

COMPETITION COMMISSION OF INDIA
NATIONAL CONFERENCE ON ECONOMICS OF COMPETITION LAW
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Special Address

Mr. Ashok Kumar Gupta, Chairperson Competition Commission of India

1. Mr. Neelkanth Mishra, Member, Economic Advisory Council to the Hon'ble Prime Minister, My colleagues in the Commission Dr. Sangeeta Verma and Mr. Bhagwant Singh Bishnoi, distinguished guests and participants, a very good morning to all of you. It's my pleasure to welcome each one of you present here to this annual national conference of CCI — a forum dedicated to antitrust economics. I am very glad that this conference has now been firmly institutionalised. The *first Friday* in the month of March is now pencilled in the conference calendar of anyone with an interest in competition law, be it academia, policy analysts, economic consulting firms, or the legal fraternity. An overwhelming response from all stakeholders each year is indeed gratifying.

2. To such an informed audience, one need not labour on why economics is integral to competition law and policy. What is important to know is that in India, the Competition Act, 2002 has economic principles embedded in most of the enforcement-related provisions. The architecture of the law is such that adjudication entails appreciation of the economics of markets and the impugned conduct.

3. As long as the law embeds economic principles and the framework for implementation is exhaustive vis-à-vis its economic objectives, conflict between legal certainty, and a “more economic approach” to the implementation of the law gets minimised. At times, there can be a tension between a rule-based approach that ensures legal certainty and a case-by-case approach that factors in economic principles. Our experience shows that a case-by-case approach to determine the likely impact of a practice is well aided by economic science. The discipline of

economics brings with it a set of rules and principles that bring coherence to the administration of the law.

4. Friends, economics plays an important role to unravel the intricacies of markets for understanding the state of competition and what aids, abets, or hinders it. Market structure and market shares do not provide a complete picture of competition. Given the inherently dynamic nature of markets, especially the new-age markets, it becomes increasingly important that the Commission engages proactively with stakeholders, including through market studies and stakeholder consultations.

5. The application of complex economic legislation can only be effective when it is nuanced and appropriately accounts for market specificities. The learnings from market studies allow the Commission to appreciate various strategic interactions in markets.

6. Secondly, and I think more importantly, both enforcement and advocacy have to account for the level of evolution of markets in India in comparison to the markets of developed economies. Recognition of these differences is important for the application of competition principles. Thus, the market studies in the legal and economics framework not only study markets but also all the concrete institutions that have an impact on market outcomes.

7. For instance, the recently concluded pharmaceutical market study not only identified the factors that influence price competition in the pharmaceutical sector but also brought out the role of trade associations and explored areas of interface between regulation and competition. The “New Institutional Economics” framework of this study opened up avenues for dialogue with central and state drug regulators for a comprehensive regulatory response to the quality issue that impinges price competition.

8. Market studies also help uncover new parameters of competition. For instance, the e-commerce market study helped develop a better understanding of the novel competition issues that were emerging with the growing importance of digital platform-centric commerce. The telecom market study brought out the importance of data governance structures of big tech firms and privacy to the centre stage of competition law.

9. While there is a copious amount of literature and frameworks that guide regulation in these new markets, it is important to understand the Indian milieu, especially the innovation ecosystem of India, then see how regulations can foster that ecosystem. Economics can play a crucial role in understanding the dynamics of the platforms ecosystem, in defining the boundaries of the relevant markets, in assessing harm from the lack of competition manifested in quality and innovation, and in balancing the short-term and long-term effects on consumer welfare. In this context, the recently concluded startup workshop deliberated on a range of issues pertaining to the startup ecosystem and competition and provided useful inputs and insights for stakeholders, policymakers, and regulators. Going forward, the Commission proposes to undertake several more market studies for the purpose of enforcement and advocacy.

10. We are conscious that the Commission, in addition to its enforcement functions, has been accorded the role of an expert body with multifarious functions. In addition to directing investigation or orders against specific entities with the aim of eliminating a practice found to be pernicious, as an expert body, our role extends to promoting a culture of competition in all economic spheres, including policy. Economic policymaking is an act of balancing various objectives, and encouraging competition-driven efficiency in allocations is one such objective that should be placed on the table in policymaking discussions. To this end, the participation of CCI in policy deliberations and engagement with various arms of the government assumes great importance. Given the apparent dichotomy between competition and regulation, competition authorities have a vital role to play in ensuring optimal

regulation that protects consumer interest while allowing competition to flourish. Sustained and effective competition advocacy to ensure a pro-competitive policy environment is thus integral to any competition agency's mandate, and these interventions draw heavily from the law and economics framework.

11. The Government of India is in the process of introducing a number of regulatory reforms to address issues in the digital space. CCI has been providing its inputs from time to time, during framing of policies, from the competition law perspective, to ensure that competition principles are embedded *ex ante* in the policy toolkit.

12. Before I conclude, I would like to add that the economist community will have to make sure that the economic case is well aligned with the legal case. For this, economists have to ensure that economic theories are grounded in the facts of the case and are able to stand judicial scrutiny. It is important that economic analysis is comprehensible and fits well with the legal framework. Our attempt would be to use economics in a simple, straightforward, and intelligible manner.

13. Friends, in our interactions with competition authorities in other jurisdictions, we hear how academia is actively engaging with authorities. In India, the antitrust regime has been in place for nearly 13 years. If we are to place the antitrust enforcement regime in India on a strong intellectual foundation, it will require the fusion of efforts by the Commission and academia. It is imperative that we build a conduit of regular communication with you. This Conference is a step in that direction. I look forward to ideas and suggestions from your side on how we can generate more research interest in antitrust economics and how we can take this partnership forward.

14. With these words, I welcome and compliment the panellists, presenters, discussants, participants, and all our distinguished guests for coming together and being a part of this initiative. It is our privilege to have Mr. Neelkanth Mishra, Member, Economic Advisory Council to the Hon'ble Prime Minister as today's

keynote speaker. He is one of India's leading experts on economic issues. We look forward to hear him today.
