

Competition Commission of India: A Young Regulator with New Challenges

Yatish Pachauri

School of Law, UPES, Dehradun, Uttarakhand, India

Abstract: *The Competition Commission of India (CCI) has emerged as a dynamic and youthful regulator, entrusted with the critical task of ensuring fair competition in the rapidly evolving Indian market. Established in 2003, the CCI has swiftly become a pivotal player in shaping economic policies and fostering a competitive business environment. With a mandate to prevent anti-competitive practices, the CCI operates in a diverse and complex landscape, addressing challenges posed by global market dynamics, technological disruptions, and emerging business models. As a young regulator, the CCI faces the formidable task of striking a balance between promoting healthy competition and fostering economic growth. It is tasked with enforcing the Competition Act of 2002, addressing issues of cartelization, abuse of dominant positions, and promoting a competitive culture. The digital economy presents a new frontier for the CCI, requiring innovative approaches to tackle issues related to data dominance, platform competition, and technological mergers. The commission must navigate these challenges with agility, leveraging its regulatory powers to ensure a level playing field for businesses of all sizes. Furthermore, the CCI plays a crucial role in nurturing a pro-competition mindset among businesses and consumers alike. Through advocacy, awareness, and rigorous enforcement, the commission aims to create an environment where market forces drive efficiency, innovation, and consumer welfare. In this dynamic regulatory landscape, the CCI stands as a symbol of India's commitment to fostering a competitive marketplace, addressing new challenges with vigor and adaptability. As it continues to evolve, the CCI's role in shaping India's economic future remains central, making it a key player in the country's regulatory framework.*

Keywords: Competition Commission of India, competition law, emerging sectors, globalization, regulatory challenges

1. Introduction

Competition Commission of India was established under Section 7 of the Competition Act by the Central Government after the judgment passed by Supreme Court in the case of *Brahma Dutt v. Union of India*ⁱ where the Court held, that for the purpose of regulatory and advisory functions relating to competition in market, Competition Commission of India (hereinafter referred as CCI) be established and for the purpose of adjudicatory functions, Competition Appellate Tribunal be established.ⁱⁱ

There are various powers as well as function of the competition Commission just to eliminate the practices which have adverse effect on the competition, promoting system. The Commission has the investigative and decision-making power. To enable it to exercise that power effectively, the Act empowers the Commission to penalize those who obstruct the investigation, contravene orders, destroys or falsify documents, supplies misleading information.

Powers of the Competition Commission

- Power to protect the interest of the consumer by eliminating practices having adverse effects on competition.
- Power to inquire into certain agreement and dominant position either Suo moto or on information received.
- Power to inquire into combination under Section 20 of the Competition Act, 2002.
- Power to issue interim orders under Section 33 of the Competition Act, 2002.
- Power of Commission to suggest or advise central or state govt. while they are formulating laws with regards to competition Commission under Section 49 of the competition act, 2002.

- Power to regulate its own procedure under Section 36 of the Competition Act, 2002.
- Power to impose monetary relief under Section 39 of the Competition Act, 2002.

Functions of CCI

- 1) To eliminate any practices having on adverse effect on competition, its promotion and to sustain healthy competition, and also to protect the interests of consumers and ensure freedom of trade in the markets of India.0.. ..
- 2) To give and formulate opinions on competition issues on a reference received from a statutory authority established under any law and to promote competition advocacy, as well as create public awareness and impart training on competition issues.
- 3) The Competition Commission of India takes the following measures to achieve its objectives:
 - Consumer welfare: To make the markets work for the benefit and welfare of consumers.
 - Ensure fair and healthy competition in economic activities in the country for faster and inclusive growth and development of the economy.
 - Implement competition policies with an aim to effectuate the most efficient utilization of economic resources.
 - Develop and nurture effective relations and interactions with sectoral regulators to ensure smooth alignment of sectoral regulatory laws in tandem with the competition law.
 - Effectively carry out competition advocacy and spread the information on benefits of competition among all stakeholders to establish and nurture competition culture in Indian economy.
 - The Competition Commission is India's competition regulator, and an antitrust watchdog for smaller

organizations that are unable to defend themselves against large corporations.

- CCI has the authority to notify organizations that sell to India if it feels they may be negatively influencing competition in India's domestic market.
- The Competition Act guarantees that no enterprise abuses their 'dominant position' in a market through the control of supply, manipulating purchase prices, or adopting practices that deny market access to other competing firms.
- A foreign company seeking entry into India through an acquisition or merger will have to abide by the Competition Laws of India. Assets and turnover above a certain monetary value will bring the group under the purview of the Competition Commission of India.

Jurisdiction of Competition Commission

For achieving the duties mentioned under the Act, the Commission has jurisdiction to:

- Enquiry into Anti-Competitive Agreements (e.g. Cartel, bid rigging, etc.)
- Enquire into abuse of dominant position (e.g. Predatory Pricing, etc.)
- Regulate combinations (Mergers, Acquisitions, etc.)
- Undertake Competition Advocacy (including advise on policy issues), create public awareness, impart training on competition issues.

CCI So far

Since its establishment, this regulatory body has scrutinized approximately 1,225 antitrust cases (outlined in Sections 3 and 4). As of April 2023, it successfully concluded about 1,102 cases, achieving a resolution rate of 92%. These cases span diverse industries such as public procurement, real estate, digital markets, power, healthcare & pharmaceuticals, media & entertainment, railroads, cement, e-commerce, and media.ⁱⁱⁱ

Notably, the organization has delivered rulings in significant cases involving major players like Google, Amazon, Flipkart, Facebook, automakers, cement producers, and tire manufacturers, among others. The imposed penalties, totaling over Rs. 17,000 crores, underscore the gravity of the offenses. While several cases are currently in different stages of litigation, many are under appeal with the National Company Law Appellate Tribunal (hereinafter referred as NCLAT).^{iv}

Furthermore, since its establishment, the Competition Commission of India (CCI) has diligently reviewed 1,024 combination matters under Sections 5 and 6, successfully resolving 1,017 (99%) of these combination notices by April 2023. Notably, over 95% of cases were concluded within the initially stipulated 30-day timeframe. It is noteworthy that no M&A deal has faced refusal or stoppage; however, in some instances, approvals were granted with the implementation of behavioral or structural remedies, following consultations with the concerned parties, to address potential anti-competitive impacts on markets.

Throughout the epidemic, CCI has adopted an understanding and compassionate stance to ensure that parties, particularly MSMEs, are not subjected to unnecessary hardships. Additionally, the commission has been committed to maintaining supply lines during this challenging period.

Challenges faced by CCI.

There are various challenges faced by CCI and among those one of the main challenges is regarding jurisdiction as there are different sectors of business in which there are separate authorities. The Competition Commission of India has been vested with an extraordinarily broad mandate under Section 18 of the Competition Act, 2002. This mandate of the CCI, however, overlaps with the competition-related powers that have been conferred on some sectoral regulators in India, constituted both before and after the enactment of the Competition Act.^v

In *Star India v. Sea T.V. Network*^{vi}, an attempt was made to clarify the jurisdictional conflict. It was held that the Monopolies and Restrictive Trade Practices (MTRP) Commission, the predecessor of the CCI, has no mandate to exercise its jurisdiction over a dispute that pertains to violation of any provision of the TRAI^{vii} Act, even though the provision involves an issue of monopoly and restrictive trade practices.

CCI vs. Sector specific regulators

There have been few cases of conflict between the Act and the other statutes governing certain specific sectors of economy such as electricity, telecom, insurance, and financial securities, etc. Statutory provision exists in the Act to avoid any confrontation between the CCI and the sector specific regulator by providing that if during the course of a proceeding before a sector specific regulator, any competition issue is raised then such regulator may make a reference to CCI and the CCI shall be bound to consider the same and give opinion on the same within 60 days of receipt of such reference and the regulator shall consider the opinion of CCI while deciding the main issue pending before it.

Similarly, where in the course of proceeding before the CCI, an issue has been raised which requires the expert knowledge or opinion from any statutory authority or sector specific regulator, then CCI may also make a reference to such sector specific regulator and the said regulator shall also consider and give his expert opinion on the issue within 60 days to CCI which shall consider the opinion of the sector regulator while deciding the competition issues.

The Supreme Court in the case titled *Competition Commission of India v. Bharti Airtel Limited and Others*^{viii} while dismissing the appeals filed by the CCI and Reliance JIO and by upholding the Bombay High Court judgment dated 21st, September 2017 which had quashed the CCI prima facie order directing investigation under Section 26(1) of the Act against Bharti Airtel, Vodafone, Idea and the trade association, the Cellular Operators Association of India (hereinafter referred as COAI) has deftly found a middle path and resolved the long debated tussle for

supremacy between the overarching fair market watchdog, the CCI and the sector specific regulators, the Telecom Regulatory Authority of India, in this case, by postponing scrutiny into any possible co-ordination or collusion between the existing telecom players through the platform of COAI or otherwise by CCI.

This way, the Hon'ble Supreme Court finally showed a middle path to resolve the long-debated issue of jurisdictional conflict between the CCI and sector regulators. The Hon'ble Supreme Court, by invoking the doctrine of harmonious construction has balanced the standby giving TRAI the power to determine the rights and obligations of the parties first, and then if it apprehends the existence of anti-competitive act, invokes the jurisdiction of CCI. It may be noted that in coming to this conclusion, the Apex Court, without making a special reference, followed the existing jurisprudence on this issue in the USA, illustrated in the noted cases of *Credit Suisse Case*^{ix} and the *Verizon Communications case*^x decided by the U.S. Supreme Court .

Problem with Exclusion of Jurisdiction

Exclusion of jurisdiction of the CCI become problematic because of three reasons mainly i.e.

(i) Functional separation:

It requires an efficient allocation of institutional responsibilities through the use of unambiguous legislative language. It does not contain any parameters for analysis of market failure to justify competition-related regulatory interventions. Most sectoral laws also do not provide any guidelines for the resolution of possible conflicts between competition objectives and other regulatory goals.

(ii) Conferment of Jurisdiction:

The conferment of an exclusive jurisdiction on the sectoral regulators may result in the perpetuation of regulation contrary to the needs of the market in question. Regulators, due to their bias towards regulation, may take the latitude of imposing burdensome, intrusive obligations, instead of allowing the competitive trends in the market to flourish organically.

(iii) Two Principles of competition act:

(a) Principle of private enforcement,

(b) Imposition of high penalties.

These principles together equip the CCI to achieve higher standards of consumer welfare^{xi}. But this protection, is absent from most sectoral laws in India, which generally rely on the regulator as the *parens patriae* for the enforcement of regulations.

2. Conclusion

Although the Competition Commission has different powers and functions as described under the Competition Act 2002, but the Commission is facing challenges regarding its jurisdiction. There are different sectors and each of such sector is regulated by some of the regulatory as there is no specific laws regarding where there is a conflict in laws of regulatory authority whose law will prevail.

Thus, there are many cases in which sectoral jurisdiction is defined because sectoral regulatory defines the dispute in different manner and Competition defines it in a different manner. The Competition Act is ill-designed to resolve situations of conflict. While Section 60 of the Act contains a non-obstante clause giving an overriding effect to the Act, Section 62 declares that the Act should be read in harmony with other statutes. The Act, however, tries to address this issue partially through Sections 21 and 21A, which incorporate a mechanism for consultations between the CCI and other sectoral authorities.

Given the dynamic nature of the Competition Act, it is essential to periodically update the legislation to align with evolving market trends. In response to the digital transformation over the past 14 years, which has seen most markets shift to a digital landscape, there is a need to enhance the legal framework accordingly. Consequently, the "Competition (Amendment) Act 2023" has received approval from the President and has been enacted by the Parliament. The amendments bring about significant changes, such as the introduction of deal value thresholds requiring prior approval for transactions exceeding Rs. 2000 crore. Additionally, the time limit for approving combinations (M&A) has been reduced from 210 days to 150 days. Penalties are now based on global turnover, and the Act incorporates negotiated settlements and commitments in line with global best practices. These changes aim to facilitate quicker decision-making and expedite market corrections.

Endnotes

ⁱBrahma Dutt v. Union of India[AIR 2005 SC 730].

ⁱⁱ Lakshaya Anand, *Competition Commission of India – Constitution, Power And Function*. Available at: <https://www.legalbites.in/competition-commission-of-india-constitution-power-and-functions/>.

ⁱⁱⁱ Kumar, D. (2023, May 19). 14 years of Competition Commission: Young regulator faces new challenges. *www.business-standard.com*. https://www.business-standard.com/opinion/columns/14-years-of-competition-commission-young-regulator-faces-new-challenges-123051901023_1.html.

^{iv} Kumar, D. (2023, May 19). 14 years of Competition Commission: Young regulator faces new challenges. *www.business-standard.com*. https://www.business-standard.com/opinion/columns/14-years-of-competition-commission-young-regulator-faces-new-challenges-123051901023_1.html.

^vPODAR, PARIDHI, *SECTORAL REGULATION AND COMPETITION LAW AND JURISDICTION OVERLAPS*.

^{vi}Star India v. Sea T.V. Network(2006) 2 CompLJ 487 Telecom DSAT.

^{vii}Telecom regulatory authority of India.

^{viii}Competition Commission of India v. Bharti Airtel Limited and Others *Civil appeal 11843 of 2018*.

^{ix} Reuters, B. (2023, March 20). *Credit Suisse's troubles — spies, money laundering and central bank cash*. BusinessLine. <https://www.thehindubusinessline.com/money-and-banking/credit-suisse-troubles-spies-money-laundering-and-central-bank-cash/article66641621.ece>

^xVerizon Communications, Inc. v. Law Offices of Curtis V. Trinko, LLP, 540 US 398 (2003)

^{xi} Singh Rahul, '*The Teeter-Totter of Regulation and Competition: Balancing the Indian Competition Commission with Sectoral Regulators*' (2009) 8 Wash U Global Stud L Rev 71, 95.