

*Workshop on*  
**“Competition Assessment and Regulatory Impact Analysis:  
Instrument for Competition Advocacy”**  
*Speech of*  
**Shri Vinod Dhall,**  
**Member & Acting Chairperson, Competition Commission of India**  
*17 March, 2006*

Dr. Rangarajan, Chairman of the Economic Advisory Council to the Prime Minister. Mr. Michael Carter, Mr. Roger Nellist, Mr. Anil Sinha, our guest speakers from overseas, professionals from the academic and research community, distinguished members of the expert advisory committees of the Competition Commission of India, representatives from several Ministries, ladies and gentlemen.

It is my proud privilege to welcome all of you to this Workshop on “Competition Assessment and Regulatory Impact Analysis”. We believe this is perhaps the first workshop on this subject by a regulatory authority. Your presence underlines both the relevance and the usefulness of this workshop. I wish to thank you for your participation and for your encouragement.

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 today 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.

The agenda for reform is far from complete, and there are still many entry barriers and obstacles to efficiency. Areas needing change include infrastructure, coal, mining, labour laws, and others. Many states are still out of the VAT regime. The country is in many aspects fragmented into several markets; the real solution lies in moving to a national GST regime now 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, headed by Dr. Vijay Kelkar. It is our earnest hope that once our exercise is complete, Government will pull together the necessary political and administrative weight to adopt and announce a National Competition Policy. The NCP would require 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 publicly announced.

Competition law has a hoary history. In the US and Canada it is over a century old, and in Japan and Europe about half a century. Like other economic laws, Competition Law has evolved over the decades in with changing economic circumstances and political philosophies. Recent changes include the moves by European states to align their laws with the EC treaty, and the marked influence on the US law of the Chicago School of thought. Certain differences exist even between the US and the European laws, as were, for example, reflected recently in the Microsoft case and the General Electric – Honeywell merger. As they say, "the search for the soul of antitrust" is still on.

Standards in antitrust are being set today by developments in the US and EU. There is no standard tailored for developing countries. The characteristics of emerging markets are different e.g. higher entry barriers (in the shape of less developed capital markets and greater regulation), higher concentration ratios, greater incidence of dominance particularly from previous public sector monopolies, marked asymmetries of information, and finally missing economies of scale.

Do these characteristics of emerging markets demand a different law ? No law can isolate itself from the surrounding economic realities and political goals. In the European Union, the Competition Law recognizes various goals in addition to economic efficiency and consumer welfare, such as the overriding aim of unifying the common market, and it retains space for objectives like development of less developed regions and state aid, though within a tight framework. We believe that the fundamental principles of antitrust have broad applicability ie against collusive practices, against abuse of dominance, and merger control, but the accommodation of other objectives and the weightage given to different factors can vary. In India too, while the basic new law is in place, in its enforcement we will need to see what approach or mix of approaches to the fundamental principles is

best suited to the needs of the country. Our Act allows some flexibility e.g. in its preamble, and in its provision relating to exemptions.

Globalization of business has also expanded the effect of anti-competitive practices across borders. A cartel in one country may deeply hurt economies in different continents, as has been brought out in recent OECD studies. This has underlined the importance of international cooperation in controlling such practices. Consensus has not emerged yet on how best to build such cooperation. However, increasingly, bilateral and regional trade agreements now include cooperation on competition issues. But agreement at the multilateral level in the WTO was shelved in the face of opposition, mainly from developing countries including India. These countries rightly argued that they had not yet gained sufficient experience in antitrust to be able to assess the pros and cons of a multilateral framework. However, the time to gain this experience is now, so that the next time around, developing countries such as India are on surer footing in negotiations. Meanwhile, it is important that the 'cooperation on competition enforcement' is included in India's bilateral and regional trade agreements so as to protect our national economy from violations of antitrust originating in other countries.

But what about violations prevailing within the country? Experience across the globe demonstrates the prevalence of market failures in all economies, whether developed or developing. These include hardcore cartels and abuses of dominant position. Several examples in developing countries have been documented by OECD, UNCTAD and other bodies. Obviously, India can be no exception. Without due investigation one can never make a definitive statement. But if instances reported in the financial press and those discussed in business circles are pointers, India may be having its own share of private restraints on competition, including cartels. This was brought out even years back by the Sachar Committee on monopolies. If true, these practices may be seriously hurting our economy through loss of efficiency, higher costs, etc. The early implementation of a Competition Law is, as Joseph Stiglitz has stressed, not a luxury but a real necessity. And, if I may add, real necessity also means real urgency.

The new Competition Act was enacted in January 2003. A Competition Commission was statutorily established in October, 2003. Since then, it has had only one member, and a very tiny complement of staff. It has not commenced enforcement work because the

concerned sections of the Act could not be notified by Government so far, due to litigation in the Supreme Court and then due to the need to carry out amendments to the Act. These amendments have now been introduced in Parliament in the current session.

The Competition Act is a modern legislation that incorporates all the broadly accepted principles of antitrust, such as provisions prohibiting anti-competitive agreements including cartels, and abuse of dominant position, and regulation of mergers. It has provisions relating to the per se rule in case of cartels, the rule of reason in other cases, the interface of intellectual property and competition, the treatment of joint ventures, the leniency tool for cartels, provisions for investigative and inquiry powers, as well as for a whole range of remedies. After its establishment, the Commission has devoted its energy to in-depth study of the various concepts and best practices, preparation of draft regulations and draft guidelines, and a host of other such activities. In all this work, we have been networking closely with eminent experts, and we have several task forces and committees.

The Commission has been undertaking competition advocacy and awareness work by interacting with Ministries and State Governments

and by joining hands with industry chambers and associations in spreading awareness. It has undertaken capacity building of its staff, established a website and a library. However, the main constraints which the Commission has been facing are of staff and of financial powers; to resolve these we have been in discussion with Government.

As part of its professional and advocacy work, the Commission has undertaken competition related studies into certain sectors of the economy. These studies are expected to help the Commission in three ways. First, these will underpin the Commission's advocacy work with private enterprises and their associations with a view to help them avoid or shed anti-competitive practices. Secondly, where the studies will bring out policy or regulatory restraints impeding competition, it will help the Commission to undertake advocacy work with Ministries, State Governments and sector regulators. Thirdly, the studies will expand the Commission's own understanding of market structures and behaviour patterns and thereby enable the Commission to handle individual cases with deeper insight.

In commissioning these studies, the Commission is guided entirely by a high level committee comprising of economists, and legal and other professionals, headed once again by Dr Kelkar. We are grateful to the committee members for devoting their valuable time and expertise to this



extremely important and pain-staking work. All the studies are being undertaken through reputed academic and research institutions on the basis of proposals submitted by them. It is in the hands of the Committee to evaluate any proposal in terms of its relevance to the Commission's work, the suitability of the institution, and the reasonability of the terms and conditions. We greatly value the partnership of these institutions in this almost path breaking work, and we are looking forward to the broadening and deepening of this network over the years to come.

It is a matter of satisfaction for us that FIAS, World Bank and DFID offered to support these studies as part of approved technical cooperation projects. This gives us additional confidence that this effort is in the right direction. The objective of this workshop is to bring together the family of those institutions interested in competition related studies to share their experiences on methodologies and best practices. This workshop will help evolve, to the extent feasible, some common templates on approaches, practices and outcomes. I wish to thank the World Bank group and DfID for their assistance, and also for being present here today.

We are keen that the Commission, when it becomes functional, should be a highly professional and expert body. We must get the Commission's vision and strategy right from the beginning. The Government must continue to provide

the Commission sufficient resources. Equally importantly, the competition dimension must be firmly ingested in policy formulation and review by all Ministries, state governments and other regulators, almost as an article of faith, subject to larger public interest.

Dr Rangarajan, I am personally grateful to you for agreeing to my request for inaugurating this workshop. Your contribution to national economic policy making in your several years at the helm of affairs, both within and outside of government, is widely recognized. The government continues to benefit from your advice in your present position. We , in the Competition Commission, would be grateful to be guided by you in discharging our onerous responsibilities, as and when these commence in full measure.