An Analytical Study of Competition Laws in Europe and India

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SUMMARY OF THE THESIS

SUBMITTED TO
THE FACULTY OF LAW PANJAB UNIVERSITY, CHANDIGARH
FOR THE DEGREE OF

DOCTOR OF PHILOSOPHY
2011

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Summary of the thesis titled “An Analytical Study of Competition Laws in Europe and India”.

The period from February 2008 to July 2008 was the start of the research on the topic “An Analytical Study of Competition Laws in Europe and India”. The main focus and emphasis during this period was undertaking an in-depth research on the second chapter of the thesis namely Competition and Law-Conceptual Dimensions. The literature reviewed during this period was the basic and advanced books, journals, websites of the European Commission and India and articles written by eminent economists, jurists and researchers on competition and antitrust laws. During this time of the research along with studying the basic tenants of the competition laws as prevalent in Europe and India a great emphasis was laid on understanding the competition law and policy as prevalent in Europe and India.

The study on conceptual dimensions in competition law was undertaken with main focus on the Concept of Competition, Competition Law and Policy, Overview of European Union Competition Law and India’s Approach towards a Competition Policy and Law. During this period apart from understanding the competition law and policy a complete overview of the competition law as prevalent in Europe and India was undertaken. In regard to the competition laws in Europe, the research emphasised on the growth of the competition law, coming into force of the Treaty of Rome, notification of Article 81, 81(3), 82 by the treaty, coming into force of the modernization regulation and its impact on the law, adoption of regulations, notices, new mergers regulations and various judgements of the European superior courts on the topic. Also researched was the Indian approach towards the adoption of the competition laws in the country. Various provisions researched during the period included the coming into force of the Indian Competition Act 2002 along with its provisions under sec 3 and sec 4 of the Act which provides for the Horizontal and vertical agreements and the abuse of dominant position. Also researched was the Competition (Amendment) Bill 2007 as amended with new provisions applicable to the Indian competition law.

The period from August 2008 to January 2009 was the second phase of the research on the topic “An Analytical Study of Competition Laws in Europe and India”. The main focus and emphasis during this period was undertaking an in-depth research on the third chapter of the thesis namely Horizontal Agreements and their impediments on Competition with position in Europe and India. The literature reviewed during this period was the basic and
advanced books, journals, websites of the European Commission and India and articles written by eminent economists, jurists and researchers on competition and antitrust laws. During this time of the research along with studying the basic tenants of the competition laws as prevalent in Europe and India a great emphasis was laid on understanding the anti competitive horizontal agreements with positions as prevalent in Europe and India.

The study on the anti competitive horizontal agreements which impede competition researched during the period included: Cartels, Horizontal Price Fixing, Horizontal Market Sharing, Quotas and other restrictions on Production, Collusive Tendering, Agreement relating to Terms and Conditions, Information Agreements, Advertising Restrictions, Anti Competitive Horizontal Restraints, Oligopoly and Tacit Collusion, Collective Dominance, The ECMR and Collective Dominance, Mergers, Adoption of ECMR, Article 81 and ECMR, Article 82 and ECMR ,Horizontal Agreements relating to Intellectual property rights, Position in India and Anticompetitive Agreements in India. In the Indian context Sec 2(o) of the Monopolies and Restrictive Trade Practices Act, 1969 was researched along with the provisions laid under sec 3 and sec 5 of the Act with Indian Competition Act 2002.

The period from February 2009 to July 2009 was the third phase of the research on the topic “An Analytical Study of Competition Laws in Europe and India”. The main focus and emphasis during this period was undertaking an in-depth research on the third chapter of the thesis namely Vertical Agreements and their impediments on Competition with position in Europe and India. The literature reviewed during this period was the basic and advanced books, journals, websites of the European Commission and India and articles written by eminent economists, jurists and researchers on competition and antitrust laws. During this time of the research along with studying the basic tenants of the competition laws as prevalent in Europe and India a great emphasis was laid on understanding the anti competitive vertical agreements with positions as prevalent in Europe and India.

The study on the anti competitive vertical agreements which impede competition researched during the period included: Single Branding Agreements, Exclusive Distribution Agreements, Exclusive Customer Allocation Agreements, Selective Distribution Agreements, Purely Qualitative Selective distribution systems, Franchising Agreements, Exclusive Supply Agreements, Upfront Access Payments, Category Management Agreements, Tying Agreements, Resale Price Maintenance, European Community Regulations, Relationship
between intellectual property rights and competition law, The application of Article 81(1) to licenses of intellectual property rights, The application of Article 82 to licenses of intellectual property rights, Intellectual Property Rights and the free movement provisions of the Treaty of Rome, The doctrine of exhaustion, Application of exhaustion principles on Patents, Application of exhaustion principles on Copyright and analogous rights, Application of exhaustion principles on Trademarks, Repackaging in Trademark cases, Products having different trademarks in different Member States, The doctrine of common origin in Trademarks, International exhaustion, Position in India and the Rule of Reason in India.

The period from August 2009 to January 2010 was the fourth phase of the research on the topic “An Analytical Study of Competition Laws in Europe and India”. The main focus and emphasis during this period was undertaking an in-depth research on the fourth chapter of the thesis namely Abuse of dominance: Anti competitive practices in Europe and India. The literature reviewed during this period was the basic and advanced books, journals, websites of the European Commission and India and articles written by eminent economists, jurists and researchers on competition and antitrust laws. During this time of the research along with studying the basic tenants of the competition laws as prevalent in Europe and India a great emphasis was laid on understanding the abuse of dominance by undertakings in the dominant position as prevalent in Europe and India.

The study on the anti competitive vertical agreements which impede competition researched during the period included: Non Pricing Practices, Exclusive Agreements, Tie in Agreements, Refusal to Supply, Refusal to supply a downstream competitor, The ‘essential facilities’ doctrine, The practical application of the essential facilities doctrine, Pricing Practices, Application of Article 82 to exploitive pricing practices, Pricing Practices having effects similar to exclusive or Tie in agreement, Loyalty rebates and similar exclusive practices, Pricing Practices intended to eliminate Competitors, Predatory Price Cutting, Selective Price cutting but not below cost, Vertical Margin Squeezing, Price Discrimination, Pricing practices that are harmful to the single market and the Position in India under Article 4 in regard to the abuse of dominance under the Indian competition laws.

The period from February 2010 to July 2010 was the fifth phase of the research on the topic “An Analytical Study of Competition Laws in Europe and India”. The main focus and emphasis during this period was undertaking an in-depth research on the fifth chapter of the
thesis namely “Requirement and Need for Competition Law and Policy in India”. The literature reviewed during this period was the basic and advanced books, journals, websites of the European Commission and India and articles written by eminent economists, jurists and researchers on competition and antitrust laws. During this time of the research along with studying the basic tenants of the competition laws as prevalent in Europe and India a great emphasis was laid on understanding the urgent need to revamp the Monopolies and Restrictive Trade Practices Act, 1969 and adoption of a new competition laws in India.


The period from August 2010 to January 2011 was the sixth and final phase of the research on the topic “An Analytical Study of Competition Laws in Europe and India”. The main focus and emphasis during this period was undertaking an in-depth research on the sixth chapter of the thesis namely “Conclusions and Suggestions”. The literature reviewed during this period was the basic and advanced books, journals, websites of the European Commission and India and articles written by eminent economists, jurists and researchers on competition and antitrust laws.
During this time of the research the emphasis was on concluding the prevalent law on competition laws in Europe and India. Also the suggestions were researched and reviewed that can give a better understanding and knowledge of the competition laws in the European context and India.


The tasks and goals as mentioned above were undertaken within the time frame as set forward for the research. The main challenge faced during this period of research in the Indian context was the analysing of the taking over the centre stage by the new Competition Act, 2002 and suggesting ways in a situation where the law is in an infant stage and we have to still see the practical implementation of the law at full thrust. In the European context there have been many changes that have taken prominence. The new Regulations and guidelines on the vertical restraints have been put into effect, review of the modernisation of Article 82 on the abuse of dominant position is still in process, and report on modernisation regulation is being researched. So how these new changes shall fare in future in the EC competition laws were accessed and certain suggestions were made in the chapter.