

Third Roadshow on Competition Law

Tuesday December 18, 2018, Ahmedabad
Public Procurement/Cartels/Trade Association
Draft Address of Chairperson, CCI

Salutations

Hon'ble Chief Minister of Gujarat, Shri Vijay Rupani;

Chief Secretary of Gujarat Dr. J.N. Singh;

President, Gujarat Chambers of Commerce Shri Jaiminbhai R. Vasa;

Additional Chief Secretary, Home, Govt. of Gujarat Shri A. M. Tiwari;

My colleagues in the Commission, Shri Augustine Peter, Shri U.C. Nahta

Distinguished invitees, ladies and gentlemen;

A very good morning to you all.

1. At the outset, I welcome you to the third Roadshow on Competition Law. We felt that there is a need to bring important stakeholders under one roof and have open discussions with them on competition issues in order to gather their perspectives and experiences. The Commission has decided to conduct a series of Roadshows. The first event was organized this year at Mumbai on 15th of October and the Second in Delhi on 5th of November. Now we are in Ahmedabad, taking another step forward towards

fulfilling our goal of bringing the stakeholders closer to the Commission.

2. Gujarat, being a major hub of manufacturing and trade in India, housing Corporate Headquarters of several prestigious Indian companies and a large number of trade associations, is an ideal destination for such an event. In the words of Hon'ble Chief Minister, Shri Rupaniji and I quote, "Whosoever has started a business in Gujarat has been successful". I may add that competition complements the success and growth of businesses.

3. A business person fully understands the importance of markets and how they function. In an economic system governed by markets, competition is the key driver and it not only gives hope to those entering the economic arena, for the first time, but also rewards innovators.

4. In this globalised world, a nation cannot achieve its full economic potential if it is not able to compete globally. Effective competition in the domestic economy allows foreign investment flows and in gaining comparative advantage for international trade.

5. Healthy competition, though vital, does not materialize on its own. Without oversight and necessary intervention, there can be

market failures. Enterprises could abuse their position in the market and indulge in anti-competitive behaviour, which if unchecked could hurt both businesses and consumers. It is in this context that the role of the Competition Law needs to be viewed.

6. Hon'ble Chief Minister Sir, the Competition Act 2002 is a modern Act. It casts a duty on the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants. The Preamble of the Act provides an apt institutional context to the Competition Commission of India. It begins with the words: '*An Act to provide, keeping in view of the economic development of the country..*'. This is a rather unique and unambiguous endorsement of the link between the micro functioning of individual markets and the larger development imperatives of the country. This is also to affirm that competition is not, an end, in itself, but a means to achieve larger economic agenda and the Commission is the facilitator for achieving this goal.

7. In the last nine years since the CCI got its enforcement power, we have crossed important milestones and have made critical interventions. In terms of numbers, the Commission has so far received 995 cases, out of which 807 cases have been disposed off. Commission has found contravention in 134 cases. On the

combinations front, Commission received 623 filings, out of which, 609 were approved.

8. In terms of impact, our interventions have had positive outcomes. In fact, in many cases, mid-course corrections have taken place. Businesses and business associations have revised their policies and practices to bring them in alignment with the principles of competition. We have sufficient reasons to believe that stakeholders are increasingly reposing their trust and confidence in the Commission. The Act and the Commission, both are consumer and business friendly. The Commission does not come in the way of ease of doing business, but it only intends to regulate anti-competitive behaviour. Hence, the Commission has to balance between its enforcement function and the advocacy function - the twin pillars on which the edifice of this law rests. I believe that a single successful competition advocacy effort resulting in a policy and regulatory reform or compliance by firms can bring manifold economic benefits, far in excess of a single successful enforcement action. Advocacy is a continuous process, which requires fusion of efforts by the regulator and the regulated. The Commission, since its inception, has been pursuing the advocacy agenda with right earnest. These Roadshows on competition law are yet another important step in our effort to reach out to the stakeholders across the country.

9. In spelling out the enforcement function, the Act is competition neutral. Both private and Government enterprises come under the ambit of the Act. Public procurement is a key economic activity of government. Procurement of goods and services is carried out by various Ministries, Departments, Municipal and other Local Bodies, Statutory Corporations and Public Undertakings both at the Centre and at the State level. In India, government procurement constitutes about 30% of the GDP. A competitive market results in savings to the exchequer and to that extent welfare of the citizens can be enhanced.

10. CCI has been promoting competition in the public procurement markets by identifying and correcting bid-rigging through strict law enforcement and also by making companies learn that the benefits of bid-rigging is much lesser in comparison to penalties they will suffer once their collusion is identified.

11. While strict enforcement of competition law is the key to deter enterprises from vitiating government tenders, the onus to design and implement procurement systems and tender conditions in a way that encourages competition rests with the procuring agencies. The standards set or the processes followed may in certain instances restrict competition or even create conditions conducive for collusion. **While cartel enforcement has been a priority area of the Commission, our general approach has been to deter them**

through severe penalties and also to use lesser penalty provisions to encourage the enterprises and individuals to come forward and cooperate in uncovering such anticompetitive agreements. The approach seems to have worked well as there are increased filings of leniency applications.

12. Let me now also briefly touch upon competition compliance by Trade Associations. Trade associations perform very vital role and undertake legitimate activities, which can significantly increase the efficiency and performance of a sector. They also interface with the Govt. from the policy perspective. However, they do face the risk of violation of competition or antitrust law in case their activities restrict competition. I may add that some of their legacy practices may overstep the boundaries stipulated by the newly introduced competition law. Lack of awareness of the law significantly contributes to their unlawful practices. For instance, a Stakeholders' Survey carried out by the Commission earlier this year, revealed that a sizeable proportion of the respondent enterprises in India were unaware that it is illegal to exchange information regarding future prices, production and sales. This brings to fore the imperative of targeted advocacy with trade associations early on, to enable a competition audit of their practices and to dislodge entrenched anti-competitive legacies. Trade associations should also formulate internal competition compliance guidelines to prevent contravention.

13. Several enterprises in India have voluntarily put in place internal competition compliance programmes. With this aim in mind, the Commission developed a Compliance Manual for Enterprises that was launched, last year by the Hon'ble Chief Justice of India Shri J S Khehar. This Compliance Manual can help enterprises and trade associations in training and educating their members about statutory provisions and obligations under the Act.

14. In the past nine years, we have reached out to our stakeholders in varied ways. We have organized lectures, workshops, seminars, moot courts and we regularly publish material which includes our quarterly newsletter 'Fair Play' along with advocacy booklets among others. Commission has also developed a Competition Assessment Toolkit, which provides a roadmap for a comprehensive Competition Assessment of policies, legislations, rules and regulations in India. The objective is to sensitise policy makers towards competition concerns in legislations and to promote a culture of competition by way of non-enforcement mechanism.

15. Commission is also contemplating to develop a Screen based Assessment Toolkit so that the procurers can identify the violators easily. Seminars, workshops and conferences are organised every year throughout the country. Recently, we have also made our

presence on social media - Facebook and LinkedIn to explore newer channels of communication. The Commission is encouraging Law Universities, to hold Moot Court Competitions. It gives me immense pleasure to inform that one Moot Court was organised in partnership with Nirma University last year. These Roadshows is our latest initiative. We, as a market regulator would like to see our role more as an enabler than as an enforcer.

16. I look forward to the deliberations in this Roadshow and hope that you will benefit from the event and take home a greater appreciation of the law and its enforcement. I invite businesses to come forward and forge proactive partnership with us in building competitive markets and a robust compliance culture in the country.

17. I request all of you to please visit the kiosks placed outside displaying glimpses of our advocacy initiatives. We have also kept advocacy literature outside that you can take and refer to. With these words, I would like to conclude and take this opportunity to thank the Hon'ble Chief Minister of Gujarat, Shri Vijay Rupani ji for taking time out of his busy schedule to inaugurate the roadshow. Sir, your message will help in disseminating the advocacy efforts of the Commission further in the State of Gujarat. I hope that the deliberations today will allow for an engagement and discussion with our stakeholders in a free

and open manner which will go a long way in leveraging the benefits of liberalised markets in terms of higher efficiency and consumer welfare.

Thank You.