



Study of Evolution and Development of Competition Law and its elements in India

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Competition is a process of economic rivalry between market players to attract customers. Competition also refers to a situation in a business environment where



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businesses independently strive for the patronage of customers in order to achieve their business objective. Free and fair competition is one of the pillars of an efficient business environment.

In the recent years the Indian economy has been one of the best performers and is on high growth path. Infusion of greater degree of competition can play a catalytic role in unlocking the fuller growth potential in many critical areas of the economy. In the interest of consumers, and the economy as whole, it is necessary to promote an environment that facilitates fair competition outcomes in the market, restrain anti-competitive behavior and discourage market players from adopting unfair trade practices. Therefore, competition has become a driving force in the global economy.

Evolution and Development of Competition Law in India

1. In India the first competition law was enacted in 1969 i.e. Monopolies and Restrictive Trade Practices Act, 1969
2. The MRTP Act, 1969 underwent amendments in the 1974, 1980, 1982, 1984, 1986, 1988 and 1991
3. Sachar Committee, which was constituted by the Govt. of India under the Chairmanship of Justice Rajinder Sachar in the year 1977.
4. In October 1999, the Government of India constituted a High Level Committee under the Chairmanship of Mr. SVS Raghavan
5. The Raghavan Committee presented its report to the Government in May 2000.
6. After considering the recommendations of the Standing Committee, the Parliament passed December 2002 the Competition Act, 2002.
7. October, 2003. CCI consists of a Chairperson and 6 Members appointed by the Central Government.
8. The Act was subsequently amended by the Competition (Amendment) Act, 2007 and Competition (Amendment) Act, 2009. The provisions of the Competition



9. Act relating to anti-competitive agreements and abuse of dominant position were notified on 20May, 2009.

Elements of Competition Law

There are three major elements of a competition law;

1. Anti – competitive agreements
2. Abuse of dominance; and
3. Merger, amalgamations and acquisitions control.

Anti- Competitive Agreements

Anti-competitive agreements are those agreements that restrict competition. Section 3 of the Competition Act, 2002 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 in India. The term 'Agreement' is broadly defined in section 2(b) of the Competition Act, 2002 and includes any arrangement or understanding or concerted action, whether or not it is formal, in writing or intended to be enforceable by legal proceedings. The agreements does not necessarily have to be a formal one and in writing or justifiable in a court of law and an informal agreement to fix prices will be hit by the provisions of the Competition Act, 2002.

Agreement between rivals or competitors is termed as horizontal agreements. The most malicious form of an anti-competitive agreement is cartelization. When rivals or competitors agree to fix prices or share consumer or do both, the agreement termed as cartel. Besides horizontal agreements, there can be anti-competitive agreements between producers and suppliers or between producers and distributors. These are referred to as vertical agreements. Vertical agreements too can undermine competition in the market.

Further the Competition Act, 2002 does not restrict any person's right to export from India goods under an agreement which requires him to exclusively supply, distribute or control goods or provisions of services for fulfilling export contracts.

Thus any agreement for the purpose of restraining infringement of such Intellectual Property Rights or for imposing reasonable conditions for protecting such rights shall not be subject to the prohibition against anti-competitive agreements.

Abuse of Dominant Position



Section 4 of the Competition Act, 2002 expressly prohibits any enterprise or group from abusing its dominant position. The term 'Dominant Position' includes a position of strength, enjoyed by an enterprise or group, in relevant market, in India, which enables it to –

- a) Operate independently of competition forces prevailing in the relevant market; or
- b) Affect its competitors or consumers or the relevant market in its favour.

The terms 'Dominance' is also referred to as market power which is defined as the ability of the firm to raise prices or reduce output or does both independently of its rivals and consumers.

The Act requires that relevant product market is to be determined by considering; physical characteristics or end-use of goods; the price of goods of services; consumer preferences; exclusion of in-house production; the existence of specialized producers; and the classification of industrial products. Further the relevant geographical market is determined by considering; regulatory barriers; local specification requirements; national procurement policies; adequate distribution facilities; transport costs; language; consumer preferences; and need for secure or regular supplies or rapid after – sales services.

In short, there shall be an abuse of dominant position if an enterprise indulges into the below mentioned activities –

- Directly or indirectly imposing discriminatory conditions in the purchase or sale of goods or service, or setting prices in the purchase or sale (including predatory pricing) of goods or services;
- Limiting or restricting the production of goods or provision of services or market therefore; or limiting technical or scientific development relating to goods or services to the prejudice of customers;
- Indulging in practice or practices resulting in the denial of market access;
- Making conclusion of contracts subject to acceptance by other parties of supplementary obligations, which has no connection with the subject of such contract;
- Utilization of the dominant position in one relevant market to enter into, or protect, another relevant market.



Merger, Amalgamations and Acquisitions Control

The Competition Act, 2002 uses the word combinations to cover acquisition of control, shares, voting rights and assets, and mergers and amalgamations.

- Approval of the proposal relating to merger or amalgamation, by the Board of Directors of the enterprise concerned with such merger or amalgamation, as the case may be;
- Execution of any agreement or other document for acquisition, acquiring of control.

The Competition Act, 2002 also sets a threshold below which a merger, acquisition or acquiring of control is not regarded as a combination.

Remedies under the Competition Act, 2002

CCI can be approached to report any unfair competition practices. CCI is also empowered to act suo-moto or on the reference.

Jurisdiction

Section 32 of the Competition Act, 2002 empowers the CCI to take action with respect to conduct that has occurred outside India and with respect to the parties located outside India provided that the conduct had an appreciable adverse effect on competition in the relevant market in India. In support of this provision, Section 18 the Act empowers the CCI to enter into a memorandum or arrangement with any agency of any foreign country with the prior approval of the Central Govt.

Private enterprises as well as government owned enterprises and even government departments are covered by the provisions of Competition Act, 2002.

Competition Advocacy

The fourth element of a competition law is competition advocacy. Competition Advocacy is most crucial component of Competition Law. Central Government/State Government may seek the opinion of CCI on the possible effects of the policy on competition or any other matter. In



this context, Section 49 of the Act envisages that while formulating a policy on the competition, the Government may make a reference to the CCI for its opinion on possible effect of such a policy on the competition, or any other matter. On receipt of such a reference, the CCI shall, give its opinion on it to the Central Government/State Government, within sixty days of making of such a reference and the Government may formulate policy as it deems fit. The role of CCI is advisory and the opinion given by the CCI shall not be binding upon the Central Government/State Government in formulating such a policy. Further the Act provides that the CCI shall take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues.

Conclusion

The Indian Competition Act, 2002 is very much comprehensive and enacted to meet the requirements of the economic growth and international economic developments relating to competition laws. The legislation is in synchronization with other policies such as trade policy, FDI norms, FEMA etc, which would ensure uniformity in overall competition policy.

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