

COMPETITION RELATED ISSUES IN HEALTH SECTORS



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The Indian healthcare sector is estimated to reach US\$ 100 billion by 2015, growing 20 per cent year-on-year (y-o-y), as per rating agency Fitch. The industry is expected to touch US\$ 280 billion by 2020, on the back of increasing demand for specialised and quality healthcare facilities. India is the most competitive destination with advantages of lower cost and sophisticated treatments, highlighted the RNCOS report titled 'Indian Healthcare - New Avenues for Growth'. The report further elaborates that several key trends are backing the growth of India's healthcare sector. "India is a very important market for many reasons. The government continues to invest in healthcare. We see that healthcare is expanding across the country. There is a growth opportunity and we continue to invest very much in India. There is so much innovation in India," highlighted Mr Adam H Schechter, Executive Vice President and President, Global Human Health Division, Merck.

Market Size

Private equity (PE) and venture capital (VC) investments in the healthcare industry in India are increasing rapidly. In 2012, the industry absorbed US\$ 1.2 billion across 48 deals, according to research firm Venture Intelligence. The hospital and diagnostic centre in India has attracted foreign direct investment (FDI) worth US\$ 1,542.35 million, while drugs & pharmaceutical and medical & surgical appliances industry has registered FDI worth US\$ 9,783.31 million and US\$ 584.14 million, respectively during April 2000 to December 2012, according to data provided by Department of Industrial Policy and Promotion (DIPP).

Indian pharmaceutical industry is projected to show double-digit growth in near future owing to a rise in pharmaceutical outsourcing and rising investments by multinational companies, as per RNCOS report titled 'Indian Pharma Sector Forecast 2014'. The report highlighted that focus of the industry will shift towards capitalising the potential of tier-III and rural areas. Emerging sectors, such as bio-generics and pharma packaging will also pave way for the pharmaceutical market to continue its upward trend during the forecast period (FY 2012- FY 2014).

Trends and Investments

Healthcare providers in India plan to spend Rs 5,700 crore (US\$ 1.05 billion) on IT products and services in 2013, a 7 per cent rise over 2012 revenues worth Rs 5,300 crore (US\$ 981.50 million), according to a report by Gartner. It is expected to grow to 3.9 per cent to reach Rs 1,720 crore (US\$ 318.52 million) in 2013, with most of this growth coming from enterprise

communication equipment. Further, the hospital services market, which represents one of the most important segments of the Indian healthcare industry, is expected to be worth US\$ 81.2 billion by 2015, as per a RNCOS report.

Public and Private Hospital Facilities in India

India is an exception as it has one of the highest private spending on healthcare. With most of the Indian population still below the poverty line public facilities are largely to cater to this segment however in the urban and sub-urban areas private healthcare facilities are preferred. With rising income levels and exposure to international standards/ quality has raised the demand for quality private healthcare facilities.

The private health sector consists of the 'not-for-profit' and the 'for-profit' health sectors. The not-for-profit health sector includes various health services provided by Non Government Organisations (NGO's), charitable institutions, missions, trusts, etc.

Healthcare sector is distinct from other sectors as there exist inherent loopholes in information which renders setting competition in this field difficult as compared to other sectors. For this reason it is often believed that the competition law may not be applicable to healthcare in the way it is applied in other sectors. However the ultimate purpose of any competition law is to protect the interest of the consumers and to ensure efficiency and competitiveness in the market. The competition law is applicable to healthcare players if they can be considered as undertakings. Since hospitals, health professionals, health insurers, pharmaceutical firms, pharmacists, etc. perform economic activities and supply service to the public at large, thus they can be considered to be undertakings and hence are subject to competition rules.

In the developing nations most patients are neither covered by public nor private health insurance. Companies in such nations do not compete via prices but rather through innovation. In such cases where consumers are not the decision makers are often misguided by doctors and pharmacists into purchasing expensive medicines and sometimes even irrational combinations of medicines leading to medical complications. It is here where the efficiency of the market is lost with patients not being provided with the best possible treatment/medicines at the lowest possible prices and hence, a monopoly has been created and high credit companies or institutions such as Hospitals, Medical Colleges, pharmacies, diagnostic centres, etc have their dominance, which they are abusing. The application of competition law improves the quality of care by protecting the patient against unfair and anticompetitive practices such as abuse of dominant position, distribution agreements, etc. At times, practices that restrict competition may themselves be quality enhancing, in that case competition law may make an exception.

The competition policy in India is laid out in the Competition Act, 2002 with an object to curb out the monopolies, to promote healthy competition and to prevent practices having an adverse affect on competition and abuse of dominance of enterprises either by entering into anti-

competitive agreements, or combinations. The anti-competitive activities in the health sector in India are rising day by day due to negligence of various concerned authorities and due to asymmetry information available in this field. The range of medical treatment to a patient differs from person to person, thereby claim to ascertain a fixed amount of money regarding any health facility cannot be met out entirely, but solution can be offered to this problem by way of the Competition Act, by focusing on to few basics, which include-anti-competitive agreements, abuse of dominance, regulation of criterion to grant certification in this sector, etc. Such agreements and abuse need to be watched out carefully by strict application of the law in this field. Following steps need to be followed:

- 1) Anti-competitive agreements must be watched out and punished accordingly;
- 2) Giving more powers and recognitions to the Regulatory bodies;
- 3) To check out the abuse of dominance by such sectors;
- 4) To regulate the asymmetrical nature of information;
- 5) Maintaining public at large as consumers and their rights against such service providers;
- 6) To regulate the certification authorities and the certification criterion;
- 7) Regulatory barriers in the medical education sector need to be looked into to ensure adequate supply of well trained professionals.

