

Key Note Address by Shri Vinod Dhall,
Member, Competition Commission of India
at the seminar on 'Competition Policy and its Impact on Industry'
at Ahmedabad on 20 September, 2004

Titles.....

1. At the outset, may I compliment FICCI for organizing this Seminar on "Competition Policy and its impact on Industry." This is a commendable initiative towards increasing awareness about competition law amongst the business community and other stake-holders. Such events will contribute substantially to the spread of the competition culture and improving levels of compliance of the competition law, which in the end would be beneficial both for the economy as well as the individual businesses themselves.
2. I notice from the programme that there would be a technical session in which important facets of the Competition Act will be described. I would therefore confine myself to outlining in a broader perspective the role of the Competition Commission and the challenges before it. As you are aware, writ petitions are pending before the Hon'ble Supreme Court challenging certain provisions of the Competition Act. As already communicated, I would not like to discuss or refer to any subject that is related, directly or indirectly, to the issues pending before the Hon'ble Court, and I would like to state the

disclaimer that anything I say in my address is subject to the outcome of the cases in the Hon'ble Supreme Court.

3. The first question that arises is what is competition and why do we need it. As you know, the Indian economy had been subject to controls and regulations for several decades. The broad policy objectives of India's planned model for industrialization were the development of a diversified industrial base with a view to achieving self-reliance, and the promotion of social justice. Self-reliance, in the Indian context, came to mean, broadly, import substitution. There was also the "*infant industry*" argument and there was "*export pessimism*" which underlay those policy objectives. Thus, the policies at that time aimed at regulating the pattern of investment through the creation of a dominant public sector, and through checks on the private sector.
4. Major economic decisions were in the hands of the Govt. and there was little room in the system for competition policy. The Indian business was shackled in a plethora of controls such as industrial licensing, monopolies and restrictive trade practices, foreign exchange restrictions, small scale industry protection, control on foreign investment and technologies, exit barriers under the Industrial Disputes Act and the Sick Industrial Companies Act, quantitative restrictions on imports, administered prices, control on capital issues, and so on and on.
5. The economic consequences of this policy regime, though initially beneficial, were reflected, generally and ultimately, in

the poor rate of economic growth, low levels of productivity and efficiency, absence of international competitiveness, sub-optimal size of businesses, and outdated and inefficient technologies in various sectors. Some firms and business houses were particularly adept at exploiting the system of licenses and controls and they built up and maintained monopolistic positions in the market to the common detriment of public interest.

6. In the late 1980s and 1990s, the realization began to dawn that this policy regime had outlived its utility and the system was crying for reform. The Industrial Policy Statement of July, 1991 recognized that,

“The attainment of technological dynamism and international competitiveness requires that enterprises must be enabled to swiftly respond to fast changing external conditions that have become characteristic of today’s industrial world. Government policy and procedures must be geared to assisting entrepreneurs in their efforts. This can be done only if the role played by the Government were to be changed from that of only exercising control to one of providing help and guidance by making essential procedures fully transparent and by eliminating delays (Italics added) (Industrial Policy, 1991).”

7. Wide ranging policy and regulatory reforms were initiated, such as de-licensing of industry, shrinking the monopoly of the public sector industries other than those where strategic and security concerns dominated, reducing the purchase preferences in Government procurement, removal of quantitative restrictions

on imports, market determined exchange rate, liberalization of foreign direct investment, abolition of the office of Controller of Capital Issues and initiating capital market reforms, liberalizing the financial markets, reduction in small scale industry reservations, and a much greater role for the private sector in infrastructure areas such as power, transport, and communications. Sectoral regulators were set up in key infrastructure and utility industries which were hitherto dominated by public sector and were now being opened up.

8. The reform agenda is far from complete. Areas still needing attention are, for example, labour policy, exit policy under the Industrial Disputes Act, infrastructure industries such as power, coal and roads, and opening state monopolies to competitive forces. Yet, one must commend the progress made so far. India has been ranked in recent years amongst the top reforming countries. The Indian market today is totally different from what it was a few years back and is in many ways quite un-recognizable. There is greater availability of goods and there is wider choice for the consumers. Prices of many goods and services have fallen in real terms and generally speaking business is growing at a healthy pace. The benefits of competition are particularly visible in sectors such as automobiles, telecommunication, airline industry, banking and insurance.
9. The Monopolies and Restrictive Trade Practices Act, which came into being 1970, was designed for a different era to serve the socio-economic objectives of that time. In 1991, one of the

first measures in the reforms package was to delete the provisions in the MRTP Act which related to controls on larger business houses in setting up new ventures or expanding existing operations. However, it was soon realized that the Act needed extensive review. The focus of the MRTP Act was on controlling monopolies whereas, now, the focus needed to be on promoting and protecting competition. Thus, a high level committee was set up to suggest a modern competition law in line with international practice and to suit Indian conditions. The committee recommended a new competition law which was enacted and it came into force in January, 2003.

10. The benefits from competition in economic growth and in enhancement of consumer welfare are widely recognized, to the point that these are self-evident. In common parlance, competition in the market means sellers striving independently for buyers' patronage to maximize profit or other business objectives. Competition makes enterprises more efficient and innovative, and offers wider choice to consumers at lower prices. It enables optimum utilization of available resources. A recent book entitled 'The Power of Productivity' by William Lewis underlines the contribution of competition and small governance to economic growth.
11. In the UK, a study was very recently carried out by the University of East Anglia to assess the impact of deregulation and competition in certain business sectors viz. retail opticians, international telephone calls, passenger flights in Europe, new cars and replica football kits. This empirical, field-level study

showed that competition led to substantial reductions in price; for example, for both international telephone calls and European economy airfares, the average price was comfortably more than halved within a decade, and in the case of new cars and replica football kits, very significant reductions were observed. The study also demonstrated that the competition is not just about price but is typically multifaceted, for example, it stimulates new ways of doing things such as new business practices introduced by low cost airlines. It showed that these benefits are generally unpredictable ex-ante, but may ultimately be worth more than just lower price. It highlighted that competition can be enhanced in a number of ways such as through competition policy per se, and deregulation/liberalization but also the market itself can throw up new opportunities, such as innovation and technological advances. Of course, it also observed that while Government policy may be important and necessary for change, it is rarely sufficient, and a pool of resourceful entrepreneurs capable of exploiting changed market conditions is also needed.

12. Competition policy typically has two elements: one is a set of policies that enhance competition in local and national markets; as stated earlier by me, these include, for example, liberalized trade policy, industrial licensing policy, relaxed foreign investment and ownership requirements, economic deregulation, privatization, etc. The second important element is legislation designed to prevent anti-competitive business practices with minimal Government intervention, i.e., a

competition law. Merely having a competition law by itself cannot produce or ensure competition in the market unless this is facilitated by appropriate Government policies. On the other hand, Government policies without a law to enforce such policies and prevent competition malpractices would also be incomplete. As I have said, competition policy has come a long way in India through the process of reform and liberalization, and the law has also been enacted enabling setting up of Competition Commission for its enforcement.

13. The jurisdiction of the Commission covers one, anti-competitive agreements such as cartels, collusive bidding and sharing of markets; two abuse of dominance such as unfair or discriminatory pricing, limiting production or technical development and predatory pricing. The third area of jurisdiction is regulation of combinations, i.e., mergers, amalgamations, acquisitions and acquiring of control. In addition, the Commission has as a fourth responsibility, competition advocacy, public awareness and training. The law provides for investigation, enquiry and adjudication by the Commission, and it can take action based on complaints or references, and also on its own motion. The Act contains provisions for penalties and also punishment for non-compliance with the Commission's orders. Details of the provisions will be provided in the presentation by my colleague in the Technical Session.

14. The Commission was established in October 2003 and so far it has only one Member. It is undertaking preparatory and

foundation work necessary for setting up the Commission as well as Competition Advocacy; but no judicial work is being undertaken.

15. The question is what are likely to be the main challenges before the Commission in discharging its work after it becomes operational. Let me draw attention to some of these challenges and we would welcome suggestions in this regard in the Technical Session:-

i) How to promote a competition culture and awareness of the competition law in a transitional economy which was hitherto subject to controls and regulations. The Commission intends to undertake this task through multiple measures such as educational literature, audio-visual material, seminars and workshops, articles in the press and journals and so on. However, in an economy which has long been used to controls and where the benefits of competition are not fully appreciated, to spread the message of competition will take a long time and will need the combined efforts of various organizations such as Chambers of Commerce (like FICCI), consumer organizations, civil society organizations, professional institutes and others.

ii) It would be a major challenge to build up the Competition Commission into a highly professional organization and attract well qualified professionals to work in the Commission. Given the Governmental salaries provided for the Commission, it may be difficult to attract and retain professionals and prevent a rapid turn-over of staff, especially economists and lawyers. It is

also important to undertake capacity building of the Commission and its staff so that they have a deep understanding of the concepts, both economic and legal, which underlie the Act and also the latest developments in this area across the globe. This challenge extends also to the investigating staff as they would be required to investigate complaints keeping in mind the complicated economic and legal issues that are bound to arise.

iii) It is also important to build up a larger body of professionals, outside of the Commission, having adequate knowledge and experience of competition policy and law such as economists, lawyers, professionals and business managers. Our experience is that, being a new field, the number of knowledgeable people in the country is very small, confined mainly to the leading lawyers or law firms and a few economists. The law provides that, in addition to advocates, chartered accountants, company secretaries and cost accountants can also appear before the Commission. It is a challenge before them to build up their knowledge and skills to do justice to their role before the Commission.

iv) As part of its advocacy function, the Commission would be expected to identify Government policies and laws that inhibit competition and to advocate suitable changes at the level of both the Central Government and the State Government. This can be an enormous task, requiring studies and analysis in various sectors of Governmental economic activities, and also the skills and independence required to take

up these issues in an appropriate and persuasive manner with the Government authorities. Often, these efforts may conflict with entrenched interests or may simply face resistance from traditional mindsets that could block the desirable changes.

v) The Commission would have to depend primarily on the Government for funding. It would have to be ensured that adequate budgetary resources are available to the Commission and that budgetary constraints do not adversely affect the financial and functional autonomy of the Commission.

vi) During the course of the foundational work, which the Commission is currently undertaking, a potential problem already visible is the lack of relevant economic data in the country. Even when the data exists, it may not be available in a form or in sufficient detail as to be useable by the Commission in deciding individual cases. The Commission is in the process of addressing this issue to see how we can network with other organizations in building up data-resources.

vii) In this globalised era, the business activities in any part of the world can impact the Indian market, and vice versa. This process of integration will only grow in future. The Act empowers the Commission to take cognizance of cases where an anti-competitive practice outside India has its effect in the Indian market, i.e., the “*effects doctrine*”. Meaningful action by the Commission may require close cooperation with competition authorities outside India. The question is how effective cooperative arrangements with other authorities can be built up. The Commission has begun to examine this aspect.

viii) The Commission could also face a ticklish problem in its role in regulated industries like power, telecom and insurance where sectoral regulators have been established or could be established in future. The Act has a “*non-obstante*” clause for the Commission to determine competition issues to the exclusion of all other authorities. On the contrary, some of the sectoral regulators have also powers to regulate issues relating to competition in their respective sectors. Having regard to these statutory provisions, it will be essential that the roles, of the Commission and the sectoral regulators, be harmonized in a most effective manner so as to allow minimum forum shopping on the part of the litigants, and ensure regulatory clarity in the market.

16. The list of challenges is not exhaustive. As we go along newer challenges will emerge. Overall, the task before the Commission is neither easy nor small, but is gigantic and complex. Equally it is one that is exciting. The success or the failure of the Commission will have no small significance for the Indian economy, but failure cannot be afforded. In this immense responsibility, the Commission needs the partnership and support of all organizations, ranging from Government, industry associations, consumer organizations, professional institutes, academicians and many others. Once again, I compliment FICCI on this initiative.
17. I wish this seminar all success and I hope that it will throw some light on the challenges that I have just outlined.