

REPORT ON PROCEEDINGS

National Conference on “Competition Regime – Benefiting the Consumer”

[November 2010]



Competition Commission
of India (CCI)



Department of Consumer Affairs,
Government of India



[In the wake of new competition regime in India, CCI, DoCA and CUTS jointly organized a one-day conference on 20th October 2010. Given that consumer welfare is central to competition law, the conference was primarily aimed at raising awareness amongst consumer organizations. Discussions during various sessions focused on ways and means to mainstream consumer concerns in competition law enforcement. This report presents the proceedings of the conference and captures the summary of discussion on various substantive aspects relating to: (a) empowerment of consumer organizations to help them proactively participate in the new competition regime, and (b) the interface of competition and consumer laws.]

1. Background

1.1 The Competition Commission of India (CCI), Department of Consumer Affairs, Government of India (DoCA) and Consumer Unity and Trust Society (CUTS International) organized a one day conference on “*Competition Regime – Benefiting the Consumer*” with the objective of raising awareness amongst the consumer groups and civil society organizations about the new Competition Act and the impact of anti-competitive practices on consumers.

1.2 The need for the conference was felt due to a knowledge deficit amongst consumer organizations about the nuances of the new Competition Act, 2002 (as amended in 2007) (Competition Act) and its benefit to consumers at large, as against the Consumer Protection Act, 1986 (COPRA), which *inter alia* redresses the grievances of an individual consumer.

1.3 The proceedings of the day were divided into five sessions, where eminent guests and panellists, highlighted the importance of the Competition Act qua the consumers and also delve with nuances of the interface between Competition Act and COPRA.

2. Opening Session

2.1 Dhanendra Kumar, Chairman, Competition Commission of India (CCI)

Mr. Kumar began by welcoming the eminent guests and participants. Briefly touching upon the activities of CCI so far, he highlighted that competition is important to protect consumer interest by offering wider choice, lower prices, better quality and access to goods & services. He emphasized that consumer welfare is the central consideration in the scheme of Competition Act and that CCI accords a high priority to consumer welfare.

Mr. Kumar stated that lack of competition hampers consumer interest due to non availability of alternatives. Clarifying the difference between Consumer Protection Act, he said that COPRA protects interests of individual consumers, whereas, Competition Act protects interests of classes of consumers - by checking collusive and anti-competitive practices adopted by enterprises. He insisted that ours is a demand based governance where need for reforms and changes must arise from downward.

2.2 Salman Khurshid, Minister of State for Corporate Affairs (Independent Charge), Government of India

Mr. Khurshid stated that there has been a paradigm shift in the government policies from protectionism to liberalization leading to dismantling of protectionist barriers which has resulted in enhancement of competition. He further underscored the need to balance the constitutional right of life and dignity accorded to an individual, provided under Article 21 of the Constitution of India, with the directive principle of state policy for enhanced development of the economy. India needs to adopt policies to protect its markets, being mindful of protecting the interest of the common man or the *aam adami*.

He concluded by highlighting the ardent need to address the overlapping jurisdictions of various regulatory authorities and insisting on drawing lines of control while enforcing law.

2.3 K.V. Thomas, Minister of State for Consumer Affairs, Food & Public Distribution

In his key note address Prof. Thomas stated that basic premise of COPRA is to protect individual interest and that of Competition Act to protect the competition in the market and

check appreciable adverse effect on competition, thereby, protecting consumer interest at large. Competition is required to optimize economic growth, provide better prices to consumers and implement better technology as it has static and dynamic efficiencies - static effect includes availability of better quality products at reduced prices, whereas, dynamic effects are innovation for reducing costs.

He also observed that the basic objective of economic policy is to provide level playing field and check illegal trade practices and emphasized that sustained efforts should be made to create awareness amongst consumers about Competition Act through advocacy seminars. He commended the efforts of CCI and CUTS to institutionalize the process of interacting with consumer organizations to understand and protect consumer rights.

Furthermore, Prof. Thomas asserted that in safeguarding and promoting consumer interest there is a collective role of public institutions and NGOs. Government should institutionalize the role of consumer organizations in decision making and ensure its participation.

2.4 M. Veerappa Moily, Minister of Law & Justice

Delivering the presidential address Dr. Moily highlighted the need for competition and mentioned that market can sustain all eligible players who wish to compete. Competition is essential for imbibing the culture of innovation and development of better technology. He said that 2010-2020 would be an era of innovations. Insisting that competition awareness needs to be created at the grass root level for effective implementation of the act, he questioned the price rise despite of bountiful production. He stressed on the effective utilization of resources and role of CCI in checking the artificial price rise.

Dr Moily asserted that reform processes are lopsided if the common man is not aware of the policies. He advocated that an effective competition infrastructure should have been developed for disseminating information before actual implementation of competition policy and law. Quoting the example of tremendous achievement of the information technology industry in Karnataka, he stated that competition coupled with expansion is required for realizing true potential of the people.

Finally, commenting on the role of CCI he said that it is not only the regulator of industry, but, it also needs to balance the interest of the consumers, as consumer and corporates are the two wings of the same plane. Key function of the CCI is to check market distortion and if prices are regulated and controlled, CCI shall be deemed to be successful.

2.5 Pradeep S. Mehta, Secretary General, CUTS International

In proposing a vote of thanks, Mr. Mehta emphasized that competition is essential for development - as India's growth rate before the reforms were adopted in 1990s was only around 3 percent and after liberalization it jumped to around 7 percent going up over time. Citing examples of benefits of competition, he drew comparison between securing a telephone connection in the pre and post liberalization era, as prior to liberalization securing a telephone connection was an uphill task, but, now due to presence of multiple companies and better technology the same is readily available.

Recognizing the presence of large number of sectoral regulators to protect consumer interest, he stated that consumer awareness is required for protection against anticompetitive

practices by enterprises in both goods and services, and inclusive growth of economy. Raising concerns about lack of clarity on dealing with unfair trade practice, he urged that the COPRA can be amended and the National Commission maybe empowered with an investigative wing to deal with UTPs. On the matter of regulating mergers, giving the example of the recent mergers in the pharma industry, Mr. Mehta argued that the provisions on the same should be notified as early as possible as otherwise it would lead an adverse situation.

Mr. Mehta also propagated adoption of a National Competition Policy to deal with government imposed barriers to competition which cannot be dealt with by the CCI as these are not legal violations but policy-induced outcomes. On the need for generating wider awareness, he recommended, observing 13th January as the National Competition Day, the day when the President signed the Competition Act. Similarly, the National Consumer Day has been adopted on 24th December, when COPRA was signed by the President.

3. Session I: Competition Law and the Consumer

First session focused on competition law and consumer, and dealt with issues relating to benefits of competition for consumer, international and domestic examples where competition has yielded better outcomes for consumers and provided an overview of Competition Act.

3.1 Geeta Gouri, Member, CCI

Chairing the session Dr Gouri highlighted the need to create awareness about the law and stated that common man is not aware about the functioning of the Competition Act and its role in protecting their interest.

3.2 Pradeep S Mehta, SG, CUTS

Mr. Mehta, making the theme presentation, touched upon various anti competitive practices prevalent in the market and explained them by citing multiple examples ranging from monopolistic behavior to tied sales. He discussed the various myths in the minds of the people relating to the Competition Act and offered correct perspective about the need for a law. He stressed that a good and effective competition law is not a luxury for industrialized countries but an equally imperative necessity for poor countries. He went on to describe various examples of anticompetitive practices which have a direct impact on the common man, such as tied sales between a doctor and pharma companies, tied sales of school uniform and books by schools etc. In a lucid presentation, he explained various classes of anti-competitive conducts along with possible actions which may be undertaken by either consumer groups or CCI.

3.3 Shantanu Dixit, Prayas, Pune

Mr. Dixit elaborated the competition issues in the energy sector and mentioned about the shift from awarding of contracts through MOUs to competitive bidding. Tracing history of power generation and tariff setting, he mentioned that due to competitive bidding the tariffs have come down and has forced the providers to adopt innovative ways of production. Stating that 70 percent of the tariff in power sector is linked to generation wherein 50 percent of the generation costs is defined by cost of fuel, he tried to highlight the nexus between the government and suppliers in the sector.

He mentioned that coal is an essential fuel and the coal mines are regulated by the government, he elucidated that lack of transparency in awarding coal blocks leads to collusion between government and contractors. As too many mines are awarded to contractors who also own power stations, the contractors effectively regulate both the source and supply of power which results in excessive pricing of power. Similarly, gas production and transmission is controlled by ONGC and Reliance. This oligopoly situation needs to be looked into as it may result in arbitrary pricing. Transmission and distribution of electricity is generally undertaken by one supplier in a given area, the consumer lacks the choice or alternative of suppliers resulting in monopoly. Open access to distribution of electricity is being opposed by states, and consumer is the ultimate sufferer due to lack of availability of choice.

3.4 T.C. A. Srinivasa Raghavan, Associate Editor, Business Line

Mr. Raghavan stated that government policies also hampered competition as evident from the banking interest rates on saving accounts. This has not been enhanced from 3 percent to protect the interest of private banks.

He also mentioned that theoretical notion of perfect competition cannot be achieved as markets are driven by profit motives. In the event where every firm is a price taker and price of commodities is uniform there will be no incentive for investors as there will be no scope for earning profits.

3.5 Sriram Khanna, Managing Trustee, VOICE, New Delhi

Tracing the origin of the competition law, Prof. Khanna said that competition laws are strong in US and EU where major penalties are imposed and recovered from enterprises engaging in anti-competitive practices and cartels. Comparatively no or little action has been seen in this regard in India and no public authority, state or Central Government has moved the competition authority against any corporate during the MRTP Act days.

Taking a dig at the political parties and bureaucrats, he observed that promotion of competition does not figure in the manifestos of political parties and there is a need for right people to sit on the bench, as effective regulation of competition will be the yard stick to measure success of the regulatory authorities. He pointed at the need to create awareness about the application of economics in competition law among the judges, as many of them find it difficult to appreciate.

4. Session II: Anticompetitive practices and the Consumer

Second session of the day focused on anti competitive practices and the consumer - as the panellists discussed the anti-competitive practices in select sectors and the redressal mechanism.

4.1 Bibek Debroy, CPR, New Delhi

Mr. Debroy spoke about the effective competition policy being an essential requirement of a liberalized economy. Ideally in a liberalized economy, competitive forces in the market

regulate prices, however, anti-competitive practices such as collusion need to be checked. Therefore, competition law and policy is a must.

He maintained that competition rests on three stands - structure, conduct and performance (SCP). Tracing the SCP movement at Harvard, he said that mergers & acquisition need to be regulated as they result in market concentration and lack of choice to the consumers. He further added that competition law deals with conducts – by ways of regulation of abuse of dominance and anti-competitive agreements – and structure – by way of regulation of combination.

4.2 Y.G. Muralidharan, Mg. Trustee, CREAT, Bangalore

Mr. Muralidharan articulated the need of structure and transaction analysis and distinguished between static and dynamic efficiency. Static efficiency leads to better choice and lower price and dynamic efficiency results in development and adoption of better technologies. He cited examples of various anti-competitive behaviours such as compulsion to buy meters with electric connection, helmets with motorcycle, etc. and pointed that consumer is yet to benefit from open access in the electricity sector.

4.3 S. Chakravarthy, Former Member MRTP Commission

Dr Chakravarthy stated that competition has proved its role and importance in India and elsewhere as evident from the fact that prior to 1984 before the launch of Maruti there were only two cars available in the market, whereas, now there are as many cars as consumers want.

Explaining the paradigm shift in the competition fundamentals post liberalization Dr Chakravarthy said dominance or size is not anti-competitive, but, abuse of dominance is. Explaining the distinction between *per se* anti-competitive and rule of reason analysis, he stated that language of Competition Act seems to suggest that apart from provisions of Section 3(3), provisions of section 4 are also deemed to be *per se* anti-competitive. He also said that competition is a class action matter, whereas, consumer law covers individual matters.

He shared that experiences of the MRTP regime revealed that competition is essential for consumers but most important is the protection of consumer interest. He suggested that CCI ought to have benches in different parts of the nation to be more effective.

4.4 Pushpa Girimaji, Consumer Columnist

Ms Girimaji drew the attention of the audience to the fact, that mere competition in market cannot protect consumer, for example, in housing sector there is competition but consumer is exploited. Therefore, there is need for effective implementation of competition law.

Explaining the exploitation by big corporate she gave the examples such as bundling of soaps in the pack of four, lack of inter operability between mosquito repellent machines and vaporizer, educational institutions collecting fees in advance along with original certificates and refusing to release the same in case a candidate wants to switch to another institution, doctors prescribing medicines not using generic names but fancy brand names, thereby, forcing the patients to pay more prices, high medical fees resulting in withdrawal of cashless insurance policies by insurance companies etc.

5. Session III: Consumer- Key stakeholder in the Competition Regime

Third session focused on consumer being the key stakeholder in the competition regime and covered issues of effective enforcement and consumer empowerment and consumer awareness and advocacy.

5.1 Geeta Gouri, Member, Competition Commission of India

Chairing the session Dr Gouri stressed on the need of creating awareness in the consumer organizations to play an effective role in protecting consumer interests. She called for methods which may empower consumer representatives and can encourage them to come forward.

5.2 Navneet Sharma, Director, CUTS Institute for Regulation and Competition (CIRC)

Making the theme presentation Dr Sharma briefly touched upon the roles consumer organizations (COs) have played in the COPRA regime during last 25 years or so which may be the basis for COs to similarly play a significant role in the new competition regime. In order to create an enabled environment for COs, Dr Sharma placed before the audience and CCI specific suggestions, such as:

- Register/accredit COs in India like it is done in the UK under its super complaint mechanism
- Waive fee (Rs 5000) for filing information for accredited COs
- Appoint a consumer liaison officer in CCI. In the EC similar practice has been found to be useful.
- By formulating an advisory body at CCI having (general and sectoral) consumer representatives as members akin to other regulators. (e.g. CUTS is a member of the advisory bodies at CERC, TRAI, PNGRB, AERA etc)
- Create consumer advocacy fund out of unclaimed moneys lying, on the lines of the Consumer Welfare Fund to enable the COs to undertake research, market surveys and actions on specific issues
- By including at least one consumer representative amongst members of the CCI. For example competition authorities in Jordan and Zambia observe such practice, while the Vice Chairman in Australia is from the consumer association.
- By establishing a joint discussion forum having representation of CCI, NCDRC and State Commissions, sectoral regulators, COs etc to facilitate timely discussions and actions to protect and promote consumer interest.

5.3 Mala Banerjee, President, FCAWB, Kolkata

Mentioning the ground reality Ms Banerjee stated that consumer groups and VCOs cannot proceed against enterprises due to paucity of funds. She further added that COs lack capacity to comprehend competition issues and require substantial support from the government agencies in this regard. Also, the socio economic condition of the *aam adami* needs to be accounted by the competition authorities while initiating any action.

5.4 R. Desikan, President, CAI, Chennai

Mr. Desikan raised potential issues relating to the effectiveness of the competition law in the years to come in light of the complexities that have been crept in COPRA framework since its inception in 1986. He mentioned that effectiveness of law is measured by its enforcement.

However, state governments have not bothered about effective implementation of legislations, for example, RTI or COPRA.

He observed that ethical business practices are increasingly difficult, as corporates are known to have nexus with government and politicians. In this background, he questioned, if the present system will allow the Competition Act to be effective, and if CCI be able to cater to the needs of the common man to regulate anti-competitive conducts causing increase in prices of essential commodities. According to him, CCI has the task of regulating 32 countries within India and there is a need to impart effective training to multiple stakeholders in order for the Competition Act to be effective.

5.5 Raghav Narsalay, Consumer Activist, Mumbai

Mr. Narsalay stated that an organization is known for its actions and not for its inactions. Pointing to the fact that all the help is available to CCI if it needs to choose its paths and directions, he stressed on the requirement for young leaders to take competition agenda forward within the consumer organizations. He further advocated using mediums of mass communications like All India Radio, Doordarshan etc. effectively for creating competition awareness.

6. The Way Forward

6.1. Dhanendra Kumar, Chairman, CCI

Mr. Kumar extended a warm welcome to distinguished guests on the dais and briefly presented scope of activity being undertaken by the CCI, and mentioned that currently there are 125 cases pending before the CCI out of which 75 have been filed directly and 50 have been transferred from erstwhile MRTP Commission. .

6.2 Pradeep S Mehta, SG, CUTS

Mr. Mehta summarized the events of the day and mentioned that strong government will is required for effective implementation of Competition Act. He suggested setting up of a Consumer Advisory Committee for working with CCI, as consumer welfare is an important goal of CA, 2002.

6.3 Justice Arijit Pasayat, Chairman, Competition Appellate Tribunal

Justice Pasayat mentioned that effectiveness of the adjudicatory bodies needs to be seen in the light of the constraints under which they operate. Competition complaints are not simple and they require a thorough analysis, therefore authorities need a lot of time before they can arrive at a judgment. He further observed that highly professional lawyers are pitted against poor and unorganized consumers, which raises a question mark on the system to deal with such anomaly.

Underlining the benefits of competition to consumers, Justice Pasayat said that competition is essential to provide an incentive to the companies to innovate, for effective allocation of resources, preventing consumer from becoming victims of cartels.

6.4 Justice Altamas Kabir, Judge, Supreme Court of India

Justice Kabir stressed on the need of holding more competition seminars as the main beneficiary of competition enforcement is the consumer. Explaining the ideology behind the Competition Act he informed the audience that need for repealing MRTP was felt because of



the shift in the global economy and business ideology, i.e. monopolies were not considered to be bad but abuse of monopolistic power was.

Reminding CCI of it's the huge task ahead, Justice Kabir remarked that in the present environment, CCI has to ensure that their judgments and policies protect consumer interests and without harming the industry. IPRs were kept out of the purview of the Competition Act as they provide a right to innovator to lawfully and commercially exploit the invention.

He opined that enactment of Competition Act is likely to benefit people in many ways as it works against cartelization, anticompetitive agreements and mergers which yield affordable prices and better products. He commended CCI and remarked that effective working of CCI is evident from the matters being disposed by the commission till date and its actions will benefit the larger section of consumers. He also stressed the need to set up benches all over the country to realize the full potential of the law.

6.5 Rakesh Kacker, Additional Secretary, DoCA

In proposing vote of thanks to all the dignitaries and participants, Mr. Kacker emphasized that more such conferences should be organized at state levels in collaboration with consumer organizations to create better awareness on the Competition Act and that the Department of Consumer Affairs will be glad to consider further assistance to such efforts.

Annexure

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