



Recommendations Of Various Committees Behind Formulation Of Competition Policy In India

Radhika Kaul

Symbiosis Law School, Noida

Abstract: The study is undertaken to gain better understanding of competition policy in India, the various recommendations and discussions that are revolving around the formulation of a competition policy in India over a long span of time and the need to have a competition policy in addition to competition legislation towards having a competitive environment in the market.

Keywords – Competition Policy, Competition Law, Recommendations, Committees, India

INTRODUCTION

Competition policy can be referred to as a comprehensive set of laws, policies and measures aimed towards creating a fair and competitive market economy, with broad range of objectives and functions and comparatively broader in ambit in comparison to that of a competition legislation. The Indian Competition Act i.e. the main legislation has been in effect since almost fifty years, however, there exists no competition policy. Having an all-encompassing feature, competition policy is a necessity for a country that desires to have a free market economy as it would play a crucial role in setting up a competition culture in the market economy. The draft of the National Competition Policy has been drafted, however, no road map for its implementation has yet been drawn out. Efforts and discussions have taken place for its formulation, it is now time to bring the competition policy in action. This article focuses on the recommendations made by committees for the formulation of competition policy in India along with its importance and need.

RESEARCH METHODOLOGY

For the purpose of this article, qualitative research method has been used wherein secondary data in the form of articles, books, reports of various committees and government documents have been analyzed. A few of which are mentioned below:

In the article titled 'India's Competition Policy: An Assessment' by Aditya Bhattacharjea (2003), the author has very logically interwoven the growth of competition law and policy in India, the role played by the Supreme Court, committees and international bodies like the World Trade Organization through its negotiations in India's competition regime and the effect of the application of the said policy to international trade.

In the article titled 'Competition Law and Policy in India: The Journey in a Decade' by Vijay Kumar Singh (2011), the author has taken the readers through the journey of the development of competition law and policy in India commencing from its historical development, reviews and recommendations of various committees on bringing up the Competition Act, addressing a few issues pertaining to the said Act and finally, a few recommendations towards the addressed issues and implementation drawbacks.

In the Report of the Working Group on Competition Policy (2011) chaired by Mr. Vinod Dhall, the aspects, background of Competition and Competition Policy have been dealt with followed by recommendations on Policy Instruments and their need, National Competition Policy, Competition Advocacy and CCI & Sectoral Regulators' coordination.

Apart from the mentioned, the writer has read various other articles from online databases and journals, books and reports to understand the meaning, importance and ambit of competition policy, the need to have it in India, the recommendations made by various committees behind its formulation and the possible positive outcomes of its implementation.

ANALYSIS

An pivotal component of an economic framework, competition policy is brought about with the aim of promoting efficiency and maximizing consumer welfare further fostering a fair and balanced business environment, improved efficiency and prevention of abuse of market power. The two essentials that form part of a competition policy are setting up policies/regulations leading to enhanced competition/competitive outcomes and the other being a law followed by its implementation towards prohibition of anti-competitive behavior, abuse of dominant position, regulation of potential anti-competitive mergers and lowering down unwarranted government controls. In order to strengthen competition in the market or to foster a fair competitive market, it is essential for a country to have a competition policy in addition to a competition law. A competition policy would have a complementary effect to the law since the law focuses on the prohibition and penalizing of practices anti-competitive in nature and the policy sets up a framework comprising of regulations that will further expedite competitive environment in the market.

During the 1999-2000 Budget Speech held on the 27th day of February, 1999, the intention of enactment of a new legislation on competition policy was expressed post which a High Level Committee on Competition Law & Policy, the Raghavan Committee was set up in the year 2000 for the purpose of analyzing and scrutinizing sections of the Monopolistic and Restrictive Trade Practices Act, 1969 and proposing a new modern competition law owing to the Indian economy undergoing liberalization.[1] The S.V.S Raghavan headed committee highlighted the importance and need to have a competition policy in India and in fact considered it to be the fourth cornerstone of government economic policies other than and apart from fiscal, trade and monetary ones. It believed that the quintessence and spirit of competition should be retained in the competition policy and stressed upon the requirement of harmonizing conflicts among policies like that of the other government backed policies with competition policy. The committee also emphasized on the central economic goal that the competition policy should possess i.e. fostering an overall competitive environment through preservation and promotion of fair processes, encouraging efficient allocation of resources and upgrade with changing technology and innovation and thereby facilitating economic growth. It was further opined that that the competition policy should consist of two elements, the first comprising of policies that aim towards enhancement of competition in local or national markets such as eased out foreign investment and ownership obligations, trade policy of a liberal nature, etc. and the second element comprising of competition legislation aimed towards prevention of practices anti-competitive in nature and unwarranted government intervention. Thus, competition policy normally

1 Planning Commission, Government of India, Report of the Working Group on Competition Policy, (Feb. 19, 2022, 10:56 pm), https://niti.gov.in/planningcommission.gov.in/docs/aboutus/committee/wrkgrp11/wg11_cpolicy.pdf

embraces competition law. It was observed by the committee that certain pre-requirements for the policy needed to be addressed by the government since the policy would work as a tool in successfully achieving efficient allocation of resources, technical progress, consumer welfare as also administration of concentration of economic power. Also, in the year 2004, the UPA government through its National Common Minimum Programme asserted that it was inclined to strengthen regulatory institutions in order to encourage and administer free and fair competition. No explicit mention of the Policy was made but all regulatory institutions, so we may assume the policy to come under competition law and policy in India as a whole and not as a distinct policy apart from legislation.

The Planning Commission under the mid-term appraisal of the ninth five year plan realized the need to have a national competition policy which would work towards accelerating economic growth in the national sphere, foster a competitive environment amongst economic or business entities for the purposes of maximizing economic adequacies, protect the interests and ensure welfare of the consumers and bring up international competitiveness and all in all, improve the economic standing of the country, consumer and social welfare. However, there was no progress in the matter.[2]

Owing to continued deliberations and advocacy post Ninth five year plan, the Planning Commission under the Eleventh Five Year Plan came up with the procedure to set up a competition policy which now can be traced in the Policy Document of the said five year plan in its chapter titled 'Inclusive Growth'. In addition, its recommendations included adoption of best international practices and comprehensive policy instruments to promote the culture of competitiveness and a few ways through which competition and competitive markets would find their place in the policymaking of the government at the State levels and that of the Centre. Thus, constant discussions and deliberations and the need to have a National Competition Policy in India drove the Ministry of Corporate Affairs to set up a committee named Committee on National Competition Policy and Related Matters in the year 2011 for the purposes of framing the said policy and a draft was prepared by the aforesaid committee and put on the official website for stakeholders consultation before being formally adopted. The objectives of the NCP are inclusive of encouraging competition and safeguarding competitive processes in the market in order to enhance efficiency, fostering innovation and maximizing welfare, promoting and protecting a strong competitive environment, harmonizing laws, policies and procedures concerning competition. And, the principles comprise of formulating effective control of anti-competitive conduct and providing a level playing field among all players competing the market.

The 2019 Report of the Competition Law Review Committee had a brief mention of the Draft National Competition Policy 2011 although with no major recommendations. It observed the policy as a crucial policy document since it intends to promote practices and behaviors that would encourage an overall competitive environment in addition to its exclusive council i.e. National Competition Policy Council which would regulate and oversee policies promoting competitive behavior.[3]

CONCLUSION

Most generally regarded as government measures, policies or laws having a direct effect on an enterprise's behaviour and an industry's structure with due consideration of ensuring that competition is not being affected in a way detrimental to the society, competition policy can be considered as a broad unit of which competition law is a subset.[4] The Raghavan Committee was also of the view that competition law must

2Planning Commission, Government of India, Report of the Working Group on Competition Policy, (Feb. 19, 2022, 10:56 pm), https://niti.gov.in/planningcommission.gov.in/docs/aboutus/committee/wrkgrp11/wg11_cpolicy.pdf

3.Ministry of Corporate Affairs, Government of India, Report of the Competition Law Review Committee (2019), (Feb. 19, 2022, 9:45 pm), <https://www.ies.gov.in/pdfs/Report-Competition-CLRC.pdf>

4 Arvind Mayaram, Garima Sodhi & Bhavi Agrawal, India must revisit its 2011 Competition Policy Draft. EU, Australia and Japan are ahead, (Feb. 18, 2022, 2:43 am), <https://theprint.in/opinion/india-must-revisit-its-2011-competition-policy-draft-eu-australia-and-japan-are-ahead/778301/>

be an emergence from competition policy working towards having a competitive market economy. Competition policy comprises of a comprehensive set of objectives for the purpose of achieving its goal of having a fair and competitive market economy through its wide array of laws, policies and measures in the economic environment coupled with its ground level approach to create a competitive environment.

The regulatory laws particularly the Competition Act has been on the roll for about 50 years, the efforts made towards introducing a competition policy have not ameliorated. The draft laid down by India's Ministry of Corporate Affairs has not as yet seen the light of the day, although its importance was acknowledged in the 2019 Report of the Competition Law Review Committee, but no road mapping was mapped out for implementing the policy. India is in dire need of a competition policy because of its broad admit and ground level approach for having a competitive market economy and would further help in the implementation of the Competition Act to its best potential.[5] The competition policy works on the basic premise of making, working and growth of the Indian economy to the most of its potential and the fundamental premise of efficient allocation of resources and consumer welfare in order to attain efficiency, quality and innovation and consequently, a fair and competitive economic atmosphere. Its functions being preservation of the competitive processes, encouraging economic democracy, build, strengthen and maintain a strong competitive culture, ensure social and consumer welfare and further, achieve of the most primary and recommended goals of harmonizing laws, policies and procedures of the governments at State level and that of the Centre as regards to competition dimensions.

The writer believes that competition policy apart from strengthening the implementation of the Competition law would help in the growth of having a competition culture in the economy. More than a formality, it's a necessity when it comes to creation of a democratic market economy and its need in a country like India who aspires to have a free market economy cannot be further overstressed. It is further believed that in the wake of globalization, since the competition policy would be adaptable to constant changes, it would work effectively and would subsequently, accelerate economic growth. Frequent discussions and deliberations have taken place towards having a competition policy in India, a draft is also up on the official MCA website. However, it is now time bring this policy into reality and strengthen the competition regulation regime in India.

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