



Keynote Address

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Plenary Session:

***Latest Development of Competition Law and Policy as well as
Enforcement in BRICS Countries***

Harish Chandra Gupta
Acting Chairperson
Competition Commission of India

Heads of Competition Authorities of China, Brazil, Russia and South Africa, distinguished guests, ladies and gentlemen! It is a great pleasure to address such an august gathering of leaders and experts in the field of competition policy from all over the world, who are here to discuss the issues of Competition Enforcement under Economic Globalization.

2. At the outset, I extend a warm welcome to all the distinguished delegates on behalf of all the co-organizers and also a special welcome from Competition Commission of India. On behalf of Competition Commission of India, I also extend very warm welcome to South African Competition Authority that has joined us for the first time after South Africa became a member of BRIC, transforming it into BRICS. We look forward to strengthening dialogue and cooperation with South Africa in the BRICS forum.

3. I am delighted that this conference is taking place in Beijing - an ancient city which has been at the heart and soul of politics, culture and art and society throughout the long history of China. I would like to thank our gracious hosts for excellent organization of this conference, for their generous hospitality and for giving us this opportunity to exchange thoughts on matter of such crucial importance.

4. The theme of the conference is highly contemporary and I am sure, during the next two days, we will have very fruitful discussions on the latest development of Competition Law and Policy as well as enforcement in BRICS Countries vis-à-vis the other countries participating in the conference.

Importance of BRICS countries and need for co-operation

5. From a geopolitical perspective, the BRICS countries occupy a strategic position. The grouping is now unparalleled in terms of collective share of global land mass, population, natural resources, impact on the global economy as well as the capacity to affect the future of other developing nations. Their continuing growth in the face of current global economic slowdown has made their role in the growth of world economy even more important.

6. Since its inception in 2006, BRICS group has played a pivotal role in integrating the efforts of members on mutual co-operation, exchange of information on legislative developments and deliberations and discussions on the issues of common interest. The agenda of BRICS meetings has considerably widened to encompass global issues such as WMDs, climate change, food and energy security and international economic and financial situation.

7. Our leaders met in Sanya on April 14, 2011 and had in-depth discussions under the theme "Broad Vision, Shared Prosperity". With our emerging economies now seen as the engine for global growth, our leaders demanded a greater voice on the world stage. They reached broad consensus on strengthening BRICS dialogue, coordination and cooperation on major issues like global economy, finance and development.

Importance of BRICS International Competition Conference

8. Countries all over the world are adopting trade and economic liberalisation policies and moving towards a market economy. As we all know, free and fair competition is one of the pillars of an efficient market economy. Therefore, competition has become a driving force in today's global world. However, a free market is prone to malpractices by some players which if unchecked may nullify the gains from competition. These malpractices not only adversely affect

end-consumers but also business enterprises, whose competitiveness is undermined by artificially rigged prices.

9. Herein comes the role of well-designed and effectively implemented competition law to protect and nurture the competitive process. It aims at reducing or eliminating impediments to competition that arise not only from private sector restrictive business practices but also from public policy interventions. This is why more than 110 countries across the world including developing countries have adopted modern competition law. Exchange of views and experiences amongst the competition authorities as well as relevant multilateral institutions and nongovernmental experts is now recognized as very important part of successful implementation of competition regulation regime.

10. International Competition Conference is one of the key activities in the wide range of issues on BRICS Agenda and has become a very important forum for discussing the various issues on competition. First International Competition Conference of BRIC was held in Kazan in 2009 and deliberated on various aspects of competition policy development and implementation. The second conference is a continuing dialogue in the same spirit towards fostering further co-operation and co-ordination on the issues relating to design and implementation of competition laws and policies in the context of economic globalization.

Theme of the Conference

11. The theme of the conference, i.e. 'Competition Enforcement under Economic Globalization' provides an excellent opportunity to discuss the latest developments in competition law and policy and its enforcement.

12. Propelled by forces of globalization, economies are moving ever closer together and becoming more and more interdependent. Business is expanding itself from national boundaries and is obtaining a transnational character. Economic globalization and the spread of antitrust laws worldwide are creating a unique set of challenges for competition authorities. It can be said that competition law is national, while markets are increasingly global in its reach. The key question is how to deal with transnational competition issues in a global economy. How can competition authorities manage marketplace conduct that takes place in one nation, but has a harmful effect in

another? Therefore, economic globalization coupled with the proliferation of antitrust laws, spread of merger review regimes, increased detection of global cartels and possible access barriers are creating urgent need for international dialogue and cooperation for effective competition regulation.

Latest Development of Competition Law and Policy as well as Enforcement in India

Now I will briefly discuss developments of Competition Law and Policy as well as enforcement in India since inception in 2009.

Institutional set up and Design

13. India was one of the first developing countries to have a competition law in the form of Monopolies and Restrictive Trade Practices (MRTP) Act, 1969 but this law proved to be largely toothless and ineffective. Following liberalization of economy in 1991, one of the key elements of reforms agenda was restoration of freedom to compete and enhancement of competition in the domestic markets. To meet these objectives, Competition act 2002, a modern competition law was passed and Competition Commission of India (CCI) set up in October 2003. However, legal challenge prevented full constitution and enforcement and only advocacy function could be notified. Competition Act 2002 was amended in 2007 and Commission was duly established on March 1, 2009 as an autonomous independent body with a collegium comprising of 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. In 2009, our earlier law - Monopolies and Restrictive Trade Practices Act 1969 (MRTP Act), was repealed and the MRTP Commission established under the MRTP Act abolished.

14. The Competition Act, 2002, as amended in 2007 follows the philosophy of modern competition laws and prohibits anti-competitive agreements, abuse of dominant position by enterprises and regulates mergers and acquisitions, which cause or are likely to cause an appreciable adverse effect on competition within India. Our law is applicable to all enterprises including state owned enterprises and commercial activities of government-related bodies. Indian Competition law also mandates us to undertake competition advocacy for promoting competition in the economy. Sections 3 & 4 relating to

anti- competitive agreements and abuse of dominance were notified w.e.f May 20, 2009 while Sections 5 & 6 relating to Mergers and Acquisitions has been notified w.e.f June 1, 2011. Thus, CCI is a fully empowered body today and Indian Competition Law has fully come into force.

15. The Commission has extraterritorial jurisdiction with powers to inquire into an anticompetitive agreement or abuse of dominant position taking place outside India, if it has, or is likely to have, an appreciable adverse effect on competition in India.

16. I may mention here that CCI unlike the earlier body MRTP Commission has adequate powers of inquiry and enforcement. The Commission may take remedial actions to deal with anticompetitive agreements, cartels and abuse of dominant position, and impose heavy penalties on the errant enterprises. Commission is empowered to grant leniency by levying a lesser penalty on a cartel member providing full and vital information regarding the cartel.

Organizational structure and Capacity Building

17. During last two years, we have focused on setting up an appropriate organizational structure necessary for effective competition regulation. Our Act provides for a Director General for Investigations and a Secretary to facilitate Commission proceedings for determination and decisions in cases. Both the functionaries are in place. In addition, there are separate Divisions for Anti-trust, Merger and Acquisitions; Law, Economics, Investigations and Capacity Building and International Cooperation.

18. A competition authority is a knowledge based organisation, and the knowledge held by its staff is its most valuable asset. It is our ability to understand the working of the markets, which finally determines our successes and failures. This is why right from the beginning, we have recognized capacity building as the key to agency effectiveness. A separate Division for capacity building headed by a senior adviser has been set up. Capacity Building has been formally recognized as a key area of CCI functions and a comprehensive *Capacity Building Approach* developed. Already, we are in the implementation phase and all the Divisions have started developing their capacity building plans. My colleague, Member Dr. Geeta Gouri will be discussing in detail our capacity building efforts and their early outcomes in Session eight tomorrow.

Enforcement and advocacy

19. Competition Commission of India is by and large independent in its functioning. It has full support from the Government of India, which was demonstrated recently at the time of issuing recent merger notification and finalizing merger regulations. But expectations are high too. Parliamentary Committee recently expressed full support but indicated expectations to effectively deal with cartels. Our orders even at prima facie level were challenged before appellate authority and courts but higher Judiciary's decisions have supported CCI in all cases. The Hon'ble Supreme Court's decision dated 9th Sep, 2010 in *CCI v. SAIL* is a landmark judgment elucidating jurisprudence in competition law supporting competition regulation but has also imposed very stringent time lines in handling various stages of information making the Commission's job even more challenging.

20. Till date, the CCI has received close to 200 matters called information under our law alleging violation of Section 3 and 4 relating to anti-competitive agreement and abuse of dominance. The information received has been in diverse sectors such as insurance, travel, automobile manufacturing, real estate, pharmaceuticals, the financial sector, and entertainment. Till date, the Commission has passed final orders in more than 100 cases. In two major cases relating to reality sector and stock exchanges, respectively penalties of around US\$ 140 million and 12 million have been imposed for abuse of dominant position in the relevant market. We are also investigating suspected cartels in many vital sectors of the economy.

21. As there have been many concerns regarding regulation of mergers by us, I will dwell on this issue at length. There were apprehensions in the business and legal community regarding process of merger review relating to timelines, confidentiality of sensitive business data, competency etc, which led to lot of delay in notifying provisions relating to mergers. After an extensive consultation process with various stakeholders, our merger regulations were notified provisions relating to mergers came into effect from June 1, 2011. Since our thresholds are one of the highest in the world, number of merger filings is likely to be relatively less but the filings are likely to be highly complex. We understand that time is the essence of merger transactions. Our Act provides for 210 days for finalizing decision on a merger filing. However, we have a self-imposed limit to clear cases within 180 days on best endeavour basis. As per provisions in our

merger regulations, most of the filings are likely to be approved within 30 days and only few filings with serious competition concerns are likely to go beyond this period to the second stage of investigation with automatic clearance at the end of 210 days, if no order is passed.

22. In accordance with the international best practices, the Commission has started the facility of informal pre-filing consultations on procedural issues and we have been receiving numerous requests for pre-filing consultations. In order to minimize burden on the industry, we have also provided for categories of transactions, which ordinarily are not likely to have any competitive impact and, therefore, the parties need not make any filing.

23. I would like to make special note of the fact that the following detailed, quick and efficient scrutiny, Commission has already cleared two filings within a period of two –three weeks. Thus, apprehensions of the stakeholders regarding delay by CCI have been allayed.

24. Competition Advocacy is one of the main pillars of modern competition law, which aims at promoting awareness of competition among the stakeholders in the economy. Enforcement and advocacy are complementary to each other as enforcement is strengthened by an active advocacy, and advocacy cannot be truly effective in the absence of effective enforcement. The Commission has taken up competition advocacy with various stakeholders including government at federal and provincial level. Since Member, Dr. Geeta Gouri would be speaking about advocacy efforts in Session eight tomorrow, I will not go into details here.

International Cooperation

25. Now, I would come to international cooperation strategy of CCI. We fully recognize that international cooperation is of particular significance for young competition authorities, who benefit from exposure to best practices from other jurisdictions as well as technical cooperation and capacity-building support. We do understand that due to increasing geographical reach of business transactions and the international impact of anticompetitive activities in modern globalized markets, cooperation in enforcement is also vital. For example, given the increasingly international nature of cartels, crossing the boundaries of jurisdictions, co-operation in action against cartels has become very important. Similarly, globalization and worldwide proliferation of merger control regimes imply transnational merger filings, which

require coordination between many jurisdictions; otherwise they may lead to inconsistent orders and remedies. Therefore, we are working on developing a comprehensive international cooperation strategy, nuts and bolts of which will be cooperation and partnerships with competition jurisdictions as well as relevant multilateral organizations on mutually beneficial basis.

Challenges

26. Ladies and Gentlemen, CCI is a very young competition agency. We are proud that during first two years of existence, we have achieved reasonable level of success. However, the sheer size of the country, diversity of people and cultures, diversity of sectors and business practices and huge size of economy being in unorganized sector make both enforcement and advocacy highly challenging. Further, the decades of government controls have resulted in a very weak competition culture in the economy. Besides, there are several areas of the economy which are still subject to a variety of government controls. In these sectors, a truly competitive market is still to evolve. The task is further complicated due to the challenges posed by increasingly transnational nature of business activities and India getting integrated with the global economy. It will be our endeavour to enforce competition law through a judicious mix of effective enforcement backed by widespread advocacy among stakeholders.

Concluding Remarks

27. Sharing our experiences today has given me immense satisfaction. I may emphasize that driven by economic globalization, dialogue and cooperation between competition agencies is not a matter of choice but has become an imperative for effective competition regulation. Therefore, we fully support close co-operation amongst the BRICS competition authorities, which will forge better relationship amongst them and stakeholders particularly business enterprises will feel assured of a fair deal, when dealing with competition issues in member countries.

28. I am quite hopeful that this conference would go a long way towards providing a platform for meaningful co-operation among the competition agencies of BRIC countries. I would conclude by wishing the BRICS International Competition Conference a great success.

THANK YOU FOR YOUR ATTENTION.