

Royal Government of Bhutan
Ministry of Economic Affairs

National Competition Policy 2014

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INTRODUCTION

Benefits of Competition

In the economic sense, ‘competition’ denotes the process of rivalry between enterprises whereby they strive independently to gain the patronage of customers in order to achieve their commercial objectives such as profit, revenue or market share.

Competition is known to increase allocative and productive efficiencies (both static and dynamic efficiencies), incentivize innovation, and maximize consumer welfare. It allows a nation’s resources to be used to best effect in the production of goods and services. It inhibits the abuse of market power. It also enhances the competitiveness of the national economy and the enterprises. These improvements lead to economic growth and benefit the consumer in the shape of wider choice, increased availability of goods and services at affordable prices, and increased employment.

Competition policy could also enhance good governance by advocating more transparency, and less controls and discretionary powers in the hands of Government functionaries. For example, competition policy would mandate that the allocation of scarce national resources or the procurement by Government should be based on competitive bidding instead of individual discretion. This would reduce the scope for opaque decision making and discriminatory or rent seeking behavior both by enterprises and government functionaries. Improved and transparent governance is a parameter in better investment environment and would attract more FDI. It is also believed that there is a positive association between competitive markets and the quality of corporate governance.

Competition in the markets and democracy in the political sphere are founded on the same value system that respects freedom of individual choice, abhorrence of concentration of power, decentralized decision making and adherence to the rule of law. ‘Equality of opportunity’ and the ‘freedom to trade’ are treated as sacrosanct in both the systems.

Competition would also contribute to the GNH principles as it signifies greater economic freedom and opportunity, security and equity, lower levels of corruption, and higher levels of material well being.

As opposed to healthy competition, anti-competitive practices cause great harm. Cartels are horizontal agreements between enterprises not to compete on price, product or customers and are regarded as the most pernicious form of market failure. Also a monopolistic or dominant market position can be abused. Vertical agreements can also be misused to increase prices or restrict the availability of goods and services. Mergers and acquisitions can create a monolith with immense market power. Such anti-competitive practices or developments may result in higher prices, erecting entry barriers, and creating artificial scarcity of goods or services, limiting quality and

finally limiting choice for consumers, which may be businesses, households or even governments.

DEFINITIONS

The following definitions are adopted for the purpose of the Competition Policy:

- a) **Acquisition:** means directly or indirectly, acquiring or agreeing to acquire:
- i) shares, voting rights or assets of any enterprise; or
 - ii) control over management or assets of any enterprise.
- b) **Competition:** means activity arising from the operations of two or more entities offering products and services in a manner that is consistent with acceptable competitive business behaviour and conduct, disabuse of dominant power in the market place, and fair business practices.
- c) **Competitiveness:** as distinct from competition, refers to the ability of two or more entities to offer products and services whose quality and prices compare favourably with those of competitors in specific market segments.
- e) **Consumer:** means any person who:
- i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment for personal use or resale;
 - ii) hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment for commercial use or for resale.
- f) **Exclusions and Exemptions:** refer to conditional arrangements under which Government may exclude and exempt certain economic activities or firms from the ambit of the Competition Policy and/or its related legislation.
- g) **Horizontal Agreements (including cartels):** refers to explicit or implicit arrangements by firms selling identical or similar products in the same market through strategies such as price fixing, output restraints, bid rigging, and division of markets amongst themselves in order to curtail inter-firm competition.
- h) **Vertical Agreements:** means arrangements between firms at different levels of the market structure aimed at establishing the price levels such as the minimum or maximum resale price at which their goods and services should be sold.

(i) **Merger** refers to a transaction wherein two or more legal commercial undertakings merge to form a single legal undertaking.

j) **Merger Control:** refers to action or measures aimed at preventing the creation of undertakings that have the incentive and ability to result in , dominant power in the market through acquisitions or other structural combinations.

k) **Monopolisation:** means the conduct and practice of a firm with a dominant position of at least 40% or more, market share and significantly larger than that of its bigger rival to maintain, enhance or exploit their dominant 'power in the market place.

m) **Predatory Pricing:** refers to a form of abuse of dominance, which consists of selling a product or service in a given market at a price below the average cost with the aim of eliminating smaller competitors.

THE GUIDING FRAMEWORK

The Constitution of Bhutan and the Competition Principle

Our Constitution reflects a clear mandate for a policy for fair competition through a liberalized and progressive economy.

- Article 7, Fundamental Rights clause 10 states:
 - “10. A Bhutanese citizen shall have the right to practice any lawful trade, profession or vocation.”
- In addition, the Principles of State Policy Article 9, clause 10 states:
 - “10. The State shall encourage and foster private sector development through fair market competition and prevent commercial monopolies.”
- Further, Article 14, Finance Trade and Commerce, Clause 16 also states:
 - “16. Parliament shall not enact laws that allow monopoly except to safeguard national security.”

Read together, the above Constitutional provisions guarantee a Bhutanese citizen the right to practice any lawful trade, profession or vocation (without unreasonable restrictions or obstacles being erected by the more powerful economic entities such as monopolies). It also directs the State to encourage and foster private sector development through fair competition and by

prevention of commercial monopolies and it prohibits statutory monopolies except to safeguard national security.

From the above, it can be inferred that our Constitution provides a firm ground for the State to foster competitive markets, promote private sector participation and prevent the creation of monopolies.

In addition to the Constitution, the competition principle is amply reflected in the Economic Development Policy (EDP2010); the EDP2010 clearly visualizes the need to foster a market based economy, and to encourage private sector participation. Together, therefore, our Constitution and the EDP2010 provide a sound and legal basis to have a National Competition Policy.

In addition, the following reports submitted to the RGoB have emphatically argued for and recommended a Competition Policy in RGoB:

- Competition Policy Framework for Bhutan, by UNCTAD, 24 April 2011
- Preliminary Framework of Competition Policy and Law for Bhutan, May 2012

The Competition Policy also recognizes the importance of the following factors:

a) Efficiency

This Policy recognizes that efficiency is indispensable to the ability of any economy to attract investment flows from both domestic and foreign sources. It also recognizes that efficiency enhances business growth prospects by engendering product and service competitiveness as well as the interface between the competition policy and sector regulation.

b) Competitiveness

Like efficiency, competitiveness is a critical success factor in the ability of any economy to effectively 'compete for the attraction of investment flows, particularly foreign direct investment. This Policy, therefore, recognizes the important role of competitiveness in underpinning the continued growth and sustainability of the economy at both micro and macro levels.

c) Consumer Welfare

This Policy recognizes the importance of consumer welfare as a public interest: phenomenon that encompasses other issues such as the protection of consumer interests, rights and access to a wider choice of quality goods and services at competitive prices.

VISION

A market based economy where fair and healthy competition prevails and there are no entry barriers for new enterprises including, in particular, cottage, small and medium enterprises. In such a situation consumer welfare is maximized, and there will be enhanced levels of innovation, efficiency and economic growth in Bhutan thereby benefiting all.

MISSION

To have policies at the level of RGoB and its agencies that will achieve the above Vision, and will encourage healthy competition in the Bhutanese markets; will spur businesses to be more efficient, innovative and responsive to consumer needs thereby providing consumers with greater choice and better prices; will promote more effective use of national resources; will facilitate entry of additional players where a monopoly or dominant position prevails; will prevent abuse of dominant position in the market or formation of cartels in the market.

CONTEXT

The state of competition in Bhutan

While there is some level of understanding of the benefits of competition, it is not a deeply rooted value in the general population. Due to past economic policies coupled with shortage of capital and technical expertise, a formal private sector was late in developing explaining the need for the creation of DHI. This late development, coupled with Bhutan's small dispersed population, has hampered the development of a significant competitive culture,

There is reason to suspect that anti-competitive activities prevail in certain sectors. This may in some cases be in the nature of a cartel, while in some other cases it may be an abuse of monopoly or dominant market power.

Certain sectors of the economy are either under legal monopoly or de facto monopoly; little competition exists in these sectors and the number of competitors is small. Much of this can be attributed to Government policy or to the limitations on competition that arise from the specific conditions prevailing in the Bhutanese market e.g its small size.

Legal Monopolies

Power generation is currently a legal monopoly though Government policy proposes to open this sector to competition, but not before 2020.

Timber and sand are also legal monopolies. The Natural Resources Development Corporation ("NRDC"), a DHI subsidiary, is responsible for the extraction of construction materials like timber, sand and stone. The Natural Resource Pricing Committee sets the price at which the

sawmill sells the timber to the construction sector as well as prices for sand and stone. The production and marketing of sand was nationalized in 2007; the sole supplier of sand in Bhutan is NRDC. As well, all riverbank collection of stone is to be given to NRDC except where it does not operate. The private sector is relegated to a fringe role.

The prices of oil and gas are regulated in Bhutan by the Ministry of Economic Affairs (“MEA”). All petro-chemical products are imported from India, so Bhutan is effectively a price taker. Prices of gasoline at Bhutan's 46 outlets however, do vary across the country depending on the distance from the Indian border.

De Facto Monopolies

In some other sectors, the establishment of new enterprises is restricted or controlled.

The Royal Monetary Authority (“RMA”) which is responsible for licensing banks has placed a moratorium on further licensing of banks until 2015.

In fixed landlines, the only provider is Bhutan Telecommunications (“BT”) a DHI subsidiary. The telephony and internet sectors are regulated by the Bhutan InfoCom and Media Authority (“BICMA”). With respect to cellular telephones, earlier there was only one provider. The introduction of a second provider introduced an element of competition in the market. Price changes must be approved by BICMA.

In the internet sector there are three private suppliers. In the broadcasting sector there are cross-media ownership limitations and the only licensed Bhutanese TV station is government owned.

It will be seen from the above that there are several areas of the Bhutanese economy and its markets where competition and its resulting benefits do not prevail; thus a policy is required at the level of the RGoB to address this situation.

OBJECTIVES of NATIONAL COMPETITION POLICY

Keeping in mind the Vision, the Mission and the Context outlined above, the broad objectives of the National Competition Policy are:

- i. to enshrine competition as the guiding principle for all laws and policies of the Government and place greater reliance on market forces;
- ii. to promote and sustain competition in the domestic market so as to optimize efficiency and maximize consumer welfare. Competition would drive domestic firms to be more efficient and competitive;

- iii. to promote and sustain a vibrant competition culture within the country, both within Government and amongst businesses.

THE NATIONAL COMPETITION POLICY

Need for the National Competition Policy

Competition in the market can be enhanced or sustained by putting in place a framework of policies that enhance competition or competitive outcomes in the markets and minimize unwarranted government or regulatory controls, such as liberalized industrial and foreign investment policies, a more open trade policy, conducive entry and exit conditions, reduced controls, progressive nature of sector regulation, and greater reliance on market forces. This may be referred to as the National Competition Policy.

Principles and Strategic Considerations of the National Competition Policy

To serve the above objectives, the National Competition Policy incorporates the following broad principles:

- 1) to the extent feasible, no monopoly or dominant position will be created or allowed to prevail in the market as an outcome of a law or policy, whether such position is enjoyed by a SOE or a private party;
- 2) in a sector where a monopoly exists, whether of a SOE or a private party, Government will encourage the entry of fresh players; in the alternative, Government will consider the introduction of regulation of the monopoly in public interest;
- 3) no cartel or other anti-competitive arrangement will be allowed to be created or prevail as an outcome of a law or policy;
- 4) no law or policy of Bhutan will discriminate between enterprises on grounds of size or ownership (government or private, domestic or foreign); thus laws and policies would be competitively neutral;
- 5) in accordance with the principles of good governance, procedures will be rule bound, transparent, fair and non-discriminatory;
- 6) as far as possible, policy making, operations and regulation will not be concentrated in a single organization; thus policy making will be with a Ministry, regulation with an autonomous regulator, and operations will be in a commercial enterprise;

- 7) both public sector procurement as well as allocation of scarce national resources by Government or other public sector bodies would be based on market mechanisms that are transparent and non-discriminatory and incorporate a system of competitive bidding;
- 8) where an essential facility is owned by a dominant enterprise, including by a SOE, third party access to that essential facility on fair and reasonable terms would be mandated by law or policy so as to allow competition with the dominant enterprise. However, what constitutes an essential facility may differ on a case to case basis;
- 9) it is recognized that in certain sectors economic regulation is justified e.g. where there is a natural monopoly or network industry or there is information asymmetry e.g. airport, telecom, or insurance; however, even in regulated sectors, the competition principle would be the basis for regulation, and the aim would be to ultimately achieve a competitive market in the regulated sector. Regulation should be progressively lighter as the regulator succeeds in promoting a more competitive structure of the sector; Government recognises the important role and advantages of having sector or industry specific regulator such as the Bank of Bhutan or the Bhutan Telecommunications Authority. However, Government will ensure that all sector specific regulatory bodies fall under the ambit of the Competition Policy
- 10) where, in order to achieve certain social objectives or in the interest of national security or in similar other cases of broader national interest, deviations from the principles of competition policy are necessary or exemptions or exclusions from the competition policy are necessary, such deviations or exemptions or exclusions would be allowed only for a well defined objective, and on the basis of clearly articulated reasons. Also, the deviation would be one that has the least adverse effect on competition while meeting the said social objectives, and as far as possible the deviation would be limited in time and not be perpetual;
- 11) the principles of competition should be embedded in the process of policy making, legislation and enforcement, and applied at both local and central Government levels. It will be ensured that every law or policy is consistent with the competition policy, except where a deviation, exemption or exclusion is warranted in public interest. Every proposed law or Government policy would be scrutinized for its impact on competition in the markets, that is to say it will be subjected to a Competition Impact Assessment (CIA), as explained below;
- 12) Government will maintain a non-interfering and competitive environment in the market. However, Government will take measures against anti-competitive activities such as horizontal agreements (including cartels), vertical agreements,

monopolization, and predatory pricing where these are having a harmful effect or are likely to have a harmful effect on the market;

- 13) in order to safeguard competition in the market place, Government will, if and when necessary, maintain merger control by reviewing mergers and acquisitions, including joint ventures and other forms of business alliances within the general framework of the present competition policy. Government will apply public interest and development criteria in authorising mergers, joint ventures and other business alliances.
- 14) in order to ensure that laws such as those which regulate professional associations and any other laws that have a direct or indirect bearing on competition do not inhibit the effective working of competitive markets, Government will include all professional associations, whether enacted by law or not, within the ambit of both this Policy and its related legislation.
- 15) Government will work in collaboration, and in harmony, with other countries and organizations at the bilateral and multilateral levels to respond to existing and potential cross-border anticompetitive practices; including' but not restricted to, various types of anticompetitive behaviour, abuse of dominant position in the, market and various types of anticompetitive combinations.

Exclusions and Exemptions

The dynamic nature of the market environment dictates that exclusions and exemptions of certain economic activities and firms from the competition policy and its related legislation be granted conditionally taking into account factors such as:

- a) The economic activity's strategic importance and national interest to the country;
- b) The extent to which social benefits to be gained from exclusions and exemptions outweigh the costs;
- c) The extent to which the size of the market share affected will not substantially lessen competition;
- d) The extent to which efficiency and external competitiveness will be enhanced as a result of exclusions and exemptions;
- e) Convincing proof or evidence that a sector regulatory body acting within its powers expressly approved the firm or organisation's action in question (explicit exclusion and exemption); and

f) Convincing proof or evidence that the application of the Competition Policy and/or its related legislation is displaced by sector specific regulatory regimes or other manifestations of state ownership or directive (implicit exclusion and exemption).

Taking the foregoing into consideration, Government will grant the following conditional exclusions and exemptions from the Competition Policy:

i) The provision of **infrastructural facilities for public utilities** such as land-line telecommunications, water, and electricity-require huge capital outlays, which take long to recoup given the paucity of Bhutan's population and the resultant small market base. Since this situation may constrain private sector investment in this sub-sector, Government may exclude exempt the provision of some of the infrastructural facilities from this Policy.

ii) The aforementioned exclusions and exemptions notwithstanding, Government may include the **provision of services** such as public utility connections and distribution services within the ambit of this Policy.

iii) Collective Bargaining: In order to prevent employers from exploiting workers under the pretext of free competition, Government will exempt and exclude collective bargaining by unionised workers from the ambit of this Policy. Furthermore, the Government's Policy of social protection for workers through the Labour Law and minimum wages shall remain in force.

iv) Intellectual Property Rights: The Policy recognises the important role intellectual property (patents, trademarks and copyrights) plays in Bhutan's human and economic development endeavours -and the need to protect and safeguard the interests of intellectual property rights-holders. Therefore, as a way of protecting intellectual property rights from infringement and in order to promote the development of creations and innovations, IP protection should be formulated and enforced in coherence with the present competition policy.

THE WAY FORWARD AND IMPLEMENTATION STRATEGY

It is intended that this Policy will be observed and complied with by all Government ministries, departments and other organizations of the Government. The National Competition Policy does not go into details of the individual sectors of the economy or the activities of the sector Ministries; however, its objectives and principles shall be adhered to by all Ministries and Government organizations when enacting sector laws (which shall include rules and regulations) and policies (which shall include all important measures).

Specific measures under National Competition Policy

In consonance with the above principles, some of the specific steps to encourage competition that are intended are described below:

- 1) Structural reform of SOEs: SOEs occupy a very significant position in the Bhutanese economy; this is especially true of basic industries which require large investments that only the government could have undertaken. Some of the SOEs enjoy a virtual monopoly or a dominant position in their respective areas of activity. It is proposed, on a sector by sector basis, to restructure the SOEs and to encourage the entry of private enterprises into the sectors where SOEs enjoy a monopoly or a dominant position. Such as telecommunications, water, electricity and electricity export with a view to opening up some of the services they provide to competition.. The same would apply to sectors where a private business house enjoys a monopoly or dominant position.
- 2) Government's intention, expressed in the EDP2010, is to undertake disinvestment of SOEs, where it is felt that it is not necessary to continue such SOEs in Government control and private enterprise may be able to provide more efficient management. Since the SOEs are generally of large size and often in essential sectors of the economy, it may be necessary to ensure that when such SOEs pass into private hands, the economic power so gained by private parties would not be abused.
- 3) Government will continue to allocate budget for facilitating the provision of efficient public services and creating an enabling environment for the private sector e.g. establishing more industrial estates, including through public-private partnerships.
- 4) In the context of the geographical situation of Bhutan the difficulties in reaching basic infrastructure like roads, transport facilities and electricity to large parts of the country are significant obstacles to the development of competitive regional markets, which tend to be local. This can be remedied partially by the expansion of cottage, small and medium industries (CSMI). In accordance with CSMI policy, Government will endeavour to promote rapid growth of CSMI especially in remote areas so as to generate greater competition in such areas.
- 5) Bhutan has a low rank in terms of starting a new business and doing business. Time consuming approvals are required from numerous agencies in order to begin operations; often there is little coordination between these agencies. Besides, licenses are granted only for a specific type of business activity; thus if a business wishes to expand its operations into a different but related field of activity, it must apply for a new license from government authorities. The government of Bhutan recognizes these as legitimate concerns and proposes to implement a single window or point of contact for business as well as a maximum response time for licenses or approvals from government.
- 6) Foreign direct investment (FDI) could enable the country to benefit from more efficient and competitive markets. At present, the country's FDI policy has certain provisions which are likely to have the effect of restricting or even discouraging FDI investment. For instance, no FDI is allowed without prior written approval and it must represent more

than 20% of the business equity; generally, all foreign investment must be in a foreign currency from own reserves; only a Bhutan joint venture partner can normally access capital from a domestic source; the RMA will provide funds for a two month period during start up but this must be repaid in six months. There is an exception that allows the foreign investor to access capital locally but the RMA decides on the debt to equity ratio. The investor must incorporate in Bhutan and must abide by a series of restrictions regarding employment of expatriates and the training and employment of local people. The foreign investor is also subject to supervision by various government authorities e.g, the RMA, Ministry of Labour the Ministry of Home and Cultural Affairs and the National Environment Commission Secretariat. It is intended to examine the FDI and related regulations with the objective of simplifying the procedures and reducing the regulatory burden on foreign investors.

Competition Advocacy

To spread the message of competition and its benefits for the consumers and businesses as well, Government would undertake advocacy and public awareness measures; this would be done *inter alia* through public awareness programmes and capacity building of stakeholders including law makers, judiciary, policy makers, regulators, businesses, trade associations, consumers and their associations, and civil society.

Competition Impact Assessment (CIA)

Based on the National Competition Policy principles stated above, every proposed policy or law would be closely reviewed for its effect on competition in the markets, that is to say whether it impacts competition positively or adversely, and if so what would be the extent of such impact. In the case of an adverse effect, it would be seen whether such adverse effect can be justified by the other gains from the policy or law. In any case it would be examined how the adverse effect can be minimized consistent with the objectives of the policy or law. This may be referred to as Competition Impact Assessment (or CIA), which is observed by several countries. It would be mandatory to include the CIA report in the proposal or document when it is being considered for a decision by the Government.

The CIA will be integrated into the Government's existing Regulatory Impact Assessment (RIA) system announced in 2011, that is to say the CIA will be carried out along with the regulatory impact assessment already mandated by the RIA system before any new law or policy is proposed or undertaken.

The CIA will be carried out as described in the Competition Impact Assessment Guidelines (CIA-G) at **Annexure-I**. The CIA-G will help to identify unnecessary restraints on market activities and consider alternative, less restrictive measures that would still achieve government policy objectives. Where the CIA-G indicate that one of the negative effects listed therein is

likely from the law or policy, it would be considered whether the proposal should be dropped or should be modified to mitigate its anti-competitive effects.

While the CIA-G provide clear guidance on the process for undertaking the Competition Impact Assessment, the Government shall arrange for training in the use of the CIA-G for the staff of the Regulatory Impact Unit (RIU) and other relevant staff of the Government and its agencies.

It is planned that the CIA exercise also be extended to existing laws or policies, as some of these may be having an adverse effect on competition or in fact giving rise to or legitimizing monopoly or dominant positions enjoyed by existing enterprises, whether SOEs or private. It is intended, as part of the National Competition Policy, to review such policies or laws and where these have an adverse effect on competition, it would be examined whether these policies or laws need to be modified in order to eliminate or mitigate the adverse effect on competition, consistent with the overall objectives sought to be achieved through the policy or law. It may be possible in several cases that changes can successfully be introduced in the policy or law without diluting its objectives but with less adverse effect on competition, and possibly in some cases the objective can be better served with the introduction or enhancement of competition.

In the first place, government will list out the existing laws and policies that need to be reviewed through the CIA process.

Oversight Arrangement for the National Competition Policy

The Competition Policy has a broad sweep, and it would be applicable across all Ministries, Government organizations and SOEs. With the view to oversee its compliance, Government would institute an oversight mechanism: a National Competition Council will be set up within Government, which would have the responsibility to ensure that the Competition Policy is being observed and followed by all concerned.

The Council would consist of highly experienced representatives from the concerned Ministries (mostly economic Ministries) but would also have representatives from SOEs, regulators, private sector, small and medium enterprises (SMEs), economists, consumer organizations, and possibly even some competition experts from outside the country. The Council would be housed in the Cabinet Office since its mandate runs across all of Government. The secretariat for the Council would be provided by the RIU in the Cabinet Secretariat .

The National Competition Policy is in accord with the GNH principles; GNH screening for the proposed has been carried out by the Ministry of Economic Affairs and the results thereof are at

Alternative arrangement to the above

Institutional arrangements for the review and monitoring of the implementation of the Competition Policy and its related legislation will remain the responsibility of the Prime Minister

Office whilst each Ministry will be responsible for the implementation of this Policy and application of the Competition Impact Assessment as outlined under the RIA regulation.

For the Competition Policy to succeed, Government will:

- a) Establish a Unit in the Prime Minister's Office;
- b) Ensure compliance and enforcement of the principles of fair play; and
- c) Maintain an effective and equitable balance between the interests of business and those of the public.

Royal Government of Bhutan
Ministry of Economic Affairs

National Competition Policy 2014

Competition Impact Assessment Guidelines (CIA-G)¹

This note describes a step wise process for conducting the Competition Impact Assessment (CIA) of a particular law or policy as stipulated in the National Competition Policy (NCP).

The CIA is to be carried out in the following steps:

1. Step-I: The first step is to identify which law or policy is likely to have an impact on competition; further steps in the CIA need be undertaken only if Step-I reveals that there is likely to be an adverse effect on competition.
2. Step-II: In the second step, it would be analyzed whether each of the measures stipulated in the proposed law or policy is required / justified in the light of the objectives thereof.
3. Step-III: Finally, it would be examined whether and how the adverse effects on competition can be mitigated while retaining the objectives of the law / policy.

Step I – Identification of adverse impact on competition

To begin with, it has to be examined whether the proposed law or policy is likely to have an adverse effect on competition; the following check-list will help in this exercise. There could be an adverse effect if the law / policy causes any of the following:

(A) Limits the number or range of suppliers; this may be so if it:

1. Grants exclusive rights for a supplier to provide goods or services.
(For example, it gives monopoly right to supply electricity, or landline telephony, or oil and gas.)
2. Establishes a license, permit or authorization process as a pre-requisite for operation.
Limits the ability of some types of suppliers to provide a good or service.

¹ This note *inter alia* draws from documents such as - the Spanish CNC, CCS's guidelines, UK RIA, the Singapore CCS Guidelines on Competition Impact Assessment, and the OECD Toolkit.

(For example: if the law / policy requires an import license to be obtained before the applicant can undertake imports.)

3. Significantly raises cost of entry or exit by a supplier.
(For example: A government policy to set a significantly low price X for all medicines for treating common cold; or to impose high license fee for setting up manufacturing facilities for these medicines. These could make it difficult for new producers to enter the market.)
4. Creates a geographical barrier to the ability of companies to supply goods services or labour, or invest capital.
(For example: if the law / policy stipulates that operations in a certain geographical area can be carried on only by enterprises located in that area.)

(B) Limits the ability of operators to compete; this may be so if it:

1. Limits sellers' ability to set the prices for goods or services. Controls or substantially influences the prices for products.
(For example: the policy / law fixes or controls the price for a particular product.)
2. Limits freedom of suppliers to advertise or market their goods or services.
(For example: regulations which prohibit advertisement for one kind of beverage but allow advertisement for a competing kind of beverage; this disadvantages suppliers of the prohibited variety.)
3. Sets standards for product quality that provide an advantage to some suppliers over others or that are above the level that some well-informed customers would choose. Or, requires technical or quality standards for products/raises relative cost of production that provide an advantage to some operators over others.
(For example: if the government mandates a minimum standard of quality of plastic to be used in making lunch boxes and this standard is already being followed by one major producer, the other producers are disadvantaged by having to incur additional costs to meet that standard, especially if an informed consumer would have wanted to buy a product of lower standard than the one imposed. There was no market based need for the other manufacturers to upgrade the quality except for the legal obligation.)
4. Treats incumbents differently from new entrants.
5. Creates regulatory uncertainty for new entrants.

(For example: a sector where new entrants are unsure of what government policy will be and how frequently it is subject to change by government. Or imposing a new and legally ambiguous condition on new entrants in the market, the implications of which are unknown.)

(C) Reduces the incentive of suppliers to compete

1. Creates a self-regulatory or co-regulatory regime.

(For example, creating a self-regulatory regime that agrees on common prices or terms of sale.)

2. Requires or encourages information on supplier outputs, prices, sales or costs to be published.

(For example: if it mandates manufacturers / wholesalers to disclose the price of supply to retailers, it might end competition between the manufacturers / wholesalers.)

3. Reduces consumer mobility between suppliers or their ability to choose between them.

(For example: if it allows banks to impose a pre-payment penalty on borrowers.)

The justification of the adverse impact will not be examined at this stage; the existence of an adverse impact is sufficient. Once the law or policy is found to have an adverse impact on competition, the process given below in this note would be followed.

Step II – Objectives of the policy

(A) Clearly identify the objective(s) of the law / policy and its legality.

1. The objective of the policy or law must be specific and consistent with the instrument used to achieve that objective.

(Avoid generic objectives such as – the policy is in “public interest” or for “the greater social well-being”. For example, if a policy reducing price of medicines for common cold causes the producers to stop producing the medicines, the policy is inconsistent with its objective of making medicine available to the poor.)

2. Avoid confusing the objective of law or policy with the means or instrument used to achieve it.

(For example: the objective of the price regulation of common cold medicines is not merely to reduce the price thereof; it is also to make common cold medicines affordable and accessible to the poor for their health and well being.)

(B) Establish a cause and effect relationship.

(Check if the policy is necessary to achieve the end result. Analyse every restriction separately to determine if it contributes to the desired objective.)

(C) Check the proportionality of the restriction.

(Balance the cost of restricting competition against the benefit achieved. For example, if the increase in social well being that is achieved is marginal in comparison to the adverse economic effect on the market, the policy is not proportionate to its objectives.)

Step III – Alternative means to achieve the objective and minimize / mitigate adverse impact on competition.

An objective can be achieved using different regulatory instruments. The impact of each of these instruments on the conditions of competition must not be ignored (cost-benefit analysis). There could be alternatives that may achieve the same objective, but have less adverse effect on competition in the markets. Providing an exhaustive list is not feasible; however, given below are some examples which can be considered:

1. Limit the period of the proposed restrictions.

As far as possible, regulations must be temporary in nature so that the adverse effect on the market may be eliminated as soon as possible.

2. Freedom of procedure.

As far as possible, the restriction should be imposed on the end result that is required, and the enterprises may be allowed to determine the process most suitable to them to arrive at the same.

3. Careful selection of regulatory mechanism.

For example, different mechanisms (licenses, concession agreements, etc.) exist to regulate entry into a market and they lead to different impacts on producers. This must be considered and the least restrictive method must be chosen.

4. Minimal regulation tailored to requirement.

If only a particular segment of a market/production process requires regulation, the policy must be tailored in a manner so that these are not applied in a blanket manner over the entire industry.

5. Do not regulate.

Finally, this alternative may also be considered: whether the market forces on their own, through competition among the market players, will achieve the desired result. Where

awareness campaigns or other policy choices can help achieve the desired objective, it should be chosen to allow for a free market to operate. Other alternatives include streamlining the process of licensing or authorisation where they are imposed; avoiding granting of rights of exclusivity where possible and considering substitutes such as a price cap instead of a fixed price regulation.

Consultation with stakeholders

1. Identification of Stakeholders.

It is important to identify the stakeholders so that consultation can be held with them to get a healthy cross-section of views about the impact of the proposed law / policy and suggestions for minimizing their adverse effects, if any.

For example, in the case of a policy for regulating prices of common cold medicines cited above, the stakeholders would include:

- Producers / suppliers
- Importers
- Distributors
- Retailers
- Consumers
- Doctors
- Independent economists
- The concerned ministries / agencies of RGoB

2. Weighing the adverse impacts of the policy on different stakeholders.

3. Consultation with stakeholders as much as possible.

(For example: in the above example of control on prices of medicines, it would be beneficial to consult with producers and economists whether such price regulation would lead to stoppage of production altogether.)

4. Documentation of Consultative process.

(The consultative process carried out for the CIA should be adequately documents and described in the CIA report.)

Royal Government of Bhutan
Ministry of Economic Affairs

National Competition Policy 2014

GNH Screening result

(To be carried out by RGoB and included as Annexure-II)