

Future Role of Competition Commission in Protecting Consumer Interest

by

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&

Consumer Association VOICE

How Competition Helps Consumers ?

- ⇒ - Lower prices
- ⇒ - Efficient use of resources
- ⇒ - Better products
- ⇒ - Consumer choice
- ⇒ - Better service
- ⇒ - Innovation
- ⇒ - Wealth

What is Anti-competitive Behavior ?

- ⇒ Trusts, Associations or Combinations
- ⇒ Monopolizing trade a felony
- ⇒ Mergers and Acquisitions
- ⇒ Discrimination in price, services, facilities
- ⇒ Discrimination in rebates, discounts, or advertising service charges; underselling in particular localities
- ⇒ Exclusion Agreements; Price Fixing

Restrictive Trade Practices Distort Competition

- ⇒ Full Line Forcing, Tied Sales
- ⇒ Price Fixing or Manipulation
- ⇒ Predatory Pricing
- ⇒ Collusive Tendering
- ⇒ Minimum Resale Price Maintenance (RPM)
- ⇒ Refusal to Supply

Competition Law and Consumer Protection - Two Sides of the Same Coin

- ⇒ Origins in US Anti-Trust Law 1920's
- ⇒ US President Won :Trust Busting laws
- ⇒ Outlaws Anti-competitive Practices
- ⇒ Punishes Anti-competitive behaviour
- ⇒ Competition Authorities Set Up to Enforce
- ⇒ FTC in USA; EC in EU; MRTPC in India Now CCI;

US Anti Trust Law:

http://www.law.cornell.edu/uscode/html/uscode15/usc_sup_01_15_10_1.html

- ⇒ Federal Trade Commission's antitrust authority comes primarily from the Federal Trade Commission Act and the Clayton Act both passed by US Congress in 1914.
- ⇒ The antitrust laws are enforced by both the FTC's Bureau of Competition and the Antitrust Division of the Department of Justice
- ⇒ States also have their Local Laws

Competition Law Strong in USA & EU

- ⇒ Recent Case in USA concerns Microsoft which has been held guilty of anti-competitive behaviour and has been reined in on the basis of adverse affect on its competitors
- ⇒ European Commission has been very strong against Cartels in Europe

United States of America (Plaintiff) Vs Mocrosoft Corp. (Defendant)

Civil Action no. 98-1232 (CKK):FINAL JUDGMENT

(November 12, 2002)

- ⇒ *Microsoft not to retaliate against an OEM by altering its commercial relations with that OEM*
- ⇒ *uniform license agreements with uniform terms and conditions*
- ⇒ Not restrict by agreement any OEM licensee
- ⇒ Allow end users .. and OEMs ... *to enable or remove access to each Microsoft Middleware Product or Non-Microsoft Middleware Product*
- ⇒ Compliance and Enforcement Procedures :A.Enforcement Authority; B. Appointment of a Tech. Committee; C. Appointment of a Microsoft Internal Compliance Officer; D.Voluntary Dispute Resolution
- ⇒ *Judgment: <http://www.usdoj.gov/atr/cases/f200400/200457.htm>*

A New Aggression Against Cartel



Fines for collusion
are big, but some
press for jail time

It was the kind of case that could be settled by the president of the United States if it were not for the fact that it is a cartel. It is a cartel, and the president of the United States is not the president of the United States. It is a cartel, and the president of the United States is not the president of the United States.

Cartels are illegal under the Sherman Antitrust Act. They are illegal under the Sherman Antitrust Act. They are illegal under the Sherman Antitrust Act. They are illegal under the Sherman Antitrust Act.

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New European antitrust actions yield big fines but no jail time (yet)

COLLUSION, From Page 13

tion still separates countries in Europe that see price-fixing as an economic peccadillo from those like the United States, which see it as out-and-out unfair," said Joshua, now a Brussels-based partner with the law firm Howrey.

Cartels represent a serious drag on global prosperity. John Connor, a professor at Purdue University, in Indiana, estimates that cartels around the world raise prices by about 25 percent. And while there are few studies on the effects of cartels on prices in Europe, one way of illustrating their effects is to study ways that government regulations raise prices. In an example publicized by the Irish Competition Authority, limits on price-cutting among retailers end up adding nearly €500 to household grocery bills each year.

The French telephone case was particularly grave, French officials said, because paying for mobile calls is a new and significant expense for households. Along with France Télécom, Vivendi Universal and Bouygues paid €34 million, the third-highest fine

ever levied in Europe. Just days before, the same officials fined the owners of some of the most famous hotels in Paris, including the Hôtel de Crillon and the Hôtel Ritz, more than €700,000 for colluding to fix the prices of rooms. German authorities also have cranked up the pressure. In 2003, the German cartel office presented cement makers, including HeidelbergCement, with a bill for €702 million, the second-highest cartel fine imposed in Europe. In 2000, Italy imposed the fifth-highest fine, slapping 38 companies, including the big insurer Assicurazioni Generali, with a bill for about €360 million for fixing the prices of car premiums.

The European Commission still holds the record for the highest fine — €855 million — imposed on eight chemical and pharmaceutical companies, including Hoffmann-La Roche of Switzerland, caught fixing the prices of vitamin additives used in everyday foods.

A trend toward serious cartel enforcement in Europe began in the late 1940s. American officials, believing cartels to be one of the tools that allowed authoritarian governments to extend

their control over production, pressured Germany after World War II to pass cartel-busting laws. The German competition laws passed in the 1950s formed the basis of the antitrust statutes adopted by the European Economic Community, the forerunner of the EU.

Even so, fines remained low in Europe. Cartel enforcers operated from obscure agencies, while many governments saw collusion as a benign way of stabilizing prices and employment. The authorities focused on marginal sectors that had little impact on the way economies functioned, and they levied fines that were more symbolic than punitive. "Breaking up cartels didn't offer a fast track to the top for bright civil servants," said Stephen Kinsella, a Brussels-based partner with the law firm Sidley Austin Brown & Wood.

The game changed with the drift toward competitive economic thinking in the late 1980s and with efforts to create an open and prosperous single European market in the following decade. Suddenly, conspiracies were being seen as ways of fleecing consumers and producers of money that could be better used to drive spending and investment.

Individuals like Joshua also played a role. Joshua was among the EU officials who fought for the right to fine companies more than 10 percent of their sales of a particular product. During the mid-1990s, Joshua helped lead the investigation into companies that colluded to raise the price of insulated heating pipes. The Swedish-Swiss engineering company ABB paid €70 million, a sum that represented nearly 20 percent of pipe sales.

"ABB was a defining moment," Joshua said. "Previously we were handing out parking tickets."

These days, the authorities are competing to land big fines for cartels, although they shy away from imposing the maximum penalty — 10 percent of overall worldwide sales — for fear of

inform on co-conspirators in exchange for exemptions from fines mean that whistle-blowers have been lining up to confess. Lawyers estimate that the European Commission alone is dealing with as many as 80 new cases, but they warn that officials may lack resources to investigate and decide them all — even after farming out more responsibilities to national authorities.

The change is all the more startling because it comes against what many critics of the EU system say is an inopportune backdrop for aggressive enforcement.

In Europe, part of the reason that price-fixers avoid jail is that the European Commission wields no authority to prosecute criminal cases, though it imposes fines directly without the need for a judge's approval and it can ask national police forces to raid executives' homes.

But the issue is a cultural one, too. Even where jail is an option, courts and the authorities have shied away from using such a strong sanction. Britain, France and Ireland are among European countries that have made price-fixing a crime, but none — not even Norway, where price-fixing has been criminal since the mid-1920s — has sent a single executive to prison.

This week, the OECD underlined the need for tougher penalties, encouraging governments to begin "securing broad public support for a criminal sanctions regime" in cases where fines are not enough by themselves to stop collusion.

Lawyers warn that a reluctance to put executives behind bars means they will confess only when they fear a crackdown or an outbreak of dissent among conspirators. Moreover, said Chris Bright, a London-based partner with the law firm Shearman & Sterling, companies usually pass on the cost of fines to consumers and shareholders. "Personalizing the penalty is what would make a real difference," he said.



Andy Shaw/Bloomberg



Trevor Humphries/Financial Times, via AP

Ian Norris, top, former head of Morgan Crucible, and Anthony Tennant, former head of Christie's International, are European involved in U.S. antitrust action.

bankrupting companies, hurting shareholders and fueling unemployment. Still, there is "a contest for who can swing the biggest club" now that evidence has become easier to obtain, said Michael Wise, a lawyer at the Organization for Economic Cooperation and Development, based in Paris.

New rules allowing companies to

As in the past, the United States again is setting the agenda for cartels. On rare occasions when European executives do go to jail, they usually serve time in a U.S. prison. Often, executives go voluntarily, knowing that the alternative is spending a lifetime risking arrest. Others have avoided American jails by cutting out travel altogether.

In one high-profile case, Anthony Tennant, the former chairman of the auction house Christie's International, indicted in 2001 for fixing the prices of commissions with its rival Sotheby's, remained in Britain as a fugitive from U.S. justice. By contrast, A. Alfred Taubman, the former Sotheby's chairman, was sentenced to a year in prison for the same offense.

But in a test case that could open the floodgates to extraditions of white-collar offenders like Tennant, the U.S. Department of Justice this year asked the British government to hand over Ian Norris, the former chief executive of the British engineering firm Morgan Crucible, in connection with a plot to fix the prices of electrical parts.

The British government has approved the first stage of the extradition, but Norris has made several appeals, and he remains in Britain. Even so, the Norris request is the first of its kind, and lawyers say it shows the determination of the American authorities to dry up remaining "safe harbors" for price-fixers in Europe.

The quickest way to stop it, said Calvani, the former Irish enforcer, is for European lawmakers and judges to overcome their reluctance to jail executives and to set an example that will be a warning to others.

"Once the public and their politicians realize that price-fixing is effectively stealing from the public," Calvani said, "the logic of jailing executives should become much harder to stop."

International Herald Tribune

Cartel crackdown

European national authorities are setting higher cartel fines, but the European Commission still inflicts the most pain.

Year	Cartel	Penalty (millions)	Authority
2001	Vitamins	€855	EU
2003	Cement	700	Germany
2005	Mobile phones	534	France
2002	Plasterboard	478	EU
2000	Insurance	362	Italy
2001	Carbonless paper	313	EU
2005	Industrial bags	291	EU
2004	Copper plumbing tubes	222	EU
2005	Monochloroacetic acid	217	EU
2002	Nintendo & distributors	168	EU

Source: OECD, European Commission

Prime objective of CCI

- ⇒ prevent practices having adverse effect on competition
- ⇒ promote and sustain competition in Indian markets
- ⇒ protect interests of consumers
- ⇒ ensure freedom of trade

CCI objectives to be met through--

- ⇒ Prohibition of anti-competitive agreements : *section 3, Chapter II*
- ⇒ Prevention of abuse of dominance: *section 4, Chapter II*
- ⇒ Regulation of combinations (mergers and acquisitions): *section 5, Chapter II*

Anti-Competitive Agreements Prohibitions

-----*Main features*

- 1) Prohibition to enter in to any agreement which causes or is likely to cause an appreciable adverse effect on competition (Section 3, subsection 1)
- 2) Such Agreements in contravention of subsection 1 shall be void.
- 3) Prohibition of agreement which can control prices, production, supply, investment, geographical area/ market etc.

Prohibition of abuse of dominant position

--- *Main features*

Restrict enterprises which

- a) directly/ indirectly impose unfair/ discriminatory
 - 1) condition in purchase or sale of goods/ services
 - 2) price in purchase or sale (incl. predatory price) of goods/ services
- b) limits or restricts
 - 1) production of goods or provision of services or market
 - 2) any tech./ scientific dev. to the prejudice of consumers
- c) any practice/s resulting in denial of market access
- d) conclude a *contracts* -- acceptance by other parties of *supplementary obligations* which, have no connection with the subject of such contracts
- e) uses *dominant position in one market to enter/protect, other market.*

Regulation of Combinations (u/s 6)

- 1) Restriction to enter in to combination that can cause/ likely to cause adverse effect on competition
- 2) Before entering in to combination enterprises to give notice to CCI disclosing the full details within seven days

Threshold of Combination u/s 5

The acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises, if—

- ⇒ (a) acquisition of an enterprise
- ⇒ (b) acquisition of control over an enterprise
- ⇒ (c) Merger or Amalgamation

(a) Acquisition Jointly Results in

	Assets etc	Turnover
Enterprise/Persons In India	Rs 1000 cr	Rs 3000 cr
Enterprise/Persons :India/Abroad	\$ 500mn	\$ 1500 mn
Group:India	Rs 4000 cr	Rs 12000 cr
Group: India/Abroad	\$ 2 bn	\$ 6 bn

**(b) Acquire control of enterprise :
identical or substitute goods/service**

	Assets etc	Turnover
Enterprise/Persons In India	Rs 1000 cr	Rs 3000 cr
Enterprise/Persons :India/Abroad	\$ 500mn	\$ 1500 mn
Group:India	Rs 4000 cr	Rs 12000 cr
Group: India/Abroad	\$ 2 bn	\$ 6 bn

(c) Merger or Amalgamation

	Assets etc	Turnover
Enterprise/Persons In India	Rs 1000 cr	Rs 3000 cr
Enterprise/Persons :India/Abroad	\$ 500mn	\$ 1500 mn
Group:India	Rs 4000 cr	Rs 12000 cr
Group: India/Abroad	\$ 2 bn	\$ 6 bn

Trigger u/s 19(1) Power to Enquire u/s 3(1) or 4(1) on its own motion or:

- ⇒ (a) receipt of a complaint, accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association;
or
- ⇒ (b) a reference made to it by the Central Government *or a State Government* or a statutory authority.

Apprehension:Can the State/Central Govt. emerge as defender of Public Interest ?

- ⇒ History (1969 to 2006) shows poor record: States or Union Ministries hardly ever used their Rights under MRTP Act?
- ⇒ Responsibility / Authority not Defined
- ⇒ Absence of Technical Capacity – mix of skills in law, economics, management, accountancy and Commerce
- ⇒ Lack of Awareness about adverse effects of anti-competitive activities on public interest
- ⇒ Lack of Political Commitment
- ⇒ Inability to Take on the Big Fish

Concerns....

- ⇒ Do Politicians, Civil Servants or Business believe in the rationale for establishment of CCI ?
- ⇒ Will the Right Persons Sit on the Bench ?
- ⇒ This is reflected in criteria for selection and appointment of chairman and members
 - ▶ A bureaucrat with relevant administrative experience
 - or
 - ▶ A judge with legal understanding to provide justice based on judicial procedure and norms
 - or
 - ▶ Experts who can understand the complex economic, commerce , financial and management reality

A Strong Bench is not enough..... What more is required ?

- ⇒ Solid Litigative Power and Research
- ⇒ Ability to confront “the expensive defence legal eagles”
- ⇒ Ability to Withstand Political Pressure
- ⇒ Legally Admissible Economic Evidence
- ⇒ Insulate Intimidation or Enticement
- ⇒ Rock Solid Bench who understand the complex subjects and market forensics

Prerequisites to achieve this...

- ⇒ A Strong Bench
- ⇒ Fast track & focused procedures
- ⇒ Building capacity among multiple stakeholders
- ⇒ Mechanism to insulate pressure
 - ✘ *threats, approach and bribe*
(*Dabav, sifarish aur rishwat*)

In its absence what will happen?

- ⇒ Big companies can not be challenged
- ⇒ Long Drawn Procedures and Unnecessry adjournments would help the offenders
- ⇒ Complainants would lack the legal expertise against the “big and expensive legal eagles”
- ⇒ The Bench will not be equipped with expertise and will not be able to protect consumer interest

The lost cases

- ⇒ TOMCO –H. Lever merger : Co's influenced Government not to challenge
- ⇒ VOICE vs Bharat TV : It was won, took 19 years to decide; by then market had changed beyond recognition... no real protection of public interest
- ⇒ Reasons
 - DG's Paucity of funds to produce evidence
 - Adjournments and multiple Parties (43)
 - Shortcomings in MRTPC regulations re: Courtroom procedures

The story goes on...

- ⇒ Jet was acquiring Sahara: Potential Impact on Prices ?
- ⇒ Combined turnover > Rs 7000 crore – Who examined legality u/s 5 , Threshold of combination and no notice given to CCI ?.. who is interested in implementing this Law ?
- ⇒ Is CCI equipped to prove it as illegal today ?
- ⇒ Competitors in no mood to challenge ?
- ⇒ M/o Civil Aviation announcing on TV that all is well!
- ⇒ No Research Institution is interested to research or prove its adverse effect on competition
- ⇒ Consumer organizations do not have the resources to marshal evidence to challenge the merger
- ⇒ What to say about media???

If CCI has to be (half) as effective as Federal Trade Commission.....

- ⇒ **Appoint Best Brains available to Bench by Open advertisement and selection**
- ⇒ **Build Procedures that award Compensation to those who help Prove the Offence**
- ⇒ **Focused Proceedings to Give Judgment on offence as well as compensation**
- ⇒ **Liberal Interrogatory and Discovery Procedures akin to US Laws**

Empower Stakeholders

- ⇒ Consumer Organizations
- ⇒ State Governments :
- ⇒ Central Government :
- ⇒ Adversely Affected Businesses
- ⇒ Research Capacity in Institutions
- ⇒ Capacity within the CCI

Industry/Trade Intelligence Unit

- ⇒ Staff with expertise in Trade, Industry, Accounts, Law with ability to do market research
- ⇒ Gather intelligence from wholesale and retail markets, VAT dept etc to identify (super profits)
- ⇒ Maintain Links with Industry/Trade Associations, Consumer Groups
- ⇒ Monitor increase (reduction) of Co Specific Retail/Wholesale Prices : esp Entering your state
- ⇒ Publish Periodic Reports on Competitive Conditions in different Economic sectors in State

Effective Competition Law can Protect Peoples Interest

- ⇒ A competitive market place can provide more protection to consumers than a thousand consumer courts
- ⇒ The FTC has twin jurisdiction -a Bureau of Consumer Protection and a Bureau of Competition
- ⇒ In India CPA 1986 followed MRTP Act 1969: they emerged out of different philosophies
- ⇒ Yet their Broader Policy Objective is common- to protect consumers

National Consumer Helpline

A Project supported by the Union Ministry of Consumer Affairs



Telephonic advice, information & guidance service

Call us Toll Free at 1800-11-4000

for

Advisory and Guidance service
to the Indian Consumer



Objective of The Helpline

- Provide consumers with the knowledge, tools and confidence to resolve their consumer problems
- Public Service to Consumers
- Create “*Smart*” consumers
- Consumers need advise and guidance on:-
 - *Who is in the wrong?*
 - *What are their consumer rights?*
 - *Whom to approach?*
 - *How to complain?*
 - *What to do if no one listens?*

1800-11-4000

How the guidance goes

- Ist Tier Advise: To approach the Company
- If 1st Tier Company Response is Unsatisfactory, 2nd Tier Approach: Industry Regulator, Government, Ombudsman, Chamber of Commerce
- If 2nd Tier does not Exist or Response is Unsatisfactory ,Guidance to go to 3rd Tier-Consumer Court

1800-11-4000

TIRED OF GETTING CHEATED?



IF YOU ARE UPSET WITH DEFECTIVE GOODS,
DEFICIENCY IN SERVICES OR
FEEL BEING OVERCHARGED BY THE SELLER.

**CALL US AT
TOLL FREE CONSUMER HELPLINE
1600-11-4000**



Helpline is a community service project of the University of Delhi sponsored by the Union Ministry of Consumer Affairs to provide consumer with information, advice, guidance to their common problems arising out of purchase of goods and services in the market.



Demand quality. It's your right.



See No Evil



Hear No Evil



Talk No Evil

TIRED OF GETTING CHEATED?

CALL US AT TOLL FREE CONSUMER HELPLINE

1600-11-4000

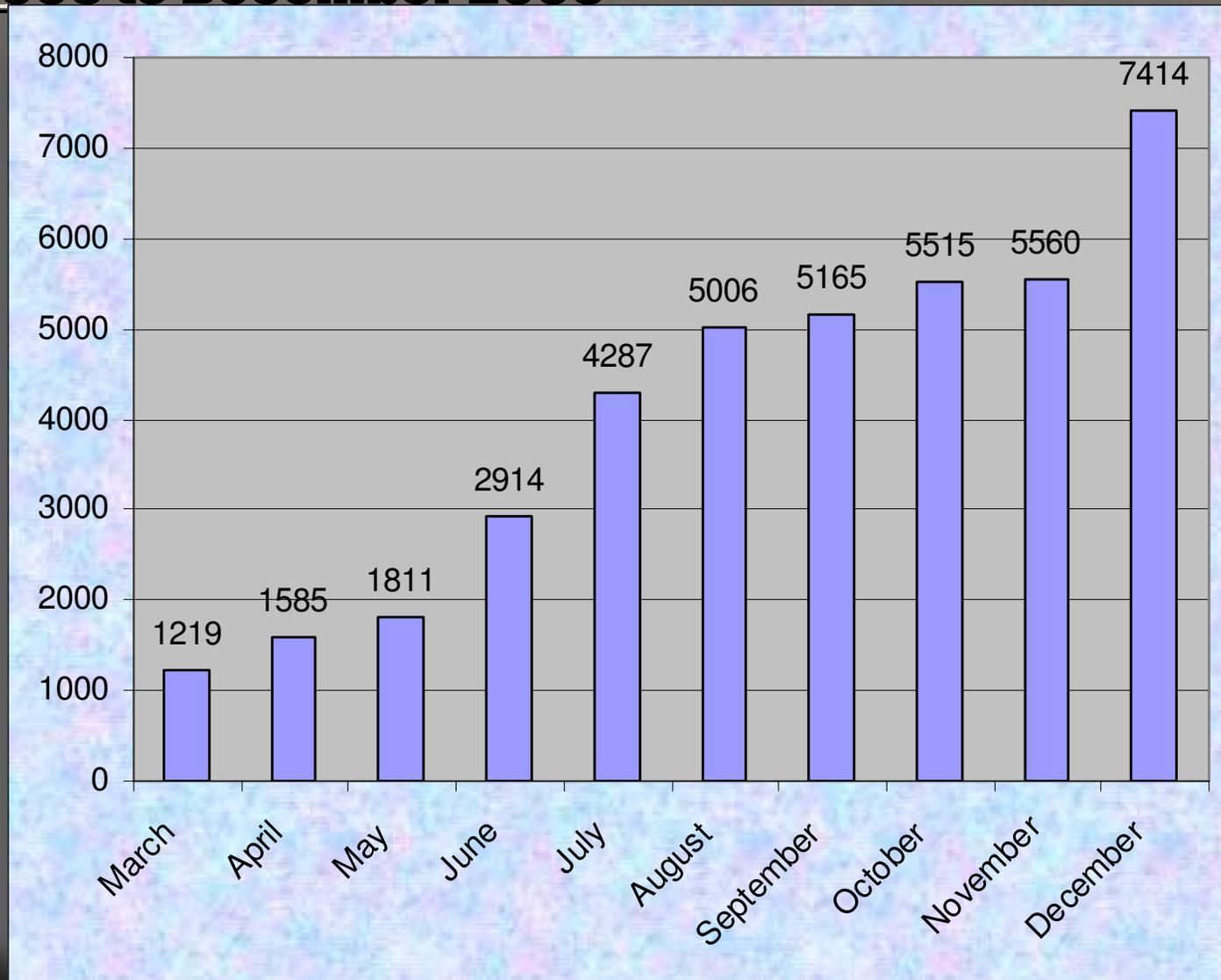


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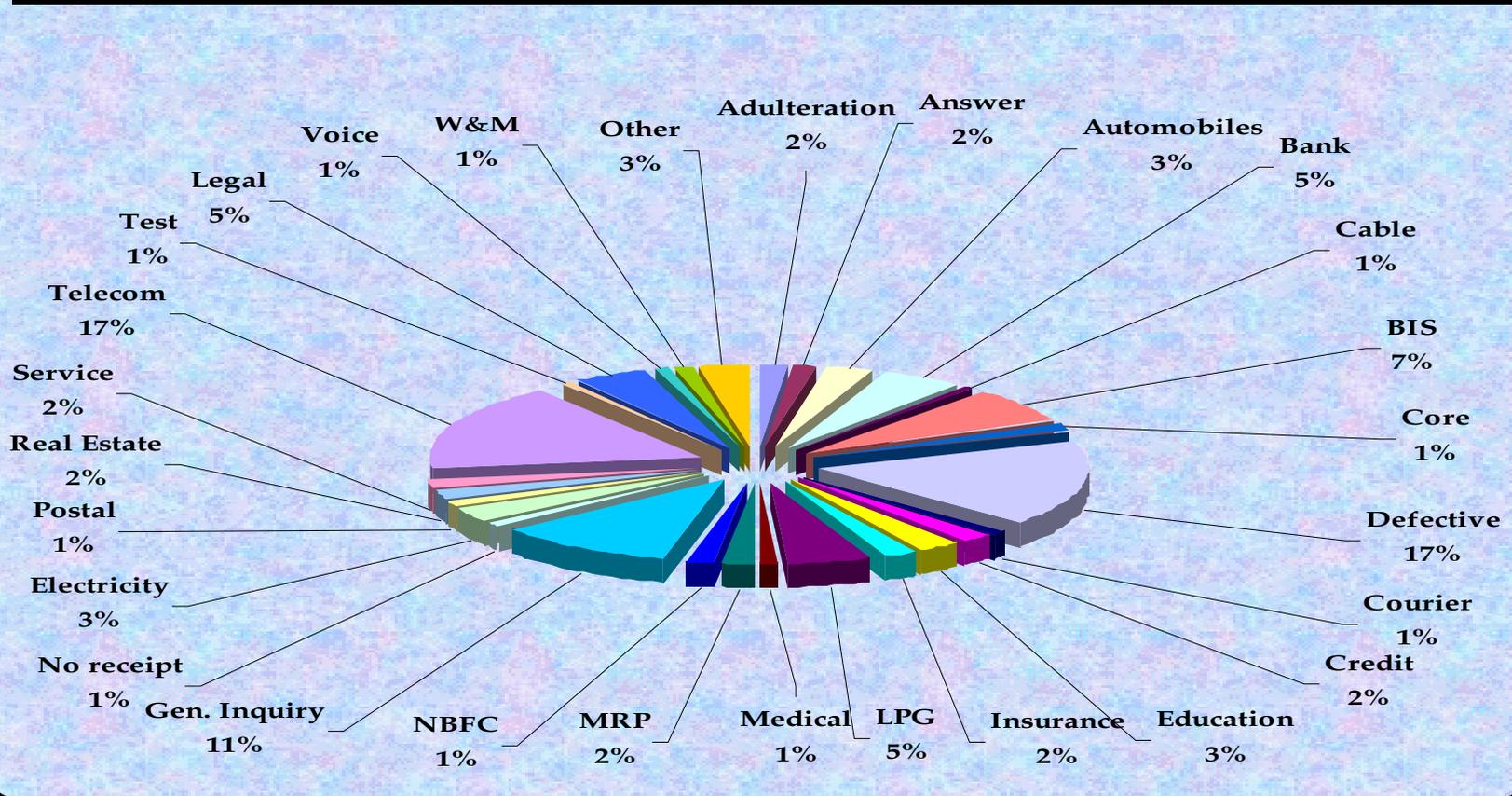


Demand quality. It's your right.

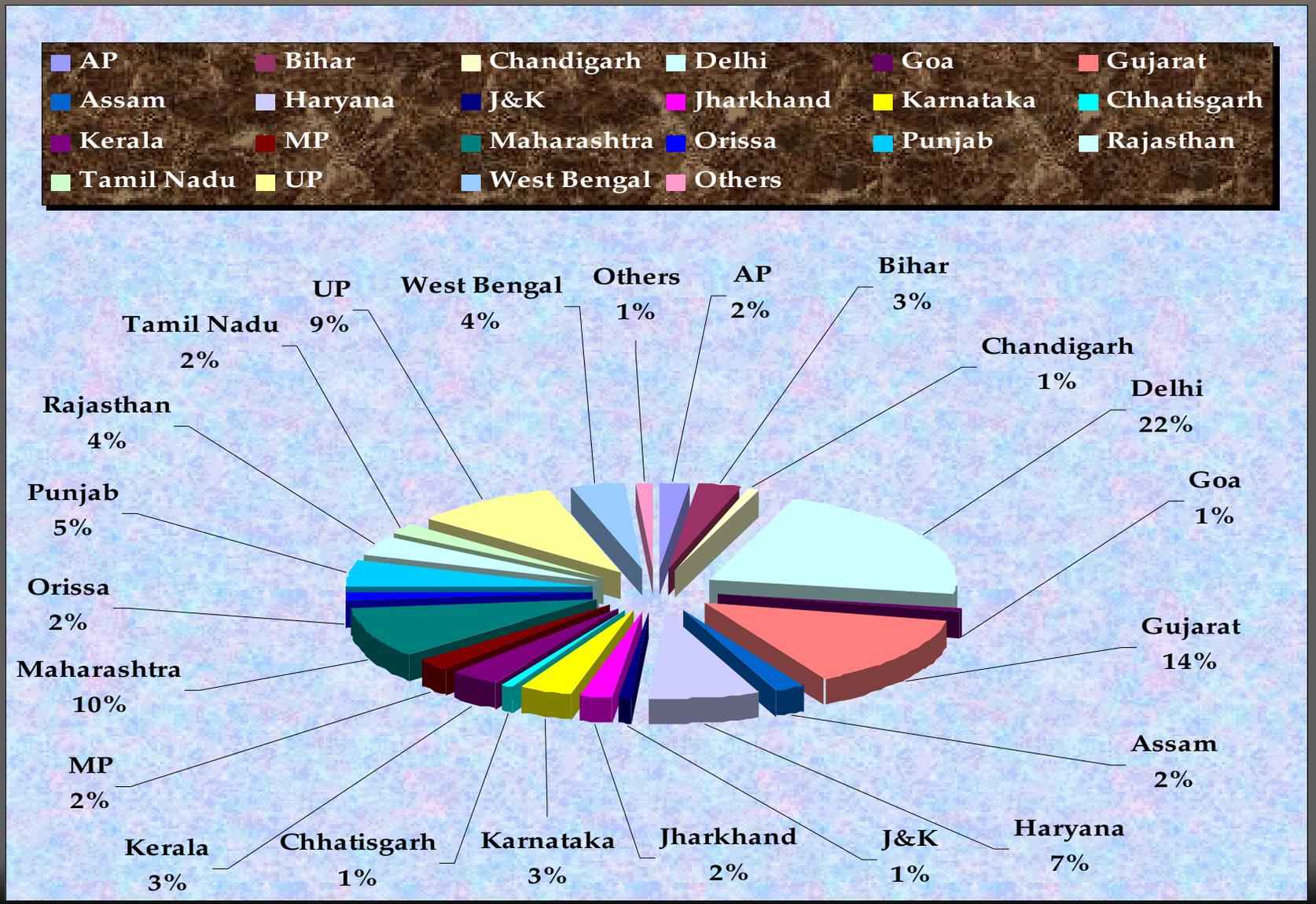
Comparative Chart of Increment of Calls from March 2005 to December 2005



Sectoral Distribution of Calls



Geographical Distribution of Calls



If CCI is effective in its Work

- ⇒ Incidence of Consumer Complaints will Come Down
- ⇒ No. of Cases in Consumer Courts will Decline
- ⇒ Corporate Behaviour in market Place will become more consumer friendly
- ⇒ Markets will be more competitive
- ⇒ Consumer will have better price and choice

Thank You

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www.consumer-voice.org