

FOREWORD

It is rightly said that when a big tree falls, the ground shakes, the squirrels fall out of their burrows, the world stands up and takes notice. For all of us who form part of the competition bar in India, the first of such moments was the Competition Commission of India's momentous 2011 decision in *DLF*. A brand which was riding high on its recall from sponsoring the glitzy Indian Premier League was suddenly hammered by a massive INR 600 crore plus regulatory fine. This decision is criticized as regulatory over-reach in many quarters – but there is no denying that it put the CCI on the global antitrust map. Those of us who were working in the fledgling competition practices of the major Indian law firms in that year remember how foreign law firms and corporates queued up to inquire about the new sheriff in town, and its powers.

The Indian competition law regime is a nascent one, having started only in 2009. However, in its nearly 8 years of operation thus far, the CCI has evolved as one of the foremost antitrust regulators of the developing world. Both the CCI and the Competition Appellate Tribunal have shown a willingness to embrace global best practices of competition regulators in order to evolve Indian competition law jurisprudence. Issues such as relevant turnover – a hotly contested concept till date – were imported from European Union law by the COMPAT in the *Aluminium Phosphide* case. Closer to home, the COMPAT's disciplining approach towards due process and procedural fairness at the investigation stage has been welcomed by the industry and practitioners alike.

One of the defining aspects of competition law is its frequent overlap with the realms of other regulators. An example of this was the differing views of CCI and SEBI on the concept of 'control'. A titanic clash between regulators was avoided when SEBI, in *Jet/Etihad*, skillfully drew a distinction between its purpose and that of the CCI, thus explaining these divergent views on control. Competition law also frequently trespasses into economic policy in general. Some sectors are especially vulnerable to antitrust action, which are consequentially referred to as 'low-hanging fruits'. Usually, as is the case for the cement sector, this is because of the inherent structure of the market itself. On the other hand, some sectors, such as pharmaceuticals, face increased scrutiny due to public policy reasons. In fact, some years ago, the powers-that-be had designated the CCI as the nodal regulator to regulate the pharmaceutical sector. It is argued that an imminent excessive pricing antitrust action against stent manufacturers was narrowly avoided when the government swung its executive axe and designated stents as 'essential medicines', thus imposing a price cap. Having

worked with the CCI on many pharmaceutical matters, be they antitrust or merger control cases such as *Pfizer/Hospira* and *Abbot/Mylan*, one can state with certainty that the officers at the CCI are well versed with how this sector operates. Given this background, issues which are arising in other jurisdictions, such as ‘pay-for-delay’, may one day need to be conclusively adjudicated in India as well. It would be interesting to see how the CCI puts its institutional body of knowledge to work in such cases.

Notwithstanding the fact that the CCI is a new regulator, cutting edge antitrust issues have come to its doorstep far faster than most practitioners thought they would. Cases on high-technology markets, standard essential patents and sham litigation, have all arrived before the CCI. As a much-networked regulator having forged ties with regulators from advanced jurisdictions, it will be interesting to know how the CCI deals with such issues.

In sum, the Indian competition law space is characterized by the twin attributes of nascence, and the willingness to rapidly evolve its own practices and jurisprudence. The competition bar and academia in India is thus required, in many senses, to become equal partners in this journey. In this context, the Indian Competition Law Review is a welcome initiative by the Centre for Competition Law and Policy, National Law University Jodhpur.

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