



Competition Commission of India

Presentation
to

THE SUGAR MILLS' ASSOCIATIONS

by

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Status of Indian Competition Law

- Competition Act, 2002 passed in January 2003
- Competition Commission of India established in October, 2003 with one Member.
- Full constitution of Commission and enforcement could not be taken up due to legal challenge leading to process of amendments
- Competition (Amendment) Act, 2007 passed in October 2007
- Process for full constitution of the Commission set in motion



Indian law in global context

- WTO : *“Law is broadly comparable to those of other jurisdictions with effective laws in this area and, for the most part, embodies a modern economics - based approach” (Trade Policy Review of India 2007)*
- OECD : *“close to state-of-the-art” (Economic Survey India Report 2007)*



Four Corners

CA 02 contains the standard provisions:

- Prohibits anti-competitive agreements (S 3)
- Prohibits abuse of dominant position (S 4)
- Regulates combinations (S 6)
- Mandates competition advocacy and awareness (S 49)



Anti-competitive Agreements

- Hard-core horizontal agreements *'presumed'* anti-competitive (Price fixing, Quantity/supply limiting, Market sharing, Bid rigging/collusive bid) (S 3(3))
- Other horizontal agreements and vertical agreements - based on *'rule of reason'* (S 3 (1)/(2))
- Exempted from these provisions:
 - *Agreement imposing reasonable conditions for protecting IPRs (S 3(5)(i))*
 - *Agreements for exports (S 3(5)(ii))*
 - *Efficiency enhancing JVs exempted from presumptive rule (S 3(3) proviso)*



Abuse of Dominant Position

- Not dominance but its abuse is prohibited (S 4(1))
- Dominance defined in Act, based on several listed factors (S 4(2)/19(4))
- Relevant market (product, geographic) to be determined as defined in Act (S 19(5)/(6)/(7))
- Abuses listed in Act (exclusive list) (S 4(2)/factors19(3))



Regulation of Combinations

- Combination defined, included mergers & amalgamation, acquisition of shares, assets (S 5)
- Combination must be above thresholds and domestic nexus (S 5)
- Thresholds defined in terms of total assets or turnover plus domestic nexus (S 5)
- Mandatory pre-notification (S 6 (2))
- Suspensive regime (S 6 (2A))
- Assessment of anti-competitive effect based on listed factors (S 20(4))



Thresholds

		Assets Total (In India)	Turn over Total (In India)
Only in India	No Group	Rs. 1000 cr	Rs. 3000 cr
	Group	Rs. 4000 cr	Rs. 12000 cr
In and outside India	No Group	US \$ 500 m (Rs. 500 cr) (Rs. 2000 cr)	US \$ 1500 m (Rs. 1500 cr) (Rs. 6000 cr)
	Group	US \$ 2000 m (Rs. 500 cr) (Rs. 8000 cr)	US\$ 6000 m (Rs. 1500 cr) (Rs. 24000 cr)



Review comparison

Country	Stage One	Stage Two
EU	25-35 W days	90-125 W days (35+125=160 W days or 224 days in the least)
France	5-8 weeks	Additional 4 months. Further extended by 4 more weeks (thus 5 ½ Months in total)
Spain	1 month	7 months
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)
USA	30/15 C days	-----
Germany	1 month	3 months (1+3= 4 months)
India	30 c days (draft regulations)	210 C days (150 w days)

Indian time caps not very different from major jurisdictions



Competition Advocacy & Awareness

- Central or State Government can refer policy or law relating to competition or any other matter for Commission's opinion – not binding (S 49(1)/(2))
- Commission required to take measures for “competition advocacy, awareness and training” (S 49(3))
- Commission may give opinion suo-motu to Government, regulators, other authorities (S 49(3)/ GR 60)
- Provision for mutual consultation between Commission and regulators (S 21/21A)



Other Principles in Act

- Competitive neutrality [S 2(h)/expln (I)]
- Effects doctrine (S 32)
- International co-operation (S 18)
- Exclusive jurisdiction in competition matters (S 53B/ 53T /61)
- Confidentiality (S 57/GR 38)



Duties of the Commission

- Prevent practices having adverse effect on competition
- Promote and sustain competition in markets
- Protect the interests of consumers
- Ensure freedom of trade carried on by other participants in markets, in India

[Preamble and Section 18]



Reach of the Commission

- All enterprises, whether public or private [S 2(h)/expln (l)]
- Departments of government except activities relatable to sovereign functions including Atomic energy, Currency, Defence and Space (S 2(h))
- Extra-territoriality (S 32)
- Provision to enter into MOUs with foreign competition authorities (S 18)



Powers of the Commission

May inquire into :

- Any anti-competitive agreement, including cartels (S 3(3), 19, 26, & 36(2))
- Abuse of dominant position (S 4, 19 & 27)
- Regulation of combinations (S 5, 6, 29, 30 and 31)

Commission/DG have :

- Powers of a Civil Court (S 36(2), 41(1) & (2))



Imposable Penalties

- Failure to comply with orders/ directions u/s 27, 28, 31, 32, 33, 42A and 43A – **fine upto Rs. one lakh per day** [S 42 & 43 (S 36 (2)/(4)) / 41(2)]
- Non furnishing of information on combinations – **upto 1% of turnover/ assets whichever is higher** (S 43A)
- Making false statement/ omission to furnish material information on combinations – **not less than Rs. 50 lakh extendable to Rs. one crore** (S 44)
- False statement/ omitting information – **fine upto Rs. one crore**
- Lesser penalty (S46)



Some Examples

- BA faced a fine close to US \$ 900 m (Rs. 3600 cr). Actually fined US \$ 300 million (Rs. 1200 cr) for co-operating in the case – for fixing some prices on International flights (US)
- Lufthansa fined SA R 8.5 m for colluding with SA Airways to fix the price of air tickets to Frankfurt by CC South Africa (SA Airways filed consent terms for R 55 m)
- EC imposed a penalty of Euro 899 m (Rs 5394 cr) on Microsoft for non compliance with March 2004 decision of EC in AOD case for disclosing interface documentation for achieving full interoperability with non Microsoft servers at a reasonable price (27.2.2008)



Present Activities of Commission

- ❑ Competition advocacy and awareness
- ❑ Ground-work--professional & legal-including 7 draft regulations and internal guidelines, etc.
- ❑ Institutional capacity building, including staffing and training-IIM B entrusted with organizational study
- ❑ IIM B suggested – economists 40% , lawyers 40% and financial analysts etc. 20%-Training – high priority, on going



Preparatory Work

- Draft Competition Commission (General) Regulations 200_
- Draft Competition Commission (Combination) Regulations 200_
- Draft Competition Commission (Lesser Penalty) Regulations 200_
- Draft Competition Commission (Meeting for Transaction of Business) Regulations 200_
- Draft Competition Commission (Determination of Cost of Production) Regulation 200_
- Draft Competition Commission (Procedure for Engagement of Experts and Professionals) Regulations 200_
- Draft Competition Commission (Calling upon Experts to Assist in Conduct of Inquiry) Regulations 200_



Guiding Principles of Commission

- Commission to be in sync with markets
- Minimize compliance costs for enterprises and enforcement costs for Commission
- Fully professional organization with required skills
- Confidentiality for business, transparency for Commission
- Consultative approach



THANKS

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