

COMPETITION REGIME AND BUSINESS WELFARE

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Business entities think that competition policy and law are tools for the consumers and not for them. Proper design and implementation of a competition regime enables enhancement of the welfare of the business community. An effective competition regime (covering competition distortions) can prevent anti-competitive abuses affecting the players within the market. This viewpoint paper argues that an appropriate and dynamic competition policy and law is important and beneficial for all business entities.

Introduction

Business entities have generally been against the adoption or implementation of a competition regime almost everywhere. For they fear that their enterprises or profits will be curbed due to such a law, which seeks to create orderly markets. Though this need not be true, when looked from a larger perspective. For example, while driving on Indian roads, should one be delighted to see no traffic policemen manning the traffic? Perhaps not. For the benefit of all the drivers, traffic needs to be regulated and that's the responsibility of a policemen. Otherwise, there will be utter chaos and road accidents would become a way of life. Similarly, competition regime regulates the market, keeps a check on the number of potholes i.e. anti-competitive practices and promotes business welfare.

What harm could result from and what economic development can the appropriate enforcement of competition regime achieve, two questions that are always raised in the mind of business entities, policymakers, academicians, etc, whenever they debate about the benefits of adopting one? Now that more than 100 countries have adopted competition laws, one can say that the debate is dying a slow death. However, everyone is aware that just adopting a competition regime is not enough, proper implementation is very important. Otherwise, the effects of competition regime can be offset well after its enactment, by denying the competition authorities with proper resources, autonomy and the business/political support to effectively function in the society. Therefore the debate still continues and the objective of this viewpoint paper is to state and evaluate the benefits that business entities gain with effective implementation of a competition regime.

Competition Regime vis-à-vis business entities?

If one looks at major anti-competitive cases, business too have faced the brunt alongwith consumers. Companies engaged in production of basic goods and services often find it conducive to carry on with the existence of anti-competitive practices, such as cartels, etc. Since consumers don't buy such goods and services directly they fail to attract media attention or publicity. Worldwide, goods that have received the distinction of

being prone to cartelisation are basic goods, such as, cement, steel, aluminum, etc, used across various industries as raw materials.

Cement manufacturers in India raised prices through collusive arrangements, the major construction companies, which consumed about 60 percent of the total cement in the country, found the going tough. These companies, under the banner of Builders Association of India (BAI), urged the Cement Manufacturers Association (CMA) of India to roll back the prices. But, the CMA turned down their demand. The Competition Authority of India, being quite ineffective, was of no use. BAI thus decided to go for selective boycotting. It targeted two major companies, which were believed to be leading the cartel. This worked and the price of cement fell.

Is Competition Law beneficial for Business entities?

Given below are some parameters to illustrate how competition benefits business entities:

• Interfirm Rivalry

Experts, have pointed out, that in certain circumstances competition contributes to innovation, productivity and growth. First, increase in competition between firms motivates the managers to focus on increasing their firm's performance so as to maximise profits and stay away from losses. One of the leading United States jurists in the early twentieth century, Judge Learned Hand, observed that, "*Possession of unchallenged economic power deadens initiative, discourages thrift and depresses energy. Immunity from competition is a narcotic and rivalry a stimulant to industrial progress.*"

Second source of evidence i.e. between competition law enforcement and increase in business performance, it is important to know that the benefits of trade reform may not be realised without effective enforcement of competition law. The reductions of trade barriers would be replaced by anti-competitive practices in the absence of a competition regime. For example, reduction in prices of importing machinery and other capital equipments would enhance investments and economy. But reductions of trade barriers on such durable goods may not result in higher growth of business or economy,

due to the presence and absence of discipline of anti-competitive practices, such as cartels, predatory pricing, abuse of dominance, etc.

Third source of evidence is the relationship between competition policy/law and FDI, which is an important source to raise necessary funds for businesses to expand in any country. Appropriate enforcement of a competition regime enhances the stability of an economy, which is important to attract FDI and to maximise the benefits that comes along with such investments. A synthesis paper on the relationship between competition policy and FDI is reported in the following discussions in the WTOs working group on the Interaction between Trade and Competition Policy:

"The point has been made in various oral and written contributions to the Group that the implementation of a transparent and effective competition policy can be an important factor both in enhancing the attractiveness of an economy to FDI and in maximising the benefits of such investment. More specifically, these contributions have suggested that competition policy can enhance the attractiveness of an economy for FDI by providing a transparent and principles-based mechanism for the resolution of disputes involving such investment that is consistent with international norms that are widely accepted internationally. This increases investor's confidence and therefore the propensity to invest. Vigorous competition in the market, reinforced by competition policy, also helps to maximise the benefits of such investment to countries, by encouraging firms to construct state of art production facilities, to transfer up to date technology and to undertake appropriate training programmes and by preventing exploitation of consumers". (WTO 1998:8)

• Market Growth

The entry of new players or expansion of existing companies can benefit other firms by increasing the size of the markets and by discovering new opportunities. For example, in the telecommunication sector, the entry of new firm increases the total number of subscribers. In addition to that, the increased size of the market, also allows new value added services to be introduced and thirdly, the increase in consumers also increases the demand for ancillary equipments, such as telephones, switches, telecom software, etc. Entry of new players also brings with it innovate business practices.

• Free entry and Exit

Ease of entry can cut both ways. If a business entity wants to enter a particular industry, barriers to entry act as an impediment. Most business players would like to operate in sectors that are difficult to enter but on the other hand, would like entry regulations to be eased if they wish to expand into other sectors. Barriers to entry are generally linked to capital market imperfections or government regulations. Capital market imperfections make it difficult for firms with viable projects to get access to capital or capital is easily available to firms with a proven track record. Government regulations such as licenses or fees also act as a barrier to entry.

Conclusion

In probably all jurisdictions, it is the business entities that approach the competition authorities more for ensuring fair market practices, rather than the consumers. Yet, the business lobby, especially in developing countries, remains antagonistic to adoption or enforcement of competition law. One wonders whether the business entities ever analyse the cost of lack of competition on firms when they purchase inputs for their processes. Not that all the firms are vertically integrated, that they produce all the raw material and intermediate goods that they require for their production purposes. To the extent they buy goods and services in other markets and lack of competition in those markets, will increase their costs and lead to higher prices of their finished products. Businesses are also consumers and they are also exposed to anti-competitive practices and in the absence of a competition regime, it would affect their business directly. For example, Reliance and Indo Rama Synthetics had increased the price of Polyester Staple Fibre (PSF) by 26% and was available in the market for Rs. 71.5/kg. As against, through imports PSF was available at Rs. 56/kg but after adding various duties, it was priced at Rs. 77.8/kg. The domestic PSF producers have been pegging their prices to landed cost of imports and taking advantage of tariff protection. With Reliance and Indo Rama have ensured very limited competition by manipulating trade policy to maintain high trade barrier and grown vulgarly rich.

Thus sooner the business entities understand the importance and benefit of a good competition regime; the better it is for them and everybody else in society.