



The Institute of Company Secretaries of India

# **GUIDELINES ON COMPLIANCE ON COMPETITION LAW BY ENTERPRISES**

*Presentation by*  
**The Institute of Company Secretaries of India**

*at*  
**National Conference on  
State of Competition in the Indian Economy**

*on*  
**March 15, 2007  
New Delhi**



“A dynamic and competitive environment, underpinned by sound competition law and policy, is an essential characteristic of a successful market economy”

*[A Framework for the Design and Implementation of Competition Law and Policy, The World Bank and OECD]*



# DEFINITION OF COMPETITION

“Competition”- the process by which economic agents, acting independently in a market, limit each other’s ability to control the conditions prevailing in that market.

*[A Framework for the Design and Implementation of Competition Law and Policy, The World Bank and OECD]*



An effective Compliance programme that embeds a culture of compliance throughout the organization can be a business enhancer offering positive benefits to business. Similarly, a superior knowledge of the regulatory risks faced by the organization and of the measures in place to guard against those risks could provide an enterprise with a competitive advantage.



# OBJECT OF THE STUDY

The object of this research study is to examine and analyze the importance of Compliance of Competition Act, 2002 and based on the study of compliance programmes prevalent in other jurisdictions particularly UK, USA and EU, to formulate :

1. Guidelines for Compliance under the Competition Act, 2002.
2. Checklist on Compliance.



# STRUCTURE OF THE STUDY

The research study has been divided into seven chapters as given below :

- Chapter 1: Introduction
- Chapter 2: New Competition Regime in India
- Chapter 3: Need for Compliance of Competition Law by Enterprises
- Chapter 4: Compliance Programme Prevalent in other Jurisdictions
- Chapter 5: Guidelines for Compliance under (Indian) Competition Act, 2002
- Chapter 6: Checklist on Compliance under Competition Act, 2002
- Chapter 7: Conclusions and Recommendations



# CHAPTER 1

## INTRODUCTION

Chapter one of the Research Study will discuss the :

- Concept of Competition
- Definition of Competition
- Importance and Welfare Aspects of Competition
- Competition Law and Policy
- Developments in Competition Policy and Law
  - Global Perspective
  - India's Approach



# CHAPTER 2

## NEW COMPETITION REGIME IN INDIA

Chapter 2 will address –

- Evolution of Competition Law in India, tracing the economic scenario particularly before and after 1991 reforms,
- Constitutional Linkages to Competition Law in India
- Analysis of the recommendations of the Report of the High Level Committee on Competition Policy and Law [S V S Raghvan Committee Report],
- The MRTP Act, 1969; and
- Analysis of the provisions of Competition Act, 2002.





# CHAPTER 3

## NEED FOR COMPLIANCE OF COMPETITION LAW BY ENTERPRISES

Chapter 3 of the Research Study will analyze and explain :

- the need for compliance of competition law for enterprises, and
- the advantages of Competition compliance programme for enterprises



# Need for Compliance of Competition Law

- The basic purpose of the Competition Act, in any country, is to ensure that markets remain competitive, to the benefit of both business and consumers.
- The compliance by the market participants of competition law, rules and directions issued by competition authorities (in the case of India, Competition Commission of India), is a precondition in achieving the purpose of law.



# Consequences of Non-Compliance

Compliance with competition law, rules etc. is necessary, as the consequences of non-compliance may be serious for concerned companies in terms of:

- Investigation by Competition Authorities
- Financial penalties.
- Agreements being unenforceable, and void.
- Adverse publicity.
- Damages.
- Possibility of being sued for damages by those harmed by unlawful behaviour.



# **Compliance of Competition Law is more than just Corporate Governance, because**

- it reduces the risk of the company being subjected to an investigation by the Competition authorities,
- which may involve senior management time and independent legal advice.
- In the event of an infringement of the law, the business can face
  - significant financial penalties,
  - third party actions, and
  - loss of reputation and goodwill.



# Compliance Programme – A Formal Internal Framework

- It ensures that businesses, i.e., the management and individual employees, comply with competition law.
- It may include such elements as training to raise awareness of the law,
- the use of checklists to ensure compliance by individual staff with company policies,
- recording systems to document any permitted contacts that employees have with competitors, and
- independent reviews of agreements, behavior and staff to monitor ongoing compliance.
- It can also help identify actual or potential infringements at an early stage, enabling the company to take appropriate remedial action.



# Advantages of Compliance Programme

- Compliance programme help assess the extent to which competition law will affect the business and the risk of committing an infringement.
- In case the risk of infringement is high, more elaborate measures are likely to be required to ensure compliance.
- Further, if employees understand competition law, they will be able to recognize when the business may become victim of anti-competitive agreements or conduct, and
- be better-placed to protect the business' interests by making a reasoned complaint to the Competition Commission of India.



## Hence

Compliance programme facilitates three major purposes of competition law :

- preventing violation of law,
- promoting a culture of compliance, and
- encouraging good corporate citizenship.



# Advantages of Compliance Programme- In Nutshell

- Competition Compliance programme help reduce legal costs by preventing an enterprise from violating competition laws.
- By presenting clear behavioral standards, compliance programmes prevent officers and employees of an enterprise from unconsciously violating the competition law.
- Enterprises save time and money by securing the following benefits from compliance programmes:

Cont...





- Corporate officers and employees become well aware of the requirements of competition laws and competition policy, and are thus able to maintain legal transparency.
- Corporate officers have advance perception concerning the activity of employees that might violate competition laws.
- Corporate officers and employees can avoid liabilities resulting from violation of competition law.
- It reduces the costs of legal counseling and litigation incurred from investigation and prosecution as well as penalties, negative publicity, and disruptions in normal corporate operation.
- A company can obtain value from good governance and compliance, develop a better culture, prolong its life and maintain its reputation.
- In the event of Competition authorities instituting proceedings, the verifiable presence of a compliance programme and culture, and its successful implementation, can be scrutinised by the competition authorities/courts when the quantum of penalty is determined.



# Advisory

A compliance programme must be capable of meeting the changing requirements of business and must make efforts as part of the regular evaluation process to ensure that the compliance programme continues to be relevant.



## **CHAPTER 4**

# **COMPLIANCE PROGRAMME PREVALENT IN OTHER JURISDICTIONS**

Chapter 4 will discuss the Competition compliance programme prevalent in other jurisdictions specially with reference to UK, USA, and EU.



- Competition authorities the worldover publish a range of publicity material on Competition Law including detailed guidelines explaining how the Competition authorities will apply and enforce its powers under the Competition Law.
- These guidelines contain detailed instructions as to how the Competition authorities intend to enforce the Law and to deal with particular competition issues and situations.



# UNITED KINGDOM (U.K)

- The Office of Fair Trading (OFT) responsible for enforcing the Competition Act in U.K, have designed several quick guides to inform businesses about how it applies competition law.
- Some guidelines provide an overview of the law, while others cover specific areas.
- One of the specific guides published by OFT titled “How your business can achieve compliance” relates to achieving compliance with Competition law
- OFT has issued a CD-Rom “Compliance matters!” explaining the importance of compliance



# **UNITED STATES OF AMERICA (U.S.A)**

- The Antitrust Division of the U.S. Department of Justice shares responsibility with the Federal Trade Commission for enforcement of Antitrust laws in USA.
- The Antitrust Division and the FTC have published extensive guidelines relating to specific areas of Antitrust Law to ensure compliance of the federal antitrust laws.



# EUROPEAN UNION (EU)

- European Commission under Article 85 has been entrusted with the task of tracking down those enterprises which are in breach of competition law.
- Primary competence for applying EU competition law rests with European Commission and its Directorate General for Competition. A decentralised regime for antitrust came into force to increase the application of EU competition law by national competition authorities and national courts.



# CHAPTER 5

## GUIDELINES FOR COMPLIANCE

### UNDER THE (INDIAN) COMPETITION ACT, 2002

- Genuine business competitiveness is demonstrated through fierce competition in individual markets, and only competitiveness that survives market competition can sustain itself in the long term.
- Indian business community should not overlook the fact that **voluntary observance of competition rules not only benefits corporations themselves but also benefits the entire economy by enhancing its external creditworthiness.**





- Competition authorities the worldover help businesses understand the benefits and responsibilities associated with the Competition Law. **They encourage businesses to think of compliance of Competition Law as an important management tool for good business practice that can lead to success and profitability.**



- The primary consideration of Competition Commission of India (CCI) under the Competition Act, 2002 is promotion of healthy competitive markets in India.
- Companies in India will be able to protect themselves and their employees by adopting Compliance programme to avoid the adverse consequences of infringement of Competition Law.
- With Indian companies going global, it becomes even more important to have Compliance programme from global perspective.



## **GUIDELINES ON COMPETITION ACT, 2002**

- Three guidelines would be prepared under Chapter 5, to help enterprises to understand the requirement of competition law and Competition Commission of India,
- The manner in which Competition Commission of India (CCI) will interpret, and give effect to the provisions of the Competition Act, 2002, and

Cont.



- To encourage enterprises to adopt sound Competition Compliance Programme.
- These Guidelines would act as Guide to enterprises while establishing, implementing and maintaining an effective compliance programme within the organization.



# **Nomenclature of the Guidelines**

- Guidelines on Anti Competitive Agreements  
[Section 3 prohibition]
- Guidelines on Abuse of Dominance  
[Section 4 prohibition]
- Guidelines on Regulation of Combinations  
[Section 6 read with Section 5]



# Scope of Guidelines

- These Guidelines would aim at developing understanding of the prohibition of Anti-competitive practices under Section 3, Abuse of dominant position under Section 4 and Regulation of Combinations under section 5 & 6 of the Competition Act, 2002.
- The guidelines would also explain how the Competition Commission of India (CCI) would analyze and enforce these provisions.
- Guidelines would outline the conceptual and analytical framework within which the Competition Commission of India (CCI) will assess complaints, investigate and undertake enforcement, in line with the approach of Competition authorities elsewhere.



# STRUCTURE OF GUIDELINES

## Guidelines on Anti Competitive Agreements

These Guidelines will contain—

- Introduction explaining overall view of the subject and contents of the Guidelines.
- Types of anti-competitive agreements to which Section 3 prohibition may apply,
- Analysis of the provisions relating to Anti Competitive Agreements



- The terms used in relation to anti-competitive agreements and the concepts relevant to their application.
- General Principles that CCI will take into account while evaluating Anti -Competitive Agreements.
- Categories of agreements excluded from the scope of Section 3 prohibition, and
- Consequences of infringement





# Guidelines on Abuse of Dominance

These Guidelines will contain—

- Introduction explaining overall view of the subject and contents of the Guidelines.
- Terms used in relation to abuse of dominant position
- The concepts relevant to their application and general analysis of the abuse of dominance provisions.
- General Principles for evaluating abuse of dominant position.
- Types of abuse of dominance to which Section 4 prohibition may apply.
- Legal exceptions and exemptions to section 4 prohibition.
- Consequences of infringement .



# Guidelines on Regulation of Combination

These Guidelines will contain---

- Introduction explaining overall view of the subject and contents of the Guidelines.
- The terms used in relation to regulation of Combination
- The concepts relevant to their application
- General analysis of the provisions relating to regulation of Combinations.



- Types of Combinations to which Section 6 read with section 5 regulation may apply.
- General Principles for evaluating the Regulation of Combination.
- Legal exceptions and exemptions to section 6 read with section 5 regulation of Combination.
- Consequences of infringement.



## **CHAPTER 6**

# **CHECKLIST ON COMPLIANCE UNDER COMPETITION LAW**

This Chapter will contain checklist for Compliance under (Indian) Competition Act, 2002 providing -

- Elements of an effective Competition Compliance Programme and
- Model Checklist of activities for ensuring Compliance with Competition Law based on guidelines prepared under Chapter 5.



# **Compliance Checklist will serve the following objectives**

- Timely prevention of violations,
- Minimizing the incidences of claims for damages and
- Creating a culture of the compliance of Competition Law.



## **CHAPTER 7**

# **CONCLUSIONS AND RECOMMENDATIONS**

Based on the entire study, Chapter 7 would contain suggestions and recommendations for ensuring better compliance of competition law.



# EPILOGUE

- A well established compliance programme helps the policy makers to shape right regulatory policy for business
- A well established compliance programme builds up image as good corporate citizen
- It creates awareness in corporates to sense anti competitive practices of competitors and to safeguard against it
- Compliance programme insulates the business from the risk of non compliance.
- The verifiable presence of a compliance programme and culture, and its successful implementation acts as a mitigating factor in the case of violation of law.
- The voluntary observance of Competition Law not only benefits corporations themselves, but also benefit the entire economy by enhancing its external credit worthiness.



The Institute of Company Secretaries of India

**THANK YOU**