National Conference on Economics of Competition Law

Competition law is intrinsically linked with the discipline of Economics. Competition law essentially involves the study of markets to ensure that there is fair competition in markets and that this competition benefits consumers. At the day-to-day level, applying competition law involves identifying markets and assessing whether competition is working well in those markets. The economists carry out these studies from various perspectives including allocation of goods and services to different consumers in markets, how consumers benefit when there are more or fewer competitors, why firms behave in certain ways, impact of any merger, among others. Understanding economics, thus, gives clarity on how markets operate and if the behaviour of firms would result in fair competition in the market thereby benefitting consumers or otherwise. Economics is, therefore, being recognised as an essential tool to assess and analyse markets. At the Competition Commission of India (CCI), we are well aware of the importance of economics in competition law and thus in order to cater to the need for a meaningful dialogue between law and economics so that the legal principles and economic perspectives are harmonised towards efficient, precise and prudent decision-making, we started the National Conference on Economics of Competition Law in 2016.

Since then, the CCI has organised five National Conferences on Economics of Competition Law. The latest being the 2020 Conference which was organised on 6th March 2020. The Conference endeavours to develop and sustain interest in the economics of competition law and create a critical mass of antitrust economists. The Conference brings together scholars, practitioners, academicians and experts working in the area of Economics of Competition Law.

1st National Conference on Economics of Competition Law

Shri Jayant Sinha, Hon’ble Minister of State, Ministry of Finance, Government of India inaugurated the 1st National Conference on Economics of Competition Law held on 3-4 March 2016 in New Delhi. The
Inaugural Session was addressed by Shri Tapan Ray, Secretary, Ministry of Corporate Affairs. Shri Devender Kumar Sikri, Chairperson, CCI made the Introductory Remarks. Shri Augustine Peter, Member, CCI delivered the Welcome Address.

2nd National Conference on Economics of Competition Law

Smt. Nirmala Sitharaman, the then Hon’ble Minister of State (Independent Charge) for Commerce and Industry, Government of India inaugurated the 2nd National Conference on Economics of Competition Law held on 2-3 March 2017 in New Delhi. Shri Arvind Subramanian, Chief Economic Adviser to the Government of India delivered the Keynote Address at the Inaugural Session. Shri Devender Kumar Sikri, Chairperson, CCI made the Introductory Remarks.

During the course of the Conference, twelve research papers on a diverse range of issues relating to the economics of competition law were presented by senior economists from various research institutes and institutes of higher learning of the country.

3rd National Conference on Economics of Competition Law

The 3rd National Conference on Economics of Competition Law was held on 5th April 2018 in New Delhi. The Conference was opened by Shri Augustine Peter, Member, CCI. Shri Devender K. Sikri, Chairperson delivered the Inaugural Address. Dr. Aditya Bhattacharjea, Professor, Department of Economics, Delhi School of Economics delivered the Keynote Address.

Apart from the Inaugural Session, the Conference also featured two technical sessions where research papers were presented and a special session on ‘Merger Control – A Practitioner’s Perspective.’

4th National Conference on Economics of Competition Law

The 4th National Conference on Economics of Competition Law was organised on 1st March 2019 in New Delhi. Dr. Krishnamurthy Subramanian, Chief Economic Advisor, Government of India was the Keynote Speaker at the Conference. Shri Ashok Kumar Gupta, Chairperson, CCI delivered the Special Address. Dr. Sangeeta Verma, Member, CCI made the Opening Remarks. The Conference, in addition to the Inaugural Session, had two technical sessions where research papers
on economics of competition law were presented, and a Special Session on ‘Contemporary Antitrust Issues and a Plenary on Digital Markets: Antitrust and Beyond’.

5th National Conference on Economics of Competition Law: Summary of the Proceedings

The 5th National Conference on Economics of Competition Law was organised on 6th March 2020 in New Delhi. Dr. Bibek Debroy, Chairman, Economic Advisory Council to the Prime Minister delivered the Keynote Address. The Conference consisted of a Plenary Session on Competition for the Market, a Special Session and two Technical Sessions. Six papers were presented during the technical sessions covering a wide range of relevant topics. A brief overview of the sessions is presented below.

Inaugural

Dr. Sangeeta Verma, Member, CCI opened the Conference. Dr. Sangeeta Verma, in her Opening Remarks, emphasised that the discipline of economics provides a common enforcement framework to global competition authorities but the application of this economic framework is constrained by national contexts, the level of economic development and the market realities. Referring to the e-commerce market study conducted by the Commission, she stressed on the importance of market studies for facilitating an evidence-based approach to antitrust policy. According to her, market studies would go a long way in achieving better market outcomes and mitigating potential competition concerns without the need of antitrust intervention.

Shri Ashok Kumar Gupta, Chairperson, CCI, in his Special Address, emphasised on the need for antitrust authorities to catch up with the economic realities of the time. “In digital markets, enforcement priorities and remedies should generate optimal deterrence of anti-competitive conduct while preserving the incentives for innovation,” he said. Highlighting the Commission’s currently ongoing advocacy initiatives, Shri Gupta mentioned that seventeen legislations/rules/regulations were undergoing an assessment from a competition perspective to identify inadvertent policy-induced restrictions on competition, if any. “On the combination review front, around 30 per cent of the cases notified to
the CCI this year were under the recently introduced deemed approval system of Green Channel,” he apprised, while adding that the Commission hopes that this channel will promote a speedy and transparent process for approval of combinations as also create a culture of self-compliance.

Dr. Bibek Debroy, Chairman, Economic Advisory Council to the Prime Minister, in his Keynote Address, highlighted that the issues of competition extend beyond the ambit of competition law. “Functioning of markets and the extent of competition are predicated on the institutional structure and system of laws that undergird markets,” he said, while adding that there are elements in several statutes in India that inhibit competition. Economic reforms, he emphasised, have almost always been about markets and increasing competition. “Nonetheless, while entry has been eased in manufacturing pursuant to economic liberalisation, barriers still exist in services as well as agriculture,” he pointed out. Referring to the structure-conduct-performance framework, he mentioned that the market structure and market shares do not provide a holistic picture of competition. He further alluded to the inherently dynamic nature of markets, and also underlined the need to account for the level of evolution of markets in India in comparison to the markets of the developed economies. “Recognition of these differences is important for the application of competition principles,” he emphasised. In his final remarks, he cautioned against looking at markets and conduct as the two extreme outcomes of perfect competition and monopoly. He thus wished to call attention to the fact that allowing for various strategic market interactions in oligopolistic markets would help harness innovation for consumer welfare. Moreover, self-regulation by industry could preclude the need for regulatory intervention. Government or the CCI needs to step in when the requisite action is not taken by the industry. In this context, he alluded to Kautilya’s Arthashastra, during which markets used to function by self-compliance rather than government’s intervention.

**Plenary – Competition for the Market**

The plenary session was chaired by Shri Ashok Kumar Gupta, Chairperson, CCI and was moderated by Ms. Payal Malik, Advisor, CCI. Mr. Tuhin Kanta Pandey, Secretary, Department of Investment and Public Asset Management (DIPAM); Mr. Ajit Pai, Consultant to Vice Chairman, NITI
Aayog; Dr. Sebastian Morris, Professor, Indian Institute of Management Ahmedabad (IIMA); Mr. Ashok Kumar Agrawal, Executive Director (Tech), Airports Authority of India; Mr. Pradeep S. Mehta, Founder Secretary General, CUTS International; and Mr. Shailesh Pathak, CEO, L&T Infrastructure Development Projects Limited were the panellists in the session.

Ms. Payal Malik initiated the discussion by highlighting the issues faced by the Commission during enforcement, i.e. operators who have been awarded concession rights of certain infrastructure which include building up of the physical asset, operating the asset and selling the service to the government, indulged in anti-competitive conduct in the downstream markets of provisioning of services relating to the physical asset. She stated that all stages of structuring, granting and implementation of concession agreements are subject to jurisdiction under the CCI.

Another issue observed was that of the design of bid documents for the purpose of an outright sale of public assets such that sufficient competition is ensured in the market for the public asset in question. She emphasised the importance of an incentive-compatible design for that bid which could ensure sufficient market participation and market discipline, while simultaneously improving the efficiency and bringing about the proficiency of management and price discovery in sale of that asset.

Shri Ashok Kumar Gupta reiterated the important issues observed by the Commission. He highlighted that “Competition for the Market” occurs when products and services exhibit characteristics such that “Competition in a Market” is not feasible in such scenarios. He gave examples of natural monopolies and public-funded monopolies. He stated that the success of the process lies in the design of the concession agreement which brings us to the broader question to be addressed, i.e. how should a concession agreement be designed so as to maximise efficiency and minimise post-award abuse. He emphasised that the concession granting authority should foresee all the concerns which could arise at the implementation stage and incorporate the same in the concession agreement itself. The core elements of a concession agreement include the length of contract, horizontal or vertical bundling and splitting of services, renegotiation possibilities, etc., all of which require far-sighted analysis.
Another issue that was highlighted was “renegotiation” where the concessioner can take advantage of loopholes in a particular clause and indulge in opportunistic renegotiation which could nullify the benefits of competitive bidding. He also stated that competition law applicability should be incorporated in the agreement itself.

Dr. Sebastian Morris mentioned that one of the greatest developments in modern times has been to breaking up of natural monopolies and cited the example of electricity to substantiate his claim. He stated that in this domain of created markets, competition for the market is also important such that there is a link between competition in the market and competition for the market. He further stated that anticipated competition in the market can inform bids and lead to risk reductions. He explained that in India, we are prepared to have full-fledged electricity markets and it can lead to tremendous benefits.

Mr. Pradeep S. Mehta explained that there are two types of concessions, i.e. policy concessions and contractual concessions. In contractual concession, he spoke about civil aviation, i.e. contractual concession agreement in the context of airports where the jurisdiction defined in law is very limited in terms of its scope. He mentioned that downstream competition is equally important to protect. In his concluding remarks, he highlighted, the need to ensure adherence to the clause of competition in a concession agreement.

Mr. Ajit Pai, at the very outset, defined objectives of the entire process that NITI Aayog is associated with so as to achieve its broader goal of making public assets more productive via investment, asset monetisation, asset recycling and PPP. He stated that competition has very significant implications in each of these areas. In this context, he explained the two goals for the CCI, i.e. maximising consumer benefits and ensuring fairness in the process.

Mr. Shailesh Pathak spoke from a private sector perspective. He is a part of the development team of L&T. He stated that the biggest problem faced by them is that they signed over 25 concession agreements with different agencies of the government but not a single has been implemented in its entirety till date. He went on to highlight that lawyers are creating products which will probably never be put to use. He was quick to point out the
emerging fascination for infrastructure investment trusts (InvITs) which have been getting a leg up from the government of late.

Mr. Ashok Kumar Agrawal spoke about civil aviation. He explained how civil aviation is a service with two verticals, i.e. an operational part (aviation activity) and a non-operational part (passenger activity). He mentioned that performance of airports in India is monitored by many bodies, i.e. national as well as international such as the CIA, etc. Also, the civil aviation in India abides by the international norms and the government is taking necessary steps to further improve the performance at large.

Mr. Tuhin Kanta Pandey spoke about the mandate of DIPAM that encompasses competition in the market rather than for the market. He mentioned the two broad pillars in disinvestment policy, i.e. Strategic Disinvestment and Sale of Minority Stake. Strategic disinvestment broadly refers to the delegation of management control and involves parting away with the organisation’s assets. He went on to explain how the process is carried out in DIPAM. The starting point of the process is when NITI Aayog looks at a multitude of factors like national security, sovereign functions, market imperfections, etc., irrespective of whether or not the disinvestment being pursued is a strategic one. Based on this evaluation, it decides whether it needs to be treated as a priority or not. DIPAM then decides as to whether partial or complete disinvestment is required. In this process, all the transactions that are carried out require approval of the CCI as well as the concerned ministry. He highlighted that we should understand how only ownership changes hands between different sectors and everything else remains within the economy. He concluded by saying that “It is not the business of the government to be in business.”

The Chair concluded by summarising the points of the speakers and talking about issues faced by the Commission which primarily revolve around information asymmetries and public-funded monopolies.

This was followed by two technical sessions in which a total of six papers were presented.