

Study of Competition Law Enforcement in India with Reference to Developed Nations

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Abstract

India is a vast economy where in there a number of players. These players differ in many ways and most significant is the scale of business. Any player who has bigger than others in scale of doing business automatically has the advantage over others. In such cases it becomes necessary to safeguard the interest of those players who are less equipped. Competition law is one among those important tools in the hand of such players. This articles analysis the prevailing Competition Act of India and the enforcement mechanism. In the later part this articles compares the enforcement mechanism of competition law in India with that of developed nations.

Keyword: Competition Law, Enforcement, India, UK.

Introduction

There are multiple players in the Indian market which cater to the different types of need of the Indian people. These players can broadly ben categorized into Private enterprises, Government enterprises, cooperative enterprises etc. Private enterprises are run by private players¹. In government enterprises government use to take decisions and in cooperative organization it is governed by a co-opertaive. Companies which entered through foreign direct investment are also serving the customers. So things have changed drastically from an era where companies had been protected by the government to stay alive and functional. In modern times companies are allowed to act freely. But it is not an easy task because across the world the companies are in different phase of evolution with difference in the degree of exposure. There are a number of companies from such markets which were always open and when they are entering to the market of India there is a need of readjustment of the regulatory mechanism just to ensure fair competition to prevail in the market². This special circumstance need a special law and hence the Competition Act become important³.

Implementation of rule of contest law in India

To ensure the right to get the best of the products and services in best price and at the same time all information to be readily available Competition law became essential in India. It

becomes significant to talk of three institutions when it comes to enforcement of competition act in India. The names are (a) Competition Commission, (b) Director General as well as (c) Competition Appellate Tribunal.⁴

1. Competition Commission of India

It has a role of regulatory body which has the objective to prevent any of the practices which is anti-competitive within the boundary of country.⁵ At the same time it also play the role advisory along with advocacy role. CCI is quasi-judicial but at the same time have a corporate set up too. The CCI has a chairperson along with 2-6 members by being appointed by the government of India⁶.

As far as the jurisdiction of this law is concerned, it enacts Pan India. It can also enquire beyond the boundaries of Indian in case something is having the impact on the fair completion within the country⁷. The competition act also has been empowered to extend its jurisdiction in all the sector such as primary sector, secondary sector and tertiary sector of the economy. When some matter comes which entails some other laws, completion laws will prevails due to the special overriding effect provided under this law⁸.

The Commission also powers wherein they can enquire when any contravention is alleged. There are some ways to do so. The commission can take action on its own or in case some else has raised the concern. It also comes within the ambit of Commission that they may start enquiry in case of any acquisition as mentioned in clause (a) (b) (c) of section 5 is harming the environment of fair completion in India. It is also worth mentioning here that under these sections inquiry has a time limit of 1 year. Commission however has the authority to bring in the matter as being mentioned in section 20 as and when needed even in these cases too.

The commission can summon and incase of any irregularity can enforce the presence. It can further examine the person. It can ask for any document. Due to all these powers one can assume to have the same power as the civil courts use to have. The individuals and the entity can be penalized in monetary terms which if they fail to pay treated in the same way as in case of income tax act. In an another case where the entities going to be one company do not have informed the commission under the section 6(2) of the competition Act, the act empowers the commission to penalize the entity. The amount of the penalty can be up to 1% of the turnover⁹

2. Director General

The Competition Commission of India has access to the Director-General.¹⁰ He is the one who head the CCI. The Director-General is named by the central government of India. Director General is appointed to make the competition commission of India functional as being mentioned in the ACT¹¹. There are other employees too to act and assist the director

general. The designations include Additional director general, Deputy director general, Joint director general and Assistant Director General etc. ¹²

3. Competition Appellate Tribunal

BrahmDutt v. Union of India¹³ resulted into a new body named Competition Appellate Tribunal. Being a quasi judicial body, Competition Appellate Tribunal use to have a chairman along with two other members. All these three people will be appointed by the government of India. The pre-requisite for the chairperson use to be that he/she should be a judge of supreme court/High court. At the same time he/she should have the exposure of international trade along with others for not less than 25 years. But if the person is still not happy with the CAT then he/she may appeal Supreme Court. The time limit is 60 days.

Unique features of Competition Act in India

Competition Act in India has received the guiding act from many other countries.¹⁴ U.K law have contributed more than anyone else. Some unique features of competition ACT of India are given below. This is expressed in Article 14 of the Competition Act regarding the convention on this issue. Where the Regulation presents the Commission to examine with the Advisory Committee on Restrictive Practices and the dominant position. As such there is no such arrangement for interview in the Competition Act. However Section 17 of the Act stipulates that the Commission may name experts and experts for the best work of the Commission.

Further to the regulation, Articles 20 and 21 furnish the Commission with the ability to examine the relationship of the efforts and efforts of the Commission and for this reason the approved officer may enter the premises of the effort, analyze books and other related records. Is, can seal. Business premises and beyond. In addition, the Commission may likewise examine some other places which are different from the premises of the undertaking, such as officers, supervisors and employees of other parts of the effort. In any case, there is no such system for examination in the Competition Act. The Commission can only request the Director General for investigation and the Director General while there is power in the examination as the Commission has given under Section 36 (2).

U.K. and Comparison of India's Enforcement Mechanisms

Despite the fact that India follows a similar line of implementation experts in India, the U.K. still remains And there is hardly any contrast between India and the authority component of competition law(Tiwari,2011).¹⁵ They are in accordance with the following: The Indian Competition Act, though not yet discussing the examination, such as u. K. The Competition Act, it does not discuss the intensification of the status of authority as it is discussed in sections 27 and 28 of the U.K Competition Act for entering the business premises. Avoiding such an arrangement in the Indian Competition Act can affect the examination process to a

large extent. The consideration of correspondence given under section 30 of the U.K Competition Act is additionally excluded from the Indian Competition Act. This can affect avoidance efforts or the privilege of legitimate or characterful people who are experiencing an examination.

In India we have sectoral controllers as competition law enforcers, currently this creates a real concern concerning the fact of the treatment of undertakings of cross sectoral issues. For example, a particular approach may be directed by an office and by CCI at competition angles. In such circumstances organizations are concerned about the possibility that collision bearings from different controllers may occur in such occasions. There are additionally dread that they need to comply with twofold rules will achieve extended business costs. In India there is no structure for coordination between the sectoral rules and the Competition Commission of India. On the other hand in U.K different sectoral controllers have ability to apply the Competition Act all the while with OFT. The Competition Act 1998 (Concurrency) rules 2000 have been made to mastermind the movement of the synchronous powers and the technique to be followed. For example in U.K they have synchronization party, where all controllers and the opposition authority sit and pick the best association to deal with the case.

Conclusion

The competitiveness of the nation changes with the adjustment in the international financial situation. Society is not stable and thus law must be dynamic for a unique society. Our Competition Act of 2002, however, has tried its level best to control counter serious game schemes in our country but has not started yet. Consequently, according to some of them in our Competition Act, hardly any changes are required to meet the current status of the competition:

Consideration of the commitments in the Competition Act will call for reducing the commission time. Although the Commission consists of its own experts, the establishment of an autonomous advisory committee will help in the proper work of the Commission. The Commission is not given the ability to investigate allegations of attempt to present against serious activities, in the event that the Commission is not given such force, at which time it may terminate the examination procedures. Thus such powers should be given to the Commission. The idea of special correspondence given under Section 30 of the U.K Competition Act is additionally excluded from the Indian Competition Act. This may affect exclusion efforts or the privilege of legal or characterful people who are experiencing an examination. There is no structure for coordination between the Regional Guidelines in India and the Competition Commission of India. In such circumstances organizations are anxious about the possibility that that in such examples there might be clashing bearings from various controllers. Further the Indian Competition Act doesn't discuss the idea of Professional Secrecy; this may likewise influence the privileges of the people just as endeavors. Consequently above were not many of the alterations that on the off chance that we make to

our Competition Act it would turn into an extensive enactment which will work in light of a legitimate concern for the nation just as the concerned gatherings.

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