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INDIA COMPETITION AND REGULATION REPORT (ICRR)

IIIrd Research Cycle: Second NRG Meeting

June 30, 2012, New Delhi.

The second meeting of the ICRR III National Reference Group (NRG) was organised in New Delhi, on June 30, 2012. The meeting was held under the chairmanship of Mr. Nitin Desai, President, CIRC Governing Council and moderated by Mr. Pradeep S Mehta, Chairman, Managing Committee, CIRC. Mr. Mehta welcomed the participants and briefed the congregation about the earlier cycles of the ICRR in 2007 and 2009 respectively. Subsequently,

Mr. Desai highlighted that the third ICRR report is well-timed as it coincides with some events of the past year which reminds one of the fragility of the present regulatory regime in the country and thus, further emphasises on the need to make good the regulatory deficit in the country. The report covers cross-sectoral issues such as Political Economy of Regulation and the importance of independent regulation.

The NRG members were of the view that more thrust needs to be laid on the overlap issues between Sector Regulators and the CCI and also on the potential dangers of seeking exemptions by government departments from the Competition Act, 2002. If the present trend continues, the CCI would be left dealing with only minor unfair trade practices pertaining to private sector. The NRG members felt that a possible solution to this problem lay in the adoption of

the National Competition Policy by the government and the report could provide an important platform to advocate the same. The NRG was of the opinion that the report could be a good source for the government to weigh different alternatives in dealing with the issue of sector regulators and the CCI, whether a National Competition Policy Council or a Cabinet Committee on Competition would be more viable for the government to handle the issue of better coordination between sector regulators and the Competition Authority. In this regard, the NRG felt that a cabinet committee on Competition, within the ministry itself, would carry more weight, supported by a small advisory council.

The NRG opined that the report could also advocate the need for carrying out research projects by the Ministry of Corporate Affairs into how different countries viz. Brazil, Korea, Spain etc. have dealt with issues of overlap and merging economic regulation into competition, as is the case with Australia, New Zealand and the Netherlands. However, it was also emphasised that such a situation would be utopian in the Indian context, given the present culture of coalition politics in the country. The NRG opined that the Planning Commission's Regulatory Reform Bill dealing with a plethora of cross-cutting issues could be dealt with in the report as it provides a template of what regulatory law should be like. It would thus fit in well with the theme of the report and enrich it further.

The important regulatory issues raised by the report were appreciated. These issues have been discussed in various fora earlier. However, the report provides an opportunity to buttress the point further. The NRG was of



Discussion at the NRG meeting in progress

Cover Story

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What's Inside

Events (p 2)

Competition Policy and Law (CPL) Programme Panel Discussions

Mr. Pradeep S. Mehta's participation in the UNCTAD Intergovernmental Group of Experts (IGE) Meeting: 12th Session

Palais de Nations, Geneva, 09th-11th July, 2012

Competition Law Workshop for Marketing Professionals

CIRC's participation in the 19th Steering Committee Meeting of SAFIR (South Asia Forum for Infrastructure Regulation) at Dhaka (9th-10th May 2012)

Research (p 4)

Submission of Synthesis Paper on CIRC- IICA Sector Studies Project

Competition Law Workshop for High-Tech Industry

the view that the competition and regulatory movement in the country has been on a lower trajectory during the past few years and the ICRR III report would help in advocating the need to take the movement ahead towards a logical conclusion.

Dr. Suparna Karmakar made a presentation highlighting the important aspects of each of the sectoral chapters with a view to gaining specific insights and inputs from the NRG members on how to enrich the report further.

This was followed by a presentation on the dissemination strategy of the ICRR III report by Mr. Hariprasad C.G., Associate Fellow, CIRC wherein, the stress was on the remaining activities of the project which are: finalisation of the report based on comments, release of final report, preparation of policy brief and briefing papers, dissemination of report and other outputs (advocacy seminars in India), and release of report in Norway & final project meeting. The report will be disseminated nationally and internationally in a series of events.

The fourth cycle of the ICRR report will focus on emerging sectors like electronic media and public procurement.

Events

Competition Policy and Law (CPL) Programme Panel Discussions

In order to facilitate better understanding of topics covered in the CPL Programme and encourage rich interaction and informed debate, panel discussions are organised at regular intervals. These discussions are organised at the completion of a particular module of the course and provide a critique and an in-depth analysis of the issues involved. Three panel discussions have been held so far.

Two panel discussions based on modules 2 and 3 of the certificate course were held recently. The panellists present for the panel discussion on module 2 were Ms. Renuka Jain Gupta, Mr. Vijay Kumar Singh, Mr. MM Sharma and Mr. Hariprasad CG. This discussion addressed two issues. One, the complex but indispensable relationship between Competition Policy and Law with other policies such as industrial and trade policies. The panellists threw light on the complicated yet intricate relationship between competition policy and law and policies such as trade policy, industrial policy, disinvestment policy and privatisation policy etc., which are in fact, components of competition policy and play an important role in shaping competition in the economy.

Two, the panel discussion was focused on characterising the relationship between the competition law authority i.e. the Competition Commission of India and sector regulators. Whether the two can have a constructive and harmonious co-existence and work together for championing the cause of competition in the economy or do the two represent a divorce on policy issues by acting at cross purposes only to protect their

own turf and thus, defeating the larger objective of promoting competition in a particular sector and the economy as a whole.

Another panel discussion on module 3 of the certificate course was held on 14th July, 2012. The panellists present at the discussion were Ms. Simran Dhir, Ms. Payal Malik, Mr. Vijay Kumar Singh and Mr. Hariprasad C.G. The discussion dealt with two divergent issues. One, whether heavy penalties imposed by the CCI on erring firms have a deterring effect on the firm's future behaviour. While the second issue addressed by the panellists was about the significance of using more economic approaches in competition law. The deliberations threw light on the importance of applying standard tools and techniques provided by economics to competition investigations. Such tools like the SSNIP test help in market analysis and it is imperative to develop a proper understanding of economic approaches for a critical appreciation of competition law.

Competition Law Workshop for Marketing Professionals

Friday, 06th July, 2012 India International Centre, New Delhi

CUTS Institute for Regulation and Competition organised a one day workshop for marketing professionals at New Delhi on 06th July, 2012. The workshop was aimed at providing a comprehensive perspective on the importance of Competition Law for marketing professionals. It was designed to generate awareness on various issues relating to Competition Law with relevance to marketing decisions of business houses.

Professionals representing various big government and non - government organizations such as IOCL, HPCL, Star TV, Western Union etc. attended the workshop to widen their understanding of how competition law may prove an effective tool to deal with the challenges of abuse of dominance and other competition issues while balancing the need of business and consumer interests. The workshop was divided into three consecutive sessions which were chaired by well-known experts on the subject as resource persons.

The event began with Mr. Hariprasad CG, Associate Fellow, CIRC welcoming the participants, resource persons and all CIRC staff present. He gave a brief overview of the workshop which was aimed at equipping professionals with an improved understanding of the fundamentals of competition law and its relevance to their business functions.



Participants in rapt attention as the speaker enlightens them about competition issues affecting marketing decisions.

He then invited Mr. G.R. Bhatia, Partner, Luthra&Luthra Law Offices to inaugurate the workshop and provide the participants with a perspective on how competition law may affect their business decisions. Mr. Bhatia outlined the major competition issues relatable to marketing professionals and discussed the relevance of competition to the marketing decisions of business houses. Mr.G.R.Bhatia emphasised that an improved understanding of competition law will enable the marketing professionals to understand areas for competition compliance.

Apart from Mr.G.R.Bhatia, the other subject experts present were Dr. Vijay Kumar Singh, Deputy Director (Law), Competition Commission of India, Dr.K.D.Singh, Deputy Director (Law), CCI, Ms. Renuka Jain Gupta, IRS, Dept. of Income Tax, Mr. Gautam Shahi, Associate, JSagar and Associates, Mr. Manish Lamba, Head Legal and Regulatory, Bharti Realty Limited, Dr. Rajat Kathuria, Professor, International Management Institute. Mr. Hariprasad CG, Associate Fellow, CIRC moderated the sessions.

The first session was further chaired by Mr.Vijay Kumar Singh, Deputy Director (Law), Competition Commission of India. He explained as to what the conduct of marketing professionals should be like, in business dealings and to what extent the information can be shared or exchanged. He elaborated as to when the exchange of information raises competition concerns.

The second session was designed to throw light on how marketing decisions involving discriminatory conditions in commercial transactions of dominant / monopoly entities like trade associations raise competition concerns.

Dr.K.D.Singh, Deputy Director (Law), CCI, steered the session further, explaining the concept of trade associations. He discussed specific competition law considerations within the ambit of marketing decisions and explained which of the enterprise agreements are anti- competitive and what marketing actions fall in the category of abuse of dominance. While addressing the issue whether a trade association is an enterprise or not, he said that there is no clear answer to it as it depends upon functional aspects of the entities involved in the case. He concluded by giving a brief overview of liabilities on the part of trade associations in cases of competition law violations.

The proceedings of the session were carried forward by Ms.Renuka Jain Gupta, IRS, Department of Income Tax. She gave a presentation on the overview of the Competition Act, 2002, covering evolution and key provisions of the Act including competition advocacy. She dealt with the concept of dominance and further explained what amounts to abuse of dominance.

Mr. Gautam Shahi, Associate, J Sagar and Associates, focussed on the conduct for establishing abuse of dominant position and discussed relevant cases pertaining to abuse of dominance and factors considered by CCI for establishing dominance.

The last session was designed to distinguish between infringements of Sections 3 and 4 of the Act by marketing

decisions through a review of existing CCI orders. The very purpose of this session was to depict the real world scenario so that the participants identify competition compliant and non-compliant strategies and their subsequent effects on business organisations. The panel discussion was led by Mr. Manish Lamba, Head Legal and Regulatory, Bharti Realty Limited, Dr. Rajat Kathuria, Professor, International Management Institute and Mr.Hariprasad CG.

The workshop ended with a vote of thanks by Mr.Hariprasad CG to all the participants, resource persons and all other colleagues present there.

Mr.Pradeep S. Mehta's participation in the UNCTAD Intergovernmental Group of Experts (IGE) Meeting: 12th Session Palais de Nations, Geneva, 09th 11th July, 2012

Annually, UNCTAD organises an experts' meeting on competition law issues at Geneva, where ministers, agency and government officials, civil society and academia come together to deliberate on imminent issues. Mr. Pradeep S. Mehta, President, Governing Council, CIRC participated in this three day event.

CIRC's participation in the 19th Steering Committee Meeting of SAFIR(South Asia Forum for Infrastructure Regulation) at Dhaka (9th-10th May 2012)

Mr. Avinash Dadhich, Associate Fellow, CIRC participated in the 19th steering committee meeting of the SAFIR held at Dhaka on the 9th and 10th of May 2012. SAFIR which was established in May 1999 with the support of World Bank aims to provide high quality capacity building and training on infrastructure regulation and related topics, in South Asia and to stimulate research on the subject by building a network of regional and international institutions & individuals that are active in the field. It also aims at facilitating effective and efficient regulation of Utility and infrastructure industries, initiate beneficial exchange of knowledge and expertise and set the trend of rapid implementation of global best practices.

Research

Submission of Synthesis Paper on CIRC- IICA Sector Studies Project

CIRC submitted a synthesis paper entitled "Infusing Competition Through Policy", incorporating the main findings of the 13 sector studies undertaken to illustrate the impact of law/policy induced competition distortions in the sector concerned. The 13 sector studies were undertaken as a part of the competition advocacy agenda of the proposed National Competition Policy. After evaluating the implementation of statutes, rules/regulations, policies and practices which limit competition in the sector, the studies have recommended changes in the regulations and their implementation procedures to address the competition related issues. The studies have also attempted to highlight an approach to promote and protect competition in the concerned sector.

These sector studies were commissioned by the Indian Institute of Corporate Affairs (IICA), which has been established by the Ministry of Corporate Affairs (MCA), Government of India. CUTS Institute for Regulation and Competition (CIRC) assisted the IICA in this endeavour.

Second intake of candidates for Competition Policy and Law Programme jointly run by CIRC and NLU-D begins

The admission process for candidates for the certificate/diploma on Competition Policy and Law programme jointly run by CIRC and National Law University, Delhi has begun from the 20th of July and will continue till the 31st of August, 2012. For more information, please visit: <http://www.circ.in/cpl/Fee.htm>

Competition Law Workshop for High-Tech Industry

CIRC is organising a Competition Law workshop for the High-Tech Industry at Bangalore on the 28th of September, 2012. A workshop on such a theme assumes significance with the increasing importance of Competition law for business units on the one hand and lack of proper knowledge of the field among stakeholders resulting in increased prosecution of anti-competitive violations by business entities, government bodies and civil plaintiffs.

The workshop would provide the necessary knowledge, understanding and skills to understand competition issues emerging from the hi-tech sector. The high-technology industries of today present legal and economic challenges that go far beyond the issues raised in the past. For one, the pace of technological change appears to be ever increasing.

Moreover, some of the characteristics of high-technology industries have changed: high-tech industries of today often are virtual, are characterized by strong network effects, and present complicated issues at the intersection of antitrust and intellectual property. More industries, particularly those based on software platforms, exhibit signs of two-sided and multi-sided markets. New theories of harm and remedies have thus emerged and are debated at the very time when multiple jurisdictions are examining, litigating, and applying different remedies to firms operating in diverse technology markets. Lectures would be delivered by senior figures in the corresponding regulatory and competition institutions, plus experienced academics and practitioners.

The workshop aims to achieve understanding on:

- Competition issues in hi-tech industry
 - Agreements in hi-tech industry
 - Abuse of Dominance in hi-tech industry
 - M&A in high-tech industries
- Conflict of interest between IPR and competition laws
- Platform markets and applicability of competition laws
- Network externalities and competition laws

The workshop aims at targeting managers (and above) of small and large enterprises of hi-tech segments such as software development, pharmaceuticals, biotechnology, electronics, telecommunication etc. This includes, in particular:

- Legal counsels
- Consultants
- Risk management specialists
- Corporate bodies

Registration

Registration for the workshop has commenced.



Policy Souvenir on PPPs

In his 2011-12 Budget speech, Pranab Mukherjee announced Central Government's intent to come out with a comprehensive policy for developing Public Private Partnership (PPPs). In this context CIRC will be coming out with a Policy Souvenir on 'Mainstreaming Public Private Partnership in India' through which it envisages: a) providing inputs for the National PPP policy in the form of policy choices facing regulatory and operational dilemmas; and b) generating resources for development of short and long term professional courses on PPPs suiting different stakeholders.



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