

CIRC WORKSHOP ON COMPETITION LAW COMPLIANCE

18th - 19th April, 2014, Metropolitan Hotel, New Delhi

Aims and Objectives

The Competition Act 2002 establishes a completely new set of rules unfamiliar to most companies doing business in India. Hence an in-house compliance programme is the need of the hour. Addressing this concern, committed as we are to serving the society, CIRC undertook the task of enlightening legal counsels of various companies in diverse sector with the importance of competition law and its basic tenets. To accomplish its goals CIRC successfully organised the workshop titled 'Competition Law Compliance' at Hotel Metropolitan, New Delhi on 18th & 19th April, 2014. We focussed on an educative and interactive training session led by experts on three arms of competition law namely Anti-competitive Agreements, Abuse of Dominance and Combinations, and the necessities of incorporating a compliance programme in an organisation to mitigate risk.

Why was this audience focussed upon?

In the recent past, many private, public and public sector undertakings have come under the screening of CCI. Prominent sectors such as cement, pharmaceuticals, tyre, coal, real estate etc. have been heavily penalised for their anti-competitive practices. Through this workshop, legal counsels working in various sectors were approached to enable them to explore and educate themselves in Competition Law. Currently only few companies are aware of the Competition Law and its implications. In order to build internal capacity on competition law compliance, CIRC designed this structured programme for the industry.

Proceedings

We were fortunate to have amongst us eminent speakers from the legal fraternity and Competition Commission of India. The workshop began with a welcome address by Saket Sharma, Junior fellow from CIRC followed by an introductory session of the participants. The workshop was spread over a period of two days – eight sessions, for a better understanding and detail discussions on Competition Act, case studies, implications and compliance programme. There was a lively panel discussion that concluded the event accompanied by concluding remarks and a vote of thanks by Mr. Arun Talwar, Chief Operating Officer, CIRC.



Day 1

Session I & II: Overview of Competition Act and Abuse of Dominance and its provisions in practice (Mr. Amitabh Kumar, Partner JSA)

The session was divided into two parts of which the first part started with an overview of the emergence of Competition Law. He discussed that, the law emerged in order to replace the existing of the MRTP Act, 1969. Though the Competition law has been enacted by almost 120 countries but, there lies a general reluctance especially in Indian companies to abide by or comply with the provisions of the law. The law in India was formulated on the recommendations of Raghavan Committee report which structured the outline by borrowing significant features from the similar laws of various countries. The primary objective of the law is to check any trade/business practice lessening competition as well as consumer welfare. However, if anyone fails to abide by the abovementioned objectives, the commission has power to impose certain fines and penalty. Mr. Kumar also discussed the powers of the Commission which lie parallel to the powers of civil court in India.

Further during the second part of the session on abuse of dominance he elucidated the concept of 'relevant product market' and 'relevant geographic market' and he emphasized the role of economic analysis in Competition Law. Through various examples and case laws, he expounded the concept of dominance and tests to check the abuse of such dominance. He drew a comparison of competition law followed in EU and US. Through famous case laws of DLF (2013), BCCI (2013), Coal India (2012) and Hoffman La Roche (1979), he further exemplified the concepts. Mr. Amitabh Kumar concluded by accentuating on the fact that it is necessary to look before you leap and for this very reason every organisation irrespective of whichever sector, especially if dominant, requires having an in house compliance programme.



Session III – Anticompetitive Agreements (Mr. MM Sharma, Head CPL, Vaish Associates)

Mr. Sharma spoke on one of the prime arm of the Competition Act. He discussed how effectively in the last five years CCI has handled over 300 matters of which a huge percentage of cases had been on cartels. He focussed on anti-competitive agreements and its effects. A detailed view of section 3 was presented by focussing predominantly on horizontal agreements and cartels and the appreciable adverse effect (AAEC) caused when they become anti- competitive. The loopholes of the Indian Act in comparison to the Acts of other matured jurisdictions were brought forth. The major difference pointed out was in the treatment of cartels because cartels in US are treated as criminal offence. He emphasized on the importance of circumstantial evidence which is an effective method to investigate and determine cartels. He also discussed the two rules i.e. ‘per se’ and ‘rule of reason’ which are used to regulate anti-competitive agreements. On the concluding end various Indian cases such as LPG (Suo moto case, 2013), Coal India (2012), Hiranandani hospital (2014), Cement cartel (2012) etc. were discussed among others.

Session IV: Application of Provisions related to Anticompetitive Agreements to Business Practices (Manas K. Chaudhari, Partner Khaitan & Co.)

The speaker engaged the audience with several case studies, and few other landmark judgments from matured competition law regimes. Utilising his know-how and vast expanse of knowledge he brought forward the practical aspect of business practice which can have anti-competitive effect on the prevailing competition in the market. The concept of ‘dawn raids’ and its procedural part of executing these raids was discussed through relevant examples. He illustrated as to how an organisation can prepare themselves prior to dawn raids and other actions of competition authorities.

Day 2

Session V: Combinations and its provisions in practice (Dr. Vijay Kumar Singh, (DD) CCI)

Dr. Vijay Kr. Singh enlightened the audience on the third area of enforcement i.e. regulation of combinations. He discussed the reasons for merger or amalgamation and expounded the thin line where and how competition becomes anti-competitive. Further on, the three types of merger and the riders to these were highlighted upon. He explained that though enforcement in section 3 & 4 of the Act is ex-post but, in sections 5 & 6 it is ex-ante. Moreover, there is a need for concurrent compliance with Companies Act, SEBI regulation and the Sectoral regulators as these go parallel to the provisions of CA, 2002. However, only combinations crossing the threshold need to be notified to CCI. He went on to explain the procedural part and quintessence of combinations. This helped the participants to get a clear and broad picture of the provisions and their implications relating to combinations.

Session VI: Application of the Provisions related top Combination Provisions to Business Practices (Mr. Vipul Puri, (DD) CCI)

After knowing the basics of combination from the earlier sessions, Mr. Puri went on to deal with the various criteria attached to it. He clarified the concepts by drawing a line of differentiation between vertical, horizontal and conglomerate merger. He went on to describe the basic assessment framework underlining unilateral and coordinated effects. Thereafter, went on the advanced edge and introduced the concept of Herfindahl- Hirschman Index (HHI), its advantages and applications. He discussed

how combinations are assessed through basic economic factors and also put forth the arguments on the basis of which mergers are scrutinised and conceded with or without modifications. The session was concluded by discussing the role of COMPAT and procedure for appeal to it. The session was illustrative and interactive.

Session VII: Developing Competition Law Compliance Programme (G.R.Bhatia, Partner Luthra & Luthra Law Offices)

His session dealt with the compliance of the Competition Act and what necessitates having a competition compliance programme. He discussed few landmark cases where CCI has imposed heavy penalty for non-compliance. He focused on the benefits of having a compliance Programme and suggested that every organisation should design a compliance programme according to its 'relevant market'. As having a compliance programme reduces the risk of contraventions and its consequences. It also helps in early detection of contraventions as well. However the compliance programme designed should not be only for display but must be strictly adhered and every person in the organisation should have a detailed knowledge through training programmes, mock dawn raids conducted on unexpected events etc.

Session VIII: Panel Discussion

The panel comprised of Dr. Seema Gaur (Adviser, CCI), Dr. Harpreet Kaur (Professor, National Law University, Delhi) and Mr. Manas Chaudhari. The three basic points discussed were scope and coverage of Competition Act, 2002; how Competition Law practice has developed in India, and need for developing competition law compliance.



Dr. Gaur gave a brief of Competition Law and efficient role CCI has portrayed in the last 5 years. She briefed on the issues of handling monopolies and unfair trade practices and restrictive trade practices. Further, she explained the procedure of in-house compliance programme and need for it.

Dr. Kaur explained the nitty-gritties of Competition Act, 2002. She differentiated between Consumer Protection Act, 1986 and Competition Act, 2002. She threw light on the negative effects occurring because of the heavy penalty imposed and emphasised on the idea that fine should be imposed only on recent year's turnover but not on total turnover achieved in last three years. She suggested that with the need of in-house compliance, there also lies a need to protect the in-house compliance officer.

Mr. Chaudhuri briefed on the history and emergence of competition law. He discussed the requisite for bringing PSU's under the preview of Competition Act, 2002. He discussed various case laws decided by CCI and also clarified the reason for imposing penalty.

The floor was open for discussion, one of the participants suggested that CCI should give reason for imposing the varied percentage of penalty, to which all three panellist agreed vehemently. Further on emphasising on the in-house compliance programme, he stressed that it should be from top to down and everyone in the organisation should know the basic laws and the intention of the Act should be understood.

Feedback

The feedback received was overwhelming. The participants were immensely satisfied with the knowledge gained. CIRC was commended for its efforts.