



सत्यमेव जयते

Government of India
Ministry of Corporate Affairs

National Competition Policy 2011

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1. Preamble

1.1 India embarked on a new trajectory of economic liberalisation in 1991. The wide spread economic reforms initiated and pursued with consistence and calibration over the last two decades have unleashed unprecedented growth momentum and pushed the development frontiers of the economy. Bolstered by strong macroeconomic fundamentals, a vibrant entrepreneurial force, a large and growing domestic market and the right policy mix, the Indian economy, which has exhibited remarkable resilience during the global economic stresses, aims to attain a double digit growth within the next few years.

1.2 The ambitious growth targets, which may peg India's economic growth to lead the World in the foreseeable future, hinge on another crucial factor of 'demographic dividend', which is in the country's favour. India is poised to have a favourable demographic profile of active workers and consumers over the next few decades. This will unleash new energies, and avenues of growth and consumption on one hand, and demand rapid job-creating opportunities on the other.

1.3 While opportunities abound, there are several areas of concern too, which unless addressed with suitable policy intervention, may pose credible threat to the sustenance of the pace of development. There is a pressing need to bridge the infrastructure deficit, development of right skill sets in consonance with the emerging needs, balancing inflationary pressures during growth of the economy, ensuring inclusive growth so that the benefits percolate to all sections of society, pushing up the growth of agriculture along with reforms in marketing and storage, and make the Indian industry, including MSMEs, globally competitive along with supportive linkages. The government has undertaken a series of policy measures to attain these objectives.

1.4 Policies initiated and pursued in various sectors like manufacturing, electricity, telecom, roads, transport, civil aviation, tourism etc. have yielded rich dividends so far. However, the progress across sectors has been somewhat uneven, and so also the trickledown effects on the common man. A common thread explaining these successes is dismantling of restraints and introduction of competition. This has also resulted in enhanced competitiveness with all the allied benefits, including the static, dynamic and allocative efficiencies, all helping to push the

growth trajectory. Removal of various fetters has helped in releasing the latent energy and dynamism in the economy and given rise to 45 million new entrepreneurs during the last two decades. However, there remain several residual restraints and anti-competitive effects of government policies and laws in several segments of the economy, mostly unintended. Based on the recommendations made by the Planning Commission, under the XI Five-Year Plan: Policy Document: “Inclusive Growth”, (Chapter XI) towards a competition policy, which was adopted by the National Development Council (NDC) in December, 2007, the Government of India intends to introduce an overarching National Competition Policy (NCP) through this Policy Statement. This Policy, when implemented, will enable a coordinated effort to attain the full growth potential of the economy, in a faster, inclusive and sustainable manner.

2 Competition, Competition Law, and Competition Policy

What is competition?

2.1 Competition refers to a situation in a market place in which firms/entities or sellers independently strive for the patronage of buyers in order to achieve a particular business objective, such as profits, sales, market share, etc. By responding to demand for goods and services with lower prices and higher quality, competing businesses are pressured to reduce costs, innovate, invest in technology and better managerial practices and increase productivity. This process leads to achievement of static, dynamic as also allocative efficiencies and increased choices and lower prices for consumers.

2.2 Importantly, competition is not automatic, and requires to be promoted, protected and nurtured through appropriate regulatory mechanism, by minimising market restrictions and distortions and access to related productive inputs as markets, capital, technology, infrastructure services, human capital etc.

What are competition law and competition policy?

2.3 Competition Policy means a set of government measures, policies, statutes, and regulations including a competition law, aimed at promoting competitive market structure and

behavior of entities in an economy. Competition Law is a sub-set of the Competition Policy. The High Level Committee on *Competition Policy and Law*, which published its report in 2000, recommending a new competition law as a modern substitute for the old Monopolies & Restrictive Trade Practices Act, 1969 observed: “*Competition law must emerge out of a National Competition Policy, which must be evolved to serve the basic goals of economic reforms by building a competitive market economy.*”

2.4 The World Trade Organisation (“WTO”) defines competition policy as:

“the full range of measures that may be used to promote competitive market structures and behaviour, including but not limited to a comprehensive competition law dealing with anti-competitive practices of enterprises”, and similarly, the World Bank defines competition policy as:

“government measures that directly affect the behaviour of enterprises and the structure of industry. An appropriate competition policy includes both:

- (a) policies that enhance competition in local and national markets, and*
- (b) competition law, also referred to as antitrust or antimonopoly law.”*

2.5 Whereas, Competition Policy provides **guidance** for government entities for use in analysing policies, laws, and regulations that affect market activity and help achieve national strategic objectives such as attaining highest sustainable levels of economic growth with inclusion, improving investment climate and attracting investment, generating entrepreneurship and employment, checking inflationary forces, promoting economic democracy, protecting economic rights of citizens for just, equitable, inclusive and sustainable economic and social development and supporting good governance by restricting rent seeking practices, competition law sets forth **binding prohibitions** of anti-competitive conducts. It would be seen that a competition law is a regulatory instrument to check the prevalence of anti-competitive practices whereas a competition policy is a proactive and positive effort to build competition culture in an economy. To strengthen the forces of competition in the market, both competition law and competition policy are required - the two complement each other. The competition law prohibits

and penalises anti-competitive practices by enterprises functioning in the market i.e. addresses market failures whereas competition policy seeks to correct the anti-competitive outcomes of various government policies and laws, and help in development of competitive markets.

3. Premise of Competition Policy

3.1 Competition is regarded as a *sine qua non* to a liberalized economy. It is a powerful instrument to help in achieving the macroeconomic policy goals of the country. It is recognised as key to “economic” efficiency. The term “economic” efficiency includes “allocative”, “productive” and “dynamic” efficiencies, which in the Government context are important for maximising the overall welfare of society. The Competition Policy seeks to integrate the principles of competition in various economic policies of the Government and reap the benefits of competition therein. The basic premise of competition policy is that Government should not restrict market activity any more than is necessary to achieve its social and other goals.

3.2 It has been observed that certain policies and laws at the state level sometimes tend to artificially segment the markets in India. The evolution of a single national market in the country, with minimum barriers, will be in the interest of competition. There may be several barriers relating to physical movement of goods and services, inter-state trade, huge variations in taxes and duties, etc. Benefits emanating from economies of scale and size may get eroded on account of these policy-induced barriers. This may be even more significant in the cases of those sectors which could be crucial for inclusive growth such as agriculture, power etc.

3.3 National Competition Policy (**NCP**) would also help to promote good governance through bringing in greater transparency and accountability on account of available competing responses and in the avoidance of any rent seeking practices. It would also have a positive correlation with various other strategic national objectives. NCP fully respects the sovereign functions of the State like defence, internal security, currency, various other non-economic state activities of sovereign nature and would seek to encourage competition related measures only in matters having economic impact on the market.

3.4 Use of information and communication technologies (ICT) is increasingly intertwined with the primary functions of the Government. Government of India, through Unique Identification Authority of India (UIDAI), has commenced use of technology in providing unique identification to all citizens and leveraging greater value from the welfare measures of the Government. Such use of ICT, with transparency and interoperability, can hugely enhance competition in markets, informed and expeditious decision making by public and the ability of Governments to efficiently and cost effectively deliver welfare services such as health care, education, public distribution etc.

3.5 A substantial part of Government expenditure, both at Centre and States, involves procurement of goods and services. Adoption of competition policy principles will help in more cost efficient utilisation of these resources and checking any rent seeking practices. In addition, these would also help in development of markets and promote good governance.

3.6 The NCP is intended to be flexible and accommodate appropriate sensitivities in matters requiring special policies for weaker section of society or regions or needs of environmental preservation and other strategic issues of public policy; the only thing is that a conscious view will have to be taken by the concerned authorities in balancing the competing considerations. It does not intend to seek *laissez faire* markets, blanket deregulation, disinvestment, welfare cutbacks, and reduced social services. It also does not seek to prevent government from increasing expenditure on welfare or levels of government-funded or subsidized social services, or maintaining government ownership of businesses. It explicitly recognises the need of government intervention in markets through optimal regulation, where it is justified. It seeks to strike a balance, between competition policy objectives on the one hand, and other policy considerations such as prudential supervision, service quality, social service commitments, safety etc. on the other, and only expects a considered and conscious view to be taken by the concerned authorities.

4. Objectives of NCP

4.1 The NCP aims to achieve highest sustainable levels of economic growth, entrepreneurship, employment, higher standards of living for citizens, protect economic rights for just, equitable, inclusive and sustainable economic and social development, promote economic democracy, and support good governance by restricting rent seeking practices.

4.2 The NCP will endeavour to:

- i. preserve the competition process, to protect competition, and to encourage competition in markets so as to optimise efficiency and maximise consumer welfare,
- ii. promote, build and sustain a strong competition culture within the country through creating awareness, imparting training and capacity building of stakeholders including public officials, business, trade associations, consumer associations, civil society organisations etc.,
- iii. encourage adherence to competition principles in policies, laws and procedures of the Central Government, State Government and sub-State Authorities, with focus on greater reliance on well-functioning markets,
- iv. ensure competition in regulated sectors and to ensure institutional coherence for synergised relationship between and among the sectoral regulators and/or the competition regulators and prevent jurisdictional grid locks,
- v. strive for a single national market as fragmented markets are impediments to competition and growth, and
- vi. ensure that consumers enjoy greater benefits in terms of wider choices and better quality of goods and services at competitive prices.

5. Principles of Competition Policy

5.1 Taking into account the needs of and priorities for promoting a healthy competition culture, the principles of the NCP shall include :

- i. **Effective prevention of anti-competitive conduct:** The Competition Act, 2002 (Act) prohibits anti-competitive agreements and combinations which have or are likely to have appreciable adverse effect on competition. It also seeks to prohibit abuse of dominant position by an enterprise. There should be effective control of anticompetitive conduct which causes or is likely to cause appreciable adverse effect on competition in the markets within India. The Act establishes the CCI as the sole national body to enforce the provisions of the Act. The implementation of NCP will strengthen the competition culture in the country and complement the endeavours of CCI.
- ii. **Institutional separation between policy making, operations and regulation** i.e. operations in and regulation of a sector should be independent of the government branch which deals with policy formulation in the sector and is accountable to the Legislature.
- iii. **Fair market process:** Market regulation procedures, whether by public authorities, regulatory bodies or through self-regulatory mechanism, should be rule bound, transparent, fair and non-discriminatory. Public interest tests are to be used to assess the desirability and proportionality of policies and regulations, and these would be subject to regular independent review.
- iv. **‘Competitive neutrality’**, such as adoption of policies which establish a ‘level playing field’ where government businesses compete with private sector and vice versa, etc.
- v. **Fair pricing and inclusionary behaviour**, particularly of public utilities, which could be imbued with monopolistic characteristics.
- vi. **Third party access to ‘essential facilities’**, i.e. requiring dominant infrastructure and intellectual property right owners to grant access to third parties their essential infrastructure and platforms (e.g., electricity, communications, gas pipe lines, railway tracks, ports, IT equipment etc) on agreed reasonable and non-discriminatory terms and conditions aligned with competition principles.

- vii. **Public policies and programmes to work towards promotion of competition in the market place;** i.e. all policies and laws should use the touchstone of competition in their formulation and implementation.
- viii. **National, regional and international co-operation** in the field of competition policy enforcement and advocacy.

Deviations from Principles of Competition Policy

5.2 Any deviation from the principles of competition should be only to meet desirable social or other national objective, which should be clearly spelt out. The deviations should adhere to the following rules:

- i. the desirable objective be well defined,
- ii. should be decided in a transparent and rule bound manner,
- iii. should be non-discriminatory between public and private enterprises
- iv. the mode, manner and extent of deviation should have the least anticompetitive effect.

5.3 There should be accountability in the process so that deviations are not made without adhering to the accepted competition principles. As a general rule, any deviation should be an exception with pre-determined tenure. There should be an inbuilt sun-set clause to limit its continuation until it is found necessary.

6. Government Initiatives

Central Government Initiatives

6.1 The following initiatives are envisaged to effectively generate a culture of competition and to enhance competition in the domestic markets with the involvement of all stakeholders:

- i. Establishment of National Competition Policy Council (NCPC) for overseeing and coordinating the implementation of this Policy.

- ii. Review of such existing policies, statutes and regulations, which may restrict or undermine competition, shall be undertaken with a view to removing or minimising their competition restricting effect.
- iii. Undertake Competition Impact Assessment, as outlined in subsequent paragraphs, of proposed policies, statutes or regulations that affect competition.
- iv. Integrate principles of competition in all regulatory regimes , and ensure gradual dilution of the regime in a progressive manner as competition becomes effective in the regulated sector.
- v. Ensure functional and financial autonomy of competition and regulatory authorities to enable them to perform effectively.
- vi. To ensure third party access in the interest of effective competition, to essential facilities in the infrastructure sector owned by a dominant enterprise on reasonable and fair agreed terms.
- vii. Incorporate provisions related to competition policy in multilateral, bilateral and regional trade agreements, which will help in preventing anti-competitive behaviour and potential anti-competitive cross-border conduct.
- viii. Encourage all Departments/Ministries to set up in-house cells to undertake Competition Impact Assessment of various policies, statutes, regulations/rules enforced by them. The in-house cell in a Department/Ministry will be headed by a senior officer, not below the rank of Joint Secretary of the Ministry/ Department concerned. The in-house cell should be mandated with responsibilities: (a) to carry out Competition Impact Assessment of the policies and statutes administered by the Ministry/Department, (b) aligning public procurement regulations and practices with competition principles, etc.
- ix. Encourage State governments to undertake pro- competition reforms keeping in mind the principles of NCP and provide a suitable incentivising mechanism for undertaking such reforms.

State Government Initiatives

6.2 The process of economic reform is incomplete unless it permeates to the level of State Governments. There are many economic areas of state legislations, regulations, policies and practices that may impact or inhibit competition in the markets. The following initiatives are envisaged:

- i. The State Governments may undertake a review of their existing and proposed policies, laws or regulations from the competition perspective and also undertake Competition Impact Assessment of proposed policy, law and regulations.
- ii. The State Government may ask all their Departments/Ministries to set up similar in-house cells to undertake Competition Impact Assessment of various policies, statutes, regulations/rules enforced by them.

Sub-State Authority Initiatives

6.3 A sub-State authority is an extended arm of the Government. It has wider connotation and includes municipalities, panchayats, housing boards, universities, professional institutes, roadways, corporations, etc. created by statutes engaged in production, supply or distribution of goods or provision of services. The State Governments may encourage their sub-State authorities to undertake similar assessment. The following initiatives are envisaged:

- i. The laws, regulations and policies which govern the sub-State authorities may be reviewed so as to align them with the principles of the NCP.
- ii. Future, laws, regulations and policies may be subjected to a Competition Impact Assessment.
- iii. State Government may encourage sub-State Governments to set up similar in-house cells to undertake Competition Impact Assessment of various laws, regulations and policies enforced by them.

7. Oversight Mechanism

Institutional arrangement to oversee implementation of the NCP: The Government has already set up the Competition Commission of India and the Competition Appellate Tribunal to enforce

competition laws. To further infuse the principles of competition, enhance the role of competition and competitive markets in government policy making at the central and state levels and promote competition culture in the country.

7.1 The NCPC will *inter alia*:

- i. Facilitate and provide technical assistance to the in-house cells of different government departments/ministries at the Central and state governments in undertaking competition impact assessment of the policies, laws, regulations and practices under their purview.
- ii. The NCPC will facilitate development of a Manual, taking into account the global best practices, for undertaking Competition Impact Assessment suited to the Indian context.
- iii. Encourage the consumer movement in implementation of the NCP by building their capacities and strengthening their resource base;
- iv. Encourage formulation, adoption and wide dissemination of Competition Policy Principles in all ministries, departments and bodies of the central government, state, sub-state governments, business and cooperative sectors to increase representation, accountability and transparency.
- v. Undertake, or get undertaken through expert agencies, sectoral studies or reviews in accordance with transparent procurement principles, and make recommendations for fostering policies and practices that increase competition in the concerned sector.
- vi. Undertake measures to build capacity of government departments, ministries and other stakeholders in the context of the National Competition Policy.
- vii. Formulate an incentive scheme under which financial grants will be given to State Governments linked to the progress in aligning their policies and laws with the principles of the National Competition Policy.
- viii. Take measures to create public awareness, such as steps to include competition policy and law in relevant curricula and undertake advocacy regarding NCP, among various stakeholders, including consumer organisations.

- ix. Report to the Cabinet, through the Ministry of Corporate Affairs (MCA), the progress on its work programme on an annual basis. This report will also be disseminated publicly.

7.2 Competition Impact Assessment: It has been envisaged that the NCPC will work with and assist various Government Departments and Ministries in undertaking Competition Impact Assessment to see if any anti-competitive effect is exerted by a provision in the existing or proposed laws, regulations and policies, enforced by them. While undertaking Competition Impact Assessments, the Ministries and Departments shall among others include the following points:

(A) Limits the number or range of suppliers

This is likely to be the case if a clause:

- i. Grants exclusive rights for a supplier to provide goods or services
- ii. Establishes a license, permit or authorisation process as a requirement of operation.
Creates natural barriers affecting prospective entrants or significantly raises cost of entry or exit by a supplier.
- iii. Limits to the number of firms permitted to enter the market
- iv. Limits the ability of some types of suppliers to provide a good or service
- v. Has barriers, based on either regulations or custom, that prevent women from commencing business in the relevant market(s) and/or expanding an existing business, or that make it difficult for them to do so.
- vi. Creates a geographical barrier to the ability of companies to supply goods services or labour, or invest capital

(B) Limits the ability of suppliers to compete

This is likely to be the case if a clause:

- i. Limits sellers' ability to set the prices for goods or services
- ii. Limits freedom of suppliers to advertise or market their goods or services
- iii. Benefits or grants preferential treatment to the state-owned enterprise/s that operate in the market/s being assessed

- iv. Sets standards for product quality that provide an advantage to some suppliers over others or that are above the level that some well-informed customers would choose
- v. Allows under-development of transport or other infrastructure in some territories to give incumbent firms monopoly status
- vi. Limits competition, transparency and fairness in government procurement
- vii. Significantly raises costs of production for some suppliers relative to others (especially by treating incumbents differently from new entrants)

(C) Reduces the incentive of suppliers to compete

This is likely to be the case if a clause:

- i. Creates a self-regulatory or co-regulatory regime
- ii. Requires or encourages information on supplier outputs, prices, sales or costs to be published
- iii. Exempts the activity of a particular industry or group of suppliers from the operation of the general competition law

(D) Regulatory and policy barriers

This is likely to be the case if a clause:

- i. Creates 'policy uncertainty' through onerous, costly or time-consuming regulation or frequent changes in regulations
- ii. Allows unequal application of laws or regulations

(E) Limits the choices and information available to customers

This is likely to be the case if a clause:

- i. Limits the ability of consumers to decide from whom they purchase
- ii. Reduces mobility of customers between suppliers of goods or services by increasing the explicit or implicit costs of changing suppliers
- iii. Fundamentally changes information required by buyers to shop effectively

7.3 As recommended in the XI Five-Year Plan document approved by NDC, the NCPC should be autonomous in its functioning and headed by an eminent non-official. For this purpose it should be provided secretarial assistance and adequate funding. The Council should be appropriately positioned in the Government, to enable it to best discharge its role of monitoring progress of the implementation of the NCP.

7.4 The task of the NCPC would be to facilitate and monitor the progress in the implementation of the NCP such as reviews of laws and policies, and the Competition Impact Assessment of both existing and new laws and policies and recommend the release of financial incentives to the State Governments based on the progress in the implementation of the policy. As also decided by the National Development Council while adopting the XI Five-Year Plan, an incentive scheme may be instituted under which financial grants may be given to State Governments linked to the progress in aligning their policies and laws with the principles of the National Competition Policy. The grants could be released based on recommendations received from the NCPC regarding the progress made by the various State Governments.

8. Coordination among Regulators

8.1 Competition law seeks to promote efficient allocation and utilisation of resources, which are usually scarce in developing countries. A competition law lowers the entry barriers in the market and makes the business environment conducive to promoting entrepreneurship. It also ought to be acknowledged that each sector has its own set of issues and problems unique to them and efficient management of sector specific issues/problems at a micro level is equally critical in ensuring effective competition in the market.

8.2 Regulation may be justified or warranted in sectors which have natural monopolies or network industries; more so where a universal service obligation exists. However, regulation may not be required where these features do not prevail. Such sectors

should ideally be left to the forces of competition. Even sectors where regulation is required, it should be competition based or competition driven. One of the objectives of the regulation, incorporated in the sectoral regulatory law, should be to create a competitive market in so far, as this is feasible. As competition in the regulated sectors expands, the regulation should hopefully become lighter and ultimately economic regulation may become no longer necessary. Therefore, sunset clauses based on considered timelines appropriate to the regulated sector may be considered in all economic regulatory laws so as to leave the industry to market forces once effective competition is achieved. However, all conduct issues will be dealt by the competition regulator.

8.3 The objective of a sectoral regulator is to provide good quality service at affordable rates, but the promotion of competition and prevention of anticompetitive behaviour may not be high on its agenda or the laws governing the regulator may be silent on this aspect. Besides, a sectoral regulator may not have an overall view of the economy as a whole and may tend to apply yardsticks which are different from the ones used by the other sectoral regulators. In other words, there is a possibility of the lack of consistency across sectors as regards competition issues. On the other hand, the CCI, which is expected to have developed the core competence, expertise and capacity in competition related issues, will be able to apply uniform competition principles across all sectors of economy. Besides, enforcement and penalising violations of Competition Act is the exclusive area of the CCI. Even otherwise, the general principle for economic efficiency would be, whoever can do a thing in best and most professional manner should do it.

8.4 The conflicts between CCI and the sectoral regulators could be caused by legislative ambiguity or jurisdictional overlap or legislative omission. Interpretational bias of the bureaucracy involved could further aggravate the conflicts. Conflicts between the two may be generated by the market players and legal arbitrators for obvious reasons. Conflicts are bound to hurt consumers and the uncertainties that go with them can

increase investment risks. Conflict resolution by a court of law may perhaps be time consuming, and therefore, be only the last alternative.

8.5 In essence a framework for an interface between a competition regulator and a sectoral regulator should deliver the following benefits:

- i. appropriately identify issues of concern
- ii. ensure appropriate channelisation of various concerns to the appropriate forum and obtain corrective action at the earliest;
- iii. establish a framework that avoids duplication of effort;
- iv. conserve the regulator's resources and limit its ambit only to matters of competition; and
- v. promote capacity building and developing expertise both at the level of the competition regulator and the sectoral regulator.

8.6 CCI and the sectoral regulators need to cooperate and establish a forum for regular exchange of ideas. In accordance with the resolution of the NDC in the XI-Plan document, a formal mechanism for coordination between the Competition Commission and the sectoral regulators is, therefore, of key importance. Coordination between sectoral regulators and Competition Commission should be made mandatory through suitable provisions in the Competition Act, 2002 and relevant sectoral laws.

9. **Strategy for implementation of NCP:**

The initiatives proposed under this Policy Statement alongwith time lines and milestones will be evolved, formulated and implemented by the Government and all other stakeholders within twelve months of the adoption of the NCP. These would include *inter alia* approval of NCP, establishment of NCPC, constitution of in-house cells in the Ministries/ Departments of Central and State Governments, formulation of an incentive scheme, and all steps needed to implement the Policy effectively.

10. **Review of the NCP**

- i. There will be a review of NCP every five years from the date of its notification, and if broad reforms with clear results have kicked in then the NCP maybe declared redundant.
- ii. An annual report of the work undertaken will also be submitted by the NCPC to the Government and will be available in the public domain.
- iii. The reviews by the Ministries/Departments of the Central Government and the other State/Sub-State bodies of their laws, regulations, policies and practices submitted to the appropriate governments will be reviewed annually.