

# **WHETHER COMPETITION POLICIES CAN BE DRAFTED TO WORK IN CONSONANCE WITH THE INTERNATIONAL TRADE LAWS**

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## **ABSTRACT**

Competition policy is traditionally a domestic economic policy that aims to enhance economic efficiency and consumer welfare by restraining anti-competitive practices in the domestic market. However, in today's globalised world of trade and investment, the scope of application has grown to become more international, as companies have become more global and their business activities take place across borders.

## **INTRODUCTION**

The purpose of competition law is to regulate the conduct of private parties which have an adverse effect of the competition in market being detrimental to the consumers. Competition law tries to maintain perfect competition in the market to protect the interest of the consumers. Competition policy, comprising both competition law enforcement and competition advocacy work, is a central element to the necessary framework for inclusive liberalisation. [1]

## **Whether competition policies can be drafted to work in consonance with the International Trade Laws**

Competition policy and competition analysis are also essential to ensure that international trade operate in ways that are inclusive and open with respect to participation by all competitive suppliers. The understanding that International Trade and Competition policies have nothing to do with each other is a fool's errand. There are ample of evidence to prove that private agreements and hybrid government-private agreements are taking place in order to create barriers to free and fair international marketplace. In the "Hawk Report" by the OECD, it has been observed that

private agreements have restricted market access in ten member countries in the domain of agriculture, energy, communications, defense, media, and other industries. It is also believed by the market players that the private agreements have hindered market access to them and competition law was infructuous in protecting their interests. In addition to the anti-competitive agreements being in place the competition policies in India also are ineffective and lax at enforcement due to the overwhelmed court system. Further such actions do not specifically fall into the scope of international trade law nor the domestic competition law, hence raising a question, whether to widen the scope of international trade laws or the domestic competition laws.[2]

In an ideal world where there are no impediments to trade and investment, where inputs for production of goods and services are fully mobilized, international trade would be the main source of market competition and efficiency. However, in the real world where there is less than full mobility of inputs and products, market imperfections, and regulatory distortions, international trade cannot work effectively. Competition policy and enforcement, which concentrate on the elimination of private incentives to restrain competition, can complement international trade.

Competition policy and international trade share the same objective of enhancing economic efficiency and consumer welfare based on trade liberalization and open markets. While they share the same goal, they have different means of achieving it. While competition policy and law enforcement focus on the elimination of private incentives to restrain competition such as unilateral conduct, cartels and mergers, international trade policy concentrates mostly on the elimination of regulatory barriers to international trade flows.

It is difficult to find consensus amongst different nations on the principles of competition law as there are vast cultural and practices difference in nations. A strong resistance is also seen from the protectionist developing nations against the International Competition Policy Regime. It is argued that the nascent industries in the developing countries are not sufficiently prepared for the imposition of such regulatory regimes which are based on the traditions of the developed markets like U.S. and Europe.

While much useful work has been done by organisations such as the International Competition Network (ICN), the Organisation for Economic Co-operation and Development (OECD), and United Nations Conference on Trade and Development (UNCTAD) to promote international cooperation and the voluntary adoption of sound enforcement practices at the national level, the

world today lacks binding mechanisms to ensure transparent and nondiscriminatory application of competition law by all countries. In the absence of such mechanisms, there is a risk that competition law enforcement can itself be employed as a tool of discrimination or market exclusion, contrary to the values it is intended to promote.[3]

## CONCLUSION

There is a need of member countries coming forward and adopting an international code of fair competition that will serve to address the problem of anticompetitive agreements creating barriers for free trade in the international market place.

## REFERENCES

- [1] M. Armstrong and D. E. M. Sappington, "Regulation, competition, and liberalization," *Journal of Economic Literature*. 2006.
- [2] P. Smith *et al.*, "Competition ," *Philosophical Transactions of the Royal Society B: Biological Sciences*. 2010.
- [3] H. Nottage, "Competition policy," in *Regionalism and the Multilateral Trading System*, 2003.