

Evolution of Competition Law in India: Need for a unique approach

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The first comprehensive final order passed by the Competition Commission of India after nearly eighteen months from the date of notification of the substantive provisions of the Indian Competition Act pertaining to anti competitive agreements and abuse of dominance raises some interesting questions on the future competition law mechanism in the emerging Indian Market. The order deals with issues involving the alleged anti-competitive agreements entered into and abuse of dominant position by banks while charging prepayment charge (PPC) on home loans.

The order serves as an authoritative interpretation on a number of issues under a law which is in its nascent stage. Some fundamental concepts like scope of agreement, abuse of dominant position are analyzed through a law and economics approach. It is important to note that Commission used principle of competition economics in this order and a fine balance has been maintained between total welfare and consumer welfare. On the technical side, this order looks almost perfect but the importance of this order in the development and promotion of competition culture in the Indian market is doubtful.

It is argued that a new law should look like to protect consumer and making believe among the people and market that the ultimate goal of competition law is to protect consumer. For example, in this case, charging prepayment charge (PPC) by all banks does not support the idea of consumer welfare; it might be good for the health of banking industry though this presumption is also not far from serious doubts.

This paper will make a critical analysis of the Commission's order and will argue that how this order does not help to promote competition law advocacy programme which is most required in the early stage of Indian competition law regime. It is also demonstrate that considering the unique nature of Indian economic growth where still 35% of people are poor, the aim of Indian competition law and policy should help most deprived society to gain benefit from competition atmosphere.

It is strongly argued that competition law and policy can not be universally applicable and emerging countries like India should choose such policies to achieve maximum consumer welfare objective. In the Indian case, the protection of SMEs and local industry should be ensured by the commission by the using of abuse of dominant provisions. This argument is supported by the necessity of keeping running effectively SMEs and local industry to support other development policies by the Indian Government.

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