

Competition Law for Marketing Professionals

Competition Law Workshop for Marketing Professionals “Understanding Legal Boundaries and Facing Competition” Friday, 11th March 2011 ■ New Delhi (Brief Report)

About CIRC Competition Workshops:

CUTS Institute for Regulation and Competition (**CIRC**) (www.circ.in) provides advisory and capacity building solutions to private sector, governments, multilateral institutions in the areas of competition law & policy, economic regulation, and consumer issues. It is governed by a Board, comprising eminent professionals headed by Dr C Rangarajan, Chairman, Prime Minister’s Economic Advisory Council. A large number of capacity building programmes have been conducted by CIRC in India as well as abroad.

CIRC Competition Workshops are tailored for specific target audience. Each workshop is led by a practicing professional and is geared towards providing hand-on solutions. The CIRC workshops aim to equip professionals with an improved understanding of the fundamentals of competition law – such as the abuse of dominance, anti-competitive agreements, etc – and its relevance to the business function.

Competition law workshop for marketing Professionals:

Notwithstanding the significance of competition law across business functions, marketing professionals, due to their nature of job and market-facing placement, require an improved understanding of competition law issues. In the process of driving sales, they need to not only counter competitors, which may on several occasions be dominant player, but also remain compliant vis-à-vis their own conducts. Further, they are involved in a large number of market-facing decisions related to pricing, discounts, rebates, storage, distribution, franchising, dealer networks, promotion, product tying and bundling, etc most of which need to be visited through competition law lenses.

In the mentioned context, CUTS Institute for Regulation and Competition (CIRC) organised a half-day workshop for marketing professionals at New Delhi, on March 11, 2011.

Participants: Professionals from diverse sectors such as tyre, chemical, automobile, and power participated in the workshop. The two business sessions were conducted by Mr. Samir Gandhi, Partner, Economic Laws Practice and Dr. Navneet Sharma, Director, CIRC.

Proceedings:

Business Session I: After a brief pre-workshop assessment of the participants’ know-how on competition issues, Dr. Navneet Sharma, Director, CIRC, provided a brief overview of the competition law– including the competitive interfaces which affect business– and discussed the main sources of competitive threats. He emphasised that an improved understanding of

competition law will enable the participants a) understand areas for pre-emptive compliance, and (b) identify the anti-competitive conducts of competitors. Further, through a checklist, the participants indicatively assessed their current state of competition compliance.

Business Session II: Mr. Samir Gandhi, Partner, Economic Laws Practice, delivered the presentation on “Marketing decisions and competition law”. Through the traffic light analogy, he dealt with specific competition law considerations within the ambit of marketing decisions and explained, a) which of the company’s agreement(s) be termed anti-competitive, b) what marketing action(s)/decision(s) of the company fall in the category of the abuse of dominance, c) how a finding on ‘Abuse of Dominance’ may affect the company, (d) how can CCI orders affect the company’s proposed combination. Also, individual queries of the participants relating to competition issues in their specific business/industry were discussed and the various possible courses of actions were explained by Mr. Gandhi.

Case Discussion: After business sessions, the participants were asked to work on a case study on the abuse of dominance. The very purpose of this exercise was to depict real event scenario, so that the participants a) identify competition compliant and non-compliant strategies, and its subsequent effects on business, b) relate those competition concerns vis-à-vis their own organisation and competitors, and c) through the discussion build on each other’s comments, probe each other’s assumptions, communicate with one another (horizontal learning), and reach consensus on recommendations for action. The discussion on the case was led by Dr. Navneet Sharma, and all the participants appreciated the discussion as well as the manner in which it was conducted. Towards the end, feedback on various aspects of the workshop was collected from all participants.

Learning Outcome: To evaluate the participants’ learning, a pre and post evaluation method was used, which indicated that almost all the participants had been significantly benefitted from the workshop. Post workshop evaluation indicated that the participants were in a much better position to not only identify the anti-competitive conducts of the competitors in their respective industries/sectors, but also aware of the compliance requirements at their own end. Overall, the participants reported that through the workshop they have developed:

- ❖ Improved understanding on competition law and its impact on/relationship with marketing activities/decisions;
- ❖ ability to identify anti-competitive conducts at the market place;
- ❖ understanding of competition law compliant marketing decisions, and
- ❖ Preparedness in responding to specific competition issues.
