



Competition Policy and Analysis

The Competition Act, 2002, as amended, has come into full effect since May 2009. With a few exceptions, this law applies to all economic activities and markets in India. The government established the Competition Commission of India (CCI) to prevent business practices adversely affecting competition, to promote and sustain competition in markets, protect the interests of consumers, and to ensure freedom of trade, keeping in mind the stage of economic development in the country.

Led by Dr R Shyam Khemani, SKP's team of in-house analysts, in collaboration with major law firms, assists leading domestic and international enterprises navigate through case-specific reviews and filings before the CCI. The areas focused on include conducting competitive analysis of markets, M&A transactions, joint ventures and strategic alliances, alleged cartels and monopolistic behaviour (abuse of dominant market position) and various competitive business practices. And studies on public policies and regulations impacting on investment, productivity and growth of industries and markets in India.

Understanding
the firm and
Industry

Delineation
of relevant
product or
geographic
market

Estimating
market shares of
firms operating
in relevant
market

Understanding
competitive
dynamics

Analysis &
Concluding on
question

Our Services

Mergers & Acquisitions

M&A transactions are an essential mechanism for business expansion, industry or firm restructuring and market entry. The 'combination provisions' of the Competition Act, 2002 require M&A transactions above certain threshold limits (based on assets or turnover in or outside of India) to be reported for review and clearance by the CCI. A transaction may be void if it is likely to cause an appreciable adverse effect on competition in the relevant market in India.

To ensure the transaction is properly evaluated and expeditiously approved, SKP works closely with our client's legal representatives to prepare a competition assessment brief that is filed with the CCI. The brief takes into account various factors specified in the Act and addresses issues or factors such as the definition of the relevant market, barriers to entry, impact on market structure and competition, potential economic efficiencies, among others.

Employing the latest industrial organisation methods, we present a credible analysis of the nature and degree of competition prevalent in the relevant market, the business rationale for the acquisition, and whether or not the proposed transaction will adversely affect or increase competition. Also, where necessary, we explore alternative ways to restructure the transaction to alleviate competition concerns, if any arise.

SKP has prepared several competition impact briefs, and all the M&A transactions we have worked on have been cleared by the CCI well within 30 days, saving our clients significant resources in bridging financing and other costs. We endeavour to bring clarity to complex business matters which are of paramount importance to the effective representation of facts to the CCI as well as other regulators, enabling strategic advantages for our clients.

Prohibition of Anti-Competitive Agreements

Under the Competition Act, agreements between enterprises, whether or not explicitly entered into, that result in the fixing of prices, allocation of customers, markets or geographic territories, etc., that cause or are likely to cause an appreciable adverse effect on competition within India are strictly prohibited. The fines levied by the CCI in such cases can be financially significant - up to 10% of the enterprise's average turnover of the previous three years.

Unless there is evidence of overt meetings by businesses to engage in prohibited agreements and related practices, it is difficult to prove cartelisation of markets. However, it must be noted that circumstantial evidence such as parallel or similar pricing can be construed as being an illegal agreement. However, the commercial reality is such that often enterprises compete by matching competitors' prices and other sale conditions.

This is done mainly when the product in question is homogenous, the terms and conditions of sale are readily observable and the industry has few enterprises so that the gains and losses of one enterprise impact others.

SKP has helped clients evaluate the economic effects of such agreements by analysing and identifying pro-competitive (technology access, economies of scale, etc.) and anti-competitive (cartelisation, abuse of power, etc.) effects. We have also aided our clients in evaluating vertical agreements between various firms in the supply chain.

At SKP, we conduct rigorous economic analyses to assess whether the allegations concerning cartelisation of markets are plausible and credible and draw distinctions between competitive and anti-competitive business behaviour. In this context, we analyse price patterns and variations, levels and dynamic changes in sales or market shares, facilitating devices such as published price lists and contracts, and other relevant factors to ascertain if there is an alleged prohibited business arrangement.



Abuse of Dominant Market Position

It is not illegal for an enterprise to be dominant or account for a significant share of the relevant market. In fact, enterprises are often larger than their competitors because of being more efficient and supplying higher quality products and services at competitive prices. However, abuse of one's dominant market position such as charging discriminatory prices, exclusionary behaviour, tied selling and predatory pricing can constitute violations of the law.

Dominant enterprises can also become targets of complaints of alleged anti-competitive business practices by those who cannot compete effectively in the marketplace, or by industrial customers seeking to extract more favourable terms or conditions of sale/ lower prices.

Given our extensive industry experience and analytical capabilities, SKP has substantial expertise in dealing with:

- The competitive dynamics of the relevant market, and the pricing and other constraints confronted by the alleged dominant firm;
- The choice of alternative products and services from competing enterprises and demand elasticity;
- The nature and extent of barriers to entry, and if such barriers are:
 - firm- or market-specific;
 - economic and/or strategic; or
 - primarily determined by government policies and regulations.
- The history of past entries or exits by enterprises and changes in the ranks of leading enterprises, assessing the degree of market contestability; and
- The factors contributing to the enterprise's relative market position regarding superior competitive performance and the benefits accruing to consumers, among other such arguments.

SKP, in collaboration with our partner law firms, provides tailored compliance programmes and advice to complement our work on corporate strategy, investment, restructuring and other areas to ensure that the management and the company are cognisant and in compliance with various government laws and policies, notably the Competition Act.

SKP is increasingly conducting specific industry market studies (Medical devices) to guide domestic and international investors on the business opportunities, regulatory and competitive business environment prevailing in India.

Our Experience



Telecom operators

Submission of a competition assessment report for a Form II filing about a proposed USD 20 billion merger between leading telecom operators in India. The transaction was unconditionally cleared by the CCI.



Transport

Provided advisory support and prepared an economic assessment report for an alleged abuse of dominant position and predatory pricing by a leading taxi aggregator in India.



Electrical

Submission of Competition Assessment Report for a Form II filing in relation to a proposed USD 3 billion acquisition of LV Switchgear business by a global firm from a leading Indian Conglomerate



Auto components

Submission of a competition assessment report for Form I filing for a proposed acquisition of an auto-components company by a billion-dollar Indian conglomerate



Professional sports

Submission of a competition assessment report in relation to an alleged abuse of dominant position by a leading sports body in India



Cement

Submission of a competition assessment report for a Form II filing in relation to a proposed acquisition of ten identified cement plants by a billion-dollar Indian conagglomerate



Telecom towers

Submission of a competition assessment report for a Form II filing regarding the proposed acquisition of an Indian passive telecom infrastructure service provider by a multinational firm.



Financial Services

Submission of a detailed market survey report for the purpose of determining market share in relation to a merger notification filed with the CCI



Oil and Gas

Submission of a report in relation to determining the relevant market definition which included SSNIP test, econometric analysis, etc. for a natural gas supplier in northern India



Automotive

Submission of an evaluation report for alleged anti-competitive trade practices in the case of a leading car manufacturer



Cement

Submission of a competition assessment report for a Form II filing in relation to a proposed acquisition of ten identified cement plants by a billion-dollar Indian conagglomerate



Textiles and Garments

Provided advisory support in responding to questions from CCI for an alleged abuse of dominant position and discriminatory pricing by a leading viscose staple fibre producer in India

Our Adviser



Dr Shyam Khemani
Senior Adviser

Dr Khemani has extensive experience in both the private and public sectors. From April 2008 to January 2015, Dr Khemani was Principal Economist with a Washington-based consulting firm, MiCRA. Prior to that he held the designation of Adviser, Competition Policy, in the Financial & Private Sector Development, Vice-President of the World Bank Group, Washington D.C.

He has advised governments and businesses in over two dozen industrial and developing countries on various competition, regulation, micro-industrial economics and international trade issues. During 2000-2002, Dr Khemani resided in Paris where he served as Director, Law & Economics Consulting Group's (LECG's) European operations and was involved in policy and case-specific issues in different jurisdictions, including the European Union. Previously, he worked with the Canadian Competition Bureau where he was Chief Economist and Director of Economics & International Affairs, and earlier, an adviser on merger policy.

In these capacities, he led his team in the analysis of complex merger cases and other competition issues across a wide spectrum of industries and markets, and contributed to the Barriers to Entry and Economic Efficiency sections of the merger guidelines. He also contributed to the work of two Royal Commissions in Canada dealing with issues of industrial concentration, competition policy, competitiveness and economic growth, and has appeared as an expert before parliamentary committees and regulatory institutions.

Dr Khemani also served as an Adviser to the Chairman of the Raghavan committee in regards to designing India's new competition law and policy. Subsequently, he directed the World Bank's Technical Advisory programme for staff capacity and institution building of the CCI, which included conducting competition assessment studies of various industries and markets, especially focused on fostering the competition advocacy function of the CCI.

Dr Khemani is a member of the Advisory Board of the Bloomberg-Bureau of National Affairs Anti-trust and Trade Regulation Report, the American Anti-trust Institute (AAI) and the Consumer Unity and Trust Society (CUTS) - an NGO based in India, among others.

He was Co-Director establishing the International Bar Association's Global Forum on Competition and has served on various working groups of the American Bar Association, the International Chambers of Commerce and the International Competition Network. He has published monographs, articles in various journals (e.g., Journal of Industrial Economics, International Journal of Industrial Organisation, Anti-trust Bulletin, Policy Options, etc.), and co-edited books on competition policy.

Dr Khemani holds a PhD from the London School of Economics (LSE), U.K., an M.A. from McGill University, Montreal, Canada and a B.A. (Honours) in Economics & Political Science from Fergusson College, Pune, India.

About SKP

SKP is a global professional services group with its principal areas of operations in business advisory, end-to-end finance and accounting solutions including attest function and taxation, business process management, and IT risk advisory. SKP's focus is to provide solutions which result in tangible business benefits and performance improvements.

Our multi-disciplinary teams serve clients from various geographies and industries ensuring global standards. With over 80% of our client-base being international, we truly understand the needs of global companies and their expectations and our customized global solutions are designed to factor in local nuances. Our commitment is rooted in a passion for solutions, empowering our people and clients to achieve more.

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