

National Competition Policy

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GOVERNMENT TO TAKE COMPETITION SERIOUSLY

The Government of India has made 'competition' a serious policy issue. Extracted below are relevant excerpts from the President's Address to the Parliament on 7th June, 2004:

"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".

"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".

"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 privatization should increase competition, not decrease it".

The National 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".

I. Preamble

1.1 The Government of India recognises that efficient, well functioning competitive markets are key to rapid economic and social development of the country. Competitive markets are essential to ensure that the ownership and control of the material resources of the community are so distributed so as best to subserve the common good; and that the operation of the economic system does not result in the undue concentration of wealth and means of production. Efficient and competitive markets are essential to ensure that the fruits of development are received by all citizens regardless of caste, creed and gender.

1.2 The National Competition Policy is being formulated to ensure that markets in the country function under the principles of free, fair and unrestricted competition. The National Competition Policy shall provide guidelines to different branches of the Government and agencies at all levels in maintaining the appropriate competition dimension, while taking any step or decision which will have an impact on the economy and consumers. The National Competition Policy seeks to maximise social welfare. The National Competition Policy Statement will be a medium-term document, subject to a parliamentary review every three years.

II. Need for a National Competition Policy

2.1 The rationale behind the National Competition Policy stems from Article 39 of the Constitution of India, which has enshrined the Directive Principles to be followed by the State, to ensure all-round welfare of the citizens of the country. In Article 39 (b) and (c) the Constitution adds: “(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

2.2 Since early 1990's the Government has initiated the process of greater market orientation through a series of reform measures. The key objective being to promote competition and ensure efficient use of available resources.

2.3 In spite of this, there exist distortions in the economic management of the country, as often policies are framed without acknowledging the market process. Moreover,

there is no consistent approach followed in the various policies that affect competition.

2.4 There are also several competition concerns in the market place, which adversely affect consumer welfare as well as business welfare.

2.5 India has had a competition legislation the Monopolies & Restrictive Trade Practices Act since 1969, which is to be replaced with the Competition Act, 2002. India has also enacted a consumer protection legislation: Consumer Protection Act in 1986 (COPRA) which recognises the rights of consumers and provides for an easy and simple redressal system. It is one of the most unique legislations in the world.

2.6 Efforts are ongoing to bring in competitive outcomes in various infrastructure sectors through regulatory reforms and establishment of new independent regulatory regimes.

2.7 The government has also established a National Manufacturing Competitiveness Council to examine and promote competitiveness of the Indian industry. However, the Council's remit is not to examine the competition scenario in the country, which covers a much wider range of issues.

2.8 Competition promotes competitiveness, but the reverse is not true. It is affected by various policies of the government such as: trade policy, investment policy, labour policy, consumer policy, environment policy, policy on intellectual property rights, sectoral regulatory policies etc.

2.9 Though the country has a Competition Law and various Sectoral Regulatory Laws, there is a need to frame a Competition Policy, to harmonise the various policies of the Government (both Central as well as States). This would ensure a consistent approach and ensure that Governments and other economic regulatory agencies are aware of and take into account the competition dimension while formulating or implementing any policy.

2.10 The National Competition Policy does not prevent government from increasing expenditure on welfare or levels of government-funded or subsidised social services, or maintaining government ownership of businesses. It explicitly recognizes the need for government intervention in markets, where it is justified.

III. Principles

3.1 The Constitution of India seeks to ensure for its citizens—social, economic and political justice. However, as consumers face imbalances in economic terms, education levels and bargaining power, the National Competition Policy aims to promote and protect economic democracy for just, equitable and sustainable economic and social development. Taking this into account, the National Competition Policy, while promoting a healthy competition culture, will endeavour to uphold the following principles:

- **Free and fair market process:** The policy will be to protect free, fair and contestable markets rather than welfare of any individual participant in the market place.
- **Removal of distortions and barriers:** The policy will emphasise on making market conditions congenial for entry of new players by removing both policy induced and private barriers.
- **Justification and Notification:** When, for reasons of economic or social welfare, there is a need to deviate from the accepted principles of competition this will be done only through notification and public justification of the measures.
- **Balancing competition and intellectual property rights:** Intellectual property right holders will be put under reasonable restrictions if their behaviour amounts to abuse of monopoly rights.
- **Competitive neutrality:** adopting policies which establish a ‘level playing field’ where the public sector competes with the private sector.
- **Access to ‘essential facilities’:** When, for reasons of technology or other public purpose it is desirable to continue a monopoly, it will be incumbent on the owners of such monopoly to grant to third parties access and use of their infrastructure at an agreed and fair price and on agreed terms and conditions

- **Competition Audit:** The Policy will encourage all Ministries, Departments and other bodies, Government and Non-government at the Centre and the States to promote accountability, transparency and good governance, and to periodically conduct a “Competition Audit” of all policies, existing and proposed.
- **Respect for international obligations:** Adherence to this policy will be subject to non-conflict with international obligations accepted by the country.
- **Involvement of stakeholders:** attempts will be made to consult all relevant stakeholders and take on board their concerns while making policy changes that affect competition.

IV. Objectives

4.1 Taking into account the needs of and priorities for promoting a healthy competition culture the objectives of the National Competition Policy are to:

- Reform regulations and policies which unjustifiably restrict competition,** i.e. tightening the examination of regulations which reduce efficiency by shielding businesses, both in private sector and public sector, from competition through a ‘competition audit’; public interest tests would be used to assess the desirability and proportionality of policies and regulations, and these would be subject to regular independent review;
- Encourage policies and programmes to enable better and healthy competition in the market place, and to bring about competitive outcomes;**
- Protect the market players** from anti-competitive practices and abuse of dominance;
- Provide adequate resources to competition authority and other economic regulators,** so that they are well-equipped to perform effectively;
- Develop an effective working relationship between various agencies and institutions that seek to promote and protect competition**
- Structural reform of public utilities to facilitate competition** i.e. opening up of public utilities to competition, where possible using independent review processes;
- Promote assessment of competition impact in every area of governance** where consumer and business interests are affected;

- h. **Promote local, national, regional and international co-operation** in the field of competition policy enforcement and advocacy; and
- i. **Promote a healthy competition culture** in the country through formal as well as non-formal education systems, which will include capacity building programmes for various stakeholders.

V. Measures

5.1 Bearing in mind the costs and benefits of proposed measures; the economic, social, cultural and technological diversity of the country; and the needs of its population, to evolve time bound programmes for the promotion of competition and realisation of competitive outcomes. These measures will apply to the market of indigenously produced goods, services and technology as well as to imports.

5.2 Policy Statement: The Government will formulate, adopt and disseminate this Statement widely so as to inform every citizen of India about the seriousness of the government to promote a healthy competition culture in the country.

5.3 Competition agencies: The Government will establish and resource agencies, such as the National Competition Policy Council; State Competition Policy Councils, Competition Authority, Independent Regulatory Agencies to promote and protect competition in the market place.

5.4 Representation: Enable representation of consumers and business' views in the decision-making process:

- a. Provide and strengthen representation to consumer and business organisations in the decision-making process of the Government at all levels; and
- b. Promote and encourage an independent consumer movement in the country by providing assistance to consumer groups to form their organisations and giving them the opportunity to present their views in the decision-making process.

5.5 Public education: To help various stakeholders in their decision making:

- a. Promote information dissemination programmes on competition as an integral part of the formal education system at school and college levels;

- b. Encourage business to undertake publication of educational material for mass distribution; and
- c. Enable consumer organisations to undertake capacity building programmes for consumers, activists and others.

5.6 Research and advocacy:

- a. Develop and strengthen competition analyses of markets and sectors and dissemination of information through research and academic institutions, media and consumer organisations; and
- b. Encourage consumer organisations to review the implementation of competition regulations by competition agencies, and of providers of goods, services and technology and verification of claims.

5.7 International exchange of information on competition policy

- a. Initiate and implement systematic exchange of information on measures of competition enforcement and advocacy, regionally and internationally; and
- b. Encourage participation of competition agencies in information exchange programmes with international organizations and other competition agencies.

VI. Monitoring and Evaluation

6.1 In view of economic, social, cultural and technological diversity of the country, it is essential to adopt and strengthen monitoring and evaluation mechanisms by involving consumer and other interest groups, and business in the process of implementation of the aforesaid measures to achieve the objectives.

6.2 Government will establish an apex National Competition Policy Council with the Prime Minister (or his/her nominee) as its chairperson, Chief Ministers of the States or their nominees, and members drawn from Business, Consumer Organisations, Media and Academia so that competition issues receive the highest consideration in every area of governance.