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CRITICAL ANALYSIS OF COMPETITION LAW IN INDIA

PARTH SARTHI YADAV*

The field of competition law has experienced significant expansion in contemporary times, particularly in the period following the 1990s. The expansion of competition law has been remarkable in both its geographic reach and the widening scope of economic activities that fall under its purview. Competition law includes promoting economic efficiency, preventing abuse of dominant market positions, and curbing anti-competitive agreements. The study evaluates the effectiveness of competition law enforcement in India. It analyses the role and powers of the CCI in investigating and adjudicating anti-competitive practices, mergers and acquisitions, and abuse of dominance cases. In conclusion, this critical study on competition law in India provides valuable insights into the effectiveness, challenges, and future prospects of the competition law regime.

Keywords: Competition, Anti-Competitive Agreement, CCI, MRTP etc.

INTRODUCTION

Numerous nations have implemented economic reforms and adopted market-based systems, leading to the introduction of competition law as a means of fostering a culture of competition and facilitating market processes. The employment of competition law and policy has become more prevalent in addressing market failures and distortions, such as anti-competitive practises and abuse of dominance. As emphasised by Joseph Stieglitz, the prompt implementation of a competition law is not a mere indulgence, but rather an imperative requirement. Understanding the origins of competition law is crucial for comprehending its identities, relevance, objectives, and the factors that influence decisions. This appreciation is essential for recognising the immense importance and significance of competition law to the national economy. The initial notion of competition, which emerged in the 18th century, and was expounded upon in Adam Smith's

* LLM Student at Amity Institute of Advanced Legal Studies-Noida

Wealth of Nations (1776), referred solely to the lack of legal impediments to commercial transactions. The origins of contemporary economic theory can be traced back to the late 19th century, culminating in the enactment of the Sherman Antitrust Act in the United States in 1890.[1] This legislation served as a model for other nations, including those who observed the developments in America, leading to the adoption of competition laws in nearly 90% of countries worldwide.

HISTORY

The Competition Act of 2002 was implemented in India with the purpose of revoking the Monopoly and Restrictive Trade Practises (MRTP) Act.[2] The Competition Act of 2002 is a legal framework that primarily deals with matters related to Anti-Trust. The Sherman Act of 1890, a United States federal law that prohibits agreements that restrain trade, is widely regarded as the world's earliest antitrust statute. The Contract Act was enacted in India prior to the Sherman Act. The Contract Act incorporates a provision that renders agreements in restraint of trade null and void. In the case of Business Electronic Corporation V Sharp Electronics Corporation (1988), the US Supreme Court explicated the term "restraint of trade" to encompass not only a specific set of agreements, but also a distinct economic outcome that may arise from diverse types of agreements under different temporal and contextual conditions.[3]

Prior to the emergence of Glasnost and globalisation in the early 1990s, India had implemented an Anti-Trust act referred to as the Monopolies and Restrictive Trade Practises Act of 1969. The preamble of the aforementioned act espoused a socialist ideology by asserting that the purpose of the act was to guarantee that the functioning of the economic system did not lead to the aggregation of economic authority to the detriment of the general public. The purpose of the act was to regulate monopolies and to establish provisions for the prevention of monopolistic and restrictive trade practises.

The MRTP Act was deemed to be highly ineffective for several reasons, including the government's frequent changes in industrial policy. Chapter 3 of the aforementioned legislation grants the central government the authority to oversee the growth and creation of new enterprises belonging to any entity covered under Chapter 3 of the Act. Following the implementation of the

[1] Christopher Grandy, 'Original Intent and the Sherman Antitrust Act: A Re-Examination of the Consumer-Welfare Hypothesis' [1993] 53(2) Jour. Eco. His. 359–76.
[2] Dr Anil Kumar Sinha, 'The MRTP Act to the Competition Act – M&A Strategies of Indian Business Groups Continues' (APIM, 2022) < https://www.asiapacific.edu/blog/the-mrtp-act-to-the-competition-act-ma-strategies-of-indian-business-groups-continues> accessed 18 May 2023.
[3] Bus. Electr. Corp. v. Sharp Electr. Corp. [1988] 485 U.S. 717.

industrial policy in 1991, the government eliminated certain significant regulatory provisions outlined in Chapter 3 of the MRTP Act. To clarify, the pre-existing limitations on corporate sector investment prior to entry have been eliminated.

Following the implementation of liberalisation policies, India became a signatory to two significant accords of the World Trade Organisation, namely the General Agreement on Tariffs and Trade (GATT) and the Trade-Related Aspects of Intellectual Property Rights (TRIPS). Consequently, numerous multinational corporations were able to penetrate the Indian market. Hence, recognising the absence of a provision for the MRTP Commission within the MRTP Act and the necessity for a novel legislation, the federal administration established a committee of eminent stature specialising in competition policy and law. The committee conducted a comprehensive analysis of the governmental policies and their impact on the industrial framework in India, as well as the inadequacies of domestic industries in competing with multinational counterparts. Subsequently, the committee presented its findings in the form of a report. The committee's primary suggestions included the repeal of the MRTP Act and the implementation of a competition act to oversee anti-competitive agreements and prevent the exploitation of dominance and combinations, including mergers.

The proposal aims to gradually allocate product reservations to small scale industries and the handloom sector. The proposed measures include the privatisation of state monopolies through the divestment of government shares and assets, as well as the inclusion of all industries in both the private and public sectors under the purview of the proposed legislation. The Competition Act 2002 was enacted by the government based on the recommendations put forth by the committee. On January 13, 2003, the Competition Act was granted approval by the President. Within a short span of time, the federal administration also issued regulations pertaining to the appointment of the chairperson and other members of the competition commission.

The legitimacy of the establishment of the Competition Commission was called into question in the case of Brahm Dutt v. Union of India (2005) before the Supreme Court of India. During the proceedings, the federal government apprised the Supreme Court of their intention to modify the aforementioned legislation. Subsequent to its enactment, the Competition Act underwent significant amendments through the Competition (Amendment) Act of 2007.[4] The amendment act mandated the Competition Commission to operate solely as a market regulator and an

[4] *Brahm Dutt v. Union of India* [2005] Writ Petition (civil) 490 of 2003.

authoritative entity carrying out adversarial and regulatory duties. In 2009, an additional amendment was made.

The current legislation aims to address three distinct areas of anti-trust concerns, which include anti-competitive agreements made by enterprises or associations of individuals, abuse of dominant market position, and mergers or combinations between entities. ”Section 3 of the relevant legislation addresses matters pertaining to anti-competitive agreements. Section 4 of the act pertains to the handling of abuse of dominant position, while section 5 and section 6 of the act pertain to the handling of combination through acquisition, merger, or amalgamation.”

ANTI -AGREEMENTS

According to Indian competition law, it is prohibited for enterprises, individuals, or groups of enterprises or individuals, including cartels, to engage in agreements related to the production, supply, distribution, storage, acquisition, or control of goods or services that may result in or have the potential to result in a significant negative impact on competition within India. As a result, such agreements would be deemed null and void. Agreements that would be deemed to have a significant negative effect are those that involve the following activities: determining sale or purchase prices, controlling production, supply, markets, technical development, investment or provision of services, allocating geographical areas of market, nature of goods or number of customers, sharing the market or source of production or provision of services, and engaging in bid rigging or collusive bidding.

TYPES OF AGREEMENT

“Competition law distinguishes between two categories of agreements. Horizontal agreements refer to agreements between enterprises that operate in the same industry and may compete with one another. The second type of agreement is vertical in nature and pertains to the collaboration between autonomous business entities. The presumption is that agreements that are horizontal in nature are deemed illegal. However, it is worth noting that the rule of reasons would be applicable for agreements that are vertical in nature.”

ABUSE OF DOMINANT POSITION

Any firm that imposes unfair or discriminatory terms on the purchase or sale of products or services, limits production or technological advancement, or prevents the admission of new

operators to the detriment of customers is abusing its dominant position. Determining market dominance is necessary for the regulations pertaining to misuse of dominant position.

COMBINATIONS

The act's purpose is to control how combinations—a word that includes acquisition, merger, and amalgamation—operate and go about their business. The commission may examine any combination that, in terms of assets or turnover, exceeds the threshold limitations set out in the act and has a negative effect on or is likely to have a negative impact on competition in the relevant market in India.

COMPETITION COMMISSION OF INDIA

The Competition Commission of India is an autonomous and incorporated organisation with the ability to engage in contractual agreements and litigate under its own name. Its composition is mandated to include a chairperson, who is to be supported by no less than two and no more than six additional members. The commission is tasked with the responsibility of eradicating practises that have a negative impact on competition, fostering and maintaining competition, safeguarding the welfare of consumers, and upholding the principle of trade freedom in the Indian markets. The commission is mandated to provide its expert opinion on matters pertaining to competition issues upon receiving a reference from a legally established statutory authority. Additionally, the commission is tasked with conducting advocacy efforts to promote competition, raising public awareness on competition issues, and providing training on the same.

The Commission is empowered to investigate instances of unfair agreements, abuse of dominant position, or combinations occurring outside of India that have a negative impact on competition within India. This authority is applicable in situations where any of the following conditions are present: an agreement has been executed outside of India, any contracting party is located outside of India, or any enterprise engaging in the abuse of dominant position is situated

One of the parties involved in the combination is situated in a foreign country. Additionally, any other practise, action, or matter that arises from the dominant position, combination, or agreement is situated outside the geographical boundaries of India.In order to address cross-border concerns, the commission has been granted the authority to establish a memorandum of understanding or agreement with any foreign agency from any foreign nation, subject to the prior authorization of the central government.

REVIEW OF ORDER OF COMMISSION

Individuals who have been adversely affected by a decision made by the commission have the option to request a review of the decision within a period of thirty days from the date on which the decision was made. The Commission has the discretion to consider a review application even if it is submitted after the thirty-day deadline, provided that the applicant can demonstrate sufficient cause for their delay in submitting the application. It is imperative that the person in whose favour an order is given and the director general, if involved in the proceedings, be afforded the opportunity to be heard before any modification or setting aside of said order takes place.

CASES

- **Excel Crop Care Limited V. Competition Commission of India and Others**[5]

"The enforcement of any new law can throw many issues. These become especially prominent in the case of law that is brought into force in phases- i.e. different provisions are made operational at different times. The competition act 2002 (competition Act) is one such legislation. Though the statute was passed in 2003, its phase-wise notification extended up till 2011. More importantly, the sections/provisions relating to anti-competitive agreements were notified and came into force from 20 may 2009. The Supreme Court of India has examined the same issue in the above case."

- **Veerappa Pillai V. Raman and Raman Limited**[6]

"The present scenario pertained to the issuance of a stage carriage permit. The petitioner who submitted the written request was dissatisfied with the actions taken by the regional transport authority. Following the annulment of the proceedings, the High Court instructed the relevant authority to issue the permits to the petitioner. The Supreme Court has noted that the issuance or denial of permits falls entirely within the purview of the transport authorities and is not a matter of entitlement. The Court has further determined that the High Court's directive to grant permits to the petitioner exceeded its legal authority and jurisdiction."

- **State of Uttar Pradesh V. Raja Ram Jaiswal**[7]

"The High Court has issued a mandamus to the statutory licencing authority, compelling them to grant the licence in question. According to the Supreme Court, in cases where a statute grants a

[5] *Excel Crop Care Limited V. Competition Commission of India and Others* [2017] 8 SCC 47.
[6] *Veerappa Pillai V. Raman and Raman Limited* [1952] AIR 192.
[7] *State of Uttar Pradesh V. Raja Ram Jaiswal* [1985] AIR 1108.

statutory authority the power and duty to perform a particular function, it is not within the purview of the writ jurisdiction to replace the licencing authority and assume its functions prior to the exercise of the power or performance of the function. In that instance, the supplication was made for a legal order known as a writ of certiorari. The Supreme Court noted that in the event of an erroneous remand order, the High Court possessed the authority to nullify the remand order. However, the High Court's jurisdiction was limited to this action and it was not empowered to assume the responsibilities of the licencing authority by issuing a writ of mandamus."

- **Google Inc. and Others V. Competition Commission of India**

"The Delhi High Court has augmented the authority of the Competition Commission of India by affirming that it possesses inherent capabilities to scrutinise or revoke its verdict."

- **Vinod Kumar V. State of Haryana**

"The Supreme Court ruled that in instances where an administrative act is deemed wrongful and illegal, it may be overturned through judicial review. Furthermore, the Court held that the administrative authority may also rectify such an order if it is found to be ultra vires, and that it is within their purview to take corrective measures by nullifying the manifestly illegal order."

CONCLUSION

Upon examining the MRTP Act, it is evident that certain trade practises, including but not limited to abuse of dominance, cartels, collusions and price fixing, bid rigging, and predatory pricing, are neither defined nor referenced. In light of international economic developments pertaining to competition laws, certain aspects of the MRTP Act have become outdated. The replacement of the MRTP Act with the Competition Act has resulted in a shift of focus from the suppression of monopolies to the promotion of competition. It is imperative that the Indian Competition Act possess robust provisions that align with global benchmarks.