

## COMPETITION IN THE ERA OF GLOBALISATION : THE ROLE OF PROFESSIONALS

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### **Introduction :**

Globalization is defined as free cross-border flow of goods, services, capital, labour, information, ideas, and intellectual property. In fact, every thing defined thus, globalization is more than mere trade reform. Globalization has a descriptive component, as well as a prescriptive one, with the latter more important than the former. The former is simply a factual statement. Globalization is the process of bringing the entire world into the system of division of labor and thus into the system of social cooperation, of which division of labor is the essence. Its completion will mark the highest level of division of labor and social cooperation that it is possible for human beings to achieve, given the size of the world's population. Broadly speaking, the globalization implies accepting a global outlook. It is to realized that the concept of globalization can aborted by understanding it in the wrong manner. Sometimes people tend to reject the idea of globalization for its future consequences which are perceived in the wrong manner. And this is time when the professionals are called upon to play their role to bring it all together to give a complete outlook of it. However, this is a very crucial as well as challenging task for a professional to be accomplished with. The challenge for the professionals may depend on the following factors :

- ❖ First, the liberalization and intensely competitive environment;
- ❖ Second, the consumer enjoying wider choices of products and services and the satisfaction of his growing expectations now inevitably assuming a critical strategic response of industry;
- ❖ Third, unleashing of the discipline of market-determined prices, except where the system of administered pricing is still prevalent (e.g. petroleum products);
- ❖ Fourth, imperatives of productivity drivers in the manufacturing operations and in the overall corporate culture;

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- ❖ Fifth, the pressures of globalizing prices of almost all industrial products and consequential compulsions of globalizing profit margins.
- ❖ Last, the legal framework that regulates the industrial market.

**Objective :**

The objective of the paper is:

- 1) To give an overview of the competitive environment in the globalization period.
- 2) To show a brief analysis, with the help of few case studies, regarding the anti-competitive trade practices in the global market.
- 3) To identify the role of professionals in the competitive world.

**The New Era of Competition :**

“*Survival of the fittest*” is the concept in the new regime of competitive environment today. To be able to survive in the market one has to battle with the competitors. Those who win will derive the cream of share from the market and losers will be washed away. The new concept of competition encompasses various fields of strategies like; joint venture, merger & acquisition, price cartel, promotional strategy, brand management etc. To obtain the best result a professional has to be technically correct in these areas. Therefore, he or she has to have a sound knowledge in these fields. The efficient market economy can only be achieved if the competition in the market is fair and there should no indulgence for unfair trade practices. The market should be opened for competition and optimum utilization of resources must be ensured. So far, the Indian industry was blessed with favourable terms of trade for a prolonged period. Barring a few exceptional years, the rate of price rise in manufacturing goods has generally been higher than the general level of inflation. The prevalence of a seller's market in the wake of endemic shortages of quality industrial products made this eminently feasible. Of course, there are units in each and every industry, which are doing well, thereby shoring up the overall corporate results. The disaggregated performance evaluation, however, brings out the winners and the losers in the new battle of the competitive market place. However, operations of a firm are subject to some legal enactments which it should not violate. To bring about congenial, strong and healthy environment in the market economy India had introduced the Monopolistic and Restrictive Trade Practices Act in 1969. The Monopolistic and Restrictive Trade Practices Act, 1969, was enacted

- ❖ To ensure that the operation of the economic system does not result in the concentration of economic power in hands of few,
- ❖ To provide for the control of monopolies, and
- ❖ To prohibit monopolistic and restrictive trade practices.

However, this act had been amended from time to time to incorporate new concepts so that it could go parallel to the changing circumstances or concepts of competition. In 2002, the MRTP Act 1969 was repealed by the Competition Act 2002. The new Competition (Amendment) Act 2007 is now regulating in the market. The new Act seeks to restrict practices like cartels, bid rigging, exclusive supply and distribution agreements. Due to lack of procession in the clauses of the MRTP Act, one had to depend on the interpretations of the MRTP commission or courts. This incongruity was sought to be corrected through the Competition Act.

The objectives of Competition Act are :

1. *to prevent practices having adverse effect on competition,*
2. *to promote and sustain competition in markets,*
3. *to protect the interests of consumers and*
4. *to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.*

#### **An Overview of the Competition Act :**

There are some salient features of Competition Act. The main focusing areas may be laid down as follows:

1. Prohibition of anti-competitive agreements;
2. Prohibition against abuse of dominant position;
3. Regulation of combinations;
4. Establishment of Competition Commission of India.

#### **Prohibition of Anti-competitive Agreement**

According to Section 3 of the Competition Act “No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.” The major attention in this section is to key out the situation or incident which may have an adverse effect on competition. The section identifies the following types of agreements which are likely to cause an adverse effect on competition :

1. Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which
  - (a) directly or indirectly determines purchase or sale prices;
  - (b) limits or controls production, supply, markets, technical development, investment or provision of services;
  - (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;
  - (d) directly or indirectly results in bid rigging or collusive bidding;
2. Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services.
3. tie-in arrangement;
4. exclusive supply agreement;
5. exclusive distribution agreement;
6. refusal to deal;
7. resale price maintenance.

It is important to note that the MRTP Act 1969 had also covered many of these agreements under Section 33. But the so called Act failed in many ground to regulate and control the situations especially where the concentration of power is concerned.

The Competition Act identifies the following grounds which are likely to cause an adverse effect on competition. They are as follows :

- a) creation of barriers to new entrants in the market;
- b) driving existing competitors out of the market;
- c) foreclosure of competition by hindering entry into the market;
- d) accrual of benefits to consumers;
- e) improvements in production or distribution of goods or provision of services;
- f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

***The Microsoft Case:***

*How is competition policy applied to the industries in an international arena can be demonstrated with the Microsoft Case. In June 1990, the Federal Trade Commission (USA) launched a probe into possible collusion between **Microsoft and IBM**. In October 1997, the Department of Justice (DoJ) filed a complaint claiming Microsoft had violated the consent decree by demanding PC makers bundle its Internet Explorer web browser with their PCs in order to obtain a license for Microsoft's Windows 95 operating system. The District Court ordered Microsoft to stop forcing PC manufacturers to ship Internet Explorer with Windows 95. The DoJ charged four specific antitrust violations (i) unlawful exclusive-dealing arrangements, (ii) unlawfully tying MSIE to Windows 95 and 98, (iii) unlawful maintenance of a monopoly in the PC operating system market, and (iv) attempted monopolisation of the internet browser market.*

*The District Court found Microsoft guilty of three antitrust violations. Specifically, it found that: (i) Microsoft employed anti-competitive means to maintain a monopoly in the operating system market ;( ii) Microsoft illegally attempted to monopolise the internet browser market; and (iii) Microsoft unlawfully tied its browser to the operating system.*

**Abuse of Dominant Position**

According to Section 4 of Act *No enterprise or group shall abuse its dominant position*. There shall be an abuse of dominant position under sub-section (1), if an enterprise *or a group*

- a) directly or indirectly, imposes unfair or discriminatory
  - i) condition in purchase or sale of goods or services; or
  - ii) price in purchase or sale (including predatory price) of goods or service; or

- b) limits or restricts
  - i) production of goods or provision of services or market therefore; or
  - ii) technical or scientific development relating to goods or services to the prejudice of consumers; or
- c) indulges in practice or practices resulting in denial of market access in any manner; or
- d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or
- e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

The following factors should be considered while determining whether an enterprise is enjoying dominant position :

- a) market share of the enterprise;
- b) size and resources of the enterprise;
- c) size and importance of the competitors;
- d) economic power of the enterprise including commercial advantages over competitors;
- e) vertical integration of the enterprises or sale or service network of such enterprises;
- f) dependence of consumers on the enterprise;
- g) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;
- h) entry barriers;
- i) countervailing buying power;
- j) market structure and size of market;
- k) social obligations and social costs;
- l) relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have appreciable adverse effect on competition;

m) any other factor which the Commission may consider relevant for the inquiry.

The power to decide on dominant position is vested in the hands of the Commission, having regard to the factors listed above.

***Dominant Position: The Intel Case:***

*The US Federal Trade Commission (FTC) issued a complaint against Intel (the computer hardware company) in June, 1998, alleging that Intel sought to maintain its dominance by, among other things, denying advance technical information and product samples of microprocessors to Intel's Original Equipments Manufacturers (OEMs) customers, who develop, manufacture, and sell computer system products such as servers, workstations, and desktop and portable personal computer. It was also alleged that Intel was threatening to withhold product from those OEMs as a means of coercing those customers into licensing their patented innovations to Intel.*

**Regulation of Combination :**

According to Section 6 of the Act no person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void. Any person or enterprise, who or which proposes to enter into a combination, shall give notice to the Commission, in the form as may be specified, and the fee which may be determined, by regulations, disclosing the details of the proposed combination, within *thirty* days of (a) approval of the proposal relating to merger or amalgamation, referred to in clause (c) of section 5 by the board of directors of the enterprises concerned with such merger or amalgamation, as the case may be;

b) execution of any agreement or other document for acquisition referred to in clause (a) of section 5 or acquiring of control referred to in clause (b) of that section. For the purposes of determining whether a combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market, the Competition Commission of India shall have due regard to all or any of the following factors, namely :

- a) actual and potential level of competition through imports in the market;
- b) extent of barriers to entry to the market;
- c) level of combination in the market;
- d) degree of countervailing power in the market;

- e) likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;
- f) extent of effective competition likely to sustain in a market;
- g) extent to which substitutes are available or are likely to be available in the market;
- h) market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination;
- i) likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market;
- j) nature and extent of verticals integration in the market;
- k) possibility of a failing business;
- l) nature and extent of innovation;
- m) relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition;
- n) whether the benefits of the combination outweigh the adverse impact of the combination, if any.

***Control of Merger: The General Electric (GE) Case:***

*In July 2001 the European Commission has blocked the \$45bn deal between US firms **General Electric (GE) and Honeywell**. Although US competition authorities had given their approval to the deal, the commission was worried that the integration of Honeywell's avionics and GE's strength in jet engines could lead to dominance of the market.*

***The Nintendo Case***

*In October 2002, **Nintendo**, the Japanese video games manufacturer, was found guilty of "ripping off" its customers in continental Europe for most of the 1990s and fined £94m by the European commission. Edinburgh-based retail distributor John Menzies - the sole UK distributor of Nintendo products - was also punished for its role in the scam.*

*The EU commission said that the fine was the fourth largest ever and reflected the seriousness of the offence. "The fine... reflects its size in the market concerned [it is the second largest maker of video games in the world], the fact that it was the driving force behind the illicit behaviour and also because it continued with the infringement even after it knew the investigation was going on," the Brussels statement said.*



### **Competition Commission of India (CCI)**

The Central Government of India had established CCI under section 7 of the Act by a Government Notification dated 14<sup>th</sup> October 2003. The Central Government of India has made provisions regarding the establishment and composition of CCI, duties and powers of CCI under this Act. According to Section 7(1) the Central Government may, by notification, appoint, a Commission to be called the “Competition Commission of India”.

- 2) The Commission shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.
- 3) The head office of the Commission shall be at such place as the Central Government may decide from time to time.
- 4) The Commission may establish offices at other places in India.

Section 8 lays down the composition of CCI as follows:

- 1) The Commission shall consist of a Chairperson and not less than two and not more than six other Members to be appointed by the Central Government.
- 2) The Chairperson and every other Member shall be a person of ability, integrity and standing and who has special knowledge of, and such professional experience of not less than fifteen years in, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters, including competition law and policy, which in the opinion of the Central Government, may be useful to the Commission.
- 3) The Chairperson and other Members shall be whole-time Members.

Section 18 to Section 40 regulate the duties, powers and functions of CCI under this Act.

#### **Role of Professionals :**

“Change” is the only constant factor in this dynamic world of competition. To keep pace with changes, to battle with new challenges professionals, whether working in industry or in a professional services firm (PSF), are required to be highly skilled and having knowledge in different fields. Thomas J. DeLong puts it, "In the past, the work of PSFs was a gentleman's game and now it's blood sport." He had also pointed

that “the entire PSF landscape is in upheaval. Associates are harder to recruit and keep; competition for clients is increasing from boutiques below and global firms above; the clients themselves are more demanding; and management time is focused on short-term issues rather than long-term strategy. Most important, professionals attracted to these firms want to practice their expertise, not necessarily to become managers and deal with human challenges. They have different goals and motives.” The expert knowledge in different fields will make the professionals to tackle new challenges in their day to day's working field. Such areas of knowledge include knowledge about the legal framework, knowledge about human resource management, knowledge about strategic management, knowledge about supply chain management, knowledge about strategic technology management, knowledge about costing & accounts etc. The acquisition of such knowledge makes a professional to be more efficient in finding out a prompt action while facing with a challenge. However, apart from acquiring the knowledge there are some ethical issue or code conduct which a professional must adhere to. The code of ethics is the principle guidelines for the professionals beyond which they are not expected to violate. For example, the Institute of Chartered Accountants of India suggests that *“the "Code of Conduct" is essentially a set of professional ethical standards regulating the relationship of Chartered Accountants with their clients, employers, employees, fellow members of the group and the public generally. The maintenance of ethical standards is the collective concern of the Institute as well as all members of the profession. The ideal situation, of course, would be that the maintenance of ethical standards at individual member level is so self-evident that its further mention need not be made. However, the human nature being what it is, a man may often place his personal gain above service. Therefore, it is necessary to keep on reinforcing the idea of keeping up and observing the highest ethical standards repeatedly.”*

### **The Big Thing :**

In today's business climate we are experiencing more interest in professionalism. The new era of globalization gives birth of new challenges and problems and all the strategic decisions taken by the professionals are purposeful actions. The future of the organization and the progress of the career might be profoundly affected by what a professional decides. Decisions are at the heart of any organization. Since a decision taken by a professional must not fail it is to be practiced in the light of every possible situation which may affect the outcome of it in the negative manner. Because if one decision fails the career of a professional may come under a question. Therefore, the need is there that a professional must not only have the knowledge to

tackle things under different situations but he/she must also possess the following attributes :

- ❖ They must be responsive to every critical situation,
- ❖ They must come with innovative ideas or concept, which will help the organization to overcome challenge,
- ❖ They must demonstrate strong interpersonal skills like effective listening, negotiating strongly and exhibiting strong communicating skill,
- ❖ They must be flexible and able to adopt any changes whether legal, political or organizational and must shift gears effectively in response to such changes,
- ❖ The quality of trustworthiness is very essential attribute that they must be equipped with,
- ❖ A professional must care. Caring exhibits thrust for gaining better understanding of every aspects of the job he or she is assigned to,
- ❖ They are to be skilled with new emerging technology like software application, internet communication etc,
- ❖ They must be supportive and take quick initiatives to must be one step ahead of the boss,
- ❖ They must act autonomously with having an independent motive.

In short, administrative professionals are those who master technology, have top class interpersonal and communication skills, are able to manage projects, tackle critical situations, track and organize and be creative in solving problems, and most importantly, are willing to learn and grow, and accept challenges. Various professionals have to work together in these areas to protect the market from the anti-competitive practices: (i) identifying the relevant market; (ii) Measuring the market force; (iii) Identifying the price cartels; (iv) Cases of merger, demerger and acquisition; (v) Analyzing the pricing pattern; (vi) International laws regarding competition; (vii) Preferences and psychology of the customers; (viii) Product classifications and market segmentation.

### **Conclusion :**

Traditional outlook of Indian economy is under a radical change. All sectors both public and private are receiving much attention from around the globe. The new shift in the Indian economy is witnessed by India's first ever attendance in the G-8 meeting of Finance Ministers. It is widely believed that the New Economic Policy-1991, concerning foreign investment would go a long way in globalizing Indian

economy thereby enabling it to emerge as world-class manufacturer. However, has the afore-said policy done enough to bring in the actualization of the required globalization? Indian industry gearing itself to challenges of globalization and if so, to what extent? This issue is of great importance in the post-WTO scenario. Undoubtedly, global markets offer opportunities for all, but opportunities do not guarantee the desired results. For High Performing Asian Economies *as well as for* China, the benefit of globalization is clearly reflected in the rising ratio of their trade (imports plus exports) to GDP, which is currently hovering around 40% to 45%. However, in case of India, even granting the fact that our trade to GDP ratio has increased in the post-reforms period from about 13% of GDP in the early nineties to about 20% of GDP at present, we have along way to catch up with the levels achieved by the Asian Tigers. Indian professionals are ready to take on any challenges or tasks they are assigned to. To become a qualified chartered accountant, one has to go through the comprehensive study of the real situation and must have profound knowledge about the accounting rules and regulations and must also possess an expert knowledge on the legal framework or the code of ethics of the profession. Similarly all these apply to a cost accountant or a company secretary and management professionals also. The real need is to have technical efficiency in every field of a profession and the globalization has made this as ever-changing characteristic.

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