

Indian Competition Law in Sports

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Abstract

In India the statute on competition law itself provides the definition of dominant position. It states that an enterprise has a dominant position in the market if it has the power to function independently of its competitors and affect them and its consumers in its favour. Competition Act 2002 has come into force to replace the Monopolies and Restrictive Trade Practices Act,1969. After the economic reforms of 1990, it was felt that Monopolies and Restrictive Trade Practices Act has become obsolete pertaining to international economic developments relating to competition law and there was a need of law which curbs monopolies and promotes competition.

The Competition Law may be seen as a dominant factor affecting some of traditional monopoly of commercial transactions of sport. Broadcasting provides a fast growing source of revenue to some sports, especially cricket.

Thus, the emphasis should be on increasing the output of games and increasing number of actors in product delivery, especially providing for 'new media' such as mobile phones and internet access.

Introduction

In 1990s India saw substantial increases in the value and volume of international trade in goods and services, in foreign direct investments, and in cross border mergers and acquisitions . Over the period of time, trade barriers fell and restrictions on foreign direct investments were reduced. The Competition Act, 2002 has been enacted with the purpose of providing a competition law regime that meets and suits the demands of the changed economic scenario in India and abroad. The Competition Act has repealed the Monopolies and Restrictive Trade Practices Act, 1969 and has dissolved the Monopolies and Restrictive Trade Practices Commission. The cases pending before the MRTP Commission are transferred to Competition Commission of India , barring those which are related to unfair trade practices and the same are proposed to be transferred to the National Commission constituted under the Consumer Protection Act,1986 The commercial significance of broadcasting sport has grown among both sports authorities and broadcasters. The growth is principally the outcome of televisions technological revolution, with the development of cable communication, subscription channel and more recently of 'package' subscriptions and per pay view.

Objectives of completion law

The main objective of Indian completion Act is the promotion and sustenance of competition in markets, protection of consumer interests and ensuring freedom of trade of other participants in the market, all against the backdrop of the economic development of the country. .

The objectives of the Competition Act are to:

- prevent anti-competitive practices,
- promote and sustain competition in markets,

- protect the interests of the consumers and
- ensure freedom of trade carried on by other participants in markets

Competition law

The growth in number of subscription channels and package subscriptions, the increased competition within television, the significant investment and the pressures from advertising and sponsorship have all resulted in search of more attractive programmes, notably for live broadcast of high profile sports events (world cup, IPL and Commonwealth games, Olympic games, important cricket and football matches, Formula One motor racing etc.) Sponsoring must be organised in an objective, open and transparent manner otherwise competition law should apply. Similarly ticketing arrangements should be made in open and transparent manner. The transfer fees of professional sportsmen from one league to another rare also one of the concerns of competition authorities. Issue of rigging of bids by league bosses is also one of the prime concerns of the competition authorities.

Competition law may still be seen as a hostile factor affecting some of traditional monopolistic commercial transactions of sport. The commercial significance of broadcasting sport has grown for both sports authorities and broadcasters. The growth results principally from televisions technological revolution, with the development of cable communication, subscription channel and more recently of 'package' subscriptions and per pay view. Broadcasting provides a fast growing source of revenue of some sports, especially cricket. Since cricket is a global sport, it provides the most vivid examples of development of competition policy of sport.

The Competition Act 2002

The Competition Act 2002 has been designed as an omnibus code to deal with matters relating to the existence and regulation of competition and monopolies.

The Act gives an exhaustive list of practices that shall check abuse of dominant position. Section 4(2) of the Act specifies those practices.

Such practices shall constitute abuse only when adopted by an enterprise enjoying dominant position in relevant market in India and for the purpose of this Act 'relevant market' means "the market that may be determined by the commission with reference to the relevant product market or the relevant geographical market or with reference to both the markets". The Act lays down certain factors of which anyone shall be taken into account by commission while defining the relevant market. Competition is undoubtedly beneficial for every market participant. Competitive markets give consumers wider choice and lower prices. It gives sellers stronger incentives to minimize their costs through innovation and other productivity enhancing techniques. This enables firms to pass on cost savings to the customers and offer better products and greater choice at lower prices.

Recognising & realising that the trade agreements have the potential of preventing, restricting, distorting, discouraging, impeding or scuttling competition in markets, Section 3 (1) & (2) of the Act declares that '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 and that such agreement being anti competitive, is void'.²

The Act stipulates five kinds of vertical agreements. Section 3(4) of the Act provides that:

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, including—shall be an agreement in contravention of sub-section (1) of Section 3 if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.

Operate independently of competitive forces prevailing in relevant market; or· Affect its competitors or consumers or relevant market in its favour.

It is the ability of an enterprise to behave/act independently of the market forces that determines its dominant position. Dominance is not considered bad per se but its abuse is. Abuse is stated to occur when an enterprise or group of enterprises uses its dominant position in relevant market in exclusionary or/and and exploitive manner. The Act gives an exhaustive list o practices that shall constitute abuse of dominant position, and, therefore are prohibited. Section 4(2) of the Act specifies those practises. Such practises shall constitute abuse only when adopted by an enterprise enjoying dominant position in relevant market in India and for the purpose of this Act ‘relevant market’³ means “the market that may be determined by the commission with reference to the relevant product market⁴ or the relevant geographic market⁵ or with reference to both the markets”. The Act lays down certain factors of which any one or shall be taken into account by commission while defining the relevant market. Competition is irrefutably beneficial for every market participant. Competitive markets give consumers wider choice and lower prices. It gives sellers stronger incentives to minimize their costs through innovation and other productivity enhancing techniques. This enables firms to pass on cost savings to the customers and offer better products and greater choice at lower prices.

Conclusion

Since sport is generally organized in a kind of a ‘pyramid’ structure, with a single governing body controlling most regulatory and commercial aspects of each sport, the governing body appears to be de facto ‘dominant’ and therefore claims relating to the abuse of monopoly power maybe relatively easy to make. Finally, well planned exhaustive competition compliance programme can be of great benefit to all enterprises irrespective of their size, area of operation, jurisdiction involved, nature of products supplied or services rendered and the same is essential for companies, its directors and the delegate key corporate executives to avoid insurmountable hardships of monetary fines, civil imprisonment, beside loss of hard-earned reputation when the Competition Authorities, the media and others reveal the misdeeds in public.

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