



COMPETITION COMMISSION OF INDIA

Address to
**INTERNATIONAL MANAEMENT INSTITUTE,
NEW DELHI**
on
COMPETING WITH FAIRNESS IN INDIAN MAKETS
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Competition : Benefits

- **Is foundation of efficiently working market system:**
 - Maximizes consumer welfare, its ultimate raison d'être – lower prices, wider choice, better services, redressal against exploitation.
 - Accelerates economic growth; higher efficiency/ productivity.
 - Generates innovation; dynamic efficiency.
 - For enterprises: level playing field, redressal against anti-competitive practices.
 - Competition – is an essential condition for competitiveness.

Empirical evidence of benefits



- Australia:
 - Average household income was up by A\$ 7,000/- per annum on account of the competition policy (APC study quoted by OECD).
 - Gains from reform ~ 5.5% of GDP (Paul Crampton, OECD-IADB).
- EU: White Paper on Growth, Competitiveness and Employment, 1993-Ensuring fair competition in market is essential ingredient for enhancing and maintaining competitiveness in economy.
- New Zealand, UK: Pro-competition policy in New Zealand and UK added around 2.5% to their employment rate over 1978-1998 (OECD).
- USA: Fall in prices following deregulation of certain industries.(OECD) In 1990s, competition contributed most to economic growth; raised productivity by 4% p.a. (Paul London).
- India: **Benefits since reforms - increased consumer welfare, enhanced growth, greater competitiveness.**

Role of Competition Law and Policy



Competition Policy has two elements:

- Competition Policy – set of policies that enhance competition, give primacy to market forces, allow entry and exit, reduce controls, minimize regulation, etc. *Most countries migrating to competition-oriented, market-based policies.*
- Competition Law – Law to prohibit anti-competitive practices and regulate potentially anti-competitive mergers; and prevent unwarranted government/regulatory intervention. *Over 100 countries have adopted modern competition laws.*

India's new Competition Law



- Competition Act, 2002 enacted in January 2003
- Competition Commission of India established in October 2003.
- Has one Member /Acting Chairman, plus small complement of staff.
- Provisions regarding Competition Advocacy notified.
- Substantive enforcement provisions not yet notified.
- Amendment Bill introduced and is under consideration of Parliament.

Duties of the Commission



Act establishes Commission to :

- Eliminate practices having adverse effect on competition;
- Promote and sustain competition
- Protect consumers' interests;
- Ensure freedom of trade carried on by other participants in markets in India; and

[Section 18 of the Act]



Main features of Competition Act

- Prohibits Anti-Competitive Agreements;
- Prohibits Abuse of Dominant Position
- Provides for Regulation of Combinations
- Enjoins Competition Advocacy

(*Off-market, non in-market. Ex-post, non ex-ante, except in combinations.)

[Sections 3, 4, 5, 6 and 49(3)]

Anti-Competitive Agreements



- Horizontal agreements, including cartels, related to – presumed to have “appreciable adverse effect on competition”, *price fixing, limiting production/ supply/etc., sharing of market, bid rigging*
- Vertical agreements – subject to *Rule of Reason*
Include: Tie-in arrangement, exclusive supply agreement, exclusive distribution agreements, refusal to deal, resale price maintenance.

[Section 3]

Anti-Competitive Agreements - Example



Global Lysine cartel, decided in US (1996) – turning point in anti-cartel action:

- 5 firms (2- Japanese, 2 – South Korean, 1 – US) were prosecuted for fixing and raising prices for 5 years
- Significantly high penalties; ADM, leader of cartel fined \$100m
- Tough (blue collar) investigative techniques
- Major role of economic analysis in calculation of overcharge

Abuse of Dominance



- Not dominance, but its abuse is illegal
- Dominance not based on arithmetical figure, but on factors listed in the Act
- Acts deemed abuses are :
 - Unfair or discriminatory pricing (including predatory pricing)
 - Limiting production or technical development
 - Denial of market access
 - Conclusion of contracts subject to supplementary obligations
 - Use of dominant position in one market to enter into or protect the other market

Abuse of Dominance - Example



United Brands prosecuted by European Commission. ECJ held following amount to abuse (1978) :

- Refusal to supply long standing customer
- Differing prices for equivalent transactions
- Excessive pricing having no reasonable relation to economic value though not established in this case
- Court assessed UB's dominance from combination of several factors

Regulation of Combinations



- Combination is a broad term; includes merger, amalgamation, acquisition of shares, acquiring of control

LIBERAL REGIME:-

Very high threshold limits – only big ticket combinations subject to regulation

- Voluntary notification regime
- Disposal of inquiry within 90 working days, failing which combination is deemed approved

Regulation of Combinations – Example



FTC, US successfully opposed (1997) pre-merger notification by Staples and Office Depot – office supplies super stores:

- Based on economic analysis, Court accepted office supply super stores as relevant market
- Court recognized undeniable benefits brought by firms to consumers
- However, Court rejected efficiency argument and granted preliminary injunction, which killed the merger



Other Highlights

- Effects Doctrine [section 32]
- International co-operation [proviso to section 18]
- Government departments/undertakings included [section 2(h)]
- Reference by Central Government [section 49(1)]
- Reference by Statutory Authorities [section 21]
- Government can issue policy directions [section 55]
- Government can notify exemptions [section 54]

Effects Doctrine



- Following liberalization/globalization, cross- border economic activity has grown enormously
- This has increased vulnerability to cross-border economic mal-practices/offences
- CCI's jurisdiction extends to anti-competitive practices/combinations taking place outside India but having effects in Indian markets
- This will better protect domestic markets/consumers

[Section 32]

International Cooperation



- For discharging its duties/functions, CCI can enter into memorandum/arrangement with any agency of any foreign country
- Such arrangements important for inquiries against overseas/cross-border violations
- International cooperation and effects doctrine mutually complimentary
- Such agreements exist between several competition authorities

[Section 18]



Reference by Central Government

- Central Government may make a reference to the CCI for opinion in formulation of policy on competition
- Opinion not binding
- No specific provision for suo moto opinion

[Section 49(1)]



Reference by Statutory Authority

Authority may refer for CCI opinion:

- Only during pendency of a proceeding before it
- Provided a party raises a competition issue
- CCI to give its opinion within 60 days, which is not binding
- Opinion is not binding; Authority may pass order “as it deems fit”
- Possibility of overlap/conflict in jurisdictions between statutory authority and CCI

[Section 21]

Competition Act and MRTP Act



Based on liberalized regime

- Competition concepts expressly defined; major role for economic analysis
- Provides for regulation of combinations
- Provides for advocacy
- Power to impose penalty – deterrence factor
- Statutory authority can seek CCI' s opinion
- Government Departments within its ambit

Based on command and control regime

- Competition concepts not expressly defined
- No regulation of combinations
- Has no advocacy role
- No power to impose penalty
- No provision for statutory authorities to seek opinion
- Government Departments outside its ambit



Present Activities of Competition Commission

- Professional ground work
- Competition Advocacy and Public awareness
- Capacity building and training



Professional ground work

- Study of economic, legal concepts
- Market studies/research projects through reputed institutions
- Draft regulations
- Competition Forum
- Close networking with experts

Competition Advocacy and Public Awareness



■ Competition Advocacy

- With Governments / Regulators, to promote pro-competition policies, laws, regulations.
- Competition principles interface with policies relating to: disinvestments, concessions, industrial/sector policies, subsidies, international agreements, entry/exit policies, etc.

■ Public Awareness

- With industry, chambers, trade associations, etc. to strengthen compliance and competition culture.



Competition Advocacy – (continued)

- Various competition authorities have undertaken sustained advocacy programmes
- Awareness amongst stakeholders will promote compliance; less intervention
- Being complex economic law, structured dissemination necessary
- Advocacy with Central/State Governments, regulators and statutory authorities to promote pro-competition laws policies, practices



Capacity building and training

- Implementation of capacity building projects, with overseas assistance
- Library
- Website
- Model is lean, professional organisation
- Training of staff, within and outside country



Disclaimer

This presentation provides only an introduction to competition law, and should not be relied on as a substitute for the law itself.

Further, this presentation is subject to any amendments which may be made in the competition law at anytime in future.



Thank you

Website:

www.competition-commission-india.nic.in