



Competition Commission of India

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by:

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Duties of Competition 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

[Section 18]



Main features of Competition Act

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

(These features are found in most modern competition regimes)

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



Anti-Competitive Agreements

- Horizontal agreements including cartels – *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*
 - 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) – a turning point in anti-cartel action

- 5 firms (2 – Japanese, 2 – S. Korean, 1 – US) were prosecuted for fixing and raising prices for 5 years
- Significantly high penalties; ADM, leader of cartel, fined \$100 m
- 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 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
- 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 the firms to consumers.
- However, Court rejected efficiency argument and granted preliminary injunction, which killed the merger



Competition Advocacy

- The Commission *shall* take suitable measures to:
 - ★ Promote competition advocacy
 - ★ Create public awareness
 - ★ Impart training about competition issues

[Section 49(3)]



Competition Advocacy – (continued)

- Various competition authorities had 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



Other Highlights

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



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]



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 effect 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 complementary
- Such agreements exist between several competition authorities

[Section 18]



Present activities of CCI

- Competition Advocacy
- Professional Work (preparatory and foundational)
- Administrative, Establishment, Budget, Accounts
 - ★ Inquiries and regulation of combinations not commenced; concerned sections not yet notified
 - ★ Present work is preparatory and foundational. Objective is to make CCI fully operational at the appropriate time, without further delay at that stage, and to build it into highly professional organization

Details of “Activities and Progress” included in background literature



Activities: Advocacy

- Intensive interaction with industry chambers/professional institutes. Several seminars held by them. Further calendar of events finalized
- Advocacy literature prepared, circulated
- Three large seminars organized by CCI
- Advocacy Programme with State Governments initiated: nodal officers, seminars, market analysis studies, review of State policies, etc.
- Website set up, periodically updated: tool for Advocacy, transparency, compliance, etc.
- Advocacy with 140 Universities/Institutes. Many included Competition Law and Policy in syllabus. Curriculum prepared, circulated. Internship arrangements set up.



Activities – Professional Work

- Initiated analytical market studies/research projects through reputed institutions
- Set up Competition Forum for capacity building/ Advocacy – 31 sessions held
- Draft regulations – general regulations prepared; predatory pricing regulations under preparation
- Two foreign aided projects (World Bank, USAID) approved, activities commenced. Objectives – institutional and personal capacity building
- Six Advisory Committees of Experts assisting Commission in – Market Studies/Research Projects, Regulations, Advocacy, Predatory Pricing, Economic Data and Information, and Course Curriculum
- Proposal to set up Centre for Competition Law and Policy



Activities – Administration etc.

- Set up temporary offices; arranged permanent office
- Arranged initial budget, staff, office services, etc.
- Library
- Website
- Emblem
 - Model is lean, professional organization.



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



Judiciary and Competition Law

- Deciding appeals
- Resolution of disputes between CCI and sector regulators
- Evolution of Competition Law
- May consider presentations (international, national) on competition issues, specially designed for judiciary. If directed, CCI could facilitate.



Thank you

Website: competitioncommissionindia.gov.in