



Research paper on efficacy of competition law in controlling the cartels

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Abstract

India, on attaining independence; subsequent steps were taken up to strengthen the economy of the country. It is unquestionable fact that economy forms the backbone for sustenance of any country. It is highly impossible for a country to do anything without a robust economy and economy is nothing but optimum management of resources of a country. The foundation for independent India's economy was set in a planned sector which brought in its framework planned utilization and consumption of resources.. It was only at this time when the Monopoly and Restrictive Trade Practices Act; hereby referred as MRTP was passed with the following two objectives:

- a) to prevent the concentration of economic power in few hands that would thereby lead to monopolistic behavior and
- b) to curb the unfair and restrictive trade practices. The ulterior motive of the same was to protect the interests of the consumers.

The present paper analyses the paradigm shift of the Competition Act from that of the MRTP. Further, the paper cites environment of effective implementation of the provisions of the Competition Act by the Competition Commission of India particularly with reference to cartels.. The paper concludes by analyzing the role of CCI by penalizing cement cartel for anti-competitive activities thereby establishing the effective ways the Competition Act has protected the interest of the consumers

Cartelization means a group of participative industries that come together to fix the price of the products and services. This works against the interest of the consumers. The Competition Commission of India ensures there is no monopoly in this sector. This leads to unfair pricing of products and services. Under this system, the competitors illegally give consent to the price, the discounts to goods and services, all of which is made in consensus. The penalty which can be imposed by the Competition Act is **three times** the amount of the profit which is made out of such agreements or 10% of the average turnover of the cartel of the last preceding three years.

The Cement Cartel Case of 2011 will help us understanding the implementation of the policies of the Competition Commission in a better manner.

The Indian Builders Association had filed a complaint in the Competition Commission of India (CCI) against ten cement manufacturing companies putting forth the allegations that the cartel had been formed by them to restrict the output and fix the prices.

The CCI had appointed a Director General to review the matter and refer the same to the CCI. The CCI reviewing the evidence gave a 258 page order which suggested that the act of the companies speaks for their intentions and that they are a cartel.

The CCI had also held that “the act of the companies in limiting and controlling supplies in the market and in determining the prices through an agreement is not only detrimental to the cause of the consumers but also the whole economy.”

The CCI imposed a fine of over US \$ 1.13 billion against the ten largest cement manufacturers in India and the Cement Manufacturers Association.

CONCLUSION

India enacted Competition Act, 2002 and it is the country's first comprehensive law dealing with unfair competition and it deals with anti-competitive practices particularly cartelization, price-fixing and other abuses of market power and should regulate mergers.

The objective of the Competition Act is not only to prevent practices which have an adverse effect on competition, but also to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade. It is truly reflective of the changing economic conditions. Therefore, proper care and protection should be taken to ensure that the measures taken upon under the garb of refraining such kinds of anti-competitive practices does not go to the extent of interfering with the liberty of the traders and businessmen.

A co-operative spirit should be adopted to safeguard the interests of both the producers, traders and the consumers. That way, it would truly promote the larger public interest. The State monopolies, government procurement and foreign companies should be subject to the Competition Law. The Law should bring within its framework all consumers who purchase goods or services regardless of the purpose for which the purchase is made. Bodies conducting and delivering the various professions should use their independence and privileges for regulating the standard and quality of the profession and not to limit competition.

The competition law should be written and implemented in terms of competition policy of the State which is dynamic and pragmatic. This Act is a step forward in the direction towards harmonizing the Competition policy with International trade and policy with a scope that Cartels which prove detrimental to economic growth will be controlled with the enforcement of this legislation.

COMPETITION ACT, 2002: ITS BEING AND EVOLUTION

India, when attained independence; subsequent steps were taken up to strengthen the economy of the country. It is undebatable that economy forms the backbone for sustenance of any society. It is impossible for a country to do anything without a stable economy and economy is nothing but management of resources of a country.

1 The foundation for independent India's economy was set in a planned sector which brought in its purview planned utilization and consumption of resources. It was only at this time when the Monopoly and Restrictive Trade Practices Act; hereby referred as MRTP was passed with the following two objectives: a] to prevent the concentration of economic power in few hands that would thereby lead to monopolistic behavior and b] to curb the unfair and restrictive trade practices. The ulterior motive of the same was to protect the interests of the consumers.

2 Gradually India's economy was strengthened and Government of India sought to divest its shares in several State Owned Enterprises (SOE's). "A state owned enterprise is a legal entity that is created by the government in order to take part in commercial activities on the government's behalf. An SOE is either wholly or partially a government entity and is embodied with the responsibility to participate in commercial activities."

3 The Competition Act has played an unavoidable role in addressing the issues related to SOE(s) and this stands as a turn-off and a well-informed departure from the MRTP act. It is very important to understand that the Competition Act, 2002 was enacted when economy was at its boom; thereby the main objectives of this act were depicted in accordance to its time of enforcement.

4 The main objectives of the Competition Act were to sustain and promote competition; protect the interest of the traders by bringing flexibility in the trade practises along with protecting the interest of the consumers. The main difference between the MRTP and the Competition Act stands as where the objective of the former was to protect monopolistic competition; that of the latter is to enhance free and positive competition and positive trade.

5 → FROM MRTP TO COMPETITION ACT: WHY THE SHIFT? This section of the article would discuss the lacunas in the MRTP act that consequently led to the framing of the Competition Act; establishing the key objectives of the Completion Act.

6 Although the MRTP act had in itself the provisions to prevent the anti-trade practises; they were comparatively weak and inadequate in comparison to the laws of many countries. The biggest shortcoming of the MRTP act was analysed as that it proved to be failure for providing any relief to ----- 1 Sorrel v Smith (1925) AC 700 per Lord Cave L.C. 2 Ware and de Freeville Ltd. V Motor trade Association (1921) 3 K. B. 40, C.A. at p. 67 3 Hornby v. Close (1867) L.R. 2Q.B. 153.4 Bellshill & Mossend Co-operative Society V Dalziel Co-operative Society (1960) AC. 832 5 ITC Ltd. v MRTP Commission (1996) 46 Comp Cas 619) 6 Bholanath Shankar Das v Lachmi Narain AIR (1930) All.83 at p.89 the complainants; all that it could do is to detest and refrain the wrongdoer from engaging in the restricted practices, however it could not impose any penalty for the breach in law. Another limitation of the same was that it did not take into account the extra-territorial domain. It is an established, well settled and prudent practice that trade cannot be limited to the intra-territorial domain; so can't the laws which deal with the adjudication of such dispute matters.

7 Hence an extra-territorial jurisdictional operation ought to have been taken but the Supreme Court had refused to acknowledge the extra territorial application of the Act.

8 Thirdly, the MRTP act had lacunas in itself with reference to the definitional provisions as it did not define the terms like abuse of dominance, cartels, collusion, price-fixing, predatory pricing etc. However, the general rule while giving interpretation to the words of the act was that all kinds of restrictive trade practices ought to be refrained; however the

general interpretation led to several ambiguities and uncertainty on the key business issues. Hence the Competition Act came into being. →

INDIA'S COMPETITION ACT WITH REFERENCE TO CARTEL: CARTEL VISÀ-VIS COMPETITION LAW

“The practice of cartels or business combinations has so much historical importance. A]those concerned with the regulation of terms of employment,(service cartels) and B] those concerned with the regulation of trading terms and conditions(trade cartels). In both cases the law relating to such combinations is closely associated with that of conspiracy. The history in brief about the cartels is legislation in England to control monopolies and restrictive practices were in force well before the Norman Conquest. In 1561 a system of Industrial Monopoly Licenses, similar to modern patents had been introduced into England. But by the reign of Queen Elizabeth I, the system was much abused and used merely to preserve privileges, encouraging nothing new in the way of innovation or manufacture. Three characteristics of monopoly were identified by the court and these are (1) price increases (2) quality decrease (3) the tendency to reduce artificers to idleness and beggary. In 1623 Parliament passed the Statute of Monopolies, which for the most part excluded patent rights from its prohibitions, as well as guilds.” This section of the paper analyses the key provisions of the Indian Competition Act and how the provisions have been implemented by the Competition Commission with regards to cartelization. In order to understand how and why the present Competition Act does the effective implementation *The Role of a Professional*, March 2007 *The Chartered Accountant*, 1452 against the cartelization practice, understanding section 3 of the Indian Competition Act is of great importance. Section 3 establishes that those agreements which cause appreciable adverse effect on competition are of the anti-competitive sort and such agreements need not be formal and can be inferable from circumstances as well. →

WHY THE LAW AGAINST CARTELISATION? The makers of the Indian Constitution being aware of the potential dangers of Concentration of Economic power, laid down certain principles in Article 39 (b) and (c) of the Constitution, to impress upon the governments of the Country about the need of fighting this danger. It says: — “The State shall in particular direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.” **Cartelisation means a group of participative industries that come together to fix the price of the products and services. This works against the interest of the consumers. The Competition Commission of India ensures there is no monopoly in this sector.** This leads to unfair pricing of products and services. Under this system, the competitors illegally give consent to the price, the discounts to goods and services, all of which is made in consensus.

The penalty which can be imposed by the Competition Act is three times the amount of the profit which is made out of such agreements or 10% of the average turnover of the cartel of the last preceding three years.¹⁶ The Cement Cartel Case of 2011 will help us understanding the implementation of the policies of the Competition Commission in a better manner. The Indian Builders Association had filed a complaint in the Competition Commission of India (CCI) against ten cement manufacturing companies putting forth the allegations that the cartel had been formed by them to restrict the output and fix the prices.

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