CHAPTER 1
INTRODUCTION

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In October 2004, I attended a grand dinner party at Jaipur where people from all walks of life were present. People were fawning over civil servants, as is the wont. Some of these fellows were quite pleasant, while many strutted around with their noses in the air. Who were the important people who were not there? – the officials of the Department of Telecommunications (DoT).

Why? A few years ago, telephone officials too strutted around such parties with their noses in the air, because people needed favours from them. For ordinary people like me, we needed a telephone, and one that worked. In any event, after getting a telephone, one would also have to grease the line-man etc., to ensure that it continued to work. Getting through long distance calls was another painful experience. I wonder how many people remember, sometime in the 1980s, when the former Chief Minister of Madhya Pradesh, Mr. P. C. Sethi, walked into a telephone exchange in New Delhi, brandishing a revolver because his trunk calls were not being realised.

What a sea change has taken place! I wonder how many people know the names of the telecom officials in their city any longer, because they don't need to. How many well-connected people make their way into the Telephone Advisory Committees? Hardly anyone, because it doesn't help any longer. Today, one can get different types of telephone services and make calls to anywhere at the drop of a hat. One no longer needs 'approach' to get a telephone connection. A similar story emerges if we look at the air transport sector. Earlier, employees of Indian Airlines too were wooed in order to get seats on over-booked flights. No longer. Now that there is competition, with many private airlines in the country, getting flight seats and at variable fares is no longer a mammoth task.

How does competition help us? Firstly, by ensuring that there are a large number of suppliers, as illustrated above, so that there is rivalry. Secondly, where there are natural monopolies, we require better regulation and price capping, so that we are not exploited. There is huge competition in the telecom sector, which is improving with new technologies available every day. Yet, the sector needs regulation. Rivals can collude, and thus negate the benefits of competition. Or, the tariff plans are made in such a way, that consumers cannot decipher. Thus, there is a Telecom Regulatory Authority of India (TRAI) at New Delhi, which governs the telecom sector including their performance standards.

TRAI is engaged in another area of regulation, which is also quite close to consumers, i.e. Cable TV. In this sector, there are a large number of suppliers i.e. the last mile operator, and a large number of consumers. Yet there is no perfect competition. Here we are stuck with natural monopolies, because they divide the territories among themselves. They too charge exploitative prices. We cannot even change our cable TV operator, or we risk getting no service at all. CUTS has done a nationwide survey on

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consumer satisfaction, results of which show just how dissatisfied they are. Then there are a huge number of other sectors, such as electricity, where too natural monopolies reign. There are regulatory institutions to govern these sectors, but their capacity is either limited or non-existent. This is made worse, as most regulators are manned with retired bureaucrats or judges, whose whole working life has been under a command and control regime. Their understanding of law and economics in the area of independent regulation is awful. Clearly, we have miles to go.

What is fortunate is that the new government at the centre is very serious about improving competition in the market place, and also to reform the regulatory structure that is in place. Currently, the Planning Commission is engaged in looking at the regulatory framework in infrastructure sectors and seeing how we can bring in best international practices to improve it. Thus, there is intent and the challenge is to convert it into reality.

2005, "Can-Do" Year for India

"I do hope that in the New Year we can all work together to build a more equitable, competitive and humane India…. This is a doable agenda provided we can set aside our "make-do" attitude and adopt a "can-do" spirit. I want 2005 to be a "Can-Do" Year for every Indian." Dr Manmohan Singh, Prime Minister of India, The Economic Times, December 25, 2004.

This report: "Towards a Functional Competition Policy for India" is dedicated to every Indian, the rich, the not-so-rich and the poor, so that we *can* build a more equitable, competitive and humane India. The process has to start now.

The Prime Minister's exhortation has its roots in the first days of the new government, which has made competition a serious policy issue. Extracted below are the relevant excerpts from the President's Address to the Parliament on 7th June:

> "Revival of industrial growth is of paramount importance. Incentives for boosting private investment will be introduced. Foreign Direct Investment will continue to be encouraged. Indian industry will be given every support to become productive and competitive. Competition, both domestic and external, will be deepened across industry with professionally run regulatory institutions in place to ensure that competition is free and fair".
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> "The Government will establish a National Manufacturing Competitiveness Council to provide a continuing forum for policy interactions to energise and sustain the growth of the manufacturing industry".
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> "The Government is committed to a strong and effective public sector, whose social objectives are met by its commercial functioning. But for this, there is need for selectivity and a strategic focus. My government will devolve full managerial and commercial autonomy to successful, profit-making companies operating in a competitive environment".
>
> "My government believes that privatisation should increase competition, not decrease it".
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> *The Common Minimum Programme adds: "*It will not support the emergence of any monopoly that only restricts competition. All regulatory institutions will be

> strengthened to ensure that competition is free and fair. These institutions will be run professionally".

It is in this background, that CUTS' research project endeavours to find out what ails the economy, in the context of competition, and what can be done to improve the situation.

What is Competition?

Competition is a process of economic rivalry between market players to attract customers. These market players can be multinational companies, domestic companies, wholesalers, retailers (even our neighbourhood shopkeeper) or a cable operator. Such a competitive situation may also be affected by market contestability, where in competition comes not only from existing players, but also from new players that could enter and contest in the market.

In their pursuit to be better than other enterprises, market players adopt the following ways:

- *Fair*: this relates to the adoption of fair means such as producing quality goods, becoming cost efficient, adopting the best available technology, more research and development and the like. In this sense, firms do their best in terms of innovation, choice, quality and service.
- *Unfair*: this relates to the adoption of restrictive business practices such as predatory pricing, exclusive dealing, tied selling, resale-price maintenance, cartelisation, refusal to deal and the like.

In either situation, competition in the sense of economic rivalry leads to a concentrated market, as the number of firms operating in them is reduced while the size of those still active increases considerably, resulting in a greater market power. Thus, 'competition kills competition'. This is true, if one follows the inherent logic within competition; the natural tendency then would drive competition to result in monopoly.

Given this, the appropriate definition of competition is "a situation which ensures that markets always remain open to potential new entrants and that enterprises operate under the pressure of competition".

Why a Competition Law?

Theoretically speaking, trade liberalisation is one of the most effective measures to ensure competition in the market place and curb abuse of market power. However, even this has its limits. Imported goods cannot reach the consumers directly and the well entrenched market players may have a grip over the distribution channels, which may nullify the gains of liberalised trade. Then, there are goods and services which are not tradable. There are goods which are tradable but only within a limited market. Cement being a classic example of this. Due to its bulky nature it is not economical to transport it to distant markets. As a result even geographical segments of a national market can be successfully monopolised or cartelised.

Thus, it is not surprising to see that while countries have gone for more and more trade liberalisation over the last one decade, more and more countries have also embraced competition laws, with many adopting new laws after scrapping their old ones. In the beginning of 1990, there were about 30 odd countries with a competition law. However, at present, the number is about 100 and many more are in the queue. Obviously there is a greater acceptance of the fact that trade liberalisation may not always be a perfect remedy for an abuse of market power.

The need for a competition law, thus arises from the following factors:

- To take care of the anti-competitive practices designed to restrict the free play of competition in the market; and
- To take care of the unfair means adopted by firms against the consumers in order to extract the maximum possible consumers' surplus; and
- To maintain and promote the competitive spirit in the market.

Competition policy and other policies

Competition policy is an integral part of economic policy. The main objective of competition policy is to preserve and promote competition as a means to ensure efficient allocation of resources in an economy, resulting in the best possible choice of quality, the lowest prices and adequate supplies to consumers. Although a competition law may be quite narrow in its scope, Competition Policy is much more broad and comprehensive in its scope, and tries to bring harmony in all government policies that may encourage or adversely affect competition and consumer welfare. To put it differently, ensuring competition is just a means to achieve the above-stated objectives.

There are complex inter-relationships between competition and other public policies. This factor has a direct bearing on the extent to which competition policy objectives can be pursued without being constrained by or conflicting with other public policy objectives. Accordingly, even in the absence of a competition law or a stated competition policy, many of the related concerns can be addressed, at least partially, if there are other policies, which are favourable to competition.

Different government policies that may encourage or adversely affect competition and hence consumer welfare, particularly, in the context of the present globalising environment would include:

- Trade policy
- Industrial policy
- Regional development policy
- Privatisation/disinvestment policy
- Regulatory reform policy
- Fiscal policy
- Intellectual property policy
- Consumer policy
- Labour policy, and
- Environment policy

In addition, sector-specific policies in various areas, such as health, electricity, telecommunications, financial services etc., also affect competition in the economy.

Australia is a classic case! It has framed a National Competition Policy (NCP), which is a set of policy reforms adopted by provincial Governments through out Australia. The objective is to encourage better use of the country's resources, and hence provide a higher standard of living, through increasing competition. NCP consists of a number of separate reforms, which, in aggregate, seek to deliver a widespread competitive revitalisation of the national economy. The policy is aimed at providing a consistent approach to the dismantling of barriers to competition across State borders as well as legislations to ensure that the same competitive rules apply to all sectors of the economy, regardless of ownership.

Promoting competitiveness through competition

Competition policy has a significant role to play in promoting competitiveness and growth. The term 'competitiveness' appears to have aroused considerable controversy in recent years. On the one hand, the word has become a kind of umbrella term for a wide ranging set of policies. On the other hand, the term evokes an analogy, which suggests that nation states compete in the same way that firms compete. It may be true that the nations do not compete but firms do. Nonetheless, it is equally true that while nations may not compete, they may help the firms compete more effectively by following a set of macro policies, which can create an enabling environment. For example the issue of clearances to set up a business and how long it takes.

A study conducted by the World Bank[1] reveals that in India, entrepreneurs on average go through 11 steps to launch business, which takes 89 days on average, as against a regional average of 9 steps and 46 days! In a sample of 145 countries, India was placed at the 130th position in terms of the number of days it takes to get the procedural clearances. What a shame!

The term competitiveness gained wide currency after the introduction of the Competitiveness White Papers in the UK and the European Community in 1994. The backdrop of these white papers was slow productivity growth and decline in relative economic positions of the UK and Europe compared with Japan and the US. The economic malaise of the UK and European economies was thought to be poor competitiveness.

The decline in the UK's (and Europe's) relative economic performance prompted much debate about the appropriate response. In many ways this debate was not new. The UK White Papers on competitiveness start from a recognition of the UK's relative decline and identify ten policy areas that influence competitiveness. One of these ten areas is the policy related to fair and open markets. Similarly, EU White Papers highlighted four areas for priority action:

- The promotion of investment in intangible assets;
- The development of co-operation between firms;
- Ensuring fair competition; and

[1] Doing Business in 2004: Understanding Regulation, The World Bank

- The modernisation of public authorities

Thus we see that both the white papers on competitiveness emphasise the need for ensuring fair competition in the market as an essential ingredient for enhancement and maintenance of competitiveness in the economy. These prescriptions apply to India as well.

Empirical evidence, though focusing mainly on the experience of developed countries, has confirmed that barriers to competition within an economy, whether due to governmental or private restraints, lead to losses in income and welfare. On the other hand, a well-designed and implemented competition policy promotes economic growth by ensuring better allocation of resources, as highlighted by the following examples:

A study carried out for the Australian economy estimates the expected benefits from a package of competition promoting and deregulatory reforms (including improvements in the competition rules) to incur an annual gain in real GDP of about 5.5 percent, or A$23 billion where consumers would gain by almost A$9 billion besides having an increase in real wages, employment and government revenue.[2]

A report prepared for the UK Government illustrates the benefits of introducing competition into markets in which, previously, it had been absent. The chosen markets were: Retail Opticians, International Telephone Calls, Net Book Agreement, Passenger Flights in Europe, New Cars, and Replica Football Kits. It was found that competition policy led to large price reductions, innovations and product development.[3]

A book released by the McKinsey Global Institute (MGI)[4]*, based on research on the economies of 13 nations, argues that the key to reducing economic inequalities between rich and poor countries is productivity and its links to competition and consumption. MGI studied national economies from the ground up, and points out that global economic agencies underestimate the significance of a level playing field. Competition is more important than education or greater access to capital markets in lifting a country's gross domestic product. To reduce barriers to competition, policy makers must stand up to business special interests and focus more on the welfare of consumers.*

In the context of developing countries, including India, there is a shortage of systematic analyses, regarding the benefits of adopting a competition policy and law. However, a relevant study of the Peruvian competition agency, Indecopi, found that in the first seven years of its operation, the economic benefits due to its operations amounted to $120m against operating costs of $20m, or six fold.[5] A study by the Korean Fair Trade Commission in 2003 found that the benefit (consumer welfare

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[2] http://www.unctad.org/en/docs//c2em_d10.en.pdf

[3] The Benefits from Competition: Some Illustrative UK Cases, Centre for Competition Policy, University of East Anglia, May 2004

[4] William W. Lewis, "The Power of Productivity", McKinsey Global Institute, The University of Chicago Press, 2004

[5] See Caceres, A (2000), "Indecopi's first seven years" in Beatriz Boza, ed., *The Role of the State in Competition and IP Policy in Latin America: towards an academic audit of Indecopi*, Lima.

increase and income transfer effect) outweighed the costs (KFTC's budget) of competition law enforcement in 2000 and 2001 by 34 times[6].

Under the 7Up1 project[7], we found that the Government in India did not appear very serious about the competition regime, as the budgetary allocation to the MRTP Commission was just about 0.0009% of the total government budget, when the ideal budget in other developing and developed countries was in the range of 0.0013% of the total budget. Even a small poor country like Zambia had provided 0.005% of its total budget to the Competition Commission.

Competition Policy and Development

An issue, often raised, while discussing Competition Policy in the context of a developing country, is the role of Competition Policy in the process of economic development of a country. The biggest challenge in the developing world today is to get rid of abject poverty that deprives a large section of their population a dignified life. An important approach to poverty reduction is to empower the poor, provide them with productive employment and increase their access to land, capital and other productive resources. But this approach many not be successful unless these people are linked to the markets and markets are made to work for the benefit of the poor people.

As stated in the World Development Report 2000-01,

"Markets work for the poor because poor people rely on formal and informal markets to sell their labour and products, to finance investment, and to insure against risks. Well-functioning markets are important in generating growth and expanding opportunities for poor people".

"Well-functioning" implies markets that work efficiently and without distortions. However, competition is often distorted by players, and it is essential that governments enact competition laws to regulate the distortions. What is very often ignored is the fact that the prevalence of anti-competitive practices in markets hurt the poor more. A rich person would not mind paying a dollar more for buying something but for people, living with less than a dollar a day, getting value for money for every cent they spend is more vital. This is the 'consumption' side.

If we turn to 'ability to pay' angle or the 'income' side, a sector that immediately comes to mind is agriculture. Of the 1.2bn people of the globe who live in extreme poverty, approximately 75 percent live and work in rural areas and about two-thirds of them draw their livelihood directly from agriculture[8]. The market for agricultural products is very often considered to be an example of a perfectly competitive market. However, there is a huge gap between the prices consumers pay and the prices farmers actually receive. This is because of the chain of intermediaries between

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[6] CUTS (2005), "Citizens' Report on the State of Competition Laws in the World", CUTS/INCSOC, Jaipur

[7] CUTS (2003), "Pulling Up Our Socks - A Study of Competition Regimes of Seven Developing Countries of Africa and Asia: The 7-Up Project", CUTS, Jaipur.

[8] International Fund for Agricultural Development (IFAD), Rural Poverty report 2001: The Challenge of Ending Rural Poverty, New York, OUP, 2001.

consumers and farmers that do not always work in a competitive manner. These intermediaries abuse their monopolistic dominance in the market for final products, while in the markets for primary products, they abuse their monopsonistic dominance. In a country like India, where two-thirds of the population draw their livelihood directly from agriculture, the linkage between market imperfections in agriculture goods and poverty is manifest.

It needs to be realised that competition law is not a luxury of the developed world, but one of the necessary tools for developing countries, in their fight against poverty. Developing countries should not be dogmatic about withdrawing from the markets as distortions and failures in markets are quite ubiquitous and the state needs to play a role in promoting a fair and orderly market.

Competition Policy maximises consumer welfare, by ensuring goods and services at best possible quality, offered at lowest prices and available in adequate quantities. Alongside, competition policy also leads to business welfare, by ensuring, for instance, intermediates goods and services consumed by businesses are available through a competitive process.

Promoting effective markets through competition

Competition, though seen as a means of attaining efficiency and fairness, may not necessarily promote these objectives. A perfectly competitive market with many small firms may achieve equality of opportunity (fairness) but may not achieve efficiency, as too many firms will mean that they will not be able to enjoy economies of scale. Obviously, competition policy must deal with trade-offs in its objectives and instruments. This concern has led to a shift from a structural approach to behavioural approach in enforcing competition in market. After all, in a fiercely competitive market, even a duopoly can produce an outcome that a perfectly competitive market generates. Thus, it may not be necessary to have a highly competitive market structure provided that appropriate rules of the game can be designed and enforced so that the behaviour of the market players remains competitive.

This approach may however become ineffective when there are natural monopolies and competition cannot be ensured as such. Situations could also arise where there might be a number of players in the market but the market itself is so segmented that the individual players become monopolists in the relevant market. The only way to get "competitive outcomes" in such markets is to put in place effective regulation. Thus, regulation in different sectors becomes an integral component of competition policy.

Obviously, competition policy is quite a complex issue. Unfortunately, there has not been much research on competition issues in India. In the past, efforts have been made by the Indian Institute of Management, Ahmedabad and CUTS, Jaipur. While the IIMA study did not go beyond policy level, a study by CUTS done under the 7-Up1 Project revealed a crying need to do further research in some sectors, which display typically anti-competitive behaviour: cement; trucking; services such as cable TV etc.

As the country is poised to implement a new competition law, a lack of understanding of the nature and extent of prevalence of different types of anti-competitive practices in India will pose a major challenge. CUTS has taken up this project to get a better understanding of the competition scenario in India. This will help:

- the government to draft and integrate a national competition policy
- the competition authority to set priorities, and
- other stakeholders to understand the situation and make appropriate interventions.

The project has involved top experts of the country who have good understanding on competition issues, as well as different subjects. Each of their names appear in the relevant chapter. The project was guided by a Steering Committee, comprising of eminent experts and economists[9].

The report itself is being published as two separate volumes. The first one is an Overview version, which carries all papers in a précis form, so that a busy reader can go through easily and get a flavour of what the issues are. This one is a more detailed report, carrying all chapters in greater depth, and is meant for the policy community, particularly the research community. It is also addressed to the more serious policy implementers, including the various branches of the Government, the Planning Commission, the Competition Commission of India and the National Manufacturing Competitiveness Council, the consumer and business community etc., to see what further needs to be done. Both the reports are not detailed research reports, but will serve as curtain raisers and as a road map for future more in depth work.

As an aside, the project had also established an e-discussion group: FunComp@yahoogroups.com. This is being used regularly to post news and views relating to competition and regulatory issues, which can generate debate and thus better learning among a large economic policy community in India. The e-discussion group has over 200 members, and it continues to grow.

This project has been supported by the Department for International Development (DFID), UK as part of a CUTS project: 7Up2, which is engaged in a comparative study of competition regimes in five other countries of Asia: Nepal, Bangladesh, Vietnam, Laos and Cambodia. Part of this project dealing with the three Mekong countries has been supported by SECO, Government of Switzerland.

The Report

To begin with, this chapter on Introduction gives an overview of issues covered in the volume. The entire volume is divided into eight parts covering systemic as well as sectoral issues.

Part I brings out India's experience with competition law and some of the specific challenges that the newly formed Competition Commission of India would face in implementing its mandate.

[9] See list at Page …

Evolution of Competition Policy and Law in India (Chapter 2) highlights the economic policy scenario in India before and after the 1991 reforms, the extant competition law: Monopolies and Restrictive Trade Practices Act, 1969, and the evolution of the new competition law: Competition Act, 2002.

What is interesting is that the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act) had its genesis in the Monopolies Inquiries Commission, 1965, which had uncovered strong concentration of economic power in various sectors of the economy. Consequently, the MRTP Act was enacted to prevent concentration of economic power, control monopolies, and prohibit monopolistic and restrictive trade practices. Unfair trade practices, a consumer protection provision covering deception, misleading claims and advertising etc, was brought in through an amendment in 1984. However, the MRTP Act was unable to deliver as expected, partly due to the weaknesses in its own structures and composition of the MRTP Commission (MRTPC), but also because it was created at a time when all the process attributes of competition such as entry, price, scale, location, etc were regulated. The MRTPC had no influence over these attributes of competition, as these were part of a separate set of policies. What a paradox! The MRTP Act was enacted to check the various competition concerns that resulted from the then control regime, but had no say in changing the very elements of that regime.

It was in 1991 that widespread economic reforms were undertaken and consequently the march from a "command-and-control" regime to a regime based more on free market principles commenced its stride. The economic reforms undertaken since the early 1990s significantly changed the economic environment in the country. Major amendments were made to the MRTP Act in 1991 but even these were considered inadequate to deal with the emerging economic order. In view of this, India adopted a new competition law, the Competition Act, 2002 (the Act) to replace the MRTP Act.

Key provisions of the Act are presented in *Competition Act, 2002: The Approach* (Chapter 3). Certain distinguishing features of the Act are noted. For instance, the Act emphasises the behavioural approach to examine competition in the market as against the structural approach followed by the MRTP Act. Importantly, the Competition Commission of India (CCI) has been given a competition advocacy role, which will help in creating a culture of competition. Other core areas on which the Act focuses are anti-competitive agreements, abuse of dominance and combinations regulations. One huge gap in the law is its ability to regulate abuse of intellectual property rights, even when it has been recommended in the TRIPs agreement.

A key reason for the ineffectiveness of the MRTP Commission was that it was poorly resourced. Hence, for the CCI to play its role effectively, it is imperative to resource it properly, including providing regular training exposure for capacity building of its personnel. The second drawback with the MRTPC was its inadequacy in dealing effectively with anti-competitive practices, which was due to lack of definitions, cumbersome procedures and scarce resources. The new law has tried to take care of these handicaps, but the resource issue will depend upon the political will of the government. However, it would bode well for the CCI to research some of the critical cases handled by the MRTPC, so that it can approach similar cases with greater confidence and cogency. Some cases could be the cement and tyre cartels, which were never cracked down by the MRTPC.

As part of the 1991 amendments, the MRTP Act was diluted by removing provisions on mergers & acquisitions (M&As), so as to allow unfettered growth. The fourth chapter (*Mergers and Acquisitions in India: Implications for Competition*) looks at the nature of M&As, post 1991 amendments and shows that merger behaviour of erstwhile MRTP companies was such as it would have come under the scanner of the now diluted MRTP Act. In fact, certain mergers relating to foreign firms involved market shares of a magnitude that would attract the attention of competition authorities in most countries, but in India all M&A activities were beyond challenge, as there is no M&A regulation from competition perspective since the 1991 amendments. The Competition Act has provisions for combinations regulations, but these will be effective from the third year of its introduction. Firstly, the definition of combinations is very narrow in its scope. It doesn't include joint ventures, alliances etc. Secondly, the threshold is so high, that many M&As will escape from its scrutiny. For effective M&A regulation, the CCI will have to also monitor those M&As which are out of the ambit of the Competition Act but may raise competition concerns.

As India integrates more and more into the global economy, it would become more prone to the anti-competitive practices operating on a global scale or originating elsewhere in the globe. *Cross-border Competition Issues* (chapter 5) addresses such issues and highlights the relevant provisions in the Competition Act, in particular that the Act has extra-territorial jurisdiction and embodies the 'effects doctrine'. To make these provisions effective the CCI would require substantial capacity building. It is suggested that efforts should be made to promote international cooperation at different levels: bilateral, regional and multilateral to tackle cross-border competition challenges.

Over the years, especially after economic reforms were initiated in the early 1990's various sectoral regulators, such as in power and telecommunications, have been established to attract private investment and create a predictable environment through the establishment of independent agencies. These regulators are also required to ensure healthy competition in the regulated sector. This can lead to overlaps with the competition law. However, we did not have any major problems until now, as our new competition authority has more or less been ineffective. So has been the case with some of our regulators as well. However, it is expected that the new competition authority and the regulators will be more active in the years to come. This may result in conflicts. Chapter 6: *Interface between Regulation and Competition Law* has tried to identify potential areas of conflict. It has also made an effort in offering some solutions based on a study of different jurisdictions where problems arose and appropriate solutions found out.

The chapter on M&As brings out one such issue of overlapping jurisdiction, which relates to M&A regulation. Besides, the CCI, there are other agencies which regulate M&As such as the Telecom Regulatory Authority of India, Electricity Regulatory Commissions (federal as well as state level), Reserve Bank of India, Securities and Exchange Board of India, company benches of the high courts, etc. However, the objective of regulating M&As varies across these agencies. Proper coordination mechanisms would be required between the CCI and all other agencies for an effective regulation of M&As in the country.

There are complex inter-relationships between competition and other public policies. Government policies such as trade policy, industrial policy, regulatory reforms, etc. may encourage or impede competition and hence consumer welfare. Thus, although a competition law may be quite narrow in its scope, competition policy is much broader and comprehensive, and seeks to bring harmony in all the Government policies. Part II of the volume traces this interface between competition and various policies of the government, both at the federal level as well as state level.

Central Government Policies: Interface with Competition Policy Objectives (Chapter 7) shows that as policy outcomes are sought to be generated, it is a persistent practice in India to do so without taking into cognisance that policies need to be framed and implemented in harmony with the market process, and not in a manner so as to stall the process. This is true of both the pre-1991 control regime and even the liberalised regime followed since the early 1990's. Several examples of policies in the current economic milieu are provided, which are not in harmony with the market processes.

Besides Central Government policies, there are policies/practices or regulatory failures of state governments, which lead to anti-competitive outcomes. Unfortunately, these issues are most often ignored, partly because of lack of awareness and partly due to vested interests. Chapter 8 on *State Government Policies and Competition,* does a survey of five such issues viz., procurement policy, excise policy, truck operations, bid rigging in construction contracts and retail services. Anti-competitive practices are rampant at the state level and we need state-level competition agencies, backed by appropriate laws, to tackle them. In fact, by promoting competition, the state governments can protect consumer interest as well as increase their revenues.

The two chapters in part II suggest that all laws and government policies should be assessed on the touchstone of competition. Governments at the federal and the state level should frame and implement policies by acknowledging the market process. One good way to do it is through a systemic 'competition audit' of all policies, new and old.

Among other goals, Competition Policy aims to promote consumer welfare mainly in terms of lower prices, better quality of goods and services, more choice and easy availability. Part III of the volume highlights this aspect of competition policy.

Competition Policy and Consumer Welfare (chapter 9) highlights that competition policy and law is just one of the tools in the larger context of other overarching public policies and approaches that need to be addressed for promoting consumer welfare. In the Indian context, besides the MRTP Act, an important central legislation to provide for the protection of interests of consumers is the "Consumer Protection Act, 1986" (COPRA). Both the outgoing MRTPA and the COPRA have similar provisions, particularly in the area of unfair trade practices (UTPs). However, the Competition Act, 2002 does not have provisions relating to UTPs, which henceforth will fall within the ambit of only the COPRA.

The chapter presents the experience with the working of the MRTP Act and COPRA in terms of protecting consumer interest. It is suggested that progressive legislations need to be encouraged to check market abuses and enhance consumer welfare. To help consumers either directly or through policy interventions, it is imperative to create and sustain a strong civil society movement.

For the new competition authority to become popular, without which it may face many hurdles thrown in by vested interests, it is necessary that it creates a public buy-in. It cannot do so by addressing only esoteric problems, such as cartels in the transmission tower industry etc. Not that it is unimportant to demolish cartels, which seem to pervade all our intermediate goods sectors. However, for getting a pro-people image, one way forward for the CCI is to take up systemic consumer abuses, which are ubiquitous at the local level. It could also do so in collaboration with the redressal agencies under COPRA, as retail level competition issues are covered under COPRA. Chapter 10: *Competition Abuses at Consumer Level: Study of Select Sectors*, has laid out a preliminary study of two consumer-level sectors: health services and school education to see how the prevailing anti-competitive practices at grassroots level are affecting the ordinary consumers.

So far, the report has addressed systemic and cross-cutting issues. In the subsequent parts, we take up sector-specific studies.

Part IV of the volume brings out competition concerns in the primary sector and discusses the issue of marketing of agriculture produce. In agriculture markets (chapter 11, *Agriculture Markets in India: Implications for Competition*), there is a huge gap between the prices consumers pay and the prices farmers actually receive. This is because of the chain of intermediaries between consumers and farmers, who most often collude. In a country where two-thirds of the population draws their livelihood directly from agriculture, the linkage between market imperfections in agriculture goods and poverty is manifest.

Alternative avenues for sale and purchase through cooperative marketing agencies are found to dilute market power of private trade to some extent. In order to provide more competition at the retail level and to benefit consumers and producers, innovative marketing mechanisms like *apni mandi* and producer’s sales counters in consumer centres should be promoted.

In the next part (part V), we look at competition issues in the manufacturing sector, in general, as well as cement, steel and pharmaceuticals sectors in particular.

Chapter 12, *State of Competition in the Indian Manufacturing Industry* makes a preliminary assessment of the extent of competition in markets in the 1990’s based on available evidence. It looks at changes in market concentration, impact of import competition and FDI, and price and profitability trends. What comes to the fore is that both domestic as well as foreign owned firms have taken dominant positions in many industries. Market concentration has risen in several industries as a consequence. The chapter highlights the need for developing a reliable and consistent data base. Linkage between industry, trade and FDI data needs to be established and maintained on a continuing basis. This would facilitate further in depth studies.

The next three chapters look at specific sectors in the manufacturing sector. Cement (Chapter 13, *Competition Issues in the Indian Cement Industry*) is a basic good that is used mainly in infrastructure and hence its availability at competitive prices is very important for developing countries. However, because of its bulky nature, the cement industry is very often insulated from outside competition. World over it has gained notoriety for collusive practices. India is no exception. Indeed cases were lodged with the competition authority a couple of times. But nothing came out. This is despite the fact that cartelisation in the Indian cement industry is an open secret. The weak provisions in the MRTP Act, along with weak investigation capacity due to resource constraints among other extraneous factors are the primary reasons for cartel formation going unchecked for years. The new law is a significant improvement in this regard with clearer provisions and leniency programme. Careful analysis of offers by different companies in Central and state government bids can give important clues if there have been patterns of systematic rotation of winning bids, stable shares of companies in overall procurement etc. This information would also be helpful in detecting collusive behaviour in the market as well.

Crying hoarse over the shenanigans of the steel industry, the Union Steel Minister: Ram Vilas Paswan has been threatening to set up a steel regulator. It is not a workable proposal, because nowhere in the world is there an independent regulator for any commodity. The only exception is pharmaceuticals, which is usually governed by a regulator, but that too under the relevant ministry. Independent regulation is used for the service sector mainly. The next chapter (chapter 14): *"Competition Scenario in the Indian Steel Industry*" examines the history of evidence of collusive practices in the steel industry. Needless to say, no action could be taken in this sector too. The structure of the study is more or less on the same pattern as the cement sector.

The pharma retail trade has been exploiting the hapless Indian consumer by colluding and gouging the industry by squeezing out ridiculous commissions. Chapter 15, *Competition Policy for the Pharmaceuticals Sector in India* shows that in this sector, it is not only the industry, but the trade is a bigger culprit. It is difficult to promote and maintain competition because of the peculiarity of the pharmaceuticals market in the sense that consumers do not decide their purchases. There is a need for an effective regulatory framework to promote good prescribing behaviour among the doctors and to curb collusive/rent-seeking behaviour of the pharmacists. Mergers and Intellectual Property Right (IPR) related abuse of dominance are likely to raise competition concerns in coming years. There is a need to study the behaviour of the bulk drug market and if desirable there can be further decontrol in this regard.

Infrastructure is a critical determining factor to achieve and sustain a high growth rate. However, poor and inadequate infrastructure continues to remain a major obstacle. To boost investment in the infrastructure sector and ensure good quality and accessible services, the Central Government has resolved to create a regulatory framework that is transparent; independent of Government and, provides an impartial balance between public sector and private sector suppliers and is based on international best practices. Besides, the Planning Commission has been asked to prepare a policy paper indicating what the regulatory structure should be for each infrastructure area. Part VI of the report takes up three infrastructure areas: telecommunications, energy and transportation.

The telecom sector is widely recognised as a success story of regulation and competition in India. The number of telephone lines per person, has grown almost ten fold in the last decade. This is partly due to the advent of private players in the market. However, competition and investment though present, is yet to be seen in fixed line services, which are used by the majority of households even as mobile phones now outstrip fixed lines in number. There are several barriers to entry in these latter services where benefits of incumbency are largest. It is here that BSNL, the state-owned enterprise rules the roost. The existing regulatory regime has been largely unsuccessful in controlling BSNL's market power and regulating it effectively. The fact that BSNL is wholly government owned also provides important clues to the reason for the failure to regulate BSNL effectively. This reason is the conflict of interest that government and regulators face in taking decisions that will impact BSNL's position in the market place (Chapter 16, *Competition Issues in Telecommunication Sector*)

In India, government still dominates most of the primary as well as secondary energy sectors at large, though a beginning has been made to allow the private sector in the area. Chapter 17, *Competition and Regulation in Energy Sector in India*, brings out that issues of regulation and competition policy are complex in the energy sector. Any piecemeal approach to policy formulation or implementation would delay the development of competitive markets. A cohesive view of competition in the entire energy sector is missing so far. Recently there were reports that the government is working towards developing a comprehensive energy policy. In such a case, it would be interesting to observe how much importance is given to make the sector competitive. It is advisable that keeping the bigger picture in mind, the choice between economic regulation vs competition be examined very carefully.

While the transport sector has grown at a healthy rate of 10 percent a year during the last decade, this is the sector that has the greatest possibility to hold back India's GDP growth target of eight per cent. Despite several efforts made by the government, the sector remains inefficient. The reason for this sorry state of affairs eventually boils down to policies that inhibit competition and their poor regulation in the various transport sectors, as disclosed by chapter 18, *Competition Issues in Transportation Sectors*.

In the case of the ports sector, for instance, despite allowing the private sector to invest in major ports, there are few instances of this happening, as it is up to the port authority (the Government) to decide to allow competition. It is worse in the case of the railways. They are the primary medium for transporting containers across the country's vast hinterland and enjoy a total monopoly over this, through the Container Corporation of India (Concor). In the aviation sector, similarly, the Government is just about to allow private airlines to fly abroad, but the barriers to entry are still high, whilst the policy is loaded against the public sector carriers. Goods transport by road is often at the mercy of a cartel of transport operators, who through collusion dictate rent-seeking freight rates. The chapter argues that whatever needs to be done in the transport sector to make it more competitive has to be done by way of policy reforms. Since transport is inter-modal, creation of a single super regulator could also be explored.

Part VII covers competition issues in services.

Competition and Regulation in Financial Services (Chapter 19) focuses on issues relating to regulatory bodies and regulation. Regulatory bodies exist in the financial services sector because of the fact that markets may fail. Given that entities in the financial sector are taking up several activities related to different markets in the financial sector, for example banks are becoming universal banks; there is need to move away from sectoral regulation to functional regulation i.e. more coordination is required amongst the various sectoral regulators in the financial market. The chapter argues that a change is required in the regulatory mindset and suggests the appointment of a super regulator for the whole financial sector. There is also a need to build the capacity of the regulatory authorities to deal with the changing environment of the global financial system.

The key objective of regulators is to address the original source of market failure which may or may not be, promoting competition, as lack of competition may not be the source of market failure in the first place. However, competition plays an important role in regulated sectors. Chapter 20 (*Competition and Professional Services*) presents a case study of professional services in this regard.

The chapter focuses on three professions: accounting, law and medicine. Due to the idiosyncratic nature of the services provided, the sector is characterised by asymmetries of information. Certain characteristics of regulatory design in professional services from the point of view of competition are highlighted. For example, entry conditions are required to ensure that the practitioner is well qualified. The risk involved is that, if the profession is captured then we may end up in a situation where the entry condition is also used to maintain market return. Restriction on advertisements protects incumbency advantages, as somebody who is well established in a profession gets a huge advantage through word of mouth. It is suggested that the CCI should engage in deeper study through public hearings etc., and a dialogue with professional regulatory authorities for better market practices. Alternatively, co-regulation can be encouraged to discipline self-regulated professions. State level competition and regulatory agencies can be established *inter alia* to enforce standards of professional conduct *vis a vis* competition concerns. Managing the professions through New Delhi-based bodies is a sub-optimal experience.

Both the Information Technology and Biotechnology sectors are emerging sectors in the economy. It is widely believed that these two sectors have been doing extremely well. The last part (part VIII) of the volume analyses the two sectors.

Chapter 21, *Competition Issues in Information Technology Sector*, reveals that during the last decade India has emerged as a major player in the field of information technology. The analysis shows that in the case of hardware, the removal of tariff barriers and the presence of a large unbranded market act as sources of increased competition. However, the situation appears to be different in the case of software. The high market concentration in some of the software segments, especially in the operating system, seems to not only have the effect of making software high-priced but also dampens the development of applications software on account of the lack of access to source codes. The chapter underscores the need for creating a more competitive environment in the software sector *inter alia* by promoting open source software. In this context, it argues for an active state role, to provide appropriate incentives for the promotion of open source software and create demand by promoting its use in all the e-governance projects. From the hardware side, innovations like ‘simputer’ need to be encouraged so that hardware becomes more affordable and leads to greater demand.

Chapter 22, *Implications of Competition Policy on Biotechnology Industry in India* highlights that India’s fast growing biotech sector has the potential of serious implications on the competition environment in the country. However, an array of pro-active legislations serves to ensure that competition is not impaired. India’s IPR regimes, whilst affording protection to inventions that fulfil the criteria of novelty, non-obviousness and commercial application, do still carry with it the elements for regulating anti-competitive behaviour on the part of the firms concerned. The flexibilities inherent in India’s IPR regimes, coupled with bio-safety, biodiversity and stringent food safety laws, could go a long way in promoting the biotech sector in a manner that is sustainable and economically advantageous.

Besides, there are certain sectors, such as media, retail sector, and postal services, which have not been included in the report. Anyhow, the typical competition issues in various sectors have already come up and there is little chance of value addition by adding new chapters.

In the media sector, for instance, the growth in readership created by price wars is a disruptive growth and leads to some artificiality in the numbers. This creates a distortion in newspaper economics and they have to, willy-nilly, depend too heavily on advertising. In Delhi, when Times of India and Hindustan Times went into a price war, the newspaper hawker was able to make money by not selling the copies at all. Price cuts reached a point where the papers sold at Re 1, while the number of pages was very high. The hawker got 40 per cent commission and so the net price he paid to newspapers was pitiful. They actually gained by not selling the paper to the readers. This led to an artificial economics, which is not good for the industry. Over-reliance on advertising also affects media’s role in promoting a competition culture in the country. With increased dependence on ad budgets, it is difficult to imagine, media providing any space to news against a market player, whose advertising budget is attractive.

Organised retailing is a sector to watch out for in India, with the emergence of giant stores, such as Shoppers Stop and Big Bazaar. Big retail chains are getting more powerful, and as they flex their muscles, manufacturers are realising the importance of dealing with them in a different manner, as compared to the regular mom-and-pop stores or neighbourhood *kirana* outlets. So will the large retailer call the shots in the future? There have been several cases of enquiry in other countries that have found retailers using their market (buyer) power to the detriment of suppliers and competitors. China is facing a similar challenge, as monopolistic behaviour is said to exist in the retail sector. Considering this, the Competition Commission needs to keep a close tab on this emerging sector.

Another important sector, which affects a major section of the society, is postal services. The state-run Department of Posts is a dominant player in the sector; in fact it has the exclusive franchise for delivery of ‘letters’. However, promoting a government monopoly does not suit the times. In fact, healthy competition from the private sector will only lead to more efficiency and innovativeness by the Government postal service. One has already seen this happening in the form of a plethora of new, non-mail services offered by the Post Office, such as insurance, bill payment, and savings schemes as well as birth of Speed Post, to take on the overnight delivery services of private couriers. It also needs to be realised that the Post Office provides universal service, by servicing remote areas and carrying low priced post cards. Hence, any competitive field that is drawn up for postal services in the country, needs to clearly spell out the means by which the Post Office would be compensated for this loss-making service. If the private sector has to play a role in this compensation then the rules should be clear-cut and penalties stiff. The experience in the telecom sector, where private licensees failed to meet their rural connectivity obligations and have been let off by mild fines, needs to be avoided.

In brief, the volume brings out that there is a need to frame a National Competition Policy for the country, so that Government and other economic regulatory agencies are aware of and take into account the competition dimension in their own policy formulations and implementation. A draft National Competition Policy Statement is annexed to this report.

The role of the government needs to be rationalised to promote effective markets. And a 'competition audit' of all new and old policies will help the government to promote competition.

Furthermore, there is an imperative need to create State-level competition and regulatory agencies to resolve local problems. Even with regional offices, federal bodies cannot be effective as has been seen in the case of the MRTPA.

The Competition Commission should be made accountable through independent review by consumer organisations, external agencies and peer review by competition authorities from other countries. To ensure effective function of the competition authority, it is imperative to resource it properly. This includes recruitment of skilled staff.

Additionally, the consumer movement in the country needs to be adequately resourced and strengthened to enable the competition and regulatory agencies to perform their tasks and their advocacy roles.