Development and Enforcement of Competition Laws in SAARC Countries to deal with Cartelization

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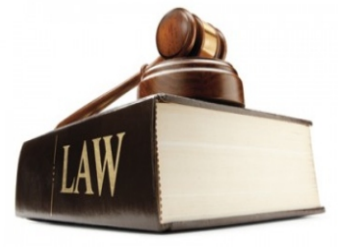
Abstract: This paper briefly analyses the development and enforcement of competition laws and policies in major market economies, with special focus on the South Asian countries grouped as SAARC and makes recommendations as to how SAARC could promote sharing of competition regulation and enforcement procedures in order to deter cartels in their respective jurisdictions as well as in the region as a whole. The paper also examines different types of cartels and anti competitive practices and their impact on consumers and small businesses vis-a-vis the role and benefits of competition policy and anti-trust laws in preventing and controlling cartels and monopolies.

Keywords: Cartels, Monopolies, Competition Law and Policy, Anti-competitive Agreements, Restrictive Trade Practices, Collusion, Abuse of dominant position, Price-fixing, Bid-Rigging.



A broad insight at the history of cartelization in South Asian countries implies that not only public sector organizations in this region are mostly operating under governments' control in a monopolistic environment, but also the major industries are owned and controlled by powerful groups and associations having political affiliations.

Introduction

The existence of Cartels and monopolies are detrimental to the effective functioning of free and competitive market economies as these harm the consumers and the society both in developed and developing countries. Cartels have a negative impact on markets, characterized by high prices, restricted supply, low efficiency and lack of innovation. It also brings economic inefficiencies due to market control and lack of competitiveness. In the present day, the governments around the world endeavour to put in place effective competition regimes to eliminate anti-competitive business practices and cartels and regulate markets to safeguard the interests of consumers and to achieve competitiveness and economic efficiency. This is largely ensured through the enactment and enforcement of competition laws and policies, including antitrust legislations, which are an effective tool against collusive cartels, monopolies, unfair and deceptive market practices and abuse of market dominance. The main objective of competition laws and policies are to create, promote and nurture free competition in the market and ensure enhanced consumer welfare and social justice. For regulating markets, governments establish independent and powerful 'Competition authorities' to ensure level playing field and healthy market competition and to take actions against hard core cartels.

In case of SAARC countries, we observe that there exist strong cartels network, especially in selected industry sectors like cement and sugar, which continue to dominate the markets. Unfortunately, the competition laws in SAARC countries have failed to control and break such cartels due mainly to lack of their enforcement mechanism and political will of governments.

In this Research Paper, we would be briefly looking into all these aspects of cartelization, anti-competitive practices and the role of competition laws and policies in SAARC countries under the following broad heads:

a) Competition - definition, types and benefits
b) Anti-competitive agreements
c) Cartelization definition, types and impact
d) Role of Competition Policy in preventing and controlling Monopolies and Cartels
e) Competition Laws in USA, UK, Europe and South East Asian countries
f) Competition Laws in SAARC countries (Bangladesh, India, Nepal, Pakistan and Sri Lanka)
g) Conclusion
h) Recommendations for SAARC Governments

Competition - definition, types and benefits

'Competition' is the life blood of a market economy

Competition is the life blood of a market economy and the key to survival in a

market driven economy. It signifies free contest and rivalry among the economic agents on level playing field with the goal of achieving greater market share or relative market supremacy. In a market economy, firms compete with each other by producing high quality goods at competitive prices in order to win the customers without resorting to any unfair or uncompetitive practices.

The literal meaning of 'competition' is a 'contestable situation where people fight for superiority'. In the **Oxford Dictionary**, competition has been defined as 'the activity or condition of striving to gain or win something by defeating or establishing superiority over others'. In the **Merriam-Webster Dictionary**, business competition has been defined as 'the effort of two or more parties acting independently to secure the business of a third party by offering the most favorable terms. In a market economy, competition is considered 'a process whereby firms contest against each other for securing consumers for their products'. In **Economics**, 'competition' has been defined as the 'rivalry among companies selling similar products and services with the objective to maximize profits, market share and sales volumes'

Types of Competition

While developing a marketing strategy, every company has to decide as to whether it want to contest with other market competitors on the basis of only 'price' or 'non-price' elements in the marketing mix. As such, competition has been broadly classified into two types i.e. price competition and non-price competition, which are briefly explained below:

1) Price Competition

It signifies competition among the suppliers of products or services whereby they try to win customers by offering lower prices. Their main intention is to distinguish their product or service from the competing products or services on the basis of low price.

2) Non-Price Competition

It signifies competition among the suppliers of products or services whereby they try to win customers not only by lowering price but also by other aspects of marketing strategy such as advertising and promotion, after sales-service, free gifts, coupons etc. Their main intention is to distinguish their product or service from competing products or services on the basis of promotional marketing strategy.

Benefits of Competition

- It creates rivalry among the suppliers to offer quality products at fair prices
- It stimulates innovation and development of new and better products by competitors
- It enhances production volume through adoption of cost efficient techniques
- It helps in efficient allocation of resources leading to production optimization.
- It enhances the quality of products through improvement in production technologies
- It creates a free market economy for smooth entry and exit of economic agents
- It encourages entrepreneurship leading to market-led economic growth
- It enhances efficiency of business enterprises leading to economic efficiency
- It enhances corporate governance in firms
- It provides wider choice of products to consumers at lower prices
- It leads to maximization of consumer welfare
- It helps suppress inflation, alleviate poverty and raise living standard of people.

Models of Competition	Number of Buyers	Number of Sellers	Nature of products	Entry and Exit Barriers
Perfect competition	Very large	Very large	Identical products	None
Monopoly	Very large	One	Single product	Very large
Monopolistic competition	Very large	Large	Minimum differences	None
Oligopoly	Very large	Very few	Large differences	Large

(**Source :** Competition Policy and Law Made Easy: Monographs on Investment and Competition Policy, by CUTS Centre for International Trade, Economic and Environment)

Anti-competitive agreements

Anti-competitive agreements are unfair market malpractices

Anti-competitive practices are those unfair market malpractices through which an unscrupulous supplier of a product or service, enjoying monopoly power, exploits the consumers through misleading advertisements, packaging, hoarding and predatory pricing. The basic intention of such anti-competitive or restrictive business practices is to distort market competition to gain hold of consumers either through abuse of market power or making collusive agreements to fix prices and outputs or entering into mergers and forming cartels to gain market power.

Anti-competitive practices are those kinds of collusive agreements which cause or are likely to cause an appreciable adverse impact on the market competition. Such agreements could be either 'horizontal' or vertical' depending upon the collusive arrangement of the competitors.

a) Horizontal Agreement – An agreement between or among the competitors such as agreement for price fixing; limiting or restricting production; controlling markets, sharing supply sources etc. Horizontal agreement also include 'cartels'.

b) Vertical Agreement – An agreement between members of the same production chain for example agreement between manufacturers and their dealers

for excusive supply or distribution agreements or tie-in arrangements. It may or may not be anti-competitive.

Cartelization – definition, types and impact

'Cartelization' is an anti-competitive and illegal practice

'Cartelization' is considered as one of the most pernicious anti-competitive practices so much so that in many countries forming cartels is treated as a criminal or illegal activity under the law resulting in heavy fines and penalties and even jail sentences. In the long run, cartelization greatly harms businesses and consumers and leads to artificial surge in prices; restriction in choice for consumers; and reduction in quality of products. **However, it may be noted here that fixation of price by governments is not considered cartelization.**

'Cartelization' is defined as an act whereby the manufacturers or suppliers associate with each other for fixing high prices or limiting production or restricting market competition so as to create monopoly or oligopoly in the market. Such an association or collusion may either be overt or covert i.e. the manufacturers or suppliers may either have a tacit or secret understanding or they may have open agreement to fix market price, increase prices, decrease quality or allocate market.

ICMA Pakistan feels that new insights by Prof. Tirole, 2014 Noble Prize Laureate would help governments around the world to encourage the powerful firms in their jurisdictions to become more productive and at the same time prevent them for harming other competitors and the consumers.

A Cartel is an agreement between competing firms, not to compete, or to restrict competition. According to **Transparency International (TI) Anti-Corruption Plain Language Guide, 'collusion'** has been defined as "a secret agreement between parties, in the public and/or private sector, to conspire to commit actions aimed to deceive or commit fraud with the objective of illicit financial gain. The parties involved often are referred to as **'cartels'."**

According to the Organization for Economic Cooperation and Development (OECD), **'hard core cartels'** have been defined as "the most egregious violations of competition law as they injure consumers by raising prices and restricting supply which eventually makes goods and services completely unavailable to some purchasers and unnecessarily expensive for others. In fact, this recommendation was adopted by the OECD Council on 25th March 1998 with the advice to all the member countries to ensure that their competition laws should deter 'hard core cartels' by providing for effective sanctions and adequate enforcement procedures as well as establishing institutions to detect and remedy hard core cartels. Such a deterrence against hard core cartels is also important from an international perspective, as distortion of world trade creates market power and inefficiency in countries whose markets would otherwise be competitive.

Types of Cartelization?

There are four broad types of cartelization viz. price fixing; market sharing or allocation; restriction on output and bid-rigging. The main objective of all these cartelization arrangements are to create monopoly and restrict competition. We will discuss each of them briefly as under:

1) Price Fixing

It is the most common type of cartel and occurs when two or more competitors in the market make an agreement to set a fixed or specific price of their goods or services. In addition to a group of producers or sellers, such an implicit agreement can also be made by the trade associations to fix, control and maintain prices of their products.

2) Market Sharing or Allocation

It is a kind of horizontal arrangement whereby two or more of the competitors makes an agreement to divide or allocate markets among themselves. In such an arrangement, exclusive allocations are made on the basis of customers, products or geographical territories and regions and selling is done only in assigned segment of the market.

3) Restriction on Output

Such a cartel is formed when two or more competitors make an agreement to reduce or restrict the output with the intention of limiting or controlling production and supply so as to increase prices of their goods or services in the market and maximize profits.

4) Bid-Rigging or Collusive Tendering

In this form of anti-competitive cartel, two or more of competitors make an agreement as to who should win a bid or tender. Such a collusive tendering is another kind of price fixing and it is ensured by the bidders that tender documents are submitted in a manner agreed upon by the members of the cartel. One bidder is designated to win tender for which others either withdraw or submit bids with higher prices or unacceptable terms. In compensation, they get sub-contracts from the winning bidder or get their designated turn in future bids. The customers are not aware of such a collusion or cartelization.

What are International Cartels?

It is important to understand as to how an **'international cartel'** operates. An 'international cartel' is said to exist, when not all the firms in a cartel are based in the same country or when the cartel affects markets in more than one country. Two examples of international cartels are import cartels and export cartels. An **'Import cartel'** consists of firms or association of firms who make agreement for importing into any country. An **'export cartel'** comprises of firms based in one country with an agreement to cartelize markets in other countries.

The Organization of Petroleum Exporting Countries (OPEC) is one of the glaring examples of international cartel which decides increase in world prices of petroleum products through imposition of production quota and fixing of prices. In addition, international cartels are also very much visible in commodities like steel, rice, fertilizers, chemicals etc.

Breeding grounds for Cartelization

There are certain market conditions under which the producers and sellers find it easy to form and sustain cartels and other types of anti-competitive agreements such as:

1) Presence of only few competitors in the market
2) Hurdles in entry and exit of suppliers in the market
3) homogeneity of products
4) Negligible difference in the cost of production
5) Consumers relying heavily on certain products
6) Collusion history in the market

Adverse Impact of Cartelization on Consumers and Small businesses

Cartelization have an adverse impact on both the consumers as well as small businesses. The consumers suffer due to artificial price surge in essential commodities, food items, fuel, transport etc, which compel them to reduce their consumption of goods and services. Similarly, small businesses find it difficult to survive in a cartelized market situation as due to dominance of few firms they cannot sell their products or services at competitive prices, rather they have to sell them at prices set by the cartel. Moreover, small businesses have to purchase inputs at higher prices which raises their cost of production.

Role of Competition Policy in preventing and controlling Monopolies and Cartels

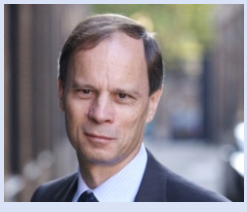
A Competition policy signify those tools that help bring about efficient market functioning; promote entrepreneurship and stimulate economic growth. It harnesses competition process and prevents the product suppliers or service providers to protect or expand their dominant position or market share at the cost of consumers' welfare. In this way, a healthy market competition develops which safeguards the interests of consumers. The consumers benefit in a competitive market by getting high quality goods or services of their choice at the lowest prices. The customers' choice eventually decides the marketing strategy of the competitors.

A competition policy, backed by an effective legislation, helps protect and promote competition through institutional structure that eventually maximizes efficiency; improves products quality and ensures its supply to the market at lowest possible prices for the benefit of consumers. A competition policy or law prevents all kinds of anti-competitive practices like collusive agreements; concentration or abuse of market power or abuse of dominant position.

A competition policy includes broader measures to enhance market competition such as economic deregulation measures, liberalized trade policy, micro-industrial policies and lucrative incentives for foreign investments. On the other hand, a competition law or an anti-trust law is a set of rules and regulations which are aimed at preventing anti-competitive practices or restrictive business practices by companies through government intervention.

The new insights and research on competition policy and market regulation concludes that these should be adopted to specific conditions of each industry. Professor Jean Tirole who has won the 2014 Nobel Prize in Economics for his research on 'market power and regulation of large powerful firms in an oligopolistic market, has emphasized on the need for designing such industry-specific policies such as telecommunications and banking. **ICMA Pakistan feels that these new insights by Prof. Tirole, 2014 Noble Prize Laureate would help governments around the world to encourage the powerful firms in their jurisdictions to become more productive and at the same time prevent them for harming other competitors and the consumers.**

Prof. Jean Tirole, French Economist Wins 2014 Nobel Prize in Economics on 'Market Power and Regulation of Monopolies'



The 2014 Sveriges Riksbank Prize in Economic Sciences, in memory of Alfred Nobel, has been awarded to Professor Jean Tirole, a French economist and an expert on monopolies, for his micro-economic research on market power and industries dominated by few large, powerful firms and what kind of regulations and competition policies are required to make them act in society's best interest, especially in preventing consumers from damages by their monopolistic behavior.

Professor Jean Tirole, 61, works at the Industrial Economic Institute at the Toulouse School of Economics in France. He has spent almost thirty years on studying on 'Oligopolies' i.e. how few large firms can dominate and damage the markets and what regulations should governments bring to tackle them. Tirole argues that the best regulation is adapted to the conditions of each industry, such as telecoms and banking, rather than trying one-size-fits-all approach. The traditional solutions, such as capping prices or banning cooperation altogether, could do more harm than good. Tirole, in his research, has also provided practical policy recommendation on kind of competition policy and regulations for telecoms, banking and energy markets.

Competition Laws in USA, UK, Europe and South East Asian countries

Almost all the developed and developing nations in the world have enacted and enforced anti-trust or competition laws in their jurisdictions in order to prevent unhealthy business practices. Let's have a look at the competition regimes in the USA, European Union (EU) and the South East Asian countries, mainly represented by ASEAN grouping.

1) USA

In 1890, the US Congress passed the first antitrust law by the name of **'Sherman Act'** which is a comprehensive charter of economic liberty aimed at preserving free and fair competition as the rule of trade. In 1914, the US Congress passed two more antitrust laws viz. the **Federal Trade Commission (FTA) Act,** which created the FTC and the **Clayton Act.** With some revisions, these are three core federal antitrust laws in USA, which intends to protect the competition process for the benefit of consumers

2) United Kingdom (UK)

The competition law in UK comprises of a range of legislations mainly governed by four principal Acts of Parliament, each dealing with separate aspect of competition policy i.e.

a) **Fair Trading Act, 1973** dealing with mergers and abuses of monopoly power

b) **Competition Act, 1980** dealing with anti-competitive practices by companies.

c) **Restrictive Trade Practices Act, 1976** dealing with agreements that restrict persons or companies from competing freely.

d) **Resale Prices Act, 1976** dealing with attempts to impose minimum prices at which goods can be resold.

3) European Union (EU)

The European anti-trust or competition policy was developed from the two central rules i.e. Article 101 and Article 102 of the **'Treaty on the Functioning of the European Union'. Article 101** prohibits 'agreements between two or more independent market operators which restrict competition', whereas **Article 102** prohibits 'firms holding a dominant position on a determined market to abuse that position' for example by charging unfair prices; by limiting production or by refusing to innovate to the prejudice of consumers. Since May 2004, all the national competition authorities in the EU have been empowered to fully apply Articles 101 and 102 of the Treaty in order to ensure that competition is not distorted or restricted.

4) South East Asian Countries (ASEAN)

ASEAN grouping comprises of ten south east Asian countries namely Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam. In the ASEAN Economic Blueprint, all these ten governments have committed to introduce nation-wide competition policy and law by 2015. The objective is to ensure that a level-playing field and a culture of fair business competition are fostered for enhanced regional and economic performance in future.

Competition Laws in SAARC countries

1) Bangladesh

When Bangladesh became an independent country after separation from Pakistan in 1971, it inherited all the Pakistani Laws, some of which remained valid for quite some time with few modifications, whereas many of them were not notified for enforcement. The "Monopolies & Restrictive Trade Practices (MRTP) (Control and Prevention) Ordinance, 1970 was one of such legislations that was enforced by replacing the words 'Pakistan', 'Central Government' and 'Rupees' with the words 'Bangladesh', 'Government' and 'Taka' respectively as required under Section 3 and Second Schedule of 'Bangladesh Laws (Revision and Declaration) Act, 1973. MRTP Ordinance remained the only anti-monopoly law in Bangladesh and provided the legal provision for taking action against any unfair competition or illegal trade practices. It was mandatory under said Ordinance, that the government, through notification in official Gazette, shall constitute a 'Monopoly Control Authority' consisting of not less than three members.

The Finance Minister confirmed that during five years i.e. from April 2008 to April 2013, the government found that many sectors of national economy were operating under the influence of cartels, including banking, stock exchange, cement, sugar, ghee, jute bags, poultry, telecom, power equipment, shipping, print media and accountancy.

In 1996, a draft legislative bill was proposed in the Parliament for enacting a competition law in Bangladesh. However, it took almost sixteen years to formulate and finally enact the said law.

In June 2012, after almost 40 years of independence, the Bangladeshi Parliament passed the long-awaited 'Competition Act' which replaced the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970. The new competition law is aimed at controlling and preventing anti-competitive agreements (cartels) and abuse of dominant positions with a view to improve production, pricing and achieve an efficient market. It is also intended to ensure a healthy competition in business practices by breaking markets cartels and syndicates.

In November 2012, the Commerce Ministry constituted a 'Committee' to formulate rules for the 'Bangladesh Competition Commission', required to be created under the

provisions of new Competition Act 2012, to oversee the execution and implementation of the law. The proposed Commission would comprise of a Chairperson and four members and shall investigate anti-competitive practices either on its own or upon receiving complaints. It would also oversee the market situation and take actions against unscrupulous businesses and organizations.

In September 2013, the Bangladeshi Parliament announced appointment of a Joint Additional Secretary to the post of Secretary which is expected to work on setting up the office of the newly created Bangladesh Competition Commission. The Commission has not yet started functioning and its terms of reference and rules are also to be framed.

2) India

In October 1960, the Government of India constituted 'Mahalanobis Committee on Distribution of Incomes and Levels of Living' under chairmanship of Prof P. C. Mahalanobis. The Committee submitted its report in 1964 in which it pointed towards growing income inequalities in India.

In April 1964, the Indian government, on suggestion of the Mahalanobis Committee, formed a 'Monopolies Enquiry Commission' to enquire into the extent and effect of concentration of economic power in private hands and the prevalence of monopolistic and restrictive practices in important sectors and economic activities.

In October 1965, the Monopolies Enquiry Commission submitted its report to the government in which it recognized the existence of monopolistic and restrictive practices and suggested to devise a public policy to avert of minimize the dangers of such practices.

In 1967, a 'Monopolies and Restrictive Trade Practices Bill was introduced in the Parliament which was referred to the Joint Select Committee. It took almost two years to pass this Bill.

In December 1969, the Indian Parliament passed 'Monopolies and Restrictive Trade Practices Bill which led to enactment of first competition law that is "Monopolies and Restrictive Trade Practices Act, 1969 which came into force from 1st June 1970. The MRTP Act intended to prevent the concentration of economic power; control monopolies and prohibit monopolistic and restrictive trade practices in the market.

In June 1970, a Monopolies and Restrictive Trade Practices Commission was established under the MRTP Act 1969 with investigatory, advisory and adjudicatory functions. Its Chairman was appointed by the Central Government. A Director General of Investigation and Registration was also appointed by the government.

In 1977, the government constituted 'Sachar Committee' under chairmanship of Justice Rajinder Sachar which proposed amendments in the MRTP Act 1969. On the suggestions of this Committee, necessary amendments were introduced in 1982 and 1984.

In 1984, the MRTP Act was amended through promulgation of the 'Monopolies and Restrictive Trade Practices (Amendment) Act, 1984 which provided measures to deal with unfair trade practices in order to protect the interests of consumers. Further amendment were also made in the MRTP Act in the year 1988 and 1991, respectively.

In October 1999, the government constituted a high-level Raghavan Committee to develop a 'competition policy' and related laws in light of international economic developments with the objective of promoting competition in the Indian market shift of focus from controlling monopolies as envisaged in the MRTP Act. The Committee submitted its report in May 2000.

In November 2000, a draft competition law was presented to the Government and later a 'Competition Bill' was introduced in Parliament which referred it to the Standing Committee.

In December 2002, the Competition Bill was passed by the Indian Parliament after considering suggestions of the Standing Committee which led to enactment of the 'Competition Act 2002'. The Bill received Indian President's accent on 13th January 2003. Some sections of the Act were enforced in March 2003 whereas majority of other sections came into effect in June 2003.

The SAARC countries must encourage and strengthen competition in their economies as it can help them greatly in achieving sustainable private-sector led growth and reduce poverty which is a major hurdle towards economic growth and prosperity in the region.

In October 2003, the Competition Commission of India (CCI) was established but it could not be made functional. Before its Chairman could assume office, a public interest litigation was filed in the Supreme Court of India. The Court's judgment came in January 2005 and in pursuance of Court's observations, a Competition (Amendment) Bill, 2007 was presented in the Parliament.

In 2007 and 2009, the Act was amended through the Competition (Amendment) Act, 2007 and Competition (Amendment) Act, 2009, respectively. One of the amendment was to constitute a 'Judicial Appellate Tribunal', a quasi-judicial body, to hear and dispose of appeal against the orders of the Commission.

In March 2009, the Competition Commission of India (CCI) was duly established and became functional under Competition Act 2002 for administration, implementation and enforcement of the Act. It comprised of a Chairperson and six members appointed by the Central Government.

In May 2009, the provisions of Competition Act 2002, relating to anti-competitive agreements and abuse of dominant position were enforced and the Commission started dealing in cases under these provisions. The Commission has so far reviewed anti-competitive practices in diversified sectors such as manufacturing, mining, stock

exchanges, automobile manufacturing, real estate, pharmaceuticals, financial sector etc.

In September 2009, MRTP Act 1969 was repealed and replaced by the Competition Act, 2002 through issue of a gazette notification dated 28th August 2009. Competition Act 2002 becomes the current competition law in India.

3) Nepal

Nepal does not have a competition law at present, however some initiatives have been taken by the government to enact such a law in order to prevent market malpractices. The Nepalese Ministry of Industries, Commerce and Supplies has developed a draft competition law but it is still under debate and has not been promulgated, through it was agreed by Nepal government, during WTO negotiations, that it would enact such a law by July 2004. Several legal documents do have explicit provisions related to market competition and preventing cartelization such as the 1990 Nepal Constitution. According to Article 25(2) of Constitution, the government or the State has been assigned the role of preventing country's available resources from being concentrated within a limited section of society as well as preventing economic exploitation of any class of individual through arrangements for equitable distribution of economic gains.

In 1975, the Nepalese government promulgated the 'Black Marketing and Certain Other Social Offences and Punishment Act, 1975' with the objective to control business malpractices such as black marketing, profiteering, hoarding, adulteration and certain other social offences.

In 1992, the 'Industrial Enterprises Act, 1992' was enacted and enforced in Nepal which was the first law to mention competition related to industry. The Enterprises Act called for making arrangements to foster industrial enterprises in a competitive manner through increase in productivity and provision of conducive investment environment.

In 1998, the government enacted the 'Consumer Protection Act, 1998' in order to protect the rights and interests of consumers through prevention of monopoly as well as restrictive and unfair trade practices. This Act aimed at creating a competitive business environment.

In February 2007, the government unveiled the 'Competition Promotion and Market Protection Act, 2007 with a view to deal with anti-competitive practices. This Act prohibits anti-competitive agreements between two or more parties with the intention to limit or control competition as well as abuse of dominant position by a producer or distributor. The Act prescribes stringent actions against those who adopt unfair market practices. A Competition Promotion and Market Protection Board has been established under this Act. The Act, however, does not apply to export business and business relating to small and cottage industries.

4) Pakistan

In February 1970, the Pakistan government promulgated the "Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970 which provided for measures against undue concentration of economic power; growth of unreasonable monopoly power and unreasonably restrictive trade practices.

In August 1971, a quasi judicial statutory body i.e. Monopoly Control Authority (MCA) was established under the MRTP Ordinance, 1970 to administer the MRTP Law. MCA used to be a wing of Corporate Law Authority and made a separate and autonomous regulatory body.

In October 2007, the Competition Ordinance, 2007 was promulgated which repealed the MRTP Ordinance 1970. Under this Ordinance, the Monopoly Control Authority (MCA) was dissolved and a new 'Competition Commission of Pakistan (CCP) was established as an independent quasi-regulatory, quasi-judicial body with objectives to create healthy business competition for improving economic efficiency and protecting consumers from anti-competitive practices.

In November 2009, the Competition Ordinance, 2007 was re-promulgated as it was to expire on 28 November 2009. The re-promulgation of this Ordinance validated all the decisions taken by the CCP during period from February 2007 to November 2009 with regard to investigations against cartels and companies involved in collusive behavior and deceptive market practices.

In January 2010, the National Assembly passed the Competition Bill 2009 and it was forwarded to the Senate for approval where it remained in abeyance. The Competition Ordinance 2009 expired on 26th March 2010 and the CCP was defunct for 22 days due to lapse of the Ordinance.

In April 2010, the Competition Ordinance 2009 was again re-promulgated, however it again lapsed on 16th August 2010 and the CCP became a defunct body.

Finance Minister Ishaq Dar confirms that several industry sectors in Pakistan are operating under the influence of Cartels

On 2nd July 2014, in response to a questioned raised in the National Assembly about the existence of cartels in Pakistan, the Federal Finance Minister, Mr. Muhammad Ishaq Dar submitted a written statement to the Parliament (as reported in the press) in which he confirmed that many industries and sectors in Pakistan have formed cartels in order to obtain an undue economic advantage. The Finance Minister confirmed that during five years i.e. from April 2008 to April 2013, the government found that many sectors of national economy were operating under the influence of cartels, including banking, stock exchange, cement, sugar, ghee, jute bags, poultry, telecom, power equipment, shipping, print media and accountancy.

It was further informed by the Finance Minister in his written statement that cartelization is a civil offence in Pakistan and existence of cartels can only be proved on the basis of evidence after an enquiry is conducted under the Competition Act, 2010. In case any company is found involved in cartelization, it could be penalized upto Rs. 75 million in fines or 10 percent of the annual turnover of the relevant company under Section 38 of the Competition Act, 2010.

In September 2010, the Pakistani parliament passed the Competition Act 2010 which covered the current economic realities as well as corrected the deficiencies of MRTP Ordinance 1970 related to definition, coverage, penalties and other procedural matters. The Competition Act 2010 envisaged establishment of a Competition Appellate Tribunal and included provisions with regard to prohibition against the abuse of a dominant position; entering into agreements aimed at preventing, restricting or reducing market competition and deceptive market practices.

5) Sri Lanka

In February 1948, Sri Lanka got independence and till 1977 it did not have any competition law or policy to promote market competition and prevent monopolies, mergers or anti-competitive practices. Instead, a policy of consumer protection was followed through administered prices and provision of consumer subsidies. A Control of Prices Act was however promulgated in 1950.

In 1975, the government promulgated the 'National Prices Commission Act of 1975' under which a National Prices Commission was established to control prices of consumer items. In 1979, a Consumer Protection Act of 1970 was also enforced for consumer protection.

In 1987, the first legislation on competition policy was introduced with the enactment of the 'Fair Trading Commission Act (FTCA) No. 1 of 1987 which came into force on 1st August 1987. This Act repealed the National Prices Commission Act of 1975 and certain sections of the Consumer Protection Act of 1979, leading to establishment of a Fair Trading Commission. This Act dealt with the control of monopolies and mergers and prevention of anti-competitive market practices. It aimed at formulation and implementation of national price policy. In 1993, this Act was amended through the Fair Trading Commission (Amendment) Act No. 57 of 1993.

In 1978, another piece of legislation with the title of 'Consumer Protection Act No. 1 of 1978' was enacted for consumer protection. This Act was amended twice in 1992 and 1995 and it was finally passed in the Sri Lanka Parliament in January 2003.

In January 2003, the Consumer Affairs Authority Act was passed in the Parliament and as a result the Consumer Protection Act of 1979; the Fair Trading Commission Act of 1987 and the Control of Prices Act of 1950 were repealed. The CAA Act represents the current competition law in Sri Lanka and intends to promote effective competition and protect the consumers. This Act aims to establish a 'Consumer Affairs Authority' and a 'Consumer Affairs Council' to carry out investigations into anti-competitive, unfair and restrictive trade practices.

In July 2003, a Consumer Affairs Authority was established and became operational under the Consumer Affairs Authority Act No. 9 of 2003. The Authority has been formed after merging the Fair Trading Commission and the Department of Internal Trade of Sri Lanka. CAA comprises a Chairman and atleast 10 members representing different fields of expertise. The Consumers Affairs Authority comes under the purview of Ministry of Cooperatives and Internal Trade and intends to protect consumers interests and ensure fair market competition in Sri Lanka.

Conclusion

A broad insight at the history of cartelization in South Asian countries implies that not only public sector organizations in this region are mostly operating under governments' control in a monopolistic environment, but also the major industries are owned and controlled by powerful groups and associations having political affiliations. These strong political and business groups exert pressure on the government as well as Competition Commissions and regulatory bodies not to take actions against cartels and monopolies formed in different sectors of the economy. The existence and mushroom growth of such cartels involved in hoarding of basic food items like sugar, wheat, vegetables, meat and milk and other items like cement, steel etc, in almost SAARC countries is a testimony to this fact. This has resulted in artificial shortage of these items in markets of these countries which ultimately deprives the consumers and general public.

It can be concluded that a strong political will is quite imperative for the government in SAARC countries if they intend to enforce competition and antitrust laws in their respective countries to address the rising influence and control of vested interest involved in cartelization and monopoly. At the same time, business and economic players in these countries should change their mindset to prefer the national interest over their self-interest. They should realize that in today's global competitive environment, international entrepreneurs only invest in those jurisdictions, where in addition to conductive investment policy and security situation, the competition policies and laws in those countries are also affectively enforced.

The Accountancy bodies in SAARC countries, including ICMA Pakistan should consider to introduce competition law as an elective subject in view of the significance of this discipline for the national economies of the regional countries.

It should be kept in mind that the SAARC countries have been making concerted efforts to promote intra-SAARC trade and investment and other forms of economic interaction in the region, however, all these efforts would not bear fruit if the competition laws in these countries are not enforced in the true spirit so as to eradicate regional and international cartels operating in the region. A culture of effective competition could only be achieved through a meaningful and regular coordination between the Competition authorities in the SAARC countries.

Recommendations for SAARC Governments

The SAARC countries must encourage and strengthen competition in their economies as it can help them greatly in achieving sustainable private-sector led growth and reduce poverty which is a major hurdle towards economic growth and prosperity in the region. In this connection, following recommendations are presented for consideration by the domestic Competition authorities and SAARC governments for dealing with cartelization and anti-competitive practices in their respective countries as well in south Asian region through joint collaboration:

(1) Setting up a 'South Asian Competition Network'

Mr. Khalid Mirza, former Chairman of Competition Commission of Pakistan (CCP) had, in 2010, proposed to the Competition Consultative Group (CCG) that a 'South Asia Competition Network (SCN) be established to highlight the peculiar issues and sensibilities of this region so that these aspects are duly considered in determining global standards for enforcement of competition norms and practices. However, this proposition has still not been realized despite some initial consultations between competition authorities in SAARC countries.

We think that this is a valid proposal which merits attention of the SAARC governments as SCN would provide a useful platform to the regional countries for enforcement of competition laws as well as enhancing operational effectiveness at the regional level.

(2) Establishing a 'Separate Chapter on Competition Law' at SAARC Law Forum

Mr. Vinod Dhall, former Chairman of the Competition Commission of India (CCI) had few years back suggested at a regional seminar that a 'separate Chapter on Competition Law' should be established at SAARC Law Forum in order to ensure exchange of information among the SAARC countries. However, initiative has not been take so far to transform this suggestion into reality.

We think that this is a good suggestion and need to be implemented by the SAARC Governments to increase coordination and consultation among the competition authorities in the region to improve the legislative and regulatory procedures for dealing with cartels.

(3) Introducing 'Competition Law as an Elective Subject' at Academic Institutions

The Competition Commission of Pakistan (CCP) has been holding advocacy sessions since last few years with various prominent business academic institutions and Universities with the proposal to introduce 'Competition Law' as an elective subject or academic course in order to create awareness and interest in this field of law which has assumed wide significance in the economic regulation. We think this is also a very interesting and meaningful proposal which need to be pursued by the CCP with full force as it would not only provide sustainable increase in knowledge relating to competition issues but would also create a nexus between competition regime and academic circles in the country.

The Accountancy bodies in SAARC countries, including ICMA Pakistan should also consider to introduce competition law as an elective subject in view of the significance of this discipline for the national economies of the regional countries. Furthermore, trainings and internships be also provided to the students in the field of competition law and policy.

(4) Creating a 'SAARC Competition Fund' from fines collected from Cartels

The SAARC governments may consider creation of a regional 'Competition Fund' to strengthen the enforcement and advocacy roles of competition authorities in the SAARC countries. Some portion of the fines collected from companies, found involved in cartelization and deceptive and anti-competitive practices, may be transferred to this fund and managed by the SAARC itself or any of its formed organization. Such a fund should be accessible to the competition authorities in the region to strengthen their competition regimes.

> **Professionals like management accountants and law experts should be engaged to assist competition authorities in SAARC to discharge their functions effectively.**

(5) Promoting 'Consumer and Civil Societies' to counter Cartels

The SAARC countries should promote and strengthen the Consumer and Civil Societies in their respective jurisdictions so that they could play a critical role in protecting consumers' interests by standing against and countering cartels and monopolies created by market suppliers. In this connection, the SAARC governments and competition authorities should develop a regional strategy to mobilize consumer action, in consultation with the Consumer Unity and Trust Society (CUTS) International, India which has already taken some initiatives in South Asia.

(6) Making the Competition Commissions completely independent

The SAARC governments should seriously consider to make their competition authorities completely independent from any government of economic influence so that they can perform their regulatory function freely and forcefully to ensure fair competition in their respective jurisdictions. They should be given more teeth to enforce financial and criminal penalties to deter cartels. Moreover, professionals like management accountants and law experts should be engaged to assist competition authorities in SAARC to discharge their functions effectively.

Please send your comments on this research paper on email:
research@icmap.com.pk or shahid.anwar@icmap.com.pk

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International Cartelization News
- Fines Imposed by European Union (EU)

EU fines Samsung, Philips and Infineon over Smartcard Chip Cartel

The European Union fined Infineon, Philips and Samsung 138 million euros (181 million dollars) for forming a smartcard chip cartel in Europe in its latest anti-trust case against technology firms. The German, Dutch and South Korean firms "colluded through bilateral contacts that took place in the period between September 2003 and September 2005," the European Commission said in a statement.

Japan's Renesas was granted immunity for revealing the cartel's existence. Infineon was fined 82.7 million euros, Philips 20.1 million euros, and Samsung 35.1 million euros, with the latter having its penalty reduced by 30 percent for having cooperated with investigators. Renesas and its joint venture parent companies Hitachi and Mitsubishi avoided a fine of more than 51 million euros because it was the first to reveal cartel's existence to the commission.

The commission said anyone harmed by the cartel may seek damages before the courts of the European member states. The EU has previously fined US computer chip giant Intel 1.06 billion euros for abusing its dominant market position. Earlier this year Google and the Commission agreed a deal over accusations the world's largest search engine was squeezing out competitors in Europe's search market, so avoiding legal action and potentially billions in fines.

EU fines European and Japanese producers of Car and Trucks in Cartel Settlement

The European Commission has found that two European companies (SKF and Schaeffler) and four Japanese companies (JTEKT, NSK, NFC and NTN with its French subsidiary NTN-SNR) operated a cartel in the market for automotive bearings and imposed fine of € 953 306 000 on them. Automotive bearings are used by car, truck and car part manufacturers to reduce friction between moving parts inside a vehicle.

Cars and trucks contain numerous bearings, for example wheel bearings, bearings for gearbox, transmission, alternator or air conditioning systems. The companies colluded to secretly coordinate their pricing strategy vis-à-vis automotive customers for more than seven years, from April 2004 until July 2011, in the whole European Economic Area (EEA). The companies involved in this secret cartel coordinated the passing-on of steel price increases to their automotive customers, colluded on Requests for Quotations and for Annual Price Reductions from customers and exchanged commercially sensitive information. This occurred through multi-, tri- and bilateral contacts. The size of the EU market for automotive bearings is estimated to be € 2 billion a year.

Japanese company JTEKT was not fined as it benefited from immunity under the Commission's 2006 Leniency Notice for revealing the existence of the cartel to the Commission. NSK, NFC, SKF and Schaeffler received reductions of their fines for their cooperation in the investigation under the Commission's leniency programme. Since all companies agreed to settle the case with the Commission, their fines were further reduced by 10%.

The decision is part of a major investigative effort into suspected cartels in the sector of car parts. The Commission already found cartels for wire harnesses in cars and for flexible foam used in car seats. The Commission is investigating more products, such as airbags, safety belts and steering wheels, air conditioning and engine cooling products and lighting systems.