



Inaugural Address
by
Vinod Dhall,
Member,
Competition Commission of India
at

Bhopal
13 February '06

Competition : Benefits

- Accepted as life blood of market economy; accelerates economic growth
- Generates innovation
- Leads to higher productivity/efficiency
- For consumers : lower prices, wider choice and better services
- For businesses : redressal against anti-competitive practices, level playing field, etc.

Research during late 1990s/early 2000s

- Paul London, Economist :
 - Competition contributed to economic growth more than technology, tax cuts, budget policies; raised productivity by 4% p.a.
- Australian Productivity Commission Study found:
 - Average household income went up by AUS \$ 7,000/- per annum on account of the competition policy in Australia
- OECD Study of 2001 showed :
 - Pro-competition policy in New Zealand and the UK added around 2.5% to their employment rate over 1978-1998
- Barnes & Hasbel : the policy that guarantees free-entry and liquidation of companies has contributed 30 – 50% of economic growth in USA and UK
- EU White Paper on Competitiveness, 1994 : Ensuring fair competition in the market is an essential ingredient for enhancing and maintenance of competitiveness in the economy
- Joseph Stiglitz, Project Syndicate, August, 2001
 - *"Strong competition policy is not just a luxury to be enjoyed by rich countries, but a real necessity for the countries striving to create democratic market economies"*
- India – benefits since reforms: enhanced growth, competitiveness, consumer welfare

Maintenance of Competition in economy needs :

- Competition Policy
- Competition Law
- Competition Culture and Awareness

Duties of the Commission

Competition Act, 2002 enacted in
January 2003

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

Commission's role is normally ex-post, not ex-ante
[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

(These features are found in most modern competition regimes, except Advocacy)

[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 – South Korean, 1 – US) were prosecuted for fixing and raising prices for 5 years
- 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.

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
- 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 State Government [section 19]
- Reference by Statutory Authorities [section 21]
- Reference by Central Government [section 49(3)]
- Government departments/undertakings included [section 2(h)]
- Effects Doctrine [section 32]
- International cooperation [proviso to section 18]

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]

Traffic Rules & Competition Rules

- Traffic Rules ensure orderly flow, with facilities for all classes of traffic
- Absence of Traffic Rules could lead to :
 - Chaos; movement can be impeded
 - Rule of the mightiest
 - Entry & Exit barriers
- Traffic police & magistrates needed to
 - oversee/ensure compliance
 - book/punish violators
- Traffic Rules & enforcement are in the interest of all

Cricket Rules & Competition Rules

Strict Rules of ODIs

- Maximum 10 overs limitation per bowler
- Restricted use of short-pitched delivery (prohibition of abuse of dominance)
- Fielding restriction in first fifteen overs
- Restriction on wide delivery
- Umpire – Referee to oversee conduct
- Other do's and don't's

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 the 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
- Three foreign aided projects (World Bank, US AID, FIAS) 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

Competition Act and MRTTP 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

Thank you

Website:

www.competitioncommission.gov.in