

**ASSOCHAM'S 4<sup>th</sup> International Conference on  
'COMPETITION LAW' - OPPORTUNITIES AND  
CHALLENGES IN INDIA –  
Friday, 9<sup>th</sup> September 2016**

Ladies and Gentlemen,

I must at the outset compliment ASSOCHAM for holding the 4th International Conference on 'Competition Law: Opportunities and Challenges in India'. This event gives us an opportunity to connect with the members of ASSOCHAM who, I am told, comprise companies and professionals from across the country. I am further told that their number is over four lakhs. Seen in that context, you are an important stakeholder for us and you can carry forward the message which will come out of the deliberations today to such a large group. For this reason, we in the Competition Commission of India are indeed thankful to you.

2. The Competition Act 2002 is a *state-of-the-art* Act and it is a product of the efforts of the Government to liberalize the Indian economy and bring it at par with the best economies in the world in this era of globalization. The main objective of competition law is to promote economic efficiency using competition as one of the means and for assisting the creation of a market responsive to the consumer preferences. The benefit of perfect competition is to achieve allocative, productive and dynamic efficiencies.

3. The competition law in India rests on four pillars. In the first place, it prohibits anti-competitive agreements. Therefore, cartels which distort the market or bid rigging that manipulate the process for bidding, are prohibited under the Act. Secondly, the law prohibits abuse of dominance by enterprises. Unlike in the past, corporates can now grow to any scale and size which they deem appropriate for surviving and succeeding in the domestic and global markets. But they cannot abuse their dominance. The third pillar is in regard to merger control. The competition law permits mergers and acquisitions by enterprises as well as groups provided such combinations do not result in any appreciable adverse effect on competition in the market. The fourth pillar is of advocacy which is mandated under the Act. This has been provided because the law is new and spreading awareness about it is central to its implementation.

4. The Competition Commission of India is a young jurisdiction having seven years of experience so far. We are endeavouring to build CCI into an effective and credible organisation. We are trying to achieve this through internal capacity building as well as through effective enforcement of anti-trust provisions of the law. Businesses all over the world like competition agencies when decisions made by them are certain and predictable. We are also striving to achieve this reputation by applying the rule of reason principle and through

appropriate understanding of the situational details in each and every case. By now, we have handled more than 700 anti-trust cases and have disposed of nearly 600 of them. Several of the decisions have gone down well and produced positive outcomes. Our decision in the case of a leading real estate company in which abuse of dominance was alleged in respect of terms and conditions of allotment, has resulted in the redrafting of such terms of allotment in the realty sector. In the pharma sector, AIOCD issued instructions to the chemists and druggists associations requesting them to refrain from indulging in practices which are anti competitive. In a few cases, mid-course corrections have taken place. In fact, the parties are asking the Commission for withdrawal of complaints and closing such matters.

5. In a recent publication brought out by CUTS on 'Competition and Regulation in India, 2015', it is mentioned that awareness about the Competition Commission of India (CCI) has grown. An overwhelming 71% of the respondents interviewed stated that they were aware of CCI; in the previous survey in 2013, this number was only 48%. This is in a way very gratifying. We in the Commission are receiving information from far-off places and from businesses which we perhaps can't imagine at times. We recently had a complaint filed by a cable operator in Baran district of Rajasthan against a renowned music company. We have also had cases in which information has been filed by a group of warp knitters against reputed yarn

producers in Surat. I am giving these few examples to support the finding which CUTS has mentioned in its recent Report. We are envisaging that this will grow further in the times to come and this is not peculiar to our jurisdiction. The experience of the mature jurisdictions has been similar. Backed by advocacy efforts which we have intensified, we wish to reach out to more and more people in the country in the near future.

6. Competition law is a complex law. Therefore, being aware of presence of the Competition Commission of India is not sufficient. It is important that the stakeholders as well as the people of the country understand the scope of the law as well as the remedies it offers. Having said this, let me now deal with the opportunities this law offers and, thereafter, mention some of the challenges which we are facing.

7. The competition law is beneficial not only for the consumers but equally well for the businesses. It is an undeniable fact that a competitive market place benefits businesses significantly. Unchecked anti-competitive behaviour hurts the businesses and, especially so, when the dominant firms misuse their market power to fence out competition or there is a cartelisation which drives up the price of inputs. Similarly, anti-competitive mergers can also weaken the competitive structure of the market. By protecting the process of competition and fair play in the market, competition law ensures freedom to businesses to compete on merits. Seen in

that sense, competition law is like a charter of economic freedom for businesses. It offers opportunity to businesses both as competitors in the market as well as consumers to come forward and point out the anti-competitive behaviour which can damage the competitive fabric of the market or stifle their competitive ability. In the past seven years, the CCI has received information from businesses regardless of their size or market position not only from across the sectors but even geographies, alleging an array of anti-competitive conduct affecting competition in Indian markets. This is indeed encouraging. Another positive outcome of the competition law is the freedom it has brought to the businesses to choose their scale and size. Thus while the law prescribes the boundaries for conduct of the enterprises, it doesn't do so when it comes to the size, scale or capacity of an enterprise. This is a radical departure from the erstwhile MRTP Act, 1969.

8. One important aspect of the competition law is its competitive neutrality which has obliterated the distinction between public and private enterprises in the market place. All public sector enterprises as well as departments of the governments at the Centre and State, barring a few which perform sovereign functions, are enterprises under the competition law. There are no price or purchase preferences anymore and the public sector enterprises have to bid and compete in the market place along with other enterprises. They are enquired into for any alleged infringement of the law

and are penalized if they are found to be indulging in any anti-competitive practice or abuse of dominance. The Commission has already enquired into and is enquiring into the instances of abuse of dominance by some of the statutory monopolies as well state owned enterprises. But we are observing the change which is taking place in their behaviour in the market place. This is a welcome sign because well-functioning and competitive markets will give confidence to investors and help Government promote its programmes of Ease of doing Business, Make in India, Start up India, etc. People will come and invest if they are assured that there are no preferences and that their interest will be protected and their innovations will not be always seen as anti-competitive. Competitive neutrality has come to ensure all this.

9. The competition law is also helpful to the Government when it comes to making public procurement. Collusive bidding as well cartelisation involving sharing of markets or customers, are prohibited under the Act. Consequently, there cannot be bid rigging or collusive tendering. Cases of collusive bidding as well as cartelisation have come to the Commission from Departments of the Government as well as from the State Government and public sector enterprises. These have been investigated and the Commission has besides passing cease and desist orders, imposed penalties also. There is greater awareness now about competitive bidding among the state enterprises as well as the Departments of the Governments.

While evaluating the bids they are closely looking at the fact whether the bidders are independent and are not under the same management. This was not appreciated earlier so much. Similarly, they are complaining if the prices quoted by the bidders are identical. This behaviour was overlooked in the past because the public sector enterprises would hold negotiations treating them all as L1. But now the same behaviour is being questioned and the Government Departments are looking genuinely for L1 bidders and who offer a truly competitive price. This change has the potential to bring about considerable savings in the procurement by the Government. Public procurements constitute 30% of the GDP in India. Departments of Defence, Railways and Telecom have 50% of the budget reserved for procurement. In the Health sector, 26% of the budget is for procurement of various items. If the Government agencies become alert and enforce competition thoroughly in bidding, even 2% savings in public procurement including financial procurement, will wipe out the fiscal deficit in the budget.

10. I am not getting into the benefits of competition law which it brings to the consumers. They are all well known. We have seen the competition which has come about in the Telecom sector. The tele-density has improved by 110 percent in the urban areas and 67 percent in the rural areas. Overall, tele-density in India is about 86 percent. A complete bouquet of telecom services is available in the country as elsewhere in

the world. India today has one of the lowest tariffs in the world and one does not know what will happen now with the advent of a new operator in 4G segment. In short, the real beneficiary of competition has been the consumer in the country. He is not only beneficiary of low prices and multiple choices, but also has got power to file a complaint in case of any anti-competitive behaviour, whether it is by a dominant player through exploitative prices or a collusive arrangement entered into by the enterprises.

11. Coming to the challenges to competition law, first and foremost challenge which we envisage is about creating awareness about the law among more and more people in the country. The law is a complex mix of economic and legal principles. Therefore, it is important that the industry familiarises itself with its various provisions and their implications. Several industries and businesses are carrying the past baggage and are not fully aware of the practices which have become unacceptable and which are prohibited under the law. Enterprises become members of trade associations and indulge in activities and conduct which were hitherto not proscribed, believing that this is in order. Time has come for the undertakings to do a competition audit of their organisation and ascertain that various agreements and transactions are not only competition complaint but are also in adherence with the provisions of the competition law. Culture of 'box-ticking' towards compliance will not work. The commitment to



competition compliance has to be there from top to the bottom in the organisation. In other words, competition compliance must go beyond being merely a formality. It should be internalized and imbibed as an article of faith by all the businesses in the country. We are conscious that majority of the businesses would wish to comply with the law. We would like to join and support them through our advocacy initiatives. We have recently undertaken to develop a Competition Compliance Manual jointly with the legal fraternity and we are hopeful that this will help in better understanding and promoting a culture of compliance in the country. The Competition Commission of India will welcome new ideas from ASSOCHAM and its members, which will help promote better compliance.

12. The second challenge before the Competition Commission of India is that the substantive jurisprudence is yet to settle. The law being young, jurisprudence is evolving with respect to procedural, jurisdictional and interpretational issues. Several interpretational issues relating to turnover, standards of proof and principles of natural justice are subjudice. We are constantly evaluating ourselves and improving our processes with a view to evolve jurisprudence that conforms with the international best practices. We are hopeful that in the next few years, jurisprudence will develop and there will be greater clarity and certainty on several issues after we have completed the appellate process chain.

13. The enforcement of the competition law has direct and far reaching implications in the market. It is important then that our actions are premised on a thorough understanding of how markets function and how competition takes place in different markets? This is a challenge – challenge because markets are evolving at an astonishing pace. New and disruptive innovations are revolutionising the industry and business landscapes at a pace and scale never seen before. Exceptions are becoming a norm in many markets characterised by network effects and multi-sided platforms. We have a real challenge before us of striking the right balance so that efficiency and innovation are not stifled by unnecessary intervention while at the same time markets are free from abuse of market power by dominant enterprises. The regulatory agencies in several of the mature jurisdictions believe competition law is flexible and sufficient enough to address the issues arising in the hi tech markets. But the real challenge before all of us is to equip our processes to detect the anti competitive behaviour and deal with it without hindering market evolution.

14. Before I conclude, let me state that ours is a large country with more than a billion population. We have an overarching jurisdiction across sectors. We have large informal segments in the economy who may be totally unaware of the competition and regulation. The legislature has given an explicit mandate

for advocacy in the statute. Advocacy is a multi-pronged and continuous process. It requires fusion of efforts by the regulator and the regulated. Platform such as this provides an opportunity to exchange views on the way forward to build a compliance culture in the country. Let me make it clear that the Commission is not in favour of penalising the businesses. Instead, it advocates and favours more and more compliance as it is in the best interest of the Indian economy. For this I invite you all to assist us and join hands in forging partnership for creating awareness among people about the competition law and competition compliance.

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