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COMPETITION LAW OF INDIA

Intent of the Legislation in behavioural cases

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Celebrating a Century

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An Overview

Substantive Law



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The Law

- Law enacted on 13 Jan 2003 to establish a Commission to ensure competition and consumer welfare
- Specialised statutory organisation with exclusive civil law jurisdiction in India
- Three-tier structural adjudicatory, regulatory, advisory and inquisitorial powers





Journey of enactment

- 1999 – High-powered Committee
- December 2002 – Jan 2003 Enactment of the Law
- Writ jurisdiction – structural issues
October 2003 – 20 Jan 2005
- September 2007
- May 2009 & June 2011
- Salient features of the law as amended
- Important decisions





Raghavan Committee

- Need for setting up of the Committee
- Historical and economic reasons
- Procedural issues – amendment of existing law or enacting a fresh law
- Was India ready for a new modern law?
- Government enterprises vs Private enterprises
- Merger control





Brahm Dutt vs U o I

- WP 490/2003
- Issues – Respondents
- Decision of the Apex Court
- Impact on the principal legislation
 - Substantial Amendments beyond the subject matter of the Writ
 - Delay in implementing by nearly 6 years





CCI vs SAIL and Others

- Salient features
- Important discussions
 - Section 26 (1) vs 26 (2)
 - Final Order vs interim orders
 - Prima facie of 26(1) and 33
 - Roles and powers of DG
 - Nature & function of the Commission
 - Expeditious action expected
 - Adjudicatory, Regulatory, Advisory





Amendments of 2007

- WP before SC was primarily against the structure of the Commission
- Obiter Dicta of the Apex Court
- Substantial Amendments
- Adjudicatory functions were subverted in SOR yet not able to undo
- Voluntary to Mandatory merger regime – impact on competition M&A





More Amendments

- September 2009-December 2009 by Ordinances
- December 2012 Bill Pending before the Parliament
- Salient issues
 - Collective Dominance
 - Separate thresholds for certain industries
 - Chairperson to be distinguished
 - Closure Orders appealable
 - Cross regulatory consultation mandatory
 - Hearing before imposition of penalties





Landmark Decisions

- Cement, LPG, Aluminum Phosphide, Explosives, Motion Picture Associations, Ministry of Commerce vs suppliers of shoe raw materias
- Tyre, Concor (IR), JSPL, Sugar, Glass
- DLF, NSE-MCX, Kapoor Glass, BCCI, TAM
- Hoshpira – Orchid, Titan International, Dhampur Sugar; Zulia Investment Section 43A
- **347** – 157 (45%), 108 (31%), 55 (16%) and 27 (8%) as on 31 Mar 2013
- Appeals





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INTENT OF THE LEGISLATION



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Per se illegal vs Rule of Reason

- What is the intent of law
- Difference between 3(3) and 3(4)
- Difference between Sections 3 and 4
- Overlap between 3 and 4 & mutual exclusivity between the two
- Intent of Sections 36(1) & 53-O
- Purpose of Sections 36(2) & 53-O(2)
- What is international best practices jurisprudence





Indian jurisprudence

- Some landmark judgments of the Apex Court
- Writ Jurisdictions of HC and SC not barred
- Civil Court jurisdictions are barred
- Let us briefly debate
- Purpose of the law vs government policies – State Aid – welfare angle- Article 19(1) (g) r/w 19 (6)





Some food for thought

- Is joint tendering by PSUs an issue under the law
- How far can negotiation go
- Roles of IEM, CVC, CAG, RTI
- Non-implementation of the Order of the CCI – its impact
- Compensation – class action – not in UK and EC but in the US & India
- Dawn Raid – challenges – Leniency Application – challenges
- Impacts per se enhances rule of reason





More thoughts

- Distinction between judicial and quasi-judicial bodies
- He who decides must hear
- Challenges
- Customized Compliance Manuals
- Mitigating factors – pre-hearing opportunities before finalising penalties
- Consultation of experts
- Is DG a sub-ordinate functionary of the CCI





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