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BRINGING THE JETSONS TO LIFE



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Market Definition: The Most
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Market Definition

THE MOST CRUCIAL ASPECT OF COMPETITION ASSESSMENT





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After economic liberalization in July 1991, competition amongst the domestic industry gradually became far more fierce and visible than before. Survival within new market-forces compelled enterprises to adopt innovative methods of doing business. These changes in doing business resulted in the emergence of a new normal. The age-old concepts of profitability and growth were soon to face newer challenges. Consumer perceptions too started changing very fast. Consumers, while buying, became more conscious about affordable price, aftersales services and quality of the products. Switching over to substitutable products by consumers, whenever available, put the producers on extra alert to innovate and remain competitive within the markets. Kodaks and traditional automobile passenger vehicles of the world, for example, faced the worst crisis by these new norms. Purchasing power of the consumers started becoming better as these could be visible in the markets.

State-owned-enterprises or Public Sector Undertakings (SOE/PSU) of India, engaged in

core industrial and economic activities, which hitherto enjoyed unbridled freedom without fear of competition – started experiencing the “heat” of the new normal. With the introduction of a series of economic legislations by Parliament and State Legislators, competitive neutrality between private and public enterprises gradually started emerging as a reality. Lessening of government control in economic activities and vesting such control in newer statutory regulators, forced SOEs to realign themselves differently in markets where they operated freely.

ANALYSIS OF THE PROCESS OF TRADE-RELATED COMPETITION

In considering the above, the enactment of the Competition Act, in 2002 (as amended) (“**the Act**”) in India was a path-breaking Parliamentary activity. The Act did not only neutralize the earlier legislation – the Monopolies and Restrictive Trade Practices Act (**MRTP Act, 1969**), but also ensured that SOEs no longer enjoyed the patronage of governments. One of the core objectives of the Act has been to free markets from the anti-competitive conduct and practices of enterprises with an aim to ensure greater consumer welfare. Thus, defining “markets” were to become a very crucial challenge for the authority, the Competition Commission of India, (“**the CCI**”) created under the Act. The Act has been carefully drafted ensuring that the “rule of reasons” guide the CCI unlike the “deemed illegality” of a business practice which the predecessor legislation professed. Along with these changes in the economy, economic theory also evolved.

Therefore, traditionally, the first steps in every competition analysis are the definition of the relevant market (both geographic and product), identification of relevant competitors (horizontal and vertical) and computation and assignment of market shares. A competition authority has to decide whether, in a given case, the pro or the anti-competitive effects are of greater importance. Thus, more weight is given to the actual competitive effects of the behavior or conduct in question of an enterprise.

The market consists of several layers of economic activities. The upstream market typically comprises suppliers of raw materials and manufacturers comprise the downstream market below raw material suppliers. The other layers may be

many depending on the nature of the product and demand-supply parameters of the market. There can be distributors or dealers or stockists as one level below manufacturers and retailers and end-consumers could be other levels of the market structure. This market structure mostly represents the traditional markets but the digital market structure varies significantly from traditional markets despite both the market operators seeking to get consumers' patronage. Each enterprise in any of the layers or nature of the market structure comes within the ambit of the Act. Therefore, analysis of each layer of market within the overall market structure is of paramount importance to understand competitive forces within such segments of the markets.

The Act defines "market" in several ways. "Relevant market", "relevant geographic market", "relevant product market"¹ are all statutory definitions of "markets" and all aim at providing various tools to the CCI to determine the "market" on a case-to-case basis depending on the facts and circumstances of each case.

Thus, encouraging and ensuring well-functional pro-competitive markets are the objectives of the Act which the CCI is mandated to implement.

RELEVANT RATIOS

In a recent decision of the CCI², relevant markets in India were determined by the CCI in respect of sale and aftersales services of CT scan and MRI machines (**Imaging machines**).

Information Providers (**IPs**) are engaged in the business of providing services of diagnostics laboratories to end-customers with imaging machine. Imaging machine suppliers were alleged by IPs to be abusing their dominant position. The CCI determined the relevant markets as "market for sale and service of all CT scan machines as relevant market 1" and "market for sale and service of all MRI machines as relevant market 2". In both these relevant markets, several bigger competitors of the supplier were present which led to the conclusion that the supplier was not a "dominant" enterprise hence allegations of "abuse" of dominant position were dismissed.



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In another decided case³, the CCI found that the Viscose Staple Fibre (**VSF**), which is one of the most important raw materials for spinning mills, was being refused to be supplied by the OP. Spinning mills were consequently driven out of the market, marginalized, denied access to the market or prevented from entering the market. The market share of the OP was to the tune of about 84-86% for three years although import from China and Indonesia was available but due to imposition of anti-dumping duties upon such imported VSF, the market remained uncompetitive.

The Commission was of the opinion that the OP has abused its dominant position in the relevant market of 'the market for supply of VSF to spinners in India' by charging discriminatory prices to its customers, denying market access and imposing supplementary obligations upon its customers, the spinning mills.

Finally, in another case⁴ recently decided by the CCI, the relevant market was defined by the CCI as the "market for procurement of custom milling services for rice in the State of Odisha". The CCI held that the OPs were engaged in abuse of dominant position in such relevant market.

¹ Sections 2(r), (s) and (t) of the Act

² Case No. 06 of 2020 decided on 13 August 2021

³ Case Nos. 51, 54 & 56 of 2017 decided on 06 August 2021

⁴ Case No. 16 of 2019 decided on 5 August 2021

CONCLUSION

The EU seems to change the 1997-definition of “relevant market”. The digital age confronts competition authorities with new challenges. Such challenges, including when faced with new consumer behavior, multi-channel market players and ‘Big Tech’ companies whose market power does not meet current competition thresholds despite their market dominance, will

have to be assessed keeping in view the market dynamism of digital markets. EU is expected to finally come out with the new definition of “relevant market” very soon which expects to define the digital markets extensively. The Competition (Amendment) Bill of India of March 2020, when passed by both Houses of the Parliament, is also expected to make suitable changes in assessing competition issues in the digital markets.

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Prior to joining the profession as a full-time lawyer, Manas has served as a Civil Judge in the West Bengal State Judicial Services, Director (Legal) MRTTP Commission and Additional Registrar (Legal) Competition Commission of India.

