



Competition Law & Regulated Sectors: The U.S. Experience

Competition Commission of India
New Delhi, India
May 10, 2005

- Express Immunity
- Implied Immunity
- Express Applicability

Implied Immunity

General Intent (early cases)

- To displace competition with “pervasive regulatory scheme” (competition off the tracks).
- To displace pervasive regulatory scheme that does not contain specific grant of authority over competition issues (*El Paso Natural Gas* case; regulator off the tracks).

Implied Immunity

Specific intent regarding issues under scrutiny
(1970s – 1990s)

- Regulator has unexercised power (no train wreck)
- Regulator exercised power consistent with competition policy (no train wreck)
- Regulator exercised power inconsistent with competition policy (train wreck)

Above approach represents current DOJ/FTC position.

Recent Trends (2000 – Present)

- Return to old pervasive regulatory scheme displacement of competition authority, even where there is no train wreck.
- Even express applicability of competition laws can result in deference to regulator where there is a pervasive regulatory scheme (*Trinko* case, 2004).