Training for central & state government officers on ‘Competition Policy and Law’

Competition and Regulation

Case Study on Indian Telecom

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Competition

• Is “a situation in a market in which firms or sellers independently strive for the buyers’ patronage in order to achieve a particular business objective for example, profits, sales or market share” (World Bank, 1999)

• Is “an essential hand maiden to efficient trade.”

• The ultimate raison d’ etre of competition is the interest of the consumer.
Competition

- Is the foundation of an efficient working market system, which has several advantages over a planned economy and constitutes the precondition which prevents freedom of decision and action of self interested individuals or entities from leading to anarchy or chaos but rather to economically optimal socially fair and desirable market results. (Report of High Level Committee on Competition Policy, Deptt. of Company Affairs, 2000).

- Competition leads to greater dynamic efficiency in the economy by bringing about innovation, technological development, lower price and better quality and service for the consumer.
Economic Regulations

- New legislation and regulations to promote competition and to bring about restructuring of major industrial sectors is essential. Legislation to aim at separating natural monopoly elements from potentially competitive activities, and the regulatory functions from commercial functions, and also create several competing entities through restructuring of essential competition activities and to create a competitive environment in following sectors.

Examples

- Electricity sector
- Telecommunications sector
- Ports
Market

- Role of Market?
- Allocation of resources
- Does it perform the role effectively?
- If so under what conditions?
What is Market Failure?

Market failure exists when one or more of the market efficiency conditions are not satisfied.

In case of Market Failure we need Regulation.
Causes of Market Failure

- Public Goods
- Asymmetric Information
- Market power (Monopoly, Oligopoly etc.)
- Distributional Failure
- Externalities
Cause of Market Failure in Telecom

- All of the above!

- But mainly market power
EXTERNAL DISCIPLINE ON INDUSTRY ACTORS

Only two types of External Discipline:
- **Competition**
- **Regulation**

More competition allows relaxation of regulation
Less competition requires stronger regulation

Case of MICROSOFT: How to Regulate?
Difficulties in Promoting Effective Competition in India
Two Policy Documents

National Telecom Policy, 1994 objective, among others to build a world class telecom infrastructure

Private participation permitted on grounds that investment needs in this sector are beyond the availability of public investment alone

Since then private participation has taken place


It envisages introduction of competition in many service segments
National Telecom Policy, 1994

- Objective, among others to build a world class telecom infrastructure
- Private participation permitted on grounds that investment needs in this sector are beyond the availability of public investment alone
- Envisaged creation of a Regulatory Authority
The Beginning of Liberalisation

- Implementation of Policy by DoT, who is also a Service Provider
- Litigation well before Regulator is created
- Once created, battles to establish itself
The Telecom Regulatory Authority Of India Act, 1997

Functions Of The Authority

- Notify rates at which telecommunication services shall be provided

- Regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services

- Facilitate competition and promote efficiency
Functions Of The Authority (Contd.)

- Protect the interest of the consumers of telecommunications services
- Monitor the quality of service
- Settle disputes between service providers;
- Ensure effective compliance of universal service obligations
Functions Of The Authority Related To Interconnection

According to TRAI Act 1997

- Ensure technical compatibility and effective inter-connection between different service providers

- Regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services
DoT increases PSTN to Mobile rate 24 times
By 1998 20 cases pending in TRAI
DoT issues Mobile License to MTNL
TRAI declares MTNL license invalid
Question of legitimacy of TRAI
CPP or does she?

- CPP sought to be introduced in Nov 1999
- Telecom Watchdog challenges the PSTN: Mobile revenue sharing of 1:2 citing it to be anti consumer and anti Public sector
- MTNL pleads TRAI has no right to alter license conditions
- DoT argues TRAI has no power to specify revenue sharing arrangements
- CPP Order struck Down
Successive Court Decisions Established

- that the government was not required to seek a recommendation from the TRAI before issuing additional telecom licenses
- that the TRAI did not have the power to adjudicate disputes between the licensor and licensee
- that TRAI did not have the power to alter provisions in the license agreements
- that the TRAI could not make regulations on revenue sharing, without these being negotiated between service providers.
TRAI –ing Times

- TRAI dissolved in January 2000
- TRAI ACT Amended in March 2000
Functions Of The Authority Related To Interconnection (Contd.)

As amended by TRAI (Amendment) ACT, 2000

- Notwithstanding anything contained in the terms and conditions of the license granted before the commencement of the Telecom Regulatory Authority (Amendment) Ordinance, 2000, fix the terms and conditions of inter-connectivity between the service providers.

- Ensure technical compatibility and effective inter-connection between different service providers.

- Regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services.
TESTING THE BOUNDARIES OF REGULATION!

- Recommendations on WLL(M) by TRAI in Jan 2001
- Mobility seen as a supplementary or value proposition to the central feature of enhanced penetration using cheaper technology
- Overlap between Cellular sought to be corrected by concessions
- Mobility restricted to SDCA
WLL(M)

- Difficult to police mobility restrictions
- Innovative methods to circumvent restriction, while remaining within the letter of law
- Unified Access License Introduced
Competition for the Market Increases

- Unlimited competition introduced in access services
- Competition in NLD and ILD segments
ASSESSMENT OF COMPETITION IN THE MARKET

- In the beginning, tariff regulated through standard tariff package
- As competition increased greater flexibility given
- Tariff Forbearance introduced
Cellular Service Tariffs de-regulated in 2002

Basic Service tariffs except Rural fixed lines also de-regulated in 2003.
Intervention by Exception

- Only if Tariffs are anti-Competitive
- Vertical Restraints disallowed
Outcomes of the Process

- Increase in Number of Operators
- Decline in Concentration Ratios
- Increase in Teledensity
- Reduction in Tariffs
- Increase in Usage
Nature of competition

- It’s changing nature
- From Price to Non-Price
- Incidence of anti competitive behaviour?
  - Lifetime Plans
  - Walky
  - Advertising (misleading?)
The Indian Story

Competition: Phases of Policy reforms

First phase of reform
- Manufacturing Sector;
- Value Added Services

Second phase of reform
**NTP 1994**
- Duopoly / Oligopoly in Services sector;
- Bidding for Licenses;
- Independent regulator

Third phase of reform
**NTP 1999**
- Open competition;
- Revenue sharing
- Separation of operator and policy maker;
- Privatisation of incumbent
- CPP
- Lowering ADC

Converged framework
- Unified Licensing Regime
  - Unified Access Licensing Regime already implemented
- Converged Ministry of ICT;
- Communication Convergence Bill 2000;
Competition Principles

Non –discrimination
Timely Action
Flexibility - as market matures
Preparing the ground with various policies
Framework of Policies

- License policy-conditions of entry / operations
- Tariff Policy
- Interconnection policy
  - Charges
  - Conditions
- Mergers etc- Limits
- Spectrum policy
  - Charges
  - Allocation mechanism
Policies (Cont’d)

- Policy towards incumbent or significant market operator
- Policy regarding wholesale / retail price of main inputs
- Conditions for intervening

*Aim – keep regulatory impact on costs as low as possible*
Additional Tools

- Number Portability
- Local Loop Unbundling
- Encourage competition from more than one Source—e.g. unified license, broadband segments
Competitive Strategy

Competitive Strategy

Potential Entrants

Threat of New Entrants

Industry Competition
(Rivalry Among Firms)

Bargaining Power of Suppliers

Suppliers

Threat of Substitutes

Substitutes

Bargaining Power of Buyers

Buyers

Source: Competitive Strategy – Michael Porter
CONCLUSION

ANALYSING TELECOM SECTOR USING MICHAEL PORTER’S FIVE FORCES MODEL

THE MOST IMPORTANT VARIABLE IN THE MODEL IS DOMESTIC RIVALRY, WHICH PROMOTES COMPETITIVENESS!

THIS CAN BE ASSURED WITH A GOOD COMPETITION LAW AND POLICY!
THANK YOU!