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List of Abbreviations

CIA	Competition Impact Assessment
CIA-G	Competition Impact Assessment Guidelines
CP	Competition Policy
CSMI	Cottage, Small and Medium Industries
GNHC	Gross National Happiness Commission
MoEA	Ministry of Economic Affairs
OCP	Office of Consumer Protection
RGoB	Royal Government of Bhutan
SOE	State Owned Enterprise

1. Rationale

Competition in a market place is founded on a value system that strives to respect freedom of individual choices, prevent concentration of power, decentralise decision-making, adhere to the rule of law, promote market self-regulation and market dynamism and promote fair trading practices in the market.

Competition enhances allocative and productive efficiencies in the economy, incentivizes innovation, and maximises consumer welfare. It allows resources to be put to best use in the production of goods and services and inhibits the abuse of market power. It also promotes consumer welfare through a wider choice and increased availability of goods and services at affordable prices.

A well-designed Competition Policy (CP) is a key to good governance by promoting greater transparency and less control and discretionary power in the hands of government functionaries and prevents anti-competitive behaviours and practices in the market by the business entities. It plays a critical role in improving the overall investment environment and in attracting more Foreign Direct Investments.

On the contrary, anti-competitive behaviours and practices cause greater harm to the economy. The existence of monopolistic, oligopolistic, market cartels or dominant market positions results in higher prices, entry barriers, and artificial scarcity of goods or services, thereby undermining quality and limiting the choice for consumers.

Certain sectors of the economy enjoy either statutory monopoly or de-facto monopoly limiting competitive process and often little competition exists in the market. In some sectors, the establishment of new enterprises is restricted or controlled for various reasons. In order to address such anti-competitive practices, a well-designed CP is imperative.

2. Application

CP shall apply to all government organisations and business entities. As such, government organisations and business entities, where relevant, shall be required to adhere to the principles of CP, while formulating and implementing sectoral policies and enacting laws including rules and regulations.

3. Legal Framework

The following constitutional provisions provide a Bhutanese citizen the right to practice any lawful trade, profession, or vocation; and require the State to encourage and foster private sector development through fair competition and by preventing commercial monopolies.

- **[Article 7, Clause 10]** - “A Bhutanese citizen shall have the right to practice any lawful trade, Profession or vocation.”
- **[Article 9, Clause 10]** - “The State shall encourage and foster private sector development through fair market competition and prevent commercial monopolies.”
- **[Article 14, Clause 16]**- “Parliament shall not enact laws that allow monopoly except to safeguard national security.”

Consumer Protection Act of Bhutan 2012 mandates to promote consumer safety and economic interest in the market place which complements the competition policy to enhance consumer welfare. Chapter II section 4 (c) and (d) states that the consumer shall have right to fair, non-discriminatory and equitable treatment by business which include fair terms of contract and sale; and access to a variety of products, technology and services at competitive prices respectively.

Further, the Economic Development Policy 2016 outlines the need and importance to formulate a competition Act by 2018 in order to foster competition, encourage private sector participation and promote a market-based economy.

4. Objectives

The objectives of CP are to:

- a. promote a market-based economy, driven by fair and healthy competition, with no entry barriers for new enterprises, prevent the abuse of market power by commercial monopolies and oligopolies.
- b. enshrine competition as a guiding principle for all relevant policies and laws and to place a greater reliance on market forces to the extent feasible;
- c. promote and sustain competition in the market to enhance efficiency, innovation, and maximise consumer welfare; and
- d. promote market self-regulation and dynamism.

5. Policy Statements

- a. Unless for reasons of social policy or security or fall in the area of natural monopoly, there shall be no monopoly or dominant entity created or allowed to prevail in the market as an outcome of a policy or law, whether such position is enjoyed by a SOE or a private party.

- b. The government shall encourage the entry of new players in a sector where monopoly exists. Or alternatively, the government shall consider the introduction of regulations to control the monopoly in the public interest.
- c. No cartel or other anti-competitive arrangements shall be allowed to prevail as an outcome of a policy or a law.
- d. No policy or law shall discriminate between enterprises based on ownership (government or private, domestic or foreign).
- e. Public sector procurement, as well as allocation of national resources by government or other public sector bodies, shall be based on market mechanisms that are transparent and non-discriminatory through a system of competitive bidding.
- f. In cases where an essential facility is owned / operated by a dominant enterprise, including by a SOE, except for reasons of social policy or security, a third-party access to that essential facility shall be mandated by policy or law on fair and reasonable terms so as to allow competition with the dominant enterprise.
- g. Where deviations from the principles of CP are necessary to achieve certain social objectives or promote national interests, such deviations shall be allowed only for a well-defined objective, and on the basis of clearly articulated reasons. Further, the deviations shall be the one that has the least adverse effect on competition while meeting the said social objectives.
- h. The government shall work in collaboration and cooperation with other countries and organisations at the bilateral, regional and multilateral levels to respond to existing and potential cross-border anti-competitive practices, including, but not restricted to, various types of anti-competitive behaviours, abuse of the dominant position in the market, and various types of anti-competitive combinations.
- i. The principles of competition shall be considered in the process of policy making, legislation and enforcement that impact competition, and applied at both local and central government levels.
- j. The government shall ensure that all sector-specific regulatory agencies embrace the principle of CP, if relevant, while formulating and enacting sector specific policies and regulations.

- k. The government shall ensure that the divestment of shares in SOEs does not lead to the transfer of monopoly or dominant power to private enterprises.
- l. The government shall prevent mergers likely to significantly impede effective competition in the market. To this end, the government shall, if and when necessary, review mergers and acquisitions, including joint ventures and other forms of business alliances, within the general framework of CP. The government shall develop criteria/guidelines for authorising mergers, joint ventures, and other business alliances, including thresholds triggering review, the treatment of efficiencies, and criteria to set remedies that can remove anticompetitive concerns.
- m. Consumers shall be protected from any deceptive and fraudulent behaviour of sellers and from unfair business practices through CP and other related legislations such as Consumer Protection Act 2012 and rules thereto.
- n. The government shall seek to encourage small-scale firms in remote areas to generate greater competition by creating a level playing field.
- o. The government shall 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 through public-private partnerships, etc.
- p. The government shall prevent anti-competitive behaviours and practices by the business entities in the market. These include cartels and other anticompetitive agreements as well as abuses of dominance.
- q. A new and existing economic policy or law proposed by any agencies of the government shall be subject to a Competition Impact Assessment (CIA) to evaluate its impact on competition in the market.

6. Exclusions and Exemptions

The following shall be excluded or exempted from the application of CP:

- a. Economic activities which are in the national interest and of strategic importance to the country or activities which are required to be undertaken solely or partly by the Government for reasons of social policy or security or fall in areas of natural monopoly as per chapter V, section 74 (b) and (c) of Public Finance Act of Bhutan 2007 or activities that address market failure,

improve consumer welfare, and maintain or improve the environment and public health;

- 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, except for hard-core cartels which should always be prohibited;
- d. The extent to which market failure, efficiency, and external competitiveness will be addressed by exclusions and exemptions;
- e. The government, however, shall grant conditional exclusions and exemptions from the CP for the following:
 - i. The provision of infrastructural facilities for public utilities such as land-line telecommunications, water, and electricity that require huge capital outlays and take a long time to recoup initial costs given the small size of Bhutan's population and the resulting small market base. Since this situation may constrain private sector investment in this sub-sector, government may exclude or exempt the provision of some infrastructural facilities from this policy.
 - ii. Notwithstanding the aforementioned exclusions and exemptions, the government may include the provision of services such as public utility connections and distribution services within the ambit of this policy.

7. Implementation Modalities

7.1 Competition Advocacy

In order to educate consumers and businesses on competition and its benefits, the government shall undertake advocacy and public awareness measures. This shall be done through, among others, public awareness programmes and capacity building of stakeholders, including lawmakers, judiciary, policymakers, regulators, businesses, trade associations, consumers and their associations, and civil society.

7.2 Competition Impact Assessment

There shall be a Competition Impact Assessment (CIA) carried out for new and existing economic policy or law proposed by government agencies for its potential impact on competition in the markets. There shall be a Competition Impact Assessment Guidelines (CIA-G) developed to implement the CP. It shall provide a clear guidance on the process of undertaking the CIA including tools and methods

to identify unnecessary restraints on market activities and to propose less restrictive alternatives to achieve government policy objectives.

7.3 Institutional Arrangements

OCP shall be responsible for implementation of CP. The Consumer Board already established under the Consumer Protection Act 2012, shall also function as the Competition Council. The Council shall comprise of all the members of the Consumer Board with additional representatives from other relevant organizations as deemed appropriate.

The Council shall broadly consist of highly experienced representatives from the ministries concerned with representatives from SOEs, regulators, the private sector, small and medium enterprises (SMEs), economists, consumer organisations.

OCP shall be responsible for review and monitoring of the implementation of CP and related legislation. Further, for effective implementation of this policy, OCP shall ensure compliance and enforcement of the principles of fair play by concerned organizations and business entities and maintain an effective and equitable balance between the interests of business and those of the public.

RGoB shall review the existing structure of OCP and provide additional human resources and budgetary support as appropriate.

8. Interpretation, Review, and Amendment

In the event of a conflict of interpretation of any part of this policy, the MoEA shall, on behalf of the RGoB, be the final authority. This policy shall be reviewed and revised as deemed necessary by MoEA on behalf of the RGoB.

9. Definitions

- a) **Acquisition:** means directly or indirectly acquiring or agreeing to acquire shares, voting rights or assets of any enterprise; or 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:** means 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.
- d) **Consumer:** means any person who buys goods and services for personal, family or household use with no intention of resale.
- e) **Cartel:** means a formal or an informal agreement between a group of producers of a good or service to regulate supply in an effort to regulate or manipulate prices in the market. Anticompetitive agreements by competitors to fix prices, restrict output, submit collusive tenders, or divide or share markets are considered hard-core cartels.
- f) **De-facto monopoly:** means a monopoly which is protected from competition by a government action.
- g) **Dominant position:** position of economic strength enjoyed by an undertaking, which enables it to prevent effective competition in the market.
- h) **Exclusions and Exemptions:** means conditional arrangements under which government may exclude and exempt certain economic activities or firms from the ambit of CP and/or related legislation.
- i) **Doctrine of essential facilities:** means an obligation on the part of the owner of a facility (e.g. a port, airport that cannot practically be duplicated by would-be competitors) to share it on non-discriminatory terms in order to stimulate the competition process.
- j) **Merger:** concentration of two or more previously independent enterprises or parts of enterprises as well as the creation of joint ventures on a lasting basis.
- k) **Merger Control:** means actions or measures aimed at preventing the creation of undertakings likely to significantly impede effective competition in the market through acquisitions or other structural combinations.

- l) **Monopoly:** means a market structure characterised by a single seller selling a unique product in the market and faces no competition, as he or she is the sole seller of goods with no close substitute.
- m) **Oligopoly:** means a market structure characterised by a few firms in the market who have power to restrict outputs or fixed prices of the goods and services above market prices through collusion, for collusive gains, and due to lack of competition in the market.
- n) **Statutory monopoly:** means a monopoly that is protected by law from competition. It may take the form of a government monopoly where the state owns a particular means of production.