

**6<sup>th</sup> CUTS-CIRC Biennial Conference on  
Competition, Regulation and Development**

**MAKING COMPETITION AND REGULATORY  
REGIMES MATTER IN INCREASINGLY  
ONLINE DEVELOPING WORLD**

**01-02**  
December, 2019  
New Delhi

# **An Analysis of Important Recommendations of the CLRC**

By CUTS International and CUTS Institute for Regulation & Competition



# Competition Law Review Committee

- 9-member committee constituted on 1st Oct18, with following ToR:
  - To review the Competition Act/Rules/Regulations, in view of changing business environment and bring necessary changes, if required;
  - To look into international best practices in the competition fields, especially anti-trust laws, merger guidelines and handling cross border competition issues;
  - To study other regulatory regimes/ institutional mechanisms/ government policies which overlap with the Competition Act;
  - Any other matters related to competition issue and considered necessary by the Committee.



# Digital Markets



# Data

- Incumbents in digital markets have the ability to amass and process huge volume of data
- Interoperability to keep these markets competitive
- ‘Data’ and ‘revealed preferences’ are non-monetary considerations (zero price argument)
- **Recommendation by the Committee:**
- Open standards for personal data and systems, but requires wider consultation
- Definition of ‘price’ includes non-monetary considerations- no amendment required



# Horizontal Agreements

- Concerns over algorithmic collusions, w/o any human intervention
- **Recommendation by the Committee:**
  - Existing provisions sufficient to deal with ‘algorithmic collusion’; amendments proposed to include ‘hub and spoke’ cartels
  - No intervention needed for tacit coordination at this point; continued monitoring of the use of machine learning and AI
- **CUTS-CIRC Opinion:**
  - The Committee could have deliberated on the ‘shifting burden of proof’, imposing ‘compliance by design’ and better ‘international cooperation between authorities’



# Vertical Agreements

- “Most favoured nation” (“MFN”) clause or “across platforms parity” - the pricing policy used in e-markets as a vertical restraint.
- **Recommendation by the Committee:**
  - Widen the ambit of law to include ‘other agreements’ that might emerge but cannot be covered under the current scope, e.g. conglomerate arrangements



# Abuse of Dominance

- Access to big data strengthens the market position of online businesses through feedback loops creating potential barrier to entry.
- **Recommendation by the Committee:**
- “Control over data” or “specialized asset” to be used as a factor for determining dominant position
- ‘Resource of the enterprise’ in the existing provision is broad enough to include factors like “control over data” and “network effects” for determining dominant position (no amendment needed)
- **CUTS-CIRC Opinion:**
- Now the onus is on the CCI to adopt such interpretations while deciding digital market cases.



# Combinations

- Present 'threshold' in India based on 'asset' and 'turnover'
- Asset light digital markets may not generate significant revenue for some years allowing certain deals to escape scrutiny
- Such transactions may lessen future competition, even if they do not have any immediate impact.
- **Recommendation by the Committee:**
  - Adoption of new thresholds based on 'size of transaction' or 'deal value'.



# Settlements and Commitments



# Settlements and Commitments

- **Low disposal rate of cases attributed to:**
  - Long and cumbersome process followed by the Commission
  - **Complex and time taking matters, especially for cartels**
- **Recommendation by the Committee:**
  - Express inclusion of settlement mechanism in cases of ‘vertical anticompetitive agreements’ and ‘abuse of dominance’
  - **Timeline for submission of application:**
    - Settlement- After receiving DG’s investigation report and prior to final order
    - Commitments- After in-depth investigation order and prior to the DG’s investigation report



# Settlements and Commitments (cont'd)

- CUTS-CIRC Opinion:
  - Significant departure from the international best practices
  - Limited scope of application, cartels excluded
  - Deliberation required on the percentage of fine reduction



# Settlements and Commitments (cont'd)

- **International Practice**

- US, EU, UK and Singapore have proper settlement guidelines
- The CLRC observed that EU regime distinguishes between settlement and commitments:
  - **Settlement mechanism - Exclusively reserved for cartels; requires admission of guilt by the parties; commission required to establish infringement by the parties; 10% reduction in fine**
  - **Commitment mechanism – Applicable to all other antitrust cases; does not involve admission of guilt; does not even establish infringement by the parties; remedies can include both structural and behavioural**



**Thank you.**

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