

**Keynote Speech**  
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Ladies and Gentlemen,

It is a pleasure to be here this afternoon to share my thoughts on 'Developments in India's Competition Regime'. I would like to compliment the American Bar Association for organizing this conference on competition law and policy in leading jurisdictions in Asia, with a special focus on India. This is evidently an endorsement of India's position as an emerging market economy.

2. It is more than three years since the provisions relating to anti-competitive behaviour and abuse of dominance came into effect. Mergers and acquisitions have been operational for more than a year now. Though relatively short in terms of life span, the Competition Law is hugely significant as a building block for economic development and rising levels of economic welfare. It is, therefore, a good opportunity to assess what has been achieved and, more importantly, identify the challenges that lie ahead.

Background

3. What is competition? Competition – the process of rivalry between business enterprises for customers – is a fundamental characteristic of a flexible and dynamic market economy. By responding to the demand for goods and services at lower prices and higher quality, competing businesses are spurred to reduce costs, increase productivity, make investments and innovate in products and processes. As a result, both economic efficiency and consumer welfare are enhanced. That is why Michael Porter observed

that few roles of government are more important for upgrading an economy than ensuring robust business rivalry.

4. The process of competition is, however, not automatic. The Chicago School, which is wedded to “Laizzez faire” philosophy, would have us believe that markets will regulate themselves. But perfect competition is as much a mirage as the perfect spouse! Vested interest groups, large monopolistic firms and other stakeholders may distort the process of competition. This happens not only in emerging economies but also in advanced industrial economies. These market distortions not only adversely affect end-consumers but also business enterprises. Hence, the need for a robust competition policy and law. This is particularly important in a liberalizing economy where the government gradually withdraws in favour of private economic agents. As for Competition Law, it is the legal instrument designed to prevent anti-competitive business practices by firms. Effective competition policy and law put together are vital for a good regulatory and business environment. That is why this is the flavour of the season across the globe with more than 120 countries having put in place competition regimes.

#### Indian scenario

5. Ladies and gentlemen, let me begin with the evolution of the Indian law. India was among the first developing countries to have a competition law in the form of the Monopolies and Restrictive Trade Practices (MRTP) Act, 1969. It was enacted on the recommendations of the Monopolies Inquiry Committee (MIC) which reported that there was high concentration of economic power in over 85% of industries at that time. This was the outcome of restriction on freedom of entry in Indian markets due to the system of controls in the form of industrial licensing. The MRTP Act was designed to check concentration of economic power, prohibit restrictive or unfair trade practices and control of monopolies.

6. Then came 1991, which was, as is now repeated ad nauseam, a watershed in the history of India's economic development. The economy was thrown open to competition at home and from abroad. Private sector participation, particularly in utility services, increased substantially. The Indian economy witnessed a paradigm shift due to the economic reforms that were undertaken in the nineties, moving gradually from a 'command and control' economy to an economy based largely upon free market principles.

7. The new India required new rules. Hence, the need for a new competition law. Accordingly, the Competition Act was passed in 2002 and amended in 2007. The Competition Commission of India (CCI) was established on March 1, 2009 as an autonomous body comprising of a Chairperson and six members. An appellate body called Competition Appellate Tribunal was also set up in May 2009 with final appeal lying to the Supreme Court of India. Subsequently, the MRTP Act was repealed, MRTP Commission established under that act was abolished and its pending cases were transferred to the CCI.

8. As some of you would be aware, when the Act was being proposed, there was a debate on whether the country and business were ready for a competition law so soon after de-regulation. The debate was settled in a perverse manner: the Act had a legal challenge, which delayed the establishment of the Commission and enforcement of the Act. It was substantially enforced from May 2009, as I said, only three years ago. As for the provisions concerning M&A, they were enforced one and a half year ago. Thus, Competition enforcement is recent.

9. As in most international competition laws, the Indian Act seeks to:

- (a) prohibit anti-competitive agreements, including cartels (S.3);
- (b) prevent abuse of dominant position (S.4); and
- (c) regulate mergers and acquisition above the specified threshold (S.5 and 6)

## Enforcement

A snapshot of the enforcement of the Act would be in order.

10. Since the notification of provisions of section 3 and 4 relating to anti-competitive agreements and abuse of dominance in May 2009, CCI has received more than 300 matters and passed final orders in more than 230 cases. The forms of enforcement include a wide range of anti-competitive issues like cartels, bid rigging, abuse of dominance, after markets etc. Apropos coverage of sectors, they are as diverse as infrastructure, finance, entertainment, IT, telecom, civil aviation, energy, insurance, travel, automobile manufacturing, real estate and pharmaceuticals.

11. In recent months, the Commission has decided a number of matters, including cartelization in government contracts. Penalties have been imposed on firms to discourage the anti-competitive practices and abuse of dominance. Wherever after inquiry, it has been found that competition could be enhanced if certain policies of government were modified, the Commission has suggested changes in such policies.

12. I am pleased to mention that the Commission is applying the law in a competitively neutral manner and has investigated a number of SOEs; also, on their information, action has been taken against the private sector. Orders have been passed in more than 21 cases wherein SOEs and Government departments were a party. Some of these include Oil Companies, Railways etc. There has been no interference either by the Government or sectoral regulators in charge of SOEs. Judicial review has also been supportive. Hon'ble High Court of Delhi in its judgment in a writ petition filed against the CCI by Government of India, through the Railway Board, underscored the distinction between sovereign and non-sovereign functions of the Government and held that the Indian Railways is an

'enterprise' under Section 2(h) of the Act and that the CCI is empowered to hear complaints against it for alleged abuse of its dominant position in goods transport sector.

13. Cement is a crucial input in construction industry vital for economic development of the country. CCI imposed a penalty of app. US\$1.2 billion on eleven cement manufacturers and their trade association for behaving like a cartel.

14. In 2011, the Commission had taken *suo-motu* cognizance of the reported manipulation of the bids by manufactures of LPG cylinders for supplying cylinders to the Indian Oil Corporation. A penalty of US\$34 million was imposed on parties to the bid rigging. Similarly, we have imposed a penalty of app. US\$ 59 million on three companies for collusive bidding to supply aluminium phosphide tablets to state-run Food Corporation of India (FCI). CCI found that these companies were guilty of the "crudest form of bid rigging" as they repeatedly quoted identical prices for FCI tenders during 2002-2009.

15. Earlier, the Commission had imposed a penalty of app. US\$140 million on DLF, a major real estate player in India. It was found that it had abused its dominant position by imposing arbitrary and unreasonable conditions on the apartment owners. This order may well become the harbinger of change in the real estate sector for the benefit of consumers.

16. Government procurement is of vital concern in India as it accounts for a significant proportion of national GDP. I would like to take this opportunity to mention that cases of agreements causing adverse effect on competition in procurement have highlighted the importance and need for better tender design and more effective vigil by procuring authorities.

17. It may not be out of place to mention that initially apprehensions were being expressed regarding the time taken to complete the process of

investigation and consequent enforcement. However, I need hardly mention to this august group that cases involving issues of competition are generally complex and require considered analysis before a decision can be taken. In any event, the law is now beginning to bite.

### *Section 5 & 6*

18. Let me move on to mergers & acquisitions. Apropos M&A, we appreciate that Indian industry is, by and large, fragmented. To achieve economies of scale and competitive muscle, it needs to consolidate and grow in an inorganic manner. It is this spirit that informs our handling of cases in which there are no competition concerns.

19. As the merger thresholds have consciously been kept at a high level and the economy is sluggish, the number of filings are relatively less. But they will increase and become more complex in the days ahead. We appreciate that time is of the essence for merger transactions. While the Act provides for 210 days for a decision, the CCI has a self-imposed limit of 30 days to clear cases with no competition concerns and other cases within 180 days on best endeavor basis. Since the notification of sections 5 and 6 in June 2011, the Commission has decided all the 80 cases within 30 days wherein we found no competition concerns. Till date, the Commission has not issued notice in any case calling for detailed scrutiny.

20. At the risk of immodesty, I can say that the CCI has kept to its promise of fast track clearance of combination filings and allayed the fears which business and industry had at the time of introduction of merger review in the country.

### Advocacy

21. I will briefly touch on competition advocacy. What do we mean by it? Competition Advocacy constitutes all the activities conducted by the competition authorities relating to the promotion of a competitive environment through non-enforcement mechanisms. A cornerstone of a

successful market economy is the existence of a “competition culture”. All parts of a society – consumers, businesspeople, the legal community, government, regulatory officials and judges need to be addressed in this effort. Success in building a competition culture has obvious benefits for enforcement: businesses will more readily comply voluntarily with the competition law; businesses and the public will more willingly co-operate with enforcement actions, by providing evidence and the like; and policy makers will more enthusiastically support the mission of the competition agency. In this sense, enforcement and advocacy are mutually complementary. Enforcement is strengthened by an active advocacy, and advocacy cannot be truly effective in the absence of effective enforcement.

22. In India, Competition advocacy is mandated by the law. Section 49 of the Competition Act, 2002 gives an advocacy role to the Competition Commission. This responsibility is taken very seriously by us and we address the whole range of stakeholders, including government at the federal and provincial levels.

23. Over the last three years, we have held more than 50 advocacy events, covering consumer groups, industry, students and legal practitioners. The lessons learned over the last few years have helped us develop a comprehensive Strategy for Competition Advocacy. Our experience shows that the selection of the messenger is as crucial as the message itself. Therefore, for each of the target groups, partner organizations have been identified based on capacity of such organisation to take the message of competition forward.

24. Government interventions in the markets is critical from the efficacy point of view. In pursuance, CCI regularly conducts workshops/seminars with nodal officers of central ministries/departments on competition coherent government policies. Two vital advocacy events are planned for the near future. One is a meeting with Trade Associations to ensure that

they do not knowingly or unwittingly cross the boundaries imposed by the Competition Act. This is scheduled for next month. The other is an interactive meeting with the CEO's of India's top 100 companies to ensure that they motivate their boards and their employees to take note of the legal landscape and put in place a competition compliance programme in their organisations. This will happen early next year. An interesting, though unintended, fall out of both these events would be more work and billable hours for law firms!

#### International Cooperation:

25. What is our approach to international cooperation? Driven by economic globalization, the world is getting smaller and integrated in business and finance. Economic globalization and the spread of antitrust laws worldwide are creating a unique set of challenges for competition authorities: competition law is national, while markets are increasingly global in its reach. Therefore, dialogue and cooperation between competition agencies is a must, not a matter of choice. For example, given the increasingly international nature of cartels, co-operation in action against cartels is vital. Similarly, transnational merger filings require coordination between or among jurisdictions; otherwise they may lead to inconsistent orders and remedies.

26. We have been fortunate that a number of international agencies have extended capacity building support to us from the very beginning. Our interaction, with foreign agencies have helped CCI staff in getting early exposure to the international best practices, and learn how to fish. I am happy to mention that the quest for capacity building is gradually paying rich dividends and the staff have been on a steep learning curve during the short period of three years.

27. We are also looking at signing of formal MOUs with some key jurisdictions. We recently signed a Memorandum of Understanding with U.S. anti-trust agencies. This will help us elevate the technical co-operation with



the U.S. Federal Trade Commission and the Department of Justice. We are also forging active engagement with multilateral agencies like ICN, OECD and UNCTAD.

### New Initiatives

28. Ladies and gentlemen, this year we have taken some new initiatives. One, with a view to getting cross section of ideas, we have set up an Eminent Persons Advisory Group (EPAG). It will serve as a sounding board for the Commission Members and also as a pool of talent and expertise which we can dip into periodically. I am pleased to mention that this initiative is attracting attention from outside jurisdictions also. Second, we have started at a modest level a "Knowledge Partnership Initiative" with premier academic institutions. As a result of this knowledge web, we will ensure an effective two way flow of information on issues of competition relevance. This would help build internal capacity in the Commission as also develop a strong knowledge base in the field of competition law and policy in the country. Third, we have started a quarterly news letter for more effective communication with the diverse body of stakeholders. May be out of politeness, may be genuinely, we have got a favourable response to this new venture.

### Proposed Amendments in the Act

29. Based on our experience gained during the working over the last three years, we realized that certain areas of Competition law need amendments to make the law more effective. In pursuance, the Competition (Amendment) Bill has been approved by the Government and will soon be put up for Parliamentary approval. These amendments cover both substantive as well as procedural aspects. In particular, it is proposed to give more teeth to the Director General to ferret out evidence against cartels. The Act presently provides for mutual consultation between the CCI and the concerned sectoral regulators. The amendments propose to provide for mandatory consultation between the two sets of regulators. It is also proposed that no sector, even where regulators exist, would be exempt

from the purview of the Competition Law and all merger and acquisition (M&A) deals would come under CCI's jurisdiction.

### Challenges

30. Ladies and Gentlemen, the CCI is a young competition agency. During its first three years of existence, it has achieved a modicum of success. Many challenges lie ahead; these will necessarily vary from time to time. At this juncture, I would identify four key challenges. These are:

- Weak competition culture;
- Indadequate business awareness and public perception;
- Strategic Focus; and
- Capacity building and institutional strengthening of the Competition Commission.

31. A 'culture of competition' exists where the rules and benefits of competition are widely known and form a natural part of the background for decisions by firms and governments. Decades of government controls in India have however hindered the growth of competition culture in the economy and several areas of the economy are still subject to a variety of controls. They cover natural monopolies and networked industries also. In these sectors, a truly competitive market is yet to evolve.

32. The level of awareness even among economic stakeholders is limited. It is also perceived by some to be an albatross around the neck of industry. Few perceive the Act as "business friendly" which, in the ultimate analysis, will lead to higher efficiency, lower costs and improvement of quality – goals which would gladden the hearts of not just business but equally of consumers. In the perception of the people at large, the Act is mistakenly seen as a vehicle for the limited objective of consumer welfare only. Quite clearly, there is need to further intensify the efforts at Advocacy.

33. The Indian Competition Law provides for informants to notify the authorities about unfair competitive practices. It also gives the Commission '*suo moto*' powers. Evidently, the intention of the legislature was to ensure that the Commission keeps in mind its strategic focus so that it produces maximum benefits from the Act. In the initial period, we have seen a large influx of cases pertaining to the real estate, entertainment, and pharmaceutical retail sectors. While not minimizing their importance, it would seem there is scope for focusing on more heavy weight sectors which can yield handsome dividends in terms of enhanced competitiveness and hence lower prices. The strategy focus – which will necessarily keep evolving – is something which the more robust competition jurisdictions around the world have followed with advantage. It is imperative that the agency selects and successfully prosecutes cases that are widely viewed as beneficial to consumers, whether they involve destructive cartels, high profile, anticompetitive mergers or abusive conduct by notorious dominant firms.

34. Last, but by no means least, is the challenge of capacity and institution building. Capacity is limited not merely in terms of number of talented people but also in terms of range and depth of experience. The credibility and performance of the Competition Commission is no doubt going to be assessed on the basis of effective intervention and the soundness of its pronouncements. Jurisprudence in Competition Law is at a nascent stage and, as a Nation; we have to ensure that its foundations are strong.

Conclusion:

35. Ladies and gentlemen, it is the mandate of the Commission to keep a watchful eye and intervene to provide remedies when the market fails to provide efficient results. CCI is set to change the rules of the game and play the role of a watchdog to check anti-competitive practices in the market. The Competition Act and the culture of competition are slowly but definitely finding their feet in India. It is the responsibility of all of us – the

Commission, the Bar and professionals in this field – to build the culture of competition. We have, in that sense, a shared goal and objective.

Thank you