

A close-up photograph of a wooden gavel and a magnifying glass resting on a rustic wooden surface. The gavel is in the foreground, with its handle extending towards the bottom right. The magnifying glass is in the background, slightly out of focus, with its lens reflecting light. The wood grain is clearly visible on both the gavel and the surface.

**Deloitte.**

Economics and Regulation  
Anti-trust and  
Competition services

Deloitte Forensic  
For private circulation



The emergence of the Competition Commission of India (CCI) as one of the key regulators has opened up another risk domain that Indian corporates need to manage proactively. Over the past six years, the CCI has investigated 590<sup>1</sup> companies for their anti-competitive behavior and has imposed penalties worth INR 12,474<sup>2</sup> (approximately US\$ 2 billion) on 351 companies<sup>3</sup>. These have included large reputed Indian corporate houses, multinationals, government-owned enterprises, trade associations, as well as individuals.

With the CCI taking rapid strides in performing its role of checking anti-competitive behavior and regulating combinations (cartelization, abuse of dominance, predatory pricing, mergers and acquisitions, vertical and horizontal agreements), Indian businesses need to reassess their business models and commercial arrangements to examine if they comply with the requirements of the Competition Act, 2002 (the "Competition Act"). However, the absence of clear guidelines and rules further complicate the scenario.

### How Deloitte Forensic can help

It is imperative to recognize that dealing with competition issues is a challenging task that involves complex questions covering both, economics and law. Our competition and dispute professionals, possessing a wide range of skill sets and a strong understanding of the regulatory framework, can help clients mitigate the risk of non-compliance as well as engage constructively with the CCI. They can also help mobilize and sift through voluminous data to present an independent economic and commercial assessment to assist clients in dealing with anti-trust matters effectively.

Our competition team provides services in the following areas under the competition policy



1 Source: Fair Play, The Quarterly Newsletter of Competition Commission of India, Volume 12: January-March 2015  
2 Source: "Competition Commission of India looking into allocation of three coal blocks", 21 April 2015, The Economic Times  
3 Source: "CCI recovers just 0.74% of INR 12,474cr fines imposed by it", 27 February 2015, Business Standard



## Are your agreements beneficial to consumers or are they anti-competitive?



The Competition Act, 2002 prohibits certain agreements with respect to the production, supply, distribution, storage, acquisition or control of goods or provision of services. Such agreements can, typically, be of two types (i.e., Horizontal or Vertical).

Horizontal agreements between rival firms on territorial exclusivity, reducing output to increase prices, collaborative pricing and advertising and bid rigging are presumed by the Competition Act to be anti-competitive. However, some forms of cooperation can be considered as legitimate, e.g. joint ventures, sharing of a rival firm's infrastructure in certain sectors etc. provided such arrangements have a beneficial impact on consumers.

Vertical agreements across different levels of a supply chain including selective and exclusive distribution chains and tying agreements between a retailer and producer are considered anti-competitive only if they lead to negative outcomes like market foreclosures, higher manufacturer margins, and other competition issues.

Economic analysis is now used in the assessment of such agreements to distinguish undesirable outcomes from beneficial ones. We assist in the evaluation of such agreements through extensive economic analysis to assess the tradeoff between efficiency gains due to the beneficial effects against the anti-competitive impact.



Vertical agreements such as exclusive agreements with dealers like territorial exclusivity, tying arrangements and price and quantity fixing can be perceived as anti-competitive

## Are you a dominant player in your market? Are you abusing your dominance?



A firm with a large market share (dominant firm) needs to necessarily be more cautious in pursuing business activities that would otherwise be considered to be legitimate. To establish dominance, the CCI first assesses the market share of the firm. It also considers other factors like barriers to entry and exit, industry performance etc. Monopolization claims associated with dominant firms can involve pricing practices adopted to limit competition, bundling and tying of products, price discrimination, huge discounts etc.

We advise clients on the likelihood of being identified as a dominant player and abusing their market power. Our approach includes the following:

- Defining the market in which the firm operates
- Identifying anti-competitive forms of the business by quantitatively analyzing the prices, costs, and the investment decisions of the firm
- Incorporating the impact of the behavior on the marketplace (than merely considering the form of the behavior) to distinguish anti-competitive form of conduct from legitimate conduct
- Identifying the motive for a firm to abuse dominance through use of recent developments in economic theory



## Are you operating in a market prone to CCI investigation?

The CCI can either undertake suo moto investigations or can act upon a reference made by the Central Government/ State Government/statutory authority, in any sector especially if there exist market features that restrict competition. They can then suggest remedies and impose penalties for non-compliance with the competition law. In addition to the non-compliant companies, penalties can be extended to key shareholders. Further, the CCI has the authority to expand the scope of its investigation to examine the conduct of all players in the market e.g. investigation on automobile manufacturers.

The areas that are usually examined include pricing, supply chain agreements, distribution networks, bid

rigging, and market structure with respect to entry barriers. Companies therefore need to be more aware of the risks of infringing competition rules especially in these areas.

An effective compliance strategy can help enable a company to minimize the risk of competition law infringements and the penalties resulting therefrom. We assist clients in pre-empting the issues by developing a compliance strategy based on the size of the business, industry-specific characteristics, and nature of risks involved. We also assist potential strategic investors and private equity funds in conducting due diligence on targets to identify risks emanating from potential Competition Act infringement.



## Have you notified the CCI of a potential merger, acquisition, or joint venture?

When firms that hold a dominant position in the market or are close competitors consider a form of combination defined in the Competition Act, the transaction may give rise to significant regulatory risks. The combination may adversely impact prices, customer service, product variety, and incentives to innovate in the post-merger stage. Such companies are required to notify the CCI and get appropriate approval.

We have the capabilities to advise clients beginning from the planning stage of the transaction itself. We can undertake pre-emptive work that can smoothen and speed up the first phase of merger enquiry. In some cases, it also averts a full-fledged investigation as approval may be granted at an early stage during the merger process. We also help clients in filing the notification of the combination before the CCI.

### Our approach:

- We examine the likely pro-competitive effects of a transaction, define relevant markets, and analyze competitive interactions as well as the efficiencies arising due to the collaboration. We do this through rigorous economic and econometric/ empirical analysis.
- We then examine whether efficiencies arising due to the combination outweigh the likely harm to competition in the market.
- We help the client in shaping the deal and designing remedies that minimize uncertainty and maximize commercial feasibility of the proposed combination/ merger



Failure to notify the CCI about a possible combination can lead to penalties of up to 1% of the turnover<sup>4</sup>

<sup>4</sup> Source: <http://www.cci.gov.in/Images/media/dvocracy/Overview2012.pdf>



## Are you entitled to compensation for damages?



Disputes may pertain to cases involving the breach of anti-trust law including practices such as cartelization, price discrimination, predatory pricing, etc. A claimant may rely on the decision made by the CCI as a proof of contravention and can claim damages based on it. We assist the client in establishing whether it suffered damages due to such a practice and in quantifying damages before the COMPAT, Competition Appellate Tribunal. Furthermore, these damage reports can assist the company's management in negotiating settlements in compensation litigation before the COMPAT.

### Our approach:

- We model the events in the absence of any infringement to generate the counterfactual scenario.
- We use cross sectional, time series and panel data econometric models with data from sources external to the infringement, to estimate the counterfactual scenario.
- In addition, in cartel damage(s) cases, we assess whether the claimant has passed on any increase in the price to the consumer, as that would alter the claim amount.



India will soon have its own version of class action suits to enforce stronger consumer protection. CCI will regulate some of the sectors for these suits

## Our solutions at a glance

<b>Competition Economics</b> 	<ul style="list-style-type: none"> <li>• Examine definition of relevant markets, identify efficiencies associated with vertical agreements and assess market concentration.</li> <li>• Identify possible dominance in relevant markets and potential abuse of dominance</li> <li>• Build econometric models to draw empirical inferences to quantitatively analyze anti-trust cases</li> </ul>	<ul style="list-style-type: none"> <li>• Assist in gathering evidence in compliance with DG's information request</li> <li>• Gather evidence to support filing of information with the CCI</li> </ul>	<b>Investigations</b> 
<b>Combination Advisory</b> 	<ul style="list-style-type: none"> <li>• Assist in mandatory notification and in obtaining approval from CCI in case of potential mergers.</li> <li>• Assist entities in defining the relevant markets, assessing market concentration and demonstrating the pro-competitive impact of the combination,</li> </ul>	<ul style="list-style-type: none"> <li>• Establish whether client suffered damages due to competition law infringement</li> <li>• Use econometric counterfactual analysis to quantify damages</li> </ul>	<b>Quantification of Damages</b> 
<b>E-Discovery and Document review</b> 	<ul style="list-style-type: none"> <li>• Deloitte Discovery Tool helps companies mitigate the risks associated with the discovery process</li> <li>• Provide services related to data collection, processing, hosting, review and production.</li> <li>• Assists clients in gathering evidence in a limited time frame</li> </ul>	<ul style="list-style-type: none"> <li>• Act as expert witnesses and testify on a wide range of business and financial matters</li> <li>• Assist in screening, coordinating and preparing other expert witnesses</li> </ul>	<b>Expert Witness</b> 
<b>Dawn Raids</b> 	<ul style="list-style-type: none"> <li>• Advise companies in preparing dawn raid guidelines including directions for preserving and managing key information</li> <li>• Provide on-site training in handling a dawn raid</li> </ul>	<ul style="list-style-type: none"> <li>• Assist in developing an effective compliance strategy to minimize the risk of competition law infringements</li> <li>• Assist strategic investors and private equity funds in conducting due diligence on targets to assess risks emanating from Competition Law non-compliance</li> </ul>	<b>Competition Compliance Service</b> 

# Economic tools for competition analysis



## Market definition analysis

- It is one of our key steps in undertaking an economic analysis of competition cases and is extremely vital in being able to identify competitive constraints that may act on a supplier.
- We calculate the market shares and market concentration ratios to assess the degree of competition in the market.
- Concentration measures like HHI, CR 1, and CR 4 are used in merger assessment cases, and form the basis for prediction with regard to the impact of a merger on competition.
- Advanced economic analysis like the Hypothetical Monopolist Test (SSNIP) are used to define the relevant product markets to be examined during an investigation.



## Econometric analysis and quantitative assessment

- We build econometric models that use data from external sources on cost, price, buyer substitution, and behavior of rival firms to provide economic inferences.
- Involves econometric modelling using cross sectional comparisons (comparing different geographic or product markets), time series comparisons and panel data comparisons.



## Economic theory/ market structure analysis

- We assess how a merger will actually lead to a reduction in competition by using efficiency analysis and incentive theory in economics.
- To infer about a price increase resultant of a merger, we use merger simulation tools that are able to quantitatively assess the price increase.
- To identify 'red flags' in cases of vertical and horizontal restraints, we look at evidence such as conduct of the firm, market concentration, and structure as well as business practices like coordinated pricing, capacity cuts, or suspicious patterns of bidding of tenders.



# Why Deloitte?



Our competition specialists work alongside competition lawyers and clients, leveraging our diverse range of services to provide a tailor-made solution to address the competition issues at stake. We offer a multi-disciplinary approach which combines our technical specialists with industry expertise. Our cross-border and cross-functional teams are able to provide global experience, balanced with local knowledge to help clients wherever they are located. Our team comprises former member of COMPAT, former CCI professionals, competition economists, chartered accountants, MBAs, technology and analytics professionals, former enforcement officials, and business intelligence professionals, to name a few. Their experience and skills are leveraged to the best possible to help you meet the challenges of the changing competition landscape and help you to respond, should you be subject to investigation or litigation.

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