



Competition Commission of India



OVERVIEW OF COMPETITION LAW

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Venue:- Scope Complex

RATNESH SAHAY, Advisor

ORIGIN OF COMPETITION LAW

- The concept of monopoly is quite ancient and can be traced back to the Indian and Roman civilizations.
- Kautilya's Arthashastra, deals with statecraft and economic policy. It does not distinguish between the wealth of the sovereign and that of his subjects. It also illustrates how hoarders were severely punished.
- Under the Roman Empire, the business practices of market traders, guilds and governments have always been subject to scrutiny, and sometimes faced severe sanctions.
- The first traceable event of origin of competition law can be regarded as the book of "Wealth of Nations" by Adam Smith where he gave the metaphor of 'the invisible hands.'

BACKGROUND OF COMPETITION LAW IN INDIA

- Liberalization
- Privatization
- Globalization
- Curbing Monopolies to promoting Competition
- MRTP Act, 1969
- The Competition Law

JOURNEY OF COMPETITION LAW IN INDIA

- During GATT negotiations in 1947, limited international competition obligations were proposed and with the creation of WTO in 1995 cross-border competition issues on a sector specific basis were discussed.
- During this period the WTO took up the examination of the interaction between trade and competition policy in 1997 which raised interest in several countries.
- Several economies adopted competition laws as a sequel to their market oriented economic reforms process.
- As a result many countries have been facing pressure to draft new and effective competition laws. This necessitated the drafting of competition law in UK, India and other countries.
- Some of these countries also adopted sector-specific regulatory laws (in telecom, electricity, financial services, etc.) after these sectors had been opened up for private players.
- This upsurge in interest in competition and regulatory laws in many economies reflects the substantial changes that have been taking place in their economic governance system.

JOURNEY OF COMPETITION LAW IN INDIA

- First and foremost step in the direction of having a competition policy in India is said to have taken in pursuance to WTOs Singapore Ministerial declaration in 1996
- An expert group was set up by the Union Ministry of Commerce in Oct, 1997 to study issues relating to the interaction, including anti-competitive practices and the effect of mergers and amalgamation on competition
- Expert Group Report suggested in Jan, 1999 the enactment of competition law and recommended harmonization of competition principles, competition policy and competition law enforcement efforts
- The Finance Minister of India in his budget speech on 27th Feb, 1999 stated that the MRTP Act has become obsolete in the light of international economic developments and there is a need to shift our focus from curbing monopolies to promoting competition

OBJECTIVES OF THE COMPETITION LAW

- Ensure fair and healthy competition in the market.
- Level playing field.
- Faster and inclusive growth.- Allocative efficiency, Productive efficiency, Dynamic efficiency. To achieve all three of these efficiencies at the same time is goal of the Competition Law.
- Competition law believes in the premise that the unrestrained interaction of the competitive forces in the market will yield the best allocation of economic resources, lower prices, improve quality and maximum material progress for the citizens.
- Thus, the principal objective of the Competition Law is to make the market economy work better by stopping vested interests from obstructing markets. The purpose, therefore, is to maintain and protect the competitive process.
- The benefits of competition for economic growth and consumer welfare are well recognized and therefore, strict enforcement of competition law is a big challenge for any competition authorities.

COMPETITION ACT, 2002

- The Competition Act, 2002 came into existence in January 2003 and the Competition Commission of India was established in October, 2003
- However, the Act could not be notified due to legal hassles.
- Finally, the Parliament in September, 2007 passed the Competition (Amendment) Act, 2007 and the Act became operational.
- CCI came into existence on 1st March, 2009.
- Provisions were notified on May 20, 2009.
- The provisions relating to Combinations were notified w.e.f 1st of June, 2011.

PREAMBLE OF COMPETITION ACT,2002

- To prevent practices having adverse effect on competition
- To promote and sustain competition in markets
- To protect the interests of consumers
- To ensure freedom of trade carried on by other participants in markets in India.

ANTI COMPETITIVE AGREEMENTS

Whenever, there is effort to restrict competition through means such as collusive agreements to fix prices and outputs they need to be prohibited through legal devices provided by the competition law.

Horizontal Agreements

- Agreement to limit production and/or supply;
- Agreement to allocate markets;
- Agreement to fix price;
- Bid rigging or collusive bidding;

Vertical Agreements

- Tie-in arrangement;
- Exclusive supply / distribution arrangement;
- Resale price maintenance;
- Refusal to deal.

Concerted Actions/practices

Exemptions –

IPRs, Copy Rights, Patents etc.

Section 3 of the Act deals with anti-competitive agreements.

CARTELS

- Cartels are agreements between enterprises, persons, a government department and association of persons not to compete on price, product, services or customers.
- Most pernicious form of anti- competitive practice which results in higher prices, poor quality and limited choice for goods or / and services.
- International Cartel – Import Cartel and Export Cartel.

Conditions conducive for formation of cartels

- High concentration
- High entry and exit barriers
- Homogeneity
- Dependence of the consumers on a product

PUBLIC PROCUREMENT

- It is a key economic activity and accounts for large proportion of GDP world wide.
- Existing statistics suggest that public procurement accounts for 15% of GDP world wide, 20% in OECD countries and 30% in India.
- In India major departments like Defence, Railway and Telecom spend about 50% of their budget on procurement.
- Around 26% of the Union Budget allocated for health is devoted to procurement.
- It plays a key role in socio-economic development process as it is required to deliver goods and services in creating infrastructure, e.g. Transportation, Public health, Education, Rural Development, Power, Roads, etc.
- Corruption in Public Procurement

CORRUPTION – A BIG CHALLENGE IN GP

Corruption in procurement is a global phenomenon. Fighting and preventing fraud and corruption in public procurement is a big challenge especially for the developing countries. The factors responsible for corruption in public procurement are:-

- Public procurement involves large orders which increases the temptations of public officials.
- Government contracts mean valuable, often long term business opportunities for bidders and their suppliers. They are subject to fierce international and local competition. All this generates enormous valuable economic activity on a global scale, and therefore, makes procurement vulnerable to bribery.
- Corruption can affect any sector particularly large sectors like energy, defence, Telecom aid etc., where stakes are very high because of the magnitude, complexity, the money involved and the international nature of the deals.
- However objectionable on moral grounds, seemingly upstanding business people yield to bribery, describing it as the price of staying in the bidding.
- Evidence shows that far from driving business, systemic corruption simply destroys it.
- Corruption, therefore, distorts competition.

BID - RIGGING

“Bid-Rigging” means any agreement, between enterprises or persons engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition.

Forms of Bid-rigging

- Bid suppression- refrain from bidding
- Complementary or Cover bidding- submit bids too high or with unacceptable terms.
- Bid Rotation- competitors agree to take turns being the lowest bidder.
- Sub-Contracting- colluding Competitors receive sub-contracts from successful bidder.

HOW BID RIGGING TAKES PLACE

Bid-rigging occurs when bidders agree among themselves to eliminate competition in the procurement process leading to higher prices and denial of fair price. It takes place:-

- When a competitor agrees to submit a non-competitive bid that is too high to be accepted or contains terms that are unacceptable to the buyer.
- A competitor agrees not to bid or to withdraw a bid from consideration.
- A competitor agrees to submit bids only in certain geographic areas or only to certain public organizations.
- Although the schemes used by firms to rig bids vary, they all have one thing in common – the bidders agree to eliminate competition so that prices are higher and the government pays more.
- It is a type of cartel, where contract is pre-determined to one party even though several other parties also present a bid.
- It is illegal in most countries as a form of price fixing and market allocation.
- Collusion between firms in a procurement setting is in which bids are submitted to keep bid amount at a pre determined level.

ABUSE OF DOMINANCE

- ▶ Dominance refers to a position of strength which enables an enterprise to operate independently of competitive forces or to affect its competitors or consumers or the market in its favour. Abuse of dominant position impedes fair competition between firms, exploits consumers in the relevant product / geographic market. Abuse of dominant position includes:
- ▶ Imposing unfair conditions or price,
- ▶ Predatory pricing,
- ▶ Limiting production/market or technical development ,
- ▶ Creating barriers to entry,
- ▶ Applying dissimilar conditions to similar transactions,
- ▶ Denying market access, and
- ▶ Using dominant position in one market to gain advantages in another market.

Section 4 of the Act deals with abuse of dominance.

COMBINATIONS

- Broadly, combination includes acquisition of control, shares, voting rights or assets, acquisition of control by a person over an enterprise where such person has control over another enterprise engaged in competing businesses, and mergers and amalgamations between or amongst enterprises where these exceed the thresholds specified in the Act in terms of assets or turnover.
- If a combination causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India, it is prohibited and can be scrutinized by the Commission.
- The thresholds for the joint assets/turnover.

Section 5 & 6 of the Act deals with abuse of dominance.

HOW TO FILE INFORMATION

Who can file the information ?

- Any person, consumer or their association or trade association can file information before the Commission.
- Central Govt. or a State Govt. or a statutory authority can also make a reference to the Commission for making an inquiry.
- “Person” includes an individual, HUF, firm, company, local authority, cooperative or any artificial juridical person.

What are the issues on which information can be filed?

- The information can be filed on the issues like anti-competitive agreements and abuse of dominant position or a combination.
- Class of consumers.

The fee -

- Rupees 5000/- (Five thousand only) in case of individual, or Hindu undivided family (HUF), or Non Government Organisation (NGO), or Consumer Association, or Co-operative Society, or Trust, duly registered under the respective Acts,
- Rupees 20,000/- (twenty thousand only) in case of firms, companies having turnover in the preceding year upto Rupees one crores, and
- Rupees 50,000/- (fifty thousand only) in case not covered under clause (a) or (b) above.

ADVOCACY FUNCTIONS

The major tasks for the Commission under advocacy functions were to:

- Spread awareness about Competition Act and the CCI among various stakeholders.
- Reach out to all the stakeholders including the consumers, the Government departments, industry organizations etc. through various Seminars, Workshops and Symposiums to make them aware of the need and beneficial role of competition.
- Sensitize the stake-holders about nuances of competition law, to facilitate competition audit of their respective laws on different subjects.
- Take confidence building measures among business enterprises and other stakeholders associated with competition.
- Take up the issues of National Competition Policy

PROCESS OF INQUIRY

Initiation of inquiry

- ▶ On its own on the basis of information and knowledge in its possession, or
- ▶ On receipt of an information, or
- ▶ On receipt of a reference from the Central Government or a State Government or a statutory authority.

Decision of the Commission

- ▶ Prima facie view
- ▶ Director General to investigate and report
- ▶ Final View
- ▶ Penalty

POWERS TO ISSUE ORDERS

- ▶ **In cases of anti-competitive agreement or abuse of dominance**
- ▶ During the course of inquiry, the Commission can pass **interim order** restraining a party from continuing with anti competitive agreement or abuse of dominant position.
- ▶ The Commission can impose a **penalty of up to 3 times its profit for each year of the continuance of such agreement or up to 10% of its turnover** for each year of continuance of such agreement or abuse, whichever is higher.
- ▶ After the inquiry, the Commission may direct a delinquent enterprise **to discontinue** and not to re-enter anti-competitive agreement or abuse its dominant position (**cease and desist order**). The Commission may also direct modification of such agreement.
- ▶ The Commission may direct **division of enterprise** in case it enjoys dominant position.

APPEAL PROVISIONS

Competition Appellate Tribunal (CAT)

- To hear and dispose of appeals against the specific order of the Commission.
- An appeal has to be filed within 60 days of receipt of the order / direction / decision of the Commission.
- A person aggrieved with the direction, decision or order of the CAT can appeal to the Supreme Court of India within 60 days from the date of communication of the direction, decision or order.

BENEFITS OF COMPETITION – INTERNATIONAL EXPERIENCE

Empirical Studies and other countries' experience have proved that

- There is a direct correlation between the Competition and GDP as it creates additional employment opportunities and increases per capita income.
- William Lewis, in 'The Power of Productivity' and economist Paul London in 'The Competition Solution' have concluded that the Competitive pressures have helped suppress inflation, raise living standards, and pushed manufacturing productivity up by 4% a year.
- Nicholas and Scarpetta (2001) have argued that pro-competition policy in New Zealand and the UK added around 2.5% to their employment rate over 1978-1998.
- An Australian Productivity Commission study estimates that average Australian household annual income was a\$7,000 higher on account of Competition Policy. Australian GDP increased by 5.5% or \$23 billion a year and average employment rose by 30,000.
- In India competition has produced many winners and has brought lower prices, better quality and wider choice to Indian consumers and some of the examples are telecommunications, automobiles, civil aviation, newspapers & consumer electronics.

GAINS FROM COMPETITION –INTERNATIONAL EXPERIENCE

- OECD survey illustrates that savings to public treasuries between 17 and 43% have been achieved in some developing countries through the implementation of more transparent and competitive public procurement process.
- European Commission found that increased competition and transparency resulting from implementation of the Public Procurement Directives of the European Communities in the period between 1993 and 2002 generated cost savings between € 5 billion and € 25 billion.
- In Bangladesh, a substantial reduction in electricity prices due to the introduction of transparent and competitive procurement procedures.
- A saving of 47 percent in the procurement of certain military goods in Columbia through the improvement of transparency and procurement procedures.
- A 43 percent saving in the cost of purchasing medicines in Guatemala.
- A substantial reduction in the budget for expenditures on pharmaceuticals in Nicaragua.
- In Pakistan, a saving of more than Rs. 187 million (US \$3.1m) for the Karachi Water and Sewerage Board through the introduction of an open transparent bidding process.

GAINS FROM COMPETITION – INTERNATIONAL EXPERIENCE

- The Portuguese Competition Authority fines € 14,7 million against five undertakings implicated in the Canteen Cartel.
- The Italian Competition Authority fines € 10 millions against 15 local public transport operators for collusive tendering
- Japan “has saved significant public resources and reduced contract prices by nearly 20 per cent in some cases as a result of restoring competition”.
- Mexico has helped cut its costs by \$3 billion over three years and the savings could add up to about 1% of its GDP.
- The OFT found out 112 construction companies involved in widespread bid rigging (Construction Industry Cartels)
- KFTC between 1998 and 2004, handled 208 cartel cases, out of which 47 (22.6 percent) were bid rigging cases and imposed fines amounted to 154 billion for bid-rigging and 399.4 billion for cartels.
- Brazilian authority ended several bid rigging conspiracies and made savings of approximately USD 9.4 billion.

COMPETITION
COMPLIANCE PROGRAMME
FOR ENTERPRISES



THANKS