

REPORT ON
“FACULTY DEVELOPMENT PROGRAMME ON LAW AND
ECONOMICS OF COMPETITION”

Jointly organised by **CIRC and Symbiosis School of Economics (SSE), PUNE**

at **PUNE** on **21st august 2014**



Background: CIRC and SSE joined together to organise a full day FDP programme on Law and Economics of Competition. CIRC, which is specialised in conducting such programmes jointly organised this programme with SSE, a premium institute under the aegis of Symbiosis International University, a University reckoned World-wide. This programme saw this two premium institutes, CIRC and SSE, partnering up to mutually benefit by sharing knowledge and platform. In this FDP there were approximately 45 participants representing teaching faculty, researchers and students from SSE, Management colleges and other colleges of Pune.

The Competition Act 2002 (CA 2002) which has been in force for the past five years, with its operation in 2009, has changed the way of doing business and the industry is in awe with the implications of the law. The various orders and observations of the authorities of this law i.e. Competition Commission of India (CCI) and the Competition Appellate Tribunal (COMPAT) has been riding high on people’s mind. Apart from the effect on big corporates (entities) that gets busted, it also has a huge influence on the market vis-à-vis the economy of India. Due to these reasons it becomes pertinent to train the resource persons (faculties, researchers and students) in this advanced stream of law that can deal with consumer aspect as well as the economic welfare aspects of the Nation.

It is pertinent to note that economics as a subject has been taught in the Law course syllabus but not vice versa. Teachers and students of economics do not have the knowledge of law. However, some colleges have included business laws (mix of company law and contract law) in their Economics course syllabus. Also, Competition law being a new law has not been included even

in the syllabus of most law colleges, only few colleges has started offering this subject. While there are only a handful of professionals trained in this law.

Speakers:

Keeping in mind the agenda of the programme, we had two eminent speakers from different backgrounds and experiences. The speaker for session 1, **Dr. Radha Seshan**, is a seasoned Economic Professor from the National Law University – Delhi. She is also a Visiting Scholar, Yale Law School, Yale University, USA and has held positions as a Professor and Administrator in various educational Institutions. She has a teaching experience of over 30 years in various branches of Economics at the Post Graduate and Research levels. Her specialization for Ph.D. and thereafter is on Law and Economics - an Interdisciplinary study. And the speaker for session 2, **Ms. Nisha Kaur Uberoi** is a Partner at Amarchand Mangaldas and Head of the Competition Law Practice (Mumbai Region) of the Firm. Nisha has handled complex competition law matters involving innovative solution oriented structuring, interaction with the regulator and economists and a multidisciplinary approach and advises on the full range of competition matters, including cartel enforcement, abuse of dominance, merger control and competition audit and compliance. The speakers for the Panel Discussion: Chair – **Dr. Jyoti Chandiramani**, Director – SSE; Panellist: **Dr. Radha Seshan**, **Ms. Nisha Kaur Uberoi** and **Ms. Lunita Hijam**, Sr. Research Associate (CIRC).

Sessions:

Welcome Address – **Dr. Jyoti Chandiramani**, Director - SSE, welcomed the speakers, the resource persons and the participants. She gave a prelude to the programme and touched upon the various facets of the economy and factors that determine the economy of a Nation. India which is reeling under a “developing country” tag needs to gear up, even as, it’s Asian and South Asian partners have progressed ahead. She referred lines and paras from reports such as the World Bank – Ease of doing Business Report (2014) and the Global Competitive Index, etc. The biggest contributors to the GDP of India, comes from three sectors - agriculture, industry and services. She linked the GDP and the population of India (which is the second in the World), how a skilled population can help in attaining a higher GDP growth.

Technical Session 1 –Economics of Competition and Introduction of Competition Act 2002: This session was on the genesis of Competition law which is based on economic principles. **Dr. Radha** set the tone of programme with her presentations. She opened the session with the thought that “markets determine a Nation” - the condition of a market affects the growth of a Nation. She also touched upon the definitions- Welfare, Scarcity, Competition and Cost-Price relationships, Consumer Behaviour; Producers Behaviour; Market-Different types; Market Strategy and Market Power Competition and linked it with the Competition law principles. She referred to the economic principles of *Adam Smith* who advocated “*on giving everyone freedom to produce and exchange goods as they pleased (free trade) and opening all markets to competition*”. This theory, however, is not bereft of criticisms.

The speaker touched upon the market power of big companies and its abusing nature. The rationale is that one assumes a position of dominance by its sheer business strategy, a mixture of

IPRs, marketing, investments, research & developments, etc. If the industry is producing the goods which are in demand then it ultimately assumes a dominant position. She cited the US influences and the Chinese influences. The US introduced the credit form of purchase i.e. “credit cards” promoting “conspicuous consumption” in the market. For instance an iPhone which has emerged as a sophisticated mobile phone is craved and bought by people reeling under conspicuous consumption, even if the company increases its price, people still buy it. Closer to India she cited the case of a big player in the realtor market in Delhi – NCR market i.e. DLF case. She discussed the case in brief wherein DLF was found guilty of provisions of abuse of dominant position under the Competition Act. The CCI had imposed a penalty of INR 630 crores; which was subsequently upheld by COMPAT recently. She concluded by saying that property, gold and Stocks/ shares are three forms of investments popularly done by people as a financial security. While doing so they tend to stand on the vulnerable side of market force, as builder usually abuse its power and rides high on the money of flat-buyers and does not keep up to the promises given and terms in the purchase contract.

Technical Session 2: Premises of the Competition Act - Anti-Competitive Agreements, Abuse of Dominance and M & As: The three main premises of the Competition Act were covered in this session i.e. Anti-competitive agreement, Abuse of dominance and M & As. **Ms. Nisha** discussed some of the landmark cases which have been in the limelight because of the high profile parties to the case. The Cement Manufacturers’ Association (Cement Cartel) case, the Coal India Case, the DLF case, the NSE case and few others. Apart from these cases, the speaker also framed some hypothetical cases to engage the participants. One was on the relevant market definition of a ball point pen and another one on cartel of detergent powder. Speaker also discussed the working and approach of the CCI in handling the cases in its five years of operation. For instance, the discretion exercised by the CCI in imposing penalty and setting threshold of the market share to determine the dominance of a firm (in India). In most of the cases, CCI has stuck to the market share threshold at 28%. In addition she said the Indian Competition authority has done fairly as it has busted the myth that PSE or SOEs are protected from Competition scrutiny. In China, traditionally, the Competition authorities do not pursue anti-competitive action against SOEs.

Commenting on the much scrutinised pharma sector, she said there have been three cases in which the CCI has forced the parties to modify their non-compete covenants. To a question from participants on Sunpharma acquiring Ranbaxy, the speaker abstained from answering the question saying it is a sub-judice matter. On another question, relating to the dominance of postal services and Railways, the speaker reiterated that the Competition Act 2002 has the jurisdiction to try any anti-competitive practices/ conduct even against the Government except for its sovereign functions like atomic energy, currency, defence and space.

Panel discussions: Topics: Interface between Competition Law with other laws:

- **IPR and Competition Law: whether two conflicting schools of thoughts?**
- **Consumer Protection Act and Competition Act, 2002: Choosing the right forum.**

At onset of the panel discussion, the Chair - **Dr. Chandiramani** urged the participants to make the most of such programmes and explore possible career opportunities and raise as many

questions as possible from the experts on the dais. One participant (faculty at SSE), asked **Ms. Nisha** about the interface between IPR and Competition Law. **Ms. Nisha** said the two are different territories all together and the government while framing the laws has made sure that both do not cross- over. Replying to a common question on the scope of Economics student in the Competition arena, **Ms. Nisha** replied that there is a dread of experts/ professionals in this field. She said there are many opportunities in this area both nationally and internationally with firms such Nathan Consulting, Econone, Genesis Analytics and MicRA (promoted by Dr. Shyam Khemani) which are into economic consulting and analysis. She also said that there are requirements with the CCI and law firms also.

To a question on the online market such as flipkart, myntra, amazon, etc, giving heavy discounts and coupons, **Dr. Radha Seshan** explained in the context of conspicuous consumption and said most people become a soft target as they are lured by the heavy discounts, owing to producer surplus. While it is good that the competition is increasing, the rationale is to actually see whether they are value for money. As one often tend to pick up stuff just because a discount is offered, regardless of the fact whether it is of use or not.

To a question on the interface between Consumer law and Competition Law and whether the two regulators should be merged, **Ms. Lunita Hijam** replied to this by saying that in some countries both the laws are dealt by a single regulator such as UK, US and Australia, which have much mature competition regimes. She went on to add that while both the laws primarily protect the welfare of the consumers, the mandate/ implications of Competition Law is much wider as it can influence the economy of a Country.

Vote of Thanks:

On behalf of CIRC, Mr. Sandeep Kumar thanked the SSE, the panellist sitting on the dais and the participants for making the programme a successful event. Dr. Jyoti Chandiramani, wrapped up the programme with a vote of thanks and felicitated the panellist sitting on the dais on behalf of SSE.



Annexure I

11:00AM– 11:30AM	Registration
11:30AM – 11:45AM	Welcome – Symbiosis School of Economics
11:45AM – 1:00 PM	Session- 1(Economics of Competition and Introduction of Competition Act 2002)– Dr. Radha Seshan, Professor – Economics (NLUJ)
1:00 PM – 1:45 PM	Lunch
1:45PM – 3:00PM	Session –2 (Premises of the Competition Act- Anti-Competitive Agreements, Abuse of Dominance and M & As)- Ms. Nisha Kaur Uberoi, Partner Competition Law- Amarchand Mangaldas, Mumbai Region
3:00 PM – 3:30 PM	Tea Break
3:30 PM – 4:45 PM	Panel Discussions- Chair – Dr. Jyoti Chandiramani, Director, SSE. Panelist: Dr. Radha Seshan, Ms. Nisha Kaur Uberoi and Ms. Lunita Hijam, CIRC
4:45 PM - 5:00PM	Concluding Remarks and Vote of Thanks - Dr. Jyoti Chandiramani and Sandeep Kumar, CIRC