

SPEECH BY MINISTER ARUN JAITLEY

In India, we are still in the process of drafting a new competition law. We have been traditionally government regulated by a whole piece of legislation which was the Monopolies and Restrictive Trade Practices legislation. Over the last 25 years, we have constantly evolved. At the same time, there has been an increased recognition that the enormous amount of regulation in India has become anachronistic. Two years ago, we started a process of debating a new competition policy. After an extensive debate, the draft competition legislation has been framed; it is now before the Parliament. Hopefully, very soon, it shall become an enforceable piece of legislation. In the course of my brief comments, after referring to the need for competition law itself, I will deal with some of the important roles and tools of the competition authority,

Competition has been conceived as an amalgame of factors that stimulate economic competition. Competition now needs to be viewed as a dynamic concept as it attempts to judge forms of industrial organisation and policies of firms by reference to the extent to which they promote rivalry. Competition describes the kind of market pressures which may be exerted to penalise the inefficiencies and reward the enterprises and in this way to promote economic progress. One of the government economic themes in the last quarter of the century has been the process of globalisation and a progressive international integration in the world economy. The movement is towards widening. International flows of trade enhance information in a single integrated global market. Globalisation has the fundamental attributes of increasing the degree of openness in most countries.

The underlying rational for globalisation is that free flows of trade, finance and information will produce the best outcome for the growth and global welfare. However, it is inevitable that globalisation makes initially an unequal world with winners and also losers. It follows therefore that, if a proper check and balances is not being done and if complementary policies are not in place, accrued welfare and income gains across the countries may wait. Liberalisation and globalisation have characterised international activities in these times. Consequently, at the micro level, firms to remain competitive are now required to adopt global strategies. As the number, size and scope of activities of these firms increase, more and more of them are adopting strategic alliances and their commercial practices have an increased international dimension more than ever before. Theses processes are resulting in an increased cross-border trade and, at times, in anticompetitive behaviours.

Such practices, if not checked, will tend to undermine the benefits of liberalisation for the countries concerned. Often trade policies and competition policies may not be in tandem. It is important for every country that straight competition policies are directed towards economic growth and development whilst observing consumers interests. Trade laws and policies are primarily used for balancing the trade and export policies of other countries in response to the demand of domestic industries. On the other hand, the very basic gamut of competition policies is in the interest and welfare of consumers with an efficient allocation of scarce resources. All trade ultimately has the consumer at its converging point. Consumer welfare and their interests are at the centre of economic liberty. It is designed for preserving an effective competition as a rule of trade, the premises of which are unrestrained interaction of competitive forces, maximum material progress through rationale allocation of economic resources and availability of goods

and services of acceptable and good quality at reasonable prices and, finally, are just a fair deal to the consumers.

We, in India, are close to enacting a new competition law. Presently, the draft law is before our Parliament. Hopefully, it will become law not before long. Our basic approach to competition law and policy is predicated on the following principles, even though we are still designing some of the contours. Firstly, competition should be a factor to be recognised in trade and other policies of the country. Secondly, there should be a competition policy and enforced competition law structured according, by and large, to the consumer interests and consumer welfare. There should be a competition authority to implement the competition law and also to facilitate the shape of competition law from time to time. Thirdly, the trade policy of the country should be, at all times, in the reckoning of the contours of the competition law and policy. There should be enough flexibility in the competition and trade policies to deal with the specific needs and requirements of the country. Fourthly, public interest's dimensions can have primacy over consumer interests in exceptional circumstances. Such exemptions and exceptions, however, should be reviewed and not be allowed to dilute competition as far as possible. Care should be taken not to allow public interest to be abused to circumvent competition. Lastly, competition policy should be an aid to the development dimension in its approach and implementation.

While keeping all these factors in mind, the draft approach that we have taken as far as India is concerned is to have effective implementation of the competition law and enforcement of competition policy through a competent judiciary body that is the competition authority. The functions of the authority as it is ruled are intended to encompass several different functions. Most competition laws like ours will have the rubrics of a) the anticompetition agreements ; b) abuse of dominance ; and c) the market surveillance. Our original regulatory law did refer to a large number of market practices which were anticompetitive.

They have now been redefined under the new legislation. We have a whole chapter dealing with anticompetitive agreements (both horizontal and vertical). There are four agreements in the horizontal category which are *per se* referred to as anticompetitive : these are agreements : i) regarding prices (all agreements that directly or indirectly fix the purchase or sell prices) ; ii) agreements regarding quantities (these are agreements limiting production, supply, markets, technical development or investment) ; iii) agreements regarding tendering and bidding and iv) agreements regarding market sharing (these include agreements for sharing of markets or sources of production supplied by territory, type or size of consumers or any other way).

While these agreements are described in the draft law as *per se* illegal, there would be others that would fall under the agreements category but treated according to a *rule of reason*. Similarly, we have a detailed chapter on vertical agreements. There is a considerable debate in our country on another component : will judicative authority be given to the competition authority with regard to abuse of dominance? The criteria for dominance in view of the specific character of our markets are under considerable debate. We have for the time being several questions raised with regard to the kind of methodology of determining dominance and what exactly could be described as an abuse of dominance. We have in our draft laid down certain grounds rules which will be the size and resources of the enterprise, the size and importance of competitors, the economic power of the enterprise including commercial advantages, technical

advantages enjoyed by the enterprise, dependence on consumers, monopolies or dominance factors, entry barriers, countervailing buying powers as well as some other relevant factors which themselves will determine the factors of dominance. Our original old law, which was the Restrictive Trade Practices and Monopolies law perhaps discouraged size. There is a substantial change as far as the new draft is concerned. It is not the size of dominance *per se* which is discouraged but it is the abuse, that is the ability to operate independently of market forces which will be discouraged by the law.

The third aspect regards merger control. In our domestic market, there is a considerable debate as to the extent to which we must enforce the law. In a market like ours we needed to encourage mergers in a big way. We therefore had a fairly liberal approach in the form of the size to which the notification of the merger would apply. We now have a provision with regard to an advanced ruling which any merging enterprise may seek. There is a time frame of 90 days in which the advance ruling is required to be given. In case the effects of a merger are to significantly eliminate or to have an adverse effect on competition, the authority can then examine this question within a time period limitation of one year, which is provided itself in the draft legislation.

There is a considerable amount of advocacy function in the initial stages which are also assigned to the Commission because the market needs to be educated in a developing economy like ours on the whole culture of competition itself. We do therefore intend that, soon after the legislation comes into force and prior to its enforceability, a certain time period will exist in which the Commission would initially perform its educational function of promoting a culture of competition in the market.

The role and tools of the competition authority are also very clearly defined. The investigative tool is considered distinct from the prosecutorial tool. There is a punitive tool. There is no provision now with regard to leniency but we are now also in the process of studying various models in the world. In addition, I have initiated a domestic debate in India with regard to the need of discussing the possibility of including leniency provisions either in the first instance or at a subsequent stage after the law itself develops.

As I mentioned earlier, we have now been shifting from a more regulated economy towards market economy. We had a regulatory law. Realising the need for promoting competition vis à vis experiences of various international models, we have been studying and educating our markets on the need to encourage competition. It will certainly be in a position to provide the best in terms of pricing and in terms of quality as far as the consumer is concerned.