



FACULTY OF JURIDICAL SCIENCES

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SUBJECT: COMPETITION LAW

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LECTURE 12

TOPIC: RAGHAVAN COMMITTEE REPORT

With a view to controlling the concentration of economic power and growth of monopoly, stopping the unfair trade practices government enacted Monopolies and Restrictive Trade Practices Act in 1969. Before the 1991 Industrial Policy announcement, MRTP would be applied to those units which were having assets base Rs. 100 crores, a dominant undertaking whose asset was more than Rs. 20 crores.

Any undertaking under MRTP Act had to seek permission from Government for further establishment of new units. This Law stood in the way of companies gaining strength, reap economies of scale and become competitive in the international market. So in 1991, Industrial policy, the concept of asset limits was discarded.

Let us now see, what is meant by Monopolistic Trade, Restrictive Trade and Unfair Trade.

Monopolistic Trade:

This is that variety of trade, which would bring distortion in competition. This trade creates misuse of the market forces in production and distribution of goods distorts the supply situation, limits technical superiority, acts in the form of charging high prices. In this case MRTP commission by virtue of MRTP Act could pass order regulating production and storage, fix prices or terms of sale or could take steps to promote competition of the trade.

Restrictive Trade Practices:

Restrictive Trade includes a trade practice, which may prevent, distort or restrict competition in a manner that may stand the way of flow of capital into the production stream, or generates price manipulation, or cause unjustified rise in the prices creating troubles for consumer. This type of Act would be stopped by the MRTP commission.

Unfair Trade Practices:

Such practices involve misleading consumer, advertisement, false representation and eliminating and restricting competition. The modification of the Act in 1991 enlarges the spectrum of Unfair Trade Practices to include false representation in the quality of goods also, whether it causes the loss or injury to the consumer.

Restrictive Trade practices would be allowed in limited cases, if removal of such practices causes a rise in unemployment, a fall in export etc.

With reference to economic liberalization it was understood that MRTP act had become harmful effect in industrial growth. The MRTP approach according to MRTP policy of the government not to make any scrutiny on investment decision by so called MRTP companies rather there will be control on monopolistic activities.

There will be steps to restrain, regulate restrictive and unfair trade practices rather than making it mandatory for obtaining prior approval of the government for expansion of industrial activities by the MRTP Companies. In fact its new avatar MRTP commission will investigate the complaints received from consumers in regard to monopolistic restrictive and unfair trade practices and initiate action thereon. The “asset approach” has been withdrawn. The Government will promote competitive elements in the economy.

In view of rapid globalization, the government embarked upon a policy of promoting competition and framed a competition policy in 2000 following the recommendations of Raghavan Committee in October 1999.

The Salient points of their recommendations are:

(i) Setting up of competition commission and winding up of MRTP commission.

(ii) Government monopolies, foreign companies will be covered by competition law.

(iii) Government should make a specific rule on mergers above a threshold investment limit and predatory pricing as an abuse if any dominant undertaking engages in it.

(iv) Competition law should cover all kinds of consumers for the purpose of protection of interest.

(v) Small scale sector should not enjoy any protection or reservation if the products of any SSI fall in the OGL category, for the purpose of imports.

(vi) BIFR should be closed-

(vii) Urban Land Ceiling Act, Industrial Dispute Act should be repealed.

(viii) All pending cases of MRTPC should be transferred to competition commission of India.

The new competition law and competition commission of India is however lacuna in many respects.

The budget on competition commission and implementation is pledged at law of Rs. 12 crores. India's budget at the starting year 0.0009% of total government expenditure but for Zambia it was 0.05%. For USA it was 0.01 percent.

Thus, there should be augmentation of fund and resources for efficient functioning relating to anti-competitive actions, acquiring spacious modern premises, engaging professional, for effective research. CCI need to provide training to its staffs, stakeholders, government officials.

There are many actions which take place at national and district levels which may escape from the clutches of competition law. Unless there is educated staff these types of abuses will never be curbed.

There is also need to develop machinery for tackling anti-competitive practices. There is need to campaign for education to comply with competition standards, rules and norms by the business community.

There should be wide propaganda for this purpose, so that business community can practice proper compliance norms. The competition commission should try to gather knowledge from abroad how similar agencies are doing elsewhere.

We need to build cooperation with other competition commission also. Brazil took punitive action against anti-competition practices getting information from USA. Thus, international networking is necessary for ensuring cooperation among competition enforcing agencies. CCI also should be an integral part of this networking process.

Exercise:

1. On whose recommendation, Competition Act, 2002 was drafted and enacted
 - a) Kelkar Committee
 - b) L.C. Gupta Committee
 - c) Raghavan Committee
 - d) Rangarajan Committee

2. Raghavan Committee (high level committee) on competition policy and law was constituted by the central government which submitted its report on
 - a) 22nd May 2002
 - b) 22nd May 2001
 - c) 22nd June 2001
 - d) 22nd April 2002

3. As per Raghavan Committee's Report, horizontal agreements refer to agreements among _____

- a) Purchasers
- b) Sellers
- c) Competitors
- d) Buyers

4. As per Raghavan Committee's Report, vertical agreements refer to agreements relating to _____ of buying and selling to each other

- a) virtual relationship
- b) actual relationship
- c) potential relationship
- d) actual or potential relationship

5. According to Raghavan Committee Report, one reason for having domestic Competition law is that it should be _____ to international competition law, which is sought to be placed on the agenda of WTO

- a) Prefix
- b) Suffix
- c) pro user
- d) precursor