

**SPEECH BY SHRI VINOD DHALL, MEMBER, COMPETITION
COMMISSION OF INDIA,
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I am greatly honoured to be invited to speak at this 22nd Conference of the Indian Paint Industry during its Inaugural Session. I would like to congratulate the organizers for holding this Conference every two years, to focus on the developments, the problems and the challenges before the Indian Paint Industry.

I am particularly privileged to be here in the presence of our Hon'ble Minister Shri Prem Chand Gupta, Minister of Company Affairs, who is also the Minister for Competition matters. I have had the honour to meet and discuss with him on quite a few occasions, and I can personally testify to his clear thinking, and to the strong and enlightened leadership he is providing to his Ministry. Besides, he is a successful entrepreneur himself, and has established prosperous businesses both in India and abroad. He is therefore in the unique position to provide the robust & practical perspective of a businessman to the work of his ministry. I have no doubt that under his leadership; the ministry would take significant strides in its work.

The Indian Paint Industry has witnessed remarkable growth over the last few years in terms of volumes, quality and also technological development. Until now, it has been mainly dominated by the decorative products; but steadily it is moving towards industrial and protective coatings, which demonstrates its increasing sophistication.

The Indian Paint Industry in many ways is a show case of the fabled entrepreneurship & professional management of Indian Industry, and its capability to take on new challenges. Like the paint industry, the rest of the manufacturing and service sector in India is also on the threshold of new opportunities and challenges. The world's markets are rapidly coalescing into a single market place. Today, the competition is not confined only to other domestic companies, but much more strongly, the competition is also from global giants, be these American, European, Japanese or Korean. To survive, you no longer have to be merely good, but be amongst the best. A market analysis presented to the Commission by some economists shows that the Indian manufacturing sector has been witnessing a steady trend towards greater concentration. In many sectors, medium - sized companies are vanishing, or are being absorbed by stronger companies, leaving only a handful of big players at the top. Thus the smaller fish are being swallowed by the bigger ones.

In this Darwinian world, it is primarily up to each enterprise to tighten its belt and fight it out with the best. But Government also has a crucial role in this area: in improving the business environment, upgrading infrastructure to world standards, reducing cost of basic utilities, easing entry and exit barriers, and minimizing compliance costs. The present Government has set up a National Manufacturing Competitiveness Council to help Government to develop strategies for making the manufacturing industry globally competitive. The Council will surely make its recommendations to the Government. It is here that the Ministry of Company Affairs also has a crucial role. Already, under the leadership of the Hon'ble Minister Shri P.C. Gupta, it is pursuing some important initiatives, for example, the E-Governance project to completely computerize and web-

enable the services of the Registrar of Companies, and the other project to reform and simplify the Companies Act. Both are being pursued with great vigour by the Hon'ble Minister, and these deserve the support of everyone including the business community.

I had the privilege to work as Secretary, Department of Company Affairs for during 2001-2003. One of the first things that struck me was the dire need to change the very perspective of the Department, from being a mainly legalistic department to being a mainly economic department. It needed a herculean effort to liberalize and change this mind-set, which looked at every proposal through the lens of the Companies Act or other legislations.

I visited several Offices of Registrar of Companies including Mumbai, Cochin, Chennai, Delhi, Hyderabad etc. The state of affairs was truly depressing. There were mountains of paper and nobody could be sure what they contained and what had gone missing. There were serious complaints of vanished documents, delays and harassment. The ROC staff could not be entirely blamed as the facilities in the offices remained hopefully inadequate, while the work had multiplied many fold over the years. The system was only contributing inefficiency and higher costs to the corporate sector, instead of facilitating matters. It was clear that no amount of procedural or cosmetic change would suffice; what was required was total overhaul. Accordingly, we conceived a project for completely computerizing the ROC Offices and placing their services on the Internet, so that you can undertake transactions with the ROC office sitting in your office or in your home. We engaged the National Institute of Smart Governance as consultant to develop the project, and they designed an excellent project and carried out proof of concept at ROC, Coimbatore. The

project would cost Government over Rs.300 crores, but it would change the face of the Department and save crores of the private sector in compliance costs. It is a matter of great pride that under the Hon'ble Minister's stewardship, the project is likely to see the light of the day in the near future.

When Enron, Worldcom, Anderson and some other companies collapsed amidst high corporate drama in the second half of 2001, one of the first authorities in the world to sit up and take note was the Department of Company Affairs. But unlike America that brought out the Sarbanes –Oxley Act within two months, we did not want to do a knee - jerk reaction, but rather make a measured and mature response - properly balancing the interests of promoters, shareholders, independent directors and others. We set up an expert committee, including business representatives, to study the whole issue in the context of the Indian Companies Act and regulatory structure and give its recommendations. After considering its report, Bills was prepared for amendments in the Companies Act and the Chartered Accountants' Act. The Companies Amendment Bill was even introduced in the Parliament. However, there were some provisions of the bill about which disagreements arose; after considering all aspects we agreed to make some changes in that Bill, but the Bill had to be withdrawn. This slowed down the modernization of the India corporate law, and more than three years after the Enron debacle, the desired changes in the legislative frame - work have not taken place in India. It is a matter of great satisfaction that the Hon'ble Minister has undertaken an exercise to re-write the Companies Act itself, with the objective of greatly condensing the Act, also simplifying and rationalizing it, and making improvements in corporate governance, reducing compliance costs, bringing greater transparency, and strengthening

the investigation and penal provisions. This effort deserves all- round support.

As I said, competition law also falls in the realm of the Ministry of Company Affairs, and we have a new Competition Act in the statute book. The Monopolies & Restrictive Trade Practices Act was enacted in 1969. However, the focus of this Act was more on the control of monopolies and the prohibition of monopolistic and restrictive trade practices. In the new economic era, it was found that the MRTP Act had “become obsolete in certain respects in the light of international economic developments relating more particularly to competition laws, and there (was) need to shift the focus from curbing monopolies to promoting competition.” This led to enactment of the Competition Act, 2002.

Competition and liberalisation are essential to unleash the entrepreneurial forces in the economy. Arguably, free and fair competition is one of the pillars of an efficient economy. Competition stimulates innovation and productivity and leads to optimum allocation of resources. After India’s closed and controlled markets were opened up to internal and external competition, the gains for the economy and the consumer have been obvious. These have been reflected in higher GDP growth, the growing diversity of the goods and services in the market, and competitive prices.

However, in an open market economy, some enterprises may also undermine the market by resorting to anti-competitive practices for short term gain e.g. they may form cartels, or big companies with market power may resort to extortionist or predatory pricing. Adam Smith wrote of the “wretched spirit of monopoly” in which “the oppression of the poor must establish the monopoly of the rich”. These practices can completely nullify the gains from competition Thus there is a need for a competition law, to

discipline such behaviour when it takes place. It is for this reason that, while countries across the globe are increasingly embracing market economy, they are also reinforcing their economies through enactment of competition law and setting up competition regulatory authority. Several countries have done this much earlier than India. Today over 90 countries have a new competition law and a new competition authority.

The earliest competition legislation was in the United States in the shape of the Sherman Act enacted in 1890. This Act was later reinforced by the Clayton Act, in 1914 and the Federal Trade Commission Act, also in 1914. The Federal Trade Commission was set up as a market watch-dog with the power to take action against violations of these Acts.

In the European Union, the historic Treaty of Rome, which led to the formation of the European Union, contained the famous two Articles 85 and 86 which constitute the competition law of the European Union and whose objective was that while the European markets were to be integrated into a single economic market, this common market was to be clearly governed by 'effective competition'. This was supplemented by the European Merger Regulation in 1989 that seeks to regulate concentrations (mergers, acquisitions etc.) that would significantly impede "effective competition in the market".

In the United Kingdom, the Monopolies and Restrictive Trade Practices (Inquiry and Control) Act, enacted in 1948, was repealed and replaced wholesale by a Competition Act, 1998 and finally by the Enterprise Act, 2002, which brought the UK law in line with the more professional regulations of the European Union.

The Indian Competition Act is a modern competition legislation and it differs from the MRTP Act in many important ways. It is line with the contemporary competition laws of the world, and it seeks to:-

- 1) prohibit anti-competitive agreements (including specifically cartels)
- 2) prohibit abuse of dominant position (e.g. predatory pricing, erecting entry Barriers)
- 3) regulate combinations, (i.e., mergers, acquisitions, etc.)
- 4) In addition, it mandates the Competition Commission to undertake competition advocacy, awareness and training about competition issues.

Writ petitions are pending before the Hon'ble Supreme Court of India challenging certain provisions of the Competition Act as well as certain matters relating to the Competition Commission. Hence, no adjudicatory work is being undertaken by the Commission at this stage. I must add that I will not comment on any issue pending before the Hon'ble Supreme Court, and anything I say is subject to the pronouncement of the Hon'ble Court. Hence, other than adjudication, all foundational and preparatory work is being intensively undertaken which, any way, is required before the Commission can become fully functional. This preparatory and foundational work includes the usual administrative and the establishment work such as setting up the offices and services, designing the organizational structure, recruiting a core team and undertaking capacity building, etc. The Commission is following completely the outsourcing model, and has employed no peons, clerks, drivers, cars, etc. In addition, it is doing Competition Advocacy and awareness and training work; several Advocacy seminars have been held or addressed by me or the officers of the

Commission. All this work is confined to what is appropriate to the present stage of the Commission.

The professional work undertaken by the Commission is much more significant. We have set up several expert committees for professional advice in specific areas, such as expert committees for the Commission's Regulations, for Competition Advocacy, Economic Information, Predatory Pricing Regulations, Research Projects, and academic Course Curriculum. These expert committees comprise of economists, legal experts, consumer organizations, industry chambers, media experts and such other professionals. In this way, the Commission is able to benefit from the professional knowledge and experience of some of the most eminent professionals in competition law and policy, as well as from inputs by industry chambers and associations.

The Commission has set up a Competition Forum, that meets every Friday, and an eminent expert is invited to discuss with the Commission on some subject related to competition. About 22 sessions of the Competition Forum have been held, with international experts, economists, legal professionals, consumer representatives, industry representatives, and organizational experts. The Competition Forum has been an invaluable platform for capacity building of the Commission and its officers, as well as for interactive communication between the Commission and stakeholders. It has helped to develop and refine many of the economic concepts embedded in the Act, which will have to be applied in deciding the cases before the Commission.

In addition, we have studied intensively the laws and practices of established competition authorities in other countries. This has brought a wealth of competition knowledge to the Commission which has been incorporated in its preparatory work.

A very important activity is the proposals to take up analytical studies and research projects in selected areas of the market. For example, these projects relate to study of the competition aspects of the pharmaceutical, transport, retail food, and telecom sectors; we are also studying broad concentration issues in the manufacturing sector as a whole. There are also proposals to study the legislations and policies at the level of State Government in selected sectors that may be impeding competition and thereby adversely affecting the states' economies and consumers. In these studies, the Commission will be advised by the Expert Committee on Research Projects, including eminent economists. All the studies will be undertaken through reputed academic and other institutions. These studies are expected to give the Commission deeper insight into the market and thereby enable more professional handling of complaints and also underpin its Advocacy work.

We propose to have a strong Economics Wing in the Commission. This wing will enable expert application of theoretical principles and econometric techniques to the available empirical data of specific markets, underpinning each case that is brought forward. Networking is being developed with organizations for the availability of economic data required for the analysis such as determination of the relevant market, dominance of a firm, existence of entry and exit barriers, etc .

[The Competition Commission has finalized its draft Regulations after consultations with the expert group on Regulations. It is in the process of drawing up its Predatory Pricing Regulations.]

The objective of this preparatory work is that after the Hon'ble Supreme Court decides the pending Writ Petitions, the Commission can become fully functional with minimum loss of time at that stage. I have described this work in some detail with four ideas in mind:-

- (1) to demonstrate the very complex nature of the Commission's work, and the thoroughly professional approach it requires.
- (2) to bring out the Commission's efforts to develop deep insight into the market and be sensitive to economic forces.
- (3) to build itself into a sound competition authority, incorporating the best practices that prevail internationally.
- (4) We intend to have to strong Advocacy and Public Awareness role so that the Business community is knowledgeable about this law, and is better able to remain in compliance of it, reducing to that extent the need for direct intervention by the Commission. This demonstrates our compliance enabling approach.

We will welcome any suggestions from industry associations such as the Indian Paint Industry.

I wish this Conference all success.