

Inaugural Series of Webinar on Competition Law
Organized By:
Banking, Finance and Corporate Affairs Expert Committee
of
Bangalore Chamber of Industry and Commerce
Keynote Address
by
Chairperson, CCI
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President, Office Bearers, Members of Bangalore Chamber of Industry and Commerce, Distinguished participants
Ladies and Gentlemen
A very good afternoon!

1. It gives me immense pleasure to be with you on the occasion of inaugural edition of Series of Webinar on Competition Law mooted by Banking, Finance and Corporate Affairs Expert Committee of Bangalore Chamber of Industry and Commerce. I am sure the Series will use this platform very effectively to provide a robust exchange of insights on various important facets of markets and antitrust amongst policymakers, experts from the industry and Government on various topical issues on a regular basis for the benefit of its members. At the outset, my compliments to each one of you!

2. We meet at a time when a pandemic of an unprecedented scale has affected economies across the globe, including India. How to reignite the national growth engines amidst the uncertain and shaky global economic environment is a pressing question before policymakers. The recent forecasts have imbued optimism for an impending recovery. It is important that competition principles be respected along the way.

3. In India, the direction of the government's economic reforms agenda is clear. The economic stimulus package has provided strong impetus to structural

reforms in various crucial sectors of the Indian economy. We broke away from the system of controls in the early nineties and it is being progressively replaced with a regime where the role of the State is that of a facilitator and where the market is to take the lead and become an instrument of growth and self-dependence. It is therefore imperative that we have markets that are well-functioning, undergirded by healthy competition.

4. Let me now provide a very brief account of competition law regime in India and the paradigm shift in the economic policy thinking from time to time which led to enactment of new competition law, *i.e.* the Competition Act, 2002.

5. Opening-up of the economy necessitated the Indian markets to gear up to face competition from within and outside. The then existing Monopolies & Restrictive Trade Practices Act enacted in 1969 focussed more on control of monopolies than promoting competition. It was a product of the licensing and controls regime. In the era of liberalisation and globalisation particularly following liberalisation of the economy in 1991, the MRTP Act was found to become obsolete in certain respects. In light of international economic developments relating more particularly to competition, it became imperative for India to shift its focus from curbing monopolies to promoting competition.

6. Therefore, the Competition Act, 2002 was enacted by the Parliament. The Competition Act follows the philosophy of modern competition laws and prohibits anti-competitive agreements, abuse of dominant position by enterprises and regulates mergers and acquisitions, which cause or are likely to cause appreciable adverse effect on competition within India. The law is applicable to both public and private enterprises.

7. Competition Law cuts across all the sectors and comes into play wherever competition is compromised, subverted or stifled. It carries with it competitive neutrality and applies to Government and non-Government entities without any discrimination. As such many Government policies with anti-competitive consequences, though unintended, fall within the ambit of competition law.

8. In correcting market-distorting practices, the Commission has used an effective mix of the twin instruments of enforcement and advocacy. The instrument of enforcement has been applied judiciously, with interventions made only in such cases where business conduct was found to seriously undermine market processes and mute competition. For instance, the Commission has had an assertive enforcement agenda against cartels to free Indian markets from this pernicious economic offense and to optimise deterrence. At the same time, it has incentivised self-reporting and offered businesses an opportunity to approach the Commission for lesser penalty by making vital disclosures on cartels. The idea has been to engage industry not only for prompt detection and rectification of competition problems but also to make them realise that all stand to gain from fair and competitive markets.

9. This year, CCI would complete 12 years of enforcement and during this period, our endeavour has been to build and develop a culture of competition in markets through effective enforcement of the law and proactive outreach. In spite of being one of India's youngest economic regulators, the Commission has been enforcing the law vigorously, though pragmatically. Within this short span of time, CCI has reviewed anti-competitive practices in diverse sectors of the economy ranging from infrastructure, travel, automobile, real estate, pharmaceuticals, financial sector, publishing, manufacturing, mining, entertainment and e-commerce.

10. The Commission has so far reviewed 1,118 cases under anti-competitive agreements and abuse of dominance, and 815 mergers and acquisitions notices. In cases of contravention, CCI has been using diverse remedies including cease and desist orders, besides, in appropriate cases, monetary penalties have been imposed.

11. On the merger review front, the Commission has been conscious of the fact that in a developing economy like India where industry is gearing up to make the nation self-reliant as well as to expand its global footprint, mergers and

acquisitions are a potent instrument to optimise scale and improve efficiency. Competition screening of M&As over the years has shown that a vast majority of transactions do not raise any competition concern. A green channel has been recently introduced for automatic approval of combinations. This is a first of its kind trust-based system in the world, where notifiable transactions having no overlaps, be it horizontal, vertical or complementary between the parties, are deemed approved upon its filing. It is expected to promote a speedy, transparent and accountable merger review, striking a balance between facilitation and enforcement. The green channel route has gained traction with one out of every five transactions being filed under this route, demonstrating stakeholders' confidence. Thus, a slew of industry-friendly measures have been adopted by the Commission to ensure speedy clearance of non-problematic transactions, to reduce procedural burden, and to make filings simpler.

12. When a nationwide lockdown was announced last year, Commission proactively activated a system of e-filing and digital payment of fees. All internal and external communications were conducted digitally over secured networks to ensure business continuity without any physical interaction. To keep all stakeholders informed, a dedicated helpline was also set-up and various guidelines were issued from time to time. In fact, CCI recognized early that COVID – 19, caused disruptions in supply chains, including those of critical healthcare products and other essential commodities/services and intervened early to address the challenges posed from competition law perspective. To cope with significant changes in supply and demand patterns arising out of this extraordinary situation, CCI issued an advisory for guidance of the businesses in COVID times and acknowledged the need for businesses to coordinate certain activities, by way of sharing data on stock levels, timings of operation, sharing of distribution network and infrastructure, transport logistics, R&D, production etc. The advisory also highlighted the in-built safeguards in the [Indian] Competition Act to protect businesses from sanctions for certain coordinated conduct, provided such arrangements, result in increasing efficiencies. However, it was cautioned that only such conduct of businesses which is necessary and proportionate to address concerns arising from COVID-19 would be considered.

13. The Commission believes that application of the law needs to be nuanced, appropriately accounting for market conditions and the larger economic and policy milieu. In a young jurisdiction like India where legacy issues have not yet faded completely, stakeholders are not fully aware of the benefits of competition and pro-market reforms are still an ongoing agenda, enforcement cannot be the only route to market correction. A large part of the Commission's work thus comprises proactive outreach and advocacy, which we feel, can be effective in preventing violation of the law and can help mitigate a range of competition concerns in Indian markets without burdening the industry with compliance and litigation costs.

14. CCI has been publishing plethora of literatures for the consumption of stakeholders of all hue and colours. In this pursuit, CCI has published myriad of books/magazines, study reports etc. A quarterly newsletter 'Fair Play' is published regularly to keep the stakeholders informed about development of Competition Law not only in India but also around the world. CCI has published 'Training Module for Administrative and Judicial Academies', 'Diagnostic Toolkit for Procurement Officials', 'Competition Compliance Manual' for enterprises, 'Consolidated Advocacy Booklets', 'leaflet', etc. for the benefit of stakeholders.

15. Correction of markets requires deep understanding of markets and market developments. It is therefore that the Commission is complementing its enforcement and advocacy by conducting a series of market studies. These studies offer a valuable opportunity for pro-active engagement with stakeholders and for assessing competition beyond individual behaviour of firms. The intent is to develop an understanding of the structural infirmities, consumer preferences, industry practices and regulatory architecture and their implications for competition in and for the market in different sectors of the economy. The E-commerce market study brought out certain issues surrounding e-commerce platforms, which the Commission sought to highlight through a self-regulation advisory. The telecom sector study accentuated the need for a harmonious

regulatory environment, focusing on strengthening cooperation among the sectoral regulators and the competition authority. A number of other market studies are now underway which are expected to bring insights for effective policy advocacy and focused business outreach.

16. Bengaluru's vibrant startup culture has maintained its strong and robust growth momentum. It is no surprise that the City is home to one of the largest startup ecosystems in the world. The growth in scale of Bengaluru's startups, both domestically and globally, as well as the ambition and drive of the city's entrepreneurs continues to be a source of inspiration for the entire ecosystem. Regulators and policymakers need to provide the necessary incentives for innovation and competition. It will be no exaggeration to say that Bengaluru is emerging as the fastest growing global tech hubs for investment and in this background, the role of competition regulation in digital space assumes critical importance.

17. The rapidly changing and evolving digital landscape is posing new challenges for competition law enforcers questioning the traditional parameters of competition regulation, making competition agencies develop innovative perspectives on how to apply the existing instruments suitably and devise new tools, where necessary.

18. The strength of network effects and consequent lock-ins for consumers differ from one market and one product to another. A one-size-fits-all approach does not work. A nuanced assessment, based on the facts of the case and the market and technology in question is the need of the hour. The Indian anti-trust law allows for the much needed flexibility within a broad framework. For instance, it is not a market-share based static view that guides the assessment of dominance. A host of other factors including entry barriers, competitors' strength, etc. are provided in the Statute Book in determining dominance. Indeed, the statutory framework is holistic as well as futuristic.

19. Given the very fast evolution of the digital markets, the Agencies need to act swiftly and craft remedies suitably to address challenges arising out of new forms of business models. Also, policy-makers need to forge appropriate policy tools and techniques to deal with the challenges thrown by the dynamics of these new and fast emerging markets.

20. Lastly, let me also share that this year i.e. on February 26, CCI has opened its southern regional office at Chennai. This is a step towards augmenting the Commission's regional presence and fulfilling its duties as a federal regulator by engaging closely with State governments, PSUs, Industry bodies and the Academia who are important stakeholders in fostering greater competition in the economy. The regional office is going to facilitate Commission's advocacy outreach, which has been at the core of competition regulation since the very inception of CCI. It will also facilitate enforcement by acting as a center for filing and receiving cases/documents and facilitating investigations in coordination with Delhi Office. The southern region, consisting of prominent industrial clusters, has been at the forefront of India's economic progress and cultural vibrancy and this regional office will cater to the needs of the States of Andhra Pradesh, Karnataka, Kerala, Tami Nadu, Telangana and the Union Territories of Puducherry and Lakshadweep.

21. In conclusion, let me congratulate Bangalore Chamber of Industry and Commerce for conceiving and designing this event by introducing Series of Webinar on Competition Issues. The theme is of great topical and contemporary relevance and would go a long way in spreading awareness about the nuances of competition law regime amongst the members of the Chamber. I believe, events like this webinar will usher in a more synergistic approach between the Commission and BCIC to address and tide over challenges of pandemic, new age markets and other concerns.

Thank you very much.