



SPEECH

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***Session 8:
Competition Enforcement Capacity Building and
Competition Advocacy: CCI***

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Honourable Chair of the Session, my fellow speakers on the dais, distinguished delegates, ladies and gentlemen!

I am deeply honoured to share Competition Commission of India's (CCI) approach and experiences in the field of competition enforcement capacity building and competition advocacy at this prestigious BRICS forum.

1. Capacity building for competition enforcement and advocacy are both interrelated. While the former relates to strengthening internal capacities, the latter is for creating the culture of competition in the country. No doubt most organisations require capacity building as it enables continuous upgrading of skills and knowledge management. In the case of Competition Commissions especially in countries like India which have a history of state-dominated economic model, capacity building becomes more critical as the mainstream academia and the intellectual world have devoted less time to competition issues as well as bureaucracy and government organisations. This is where capacity building and advocacy get linked together. It is therefore, appropriate that the sessions covers both dimensions of what I define as the underpinnings of successful market regulation and market functioning.

ENFORCEMENT CAPACITY BUILDING

2. Any organization is judged by its impact. That impact should, in principle, be in line with the purposes and objectives of the organization, and would define success for the organization. To ensure an alignment between impact and purpose, an organization needs to put in place the capabilities for success. Capacity Building can be defined as increasing the capability of an organization to achieve its goals and respond to new challenges. In the context of competition regulation, capacity building is the *process* of putting into place, sustainable competition regulation frameworks encompassing not only competition authorities but also all the actors involved in the implementation of a competition regime. Even at the level of competition authority, capacity building involves not only the physical, institutional and organisational creation of the competition authority itself, essential as these elements undoubtedly are. To be in a proper capacity to enforce its competition rules, an agency needs to acquire a credible standing with the stakeholders.

3. As you may be aware, Competition Commission of India was constituted in March 2009. During the last two years, we have focused on setting up an appropriate organizational structure necessary for effective competition regulation. There are separate divisions for Anti-trust, Merger and Acquisitions; Law, Economics, Investigations and Capacity building and International Cooperation. Out of the one hundred eighty seven posts including 122 professionals, 50 Professionals and 50 support staff are in place at present. Top layer of professionals comes from Government on secondment for 4-5 years. Middle level has been directly recruited through recruitment in two phases comprising of written examination, followed by interview with high cutoffs.

4. From the beginning, we have recognized capacity building as the key to agency effectiveness. This is why a separate Capacity Building Division headed by a senior adviser spearheads the capacity building initiatives in CCI. We have formally recognized Capacity Building as a key area of CCI functioning. The nuts and bolts of a comprehensive Capacity Building Approach have been identified, and we are now in the implementation phase.

5. The performance of a competition agency depends on many variables, such as financial resources, independence and the legal and political environments but human capital stands out as a key explanatory factor of performance. Nature of work in a competition agency is of very

specialized nature and involves a combination of analytical and investigative skills apart from knowledge of law, economics and finance. Human resource development therefore constitutes the main pillar of the capacity building approach in CCI.

6. Under this approach, each Division is required to prepare a detailed Capacity Building Plan and entire CCI staff is required to devote 10-20% of their time to capacity building activities, which may include research, delivering training, talks and lectures, publishing articles etc. To motivate staff, participation in capacity building activities has been linked to performance assessment and career progression of staff. This is expected to contribute to professional development of staff and help CCI become a knowledge-oriented competition regulator.

7. To train officers, multi-pronged training strategies beginning with induction training, followed by increasingly higher level specialized training programme are being pursued. I am happy to inform you that a two week induction training program covering training on competition law as well as administrative skills such as filing, noting and drafting is entirely organized in-house through CCI resource persons and hands-on attachments within CCI. This is a testament to the willingness of our officers to contribute to the capacity building of CCI.

8. We have also been very fortunate that a number of foreign jurisdictions such as United States Federal Trade Commission and Director General of Competition, European Commission and Competition Authority of Ireland as well as multilateral agencies such as OECD have extended support to us from the very beginning. Last year itself, we had organised several trainings/ workshops at our premises. In addition, officers also attended trainings/ workshops outside India. These interactions with foreign agencies have helped CCI in getting exposed to the international best practices, and learn from extensive experiences of our partners. In many ways, they have contributing to our learning how to fish, as the age old adage goes.

9. Peer-to-peer learning through regular weekly discussions and presentation by officers have become hallmark of capacity building in CCI. A formal Training Needs Analysis (TNA) to identify the training needs of CCI staff is also in progress, so that future training can be organized based on the same.

10. I am proud to mention that just discussed approach for capacity building is paying rich dividends and CCI staff has been on a steep learning curve during the last two years.

11. I would like to add further that research and knowledge creation within CCI is being recognized as vital to capacity building and creation of a knowledge based competition authority. We are making efforts to create an institutional network for creating research partnerships for research on relevant issues in competition regulation. To maintain continuity and capture individual and institutional learning, knowledge management system is also being planned.

12. We realize that not only CCI, capacity building of other stakeholders especially academia is also vital. At present, we are facing tremendous shortage of skills in Competition law and competition economics. Necessary steps for networking with leading law/economic schools are being pursued so that various activities for skill development in competition field can be initiated to aid learning at university level as well as CCI.

COMPETITION ADVOCACY

13. I will now take up the topic of competition advocacy and the importance attached to it in the overall scheme of competition enforcement in India. Section 49 is a unique section in our competition law, which mandates competition advocacy. At least in India, no other Act has this condition. This might be true in other countries too. I have often wondered about the significance of this section. Experience as Member however provides insights into the wisdom of the legislature. Competition and market mechanism are always dynamic undergoing continuous changes. Interventions in market mechanisms for ensuring effective functioning can never be a onetime mechanism. A dialogue has to be always sustained among the market players and it is this job of the Commission to keep the dialogue alive.

14. What do we mean by Competition advocacy? Competition Advocacy constitutes all the activities conducted by the competition authorities relating to the promotion of a competitive environment through non-enforcement mechanisms, mainly through its relationships with other governmental entities and by increasing public awareness of the benefits of competition.

15. Question arises why advocacy is needed? What are its objectives? The first objective is to strengthen competition awareness amongst market players, thereby encouraging self-compliance and reducing the need for direct action against erring enterprises. The second objective relates to addressing perverse effect of various government policies such as sector regulation, trade policy, industrial policy etc on market structure, business conduct and economic performance. A suitable framework of policies (with wider social objectives in mind, no doubt) is therefore a prerequisite for effective competition in the economy. The Competition Authorities must through a sustained process of Competition Advocacy influence the government policies to lower barriers to entry, promote de-regulation and liberalisation of trade policies and otherwise minimize unnecessary government intervention in the marketplace. A third objective of competition advocacy relates to helping in building a Competition Culture in the economy. A cornerstone of a successful market economy is the existence of a 'competition culture' within a country – an understanding by the public of the benefits of competition. All parts of a society – consumers, businesspeople, trade unions, educators, the legal community, government and 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 particular by giving more resources to it.

16. For successful competition advocacy, the agency must acquire credibility and reputation amongst various stakeholders as an effective and impartial advocate for competition. This requires a multi-faceted effort from the agency. It is in part an educational effort – the imparting of information about how competitive markets work and the benefits that result. But at least as important is the experiential factor – there must be observable gains to consumers that derive from the actions of the agency. In other words, the competition agency must achieve some demonstrable success in both its law enforcement and advocacy efforts. This implies that enforcement and advocacy are mutually complementary and both reinforce each other. Enforcement is strengthened by an active advocacy, and advocacy cannot be truly effective in the absence of effective enforcement. Credibility cannot be gained through advocacy alone and it must be sufficiently backed by success in enforcing the competition law. 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. In the end, a competition agency's reputation will be built largely upon its record in enforcing the competition law, and this reputation will significantly affect its influence as an advocate in other forums.

17. I would like to add few words on why competition advocacy is considered critical in developing and emerging economies, although it is needed in developed countries too. These countries are embracing market based economies with trade liberalisation, privatisation of state owned enterprises, creation of new regulatory institutions and so on, most of which occur in the formative stages of a market economy. It is better to accomplish these changes properly at the outset than to try to amend them later, and the participation of the competition agency as an advocate for competition has obvious value to that end. Further, most developing countries significantly lack competition cultures, and it is important for the agency to begin the process of building one pro-actively.

Competition Advocacy by Competition Commission of India

18. In many countries, the advocacy function is backed by suitable provisions in the competition law, which gives an added edge to advocacy efforts. As I mentioned earlier, fortunately, in India, Competition advocacy is mandated by our competition law. Under Section 49, the government may make a reference to the Commission for its opinion on the possible effect on competition of a policy or law. The Commission is also required to take suitable measures for the promotion of competition advocacy, creating awareness and imparting training on related issues. This responsibility is taken very seriously within CCI and a separate division- the Advocacy Division has been created to undertake the advocacy initiatives.

19. While the Commission has not received any reference so far from a ministry under section 49, even before the full Commission was put in place, CCI was undertaking advocacy as a major activity under the powers granted to it by the Competition Act, 2002. The Commission has been in past engaged in undertaking advocacy with various authorities. The Commission has given its opinion on several draft legislations such as the Indian Post Office (Amendment) Bill, 2007, the Warehousing (Development and Regulation) Bill, 2006, the Shipping Trade Practices

Bill, 2007 and the Petroleum and Natural Gas Regulatory Bill, 2005. The Commission has also given its views on regulatory policies and practices in many areas such as banking, telecommunications, intellectual property rights.

20. Like other developing countries, India also has weak competition culture with competition lacking in many markets including regional and local markets. The sheer size of the country, the diversity of sectors and business practices and the mix of organised and unorganized sector makes competition advocacy a highly challenging task. With limited physical and financial resources at hand, CCI is focussing on a broad based strategy with activities that require limited resources and ensure widespread influence such as workshops with higher judiciary and Government, seminars with consumer organizations, Chambers of commerce, advocacy literature, Television and radio advertisement etc.

21. Over the last three years, we have held around 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. This strategy identifies three target groups for the advocacy initiatives. They are consumers, students and the corporate sector. 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.

Consumers

22. Our experience has been that most consumers are not aware of the existence of the law on competition, and these seminars not only provide them with an introduction to competition law and its purpose, but also a point of contact. As far as possible the seminar is held in the local language of the region, and the examples provided are those that can easily be co-related to the day to day lives.

Students

23. One of our key successes this year was the holding of an essay competition for under graduate and post graduate students. Around 500 students participated, representing around 200 educational institutions, covering almost all states and union territories. We also offer internships

to students from the stream of law, economics and management. The student research papers are also made available on our website.

Corporate Sector

24. Recently with the coming into effect of the provisions on merger regulation, a number of interactive sessions were organised, which helped us not only understand industry concerns, but also allowed the Commission to put forward its view on certain issues.

CONCLUDING REMARKS

25. Thus, we have seen that both capacity building and competition advocacy have important implications for enforcement success of a competition authority. Based on our experience of last two years, we have realized the importance of leveraging International cooperation for both these activities.

26. As there are no precedents within the country, developing formal or informal relations with others jurisdictions/ multilateral agencies for experience sharing and learning, as well as developing linkages for technical cooperation is a must for effective capacity building. This requires nurturing of fruitful partnerships, which in turn require continuing dialogue between both sides.

27. As far as advocacy is concerned, competition agencies in early stages may lack the foundation for undertaking effective advocacy ó they may not yet have acquired the independence, the resources and the credibility necessary for effective advocacy. In this area also, it would be highly useful to learn about other agencies experiences and how they have tackled such challenges.

28. BRICS International Competition Conference has already become a very important forum to continue the experience sharing and develop partnerships between jurisdictions and multilateral agencies. I look forward to listening to other's experiences and would be happy to answer any questions you may have on capacity building of CCI and its advocacy initiatives.

THANK YOU