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COMPETITION LAW

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Research by : Adv. Salman Y. Shaikh, Associate
Verified by : Adv. Ashish Ved, Co-Founder & Senior Partner
Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

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CHAPTER 1: INTRODUCTION

Competition law is all about economic behaviour. It is being increasingly recognized that markets have an important role to play in any economy. Efficiency is associated with competition and the markets can fulfil their functions efficiently only if they remain competitive. As the role of the market expands, the role of the state also undergoes a change. The regulatory role of the state demands action to maintain fair competitive conditions in the markets. Legislation is therefore, required to prevent the degeneration of the markets to a monopolistic or a near-monopolistic situation. Competition law is a framework of legal provisions designed to maintain competitive market structures. Thus, Competition Law, broadly, relates to efforts at promoting competition through legislative means.

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CHAPTER 2: EVOLUTION OF COMPETITION LAW IN INDIA

Competition Law for India was triggered by Articles 38 and 39 of the Constitution of India. These Articles are a part of the Directive Principles of State Policy.

In 1964, when the Indian democracy was in its nascent stage, barely 17 years old, the Government of India appointed the Monopolies Inquiry Commission to inquire into the extent and effect of concentration of economic power in private hands and the prevalence of monopolistic and restrictive trade practices in important sectors of economic activity other than agriculture. The Commission submitted its report along with The Monopolies and Restrictive Trade Practices Bill, 1965, which was later passed by both the Houses of Parliament and received the assent of the President on December 27, 1969. It came into force on June 1st, 1970 as the Monopolies and Restrictive Trade Practices Act, 1969. The object and reasons of the Act was to provide that the operation of the economic system did not result in the concentration of economic power to the common detriment, for the control of monopolies, for the prohibition of monopolistic and restrictive trade practices and for matters connected therewith and incidental thereto.

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Pursuant thereto, the Act was amended several times to suit to the changing circumstances. However, of late, particularly after the economic reforms of early 1990s, it was felt that the MRTP Act had become obsolete in certain respects in the light of international economic developments relating more particularly to competition laws and there was a need to shift focus from curbing monopolies to promoting competition.

In October 1999, the Government of India appointed a High Level Committee (Raghavan Committee) on Competition Policy and Competition Law to advise a modern competition law for the country in line with international developments and to suggest a legislative framework, which may entail a new law or appropriate amendments to the MRTP Act. The Committee presented its Competition Policy report to the Government.

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CHAPTER 3: THE COMPETITION ACT, 2002

"An Act to provide, keeping in view of 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 connected therewith or incidental thereto".

Following the report of the Ragavan Committee, after consultations with all concerned, including trade and industry associations and the general public, the Government of India passed the Competition Act in December, 2002. India's new competition law, the Competition Act of 2002, was passed by Parliament in the year 2002 and received the assent of the President of India on 13 January 2003, thereby becoming the law of the land from that date. The Act has an overriding effect over any inconsistent provision in any other law for the time being in force and provided for the establishment of Competition Commission of India. The replacement of the MRTP Act of 1969 by the new Competition Act is a natural corollary to economic liberalization and opening up of trade to competition. The Act was amended in September 2007 providing for setting up of a Competition

Appellate Tribunal. The Act is a central law in India, i.e., a law of the Union Government and there is no corresponding law enacted at the level of the constituent States.

The Competition Commission of India (Commission) has been established under the Competition Act, 2002 (the Act) to prevent practices having adverse effect on competition, promote and sustain competition in Indian markets, protect the interests of consumers and ensure freedom of trade carried on by other participants in markets, in India and for matters connected therewith or incidental thereto. It is mandated, inter alia, to take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues. It, therefore, pursues its objectives through two sets of instruments, namely, advocacy and enforcement targeted at enterprises. These measures are complementary and are expected to promote freedom of trade by enterprises and ensure consumer welfare thus ensuring 'fair competition' for greater good.

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CHAPTER 4: OBJECT OF THE ACT

The principal objective of Competition Law is to maintain and encourage competition as a vehicle to promote economic efficiency and maximize consumer welfare. It is noteworthy that, Indian law adjudicates anti competitiveness of any firm or company on the basis of its action, rather than simply by its potential to behave in such manner.

Competition law is a form of regulation which involves laws that promote or maintain market competition by regulating anti-competitive conduct. An anti-competitive practice can be said to be one, which has or is intended to have or is likely to have the effect of restricting, distorting or preventing competition in a market. Anti-competitive actions may also include formation of cartels and exclusive agreements by an enterprise or association of enterprises in respect of production, supply, distribution, or control of goods or services, which causes or is likely to cause adverse effects in the market like creation of entry barriers, forcing existing competitors out of market, etc. Usually the ability to indulge in anti-competitive practices depends on the market power of the business firm or company concerned thus it is obvious that the bigger firms or companies come under the scanner more often.

CHAPTER 5: ENFORCEMENT AND ADMINISTRATION

The Competition Act envisages the provision of a new enforcement authority, the Competition Commission of India (CCI), which is solely responsible for the enforcement and administration of the Competition Act. The CCI may initiate an inquiry in relation to an anti-competitive agreement or abuse of dominant position either on its own, on the basis of information or knowledge in its possession, or on receipt of information or on the receipt of a reference from the government or a statutory authority. Any person, consumer or their associations can file a complaint/information relating to anti-competitive agreements and abuse of dominant position. With respect to combinations, the CCI may initiate an inquiry either on its own or on the basis of the notification by the firms proposing to enter into the combination. The CCI and its investigative wing, the Office of the Director General (DG), is entrusted with extensive powers of investigation with respect to anti-competitive practices, which include powers to summon and enforce the attendance of any person, examine them on oath, receive evidence on affidavit and other similar provisions. If the CCI is of the opinion that there is a prima facie case, it shall direct the DG to investigate the matter and report

its findings. The DG is also empowered to carry out "dawn raids" for the purpose of its investigation. The CCI may rely upon the recommendations made by the DG in its report and after giving the concerned parties a due opportunity to be heard, pass such orders as it may deem fit, including an order to cease and desist and impose penalties. Under the Competition Act, there is a provision for appeal to the Competition Appellate Tribunal (COMPAT) against certain orders of the CCI. A further appeal from the decision of the COMPAT may lie before the Supreme Court of India.

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CHAPTER 6: COMPOSITION OF THE COMPETITION COMMISSION

- The Commission consists of one Chairperson and six Members who shall be appointed by the Central Government.
- The commission is a **quasi-judicial body** which gives opinions to statutory authorities and also deals with other cases. The Chairperson and other Members shall be whole-time Members.
- **Eligibility of members:** The Chairperson and every other Member shall be a person of ability, integrity and standing and who, has been, or is qualified to be a judge of a High Court, or, has special knowledge of, and professional experience of not less than fifteen years in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which, in the opinion of the Central Government, may be useful to the Commission.

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CHAPTER 7: POWER AND FUNCTIONS OF THE COMMISSION

1. To eliminate practices having adverse effect on competition, promote and sustain competition, protect interests of consumers and ensure freedom of trade by other participants.
2. ***Inquire into certain agreements and dominant positions of enterprises***–The Commission may either *suo moto* or on receipt of any information of alleged contravention of Section 3 (prohibits anti-competitive agreements) inquire into the same.
3. ***Inquiry into combinations***– Section 20 of the Act entrusts the Commission with the power to inquire into any information relating to acquisitions and determine whether such combinations or acquisitions may have an appreciable adverse effect on competition (AAEC).
4. ***Reference of an issue by a statutory authority to the Commission***– Section 21 of the Act provides that in the course of a proceeding if any issue is raised that any decision of a statutory authority will be in conflict with the provisions of the Competition Act, 2002, the statutory authority shall make a reference in this regard to the Commission.
5. ***Reference by Commission***– Section 21A of the Act provides that if in the course of proceeding an issue is raised by any party that any decision taken by the Commission is in contravention of the provisions

of the Competition Act, then the Commission may make a reference in respect of the issue to the statutory authority.

6. ***Power to issue interim order***– Section 33 of the Act empowers the Commission to issue interim orders in cases of anti-competitive agreements and abuse of dominant position, thereby temporarily restraining any party from carrying on such an act.

7. ***Competition Advocacy***– Section 49 of the Act provides for competition advocacy and provides that the Central or State Government may while formulating any policy on Competition or any other matter make a reference to the Commission for its opinion on possible effects of such a policy on Competition. However, the opinion given by the Commission is not binding on the Central Government.

CHAPTER 8: HOW A CASE PROCEEDS IN COMPETITION LAW

INQUIRY- PROCESS
Receipt of information (Suo-Moto or by Reference) ↓
Preliminary Analysis, if commission is of the opinion that there is Prima Facie case ↓
Direction to the DG for detailed investigation ↓
DG submits investigation report to the commission within a specific time period; if Commission feels so it may ask DG for further investigation ↓
Commission sends DG report to both the parties for inviting their comments and objections ↓
After further analysis and a detailed hearing, the Commission passes appropriate orders

On filing a case:

Any person can file an application or information before the Secretary of the Commission. CCI has to judge if there is a prima facie case or not within 15 days of receipt of the same. If CCI finds that there is a prima facie case, it has to form its opinion on the case within 60 days. However, in practice, it takes much longer.

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On seeking evidence:

At the prima facie stage, the CCI is not required to and generally does not ask for evidence from all parties involved. The CCI has the discretion to call the opposite party for the prima facie hearing.

On informing the opposite party:

Generally, the opposite party is informed of the case only when the DG during the course of its investigation, sends a notice to the party. CCI does not send the prima facie order to the opposite party.

On sharing DG's report with opposite parties:

In case the DG does not find a violation, the DG's report is not shared with the parties. However, in case of violation by the opposite parties, once DG submits its report to the CCI, the Commission shares the report with the parties and objections to the DG's report are invited. After the objections to the DG's report are filed by the parties, the CCI conducts oral hearings in the matter where the parties are allowed to make oral submissions before the CCI to support their case.

On time taken by DG to complete the investigation:

When a case comes up for investigation, the DG is required to submit a report on his findings within a period of 60 days. However, the DG generally requests for several extensions before the investigation report is actually submitted to the CCI. The DG generally takes 8-15 months to complete an investigation, depending on the complexity of the investigation and number of parties involved and such extensions are usually necessary for a fair investigation to be undertaken.

On the process followed in merger cases:

In mergers and acquisitions (combination) cases, on receipt of a notification form, the CCI is required to form a prima facie opinion within a period of 30 days. This is Phase I of the review process. If the CCI requires the parties to remove defects in the notification or to provide additional information, it "stops the clock" until the additional information is provided. This means that it can take much longer than 30 days for the CCI to form such a prima facie opinion. To date, all combinations notified to the CCI have been cleared in Phase I of the review process. If the CCI forms a prima facie opinion that a combination, causes or is likely to cause an adverse effect on competition, a detailed investigation will follow which is called Phase II investigation.

On whether CCI is bound by law to give final order within a certain time period:

The Competition Act does not prescribe a maximum time limit for an investigation initiated - from filing of the information to the final order, in respect of an anti-competitive agreement or an abuse of dominance.

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CHAPTER 9: COMPONENTS OF COMPETITION ACT

The rubric of the new law, Competition Act, 2002 (Act, for brief) has essentially four components:

- Anti - Competition Agreements
- Abuse of Dominance
- Combinations Regulation
- Competition Advocacy

1. Anti - Competition Agreements

The Act, under Section 3(1), prevents any enterprise or association from entering into any agreement which causes or is likely to cause an appreciable adverse effect on competition (AAEC) within India.

Firms enter into agreements, which may have the potential of restricting competition. A scan of the competition laws in the world will show that they make a distinction between horizontal and vertical agreements between firms. The former, namely horizontal agreements are those among competitors and the latter, namely vertical agreements

are those relating to an actual or potential relationship of purchasing or selling to each other. A particularly pernicious type of horizontal agreements is the cartel. Vertical agreements are pernicious, if they are between firms in a position of dominance. Most competition laws view vertical agreements generally more leniently than horizontal agreements, as, prima facie, horizontal agreements are more likely to reduce competition than agreements between firms in a purchaser - seller relationship. An obvious example that comes to mind is an agreement between enterprises dealing in the same product or products. Such horizontal agreements, which include membership of cartels, are presumed to lead to unreasonable restrictions of competition and are therefore presumed to have an appreciable adverse effect on competition. In other words, they are per se illegal. The underlying principle in such presumption of illegality is that the agreements in question have an appreciable anti-competitive effect. Barring the aforesaid four types of agreements, all the others will be subject to the rule of reason test in the Act.

2. Abuse of Dominance

Section 4 of the Act prevents any enterprise or group from abusing its dominant position. Dominant Position has been appropriately defined in the Act in terms of the position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to (i) operate independently of competitive forces prevailing in the relevant market; or (ii) affect its competitors or consumers or the relevant market, in its favour. Section 4 enjoins, No enterprise shall abuse its dominant position. Dominant position is the 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 affects its competitors or consumers or the relevant market in its favour. Dominant position is abused when an enterprise imposes unfair or discriminatory conditions in purchase or sale of goods or services or in the price in purchase or sale of goods or services. Again, the philosophy of the Competition Act is reflected in this provision, where it is clarified that a situation of monopoly per se is not against public policy but, rather, the abuse of the monopoly status such that it operates

to the detriment of potential and actual competitors is against public policy. At this point it is worth mentioning that the Act does not prohibit or restrict enterprises from coming into dominance. There is no control whatsoever to prevent enterprises from coming into or acquiring position of dominance. All that the Act prohibits is the abuse of that dominant position. The Act therefore targets the abuse of dominance and not dominance per se. This is indeed a welcome step, a step towards a truly global and liberal economy.

3. Combinations Regulation

The Competition Act also is designed to regulate the operation and activities of combinations, a term, which contemplates acquisitions, mergers or amalgamations. Thus, the operation of the Competition Act is not confined to transactions strictly within the boundaries of India but also such transactions involving entities existing and/or established overseas. Herein again lies the key to understanding the Competition Act. The intent of the legislation is not to prevent the existence of a monopoly across the board. There is a realization in policy-making circles that in certain industries, the nature of their operations and

economies of scale indeed dictate the creation of a monopoly in order to be able to operate and remain viable and profitable. The Act has made the pre-notification of combinations voluntary for the parties concerned. However, if the parties to the combination choose not to notify the CCI, as it is not mandatory to notify, they run the risk of a post-combination action by the CCI, if it is discovered subsequently, that the combination has an appreciable adverse effect on competition. There is a rider that the CCI shall not initiate an inquiry into a combination after the expiry of one year from the date on which the combination has taken effect.

4. Competition Advocacy

In line with the High Level Committee's recommendation, the Act extends the mandate of the Competition Commission of India beyond merely enforcing the law (High Level Committee, 2000). Competition advocacy creates a culture of competition. There are many possible valuable roles for competition advocacy, depending on a country's legal and economic circumstances. The Regulatory Authority under the Act,

namely, Competition Commission of India (CCI), in terms of the advocacy provisions in the Act, is enabled to participate in the formulation of the country's economic policies and to participate in the reviewing of laws related to competition at the instance of the Central Government. The Central Government can make a reference to the CCI for its opinion on the possible effect of a policy under formulation or of an existing law related to competition. The Commission will therefore be assuming the role of competition advocate, acting pro-actively to bring about Government policies that lower barriers to entry, that promote deregulation and trade liberalization and that promote competition in the market place. Perhaps one of the most crucial components of the Competition Act is contained in a single section under the chapter entitled competition advocacy.

CHAPTER 10: PENALTIES AND PUNISHMENTS

In cases where the compliance of Competition Act is breached by an entity, the Act provides for imposition of penalties on such an entity.

Chapter VI of the Competition Act, 2002 deals with imposition of penalties by the Competition Commission.

Following are the penalties under the Competition Act, 2002:

Sr. No	Contravention	Penalty/Compensation	Section
1.	Orders of Competition Commission of India	Rupees One Lakh for each day of contravention subject to a maximum of Rupees Ten Crores	42(2)
2.	Orders of Competition Commission of India under Section 42(2)	Imprisonment for a term upto three years or with fine upto Rupees Twenty Five Crores or with both.	42(3)
3.	Orders of Competition Commission of India	Make application to the Appellate Tribunal and claim compensation for any loss or damage suffered.	42A

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4.	Failure to comply with directions of Competition Commission of India / Director General	Rupees One Lakh for each day of contravention subject to a maximum of Rupees One Crore	43
5.	Non furnishing of information on combinations	Penalty upto one percent of total turnover or the assets whichever is higher of such combination	43A
6.	Making false statement or omission to furnish material information with regard to Combination	Minimum – Rupees Fifty Lakhs; Maximum – Rupees One Crore	44
7.	Offences in relation to furnishing information	Up to Rupees One Crore	45

Provision for lesser penalties

Leniency provision is incorporated under Section 46 of the Competition Act, 2002. If the requirements of section 46 are met,

Competition Commission is empowered to impose lesser penalty in cartel cases. Section 46 provides that, if any producer, seller, distributor, trader or service provider included in any cartel, which is alleged to have violated section 3, has made a full and true disclosure in respect of alleged violations and such a disclosure is vital, the Commission may impose upon him a lesser penalty than as prescribed under the Act or rules or regulations. However, lesser penalty will not be levied where before making such disclosure, the report of investigation directed under section 26 has been received. Further, lesser penalty will be imposed only in respect of the producer, seller, distributor, trader or service provider included in the cartel, who has made full, true and vital disclosures. The provision for lesser penalty under section 46 will cease to operate if the person making the disclosure does not continue to cooperate with the Commission till the completion of proceedings before the Commission. Section 46 further provides that any producer, seller, trader or service provider included in the cartel will also be liable to imposition of penalty, if in the course of proceedings, he has – (i) not complied with the condition on which the lesser penalty was imposed by the Commission; or (ii) given false evidence; or (iii) the disclosure made is not vital.

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Procedure for imposing penalty

The procedure for imposition of penalty under the Competition Act, 2002 is mentioned in Regulation 48 of the Competition Commission of India (General) Regulations, 2009. No order or direction imposing a penalty under the Act should be made unless the person or the enterprise or a party to the proceeding, during an ordinary meeting of the Commission, has been given a show cause notice and reasonable opportunity to represent their case before the Commission. In case the Commission decides to issue show cause notice to any person or enterprise or a party to the proceedings, as the case may be, the Secretary should issue a show cause notice giving not less than fifteen days asking for submission of the explanation in writing within the period stipulated in the notice. The Commission on receipt of the explanation, and after oral hearing if granted proceeds to decide the matter of imposition of penalty on the facts and circumstances of the case.

Crediting sums realised by way of penalties

All sums realised by way of penalties under the Competition Act should be credited to the Consolidated Fund of India.

Contravention by companies

"Company" means a body corporate and includes a firm or other association of individuals. "Director", in relation to a firm, means a partner in the firm. Where a person committing contravention of any of the provisions of the Competition Act, 2002 or of any rule, regulation, order made or direction issued thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, will be deemed to be guilty of the contravention and will be liable to be proceeded against and punished accordingly. But such person will not be liable to any punishment if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

CHAPTER 11 : COMPETITION LAW IN AVIATION SECTOR

As the economies of developing countries grow, their own citizens are already becoming the new international tourists of the future. The more rise in demand for air services, the more is the supply. The urge to provide more better and better services with the added incentive of large scale profits has induced new players to join the regime of Airline Industry. Hence more is the competition among players.

The civil aviation industry in India has emerged as one of the fastest growing industries in the country during the past few years. India is currently considered the third largest domestic civil aviation market in the world.

By nature, aviation industry is oligopolistic in nature. Oligopolistic market is characterized by concentration of the market share in a few firms, which exert a significant influence over each other. Interdependence is a common incidence in an oligopoly. This can result in diverse outcomes for the market and the consumers. A positive outcome could be in the nature of fierce competition among the firms and thus a lower price and higher consumer satisfaction. But what is often seen is that oligopoly can give rise to restrictive practices adopted by the firms by means of collusion to inflate

prices and exploit consumers. A classic example is of Organization of the Petroleum Exporting Countries, which is a sovereign cartel exerting profound influence over the oil prices all over the world. Given the oligopolistic nature of the aviation sector, it becomes imperative that a close watch be kept on the activities of the players in the market.

The legislative and regulatory framework that governs the aviation sector is an umbrella legislation that assess the practices adopted by industries and the effect of the same on the competition in India. The policies are formulated by the Ministry of Civil Aviation and the major regulators are the following:

- Airport Authority of India - which regulates construction and management of airports;
- Directorate General of Civil Aviation which regulates safety and operations of aircrafts;
- Bureau of Civil Aviation Security, which regulates airport and airline security standards; and
- Airports Economic Regulatory Authority, which regulates tariffs and fees

In the case of ***Re Express Industry Council of India Vs. Jet Airways (India) Ltd & Ors., Case No. 30 of 2013 (Competition Commission of India, 07/03/2018),*** the Competition Commission of India penalized three airlines, namely Jet Airways (India) Ltd., Spice Jet Ltd. and IndiGo Airlines for collusion to inflate prices of Fuel Surcharge rates for cargo transportation by the domestic airlines thereby contravening the provisions of Section 3 of the Act. The Commission arrived at this decision after a careful analysis of the market conditions and the corresponding increase in the surcharge. It went on to distinguish price parallelism with collusion in an oligopoly and dealt with the question of how an anti-competitive agreement is evidenced in an investigation.

Public institutions and authorities have the onus to cultivate and maintain fairness and equality in the market. The same applies to the ones entrusted with the regulation of the aviation sector. Tremendous power and influence is attached to institutions such as the DGCA, AAI etc. An error, intentional or unintentional, in terms of policies or their implementation would lead to catastrophic results that may lead to unmatched and unwarranted advantage for a few market players at the cost of others.

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CHAPTER 12 : KEY ISSUES IN THE INDIAN COMPETITION LAW REGIME AND CHANGES REQUIRED TO OVERCOME THEM

Since the enactment of the Competition Act, 2002 ("**Competition Act**"), the business milieu has changed considerably globally and in India. More and more businesses are now being run in the virtual world and newer models of business exist now which would have been inconceivable a decade ago. The pace of innovation in high-technology disruptive markets has also presented unique problems for competition law by challenging the traditional understanding of concepts such as 'market', 'monopoly', 'dominance', and 'agreement'. Lack of compliance with due process and principles of natural justice during investigation and decision-making by the Director General ("**DG**") and the CCI has also been highlighted as one of the shortcomings of the present regime. To compound matters, the rapid pace of modern business has made timely adjudication of cases non-negotiable for the competition law framework to remain relevant. Given the intertwined relationship of competition law and the markets, in order for the law to remain relevant, it is imperative that it develops in line with market realities and revamps from

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time to time. As a first step, I have outlined below a few key issues in the competition law regime in India that need to be addressed.

1. **Revisiting CCI's Regulation-making Power:-**

Regulations framed by an authority in the exercise of powers granted by the enabling statute are a widely accepted form of delegated legislation. Several regulations have been framed by the CCI as well, in exercise of the powers conferred by the Competition Act. However, a close scrutiny of the content of these regulations would reveal that, in certain cases, the limits of permissible delegation of legislative power are not adhered to. For example, the CCI (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 ("**Combinations Regulations**") exempt several transactions from the mandatory prior notification requirement under merger control provisions of the Competition Act. Neither is there any specific provision in the Competition Act that empowers the CCI to exempt combinations nor has any guidance been provided by the legislature for exercise of such power by CCI. It may be argued that in light of the above, these regulations are

not a valid form of delegated legislation and are susceptible to a challenge to their constitutional validity.

2. Compliance with Due Process of Law by the CCI and DG:-

Even a brief analysis of competition law jurisprudence demonstrates several instances where the Competition Appellate Tribunal ("COMPAT") has noted non-compliance of principles of natural justice by the CCI and the DG. Examples include lack of a fair hearing to parties, failure to meet quorum requirements while passing orders, and abuse of search and seizure powers by the DG. For instance, in the Cement Cartel case (COMPAT Order dated December 11, 2015 in Appeal no.105 of 2012) the Chairperson of the CCI became a party to the final order that imposed penalties of hefty amounts without being a part of the quorum which heard the arguments of the parties. To avoid such situations, in several jurisdictions overseas, the procedure to be followed during investigation and proceedings of competition authorities are laid down in detail. Eventually, confidence of the business community in competition law enforcement in India will erode if the CCI and the DG are perceived to be

arbitrary in their approach with no regard to compliance with principles of natural justice and due procedure.

3. Overload on the Office of the DG and Need for the CCI to Exercise Discretion in Ordering Investigations:-

Data provided in the Annual Reports of the CCI demonstrate that contravention of the Competition Act was found in only about 50% of the cases ordered to be investigated by the CCI regarding violation of Section 3 (anti-competitive agreements) and Section 4 (abuse of dominance) of the Competition Act. Studies suggest that unwarranted investigations by the DG have an adverse effect on businesses as they impair the reputation and prospects of a company even though it may be ultimately exonerated. The United Kingdom ("**UK**") has adopted the 'Prioritisation Principles' of the Competition and Markets Authority ("**CMA**") to deal with the issue of burgeoning caseload on competition authorities. The Prioritisation Principles ensure that the CMA only investigates such complaints which would directly or indirectly affect UK's desired competition law outcomes or are strategically significant or there is likelihood of a successful outcome within available resources. India must consider formulating

similar principles to avoid wasting its limited regulatory bandwidth. Additionally, the CCI must record reasons in writing for ordering investigations by the DG. With respect to the DG, its office must be adequately staffed with experienced persons. Time, resources and reputation of businesses must not indented without concrete reasons for doing so.

4. Issues at the Appellate Stage:-

The Competition Act has a six-month indicative timeline for disposal of appeals. However, figures in the Annual Reports of the CCI suggest that over 46% cases remain pending with the appellate authority for over a year.

None of the relevant rules or regulations, including the CCI (General) Regulations, 2009, the Competition Appellate Tribunal (Form and Fee for Filing an Appeal and Fee for Filing Compensation Applications), Rules 2009 and the Competition Appellate Tribunal (Procedure) Regulations, 2011 provide stage-wise timelines for the appellate process.

5. Interface with other Sectoral Regulators:-

The interface between competition policy and sector-specific regulation poses complex questions, particularly concerning the jurisdictional mandate for competition law issues. There have been several instances of turf conflicts between the CCI and various regulators and forum shopping by plaintiffs, stemming from a lack of clarity with respect to a delineation of roles and responsibilities between the CCI and sectoral regulators.

To homogenize decision making, it must be made mandatory for regulators to employ the cooperation/ consultation mechanism by necessary amendments to the Competition Act and sectoral laws. Following the example of the UK Enterprise Reform Act, the Central Government can lay down conclusively which regulator shall have primary jurisdiction in competition law matters in case of concurrent powers. Clarifying role of the CCI and sectoral regulators in competition law matters will prevent contradictory views being pronounced by various regulators and the resultant forum shopping.

6. Technology and Competition Law:-

Recent large scale mergers, particularly the Facebook/WhatsApp merger have encouraged discussions regarding the competition law impact of gaining control over 'big data' and its treatment as an asset in determining market power. Further, it has been observed that there is the risk that some algorithms with powerful predictive capacity will be able to collude and control markets without the need for any human intervention. In order to maintain competitive markets there must be periodic analysis and overhaul of competition law in the context of technological advances that have not been envisaged while formulating the law in its original form. The importance of conducting market studies to understand the effects of these technological developments on the Indian competition landscape cannot be over-emphasised in this regard. Efforts must also be made to build technical expertise among the competition law authorities by engaging expert advisors, participating in industry-wide coordinative processes and training exercises.

Research by : Adv. Salman Y. Shaikh, Associate
Verified by : Adv. Ashish Ved, Co-Founder & Senior Partner
Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

CHAPTER 13: CASE LAWS & CITATIONS

Mcx Stock Exchange Ltd. & Ors Vs. National Stock Exchange Of India

Order dt. 23rd June, 2011.

This case was initiated on the basis of information filed by MCX Stock Exchange Ltd. (MCX-SX) on 16.11.2009. The Commission passed an order under Section 26(l) on 30.3.2010 recording its opinion that there exists a prima facie case and directed the Director General to investigate into the matter. Further process of inquiry was undertaken in accordance with the provisions of the Competition Act, 2002 and relevant regulations thereunder. Full opportunity was given to both MCX-SX and National Stock Exchange (N SE) and other parties for the perusal of all relevant records and making their submissions, both in writing and orally, before the Commission. After completion of the entire process, the Commission, through a majority order, found violation of Sections 4(2) (a) (ii), 4 (2) (b) (i) & (ii), 4 (2) (c), 4 (2) (d) and 4 (2) (e) of Competition Act, 2002 (the Act).

It is noted that based on the aforesaid finding, a show cause notice had been issued to NSE for violation of the provisions of the Act, in pursuance of the

majority view, seeking its response before taking a decision regarding penalties/remedies.

Mohit Manglani v. M/s Flipkart India Pvt. Ltd. & Ors
Order dt. 23.04.2015, Case No. 80 of 2014.

Mr. Mohit Manglani filed a complaint u/s 19(1) (a) of the Competition Act, 2002 against various e-commerce/portal companies for their alleged contravention of the provisions of Section 4 of the Competition Act, 2002.

It was alleged by the informant that these e-commerce websites have been involved in anti-competitive practice with the seller of goods/services in nature of "exclusive agreements". According to the Informant, owing to such practices, the consumer doesn't have any option with regards to the terms and price of the goods and services and is left with no option but to purchase the product as per the terms of the website. This can be considered as a move which might have consequences towards the creation of transparency and accountability in the legal system, fair trade regulations. Competition Commission of India (CCI) is investigating whether resale prices arrangements between manufacturer and e-retailers violates any competition norms.

M/s Fast Track Call Cab Private Limited v. M/s ANI Technologies Pvt. Ltd.
Case No. 6 & 74 of 2015, Order dt. 19th July, 2017.

The Informant had sought for an Order from the Commission directing M/s ANI Technologies Pvt. Ltd to restrain from indulging in the alleged practice of predatory pricing.

The CCI was of the view that destructive pricing which provides additional incentives and discounts to customers and drivers created an entry barrier for potential players which was contrary to the provisions of Section 4 of the Act.

Interglobal Aviation Ltd. vs. Secretary CCI
Delhi High Court decided on 06.10.2010

The basic issue in these Writ Petitions was that the CCI had no jurisdiction to deal with these matters because these matters were pending before the erstwhile MRTP Commission as the same were referred by the MRTP Commission to DG (I&R) for merely preliminary investigation under Section 11(1) of MRTP Act. It was the case of the Petitioners that Section 66(6) of the Competition Act (CA) was meant to cover only such cases where DG (I&R)

took suo-motto notice under Section 11(2) of MRTP Act and investigations were incomplete at the time of repeal of MRTP Act. The Hon'ble Court held that there is nothing in the language of Section 66(6) of CA to suggest this. The resultant position is that all investigations and proceedings which were pending before DG (I&R), MRTP Commission as on the date of repeal of MRTP Act, whether by way of a reference made to it by the MRTP Commission under Section 11(1) or taken up by DG (I&R) suo-motto under Section 11(2) of the MRTP Act, would stand transferred to the CCI in terms of Section 66(6) of the CA. There is, therefore, no illegality in the action of transferring the investigations pending before the DG (I&R), MRTP Commission to the CCI.

Belair owner's Association Vs. DLF Limited

Case No. 19/2020, Order dt. 12th August, 2011.

In another landmark case, the Commission fined India's largest real estate firm INR 630 crore, vindicating a group of homeowners in a high-end housing project who alleged that DLF had delayed the completion of building plans. The homeowners alleged that DLF had abused its dominant position and imposed arbitrary, unfair, and unreasonable conditions on the apartment

owners. The complaint listed 21 unreasonable conditions (such as "abnormal delays") that were forced on them.

DLF announced the launch of Group Housing Complexes, known as The Belaire, Park Place and Magnolia upon which the informants booked the apartments and entered into the Apartment Buyer's Agreements (**'ABA'**). Also by that time informants had already paid substantial amount as they hardly had any option but to adhere to the dictates of DLF. The Commission defined the relevant market to be the high-end residential market in an area of Delhi called Gurgaon. As was previously discussed, the Commission purported to use a SSNIP test, intuiting first that a customer who wanted to live in Gurgaon would not look elsewhere, and that a 5% increase in the price of neighbouring flats would not cause buyers to shift to the Gurgaon development (or, that the two residential areas were not substitutes). The Commission relied on industry report market share data in order to conclude that DLF had a dominant market position (its share was 50% of the market). The Commission found DLF guilty of abuse of dominance, finding the terms of the agreement as well as DLF's conduct to be unfair and exploitative.

Research by : Adv. Salman Y. Shaikh, Associate
Verified by : Adv. Ashish Ved, Co-Founder & Senior Partner
Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

CHAPTER 14 : CONCLUSION

Competition law is a unique law as it stresses on the necessity of protecting the process of competition and also refers to the broader political and social policy goals. It aims to strike a balance between unrestrained interaction of competitive forces and the preservation of our democratic, political and social institutions. This balance is essential for the co-achievement of economic goals such as lowest prices, highest quality, and greatest material progress and of social goals like consumer welfare, self-reliance, optimum allocation etc. which are interrelated by their very nature. Thus, it can be said that competition law is an inevitable medium of regulation that caters to the modern market needs and also tries to reconcile personal and public interest without causing any unreasonable harm to either.

Research by : Adv. Salman Y. Shaikh, Associate
Verified by : Adv. Ashish Ved, Co-Founder & Senior Partner
Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

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Research by : Adv. Salman Y. Shaikh, Associate
Verified by : Adv. Ashish Ved, Co-Founder & Senior Partner
Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner