

**“Seminar on
Competition Law and Policy”**

**Jointly organized by
Competition Commission of India
and FICCI**

Key note address by

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Hon.Minister of State for Industry Shri.Ashwani Kumar, Dr.Krishna Ella, expert speakers at the technical sessions, distinguished leaders & achievers of the business community, ladies and gentlemen.

On behalf of the Competition Commission of India, it is my proud privilege to welcome the Hon. Minister and all of you to this Seminar on Competition Law & Policy, jointly organised by FICCI and the Competition Commission of India.

It is about 15 years since India started comprehensive economic reforms. These reforms have covered a broad canvas, including several sectors of the economy and government economic activity. The reforms gave rise to an enormous churning as competitive forces entered the economy. In the beginning, many businesses that lacked competitiveness were forced into extinction, and many jobs were lost. These were the initial years of pain. What we are witnessing now is the gain from the new economic model. Businesses that have grasped the new reality have restructured, cut flab, and enhanced efficiency. The competition has produced many winners, and business confidence today is at its highest levels. To the Indian consumer, competition has brought lower real prices, better quality, & wider choices.

The agenda for reform is far from complete, and there are still some entry barriers and obstacles to efficiency. Areas needing change include infrastructure, coal, mining, labour laws, and others. Some states are still out of the VAT regime. The country is in many respects fragmented into several markets; market integration is essential to reap fully the benefits of a large economy. It is now necessary to move to a national GST regime recently announced by the Finance Minister.

A competitive and contested market requires that the unfinished reform agenda be pursued with vigour and in a manner that recognizes the market principle. A mechanism is needed for firmly incorporating the 'competition dimension' within Government policies. Government has recently requested the Competition Commission to suggest a draft consultation paper for a National Competition Policy. We are working on this and are being guided in this work by a committee of highly respected economists, policy makers and other professionals. It is our earnest hope that once our exercise is complete, Government will be able to adopt and announce a National Competition Policy, the objective of which would be that all policies should suitably integrate the 'competition principle' and stipulate that where deviation is justified in larger public interest, the reasons should be properly articulated and announced.

Economic theory recognizes the advantages of competitive markets for economic growth and consumer welfare. These benefits are further underscored by credible research carried out across various countries, including developed and developing economies. Several studies have documented the specific gains from competition in countries like Australia, U.S.A., U.K., New Zealand and several others.

Joseph Stiglitz, the renowned (Nobel) economist has stressed that, “Strong competition policy is not just a luxury to be enjoyed by rich countries, but a real necessity for those striving to create democratic market economies”.

Competition is a key driver of competitiveness of national economies. Competition puts pressure on enterprises to reduce costs, improve quality, undertake innovation and generally to strive towards excellence. Michael Porter, Professor at Harvard University is a recognised authority on competitiveness & economic development; in his view, it is difficult to visualize a business emerging as a global champion if it has not had to face competition at home.

Competition policy operates in two broad areas. One is a set of government and regulatory policies that enhance competition, give primacy to market forces, allow entry and exit, reduce administrative controls and minimize regulations. The other area of competition policy is a law to prohibit anti-competitive practices and regulate mergers that might adversely impact competition. The two areas of competition policy are therefore mutually complementary, with competition policies focusing on removing public or government restraints on competition, & competition law focusing on preventing private restraints from inhibiting competition. Today, most countries

have embraced or moved towards a market based economy, recognising competition as a central principle in their economic reforms. Also, more than 100 countries have enacted modern competition laws and set-up competition authorities.

India enacted its new Competition Act in January, 2003 as part of the second generation of economic reforms. The new Act was based on the report of high level committee set up by Government to study the existing Act i.e., the MRTP Act and the legislative changes needed for the emerging new economic scenario. The Competition Act is a modern legislation on par with similar laws across the world, and it incorporates most of the standard principles and concepts of a competition law.

The new Act prohibits two kinds of anti-competitive practices. One is anti competitive collusive agreements between enterprises like fixing prices, sharing customers or territories, and bid rigging. In particular, the Act views cartels and similar breaches more seriously, & treats them as “presumed” or “per se” violations.

Secondly, the Act prohibits dominant firms from abusing their positions through practices like discriminatory prices, limiting production and denying market access. Dominance itself is not bad,

but its abuse is. The Act is not against size or the growth of a firm; In fact dominance is determined through a host of economic and other factors and not merely by size or market share.

Like competition laws everywhere, the Competition Act also seeks to regulate combinations i.e., mergers, acquisitions, etc that may produce anti-competitive effects, though our Act has a very liberal regime in regard to combinations. The threshold of assets or turnover above which only combinations are liable to scrutiny by the Competition Commission are particularly high. Also, it has a voluntary notification regime, making it optional for enterprises to notify the Commission prior to the combination. The Act also prescribes a tight time frame within which the Commission must give its order regarding the combination; otherwise, the combination is deemed to be approved.

The Competition Act also mandates the Commission to undertake a competition advocacy role. This embraces two types of activities. One is to undertake competition advocacy respecting government and other regulatory bodies with a view to promote pro-competition policies and regulations. The second element is to take measures for creating public awareness and for training regarding

competition issues. This awareness is particularly important amongst stake holders like the business community itself and others like lawyers, chartered accountants, company secretaries, company officials and academicians.

Under the Act, a complaint can be made against any enterprise undertaking a prohibited activity. A complaint can be made by any enterprise adversely affected or any other person, consumer, etc. A reference can also be made to the Commission by the Central Government, a State Government or a statutory authority. The Commission has the power to inquire into the matter and pass such orders as provided in the Act, which include cease and desist order, and an order imposing penalty.

It is important fully to understand and appreciate the role of the Competition Commission. The Commission is unlike a sector regulator, which undertakes ex-ante regulation laying down detailed rules & procedures to be followed by the enterprises in the regulated sector of the economy. On the other hand, the Competition Commission's role is mostly ex-post, and matters generally arrive before the Commission once a violation has taken place. In the case of combinations, there could be an ex-ante role as well; however, in

the Competition Act, as already stated, the merger regime is a liberal one. The Competition Commission seeks to ensure healthy functioning of the market forces and takes action against those who undermine the market through activities prohibited in the Act.

Allow me here to draw attention to a statement of Prof. Paul Geroski, earlier Chairman of the Competition Commission of U.K. :

“It is worth emphasizing that many of the benefits that come from the proper application of competition policy are felt in the first instance by firms. This is a point of some importance for those who seem to think of competition policy as just an added and unnecessary burden on business. Competition policy is sometimes a burden on business, but only on those businesses that try to unfairly disadvantage their rivals in ways that reduce their competitive abilities or incentives to compete vigorously.”

The Competition Commission of India was statutorily established in October, 2003. Since then, it has had only one member, and a very small complement of staff. It has not commenced enforcement work because the concerned sections of the Act could not be notified by government so far, since earlier, litigation was pending before the Hon. Supreme Court and, thereafter, Government has had plans to bring certain amendments to the Act. The Amendment bill has been

introduced in Parliament during the budget session, where it is pending for consideration.

During this period, the Commission has been undertaking competition advocacy and public awareness work, on the one hand by interacting with Ministries and State Governments, and on the other hand by pro-actively cooperating with industry chambers and associations in spreading awareness.

The Commission has also been undertaking preparatory work required before the Commission can begin enforcement, such as preparing regulations and operation manuals. It has also been undertaking capacity building of its staff in varied ways. Further, the Commission is undertaking, through highly reputed institutions, a number of market studies into different areas with a view to gain insight into the structure and behaviour patterns of markets in India. This is expected to help the Commission in its advocacy work and also enable more professional handling of cases. In all these activities, the Commission has been closely associating renowned experts and it has a number of advisory bodies consisting of highly reputed professionals.

The Commission has been particularly mindful to interact intensively with industry chambers and associations. It has taken care to include business representatives in almost all of its advisory bodies. It has joined hands with chambers and other representative bodies to organize seminars and workshops. About 37 seminars or workshops have been held so far in different cities in the country which the Commission has participated in or organised. This is with the view to enhance levels of awareness amongst the business community and encourage higher levels of self compliance. This is also to explain the benefits of the law to enterprises and others and strengthen the competition culture in the country.

The Competition Commission of India greatly appreciates the initiative taken by FICCI to organize this Seminar jointly with the Commission. It reflects an enlightened and healthy approach on the part of FICCI and its constituents.

We hope that FICCI will continue organizing programmes relating to competition which will be useful to their members. FICCI has nominated a nodal officer for competition law and policy; in addition we propose FICCI to constitute a high level committee to plan and steer activities relating to this subject.

We also propose that FICCI develop a model Compliance Programme for Individual Companies such that will help the companies to avoid violations of this law. Such compliance programmes have been adopted by several global companies with a view to minimizing the possibility of infringing the competition law. Competition authorities, such as in the United Kingdom - and elsewhere, take note of such company compliance programmes, when hearing cases relating to individual enterprises and regard such compliance programmes as a mitigating factor when deciding on penalties for violation.

Hon. Minister, we are grateful to you for having taken time out of your busy schedule to inaugurate this Seminar. Your important portfolio includes vast responsibilities and your keen interest in enhancing the competitiveness of the Indian industry is well known. Your presence here recognises the role of healthy competition in building national competitiveness in the economic field, as also in enhancing consumer welfare and accelerating economic growth. We in the Competition Commission, would be grateful to be guided by you in discharging our onerous responsibilities.