



The Quarterly Newsletter of Competition Commission of India (CCI)

Fair Play

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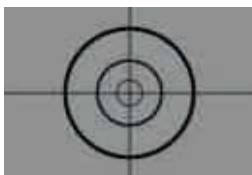
Five Years of Competition Law Enforcement

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KNOW YOUR COMPETITION ACT

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FROM THE DESK OF THE CHAIRPERSON



India was one of the last major economies to introduce a modern competition law regime. Although India's Competition Act was enacted in 2002, its enforcement was delayed and the Competition Commission of India (CCI) has been fully functional only from May 20, 2009. This year, CCI completes five years of credible and effective enforcement. In spite of being one of India's youngest economic regulators, we have been enforcing the law vigorously, though pragmatically. Within this short span of time, CCI has reviewed anti-competitive practices in diverse sectors such as stock exchanges, infrastructure, travel, automobile, real estate, pharmaceuticals, financial sector, publishing, manufacturing, mining and entertainment and has gone on to impose more than ₹ 80 billion in financial penalties. The Commission has received more than 150 combination filings, all of which have been assessed and approved within a period of 30 days. Further, in these five years we have developed a cadre of high-quality professionals, a challenging task given that no competition enforcement expertise was available at home.

The overarching aim of the Competition Act is to create and sustain competitive markets and work for the welfare of the Indian consumer. Since its inception, the CCI has worked tirelessly to achieve this statutory mandate. Whether, it is challenging the abuse of dominance of economic giants or investigating cartels in key economic sectors, the Commission has demonstrated its commitment to make markets efficient and more competitive. What is more, the CCI has steadfastly stood beside the Indian consumer.

In the area of merger-control, CCI has been pro-active in responding to the needs and aspirations of the Indian industry and such efforts have earned praise from several industry stakeholders. We have institutionalised pre-merger consultation in both procedural and substantive issues, demonstrating our commitment to support Indian industry in its compliance with the evolving Indian merger-control jurisprudence.

We are committed to develop a "competition culture" in India and our advocacy initiatives bear testimony to that fact. Over the past five years, we have worked with industry groups, trade associations, judiciary, consumer groups and other stakeholders to create awareness and change the mis-perception about competition law being another bureaucratic hurdle in carrying on Indian business. In the coming years, we will endeavour to further bridge this gap.

Creating regulators is not enough; the key is to have an efficient regulatory process. We have worked hard to achieve this milestone and are ready for the many challenges that lie ahead.

Ashok Chawla



The emergence of regulatory governance in India is of recent origin. Regulation of markets became a necessity in the aftermath of globalisation and economic liberalisation of the economy as economy was thrown open to competition within and from abroad. In a free market economy, vested interest groups, large monopolistic firms and other stakeholders could distort the process of competition and deprive markets of their ability to deliver efficient results. It was realised that India's old competition law i.e. the Monopolies and Restrictive Trade Practices (MRTP) Act, 1969 had outlived its utility and a new law

was needed in line with new economic philosophy to protect and nurture the competitive process.

Based on the recommendation of an expert committee, the Competition Act, 2002 (hereinafter the Act) was enacted in the year 2002 and partly notified in January 2003. The Act however, had a legal challenge, which delayed the establishment of the Commission and enforcement of the Act. The Act was subsequently amended by the Competition (Amendment) Act, 2007 embodying the modern principles of competition law. As in most modern competition laws, the

Indian law also seeks to (a) prohibit anti-competitive agreements, including cartels; (b) prevent abuse of dominant position; (c) regulate mergers and acquisition, and (d) propagate competition advocacy. The Act has established a Commission comprising of a Chairperson and a maximum of 6 members. The Commission is vested with the same broad powers as are available to competition authorities in other jurisdictions.

Beginning of new era

The era of enforcement against monopolies and restrictive trade practices gave way to competition

enforcement with the constitution of the Competition Commission of India (CCI) in 2009. The overarching aim of the Commission is to create and sustain fair competition in the economy that will provide a 'level playing field' to the producers and make the markets work for the welfare of the consumers. An appellate body called the Competition Appellate Tribunal was later set up in May 2009, with final appeal lying to the Supreme Court of India. In 2009, the earlier MRTP Act was repealed and the MRTP Commission established under that Act was abolished. MRTP Commission's pending cases were transferred to CCI.

Major challenges

In a developing economy like India, various stake-holders perceive competition regulation as a new bureaucratic hurdle in carrying on business. The level of awareness even among economic stakeholders is limited. Not many perceive the Act as "business friendly" which, in the ultimate analysis, will lead to higher efficiency, lower costs and improvement of quality. This has been one of the reasons which delayed notification of provisions relating to combination regulations. Due to apprehensions in the minds of industry regarding combinations review, it was only after an extensive consultation process that it could be enforced from June 2011.

The enforcement of the Act required CCI to frame a number of regulations as mandated under section 64 of the Act, which was a major task to facilitate the working of the Commission. Based on a consultative process with various stakeholders, CCI framed six regulations and notified the same in the very first year of its enforcement.

Another challenge before the Commission has been setting up an appropriate organisational structure necessary for effective competition regulation. This included developing a cadre of high quality professionals in various disciplines to assist the Commission in discharge of its duties. The Commission carried out a direct recruitment drive and selected professionals at various levels. Capacity building at all levels in the Commission has been a daunting task given the fact that no competition enforcement expertise was available at home. CCI's own endeavours and cooperation with key foreign competition jurisdictions and multilateral organisations provided exposure and training opportunities to newly recruited officers of the Commission.

Section 49(3) of the Competition Act lays responsibility on the Commission to take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues. Given

the fact that competition law is relatively new and various stakeholders including the consumers are not much familiar with the concept and the provisions of the law, the Commission took it as a challenge to create awareness about competition law and benefits of competition in a vast country like India with weak "competition culture".

Competition Jurisprudence

Enforcement of competition law by CCI was questioned by parties in High Courts, Competition Appellate Tribunal and the Supreme Court. Issues raised in these forums pertained to jurisdiction of CCI and also certain innate issues of competition jurisprudence. In the initial days of competition enforcement, the High Courts ruled that CCI has no retrospective jurisdiction but has authority to investigate anti-competitive matters of continuing nature. In 2010 in the case of Competition Commission of India



v. Steel Authority of India Limited, where initial investigation orders of CCI were appealed against and challenged in the appellate tribunal, the Supreme Court pronounced a landmark judgment and limited the intervention of appellate authority in prima facie investigation orders of CCI. Hon'ble Supreme Court, in this judgment, pronounced guidelines on several issues relating to enforcement of the Act, which have become guiding force for the Commission in enforcing the law.

Enforcement of Law

The Commission will soon complete five years of successful enforcement of the Act. CCI has been enforcing the provisions of the Act in a consistent manner and has acquired significant experience in handling cases under section 3&4 as well as section 5 & 6. Several cases have gone to Competition Appellate Tribunal and competition jurisprudence is gradually building up.

Sections 3 and 4: Enforcement Experience

The enforcement provisions of the Act (section 3 & 4) relating to anti-competitive agreements and abuse of dominant position and related provisions were notified on May 20, 2009. Till March, 31, 2014 the Commission has processed more than 450 cases out of which approximately four-fifth cases have been disposed of. Orders have been passed with far reaching implications in a number of cases encompassing a wide range of sectors such as real estate, pharmaceuticals, cement, steel, coal, sports etc. CCI has issued cease and desist orders in many cases as well as ordered for modification of agreements such as in DLF and the Paper Merchant Association matters. Heavy

The Commission has heard several cases of anti-competitive conduct relating to public entities. Recent imposition of a penalty of about Rs 17 billion on "Coal India", a state owned monopoly for abuse of dominance sends a clear message that public entities cannot escape their responsibility under the Competition law.

penalties have been imposed in many cases to discourage the anti-competitive conduct by erring enterprises such as in case of cement cartel.

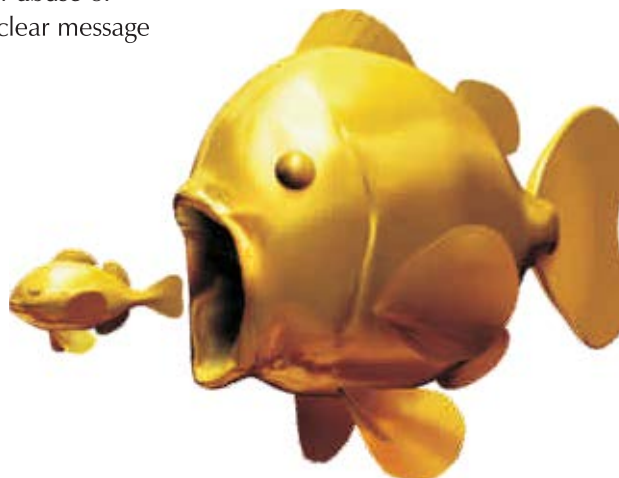
To provide a level playing field, Indian competition law does not discriminate between private and government enterprises except for limited exemptions relating to sovereign functions of government (including activity relating to energy, currency, defence and space). Thus, law is competitively neutral and is being enforced by CCI in the same spirit. The Commission has heard several cases of anti-competitive conduct relating to public entities. Recent imposition of a penalty of about Rs 17 billion on "Coal India", a state owned monopoly for abuse of dominance sends a clear message

that public entities cannot escape their responsibility under the Competition law.

The role of trade associations also came under the scrutiny of the Commission in many cases and a series of directions were issued for compliance by the trade associations. This has sent the message across that while competition law is not an impediment to legitimate association activity; trade associations and their members must be fully aware of the types of conduct frowned upon by the competition law.

Public procurement is a substantial proportion of State spending in India. Bid rigging/ collusive bidding in public procurement has remained an important area for intervention for CCI. CCI found that often suppliers take advantage of inadequate specifications and lack of vigil by procuring authorities and through collusive conduct raise the cost of procurement, causing drain on the exchequer. The Commission has imposed substantial penalties upon the infringing vendors and suppliers.

Given the duty cast upon the Commission under section 18 of the Act, it is a daunting task to monitor the huge Indian economy and identify anti-competitive conduct of enterprises and set them right by prescribing apt remedial measures. This also





requires suo moto action by CCI. Although, there are no statutory prescriptions to set priorities, yet CCI tries to take suo moto action in activities with more visible and direct impact on the lives of a vast number of people, for example, sectors like pharmaceutical retail.

Section 5 & 6 enforcement

Provision of the Act (section 5 and 6) regulating combinations (merger, acquisition, amalgamation etc.), within India were notified with effect from June 1, 2011. The Act provides for mandatory prior approval above the notified thresholds and gives CCI 210 days for finalising decision on a combination filing. Having regard to the fact that time is the essence of these transactions; CCI has a self-imposed limit to clear cases within 180 days on best endeavour basis. As per provisions in "Combinations Regulations", most of the filings are likely to be approved within 30 days and only those with serious competition concerns are likely to go beyond this period to the second stage of investigation.

The Commission, with a view to further simplify the filing requirements and bring about greater certainty in the application of the combination regulation has

amended the Combination Regulations thrice, i.e, in February 2012, April 2013 and recently in March 2014. During the period 01.06.2011 to 31.03.2014, the Commission has received more than 150 combinations filings, all of which have been cleared by the Commission within a period of 30 days as per the provisions of the Combination Regulations. This has helped in boosting the confidence of stakeholders in combination review under the Act.

Advocacy

The cornerstone of a successful market economy is the existence of a "competition culture" for which competition advocacy is vital. CCI has addressed the whole range of stakeholders including industry, academia, judiciary, consumers, public sector undertakings and government at the federal and provincial levels, to make them aware of the beneficial role of competition. In the last five years, the Commission has organised numerous workshops, conferences, seminars, used electronic media and undertaken studies in pursuance of advocacy mandate. As government policies may be important source of market distortions, CCI is also engaging the government to review economic

policies and make them competition complaint.

Enforcement is the ultimate advocacy. Once, penalties have been imposed on the enterprises and the trade associations, awareness has started to set in. Many companies are putting in place compliance programmes. CCI is focusing on advocacy and communication in a very big way to pass on the message that the competition law is a new paradigm and the business community has got to adapt to it.

CCI has also formed a core advisory group called Eminent Persons Advisory Group (EPAG) consisting of corporate, academics, regulators and civil society to guide CCI in undertaking efforts to make market competition compliant. In order to create wider awareness amongst various stakeholders in the economy, CCI has been commemorating May 20th as its Annual Day by bringing together various stakeholders and creating a call for competition compliance in the economy.

International cooperation

Driven by economic globalisation, the world is getting smaller and

It is in recognition of its achievements, CCI was nominated for 'Global Competition Review (GCR) Award' in 2013 and 2014 under the category of "Agency of the Year-Asia-Pacific, Middle East & Africa".

now business and money have no geographical boundaries. Competition authorities are facing a unique challenge: competition law is national, while markets are increasingly global in their reach. Therefore, dialogue and cooperation between competition agencies are no more a matter of choice. CCI's interactions with mature jurisdictions as well as multilateral agencies have helped in learning how to best forge ahead. CCI has signed Memorandum of Understanding with competition agencies of US, EU, Australia and Russia and is considering MOUs with few other agencies. CCI recently brought into focus the global relevance of BRICS Competition Authorities by successfully organising the 3rd BRICS International Competition Conference in New Delhi.

Score card so far

In spite of many challenges, CCI is beginning to make an impact and stakeholders are realising that fair play is integral to the functioning of a sound economic architecture. Competition law and policy in India is emerging as a tool to enhance economic development, promote competition and protect the consumers in India.

During the first five years, CCI has achieved a reasonable level of success. The Commission has evolved its processes based on international best practices and adhered to principle of competitive neutrality establishing itself as an

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impartial competition regulator enforcing the law equally on private as well as state owned entities. The orders of the Commission reflect the robustness of the system and determination to curb the anti-competitive practices in Indian markets. This is also reflected by CCI's recent articulation of a 'Vision Statement' and a 'Mission 2020 Statement', which underscore the priorities of the Commission. It is in recognition of its achievements that CCI was nominated for 'Global Competition Review (GCR) Award' in 2013 and 2014 under the category of "Agency of the Year-Asia-Pacific, Middle East & Africa".

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Looking forward

Jurisprudence in Competition Law is at a nascent stage and, as a nation; there is need to ensure that its foundations are strong. The development of a robust jurisprudence in the coming years will lay down the foundation for competition regulation that is

credible in the eyes of stakeholders—both in India and abroad. Towards that objective, CCI will have to rely on domestic as well as overseas expertise and skills. It will be the endeavour of CCI to enforce competition law through a judicious mix of effective enforcement backed by widespread advocacy among stakeholders to foster a competition compliance culture in the country. In order to give impetus to the evolutionary phase of competition law and policy in India, the Government of India is considering wide ranging amendments in the Act and also a National Competition Policy.

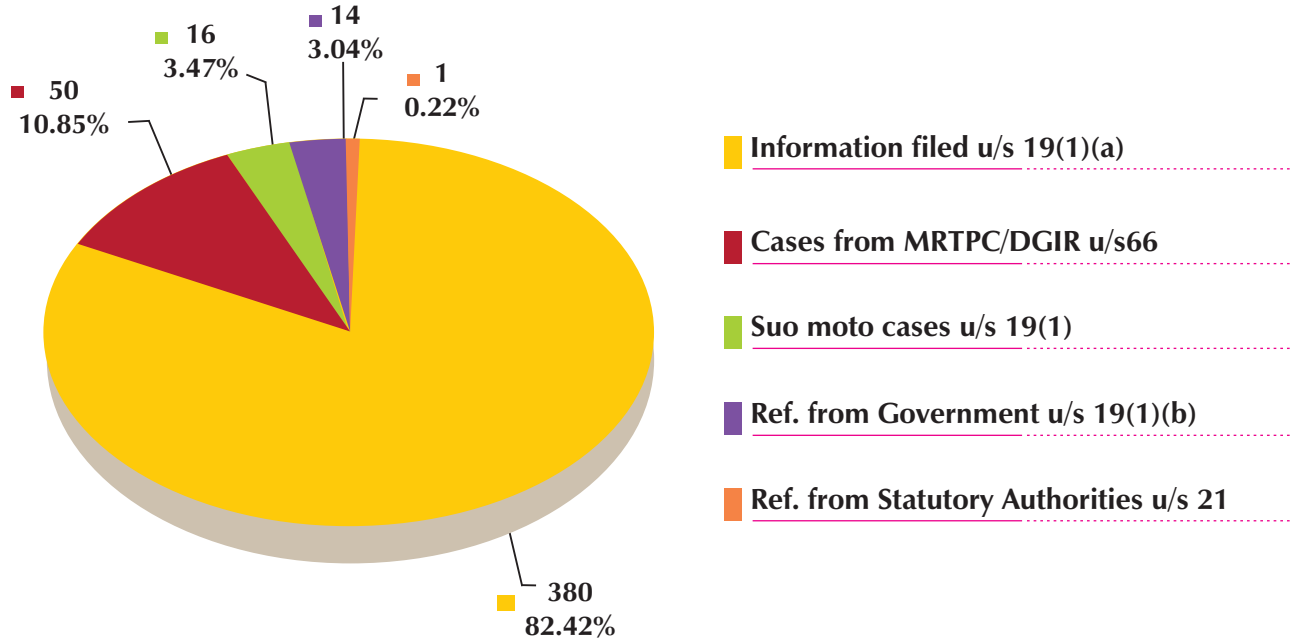
CCI fully realises that many challenges lay ahead. The sheer size of the country, diversity of people, culture and language, country's large and disparate economy and above all, weak "competition culture" make both enforcement and advocacy highly challenging. The task is further complicated due to the challenges posed by the increasingly transnational nature of business activities and India's integration into the global economy.

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FIGURES SPEAK

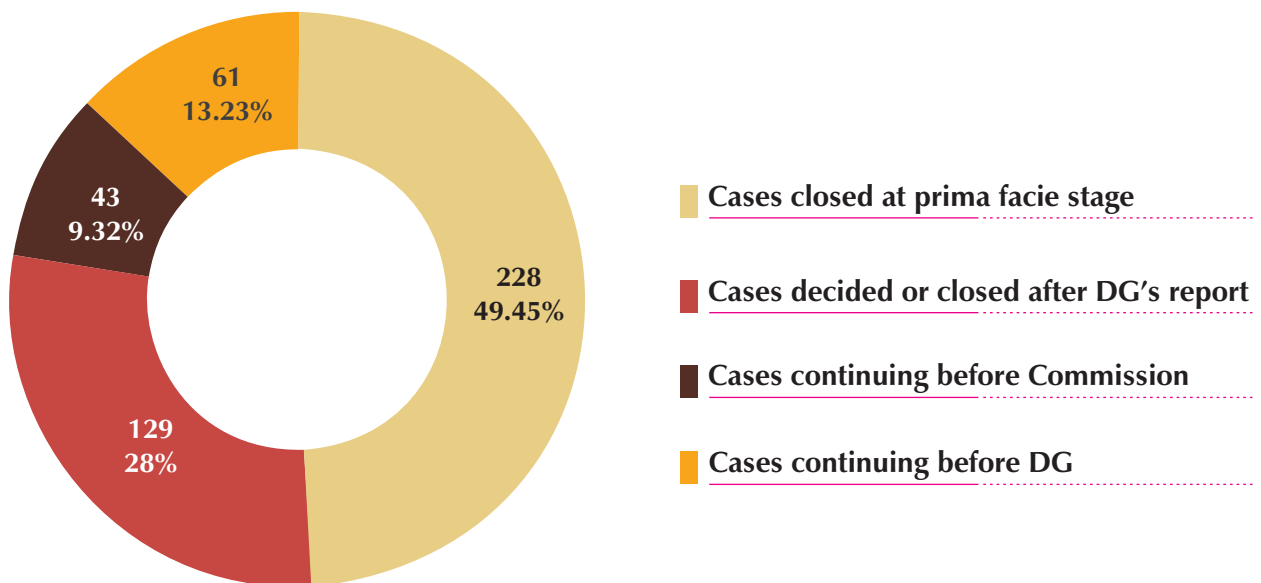
Matters Undertaken by CCI

(Under section 3 & 4)
(as on March 31, 2014)
Total Cases: 461



Case Status

(As on March 31, 2014)
Total Cases: 461



SECTION 3 & 4 ORDERS


CCI penalises

Dr. L.H.Hiranandani Hospital, Mumbai for anti-competitive conduct

CCI has found Dr. L.H. Hiranandani Hospital, Mumbai in contravention of section 3 of the Competition Act, 2002. The informant in case no. 39 of 2012, Mr. Ramakant Kini had approached CCI alleging anti-competitive conduct by the opposite party Dr. L.H. Hiranandani Hospital in not allowing any other stem cell bank to enter its premises to collect the stem cell of a new born except M/s Cryobank with whom it had an exclusive agreement.

The Commission concluded that the exclusive agreement between

the opposite party and M/s Cryobank did not accrue any benefit to the consumer; rather it limited consumer choice. Since the stem cell banking service is at a nascent stage in India with very few players, the Commission took the view that this kind of exclusive contract between a hospital and a stem cell bank had the tendency of distorting market mechanism as each player, instead of competing with other players for efficiency and competitive price, would endeavor to pay commission to different hospital and mop up



clients. The Commission further held that because of the total dependence of the expecting mothers on the maternity service providers to get access to stem cell/cord blood from newly born in the hospital, the adverse effect on competition is much more telling in this particular market. The Commission also noted that the consumer may suffer in the long run when the stem cell banker tied up with a hospital, provides downgraded services due to inefficiency or otherwise vis-à-vis other competitors.

Based on these reasons, the exclusive agreement between Dr. L.H. Hiranandani Hospital and M/s Cryobank was held to be anti-competitive and in contravention of the provisions of section 3(1) of the Act as it caused appreciable adverse effect on competition in the market of stem cell banking. Accordingly, CCI passed order under section 27 of the Act declaring the agreement of OP hospital with Cryobank for the years 2011-12 and 2012-13 as null and void. The OP hospital has been directed not to enter into a similar agreement with any stem cell bank in future. CCI also imposed a penalty of Rs. 3,81,58,303/- calculated at the rate of 4 per cent of the average turnover of OP hospital. The penalty is to be deposited within 60 days of receipt of the order.

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No cartelisation in the 3G spectrum case

In case no. 55 of 2013 titled Mr. M.K Shrivastava, DGM (Regu-I), BSNL v. M/s Bharti Airtel Limited and Others, the information alleged cartelisation amongst three private telecom service providers in India i.e. M/s Bharti Airtel Limited (Opposite Party 1 or OP1), M/s Vodafone Mobile Services Limited (Opposite Party2 or OP2) and M/s Idea Cellular Limited (Opposite Party3 or OP3) (together as OPs) in 3G spectrum auction held in 2010. It was alleged that OPs had entered into illegal roaming arrangements amongst themselves

to secure roaming rights over areas for which they had not bid.

The information filed with the Commission revolved around the notice inviting applications from eligible operators to bid for 3G spectrum services in 22 circles across India by the Department of Telecommunication (DoT). The informant was not a bidder but was required to match the winning bid in terms of price for the 3G spectrums for 20 telecom circles, for which the informant had made a payment of Rs. 10,186.31 crores. A multi-stage bidding process was

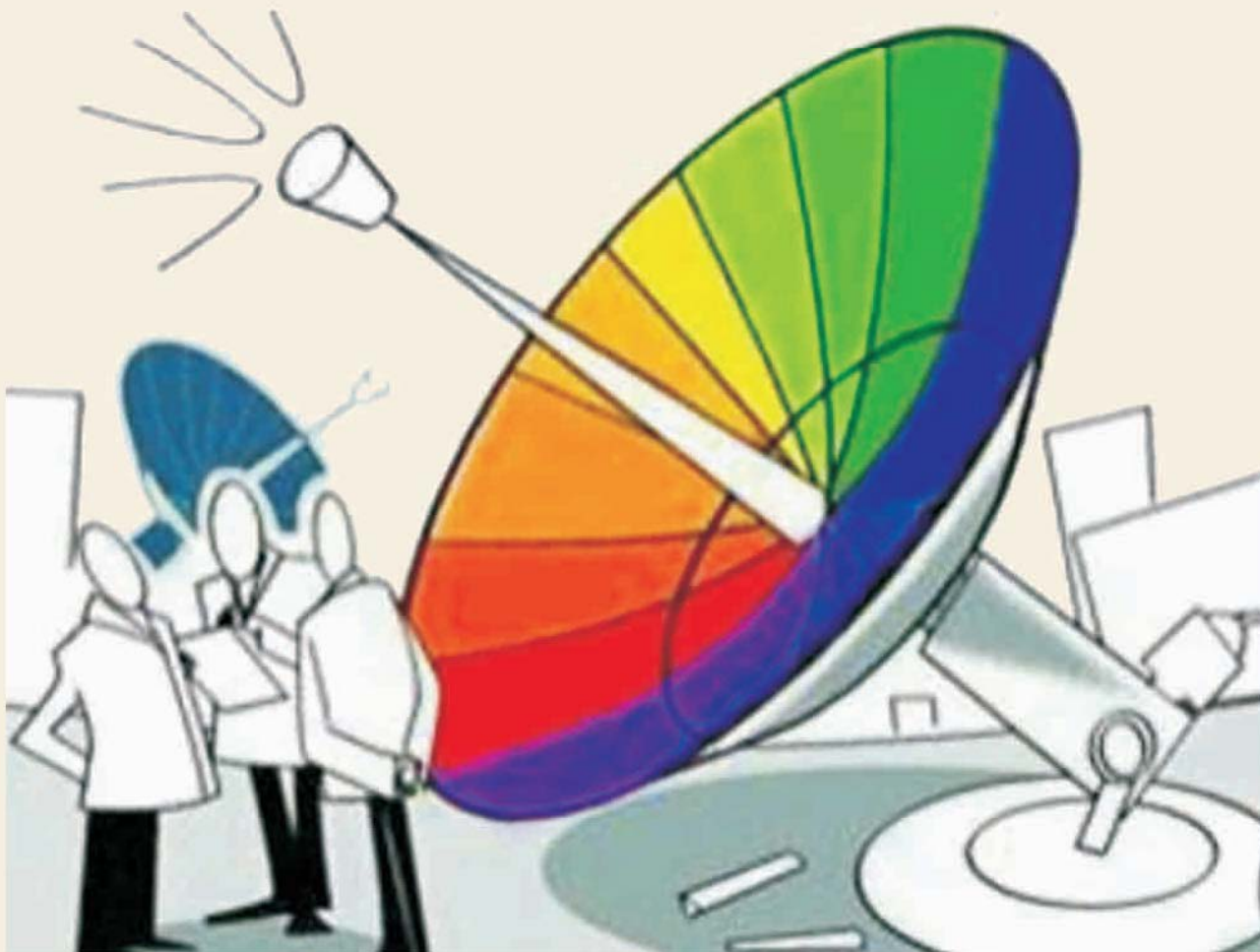
followed and the informant alleged that the OPs coordinated their bids in a manner to maximise their combined coverage without having to compete against one another and secure maximum circles at lowest prices. As per the changes made in the Unified Access Service Licenses (UAS Licenses) the OPs were to provide services only in the circles they had won the 3G spectrum bid. It was alleged that the bidding was done in such a way that the OPs ensured that at least one of the three operators had a presence in every circle in India

and entered into arrangements amongst themselves to provide services in areas in which they had no license.

The Commission considered the above allegation and prima facie analysed the information available with respect to the bids. It was found that Airtel, Vodafone and Idea got 3G spectrums in 13, 11 and 9 service areas respectively out of the total 22 circles. The Commission was of the view that had the OPs formed a cartel, the

total number of licenses obtained would have been 22 and not 33, as in the present case. Furthermore, no other data had been furnished to show that the OPs had formed a cartel amongst themselves. It was observed that operators and service providers would want to bid for high revenue circles such as in metropolitan cities and an adverse inference should not be drawn against a decision to not bid in all sectors.

With respect to the arrangements between the OPs relating to inter and intra circle arrangements, the Commission was of the opinion that remedy of such violations does not lie with the Commission but should be considered in the light of the terms and conditions of the license granted to the parties. Accordingly, the Commission closed the case under section 26 (2) of the Act.



SECTION 5 & 6 ORDERS

Commission approves acquisition of formulations business of Elder by Torrent

Torrent Pharmaceuticals Limited (Torrent) and Elder Pharmaceuticals Limited (Elder) filed a notice pursuant to the execution of a Business Transfer Agreement (BTA) and a Manufacturing and Supply Agreement (MSA), between the parties. Both Torrent and Elder are engaged in the business of manufacturing and marketing of branded generic medicines in different therapeutic segments.

Under the proposed combination, Elder has agreed to sell its certain branded domestic formulations business or parts thereof, in India and Nepal (Identified Business) to Torrent, which comprises approximately 30 brands across the therapeutic segments of women's healthcare, nutraceuticals and pain & wound management. However, the manufacturing facilities of Elder, its operations of in-licensing deals, anti-infective product categories and exports business do not form part of the Identified Business and therefore would not be transferred to Torrent.

The competition assessment of the proposed combination is limited to acquisition of these brands, in India. For the purpose of the competition analysis of the proposed combination, various products of Elder and Torrent were classified on the basis of their therapeutic category i.e. the intended use of the drugs/formulations. On the basis of this classification, it was observed that there is a horizontal overlap in sixteen therapeutic categories, between the existing products of Torrent and the products being acquired from Elder. It was further observed that in most of these therapeutic categories, the combined

market share of the Parties is not significant enough to raise any competition concern. Even in those therapeutic categories where the combined market share is high, this is almost entirely on account of the market share of one of the parties with the other party having a miniscule share.

The horizontal overlap between the existing products of Torrent and the products being acquired from Elder was also assessed at the therapeutic sub-group or molecule level. In this regard, it was observed that there is a horizontal overlap between the existing products of Torrent and the products being acquired from Elder in eleven molecules/therapeutic sub-groups, out of which, the post combination market share of Torrent will be 10 per cent or more only in respect to three categories. However, in all these three therapeutic sub-groups, the combined market share of the parties is primarily on account of Elder as Torrent has very limited presence in these sub-groups.

In relation to vertical relationship between the parties, it was submitted in the notice that as on date, there are no vertical arrangements between Torrent and Elder. However, Torrent will enter into certain agreements with Elder and entities related to Elder for supply of certain products. In this regard, it was observed that these aforesaid agreements are not likely to result in any appreciable adverse effect on competition in India. It was also observed that Torrent, Elder and certain persons/entities related to Elder have agreed for certain non-compete covenants through different agreements. As per these covenants, Elder, certain

promoters of Elder and their affiliates shall not engage in (a) specified business activities in relation to products categorised under certain therapeutic area subgroups for a period of three years; (b) specified business activities in relation to products categorised under therapeutic area subgroups for Chymoral and Shelcal for a period of five years; and (c) the products containing any of the anti-oxidants, vitamins, minerals, proteins, hematinics, bone supplements, omega fatty acids or nutrition products that form part of the composition of the acquired products and the vitamins, minerals and nutrition market for a period of 3 years.

During the assessment of the proposed combination, the parties were required to provide clarification and justification on certain aspects of non-compete obligations. In their response, the parties while providing clarification for the duration as well as the scope of the business activities restricted under the non-compete covenants, proposed certain modifications to the non-compete obligations, in terms of sub-regulation (2) of Regulation 19 of the Combination Regulations.

The Commission accepted the modifications offered by the parties and approved the proposed combination under sub-section (1) of section 31 of the Act vide its Order dated 26.03.2014. The Commission also directed the parties to make necessary amendment(s) in the agreements so as to incorporate the said modifications and submit a copy of such amended agreements along with the relevant documents to the Commission by 5.06.2014.

FAIR PLAY Completes 2 Years

FAIR PLAY, the quarterly newsletter of CCI completes two years of publication with the current issue. *FAIR PLAY* was launched in 2012 as an advocacy tool and a mouth piece of CCI to get connected with various stakeholders in the economy. The first issue was published in electronic form and thereafter printed version was introduced. Publication of *FAIR PLAY* has been one of the most significant outreach initiatives of CCI since its inception, which drew accolades from stakeholders.

The objective has been to bring to stakeholders every quarter the latest news, important orders, key investigations, and noteworthy

developments in CCI. Effort was also made to develop knowledge about various provisions of the Act, and present the complex legal and economic principles of competition enforcement in easy to comprehend language. Presenting information on competition law and policy developments in relevant foreign jurisdictions has also been a key feature of the *FAIR PLAY* in the last two years.


In every issue, *FAIR PLAY* carried an "IN FOCUS" article, which brought the enforcement message of the Act and approach of CCI on the same to stakeholders including academia, non-government actors, and the government departments.

The most significant IN FOCUS articles have been on Trade Associations, Public Procurement, Competition Compliance, and BRICS International Cooperation. Although not conceived as a journal on the subject, yet *FAIR PLAY* is being referred consistently in academic and non-academic publications.

For the last two years, guided by the vision of CCI Chairperson, *FAIR PLAY* has been nurtured by the present editorial team from the capacity building division of the Commission. From next issue onwards, the editorial baton would pass on to advocacy division of the Commission.



INVESTIGATION INITIATED



CCI Orders Investigation Against Telefonaktiebolaget LM for Alleged Abuse of Dominance

Another case against Telefonaktiebolaget LM i.e. case no.76 of 2013 for alleged abuse of dominance in demanding exorbitant royalty rates and unfair terms for licensing its Standard Essential Patent (“SEP”) has been filed. Information was filed against M/s Telefonaktiebolaget LM Ericsson (Publ) [Opposite Party or OP] by M/s Intex Technologies (India) Ltd. [Informant]. CCI has already caused an investigation against the OP in another case of abuse of dominance alleged by Micromax Informatics Limited.

The informant has alleged that the OP demanded exorbitant royalty rates and imposed unfair terms for licensing its patents to the Informant. OP’s royalties were linked with cost of product of user for its patents. These practices of imposing discriminatory royalty rates are contrary to the Fair, Reasonable and Non-Discriminatory (FRAND) terms. Informant further alleged that OP

might have offered different royalty rates/commercial terms to other potential licensees belonging to the same category as that of informant as OP refused to share the commercial terms and royalty payments on the grounds of Non-Disclosure Agreements (“NDAs”). It was also alleged that the NDA provided jurisdiction of Singapore, which has crippled the Informant to address or seek redressal of its grievances in a local court. It was also submitted by informant that OP is a member of European Telecommunications Standards Institute (ETSI) which is officially recognised by the European Union as a European Standards Organisation and was required to give irrevocable written undertaking, that it is prepared to grant irrevocable licences on FRAND Terms, to be applied fairly and uniformly to similarly placed players as per clause 6 of ETSI IPR policy.

In the present case, OP had declared to ETSI that it had patents

over 2G, 3G and EDGE Technology and these patents were, Standard Essential Patents (SEP). SEPs have no alternate technology in the Indian market and OP being a holder of the same clearly suggested that it enjoys dominance over its present and prospective licensees in the relevant market. After having perused, the facts and information, CCI found a prima facie case under section 26 (1) of the Act. The reasons for the prima facie opinion included the alleged discriminatory practices adopted by the OP contrary to FRAND terms, OP’s refusal to share commercial terms of FRAND licenses with other licensees, forcing the users (including informant) to sign the NDA (disabling each user of SEPs to know the terms of royalty of other users), and imposing a foreign jurisdiction for redressal of disputes instead of a country where both the parties have their businesses. Accordingly, CCI directed the DG to investigate the matter and submit a report.

REGULATION UPDATES



REGULATION

UPDATE

- The provisions of the Act relating to the regulation of combinations as well as the Combination Regulations have been in force with effect from 1st June 2011. The Combination Regulations were amended twice on 23rd February 2012 and 4th April 2013, with a view to relax filing requirements in respect of transactions not likely to raise competition concerns, provide certainty, reduce compliance requirements and make filings simpler. In continuation of these efforts, CCI has further amended the Combination Regulations on 28th March 2014 to, inter alia, simplify and provide greater clarity on the application of the combination provisions of the Act and the Combination Regulations. The highlights of the recent amendments in the Combination Regulations are as under:
- It has been clarified that the notification requirement shall be determined with respect to the

substance of the transaction and structure of transaction(s) having the effect of avoiding notice shall be disregarded;

- Item (10) of Schedule I has been deleted with a view to avoid ambiguity and uncertainty regarding insufficient local nexus and effect on markets in India;
- Considering the nature of cases and the resources deployed by the Commission, as well as the assistance provided to parties, it has been decided to revise the fee, from INR 10,00,000 to INR 15,00,000 for Form I, and from INR 40,00,000 to INR 50,00,000 for Form II;
- It has been decided to delete regulation 29 which was perceived to impose an additional condition in respect of preferring appeal in matters relating to combinations; and
- Similar to Form I, now the regulations do not require verification on each page of Form II.

Consistent with the international best practices, CCI has been offering informal pre-notification consultation with its staff on the procedural issues relating to filing of notice. Considering the experience of more than two and half years of enforcement and the requirements of stakeholders, it has been decided to expand the scope of consultation to include substantive issues regarding filing of notice with CCI. This measure is expected to benefit the parties with appropriate guidance on the requirements of combination provisions of the Act and the Combination Regulations. As before, the pre-filing consultation would continue to be informal & verbal and the consultations offered would not be deemed to be the opinion of the Commission in any manner whatsoever, or binding on the CCI.

ADVOCACY INITIATIVES

Webcast on “Application of Knowledge of Competition Law During Audit of Stakeholders”



A Webcast on “Application of knowledge of Competition Law during Audit of Stakeholders” was organised in office of Comptroller & Auditor General of India, New Delhi on February 13, 2014. The webcast was for more than 150 offices of CAG across India. Mr. S.L. Bunker, Member, CCI inaugurated the WEBCAST and officers of CCI gave their presentations and answered the queries of the delegates.

Advocacy Initiatives with Central Government



As part of advocacy initiatives for

Government, a team of officers under the leadership of Dr. Geeta Gouri, Member, CCI held a preliminary meeting with the key functionaries of Department of Agriculture and Cooperation, Ministry of Agriculture on January 20, 2014 in Krishi Bhawan.

Advocacy Initiatives with Judiciary



CCI made a presentation on “Overview of Competition Act, 2002” and had interaction with 40 newly recruited Additional District and Session Judges at Judicial Training & Research Institute, Lucknow on January 22, 2014.

A workshop on Competition Law was organised with High Court Judges of Kerala at Kochi on February 13, 2014. Mr. S.N. Dhingra, Member, CCI gave a key note address in the workshop which was attended by Judges of High Court of Kerala.

Advocacy Initiatives with States

CCI officers under the leadership of Mr. Anurag Goel, Member, CCI participated in two workshops on competition issues organised by Government of Kerala on January



7-8, 2014 at Thiruvananthapuram and Kochi respectively and made presentations.

CCI officers led by Mr. Goel, also participated as resource persons in a ‘Workshop on Exploiting Benefits Of Competition’ organised with Government of Uttar Pradesh at Lucknow on January 24, 2014

Advocacy Initiatives with Training Academies



As part of CCI initiatives in Government training academies, CCI officers held sessions on ‘Overview of Competition Law’ and ‘Competition Law and Government’ on January 17, 2014 during the Management Development Programme for Lok Sabha Secretariat Officers organised at National Academy of Direct Taxes, Nagpur.

EVENTS

Tenth DVKS Lecture

Mr. Vikram Mehta delivered tenth DVKS lecture on "Competition concerns in energy sector in India" on March 20, 2014 at CCI. Mr. Mehta is presently chairman of Brookings India and has long held the position of chairman of the Shell Group in India.



Offsite Workshop on Leadership & Team Building



Offsite Workshop on Leadership & Team Building for the officers of CCI was organised during March 21-23, 2014. The workshop focussed on developing leadership and team-building among officers through various interactive field activities.

Second Special Knowledge Sharing Lecture

Second Special Knowledge Sharing Lecture on "Competition issues in Transport Sector" was delivered by Dr. Russel Pittman, Director of Economic Research in the Antitrust Division of the U.S. Department of Justice on January 22, 2014.

ENGAGING WITH THE WORLD



Member Mr S.L. Bunker participated in the OECD Korea Policy Centres 10th anniversary celebrations. The event comprised a workshop on "International cooperation with cross border competition cases", in which Mr. Bunker made a presentation on the Indian perspective on the subject.





Chairperson CCI Ashok Chawla attended OECD Competition Committee and Global Forum on Competition meetings during February 24-28, 2014 in Paris, France. CCI also contributed two papers i.e, a) Competition and Corruption, and b) Competition Concerns in Pharmaceutical Sector for the meeting.



Distinguished Visitors from Abroad

The Lord Mayor of City of London, Rt Hon Alderman Fiona Woolf along with delegation, visited the Commission on January 20, 2014, and discussed issues of mutual interest with the Commission.



American Bar Association (ABA) delegation, visited the Commission on February 13, 2014, and had meeting with the Commission.



International Events

CCI officials participated in various workshops/ seminars/ meetings, some of which are:



2014 Global Antitrust Colloquium for International Competition Agency Official organised by George Mason University School of Law in cooperation with the US Federal Trade Commission during February 13-14, 2014 in Virginia, the USA.



2014 ABA/IBA International Cartel Workshop during February 19-21, 2014 in Rome, Italy.



4th Joint Session of the International Working Group for Studying Competition Problems in Pharmaceutical Sector during March 11-12, 2014 in Moscow, Russia.

DEVELOPMENTS IN OTHER JURISDICTIONS

EU fines power exchanges € 5.9 million in cartel settlement

The European Commission has imposed fine of €6 million on the two leading European spot power exchanges for agreeing to not to compete with each other for their spot electricity trading services in the European Economic Area (EEA). France's EPEX Spot (EPEX) and Norway's Nord Pool Spot (NPS) were fined EUR 3.7 million and EUR 2.3 million for breaching antitrust rules. EPEX and NPS agreed not to compete with each other and to allocate European territories between them.

The Commission found that the companies breached Article 101 of the Treaty on the Functioning of the European Union (TFEU) and Article 53 of the EEA Agreement, which prohibits cartels.

In setting the level of fines, the Commission took into account the power exchanges' value of sales for the services concerned within the EEA, the very serious nature of the infringement, the geographic scope and duration of the cartel.

"Power exchanges are central to an efficient functioning of electricity markets. In times when most European consumers are concerned by their rising electricity bills, I am particularly satisfied that we have brought to an end the market sharing agreement between EPEX and Nord Pool Spot."

Joaquín Almunia, European Commissioner for Competition

Swiss Regulator Fines Airlines \$11M for Price-Fixing



Switzerland's Competition Commission (WEKO) fined 11 airlines a total of 11 million Swiss francs (€8.9 million) for operating an air freight cartel between 2000 and 2005.

The airlines fined by WEKO included Korean Air, Atlas Air Worldwide Holdings (Polar Air Cargo), American Airlines, United Airlines, Scandinavian Airlines, Japan Airlines, Singapore Airlines, Cathay Pacific, Cargolux, British Airways Plc. and Air France-KLM. Lufthansa was the leniency applicant and escaped a fine of 15.8 million Swiss francs (€12.8 million).

The Commission in its investigation found that that the airlines had agreed on freight rates, fuel surcharges, war risk surcharges, customs clearance surcharges for the US and the commissioning of surcharges.

Italy fines Roche, Novartis for restricting use of Avastin in favour of Lucentis

Italian Competition Authority fined two pharmaceutical companies 'Roche' and 'Novartis' over EUR 180 million for allegedly colluding to prevent the sale of a cheap drug 'Avastin' used in treating sight problems. The companies have been accused of creating a false distinction between Lucentis, a more expensive drug costing €900 per injection, and Avastin, a cheaper drug costing €81 per injection, which in reality have similar effects and uses.

The Authority found that Roche and Novartis colluded to create an artificial product differentiation and purport 'Avastin' as more dangerous than expensive drug 'Lucentis', in order to influence prescriptions of doctors and health services. The authority also found that both companies benefitted from its sales as both the drugs were developed by Genentech, a subsidiary of Roche and Novartis owns more than 30 per cent of Roche. The Italian Competition Authority, in light of the seriousness of the infringement, imposed on Roche and Novartis, fines totaling 90.5 million and 92 million Euros, respectively.

KNOW YOUR COMPETITION ACT

In the previous issues, various aspects of Competition Act have been discussed. This issue focuses on the provisions of Competition Advocacy under the Competition Act, 2002.

Competition Advocacy



Competition advocacy is one of the main pillars of modern competition law, which aims to create, expand, and strengthen awareness of benefits of competitive markets in the economy. Competition Advocacy constitutes all the activities undertaken by the competition authorities relating to the promotion of a competitive environment through non-enforcement mechanisms. It is a tool of outreach to influence the economic behaviour of market players, elicit support for the principles of competition and convince stakeholders about the innate advantages of competition.

Objectives

There are two key objectives. The first objective is to promote

“Competition Culture” in the economy - an understanding by the public of the benefits of competition. Success in building a competition culture has obvious benefits for enforcement: encouraging self-compliance with the competition law and reducing the need for direct action against erring enterprises; co-operation by stakeholders with enforcement actions, by providing evidence and the like; and greater support by the Government for the mission of the competition agency. The second objective relates to handling of competition distortions introduced by various Government policies such as sector regulation, trade policy, industrial policy etc. through their adverse impact on market structure, business conduct and economic performance. The competition authorities through a sustained process of Competition

Advocacy need to influence the Government to adopt competition friendly policies and laws.

Competition advocacy is thus an essential mechanism for compliance of competition law and creation of competition culture in the economy. The success of a competition regime depends substantially on successful competition advocacy. It is said that a successful competition advocacy effort can bring about economic benefits far in excess of a successful enforcement action.

Advocacy provisions under the Act

The provisions on competition advocacy are incorporated under section 49 of the Act. This provision mandates CCI to take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues. Under this provision, Government may also request CCI for opinion on possible effect of a policy on competition. CCI is required to give opinion within 60 days, which is however not binding on Government. Thus the provision has two dimensions. The first is a mandate for CCI to act to create increased public understanding and acceptance of competition principles. The second reflects CCI’s role as advocate to Government regarding competition friendly legislation and policies. No other law in India has this unique provision.

Advocacy Measures by CCI

In pursuance of the advocacy mandate, CCI has entrusted a dedicated division to undertake competition advocacy activities with the stakeholders. Like other developing countries, India has weak competition culture with competition lacking in many markets including regional and

local markets. The sheer size of the country, the diversity of sectors and business practices and the mix of organised and unorganised sector make competition advocacy a highly challenging task.

The advocacy strategy of CCI is broad based and focuses on awareness building amongst various stakeholders such as Government at Central and State level, business chambers, consumer associations,

academic institutions, judiciary, and various professionals. Various methods include seminars/workshops with stakeholders, publishing advocacy literature and press and television publicity campaigns, interactive meetings with key policy makers and engagement with academia including organising internships for students at CCI.



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For any query/comment/suggestion, please write to capacitybuilding@cci.gov.in

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