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ROLE OF THE COMPETITION COMMISSION OF INDIA

~Vansh Kapila

ABSTRACT

Competition is the best means of ensuring that the ‘Common Man’ or ‘Aam Aadmi’ has access to the broadest range of goods and services at the most competitive prices. With increased competition, producers will have maximum incentive to innovate and specialize. This would result in reduced costs and wider choice to consumers. A fair competition in market is essential to achieve this objective. Our goal is to create and sustain fair competition in the economy that will provide a ‘level playing field’ to the producers and make the markets work for the welfare of the consumers.¹

The Competition Act is a type of anti-trust law that is widely used worldwide to protect consumers at the macro level, rather than the micro level, and also to protect small and medium businesses from the abusive market position of large enterprises. Every government aims to protect and safeguard their consumers. At the micro level, there are easy remedies. In the case of any issues, one can go to a service center to have the issue rectified, especially if it pertains to the purchase of a product, and can further approach the Tribunal under the Consumer Protection Act of 2019. This protection or safeguard is at the micro level. At the macro level, business enterprises can cause damage that is initially difficult to assess, but by the time the damage is realized, it is already done. This is where the Competition Act of 2002 comes to the rescue of consumers by protecting them at the macro level from the monopoly of large business enterprises, thereby promoting competition.

The primary goal of Competition Policy is to promote consumer welfare, which can be achieved by establishing minimum specifications and standards for the safety of both goods and services. Moreover,

¹ Competition Commission of India, Government of India. Available at: <https://cci.gov.in/about-us> (Accessed: 10 June 2024).

these objectives can be achieved by creating mechanisms to address consumer grievances. To administer, implement, and enforce the Competition Act of 2002, the Competition Commission of India (CCI) was established. The CCI performs advocacy and advisory functions, apart from being a market regulator in India. The key to consumer welfare is fair competition, which can be achieved through the purposes of the Competition Act of 2002 in protecting and promoting fair competition in the Indian markets.² The primary focus of the research is on the role of CCI in relation to different arenas covering all the aspects.

KEYWORDS

Competition, Developing economy, Regulation, Consumer Welfare, Market, Competition Law, Competition Commission, Protection, Anti Competitive, Monopoly, Consumer, Consumerism, Anti Competitive agreements, Abuse of dominant position

RESEARCH METHODOLOGY

The research is purely analytical in nature. It involves obtaining legally relevant information by analyzing and interpreting legal provisions under the Competition Act, 2002 to address the current issue. Case laws have been considered to analyze the role of the CCI in protecting the interests of consumers in India. Additionally, information has been gathered from various sources such as websites, newspapers, government publications, and books, covering all the spheres dealing with the CCI.

INTRODUCTION

The basic tenets of democracy and of market competition are ingrained in the same value system - freedom of individual choice, decentralized decision making, and adherence to the rule of law. The common goal of both democracy and market competition is the same - the maximization of public welfare.³ Many regard competition law as the economic analog of political democracy and in some countries like the United States of America, competition law has been accorded the status almost of an economic constitution.⁴ At

² (PDF) Competition Commission of India: Role and efficacy in regulating e-commerce in India. Available at: https://www.researchgate.net/publication/358660617_Competition_Commission_of_India_Role_and_Efficacy_in_Regulating_E-Commerce_in_India (Accessed: 10 June 2024).

³ See, The objective of Competition Act, 2002. The preamble of the Competition Act, 2002 reads: "An Act to provide, keeping in view the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connect therewith or incidental thereto

⁴ In United States of America, it is referred as antitrust laws. The first legislation in the USA is of year 1890 i.e. Sherman Act and subsequently other legislation like Robinson Pittsman Act, 1932 have also been enacted to regulate the competition in a given market

the same time, the global integration of the market economy has transformed national markets into one single global market.

Competition offers enhancement of productivity at the industry level of more employment and lowering of consumer prices. Proponents of free trade argue that by itself it provides all the safeguards and regulations that a welfare state like India requires.⁵

The Competition Commission of India (CCI) is the chief national competition regulator in India. It is a statutory body within the Ministry of Corporate Affairs and is responsible for enforcing the Competition Act, 2002 to promote competition and prevent activities that have an appreciable adverse effect on competition in India. The CCI looks into cases and investigates them if the same has a negative impact on competition.

CCI also approves combination under the act so that two merging entities do not overtake the market.

The commission was established on 14 October 2003. It became fully functional in May 2009 with Dhanendra Kumar as its first chairman. The current Chairperson of the CCI is Ravneet Kaur, who was appointed to the role in 2023.⁶

THE COMPETITION ACT 2002: HISTORY , VISION , & ITS ROLE

The Competition Act, 2002 was enacted by the Parliament of India and governs Indian competition law. It replaced the archaic Monopolies and Restrictive Trade Practices Act, 1969. Under this legislation, the Competition Commission of India was established to prevent activities that have an adverse effect on competition in India⁷. This act extends to the whole of India.

It is a tool to implement and enforce competition policy and to prevent and punish anti-competitive business practices by firms and unnecessary Government interference in the market. Competition law is equally applicable on written as well as oral agreements, and arrangements between the enterprises or persons.

⁵ The notion of welfare state is reflected from the text of preamble of the Constitution read with part IV i.e. directive principles of state policy (DPSP) of the Constitution. See, The Supreme Court of India decision in the matter of *Minerva Mills v. Union of India* (1980) 3 SCC 625 ; *D.S. Naikara v. Union of India* , 1983 SCR (2) 1

⁶ https://en.wikipedia.org/wiki/Competition_Commission_of_India (Accessed: 10 June 2024).

⁷ CCI will be in full operation next year (2016) *The Hindu*. Available at: <https://www.thehindu.com/todays-paper/tp-business/CCI-will-be-in-full-operation-next-year/article14833161.ece> (Accessed: 10 June 2024).

The Competition Act, 2002 was amended by the Competition (Amendment) Act, 2007 and again by the Competition (Amendment) Act, 2009.

The Act establishes a Commission that is duty-bound to protect the interests of free and fair competition (including the process of competition), and as a consequence, protect the interests of consumers. Broadly, the commission's duty is:-

- To prohibit the agreements or practices that have or are likely to have an appreciable adverse effect on competition in a market in India, (horizontal and vertical agreements/conduct);
- To prohibit the abuse of dominance in a market;
- To prohibit acquisitions, mergers, amalgamations etc. between enterprises which have or are likely to have an appreciable adverse effect on competition in market(s) in India.

In addition to this, the Competition Act envisages its enforcement with the aid of mutual international support and enforcement network across the world.

HISTORY

The Government of India in April 1964 appointed the Monopolies Inquiry Commission under the Chairmanship of Justice K. C Das Gupta, a judge of the Supreme Court, to inquire into the extent and effect of concentration of economic power in private hands and prevalence of monopolistic and restrictive trade practices in important sectors of economic activity other than agriculture.

To regulate advertising, in 1984, Parliament inserted a chapter on unfair trade practices in the Monopolies and Restrictive Trade Practices Act, 1969⁸.

The Monopolies and Restrictive Trade Practices Commission was constituted in the year 1970.

The Monopolies and Restrictive Trade Practices Act, 1969 had its genesis in the Directive Principles of State Policy embodied in the Constitution of India⁹. It received the assent of the President of India on 27 December 1969. The Monopolies and Restrictive Trade Practices Act was intended to curb the rise of concentration of wealth in a few hands and of monopolistic practices. It was repealed in September 2009. The Act has been succeeded by The Competition Act, 2002.¹⁰

⁸ THE MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT 1969

⁹ https://www.mca.gov.in/Ministry/annual_reports/annualreport2007/Eng/CHAPTER4.pdf (Accessed: 10 June 2024).

¹⁰ THE COMPETITION ACT, 2002

The Competition Bill, 2001 was introduced in Lok Sabha by Finance Minister Arun Jaitley on 6 August 2001.

VISION AND MISSION

- The vision of CCI is To promote and sustain an enabling competition culture through engagement and enforcement that would inspire businesses to be fair, competitive and innovative; enhance consumer welfare; and support economic growth.¹¹
- The mission of CCI¹² –

Competition Commission of India aims to establish a robust competitive environment through:

- Proactive engagement with all stakeholders, including consumers, industry, government and international jurisdictions.
- Being a knowledge intensive organization with high competence level.
- Professionalism, transparency, resolve and wisdom in enforcement.

OBJECTIVES

The CCI acts as the competition regulator in India. The Commission was established in 2003, although it became fully functional only by 2009. It aims at establishing a competitive environment in the Indian economy through proactive engagement with all the stakeholders, the government, and international jurisdiction. The objectives¹³ of the Commission are:

- To prevent practices that harm the competition.
- To promote and sustain competition in markets.
- To protect the interests of consumers.
- To ensure freedom of trade.

¹¹ Competition Commission of india, Government of India. Available at: <https://www.cci.gov.in/vision-and-mission> (Accessed: 10 June 2024).

¹² Competition Commission of india, Government of India. Available at: <https://www.cci.gov.in/vision-and-mission> (Accessed: 10 June 2024).

¹³(2024) Competition Commission of India (CCI) - statutory body: UPSC: Byju's, BYJUS. Available at: <https://byjus.com/free-ias-prep/the-competition-commission-of-india/> (Accessed: 10 June 2024).

FUNCTIONS OF CCI

Chapter 4 (section 18-40) of the Competition Act, deals with duties, powers, and functions of the Competition Commission of India

The Competition Act preamble aims to develop the economy and the country by preventing unfair competition and promoting fair competition. The Competition Commission of India (CCI) has the following functions¹⁴:

- Ensure customer welfare in the Indian market
- Promote fair and healthy competition for economic growth
- Ensure efficient resource utilization through competition policies
- Advocate for competition
- Serve as the antitrust ombudsman for small organizations
- Review foreign companies entering the Indian market via mergers or acquisitions to ensure compliance with Indian competition laws
- Cooperate with other regulatory authorities to ensure sectoral regulatory laws align with competition laws
- Prevent dominance of a few firms in the market and promote peaceful co-existence between small and large enterprises.

WHY DO WE NEED COMPETITION LAW

The competition laws basically perform three main functions in society:

- 1. Maintaining free enterprise:** These laws are often referred to as the Magna Carta of free enterprise.
- 2. Protection against market distortions:** There is a constant risk of market distortions and abuse of dominant positions leading to anti-competitive activities. Therefore, competition laws are necessary to ensure the market is safeguarded from these distortions.
- 3. Promotion of domestic industries:** Competition laws are required to ensure that domestic industries are not suppressed with the increase in globalization. They play a crucial role in determining the viability of domestic industries. Additionally, the Indian government has established a Competition Law Review

¹⁴(2024) Competition Commission of India (CCI) - statutory body: UPSC: Byju's, BYJUS. Available at: <https://byjus.com/free-ias-prep/the-competition-commission-of-india/> (Accessed: 10 June 2024).

Committee to keep the Indian competition laws updated with the businesses of the digital world, which often have fewer physical assets.

COMPOSITION OF COMPETITION COMMISSION OF INDIA

Chapter 3 (section 7-17) of the Competition Act¹⁵ deals with the Competition Commission of India wherein section 7 of the act deals with the establishment of the commission and section 8 deals with the composition of the commission.

The members of the CCI are appointed by the Central Government. The Competition Commission of India currently operates with a Chairperson and two members.

1. The Commission previously consisted of one chairperson and a minimum of two members and a maximum of six members.
2. This has been reduced to three members and one chairperson by the Cabinet. This change aims to expedite hearings and approvals, resulting in faster decision-making and benefiting businesses and employment opportunities in the country.
3. The chairperson and the members are usually full-time members.
4. Eligibility for the Commission: The Chairperson and every other Member should be a person of ability and integrity, who has been or is qualified to be a judge of a High Court, or possesses special knowledge and at least fifteen years of professional experience in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration, or any other field that the Central Government deems useful for the Commission.

BASIC DEFINITIONS UNDER THE ACT

Section 2 under Chapter 1 of The Competition Act¹⁶, deals with definitions while referring to which the basic definitions are listed below:

- **Acquisition:** Acquisition means, directly or indirectly, acquiring or agreeing to acquire shares, voting rights or assets of any enterprise or control over management or assets of any enterprise.[10]

¹⁵ THE COMPETITION ACT, 2002

¹⁶ THE COMPETITION ACT , 2002

- Cartel: Cartel includes an association of producers, sellers, distributors, traders or service providers who, by agreement among themselves, limit control or attempt to control the production, distribution, sale or price of goods or provision of services.
- Dominant position: It means a position of strength, enjoyed by an enterprise, in the relevant market which enables it to operate independently of competitive forces prevailing in the market or affect its competitors or consumers in its favour.
- Predatory pricing: Predatory pricing means the sale of goods or provision of services, at a price which is below the cost of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.
- Rule of reason: It is the analysis of any activity under the challenge on the basis of business justification, competitive intent, market impact, impact on competition and on consumer. It is the logic behind the conclusion for any order.

POWERS & JURISDICTION OF THE COMMISSION

Some of the major powers include¹⁷ :

The Commission has the authority 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 reported violations of the provisions outlined in Section 3(1). This investigation can be initiated either by the Commission itself or upon receiving relevant information and the prescribed fee 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. To ascertain an enterprise's dominant position, the Commission is required to take into account a range of elements, such as 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 Commission has the authority 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),

¹⁷ Digital economy, data, and dominance: An Indian ... Available at: <https://ccijournal.in/index.php/ccijoelp/article/download/43/37> (Accessed: 10 June 2024).

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 judgment 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 report its findings afterwards.

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 the Commission is of the view that the merger and acquisitions may have a negative impact on the market, a notice shall be sent. This notice will request the involved parties to provide a response within thirty days, 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 been successful in preventing the development of cartels, imposing sanctions on the Board of Control for Cricket in India (BCCI), initiating an investigation into Google for alleged violations of anti-trust laws, and blocking the formation of cartels in the

telecommunications sector. Section 18 of the Act tasks the Competition Commission of India (CCI) with the responsibility of eliminating anti-competitive practices, promoting competition, protecting consumer interests, and facilitating unimpeded commerce. The main objective of the Commission is to establish a comprehensive framework that fosters fair competition and protects consumer welfare, thereby avoiding any negative impact on consumer surplus.¹⁸

ENFORCEMENT MECHANISMS

The Competition Commission of India (CCI) consists of six members and a chairperson with the authority to initiate independent investigations related to anti-competitive practices 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, consumers, and other entities have the ability to formally lodge a complaint or provide relevant information regarding anti-competitive agreements and the abuse of dominant market positions. If a prima facie case is established, the CCI instructs the Director General to commence an inquiry and deliver their findings. The Director General is authorized to conduct police raids as part of the investigative process. The CCI's decision-making process may be influenced by the suggestions put forward by the Director General during the inquiry. Accused parties are given a fair opportunity to present their case before any final determinations are made. Subsequently, the authorities have the power to take necessary actions, including issuing directives to halt and desist activities and imposing monetary penalties. The Competition Act allows for the possibility of appealing certain judgments made by the CCI to the Competition Appellate Tribunal.¹⁹

IMPACT OF THE COMMISSION'S ENFORCEMENT MECHANISMS

The Competition Act is designed to promote market competition while also protecting consumers. The CCI investigates potential violations of two parts of the Act (parts 3 and 4). Section 3 deals with anti-competitive contracts, which are agreements among companies that restrict competition. Section 4 addresses abusive conduct by dominant market players, where a company with significant market power misuses it to harm competitors or consumers. The Commission can investigate potential violations of these sections in three ways. Firstly, it can take Suo motu action, meaning it can initiate an investigation

¹⁸ *Topic-5: Competition Commission of India: Duties ...* Available at: https://aliah.ac.in/upload/media/12-04-20_1586639430.pdf (Accessed: 10 June 2024).

¹⁹ CCI Competition Commission of India - definition, what is CCI Competition Commission of India, advantages of CCI Competition Commission of India, and Latest News (no date) cleartax. Available at: <https://cleartax.in/glossary/cci-competition-commission-of-india/#evaluation-of-the-working-of-cci> (Accessed: 10 June 2024).

on its own. Secondly, under Section 19(1)(a) of the Act, it may conduct an investigation after receiving information from individuals, consumers, or their associations. Finally, it has the authority to investigate if it receives a referral from the Central Government, a State Government, or a statutory body under Section 19(1)(b) of the Act.

The Commission will investigate the alleged infringement to determine if there is enough evidence to suggest that a violation has occurred. If the Commission finds that there is sufficient evidence, it will direct the Director General (DG) to initiate an inquiry under Section 26(1) of the Act. Conversely, if the Commission determines that there is not enough evidence, it will conclude the investigation by issuing an order under Section 26(2) of the Act.

CONSUMER PROTECTION & THE CONSUMER LAW

Competition is increasingly recognized as a key consumer issue, with competition policy and consumer interests seen as interconnected. Consumer interests, related to price, service quality, and choice, are difficult to address through competition policy alone. Both Competition Law and Consumer Law work together to protect consumers, ensuring economic self-determination and addressing market failures. This creates synergies between competition and consumer policy, sharing the goals of healthy competition and consumer welfare.

❖ CONSUMERISM – AN INTEGRAL ASPECT

The term "consumerism" encompasses consumer protection and activism to inform and protect consumers. In India, consumer protection is guaranteed by the Constitution through various articles under Directive Principles of State Policies. These provisions aim to promote social welfare by minimizing inequalities in income. Both the Competition Law and the Consumer Protection Act of 1986²⁰ strive to protect consumer interests. In the case of *Ashoka Smokeless Coal Ind. P. Ltd. v. Union of India*²¹, the Supreme Court emphasized the importance of a level playing field in the market to benefit consumers in a free economy.

Competition law is designed to protect competition in the market with the goal of improving consumer welfare and ensuring efficient resource allocation. It is primarily focused on the welfare of consumers. Additionally, the Supreme Court of India, in the case of *Competition Commission of India v. Steel Authority of India Ltd*²², highlighted that the main objectives of the Act are to eliminate practices that have negative effects on competition, promote and sustain competition in the market, protect consumer

²⁰ THE CONSUMER PROTECTION ACT, 1986

²¹ (2007) 2 SCC 640

²² Civil Appeal No. 7779 of 2010

interests, and ensure freedom of trade. In summary, the Act requires the protection of both trade and consumer interests.

❖ DEFINITION OF CONSUMER

The word consumer has not been defined under Competition Act, 2002 but it has been defined exclusively under Consumer Protection Act, 1986. It defines Consumer²³ as:

- (i) “One who buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
- (ii) One who hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment.

The term 'consumer' has different meanings under the Consumer Protection Act, 1986 and the Competition Act, 2002. The Competition Act has a broader definition, allowing a trader who buys goods for commercial purposes to be considered a consumer. This means that challenges against anti-competitive practices can be made by individuals buying goods for resale under the Competition Act, but not under the Consumer Protection Act.

Consumer protection from competition law aspect:

Competition law of India advocates consumerism mainly through four important aspects:

- a) Protecting consumers from anti- competitive agreements by market controllers.
- b) Protecting consumers form any abuse of dominance by market players.
- c) Protecting consumers from any type of combinations i.e. from mergers, acquisitions, amalgamations etc. having adverse effect on competition in the market.
- d) By promoting Competition Advocacy to consumers.

A) Anti-Competitive Agreements And Consumer Protection:

²³ THE CONSUMER PROTECTION ACT

Section 3 of Competition Act, 2002 describes exclusively agreements which are anti- competitive in nature. It prohibits any enterprise or association of enterprises or person or association of persons to enter into any type of agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services which causes or likely to cause any appreciable adverse effect on competition²⁴. Thus, it protects consumers from being harassed by those anti- competitive agreements.

Section 3(3) and Section 3(4) of the act exclusively provides for cartels and vertical restraints of trade as anticompetitive in nature.

Cartels: In simple terms a cartel is an association of manufacturers or suppliers that maintain prices at a high level and restrict competition.

"A hard-core cartel, as defined by the OECD, refers to anticompetitive practices such as fixing prices, making rigged bids, setting output restrictions, or dividing markets. Fighting cartels is a top priority for competition authorities as they harm economies and consumers by eliminating or restricting competition."

Vertical restraints limit the freedom of one party in an agreement, typically imposed by the economically stronger party. These restraints are anticompetitive and harmful to consumer interests if they significantly impact competition.

Section 19(3) of the Competition Act, 2002 empowers the Competition Commission of India to address issues related to anti-competitive agreements, including cartels and vertical restraints such as tie-in agreements. If they determine that these agreements have a significant adverse effect on competition in the relevant market, the Commission may nullify the agreements and impose penalties on the entities involved, which could amount to up to ten percent of the profits earned by those entities in the previous three years..²⁵

B) Abuse Of Dominant Position And Consumer Protection:

"The extent of domination can be defined as the level of strength that allows a company to operate independently of competitive pressures in the market and also to influence the market, competitors, and consumers through its actions." ²⁶

The Competition Law does not prohibit dominance but abuse of Dominant Position.²⁷

²⁴ THE COMPETITION ACT , 2002

²⁵ COMPETITION ACT , 2002

²⁶ Abir Roy, Jayant Kumar, Competition Law in India on the Anvil, Vol. 42 May (I) Corporate Law Advisor, pp 8- 23.

²⁷ Sri Neeraj Malhotra v. North Delhi Power Limited, BSES Rajdhani Power Limited and BSES Yamuna Power Limited, MANU CO/0026/2011

The concept of abuse refers to the behavior of a dominant company that has a significant impact on the market structure. This impact weakens competition and hinders the normal competitive process by using methods that are different from those typically seen in commercial transactions. As a result, the existing level of competition in the market is hindered, and the growth of competition is also affected.²⁸

❖ PREDATORY PRICING AND CONSUMER

The “predatory pricing” under the Act means “the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of goods or provision of services, with a view to reduce competition or eliminate the competitors”.¹⁴ The predatory firm after driving other competitors from the market raises their price above the competitive levels to earn supra-competitive profits and recoup the losses incurred during the predatory period. This anticompetitive practice undermines the competition in the market and is not in the interest of the consumers.²⁹

Regulation Of Abuse Of Dominance By Competition Commission of India:

Section 19(1) of the Act states that the Commission may inquire into any alleged contravention of the provisions contained in Section 4(1) of the Act, either on its own motion or on receipt of a complaint from any person, whether it's the consumer, a trade association, the government, or any other authority. The Commission may pass an order under Section 27 to address abuse of dominance, which may include:

- a) Directing the parties to discontinue and not re-enter such an agreement;
- b) Directing modification of the agreement;
- c) Imposing a penalty not exceeding 10% of the average turnover for the last three financial years; and
- d) Awarding compensation to the parties in accordance with the provisions of Section 34 of the Act.

C) Effect Of Combination On Consumers: Section 5 of the Act refers to the acquisition of enterprises, by one or more persons or merger or amalgamation, in the manner set out therein, which would be a combination³⁰.

In Section 2(1), the term ‘person’ includes an individual, a company, and certain other entities. The combination of two firms can have an adverse effect on the market, affecting consumers. The Competition Commission is duty-bound to regulate mergers and combinations to prevent anti-competitive practices.

²⁸ Hoffman La Roche & Co. Ag, Basle v. Commission of the European Communities in Brussels, Case 85/76.

²⁹ Einer Elhauge and Damien Geradin, Competition Law and economics, Hart Publishing, pp314

³⁰ T. Ramappa, Competition Law in India- Policy issues and Developments, Oxford University Press, New Delhi, 2006.

Section 6 of the Competition Act, 2002 provides the Commission with power to regulate mergers and combinations that have an adverse effect on competition. Entities undergoing mergers, acquisitions, or combinations are required to inform the Commission, which will issue instructions if any provision of the Competition Act, 2002 is violated, thereby causing harm to consumers. Provisions relating to the regulation of combinations and inquiry procedures for the same are outlined in Section 20, Section 29, and Section 30 of the Competition Act, 2002.

Competition advocacy is a crucial aspect of competition law, aimed at protecting consumers' interests by promoting effective competition. The Competition Act, 2002 contains provisions for competition advocacy, allowing the Competition Commission of India to conduct activities such as creating awareness among government officers, identifying anticompetitive practices, protecting small enterprises, and familiarizing individuals with legal remedies available in competition law.

Thus, in this manner Competition Act, 2002 plays a great role in generating consumer awareness and thereby helping in consumer advocacy.

Competition promotes efficiency and productivity, driving out poor-performing products and services to leave only high-quality options for consumers. Market players are incentivized to offer the best quality goods and services at the lowest possible prices, ultimately benefiting consumers through reduced prices and more choices. The Competition Act in India, which came into force in phases, has quickly established the Competition Commission of India as a credible regulator. However, issues such as inconsistencies in the approach towards establishing a cartel and the lack of guidelines for imposing penalties need to be addressed for the law to be more effective.

COMPETITION LAW & GLOBAL CONTEXT

New forms of global integration have brought promises of increased opportunities to buy and work. Liberalized policies are aimed at directing assets to their highest and best use. Following this liberalization, companies have increased their size, market share, and resource base. They have also engaged in aggressive and competitive trade practices to attract customers, raising questions about the truthfulness and fairness of product and service representations, advertisements, schemes, and promotional modalities. This is where competition laws come into play. As Lord Denning rightly observed, "People who combine to keep up prices do it in secret and make their own arrangements where no one can see. They will not put anything in writing."

The competition law is designed to address economic behaviors that disrupt the effective functioning of competitive markets and to safeguard uninformed, innocent buyers. It also aims to remove barriers to innovation and expansion, as well as to promote competition as a fundamental value.

The goal of competition law is to prevent individual interests from undermining the broader community's interests. In 1991, India implemented economic reforms that helped the country transition from a slow growth rate of 3 percent to an annual growth rate of over 8 percent. The Competition Act was enacted in 2002, marking India's entry into market economies that used legal tools to promote foreign investment and drive economic growth. This act was part of the second-generation economic reforms, aiming to prevent practices that could significantly harm competition, promote and maintain competition in markets, safeguard consumer interests, and ensure freedom of trade for all participants in a given "relevant market."

The Competition Commission of India (CCI) has extraterritorial jurisdiction, which means it has the power to investigate activities prohibited under the Act that distort competition in a given market. It can inquire into abuse of dominant position, combinations, or any action likely to have an adverse effect on the relevant market in India. This is regardless of whether the anti-competitive agreement or activity takes place outside India, involves parties outside India, or affects India's relevant market. This represents a significant departure from the earlier law, as the MRTP Commission did not have extraterritorial jurisdiction. Earlier, the Supreme Court of India had ruled that the Act does not have extraterritorial operation and cannot apply to goods intended for export to India or to agreements where neither party is conducting business in India.

In today's globalized economy, the slogan "bigger is better" has become the mantra for success. Amidst these developments, ensuring the maximum welfare of consumers remains the focus of every policy, legislation, and trade negotiation. An ideal definition of 'Global Consumer Welfare' would mean that consumers, regardless of their nationality, have access to low-priced, high-quality products. They should also have the option to choose among different products. Additionally, producers should have access to an internationally stable transactional environment³¹.

In case of the Boeing and McDonnell Douglas merger, there were enquiries conducted by both the US Department of Justice and the European Commission because the proposed merger would have had effects in both the US and Europe. While the US approved the merger, European Commission turned it down because of possible anti-competitive effects. After intense negotiations, further due diligence and restructuring the merger was approved.

The adoption of competition laws by more than 100 countries varies based on different reasons. These include preventing the formation of cartels, complying with bilateral and plurilateral trade agreements, and addressing cross-border competition concerns. It's noteworthy that countries have implemented

³¹ Joseph Wilson, "Globalization and the Limits of National Merger Control Laws" 10

competition laws regardless of their stage of economic development or the economic, social, and political policies they pursue.

In the realm of mergers and acquisitions, regulatory authorities face significant challenges. National policies and instruments are ill-equipped to handle cross-border mergers and transnational combinations, sparking debates about the need for new global institutions to regulate and advance the welfare of humanity. Enforcement agencies worldwide struggle to enforce competition policies in cases of cartels due to the wall of silence surrounding such illicit collusion.

The enforcement agencies across the world find it difficult to enforce their competition policy in cases of cartels because such illegal collusion is surrounded by wall of silence³².

NOTABLE JUDGEMENTS

In the case of *Dushyant v. National Accreditation Board for Testing and Calibration Laboratories*³³, the Competition Commission of India (CCI) found that the Informant did not provide sufficient evidence to demonstrate the existence of an agreement or arrangement between the National Accreditation Board for Testing and Calibration Laboratories (NABL) and the Opposite Parties (OPs) regarding an exclusive arrangement in favor of NABL. Therefore, based on the initial examination, the CCI did not identify any violation of Sec 3(4) of the Competition Act by any of the concerned parties (OPs).

Regarding the potential violation of section 4 of the Act, the CCI determined that the Informant did not provide any substantiating facts or evidence to support his claim regarding the market share or dominance of any of the involved entities. The original posters (OPs) are seeking accreditation from NABL in line with the organization's policies, guidelines, rules of procurement, and relevant enactments governing 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 freedom to establish specific criteria for procurement, and it would be incorrect to categorize such practices as inherently anti-competitive. There was no indication to suggest that procurers, aside from the original posters (OPs), are imposing similar requirements as the current OPs. Therefore, the issue of potential monopolization of the market by other certification bodies is not a relevant concern.

³² Canadian draft information bulletin released in February” European Competition Law Review 2000

³³ Case No. 48 of 2021

The 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. Consequently, the issue was promptly directed to be concluded. In the case of *Dushyant v. National Accreditation Board for Testing and Calibration Laboratories*, the Competition Commission of India (CCI) found that the Informant did not provide sufficient evidence to demonstrate the existence of an agreement or arrangement between the National Accreditation Board for Testing and Calibration Laboratories (NABL) and the Opposite Parties (OPs) regarding an exclusive arrangement in favor of NABL. Therefore, based on the initial examination, the CCI did not identify any violation of Sec 3(4) of the Competition Act by any of the concerned parties (OPs).

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- *M/S Voltas Limited, Bombay vs Union Of India & Ors*³⁴

The appeals being considered have been filed in accordance with Section 55 of the Monopolies and Restrictive Trade Practices Act of 1969. These appeals challenge the judgment and order issued by the Monopolies and Restrictive Trade Practices Commission (referred to as 'the Commission'). Consequently, the appeals have been granted. The order made in the 15 inquiries by the Commission has been invalidated, and the Commission has been instructed to re-examine the relevant matters based on the evidence provided

³⁴ 1995 AIR 1881

by all involved parties. The Commission has the authority to request additional evidence, such as oral testimony or written records, from any involved parties, in order to ensure a conclusive outcome. After carefully considering the facts and circumstances of the cases, it has been decided that no rulings will be issued regarding the allocation of expenses.

CONUNDRUMS OF CCI

The Competition Commission (CCI) faces challenges in enforcing competition legislation due to the ever-changing nature of antitrust issues and evolving business models. The Commission of India is currently conducting market surveys and closely examining emerging markets such as algorithms and online platform networks to better understand these situations. Meanwhile, the House Judiciary Committee in the United States is investigating the effectiveness of current antitrust laws regarding technology companies. At the same time, the Competition Law Review Committee of the Indian Government is working on developing rules for imposing penalties and giving industry-specific recommendations.³⁵

The Competition Commission of India is focusing on competition-related issues in Mumbai to improve access to justice and create a better business environment. One challenge is defining new markets in the digital domain due to the lack of physical boundaries. Concerns have also been raised about cartels due to global product scarcity and the Eastern Europe turmoil.³⁶

The Competition Commission of India has faced criticism for not having strong enforcement powers, which has led to many judgments being challenged or facing legal issues. The 2022 Competition Act is a big improvement over the previous MRTP Act, but there are still some problems and uncertainties in the current law, causing unnecessary legal issues. To promote competition in these sectors, it's important for the Commission to hire professionals with technological expertise and a deep understanding of the current economic landscape in the industry.³⁷

³⁵ Contributor, G. (2022) Financial express, Opinion News | The Financial Express. Available at: <https://www.financialexpress.com/opinion/the-challenges-ahead-for-the-competition-commission-of-india/2531378/> (Accessed: 10 June 2024).

³⁶ Sharma, R. (2023) CCI (Competition Commission of India): Provisions, working and challenges – explained, pointwise, Community. Available at: <https://forumias.com/blog/cci-competition-commission-of-india-provisions-working-and-challenges/> (Accessed: 10 June 2024).

³⁷ Drishti IAS (2022) Competition Commission of India (CCI), Drishti IAS. Available at: <https://www.drishtiiias.com/daily-news-analysis/competition-commission-of-india-cci> (Accessed: 10 June 2024).

CONCLUSION

It is understood that the success of an economy depends on unrestricted commerce and fair competition in the market. Unfair competition tactics, such as monopolies and cartels, can disrupt the progress of smaller businesses. The Competition Commission of India (CCI) and competition laws have a significant impact on the Indian economy. However, the CCI faces challenges due to technological and societal advancements. The commission needs to implement measures to facilitate the coexistence of small and large organizations in the market and prevent the consolidation of market power in a limited number of dominating corporations.