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Competition Commission of India: An Overview on its working and Recent Amendments

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This paper discusses about the Competition Commission of India (CCI) and its recent amendments. The first segment starts with a brief description of CCI, its objectives, and the Competition Act, 2002. The next segment describes the impact of competition law on consumers and the economy. Moving on, there are four recent amendments which are described briefly. The later segment describes CCI's collaboration with international agencies. A landmark judgement of CCI is explained briefly. Finally, it deals with the competition policy actions to be followed by the Competition authorities during the crisis (e.g., COVID-19) and emergency conditions. As a result of the liberalisation and privatisation in India in the early 1990s, it became clear that the current Monopoly and Restrictive Trade Practices Act of 1969 ("MRTP Act") was not prepared to handle the competitiveness element of the Indian economy. With the beginning of the process of globalisation, Indian companies began to face the heat of competition from local competitors as well as from global giants, who demanded equal opportunities and an investment-friendly climate. Eventually, it was concluded that the competition legislation required a change from restricting monopolies to incentives to develop and expand businesses. Therefore, fostering competition while avoiding market power abuse.

Keywords: *competition, consumers, economy, market, unfair.*

INTRODUCTION

The aim of the competition law is to control monopolistic, unfair, and restrictive trade practices by establishing a set of rules or legislations which will enhance competition or the competitive outcomes in the markets, and by the way of sanctions, it will restrict anti-competitive practices. However, the strength of competition helps to influence the competitiveness of a country i.e., it influences the domestic markets firms to compete in the export markets and against imports in home markets. Modern competition law aims at two broad categories of provisions:¹

1. Firstly, preventing the restraints of competition through agreements or concerted practices such as trust or cartels.
2. Secondly, under acquisition of economic power through monopolization, abuse of dominant position or mergers.

In 1969, India adopted its 1st Competition Law i.e., Monopolies and Restrictive Trade Practices Act, 1969. Its objective was to prevent economic power concentration, controlling monopolies, and prohibiting monopolistic, restrictive, and unfair trade practices. As years passed, there was a need for new competition law. By introducing the new economic policy and opening up the Indian market to the world shifted the focus from restricting monopolies to promoting overall competition in the Indian market due to which the Competition Act, 2002 was enacted. In terms of administrations of competition in the market, this Act is proactive. In case of enforcement purpose, the Act not only disapproves the dominance of an enterprise, but also it doesn't make any distinction between an enterprise owned by a state or a private sector entity.

The Indian Government under the Competition Act, 2002, established the "Competition Commission of India (CCI)" in March 2009, where this commission is responsible for the

¹ Competition Commission of India, 'Annual Report 2019-2020' (2020)

<<https://www.cci.gov.in/sites/default/files/annual%20reports/ARENG2019-20.pdf>> accessed 05 July 2021

administration, implementation, and enforcement of the Act.² Under Section 18 of the Act,³ the given objectives of the commission are:

1. Practices having adverse effects on competition should be prevented;
2. To sustain and promote the competition on markets;
3. Interests of consumers should be protected;
4. Freedom of trade carried on by other parties in Indian markets is to be ensured.

IMPACT ON CONSUMER AND ECONOMY

The implementation of competition law has shown a positive impact on the Indian economy as a whole. This enabled a systematic approach to consumer preference and giving importance to an array of quality products and services at an affordable price. Before the Industrial Policy Resolution of 1956 industries in the private sector enjoyed a monopoly in the market and used their influence to manipulate the market prices thus making huge profits by exploiting the consumers. But then the licensing policy of the government encouraged industries in the backward regions of the country. This was to promote regional equality. A licensing was not only needed for establishing a new enterprise, but also for expanding the production capacity of the existing ones. This was to regulate the allocation of resources to different uses. The focus was to promote social welfare rather than private profits. But then after the opening up of the Indian economy by the introduction of the New Economic Policy of 1991, free play of the market forces led to the emergence of private companies especially Multi-National Companies (MNC's).⁴ But in the process, goods and services are produced for those who have the means to buy them. When prices rise (which is an obvious tendency in a system driven by the free play of market forces), weaker sections of the society suffer deprivation. Thus, then the government thought of implementing competition law, and finally The Competition Act, 2002 was introduced and this competition law seeks to maintain market competition by regulating

² 'Competition Commission of India' (*Drishti IAS*, 2019) <<https://www.drishtias.com/important-institutions/drishti-specials-important-institutions-national-institutions/competition-commission-of-india>> accessed 05 July 2021

³ Competition Act 2002, s 18

⁴ T R Jain and V K Ohri, *Indian Economic Development* (VK Global Publications 2020)

anti-competitive conduct by the companies and this, in turn, resulted in increased consumer welfare.

Furthermore, the competition law seeks to provide incentives to businesses to undertake innovation. This way, the government ensured that competition law leads to overall consumer welfare along with economic development. Thus, an effective competition law ensures to protect consumers' interest in the meantime helps in fostering economic growth and helps in increasing GDP at a faster pace.

Sometimes the producers/suppliers use unfair means especially activities like hoarding with a motive of speculating with the future prices of the goods and services which leads to anti-competitive practices. Such anti-competitive practices may lead to market failure and lesser innovation which in the end hampers dynamism in the economy. Competition law seeks to prevent such unfair practices and promotes healthy competition in the market.

RECENT AMENDMENTS

According to Section 64 of the Competition Act, 2002,⁵ the Competition Commission of India (CCI) can make regulations to further amend The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011.

1. The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2019

On 13th August 2019, it was notified that the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 was amended, and later, The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2019 came into

⁵ Competition Act 2002, s 64

force.⁶ An automatic system of approval for the combination was introduced under 'Green Channel'. It was expected that this 'Green Channel' would:

- sustain and promote speedy, transparent, and accountable review of combination cases;
- strike a balance between facilitation and enforcement functions;
- create a culture of compliance and;
- support economic growth.

According to Section 31(1) of the Act,⁷ it is deemed to a combination to get approved after filing the notice as per the prescribed format and acknowledgement, and later, it will be subjected to the Commission's finding whether the combination falls under the scheme, 'Green Channel' (where this combination is mentioned in Schedule III). The parties belonging to such combinations as mentioned in Schedule III, should provide Form I pursuant to regulation 5, besides, the declaration as specified in Schedule IV. If the Commission figures it out that the combination doesn't fall under Schedule III and the filed declaration pursuant to sub-regulation 1 is incorrect, then the given notice and the granted approval under this regulation shall be *void ab initio*, and the Commission deals with the combination with respect to the mentioned provisions in the Act.

2. The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Second Amendment Regulations, 2019

On 30th October 2019, CCI notified for further amendment of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 i.e., The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Second Amendment Regulations, 2019.⁸ In the Regulation

⁶ Devika Sharma, 'The Competition Commission of India (Procedure in Regard to the Transaction of Business Relating to Combinations) Amendment Regulations, 2019' (*SCC Blog*, 2019) <<https://www.sconline.com/blog/post/2019/08/14/the-competition-commission-of-india-procedure-in-regard-to-the-transaction-of-business-relating-to-combinations-amendment-regulations-2019/>> accessed 06 July 2021

⁷ Competition Act 2002, s 31(1)

⁸ 'Competition Commission of India (Procedure in Regard to the Transaction of Business Relating to Combinations) Second Amendment Regulations, 2019' (*Legitquest.com*, 2020)

11 of The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, the amendment signifies the amount fee payable besides the notice, as follows:

1. The fee payable shall be Rs.20,00,000 (rupees twenty lakhs) only, in the case if the notice is filed in Form I.
2. The fee payable shall be Rs.65,00,000 (rupees sixty-five lakhs) only, in the case of the notice is filed in Form II.

3. The Competition Commission of India (General) Amendment Regulations, 2019

According to Section 64 of the Competition Act, 2002,⁹ CCI can make regulations to further amend the Competition Commission of India (General) Regulations, 2009. A new clause (*da*) was added in Regulation 10(2) which states that 'the Informant is required to provide the details of pending disputes and litigations between the Informant and the parties before any court, tribunal, statutory authority, or arbitration with respect to the subject matter of the information. Under Regulation 35(1), a proviso was added which permits the Commission to disclose the Informant's identity whenever appropriate to do so for the purposes of the Act after giving the informant the opportunity of being heard.

Under Regulation 49(1)(a), the sub-regulation shall be substituted. According to Section 19(1)(a) of the Act,¹⁰ any person shall be accompanied by having proof of the fee paid as follows in case of:¹¹

- an individual or Hindu Undivided Family (HUF) then the amount will be Rs.5,000;
- Non-Governmental Organisation (NGO) or Trust or Consumer Association or a Cooperative Society then the amount will be Rs.10,000;

<<https://www.legitquest.com/act/competition-commission-of-india-procedure-in-regard-to-the-transaction-of-business-relating-to-combinations-second-amendment-regulations-2019/83B7>> accessed 07 July 2021

⁹ Competition Act 2002, s 64

¹⁰ Competition Act 2002, s 19(1)(a)

¹¹ Sharma (n 6)

- Company (which includes one person company) or Firm (which includes limited liability partnership, proprietorship, or partnership) having turnover for about Rs.2Crores in the previous year then the amount will be Rs.40,000;
- Company (which includes one person company) or Firm (which includes limited liability partnership, proprietorship, or partnership) having turnover for about more than Rs.2 Crores and up to Rs.50 Crores in the previous year then the amount will be Rs.1,00,000;
- for those who aren't covered under clauses (a), (b), (c), or (d) then the amount will be Rs.5,00,000.

The Competition Commission of India (General) Amendment Regulations, 2020

Regulation 20(4) of the Competition Commission of India (General) Regulations, 2009 shall be amended. The words in Regulation 20(4) i.e., 'The report of the Director-General shall contain his findings on each allegation which were made in the reference or information, along with all the documents, statements, analyses, and evidence collected during the investigation', shall be substituted with 'The report of the Director-General shall contain his findings along with the documents, statements, analyses, and evidence which are collected during the investigation'.¹²

INTERNATIONAL ENGAGEMENT OF CCI

International collaboration is widely known for establishing a strong connection with the corresponding multilateral agencies and competing jurisdictions in terms of capacity development, enforcement cooperation, networking, and exposure to best global practices. The Commission is asked to attend meetings and conferences organized by international organizations like OECD, the International Competition Network (ICN), the United Nations Conference on Trade and Development (UNCTAD), etc.¹³

¹² Devika Sharma, 'CCI Notifies -- Competition Commission Of India (General) Amendment Regulations, 2020' (SCC Blog, 2020) <<https://www.sconline.com/blog/post/2020/02/10/cci-notifies-competition-commission-of-india-general-amendment-regulations-2020/>> accessed 08 July 2021

¹³ Annual Report (n 1)

During the conferences/sessions of the OECD, the Commission has made frequent contributions at different round tables. In 2019-20, the Commission presented its written input on “IP Rights Licensing and Competition Law,” “Vertical Fusions for Technology, Media and Telecom” and “Digital Lab Questionnaire and Dynamic Markets Control,” respectively. The Commission is also a member and an official invitee to all ICN meetings, workshops, seminars, and conferences. The Commission joined the Competition Agency (CAP) Framework of the ICN in 2019-2010, which emphasizes openness and the due process of law by the Competition Agency.

Section 18 of the Competition Act¹⁴ states that the Commission may engage in any agreement or arrangement in order to discharge its responsibilities or execute its obligations under this Act with the prior permission of the Central Government and any agency of any foreign nation. The Commission has so far concluded six Memoranda of Understanding in this regard.

LANDMARK JUDGEMENT OF CCI

- **Naveen Kataria vs Jaiprakash Associates Limited¹⁵**

Facts: The present case was filed by Smt. Naveen Kataria against Jaiprakash Associates Limited (Jal). Smt. Kataria, a buyer of a villa that was constructed by JAL, alleged that the terms and conditions in the Provisional Allotment Letter (PAL) were one-sided, unfair, and were in favour of JAL. On 21st May 2015, under Section 26(1) of the Act,¹⁶ the Commission passed an order to submit a *prima facie* case of contravention of the provisions of Section 4 of the Act¹⁷ and governed the Director-General to start investigation in the matter and submit a report. Consequently, after submitting the investigation, the Commission asked the Director-General to initiate a further investigation and submit a supplementary report.

Issues: According to the investigation made and other evidence, the Commission considered with an opinion that the JAL in the relevant market of ‘provisions of services for

¹⁴ Competition Act 2002, s 18

¹⁵ *Naveen Kataria v Jaiprakash Associates Limited* Competition Commission of India Case No 99 of 2014

¹⁶ Competition Act 2002, s 26(1)

¹⁷ Competition Act 2002, s 4

development and sale of independent residential units in Integrated Townships in the region of Noida and Greater Noida'. Also, the Commission found that the standard terms and conditions mentioned by JAL were one-sided and arranged in such a manner that it doesn't favour the consumers but favours JAL. However, the mentioned terms are uncertain and for the buyers, no substantive rights were provided.

The Acts of JAL such as charging from buyers without delivering the units on time, imposing on various charges, including additional constructions, changing the layouts plans, and the right to increase finance from any financial institution, or corporate body, or bank without the buyer's consult was considered to be abusive. Thus, it was concluded by the Commission that such kind of conduct of JAL was considered as a violation of Section 4(2)(a)(i) of the Act¹⁸.

Judgement: On 9th August 2019, the Commission directed JAL to refrain and stop from indulging in the conduct where it has been found as a violation of the provisions of the Act. Besides, Jal was also ordered to pay Rs.13.82 crore as a penalty where it was estimated that at the rate of 5% of the average relevant turnover of JAL from the sale of independent residential units in the relevant market.

COVID-19: COMPETITION POLICY ACTIONS¹⁹

- In order to ensure the market's well-functioning which helps to promote economic development, Competition has to play a fundamental role. The market conditions in the crisis should be taken into consideration. The objectives of Competition law enforcement and the actions of competition authorities should be realistic. Also, there should be flexibility in the procedure in case of emergency and crisis conditions.
- The exit strategy developments should be informed by the Competition authorities so that there will be a possibility for the market mechanisms to get restored post-crisis.

¹⁸ Competition Act 2002, s 4(2)(a)(i)

¹⁹ 'COVID-19: Competition Policy Actions For Governments And Competition Authorities' (*Oecd.org*) <<https://www.oecd.org/daf/competition/COVID-19-competition-policy-actions-for-governments-and-competition-authorities.pdf>> accessed 10 July 2021

This helps the markets to be competitive post-crisis. In order to safeguard the playing field level, the Competition authorities should continue to champion Competition principles and avoid market distortions by helping the government.

- To protect consumers from unfair pricing practices, the authorities should either rely on consumer protection powers or coordinate closely with the consumer protection agencies.
- It is necessary to consider efficiencies in arrangements among competitors and especially for the development of main health products (e.g., essential drugs and vaccines). However, authorities should remain vigilant.
- The authorities should take initiatives to support the recovery of the economy from the crisis. The authorities should focus on those sectors of the economy which got suffered due to the crisis.
- During times of crises such as covid, it is very important for the commission to prohibit anti-competitive mergers which can generate a long-lasting negative impact on the market. Firms in such financial and economic crisis may seek to improve their core strength by merging with healthier competitors. The firms should carefully look into the transactions in order to ensure that the merger constitutes a “rescue merger”, to avoid the risk of anti-competitive mergers which can lead to a long-lasting negative impact on the marketplace. Recognizing that the firm in distress may deteriorate rapidly during the investigation, which in turn may lead to the problem of sufficient liquidity, competition authorities should adopt a procedural change to ensure a speedier review and successful mergers.
- Decisions based on other considerations of public policy should be restricted to exceptional situations, made in a transparent manner, and when the same public policy goals are met, with no less restrictive alternatives. If the power to approve an anti-competitive merger on the basis of concerns about public interest rests with a different government body, the competitive body should where available, actively promote the use of alternative policy measures that achieve the same objective of public interest while reducing competition restrictions.

- Given the containment measures restricting the movement of persons (and of staff) and the necessity for adaptation to crisis-related priorities, competitive authorities should explore the use of flexibility within procedures including accelerated derogation from fusion standstill obligations, if necessary, and mechanisms to accelerate fusion reviews (e.g., E-filings), extension Any such use of flexibility and modified processes should be aware of the right to due process.

CONCLUSION

The concept of the Competition Commission was developed and implemented under the administration of Vajpayee government in the form of the Competition Act 2002. In the wake of 1991 Indian economic liberalization, there was a need to encourage competition and private business. The Competition Act, 2002, modified by the Competition Act, 2007, reflects contemporary competition law theory. The Act bans antimonopoly agreements, abuses of company dominance, and controls combinations (acquisition, acquisition of control, and merger) which create or may have significant detrimental effects on competition in India. The objectives of the Act must be met via the Competition Commission of India (CCI), constituted with effect from 14 October 2003 by the Central Government. The CCI is made up of a chairman and six Central Government Members. The Commission's responsibility is to remove practices that have detrimental effects on competition, to promote and maintain competition, to safeguard consumers' interests, and to guarantee free trade on Indian markets. The Commission is also obliged, on a referral received from a statutory body created according to any legislation, to provide an opinion on competition problems and to raise public awareness and teach competition training.

In an ordinary market without any restrictions laid upon the firms and producers by the government, it can lead to a situation of violation of consumer rights and interests, as the firms and producers will focus on profit maximization rather than focusing on serving the consumers interests. Thus, in such situation, it becomes necessary to implement competition laws in order to restrict companies from practicing monopoly in the market. And Competition

Commission of India has played its role very well especially in the matters of mergers and acquisition in India by timely monitoring.