

TOWARDS BETTER COMPETITION: AN EVALUATION OF THE LAW RELATING TO COMPETITION IN SRI LANKA

Pramoda Shanika Prasanshanie GonapinuwalaVithanage

Temporary Lecturer, Department of Commercial Law, Faculty of Law, University of Colombo

ABSTRACT

Sri Lanka, being a country which is more concerned about its economic policy, has initiated several policies and plans to create a better platform for trade and investment while successfully facing the global competitiveness. According to the past experiences in this journey towards a better competition, conflict of privatization policy which is dependent on the political leadership and party ideologies with national competition policy have remained as major problems. Instead of a steady longterm vision towards more competition, Sri Lanka has been adopting an ad hoc system of governance for the competition policy. The climax of the negative impact due to the absence of an effective competition policy was evident in recent fuel production shortages and the price fluctuations in certain goods at the national level while it must have been causing multiple disadvantages at the global level. In order to offer a stable and conducive commercial platform for traders as well as for foreign investors, a comprehensive national policy on competition has become an essential factor undoubtedly. Hence, this paper utilizes a critical approach to the existing law relates to competition in Sri Lanka and intend to recommend a suitable unique system where the competitiveness of the nation could be accelerated.

Keywords: anti-competitive practices, competition policy, mergers, price controlling

INTRODUCTION

According to the Global Competitiveness Index 2016–2017 Rankings, in the Global Competitiveness Report 2016–2017 (Anon, 2018) released by the Geneva-based World Economic Forum (WEF), Sri Lanka is ranked 71 out of 138 economies with a score of 4.19. Comparatively Sri Lanka lost her position in the rankings of Global Competitiveness index, where Sri Lanka was placed at 68 with a score of 4.21 in 2014-2015. As per the latest, Switzerland remains continuously in the 1st place and significantly Singapore ranks 2nd for the sixth year in a row exhibiting remarkably strong performance as an East Asian economy. Recent government initiatives regarding Sri Lanka's development agenda have been formulated towards the goal of becoming a 'commercial hub' where as the country is expected to be benefited

immensely by its trade transactions and investment inflows. The goal towards a ‘commercial hub’ would continue to remain as a dream if necessary layouts such as the competition policy is not properly addressed at the very outset. Among many other indicators, the Global Competitiveness index has also provided a signal indicating the need for reforms in the Sri Lankan competition policy framework.

It is an authoritative fact that the need for competition can never be denied, whereas it is believed that competition enhances technical development, market efficiency, innovation, price diversification, employment opportunities and better quality of products and services in the domestic and international market level. However, anti-competitive practices from Dumping, Price fixing, Refusal to deal, Tying, Limit pricing, Resale price maintenance, Exclusive dealing, Dividing territories, abuse of dominance to cartels, mergers and acquisitions can have adverse impact on the economy and social welfare of the state, which would ultimately erode the nation’s development agenda. Hence, it’s a known fact that Competition law and policy and its effective functioning have always been an underpinning rationale behind successful markets in the world.

RESEARCH OBJECTIVE

The main objective of this paper is to examine the evaluation of the law relating to Competition in Sri Lanka with an insight to the possible reforms for an effective framework which would foster the development goals of the country inline with the regional and global trends.

RESEARCH METHODOLOGY

This research is mainly a qualitative and descriptive analysis based on library based secondary sources such as books, academic writings, journal articles and e-sources. This paper utilises a critical approach to the existing framework on Competition law in Sri Lanka through an analysis of legislations and decided cases. When arriving at the conclusion, a comparative study of the jurisdictions of India and Singapore was also carried out.

DISCUSSION

Definitions of Competition Policy and Competition Law

Most common definition of ‘Competition Policy’ consists of two components; competition Law and economic policy. Competition Law in a country is designed to regulate anti- competitive practices of firms and also to prevent unnecessary government intervention into the market which would ruin the freedom of trade. (Das & Kumar, 2001) Economic policies which is a much broader concept compared to the legal aspect, consists of policies designed by governments in order to foster competitiveness at the national and global level. Further more, governments or

economic policies in this sense can vary from Deregulation & Privatisation, Trade Policy, Industrial Policy, Regulations governing capital and FDI, Consumer Policy, Other Policies Such as: Regional Development Policy; Small and Medium Enterprises (SMEs); Reservation Policy etc. (Competition Policy & Law Made Easy Monographs on Investment and Competition Policy, 2001)

Depending on the realities at the grass root level, economic policies in a country will definitely vary from time to time due to the inconsistent nature of the political allegiance at national governance level especially in developing nations. Unless a country has a government system which is driven by a long term vision, the control over the aspect on economic policies within the competition policy remains at a lower level. Despite this backdrop, one better solution to have a control over an effective competition policy is to have an effective law relating to competition. Hence, once a law is enacted, it will have to be enforced despite political interventions and it is upto the judiciary to interpret the law whenever it is necessary to bring in justice.

Furthermore, when the objectives of such competition policy is concerned, in 2003 the OECD Global Forum on Competition identified the competition law and policy objectives as pluralism, de-centralisation of economic decision-making, preventing abuse of economic power, promoting small business, fairness and equity and other socio-political values. Hence, it is worthy enough to evaluate the effectiveness of a competition policy based on objectives as stated above.

Need of a law for effective competition

In order to uphold much accepted norm of market regulations to be minimum and letting the market forces to prevail freely on one side, anyone would raise the question regarding the necessity of a law to govern competition. Compared to the poor performance of the state driven sectors, managerial and commercial autonomy and less government control have driven the corporate sector relatively successful with the competitive private sector participation. At the same time, it's worth to examine whether privatization has actually increased or decreased competition in reality. Unlike in Europe and the Western world, competition law has been relatively a new concept to the Asian economies that entered in the competitive global market considerably late but in an aggregated manner over the past decades. According to Prashant Kumar (Kumar, 2014) in the interest of consumers, and the economy as whole, it is necessary to promote an environment that facilitates fair competition outcomes in the market, restrain anti-competitive behavior and discourage market players from adopting unfair trade practices.

Effective competition is a driving force behind the success of a county's trade and commerce, consumer protection and investment atmospheres. Unless having a proper and effective national policy on competition which has been a major constraint on the ability to attract more foreign

investors as a developing nation, maximizing the benefits of FDI would remain a dumb topic in reality. According to the 'carrot and stick' approach, it can be predicted that a nation would be more benefited if it could provide a 'guarantee against anti-competitiveness' while offering tax and non-tax incentives to foreign investors when attracting them. On the other hand, having a lacuna in this regard can erode the survival of the infant industries even at the domestic level lacking the potential to compete with the giant MNCs and individual investors and maintaining the market control and the status mainly at the regional level. Hence, competition law can never be isolated from these factors which are interconnected in all aspects.

With reference to the idea stated more often that "*competition kills competition*", there has always been a question about the role of a law relating to competition. Prior to answering this question, as per the realities are concerned, it is essential to note that by ensuring competition free and fair trade could be extinguished and consumers could be given the best quality products at a fair price while protecting their rights too. Moreover, this would ultimately be the foundation of a culture of fair competition in any nation.

Sri Lankan Competition policy

After being a politically independent country in 1948, the Sri Lankan economy was driven by the state according to its state interventionist economic policies until 1977. In 1977, after the open economic policies being introduced, liberalized market based approaches started to pave the way for a different economic atmosphere. However, with regard to the economic reforms by successive governments, critics have paid attention to issues of bad governance as well an ineffective policy framework which has not provided sufficient incentives for private investment growth and employment to take place. (Thurairatnam, 2004)

The Fair Trading Commission Act, No.01 of 1987 (FTCA) is the first legislation which came in to force with regard to competition law in Sri Lanka. This Act established the Fair Trading Commission (FTC) which is known as a quasi- judicial body under the Ministry of Commerce and Consumer Affairs. FTCA can be considered as a significant piece of legislation as it addressed essential aspects such as control of monopolies and mergers and prevention of anti-competitive practices as well as price regulation which is a main part of the mandate of the established commission. Having considered the special features of this Act, in controlling monopolies, megers and anti-competitive practices, harmful to 'public interest' was used as a criteria by the commission. However, since the interpretation to 'public interest' remains ambiguous, it had been misused for certain tactful justifications which had destroyed the ultimate purpose of the Act. And also, 'prescribed percentage' test under the monopolies control was another highlighted draw back. This Act also contained some unrealistic and impractical procedural provisions such as in case of a meger, it has to be notified in writing to the FTCA at

least thirty days prior to the proposal. As per the critics, this has only being there on the paper and never being practiced. (Thurairtnam, 2004)

Under the FTCA, 'anti-competitive business practices' were broadly defined including instances where a person, in the course of conduct that had the effect of restricting, distorting or preventing competition in connection with the production, supply or acquisition of good or the supply or securing of services. (Section 14 of FTCA) As critics have pointed out no clear differentiation between different types of anti-competitive conducts were included in this broadly defined provision.

However, under this legislation, minister's influential role in appointment and survival of the FTC had resulted in ruining the independence and the transparency of the FTC. And eventhough the FTC was empowered to take remedies in violation of FTCA, the counsil's less authoritative and legitimate power was not enough to impose such binding penalties when it comes to the practical implementation.

The current law applicable to law relating competition is included in the Consumer Affairs Authority Act No.9 of 2003, (CAAA) which came in to force on 17th March 2003, repealing the Consumer Protection Act, No. 1 of 1979, The Fair Trading Commission Act, No 1 of 1987 and the Control of Prices Act (Chapter 173). As per the preamble of the CAAA, it was enacted, for the promotion of effective competition, the protection of consumers and for the establishment of a Consumer Affairs Authority and a Consumer Affairs Council. Therefore, these two institutions are expected to be the administrative arm in monitoring and prevention of anticompetitive practices. The content of the Act is included in seven parts such as Part I: Establishment of the Consumer AfSairs Authority, Part 11: Regulation of trade, Part 111: Promotion of Competition and consumer interest, Part IV: Consumer Affairs Council, Part V: Fund of the Authority, Part VI: Stafof the Authority, Part VII: General.

The 'Consumer Affairs Authority' established under this Act is comprised of ten members and funded by the government. One of the main features of this body is that Minister of Trade and Commerce plays a significant role in relation to the appointment and fixing of remuneration, the removal of members. Nevertheless, by protecting the position of full time members from minister's influence, the Act tries to ensure autonomosness. Under Section 8 of the Act, the authority of the Consumer Affairs Authority is broadly explained under the catagories of Regulatory functions, Normative functions, Investigative functions, Standard-setting functions, Promotional functions, Educative and public information functions, Registration functions, Research functions and Advisory functions.(Section 8 of the Act) Eventhough this Authority is vested with power to carry out investigations into anti-competitive practices, it is not empowered to make decisions.

Instead, a separate body named ‘Consumer Affairs Council’ is established for the purpose of conducting investigations in prevalence of any anti-competitive practice. In determining an anti-competitive practice, ‘Public Interest Test’ is applied. In order to expedite the process, the Act has set a 100 days period for investigation to be carried. Upon the discretionary selection of the council, it gives opportunity for the interested parties to be heard, provide oral or documentary evidence as procedural requirements. As per the Section 40(2) of the Act, the council can issue an order against a company or an individual to terminate and take other actions to remedy and prevent the effect of such practice. Another significant feature of the council is that it is vested with the powers of a District Court in issuing notices to witnesses and requiring document submissions. And also, Consumer Affairs Authority can hear and conduct inquiries upon a complaint or a request by any person, organization of consumers or trade association. If such complaint in first instance gets rejected by the Authority, they may apply it to the council. And also, council is given power to have inquiries regarding the concluded investigations by the Consumer Affairs Authority.

According to Section 60 of the Act, Any person who fails or refuses to comply with an order of the Council or acts in contravention of such order is guilty of an offence under the Act and, upon conviction after trial before a Magistrate, the Magistrates court can impose a fine or a sentence of imprisonment. For first offences, fines can vary from Rs. 5000 to 50,000 in the case of a natural person and up to Rs. 1 million in the case of a corporate entity and imprisonment in the case only of a natural person up to a period of 1 year. (Gunawardene, 2005)

Against this background set under the Act, the minister is given a significant role in establishment and functioning of the council as same as in the authority. It can also be particularly noted that the council’s orders are regarded as final and binding and no appeal process is allowed under the Act. However, there is no exception to not being considered for the remedies under Judicial Review within the Administrative law of the country. Hence, judiciary as an arm of the government actively involved in the law making process is expected to play a responsible role towards an effective implementation of a competition policy in which the lacunas of the legislative process is left to be amended by the judiciary in interpretation.

However, Gunawardena stated Sri Lankan courts had interpreted the identical provision in the Fair Trading Commission Act narrowly and strictly. In the case of *Ceylon Oxygen Ltd. v. Fair Trading Commission*, (1997) 2 Sri. L.R 372, the Court of Appeal declined to recognize that predatory pricing, discriminatory rebates or discounts in pricing policies and exclusive dealings fall under the category of anti-competitive practices. As noticed above the non-consensual attitude on interpreting these legislations has created an academic debate on the whole area. A. Aluwihare Gunawardena (Gunawardene, 2005) further emphasized that judicial creativity could

result in the 2003 Act being used to its full potential to include mergers within its purview. He further urged that until a court of law indicates the extent to which it will interpret the provisions in the 2003 Act in merger situations, some legal uncertainty will remain as to the scope of the powers of the Consumer Affairs Authority and the Consumer Affairs Council with regard to control of mergers.

In comparison to the previous legislation, some vital and essential aspects of a competition law have remained, untouched and unanswered under the current legislation. Controlling mergers and acquisitions is a major aspect in any legislation which aims to address competition. However, when drafting this legislation, Sri Lankan legislature has intentionally dropped this topic since it had been addressed in several other legislations. Furthermore, the term 'unfair trade practices' is undefined under the Act. Absence of adequate provisions required for the effective regulation of anti-competition and unfair practices under the existing law has been the major criticism over the past years of this Act being in force. As per Dr. Dayanath Jayasuriya, PC it has been observed that in the absence of amending legislation, the Authority and the Council would face "a formidable challenge of trying to navigate in uncharted territory without even a compass and a map" (Jayasuriya, 2011)

With a holistic view of the existing law, it can be noticed that the present Act is more sensitive towards consumer protection rather than playing its expected role in maintaining fair competition in the market and benefiting the economy with its positive implications. Hence, it can be argued that the Act has failed in balancing the competing interests of the stakeholders and has put industries in a risky situation.

Having no direct legislation that addresses anti-competitive practices, Public Utilities Commission of Sri Lanka Act, No. 35 of 2002 of Sri Lanka contains provisions on the regulation of anti-competitive practices, mergers, acquisitions, monopolies, and the abuse of a dominant position in relation to specified public utilities industries such as the electricity industry and the water services industry. However, overlapping of issues that come under the purview of this Act with the Consumer Affairs Authority Act and the interplay of these laws has created an unascertained situation where certain behaviours of the market would remain unaddressed by either of those. Therefore, this paper proposes to have a one piece of legislation which could be more successful in effective control of mergers and acquisitions under the law relating to competition.

No one would disagree if it is said that the best time when these reforms could have been brought in was the post-war era. However, in the post-war era Sri Lanka has gained much demand in FDI, having recognized its geographical positioning and its skills and attractive political promises including factors ensuring good governance by the elected governments. Despite the fact that promises are to be honoured subsequently, Sri Lanka's export oriented modern

economic vision has laid a suitable foundation in which a new legislation relating to competition law could be brought in as a timely need.

Comparative Studies- Law relating to competition in India and Singapore

a. Law relating to competition in India

India's alarming economic growth in recent years and revival fact of evidence of the States's successful foundation in fostering the performance in the global market. At the outset it must be noted that the Indian Constitution of 1949 has provided a constitutional foundation for the country's competition policy in Article 38 and 39 by emphasizing the need to distribute ownership and control of material resources in common good and also the operation of the economic system not be resulted in the concentration of wealth but for the means of production to the common detriment.

India's journey in bringing a legislation to govern competition started in 1969 with the introduction of the Monopolies and restrictive Trade practices Act, 1969 (MRTP Act, 1969) which was amended in the 1974, 1980, 1982, 1984, 1986, 1988 and 1991, followed by the recommendations provided by the Sachar Committee in 1977. It is significant to witness that the need for a new law in this area was a considered fact in the parliament and having understood the necessity the government of India constituted a High Level Committee on Competition Policy and Competition Law, chaired by Mr. S V S Raghavan, a retired senior Central Govt. officer (popularly known as 'Raghavan Committee') in October 1999 to advise a new and effective contemporary competition law to cope up with the international economic developments and to recommend a suitable legislative framework, which may imply a new law relating to competition law for necessary amendments in the MRTP Act, 1969. (Sunipun, 2017) Followed by the recommendations of the Raghavan Committee, the Competition Act, 2002 was introduced after receiving the assent of the President on the 13th January, 2003 and it repealed and replaced the MRTP Act. As per the preamble the piece of legislation is intended to,

“provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental there to” (Preamble of the Competition Act, 2002)

Followed by the establishment of this law, India established the Competition Commission of India ('CCI') on 14 October, 2003, consists of a chairperson and 6 Members appointed by the Central Government which functions as the market regulator for preventing and regulating anti –

competitive practices. Establishment of a quasi-judicial body mandated to hear and dispose of appeals against direction or decision made by the CCI as a Competition Appellate Tribunal is also a significant step in this journey. Being aware of the timely concerns, the major Act was subsequently amended by the Competition (Amendment) Act, 2007 and Competition (Amendment) Act, 2009.

As an overview of the Competition Act, 2002, it covers Anti – competitive agreements, abuse of dominance, mergers, amalgamations and acquisitions control through its comprehensively stated sections. In Section 4 of the Competition Act, 2002 the prohibition of any enterprise or group from abusing its dominant position has been included and followed by the Section 19(4) of the Act which provides power to the Competition Commission of India to determine whether any enterprise or group has acquired a dominant position or not, in the relevant market and also to decide whether or not there has been an abuse of dominant position.

Section 6 lays the foundation to address issues of Merger, Amalgamations and Acquisitions Control. Having prohibited any person or enterprise from entering into a combination which causes adverse effect on competition under Section 6(1), the subsection 2 provides notice of who or which proposes to enter into such combination, shall be given to the Competition Commission of India within 30 days of Approval of the proposal relating to merger or amalgamation, by the Board of Directors. Thereafter, the Commission must review the combination within tight time limits or else the combination is deemed to be approved. However, this Section gives exceptions to share subscription or financing facility or any acquisition, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement.

As per the special features of this Act, Section 18 the Act allows the CCI to enter into a memorandum or arrangement with any agency of any foreign country with the prior approval of the Central Government. And also as per the jurisdiction of this legislation, private enterprises as well as government owned enterprises and even government departments are covered by the provisions of Competition Act, 2002. Furthermore the Act in Section 57 provides an assurance of confidentiality in non disclosure of commercial sensitive information of the enterprises.

With regard to remedies and penalties, if the CCI finds that there is an unfair competition practice, which caused adverse effect on the competition in India, the CCI may pass all or one of the orders mentioned such as a cease and desist order, an order which imposes a monetary penalty etc. And also any person may apply to the Competition Appellate Tribunal for the recovery of compensation from any enterprise for any loss or damage caused by a person or an enterprise who is violating and delaying the directions or orders given by the CCI.

When the Competition Act, 2002 is concerned with a holistic view, the legislation provides a comprehensive legal framework for the States's competition advocacy. With this backdrop the recent changes took place in the economic reforms and financial policy, the effectiveness and applicability of this Act has also been accelerated.

b. Law relating to competition in Singapore

In Singapore, the Competition Act 2004 which is modeled on the UK Competition Act 1998 was passed by Parliament on 19 October 2004 with the objective of promoting the efficient functioning of Singapore's markets in order to enhance the competitiveness of the economy. It is known as a generic law to protect consumers and businesses from anti-competitive practices of private entities. In considering the background of which the Act came into enforcement, it is important to note that two rounds of public consultations on the Competition Bill have been conducted by the Ministry of Trade and Industry (MTI) in 2004 prior to the finalisation of the Act. Furthermore, there has been another public consultation exercise on the proposed Merger Regime held in 2006.

The Competition Act comprised of six parts which includes; Part 1: Introduction of the Act and Definition of Terms, Part 2: Establishment of the Competition Commission of Singapore ("CCS") and its functions, Part 3: Provisions for a competition regime, key prohibitions, block exemption orders, procedures for notification for guidance and decision, and CCS' powers of enforcement, Part 4: Establishment of the Competition Appeal Board ("CAB") and appeal proceedings before the CAB and the Courts, Part 5: Establishment of non-compliance with CCS' request for information and investigatory power as criminal offences and composition of offences, Part 6: Miscellaneous provisions, including the rights of private action. One of the significant features of the Singaporean competition model is that it has being designed on the belief that enforcement and advocacy must go hand in hand towards building a pro-competition environment in Singapore.

The Competition Act specifically prohibits three activities of agreements, decisions and practices which prevent, restrict or distort competition (Section 34), Abuse of a dominant position (Section 47) and Mergers that substantially lessen competition (Section 54) Andalso, in deciding on the effect on competition in Singapore and its economic benefits, as per the official website states CCS takes in to consideration whether an activity promotes innovation, productivity or longer-term economic efficiency so that innovation and enterprise are not constrained inadvertently. Having observed the effective functioning of the policy, one of the major positive factors that can be emphasized is that competition philosophy in Singapore is based on the two-pronged approach in which enforcement and advocacy go hand in hand in creating a pro-competition environment. ("CCS Competition Philosophy", 2014)

Moreover, when considering the institutional frameworks where competition policies are being effectively implemented, one of the best models can be seen in European Union in which the competition policy is at a too complex level in comparison with models of others. Apart from its effectively enacted legislations, linkages among the institutions starting from the European Parliament committees such as European Parliament ECON committee (economic and monetary affairs) (economic and monetary affairs), European Parliament IMCO committee (internal market and consumer protection) and the European Council, EU Council, European Commission, European Court of Justice, European Central Bank, Court of Auditors, European Social and Economic Committee has contributed for the implementation of its effective competition policy. (Competition policy and EU institutions - European Commission, 2018). The success of this structure is evident by the fact that EU competition policy is being considered as an important factor in designing the competition policies in most of the economies in the world.

SUGGESTIONS & RECOMMENDATIONS

‘What has to be there in an effective Competition Law’ is a good topic for an intellectual discussion by all stakeholders. However, at the threshold, it must be clearly noted that a legislation in competition law must necessarily be able to address prohibition of anti-competitive agreements, abuse of dominant position and regulates mergers, amalgamations and acquisitions. And also, the conflict between privatization and competition principle has to be addressed in a direct manner in a balanced legislation.

With the increasing growth of Multinational companies (MNCs) spreading all over the world and entering in to all most all the markets, an authority which is given the mandate under a new legislation has to be vested with extra-territorial jurisdiction with clear definition on its scope and application. As per the lesson learnt from the Gloaxo- Welcome SmithKline & Beecham (GSK) merger, an authority without extra- territorial jurisdiction would look alike a bird without feathers. (Thurairtnam, 2004)

Over the recent past, reforms in economic policies have often become a popular topic for political parties in their election propogandas, rather than implementation of them by having long-term projection towards nation’s development. When the government policies are taken in to account, it’s a notable phenomena that most of these policies are not aligned with the competition policy in the country, where as policy formulation is expected to be pro-actively involved in order to ensure flexible and adaptable market behaviour.

However, the whole burden of bringing effective competition to the nation could never be left alone with the government. Apart from government intervention, positive signs of private initiatives can be seen in Asia with Competition groups advising and providing its services. And

also, as a responsible community, civil society initiative can also provide a better solution in this regard. Unfortunately, within the Sri Lankan market sector background, the consumer has always been left as the ultimate victim and is never being assisted by collective movements in raising the voice against anti-competitive practices.

As observed, a proper competition policy must not be sensitive towards sectoral needs, rather it would be effective to be more focused towards nation's requirements as a whole and ultimately to accelerate nation's competitiveness at the global level. However, in order to achieve the broader aim of an effective competition policy, in-house methods are necessary before focusing on Strategic ways to meet the global competitiveness. Therefore, if these two aspects could be carefully looked at simultaneously, as a country we could certainly embark to the future with a successful economy.

With regard to market awareness of domestic companies' attentiveness regarding issues affecting their businesses plays a vital role in taking right decisions in a timely manner' to meet the challenges. Anti-trust and competition compliance must be a separate division in every company which has a continuous concentration in this fast moving world. It is also advisable for firms to investigate various distributions and potential competition issues related when they are entering into novel business sectors.

Expertise in anti-trust litigation is another lacuna in developing economies such as Sri Lanka. Integration of academia, private sector and expert legal community could fill this gap for a better competition policy implementation. However, any legislation which governs the law relating to the competition must derive its acceptance from the trade sector of the country in which the actual ultimate implementation would occur. And also it would have an effective enforcement if adequate public consultation is being done prior to finalizing of such legislation. Furthermore, such legislation must be in synchronization with other policies such as concerns on FDI, trade policy, consumer rights etc, which would ensure uniform application and acceptance in overall competition policy as an ultimate goal.

Furthermore, one of the main strategic ways to cope up with the stress thrown by this multi-polar world economy would be to enhance the nation's comparative advantages. Therefore, it is high time to bring a new piece of legislation which could facilitate to enhance effective competition, rather than stressing its need.

At the global level, it is observed that no internationally accepted instrument is in existence with regard to Competition Policy except some regional measure such as Treaty on the Functioning of the European Union (TFEU) in which European competition law derives today. However, with a future projection, it can be predicted that the world will have to create a global forum and a

multilateral strategy to address risks and conflicts associated with the inconsistency application of competition policy in the areas of international investment, trade and commerce.

Furthermore, the most challenging task of having an effective competition is not bringing a piece of legislation in to the existence, rather creating a competition culture in a country like Sri Lanka would be more difficult. This has to be driven by a long term vision while gaining the continuous assistance of all stakeholders.

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