

Regulatory oversight needs to be regularly fine-tuned with changing times- CCI Chairperson

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Regulatory oversight should be regularly fine-tuned with changing times to suit the dynamic business environment, especially in the present digital world, stated Shri Ashok Kumar Gupta, Chairperson, Competition Commission of India (CCI) at the 6th International 2-Day Virtual Conference-2021 on 'Competition Law: Risk, Challenges and The Way Forward', organised by the Associated Chamber of Industry and Commerce (ASSOCHAM).

Speaking at the event, Shri Gupta stated that competition is the life force of markets that creates the best incentives for businesses to increase efficiency, drives their productivity and fuels innovation.

"Despite its all-encompassing benefits, healthy competition may not emerge on its own. Even the most ardent votaries of a market economy recognise that liberalised markets cannot be presumed to be competitive and efficient," he said.

Shri Gupta explained that 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. "The objective of CCI is to bring about market corrections where fair competition is found to be hindered due to anti-competitive conduct," he said.

According to Shri Gupta, data hegemony by some digital companies may lead to an "attention economy", in which Big Tech players work to capture users' attention, build profiles of their choices and habits, then sell those profiles to advertisers. "The CCI has a very important role in ensuring that these platforms remain neutral, offer a level playing field and allow enterprises, big and small, that access consumers through these platforms, to compete on the basis of merits," he pointed out.

He explained that in these fast-evolving and dynamic markets, a regulator's task is much like hitting at moving targets. "The regulatory stance needs to be nuanced, and the enforcement toolbox needs to be adapted to these changes so that the instrumentality remains fit for purpose. The challenge is to keep abreast of the developments in these markets and continue to evolve and refine the tools," Shri Gupta mentioned.

He further added that this will help make timely interventions and strike a fine balance so that efficiency and innovation are not stifled while markets are free from anti-competitive practices.

Mr Sumant Sinha, senior vice-president, ASSOCHAM, stated that due to the COVID-19 pandemic, consumers have made a shift to digital modes of commerce for meeting their demands. "This leaves them vulnerable to anti-competitive practices in digital markets, which are characterised by high concentration of market power. This is a space that the CCI would observe and monitor more closely," he said.

Mr Sinha said that the pandemic has brought into sharp focus the critical role played by the drugs and pharmaceuticals sector. "We have seen how prices of critical drugs shot up during the second wave.

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It is for this reason that the pharmaceuticals sector would need closer monitoring. In this context, we welcome the Market Study of the Pharmaceutical Sector that was conducted recently by the Competition Commission,” he said.

Speaking on the wave of Mergers and Acquisitions during the pandemic, Mr Sinha stated that the companies that are in distress are seeking knights in shining armour to rescue them. “We, in ASSOCHAM would urge the Competition Commission to continue to simplify the rules and regulations connected to M&A activity to give the much-needed boost to the economy,” he added.

Mr Deepak Sood, Secretary General, ASSOCHAM explained that changed scenario may lead to cooperation with competitors on one hand and adoption of imposition of unfair and/or discriminatory prices or conditions. “The Competition Commission has a critical role to play. Companies need to be mindful of the fact that the provisions of the Competition Act, 2002 continue to apply even during tough times, perhaps even more so,” he said.

Mr Sood stated that despite the challenges, the Competition Commission has stood the test of time and moved along with stakeholders to the best of their abilities. “In fact, the Commission issued an “advisory” as early as on 19th April 2020 highlighting as to how it would help enterprises meet the challenges of the new normal of demand-supply mismatch within the overall framework of the Competition Act,” he said.

Mr. Manas Kumar Chaudhuri, Chairman, ASSOCHAM, National Council on Competition Law, stated that the companies and other stakeholders have additional responsibilities to meet the challenges of the Competition Act while doing normal business on day-to-day basis. “COVID-19 pandemic may have given some limited and temporary “safe harbours” but in reality there is none. Thus, strict internal compliance and building robust documentary evidence, corroborating business justifications, shall continue to mitigate the unforeseen risks, if any,” he informed.

Mr. Karan Singh Chandhiok, Co-Chairman, ASSOCHAM, National Council on Competition Law stated that the National Council has been at the forefront of the competition law policy debate. “This conference is in continuation of that philosophy. Over the next two days we will discuss, debate, and deliberate on the most contemporary issues on competition law. It is our hope that we will have heard all the voices in the room and have a sense of some direction on where, when and how to enforce competition law in the new industrial age,” he said.

Mr. David Andersen, Partner In Charge, Brussels Office- BCLP LLP said, Creating a competition regime that allows for agreements that promote sustainability but are not anticompetitive is the sweet-spot we are all looking for in this still developing sustainability-competition law debate. He said, competition agencies worldwide are still developing their positions but largely fall into the “reformer” camp (looking to expand what competition law allows to assist sustainability efforts) and the “retainer” camp (looking to use existing tools and standards to promote sustainability goals). The Netherlands, Greece and Austria are leading the reform camp while the European Commission, Germany and likely the US are in the retainer camp.”