



FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B. IX th Semester

SUBJECT: COMPETITION LAW

SUBJECT CODE: BAL 901

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LECTURE 14

TOPIC: DEFINITION OF COMPETITION AND COMPETITION LAW

Concept of Competition Law

Competition law, the 'law' used as an expression of the idea of competition, is negative and prohibitory in the sense, it prohibits anti-competitive agreements. From its nature, competition law or Anti-trust law does not directly promote competition, but rather it tries to prevent anti-competitive activities in the market through the employment of legal systems. Courts define competition as a process that requires numerous participants and decentralization. In the *Treaty Establishing the European Community* (EC Treaty), for example, Article 81(1) provides: "The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by association of undertakings and concerted practices." In a similar manner, Section 1 of the *Sherman Act*, 1890 in the United States (US) declares: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce..." In neither provision is there any mention of 'encouraging competition' or of 'compelling' firms to compete.

According to the *World Bank*, businesses have but one aim-to market their products and services to the customer and earn profits. In this context, "Competition" has been defined as a situation in a market in which firms or sellers independently strive for the buyer's patronage in order to achieve a particular business objective for, instance. profits, sales or market shares.

The UK Competition Commission defines competition as "a process of rivalry between the firms. . . seeking to win customers' business over time". In India, the Parliamentary Standing Committee on Home Affairs, in its 93rd Report on the *Competition Bill*, 2001,

though conceded that competition as an evasive term and is understood differently in different contexts, observed that competition is basically the process of economic rivalry amongst economic entities to control greater market power. It is a situation where the market is open to the potential new enterprises and all those enterprises including newer ones to operate under the pressure of competition.

Thus, in order to prevent anti-competitive activities, competition needs law as a form of expression. In particular, there is a need to protect fair competition by competition law in order to guarantee the benefits of the market. It is important to note that, as an essential part of the efforts by developing countries and countries with their developing economies to protect their domestic economies and integrate them fully to face the global economy in order to make these developing economies capable of exploiting newer and wider opportunities. In order to receive their fair share of the benefits accruing from globalization, an increasing number of such countries adopt economic reform packages which liberalize industries, lead to privatization and help those countries adopt Anti-trust laws and policies. In this sense it would appear therefore that certain countries, at least, introduce Anti-trust laws in their domestic legal systems as a matter of choice and as part of a general aim on the part of those countries to become competitive in a globalized economy.

Exercise:

1. Competition law, the 'law' used as an expression of the idea of competition, is negative and prohibitory in the sense, it prohibits anti-competitive agreements
 - a) True
 - b) False

2. Those words and expressions used in the Competition Act but not defined in the said Act shall have same meanings, if defined in the _____
 - a) Companies Act
 - b) MRTP Act
 - c) Finance Control Regulation Act

d) RBI Act

3. Competition is defined as “a process of rivalry between the firms. . . seeking to win customers’ business over time” by

a) The UK Competition Commission

b) The US Trade Commission

c) Competition Commission of India

d) None of the above

4. According to the *World Bank*, businesses have but one aim-to market their products and services to the customer and earn profits

a) True

b) False

5. Which section of the *Sherman Act*, 1890 in the United States (US) declares: “Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce...”

a) 1

b) 2

c) 3

d) 4