



Report on WINTER COURSE on “COMPETITION LAW & PRACTICE IN INDIA”



CUTS Institute for Regulation & Competition
21st – 23rd December, 2013 – New Delhi

Objective of the Winter Course

CIRC is a premier research and capacity building institute with a focus on economic regulation and competition policy and law. It has been promoting and spreading awareness on Competition Law and its scope since its inception. In pursuance of this objective, CIRC conceptualised a 3 day introductory course on “*Competition Law & Practice in India*” held bi-annually in summer and winter. After the huge success of its Summer Course, CIRC was pleased to conduct its three day Winter Course from 21st December to 23rd December 2013 at New Delhi.

Methodology and Course Content

The course was designed to give participants a thorough understanding of the Competition Law of India with related case studies to understand the practical implications of the Law in practice. The members of faculty comprised of representatives from the Competition Commission of India, Universities, premier law firms of the country and CIRC with participants from different disciplines such as law, economics, commerce and management & professionals such as lawyers, economists and researchers. The course relied on sustained exposure and interactions of the participants with members of faculty with a view to allow participants the full advantage of their rich theoretical and practical knowledge.

The course was structured to comprise of class-room lectures of 1.5 hours each - arranged thematically beginning with introductions to economic theory, charting the development and evolution of Competition law and its practice and culminating with discussions on competition regimes. Each session was followed by an open-house Q&A session between the students and faculty and/or discussions over a case study relating to the session theme. To assess the attentiveness and comprehension of students in each session, a Multiple Choice Quiz by the lecturer at the end of each lecture was also conducted. The Winter Course ended with an in-depth Panel Discussion between the students and competition experts whereby theories and concepts were discussed and clarified. The course covered broader issues on Competition Law & Policy.

Knowledge Sessions

Day I Sessions

The first day of the 3 day Winter Course commenced with the first session introducing participants to the basic concepts of economic theory with an emphasis on understanding market economies and the existence and operation of competition in its various forms. The session demonstrated the need for legal practioners to possess an astute understanding of the principles of economic theory insofar as dealing with Competition Law and Practice and went ahead to educate the participants of these basic tenets of economics. The session evidenced this from the fact that the most critical determinant of punitive behaviour under the Indian Competition Act i.e. ‘*Appreciable Adverse Effect on Competition*’ has nowhere been defined in the Act itself, thereby necessitating an economic interpretation for determination of ‘AAEC’.

The second session thereafter transitioned into explorations of the evolution of Competition Law and Policy, tracing the historical growth of the subject from the earliest attempts made in the USA and Europe as well as charting the evolution of the competition regime in India from its legacy inception in the ‘MRTP’ jurisprudence of state control to today’s progressive position based on encouragement and sustenance of competitiveness. These sessions jointly terminated in a brief set of MCQs asked by the resource person to the participants followed by a detailed analysis of the case study on the acquisition of United Spirits by Diageo. Both these sessions

were conducted by Mr Vipul Puri, Deputy Director (Financial Analysis), Competition Commission of India.

The last session of the day was taken by Ms Surbhi Mehta who heads the competition law and policy practice at one of the premier specialized practice law firm in New Delhi. Ms Mehta provided a brief overview of the constitutional underpinnings of a vibrant competition culture in legislation and discussed the foundation of competition policy in the country that were evolved through the various committees (Hazari, Raghavan committees). The presentation then dealt with an overview of the Competition Act 2002, analysing the impact of its various amendments including the proposed amendment bill pending in Parliament. The session culminated with MCQs and an open house interaction amongst participants.

Day II Sessions

The 2nd day of the Winter Course saw Mr Saket Sharma, Jr. Fellow, CIRC commencing the days' discussions with a presentation on 'Anti-Competitive Agreements' and their interpretation and implementation under the Competition Act 2002. Participants were introduced to various types of horizontal and vertical agreements while determining their respective impact on free and fair competition via discussions and learnings from real-life case studies, especially those instances where the competition regulator has passed orders. Mr Sharma thereafter examined the *Per – Se* and *Rule of Reason* approaches to analyse the anti-competitive effects of business practises as well as the process of determinability of offences and charges under the different approaches.

The second session considered issues of abuse of dominance by enterprises in the market and policies to regulate such abuse. Beginning with identifying the difference in approaches between the European civil penalty approach as opposed to the American criminal penalty approach for anti-trust offences, the session also dealt with the steps to determine abuse of dominance using case studies such as the Kingfisher Case (Mumbai High Court) to illustrate these benchmarks.

The final session of the day touched upon the regulations for combinations and mergers and acquisitions under the competition framework wherein participants were provided with a hypothetical situation for competition analysis and asked to determine the probable outcomes if challenged at the Commission. Both sessions were conducted by Dr Vijay Singh, Deputy Director (Legal Affairs) with the Competition Commission of India. Each Session was followed by a MCQ to test the knowledge acquired.

Day III Sessions

The final day of the Winter Course began with examination of the peculiar relationship between competition policy that encourages competitive tendencies on the one hand and intellectual property rights whereby an individual or enterprise may be allowed to exclude competitive tendencies to protect a deeper personal right to protect and prevent the exploitation of its originality and creativity. The discourse discussed the relation to IPRs under Competition Policy and the law in the country and provided specific instances through case-studies whereby the interaction between personal rights and free competition were accommodated through adjudicated disputes.

Approaches to the interaction between IPR and Competition were based on 2 schools of thoughts the first believing that IPR and Competition are antithetical to each other and the second school which states that since both emphasize the protection of the end-user the approaches are aligned. The presentation explained concepts relating to FRAND commitments and Compulsory Licensing and discussed emergent case law while simultaneously sharing insights from the US and EU jurisdictions on how they have handled these conflicting issues. This session was followed by an interactive session on cross border issues and procedural aspects and compliances under the Competition regime where substantive parts of the Competition Law were identified and practical implications in their enforcement were discussed. These sessions

were conducted by Mr Saket Sharma, Jr. Fellow, CIRC and Mr M.M. Sharma, Head-Competition Law and Policy, Vaish Associates Advocates.

Panel Discussion

The final session of the Winter Course proceedings was an intensive Panel Discussion chaired by Mr Amitabh Kumar, Partner, J. Sagar Associates. Other panellists were: Ms Surbhi Mehta, Head-Competition Law & Policy, APJ-SLG Law offices; Ms Reeti Choudhary, Senior Associate, J. Sagar Associates; and Mr Saket Sharma, Jr. Fellow, CIRC.

The discussions were divided into three broad themes followed by open floor comments on the issues by all the panellists and a final Q&As amongst all participants. These themes were: -

1. Achievements of the Indian Competition Regime

The panellists critically examined the genesis of the Competition Law regime to proceed towards the examination of the achievements of the competition regime in India. Mr Kumar noted that the Act had initially taken some years to fructify and it has now finally begun to blossom into a substantive law with case precedence and reasoned assessments of orders.

Panellists observed that the enforcement of the Competition Law in India is in its infancy and the jurisprudence is evolving in this field. Panellists noted that CCI under the merger regime under Competition Act has acted swiftly and has cleared most of the cases well within the time frame. Recalling the significant changes under the administrative structure and establishment of COMPAT by amendments in the Act, it was highlighted that since the notification of substantive provisions in 2009, the CCI has given significant orders related to diverse sectors in the economy.

2. Challenges in Competition Jurisprudence

Each panellist identified key areas for the Competition Commission to upscale and improve and offered relevant insights to improve the Competition Regime. Mr Kumar identified major challenges for the CCI. Panellists noted that the evolving competition jurisprudence needs to adapt itself to the dynamic business environment.

Panellists opined that it is important to understand how decisions in international regimes were taken and what conditions and economic reasoning was employed therein, so as to allow decisions to be made per the peculiar economic circumstances of each matter. In so far as orders are reasoned on sound legal and economic principles, clients and enterprises would continue to repose faith in the CCI.

The biggest challenge according to one panellist was the regulatory overlap with other sectoral regulators since there is the threat of forum shopping amongst complainants to restrict the CCI's jurisdictions. A judicial or legislative instrument shall be required to demarcate the line between the sectoral regulators. Need of penalty guidelines was also highlighted in light of some of the decisions of COMPAT where COMPAT while upholding the violations reduced the penalty imposed by CCI.

3. The future of Competition Policy and Law in India

The future of the Competition regime lay in the hands of the regulator and the legislative intent behind it. It is up to them to ensure that the Competition Regime is kept update, relevant and reformative. Panellist highlighted the role of lawyers in ensuring they keep pace with latest developments in the field and provide the courts and CCI with the best practices and information to evolve the whole regime.

Panellist agreed that there is lack of a compliance and awareness culture for competition. There will be a need to utilise other institutions to interact and develop the regime such as

sharing capabilities and resources with other competition regulators and agencies and educate and inform all the stakeholders and businesses.

Panellist felt that international cooperation shall be vital for the future of Competition Policy in the country and reservations on trans-national investigations and confidentiality shall have to be addressed. Talking about the need for a National Competition Policy, panellist indicated that a bigger challenge would be to simply review all the existing Central Acts to understand and orient competition policy to these laws to ensure determination of disputes are aligned to competition objectives.

Various questions were raised by the students related to practice and scope of Competition Law in India. Panellists addressed the queries raised by the students and highlighted the need of experts in the field of competition law. Mr Kumar, chairing the panel discussion thanked the panellists and all the students for interactive session and appreciated such initiatives by CIRC to conduct training programmes on such contemporary legal field thereby contributing in filling the knowledge gap. This culminated the Winter Course on “Competition Law & Practice in India” with the Panellists distributing the certificates to all the participants.

About CIRC

The CUTS Institute for Regulation & Competition (CIRC), a premier research and capacity building institute was established in 2008 by CUTS International www.cuts-international.org CIRC has been conducting competition policy advocacy and undertaking training and academic courses on Competition Policy & Law and Economic Regulations.

With the mission to be a Centre of Excellence on Regulatory and Competition Issues, CIRC primarily focuses on economic regulation in infrastructure sectors, and competition policy and law with an objective of reaching out to the target audience in India and other developing countries in Asia and Africa. CIRC offers practical focus on educational and training programmes on economic regulation, and competition policy and law. 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. Further, since its inception CIRC has taken varied initiatives to impart knowledge and train various stakeholders on these areas with 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



CUTS Institute for Regulation & Competition
Three Day Winter Course on Competition Law & Practice in India
21st to 23rd December, 2013, Indian Social Institute, Lodhi Road, Delhi

AGENDA

Day I (Saturday): 21st December, 2013

(0900 Hrs. – 0945 Hrs.) – Registration
Welcome and Introductory Remarks

Session I: 1000 Hrs. - 1130 Hrs.

Understanding Market Economy and Competition (Mr Vipul Puri, Deputy Director (Financial Analysis), Competition Commission of India)

- Market and Different Types of Competition
- Basics of Economics for Competition Law
- Monopoly, Oligopoly & Perfect Competition
- Conceptualising 'Relevant Market'
- MCQs Quiz & Discussion on a Case Study (10-15 Mins.)

Tea Break: 1130 Hrs. - 1200 Hrs.

Session II: 1200 Hrs. – 1330 Hrs.

Evolution of Competition Law & Policy (Mr Vipul Puri, Deputy Director (Financial Analysis), Competition Commission of India)

- Aim, Objective and Importance of Competition Law and Policy
- Competition Policy vis-à-vis Competition Law
- Competition Act, 2002 vis-à-vis MRTP Act, 1969
- Overview of other Jurisdictions- USA and EU
- MCQs Quiz & Discussion on a Case Study (10-15 Mins.)

Lunch Break: 1330 Hrs. - 1430 Hrs.

Session III: 1430 Hrs. - 1600 Hrs.

The Competition Act, 2002 & Amendments (Ms Surbhi Mehta, Head-Competition Law & Policy, APJ-SLG Law Offices)

- Overview of the Act and Amendments
- Dissecting Definitional Aspects
- Exemptions and Jurisdictional Aspects
- Role and Administrative Structure of Authorities under the Act
- MCQs Quiz & Discussion on a Case Study (10-15 Mins.)

Session IV: 1000 Hrs. - 1130 Hrs.

Anti-Competitive Agreements (Mr Saket Sharma, Jr. Fellow, CIRC)

- Horizontal Agreements
- Vertical Agreements
- 'Per Se' vis-à-vis 'Rule of Reason' Approach
- Assessing Appreciable Adverse Effect on Competition
- MCQs Quiz & Discussion on a Case Study (10-15 Mins.)

Tea Break: 1130 Hrs. - 1200 Hrs.

Session V: 1200 Hrs. - 1330 Hrs.

Regulation of Abuse of Dominance (Dr Vijay Kumar Singh, Deputy Director (Law), Competition Commission of India)

- Regulation of Abuse of Dominance in India
- Steps for Analysing Dominant Position
- Exclusionary and Exploitative Abuses
- MCQs Quiz & Discussion on a Case Study (10-15 Mins.)

Lunch Break: 1330 Hrs. - 1430 Hrs.

Session VI: 1430 Hrs. - 1600 Hrs.

Regulation of Combinations in Competition Law (Dr Vijay Kumar Singh, Deputy Director (Law), Competition Commission of India)

- Regulation of Combinations
- Thresholds, Notifications and Exemptions
- Assessing Appreciable Adverse Effect on Competition
- MCQs Quiz & Discussion on a Case Study (10-15 Mins.)

Day III (Monday): 23rd December, 2013

Session VII: 1000 Hrs. - 1130 Hrs.

Competition Law and IPRs (Mr M.M. Sharma, Head-Competition Law and Policy, Vaish Associates Advocates)

- Introduction to the Interface between Competition Law and IPRs
- Competition Concerns in IP Licencing Agreements
- IPRs and the Abuse of Dominant Position
- IPRs and Mergers and Acquisitions
- MCQs Quiz & Discussion on a Case Study (10-15 Mins.)

Tea Break: 1130 Hrs. - 1200 Hrs.

Session VIII: 1200 Hrs. - 1330 Hrs.

Cross Border Issues and Procedural Issues of Practice of Competition Law in India (Mr M.M. Sharma, Head-Competition Law and Policy, Vaish Associates Advocates)

- Competition Law and Cross Border Issues (Effects Doctrine)
- Practice of Competition Law in India
 1. Enforcement Procedure (from information filing to execution of judgment)
 2. Relevant Provisions of CCI (General) Regulations, 2009
 3. Relevant Provisions of Combinations Regulations, 2011
- MCQs Quiz & Discussion on a Case Study (10-15 Mins.)

Lunch Break: 1330 Hrs. - 1430 Hrs.

Session IX: 1430 Hrs. - 1600 Hrs.

Panel Discussion & Q/A Session: (Chair: Mr Amitabh Kumar, Partner, J. Sagar Associates), (Ms Surbhi Mehta), (Ms Reeti Chaudhary, Senior Associate, J. Sagar Associates) and (Mr Saket Sharma)

Topic: Future of Indian Competition Law: Achievements and Challenges

Certificate Distribution

List of Institutions from where students participated

There were approximately 50 participants from the following law schools, universities, etc.

- ❖ Ram Manohar Lohia National Law University, Lucknow
- ❖ Ramjas College, Dept. of Political Science, Delhi University
- ❖ Amity Law School, IP University, New Delhi
- ❖ Punjab University, Chandigarh
- ❖ NUJS, Kolkatta
- ❖ Lloyd Law College, Noida
- ❖ ICFAI Law School
- ❖ Government Law College, University of Mumbai
- ❖ Symbiosis Law School, Pune & Noida
- ❖ National Law University, Jodhpur
- ❖ Indian Law Institute, New Delhi



CUTS Institute for Regulation & Competition

R 75, First Floor, Greater Kailash I

New Delhi 110048, INDIA

Tel: +91 11 26463021/22/23, Fax: +91 11 40535921

Email: circ@circ.in, Web: www.circ.in