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"Fair Competition for Good Corporate Governance"

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ABSTRACT

Corporate governance and competition law may be perceived as strong collaborators to ensure that the enterprises behave ethically and do not follow unfair business practices. The Competition Act prohibits the prevalence of anti-competitive practices and SEBI LODR (Listing obligations and disclosure requirements) prescribes the corporate governance principles and the manner of adherence to the same. This paper outlines the connection between Competition and Corporate Governance and the framework of competition governance in India and its effect on the economy.

KEYWORDS: Corporate Governance, Competition, Compliance, Economy, Shareholders, etc.

I. INTRODUCTION

Corporate governance is a comprehensive subject area which deals with an extensive array of specialties such as "accounting, consulting, economics, ethics, finance, law, and management"[1]. Governance, in particular, refers to the set of rules & regulations laid down to prescribe corporate conduct. The primary objective of corporate governance is to draft agreements that illustrate the rights & responsibilities of the corporation & shareholders. Whereas the primary objective of competition policy is to improve consumer benefits by indorsing competition and regulating activities that could constrain it. More competitive markets lead to decrease in prices, more investment & innovation[2] which lead to increased levels of welfare, transparency & growth in the economy. There's a direct link between corporate governance & a competitive business environment, with the competitive business environment promoting & influencing Corporate Governance. Competition has a huge impact on a country's economic growth. Many countries are thus moving towards a more "competition-oriented market-based policy". A competitive business environment is essential for a country's economic growth as well as its social advancement.

Both corporate governance & competition norms, which progressed around the same phase in India, have advanced at a remarkable rate. Theoretically, competition law seeks to tackle acts of companies that are anti-competitive in nature while corporate governance norms strive to implement procedures within the company to align the shareholders and management's interests. Although it may seem like competition & corporate governance are not related there's growing scholarship vis-à-vis the scope for significant interaction amongst them. This

[1] S. Li and A. Nair, "Asian corporate governance or corporate governance in Asia?" Corporate Governance: An International Review, vol. 17, no. 4, pp. 407-410, 2009.
[2] OECD Report on Competition and Corporate Governance (2012)

paper discourses the significance of competition law to corporate governance, which successively influences the social & economic development of the countries where the corporates are located.

II. CORPORATE GOVERNANCE

"Corporate governance is the system by which companies are directed and controlled".[3] Its main objective is to enable entrepreneurship & judicious management that can render the success of a company in the long run. A corporate governance framework should foster transparent and fair markets along with efficient distribution of resources. It should be coherent with the rule of law and promote effective management & execution. But most corporates end up not giving enough attention to the environment in which business is carried out. The environment includes- "the degree of competition among companies, the existing level of competition in the market, entry and exit rules and the openness of the economy". With competition regimens being reinforced in various countries around the world, there's a growing understanding of the need to factor in the competition principles in corporate governance. The Business environment in its widest sense has a substantial influence on the corporates' motivations to pursue & implement competitive practices and policies.

Under the Indian regulatory regime, the Companies Act, 2013 gives adequate recognition to the principles of corporate governance, and the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (SEBI LODR) is supposed to be a powerful tool for implementing the corporate governance by the listed companies. SEBI LODR prescribes key norms on board and senior management framework, disclosure and transparency mechanism, documentation, related party transactions, system formulation, etc.

III. COMPETITION

The Competition framework differs in every other country, but the fundamental objectives present in the competitive framework of all the countries are "economic efficiency, consumer welfare, and public interest". In any economy, competition guarantees the highest level of consumer welfare and competences in the market. Competition Act, 2002 was brought into force in India in January 2003 along with the establishment of the Competition Commission of India, which is the enforcement authority of the said act in India. The competition law was enacted to prevent, prohibit & regulate anti-competitive practices and to prevent unnecessary government and regulatory interference. Certain examples of anti-competitive agreements are refusing to deal, fixing prices, limiting or controlling the production supply, etc.

[3] https://www.icaew.com/technical/corporate-governance/principles/principles-articles/does-corporate-governance-matter

Ultimately, it can perhaps be said that good governance is an essential for competition. Competition increases productivity at an industrial level which helps in creating jobs & lower prices for the consumers. At the micro-level, it's understood that firms need to adopt global strategies to stay relevant in the competition. It's imperative to see to it that "privatization, liberalization, and globalization" are boosting and not diminishing the competition in the market. Thus, corporate governance is essential to safeguard consumers' interests & economic growth and is thus closely related to competition policies.

IV. PRODUCT MARKET COMPETITION AND CORPORATE GOVERNANCE

Fundamentally, an increase in product market competition affects corporate governance positively, the reason being, competition drives the administration into making sensible choices that are ultimately in the interest of shareholders.[4] Furthermore, the severity of competition study of a company can affect the control & ownership of the company.[5] Thus, both increase in competition in the market & the subsequent push on corporate governance mechanisms augmented the functioning of the firms in the market.[6]

A study about the manufacturing firms in the European Union found that a competitive environment lowers insider ownership and leads to a more spread-out ownership amongst outside shareholders.[7] Thus, a competitive environment led towards the distribution of stake from within the firm to a more diverse "outside" shareholding, because competition eliminated the want for a significant shareholder to scrutinize the agency expenses.[8] While in India, multiple studies have found a positive effect that competition has on corporate governance by arriving at the conclusion that an increase in insider ownership in a firm increases productivity only when there's intense competition in the product market.[9]

Both the abovementioned researches point out something similar, i.e., policy-makers who are determined to improve corporate governance must widen their scope. This would involve enhancing the competitiveness in the market by an improved understanding of Competition laws & its interaction with corporate governance mechanisms.[10] The correlation between product market competition & corporate governance must be used to our advantage by

[4] Franklin Allen & Douglas Gale, Corporate Governance and Competition 35 (Wharton Financial Institution Center, Working Paper 28, 1999).
[5] Angela Wigger, Towards a market based approach: The privatization and micro-economization of EU antitrust law enforcement in The Transnational Politics of Corporate Governance Regulation, 98 (HenkOverbeek, Bastiaan van Apeldoorn & Andreas Nölke (eds.), 2007).
[6] Grosfeld & Tressel, supra note 28; Hee Sub Byun, JiHyeLee, KyungSuh Park, How does product market competition interact with Internal Corporate Governance?
[7] http://papers.ssrn.com/ sol3/papers.cfm?abstract_id=2356526
[8] Id.
[9] Ekta Selarka, Corporate Governance, Product Market Competition and Firm Performance: Evidence from India in Corporate Governance in Emerging Markets: Theories, Practices and Cases
[10] Giroud & Mueller, supra note 38, 330.

formulating sensible policy which boosts the competition in the market & at the same time address “agency costs”.[11]

V. THE CONCEPTUAL CONNECT BETWEEN CORPORATE GOVERNANCE AND COMPETITION

Perfect competition in the real world is a myth. The market is characterized by imperfect competition, consisting of entities that strategically work towards maximizing their bottom lines and for this purpose restrict the opportunities available to their competitors. Such distorted competition results in the exploitation of consumers and imposes significant economic and social costs on society. In the long run, such imperfect competition is not sustainable from the point of view of inclusive economic growth. There is a need for all entities having the capacity to influence competition to behave in a responsible manner by at least complying with the prevailing regulatory framework in letter and spirit[12].

All corporate actions eventually have a common objective- “the consumer”. Sustainable corporates understand that consumer welfare and interest should form the basis of their marketing and management strategy. This in turn requires ensuring free and fair competition, which can be achieved by a company that ensures a balanced distribution of economic resources. The ultimate focus is to provide a just and fair deal to the consumers. Corporate Governance rules have to take into account these principles and rules to ensure that they achieve the country level responsibilities and objectives set for itself.[13]

Competitive markets facilitate the most effective production of goods & services by utilizing national resources to the best effect. For instance, theoretic & experimental studies recently have highlighted the productive & dynamical efficiency gained from a competitive market.[14] A competitive environment gives the firm the necessary boost to make their manufacturing & supply more effective, to adapt to advanced tech & to innovate.[15] This in turn leads to an increase in productivity, which leads to growth & reduces poverty.

For example, Apple is a company that is known for its innovative ideas since the time of Steve Jobs when he unleashed the first Macintosh Computer to the world. Currently, with the iPhone, they always strive to provide the consumers with new innovative techs like a more powerful processor, 3D touch, or a camera with unbelievable clarity. They always ensure that they are doing something new to stay ahead of their competitors like Samsung, Sony, or OnePlus who also are a part of the race of innovation. This is a clear example of Competition promoting good governance and innovation.

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11 Sahithya Muralidharan and Chaitanya Deshpande, *Scope for Intersection Between Antitrust Laws and Corporate Governance Principles Vis-À-Vis Cartels Deterrence in India*, 9 NUJS L. Rev. 93 (2016)
12 Chartered Secretary Vol 50 (2020) p. 74
13 Chartered Secretary Vol 50 (2020) p. 75
14 Uchida and Cook, in Cook et al. (2007) p. 311
15 As Metcalfe and Ramlogan suggested in Cook et al.(2007) “the best competition policy is a pro-innovation policy”. P. 21

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Thus, over some time, only a proper governance framework drafted to deal with competition is sustainable on a long-term basis.

VI. CONCLUSION

Corporate governance and competition law complement each other and aim at balancing the interest of all the stakeholders of the social and economic system. Competition law compliance has an important role in setting the high standards of corporate governance in the corporate sector. The provisions of the Act are generally applicable to large conglomerates and the total implementation of corporate governance practices is expected from the said economic entities. "Businesses should conduct and govern themselves with integrity, and in a manner that is ethical, transparent, and accountable."[16] One of the core elements of this principle provides that the "Governance Structure should take responsibility for meeting all its statutory obligations in line with the spirit of the law, enabling fair competition and ensuring it equitably treats all its stakeholders".

[16] Principle 1 of the National Guidelines on Responsible Business Conduct