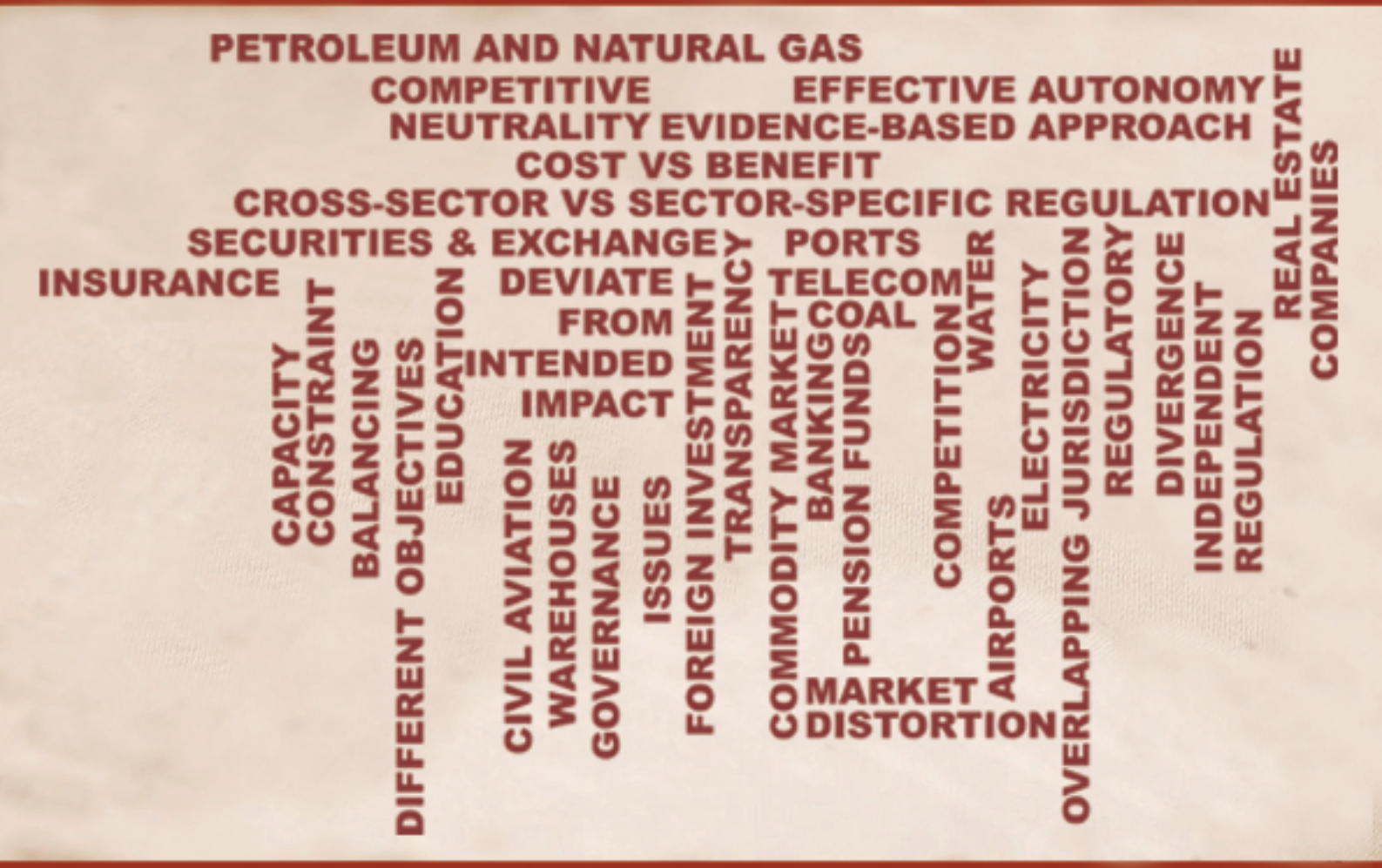
Economic Regulation in a Liberalized Economy

Relevance and Challenges in India



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Contents

Introduction

When markets fail to produce an optimum level of goods and services or appear to undermine social and economic objectives, government tends to intervene. In a free market, government applies certain measures to regulate economic activity in order to ensure consumer welfare and achieve sustainable growth and development.[1] Such measures of economic regulation include taxes and subsidies, and legislative and administrative controls over rates, entry, and other facets of economic activity. These measures are rooted in government policy and expressed through the activities of regulatory agencies.

Historically, most developing countries have conflated regulation with government control of economic activity, believing that government can allocate productive resources in a manner that ensures sustainable growth and maximizes consumer welfare. The less than satisfactory results of this belief, particularly low growth, have compelled many of these countries to phase out government monopolies, deregulate industry and services to allow private investment, and liberalize trade and investment to attract foreign capital. Views on the role of regulation have also changed accordingly. Regulation exists to protect market functioning and consumer interests by ensuring that

- An adequate supply of goods and services is available at competitive prices, and
- Producers and suppliers of goods and services can enter the market and compete with each other.

But these economic regulations are plagued by certain challenges highlighting the need for

- ***A stable and predictable regulatory environment*** characterized by regulatory harmony or "convergence." Sector-specific regulations and regulations that apply across sectors, for example, must not conflict. A chaotic regulatory environment discourages investment, dampens growth, and, ultimately, renders even the most well-conceived regulations ineffective.
- ***Constant assessment of impact of regulations.*** Markets are dynamic, and economic entities respond to regulations as they do other market forces. To achieve regulatory goals, government must assess the impact of regulations on a continuing basis, seeking to answer certain questions: What are the effects of the regulation? Does the regulation achieve its stated goals, and how is this known? If it has not achieved the stated goals, how might it be amended? Does the regulation have unintended consequences and if so how can they be avoided or mitigated? Is an activity being over- or under-regulated?
- ***Good governance.*** A sound framework and well-conceived and harmonious regulations can be effective only if the regulator has the credibility as well as the capacity needed

for enforcement. Good governance requires an independent, autonomous regulator that is reliable, consistent, and transparent in its decisions and that has a clear rationale for its actions.

India instituted its first round of reforms with economic liberalization in 1991. The evolution of the economy and with it the regulatory regime in the liberalized environment has led many to question the appropriateness, effectiveness, and implementation of economic regulations. Before the next round of reform, it would be wise to identify and remove regulatory "bottlenecks" to sustainable economic growth.

Drawing on five years of experience analysing and recommending improvements to India's regulations governing civil aviation, banking, and electricity—and competition law in general—Nathan Economic Consulting India Pvt. Ltd. examines in this paper the value of pro-market regulation to India. We provide an overview of the country's regulatory framework and the evolution of its regulatory regime (Chapter 1), discuss the country's biggest regulatory challenges (Chapter 2), and recommend ways to make existing regulations more credible and more effective in spurring growth and development (Chapter 3).

1. India's Regulatory Framework

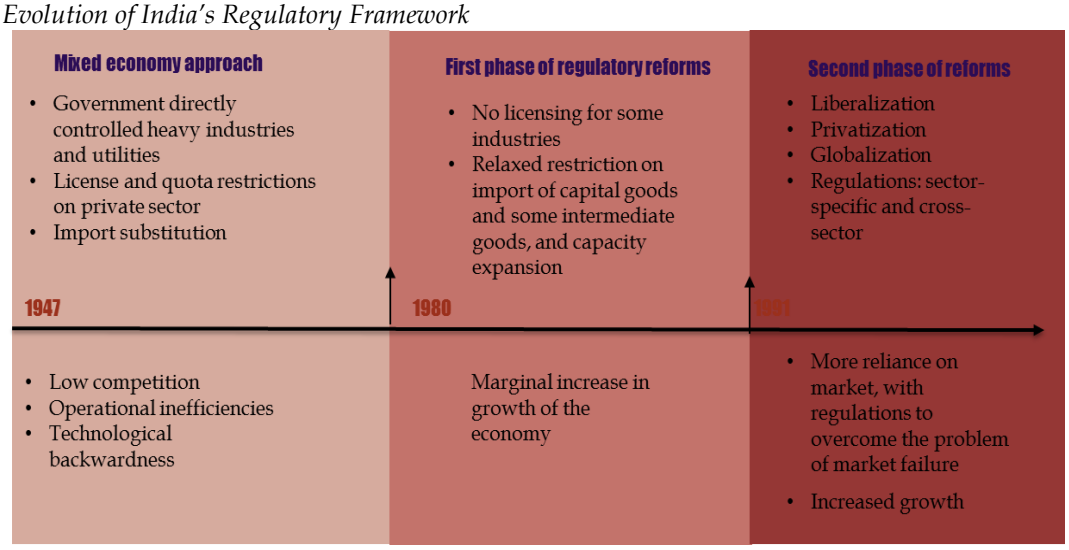
The purpose and implementation of India's regulatory structure has changed radically from the pre-liberalization era. The objective under the old system was to control economic activity directly. Recognizing that regulation and free market dynamics are both critical to growth, the purpose of the new regulatory system in liberalized India is to foster economic growth and protect consumer welfare by correcting inefficient market outcomes.

Evolution of Regulations

After India gained independence in 1947, the government used regulation to directly control economic activity in order to spur development and protect domestic industry from foreign competition.[2] Relying on the public sector for production, and restricting trade, had unintended consequences that are now all too familiar: thwarted competition, operational inefficiencies, poor quality goods and services, technological backwardness, high production costs, and inefficient allocation of resources.[3]

Gradually, authorities recognized the need to relax economic controls and to allow the free market to operate. Minor reforms were introduced in the late 1980s.[4] Then, in 1991 in response to a balance of payments crisis, the government introduced the New Economic Policy. This policy used liberalization, privatization, and globalization[5] to stimulate growth through market forces and competition. The economy grew at 5.5 percent in 1992-1993, up significantly from 1.1 percent in 1991-1992.[6] Thus, liberalization did promote economic growth.

Figure 1-1
Evolution of India's Regulatory Framework



The new system of regulation that came with this liberalization was intended to create a level playing field for public and private players and to intervene when market outcomes were not optimal. In contrast to the previous system, regulators were independent and separate from the executive branch and thus enjoyed a certain degree of autonomy. And whereas the earlier system restricted market forces and emphasized the role of the government, the new system recognized the role of the market in economic growth and aimed to foster an enabling environment and limit potential harm to consumers and the general public.

From Seller's Market to Buyer' Market: The Impact of India's Regulatory Structure on the Automobile Sector

India's automobile industry started in the early 1940s when Hindustan Motors Ltd. and Premier Automobiles Ltd. were established. At first, the industry was protected from foreign competition through high import tariffs, foreign investment licensing requirements, and the transfer of effective control over foreign collaborations to Indian entities. The result? Medium- to large-sized enterprises produced low-quality, high-priced vehicles.

The policy change of the 1980s eased restrictions on the import of capital goods, technology, and raw materials necessary for modernization. Competition increased, and by 1985 four foreign collaborating firms began operating in India. Relaxed import restrictions and the abolishment of approvals from the Monopolies and Restrictive Trade Practices Commission enabled firms to upgrade and grow.

The reforms of 1991 lowered barriers to entry and allowed up to 51 percent foreign direct investment. Global firms and domestic companies formed a large number of joint ventures and the industry benefited from the introduction of sophisticated technology. Before the reforms, the industry had a negative annual growth rate of 10.1 percent—after the reforms growth began to recover and then to rise. The number of foreign players in India's market rose significantly in the early 2000s after 100 percent foreign equity investment was permitted for automobile and auto-component manufacturers. The heightened competition resulted in a cost-effective, technologically superior, and fuel-efficient transport market—in other words, a buyers' market. Liberalization measures helped India's automobile firms interact productively with foreign counterparts and "globalize."

Types of Regulation in India

Over the past two decades since its liberalization, India has instituted various economic regulations and set up regulatory authorities to enact and enforce them. These economic regulations fall into two main categories: cross-sector and sector-specific. Cross-sector regulations include the Securities and Exchange Board of India (SEBI) Act (1992), the Competition Act (2002), and the new Companies Act (2013). Sector-specific regulations include the Telecom Regulatory Authority of India (TRAI) Act (1997), the Electricity

Regulatory Commissions Act (1998), the Insurance Regulatory and Development Authority (IRDA) Act (1999), and the Petroleum and Natural Gas Regulatory Board (PNGRB) Act (2006). Similar initiatives are envisaged for other sectors such as ports, coal, real estate, and education. The main objectives of these regulations are to facilitate development of the market, encourage competition, promote efficiency, and protect the interests of consumers.

CROSS-SECTOR REGULATIONS

Cross-sector regulations form the regulatory framework applicable to all sectors. They are concerned with fostering economic growth by making India a pro-business location with clear rules and regulations. They address issues applicable to the whole economy, but each regulation has its own function, whether promoting competition in the market, regulating transparency in capital market transactions, or ensuring proper functioning of business.

For example, the Competition Act provides rules on how market participants should act and interact to ensure the presence of competition. The Competition Commission of India (CCI) enforces the Act by preventing market participants from colluding, imposing unfair or discriminatory conditions or prices on the purchase or sale of goods or services, and inflicting harm on consumers, and by providing clear guidelines for compliance and reporting with regard to mergers and acquisitions. In 2011, for instance, the CCI fined the real estate firm DLF Ltd. INR 6.3 billion for harming consumers by way of unfair terms and conditions such as not permitting them to make any alterations/modifications to the buyers' agreement, delay in completion of the apartment project, and arbitrary forfeiture of earnest money deposit by DLF without notifying the buyer.[7] The CCI also ordered DLF to cease and desist from imposing unfair conditions and to modify its agreements to remove unfair conditions imposed on buyers.[8] Further, in June 2012, the CCI fined 11 cement manufacturers in India more than INR 63 billion for being part of a cartel.[9]

The SEBI Act and the Companies Bill are other cross-sector regulations. The SEBI Act regulates the functioning of the securities market and requires transparency in the transactions in the securities market. This is done in order to protect the interests of investors in securities of all sectors and promote the development of the securities market.[10] In September 2012, seven entities, including three individuals, were banned by SEBI from the securities market for four years for alleged involvement in the unfair practice of circular trading of shares of five companies.[11] The Companies Bill consolidates laws governing the functioning of listed companies across all sectors. Regulated functions include incorporation; allotment of securities, share capital, and debentures; management and administration; accounts and audits; and board meetings, governance, and corporate social responsibility.[12]

SECTOR-SPECIFIC REGULATIONS

Sector-specific regulations are based on detailed technical understanding of a sector and are aimed at addressing issues inherent to the sector. They are introduced when the market is not able to function efficiently on its own, or when consumer welfare is

compromised. This is common in sectors with one or more of the following characteristics:

- ***High initial fixed costs for infrastructure.*** In industries such as of oil and gas distribution, the player who first sets up the pipeline infrastructure can service the entire market. This could act as a barrier to entry and restrict competition, resulting in monopoly pricing detrimental to consumer welfare.
- ***Scarce inputs.*** Where scarce resources are substantially or wholly owned by incumbents (e.g., telecommunications firms) competition is skewed in the incumbents' favour, a situation also detrimental to consumer welfare.
- ***Vertical integration.*** When an entity is in both the upstream and the downstream market (e.g., electricity), it may engage in activities that restrict competition in the downstream market and may act as a monopolist.

Sector-specific regulations have two objectives: (1) foster growth by promoting investment and creating a market environment that makes it possible for market participants to operate viably; and (2) promote competition and ensure consumer welfare (this is also a function of the CCI, a cross-sector regulator). Sector regulators meet these objectives, for example, by setting tariffs, ensuring market participants' access to resources and essential facilities, prohibiting unfair trade practices, and regulating price and quality of goods or services.

The Petroleum & Natural Gas Regulatory Board (PNGRB), for example, determines transportation tariffs for common and contract carriers, and city or local natural gas distribution networks. In determining the tariff it considers the cost of service, internal rate of return, alternate modes of transport, level of infrastructure, and other factors that encourage competition, efficiency, and economic use of resources, and that safeguard consumer welfare. TRAI, the telecommunications regulator, started determining tariffs for services and interconnection policies when private service providers entered the sector. The electricity sector regulator, the Central Electricity Regulatory Commission (CERC), regulates tariffs and promotes competition, efficiency, and investment. Because real estate consumers in India are often unable to get complete information from builders and agents and/or hold them accountable,[13] the Real Estate (Regulation and Development) Bill (2013) is being introduced in each state "to protect the interest of consumers, to promote fair play in real estate transactions and to ensure timely execution of projects."[14]

Regulations have been introduced in India over the years whenever the need for them was recognized, whether in a specific sector or across all sectors. This has resulted in some overlap in the functions of regulators. For instance, even before the Competition Act was introduced, ensuring competition and consumer welfare in a sector was a recognized function of sector regulators. However, with the introduction of the Competition Act, the problem of overlap was experienced. This and other regulatory challenges in India are explored in Chapter 2.

2. India's Regulatory Challenges

Regulation in India since liberalisation has had direct and indirect benefits, but the regulatory structure continues to be plagued by problems such as overlapping jurisdiction, unintended market distortion, and poor enforcement. These problems can hinder the growth of the economy; indeed, some estimate that the problems are delaying projects worth nearly INR 2 trillion.[15] The key regulatory challenges in the country are discussed below.

Is there Regulatory Convergence?

Ensuring "convergence" among regulations with overlapping functions is a major challenge because regulations have been introduced at different times in India, as and when the need for a regulation was felt. This piecemeal development has created overlapping jurisdiction between sector-specific and cross-sector regulators, all of whom are responsible for facilitating competition and efficient market funstioning and protecting consumer interests. And when multiple regulators have jurisdiction over the same matter, the resulting uncertainty and unpredictability make regulation less effective. Consider the following:

- ***The tussle between the Reserve Bank of India and the CCI regarding mergers in the banking sector.*** Previously, mergers were the sole responsibility of RBI, but CCI approval is now needed (except when a failing bank merges with another bank). [16] Experts and practitioners are divided on the issue of whether the RBI should regulate banking functions while the CCI regulates areas dealing with competition.[17] That the two regulators are governed by different ministries has led to further uncertainty.
- ***The potential for contradictory decisions by TRAI and the CCI on telecom mergers and acquisitions.***[18] TRAI regulates merger and acquisition (M&A) on the basis of fixed-percentage market share thresholds,[19] but the CCI assesses whether the M&A would result in an abuse of dominance or any anticompetitive behaviour.
- ***Uncertain jurisdiction in the power and petroleum industries.*** According to the Electricity Act of 2003, an "appropriate commission" can issue directions to a generating company if it abuses its dominant position or is part of a combination likely to harm competition in the sector.[20] Regulators disagree on which is the "appropriate" commission: the Central Electricity Regulatory Commission or the CCI.[21] Likewise, when the CCI investigated anticompetitive practices by the three public sector oil companies, the companies contended before the Delhi High Court that the CCI does not have jurisdiction to investigate the matter because PNGRB regulates the sector. The High Court has stayed CCI proceedings against the three companies.[22]

- ***Overlapping powers in the pharmaceutical sector.*** According to certain market players, the growing trend of M&As by foreign pharmaceutical companies will raise the price of medicine in India. They believe that the Foreign Investment Promotion Board (FIPB) should tighten M&A norms.[23] But according to a government-appointed committee examining investment in existing production facilities (i.e., brownfield investment) the CCI, not the FIPB, should take action.[24] The committee also suggested that the CCI lower threshold limits for M&As in the pharmaceutical sector and consult with sector experts on M&As.[25]

Sector-specific and cross-sector regulators are both necessary, but regulatory convergence is imperative to mitigate the uncertainty arising from legislative ambiguity, jurisdictional overlap, and interpretative bias. Overlapping jurisdiction causes confusion and delays decisions. It also creates an incentive for regulated entities to indulge in 'forum shopping' to seek regulators who are most likely to favour them—again causing delays costly to businesses and eroding investor confidence. After liberalization, sector-specific regulations are essential but as competition increases over time, it may be best to replace their competition-related function with general competition regulations.[26]

Are Regulations Appropriate and Adequate?

Regulators must balance several sets of objectives. They must ensure that consumers' interests are protected by way of lower prices, more choice, and better quality; that producers remain financially viable, efficient, and innovative; and that broad goals for employment, investment, competition, universal service, equity and merit goods are advanced. But in ensuring consumer welfare and economic growth, they must not create undue distortions in the market or generate unintended negative impact.

Assessing regulatory quality assesses its impact, reveals actual or perceived divergence between policy and regulation, and identifies instances of over- and under-regulation. Most developed countries conduct formal assessments of regulatory impact to ensure that laws and regulatory bodies do not proliferate without good reason, that regulations do not distort competition, and that regulations correct the problems they were intended to.[27]

A system of regulatory quality and impact assessment in India could reveal a number of regulatory strengths and weaknesses. Consider the following results of a cursory assessment of regulations in telecommunications, network industries, civil aviation, banking, and natural resources:

- ***The right regulations can promote economic growth.*** According to economic literature, the causal link between regulatory quality and economic performance is strong.[28] For example, introduction of the "calling party pays" regime (i.e., no charges for incoming calls) and cost-based interconnect usage charges by TRAI has improved competitiveness, lowered call charges, rationalized roaming charges, and increased teledensity in India.[29]
- ***Some economic regulations can enable competition and growth.*** For example, regulations have ensured competitive "neutrality" in the natural monopolies of

network industries such as gas pipelines. A pipeline owner has a competitive advantage over others for whom building a pipeline or grid is not economically or physically feasible. By providing other players open access to this infrastructure at a fair transportation cost, regulation ensures that competition in not impeded. Constant review of conditions of access and tariffs is necessary in dynamic markets. The PNGRB through its regulation on "Access Code for Common Carrier or Contract Carrier Natural Gas Pipelines" has directed Reliance Gas Transportation Infrastructure Ltd. to provide access to power companies in Andhra Pradesh to transport re-gasified liquefied natural gas from the West Coast to the East Coast using its pipeline.[30]

- ***Some policies and implementing regulations have divergent objectives.*** To operate internationally an Indian airline must have at least 20 aircraft and five years of experience in domestic scheduled air transport.[31] This requirement conflicts with the regulatory objective to promote competition and growth because it creates a barrier to entry and inadvertently favours foreign over domestic airlines. Unsurprisingly, foreign airlines' operations to and from India have expanded steadily while Indian airlines handled only 36 percent of India's international passenger traffic in 2011-2012.[32,33]
- ***Other policies and regulations have multiple negative consequences.*** Banks in India are required to lend to certain sectors, which imposes high costs on them and throws into question the policy behind such a requirement. The RBI's priority sector lending (PSL) policy requires commercial banks to direct a portion of their lending to strategic sectors, such as agriculture, micro and small enterprises, microcredit, education, housing, and export credit.[34] But PSL increases the number of nonperforming assets in the economy, raises transaction costs, erodes bank profitability, and discourages banks from increasing lending in general because doing so merely raises PSL targets for the next year. Ultimately, PSL reduces the credit supply and general economic growth.[35] And the uniform imposition of the policy on all kinds of banks—public, private and foreign— is inefficient because each type of bank follows a business model based on its expertise.
- ***Some policies are at the expense of competition and consumer choice.*** Private oil companies are at a competitive disadvantage in India because the government provides subsidies on diesel only to public sector oil companies, putting private oil companies at a competitive disadvantage.[36] Despite having a strong distribution network, private companies such as Essar Oil, Reliance Industries, and Shell India are unable to sell diesel through their outlets, thus reducing competition and consumer choice.[37]

Are Regulations Enforced Effectively?

Consistent enforcement is one of the most challenging tasks facing regulators, who must draw on their knowledge and experience to devise solutions in dynamic markets. But limited attention to technical and practical issues in India's educational curriculum and limited experienced personnel in regulatory agencies make effective enforcement at best difficult. According to a recent study, "India's regulatory architecture is getting increasingly complex with the setting up of new regulatory bodies which are inadequately empowered, and insufficiently manned in terms of both numbers and

skills."[38] The Indian Institute of Management, Bangalore, determined that the CCI should have at least 240 employees, but it in fact has far fewer.[39] How does India fare in ways with regard to the preconditions for effective enforcement—adequate technical expertise, capacity, autonomy, and transparent decision making?

- ***Expertise and capacity.*** A shortage of manpower and technical expertise greatly weakens regulatory independence and functional autonomy—in extremes leading to regulatory capture. In 2007-2008, the government approved 48 positions for the PNGRB but none were filled. The government then appointed officials from state-owned oil companies (e.g., GAIL, Indian Oil, HPCL) to be the senior staff of PNGRB. [40] Thus, those who were to be regulated became the regulators.

- ***Autonomy.*** Even when a regulation has clear objectives the regulator may be unable to exercise the power necessary to meet them. Reforms in the electricity sector, especially the Electricity Act of 2003, aimed to increase the supply of electricity to more people and to introduce competition in all segments—generation, transmission, and distribution.[41] But state control of electricity distribution has made the reforms ineffective. The ruling political parties in states have forced distribution utilities to keep tariffs the same even though the National Tariff Policy stipulates that tariffs should be within the range of plus minus (+/-) 20 percent of the cost of power supply to make the tariff reflective of the cost of power supply. State Electricity Regulatory Commissions (SERCs) set the tariffs at the behest of the state governments. Thus, the regulation has not been effective and the sector's distribution segment has not benefited as intended by the regulation.

- ***Transparency.*** Regulations often allow regulators to use discretion in implementation, which makes it imperative that decisions be made transparently. For example, the Competition Act lists factors that the CCI should consider in determining dominance, along with any other factor the CCI considers relevant. That the CCI may consider any one, some, or all factors creates apprehension about the arbitrariness and predictability of its orders. If the orders do not clearly explain the reason for considering some factors but not others, they may very well be challenged in appellate courts. The end result will be a loss of credibility, weaker enforcement and legal uncertainty, and the stigma of poor decisions. Explaining how and why a particular decision was reached will overcome apprehension about orders.

- ***Evidence based approach.*** Effective enforcement also requires data. For example, to examine allegations of predatory pricing and cartelization in India's civil aviation sector, regulators need detailed data. One solution is to develop a data collection tool for the civil aviation market using the techniques employed by the United States' Department of Transport in creating its DB1B and T100 databases. These contain data on every tenth ticket sold in the United States to track air fares, carrier market share, air traffic patterns, and passenger flows. Periodic collection and monitoring of cost and airfare data will help identify pricing trends within India's civil aviation market, and comparison of these trends with cost and prices in other periods.

3. Recommendations

Competitive and effectively regulated markets are the best at providing goods and services to consumers. As regulatory agencies mature and rules expand, the challenges discussed above will only increase. It is therefore essential to identify measures to overcome them now and arrive at the right set of regulations. In this section we recommend three actions to achieve this objective.

Define Clear Jurisdictions for Each Regulator and Make Regulations Convergent

To minimize overlapping jurisdiction, each regulator's functions and jurisdiction must be clearly defined and convergent with those of other regulators. This can be done through legislative changes or court rulings. For example, to resolve issues arising from overlapping jurisdiction of the CCI and the RBI, the government exempted mergers and acquisitions of loss-making banks from CCI's purview for five years starting January 2013.[42] Another solution is to bring all competition issues before the CCI, while all other sector-specific matters are handled by sector regulators. This means that sector regulators focus on their primary role, while the CCI focuses on broad matters of competition and consumer welfare. If necessary, the CCI could turn to sector regulators for technical expertise for particular cases.

Korea's Ministry of Information and Communication (MIC) and the Korean Fair Trade Commission (KFTC) adopted a similar solution when their functions in the telecommunications sector overlapped. In 2003, the Office of Government Policy Coordination in the Prime Minister's Office clearly delineated the jurisdiction of both regulators.[43] The KFTC would regulate general unfair business practices, while the MIC regulated technical matters requiring industry expertise and practices injurious to the interests of telecommunications users.[44] The MIC and the KFTC signed a memorandum of understanding that provided procedures to avoid concurrent investigations.[45]

Conduct a Comprehensive Assessment of Regulations

If regulation or deregulation is to be of benefit, one must first determine how much regulation is needed. Regulations should provide an impetus to growth while ensuring that their defined social and economic objectives are met. Over-regulation can be a barrier to entry and expansion, restricting market competition and growth. Under-regulation may lead to the sector missing out on growth opportunities due to the lack of supporting

facilities or a supportive business environment. Whether too much or too little, an inappropriate amount of regulation stunts economic growth.

Comprehensive assessment is also needed to identify the actual impact of regulations—Are they having the intended impact? Are they distorting the efficient functioning of the market? How can they be adjusted to minimize negative impact? With regard to competition, an impact assessment would answer the following questions: [46]

- Does regulation limit the number or range of suppliers?
- Does it limit the suppliers' incentive or ability to compete?
- Is the regulation creating barriers to entry?
- Is consumer choice or information being limited due to regulation?

Various members of the Organization for Economic Co-operation and Development (OECD) conduct formal regulatory impact analysis. RIAs have enabled most of these countries to make cost-effective decisions and remove unnecessary and poor quality regulations. For example, Mexico assessed the impact of its administrative procedure law in March 2000 and established the Federal Regulatory Improvement Commission (COFEMER) to review draft regulations and RIAs produced by ministries and regulatory agencies. By 2002, COFEMER had reviewed 311 RIAs and rejected 51 draft proposals because they lacked legal and technical accuracy.[47]

Create an Environment Conducive to Effective Enforcement and to Proper Governance

As discussed in Chapter 2, lack of competence and adequate staffing in regulatory agencies can seriously erode the quality and impact of a regulation. India's educational institutions should design programs and offer courses on regulatory economics to impart these sorely needed skills to future regulators. In addition, the manpower and technical expertise needed by each regulatory agency should be assessed and capacity building then started.

To help ensure effective enforcement, regulators should be provided with the autonomy to function independent of the government and market actors and not be linked to the provision of the good or service being regulated. For example, TRAI is a regulator and is not in the business of providing telecommunications services. Moreover, the regulator should be neutral with regard to whether a company is in the public or private sector.

For regulations to guarantee transparency, predictability and efficiency, they should be based on economic principles. Canada's regulatory framework, for instance, takes an evidence-based approach to decision making.[48] This approach uses information and knowledge gained through robust economic analysis to determine the likelihood of market distortions and their impact. Regulators in India should collect reliable data on a periodic basis so they can analyse market trends and identify market aberrations. Finally, regulators should clearly explain their decisions and support them with solid analysis to remain credible.

Conclusion

The need for a right set of regulations in a liberalized economy is well-recognized. The pertinent question in case of a liberalized economy such as India is, to what extent is economic regulation desirable. This study highlights India's regulatory issues of overlapping jurisdictions, appropriateness and adequacy of regulations, and poor governance, and recommends steps to overcome these challenges in order to pave way for an improved regulatory system.

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[1] Posner, Richard A. 1974. *Theories of Economic Regulation*. Working Paper No. 13, Center For Economic Analysis of Human Behavior and Social Institutions, National Bureau of Economic Research. Inc. http://www.nber.org/papers/w0041.pdf.

[2] The government regulated economic activity in this period by controlling heavy industries and utilities, and licensing imports and substituting them with domestic production to eliminate foreign competition and protect domestic industry. The government controlled the private sector through licensing, price controls, quotas on outputs and imports, restrictive controls on foreign investment, and high import tariff protection.

[3] Agarwal, O.P. 2000. Role of Independent Regulation in Economic Reforms. In *Proceedings of the National Conference on Regulation in infrastructure Services*: *progress and way forward.* New Delhi, November 14-15. http://www.teriin.org/upfiles//pub/papers/ft25.pdf.

[4] Reforms included relaxing regulations relating to licenses for some industries, import licensing for capital goods and some intermediate goods, and expansion of capacity by large enterprises.

[5] India began delicensing industries, abolishing quotas on business outputs, permitting private players to enter sectors that were previously government monopolies, liberalizing quotas and tariffs on the import of capital goods, and reducing import tariffs.

[6] Computed using GDP data from the RBI.

[7] *Order of the CCI on Case No. 19 of 2010* (12.8.2011), Belaire Owner's Association vs. DLF Limited & Others
http://www.cci.gov.in/May2011/OrderOfCommission/DLFMainOrder110811.pdf.

[8] Ibid.

[9] *Order of the CCI on Case No. 29 of 2010* (20.6.2012), Builders Association of India vs. Cement Manufacturers' Association & Others
http://www.cci.gov.in/May2011/OrderOfCommission/292011.pdf.

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[13] Real Estate (Regulation and Development) Bill, 2013, Introduced in Rajya Sabha (14 August 2013), Press Information Bureau, Ministry of Housing and Urban Poverty Alleviation
http://pib.nic.in/newsite/PrintRelease.aspx?relid=98224.

[14] Ibid.

[15]India has too many regulations: Raghuram Rajan. March 13, 2013. NDTV Profit.

http://profit.ndtv.com/news/economy/article-india-has-too-many-regulations-raghuram-rajan-319448.

[16] Venkatesh, M. New banks: CCI to prevent monopoly. *Hindustan Times* . August 7, 2013. http://www.hindustantimes.com/business-news/businessbankinginsurance/new-banks-cci-to-prevent-monopoly/article1-1104847.aspx.

[17] Tiwari, D. Allowing Bank Mergers Would Boost Local Consolidation. *The Economic Times.* November 7, 2013. http://articles.economictimes.indiatimes.com/2013-11-07/news/43776332_1_foreign-banks-finance-ministry-mergers-and-acquisitions.

[18] Consult us before finalising M&A norms in telecom: CCI to TRAI. *The Economic Times.* December 2, 2011. http://articles.economictimes.indiatimes.com/2011-12-02/news/30468089_1_achievement-of-two-years-cmts-and-uas-licenses-component-of-licence-fees.

[19] According to various newspaper reports, the market share threshold for mergers and acquistions is being raised from less than 35 percent to 50 percent.

[20] Section 60, Electricity Act 2003.

[21] CCI, CERC differ over anti-competition norms in power sector. *The Economic Times.* October 16, 2012. http://articles.economictimes.indiatimes.com/2012-10-16/news/34499262_1_cerc-central-electricity-regulatory-commission-power-sector.

[22] Delhi HC stays CCI proceedings against IOCL, HPCL and BPCL. *Business Today.* November 22, 2013. http://businesstoday.intoday.in/story/delhi-hc-stays-cci-proceedings-against-iocl-hpcl-and-bpcl/1/200813.html.

[23] Acquisitions in existing companies are brownfield investments that are cleared on a case by case basis. Greenfield projects are fresh investments by a foreign company and are cleared by the Indian government under the automatic route.

[24] Committee headed by Arun Maira, member of the Planning Commission

[25] A lower threshold in the pharma sector has been suggested to ensure that a balance between public health concerns and attracting overseas investment in the sector is maintained. Six merger applications have been reviewed since CCI notified M&A scrutiny in 2011. According to CCI norms, it must approve in advance any acquisition that will result in combined sales of more than Rs 4,500 crore of two Indian companies and above $2.25 billion (around Rs 11,025 crore) by two overseas companies. For two conglomerates these thresholds are Rs 18,000 crore for groups in India and $9 billion for global groups. The CCI exempts an acquisition if the smaller company has sales of less than Rs 750 crore. In case of merging global firms or groups, CCI will need to be notified only if their combined Indian operations (called India nexus) are at least Rs 2,250 crore. See Cabinet to consider FDI policy change in existing pharma projects soon, *Business Standard,* August 16, 2013; Tighter M&A norms for pharma sector confuse CCI, experts *Live Mint,* October 11, 2011; and CCI to vet brownfield pharma M&A deals, *The Financial Express,* November 16, 2012.

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