

Presentation
on
Competition Law in India
before
Korean Delegation
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Indian Law in Global Context

- OECD : *“close to state-of-the-art” (Economic Survey India Report 2007)*
- 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)*

Competition Act, 2002

- Prohibits anti-competitive agreements (including cartels)
- Prohibits abuse of dominant position (including predatory pricing)
- Provides for regulation of combinations (mergers & acquisitions)
- Enjoins competition advocacy (in policy formulation and awareness creation)

Special Features of Act

- No discrimination between domestic and foreign enterprise
- No discrimination between public sector and private sector enterprise
- Only activities related to sovereign functions of government including atomic energy, currency, defence and space excluded
- Exemption possible in case of obligation under any treaty, agreement or convention with any country

Competition Commission

- A statutory body with functional autonomy and powers to regulate its own procedure
- Powers to inquire into conduct taking place outside India but having effects on competition in India
- Can enter into any memorandum or arrangement with any agency of foreign country
- Orders appealable to Competition Appellate Tribunal and thereafter to Supreme Court of India

Implementing Regulations

- Drafts published on the official website
- Combination regulations provide procedure of filing notice and categories of transactions not likely to have AAEC
- Leniency regulations provide procedure for application and conditions for leniency
- Cost of Production regulations provide for determining cost in predatory pricing cases
- General regulations provide for procedure of giving information and maintaining confidentiality

Combination Regulations

- Provisions in sync with ICN Recommended Practices
- Acquisitions solely for investment or in ordinary course of business of not more than 15% of shares/VRs not leading to control are considered not likely to have AAEC
- Local nexus for each of at least two parties-assets / turnover of Rs 200 / 600 crores in India
- Deemed approval in case no show-cause issued within 30/60 days period
- Long and Short Forms for filing notifications to reduce compliance cost

Filing Thresholds

		Assets Total (In India)	Turn over Total (In India)
Only in India	No Group	Rs. 1000 cr (US \$ 250 m)	Rs. 3000 cr (US \$ 750 m)
	Group	Rs. 4000 cr (US \$ 1000 m)	Rs. 12000 cr (US \$ 3000 m)
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)

Confidentiality Provisions

- Strict disclosure norms for information provided to Commission by enterprises
- Trade & business secrets to be treated as confidential
- Identity of informant to be kept confidential, if requested
- Confidential version and public version of documents separate
- Strict internal procedures for maintaining confidentiality

Guiding Principles

- Commission to be in sync with markets; have good understanding of market forces
- Minimize compliance cost for enterprises and enforcement cost for Commission
- Fully professional organization, equipped with required skills
- Maintain confidentiality of business information, transparency in Commission's operations
- Maintain a consultative approach