
Competition Commission of India

Presentation in the Asian Centre for Corporate
Governance

Chennai

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Duties of the 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; and

[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

Significantly 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

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, 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 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 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 effects 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 complimentary

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 & Progress” included in the 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 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

Two foreign aided projects (World Bank, US AID) 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

Competition : Benefits

Accepted 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: protection against anti-
competitive practices, level playing field

Research during late 1990s and early 2000 and beyond

Research of late 1990s suggests (Paul London)

Competition contributed in economic growth more than technology, tax cut, 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 pre-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

“Strong competition policy is not just a luxury to be enjoyed by rich countries, but a real necessity for the striving to create democratic market economies”²³

Joseph Stiglitz, Project Syndicate, August, 2001

Thank you

Website: www.competitioncommission.gov.in