

Q1. What are the strategic actions that your authority will undertake to contribute to the economic recovery and the envisaged activities to be implemented in this regard during the pandemic and beyond?

Response

1. As we are all aware, the unabated spread of COVID-19, has posed, unprecedented challenges, not only to public health, but also to markets and economies. Businesses have responded, with significant adjustments, in the face of depressed demand, disrupted value chains and supply shortages. Market regulators have also, had to re-examine their priorities, and re-organise their operations. The Competition Commission of India, since the onset of the COVID-19 pandemic, 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, that consumers are not deprived of, the benefits of competitive markets in these troubling times.

2. We believe, that the Commission has an important role to play, in economic recovery, that would require, reigniting private sector output, and increasing **productivity**. The role of competition, as a key driver of, **productivity** and economic growth, necessarily implies, that the policy,

aimed at economic recovery, should incorporate, competition considerations. The value of competition, needs to be acknowledged, and embedded in policies, as in the business conduct of enterprises. Our aim is therefore, to step up our efforts, in the months to come, and develop, a sustained, and effective competition advocacy message, to ensure, a pro-competitive policy environment. To this end, the participation of CCI, in policy deliberations and engagement, with various arms of the Government, assumes great importance. Policymaking is indeed, an act of balancing various objectives, and, **encouraging competition driven efficiency in allocations is one such objective**, that should be factored in, policymaking discussions.

3. We recognised early during the pandemic, that certain forms of co-operation between competitors, are necessary to ensure essential supplies. This approach will be continued, in order to maintain – or revive – the manufacturing, and supply of essential products, severely disrupted by the pandemic. However, we will continue to monitor, the developments closely, and be vigilant in protecting, competition and consumers, in these turbulent times. The learnings thus far, will inform our actions going ahead. While effective, transparent and flexible enforcement of the law, will continue, the CCI will also promote, competition as a guiding principle, in building economic recovery. The goal will, not only be, to spur economic rebound, but also to ensure, that the steps towards recovery, do not irreversibly alter markets. Reducing

competition and competition enforcement in a crisis, can entail heavy costs.

4. However, there may be certain country specific caveats. In India, MSMEs, contribute nearly 8% of the country's GDP, around 45% of the manufacturing output, and approximately 40% of the country's exports. They are the backbone of the economy. This sector generates, significant employment, and its contribution, with respect to entrepreneurship development, especially in semi-urban and rural areas of India, is immense. The pandemic has hit this sector hard. The lockdown, due to the pandemic, impacted the supply of finished goods, procurement of raw material and availability of employees, to work in production and supply processes. The CCI has been cognizant of the economic distress, brought about by the pandemic, on the MSME sector. In this regard, we will continue to be guided, by the larger goal of facilitating, overall market correction, rather than penalising individual firms, through monetary penalties. Such accommodative stance of the regulator, has been devised, to meet the extraordinary situation, arising out of, the global pandemic. We are sure that this approach, would create the necessary confidence, in business revival, and encourage small and medium enterprises, to rekindle their business activity, while staying, on the right side of the competition law.

5. We have seen, that the pandemic has changed, the way business runs. The ubiquitous role, which technology plays in our lives, has

become even more accentuated, due to the pandemic-induced lockdown, in many countries across the world. Consumers have made a shift, to digital modes of commerce, for meeting their demands. This leaves them vulnerable, to potential harmful effects of, anti-competitive practices in digital markets, which are characterised, by high concentration of market power. Going forward, the Commission would keenly observe, the developments in the digital space, for emerging competition dynamics, and its related issues.

6. One way to support economic recovery is, to redirect enforcement resources, towards strategic markets and industries, that are at the center of, the recovery process. Digital sector maybe, one such sector. Other areas of priorities would be, to weed out cartels, from crucial physical infrastructure sectors, in order to spur economic growth.

7. The Commission during the pandemic, also continued, with its practice of understanding market dynamics, through the judicious use of market studies. The market study in the e-commerce sector was completed, last year and a self-regulation charter was issued, for the e-commerce marketplaces. During the pandemic, market studies on telecom sector, pharmaceutical sector and an issue-based study on common ownership, were initiated by the Commission. The Commission like its other international counterparts, is moving in the direction of, more expert administration and problem-solving approaches, rather than relying, solely on adjudication.

8. The pandemic has brought, the Pharma sector into focus, as timely and adequate, supply of medicines and healthcare, at a reasonable cost, has become critical, not only in addressing health concerns, but also revival of the economic activity. The Commission has received, a number of cases from the sector, in the past twelve years of its enforcement regime, pertaining mostly, to the pharmaceutical distribution segment. Many of these, **conduct related cases**, before the Commission, have shown, that the entire supply chain of drugs, is 'self-regulated' by the trade associations, resulting in market distortions. The sector's peculiar **structural features**, with their possible limiting effects on competition, and the **multitude** of cases, raising competition law issues, prompted the Commission, to take a comprehensive look, at the sector from a competition standpoint.

9. A market study was thus initiated, in October 2020, with the overarching objective of understanding, the competition landscape in the pharmaceutical sector in India. The study traversed, the specific realms, of the distribution architecture for drugs (including the emergence of e-pharmacies), trade margins, prevalence of branded generic drugs in India, and its implications for competition. The pharmaceutical sector, being a regulated sector, the study aimed to explore, the areas of regulation-competition interface, with a view to ascertain, the Commission's advocacy priorities.

10. On the merger front, as we usher economic revival, I would like to state, that CCI will continue to make, procedures on M&A front, more business friendly, and ease of business oriented, as was done during the pandemic last year. We will review our M&A processes further, to trim down procedures, and make them hassle free for parties. While doing so, we will further add analytical tools, for quicker market assessment in M&A cases.

11. Overall, the Commission will strive, to step up its engagement, with the stakeholders, by highlighting the importance of competition compliance. More than being a strict watchdog, and an intervening regulator, we would like to be perceived as, a facilitator of competition and growth. We strongly believe, that the Indian economy, has enough resilience, to overcome the challenges, posed by the pandemic, and CCI will play a vital, role as a market regulator, in its recovery.

Question 2: Last year as the pandemic suddenly struck and disrupted the normal way of doing things what were the challenges faced by your agency and how did you deal with them. Did it result in slowdown in the merger and antitrust work?

1. There would be no exaggeration in saying, that the Covid-19 pandemic, has caused, irreparable loss to man-kind, and has become, a formidable challenge for countries, around the world, since its onset in 2020.

2. The foremost focus has been, on saving lives, and getting populations vaccinated. Apart from the direct health implications, the economic impact of this pandemic, has been significant. It has left, an indelible mark, on the global economic timeline, by causing disruption of economic activities.

3. I would like to share, experience of the Competition Commission of India, in responding to the challenges, arising out of COVID-19. CCI as a market regulator, enforces the competition law in the country, in light of its motto 'Fair Competition for Greater Good'. During the Covid-19 pandemic, the flexibilities, embedded in the **statutory** framework, came handy, in implementing the law in a pragmatic manner, thereby providing confidence to the stakeholders.

4. We recognised early, that COVID – 19, has caused disruptions in supply chains, including those of critical healthcare products, and other essential commodities and services. It was realized, that businesses may need to coordinate certain activities, by way of sharing data, on stock levels, timings of operation, sharing of distribution network and infrastructure, transport logistics, R&D, production, etc. To cope with significant changes, in supply and demand patterns, arising out of this extraordinary situation, the CCI issued a guidance advisory for businesses.

5. The advisory highlighted, that the Competition Act has, in-built safeguards, to protect businesses, from sanctions, for certain coordinated conduct, provided such arrangements, result in increasing efficiencies. However, it was clarified, that only such conduct of businesses, which were necessary and proportionate, to address concerns, arising from COVID-19, would be considered. Businesses were also cautioned, not to take advantage of, the extraordinary situation, on account of COVID-19 outbreak, to indulge in anti-competitive activities.

6. Considering restrictions placed on physical movement, the CCI leveraged technology in a big way, and reoriented its procedures. This included, not only electronic filing of antitrust and combination cases, but also conducting proceedings, through virtual mode. A dedicated helpline was also set up, to attend to the queries of stakeholders, during the pandemic, for timely guidance. Relevant public notices, were

regularly put, on the website of the CCI, for information of all stakeholders. Enabling the processes with the push of technology, all internal movement of files, were moved to E-office system, this helped secured and timely e-access, to records and filings by the CCI staff.

7. Disruptions and difficulties, faced during the pandemic, triggered takeovers, mergers and acquisitions. Realizing the importance of M&As during the tough time, the CCI brought about substantive and procedural changes, to combinations regime. Promptly mechanisms were put in place, for online filings, and timely approval of mergers & acquisitions, to mitigate the adverse effect of business environment, on the overall economy. Pre-Filing Consultation facility, for combinations, was made available through video conferencing. A new revised guidance note was issued, providing clarification, to the parties to transaction, while filing Notice for their combination. The requirement to provide information, related to non-compete restriction clauses, was omitted from the notification form. As a result, parties notifying a transaction, are not bound by, general set of standards, for assessment of non-compete restrictions, providing them flexibility to negotiate, non-compete clauses. Besides, it reduces information requirements on them. CCI has recently introduced, a green channel, for an automatic approval of combinations. This is a first-of-its-kind, trust-based system, where notifiable transactions, having no overlaps, are approved upon filing. It is expected to promote, a speedy, transparent and accountable merger review process, striking a balance, between facilitation and enforcement,

and creating a culture of voluntary compliance, that supports economic growth. Over the last year, the green channel route, has gained traction, with one out of every five transactions, being filed under this route, demonstrating stakeholders' confidence. All these changes were made, in active consultation with stakeholders. As a result of our quick response, to the lockdown, due to COVID-19, we were able to put, our M & A regulation activity on track. Despite the pandemic, we have been able to approve, nearly, the same number of combination cases, as we did in the corresponding period last year. In fact, the CCI has given, timely approvals to all notifications, filed even in the lockdown period. Thus, the business-friendly policies, and **political stability**, has led to, boosting of investor confidence, and M & A activity in India. The ongoing reforms, have made India, a preferred destination, for strategic investments and M & A's activities, even in COVID- hampered economy.

8. During this period, the CCI continued to process, anti-trust cases in a smooth manner, and issued appropriate orders and remedies, across diverse sectors of the economy. The Commission was able to review, a wide range of cases, related to Bid Rigging, Automotive Sector, Power Sector, Pharma Sector, Minerals, Petro chemicals, Information Technology, Textiles, Agriculture, Real Estate, Food and Beverages that are germane, to the growth of the economy. CCI has responded dynamically, in crafting remedies, in the wake of COVID-19, and the consequent disruptions, brought by it in the economy. The objective of

the Commission, all along has been, to correct the market distortions, and to discipline, the behaviour of the market participants.

9. Another key area of the Commission's work, during pandemic times has been, advocacy, including focus on making public procurement competitive. It is vital in ensuring, that public money is spent efficiently. Public procurement triggers, a multiplier effect in the economy, that propels job creation, innovation and economic growth. Public procurement generates, businesses for private enterprises, and is having a significant bearing, on their scale of operation, and competitiveness. To take competition advocacy in public procurement, at the provincial level, the Commission introduced, the State Resource Person Scheme last year, whereby Resource Persons are engaged in each State, to train State and State Owned enterprises procurement officials, equip them with competitive tender design tools, and competition assessment of bids and tender outcomes. CCI conducted 87 advocacy programmes, for state government officials and state owned enterprises, during the pandemic.

10. One of the other advocacy activities, undertaken by the Commission, during the pandemic, pertains to, providing inputs in formulation of public, policies to make them competition compliant.

11. I am happy to say, that we have been able to maintain efficiency, in our operations, and help the stakeholders and the economy, in these trying times.

Thank you!