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Competition Policy for Free and Fair Competition – Rationale and Implications

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ABSTRACT

The importance of competition for economic growth and development is a source of growth and technological improvement in wide array of development of developing countries. Many developing countries including India undertook economic reforms which advocated a free competitive market economy as against the control and command economy. In an increasingly integrated global economy, domestic firms and industries cannot be completely insulated from external competitive pressures. The rapidity of liberalisation created a number of problems for developing countries in their approach to competition especially check over anti-competitive practices. The main focus of competition policy is to deter and/or provide remedies for various anti-competitive practices in order to ensure free and fair competition in the market. The present paper is an endeavour to highlight the role of competition policy in ensuring free and fair competition as well as implications for ensuring free and fair competition particularly in the developing countries like India.

KEYWORDS: Competition, Anti-competitive Practices, Competition Policy, Free and Fair Competition.

I. Introduction

Competition policy is a key element in maintaining both the efficient functioning of markets and competitive pressures. The economic liberalisation has increased the need and relevance of competition policy because while the liberlisation unleashes competitive forces, in the absence of safeguards, this may also provide scope for unfair competition. It has been accepted as a tool for addressing competition problems in transition economies, which are now characterised by extensive privatisation and deregulation. More vigorous regulation of anti-competitive practices may be required to cope with the problems as incumbent firms could counter the anti-competitive practices. Liberalisation could also result in abuse of market dominance by MNCs with the resources to engage in forms of competition that could drive out domestic rivals. Thus, the need to safeguard competition remains even in a liberalised economy (Bhattacharjea, 2004).

Competition policy wards off the ill effects of cartels and the transformation of public monopolies into private monopolies. It embraces objectives consistent with broader goals of liberalisation and deregulation as well as contains advocacy tools to challenge anticompetitive behavior.

Against this backdrop, the present paper is an attempt to highlight the rationale of competition policy for ensuring free and fair competition particularly in the developing countries like India and implications thereof for the economic development. Besides in introduction in Section-I, the various anti-competitive practices which impede competition in the developing countries have been elaborated in Section-II. The rationale of competition policy in the competition regime in the Indian perspective has been discussed in Section-III. The summary and conclusions have been incorporated in Section-IV.

II. Anticompetitive Practices in Developing Countries

The anticompetitive practices in the developing countries can be categorised into two parts i.e. Horizontal Agreements and Vertical Agreements (Figure-I). Such agreements lead to unreasonable restrictions and have an appreciable adverse effect on competition.

Horizontal Agreements

These are the agreements between two or more competing enterprises that are at the same stage of the production chain and in the same market, which may result in reduced competition.

Market allocation - Market allocation is form of cartel arrangement that divide markets by territory or by customers among competitors. It is one of the most anti-competitive practices as it eliminates competition in the relevant market. Price fixing - It is a collusive agreement on prices by the competitors at any level in the production-distribution process to be charged on some or all customers.

Output restriction - Under this agreement, enterprises producing or supplying the same products or services agree to limit their supplies to a lower proportion of their previous sales. It can be judged by a sudden fall in the supply for creating artificial crisis.

Collusive tendering or bid-rigging - Bid rigging is an agreement between enterprises engaged in identical or similar production or trading of goods or provision of services which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process of bidding.

Boycott or Joint refusal to deal - It is a joint action by competitors to use the combined market power to force a supplier, competitor or a customer to agree to an action that harms competition. It includes any agreement which restricts or is likely to restrict by any method the persons or classes of persons to whom goods are sold or from whom goods are purchased.

Vertical Agreements

These are the arrangements between enterprises that are at different stages or levels of the production chain and in different markets.

Predatory pricing - It occurs when a firm with market power sells its products below cost in order to drive competitors out of the market or create a barrier to entry into the market for new competitors. The reduction in price does not provide benefit to the consumer for the short period. It is disadvantageous for consumers in the long run if the seller is able to maintain the price at a monopoly level.

Transfer pricing - It is a practice of either under-invoicing or over-invoicing taking place between a parent company and its subsidiaries. The aim of under-invoicing is to lower the costs of the subsidiary so that its prices are reduced and it can eliminate its competitors from the market (disguised predatory pricing).

Tied selling - It is an arrangement where the sale of one good to the customers is dependent on the conditions of the purchase of another good. It usually occurs where monopolistic dominance or general scarcity in the market for some goods or services prevails.

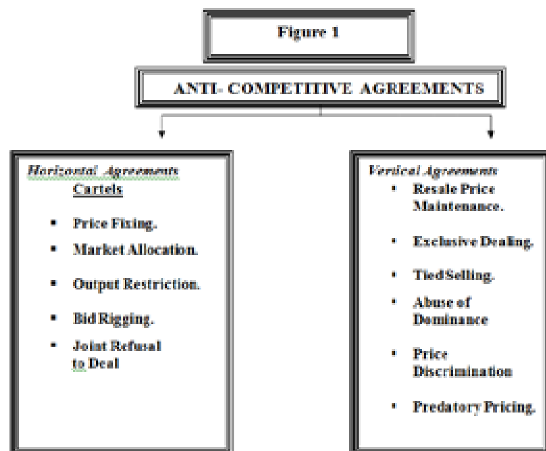
Exclusive dealing - It is a vertical agreement by which a retailer or a wholesaler is bound to purchase from a supplier on the condition that no other supplier will supply in a given area. Such agreements tend to have adverse effect on competition, since they restrict the access of other rivals to distributors.

Refusal to deal - it includes any agreement which restricts or is likely to restrict by any method from supplying and purchasing to the persons to whom goods are sold and from whom purchased. Such practices without reasonable justifications are prohibited as they are anti-competitive when they prevent third party firms from entering the markets.

Resale price maintenance - It is the practice whereby a producer supplies distributors only on the condition that the distributor sells at a

minimum price set by the supplier. Such practice is unlawful only when it has adverse effect on competition.

Differential or discriminatory pricing - It refers to the practice of a supplier who charges different prices to different sellers on a basis other than quality or quantity. However it becomes anti-competitive when dominant firms lower prices in particular markets in order to eliminate local competitors.



III. Competition Policy for Free and Fair Competition

The importance of competition and competition policy for economic growth and development is a source of growth and technological improvement in wide array of development of developing countries. In an increasingly integrated global economy, domestic firms and industries cannot be completely insulated from external competitive pressures. Through effective competition policy, government conditions the business environment in which these firms operate, encourage flexibility and adaptability and efficient mobilisation of resources. Such policy has a critical role to play in the restructuring of developing and transition market economies. By preventing artificial barriers to entry, it facilitates market access and complements and buttresses other policies that promote free and fair competition. It fosters both static and dynamic efficiencies and the international competitiveness of firms (Khemani, 1996).

Competition policy is a broad concept which covers all aspects of government actions that affect the conditions under which firms compete in a particular market and considered as complex in its intentions and effects. Competition policy involves the prohibition or regulation of Restrictive Business Practices (RBPs) or anti competitive practices that firms undertake in order to limit competition. Competition law is one of the important constituent of competition policy. Competition policy encompass a range of other government measures that affect competition, such as policies towards international trade, foreign investment, licensing, regulation, taxation, government procurement and standard setting. But its core remains the regulation of RBPs by enterprises, so as to promote and protect a competitive market, which encourages lower prices, better quality, enhanced choice and variety, efficient allocations of resources and innovation and growth. Competition policy is a key element in maintaining both the efficient functioning of markets and competitive pressures. The sequencing and timing of competition policy in developing countries depends to a great extent on domestic compulsions and needs (Basant and Morris, 2000).

The Indian Perspective

In the context of the new economic policy paradigm, India has chosen to enact a new competition law called the Competition Act, 2002. The competition law is one of the parts of competition policy. The MRTP Act has metamorphosed into the new law, Competition Act, 2002. The new law is designed to repeal the MRTP Act. The Competition Act, enacted in December 2002, is a landmark legislation that aims at promoting competition through prohibition of anti-competitive practices, abuse of dominance and regulation of combinations (Chakravarthy, 2006 and Dhall, 2008). With the coming into effect of the Competition Act, 2002, the Monopolies and Restrictive Trade Practices (MRTP) Act, 1969, was repealed and the MRTP Commission was dissolved. The Competition Act, 2002 extends to the whole of India except the State of Jammu and Kashmir. The Competition Act, 2002 improves upon its predecessor in many ways. While formulating it, most of the inadequacies of MRTP Act have been taken into account.

In view of the policy shift from curbing monopolies to promoting competition, there was a need to repeal the Monopolies and Restrictive Trade Practices Act. Hence, the Competition Act aims at doing away with the rigidly structured MRTP Act. The Competition Act is flexible and behaviour oriented.

Components of Competition Act

The Competition Act, 2002 has four components:

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

IV.Summary and Conclusions

After the transition to market economies, developing countries realised that the benefits of market-oriented reforms were likely to be fully realised only if enterprises acted under the spur of competition, to create a level playing field by reducing barriers to entry which originate from anti-competitive practices. It was further recognised that countries that had undertaken trade liberalisation measures had every interest in ensuring that the welfare and efficiency benefits arising from such measures are not lost due to anti-competitive practices by firms. A well-functioning market mechanism is essential in this respect. It is now accepted that there is a link between measures to enhance competition in developing countries and economic growth. This is why almost all developing countries are giving their full support to the enactment and the establishment of a strong and effective competition policy in their countries.

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