

Unclassified

English - Or. English

10 May 2021

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 3 on Co-operation and Enforcement

Competition Compliance Programmes – Note by India

8 June 2021

This document reproduces a written contribution from India submitted for Item 1 of the 133rd OECD Working Party 3 meeting on 8 June 2021.

More documents related to this discussion can be found at
<http://www.oecd.org/daf/competition/competition-compliance-programmes.htm>.

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JT03476179

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1. Introduction

1. The Competition Commission of India (“**CCI**”/ “**Commission**”), established under the Competition Act, 2002 (“**Act**”), a parliamentary law of the Republic of India, strives to promote and sustain competition in India. The Act prohibits anti-competitive agreements, abuse of dominant position by enterprises and regulates combinations. It is the duty of the Commission to promote and sustain competition, eliminate practices having adverse effect on competition, protect the interests of consumers and ensure freedom of trade in the markets. Over a decade of its operations, CCI has handled over 1100 anti-trust cases and 850 combination cases. This has brought rich experience in conceiving, designing and implementing competition compliance programmes.

2. Section 49 of the Act mandates CCI to take suitable measures for promotion of competition advocacy, creating awareness and imparting training about competition issues. The primary objective of Competition Advocacy is to strengthen competition awareness and create a competition culture amongst market players, leading to competition compliance. This activity is conceived largely as non-invasive, voluntary and participative with no legal consequences. All activities under this domain are conceptualised for wider competition compliance in the economy. The Competition Compliance Programmes (CCPs) draw resources from primarily two activities, firstly independent advocacy initiatives and secondly, advocacy through enforcement orders of the Commission. The first activity is an ongoing process, encompassing a plethora of advocacy initiatives often customized to suit the participating stakeholders. This includes leniency advocacy as well. The second activity derives strength from enforcement orders of the Commission, wherein these orders are taken to wider participants through innovative means to enable an environment that sustains and promotes competition compliance in the given sector or the concerned markets.

2. Tools for CCP

3. For over 10 years, CCI has taken measured, focused and effective steps to build a culture of competition in markets in India. This has been done through robust enforcement and sustained competition advocacy. CCI has reached out to stakeholders across the board including Industry, Central and State Governments, Trade Associations, Professional Bodies, Academia, etc., to enhance awareness about competition law and promote CCP. The endeavour, through various advocacy initiatives, has been to sensitise the stakeholders regarding the nuances of competition law, enhance their understanding of the law and its application, and guide them towards playing roles in achieving the overall objectives of the competition law.

4. CCI has been using various advocacy tools to create awareness about the benefits of competition and how an effective competition compliance programme may be implemented. These tools are as below:

2.1. Competition Advocacy Events

5. Workshops, seminars, training programmes, and conferences are organised across the country to engage with the stakeholders and bring them on board towards increasing

competition compliance. These events are conducted by senior officers of the Commission whereby stakeholders are informed about the legal and practical aspects of the law by showcasing insightful case studies. During the Covid-19 period, technology has been leveraged and such programmes are conducted mostly online.

2.2. Publications

6. Over the years, the Commission has published rich literature on promoting competition for the benefit of stakeholders. These written materials explain technical aspects of the law in simple language using examples and case studies. Some of the literature published includes Competition Compliance Manual for Enterprises, Competition Assessment Toolkit, and Diagnostic Toolkit for Public Procurement Officers, etc. These materials are made available to stakeholders along with customised programmes for effecting competition compliance.

2.3. Social Media

7. Continuous engagement with the stakeholders encourages compliance, in this regard use of social media has also been explored by the Commission to engage with them and initial results have been encouraging.

3. Advocacy Efforts towards Compliance in the Private Sector

8. It has been a hallmark for CCI that as a regulator it enjoys trust and confidence of the private sector, which is a crucial factor in the economic development of the country. CCI attempts to inspire and encourage this sector to adopt and adhere to competition compliance through continuous engagement.

9. The aim of CCPs with the private sector is to build a competition culture in the country. The Commission's advocacy efforts towards this crucial stakeholder group have been geared towards complementing its enforcement functions by way of achieving the larger goal of market correction.

10. The Commission has been organising training programmes in competition law compliance with leading players in key markets across the spectrum. Emphasis in these training programmes has been on a need to appoint compliance officers in the organisation for ensuring effective competition law compliance. Industry stakeholders have also been sensitised on possible financial and reputational loss arising out of non-adherence to provisions of the Act. They have also been encouraged to report any anti-competitive practices adopted by their rivals or any other company in the market to CCI. They are also encouraged to undertake consistent and timely audits of their existing business practices to ensure that their conduct, at the horizontal and vertical levels, are compliant with competition law in India. Stakeholders are also educated on the leniency programme of the Commission and procedural aspects therein.

11. A 'Compliance Manual for Enterprises' has been developed by CCI which provides concise guidance to business enterprises for undertaking competition compliance initiatives. The Manual contains the basic principles of competition law that impact an enterprise's relationship with competitors, agents, suppliers, distributors, customers and other third parties. It also contains guidelines that are designed to help executives and employees of any enterprise to distinguish between permissible business conduct and illegal anti-competitive behaviour. The Manual strives to increase familiarity of business enterprises with the competition law and to handhold them towards best practices for

greater compliance and help them exhibit good corporate citizenship. Recently, the Commission published an infographic based on ‘Dos and Don’ts for Trade Associations’ and an animation video on the same to sensitise trade associations to remain competition compliant while discharging their functions.

12. CCI has been proactively conducting competition advocacy events to enhance awareness about leniency regime, which encourages disclosure of information on anti-competitive practices. This has helped the Commission receive a significant number of leniency applications. Based on the experience and feedback, the Commission has also made sure that its leniency provisions and regulations have been kept aligned with global best practices. It has also constantly strived towards maintaining simplicity, transparency and consistency in the procedural aspects of these provisions. One of the objectives of CCPs is to encourage use of leniency programme of the Commission.

13. In order to promote CCPs, CCI engages closely with industry groups to understand markets better and appreciate the business nuances. CCI works with industry representative associations at the national, local and sectoral levels to encourage two-way engagement and understanding of issues. CCI regularly conducts sectoral workshops which have focus on competition issues specific to the sector. These events have received encouraging feedback from participating industry representatives. Participants appreciate the effectiveness of such events in bringing the stakeholders closer to the law and its application. In recent times, the Commission has conducted highly engaging workshops in key markets such as pharmaceuticals, telecom, e-commerce among others.

14. Realising the fact that enforcement alone cannot achieve all goals of Competition Law which aims at building competition culture in the country, a focused industry approach has been conceptualised. Under this approach, leading Listed/Private Companies in India are approached and pursued to implement CCPs. Results of this approach will be visible in near future, however, initial outcomes are very encouraging and portray willingness of industries towards CCPs. These corporates are informed about the nuances of CCPs, which include the following: (a) industries may do internal assessment and effect Competition Compliance Programme themselves, (b) refer the instances of violation of competition law to the Commission (c) publicise leniency programme, which inspires self-disclosure of violations, (d) avoid the chances of violation of provisions of the Competition Act, and (e) creation of competition culture amongst the officers/executive of companies which will result into Competition Compliance.

3.1. CCPs in Pharma Sector

15. In pharmaceutical sector, over the years CCI has handled over fifty antitrust cases emanating from various parts of country. Such enforcement has resulted in market correction at district level, State level and all India level. With rigorous advocacy of enforcement orders, pharmaceutical stakeholders are reached out and sensitised to take up competition compliance and shun acts and activities proscribed by the Act. The associations in the sector were directed to organise competition awareness and competition compliance programmes over a period of six months, and file a compliance report with CCI within one month of hosting the last competition compliance programme.

16. The Commission also directed associations to file an undertaking that the practices carried on by them and their members regarding grant of NOC for appointment of stockist, fixation of trade margins, collection of Product Information Service (PIS) charges and boycott of products of pharmaceutical companies should be discontinued within two months from the date of receipt of the order. The PIS services could be availed by manufacturers/ pharmaceutical firms on a voluntary basis. Trade associations were also

directed not to associate with officers of pharmaceutical companies with regard to internal affairs including administration, management and governance of the company in any manner for a period of two years.

17. Given the length and breadth of the country, it is visible that this sector has moved on the path of competition compliance and stakeholders are bracing CCPs for a greater good.

3.2. CCPs with Public Sector

18. Public sector undertakings have been important stakeholders for CCI since very beginning. CCI has been interacting with PSUs to sensitise them about competition law. Interactions with them have focused largely on public procurement aspect and many of them in the last ten years have used various guidance, publications, etc., of CCI. The recently conceived State Resource Person Scheme is playing a crucial role in this sphere.

3.3. CCPs with Micro, Small & Medium Enterprises (MSMEs)

19. Importantly, the Commission has been guided by the larger goal of keeping MSMEs functional and ensuring continuity of market corrections than penalising the firms through monetary penalties. In this process, regular interactions with MSMEs and representative associations are considered significant towards promotion of competition. It has been noticed that given lower economies of scale and scope, MSMEs may be vulnerable as against bigger enterprises. Further, not being aware of nuances of competition enforcement they may walk on an anti-competitive path inadvertently. Considering this fact, outreach with MSMEs has been considered on priority and CCPs for MSMEs are also pursued to implement the same.

4. Innovations in CCP

4.1. Network of Indian Competition Experts (NICE)

20. Capacity building is core to CCPs. In a country so vast and diverse, competition experts are needed in distinct geographical regions as well as conversant in various local languages. In order to achieve this larger objective, CCI conceived NICE, which is a network of academicians/ researchers in the field of Law, Economics and Finance. These experts are expected to work closely with CCI, build mutual capacities, track local competition scenario and develop expertise in competition compliance, auditing and legislative assessment. This network has completed one year and the initial output is very encouraging. This network has been working during Covid-19 times by leveraging technology.

4.2. Online Internship

21. Students of colleges and universities have been important stakeholders of advocacy driven CCPs. CCI has been regularly reaching out to these stakeholders, creating awareness and highlighting the importance of competition. Notably, during the Covid-19 driven lockdown, CCI switched over to Online Internship as regular physical internship was not possible. The response was overwhelming, a large number of applications poured in even from the remotest corners of the country. This afforded students to intern with CCI, who otherwise could not have availed internship due to geographical constraints. From May 2020 to March 2021, over 200 students from various law schools, management institutes

and professional bodies and universities have undergone internship on competition law and were made aware about CCPs.

4.3. State Resource Person Scheme

22. In order to augment CCP with States and PSUs therein, CCI launched the State Resource Person Scheme (SRPS) in October 2019 which was implemented from January 2020. It is imperative to note that in a federal set up, States are key stakeholders in public procurement and the Commission recognises the importance of sensitising procurers about CCP. The SRPS aims at sensitising State machinery on competition matters, especially public procurement. This scheme was imperative for building a competition compliant culture in the country and for imparting training to state government officials in general and procurement officials in specific. The scheme involves appointment of a Nodal Officer in each state (till now 17 States and 4 Union Territories have appointed nodal officers). The Nodal Officer nominates two Resource Persons (RPs) in each State respectively. These RPs are trained by CCI for undertaking competition advocacy with State government officers. This scheme was intended to bridge the implementation gap of a Central /Federal Law to State/Provincial Level. In furtherance of the objective of this Scheme, more than 100 programmes for the procurement officials in seven States/UTs (Himachal Pradesh, Odisha, Assam, Telangana, Kerala, Haryana and Puducherry) have been conducted within a period of one year. Initial response of the participating States have been encouraging. They have also acknowledged that this initiative has helped them develop a deeper understanding of competition law and its compliance.

5. Conclusion

23. CCPs is a continuing process and it requires sustained efforts, and trust of participants. The role of industry in creation and sustenance of a robust competition culture in the economy is crucial. For a competition regulator, it is imperative that it engages closely with industry bodies and market players to help them not only appreciate the law better, but also implement effective compliance programmes at all levels. CCI has followed this approach with multi-pronged initiatives designed to ease understanding and provide effective guidance.