

**CII ANNUAL CONFERENCE (VIRTUAL) ON COMPETITION LAW
AND PRACTICE**

4 AND 5 DECEMBER, 2020

Keynote address by Chief Guest

Mr. Ashok Kumar Gupta, Chairperson, CCI

Mr. Vikkas Mohan, Ms. Zia Mody, Chairperson, CII National Committee on Regulatory Affairs & Co-Founder & Managing Partner, AZB & Partners, Mr. Mihir Rale, General Counsel, Star and Disney India, Ms. Inderpreet Sawhney, Group General Counsel and Chief Compliance Officer, Infosys, my colleagues from the Commission, distinguished panellists and participants, friends from the media. Very good morning to everybody.

1. It is a great pleasure to be at this virtual Annual Conference on Competition Law and Practice. Over the years, this platform has helped in brainstorming various facets of competition law and enforcement. In that sense, this annual Conference provides an excellent place for exchange of ideas that can inform the evolution of competition law.
2. Given the extraordinary circumstances caused by COVID-19, I must commend the efforts of CII for organising this virtual conference today. Friends, the unabated spread of the COVID-19 has caused unimaginable crisis across the globe. Never before, in recent history, have we encountered a challenge of this enormity that has so profoundly impacted the world and all sectors of economy likewise.

3. A pandemic brings in its wake, crises of unprecedented magnitude and also newer opportunities and solutions to counter the same. Such disruptive events not only test resilience and adaptive capacity but can also unleash forces of innovation and creativity to shape a more sustainable and inclusive future. In crisis like this, competition authorities have a paramount role in helping economies to get back on the track.
4. Competition Law has seen an exponential growth throughout the world. There are currently more than 130 jurisdictions across the globe that have some form of competition law. As a philosophy, competition law ensures level playing field for all enterprises, promotes vibrancy of economy and enables common man to reap the benefits of growth. COVID-19 has given an opportunity to reassess working of national economy and reflect on the emergence of digital economy across the nations on a wider scale. Digital economy, e-commerce, and platform markets sound similar tones in every jurisdiction and show similar concerns on the regulatory maps across the world. Competition authorities everywhere are grappling with these concerns for some time now, and the Competition Commission of India is no exception.
5. As I can see from the comprehensive agenda of this Conference, a host of competition related issues, of contemporary relevance, have been encapsulated. I hope, these sessions will not only deal with the main issues but will also address subtleties involved within these themes. During present challenging times, our efforts at CCI have been to augment the regulatory outreach

with stakeholders, and we are extensively using digital ways and means to further this. I would like to re-emphasise that CCI believes in consultative and harmonious approach so that the goal of well-functioning markets can be achieved with active cooperation of trade chambers like CII.

6. In the COVID impacted economy, the tasks of Competition Regulators have become formidable as they endeavour to preserve an economic environment in which technology and innovation can flourish while ensuring that the same are not used by enterprises to undermine the competition in the economy. In the digital landscape, amassing of huge data by first movers to the detriment of new entrants and consumers and the phenomenon of winner takes all, have posed objective challenges before the competition authorities.
7. While Competition Regulators across the world have adapted to new normal and adopted measures to protect markets and economies, in India, CCI, acting proactively, has responded both on the administrative side as well as on the regulatory front. On administrative side, to ensure continuity of work, arrangements have been made to enable parties to file electronically anti-trust cases as well as combination notices including Green Channel notifications. Further, to ensure that cases do not remain hanging in uncertainty, the Commission is conducting virtual hearings.
8. CCI issued an Advisory for guiding businesses during these tough times. It was necessitated due to widespread disruptions

in supply chains, including crucial healthcare and other essential services. It was highlighted in the Advisory that given the pandemic situation, businesses may need to coordinate certain activities, such as data on stock, transport logistics, R&D etc. and resorting to such activities would not fall within the presumptions envisaged under Section 3(3) and 19(3) of the Competition Act, provided such arrangements result in increasing efficiencies and such conduct of businesses are necessary and proportionate to address concerns arising from the pandemic.

9. The Commission has responded dynamically in crafting remedies in the wake of COVID-19 and the consequent disruptions brought by it in the economy. The Commission has been cognizant of the economic distress brought about by the pandemic upon small market players particularly the MSMEs. In this, the Commission has been guided by its larger goal of keeping MSMEs going and faster market corrections than penalising the firms through monetary penalties. In this connection, let me mention that the Commission in its recent interventions has taken due cognizance of cooperation extended by the parties, during investigation and inquiry stage, and refrained from imposing monetary penalties when, taking note of the conduct of the parties, the Commission was satisfied that a simple cease and desist order would suffice to attain market correction. Such accommodative stance of the regulator was devised to meet the extraordinary situation arising out of the global pandemic and was also subject to the specific facts and cooperative and reformed conduct exhibited by the parties.

Going forward, please take note that the Commission may assimilate such factors in its decision making process which will encourage the parties to cease the anti-competitive behaviour and thereby bringing about the much needed market correction faster.

10. The Commission has recently amended the combination regulations to dispense with the requirement of providing information on non-compete arrangements in Form I. This amendment will provide flexibility to the parties to the combination in negotiating non-compete clauses. Thus, the parties are not bound by general set of standards for assessment of non-compete restrictions which may differ from case to case especially in these modern business environments. This measure will also reduce the information requirements at the time of notifying the combination.
11. The Commission's Green Channel for automatic approval of combinations has received a positive feedback from the business and industry. One out of every five cases are filed under Green Channel, demonstrating greater stakeholder confidence. This is a first of its kind trust-based system in the world and should sustain speedy, transparent and accountable merger review, strike a balance between facilitation and enforcement and create a culture of voluntary compliance that supports economic growth.
12. As the New Age Markets characterised by e-Commerce have thrown challenges of newer proportion and nature, the

Commission undertook a market study on e-commerce with an objective to comprehend the business practices and contractual provisions in e-commerce and their underlying rationale and implication for competition. Some competition concerns that emerged from the study include (i) Lack of Platform neutrality, (ii) Unfair Platform – Business Contract Terms, (iii) Existence of platform parity clauses and exclusive agreements and (iv) Deep Discounting. It is felt that while these issues may be examined within the provisions of Competition Law, what seems to lie at the core, is an imbalance in bargaining power between platforms and businesses.

13. In the current year, private equity investments have surpassed strategic investments in India due to the prevailing pandemic. A new trend has emerged where FDI investments and other foreign investments have been overtaken by PE investment. The Commission has been examining transactions of sub 10% investments in target enterprise, by private equity investors, where there is, even a single board seat in the target enterprise. Since many of these PE investments are in multiple firms of the same industry leading to product market overlaps, the issue of common ownership by minority shareholders across firms and its impact on competition needs to be understood. In order to understand the trends and patterns of common ownership by PE investors across sectors in India, the Commission is shortly going to conduct a market study. This study aims to gauge the common PE investors' underlying incentives and motivations behind such investments. It is important to look at the rights they get to protect their legitimate financial interests from their

shareholdings and whether these rights can translate into their ability to influence the decision of a firm consequently impacting competition or whether the investor and the company holding the minority shareholding will classify as a 'passive' investor. The study would help us in identifying the kind of shareholding rights available to common shareholders, the type of influence these rights provide, and the available safeguards in companies' policies for mitigating competition concerns, if any.

14. In October 2020, the Competition Commission of India also launched a market study of the pharmaceutical sector in India. The pharmaceutical sector plays a pivotal role in the public health agenda of any nation. Quality, access and affordability of medicines are key determinants of the overall quality of public health. However, owing to the inherent information asymmetry between consumers and suppliers of medicines, markets by themselves may not deliver optimal outcomes in terms of these parameters. To this end, the study intends to focus on the distribution segment of the pharmaceutical market in India with a view to understand i) discounts/margin policies at wholesale and retail levels of the distribution system, ii) the role of trade associations vis-à-vis various aspects of the distribution business, iii) regulatory rationalisation of trade margins and its impact on price and competition and iv) the impact of e-commerce on price and competition. Besides, the study also aims to investigate the extent of proliferation of branded generic drugs in India with its implications for competition and to assess potential hurdles, if any, in entry of bio-equivalent/bio-similar drugs in India.

15. CCI has been doing competition advocacy since its inception. With a decade of enforcement experience, it was brought to fore that there have been inherent issues in public procurement and tender designs vis-à-vis competition proliferation. Public procurement in India as a percentage of GDP is estimated between 20% to 22%. For the size of Indian economy at USD 2.7 trillion, public procurement amounts to the tune of USD 500 billion annually. Public Sector Undertakings (PSUs) are a major contributor to public procurement of works, goods and services. CCI has learnt through its experience that it's not enough to correct market on the supply side through enforcement orders and advocacy, rather effective approach is required to work on the procurers' side as well. In order to broaden the reach and disseminate the idea of Competition Law to States, CCI launched a scheme named as State Resource Person Scheme (SRP) which was implemented from January, 2020. This endeavour was imperative for imparting training to State Government Officials in general and Procurement Officials in specific. In furtherance of the objective of the Scheme, CCI has conducted so far 41 Advocacy Programmes for the procurement officials under the SRP scheme. Response of the participating States has been overwhelming.
16. I would like to emphasise that CCI has not only brought out an advisory for enterprises during COVID-19 times but has also cooperated with BRICS counterparts and signed 'Statement of the BRICS Competition Authorities on COVID-19' expressing intention to join efforts in combating the negative economic

consequences caused by COVID-19, sharing experiences, information and practices on developing competition during and after the pandemic for the benefit of the society and economies. Our endeavour has always been to take competition regulation wider and make it accessible to one and all. I am happy to share that in our approach we get support of all stakeholders.

17. At the end, I would like to appreciate the efforts of CII in organising this event and look forward to a productive outcome of this Annual event. Human interaction is key to growth and communication is an integral part. Such events not only help us to introspect but also bring new ideas to current practice of competition law. A number of good suggestions have been articulated in the inaugural session. They will definitely help the Commission in taking informed decisions.

18. I believe, as the sessions in the conference unfold, it will usher in a more synergetic and symbiotic approach between CCI and CII to address and tide over challenges of pandemic, new age markets and any other challenge to build a robust economy through fair competition in all sectors.

Thank You.