

A STUDY OF INTERRELINKAGES OF CORPORATE GOVERNANCE ALLIGNED WITH COMPETITION LAW

Dr Namita Rajput*

Ms Shweta Satija**

Ruhi Kakkar***

ABSTRACT

The relationship between Competition and Corporate Governance explores how Governance structure of an organization incorporate the policy of Competition and to identify the possible concerns which have come up in many jurisdictions in relations to Compliance Programmes. This paper tries to discover the connections between Competition and Corporate Governance and how companies can bring into line the policies of Competition laws into Corporate Governance structure. The research-methodology implemented is chiefly Non-doctrinal and eloquent. The sources of data include secondary sources like Articles, books and Journals. Various search engines and websites also provided the vital information. The paper concludes that designing a model to evolve Indian competitiveness essentially requires a gentle acknowledgement of the current business environment along with a positive approach to future development which can be developed by a close connect between profit maximization, stakeholder optimization and ethical competitiveness in order to create sustainable growth. Profit maximization, market leverage and global competitiveness must take an equal precedence with ethical behaviour and Corporate Governance. The enterprise must analyze stakeholder priorities to develop a strategy for strengthening competitiveness i.e. it must include the compliance of Competition laws into their Governance structure so that the enterprises can avoid contravene the provisions of Competition law.

Key Words: Competition law, Corporate Governance, ethical behaviour, global competitiveness.

SECTION 1: INTRODUCTION

* Associate Prof in Commerce, Sri Aurobindo College (M), University of Delhi

** Assistant Prof in Commerce, Shamlal College (M) University of Delhi

*** Assistant Prof in Commerce, Bharti College, University of Delhi

The relationship between the Corporate Governance and Competition is very intricate and composite, but crucial one to the design of apt economic policies, together with Competition policy. This relationship between Competition and Corporate Governance explores how Governance structure of a company incorporates the guidelines of Competition and to identify the possible concerns which have come up in many influences in relations to Compliance Programmes. It is also relevant in the context of the economic crisis, as a failure can be elicited in the market if incentives are not aligned for the long term and instead focus on short-term goals. Business Directory defines Corporate Governance as the framework of rules and practices by which a board of directors ensures accountability, fairness, and transparency in a company's relationship with its all stakeholders (financiers, customers, management, employees, government, and the community). The relationship between the Corporate Governance and Competition is a rather multifaceted, but vital one to the design of suitable economic strategies, including Competition policy. The relationship between Competition and Corporate Governance is to discover how Governance assembly of an organisation must integrate the policy of Antagonism and to categorize the conceivable concerns which have come up in many dominions in relations to Compliance Programmes. It is also appropriate in the framework of the economic predicament, as a disappointment can be triggered in the markets if benefits are not associated for the long term and instead spotlight is on short term goals. Competition is classically regarded as the chief strength that disciplines companies by keeping them reactive to their market, suggesting them to implement competent practices (including high-quality Corporate Governance engagements) and cheering them near exploiting effectiveness. Competitive Markets needs complementary Governance in bid to avert the self-destruction of Competition.

Competitive markets by and large symbolize the unsurpassed accessible harmonization machinery for profitable deeds. More accurately, aggressive markets donate to finest portion, originality, consumer dominion, financial independence and elasticity and sensitivity of the financial system. Distinguish Corporate Governance principally concerns the liaison between officers, directors and shareholders. The consequence is two moderately detached bodies of regulation, with a times Competition Policy strength and Corporate Governance weaker and the reverse. Competitive commerce surroundings and suitable good Corporate Governance have a link, the ex fuelling, influencing and impacting the second and the same looking out to congregate the challenges of the ex. Corporate Governance thus needs to trend itself to rally

Competition and avoid enterprises that make a fuss of (inadvertently or otherwise) anti-competitive practices. Governance desires to unite the interests of consumers and economic progress. Competition exploits incentives to modernize, engage in novel promising activities, offer better amenities and wider choices at lower values. The continuous pursuit for efficiency and development is not merely a consequence of the competitive progression, it is the competitive process, where companies- small, medium-sized or large- aim at becoming as competent as possible, rather than on surviving by other (illegal) resources, their competitiveness will rise whether they function in their domestic market or in the global stage. The need for employment of good Corporate Governance policy is not only societal, but there are good commercial reasons also. The Companies enjoying Governance habits are more likely to profit on competitive advantage over their counterparts.

Competitive business environment and appropriate good corporate governance have a nexus, the former stimulating, controlling and impacting the latter and the latter seeking to meet the challenge of the former. For corporate governance, inhering competition principles in policy making would appear sine qua non. Competition has a very strong association and relationship with economic development. Corporate governance (designed to home in corporate performance leading to economic development), consequently needs to fashion itself to meet competition and to steer clear of indulging in (inadvertently or otherwise) anti-competitive practices. Corporate governance needs to inhere and watch the interests of consumers and economic development. Competition laws have their origins that date back to ancient Roman times. As civilization matured and market matured, this area of laws has also matured from the punitive edict under Emperor Diocletian in 301AD. Under Emperor Diocletian, the death penalty was imposed on anyone who violates a tariff system, for example, by buying up, concealing or scheming to control the supply and price of everyday goods. That edict was a further extension of the 'Lex Julia de Annona', enacted during the Roman Republic around 50BC to protect the corn trade (Wilberforce et al., 1966). Thus, competition law has its roots not only due to liberalization of markets to allow competition but also providing social protection with an embedded public policy.

The benefits that the enterprise accepts from society imply certain errands, including key rudiments of Corporate Governance, such as "clarity, honouring of agreements, and value for the traditions of the larger social and collective bid."The augmentation of the observation of societal

needs by enterprises, in terms of outspreading their responsibilities outside the needs of the stakeholders, can become an imperative advantage for the company. It can shape new exceptional competencies characteristic from its competitors and can harvest good character and trustworthiness for the enterprise.

SECTION 11: OBJECTIVES OF THE STUDY

The present study tries to discover the connections between Competition and Corporate Governance and how companies can bring into line the policies of Competition laws into Corporate Governance structure and how competition laws deemed to secure a competitive marketplace and thus protect the consumers from unfair, anti-competitive practices by aligning with the corporate governance practices.

To achieve the objectives of the study the paper is divided into following sections .Section 1 i.e the present section gives the insights of competition and its relationship with corporate governance, Section 11 gives objectives of the study, Section 111 gives the detailed analysis of governance linked with competition and gives detailed view of their interrelationships. Followed by Area of Governance in Competition Law, compliance programme and monitoring system, and corporate reporting. Section IV gives conclusions of the study and references form the part of last section i.e section V.

SECTION III ANALYSIS AND INTERPRETATIONS

GOVERNANCE LINKED WITH COMPETITION

Corporate Governance

The word ‘Corporate’ is related by legal portrayal for the operation of a business. Likewise, the word ‘Governance’ means exercise of Power, Direction or Control. Thus, the notion of ‘Corporate Governance’ is the arrangement by which the administration of a business entity guides and controls the doings in the best interest of the investor. Corporate Governance has competing explanations, but in Margaret Blair’s approximation encompasses the “the whole set of legal, cultural and institutional provisions that determine what overtly traded corporations can do, who controls them, how that control is drilled, and how the dangers and returns from the doings they take on are allocated” .OECD originally defined Corporate Governance as the system by which business corporations are directed and controlled. The Corporate Governance

structure stipulates the allocation and division of rights and responsibilities among diverse accomplice in the company, like the Board, Managers, Shareholders and other Stakeholders and spells out the rules and procedures for making decisions on Corporate Affairs. By doing this, it also provides the structure through which the Company aims are set, and the ways of attaining those purposes and monitoring recital.

Competition

As per Oxford dictionary, the meaning of Competition is the activity or condition of striving to gain or win something by defeating or establishing superiority over others. Competition in the market denotes sellers motivated independently for buyer's support to exploit profit or other business aims. Competition makes business more efficient and offers broader choice to customers at lower prices. This safeguards finest utilization of available possessions. It also enhances consumer well-being since consumers can buy more of better quality products at lower prices. Fair Competition is advantageous as it will lead to enrichment of economic liberty and minor blockades to entry for new firms and opponents. In the manner of addressing, Competition can be equated to what is adversative to monopoly. While monopoly is malicious to consumer appeal and free and reasonable trade, Competition pay for wide fluctuating benefits to the consumers. Adam Smith (1776) captured this unselfishness in his famous book "Wealth of Nations", when he observed: "By a perpetual monopoly, all the other subjects of the State are taxed very absurdly in two different ways, first by the high price of goods, which, in case of free trade, could be bought at much cheaper rates and secondly, by their total exclusion from a branch of business, which it might be both convenient and profitable for many of them to carry on."

Linkages of Competition and Corporate Governance

As per definition of Corporate Governance given by the Institute of Company Secretaries of India (ICSI) "Corporate Governance is the application of best Management practices, Compliance of law in true letter and spirit and adherence to ethical standards for effective Management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders." Basically if we ponder on the definition of Corporate Governance, the following components of the definition creates a linkage between corporate governance and competition law like adherence to Ethical Standards; compliance of law in true

letter and spirit; discharge of Social Responsibility for Sustainable Development; and best Management Practice. There is no uncertainty that there is precise connection between the internal Governance apparatus and the functioning of an enterprise. In endorsements of numerous Boards set up on Corporate Governance in dissimilar fractions of the domain it was watched that the Corporate Governance background in many countries of the world is principally inward-focused but it has to be recalled at the same time that peripheral Governance apparatus including Competition, is also of fundamental importance, though there has been a very little consideration in communication between internal and external Governance mechanism in evolving market thrifits.

For the purpose of studying Governance aspects of an enterprise, while it is convenient to consider the impact of numerous variables on the routine of the Competition, it is also convenient to learn the shared exchanges of these variables between themselves. It is likely that these variables coerce the administrative choice while acting individualistically or even they can provoke managers to pacify their appeal in contradiction of the interests of shareholders. At the same time, these variables may be corresponding or compatible to each other. Particularly, Competition and Corporate Governance variables may shift together in the same trend or occasionally even in opposite track, thereby affecting output of the Corporation. When their drive is in the same direction, they are said to be corresponding to each other.

The class of Competition and effectiveness is complementary to each other. To safeguard good Corporate Governance, the Competition Policy should be absorbed on nurturing Competition in the economy. It is contended that Competition among the enterprise(s) can perform as the most effective mechanism for guaranteeing the Corporate Governance. It can absolutely be appealed that Competition stipulates a yardstick for measuring the act of a Company from inside, i.e. the management. Competition puts pressure on the participating factors, in particular on enterprises, and it is this pressure which is predominantly responsible for the efficiency and welfare gains due to competitive markets.

Product of Corporate Governance and Competition

The product of Competition and Corporate Governance can be examined in three parts i.e.

1) *Sustainable Development of Business Entity*: Commercial Sustainability signifies new viewpoint as an option to the customary growth and profit enlargement model under which justifiable development comprising environmental protection, social justice and equity and

economic development are given more noteworthy focus while distinguishing simultaneous corporate growth and profitability. Commercial Sustainability is a business method towards creating shareholder worth in long run. Competition Policy seeks to maintain and encourage the competitive process with a view to promoting economic efficiency and consumer welfare. Its objective is to spike firms and individual troupes in the market to contest with each other to protect the investment of customers in terms of, inter alia, For Corporate Governance; therefore, inhering Competition philosophies in policy making would seem to be sine qua non. Encountering Competition means enhanced functional efficiency, cutting costs, keeping down administrative incidentals and managing to pay for quality products at reasonable prices to the consumers. Corporate Governance should certify that the Corporate do not make a fuss of anti-competitive practices, despite the attraction to cartelise and fix prices, a business entity or firm should not lend the aforementioned to join other entities in the same line of fabrication or service with the objective of conspiring with them and driving the market with sophisticated prices and lower output. In the long run, firms which trust in good Corporate Governance are expected to progress in the market and also to adopt a vigorous Competition in the market.

2) *Open-minded Competition in Market:* Open-minded Competition set criteria relating to transactions within the business market and also dealings between the business community and consumers. It develops an environment in which all businesses- large, medium and small- can work according to the similar set of evidently defined rules and standards. Since Competition encourages and impacts Corporate Governance, the Strategy of Governance in an organization must incorporate strategies in the shape of Open-Minded Competition where businesses are done in a market determined economy and they perceive certain rules which are calculated to help the economy cultivate. Where Competition is not enough or sub-optimal, Corporate Governance tends to become slack, with decision making in business subjects by enterprises tardy or postponed.

c) *Consumer Interest:* All Corporate activities end up with the consumer. Consumer welfare and interest aim at uninhibited interaction of inexpensive forces, full material advancement through balanced apportionment of economic resources, accessibility of goods and services of acceptable and good value at judicious prices and finally a objective and fair arrangement to the consumers. Corporate Governance has to reason these, if it has to live up to its errands by the country and its subjects. Corporate zone is not only made up of MNC's but also is frequently instituting of small

and medium industries. With rise in number of Small and medium enterprises, all corporate need to incorporate Competition principles in their Governance even though they are big, medium or small in size and workings.

Area of Governance in Competition Law : Section 3 (Anti Competitive Agreements):

Section 3 prohibits companies from entering into agreements in respect of the production, supply, distribution, storage, acquisition or control of goods or provision of services which cause or are likely to cause an appreciable adverse effect on Competition in India. Section 3 covers two kinds of agreements, viz., Horizontal and Vertical.

1. Horizontal agreements are usually agreements between direct competitors, and therefore have the propensity to cause the greatest harm to Competition. For this reason the Competition Act states that certain horizontal agreements are presumed to cause an appreciable adverse effect on Competition. These relate to agreements to fix prices, control output, share markets or customers, and bid rigging.

2. Vertical agreements are those between entities in different levels and include tying, exclusive supply or distribution agreements, and resale price maintenance. These agreements may be pro-competitive and hence are to be judged by the rule of reason.

Section 2(3) of the Competition Act,2002,Section 3(4) of the Competition Act,2002.The area of Governance in Section 3 for Competition Law purposes is to examine the term “Agreement” which has a very wide meaning and includes all types of collusive arrangements and understandings between two or more competitors. The Governance arrangement of the organisation must be so intended to keep an inspection on the contracts which have been arrived into by the organisation with merchants, suppliers, clients etc, so that the contracts agreed upon or finalised by the management/directors in the Board Meeting, do not disrupt any of the provisions of the Section 3 of the Competition Act, 2002.

Section 4 (Prohibition of abuse of dominant Position): Section 4 prohibits the Abuse of Dominant Position by an enterprise. This results when swearing of a leading position would weaken the capability of the competitors to compete as they would and consumers would, as a result, have to endure greater prices or abridged quality. The abuse of a leading position is in one way prying with Competition in the market. Stated simply, ‘abuse of dominance’ refers to the conduct of an enterprise that enjoys a ‘dominant position’ which is defined under the Indian

Competition Act, 2002 (the Act) to mean a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to –

- Operate independently of competitive forces prevailing in the relevant market; or
- Affects its competitors or consumers or the relevant market in its favour.

The Indian marketplace is a highly concentrated one depending on how the relevant market is defined. This is why one of the main concerns of the Competition Act (as with any Competition law in the world) is regarding enterprises that are in a position to exercise a considerable amount of influence in the market. This ‘market power’ is measured in the relation to the product in question (includes ‘goods’ and ‘services’) and a geographical area for that product. In the Act therefore, the relevant market is defined in terms of the ‘relevant geographic market’ and the ‘relevant product market.’ “Relevant Geographic Market” and “Relevant Product Market” defined under Sections 2(s) and 2(t) of the Competition Act. These stipulations will be interpreted along with Sections 19(6) and 19(7) which state the limits which the CCI has to take into credit while influencing these markets.

Section 5 (Regulation of Combination): Section 5 of the Competition Act trades with bendable ‘Combinations.’ An arrangement for the resolutions of the Competition Act covers three types of communications when the whole worth of assets or income of all the parties to the Arrangement cross the threshold limits specified in Section 5 –

- Acquisition of shares, voting rights or assets by a person or enterprise of another;
- Acquiring of control by a person over an enterprise;
- Merger or amalgamation between or amongst enterprises.

Area of Governance which primarily involves determining whether or not a proposed transaction triggers the mandatory notice filing requirement. In terms of Section 6(2A), no combination can take effect unless the CCI has passed an order to that effect or the passing of 210 days from the date of filing of a valid notice with the CCI. Consequent to the 2007 amendments to the Competition Act, India now has a ‘Mandatory Notice Filing System’ and is a “Suspensive Jurisdiction” which essentially means that no proposed combination can be consummated unless and until the CCI approves the same. Approval is mostly a requisite before finishing point of the intended absorption and must be noted beforehand of any consummation. The Competition Compliance Checklist can be premeditated by an enterprise so that the Board of Directors can evaluate the contracts started during each quarter and the status of compliance can be verified

under the applicable stipulations mentioned as per the Competition Act, 2002. The Checklist for quarterly compliance can be designed as mentioned in Annexure-1

COMPETITION COMPLIANCE

Objectives of Competition Compliance

It is possible to outsource the requisite services of the Competition Compliance Programs (CCPs) which are necessarily required to be set up within the organization. Fundamentally, CCPs are essential as all enterprises are preferred to behave in tandem with the Competition laws of the state. The primitive purposes that make CCP a necessary requirement are: to facilitate prevention of violation of Competition laws; to cultivate a healthy culture of compliance; and various practices of Corporate Governance are adopted to increase the character of the enterprise.

Benefits of Compliance

Competition Compliance offers the following advantages. It discourages the Competition Authorities from investigating into the enterprise and lowers their risk. Reduces the chances of contracts being void and unenforceable. Reduces the risk of character being disadvantaged and litigation due to unlawful conduct can be avoided. It not only generates awareness concerning the relevant laws but also nurture the employees in an enterprise to fall in line with the said laws by identifying the potential discrepancies or disputes that may come up in the near future. When the enterprise is affected by any anti-competitive agreements, the knowledge of Competition laws will enable the personnel to recognize and handle the issues. First and foremost, it is essential to ascertain the need for Competition laws in the sector in which the particular enterprise falls. All the above mentioned factors will help in devising a suitable CCP for the organization.

Comparison of Competition Compliance Programme

It may be important to throw light on the Competition Compliance Programmes (CCPs) introduced by a few other dominions and their comparison with the Indian CCP. It will be relevant to begin with the Competition Compliance Programmes of the United Kingdom (UK) introduced by the Office of Fair Trading (OFT).

Comparison with CCP of United Kingdom (UK)

According to the Office of Fair Trading (OFT), the most important factor leading to an effective CCP is the management's commitment to compliance. The OFT has also identified the key steps to an effective CCP which are:

- Identifying the risk;
- Assessment of the risk;
- Facilitating risk mitigation; and
- Reviewing the process.

By following these four steps the enterprise would ensure that it is able to identify the potential risks of anti competitive agreements and violations of Competition laws. <http://jurisonline.in/2010/08/significance-of-Competition-compliance-programs-in-enterprisesanalysisof-a-few-jurisdictions-in-the-light-of-the-indian-Competition-compliance-program> last visited on 13th August 2012 at 10.20 am.

The OFT as a body defines four essential elements of a CCP which neither are very rigid nor do they attempt to make enterprises follow the standards in the said manner which are:

- Senior management support;
- Framing of appropriate policies and procedures;
- Develop effective training avenues; and
- Facilitate system for regular evaluation.

It is stressed by Office of Fair Trading (OFT) to update the CCPs from time to time to ensure it is in compliance with the best current practices. The OFT states that in addition to their powers under the Competition Act 1998, the sector regulators continue to have powers under the legislation specific to the sectors they regulate.

Implementation of Compliance Programme

Competition Compliance Programme (CCP) is a multipronged instrument to guarantee obedience with Competition law and speedy discovery in case of any accidental disruption. It operates on the principle that 'prevention is better than cure'. A proof of the bona fide of the entity is an effective CCP. It proves that the unit is sincerely concerned about following the Competition law and any deviation was unrequited and short of any mala fide. It is acquired keeping in mind the specific obligations of an enterprise and has the following fundamental targets:

- It encourages the employees and officials of the market participants to carry out their duties in a manner which is compliant with the laws of the land by imparting education and training.

- Since CCPs tend to foster a culture of compliance It can encourage companies to follow their authentic business activities with assurance
- It enables market participants to inculcate a culture of compliance throughout the organization by prescribing “Guidelines” and “Best Practices” as per the commercial requirements of the organizations.
- Regular reinforcement among employees of the fact that the company will not tolerate anticompetitive conduct ,the company aims at reducing the risk of violation of the Competition laws
- Through a two pronged strategy of educating and providing clear and safe avenues for reporting suspected violations, the unit can substantially increase the early detection of violations
- It can have the effect of forestalling or reducing the costs and undesirable effects of lawsuit and regulatory interference.

Constitute a Compliance Committee

The organization must institute a Committee comprising of associates from various educations consisting of law, economics, accounts etc, or professionals in related arena to develop a outline on Competition Compliance relevant to the trade. The function of this Committee will deliver on the following grounds:

- Opportune reporting to the Board of Directors regarding the Competition Compliance.
- Conscribing of Competition Compliance Manual for the Organisation.
- Assessment and upadation of the Competition Compliance Manual.
- Application of Competition Compliance through the organisation based on levels of organisation, strength and nature of industry in which it operates.
- Timely check and review of transactions or agreement about the shortcomings and areas of improvement.
- Facilitating training programs in Competition laws for the employees and the people engaged in the organisation.
- Advising the Board on the matters of arrangements involving mergers, acquisitions, takeovers.
- To organize the departments in various levels of the organisation and get their response on Competition issues and to follow the best practices of Competition in the organisation
- To file timely information with the authorities administering Competition laws.

Creating a Competition Compliance Manual

Putting a Competition Compliance Manual in place is simple and not as expensive as it sounds. Many companies already have a company policy either physically handed in the form of a manual or more often in the form of a computer based tool or web page. Some even stress the need for compliance with trade practice laws.¹⁴

While this is commendable, it may not be sufficient to prevent violations and prosecution in the event enforcement activities are taken up in right earnest by the CCI. ¹⁵

At the outset it is critical to understand that it is not possible to design a Compliance Manual which suits or fits the requirements of all companies. An effective Manual depends squarely on the business and commercial strategy of the organization in question. The best approach to Compliance Manual is to understand the business and design a programme that addresses relevant risks while facilitating Company's ability to compete effectively. Healthy Competition always makes the company stronger and stimulates the forces that drive long-term prosperity for the company. Whereas, indulgence in anti competitive practices, for example price fixing, boycott and bid rigging, tend to limit growth and damage the incentives to innovate & respond to customer needs.

Establishing a Monitoring System

It is appropriate that the Competition Compliance must be planned in a manner which is easy to apply and understand and which can be monitored on a regular basis. It should be designed to aid in understanding how Competition law applies to the organisation. It can be classified into:

- What employees in the organization are capable of doing?;
- What employees in the organization are unable to deliver?; and
- When the employees in the organization seek advice for?
- It is possible to categorise into a colour code system which is as follows ¹⁷

CONTACT WITH COMPETITORS

What is forbidden?

It is advised not to enter into any agreement, arrangement, understanding or discussion with any of the Competitors with regard to any of the following:

a) **Pricing:** Pricing is crucial in relation to Competition. Enterprise must independently determine its own pricing policy. Price Fixing can take many forms, including agreement on:

- Minimum and/or maximum prices along with published price lists (whether these prevent one party from offering discounts)
- Fixing part of price (eg a surcharge or other charges and profit margins)
- Consultation (eg where one party agrees not to quote a price without consulting its competitors)
- Passing on surcharges at cost and agreeing not on discount surcharges.

b) Market Sharing or Allocation: Generally where one or more competitors agree to divide a market, it leads to market sharing. It is important for management to decide about which decisions to make:

1. Whether to bid for contracts or jobs;
2. On what terms bid will be made;
3. The prices and conditions to be offered to customer or prospective customer; and
4. Terms and conditions relating to commercial issues such as liability.

c) Sharing Information:

One of the serious Competition law problem is Information exchange between the competing firms. Each competitor must impartially set the policy which it aims to adopt. Due care must be taken while sharing of Information between competitors which is considered illegal specially when the type of information being shared is commercially sensitive. It is prudent for organizations to be vigilant by not sharing any kind of information with competitors which enables them to understand or guess current market. It is considered ethical for the former employee of a competitor to destroy or return any confidential information to previous employer

d) Collective Boycotts (collective refusal to do business):

It is illegal when two or more competitors agree not to do business with a particular firm which amounts to Collective Boycott. One must not indulge in any of the below mentioned practices or agreements under any circumstances

What is Permitted

From the perspective of Competition Law, any contract with competitors is highly sensitive. However, there are very few contracts that are allowed which are likely to give rise to concern. Discussion on the following is unlikely to be problematic: Regulatory changes and compliance, Government Policy, Industry lobbying and promotion initiative, Health and safety information, Industry employment and training issues.

It is important to note that whenever advice is to be taken from Legal Department some doubts will occur about whether the discussion is likely or could have the following outcomes:

1. Affect future commercial strategy, product or service composition;
2. Lead to a change of strategy in the short or medium term;
3. Lead to an immediate or short term change in behaviour relating to: Price, Service offered, Discounts, Surcharges

TRADE ASSOCIATION

Trade Association is defined as an “Organization whose members are involved in a particular business or trade, such as retail and wholesale, fabrics, food stuff, and transportation”.

What is forbidden?

It is advised that one should not discuss any of the following types of information at a trade meeting :

- Pricing or other terms given to customer
- Services capacity of individual companies or changes in industry production capacity or inventories;
- Bids on contracts for particular products and the procedures for replying to bid invitations;
- Any individual company’s costs;
- Terms of business on which the organization usually operates.
- Allocation of customers, contracts, sites, regional areas or types of services.
- Details about potential individual suppliers or customers which might exclude them from the market or influence other companies behaviour towards the interested parties such as suppliers or customers.

Potential permissible areas for contracts with competitors are a highly sensitive issue. It is generally difficult to identify difference between legitimate trade association activity and unlawful activity which encourage opting for legal advice.

CONTACT WITH CUSTOMERS AND SUPPLIERS

Exclusivity

As a rule, there is no objection in entering into selective arrangements with customers or suppliers provided the term (duration) of the contract is not unwarranted.

Under Competition Law, there are 2 areas that often raises questions.

2. Dealing with competitors as customers
3. Dealing with competitors as suppliers

The legal department must be consulted before entering into any agreement with suppliers who are competitors.

Enforcement and Reporting

It is the local language which is accepted by all. Thus the Compliance Programme should be implemented and enforced throughout the organisation and translated into local language. The CCP must be widely communicated to all related employees (i.e those who are directly or indirectly involved in commercial activities and/or who come into contact with customers, suppliers and competitors) and all related business associates. Do's and Dont's can be originated and altered to best installation with the Competition Compliance Requirements. In places where Competition Laws are well settled and established, the Compliance Programme must be designed in tune with global requirements, whereas in places where there is no antitrust law, suitable processes should be developed with a perspective to adopting the anti-trust regulations and norms covered in the Competition Policy of the enterprise to the specific legal and business background of the related country. Coverage about the Policy application is usually achieved through Competition Compliance Committee. In this framework, Annual Questionnaire shall come handy as a basis for such reporting. Reported information is required in order to get a reasonable view of the application of the Compliance Programme in various stages of the management. Interior confirmations can be managed from time to time in any of the business units by the competition Committee, with an aim to verify the correct application of Compliance Programme. An annual verification strategy shall be agreed in advance and it shall be kept confidential and updated on a regular basis if needed. Unless otherwise decided, those verifications shall be communicated in advance only to a limited number of people in order to ensure proper efficiency. Conclusions of such verifications shall be placed before the Board of Directors and any corrective action required shall be decided accordingly.

SECTION IV: CONCLUSION

Designing a model to grow Indian competitiveness requires a graceful acknowledgement of the present business environment along with a optimistic approach to future growth. Businesses must link the fibres between profit maximization, stakeholder optimization and ethical competitiveness in order to generate justifiable growth. Profit maximization, market leverage and global competitiveness must take an even superiority with principled behaviour and Corporate Governance. The enterprise must study stakeholder urgencies to develop a strategy for reinforcing keenness. Enterprises must develop a physical framework and generate standards to make it extra competitive. Establishing short-term and long-term aims for ethical compliance is important because it creates standards that make a company more competitive on the global sphere. Continuously regulating these values will enable a business to cross the threshold by entering new markets and recover image as the Indian businesses achieve multinational rank. Therefore the enterprises must embrace the compliance of Competition laws into their Governance assembly so that the enterprises can evade contravening the stipulations of Competition law. Establishing a code that describes polite decision making will give all stakeholders a prototype that is, at best, a route for triumph and competitiveness, while also fluctuating power undercurrents within an organization. While competitiveness is the concern of all stakeholders, ethical behaviour starts at the pinnacle because implementation begins and ends there. The aim is to nurture long-term stakeholder worth by taking benefit of opportunities and coping with risks related to economic, conservational and social advances. Victory for all open-minded corporations today includes, among other factors, the aptitude to shape up a brand that inspires and reproduces trust. Finally the distinct standards on Competition and its appropriate Compliance by the enterprise will certainly attain the objectives of Competition Law i.e. Prevention of anti-competitive practices; Promotion and Sustained competition; Protection of consumers Interest; and Autonomy of trade.

SECTION V: REFERENCES:

1. Anand Agrawal and Sanjay Fuloria, "Corporate Governance for Competitive Credibility".
2. Chandhoke, H.S., & Hussain, A., Life after Competition, PHDCCI Annual Bulletin, December 2006.
3. Kapoor, Sandeep, Competition Compliance Programme: Indian Perspective.
4. Oliver Budzinski, THE GOVERNANCE OF GLOBAL COMPETITION, 1st ed. 2008.
5. OECD Hearings Competition and Corporate Governance 2010.
6. OECD, Corporate Governance and National Development, Technical Paper No. 180 (2001), available at:
http://www.oecd.org/home/02987en_2649_201185_1_1_1_1_100.html, visited on 28th August 2012.
7. Thomas Clarke and Marie Dela Rama, "Fundamentals of Corporate Governance".
8. Weston J. Fred, Mitechell L. Mark, and Mulherin J. Harold, Takeovers, Restructuring and Corporate Governance, at p. 589 (Pearson Education, New Delhi, 4th ed. 2008)
9. <http://jurisonline.in/2010/08/significance-of-Competition-complianceprograms- in-enterprises-analysis-of-a-few-jurisdictions-in-the-lightof-theindian-Competition-compliance-program> last visited on 13th August 2012 at 10.20 am.
10. <http://legalservicesindia.com/article/article/Competition-&-Corporate-Governance-602-1.html> last visited on 13th August 2012 at 14.12 pm
11. <http://www.lawyersclubindia.com/articles/The-Relevance-of-Competition-Compliance-Programmes-Under-Ind-1322.asp#.UCiUTZ0gfKM> last visited on 13-08-2012 at 11.17 am
12. Corporate Governance, Reputation and Competitive Credibility
http://www.academyofcg.org/CMSAdmin/DATA/8_12_2010_4_51_4_October_2002-2.pdf last visited on 13-08-2012 at 16.50 pm
13. <http://www.lexvidhi.com/article-details/compliance-management-under-Competition-act-435.html> last visited on 17-08-2012 at 11.07 am
14. Competition Compliance Policy available at
http://www.agilitylogistics.com/EN/GIL/Documents/Agility_PDF/CompliancePolicy.pdf last visited on 17 August 2012 at 11.00 am

List of Websites Visited:

1. www.cci.gov.in
2. www.legalservicesindia.com
3. www.jurisonline.in
4. www.oecd.org
5. www.oft.gov.uk
6. www.ssrn.com
7. www.icsi.edu
8. www.lawyersclubindia.com
9. www.academyofcg.org
10. www.lexvidhi.com
11. www.agilitylogistics.com

