

INDIAN COMPETITION LAW IN INDIA: PERSPECTIVES

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ABSTRACT

A competitive business environment is central to fostering the gains of productivity and efficiency. In the last 20 years, with the increase of international trade all across the world, concerns was raised about loss of economy due to anti-competitive activities, abuse of dominant positions and anti-competitive combinations. The history of the Competition Act is a good example of the proverb that the road to hell is paved with good intentions. True, the Act was late compared to the legislation of many countries, but it was unexceptionable in terms of the key issues it was intended to deal with. Its aim was to preserve competition in the market, principally through control of anti-competitive acts, agreements, abuse of dominate position and mergers that would impair or eliminate completion in a particular market. The competition law should be designed and implemented in terms of competition policy of the State which is dynamic.

INTRODUCTON

Competition Law in India is more than a hornbook which gives an overview but in-depth analysis of legal issues arising out of intersection of different branches of law with competition law. Thus need to fill a significant gap in the present legal literature on competition law of India was indispensable. The Indian competition law regime is a nascent regime. Prior to the Competition Act in May 2009, MRTP Act was the operational law that regulated certain aspects of competition. After the attainment of independence, India adopted and followed policies comprising of “Command-and-Control”, Laws, rules, regulations and executive orders. The MRTP Act was one such case wherein such command and control economy was based. However there were widespread economic reforms undertaken and consequently the march from “Command-and-Control” economy to an economy based more on free market principles commenced its stride has been in the amendments made in MRTP in 1991.

ENACTING COMPETITION ACT 2002

The need for a new law has its origin in Finance Minister’s budget speech in February, 1999:

“The MRTP Act has become obsolete in certain areas in the light of international economic developments relating to competition laws. We need to shift our focus from curbing monopolies to promoting competition. The Government has decided to appoint a committee to examine this range of issues and propose a modern competition law suitable for our conditions”.

The Raghavan Committee was constituted to recommend a suitable legislative framework relating to competition law for the country. It was felt that although the MRTP Act seemingly had provisions regulating anti-competitive practices, in comparison with competition laws of many countries it was inadequate for promoting competition in the market trade and for reducing, if not eliminating, anticompetitive practices in the country's domestic and international trade. The committee undertook an exhaustive study of the government policies, their effect on the industrial structure in India, the deficiencies of the Indian industries to compete with multinational and then submitted its report. The major recommendations made by the committee were:-

- To repeal the MRTP Act and to enact a competition act for the regulation of Anti- Competitive agreements and to prevent the abuse of dominance and combinations including mergers.
- To eliminate reservation of products in a phased manner for the small scale industries and the handloom sector.
- To divest the shares and assets of the government in state monopolies and private them, and
- To bring all industries in the private as well as public sector within the proposed legislation.

The replacement of the MRTP Act of 1969 by a new Competition Act is a natural corollary to economic liberation and opening up to trade to competition. Realizing the need for a new competition law, Government of India appointed a High Level Committee on Competition Policy and Law, "Raghavan Committee" to advise a new competition law for the country. The committee submitted its report in May 2000 advising a new competition law in line with international developments. On the basis of the report, the Competition Act was enacted by Parliament in December 2002 and it received presidential assent in January 2003. The Committee found the MRTP Act to be falling short of squarely addressing competition and anti-competitive practices. It stated that:

"The MRTP Act, in comparison with Competition Laws of many countries, is inadequate for fostering completion in the market and trade and for reducing, if not eliminating, anti-competitive practices in the country's domestic and international trade".

The Government very well received the recommendations of the committee and after consultations with all concerned, including the trade and industry associations, the Government decided to enact a new law on competition, i.e., the Competition Act 2002.

OBJECTIVES OF THE COMPETITION ACT 2002

In the context of the new economic policy paradigm, India had enacted the Competition Act 2002. The Competition Act 2002 aims to prevent practices having adverse effect on competition and abuse of dominance of enterprises wither by entering into anti-competitive agreements, or combinations. The Act typically focuses on four areas :

(1) Anti-competitive agreements :

The Competition Act defines the term “agreement” under section 2(b) as to include any arrangement, understanding or action in concert. Such arrangements, understanding or action in concern could either be in writing or oral; and it could either be enforceable or not by legal proceedings. The definitions given under the Act is very wide and covers both vertical as well as horizontal agreements. Section 3 of the Act states that any agreement which causes or is likely to cause an appreciable adverse effect (AAE) on competition in India is deemed anti-competitive. Section 3 (1) of the Competition Act prohibits any agreement with respect to “production, supply, distribution, storage, and acquisition or control of goods or services which causes or is likely to cause an appreciable adverse effect on competition within India”. Such agreements would consequently be considered void.

(2) Abuse of dominance

The term ‘dominance’ doesn’t signify any arithmetic or quantitative share in the market; rather it is a matter of subjective analysis. Section 4 of the Competition Act, “dominant position” is defined as a position of strength, enjoyed by an enterprise, in the relevant market in India which (a) enables it to operate independently of competitive forces prevailing in the relevant market or (b) to affect its competitors or consumers or the relevant market in its favor. The Competition Act provides an exhaustive list of practices, which, when carried out by a dominant enterprise or group, would constitute an abuse of dominance and any behavior by a dominant firm which falls within the scope of such conduct is likely to be prohibited. These include:

- imposing unfair or discriminatory conditions on sale or purchase of goods/services, including predatory pricing;
- limiting or restricting:
- production of goods or provision of services of a market; or
- technical or scientific development relating to goods or services to the prejudice of consumers;
- indulging in practice or practices resulting in denial of market access, in any manner;
- making the conclusion of contracts subject to acceptance by other parties of supplementary obligations, which, by their nature according to commercial usage, have no connection with the subject of such contracts; and
- using one’s dominant position in one relevant market to enter into or protect another.

(3) Combination regulation:

The definition of “Combination” as contemplated under the Act covers merger, amalgamation, acquisition and takeover. The Act considers acquisition, merger and amalgamation to be a combination, provided the combined asset value or turnover value, as the case may be, exceeds the threshold limits. The CCI is empowered to investigate into the dealings with respect to combinations on its own knowledge or information

without waiting for merging parties to approach it. The CCI can undo or modify a combination, if it causes an appreciable adverse effect on competition within the relevant market in India.

(4) Competition advocacy:

Advocacy is often referred as compliance without enforcement. In most countries the concept was linked automatically to the successful implementation of the competition policy and followed the enforcement of the competition law. Competition law enforcement is much older than competition advocacy. Competition advocacy, can be a useful tool to usher in regulatory reforms and create a policy climate that favors deregulation in a number of sectors and thereby increase consumer welfare. The commission is also required to take suitable measures, as may be prescribed, for the promotion of competition advocacy.

CONCLUSION

Law is an instrument to regulate human behavior, be it social life or business life. With the emergence of string and dominating market players, law was required to regulate their behavior in the market. The competition act while replacing the MRTP Act shifts our focus from curbing monopolies to promoting competition. But the Indian competition Act should be strong enough and also try to match up with the international standards. It is the duty of the commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interest of consumers and ensure freedom of trade in the markets of India. Therefore, competition law was introduced. It had twofold purpose. At the first instance competition law ensures competition in the market. Secondly, whenever there is competition, there is a likelihood of unfair competition. Violation of the “rules of the game” is the essence of unfair completion, and it is the nature of the competition that determines those rules. The Competition Law,2002 is therefore regarded as a landmark legislation.

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