



**6<sup>TH</sup> WINTER SCHOOL**  
**ECONOMICS OF COMPETITION LAW**  
THE VIRTUAL EDITION  
14<sup>TH</sup> DECEMBER - 19<sup>TH</sup> DECEMBER 2020

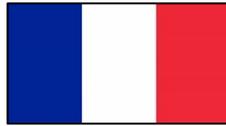
**REPORT**

CUTS Institute for Regulation & Competition (CIRC)  
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## Global experts and participants



India



France



Australia



United States of America



Switzerland



Barbados



Mauritius



Nigeria



Peru



Costa Rica

## **Objective of the Winter School**

Over the past few years, as markets became increasingly global as well as digital, the approaches to regulate them leaned more heavily on economics. Modern competition law differs from traditional competition law in that it reflects the economic dimensions of analysing market structures and behaviour taking into account innovation and market dynamism. Unlike many other laws, competition law straddles law and economics. The same principle also applies in other commercial laws but in competition law the relationship is much deeper. Competition law has to be applied on a ‘rule of reason’ approach rather than a straightforward ‘rule of law’ approach. Thus economics assumes significant importance as regulatory and competition authorities have moved to adopt more economics based approaches in assessing business practices and anti-competitive behaviour. It is critical to understand these nuances to help better understand the bigger picture and thus adjudicate competition cases.

The Covid-19 pandemic had caused severe disruption to normal market functioning and global supply chains. Like in any other economic governance issue, competition authorities too are grappling with the unprecedented scenario that has emerged. Thus, it becomes all the more important to understand the fundamentals of market economics to deal with the complex scenario the world is facing right now. The goal of CIRC’s Winter School on Economics of Competition Law is to familiarise participants with economic literature in the field of competition law and equip them to use the economic analysis tools and methods used around the world. It is intended for competition lawyers, academics, professionals, corporate and legal consultants, staff of competition authorities and students. To this end, on 14-19 December 2020, CUTS Institute for Regulation & Competition (CIRC) organised the sixth edition of its popular six-day Winter School on Economics of Competition Law virtually.

## **Structure and Pedagogy**

The past editions of the Winter School were conducted in a physical setting; however, due to the Covid-19 pandemic restrictions, the event was conducted virtually this year over a period of six days with four-hour sessions each day. The topics covered in the sessions ranged from basic economic concepts, econometric tools, market structure, market definition, horizontal agreements, vertical agreements, market power, economics of networks and platforms, algorithms and

collusion, merger analysis to the interplay between intellectual property rights and Competition Law.

The pedagogy involves theory as well as case laws for all the topics through presentations, discussions and graphical representations. They were interactive and intellectually stimulating, and fostered strategic understanding and in-depth analysis of problems among the participants. Many interesting discussions and question-answer rounds took place during the sessions.

After the completion of the training, certificates of participation were issued and feedback was sought from the participants on all the sessions and faculty in a feedback form. A summary of the feedback is provided in Annexure IV.

## **Faculty and Participants**

The virtual mode enabled us to bring several global experts together in this event making it one of a kind learning experience for the participants. The faculty included the following experts from the field (See Annexure III for speakers' profile):

- 1) Frederic Jenny, Chairman, OECD Competition Committee
- 2) Rhonda Smith, Senior Fellow, Faculty of Business and Economics, University of Melbourne
- 3) Payal Malik, Adviser (Economics) and Head, Economics Division, Competition Commission of India (CCI)
- 4) Geeta Gauri, Former Member, CCI
- 5) Neha Malhotra Singh, Independent Economist
- 6) Anna Barker, Competition Expert, OECD
- 7) Shubha Ghosh, Crandall Melvin Professor of Law and Director, Technology Commercialization Law Program, Syracuse University College of Law

Garima Sodhi, Senior Fellow, CIRC, was the Course Director as well as faculty, while Bhaavi Agrawal, Research Associate, CIRC was the programme coordinator.

We had the pleasure of hosting participants from Nigeria, Costa Rica, Australia, Barbados, Mauritius, Switzerland, Peru and India. The participants were a focused group consisting of seven representatives from international organisations, six from international competition authorities, nine from law firms, five from corporates, and seven law students.

## **Day 1: December 14, 2020**

### **Inaugural Session**

The Inaugural Session was graced by Dr Arvind Mayaram, Chairman, CUTS Institute for Regulation and Competition, former Finance Secretary (Government of India), Pradeep S. Mehta, Secretary General, Consumer Unity & Trust Society (CUTS International) and Founding Board Member, CIRC. Garima Sodhi welcomed the participants and briefed them about CIRC and the virtual training programme.

Dr Mayaram welcomed the participants and talked about the shifting perspectives towards competition enforcement due to the pandemic. He also pointed out the shift in the attitude towards cooperation between firms. While it was strictly prohibited before the COVID-19 crisis, the authorities are now concerned with differentiating between positive firm cooperation and negative firm cooperation. He also discussed the importance of regulation of the ever-growing digital market which further witnessed a boom in the wake of the pandemic-induced lockdown and the need for developing modern competition tools to correctly ascertain and capture competition offences in the digital landscape.

In his keynote speech, Pradeep S. Mehta highlighted the objective of Competition Law and its role in the healthy functioning of markets. He also briefly spoke about the effects of the pandemic on Competition Law. He further expounded upon the evolution of Competition Law in the world. He illustrated that Competition Laws were formulated in 1889 in Canada and in 1890 in USA in response to agrarian interests, and explained how they stand today. He added that when the WTO agreement was signed in 1994, only about 35 countries had Competition Laws. Today the number has crossed 140 and counting. He cited the need for further evolution of competition enforcement to adapt to rapidly changing times, and particularly on global cooperation in view of increasing cross-border trade. He concluded his presentation by welcoming all the participants to the training programme.

The inaugural session concluded with a round of introduction of the participants.

## **Session 1: Economics of the Competition Law – Frederic Jenny**

The first session of the six-day virtual winter school was delivered by Dr Frederic Jenny on the economic concepts used in Competition Law. During the session, the participants were exposed to various concepts of economics relevant for better understanding the investigation into issues of competition. Starting with discussion about ‘what is a rational consumer’ bringing in the flavour of behavioral economics, Dr Jenny explained key concepts like market demand and supply, price elasticity, economic cost, consumption synergies, market structure, SSNIP test, consumer welfare and monopolies, followed by case studies of Google and Microsoft. He also expounded upon various biases of a consumer that investigating agencies often miss out while defining markets and product substitutability. The session concluded with an interesting discussion between Dr Jenny and the participants on application of those concepts, particularly in the digital market.

### **Day 2: December 15, 2020**

## **Session 2: Horizontal Agreements – Rhonda Smith**

Dr Rhonda Smith delivered a lecture on horizontal agreements. Competition Law provisions applicable to horizontal agreements, concepts of cartel, tacit collusion, incentives to collude, price leadership, cartel detection and successful prosecution, hub & spoke and Most Favoured Nation (MFN) arrangements were explored in great detail. The participants were then presented with case studies to discuss harms of horizontal agreements. A very interesting discussion took place on the topic: ‘If a cartel can ever be beneficial’. The positive impact of a horizontal agreement during times of market crisis or disruption in supply chain was also discussed. Pertinent case studies of the Lysine cartel and the Queensland concrete cartel were presented to help participants understand cartels from every angle. This was followed by an in-depth discussion on leniency policies and criminal sanctions of various jurisdictions.

### **Day 3: December 16, 2020**

## **Session 3: Vertical Agreements – Payal Malik**

A lecture on vertical agreements was delivered by Payal Malik. Relevant provisions from the Indian Competition Act, 2002 were discussed to set the scope of the discussion. Various types of vertical agreements were explored like resale price maintenance, exclusive supply agreement, tying & bundling. The students engaged with Ms. Malik on issues concerning economic rationale

and efficiency justifications for vertical agreements. It brought forward appurtenant issues like double marginalisation, free-riding by distributors, destructive competition between manufacturers and capturing economies of scale. Theories of harm were also discussed in detail. Ms. Malik discussed some of the vertical agreement cases adjudicated by the Competition Commission of India.

The second half of the session was devoted to a discussion on the existence and functioning of vertical agreements in the digital market. After discussing the governance system and algorithms of platforms, vertical restraints and exclusive contracts were talked about. Emerging issues like selective distribution and price parity clauses were also discussed at length. Ms. Malik concluded the session by analysing the complexities presented by the digital market and factors to consider in evaluating vertical restraints for platforms.

#### **Day 4: December 17, 2020**

#### **Session 4: Abuse of Dominance – Geeta Gouri, Neha Malhotra & Garima Sodhi**

The session on the fourth day was interesting and unique as it was delivered by three economists. The introductory session was delivered by Dr Geeta Gouri on the basics of dominance, determination of dominance and the evolving frontiers of market dominance. She then touched upon the shifting paradigm due to the digital ecosystem. Multiple investigations under EU jurisdiction into the conduct of Google were then presented for the students to discuss and debate.

Ms Sodhi then dived into the core economic concepts relevant for the detection, analysis and investigation of abuse of dominant position. She discussed SSNIP test, critical loss analysis, price correlation analysis, catchment area test, shipment data test and shock analysis. After exploring the contours of market power and market shares; she spoke about measures of concentration. She dealt with various kinds of barriers to entry, and exploitative and exclusionary practices. She discussed predatory pricing with its efficiency justifications. She concluded her presentation with discussing the United Brands Test case study for excessive pricing.

Neha Malhotra then acquainted the participants with questions to be asked while undertaking abuse of dominance assessments using an effects-based approach. She presented an array of case laws to discuss the application of the principles of undertaking an abuse of dominance investigation and

forms versus effects-based approach. She moved ahead to discuss the treatment of abuse of dominance cases across jurisdictions. The session was concluded by a very active round of discussion amongst the participants and the three faculty members.

### **Day 5: December 18, 2020**

#### **Session 5: Merger Control – Anna Barker**

Anna Barker made a presentation on merger control on the fifth day of the winter school. She began the session with a discussion on the prime reasons why firms merge and the aim of merger review, moving on to theories of harm in the cases of horizontal merger, vertical merger and conglomerate merger. She delved into unilateral effects that merger of rival firms may produce, followed by a discussion on maverick firms, coordinated effects, killer acquisitions and the potential pro-competitive effects versus potential anti-competitive effects of the acquisition of start-up firms. The participants were then introduced to assessment of merger effects by ways of basic economic methods like developing credible counterfactuals, calculating diversion ratios, upward pricing pressure test, Compensating Marginal Cost Reductions (CMCR) and Illustrative Price Rise (IPR).

The latter half of the session was devoted to understanding the possible remedies and ex-post evaluation of a merger, aided with a case study on merger of mattress spring producers. This was followed by several other case studies in an interactive manner to explain the application of merger control tools in practice. The session concluded with an interesting Q&A round.

### **Day 6: December 19, 2020**

#### **Session 6: Intellectual Property and Competition – Shubha Ghosh**

The last session of the winter school taught by Dr Shubha Ghosh focused on the inter-play between Competition Law and intellectual property. He started off by discussing the Schumpeter/Arrow Inverted-U theory and substantiated the same with empirical studies. He discussed disruptive innovation, high entry barriers, network effects, firms as platforms and competition law enforcement in great detail. He presented the *United States v. Microsoft* case study along with European Commission 1998 Investigation into unlawful tying of Windows Player to Windows Operating System. Dr Ghosh argued on the importance of protecting nascent competition to boost

innovation, highlighting the ill effects that a conventional analysis can have in cases of innovation. He showcased how standards and interoperability are critical for innovation but difficult to regulate.

He further presented the Qualcomm case study to explain Standard Essential Patents and FRAND (Fair, Reasonable and Non-Discriminatory) patent licensing obligations and then delved into the exhaustion of patent rights, pay for delay settlements, and investigation of two-sided platforms like Google Search Engine. He concluded by discussing the challenges in the alignment of competition law and intellectual property for the goals of development.

### **Valedictory**

At the end of the sixth session, Garima Sodhi delivered the vote of thanks to the faculty and the participants on behalf of CIRC for collaborating and successfully leading the lectures in the Winter School. The participants received temporary access to the recording of each session along with presentations of the faculty. All the participants were issued certificates of participation after the successful completion of the training programme.

## **Annexure I: About Organisers**

CUTS Institute for Regulation & Competition (CIRC) was established in 2008 by CUTS International ([www.cuts-international.org](http://www.cuts-international.org)). CUTS, established in 1983, is a globally renowned non-government organisation working on rules-based trade, effective regulations and good governance. It has been responsible for the adoption and/or refinement of Competition Laws in over 30 developing countries.

This track record is the pedigree of CIRC, which is also a not-for-profit, independent research and capacity building organisation. It has been active in the areas of competition, regulation and sustainable infrastructure, including PPPs. It assists multilateral and bilateral government and private agencies in knowledge creation as well as strengthening capacity for achieving better outcomes in policy formulation and implementation in the projects that they undertake.

The Institute aims to facilitate research to enhance understanding and explore inter-disciplinary linkages among the identified subjects. CIRC is striving hard in its endeavour to generate and disseminate knowledge on its thrust areas. Since its inception, CIRC has taken varied initiatives to impart knowledge and train various stakeholders on these areas with the aim to build capacity of these stakeholders, thus contributing to the economy in this knowledge intensive era. For further details on our initiatives, please visit website: [www.circ.in](http://www.circ.in)

## **Annexure II: Detailed Agenda**

### **Economics of Competition Law – The virtual edition**

**Organised by CIRC**

**14–19 December 2020**

#### **Platforms:**

Zoom and WebEx software

#### **Course Coordinators:**

##### **Garima Sodhi**

Senior Fellow, CIRC

Email ID: [gms@circ.in](mailto:gms@circ.in)

##### **Bhaavi Agrawal**

Research Associate, CIRC

Email ID: [ba@circ.in](mailto:ba@circ.in)

<b>DATE</b>	<b>SESSION TIMING</b>	<b>TOPIC</b>	<b>SPEAKER</b>
<i>14<sup>th</sup> December</i>	14:30-15:00 IST [09:00-09:30 GMT]	<b>Inaugural Session</b>	<b>Pradeep S. Mehta</b> , Secretary General, CUTS International <b>Arvind Mayaram</b> , Former Finance Secretary GoI and Chairman, CIRC
	15:00-19:00 IST [09:30-13:30 GMT]	<b>Economics of Competition Law</b>	<b>Frederic Jenny</b> , Chairman, OECD Competition Committee
<i>15<sup>th</sup> December</i>	10:00-14:00 IST [04:30-08.30 GMT]	<b>Horizontal Agreements</b>	<b>Rhonda Smith</b> , Senior Lecturer, University of Melbourne and former Commissioner, ACCC
<i>16<sup>th</sup> December</i>	15:00-19:00 IST [09:30-13:30 GMT]	<b>Vertical Agreements</b>	<b>Payal Malik</b> , Economics Advisor and Head Economics Division, Competition Commission of India
<i>17<sup>th</sup> December</i>	15:00-19:00 IST [09:30-13:30 GMT]	<b>Abuse of Dominance</b>	<b>Geeta Gouri</b> , Former Member, Competition Commission of India <b>Neha Malhotra</b> , Independent Economist <b>Garima Sodhi</b> , Senior Fellow, CIRC
<i>18<sup>th</sup> December</i>	15:00-19:00 IST [09:30-13:30 GMT]	<b>Merger Control</b>	<b>Anna Barker</b> , Competition Expert, OECD
<i>19<sup>th</sup> December</i>	18:30-22:30 IST [13:00-17:00 GMT]	<b>Intellectual Property and Competition</b>	<b>Shubha Ghosh</b> , Crandall Melvin Professor of Law Director, Syracuse University College of Law

## Annexure III: Speakers' Profile

### Frederic Jenny

#### Chairman, OECD Competition Committee



Frederic Jenny is professor of Economics at ESSEC Business School in Paris. He is Chairman of the OECD Competition Committee (since 1994), and Co-Director of the European Center for Law and Economics of ESSEC (since 2008). He was previously Non-Executive Director of the Office of Fair Trading in the United Kingdom (2007-14), Judge on the French Supreme Court (Cour de cassation, Economic Commercial and Financial Chamber) from 2004 to August 2012, Vice Chair of the French Competition Authority (1993-2004) and President of the WTO Working Group on Trade and Competition (1997-2004). Professor Jenny holds a Ph.D. in Economics from Harvard University (1975), a Doctorate in Economics from the University of Paris (1977) and an MBA degree from ESSEC Business School (1966).

### Rhonda Smith

#### Senior Fellow (Melbourne Law Masters), Faculty of Business and Economics, University of Melbourne



Rhonda Smith is a Senior Lecturer in the Economics Department at the University of Melbourne. From November 1995 to November 1998, she was a Commissioner with the Australian Competition and Consumer Commission. She was also a member of the Federal Government's Copyright Law Reform Committee (1995 to 1998) and is currently a member of the Copyright Tribunal and a lay member of the High Court of New Zealand. Rhonda has acted as an expert witness in a number of Trade Practices cases, has advised firms in relation to trade practices issues and provides training in relation to the economics of trade practices, including to the ACCC.

## **Payal Malik**

### **Economics Advisor and Head of the Economics Division to Competition Commission of India**



Payal Malik is Adviser, Economics and Head of the Economics Division at the Competition Commission of India. She is on secondment from PGDAV College, University of Delhi, where she is an Associate Professor of Economics. Formerly, she was a visiting Senior Research Fellow, LIRNEasia. A senior economist on public policy, her areas of expertise are Competition Law, policy and regulation. She was on the team that drafted the Electricity Act of India ushering competition into the sector. Previously, she was a senior consultant at the Centre for Infrastructure and Regulation, National Council of Applied Economic Research (NCAER), India. She is also a member of the Governing Council of the CUTS Institute for Regulation and Competition. She has a B.A. (Hons) in Economics from Lady Shri Ram College, University of Delhi and an M.A. and M.Phil. in Economics from the Delhi School of Economics. She also has an M.B.A. in finance from the University of Cincinnati, Ohio, USA.

## **Geeta Gouri**

### **Former Member, Competition Commission of India**



Dr Geeta Gouri, former Member of the CCI, is an economist with 15 years of experience working as a Regulatory Economist. She served as Member (Economics) at the CCI for five years and prior to that as Director (Tariffs) at the Andhra Pradesh Electricity Regulatory Commission. This unique experience gives her the privilege of being perhaps the only economist in India to be associated with the premiering of the two commissions which ushered competition and markets reforms in the economy. Dr Gouri has published extensively and delivered lectures on a wide range of subjects: Pricing for Welfare; Petroleum Products in India; Privatisation and Public Enterprise: The Asia-Pacific Experience; Towards Equity: New Economic Policy and Equity.

## **Neha Malhotra**

### **Independent Economist**



Neha Malhotra Singh has extensive experience in undertaking economic analysis and competition assessments for matters related to mergers and acquisitions, cartels, abuse of dominance and resale price maintenance. She has led economist report preparation for presentation to the Competition Commission of India (CCI) in various such matters. Recently, she presented her paper titled, Legal Treatment of Abuse of Dominance in Indian Competition law: Adopting an Effects-Based Approach at the CRESSE 2017 conference in Greece. In 2018, she presented another paper at the CCI conference - Application of Economic and Quantitative Tools for Merger Analysis in India. Neha is currently working as an Independent Economist. Neha has completed M.Sc. Economics from London School of Economics and Political Science, UK and B.Sc. Economics from Indian School of Business & Finance (University of London External Programme), New Delhi.

## **Garima Sodhi**

### **Senior Fellow, CIRC**



Garima Sodhi is Senior Fellow at CUTS Institute for Regulation & Competition (CIRC), New Delhi, and leads its Competition & Regulation vertical. She has previously worked at Competition Commission of India in economics division as well as investigation division as an Economics Expert. Prior to joining CIRC, Ms Sodhi has worked at ICF International (ICFI) in energy consulting for North American and Indian markets. She has extensive experience in research and consulting in the areas of competition economics, public policy, intellectual property and energy economics. She holds a Masters in Economics (with specialisation in environment and resource economics) from TERI University, New Delhi, India and a B.A. (Hons) Economics from College of Vocational Studies, Delhi University, New Delhi, India.

## **Anna Baker**

### **Competition Expert, OECD**



Anna Baker is a Competition Expert in the Competition Division of the Organisation for Economic Cooperation and Development (OECD). In this role she has focused on competition issues associated with the use of consumer data and digital advertising. Before this, she worked for the OECD's Committee for Consumer Policy on measuring consumer detriment, behavioural insights and online disclosures, consumer issues associated with online advertising, the digital economy and the smart home, and consumer trust in the sharing economy. Prior to the OECD, Anna worked at the Australian Competition and Consumer Commission, where she held various roles over a period of nine years. She has also worked for the Office of Gas and Electricity Markets in the UK, and the Productivity Commission and Queensland Treasury in Australia. Anna holds a First Class Honours degree in Economics, and a Master's degree in Competition and Consumer Law.

## **Shubha Ghosh**

### **Crandall Melvin Professor of Law and Director, Technology Commercialization Law Program, Syracuse University College of Law**



Dr Shubha Ghosh is the Crandall Melvin Professor of Law and Director, Technology Commercialization Law Program, Syracuse University College of Law. He earned his J.D. from Stanford University, with distinction, and his Ph.D. in Economics from the University of Michigan. He earned his B.A. cum laude, from Amherst College. Prior to joining Syracuse University College of Law, Ghosh taught at the University of Wisconsin Law School as a chaired, tenured professor and co-director of the Innovation cluster consisting of faculty in the law and business schools.

## Annexure IV: Feedback and Suggestions

The course received a good response from the participants and suggestions of conducting more trainings/workshops on similar topics. Table 1 below summarises the ratings given for each session.

**Table 1: Session Feedback**

	<b>Session</b>	<b>Excellent</b>	<b>Very Good</b>	<b>Good</b>	<b>Average</b>	<b>Poor</b>	<b>No Response</b>
1	Session 1- Economics of Competition Law (Frederic Jenny)	86.6%	6.6%	6.6%	-	-	-
2	Session 2- Horizontal Agreements (Rhonda Smith)	46.6%	20%	33.3%	-	-	-
3	Session 3- Vertical Agreements (Payal Malik)	53.3%	26.6%	20%	-	-	-
4	Session 4-Abuse of Dominance (Geeta Gauri, Garima Sodhi, Neha Malhotra)	60%	20%	20%	-	-	-
5	Session 5- Merger Control (Anna Barker)	33.3%	40%	26.6%	-	-	-
6	Session 6- Intellectual Property and Competition (Shubha Ghosh)	46.6%	20%	33.3%	-	-	-
The columns indicate number of participants who gave the corresponding ratings to the respective issues, total number of participants who filled the feedback form.							

The participants found the course helpful in their profession and were satisfied with the learning on Competition Law and assessment tools that help in detecting anti-competitive elements. Suggestions

were received for providing course material in advance along with suggested readings. Some participants also suggested increasing the number of breaks between sessions. Table 2 shows the general review of the Winter School shared by the participants.

**Table 2. General Review**

	<b>Excellent</b>	<b>Very Good</b>	<b>Good</b>	<b>Average</b>	<b>Poor</b>	<b>No Response</b>
<b>Appropriateness of the course and contents</b>	60%	33.3%	6.6%	-	-	-
<b>Organisation of the course</b>	33.3%	60%	6.6%	-	-	-
<b>Speaker(s)</b>	60%	33.3%	6.6%	-	-	-
<b>Quality of course material</b>	26.6%	40%	33.3%	-	-	-
<b>Effectiveness of audio/visual</b>	33.3%	40%	26.6%	-	-	-
<b>Classroom interaction</b>	20%	33.3%	46.6%	-	-	-
<b>Overall evaluation of course</b>	40%	53.3%	6.6%	-	-	-

