

**IIM KASHIPUR's**  
**FOURTH INTERNATIONAL CONFERENCE ON**  
**COMPETITION REGULATION AND COMPETITIVENESS**

Venue: Hotel Lalit, New Delhi  
Friday, the 10<sup>th</sup> February, 2017 at 9.15 a.m.

It is indeed my pleasure to be at this Conference today again in the year 2017 which is organized by IIM Kashipur. They had organized the annual conference in February 2016 also. Let me compliment IIM Kashipur for continuing with this endeavour and for bringing together some of the eminent stalwarts who have worked extensively in the area of competition law and policy from different parts of the world to debate and deliberate on various aspects of competition regulation. Their presence here today will definitely be useful and I believe that they will enrich the deliberations with their personal experience. Competition regulation is admittedly a subject which deserves an important place in the academic and policy discourse in the country, as India happens to be one of the growing economies among the emerging economies of the world.

2. Last year when we had met, I had just taken over as Chairperson, Competition Commission of India (CCI). Palpably, I was not exposed to the issues in the competition sphere which are engaging the competition authorities across

the world. Over the last one year, one had the good fortune of not only dealing with some of the important antitrust and merger cases but also had the opportunity to participate in national and international conferences as well as other discussion fora. These have no doubt given exposure to a variety of fascinating ideas and issues which are engaging the attention of competition authorities worldwide. I will take this opportunity to share some of them today.

3. Many of you present here may be aware that one of the very important issues facing regulators today is the rapid change in markets, led by technology and innovation. Advances in technology and, more particularly, digital technology and disruptive innovations, are transforming markets at an unprecedented scale and pace. The Commission has received, in the last one year, number of cases pertaining to digital markets and disruptive entry. These cases have, no doubt, given rise to a number of issues both operative and normative.

4. Digital markets are characterized mainly by the presence of two distinct sides interacting through a common platform. The platform often treats one side as a profit center and uses it to subsidize the other side. As you are all aware, in online search engines as well as in social network,

users do not pay any consideration at all. The question that is often put forward (to the competition authority) is how to define the antitrust market in the face of distinct provisions and determine market power when the services provided are free of cost. While it is a fact that users may not pay in monetary terms, there is a view that they are paying implicitly by sharing their personal data as well as revealed preferences. The platforms are competing with one another for users' attention because they know that they can monetize it in one form or the other. This raises a pertinent question as to whether data can be viewed as a form of currency to pay for free online services.

5. This issue has to further be seen in the context of the discussion happening on big data and competition law. There is an opinion that data may be viewed not only as a currency but also as an asset and, thus, as a source of market power. A contrarian view is that data is personal information which is being shared to enable better quality of services. All that is required is that there should not be any degradation of its quality by the service provider and that users should be offered due protection for privacy. While this debate is continuing, the fact remains that business models based on vast collection of data and its processing on a near real-time

basis, are enabling data service provider to offer a wide range of innovative and customized services. This brings advantage to consumers in reduction of cost, customized offerings as well as convenience of choice. But at the same time, data-driven network effects can be a source of market power and can be used for influencing the choices of the customers.

6. Having said this, I must say that like in any other sector, market power or dominance *per se* should not be an antitrust concern, even in the digital as well as data-driven markets. It is the practices adopted by the digital players which need to be competition compliant. The analysis of impact of any practice on competition and consumer welfare will have to take into account the interdependent consumer groups which the platform serves. One of the questions which is often raised is whether the traditional antitrust toolkit will be able to meet the analytical requirements of a digital market. I am personally of the view and this is shared by several of the competition authorities also, that competition law has enough protection and flexibility to handle the new dimensions posed by the antitrust cases in digital markets. The test of the competition authority would be to understand the markets with their complexities, assess the requirement and decide

the interventions that would be most relevant in these dynamic and fast-moving markets.

7. As I said earlier, big data in the digital space has thrown up concerns relating to privacy, data protection and consumer rights. These are already receiving a lot of attention in various jurisdictions and, in the foreseeable future, some of these issues may surface in India also. You must have read only few days back that a case has been filed in the Delhi High Court on the 'right to be forgotten', which has generated a lot of interest. The Indian market will become more and more digital with the growing emphasis on use of less cash and the implementation of Digital India programme by the Government, to connect the rural and urban economic markets. This may witness real expansion over space and in time. While the Commission will endeavour to strike the right balance between efficiency and innovation in these markets *vis-à-vis* abuse of market power, it is time that the academia also begins to participate and undertake research as well as studies on different aspects of competition.

8. On this note, I would like to add that world over, these issues have garnered a lot of attention and interest of the academia. There has been some good academic work done

on various aspects of competition law and economics in the digital economy, big data etc. by professors overseas in University of Surrey, University of Tennessee, University of Oxford, International Centre for Law and Economics, to mention a few. Their research studies have contributed to develop a more nuanced understanding of the frontier/cutting-edge issues in antitrust law and economics.

9. In India, we have completed nearly eight years of antitrust enforcement and six years of merger review. The time is ripe for our universities, IIMs, IITs, National Law Schools to now come forward, build a repertoire of antitrust literature in the Indian context and play their part in establishing an effective competition regime in India.

10. Another challenge which is facing the competition authority in India is the developing jurisprudence in competition law. There are number of areas such as, turnover, standards of proof, principles of natural justice, individual liability, which are currently *sub judice* and in which jurisprudence is yet to be settled. There is also an issue of jurisdiction among regulators which needs to be settled. The Competition Appellate Tribunal as well as High Courts have provided directions on some of the issues. The Hon'ble Supreme Court of India is seized of matters on a number of

legal and interpretational issues. The decisions of the Apex Court will not only bring about greater clarity but also predictability and certainty in the implementation of competition law in the country. The Commission will make use of them to lay down guidelines as well as guidance notes for more efficient working as well as optimal use of resources. This will help the businesses and industry a great deal in the country.

11. Coming to enforcement, 'Cartels' remain CCI's top priority. Horizontal agreements entered into between competitors to fix prices, share markets and/or customers or rig bids, raise a presumption of causing anti-competitive harm under the Act. The Legislature has carved out stricter penalty provisions in case of cartelization. Our general approach is to deter them through penalties as well as to use the lesser penalty provisions to encourage enterprises to cooperate in uncovering the cartels. In the mature jurisdictions, large proportion of cartel investigations result from participants who approach the authorities to reveal cartel practices. In India, there has been a surge in leniency applications in the last one year. Recently, we have issued our first order in a case where 75% reduction in penalty has been granted to an applicant under the Lesser Penalty

provisions. Through this decision, we have tried to convey our intention as well as provide clarity regarding the criteria used for determining the reduction in penalty such as, timing of the disclosure, the value that the applicant adds to the evidence already available with the CCI and continued cooperation during investigation. We expect that more and more enterprises will come forward and help us unravel cartels in many more areas. We will like to move fast on this and we are reviewing the confidentiality provisions. We are planning to lay down the road map for moving from the covert to overt phase and are considering to effect amendments, as may be required, so that the leniency regime becomes more attractive to enterprises to make use of.

12. While on this, I would like to mention our expectation about the need for a change in the approach of the parties who are currently appearing before the Commission for arguing their case post-investigation. The proceedings before the Commission are inquisitorial in nature in which enterprises are expected to evaluate the DG's findings and give response. The general tendency which is observed, is to contest every finding and argue for rejection of the DG report in its totality. There is no attempt to accept the findings that



are unambiguous and, as a result, the proceedings tend to tilt more towards the adversarial form. This is not in-keeping with the spirit of the Act. It is resulting in increased litigation and consequent costs. Pending the introduction of a commitments/settlement regime in the country, a more constructive approach by the parties in respect of DG's investigation will help in furthering the cause of the markets, consumers, as well as the enterprises.

13. Having said this, let me reiterate what I have been saying off and on at various platforms. Our priority is and will remain to ensure that violations of the Act do not happen in the first place. The Commission has been and will strongly advocate to enterprises to inculcate a compliance culture in their organizations, so as to realize the benefits of competition. It is heartening to learn that more and more enterprises in India are introducing internal competition compliance programmes. This should receive further fillip, as having a competition compliance programme would be seen as a mitigating factor in case an enterprise happens to be on the wrong side of competition law compliance. But it will need to be demonstrated and established by enterprises that efforts have actually been made for its promotion and effectiveness. CCI will soon bring out a comprehensive

compliance manual to facilitate this. We hope this manual to be at par with the best in the world.

14. Coming to mergers, one significant trend that one sees is the increase in the number of global, multi-jurisdictional 'mega mergers'. The competition authorities assess them from the point of view of whether there is sufficient local nexus. They will intervene only when there is a potential adverse impact on competition in local markets in the foreseeable future. However, this does not obviate the possibility of such mergers having a long term effect on consumers and businesses as well as on the public policy objectives. It may be beyond the remit of competition law to address public interest considerations. Moreover, the competition authorities may not have capacity to conduct a balancing exercise by weighing competition factors *vis-à-vis* public interest. In such a situation, other policy instruments may provide a redressal because competition policy is only one of the cornerstones of the overarching economic policy framework of the Government along with monetary, fiscal, trade and industrial policy.

15. I am happy to share some of the issues which can serve as focus areas for research also. Early years as they are, the capacity and knowledge in the field of antitrust is not yet

sufficient in the country. If we are to place the competition law regime in India on a strong intellectual foundation, academia would have to play a vital role. The Commission is trying to reach out and encourage research in antitrust through various initiatives. One of them is the National Conference on Economics of Competition Law, which we have made an annual feature. This year, the Conference is scheduled for 2<sup>nd</sup> and 3<sup>rd</sup> March, 2017. We are also engaging with various institutions of higher learning and research for undertaking competition impact assessment of the policies and legislations in the country. We expect to expand this cooperation in the days to come by involving more and more institutions and by developing greater competence in this area. On this note, I will like to once again compliment IIM Kashipur for holding this annual conference. But let this not remain an annual feature only. We should encourage dialogue throughout the year on several issues and bring out research papers to promote better understanding. I will request the academia, consulting firms and the legal fraternity to make a collective endeavour on a continuing basis to deepen the understanding of markets, to reinvent ourselves as markets evolve and to make assessment of competition more robust, reliable and effective.

16. Before I conclude, I will like to mention that today, we are standing at a juncture where we see a trend among a few nations turning inward, rebuilding trade barriers and fencing themselves. However, we all stand to gain by keeping markets open and by providing a level playing field. The role of antitrust authorities will be to stay committed to the mandate of maintaining free and competitive markets, for lower prices, better quality, greater innovation and increased global competitiveness and growth.

17. With these words I wish this Conference success.

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