

RESEARCH PROJECT  
**COMPETITIVE NEUTRALITY  
IN INDIA**

WORK IN PROGRESS

SEEMA GAUR  
COMPETITION COMMISSION OF INDIA

3RD ANNUAL MEETING OF RPP, UNCTAD  
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THE VIEWS EXPRESSED ARE THOSE OF THE AUTHOR AND DO NOT NECESSARILY REFLECT THE VIEWS OF  
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# Research project agenda: issues ?

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- What is the nature of SOEs/ government bodies in the jurisdiction?
- Are they caught by competition law?
- Is Competitive Neutrality (CN) addressed at all?  
Corporatisation? Governance? CN framework?
- Which bodies should be subject to CN?
- Advantages/disadvantages of government ownership?
- Determining net competitive advantages
- Mechanisms eg complaints? supervision?

# Introduction



- Mixed economy framework adopted in India in early 50s
- Public enterprises accorded predominant role in industrialisation and economic development
- Most markets post liberalization in 1991 have public players competing with private players
- Subject to public service obligations, state enterprises need to be subject to similar competition discipline as private players
- Issue of competitive neutrality therefore important in India
- CCI joined the RPP's Competitive Neutrality Project in February, 2012.

# Content



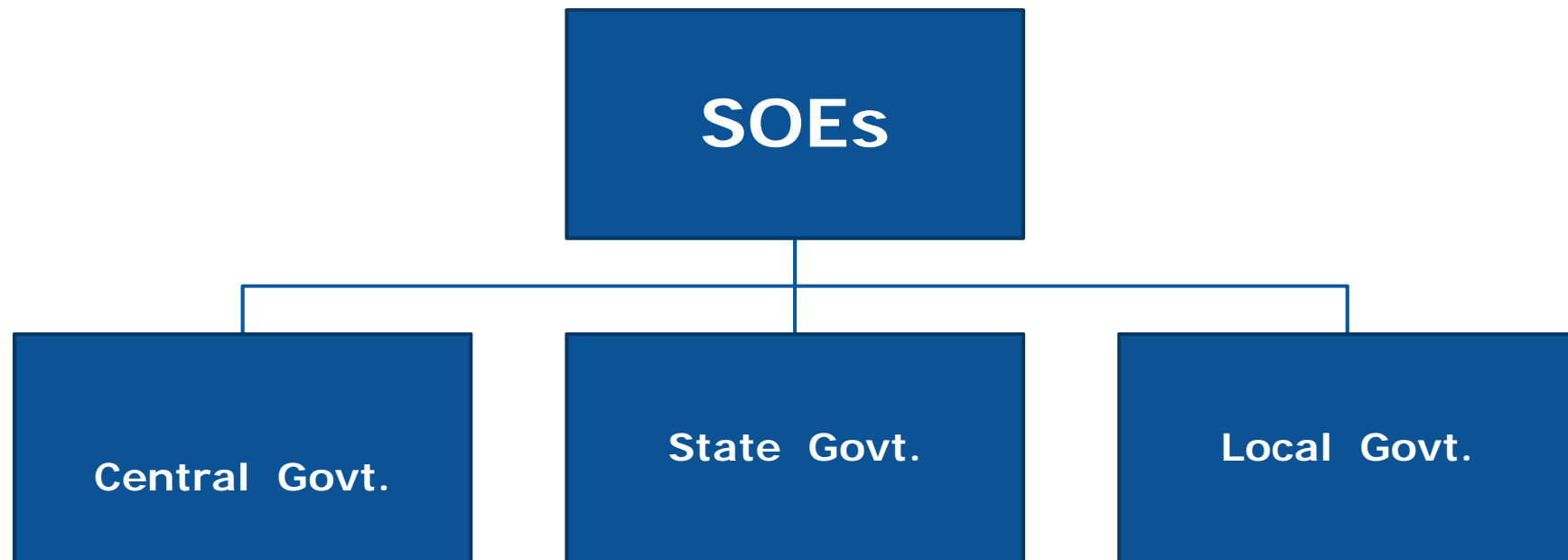
- Discussion on some of research issues in Indian Context
- Takeaways from Workshop held in India
- Proposed Handbook Project

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## Nature of SOEs in India ?

# Levels of SOEs in India

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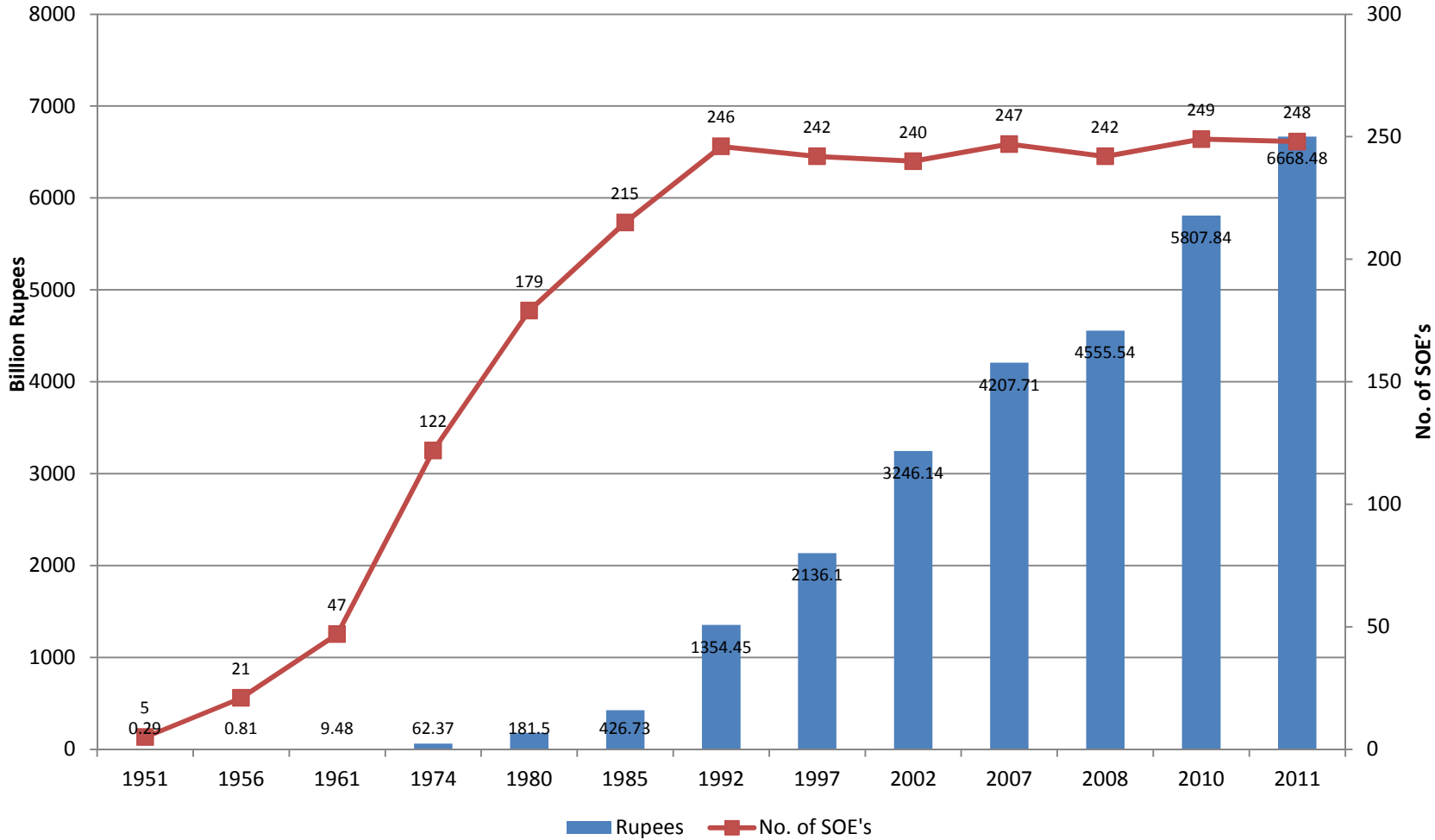


# Forms of SOEs in India

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- Government Companies
- Departmental Enterprises
- Public Sector Banks and Public Sector Financial Institutions
- Public Corporations
- Cooperative Societies
- Autonomous Bodies
- Trusts
- Deemed Government Companies

# Growth of SOEs





# Role and contribution of SOEs



- Very crucial role in Indian economy
- SOEs by and large delivered the purposes for which established
- Domination of critical sectors such as railways, post and telegraph, petroleum, ports, airports, power, mining, shipping, banking, insurance etc.
- Significant contribution to GDP and gross domestic capital formation as well as to exchequer through dividend payment, interest payment on government loans and payment of taxes & duties, foreign exchange earnings

# Competing with Private sector: Post 1991

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- Post-1991 reforms SOEs Competing with private players in domestic/ international markets
- Over years, SOEs expanded into wide range of activities
- SOEs adapting well to changing market dynamics - growing in size and stature
- Economic slowdown led to importance of SOEs re-established.

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## Whether Competition law applies to SOEs ?

# Competition law in India & SOEs

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- “Competitive neutrality’ enshrined under Indian competition law.
- No distinction between SOEs and Private Enterprises
- Enterprise – Competition Act, 2002, defines the term “enterprise” as :
  - “a person or a department of the Government.....*
  - but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space”*
- Central Govt. may exempt SOEs only regarding sovereign function

# SOEs and enforcement of Competition Law...

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- Enforcement without distinction between private/public enterprises
- Investigation against many SOEs/ against private sector on cases filed by SOEs
- Orders passed so far in 21 cases but SOEs not found in breach
- Need for SOEs to improve their competition law compliance

# SOEs and enforcement of Competition Law in India

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- Cases against private players taken up suo moto/complaint of SOEs
  - Pankaj Gas Cylinders Ltd. vs. Indian Oil Corporation Ltd.
  - Explosive manufacturers vs Coal India Ltd.
- Action against SOEs led to anti-competitive conduct of private players being investigated and fined

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Is CN addressed in any way ?

# Competitive Neutrality Measures

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- Competition law alone not sufficient to ensure a level playing field
- Ex ante implementation of a competitive neutrality framework most effective means as in Australia
- Some other measures : privatisation, effective governance, improving independence, accountability and disclosure



# Becoming competitive

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- Shift from a State-controlled economy to a market driven economy- need to become competitive and provide level playing field
  
- Several policy initiatives undertaken such as:
  - ▣ Disinvestment by central SOEs
  - ▣ Restructuring, modernization, capacity rationalization
  - ▣ autonomy - empowerment of Board of Directors of SOEs as per category of SOE - Miniratna II, Miniratna I, Navratna and Maharatna with increasing empowerment
  - ▣ Performance accountability through MOUs etc

# Special Status Central SOEs

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Category	Number	Names
Maharatna	5	CIL, IOCL, NTPC, ONGC, SAIL
Navratna	16	GAIL, HPCL, MTNL, NMDC, OIL...
Miniratna I	51	NHPC, BSNL...
Miniratna II	16	MEACON, NSICL...

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## What are CN Issues in India ?

# Competitive Neutrality Issues in India : advantages for SOEs

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- Subsidies: i.e subsidies to oil SOEs but not private sector forcing them to stop/slow down operations
- State guarantees and concessional financing
- Protection from bankruptcy and bailout support ie. government providing bailout packages to state owned component of aviation sector
- Monopoly power and exclusive rights conferred to SOEs- postal service, railways, coal mining, Oil majors
- Non-commercial rate of return requirements
- Purchase price preferences in Public procurement
- Ability to cross-subsidise between activities –Railways between freight and passenger traffic
- Captive market
  - i.e mandatory travel of central Govt. officials on Air India

# Competitive Neutrality Issues in India : disadvantages for SOEs

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- Implement multiple and sometimes conflicting objectives while operating commercially.
  - ▣ Universal service obligations, charge lower tariffs while operating commercially
- Obligations to undertake non-commercial activities like flying non commercial routes
- Restrictions on managerial freedom
  - ▣ Inability to buy aircrafts by IA without clearances
  - ▣ All SOEs to charter ships through Ministry of shipping
- Limitations on ability to invest or diversify
- Regulatory restrictions
- Barriers to raising finances – in port sector, private sector free but not major/minor ports
- Regulations may sometimes favour private players

# Reverse competitive neutrality

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- Reverse competitive neutrality
  - BSNL adversely affected in payment of license and spectrum fee due to being a state player and not being able to appeal against adverse orders of regulatory bodies
  - Cancellation of captive coal mine licenses of public sector units while mostly of private sector spared.

# Recent Positive CN Measures

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- Abolition of general PPP policy for PSEs
- Separate funding for specific obligations rather than distortion of competition in telecom sector
- Coal Sector under consideration for opening up to private sector

# Balance of Competitive neutrality and Social objectives

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- ❑ SOEs meet public service obligations
- ❑ Subsidies given mostly to control prices by the state to ensure supply of goods/services e.g.
  - ❑ to control fuel prices for public consumption
- ❑ They may however stifle competition which needs to be addressed through Competitive neutrality.
- ❑ Fair play in market however not to impact social –eco objectives of Governments.
- ❑ Therefore, Cost of Competition Distortions need to be analyzed against cost of subverting social objectives



# Competition Law and Competitive Neutrality : CCI's role

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- Limited role of competition authorities
- Effective enforcement against both SOEs & private enterprises in a competitive neutral manner
- Competition law cannot address policy related distortions
- Advocacy for competitive neutral policies –
  - Alerting policy makers on competition distorting policies
  - Conduct competition assessment of such policies against social objectives
  - Advocating regulatory reforms in liberalized sectors

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## CCI Workshop on CN – May 2012

# Workshop on Competitive Neutrality in India

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- CCI organized a Workshop with UNCTAD on Competition Law and SOEs in May this year in New Delhi
- Australia, EU, S. Africa, Russia, Korea and a Private practitioner participated as speakers
- Important SOEs in India, Government Ministries, academia etc attended the workshop
- Discussions over two days

# Takeaways from CCI Workshop



- SOEs need to develop robust competition compliance programs to comply with the Competition Act, 2002
- Competition law alone is not sufficient in ensuring a competitively neutral market. Government policies outside the competition law framework must work in tandem
- To achieve competitive neutrality, the Government needs to develop an appropriate framework
- CCI must take up competition assessment at a wider scale, and suggest various policy and substantive action frameworks
- CCI may consider the feasibility of bringing out guidelines suggesting a framework within which SOEs may do competition assessment on their own
- CCI may use its advocacy mandate to help Government develop competitive neutrality framework in India.

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## Proposed Handbook Project

# Project : Competition Assessment Handbook for SOEs and Government

- Govt. and SOEs lack practical guidance on how to reflect the Competitive neutrality principle in their regulations and activities.
- UNCTAD has proposed to assist the government/SOEs in producing more competition neutral or pro-competitive policies and activities
- CCI may develop a toolkit or handbook.
- Objective :
  - to create awareness about competition issues that its regulations and activities may involve ;
  - to produce guidelines or a handbook in order to guide Ministries drafting government policies or regulations, as well as SOEs.
- CCI will assess resources required for the project and discuss with UNCTAD how project can be accomplished.

# Outline of the handbook

## << Part 1. For Government >>

- Main competition issues involving state-owned enterprises
- how other government policies or regulations affect or distort competition in the market
- Actual examples where government policies or regulations fully adopt or fail to reflect competitive considerations.
- methodology that government agencies can employ in their internal assessment of their regulations
- Suggestive procedures for the efficient and consistent competition assessment

## << Part 2. For state-owned enterprises >>

- How the competition law views and deals with competition issues concerning state-owned enterprises
- Actual examples where their activities infringe the competition law
- Helping managers or directors to pro-competitively operate SOEs and to clarify their responsibilities
- A to-do-and-not-to-do list in introducing the competition principle into their activities

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*Thank you*

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