

**CHAIRMAN, CCI's SPEECH ON THE OCCASION OF**  
**INAUGURATION OF**  
**DIPLOMA COURSE IN COMPETITION LAW AT**  
**ILS, PUNE ON 8<sup>TH</sup> AUGUST 2014**

Professor Joshi-Principal, ILS Law College;

Distinguished faculty members;

My dear students, eminent guests and invitees;

**INTRODUCTORY**

It gives me great pleasure to address this august gathering of academics and legal professionals on the occasion of inauguration of the diploma course in competition law. This is a timely initiative at a stage when the demand for competition law experts is set to rise and is being increasingly felt by industry and other stakeholders.

I hope and trust that this institute, through such initiatives, would impart the necessary skill sets required by present day professionals in their practice before regulatory bodies, tribunals and courts. This would also enrich the decision making process of such expert bodies. Besides, such professionals could also help policy makers in forging appropriate policy tools and instruments to enhance competition in the markets.

**HISTORICAL: From 'Command-and-Control' to 'Market' Economy**

In the early stages of our economic policy thinking, a 'command-and-control' economy found resonance with citizenry that was still adapting itself to self-governance. The Indian economy witnessed low growth during that period. Direct control through PSUs, public ownership of banks through nationalization, price controls and industrial & import

licensing were the chief instruments employed by the Government to satisfy all interest groups.

Such skewed resource allocation was destined to become inefficient with resultant fall in growth. The dissatisfaction with this model, along with a change in world economic order, ushered in a market based economy with concomitant emphasis on growth.

Theoretically, there are fundamental differences between the legal and regulatory framework of a 'command-and- control' economy and a 'market' economy. In the former, economic activity is restricted to those activities that are permitted by the state. In the latter, the economy thrives because the state interferes only when there is 'market failure', *i.e.* monopoly power, asymmetric information or negative externalities. As a consequence, laws permit all activities, unless the state specifically restricts them in the context of 'market failure'. The restrictions, however, need to be part of a known and predictable regulatory regime in a stable framework.

### **ECONOMIC REFORMS-ADVENT OF COMPETITION**

The transition from 'command-and- control' economy to 'market' economy became complete with the onset of economic reforms in early 1990s. The economic reforms introduced through the process of liberalization, privatization and globalization aimed at making the Indian economy globally competitive. A new chapter dawned for India and her billion plus population. This period of economic transition had a tremendous impact on the overall economic development across all the sectors of economy.

Till such reforms, PSUs enjoyed monopoly status backed by statutes. Competition was unheard of and practically non-existent. This resulted

in inefficiencies. Consumers lacked choice and quality products. Absence of effective consumer disputes redressal agencies made the consumers singe than King!

Let me share the experience of yesteryears of pre-reform and pre-competition era which my contemporaries sitting in this hall would bear and testify.

No date of marriage would be finalized in 70's and 80's unless the date for delivery of Chetak Scooter was given by the dealer. The waiting list for delivery was about 10 years!

Doordarshan, the only channel, at the prime time would telecast *Chaupal* through grainy black and white video forcing audience from kids to adults to imbibe tips on farming!

Linesmen of Post & Telegraph (much later DoT) Department were amongst the most sought after grooms overlooking professionals due to their sheer control on the working of landline phones!

Toothpastes in aluminium tubes leaked more from sides and below than from the opening!

Amby was the undisputed King of roads! And the cars waited endlessly at single-bay petrol pumps for their turns to fill the tanks!

Ladies and Gentlemen,

The economic reforms changed all that and brought along a host of quality products and services, produced and delivered by domestic and foreign players. The reforms unleashed the entrepreneurial spirit of

Indian businessmen who were hitherto shackled by 'license- permit-quota' Raj, heralding an era of competition.

Today, we have a vibrant automobile sector where multiple models and immediate delivery is the norm and terms like 'priority letters' have little relevance.

Telecommunications revolution is another example of reforms and requires no elaboration. Telecasting through cable and DTH has completely changed viewing experience of consumers through high definition quality and a vast bouquet of channels. Competition in oil marketing provided not only multiple-bays but also a different experience altogether. Competition in banking sector made the goal of financial inclusion real with entry of private-domestic and foreign-players in the markets. Earlier, to open a bank account in nationalized banks was a daunting task, if not a challenge. Now, it is possible to open a bank account while sitting in the cool confines of one's home.

Aluminium tubes of toothpaste have long been replaced by laminated tubes and the variety of choice available in the market for a product as simple as toothpaste is in itself evidence of the benefits competition can bring.

## **COMPETITION REGULATION**

Opening-up of the economy necessitated the Indian markets to gear up to face competition from within and outside. This required putting in place a regulatory architecture to govern the harmful effects arising out of anti-competitive agreements, abusive behaviour of dominant undertakings and mergers & acquisitions.

The then existing Monopolies & Restrictive Trade Practices Act (MRTP Act) enacted in 1969 focussed more on control of monopolies and prohibition of monopolistic and restrictive trade practices. It was a product of the licensing and controls regime. In the era of liberalization and globalization, the MRTP Act had become obsolete in certain respects. In the light of international economic developments relating more particularly to competition, it was imperative for India to shift its focus from curbing monopolies to promoting competition.

Competition law is an economic law based on economic principles. A competitive market is said to achieve allocative efficiency and productive efficiency. The combined effect of allocative and productive efficiencies is that society's welfare overall is maximized. Consumer welfare is also maximized in such a situation.

Allocative efficiency is achieved when the goods are produced in the quantities desired by society; and it is not possible to make any one better off without making someone else worse off. Productive efficiency is achieved when goods are produced at the lowest possible cost, that is, as little of society's wealth is expended in the production process as is necessary. Competition also enhances dynamic efficiency in that it spurs innovation, development of new products and technological growth. Overall, competition contributes to the promotion of economic development.

Based on the above economic principles, the main objective of any competition law is to make the market economy work better by preventing enterprise power from distorting the market. Individual players may tend to restrict competition through means such as collusive agreements to fix prices and outputs, exploitative or exclusionary measures by a dominant enterprise, and mergers and other forms of combinations to gain or augment market power.

Accordingly, the Competition Act was enacted in the year 2003 for establishment of Competition Commission of India to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets.

#### Enforcement functions

On the enforcement side, CCI inquires into anti-competitive agreements and abusive conduct of dominant enterprises at *ex post* stage and examines mergers and acquisitions at *ex ante* stage. In the event, contraventions are found, CCI is empowered to issue suitable remedies which include cease and desist orders, imposition of penalties and modification of agreements. In the context of mergers and acquisitions, CCI has the power to approve (with or without conditions) or to block combinations.

#### Advocacy function

CCI is also mandated to discharge competition advocacy role by taking suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues, and activities that could strengthen the competition culture in the market. Thus, CCI has the specific responsibility to create awareness and impart training on competition issues.

#### Advisory function

Furthermore, the law states that in formulating a policy on competition (including review of laws related to competition), the Government may make a reference to CCI for its opinion, and CCI is required to furnish

such an opinion to the Government. The statutory framework of the Competition Act also provides a broad means to CCI for providing a competition perspective to other statutory authorities, including sector regulators.

### Interventions by CCI

The competition law, though enacted in 2003, was notified in May 2009 and became fully functional from June 2011. Thus, CCI has completed only five years of its enforcement functions. Within this short span, CCI has dealt with a range of cases relating to anti-competitive agreements and abuse of dominant position across various sectors of the economy including aviation, banking, insurance, retail, real estate, pharmaceuticals, commodities, telecommunications, media & broadcasting, capital markets.

In the last three years, the CCI has also reviewed over 180 mergers. I am happy to report that notwithstanding the period stipulated under the law *i.e.* a maximum of 210 days to examine the combinations, CCI has taken only an average of 17 days in reviewing M&As. This has substantially allayed the apprehensions of industry.

While enforcing the provisions of the law, the commission has reinforced the principle of competitive neutrality providing a level playing field between public and private enterprises. The Commission has inquired into the alleged instances of abuse by state monopolies and state-owned enterprises and penalised the contravening parties.

We believe that the CCI has evolved from being a market watchdog which merely keeps a watch on anti-competitive activities to a body which is extensively engaging with the governments, industry and academia to imbibe a culture of competition in the markets.

## **STUDY OF COMPETITION LAW AND POLICY**

Ladies and Gentlemen,

Competition can be a powerful instrument to ensure that the fruits of growth percolate down to the bottom of the pyramid through lower prices, wider choice and better quality of products and services. While competition law prohibits and prevents practices having appreciable adverse effect on competition and seeks to foster and sustain competition in the market, other policy instruments, sometimes, deal with the externality problems. From this perspective, competition policy is one of the cornerstones of the overarching economic policy framework of the Executive along with monetary, fiscal, trade and other policies. This makes the study of competition law and policy necessary.

However, studying competition law, unlike other conventional disciplines, requires a different initiation and orientation in the approach.

I am very glad that this Institute has taken the initiative to launch this professional programme to groom budding and practising professionals and help develop a wider appreciation of competition law amongst a crucial stakeholder set.

### **CCI AND ILS, PUNE**

The present endeavour of the Institute is, I believe, an outcome of the Knowledge Partnership Initiative launched by CCI in 2012 to promote proliferation of Competition Law and Knowledge. CCI has engaged in collaborative efforts with various professional institutes to partner with

them to launch programmes and courses in the field of competition law. ILS Pune has been one of the active partners of CCI in this initiative.

ILS Pune has framed the curriculum of the present diploma course in close association with CCI which is thorough, and inter- disciplinary to make the study relevant for the target group to equip them with the requisite expertise to practise and develop competition law.

I am sure that the modules imparted by the Institute would be very useful for the students and professionals alike. The curriculum addresses the needs and requirements of not only present but also future professionals and practitioners in this sphere of economic regulation. However, I may hasten to add that markets are dynamic and so are laws governing markets. Therefore, the process of firming up of curricula and modules should remain a continuous exercise.

As I mentioned earlier, competition also enhances dynamic efficiency by spurring innovation. Hence, a dedicated module to explain the interface between anti-trust law and IPR regime would be entirely in order.

Similarly, an interaction between trade policy and competition policy hardly needs any emphasis. Competition policy and liberal trade policy seek to achieve the same objective *viz.* economic efficiency. Whereas competition policy seeks to achieve economic efficiency by liberalizing domestic markets and by having laws that protect and promote competition, a liberal trade policy seeks to achieve economic efficiency by liberalizing markets by removing the barriers to trade at the border.

In sum, I wish to emphasize that a competitive market functioning efficiently cannot be viewed in isolation. Anti-trust law, as a microcosm, reflects larger movements of our society.

Before I conclude, I would like to announce that CCI has recently approved the introduction of a scheme to reward the best dissertation papers by students enrolled in LLM/ diploma courses. Under this scheme, three papers would be selected every year for a cash prize and awarded at the Annual Day of CCI *i.e.* on 20<sup>th</sup> May every year. I hope that all of you would participate and the contributions will help enhance the knowledge base of competition law in India.

### **WAY FORWARD**

Ladies and Gentlemen,

The Indian constitution, through its preamble, seeks to secure to her citizens justice-social, economic and political.

On attaining freedom, we have attained political freedom in full measure though universal adult franchise without any discrimination. Social justice is a work in progress through various efforts including affirmative action programmes. However, the goal of ensuring and achieving economic freedom and justice still eludes us. The first wave of economic reforms started in 90s provided impetus to the task of realizing economic freedom. However, India is far away from realizing its full potential. Time has come to unleash a second wave of economic reforms to fulfil the ideals enshrined in our Constitution by the Founding Fathers. Competition law and competition policy would play a significant role in this direction. Whereas competition policy would help review the regulatory and legal framework to remove bottlenecks in the markets, competition law through CCI would ensure freedom of trade by penalising enterprises indulging in anti-competitive conduct.

## **CONCLUDING**

In conclusion, I believe that the regulated entities need to be fully sensitized about the objectives and implications of the new economic regulatory architecture. For this, it is imperative that a well-trained stream of professionals assists them as also the regulators and courts.

With these words, I commend the Institute for introducing this initiative at a time when the competition law is at the cusp to play an increasingly significant role in fostering fair play in the markets for the general good.

Thank you, ladies and gentlemen.

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