

Competition Law & Policy in India

Prepared

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Competition

- Is “a situation in a market in which firms or sellers independently strive for the buyers’ patronage in order to achieve a particular business objective for example, profits, sales or market share” (World Bank, 1999)
- Is “an essential hand maiden to efficient trade.”
- The ultimate *raison d’etre* of competition is the interest of the consumer.

Competition

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- Is the foundation of an efficient working market system, which has several advantages over a planned economy and constitutes the pre-condition which prevents freedom of decision and action of self interested individuals or entities from leading to anarchy or chaos but rather to economically optimal socially fair and desirable market results. (Report of High Level Committee on Competition Policy, Deptt. of Company Affairs, 2000).
- Competition leads to greater dynamic efficiency in the economy by bringing about innovation, technological development, lower price and better quality and service for the consumer.

Competition Law & Policy

- In India, Competition Law and Policy are relatively new concepts.
- However in various developed countries, it has long history e.g. Canada enacted its first Competition Law in 1889.
- In the 1890s, many of the states of USA enacted Competition Laws. The Federal Government of USA enacted the (Sherman Anti-trust Act [1890]), Clayton Act (1914) and Fair Trade Commission Act (1914).
- As of today more than 90 countries have Competition Acts.
- There is an international Competition Network and a Global Forum on Competition (OECD).

Competition Law

- The need for Competition Law arises because market can suffer from failures and distortions, and various players can resort to anti-competitive activities such as cartels, abuse of dominance etc. which adversely impact economic efficiency and consumer welfare.
- Thus there is need for Competition Law, and a Competition Watchdog with the authority for enforcing Competition Law.

Promotion of Competition

- For promotion of competition in the market an appropriate competition policy is required.
- Competition policy includes “those government measures that directly affect behaviour of enterprises and structure of industry.” (Khemani and Mark Dutz 1996)

Elements of Competition Policy

Competition policy has two elements :-

- Putting in place a set of Policies that enhance competition in local and national markets.
- A Law designed to prevent anti competitive business practices and unnecessary government intervention.

Competition Policy

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It includes Reforms in certain Policy areas to make these more pro-competition:-

- Industrial policy
- Trade policy
- Privatization/disinvestment
- Economic Regulation
- State aids
- Labour policy
- Other such policies

Industrial Policy

- Industrial Policy has to address and reform licensing requirements, restrictions on capacities, or on foreign technology tie ups, guidelines on location of industries, reservations for small scale industry, etc. These adversely affect free competition in the market.

Trade Policy

- Trade policy has important implications for development of competition in the markets. Measures for liberalisation of trade promote greater competition e.g. reducing tariffs, removal of:
quotas/physical controls, investment controls, conditions relating to local content etc.

Privatisation/Disinvestment

- Empirical research has found that state- owned enterprises generally tend to be less efficient than private owned firms, for reasons such as manager compensation, low incentives, lack of direct accountability, hard budget constraints for managers, etc.
- State owned enterprises are generally insulated from market forces and receive protection/benefits such as government imposed barriers to entry, price regulation and subsidies.
- Thus privatization of state owned enterprises is important element of competition policy.
- However, in privatization/ disinvestment process, care is to be taken that state monopoly is not replaced by private monopoly.

Economic Regulations

- New legislation and regulations to promote competition and to bring about restructuring of major industrial sectors is essential. Legislation to aim at separating natural monopoly elements from potentially competitive activities, and the regulatory functions from commercial functions, and also create several competing entities through restructuring of essential competition activities and to create a competitive environment in following sectors.

Examples

- Electricity sector
- Telecommunications sector
- Ports

State Aids

- Several state aids create unequal operating conditions for businesses. Examples
 - Subsidies
 - Tax rebates
 - Preferential loans
 - Capital injection
 - Public procurement
- Experience suggests that such policy measures rarely have successful results and destroy incentives for firms to become efficient.
- Temporary specific state-aid for well stated public purpose can be justified.

Competition Law

- It is a tool to implement and enforce competition policy and to prevent and punish anti-competitive business practices by firms and unnecessary Government interference in the market.
- Competition Law generally covers 3 areas:
 - Anti - Competitive Agreements, e.g., cartels,
 - Abuse of Dominant Position by enterprises, e.g., predatory pricing, barriers to entry and
 - Regulation of Mergers and Acquisitions (M&As).

Background to India's Competition Law

Earlier Law

MRTTP Act enacted in 1969

- Belongs to the era of controlled economy, as against the market based economy
- Objectives were to prevent concentration of economic power, to control monopolies, and to prohibit monopolistic and restrictive trade practices
- Major amendments to MRTTP Act undertaken in
 - 1984 – major addition was relating to Unfair Trade Practices,
 - 1991 – deletion of Chapter relating to Mergers and Acquisitions, and
 - Addition relating to Award of Compensation.

Competition Act 2002

- An Act to establish a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect interest of consumers and to ensure freedom of trade carried on by other participants in markets, in India
- Under the Act the Commission can enquire and adjudicate in respect of
 - Anti-Competitive Agreements
 - Abuse of Dominant Position
 - Regulation of Mergers and Acquisitions
 - Commission also has responsibility to undertake Competition Advocacy

