



**COMPARATIVE ANALYSIS OF  
COMPETITION LAWS IN CHINA, JAPAN  
& CANADA**

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**ABSTRACT:**

What is competition? This is the first question that sparks in the mind of any or every individual who reads about competition law. Competition is basically that force which creates a sense of responsibility among the individual to do something better than the other person but this same competition can be a source of malpractice as well and for controlling and checking such kind of practices and making a fair environment in the sectors for the consumers competition laws are enforced. Competition laws are important in order to maintain a free and fair competition among the entrepreneurs and maximise consumer welfare by prohibiting anti-competitive activities.

The focal point of this article is to show an analysis between the competition policies of China, Japan and Canada. In the following article historical backgrounds of the three nations competition acts are discussed so as to show how and at what rate the policies of the individual nations have grown with passage of time. Different competition acts vary according to their nation's economic conditions but as they all are built on the same platforms there are some provisions which remain the same which are being compared in this article further i.e. purpose, anti-competitive/ monopolistic agreements, abuse of dominant position. Provisions related to combinations are also discussed in the article as many a times foreign companies

try to have dominant status in the domestic country and this can lead to an adverse effect on the competition.

**INTRODUCTION:**

Competition is that important part of an industry without which an industry cannot grow in any way. An important reason that an individual works with extreme zeal and enthusiasm is because that person wants to beat the other professional worker in this race of being the best in their field i.e. 'Competition'. Competition policy is an area of law that promotes fair competition among the enterprises and focuses on customer welfare. Different countries follow distinct policies of competition yet with the similar thought process. These competitive policies have played an important role in making the market consumer oriented and free from all the malpractices which were done by the industry giants. This article will make a comparative analysis of such kind of competition policies which are force in China, Japan and Canada.

**HISTORICAL BACKGROUND:**

A successful legislative idea requires ample amount of research, discussion and analysis in order to leave all the shortcomings behind before it is passed and becomes an official statute which is followed by the whole nation. Further how the competition policies in China, Japan and Canada came into effect is discussed in the following article.

**CHINA:**

It is normally perceived that the enactment of the anti-monopoly law in China was started in August 1987 when an AML drafting group was set up by the former Legal Affairs Bureau of the State Council to officially continue to draft the AML. Though many



jurisdictions around the world adopted competition laws beginning in the early 1990s, China's Anti-Monopoly Law (AML) was enacted only in 2007. The Anti-Monopoly Law (AML) was debated and worked on for two decades before it was passed and made into law.

The driving force behind this was allegations of monopolistic behavior of foreign firms in China, specifically Tetra Pak in 2003. The government began to conduct investigations and concluded that foreign companies may begin a trend of monopolizing Chinese markets<sup>1</sup>. The AML targets three broad categories of monopolistic behavior: monopoly agreements, abuse of dominance, and anticompetitive concentrations<sup>2</sup>. Though some contributors suggest that AML enforcement is largely in line with international practice, many have also argued that it exhibits a number of country-specific concerns. These include political concerns, such as consolidating decision making powers by the central government vis-à-vis the regions, as well as economic concerns, such as balancing development needs and economic efficiency. Some have even argued that the AML has been abused as a competition instrument, by turning it into a protectionist tool to favor or shield domestic industry or local economic interests<sup>3</sup>.

#### JAPAN:

The Antimonopoly law of Japan was effective from July 1947. The industrial developments which carried Japan from a

feudalistic society to a major world power in less than a century, measured from the 1853 call of Commodore Perry to World War II, were accompanied by constant reliance upon government control and financing<sup>4</sup>. In response to the Allied demands against the Zaibatsu structure, Japanese government directed the enactment of law against private monopoly, restraint of trade and as will give equivalent chance to firms and people to contend in industry, business, money, and agriculture sector. Thus, the new law was enacted on April 14, 1945, the last day of the final session of the Imperial Diet under the Old (Meiji) Constitution.<sup>5</sup>

The antimonopoly law was not desired by the Japanese people but rather was imposed upon a defeated state by a foreign government. This law has been a great success for the Japanese government as it was much more skilled and well drafted than any other antimonopoly law at the time it came into effect. Although it has been a major source of political controversy but with the passing of years and having amendments to it, the government policy has maintained a true and fair environment in the Japanese market.

#### CANADA:

The competition law of Canada is the oldest competition policy enacted in 1889. Canadian competition policy is based on the premise that free market forces, operating under competitive conditions, are the best means of allocating resources in the economy and maximizing total economic welfare<sup>6</sup>. The

<sup>1</sup> Lechtenberg, Luke, "China's New Anti-Monopoly Law" (2018). International Immersion Program Papers. 87.

<sup>2</sup> *Ibid.*

<sup>3</sup> Yane Svetiev & Lei Wang, Competition law enforcement in china: Between Technocracy and Industrial Policy.

<sup>4</sup> Michiko Ariga & Luvern V. Rieke, The Antimonopoly Law of Japan and Its Enforcement, 39 Wash. L. Rev. 437 (1964)

<sup>5</sup> *Ibid.*

<sup>6</sup> Calvin S. Goldman and Joel T. Kissack, The Role of Competition Policy in Canada's Industrial Policy, 19 Can.-U.S. L.J. 105 (1993).



Act comprehensively sets out the competition law of Canada, from hard-core cartels to merger review. With few exceptions, it applies to all businesses in Canada. In enacting the legislation, it was Parliament's intent to encourage competition, promote greater economic efficiency and enhance Canada's position in world markets<sup>7</sup>.

The act focuses on criminal issues frequently happening in the market ( Bid rigging, price fixation etc. ) and other non-criminal issues also ( merger review, exclusive dealing, abuse of dominant position etc.) . The non- criminal matters are taken up by the competition tribunal according to the provisions of the statute. Private parties may also apply to the Tribunal seeking a review of certain business practices (such as refusal to deal, tied selling and exclusive dealing). The Act also requires premerger notification<sup>8</sup>.

#### **COMPARITIVE ANALYSIS OF COMPETITION LAWS IN CHINA, JAPAN AND CANADA:**

Although the competition policies of the three nations i.e. China, Japan and Canada are enacted at different stages but are established on the same base. Further in order to have a better understanding of the same an analysis showing the purpose on which these policies are created, the regulators who regulate these policies, anti-competitive/ monopolistic agreements which take place, provisions for the abuse of dominant position by the big companies and process to be checked during mergers and acquisitions is presented ahead.

#### **PURPOSE:**

<sup>7</sup> Yves Bériault and Oliver Borgers, McCarthy Tétrault LLP, Overview of Canadian antitrust law.

The purpose of the competition law is clearly stated in Article 1 of the statutes of the respective nations. These laws promote fair and free competition in the market, safeguarding the interest of the consumers, encouraging business activities and promoting national market in global sector. These policies by restricting malpractices create a sense of competitiveness among the different companies which leads to better quality products and reduction in the price of the products produced.

#### **REGULATORS:**

Regulators of these policies have the authority to adjudge the anti-monopoly matters in their explicit nations. China's competition regulatory authority includes Ministry of Commerce (MOFCOM), National Development and Reform Commission (NDRC) & Administration for industry and commerce (SAIC). In Japan, the Fair Trade Commission(FTC) has the duty to achieve the purpose set forth in Article 1. In Canada, governor in council may appoint an officer to be known as the Commissioner of Competition, who shall be responsible for the administration and enforcement of this Act.

#### **ANTI-COMPETITIVE AGREEMENTS:**

Anti-competitive/ Monopolistic agreements in the industry are one of the reasons because of which there remains an adverse effect in the competition. There are provisions in these statutes which show whether an act performed by the two enterprises is anti-competitive/ Monopolistic in nature. Article 13<sup>9</sup> defines "Monopolistic agreement" as agreements, decisions or concerted actions which eliminate or restrict competition. The corresponding provisions are found in

<sup>8</sup> *Ibid.*

<sup>9</sup> Anti-monopoly law, People's Republic of China.



competition policy of Canada and Japan as well. There are two types of anti-competitive agreements: Horizontal Agreements and Vertical Agreements. As a general proposition, vertical agreements are much less likely to harm competition than horizontal ones.

Some of the factors which cause an anti-competitive agreement are price fixation, tied selling, bid rigging, exclusive selling or purchasing agreements etc. Such type of agreements are regarded as the main cause of monopoly in the market. In order to remove such kind of malpractices the competition policies are enforced so that there remains no sign of anti-competitive agreements or any other practice which can hamper the fair business environment and serve as savior of the consumers.

#### ABUSE OF DOMINANT POSITION:

Enterprises misuse their predominant situation in the market to control the market situation and stifle the more vulnerable undertakings. Chapter 3<sup>10</sup> of the Chinese competition law states provisions of dominant position, AML defines a dominant market position as the ability to control the price or output of production in their relevant market, or the ability to block or affect the entry of similar undertakings in their relevant market.<sup>11</sup>

Article 79(1) of the Canadian competition law deals with the provisions of dominant position.

In Canada, possessing a dominant position is not in itself illegal. Abuse of a dominant position by resorting to anti-competitive acts

in a market can, however, give rise to an order by the Tribunal if such abuse results in a substantial lessening or prevention of competition<sup>12</sup>.

No specific provisions are stated in the competition law of Japan regarding abuse of dominant position in the market. However, the AML approach to dominant position such as subcontractors that supply parts and components to manufacturers, as well as suppliers of commodities to supermarkets and departmental stores. It is in this sense that it can be said that this control is designed to protect small enterprises<sup>13</sup>.

#### COMBINATIONS:

Companies merge so as to maintain a firm grip over the market and reduce competition. The merging parties are required to prove that the merger will not adversely affect competition. Merger means the acquisition or establishment, direct or indirect, by one or more persons, whether by purchase or lease of shares or assets, by amalgamation or by combination or otherwise, of control over or significant interest in the whole or a part of a business of a competitor, supplier, customer or other person.

Chapter 4 of the China's policy states provisions of merger, the various factors that need to be considered while mergers, the process of notifying to the concerned authority. Ministry of Commerce (MOFCOM) is the authority that deals with the issues of merger. In case a concentration has or may have effect on eliminating or restricting competition, the antimonopoly

<sup>10</sup> *Ibid.*

<sup>11</sup> *Supra note 1*

<sup>12</sup> Calvin S. Goldman, & Navin Joneja, *The Institutional Design of Canadian Competition Law:*

*The Evolving Role of the Commissioner*, 41 *Loy. U. Chi. L. J.* 535 (2010).

<sup>13</sup> *The Antimonopoly Law of Japan*, Mitsuo Matusushita..



authorities shall take decision of prohibition. However, the antimonopoly authorities may decide not to prohibit the concentration if the undertakings can prove either that the concentration bring more positive effect than negative effect on competition, or that the concentration is in harmony with public interests<sup>14</sup>.

Article 15 of the AML( Japan) states that every company that intends to become a party to a merger must, pursuant to the provisions of the Rules of the Fair Trade Commission, notify the Fair Trade Commission in advance of its merger plan if the total domestic sales amount of any one of the companies intending to be parties to the merger exceeds the amount provided by Cabinet Order, which must be no less than twenty billion yen, and the total domestic sales amount of any one of the other merging companies exceeds the amount provided by Cabinet Order, which must be no less than five billion yen; provided, however, that this does not apply if all of the merging companies belong to the same group of combined companies.<sup>15</sup>

Section (91- 100) of the Canadian law deals with the provisions related to mergers. Section 92<sup>16</sup> states Where, on application by the Commissioner, the Tribunal finds that a merger or proposed merger prevents or lessens, or is likely to prevent or lessen, competition substantially it can pass order both in case if the merger is completed or proposed. There are some exceptions which needs to be looked while checking for anti-competitive activities in the process of combinations and arrangements.

### CONCLUSION:

In conclusion, it would not be wrong to say that every individual nation's competition policy is unique and effective in their own way. The policies depend on the nation's economic stability as with the change in economy the competition will change and there will be a need for an amendment in the competition policy. This article has outlined the comparative analysis of the competition laws in China, Japan and Canada explaining different aspects including monopolistic agreements, abuse of dominant positions and more. The competition policies in the three nations are important in their own way. History of the specific statutes have also been discussed in the article giving the glimpse of how the competition policies have developed in these following years. Not all the things start at the same time period and what comes in the future depends on the work of the individuals who are governed by the same and this can be seen by comparing the historical backgrounds of the competition policies of the three nations which were enforced in different time period but have developed in their own pace.

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<sup>14</sup> *Supra note 10.*

<sup>15</sup> Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of April 14, 1947).

<sup>16</sup> Competition Act of Japan 1889.