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**DOES COMPETITION KILL OR CREATE JOBS?**

**Contribution from CUTS**

-- Session I --

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## **SHAPING DOMESTIC COMPETITION REGIMES TO CREATE AND PROTECT JOBS – SOME THOUGHTS FROM INDIA**

-- CUTS<sup>1</sup> --

### **1. Introduction**

1. In the recent UN Summit for Sustainable Development (2015), world leaders unanimously adopted the 17 Goals to end poverty, reduce inequality and address climate change. One of these Goals (Promote inclusive and sustainable economic growth, employment and decent work for all), highlights the need for creating jobs and calls on national governments to ensure full and productive employment for their citizens – men and women.

2. Given the above, the international competition fraternity and indeed national policymakers need to explore ways in which fair markets influence jobs – especially in the developing world. As an advocate of competition reforms across the developing regions of the world, CUTS presents its views on the linkage between competition and employment, under the following three heads especially relevant for developing countries like India:

- First of all, it highlights implications of pro-competitive sectoral policies on jobs
- Secondly, it delves into the impact on employment due to trade liberalisation
- Thirdly, it presents examples to illustrate how M&A regulation by competition agencies can have implications on jobs. In the same vein, the paper notes some ‘good practices’ by a few developing country competition agencies which have helped them to deal with this issue.
- Finally, it draws from the above experience to take a critical look at the Competition Commission of India (CCI) – especially the role that CCI can play in protecting jobs in certain markets. This is particularly relevant in India, on account of the fact that certain sectors have been subject to considerable restructuring in recent times; and further creating (and protecting) jobs remains a key developmental objective of the government.

### **2. Sectoral policies and implications on Jobs**

3. This section delves into three aspects of the linkage between economic reforms and its implications on jobs. While a lot of the examples and illustrations are provided in the context of India, the emerging broader policy and practice lessons should be relevant for other developing and least developed countries as well.

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<sup>1</sup> Consumer Unity & Trust Society.

- Economic reforms leading to greater private participation and expanding sector is intuitively expected to create greater job opportunities resulting from expanding sectors. However, the relationship between an expanding economy and jobs is non-linear, with some sectors likely to benefit more (in terms of job creations) than others.
- Greater trade and economic liberalisation is likely to infuse a sense of contestability in markets that some of the dominant firms are unable to cope with and might shrink and fold-up in the short term. Though, in the long-term, such sectors are likely to become more vibrant and efficient.
- Finally, from a job creation perspective, it is critical to ensure that the interest of micro, small and medium enterprises (MSMEs) are protected in developing country markets – given the contribution of MSMEs to jobs. MSMEs should also look at the national competition regime as a tool for them to protect themselves from coercive and exploitative actions of some of the more powerful firms in the market.

## 2.1 *Economic reforms, private sector development and jobs*

4. There is ample evidence in literature to suggest a positive linkage between economic reforms in certain sectors and jobs. Eliminating barriers to competition has a positive impact on employment and growth. In a cross-country study, Nicoletti & Scarpetta (2005) showed that reforms that would reduce the most pronounced state controls and barriers to competition observed in a sample of 20 OECD countries would increase long-run employment rates by 2.5 to 5 % points<sup>2</sup>. Government data on employment in the US telecommunications industry reveals a substantial increase in sector employment following passage of the Telecommunications Act of 1996.<sup>3</sup>

5. The goal of the 1996 Telecommunications Act were to “promote competition and reduce regulation” in communications industries. For the five years prior to the 1996 Act, employment in the wireline telecommunications sector was falling by an average of 2.3% annually. In the six-plus years following the 1996 Act, employment in the wireline telecommunications industry reversed trend. Based on forecasted employment trends from the pre-Act period, it was estimated that the 1996 Act produced an average of 105,000 wireline telecommunications jobs (on average) from February-1996 through July-2003.<sup>4</sup>

6. There have been some studies in developing countries, including in India on this issue. An approach used in a recent study examined the relationship between services trade liberalisation and growth across key sectors of the Indian economy (Arnold, Javorcik, Lipscomb & Mattoo, 2011<sup>5</sup>). The study established that those sectors that were liberalised registered more growth than those not liberalised (Figure 1). The expanding sectors (banking services, communications, life insurance and road transport) will in turn be expected to create greater job opportunities. This is likely to happen irrespective of whether the market is highly concentrated or competitive.

<sup>2</sup>Nicoletti, G. and S. Scarpetta (2005), “Product Market Reforms and Employment in OECD Countries”, Economics Department Working Paper 472, OECD, Paris

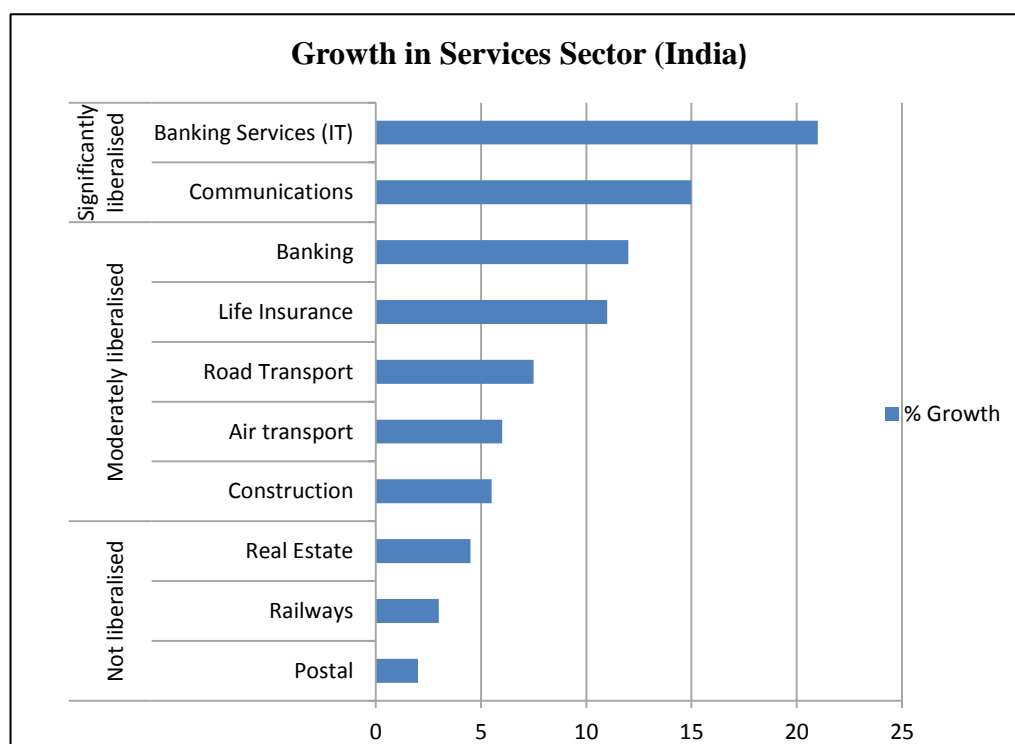
<sup>3</sup><http://www.phoenix-center.org/PolicyBulletin/PolicyBulletin7Final.pdf>

<sup>4</sup> *Ibid*

<sup>5</sup> Arnold, J *et al* (May 2012), “Services Reform and Manufacturing Performance: Evidence from India”, refer: [http://siteresources.worldbank.org/INTTRADERESEARHC/Resources/544824-1296163684646/7695355-1337112639003/Arnold\\_Javorcik\\_Lipscomb\\_Mattoo\\_ppt.pdf](http://siteresources.worldbank.org/INTTRADERESEARHC/Resources/544824-1296163684646/7695355-1337112639003/Arnold_Javorcik_Lipscomb_Mattoo_ppt.pdf)

7. For example in an expanding market that is highly concentrated, the dominant players would be tempted to add on to their market share by adding to their productive capacity and thereby creating job opportunities. It would be difficult for historically dominant players to improve their productivity (due to strong labour unions) – and therefore, the only option left for them to benefit from an expanding market would be to add to their labour force – thus creating jobs. On the other hand, in a competitive market that is expanding, new entrants would be able to establish themselves with less difficulty (given absence of entry barriers), thereby creating new jobs.

**Figure 1: Liberalisation and growth across Indian services sector (2011)**



8. However, the relationship between an expanding sector (higher sectoral growth) and employment is not linear. There is evidence to show that expanding economy (and high growth sectors) in India did not have a corresponding universal impact on the number of jobs across sectors. Between 2004-05 and 2009-10, a period that saw three successive years of GDP growth rate of 8% or higher in India, about five million jobs were lost in the manufacturing sector<sup>6</sup>. Over the same period, over eighteen million new jobs were created in construction and more than nine million in the services sectors<sup>7</sup>.

9. In the retail sector, pro-competitive policies have been found to increase both labour and total factor productivity growth. In an empirical analysis of 1,948 retail stores located in 41 cities in India, Amin (2007) established a strong causal effect of competition on labour productivity of stores. This study

<sup>6</sup> Based on data from the National Sample Survey Organisation (NSSO) survey for the period

<sup>7</sup> Ibid

suggested an increase of 87% in labour productivity from pro-competitive reforms<sup>8</sup>. Deregulation of shop opening hours has been found to increase employment in the sector.

## 2.2 *Trade liberalisation can kill jobs– some evidences*

10. A question that sometime worries developing country policymakers and practitioners is whether greater trade liberalisation might exert pressure on domestic (erstwhile) dominant players (public and private), which are unable to cope with new liberalised market conditions and larger number of players (including foreign players). This might lead to shrinking capacities and finally closure of some of these players – thereby jeopardising jobs. Ahsan & Mitra (2011) have shown that trade reforms in India, on average, led to a decline in the bargaining power of workers in firms across all size categories<sup>9</sup>.

11. It has also been noted that Indian industries are moving from labour-intensive exports to capital-intensive exports in the wake of increased global competition on account of trade liberalisation. This has reduced labour demand. Earlier studies by Revenga (1992) and Feenstra and Hansan (1996) concluded that increase in import competition or outsourcing has significant effect in terms of decrease in employment in US<sup>10</sup>.

## 2.3 *Level-playing field creates opportunities for MSMEs*

12. Micro, Small and Medium Enterprises (MSMEs) provide majority of employment opportunities in developing and least developed countries. According to available information, the Micro-Small and Medium (MSME) sector in India provides jobs to over 106 million people<sup>11</sup>. Lack of pro-competitive policy framework or weaknesses in its implementation has adverse implications on MSMEs thereby affecting jobs. Artificial barriers in sectors/processes reduce the possibility of MSMEs to engage in certain productive activities. MSMEs can use national competition law to protect themselves from coercive and exploitative conditions that are often imposed on them. Given the above, the role of competition agencies in protecting the interest of MSMEs (and building alliances with them), especially in developing countries becomes extremely important. Competition agencies in some countries like South Africa<sup>12</sup> have been extremely pro-active in carrying out this role – and should act as a source of motivation for other developing countries to emulate.

13. In India, it is common practice to see small scale industries being crowded out from many public procurement processes, often due to unfavourable ‘eligibility’ criteria for them to participate in public procurement bids. They are also subject to unfavourable conditionalities imposed by dominant buyers that they supply their goods/services to<sup>13</sup>. This is in spite of the fact that a number of measures have been taken

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<sup>8</sup><http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Labor-Market-DP/0816.pdf>

<sup>9</sup>[http://www.isid.ac.in/~pu/conference/dec\\_11\\_conf/Papers/DevashishMitra.pdf](http://www.isid.ac.in/~pu/conference/dec_11_conf/Papers/DevashishMitra.pdf)

<sup>10</sup><http://www.mse.ac.in/frontier/i9%20uma.pdf>

<sup>11</sup><http://msme.gov.in/WriteReadData/DocumentFile/ANNUALREPORT-MSME-2013-14P.pdf>

<sup>12</sup> One of the South African Competition Act’s explicit purposes is to “ensure that small and mediumsized enterprises have an equitable opportunity to participate in the economy”. The Act reflects the government’s aims to incorporate particular public interest policies that reflect the changing socio/economic and political context within which the Act was promulgated (ref: <http://www.comptrib.co.za/assets/Uploads/Speeches/kim.pdf>)

<sup>13</sup>[http://cci.gov.in/images/media/presentations/anil\\_sme\\_1may08\\_20080522160152.pdf](http://cci.gov.in/images/media/presentations/anil_sme_1may08_20080522160152.pdf)

by the Government of India to protect the interest of the micro small and medium enterprises (MSMEs)<sup>14</sup>, which clearly does not seem to be as effective on the ground.

14. Further, in some sectors – policies are designed such that they have negative implications on the SMEs. In India’s public transport sector, it is evident that there’s a tendency in government policy to support the incumbent state-owned public sector operators in some states<sup>15</sup>, thereby creating regulatory restrictions/entry barriers for private operators in public transport. Over and above such ‘one-sided’ state level policies (which are observed in a number of Indian states e.g. Kerala, Tamil Nadu<sup>16</sup>, Rajasthan<sup>17</sup>) considerable amount of monetary support is also provided to subsidise public transport. The argument is that it is a public welfare measure and the subsidy is provided to meet goals related to education, healthcare, and employment.

15. In a recent CUTS study (2015)<sup>18</sup> undertaken in two states of India (Gujarat and Madhya Pradesh), state policy in the bus transport sector protected the interest of the incumbent state owned enterprise at the cost of the private sector – thereby affecting jobs. It was observed that the state Government of Gujarat had provided monopoly rights to the incumbent - Gujarat State Road Transport Corporation (GSRTC) by a state policy directive of 1994, to provide services in the inter-city ‘stage carriage’<sup>19</sup> segment – at the cost of the private operators. However, a shrinking fleet of GSRTC<sup>20</sup> and rising commuter demands<sup>21</sup> motivated private providers to operate on these routes. Though deemed ‘illegal’, consumers were happy using these private providers as it met their needs. Strict actions are taken against private buses operating on these ‘restricted’ routes. Therefore, private bus operators have had to bear additional costs (as ‘rents’ and penalty) to continue providing these services in order to meet the demand of commuters. The big private operators have been able to continue to pay these additional costs and sustain their services, but this has created entry barriers for small/medium operators.

16. The state of Maharashtra (India) presents a similar story where public transport was nationalised in 1974<sup>22</sup>. Since then, all intra-state routes are reserved for public operations and no private operators are allowed. Only 7 per cent of the total buses are privately owned, rest 93 per cent are owned by the public sector<sup>23</sup>. In this state too, clandestine operations of the private operators are prevalent on inter-state routes.

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<sup>14</sup> <http://www.dcsmse.gov.in/policies/policies.htm>

<sup>15</sup> [http://www.cci.gov.in/images/media/completed/2statepoliciesaffecting\\_20080508111218.pdf](http://www.cci.gov.in/images/media/completed/2statepoliciesaffecting_20080508111218.pdf)

<sup>16</sup> [http://www.competition-commission-india.nic.in/work\\_Shop/March14-15\\_2007/8.%20NCAER,%20CCIMar14-3-07.pdf](http://www.competition-commission-india.nic.in/work_Shop/March14-15_2007/8.%20NCAER,%20CCIMar14-3-07.pdf)

<sup>17</sup> <http://timesofindia.indiatimes.com/city/jaipur/Now-public-private-partnership-for-state-bus-terminals/articleshow/46870873.cms> & [http://www.cuts-ccier.org/pdf/Anti-competitive\\_Provisions\\_in\\_the\\_Motor\\_Vehicles\\_Act-1988-Case\\_Study\\_of\\_Private\\_Bus\\_Operators\\_in\\_Nathdwara.pdf](http://www.cuts-ccier.org/pdf/Anti-competitive_Provisions_in_the_Motor_Vehicles_Act-1988-Case_Study_of_Private_Bus_Operators_in_Nathdwara.pdf)

<sup>18</sup> CREW Project ([www.cuts-ccier.org/CREW](http://www.cuts-ccier.org/CREW)) – supported by DFID (UK) and BMZ (Germany) facilitated by GIZ (Germany)

<sup>19</sup> *Stage Carriage*: It is a mode of licence under which the bus operator can charge fares stage-wise, i.e. on a per kilometre basis. Under this licence operators can pick and drop passengers anywhere on the route and charge them accordingly

<sup>20</sup> Reducing fleet size of 6,694 buses in 2013 from 7,793 buses in 2003

<sup>21</sup> Passenger carrying capacity of GSRTC has declined from 1.27 billion/year passengers in 2003 to 0.84 billion/year in 2013. Data Source: Transport Research Wing, Ministry of Road Transport and Highways, India

<sup>22</sup> per notification (November 1973) under Chapter-4A of the Motor Vehicles Act, 1939 MSRTC had been granted the monopoly to operate stage and contract carriage services by the Government

<sup>23</sup> NCAER Report (State Policies Affecting Competition: Passenger Road Transportation Sector), April 2007

Users prefer the operation of the private operators over the state owned public operator (Maharashtra State Road Transport Corporation, MSRTC)<sup>24</sup>.

17. Many private bus owners in the public transport sector are small/medium sized entrepreneurs and engage drivers and bus conductors on short-term (renewable) contracts. So, when a private bus is restricted from plying, often the crew lose their jobs. Absence of a vibrant bus sector also hurts allied micro, small and medium industries (e.g. bus maintenance, spare parts, etc.), which otherwise provide employment opportunities, especially for skilled and semi-skilled youth.

### **3. M&A activities in sectors and implication on Jobs**

#### **3.1 *Protecting jobs – a key consideration for developing country Competition agencies***

18. Competition enforcement has a direct relationship with employment creation through the regulation of mergers and acquisitions. Mergers can result in job losses, especially for horizontal mergers, where merging would result in duplication of roles, resulting in a significant portion of the employees becoming redundant. Even in vertical and conglomerate mergers, it is also expected that some managerial roles would be rendered redundant by a merger, as duplication of roles would also result at management level. Lehto & Bockerman (2008)<sup>25</sup> have shown that change in ownership associated with domestic mergers and acquisitions lead to employment losses, particularly in certain sectors.

19. In assessing merger reviews, it has been seen that some competition authorities in developing economies have devoted attention to the impact that the merger would have on employment. Such an approach by the competition authority helps avoid allowing mergers that result in laying-off of workers. The loss in employment would have to be weighed against any anticipated benefits arising from the merger, so that the merger can only go ahead if the net effect is positive. Where it is felt that the loss in employment would be substantial, the competition authority can also impose conditions on merger approvals that are intended to limit the loss in employment following the merger.

#### **3.2 *Some ‘good practices’: South Africa, Kenya and Namibia***

##### ***South Africa***

20. The Competition Act, 1998 of South Africa has specific provisions regarding public interest, without necessarily providing a definition of ‘public interest’. Public interest provisions in the South African competition legislation are found in Section 12 of the Competition Act and form an important part for the assessment of mergers and acquisitions. The inclusion of public interest in merger policy in South Africa was largely driven by the need for economic redistributive justice. Section 12A of the Act on consideration of mergers provides that whenever the Commission or the Tribunal is considering a merger, they must initially determine whether or not the merger will result in substantial lessening of competition, and if it does, they must also look at whether the merger can be justified on substantial public interest grounds.

21. In terms of section 12A(3) of the Act, when determining whether or not a merger can or cannot be justified on the grounds of public interest, the Competition Commission or the Competition Tribunal must consider the merger will have on: (a) a particular industrial sector or region; (b) employment; (c) the

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<sup>24</sup> *ibid*

<sup>25</sup> [http://www.petribockerman.fi/lehto%26bockerman\\_ana\\_2008.pdf](http://www.petribockerman.fi/lehto%26bockerman_ana_2008.pdf)

ability of small businesses, or firms controlled or owned by historically disadvantaged persons to become competitive; and (d) the ability of national industries to compete in international markets.

- In *The Metropolitan Holdings Limited and Momentum Group Limited*<sup>26</sup>, the Tribunal conditionally approved the acquisition of 100% of the issued ordinary share capital of Momentum by Metropolitan. The merging parties submitted that the merger may lead to up to approximately 1000 job losses as a result of redundancies. The Tribunal approved merger conditionally and directed the parties to ensure that there are no retrenchments in South Africa resulting from the merger for a period of two years from the effective date of the proposed transaction.
- Special remedies can be suggested by the Commission in case the proposed merger is going to affect the jobs. An innovative example was seen in the *Lonmin PLC/Southern Platinum Corp*<sup>27</sup> case. The parties in this case anticipated more than 400 post-merger retrenchments. The South African Competition Tribunal approved the transaction subject to a maximum of 400 retrenchments. The merged entity was directed to offer alternative skills training to those employees who were to be retrenched as a result of the proposed transaction.

### **Kenya**

22. In Kenya, the merger control provisions are contained in Part IV of the Act and the criteria for review are highlighted in sections 41 to 49 of the Act. Under the Act, the criteria for evaluating the effect of mergers include whether the proposed merger would be likely to affect employment<sup>28</sup>. Competition Authority of Kenya (CAK) has also issued public interest guidelines<sup>29</sup> aimed at clarifying the application of public interest test. As per these guidelines, the Authority employs both the substantial lessening of competition test (SLC) and the public interest test (PIT) to analyse mergers. In Kenya, the parties are expected to provide a definitive analysis of the impact of the merger on employment. In order to satisfy the CAK, the parties must show that:

- A rational process has been followed to arrive at the determination of the number of jobs to be lost. That is, the reason for the job reduction and the number of jobs proposed to be lost are rationally connected, and;
- The public interest in preventing employment loss is balanced by an equally weighty, but countervailing public interest, justifying the job loss and which is cognizable under the Act.

23. The PIT includes the extent to which the proposed merger would be likely to affect: a particular industrial sector or region; employment; the ability of small undertakings to gain access to or to be

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<sup>26</sup> The Metropolitan Holdings Limited and Momentum Group Limited, Case 41/LM/Jul10, decision available at <http://www.saflii.org/za/cases/ZACT/2010/87.html>

<sup>27</sup> Lonmin Plc and Southern Platinum Corp (41/LM/May05) [2005] ZACT 49 (22 July 2005), decision available at <http://www.saflii.org/za/cases/ZACT/2005/49.html>

<sup>28</sup> Section 46(2)(e) of the Kenya Competition Act, 2010.

<sup>29</sup> Balancing Public Interest Guidelines issued by Competition Authority of Kenya (CAK), available at: [www.cak.go.ke/index.php/status-regulations/the-competition-act-no-12-of-2010/cat\\_view/6-mergers/22-balancing-public-interest-guidelines.html](http://www.cak.go.ke/index.php/status-regulations/the-competition-act-no-12-of-2010/cat_view/6-mergers/22-balancing-public-interest-guidelines.html)



competitive in any market; the ability of national industries to compete in international markets; and any benefits likely to be derived from the proposed merger relating to research and development, technical efficiency, increased production, efficient distribution of goods or provision of services and access to markets.

### *Namibia*

24. Namibia's competition law (Competition Act, 2003) not only covers the three major competition concerns of anti-competitive agreements, abuse of dominance, and anti-competitive mergers, but it also takes into account the public interests provisions on protecting consumers by safeguarding competitive prices and product choices, as well as promoting employment and advancing the social and economic welfare of Namibians.

25. For example, in the case of acquisition of Massmart Holdings Limited by Wall Mart Stores Incorporated, the Commission approved the merger on three conditions i.e. that the merger should allow for local participation in accordance with section 2(f) of the Act; secondly, that there should be no employment losses as a result of the merger and thirdly, that the merger should not create harmful effects on competition that may give rise to risk of market becoming foreclosed to competitors, especially for small and medium enterprises (SMEs).<sup>30</sup>

## **4. Emerging lessons for the Competition Commission of India**

### **4.1 CCI's approach to M&As**

26. The merger control regime<sup>31</sup> under the Competition Act, 2002 has been in force in India for over four years now. Sections 5 and 6 of the Indian Competition Act prohibit a combination<sup>32</sup> which causes or is likely to cause an 'appreciable adverse effect on competition' (AAEC) in the relevant market in India, and treat such combinations as void. The combination becomes effective only after the expiry of 210 days from the date on which notice is given to the CCI, or after CCI has passed an order approving the combination or modifying the same.

27. CCI has often taken into consideration larger socio-economic objectives while dealing with cases related to anticompetitive agreements and abuse of dominant position. It would be crucial for CCI to adopt a similar approach while dealing with M&As. Some of the considerations, while examining M&As would be protecting employment, drawing from the above-mentioned 'good practices' of South Africa, Kenya and/or other developing countries. Such an approach can be construed from the Preamble<sup>33</sup> of the

<sup>30</sup><http://www.compcom.co.za/wp-content/uploads/2014/09/Are-merger-conditions-a-viable-instrument-to-achieve-non-economic-goals-in-developing-countries-the-case-of-namibia.pdf>

<sup>31</sup> The power to approve amalgamations, mergers and demergers rests with the High Courts of India of each state where the registered office of the company is situated for both listed and unlisted companies under the Companies Act, 1956. Following approval of the scheme by the boards of the merging and surviving companies, the companies are required to file the scheme with the High Court situated in the jurisdiction of their respective registered offices. Pursuant to the new Companies Act, 2013, this power will be transferred to the National Company Law Tribunal, although the relevant sections have still not been notified. Further, lay off and retrenchment from the employees benefit perspective is covered under the Industrial Disputes Act, 1947. Chapter VA of the Industrial Disputes Act, 1947 incorporates provisions and conditions related to layoffs and retrenchments.

<sup>32</sup> The Indian Competition Act uses the term Combination which includes a merger, acquisition and amalgamation between or among enterprises that exceed the 'financial thresholds' prescribed under the Competition Act.

<sup>33</sup> Preamble of the Competition Act, 2002 reads: "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

Competition Act 2002, which sets out the broad objectives to be achieved by this law. A brief case study of the Indian pharmaceutical sector is presented below, to highlight how such an approach taken by CCI would be beneficial.

#### 4.2 *A glance at the Indian Pharma Sector*

28. A look at the trend in the pharma sector, globally, suggests a direct relation between the workforce layoffs and mergers. According to Danzon et al. (2007) in large pharmaceutical and biotech firms, mergers are motivated by excess capacity as patent expiration and gap in the pipeline drugs make current human and physical capital excessive<sup>34</sup>. As per news reports<sup>35</sup>, since 2005, Pfizer Inc. has eliminated more than 56,000 jobs world-wide. Since 2009, the pharmaceutical industry has announced more than 156,000 job cuts in the U.S. alone. Reductions in jobs tend to be high following M&As, especially if they involve companies in the same industry. Instances of job losses from EU are also readily available. In the case of Bayer's acquisition of Schering about 5,350 jobs were planned to be cut, some 3,150 of them in Europe. This prompted the German Chancellor to request the company to minimise job losses in Germany<sup>36</sup>. European Restructuring Monitor (ERM) reports that over a period of 2002–2007, of the approximately 3.7 million job losses announced as a result of restructuring, some 6.5%, or about 240,000 jobs, arose from cases where M&As were involved<sup>37</sup>.

29. India is one of the biggest emerging markets of pharmaceuticals, and accounts for about 2.4 per cent of the global pharmaceutical industry in value terms and 10 per cent in volume. This sector is expected to expand at a Compound Annual Growth Rate (CAGR) of 16 per cent to reach US\$ 55bn by 2020 from US\$ 20bn in 2015<sup>38</sup>. As the pharmaceutical sector is highly fragmented, consolidation has increasingly become an important feature. There is a general trend of being aggressive, when it comes to acquisitions in this sector in India. Such an approach provides companies with faster and easier access to new territories, increased balance sheet strength and new drug molecules. As reported recently, Indian pharma companies are expanding strongly both in the domestic and export markets<sup>39</sup>. In recent years, Indian pharmaceutical industry has witnessed increased M&A activities. Generally from the organisational cultural differences perspective, it has been seen that integration of big organisations leads to large number of layoffs and exits. Synergy and cost cutting also play an important role in M&A deals and one of the main ways of achieving this is by laying off some of the workforce post-merger.

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*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.”*

<sup>34</sup> Danzon, P.M., Epstein, A., Nicholson, S. (2004) “Mergers and Acquisitions in the Pharmaceutical and Biotech Industries.” NBER Working Paper Series, available at [www.nber.org/papers/w10536.pdf](http://www.nber.org/papers/w10536.pdf)

<sup>35</sup> “In Drug Mergers, There's One Sure Bet: The Layoffs”, The Wall Street Journal, April 29, 2014, available at [www.wsj.com/articles/SB10001424052702304393704579532141039817448](http://www.wsj.com/articles/SB10001424052702304393704579532141039817448)

<sup>36</sup> ERM case studies: The consequences of Mergers and Acquisitions, European Monitoring Centre on Change, February 2009, available at [www.eurofound.europa.eu/observatories/emcc/comparative-information/erm-case-studies-the-consequences-of-mergers-and-acquisitions](http://www.eurofound.europa.eu/observatories/emcc/comparative-information/erm-case-studies-the-consequences-of-mergers-and-acquisitions)

<sup>37</sup> ERM case studies: The consequences of Mergers and Acquisitions, European Monitoring Centre on Change, February 2009, available at [www.eurofound.europa.eu/observatories/emcc/comparative-information/erm-case-studies-the-consequences-of-mergers-and-acquisitions](http://www.eurofound.europa.eu/observatories/emcc/comparative-information/erm-case-studies-the-consequences-of-mergers-and-acquisitions)

<sup>38</sup> Indian Pharmaceuticals Industry Analysis, Indian Brand Equity Foundation, August, 2015, available at <http://www.ibef.org/industry/indian-pharmaceuticals-industry-analysis-presentation>

<sup>39</sup> “Indian pharma firms build a war chest for acquisitions”, Live Mint, July 03 2015, available at [www.livemint.com/Companies/5fU5hSQWw2zym3WzqIXEIP/Indian-pharma-firms-build-a-war-chest-for-acquisitions.html](http://www.livemint.com/Companies/5fU5hSQWw2zym3WzqIXEIP/Indian-pharma-firms-build-a-war-chest-for-acquisitions.html)

30. The table<sup>40</sup> shows the merger cases from the pharma sector notified to CCI since 2011. Out of these 20 cases, three were modified to the extent of duration of non-compete agreement. One case where structural modifications were carried out related to Sun-Ranbaxy merger. Again, in this case, the focus of the CCI analysis revolved around determining and addressing the appreciable adverse effect on competition. As reported, the Sun-Ranbaxy merger will create the world's fifth biggest generic drug maker, but it will also result in job redundancies. Sun Pharma has estimated that it will save \$250 million in the third year of the merger because of operating synergy, which will likely come from trimming the field force of the two companies and integration of its supply chain<sup>41</sup>. At least 40% of this savings is expected from a cut in sales force at various locations.

**Table 2: List of pharma sector cases dealt with CCI**

Combination cases Pharma sector notified to CCI	Year	Outcome
Notice for Acquisition filed by G&K Baby Care Private Limited	2011	Approved
Notice for Acquisition filed by Orchid Chemicals & Pharmaceuticals Limited and Hospira Healthcare India Private Limited.	2012	Non-compete clause modified
Acquisition of the global nutrition business of Pfizer by Nestle	2012	Approved
Notice for Acquisition given by Mitsui & Co. Limited.	2012	Approved
Notice given by Mylan Inc.	2013	Non-compete clause modified
Notice given by Mylan Laboratories Ltd.	2013	Approved
Notice given by Anant Investments.	2013	Approved
Notice given by Novartis AG and GlaxoSmithKline plc	2014	Approved
Notice given by Wipro GE Healthcare Private Limited and GE India Technology Centre Private Limited.	2014	Approved
Notice given by Sun Pharmaceutical Industries Limited and Ranbaxy Laboratories Limited	2014	Approved with structural modifications
Notice given by Meiji Seika Pharma Co., Ltd.	2014	Approved
Notice given by Sanofi-Synthelabo (India) Limited	2014	Approved
Notice for acquisition given by Torrent Pharmaceuticals Limited and Elder Pharmaceuticals Limited.	2014	Non-compete clause Modified
Notice given by Glenmark Generics Limited, Glenmark Access Limited and Glenmark Pharmaceuticals Limited.	2014	Approved
Notice given by New Moon B.V.	2014	Approved
Notice given by Beckman Coulter, Inc. and Beckman Coulter India Private Limited	2014	Approved
Notice given by Dunearn Investments (Mauritius) Pte. Ltd.	2014	Approved
Notice given by Strides Arcolab Limited and Shasun Pharmaceuticals Limited	2015	Approved
Notice given by Ordain Health Care Global Private Limited	2015	Approved
Notice given by Wipro GE Healthcare Private Limited, Mr. S. Ganeshprasad, Mr. Kiran Thadimarri & Mr. R. R. Balaji	2015	Approved

<sup>40</sup> Adapted from the contribution by India, Seventh United Nations Conference to review the UN Set on Competition Policy Roundtable on: Role of Competition in the Pharmaceutical Sector and its Benefits for Consumers, Geneva, 6-10 July 2015, available at

[http://unctad.org/meetings/en/Contribution/CCPB\\_7RC2015\\_RTPharma\\_India\\_en.pdf](http://unctad.org/meetings/en/Contribution/CCPB_7RC2015_RTPharma_India_en.pdf)

<sup>41</sup> "Sun Pharma, Ranbaxy merger: Layoffs, supply synergy key to \$250 mn savings", Live Mint, April 14 2014, available at [www.livemint.com/Companies/7eHPFVf9o1sTO45WGBZtvI/Sun-Pharma-Ranbaxy-deal-Layoffs-supply-synergy-key-to-25.html](http://www.livemint.com/Companies/7eHPFVf9o1sTO45WGBZtvI/Sun-Pharma-Ranbaxy-deal-Layoffs-supply-synergy-key-to-25.html)

31. From a look at CCI's 'orders' from the above cases, it emerges that the Commission did not take into consideration 'possible job losses/impact on employment'. Creating jobs is a current policy priority in India.

32. It will be useful for the CCI to have such criteria for evaluating and approving M&As. Further conditions to ensure minimum jobs loss can be placed appropriately. Countries with similar socio-economic realities (like South Africa and Kenya) have included 'protection of jobs' as a key criterion while enforcing their national competition acts, included analysing M&As. This can be a good practice for India and other developing economies to emulate. Further, it is important to note that such public interest issues and competition issues need not be handled by different institutions, as this can turn out to be a major source of clashes<sup>42</sup>. Allowing other public institutions to handle public interest issues which overlap with competition issues may unnecessarily result in competition issues being totally ignored out of the equation<sup>43</sup>.

33. Experiences from South Africa and Kenya clearly show the tailoring of competition law principles keeping in view the socio-economic milieu of an economy. Such tailoring of competition law is necessary for it to become more politically relevant and acceptable to the respective developing economies. This will also help developing countries fulfil the commitment that they have taken at the UN Summit on SDGs.

## 5. Concluding remarks

34. In conclusion, it emerges that there are certain key questions that needs to be considered from a pro-competition policy and practice perspective in developing countries like India to ensure that there is a positive implication of competition on jobs:

- Prioritise promotion of pro-competitive policies (enabling environment) in certain Indian sectors that have been found to have significant implications on job creation (e.g., communications, banking, construction, organised retail, etc.)
- While trade and economic liberalisation could have a negative impact on jobs in the short-term, in the long-term it can contribute towards developing vibrant sectors that can create greater job opportunities.
- MSMEs continue to contribute a bulk of employment opportunities in India. CCI should reach out to Indian SMEs to ensure that they are not subjected to coercive contracts, excluded from market opportunities, etc. Growth of MSMEs will ensure greater job opportunities for the workforce
- Regulation of mergers and acquisitions (M&As) should be done in a way that restructuring in sectors lead to little/no job losses. If there are cases, where job losses will happen than a condition of the merger approval should require the firm to provide retraining to retrenched workers to enable them to get rehabilitated like the Lonmin/Southern Platinum case is South Africa<sup>44</sup> and also in the case of US Trade Adjustment Assurance programme.<sup>45</sup>

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<sup>42</sup> Mehta, Pradeep S; Mehta, Udai S Mehta; and Dube, Cornelius "Public Interest Issues In Competition Analysis", CUTS Briefing Paper No.8/2008. Available at: <http://www.cuts-international.org/pdf/CCIER-5-2008.pdf>

<sup>43</sup> Ibid.

<sup>44</sup> The transaction was approved subject to the following conditions - The maximum number of employees to be retrenched as a result of the proposed merger shall be approximately 284 semi-skilled employees and approximately

- CCI should have a charter on ‘public interest’ and one of the considerations should be prompting/protecting employment in sectors

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116 employees at the management, artisan, supervisor and administrator levels, provided that in total there shall not be more than 400 retrenchments; at least a quarter of the retrenched employees shall be short listed for appropriate positions that become available within the Lonmin Group or elsewhere; the merged entity shall offer alternative skills training, as agreed with the relevant trade unions, to employees who are retrenched as a result of the proposed merger. Such skills training will be available for a period of six months from the date on which notice of the retrenchments is given to the relevant trade unions. The merged entity must ensure that the training commences prior to the effective date of the retrenchments; the merged entity shall pay the costs of the alternative skills training offered by the merged entity, including accommodation and two meals a day.

<sup>45</sup> The Trade Adjustment Assistance (TAA) program is a federal program that assists workers who have lost their jobs as a result of increased imports or shifts in production out of the United States. This program seeks to provide adversely affected workers with opportunities to obtain the skills, credentials, resources, and support necessary to become re-employed.