International Journal of Science and Research (IJSR)
ISSN: 2319-7064
SJIF (2022): 7.942

Revision of India’s Competition Law: The Competition Act, 2002's Development, Significance and Prospects

Arpita

Abstract: ***This article explores how the Competition Act of 2002, which superseded the Monopolies and Restrictive Trade Practices Act of 1969, completely changed India's competition laws. It critically analyses the evolution of the Act in light of India's economic liberalization and adherence to international trade norms, including the Act's subsequent amendments in 2007 and 2009. The article outlines the main goals of the Act, which are to protect consumer interests, encourage market competition, reduce anti-competitive behavior, and adjust to the dynamics of global economic trends. The creation of the Competition Appellate Tribunal (COMPAT) and the Competition Commission of India (CCI) as regulatory agencies tasked with enforcing market justice is also covered. It also examines the Act's important role in promoting innovation, guaranteeing quality, and expanding consumer options in the marketplace.Lastly, it discusses the Act's applicability in the digital age and the problems that still arise, outlining potential areas for modification and advancement.***

Keywords: Economic Liberalization, Anti-Competitive Behavior, Competition Commission of India, Competition Act 2002 India, and Compliance with Global Trade Norms.

1. Introduction

On January 13, 2003, the Indian Parliament approved the Competition Act, 2002, repealing the Monopolies and Restrictive Trade Practices Act, 1969. It was enacted on March 31, 2003. Following its passage into law, the Competition Act of 2002 underwent two amendments: the Competition (Amendment) Act of 2007 and the Competition (Amendment) Act of 2009. India's push for economic liberalization and globalization was the cause of it. Controlling a firm or company's anti-competitive behavior that adversely affects competition in the Indian market is the main objective of the Act. In addition, the Act aims to protect consumer interests, promote and preserve market competition, and preserve market freedom in our nation (1).

India passed the Competition Act of 2002 in order todouble objectives of protecting anti-competitive behavior and endorsing World Trade Organization (WTO) agreements. Additionally, the Act creates the Competition Commission of India (CCI) as the nation's market regulator, tasked with preventing and managing anti-competitive activity. Additionally, it creates the Competition Appellate Tribunal (COMPAT), a quasi-judicial body tasked with hearing appeals against any ruling or instruction made by the CCI and rendering a verdict.

2. The Competition Act's evolution and development

Act of 1969 on Monopolistic and Restrictive Trade Practices

India's first competition law was created in 1969 and is known as the Monopolies and Restrictive Trade Practices Act (MRTP Act). On June 1st, 1970, the MRTP Act went into force with the intention of preventing the economy from becoming concentrated in the hands of a small number of people as a result of the way the market system operated. It also outlawed actions that are detrimental to the general population, such as monopolistic and discriminatory practices.

Liberalization of the economy and the 1991 repeal of the MRTP Act

The introduction of economic liberalization in 1991 marked a significant shift for Indian markets in the context of a globalized world. Trade barriers were removed, exposing the country to competition from both domestic and foreign sources. As a result, India launched numerous new economic initiatives, minimized government intervention, and gradually began to open doors for business and foreign investment in order to prepare the way for globalization. Many modifications were made to India's competitive system among these new provisions, including:

Following an amendment to the Monopolies and Restrictive Trade Practices Act, MRTP Industries no longer has to apply to mergers and acquisitions (M&A) or pre-entry critical review of investments.Combination, as well as the requirement for official approval to expand and launch new businesses.Establishing a competition law framework that was more in line with global norms and pertinent to domestic economic forces became imperative after economic liberalization in 1991(1).

The Competition Act of 2002's emergence

In order to control companies that engage in anti-competitive behavior in the Indian market, the Indian Parliament passed the Competition Act in 2002. It was implemented to prevent actions that could have a significant negative impact on competition (AAEC). The Competition Act of 2002 aims to create and maintain an environment that is fair, competitive, open, and innovative in order to safeguard consumer interests and promote the country's long-term economic growth. The Act claims that because of global economic trends, MRTP is no longer relevant and needed. Accordingly, the focus must shift from "curtailing monopolies" to "supporting competition."

The Competition (Amendment) Act 2007, which came into effect on May 20, 2009, amended the Competition Act, 2002 in ways related to anti-competitive agreements and abuse of dominant positions, as notified by the Indian government. Three more years later, in June 2011, some acquisition control-related provisions became operative (1).

Competition Act of 2002: It's Importance

Enforcement of regulations to guarantee that businesses and corporations effectively compete with one another is the focus of the Competition Act. This enhances customer choice, encourages entrepreneurship and productivity, lowers costs, and improves quality.

1) Low prices: The simplest strategy for a company to gain a significant market share is to offer a lower price. In a market where there is competition, prices decrease. Not only does this benefit consumers, but it also encourages businesses to produce and boosts the economy overall when more people can afford to buy goods.
2) Innovation: Businesses need to be innovative in their product concepts, designs, manufacturing techniques, services, and other areas if they want to produce high-quality goods.
3) Higher quality: In order to draw in more customers and grow their clientele, businesses are encouraged by the Competition Act to improve the caliber of their products and services. Quality can include many different things, such as products that function better or last longer, better after-sales support, better technical guidance, and better service.
4) More options: Businesses will try to set their products apart from rivals in a competitive market. Customers now have more options, enabling them to select the item that offers the best value for their money.

Characteristics of the 2002 Competition Act

Among the Competition Act's principal characteristics are the following ones:

1) Anti-competitive agreements: Any agreement between two or more businesses or individuals to uphold market competition and further the public interest in India is prohibited by the competition law.
2) Preventing abuse of dominance: Any company that abuses its position of dominance will face consequences.
3) Anti-cartels: It is a civil offense for two companies or individuals to come to an agreement that hurts competition.
4) Mergers and acquisitions: If a merger or acquisition does not lessen market competition, the Commission will only approve it.
5) Informative nature of this act: Before taking any action or entering into any agreement that could hurt market competition, a business must notify CCI of any interactions that could cause confusion or misunderstandings between individuals or companies.

Essential ideas of the 2002 Competition Act

Four main topics are covered by the Competition Act of 2002.

1) Abuse of the dominant position
2) Anti-competitive agreements
3) Pairs and the rules governing them
4) The Indian Commission on Competition

Anti-Competitive Agreements

Agreements between businesses in a commercial transaction that have the potential to reduce competition in a particular market or benefit one particular group at the expense of the others are known as anti-competitive agreements. The Competition Act of 2002 forbids these kinds of anti-competitive contracts. According to Section 2(b) of the Competition Act of 2002, the term "agreement" does not require the use of a formal document that the parties must sign. It might or might not be written down. The given definition covers a wide range of topics and is obviously broad rather than exhaustive. The Competition Act of 2002 expanded the definition of "agreement" primarily because those who participate in anti-competitive behavior cannot enter an officialwritten agreement to censor their behavior(2).

Any agreement relating to the production, sale, transportation, warehousing, acquisition, or management of goods and services that has or is likely to have a negative impact on the Indian market is prohibited by Section 3 of the Competition Act, 2002. Furthermore, any agreement entered into in violation of this clause is void, according to Section 3(2).Horizontal and vertical agreements are the two categories of agreements that the Competition Act seeks to regulate.

Agreements Horizontal

The Competition Act of 2002 discusses horizontal agreements in Section 3(3). These are contracts between two or more companies that operate at the same production and distribution levels. Certain horizontal agreements are considered to have a significant negative impact on competition in India under the Competition Act. This presumption does not imply that all horizontal agreements are inherently anti-competitive; rather, the parties to a horizontal agreement must demonstrate that the agreement will not materially harm competition. A case of horizontal agreement can be seen in the setting of a commodity's price by two producers.

The following are a few examples of horizontal agreements that are forbidden by the Competition Act of 2002:

1) Agreements pertaining to the purchase or sale price of the commodity, whether stated explicitly or implicitly.
2) Agreements that restrict or control the production, sales, expenses, or service requirements for particular items and quantities.
3) An agreement concerning market sharing.
4) Contracts for bid rigging: According to Section 3(3)(d), a bid rigging contract is an arrangement between two parties involved in a comparable business that has the potential to negatively impact or influence bidding or eliminate or reduce bid competition.
5) Agreements in the form of cartels: In actuality, cartels are private contracts between businesses that are solely intended to share markets or set prices. They significantly jeopardize competition, and as a result,stifle open commerce.

AgreementsVertical

The Competition Act of 2002 discusses vertical agreements in Section 3(4). These are the contracts that are made between businesses or individuals at different stages or levels of the supply chain. Vertical agreements are typically accepted unless it can be demonstrated that they significantly reduce competition in the Indian markets or are likely to do so. Based on how they affect Indian competition, a comprehensive list of vertical agreements that could be prohibited is included in the Competition Act. A vertical agreement, for instance, could be an arrangement between a supplier and a producer that has the power to influence market competition(2).

The following list of different vertical agreements is allowed by the Competition Act of 2002:
Exclusive distribution and supply agreements, Exclusive tie-in agreements, Refusal to deal and Maintenance of resale prices.

Misuse of a position of dominance
A person or business is said to be in a dominant position when they possess a stronger position that permits them to act without restriction from market forces competing with one another. Additionally, they positively affect their competitors, clients, and the state of the market. A company that has a dominant position in an Indian market is one that has the ability to operate independently of external business constraints.

A company must first hold a dominant position in relation to a particular product and the geographic market for that product in order to prove abuse of dominant position. The Competition Act of 2002's Section 4 focuses on outlawing this kind of misuse. It suggests that no company or group should take advantage of its dominant position. It also serves as an example of the kinds of actions that constitute abuse of a dominant position. These kinds of activities include the following:
1) Putting unfair or discriminatory conditions on the sale or purchase of goods and services, or raising prices (especially aggressive rates) on these transactions, either overtly or covertly
2) Reducing or controlling the production of goods or services to the detriment of consumersor impeding the development of goods- or service-related science or technology.
3) Taking part in any kind of activity that limits access to markets.
4) Making use of a strong position in the market to defend or enter a different one.

A few instances of the abuse of dominant position are listed below:

M/s Gujarat Gas Company Limited v. M/s Saint Gobain Glass India Ltd.
In determining the "relevant market," the CCI examined factors to be taken into account for defining the significant geographic market and the suitable product market in the case of M/s Saint Gobain Glass India Ltd. v. M/s Gujarat Gas Company Limited.

The cost of goods or services, the rejection of in-house manufacturing, the physical characteristics of finished goods, customer preferences, the presence of specialized manufacturers, and the classification of manufactured goods in accordance with the guidelines in are all required to be considered by the commission when defining the "relevant product market," according to the CCI.

ANI Technologies v. M/s Fast Track Call Cab Private Limited
It was determined in the verdict of M/s Fast Track Call Cab Private Limited v. ANI Technologies that Ola had given unfair discounts, rewards, refunds, and loyalty. The Commission stated that Ola appears to be using its practice of rewarding employees and offering steep discounts to consumers at the risk of losing money as a well-thought-out tactic to drive rival companies out of the specific market. This case shows how CCI has changed its position on regular taxi service providers' security (2).

Combinations and the laws governing them
According to Section 5 of the Competition Act of 2002, a combination is when one or more individuals actively or passively purchase shares, voting rights, resources, or control over the management or supervision of the assets of multiple businesses. It is the coming together or merging of businesses. Under competition law, a combination is the acquisition of a business sector (e.g., company or firm) by another commercial entity, or the merging of two or more businesses or organizations. In India, there are two categories of mergers:
1) Merger by absorption: Absorption is the process of combining two or more companies into a single, "established business." All firms, with the exception of one, lose their identities in this combination.
2) Merger by consolidation: This type of merger involves the joining of two or more companies to form a "new organization." In this kind of merger, a new company is created and all existing firms are formally dissolved.
3) In order to prevent such mergers from impairing market competition, the Competition Act includes a number of rules and regulations pertaining to combinations. The following are these guidelines:
4) No company may merge with another company if doing so would significantly hurt competition.
5) Section 6(1) states that certain combinations should be deemed null and void and prohibits the establishment of combinations that appear to have a noticeably negative impact on competition in the relevant market in the nation.
6) The CCI must authorize the formation of any combination that a person or business wishes to create.
7) Before the CCI grants approval or denies the proposed merger, the following processes must be completed:
    a) Send a notification to the Commission.
    b) In compliance with Section 29 of the Competition Act of 2002, CCI will investigate the merger;
    c) If the Commission concludes after an investigation that a merger has no, or is unlikely to have, a materially adverse effect on competition, the combination is approved.

Indian Competition Commission
A CCI may be established in accordance with the Competition Act. In the Indian market, it serves as a competition regulator. Although the commission was

established in 2003, it wasn't until 2009 that it was fully operational. The CCI is composed of six members and a chairman chosen by the central government. The commission is in charge of outlawing anti-competitive behavior, promoting and preserving competition, defending consumer rights, and ensuring unrestricted trade in India's markets. Its responsibilities as a quasi-judicial body include the following:

1) Avoid actions that could harm the competition.
2) Promote and preserve competition in the market.
3) Preserve the interests of every customer.
4) Retain business liberty.
5) Look into issues pertaining to or associated with trade.

India's implementation and observance of competition law

The CCI was founded by the Competition Act and is solely in charge of enforcing and applying the Competition Act. There are presently six members of the CCI, led by Ashok Kumar Gupta. Upon receiving information or a recommendation from the state or legal authority, or based on facts or evidence in its possession, the CCI may initiate an independent investigation into an anti-competitive agreement or abuse of dominance. Customers and other organizations are among those who can file a complaint or offer information about anti-competitive agreements and abuses of dominant positions. The CCI has the authority to start an investigation into mergers and acquisitions on its own initiative or in response to information provided by the merging companies.Regarding anti-competitive practices, the CCI and its inquiry team are empowered to conduct extensive investigations. These investigative powers include the ability to obtain affidavits of witnesses, summon and administer the participation of any individual, and investigate them under oath. In the event that CCI determines there is a plausible case, it will direct the Director General to carry out an inquiry and present its findings. In the course of its investigation, the Director General is also permitted to carry out police raids. The Director General's recommendations may be followed by the CCI after it has finished its investigation and given the accused parties a fair opportunity to be heard. Following that, they are free to take any appropriate action, like issuing an instructionto halt, desist, and apply penalties. Certain CCI rulings may be appealed to the Competition Appellate Tribunal under the Competition Act. The Supreme Court of India may receive a second appeal from the COMPAT ruling(1).

Spirited advocacy in competition

The Competition Act extends CCI's purview beyond regulatory oversight to encompass competition advocacy and the establishment of a competitive atmosphere. Initiatives that increase public awareness of the value of a competitive industry are referred to as competition advocacy, as stated in Section 49 of the Competition Act, 2002. It is the customers' responsibility to advocate for competition law by the CCI, since their well-being is the main objective of the legislation. The CCI has worked with consumer activists, corporate entities, and regulatory bodies made up of professionals like attorneys, chartered accountants, and corporate executives to advocate for competition in both the Union and State governments. Competitive advocacy can vary depending on the political and fiscal climate of a government to fulfill a range of tasks.

On the potential ramifications of a strategy in the development of any applicable competition law, the Union government may decide to form its own opinion or seek advice from the Competition Commission of India. Within sixty days of receiving such a recommendation, the Commission must submit its recommendation to the Union government. Consequently, the CCI will be regarded as the champion of competition, striving to create laws that uphold free commerce, lower obstacles to entry, and boost market competition.

The goal of the Act is to create a clear connection between competition advocacy and law enforcement. Creating conditions that encourage corporate behavior and increased market competition without the CCI's penalties is one of the main objectives of competition advocacy. Within the legal framework, the CCI's opinion will play a major role in helping the government carry out its legislative or policy initiatives(1).

Competition law development in 2022

The Competition (Amendment) Bill, 2022, put forth by the central government, would change the CCI's governance structure.

Briefly, regarding the bill

The bill aims to strengthen the regulatory framework by increasing the CCI's responsibility, adaptability, and implementation capacity. It also intends to check anti-competitive practices in the online business sector, which has faced significant legal and regulatory concerns. Finally, it intends to amend the fundamental provisions to accommodate the demands of the modern market.

The bill's suggested amendments

Some of the primary changes the bill suggests are as follows:

- A board of directors to supervise CCI operations, made up of experts working part-time.
- CCI is required to set penalty guidelines and offer justifications for any inconsistencies.
- There has been a reduction in the merger evaluation time from 210 to 150 days.
- The creation of an eco-friendly channel for merger submissions.
- The National Company Law Appellate Tribunal (NCLAT) will hear appeals from CCI, provided they prepay a sum not to exceed twenty-five percent of the fine they were ordered to pay.
- CCI would be able to bring it up to date with the Securities and Exchange Board of India (SEBI) by having structured talks with parties and coming to an amicable resolution without having to follow lengthy, established procedures.

Competition law's applicability in the digital age

Over the past few years, there has been a rise in the use of digital platforms. CCI has enforced strict regulations and taken proactive measures against digital platforms involved in anti-competitive practices, as mandated by the Competition Act of 2002. In order to improve competition

Paper ID: SR231127144700 DOI: https://dx.doi.org/10.21275/SR231127144700

regulation in digital markets, CCI looks at network effects, internet privacy, data manipulation, data collection, incorporation, and exchange. Rather than continuing its previous practice of integrating online and offline marketplaces, CCI has revised this particular market by focusing primarily on online market segments, thus bringing additional technology platforms under investigation. Although digital markets are effectively regulated by competition laws, there is room for strengthening competitive markets through appropriate modifications to keep up with the rapidly changing technological landscape. The times aheadthe future appears promising for antitrust regulation of online marketplaces(2).

Important decisions pertaining to competition law

Google Inc. &Ors v. Indian Competition Commission

The following is the ruling rendered in Google Inc. &Ors v. Competition Commission of India (2015):

Facts: According to a complaint filed with the CCI, Google Inc. abused its dominant position in the online advertising space by promoting its vertical online services, which include YouTube, Google News, Google Maps, and others. Put differently, these services show up high on the Google search engine result page, regardless of how well-liked or relevant they are.

Issues: Without reference to any specific clauses in the Competition Act of 2002, the central query was whether an administrative body, like the CCI, had the inherent authority to review or reverse a decision made pursuant to Section 26(1).

Decision: The Delhi High Court ruled that the CCI may recall or reexamine its decision under certain circumstances. It should be done sparingly, though, and not in every instance where an incomplete investigation was used to conduct the investigation.

M/s Flipkart India Pvt. Ltd. &Ors.v. MohitManglani

The following is the ruling in MohitManglani v. M/s Flipkart India Pvt. Ltd. &Ors (2015):

Facts: MohitManglani issued a challenge to the following four well-known Indian e-commerce companies: Amazon Vector E-commerce, Flipkart, Jasper Infotech, and Xerion Retail (collectively, the "Opposite Parties"). The complainant contended that in order to commit anti-competitive acts in violation of the Competition Act of 2002, the opposing parties entered into exclusive selling and distribution agreements with manufacturers of goods and services. He went on to say that the other parties had acquired a product-specific monopoly—that is, they all held complete market dominance for goods that were only available on their websites—as a result of these exclusive contracts.

Question: Does entering into exclusive agreements for the purchase and sale of goods through online commerce violate the Competition Act?

Conclusion: The Commission concluded that customers can compare prices and the advantages and disadvantages of the service through the digital distribution channels provided by the OPs. It also gives customers the option of delivery at their convenience. Therefore, it would seem that AAEC in the industry is not a result of the exclusive agreement between manufacturers and e-portals(2).

A Lack of Clarity in the Competition Act

Despite its crucial significance in an evolving economy like India, the Competition Act does not address the fundamental concept of collective dominance. The Indian competition law's exclusion of the concept of "collective dominance" has frequently prevented the CCI from pursuing appropriate remedies when they are needed. The term "collective dominance" describes a scenario in which two or more independent businesses that are connected by business dealings maintain a stronger position than the other traders. It is evident that collective dominance exists in both horizontal and vertical markets. Therefore, it is not necessary for parties in a dominant position to be a part of a cartelization or anti-competitive agreement. Additionally, some claim that due to the intricacy of analyzing competition law and the absence of organizationaladopting a competition law regime may wind up doing more harm than good because of the high risk of drawing the wrong conclusions given the endowment in the majority of emerging economies.

The CCI can be overruled by the government. These restrictions significantly affect the independence and efficiency of the CCI. In actuality, the Act's provision requiring the Central Government to consult with the CCI when formulating competition policy ought to be changed from optional to required. Moreover, intellectual property rights, which are monopoly rights for a finite amount of time, are not covered by the Act.

India's relationship between IPR and competition law

IPR and competition law seem to work against each other like fire and water at first glance. Over time, this view has changed, and the consensus now is that they have similar viewpoints. The interplay between competition law and intellectual property rights permits individuals to participate in more competitive activities while limiting rigid competition. For a given amount of time, it gives the holder exclusive use of his product. Patent holders are in a dominant position and have monopolistic control during this period. Antitrust law will not be broken as a result of such dominance.

By limiting monopolistic power, competition law seeks to protect and improve consumer welfare. Conversely, intellectual property rights (IPRs) encourage innovation by giving owners the sole authority to conduct commercial ventures; however, this does not mean that they can monopolize the market. IPR gives its holders a preventive right, but this right cannot be sufficiently exclusive to grant monopoly status. This is where competition law enters the picture. If the owner of the intellectual property engages in any anti-competitive behavior or activity, competition law will apply (1).

What sets the Competition Act of 2002 apart from the MRTP Act of 1969

- The MRTP Act, which consists of rules and laws prohibiting discriminatory market practices, is India's first competition law. In order to preserve and promote economic competition and safeguard commercial liberty, the Competition Act of 2002 was created.

- The pre-liberalization and pre-globalization eras served as the foundation for the MRTP Act of 1969.The liberalized and globalized economy serves as the foundation for the Competition Act of 2002.
- The MRTP Act of 1969 forbids unfair business practices and monopolistic markets. The Competition Act of 2002 promotes competition while upholding corporate independence.
- The 1969 MRTP Act is a reformatory statute. The Competition Act of 2002 is a punitive law.
- Fourteen offenses under the MRTP Act, 1969 go against the idea of natural justice. Only four offenses are recognized by the Competition Act as being in violation of the idea of natural justice.
- The chairman of the CCI will be selected by a panel made up of retired judges and other professionals with experience in a variety of fields, including trade, commerce, industries, finance, and so on while the head of the MRTP Commission was appointed by the central government.While violations of the Competition Act are subject to penalties, those of the MRTP Act, 1969 are not.

3. Summary

The Competition Act of India is a comprehensive piece of legislation that was created to address global economic trends and the demands of an expanding economy with regard to competition law. The 2002 competition law is regarded as a historic law as a result. This law forbids the abuse of authority. In order to increase the commercial viability of the industry, this law primarily encourages market competition while also allowing for flexibility in the distribution of income to businesses of all sizes. Even though the entire Act has not yet been put into effect, its adoption will surely boost market competitiveness both domestically and globally(1).

Imagine that the only store in your neighborhood sells smartphones, so you are forced to purchase them there. We all dread the possibility of being left with no other choice but to pay whatever is demanded in today's society. That's the exact reason competition laws were passed. These rules guarantee the promotion of market competition and the availability of premium goods at affordable prices for consumers. Any company or organization looking to influence the industry through anti-competitive agreements with one another is always a cause for concern for the CCI. It also has the power to look into and investigate abuses of dominant positions, mergers and acquisitions, and agreements that are anti-competitive. It can impose fines as a form of punishment on these companies.

Anybody can file a complaint about a company with the CCI. You can easily file a complaint with the CCI if you are a disgruntled customer who is tired of the lack of variety in the industry or if you are any individual, corporation, business, local government, etc. and know of companies planning to reduce the level of competition in the industry. Actually, the CCI committee has the authority to start the inquiry on its own (2).

References

[1] https://blog.ipleaders.in/competition-law-in-india-2/#:~:text=Anti%2Dcompetitive%20agreements%3A%20The%20competition,dominating%20position%20will%20be%20penalised.

[2] https://www.globalcompliancenews.com/antitrust-and-competition/antitrust-and-competition-in-india/

[3] https://www.cci.gov.in/images/legalframeworkact/en/the-competition-act-20021652103427.pdf

[4] Competition Law in India by Jayant Kumar and Abir Roy

[5] Guide to Competition law by S M Dugar