Page 4131 - 4138 **DOI:** *https://doij.org/10.10000/IJLMH.11981*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 3

2021

An Overview of Competition Act 2002: Indian Legislation

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ABSTRACT

Competition is the creator to accomplishment. At the point when markets crumple down there is maintainability, profits, effectiveness, advancement and sustaining benefits to the economy. The Competition Act is one such ratification which aims to get rid of anticompetitive practices through prevention of anti-competitive agreements and abuse of predominance circumstances in marketplace. This paper means to consider the structural aspects of the Competition Act by discussing primary perceptions in an exact way. Making consumer aware in the field of Competition Law is an utter necessity since most of the time consumers don't know about the impacts of such practices and neglect to understand the monopoly of market. Inside this time of evolution, competition law and policy in India has seen an active interpretational exercise.

Keywords: *Competition Act, combinations, anti-competitive agreements, regulations, abuse of dominance.*

I. INTRODUCTION

After the auxiliary of The Monopolies and Restrictive Trade Practices Act, 1969 the C.C.I. was established for avoiding activities consisting of a harmful effect on competition in India. It is an mechanism to implement and impose competition policy and to prevent and penalize anti-competitive business practices by corporations and unnecessary Government interference in the market. Competition laws are comparably applicable on written as well as oral agreement, arrangements among the organizations or individuals. Also, it aims to forbid adverse effect of agreements, practices, abuse of dominance, acquisitions, mergers, amalgamations etc. in market(s) in India.

II. CONSEQUENCES OF THE RECOMMENDATIONS OF RAGHAVAN COMMITTEE

Raghavan Committee inter alia recommended revoking of the MRTP Act and endorsing a modern-day competition law to meet the challenges, if any, of trade liberalization.[3] Article

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[3] Indian Competition Law (2000). Report of the High Level Committee on Competition Policy and Law from

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19(1) (g) of the Constitution of India guarantees all citizens of India a right to practice any occupation or to carry on any profession, trade or business subject to the condition that the state shall in public interest levy reasonable restrictions to such freedom by ratifying suitable legislations.[4] Article 301 of the Constitution of India, read with Articles 302 and 304(b), engage the Parliament to enact appropriate laws to sensibly confine freedom of trade all through the territory of India. In this way, it rises up out of the prior that the Parliament is enabled to force sensible limitations upon enterprises from getting a charge out of liberated freedom of trade and business. Combined with the recommendations of the Raghavan Committee and the Constitutional order, the Parliament enacted the Competition Act, 2002 in December 2002 which acquired the Presidential assent on 13 January 2003.

The Competition Act is, subsequently, an enactment that forces sensible limitations upon residents and enterprises to the freedom of trade and business while working in India. Considering the previous principles, it is judicious to momentarily inspect the need of passing of the Competition Act in 2002. While enacting the Competition Bill, the Government of India entomb alia noticed the accompanying: India has, chasing globalization, reacted to opening up its economy, eliminating controls and falling back on liberalization. As a characteristic outcome of this the Indian market must be outfitted to confront competition from inside the country and outside. The Monopolies and Restrictive Trade Practices Act (MRTP), 1969 has become obsolete in certain ways in the light of international economic developments concerning more particularly to competition laws and there is a necessity to move the focus from shortening monopolies to promoting competition.[5]

III. DISTINCTION BETWEEN MRTP & COMPETITION ACT

1. Meaning: MRTP Act is the first competition law made in Quite a while, which covers rules and regulations identifying with ridiculous exchange practices. While, Competition Act, is carried out to advance and keep up competition in the economy and guarantee opportunity of business.
2. Description - MRTP Act is penitentiary in nature. Though, competition Act is corrective in nature.
3. Punishment - No punishment for offense under MRTP Act. While, in Competition Act, punishment is available.

https://theindiancompetitionlaw.files.wordpress.com/2013/02/report_of_high_level_committee_on_competition_policy_law_svs_raghavan_committee.pdf

[4] Refer to Civil Appeal No 4157 of 2015 [Kerala Bar Hotels Association v. State of Kerala 2015 SCC Online SC 1385] & [(2007) 10 SCC 306 Udai Singh Dagar and others v. Union of India and others].

[5] The Competition Act, 2002, p. 1 (Introduction).

4. Objective-MRTP Act controlled restraining infrastructure in the market. While objective of Competition Act is to advance competition.

IV. TRANSFORMATION IN FORMATION OF CCI – AMENDMENT OF 2007

The setting up of a competition system in India has so far shown to be a much more difficult task than initially envisaged.[6] In the last era, the competition law in India saw a lot of curves and bends. The Competition Bill, 2002 ('the Bill') received Presidential approval on January 13, 2003. The first provisions of the Act were informed on March 31, 2003, while other provisions were notified afterward. The provision establishing the CCI and other provisions concerning to competition advocacy, finance, accounts and audits, and miscellaneous provisions were notified on June 19, 2003. On May 20, 2009, the working provisions, i.e., provisions relating to anti-competitive practice and abuse of dominance were taken into force.

In exercise of the power bestowed upon it under the Act, the Central Government established the CCI having its head office at New Delhi with impact from October 14, 2003. As per the discussions in Parliament on the Bill, the Act must be executed in a phased approach, as follows:

- *First year* – Competition advocacy and instruction for officers and staff of CCI.
- *Second year* – Provisions relating to anti-competitive practice along with abuse of dominance to be taken into force.[7]
- *Third year* – Provisions relating to combination to be taken into force.[8]

There were two fundamental perspectives in regard to the execution of competition law in India. A shade of assessment in the Committee fought that by enacting the Bill at this stage, India would lose its bartering power at WTO negotiations. It was recommended that the Bill ought not to be enacted till January 1, 2005 by which time choices on issues like competition strategy, exchange and investment and related issue would be taken. Hence, it was recommended that there was no rush in passing the Bill and that the MRTP Act could be reasonably changed to meet the necessities of right now. The other shade of assessment supported the section of the Bill. It was of the view that the MRTP Act depended on old monetary hypothesis, which was not, at this point adequately effectual to check the attack of unfamiliar organizations against Indian organizations. This progress would assist the Indian

[6] Anurag K. Agarwal, Competition Law in India: Need to Go Slow and Steady (IIM Ahmedabad, Working Paper No. 2005-10-05) available at http://www.iimahd.ernet.in/publications/ data/2005-10-05anurag.pdf

[7] Notified on May 20, 2009 (approximately six years from the notification of the Act – Much of this delay has to be attributed to the judicial challenge to the powers of the Chairman of CCI which led to a major amendment in 2007).

[8] Notified on June 1, 2011 (approximately eight years from the notification of the Act).

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economy with adapting to the changing climate just as result in wealth and work.

(A) Objectives of Competition Act, 2002

- To deliver the structure for the establishing of the Competition Commission.
- To avoid monopolies and to encourage competition in the market.
- To safeguard the freedom of trade for the contributing individuals and entities in the market.
- To defend the interest of the consumer.

(B) Composition of CCI under Indian Legislation

The Commission consist of one Chairperson and six Members according to the Competition Act who will be named by the Central Government.

The commission is a quasi-judicial body which offers thoughts to legal specialists and furthermore manages different cases. The Chairperson and different Members will be entire time Members.

Qualification of members: The Chairperson and each and every other Member will be a person of capacity, uprightness and standing and who, has been, or is able to be an appointed authority of a High Court, or, has uncommon information on, and proficient experience of at the very least fifteen years in global trade, financial aspects, business, trade, law, finance, bookkeeping, the board, industry, public affairs, administration or in some other matter which, in the assessment of the Central Government, might be helpful to the Commission.

(C) Necessity of CCI in India

1. Advance free enterprise

Competition laws have been depicted as the Magna Carta of free enterprise. Competition is significant for the conservation of economic opportunity and our free enterprise framework.

2. Protect against market curves

The requirement for competition law emerges in light of the fact that market can experience the ill effects of failures and twists, and different players can depend on enemy of serious exercises like cartels, maltreatment of predominance and so on which antagonistically sway economic productivity and consumer welfare.

3. Advances homegrown industries

During the period where the economies are moving from shut economies to open economies, a powerful competition commission is fundamental to guarantee the proceeded with suitability

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of homegrown industries, painstakingly adjusted with achieving the advantages of foreign speculation expanded competition.

(D) National Competition Policy in India

National Competition Policy is detailed by the Government of India so as to accomplish most noteworthy reasonable degrees of economic growth, business venture, work, better expectations of living for residents, protect economic rights for just, impartial, comprehensive and manageable economic and social turn of events, advance economic democracy and backing great governance by limiting rent-chasing practices.[9]

(E) Objectives of National Competition Policy

1. To ensure consumer welfare by empowering ideal assignment of resources and conceding financial agent's suitable incentives to seek after profitable efficiency, quality and advancement
2. To eliminate hostile to rivalry outcome of existing demonstrations, orchestrate laws and policies of Center and State and proactively promote rivalry standards.
3. Take a stab at single public market.
4. Set up a level battleground by giving competitive lack of bias'.

V. ANTI-COMPETITIVE AGREEMENTS AS PER DISCUSSED UNDER SECTION 3 (C.A., 2002)

The Competition Act, 2002 doesn't perceive the categorization of anti-competitive agreements into vertical and horizontal type, the language of Sub – Section (3) and (4) expresses that the previous arrangements with horizontal agreement while the last include vertical agreements. Horizontal type of agreements is that where two opponent enterprises at any equivalent phase of creation either fix costs or breaking point the degree of creation or offer markets. It is accepted that such agreements would create a situation of AAEC.

In *Sodhi Transport Co. v. the State of U.P.*[10], phrase 'shall be assumed' as utilized in Section 3(3) has been deciphered as an assumption and not as proof in itself which is characteristic of the party on whom the burden of proof falsehoods. A famous illustration of such horizontal agreement is cartels.

Vertical agreements incorporate those agreements which are gone into by two enterprises at

[9] Draft National Competition Policy 2011, MCA – Draft, retrieved from http://www.mca.gov.in/Ministry/pdf/Draft_National_Competition_Policy.pdf
[10] AIR 1986 SC 1099

various phases of the creation agreement for instance between a maker and merchant or among vender and wholesaler. The subject of vertical agreements is controlled by the court utilizing the above-expressed principle of the rule of reason. Both positive and negative impact of competition are broke down utilizing this rule.

VI. ABUSE OF DOMINANT POSITION UNDER SECTION 4 OF COMPETITION ACT, 2002

A person or an enterprise is believed to be in dominant position when such entity is in a situation of strength and such position enables that entity to function independently of competitive forces prevailing in the pertinent market or affects its competitors or customers or the relevant market in its favor.[11]

Dominant position has been characterized in comprehensively comparable terms in the competition laws of a few different purviews. The European Commission's Glossary expresses that 'a firm is in a dominant position in the event that it can act autonomously of its competitors, customers, suppliers, and at last, the last consumer.' For the motivation behind Competition Act, 2002 the meaning of 'dominant position' relies on the meanings of relevant market, which are clarified previously. Hence, for an abuse of dominance discovering, it is important to initially discover the enterprise being referred to involve a position of dominance regarding a specific product market and the boundary of the geographic market for that product. Section 4 of the Act accommodates control of such abuse. It expresses that no enterprise or group abuse its dominant position. It likewise accommodates cases regarding what acts add up to abuse of Dominant position. The acts which add up to 'abuse of dominant position' are revered underneath:

(i) Direct or Indirect imposition of unfair or discriminatory restriction in purchase or sale of goods or services or prices in purchase or selling (including predatory price) of goods and services.[12]

(ii) Limiting or constraining the production of goods or services or placing restrictions on technical or scientific development concerning to goods or services to the prejudice of consumers.

(iii) Indulging in practices which result in deprivation of market access in any manner.

(iv) Using Dominant position in one appropriate market to protect or to enter into another appropriate market.

[11] Explanation (a) to Section 4
[12] Section 4(1)(a)

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VII. REGULATION OF COMBINATIONS

The acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises[13]. Although as per discussed under Section 6 of Competition Act, 2002 on regulation of combinations it has been derived 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".[14]

In many purviews, horizontal mergers are assessed under a rule of reason assessment depending on the assumption that they frequently have significant efficiency benefits. This is genuine even in the Indian Competition Law. According to Section 20(4), for the purposes of determining whether a combination would have the impact of or is probably going to have an obvious antagonistic impact on competition in the relevant market, the commission will have due respect to a few variables among which the accompanying two explain the way of thinking of the merger system conceived by the Act: Section 20(4) (m) relative advantage, via the commitment to the financial development, by any mix having or liable to have apparent unfriendly impact on competition; Section 20(4)(n) regardless of whether the benefits of the mix exceed the unfavorable effect of the mix, assuming any. In however much the previously mentioned sections go, obviously, an all out welfare standard has been proposed. The nation's Finance Minister at a merger workshop coordinated by the commission additionally supported this. As indicated by him, as long as there is contestability from imports, merger system ought to take into account formation of some edge level of scale to make Indian firms internationally serious. In any case, foreseeing since long times ago run outcomes is an exceptionally theoretical endeavor, while evaluation of consumer losses is pretty much a slam dunk. Anticipating and evaluating post-merger efficiencies is a phenomenally troublesome assignment. Here as well, competition law considers offering weight to consumer welfare—as value rise is a factor for appraisal of effects of mergers yet effectiveness and development effects are likewise vital for evaluating the serious effects of the merger.

VIII. CONCLUSION

The gains obtained through a competition law can only be realized with efficient enforcement. Weak enforcement of competition law can be as significant an impediment to consumer interest

[13] Section 5 of The Competition Act, 2002
[14] Section 6 of The Competition Act, 2002

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as the altogether absence of such a law.[15] The CCI must meet this challenge and prove the issue to be an expert body under the Act- something it has been able to do within a short period of two years of its enforcement despite the limitations it has. Competition law and policy in India is in a developing stage. This is clear from the recent policy decisions of the Government in this regard, especially in view of the constant work on the National Competition Policy and the substantial changes it would bring to the Act. To conclude, over the last era, a significant path has been covered by Indian competition law and policy. This, however, is just the beginning, and there are many objectives yet to be achieved in terms of achieving goals of competition law.

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[15] S. Chakravarthy, The Need and Rationale for and the Objectives of Competition Policy and Competition Law, available at http://www.circ.in/pdf/CPS06-Rationale-For-CompetitionPolicy-Law.pdf

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