



## Role of Economics in Competition Law



*Athens University of Economics and Business*

### Report on CIRC and CRESSE Winter School

11-15 November 2013

#### **CUTS Institute for Regulation & Competition**

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# Report on ROLE OF ECONOMICS IN COMPETITION LAW

## CIRC and CRESSE Winter School

11th – 15th November, 2013, New Delhi

### Objective of the Winter School

The aim of the School was to familiarise participants with the new economic literature and with recent legal developments to establish a clear link between the new theories and the day to day work of practitioners. The objective was to enable participants to answer complex questions, about the practical matters they come across in their legal work, in an economically informed manner. With this objective in mind, a five day Winter School on 'Role of Economics in Competition Law' was organised by CIRC and CRESSE during 11<sup>th</sup> to 15<sup>th</sup> November, 2013, New Delhi. See Annexure I for details about organisers.

### Structure and Pedagogy

The structure of the twenty sessions of the five day Winter School was meticulously devised to cover the basic and applied economic aspects related to competition law. Detailed agenda with information on sessions is provided in Annexure II. The venue for this Winter School was Institute for Studies in Industrial Development (ISID), 4, Institutional Area, Vasant Kunj, New Delhi 110 070.

Participants were provided with a training kit consisting of useful material including printed material provided by CRESSE, some case studies and reports shared by CIRC. Further, participants were provided with a reference list of related books and journal articles by each faculty. Provision was also made for facilitating participants' regular feedback on the conduct of the sessions.

Presentations, graphical representations, discussions, and information exchange happened during the sessions with examples from decided and hypothetical case studies. Faculty was supportive and answered the queries and questions during the sessions. Further, the sessions were planned to give adequate time to discuss the basic, advanced and applied aspects of the economics. Even, the participants shared their experiences and aspects specific to their home jurisdictions including India, Malaysia and Tanzania. The breaks after sessions were allocated to give all the participants as well as the faculty time for more informal discussions.

### Faculty & Participants

Faculty consisted of the following international experts on the subject:

- a. Prof. Maarten Pieter Schinkel, Professor of Economics and Professor of Law (by affiliation), Co-Director of the Amsterdam Centre for Law and Economics; Senior Consultant, CRA London

- b. Prof. Joseph E. Harrington Jr., Professor of Economics, Business Economics and Public Policy Department, The Wharton School, University of Pennsylvania
- c. Prof. Yannis S. Katsoulacos, Professor of Economics and Chairman, Department of Economics Science, Athens University of Economics and Business (AUEB); Senior Consultant, CRA London

Mr Saket Sharma, Junior Fellow, CIRC and Mrs Arvinder Kaur, Assistant Director, CIRC were the school coordinators. The participants were a focussed group consisting of legal practitioners, representatives from law firms, representatives from competition authorities, students and non-governmental organisations from India and other developing countries. List of the participants is provided in the Annexure III and overview of the feedback of the participants is given in Annexure IV.

## Inaugural Session

Mr Pradeep S Mehta, Chairman, Managing Committee, CIRC; Dr Geeta Gouri, Member Competition Commission of India; Mr Arun Talwar, Chief Operating Officer, CIRC; Prof Maarten Pieter Schinkel and Prof Joseph E. Harrington Jr. were present in the inaugural session.

Mr Mehta welcomed the participants and stated that such an initiative is in line with the objectives for which CIRC had been established. Incidentally, one of the main objectives of CIRC is to train and build capacity amongst various stakeholders on areas like competition law which is more economics based law. He mentioned that the Competition Act is an economic law and described the importance of economic analysis in application of the law. He further highlighted the criticality of School at contemporary nascent stage of application of competition law in India. Mr Mehta thanked CRESSE and faculty members for collaborating for organising the Winter School.

Dr Gouri delineated in to the discussion regarding the cartels and described how cartels operate as repeated games from economic context. She then linked it with examples from India and portrayed various factors, including social linkages, for cartel type behaviour in the onion market in India. She further cautioned that one has to be careful while applying principles of economic analysis from mature jurisdictions like EU and US. Dr Gouri further explained that there could be differences in objectives pursued by the competition laws, as competition law in EU has a major goal of integration and common market. Further, in case of US, concept of consumer welfare will be different when compared with India.

## Day 1 (Sessions 1 to 4)

Faculty: Prof Maarten Pieter Schinkel

Broad Topics Covered: Role of economics in competition law and practice, sources of market failure, structural and behavioural aspects of competition, monopoly theory, oligopoly theory, market definition.

Brief Overview of Discussions: There were in all four sessions of knowledge sharing on first day. The first session started with importance of economics for competition law and how can economics help in not only just analysis but areas of law enforcement like detection of cartels. Then, the evolution of Harvard and Chicago School thinking in US was discussed. Further, Ordoliberal thought which is seen as basis for EU Competition law approach was described.

Various economic theories like monopoly theory, oligopoly theory and dynamic competition were discussed. Concepts like supply, demand, marginal utility, marginal revenue, product differentiation, substitution, Lerner Index were explained. Models of perfect competition, structure-conduct paradigm and relevant industrial organisation theories were discussed highlighting the importance of objectives of competition policy while relating it to growth and welfare in the economy. Briefly the legal framework for competition law in EU and US was given.

Several case examples for clarifying concepts related to market definition including that of portraying 'toothless fallacy' were given. Participants raised the complex issues like including unorganised sector and goods from parallel imports in defining relevant market in India. Further, the need for reliable data and effective economic analysis was highlighted in order to conduct market enquiries.

## Day 2 (Sessions 5 to 8)

Faculty: Prof Maarten Pieter Schinkel

Broad Topics Covered: Merger control, use of market definition in abuse of dominance and merger control cases, competition policy in two-sided markets and competition policy in financial markets.

Brief Overview of Discussions: Starting session 5, Prof Maarten described the main reason for merging firms is the efficiency enhancing factors. He initially started from the basic definitions related to horizontal mergers, vertical mergers and conglomerate mergers. Then, issues like vertical foreclosure, customer foreclosure and coordinated effects were discussed. Briefly the timeline of EU merger regime focussing on its evolution was provided. Working of SSNIP test in merger control cases was illustrated with examples and cases. He further gave an example of Netherlands case where 150 relevant markets were analysed in one case of mergers related to dairy products market.

Efficiency defence in mergers was illustrated with practical examples and graphs highlighting concentration versus efficiencies. Concepts like issue of asymmetric information, upward pricing pressure, Werden Froeb index, etc., were discussed while discussing merger simulation models.

Concept of two-sided markets, platform markets and multi-sided market were the focus for

session 7. Various examples of multi-sided markets like shopping malls, credit cards, operating system software were discussed. Concepts like network effects, tipping off, externalities, multi-homing, tying and foreclosure were discussed keeping in view their application to multi-sided markets. The discussions in the next session moved towards the effect of competition policy in financial markets and how to balance the application regulation and competition in financial markets. Typical conditions of financial markets like product differentiation, asymmetric information, product bundling, two-sided markets, switching costs and lock-in were elaborated with examples. Provisions of State Aid, peculiar to EU jurisdiction, were also briefly discussed.

### Day 3 (Sessions 9 to 12)

Faculty: Prof Joseph E. Harrington Jr.

Broad Topics Covered: Game theory, oligopoly theory, cournot and bertrand model of competition, collusion theory, firm asymmetries, coordination mechanisms, collusion and information sharing.

Brief Overview of Discussions: Prof Joe initially explained the basics of game theory while describing concepts like strategy set, pay offs, strategic form game and dominant strategy. He then gave hypothetical examples elaborating on the concepts of the game theory and explained how firms behaviour in market can be analysed using these techniques. Further, he talked about Nash equilibrium and coordination games with pertinent illustrations.

He then moved on to basic theories and dealt in detail the oligopoly theory model. Further concepts of Cournot (quantity) competition and Bertrand (price) competition were elaborated with graphs and examples.

Coordination mechanisms like explicit and tacit collusion used in the collusion theory were discussed. Discussed the 'object and effect' approach in analysing anticompetitive effects under Art 101 of TFEU. Cases related to cartels are analysed by EU authorities more based on object approach. Further, the discussion focussed on identifying market conditions which are conducive to collusion. These conditions include: market concentration, product differentiation, entry conditions, demand volatility, firm asymmetries, excess capacity, buyer concentration, price transparency and information exchange. These conditions were illustrated with graphical representations and practical examples.

### Day 4 (Sessions 13 to 16)

Faculty: Prof Joseph E. Harrington Jr. and Prof. Yannis S. Katsoulacos (session 16)

Broad Topics Covered: Stages in fighting cartels, damages, leniency programme, cartel price paths, detecting cartels, unlawful collusion, overview of abuse of dominant provisions and transatlantic differences in abuse of dominance cases.

Brief Overview of Discussions: Discussions on collusion and cartel behaviour from the earlier day were further carried on to discuss different aspects for the same. Three important stages in

fighting cartels viz. discovery, prosecution and penalisation were described giving relevant hypothetical as well as real examples. He described the relevance of damages and leniency programme for deterrence and disabling cartel behaviour. He illustrated how treble damages and class action suits are used to levy heavy fines for deterrence. He further focussed on importance of leniency programme while giving US and EU approaches to leniency programmes.

Detailed graphical presentation was made to understand the price path for cartels with real examples. Prof Joe described four economic tests for detecting cartels which focussed on structural and behavioural aspects of cartels. He then described the stages in process of cartel detection viz. screening, verification and prosecution.

Session 16 by Prof Yannis started with the overview of abuse of dominant provisions. He initially focussed on the basics while analysing and depicting the differences between US and EU approaches to abuse of dominance provisions. He told how the focus in US is more on exclusionary practices while the EU approach covers both exclusionary and exploitative practices. Interestingly, the participants related this well with the Indian provisions also and raised some interesting comparisons while analysing the approaches of EU and US.

## Day 5 (Sessions 17 to 20)

Faculty: Prof Yannis S. Katsoulacos

Broad Topics Covered: New Economic approach to article 102 cases, tests for identifying abusive conduct, examination of abusive practices by dominant firms, exclusionary and exploitative practices.

Brief Overview of Discussions: Prof Yannis continued his discussion from the earlier sessions on the abuse of dominant provisions. He then delved in detail on concepts like market power, assessment of dominance, collective dominance, SSNIP test, cellophane fallacy and essential facilities doctrine. While describing these concepts, he further explained as to how the more economic and effects based approach came in to being through EAGCP report of 2005 and Guidance Paper of 2008 on Art 102 by EU Commission.

Exclusionary practices and exploitative practices were described in detail. Further, abusive practices like monopoly leveraging, fidelity rebates and refusal to deal were explained with specific case laws. Intricacies of assessing such abusive conduct were shared citing decided cases of EU and US. Five tests for identifying abusive conduct viz. the profit sacrifice test, no economic sense test, equally efficient firm test, consumer welfare test and Elhauge test were described with practical examples of applying them.

Strategic pricing practices like predatory pricing, price discrimination, margin squeeze and conditional rebates were discussed. Non-pricing practices like refusal to deal, tying, bundling and exclusive dealing were also described with illustrations and cases.

## Valedictory Session & Certificate Distribution

Mr Nitin Desai, Former Under Secretary General of UN, Prof Yannis S. Katsoulacos and Mr Arun Talwar, Chief Operating Officer, CIRC were present for the valedictory session and for distributing certificates of participation to the participants.

Mr Desai commended CIRC and CRESSE for such a joint initiative aimed at capacity building in this new emerging area of law. He further elaborated upon the interface of law and economics and highlighted the importance of economic analysis in the competition law framework. Mr Desai crisply captured the essence of objective of the Winter School by stating that basic contractual freedom to do business needs to be regulated by competition law and role of economics becomes critical while taking in to account and evaluating the efficiencies of practices which can have anticompetitive or procompetitive effects in the market place.

Prof Yannis appreciated the participants for their active participation and interaction during the Winter School. He also thanked CIRC for successfully organising the event. Mr Talwar expressed gratitude to CRESSE for collaborating and helping in organising for a first time such a Winter School in India. Further, Mr Talwar thanked ISID for extending support and providing the infrastructure facilities for the Winter School. Certificates of participation to all the participants were issued jointly by CIRC and CRESSE to all the participants.

## Annexure I: About Organisers

CUTS Institute for Regulation & Competition (CIRC) and The Competition and Regulation European Summer School (CRESSE) jointly organised this Winter School.

**About CIRC:** CUTS Institute for Regulation & Competition (CIRC) was established in 2008 by CUTS International ([www.cuts-international.org](http://www.cuts-international.org)). With the mission to be a Centre of Excellence on Regulatory and Competition Issues, CIRC primarily focuses on economic regulation in infrastructure sectors, and competition policy and law with an objective of reaching out to the target audience in India and other developing countries in Asia and Africa. CIRC offers practical focus on educational and training programmes on economic regulation, and competition policy and law. The Institute aims to facilitate research to enhance understanding and explore interdisciplinary linkages among the identified subjects. CIRC is striving hard in its endeavour to generate and disseminate knowledge on its thrust areas. Further, since its inception CIRC has taken varied initiatives to impart knowledge and train various stakeholders on these areas with aim to build capacity of these stakeholders, thus contributing to the economy in this knowledge intensive era. For further details on our initiatives, please visit website: [www.circ.in](http://www.circ.in)

**About CRESSE:** CRESSE is a Network of academics and professionals, practicing in Competition or Regulatory Authorities, Consultancies and Legal Practices, with an interest in Competition Policy and Sectoral Regulation. CRESSE has established itself as the top academic summer event in the areas of Competition and Regulation Policy in Europe. It was initiated by Prof Y. Katsoulacos in 2005. The specific format and content of the CRESSE Summer School and Annual Conference has been influenced by the suggestions and ideas of a large number of people. Special mention should be made of Prof J. Harrington, Prof M. Motta, Prof Patrick Rey and Prof D. Ulph. CRESSE has established itself as the top academic summer event in the areas of Competition and Regulation Policy in Europe. The School offers a unique opportunity for intellectual exploration in the summer. For further details, please visit website: [www.cresse.info](http://www.cresse.info)

## Annexure II: Detailed Agenda

# ROLE OF ECONOMICS IN COMPETITION LAW

Organised jointly by CIRC and CRESSE

11<sup>th</sup> – 15<sup>th</sup> November, 2013 at New Delhi

### Venue:

Institute for Studies in Industrial Development (ISID)  
4, Institutional Area, Vasant Kunj  
New Delhi, 110070  
Ph: +91.11.26761600

### Course Coordinators:

Mr Saket Sharma  
Jr. Fellow, CIRC  
Mob: 9015518114

Mrs Arvinder Kaur  
Assistant Director, CIRC  
Mob: 9871392562

### DAY 1: 11<sup>TH</sup> NOVEMBER

08:45 – 09:00	Registration
09:00 – 09:45	Inauguration
09:45 – 10:15	<i>Tea Break</i>
Lecturer:	<i>Prof Maarten Pieter Schinkel, Professor of Economics and Professor of Law (by affiliation), Co-Director of the Amsterdam Centre for Law and Economics</i>
10:15 – 13:15	Session 1&2: Basic Economic Concepts and the Role of Economics
13:15 – 14:00	<i>Lunch Break</i>
14:00 – 16:00	Session 3: Basic Economic Concepts and the Role of Economics
16:00 – 16:15	<i>Tea Break</i>
16:15 – 18:15	Session 4: Market Definition and Determinants of Market Power

### DAY 2: 12<sup>TH</sup> NOVEMBER

Lecturer:	<i>Prof Maarten Pieter Schinkel, Professor of Economics and Professor of Law (by affiliation), Co-Director of the Amsterdam Centre for Law and Economics</i>
09:00 – 11:00	Session 5: Mergers
11:00 – 11:15	<i>Tea Break</i>

11:15 – 13:15	Session 6:	Mergers
13:15 – 14:00	<i>Lunch Break</i>	
14:00 – 16:00	Session 7:	Mergers
16:00 – 16:15	<i>Tea Break</i>	
16:15 – 18:15	Session 8:	Mergers

### DAY 3: 13<sup>TH</sup> NOVEMBER

Lecturer: *Prof Joseph E. Harrington Jr., Professor of Economics, Business Economics and Public Policy Department, The Wharton School, University of Pennsylvania*

09:00 – 11:00	Session 9:	Oligopoly and Game Theory
11:00 – 11:15	<i>Tea Break</i>	
11:15 – 13:15	Session 10:	Oligopoly and Game Theory
13:15 – 14:00	<i>Lunch Break</i>	
14:00 – 16:00	Session 11:	Cartels and Other Coordinated Practices
16:00 – 16:15	<i>Tea Break</i>	
16:15 – 18:15	Session 12:	Cartels and Other Coordinated Practices

### DAY 4: 14<sup>TH</sup> NOVEMBER

Lecturer: *Prof Joseph E. Harrington Jr., Professor of Economics, Business Economics and Public Policy Department, The Wharton School, University of Pennsylvania*

*Prof Yannis S. Katsoulacos, Professor of Economics and Chairman, Department of Economics Science, Athens University of Economics and Business (AUEB)*

09:00 – 11:00	Session 13:	Cartels and Other Coordinated Practices
11:00 – 11:15	<i>Tea Break</i>	
11:15 – 13:15	Session 14:	Cartels and Other Coordinated Practices
13:15 – 14:00	<i>Lunch Break</i>	
14:00 – 16:00	Session 15:	Cartels and Other Coordinated Practices
16:00 – 16:15	<i>Tea Break</i>	
16:15 – 18:15	Session 16:	Assessment of Abusive Unilateral Conduct of Dominant Firms

## DAY 5: 15<sup>TH</sup> NOVEMBER

Lecturer: *Prof Yannis S. Katsoulacos, Professor of Economics and Chairman, Department of Economics Science, Athens University of Economics and Business (AUEB)*

09:00 – 11:00	Session 17:	Assessment of Abusive Unilateral Conduct of Dominant Firms
11:00 – 11:15	<i>Tea Break</i>	
11:15 – 13:15	Session 18:	Assessment of Abusive Unilateral Conduct of Dominant Firms
13:15 – 14:00	<i>Lunch Break</i>	
14:00 – 16:00	Session 19:	Assessment of Abusive Unilateral Conduct of Dominant Firms
16:00 – 16:15	<i>Tea Break</i>	
16:15 – 18:15	Session 20:	Assessment of Abusive Unilateral Conduct of Dominant Firms
18:30 – 19:00	Certificate Distribution	
19:00 onwards	<i>Dinner</i>	

### Annexure III: List of Participants

S. No.	Participant	Designation	Organisation
1	Rahul Satyan	Associate	AZB & Partners, Mumbai
2	Hemangini Dadwal	Associate	AZB & Partners, New Delhi
3	Gautam Shahi	Senior Associate	J.Sagar Associates, New Delhi
4	Vijay Lakhanpal	Executive Director	Nathan Economic Consulting India Pvt Ltd, New Delhi
5	Fred Ringo	Director General	Fair Competition Commission, Tanzania
6	K.Ugula	Senior Enforcement Officer	Fair Competition Commission, Tanzania
7	Norhafiza Binti Shafie	Economist	Malaysian Competition Commission, Malaysia
8	Girish Pande	Regional Financial Officer	Saint Gobain, New Delhi
9	Rashmi Rai	Advocate	Delhi High Court, New Delhi
10	Saiful Islam	Executive Director	Gono Bishwabidyalay, Bangladesh
11	Dhruv Malik	Advocate	I.L.A. Pasrich & Co., New Delhi
12	Kashika Adlakha	Student	CPL Course Candidate
13	Priya Arora	Economist	Econ One Research, New Delhi
14	Unnati Agrawal	Associate	TMT Law Practice, New Delhi

## Annexure IV: Participant's Feedback

Participants shared regular feedback on the conduct of the sessions daily. The criteria for the feedback about the faculty were: response to questions in the class, knowledge about subjects, accuracy, and opportunity to seek clarifications/raise questions and involvement. Participants were asked to give inputs on these criteria on a scale from 1 to 10, ten being the highest score in the scale. Table briefly depicting the feedback of all the participants is given below:

Summary of feedback given by the participants		
Day	Faculty	Average
11.11.2013	Maarten Schinkel	8.8
12.11.2013	Maarten Schinkel	8.5
13.11.2013	Joseph Harrington	8.3
14.11.2013	Joseph Harrington	9.2
15.11.2013	Yannis S. Katsoulacos	8.6

### Few excerpts from the feedback by the participants are:

*"The classes according to me were really good, gave me a different perspective to look at while analysing anti-competitive practices. I have already put a few theories to test in one of the matters that I am currently working on."* Dhruv Malik, Advocate, I.L.A. Pasrich & Co., New Delhi

*"The course was very informative and intellectually stimulating. I would suggest that the study material is emailed 2-3 weeks in advance so that we spend less time learning basic concepts which we can do ourselves and more time analysing and discussing cases and examples."* Unnati Agrawal Associate TMT Law Practice, New Delhi

*"The winter School was fine."* Fred Ringo, Director General, Fair Competition Commission, Tanzania

*"CIRC deserves the credit... ensured that basic and applied economic concepts get cleared."* Rashmi Rai Advocate, Delhi High Court, New Delhi

*"It was a well organised course and gave us a better understanding of the economics based arguments in competition matters. It should be an annual event.....suggest that in future, the lectures should also give an Indian context."* Gautam Shahi, Senior Associate, J. Sagar Associates

*"As someone with very little exposure to economics, I found the course highly interesting and informative. It forced me to look at competition law in a very different way. The faculty was excellent and my co-students livened up the room with their interaction and questions. Am hoping to use some of the knowledge gained during the Winter School in a real case before the CCI."* Rahul Satyan Associate, AZB & Partners, Mumbai



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