

**Virtual Webinar
On
Competition Law**

Organised by:

Northern India Regional Council, ICAI

Keynote Address by:

Shri Ashok Kumar Gupta

Chairperson

Competition Commission of India

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**CA Avinash Gupta ji, Chairman, Northern India Regional
Council**

Distinguished Members of the Institute

Participants

Ladies and Gentlemen,

A very good afternoon to you all!

1. It gives me immense pleasure to join you in the virtual webinar on 'Competition Law' being organised by the Northern India Regional Council of the Institute of Chartered Accountants of India.

2. The Chartered Accountants community is rightly considered an important pillar in nation building. The more than three hundred-thousand strong community is responsible for infusing fiscal discipline in the working of business entities, and thus, make important contributions towards economic development.

3. As a key stakeholder, the community also has a critical role to play in the economic governance of the country. Today, Chartered Accountants hold important positions in the corporate hierarchy, and their role in adhering to corporate governance principles and ensuring compliance with laws hardly needs any emphasis. The community also plays a critical role in ensuring competition culture and compliance in the working of enterprises.

4. With the advent of globalisation and digitalisation of the economy, the nature and complexity of business transactions have changed.

5. The emergence of new business models has further necessitated re-visiting and re-calibrating the approaches adopted in dynamically responding to the challenges posed by such changes. I am confident that the Institute has been regularly updating its curriculum to align and make it in sync with new market structures so as to effectively cater to the needs of businesses. Such continuous knowledge enhancement is imperative for practitioners to equip themselves to meet the demands emerging out of the new ecosystem.

6. CCI, on its part, keeps engaging in dialogues with all stakeholders to make them aware of the provisions of the law, and this event is another step in that direction.

7. Broadly, competition law promotes fair competition in markets and outlaws agreements that seek to reduce or avoid competition. In India, the Competition Act aims to prevent anti-competitive behaviour and promote and sustain competition in markets. The statute provides a formal and legal framework to prevent practices having adverse effect on competition, promote and sustain competition in markets, protect the interest of consumers and ensure freedom of trade. It is in sync with the philosophy of modern competition laws and prohibits anti-competitive agreements and abuse of dominant position by enterprises, and regulates mergers and acquisitions that

cause an adverse effect on competition in markets. The new law is competition-neutral in its application and covers within its ambit both public and private enterprises.

8. Provisions dealing with anti-competitive agreements and abuse of dominant position became operational in 2009, and the provisions related to mergers and acquisitions were notified in June 2011. Notifications of these substantive provisions of the Competition Act, 2002, marked a watershed in the regulatory governance of the Indian economy, which was transitioning to an economy where markets were essential instruments for resource allocation.

9. In its existence of over a decade, CCI has been able to build a robust competition culture in the country by actively pursuing the mandate enshrined in the Competition Act and ensuring competitive markets in India. In the last twelve years since CCI got its enforcement power, we have crossed important milestones and made critical interventions in key markets.

10. Realising that competition is a means to achieve larger economic goals, CCI has examined over 1100 cases of anti-competitive agreements and abuse of dominant position in diverse sectors ranging from entertainment, pharma, aviation, agriculture, construction, cement, sports

and real estate, wherein concerns of a large number of market players and consumers, both with respect to cartelisation and abuse of dominance, have been addressed. Appropriate behavioural and structural remedies have been issued by CCI, including the imposition of monetary penalties, to bring out faster market corrections.

11. In the recent past, CCI has had occasion to deal with various cases arising out of the new economy industries such as digital markets. CCI's interventions in such markets have been nuanced so as to preserve the incentives of innovation while correcting anti-competitive conduct. The instrument of enforcement has been applied judiciously, keeping in mind the specificities of the sector involved, market structure and the nature of contraventions.

12. Under the merger control regime which came into effect in 2011, CCI has examined more than 800 mergers and acquisitions notices. Conscious of the need and significance of inorganic growth for enterprises to attain size, scale and efficiency, we have focused on the quick approval of mergers and acquisitions that do not cause appreciable adverse effect on competition in markets. In this, CCI has successfully balanced the requirements of a robust merger control regime with the need to facilitate

ease of doing business. CCI has introduced the Green Channel route for filing a combination notice, wherein a proposed combination is deemed to be approved subject to fulfilling certain criteria. This mechanism is a first of its kind in any competition jurisdiction in the world. The Green Channel has gained traction and has been very well received by the industry.

13. CCI also commissions market studies for understanding markets. Usually, such market studies have been followed through engaging seminars and workshops which focus on sector-specific competition issues, where active engagement with industry players, academia and sectoral regulators helps place these issues in perspective. In the recent past, CCI has released market study reports in the e-commerce and telecom sectors. A few other market studies are in the pipeline, namely, pharmaceutical, common ownership, film sector, etc. We hope to gain a better understanding of these areas after the studies, which would guide our enforcement actions in the future.

14. As part of our advocacy mandate, we reach out to our stakeholders in various ways. CCI has published a number of advocacy booklets, quick guides and resources, which are available on its website, to help stakeholders better understand competition rules and frame in-house compliance manuals. Besides, we organise lectures,

workshops and seminars, and publish our bilingual quarterly newsletter *Fair Play*.

15. Competition law is a specialised economic law which is multi-disciplinary in its approach. The framework specifically envisages contributions from three specific fields of study i.e., legal, economics and finance. The role of finance professionals is required in the examination of all three main instruments of regulation, viz., anti-competitive agreements, abuse of dominance and regulation of mergers and acquisitions. Thus, as specialists in the financial domain, you have an important role in assisting CCI to achieve its objectives as enshrined in the Competition Act.

16. The role of accountants as advisers to businesses cannot be overemphasised. As advisers to businesses, your knowledge about competition law should be of an advanced level so as to advise the firm's managers and directors. This will help plug any gaps concerning competition law compliance by firms.

17. Let me also apprise you of the professional avenues available to those interested in pursuing competition law practice. The legislature has specifically recognised CAs, apart from lawyers and CSs, as a category of professionals

who can present cases on behalf of firms before CCI. Being part of the larger business ecosystem, CAs would be well placed to assist CCI in applying the provisions of competition law.

18. The community has a role to play in each and every aspect of the implementation of the law, starting from analysing anti-competitive effects of agreements between competitors in the form of price fixing, bid rigging and allocation of markets, to the assessment of abuse of dominant position in the form of unfair and discriminatory purchase and price levels, predatory pricing, conclusion of contract with supplementary obligations having no connection with the subject of contracts, etc. Most importantly, the expertise of Chartered Accountants is immensely useful in the analysis of various financial reports of merging companies, threshold analysis, issues related to determination of control, group, common ownership, minority shareholding, etc.

19. The first aspect of regulation of mergers and acquisitions is determining whether or not a particular transaction is required to be notified to the Commission. The law does not envisage the notification of all transactions, and therefore, thresholds have been provided in terms of values of assets and turnover. Even at this initial stage, a specialised knowledge of finance is required

to ascertain the relevant values of assets and turnover. The exercise is comprehensive, and apart from usual product and geographic dimensions, it requires the consideration of various dimensions, viz., identification of relevant enterprises and groups, and the determination of control. CCI has issued certain FAQs to clarify the concepts. However, with businesses becoming more and more dynamic, the Institute may also contribute to standardising the approach of testing thresholds.

20. Similarly, on the assessment front, there is a strong relevance of financial analysis from review of a notice to the design of remedies, as required. Chartered Accountants can play an effective role, and, in fact, are already playing an effective role, in monitoring the remedies imposed by the Commission to address the perceived competition harm resulting from a combination.

21. The responsibility of protecting and promoting the competitive process rests with all the stakeholders, including accounting professionals. The risks of various sanctions and fines and other costs can be eliminated or reduced if a 'compliance program' is adopted and implemented by firms. As part of the internal audit, auditors are also required to comment on the risk management framework employed by the auditee. Compliance with laws in general and adherence to

competition law norms in particular have been an important area of such a framework.

22. To facilitate businesses in being competition compliant, CCI has developed a Competition Compliance Programme which is primarily aimed at preventing the risk of violation of competition law. The manual contains the basic principles of competition law that impact an enterprise's relationship with competitors, agents, suppliers, distributors, customers and other third parties. It also contains guidelines that are designed to help executives and employees of the enterprise distinguish between permissible business conduct and anti-competitive behaviour.

23. The cost of non-compliance under the provisions of the Competition Act is high. Apart from damage to business reputation, such conduct may also result in significant monetary penalties and risk of directors' disqualification under the Companies Act, 2013. Thus, the benefits of putting in place a compliance programme far outweigh the associated costs. The adoption of a compliance programme by enterprises ameliorates these risks and encourages good corporate governance. Therefore, as part of their risk assessment/management, it is desirable that auditors advise firms to put in place a Competition Compliance Programme and follow it in letter and spirit.

24. All regulations are practically enriched by decisional practices. Regular update by way of post-qualification courses, publications, seminars, etc., on developments in the field of competition law, including the decisions of CCI and courts, would help the community keep abreast of the challenges posed by the dynamic business environment and better serve businesses.

25. In today's business environment, CAs have to grow beyond the narrow boundaries of accounts and audit. It is now vital for you to be well-versed in competition law so as to enhance your contribution to the growth of not only the enterprise concerned but also the economic development of the country.

26. With this, let me conclude by congratulating the Northern India Regional Council of the Institute, and particularly CA Avinash Gupta for conceiving and designing this event, which is of great topical and contemporary relevance. Two of our outstanding officers, CA Anshul Jain and CA Sachin Goyal will also be making presentations. I am sure this would go a long way in spreading awareness about the nuances of competition law regime amongst members of the community. I believe that Chartered Accountants will continue to play a pivotal role in providing value added services to stakeholders based on the

principles of trust, transparency, accountability and proactive governance.

27. Thank you very much.
