APPRAOCH OF IMPLEMENTATION OF COMPETITION LAW IN DEVELOPING ECONOMIES

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Views Are Entirely Personal

- Don’t Represent the Official Views
- Either of Govt. of India Or
- Indian Competition Agency i.e. CCI
- One Year Hiatus on Purpose
- Views Border on Heresy
- Only Questions
- No Answers- Looking For
Expected vs. Real Life

- **Expected**
  - Idealistic- Systemic
  - Rule of Law etc. etc.
  - ‘Cause’ and ‘Effect’

- **Real**
  - Murphy’s Law – If Things Can Go Wrong
  - Rule of Possible etc.etc.

- **Meaning of ‘Cause’ and ‘Effect’ is Different**
Economics: Theory & Practice-I

- Capital Flows To The Highest Return
- Entry and Exit Barriers-
  Commerce/Competition
  - Intimately Connected
  - TRIPS- Interesting Negotiations-Self Strengths
  - Regional Blocks-EU-State Aid-50% Resources
- Issue Of Trade Barriers across Borders
  - Are Barriers Of Only Trade- Def Eqpmnt Pak/India ?
Or Trade, Diplomacy and Show of Strength- Even Wars?
Trade Being Just A Part- Only Spoken Part
Or There Are Huge Unspoken Components?

Is True Economics is Getting Too Complicated
Or is Economics Too Important To be left to Economists?
Yes, Politics, Foreign Policy, Military, National Champions
Despite This- National Champions – Favourite Whipping Boys- All Conferences
Ignoring Reality- Ostrich Like Attitude
June 30 TOI- Queen Too Busy to Accept Credentials
- CW Games- India replaced HC after 7 months
- Multi-billion IAF order for combat aircraft was awarded to France and not to a consortium in which BAE of Britain had a major stake

Microsoft Anti-Trust Violations : USA /EU
GE-Honeywell Merger: USA /EU
Two Airline Companies: USA /EU
Day to Day Cases
Beyond Economics or Economics Plus/Minus
Two Mature Regimes: US/EU

- When Two Experts Differ
  - What A Novice Will Do
  - Be More Impressed By The First Encounter
    - Yes, The Organisational Structure
    - Subsidies- Anecdote of FM
- May Be Good-The Experts in Enhancing Followers
  - What About the Novice
- Repeat Mistakes
  - To The Last Typed Comma
  - Brown Shoe(62) and later
  - Learn Afresh
  - From First Principles
What is Competition Law and Policy (CLP)?

Whether it is like:

- A Plain Vanilla Ice Cream or
- Plain Vanilla Ice Cream with different toppings or
- Plain Vanilla Ice Cream interspersed with different ingredients/flavours

Perhaps, the last one

These Ingredients/Flavours, if Suitable, Render it digestible
Basics Question-II

- Some Examples: How the same prescription gave differing results
  - Giving A Free Hand
    - Resulted in world class facilities for Olympics in Los Angeles 1984 - the first Games to turn a profit ($225 million) since 1932 in history
    - In India – Budget Spiralled- CWG Organisers cooled their heels in Jail
- Differing Socio Politico Economic Systems gave Differing results
Apparent Reasons-No Justifications

- Rule of Law- But Slow
  - If you Knew that you can delay the process and are not law abiding- you can get away

- Excessive Greed
  - Insecurity
    - Hardly any Social Security
  - Uncertainty of Tomorrow
  - Contradiction-One of the Highest Investment In
    - Gold
    - Undisclosed Swiss Accounts

- Vicious Circle- Will Take time
Benefits of Competition

- Promotes efficiency and innovation
- Ensures abundant availability of goods and services of acceptable quality at affordable/lower prices
- Offers wider choice to consumers
  - Only in absence of market Failures
    - Too common to be ignored but
    - Often ignored
Perfect Competition

- Products are homogenous
- Perfect information - symmetry
- Large number of independent buyers and sellers
- Quantity of product bought/sold relatively so small as not to affect market price
- Free entry and exit

When Are These Met
Growth of Competition Related Economic Thought

- Nash Equilibrium
- Bertrand's oligopoly
- Stackelberg's duopoly
- Cournot's duopoly
- Prisoner’s Dilemma
- All involve assumptions

- Further Refinements
  - Removing Assumptions - One by one
  - More And More Complex

- Have We Reached An Assumption Less Stage
  - Not Yet

- Have we tried removing Non Economic Assumptions
  - Very Little Effort
Growth of

Competition Economic Thought-II

- Not Many Have worked or Commented except
  - E Fox
  - William Kovacic
  - Phillippe Bruisic
  - Shyam Khemani

- National Champions are favourite whipping boys in all the competition law conferences without getting really a whip mark- Reason — may be — at home they are well fed
Is Some thing Missing

- Are some parameters being overlooked?
- If Yes, What are these?
- Frequently heard: Competition Law Can’t be different in developing countries and developed countries.
- One Size fits All – Can it?
Unstated Assumptions (Ground Realities)-I

- Robust Institutional Framework- Judiciary, Rule of Law, Certainty of Life and Life Transactions
- Are All The Countries at the same level on these parameters?
- If the answer is no, CLP needs to be fine tuned
- Not Much Study On:
  - Human Component
    - Any Law has to be implemented by Human Beings
      - Indian Experience
    - China- Theory and Practice
    - Given a Choice – Human beings will subvert
Unstated Assumptions (Ground Realities)- II

- No Fully Altruistic Man Ever Born
- Can’t Discount this
- When Altruistic Cells are also Found
- Checks and Balances

- Institutional Framework
  - Maturity
  - Robustness
  - Certainty
  - Self Sustaining Momentum
Quality of Checks and Balances

Form-Checks and Balances May be in Place

Substance-The Resultant Outcome , Despite Checks and Balances , May Be Different in Different Settings

The Differentiating Background Settings- A Function of Maturity of Checks and Balances In Place
Assumptions About Reality

- In Sixth UN Review Conference 2010, one commentator stated very clearly that the competition agency is not in a vacuum or on an island.
- It is a part and product of political economy.
- Convincing and taking along of politicians is an important component of the competition agency.
- It should endeavour to ensure that the political executive sees it as its own agenda.
Country Differentiators-I

- Feeling/Degree of Citizenship
- Two Way Process
  - State Cares For You
    - (You are on your own- bad or good times)
  - Will take good care, if you don’t behave
    - (Can Not /Will not Do Much if you Don’t Follow norms)
- The price for this feeling may be substantial
  - For State
    - Comprehensive Social Security
  - For Citizens
    - Don’t Expect everything for free
      - High Taxes
      - Pay for almost everything
      - Limited-Subsidies, if any
Country Differentiators-II

- Regulatory burden- part of Existential Habit
- Great Feeling of Security
  - You Don’t Feel That You have to fend for yourself
- Certainty of
  - Life Transactions
  - Health and Living
  - Law and Order
- Economy- India BPL Rs 28 per day Or approx. 50 Cents -Two Dimes a day
Country Differentiators-III

- White Collar – Blue Collar Divide
- USA/ Europe- farmer is not that helpless creature
- India – extremes
- Some computer engineer returned to claim a political legacy
- Satisfaction in what you do
- Move with your head high
Realities In Developing Democracies

- Distributing Diesel / kerosine / fertilizer / MNREGA / Bank Loan Waivers / Sarees / Rice either at or nearly free
- And we have to - for some time at least
- Having Opted for Democracy – we can not run away
- Necessary pitfalls
- Blessings as well
  - Smallest man can aspire for the highest office
  - Even prime minister is not above allegations
- Processes – and meeting of these aspirations has a cost
- From ‘cause’ based populism - Competitive Populism
Democracy – Cost Benefit

- Transparency- Has A Cost
- Otherwise autocracy- Iraq/Libya
- Revolutions in erstwhile communist countries also has a great cost in terms of human lives
- Opting for Democracy – Choice
- Compulsions
  - Most popular has to get in office
  - Office brings prosperity to the elected
  - Sharing it in advance and afterwards with the elector
  - Pretentious intellectuals may hate it
  - But it is a reality
Democracy- Differing Views

- With all my admiration and love for democracy, I am not prepared to accept the statement that the largest numbers of people are always right – Jawaharlal Nehru

- Ignorance reduces democracy to a Government of the cattle, by the cattle and for the cattle. – J. B. Kriplani
Corporate Governance- Rule of Law

- Rajat Gupta- Possible jail term of 25 years
- In India if enforced -A substantial Chunk of corporates will be in Jail. Claim that insider trading is legal in India
- Developing country- India- purjury – almost every day false affidavits are being given by witness. Already pendency is mind boggling 466 years to clear
  - Except some high profile cases, it goes unpunished
- If all perjury cases are taken – can’t expect justice in this life time
- People Feel that they can get away with falsehood
  - Instances taken seriously too – but in high profile cases only
The Way Ahead

- Better We fine tune our Institutional Systems
- Societies Not being Equal- The same remedy may not work
- One man’s meat is another’s poison
- Institutions, Culture, Deterrence, Enforcement vary
- Resultant Impact
  - Capacity Issues
  - Will take time
Implementation Priorities

- Top Priority- Cartel and Anticompetitive Agreements-Graded Approach
- Not too Critical of AOD
- Merger Review- Comforting but Improving Standards
- Fine Tune factors, wherever given (as in India), to achieve objectives
Looking for Answers

Thanks

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