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Importance of Free and Fair Competition for Economic Growth

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Abstract

Competition is an event or a contest in which people fight for superiority or supremacy. In the market, competition is taken as a process whereby firms fight against each other in order to secure customers for their products by adopting any means (fair or unfair). Therefore, each country enacts competition law by adopting competition policies for free and fair competition to achieve economic growth of country. Under the provisions of the Competition Law, unfair competition of businesses, monopolizations, restrictive agreements or arrangements among enterprises and abuse of dominant position in the market will be eliminated and controlled. By doing so, it will protect the grievances of public interests and will promote the economic growth of the country by cooperating in the free competition network for international and regional free flow of goods and services, free flow of investments, skilled-laboured workers and money. Moreover, it will encourage the innovative skill by protecting the intellectual property rights of the inventors, investors and producers in the market.

Key Words: Competition, Monopolization, Dominant position

Introduction

Competition law is essential to ensure the economic efficiency through the protection of free market competition. Therefore, many countries emphasize the legislation of competition laws and recognize the importance of competition policy which contributes dynamic efficiencies, higher productivity, greater innovation for high quality products and stronger economic growth and development. Later, the number of countries which introduced the competition laws is increasing one after another. Today, over 120 countries have enacted competition laws and it is still counting.

In ASEAN, half of the member countries had already implemented the competition laws and the rest countries have to provide their competition laws in 2015 because the legislation of competition laws and policy plays an important role in the achievement of the AEC to establish the ASEAN Community by the year 2015.

Materials and Methods

This paper was prepared by stating the restrictive business practices which hamper the free and fair competition of the businesses and the importance of competition law to control and eliminate such practices. This paper highlights how the competition law is beneficial for the economic growth of a country and it also describes the increasing number of competition laws around the world.

Finding

Some practices of competition may cause the trade barriers and may affect the consumer welfare. Such practices are called restrictive business practices which make the price of the products high, the consumers no choice, small or new firms entry

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barrier and no innovations for new products. Therefore, competition laws are enacted to protect and preserve free and fair competition which will promote the economic growth of the country by encouraging the competition process of the market economy.

Discussion

Competition is the struggle for commercial advantage; the effort or an action of two or more commercial interests to obtain the same business from third parties.[2]

Competition drives firms to become more efficient and to offer a greater choice of products at lower prices because of the fear that only the fittest will survive in the market. This ensures best possible utilization of available resources.[3]

Competition is therefore a fundamental characteristic of a flexible and dynamic market economy.[4]

Ways of Competition

***Fair Competition**:* This relates to the adoption of fair means by firms, such as producing quality goods, becoming cost-efficient, optimizing the use of resources, adopting the best available technology, investing in research and development, etc.

***Unfair Competition**:* This relates to the adoption of unfair means such as: fixing prices with the rivals, setting a price which is lower than cost in order to throw out competitors from the market, advertising that belittles others' product, etc.

Types of Competition

***Price Competition**:* This is a form of competition among suppliers where the suppliers try to win customers by offering them a product at a price which is lower than their competitors' price. Lowering down of price is expected to bring about an increase in the market share of the lower priced product. But this strategy may not click for those customers who are loyal to any particular brand and are not price conscious.

***Non-price Competition**:* This is a form of competition among suppliers where they try to win customers not by lowering price but by advertising, offering after-sales-service, using sales-promotion tools, etc.[5]

There are other forms of competition; horizontal competition, vertical competition and perfect competition.[6] *Horizontal competition* is the competition between a seller and its competitors. It is also termed as primary-line competition.

Vertical competition is the competition between participants at different levels of distribution such as manufacturer and distributor. It is also termed as secondary-line competition.

Perfect competition is a completely efficient market situation characterized by numerous buyers and seller, a homogeneous product, perfect information for all parties and complete freedom to move in and out of the market.[7]

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[2] BLACK's Law Dictionary, Bryan A. Garner, 9th Edition, 2009, WEST, p-322

[3] Competition Policy and Law Made Easy, CUTS Centre for International Trade, Economics & Environment,2001, p- 6

[4] Cavinder Bull SC, Lim Chong Kin & Richard Whish, Competition Law and Policy in Singapore, Academy Publishing, 2009, p- 1

[5] Competition Policy and Law Made Easy, CUTS Centre for International Trade, Economics & Environment,2001, p- 6-7

[6] BLACK's Law Dictionary, Bryan A. Garner, 9th Edition, 2009, WEST, p-322-323

According to the structural characteristics of the market, different forms of competition in the market can be distinguished such as: number of sellers and buyers, the type of goods produced, the nature of entry barriers i.e. new firms cannot enter the market, etc.

Generally, there are four forms of market and the associated competition:

(1) *Large number of sellers and buyers, identical goods, free entry and free exit:* This form of competition is called, "*Perfect Competition*". The existence of a very large number of sellers, producing identical goods, results in same price for these goods. Eg- Vegetables

(2) *Single seller, large numbers of buyers, no close substitutes of the product, high entry barriers:* This form of competition is called, "*Monopoly*". In this market form, the monopolist (i.e. the only seller) is the price and output setter. Eg- The State in developing countries for public utilities; railways, electricity

(3) *Large number of sellers and buyers, existence of close substitutable products, no entry barrier:* This form of competition is called, "*Monopolistic Competition*". Existence of a large number of sellers and buyers may give an impression that this form of competition resembles perfect competition. Eg- Soap, toothpaste etc.

(4) *Very few sellers, large number of buyers, large number of branded products, high entry barrier:* This form of competition is called, "*Oligopolistic Competition*". The number of sellers is so small that they are conscious of their interdependence (be it in price, product or promotion).Eg- Handset, computer etc.[8]

Advantages of competition

Competition can cause the following benefits:

- For Firms: Efficiency, allocation of resources, product innovation
- For Consumers: Lower prices, better quality, more choices
- For Society: Economic democracy, good governance.[9]

Moreover, competition creates efficiencies in the market place. Three or Four of those efficiencies are distinguishable:

1. ***Productive efficiency***: Here, interest is in ensuring that any time a good or service is produced, it is done by using the smallest number of resources. Thus, if a man uses a tree to make 4 cricket bats, and another man uses a tree to make 5 cricket bats, then the latter's productive efficiency is better than the former's.
2. ***Allocative efficiency***: Here, interest is in ensuring that the available resources are used in a satisfactory manner. That is, we want to produce those things most desired by the community first.
3. ***Dynamic efficiency***: In the modern world it is important that firms are able to respond quickly to changing economic circumstances. To be dynamically efficient means that firms are aware of the changing circumstances, and they are able to adapt to meet those new needs, such as searching for and adopting new technologies and ways of doing things better.

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[7] Competition Policy and Law Made Easy, CUTS Centre for International Trade, Economics & Environment,2001, p-7

[8] Ibid, p-8

[9] Pradeep S Mehta, Secretary General,Evolution of Competition Policy & Law in the World, CUTS International,p-9

4. ***Inter-temporal efficiency***: There is a balance to be found between what we need now, and what we will need in the future. If we use up all of our resources now there will be a smaller number of resources for a larger population.[10]

The first three types of efficiencies inspire rivalry among firms, making them to use the best means to attract and keep customers and also enhance their profit. Those three efficiencies – *productive*, *allocative* and *dynamic* – are of crucial importance to society and it is for their sake that the law seeks to protect competition.[11] Competition therefore brings about benefits to the economy and the consumers.

Importance of Competition

The rules on the prevention of restrictive business practices ensure the efficient operation of a market economy with the preservation of the *freedom of competition* by combating restraints on trade and abuses of economic power.[12]

Functioning competition is an essential prerequisite for growth and employment in a market economy. Competition promotes innovation, an efficient allocation of resources, and consumer sovereignty; it limits economic power and also produces positive social results. Competition in free and open markets makes markets work much better and is the basis of the social market economy.[13]

Restrictive business practices

Monopoly

Monopolist firms (in their attempt to maximize profits) keep the price high and restrict the output, and show little or no responsiveness to the needs of their customers. Most governments therefore try to control monopolies by (1) imposing price controls, (2) taking over their ownership (called 'nationalization'), or (3) by breaking them up into two or more competing firms. Sometimes governments facilitate the creation of monopolies for reasons of national security, to realize economies of scale for competing internationally, or where two or more producers would be wasteful or pointless (as in the case of utilities). Although monopolies exist in varying degrees (due to copyrights, patents, access to materials, exclusive technologies, or unfair trade practices) almost no firm has a complete monopoly in the era of globalization.[14]

In fact, a monopoly is a market environment where there is only one provider of a certain economic goods or service. In a free enterprise system, prices are largely determined by the competing market forces of supply and demand. Buyers and sellers both exert an influence over prices, and this eventually results in a state of equilibrium.

However, in a monopolistic environment, a single company or provider has absolute control over the supply that is released into the market, giving that particular provider the ability to dictate prices. In the absence of any competition, the lone seller is free to keep prices artificially high, without fear of being undercut by another

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[10] http://www.mrwood.com.au/unit3/resources1.asp

[11] Nnamdi Dimgba, Introduction to Competition Law: a sine qua non to a Liberalized Economy, 2006, p-6

[12] Protection Against Unfair Competition, WIPO, 1999, p-12

[13] Frank Tibitanzl, Competition Policy in Southeast Asia and German Technical Cooperation, p-258

[14] http://www.businessdictionary.com/definition/monopoly.html

provider. Obviously, such a scenario is usually highly unfavorable for consumers, as it gives them no recourse to seek alternatives that might force prices lower.[15]

Merger

Merger is a fusion between two or more firms whereby the identity of one (or more) is lost and results in a single firm.[16]

Merger is also defined as voluntary amalgamation of two firms on roughly equal terms into one new legal entity. Mergers are effected by exchange of the pre-merger stock (shares) for the stock of the new firm. Owners of each pre-merger firm continue as owners, and the resources of the merging entities are pooled for the benefit of the new entity. If the merged entities were competitors, the merger is called horizontal integration, if they were supplier or customer of one another, it is called vertical integration.[17]

Merger is a technique of business growth. It is not treated as a business combination. Merger is done on a permanent basis. Generally, it is done between two companies. However, it can also be done among more than two companies.[18]

Dominant Position

"Abuse" of a dominant position occurs where the dominant enterprise, either individually or together with other undertakings, exploits its dominant position in the relevant market or excludes competitors and harms the competition process.[19]

Competition law typically prohibits the abuse of a dominant position, but not the possession of a dominant position achieved through the firm's merits.[20] Abuses of a dominant position may come in the form of unilateral conduct by dominant firms to remove an efficient rival, limiting competition from existing rivals or excluding rivals from entering the market.[21]

Cartel

Cartel is a combination of producers or any product joined together to control its production, sale and price so as to obtain a monopoly and restrict competition in any particular industry or commodity.[22]

In a business dictionary, cartel is a market situation where one producer (or a group of producers acting in concert) controls supply of a good or service, and where the entry of new producers is prevented or highly restricted.[23]

In fact, cartel is a group of companies, countries or other entities that agree to work together to influence market prices by controlling the production and sale of a particular product.

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[15] http://www.investinganswers.com/financial-dictionary/economics/monopoly-943

[16] Competition Policy and Law Made Easy, CUTS Centre for International Trade, Economics & Environment, 2001, p-8

[17] http://www.businessdictionary.com/definition/merger.html

[18] http://kalyan-city.blogspot.com/2012/04/what-is-merger-definition-meaning-and.html

[19] ASEAN Regional Guidelines on Competition Policy, August, 2010, para-3.3.1.2

[20] International Competition Network Unilateral Conduct Working Group, Dominance/Substantial Market Power Analysis Pursuant to Unilateral Conduct Laws- Recommended Practices (presented at 7th Annual Conference, Kyoto, Japan)

[21] Cavinder Bull SC, Lim Chong Kin & Richard Whish, Competition Law and Policy in Singapore, Academy Publishing, 2009,p-4

[22] Black's Law Dictionary, Henry Campbell Black, 6th Edition, 1990, p-215

[23] http://www.businessdictionary.com/definition/monopoly.html

Members of a cartel generally agree to avoid various competitive practices, especially price reductions. Members also often agree on production quotas to keep supply levels down and prices up. One of the world's best-known cartels is the Organization of Petroleum Exporting Countries (OPEC).[24]

Competition Policy and Law

The Model Law on Competition put forward by the United Nations Conference on Trade and Development (UNCTAD) outlines the aim of competition policy to control or eliminate restrictive agreements or arrangements among enterprises, or merger and acquisitions or abuse of dominant positions of market power, which limit access to markets or otherwise unduly restrain competition, adversely affecting domestic or international trade or economic development.[25]

Then, competition policy can ensure the benefit of consumers in the following ways; -best possible utilization of available resources.

-better quality products at lower prices to consumers and

-check hurdles to fair competition.

Competition policy can be described as all rules and interventions that are designed to prevent all restraints on market competition that have negative impacts on economic welfare. Hence, competition policy comprises all activities of the government to ensure fair competition as a fundamental element of the social market economy.

Nowadays, competition policy plays a central role to stimulate economic growth through the positive relationship between competition and increased productivity in the economy.[26]

Competition law comprises the sets of rules maintained by governments to outlaw or restrict anti-competitive practices. Such practices include agreements or arrangements between two or more people or enterprises that contain provisions that substantially lessen competition or increase dominance in a market, including by mergers or acquisitions, are exclusionary, in preventing or limiting dealings with a rival, or fix prices, volumes or other terms of trade amongst competitors. They also include unilateral behavior by a person or enterprise to take advantage of market power for an anti-competitive purpose or to set the minimum price at which goods are supplied by the person or enterprise or can be sold by others.[27]

Competition law is to protect the competition process, and not competitors. Competition laws need to;

- deal with anti-competitive practices
- take care of unfair means
- maintain and promote the competitive spirit
- promote economic democracy & consumer welfare
- enable good governance.[28]

Therefore, competition laws promote economic efficiency and social welfare by prohibiting restrictive business practices and creating a level playing field for firms.[29]

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[24] http://www.investinganswers.com/financial-dictionary/economics/cartel-1030

[25] Ping Lin,The Evolution of Competition Law in East Asia, p-15

[26] A Vision for Competition, Competition Policy towards 2020, Report from the Nordic competition authorities No. 1/2013,p-5

[27] Johannah Branson 2008, Competition Policy in ASEAN Case Studies,p-1

[28] Pradeep S Mehta, Secretary General, Evolution of Competition Policy in the World, CUTS International, p-7

Competition laws vary in terms of their coverage and content, reflecting differing social, political, cultural and legal contexts. Enforcement procedures also vary. Most laws rely on sanctions and penalties to prevent violations. Different penalties can be imposed, the remedies can be criminal as well as civil, the size of the fine varies, and some countries allow multiple damages or punish repeated offenders more severely.[30]

The purpose of competition law is to further competition and thereby promote efficient utilization of society's resources, i.e. economic efficiency.[31]

Since competition law is meant to protect the competition, it could be easily assumed that its objective would be the maintenance of the competitive process, free competition or effective competition.[32] However, countries often pursue additional objectives in their implementation of competition policy and law, some of these other objectives include promotion of market integration, defence of small and medium-sized local enterprises, promotion of fairness and equity in the market place and protection of economic freedom.[33]

The core functions of the competition law and policy are to promote and protect market competition. It is widely accepted that the main functions of the competition law should be based on the economic theory of competition by seeking to create and protect the competition process in the pursuit of optimal levels of economic efficiency.[34]

The competition law and policy then have to be available remedies to address those anticompetitive behaviors. The competition law and policy then would correct and remove anticompetitive conducts which deter domestic market accession. Therefore, the competition law and policy can be seen as important mechanism to reduce market barriers and to facilitate a pace of market integration.[35]

Strong competition policy and law, with effective enforcement capacity, promotes static economic efficiency, fair and efficient markets, lower production costs and consumer prices, and consumer welfare and sovereignty. There is mounting evidence that strong competition policy also contributes substantially to the generation of dynamic efficiencies, higher productivity, greater innovation in the form of new high quality products and process technologies, and stronger economic growth and development.[36]

Competition Laws in the World

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[29] Ping Lin, The Evolution of Competition Law in East Asia, p-15 -16

[30] Ibidp-16

[31] David K. Round and Alec Zuo, 'The Welfare Goal of Antitrust Laws in Asia: For Whom Should the Law Toil?' (2008) 22(2) Asian-Pacific Economic Literature, p. 32

[32] " A Framework for the Design and Implementation of Competition Law and Policy" (World Bank and OECD, 1999) ch 1

[33] Cavinder Bull SC, Lim Chong Kin & Richard Whish, Competition Law and Policy in Singapore, Publishing, 2009,p-3

[34] David K. Round and Alec Zuo, 'The Welfare Goal of Antitrust Laws in Asia: For Whom Should the Law Toil?' (2008) 22(2) Asian-Pacific Economic Literature, p. 32

[35] Peter Hoeller and Marie-Odile Louppe, 'The EC's Internal Market: Implementation and Economic Effects' (OECD Economic Studies No. 23, 1994) <http://www.oecd.org/dataoecd/46/24/33765116.pdf> accessed on 21 May 2012

[36] Johannah Branson 2008, Competition Policy in ASEAN Case Studies,p-1

The Sherman Act, 1890 and the Clayton Act, 1914 in the United States is the best well-known competition Law.[37]

In Europe, the enactment of some sort of competition law was adopted in the 1920s and 1930s.[38]

In Asia, the first attempt to enact the competition law was made in 1925 in the U.S. ruled Philippines although this act has never been effective in practice. For practical purposes, the first competition law of Asia was enacted in Japan in 1947.[39]

However, a typical example of regulatory model of competition law which aims to foster economic growth through the government control was adopted in India in 1969.[40]

Since 1980, the number of countries with competition laws has increased rapidly. Countries with competition laws now account for more than 85 per cent of world trade.[41]

Also in recent years, one after another, a number of states have embarked on the establishment of competition rules, as competition law and policy have been considered one of the most important mechanisms for the successful implementation of liberal national policies.[42]

Today, over 120 jurisdictions have enacted competition laws.[43]The substantial growing number of countries that have introduced competition can be seen by the membership of the International Competition Network ("ICN"), an international body devoted exclusively to competition law enforcement and its members represent national and multinational competition authorities. [44]

The diversity in approaches regarding the proper application of competition law is a process in which the various ideas about the nature and aims of competition law and policy are exchanged, and the economic, social, legal and political standards according to which national competition laws apply are observed.[45]

Conclusion

Competition is the act of rivalry between two or more firms in order to control the market with their products. By competition process, firms have to ensure the quality of their products and customers get the greater choice of products at lower prices.

However, there are different types and ways of competition which are either fair or unfair. Therefore, to combat restraints on trade and abuse of economic power for the preservation of freedom of competition, competition laws are enacted around the world especially in industrialized and developed countries.

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[37] W.E. Kovacic and C. Shapiro (2000), 'Antitrust Policy: A Century of Economic and Legal Thinking' 14(1) *Journal of Economic Perspectives* 43

[38] D. Gerber (2000), *Law and Competition in the Twentieth Century: Protecting Prometheus* (Oxford University Press) p-115-8, 163

[39] YASUDA Nobuyuki, The Evolution of Competition Law in Southeast Asian Countries, 2003, p-6

[40]Ibid, p-7

[41] Johannah Branson, Competition Policy in ASEAN: Case Studies, p-5-6

[42]Anestis S Papadopoulos,The International Dimension of EU Competition Law and Policy, 2010, 1st Edition, Cambridge University Press, p-15

[43] John Fingleton, The International Competition Network, Planning for the Second Decade (9th Annual ICN Conference, Turkey, April, 2010)

[44] International Competition Network, Address to the federation of the Industries of Sao Paulo State (12 May 2008) (Chairman: Sheridan Scott), p-17

[45] Ibid, p-18

The main functions of competition law and policy are to promote and protect market competition. It will help reduce market barrier and facilitate the pace of regional market integration.

In conclusion, competition law protects and preserves the free and fair competition which promotes the economic growth of a country by encouraging the competition process of the market economy.

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