

Competition Distortions Require a Policy Response

Evidence from Competition Commission of India Orders



Setting the clear rules of the game is crucial for the players to act fairly and for the enforcers to check the foul play. Think of a situation where the rules to fair play are skeptical or absent but action for foul play is strict. This

seems to be the situation in some of the sectors in India.

In February, 2015, disposing a case against 21 real estate developers and their industry body CREDAI, CCI firmly opined that the issues in the real estate sector are not only pertinent but need to be addressed by the

policy makers and regulators through appropriate legislative tools. Falling short of levying any penalty due to lack of evidence, the CCI came hard on real estate players for their anticompetitive practices and exploitative conduct. Let us scan some of the orders of CCI which call for a legislative response to weed out

competition distortions from India.

Competition distortions emanate from two prime sources in an economy. First source can be the law and policy formulation by government. Second source is the conduct of market players. Since five years, Indian economy is witnessing a vibrant Competition Commission in its endeavors for tackling the second source of competition distortions. Focus on tackling distortions from the first source is imperative and the need for such focus is evident from the orders of the CCI.

Competition distortions due to legal and policy hitches can be broadly due to two reasons. First there is lack of regulation and second there is regulation which is producing anticompetitive effects. Let us take evidence related to three sectors CCI has given significant orders viz real estate, car auto parts and coal. Interestingly the Coal India case depicts an example of sector where the regulation has led to competition distortions. On the other hand the auto parts case depicts a case where

lack of regulation has led to the competition distortion. Thus lack of competitive framework in a sector can be due to distorted legal and policy framework or can be due to absence of regulation.

Much celebrated case regarding abuse of dominance by DLF which has been upheld by COMPAT also shows as to how lack of proper regulatory framework can not only go against ethos of fair competition but can also give rise to unfair practices. CCI felt that although there is a plethora of laws, there is no proper regulation of the real estate sector, particularly the housing sector. CCI categorically recommended the Central Government and all State Governments to come out with real estate regulations at the earliest for ensuring overall consumer welfare, to ensure free and fair competition and to discourage unfair trade practices that seem prevalent in the sector.

Second example is the auto parts sector. This shows a condition where the competition distortions are due to the lack

of regulation. The automakers spare parts market case depicts a situation where lack of regulation is preventing effective competitive framework for the growth of secondary market for spares in the economy. This has also led to the growth of spurious market for spare parts, thereby leading to more loss to the economy. CCI observed in its order that this is something which may be separately brought to the notice of the government for appropriate action, which could include suitable legislation and setting up of an appropriate regulator.

Abuse of dominance by Coal India Ltd. was found by CCI mainly because of lack of competition in the sector and its dominant position attained due to legal framework. It shows that the sector was overregulated and due to which there was lack of competition. CCI in its Coal India order noted that there is an imperative need to carry forward reform momentum by restructuring the sector by introducing more number of players so that it can reduce the dominance of any one player



and can facilitate competition. Bringing the coal sector under the independent regulatory oversight would only help if there are enough players in the market. Again in this case, the order notes to forward the order copy to the Ministry of Coal.

In all the three significant orders dealing with coal, real estate and auto parts sector, CCI found that improper regulation has led to anticompetitive practices and loss of competition and consumer welfare. It is evident from the orders of CCI that achievement of an effective competition culture requires a policy response along with the action from a regulator to check and control anticompetitive practices. Rightly so, in all these cases, CCI has forwarded the orders to relevant ministry or authorities to highlight the plight of sectors due to improper regulation.

Palpable evidence from the observations of the CCI orders manifest that competition law alone cannot take care of all types of competition distortions in an economy. Proper policy response to check anticompetitive practices emanating from law and policies is possible only when there is comprehensive policy like National Competition Policy. Evidence from the CCI orders clearly accentuates the need of a comprehensive National Competition Policy to overcome the competition distortions emanating from the law and policy. Competition impact assessment of the laws and the policies governing a sector will clearly establish as to what needs to be done. Competition impact assessment is a process through which a government or regulatory body analyses and evaluates how proposed or existing laws and regulations designed to achieve specific targets may affect competition in the economy.

International experience on gains from the competition policy will make things clear here. Productivity Commission in Australia estimated that productivity improvements and price reductions flowing from the National Competition Policy and related



reforms in the 1990s raised Australia's GDP by 2.5 per cent. Interestingly, after reaping benefits from adopting a competition policy in 1995, Australia is currently reviewing its competition policy regime to boost further economic reforms. Recent draft recommendations include review of regulations restricting competition with particular priority given to regulations covering planning and zoning, retail trading hours, taxis, and pharmacy and parallel imports.

In India, this reform plank becomes more important as it dovetails with PM Modi's agenda of creating an entrepreneurial and competitive business environment for unleashing the energies of economy. A committee appointed during the Vajpayee government in 1998 had recommended repeal of 1,382 laws. As per recent news reports, the newly-constituted Committee by Modi government will examine all Acts recommended to be repealed by the Committee on Review of Administrative Law and might come out with an Obsolete Laws Bill. It is relevant to weed out the obsolete, but it is imperative to include the relevant. A draft National Competition

Policy was prepared by a Committee on National Competition Policy set up by the Ministry of Corporate Affairs in 2011, which has not seen the light of day till date.

A National Competition Policy is indispensable in India. Potential benefits competition policy offers include higher economic growth, efficient usage of resources, and promotion of economic democracy and encouragement of entrepreneurship. Clearly, it has a pivotal role in economic management of resources. Tackling competition distortions emanating from law and policy also dovetail with the current government agenda for infusing reforms and providing a competitive culture for unleashing entrepreneurial energy in India. [w](#)

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