Competition Commission of India

Overview of Competition Policy & Law

Lecture by

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Competition : Benefits

Is foundation of efficiently working market system:

- Maximizes consumer welfare, its ultimate raison d'etre. Lower prices, wider choice and better services. Redressal against exploitation.
- Accelerates economic growth; higher efficiency / productivity.
- Generates innovation; dynamic efficiency.
- For enterprises : level playing field, redressal against anti-competitive practices.

Empirical evidence of benefits

- <u>Australia:</u>

➢Average household income was up by A$ 7,000/- per annum on account of the competition policy (APC study quoted by OECD).

➢Gains from reform~ 5.5% of GDP (Paul Crampton, OECD-IADB).

- <u>EU:</u> White Paper on Growth, Competitiveness and Employment, 1993-Ensuring fair competition in market is essential ingredient for enhancing and maintaining competitiveness in economy.

- <u>New Zealand, UK:</u> Pro-competition policy in New Zealand and UK added around 2.5% to their employment rate over 1978-1998 (OECD).

- <u>USA</u>: Fall in prices following deregulation of certain industries.(OECD) In 1990s, competition contributed most to economic growth; raised productivity by 4% p.a. (Paul London).

- **<u>India:</u> Benefits since reforms - increased consumer welfare, enhanced growth, greater competitiveness.**

Competition and Competitiveness

Competition is one of the key drivers of competitiveness.

International studies reveal :

- Competition is mechanism that helps more productive and efficient companies expand and take market share from less productive ones, which either go out of business or become more efficient. (MGI Study)

- When Government policies limit competition, even unintentionally, economic growth slows and nations remain poor. (MGI Study)

- India at 16th position in market dominance, but ranked 37th in Business Competitiveness Index out of 102 countries surveyed. (WEF)

Competition and Competitiveness

- Close negative relation between market dominance and Business Competitiveness Index; higher the level of market dominance, lesser is competitiveness. (WEF)

- Study of 670 British companies: market power led to reduced productivity. (S. Nickell)

- Unequivocal evidence relating to higher costs/charges in concentrated markets. (Scherer & Roses)

- UNCTAD: In long run full competition essential for competitiveness.

Role of Competition Law and Policy

Both Competition Law and Policy have roles in maintaining free & fair competition:

- Competition Policy – set of market based policies that enhance competition, facilitate entry and exit, reduce administrative controls, minimize regulations, etc. Increasing number of countries migrating to competition oriented policies.

- Competition Law – a law to prohibit and penalize anti-competitive practices by enterprises and regulate potentially anti-competitive mergers. (Market Failures).

  Could also provide for Competition Advocacy.

About 105 countries have adopted Competition Law.

Government Policies Affecting Competition

Following major policies can affect competition:

- Trade policy ,including Tariffs, Quotas, Subsidies, Anti – dumping actions etc.
- Industrial policy
- Labour policy & labour laws
- Privatization policy & Regulatory reforms
- Policy on reservations for SSI, PSUs etc.
- Policy on government procurement
- Foreign exchange policy
- Policy on sectoral regulations e.g. Telecom, Electricity, Banking
- State Monopolies policy

Government Policies Affecting Competition

Other policies that may affect competition:

- Policy of merger of airlines
- Proposed Postal Bill
- Proposed Warehousing Bill
- Policy on grant of Model Concession Agreement (MCA) under Public Private Partnership (PPP) projects in the infrastructure sector such as in national and state highways & ports
- Proposed regulation of broadcasting sector
- Policy of regulations in road transport sector

Evolution of Competition Policy in India

Scenario before the nineties:

- India adopted a planned economic development model.
- Broad policy objectives were:
  - Development of a large industrial base with a view to achieve self reliance
  - Promotion of social justice.
- Policy instruments used to achieve these objectives were:
  - Controlling the pattern of investment,
  - Indirectly-Industrial Licensing
  - Directly- Creation of large Public sector
  - Directly- Control of utilization of foreign exchange
- Restricting the growth of private sector by following:
  - Entry & exit were restricted
  - Firm & Plant size determined by Government policy

Evolution of Competition Policy in India

Scenario before the nineties(Contd.):

- Growth of private sector restricted by:

  - Most production directly in public sector
  - Prices in important sectors administered by Government
  - Allocation of scarce financial resources determined by formal Government policy and informal interventions
  - Competition from abroad curtailed deliberately by high tariffs and quantitative restrictions
  - Restrictions on Foreign Direct Investment (FDI)

- No place for a competition policy .

Evolution of Competition Policy in India

Policy wise position

- Industrial policy

o Public Sector – Highly protected from competition through reservation, policies mandated that both central government departments & public sector enterprises shall apply price and purchase preference in favour of public sector.

o Licensing & other restrictions – The Industrial (Development & Regulation) Act, 1951 (IDR Act) – regulated entry as well as expansion of capacity; MRTP Act, 1969 – prohibited entry & expansion of firms beyond the limit.

o Small scale industry – Granted exemption from licensing , promoted to foster labour intensive production in consumer goods sector, to spread industrialization to rural areas; policies protected them from competition from large scale industries.

oForeign investment restricted – The Foreign Exchange Regulation Act, 1973 (FERA) restricted the equity of foreign companies in Indian companies to 40 percent, no incentive for greater assistance including technology transfer from the foreign partner.

o Exit barriers – Created by labour and bankruptcy laws e.g. Industrial Disputes Act, 1947 – still controls retrenchment of labour & closure of enterprises.

Evolution of Competition Policy in India

Policy wise position

- Trade Policy

o Licensing policy – Up to 1970s, focus of trade policy was on regulating the utilization of foreign exchange through use of quota restrictions i.e. licensing for all categories of imports; import of consumer goods prohibited; ad-hoc allocation of licenses based on criteria of "essentiality" and "indigenous non-availability".

o Price controls – No. of important commodities subjected to price & quality controls e.g. edible oils, sugar, fertilizers, pharmaceuticals, aluminum, cement, steel, coal and petroleum products.

o Financial sector – Total lack of competition due government intervention & control in the banking system, nationalization of 14 large commercial banks in 1969 brought 85% of the banking assets under public control, very few long term lending financial institutions which acted as a consortium and resembled a lending cartel.

o In equity market – Entry barrier and setting the issue price by Controller of Capital Issues, hindered the widening of the investors base, dominance of public sector financial institutions e.g. UTI, LIC, GIC etc; no Foreign Institutional Investors (FII) permitted to enter.

Evolution of Competition Policy in India

Consequences of state controlled economy

- Delays in decision making, high administrative costs, inefficient choice of scale, locations and technologies. Detrimental to economic efficiency & productivity. Resulted into a non-competitive and high cost industrial structure.
- Absence of domestic competition with protection from imports led to inefficient domestic private sector besides blocking technological advancement. Resulted into technical inferiority with the rest of the world.
- Initial growth in industrial sector (7.1%) till 1965-66, reversed from 1966-67 to 1979-80 (5.5 %).
- Slowdown in growth rates in consumer goods sectors, textiles & food products.
- Concentration of industries in capital goods and intermediate sectors – led to monopoly power of few by exploiting licensing system, due to limited domestic competition and absence of foreign competition.

Evolution of Competition Policy in India

Scenario after 1991- changes in the policy regime

Industrial Policy:

- Abolition of licenses for industries (except 7 industries in the core areas) – Industrial policy, 1991
- Abolition of monopoly of public sector except those in defence & strategic areas, discontinuation of "price preference" system.
- Sick PSUs referred to Board For Industrial And Financial Reconstruction (BIFR) for structural reforms.
- Participation of private sector in sick PSUs.

Trade Policy

- Reforms in Export and Import (EXIM) policy – import of several restricted items permitted freely through Special Import Licenses (SIL).
- India signed world trade treaty and agreed to honor WTO commitments to do away with quantitative restrictions regime by April 2001.
- Increase in the Open General License (OGL) list.

Evolution of Competition Policy in India

Scenario after 1991- changes in the policy regime (Contd..)

Trade Policy

- Lowering of tariff rates – from 125 % in 1991 to 35% in 1997-98; further reduction thereafter.
- Deregulation of Financial Sector – Permitted entry of domestic & private foreign banks, liberalization of regulations on non-banking financial companies – resulted into entry of such domestic financial institution in short term lending, providing competition to banks.
- Liberalization of foreign direct investment, foreign technology agreements & compulsory industrial licensing, automatic approvals permitted for investment up to 51 % equity and 34 % investment, 100 % foreign holding permitted in Export Oriented Units (EOU), Foreign Investment Promotion Board (FIPB) set up.
- Change in exchange rate policy – a flexible exchange rate policy after 1985 had a positive impact on exports.
- Abolition of the office of Controller Of Capital Issues in 1992 – leading to free pricing of issues based on competition in the market, private mutual funds and FIIs permitted to trade in equities, increasing competition.
- Competition introduced in exchanges with setting up of National Stock Exchange.

Objectives of Competition Law

- To promote, preserve and sustain competition in markets
- To prevent creation of excessive market power by preventing abuse of dominance in market.
- To prevent practices having adverse effect on competition.
- To protect the interest of consumers.
- To ensure freedom of trade carried on by other participants in markets. (Fundamental right guaranteed under Article 19(1)(g) of the Constitution Of India)
- To serve other social and political objectives such as equitable distribution of benefits of creation of wealth by enterprises (Article 39 of the Constitution Of India).

Disclaimer

This presentation provides only an introduction to competition law, and should not be relied on as a substitute for the law itself.

Further, this presentation is subject to any amendments which may be made in the competition law at anytime in future.

Thank you

Website:

www.competitioncommission.gov.in