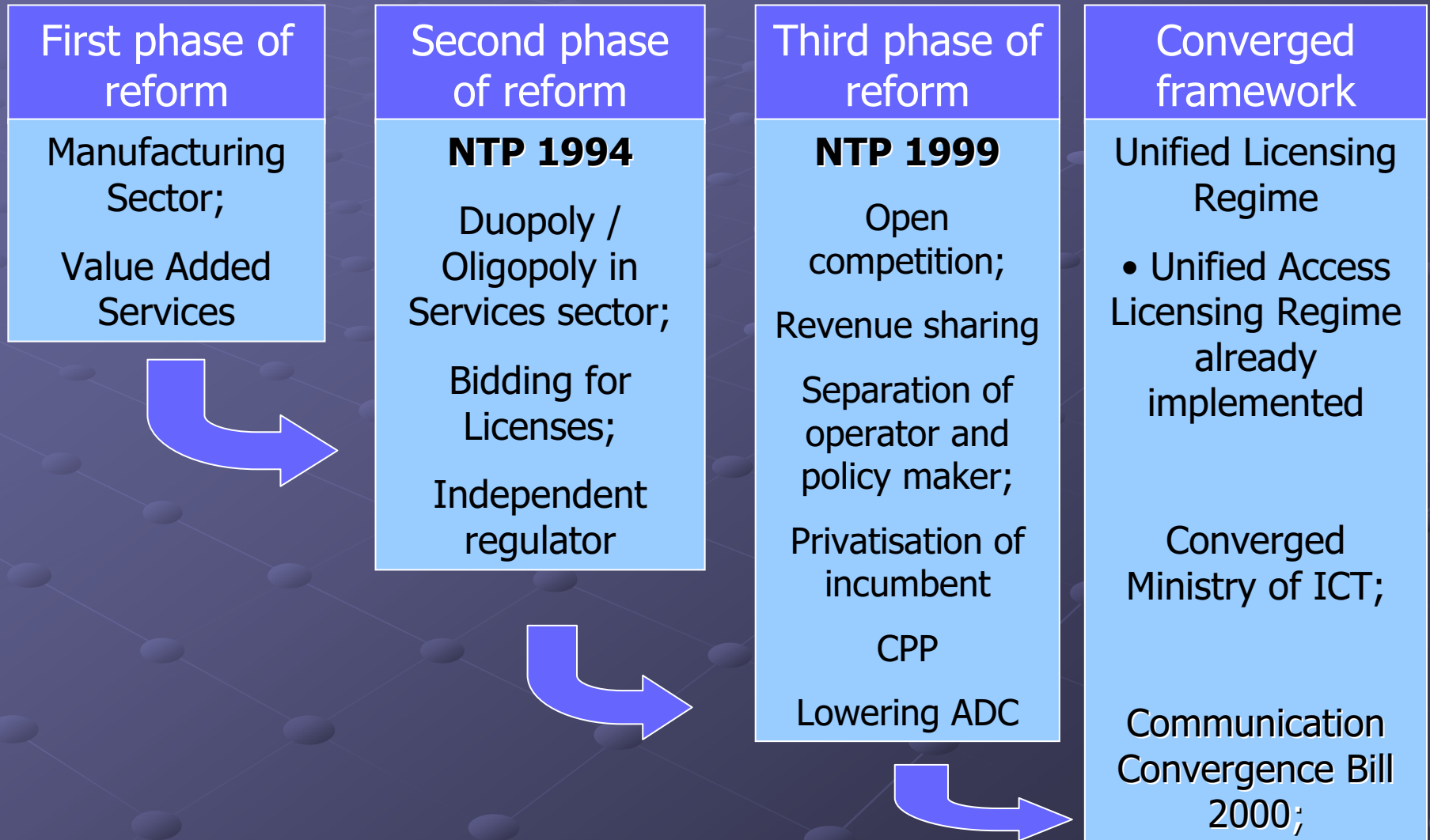
- Increase in Number of Operators
- Decline in Concentration Ratios
- Increase in Teledensity
- Reduction in Tariffs
- Increase in Usage

# Nature of competition

- It's changing nature
- From Price to Non-Price
- Incidence of anti competitive behaviour?
  - Lifetime Plans
  - Walky
  - Advertising (misleading?)

# The Indian Story

## Competition: Phases of Policy reforms



# Competition Principles

Non –discrimination

Timely Action

Flexibility - as market matures

Preparing the ground with various policies

# Framework of Policies

- License policy-conditions of entry / operations
- Tariff Policy
- Interconnection policy
  - Charges
  - Conditions
- Mergers etc- Limits
- Spectrum policy
  - Charges
  - Allocation mechanism



## Policies (Cont'd)

- Policy towards incumbent or significant market operator
- Policy regarding wholesale / retail price of main inputs
- Conditions for intervening

\*Aim – keep regulatory impact on costs as low as possible

# Additional Tools

- Number Portability
- Local Loop Unbundling
- Encourage competition from more than one Source-e.g. unified license, broadband segments

# Competitive Strategy



Source : Competitive Strategy – Michael Porter

# CONCLUSION

- ANALYSING TELECOM SECTOR USING MICHAEL PORTERS FIVE FORCES MODEL
- THE MOST IMPORTANT VARIABLE IN THE MODEL IS DOMESTIC RIVALRY, WHICH PROMOTES COMPETITIVENESS
- THIS CAN BE ASSURED WITH A GOOD COMPETITION LAW AND POLICY!



**THANK YOU!**