



Workshop on Investigation Methodology & Procedures January, 2007

**Presentation
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Competition Act, 2002



Act establishes a Commission to :

- prevent 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

Main Features of Competition Act



- 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)

DG Office



- DG to assist Commission in investigating into any contravention
- Investigation only when directed by the Commission
- Direction of investigation to DG shall be deemed as commencement of inquiry
- Procedure of investigation has been laid down under the Act & Regulations
- Prosecution before Commission

Brief Overview of Steps



- Receipt of direction from Commission for inquiry
- Submission of inquiry report by DG
- Report of DG placed before Commission
- Report of DG forwarded to parties/CG/SGs/ SAs
- Commission calls parties for hearing
- Commission passes order

Powers of DG-I



Powers of civil court for the following matters:

- Summoning and enforcing the attendance of any person & examining him on oath
- Requiring discovery & production of documents
- Receiving evidence on affidavits
- Issuing commissions for examination of witnesses/documents
- Requisitioning public records/documents

Powers of DG-II



Powers to DG under the Companies Act, 1956:

- For production of documents, information and examination on oath under section 240
- Power of search and seizure of documents under section 240A
- Provisions for imprisonment and/or penalty for person who fails to produce documents, information, appearance under section 240(3)

Powers of DG-III



- Commission shall impose penalty of Rs 1 lac each day in case of failure to comply with directions of DG
- Commission shall impose penalty which may extend to Rs 10 lacs in case:
 - a person makes false statement or document
 - knowingly omits to state a material fact
 - willfully alters, suppresses or destroys a document

Organisational Structure



- DG along with Additional DGs, Joint DGs, Deputy DGs, Asst. DGs as investigators
- Economists, lawyers and financial analysts as members of investigation team
- Experts may be called upon as witnesses during investigation

Procedure of Investigation



- Act provides for detailed features of anti competitive agreements, abuse of dominant position; and, gives thresholds for combinations
- Factors given for inquiry/investigation under the Act for determining Relevant Market, AAEC and Dominant Position
- Investigation team to collect evidence on laid down factors

Types of Evidence-I



- Material available/enclosed with order of investigation from Commission
- Pre-existing materials in public domain- industry surveys, market studies, commodity bulletins, etc.
- Pre-existing documentary evidence available from parties - corporate strategy documents, audit reports, board decisions, circulars and sales reports, etc.

Types of Evidence-II



- Compulsory request for information to parties-written questionnaires, telephone interviews, oral inquiries, presentations
- Descriptive evidence from market participants like customers, suppliers, competitors, etc.
- Expert and quantitative evidence, including economic analysis and expert testimony
- Evidence gathered through search & seizure

Issues in Evidence Collection



- Use of oral inquiry or telephone interview as admissible evidence
- How to obtain maximum documents without search or seizure
- Reliability issues in expert testimony
- Precautions in recordings of statements
- Digital evidence-phone records, emails, digital records

Confidentiality Requirements



- Documents or parts of it, requested by parties and agreed by Commission/DG, shall be kept confidential
- Confidentiality requests- disclosure of trade secrets, destruction or appreciable diminution of commercial value of information, disclosure causing serious injury
- Two versions of documents to be maintained - confidential and public version

Confidentiality Issues



- System for maintaining confidentiality of documents
- System for sharing confidential documents within organization
- Fixing accountability in case of leakage
- Ensuring maintenance of confidentiality by the party itself
- Exemption from disclosure under RTI Act, 2005

Issues in Search & Seizure



- How to keep search under wraps
- Team formation for search operations
- Arranging for witnesses during search
- Dealing with media
- Labelling and coding of seized documents
- Handling/chain of custody of seized documents

Other Issues



- Meeting timelines in investigations
- Maintaining secrecy of investigation in team work
- Rebuttal of evidence
- Prosecution
- Coordination with other agencies
- Essential elements of a Manual



Thank You

