**Indian corporates are not fully prepared to handle these kind of new regulations | The Indian Express**

Indian corporates are not fully prepared to handle these kind of new regulations Summary. In this Walk the Talk on NDTV 24x7 with The Indian Express Editor-in-Chief Shekhar Gupta,Ashok Chawla,chairman of the Competition Commission of India,speaks about imposing fines on corporates and the role of the competition regulator. Related. In this Walk the Talk on NDTV 24×7 with The Indian Express Editor-in-Chief Shekhar Gupta,Ashok Chawla,chairman of the Competition Commission of India,speaks about imposing fines on corporates and the role of the competition regulator. My guest today can be the dread of many corporates but he can also be the envy of many. Ashok Chawla,chairman of Competition Commission of India. You know why I said envy of many? Its because you hit the $1.5 billion turnover mark faster than any corporate in Indian history. A Rs 6,500-crore fine on the cement cartel,DLF,NSE,aluminium phosphide makers and all of that in just about a yearthis is big hitting. The Competition Commission is a young body,its three years old. We have got more active in the recent past. A lot of things which were started earlier are now coming to fruition. What you are not seeing is that many of the cases get closed. We need a fair amount of evidence before we can penalise the corporates who should be behaving in a different manner from what they are behaving. It is ironic. We are in the heart of Indias centre of governance and power. These areas usually love their acronyms. So CCI until now used to be Cement Corporation of India. Or the Cricket Club of India. Or,in old days,Controller of Capital Issues. But now CCI is a body that represents the spirit of reform because regulation is about free markets and reform,isnt it? Regulation preventing anti-trust moves or misuse of dominant positions. As the economy moves more and more to the market mode,the system needs a market regulator,distinct from sectoral regulators who look at specific areas like insurance regulation,security market regulation,etc. Do you get the sense that nobody quite figured that CCI would become such a big hitter or such a virtuous monster? Its a new body and people are not very familiar with the contours of law and they are also not quite aware of how its going to work or shape. The law that Parliament passed in 2002 and amended in 2007 is very robust and can be aggressive. Can it be misused? Well,it depends on the authority or commission that adjudicates the law. This applies to any piece of legislation. Because many corporates had thought that this law was hasty or draconian and there was opposition. There was a debate on whether the country is ready for a competition law so soon. Today,I think the system is ready and appreciates the need for such a legislation. Everybody will certainly not be happy with what happens to them because these are things in which everybody says its a good thing,but not in my backyard. But when you deal with Indian corporates,is it still taking them time to figure out that a competition regulator is very serious business? I think the informed corporates and businesses are aware of it. The general stakeholders,which includes the community,may not be fully aware. Therefore,lots of things which we get are relating to contractual disputes and consumer issues,for which there are other forums. Incidentally,the focus gets on to the consumer but not directly. Are you getting a sense that Indian corporates have begun to provide for this in their planning,or their strategising? Do they have somebody in their leadership groups trying to make sure it is not anti-competition,anti-trust and will not be seen as misuse. Because you are levying serious fines. These are not traffic offences. In the Act,we have a provision for advocacy,which is somewhat unusual and unique. We keep talking to chambers of commerce,industries and other stakeholders and passing the message. But my sense is that by and large,they are not fully prepared to handle these kind of new regulations and the process of compliance and risk management that goes with it. And they all think nobody will be made to pay these fines,that they will be set aside or lessened. Everybody thinks that it is not that easy for them to come under the scanner and if they do,they would put up a strong defence,otherwise there are higher courts for appeals. People also have the experience of SEBI. I remember asking former SEBI chief Mr Damodaran that its one thing to be levying big fines but everybody gets away in appeal. You have your equivalent of the securities appellate tribunal. Thats how it should be and the law will always provide higher forums for appeal. That is also the way jurisprudence will build up. Do you sometimes think that there might be an impression that the magnitude of fines you are levying is also for shock effect? I wouldnt say that because the law is pretty clear. It states that the fine can go as high as 10 per cent of the turnover,which in any case,is pretty high. In the case of cartels,it is even higher. It is linked to profits. So the philosophy behind competition regulation,not only in India but across the world,is that where you find aberration,then the punishment must be exemplary. A promoter of one of the cement companies said their turnover included the sale of treasury shares. Well,it may be true,but its his income,his turnover and we are capturing part of the profit,which we believe was undue profit (in the cement case). We are capturing a part of that and putting it into the treasury. We do not get anything out of it. The penalty,of course,goes to the consolidated fund. So there were four major cases. Two are regarding the use of dominant position: DLF and NSE (National Stock Exchange),and two are of cartelisation: the cement and aluminium phosphide cases. Describe each one for a layman. In the DLF case,the issue was whether they were dominant in the segment in which they are operating. The competition principles talk about a relevant geographic market and a relevant product market. That is the way it works in all cases. You identify that and then decide whether someone is dominating the market and abusing it,which is called unilateral action. Then,of course,a fine is levied. In this case,there were many provisions and conditions in the agreements which were there because of the dominant position. But that might be true of all flat buyers agreements,sold by all builders. Thats possible. Those conditions may be copied or used by them. But the entity which is strong and can operate on its own without market forces will have to pay the price for it. So did many people start coming to you,as if you were a real estate regulator? That did happen and we had to put many cases aside because there was no real abuse of dominance there. There is a case for real estate companies that a regulator is needed to ensure that all agreements are balanced and not one-sided. We need a standard document. Would you recommend that to the government? Yes,absolutely. That is the way to go. What about NSE? NSE was dominant and using that position to not charge in a different segment of the financial market. The other entity was only in that segment. So if you dont charge,one entity can bear the burden because it is getting revenue from elsewhere,but the other cannot. So,its a case of creating an entry barrier and restriction on trade. Fining the NSE is as close as one can come to taking on the establishment in the economic sphere,without actually going after the Ministry of Finance. Both yes and no. They are a major player but they are not really an arm of the government. The other two cases. The aluminium phosphide companies were found to be quoting the same price to the Food Corporation of India. They were rigging the bid. And this is a chemical used in preserving foodgrain,without which we will lose even more food than we do. Thats true. Then,in the cement case,we found a fair amount of parallelism in terms of prices. We found that the production capacities had increased quite a bit but the actual production was much lower. It is a well-known fact that the cement industry in India is oligopolistic,where a few players have a large share of the market. The top five control about 50 per cent of the market and the top 10 about 70 per cent. These are pointers to the fact that there is a high probability of their coming together and fixing prices. But how did you arrive at that conclusion? Their prices were not the same. It was just a direction in which the prices were moving. They were not the same but the prices were not too far from each other. So who else has to worry now? There may be 20 companies who may be pricing their TVs,refrigerators exactly the same way. If you go to a large showroom like Croma,you may find 10 ACs in the same category priced about the same. If they are priced the same,there is no issue. The problem arises when we find evidence of companies fixing their prices. Do you think CCI is now strong enough to take on the government? To give you a small example: BSNL refusing to share roaming with private companies or the government of India destroying the private civil aviation sector to keep Air India alive. You should also know that having been Civil Aviation secretary. The Act does not distinguish between a government or a private company. So,how would CCI look at the government of India keeping Air India alive? Air India gets sovereign guarantees on its borrowings,others do not. Air India gets first flight on its routes,others do not. These are issues to be looked at as we go along. So if I were to come to you with a complaint on these issues,would I have locus standi? You do. Anybody does. It is not necessary for anybody to be aggrieved. You just have to be an informant. As a former Civil Aviation secretary,does your heart bleed to see what is happening to the Civil Aviation sector in the country? Industries and sectors go through cycles. Civil Aviation has seen glorious days,when there was a huge growth in that sector. Various entrants came into the field. Everybody thought this was a sunrise sector,with a lot of scope for low-cost airlines. Due to this,there was increased capacity,much more supply. Something has to give way. Back to CCI. When you came to CCI,did you see it becoming a headline-making body? I had looked at the Act and my impression was that the Act is quite robust. But I was not sure how it would shape up and whether the institution would hit the ground running as fast as it has. I did not realise that it would be such an active body,which was going to attract so much attention: some due,some undue. That is also because CCI has come at a time when questioning of corporates has become fashionable globally. Yes,after the financial crisis of 2008,there has been a lot of focus on economic entities. The dream run which the corporates had for 15-20 years prior to the crisis went down with it. Five years ago,the top role model among Indias youth used to be Narayana Murthy. Now,its usually Anna Hazare. Times change. Around the world,competition bodies draw talent from among lawyers,economists,accountants and investigators. Must every regulator in India be manned by civil servants? Not necessarily. For example,a provision in the competition law allows recruitment to be widely advertised and the selection committee is headed by a Supreme Court judge as a nominee of the Chief Justice. But there are not too many serious contenders from outside the system. They are not too happy with the emoluments which regulators have. They are not very happy with the working conditions they may end up with. At least the better people have better opportunities. But I wouldnt be surprised to see people keen to join regulatory bodies a few years down the line. I can see that you are also feeling competitive pressures because I see TRAI,RBI,etc getting worried. RBI does not want CCI to get into banks,TRAI does not want CCI in telecom. Everybody is turf-conscious. How will you deal with this? I think there is a misconception of our role and their roles. Sectoral regulators take care of royalty,tariff,etc. Our area is to look at how companies are behaving. So how will you divide turf with RBI? The RBI wants the government to carve out the purview of mergers and acquisitions from CCI to itself. Do you like it? I dont think it is a good idea,because when you have a specialist body which looks at all mergers and acquisitions,there is no great reason to carve out any sector. Are you talking to RBI about this or is it only through TV channels? I saw you saying that if telecom and banking are kept out of CCI,then CCI might as well be shut down. In the sense that if this kind of virus spreads,then there is no point having a competition commission and a market regulator. I suppose these will get settled,the government is looking at them. Has anybody from the government asked you to slow down? I can honestly tell you that till now there has been nothing of that kind. And has anybody from the government ever said,Well done. This is what India needed. No,we havent heard that either. Are there pressures? No. There may be very subtle hints,but no pressures. Congratulations. This is the rise of another great institution after SEBI. Recently,during a debate on a TV channel,I remember one of the analysts saying,Business and industry had two mothers-in-lawRBI and SEBI. Now they will have to deal with a thirdCCI.