



Competition Commission of India

Presentation in Seminar of
PHD Chamber of Commerce and Industries

at

Chandigarh

On 6 October, 2005

by:

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Competition:

Increases efficiency

Encourages innovation

Enhances consumer welfare--wider choice, lower prices, better quality

Conducive to economic and political democracy

Empirical studies have demonstrated benefits in several countries eg Australia, USA, UK and Ireland

Why Competition Law?

Market economy can suffer from market failures/
distortions, leading to adverse effects on economy
and consumers

This necessitates a law and an authority to check
against such practices

Consequently, about 100 countries have enacted
modern competition laws

India too enacted new Competition Act, 2002 as part
of second generation economic reforms



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 – more serious, *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. Prison sentences awarded.

Tough (blue collar) investigative techniques

Major role of economic analysis in calculation of overcharge

In India-cartels suspected in several industries, but no effective action so far



Abuse of Dominance

Not dominance, but only 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 Co. prosecuted by European Commission. ECJ held following acts amounted 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 eg market share, technological advancement, vertical integration.

In India- suspected cases of abuse of dominance; but no known case of effective action.



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*

Worldwide, most mergers have no issue with competition authorities



Regulation of Combinations - Example

FTC, US opposed (1997) merger by Staples and Office Depot – two office supplies super stores

Based on economic criteria, Court accepted office supply super stores as separate ie relevant market.

Court noted possible anti-competitive fall-out of merger eg huge market share, higher prices, etc

Court rejected efficiency argument and granted preliminary injunction, which stopped the merger

In India- Mergers and Acquisitions increasing; some cases could have anti competitive consequences, and may warrant scrutiny from competition angle.



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 have undertaken sustained advocacy programmes eg UK, Australia, Canada

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

Effects Doctrine- overseas action having effect in India is within CCI jurisdiction *[section 32]*

International co-operation provided for *[proviso to section 18]*

Government departments/undertakings included-level playing field *[section 2(h)]*

Reference by Central Government *[section 49(1)]*

Reference by statutory authorities *[section 21]*

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 by CCI

[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”

[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



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 – 35 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. Third project in pipeline

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 eg cartel

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

Thank you



Website:

competitioncommissionindia.gov.in

