



The Quarterly Newsletter of Competition Commission of India (CCI)

Fair Play

PROMOTING AND SUSTAINING COMPETITION IN MARKETS

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In Focus: 4th Annual Day Commemoration

Annual Day Lecture Competition Commission of India

2013 2012 by Delhi



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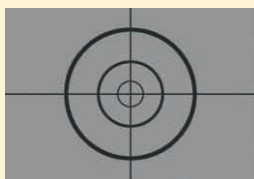


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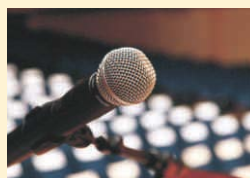
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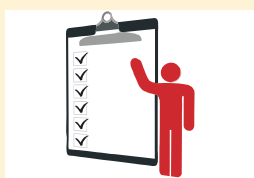
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FROM THE DESK OF THE CHAIRPERSON



The day enforcement of the Competition Act began is a special day for the market and for all its stakeholders. The Competition Commission of India has been, in the past, organising some event on the said day. The objective has been to bring “Competition” in focus and raise the visibility of this important economic legislation.

The 4th Annual Day on 20th May 2013 was uniquely significant because the Commission decided to institutionalise the celebration of the day by hosting an Annual Lecture by an eminent personality. The inaugural lecture was graciously delivered by Finance Minister Mr. P. Chidambaram – an eminent lawyer by profession and an equally regarded economist by training. We could not have got a more well-known icon to address the large gathering of “Friends of Competition”. Minister of Corporate Affairs Mr. Sachin Pilot joined us to bless the journey that we started on that day.

“Competition” and the dynamics of the market is not something of recent origin. We find references to these broad concepts from the days of the Roman Empire and in the works of Chanakya. However, the concept has become much more central and critical since the Industrial Revolution, when economies started turning out goods and services on an unprecedented scale. Today, we live in times when almost everything, albeit unfortunately, can be bought and sold. Markets have, consequently, come to govern economic systems and human lives as never before.

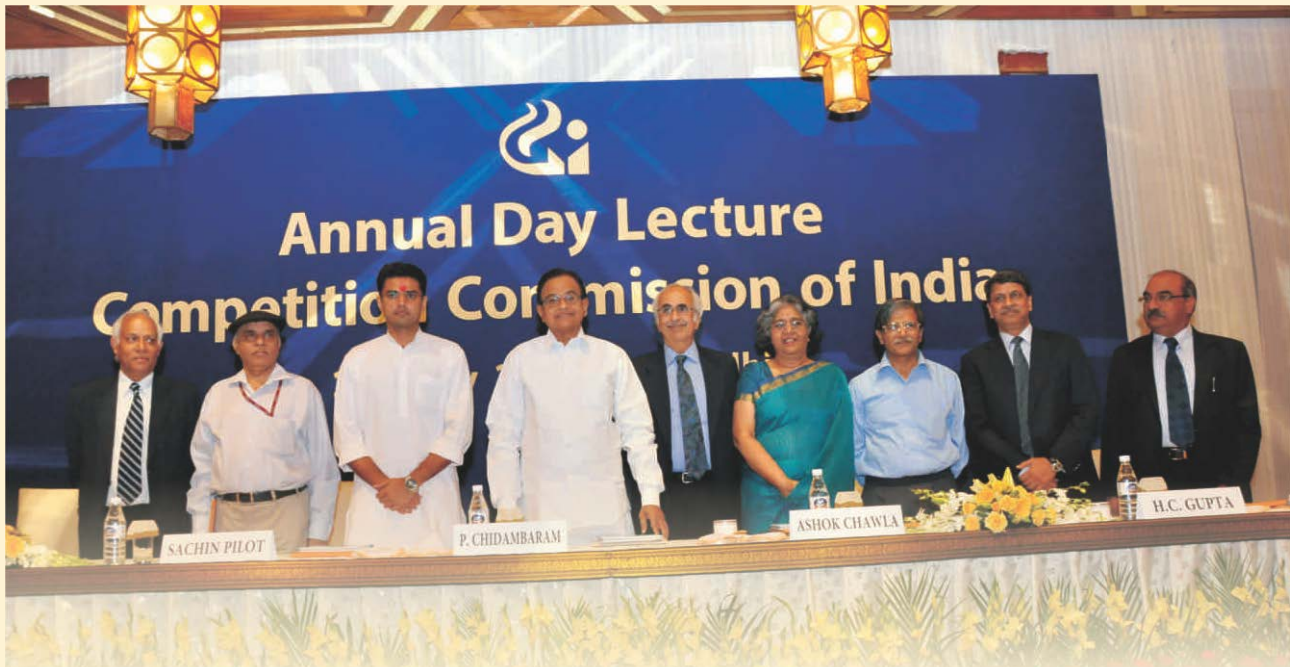
This situation crept upon the world in a big way from the 1980's. President Reagan in the United States and Prime Minister Margaret Thatcher in the United Kingdom convinced themselves and their generation that markets held the key to prosperity and economic freedom. Closer home, in India, we saw a paradigm shift from a State controlled to a more market oriented economic system since the early 1990's.

The age of market dominance got a shock with the financial crisis of 2008. Policy makers and economists were reminded once again, yet again, that markets may not be self-correcting and, therefore, need robust over-sight. It is almost as if by divine parallelism that the Indian Competition Law came to be enforced at about the same time. The Competition Act, 2002, which was enacted to prevent practices having adverse effect on competition, could not be enforced for a number of years due to a legal challenge. The Act, as amended, was eventually notified for enforcement with effect from May 20, 2009.

Anniversaries are moments of satisfaction and happiness. Anniversaries are also milestones to look ahead with greater resolve to do still better. I hope that we, in the Competition Commission, get strength from within and support from outside to achieve this.

Ashok Chawla

4th Annual Day Commemoration



CCI Commemorates Annual Day

Competition Commission of India (CCI) was established on March 1, 2009 with the mandate to implement the Competition Act, 2002 (the Act). Enforcement provisions of the Act (except Section 5 & 6) came into effect from May 20, 2009. Since then, every year May 20 is commemorated as Annual Day of CCI – the day of commencement of competition enforcement in India. CCI commemorates the day by organizing some special event i.e. workshop, seminar, lecture etc.

4th Annual Day – Four Events

On 20th May 2013, CCI commemorated the 4th Annual Day. Four significant developments marked the day:

1. Delivery of the “Annual Day Inaugural Lecture”
2. Release of a book entitled “Competition Commission of India” ;
3. Unveiling of “Vision” and “Mission 2020” of CCI, and;
4. Release of the “Special Cover” on CCI issued by the Department of Posts.

1. The Annual Day Inaugural Lecture

CCI being a multi-disciplinary knowledge based regulatory authority has to strive and excel perpetually in acquisition of knowledge and skills. In order to augment the process, an “Annual Day Lecture” has been instituted by CCI, which will be delivered every year by a nationally/globally renowned scholar/eminent personality.

The Annual Day Inaugural Lecture¹ was delivered by the Hon’ble Union Finance Minister Mr. P. Chidambaram. In the lecture, Hon’ble Minister highlighted the journey of competition regulation from the Monopolies and Restrictive Trade Practices Act, 1969, to the Competition Act as an evolutionary process in a society that adopts social contract. According to him, as society evolves, it adopts social contracts i.e. various norms, conventions, and laws that help clarify the interaction of citizens with each other; with institutions, and between institutions. Economic regulations are the set of social contracts that help guide economic activity in ways that enhance the public good.

He said that by establishing the Competition Commission under

¹ The lecture has been published by CCI and is also available on our website <http://www.cci.gov.in/>.



the Act, there can be no doubt whatsoever that the goal of Parliament is to promote competition, to sustain competition in markets, to allow new entrants into the market, and to protect the interests of the consumers. The Competition Commission has vast powers including powers to modify agreements, pass punitive orders and to split up enterprises. In this respect, CCI enjoys the same broad powers as are given to similar Commissions in other jurisdictions.

The Conceptual Basis of Competition

Speaking about the conceptual basis of competition, he stated that innovations emerge from healthy competition, as does economic efficiency. Non-competitive markets are characterized by a small number of producers or buyers controlling the market. In such a situation, these entities can act as price-setters so as to maximize profits at the expense of other market participants. Such a situation is not only unfair but also reduces economic efficiency, since it shrinks the available economic pie; too little is produced as the Monopolist tries to keep his profits high by ensuring scarcity of goods.

He has little incentive to serve the consumer, since the consumer has little or no choice. Competition ensures that markets are not only beneficial but they are also fair - the best producers win; not based on their connections or influence but because they build a better cycle, a better motorcycle or a better car.

We have to ensure that the economy continues on the path of competitive, fair, and transparent business practices, and any aberrations that interrupt the path are set right. Hence, the need for an effective Competition Commission that favours none and spares none.

Competition Policy

He focused on five key issues for competition policy - mergers and acquisitions, natural monopolies, regulatory capture, governance biases towards Public Sector Enterprises (PSEs), and predatory behaviour.

Regarding mergers and acquisitions, he said that there are massive gains, both private and societal, from mergers and integration in industries such as economies of scale, ease of information transmission, reduction of uncertainties, and synchronization of demand and supply. At the same time, we have to ensure that mergers do not

substantially reduce competition and consumer choice. Referring to telecom industry, he emphasized that regulators have to take a call on the right balance between too many players and too few. Further, despite TRAI being the sector regulator, the overarching role of CCI in competition policy cannot be ignored. Similarly, in case of bank mergers, mergers may reduce competition in certain segments or geographies substantially, and may alter competition between banks and non-banks. He raised several issues: are our regulators well positioned to evaluate the consequences to competition in different sub-markets and across regulatory jurisdictions? Is there a role for the CCI here? Finally, we have seen bank mergers lead to too-big-to-fail entities. What constitutes a merger too far? How do the relative merits of prudential regulation and competition regulation weigh? He said that we have not confronted these issues as yet in India, but undoubtedly will have to in the not too distant future, and will have to prepare for them.

Similarly, speaking on monopolies and sectoral regulators, he stated that the separate regulators may be needed for sectors like water distribution, which are amongst few natural monopolies left. At the same time, there is danger that these sectoral regulators are liable to be captured by industry players and don't see the benefits of competition coming from new technologies, new entrants, or new sectors that erode hitherto natural monopolies. Competition Commission can play an important role in keeping an eye open for such behaviour and ensuring that the public is well served.

Regulating the sectoral regulator in these matters, while difficult and fraught with legal difficulties, is an essential role; the Competition Commission may have to play.

Speaking on public sector enterprises, he emphasized that the most important reason to bring public sector enterprises under scrutiny for anti-competitive practices is that we increasingly have an open economy, where the private sector has to compete with public sector. A level playing field is in the best interest of the public; the consumers whose interest the Commission is mandated to protect. He emphasized that in the medium term, we have to remove constraints on public sector firms that limit their ability to compete, even as we take away special privileges and make the playing field as level as possible.

An important role of the Competition Commission in the years to come will be to guide us on how the interaction between the Government and public sector firms should play out to create the most competitive environment we can.

He also identified public procurement as a neglected area of competition policy and emphasised the role to be played by CCI.

He called up on CCI to develop a body of work that allows it to address a number of issues

including prevention of predatory behavior by enterprises in the market. He said research and deep investigation, drawing on the Indian reality and the experiences of other countries must become integral aspects of the CCI.

A Caution, a Caveat and Optimism

Hon'ble Minister, while concluding his inaugural lecture presented a caution, a caveat and his optimism for the future of competition regulation and enforcement in India. He cautioned that competition regulation must not become another bureaucracy stifling growth. The CCI must continue to be a lean organization, picking the issues it can weigh on carefully, and making a difference when it does. Its rulings must be transparent and afford clarity rather than obscurity. Its rulings should avoid the perils of overreach as well as regulatory capture. The caveat; competition is about improving choice and sometimes choice can be improved in more subtle ways than regulation. Speaking on his optimism, hon'ble Minister stated that the Indian economy is entering a new phase of strong growth supported by transparent and effective institutions.

In the short time that the Competition Commission has been in existence, it has already contributed significantly towards the goal of strong, sustainable and inclusive growth.

He was optimistic that it will continue to do so in the years to come.

2. The Annual Day Book

The Act creates a framework for competition regulation in India and one of the most significant pillars of this framework is "competition advocacy". This endows a responsibility on CCI to sensitize the stakeholders about the benefits of competitive markets and need to be competition compliant. In the past, CCI has published a number of advocacy booklets to bring to stakeholders knowledge on various enforcement facets of the Act. The 4th annual day of CCI marked the release of a book on CCI, which explains in a lucid way the nitty-gritty of competition law and policy in India. It also elucidates in easy-to-comprehend manner complex enforcement provisions of the Act, such as Jurisdiction of CCI, appeal processes, anti-competitive agreements, abuse of dominant position, merger control etc. so as to take parliamentary mandate under the Act one step closer to common man.

Hon'ble Minister of Corporate Affairs Mr. Sachin Pilot, while releasing the annual day book said that the endeavour of CCI to bring out a book on the Commission and enforcement of competition law is an important step. The contents of the book are designed for the common man to have a quick grasp and understanding of the Commission and its functions in lucid and simple language, so that common man can understand about CCI and easily approach them, whenever needed.



3. Vision and Mission of CCI

Vision and Mission of an organisation is a communication window, through which it can make the world know as to why it exists and for whom. Minister of State of Corporate Affairs Mr. Sachin Pilot unveiled “Vision” and “Mission 2020” statements of CCI during his presidential address.

The hon’ble Minister said that the Commission has unveiled its vision and Mission 2020 for the first time, which is a step towards the wider vision. He further said that the Commission’s vision to promote and sustain an enabling competition culture through engagement and enforcement, which would inspire businesses to be fair, competitive, and innovative; enhance consumer welfare; and support economic growth is truly a lofty vision and totally in accordance with the mandate given under the competition law.

He said that through its Mission statement, CCI seeks to engage with various stakeholders, which include consumers, industry, government, judiciary, parliamentarians etc. to foster greater understanding and appreciation of the benefits of competition and encourage grassroots ownership and demand for pro-competition policies. He lauded advocacy initiatives of the Commission stating that such initiatives are significant for development of competition culture in the economy. Further, he highlighted the need to strengthen competition awareness amongst market players, thereby encouraging self-compliance and reducing the need for direct action against erring enterprises.

He underscored that the Commission needs to assume the role of a competition advocate, acting proactively to bring about Government policies that lower barriers to entry, promote de-regulation and trade liberalisation and promote competition in the market place.

Hon’ble Minister identified CCI as an expert body to deal with the issues relating to enforcement of competition law. Professionalism, transparency, resolve and wisdom in enforcement should be reflected in all the activities of the Commission, either it be the enforcement of the provisions of



the Act, advocacy functions of the Commission or even the representation of the Commission at international forums. He said that the jurisprudence of modern competition law is evolving under the Commission, which would be further shaped by the Competition

Vision

To promote and sustain an enabling competition culture through engagement and enforcement that would inspire businesses to be fair, competitive and innovative; enhance consumer welfare; and support economic growth.

Mission 2020

Competition Commission of India aims to establish a robust competitive environment through:

- proactive engagement with all stakeholders, including consumers, industry, government and international jurisdictions;
- being a knowledge intensive organization with high competence levels;
- professionalism, transparency, resolve and wisdom in enforcement.

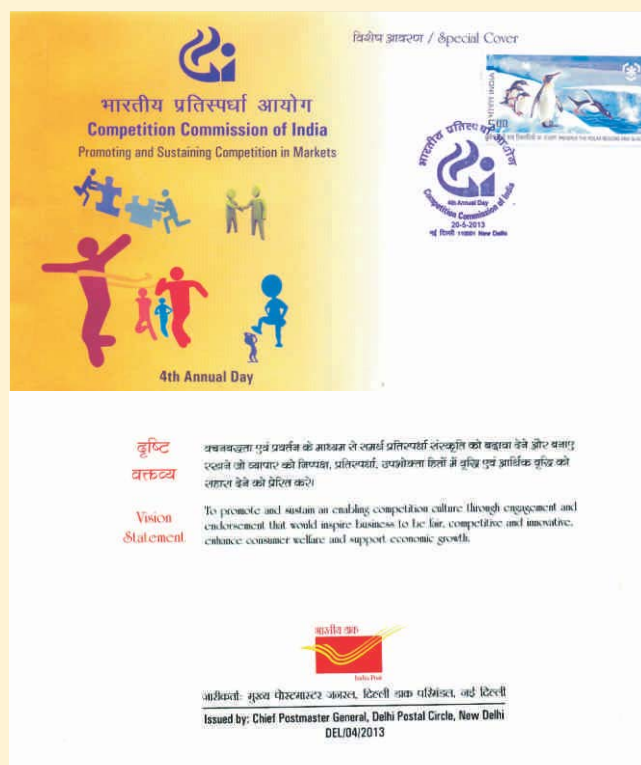
Appellate Tribunal and the Supreme Court. Thus, Commission bears the responsibility of developing a strong knowledge base for itself and for various stakeholders. He appreciated the approach of CCI in developing MoUs with foreign jurisdictions, given the extra-territorial application of the Act.

He recognised that competition is not an objective, but an instrument for achieving wider societal goals. He said that Ministry of Corporate Affairs is tirelessly working towards adoption of National competition Policy so that across sectors and at various levels of government, all policies are assessed on the lens of competition. The introduction of competition assessment into government policies, laws and regulations has the potential to yield strong economic benefits by identifying areas, where market activity is unduly restricted and suggesting policy alternatives that will continue to meet policy goals; while promoting competition as much as is possible.

4. Release of Special Cover



In order to mark four successful years of competition enforcement in India, the Department of Posts issued a special cover on CCI in limited numbers, which has similar significance as a memorabilia. The special cover carries symbolic imprints of features of the Act and depicts vision statement of CCI. Department of Posts presented the first cover to the hon'ble Finance Minister Mr. P. Chidambaram, who also unveiled the special cover marking the 4th Annual Day of CCI. In terms of advocacy, special cover enhances the reach of CCI and takes it closer to people of India.



SECTION 3 & 4 ORDERS

NIMPA Found Guilty of Anti-competitive Conduct

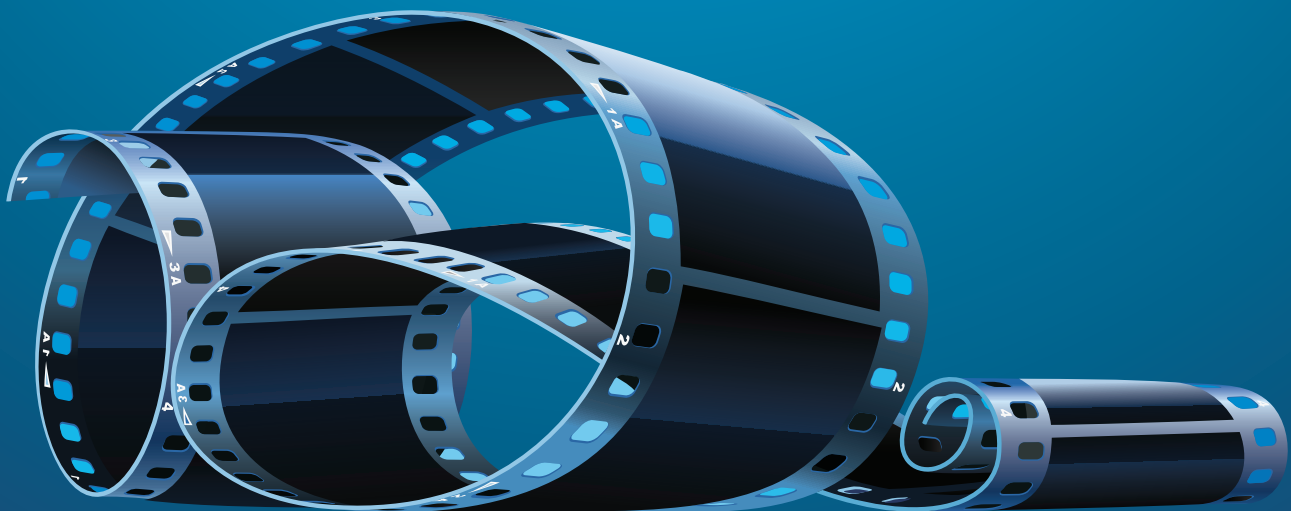
The Commission found North Indian Motion Pictures Association (NIMPA) guilty of anti-competitive conduct of imposing compulsory registration and refusing to register films. Information was filed by Shri Ashtavinayak Cine Vision Limited (the informant), Mumbai against PVR Picture Limited, New Delhi & 17 other opposite parties including NIMPA. The Informant is engaged in the production and distribution of cinematographic films. The opposite party, PVR Pictures Ltd. is engaged in the business of distribution and exhibition of feature films. The Informant alleged that the associations make compulsory for every film distributor to become their member and/or register its film with them before the exhibition of such films. A distributor who refuses to become a member of the associations and/or refuses to register his film with them is not allowed to distribute and exhibit its film in the territories regulated by such associations.

The Informant had produced a feature film titled "Rockstar", which was distributed by Eros International Ltd. When Eros International Ltd. attempted to book theaters for exhibiting the said film, NIMPA informed its members and Eros International Ltd. that the said film was registered in its records in the name of Puri Sons. Registration was not likely to be granted due to a complaint from PVR Pictures Ltd. against the informant. The informant alleged that the NIMPA had illegally and wrongfully threatened to refuse to register the said feature film in the name of Eros International Ltd., which was directed not to book theaters to exhibit the said film. The Commission found a prima facie case and ordered investigation by the Director General (DG), CCI.

The DG investigation revealed that NIMPA had restricted the release of film "Rockstar" by refusing to register the film in its territory. M/s PVR Picture as a member of NIMPA

was found to be involved in the imposition of restriction against the informant. The DG concluded that the alleged conducts were anti-competitive and violated section 3(3)(b) of the Act.

The Commission held that the conduct of NIMPA in refusing to register the film in the name of Eros International Ltd., and not allowing it to exhibit the film by instructing its members was restrictive in nature. The Commission also ruled that the compulsory registration of the film with the trade association was an in-built pressure on the distributor to register its film with the concerned association as the film could not be released without registration. Since a penalty had already been imposed upon NIMPA in a previous case, the Commission ruled that it was unnecessary to impose any penalty upon NIMPA in the present case.



Hockey India Exonerated with a Caution by CCI

CCI has begun scrutinising sports leagues in India for their anti-competitive conduct. Although scrutiny of hockey leagues has resulted in exoneration of Hockey India (HI) in the Dhanraj Pillay & Ors vs M/s Hockey India, the Commission has cautioned HI to streamline its regulatory powers so that anti-competitive practices do not creep into Hockey, the national game of India.

In Dhanraj Pillay & Ors vs Hockey India, the hockey legend Mr. Dhanraj Pillay alleged that the HI entered into an agreement with each of India's top hockey players that were eligible for playing in the national hockey team of India. The terms of this agreement are recorded in the "Code of Conduct" for these players in domestic/international competitors agreement ("COC Agreement") signed with each player. The COC Agreement contains explicit conditions that prevent hockey players from participating in "unsanctioned events". It was alleged in the information filed that this is anti-competitive having "exclusive supply agreement" imposed on Indian hockey players with an intention of preventing participation in the WSH tournament and securing the market for its self-promoted league event. Clause 3 of the said COC Agreement sets out that any player desiring to play for a foreign club/team will be required

to obtain a "No Objection Certificate (NOC)" from HI. It is quite possible that once a player has signed the COC Agreement, he can be prohibited from participating in any tournament by not providing the NOC. It was also stated that HI enjoys a monopoly in the relevant market for conducting and governing international hockey

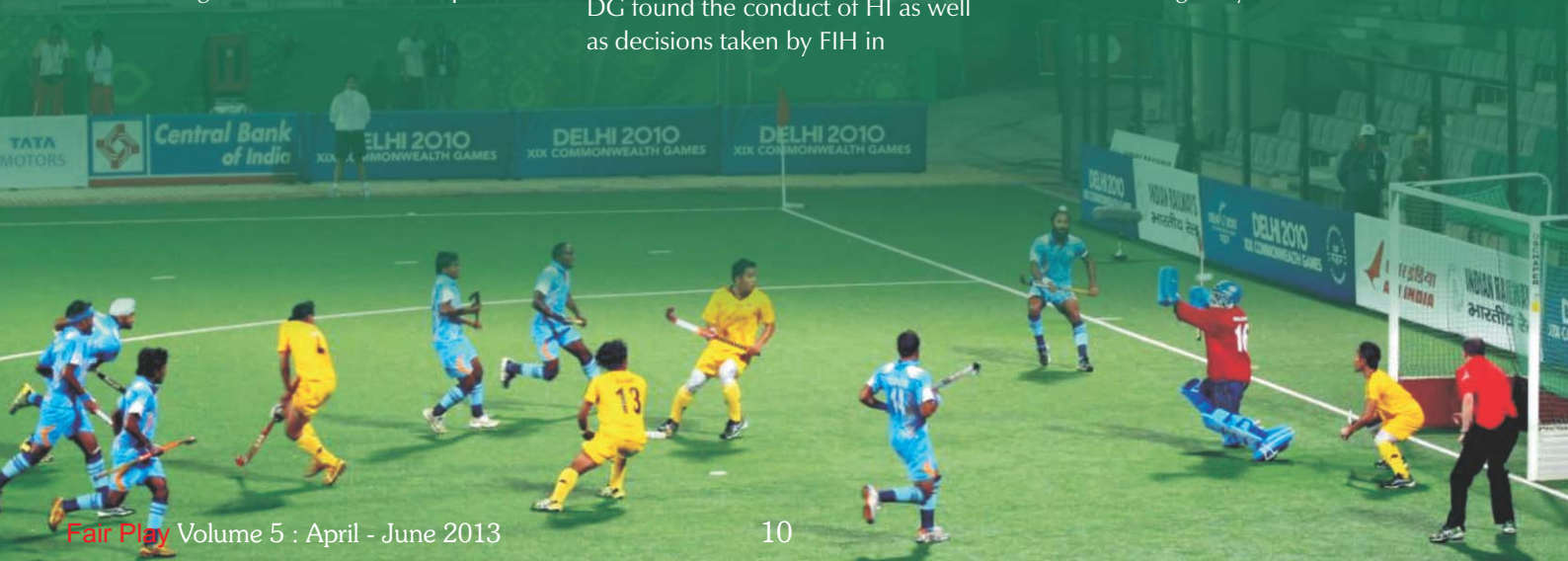
The Commission mandated Hockey India to put in place an effective internal control system...to ensure that its regulatory powers are not used in any way in the process of deciding on any matters relating to its commercial activities.

activities in India. It is currently the sole recognized National Association affiliated to the International Hockey Federation (FIH) and Asian Hockey Federation (AHF). HI is also endorsed by the Indian Olympic Association (IOA).

After considering and analysing competition issues in the information, the Commission found *prima facie* case and ordered investigation by the DG, CCI. The DG found the conduct of HI as well as decisions taken by FIH in


consultation with its members including HI regarding sanctioned and unsanctioned events in breach of the Act and submitted a report to the Commission, accordingly.

The Commission after considering DG report and hearing parties ruled that HI's economic power is enormous as a regulator as virtually, there is no other competitor of HI. The dependence of competitors on HI for sanctioning of the events, as also dependence of players, has been total, considering the terms of bye-laws of FIH and COC Agreement. The Commission concluded that though these regulations are inherent and proportionate to the objectives of sports federation, the manner of application is always a concern, given the duality of roles leaving scope for possible violation of the Act. The Commission mandated HI to put in place an effective internal control system to its satisfaction, in good faith and after due diligence, to ensure that its regulatory powers are not used in any way in the process of deciding on any matters relating to its commercial activities. The Commission also mandated HI to set up a streamlined, fair and transparent system of issuing NOCs to the players for participating in events organized by foreign teams/clubs. However, HI was not found in breach of Section 3(3)(b), 3(4), 4(2)(a), 4(2)(c) and 4(2)(e) of the Act as alleged by the informant.



SECTION 5 & 6 ORDERS

Commission Approves Acquisition of Agila India by Mylan



Mylan Inc. incorporated in Pennsylvania, USA is present in India through its three Indian subsidiaries, major among them being Mylan Laboratories Limited. In India, Mylan manufactures and supplies high quality Active Pharmaceutical Ingredients (APIs) for use in the manufacture of Mylan's own pharmaceutical products, as well as for use by third parties, in a wide range of therapeutic categories. It plays a significant role in supplying APIs for the manufacture of anti-retroviral (ARV) drugs used for treating HIV/AIDS.

Mylan Inc. notified CCI on April 1, 2013 under Section 6(2) of the Act pursuant to the execution of a Sale and Purchase Agreement (SPA) between Mylan, Strides Arcolab Limited (Strides) and certain shareholders of Strides. Under the proposed combination, Strides agreed to sell the entire issued and outstanding share capital of Agila

Specialties Private Limited (Agila India), which is a wholly owned subsidiary of Strides to Mylan. Agila India is involved in the development, manufacturing and supply of injectable products mainly for the export market. Agila India has six plants in India manufacturing injectable formats under different product categories including oncology, penicillin, cephalosporin and general injectables. Agila India has one wholly owned subsidiary i.e. Onco Therapies Limited, whose core business is research, development and manufacturing of oncology related products (Agila India and Onco Therapies Limited collectively referred to as "Target Enterprises").

CCI observed that Agila India and its subsidiary primarily caters to the export market and their sales in the domestic market in India (excluding intra-group sales) contributed less than five per cent

to their consolidated sales for the financial year ended 31st December 2012. Similarly, Mylan also had limited presence in the domestic market in India as more than 80 per cent of the consolidated sales of Mylan in India were driven from exports. CCI also noted that the products offered by Mylan and the Target Enterprises in the domestic market in India belong to different therapeutic categories, except for a few products, which are entirely different in terms of their characteristics and intended use.

Further, majority of the domestic sales of Mylan relate to the sales of APIs (which are used for manufacturing the final product i.e. formulation), whereas the entire domestic sales of the Target Enterprises relate to injectable formulations. However, the APIs manufactured and sold by Mylan in the domestic market in India are mostly non-sterile APIs, which

cannot be used for developing injectable formulations. Thus, the proposed combination is not likely to result in any vertical integration of the acquirer i.e. Mylan and the Target Enterprises in the domestic market in India. It was noted that parties have also entered into a Restrictive Covenant Agreement (RCA) and as per the SPA & the RCA, Strides, its promoters and any of the group company of strides shall not engage in the business of developing, manufacturing, distributing, marketing or selling any injectable, parenteral, ophthalmic or oncology pharmaceutical products for human use, anywhere in the world including India, for a period of six years.

The Commission in its Order dated 21st December, 2012 in the notice (Comb. Reg. No. C-2012/09/79) had observed that “non-compete obligations, if deemed necessary to be incorporated, should be reasonable particularly in respect of (a) the duration over which such restraint is enforceable; and (b) the business activities, geographical areas and person(s) subject to such restraint, so as to ensure that such obligations do not result in an appreciable adverse effect on competition.”

In the present case, it was noted that the non-compete covenant sought to impose a blanket restriction covering all products in injectables, parenterals, oncology and ophthalmic categories even though there are products under these categories, which are currently not being manufactured by the Target Enterprises. CCI observed that the scope of the non-compete covenant should cover only those products, which

are either being presently manufactured/sold or are under development, by the Target Enterprises. The acquirer was therefore, required to provide a detailed justification for the duration as well as scope of business activities restricted under the non-compete covenant. In their response, the parties offered the following modification(s) in the non-compete covenant, under the provisions of Regulation 19(2) of the Combination Regulations:

1. Reducing the duration of the non-compete obligations under the SPA and the RCA as applicable to the Indian market to a period of four (4) years;
2. Restricting the scope of the non-compete clause as

CCI observed that the scope of the non-compete covenant should cover only those products, which are either being presently manufactured/sold or are under development, by the Target Enterprises. The acquirer was therefore, required to provide a detailed justification for the duration as well as scope of business activities restricted under the non-compete covenant.

applicable to the Indian market only to the products that each of the Target Enterprises currently manufactures and to pipeline products in development.

3. Permitting the promoters of Agila India and their group companies to conduct

research, development and testing on such new APIs/molecules, which would result in development of new APIs/molecules for injectable formulations, which are currently non-existent worldwide.

The Commission accepted the modifications offered by the parties and approved the proposed combination under Section 31(1) of the Act. The Commission also directed the parties to make necessary amendments in the SPA and the RCA to incorporate the said modifications.

No Jurisdiction, No Order

In a recent direction, the Commission has stated that issuance of order u/s 31 of the Act is not required for deals, which do not meet the jurisdictional thresholds under Section 5 of the Act.

In a notification on March 4, 2013, the parties to the proposed amalgamation i.e. Champalal Motilal Steel Company Private Limited (CMSL), Phoenix Impex Private Limited (PIPL), Poscho Steels Private Limited (PSPL) and Akshata Mercantile Private Limited (AMPL), under sub-section (2) of Section 6 of Act, jointly filed a

notice relating to the proposed amalgamation of CMSL, PIPL and PSPL into AMPL, pursuant to the execution of a Scheme of Amalgamation under Sections 391 to 394 and other relevant provisions of the Companies Act, 1956.

Details provided in the notice and the subsequent submissions made by the parties indicated that the parties did not meet the jurisdictional thresholds for the purposes of Section 5 of the Act, as the value of the assets or the value of the turnover, of the parties to the

proposed amalgamation did not exceed the value of assets or the value of the turnover as provided under Section 5 of the Act.

Therefore, the Commission in its direction dated 9th April, 2013 noted that as the proposed amalgamation of CMSL, PIPL and PSPL into AMPL was not a 'combination' in terms of Section 5 of the Act, the notice under Section 6(2) of the Act was not required to be filed, and consequently does not require the Commission's Order under Section 31 of the Act.

Titan International Penalised for Delayed Notification

CCI imposed a penalty of INR one crore on Titan International for its failure to give notice to the Commission in accordance with Section 6(2) of the Act. This is the second instance in which the Commission has imposed penalty for not filing the notice within the stipulated time.

In the instant case, Titan International and Titan Europe had reached an agreement on the terms of the recommended share offer for the acquisition of entire share capital of Titan Europe on 10th August, 2012 and therefore, as required under Section 6(2) of the Act, the Acquirer ought to have given the notice to the Commission within thirty days of reaching the said agreement. However, the Acquirer gave the notice to the Commission only on 4th February, 2013 with a delay of around 147 days and that too after the combination had already taken effect.

The parties argued that they were unaware about the requirement to file the indirect acquisition and the omission to comply with Section 6(2) of the Act was altogether inadvertent and unintentional. However, CCI noted that the notice by the parties was not only given belatedly, but also after the combination had already taken effect, which was in contravention of the relevant provisions of the Act. CCI also emphasized that any person or enterprise proposing to enter into a combination has to mandatorily give a notice to the Commission under Section 6 (2) of the Act, prior to entering into a combination.

Any person or enterprise, who or which proposes to enter into a combination, has to mandatorily give a notice to the Commission under Section 6 (2) of the Act prior to entering into a combination.

While imposing penalty, CCI observed that in terms of Section 43A of the Act, the maximum penalty that may be imposed on the Acquirer comes to approximately INR 145 crores. However, CCI took note of the fact that both the parties are based outside India; the combination resulted from the acquisition of one foreign enterprise based outside India by another foreign enterprise based outside India; and the parties, notwithstanding the delay, voluntarily submitted the notice. In view of the above, CCI considered it appropriate to take a lenient view and imposed a smaller amount of penalty of INR one crore on the Acquirer.

ADVOCACY INITIATIVES



Advocacy with Central Government

The Commission under its advocacy mandate is making definitive forays in advocating competition assessment of Central Government's rules, regulations and policies so as to inhibit the potential harm they may cause to competition and overall economic interest of the country. During this quarter, CCI organized preliminary meetings with key policy makers of Ministry of Surface Transport & Highways, Department of Pharmaceuticals, Defence Research & Development Organization, Department of Higher Education and Ministry of Health & Family Welfare. The preliminary meetings are the first step initiated to understand the dynamics of the policies, rules and regulations framed by the Ministry/Department. CCI will

endeavour to encourage them to incorporate competition assessment of policies as a regular practice to help in adoption of policies with least competition distortions to meet the intended social objectives.



CCI conducted workshops for the executive committee of four trade associations viz. All India Organization of Chemist & Druggist (AIOCD), Automotive Component Manufacturers Association of India (ACMA), All India Glass Manufacturers Federation (AIGMF) and Automotive Tyre Manufacturers' Association (ATMA).

Advocacy with States

CCI aims to engage with the States to generate

awareness among their key policymakers about the provisions of the Act. During this quarter, two workshops were organized for the key functionaries of Government of NCT of Delhi to sensitize them about the need to adopt competition friendly policies and comply with the provisions of the Act as the Act is applicable to all enterprises irrespective of their ownership.

Advocacy with Trade Associations

CCI continued the initiatives with trade associations to generate awareness among trade associations and their members to adopt competition compliance programme (CCP). This will not only help to avoid penalties and damage to reputation, but also inculcate good governance in their associations and respective constituents. During this quarter,

REGULATIONS UPDATES

Amendment of Combination Regulations

The Combination Regulations have been in force since June 1, 2011. The Combination Regulations were amended for the first time on February 23, 2012 to relax certain requirements related to filings for combinations that are unlikely to raise adverse competition concerns. The Commission has further amended the Combination Regulations on April 4, 2013 with a view to simplify the filing requirements and bring about greater certainty in the application of the Act and the Regulations.

The highlights of the major changes in the Combination Regulations brought about by the recent amendment are as under:

1. The Combination Regulations now do not require a notice to be filed for acquisition of shares or voting rights of

companies, if the acquisition is less than five per cent (5%) of the shares or voting rights of the company in a financial year, where the acquirer already holds more than twenty five (25%) percent but less than fifty percent (50%) of the shares or voting rights of the company.

2. To significantly reduce compliance requirements, the provision for giving notice is now dispensed for mergers/amalgamations involving two enterprises, where one of the enterprises has more than fifty per cent (50%) shares or voting rights of the other enterprise. Similarly, the requirement of giving notice is also dispensed for merger or amalgamation of enterprises in which more than

fifty per cent (50%) shares or voting rights in each of such enterprises are held by enterprise(s) within the same group.

3. To provide clarification on the nature of intra-group acquisitions for which notice has to be given, Item 8 of Schedule I has been amended to state that the relaxation would not apply, where the acquired enterprise is jointly controlled.
4. To avoid repetition and to have one category of exemption for acquisition of certain current assets like stock-in-trade, raw materials etc., item 5 and item 9 of Schedule I have been clubbed and provided as one category under item 5.



ENGAGING WITH THE WORLD

Signing of MOU with Australia



Memorandum of Understanding (MOU) on Cooperation was signed between Competition Commission of India and Australian Competition and Consumer Commission (ACCC) at Canberra, Australia on June 3, 2013. The MOU was signed by CCI Chairperson Mr. Ashok Chawla, and ACCC Chairman Mr. Rod Sims in the presence of Hon'ble Minister of State (IC) of Corporate Affairs Mr. Sachin Pilot.

CCI Participation in ICN Annual Conference



A CCI delegation led by CCI Chairperson Mr. Ashok Chawla participated in the 12th Annual Conference of the International Competition Network (ICN) during April 23-26, 2013 in Warsaw, Poland. Mr. Chawla moderated the plenary session of the Merger Working Group and CCI officials made presentations in some of the sessions.

International Events

- ❖ CCI Member Mr. Anurag Goel participated in the 6th Astana Economic Forum Conference organized by Agency of the Republic of Kazakhstan for Competition Protection (Antimonopoly Agency) during May 22-24, 2013 in Astana, Kazakhstan and presented a paper titled "Competition Regulation & Corporate Strategy : Need to Connect".
- ❖ CCI Member Mr. M. L. Tayal participated in the meeting of OECD Competition Committee and Working Parties during June 17-20, 2013 at Paris, France. CCI contributed two papers on the topics, "International Cooperation and Enforcement" and "Definition of Transaction for the Purpose of Merger Control Review".
- ❖ CCI officials participated in various workshops/ seminars/ meetings:



- OECD- Korea Policy Center and World Intellectual Property Organization (WIPO) Workshop on Intellectual Property and Competition Law during April 17-19, 2013 in Jeju Island, Korea.
- Third International Conference on "Role of competition in fostering trade and investment" during May 29-30, 2013 in Islamabad, Pakistan.
- Japan Trade Fair Commission and Asian Development Bank Institute training program on Competition Law & Policy for Asian Countries during June 3-7, 2013 in Tokyo, Japan.
- OECD- Korea Policy Center Workshop on "Fighting Bid-rigging" during June 25-27, 2013 in Kuala Lumpur, Malaysia.
- Course for competition authority economists by Fordham Competition Law Institute (FCLI) during June 24-28, 2013 in New York, USA.

CCI will Organise 3rd BRICS International Competition Conference



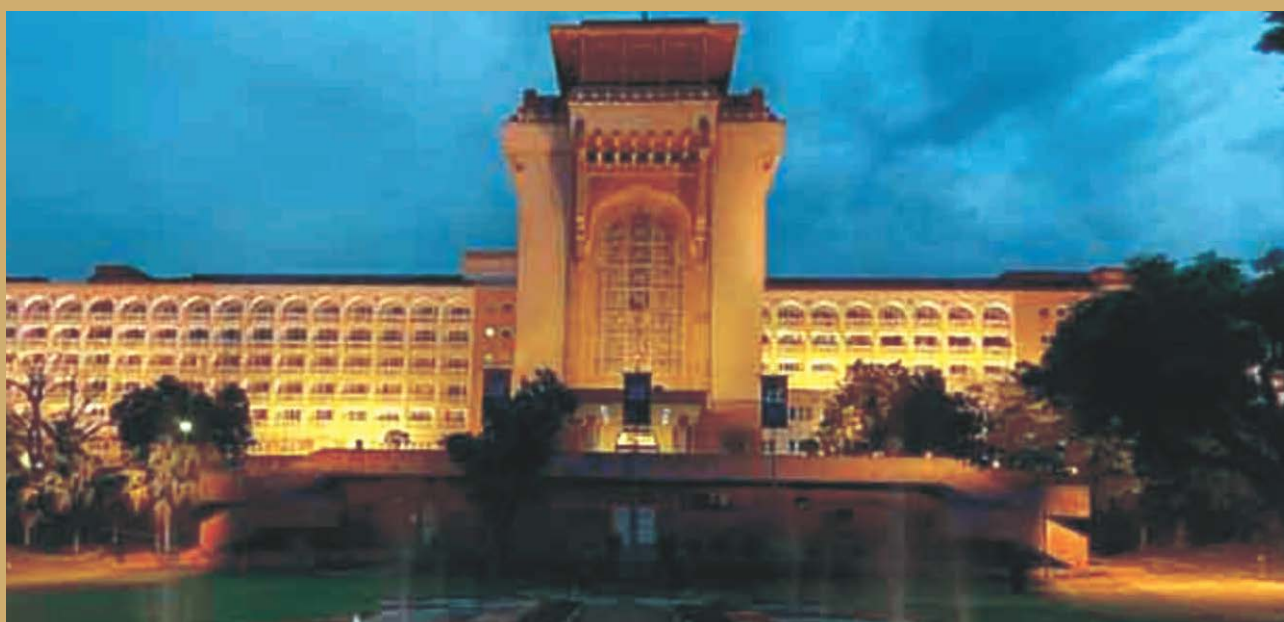
BRICS International Competition Conference
20-22 November 2013, New Delhi, India

BRICS International Competition Conference is a prestigious conference in the field of competition law and policy. The 3rd BRICS International Competition Conference will be held at New Delhi during November 20-22, 2013. The conference is being organised in pursuance of the New Delhi Declaration and Action Plan adopted at fourth BRICS Leaders Summit in New Delhi on March 29, 2012. The conference is third in the series with the earlier two Conferences having been organised in Kazan, Russia (2009) and Beijing, China (2011) respectively.

The theme of the Conference is ***“Competition Enforcement in BRICS Countries: Issues and Challenges”***. The objective of the conference is to discuss various issues and challenges in competition enforcement in BRICS countries and take the agenda of cooperation among the BRICS competition authorities forward from the earlier two conferences.

During the two day conference, discussions would focus on issues and challenges in setting up an affective agency, enforcement vis-à-vis state owned enterprises, public procurement and creation of competition culture. A separate

session has been provided for experience sharing by mature jurisdictions on the subject of role of Competition regulation in innovation and economic development. In the last session, it is proposed to discuss how to transform BRICS cooperation from ideas into action. The Conference is expected to provide opportunity for wide ranging discussions among the representatives from the BRICS countries as well as from other enforcement agencies, multilateral institutions, and academia and civil society institutions.



The Ashoka, New Delhi - Venue of the Conference

DEVELOPMENTS IN OTHER JURISDICTIONS

Pay-for-delay cases in Pharmaceutical Sector

Pay-for-delay agreements are a kind of non-compete agreements between the branded drug manufacturers and the generic manufacturers to stifle competition from lower-cost generic medicines. The branded drug makers have been able to side-step competition by offering patent settlements that pay generic companies not to bring lower-cost alternatives to market. This issue has emerged as an important competition issue and is being taken very seriously by the US courts as well as by the European Commission, where heavy penalties have been imposed on the pharmaceutical companies entering into such practices.

United States – Federal Trade Commission

According to Federal Trade Commission (FTC) study in USA, “pay-for-delay” deals cost consumers and taxpayers \$3.5 billion in higher drug costs every year. Since 2001, the FTC has filed a number of lawsuits to stop these deals, and it supports legislation to end such “pay-for-delay” settlements. However, these agreements were not treated as anti-competitive in a number of cases before Circuit Courts of US. This position has now changed with the US Supreme Court ruling in *FTC v. Actavis* on June 17, 2013.

The arrangement stemmed from a Federal Drug Authority (FDA) filing by Actavis and another company, in which they asserted a right to

produce a generic version of AndroGel. As the FDA was reviewing the case, Solvay sued Actavis claiming patent infringement. The FDA eventually approved Actavis generic product, but instead of bringing its drug to market, Actavis entered into a 'reverse payment' settlement agreement with Solvay, agreeing not to bring its generic to market

“...the court has taken a big step toward addressing a problem that has cost Americans \$3.5 billion a year in higher drug prices.”
Edith Ramirez,
Chairwoman FTC

for a specified number of years and agreeing to promote AndroGel (the brand in question) to doctors in exchange for millions of dollars.

US Supreme Court ruled that these agreements are not ‘per se’ violative and need to be assessed under the ‘rule of reason’ approach. This ruling of the Supreme Court would facilitate scrutiny of agreements entered into

by the parties under intellectual property transactions, for antitrust violations.

European Union

The European Commission has imposed a fine of € 93.8 million (approx. 7263 million INR) on Danish pharmaceutical company Lundbeck and fines totaling € 52.2 million (approx. 4041 million INR) on several producers of generic medicines. In 2002, Lundbeck entered into agreements with each of these companies to delay the market entry of cheaper generic versions of Lundbeck's branded citalopram, a blockbuster anti-depressant. These agreements violated EU antitrust rules that prohibit anti-competitive agreements (Article 101 of the Treaty on the Functioning of the European Union – TFEU). These generic companies were notably Alparma (now part of Zoetis), Merck KGaA/Generics UK (Generics UK is now part of Mylan), Arrow (now part of Actavis), and Ranbaxy.

Citalopram is a blockbuster anti-depressant medicine and was Lundbeck's best-selling product at the time. After Lundbeck's basic patent for the citalopram molecule expired, it only held a number of related process patents, which provided a more limited protection. There was possibility of market entry of producers of cheaper, generic versions of citalopram. Indeed, one of them had actually started selling its own generic version of citalopram and several



other producers had made serious preparations to do so.

Instead of competing, the generic producers agreed with Lundbeck in 2002 not to enter the market in return for substantial payments and other inducements from Lundbeck amounting to tens of millions of euros. Lundbeck paid significant lump sums, purchased generics stock for the sole purpose of destroying it, and offered guaranteed profits in a distribution agreement. The agreements gave Lundbeck the certainty that the generics producers would stay out of the market for the duration of the agreements without giving the generic producers any guarantee of market entry thereafter. These agreements are very different from other settlements of patent disputes, where generic companies are paid off for various other reasons and not only to stay out of the market.

"It is unacceptable that a company pays off its competitors to stay out of its market and delays the entry of cheaper medicines. Agreements of this type directly harm patients and national health systems, which are already under tight budgetary constraints. The Commission will not tolerate such anti-competitive practices".

EU Vice-President JoaquínAlmunia, in charge of competition policy.

KNOW YOUR COMPETITION ACT

In the previous issue, features of the Act were briefly introduced. In this issue, various aspects of the anti-competitive agreements as provided under Section 3 of the Act are discussed.

‘Agreement’ Defined as Per Act

The word ‘Agreement’ has wide connotations and interpretations under various laws. However, in

Competition Law, the term ‘Agreement’ means any ‘arrangement’, ‘understanding’ or

‘action in concert’. It includes formal or informal, written or oral agreement, whether or not meant to be legally enforced.

Anti-competitive Agreements

Anti-competitive agreements are agreements among competitors that negatively or adversely impact the process of competition in the market. This refers to a wide range of business practices that a firm or group of firms may engage in order to prevent, restrict or distort inter-firm competition to maintain or increase their relative market position and profits. These practices

mostly take place in the oligopolistic markets, where the decision of a few firms to collude can significantly impact the market and distort competition.

Monopolists are also sometimes found guilty of such anti-competitive practices. These practices often enrich those who practice them and cause disadvantage to the competing

firms and consumers, who are not able to avoid their effects. The economic impact of the damages of anti-competitive practices on both developed as well as developing economies is significant. This is the reason that most developing nations have also now enacted ‘competition law’ to prevent anti-competitive practices prevailing in the economy.

Kinds of Anti-competitive Agreements

Anti-competitive agreements may broadly be classified in two categories- horizontal and vertical agreements as briefly discussed below:

Horizontal Agreements

The agreements that exist between firms at the same level of production chain are called horizontal agreements and are covered under section 3 (3) of the Act. Horizontal agreements are often referred to as collusion, which can occur in the form of fixing prices, limiting output, sharing markets and collusive bidding; between/amongst enterprises engaged in trade of identical or similar products.

Collusion is of two types, explicit and tacit. Explicit collusion is overt collusion, and involves some sort of agreement among the colluding firms. The collusion which is not overt, on the other hand, is known as tacit collusion.

Cartels are a specific case of explicit collusion and are regarded as most pernicious form of anti-competitive behaviour. Cartels include association of producers, sellers, distributors, traders or

service providers, who by agreement amongst themselves limit, control or attempt to control the production, distribution sale or price of, or trade in goods or provision of services.

Horizontal agreements are presumed to have “Appreciable Adverse Effect on Competition (AAEC)”. In such cases, the burden is on the defendant to prove that the agreement is not anti-competitive.

Vertical Agreements

The agreements between firms at different stages of the production chain are called vertical agreements and are covered under Section 3 (4) of the Act. In most cases, vertical agreements occur between suppliers and users of

business inputs. This may relate to price or other matters (such as quotas). Vertical Agreements occur in the form of tie-in sales, exclusive supply agreements, exclusive distribution agreements, refusal to deal and resale price maintenance.

Vertical agreements are assessed on the 'rule of reason' and compared to horizontal agreements are considered relatively less harmful.

Exemptions Under The Act

Holders of Intellectual Property Rights (IPRs)

The Act provides protection to holders of intellectual property rights (IPRs). Section 3 (5) of the Act states that provisions of this section would not restrict the right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting his rights conferred upon him under certain

Acts. These Acts are the Copyright Act, 1957, the Patents Act, 1970, the Trade Marks Act, 1999, the Geographical Indications of Goods (Registration and Protection) Act, 1999, or the Designs Act, 2000. Thus, intellectual property right holder as identified under the aforesaid Acts may impose conditions on their licensees in

exercise of their rights granted under a patent issued to them. However, patentees or owners of any other intellectual property rights cannot directly or indirectly interfere with the competitive process, or cannot impose any condition, which is not essential to protect their IPRs and may have adverse impact on competition.

Export Cartels

Agreements between exporters in spite of being horizontal are exempted as they do not impact markets in India.



Anti-competitive Agreements

Horizontal Agreements

- Agreement to Limit Production
- Agreement to Allocate Markets
- Agreement to Fix Prices
- Bid Rigging or Collusive Bidding

Vertical Agreements

- Tie-in Arrangement
- Exclusive Supply Agreement
- Exclusive Distribution
- Refusal to Deal
- Resale Price Maintenance

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