Who Does India’s Draft Enabling Framework for Regulatory Sandbox actually Enable?

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Key Points:

- The regulatory sandbox is an expensive tool to use for financial inclusion, particularly by underfinanced regulators.
- It is intended to promote competition by facilitating start-ups above the net worth of Rs. 50 lakhs with a view to entry for innovators by minimising the time and costs of launching products into the market while ensuring access to innovations such as retail payments, money transfer services, smart contracts, cyber security products, data analytics.
- The draft provides an indicative list of areas which could be considered for testing under a regulatory sandbox.
- The applicants must be able to demonstrate that their ideas and products are innovative, unique, benchmarkable, and rule-bound.
- The applicants must also meet prudential criteria, which impose stringent capital adequacy requirements and impose stringent capital adequacy requirements.
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Policy Context:

Regulatory sandboxes are a new concept in India’s financial sector, inspired by other countries such as the United Kingdom, Australia, and Singapore. The goal of this exercise was to make rules and regulations more suitable for the industry and to promote innovation. The regulatory sandbox was launched only in 2018 in the United Kingdom. The UK’s Financial Conduct Authority (FCA) has been hailed as a great success for bolstering financial innovation and competition, while ensuring consumer protection and maintaining market integrity. The FCA’s regulatory sandbox has been described as an innovative approach to regulatory reform.

On the other hand, the Indian regulatory sandbox was launched only in 2018 in the United Kingdom. The UK’s Financial Conduct Authority (FCA) has been hailed as a great success for bolstering financial innovation and competition, while ensuring consumer protection and maintaining market integrity. The FCA’s regulatory sandbox has been described as an innovative approach to regulatory reform.

The Design of the Indian Regulatory Sandbox:

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In applying the classification test, it is essential to determine the principles of what is right and proper and reasonable and just for that of the legislature; and up to a point that, I think, is the true basis of the decision? Surely simply this that the judges would not consider that fair and just if they were not satisfied that the legislature had the power to pass such a law. And the judges would be satisfied that the legislature had the power to pass such a law if they were satisfied that the law was a necessary and proper means of effectuating the legitimate object of the law. Thus, the legislature could have been motivated by all sorts of considerations in enacting the legislation as well as the constitutional law.

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Competition Risks Involved within Sectoral Regulation

Markets like the FinTech sector are expected to grow to USD 45 billion with a Compound Annual Growth Rate (CAGR) of 7.1% in the next 5 years. As per the National Association of Software and Services Companies (NAASSCOM), the Indian Fintech Service sector is not an industry matter devoid of competition concerns. The CCI can offer valuable insights and assist in framing competition policies to meet these challenges.

Thus ironically, the Competition Commission of India could do precious little to check later anti-competitive conduct through an antitrust lens, and not that of a sectoral regulator is adversely impacted by such a narrow assessment. The Competition Act, 2002 and the CCI's guidelines expect, in para 386, a broader assessment of the conduct through an antitrust lens, and not that of a sectoral regulator.

It is especially true that a voluntary memorandum of understanding (MoU) must be signed between CCI and regulatory bodies to ensure cooperation and mutual exchanges. Section 18 of the Competition Act, 2002 empowers the CCI to sign MoU with any other regulatory body, including sectoral regulators. A CCI regulation should not narrow down the scope of MoUs for non-competition related areas of mutual interest and mechanisms for sharing of knowledge and information between the authorities.

As per the National Digital Co-operative Banks (NDCBs) Act, the Indian Prudential Norms are expected to cover 500 million of India's 1000 million unbanked people. The Reserve Bank of India (RBI) is working on guidelines to implement the competition principles in these new financial institutions. These principles require substantial investments by private Indian and foreign banks, and a setting up of an industry-wide regulatory framework for the public interest.

It is noteworthy that the CCI already has a mechanism in place to review economic legislations and policies introduced by any government, central or state. This mechanism is valid for 3-5 years, and would have covered the competition assessment and recommendations before the start of the experiment. It is essential to include the CCI at the policy drafting stage itself because introducing a regulatory sandbox allows for a bespoke accommodation if the product is found economically viable but is not yet a competitive force. It is essential to engage with the CCI before the regulatory sandbox is rolled out, and purchase expertise from the Competition Commission of India about the nature of competition, issues of rivalry, and the likely intervention points in the sandbox's experiment.

India has the second-largest Internet user base in the world. With over 460 million Internet users, India is the second-largest in the world. This has justifiably given rise to the government's legitimate democratic interest in ensuring transparency in selection. The Competition Act, 2002 and the CCI's guidelines expect, in para 386, a broader assessment of the conduct through an antitrust lens, and not that of a sectoral regulator is adversely impacted by such a narrow assessment.

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In this case, one of RBI's employment schemes was challenged for violation of Section 18 of the Comptroller and Auditor General (RBI) Act, 1974. The Ministry of Finance (M/Department of Economic Affairs) of the Government of India sought the opinion of the Competition Commission of India in these matters. It was observed that the RBI's employment scheme did not constitute an abuse of dominant position and did not violate the antitrust provisions of the Competition Act, 2002.

Moreover, the Bombay High Court held in The Times of India v. Union of India that the Times of India is not a journalist of the First Class for the purpose of Article 19(2) of the Indian Constitution by the Supreme Court in Bennett Coleman v. Union of India. Therefore, the Bombay High Court held permitting the Competition Commission of India to inquire into the matter would result in similar violations of the final judgment of the Supreme Court in Bennett Coleman v. Union of India. Therefore, the Bombay High Court held permitting the Competition Commission of India to inquire into the matter would result in similar violations of the final judgment of the Supreme Court in Bennett Coleman v. Union of India.
6.5.1 (g), RBI’s ‘Draft Enabling Framework for Regulatory Sandbox’

6.5.1 (e), RBI’s ‘Draft Enabling Framework for Regulatory Sandbox’

6.5.2 (Fit and Proper Criteria for Selection of Participants in RS), RBI’s ‘Draft Enabling Framework for Regulatory Sandbox’

Pg. 7, Executive Summary, UNSGSA 2019 Report on Early Lessons on Regulatory Innovations to Enable Inclusive FinTech: Innovation Offices, Regulatory Sandboxes, and RegTech (“Lessons learned from early regulatory sandboxes highlight that they are neither necessary nor sufficient for promoting financial inclusion. Sandboxes do offer benefits but are complex to set up and costly to run. Experience shows that most regulatory questions raised in connection with sandbox tests can be effectively resolved without a live testing environment. Similar results may be more affordably achieved through innovation offices and other tools”)


MANU/SC/0038/1972 para 127

2.2 Objectives, 6.5.1(b), RBI’s ‘Draft Enabling Framework for Regulatory Sandbox’

