Competition Law in India - A Snapshot

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ABSTRACT

Competition is a practice of business rivalry between market players to attract customers. Competition also refers to circumstances in a business environment. Free and fair competition is the backbone of a skilled business environment. Competition law deals with restrictive business practices which are having an adverse effect on competition as well as to ensure consumer welfare. The record of competition law is generally traced back to the enactment of Sherman Act in 1890 in the US to control monopoly practices. This acknowledgment led to enactment of competition law in many countries, together with developing countries, and the figure now stands at around 105. Competition means competing for quality, price and resources, leading towards consumer rights, fair dealing, and well-organized resource allocation, development of small businesses, incentives for improvement and spreading of economic power. The present study analyse the historical growth and present trend of competition law in India. This paper also focuses the changes between MRTP Act, 1969 and Competition Act, 2002.

Key words: Competition, Monopoly, Economic Development, Consumer Rights

INTRODUCTION

The term 'Renaissance' originally referred to a cultural movement during 14th to 17th centuries, it also refers to an historic period affecting other aspects of daily life, including that of trade and competition. Competition plays an important role in economic development of a country. During this Renaissance period, mainly from the 16th century onward, international trade started growing which leads to illicit wealth. The authorities in England saw the impact of these unfair trade practices and decided to enact a law i.e. the Statute of Monopolies, 1623.

Modern day competition law is usually acknowledged to have had its foundations in the Sherman Act (1890) and the Clayton Act (1914) – both instituted in the United States as antitrust legislation to regulate monopolies and competition. In the U.S., the term 'antitrust' is usually used when referring to laws preventing the creation of cartels, also referred to as 'business trusts or monopolies.

After Independence (1947), India adopted many policies mainly known as Command-and-Control laws, rules, regulations and executive orders to regulate business activities. In order to regulate unfair trade practices (UTP), restrictive trade practices (RTP) and monopolistic trade practices (MTP) the Monopolies and Restrictive Trade Practices Bill, was introduced in the Parliament in the year 1967 and passed by parliament in 1969. The MRTP Act, 1969 came into force, with effect from, 1 June, 1970. The socio-economic philosophy enshrined in the Directive Principles of State Policy contained in the Constitution of India, was the pillar of this act. The article 38 and 39 of Indian constitution mandate the State to promote welfare of the people and ensure socio-economic and political justice. The planning Commission lay down the following objectives of planning:

1. To enhance production to the utmost possible extent so as to get higher level of national and per capita income.
2. To achieve full employment.
3. To minimise inequalities of income and wealth.
4. To set up a socialist society based on equality and justice.

Evolution of Competition Law in India

1. Development policy (after 1947)

The country entirely adopted the Indian Industrial Policy in order to support and protect the economic development. The new policy also clearly defined the role of State in industrial development. An important
resolution which was passed in 1956 started the regulatory process of the government regarding government and private sectors. The government supported entrepreneurs by granting commercial licences, as they mostly contributed to the economy and protected collaborations world over. This leads to the enactment of MRTP, Act 1969.

2. Determining factors of the MRTP Act

The following studies played an important role in shaping the MRTP Act 1969.

a) Hazari Committee Report on Industrial Licensing Procedure (1955) - This study revealed that the States have been biased in granting Industrial Licenses only to rich and powerful entrepreneurs and it has resulted in an irregular development of the industries.

b) Mahalanobis Committee Report on Distribution and Levels of Income (1964) - This study reported that the economic model was in favour of the successful industrialists and a handful of powerful groups forced a huge amount of income.

c) Monopolies Inquiry Commission Report of Das Gupta (1965) - The economic control was in the hands of a few business houses and restrictive and monopolistic trade practices were prevalent. In order to regulate such practices the Monopolies Inquiry Commission (MIC) drafted a bill. This bill later became the Monopolies and Restrictive Trade Practices Act, 1969

The Sub-sections (b) and (c) of Article 39 of the constitution state that the state must drive its policies to ensure that:

1) The ownership and control of the material resources of the community are so distributed as best to serve the common good.
2) The operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

The main focus of MRTP Act was to control unfair, restrictive and monopolistic trade practices in India.

The “Monopolistic trade practice” means a trade practice which has or is likely to have, the effect of:

- Maintaining price at unreasonable level
- Unreasonably preventing competition
- Limiting technical development
- Increasing unreasonably the cost of production, charges etc
- Using unfair methods of practices etc

In addition, section 32 stated that every monopolistic trade practice was to be deemed to be prejudicial to public interest, except where excepted as provided in subsection.

Restrictive trade practices means a trade practice which has or may have the effect actual or likely of restricting, preventing, reducing or destroying competition, it is likely to be regarded as restrictive trade practice. Certain common types of Restrictive Trade Practices defined in the MRTP Act are given below:

- Refusal to deal
- Tie-up sales
- Full line forcing
- Exclusive dealing
- Price discrimination
- Re-sale price maintenance
- Area restriction

Section 33 read with section 2(o) of MRTP Act states that above mentioned practices are not per se good or bad but it depends upon the facts and circumstance. Section 37 to 40 provides in favour of certain restrictive trade practices.

The Unfair Trade Practice (UTP)

Provisions relating to Unfair Trade Practices were included in the MRTP Act, 1969 in 1984. It is defined in Section 36A as trade practices which for the purpose of promoting the sale by using deceptive means which create an adverse effect on consumers. For example:

- Hoarding or destruction of goods
- Promoting false and misleading promotional contests Example
- Unreasonably increasing the price of certain goods.
- Selling the goods at a price which is higher than the Maximum Retail Price (MRP)
- Bargain sale
- Misleading Advertisement
  - False Representation
  - Free Riding over someone else reputation etc.

Note: In addition, the above mentioned lists are not exhaustive which leads to formation of new Competition law in India.

## Difference between MRTP Act and Competition Act:

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>MRTP Act, 1969</th>
<th>Competition Act, 2002</th>
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<tbody>
<tr>
<td>1</td>
<td>Based upon size theory</td>
<td>Based upon behavioural theory</td>
</tr>
<tr>
<td>2</td>
<td>Procedure oriented</td>
<td>Result oriented</td>
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<tr>
<td>3</td>
<td>Offending trade practices are not mentioned like cartel, bid rigging etc</td>
<td>Offending trade practices are defined explicitly</td>
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<tr>
<td>4</td>
<td>Unfair Trade Practices covered</td>
<td>Unfair Trade Practices removed</td>
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<tr>
<td>5</td>
<td>Rule of Law approach</td>
<td>Rule of Reason approach</td>
</tr>
<tr>
<td>6</td>
<td>No Competition Advocacy</td>
<td>High importance for Competition Advocacy</td>
</tr>
<tr>
<td>7</td>
<td>UTP, RTP &amp; MTP lists are not exhaustive</td>
<td>Added a phrase &quot;agreements having adverse effect on competition in India&quot;</td>
</tr>
<tr>
<td>8</td>
<td>Dominant position is bad</td>
<td>Abuse of dominant position is bad.</td>
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**Source:** Ministry of Human Resource Development, Government of India

### Overview of Competition Act

The Preamble of Competition Act, 2002 states that “by keeping in view of economic development” five areas should be covered namely to:

1. Establishment of Competition Commission in India
2. Prevent such practices which are having an appreciable adverse effect on Competition.
3. Sustain and Promote Competition in India
4. Consumer protection
5. Freedom of trade in India

The Preamble itself speaks about the wide range of Competition Act. The whole Act also covers five main areas these are:

a) Anti Competitive agreements (Section 3)
b) Abuse of Dominant Position Section 4)
c) Combination (Section 5)
d) Regulation of combinations (Section 6)
e) Competition advocacy (Section49)

The Competition Act was fairly enforced on 20 May, 2009 when the provisions relating to anticompetitive agreements and abuse of dominant position were notified. In May 2011, the combination regulations were also notified and became effective from 1 June, 2011. As a quasi-judicial body, the Competition Commission of India is bound by principles of rule of law in giving decisions. It is also empowered to take documents and testimonial by way of evidence. It is based upon the philosophy of Articles 38 and 39 of the Constitution of India which provides that the State shall strive to promote the welfare of the people by ensuring social, economic and political justice.

The main objectives of CCI are to prohibit such agreements which are having appreciable adverse effect on competition in India as well as to regulate activities of market players.

Why we need Competition Act

1. To increase Efficiency:
   a.) Allocate Efficiency- for best allocation of resources in all areas.
   b.) Productive Efficiency- to increase production level and minimise cost of production.
   c.) Dynamic Efficiency- optimum use of resources for present as well as for future generation. It also refers to new ideas, innovative techniques etc.
2. To create balance between demand and supply in the market.
3. To prevent Unfair, Restrictive and Monopolistic practices if they create an adverse effect on competition.
4. For application of extra territorial jurisdiction
5. To control business players i.e. Producer, Manufacturer, Supplier and Distributors etc.

Role of Competition Commission of India

Express Industry Council of India Vs Jet Airways Ltd & Ors, 2013:

The CCI came to know the Airlines indulging in 'concerted action' in Fixing Fuel Surcharge rates ("FSC"), which is contravention of the Competition Act, 2002. It imposed a penalty of 10% of the average turnover over the last three preceding financial years or 3 times the profit for each year of persistence of contravention, in case of cartelisation. The CCI also discourage airlines from indulging into anti-competitive behaviour.

Automobile Dealers Case, 2011:

The complaint was filed by one Shamsher Kataria alleging anti-competitive practices and abuse of dominance by 3 car manufacturers. However after the request of DG of the Commission that similar practices might be happening in the whole automobile industry, the range of the investigation was extended to these 14 manufactures in India. It was found by CCI that The Automobile manufacturers were abusing their dominance in violation of Section 4 of the Act, hence they are liable.

Exclusive Motors Pvt. Limited vs Automobili Lamborghini S.P.A on 6 November, 2012:

The present information has been filed by Exclusive Motors Pvt. Limited ('the informant') under Section 19(1) (a) of the Competition Act, 2002 against Automobili Lamborghini S.P.A. ('the opposite party') alleging inter-alia breach of Section 3 and Section 4 of the Act. But after considering all relevant facts the Commission is of the view that since the Opposite Party is not dominant, there is no ground for directing DG to investigate the matter. There is no prima facie case either under Section 3 or under section 4 of the Act. The case deserves to be closed under section 26 (2) of the Act and is accordingly hereby closed.

The Case of Board for Control of Cricket in India (BCCI)

The instant complaint was filed by complainant, who is cricket fan, against the Opposite Party to the CCI under Section19 (1) (a) of the Competition Act, 2002 against Steel Authority of India Ltd (SAIL) alleging inter alia breach of Section 3 and Section 4 of the Act. But after considering all relevant facts the Commission is of the view that since the Opposite Party is not dominant, there is no ground for directing DG to investigate the matter. There is no prima facie case either under Section 3 or under section 4 of the Act. The case deserves to be closed under section 26 (2) of the Act and is accordingly hereby closed.

Competition Commission of India vs. Steel Authority of India & ANR 2013

In October 2009, Jindal Steel and Power Ltd. (JSPL) invoked Section 19 r/w Section 26(1) of the Competition Act, 2002 by providing information to the CCI alleging that Steel Authority of India (SAIL) had inter alia, entered into an exclusive supply agreement with Indian Railways for the supply of rails. The Hon’ble Court observed that with reference to Section 26 (1) of the Act, neither any statutory duty is transmit on CCI to issue notice or grant hearing, nor
any party can claim as a matter of right, notice and/or hearing at the stage of formation of opinion by CCI etc. On the bases of above mentioned facts an inference may be taken that CCI is playing a pro active role in India

**Competition Law and Competition Policies in India**

Competition refers to circumstances in a market place in which firms/entities or sellers independently struggle in order to achieve a particular business objective, such as profits, sales, market share, etc. Competition law simply means the methods by which the rights under competition act can be enforced. Competition Policy means a set of government method, measures, policies, statutes, and regulations including a competition law, intended to promote competitive market structure and behaviour of entities in an economy. “Competition law have to emerge out of a National Competition Policy, which must be evolved to provide the basic goals of economic reforms by building a competitive market economy.” According to The World Trade Organisation (“WTO”) Competition policy should contain two factors namely: (a) Policies that improve competition in local and national markets, and (b) Competition law, also referred to as antitrust or antimonopoly law.

**Objectives of National Competition Policy (NCP)**

The NCP aims to attain highest sustainable levels of economic development, free enterprise, employment, higher standards of living for citizens, guard economic rights for just, fair, and social development, and support good governance by restricting rent seeking practices. The main objectives of NCP are given below:

1. To protect and encourage Competition in markets so as to optimise efficiency and maximise consumer welfare.
2. To promote, build and sustain a strong competition environment within the country.
3. To ensure competition in regulated sectors
4. Endeavour for a single national market as fragmented markets are impediments to competition and growth.
5. Ensure that consumers take pleasure in terms of wider choices and better quality of goods and services at reasonable prices.

**Ideology of Competition Policy in India**

- Effective prevention of anti-competitive conduct.
- Fair market process.
- Competitive objectivity.
- Public policies and programmes to effort towards promotion of competition in the relevant market in India.
- National, regional and international co-operation in the field of Competition Policies.

**Central Government Initiatives in India**

The following initiatives are envisaged by Central Government to successfully generate a healthy competition and to improve competition in the domestic markets with the involvement of all stakeholders:

- Establishment of National Competition Policy Council.
- Re-examine of such existing policies, statutes and regulations
- Start Competition Impact Assessment.
- Join together ideology of Competition in all regulatory regimes.
- Make sure functional and financial autonomy of competition
- Promote all Departments to situate in-house cells to start Competition Impact Assessment of various policies, statutes.
- Encourage State governments to take steps for reforms keeping in mind the principles of NCP.

**State Government Initiatives in India**

The process of economic reform is imperfect unless it permeates to the level of State governments. The following initiatives are envisaged:

- A review of their active and planned policies, laws or regulations.
- To set up similar in-house cells to start Competition Impact Assessment of different policies, plans etc.

**CONCLUSION AND SUGGESTIONS**
The Competition Act, 2002 was put jointly with the intent to speak the shortcomings in the Monopolies and Restrictive Trade Practices Act, 1969 in the light of the changed economic situation in the country. The Competition Act aims to stop unfairness and encourage competition in the Indian market and to make sure free and fair trade by all the Competition players in the market. The present study also reveals the importance of CCI to prevent such business practices which are having an appreciable adverse effect on competition in India.

The concept of competition advocacy is also in favour of fair competition. It also talks about the awareness among people so that the interest of consumer can be protected effectively. The intention behind Competition Act is primarily protection of consumer and other competitors in the market as well as social development. Competition Law and Competition Policies are complimentary for a country with objective of social development and welfare. In addition, the Central and State Government are playing a pro-active role to achieve their objectives. But it is not only the duty of government to protect our right but a citizen should also be conscious regarding his duties as well as responsibilities. The Competition Act can impose penalties or restrict any wrong doer but the Competition Act cannot change the mentality of business players. So it very important to change the mentality of all competitors as well as consumer in the market only than the objective of ‘the Preamble’ of Competition Act, 2002 i.e. economic development with consumer welfare could be achieved.

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