

COMPETITION LAW TODAY (2007). By Vinod Dhall (ed.). Oxford University Press, New Delhi. Pp xxiv + 561. Price Rs. 875/-.

IN THIS era of privatization and globalization when market forces are driven by economic power, autonomy and profit making, fair play becomes the core concern of the regulator of the market. It is also the touchstone on the basis of which any abuse or abrasion is tested. Fair play, however, cannot be achieved without a mechanism. It is this realization that called for the establishment of a legislative regulatory framework after a careful study of the structure of the markets and economic behaviour of the participants. Competition law, in India, is one such legislative framework, which purports to ensure fair play in addition to people's welfare in a market driven economy.

Many countries have been adopting modern competition laws. But what is lacking in these countries is the competition culture amongst companies and experienced enforcement officials. This situation calls for building up a knowledge base. The book¹ under review, which is a collection of essays contributed by various experts on a variety of topics relating to competition law, is a step in this direction. The book contains 23 articles covering a wide range of areas such as competition law and intellectual property rights, abuse of dominant position, merger control, exemptions, exceptions and differential application of competition law policy and competition law in select jurisdictions such as the USA, EU, Germany, Mexico, South Africa, Korea, UK and Australia. In addition to this, a separate part is devoted to the competition law in India wherein the article by Amitabh Kumar gives a historical backdrop against which the present competition law operates. Vinod Dhall in another article takes us through the substantive provisions of the Act, 2002 while reflecting on the jurisprudence developed during MRTP regime.

The book is divided into four parts dealing with jurisprudential aspects of competition, explication on substantive provisions, experiences in select jurisdictions and competition law in India. Though the book is quite comprehensive, the chapters could be arranged in more systematic and useful manner. For instance, part III containing articles on 'economic

1. Vinod Dhall (ed.), *Competition Law Today : Concepts, Issues, and the Law in Practice* (2007).



growth and consumer welfare...’, ‘economics of competition law’ and ‘return of industrial policy...’ should have been better placed in part I as these articles deal generally with the competition law. Also ‘overview of key concepts’ and ‘competition and regulations’, which is in part I now could be placed in the proposed part I along with the three articles mentioned above. This is being suggested, as the book, to be more methodical, should flow from general to specific and articles should have connection with each other. Moreover, in part I articles titled ‘control of cartels...’ and ‘leniency programmes...’ should be placed one after another as they are linked with each other.

In fact the competition law is concerned less with the competition but more with the lack of competition; it focuses on monopoly, which implies lack of competition. Monopoly, due to its inherent inefficiencies is not a preferred structure of market. Competition in the market, on the other hand, is desirable as it promotes efficiency and increases consumer welfare. Amit Bubna and Shubhashis Gangopadhyay in their article² have demonstrated with the help of economic tools the weaknesses of a monopoly. They also discuss how competition law can improve the market. In other words, the authors in their essay have given a fine exposition of the larger objective of competition law.

The market founded on competition, is presumably advantageous for consumers in ensuring better goods and services at lower prices. Competition mandates the players to compete with each other for consumer patronage. But sometimes, competitors instead of competing cooperate with each other in order to benefit themselves. Cartelisation is an example of cooperation amongst competitors. Cartelisation generally takes place in the field of production, sales, supply, market allocation and pricing etc. Though this practice is severely condemned and prohibited world-over it has been and is still, existing since ages. The reason is that the detection and proof of cartelisation is very difficult. In order to deal effectively with cartelisation, the competition authorities worldwide are trying to evolve innovative methods. While demonstrating the existence of near consensus against cartelisation Richard Whish in his article³ has dealt with the new techniques evolved by various countries to detect and prohibit cartels. Important are the leniency programmes for whistle-blowers, rewards for informants and stricter sanctions for participants of cartels, to name a few. The author discusses in detail the legislative framework of various countries incorporating

2. Amit Bubna and Shubhashis Gangopadhyay, “The Economics of Competition Law” *id.* at 439-451.

3. Richard Whish, “Control of Cartels and other Anti-Competitive Agreements” *id.* at 39-58.



these tools. To bring home the point that these tools are efficient and effective, the author gives recent instances where these new tools have been used against the erring companies for indulging in cartels in various countries.

The issues are further discussed by Paul Crompton and Graham Reynolds⁴ who examine various dimensions of leniency programmes ranging from essential elements to the pre-requisites for making leniency programme a success to the process of obtaining immunity etc. The article also deals with partial leniency, a phenomenon, which in certain jurisdictions is colloquially known as plea-bargaining.

There has been a time when industries were prioritised and structured according to the industrial policy formulated on the basis of socio-political and economic considerations. That period had given way to the free market economy. That was the golden era for competition laws, which was spread sometime between mid-eighties till the end of the last century. With the financial crisis in East Asian Countries in 1997 and host of other reasons such as desire to create 'national champions' to compete in international market etc., the focus again shifted back from free market economies to the state intervened economies since the beginning of the present century. This shift has resulted in the revival of industrial policy, which has apparent implications on the enforcement of competition laws. The dynamics of industrial policy and competition laws are piquantly explained by Simon J. Evenett.⁵ According to him the political milieu in which competition laws are going to be enforced is changing wherein the enforcement officials have to reconcile the political objectives of industrial policy and pure economic principles through pragmatism.

The revival of industrial policy has resulted in the creation of regulatory framework by the states. Allan Fels⁶ in his article has nicely highlighted the dynamics of the relationship between competition and regulations. In his philosophical article, the author concludes that the relationship between competition and regulation is a complex one, varying from one situation to the next and not capable of easy generalization. Supplementing the view expressed by Allan Fels, Philip Lowe and Geraldine Emberger⁷ observe that there are several ways in

4. Paul Crompton and Graham Reynolds in "Leniency Programmes in Competition Law" *id.* at 108-128.

5. Simon J. Evenett "The Return of Industrial Policy: A Threat to Competition Laws" *id.* at 452-476.

6. Allan Fels, "Competition and Regulation" *id.* at 195-206.

7. Philip Lowe and Geraldine Emberger, "Competition Advocacy and Interface with Government" *id.* at 171-194.



which regulation can impact on competition. But the conflict arises if regulation directly or indirectly restricts the competition in the market. The effect of such a conflict can be mitigated to an extent in order to promote competition if the governments resort to ‘competition screening’ by the competition authorities through ‘regulatory impact assessment’. The authors in this article have discussed the various methods devised by various competition authorities worldwide and the challenges faced by them in applying these methods.

To make the book more useful and informative, the editor has in the prologue given an interesting and illuminating overview of basic concepts generally used in the competition laws. In addition to this, the note by Fali S. Nariman stressing the need to study and understand economics by the bar and bench forms an important beginning of the book. The book also includes in addition to articles a valuable select bibliography and table of cases. Most of the articles in the book are research based that makes the book a useful reading for members of competition authority, bar and bench, academia, sectoral regulators, chartered accountants, company secretaries, senior manager and policy-makers. The printing is good and the book is reasonably priced.

*Versha Vahini**

* Assistant Research Professor, Indian Law Institute, New Delhi.