

The Role of Competition Commission of India in Navigating the Turbulent Waters of Indian Market Dynamics

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Abstract

Competition law encompasses a set of rules and regulations designed to protect and promote competition, with the ultimate goal of maximizing consumer welfare. Competition law has gone through several stages of development, and it is only in recent times that its significant alteration has aligned more appropriately with the contemporary economic and political landscape on a global scale. During the early stages of competition law, it was primarily formulated by developed economies. Consequently, this exerted influence on developing economies such as China and India, prompting them to adopt competition laws within their own jurisdictions. This adoption has subsequently facilitated a more favorable business environment, even in developing countries, as competition operates on an international scale and possesses a global reach. In the absence of competition rules, a nation may have a range of drawbacks, including negative impacts on consumer welfare, reduced product quality, and limited market options, among others. The Competition Commission of India serves as the regulatory body responsible for overseeing competition within the Indian market and is endowed with the authority to implement competition laws. Competition law refers to the legal framework that addresses various obstacles and distortions in the market. The entity responsible for monitoring and regulating market operations is known as the competition regulator. The commission is legally obligated by the Competition Act, 2002, to proactively mitigate anti-competitive acts, foster and maintain competition in markets, safeguard consumers' interests, and uphold the unrestricted freedom of trade exercised by other participants in the market. This research article seeks to examine and analyze the Competition Commission of India, including its powers, functions, enforcement mechanisms, the regulatory contributions made by CCI in the field of competition regulation, and the significant judgments delivered by CCI.

Keywords: Competition, Developing economy, Regulation, Consumer welfare, Market

INTRODUCTION

Competition helps to ensure that good quality goods are provided to the people. In light of heightened rivalry, producers will be motivated to engage in innovation and specialization to the fullest extent possible. The objective of the competition commission is to establish and maintain equitable competition within the economy, so ensuring a balanced and unbiased environment for producers, while simultaneously promoting consumer welfare via the efficient functioning of markets.

EVOLUTION OF COMPETITION COMMISSION OF INDIA

Monopolies and Restrictive Trade Practices Act, 1969 was implemented with the aim of mitigating the consolidation of economic influence, regulating monopolistic entities, and proscribing anti-competitive trade behaviors. Nevertheless, with the progression of India's economic reforms towards liberalization, privatization, and globalization, the Monopolies and Restrictive Trade Practices (MRTP) Act was considered outdated.⁴

In the year 2000, the High Level Committee put up a recommendation to substitute the MRTP Act with more current competition legislation. It led to the implementation of The Competition Act 2002.⁵

Competition Appellate Tribunal came into force in the Amendment Act of 2007. COMPAT is responsible for supervising the directives and judgments made by the Commission. As of the year 2016, the Commission has conducted an examination of more than 700 cases pertaining to agreements that are anti-competitive in nature and the misuse of dominant market positions. From 2011 onwards, the Commission has been the recipient of 400 notifications pertaining to mergers and acquisitions. It is noteworthy that a staggering 99.9% of these notifications have been approved within a span of 21 days. As of the year 2022, the Commission has successfully resolved a total of more than 1200 antitrust lawsuits and has reported a figure exceeding 900 mergers and acquisitions.⁶

MAIN OBJECTS OF THE COMPETITION ACT, 2002

The primary objective of the Competition Act of 2002 is to safeguard consumer interests by effectively resolving anti-competitive behaviour, promoting market competition, upholding consumer welfare, and assuring the preservation of trade freedom. The institutional framework comprises of three key components: the Competition Commission of India, the Competition Appellate Tribunal, and the National Competition Policy. The primary objective of the Act is to uphold and maintain market competition, while also ensuring that customers are able to obtain affordable goods.

The basic tasks of the entity in question encompass the eradication of detrimental behaviours, the preservation of principles related to unrestricted commerce, the maintenance of a competitive atmosphere, and the safeguarding of consumer well-being. Furthermore, the Commission provides expert counsel, champions equitable competition, disseminates knowledge to the public, and delivers instruction on matters pertaining to competition.⁷

POWERS AND JURISDICTION

Some of the major powers include;

The authority of the Commission to conduct inquiries into specific agreements and the dominant position of enterprises, as stipulated in Section 19.

According to Section 19, the Commission is granted the authority to conduct investigations pertaining to specific agreements and the dominating position held by enterprises. The Commission has the authority to investigate any reported violation of the provisions outlined in Sec 3(1). This investigation can be initiated either by the Commission itself or upon receiving relevant information, along with the prescribed fee as determined by regulations, from individuals, consumers, their associations, trade associations, or through a referral from the Central Government, State Government, or a statutory authority.

When examining the considerable negative impact of an agreement on competition, the Commission is required to take into account many considerations, including barriers faced by new market participants,

hindrances to market entry, advantages for consumers, enhancements in products or services, and the promotion of technical, scientific, and economic progress.

In order to ascertain an enterprise's dominant position, the Commission is required to take into account a range of elements. These factors encompass market share, dimensions, available resources, competitors, vertical integration, as well as the extent of sales or service network coverage. The consideration of consumer reliance is also warranted.

The authority of the Commission to conduct investigations into combinations, as outlined in Section 20. The Commission has the authority to investigate whether a combination, as defined in sections 5(a), 5(b), or 5(c), has resulted in or is likely to result in a significant negative impact on competition in India. The Commission possesses the authority to commence an investigation on the basis of its own knowledge; nevertheless, it is precluded from commencing such an investigation one year subsequent to the implementation of a combination. Upon receipt of a notice, it is incumbent upon the Commission to conduct an investigation into whether the combination in question has a substantial adverse effect on competition within the Indian market.

Section 21 of the legislation grants individuals the authority to express their opinions on references provided by those in positions of power.

A party has the ability to bring up a concern to a legally established governing body, asserting that a decision made is in contravention of the stipulations provided in the legislation. The statutory authority also evaluates the perspective of the Commission and formulates conclusions in accordance with that viewpoint.

During a formal hearing conducted by the Commission, a participant has the opportunity to bring forth a matter pertaining to a judgement that contravenes a specific requirement outlined in the legislation. The Commission has the authority to submit the matter to the statutory body, which is obligated to furnish its opinion within a period of sixty days. The Commission will take into account the perspective of the authorities and afterwards report its findings.

Section 28 of the legislation grants the Commission the authority to partition the firm that holds a dominant position.

The Commission has the authority to issue written orders directing the division of a dominant enterprise in order to prevent the abuse of its dominant position. The order has the potential to encompass several aspects, such as the transfer or allocation of assets, rights, liabilities, or obligations, as well as the modification of contracts through the discharge or reduction of liabilities or obligations, among other provisions. Regardless of any provisions in existing laws, contracts, or articles of association, an individual who is an officer of a company and ceases to hold office due to the division of an enterprise is not eligible to receive any compensation for such termination.

Section 29 of the legislation grants the Commission the authority to carry out investigations pertaining to combinations.

If commission is of the view that the merger and acquisitions may have a bad impact on the market, a notice shall be sent. This notice will request them to provide a response within thirty days of receiving the notice, explaining why an investigation into the merger or acquisition should not be conducted.

Some of the important duties of CCI include:

The Competition Commission of India (CCI) has successfully acted as a deterrent against the development of cartels, imposed sanctions on the Board of Control for Cricket in India (BCCI), commenced an investigation into Google for alleged violations of anti-trust laws, and prevented the establishment of cartels in the telecommunications sector. Section 18 of the Act mandates the Competition Commission of India (CCI) with the responsibility of eliminating anti-competitive practises, promoting competition, protecting consumer interests, and facilitating unimpeded commerce. The primary goal of the Commission is to create a comprehensive structure that promotes equitable competition and safeguards the well-being of consumers, so preventing any detrimental impact on consumer surplus. ⁸

ENFORCEMENT MECHANISMS

The CCI, consisting of six members and a chairperson, with the authority to initiate autonomous investigations pertaining to anti-competitive practises and the abuse of dominant market positions. This can be done based on existing facts or evidence within its control, or upon receipt of information or a referral from a governmental or legal entity. Individuals, as well as consumers and other entities, has the ability to formally lodge a complaint or furnish pertinent information pertaining to anti-competitive agreements and the abuse of dominant market positions.

In the event that a prima facie case is established, the Competition Commission of India (CCI) instructs the Director General to commence an inquiry and thereafter deliver their findings. The Director General is vested with the authority to conduct police raids as a component of its investigative endeavours.

The decision-making process of the CCI may be influenced by the suggestions put out by the Director General over the course of its inquiry. Additionally, the accused parties are afforded a fair opportunity to present their case before any final determinations are made. Subsequently, the authorities have the authority to implement any necessary actions, including the issuance of directives to halt and desist activities, as well as the imposition of monetary penalties. The Competition Act allows for the possibility of appealing certain judgements made by the Competition Commission of India (CCI) to the Competition Appellate Tribunal. ⁹

ANTI COMPETITIVE PRACTICES

The Competition Act of 2002 has been implemented by the Indian government with the aim of enhancing economic liberty and establishing an efficient investment framework. The Framework of the Competition Act 2002 has four key pillars, including

- The Prohibition of Anti-Competitive Agreements,
- Abuse of Dominant Position,
- Regulation of Combination (Merger & Amalgamation, Takeovers), and
- Competition Advocacy.

The anchors mentioned may be further categorized into two main types:

- Behavior-oriented and
- Structure-oriented.

The behavior-oriented anchors pertain to prior agreements made between firms, while the structure-oriented anchors relate to future agreements, such as mergers and amalgamations.

In India, the presence of anti-competitive agreements is strictly forbidden due to their potential to result in significant negative impacts on competition within a relevant market.

Anti-competitive agreements may be categorized into two distinct types:

- Horizontal agreements and
- Vertical agreements.

Horizontal agreements refer to contractual arrangements made between entities operating within the same sector of production, such as manufacturers and distributors. Presuming the existence of considerable unfavorable effects on competition, it may be inferred that engaging in activities such as determining purchase or sale prices, limiting or controlling output, sharing or dividing markets, or participating in bid-rigging or collusive bidding are indicative of such impacts.

Vertical anti-competitive agreements refer to contractual arrangements established between two or more enterprises operating at distinct stages of the manufacturing or distribution chain. These agreements pertain to the terms and circumstances governing the acquisition, sale, or resale of certain goods or services. Vertical anti-competitive agreements encompass several types of arrangements that might potentially restrict competition. These include tie-in arrangements, exclusive supplier arrangements, exclusive distribution arrangements, refusal to deal restrictions, and resale price maintenance agreements.¹⁰

The primary objective of the Competition Act 2002 is to increase economic liberty and provide a robust investment framework through the prohibition of anti-competitive agreements, prevention of misuse of dominant market positions, and regulation of business combinations. The Act also acknowledges the necessity for a stronger and more efficient competition framework in India.

CONUNDRUMS OF CCI

The implementation of competition legislation by the Competition Commission (CCI) is hindered by the dynamic nature of antitrust concerns and the continuous evolution of business models. The Commission of India is currently engaged in conducting market surveys and closely examining developing markets such as algorithms and online platform networks in order to have a deeper comprehension of these situations. The House Judiciary Committee in the United States is now conducting an investigation on the efficacy of current antitrust laws pertaining to technology companies. Simultaneously, the Competition Law Review Committee of the Indian Government is in the process of developing rules for imposing penalties in order to offer industry-specific recommendations.¹¹

The Competition Commission of India is now prioritising competition-related issues in the city of Mumbai, with the aim of enhancing access to justice and fostering a conducive business climate. One of the challenges that arises is the establishment of a new market definition, which is complicated by the lack of physical boundaries in the digital domain. The worldwide scarcity of products and the turmoil in Eastern Europe have also raised concerns on the issue of cartels.¹²

The Competition Commission of India has been criticised by experts for its perceived deficiency in possessing robust enforcement authorities, resulting in numerous judgements being challenged or facing legal challenges. The Competition Act of 2022 represents a significant improvement compared to its predecessor, the MRTP Act. However, the existing legislation still has several deficiencies and uncertainties, leading to unnecessary legal uncertainty. In order to facilitate competition in these sectors,

it is imperative for the Commission to recruit professionals possessing technological knowledge and a complete comprehension of the present economic landscape within the industry.¹³

NOTABLE JUDGMENTS

In the case of **Dushyant v. National Accreditation Board for Testing and Calibration Laboratories**¹⁴

The Competition Commission of India (CCI) determined that the Informant did not present any substantiating information regarding the existence of an agreement or arrangement between the National Accreditation Board for Testing and Calibration Laboratories (NABL) and the Opposite Parties (OPs) concerning an exclusive arrangement in favour of NABL. Therefore, based on initial examination, the Competition Commission of India (CCI) did not identify any violation of Sec 3(4) of the Competition Act by any of the concerned parties (OPs).

Regarding the matter of potential violation of section 4 of the Act, the Competition Commission of India (CCI) determined that the Informant did not furnish any substantiating facts or evidence to corroborate his assertion regarding the market share or dominance of any of the involved entities. The original posters (OPs) are in search of accreditation from NABL, in accordance with the organization's policies, guidelines, rules of procurement, and relevant enactments controlling its operations. There is no indication that NABL played a role in formulating these accreditation requirements. Moreover, it should be noted that Original Equipment Manufacturers (OPs) have the liberty to establish specific criteria for procurement, and it would be incorrect to categorise such practises as inherently anti-competitive. There was no indication to imply that procurers, aside from the original posters (OPs), are likewise imposing comparable requirements as the current OPs. Hence, the issue pertaining to the potential monopolisation of the market by other certification bodies is not a relevant concern.

The Competition Commission of India (CCI) determined that there was insufficient evidence to establish a preliminary case of violation of any provisions outlined in Section 3 and/or 4 of the Act against the concerned parties (OPs) that would warrant an investigation into the matter. Consequently, the issue was promptly directed to be concluded..

M/S Voltas Limited, Bombay vs Union Of India & Ors¹⁵

The appeals under consideration have been duly filed according to with Section 55 of the Monopolies and Restrictive Trade Practices Act of 1969 .The present appeals contest the judgement and order rendered by the Monopolies and Restrictive Trade Practices Commission (hereafter referred to as 'the Commission'). As a result, the appeals have been approved. The validity of the order made in the 15 enquiries by the Commission has been nullified, and the Commission has been directed to reassess the relevant topics based on the evidence submitted by all parties involved. The Commission possesses the prerogative to solicit additional evidence, which may take the form of verbal testimony or written records, from any of the parties implicated in the matter. This measure is implemented in order to enhance the Commission's capacity to achieve a conclusive outcome. After careful consideration of the facts and circumstances surrounding the cases, it has been concluded that no rulings shall be issued with respect to the allocation of expenses.

CONCLUSION

The success of an economy is contingent upon the presence of unrestricted commerce and equitable competition within the market. Unfair competition tactics, such as monopolies and cartels, have the potential to disrupt the progress of smaller organizations and businesses, resulting in disparate patterns of growth and development. Therefore, it can be argued that both the Competition Commission of India (CCI) and competition laws have a substantial impact on the Indian economy. Nevertheless, the contemporary advancements in technology and society are presenting significant obstacles for the CCI. The commission need to implement measures aimed at facilitating the cohabitation of small and big organizations within the market, therefore mitigating the potential consolidation of market power within a limited number of dominating corporations.

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