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Sectoral Regulators v CCI: Jurisdictional Challenges under the Competition Act 2002

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The fluctuating regulatory landscape in India has emphasised intricate jurisdictional challenges between the Competition Commission of India and various sectoral regulators. Though the CCI is tasked with sustaining and enhancing market competition as per the Competition Act 2002, sectoral regulators like TRAI, SEBI, IRDAI and others have the authority to supervise particular sectors, concentrating on technical, economic, and consumer welfare goals. This intersection has resulted in conflicts and uncertainty in the implementation of regulatory power, particularly in areas such as telecommunications, finance and energy. The study explores the relationship between CCI and sectoral regulators by analysing statutory interpretation and judicial rulings. It examines some landmark cases and studies the principle of regulatory comity, the doctrine of harmonious construction and the controversy surrounding exclusive jurisdiction vs concurrent jurisdiction. The study advocates for a sophisticated and cooperative strategy that honours the technical knowledge of sectoral regulators while maintaining CCI's primary responsibility in competition enforcement. This paper concludes by suggesting distinct legislative boundaries, better institutional collaboration and the potential creation of a regulatory coordination framework to reduce jurisdictional overlaps and improve regulatory certainty. Due to the technological advancements in the Indian diaspora, the issues between concurrent and exclusive jurisdictions have become more prominent in the digital market.

Keywords: cci, sectoral regulators, competition act.

INTRODUCTION

The Competition Act, 2002, came into being with 9 chapters containing 66 sections to prevent the occurrence of activities that have an appreciable adverse effect on competition in the market in India.¹ The Competition Act 2002 mainly deals with acts resulting in anti-competitive agreements, abuse of dominant position and regulation of combinations. The Act further provides for the establishment and composition of the Competition Commission of India (hereinafter referred to as CCI). It defines the powers, functions and duties of the Competition Commission of India. Section 7 deals with the establishment of the Competition Commission of India, which was established by notification from the Central Government.

Section 7² further declares the commission as a corporate body having perpetual succession, a common seal and the power to hold and dispose of property and can sue and further be sued. Sectoral regulators are the sector-specific regulatory authorities which regulate a particular sector, such as telecommunication, water services, gas and electricity, aviation and airports, railways, banking, tobacco, etc³.

The rationale behind conducting this research is to study the overlapping jurisdictions of the Sector Regulators and the Competition Commission of India. The main aim of the research is to study the behaviours of CCI and sectoral regulators and their relationship with each other.

RESEARCH QUESTIONS

This paper aims to explore and tackle the following key issues based on existing research and court rulings:

1. When both the CCI and a sectoral regulator assert their authority over a specific matter, which body has the right to resolve the dispute?

¹ Competition Act 2002

² Competition Act 2002, s 7

³ Maher M. Dabbah, 'RELATIONSHIP BETWEEN COMPETITION AUTHORITIES AND SECTOR REGULATORS' (2011) 70(1) The Cambridge Law Journal <<https://doi.org/10.1017/S0008197311000195>> accessed 17 March 2025

2. In the event of a jurisdictional conflict, how is it resolved, and what factors or principles are considered in determining the appropriate forum?
3. What are the legal boundaries of the CCI's jurisdiction in relation to sectoral regulators, and how are these limits defined and interpreted?

LITERATURE REVIEW

The Competition Commission of India, under Section 18 of the Competition Act, 2002, is vested with the duty of eliminating acts that have an appreciable adverse effect on competition in the market, maintaining fair competition, and ensuring consumer welfare⁴.

Section 18⁵ of the Competition Act, 2002, having a broader scope, overlaps with the jurisdiction of the sector-specific regulators such as the Telecomm Regulatory Authority of India (TRAI), Securities Exchange Board of India (SEBI), Central Electricity Regulatory Commission (CERC), and Insurance Regulatory and Development Authority (IRDA)⁶.

CCI, having broad jurisdiction across various sectors, was duly acknowledged by the Supreme Court in the *Bharti Airtel Case*⁷. The court, while dealing with the issue of jurisdictional overlap between the TRAI and CCI, has pointed out that in case of parallel jurisdiction enjoyed by both the authorities over the same matter, the sectoral regulator will have primacy in dealing with matters related to technical issue once the technical issue is decided then the matter would be handed over to CCI to deal with anti-competitive practices if any⁸.

In fact, the Act in Section 62⁹ provides for acting in a complementary nature to the other laws in force. Section 60¹⁰ includes the overriding effect, states that in case of inconsistencies with other laws, the Competition Act 2002 will prevail and will enjoy supremacy in the domain of

⁴ Bishwash Vijeta, 'Analysis of Conflict between CCI and Sectoral Regulators: Challenges and Solution' (2023) 6(2) International Journal of Law Management & Humanities <<https://doi.org/10.10000/IJLMH.114510>> accessed 17 March 2025

⁵ Competition Act 2002, s 18

⁶ Vijeta (n 4)

⁷ *Competition Commission of India v Bharti Airtel Ltd. & Ors* (2019) 2 SCC 521

⁸ Danish Khan and Aakrit Aditya Sharma, 'Competition Commission of India's Jurisdiction across all Sectoral Boundaries' (SCC Online, 20 September 2024) <<https://www.sconline.com/blog/post/2024/09/20/competition-commission-of-india-jurisdiction-across-all-sectoral-boundaries/#fn7>> accessed 17 March 2025

⁹ Competition Act 2002, s 62

¹⁰ Competition Act 2002, s 60

competition enforcement. The apex court reiterates the fact that CCI and sectoral regulators should work in comity and resolve disputes harmoniously.

In another case, the Coal India Ltd. Case, wherein the apex court time and again emphasised that even if another forum has jurisdiction over the matter, it does not completely oust the jurisdiction of the CCI to deal with the matter¹¹.

In fact, in this case, the apex court endeavours to establish the fact that the Competition Act will apply to state-owned monopolies as well¹². A petition was filed with CCI stating that the Bar Council of India is misusing its position by barring entry of new entrants in the LLB course by imposing a maximum age limit barrier, leading to abuse of its dominant position in the market¹³.

HISTORICAL PERSPECTIVE

The Competition Commission of India, a watchdog appointed under the Competition Act of 2002, has been entrusted to enforce competition law and uphold fair competition, securing market transparency and efficiency¹⁴. At its very start, the competition framework was governed by the Monopolies and Restrictive Trade Practices Act 1969 (MRTP Act, 1969), which was replaced by the Competition Act 2002. The purpose of the MRTP Act was to prevent the concentration of economic power in a few hands¹⁵.

The Act focused on curbing monopolies rather than maintaining fair competition in the market. With the liberalisation, privatisation and Globalisation in 1991 of the Indian economy, this law became redundant, and a need for new legislation was felt. The government constituted the Raghavan Committee¹⁶, which was put to work on devising a

¹¹ Khan (n 8)

¹² Rohan Arora and Shivek Sahai Endlaw, '10 Important Judgements on Competition Law by Indian Court in 2023' *Bar and Bench* (09 January 2024) <<https://www.barandbench.com/columns/10-important-judgments-competition-law-indian-courts-2023>> accessed 17 March 2025

¹³ Akshita Saxena, 'Bar Council of India misusing its dominant position: Plea in CCI Against Maximum age limit for LLB Course' *Live Law* (03 December 2020) <<https://www.livelaw.in/news-updates/bar-council-of-india-dominant-position-cci-maximum-age-limit-llb-course-166775>> accessed 17 March 2025

¹⁴ Competition Act 2002, s 7

¹⁵ Monopolistic and Restrictive Trade Practices Act 1969

¹⁶ Raghavan Committee, *Report of the High-Powered Expert Committee on Competition Law and Policy* (2022)

modern competition policy that could cater to today's needs and align with international standards.

As a result of the recommendation of this committee, the Competition Act 2002 was established, and the CCI came into existence as a regulator of competition in the market. The primary concern of CCI, as defined in Section 18 of the Competition Act, 2002, is reproduced herein: *"Commission has the duty to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and freedom of trade carried on by other participants in market in India."*¹⁷

CCI prevents three types of practices, namely:

1. Anti-Competitive Agreements (Section 3) -

Horizontal Agreements: Section 3(3) of the Competition Act, 2002¹⁸ defines horizontal agreements. These agreements are entered into between competitors operating at the same level of production and engaged in the business of dealing with similar goods and services.

Illustration: Suppose there is a bid for a real estate property, and all the bidders decide to let one firm win the bid. They will show that the bidding was conducted legitimately, so no one questions the authenticity of the bid.

Vertical Agreements: Vertical agreements are dealt with within Section 3(4) of the Competition Act of 2002¹⁹. These types of agreements are entered into between competitors operating at different levels of production. There are different types of vertical agreements, namely, tie-in agreements, exclusive dealing agreements, exclusive distribution Agreements, refusal to deal, and resale price maintenance.

2. Abuse of Dominant Position (Section 4) -

Dominance refers to the ability of one player in the market to influence the pricing and output in the relevant market, and abuse means to misuse or exploit a firm's power. The CCI uses some factors to decide whether an enterprise is abusing its dominant position in the market.

¹⁷ Competition Act 2002, s 18

¹⁸ Competition Act 2002, s 3(3)

¹⁹ Competition Act 2002, s 3(4)

3. Regulation of Combination (Sections 5 & 6) -

Combination refers to the acquisition, merger, or amalgamation of one enterprise by another, which is subject to the approval of the CCI. As such a combination may have an appreciable adverse effect on competition in the market, such approvals are necessary to prevent such practices and maintain fair competition and transparency.

THEORETICAL FRAMEWORK AND LEGAL PROVISIONS

The concept of jurisdiction in regulatory law refers to the legal authority granted to an administrative body to address or oversee specific issues, which is essential for the functionality of both general and specialised regulators. In the realm of administrative law, jurisdiction delineates both the scope of an authority's power and the legitimacy of its actions.

Statutory interpretation plays a critical role in demarcating regulatory boundaries, particularly when legal terminologies intersect or become ambiguous. As outlined in the Competition Act, 2002, key provisions such as Section 18 (Responsibilities of CCI), Section 19 (Inquiry into Anti-competitive agreements and abuse of dominance)²⁰, as well as Sections 5 and 6 (Combination Regulation)²¹, establish the legal framework for the functions and powers of the CCI.

These provisions are often interpreted in regard to sector-specific legislation to assess the extent of CCI's authority in complex scenarios. On the other hand, sectoral regulation pertains to supervisory frameworks tailored for specific industries, such as telecommunications (TRAI), securities (SEBI), insurance (IRDAI), electricity (CERC), and banking (RBI).

These sectoral regulators are tasked with both technical supervision and consumer protection within their respective areas. The CCI operates as a cross-sectoral regulator aimed at safeguarding market competition and preventing anti-competitive conduct. On the other hand, sectoral regulators predominantly concentrate on economic regulation, including pricing, licensing, and compliance matters. Consequently, while their objectives may

²⁰ Competition Act 2002, s 19

²¹ Competition Act 2002, ss 5-6

overlap, their mandates remain distinct, leading to potential jurisdictional disputes that necessitate careful legal examination and cooperative engagement between regulators.

CASE ANALYSIS: JURISDICTIONAL CHALLENGES

Competition Commission of India v Bharti Airtel Ltd -²²

Brief Facts: In this case, the Respondents were Bharti Airtel India, Vodafone India, Idea Cellular and Cellular Operators Association of India, who are referred to as the Incumbent Dominant Operators (IDOs). The Appellants, namely, Competition Commission of India and Reliance Jio Infocom Limited (hereinafter referred to as RJIL) were of the opinion that the Respondents had indulged in a cartel u/s 3(3)(b) of the Competition Act, 2002²³, due to which there was appreciable adverse effect on competition in the market and further stated that the same acted as a barrier for RJIL which prevented its entry into the relevant market.

CCI had invoked an inquiry into the said matter under Section 26(1) of the Competition Act, 2002²⁴ and had passed an order with regard to the case. An appeal was filed before the Bombay High Court wherein the court held that TRAI is the telecom sector regulator and has the jurisdiction to investigate, regulate and govern the matters related to the telecom sector. Hence, the order passed by the CCI was quashed. The respondents, aggrieved by the order of the Bombay High Court, filed 4 SLPs before the apex court with regard to the conflict of jurisdiction.

Legal Issues:

1. Does the CCI have the jurisdiction to investigate the issue even though TRAI is designated as the sector regulator?
2. Is it necessary for CCI to have TRAI's technical findings as a condition for exercising its authority?

Decision: The Apex court was of the opinion that TRAI and CCI have parallel jurisdiction over the matter to investigate. In contrast, the mandates of the two regulators are different

²² *Commission of India v Bharti Airtel India* (2019) 2 SCC 521

²³ Competition Act 2002, s 3(3)(b)

²⁴ Competition Act 2002, s 26(1)

from each other. TRAI is a statutory body with a duty to deal with the interests of the consumers, resolving disputes and appeals of the telecom sector, while CCI deals with matters related to anti-competitive behaviours of the market player and does not deal with technical and economic matters of the telecom sector like the TRAI.

The Supreme Court observed that TRAI will have first-hand jurisdiction in the matter, and only after a decision by the TRAI has obtained finality can the CCI initiate its proceedings. The apex court further promoted the principle of regulatory comity between the two regulators so the proceedings could be concluded harmoniously²⁵.

Analysis: This scenario underscores the necessity for a sequential approach, where sectoral regulators like TRAI address technical issues first. While the CCI retains its authority to adjudicate the matter at a later stage, such authority should be exercised cooperatively rather than allowing both authorities to function to operate independently. In this context, a collaborative model was adopted over a hierarchical one.

DISCUSSIONS, POLICY IMPLICATIONS AND FUTURE DIRECTIONS

The case study of CCI v Bharti Airtel Ltd. highlights the intricate jurisdictional relationship between the CCI and sector-specific regulators in India. In the case of Bharti Airtel, the Supreme Court underscored the importance of regulatory comity, pointing out that technical matters clearly within TRAI's jurisdiction must initially be addressed by the sector regulator prior to any intervention by the CCI. This ruling advocated for a sequential model wherein the authority of the CCI is not extinguished but instead delayed until the completion of technical evaluations. These findings indicate a judicial preference for case-by-case evaluations within regulatory domains rather than adhering to a rigid hierarchy or an exclusionary framework.

From a policy standpoint, these overlapping jurisdictions create ambiguity for businesses, regulators, and consumers alike. Reforms are critical to delineate the operational boundaries between the CCI and sector-specific regulators in order to address this issue. One potential approach could involve amending the Companies Act, 2002, along with other sector-specific

²⁵ *Ibid*

legislations to incorporate explicit coordination provisions, potentially drawing inspiration from international best practices such as the UK's concurrency system²⁶ or the EU's frameworks for sectoral cooperation²⁷. Furthermore, establishing official coordination structures, like inter-regulatory advisory committees or formal memorandum of understanding (MOUs), could improve communication, deter forum shopping, and ensure the swift resolution of disputes. A detailed protocol for managing overlapping issues might also outline which authority should lead, depending on the type of issue, such as technical, commercial, or behavioural.

Looking ahead, jurisdictional conflicts are anticipated to increase in digitally converging sectors such as commerce, digital payments, fintech, and data protection, where traditional sector boundaries are rapidly dissolving. For example, disputes concerning the open network for digital commerce (ONDC)²⁸ or data portability may fall under the purview of the CCI and the upcoming data protection board. These evolving challenges call for proactive academic inquiry aimed at developing regulatory framework designs that ensure coherence, minimise conflicts, and promote fair market practices. Comparative studies with international regulators, assessments of emerging legal precedents, and simulations of overlapping case scenarios could significantly improve both theoretical and practical understanding of shared regulatory environments.

CONCLUSION

The issue of jurisdictional disputes between the Competition Commission of India and sectoral regulators represents a significant divide within India's regulatory framework. Analysing court decisions reveals a dynamic yet still evolving relationship between competition law and sector-specific regulation. While courts have generally upheld the CCI's institutional autonomy, they have also highlighted the necessity of respecting the specialised expertise of sectoral regulators, particularly in matters involving intricate technical aspects.

Ultimately, clear regulations are essential for ensuring predictability, fostering investment, and protecting consumer rights. In the absence of well-defined boundaries, the risk of

²⁶ Richard Whish, 'United Kingdom's enhanced currency regime' (2018) 17(2) Competition Law Journal <[10.4337/clj.2018.02.02](https://doi.org/10.4337/clj.2018.02.02)> accessed 18 March 2025

²⁷ Emmanuel Ugirashebuja et.al, *East African Community Law* (Brill Nijhoff 2017)

²⁸ *Ibid*

regulatory arbitrage, redundant efforts, and legal uncertainty increases significantly. Therefore, a cohesive legal and policy initiative is imperative to redefine the contours of regulatory authority in India.

The path to successful market governance is through harmonisation rather than fragmentation, which can only be realised by adaptive judicial interpretation and progressive statutory and institutional changes. As India's economy keeps expanding and diversifying, the regulatory system must adapt simultaneously to address the needs of a complex, converging, and digital-driven market.