

Report- SUMMER COURSE on “Competition Law & Practice in India”

19th -21st June, 2014 – New Delhi



CUTS Institute for Regulation & Competition

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Objective of the Summer 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 course on “**Competition Law & Practice in India**” to be held bi-annually in summer and winter. After the huge success of its Winter Course in 2013, CIRC successfully delivered the three days Summer Course from 19th June to 21st June, 2014 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 faculty comprised of the representatives from the Competition Commission of India (CCI), 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 comprised of class-room lectures of 1 hour 45 minutes each - arranged thematically beginning with introductions to the specific provisions of the Competition Act, discussing the underlying theory and its practice and culminating with discussions on decided cases. Each session was followed by an open-house Q&A session. 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 Summer Course ended with a Panel Discussion on contemporary issues related to IP law and competition law interface and on challenges and achievements by CCI in the five years of Indian competition regime.

Knowledge Sessions

Day I Session I

The first session was delivered by Mr. Manas Kumar Chaudhuri, Partner, Khaitan & Co. introducing participants to the basics of Competition Law and Policy with emphasis on objectives of Competition Law. He encouraged the students to pursue such courses as it can give them first mover advantage. He explained the importance of understanding the history, fundamentals, objectives, evolution and the intent of drafting such law by the Legislature. He stressed on the fact that mere law is not sufficient. There is a need for good enforcement authorities. Highlighting the fact that MRTP Act was having only recommendatory powers, Mr. Manas very interestingly laid down the differences between MRTP Act and Competition Act, 2002. He touched upon the four facets of CCI i.e. adjudicatory, regulatory, inquisitory and advisory using case studies such as United Brands Case, TRAI Case, SAIL Case, Jet Etihad Case, Coal India Ltd. Case and LPG Cylinder Case. He also discussed the ingredients of Competition Policy and other concepts like dawn raids, stop clock and *pay for delay* cases. The session ended with an interactive Multiple Choice Questions (MCQs) session.

Day I Session II

The second session on the basic concepts of economic theory was delivered by Mr. Vipul Puri, Deputy Director, CCI. The emphasis was on understanding market economics and the existence

and operation of competition in its various forms. The session demonstrated the need for legal practitioners 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 most critical determinant of punitive behaviour under the Act is Appreciable Adverse Effect on Competition has nowhere been defined in the Act. This necessitates the economic interpretation of it. He also discussed the concepts of invisible hand principle, elastic and inelastic demand. He explicitly explained the differences between the different types of market structures, citing cases from smartphone and automobile industry. The session also dealt in detailed provisions of Relevant Product Market and Relevant Geographic Market. He also explained different economic tests like SSNIP Test, Critical Loss Analysis and EH Test. The session terminated on a detailed case study of acquisition of United spirits by Diageo and recent case of Hiranandani Hospital (stem cell case).

Day II Session I

The first session, on second day of the Summer Course, was delivered by Mr. K.K Sharma, Head K.K. Sharma Law Offices, Delhi. He commenced the session with a presentation on 'Regulation of Anti-Competitive Agreements' and their interpretation and implementation under the Competition Act 2002. Participants were introduced to various provisions under the Act. The two different types of agreements i.e. horizontal and vertical agreements were discussed in detail. Mr K.K. Sharma highlighted the fact that vertical agreements carry more penalty than other types of agreements. The concept "what is a cartel" and how it functions was also explained. He discussed many case studies; some of which were Cement Association Case, Coal India Limited Case, LPG Cylinder Case etc. The session concluded with a round of MCQs session.

Day II Session II

The second session considered the issues of "Abuse of Dominance" by enterprises in the market and policies to regulate such abuses. The session was delivered by Mr. Saket Sharma. Beginning with identifying the problems and characteristics of monopoly situation, he highlighted the fact that monopoly situation leads to dead weight loss and that there is thin line difference between what can be said to be competitive and what as anti-competitive. He very briefly touched upon Section 2 of Sherman Act (USA) and Article 102 of TFEU (Europe). He also explained the abuse of dominance provisions i.e. Section 4 of the Indian Competition Act. The session also dealt with the steps to determine abuse of dominance using case studies such as the BCCI Case, Coal India Ltd Case, DLF Case and Cellophane Fallacy Case. A well formulated table clearly carved out the different types of exclusionary and exploitative conducts. Various abuses of dominant position were described with examples from the decided Indian cases. The different types of remedies i.e. behavioural and structural were also discussed with illustrations. Other concepts which were discussed during the session were relevant market, Essential Facilities Doctrine (US v Terminal Railroad and Trinko Case) and Monopoly leverage. Session was followed by MCQs to test the knowledge acquired.

Day III Session I

The first session of the concluding day of the Summer Course began with examination of the regulations of combinations and M & As under the competition law framework by Dr. Vijay Singh, Deputy Director, CCI. Participants were explained regulation of combinations, different threshold limits, exemptions and how to assess AAEC.

Participants were given a hypothetical case on manufacturing of pen. Using this case, he explained the concept of economies of scales. Different types of mergers and amalgamation were also discussed. Horizontal (Flipkart and Myntra Case), Vertical (Tata Group purchasing tyres from MRF) and Conglomerate (Reliance Group) mergers were explained in detail. Thereafter he examined the “Per se” and “Rule of Reason” approaches to analyse the anti- competitive effects of business practices as well as the process of determinability of offences and charges under different approaches. Detailed case study on Multi Screen Media Pvt. Ltd. Case and Century Tokyo Leasing Corporation Case were done. Other provisions relating to M&As in India was also touched upon. The resource person also explained the difference between the word ‘control’ under Section 2(a) and Section 5. Session was followed by MCQs to test the knowledge acquired.

Day III Session II

Panel Discussion

The last and the final session of the Summer Course proceedings was an intensive Panel Discussion chaired by Mr Amitabh Kumar, Partner, J. Sagar Associates. Other panellists were: Mr Vipul Puri, Deputy Director, CCI and Mr Saket Sharma, Jr. Fellow, CIRC.



Image: Panel Discussion in Progress

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

The two themes for the panel discussion were:

1. Interface between Competition Law and IPR in India

The Competition Law and IPR theme was further bifurcated into:

- a) Whether IP can be termed as monopoly?
- b) Whether these laws have divergent/ common objectives?
- c) Case Studies
- d) Jurisdictional Challenges to IP

Each speaker shared their views on this highly debated theme. According to Mr. Vipul whether IP can be termed as a monopoly or not depends on various things including the available substitutes and the market power gained through IP. Adding to this, Mr. Saket very precisely stated that traditionally seen as opposites, both IP and Competition Law are now seen as complimentary and promoting innovation. Thus, earlier seen as opposites like fire and water; now both set of laws are aimed at combining fire and water to form steam i.e. innovation.

The concept of FRAND was also touched upon. Panel discussed on IP having monopoly in the case of Standard Essential Patents with relevant examples from various jurisdictions. Recent EU decisions of Samsung and Motorola were also touched upon for describing the various competition issues due to IP. Section 3(5) of the Act was explicitly discussed. All the panellists shared a common view that there are no standards/ precedent cases declaring as to what amounts to be reasonable and what is not. It was agreed that the jurisprudence in such cases will take some time to settle in jurisdiction like India when we have some settled precedents by the Courts and authorities for guidance.

2. Future of Competition Law Practice in India

Five years of Indian Competition Law regime was discussed in detail. The role, functioning and challenges before the CCI were highlighted and analysed. Various decided cases by the CCI were cited. Other concepts such as that of competitive neutrality and competition advocacy were also discussed. The Chair concluded that in light of available CCI manpower strength and its functioning time period, CCI has done a fair job and has dealt with cases from diverse sectors of the economy. The future career options for the students were also discussed. Thereafter the floor was left open for the questions and queries from the participants. Panellists addressed the queries raised by the students and highlighted the need of experts in the field of competition law.

The Summer Course on “Competition Law & Practice in India” culminated 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

Annexure I- AGENDA

Three Day Summer Course on Competition Law & Practice in India

(19th to 21st June, 2014), YMCA, 1, Jai Singh Road, New Delhi

Day I (Thursday): 19th June, 2014

(08:30 Hrs. – 09:00 Hrs.) – Registration

(09:00 Hrs. – 09:15 Hrs.) – Welcome and Introductory Remarks

Session I: 09:15 Hrs. – 10:45 Hrs.

Introduction to Competition Act & Policy (Mr. Manas Kumar Chaudhuri, Partner Khaitan & Co.)

- Evolution of Competition Law & Policy
- Objectives of Competition Law
- Learnings from the Mature Jurisdictions
- Erstwhile MRTP Act and Competition Act
- Overview of the Competition Act and Authorities under the Act

Tea Break: 10:45 Hrs. – 11:15 Hrs.

Session II: 11:15 Hrs. – 13:00 Hrs.

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

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

Day II (Friday): 20th June, 2014

Session III: 09:00 Hrs. – 10:45 Hrs.

Regulation of Anticompetitive Agreements (Mr. K.K. Sharma, Head K.K. Sharma Law Offices, Delhi and formerly DG, Competition Commission of India)

- 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: 10:45 Hrs. – 11:15 Hrs.

Session IV: 11:15 Hrs. – 13:00 Hrs.

Controlling Abuse of Dominance (Mr. Saket Sharma, Jr. Fellow, CIRC)

- 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.)

Day III (Saturday): 21st June, 2014

Session V: 09:00 Hrs. – 10:45 Hrs.

Regulation of Combinations under Competition Law (Dr. Vijay Singh, Deputy Director, 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.)

Tea Break: 10:45 Hrs. – 11:15 Hrs.

Session VI: 11:15 Hrs. – 13:00 Hrs.

Concluding Session: Panel Discussion (Chair: Mr. Amitabh Kumar, Partner, J. Sagar Associates); (Mr. Vipul Puri); and (Mr. Saket Sharma)

- Interface between Competition Law and IPR in India (45mins)
- Future of Competition Law Practice in India
- Q & A rounds
- Certificate Distribution

Annexure II- List of Institutions from where students participated

- ❖ Banaras Hindu University, Varanasi
- ❖ University of Petroleum and Energy Studies, Dehradun
- ❖ University of Pune
- ❖ Amity University, Rajasthan
- ❖ Bharati Vidyapeeth
- ❖ Amity Law School, Noida
- ❖ Amity University, Jaipur
- ❖ Institute of Law, Kurukshetra
- ❖ Campus Law Centre, University of Delhi
- ❖ Amity University, Delhi
- ❖ Hidayatullah National Law University, Raipur
- ❖ Vivekananda Institute of Professional Studies, Delhi
- ❖ ILS Law College, Pune
- ❖ National Law University, Odisha
- ❖ Symbiosis Law College, Pune