

Vision India@75 Series – Road to 2047

Key Note Address by

**Shri Ashok Kumar Gupta, Chairperson, Competition Commission of India
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1. Shri Amit Goenka, Prof. Bejon Mishra, Shri Anant Sharma, distinguished participants and friends. Good evening. I am happy to participate in Vision India@75 Series and give an overview of Competition Commission of India.
2. Twelve years ago, the substantive provisions of the Competition Act, 2002, relating to anti-competitive conduct were notified, marking a watershed in the regulatory governance of the Indian economy, which was transitioning to an economy where markets were essential instruments for resource allocation.
3. The economic reforms in India which gained momentum with liberalization in 1991 envisaged competition as a key instrument of growth. Growth and efficiency of an economy stand on the fulcrum of competitive markets. Competition spurs productive efficiency which, in turn, propels economic growth, besides incentivizing innovation that brings about dynamic efficiency and higher competitiveness. A review of cross-country literature suggests that there is a positive co-relation between GDP growth and level or degree of competition. Many empirical studies have suggested that competition enhances productivity at the industry level, generates more employment and lowers consumer prices.
4. Despite its all-encompassing benefits, healthy competition may not emerge on its own. Even the most ardent votaries of a market economy recognize that liberalized markets cannot be presumed to be competitive and efficient. Without oversight and necessary intervention, we could witness a chaotic environment, where dominant firms misuse their market power to fence out competition, cartels

drive up prices or anti-competitive mergers weaken the competitive structure of markets, resulting in businesses getting affected and consumers being deprived of value for money. Such distortions break the link between liberalized markets and the productivity and innovation gains they are believed to yield. Therefore, the need for regulatory oversight cannot be overemphasized.

5. Against this background, the Competition Act was enacted as a modern legislation to provide a regulatory framework to deal with competition issues. The Act aims at preventing practices having adverse effect on competition, promoting and sustaining competition in markets, protecting consumer interests and ensuring freedom of trade carried on by other participants in markets in India. Provisions dealing with anti-competitive agreements and abuse of dominant position became operational in 2009, and the provisions related to mergers and acquisitions were notified in June 2011.

6. The Competition Act follows the philosophy of modern competition laws and prohibits conducts which cause or are likely to cause an appreciable adverse effect on competition in markets. Unlike the previous MRTP regime, the new competition law does not frown upon the size or dominance of undertakings *per se*, yet, CCI is obligated to preserve the competitive process and ensure freedom of trade by prohibiting exclusionary and exploitative practices of dominant undertakings. Moreover, the new law is competition-neutral in its application and covers within its ambit both public and private enterprises without any discrimination.

7. The Competition Commission of India (CCI), established as the enforcer of competition law in India, devoted its formative years shaping the regime in accordance with evolving market realities while anchoring it in the economic development goals of the nation.

8. Since inception, it has been the Commission's endeavour to develop a culture of competition in markets through effective enforcement of the law and proactive advocacy outreach. The focal points of its actions and interventions have been to bring about swift market correction so that businesses can compete on merits irrespective of their size and, most importantly, ensure that consumers benefit from improved market outcomes.

9. The Act prohibits anti-competitive agreements and abuse of dominant position by enterprises. For established infringements, the Commission may impose monetary penalties apart from issuing various other structural and behavioural remedies. Since inception, the Commission has examined more than 1100 cases of anti-competitive agreements and abuse of dominant position in diverse sectors of the economy such as airlines, banking, capital markets, e-commerce and digital markets, infrastructure, travel, automobile, real estate, pharmaceuticals, financial sector, publishing, manufacturing, mining and entertainment. The instrument of enforcement has been applied judiciously, keeping in mind the specificities of the sector involved, market structure and nature of contraventions.

10. In correcting market-distorting practices, the Commission has used an effective mix of the twin instruments of enforcement and advocacy. The instrument of enforcement has been applied judiciously, with interventions made only in such cases where business conduct was found to seriously undermine market processes and mute competition. For instance, the Commission has had an assertive enforcement agenda against cartels to free Indian markets from this pernicious economic offence and optimize deterrence. At the same time, it has incentivized self-reporting and offered businesses an opportunity to approach the Commission for lesser penalty by making vital disclosures on cartels. The idea has been to engage the industry not only for prompt detection and rectification of

competition problems but also to make them realize that everyone stands to gain from fair and competitive markets.

11. In recent years, digital markets have been the major focus area of competition agencies across the world. The increased shifting of physical markets towards digital markets has multiplied the need to have a closer look at the digital markets. On the one hand, digital markets are bringing in innovation, but on the other, they are giving rise to various competition concerns. There has been a steady rise in cases reviewed by CCI emanating from new-age markets, which range from across the verticals, such as search engines, online marketplace platforms, appstores, payment gateways, online travel, food aggregators, cab aggregators and social networking. Such cases, pertaining to issues like search bias, predatory pricing, deep discounting, self-preferencing and leveraging, have a direct interface with competition law regime. Given the rapid evolution of digital markets, the focus has been to act swiftly and craft remedies suitably to address challenges arising out of new forms of business models. In its interventions in digital markets, the regulator needs to strike a delicate balance in addressing market distortions without stunting efficiency and innovations. CCI has also been continuously streamlining processes and procedures to meet the demands of the times. Presently, CCI is in the process of introducing a confidentiality regime in line with the best global practices in consultation with stakeholders.

12. The Commission is also responsible for undertaking competition scrutiny of notifiable combinations, *i.e.*, mergers, amalgamations and acquisitions, before they are consummated. Based on its assessment, the Commission may approve or suggest modifications. In appropriate cases, the Commission can also disapprove proposed combinations.

13. On merger control, we have remained conscious of the fact that, in an emerging economy like India, where industry is gearing up to make the nation self-

reliant as well as enhance its global competitiveness, mergers and acquisitions would be a potent instrument. The Commission has reviewed over 800 merger filings. Alongside its unfailing commitment to objective and robust substantive assessment of mergers, the Commission has adopted a slew of measures to ensure speedy clearance of non-problematic transactions to reduce procedural burden and make filings simpler. Specifically, to ease compliance, CCI has amended the Merger Control Regulations to dispense with the requirement of providing information on non-compete arrangements. This has provided the required flexibility to the parties to the combination in negotiating non-compete clauses and reduced the information requirements at the time of notifying the combination. A Green Channel route has also been recently introduced for automatic approval of combinations. This is a first-of-its-kind, trust-based system in the world, where notifiable transactions having no overlaps, be they horizontal, vertical or complementary between the parties, are deemed approved upon filing. It is expected to promote a speedy, transparent and accountable merger review, striking a balance between facilitation and enforcement. The Green Channel route has gained traction, with one out of every five transactions being filed through this route, demonstrating stakeholders' confidence. All these steps have made the approval process business-friendly and reduced compliance costs.

14. The Commission believes in nuanced application of the law in a manner that appropriately accounts for the dynamic and rapidly changing market conditions, as well as the larger economic and policy milieu. In a young jurisdiction like India, where legacy issues have not yet faded completely, stakeholders are not fully aware of the benefits of competition and pro-market reforms are still an ongoing agenda, enforcement cannot be the only route to market correction. Therefore, a large part of the Commission's work has comprised and will continue to consist of proactive outreach and advocacy. Our experience suggests that dialogue with stakeholders can be effective in preventing violations of the law and can help

mitigate a range of competition concerns without burdening the industry with compliance and litigation costs.

15. The Commission has taken a number of steps to enhance the culture of competition compliance in businesses to help reduce the incidence of infringements of statute. The Commission has come out with a Competition Compliance Manual for the benefit of enterprises and corporate professionals, explaining 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 an enterprise distinguish between permissible business conduct and illegal anti-competitive behaviour. It is heartening that, over the years, the Manual has served as a critical guidance for enterprises to devise compliance programmes of commercial entities and improve corporate governance standards. Lesser Penalty Regulations have been amended to make leniency regime robust and unambiguous for leniency applicants and encourage enterprises to cooperate in uncovering the cartels. The idea behind these initiatives has been to engage the industry, not only for prompt detection and rectification of competition problems, but also to make them realize that everyone stands to gain from fair and competitive markets.

16. The Commission has also engaged with the NITI Aayog in the past year for competition assessment of Model Concession Agreements (MCAs) in infrastructure and public service delivery sectors such as railways, ports, airports, coal, national highways, education infrastructure, etc. The intention is to mitigate competition concerns in structuring, granting and implementing concession agreements, which would help pre-empt competition intervention.

17. Ex ante competition assessment of draft legislations and policies for identifying competition issues and recommending pro-competitive measures is

another key area of engagement with the government that is part of the advocacy mandate of the Commission.

18. A major focus area of the Commission's work over these years has been public procurement. Competitive procurement markets are fundamental to ensure that public money is well spent and fiscal space is created for funding other development priorities. To assist procurers in designing a competition-compliant tendering process, the Commission has provided a diagnostic toolkit for undertaking assessment of procurement systems from a competition perspective.

19. In the past year, advocacy efforts in this area were augmented through the introduction of the State Resource Persons Scheme. Under the scheme, two retired officers from the State Government are appointed by the Commission. These officers disseminate awareness on competition law by imparting training and organizing workshops in their respective States for procurement officers of various State Departments. Thus, the Commission aims to make the States active partners in fostering competition in markets. On February 26, 2021, we opened our first regional office in Chennai. This is a step towards augmenting the Commission's regional presence and fulfilling its duties as a federal regulator. To deepen our engagement with State governments, PSUs, industry bodies and academia at the State-level, the Commission's advocacy literature is being translated into different regional languages.

20. It has been the constant endeavour of the Commission to build its capacities and update its knowledge and skillsets. To this end, the Commission regularly engages with domain experts besides commissioning market studies for robust understanding of the construct of the markets in question. The market studies provide an opportunity to the Commission to gain insights from stakeholders across the value chain in the sector. I am happy to share that the market study of the e-commerce sector was completed last year, and a self-regulation charter was issued for e-commerce marketplaces. Market studies on the telecom sector,

pharma sector, film distribution, surge pricing by cab aggregators and an issue-based study on common ownership have also been initiated by the Commission. While the telecom study has been successfully completed, the other market studies are ongoing.

21. Friends, the past one-and-a-half years have posed unprecedented challenges to us on multiple fronts. Never before, in living memory, have we confronted a crisis of this enormity. Pragmatic application of competition law is of particular importance in moments of crisis to ensure that market failures are avoided and economic recovery is fast and sustained. Since the onset of the COVID-19 pandemic, the Commission has strived to facilitate businesses in their legitimate responses to this extraordinary situation while furthering its enforcement and advocacy agenda with unstinted vigour to make sure consumers are not deprived of the benefits of competitive markets in these troubling times.

22. When business was severely disrupted during the national lockdown due to the onset of COVID-19, CCI remained open for business and modified its procedures to deal with the changing circumstances. It replaced physical filings with e-filings, conducted virtual instead of physical hearings and proactively issued a business advisory that recognized that businesses may need to coordinate certain activities to ensure continued supply and fair distribution of products. Such coordination was permitted as long as it ensured continued supply and distribution of goods and services and resulted in efficiencies. This enabled businesses to take swift commercial decisions without worrying about regulatory ire. The Commission also took a balanced approach in its enforcement decisions, focusing on faster market corrections, and a nuanced view in levying penalties, particularly for MSMEs, considering their financial distress.

23. Competition law is an economic law that automatically imposes a time factor upon the Commission to make its orders meaningful and relevant for market correction as markets evolve and change. Hence, the Commission has prioritized

its response to legal challenges. The Commission has used its advocacy arm to engage with the judiciary to sensitize about the need for faster market correction and the non-adversarial nature of proceedings before the Commission. The Commission has continued to engage with its international jurisdictions through bilateral and multilateral forums to share learnings, exchange ideas and showcase its expertise in the intellectual domain of competition law. To facilitate knowledge exchange and cooperation in cross-border antitrust and combination cases, the Commission has signed MoUs with competition agencies of the US, Russia, Australia, European Union, Canada, Brazil, Japan and BRICS.

24. Today, I can say with some sense of satisfaction that we have crossed important milestones, and players in different sectors have altered their legacy practices to bring them in sync and alignment with the principles of the new competition law framework. I assure you that the Commission shall remain steadfast in its commitment to safeguard and promote competitive markets in India.

Thank you.
