

Competition Commission of India



Importance of Self Regulation

by

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Why Competition Law

- ◆ Resources are finite
- ◆ Economic well being
 - Better off societies
 - Worse off societies
- ◆ Maximizing societal welfare
 - Allocative efficiency
 - Productive efficiency
 - Dynamic efficiency
 - Innovation
- ◆ Welfare maxima limited by resources



Benefits of Competition

- ◆ Promotes efficiency and innovation
- ◆ Ensures abundant availability of goods and services of acceptable quality at affordable / lower prices
- ◆ Offers wider choice to consumers
- ◆ Attempts to satisfy more and more wants with less and less consumption
- ◆ Positive impact on environment



Enforcement

- ◆ Enact and enforce a competition law and
- ◆ Educate and promote self regulation
- ◆ Is self regulation possible?
- ◆ Can it be enough?
- ◆ Human nature
- ◆ Cost of non-compliance vs self regulation
- ◆ Cost of compliance vs self regulation



Cost of Non-Compliance

- ◆ Fines/penalties
- ◆ Imprisonment, if applicable
- ◆ Loss of reputation
- ◆ Effect on business dealings
- ◆ Wastage of resources-money, manpower- which could have been used more gainfully
- ◆ Can't be debited to BOA-violation of law



Cost of Compliance

- ◆ Regular staff/executives
- ◆ Compliance officer
- ◆ Resources- hiring/training of awareness and compliance of competition law
- ◆ Marginal increase in cost for competition audit(including IT)
- ◆ Debited as business expenditure



Factors

- ◆ Self compliance = f (cost of non-compliance, cost of compliance, effectiveness of detection)
- ◆ Cost of non compliance –high
 - Self compliance high(proportional)
- ◆ Cost of compliance – high
 - Self compliance low(inversely proportional)
- ◆ History of direct taxes



Comparison

- ◆ Trade off between cost of non-compliance and cost of compliance is obvious in competition law violations
- ◆ Hefty penalties/imprisonments(in some jurisdictions)
- ◆ Cost of non compliance is too huge in comparison to cost of compliance



Effectiveness of Detection

- ◆ Self compliance = f (effectiveness of detection)
- ◆ Effectiveness of detection-high
 - Self compliance-high and vice versa
- ◆ Self compliance will also depend on CCI
- ◆ Savings to society
 - Cost of enforcement & on enterprises in terms of fines/imprisonment etc.



Characteristics of Cartels-1

- ◆ Brazen nature
- ◆ Involvement of senior executives
- ◆ Avoidance of strong anti trust jurisdictions
- ◆ Taking cover under associations



Characteristics of Cartels-2

- ◆ Fixing prices
- ◆ Global volume allocation
- ◆ Score sheets and audits
- ◆ Compensation mechanism
- ◆ Retaliation for cheating
/policing the agreement



Characteristics of Cartels-3

- ◆ The structure of cartels
- ◆ Even the large buyers can be victims
- ◆ Includes large publically held companies
- ◆ Repeat offenders



Level of involvement

- ◆ Individuals whose employment is dependent on corporate/business unit profitability
- ◆ Profile can be extremely varied
- ◆ May be
 - Highest level
 - Middle level
 - Lower level



Different Cartels-1

Year	Cartel	Position(s) of employees involved
2009	LCD SCREENS* #	President of Subsidiary; Executive Vice President of Sales and Marketing; Vice President of Sales Planning
2008	AIR CARGO #	Director of Sales and Marketing; Commercial General Manager
2007	PASSENGER FUEL SURCHARGE (BA/VIRGIN)	Head of Sales; Commercial Director; Head of Communications



Different Cartels-2

Year	Cartel	Position(s) of employees involved
2002	AUCTION HOUSES	Chairmen
2007	LIFTS & ESCALATORS	National Sales Managers
2001	VITAMINS* #	President of Divisions; Division Managers; Marketing Directors
2001	GRAPHITE ELECTRODES* #	President ; Chairman; Senior Vice President; General Managers; Local Sales Managers



Different Cartels-3

Year	Cartel	Position(s) of employees involved
2000	LYSINE (AMINO ACIDS)* #	Executive Vice President; Group Vice President

*Some involvement of subsidiary companies

At least one employee imprisoned in the United States



Effective Self Regulation

◆ Objective

- Prevention of competition law violations
- Not to enable enterprises committing violation to escape punishment
 - ◆ Detect violation as soon as possible
 - Early warning systems (EWS)



Requirements-1

- ◆ Clearly established compliance standards
- ◆ Assigning overall responsibility to oversee compliance to high-level executives within the company
- ◆ Exercising due care not to delegate responsibility to employees who have a propensity to engage in illegal conduct



Requirements-2

- ◆ Taking reasonable steps to communicate standards and procedures effectively to all employees
- ◆ Taking reasonable steps to achieve compliance with standards



Requirements-3

- ◆ Consistent enforcement of standards through appropriate disciplinary mechanism and
- ◆ Taking reasonable steps when an offense occurs to respond and to prevent future violations



Warning Signs-1

- ◆ Activities of trade associations
- ◆ Sales transactions between the enterprise and the competitor- especially towards the close of the year
- ◆ Data on market share
- ◆ Calls to senior executives from callers giving strange sounding names or refusing to identify



Warning Signs-2

- ◆ Sudden unexplained price increases
- ◆ Copies of announcement of competitors prices in the files of your enterprise



Impact of Good Self Regulation

- ◆ Difference between survival and possible extinction of an enterprise
- ◆ Massive fines
- ◆ Possible jail terms in many jurisdictions
- ◆ Reputation



Initiatives by CCI

- ◆ Engagement of stake holders
- ◆ A study on compliance by ICAI
- ◆ Advocacy booklet “Competition Compliance Programme”
- ◆ Educative advocacy seminars
- ◆ Active engagement with ICAI



Likely Employees

- ◆ Those doing sales and marketing;
- ◆ Anyone having direct contact with competitors
- ◆ Those engaged in setting up and operation of distribution arrangements



Assessing Agreements

- ◆ Keep record of all agreements for competition audit
- ◆ High commercial value agreements should be evaluated from competition angle by senior executives
- ◆ Time bound review of these agreements-may be annual or once in two years/five years



Coordination

- ◆ Liaison of marketing department with legal department
- ◆ Regular competition review of all agreements – may be in one, two or five years
- ◆ If resources don't permit in house audit, can be given to outsiders
- ◆ Regular screening of e -mails

Evaluation of Self Regulation

1

- ◆ How well are officers and employees aware of the chief executive's determination and commitment as regards compliance?
- ◆ Do officers and employees have a clear understanding of what kind of conduct violates competition law?

Evaluation of Self Regulation

2

- ◆ Do officers and employees properly recognize the 'dos and don'ts' of preventing violations of law?
- ◆ Is compliance accountability accurately perceived at all levels of management?
- ◆ To what extent do the enterprise's business practices conform to the provisions of competition law and other related regulations?

Evaluation of Self Regulation



3

- ◆ How high is the enterprise' level of conformity' compared to other enterprises engaging in the same business activities?
- ◆ How many violations took place and how serious were they?
- ◆ What kind of corrective action was taken against those violations, and how effective have they been?

Evaluation of Self Regulation



4

- ◆ How often is internal monitoring carried out and has the monitoring proved effective in preventing and detecting violations of law?
- ◆ To whom and to what extent is compliance education provided, and how effective are education programmes?



Associations-Red Flags-1

- ◆ Past, current or future prices
- ◆ What constitutes 'fair profit level'
- ◆ Pricing policy and actual costs of individual enterprises
- ◆ Possible increase or decrease in prices
- ◆ Standardization or stabilization of prices



Associations-Red Flags-2

- ◆ Bidding prices for projects
- ◆ Collusive tendering (bid rigging)
- ◆ Standardization of credit and trade terms
- ◆ Control of production
- ◆ Division or allocation of markets
- ◆ Select customers to deal or not to deal because of the above reasons



Compliance Officers

- ◆ Delegation of authority to enforcement complaint programme
- ◆ Independent professional with expertise in compliance
- ◆ Focal point for compliance



Compliance Manual

- ◆ Up to date compliance procedure
- ◆ Regular updating
- ◆ Compliance check list
- ◆ Regular monitoring



Competition Act, 2002

◆ S 18

.....it shall be the duty of the Commission to....., promote and sustain competition, protect the interest of consumers and ensure freedom of trade carried on by other participants, in the markets in India;



THANKS

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