



MERCHANTS' CHAMBER OF COMMERCE & INDUSTRY

Regional Workshop on

COMPETITION LAW

Friday

22 November
2024

2.30 p.m.

HHI, Kolkata

Merchants' Chamber of Commerce & Industry organised **Regional Workshop on Competition Law** on **Friday, 22 November 2024** at **Hotel Hindusthan International, Kolkata**.

Shri Amit Saraogi, President, MCCI in his Welcome Address said that fair, regulated and healthy competition is the cornerstone of the overall development of the economy. It ensures that resources are allocated efficiently, stimulating innovation and productivity and resulting in the highest quality of products for consumers at the best (lower) possible rates. This consumer-centric productivity can be achieved when manufacturers, distributors, and service providers are incentivized to innovate and reduce costs, primarily by placing societal interests above profit-making motives. There is a lack of awareness among Indian businesses about competition laws and their implications. The CCI has been working to create awareness and educate businesses about competition laws.

Shri Saraogi highlighted that the Competition Act amended in 2023 has brought in new regulations

to not only address the enforcement gaps in the earlier Act but to also simplify the regulatory framework and provide clarity on competition laws. CCI has not only played a pivotal role in creating awareness on competition laws and fair competition but have adjudicated matters from traditional brick and mortar industries to digital platforms and marketplaces.

Shri Saraogi also pointed out that different sectors in India have faced unique sector-specific challenges related to competition laws. However, the rapid advancements in the technology space outstrip the ability of traditional regulatory frameworks to promptly respond to issues pertaining to abuse of fair competition.

Smt. Ravneet Kaur, Chairperson, Competition Commission of India delivered the Keynote Address where she stressed that trade and industry chambers should play an instrumental role in providing an open platform for exchanging ideas that drive our economy forward. To eradicate anticompetitive behavior or practices, business associations should operate within the framework



of competition law.

While discussing on Competition Amendment Act, 2023, Smt. Kaur mentioned that the regulatory landscape has evolved significantly by the introduction of the path breaking amendment, to address the emerging challenges and strengthen our commitment to making India a global hub for businesses. She further added that the introduction of commitments and settlements regime enables businesses to offer solutions which address competition concerns without undergoing lengthy legal proceedings. It allows for faster market corrections, conserving regulatory resources, and provides business organisations an opportunity to avoid adversarial proceedings

She expressed that, in recent times, there has been rapid development in the digital landscape. She further added that not only the big tech companies but, even the industry is adopting more digital outreach, more practices which are based on AI and digital services. Hence in that kind of a landscape, it becomes even more important for us to understand what the competition law requires. Smt. Kaur explained that for penalizing an outfit which had no revenue model in India, CCI would consider the global turnover for calculation of penalty.

Smt. Ravneet Kaur said that CCI and the industries should collaborate together to promote and sustain competition for avoiding litigation. She assured that CCI remains committed to working proactively and collaboratively with trade associations and businesses to ensure compliance with competition laws.

Smt Mamta Binani, Chairperson, Council on Legal & Corporate Governance, MCCI in her address focused on **Recent Judgments in Competition Law**. She deliberated the recent cases where the

organizations have participated in anti-competitive practices.

She further mentioned that the Competition Commission of India (CCI) has initiated investigations based on complaints from multiple parties alleging restrictions.

The Technical Session on 'Competition Law Compliance: Do's and Don'ts for Enterprises' was addressed by **Shri Rakesh Bhanot**, Adviser, CCI. In his address, Shri Bhanot mentioned that the objectives of the **Competition Act, 2002** is to prevent practices having adverse effect on competition; to promote and sustain competition in markets; to protect the interests of consumers; and to ensure freedom of trade.

Shri Bhanot highlighted the **Horizontal Agreements** that could be construed as anti-competitive in nature.

Enterprises/ persons agree to cooperate to limit/ control price, distribution, production, sale etc. (e.g. price agreements, limiting production). Bidders agree to manipulate the process of bidding or reduce/ eliminate competition for bids (bid for agreed prices/ quantities in procurement of goods/services)

Shri Bhanot also spoke about Abusive Conduct and its implications in the context of competition laws.

Imposing unfair or discriminatory price or condition

- Limits or restricts production of goods or provision of services or market
- Limiting scientific development
- Denial of market access
- Conclusion of contract subject to supplementary obligations
- Use of position in one relevant market to enter into or protect other relevant market

He also spoke about the Power of CCI to pass orders in case of contraventions:

- Cease and desist order
- Penalty upto 10% of average turnover for last three preceding financial years
- In case of cartels, penalty upto 10% of turnover or three times of profit, whichever is higher
- Agreements having appreciable adverse effect on competition (AAEC) void Modification of agreements



- In case of dominance position-order for division of enterprise
- Power to issue interim orders
- In case of combination-can be approved, approved with modification or refused approval

Lastly, he mentioned the Do's & Don'ts that the enterprise should follow:

Do's:

- Make independent business decisions
- Keep commercially sensitive information confidential
- Maintain clear records of communications with competitors

Don'ts:

- Discuss prices, costs, or sales strategies with competitors
- Engage in market allocation or bid-rigging activities
- Attend unrecorded meetings with competitors

The Technical Session on 'Collusive Conduct and Leniency' was addressed by **Dr. K D Singh**, Director (Law), CCI. In his address, Dr. Singh explained some of the sections of competition laws.

Section 2(b) "agreement" includes any arrangement or understanding or action in concert; whether or not, such arrangement, understanding or action is formal or in writing; or whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings; Very widely defined in an inclusive manner and not a formal contract

Section 3(3) provides presumption of Appreciable Adverse Effects on Competition (AAEC) in respect of certain horizontal agreements as specified; Agreements determining prices, Agreements limiting/controlling production, supply, markets etc., Agreements sharing markets and Bid rigging/collusive bidding.

Section 3(4) is illustrative of certain vertical agreements which are stated to be in contravention of section 3(1) if cause or are likely to cause AAEC in India

Section 3(1) is independent of section 3(3) and section 3(4) of the Act, may be invoked in respect of agreements not falling within the purview of section 3(3) and section 3(4)

Agreements covered under section 3(3) of the Act presume to have AAEC, hence AAEC need not be established

With reference to all other agreements whether falling in section 3(4) or relating to the residual types under section 3(1) - AAEC needs to be established by reference to factors mentioned in section 19(3) of the Act i.e. on assessment of negative factors (creation of entry barriers, ousting competitors, foreclosure of competition) and positive factors (accrual of benefits to consumers, improvement in production or distribution, promotion of technical/ scientific/ economic development)

Shri Munish Jhajharia, Vice President, MCCI said the Workshop on Competition Law helped audience to understand nuances of the Competition Laws. CCI promotes fair competition among business enterprises that helps in the



sustainable growth and development of our economy.

Shri Jhajharia expressed that there is a lack of awareness among Indian businesses about competition laws and their implications. The CCI has been working to create awareness and educate businesses about competition laws.

Workshop on Competition Law was organised to focus the importance of Competition in market. CCI ensures that consumers should access to the broadest range of goods and services at the most competitive prices. With increased competition, producers will have maximum incentive to innovate and specialize. This would result in reduced costs and wider choice to consumers. A fair competition in market is essential to achieve this objective.

The Workshop deliberated on following key areas:

- How to protect consumer interests by ensuring competitive pricing and quality, and preventing anti-competitive practices
- CCI investigation on complaints of anti-competitive practices, such as price-fixing, bid-rigging, and abuse of dominant position
- How to review and approves mergers and acquisitions above a certain threshold to ensure they do not harm competition
- Importance of collaboration with other regulators to ensure consistency with competition laws
- creating awareness and imparts training on competition issues



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