
COMPETITION LAWS: “A LAW TO SUSTAIN HEALTHY COMPETITION IN THE MARKET”

Snehanshu Bhushan, School of Law, Sharda University

ABSTRACT

This Paper gives a brief analysis of Competition Law in India and also other nations like Europe and United States of America. It starts with giving an insight to the Background of the Competition law i.e. with an explanation of the Competition Act 2002, the procedural aspect; how the act came into existence replacing the MRTP Act 1969 and the principle Objectives of the act. Also the paper discusses about the formulation of the Competition Commission in India to regulate the act. Also the paper highlights the basic roles and responsibilities of the commission. Below then in the paper are mentioned the relevant provisions of act that are as stated: Section (3) Prohibits Anti Competitive agreements, Section (4) Prohibits abuse of Dominant position, Section (5&6) Regulates Acquisitions, Mergers and Combinations, and Section (49) Mandates competition advocacy, detailed analyses of these headings have been provided in this paper. Also the paper discusses about the concept competition advocacy and its requirements in the nation.

The paper is completely based upon both the theoretical and practical approach of the study and upon additional research of the subject and the secondary material available in the library and internet. Various articles and journals too have constituted in writing of this paper and they hold a recognition for the same. It is a descriptive study in nature and accurately portrays the characteristics of a particular situation. The relevant citations of relevant data's have been placed there in the paper as footnotes.

The ultimate aim of this Paper is to give an elaborative study to the competition act and its mandates to conduct fair competition in the market. It could help one to get well versed with the application of competition law in different nations and their role. This paper will in depth enhance one's approach towards the competition law and its relevant characteristics.

Background: Competition Laws

It is very commonly stated that, where there is a market there must be a competition. It is with the same sense there arrives the meaning of competition law. Prior to indulging ourselves within the meaning of competition laws and its aspects we must be aware with what is basically a competition, wherever there is an economic rivalry between the parties in the market and the entities tries their best to attract the customers and get benefits out of them thus give a rise to the definition of competition. It means of a procedure of standing best among the available options. It is a situation in the market in which the sellers tries to engage as much as sellers within it so as to obtain the best outcomes from them. The ultimate object of the competition is to secure the interest of the customers. Competition therefore is a process between the rivalries to gain profits out of it. It can be classified into two types namely Price and Non Price competition, the first one is by attracting the customers by lowering the price of goods and the second one is by attracting the customers by advertising and using the promotional agendas. All these could be done either in a fair or unfair manner, it is said to be fairly competed when an entity produces quality products and its demand rises as in comparison to others but on the other hand it can also be practiced unfairly like of reducing the prices below the desired limit which is commonly known as predatory pricing, misleading advertisements and wrong packaging's. Therefore it is for the regulation of such competitions and fair dealing of goods in the market and to avoid unlawful agreements there come the picture of enactment of competition law.

The competition law in India is drafted by the Legislatures as the Competition act 2002. The provisions of this act were enacted with various legislations under different jurisdictions and were so drafted keeping in mind of the structural and economical aspect of Indian markets. The Competition Act of 2002 was enacted by replacing the Monopolistic Restrictive Trade Policy Act 1969 commonly known as MRTP Act 1969. On 2001 the Government of India introduced the bill in the parliament; bill was then passed in dec 2002 and was finally assented by President in 2003. This act was then subsequently amended in year 2007. This act was formulated with certain specific objectives like of to-

- Eliminate Practices having adverse affect on the competition.
- Promote and sustain healthy competition in the market.
- Protect the interests of consumers and buyers.
- Protect anti competitive agreements in market.

- Ensure of Freedom of Trade Practiced by other participants. Etc

This is an Act to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.¹ This act prohibits practices of Price fixing, Bid rigging and exclusive dealing of the goods.

Competition Commission of India

To regulate the competition law in India a statutory body was incorporated this was called the Competition Commission of India commonly know with the short name CCI. It is an independent entity possessing its own common seal entrusted with the powers to enter into any contract and make decisions required accordingly. The commission is headed by a Chairman its executive officers. CCI has the power to enquire into unfair agreements or abuse of dominant position or combinations taking place outside India but having adverse effect on competition in India. To deal with cross border issues, CCI is empowered to enter into any Memorandum of Understanding or arrangement with any foreign agency of any foreign country with the prior approval of Central Government. The Act contemplates the extension of the executive powers of CCI by the appointment of a Director General and as many other persons for the purpose of assisting it in conducting enquiries into contraventions of the provisions of the Act as well as conducting cases before the Commission. CCI, either on its own motion, on receipt of a complaint or on a reference made to it by the Centre or State Government may enquire into any alleged contravention regarding the nature of the agreement, which is suspected to be inherently anti-competitive, or the abuse of dominant position. Any person, consumer, consumer association or trade association can make a complaint. Limitation of time for initiation of enquiry is one year from the date on which the combination has taken effect when CCI conducts such enquiry. CCI has been vested with the powers of a civil court including those provided under sections 240 and 240A of the Companies Act, 1956 on an "Inspector of Investigation" while trying a suit, including the power to summon and examine any person on oath, requiring the discovery and production of documents and receiving evidence on affidavits. CCI is also vested with certain powers of affirmative action to act in an expedited

¹ The Competition Act 2002 pdf; Competition Commission of India
<<https://www.cci.gov.in/competition-act>>accessed on 27 May, 2021

manner. Civil courts or any other equivalent authority will not have any jurisdiction to entertain any suit or proceeding or provide injunction with regard to any matter which would ordinarily fall within the ambit of CCI.²

Competition Law in India, Europe and U.S.A

Basis of competition Law in European Union

The EU competition law framework originates from the Treaty on the Functioning of European Union (Treaty). The Treaty covers a wide variety of subjects; however the substantial legal development has come in the area of competition law covered under Articles 101 and 102.³ The Treaty is generally applicable to agreements and conduct between the EU member states though Law trade practices Appellate antitrust laws each constituent state of the EU also has their respective national competition agencies and legislations. The Treaty did not specify the institutional structure for the competition law enforcement and the same was framed by the European Council (“Council”). The Council entrusted the European Commission (“EC”) with the duty to ensure compliance with the Treaty and enforcing, implementing and developing the European community’s competition law and policies.⁴

Basis of Competition law in U.S.A

U.S. competition law is commonly traced to the passage of the Sherman Act in 1890, although a few state antitrust laws preceded it and the act itself was something of a codification of the common law.⁵ The strict doctrine of early common law invalidating all restraints of trade was prevailing in the U.S.A. until the turn of the century. The doctrine has been relaxed in view of the public interest in permitting certain protective covenants. The fixed rules as to the conditions for restraint on the freedom of contract were upheld by both English and American

² Rajkumar Dubey; Dubey & Partners- Advocates , India: Indian Competition Act: An Overview, Mondaq<<https://www.mondaq.com/india/antitrust-eu-competition-/33971/indian-competition-act-an-overview>> accessed on 27 May, 2021

³ Nishitagambhir, Competition of Law in India v/s USA and EU; Legal Service India <<http://www.legalserviceindia.com/legal/article-2822-competition-law-in-india-v-s-usa-and-eu.html>>accessed on 28 May, 2021

⁴ Payal Chatterjee and Shashank Gautam, Nishith Associates; Competition Law in India v/s USA and EU, Legal Era <http://www.nishithdesai.com/fileadmin/user_upload/pdfs/New_Competition_Law_in_India_vs_USA_and_EU> accessed on 28 May, 2021

⁵ Stephen Calkins, Competition Law in the United States of America, (Wayne State University Law School Legal Studies Research Paper Series, April 2007)<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=978787> accessed on 28 May, 2021

Courts until the introduction of the modern view of the validity of agreement on the test of reasonableness of the restraint.⁶ All combinations or agreements which unreasonably suppress competition or restrain trade are illegal and void at common law as against public policy regardless of declared purpose.⁷

Basis of Competition law in India

With the vast shift of globalization and economic growth and resorting to liberalization, it was becoming tough and difficult to deal up with the current arisen scenarios relating the economic concern ahead so to gear up with such economic issues it became a necessity to get up acknowledged with the laws so that can deal with such issues and hence then arrived the need of competition law in India. Thus with the increasing integration of the Indian economy and its international concerns the government of India initiated with new laws and competition laws. As of the aforesaid statements we are now well equipped with meaning purpose and the principle objective of this act. Therefore here at under this heading we'll be dealing with some relevant provision of the competition act 2002.

Relevant Provisions of Competition act 2002

Below are mentioned some of the relevant provision of the act-

- Section (3) Prohibits Anti Competitive agreements.
- Section (4) Prohibits abuse of Dominant position.
- Section (5&6) Regulates Acquisitions, Mergers and Combinations.
- Section (49) Mandates competition advocacy

These provisions form the backbone of the act and assign a definite meaning to it. They are the main elements of this act and it is with the fulfillment so stated elements there has been drafting of the act. Now we'll be dealing with these respective provisions simultaneously.

Anti Competitive Agreements

Section 3 of the act deals with anti competitive agreements, this provision has a specific understanding under the act and has a broader scope. Section 3 (1) provides that any agreement shall deemed to be void and prohibit any enterprise or person in individual entering into such

⁶ Corpus Juris Secundum, Vol. 17, § 240 < <https://www.scribd.com/document/138715890/3-Corpus-Juris-Secundum-Re-LOYALTY> > accessed on 28 May, 2021

⁷ Bruce's Juricas v. American Can Co., 22 So.2d 461 affirmed 67 S.ct. 1015:320 US 743 < https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2381195_code2182734.pdf?abstractid=2381195&mirid=1 > accessed on 28 May, 2021

contracts if it is in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes, or is likely to cause an appreciable adverse effect on competition within India. Section 3(3) specifies certain anti-competitive agreements that may be entered into or practices that may be carried on, by enterprises supplying similar or identical goods or services or cartels. Section 3(4) deals with what are termed as vertical restraints. These are restrictions amongst enterprises at different stages of production chain in different markets. Section 3(5) provides certain exceptions from Section 3. The first set of exceptions protect the right of an owner of any of the intellectual property rights under the enactments listed in the subsection, to restrain any infringement of any of his rights, or to impose reasonable restrictions necessary to protecting any of those rights.⁸ In lay man terms the provision could be understood likely as that; No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.

Abuse of Dominance

Keeping an eye over the dictionary meaning dominance means something powerful and influential over others. Similarly in general terms it could be understood as supremacy prevailing over any other. Dominance is controlling capacity of any dominant entity in respect to their fields like of political dominance, sociological dominance, dominance for competing of enterprises in competition markets, it is the powerful position ascertained by the entities against their rivals. Abuse occurs when an enterprise uses its dominant position in the relevant market in an exclusionary and/or exploitative manner. The abuse of dominant position is prohibited by Section 4 of the Competition Act. Abuse of dominant position is defined under the second part of the same Section. According to the Act, dominant position means a position of strength, enjoyed by an enterprise in the relevant market in India which enables it to: 1. Operate independently of competitive forces in relevant market 2. Affect competitors, consumers or relevant market in its favor.

There are three stages for determining the dominant position in the market they are:

- Stage 1 - Determination of Relevant Market

⁸ Sumita Patwari; Competition Law: A Trans- National Perspective.
<https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2381195_code2182734.pdf?abstractid=2381195&mirid=1
> accessed on 28 May, 2021

- Stage 2 - Dominance of the enterprise/group in the relevant market is ascertained
- Stage 3 - "Abuse" by the dominant enterprise in the relevant market is determined

The difference between the definition of anti-competitive agreements and abuse of dominant position is that in anti-competitive agreements there have to be two or more parties and it can be between any enterprise or firm and doesn't require there to be a dominant firm involved. In abuse of dominant position, it can be done by a single party but the party has to be in a dominant position in the relevant market.⁹

Acquisitions, Mergers and Combinations

The term Acquisitions and Mergers are included in this act under the meaning of combinations, Combination is a broader term and it in calculates the meanings of both mergers and acquisitions within it under this act. "Combination" as defined under Section 5 includes merger of enterprises and their acquisitions. The acquisition of shares, voting rights, assets of another enterprise above certain prescribed threshold levels of value or control over another enterprise and merger of enterprise where the relevant assets exceed the prescribed value are covered by Section 5.¹⁰

Mergers & Acquisitions (combinations) mean any situation in which the ownership of two or more enterprises is joined together. In business world joining of ownership may take many different forms, and may be either amicable and consensual, or unwelcome and hostile. In India Mergers are regulated under the Companies Act and also under the SEBI Act. With the enactment of the Competition Act in 2002, mergers also come within the ambit of this legislation.

There are three types of mergers namely, Horizontal mergers, Vertical Mergers and Conglomerate Mergers. The Horizontal Merger is between same rivals additionally Vertical Mergers are between same enterprises but at different levels or say stages and lastly conglomerate mergers are those kinds of mergers that take place between enterprises that are not in the same line of business. Combinations ensure economic growth, more economic

⁹ Abuse of Dominant Position, Competition Act 2002; Clear Tax
< <https://cleartax.in/s/competition-act-2002#:~:text=The%20Competition%20Act%2C%202002%20defines,of%20goods%20or%20provision%20of>
> 28 May 2021

¹⁰ Sumita Patwari; Competition Law: A Trans- National Perspective.
<https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2381195_code2182734.pdf?abstractid=2381195&mirid=1
> accessed on 29 May, 2021

opportunities for businesses to compete with their overseas counterparts and consumer welfare ultimately. In common Parlance the Provision could be understood as that; No person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void.

Competition Advocacy

Competition Advocacy with by name itself gives its meaning of adjudicating the matter with respect to competition law. Section 49 of the Act empowers commission to take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues. It is clear that advocacy is a very important tool in almost all the jurisdictions across the world for regulating the competition in the market.

Competition Advocacy is one of the main Perspective pillars of modern competition law which aims at creating, expanding and strengthening awareness of competition in the market. Section 49 of the Competition Act, 2002 mandates the CCI to undertake advocacy for promoting competition. “**Competition advocacy**” means those activities which are conducted to promote a competitive environment for economic activities. The main beneficiaries of competition policy and law are the consumers, whose welfare is its declared objective of competition Act.

In that sense advocacy always plays a vital role in securing the willingness and acceptability of any policy and law. Raising the level of awareness among the public is an important step towards creating a competition culture within the country. The CCI has taken up competition advocacy efforts simultaneously with the Central Government and State governments, besides undertaking advocacy with the other stakeholders such as the business chambers, consumer activists / associations, academic institutions and statutory bodies of professionals such as lawyers, chartered accountants, cost accountants and company secretaries.

CCI has taken various initiatives for promotion and creating awareness of competition law awareness and capacity building in competition matters as follows-National and State level Workshops and Seminars, Special lectures organised for CCI officers, Papers and studies published for competition advocacy and for creating awareness of competition issues. Capacity building of stakeholders or for CCI officials to participate in competition regulatory process, Competition related sectoral/ regulatory impact assessment; market studies and research

projects carried out by the commission. Consultation papers published/ placed on website of the Commission, Press conferences and press releases.¹¹

The International Competition Network has defined Competition Advocacy as “all those activities conducted by the competition authority related to the promotion of a competitive environment for economic activities by means of non-enforcement mechanisms, mainly through its relationships with other governmental entities and by increasing public awareness of the benefits of competition”.¹²

Conclusion

- The objective of MRTP act 1969 is promoting fair play & fair deal in market.
- The competition act 2002 was passed to benefit the consumer, business houses as well as government.
- The main aim of this act was to encourage healthy and free competition in the market.
- Competition being an efficient system of markets working encourages enterprise and widens choice.
- World is not a free platform for trade and commerce.
- These laws implement the basic principles namely, anti-competitive agreements, abuse of dominant position and combinations in different ways.
- Roles and Duties of Competition Commission of India.
- Agreements between different level of production and distribution chain are called vertical agreements.
- Responsibility of CCI to prohibit anti-competitive agreements, abuse of dominance, and regulate combinations through proper inquiry & investigations.
- Competition law offers the possibility of prohibiting the emergence or strengthening of dominant positions through mergers.

¹¹ Pallavi Gupta, JIMS School of Law, Greater Noida, U. P. Concept of Competition Advocacy and Role of CCI in India: A Practical Approach, Jan 25 , 2015. <<https://jimsgnblog.blogspot.com/2017/01/concept-of-competition-advocacy-and.html>> accessed on 29 May, 2021

¹² Vishakha Jaiprakash Thanvi, TMV Lokmanya Tilak Law College, Restrictions Imposed on CCI Advocates, Indian Legal Solution; January 16, 2021< <https://indianlegalsolution.com/restrictions-imposed-by-cci-on-advocates/>> accessed on 29 May 2021.

- To prove the abuse of a dominant position on the procurement side of the market, it is necessary to establish that a dominant position exists on the relevant market and that it has been abused.
- Competition law has a broader aspect on the International Scenarios as well.
- This law promotes the competition between enterprises and leaves the market unbound by the manipulation of stronger trading enterprises.
- It is the foundation on which market system works and economy grows.
- CCI mandates for the various bodies to undertake advocacy for the promotion of competition.
- Important to keep competition advocacy transparent to maintain integrity of commission.

Bibliography

Books Referred:

- **Competition Law**, Author(s): Dr. Avtar Singh; Brand: Eastern Book Company; Edition: 1 Ed Rp 2021
- S M Dugar, Guide to Competition Act, 2002: **An Exhaustive Section-wise Commentary Incorporating All Legislative and Judicial Developments**; Book by S. M. Dugar and Sudhanshu Kumar.
- Mittal D.P., **“Competition Law & Practice”**, Taxmann Publications (P.) Ltd., 3rd Ed.(2011)
- Ariel Ezrachi, **“EU Competition Law: An Analytical Guide to the Leading Cases”**, Hart Publishing, 2 nd Ed. 2010

Articles Referred:

- India: Indian Competition Act: An Overview; 27 July 2005 by Dubey;& Dubey Partners.
- Competition law in India; By Karney Partners Advocates; Legal Services India.

Websites:

- <http://www.legalserviceindia.com/legal/article-2822-competition-law-in-india-v-s-usa-and-eu.html>
- <https://blog.ipleaders.in/abuse-dominant-position-competition-act-2002/>
- <https://www.cci.gov.in/competition-act>
- <https://norrismclaughlin.com/articles/competition-laws-in-the-european-union>
- <https://cleartax.in/s/competition-act-2002>
- https://www.cci.gov.in/sites/default/files/cci_pdf/competitionact2012.pdf