



COMPETITION LAW & TRADE ASSOCIATIONS

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PLAN OF PRESENTATION

- ❖ Applicability of Competition Law to Trade Associations
- ❖ What is Competition Compliance Programme (CCP)?
- ❖ Role of Trade Associations in promoting Competition Compliance

DEVELOPMENT OF COMPETITION LAW IN INDIA



- ❖ Raghavan Committee constituted in 1999, to examine the existing MRTP Act and to suggest a modern competition law in line with international developments to suit Indian conditions .
- ❖ Competition Act, was enacted in 2002.
- ❖ Initially notified in January, 2003, enforcement delayed due to certain legal issues raised in courts.
- ❖ Act amended in the year 2007.
- ❖ CCI became functional since 2009.



Competition Law: Legal Framework

- ❖ Prohibits Anti-Competitive Agreements (Sec 3)
- ❖ Prohibits Abuse of Dominant Position (Sec 4)
- ❖ Regulates Combinations (Sec 5&6)
- ❖ Mandates Competition Advocacy (Sec 49)



Applicability of Competition Law to Trade Associations

No

❖ Enterprise or Association of Enterprises or Person or Association of Persons shall enter into agreement which causes or is likely to cause AAEC (S. 3(1))

❖ Contravening agreements void (S. 3(2))



Applicability of Competition Law to Trade Associations.... Contd..

Section 3(3) captures not only

❖ Agreements entered into between enterprises or associations of enterprises or persons or associations of persons, or between any person and enterprise

But also

❖ practice carried on, or decision taken by, any association of enterprises....., including cartels if the agreements/decisions/practices

- ❖ Fix prices
- ❖ Limit output
- ❖ Share markets
- ❖ Indulge in bid-rigging



Coverage of Agreement

- ❖ Agreement is defined very widely
- ❖ Inclusive definition – includes any arrangement or understanding or action in concert
- ❖ Includes formal and informal, written or oral agreements
- ❖ Includes agreements not meant to be legally enforced



Tools to reign Cartels

- **Stick**

- fines both corporate and individuals
- compensation to victims

- **Carrot**

- leniency



CONDUCT OF TRADE ASSOCIATIONS & COMPETITION LAW: SOME ISSUES



CONDUCT OF TRADE ASSOCIATIONS

- ❖ Trade/business associations have historically played an important role. Can play even larger role in open market economy.
- ❖ Sometimes trade associations may serve as a platform for activities that restrict competition.
- ❖ A fair number of the cartel cases brought by competition agencies around the world directly or indirectly involved a trade association.



CONDUCT OF TRADE ASSOCIATIONS (cont'd)

❖ **Price Fixing**

There are many ways in which an association may fix prices such as:

Fixing the actual price charged by the association's members.

Setting a target price or minimum price.

❖ **Terms and Conditions of Sale**

Formulation of the standard/common terms and conditions to be applied by the members in their trading relationships.



❖ **Sharing of Customers and/or Markets**

Trade and professional associations are sometimes directly involved in exclusive territory and marketing arrangements on behalf of their members.

❖ **Collusive Tendering and Bid Rigging**



CONDUCT OF TRADE ASSOCIATIONS (cont'd)

Other Activities :

- ❖ Unduly restrictive or mandatory membership rules.
- ❖ The exchange of detailed sensitive commercial information.
- ❖ The setting of exclusive/closed industry standards.
- ❖ The imposition of marketing restrictions
- ❖ The adoption of pricing or other trading practices which limit the members' ability to compete freely.



SOME CASES



SOME CASES

- ❖ *In FICCI - Multiplex Association of India vs United Producers/ Distributors Forum & Ors.*, the CCI imposed a penalty on 27 major film producers.
- ❖ *In Uniglobe Mod Travels Pvt. Ltd. vs Travel Agents Association of India & Ors*, penalty was imposed by the CCI on Travel Agents Federation of India (TAFI) and Travel Agents Association of India (TAAI) and IATA Agents Association of India (IAAI).



SOME CASES...

- ❖ *In Builders Association of India v Cement Manufacturers Association and Ors*, the penalty on 11 cement manufacturers was equivalent to 50 per cent of their profit for 2009-10 and 2010-11. And it was found that the competitors were interacting using the platform of the CMA and this gave them an opportunity to determine and fix prices. Penalty on CMA was Rs. 0.73 crore.
- ❖ *In Varca Druggist & Chemist & Ors. vs Chemists and Druggists Association*, Goa, CCI has termed the imposition of guidelines by CDAG that lay down the margins for wholesalers and retailers as anti competitive and against the interests of the consumers. The Commission imposed penalty @10% on the average of the receipts for financial year 2008-09, & 2009-10 on CDAG.



SOME CASES...

- ❖ In **Case No 25 of 2010**, CCI levied penalty of more than Rs 46 lakh collectively on the seven **film trade associations** for engaging in anticompetitive practices and not allowing exhibition of several Bollywood blockbusters in the respective regional markets.
- ❖ Looking at the gravity of the allegations, the Commission decided to impose a penalty on each of these associations and also directed the associations not to make any discrimination between regional and non-regional films.



“COMPETITION COMPLIANCE PROGRAMME”

WHAT IS COMPETITION COMPLIANCE PROGRAMME (CCP)?



“A compliance Programme provides a formal internal framework for ensuring that businesses, i.e., the management and individual employees, comply with competition law” (CCS)

It is based on the principle that *‘prevention is better than cure’*



WHY COMPETITION COMPLIANCE?



- ❖ Creates an early detection mechanism;
- ❖ Demonstrates commitment to conducting business in conformity with the Competition Law;
- ❖ Reduces unnecessary legal disruption of business;
- ❖ Provides competitive advantage in availing leniency treatment; (Section 46)
- ❖ Creates competition culture.

Most of the fortune 500 companies have adopted CCP.

WHY CCP FOR TRADE ASSOCIATIONS ?



- ❖ Competition Act covers all economic agents – producers, service providers, traders, sellers, buyers, etc.
- ❖ Including ‘Association of Enterprises’ (Section 3)
- ❖ All public sector enterprises and even government departments engaged in commercial activities are within its purview.

Costs of Non-compliance



- ❖ Damage to the reputation.
- ❖ Heavy Fines:
 - The **penalty** on cartel is up to **3 times** of the profit of each member OR up to **10% of the turnover of each member for each year** of continuance of such agreement, whichever is higher. (cartel)
 - The Penalty can be **up to 10% of the average turnover for the last 3 preceding financial years** upon each of such persons or enterprises which are parties to anti competitive agreements or abuse of dominance. (Agreements & AoD)
 - Individual Fines
 - Compensation
- ❖ Drain of resources in handling competition law infringement cases.



“How to Introduce Competition Compliance Programme”

4 'C's of an effective CCP

- Commitment
- Compliance Know-How
- Controls- Assessment at regular intervals
- Continuous improvements



I: THE COMPLIANCE COMMITTEE



Role of Compliance Committee:

- ❖ To design & implement a CCP.
- ❖ To act as a one stop point for any clarifications on the conduct of the enterprise;
- ❖ To train and motivate the top managers and employees .
- ❖ To conduct periodic review of the compliance program.
- ❖ To design competition compliance manual for the reference of employees and management.

II: COMPLIANCE MANUAL



An ideal Compliance Manual should contains:

- ❖ A brief overview of the relevant provisions of the competition law;
- ❖ A statement endorsed by the Board/Management of the business regarding the '**zero tolerance policy**' of competition law violations;
- ❖ A bullet point list of 'dos' and 'don'ts';
- ❖ A clear instruction on the consequences of breach of competition rules;
- ❖ Details of the compliance officer.

III: COMPETITION IMPACT ASSESSMENT



- ❖ It means the assessment of all existing agreements, policies, actions etc. to check their compatibility with the competition law.
- ❖ And review of all internal documents, publications, websites, newsletters and magazines of your association from the angle of competition law.





IV: REVIEW OF CCP

- ❖ Time to time review of CCP is necessary so that the risk mitigation activities remain appropriate and effective.
- ❖ The key competition law compliance risks faced by a business might change over time..

There is no standard review period – it is for the business to decide how frequently reviews should be carried out.



'Do's and Don'ts



Do's

- ❖ Guidelines to all members for proper conduct during meetings of association.
- ❖ Take legal advice whenever it is required.
- ❖ Maintain proper record of meetings;
- ❖ Inform CCI whenever you observe any instance of violation of Competition Act,
- ❖ Develop a competition compliance culture in your organization.



Some Don'ts

- ❖ DO NOT discuss exchange or agree about any type of price information with competitors.
- ❖ DO NOT enter into agreements with competitors on allocation of territories or customers.
- ❖ DO NOT enter into agreements with competitors which result in fixing production, sales quotas or reducing output.
- ❖ DO NOT resort to bid-rigging.

CCI'S INITIATIVE IN PROMOTING CCP TO BUSINESSES



Competition Advocacy—Primary objective is to strengthen the competition awareness and competition culture among market players, thereby encouraging self compliance.

❖ Publications:

‘Competition Compliance Programme for Enterprises’

‘Leniency Provisions’

Awareness campaign through media

❖ Regular engagement with the business community to develop cordial atmosphere for ensuring a good competition culture in the country.

Competition Advocacy 2013: one of the focus is ‘Trade Associations’



CONCLUSIONS

- ❖ Compliance of the Competition Law is the best policy for association of enterprises as '*prevention is better than cure*'.
- ❖ Presently more than 120 countries have Competition Rules in place, Competition Compliance requirements are here to stay.
- ❖ Competition - fourth corner-stone of the public policy framework, along with the monetary, fiscal and trade policies.
- ❖ After all, competition is an instrument for India's economic growth- you can be a partner in this endeavor.



THANK YOU