CUTS' Competition Impact Assessment Toolkit

A Framework to Assess Competition Distortions Induced by Government Policies in the Developing World

30 CUTS International 1983 2012

CUTS' Competition Impact Assessment Toolkit

A Framework to Assess Competition Distortions Induced by Government Policies in the Developing World

CUTS
International

CUTS' Competition Impact Assessment Toolkit

A Framework to Assess Competition Distortions Induced by Government Policies in the Developing World

Published by:
CUTS International

CUTS Centre for Competition, Investment & Economic Regulation
CUTS C-CIER

D-217, Bhaskar Marg, Bani Park, Jaipur 302016, India
Ph: 91.141.2282821, Fax: 91.141.2282485
Email: c-cier@cuts.org
Website: www.cuts-international.org, www.cuts-ccier.org

Printed by:
Jaipur Printers P. Ltd.
Jaipur 302001

ISBN 978-81-8257-220-1

Citation:
Mehta, Pradeep S. (2014) CUTS' Competition Impact Assessment Toolkit: *A Framework to Assess Competition Distortions Induced by Government Policies in the Developing World*, CUTS CCIER, Jaipur

#1413

Contents

Abbreviations i

1. Introduction 1

2. Instruments for Effective Competition 5

3. Competition Distortions in Government Policies 7

4. The Assessment Framework 15

Annexure A: Competition Analysis of Markets 31

Annexure B: Application of Competition Principles *vis-à-vis* the Pharmaceutical Sector in India 35

List of Boxes

Box 1: Vignettes on Benefits of Competition in Developing Countries 3
Box 2: Lessons from Australia 11
Box 3: CCI's Advocacy on Banking Sector 15
Box 4: Public Sector Vaccine Units Closed 15
Box 5: Ministries Spar over Entry of Private Players 16
Box 6: Unfair Condition Acts as a Barrier 17
Box 7: NTB to protect domestic firm from foreign competition 17
Box 8: The 'grandfather' rule 18
Box 9: Entry Barrier for Private Players 19
Box 10: Parallel Imports 19
Box 11: Government Direct PSU Banks to Open More Branches in NE states 19
Box 12: Entry Tax Act Sparks Legal Battle 21
Box 13: Growth of Public Sector in India 21
Box 14: Exclusive Rights to Public Sector Companies 22
Box 15: CONCOR Abusing Dominant Position 22
Box 16: Supply Licence 22
Box 17: Compulsory Licensing 23
Box 18: Failure of Regulatory Environment in the Absence of a Legal Framework 24
Box 19: Violation of Principles of 'Competitive Neutrality 24
Box 20: New Excise Policy Evokes Good Response 26
Box 21: Governments Sometimes Benefit from Uncompetitive Situations 26
Box 22: Australia's Competition Principles Agreement 28

Figure 1: Competition Policy *vis-à-vis* Competition Law 5
Figure 2: Invisible Hand, Visible Results 8

Abbreviations

AIOCD	All India Organisation of Chemists and Druggists
APMC	Agricultural Produce Marketing Committee
BRE	Better Regulation Executive
BSNL	Bharat Sanchar Nigam Ltd
CCI	Competition Commission of India
CERC	Central Electricity Regulatory Commission
CIRC	CUTS Institute for Regulation & Competition
CONCOR	Container Corporation of India
DFID	Department for International Development
DoT	Department of Telecommunications
ECJ	European Court of Justice
EU	European Union
FDI	Foreign Direct Investment
FRAND	Fair, Reasonable and Non-Discriminatory
GMPs	Good Manufacturing Practices
HHI	Herfindahl Hirschman Index
IAs	Impact Assessments
ICDs	Inland Container Depots
IPR	Intellectual Property Right
M&As	Mergers & Acquisitions
MoHFW	Ministry of Health and Family Welfare
MRTPA	Monopolies & Restrictive Trade Practices Act
MTNL	Mahanagar Telephone Nigam Ltd.
NCP	National Competition Policy
NPPP	National Pharmaceutical Pricing Policy
NTBs	Non-tariff Barriers

OECD	Organisation for Economic Cooperation and Development
PSU	Public Sector Undertaking
R&D	Research and Development
RBI	Reserve Bank of India
RIAs	Regulatory Impact Assessments
RSBCL	Rajasthan State Beverages Corporation Ltd.
SAWTEE	South Asia Watch on Trade, Economics & Environment
SoEs	State-owned Enterprises
SSNIP	Small but Significant Non Transitory Increase in Price
TRIPs	Trade-Related Aspects of Intellectual Property Rights
USO	Universal Service Obligation
WHO	World Health Organisation
WTO	World Trade Organisation
ZCC	Zambia Competition Commission

Chapter 1
Introduction

The implementation of a comprehensive competition policy requires a strong state which many developing countries at low levels of industrialisation do not have and so clearly it would be unfair, if not absurd, to subject a Burkina Faso to the same competition policy disciplines as the UK

Although a great amount of empirical and theoretical literature on the benefits of competition exists today, skeptics have expressed doubts in the past about whether competition as a policy would work well for developing countries. One such view has been expressed by an eminent economist Jean-Jacque Laffont as: "Competition is an unambiguously good thing in the first-best world of economists. That world assumes large numbers of participants in all markets, no public goods, no externalities, no information asymmetries, no natural monopolies, complete markets, fully rational economic agents, a benevolent court system to enforce contracts, and a benevolent government providing lump sum transfers to achieve any desirable redistribution. *Because developing countries are so far from this ideal world, it is not always the case that competition should be encouraged in these countries.*" (italics added).[1]

Laffont suggests that even if competition policy of the kind followed by advanced countries, such as the US or the UK were appropriate for poor African countries, they severely lack the institutional capacity to implement such policies. The implementation of a comprehensive competition policy requires a strong state which many developing countries at low levels of industrialisation do not have and so clearly it would be unfair, if not absurd, to subject a Burkina Faso to the same competition policy disciplines as the UK. He, therefore, suggests that these countries turn to industrial policy as second best solutions.

Similarly, other arguments in favour of this view voice that development depends primarily on investment and that investment is more likely if firms make substantial profits which could be endangered if competition is maximised. In addition to this, many have strongly argued that implementation of competition policy and law should not be given priority in light of other existing pressing social concerns prevalent in these countries. And if they were to do so, it should only be restricted to curbing cartel conduct and not include merger reviews and abuse of dominance matters which are best left to the more mature and developed economies.

There is enough evidence to suggest that infusing competition in markets is essential if these markets are expected to work for the poor

On the contrary, there is enough evidence to suggest that infusing competition in markets is essential if these markets are expected to work for the poor. In many developing and developed countries, provision of services and production of essential goods is handled by private firms often in concentrated markets. This accentuates the need for a functional competition regime, to ensure that these firms do not engage in anticompetitive practices to the detriment of consumers or even small suppliers. The 2001 Nobel Prize winner Joseph Stiglitz 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".

The 2001 Nobel Prize winner Joseph Stiglitz 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"

Over the past years, the beneficial outcomes of interventions by domestic competition agencies of countries have to a large extent succeeded in dispelling the myth that competition policy and law is for the rich and the affluent only.

Speaking for a lesser developed country like Nepal, Ratnakar Adhikari of South Asia Watch on Trade, Economics & Environment (SAWTEE), Nepal said, "Small countries could rely, to some extent, on the institutional mechanisms of their large trading partners to tackle competition concerns involving foreign companies, however, national competition policy would still be useful to deal with anticompetitive practices in retailing and other non-traded service sectors."[2]

Competition is crucial if markets are to work well for the poor because they ensure efficient production and distribution. In a 2007 study,[3] the World Bank concluded that the world's poorest countries tend to have low levels of competition in domestic markets and a high degree of market dominance.

In a 2008 study, Brusick and Evenett observed that because of underdeveloped infrastructures, the competitiveness of domestic markets of developing countries is limited. This is one of the factors calling for the need of competition policy and law to address these deficiencies.[4]

An Organisation for Economic Cooperation and Development (OECD) report says that firms and sectors are far more likely to be competitive internationally if they operate within competitive domestic markets.[5]

Without an effective competition regime in place, the lesser developed countries are much more vulnerable to the cross-border impacts of anticompetitive practices

Competition is also important for the effectiveness of government procurement which has a direct bearing on social gains (for example, in the provision of rural infrastructure), as anticompetitive practices by suppliers can reduce what governments can achieve with the limited funds available, which if freed up, can be utilised towards other social infrastructure. Competitive markets are also more likely to provide the poor with newer opportunities for employment (when the competitive spirit in the market stimulates entrepreneurship and also curbs entry barriers in key markers).

Furthermore, without an effective competition regime in place, the lesser developed countries are much more vulnerable to the cross-border impacts of anticompetitive practices. The growing trade reforms and economic liberalisation need to be accompanied by an effective competition regime. Evenett argues that having a competition regime could make countries more attractive for foreign direct investment (FDI).[6] The 2005 Report of the Commission for Africa identified the role played by an effective competition policy in attracting foreign investments by creating a good and transparent business environment that boosts investor confidence.[7]

There is enough evidence to show that the developing world also needs to promote a competition culture through appropriate policies and laws, which would help its own growth and development

Kee and Hoekman (2003)[8] found in a study that there was a possible relevant side-effect of competition law such that industries subject to competition law had a larger number of active firms implying ease of entry. Since entry is made easier, the study went a step further to assess whether it explained changes in the corruption levels since it makes little sense then to bribe officials for a share of the market. The above discussion, therefore, leaves little doubt about the need for a functional competition regime in developing/least developed countries. It is only the design of the national competition regime which seems to be a matter of debate.

There is enough evidence to show that the developing world also needs to promote a competition culture through appropriate policies and laws, which would help its own growth and development. One cannot ask poor countries to rely on industrial policy alone, because a competition policy is the other side of the coin. However, development of institutions in the developing world is not as easy as in the rich world. Secondly,

Box 1: Vignettes on Benefits of Competition in Developing Countries

A. In India, the effect of competition on price and accessibility is best illustrated by the case of telecommunications with tele-density increasing from a mere 2.32 percent in 1999 to 47.89 percent in December 2009 and tariffs falling from ₹16 to less than ₹1 per minute. Moreover, such intense competition amongst various service providers has resulted in improvement in availability though quality of service is not as good.

B. In Zambia, two multinationals (Dunavat and Cargill Cotton) were dominating the market with a CR2 of 83.49 percent and abused the outgrower scheme by charging high input prices and paying a low final price. In 2005, the Zambia Competition Commission (ZCC) intervened in the matter. Before ZCC's intervention, they were charging the input prices at ZK40,000 per pack. While investigations were still underway, Dunavat indicated that they were now reducing input prices to ZK36,000. Cargill also decreased input price for the 2006 season by 28 percent. According to Cargill's estimates, the changes gave an average farmer an additional net income increment of 75 percent compared to the previous year.[9]

C. Mauritius had to rely on powdered milk to meet their and their children's nutritional demand as fresh milk was unavailable in the country prior to 2006. The powdered milk market was dominated by a handful of players one of whom decided to raise the price of the product enjoying a profit margin of nearly 41 percent. Awareness and interventions regarding the anticompetitive practices on consumers' daily lives by the civil society organisations led to the government eventually intervening and fixing the margin of profit for the sector at 14 percent leading to a substantial decrease in price.[10]

D. In Bhutan, the government requested Hindustan Lever Ltd. (renamed as Hindustan Unilever Ltd.) an Indian company to appoint more than one distributor, but the company declined. Bhutanese government which had no jurisdiction on HLL then passed a regulation to stop local traders in Bhutan to be exclusive agents for any foreign company. HLL was forced to appoint Food Corporation of Bhutan as the second distributor, which had a depot in all the 75 districts. Consequently, HLL's sales went up three times, and consumers in Bhutan were not dependent upon one private company which did not service the entire country properly.

E. In a study, Clarke and Evenett[11] found that there were significant reductions in overcharges on vitamins by the associated cartel due to anti-cartel laws in the 1990s. In Zambia, the average annual reduction in overcharges was about US$10,000 while the reductions were about US$20,000, US$180,000 and US$9.91mn in Tanzania, Kenya and South Africa respectively.

F. Immediately post the implementation of the Tanzanian Fair Competition Act in 1994, it was noted that markets with five or more incumbent firms achieved increases in productivity levels of between 13 and 24 percent.[12]

laws cannot be copied from the developed world, as one size or style will not fit all. Developing countries will have to adopt laws and implementation agencies by designing and adopting them to the local context and by providing human and financial resources which can be garnered.

Chapter 2

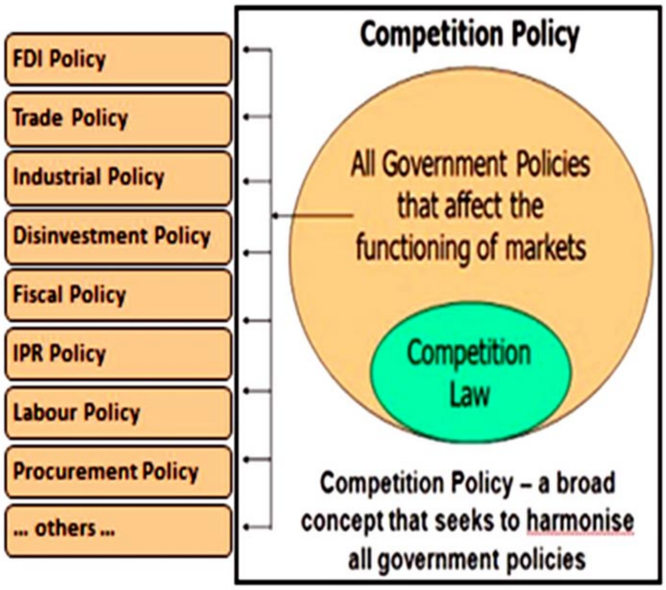
Instruments for Effective Competition

Competition policy and law are the two main instruments that ensure that the outcomes anticipated from competition are optimally realised. Unfortunately, most of the policy community consider these terms as synonymous and interchangeable. However, they are complementary yet distinct concepts (refer to Box 1).

Competition law is the framework of rules and regulations designed to foster a competitive environment and curb anticompetitive market practices

Competition law is the framework of rules and regulations designed to foster a competitive environment (i.e., promote competition) and curb anticompetitive market practices. A large number of developing countries have enacted a competition law[13] that regularly checks and seeks to rectify anticompetitive behaviour of enterprises, statutorily through the implementation of its legislative provisions that are designed to attack behaviour such as cartelisation, price-fixing, abuse of dominant position, anticompetitive mergers and takeovers that cause or have the potential to cause an appreciable adverse effect on competition in the market. While still maturing, there is a system in place to acknowledge and address such practices that thwart competition and challenge the economic growth of the country.

Figure 1: Competition Policy *vis-à-vis* Competition Law



Source: CUTS, 2007

It is a competition policy that, besides encompassing the competition law can also deal with anticompetitive dimensions inherent in some government policies and/or the anticompetitive outcomes of the manner in which many of them are implemented

Contrary to this, challenging the distortions and impediments induced by government erected institutional barriers to competition is not a simple application of the existing domestic laws, and in most developing countries falls beyond the jurisdiction of the competition authority. It is a competition policy that, besides encompassing the competition law can also deal with anticompetitive dimensions inherent in some government policies and/or the anticompetitive outcomes of the manner in which many of them are implemented. It also tries to bring harmony in all government policies that affect competition and consumer welfare.

Experience shows that the ideal process of evolving a national competition regime is for a national competition law to be preceded by a national competition policy. This methodology has also started to find acceptance in developing countries. One of them worth mentioning is Botswana, which first embarked on an economic mapping study to identify the policy areas of concern from a competition point of view; this was followed by an inventorisation of legislations that needed to be synchronised with the competition policy. Finally, the country developed a National Competition Policy (NCP) in 2005. Subsequently, the Competition Law of Botswana was adopted in 2009 and is currently being implemented by the Competition Authority of Botswana.[14] A few other countries have chosen similar paths like Malawi, Mozambique, Ghana, etc.

Australia adopted a competition policy much after its competition law, when it was discovered that there are many policy-induced distortions which cannot be tackled by the law. The Policy was adopted after a detailed review as part of the recommendations contained in the *Hilmer Report,*[15] 1993, and agreed to by the Federal Government and the state governments. It has since been implemented by the National Competition Council.

Following the preparation of the NCP in India, the Ministry of Corporate Affairs and the CUTS Institute for Regulation & Competition carried out snapshot studies in 13 subject and some cross cutting sectors in 2012 to analyse the types of competition impediments which prevailed in the market place

Following the Australian experience, India prepared a draft NCP in 2011 and is expected to be adopted soon. The country enacted a modern competition law in 2002 replacing the old Monopolies & Restrictive Trade Practices Act (MRTPA), 1969. The new law is under implementation since 2009. Australia had a competition law since 1974, but its competition policy was adopted in 1995. In the case of Australia, the economy gained by 5.5 percent once the competition reforms were carried out. Further, a 'Review of the NCP Reforms' undertaken in 2005 found that the benefits of these reforms touched the lives of its citizens from different economic classes, and across both urban and rural areas in the country.[16]

Following the preparation of the NCP in India, the Ministry of Corporate Affairs and the CUTS Institute for Regulation & Competition (CIRC) carried out snapshot studies in 13 subject and some cross cutting sectors in 2012 to analyse the types of competition impediments which prevailed in the market place.[17]

Chapter 3

Competition Distortions in Government Policies

Competition can be distorted both by anticompetitive practices of enterprises and by policies and regulations of national, state and local governments that have anticompetitive outcomes as an unintended consequence

Effective competition is one of the critical instruments for increasing economic growth through enhanced innovation, efficiency and productivity as well as ensuring social gains by overall poverty reduction and greater consumer welfare. In his book, the *Power of Productivity,*[18] William Lewis argues that if countries eliminated the policies that distort competition, they could grow rapidly. Competition can be distorted both by anticompetitive practices of enterprises and by policies and regulations of national, state and local governments that have anticompetitive outcomes as an unintended consequence.

In theory (which is often far from reality), the welfare optimum is achieved in perfectly competitive markets where prices are close to the cost of production and no single company has influence over the prices. Such markets are fully transparent and have a large number of sellers and buyers who possess perfect information regarding the products and services.[19]

What is Competition Distortion?

Competition distortion denotes a situation in which companies are not competing under equal conditions posed by several factors characterised by the anticompetitive practices of firms and some competition-distorting government policies, regulations and praxis.

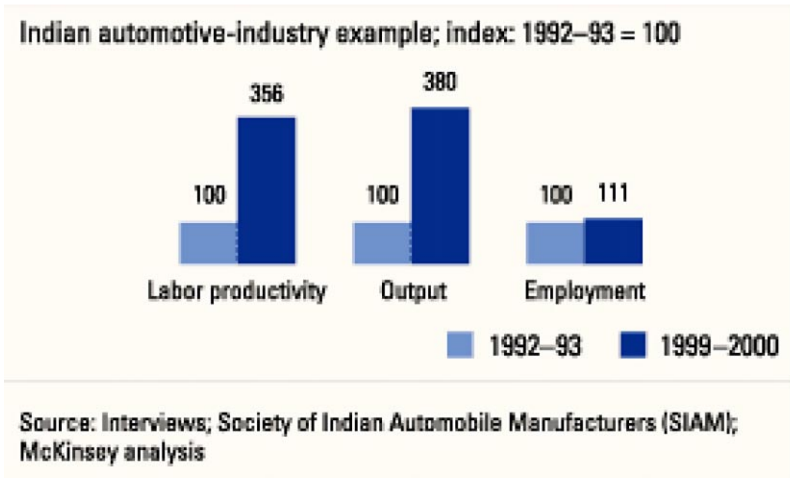
Lewis also says that one of the main obstacles to economic growth and poverty reduction in many countries is the reason that many policies distort competition. India offers a good example of this, he writes. He argues that when India abandoned many of the limits on foreign investment in the country's automotive industry during the early 1990s, subsequently, prices fell, demand for cars exploded, and output nearly quadrupled as seen below.[20]

One of the main obstacles to economic growth and poverty reduction in many countries is the reason that many policies distort competition

Not only that, India started exporting automobiles which was unimaginable in the pre-reform period. The competition ushered in by allowing several foreign manufacturers also helped boost the domestic auto components industry, and two of India's big business houses: Tatas and Mahindras started manufacturing and exporting vehicles with their own design.

The Planning Commission has mentioned that there are several existing policies, statutes and regulations of the government that restrict or undermine competition and hence review from the competition perspective needs to be undertaken

Figure 2: Invisible Hand, Visible Results



How is Competition Distorted?

Anticompetitive practices by firms are one cause for altering market conditions. Inappropriate regulations and policies by national, state and local governments leading to anticompetitive market outcomes is the other cause of market distortion. Furthermore, when government policies limit competition, even unintentionally, more efficient companies cannot replace less efficient ones, thereby having negative implications for growth. In the Eleventh Five Year Plan Policy Document[21] on Inclusive Growth (paragraph 11.29), the Planning Commission has mentioned that there are several existing policies, statutes and regulations of the government that restrict or undermine competition and hence review of such policies, statutes and regulations from the competition perspective needs to be undertaken.

Challenges Posed by Government Policy-induced Competition Distortions

The design and operation of several policies and practices of the government are such that they distort the market process and competition, usually in the name of public interest often which invariably means some entrenched/vested interests.[22] The distortions caused by government policies/practices to the market process may be broadly grouped and classified as those relating to (though not limited to) trade, procurement, financial, industrial, transport and fiscal policy.

The distortions caused by government policies/ practices to the market process may be broadly grouped and classified as those relating to trade, procurement, financial, industrial, transport and fiscal policy

A major difficulty posed by distortions of such nature emanates from the fact that in most government policies, such as trade remedial measures, other trade policy instruments, procurement policies, pricing policies and others that have the effect of weakening competition, the distortive component is accompanied with significant policy objectives and justifications. Such justifications may well be necessary in the larger public interest or for the achievement of social and environmental objectives. However, such justifications/assumptions cannot be

The 2005 report by the then Better Regulation Task Force in UK articulated the 'five principles for better regulation' as: (i) proportionality; (ii) accountability; (iii) consistency; (iv) transparency; and (v) necessity

presumed and need to be transparently and clearly communicated for an informed debate before a decision is reached. This is seldom the case.

It is sometimes also seen that even when the government is committed to introducing competition based market principles, the outcome is generally the opposite mainly because of futile and ignorant efforts to reconcile too many conflicting objectives.[23] Multiple objectives also result in limiting the accountability of governments.

A second challenge posed by such policies is that there is no mechanism in the existing economic governance regime of India that ensures that policies are formulated in a manner that their anticompetitive outcomes are minimised and they are least competition restrictive.

In UK every new law has to carry a Regulatory Impact Assessment (RIA). Better regulation has been focus there since the establishment of an advisory Better Regulation Task Force in 1997. The 2005 report by the then Better Regulation Task Force in UK articulated the 'five principles for better regulation' as: (i) proportionality; (ii) accountability; (iii) consistency; (iv) transparency; and (v) necessity. These five Better Regulation principles have been incorporated in Legislative and Regulatory Reform Act 2006.

In 2006, a permanent body called the Better Regulation Commission was established. Thus, in the UK, RIAs have been a key tool in helping improve the quality of regulation. RIAs have been produced by government departments for many years using guidance produced by the Better Regulation Executive (BRE). In May 2007, a new system of Impact Assessments (IAs) was introduced and made fully operational in November 2007. The Department for Business, Innovation & Skills is in charge of the process of implementation of this new system, and is particularly cognisant of protecting the competitive process in the market and preserving the interest of consumers, as well. In India, CUTS is pushing the agenda to incorporate impact assessments in law making and review process through its projects entitled 'Facilitating the Adoption of Regulatory Impact Assessment Framework in India' and 'Regulatory Impact Assessment in Indian Electricity Generation Sector' respectively.

Political Economy Factors Causing Distortions

Political economy factors play a huge role here especially in developing countries. In the theory of political economy developed by Anne Krueger[24] and Gordon Tullock,[25] the authors argue that in many market-oriented economies, especially developing, 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.

Antidumping and safeguard actions are also potential weapons of competition distortion though these can be justified on public policy grounds

Sometimes such government actions are acceptable or even necessary, but at other times it takes the form of policy distortions, bribery, corruption, smuggling and black markets. Rent seeking in such cases may be wasteful of resources, lead to a suboptimal utilisation of resources, a welfare loss associated with a particular set of policies and a divergence between private and social costs of certain activities.

Suppose the government decides on licence allocations (say in telecom, where three operators were allowed per circle), competition can occur through resources to influencing the probability or expected size of licence allocations (3 instead of 4). Some means of influencing the expected allocation may be in the form of inducements, which may not be easily detectable.

Others, like bribery, hiring relatives of officials or employing the officials themselves upon retirement are cases of rent seeking leading to a competition distortion. Further, in the case of a restriction like an import licence or tariffs may also lead to competition distortions. For example the steel industry may lobby for ban on imports or a higher tariff if imports are allowed. Antidumping and safeguard actions are also potential weapons of competition distortion though these can be justified on public policy grounds.

Legislative Review

The importance of regulatory impact analysis has grown enormously in recent times as countries have recognised that regulatory failure may impose higher costs than the market failure the regulations are designed to correct. The Planning Commission of India, in its recommendations on the Eleventh Five Year Plan, suggested a review of policies, statutes and regulations from the competition perspective, so that remedial action can be taken to remove or minimise their competition restrictive effects. Such a review, the Planning Commission said, should include regulatory impact analysis. This involves cost-benefit analysis of regulations, with the costs including those of compliance and enforcement of regulations, and with the benefits being the welfare gains produced by regulations.

Competition impact assessments are designed to look into how regulations impact on the behaviour of market participants and to forecast the longer-term benefits and costs

A Competition Impact Assessment (CIA) should be undertaken also. The draft NCP in India also recommends CIA. Competition impact assessments are designed to look into how regulations impact on the behaviour of market participants and to forecast the longer-term benefits and costs. Hence, they constitute an indispensable tool for the assessment of regulations. Countries including the UK, Korea, Australia and Spain[26] have conducted competition impact assessments of their policies.

Distortions caused by government policies and regulations are often found in relation to trade, procurement, pricing and subsidies. Policies

Box 2: Lessons from Australia

The Australian NCP came up with the need for a legislative review under Clause 5 of its Competition Principles Agreement whereby the Australian Government and all state and territory governments undertook to identify their existing legislation that restricted competition, and to review, and where appropriate, reform that legislation. The guiding review and reform principle [in clause 5(1)] of the Competition Principles Agreement) was that legislation should not restrict competition unless the benefits of the restriction to the community as a whole outweighed the costs and the objectives of the legislation can only be achieved by restricting competition and that a legislation that restricts competition is consistent with the guiding review and reform principle [clause 5(5)].

In 1996 each government developed a review timetable. These timetables identified in total about 1800 pieces of legislation. The identified legislation covered a wide range of topics. Governments also issued a policy statement that addressed the application of this principle to local governments. Governments published annual reports addressing their progress against the legislation review and reform commitment, over the period of the NCP. Where a review had a national dimension, the government responsible for the review could consider whether a national approach was appropriate. There were several areas where legislation with a national dimension was considered via a national approach. Because the review of such a large number of laws was an extensive task, the National Competition Council agreed that for purposes of assessing progress with reform implementation, the legislation should be prioritised on the basis of its likely effects on competition. Priority legislation was to be subjected to comprehensive review processes and other legislation to desktop assessments. Each of the National Competition Council's progress assessments considered legislation review and reform issues. The National Competition Council issued review guidelines to assist governments and others involved in reviews of legislation.

There was a related commitment under the Agreement to Implement the NCP and Related Reforms. This was a commitment by governments to set national standards in accord with the Principles and Guidelines for National Standard Setting and Regulatory Action and advice from the then Office of Regulation Review on compliance with these principles. The Office of Regulation Review reported annually on compliance.

Source: http://ncp.ncc.gov.au/pages/legislation

Policies sometimes seem to favour public sector players thereby distorting competitive neutrality

sometimes seem to favour public sector players thereby distorting competitive neutrality. (The reverse may also be true in some situations, due to governance deficit). Due to their anticompetitive outcomes, there is a need to scrutinise and assess their formulation and implementation on the touchstone of competition. This requires identifying the impediments the policies might cause to the market process.

While the Competition Assessment Toolkit devised by Department for International Development is very useful for market studies, the Competition Assessment Toolkit of the OECD[28] assesses the impact of government policies on competition

Of course, social, environmental, defence or security objectives can override economic interests in terms of determining the public or national interest. Where this is the case, intervention in markets to achieve such objectives can be entirely appropriate. It is necessary, however, that such deviations are justified, disseminated and are implemented in a transparent manner and that the objectives are clearly spelt out.

Further, it is very important that there should be a provision for constant review and sunset clause for the deviations from the principles of competition policy. Such provisions help in monitoring the deviations and thus the exemptions can be suitably modified with change in conditions which initially justified the deviations.

To achieve this, a review of government policies at both the Central and state levels (especially in a country like India, with a federal system of government), is essential. The toolkits devised earlier by countries and institutions are indeed useful in this respect. While the Competition Assessment Toolkit devised by Department for International Development (DFID)[27] is very useful for market studies (which used CUTS own experience), the Competition Assessment Toolkit of the OECD[28] assesses the impact of government policies on competition.

CUTS Competition Impact Assessment Toolkit is a complement to the existing tools, as it focuses mainly on analysing competition distortions caused by government policies *in the developing world*. This toolkit uses elements from the competition policy principles. These principles of competition have been identified by the Planning Commission as well by the Committee on NCP in India on the basis of research done by CUTS in India.[29]

CUTS Competition Impact Assessment Toolkit is a complement to the existing tools, as it focuses mainly on analysing competition distortions caused by government policies in the developing world

It is important, however, to note that a complete competition impact assessment ideally should require the preliminary analysis of sector selection, market definition and structure analysis. A process for undertaking a preliminary competition analysis of markets is annexed to this study (Annexure A).

The draft policy document of Committee on National Competition and Allied Matters, Ministry of Corporate Affairs,[30] in paragraph 8, enunciates several valuable policy initiatives, including:

(i) a review of existing policies, statutes and regulations, and an impact assessment of those proposed, from a competition perspective;
(ii) incorporation of principles of competition in all regulations;
(iii) setting up an in-house cell within departments/ministries with a mandate to:
  - carry out competition impact assessment of policies and statutes; and

- align public procurement regulations and practices with competition principles.

Given that the draft NCP of India lays down principles of competition, it is important that such a framework be aligned with these principles as well. CUTS Competition Impact Assessment Toolkit is an attempt in this direction.

To serve as an illustrative guide for users, a brief analysis of the ***pharmaceuticals sector*** in India along the lines of competition principles is annexed to this document (Annexure B).

Given that the draft NCP of India lays down principles of competition, it is important that such a framework be aligned with these principles as well. CUTS Competition Impact Assessment Toolkit is an attempt in this direction

It is an attempt to arrive at an algorithm that draws on previous work done in the area. It is however a step forward in the direction of marrying the elements previously etched out with the principles upon which competition policy should be hinged. Further, it takes account of various political economy challenges that have remained unaddressed in the frameworks developed thus far and which continue to contribute significantly to distortive outcomes.

Before listing the questions required to be asked when assessing the implications for competition of a specific government policy or measure, let us briefly identify the conditions that really distort competition in the market. This will help establish a link between how government interventions lead to such outcomes by creating conditions conducive to market failure.

Competition is distorted in the market when firms possess market power. Market power can be understood as the ability to profitably raise and sustain prices above competitive levels or restrict output below competitive levels. When firms possess market power, they are no longer price takers but are price makers and have the ability to manipulate prices to gain super-normal profits to the detriment of consumers and the economy as a whole.

Market power depends on several factors of which key are market shares/concentration, barriers to entry and exit, bargaining power of buyers and the degree of product differentiation in the market. Government policies lead to anti-competitive outcomes or distort competition in the market when they are directed at (or have the impact of) enhancing market power of a select few firms.

Chapter 4

The Assessment Framework

Ascertaining distortions induced by government policies

Distorting the level playing field between competitors

- *Does the policy discriminate between the state owned enterprises and the private players? In other words, does it distort competitive neutrality?*
  As OECD report has pointed out, "when there are no mechanisms in place to promote and guarantee competitive neutrality, most State Owned Enterprises enjoy unearned competitive advantages…" It is, however, important not to be confined to distortions that strictly fall within the ambit of such comprehension. There are cases of reverse competitive neutrality too, where the private sector has been favoured against the public sector, for extraneous reasons.

Box 3: CCI's Advocacy on Banking Sector

In 2007, the Competition Commission of India (CCI), under its advocacy functions, had observed that banking sector would reap the full benefits of competition only if the Reserve Bank of India (RBI) restricts itself to framing prudential norms for banks and leaves all other issues to market forces. Significantly, the CCI had suggested that public sector banks should not be given any preference over private sector ones.

On the other hand, this move of RBI could be a result of promoting economic interest by creating jobs, alleviating sponsored schemes and have good outreach (financial, geographical, etc.).

However, if the claim by private sector banks that they have started engaging in government-sponsored schemes is correct, than RBI's direction will only stifle competition in the banking sector as reduction in competition will not be offset by gains in public welfare.

Box 4: Public Sector Vaccine Units Closed

In January 2008, the Ministry of Health and Family Welfare closed down three public sector vaccine manufacturing units on grounds of non-compliance with Good Manufacturing Practices. The three units were: the 103-year-old Central Research Institute, Kasauli; the 100-year-old Pasteur Institute of India, Coonoor; and the 60-

year-old BCG Vaccine Laboratory, Chennai. The resultant impact on consumers has been catastrophic since these units accounted for over 70 percent of vaccines needed for the country's Universal Immunisation Programme. The number of adverse effects from immunisation deaths among children has risen four times since the three units closed down – it was reported to be 128 in 2010.

Moreover, following the closure, the vaccines were procured from the private sector in addition to those supplied by the World Health Organisation. In the absence of supply of vaccines from the public sector, competition in the healthcare sector has been stifled, and the cost of vaccines in the domestic market has risen by 50 to 70 percent in the two years since the closure of the units.

However, the current situation has changed after the Parliamentary Standing Committee on Health and Family Welfare criticised the practice.

Creates entry barriers

- *Does the policy limit the entry of foreign players into domestic markets?*
  This impediment is not really within the realm of competition policy because countries determine their foreign direct investment policies independently and on various grounds where it can be justified, rightly or wrongly. However, there can be situations where a Government may adopt a policy which limits or bars entry of foreign players due to lobbies in the country and thus restrict competition among domestic players only.

  It could also be due to reciprocity conditions where a country does not allow foreign players in a sector but is seeking access in the same sector in another country. Or it could also be dependent upon the commitments made by the country in international agreements such as on services in the WTO.

There can be situations where a Government may adopt a policy which limits or bars entry of foreign players due to lobbies in the country and thus restrict competition among domestic players only

- *Are procedures rule and time bound, transparent, fair and non-discriminatory? Are the licensing and authorisation conditions imposed for starting business too onerous or arbitrary?*

Box 5: Ministries Spar over Entry of Private Players

Private players may lose out on the opportunity to explore coal-bed methane, as two Former key Ministries — Petroleum and Natural Gas, and Coal — hold divergent views on them. Former Oil Minister M. Veerappa Moily proposed that private players should be allowed to explore Coal Based Methane (a form of gas found in coal beds) along with Coal India in its existing mines. But, Former Coal Minister Sriprakash Jaiswal contested this.

"The proposal to allow private companies to take out CBM in Coal India blocks was floated by the Petroleum Ministry twice in the past one-and-half years. But, the then Coal Ministry objected to it, as it was not comfortable allowing private players to foray into Coal India's mines," a government official informed.

With the third-largest proven coal reserves, and the fourth largest coal producer in the world, India holds significant prospects for commercial recovery of CBM. The resource was estimated to be around 4.6 trillion cubic metres, according to the Directorate General of Hydrocarbons.

Source: www.thehindubusinessline.com/economy/coalbed-methane-ministries-spar-over-entry-of-private-players/article5383846.ece

- *Do the standards set for product quality provide an unfair advantage to some suppliers over others?*

Box 6: Unfair Condition Acts as a Barrier

In a tender call for Ayurvedic medicines, the Directorate of Ayurveda in Ajmer, Rajasthan, India was seen to bend the rules governing the procurement of medicines by adding a rider that manufacturers must have a minimum five-year experience. This condition did not figure in the original call for tenders. The purchase committee had decided to invite public sector undertakings and cooperatives, with Good Manufacturing Practice (GMP) compliance for the purchase bid.

Later, in its advertisement, it inserted a condition requiring that the manufacturer must have a minimum five-year experience. Of the existing PSUs and co-ops that manufacture Ayurvedic medicines, only eight had experience of five years and more. Unless a minimum of five-year experience was genuinely necessary to ensure the level of quality sought, (and the purchase committee failed to adequately demonstrate this), such a rider acted as a deterrent for entry.

Also, operations of most of the qualifying companies were being managed by the same set of people which could raise the possibility of collusive behaviour between the officials and the specific manufacturers.[31]

Box 7: NTB to protect domestic firm from foreign competition

In Zambia, the sugar market is protected from external competition by non-tariff import barriers. The requirement for potential sugar importers to obtain import permits through a bureaucratic and non-transparent process was cited as a barrier. Further, there is a government requirement that all sugar being sold in Zambia must be fortified with vitamin A. This is an unusual requirement, which few if any other countries have imposed. The government argued that a large part of the Zambian population suffers from vitamin A deficiency, and since sugar is a staple commodity, it is a good medium through which to provide vitamin A to the people.

However, many stakeholders outside the government and the sugar industry consider fortification to be a mechanism for protecting the Zambian sugar market from foreign competition. They expressed the view that there were certain shared interests between Zambian sugar industry players and the Government, favouring continued protection from import competition, and allowing prices and profits to remain high.

Source: www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/6066.pdf

- *Is there a grandfather clause that treats incumbent firms differently from new ones in a manner that raises costs of production of the new players and creates entry barriers?*

Standard essential patents are essential to an industry for setting standards and their access needs to be provided on fair, reasonable and non-discriminatory (FRAND) terms so as to ensure compatibility, interoperability and competitiveness in that specific industry

Box 8: The 'Grandfather' Rule

The 'grandfather' rule followed in India for the purpose of airport slot allocation prefers the allocation of slots to incumbent air carriers over new air carriers. This creates a barrier to entry for new carriers and reduces the incentive to compete.[32]

- *Does the policy deny third party access to essential facilities?* These are the facilities which cannot be duplicated in an economically viable way, and where access to them by a third party is necessary to ensure effective competition in a downstream or upstream market. Control over essential facilities in network industries by dominant enterprises undermines competition by denying access of inputs indispensable for effective competition to new entrants. An example is the celebrated Microsoft case. The European Court of Justice (ECJ) in its 2004 ruling against Microsoft held that Microsoft's refusal to disclose interoperability information created significant barriers to market entry, owing to indirect network effects, and is thus an abusive conduct.

  This also applies in case of intellectual property if that serves as an essential facility. Standard essential patents are essential to an industry for setting standards and their access needs to be provided on fair, reasonable and non-discriminatory (FRAND) terms so as to ensure compatibility, interoperability and competitiveness in that specific industry.

- *Does the policy create geographical barriers?*

Box 9: Entry Barrier for Private Players

The Ministry of Railways, Government of India, has laid down that **private** container operators should build their own Inland Container Depots (ICDs). Stakeholders have expressed concern that the cost of procuring land from the Railways to build ICD has become a major entry barrier for these private players. At present, if the new container operators want to use Container Corporation of India Ltd.'s (CONCOR), the incumbent monopolist's, ICDs (an essential facility) they have to pay access charges. The access charges fixed by CONCOR are extremely high and are almost 'prohibitive.'[33]

Box 10: Parallel Imports

An example can be found in the area of Intellectual Property Right (IPR)-protected goods, and pertains to parallel importation. Parallel imports means that a trader can import IPR-protected goods from another country, if the same are available at a cheaper price than in his/her country where the good enjoys protection.

Under the World Trade Organisation (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), a country can allow import of IPR-protected goods from outside without violating the IPR laws. The counter argument is that once the goods are sold in the market, the principle of exhaustion of rights applies. Countries operating under an international exhaustion doctrine such as India may well be able to overcome the geographical barriers and trade in goods.

A common argument against allowing parallel importation is of counterfeit goods. However, this is a piracy issue, not to be confused with parallel imports. Parallel imports are allowed in India and a policy circular was passed by the Ministry of Finance's Central Board of Excise & Customs on this, and was issued on May 08, 2012.[34]

Alas, while the issue of parallel imports has been clarified by the government in the case of patented and trademarked goods, this has not occurred so far in the case of copyrighted goods.

Box 11: Government Direct PSU Banks to Open more Branches in NE States

The government's step (October 2011) to direct PSU banks to open more branches in the seven states located in the North-Eastern part of India, is a welcome move. The seven sister states in the region: Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland and Tripura — are home to 70 unbanked blocks and 55 under-banked districts as banks have generally shied away from this economically backward terrain mired by insurgency. However, the move to direct public sector banks only to serve this region (by providing a 'first mover's advantage') is being questioned by some experts This move will also add to the costs of PSU banks.

This kind of treatment, competition scholars feel is a violation of the principle of competitive neutrality. Lessons may be drawn from the telecommunications sector in this instance where it has been recommended to utilise the Universal Service Obligation (USO) Fund to provide subsidy to those that provide telecom and IT services via satellite in rural and hilly areas.

Universal service is an economic, legal and business term used mostly in regulated industries, referring to the practice of providing a baseline level of services to every resident of a country. To fund the telecom USO, India has set up a fund which can be used to provide assistance to the service suppliers.

Limits free and fair market process

- *Does it limit free flow of goods and services?*

  Article 301 of the Constitution of India provides for freedom of trade and profession in India, which is also guaranteed as a Fundamental Right. Article 304 (a) allows the state legislatures to impose any tax to which similar goods manufactured in its own state are subjected so as not to discriminate between imported goods and those manufactured in its state; and Article 304 (b) allows the state legislatures to impose reasonable restrictions on the freedom of trade, commerce or intercourse.

  In practice, however, the reasonable restrictions on the freedom of trade and profession have negated the very purpose of the Article 301. Further, Article 246 of the Constitution of India provides for division of power among Centre and states with respect to taxes. It allows taxation by the Central government up to manufacturing stage and on sale/distribution of goods by state governments. This division leads to multiplicity of taxes and cascading of such taxes on cost of production and services.

  Variance in the tax rates across states leads to distortion of trade and commerce flows.

  Similarly, the Eleventh Plan as well as the Twelfth Plan document[35] observed that regulations, such as Essential Commodities Act, Agricultural Produce Marketing Committee (APMC) Act and the control orders issued under these acts have created restrictive and monopolistic marketing structures. The document further added that these restrictions have an adverse impact on agricultural production and system, efficient flow of commodities and fostering competition. Such regional trade barriers may affect the national interest and will be disadvantageous to states in the long run.

The Eleventh Plan as well as the Twelfth Plan document observed that regulations, such as Essential Commodities Act, Agricultural Produce Marketing Committee (APMC) Act and the control orders issued under these acts have created restrictive and monopolistic marketing structures

Box 12: Entry Tax Act Sparks Legal Battle

Part XIII of the Constitution deals with Trade, Commerce and Intercourse within the territory of India. The Supreme Court of India in case of *Atiabari Tea Company Limited vs. State of Assam & others [1961 AIR SC 232],* has held that power to tax vested by the legislative list in the Parliament or State legislatures, is circumscribed by Part XIII of the Constitution and if the exercise of that power does not conform to the requirements of Part XIII, it will be regarded as invalid.

In the case of *Automobile Transport (Rajasthan) Ltd. vs. State of Rajasthan [AIR 1962 SC 1406],* the challenge was to the Rajasthan Motor Vehicles Taxation Act, 1951 before the Indian Supreme Court. The challenge to Article 301 was rejected by holding that "the taxes are compensatory taxes which instead of hindering trade, commerce and intercourse facilitate them by providing and maintaining the roads" There have been various cases decided on these matters. Supreme Court in a five member bench in the case *of Jindal Stainless Ltd. and another vs. State of Haryana and others [2006–145–STC-0544–SC] observed,* compensatory tax is a compulsory contribution levied broadly in proportion to the special benefits derived to defray the cost of regulation or to meet the outlay incurred for some special advantage to trade, commerce and intercourse. It needs to be shown that the payment of compensatory tax is a recompense for the measurable benefit provided to its payers.

Further, it said that if enactment invades freedom of trade, it is necessary to enquire whether the State has proved that the restrictions imposed by it by way of taxation are reasonable and are in public interest and satisfy the conditions laid down in Article 304(b) of Constitution of India. Hence, these judgments emphasise that the imposition of tax must be with definite purpose of meeting the expenses on account of providing or adding to the trading facilities and should not hinder trade and commerce. Based on principles enunciated by the Supreme Court, various appellate authorities and High Courts have held respective State's Entry Tax Act's as unconstitutional.

Promotes monopolies and their abuse

- *Does it encourage the exchange between suppliers, or publication, of information on prices, costs, sales or outputs?*

Box 13: Growth of Public Sector in India

In May 2012, the Indian Finance Ministry passed an order asking four dominant Public Sector Undertaking (PSU) insurance companies to share all the information they held regarding premiums, claims etc., so as to avoid any competition between them, thus creating a cartel within the industry. The order also includes a clause of not quoting lower prices at the time of renewal by any company to attract a client of another company. The companies happen to own over 56 percent of the total market share collectively. Policies like these are nothing but sanctioning cartelisation in the industry.

- *Does it grant exclusive rights for a supplier to provide goods or services?*

Box 14: Exclusive Rights to Public Sector Companies
There are several instances to show how exclusive rights are granted or preference given to public sector companies to provide services in various sectors. Three such examples are provided below, drawn from three key sectors of the economy: (i) **Civil Aviation:** Government officials and others on government business are only supposed to travel by the national carrier in India (Air India); (ii) **Postal Services:** Filled-up income tax return forms for taxpayers using the electronic payment system are to be sent only using the government postal services; (iii) **Bus Transport:** According to the Motor Vehicles Act, 1988 of India, preferences are given to state transport corporations to ply buses in new routes that are opened up.

- *Does it allow for firms to use incumbency advantages to create strategic entry barriers for new players?*

Box 15: CONCOR Abusing Dominant Position
CONCOR, an incumbent and a company owned by the Ministry of Railways in India, has an enormous infrastructure base, whereas the private players, allowed to operate in the space of container transport recently, find that building infrastructure requires a large capital outlay. CONCOR, with a market share of 95 percent, tends to misuse its dominant position against the new entrants. Therefore, even where private operators are able to win traffic, CONCOR is in a position to undercut prices, which it has been alleged to do, due to its wider scale of operation and preferential treatment. This deters competition and has an exclusionary effect. Besides this as Railways are the owners of CONCOR they provide step motherly treatment to private container operators in various ways, such as allocation of rakes or land under Railways to set up depots etc.[36]

Limits the scope to introduce new products or supply existing products in new ways

- *Is there a restriction on the products that can be supplied?*

Box 16: Supply Licence
The illustration above, whereby the Government of Zambia imposed a condition for potential sugar importers to get a license to supply, if and only if, they were able to supply sugar that fortified with Vitamin A.

- *Is there a restriction on the production process used or means of supply?*

Box 17: Compulsory Licensing
Intellectual property confers a legal monopoly while competition is concerned with economic monopoly or market power of firms. Intellectual property, therefore, is not in conflict with competition policy and law in this manner. However, a problem may occur if such power is abused. Policy towards intellectual property protection can also have an adverse impact on competition at times. The length and breadth of a patent is crucial here. The problem of ever-greening of patents can limit generic competition to a large extent. In an Indian cases where a cancer drug Glivec was denied patent on the ground of preventing ever-greening serves a good example. This action is in compliance with TRIPs and aims at ensuring that weak patents are not granted which have anticompetitive potential and can be abused later on. Further, the need is to balance the exclusive rights provided under the intellectual property laws and the major innovation enhancing goal of IP laws. This balance can be achieved by using tools like compulsory licensing coupled with reasonable royalty in rare cases where the exclusive rights provided are not being worked properly. Thus, compulsory licensing coupled with reasonable royalty ensures that the innovation is used effectively for welfare.[37]

It is an important principle of governance that there should be institutional independence in the structure

Limits institutional independence

It is an important principle of governance that there should be institutional independence in the structure. It is important that authorities looking into different aspects pertaining to the functioning of the sector be allowed to do so. For example, in the electricity sector, a need has been felt since 2009 to separate the working of the Load Despatch Centres, Transmission and Distribution.

However, little has been done in this regard despite the strong recommendations of the Central Advisory Committee of the Central Electricity Regulatory Commission (CERC) since 2009. The CERC said that it is not only important to grant independent status to these authorities but also to insulate the load despatch centres from political pressure.

However, the fact that this recommendation was not heeded to can be explained by reviewing the reason behind the massive, unprecedented 'grid-failure' that happened in July 2012 in India. One of the main reasons of this incident was that the 'northern grid' overdrew power to satiate the demand of the powerful farming community of northern India, which had experienced a bad monsoon. The regional load despatch centres were unable to intervene due to the political undercurrents in the matter.

Box 18: Failure of Regulatory Environment in the Absence of a Legal Framework

The lack of factual separation between policymaking (Department of Telecommunications), regulation (Telecom Regulatory Authority of India) and the incumbent operator [Bharat Sanchar Nigam Ltd (BSNL) and Mahanagar Telephone Nigam Ltd. (MTNL)] has partly contributed to potentially distortionary interventions or regulatory practices. In the absence of a legal framework demanding the same, the regulatory environment failed to impose competition friendly measures such as unbundling of the local loop, sharing of optic fibre cable and other critical infrastructure and sufficient regulatory oversight to ensure that points of interconnect (bottleneck infrastructure) are provided fairly and expeditiously by BSNL to its competitors.

The competition distorting impact of this regulatory deficit has been borne primarily by the customer as exemplified by India's low landline penetration rate (2.59 percent as on June 30, 2012) and abysmal broadband penetration rates. Likewise, *ex ante* regulation is also needed to ensure competition in market segments where private sector dominates such as access to intercontinental undersea cables through landing stations.

Source: The Economic Times, August 22, 2012

Is a subsidy or state aid distortionary?

- *Is the measure proportionate to what is required to achieve the intended objective?*
- *Does it offer an unfair advantage to the beneficiary vis-à-vis its rivals?*
- *Does it promote soft budget constraints and operational inefficiencies?*

Box 19: Violation of Principles of 'Competitive Neutrality'

Losses in the Indian domestic aviation industry are ubiquitous. Most of the running domestic airlines have been operating under huge losses. This led to the shutdown of Kingfisher Airlines. However, the government continued to help Air India, the incumbent government carrier, with regular bail-out doses. This is against the principle of fair competition in the market (domestic aviation), as has not only been felt by experts,[38] but also by the CCI.[39]

However, the CCI can only make suggestions to the Government of India, as it has done in this case which seem to violate the principle of 'competitive neutrality'. In spite of trying to infuse efficiency in its operations, Air India can continue to operate in the manner it has operated given the assurance that the Government would be there to bail it out, every time its financial position touches the bottom.

Recently, two PSU telephone companies. BSNL and MTNL in India have sought a bailout package to fund their one time spectrum fee burden. All the private competitors have rightly opposed this move.

In the European Union, there are regulations to check state aids by conducting a cost benefit analysis between the distortions caused by state aids and the benefits of correcting market failures to which state aid is directed at. Article 107 of the Treaty on Functioning of European Union addresses this issue and recommends adopting a refined economic approach and conducting a balancing test when dealing with approval of state aids.

There is ample evidence to show that state aids end up distorting market competition. They also promote operational inefficiencies that resemble those associated with monopolies as the incentive to perform is dampened.

Is the measure driven by vested interests promoted by the government?

- *Is the government enjoying benefits from opposing reforms?*
- *Is the government sharing the high profits through taxes etc. that dominant players may be able to make if they are allowed to maintain such position in the absence of competition in the market?*

Vested Interests

Business and their associations generally oppose competition regimes as they feel that it would reduce their market share and hence business profits. In most developing countries, economic power is concentrated and such businesses usually fund political activities and have great influence over economic decisions that politicians make.

When economic vested interests dominate political power they also limit growth dynamics and curtail economic opportunities for poverty reduction in developing countries

For example, in Thailand, though the government enacted its second competition law in 1999, to date it has had very limited impact due to the nexus between politicians and businessmen, and cronyism. The Competition Board is headed by the Minister and comprises businessmen too who are loath to implement the law in spirit and letter.

Countless other examples exist from other developing countries where business lobbies opposed the adoption of a competition law. Wherever the implementation took place, business lobbies with support of politicians created obstacles for proper implementation.

When economic vested interests dominate political power they also limit growth dynamics and curtail economic opportunities for poverty reduction in developing countries. Furthermore, the situation also creates entry barriers for new entrants. However, the vested interests among entrenched producer groups are also not homogeneous. The nexus between business and government may be difficult to break.

Box 20: New Excise Policy Evokes Good Response

The government backed monopoly in the case of liquor in the Indian state of Uttar Pradesh (a large state with 200mn population, which is perhaps bigger than most countries in the world) after it decided to abolish the system of multiple wholesale dealers on grounds of controlling the trafficking of spurious alcohol from neighbouring states and giving it all to just one seller of alcohol popularly known as Ponty Chadha presents a good example. This did not necessarily result in higher revenues, but certainly higher 'revenues' for politicians in the shape of rents.

It had first happened under the BSP government in UP in 2007-12 and has been reinstated by the Samajwadi Party after it came to power in 2012. Meanwhile Ponty Chadha was killed, but his business was inherited by his son.

A contrarian example comes from Rajasthan, another state in India, where the excise policy governing the distribution of liquor was changed and the government revenues shot up every year. A CUTS report, 'Towards a Functional Competition Regime in India' (2005) highlighted how anticompetitive outcomes in the market often resulted from state government policies. The report was presented to the then Chief Minister of Rajasthan in a pre-budget consultation meeting in 2005. The state government was persuaded by the report's recommendations and made changes in the State Excise Policy with a view to break the liquor cartels prevalent in the state. The government also established the Rajasthan State Beverages Corporation Ltd. (RSBCL) to take over the role of purchaser and supplier of liquor, dispensing with exploitative middle men.

Furthermore, in a significant departure from its earlier policy of exclusive privilege system, the government introduced a two-tier system of licensing – licenses for wholesaler as well as retailer – on the basis of a fixed license fee. The process of allotment was based on a lottery system. The new system provides liquor selling rights to a large number of vendors. The lottery system meant that the selected vendors were not necessarily known to each other. The large numbers selected meant that cartel formation and implementation had been rendered impracticable.

Source: www.cuts-ccier.org/pdf/FairCompetitionLeadstoRiseinStateRevenue.pdf

Box 21: Governments Sometimes Benefit from Uncompetitive Situations

Papua New Guinea, for instance, had earlier prevented new entrants in the mobile phone market to protect the state monopoly in this sector, as the SoE would have been unable to compete effectively and because the government saw the public enterprise as a source of revenues. A similar case was unearthed by CUTS during its competition research and advocacy activities in Togo (7Up4 project). In Togo, the government, for a long time did not

To effectively prevent anticompetitive conduct, a country needs an effective competition law

renew the license of a second mobile operator (Moov), which had been gaining market space causing discomfort to the erstwhile state monopoly, Togocell. However, due to escalating public and media pressure, the government finally agreed to renew Moov's license to the relief of the Togolese consumers.

According to the Law on Mineral Resources of Vietnam, only SoEs are permitted institutional access to the national mines. Enterprises from the non-state can only gain access to these mines through contracts with SoEs, which is totally in contradiction with the principle of non-discrimination/fair treatment. Private cement producers in Vietnam have to get the approval of the General Cement Corporation (their very own competitors) on their allocated quota to import clinker for producing their own finished products – an authority which has been bestowed by the Ministry of Industry.

One can find example of CG Iron sheet sector in Bangladesh where the government decided arbitrarily that there is enough capacity in the country and did not allow new entrants, without appreciating the fact the new entrants may be able to produce better quality at a lower price.

Does not effectively prevent anticompetitive conduct

Developing country competition agency – going is tough

To effectively prevent anticompetitive conduct, a country needs an effective competition law. If one looks at the situation in developing countries there is a spurt of designing and adopting competition laws, which means the glass is half full. However, their performance varies and is much dependent upon the people who run it.

Zambia is a good case in point. The litmus test for this question is therefore the design of the law and the institutions which run them. Peru is a good example. Bangladesh is not so good example that the law has been passed but implementation is lacking. Moreover, the law is bad because appeals against the Commission's orders lie with the Minister.

In the same vein, the Kenyan competition regime was similar and now the latest law has created an independent body.

Long gestation period is common

Adopting or strengthening an existing law by itself will not help, there is need to create a strong institutional mechanism to enforce it for which the political will is very crucial

If competition policy and law is to yield the envisaged benefits, political will and consensus for reform is necessary. Adopting or strengthening an existing law by itself will not help, there is need to create a strong institutional mechanism to enforce it for which the political will is very crucial.

In Malawi, although the government claimed to support competition, there was a long gap between the enactment of relevant laws, the establishment of the competition authority and its functional initiation.

In Bangladesh, the Monopolies and Restrictive Trade Practices Ordinance remained on the statute books, which were inherited from Pakistan, after Bangladesh split from it. But the government only attempted to adopt a competition law until recently. In 2013, a new competition law was adopted by Bangladesh mainly because of the intervention of bilateral donors, such as EU and DFID as part of their support for improving the business climate, and aided by civil society organisations such as CUTS and international bodies. However, its actual implementation still remains a question mark. Even in case of India, the period between the adoption of the law and its actual implementation took almost five years.

If the answer to any of the nine questions (A to I) above is in the affirmative, the policy should require further analysis.

The last question to be posed before concluding analysis within the prescribed framework is shown below:

Box 22: Australia's Competition Principles Agreement

Legislative Review: The guiding principle is that legislation should not restrict competition unless it can be demonstrated that:

1. The benefits of the restriction to community as a whole outweigh the costs, and
2. The objectives of the legislation can only be achieved by restricting competition.

Balancing Interests: Public Notification and Justification of Deviations from Competition Principles

India and other developing countries are following the path of inclusive growth. There are several socio-economic and environmental factors that are given prominence in such an economy and policies have to be aligned to be in conformity with them.

An example is price control in public interest in the pharmaceutical sector to ensure affordability. Competition policy or in this case any policy must be tailored according to the specific needs of a country. Thus, there can be justifiable cases of deviations from competition keeping in view specific context.

A policy deviating from competition should adhere to the following rules:

- The stated objective should be well defined
- The policy should be necessary to achieve the stated objective
- The nature of restriction on competition should be identified
- The likely effect of restriction on competition and the economy should be analysed

- The policy should be decided in a transparent and non-discriminatory manner
- The costs and benefits of restriction should be weighed
- Alternative means to achieve the policy objective should be considered

If there is another policy alternative that may be able to achieve the same objective with a lesser extent of distortion to competition, then that should be employed

- Inclusion of a 'sunset clause' for the policy may be desirable
- Implementation of the policy should be monitored and reviewed

Annexure A

Competition Analysis of Markets

Preliminary Steps of Competition Analysis

I. Sector Selection – Rationale

In order to start with the exercise, one needs to select the sectors that should be subjected to a rigorous assessment. Some sectors may have more importance than others, because of their contribution to national growth and their impact on the quality of life of consumers. Distortions to competition can have severe adverse impacts on the economy and on the average consumer. One important criterion could be sector(s) which cause high public pain, and if such sector(s) can be tamed then public buy in of the competition law can be high.

Step 1: What are the commonly used methods to identify the sectors to be studied?

The sector selection should be based on the following factors:

- Importance to the economy
  Is the sector important to the economy, because:
  - it makes a significant contribution to national income or
  - it has linkages with other sectors/industries as a provider of inputs and services or
  - it provides scope for wider gains through innovation, improved distribution and business processes or
  - it is significant for investment and productivity levels?

- Importance in terms of consumers
  Is the sector important to consumers, because:
  - it supplies goods or services that are essential, or that account for a significant part of consumer spending or
  - it directly or indirectly affects the quality of life of the people or
  - it contributes to the alleviation of poverty

- History of alleged anticompetitive conduct
- Vested interests opposed to reforms
- Pattern of high market concentration

II. Determining the relevant market and competitors

The next step in any competition analysis is defining the relevant product as well as geographic market. Market definition is the most crucial step in any competition analysis. If markets are defined incorrectly, it affects further analysis such as market share calculation, assessment of barriers to entry, etc. For example, if markets are defined too narrowly, a firm may appear to be dominant when it may not be so and if they are defined too broadly, the opposite is true.

For example, Section 19(6) and 19(7) of the Indian Competition Act, 2002, lays down certain conditions to be considered while making such determination.

Section 19

(6) The Commission shall, while determining the "relevant geographic market", have due regard to all or any of the following factors, namely:—
   (a) regulatory trade barriers;
   (b) local specification requirements;
   (c) national procurement policies;
   (d) adequate distribution facilities;
   (e) transport costs;
   (f) language;
   (g) consumer preferences;
   (h) need for secure or regular supplies or rapid after-sales services.

(7) The Commission shall, while determining the "relevant product market", have due regard to all or any of the following factors, namely:—
   (a) physical characteristics or end-use of goods;
   (b) price of goods or service;
   (c) consumer preferences;
   (d) exclusion of in-house production;
   (e) existence of specialised producers;
   (f) classification of industrial products.

Step II: How to determine the relevant market for the purpose of the study?

Several jurisdictions follow a Small but Significant Non Transitory Increase in Price (SSNIP) test which is also known as the hypothetical monopolistic test. This can be simply explained as the smallest market that a monopolist can manipulate. The hypothetical monopolist starts with a product under investigation and then sees whether a 5-10 percent increase in its price is profitable. If it is not, then that means substitutes are available that render such price increase unprofitable. The monopolist then adds the substitute to the list and repeats the test to see whether the price increase is profitable then. This is an iterative process and ends once the hypothetical monopolist has found a group of all the substitutes such that an increase in price by 5-10 percent would be profitable for him. The test primarily relies on demand side substitutability and while EU additionally looks at supply side substitutability, the US does not as the same can be addressed when assessing barriers to entry and expansion.

This step should involve an analysis about the following:
Demand-side substitutability analysis

- Who are the existing suppliers in the market for a particular product?
- Who are the main buyers from these suppliers? Their purchasing history can throw some light on the substitutability of a certain product. If buyers move their purchases between suppliers as opposed to being fixed to the select few, substitutes for the product exist in the market.

Supply-side substitutability analysis:

- Are there other suppliers that can enter the market by adjusting their production line to offer the same product?
- Are imports a realistic alternative for buyers?

If any of the above is possible then more substitutes exist. These could impose a competitive restraint on the product in question, making it difficult for a producer to sustain a price rise.

III. Market Structure Analysis
The structure of a market refers to the number and characteristics of the firms in it. Many industries or markets are dominated by a few firms. Others contain many sellers.

In some markets, products are homogeneous while in others they are heterogeneous (include branded products). Depending on the number of players, barriers to entry, nature of products, markets may be characterised as perfect competition, monopoly, monopolistic competition and oligopoly.

Step III: Ascertaining the following: (i) What is the level of concentration in the relevant market? (ii) Do entry barriers exist? (iii) Is there significant countervailing power by buyer? In other words, this step helps in understanding if the market structure competitive?

In determining the above, the following needs to be looked at:

- *Market concentration*
  The number of market players may help indicate how concentrated the market is. The Herfindahl Hirschman Index (HHI) is popularly used to calculate concentration based on market shares of firms. The index number is equivalent to the sum of the squared market shares of all firms in the market. If market shares have been stable over a period then it is possible that the market is concentrated.

- *Entry barrier analysis*
  There has been considerable debate on the definition of entry barriers for a long period. However at this point it may not be so important to get into that in the absence of a clear favourite one. It is, however, important to understand that entry barriers can retard, diminish, or entirely prevent the markets usual mechanism for checking market power: the attraction and arrival of new competitors. In order to be able to pose a threat to the incumbent firms, entry should be likely, that is, commercially feasible, sufficient in terms of scale of operation and timely, (say within a period of 2 years). It may be useful to see if there has been an instance of entry of new firms into the relevant market in the recent past and how successful it has been.

  Entry barriers may be characterised as natural (access to essential input, natural resources, intellectual property etc.), strategic (behaviour of incumbent firms that raise the rival's costs such as exclusive supply and distribution agreements, predatory pricing etc.) and regulatory (licensing conditions, discriminatory laws etc.)

- *Buyer power*
  If a single buyer or a small group of buyers account for a substantial part of the market then they can exert a countervailing power if the sellers try to abuse market power, so long as they have another alternative source of supply including self-supply.

Annexure B

Application of Competition Principles *vis-à-vis* the Pharmaceutical Sector in India

1. Principle: Fostering Competitive Neutrality

Application: Competitive neutrality not only means that public sector should not be unduly favoured but also that it should not be discriminated against. There are glaring instances of distortion of a level playing field in favour of private sector (reverse competitive neutrality) in the pharmaceutical sector.

For example, three large vaccine manufacturing Public Sector Undertakings (PSUs) (Central Research Institute at Kasauli, the Pasteur Institute of India at Coonoor and the BCG Vaccine Laboratory at Chennai) were closed down in January 2008 on grounds of non-compliance with Good Manufacturing Practices even though the vaccines produced did comply with standards of safety.

The government has, since the closure, been procuring vaccines required for the country's national immunisation programme from the private vaccine companies at high prices, thereby leading to a substantial increase in the expenditure on the universal immunisation programme.

Evidence has shown that private players offered vaccines at competitive prices prior to closing down of the three PSUs after which the government has been seen to steadily pay higher prices for procuring vaccines from them to this day. This is because the closure has stifled competition in the pharmaceutical sector with only private vaccine manufacturers operating in the market, and this has seen a resulting increase in the price of vaccines by up to 75 percent.

2. Principle: Procedures to be Rule Bound, Transparent, Fair and Non-discriminatory

Application: Under the Drug and Cosmetics Act, 1940 the regulation of manufacture, sale and distribution of drugs is primarily the concern of the State authorities while the Central Authorities are responsible for approval of new drugs, clinical trials in the country, laying down the quality standards for drugs, control over the quality of imported drugs, coordination of the activities of State Drug Control Organisations and providing expert advice with a view of bringing about uniformity in the enforcement of the Drugs and Cosmetics Act.

It is essential that the Drugs Controller General, the State Drugs Controllers and the various drugs inspectors and other officers carry out these tasks as per the laws, rules and regulations laid down in a transparent and non-discriminatory manner.

Quite often it has been seen that rules are not applied in a transparent or a fair manner. Authorities also use circulars etc. to define their own interpretation of the laws and policies without proper consultation with the affected parties.

In *Sagar Medical Hall vs. State of Bihar* a petition was filed against the order of State Government restraining the regional licensing authorities from issuing or renewing licence for the wholesale and retail sale of drugs. Rule 64 of Drugs and Cosmetics Rules, 1945 provides for conditions subject to which a licence shall be granted or renewed. The State Government's justification for its policy decision was that the ban on the issuance of wholesale and retail drug licences was a temporary measure to prevent the spurt of spurious drugs.

The State Government said that there were adequate drug stores to meet public need. The High Court held that the grant and renewal of drug licence is governed by statutory rules and nowhere do such rules provide that the license can be declined or renewal refused on the ground that the State Government reckons that the number of shops are sufficient to meet demand of public.

Thus, executive decisions of the State cannot override the statutory provisions. This case shows how sometimes rules are misinterpreted by the authorities in a manner that can be detrimental to competition.

In *Bharat Biotech International Ltd. vs. A.P. Health and Medical Housing and Infrastructure Development Corporation*, eligibility criterion for the tender for supply of Hepatitis-B drugs required WHO pre-qualification. This was challenged as arbitrary and with the intent to exclude competition in favour of one manufacturer. The High Court evaluated the provisions of Drugs and Cosmetics Act. The court concluded that the State had failed to establish that WHO adopts standards that are higher than the standards adopted under the Indian law for assessing the quality of the product. It held that the Indian laws were stringent in ensuring a high standard of drugs but that these laws have been futile because of laxity on part of the State in enforcing the law. Instead of rectifying the implementation of the Act, the State cannot seek shelter in such a manner. Accordingly, such a prequalification was set aside.

3. Principle: Third party access to essential facilities on reasonable fair terms will ensure effective competition and therefore, should be provided in law

Application: It is correct to assert that all forms of IPRs have the potential to stifle competition since they provide exclusive rights to the person who has claimed the same for an invention etc. as the case may be. With regard to the pharmaceutical market, patents confer monopoly status to pharmaceutical companies as patent-holder who is granted exclusive rights to make, use or sell a product for a specified period. Access to affordable medicines can seriously be impacted in cases where patented drugs are priced to extract monopoly profits. This is more of a concern now in India with the product patent regime in place from 2005 to comply with India's obligations under the WTO TRIPs Agreement.

The abuse of monopoly power bestowed on the patentee by the patent system could be remedied through licenses. This method of allowing flexibility was introduced by the TRIPs to safeguard public health. India has incorporated liberal provisions of "compulsory licensing" in the Patent Act (Sections 84, 92, 92A, 100). Unfortunately little has been done to date, with the exception of one case of compulsory licensing. Compulsory licensing can allow manufacture of generic versions of patented drugs before the expiry of the monopoly right conferred on the patentee, subject to certain grounds laid out in the relevant provision.

Furthermore, recognising the potential of monopolistic practices to thwart competition through the patent regime, the Parliament introduced a significant and important provision to prevent 'ever-greening' and the grant of frivolous patents.

This is section 3(d) of the Patent Act. The High Level Maira Committee on Affordable, Accessible and Acceptable Medicines for all reiterated that there is evidence that the international norms for IPRs in the pharmaceutical industry may be going too far towards protecting the monopolies of the inventors and hurting the interests of consumers.

Therefore, India must not go any further than what it is already committed to under WTO and TRIPs. It must not succumb to the pressure being brought on it to modify Section 3(d). While this sub-section is one of the most pro-competitive provisions in the Indian Patent Act, its success has been limited due to the manner in which it has been interpreted and implemented by the Patent Office.

4. Principle: Ensure Free and Fair Market Process

Application: Many procurement policies of the government are seen to introduce entry barriers in the manner tenders/bids are drafted. For example, in a tender call for Ayurvedic medicines, the Directorate of Ayurveda in Government of Rajasthan, Ajmer was seen to bend the rules governing the procurement of medicines by adding conditions that manufacturers must have minimum five years of experience, a condition that did not figure in the original call for tenders.

On the other hand, the purchase committee had decided to invite public sector undertakings and cooperatives, with GMP compliance for the purchase bid without the five year clause. Later, in its advertisement, it inserted a condition that the manufacturer must have a minimum five-year experience. Of the existing PSUs and co-ops that manufacture Ayurvedic medicines, only eight had an experience of five years and more. Unless an experience of minimum of five years was necessary to ensure the level of quality sought which the purchase committee failed to adequately demonstrate, such a rider acted as a deterrent for entry of new players which also stifles innovation.

It is to be noted that government policies should not interfere with the free and fair market process by restricting market access to players.

The above referred Bharat Biotech case referred to in Para: 2.2 is another illustration of procurement policy practice distortions.

5. Principle: Effective Control of Anticompetitive Conduct through Competition Rules Application

Several anticompetitive practices occur in this sector, and these can be categorised into three main classes: (i) intellectual property rights related breaches, (ii) potential abuse of competitive norms arising from mergers & acquisitions, and (iii) collusive and other anticompetitive practices.

Anti-competitive practices in the healthcare delivery system range from doctors receiving kickbacks from pharmaceutical companies for influencing drug sales, to tied sales. With specific reference to doctors, suggesting more tests than necessary and accepting commission for referrals are practices, which may have anticompetitive implications. With particular reference to pharmacists, the anticompetitive practices most commonly engaged in are reflective of collusion.

In a CUTS study, the majority of pharmaceutical companies surveyed claimed awareness with respect to the existence of collusive practices in the pharmaceutical industry and a high 32.3 percent of respondents asserted that such practices prevail in the industry to a great extent. There have been instances of cartelisation along the chain some of which have been brought under the CCI scrutiny.

There is evidence of pharma trade engaging in anticompetitive practices by demanding higher margins from manufacturers with the threat of boycott, which has resulted in higher prices for the end consumers. For instance, the pharmacists, organised under the All India Organisation of Chemists and Druggists, and some of their state bodies, collectively boycotted pharma companies in order to pressurise them for higher margins in 1980s.

Aside from anticompetitive agreements, combinations that threaten market competition are a major concern with so many consolidations taking place in the past couple of years.

Matrix lab was acquired by US based Mylan Inc in August 2006, Dabur Pharma acquired by Singapore based Fresenius Kabi in April 2008, Ranbaxy Laboratories Limited acquired by Japan based Daiichi Sankyo in July 2009, Shantha Biotech by France based Sanofi Aventis in July 2009, Orchid Chemicals (injectible business) by US based Hospira in December 2009, Piramal Healthcare (domestic formulation) acquired by US based Abbott Laboratories in May 2010.

As a natural consequence of M&As, there is bound to be an increase in scale and scope of enterprise activities and reduction in the costs of the firms merged. However, such combinations may lead to higher prices and the acquisition of generic manufacturing firms can potentially lead to a wash-out of cheaper generic drugs from the market. What makes this worse is that most such transactions do not meet the threshold criteria laid down in the Act which qualifies for CCI scrutiny despite having potentially hazardous effects.

6. Notification and Public Justification of Deviations from Principles of Competition Policy

Application: Intervention in the market process to achieve social, environmental and other goals may be entirely appropriate. One such goal may be to ensure affordability of medicines.

The greatest conundrum in the pharmaceutical industry is how to balance consumer welfare with entrepreneurial interests. What health plans view as necessary to maintain equitable access to medicines, may be viewed by the manufacturers as inimical to Research and Development (R&D) and innovation.

In September 2010, the Parliamentary Standing Committee on Health & Family Welfare, in one of its reports suggested a series of measures like increasing the number of drugs under price control, a blanket cap on profit margins of all medicines and promoting the use of generic drugs to make them more affordable and accessible to the common man. Dr. Reddy's Laboratories opposed the Parliamentary Standing Committee recommendations on increasing the number of drugs under price control and placing a cap on profit margins for all medicines.

Their argument was that the Indian pharmaceutical industry needs huge investments in research and development. Unfortunately, capping the prices of drugs cuts down profits, thereby reducing the availability of finance and discouraging investment in research. That is, it was argued that the lack of commensurate rewards would reduce the incentive to innovate.

A draft National Pharmaceutical Pricing Policy was introduced in 2011 which sought to bring about some changes to the methodology used to calculate drug prices and other issues. The draft policy also proposed the decontrol of bulk drugs from price control. This was unanimously welcomed as it was felt that it would reduce our growing reliance on imports from China.

There is not yet a mechanism that strikes the desired balance. However it is important that policies calling for price control which have the potential to adversely impact competition and trade be publicly notified, justified and implemented in a transparent manner and not just presumed in the interest of meeting national priorities.

Endnotes

1. Laffont, J.J. (1998), "Competition, Information and Development", Annual World Bank Conference on Development Economics, 1998, pp. 237?57
2. It is, however, important to understand here that a framework that works for the developed world may not necessarily work for the developing world. But this argument has been taken up in greater detail in subsequent sections
3. FIAS Report, 2007
4. Philippe Brusick and Evenett, Simon J. "Should Developing Countries Worry About Abuse of Dominant Power?" Wisconsin Law Review 269, 2008
5. OECD Report on on Promoting Pro-Poor Growth: Private Sector Development (2006)
6. Simon Evenett, "Links Between Development and Competition Law In Developing Countries", Case Studies for the World Development Report 2005, DFID, UK
7. Godfrey, Nick. "Why is Competition Important for Growth and Poverty Reduction", Global Forum on International Investment, 2008
8. Kee, H L & Bernard Hoekman, "Import, Entry and Competition Law as market Disciplines", Development Economics Research Group, The World Bank, 2003
9. The specific details on prices were obtained from Kaira, Thula (Executive Director, ZCC), "The Role of Competition Law and Policy in Alleviating Poverty – The Case of Zambia" in 'The effects of anticompetitive business practices on developing countries and their development prospects', UNCTAD, 2008
10. http://www.cuts-international.org/7up3/7Up3-enewsIV.htm
11. J.L. Clarke and Evenett, Simon J. "The Deterrent Effects of National Anti-Cartel Laws: Evidence from the International Vitamins Cartel," 2002
12. Stewart et. al., "Competition Law in Action: Experiences from Developing Countries", IDRC, 2007.
13. In 1995 about 35 countries in the world had a competition law. Today the number has crossed 130 and more are in the queue. The increase is entirely in the developing world. Importantly, many including developed countries are also amending or revising the competition laws in light of the experiences gained.
14. Refer http://www.competitionauthority.co.bw/, for activities of the Competition Authority of Botswana, and to view it national competition policy
15. Refer: http://ncp.ncc.gov.au/docs/National%20Competition%20Policy%20Review%20report,%20The%20Hilmer%20Report,%20August%201993.pdf, for the report "National Competition Policy', 1993
16. 'Review of National Competition Policy Reforms, Australian Productivity Commission, Government of Australia, 2005, pg - XII
17. Mehta Pradeep S, Natasha Nayak, Navneet Sharma, Saket Sharma (2012), "Infusing Competition Through Appropriate Policy Responses" CUTS Institute for Regulation & Competition (CIRC) & Indian Institute of Corporate Affairs (IICA), New Delhi, India (www.iica.in/SectorStudies.aspx)
18. William W. Lewis, "Power of Productivity: Wealth, Poverty and the Threat to Global Stability," University of Chicago Press, 2005.
19. http://ec.europa.eu/environment/enveco/economics_policy/pdf/single_market.pdf
20. Supra Note
21. http://planningcommission.nic.in/plans/planrel/fiveyr/11th/11_v1/11th_vol1.pdf
22. *Ibid*

23. Pradeep S. Mehta (ed.), "Competition and Regulation in India, 2007", CUTS and CUTS Institute for Regulation & Competition, 2007
24. Anne O Krueger, "The Political Economy of the Rent Seeking Society", American Economic Review, Vol 64, No 3, June 1974
25. Gordon Tullock. "The Economics of Special Privilege and Rent Seeking", Kluwer Academic Publishers, Massachussets, US, 1989
26. See for example: Competition Assessment Toolkit of Korea, Best Practice Regulation Handbook of Australia, Guide to Competition Assessment of Spain etc.
27. http://webarchive.nationalarchives.gov.uk/+/http://www.dfid.gov.uk/Documents/publications/comp-assess-fwork-2008.pdf
28. http://www.oecd.org/daf/competition/reducingregulatoryrestrictionsoncompetition/45544507.pdf
29. Chapter 4 in Competition & Regulation in India, 2007, Pradeep S Mehta (Ed), CUTS CIRC
30. Available at: http://www.mca.gov.in/Ministry/pdf/Draft_National_Competition_Policy.pdf
31. http://findarticles.com/p/news-articles/dna-daily-news-analysis mumbai/mi_8111/is_20100925/dept-adds-riders-restricts-firms/ai_n55412840/
32. http://circ.in/pdf/Civil_Aviation_Sector.pdf
33. http://circ.in/pdf/Railways_Sector.pdf
34. www.cbec.gov.in/customs/cs-circulars/cs-circ12/circ13-2012-cs.htm
35. Report of the Working Group on Agriculture Marketing Infrastructure, Secondary Agriculture and Policy Required for Internal and External Trade for the XIII Five Year Plan 2012-17. Accessed at: http://planningcommission.nic.in/aboutus/committee/wrkgrp12/agri/weg_rep_market.pdf on May 03, 2012
36. *Ibid*
37. http://www.financialexpress.com/news/green-implications-of-compulsory-licensing/1000252/0
38. www.thehindubusinessline.com/opinion/why-private-airlines-deserve-a-bailout/article2627479.ece
39. www.cuts-ccier.org/pdf/CDIDossier-Oct-Dec11.pdf

ISBN 978 81 8257 220 1

9 788182 572201

1983 2012 CUTS International

www.cuts-international.org