

## 1. Introduction

1.1 India, embarked on a new trajectory of economic liberalisation in 1991, when a host of controls on trade and industry were removed. The various reforms initiated recognised the need for removing various fetters on trade and industry with a view to unleashing the energy and dynamism of competition in the market. In his Budget Speech, Dr Manmohan Singh, the then Finance Minister underlined, “***no power on Earth can stop an idea whose time has come***” and that “***It is essential to increase the degree of competition between firms in the domestic market so that there are adequate incentives for raising productivity, improving efficiency and reducing costs***” Since then, a host of new policy and regulatory reforms across various sectors have been introduced by the Government.

1.2 After Independence, India pursued a strategy of planned economic development, with the objective of developing a broad industrial base to achieve speedy economic self-reliance and promoting social justice. The industrial policy assigned commanding heights of the economy to the public sector. The State exercised control over the direction, pattern and quantum of investments through the Industries (Development & Regulation) Act, 1951 and the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act). A major part of the financial sector was also kept under Government control while a number of products were also subjected to price and distribution controls coupled with extensive reservations and concessions in favour of small-scale industry. The trade policy too affected competition by providing a high level of protection to domestic industry. These restrictions, which were in consonance with the National Strategic Policies at that time and relevant in the context of limited resources and need of checking monopolies and concentration of economic power, did nevertheless, impacted competition. However, gradually, and from 1980 onwards, incremental changes were brought in to usher in greater competition. The Industrial Policy Statement of 1980 introduced greater competition in the domestic market, technological up-gradation and modernisation. The major reforms initiated from 1991 onwards were, however, on a much broader scale, sweep and scope, and provided a new paradigm shift to economic growth in India, releasing new entrepreneurial energy and dynamism in the Indian industry, diversification of domestic production and stimulating exports, adding to the GDP growth.

1.3 The last two decades since 1991 have witnessed significant changes in terms of opening of markets, factor mobility and regulatory environment. The benefits have been substantial and manifested in various segments of economy, e.g. telecom, civil aviation, transport, manufacturing, etc. However, the progress has been somewhat uneven, and so also the trickle-down effects on the common man. Underlying this success is a structural shift in India's growth trajectory. Further, like many other similar economies under transition, there have been residual restraints and anti-competitive traits in several areas of economy. While the process of reforms is a continuing one, the pace and direction necessitates the introduction of an overarching National Competition Policy to realise the fuller growth potential of the economy.

## 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 in processes and products, invest in technology and better managerial practices and increase productivity. This process leads to achievement of static, dynamic as also resource/allocative efficiencies, sustainable economic growth, development, and poverty alleviation.

2.2 Competition is not an end unto itself, rather a means to achieve economic efficiency and welfare objectives. Importantly, competition is not automatic, and requires to be promoted, protected and nurtured through appropriate regulatory frameworks, by minimising market restrictions and distortions, and provision of related productive inputs such as infrastructure services, finance, human capital etc. However, a Competition Policy has to be evolved to imbibe the principles of competition in various endeavours of the Government, of course in alignment with the national strategic objectives, alongwith social, environmental, public safety, and other considerations.

### ***What are competition law and competition policy?***

2.3 Competition Policy means government measures, policies, statutes, and regulations including a competition law, aimed at promoting competitive market structure and behavior of entities in an economy<sup>1</sup>. Competition Law is but a sub-set of the Competition Policy. The Raghavan Committee had observed that “**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**”. World Bank also provides a definition of 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 Competition Policy is a broader term which includes all government policies and laws whereas competition law is specific statute with a pre-defined mandate to adjudicate on violation(s) of the law. In the case of India, the Competition Act, 2002 deals with anti-competitive agreements such as price fixing, bid rigging, joint boycotts, etc; abusive practices undertaken by dominant entities such as predatory pricing, abusive conditions of supply, etc, and regulation of combinations. 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 a competition culture in an economy.

### **3. Need for Competition Policy**

3.1 The 2001-Nobel Prize winner Joseph Stiglitz has rightly said: “**Strong competition policy is not just a luxury to be enjoyed by rich countries, but a real necessity for those striving to create democratic market economies**”.

3.2 National Competition Policy is necessitated, as an overarching Policy framework, in continuation of the 1991-reforms, to infuse greater competition across sectors, and unleash fuller growth potential of the Indian economy. Faced with dynamic market realities, there is a need for promoting economic democracy, the forces of competition and transparency in markets in keeping with the rapidly changing market conditions to ensure the protection of consumer interests, while at the same time protecting the rights of market players to free and fair competition.

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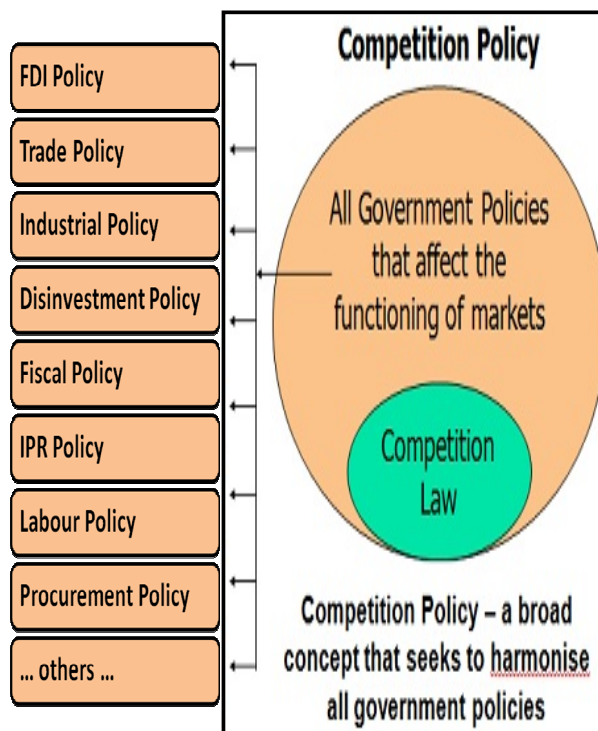
Several agencies such as the World Trade Organisation (WTO), the World Bank, UNCTAD etc have attempted to define the terms competition policy.

WTO (1999), “The Fundamental Principles of Competition Policy: Background Note by the Secretariat” Working Group on the Interaction between Trade and Competition Policy WT/WGTCP/W/127

3.3 The need for Competition Policy was also articulated by the Finance Minister in 2009<sup>2</sup> when he underscored that: “*Competition law alone is not sufficient for realising the gains from greater competition*”. He further added that: “*There is need to engage in advocacy with stakeholders, including public institutions, in order to build a culture of competition that is receptive to and supportive of the new competition regime.*”

## Competition Policy vis-à-vis Competition Law

3.4 Competition has a two-way linkage with various policies of the Government such as: fiscal policy, trade policy, investment policy, labour policy, consumer policy, environment policy, policy on intellectual property rights, sectoral regulatory policies etc.



3.5 While a series of reforms in various sectors have been introduced from time to time and on incremental basis since 1991, the progress across sectors has been relatively uneven. Notably, some sectors have successfully imbibed a competition culture, several other sectors still witness weak competition. An overarching policy framework seeks to harmonise these efforts, which would help policy reviews by the concerned authorities in relevant sectors, including at Central, State and Sub-state level.

3.6 There may exist barriers, both fiscal and others, at the state level, which may hinder inter-state trade. These restrictions may tend to fragment the national market, and impact freedom of trade. A sub-State authority is an extended arm of the Government, and includes municipalities, panchayats, housing boards, universities, professional institutes, roadways, corporations which may be created by statutes or other mechanisms but engaged in production, supply, distribution of goods or provision of services. Policies and practices of these state and sub-state authorities may influence competition in the relevant market significantly, and in fact may have greater and day-to-day impact on the common man and it may be desirable to introduce competition principles there too.

3.7 National Competition Policy has been taken up for consideration in different fora within the Government at different points in time during the last two decades. The Government of India has expressed its intent and views on the need and form of the National Competition Policy on various

<sup>2</sup> Speech of Shri Pranab Mukherjee, Minister of Finance at the National Conference on Competition, Public Policy and Common Man, 16<sup>th</sup> November 2009, New Delhi

occasions. An account of various developments so far has been presented in the Annexure–I to this document.

#### **4. Premise of Competition Policy**

4.1 The Constitution of India seeks to ensure for its citizens—social, economic and political justice. Article 19(1)(g) of the Indian Constitution provides “freedom to practice any profession, or to carry on any occupation, trade or business”. Articles 301-304 further elucidate the issues. In a judgment<sup>3</sup> the Supreme Court held that Article 301 provides freedom not from all laws but freedom from such laws which restrict or affect activities of trade and commerce among and within the States; and that Article 301 refers to freedom from laws which go beyond regulations which burdens, restricts or prevents the trade movements between states and within states.

4.2 Competition Policy is widely recognised as a powerful tool to promote freedom of trade, efficient use of scarce resources, enhance productive efficiency, add to the static and dynamic efficiency of the economy, maximise economic growth and contribute to the welfare of the common man.

4.3 The basic premise of the National Competition Policy (NCP) is to unlock fuller growth potential of Indian economy, which among other things could also help in tapping the opportunities arising from the demographic dividend in our country. It would seek to inculcate a competition culture across various sectors to induct greater efficiency and dynamism, bringing in innovation and technology, delivering goods and services which are competitive, thus contributing to accessibility for consumers and consumption and thereby accelerating economic development, global competitiveness, unleashing entrepreneurial energy, creating more jobs and opportunities to raise the living standards of people, thus ensuring inclusive growth.

4.4 National Competition Policy may also help to promote good governance by transparency, accountability through competing responses and avoidance of rent seeking. It would also have a positive co-relation with other strategic national objectives like employment, R&D efforts and environmental objectives. It also respects the sovereign functions of the State like defence and security etc, and would seek to encourage competition related measures only in matters having economic impact on the market.

4.5 The National Competition Policy is not dogmatic and is mindful of appropriate balance in matters having bearing on social, environmental, security and other strategic issues of national importance; the only thing is that a conscious view may have to be taken but the concerned authorities in balancing the competing considerations. It does not seek disinvestment, blanket deregulation, *laissez faire* markets, welfare cutbacks, and reduced social services. It does not seek to prevent government from increasing expenditure on welfare or levels of government-funded or subsidised 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, of course with reasons, 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.

#### **5. Benefits of Competition Policy**

5.1 The National Competition Policy seeks to address policies, practices and market structures that significantly lessen or harm competition. The objective of such a policy is to nurture and nourish competition and create a competition culture in order to foster greater efficiency in resource allocation and maximise total welfare. With the encouragement of competition and the maintenance of the competitive process, associated objectives of freedom of choice and access to markets are also achieved.

5.2 A review of cross-country literature suggests a positive association between GDP growth and degree of competition. Many empirical studies of select industries in OECD countries suggest that competition enhances productivity at industry level and lowers consumer prices.<sup>4</sup> Enhancement of productivity is caused by the pressure generated by competition on firms to innovate or enhance

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<sup>3</sup> Jindal Stainless Steel Ltd v. State of Haryana, AIR 2006 2550

<sup>4</sup> Eleventh Five Year Plan Report on Inclusive Growth,

efficiency of operations both of which are associated with lower costs. Higher productivity is also associated with enhanced output and therefore increased employment.

5.3 Public procurement of goods or services is a key economic activity of governments accounting for 20-30 percent of GDP in India as per estimates available. As per the findings of an OECD survey, savings to public treasuries between 17 percent and 43 percent have been achieved in some developing countries through implementation of competitive procurement processes. In view of the huge public expenditure on procurement including in infrastructural sector, substantial savings can be achieved in India by infusing greater competition, which in turn could release resources for the much needed investment in social sector development in the country.

5.4 Studies have outlined positive linkages between good governance and competition. It has been found that by lowering barriers to the entry of new firms, competition policy helps to create an enabling environment for entrepreneurial development, an essential pre-requisite for a vibrant economy (OECD and Khemani 1998)<sup>5</sup>. Michael Porter in his book 'Competitive Advantage of Nations' has outlined the role of government as a catalyst which should encourage companies to move to higher levels of competitive performance.

5.5 To illustrate the growth benefits of competition, Bayoumi et al. (2004)<sup>6</sup> have estimated that differences in levels of competition account for more than 50 percent of the current gap in GDP per capita between the Euro area and the United States. They conclude that more intense product market competition enhances growth and employment. Aghion et al (2001)<sup>7</sup> and Dutz and Hayri (1999)<sup>8</sup> echo these views through their empirical work.

5.6 There is extensive economic literature wherein the effects of competition distortions have been brought out. For example, in his book, the Power of Productivity, William Lewis says that one of the main obstacles to economic growth and poverty reduction in many countries is the many policies that distort competition. Similarly in the theory of political economy developed by Anne Krueger<sup>9</sup> and Gordon Tullock<sup>10</sup>, the authors argue that in many market oriented economies, especially developing economies, like India, governmental restrictions upon economic activity are pervasive facts of life. These restrictions give rise to a variety of forms and people often compete for the rents.

5.7 OECD<sup>11</sup> has observed that with the globalisation and increasing global integration, a large number of developing countries and transition economies are rapidly adopting competition legislation and are strengthening the existing competition policies. On future trends, OECD noted that: "***we can conclude that in the near future, competition policies will be the core policies in the countries that pursue constant economic development regardless of their current economic status***".

In view of the growing global recognition of the strong linkage between competition policy and the pillars of economic development, as evidenced in several countries, the OECD stressed: "***the building of a***

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<sup>5</sup> Organisation for Economic Cooperation and Development and R. Shyam Khemani, 1998. *A Framework for the Design and Implementation of Competition Law and Policy* (Washington, World Bank).

<sup>6</sup> Bayoumi, T. Laxton D. and Pesenti P (2004), "Benefits and Spillovers of Greater Competition in Europe: A Macroeconomic Assessment", Working papers

<sup>7</sup> Aghion, P., Harris, C., Howitt, P. and Vickers, J. (2001), "Competition, Imitation and Growth with Step by Step Innovation," *Review of Economic Studies* 68

<sup>8</sup> Dutz, M. and Hayri A., (1999), "Does more Intense Competition lead to Higher Growth?" CEPR Discussion Paper, No. 2249

<sup>9</sup> Anne O Krueger, "The Political Economy of the Rent Seeking Society", *American Economic Review*, Vol 64, No 3, June 1974.

<sup>10</sup> Gordon Tullock. "The Economics of Special Privilege and Rent Seeking", Kluwer Academic Publishers, Massachusetts, USA, 1989.

<sup>11</sup> OECD (2003), *The Objectives of Competition Law and Policy and the Optimal Design of a Competition Agency*. CCNM/GF/COMP/WD(2003)7

*competition culture is the most important step to be followed by all countries that are committed to promote a more market based economy”.*

## 6. Objectives of National Competition Policy

6.1 The National Competition Policy aims to promote economic democracy, achievement of highest sustainable levels of economic growth, entrepreneurship, employment, higher standards of living, and protect economic rights for just, equitable and sustainable economic and social development, and supports good governance by restricting rent seeking practices.

6.2 In this background, the National Competition Policy will endeavour to:

- a) preserve the competition process, to protect competition, and to encourage competition in the domestic market so as to optimise efficiency and maximise consumer welfare. This would also make domestic firms competitive globally,
- b) promote, build and sustain a strong competition culture within the country through creating awareness, imparting training and consequently capacity building of stakeholders including public officials, business, trade associations, consumers associations, civil society etc.,
- c) achieve harmonisation in policies, laws and procedures of the Central Government, State Government and sub-State Authorities in so far as the competition dimensions are concerned with focus on greater reliance on well-functioning markets,
- d) ensure competition in regulated sectors and to ensure institutional mechanism for synergised relationship between and among the sectoral regulators and/or the CCI and prevent jurisdictional grid locks,
- e) strive for single national market as fragmented markets are impediments to competition, and
- f) ensure that consumers enjoy greater benefits in terms of wider choices and better quality of goods and services at competitive prices.

## 7. Competition Policy Principles

7.1 Taking into account the needs of and priorities for promoting a healthy competition culture the principles of the National Competition Policy are:

- a. **Fair market process:** Market regulation procedures 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.
- b. **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.
- c. **‘Competitive neutrality’**, such as adoption of policies which establish a ‘level playing field’ where government businesses compete with private sector and vice versa.
- d. **Fair pricing and inclusionary behaviour**, particularly of public utilities and intellectual property rights holders, which could be imbued with monopolistic characteristics and a large part of the consumers could be excluded.
- e. **Third party access to ‘essential facilities’**, i.e. requiring dominant infrastructure owners to grant to third parties access (e.g., electricity, communications, gas pipe lines, railway tracks etc) to their infrastructure on agreed terms and conditions and at regulated prices, aligned with competition principles. Such treatment can be given to intellectual property rights as well if the IPR concerned possesses essential infrastructure characteristics.
- f. **Public Policies and programmes to work towards promotion of competition in the market place;** and
- g. **National, regional and international co-operation** in the field of competition policy enforcement and advocacy.

## 8. Government Initiatives Central Government Initiatives

8.1 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 the stakeholders:

- i. Several existing policies, statutes and regulations of the Government restrict or undermine competition. A review of such policies, statutes and regulations from the competition perspective will be undertaken with a view to removing or minimising their competition restricting effect.
- ii. Proposed policies, statutes or regulations that affect competition should be subject to Competition Impact Assessment, as outlined in subsequent paragraphs.
- iii. Where a regulatory regime is justified, it should provide that the principles of competition would be taken into account in the regulation. Regulation needs to be diluted progressively as competition becomes effective in the regulated sector.
- iv. The competition authorities need to be functionally autonomous and financially independent.
- v. In order to ensure effective competition, third party access to essential facilities in the infrastructure sector owned by dominant enterprise on reasonable and fair terms should be provided.
- vi. Incorporate competition clauses in bilateral and regional trade agreements, which will go a long way in preventing anti-competitive behaviour and potential anti-competitive cross-border conduct.

### **State Government Initiatives**

8.2 The process of economic reform is incomplete unless it permeates to the level of State Governments. The initiatives at the State Government level would require undertaking pro-competition reforms keeping in mind the principles of the National Competition Policy. There are many economic areas of state legislations, regulations, policies and practices that impact or inhibit competition in the markets. The following are envisaged:

- i. There may exist barriers, both fiscal and otherwise, which hinder inter-state trade. These restrictions tend to fragment the national market, which not only heightens the possibility of indulgence in trade practices adversely affecting competition but also hinder freedom of trade.
- ii. The State Governments may volunteer to undertake a review of existing policies, laws or regulations from the competition perspective and also undertake a Competition Impact Assessment of proposed policy, law and regulations before these are finalised.
- iii. The State Governments may be encouraged to consult the implementation authority of the National Competition Policy.

### **Sub-State Authority Initiatives**

8.3 A sub-State authority is an extended arm of the Government. It has wider connotation and may include municipalities, panchayats, housing boards, universities, professional institutes, roadways, corporations which are created by statutes but are engaged in production, supply, distribution of goods or provision of services. The following are envisaged:

- i. The statutes, laws, procedures which govern the sub-State authorities may be reviewed so as to align them with the broad principles of the National Competition Policy.
- ii. Such authorities will be encouraged to consult the implementation authority of the National Competition Policy on changes contemplated in the rules and procedures to ensure that competition is not undermined.

## **9. Implementation Measures**

9.1 Institutional Arrangement to Enforce the NCP: The Government has already set up the Competition Commission of India and the Competition Appellate Tribunal to enforce competition laws. To further promote competition in the market place, the Government will establish and resource an agency, the National Competition Policy Council.

9.2 The Government will encourage all Departments/Ministries of the Central, State, sub-State Governments to set up an in-house cell to undertake Competition Impact Assessment, as described below, of various policies, statutes, regulations/rules enforced by them.

9.3 The National Competition Policy Council will *inter alia*:

- a. Facilitate and provide technical assistance to the in-house cells of different government departments/ministries at the Central and state governments in undertaking competition assessment of the policies, laws, regulations and practices under their purview.
- b. Promote and encourage involvement of consumer movement in implementation of the NCP by building their capacities and strengthening their resource base;
- c. 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.
- d. Undertake, or get undertaken through appropriate agencies/ experts sectoral studies or reviews and make recommendations for fostering policies and practices that increase competition in the concerned sector.
- e. Undertake measures to build capacity of government departments, ministries and other stakeholders.
- f. Frame and administer 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.
- g. Take measures to create public awareness and undertake advocacy, among various stakeholders, including consumer organisations.

9.4 **Competition Impact Assessment:** It has been envisaged that government departments and ministries will undertake Competition Impact Assessment to see if any anti-competitive effect is exerted by a provision in the policy/law/regulation/practice, enforced by them. An illustrative list of parameters for undertaking Competition Impact Assessment is enclosed at Annexure–II. The National Competition Policy Council will facilitate development of a Manual for undertaking Competition Impact Assessment suited to the local context.

#### **10. Review of the NCP**

10.1 There will be a review of NCP every five years from the date of notification of the NCP.

10.2 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.

10.3 The Ministries/Departments of the Central Government, and the other State/Sub-State Bodies will undertake review of their laws, regulations, policies and practices, and submit annual reports to their appropriate Governments.

#### **11. Conclusion**

11.1 Indian economy after a slew of measures taken post-1991 is on a high growth path. In the recent years the Indian economy has been one of the strongest performers in the world. However, the full growth potential of the economy remains yet to be realised. Infusion of greater degree of competition can play a catalytic role in unlocking the fuller growth potential in many critical areas of the economy, which hitherto has been held back by restriction on competition in various forms. However, still much is required to be done in several endeavours of Central and State Government where a well-designed Competition Policy reflecting a broad consensus of major stakeholders, can play very useful and effective role. It would be desirable to undertake competition assessment of existing and proposed public policies that unduly restrict competition and develop specific and transparent criteria for performing competition assessment, including the preparation of screening and monitoring mechanism. Greater transparency and adherence to competition principles in different sectors and activities could ultimately boost India's growth and help our country to attain a double digit growth on an inclusive and sustainable platform. Two decades after the first generation economic reforms of 1991 perhaps the National Competition Policy can provide the necessary push to unlock the fuller growth potential of the Indian economy.

#### **Annexure - I**

#### **Genesis of Competition Policy in India**

##### **Introduction**



As enumerated earlier, the process of economic reforms which had been initiated in 1980s gathered pace and momentum in 1990s. The Industrial Policy Statement of 1991 noted that operating in an over regulated environment was detrimental for competitiveness in the international economy and technological dynamism. There were major complementary policy reforms in the financial sector, especially in banking, stock market and insurance. The same thread ran through other sectoral reforms like in telecom, civil aviation, manufacturing, and other infrastructure sectors where public private partnership (PPP) was introduced in a big way. Alongside, a new competition law was enacted in 2002 and need for a Competition Policy was also articulated by the Government.

National Competition Policy has been taken up for consideration in different fora within the Government at different points in time during last two decades.

The Government of India has expressed its intent and views on the need and form of the National Competition Policy at various occasions. At the time when the Government of India was considering to bring in a new competition law, the then Finance Minister, during a debate in Lok Sabha<sup>12</sup> in 1999 informed the House that the Government will come out with a National Competition Policy. Prior to that, pursuant to WTO's Singapore Ministerial Declaration in 1996, which established a Working Group on the Interaction between Trade and Competition to ostensibly propose the adoption of competition laws by member States, an Expert Group was established by the Union Ministry of Commerce in October, 1997 to study the interaction between trade and competition policy in India, including anticompetitive practices and the effect of mergers and amalgamations on competition. In its report submitted in January 1999, the Expert Group suggested enactment of a new competition law and recommended harmonisation of competition principles, competition policy and objectives, and competition law enforcement efforts. This laid the ground for future developments in the direction of ushering in a National Competition Policy.

#### ***A. Raghavan Committee's Recommendation on National Competition Policy***

Following the Government's resolve to enact a new competition law, a High Level Committee on Competition Policy and Law (the ***Raghavan Committee Report***) was set up, which in its report recognised the need for a National Competition Policy and noted that:

***“An effective competition policy promotes the creation of a business environment which improves static and dynamic efficiencies and leads to efficient resource allocation, and in which the abuse of market power is prevented mainly through competition. Where this is not possible, it requires the creation of a suitable regulatory framework for achieving efficiency. In addition, competition law prevents artificial entry barriers and facilitates market access and complements other competition promoting activities. Trade liberalisation alone is not sufficient to promote competition and there is a need for a separate competition policy.”***

B. In 2004, the Common Minimum Programme of the United Progressive Alliance (UPA), also recognised the need for promotion of competition across sectors and noted that:

***“Indian industry will be given every support to become productive and competitive. All regulatory institutions will be strengthened to ensure that competition is free and fair. These institutions will be run professionally.”***

#### ***C. Standing Committee on Finance (2006-07) Observations***

The issue of a National Competition Policy was considered by the Standing Committee on Finance<sup>13</sup> (2006-2007) of the Fourteenth Lok Sabha while considering the relevant issues in the context of Competition (Amendment) Bill 2006. The Committee made a reference to the Competition Policy and

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<sup>12</sup> Lok Sabha (1999), “Further Discussion on the Insurance Regulatory and Development Authority Bill, 1999”, XIII Lok Sabha Debates, Session II (Winter Session), Thursday, December 2, 1999

<sup>13</sup> Lok Sabha Secretariat (2006), Forty Fourth Report – Competition (Amendment) Bill, 2006, Standing Committee on Finance (2006-2007) , December 2006

recommended the inclusion of 'state governments', in addition to central government, within the ambit of competition policy provisions.

#### ***D. CCI Advisory Committee on National Competition Policy (2007)***

The Ministry of Corporate Affairs had asked the Competition Commission of India (CCI) in 2005-06 to draft a 'Consultation Paper on Competition Policy'. Accordingly, an Advisory Committee, under the chairmanship of Dr Vijay Kelkar was set up by the CCI wherein a sub-committee, under the chairmanship of Shri P. G. Mankad, was also set up to finalise a draft 'Consultation Paper'. In the meantime, the Planning Commission Working Group, as referred to in the following para, submitted its report which was accepted by the Planning Commission in 2007. In September 2007, the CCI Advisory Committee decided to adopt the report of the Working Group of the Planning Commission as the "final draft Consultation Paper on Competition Policy.

#### ***E. Planning Commission Discourse on the National Competition Policy (2007)***

The issue has been discussed at the Planning Commission in the context of Tenth and Eleventh Plans. During the mid-term appraisal of the Tenth Plan, it was recognized that there is an urgent need for articulating a National Competition Policy (NCP) in India, which should fully reflect the national resolve to accelerate economic growth, improve both the quality of life of the people of the country, national image and self-esteem. It further noted that NCP would bring about a competition culture amongst economic entities to maximize economic efficiency, protect consumer interests and improve international competitiveness. During the Eleventh Plan, a Working Group on Competition Policy submitted its report to the Planning Commission. In addition, the Eleventh Plan Document in chapter 11 made a reference to need for a competition policy. The Chapter 11<sup>14</sup> notes that:

*"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 penalizes anti-competitive practices by enterprises functioning in the market; that is, it addresses market failures. Sector regulatory laws mimic competition in the areas of natural monopolies. Other regulatory laws, such as those for intellectual property or anti-dumping or even capital markets, too have an important interface with competition.*

*The aim of the competition policy is to create a framework of policies and regulations that will inform other policies to facilitate competitive outcomes in the market. Competition policy is a critical component of any overall economic policy framework. Competition policy is intended to promote efficiency and to maximize consumer/social welfare. It also promotes creation of a business environment, which improves static and dynamic efficiencies, leads to efficient resource allocation and consumer welfare, and in which abuse of market power is prevented/curbed. It also promotes good governance by restricting rent seeking practices of economic actors.*

*Given the wide canvas of NCP, a suggestion has been made by the Working Group on Competition Policy for setting up an institutional arrangement for monitoring the progress of the implementation of the policy. A small and compact Competition Policy Council of about 25 members could be set up which would be advisory, nonstatutory and autonomous in its functioning and be headed by an eminent non-official*

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<sup>14</sup> Extract from Para 11.23 of Chapter 11 of the Policy Document: "Inclusive Growth" as part of the 11<sup>th</sup> Five Year Plan adopted by the National Development Council in December, 2007 ([http://planningcommission.nic.in/plans/planrel/fiveyr/11th/11\\_v1/11th\\_vol1.pdf](http://planningcommission.nic.in/plans/planrel/fiveyr/11th/11_v1/11th_vol1.pdf))

*person and comprising key officials from economic Ministries/Departments, and non-officials from media, academia and civil society. The task of the Competition Policy Council would be to review the progress in the implementation of NCP such as reviews of policies, regulations and practices, and the competition impact assessment of new laws, regulations and policies.”*

Subsequent to the submission of the Report of the Working Group on Competition Policy, its recommendations, contained in a document titled ‘Inclusive Growth, Vol I, as part of the 11<sup>th</sup> Five Year Plan, were adopted by the National Development Council in December, 2007<sup>15</sup>.

#### ***F. The Second Administrative Reforms Commission (ARC) Recommendations (2007)***

The Second Administrative Reforms Commission (ARC), chaired by Dr M. Veerappa Moily, recommended that:

*“Each Ministry/Department may undertake an immediate exercise to identify areas where the existing ‘monopoly of functions’ can be tempered with competition. A similar exercise may be done at the level of State Governments and local bodies. This exercise may be carried out in a time bound manner, say in one year, and a road map laid down to reduce ‘monopoly’ of functions. The approach should be to introduce competition along with a mechanism for regulation to ensure performance as per prescribed standards so that public interest is not compromised.*

*Some Centrally Sponsored schemes could be restructured so as to provide incentives to states that take steps to promote competition in service delivery.*

*All new national policies on subjects having large public interface (and amendments to existing policies on such subjects) should invariably address the issue of engendering competition.”*

#### ***G. Committee on National Competition Policy (2011)***

Continuing the pursuit of the core philosophy of promotion of competition across sectors, Ministry of Corporate Affairs, Government of India, vide notification F.No.5/15/2005-IGC/CS dated 8<sup>th</sup> June 2011, has now constituted the Committee on National Competition Policy and Related Matters (C-NCP) for:

- Framing of a National Competition Policy (NCP)
- Strategy for competition advocacy with government and private sector
- Changes required in Competition Act for fine tuning it and
- Any other matter relation to competition issues

The Committee, after eight meetings, recommended the objectives, principles, initiatives and measures to be taken by the government.

#### **Annexure - II**

#### **Illustrative List of Parameters for Undertaking Competition Assessment**

An illustrative list of parameters, some of which may be considered while ascertaining, if government policies or institutions limit competition may include:

- **Limits on the number or range of suppliers through**
  - ❖ Granting exclusive rights for a supplier to provide goods or services
  - ❖ Establishing a license, permit or authorisation process as a requirement of operation
  - ❖ Limiting the ability of some types of suppliers to provide a good or service
  - ❖ Significantly raising cost of entry or exit by a supplier

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<sup>15</sup> Planning Commission (2007), Eleventh Five Year Plan 2007-2012, Vol I – Inclusive Growth.

- ❖ Creates a geographical barrier to the ability of companies to supply goods services or labour, or invest capital
- **Creates and fails to address natural barriers, strategic barriers, regulatory and policy barriers or gender-based barriers**
- **Limits the ability of suppliers to compete through**
  - ❖ Limiting sellers' ability to set the prices for goods or services
  - ❖ Limiting freedom of suppliers to advertise or market their goods or services
  - ❖ Setting 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
  - ❖ Significantly raising costs of production for some suppliers relative to others (especially by treating incumbents differently from new entrants)
- **Reduces the incentive of suppliers to compete through**
  - ❖ Creating a self-regulatory or co-regulatory regime
  - ❖ Requiring or encouraging information on supplier outputs, prices, sales or costs to be published
  - ❖ Exempting the activity of a particular industry or group of suppliers from the operation of general competition law
- **Limits the choices and information available to customers**
  - ❖ Limiting the ability of consumers to decide from whom they purchase
  - ❖ Reducing mobility of customers between suppliers of goods or services by increasing the explicit or implicit costs of changing suppliers
  - ❖ Fundamentally changing information required by buyers to shop effectively

The company while seeking approval of the directors and shareholders in their meetings shall specifically take approval to the effect that: --

- (i) Proposed contract is competitive, at an arm's length, without conflict of interest and is not less advantageous to it as compared to similar contracts with other parties.
- (ii) The company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon and has filed its upto date Balance Sheets and Annual Returns with the Registrar of Companies;
- (iii) The proposed contract is falling within the provisions of section 297 of the Act and provisions of sections 198, 269, 309, 314 and 295 are not applicable in the proposed contract.
- (iv) The company and its Directors have complied with the provisions of sections 173, 287, 299, 300, 301 and other applicable provisions of the Companies Act, 1956 with regard to the proposed contract.

The application will be processed online and approval of Central Government shall also be made available to the applicant company online on the basis of declarations made by the company and certifications by the professionals given in the e-form.

If any of the information or declaration given by the company or certificate given by the professional in the e-form is found to be wrong, then the applicant company, its Directors and professional shall be liable for penal action under section 297 and 628 of the Companies Act, 1956 in addition to penal action prescribed in regulations of the respective professional institutes.

It may be noted that the Ministry of Corporate Affairs has been receiving representations from various stakeholders to simplify the approval processes under section 297 of the Companies Act, 1956.

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