

Agenda Note

Item 1 :	Draft Note for Cabinet Committee on Infrastructure (CCI) for extension of time by two years upto 2012-14 for completion of projects sanctioned till March 2012 and extension of period of implementation of reforms, etc. under the Sub-Mission on Basic Services to the Urban Poor (BSUP) and Integrated Housing and Slum Development Programme (IHSDP) under Jawaharlal Nehru National Urban Renewal Mission (JNNURM).
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Proposal in Brief

Ministry of Housing and Urban Development vide letter dated 08/02/2012, addressed to the Secretary, MTA, have sought the comments of the Ministry on the draft Cabinet Note on the above subject. The draft Cabinet Note has been referred by the MTA to this Commission for its views/ comments.

2. The draft Cabinet Note was circulated to the Members of the Commission vide letter dated 16/02/2012, seeking their views/ comments in the matter and for discussion in the meeting of the Commission.

3. The Draft Note for Cabinet Committee on Infrastructure (CCI) seeks approval for extension of time by two years upto 2012-14 for completion of projects sanctioned till March 2012 and extension of period of implementation of reforms, etc. under the Sub-Mission on Basic Services to the Urban Poor (BSUP) and Integrated Housing and Slum Development Programme (IHSDP) under Jawaharlal Nehru National Urban Renewal Mission (JNNURM).

Observation

4. It is noted from the background contained in Para 2 of the Cabinet Note that the Jawaharlal Nehru National Urban Renewal Mission (JNNURM) was launched on 3rd December, 2005 to implement reform-driven planned development of cities in a Mission mode with focus on upgradation of Urban infrastructure and provision of basic services to the urban poor, community participation and accountability of Urban Local Bodies (ULBs). Duration of the Mission was seven years beginning from 2005-06 till 2011-12.

5. The Mission comprises four components of which two, viz., the sub-Mission for Urban Infrastructure and Governance (UIG) and the Sub-Mission for Basic Services to the Urban Poor (BSUP) are implemented in 65 cities other two components, namely, Urban infrastructure Development Scheme for Small and Medium Towns (UIDSSMT) and Integrated Housing and Slum Development Programme (IHSDP) are implemented in other cities/towns. While UIG and UIDSSMT are implemented by the Ministry of Urban Development (UD), the Ministry of Housing and Urban Poverty Alleviation (HUPA) is implementing BSUP and IHSDP.

6. The list of 65 cities mentioned above is enclosed. A list of Scheduled Areas in the 9 States of country is also enclosed. The position in respect of 65

cities has been checked up. The list includes only the following cities/UA which are in Scheduled Areas:-

1. Ranchi
2. Jamshedpur
3. Dhanbad
4. Raipur.

Proposed Views of the Commission

7. TSP areas in 25 States also include Scheduled Areas. Besides, VI Scheduled States in the North East are Tribal majority States and all these areas do have cities/UA which need to be covered under the project. However, the proposal seeks approval only of the existing projects/ Programmes and does not mention about sanction of new projects under BSUPO and IHSDP after 31st March 2012. While we may agree to extension of the project period as sought in the Note for the Cabinet, we may also advise that the scope of the project may be amended to cover cities/ UA within the Tribal Sub-Plan areas and the Sixth Scheduled Areas.

Agenda Note

Item 2 :	Draft Cabinet Note on National Policy on Electronics prepared by Department of Information Technology, Ministry of Communication and IT
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Proposal in Brief

Department of Information Technology, Ministry of Communications and IT, vide letter dated 28/02/2012, addressed to the Secretary, MTA have sought the comments of the Ministry on the draft Cabinet Note on the National Policy on Electronics. The draft Cabinet Note has been referred by the MTA to this Commission for its views/ comments.

2. The draft Cabinet Note was circulated to the Members of the Commission vide letter dated 21/03/2012, seeking their views/ comments in the matter for discussion in the meeting of the Commission. The views/ comments from the Members are awaited.

3. It is stated in the Draft Cabinet Note that the Minister of Communications and Information Technology (MCIT) had directed creating a Triad of Policies relating to Electronics, Information Technology (IT) and Telecom to drive a national agenda for Information & Communications Technology and Electronics. A Round Table meeting was held on June 9, 2011 under the chairmanship of MCIT, and with participation of various stakeholders, including industry, academia and Government representatives. A draft National Policy on Electronics (NPE) was released by MCIT on October, 3, 2011 for public consultation. A document entitled "A Triad of Policies to Drive a National Agenda for ICTE", which brings in the convergence and interdependence of the three policies was also released along with the draft NPE. A copy of the said draft is at **Annexure – 1** to the Note for the Cabinet (circulated on 21-03-2012).

4. After the release of the draft NPE, wide ranging responses were received in the MCIT from several individuals and organizations, including industry, policy research organizations and several foreign governments and their trade organizations in the country. The feedback received has been considered and necessary amendments have been carried out in the draft NPE.

5. The draft Cabinet Note seeks approval for the draft National Policy on Electronics which is placed at **Annexure - 2** to the Cabinet Note (circulated on 21-03-2012). The Policy envisions creating a globally competitive electronics design and manufacturing industry to meet the country's needs and to serve the international market. The objectives of the policy and the strategies have been incorporated in para 3.2 and para 3.3 respectively of the Cabinet Note.

Observation

6. It is noted from the Annex. – 1 of the draft Cabinet Note that the principle policy objectives are to optimally leverage our existing and developing ICT Infrastructure and capabilities to meet the growing need for high quality social sector services like education, health, skill development, welfare or benefit

programmes, e-government services, economic services like banking, insurance, transportation and logistics, and other societal needs like entertainment, communications, social media, information dissemination, etc.

7. The above mentioned Annexure – 2 containing National Policy on Education also includes Action Plan for Human Resource Development, which *inter-alia* include facilitate enhancement of the number of graduates and other skilled manpower, especially women, by suitably increasing capacities in colleges/ ITIs and Polytechnics through public and private sector investment and encourage setting up of skill-oriented courses and training programmes for electronic designs along with hands-on laboratories enabling graduates from other disciplines to migrate to ESDM.

Earlier Views of the Commission & Analysis

8. The strategy for all development programmes, particularly the major missions/ schemes of the Ministries/ Departments, should comprise sub-Chapters for accelerated development of the tribal areas. In particular, it is necessary to have specific Tribal Sub Plan (TSP) component in all the major missions/ schemes/ programmes of all Ministries/ Deptts to have a clear focus on formulation of schemes/ programmes concerning the STs and their effective implementation and monitoring.

Proposed Views of the Commission

9. In line with the earlier views of the Commission, the Commission may emphasize a sub-Chapter in the draft National Policy on Electronics concerning STs to have a clear focus on formulations of schemes/ programmes concerning well defined Scheduled Areas and Tribal areas and the Scheduled Tribes and effective implementation/ monitoring of the programmes taken up as per sub-Chapter.

Agenda Note

Item 3 :	Draft Note for the Cabinet for Amendment to Article 243T of the Constitution to provide for 50 percent reservation for women including that of Chairpersons in Urban Local Bodies.
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1. Ministry of Housing and Urban Development vide letter dated 05/03/2012, addressed to the Secretary, NCST, have sought the comments of the NCST on the draft Cabinet Note on the proposed Constitution (One Hundred and Twelfth Amendment) Bill, 2009.

2. The draft Cabinet Note was circulated to the Members of the Commission vide letter dated 19/03/2012, seeking their views/ comments in the matter for discussion in the meeting of the Commission. The views/ comments from the Members have not been received as yet.

Proposal in Brief

3. Ministry of Urban Development had introduced the Constitution (One Hundred and Twelfth Amendment) Bill, 2009 in Lok Sabha on 24.11.2009 to enhance reservation for women (including Scheduled Castes/Scheduled Tribes women) in Urban Local Bodies from one-third to one-half as well as for provision of reservation for Scheduled Castes, Scheduled Tribes and Women in respect of appointment to the office of Chairperson in proportion to their respective population in the State. The matter was referred to the Parliamentary Standing Committee on Urban Development which has recommended that the number of seats reserved for Scheduled Castes/ Scheduled Tribes with respect to the office of Chairpersons in Municipalities in the States should be in proportion to the urban population and not the overall population of the State, and that the seats may be reserved for a minimum of two terms.

4. The Committee in its recommendation relating to 'Rotation of Seats', has observed that the Constitution (Seventy-Fourth Amendment) Act, 1992, leaves the issue of rotation of reserved seats including reservations in respect of Offices of Chairpersons to the discretion of State Governments. The Committee noted that the States have adopted different methods and terms for rotation. The Committee, therefore, recommended for inviting views from all the States so as to ensure uniformity in terms of rotation of seats and provide for reservation for at least two terms.

Observation

5. It is also noted from para 3.5 of the Draft Note, that for the purpose of training of Women Councilors, the Ministry of Urban Development provides financial assistance under its plan budget to State Governments, specifically for training of elected women representatives in the urban local bodies. Under this scheme, the State Governments are required to nominate one State-level institute to conduct the training programmes of three days duration. State Governments are provided with lump sum financial grants @ Rs.2,500/- per day per participant. Also, financial assistance (Maximum Rs.50,000) is provided to States for preparation of training modules. The expenditure on this account during the 11th

Plan period was Rs. 4.15 crore. Details of the scheme are in Annexure IV to the Note.(pages 22 & 23).

6. It is noted from Annexure V to the Note that Ministry of Panchayati Raj, Ministry of Women & Child Development, Ministry of Social Justice & Empowerment, Ministry of Tribal Affairs have supported the proposal. The NCSC have also communicated their support to the proposal to the Ministry of Urban Development vide letter dated 28/03/2012.

Earlier Views of the Commission

7. While formulating its views with reference to the Writ Petition No. 4860 of 2008 filed in the High Court of Judicature of Bombay bench at Aurangabad in the matter of Vikramsing and Another (Petitioners) vs. State of Maharashtra and Others regarding non-implementation of the provisions of the Panchyats (Extension to Scheduled Areas) (PESA) Act, 1996 in elections to Zila Parishads and Panchayat Samitis in the Scheduled Areas of the State of Maharashtra, the Commission, in its meeting held on 3/10/2008, had opined its views on a similar issue as under:

The seats need to be reserved for Scheduled Tribes in proportion to the overall population of the Scheduled Tribes in the Zilla Parishad or the Panchayat Samiti as the case may be and at least 50% of the seats shall be reserved for Scheduled Tribes in the Scheduled Areas (even though population of Scheduled Tribes in the Scheduled Areas may be less than 50% of the total population). Further, as the population of the Scheduled Tribes may be sparced throughout the Zilla Parishad/ Panchayat Samiti Area while at the same time the ST population may be concentrated in the Scheduled areas under the same ZP/ PS Area, it was necessary that out of these reserved seats within ZP/ PS, the number of seats may be earmarked in relation to the Scheduled Area which is part of the Zilla Parishad or the Panchayat Samiti as the case may be and thereafter, the process of rotation may be made applicable to the seats calculated to be reserved for areas outside the Scheduled Area while rotation should not be applied to the seats earmarked for Scheduled Areas within a ZP/PS. In other words, the process of rotation of seats reserved for Scheduled Tribes in a ZP/PS may be restricted to the number of seats that are required to be reserved in respect of the ST population in the areas outside the Scheduled Areas within a ZP/PS and not inside the Scheduled Areas.

Proposed views of the Commission

8. The Commission may support the proposal. However, in line with the earlier recommendations of the Commission in relation to reservations of seats within Zila Parishad and Panchayat Samiti as quoted in para 7 above, the Commission may recommend that out of proposed reservation of 50% of women in the urban local bodies, the seats should be permanently reserved for women in the local bodies having women population more than 50%, and in the remaining local bodies where women population is less than 50%, the principle of rotation should be applied.

Agenda Note

Item 4	:	Draft Cabinet Note on relaxation in PMGSY norms to 78 selected tribal and backward districts
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Ministry of Rural Development vide letter dated 09/03/2012, addressed to the Secretary, MTA, have sought the comments of the Ministry on the draft Cabinet Note on relaxation in PMGSY norms to 78 selected tribal and backward districts. The draft Cabinet Note has been referred by the MTA on 13/03/2012 for its views/ comments.

The draft Cabinet Note was circulated to the Members of the Commission vide letter dated 21/03/2012, seeking their views/ comments in the matter for discussion in the meeting of the Commission. The views/ comments from the Members have not been received as yet.

Background

3. Pradhan Mantri Gram Sadak Yojana (PMGSY) was launched on 25th December, 2000 with the objective of providing All-weather roads (with necessary culverts and cross-drainage structures, which is operable throughout the year), to the eligible unconnected habitations in the rural areas having population of 500 persons and above (as per 2001 census) and in respect of the Hill States (North-East, Sikkim, Himachal Pradesh, Jammu & Kashmir and Uttarakhand), Desert areas (as identified in the Desert Development Programme) as well as the Tribal (Schedule V) areas, with the objective to connect habitations having population of 250 persons and above (as per 2001 census). In addition, it also has an element of upgradation, though it is not central to the Programme.

4. PMGSY is being implemented since 2000-01. It was estimated that about 1,72,772 habitations would require connectivity to be provided under the programme accounting for habitations connected under other Schemes, deletion of non-feasible habitations, dropped out habitations and relaxation accorded by the Empowered Group of Officers, the revised number of total eligible unconnected habitations has become 1,58,849. As on 31st October, 2011, project proposals for providing connectivity to 1,10,534 eligible habitations have been sanctioned. As reported by the States, till 31st October, 2011, a total of 3,33,440 km roads including upgradation have been constructed and All-weather connectivity has been provided to 80,379 eligible habitations.

5. A Working Group on Rural Roads was constituted by the Planning Commission under the Chairmanship of Secretary, Rural Development, Government of India. The Report of Working Group was submitted to Planning Commission and a presentation was also made before it. Subsequently, the figures were revised based on consultation with the States and some additional relaxations proposed in this Cabinet Note.

6. While presenting the budget for the year 2010-11, the Government had announced its decision to introduce a special scheme to address the development of Left Wing Extremism (LWE) affected districts. It was *inter-alia*, stated that the Planning Commission would prepare an Integrated Action Plan (IAP) for the affected areas. The Ministry of Home Affairs constituted an Empowered Group of

Officers under the chairmanship of Member Secretary, Planning Commission on 14th July, 2010 to suggest measures for accelerated development in LWE districts. The Empowered Group of Officers has approved, the following relaxations in the norms of PMGSY guidelines to IAP districts:-

- (i) Provide connectivity to the eligible unconnected habitations having population of 250 persons and above (as per 2001 census) in the 60 Selected Tribal and Backward Districts in 9 States under Integrated Action Plan (IAP) (whether in Schedule V areas or not) as identified by Planning Commission and Ministry of Home Affairs.
- (ii) Fund the cost of bridges upto 75 meter in the 60 Selected Tribal and Backward Districts in 9 States under Integrated Action Plan (IAP) by Government of India as against 50 meter for other areas. Notably, for longer bridges, pro-rata cost beyond 75 meter would be borne by the State Governments, whereas cost of causeways, irrespective of length will continue to be fully borne by Government of India.
- (iii) Reduce the minimum tender package amount to Rs. 50 lakh to attract more response to bids, in case of LWE/ IAP districts.

7. As mentioned in the draft Note for the Cabinet under consideration, States have informed that at the time of preparation of Core Network in the 78 Selected Tribal and Backward Districts in 9 States under Integrated Action Plan (IAP), proper survey could not be carried out due to law and order problems or inaccessibility. Therefore, some habitations have been left out from inclusion in the Core Network or wrongly shown as connected, hence, depriving these habitations of connectivity. Inclusion of such left out/ wrongly shown as connected habitations for providing connectivity would help in inclusive growth of these remote areas. States have further informed that at the time of preparation of Core Network, the assessment of surface condition of the already existing roads could not be properly carried out in such areas and some of the habitations have been shown as connected though the surface condition of these roads is not in conformity with the specifications of PMGSY. The States have requested for considering these roads under Up-gradation. The issue was also placed in the 14th meeting of the Empowered Group of Officers held on 2nd December 2011 which had accorded in-principle approval and suggested that as a substantial funding of Rs. 10,000 crore is involved, the Ministry could consider taking a Note for the approval of the Cabinet Committee on Economic Affairs.

Proposal in brief

8. The Draft Note for Cabinet Committee seeks approval for relaxation to 78 Selected Tribal and Backward Districts in 9 States under Integrated Action Plan (AP) to revise their Core Network for inclusion of left-out habitations (as per 2001 census) and for upgradation of some selected roads out of the roads; assessment of surface condition of which could not be carried out properly.

Observation

9. The existing scheme envisage covering unconnected habitations in rural areas having population of 500 persons and above in general areas and to connect unconnected habitations in Desert Areas and Tribal (Schedule V) areas having population of 250 persons and above. The Empowered Group of Officers

has approved for relaxation of the norms in the 12th F.Y.P. to provide connectivity to eligible unconnected habitations having population of 250 persons and above (as against 500 at present) in 60 selected Tribal and Backward districts in 9 States under IAP and some additional activities in the already covered areas. The Note for the Cabinet however, does not give details of the areas/ districts to be covered and how many of these are Tribal Districts and those which are other Backward Districts.

10. It is further noted from **Annexure-II** to the Draft Cabinet Note that the assessment of funds required under PMGSY for the 12th F.Y.P. *inter-alia* include funds for new habitations of 250+ population in 78 selected districts and the funds required for providing connectivity to habitations having 100-249 persons in these districts, though the main Note does not make any proposal for connecting habitations having 100-249 persons, though this proposal in respect of Desert and Tribal (Schedule V) areas logically should have been clearly highlighted in the Draft Note.

Earlier views of the Commission on Infrastructure development

10. The Constitution provides a special role for the Central Government in the administration of Scheduled Areas. Special Central Assistance (SCA) for the Tribal sub-Plan has made limited impact to bridge the development gaps in Scheduled Areas. The Government of India should bear the responsibility for infrastructure development/ upgradation of Administration in Scheduled Areas under Art. 275 of the Constitution, rather than confining itself to the issue of directions for its development. The cost of governance in tribal areas should also be funded under Article 275. Besides, allocation for Tribal Sub-Plan should not be per population share but according to "problem-share" and "need-based". The unutilized TSP fund of various Central Ministries / Departments should be placed in a non-lapsable development fund administered by the Ministry of Tribal Affairs and the fund should be used for infrastructure development in the TSP areas. It is also necessary to prepare detailed guidelines for expenditure out of this fund, to make optimum use of those funds and to ensure that the desired benefits reach the Scheduled Tribes and the tribal areas.

[Reference NCST Letter No.M-12052/3/2010-11/SJ&SW dated 02.08.2011 on 'Empowerment of Scheduled Tribes (STs)' for the formulation of the Twelfth Five Year Plan (2012-2017)] .

Proposed views of the Commission

11. The proposal is to relax the norms under PMGSY in respect of selected 78 tribal and backward districts in 9 States. In the light of foregoing, approval for relaxation of norms for 78 Selected Tribal and Backward Districts in 9 States under Integrated Action Plan (IAP) to revise their Core Network for inclusion of left-out habitations (as per 2001 census) and for upgradation of some selected roads out of the roads; the assessment of surface condition of which could not be carried out properly may be agreed to subject to maintaining transparency in the Note for Cabinet by furnishing details of areas to be covered in the 12th Five Year Plan so that proper assessments of the targets fixed may be made regularly.

Agenda Note

Item 5 : Draft Cabinet Note on National Competition Policy

Ministry of Tribal Affairs has forwarded Ministry of Corporate Affairs O.M. dated 02/03/2012 for seeking views/ comments of the Commission, which was received in the Commission on 15/03/2012.

2. The draft Cabinet Note was circulated to all members of the Commission vide letter dated 21/03/2012 for their views/ suggestions which have not been received as yet.

Background

3. The Hon'ble Finance Minister of India in his budget speech on 27th February, 1999 stated *"the Monopolies and Restrictive Trade Practices Act has become obsolete in certain areas in the light of international economic developments relating to Competition laws. We need to shift our focus from curbing monopolies to promoting competition. The Government has decided to appoint a committee to examine this range of issues and propose a modern competition law suitable for our conditions"*. These recommendations lead to constitution of a High Level Committee on competition policy and law in October, 1999 also known as the Raghavan Committee. Based on the report of the Committee submitted in May, 2000, Competition Act, 2002 was enacted, which has been fully operationalised with the formation of Competition Commission of India (CCI) and Competition Appellate Tribunal (CAT). The Raghavan Committee Report emphasized on the need to harmonize the conflict between the objectives of competition and other government policies through a competition policy which has, as its central economic goal, the preservation and the promotion of the competitive process to encourage efficiency in resource allocation and production and over time provide an impetus to technological change.

4. The objectives, principles and powers relating to Competition Policy and Law have their genesis in the Constitution of India, Part XIII, Articles 301 – 307. Besides, Section 49 of the Competition Act, 2002 also envisages formulation of a Policy on Competition by the Central Government.

5. Parliament passed the Competition Act, 2002, to provide 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. The need for such enactment was felt in the context of evolving economic realities and certain obligations accepted by this country as part of WTO arrangements etc. The Act underwent certain amendments in 2007 & 2009.

6. Ministry of Corporate Affairs consulted Competition Commission of India (CCI) on the draft National Competition Policy based on certain concerns expressed by CCI. The National Competition Policy has been revised to ensure explicit distinction between the functions of CCI and Ministry under the direction and guidance of Cabinet Committee on Competition.

Observations

Objectives of National Competition Policy:

7. As per Draft Note for the Cabinet, the National Competition Policy will endeavour to:

- i. preserve the competition process, protect competition, and encourage competition in markets so as to optimize efficiency and maximize consumer welfare;
- ii. promote, build and sustain a strong competition culture within the country through creating awareness, imparting training and capacity building of all stakeholders, including public officials, business, trade associations, consumer associations, civil society organisations etc;
- iii. encourage adherence to competition principles in policies, laws and procedures of the Central Government State Governments including their instrumentalities, and sub-State Authorities, with focus on greater reliance on well-functioning markets;
- iv. ensure institutional coherence for synergized relationship between and amongst sectoral regulators and the competition regulators and prevent jurisdictional grid locks;
- v. strive for a single national market as fragmented markets are impediments to competition and growth; and
- vi. ensure that consumers enjoy greater benefits in terms of wider choices and better quality of goods and services at competitive prices.
- vii. Increase economic efficiency in markets by easing cost of doing business, lowering barriers to entry to exit, reviewing out-dated and unnecessary regulations and undertaking regulatory reforms designed to reduce the time and cost of regulatory compliance.

Central Government Initiatives envisaged in the Policy

8. The following initiatives are envisaged to effectively generate a culture of competition and to enhance competition in the domestic markets with the involvement of all stakeholders:

- i. To review such existing policies, statutes and regulations, which may restrict or undermine competition, with a view to removing or minimizing their competition restricting effect.
- ii. To get undertaken Competition Impact Assessment of proposed policies, statutes or regulations that affect competition.
- iii. To integrate principles of competition in all regulatory regimes, and ensure gradual dilution of the regime in a progressive manner as competition becomes effective in the regulated sector.
- iv. To ensure functional and financial autonomy of competition and regulatory authorities to enable them to perform objectively and freely.

- v. To ensure third party access in the interest of effective competition, to essential facilities in the infrastructure sector etc. owned by a dominant enterprise on reasonable and fair agreed terms.
- vi. To incorporate provisions related to competition policy in multilateral, bilateral and regional trade agreements, which will help in preventing anti-competitive behaviour and potential anti-competitive cross-border conduct.
- vii. To encourage all Departments/ Ministries to set up in-house cells to undertake Competition Impact Assessment of various policies, statutes, regulations/ rules within their respective domains.
- viii. To encourage State governments to undertaken pro-competition reforms keeping in mind the principles of National Competition Policy and provide a suitable incentivizing mechanism for undertaking such reforms.
- ix. Review of such existing policies, statutes and regulations, which may restrict or undermine competition, "or result in unnecessary burden on compliance with any outdated and unnecessary regulations" with a view to removing or minimizing their competition restrictive effect.

9. It is further observed that the Chief Ministers of all the State Governments were requested by the Minister for Corporate Affairs on 23.11.2011 to offer their comments on the draft of the National Competition Policy. The responses were received from the State Government of Orissa, UP, MP and Punjab.

10. As per reply received from the Government of Madhya Pradesh, the State Government is broadly in agreement with the objective and main feature of the National Competition Policy. The State Government has further suggested that:-

- i. State Govt. and sub-state authorities should be strongly supported by the Central Govt. for Competition Impact Assessment and adoption of Competition Policy and Capacity Building.
- ii. Model Manual for procurement of goods and services by major Ministries/ departments should be circulated for adoption by State government.
- iii. Reservation of items for procurement for goods of MSME sector should be excluded from the purview of the competition policy. Similar exemption should be permissible for specific priorities and policies of the State Government."

11. Similarly, the Government of Punjab has suggested for incorporation of a mechanism in the policy whereby the States like Punjab where Micro, Small, Medium Sector is in pre-dominance may not suffer at the hands of large industry in the name of Competition.

Proposal in brief

12. It may be seen from page 16 and 17 of the Draft Cabinet Note that the approval of the Cabinet have been solicited on adoption of National Competition Policy document and creation of Cabinet Committee on Competition with the specified Terms of Reference outlined in para 14 (b) (i) to (vii) of the draft Note

and setting up an Advisory Committee on Competition under the Chairmanship of Hon'ble Corporate Affairs Minister comprising *inter-alia* of Secretaries from Economic Ministries, Secretary, Consumer Affairs, representatives from 5-6 State Governments (on rotational basis), two representatives from trade/ industry, one economist and two experts.

Earlier views of the Commission on Infrastructure development

13. Article 46 of the Constitution stipulates that "The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation". In terms of these enabling provisions, various safeguards have been provided for socio-economic and educational development of Scheduled Tribes (and Scheduled Castes) in the Constitution of India. The Tribal Sub-Plan approach of the Government of India envisage formulating Sub-Plans for the Scheduled Tribes out of the General Plans of each Ministry/ Department and the State Government. Since Tribal Sub-Plan Areas are well earmarked the concerned Government should earmark schemes and funds for development of Tribal Sub-Plan Areas. Since TSP Areas also include Scheduled Areas, for protection of which special provisions have been made in the Constitution. The Commission has therefore, taken a view that each Policy and Legislative Proposal should devote a separate chapter regarding "Applicability to Scheduled Areas and Scheduled Tribes".

14. In the context of the present proposal also, it is desirable not only to watch the interests of ST Traders, entrepreneurs and industrialists but also to provide various incentives to them so that they can stand in the competitive market. The suggestions made by Government of Madhya Pradesh and Punjab broadly support the above views. Accordingly, the National Competition Policy should take care of this aspect relating to Scheduled Tribes and Scheduled Areas. This can best be achieved by adding a separate special chapter in the NCP. In addition to this, the Advisory Committee proposed to be set up under the NCP may have Secretary, Ministry of Tribal Affairs also as one of the representative.

Agenda Note

Item 6 :	Draft Note for Cabinet Committee on Infrastructure (CCI) for relaxation of reform conditionalities under Urban Infrastructure Development Scheme for Small and Medium Towns (UIDSSMT) for release of second installment of funds.
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Ministry of Urban Development vide letter dated 13/02/2012, addressed to the Secretary, MTA have sought the comments of the MTA on Draft Note for Cabinet Committee on Infrastructure (CCI) for relaxation of reform conditionalities under Urban Infrastructure Development Scheme for Small and Medium Towns (UIDSSMT) for release of second installment of funds. MTA has referred the draft Cabinet Note to the Commission for its views/ comments vide O.M. dated 29/02/2012 and 12/03/2012.

2. The draft Cabinet Note was circulated to the Members of the Commission vide letter dated 27/02/2012, seeking their views/ comments in the matter for discussion in the meeting of the Commission. The views/ comments from the Members have not been received as yet.

Background

3. It is mentioned that the Govt. of India is supporting the State Governments in meeting the growing requirements of funds for infrastructure projects in all eligible small and medium towns of the country through UIDSSMT. The Cabinet Committee on Economic Affairs (CCEA) had earlier approved the guidelines of UIDSSMT on 17/11/2005. As per the provisions contained in Para 7 of the said guidelines, release of Central assistance is as follows:

(i) Central assistance (grant) released will go directly to the nodal agencies identified by the State government as Additional Central Assistance.

(ii) Release of Central share to nodal agency will be in two installments and will depend on availability of State share and submission of utilization certificates within 12 months of the closure of the financial year in accordance with the provision of General Financial Rules.

4. The criteria for release of funds is as under:

-50% of the Central share will be released on signing of Memorandum of Agreement to the State nodal agency, after ascertaining availability of State share

-Balance 50% of the Central share would be released on submission of Utilization Certificates by nodal agency for 70% of funds (Central & State grants) released earlier

5. State level nodal agency will, however, release funds in the following manner:

- 25% of Central grant on ascertaining availability of State share;

- Balance Central grant after release of State grant and after assessment of progress of implementation of reforms.

6. Sixteen Urban Local Bodies (ULB) level reforms, out of total 23 urban sector reforms are to be implemented within the 7 year Mission period. The remaining 7 reforms are to be implemented at the State level. List of the Reforms is annexed at Annexure-I to the Draft Cabinet Note. The reform conditionalities, both mandatory and optional, are the same as are applicable to 65 mission cities under the Urban Infrastructure and Governance (UIG) component of Jawaharlal Nehru National Urban Renewal Mission (JNNURM).

Observations

7. It is mentioned that the project also covers tribal areas, the details of which are not available in the Cabinet Note nor even on the Website of the Ministry of Urban Development. As mentioned in Para 4.2 of the Cabinet Note, reform implementation in case of remaining 176 projects involving release of Rs. 1100 crore has been slow due to various reasons. Of these, 77 projects (costing Rs.304 crore) are on-going in ULBs of J&K and NER States where the problem on reform implementation is acute. It is noted that the matter was also considered by the Committee of Secretaries.

Proposal in Brief

8. MoUD has proposed relaxation of norms taking into consideration the decision of the Committee of Secretaries on 13/10/2011, quoted in Para 3.7 of the Cabinet Note. The draft Cabinet Note seeks approval of the CCI for relaxation of reform conditionalities under UIDSSMT for release of second installment of funds as under.

(i)	To de-link the reforms implementation with release of funds for second installment in the ongoing projects in the States of North Eastern Region & State of Jammu & Kashmir.
(ii)	The second installment for the on-going projects sanctioned under UIDSSMT may be released to those Urban Local Bodies (ULBs) that have completed 4 out of the 6 mandatory ULB level reforms, including 2 reforms relating to Property Tax to the extent of 60% coverage of Properties and 70% collection efficiency and in respect of reforms on Recovery of O&M cost through user Charges to the extent of 70% are achieved.
(iii)	Those ULBs which are not able to achieve the relaxed standards as suggested by CoS to the extent of 2 nd installment due in the on-going projects sanctioned under UIDSSMT, work may be carried out with the funds available with States. This would be reimbursed if reforms to the extent of (ii) above are achieved by March 2014.

Analysis and proposed view of the Commission

9. It is noted from the proposal that the proposed recommendations dilute the accountability of the implementing agencies towards proper utilization of funds. As regards implementation of this scheme in tribal areas, there is an imperative need to have fool-proof mechanism, susceptible to verification, and to ensure proper utilization of funds. Names of Urban Agglomerations and ULBs in Tribal/

Scheduled Areas under Vth and VIth Schedule to the Constitution already covered, being covered and those to be covered in future may be clearly spelt out in the Draft Note for the Cabinet so that proper assessments of the targets fixed may be monitored regularly. In this connection, it is noted from Para 3.6 of the Cabinet Note that the Planning Commission has suggested that MoUD may explore the option of releasing funds equivalent to second installment of ACA (Additional Central Assistance) as interest free loan to the State Govt., with stipulation that significant progress is achieved in carrying out the reforms, this loan element be suitably converted in to a Grant. The Commission may also consider suggesting similar views, also recommending that the proposed conversion of loan to grant should be based on utilisation certificate verifiable through documentary evidence towards the progress of the Reforms.

Agenda Note

Item 7 :	Draft Cabinet Note for Introduction of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Bill, 2012 in the Parliament.
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Proposal in Brief

Ministry of Health & Family Welfare vide letter dated 20/03/2012, addressed to the Secretary, MTA have sought the comments of the MTA on Draft Cabinet Note for introduction of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Bill, 2012 in the Parliament. MTA has referred the draft Cabinet Note on 30/03/2012 to the Commission for its views/ comments.

2. The draft Cabinet Note was circulated to the Members of the Commission vide letter dated 04/04/2012, seeking their views/ comments in the matter for discussion in the meeting of the Commission. The views/ comments from the Members have not been received as yet.

Background

3. In the introduction to the draft Cabinet Note, it has been mentioned that India is estimated to have 2.39 million people living with HIV/AIDS (PLHIV), the third highest number after South Africa and Nigeria. Currently, the epidemic is "concentrated" i.e. HIV is more prevalent in high-risk groups such as female sex workers, men-who-have-sex-with-men and injecting drug users. It is therefore important for these groups to access services such as treatment of sexually transmitted infections, HIV testing, condoms, clean needles and syringes to prevent transmission of HIV to the general population. Since the route of transmission is primarily sexual, there is stigma surrounding HIV infection and those affected by it, with instances of discrimination being reported in health-care; employment and education settings etc. Given this situation, it is necessary to ensure confidentiality, privacy and informed consent when it comes to provide HIV-AIDS related services. It is also important that existing structures, both private and public recognize the need to safeguard the rights of people infected with HIV/AIDS, particularly women and children.

Proposal in brief

4. The Bill seeks to address HIV-related discrimination, strengthen the existing programmes by bringing in legal accountability and establish formal mechanisms for redressing grievances and inquiring into complaints.

5. The discrimination against people infected or affected by HIV has been reported in the form of denial of and access to healthcare and treatment, denial of and/ or removal from employment; denial of various services including insurance medical benefits etc; discrimination against admission or continuance of their children in schools.

Observations

6. The features of the legislation have been illustrated in Para 7 of the Cabinet Note. Specific attention is invited to the following features of the Bill:-

- (i) Chapter IV "Disclosure of HIV Status" provides guaranteed confidentiality of HIV-related information, including HIV+status and exceptions to it. The chapter also highlights the duty of PLHIV in preventing further transmission.
- (ii) Chapter VII "Promotion of Strategies for Reduction of Risk" provides legal protection to NACO's Targeted Intervention programme with marginalized groups such as sex workers and injecting drug users. The provisions in this chapter ensure that field work in these sites is not hampered by law enforcement authorities.
- (iii) Chapter VIII "Welfare Measures by the Government" puts an obligation on central and state governments to take measures to facilitate better access to welfare schemes for HIV-affected persons. This chapter also puts a duty on Governments to frame schemes to address the needs to HIV-affected women and children. It may be noted that other Ministries/ departments need to taken necessary action in this regard.
- (iv) Chapter IX "Promotion of HIV & AIDS-Related Information, Communication and Education" specifies that the central and state governments shall formulate IEC programmes that are age-appropriate, gender-sensitive, non-stigmatizing and non-discriminatory.
- (v) Chapter XII "Special Provisions" focuses on special provisions for those who are disproportionately affected by the epidemic, particularly women, children and persons in the care and custody of the State who due to social, economic, legal and other factors find themselves more vulnerable to HIV. Such provisions include the right to reside in the shared household, the right to receive counselling regarding pregnancy.
- (vi) Chapter XIII "Special Procedures in Court" provides for suppression of the identity of PLHIV in court proceedings. It provides that the court shall dispose of cases on a priority basis. It also aims to ensure that HIV-positive persons, if convicted, shall be placed in custodial facilities where treatment is available.
- (vii) Chapter XIV "Penalties" provides penalties as follows -

Offences/ Violations	Penalty
HIV-related hatred and discriminatory propaganda	Imprisonment which shall not be less than three months but which may extend to two years and with a fine that may extend to One Lakh rupees or both.
Non-compliance of orders of Ombudsman	Fine that may extend to Ten Thousand rupees. In case the failure continues, an additional fine up to Five Thousand Rupees per day
Breach of Confidentiality in legal proceedings	Fine that may extend to One Lakh rupees

7. It may be noted that as per the Bill, no court other than the court of a Judicial Magistrate of First Class shall take cognizance of an offence under this Act.

8. It has been mentioned in the Note that the current National AIDS Control Programme takes care of the concerns expressed in the Bill for prevention and control of HIV and AIDS. The Planning Commission has allocated Rupees 1700 crore for the Department of AIDS Control for the year 2012-13. It is difficult to estimate the provision required for new activities such as number of Ombudspersons who will be appointed by the State governments, the scheme to be drawn out by Central Government and State Governments etc. In addition, there are some schemes which need to be framed and implemented by other departments and ministries for people infected/affected with HIV or AIDS.

9. The views of various Ministries viz. Ministry of Health & FW, Ministry of Home Affairs, Ministry of Corporate Affairs, Ministry of Finance (Deptt. of Economic Affairs), Ministry of Labour & Employment, Ministry of Law & Justice (Deptt. of Legal Affairs) and Ministry of Defence are stated to be annexed at Annexure-1 to the Draft Cabinet Note. The comments received from State Governments/Union Territories viz. Daman & Diu, Assam, Meghalaya, Goa, Kerala, Tamil Nadu, Punjab, Karnataka, Chhattisgarh, Tripura, Haryana, Gujarat, Bihar, Mizoram, Uttar Pradesh, Pondicherry, Mumbai, Madhya Pradesh, Rajasthan, Himachal Pradesh and Chandigarh are also annexed with the Draft Note.

10. The Government of Gujarat (State AIDS Control Society) has stated that there was a need for detailed provisions in the Bill for the Marginalized Communities with high vulnerability to HIV/AIDS viz; CSWs and MSM. This to some extent speaks indirectly about vulnerability of Tribals.

Analysis and proposed view of the Commission

11. India has the second largest concentration of tribal population in the World. Indian tribes constitute around 8.2 percent of nation's total population, constituting nearly 84.3 million according to Census 2001. There are 635 tribes in India located in five major tribal belts across the country. There are in all 35 States and Union Territories (UTs) in India, of which in about 14, the proportion of scheduled tribe population to the total population is more than 10 percent. These states and UTs are Manipur, Arunachal Pradesh, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Jharkhand, Bihar, Orissa, Chattisgarh, Madhya Pradesh, Gujarat, Rajasthan, Maharashtra, Andaman & Nicobar and Lakshadweep. The main concentration of tribal people in India is the central tribal belt and the north-eastern States. Barring a few states, they have their presence in all States and Union Territories of the country. Predominantly rural, they mainly stay in forests and hilly regions. The literacy level among Scheduled Tribe is 47.1%, much lower than the national average of 64.8% (Census, 2001). A comparison of the recent classification² of high-prevalence, moderate prevalence, highly vulnerable and vulnerable states by the National AIDS Control Organisation (NACO) with the predominantly tribal states shows that barring one state (Rajasthan) almost all the states either fall in high prevalence or HIV vulnerable states.

12. It is noted that the National AIDS Control Programme (NACP) in its third Phase¹ envisaged to go beyond the high risk behavior groups covered by

¹ National AIDS Control Program Phase III (2006-2011) Tribal Strategy and Implementation Plan

Targeted Interventions. This entails extension of interventions to populations that are vulnerable to HIV such as the Tribal people and socially disadvantaged sections of the population in both rural and urban areas. This necessitated undertaking a rural risk/ vulnerability assessment and a Social Assessment of HIV/AIDS among Tribal People in India². The Social Assessment among Tribal People documented the prevalence and risk of HIV/AIDS among tribal people, their levels of knowledge, social and behavioural causes and consequences of HIV/AIDS (including stigma), and strategies used for prevention, diagnosis, treatment and care (PDMC) of HIV/AIDS in order to ensure appropriate programme design and implementation to reduce the spread of HIV/AIDS and improve its management. Primary data collection, review of existing literature and programmes, consultation with stakeholders and development of Tribal Action Plan was an integral part of the assessment. The primary data collection, qualitative in nature, was done amongst the tribal populations in six states of the country namely – Andhra Pradesh, Chattisgarh, Rajasthan, Maharashtra, Manipur and West Bengal.

13. The tribal population in the country has poor health generally due to, among other factors, their poverty and social vulnerability. Tribal people are known to have sexual practices that differ from those of mainstream cultures, and a high prevalence of sexually transmitted infections. The prevalence of STI/HIV/AIDS among tribal people in India is evident in some of the tribal states of the North-East of India as these have high prevalence of drug use. The tribal population in the country is high and their sheer number makes it imperative for the Government to bring them in the fold of the national programme. To be able to do so, it is essential to understand the behaviors, practices that drive the vulnerability and risk among the tribal people. This would help guiding evidence-based design of HIV/AIDS prevention, diagnosis, treatment and care programmes oriented towards tribal population. Besides, important State and National Highways pass through Tribal Areas and various industrial, irrigation and power projects have been set up in Tribal Areas and consequently, the Tribal living in and around those areas, directly or indirectly get exploited and many of them become victims of various kinds of exploitation including sexual exploitation. It has also been noted that the Tribal on their own never catch STI, it is only when the outsiders such as Contractors (Thekedars) and Transporters visit their areas, they leave behind such problems.

14. As it is well known the Tribal Areas also include well specified Scheduled Areas under Vth and VIth Schedule to the Constitution. That is why the Tribal Sub-Plan approach envisages integrated area development approach through preparation of TSP and ITDPs for the smaller administrative units in TSP Areas. In the context of the above proposal relating to HIV/ AIDS in the country, also we have to give a special focus on Tribal areas. It is supported by the fact that the NACP-Phase III for Tribal population of India was initiated. However, despite this plan, the proposed Bill and the Note for the Cabinet for introduction of the Bill is practically silent on these issues. We may advise the Ministry of Health and Family Welfare to ensure that the Bill as well as Note for the Cabinet gives due focus on the problems of Scheduled Tribes and Tribal areas including Scheduled Areas.

² "Social Assessment of HIV/ AIDS among Tribal People" carried out by ORG Centre for Social Research