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ABOUT US

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COMPETITION LAW IN JAPAN: **UNIQUE FEATURES**

AUTHORED BY - SAI KRISHNA CHEEKATI

INTRODUCTION

Competition law in Japan, known as the Antimonopoly Act 1947, is a crucial legal framework that governs and promotes fair competition within the country's market. Subsequently amended to investigate evolving economic dynamics, this legislation aims to prevent anti-competitive agreements and abuse of dominance that benefits consumers, businesses, and the overall economy. The Antimonopoly Act of 1947 prohibits activities that may be against the competition, such as anti-competition agreements, abuse of dominant market position, and mergers and acquisitions that may lessen the competition. These provisions aim to prevent unfair business practices, protect consumers and increase innovations and efficiency. Under this law, the Japan Fair Trade Commission is a regulatory body that has to enforce competition rules and investigate violations.

LEGAL REGIME

In Japan, Anti-Monopoly Act ("AMA") is encompassed with several provisions like - a) governs cartel enforcement b) prevents 'excessive concentration of power'¹ and c) prohibits engagement in 'unreasonable restraint of trade'², 'private monopolisation'³ and 'unfair trade practices'⁴.

Excessive concentration of power has been defined in AMA as a situation in which a company, including its sister companies and other domestic companies whose business activities it tries to control through share capital, (a) has an exceptionally large company's overall scale all over various corporate areas, (b) has a dominant business position and has an influence on other companies through transactions with their funds, (c) holds powerful positions in several connected commercial disciplines, and each of these elements has a significant effect on national economic growth and impedes free and equal competition. The AMA defines unreasonable trade restraint as

¹ Anti-Monopoly Act 1947, Art-9

² Anti-Monopoly Act 1947, Art-2

³ ibid

⁴ ibid

"business activities by which any enterprise, by contract agreement or any other means, regardless of its name, in concert with other companies jointly constrain or conduct their business operations in such a manner as to fix, maintain, or raise wages or to limit production, tech products, facilities, or counterparties, thereby causing a substantial restraint of competition, contrary to the public interest⁵." The AMA defines private monopolization as business activities by which any enterprise, individually or in combination with other enterprises, conspires against them, or in any other way eliminates or regulates the business operations of other companies, resulting in a significant reduction in competition in a given market sector that is against the public interest⁶.

Unfair trade practices have been defined in AMA as the act of⁷:

- 1) Approaching a competitor with an anti-competitive mindset-
 - a) withholding the supply from a particular enterprise or imposing restrictions on the amount of goods and services provided to particular enterprises.
 - b) causing making another enterprise to decline the supply to specific enterprises or to impose restriction on the quantum of goods and services which has to be provided to particular enterprises.
- 2) Constantly and unreasonably charging different rates in different locations or to different parties, which makes it impossible for another company to do its varied business operations.
- 3) without rationale, consistently offering products or services at a discount from what it costs to produce them, which interferes with other businesses' operations.
- 4) Providing commodities to a third party after purchasing the necessary items from oneself while enforcing, without rational grounds, one of the following restrictive terms:
 - a) inflicting restrictions on the party's ability to choose the selling price for the products, such as requiring the party to sustain the selling value of the products set by the providing company.
 - b) inflicting the party to restrain the relevant enterprise's freedom to decide on the selling price of the products by ordering a company that receives the products from the party to keep the selling price for the products that one has established.
- 5) Conducting any of the acts listed in any of the following while unfairly taking advantage of the counterparty's stronger negotiating position in light of customary business practices. This might

⁵ Anti-Monopoly Act 1947, Art-2(6)

⁶ Anti-Monopoly Act 1947, Art-2(5)

⁷ Anti-Monopoly Act 1947, Art-2(7)

include several different activities, such as requiring the counterparty to contribute funds, services, or other economic advantages, refusing to accept products from the counterparty, postponing or lowering payment, or adopting trade conditions that put the counterparty into a disadvantageous position.

ENFORCEMENT

The Japan fair trade commission is responsible for enforcing the AMA. The AMA provides for administrative sanctions, including abstaining the directions and imposing fines or Surcharges extensive guidelines have been provided for in AMA. The JFTC has no discretion to impose fines. In contrast, the CCI has wide discretion when it comes to imposing on enterprises and individuals the CCI employees aggravating as well as mitigating factors. While deciding the quantum of penalties first instances reviewing against JFTC orders shall be submitted to Tokyo's court of district. High Court has the jurisdiction to hear appeals from the Tokyo District Court. Final appeals shall be filed before the apex court of Japan. The AMA also provides provisions for criminal prosecution in certain cases including⁸ private monopolization, irrational restraint of trade, anti-competition activities in the field of trade, limiting the number of participants in a market or restricting activities of market participants by a trade association, banking and insurance businesses from holding more than 5% and 10% voting rights respectively in other companies⁹. A criminal proceeding can be initiated only if JFTC files an accusation with the prosecutive general¹⁰. Criminal investigation in Japan is governed by Japan's criminal procedure. court of the district in Japan has jurisdiction over such kinds of criminal cases under AMA.

MERGER CONTROL

Chapter-4 of the AMA focuses on the merger control regime in Japan and sets out the transactions covered and the jurisdictional threshold. The regime can be broadly put into two categories-

a) A generalization of economic power concentration.

Article 9 of AMA prohibits a company whether it is existing or newly established from causing an immoderate engrossment of economic power in Japan by acquiring or clenching shares in other

⁸ Anti-Monopoly Act 1947, Art-89

⁹ Anti-Monopoly Act 1947, Art-11

¹⁰ Anti-Monopoly Act 1947, Art-96

companies in Japan¹¹. Article 11 prohibits banking and insurance businesses from holding more than 5% and 10% voting rights respectively in other companies. Article 10 prohibits a company from acquiring or clenching shares of any other companies using immoral trade practices to clench shares. Article 15 prohibits certain kinds of mergers, if the merger significantly impedes competition in an industry or if immoral trade practices were performed¹².

b) specific concentration of economic power.

The AMA prohibits a company from acquiring or gaining shares of any other companies¹³, carrying out a mutual amalgamation type companies split or a permeation types split¹⁴, engaging in joint share transfer, acquiring another company in whole or in part through unfair trade practices, or if the act substantially restrains competition¹⁵. Article 13 also prohibits a company from using unfair trade practices to coerce another company to admit an officer or employee of the former company into the latter. Before 30 days have passed after the day the JFTC accepted the notification, transactions cannot be completed. The JFTC must provide its approval to a transaction within 30 days of the date it received the notification. If the JFTC determines that a more thorough study is required, the review time will be stretched to 120 days starting with the date on which the notice was accepted or 90 days first from the date on which the required reports were accepted, whichever comes first.

INTERNATIONAL CO-OPERATION

Japan has entered into economic partnership agreements with different countries like India¹⁶, Australia and Singapore have provisions related to competition law and policy. Japan has also entered into cooperation agreements and MoUs with antitrust agencies of different countries like China, Brazil, and Australia¹⁷.

¹¹ Anti-Monopoly Act 1947, Art-9

¹² Anti-Monopoly Act 1947, Art-15

¹³ Anti-Monopoly Act 1947, Art-10

¹⁴ Anti-Monopoly Act 1947, Art-15-2

¹⁵ Anti-Monopoly Act 1947, Art-16

¹⁶ Ministry Of Foreign Affairs Of Japan < <https://www.mofa.go.jp/region/asia-paci/india/epa201102/index.html> > accessed on June 5, 2023

¹⁷ Australian Government Department Of Foreign Affairs And Trade < <https://www.dfat.gov.au/trade/agreements/in-force/jaepa/japan-australia-economic-partnership-agreement> > accessed on June 5, 2023

CONCLUSION

The Anti-Monopoly Act 1947, has various provisions to promote fair competition and protect consumers of the country. It governs cartelization, prevents the concentration of power in a few hands, and prohibits unreasonable restraint of trade, anti-competition agreements, and abuse of supremacy. The Japan Fair Trade Commission enforces the AMA, imposing sanctions and fines. The merger control regime under the AMA covers general and specific concentration of economic power, with restrictions on acquisitions, shareholdings, and mergers that may lessen the competition and may create excessive concentration among a few companies. The JFTC reviews transactions within specified timeframes, ensuring whether it is compliant with the AMA's provisions.

