

## India badly needs a National Competition Policy -Essential for growth in a free market economy

\*MM Sharma



The Indian Prime Minister Modi's vision of achieving US Dollar 5 Trillion Economy by 2025 seems to be under cloud now. The recent Rupees 20 lakh crore economic package to stimulate growth during and post COVID-19 crisis may take time to bear fruits, but current macroeconomic indicators do not support the initial euphoria. Moody's downgraded India's ratings from 'stable' to 'negative' in November 2019 , Fitch Ratings released in May projected a 5 percent decline in growth to minus 4.6% and even IMF's recent report of 24<sup>th</sup> June has projected India's economy to contract by 4.5% in 2020-21 and IMF has slashed India's growth rate to 1.9% in FY 21. Clearly there is urgent need for some deeper and long-term economic reforms which can, inter alia, enhance competitiveness in the economy by eliminating market distortionary practices (like cartelization in public procurements etc.) to usher economic growth in across sectors.

In this context, one needs to recapitulate whether India has utilized the full potential of growth envisaged after our historic shift from a "state-controlled" economy to a "free market" economy and if not why? Have we been able to introduce a culture of competition in our markets which leads to efficiencies and higher productivity and hence higher growth and is the most essential ingredient for success of free market economy structure? Let' us look back for a while.

In the wake of globalisation, India adopted revolutionary measures of opening of its economy, removing of controls and to resort to liberalisation. It was, therefore, imperative that in order to cope up with the reforms and to introduce the concept of "Free markets" in the Indian economy, the Indian markets should be geared up to face competition from within as well as outside. India's economic reforms, started by Narasimha Rao Government in 1991, brought competition into the Indian markets and the benefits, both in terms of faster economic growth and consumer welfare are clearly visible. For the first time since independence, the ordinary Indian consumer has become sovereign and enterprises have to compete for his patronage, particularly in some sectors like telecommunication, aviation, consumer electronics, automobiles etc. However, the situation is not the same for all sectors like power, ports, mining, electricity etc. and the benefits of competition are yet to reach to the consumers in these sectors.

---

*\* The Author, former Additional Registrar in CCI, heads the Competition Law & Policy practice at Vaish Associates, Advocates, a Corporate, Tax and Business advisory Law firm in India. The views expressed are personal. The Author may be reached at [msharma@vaishlaw.com](mailto:msharma@vaishlaw.com)*

**What is Competition?** -The term 'Competition' refers to the economic rivalry amongst the suppliers and service providers present in the relevant market who are engaged in similar trade or provision of services and the policies implemented by the Government for building up market structure, conducive to such rivalry. These measures are implemented in a systematic manner so that a level playing field is established which helps to regulate the market and ensures availability of goods and services at reasonable prices as compared to the current level of costs. Healthy competition amongst the market players leads to not only maximization of consumer welfare and benefit but also increased productivity due to forced efficiencies in the system and hence leads to economic growth of any organisation.

**What is Competition Policy?** - Competition policy has been defined as "those Government measures that directly affect the behaviour of enterprises and the structure of industry" (*Khemani R.S. and Mark A. Dutz, 1996*). Proper implementation of competition policy leads to promotion of efficiency, which in turn maximizes welfare. The term welfare implies the sum total of consumer's surplus and producer's surplus, as well as taxes collected by the Government. Competition policy is the main frame of which competition law is the ancillary support. Competition Policy is pronounced in the trade policies in terms of which trade is regulated and does not require legislative sanction before enforcing the same. However, such policies should have the cover of the law, because in absence of such a cover there is likelihood that the policies may become discriminatory. In this context, there is an urgent need to adopt a National Competition Policy (NCP) which has proved as a key structural reform to boost economic growth in many developed countries. There is a direct relation between competition policy and competition law which is a tool to achieve the goals under the competition policy.

With this background, the Competition Act, 2002 was enacted in the previous NDA regime to replace the archaic MRTP Act, 1969 with the objective of preventing anti-competitive practices, promoting and sustaining competition, protecting the interest of consumers and ensuring freedom of trade. Control of anti-competitive agreements and prevention of abuse of dominant positions by large enterprises, regulation of combinations and competition advocacy are the broad thrust areas under the Act. The Competition Commission of India ("CCI") is the statutory body created to enforce the Act, with a mandate to preserve, protect and promote competition in Indian markets. Although enacted in 2002, the Act was brought into force in a phased manner from May 2009. But apparently, we do not seem to have utilized CCI's full potential due to absence of a national competition policy across all sectors, which, if implemented before commencing enforcement in 2009, would have produced results by now.

**Why we need a national competition policy?** - As stated earlier, the benefits of competition law, though in force for the last 10 years, through the institution of the CCI, have yet to reach to all sectors of our economy. Whereas Sectors like coal mining are still under the monopoly control of the State through Public Sector Undertakings, like the Coal India, other ostensibly "open" sectors such as power and road infrastructure have not been able to reap the benefits of competition due to strong governmental interference. Particularly, in the Power sector although the Electricity Act, 2003, enacted simultaneously with the Act by the Parliament introduced bold legislative reforms, such as mandating competitive- bidding, open access etc. but these measures have remained in the statute book, largely, due to absence of financial autonomy to the now 'unbundled' State Electricity Boards and also due to political interference by the State governments in their day to day functions. Similarly, the public procurement of goods and services by the governments, which constitutes approximately 20-30% of our GDP , continue to be infested with the menace of cartelization in the bidding process

for which no serious attempt has been made except for occasional references made by some large public procurement organizations such as DG S&D, Railways etc. to CCI. This appears to be not only due to the corrupt nexus between government officials and the interested bidders' i.e. vested interests but also due to a general lack of awareness of the reach of competition law or about the Act. This apathy and ignorance can be best cured if India adopts a NCP as a part of its Directive Principles of State Policy under the Constitution of India which each and every policy, regulations and even laws will be first required to be screened from the angle of their impact, if any, on the state of competition prevailing in the relevant markets.

**How NCP will affect economic growth?** -An effective NCP can bring in that much needed extra boost to the economy. The successful implementation of such a National Competition Policy leading to higher growth has been demonstrated particularly in Australia in 2005, where after the Council of Australian Governments (CoAG) adopted a National Competition Policy in 1995, found that productivity and price changes in infrastructure sectors, where competition reforms were implemented boosted Australia's GDP by 2.5 percent. Similarly, South Africa saw positive effects on total productivity factor because of implementation of competition policy. From a 2014 report of OECD, there appears to be a consensus that effective competition policy can result in an extra 2-3 percent growth. The absence of effective competition policy has been identified as one of the causes of economic problems faced by nations. Apart from Australia, competition policy has also been adopted and implemented by UK, Denmark, Italy, Turkey, Mexico, Hong-Kong, Malawi and Botswana. Recently, The Philippines has adopted a NCP. In India, however, a draft NCP, formulated in November 2011, is gathering dust in the corridors of the Ministry of Corporate Affairs, despite the Three-year agenda by the NITI Aayog recommending comprehensive competition policy reforms.

India's NCP should focus on promoting free and fair competition by focusing on competitive neutrality i.e. creating level playing field between all private and public sectors and gradual opening of sectors such as mining, ports, railways, and electricity towards true competition. A recent study<sup>1</sup> by CUTS - CIRC has also showed that an early adoption of NCP is essential for utilizing the full potential of digital economy in the wake of contemplated major disruptive trends like Internet Of Things, Machine to Machine learning, 5G etc.

The recent government initiatives to introduce limited privatisation of Indian Railways by introducing 109 pairs of routes for private train operations for passenger train services indicate PM Modi's growing realisation of importance of introducing competition in public sector. However, such ad hoc initiatives may not give the desired results, unless institutionalised and implemented after adoption of a well-considered and thoroughly debated NCP, which will be a challenge to PM Modi to bring national consensus of all political parties.

---

Note- This is the full text of my article, an abridged Press version of the same has been published in **THE FINANCIAL EXPRESS**, New Delhi on 22nd August, 2020. The same can be viewed [here](#).

---

<sup>1</sup> Mehta, Udai and Ujjawal Kumar (2020), Competition and Regulation in India -2019 published by CUTS International, Jaipur (Pp 2-3)