

Competition Law Workshop for Marketing Professionals

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

Report on Workshop Proceedings

CUTS Institute for Regulation and Competition organised a one day workshop for marketing professionals at New Delhi on 06th July, 2012. In the context of business functions, marketing professionals need to counter not only competitors, who may on several occasions be dominant players, but also remain compliant with the legal framework pertaining to competition themselves. 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., thus, it becomes immensely important for marketing professionals to be equipped with the appreciation of competition law.

The workshop covered the areas of competition law enforcement including anti- competitive agreements, abuse of dominance, penalties, etc. In particular, the workshop covered the following competition issues:

- Exchange of information in informal meetings
- Role of trade associations in marketing decisions and anti-competitive agreements
- Role of trade associations in marketing decisions and abuse of dominant position
- Whether refusal to deal is a collective abuse
- Whether refusal to deal is a collective action
- Whether trade associations are enterprises

Senior executives from companies such as HPCL, Western Union, India today, GAIL, IOCL, IREL, EIL etc. participated in the workshop. The workshop was divided into three consecutive sessions which were chaired by well-known experts on the subject.

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 aiming to equip professionals with an improved understanding of the fundamentals of competition law and its relevance to their business functions. 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 related to marketing function and discussed the relevance of competition in marketing decision making process.

Session I: Marketing Decisions and Anti- Competitive Agreements

This session was designed to address competition concerns raised by marketing decisions of tying, pricing, retailing, exchange of sensitive information etc. and how they may infringe Section 3 of the Competition Act, 2002. Mr. Bhatia emphasised that an improved understanding of competition law will lead to better compliance by market functions. He further illustrated anticompetitive agreements and also competitive code of conduct. He highlighted the possibility of communication through telephone call, email, SMS, minutes, agenda etc. being used as evidences of anti- competitive behaviour.

The session was further addressed by Mr. Vijay Kumar Singh, Deputy Director (Law), Competition Commission of India (CCI). Dr. Singh explained, in detail, guidelines to participate in the Trade Association meetings. He added that participation in trade associations may not always be construed as leading to a cartel. However, the possible violation may happen on account of frequent information exchange on prices, costs, production, supply, market allocation etc.

While responding to participants' queries he elaborated the possible competition law violation concerns such as exclusivity clauses, resale price maintenance clauses, tying-in clauses in contracts, quantity rebates, loyalty rebates and other discount schemes.



Session II: Marketing Decisions and Unfair Practices

This session was designed to highlight how marketing decisions involving discriminatory conditions in commercial transactions of dominant entities, raise competition concerns, with special reference to trade associations.

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Dr. K.D.Singh, Deputy Director (Law), CCI, addressed this session and explained the concept of trade associations. He discussed specific competition law considerations in relation to marketing decisions and illustrated some of the enterprise agreements which are anti-competitive and type of marketing actions which 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 an overview of liabilities of trade associations in cases of competition law violations.

The proceedings of the session were carried forward by Ms. Renuka Jain Gupta, IRS, Dept. of Income Tax. Her presentation focussed 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. He added if a business tries to eliminate its competitors or stop new entrants by abusing its dominant position, this is a breach of competition law.

Further, he explained the behaviour of the dominant firm and how it distorts competition and harm consumers.

Session III: Panel Discussion: Simulations of Session I and II with Case Studies

This session was designed to distinguish between infringements of Sections 3 and 4 of the Competition 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. All the participants appreciated the discussions 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.

The workshop also had group activities wherein participants engaged in an analysis of relevant case laws to appreciate the application of legal concepts in the marketing field. At the end of each session, the floor was thrown open for comments/ questions on the preceding discussions. The workshop ended with a vote of thanks by Mr. Hariprasad CG to all the participants, resource persons and all other colleagues present there. The feedback received by the participants was positive.