

**COMPETITION? YES. COMPETITION LAW? NO.**  
**RANDOM THOUGHTS FOR THE COMPETITION COMMITTEE**

**By, D. R. PENDSE**

(1) Economic policy issues relating to competition and competition policy are thankfully once more in the air. For three decades or more, successive governments in our country adopted numerous economic policy measures through laws, regulations and controls to place fatal roadblocks that effectively destroyed competition. We paid a heavy price for it; but at long last have woken up to the need, in the words of the Finance Minister, ' to change our focus from controlling monopolies to promoting competition. Predictably, a new Competition Committee (CC) is constituted to examine the issues.

The intention was announced in the Budget speech in February 1999. Then the government collapsed. After it was reinstalled in October, the CC's constitution was also announced. It is now to report by end March this year.

(2) Happily, most of the members are known to be practical and experienced. They have known where the shoe pinched, and can be counted upon making results-oriented, concrete and firm recommendations. 'Most', because there may be an exception or two with a personal stake and with previous personal baggage. The majority will be well advised to stand firm on its own thinking and not to let itself be swayed by anybody's passionate pleas. A unanimous Report is a virtue only up to a point.

(3) The CC may be tempted actually to draft out something like a 'Competition Bill'. Their draft may be excellent in itself. However, there is a big gap indeed between the cup and the lip. It is good to recall a point or two about the old Monopolies Enquiry Commission. It reported in 1964. Brilliant members blessed it too. It too produced an excellent looking draft for an M.R.T.P. Act. However, when their Bill went before Parliament, a whole new chapter, the notorious chapter III, titled 'Concentration of Economic Power', was superimposed at the instance of the politicians: a chapter that was not even thought of by the brilliant Enquiry Commission. It was the brainchild of the politicians bitten by the socialist sedative. Unsurprisingly, it is this chapter which, in retrospect, has turned out to be easily the worst part of the MRTP legislation. It had to be totally repealed in the early 1990s; but not until Indian industry and the country had suffered a grievous blow. (The cost of the MRTP Act to India's economic development is an enormously engaging subject in itself. Some other time.) I earnestly hope that the CC would not miss the message of this mundane story.

(4) The CC should not be unduly overawed by what some other countries are doing about this issue. The evidence is not conclusive in any case. If e.g., the US feels that its economy has duly benefited from its extensive Competition legislation (known there as the Anti-Trust legislation) so be it, and good luck to them. Singapore has one of the world's most competitive

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economies. It has no competition law. Some other countries can boast of an elaborate competition law but not of a truly competitive economy. Interestingly, the World Bank, OECD, the U.S.-all seem to be taking quite some interest in our framing a Competition law. I am touched.

In a recent informal chat, a visiting US expert on Competition policy agreed that in India far too many laws had in fact become roadblocks to competition. He thought of India as the land of the 'policy of irony': every good-sounding economic policy that is enacted has the opposite effect of what is intended. Nevertheless, he pleaded for a new Competition Law for India, saying, he hoped this time it would be different! Some hope!

**Comment [D1]:** This refers to what Dr Russell Pittman said in his E Mail to me dated Jan 3, 2000.opy kept in file.

(5) Most laws of this nature end up in creating some sort of a government agency to administer the law. If a law comes, can a new government department be far behind? Competition law will be no exception. The US has its sprawling 'Anti-trust Division' within their Department of Justice. It appears that the CC will end up proposing a Competition Commission. In fact, looking at the way the terms of reference of the CC have been framed, I suspect that the whole exercise is aimed at securing an enlargement of the present MRTP Commission by leaps and bounds. That would be most unfortunate, and for good reasons:

(6) The mandate of a Competition Agency should, as emphasized in an excellent recent OECD/WORLD BANK study, extend far beyond merely enforcing the competition law. 'It must assume the role of competition advocate, acting pro-actively to bring about government policies that lower barriers to entry, promote deregulation and trade liberalisation, and otherwise minimise unnecessary government intervention in the market place.' This latter role is not only far more important but more challenging too. For, the first experience that many individuals have with free markets, notably in countries (like India) in transition from planned economies, is negative, not positive. The Study elaborates at length as to how the Agency should go about playing this role. Its telling, but not very surprising, conclusion is that in most countries, while the 'Agency' managed to enforce the law, it has had only a very limited success in this pro-active role.

**Comment [D2]:** 'A Framework for the Design & Implementation Competition Law & policy' Published first Nov,1998 by OECD/IBRD. Copy of it was borrowed from the Bombay Chamber. Selected pages Xeroxed and kept. Sunday January9, 2000. (00.30 a.m.)

(7) In India, it is inconceivable that a government sponsored agency, by whatever name it is called, and howsoever it is constituted, will even start succeeding in this proactive role. Governments (the politicians and the bureaucrats alike) will do dumb things that ruin competition. It is idle even to expect that an Agency within the Government will call a spade a spade, and will go round educating and moulding public opinion to stop or postpone from being enforced a bad imminent anti-competition policy. I have my serious doubts, arising from decades of experience, about such an Agency succeeding in even enforcing a Competition law. (That is another matter.) Moreover, there is the simple rule: THE LARGER THE AGENCY, THE DUMBER THE ENFORCEMENT.

(8) The economics Nobel Laureate Ronald Coase once said that if an economist delays the adoption of a bad law by one week, he has earned his lifetime salary several times over. Happily, in India, indeed many bad economic policies destroying competition have been revised or partially reversed; many others have been prevented from seeing the light of the day and many have been delayed. Public opinion has been moulded and spades have been called spades.

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(Diamonds have been called diamonds too.). But for this, our society must salute those few courageous and patriotic leaders, economists and thinkers, (like Mr. Nani Palkhiwala) who sacrificed personal popularity for years and dared to keep on expressing their convictions without falling a prey to wishy washy conventional wisdom. The competition scenario in our country would have been far more disturbing, but for their crusade. Government sponsored agencies are singularly unsuitable to produce such leaders (while in service!).

(9) Even in the world's free-market economies the important task of promoting competition is today more effectively carried out by numerous independent public policy think tanks through high grade studies undertaken by them. 'The Institute of Economic Affairs' in London, 'The Cato Institute' in Washington D.C. or 'The Fraser Institute' in Vancouver comes readily to mind; but there are indeed many others equally good ones. Presidents and Prime ministers the world over have gratefully acknowledged their role.

(10) This does not mean that good governments have no role to play in promoting competition. Far from it. I visualise at least a three-fold role:

First, governments must help create conditions for the smooth functioning of markets. This includes not only dissemination of full and prompt market oriented information, but also creating the requisite physical, technical and financial infrastructure.

Secondly, governments or their concerned agencies can chose to be players in the market, as distinct from being regulators. If in its wisdom, a government feels that full scale open market competition is not giving farmers remunerative prices, nor helping the consumers, but is only lining the pockets of the middlemen, it is welcome to buy from farmers their produce at higher than the market prices and sell effectively in open market without asking for a subsidy. If the RBI feels that the rupee is depreciating unnaturally, it is welcome to sell its own dollars to arrest the fall. But in either case, the concerned agency should not force its views on the market by controls and regulations.

To prevent too free a play of market forces, or to restrict the abuse of dominance is the third vital function for the governments. Competition is wonderful; but it is not everything. Even the basic functions of defence or of the maintenance of law and order need to be seen in this light. The wide spread restrictions imposed by practically all rich countries on the immigration of cheap but equally productive labour from developing countries are also explained (though, to me, not very convincingly at all) on the ground of preventing possible abuse of open competition. Indeed governments are needed to carry out these restrictive sorts of functions; and many governments are good at it.

(11) That is because, as the OECD/IBRD study readily concedes, 'there is more to competition than competition legislation'. If that 'more' is present, competition legislation is not needed at all. If that 'more' is absent, any amount of competition legislation is of no avail.

I have every hope that, given the enormous pool of dedicated talent among its membership, the CC will ponder over these musings before deciding to burden India's economy with one more law and one more government agency

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