

# International Conference Session on Leniency & Predatory Pricing Regulations

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# Leniency Provisions

- Section 27 of the Act provides for penalty to a cartel member
- Section 46 of the Act provides for imposing lesser penalty before report of investigation
- Full and true disclosure of its cartel conduct
- Disclosure is considered vital by the Commission
- Continues to cooperate with Commission

# Leniency Regulations

- Commission has brought out draft Leniency Regulations
- Hosted on website for wider consultation
- Contains detailed procedure for granting leniency
- Incorporates essential elements of rush-to-agency, transparency, certainty and confidentiality

# Rush to agency

- First applicant to get full leniency of 100%
- Second applicant to get partial leniency of 50%
- Third applicant to get leniency of 30%
- Subsequent applicants to get leniency of 10%
- No leniency if report of investigation received

# Transparency

- Process from receipt to disposal laid down
- Clear eligibility conditions laid down
- First-come first-serve basis
- Agreement with definite terms & conditions

# Marker System

- Marker system for ensuring place in queue
- A transparent system for ensuring date and time of receipt of such marker
- At the marker stage the applicant needs to only provide a descriptive list of evidence
- Time given to perfect the marker

# Certainty

- Extent of leniency known before entering into agreement
- Agreement binding also on Commission
- Order of Commission for leniency to be in accordance with the agreement
- Opportunity to explain in case of failure to comply conditions by applicant

# Confidentiality

- Identity of applicant need not be disclosed till agreement stage
- Authorized representative allowed to submit application
- Applicant can make hypothetical disclosure at marker stage
- Additional confidentiality provisions to safeguard identity & information provided



# Leniency to Individuals

- Directors, managers, secretary or other officers of a company are also eligible for leniency
- Only when their company applies for leniency in view of the provisions under section 48 of the Act
- provided they cooperate with the commission making true & full disclosure

# Predatory Pricing

- Predatory price has been defined in Explanation to Section 4 of the Act
- Three Elements of Predatory pricing
- Engaged by firm in dominant Position
- Sale at a price which is below cost
- Intent to reduce competition or eliminate competitors

# Cost of Production Regulations

- Relate to only one element of the provision under predatory pricing- cost of production
- To provide objectivity in arriving at the “cost”
- Remaining elements of predatory pricing- to be determined by Commission based on facts and circumstances of every case

# Cost Principle

- Internationally accepted economic principle used in Areeda-Turner test - proxy for marginal cost
- Average Variable Cost (AVC) to be used as 'cost' in predatory pricing cases
- Due regard to the Cost Accounting Standards issued by the ICWA in arriving at AVC
- Alternative cost principle may be used by Commission, if circumstances so warrant

# Alternative Methodology

- In cases of multi product enterprise, joint products & by-products, transfer pricing, captive consumption or absence of books of accounts, Commission empowered to use alternative methodologies
- Guidelines to evolve eventually to determine costs in complex cases after experience is gained

# Thank You

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