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IMPACT OF COMPETITION AMENDMENT ACT 2023

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I. ABSTRACT

Competition Law in India has been introduced for the effective implementation of policies in the market and to act against anti-competitive agreements. The main job of competition law is to maintain healthy competition in the market. Not only in India but also around the world, every country has its competition law to regulate their markets, Brazil has Antitrust laws that aim to protect free competition and prevent anti-competitive practices, with the Administrative Council for Economic Defense (CADE) as the enforcement body.² The history of competition law can be traced back to the enactment of the Sherman Act and the Clayton Act, also known as antitrust laws, which were introduced in the USA around the 19th and 20th centuries, respectively. In India, the history of competition law can be traced back to the implementation of the MRTP Act 1969, Monopoly and Restrictive Trade Practices Act. In 2002, the MRTP was repealed by the Competition Act, which was passed by the parliament in 2002 and came into effect in 2009. The Competition Act 2002 was to promote competition in India and consider the interest of the public at large. After almost 20 years, the competition act was amended in 2023. The amendment focuses on enhancing regulatory efficiency, promotes fair competition, and addresses challenges posed by the digital economy. ³This research paper focuses on every aspect of the amendment like deal value thresholds, settlements and commitments, leniency provisions, and changes in penalties.

II. KEYWORDS

Competition law, MRTP Act, Competition Act 2002, Deal Value Threshold, CCI Regulations 2024, Deal Value Threshold, Merger and acquisitions, settlements and commitments.

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² Ganesh Makam, *A Comparative Analysis of the Competition Act in India and Other Jurisdictions' Competition Laws: Assessing Frameworks, Similarities, and Best Practices*, SSRN (2023)

³ Changes to the Competition Act - catalyst to the Indian economy? azb, <https://www.azbpartners.com/bank/changes-to-the-competition-act-catalyst-to-the-indian-economy/> (last visited Apr 1, 2025)

III. INTRODUCTION

Competition law in India started from the enactment of MRTP act 1969. The principles of this act were based on the socio-economic principles enshrined in the directive principles of state policy of the Constitution. The amendments introduced in the MRTP Act in the year 1982 and 1984 were based on the recommendations of the Sachar Committee, led by Rajinder Sachar in the year 1977.⁴ The committee contended that advertisements and sales promotions having become well established modes of modern business techniques, representations through such advertisements to the consumer should not become deceptive.

The Committee recommended that an obligation is to be cast on the seller to speak the truth when he advertises and also to avoid half-truth, the purpose being to prevent false or misleading advertisements.⁵ However, the MRTP act was not effective as much. It faced many criticisms. It was criticized for being outdated and not comprehensive enough to address the evolving economic landscape after the economic reforms of 1991. The MRTP act lacked clarity, had burdensome processes, and faced resource constraints. The act failed to define and address certain anti-competitive practices like cartels, manipulation, etc. There were also drawbacks of MRTP ACT- excessive govt. control, vague and ambiguous law, excessive export promotion, and insufficient MRTP commission. To overcome these challenges the MRTP act was repealed by the Competition Act 2002⁶.

In October 1999, the Government of India instituted a committee known as the Raghavan Committee, under the leadership of SVS Raghavan. The committee presented its report to the government in May 2000.⁷ After getting recommendations from the Standing Committee, the Competition Act was passed in December 2002 and received Presidential assent in January 2003. Its substantive provisions relating to anti-

⁴ Evolution of competition law in India LawBhoomi, https://lawbhoomi.com/evolution-of-competition-law-in-india/#Impact_of_the_Competition_Act (last visited Apr 1, 2025)

⁵ *ibid*

⁶ The Competition Act, 2002, No. 12, Acts of Parliament, 2003 (India)

⁷ BHATTACHARJEA, ADITYA. "Of Omissions and Commissions: India's Competition Laws." *Economic and Political Weekly* 45, no. 35 (2010): 31-37. <http://www.jstor.org/stable/25742019>.

competitive agreements and abuse of dominance came into force on 20 May 2009, and the MRTP Act was formally repealed on 1 September 2009.

The main objectives of the competition act 2002 was to curb anti-competitive agreements and to prevent the dominant position of the companies that they hold in the market. However, the act was not sufficient to meet the demands of the healthy market. In 2023, the government of India amended the Competition Act 2002, strengthening the role of CCI (Competition Commission of India) in the market and fostering business friendly market. The amendment also focuses on various factors like deal value threshold (transaction limit), reducing the period for implementation of combination and many more.

The act also welcomed the establishment of CCI (Combinations) Regulations 2024. The act was passed in the parliament, and the President gave its assent on 11 April 2023. The act came into force on 10 September 2024. This research paper will give a brief insight into the changes made in the Competition Act 2002 and its impact on the market and the economy of the nation. The research paper will also suggest some future amendments and policy directions.

A. RESEARCH OBJECTIVES

- To chart and explain the key statutory and regulatory changes introduced by the Competition (Amendment) Act, 2023 and the CCI (Combinations) Regulations, 2024.
- To evaluate the impact of the new deal-value thresholds and reduced approval timelines on merger notification behaviour and regulatory workload.
- To analyse how the expanded definitions (e.g., combination, cartel participation) and new enforcement tools (settlements and commitments) affect enforcement outcomes and deterrence.
- To assess the adequacy of the amended framework for addressing competition problems in digital platform markets (data-driven networks, multi-sided platforms, and hub-and-spoke arrangements).

B. RESEARCH QUESTIONS

- Which specific provisions and regulatory changes introduced by the 2023 Amendment and 2024 Combinations Regulations materially change the CCI's merger-control and cartel-enforcement powers?
- How will the introduction of a deal-value threshold and shortened timelines influence firms' notification decisions, structuring of transactions, and use of pre- or post-merger remedies?
- Do the settlement and commitment procedures accelerate case resolution without compromising enforcement effectiveness and fairness?
- To what extent are the amended provisions capable of capturing anti-competitive conduct in digital markets (platform exclusivity, data-sharing, algorithmic coordination)?

C. RESEARCH HYPOTHESES

This research is based on the hypothesis that the Competition Amendment Act 2023 has strengthened the overall functioning of the Competition Commission of India (CCI) by introducing clearer rules, faster processes, and stricter enforcement mechanisms. It is hypothesised that the deal-value threshold will bring more transactions under the CCI's review, making merger regulation more effective. It is further assumed that the expanded definition of cartels and higher penalties will reduce cartelisation and discourage anti-competitive behaviour.

Another hypothesis is that the settlement and commitment mechanisms will significantly reduce investigation time and help resolve cases faster. Finally, the research assumes that these amendments will make the Indian competition law framework better suited to handle challenges in digital markets, such as data-driven dominance and platform-based unfair practices.

D. RESEARCH METHODOLOGY

This research follows a simple descriptive and doctrinal methodology. The study mainly relies on primary legal sources such as the Competition Act 2002, the Competition Amendment Act 2023, the CCI (Combinations) Regulations 2024,

relevant CCI orders, and case laws. Secondary sources like books, journal articles, websites, and news reports are also used to understand the background and implications of the amendments. The method of analysis involves comparing the earlier provisions of the Competition Act with the new amendments to identify the major changes and their impact on mergers, cartels, penalties, and digital market regulation. The research uses basic document analysis and comparative analysis to interpret the legal developments. The main limitation of the study is the limited availability of post-amendment data, as many new provisions are recently introduced and some CCI investigations remain confidential.

IV. MAJOR AMENDMENTS DONE IN THE COMPETITION AMENDMENT ACT 2023

E. Role of CCI in Mergers/Acquisitions/Amalgamations

One of the key amendments done in the act was the expansion of the term “Combination” scope. Combination means mergers, acquisitions, and amalgamations by one or more persons or by one or more enterprises. Under the Competition Act 2002, such combinations entered by an enterprise or person that causes an AAEC effect (appreciable adverse effect on competition) shall be void.

The new amendment focused on expanding the definition of combination and broadening the powers of CCI⁸ in regulating the effect of combinations that cause AAEC. These new transactions' introductions as combinations are known as deal value thresholds. Under this amendment, the CCI has also introduced the Competition Commission of India (Combination) Regulations 2024 for the classification, notification, and regulation of combinations under this act.

Earlier in the Competition Act 2002, there were only two methods in classifying the transaction of combinations, i.e., assets of the parties should be more than 1000 crores INR, and the turnover of both the parties should be more than 3000 crores INR. However, in the Competition Amendment Act 2023, a transaction may now also be

⁸ Competition (amendment) act, 2023 salient features, https://www.cci.gov.in/images/publications_booklet/en/competition-amendment-act-2023-salient-features1684831868.pdf (last visited Apr 2, 2025)

classified as a combination based on its total value. If the total transaction of the combination, including voting, shares, rights, equity of merger, acquisitions, or amalgamations, is more than 2000 crores INR, then it will be classified as a combination.

Subsequently, for any mergers and acquisitions, the approval of the CCI is necessary. The amendment has reduced the period of permission that is required to take from CCI from 210 days to 150 days. The reduction to 150 days can also be extended to 30 days for necessary cases.⁹ However, CCI approval is not required for certain small transactions. In the Competition Act, such acquisition, merger, or amalgamation will not be categorized as combination if the total value or assets are in the following manner:

- The minimum value of assets is worth less than 450 crores (4.5 billion INR)
- The minimum value of turnover is less than 1250 crores (12.5 billion INR)

F. Punishment for Cartelization

Cartels have been defined under section 2 clause C of the Competition Act- *“cartels include an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services”*. Around the 20th century, cartels expanded around Scandinavian countries, such as Austria, Switzerland, and cartelization was also witnessed in Japan.

After the phase of World War 2, the United States of America started imposing strict regulations to control the group of the cartels and their monopolies in European countries as well as in Japan. The amendments done in the Competition Act 2023 have broadened the definition of the cartel and have stressed the participation of the entities in the market. The digital platforms that share information or resources between its service recipients, will be considered as a part of the cartel. Earlier, the punishment

⁹ India's competition act 2023: New provisions and deal thresholds enforced India Briefing News, [https://www.india-briefing.com/news/india-antitrust-law-amendments-competition-act-2023-september-2024-updates-34652.html/#:~:text=The%20latest%20amendments%20in%20the,been%20reduced%20to%2015%20days.\(last%20visited%20Apr%203,%202025\)](https://www.india-briefing.com/news/india-antitrust-law-amendments-competition-act-2023-september-2024-updates-34652.html/#:~:text=The%20latest%20amendments%20in%20the,been%20reduced%20to%2015%20days.(last%20visited%20Apr%203,%202025))

for cartelization was only given to those who directly or indirectly participated in the process of cartelization. After the amendment of 2023, anyone who has only the intention but does directly or indirectly participate, that association will also be punished for cartelization. This is also known as Hub and Spoke Cartel.

G. Determination of Penalty

The amendment of 2023 has empowered the Competition Commission of India to impose penalties on the basis of global turnover derived from all goods and services by a person or an enterprise, irrespective of the scope of infringement of other goods and services.¹⁰ It has escaped from the penalty based on the relevant turnover of the enterprise. Relevant turnover has been defined as the turnover of enterprise related to the specific goods and services which has been subjected to such contravention. The Supreme Court in its 2017 judgement has contended that the relevant turnover is not exhaustive in nature.

The landmark case of Excel Crop Care Ltd. v. Competition Commission of India has defined the relevant turnover for determination of penalties in Competition Law contravention. The proceedings of the above ruling involve the alleged contravention of vertical agreements under anti-competitive agreements. The case involves the buying of the Aluminum Phosphate Tablets (ALP) by Food Corporation of India (FCI). The CCI found out that such public procurement of tablets was violative of the Section 3(3) of Competition Act 2002 and it imposed a penalty at rate of 9 percent of the total turnover of concerned manufacturers of ALP tablets- Excel Corp Care Limited, United Phosphorus Limited (UPL) and Sandhya Organic Chemicals Private Limited. COMPAT- The Competition Appellate Tribunal upheld the decision of CCI, however the penalties imposed by the CCI was reduced. COMPAT contended that the penalty was based on the principle of turnover defined under section 27(b) of Competition Act.

The CCI opposed this decision and appealed to the Supreme Court of India stating that the turnover mentioned in the act should always be considered as total turnover

¹⁰ News details Nishith Desai Associates the Competition (Amendment) Act, 2023, <https://www.nishithdesai.com/NewsDetails/9599> (last visited Apr 3, 2025)

of the enterprise in relation to the contravention. However, the Supreme Court of India upheld the decision of COMPAT contending that the criteria of the penalties based on the relevant turnover stays true to the purpose of the Act and the legal principles behind it. The reason behind this amendment has been done to prevent the participation of big enterprises in anti-competitive practices.

H. Commitment and Settlements

Commitment and settlement have been introduced for the first time in the Competition Act.¹¹ The provisions for settlement and commitment mechanisms have been brought under Section 48A and 48B respectively of the Competition Act. According to these provisions the parties that have been accused of indulging in anti-competitive agreements or has been abusing their dominant power in market defined under Section 4 of Competition Act they can voluntarily comply with these provisions without requiring to face the Director General and subsequent imposition of penalties.

The same allows reduction in investigation timelines, faster adjudication and timely correction in market distortions. Before coming of the commitment and settlement, each and every investigation was done by Director General (DG)- the investigative wing of CCI. The commencement of investigation used to begin when the DG prima facie the order under Section 26(1) of Competition Act. After the completion of investigation, the Director General has to submit its report to the Competition Commission of India. Alongside he also needs to submit various documents, evidences that he has collected during the investigation. As we can, the tables have been turned by skipping the unnecessary procedures.

An application under commitment has to be filled within 45 days of receipt of prima facie given by CCI. The same has been mentioned for commitment regulations. However, in commitment the period of 45 days can be extended to more 30 days. The application under settlement has to be filled with necessary details attached with an affidavit. The application shall be furnished with the following details- name of the party, legal status, registration number of the enterprise etc., along with the details of

¹¹ *ibid*

the findings of the DG investigation report, details of the proposal for settlement, and a full and true disclosure of facts in respect of the alleged contraventions.

V. SUGGESTIONS

While the Competition Amendment Act 2023 is a progressive step, some basic changes are need to be done to fill certain gaps and concerns. First of all, these amendments should be more towards the digital market. For example, big online players like Flipkart, Amazon, Myntra etc. tend to preference their service over other small players and they share the data with each, which ultimately benefit them, therefore, promoting cartelization.

Due to this these tech giant companies by cartelization tend to abuse their power in the market. For this the punishment for cartelization should be more of serious nature. The introduction of settlement and mechanism scheme has been an innovative step in decreasing the burden on CCI. However, there is a high chance that these mechanisms can be misuse by big companies or corporations. To regulate it, the loopholes should be checked thoroughly and there should be no disparity between big and small companies. The penalties that are based on global turnover of the company should not impact companies that have minimal business presence in India.

VI. CONCLUSION

The Amendment of 2023 has both negative and positive impact on the market. The amendments have for sure created positive impact more than negative ones. These amendments have helped small startups or businesses in creating a safer space in the market or expanding their business. These amendments have reduced the burden on the regulatory body i.e. CCI (Competition Commission of India).

The expansion of the definition of combination has prevented the AAEC (appreciable adverse effect) on the market and also diversified the classification of combination. Cartelization has been thoroughly been checked out. Whosoever directly or indirectly participate in cartelization, will be punished. It is the most important amendment towards growth and development of antitrust laws. The amendment of commitment

and settlement has reduced burden on CCI. It has also reduced unnecessary procedure that waste a lot of time.

Overall, after the amendment of 2023, the criteria for healthy market have been uplifted. This amendment has improved the conditions in the market. It has aimed to ensure that transparency and accountability remain in the market. At last, the Competition Amendment Act 2023 has introduced transformative changes aimed at strengthening competition law enforcement, enhancing regulatory efficiency, and aligning India's framework with global standards.

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