Competition Law in India

Prathamesh M Joshi
Visiting Faculty, Symbiosis Law School, Symbiosis International University, MS, India

Abstract

Competition has found its roots since the birth of time. One may argue that the primal instinct of the 'survival of the fittest' being inbred in the human beings is the point from which the entire concept of competition can be brought from. From the economists to the philosophers, every individual on the face of this planet has had an opinion to give or an argument to infer upon whenever the subject of competition has arisen. However, with the alarming rise in the concentration of wealth in the world, the industrial sector, especially the corporate sector was looked at as a way in which this may be removed however, the way in which the sector was getting prosperous, somewhere down the line, the need to regulate the blood thirst of such corporations was sought.The Competition Act, the world over had seen some rapid growth and a question arose about its authenticity. This paper makes an attempt to understand how competition laws have been framed in India. Emphasis has been given on the four key aspects of filtering in the competition laws being Anti-Competitive Agreements, Abuse of Dominance, Combinations Regulations and Competition Advocacy.The author would be attempting to explain whether the permutations and combinations in the law have worked, by keeping in mind each amendment that has happened.

KEYWORDS – Anti-competitive agreement,Competition Law,dominant position,Monopoly,Wealth

Introduction:

In olden days, if one had two cows, he could sell one and buy a bull which allowed him to multiply his herd and to grow his economy. He could then sell his herd and retire peacefully. Today, if one has two cows, he sells three of them to his publicly listed company using letters of credit opened by his brother-in-law at the bank, then execute a debt/equity swap with an associated general offer so that he can get all his four cows back, with a tax exemption for five cows. The milk rights of the six cows are then transferred via an intermediary to a Cayman Island company secretly owned by the majority shareholder who sells the rights to all seven cows back to his listed company. The annual report says that the company owns eight cows with an option of one more. He sells one cow to get a favourable position with the government leaving him with nine cows. No balance sheet is provided with such release. The public then buys his bull. The world has evolved and people say that such capitalistic evolution may become sinister.

Competition has found its roots since the birth of time. One may argue that the primal instinct of the 'survival of the fittest being inbred in the human beings is the point from which the

entire concept of competition can be brought from. From the economists to the philosophers, every individual on the face of this planet has had an opinion to give or an argument to infer upon whenever the subject of competition has arisen. A beacon of hope to many, this phenomenon has been used as a ladder, a stepping stone, as an opportunity to rise from the ashes and thrive, by many, individuals and companies alike, and hence it becomes highly interesting when the mankind itself starts questioning this system, this belief which, many argue to be a part of the DNA of its.

Concentration of Wealth:

One of the surveysby the Rules.org shows the alarming situation of the concentration of wealth and the inequality of it in the entire world. Inequality is talked a lot about by the people, especially the fact that the richest 1% possess so much more than everybody else. However, while making such statements and judgments, most of them are targeted towards the United States of America. However, if dug deeper, this story is found to be similar for the entire world. After doing the research through reliable sources like the United Nations, it was found that although it is true that there is massive concentration of wealth in the hands of the few in the USA, things are way worse in the rest of the world. If a hypothetical example is created wherein the population of the world is divided into five groups from A to E, A being the richest and E being the poorest, in ideal conditions, the wealth would be equally divided between all of them i.e., 20% each however, in reality, A holds 94%, B 3%, C 2%, D 0.5% and E 0.5%. The rate at which this is happening is alarming and corrective steps, if any have to be taken or else there are strong possibilities of their being wide scale turmoil and a situation where in there would be a massive over throwing of the governments all over.

Evolution of Competition Law:

Karl Marx had theorised that due to the glory that competition was getting under Capitalism, it would prevail throughout the world. As capital accumulation was the basic trait of capitalism, he had stated, "Competition contains the seed for future centralisation."

Monopoly, as a concept is pretty old and can be traced back to the Roman Empire. Hence, it is proclaimed that the development of competition started with the grants of individual freedom against the existing guilds in Europe in the early 18th century. Adam Smith had theorised the 'Invisible Hand'. According to this, a person's intention is only his own gain and hence he is led by an invisible hand in this, to promote him to an end which wasn't initially the part of his intention. This theory is considered to have sown the seeds for the subsequent evolution of the competition laws in the world.

The middle period brought out the 'rule of reason' approach which was opinionated by Justice Brandeis in Board of Trade of Chicago v. United States. It brought out the key difference between an agreement to restrain and the agreement to restrain competition. The key

observations denoted the fact that every agreement would have the characteristics to restrain, however, the key lies in checking whether such restrains are done so to promote competition or to destroy it and only those restrains which are wiping out the competition should be brought under review and consideration.

Sherman Antitrust Act:
The Act was enacted post the Civil War which had resulted in a rising number of business enterprises.

Sherman Antitrust Act (hereinafter referred to as 'Sherman Act') has two stages or two sections of violation:
Section 1 Violation-
*'An agreement*which unnecessarily refrains competition and which affects interstate commerce.'
The above statement has been divided into three parts and these three parts form the three elements of this section.
Section 2 Violation-
(1) The possession of monopoly power in the relevant market and
(2) The willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.

History of Competition Laws in India:

The 'command and control' regime was adopted by India, post-independence and its traces could be seen in every law that followed. The Monopolistic and Restrictive Trade Practices Act, 1969 came into existence as a product of this regime.

Monopolistic and Restrictive Trade Practices Act, 1969:
Principles behind the enactment of this Act were:
a) Social Justice with economic growth,
b) Welfare State,
c) Regulating the concentration of economic power to the common detriment,
d) Controlling monopolistic, unfair and restrictive trade practices.

Three types of practices are dealt within this act, the restrictive trade practices, monopolistic trade practices and unfair trade practices.

Restrictive Trade Practice:
Any practice having an effect of preventing, distorting or restricting competition becomes a part of the restrictive trade practice. Refusal to deal, tie-up sales, full line forcing, exclusive dealings, price discrimination, re-sale price maintenance, area restriction are few of the practices specifically provided in the MRTP Act.

Unfair Trade Practice:
Any unfair or deceptive practice for the purpose of promoting sale or use or supply of goods or promoting services comes under the ambit of unfair trade practice. Post amendment in the MRTP Act, in the year 1984, misleading advertisements and false representations, bargain sale, bait and switch selling, offering of gifts or prizes with the intention of not providing them and conducting promotional contests, product safety standards, hoarding or destruction of goods were included as unfair trade practices.

Monopolistic Trade Practices:
These practices became a part of the MRTP Act after the amendment in the year 1984. Maintenance of prices at unreasonable levels, preventing competition in the supply of goods and services, preventing technical development, increasing costs, preventing competition by the adoption of unfair methods were included in the monopolistic trade practices.

MRTP Act, 1991:
The economy of the country was changing and the government was realising the fact that the MRTP Act that was prevalent and the economy that was changing did not go hand in hand and hence, through the amendments that happened in the year 1991, came up the MRTP Act, 1991. Later on, with the advent of the World Trade Organisation, the Ministry of Finance along with the Government of India thought about overhauling the entire Act as many changes were sought in it and thus, the Government appointed a high level committee, "Raghavan Committee" to appoint a new competition law in India.

Competition Act, 2002:

The Competition Act, 2002 ensures and promotes a fair competition by prohibiting derogatory competition. For the same reason, the CCI or the Competition Commission of India was implemented. It mainly deals with:

- Anticompetitive agreements
- Abuse of Dominance
- Combinations Regulations
- Competition Advocacy

Anti-Competition Agreements-
Agreements carry a huge potential to restrict competition. Competition laws all over the world have had a strict demarcation and regulation on such agreements, and entities trying to enter into such agreements. Primarily, they are divided into two forms, a horizontal agreement and a vertical agreement.

Horizontal Agreements are formulated amongst the entities who are direct competitors in a particular product or a particular service whereas the Vertical Agreements are entered into between those entities having a potential of entering into a buying or a selling relationship of

their own goods or services, amongst each other. Cartel or Cartelisation is a well-known and a detrimental, if used in appropriately, type of a horizontal agreement. Vertical agreements may become detrimental only if the entities that are entering into them are in a dominant position. Hence, almost all of the competition laws across the world have a tad bit lenient view towards the vertical agreements than the horizontal agreements. For example, an agreement between the entities dealing in the same goods or same services. If in this example, the membership is being garnered through cartelisation, it would create a dominant group and would have an adverse effect on the competition, thus, they per se are termed to be illegal. This illegality however, purely is a question of fact and would only be applied if there is a distinct view of cartelisation. In rest all other examples, the rule of reason is implemented with.

Horizontal Agreements-

The enterprises or persons engaged in the trade which can be considered to be of an identical or similar in nature or those goods which can be presumed to have an Appreciable Adverse Effect on Competition (AAEC) if they are-

- Determining the purchase or sale prices directly or indirectly
- Technical development, services, outputs, etc. are being controlled or limited
- Markets are being divided or shared
- Collusive Bidding or Bid Rigging is being indulged into

Cartels-

The definition of cartels is inclusive in nature and a cartelisation is said to happen when an agreement takes place in order to limit, control or attempt to control production, distribution sale or price.

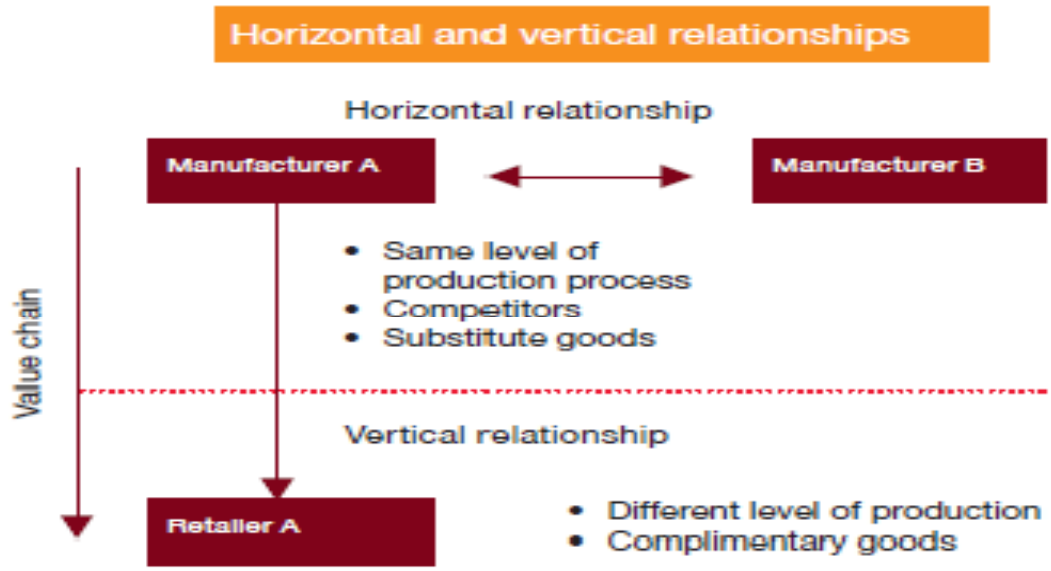

Figure 1: Horizontal and Vertical Relationships

Vertical Agreements-

An agreement may happen between persons or enterprises which are at a different level or a different stage of a chain of production and which are prevalent in different markets. Now, such agreements which are causing an AAEC are prohibited. These may include:

- Tie-in Arrangement
- Exclusive Distribution Arrangements
- Exclusive Supply Arrangements
- Refusal to Deal
- Resale Price Maintenance

Abuse of Dominance-

If an entity enjoys a position of strength in any particular and a relevant market in India which would allow them to

a. Operate without being affected by the competition in the market OR

b. Its functioning would affect the competition in the market adversely

Such position is said to be a Dominant Position. Section 4 clearly states that no enterprise is supposed to abuse its dominant position. If such an enterprise imposes discriminatory or unfair restrictions in the purchase/price or sale of its own goods or services so much so that it affects the market and its competitors adversely, it is said to use its dominant position favourably. This in turn leads to monopoly, which clearly is against the philosophy and the genesis of the Competition not just in India but all over the world. However, no competition law is per se against monopoly, but only its illegitimate usage.

At this point, it is worth mentioning that the Act does not prohibit or restrict enterprises from coming into dominance. There is no control whatsoever to prevent enterprises from coming into or acquiring position of dominance. All that the Act prohibits is the abuse of that dominant position. The Act therefore targets the abuse of dominance and not dominance per se. This is indeed a welcome step, a step towards a truly global and liberal economy.

The Act on Combinations Regulation -

The Competition Act is also designed to regulate the operation and activities of combinations, a term which contemplates acquisitions, mergers or amalgamations. Thus, the operation of the Competition Act is not confined to transactions strictly within the boundaries of India but also suchtransactions involving entities existing and/or established overseas.

Herein again lies the key to understanding the Competition Act. The intent of the legislation is not to prevent the existence of a monopoly across the board. There is a realisation in policy-making circles that in certain industries, the nature of their operations and economies of scale indeed dictate the creation of a monopoly in order to be able to operate and remain viable and profitable. This is in significant contrast to the philosophy, which propelled the operation and application of the MRTP Act, the trigger for which was the existence or impending creation of a monopoly situation in a sector of industry.

Voluntary combinations however, have been dealt with a specific set of provisions in the Act itself. The only issue lies that as it is not mandatory to notify such a combination to the CCI and hence the parties choose not to, the CCI may take a post-combination action on them if at any point it gets discovered that the competition prevalent in the market has been adversely affected by the competition. This post-combination action becomes crucial because CCI cannot initiate an action after one year of formulation of such a combination and hence the authority looks at a quick and swift action whenever a necessity arises.

Competition Advocacy-

Pursuant to the High Level Committee, 2000's recommendation, the mandate and role of the CCI has been extended beyond a mere enforcer. The fact that competition advocacy exists and persists works as a huge boon as it mainly creates and encourages a culture of competition. The competition advocacy can mould itself to play any kind of role depending on the socio-political and economic condition of the country. CCI although being a regulatory authority has also been empowered to participate and formulate policies and to review laws whenever the get related to the competition subject to the instance of the Central Government. Such instance by the Central Government with respect to any policy that may affect the competition, can be made so only when it requires the opinion of CCI. CCI if conducts its competition advocacy prudently, it would help in bringing down the barriers to entry that may in turn promote deregulation, trade liberalisation, promotion of competition at market places. Thus competition advocacy gives a fundamental angle to the CCI.

The MRTP Act, 1969 v. The Competition Act, 2002:

Sr. No	MRTP Act, 1969	Competition Act, 2002
1.	Premised on size	Premised on conduct
2.	Procedure oriented	Result oriented
3.	Reformist and behavioural approach	Punitive approach
4.	Competition offences implicit and not defined expressly	Competition offences explicit and defined
5.	Frowns upon dominance	Frowns upon abuse of power
6.	Included unfair trade practices	Excluded unfair trade practices
7.	Rule of law approach	Rule of reason approach
8.	No extraterritorial application	Extraterritorial application of the Act
9.	No combination regulation	Presence of combination regulation
10.	No penalties for offence	Penalties for offences
11.	Competition Advocacy role is not played by the MRTP Commission	Competition Advocacy role is played by the CCI

Intellectual Property Rights &the Competition Act, 2002:

Article 38 and Article 39 of the Constitution of India have stated and laid down the duties of the state, being to promote the welfare of the people be securing and promoting a social order. Such social order should have a scope for prevailing social, political and economic justice. State also has the duty to distribute the ownership and control of material resources of the community in the best possible way that brings about a common good in the society. The design of the system should be such that it does not lead to any concentration of wealth. These articles play a significant role in the initial formulation of the MRTP Act, 1969 and the Competition Act, 2002. Intellectual Property Rights found a major role to play in the latter because it corresponded with the TRIPS compliance period for India.

Section 3 of the Competition Act, 2002 requires the Competition Commission to declare those agreements as void which are anticompetitive in nature. As a result, Section 3(5) gives a cocoon effect to the IPRs and creates a blanket expression as they help in preserving and promoting the very important aspect of innovation and also bring out the lack of quality in goods and services which are being provided. However, having stated this, it does not permit unreasonable conditions just for the sake of protecting IPR. Hence, any IPR licensing

agreements that would interfere with competitive pricing, quantities or qualities of products would be considered as uncompetitive by the Competition Law in India.

Major observations from landmark Judgements and their implications:

General Motors of Canada v/s City National Leasing:

'Trend towards globalisation and liberalisation makes the Competition Law to play an even larger role.'

Mithilesh Garg v/s Union of India:

'The fundamental right under Article 19(1) (g) of the Constitution of India does not extend to shutting out constitution.

Eastman Kodak Co v/s Image Technical Service Inc.:

A 'tying' or 'tie in' or 'tied sale' agreement has been defined as an agreement by a party to sell one product on the condition that the buyer also purchases a different or a tied product or agrees that he will not purchase that tied product from any other supplier.

Tampa Electric Co v/s Nashville Coal Co:

In the intellectual property context, exclusive dealing occurs when a license prevents the licensee from licensing, selling, distributing or using competing technologies. Exclusive dealing arrangements are evaluated on the *Rule of Reason*.

Collusive Tendering (Bid Rigging) in Electrical & Building Works:

A concentrated practice may be found to exist in the parties, even if they did not enter into an agreement, knowingly substituted the risks of competition with cooperation among themselves.

United States v/s Arnold, Schwinn & Co:

Restraints to territory and consumers, vertical or horizontal are unlawful, if they are ancillary to the price fixing or if the price is an integral part of the whole distribution system.

United States v/s Colgate & Co:

Refusal to deal with a buyer or a class of buyers is a restrictive trade practice within the meaning of this clause. Moreover, refusal to buy from a seller or a particular class of sellers is also to be considered as a restrictive trade practice.

Nelson Radio & Supply Co v/s Motorola:

An act of refusing to deal and an execution of a contract which renders a person unable to deal with another are to be tackled with separately. The abomination in the eye of the law arises with the latter and not the former.

United Shoe Machinery Corporation v/s United States:

Pursuant to Section 3 of the Clayton Act, it was held that where a manufacturer with substantial power in one market seeks through a tie, to extend that power in another market, there is an adverse competitive effect and also an abuse of power.

DGIR v/s Drillco Metal Carbides Ltd:

A discriminatory discount based upon quantity off take to the extent of five percent will not discourage competition to any material degree. Hence, in order to give an effect, the turnover discount was increased from two percent to five percent in three different slabs and the effective discount was about one percent, as a quantity based slab discount.

Raghubir Singh Jain v/s Ansal Housing & Construction Ltd:
It was held by the commission that the word 'approximate' could not be permitted to be used for adding 25 percent more area. The additional price was also being demanded for niches and balconies. In addition to the amount shown at the time of the booking, an additional amount of Rs. 1, 50,000/- was being demanded. This was held to be an unfair trade practice and the builder was ordered to refund the entire deposit amount with interest at 15 percent failing which an action was to be taken.
Om Prakash v/s Haryana Agro Industries Corporation:
In a counter sale of houses, there was a delay in handing over the possession. Seller increased the prices by clearly taking an advantage of the creation of this gap. This was held to be an unfair trade practice. Moreover, a tractor to be delivered in March was booked in February; however, it was actually supplied in July that too at a higher price. This was held to be an unfair trade practice.
United States v/s Socony-Vacuum Oil Co:
Price fixation, even if it is used as a defensive mechanism, is susceptible to the same kind of abuse as in the other cases and hence, this case also is an example of an unfair trade practice.

Competition Laws: A Critique-

An idealistic world, where everyone has complete knowledge about everything and where there is a source of energy to cater the needs of all is the only scenario where one can expect not to have a competition in the world or else, competition is inevitable and here to stay. This being the case, this being the pragmatic reality, one always wonders how competition law, if studied in depth and by considering the niche aspects, has the ability to bring back the world to the feudal age. Here are some notable examples:

A messiah of the weak or the inefficient?
Competition Law has always been under the critical radar for being the bread earner of the inefficient and a hurdle for the more innovative ones. If there is any energy efficient, alternative source of fuel or any such ultra-potent innovation that may have come up, one would never know whether such innovations couldn't come through because of some technical difficulties or the compliance norms put up by the competition laws.
Sherman Act and recently the European Union were heavily criticised for forcing Microsoft to share its technology with the competitors. This, as Microsoft had alleged, was happening to them because they were successful.

Dominant high-tech firms allege that if they are forced to share their intellectual property with competitors or are prevented from controlling the price at which their products and services are sold, they will innovate less. This, in turn, will slow the development of new goods and services and hence competition, to the detriment of consumers and broader economic performance. Indeed, competition law has regularly been accused of failing to understand the

nature of competition in the markets, and of favouring the interests of 'competitors' rather than 'competition'.

Ignorance by Venture Capitalists:

Startups have been a backbone of the United States economy. A good idea always deserves a platform and such platforms are provided by the Venture Capitalists in most of the cases. If the list of 100 biggest companies in the world is studied, one would see that in the past forty years, five startup companies from the United States of America (Microsoft, Sun Microsystems, Intel, Cisco and Oracle) have made the list. This is because Venture Capitalists have more belief, not only in the company, but also in the laws prevalent in their own countries.

However, when the European Union is compared with this statistic in mind, things look extremely bleak. No European firm has achieved such growth over the same period. The one that comes closest is SAP, a German producer of business software. There are plenty of small high-tech European firms. The problem is that very few of these small companies grow into big businesses. One explanation is the lack of venture capital. There is no pan-European equivalent of NASDAQ, the stock exchange for start-up companies established in 1971. All five of the US firms mentioned above were listed and continue to float on NASDAQ. However, the fragmentation of EU markets, combined with still insufficient levels of competition in some sectors and under-investment in human capital, are further reasons for Europe's poor record of producing large, high-tech businesses. Competition law may not be the most important explanation for Europe's relative dearth of innovation, but it deserves more attention. After all, firms will only invest in R&D if they are confident that they will reap the rewards of that investment. Competition policy can affect their ability to do so and as such is far from being an esoteric concern.

Sharing of Intellectual Property:

Intellectual property has always been under a barrage of questions in the free world. Whenever and wherever any dispute arises with regards to the intellectual property rights, a horde of laws have been utilised to come up to a conclusion. This being the case, the competition law forcing an entity to share its own intellectual property seems very childish to say the least.

For example, in industries such as ICT and pharmaceuticals, where R&D largely determines which firms are competitive and which are not, a general obligation to share valuable intellectual property could discourage innovation and ultimately damage competition. Once a Firm has created valuable intellectual property that allows it to maintain a temporary monopoly, rivals will obviously have an interest in forcing it to share. But a dominant firm should be entitled to refuse to share its intellectual property, if this is the fruit of significant investment. After all, the purpose of intellectual property rights is to reward risk-taking and spur innovation.

A breeding ground for the conspiracy theorists:
Provisions throughout all the competition laws have made this quite clear. The burden of proof is not on the plaintiff but the defendant. It means that a mere issue raised by any entrepreneur belonging to any industry whatsoever brings the entity on whom such an issue is raised to a complete back drop. The amount or the gravity of evidence that is required to amount to a conspiracy itself is a question of a large scale discontent.

A parallel conduct is also considered as a conspiracy. It means that the plaintiffs just have to suggest that a conduct seems suspicious of the defendant and there are credible chances of him getting involved in a conspiracy that would hamper the markets and would make the trade unfair and it would make the defendant liable to provide with all the disclosures that would render the allegations futile.

What is abuse?
An abuse caused to the market and caused to the pious competition is the corner stone of a competition law to come into existence in itself, however, what is this abuse or how does this abuse come into existence and how it can be differentiated is unclear. Limiting production at a shipping port by refusing to raise expenditure and update technology could be abusive. Tying one product into the sale of another can be considered abuse too, being restrictive of consumer choice and depriving competitors of outlets.

Price exploitation- as unclear as the law itself:
Price exploitation is considered as a form of an abuse. However, it is difficult i.e. it cannot be stated when a particular transaction is an abuse, let alone, is an aspect which derives to be termed under the ambit of exploitation. There are one off cases where price exploitation could be determined, a French funeral service had once done, and was found to do so, i.e. it had asked for exploitative prices. The justification in which it was concluded that the prices indeed were exploitative and exorbitant was that the funeral services outside the region were compared. A trickier issue than the exploitative pricing is the predatory pricing. This happens when the bigger players drop the prices so low in the market that the smaller players cannot cope up with them. In France Telecom SA v Commission, a broadband internet company was forced to pay €10.35 million for dropping its prices below its own production costs. It had "no interest in applying such prices except that of eliminating competitors" and was being crossed subsidised to capture the lion's share of a booming market. One last category of pricing abuse is price discrimination. A rebate offered to industrial customers who sell one's own product further is also a part of price exploitation, but then again, whether it is price exploitation or is an example of an honest incentive cannot be fathomed.

Lowering costs v/s maintaining competition:
The way all the competition laws in the world are designed, one fails to understand as to what the goal of setting them up was. Many consider that the sole purpose for which the

competition laws have been drafted was to lower the costs. That being the case, it would be termed as a competition law, because the way a competition law is portrayed is to control the competition in the markets and to keep it fair. Hence, whether the soul of a competition law is to be protectionist is a question which is asked at oft. In case of the Sherman Act, the protectionists did not want prices paid by consumers to fall. But they also understood that to gain political support for high tariffs, they would have to assure the public that industries would not combine to increase prices to politically prohibitive levels. Support for both an antitrust law and tariff hikes would maintain high prices while avoiding the more obvious bilking of consumers.

Competition Commission of India- A critique:

The competition legislation, as passed by Parliament had suggested that two or more enterprises in a position to control 26 per cent or more of the voting rights in the other enterprise will constitute a "group". This was intended to ensure that while calculating the jurisdictional monetary thresholds of assets and turnovers, all entities within a group will be taken into account. This 26 per cent cap was evidently seen by the businesses as too low a bar. Interestingly, MCA issued a clarification a few months ago effectively amending the definition of "group" to ensure that the barometer of 26 per cent became 50 per cent and a "group" exercising less than 50 per cent of voting rights was exempted from the calculation of jurisdictional monetary thresholds under competition law.

The foolhardy lobbying that went into effecting this change will come back to haunt businesses. The raising of the bar to 50 per cent also increases the threshold for claiming safe harbour for groups under CCI's merger control regulations. As mentioned above, CCI regulations exempt group transactions from premerger notification requirement. If the barometer for claiming the safe harbour is 50 per cent instead of 26 per cent, fewer transactions will be able to claim the safe harbour under regulations. The businesses, through their hectic lobbying endeavours aimed at having their cake and eating it too, appear to have shot themselves in the foot.

Besides the safe harbour for group companies, there is another effective exemption that CCI has conceded. An acquisition of shares or voting rights, where the acquirer already has 50 per cent or more of either in the acquired entity, will also fall within the safe harbour. The only exception to this will be cases that entail change in quality of control from "joint control" to "sole control". This exception contradicts the safe harbour envisaged for groups. It is unclear why enterprises that have prior control of 50 per cent of an enterprise would not claim the safe harbour and instead fall within the exception of notifying to CCI.

The sudden, drastic, qualitative improvement in its final regulations, as juxtaposed with the earlier drafts appears to be a result of CCI's overdrive to recruit internal experts who gave shape to the regulations. Let the end game of incessant corporate lobbying at MCA and CCI (which has evidently led to the contradictions in the regulations) not take away from the promising, forward-looking regulations that the commission has managed to come up with.

Monopoly?

All of the competition laws have been designed to create a market where no player takes an advantage of its conditions and situations and creates an unfavourable market for its competitors. However, the laws also state that if all the regulations are followed, a monopoly market, purely based on merit can be created. Now, after doing a critical analysis of the competition laws, there are a lot of open ends and unclear aspects. When that is the situation, it can be said that a monopoly indeed has come up with the fairest of trade practices.

Conclusion:

One may like it or not, it has to be accepted that today's world is rapidly moving towards absolute capitalism.

Competition, a perfect competition to be precise, is a myth. In today's globalised world, competition is going to persist and the bigger fish are always going to eat up the smaller ones. Laws exist all around to curb an unfair competition and this prospect should be lauded however, questions exist whether these laws are keeping a fair competition or are they hampering growth.

Post-independence, the rate at which the Competition Law in India has grown and has evolved is worth appreciating. From the confines of monopoly to the overall ambit and a holistic view point towards competition in itself shows how the law has adapted and evolved with a rising and a changing India and yet, there are lacunae or loopholes. But all in all, the following quote sums it all up,

"And while the law of competition may be sometimes hard for the individual, it is best for the race, because it ensures the survival of the fittest in every department."

-Andrew Carnegie

REFERENCES

Books:-

1. A.C. Kapur & K.K. Misra, *SELECT CONSTITUTIONS*, (15.2014)
2. A. Roy & J. Kumar, *Competition Law in India*, (2.2014)
3. A. Singh, *Competition Law*, (2.2010)
4. Adam Smith, *An inquiry into the nature and causes of the Wealth of Nations*, (Digital Edition)

Articles:-

Internet-

1. PWC, *Why you should be concerned about the Competition Act? India's competition law*, pwc.in (August29, 2015, 03.00 p.m.), https://www.pwc.in/assets/pdfs/publications-2012/pwc-india-competition-law.pdf
2. S. Tilford, *Is EU competition policy an obstacle to innovation and growth?*,cer.org.uk (August 29, 2015, 04.00 p.m.), http://www.cer.org.uk/sites/default/files/publications/attachments/pdf/2011/essay_competition_st_20nov08-1359.pdf
3. R. Singh, *Competition/Antitrust*, manupatrafast.com (August 29, 2015, 05.00 p.m.), http://www.manupatrafast.com/articles/PopOpenArticle.aspx?ID=b768fb4b-a246-4a10-a5e1-0b489d865bca&txtsearch=Subject:%20Competition%20/%20Antitrust

Newspaper-
1. A. Thakur, *India's more engaged with world economy than US, China*, Sunday Times, August 30, 2015
2. R. Singh, *How McDonald's Indian operations have become a victim of a long-drawn-out slugfest*, The Economic Times, August 30, 2015