



## Study of The Competition Act in India, its components and silent features

Dr. Kulbir Singh, Associate Professor of Commerce, C.R.K. College Jind

**Abstract :** In the wake of liberalization and privatization that was triggered in India in early nineties, a realization gathered momentum that the existing Monopolistic and Restrictive Trade Practices Act, 1969 ("MRTP Act") was not equipped adequately enough to tackle the competition aspect of the Indian economy. With starting of the globalization process, Indian enterprises started

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facing the heat of competition from domestic players as well as from global giants, which called for level playing field and investor-friendly environment. Hence, need arose with regard to competition laws to shift the focus from curbing monopolies to encouraging companies to invest and grow, thereby promoting competition while preventing any abuse of market power.

**Competition: meaning and benefits :** Competition is a situation in market, in which sellers independently strive for buyer's patronage to achieve business objectives. Competition and liberalization, together unleash the entrepreneurial forces in the economy. Competition offers wide array of choices to consumers at reasonable prices, stimulates innovation and productivity, and leads to optimum allocation of resources.

**Key Words :** Competition, Monopolistic and Restrictive Trade etc.

**Introduction :** The Competition Act, 2002 was passed by the Parliament in the year 2002, to which the President accorded assent in January, 2003. It was subsequently amended by the Competition (Amendment) Act, 2007.

In accordance with the provisions of the Amendment Act, the Competition Commission of India and the Competition Appellate Tribunal have been established. The Competition Commission of India is now fully functional with a Chairperson and six members. The provisions of the Competition Act relating to anti-competitive agreements and abuse of dominant position were notified on May 20, 2009.

Since attaining Independence in 1947, India, for the better part of half a century thereafter, adopted and followed policies comprising what are known as Command-and-Control laws, rules, regulations and executive orders. The competition law of India, namely, the Monopolies and



Restrictive Trade Practices Act, 1969 (MRTP Act, for brief) was one such. It was in 1991 that widespread economic reforms were undertaken and consequently the march from Command-and-Control economy to an economy based more on free market principles commenced its stride. As is true of many countries, economic liberalization has taken root in India and the need for an effective competition regime has also been recognized.

In the context of the new economic policy paradigm, India has chosen to enact a new competition law called the Competition Act, 2002. The MRTP Act has metamorphosed into the new law, Competition Act, 2002. The new law is designed to repeal the extant MRTP Act. As of now, only a few provisions of the new law have been brought into force and the process of constituting the regulatory authority, namely, the Competition Commission of India under the new Act, is on. The remaining provisions of the new law will be brought into force in a phased manner. For the present, the outgoing law, MRTP Act, 1969 and the new law, Competition Act, 2002 are concurrently in force, though as mentioned above, only some provisions of the new law have been brought into force.

Competition Law for India was triggered by Articles 38 and 39 of the Constitution of India. These Articles are a part of the Directive Principles of State Policy. Pegging on the Directive Principles, the first Indian competition law was enacted in 1969 and was christened the Monopolies And Restrictive Trade Practices, 1969 (MRTP Act). Articles 38 and 39 of the Constitution of India mandate, inter alia, that the State shall strive to promote the welfare of the people by securing and protecting as effectively, as it may, a social order in which justice social, economic and political shall inform all the institutions of the national life, and the State shall, in particular, direct its policy towards securing.

- That the ownership and control of 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.

In October 1999, the Government of India appointed a High Level Committee on Competition Policy and Competition Law to advise a modern competition law for the country in line with international developments and to suggest a legislative framework, which may entail a new law



or appropriate amendments to the MRTP Act. The Committee presented its Competition Policy report to the Government in May 2000 [the report will be referred to hereinafter as High Level Committee (2000)]. The draft competition law was drafted and presented to the Government in November 2000. After some refinements, following extensive consultations and discussions with all interested parties, the Parliament passed in December 2002 the new law, namely, the Competition Act, 2002.

### **Components Of Competition Act**

The rubric of the new law, Competition Act, 2002 (Act, for brief) has essentially four Compartments:

- Anti - Competition Agreements
- Abuse of Dominance
- Combinations Regulation
- Competition Advocacy

### **Salient Features Of New Competition Policy**

- The Industries (Development and Regulation) Act, 1951 may no longer be necessary except for location (avoidance of urban-centric location), for environmental protection and for monuments and national heritage protection considerations, etc.
- The Industrial Disputes Act, 1947 and the connected statutes need to be amended to provide for an easy exit to the non-viable, ill-managed and inefficient units subject to their legal obligations in respect of their liabilities.
- The Board for Industrial Finance & Restructuring (BIFR) formulated under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 should be abolished.<sup>3</sup>

### **The Act on Combinations Regulation**

The Competition Act also is designed to regulate the operation and activities of combinations, a term, which contemplates acquisitions, mergers or amalgamations. Thus, the operation of the Competition Act is not confined to transactions strictly within the boundaries of India but also such transactions involving entities existing and/or established overseas.

Herein again lies the key to understanding the Competition Act. The intent of the legislation is not to prevent the existence of a monopoly across the board. There is a realisation in policy-



making circles that in certain industries, the nature of their operations and economies of scale indeed dictate the creation of a monopoly in order to be able to operate and remain viable and profitable. This is in significant contrast to the philosophy, which propelled the operation and application of the MRTP Act, the trigger for which was the existence or impending creation of a monopoly situation in a sector of industry.

The Act has made the pre-notification of combinations voluntary for the parties concerned. However, if the parties to the combination choose not to notify the CCI, as it is not mandatory to notify, they run the risk of a post-combination action by the CCI, if it is discovered subsequently, that the combination has an appreciable adverse effect on competition. There is a rider that the CCI shall not initiate an inquiry into a combination after the expiry of one year from the date on which the combination has taken effect.

### ***Competition Advocacy***

In line with the High Level Committee's recommendation, the Act extends the mandate of the Competition Commission of India beyond merely enforcing the law (High Level Committee, 2000). Competition advocacy creates a culture of competition. There are many possible valuable roles for competition advocacy, depending on a country's legal and economic circumstances.

The Regulatory Authority under the Act, namely, Competition Commission of India (CCI), in terms of the advocacy provisions in the Act, is enabled to participate in the formulation of the country's economic policies and to participate in the reviewing of laws related to competition at the instance of the Central Government. The Central Government can make a reference to the CCI for its opinion on the possible effect of a policy under formulation or of an existing law related to competition. The Commission will therefore be assuming the role of competition advocate, acting pro-actively to bring about Government policies that lower barriers to entry, that promote deregulation and trade liberalization and that promote competition in the market place.

Perhaps one of the most crucial components of the Competition Act is contained in a single section under the chapter entitled competition advocacy.

### **Conclusion**

Non-issuance of notification till date by the Government regarding the Act, has taken the wind out of the new competition policy. As a result, the proposed CCI has not become functional and the matters are still looked into by the obsolete MRTP Commission.



The act is comprehensive enough and meticulously carved out to meet the requirements of the new era of market economy, which has dawned upon the horizon of Indian economic system. It is in synchronization with other set of policies such as liberalized trade policy, relaxed FDI norms, FEMA, deregulation etc, that would ensure uniformity in overall competition policy. It's just a matter of time when the Act is made effective and CCI becomes functional, which would, in turn, help realize our aspiration to catch up with the global economy. However, the Act is truly reflective of changing economic milieu of our country and is well equipped to promote fair competition and take care of impinging market practices, facilitate domestic players vis-à-vis outsiders, safeguard the interests of consumers and thus, ensure vibrancy and stability in the Indian market.

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