



Competition Commission of India

Competition Act: Some Issues in Implementation

Consultative Meeting with
Investment Commission

December 18, 2007



Competition Act, 2002

- The Act mandates the Competition Commission of India to :
 - *Prevent anti-competitive agreements*
 - *Prevent abuse of dominant position*
 - *Regulate anti-competitive combinations*
 - *Undertake competition advocacy*



Present Status

- Enforcement provisions of Act not yet notified
- Commission's present activities:
 - *Competition Advocacy*
 - *Capacity Building*
 - *Professional Groundwork*



Advocacy : 1

- Initiatives by Commission in respect of:
 - *Department of Posts – Indian Post Office (Amendment Bill), 2006 – monopoly of letter mail, USO fee, new regulator, etc.*
 - *Department of Shipping – Shipping Conferences – tariff fixing; and Shipping Trade Practices Bill, 2005*



Advocacy: 2

- *Department of Telecom & TRAI – number portability, spectrum allocation, additional merger regulation, open access to telecom infrastructure*
- *Ministry of Civil Aviation – price fixing by airline association*
- *Reserve Bank of India – competition issues in banking sector*



Advocacy : 3

- *Department of Food & Public Distribution – Warehousing (Development & Regulation) Bill, 2005 – price monitoring by proposed regulator*
- *Department of Road Transport and Highways – Competition oriented reforms in Passenger Road Transport (in States)*
- *Planning Commission – model concession agreement*



Advocacy : 4

- *Planning Commission – Competition Policy for 11th Five Year Plan document*
- *Planning Commission - overlap between sectoral regulators and Competition Commission*
- *Presentations to Ministries/ others*



Advocacy/Awareness

- 60 seminars/ workshops held with Chambers, Institutes, etc.,
- Interaction with Trade Associations
- Advocacy/awareness literature
- Writings in press
- Training workshops for policy makers
- Internship



Capacity Building: 1

- Commissioned IIM (B) for organizational study of Commission
- Proposal to Government for creation of posts/recruitment of professionals, i.e. economists, lawyers and financial analysts (IIMB recommended 480 by 5th year)



Capacity Building : 2

- Structured In-house Training commenced.
- Proposal to engage international/national academic institution for development of curriculum & delivery of training programme under World Bank project.
- Four officers assigned to course in Economics of Competition Law, Kings' College, London.



Capacity Building : 3

- Competition Forum – 47 sessions
- 60 advocacy/awareness programmes undertaken
- Member/officers participated in international/national seminars/workshops



Professional ground work

- Market studies (Kelkar Committee)
- Network/ Committees of professionals
- Draft Regulations
- Internal guidelines

General Regulations:



Salient features

- Preliminary conference
- Consent order
- Confidentiality
- Closed door meetings
- Prima facie order within 90 days
- Final order by Commission within 21 days of final meeting

Meeting Regulations:

salient features



- Maximum 3 adjournments in a matter
- Meetings through video conference
- Fortnightly meeting for competition advocacy initiatives



Leniency Regulations

- Marker system— first to reach Commission entitled to full leniency; subsequent applicants entitled to lesser reduction in penalty.
- Identity of applicant to be kept confidential
- Upon signing agreement, leniency to be granted; can only be withdrawn if terms of agreement violated by applicant.

Determination of Cost Regulations for Predatory Pricing



- Average variable cost as bench mark
(Areeda -Turner test)
- Provisions for dealing with imputed cost, joint product, by-product, absence of books of accounts, etc.



Combination Regulation

- Exists in all competition laws
- Mandatory filing – only 8 out of 106 countries have voluntary filing
- Voluntary filing not favoured due to uncertainty

Combination (Merger) Regulation- Issues

Issue:

- Minimum thresholds for acquisition of shares/voting rights/assets and possibly to align these with 26% norm prescribed in S. 5
 - *De minimis provision under consideration*



Combination Regulation- Issues

Issue:

- Criteria for ‘dominance’ should specify market share thresholds
 - *This would be retrograde and contrary to international practice (e.g. EU, US)*
 - *Besides, ‘relevant market’ has to be defined before market share can be determined*

Combination Regulation- Issues



contd.

Issue:

- Concept of predatory pricing without a minimum market share trigger can hinder new entrants in product market
 - *Charge of predatory pricing can only be made against 'dominant' enterprise in 'relevant market'*
 - *Highly unlikely that new entrant will be in dominant position*
 - *Three pre - conditions for predatory pricing*



Combination Regulation- Issues

Contd.

Issue:

- Assets and Turnover thresholds need to be increased to reflect inflation and growth
 - *Assets and Turnover can be increased as per law in consultation with CCI taking into account inflation and exchange rate fluctuation - S. 20(3)*



Combination Regulation-Issues

Contd.

Issue:

- Concept of 'group' consisting of enterprises engaged in different product markets is not clear
 - *'Group' concept is very much part of the law in several countries e.g. Brazil, EU, Germany, SA, Portugal, Netherlands, Denmark, Canada, Serbia*



Combination Regulation- Issues

contd.

Issue:

- Time period of 210 days is too long
- Initial stage (s) of review should be rapid, time bound and confidential - for facilitating participation in International Competitive Bids
 - *Concerns proposed to be addressed through regulations*



Combination Regulation- Issues

contd.

- *Transactions having little impact on competition may be required only to inform Commission*
- *For other transactions, time caps for initial review proposed to be 30 and 60 days*
- *One 'long form', for clearance in 30 days, and one 'short form', for clearance in 60 days, proposed. Thus option to give less information. Precedent in mature jurisdictions e.g. Canada (14 days for 'long form'; 42 days for 'short form')*



Combination Regulation- Issues

contd.

- *Proposed time caps compare favourably with other countries*
- *210 days cap applicable to very small percentage of cases. Majority of cases cleared in shorter periods*
- *ICN recommended best practices – 6 weeks and 6 months.*

Time Caps - Comparison



Country	Stage One	Stage Two
Spain	1 month	7 months
EU	25-35 W days	90-125 W days (35+125=160 W days)
Singapore	30 W days	120 W days (30+120=150 W days)
China	30 W days	90-150 W days
Mexico	40 C days	145 (in complex cases)
Japan	30 C days	120 C days (more if information is late)
France	5-8 weeks	Additional 4 months. Further extended by 4 more weeks (thus 5 ½ Months in total)
USA	30/15 C days	-----
Germany	1 month	3 months (1+3= 4 months)
India	30 /60 C days (under consideration)	210 C days

Indian time caps not very different from major jurisdictions



Combination Regulation- Issues

Issue:

- In the initial years CCI should do competition advocacy and thereafter enforcement of anti competitive agreement (S 3) and abuse of dominance (S 4). Only after gaining experience of several years should regulation of combinations begin.
 - *Merger Regulation is an integral part of Competition Law in all significant jurisdictions – recommended by Raghvan Committee after due consideration*
 - *US & EU found it necessary to bring in merger regulation after failing to control anti-competitive practices*
 - *In the absence of merger regulation, unscrambling a merger may involve high socio-economic costs*