



PRESENTATION
ON
COMPETITION
COMPLIANCE PROGRAMME
(CCP)
FOR ENTERPRISES

By

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COMPLIANCE OF COMPETITION LAW



- **Why compliance of Competition Law is necessary ?**
 - Ignorance of law cannot be an excuse
 - Compliance is the best policy for the enterprise
 - Compliance of law results in social welfare enhancement
- **Non compliance can be costly for enterprises**
 - Inquiry by Competition Commission of India
 - Financial penalties
 - Diversion of time and energy while facing inquiry
 - Agreements become unenforceable, and void
 - Adverse publicity
 - Possibility of being sued for Compensation.
- **Need for Competition Compliance Programme**

OBJECTIVES OF COMPETITION COMPLIANCE PROGRAMME

- The Competition Compliance Programme should have the following three main objectives:
 - (i) Prevent violation of law, i.e. the Competition Act 2002 and all Rules, Regulations & Orders made there-under
 - (ii) Promote a culture of compliance, *and*
 - (iii) Encourage good corporate citizenship
- As the consequences of non-compliance may be serious, enterprises are expected to design their compliance programmes in such a way as to avoid any violation of the competition law and to promote the culture of compliance down the value chain.

COMPLIANCE GUIDELINES: CONTENTS



- **Types of external discussion that will always be prohibited (e.g. about pricing)**
- **Guidelines on the information that can be legitimately exchanged and what constitutes confidential or commercially sensitive information**
- **Guidelines for the proper conduct of meetings with competitors (or suppliers/customers)**
- **Guidelines on direct and indirect price fixing (including re-sale price maintenance, where suitable)**
- **Guidance on how to deal with complaints from customers and/or suppliers; and**
- **Guidance for dominant companies on the care to be taken while dealing with customers/suppliers**
 - **Practical examples of ‘Dos & Don’ts’, along with real-life examples from the company’s business would turn out to be very effective.**

COMMITMENT OF SENIOR MANAGEMENT



- The support of Senior Management must be visible, active and regularly reinforced.
- Commitment must be driven from Board level to take responsibility for its implementation.
- The element of commitment can best be achieved in a number of ways, including:
 - A personal message to staff from the most senior officials in the enterprise stating their commitment to the compliance programme
 - Referring to the compliance policy in the company's 'Mission Statement' or Code of Conduct and Ethics
 - Making adherence to the programme one of the overall objectives of the enterprise

COMMITMENT OF SENIOR MANAGEMENT *(CONTD.)*



- Designating a member of senior management team to take overall responsibility (Compliance Officer) for ensuring that the compliance programme is :
 - properly designed
 - regularly monitored
 - effectively implemented
 - reported upon at regular intervals to the Board
- Effectiveness of a Compliance Policy will be enhanced if it is linked to an enterprise's human resource (HR) and disciplinary policy.
- This would prompt employees to attach seriousness to the compliance issues. Besides, this would reflect the seriousness of the management to compliance, as far as the competition authority is concerned. Different levels of infringements can be dealt with by increasing levels of sanction, resulting ultimately in dismissal for the most serious infringement.

COMMITMENT OF SENIOR MANAGEMENT *(CONTD.)*



- Competition compliance can also be built into the existing staff appraisal procedures, so that employees are regularly asked to sign a form to confirm that they are not aware of any existing compliance breaches.
- This will help detect any anti-competitive practice that may exist at early stage.
- Most of the enterprises have a policy in place for retaining financial information for accounting and tax purposes.
- Documents relevant to prove the compliance of the enterprise and its employees with competition law provisions will have to be retained for sufficiently long period to save the embarrassment of not being able to defend in case of allegation related to infringement.

IDENTIFY EMPLOYEES AND DIVISIONS AT RISK



- It is necessary to identify the employees and divisions that are likely to be exposed to competition law risks.
- **These can normally be:**
 - those doing sales and marketing;
 - anyone having direct contact with competitors
 - those engaged in setting up and operation of distribution arrangements
- Engagement of senior management is a must for the compliance programme to be taken seriously by employees.

IMPORTANCE OF ACTIVE RISK MANAGEMENT (ARM)

- Compliance Programme is aimed at avoiding or minimizing the risk of infringement /non compliance, with all its consequences for the enterprise.
- However, law evolves, procedures and regulations are regularly streamlined and views and outlook on issues change.
- A static policy towards risk management through Compliance Programme may not serve the purpose; it may even turn out to be counter productive.

IMPORTANCE OF ACTIVE RISK MANAGEMENT (ARM)

- A dynamic environment necessitates active risk management.
- What is consistent with the competition law yesterday may be declared inconsistent today; or the conditions under which a behaviour is considered consistent today may become consistent only under different conditions tomorrow.
- Therefore, an active risk management is called for. This is all the more important in the case of agreements.

ACTIVE RISK MANAGEMENT – THE CASE OF AGREEMENTS



- It is important to keep a record of all the agreements signed by the company and assessed for competition compatibility.
- The risk from an agreement being found null and void by the Commission may be very costly for the enterprise
- Agreements that are of very high commercial value for the enterprise should be entrusted to senior executive involved in the implementation of that agreement to do active risk management of that agreement

ACTIVE RISK MANAGEMENT – THE CASE OF AGREEMENTS



- There should be a time table for review of the status of the agreement from competition angle.
- There should be a system for reminding the official concerned about this. The responsibility could be entrusted to a senior executive of the commercial division since the risk is most felt by the commercial wing
- Marketing department should liaise with the legal department. Every agreement on record should be subjected to competition review every three to five years. For very large enterprises such review could be on yearly basis
- When such active risk management is not found feasible in-house, assistance of specialized external agencies should be sought

EVALUATION AND REVIEW



- Enterprises should ensure that the Compliance Programme represents current best practices, remains relevant, comprehensive and effective. Periodic evaluation of Compliance Programme is suggested to keep it relevant.
- The process may include evaluation of individual employees' knowledge of law, policy and procedures.
- Adherence to compliance policy could also be used as one of the criteria for individual's and department's/ division's performance appraisal.
- It is important to ensure that the evaluation process remains as transparent and open as possible.

EVALUATION AND REVIEW *(Cont*



- The evaluation should also include as to whether the Compliance Programme achieves expected results, and whether the system is appropriate and effective.
- The evaluation findings should be appropriately reflected in the overall operational system, including compliance monitoring, education programs, and the compliance manual.
- It is worth emphasizing that evaluating implementation of Compliance Programme depends on motivation for compliance, distribution of authority and responsibility, support of human and physical resources, and communication within the corporation.
- The enterprises are, therefore, advised to set evaluation criteria conforming to their compliance policy.

PERFORMANCE INDICES FOR EVALUATION OF CPP



- The enterprises may also consider devising performance indices to evaluate the Compliance Programme. An illustrative list of performance indices may include:
 - 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?
 - 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?

PERFORMANCE INDICES FOR EVALUATION OF CPP (*Cond.*)



- To what extent do the enterprise's business practices conform to the provisions of competition law and other related regulations?
- How high is the enterprise's 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?
- 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 programs?

IMPORTANCE AND ROLE OF COMPLIANCE OFFICER



- In order to ensure effectiveness of compliance programme, it is desirable that a Compliance Officer with appropriate delegation of authority be appointed to enforce the Compliance Programme.
- The Compliance Officer should preferably be an independent professional with expertise and core competency in compliance and compliance management.
- He should be a focal point and in charge of designing a program, motivating officers and employees, managing any accompanying administrative/ organizational issue, preparing compliance manual, and auditing compliance.

Compliance Committee



The Enterprises are advised to constitute a Compliance Committee comprising senior management, with ultimate responsibility of overseeing the Compliance Programme, including conducting periodic review of its effectiveness.

COMPLIANCE PROGRAMME FOR ENTERPRISES - CHECKLIST



- Should be tailored to suit the business needs of the organization
- A senior management personnel as compliance officer
- Regular and adequate training in identifying potential anti competition issues and developments in the industry environment.
- Prepare and make available a comprehensive compliance Manual for reference.
- Illustrations of likely violations
- Adopt guidance or clearance procedure for situations where there may be a problem.

COMPLIANCE PROGRAMME CHECKLIST (Contd..)



- Adopt a **clearance procedure** for all agreements from the legal department to ensure compliance.
- Integrate a **competition-compliant information management system** into the overall document management system of the company.
- Make provision for a possible **surprise investigation/checks / dawn raids** by the Competition Commission.
- Ensure a proper **recording system** for all **documents, minutes of meetings, and other events** which may provide useful evidence of non-participation in anti-competitive practices.



COMPLIANCE PROGRAMME FOR ASSOCIATIONS - 1

- Associations of enterprises serve a number of benign and useful objectives
- However, there is tendency for such associations to be used as a platform for anti-competitive activities: sometimes this could be unintentional.
- However, intent is not always a pre-condition for infringement



COMPLIANCE PROGRAMME FOR ASSOCIATIONS - 2

General Operational Procedure

- Issue a statement of the association's **intention to comply with CA, 2002**
- All office bearers of the Association to have **Compliance Guide with 'do's and don'ts'**
- Have a an **'Association's compliance programme'**
- **Association's meetings** are regularly held, with agenda prepared in advance and, if necessary, in consultation with legal experts
- **Minutes of meetings of Board of Directors** should reflect the association's guideline of complying with CA, 2002

COMPLIANCE PROGRAMME FOR ASSOCIATIONS - 3



Membership Policy

- Should not exclude certain competitors from membership, when the applicant meets all the required conditions
- Should not restrict Members from dealing with non-Members
- Should not prevent non-members from obtaining access to information which, if denied would limit latters' ability to compete effectively with members of the association

COMPLIANCE PROGRAMME FOR ASSOCIATIONS - 4



(List of topics for discussion to be avoided: (Non exhaustive))

- Past current or future price
- What constitutes a 'fair profit level'
- Pricing policy and actual costs of individual enterprises
- Possible increase or decrease in prices
- Bidding prices for projects
- Standardization or stabilization of prices
- 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



CONCLUSIONS

- **Competition policy and law are beneficial for individual enterprises and groups of enterprises. It benefits consumers as well**
- **Compliance of Competition law is the best policy for enterprises**
- **CCI has sufficient powers to crack on cartels and other anti-competitive offences**
- **A well thought out compliance programme has to be in place at each enterprise**
- **Professionals like Company Secretaries would be most suited to serve as Competition Compliance Officers**
- **Industry associations should serve as ‘ambassadors’ of competition policy and law and should not allow themselves to be used as platforms for anti-competitive activities**



THANK YOU

