RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

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

SUBJECT: COMPETITION LAW

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LECTURE 5

TOPIC: PROVISIONS OF SHERMAN'S ACT

The American Shaman Act, 1890 attempts to sustain the competitive process? The purpose of the Sherman Act, 1890 originated out of popular concern for the U.S economy during a period when a small number of corporations and individuals had accumulated a huge amount of wealth. Corporate organizations, unconcede with public interests, were spawning in large numbers: dangerous business establishments known as b'husts"8 were growing in number and suppressing competition. In the interests of curbing business excess and abuse while preserving the competitive nature of the U.S. economy, the Sherman Act, I890 became one of the first modem Competition Law statutes and the first of such statutes to become a significant factor in legal and economic life.' The Sherman Act, 1890 contains two broadly construed substantive sections of importance. Under Section 1 of the Sherman Act, 1800, "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal." Section 2 of Sherman, 1890 makes it a felony for "ovcry person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states or with foreign nations." Fines for such violations now include up to $350,000 for individuals and/or three years imprisonment. The judiciary of US plays an important role in interpreting the provisions of the Sherman Act, I890 and the U.S Competition Law system. The Sherman Ad, 1890 for example, may be enforced with only criminally by the U.S Department of Justice C'DOJ"), but civilly as well by the government and aggrieved parties.'0 In fact, the broad language of the Sherman Act, 1890 essentially demands that the U.S Judiciary play a vital role by injecting flesh and blood to the very general phrases contained within the Sherman Act, 1890. The most important early interpretation of Section I of the Sherman Act, 1890 came in United States \I. Addyson Pipe & Steel Co. 1898, which gave birth to the "rule of reason" commonly applied in

Sherman Act, 1890 cases today. Under the "rule of reason," "No conventional restraint of trade can he coerced unless the corlcnant embodying it is merely ancillary to the main purpose oja Ian@/ contract, and necessary to protect the covenantee in the enjoyment of the legitimate fiits of the contract or to protect him from [he dangers of an unjust use of those fruits by the other party. " It is quite apparent from the decision, only those restraints of trade that are deemed unreasonable violate the Sherman Act, 1800. Of particular imparlance to the Sherman Act, 1890 has been the interpretation of the section 2 prohibition against those who "monopolize or attempt to monopolize." Under Section 2 of the Sherman Act, 1890 becoming a monopoly or achieving monopoly status is not in itself m illegal act, but rather the act or attempt at monopolization constitutes such an offence. Hence, a company that becomes a dominant force in its industry is not per se perpetrating an illegal act, and the lack of effective competition in the sector and market occupied by the company is not illegal. A monopoly becomes illegal when a company involves unfair means to achieve a dominant position or when monopoly power is used to maintain a dominant position and to exclude competition from the marked." Thus, attaining monopoly position through legitimate mans like product superiority, technology superiority or historical accident is not an offence and in fact it is permitted. The degree of market power that. mus1 be shown varies from case to case,

It though it is often reflected in market share portage calculations, and the definition of what constitutes unfair monopolizing behavior remains the subject of most cases in this area.'* Along with the Shaman Act, 1890, several other statutes exist that form the core of the U.S. Competition Law. One of these acts, the Wilson Tariff Act of 1894, specifically Sections 73-76 of the Wilson Tariff Act. 1894, imposes punitive measures on the abuse of U.S import laws through agreements or conspiracies between importers and others. The Wilson Tariff Act, 1894 forbids "every combination, conspiracy, trust, agreement, or contract" between two or more parties where either party is engaged in importing goods from foreign states into the United States intending to restrain trade or increase market prices. Violations of Wilson Tariff Act, 1894 arc almost always brought in conjunction with Sharman Act, 1890 suits and the act is of little significance on its own" Business consolidation roared along in the 1890s and 1900s. AY a result, the

progressive era put Anti-trust high on the agenda. Theodore Roosevelt sucd 45 wmpanics under the Sherman Act, 1890 whilc William Howard Tafi sued 75. In 1902, Roosevelt stopped the formation of the Northern Securities Company which threatened to monopolize transportation in the nor~hwest.'~ The Supreme Court of the United States in the Standard Oil Company v. United states" has observed: "The Anti-trust Act 01 1890 was enacttld in the light ?(the then existing pracrical conception of the law against rc.struint of trade , und the intent of lbngre.~~ was not to restrain the right to make and mnjorce contracts, whether resrrltingjrom cornhination or otherwise, which do no/ rrnduly restrain inter-state qfjbreign commercv, hut to protect thar commercc/rom contracts or comhinatians by methods, wherhcr old or new which would constirutc. an inrer/crnce with, or an undue re.~trainf upon, if" '"

The Sherman Act had even jurisdiction outside the American shores. The U.S Supreme Court in HaMoed Fire Insurance Cd V. coloron" had observed that: "It is well established by now that the Sherman Act applies to being conduct that was meant to produce and did in fact produce some substantial effect in the United States" nus, the court in this case had explicitly recognized the 'effects doctrine. "In 2004, the Supreme Court took a start toward resolving another conundrum, ruling that when a global conspiracy causes both US harm and independent harm aboard, a private plaintiff may not recorder for that independent, foreign harm at least unless it is inextricably linked and domestic harm." The Sherman Act, 1890 had some loopholes. It did not deal with corporate amalgamations. It forbids collusion" and monopolization, including predation." It does not deal with anti-competitive mergers. Further, in passing Sherman Act, the Congress did not give ally indication of its intention about what the expressions "restraint of trade" and "attempts to gain monopoly, mean and stand for. Uncertainty prevailed about what is legal. In an effort to clear up the ambiguity, Congress passed the Clayton Act, 1914. With its passage, the three routes to monopoly are closed by prohibiting collusion, monopolization including predation and anti-competitive mergers.

Exercise:

1. Sherman Antitrust Act is the first antitrust legislation to be paned by _____

a) Indian Parliament
b) UK Senate
c) US Congress
d) Australian Parliament

2. Sherman Antitrust Act was named after

a) David Sherman
b) John Sherman
c) Kiddle Sherman
d) Mary Sherman

3. The American Shaman Act was enacted in the year

a) 1819
b) 1890
c) 1918
d) 1980

4. Sherman Antitrust Act contains _____ sections

a) 3
b) 11
c) 7
d) 9

5. Which section of the Sherman Act prohibits against those who "monopolize or attempt to monopolize."

a) Section 1
b) Section 2
c) Section 3
d) Section 4