Competition Bill of India, 2001

A Right Step in the Right Direction

Bill Blowup

In the light of the changed economic scenario of India and the world, the existing competition regime under the Monopolies and Restrictive Practices (MRTP) Act, 1969, is has lost its suitability. The Competition Bill, 2001, that seeks to repeal the existing regime, aims to promote and sustain competition in markets by preventing anti-competitive practices and creating a conducive economic environment. It further aims to protect the interests of consumers, while ensuring freedom of trade. Though the overall direction of the Bill is good, certain areas need reconsideration. Members of Parliament can improve it.

The Bill at a Glance

Highlights

- Registration of business agreements dropped.
- Four anti-competitive agreements, viz., price-fixing, output restriction, market allocation, and bid rigging prohibited *per se*.
- Regulation of mergers & acquisition above a threshold and prior notification optional.
- 'Abuse' of dominance and not 'dominance' is frowned upon.
- Higher penalties for offences, up to 10 percent of the average of the turnover for the last three preceding financial years.
- Members of the Commission to be selected by a Collegium.
- Unfair trade practices omitted – pending UTPs cases to be transferred to the consumer courts.
- Emphasis on competition advocacy.
- Constitution of 'Competition Fund'.

Lowlights

- Independence of the Commission under threat, as it is required to adhere to the policy guidelines from the Central Government from time to time.
- The Bill appears soft on serious competition abuses like hard core cartels.
- Competition abuses due to intellectual property rights not addressed at all.
- Windows for the appointment of retired judges and civil servants as Members and/or Chairperson still open.
- Relationship between the proposed Competition Commission and other sectoral regulators not very well defined.
- 'Exemptions' from the Act (Bill) is left on the discretion of the Central Government without any guidelines.
- Transfer of certain cases from the MRTP Commission to the consumer courts not very well defined.

Action Points

- Purpose or objective should be in the main body of the Bill rather than provided as the Preamble. *(Preamble)*
- Hard-core cartels need to be tackled through a 'carrot and stick' approach, which is not the case. *(Clauses 3 and 27)*
- Despite the increasing importance of intellectual property rights issues (under TRIPs etc), the Bill does not adequately deal with them. The matter has potential to be dealt within a separate chapter altogether. *(Clause 3(5)*
- No provision for the regulation of those mergers & acquisitions that do not fall within the meaning of 'combination' yet has the potential to affect competition adversely. *(Clauses 5 and 29)*
- Appointing retired judges and civil servants as the Members or Chairperson of the Commission is undesirable for two reasons: it breeds corruption as judges and civil servants succumb to the establishment to get sinecures after retirement, and secondly most of them are ill-equipped to deal with economic issues. *(Clause 10(1)(a) and (b)*
- No scope for the Commission to cooperate with and seek cooperation from its counterparts in other countries in case of cross-border competition concerns. Merely having an extra-territorial clause may not be enough. *(Clause 32)*
- The Bill requires the proposed Commission to give its opinion on possible effect on competition policy (competition advocacy) only on a reference made by the Central Government and that too only for future policies. Instead the Bill should empower the Commission to make recommendations to the Government on its own motion, covering both current and future law and policy. *(Clause 47)*
- By making the Commission dependent on its grants, the Government is taking away the much needed financial autonomy. The Commission should be funded from the Consolidated Fund of India. *(Clause 48)*
- Similarly, by making the Commission bound by its policy directions, the Government is taking away the independence of the Commission and has raised the scope of political interference. This is in contrast with what has been recommended by the High Level Committee on Competition Law and Policy in 2000. *(Clause 53)*
- The power for exemptions from the purview of the Bill has been left upon the Government without any proper guidelines, having a potential to be misused. The exemptions should be well debated. *(Clause 52)*
- Transfer of the subject area of 'unfair trade practices' from competition law to consumer protection law is welcome, but cases pertaining to unfair trade practices in a commercial transaction should be retained under the Competition Act. *(Clause 64)*

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Introduction

The Competition Bill of India, introduced in the Lok Sabha (Lower House of the Parliament) on the 6th of August 2001, is perhaps the most debated Indian law in the making. However, despite the intense debate that gathered momentum after the publication of the Raghavan Committee Report in May 2000, certain issues remain unresolved. Various interest groups are now eagerly looking for a good debate in the Parliament and the final outcome.

Competition Policy & Law

Competition policy is generally defined as those government measures that directly affect the behaviour of enterprises and the structure of industry. Such a policy has essentially two elements. The first involves putting in place a set of policies that enhances competition in the market, which include policies of privatisation, trade and foreign exchange liberalisation, good regulation and deregulation policies etc. The second is the competition law that is put in place to control/prevent anti-competitive business practices and unnecessary government intervention. For optimum results, both policy and law need to be implemented in coherence.

In recent past India saw a complete lack of coherence between the changing macro economic policies and the existing competition regime under the MRTP Act. Hence, the demand for a new competition law. The present Bill is to meet the said demand. Therefore, the Parliament should endeavour to pass the Bill, while making few changes on the lines of suggestions proposed and discussed in this paper in order to make it more meaningful and effective.

The Competition Bill, 2001: What Changes and Why?

The changes, together with the rationale therefor, in the Bill are suggested under the following 18 heads:

1. Purpose
2. Definition
3. Hard-core cartels and fine-structure therefor
4. IPRs and the Bill
5. Regulation of combinations
6. Competition Commission of India
7. Determination of appreciable adverse effect on competition
8. Determination of relevant market
9. Reference by statutory authority
10. Clause 27
11. Extra-territorial jurisdiction
12. Power to award compensation
13. Competition Advocacy
14. Independence of Commission
15. Competition Fund
16. Exemptions from the Act
17. Unfair trade practices
18. Amending other laws

1. Purpose

The purpose/objective of the Bill is given in as a Preamble, which has less interpretative value than provisions in the main body of any enactment. Hence, it would have been better if there was a 'purpose' or 'objective' clause in the main body of the Bill.

2. Definition

The definition of 'relevant market' under clause 2(q) of the Bill should include 'temporal' and 'functional' dimensions apart from the given 'product' and 'geographical' dimensions. *(See Box 1)*

Furthermore, definitions of 'goods' and 'services' (also technology) could be merged together by defining 'products' suitably that would include both. This would make the law simpler. There are examples in this regard, for instance in the Canadian competition law.

3. Hard-core cartels and fine-structure thereto

As the cartels, particularly the 'hard-core' cartels mentioned in Clause 3(3) of the Bill, have grave adverse effect on the economy and consumers, and as they are very difficult to detect and prove, the provision should be as preventive as possible. The following suggestions could be useful in this regard:

Firstly, for the purpose of 'hard-core' cartels, the Bill should include 'purpose' in addition to 'cause' (effect) within the prohibition on anti-competitive agreements. That is to say that in addition

Box 1: Temporal and Functional Dimension of a Market

Temporal (time) dimension of the market refers to the period of time over which substitution possibilities should be considered. This is an important factor for high-technology oriented sectors, for example telecommunications industry, which is characterised (a) by products which have a very short time frame for product modification or development; and (b) by substantial infrastructure and establishment costs.

Thus, while examining market power, one needs to (a) assess each relevant telecommunications market at the time of the impugned conduct, and (b) consider substitution possibilities in the foreseeable future that may effectively constrain the exercise of substantial market power. In other words, product 'A' may be a substitute for product 'B' today but it may cease to be so tomorrow or a new product 'C' could become substitute for 'B' because of the high rate of technology changes.

Analysis of functional dimension of a market begins with the understanding that for any product there is a supply chain and the task involved is to identify which parts of the supply chain are relevant in considering the competition issues associated with particular conduct.

The traditional approach to delineate the relevant functional dimension of a market involves consideration of the extent to which vertically integrated suppliers constrains the price and output decisions of non-integrated suppliers.

Taking example of telecom sector again, let us imagine a situation where a vertically integrated carrier supplies an essential input such as a local loop to itself and to other downstream suppliers for long distance phone service. And that there is a close competition between those long distance service using local loop and an alternative services not requiring access to the carrier's local loop. In such circumstances, the provision of local loop service would not be distinguished as a separate market from involving the provision of long distance services.

On the other hand, if there is no such downstream competition and the supplier of local loop service does not constrain the price and output decision of non-integrated suppliers for a long distance phone service. Then, in that case, separate markets for the supply of local loop and for the long distance services will be defined.

to the agreement which "causes or likely to cause…" the agreements entered into for the *purpose* of restricting competition should also be prohibited *per se*, even if there is no adverse effect on competition from such agreements, in practice. In fact the Black Law Dictionary defines *per se* violation as "A trade practice (such as price-fixing) that is considered inherently anti-competitive and injurious to the public *without any need to determine whether it has actually injured market competition"* (emphasis added).

In the current form [i.e. clause 3(3) read with clause 3(1)], it seems that if the cartelising parties are able to rebut the presumption against them (of appreciably affecting competition), they might be left unpunished, even if it is established that they had entered into the agreement with *mala fide* intention of reducing competition. Defaulters must be punished even if they do not achieve their desired results, which would discourage the formation of cartels at the first instance. Therefore, at least hard core cartels should be put under *per se* rule as given by the Black Law Dictionary, i.e. no proof will be required to show whether there was any abuse of market competition.

Secondly, for hard-core cartels the present fine structure as given under clause 27 of the Bill may not provide enough deterrence, and hence demands reconsideration. The Bill has painted all conducts with the same brush. On one hand, fines could be harsh for abuse of dominance and vertical agreements, while on the other hand, it may be less for serious conducts like hard-core cartels.

Keeping in mind that profit margins can be exponentially increased by opting for hard-core cartel, to be an effective deterrent for hard-core cartels, fines should be much higher than the gains because of the same. Consideration should be given to increasing the possible fines/damages by a multiple of three times the proved loss or damage in the case of such cartels. This is the current trend being followed by many countries.

Thirdly, to make the law more deterrent and hence more preventive, the Bill should further provide for initiation of criminal proceedings against the persons involved (personal liability) at the appropriate criminal court in case of hard core cartels, once such cartel is proved. The Competition Commission should proactively ensure that such criminal proceedings are initiated and pursued, as it happens in the USA etc.

Fourthly, it is extremely important to include in the Bill explicit authority for the Commission for two things: (a) provide protection to the whistleblower, usually an employee who brings forth incontrovertible evidence which can assist the Commission in fixing the violators; and (b) to set up a leniency programme, which will grant amnesty to the approving colluding firm, which has been a member of the cartel and brings forth damning evidence. (Similar provision exists in our criminal law). The degree of these measures has to be structured so as to encourage firms and their employees to be the first to inform the Commission of the nefarious activities.

The "stick and carrot" of heavy potential fines and punishments (like jail terms) coupled with the promise of amnesty for the whistleblower has proven effective in uncovering and prosecuting hard core cartels in many countries including the US and the EU. Recently the UK has amended its Competition Law of 1998 to include harsher punishment, including personal criminal liability.

Hence, to achieve the above-said aim, clauses 3 and 27 of the Bill have to be reconsidered in order to provide separately for general anti-competitive agreements and hard-core cartels, including the fine structure therefor.

Box 2: TRIPs and Competition Law

Article 40 of the TRIPs provides for control of anti-competitive practices in contractual licenses. It says that the TRIPs Agreement does not prevent countries from specifying in *their legislation* licensing practices or conditions that may in practice constitute an abuse of IPRs having an adverse effect on competition in the relevant market. In this regard, it says further that, a Member may adopt appropriate measures to prevent or control such practices in light of the relevant laws and regulations of *that Member*. Thus to use this flexibility, the onus is on the Member states to enact such provisions.

In this regard, competition law seems to be the best-suited enactment, as the competition authority is better placed to decide whether there is an adverse effect on competition. Once it is decided that there is an adverse effect on competition, the authority can seek opinion from the concerned officials dealing with the IPR in question "whether there has been any abuse of the IPR" and recommend to the Government accordingly.

Secondly, Article 31 of TRIPs expressly allows the granting of compulsory licenses under certain conditions. However, there is no specification made in the Agreement on the *grounds* for the same. One of the conditions upon which compulsory licensing can be granted is to correct anti-competitive practices. However, such a grant has to be preceded by certain administrative or judicial process. A competent authority has to determine that anti-competitive practice, such as abuse of monopoly, is prevalent, before the Government can grant license to others.

Again the competition authority i.e. Competition Commission of India is the best-suited body. Hence, there should be an express recommendatory power vested in the Commission so that it can recommend to the Government that an anti-competitive situation has arisen and that the Government can validly grant compulsory license to rectify the situation.

Last but not the least, Article 6 of TRIPs recognises the possibility of legally admitting parallel imports, based on the principle of "exhaustion of rights" i.e. title-holder has no right to control the use or resale of goods which he has put on the market or has allowed the licensee to market. Consent of the holder is not required, it is enough that the product was lawfully put on the market. The IPR holder is considered to have been rewarded through the first sale or distribution of the product.

As parallel imports increase competition (intra-brand), reduce prices and provide more choice for the consumers. The same can be reflected in appropriate language in competition law, which seems to be the appropriate legislation for this purpose.

4. IPRs and the Bill

The Bill, vide its clause 3(5), seems to exclude "licensing agreements" with respect to intellectual property rights (IPRs) from the purview of regulating anti-competitive agreements. It needs re-consideration in light of present practices in global market, which tend to go beyond the rights provided by intellectual property right laws. It has been observed that in the name of exploiting IPRs, parties generally transgress into such areas, for example distribution (with the help of licensing agreements/arrangements or otherwise), which reduces competition in the market.

It is suggested to have a separate chapter on "Intellectual property rights" in the Bill. This is important not only to check the said transgressing activities of firms but also to exploit the flexibility provided under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) of the World Trade Organisation, as illustrated in *Box 2*.

Furthermore, often IPR relationship between two firms end up in cartels and/or other anti-competitive conducts. The Commission will have to keep an eye on such relationships as a part of its proactive role. Unless there is some provision with respect to IPR in the Bill, the Commission may tend to overlook such kind of relationships as well, thinking that the same does not lie under its jurisdiction. Generally speaking, there is no harm if the competition law provides for a second tier of IPR regulation in certain aspects.

In light of the above-said, a good competition law cannot afford to be silent in addressing IPRs in this fast changing global economic environment, which is shifting towards knowledge-based economy where IPRs are used as market strategy. As no concrete model is available to incorporate IPRs into competition legislation, the area needs innovation and hence some research.

5. Regulation of combinations

According to the relevant provisions of the Bill, only those mergers & acquisitions (M&As) are liable to be regulated that qualify under the definition of 'combinations' under clause 5. There may arise a situation where any merger may not come under the definition of 'combination', yet may give rise to serious competition concern in a market. There should be some window whereby the Commission could regulate such M&As as well, should the need arise in future.

For example, let us suppose a situation where there are only two competitors for a product and they decide to merge. However, their asset values as well as turnover are such that their merger would fall outside the definition of 'combination' as given in the Bill. Hence, despite causing clear appreciable adverse effect on competition, the merger would go unregulated.

Secondly, according to the Bill (clause 29) combinations can only be regulated on Commission's own motion. There is no window for any complaint from a competitor or consumer, in case they feel that a competition concern has arisen or is going to arise with respect to a combination. The Bill provides that the Commission would proceed vis-à-vis any combination 'if it forms the requisite opinion'. Though a complaint can induce the Commission to 'form the requisite opinion', it does not give rise to any obligation on part of the Commission to act on such complaint.

6. Competition Commission of India

The Bill should not unnecessarily create differentiation between the Members and the Chairperson of the Commission and have special provisions for the latter. All powers of the Chairperson should be the powers of the Commission, unless the Commission delegates special power to the Chairperson. Chairperson may have certain extra administrative powers, but in general, s/he should be one among the equals. More or less this rule is followed even in the case of Supreme Court judges, where the Chief Justice does not enjoy more benefits (such as higher retirement age), except for administrative purposes, than other judges. Hence, all the provisions that say "*the Chairperson and the Members…*" could be rewritten as "*the Members…*"

Secondly, the eligibility criteria as provided under clause 8(1)(b) provides for 'not less than 15 years of experience.' The experience criteria should not be so rigid, as often one can find better suited persons to man the Commission but not fulfilling the experience criteria. The intention of the drafters of the Bill seems to avoid appointment of inexperienced persons as Members, who could be useless, appointed solely by favouritism. But that can be checked by the selection procedure, which can comprise of the Collegium, and through publication of a Public notice, inviting comments from the public.

Thirdly, the upper age limit as provided under clause 10(1) (a) and (b) of the Bill is very high. The same should not be more than sixty years (that of the judges of the High Courts), both for the Chairperson as well as other Members. There should not be any distinction.

Fourthly, and most importantly, no retired person, whether from civil services or that from judiciary should be appointed as a Member of the Commission. This is necessary not only for the independence of the Commission but also that for the independence of judiciary. Furthermore, the appointment of retired civil servants or judges encourages an unholy bureaucrat-politician nexus.

If at all services from retired civil servants and/or judges are desirable, the same could be accepted through *ad hoc*/permanent advisory staff. In fact it would be better to have a permanent *Advisory Council* to the Commission. Here qualified representatives from different stakeholders, apart from experts on macro economic policy, can also be nominated. This is also important in the sense that certain recommendations from the Commission would have effects on the macro-economic policy and the proposed Advisory Council can advise the Commission on such issues. The Insurance Development & Regulatory Authority, the Telecommunications Regulatory Authority of India, and all the electricity regulatory commissions have advisory committees, which have representation from all stakeholders.

Importantly, market place behaviour is getting more and more complex. The Commission is expected to apply the rule-of-reason approach rather than throwing the book at so called violators. This requires a Commission, whose members will be professionals, such as well qualified and experienced economists, lawyers, accountants etc, who have had demonstrated solid private sector and/or regulatory experience. Therefore too the appointment of retired civil servants and judges should be discouraged as a rule. It has often been seen that they cannot

absorb new ideas, act arrogantly and suffer from inflated egos, thus negating the very purpose for which they may have been appointed: to ensure a healthy competition culture. In many advanced countries the competition authorities have been manned by Members who are in thirties and forties. Many have left a lucrative career for the prestige of the appointment, and having served for limited terms, returned to their original professions.

Last, but not the least, it is suggested to have an age limit beyond which no person should be appointed as the Members. This will provide some continuity of the members. For instance, if the law bars the appointment of any person as members after s/he attains the age of 57, then there would be certainty that a member would be there at least for 3 years, taking into account 60 as the retirement age.

7. Determination of appreciable adverse effect on Competition

The grouping of factors, as provided under clause 19(3)(a) to (f), which are to be taken into account for determining whether an agreement has an appreciable adverse effect on competition should be reconsidered. Sub-clauses (d) to (f) of the clause 19(3) are basically defences or exemptions that may be granted from the application of the law against anti-competitive agreements and hence would create confusion if aligned together with (a) to (c) that tend to establish appreciable adverse effect on competition.

Basically, the Commission would have to weigh, applying the rule-of-reason, benefits accruing due to (d), (e) and/or (f) against costs due to (a), (b) and/or (c), in order to allow or disallow the impugned agreement. Separate clauses on both the aspects would be appropriate and hence the sub-clause (3) of clause 19 should suitably be divided.

8. Determination of relevant market

As mentioned above, while determining relevant market under clause 5, in addition to 'relevant geographic market' and/or 'relevant product market' the Commission should also give due regard to the 'temporal' and 'functional' dimension of a market. *(See Box 1)*

9. Reference by statutory authority

As far as relationship between the Commission and other statutory authorities, in general, and utility regulators, in particular, as reflected in clause 21 is concerned, it needs re-consideration.

Firstly, apart from issue raised by any party [as provided clause 21(1)], any statutory authority should also on its own recommend to the Commission for the latter's opinion on any matter/practice in its sector, if it believes that there is a violation of the Competition Act, which it cannot investigate and judge on its own.

Secondly, the Competition Commission should also be empowered to begin inquiry on its own, in any sector being regulated by a statutory authority (say for example telecom sector), if it feels that an anti-competitive act has occurred or is likely to occur in that sector. The concerned regulator (statutory authority) should cooperate with the Commission in such a case.

Thirdly, as against what is mentioned in clause 21(1), the Commission may not (rather should not) wait for any party to raise the issue with respect to the regulator's decision that the same is contrary to the provisions of the Act. The Commission may act on its own knowledge or on information from any other source.

Lastly, it should be made clear that when the Commission is dealing with any matter concerning the violation of the Act in any sector, the concerned regulator (statutory authority) is subordinate to the Commission. The Bill, however, provides only advisory role to the Commission in this regard. The Commission is better equipped to decide the competition aspect in any sector than the concerned regulator.

Alternatively, if the Central Government feels that all or any of the utility regulators can deal with competition issues in their sectors themselves, then in that case, the Commission can act as an appellate body for the orders/decisions with respect to such competition disputes. However, delay in obtaining final decision may be a problem with such a mechanism. Also, if such a structure is opted, any confusion with respect to the jurisdiction of High Courts under Article 226 of the Constitution of India vis-à-vis the dispute should be clarified by declaring the Competition Commission as a tribunal under Article 323B of the Constitution.

10. Clause 27

There seems to be a typing error in the first line of the clause 27, instead of "…any agreement or action, *of* an enterprise in a dominant position…" it should be "…any agreement or action, *or* an enterprise in a dominant position…" else the whole meaning of the clause would change.

11. Extraterritorial jurisdiction

The extraterritorial jurisdiction under clause 32 should empower the Commission with the authority to 'pass necessary orders' in addition to the power to 'inquire'.

Secondly, the Bill should expressly confer necessary powers on the Commission to cooperate and/or seek cooperation of other competition authorities or concerned officials in other countries for the purpose of investigation and/or implementation of its orders with respect to cross-border competition concerns, and to provide cooperation when required by a competition authority of another country.

12. Power to award compensation

Clause 34 provides for the award of compensation to any person for any loss or damage *shown to have been suffered* as a result of contravention of chapter II of the Bill. However, in many cases though the applicant can establish that loss or damage has been suffered individually or collectively, but s/he might not be in a position to quantify the damage. In such a case it should be the duty of the Commission to quantify the same for the applicant on good principles of compensatory law.

Secondly, it is not clear whether compensation would be granted to the applicant for loss or damages suffered due to competition abuses occurring outside India. Clause 34 says 'as a result of contravention of chapter II' only. The Bill should clearly mention that the Commission shall have power to award compensation vis-à-vis competition abuses taking place outside India, and also to quantify the loss or damage due to such abuses.

Lessons could be learnt from the working of the regime under MRTP Act. Even though certain instances of international cartels, having effect on several countries including India, have come to fore in the recent past, the MRTP Commission has done nothing in this regard. They have even not made efforts to find out whether such cartels have had adverse effects on competition and consumers in India.

13. Competition advocacy

Clause 47 refers to only future law or policy. The Central Government can also make similar references to the Commission with respect to existing law or policy, upon which the Commission can give its opinion.

Secondly, the Commission should also respond to any reference from State Governments, Parliament and State Legislatures with respect to any existing or future law or policy.

Thirdly, and most importantly, as a proactive body, the Commission should be bestowed with the power to recommend to the Central or State Governments after examining from competition angle (competition audit) any existing or proposed law or policy on its own without waiting for any reference from the concerned governments. Such recommendations should be given due weightage and the governments should give reasons if they chose to reject the same.

14. Independence of the Commission

Clauses 48 and 53 of the Bill would seriously impair the autonomy and independence of the Commission. The same goes against the recommendation of the High Level Committee, which visualised the Commission as insulated from political and budgetary control of the Government.

By virtue of the clause 48, the Commission has to depend on the Central Government's grant to pay salaries and to meet other expenses in implementing the law. Since, the Commission was visualised as an independent body, and rightly so, its expenses should be charged upon the Consolidated Fund of India. This was also provided in the Concept Bill on Competition that was made public in November 2000.

Secondly, and most importantly, according to clause 53 of the Bill, *which was never publicly debated*, the Commission is bound to follow any policy directions coming from the Central Government. This provision has the portent of curtailing the Commission's independence and hence should be reconsidered. Even the existing MRTP Act does not have any provision for the MRTP Commission to be bound by policy directions from the government. Furthermore, the Supreme Court has held in a case (Govindraja Mudaliar Vs. State of Tamil Nadu) that no quasi-judicial body is under any obligation to endorse a government policy.

15. Competition Fund

The Competition Fund to be established under clause 49 should also be open for grants from other non-profit sources. For example the Commission could raise funds from donors to carry on its advocacy purposes. Such grants should also be part of the Fund.

16. Exemptions from the Act

The Bill, vide its clause 52, gives wide discretion, without much guidelines, to the Central Government as far as exemptions from the Competition Act are concerned. First, the government has to use it very carefully so as not to frustrate the very purpose of the law (i.e. promote and sustain competition in the market). In other words, *it should not be used as a populist or misguided step*.

Secondly, it would be better if such exemptions are made only after consultation with the Commission and the suggested Advisory Council (*see 6, above*) after a public debate on the same. As far as possible, time period with proper over all guidelines for such protection should also be given.

Thirdly, clause 52(c) needs some changes for better clarity. With respect to the sovereign function the provision in its present form may be interpreted as exempting even those enterprises that generally performs sovereign functions but also perform non-sovereign functions. In other words, an enterprise that generally performs sovereign functions may get exemption vis-à-vis its non-sovereign functions also.

The provision should stress on 'function' rather than on 'enterprise' and could be re-written as "*any sovereign function performed on behalf of the Central or a State Government.*"

17. Unfair trade practices (UTPs)

The Bill, by virtue of clause 64, seeks to transfer all the UTP cases to the National Commission constituted under the Consumer Protection Act, 1986 (COPRA). In fact the Competition Law would not deal with UTPs at all. In this regard, it would be better that only such cases which involve consumers be transferred to COPRA, while those involving commercial transactions be tried under the new competition law.

18. Amending other laws

The new law should also look into and suggest amendments to all other laws and/or clauses therein which have the potential of nullifying or impairing the effects of the new Competition law. The Parliament can call upon the relevant department of Company Affairs to carry out the exercise and submit suitable amendments. This will help the process of avoiding any existing or potential conflicts.

Conclusions

In conclusion it is submitted that the Parliament should consider the above-said suggestions before passing the Competition Bill. The said suggestions are not against the spirit of the Bill, but to enhance the same and make the final outcome more meaningful and perhaps more effective.

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