Airwaves, Incumbents and Good Governance-
The Urgent Need for a Robust Competition Policy Framework

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"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. "

-Joseph Stiglitz[i]

Part I

Introduction

Competition and India's Economic Reforms

India's 11th plan document stated that 'competition policy is intended to promote efficiency and to maximise consumer/social welfare, create a business environment, which improves efficiencies, leads to efficient resource allocation and consumer welfare and prevents/curbs abuse of market power. It also promotes good governance by restricting rent seeking practices of economic actors.' [ii] The draft National Competition Policy 2011 ("NCP") aims at "laying down an overarching policy framework for infusing competition principles in various statutes, regulations and policies of the government …thereby unleashing the next wave of economic reforms …making our economy more competitive, productive and leading to inclusive growth."[iii] The fundamental role of competition policy is envisioned therein as guaranteed consumer welfare following from optimal allocation of resources and the free play of incentives that encourage productive efficiency, quality and innovation. The NCP also provides for the carrying out competition impact assessment of statues, regulations and policies.

While lauding the progress made by India since 1991 in terms of market liberalisation and regulatory achievements and their positive impact, the NCP accepts that "there have been residual restraints and anticompetitive impact of policies and laws in several areas of the economy. The time is now ripe for the introduction of an overarching National Competition Policy to realise the full growth potential of the economy."[iv]

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Dark Clouds Loom; a Silver Lining Beckons

The abovementioned policy statement assumes importance especially in the context of the developments of the past few years whereby audit authorities have been alleging the incidence of major economic irregularities in various sectors of government. The damaging effect of widespread corruption has become a source of growing public anger. The issue of appropriate policies and procedures for allocation of natural resources such as spectrum and coal have become the subject of vigorous national debate. Sectors such as airlines and telecommunications which were apparently buoyed by healthy competition so far are now in difficulties. Their incumbent operators having been cossetted for decades are now fairly sick and ironically protective policies and state interventions favouring these organisations have only contributed to their poor health, apart from harming the sector as a whole. While the public sector languishes, the private sector is unhappy with the treatment meted out to them. Government decisions are increasingly being viewed negatively regardless of their correctness. Government officials are correspondingly becoming increasingly wary of decision-making for fear of possible misinterpretation of their motives and actions. All this has damaged public perception about and investor confidence in the quality of our governance and in the development potential of our economy. Not surprisingly, India's economic growth is flagging. Leading experts have been quick to point out what should have been a common sense conclusion, namely, that it is the failure of our 'governance capabilities' to keep with rapid economic growth that has led us to this crisis[v]. India's Chief economic Advisor, Raghuam Rajan, has stated that the 'level of governance' needs to be improved and brought at par with level of economic growth to bring back confidence in both the government and the private sector.[vi] Similarly Arun Maira, Member Planning Commission, has pointed to the need for institutional reforms and policy making process reforms to 'make them more transparent and...inclusive to arrest the declining trust in institutions of government and big business.'[vii]

However, fortunately, even in the present climate of decline, disruption and despondency, there are three things for India to celebrate. The first is that "India is being dragged, kicking and screaming, to a rule-based regime." [viii] The second is the increasing availability of information to the general public and the third is the decreasing tolerance of the public towards corruption.[ix] On a dramatic note one can say that drastic improvements in

governance are now inescapable or "an idea whose time has come"[x]. On a more prosaic note, it is clear that the stage is now set for bringing about far-reaching regulatory changes which will put an end to discretionary powers, crony capitalism and rent seeking behaviour which allow a privileged few to benefit at the cost of common good.

One of the simplest ways to begin is to institute and implement a robust competition policy framework for the country. While we already have a competition law by way of the National Competition Act 2002 ("Act") as well as an institutional mechanism consisting of the Competition Commission of India (CCI) and the Competition Appellate Tribunal, in place, these comprise only a subgroup of a competition policy framework. Whereas competition law is a regulatory instrument to check the prevalence of anti-competitive practices, competition policy is a broader term which constitutes 'proactive and positive effort to build a competition culture in an economy.' It 'includes all government policies and laws' and encompasses the competition law. It holds the promise of promoting 'good governance' through 'accountability by way of competing responses', 'transparency' and 'avoidance of rent seeking behaviour.'[xi]

Part II

The Draft National Competition Policy-Key Provisions

Objectives

Para 6.1 of NCP states that it 'aims to promote economic democracy, achievement of highest sustainable levels of economic growth, entrepreneurship, employment, higher standards of living, and protect economic rights for just, equitable, inclusive and sustainable economic and social development, and supports good governance by restricting rent seeking practices.'

NCPs objectives as listed in Para 6.2 are to:

'a) preserve the competition process, to protect competition, and to encourage competition in the domestic market so as to optimize efficiency and maximise consumer welfare.

b) promote, build and sustain a strong competition culture within the country through creating awareness, imparting training and consequently capacity building of

stakeholders including public officials, business, trade associations, consumers associations, civil society etc.,

c) achieve harmonization in policies, laws and procedures of the Central Government, State Government and sub-State Authorities in so far as the competition dimensions are concerned with focus on greater reliance on well-functioning markets,

d) ensure competition in regulated sectors and to ensure institutional mechanism for synergized relationship between and among the sectoral regulators and/or the CCI and prevent jurisdictional grid locks,

e) strive for single national market as fragmented markets are impediments to competition, and

f) ensure that consumers enjoy greater benefits in terms of wider choices and better quality of goods and services at competitive prices.'[xii]

Principles

Para 7.1 of the NCP lays down the following '[p]rinciples of the National Competition Policy':

'(a) Effective prevention of anticompetitive conduct: The Competition Act, 2002 prohibits anti- competitive agreements and combinations which have or are likely to have appreciable adverse effect on competition. It also seeks to prohibit abuse of dominant position by an enterprise. There should be effective control of anticompetitive conduct which causes or is likely to cause appreciable adverse effect on competition in the markets within India. …..It is envisaged that the implementation of NCP will strengthen competition culture in the market and complement the endeavours of CCI.

(b) Fair market process: Market regulation procedures should be rule bound, transparent, fair and non-discriminatory. Public interest tests are to be used to assess the desirability and proportionality of policies and regulations, and these would be subject to regular independent review.

(c) Institutional separation between policy making, operations and regulation i.e. operations in and regulation of a sector should be independent of the government

branch which deals with policy formulation in the sector and is accountable to the Legislature.

(d) 'Competitive neutrality', such as adoption of policies which establish a "level playing field" where government businesses compete with private sector and vice versa.

(e) Fair pricing and inclusionary behaviour, particularly of public utilities, which could be imbued with monopolistic characteristics and a large part of the consumers, could be excluded.

(f) Third party access to 'essential facilities', i.e. requiring dominant infrastructure owners to grant to third parties access (e.g., electricity, communications, gas pipe lines, railway tracks, ports etc) to their infrastructure on agreed terms and conditions and at regulated prices, aligned with competition principles.

(g) Public Policies and programmes to work towards promotion of competition in the market place;

(h) National, regional and international co-operation in the field of competition policy enforcement and advocacy.

(i) Where a separate regulatory arrangement is set up in different sectors, the functioning of the concerned sectoral regulator should be consistent with the principles of competition as far as possible. Also there should be an appropriate coordination mechanism between CCI and sectoral regulators to avoid overlap in interpretation of competition related concerns.'[xiii]

Deviations from Principles of Competition Policy

Provisions in this regard are covered in para 7.2 of the NCP as follows:

'Any deviation from the principles of competition should be only to meet desirable social or other national objective, which should be clearly spelt out. The deviations should adhere to the following rules:-

(a) the desirable objective be well defined,

(b) should be decided in a transparent and rule bound manner,

(c) should be non–discriminatory between public & private enterprises

(d) and also between domestic and overseas enterprises,

(e) the mode, manner and extent of deviation should have the least anticompetitive effect.

There should be accountability in the process so that deviations are not made without adhering to the accepted principles. As a general rule, any deviation should be an exception with pre-determined tenure. There should be an inbuilt sun-set clause to ensure its continuation only until it is found necessary.'[xiv]

Envisaged Central Government Initiatives

NCP envisions that the central shall take certain steps ' to effectively generate a culture of competition and to enhance competition in the domestic markets with the involvement of all the stakeholders.' These are as follows:

'a. Several existing policies, statutes and regulations of the Government may restrict or undermine competition. A review of such policies, statutes and regulations from the competition perspective shall be undertaken with a view to removing or minimizing their competition restricting effect.

b. Proposed policies, statutes or regulations that affect competition should be subject to Competition Impact Assessment, as outlined in subsequent paragraphs.

c. Where a regulatory regime is justified, the principles of competition would be taken into account in the regulation. Regulation needs to be diluted progressively as competition becomes effective in the regulated sector.

d. The competition authorities need to be functionally autonomous and financially independent.

e. In order to ensure effective competition, third party access to essential facilities in the infrastructure sector owned by dominant enterprise on reasonable and fair terms should be provided.

f. Incorporate competition clauses in bilateral and regional trade agreements, which will go long way in preventing anti-competitive behaviour and potential anti-competitive cross-border conduct.

g. Ministries/Departments which have set up regulatory authorities should consider rationalizing their manpower.

h. The Government will encourage all Departments/Ministries to set up an in-house cell to undertake Competition Impact Assessment of various policies, statutes, regulations/rules enforced by them. …The head of in-house cell may be mandated with responsibilities: (a) to carry out Competition Impact Assessment of the policies and statutes administered by the Ministry/Department, (b) aligning public procurement regulations and practices with competition principles, etc.'[xv]

Part III

Relevance of NCP& Way Forward

Allocation of Natural Resources

Taking the example of the 2G spectrum allocations of 2008, it could be claimed that the contentious decisions regarding the allotment procedure would have been rendered quite difficult had there been a well-defined ex ante competition policy framework such as the one mentioned above, against which such proposals could have been tested (and found wanting). Four years down the line, the Supreme court has clarified in response to a presidential reference that while policy making is undisputedly the prerogative of the executive, however,'..if a policy or law is patently unfair to the extent that it falls foul of the fairness requirement of Article 14 of the Constitution, the court will not hesitate in striking it down.'[xvi] Even when such an anomaly may be apparent during the official decision making process, it would be rather awkward for a civil servant to refer to Article 14 of the Constitution while commenting upon the prudence of proposals. Nor is it easy to counter a justification to the effect that a policy introducing more market players must necessarily be beneficial, unless one has a clear understanding of competition principles and the legal framework demands a relatively sophisticated competition analysis. However, even the junior-most official would not hesitate to blandly point out principles such as level playing

field, non-discrimination, transparency, impact on competition and long-term impact on the health of the sector provided that these have been codified as National Competition Rules ("NCR") flowing from the Act and NCP. This would be akin to the Indian Government's General Financial Rules (GFR), ensuring adherence to which is the *sine qua non* when it comes to scrutiny of government proposals.

It would be rather obvious that the negative cascading effect of the 2G imbroglio on the telecommunications sector and the economy as a whole could have easily been avoided had it been mandatory to test the proposed decisions of the department against various provisions of NCP (such as those contained in paragraphs 7, 7.2 and 8 mentioned above). Reference to specific competition rules (had they existed) would have clinched the issue. That the same argument would apply to the procedure for allocation other natural resources such as coal blocks is plain to see.

Such a move to clearly enunciate all-encompassing competition principles through policy and regulation would empower the bureaucracy to render sounder advice, inform and improve the government's decision making processes and guard against opportunistic rent seeking. This would help not only to overcome ambiguities and lacunae in other rules or procedures, but also to compensate for institutional inadequacies. Such a regulatory framework would also help various government functionaries to confidently handle the challenges they are bound to face on account of India's economic advancement, rather than tying themselves up in knots of red tape for fear of discretionary powers being abused or perceived to have been misused.

Ensuring a Level playing Field

Coming to the other issue of the state, public sector incumbents and level playing field, let us take the case of Bharat Sanchar Nigam Ltd (BSNL) to illustrate several areas where the provisions of NCP would be/have been relevant to prevent/correct competitive distortions. Telecommunications is an apt sector to study because it was one of the earliest to be liberalised. Here, the lack of factual separation between policymaking (Department of Telecommunications (DOT)), regulation (Telecom Regulatory Authority of India (TRAI)) and the incumbent operator BSNL 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 (LLU)[xvii] or sharing of optic fibre cable and other critical

infrastructure. Apart from inheriting a nationwide government funded infrastructure, BSNL has been the recipient of many financial benefits such as license fees and spectrum charges waivers and Access Deficit Charges (ADC). The latter were paid as a part of TRAI's interconnection usage charges (IUC) regulation by mobile operators to BSNL to compensate it for regulated below-cost pricing of fixed lines.[xviii] Even DoT's Universal Service Obligation Fund (USOF) subsidy schemes for rural telephony which are bid out competitively have (albeit unwittingly) favoured the incumbent operator given its inherent advantages by way of pre-existing rural infrastructure and the regulatory leniency described above. This has in fact led to a situation whereby other telecom operators who contribute to this Fund by way of 5% of their adjusted gross revenue have demanded that it be scrapped[xix]. It is interesting to note that while BSNL had received more than 87% of total funding from USOF schemes as on June 30, 2011, its share in rural telephone was only about 14% as on that date.

In the United Kingdom, ADCs were required to be paid by other operators to the incumbent (British Telecom or BT) partly to compensate for mandatorily sharing its fixed line) access network[xx]. These were also accompanied by safeguards like accounting separation and came to an end when tariffs were deregulated. In India, more than Rs 12,000 crores of ADC were paid by mobile service providers to BSNL from 2004 to 2010 however, this was unaccompanied by competition enhancing LLU. Further, in the absence of mandatory accounting separation, TRAI itself has acknowledged the possibility of misuse of ADC by BSNL to unfairly cross subsidise its other operations through bundling of services[xxi].

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% as on June 30, 2012[xxii]) and correspondingly abysmal broadband penetration rates. It is interesting to note that TRAI does take note of the less than optimal utilisation of existing copper lines even in metros (see Table 1 below) and has accepted this as one of the reasons for low broadband penetration. Competition from other access providers who would have leveraged the incumbent's underutilised network to service customers (had it been mandated by competition policy/rules[xxiii]) could have led to a very different situation.

Table 1. Broadband as a percentage of fixed lines in metros

Name of Metro	No. of fixed lines	No. of Broadband connections	Broadband as a percentage of fixed line connections
Delhi	2,710,835	785,564	28.97%
Mumbai	2,945,525	477,692	15.87%
Chennai*	1,420,342	366,539	25.80%
Kolkatta	1,463,442	248,510	16.98%
*Broadband subscriber figures are approximate			

Source: TRAI, 2010[xxiv]

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[xxv]. Neither the TRAI Act under which TRAI may recommend "measures to facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services"[xxvi] or the Competition Act under which "abuse of dominance"[xxvii] would have to be proven through an elaborate mechanism, are sufficient to avert such costly errors. A strong argument in favour of the need for competition policy and rules in the telecommunications sector is reflected in the below mentioned comment:

> *"The development of strong competition in telecommunications requires the concerted efforts of the competition authority, the sectoral regulator, the governmental telecommunications policy body, the Department of Telecommunications, the legal apparatus of the country and other governmental agencies and ministries……It would help if all these bodies used some clearly defined principles and rules to reach decisions. It would help if these rules were based on competition principles."* [xxviii]

Similarly, the concessions that the government has progressively provided to Air India (AI) including its monopoly over lucrative international routes have harmed not only the airline industry but also the incumbent. The recent Rs 30,000 crore restructuring

packaging to bail out the ailing incumbent is legally defensible under the Air Corporation Act 1953[xxix] but it clearly gives AI an 'unfair competitive advantage.'[xxx] Thus, this Act lacks competitive neutrality and violates the requirement of a level playing field as required by the NCP[xxxi]. That protectionism is contrary to productivity, innovation and hence competitiveness has been pointed out famously by Michael E. Porter[xxxii]. There is sometimes an erroneous notion in bureaucratic circles that distortionary regulations, policies or other interventions or economic inefficiencies are pardonable if the beneficiary or perpetrator is the public sector. Surely tax payers would beg to differ and the NCP and NCR would not allow this to continue. In fact, while enforcement of competition law can effectively handle anti-competitive behaviour of private entities, it cannot easily prevent potentially anti-competitive "public regulatory interventions" [xxxiii] as these are often otherwise legal as we have just seen in the AI case. Regardless of whether these interventions arise from "pressure"[xxxiv] by "interest groups"[xxxv] or not, this problem necessitates the legalisation of competition advocacy through competition policy and rules.

The need for due care in instituting a well-defined legal (policy and regulation) framework when dealing with governance in a developing, or emerging economy such as ours, cannot be overemphasized. Such a regulatory framework would strengthen governance and compensate for limitations or underdevelopment of the overall regulatory environment and institutions. It can be said that 'there are two major aspects of government-business relations (a) the 'rules of the game' with regard to market competition, and (b) the regulatory institutions that define and maintain these rules."[xxxvi]" The World Bank has stressed that, "regulation, particularly in developing countries, must be designed with an appreciation of both information asymmetries[xxxvii] and difficulties of enforcement"[xxxviii] thereby underlining the above argument. An overarching competition policy framework by way of the NCP (and NCR) conforming to international best practices is one such example of much needed regulation.

There is no doubt that governance in any country and especially a developing nation must be guided by several considerations beyond competition for the sake of competition. Competition is after all not an end in itself but a means to the end of public good. To that extent, far from being dogmatic, the NCP is adequately attentive to social and environmental security and other strategic issues of national importance.[xxxix]. It states that,

"[t]he National Competition Policy …….is mindful of appropriate balance in matters having bearing on social, environmental, security and other strategic issues of national importance; the only thing is that a conscious view may have to be taken but the concerned authorities in balancing the competing considerations. It does not seek laissez faire markets, blanket deregulation, disinvestment, welfare cutbacks, and reduced social services. It does not seek to prevent government from increasing expenditure on welfare or levels of government-funded or subsidized social services, or maintaining government ownership of businesses. It explicitly recognizes the need of government intervention in markets through optimal regulation, where it is justified. It seeks to strike a balance, of course with reasons, between competition policy objectives on the one hand, and other policy considerations such as prudential supervision, service quality, social service commitments, safety etc. on the other."[xl]

It is well a recognised principle that "regulatory intervention may be warranted [for e.g.] in sectors featuring extensive economies of scales or other market failures. In particular, without intervention, some markets may fail to provide minimal levels of services considered of public interest."[xli] However, the abovementioned discussion reveals that "regulatory intervention may go beyond the strictly necessary and may impede competition in those sectors. Para 7.1 of the NCP guards against this by providing that any deviation from the principles of competition should permissible only on clearly enunciated grounds of desirable social or other national objectives and should be subject to time limits, transparency, non-discrimination between the public and private enterprises, minimisation of anti-competitive impact etc. guards against misuse/mistakes of sectoral regulation.

There is a pressing need to not only approve and implement the NCP but also to frame the Rules (NCR) to elaborate and codify the legal framework required to achieve desired policy objectives. In this regard, a lot can be learnt from the competition policy frameworks of EU and Australia. When it comes to competitive neutrality and economic consequences of state funding, India can draw valuable lessons from EU's state aid rules[xlii] which aim to avoid or at least minimise market distortions even as they allow for state funding in specified areas having strategic or socio-economic relevance. It is also worth looking at Australia's Competition Principles Agreement 1995. This agreement lays down a detailed mechanism to ensure competitive neutrality, level playing field and prevent resource allocation distortions arising from public ownership of business entities including inter alia regulatory independence and third party access to significant infrastructure facilities,.[xliii]

The provisions of NCP would be facilitated by a simple but well-defined framework of competition rules (NCR). These should be applied as universally as the GFR. Apart from competition auditing of policy and regulations as required by NCP, every government program, plan, project or expenditure proposal should be subject to ex ante competition impact assessment with the help the NCR. Specific issues requiring clarification could be referred by the ministerial/departmental in-house cell to the National Competition Policy Council envisaged be set up as the institutional arrangement to oversee the implementation of the NCP[xliv].

Way Forward

While we may have faltered on governance in the recent past, India can draw inspiration from the example of Australia where a national competition policy was successfully implemented several years after competition law, with an extremely beneficial impact on economic growth and consumer welfare. The impetus for this reform was the realisation that competition law alone does not suffice to prevent competitive distortions arising from public policy. Competition impact assessment carried out under this policy led to identification and correction of as many as 1800 competitive impairments at both the federal and provincial level[xlv]. It is thus never too late. The completion of India's competition framework through the adoption of a Competition Policy and Rules would constitute a crucial step forward in paving the way for better governance and sustained and inclusive economic growth.

Disclaimer

Views are entirely personal

About the Author

The author is a 1989 batch Indian P&T Accounts and Finance Service officer. At present she is posted as Financial Advisor NDMA.

Endnotes

[i] Quoted in draft National Competition Policy (pre-revised) 2011 at http://www.mca.gov.in/Ministry/pdf/Draft_National_Competition_Policy.pdf
[ii] Ibid
[iii] Ibid
[iv] Ibid
[v] Sidhartha and Shankar Raghuraman,'Lag in governance let private firms make killing:Raghuram,'Times of India, November 27, 2012
[vi] Ibid
[vii] Arun Maira,'The Reforms that Matter,' Times of India, September 29, 2012
[viii] R Sukumar, "Respect for the rules," *Mint*, September 8, 2012
[ix] Ibid
[x] as eloquently put by Victor Hugo
[xi] Ibid
[xii] Supra note 1
[xiii] Ibid
[xiv] Ibid
[xv] Ibid
[xvi] Dhananjay Mahapatra,'Apex court puts aside Chawla panel's remarks,' Times of India, September 28, 2012. It is further stated that Article 14 *of the constitution, guards against arbitrary and discriminatory actions of the state.* For example*, In Ramana Dayaram Shetty Vs International Airport Authority Of India And Others (1979 AIR(SC) 1628)* the court ruled that [t]he State cannot…, act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory. (Ravi Kant,' Arbitrary actions of the state are in conflict with article 14 (right to equality) of the constitution of india.' http://lawreports.wordpress.com/2009/06/12/arbitrary-actions-of-the-state-are-in-conflict-with-article-14-right-to-equality-of-the-constitution-of-india/)
[xvii] Local Loop Unbundling (LLU) is the process where the incumbent operators ([for e.g.] BT and Kingston in the UK) makes its local network (the copper cables that run from customers premises to the telephone exchange) available to other companies. Operators are then able to upgrade individual lines using [digital subscriber loop] DSL technology to offer services such as always on high speed Internet access, direct to the customer from http://www.ofcom.org.uk/static/archive/oftel/publications/broadband/dsl_facts/LLUbackground.htm viewed in September 2012.
[xviii] In this regard it is interesting to note what the Australian Productivity Commission has to say about price regulation in the context of Australia's National Broadband Network.' *Excessively low access pricing produces its adverse effects gradually, but its long-run welfare implications can be significant. If access prices remain too low, no firm (including the incumbent) will make core network investments as it cannot expect a reasonable return on capital.*' http://www.pc.gov.au/__data/assets/pdf_file/0008/90773/national-broadband-network-2009.pdf
[xix] Scrap the USO Fund, Economic Times, August 21, 2012
[xx] apart from compensating BT for the regulatory cap on fixed line rentals, as in India
[xxi] In the Explanatory Memorandum to the IUC regulation 2007 dated 21st March 2007, TRAI has noted that, "*BSNL has not actively responded to the key purpose for which ADC was given. It may be recalled that ADC had specific purpose to be fulfilled in a time frame (i.e. tariff rebalancing). Further, BSNL is now offering tariff regime for bundled services which appear to be having some element of cross subsidy*."
[xxii] www.trai.gov.in
[xxiii] In particular see provisions of para 7.1 of NCP above
[xxiv] TRAI Consultation paper on National Broadband Plan dated 10 June, 2010,page 32
[xxv] 'Landed Costs', *Economic Times,* August 22,2012
[xxvi] TRAI's "Recommendations on Growth of Telecom services in rural India ,The Way Forward", 3 October , 2005 at http://www.trai.gov.in/trai/upload/recommendations/6/recom3oct05.pdf & Recommendations On Growth of Broadband dated January 2nd, 2008 at http://www.trai.gov.in/trai/upload/PressReleases/525/recom2jan08.pdf
[xxvii] Covered by Section 4 of the Competition Act,2002
[xxviii] Subhashish Gupta "Competition Policy in Telecommunications in India", December 2007, Indian Institute of Management, Bangalore at http://www.cci.gov.in/images/media/completed/competition_policy_tel_20080508104446.pdf viewed in September 2011

[xxix] Under this Act 'the government can provide capital funds and bail out funds to AI.
[xxx] 'Air India should be privatised, says study,' Business Standard, September 30,2012
[xxxi] This would be the subject matter of competition audits under NCP
[xxxii] Michael Porter is the author of several books on competitiveness of companies, nations and regions
[xxxiii] "Advocacy and Competition Policy" report prepared by advocacy working group, International Competition Network Conference, Naples, Italy, 2002 at http://www.internationalcompetitionnetwork.org/uploads/library/doc358.pdf viewed in September 2012
[xxxiv] Ibid
[xxxv] Ibid
[xxxvi] Chiranjib Sen , Anil Suraj, 'The Role of Legal Process, in the Redesign of Indian Government-Business Relations,' CDDRL working papers, Stanford, Number 102,October 2009 atiis-db.stanford.edu/.../No_102_SenSuraj_Legal_Process_India_91909.pdf viewed in September 2011
[xxxvii] The regulator must decide what the regulated firm(s) must do but often lacks information about relevant costs and technologies or "consumer preferences." This inevitably creates dependence on the regulated firm(s) themselves often facilitating the supply of biased information by the latter. (Supra note xxv).
[xxxviii] Thorsten Scherf, 'Policies for Universal Access to Telecommunications in Rural areas of Developing Countries-A Comparative Analysis,' Institute for Cooperation in Developing Countries at Philipps University, Marburg, Germany at http://editorialexpress.com/cgi-bin/conference/download.cgi?db_name=IIOC2006&paper_id=544 last viewed in September 2012
[xxxix] Supra note 1
[xl] Ibid
[xli] Supra note xxxiii
[xlii] http://ec.europa.eu/competition/state_aid/legislation/provisions.html
[xliii] http://www.ncc.gov.au/images/uploads/cpa_amended_2007.pdf
[xliv] Para 9.2 of NCP
[xlv] Pradeep Mehta, 'Front-End Regulator, Back-End Council,' Economic Times, September 20, 2012.