COMPETITION COMMISSION OF INDIA

PROJECT REPORT

INTERFACE BETWEEN COMPETITION ACT AND THE PETROLEUM AND NATURAL GAS REGULATING BOARD ACT

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# TABLE OF CONTENTS

DISCLAIMER ......................................................................................................................... 2

ACKNOWLEDGEMENTS ........................................................................................................ 3

INTRODUCTION ..................................................................................................................... 6

1.1 Petroleum – Sectoral regulators ....................................................................................... 7

SECTORAL REGULATION AND COMPETITION ................................................................. 11

2.1 Forms of Cooperation ..................................................................................................... 11

2.1.1. Informal and Soft techniques: ................................................................................... 12

2.1.2. Delimitation of jurisdiction: ..................................................................................... 12

2.1.3. Organized cooperation .............................................................................................. 13

2.2. Framework suitable for Indian system ......................................................................... 13

2.3. Competition in India’s Oil and Gas Sector ................................................................... 14

2.3.1. Possible solution – lessons from across the world .................................................. 15

2.3.2. Competition Commission versus regulators ............................................................ 17

THE INTERFACE .................................................................................................................. 19

3.1. Overview of Jurisdictional and Substantive conflicts .................................................. 20

3.2. Source of conflict between Competition Commission and PNGRB ......................... 21

3.3. A Prominent Illustration: The Deutsche Telekom and the Verizon Case ..................... 24

3.3.1. The Deutsche Telekom Case .................................................................................... 24

3.3.2. The Verizon Case .................................................................................................... 25

3.3.3. The Final Solution .................................................................................................. 27

3.4. The Ongoing Turf War ................................................................................................. 27
I

INTRODUCTION

Regulatory reform has long played an important role in a large and growing number of economies today. Despite significant differences across countries and industries, most regulatory reforms, especially in the developing countries, comprise of privatization of former state owned enterprises; liberalization of the markets, redefinition of universal service obligations, introduction of competition to these markets. These substantial structural changes also led to significant conceptual and institutional changes and challenges in the legal and administrative systems of the countries concerned. Not only the regulatory process but also competition law and policy have been among those challenges. This is not surprising given that competition law and policy stands as the main pillar for all of those policies1.

In the past, most developing countries were characterised by significant government involvement in their economies marked by dominance of large state-owned enterprises. Economic liberalisation process started in several of these countries during the 1980s and 1990s and most of them adopted policies of deregulation, privatisation and trade liberalisation2.

Despite these developments, for a variety of reasons competitive markets did not yield desired results. Because of such market failure in various sectors in the past, it was felt that some form of intervention was required. Traditionally, governments intervened to correct market failures. However, it has been realised that the manner in which governments intervened proved to be ineffective3. As a consequence there emerged a new form of economic governance characterised by the setting up of specialised agencies, seeking to ensure competitive outcomes by making decision in a transparent, consultative and participatory manner4.

While in some sectors, Government continues to perform the regulatory function, in others specialised regulators have been set up to perform the regulatory functions5.

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3 In general, intervention by government has failed on account of these factors, as rules are framed in an opaque manner without any participation/consultation from stakeholders. This gets compounded by the fact that, often the same ministry performs the conflicting roles of a regulator, policy maker, and service provider/operator. Furthermore, if the government continues to perform regulatory function, even after a sector is opened to private participation, it may lead to violation of the principle of competitive neutrality, which seeks to ensure equal treatment to both the private sector and state-owned enterprises.
4 Supra Note 2
5 Comparative Study of Sectoral Regulation in Select Developing Countries Research Study,
Regulators apart from the Government, generally fall into two categories—those with a mandate pertaining to specific sectors (sector regulators) and competition authorities, established to enforce national competition laws. Competition authorities have a regulatory mandate over competition issues that cover all sectors of the economy. The two sets of regulators share a common goal of protecting and enhancing social/economic welfare.

Despite sharing a common goal, sector regulators and competition authorities generally have different legislative mandates and their perspective regarding competition matters may be different. Competition laws seek to protect the process of competition, not agents in the market with a view to maximising productive and allocative efficiencies. Competition rules tell the agents in the market what they should not do, while sector regulation does the reverse and tells market agents what to do.

The differences in the methods and approaches to competition matters may result in different outcomes, thereby causing confusion for stakeholders and leading to forum shopping. Moreover, there is normally an absence of clearly defined jurisdiction in regulatory matters, leaving a lot of subjectivity as to which of the two authorities can be more effective in handling specific cases.

There is, therefore, a need for defining boundaries between mandates as well as understanding respective competencies to ensure that each regulatory body regulates that is best suited for it.

1.1 Petroleum – Sectoral regulators

The Petroleum industry is one of the great, complex industries of the economy in which extremes of monopoly and competition have prevailed. The survival of small firms has been continually threatened by the controls, which large firms have exercised over the most efficient means of transportation.


6 Ibid
7 Ibid
8 Supra Note 1
9 Supra Note 2
The Indian petroleum industry is extremely open; trade flows are large compared to production\textsuperscript{11}. Petroleum is extracted from underground reserves; then it is cracked or “refined” into end products for various uses. The petroleum industry thus has two parts: an oil exploration and production industry (upstream) and a refinery industry (downstream). Most oil producers also own refineries. However, the reverse is not true; a high proportion of oil is sold to refinery companies that do not produce crude oil. Sedimentary rocks in which hydrocarbons are trapped often hold gas, sometimes in association with crude oil and sometimes alone. It consists mostly of methane, which is lighter than air and toxic. It therefore requires airtight tanks for storage and similarly leak-proof pipes or trucks for transport, which raise its capital costs. Associated gas was flared in early years of the industry; it is still flared at remote or minor wells where the cost of its collection and transport would be high, or often reinjected into the oilfield to maintain pressure which forces oil up to the surface. Nevertheless, mining and trading of natural takes place if the quantities are large enough. It is mainly used as an industrial, domestic and vehicular fuel. Motor vehicles run almost exclusively on petrol and high-speed diesel oil, both fuels derived from mineral oil – although they can be modified to run on certain biofuels\textsuperscript{12}. Vehicles are so widely dispersed that they require an extensive distribution system for these two refinery products. As motor vehicle use has spread across the world, it has brought along with it petrol pumps, logistics, storage and supply of fuels. There is thus a third part of the petroleum industry downstream from refineries, which distributes the products. Some countries have distribution chains that are independent of producers and refiners; and in countries which do not have refineries, distribution is undertaken by either local or foreign oil companies\textsuperscript{13}.

The petroleum sector consists of four sub-sectors, namely, exploration and production, oil refining and marketing, natural gas transportation and marketing, and crude oil and petroleum products pipelines. Of these four, the first, categorised as upstream, is supposed to be regulated by the Directorate General of Hydrocarbons (DGH), while the remaining three downstream sub-sectors fall under the domain of PNGRB\textsuperscript{14}.

The DGH was created by a government resolution in 1993 and was posited as the regulator of the upstream sector\textsuperscript{15}. The DGH operates under direct and complete administrative control of the ministry. It functions with the assistance of an advisory council and members of the council.


\textsuperscript{12} Ibid

\textsuperscript{13} Supra Note 1

\textsuperscript{14} Ibid

\textsuperscript{15} Supra Note 11
and staff of the DGH is appointed on a deputation/tenure basis by the ministry in consultation with the DGH chief. In terms of its mandate, the DGH is predominantly an advisory, rather than a regulatory, body.

In the downstream sector, however, the regulator owes its existence to a statute. The PNGRB Act was passed in 2006 and notified on October 01, 2006. The PNGRB has been vested with very tangible regulatory powers and the statutory nature of its genesis gives it its independence. But despite its powers and independence, it is the ministry which seems to call the shots in the regulatory space. Before March 28, 2002, marketing and pricing of petroleum products, including transportation fuels, namely, motor spirit (MS) and high-speed diesel (HSD), was controlled by the government under a mechanism known as “Administered Price Mechanism (APM)”. The APM was dismantled by a notification on March 28, 2002. The PNGRB is to regulate anti-competitive behaviour like predatory pricing.

The role of PNGRB, in the presence of government’s regulatory bodies, was examined brilliantly in a landmark judgment, dated October 05, 2009, by the Appellate Tribunal for Electricity, in appeal number 50 of 2009\textsuperscript{16}. The judgment, either directly or indirectly, establishes the following positions:

- Sections 11(a), 12 and 25 of the PNGRB Act, 2006, together give wide amplitude to its duties and powers to foster fair trade and competition amongst the entities.

- The dismantling of the APM by the notification dated March 28, 2002 was a policy decision, which holds good as it no other policy decision has reversed it yet. The government, therefore, cannot fix prices under the garb of policy.

- Section 2(x) of the Act specifically provides that it is only the entities which can fix the price and not the government.

- The above power given to the entities to fix the price cannot be usurped by the government.

- If the prices are to be fixed by the government as a sovereign, then it has to be declared as a public policy after observing formalities as provided under the Constitution.

After this judgment by the tribunal, the case is now before the PNGRB. It will be interesting to see whether PNGRB asserts its independence and buries the ghost of APM once and for all.

\textsuperscript{16} Supra Note 10
II

SECTORAL REGULATION AND COMPETITION

According to former Governor of the Reserve Bank of India, C Rangarajan, India should avoid having too many regulators, as the Competition Commission of India is competent to deal with some of the common problems concerning regulation\textsuperscript{17}.

Though there is no doubt about the competency and authority of the Competition commission to solve anti-competition problems, it certainly does not possess the required technical know-how pertaining to various ever growing sectors. People involved in framing regulation should be equipped with domain knowledge that is essential for effective regulation.

Owing to the above mentioned reasons as well to the lopsided structure of the Indian economy, sectoral regulators are the need of the hour, but there should be clarity about regulations especially on the area that needs regulation. People involved in framing regulation should be equipped with domain knowledge that is essential for effective regulation.

However, unlike sector-specific regulatory authorities, the Commission combines the twin powers of private enforcement and the ability to pursue claims for damages. Hence, the Commission is uniquely situated to ensure a robust level of consumer welfare.

2.1 Forms of Cooperation

Various forms for cooperation and means to avoid inconsistencies are pointed out below. Some of the options set forth below cannot be applied immediately due to the legal/structural constraints arising from the relevant laws but some may contribute to the development of competition advocacy.

The forms of cooperation applied in various jurisdictions are grouped under three main headings\textsuperscript{18}.

\begin{enumerate}
\item Informal and soft techniques of cooperation
\item Delimitation of jurisdiction
\item Organized cooperation
\end{enumerate}

\textsuperscript{17}“India should avoid too many sectoral regulators: Rangarajan”, http://circ.in/media-jan09.htm, Indopia, January 16, 2009, retrieved on January 6, 2012

2.1.1. Informal and Soft techniques:

These may include informal contacts and exchange of views, appointment of contact persons (at the directorate level) and appointment of industry experts as applicable. Also, joint working groups can be constituted to ensure cooperation between both the regulators.

2.1.2. Delimitation of jurisdiction:

- Abstention – De facto assignment of lead jurisdiction as a way to mitigate overlapping of the powers of different authorities as in Canada would help. There the Competition Bureau’s policy is not to enforce competition law in regard to anti competitive actions that are the subject of an enforcement action by an industry regulator. On the other hand, the Industry regulator is also required to refrain from exercising regulatory authority where sufficient competition exists. Opting not to apply competition law whenever there is a legal basis of an industry regulation for a specific behavior, is prevalent with respect to abusive practices concerning telecommunications in Germany.

- Written delimitation of jurisdiction, cooperation and coordination – There can be clear delimitation by the Statute conferring jurisdiction. In some countries government is empowered to decide on the relationship. A new draft law in Turkey proposed the Prime Minister’s involvement. There can also be joint guidelines on cooperation or joint statements which aim at clarifying the operational principles of cooperation.
  
  o Clear Separation of Competition enforcement functions from technical functions – Sectoral regulator may be vested with powers of ex ante control and the competition authority may be given ex post authority. The Australian model leads to competition enforcement function and economic aspects of regulation with the competition authority and technical aspects of regulation with sector-specific regulation. There the Competition Authority covers competition enforcement, access regulation, regulation of prices of public utilities and a variety of other regulatory tasks while sectoral regulators carry out the technical regulatory responsibilities in their specific industries.\(^\text{19}\)

  o Shared Jurisdiction over Competition matters – In the United Kingdom, most sector specific regulators apply and enforce the provisions of the competition

\(^{19}\text{Ibid}\)
legislation to activities in their designated sectors. At the same time, Office of Fair trade alone retains the power to issue guidance on levy of penalty\textsuperscript{20}.

2.1.3. Organized cooperation

- Competition Authority can be given a right to make submissions or provide industry regulators with comments or expert reports.
- Joint Proceedings may be conducted in order to make use of complementary expertise.
- Competition Authority should provide for the mandatory competitive factors to regulators. There should also be an obligation to obtain the Competition Authority’s agreement for market definition decisions and conclusions about market dominance.
- The regulator or the competition authority may allow a limited time for providing a report or an opinion to the other body.
- Appeal Proceedings of both kinds of authorities assigned to the same appeal court e.g. France. This also applies in Turkey since 13\textsuperscript{th} chamber of the Council of State is authorized to deal with the decisions of the Sectoral Regulatory Agencies as well as the decisions of the Competition Board. In case of conflicting views, the onus of resolution of a matter is on the appellate body.

2.2. Framework suitable for Indian system\textsuperscript{21}

There is no single framework or model to completely address the issue of conflict of jurisdictions between the competition authorities and the sectoral regulator. More than one model or framework may be employed within a country to address this issue. In a single jurisdiction, while in one sector the competition authority may have statutory powers for some aspects of regulation, in another sector, the sector regulator and the competition authority may exercise concurrent jurisdiction.

- Competition authority as the principal enforcer and overseer of competition issues:

  Indian regulators appear to be in favor of leaving competition related issues exclusively in the hands of the competition authority and retaining the responsibility of deciding on the technical issues with themselves. This practice has also been adopted in several

\textsuperscript{20} \textit{Ibid}

countries, including the United States (US)\textsuperscript{22}. An industry-specific regulator may have jurisdiction to set prices, but not have jurisdiction to criminally prosecute price fixing.

- Sector regulators and competition authorities concurrently oversee competition issues and enforce competition laws:

  The allocation of work between the agencies in case concurrent jurisdiction of competition authorities and sector regulators in regulating a sector may be implemented in a number of ways, including effective use of the reference mechanism under Section 21 of the Competition Act and MoUs between the CCI and sectoral regulators.

  The Government of India may consider making it mandatory for the CCI and the concerned sector specific regulator to respond to the requests from each other to give their opinion under the reference mechanism (envisaged under section 21 of the Competition Act), on the competition issue at hand within the timeline stipulated in the Act. In the event that the regulators fail to reach a consensus, the Government may reserve the power to make a final “national interest” decision.

  Empowering the CCI, possibly via an amendment to the Competition Act, to enter into Memorandum of Understanding with other sector specific regulators, will help in effectively setting out the respective roles of the agencies. Such an approach has been adopted by countries such as Ireland and Canada\textsuperscript{23}.

2.3. Competition in India’s Oil and Gas Sector

High oil and gas prices have prompted increased investments in the exploration and production (E&P) sector posing new challenges for the sector in the form of increased cost of operations due to high service costs, exposure to logistically difficult terrain and shortage of technical manpower. Global refining scenario indicates negligible addition in capacities in major developed consumer markets like the USA and the European countries\textsuperscript{24}. Developing countries like the Middle East, China and India are fast emerging as refining hubs. Needless to say that capacity augmentation in these regions would also result into possible integration of both the refining and petrochemicals businesses.

\textsuperscript{22} Ibid
\textsuperscript{23} Ibid
\textsuperscript{24} See planningcommission.nic.in. Last visited on January 23, 2012
India’s Oil and Gas Sector face the dominance of PSUs in the petroleum sector. Also there is monopoly in gas transmission and marketing for GAIL. Also, there is no independent regulator in the upstream segment and adequacy of PNGRB act 2006 in promoting competition is well in question.

2.3.1. Possible solution – lessons from across the world

Some countries believe in informal cooperation by way of meetings, exchange of information, joint work groups etc. while others favour formal cooperation. Yet another solution lies in having a common appellate authority as in UK. Australia is unique in the sense that the competition authority and the sectoral regulators have been brought under one roof in the form of the Australian Competition and Consumer Commission (ACCC). New Zealand has only a competition authority, which deals with all issues relating to sectoral regulation. Canada follows Regulated Conduct Defence, which means the law presumes any conduct authorized by another valid law cannot be violative of the competition law.

The French law provides for mandatory consultation between certain sectoral regulators and the competition authority. After experimentation with complete exclusion of utility and public service sectors from competition law, Germany has settled for a division of labour between the two, by suitably amending the laws to minimize parallel competencies. In South Africa, sectoral regulation was initially excluded from the jurisdiction of the competition authority. It was subsequently brought within its domain as experience showed that competition issues could not be handled by sectoral regulators. Sri Lanka, Botswana, Kenya and Pakistan let such conflicts be resolved by courts of law.

In USA, industrial regulators have been granted monopoly in enforcing all or part of competition law in their relevant sectors, Department of Justice and Federal Trade Commission

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26 Ibid
27 Ibid
28 Supra Note 21
30 Ibid
31 Ibid
32 Supra Note 25
33 Ibid
34 Ibid
often advice industry specific regulators on matters that may affect competition\textsuperscript{35}. This advice may be voluntary or, in some circumstances, required by statute. For example, the US antitrust agencies, like any private person may file comments offering their competition expertise in regulatory proceedings before independent agencies\textsuperscript{36}. In contrast, some states require the regulator to seek advice from the competition agencies in particular types of proceedings\textsuperscript{37}.

In Ireland on the other hand, a new framework for the relationship between the Competition Authority and various statutory bodies, including sectoral regulators, is outlined in Section 34 of the Competition Act 2002, which came into effect on 1 July 2002\textsuperscript{38}. This provides for “cooperation arrangements” and the exchange of information, in line with the suggestions of the OECD and the Competition and Mergers Review Group\textsuperscript{39}.

In Denmark, sectoral regulator has to seek an opinion from the Competition Authority, where as in France and Germany there is just a duty of informing the other party\textsuperscript{40}. In Italy and Sweden, Competition Authorities have the primary role and receive opinion from the other Sectoral Regulatory Agencies\textsuperscript{41}. In the Netherlands, however, there is explicit coordination between the Sectoral Regulatory Agencies and the Competition Authorities\textsuperscript{42}.

In Austria, in most cases there is no concurrent jurisdiction of the competition authorities with sectoral regulators\textsuperscript{43}. The regulators cooperate with the competition authorities peculiarly in connection with sector inquiries\textsuperscript{44}.

To avoid risks of concurrent jurisdiction, the Belgian competition legislation has sought to rely on three distinct mechanisms\textsuperscript{45}. Firstly, decisions rendered by sectoral regulators in the field of electronic communications and post (the sector-specific regulator is the IBPT) and in the field of gas and electricity (the sector-specific regulator is the CREG) shall be appealed before a single, centralized, institution, i.e. the Competition Council\textsuperscript{46}. Secondly, the legislation delineates areas of exclusive jurisdiction\textsuperscript{47}. For instance, in the field of electronic communications, the

\textsuperscript{35} Ibid
\textsuperscript{36} Ibid
\textsuperscript{37} Supra Note 1
\textsuperscript{38} Ibid
\textsuperscript{39} Ibid
\textsuperscript{40} Ibid
\textsuperscript{41} Supra Note 5
\textsuperscript{42} Ibid
\textsuperscript{43} Supra Note 21
\textsuperscript{44} “Is there concurrent jurisdiction with sectoral regulators? Which sectors are these?” http://www.concurrences.com/nr_one_question.php3?id_rubrique=523, retrieved on January 6, 2012
\textsuperscript{45} Ibid
\textsuperscript{46} Ibid
\textsuperscript{47} Supra Note 21
Competition Council deals with disputes relating to interconnection, leased lines, special access, unbundled access to the local loop and shared lines. Thirdly, the Competition Council may address opinions to the IBPT.\textsuperscript{48} In practice, the allocation of competences between sectoral regulators and the competition council has given rise to a number of interesting cases\textsuperscript{49}.

Unlike other jurisdictions, the balance of power is different in Chile as Chile Competition Law, in addition to being applicable to individuals and enterprises, under certain circumstances may apply to the decisions of ministries and the agencies even where they are acting in a regulatory capacity, and not just when they are acting in a proprietary capacity\textsuperscript{50}. A usual practice has been that when a government entity will decide something that can have competition problems it asks for a consultation of the Competition Authorities- Prosecutor’s Office or Competition Tribunal to inquire whether go ahead or not\textsuperscript{51}.

Another example is Australia where in addition to its core competition function the Australian Competition Authority has a number of key economic regulatory functions\textsuperscript{52}. With the division of labor between various regulators, there is potential for some degree of overlap of functions between the Australian Competition Authority, which administers competition regulation across all the sectors of economy, and those technical and economic regulators that operate within specific industries or within certain States across a number of industries. For this reason, a number of steps have been taken to minimize uncertainty regarding the jurisdiction of particular regulators and avoid confusion for consumers and the business community\textsuperscript{53}.

The international experience shows that to manage the interaction between sectoral and competition regulators there are different institutional approaches: giving primacy to the sectoral regulation or the competition or requiring consultation between both the regulators\textsuperscript{54}.

\subsection*{2.3.2. Competition Commission versus regulators}

The Competition Authority assesses lawfulness of a conduct; which it has the power to proscribe\textsuperscript{55}. Private parties play a big role by bringing in the competition issues before the

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{48} Supra Note 44
\item \textsuperscript{49} Ibid
\item \textsuperscript{50} Supra Note 1
\item \textsuperscript{51} Ibid
\item \textsuperscript{52} Ibid
\item \textsuperscript{53} Ibid
\item \textsuperscript{54} Ibid
\end{itemize}
\end{footnotesize}
authority for modifying any unlawful conduct\textsuperscript{56}. Such authority prohibits activities like price fixing, bid rigging thereby stressing on what market agents should not do.

The sectoral regulators on the other hand, have discretionary powers \textit{ex ante}. It has the power to set procedure, standards etc. It prescribes activities rather than prohibiting them at a later stage.

\textbf{2.3.2.1. Unnecessary delay in policy making}

Pressures from incumbent operators, new players and national treasury are generally responsible for slowing down the decision making process in various sectors. In addition, the current turf-wars between the competition commission and other sectoral regulators result in lack of adequate power to each of the two regulators which hinders adequate regulation of the market\textsuperscript{57}.

\textsuperscript{56} \textit{Ibid}

III

THE INTERFACE

Following a structural adjustment program in 1991, India embarked on the path of market liberalization\textsuperscript{58}. As a result, it increasingly relies upon market rivalry as the organizing principle for economic activity. Markets have generally been understood to ensure efficient allocation of resources. Nevertheless, considering that markets are imperfect, and often prone to failure, the role of competition law and policy cannot be overemphasized.

The Indian competition law framework, through the Competition Act of 2002\textsuperscript{59}, envisages the Competition Commission of India as a competition authority. In the aftermath of a 1992 securities scam,\textsuperscript{60} several sector-specific regulators have emerged on the Indian regulatory horizon\textsuperscript{61}.

Sector-specific regulation presents distinct challenges in competition law and policy. The roles of the competition authority and sector-specific regulators can be complimentary. However, at times, the interface between the two can also be a source of tension. While sector-specific regulation seeks to identify a problem \textit{ex ante} and creates administrative machinery to address behavioral issues before the problem arises, competition policy generally addresses the problem \textit{ex post}, in the backdrop of market conditions.

There is an ever-existing need of sectoral regulators owing to their intimate knowledge of the subject. The Competition Commission, on the other hand, may seem to lack technical knowledge but has sufficient knowledge regarding the market structure and conduct to enforce efficient use of resources and provide the consumer with the best possible price and quality.

The difficulty arises because competition law cannot be easily enforced if there is an overlap between sectoral regulation and competition law or in case of an ambiguity in their provisions. In such situations, violators can easily escape sanctions.

In an examination of the interface between competition and sectoral regulation laws, it is imperative to refer to David Boies’ quotation in 1977\textsuperscript{62}.

\begin{itemize}
\item \textsuperscript{58} Amit Bhaduri & Deepak Nayyar, “The Intelligent Person’s guide to Liberalization”, 1996
\item \textsuperscript{59} The Competition Act, 2002, No. 12 of 2003
\item \textsuperscript{60} Supra Note 58
\item \textsuperscript{61} Shri P. Chidambaram, Indian Fin. Minister, Address at the Fourteenth Annual Convocation of the National Law School of India University, Bangalore, August 27, 2006, http://tradeandcompetition.blogspot.com/, retrieved on January 16, 2012
\item \textsuperscript{62} David Boies. 1977, ‘Public Control of Business’, Little Brown
\end{itemize}
“The interface between anti-trust (competition law is referred to as anti-trust in the United States) and regulation is a veritable no-man’s land for students and practitioners alike. Since the theories of anti-trust and regulation reflect differing assumptions about government intervention into the market place, it is often difficult to rationalise their impact on particular industry behaviour. The anti-trust laws, to borrow a phrase, are brooding omnipresence, with pervasive, almost constitutional meaning in our jurisprudence. Direct economic regulation (which is entrusted to agencies rather than the courts) may supplant the anti-trust laws and specific industries for carefully carved-out purposes. But at the edges, these purposes thin out and the anti-trust laws inevitably reappear in the background. At this point, it is no small matter to blend the policies of the two conflicting regimes into an overall regulatory purpose that preserves the values of both”.

In cases of apparent overlapping of jurisdictions of the sectoral regulator and the Competition authority, we must first analyse the relevant provisions in both the Acts, then interpret them in a manner so as to find out the intention of the Legislature.

In the instant case of apparent conflict between PNGRB Act and the Competition Act, we shall proceed in the above-said manner to conclude that in law, there is no overlapping between the two jurisdictions. We shall find that Legislature has been very clear in its intent in saying that the Competition Commission should have the exclusive jurisdiction to deal with the competition-related issues within the petroleum sector.

3.1. Overview of Jurisdictional and Substantive conflicts

Jurisdictional conflicts may occur when different authorities are in principle competent in respect of the same matter63. Parallel actions before different authorities are common given complainants’ understandable desire to maximise the prospects of a favourable outcome. Parallel proceedings risk, however, the duplication of work, as well the possibility of contradictory decisions.64

64 Ibid
Moreover, such a situation would lead to forum shopping which is a discouraged practice in itself. It would also lead to expenditure of lot of time and money and would prove to be extra burden on the concerned bodies. Therefore, it is imperative that such disputes should be carefully analysed and settled as soon as possible.

In this project, we would be analyzing a similar situation of apparent overlap. For this, most important step would be to figure out the source of such conflict.

### 3.2. Source of conflict between Competition Commission and PNGRB

Preamble and Section 18 of the Competition Act entrusts the CCI with the principal duty of sustaining competition in whole economy of India. It shall be the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of the consumers and ensure freedom of trade carried on by other participants, in markets in India. This mandate is extraordinarily broad, yet it remains agnostic about sector-specific regulators. The Preamble of the enactment echoes the wide scope of Section 18, which also uses a similar language.

Specific provisions contained within the legislation exemplify the possible tension. Section 60 and 62 of the Competition Act give the Act an overriding effect and simultaneously do not bar the application of other laws, respectively. According to Section 60, the Competition Act shall be the primary law in case anything in the act is inconsistent with any other act in force.\(^{65}\). Section 62 however, says that provisions of this act should be read in conjunction with other statues and not in derogation of the same.\(^ {66}\). Section 60 of the Competition Act is the usual *non obstante* provision asserting the supremacy of competition legislation within the domain of competition enforcement,\(^{67}\), and both Sections 60 and 62 are couched in mandatory language, yet, ironically, Section 62 hortatorily declares that competition legislation ought to work along with other enactments.

Moreover, Section 21 of the Competition Act suggests that in any proceeding before a statutory authority,\(^{68}\), if such a need arises, the statutory authority may refer an issue to the Commission.\(^ {69}\).

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\(^{65}\) Section 60 Competition Act says, “Act to have overriding effect: The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”

\(^{66}\) Section 62 Competition Act says, “Application of other laws not barred: The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.”

\(^{67}\) *Supra* Note 67

\(^{68}\) Section 2 (w) Competition Act says, “'statutory authority' means any authority, board, corporation, council, institute, university or any other body corporate, established by or under any Central, State or...
The Commission is then bound to deliver its opinion to the statutory authority within a stipulated period of two months\textsuperscript{70}. Incidentally, however, this opinion is not binding upon the statutory authority\textsuperscript{71}. Moreover, an amendment to the Competition Act of 2002, passed in late 2007 envisages the possibility of the Commission making a reference to a statutory authority under Section 21A\textsuperscript{72}.

A combined reading of all the above-mentioned provisions appears to give the CCI, the primary jurisdiction to regulate conditions in the Indian economy as a whole.

However, various sector specific regulations also appear to provide the regulators constituted there under with the power to decide on or regulate the aspect of maintaining or promoting competition in the relevant sector.

The PNGRB Act in its Preamble\textsuperscript{73} provides for the establishment of a Petroleum and Natural Gas Regulatory Board to regulate the refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas with an aim to protect the interests of consumers and entities engaged in specified activities relating to petroleum,
petroleum products and natural gas. Such Board shall also promote competitive markets and shall deal with matters connected with it\textsuperscript{74}. Section 11 and Section 12 of the Act define the functions of the Board, enlists protection of the interest of the consumers by fostering fair trade and competition amongst the entities and give it power to do so respectively\textsuperscript{75}.

The PNGRB Act mandates the regulator “to protect the interests of consumers by fostering fair trade and competition among the entities”\textsuperscript{76} operating in this sector, which could be interpreted to mean that the board has a duty to check anti-competitive practices.

In other words, in spite of the Competition Act, one of the objectives behind the recently drafted Petroleum and Natural Gas Regulatory Board Act, 2006, is “to promote competitive markets”

\textsuperscript{74} Preamble of the PNGRB Act says that, “An Act to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.”

\textsuperscript{75} Section 11 of PNGRB Act says, “Resignation, removal and suspension of Chairperson and other members (1) The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office:
Provided that the Chairperson or a Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.
(2) Notwithstanding anything contained in sub-section (1), the Central Government may, by order, remove the Chairperson or any other Member from his office if such Chairperson or Member, as the case may be,—
(a) is, or at any time has been, adjudged as an insolvent; or
(b) has engaged at any time, during his term of office, in any paid employment; or
(c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or
(e) has so abused his position as to render his continuance in office prejudicial to the public interest; or
(f) has become physically or mentally incapable of acting as a Member.
(3) Notwithstanding anything contained in sub-section (2), no Member shall be removed from his office on the ground specified in clause (d) or clause (e) of that subsection unless the Supreme Court, on a reference being made to it in this behalf by the Central Government, has, on an inquiry, held by it in accordance with such procedure as may be prescribed in this behalf by the Supreme Court reported that the Member, ought on such ground or grounds to be removed,”

Section 12 says that, “Restriction on employment of Chairperson and other Members in certain cases The Chairperson and other Members shall not, for a period of 20 [two years] from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any enterprise which has been a party to a proceeding before the Commission under this Act:
Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956)”

\textsuperscript{76} Supra Note 76
and “protect the interest of consumers by fostering fair trade and competition amongst the entities”77.

Under the PNGRB Act, the PNGRB must be mindful of the competition concerns when dealing with access to common carriers or contract carriers as well as distribution networks. Specifically, if the PNGRB is interested in declaring an existing pipeline or distribution network to be a common carrier, it still needs to follow the principles of competition policy. Subject to an entity’s right of first use, the entity’s excess capacity is to be distributed by the PNGRB in accordance with “fair competition”. Further, while determining transportation tariffs, the PNGRB is expected to keep considerations of competition and efficiency in mind.

The above-mentioned provisions, in the first glance, give an authority of regulating competition to both the impugned Acts. In such circumstances, it is imperative that there will be confusion between the two regulatory bodies and consumers will have an opportunity of forum shopping. This possibility of overlap in the jurisdiction of the CCI and the PNGRB, is the major source of conflict.

India is fortunately, not the first country ever to face such a problem and therefore, we have for our assistance, the various ways in which other parts of the world have overcome this situation. Though the foremost way should be to understand the intention of the legislature, a glance through the most highlighting case, would certainly help.

3.3. A Prominent Illustration: The Deutsche Telekom and the Verizon Case

3.3.1. The Deutsche Telekom Case

The difficulty between Sectoral regulators and Competition authorities, both of which are seemingly competent to regulate fair trade in the market, is best understood by the very famous case in the United States i.e. the Deutsche Telekom (hereinafter referred to as “DT”) case78. This case concerned the prices DT charged its competitors for unbundled access to local loops in Germany. The Commission had received complaints from DT’s competitors, who claimed that DT’s access charges were incompatible with Article 82 EC. In its defence, DT argued that its

77 Ibid
local access tariffs had been approved by the NRA, the Reg TP\textsuperscript{79}. DT contended that if there was an infringement of Community law, the Commission should not be acting against the addressee of the regulatory framework, but against the Member State under Article 226 EC.

The Commission, however, rejected this argument on the ground that “competition rules may apply where the sector-specific legislation does not preclude the undertakings it governs from engaging in autonomous conduct that prevents, restricts or distorts competition.”

The Commission considered that, despite the intervention of the RegTP, DT retained a commercial discretion, which would have allowed it to restructure its tariffs further so as to reduce or indeed to put an end to the margin squeeze.

The Commission therefore considered the margin squeeze, which constituted the imposition of unfair selling prices within the meaning of Article 82(a) EC and imposed a fine of 12.6 million on DT.

Similar reasoning was adopted in the recent France Télécom/SFR Cegetel/Bouygues Télécom decision by the Conseil de la concurrence in France.

3.3.2. The Verizon Case

Interestingly, in its recent judgment in Trinko, the US Supreme Court adopted a different approach to the Commission in Deutsche Telekom. Verizon Communications Inc.\textsuperscript{80} (hereafter, “Verizon”) was the exclusive local exchange carrier (“LEC”) for the State of New York until the 1996 Telecommunications Act (hereafter, the “1996 Act”) sought to introduce competition in the local telecommunications market.\textsuperscript{81}

The 1996 Act compelled Verizon and the other LECs to share some of their local networks with new entrants (known as the competitive local exchange carriers or “CLECs”), including provision of access to individual elements of the network on an “unbundled basis” (known as unbundled network elements or “UNEes”). Part of Verizon’s UNE obligation related to the provision of access to operation support systems (hereafter, “OSS”), which allow CLECs to fill their customers’ orders.

In late 1999, CLECs complained to regulators that many orders where going unfulfilled in violation of Verizon’s obligation to provide access to OSS functions. The Public Service

\textsuperscript{79} OJ 2003 L 263/9
\textsuperscript{81} \textit{Ibid}
Commission (PSC) of the State of New York and the Federal Communications Commission (FCC) opened parallel investigations, which led to a series of orders by the PSC and a consent decree by the FCC. The day after Verizon entered its consent decree with the FCC, the Law Offices of Curtis Trinko, a law firm that bought services from one of the new entrants, filed an antitrust complaint, alleging that Verizon had violated Section 2 of the Sherman Act by filling rivals’ orders in a discriminatory manner to discourage customers from becoming customers of the new entrants.

The Supreme Court held that Trinko did not state a claim under Section 2 of the Sherman Act as a matter of law. This was based on the Court’s view that, absent exceptional circumstances that were not present in the case at hand, incumbents should not be required to give their competitors access to essential inputs.

However, the Court’s refusal to apply Section 2 of the Sherman Act to the matter at hand was also strongly influenced by its view that, once a sector-specific regulatory structure “designed to deter and remedy anticompetitive harm” exists, there should be no further scope for antitrust intervention. The reasoning of the Court runs as follows: First, it states that “[a]ntitrust must always be attuned to the particular structure and circumstances of the industry at issue”. It then claims that “[o]ne factor of particular importance is the existence of a regulatory structure designed to deter and remedy competition harm. Where such a structure exists, the additional benefits to competition provided by antitrust enforcement will tend to be small and it will be less plausible that the antitrust laws contemplate such additional scrutiny”.

The Court also pointed to the importance of evaluating the costs of antitrust intervention. Citing the decision of the Court of Appeals (DC Circuit) in Microsoft, the Court states that “[u]nder the best circumstances, applying the requirements of §2 ‘can be difficult’ because ‘the means of illicit exclusion, like the means of legitimate competition are myriad’”.

The Court also pointed to the risks of “mistaken inferences and the resulting false condemnations”, which are associated with antitrust proceedings. Recalling its Brooke Group decision, the Court further stated that, even in the absence of the problem of false positives, the conduct consisting of violations of the regulatory framework (i.e., Section 251 of the 1996 Act) would be “beyond the practical ability of a judicial tribunal” since “[e]ffective remediation of violations of regulatory sharing requirements will ordinarily require continuing supervision of a highly detailed decree.”
3.3.3. The Final Solution

The final solution, adopted by the United States, as an aftermath of these two cases is as follows. The court answered the question ‘whether the Commission should intervene when a sector specific remedy is available’ in the following manner.

It said, “Two situations should be distinguished. The first is whether the Commission should intervene when there is a sector-specific remedy that protects a competitive market structure in a given industry, which has been correctly enforced by a national regulator and which does not violate EC competition rules (i.e., there is an “effective” regulatory remedy). In that case, the Commission should not intervene for the following reasons:

- First, sector-specific regulators will be generally better placed than the Commission to address the relevant issues, such as the pricing of wholesale inputs or retail products, etc. These issues require technical expertise, as well as a range of information, which the Commission does not generally possess84. Moreover, as noted above, pricing decisions require constant monitoring (e.g., as costs evolve), which is not compatible with competition authorities’ publicly-stated reluctance to act as price control agencies.
- Second, having two sets of rules and two distinct authorities involved on a similar issue raises the risk of contradictory decisions or the imposition of inconsistent remedies.

The second issue is whether the Commission should intervene when there is a sector-specific regime designed to protect a competitive market structure, but the regulator i.e., a “lazy and/or captured” regulator, has not applied that regime. In that case, competition authorities should be left free to launch proceedings. The Commission should also be entitled to act when the decision adopted by the other Regulating authority is not compatible with EC competition law.”

3.4. The Ongoing Turf War

In spite of the Competition Act, one of the objectives behind the recently drafted Petroleum and Natural Gas Regulatory Board Act, 2006, (“PNGRB Act”) is “to promote competitive markets”85

85 The preamble to the Petroleum and Natural Gas Regulatory Board Act, 2006 states, “regulate the refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas excluding production of crude oil and natural gas so as to protect the interests of consumers and entities engaged in specified activities relating to petroleum, petroleum products and natural gas and to ensure uninterrupted and adequate supply of petroleum, petroleum products and
and “protect the interest of consumers by fostering fair trade and competition amongst the entities”\textsuperscript{86} as we have already discussed above.

CCI is a generic market regulator, while PNGRB is a specialized one but there seems to be ambiguity in the law on whose turf this really is. Currently, CCI and PNGRB are battling over anti-competitive practices in the oil market. Delhi High Court will decide which regulator has the jurisdiction when an issue falls within a specialized sector such as petroleum.

### 3.5. My Opinion

The interface between sector-specific regulation and competition law in India is unique. In the immediate past, the Indian economy has witnessed a massive growth spurt\textsuperscript{87}. While the fast-paced development has lifted millions of people up from poverty levels, it has also led to concomitant challenges\textsuperscript{88}. India has seen several economic scandals and other crises during the period of economic boom\textsuperscript{89}. A significant feature of the Indian economic and legal regime during this period has been a mushrooming of innumerable regulatory authorities. With several regulatory authorities cropping up simultaneously, it is natural that they might end up having overlapping jurisdictions.

#### 3.5.1. The scope of Competition Law where sector-specific remedies exist

Assuming that \textit{ex ante} regulatory intervention has taken place (e.g., through the adoption of a pricing regime for wholesale products), the question arises whether there remains any residual scope for the application of competition law \textit{ex post}. This raises difficult issues about the nature

\textsuperscript{86} Section 11(a) of the PNGRB Act states: “The Board shall protect the interest of consumers by fostering fair trade and competition amongst the entities.”


\textsuperscript{88} Post-1991, with the ushering in of an era of liberalization in India, the percentage of poor people in India has been the subject of intense debate. Approximately twenty-six percent of India’s population is poor. The figures released by the government are allegedly based upon a severely flawed methodology and accordingly have attracted scathing criticism from economists. \textit{See generally} Angus Deaton & Jean Drèze, \textit{Poverty and Inequality in India: A Re-examination}, ECON. & POL.WKLY.

and extent of regulatory objectives and to what extent the consumer welfare concerns underpinning regulation and competition law converge or diverge\textsuperscript{90}.

The notion that a sector-specific regulator ought to take primacy over a competition authority appears very attractive at first blush. The sector specific regulator is closest to the sector and would naturally be a repository of pertinent information available within that sector\textsuperscript{91}. In other words, it would be more in tune with the needs of the businesses within its sector.

However, when the institutional setup grants a sector-specific regulator jurisdiction over both sectoral regulation and competition matters arising within the sector, conflicts may arise between the objective of protecting competition and other goals such as, for instance, the orderly development of a specific market\textsuperscript{92}. Additionally, sectoral regulators may shy away from enforcing competition law in order to reduce the potential for any conflict with regulated entities.

Sectoral regulators should not displace the Competition Commission Institution. The optimal, \textit{sui generis} model must be rooted in the legal context. To be sure, both sector-specific regulators and competition authorities have unique core competencies to offer.

### 3.5.2. The Intention of the Legislature

It is the Legislature, which makes laws, and therefore, to interpret the law, understanding of the intention of the legislature is of utmost importance. In this section, we shall attempt to figure out the idea, which the Legislature had in mind while enacting these two legislations.

The PNGRB Act was enacted in 2006 i.e. after the enactment of the Competition Act, 2002. Therefore, there is no doubt in the fact that the PNGRB is the later intention of the legislation. According to the general principles of interpretation of statutes, the later intention of the legislature should prevail over an earlier enactment.

The Legislature enacted PNGRB to regulate the Petroleum Sector. It also said in the Preamble and Sections 11 and 12 of the Act that Petroleum and Natural Gas Regulatory Board should be responsible to maintain fair trade practices in the market. However, the legislature did not define what would constitute ‘unfair trade practices’ under the PNGRB Act. Neither did they lay

\textsuperscript{91} Supra Note 97
\textsuperscript{92} \textit{Ibid}
down any mechanism to define ‘anti-competitive agreements’ and nor did they lay down any procedure or mechanism for employing penalties on ‘offenders’. The Act does not even have any remedies for the ‘affected consumers’.

However, all such specifications have been dealt with by the legislature while they framed the Competition Act, 2002. In such case, the first and the most convenient interpretation should be that the legislature did not intend to give PNGR Board such powers as have been confined upon the CCI.

The PNBGRB Act, with respect to competition, is only an academic body which has no tooth or hands to tackle competition related issues. This being the case, the only conclusion is that the legislature intended to not give such powers and authority to PNGRB. Now, if the legislation does not intend to give or take away any powers, there should be no confusion in this regard. The CCI has the exclusive jurisdiction to deal with competition related matters in this case.

3.5.3. The solution for India

The much hyped turf war is non-existent because the turfs on which the CCI and sectoral regulators play are broadly different with only slight overlaps. Regulation of an industry has three primary dimensions; technical, economic and competition. These three elements have to be distributed between the sectoral regulators and competition authority. Different countries have used different kinds of permutations and combinations vis-à-vis these elements in order to achieve coherence in the regulatory environment. For instance, Australian Competition and Consumer Commission covers access regulation, regulations of prices of public utilities and a variety of other regulatory tasks while the state regulators undertake technical and economic regulatory responsibilities.

In India, Competition Act (governing law for CCI) itself, restricts the role of CCI to competition issues. Hence, Sectoral Regulators still have a free hand in the technical and economic regulation of their respective industries. A clear example of the requirement to regulate competition is the recent CCI notices to banks asking them to explain the imposition of penalty on borrowers for pre-payment of home loans. CCI’s notice is based on the premise that pre-

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93 Ibid
94 Ibid
95 The preamble of the Act states the purpose of CCI; “...to prevent practices having adverse effect on competition, to promote and sustain competition in the markets, to protect the interest of the consumers and to ensure freedom of trade...”
96 Supra Note 98
payment penalty acts as a barrier by preventing customers to shift their loans from one bank to another bank which offer better interest rates. Pre-payment penalties have been in existence for a long time. However, its impact on the Banking sector was never detected or analysed by RBI, primarily because RBI officials have not been trained to do so. In fact just after CCI’s intervention a senior RBI official gave the following statement to media – “We will direct banks to do away with the prepayment penalty in case of loans disbursed in future”\textsuperscript{97}. It is clear that a regulatory loophole existed which needed to be filled by CCI. Similar loopholes vis-à-vis competition exists in other sectors and they need to be addressed by CCI. As far as overlapping of jurisdictions is concerned, the requirement is to create systems to ensure cooperation between CCI and other Sectoral Regulators. Both CCI and the Sectoral Regulators have their areas of expertise and both cannot replace each other. It may also be noted that the objectives of CCI and sectoral regulators are complementary. While sectoral regulators have socio-economic benefits as their objective, CCI’s objective is to promote and sustain competition in the market in order to protect the interest of the consumer\textsuperscript{98}.

Cooperation will make sure that the activities of the regulators are well coordinated, thereby ensuring best use of their respective resources. It may also happen that conflicts may arise due to different prioritisation of their respective goals by the CCI and Sectoral Regulators. Even the different method used for resolution of same problem may cause conflict. However, such conflicts can be sorted out through consultation. It is for this reason that Competition Act provides for consultation between CCI and other statutory authorities i.e. sectoral regulators here, by way of reference. Government may also consider creating ‘regulator’s forum’ (as has been done in some other countries) which would allow CCI and Sectoral Authorities to work in close cooperation and coordinate their action.

\textsuperscript{97} Ibid
\textsuperscript{98} Ibid
IV

FINDINGS AND CONCLUSION

Following a structural adjustment program in 1991, India embarked on the path of market liberalization. As a result, it increasingly relies upon market rivalry as the organizing principle for economic activity. Markets have generally been understood to ensure efficient allocation of resources. Nevertheless, considering that markets are imperfect, and often prone to failure, the role of competition law and policy cannot be overemphasized.

4.1. Findings

Though Dr. Rangarajan, former Reserve Bank Governor, believes that India should avoid too many regulators, the author believes that sectoral regulators are need of the hour. Owing to the lopsided growth of the Indian economy, we cannot do away with sectoral regulators. Each sector has its own pace of growth and a different structured economy. To regulate a sector that witnesses a new discovery and a new invention every other day, we need a body that would be familiar with the technical knowledge governing the same. One regulatory authority that is not aware of the technicalities of the sector, cannot regulate the entire market.

Every sector has three areas which need regulation; economic, technical and competitive. The Competition Commission is responsible for maintaining fair competition in the market hence, the dichotomy. On one side, we need technical expertise to govern the sector and on the other, we need a regulatory authority to regulate competition in the market. Therefore, co-existence of both the sectoral regulators and the competition authority is inevitable.

Existence of such sectoral regulators and the competition commission therefore, aims at cooperative effort for consumer welfare.

Though the apparent reading of both the acts put us into a dilemma, if we interpret the same provisions which the help of the very basic principles of interpretation of statutes, we will find out that there exists no conflict at all as the legislature has not given any powers to the PNGR Board to regulate competition in the market. The sole intention of legislature is that the PNGR Board should regulate the market in a manner to promote competitive practices.

In other words, there are three major findings of this research project. One, sectoral regulators are the need of the hour and cannot be done away with. Second, the economic structure of India calls for co-existence of both, the sectoral regulators and the competition commission. Third, an overlapping of jurisdiction appears on the first reading of the PNGRB Act and the Competition Act. However, there exists no such conflict if the provisions in dispute are so interpreted, as to understand the intention of the legislature.

4.2. Recommendations

Competition agencies and sector regulators should share a common objective in regulated industries to improve economic performance by preventing market power and avoiding inefficient regulations. Differing tasks and specialised areas of knowledge and experiences can cause friction between the two types of agencies, despite this shared objective. And in some circumstances, other official or unofficial objectives may dominate the attention of the sector regulatory agency. The tone and content of interactions between competition agencies and sector regulators depend on a variety of factors. Chief among them are the stages of policy and institutional development in the agencies, the degree of jurisdictional overlap between the agencies, and the competition advocacy initiatives of the competition agency.

Competition law cannot and should not be used to achieve regulatory objectives, such as assisting the entry of additional operators on the market through favourable pricing mechanisms, even if the competition authorities of various regulating authorities believe that, in so doing, competition would be enhanced in the long-run.

Competition commission should deal with the competition related issues of the entire market but should not try to achieve regulatory objectives. Sectoral regulators (PNGRB in this case) should deal with the economic and technical aspect of the market.

Also, the commission should appoint a panel of experts as and when needed, to take assistance in the technical knowledge of a sector and thereby use the powers conferred upon it by Section 16 of the Competition Act, 2002.
4.3. Conclusion

A layer of complexity is created by the concurrent application of competition rules and sector-specific application, which increases the risk of jurisdictional and substantive conflicts. The greatest risk, however, arises not from procedural or substantive disputes, but from conflicts between competition law principles and regulatory objectives. Competition law seeks to promote economic efficiency by protecting a competitive market structure. Regulation is different in that it seeks to smooth out market imperfections over time, including, where appropriate by creating (new) precise duties that could not be imposed under competition law. The risk of regulation through competition law is particularly acute when sector-specific regulators have concurrent powers to apply competition rules to the sector that they are charged with regulating. Unlike sector-specific regulatory authorities, however, the Commission combines the twin powers of private enforcement and the ability to pursue claims for damages. Hence, the Commission is uniquely situated to ensure a robust level of consumer welfare in the area of competition.

Unlike in this case, when competition agencies and sector regulators have overlapping jurisdictions, interaction between the agencies is inevitable. Concerns will arise if the agencies do not coordinate their decisions and processes because failure to do so will create regulatory risk for investors and increase compliance costs.

It is very important to deal with such issues which may lead to situations like forum shopping. Also, the solution to such cases should be arrived at, at a faster pace so as to minimise the wastage of time and money.

The Indian competition law framework, through the Competition Act of 2002 ("Competition Act"),\textsuperscript{100} envisages the Competition Commission of India ("Commission") as a competition authority.

The roles of the competition authority and sector-specific regulators should be complimentary. While they should distribute their work, both the regulators should have an ultimate aim of ‘consumer welfare’.

\textsuperscript{100} The Competition Act, 2002, No. 12 of 2003
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