

Implications of COVID-19 on competition law in India

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Abstract

Competition law is an ever more common element of public economic policy. One nation (the U.S.) had antitrust laws and active compliance a half century ago. Today, more than 90 jurisdictions have competition laws, and by the end of the decade the number will reach to 100. There is a lack of successful regulation of most antitrust laws, but an increasing number of jurisdictions have regulatory mechanisms that business operators will take seriously. The international extension of competition law has an impact on cross-border trade. The comparatively limited definition of extraterritoriality pioneered by the European Union (EU) and United States is often endorsed by national or regional antitrust regimes. Covid-19 has affected the competition laws and economy very badly. Even Competition Commission of India on 31st March, 2020 has suspended its activities and announced that new filings or submission will not be accepted including the Office of Director General for ongoing investigation and fresh compliant. The study aimed to find the negative effects of covid-19 on the implementation of competition law, It was found that Covid 19 has affected prices, mergers, secret agreements, sharing information especially in the necessity products. It was recommended that CCI should come out temporary measures and control and should have close watch on the working of the players in the market to avoid any unethical trade practice that are prohibited by CCI.

Keywords: Competition, Covid-19, prices, CCI, e-filings, mergers, unethical

1. Introduction

The broad objective of the study is to give a briefing to Competition Law and then move towards research subject undertaken by the emerging trends in competition law. It is the legal body which deals with the conduct of the corporate and company market (Peter Nygh and Peter Butt, 1997) ^[2]. Mostly, focus of the study will be on impact of Covid-19 on the implications of the Competition Commission of India on the changed scenario of the business. Therefore, the jurisdiction for the enforcement of antitrust laws needs to be determined (Fod Barnes and Michael Scheidgen, 2009) ^[1]. The company's increased globalization of markets has raised the question of what the competition policy response to globalization should be especially during this outbreak of the Covid-19, whereas on 24.06.2020, there are Active cases 183022, Cured 2,58,684, Death 14476 and 01 is migrated (<https://www.mygov.in/covid-19>). Therefore, Companies should be careful and take the wiseable steps as the provision of the Competition Act, 2002 continue to exist and applicable even during this turbulent time. As Worldwide regulators including European Union, United Kingdom, United States, South Africa, Spain have already declared and warned that they are keeping the constant and close watch on all the transactions and dealings of the companies.

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extraterritoriality pioneered by the European Union (EU) and United States is often endorsed by national or regional antitrust regimes. Such design means that particular transactions or activities involving major suppliers of goods and services are often subject to more than one jurisdiction under the competition laws. Even the Competition Commission of India on 31st March, 2020 has suspended its activities and announced that new filings or submission will not be accepted including the Office of Director General for ongoing investigation and fresh compliant.

Despite all the above restrictions and implications, some of the companies are misusing the involving into sharing of information, secret mergers on the pleas of essential products including medicine, medical equipment, masks and sanitization.

2. Research Problem: Issues and Challenges

As this dissertation deals with the emerging trends in competition law in India, the research problem basically deals with the following questions:

1. To analyze the objectives of the Competition Law
2. To analyze the effects of Covid-19 on implication of Competition law
3. Analysis the exploitative practices on business due to suspension of all fillings by CCI
4. Threats to the business due to suspension of filings at CCI
5. Changed role of CCI in the new paradigm

3. Review of Literature: Existing Approach

Competition law in India was largely under-developed. The objective of MRTP Act is to ensure that the functioning of the economic system leads to accumulation of economic power to the damage of the population, and such monopolistic and discriminatory to avoid business practices

that undermine the public interest. In addition, a study of the MRTP Act shows that there is no stricter interpretation or relationship with some emissions trading practices.

As a result, the MRTP Act seems to have become ineffective in view of specific economic reforms related to consumer protection laws with the need to move from limiting free markets to fostering competition. The State has drafted a new law to correct these shortcomings, resulting in the 2002 Competition Act under documents 38 and 39 of India's Constitution as Competition Law for India. These documents are part of the State Policy Directive. India's first Competition Act was enacted in 1969 called Monopolies and Restrictive Business Practices Act (TPM Act) in accordance with the Principles of the Directive. Articles 38 and 39 of the Constitution of India, among other things, stipulate that the State seeks to promote people's well-being by creating and safeguarding, as effectively as possible, social order in which all national life institutions are informed and guided by their security strategy in particular.

4. Research Objective

Main objective for researching on emerging trends in competition law is to define problems in implementation of competition law and competition policy during the Covid-19. Researcher's goal is to find the solution to how competition law and policies can be applied more effectively during and after the Covid19 regime. How it can be safeguards the consumer and Industry in Indian as well as in International market.

5. Research Methodology

This research must carry out analysis doctrinal methods. If a thesis is a legal issue, or dealing with problems/questions, then it is called doctrinal, theological, or pure legal analysis. The other type of research is empirical research that takes into consideration when a legal analysis takes a study of from the point of view of society for social issues, concerns or queries, it is known as socio legal research at some stage. For a library-based analysis, doctrinal research, often referred to as armchair research. Doctrinal research is a research of legal proposition through the application of the researcher's reasoning power to analyze the existing statutory provision along with the present case laws. Researcher uses various rulings, treaties, law documents, legal papers, newspapers, etc. for doctrinal analysis., and from these he attempts to gather all relevant material on the subject and then with the power of logic, the researcher tries to find out the void, the question and draw the final conclusion.

6. Competition Policy and Law Objectives

Objective of competition law primarily is to monitor flowing anti-competitive activities of companies and enterprises. Under the condition of an active competition policy, the full benefit of economic reforms must be felt and better realized. Consumer protection is another important objective of competition law. It has been seen across jurisdictions that its objective varies among countries. They can change even within a country with variations in economic situation.

Hon'ble Supreme Court of India judgement, 2010 defines that the broad aim of competition law is to promote economic efficiency by bringing competition forward as one of the ways to craft a market that responds and provides

products as per the preferences of consumers. The benefits are triple, i.e. allocate efficiency, ensuring effective allocation of resources, competitive performance, ensuring low and flexible cost efficiency of production, and ensuring creative practices All over the world, these factors have been accepted as the guiding principles for the effective application of competition law.

In simple terms, competition law and policy are linked with pricing and competitiveness problems. Competition would be more common in terms of general economic governance and growth, stronger regional and global trade and development agreements.

Competition goals that may be final or intermediate goals are important to understand. The distinction is that intermediate targets are short-term objectives that help achieve the final goals, whereas long-term results depend on the interplay of other goals, end-to-business goals or goals are also present.

Through regulating and restricting activities, the intermediate goal of competition policy can be seen as preserving the competitive system or free competition in the economy or avoiding unfair trade limitations in order to achieve free exchange, free choice and market access. Achieving these targets would play a critical role in achieving another intermediate target, i.e. economic efficiency, which is achieved in a market where there is no other way to re-allocate exchange terms on the same market, it can increase overall surplus and overall product surplus. Economic performance can also be categorized in two parts i.e. static and dynamic. Dynamic performance is at the same time optimizing the overall consumer and customer surplus in a given market, whereas Dynamic Performance is maximizing the overall surplus over time or over a specific period to represent development and technical progress.

7. Components of Competition Law

Although competition law varies from nation to nation, some fundamental principles underpin almost all competition law regimes. These regulations can be divided into three different categories as follows:

- a. Anti-competitive agreements prohibition or practicing restriction on free trade and business competition.
- b. Prohibition dominant market abusive behavior or a dominant position which is the result of anticompetitive behaviors.
- c. Supervision for large corporate mergers and acquisitions, including some joint ventures.
- d. Introduction of competition Advocacy

8. Covid-19 and Competition laws

The sweeping impact of this outbreak on the economic sector has left regulating authorities to balance between the defending competition to control the prices and granting exemptions to competition rules to protect and make it sure that entire economic sector is survived especially, it is happening at geographical market which is that part of territory where the conditions of competition of supply of goods or services are distinctively homogeneous (Ramappa T). Even, Ministry of Consumer Affairs, Govt. of India has also invoked the essential Commodities Act, 1955 due to sudden increase of products like masks and sanitizers to avoid the triggering of price high and brought under this Act.

9. Findings of Research

The CCI and worldwide regulators on completions are very active but they are compelled to relax some of the restriction to meet the sudden requirements of the covid-19 like companies working together to accelerate the development of the Vaccines, diagnostics kits and other machines to fight the pandemic. Hence, it may be assumed that the regulators may be willing to permit some temporary competitor cooperation and exchange of data to combat this outbreak. Some sectors are misusing the concept by increasing the prices of medical equipments, medicines, medical treatments and masks etc. Market has experienced the sudden shortage of essential products like face masks, sanitisers and other health care products due sudden disturbance of balance between the supply and demand of these products. The following factors may emerge, which has to be seen by the CCI.

9.1 Sharing of data

Many companies are indulged in sharing data effecting the demand spikes, supply restriction and disruptions and future expectation about the market. It may be the informal or secret agreements for allowing few suppliers to supply the products make the monopolistic or monopoly conditions. Like United Kingdom has relaxed its laws for the time being relating to competition and antitrust by sharing data with each other on stocks position, pooling of staff, sharing distribution channels etc.

9.2 Mergers

Due to sudden change in Stock Markets or lower share prices, it may trigger a spike in mergers deals, as fresh filing or ongoing filing have been stopped by CCI on 31st March 2020. Even European Commission is also asking their companies to deal by the filing of the mergers and acquisitions. But some business mergers or joint ventures may be allowed to help for survival in this crisis. Therefore, some important ant and required antitrust reforms that were expected in 2020 may be delayed or put in dust bin for dealing with the crisis. As U.S. antitrust legislation generally deemed it illegal to restrict vertical relationships until the late 1970s, while the European commission still retains some of its famous mistrust towards these restraints as a consequence of the potentially harmful consequences for the competitive process, coupled with the market-partition effects of territorial restriction (Sandra maraca)

9.3 Collaboration between competitors

Some companies are found to work under pressures like food retailers, pharmaceuticals for which the relaxation is bound to be done like Norway suspended between airlines, Germany and UK between food retailer and United States between medical suppliers for fighting the outbreak. But, how much honesty in collaboration exists will be assessed after phase of this pandemic. The need to assess the completion risk before collaboration should be done with all the safeguards required for the fare dealing.

9.4 Exploitative practices

There is utter atmosphere and chances for indulging into malpractices for minting the money by forming cartels to fix prices, allocation of customers, controlling the supply of products for creating temporary scarcity and using the features of monopoly or oligopoly conditions of the market.

No doubt the Government of India has taken the Covid-19 related products into category of Essential products and fixed the prices by the notes of Ministry of Consumer Affairs, Food & Public distribution vide their order dated 13th March, 2020 under the Essential Commodities Act, 1955

9.5 Increase in prices

This is most prone and effect area where antitrust authorities should take active role during this crisis to control the excessive price. In India also excessive prices have experienced in the necessity products like masks, healthcare products, sanitizers, corona testing, medical treatment. This may be due to emerging monopoly or oligopoly market competition or unethical cartels in market by way of secret agreements and collaborations. There is always risk of the Horizontal agreements (prohibited by the Competition Act) for some of the industries like pharmaceutical and health care, essential commodities, consumer products and other Covid related products.

9.6 Secret understanding in bids

There is always a threat of the bids submission as only few players can have the secret understanding to meet the sudden increase in demand by distributing and assigning the different products to themselves by quoting the pre-decided prices, which has to be accepted by the Government, which is an unethical practices and prohibited by the Act

10. Suggestions and Recommendations

During this pandemic, there is every chance of unethical practices and abuses in the market. Many players especially in the essential category may be misusing this opportunity for drainage of money from the market. Hence, the role of Competition Commission of India (CCI) become inevitable for protecting the genuine welfare of consumers in this unprecedented challenge i.e. enforcing the law more strictly and vigilantly and on the other hand providing relaxations in critical sectors. The following suggestions are given, which may protect the common consumer and help to fight this outbreak.

10.1 E-filing at CCI - CCI should understand to streamline its e-filing and put in systems in place of the submitting the physical set of the filing for the time being. The online application for mergers can be invited and in feasible even the antitrust filings facility can be extended. But all this can be done with precaution and protecting the confidentiality with special attention to the remote areas.

10.2 Antitrust procedure should be expedited by providing the guidance for collaboration and mergers of the business engaged in protecting and health and safety of the citizen during the covid-19 as done by Federal Trade Commission and US Department of Justice Antitrust Division.

10.3 CCI should also take cognizance of any antitrust taking place including the unfair prices, market abuses, unethical agreements and should have a close check on the market players, so that common man can be protected from the bad and unethical practices of the business. This will help to maintain the keep the demand and supply of the products.

10.4 CCI may issue strict warning for any unethical dealing

by taking stern legal action, if any competitor found sharing the data, sensitive information directly or indirectly, use any common platform for distribution. Every irresponsible and ill-informed action of any competition for exploitation or misuse of the pandemic condition should be stopped

10.5 Timely action of CCI will help not only the negative outcome and financially drainage but also severely damage the image and reputation of the companies and CCI. Any coordinated behavior of the competitions in the covid-19 should be in the consumer's interest and not for the extraordinary profit. Hence, any exemption provided by the CCI should be based only on trust and competition authorities believed that relaxation given are genuinely for the welfare of the consumers.

10.6 CCI should also design the systematic relaxation for completion and antitrust policies as Australian Competition and Consumer Commission has already allowed the hospital both of private and public for sharing information, patients, medicine and even staff also. In the same lines, United Kingdom has also relaxed for the time being the completion laws for retailers and supermarkets to meet the emerging and sudden demand of the market. Guidelines may be issued temporary relaxation into the antitrust policies, mergers, joint venture or sharing any information or platform, which was earlier prohibited by the CCI.

11. Conclusions

Competition Law is the main source for controlling the antitrust activities and its activities are all meant to save the normal customers from the unethical practices of the business and even help the competitors from unnecessary competition. But due to covid-19 all the filings a CCI have been stopped and now we need the close monitoring of the business and hence required to control the antitrust policies. The main purposes should be to create the balance between the relaxations and control of necessity products and strict guidelines should be issued for any unethical practices to be dealt after Covid-19. Hence, the role of Competition Commission of India (CCI) become inevitable for protecting the genuine welfare of consumers in this unprecedented challenge i.e. enforcing the law more strictly and vigilantly and on the other hand providing relaxations in critical sectors.

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