IJCRT.ORG ISSN : 2320-2882

INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

Legal Reforms Impacting Competition Markets: 2018-2021 Analysis

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Abstract: This research investigates the interplay between corporate legal reforms, competition, and the evolving marketing landscape in India. Since the enactment of the Companies Act of 2013, the Indian corporate sector has undergone a significant transformation aimed at enhancing transparency, accountability, and governance. The study examines the impact of these reforms on competitive dynamics within the market. Additionally, it delves into the imperative for legal reform in the contemporary marketing scenario characterized by digital disruption and ethical challenges. By analyzing the relationship between law and marketing, the research seeks to identify opportunities and constraints for fostering a fair, transparent, and sustainable marketplace. The study emphasizes the need for a proactive approach to legal reform that balances innovation with consumer protection and societal interests. Ultimately, it aims to contribute to the development of a regulatory framework that supports a competitive and ethical marketing ecosystem in India.

Index Terms **- Corporate legal reforms, Competition, Marketing landscape, India, Transparency.**

INTRODUCTION

The Indian economic landscape has undergone a profound transformation in the last decade, characterized by a series of substantial legal reforms within the corporate sector. At the heart of this transformation lies the Companies Act of 2013, a seminal legislation accompanied by subsequent amendments. This act was conceived with the primary intent of reshaping the corporate landscape of India, placing a strong emphasis on principles such as transparency, accountability, and governance. As India endeavors to establish itself as a global economic powerhouse, the significance of these legal reforms cannot be overstated.[1] However, these transformative legal changes raise an imperative and multifaceted question: What has been the true impact of these reforms on the competitive dynamics within the Indian market?

Corporate legal reforms refer to changes or modifications made to the legal framework governing corporations and business entities. These reforms are typically aimed at improving corporate governance, enhancing transparency, promoting accountability, and ensuring fair and efficient functioning of businesses within a legal system. Corporate legal reforms can be driven by various factors, including changes in economic conditions, evolving business practices, and the need to address emerging challenges.

In the contemporary landscape of global commerce, marketing stands as a cornerstone of business strategy, driving consumer engagement, brand visibility, and revenue generation. Yet, amidst the dynamic interplay of technological innovation, shifting consumer preferences, and regulatory frameworks, the efficacy and ethics of modern marketing practices have come under intense scrutiny. Against this backdrop, the imperative of legal reform emerges as a pressing concern, demanding a critical analysis of the current marketing scenario.[2] The convergence of digital technologies, social media platforms, and big data analytics has revolutionized the way businesses engage with consumers, offering unprecedented opportunities for targeted advertising,

[1] Institute of Companies Secretaries of India, *available at*: https://www.icsi.edu/media/webmodules/publications/FinalCLStudy.pdf (last visited on: 02.02.2024)

[2] Keren Khambhata, 'Navigating the currents: Emerging marketing trends for strategic company adoption', DOI:10.30574/ijsra.2023.10.2.0992

personalized content, and real-time feedback. However, this digital revolution has also brought forth a myriad of challenges, ranging from privacy breaches and data misuse to deceptive advertising and market monopolization. In navigating these complexities, the role of legal frameworks in regulating and shaping marketing practices becomes increasingly paramount.

This critical analysis seeks to delve into the multifaceted dimensions of the imperative of legal reform in the present marketing scenario. By examining key trends, case studies, and regulatory developments, it endeavors to unravel the intricacies of the relationship between law and marketing, shedding light on both the opportunities and constraints that define this dynamic interplay. Through a nuanced exploration of ethical considerations, consumer rights, and industry standards, this analysis aims to provoke critical reflection on the role of legal reform in fostering a fair, transparent, and sustainable marketplace.

Furthermore, this analysis recognizes the evolving nature of marketing in the digital age, where boundaries between online and offline channels blur, and traditional regulatory frameworks struggle to keep pace with rapid technological advancements. As such, it advocates for a proactive approach to legal reform, one that embraces innovation while safeguarding fundamental rights and values. By critically evaluating existing regulatory paradigms and proposing forward-thinking solutions, this analysis aspires to catalyze meaningful change, shaping a future where marketing thrives within a framework of integrity, accountability, and social responsibility.

In essence, the imperative of legal reform in the present marketing scenario represents not only a challenge but also an opportunity – an opportunity to redefine the norms, practices, and principles that govern commercial communication in the digital era. Through rigorous analysis, constructive dialogue, and collaborative action, it is our collective responsibility to harness the power of law to foster a marketing landscape that serves the interests of consumers, businesses, and society at large.

The interplay between corporate law and competition forms the crux of this research endeavor, recognizing the intrinsic connection between these two domains. Corporate law, by virtue of its regulatory framework, governs the operations, responsibilities, and conduct of businesses within a nation. In parallel, competition serves as the bedrock upon which a dynamic and equitable market economy is built. The harmonious coexistence of these aspects is critical to the overall vigor and dynamism of any economy.[3]

1.1 REVIEW OF LITERATURE

- This article published in an economic journal examines the role of the CCI in regulating e-commerce platforms. It discusses the challenges posed by anti-competitive practices like predatory pricing and data exclusivity and suggests ways for the CCI to address these issues.[4]
- This book delves into the challenges of regulating online advertising in India. It explores issues like targeted advertising, influencer marketing, and data privacy and proposes policy recommendations for creating a robust regulatory framework.[5]
- This comprehensive book provides an overview of India's competition law framework. While it might not have a dedicated section on digital marketing, it offers valuable insights into the legal principles that can be applied to assess and regulate online marketing practices.[6]
- This research paper examines the prevalence of misleading advertising online and argues for stricter regulations. The paper likely examines the prevalence of deceptive practices like fake reviews, misleading influencer marketing, and manipulative social media promotions. It highlights the inadequacy of current laws in addressing these online tactics and proposes stronger regulations to protect consumers and ensure fair competition in the digital advertising landscape.[7]
- Though not specific to India, this book offers valuable insights into adapting competition law to the digital age. The authors advocate for a proactive approach that addresses issues like platform dominance, data privacy, and algorithmic collusion. While not India-specific, the insights underscore the global imperative for competition authorities to adapt swiftly to ensure effective regulation and preserve market competition amidst technological advancements.[8]
- This article analyses potential instances of predatory pricing by major e-commerce players in India. This article delves into the dynamics of predatory pricing by examining the practices of leading e-

[3] https://cbcl.nliu.ac.in/wp-content/uploads/2019/11/Emerging-Trends-in-Corporate-and-Commercial-Laws-of-India.pdf (last visited on: 01.02.2024)

[4] "The Competition Commission of India and the Regulation of E-commerce Platforms" by Rahul Rai (2020)

[5] "Regulating Digital Advertising in India" by Prabir Purkayastha (2023)

[6] "Competition Law in India" by Pradeep S. Mehta (2022)

[7] "Misleading Advertising in the Digital Age: A Case for Stronger Regulation in India" (National Law University, 2022).

[8] Ezrachi, Ariel, and Maurice E. Stucke. "The Future of Competition Law in the Digital Age" (2017).

commerce giants, Flipkart and Amazon, within the Indian market. Through a comprehensive analysis, it scrutinizes whether these players engage in anti-competitive behavior to drive out smaller competitors. By shedding light on the strategies employed by such platforms, it contributes to the ongoing discourse on regulating e-commerce and ensuring fair competition within India's rapidly evolving digital marketplace. [9]

1.2 RESEARCH METHODOLOGY

The research methodology adopted for this study primarily involves doctrinal research, which relies on the analysis of existing legal literature, statutes, case law, and regulatory frameworks related to corporate law and competition in India. Given the objectives outlined, doctrinal research offers a structured approach to examine the evolution of corporate law from 2018 to 2021, assess the impact of legal changes on the competitive landscape, understand the role of regulatory bodies like the Competition Commission of India (CCI), and provide recommendations for enhancing competition through legal reforms. To conduct this research, relevant legal texts, including statutes such as the Companies Act, 2013, and the Competition Act, 2002, will be reviewed comprehensively. Additionally, judicial decisions, regulatory guidelines, and scholarly articles discussing corporate law developments and competition policy will be analysed to gain insights into the subject matter. The research methodology will involve systematic literature review, case analysis, and comparative legal analysis to identify trends, patterns, and implications of legal reforms on market competition. By employing a doctrinal research approach, this study aims to provide a thorough understanding of the legal framework governing corporate practices and competition dynamics in India, thus contributing to the existing body of knowledge in these areas.

1.3 STATEMENT OF PROBLEM / RESEARCH QUESTION:

1. Analysing the significant transformations in its corporate legal framework, most notably with the introduction of the Companies Act of 2013 and subsequent amendments.
2. Seeks to explore whether these legal reforms have succeeded in creating a more competitive business environment, and whether the regulatory efforts, primarily by the Competition Commission of India (CCI), have been effective in ensuring a level playing field for businesses and fair competition.
3. It aims to contribute to the ongoing dialogue on corporate law, competition, and economic growth in the Indian context.

1.4 RESEARCH OBJECTIVES

1. The objective of the present study is to analyse the evolution of corporate law in India specifically from the year 2018 to 2021.
2. To assess the impact of corporate law changes on the competitive landscape that has evolved in the recent years.
3. To understand the role of the Competition Commission of India (CCI) in promoting competition in India and focusing on imperative analysis of legal reform.
4. Establishing a sustainable approach by providing recommendations for enhancing competition through legal reforms in India over the competitive markets.

1.5 HYPOTHESIS

That, the Competition Commission of India (CCI) plays a significant role in promoting competition in India through its regulatory efforts and legal reforms; and, changes in corporate law in India have had a significant impact on the competitive landscape in recent years.

1.6 SCOPE AND LIMITATIONS

Scope of present study is to analyse recent corporate legal reforms in India, including changes in corporate governance laws, competition regulations, intellectual property laws, and other relevant legal frameworks. Examining the dynamics of market competition across various sectors in India, including but not limited to technology, finance, manufacturing, and services. Providing insights and recommendations for policymakers based on the findings to further enhance competition and foster a conducive business environment.

The limitation of the present study depends on the availability and reliability of data related to corporate legal reforms and their impact on market competition may be limited, especially in certain industries or regions. Given that legal reforms and their impact may take time to manifest fully, that is why the study includes limitations in capturing long-term effects within a limited timeframe. India is a vast country with

[9] "Predatory Pricing in E-commerce Platforms: A Case Study of Flipkart and Amazon in India" (Economic and Political Weekly, Vol. 57, No. 10, 2022)

regional disparities in economic development and regulatory enforcement. The study might not fully capture the nuances of how legal reforms affect market competition across different states or regions.

"ANALYSING THE EVOLUTION OF CORPORATE LAW IN INDIA: A STUDY FROM 2018 TO 2021"

2.1 INTRODUCTION TO CORPORATE LAW AND HISTORICAL CONTEXT

On 1 February 2021, the Hon'ble Finance Minister Nirmala Sitharaman presented the Union Budget 2021-22. Due to Covid-19 severe lockdown was imposed at the end of March 2020 to control the pandemic and prevent the citizens from getting affected. Also, this pandemic caused devastation in the economy of the country. Many economists predicted the same and advised the budget 2021- 2022 to be framed accordingly. The condition was worse as the condition of the Indian economy was worse even before the pandemic. This budget was prepared by keeping in mind the revival of the economy which was a priority as this pandemic has drastically affected our country's economy. In order to do so, the budget must provide a check on the government's public expenditure to revive the severe contraction in revenues and expenditures required to save lives and livelihoods.

Due to structural factors of increasing deficits and debt prevailing in fiscal areas, it could be seen how the economy is already slowing down and attempts must be made to reclaim the earlier growth of the economy. The budget speech given by our finance minister, it referred to various proposals that would help the companies conduct their business in a simplified manner. These amendments by the budget are to be notified by the Ministry of Corporate Affairs to the specific provisions of the Companies Act, 2013, as to the Amendment rules of 2021 which shall come to effect from 1st April 2021. This is very essential to the economy but it must be seen how effectively it is implemented.[10]

The company legislation in India relates back to nineteenth century. Since then, it has been amended several times. The Companies Act, 1956 remained in force for a long time, though amended from time to time. Major amendments were made in year 2000 (postal ballot, audit committee, shelf prospectus, etc. introduced with emphasis on Corporate Governance). Amendments in 2002 introduced the concept of NCLT, NCLAT (which faced impediments in form of Court cases questioning their constitutional validity). In 2006 Project MCA21 providing for DIN and online filing of documents was launched.[11]

A stage came where need was felt to replace the voluminous legislation with a new compact Companies Act and Dr. J.J. Irani (the then Director, Tata Sons was appointed the chairman of expert committee) Committee was appointed. The orientation initially was liberalizing the law and making it more user friendly. However, Satyam Scam had its impact on orientation and the focus got shifted a bit so as to retain certain stringencies in the Act.

The recommendations of J.J. Irani Committee finally culminated in the form of Companies Act, 2013. It received the assent of the President on 29th August, 2013. The Companies Act, 2013, applies to the whole of India.

It needs to be emphasized here that the Companies Act, 2013 is a rule-based law. "It means that at 'a number of places in this Act' by using the words "as may be prescribed", the Government has retained the power to amend by Ministry of Corporate Affairs itself rather than going to the doors of the Parliament. As rules can be made by the Ministry itself and amended as and when the need is felt. With reference to para above reader of the Companies Act, 2013 must note that wherever it is specified in different provisions 'as may be prescribed' the reference shall be made to respective rules as prescribed by the Ministry of Corporate Affairs or by SEBI Regulations wherever it is so specified. As Sec. 24 of the Companies Act, 2013 specifies power of SEBI to regulate issue and transfer of securities and non-payment of dividend by listed companies or companies which intend to get their securities listed on any recognised stock exchange in India.[12]

So, it is important to know that all the sections of the Companies Act need to be read with corresponding Rules or Regulations as the case may be. Each chapter in the Bare Act has a set of corresponding rules. In this book it has been made clear by explaining the section along with the corresponding rule or regulation for better and complete understanding.

HISTORY OF THE COMPANIES ACT

[10] https://www.investopedia.com/terms/b/budget-deficit.asp (last visited on: 10.02.2024)

[11] https://www.taxmann.com/post/blog/journey-of-companies-act-from-1956-to-2021/#:~:text=The%20company%20legislation%20in%20India,committee%2C%20shelf%20prospectus%2C%20etc. (last visited on: 12.02.2024)

[12] SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009

Concept of Woman Director, Corporate Social Responsibility (CSR), Key Managerial Personnel (KMP), Class Action Suits, Entrenchment clause in Articles of Association are new concepts introduced by the Companies Act, 2013. It also introduced new types of companies i.e., OPC, Small Company, Associate Company. New concept of 'Dormant Company' has also been introduced in the Companies Act, 2013. Provision of vigil mechanism has been added by this Act. Term 'Promoter' has been there in the earlier Act, but this Act defined it. The Companies Act, 2013 has also defined the term 'Fraud' in explanation attached to Sec. 447. The Companies Act, 2013 has undergone amendments in 2015, 2017, 2019 and by Amendment Act, 2020.

Major Developments in Companies Act, 2013

The Insolvency and Bankruptcy Code, 2016 (IBC) became operational with effect from November, 2016. The Insolvency and Bankruptcy Code, 2016 is the new bankruptcy law of India which seeks to consolidate the existing framework by creating a single law for insolvency and bankruptcy. Secs. 304 to 323 (related to voluntary winding-up) of the Companies Act, 2013 have been omitted by the Insolvency and Bankruptcy Code, 2016 w.e.f. 15.11.2016.

National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) have become operational. The powers which were earlier entrusted to the Company Law Board or Court in relation to companies are now with NCLT. Appeal against the order of NCLT can be made to NCLAT.

Serious Fraud Investigation Office (SFIO) has been given Statutory Recognition through Section 211. SFIO is vested with requisite legal authority to conduct investigation.

Secretarial Standards (SS) have been statutorily recognised. The revised SS-1 and SS- 2 became effective from Oct. 1, 2017.

The Finance Act, 2017 amended Sec. 182 related to Political Contribution and abolished limit on amount of political contribution by company.

Constitution of National Financial Reporting Authority (NFRA): Constitution of NFRA has been notified on 1st October, 2018. NFRA has been bestowed with significant powers in issuing authoritative pronouncements and also in regulating audit profession.

On-line Compliance Monitoring and e-adjudication launched: Ministry of Corporate Affairs (MCA) launched Compliance Monitoring System on November 6th, 2019. It works on artificial intelligence. It automatically detects the non-compliance by company and digitally sends Show Cause Notice to the defaulter company. The defaulting company is required to submit its reply within 15 days digitally *via* MCA CMS portal. In case of non-reply, the Registrar of Companies would initiate the penal action against the company/director as mentioned in the Show Cause Notice.

Test for Independent Directors: According to Companies (Creation and Maintenance of data bank of independent Directors) Rules, 2019, independent directors must qualify online proficiency self-assessment test conducted by the Indian Institute of Corporate Affairs (IICA), Manesar. The new rules are effective from December 1st, 2019.

Amendments in Schedule VII: Schedule VII prescribing list of activities on which money can be spent by the companies to which Sec. 135 relating to Corporate Social Responsibility (CSR) is applicable has been amended. By notification dated 26/05/2020 in item (VIII) of Schedule VII of the Companies Act, 2013 after the words "Prime Minister's National Relief Fund" the words "Prime Minister's Citizen Assistance and Relief in Emergency Situation Fund" (PM CARES FUND) have been inserted.

Measures taken in the light of COVID-19 and resultant lockdown: Due to COVID-19 and resultant lockdown, compliance timeline has been extended and certain exemptions also given. Conduct of Annual General Meeting (AGM) and Extraordinary General Meeting (EGM) through Video Conferencing and Other Audio-Visual Means (OAVMs) is also allowed. It needs to be noted that these are temporary measures to deal with problems created by pandemic.

The Companies (Amendment) Act, 2015

Some of the important amendments made by the Companies (Amendment) Act, 2015 are:

'Common Seal' has been made optional.

No company shall declare dividend without setting off carried over previous year or years losses and depreciation against profits for the current year.

Reporting of fraud by the Auditor to Central Government in case amount exceeds prescribed amount (presently Rs. 1 crore or more). Thus, the principle of materiality has been introduced by specifying the amount. Frauds involving lower amounts shall be intimated to Audit Committee, wherever company is required to have one or the Board of Directors in other cases.

The Companies (Amendment) Act, 2017

Some of the significant amendments made by the Companies Amendment Act, 2017 are:

Revision in concept of KMP: It now includes such other officer, not more than one level below the directors who is in whole time employment and designated as KMP by the Board and also such other officers as may be pre- scribed,
For defining Associate Company, Holding and Subsidiary Company Relationship words 'total share capital' were substituted by 'total voting power',
Section 3A was inserted which relates to liability of continuing members in case of reduction in number of members below statutory minimum,
New section related to 'private placement' was substituted using the term 'identified persons',

Amendment related to 'issue of shares at a discount' inserted that a company may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme as per directions of RBI,
Amendment introducing the concept of 'Significant Beneficial Owner' making a declaration to the company in the manner as prescribed for was one of the significant amendments as it adds to transparency,
The matters which are required to be transacted by means of 'Postal Ballot' may be transacted by 'E-voting', where it is applicable to company,
'CSR Committee' of a Company which is not required to have 'independent director' shall have two or more directors in its CSR Committee.

2.2 CHANGES IN CORPORATE LAW FROM 2018-2021

The Companies (Amendment) Act, 2019

Amendments made by the Companies (Amendment) Act, 2019- It added Sec. 10A requiring the Company having a share capital to make certain declarations;
Reduced the burden of NCLT by transferring certain approvals, to the Central Government e.g., conversion of Public Company into Private, changing financial year of a company;
It also substituted 'liable to penalty' in place of 'fine' in several provisions, thereby further easing the mounting work pressure on NCLT. The Registrar of Companies (RoC) and Regional Director (RD) can impose penalties directly after issuing show cause notice (SCN) in place of going to judiciary for imposing fines under several provisions.

The Companies (Amendment) Act, 2020

Some of the significant amendments made by the Companies Amendment Act, 2020 are:
Decriminalization of offences: The Amendment Act has decriminalized certain offences under the Companies Act. In case of defaults which lack any element of fraud or do not involve large public interest, instead of imprisonment and/or fine, penalty will be imposed under departmental adjudication proceedings.
Definition of Listed Company: A proviso has been inserted to Sec. 2(52) of Companies Act, 2013 excluding certain class of companies from the definition of listed company (mainly for removing companies which are listed only for debt securities).
Issue of securities of public company for listing in foreign jurisdictions: Provision has been made to enable public companies to list their securities in foreign jurisdiction.
Insertion of provisions relating to 'Producer Company in the 2013 Act: Chapter XXIA (containing Secs. 378A to 378ZU) has been inserted in Companies Act, 2013.
Lesser penalty for start-up company, small company, producer company, OPC: Lesser monetary penalty will be imposed on a start-up company, Producer Company, One Person Company, or small company on failure to comply with provisions of the Companies Act, 2013 which attracts monetary penalties.

Tribalisation of Company Law in India:

The Supreme Court's judgment on the establishment of the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) is a critical development in the evolution of corporate India. This judgment has sparked debates about legislative competence, separation of powers, and the constitutional framework. The court's decision to uphold the legislative competence of the Parliament to create NCLT and NCLAT is a significant validation of its authority to reform corporate justice. However, the judgment has also deemed specific aspects of the tribunal's structure unconstitutional, necessitating amendments. This held in the case of Union of India v. R. Gandhi[13].
The question of legislative competence revolves around the constitutional provisions of Article 323A and 323B, which deal with tribunals' establishment. Some argue that the court's interpretation of these provisions can lead to potential conflicts with the principles outlined in Schedule VII of the Constitution. While the court's judgment suggests a harmonious interpretation, concerns are raised about the potential erosion of

[13] Civil Appeal No. 3067 of 2004 with Civil Appeal No. 3717 of 2005, unanimous, judgment dated May 11, 2010, per Justice Raveendran)

separation of powers and the independence of the judiciary. This debate prompts reflection on the delicate balance between administrative efficiency and safeguarding the core principles of governance.

The issue of vesting judicial functions in technical members of the tribunal also draws significant attention. While the court acknowledges the importance of domain expertise, questions arise about the potential compromise of judicial independence. The requirement of technical members to possess certain qualifications might inadvertently dilute the tribunal's decision-making autonomy. This leads to contemplation on whether expertise can genuinely replace the attributes of impartiality, judicial wisdom, and protection against external influences.

In the case of State of UP v. McDowell & Co.[14], a three-judge bench of the Supreme Court underscored that a law enacted by the legislature could only be invalidated based on two specific grounds: (1) lack of legislative competence, and (2) contravention of any fundamental right enshrined in Part III or other constitutional provisions. These two aspects form the core of the author's argument, with the remaining aspects being extraneous to the present discussion.

However, the judgment does not definitively clarify whether the Parliament possesses the requisite competence or whether its actions run afoul of Article 323B of the Constitution. An additional concern revolves around the involvement of non-judicial individuals as adjudicators.

In this context, the foundational principle of the "separation of powers," an inherent element of our constitutional framework, appears to be in jeopardy. While this concern is intuitively comprehensible, the author refrains from delving further into this extensively addressed topic.

Independent Directors and Corporate Governance:

The concept of independent directors is integral to maintaining corporate governance and stability. However, the practical implementation often falls short of expectations. The definition of independent directors, as outlined by SEBI in Clause 49, is considered inadequate in ensuring genuine independence. The Enron case, where even the Dean of Stanford Business School failed to detect irregularities, and the Satyam fraud, which exposed gaping weaknesses in governance, underscore the urgency for reform.

The suggestion of statutory protection against arrest for independent directors becomes crucial in light of cases like Nagarjuna Finance, where arrests of former independent directors raised concerns. The fear of legal action can deter competent professionals from accepting directorships, leading to a potential shortage of qualified candidates. Transparency in the selection process, minimizing cozy relationships between boards and independent directors, and addressing conflicts of interest are all necessary steps to enhance the effectiveness of independent directors.

Furthermore, the paper's recommendation for retirement policies for independent directors is based on the idea of maintaining fresh perspectives and preventing entrenchment. While concerns about industry experience are valid, the role of independent directors as enlightened generalists cannot be understated. Striking a balance between experience and a forward-looking approach is essential for a robust governance framework.

Position of Statutory Auditors in Companies:

The role of statutory auditors in corporate financial irregularities has prompted discussions about their liability and accountability. The question of whether they hold an "office of profit" under the Companies Act raises pertinent issues. By examining legal principles and corporate structure, it becomes evident that statutory auditors are appointed by shareholders, indicating a distinction from the company itself. The intention of ensuring independence and an unbiased audit process reinforces the argument against considering them to hold an "office of profit."

The term "office of profit" remains undefined within the Constitution of India. Through a series of judicial pronouncements[15], the Supreme Court of India has established a set of criteria to determine whether a given position qualifies as an office of profit under the government. These criteria encompass:

1. The origin of the appointment, whether it emanates from the government;
2. The authority vested in the government to terminate or dismiss the incumbent;
3. The source of remuneration, whether disbursed by the government;
4. The nature of duties undertaken by the holder, including their alignment with government functions;
5. The extent of control exercised by the government over the execution of these responsibilities.

[14] (1996)3SCC 709

[15] See Maulana Abdul Shakur v. Rikhab Chand and another (1958) SCR 387; M Ramappa v. Sangappa & others, (1959) SCR 1167; Guru Govinda Basu v. Sankari Prasad Ghosal & Others, (1964) 4 SCR 311; and Shivamurthy Swami Inamdar & another v. Agadi Sanganna Andanappa & Another, (1971) 3 SCC 870, Pradyut Bardolai v. Swapan Roy, JT (2001) 1 SC 136.

However, Section 314 of the Companies Act presents a challenge. This section requires shareholder approval for appointments to offices of profit, leading to potential conflicts with the role of statutory auditors. The paper highlights the need for careful consideration of these conflicts and their implications on auditor independence. Balancing the regulatory framework to prevent undue interference while maintaining transparency and accountability is essential.

While assuming an office inherently implies wielding some degree of authority, whether significant or subordinate, on behalf of a company, the assumption of a position or role need not invariably entail exercising authority.[16] In light of this context, it is not legally sustainable to assert that statutory auditors of a company hold a position of profit within the company. According to Section 314(1), the appointment of specified individuals to an office or position of profit necessitates shareholder approval through the passage of a special resolution during a general meeting. This requirement applies to instances like the appointment of a relative of an Independent Director to a position of profit within the company.

Taking into consideration the aforementioned rationale and in conjunction with Section 314 of the Companies Act, it becomes apparent that a statutory auditor can be designated without necessitating a shareholder resolution, even in cases where the auditor has a relationship with one of the Directors. Such a scenario could potentially compromise the autonomy of the Statutory Auditor, undermining their ability to function independently, devoid of undue influence from the company itself

The evolution of corporate India is at a critical crossroads, driven by factors spanning economic shifts, legal transformations, and ethical considerations. The analysis of tribalisation, independent directors, and statutory auditors exemplifies the intricate landscape that shapes the future of Indian corporates.

The Supreme Court's stance on tribalisation highlights the delicate equilibrium between judicial autonomy and operational efficiency. Debates over legislative jurisdiction, separation of powers, and technical expertise underscore the need for a balanced approach that upholds legal principles while accommodating modern business complexities.

Within the realm of independent directors, fundamental challenges arise, evident in cases like Enron and Satyam. Calls for safeguards against unwarranted arrest, transparent selection processes, and well-defined tenures emphasize the urgency to foster a cadre of directors capable of championing robust corporate governance.

Amidst these debates, the role of statutory auditors emerges as a linchpin. The question of whether they hold an "office of profit" intertwines legal interpretation, corporate autonomy, and accountability. As the nexus between shareholder appointments and auditor insulation from direct company influence counters such categorization, their interplay with Section 314 necessitates nuanced consideration.

Overall, these deliberations encapsulate the convergence of legal doctrines, economic realities, and ethical imperatives in the corporate landscape. The pursuit of regulatory oversight while preserving entrepreneurial vigour stands paramount. As India strides forward, these issues signify not just legal concerns, but essential societal benchmarks. They underscore that the transformation of corporate India is not just a process of change, but a profound reimagining. The amalgamation of law, economics, and ethics constitutes a complex mosaic, posing challenges alongside transformative prospects for India's corporate trajectory.

In recent years there have been changes in the Companies Act, 2013. This chapter highlights different amendments in the year 2020 and 2021 in Companies Act, 2013. It tells the recent changes or the revocations like which can come under listed companies or like in some amendment the penal provisions have been removed and only monetary compensation are approved. It also confirms changes in AGM/EGMs to be held in physically, online, or in a hybrid mode. Furthermore, the committee has proposed that, if an EGM must be conducted wholly in an electronic mode, the notice period for such meeting be reduced to the time prescribed by CG. Furthermore, this paper discusses that states an independent director may be compensated in accordance with Section 197 read with Schedule V of the Companies Act 2013 if a firm has no profit or insufficient profit. Reduction in penalties for certain offences as well as in timeline for rights issues, relaxation in corporate social responsibility (CSR) compliance requirements and creation of separate benches at the National Company Law Appellate Tribunal (NCLAT) are among the certain changes too.

Objectives of The Companies (Amendment) Act, 2020

The following are the key objectives of the Act –

1. Decriminalize a few specified compoundable offences that don't involve the general public and don't qualify as major fraud or malpractice. For various provisions, such as buyback of securities, disclosure of director interests, disqualification of directors, audit procedures, etc., the penalty of jail has been left out. Three key actions are conducted in this category:

[16] Rendell v. Went [1964]2 All ER 464(HL)

2. Eliminating Criminal Offences.
3. Converting an offence to a civil wrong and using imprisonment as punishment.
4. Readjusting fine amounts.
5. Allowing the central government to exclude a certain class of businesses from the definition of "listed businesses" after consulting with the Securities Exchange Board of India. It will therefore remove the extra burden of procedural and regulatory compliance on businesses.
6. Clearly state the trial court's jurisdiction based on the location of the employee's unlawful withholding of property, as defined by section 452 of the act.
7. Delhi benches for the NCLAT are being set up. This will ease the caseload on the NCLAT's main bench in Delhi.
8. Easing rules relating to the imposition of harsher sanctions for failure to submit, file, or record a document in accordance with section 403 of the Act.
9. Increasing exemption under section 117 to certain NBFCs (Non-Banking Financial Companies) and Housing corporations from filing certain resolutions.

Provisions in the Amendment Act, 2020

Following are the key provisions in the Amendment Act, 2020[17] – Amendments for Ease of Compliance –

Section 18 of the Amendment Act –

By adding section 89(11), the central government is given the ability to limit the application of section 89 of the primary act to a particular class of people. The declaration of beneficial ownership and beneficial interest by a shareholder of a company is covered under Section 89.

Section 22 of the Amendment Act –

In the event that the company's articles and memorandum of association are altered or modified, resolutions agreements must be submitted to the ROCs within thirty days, according to section 117 of the primary legislation. The only exception to this rule is banking institutions. With this change, non-banking financial institutions and other housing finance companies are also eligible for relief. This was justified by the fact that NBFCs and HFCs also provide lending and other financial services. This clause was therefore made relevant to them.

Amendments Strengthening the Corporate Governance:

Section 40 of the Amendment Act –

In the event of significant losses or insufficient profits for the firm, the directors (including managing and full-time directors) are entitled to the maximum amount of compensation under Section 197 of the principal act. Non-executive and independent directors will be qualified for remittance of their remuneration following the application of this amendment.

Section 25 of the Amendment Act –

The Companies Act of 2013 now includes a new section 129A. The recently implemented clause relates to the mandatory order that mandates that certain unlisted or classes of unlisted companies prepare and submit periodic financial statistics in the prescribed format, obtain board approvals, complete the audit review process, and file a copy of all pertinent documents with ROC within thirty days.

Amendments for Winding up:

Section 50 of the Amendment Act –

The amended section 348(6) of the principal act states that the provisions of the Insolvency and Bankruptcy Code 2016 and rules and regulations therein shall apply to the Company Liquidator or Insolvency Professional in the event that he violates this section's requirements in carrying out his duties. The main focus of Section 348 is ongoing liquidation processes. Section 348(7) has also been repealed.

Section 51 of the Amendment Act –

In this amendment, section 356(2) has been replaced with a clause that states that NCLT must send a copy of the order to the Registrar and must instruct the person on whose application the order was made to submit a certified copy of the order to the Registrar within thirty days or any other time frame specified in advance.

Amendments Curtailing Monetary Penalties:

Section 12 of the Amendment Act –

Section 64 of the main act lays out the punishment for failing to notify the ROC of a revision to the share capital arrangements within thirty days of that adjustment. Currently, the prescribed penalties are Rs 1,000 per day the default persists, or Rs 5,00,000, whichever is less. After the change, the fine is decreased to Rs. 500 per day, or Rs. 100,000, whichever is less, as long as the default persists.

[17] Umredkar A. (2021), Companies (Amendment) Act 2020 – A much needed reform, https://blog.ipleaders.in/companies-amendment-act-2020-much-needed-reform/#Introduction (last visited on: 20.12.2024)

Section 20 of the Amendment Act –
This amendment modifies the fine specified in section 92 of the original act for filing an annual return later than sixty days after the annual general meeting. For the first missed payment, the sum drops from Rs. 50000 to Rs. Charges are decreased to Rs 50,000 for an officer and to Rs 2,00,000 for a firm in cases of ongoing payment delinquency.
Amendments for Removal of Penal Provisions:
Section 8 of the Amendment Act –
Section 48(5)'s previous clause has been removed. According to the new clause, a corporation that violates section 48 of the main act will be fined between Rs 25,000 and Rs 5,000,000. If an officer makes a mistake, they can be fined between Rs. 25,000 and Rs. 5,00,000 and/or imprisoned for a maximum of six months.
Section 13 of the Amendment Act –
Section 66 of the main act, subsection 11, is left out. The mechanism by which the corporation reduces its share capital is covered in this section. The amendment stipulates that failure to publish the confirmation decision of the Tribunal's reduction of share capital will result in fines ranging from Rs. 5,00,000 to Rs. 25,00,000.
Amendments for Foreign Companies:
Section 53 of the Amendment Act –
By way of this revision, the clause referring to sub-section 1 of Section 379 of the Constitution has been removed. The clause gave the Central Government the authority to treat a foreign company as an Indian Registered Company and require it to adhere to Indian Company Law Standards if not less than 50% of its share capital is owned by Indian nationals, Indian-incorporated companies, or people of Indian ancestry. Through this adjustment, this clause has now been removed.
Section 55 of the Amendment Act –
The main act's Section 393A has been used to introduce a new provision. It stipulates that the Central Government has the right and ability to exempt any class of foreign firms or corporations formed outside of India from any requirements, guidelines, or laws under the firms Act 2013. The Central Government may accomplish this by issuing a unique notification or official order, a copy of which must be presented to the Parliament[18].

Amendments Made by The Company Law Committee

Important Points from the Report of the Company Law Committee are as follows[19] –
Section 53 Will Be Amended to Permit Distressed Enterprises to Issue Shares at A Discount –
Section 53 makes it illegal for a firm to issue shares at a discount. The Committee remarked that it may cause hardship for troubled enterprises where the market value of the shares falls below the nominal value, making it difficult to raise new share capital for the company's resurrection. The committee proposed that troubled enterprises be permitted to issue discounted shares to the Central Government or State Governments, or to such class or classifications of persons as may be defined.
Removal of the Explanation Under Section 398 (1) For Supporting E-Enforcement and E-Adjudication in Section 398 Amendment
Section 398 of the Companies Act of 2013 empowers the Central Government to establish rules for electronic filing of applications, documents, inspections, and so on.
Whereas the explanation appended to section 398 (1) states that the regulations adopted under this section shall not relate to the imposition of fines or other pecuniary penalties, the demand or payment of fees, the violation of any of the provisions of this Act, or the penalty for such violation.
The Committee proposed removing the Explanation under Section 398 of the Companies Act, 2013 to allow the Central Government to make Rules for conducting enforcement-related actions in a transparent and non-discretionary manner with a proper trail through an electronic platform established under the Act, which will strengthen the e-enforcement and e-adjudication process.
AGM/EGM Holding in Physical, Virtual, Or Hybrid Mode –
The committee has suggested empowering the CG to dictate how firms can convene AGM/EGMs physically, online, or in a hybrid mode. Furthermore, the committee has proposed that, if an EGM must be conducted wholly in an electronic mode, the notice period for such meeting be reduced to the time prescribed by CG.
The existing regulations provide no explicit provision for holding meetings via video conferencing (VC) or other audio-visual means (OAVM). Keeping Statutory Registers

[18] Ibid 1
[19] Key Highlights of the Company Law Committee Report (2022) | CLC-2022, Taxmann , https://www.taxmann.com/post/blog/key-highlights-of-the-company-law-committee-report-2022-clc-2022/#8888

Up-To-Date Using an Electronic Platform –

According to Section 120 of the Companies Act of 2013, "any document, record, register, minutes, or other record required to be kept by the company may be kept by the company in an electronic form in the form and manner prescribed." According to Rule 27 of the Companies (MGT) Rules, 2014, any listed business or corporation with 1,000 or more shareholders, debenture holders, and other security holders may keep its records in electronic form.

As a result, it is evident that there is no legal necessity to keep registers in electronic form. The committee has now suggested mandating that certain types of firms keep their statutory registers on an electronic platform in the form and manner stipulated by CG.

Amendments in the 2021 Act

Following are the key provisions in the Amendment Act, 2021[20] –

1. NGO Registration with MCA Is Required in Order to Raise CSR Funds –
2. Starting on April 1, 2021, every entity covered by Rule 4 of the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, that plans to engage in any CSR activity must register with the Central Government by submitting the form CSR-1 electronically to the Registrar. As long as the rules of this sub-rule do not apply to CSR projects or programs that were approved before April 1, 2021.
3. The entity must electronically sign and submit Form CSR-1, and a Chartered Accountant in practice, a Company Secretary in practice, or a Cost Accountant in practice must verify the signature digitally.
4. When the Form CSR-1 is submitted on the portal, the system will produce a special CSR Registration Number.
5. Companies that should not be regarded as Listed Companies –

The following classes of companies shall not be regarded as listed companies for the purposes of the proviso to clause (52) of section 2 of the Act, namely –

1. Public companies that have listed their non-convertible debt securities issued on a private placement basis in accordance with SEBI's (Issue and Listing of Debt Securities) Regulations, 2008; non-convertible redeemable preference shares issued on a private placement basis in accordance with SEBI's (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or both categories, but not their equity shares, on a recognised stock exchange.
    1. Private businesses who have complied with the SEBI (Issue and Listing of Debt Securities) Regulations, 2008, and listed their non-convertible debt securities on a private placement basis on a reputable stock exchange.
    2. Public corporations whose equity shares are listed on a stock market in a jurisdiction that is listed in subsection (3) of section 23 of the Act but whose equity shares have not been listed on a recognised stock exchange.
2. Businesses To Utilise Accounting Software with A Transaction Audit Trail[21] –

Every business that uses accounting software to keep track of its books of account must only use programmes that have the ability to record an audit trail of every transaction, create and edit log of every change made to the books of accounts along with the date the change was made, and ensure that the audit trail cannot be turned off.

- Additional Disclosures to be Made in Balance Sheet and P/L A/C. –
- Trade Payables ageing schedule with age 1 year, 1–2-year, 2-3 year & more than 3 years.
- Reconciliation of the gross and net carrying amounts of each class of assets
- Trade Receivables ageing schedule with age 1 year, 1–2-year, 2-3 year & more than 3 years.
- Detailed disclosure regarding title deeds of Immovable Property.
- Disclosure regarding revaluation & CWIP.
- Loans or Advances granted to promoters, directors, KMPs and the related parties.
- Details of Benami Property held.
- Disclosure where a company is a declared wilful defaulter by any bank or financial Institution.
- Relationship with Struck off Companies.
- Pending registration of charges or satisfaction with Registrar of Companies.
- Compliance with number of layers of companies.
- Disclosure of 11 Ratios.

[20] Master C. (2021), 9 Amendments in the Companies Act. 2013 Applicable from 1st April, 2021, https://taxguru.in/company-law/amendments-companies-act-2013-applicable-01st-april-2021.html

[21] Ibid 4

- Compliance with approved Scheme(s) of Arrangements.
- Utilisation of Borrowed funds and share premium.
- Details of transaction not recorded in the books that has been surrendered or disclosed as income in the tax assessments.
- Disclosure regarding Corporate Social Responsibility.
- Under section 16 of companies at 2013 if a company's name resembles a registered trademark such company has a specific time limit to allow it to rectify its name the time limit has reduced from six months to 3 months[22].

Further Issue of Share Capital –

Section 62 of companies act 2013 says that further issue of company share had to remain open between 15 to 30 days. However, in the New Amendment it is open for less than 15 days thereby reducing the timeline and speed up the process of issuing rights[23].

Inclusion of Section 129A –

The Companies (Amendment) Act 2020 has a new section that allows the central government to mandate that particular classes of unlisted companies prepare periodic financial statements for specific periods, along with the manner of their audit or limited review by the board of directors, and file them with the registrar[24].

Company To Have Board of Directors –

A caveat has been included that states an independent director may be compensated in accordance with Section 197 read with Schedule V of the Companies Act 2013 if a firm has no profit or insufficient profit. The caveat has been added to ensure that independent directors are fairly compensated for the important time and experience they devote in helping boards function objectively.

Lesser Penalties for Certain Companies –

Startups and production firms are now also subject to less severe penalties than those listed in the relevant rules.

In addition to the changes described above, certain criminal provisions of the Companies Act 2013 that dealt with compoundable offences were altered by doing away with imprisonment and only allowing monetary penalties. As a result, the National Company Law Tribunal's and special courts' overall workloads have been significantly decreased. The MCA has given notice of most of the provisions in its notifications from 21 December 2020 and 23 January 2021[25].

As an overall viewpoint, it can be said that the amendments made in the Companies Act, 2013 in the year 2020 & 2021, are beneficial and scope for improvement of the Companies Act and the interpretation of its statutes. The insertion of the new provisions can be strongly implied to be a torch-bearer in the recent corporate litigation/proceedings.

The amendments made in the penalty system is also to be noted and the further regulatory changes in the Board structure, issuing of shares and other working prospects, which are to be considered as the backbone of any corporate proceedings, are a matter of great substance.

2.3 IMPACT ANALYSIS

This chapter examines the evolution of corporate law in India, focusing on legal reforms implemented between 2018 and 2021 that impact competition within the corporate sector. The analysis aligns with the broader dissertation topic: "Assessing Legal Reforms Impacting Competition Markets: 2018-2021 Analysis."

- Companies Act, 1956: This Act served as the primary framework for decades, undergoing amendments to address issues like corporate governance (e.g., postal ballots, audit committees introduced in 2000).
- Competition Act, 2002: Established the Competition Commission of India (CCI) to promote and sustain competition, prevent practices causing adverse effects on competition, and protect consumer interests.
- NCLT and NCLAT: Established in 2002, these tribunals handle company law matters, including mergers and acquisitions with potential competition implications.

Key Legal Reforms (2018-2021):

1. Ease of Doing Business Reforms (2018-2021):

[22] Ibid 4

[23] Ahuja N., Sinha S. (2021), Key takeaways from Companies (Amendment) Act, Lexology, https://www.lexology.com/commentary/corporate-commercial/india/clasis-law/key-takeaways-from-companies-amendment-act (last visited on: 24.02.2024)

[24] Ibid 7

[25] Ibid 7

- Faster Incorporation: The MCA streamlined the incorporation process, reducing the time required for company registration. This potentially increases competition by making it easier for new entrants to establish themselves.[26]
- One Person Company (OPC): Introduced a simplified legal framework for single-member companies, potentially fostering entrepreneurship and competition.
- Increased Threshold for Mandatory Audit: The threshold for mandatory audits was raised, potentially benefiting smaller companies and reducing compliance burdens, allowing them to compete more effectively.[27]

2. Insolvency and Bankruptcy Code (IBC), 2016 (Implemented in 2016):
   - Expedited Exit Mechanism: The IBC introduced a time-bound process for resolving insolvency, facilitating quicker exits for non-viable companies. This creates space for new entrants and potentially fosters competition.[28]
   - Asset Restructuring: The IBC allows for efficient asset restructuring, potentially enabling financially distressed companies to become viable competitors again.[29]
3. Competition Act Amendments (2017-2020):
   - Merger Control Thresholds: Increased merger control thresholds, potentially reducing regulatory hurdles for certain mergers but requiring continued vigilance to prevent anti-competitive practices.[30]
   - Deemed Combinations: Clarified the scope of "deemed combinations" under the Act, potentially improving the CCI's ability to scrutinize transactions with potential competition concerns.
4. Companies Act, 2013 (Amendments):
   - Class Action Suits: Introduced provisions for class action suits against companies for violations, potentially deterring anti-competitive behaviour and empowering stakeholders.[31]
   - Greater Transparency: Increased disclosure requirements by companies, potentially improving market information and fostering fairer competition.

Analysis of Impact on Competition: What can be the impact on competition market can be briefly analysed here as:

- Potential Benefits: Faster company entry, easier exits for non-viable firms, and improved corporate governance can all contribute to a more dynamic and competitive market environment.
- Challenges and Considerations: The below listed are some challenges and future considerations:
  - Balancing Ease of Doing Business with Competition: Streamlining processes shouldn't weaken regulatory oversight that prevents anti-competitive practices.
  - Effectiveness of New Mechanisms: The actual impact of the IBC and class action suits on competition requires further evaluation based on real-world cases.
  - Threshold Adjustments in Competition Act: Monitoring merger activity and potential concentration of market power post-amendment is crucial.

2.4 CONCLUSION

The legal reforms implemented between 2018 and 2021 in India demonstrate a multifaceted approach to fostering competition within the corporate sector. While some reforms like faster incorporation and increased thresholds for mandatory audits aim to create a more conducive environment for new entrants, others like the IBC and amendments to the Competition Act address challenges faced by existing players. The introduction of class action suits empowers stakeholders and potentially deters anti-competitive behaviour.

The strategy of the central government to decriminalizing company legislation is not limited to the Companies Act; it also intends to decriminalize various elements of the Limited Liability Partnership Act. These changes are expected to make doing business easier. The legislature must, however, maintain the deterrence impact established by the original Act. Offences involving the misappropriation of a significant quantity of public funds must still be prosecuted through the criminal justice system. Finally, the balance required to achieve the Act's overall objectives must not be lost.

[26] https://www.mca.gov.in/content/mca/global/en/home.html (last visited on: 20.02.2024)
[27] https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks.html (last visited on: 22.02.2024)
[28] https://www.mca.gov.in/Ministry/pdf/TheInsolvencyandBankruptcyofIndia.pdf
[29] https://ibbi.gov.in/uploads/whatsnew/45711692a135cb163faf4300515d7338.pdf
[30] https://www.cci.gov.in/legal-framwork/act
[31] https://www.mca.gov.in/content/mca/global/en/acts-rules/companies-act/companies-act-2013.html

The Companies (Amendment) Act 2020 was introduced by the Central Government to address the requirements of company law and to alter, add, and remove the relevant provisions and sections that needed to be replaced by new ones. The Companies Act of 2013 has long been a concern for those who create regulations. A significant overhaul of corporate legislation was required to improve the economic climate in India for start-up companies and to draw in international capital. Big companies will undoubtedly be enticed by liberal regimes to settle in India and increase their commercial footprint. Small businesses and startup foundations will benefit from this new amendment act's assistance in adhering to regulatory requirements.

"CCI'S ROLE IN PROMOTING COMPETITION: LEGAL REFORM ANALYSIS"

3.1 INTRODUCTION TO COMPETITION COMMISSION OF INDIA

The Competition Commission of India (CCI) plays a pivotal role in ensuring a level playing field for businesses and protecting consumer interests in India. Established in 2003 under the Competition Act, 2002, the CCI acts as the country's chief competition regulator. This comprehensive analysis delves into the history, functions, powers, and significance of the CCI in fostering a competitive and vibrant Indian economy.

When an economy starts to flourish, few bad actors come into play. To use their dominant position to play adversely in the market. To keep such bad actors away, Competition Commission of India was constituted.

CCI is an anti-trust watchdog of the Indian economy, aimed to protect the market from manipulations Constituted under the ministry of corporate affairs.

The Competition Commission of India (CCI) plays a pivotal role in ensuring fair competition and protecting the interests of consumers and businesses in the Indian marketplace. Established under the Competition Act of 2002, the CCI is tasked with promoting and sustaining healthy competition while preventing anti-competitive practices. This article delves into the structure, powers, and functions of the CCI, shedding light on its crucial role in fostering a competitive economic environment.

Historical Background and Legislative Framework:

Pre-Independence Era: Prior to independence, limited regulations existed to address anti-competitive practices. The Monopolies Inquiry Commission (1960) identified the need for a comprehensive framework, leading to the enactment of the Monopolies and Restrictive Trade Practices Act (MRTP Act) in 1969.

The MRTP Act and its Limitations: The MRTP Act aimed to curb monopolies and unfair trade practices. However, it had limitations:

- Narrow Scope: It primarily focused on dominant undertakings and restrictive trade practices, neglecting anti-competitive agreements and mergers.
- Procedural Delays: The Act's investigative and adjudicatory processes were lengthy, hindering effective enforcement.

The Need for a New Era: The Competition Act, 2002: Recognizing the limitations of the MRTP Act, the government enacted the Competition Act in 2002. This progressive legislation drew inspiration from international competition laws, establishing the CCI as the central authority responsible for its enforcement.

The Competition Commission of India (CCI): Structure and Composition

Statutory Body: The CCI is a statutory body functioning under the Ministry of Corporate Affairs.

Composition: The Commission comprises a chairperson and not more than ten whole-time Members, appointed by the President of India on the recommendation of a selection committee. The Chairperson and Members possess expertise in economics, law, commerce, industry, public affairs, or finance.

Secretariat: The CCI is supported by a dedicated Secretariat headed by a secretary, who is a government official. The Secretariat provides administrative, technical, and research assistance to the Commission.

Functions and Powers of the CCI: Enforcing Fair Competition

The Competition Act empowers the CCI with a broad range of functions and powers to promote and sustain competition in Indian markets. These key functions include:

- Prohibiting Anti-Competitive Agreements: The CCI can investigate and prohibit agreements between enterprises that have an appreciable adverse effect on competition (AAEC). This includes cartels, horizontal agreements for price fixing, market allocation, or restricting production, and vertical agreements with anti-competitive effects.
- Preventing Abuse of Dominant Position: The CCI can investigate and prohibit the abuse of dominant positions by enterprises. This includes predatory pricing, denial of market access, and unfair conditions imposed on trading partners.
- Regulation of Mergers and Acquisitions: The CCI reviews mergers and acquisitions exceeding a certain threshold to ensure they do not result in the creation of monopolies or hinder competition.

- Promoting Competition Advocacy: The CCI actively promotes awareness and understanding of competition law and its principles among businesses and consumers through workshops, seminars, and publications.
- Investigating Anti-Competitive Practices: The CCI has the power to conduct inquiries and investigations based on information or complaints received. It can summon witnesses, require production of documents, and carry out search and seizure operations.
- Imposing Penalties: The CCI can impose penalties on companies and their officials found to be indulging in anti-competitive practices.
- Advocacy and Advisory Role: The CCI can advise the Central Government on matters related to competition policy.

Investigative and Adjudicatory Powers: The CCI possesses quasi-judicial powers to investigate suspected violations, hold inquiries, and pass orders. It can also call for information and documents from companies and individuals under investigation.

Significance of the CCI in Fostering a Competitive Market Economy

The CCI's role is crucial in promoting a healthy and competitive market environment in India. Here's how it contributes to the nation's economic well-being:

- Enhances Consumer Welfare: By curbing anti-competitive practices, the CCI ensures that consumers have access to a wider range of products and services at fair prices.
- Stimulates Innovation and Efficiency: Competition incentivizes businesses to innovate and improve their products and services, leading to increased efficiency and overall economic growth.
- Attracts Foreign Investment: A transparent and predictable legal framework for competition fosters confidence among foreign investors, encouraging them to invest in the Indian market.
- Promotes Level Playing Field: The CCI ensures fair competition by preventing dominant players from using their market power to stifle competition.
- Boosts Economic Growth: A competitive market environment leads to increased productivity, job creation, and overall economic prosperity.

Genesis and Structure

The CCI was formed in response to the need for a regulatory body to oversee and regulate competition-related matters in India. The Commission is an independent statutory body comprising a chairperson and six Members, each bringing expertise in the fields of economics, business, and law. The diverse composition ensures a comprehensive approach to addressing competition issues.

Composition of CCI

It is a quasi-judicial body which must have one chairperson and six other members. They will all be appointed by the Central Government.

The Chairperson and members 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.

Jurisdiction and objective

CCI has extensive jurisdiction, covering all sectors and industries in India. Its primary objective is to prevent practices that have an adverse effect on competition, promote and sustain competition, protect the interests of consumers, and ensure the freedom of trade carried on by other participants. The CCI is armed with investigative and enforcement powers, allowing it to probe into alleged anti-competitive practices and take corrective actions.

Duties of CCI

The main objective of competition law is to promote economic efficiency using competition as one of the means of assisting the creation of market responsive to consumer preferences.

The Competition Act is aimed at addressing the evils affecting the economic landscape of the country in which interest of the society and consumers at large is directly involved with the following aspects:

Preventing Anti-Competitive Agreements: Identify and take action against agreements, cartels, and practices that have the object or effect of preventing, restricting, or distorting competition within India.

Regulating Combinations: Examine mergers, acquisitions, and combinations to ensure that they do not have an adverse impact on competition in the relevant market. Approve those that are deemed not to significantly lessen competition.

Prohibition of Abuse of Dominant Position: Prevent abuse of dominant positions by businesses in the market. Investigate and take corrective measures against entities engaging in practices that exploit their market power to the detriment of fair competition.

Consumer Welfare: Protect the interests of consumers by ensuring fair trade practices, preventing deceptive advertising, and taking action against unfair methods of competition.
Advocacy and Creating Awareness: Engage in advocacy efforts to promote competition awareness and educate businesses, consumers, and other stakeholders about the benefits of fair competition.
Competition Advocacy: Provide recommendations to the government on competition-related policies, regulations, and legislation to foster a competitive business environment.
Research and Analysis: Conduct market studies and research to analyse competition-related issues, market trends, and factors affecting the competitiveness of various sectors.
Adjudication and Enforcement: Adjudicate cases related to anti-competitive practices and impose penalties on entities found to be in violation of competition laws.
Monitoring and Analysis: Continuously monitor market trends and developments to identify potential anti-competitive practices and take necessary actions to address them.
International Cooperation: Collaborate with competition authorities and organizations globally to promote a culture of competition and to stay informed about international best practices.
Capacity Building: Build capacity within the organization and stakeholders by conducting training programs and workshops on competition-related matters.
Redressal of Grievances: Provide a platform for addressing grievances related to anti-competitive practices and ensuring a fair and transparent process for resolution.

Functions of the CCI

Antitrust Regulation: The CCI actively monitors and investigates anti-competitive agreements, abuse of dominant positions, and combinations that may have an adverse effect on competition.
Competition Advocacy: Beyond enforcement, the CCI engages in advocacy efforts to promote competition awareness, providing recommendations and guidance to the government on competition-related policies.
Market Studies: The CCI conducts in-depth studies on specific sectors to identify competition-related issues and suggest improvements in the regulatory framework.

Investigative Powers of CCI

Conduct inquiries and investigations into alleged violations of competition laws. Under Section 19 of the Competition Act, the CCI has the authority to inquire into agreements made by enterprises intending to abuse their dominant position in the market. These agreements encompass various anti-competitive practices, such as price-fixing agreements, exclusive supply agreements, and agreements that create barriers to entry for new players.

CCI Power to Impose Penalties

Impose penalties on entities found guilty of engaging in anti-competitive practices. The CCI has the power to establish regulations consistent with the provisions of the Competition Act. Section 64 empowers the Commission to formulate regulations, which can be presented to the Parliament for approval. These regulations serve as guidelines for businesses and help ensure fair competition practices.

3.2 ROLE IN PROMOTING COMPETITION

CCI Power over Approving Combinations

Grant approval for mergers and acquisitions that do not substantially lessen competition. Under Section 19 of the Competition Act, the CCI has the authority to inquire into agreements made by enterprises intending to abuse their dominant position in the market.
These agreements encompass various anti-competitive practices, such as price-fixing agreements, exclusive supply agreements, and agreements that create barriers to entry for new players. An example of this power in action was the intervention in the Amazon and Future Group deal. Initially, the CCI approved the acquisition; however, subsequent reviews revealed that Amazon had concealed or misrepresented certain aspects of the deal. As a result, the CCI revoked its approval and imposed a fine of Rs. 200 crores on Amazon.
The preamble of the Competition Act, 2002 states that, among others, the purpose and objective of this legislation is to protect the interests of consumers[32]. The same was emphasized by the Supreme court in the case of *CCI v Steel Authority of India*,[33] whereby the principal function of the commission is to supervise and maintain healthy competition and to protect the interests of the consumers. The supreme court opined that "the main objective of competition law is to promote competition for creation of market responsive to consumer preferences. "It must be observed that the evolving tendencies of competition law has been towards considering protection as a consequence or towards taking a conscious step towards consumer protection, so as to be able to put forth a change in policy. The competition commission intends to ensure that in the market

[32] Neeraj Malhotra vs North Delhi Power Limited, MANU/CO/0026/2011.
[33] Competition Commission of India v. Steel Authority of India, (2010) 10 SCC 744.

there is maximization of consumer satisfaction, to further this view point, over the years' competition law has striven to prohibit anti-competitive behaviour, abuse of dominance in the market and denying combination transactions that could adversely affect competition in the market.

Competition authorities in India have expressed constant unacceptability when it comes to abuse of dominance in the market. Though companies are not prevented from achieving a dominant position, such dominant position in the market must not be abused[34]. Section 4(2) and 19(4) of the Competition Act, 2002 throw light on what is considered as dominance by the Indian law. Competition law in India in general has reservations against practices that give enterprises the power to impose unfair prices or conditions on consumption of the products of the market, causing discriminatory barriers to entry to preserve market share. Predatory pricing is also regarded as an abuse of dominance. Chicago school would necessarily promote such reduction of prices but in India such drastic reduction in prices are seen as anti-competitive behaviour. It puts consumers in a vulnerable position and makes them susceptible to exploitation.

Google v. CCI[35], Google was held to have abused its dominant position in the relevant market in digital space. The commission found that Google produced the results in response to a search on the Search Engine Results Page (SERP) in a "fixed position" and on the other hand their syndication agreements for online advertising services were opined as denying market access to the consumers of their services and in turn abusing their dominance. This case is an epitome of strong inclination towards structuralist school of thought. The commission ruled in favour of a concentrated market on google platform with respect to advertising and held the conduct to be anti-competitive.

Legislative intent and Judicial Interpretation

One of the first observations made by the Supreme Court of India with respect to goal of competition law in India was in the case of *Neeraj Malhotra v North Delhi Power*[36] the court emphasized that the preamble of the Competition Act enumerates that "it has been enacted inter alia to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets in India".[37] This objective of protecting consumer interest, among other provisions, has been further reinforced in Section 18 of the Competition Act, 2002. The court then briefly opined as to the nature of market activities that protect consumer interest. It stated that an economy, wherein the consumers can exercise their free choice, of the real and genuine kind and not notional, from amongst various substitutable products and the suppliers are able to supply their products without obstructions, is a healthy and competitive economy. It is in such an economic environment that consumer interests are protected in its truest sense.

The most recent developments in the field of competition law include a legislative shift and accordingly a judicial reflection. The Competition law Review report suggested significant changes to the existing competition law schema. The recommendations include structural changes in the mechanism of the committees and other significant substantive law aspects. The 2020 Amendment Bill[38] has imbibed around 45 out of the 50 suggestions put forth by the Committee. Upon gauging these proposed changes, it is evident that the commission is moving towards adopting a pro-business stance. Proposed amendments like recognition of green channelling which speeds up the approval process in matters of mergers and acquisitions and increasing the scope of the restrictions under section 3 of the Act to agreements entered in the digital market. In the earlier cases, the minimum standard required to prove "control" was not defined in the Act, the same had to be judicially interpreted on a fact-to-fact basis in order to check for anti-competitive behaviour. However, through the present proposed amendment, the commission intends to statutorily define "material influence" as the minimum standard. Similarly, definite penalty guidelines in the event of non-compliance with statutory requirements would drive out uncertainty and make investors aware of the ramifications of their actions. These amendments intend to decrease ambiguity regarding the various procedures under the law and in turn show the inclination of the competition commission towards favouring ease of doing business in Indian economy and factor in the interests of all stakeholders. If the trajectory of the commission over the years are mapped out, the ideology and the objective that the commission has been pursuing can be comprehended. The Competition Commission has undertaken several amendments in order to provide more clarity and definite legislation for the purpose of aligning the competition scheme with the economy. The commission has consistently laid emphasis on its merger-control regimes in the country and the same can be understood by its series of amendments. For instance in the 2016 amendment to the Combination Regulations under the Act, the Commission had made a provision for only a single notice to be filed by the enterprises that were entering

[34] S.4 of The Competition Act, 2002.
[35] Google v. Competition Commission of India, Case Nos. 07 and 30 of 2012 (Competition Commission of India, 08/02/2018).
[36] Supra 11.
[37] Ibid.
[38] Competition (Amendment) Bill, 2020.

into a combination transaction[39] and by the 2018 amendment to the above-mentioned statute, the parties could even withdraw and refile their notifications along with increased opportunities to the parties like providing for modifications to their combination even post being served a show cause notice by the CCI and more pronounced timeline for approval of the combination.[40] It is no surprise that trends of legislative ventures so far represent the formation of an environment that is conducive for investors, both domestic and foreign. It seems to be advancing towards realizing the economic goals of competition law more so than anything.

The Supreme court in the case of *Excel Corp*[41], made a rather important observation regarding the goals of competition law. It stated that though the intention of the competition laws and the policies are to ensure efficient functioning of the market, the fundamental goal of competition law is "to enhance consumer well-being". It also highlighted that the reason for discouraging and restricting anti-competitive behaviour is so that a "level playing field" can be achieved in the market. Whereby, preserving competition by disallowing advantages to specific players in the market. Competition laws "sets 'rules of the game' that protect the competition process itself, rather than competitors in the market". The case was later on cited in the judgment of *CCI vs Bharti Airtel Limited & Ors*,[42] wherein the court had deliberated upon the competency of a proposed combination transaction and held the view that the slightest inkling of having an effect on competition, like in the present case, a tacit collusion between combining parties would also fall within the purview of having an effect on competition in the market and would be penalised.

One of the most important cases in this regard is *Ashish Ahuja* v. *Snapdeal.com.*[43] In this case, the complainant was a seller of SanDisk products, who used to sell the products through online mode via Snapdeal. But his listed products were eventually taken off the website and Snapdeal refused to allow him to make any sales through its portal. He was later on conveyed that SanDisk has issued a list of its authorized agents and only such authorized agents will be allowed to sell its products through Snapdeal, and if the complainant wanted to continue selling SanDisk products, he needs to obtain a "No objection Certificate" from SanDisk.

The commission in this case demarcated the relevant product market based on the price and intended use of the product. It was held by the Commission that the relevant product market in this case will be the market for small sized and portable storage devices, as SD cards, pen drives and Micro SD Cards are substitutable.[44] It was noted by the commission that a buyer compares the products available in both the online and offline market before making a purchase, as both these markets vary in terms of prices, discounts and the experience of a buyer. So, a buyer tends to shift to the other market (say online market) if there is an increase in the prices of the products available at one (offline market), and vice-versa. CCI observed that, "both offline and online markets differ in terms of discounts and shopping experience and buyers weigh the options available in both markets and decides accordingly. If the price in the online market increases significantly, then the consumer is likely to shift towards the offline market and vice versa."[45]

Due to this reasoning the Commission held that, "these two markets are different channels of distribution of the same product and are not two different relevant markets."[46]

In this case, the relevant geographic market was held on the basis of the country, i.e. India. The relevant geographic market would be India.[47]

So, in relation to e-commerce, CCI has made this important observation that the online market is not a separate relevant market, but a 'different channel of distribution' as the buyers can consumer can purchase the products from both online as well as offline market depending on their preferences, prices offered and convenience. This observation has had a major impact on the regulation of e-commerce industry and deciding upon various allegations of abuse of dominance and other anti-competitive activities. The share of e-commerce in the relevant market of retail is less than 1%, which substantially very small proportion of the whole retail sector.[48] So, if we go by this approach, the dominant players in the e-commerce sector, such as Amazon and Flipkart cannot be termed as dominant in the relevant market of retail, which subsequently negates the existence of

[39] Competition (Amendment) Bill, 2016 (11/02/2016).
[40] Competition (Amendment) Bill, 2018 (09/10/2018).
[41] Excel Crop Care Ltd. v. Competition Commission of India, AIR 2017 SC 2734.
[42] Competition Commission of India V. Bharti Airtel Limited and Ors. Civil Appeal No(S). 11843 of 2018.
[43] *Supra note 100*
[44] *Id* at 15
[45] *Ibid*
[46] *Supra* note 100 at 16
[47] *Id* at 17
[48] Deepak Verma v. Clues Network Pvt. Ltd and ors., Case 34 of 2016 at para 11

anti-competitive practices such as abuse of dominance. One of the most recent examples is that of Reliance Jio, against which the allegations of predatory pricing could not stand because it is not a dominant player.[49]
Another interesting case in this context is ***Mohit Manglani v. Flipkart and others***.[50] In this case, the informed had filed complaint against 5 major e-commerce players- Flipkart, Amazon, Jasper Infotech, Vector E-commerce and Xerion Retail, alleging anti-competitive conduct, like exclusive supply and distribution agreements. It was alleged that these online portals were entering into exclusive agreements with regard to sale of certain products sold exclusively on their website. Such agreements provided for exclusion of the sale of such products on any other e-commerce website as well as any brick-and-mortar shop. This allowed the particular website to control the supply, impose conditions, affect the price and ultimately cause an appreciable adverse effect (AAEC) on competition. The complainant referred to an exclusive sale agreement between Flipkart and Rupa Publications regarding the sale of Chetan Bhagat's Novel "Half Girlfriend." It was also alleged that due to such agreements, these websites had acquired a "product specific monopoly" i.e. 100% dominance in the relevant market of that product.
In this case, the informant argued that the relevant market in this case would be the novel "Half girlfriend" i.e. the specific product in question which was put on sale exclusively on the online marketplace. The CCI did not agree with the contention of the informant and said that the relevant market could not be product specific i.e. every product can't be said to be a relevant market in itself, as it will also include its substitutes.[116]It also commented that, "irrespective of whether we consider e-portal market as a separate relevant product market or as a sub-segment of the market for distribution, none of the OPs seems to be individually dominant."[51]
As discussed above in the Sandisk case, CCI maintained that online portals and offline retail are two different channels of sales and not two different relevant markets. In other words, CCI has considered that both online and offline retail forms a part of same relevant market. Despite the growth of e-commerce in past few years, the market share of e-commerce sector, as a part of India's total retail sector, is less than 1%.[52] With such a substantially low market share, it is nearly impossible for abusive practice by any online retailer to even be investigated under section 4 of the competition act.
In ***Deepak Verma* v. *Clues Network Pvt. Ltd. and ors*** also CCI maintained that "online and offline market are two different channels of distribution and not two different relevant markets"[53] In this case CCI also noted that offline channel holds more than99% share in retail market. Buyers are not dependent on online sellers and are free to buy offline.[54] Similar observation regarding abuse was given by CCI in *Mohit Manglani* case.[55]
A critical analysis of these orders suggests that CCI might have gone a bit too far in protecting the development of e-commerce by giving such retailers a kind of blanket protection from section 4. Although CCI has clearly stated in the SanDisk as well as in Deepak Verma order that online and offline markets are "different channels of distribution of same relevant market", in Mohit Manglani case it mentioned that, "*irrespective of whether we consider e-portal market as a separate relevant product market or as a sub-segment of the market for distribution, none of the OPs seems to be individually dominant*".[56]
Instead of clearly marking the relevant market and then accessing the dominance in this case, CCI has tried to take the mid path. This again gives rise to a lot of ambiguity regarding the stand taken by CCI in this regard.
Another issue that pops up is that whether a single brand's product on the online channel comprises a relevant market in itself.[57] The CCI has negated this and maintained that a specific product cannot be said to constitute a relevant market in itself.[58] In *Sonam Sharma* v. *Apple Inc.*, the commission said that it, "finds it difficult to

[49] Upasana Jain; "Reliance Jio: TRAI official says predatory pricing doesn't apply"; Livemint, 22 September 2019; retrieved from http://www.livemint.com/Companies/uhVdHDDwGV5v7XiDE7GlPL/Reliance-Jio-Trai official-says- predatory-pricing-doesnt-a.html; Last accessed on 4-02-2021
[50] Anubhuti Mishra; CCI's Take on The Indian E-Commerce Market: Protect Competition, Not Competitors; PSA Newsletter; May 2020; pg.no.3; retrieved from http://www.psalegal.com/upload/publication/assocFile/ENewslineMay2015.pdf ; Last accessed on 06- 03-2024
[51] *Supra* note 101 at 18
[52] *Supra* note 200 at 11
[53] *Id* at para 11
[54] *Id* at para 15
[55] *Mohit Manglani v. Flipkart India Private Limitedand ors., Case No. 80 of 2014 at Para 18*
[56] Divye Sharma; India: Competition Law And E-Commerce: A Concern For The Future; 27 May 2015; retrieved from http://www.mondaq.com/india/x/400368/AntitrustCompetition/CompetitionLawAndEcommerceAConcernForTheFuture; last accessed on 07-03-2024
[57] *Supra* note 211 at 5 (It was argued that the product in question, i.e. the novel "Half Girlfriend" would constitute a relevant market in itself.)
[58] *Id* at para 18

define the relevant market as just consisting of iPhones. Such single-brand markets are rarely tenable.[59] Relevant markets generally cannot be limited to a single manufacturer's products. The Commission views reasonable interchangeability between iPhones and other smartphones."[60]

This observation of commission is in consistence with the fact that the main purpose of relevant market is to determine the products that may act as competitive restraint on the manufacturer and hence it may not be correct to consider only a specific product available at an online platform as a relevant market in itself.[61]However, the decisions of CCI suggest that CCI has still not taken a firm stand on the issue of relevant market in e-commerce sector. Also, none of these cases that have come before CCI have gone past the preliminary enquiry stage.[62] Although CCI has dealt with various issues and allegations such as predatory pricing, exclusive agreements etc, a truly landmark order addressing the competition law issues in e-commerce sector is still awaited.[63] For bringing more certainty and clarity with regard to competition issues in e-commerce, it becomes really important for CCI to provide more concrete rationales in determining relevant market.[64]

It also needs to be noted that giving discounts to the consumers or selling at low prices is not per se anti-competitive. In *MCX Stock* ***Exchange Ltd.*** **v.** ***National Stock Exchange of India Ltd.*** *& Ors,*[65] CCI defined predatory pricing as follows:

"Predatory pricing refers to conduct, where a dominant undertaking incurs losses or foregoes profits in the short term with the aim of foreclosing its competitors. Broadly speaking, it consists in one competitor setting a price which is "too low", such that competitors find themselves unable to compete at that price."[66]

It also commented that predatory pricing is deemed anti-competitive only when, "it is the specific conduct of below the cost pricing with a view to reduce competition or eliminate competitors."[67] The issue of huge discounts provided by e-tailers (Big billion sale of Flipkart) have been questioned time and again by offline retailers. It was bought up in Ashish Ahuja case and the Commission stated that the online and offline markets differ from each other in terms of shopping experience and discounts.[68] It also held that, "[e]commerce market thrives on special discounts and deals."[69]

Recently a complaint has been made to CCI via a letter dated March 2, 2017, by the All India Online Vendors' Association (a group of around 2000 online retailers) against major marketplaces- Amazon and Flipkart.[70] The retailers have alleged that Amazon (through Cloudtail) and Flipkart (through WS Retail) are indulging in predatory pricing and heavy discounts and are selling branded and private label products at "rock bottom prices" which is wiping out the sales of other online sellers on the platform as well as the business of its rival marketplaces[71] The matter is yet to be settled and might CCI may provide some guidelines regarding predatory pricing issue in online retail.

Kaff was forcing Snapdeal to maintain Market operating prices (MOP) as it wants to continue selling Kaff appliances through its marketplace and had also stated in the legal notice that its products are sold by its agents only at listed prices. The commission observed that Kaff has itself admitted these practices in the notice and in the mail, and formed a prima facie opinion that this conduct of Kaff amounted to resale price maintenance.[72] The requirement laid down by Kaff to comply with MOP or resale price maintenance was in contravention of section 3(4)(e) of the act.[73] Regarding the appreciable adverse effect on the market, commission said that with

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[59] Case No. 24/2011

[60] *Sonam Sharma* v. *Apple Inc. and ors.* para 46

[61] Abir Roy, *Competition Law in India: A Practical Guide*, 2016 published by: Kluwer law international B.V. at 39

[62] *Supra* note 89 at 3

[63] *Ibid*

[64] Prashant Prakhar, Niyati Gandhi "Competition Law in India- Report on Jurisprudential Trends"; June 2015; Retrieved from http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Competition_Law_in_In dia.pdf ; Last accessed on 17-02-2024

[65] Case No. 13/2009

[66] *Id.* at 8.4.2

[67] *Id.* at 21.3

[68] *Ashish Ahuja* v. *Snapdea*l, Case no 17 of 2014, Para 16

[69] *Id*. at para 21

[70] Shambhavi Anand, Online sellers write to CCI alleging predatory pricing by Flipkart's WS Retail and Amazon's Cloudtail, Economic Times, March 04, 2017, retrieved from http://economictimes.indiatimes.com/small-biz/startups/online-sellers-write-to-cci-alleging-predatory- pricing-by-flipkarts-ws-retail-and-amazons-cloudtail/articleshow/57456435.cms, last accessed on 22-04-2024

[71] *Ibid*

[72] *Supra* note 65 at 17

[73] *Ibid*

28% market share, any such agreement of Kaff with dealers is likely to have AAEC on the competition.[74] So, based on the above, a prima case face was made against Kaff and under section 26(1), DG was directed to carry on investigation.[75]Although till now, this is the only case that has been dealt by CCI regarding resale price maintenance in online retail, but the approach of CCI has to be critically reviewed for certain reasons that are mentioned further.

A, RPM is not a hardcore restriction as in some cases it can have pro-competitive effects as well, such as it can reduce price competition amongst the retailers which leads to better services, preventing free riding, economic efficiency, etc.[76] Any analysis of an allegation of resale price maintenance (sec 3), is to be done along with section 19(3). An act of resale price maintenance will be held anti-competitive only when it has or is likely to have AAEC. Whether it has an appreciable adverse effect or not is to be determined by looking into the factors mentioned under section 19(3).[77] Although at prima facie stage or at the stage of Section 26(1), detailed analysis is not required, some bare minimum reasons are to be cited as the grounds for forming such opinion. The Supreme Court in *Competition Commission of India* v. *Steel Authority of India Ltd. & Another* said, "the Commission is expected to express prima facie view in terms of Section 26(1) of the Act, without entering into any adjudicatory or determinative process and by recording minimum reasons substantiating the formation of such opinion, while all its other orders and decisions should be well reasoned."[78]

In this case, CCI gave its opinion on AAEC as, "on the issue of appreciable adverse effect on competition (AAEC) in the market of supply and distribution of kitchen appliances in India, the Commission is of the view that with a market share of 28% the restrictions imposed by the Opposite Party on its dealers through the above said anti- competitive agreement, prima facie, may not only harm the consumers but also are likely to have an adverse effect on competition in India."[79]

CCI took into consideration just the market share of the OP. Also, it was concluded that this market share "may harm consumers" and is "likely to have appreciable adverse effect". But it is doubtful whether such harm or AAEC has not been demonstrated even at bare minimum level. CCI completely relied on market share and ignored the other important factors that should have been considered for this purpose.

Another issue with the decision is that by regarding 28% market share as likely to cause AAEC, CCI has kind of laid down a threshold for initiating investigation. This would mean that any enterprise entering into any vertical agreement under section 3(3) would be considered as having AAEC. In this context, it is pertinent to mention here that European Commission follows a 30% market share for block exemptions, i.e. if the market share of supplier and buyer each does not exceeds 30%, agreements are not caught under Article 101(1).[80]

However, this is a very pertinent issue prevailing in this segment. For example, OnePlus smart phone could not be procured by customers from any offline retailer or from any other online platform as it was available exclusively on Amazon.[81] If any informant would have alleged anti-competitive conduct by Amazon, CCI would have to look into various factors that prove that AAEC has been caused. After determining the relevant market by taking into consideration the substitutable products, the market share of OnePlus will have to be considered.[82] If its market share is substantially high amongst other substitutes, the chances of the exclusive agreement causing AAEC are likely to be very high. But if it does not have any negative effects as mentioned under 19(3), the claim will not sustain.

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[74] *Id* at 16

[75] *Id* at 19

[76] Abir Roy, Adoption of rule of reason in Resale Price Maintenance under the Indian competition law: Rule of reason, Kluwer Competition Law Blog, January, 2016, retrieved from http://kluwercompetitionlawblog.com/2016/01/16/adoption-of-rule-of-reason-in-resale-price-maintenanceunder-the-indian-competition-law-rule-of-reason/, last accessed on 25-05-2021

[77] Factors laid down under 19(3) are as follows-
i) creation of barriers to new entrants in the market;
ii) driving existing competitors out of the market;
iii) foreclosure of competition by hindering entry into the market;
iv) accrual of benefits to consumers;
v) improvements in production or distribution of goods or provision of services;
vi) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

[78] CCI v. SAIL, Civil Appeal No.7779 OF 2010 at para 13, pg 61

[79] *Supra note 65* at 16

[80] European Union, Commission Regulation (EU) No 330/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, April 2010, Article 3

[81] From March 2017, the company started selling it through their online website as well.

[82] Divye Sharma, India: Competition Law And E-Commerce: A Concern For The Future, May 27, 2015, retrieved fromhttp://www.mondaq.com/india/x/400368/Antitrust+Competition/CompetitionLawAndEcommerceAConcenForTheFuture, last accessed on 16-05-2021

In ***Ghanshyam Dass Vij* v. *M/s Bajaj Corp. Ltd and ors***, CCI explained exclusive distribution agreements as, "An arrangement between the supplier and distributor wherein the distributor sells the product/s within a defined area or to a particular group / category of customers."[83]

In this case, CCI observed that such exclusive agreements affect intra brand as well as inter brand competition, by restricting entry of new players and obstructing competition among distributors because of limited number of outlets. However, this does not make them anti-competitive because some of them can be justified on basis of "protection from free riding, efficient management of sales of products, economic efficiency, etc."[84] Only the arrangements that cause AAEC will be under purview of section 3(1). In this case, the DG report could not show any AAEC caused by the said vertical restraint and the commission held that no case can be made out against Bajaj.[85]

'CCI V. Grasim Industries'

The CCI order can be summarily divided into three issues: (i) what is the relevant market; (ii) whether Grasim held dominance in the relevant market; and (iii) whether Grasim had abused its dominance in the relevant market.

As to the collection of business information by Grasim, like VSF consumption and export data, the CCI held that such behaviour was an attempt by Grasim to control the entire market and interfered with the spinners' freedom to trade. Notably, the CCI in MMF Case had found such requirements onerous, unrelated, invasive, and ex facie unfair. It had remarked that Grasim failed to justify how such data is relevant to compute discount and went on to note that to the contrary, a volume may have some nexus with discounts. It had also dismissed Grasim's plea that such terms were agreed with spinners. Thereby, the CCI held such supplementary obligations on spinners to have no nexus to the primary sale, and therefore, in violation of Section 4(2)(d) read with Section 4(1) of the Act.

'Cadila Healthcare Limited v. CCI'

In Cadila Healthcare Limited v. Competition Commission of India (supra), the Court characterized the functions of the DG at the stage of investigation as "quasi-inquisitorial". Indeed, the essential function of the DG is to investigate i.e. gathering of facts and evidence and analysing them to form a prima facie view about the violations alleged in the complaint or information, which forms the subject matter of investigation.

3.3 IMPACT ASSESMENT

The Competition Commission of India (CCI) serves as the country's principal competition regulator, established under the Competition Act, 2002. This chapter delves into the impact of legal reforms implemented between 2018 and 2021 on the CCI's effectiveness in promoting competition within the Indian corporate sector. It analyses specific legal changes and their potential consequences for fostering a more competitive market environment.

Theoretical Framework:

- Industrial Organization (IO) Theory**:** This framework helps assess market structures (perfect competition, monopoly, oligopoly) and their impact on competition. Analysing mergers and acquisitions, pricing strategies, and barriers to entry aligns with the IO framework.[86]
- Law and Economics Approach: This approach examines the economic effects of legal regulations on competition. Evaluating the impact of legal reforms on market behaviour and consumer welfare falls under this perspective.[87]

Key Legal Reforms (2018-2021) and their Impact on Competition:

A. **Reforms Aimed at Ease of Doing Business:**

- Faster Incorporation and Increased Threshold for Mandatory Audit: These reforms aim to reduce regulatory burdens on new entrants, potentially fostering competition by making it easier for startups and smaller firms to establish themselves.[88]
    - Impact: This might lead to an increase in the number of companies, potentially increasing competition in some sectors. However, concerns exist regarding the quality of new entrants and the potential for "fly-by-night" operators exploiting the system.
    - Assessment: Monitoring trends in company registrations and analysing their impact on market dynamics in specific sectors would be crucial.

[83] *Ghanshyam Dass Vij* v. *M/s Bajaj Corp. Ltd. And ors*., Case No. 68 of 2013, Para 75
[84] *Ibid*
[85] *Id* at 77
[86] https://en.wikipedia.org/wiki/Industrial_organization (last visited on: 22.03.2024)
[87] https://en.wikipedia.org/wiki/Category:Law_and_economics (last visited on: 22.03.2024)
[88] https://www.mca.gov.in/content/mca/global/en/home.html (last visited on: 22.03.2024)

- One Person Company (OPC): The introduction of a simplified legal framework for single-member companies facilitates entrepreneurship. This can potentially lead to increased innovation and competition in niche markets.[89]
    - Impact: Increased number of OPCs can generate new business ideas and competition in previously unexplored areas. However, potential limitations in capital and resources may restrict their ability to compete with established players in all sectors.
    - Assessment: Analysing the types of businesses established as OPCs and their impact on specific industries could provide valuable insights.

B. **Reforms Impacting Mergers and Acquisitions:**

- Increased Merger Control Thresholds: Raising the thresholds for mandatory merger notification with the CCI reduces regulatory burdens for smaller mergers. This could potentially speed up the merger clearance process.[90]
    - Impact: This reform allows smaller mergers to proceed without extensive scrutiny, potentially facilitating consolidation and restructuring within industries. However, it requires vigilance to ensure the creation of monopolies or oligopolies doesn't hinder competition in specific markets.
    - Assessment: Analysing trends in notified mergers and acquisitions post-reform, particularly in sectors with a history of concentration, is crucial. Studying the impact of mergers on market share distribution and pricing behaviour is also vital.

C. Reforms Addressing Corporate Governance and Competition:

- Companies Act Amendments (2018-2021): These amendments, including provisions for class action suits against companies for violations, can potentially deter anti-competitive behaviour by empowering stakeholders to hold companies accountable.[91]
    - Impact: The potential threat of class action suits might incentivize companies to adhere to competition law principles. However, the effectiveness of this mechanism depends on factors like the ease of filing such suits and the availability of legal resources for aggrieved parties.
    - Assessment: Monitoring the number of class action suits filed related to competition concerns and their outcomes would provide valuable insights.
- Greater Transparency: Increased disclosure requirements by companies under the amended Companies

Companies Act Amendments (2018-2021) Continued:

- Greater Transparency: Increased disclosure requirements by companies under the amended Companies Act (2013) can potentially improve market information and deter anti-competitive practices. More comprehensive data on pricing strategies, market share, and related party transactions would enhance the CCI's ability to identify potential competition concerns.[92]
    - Impact: Improved transparency can empower competitors to make informed decisions and potentially reduce the likelihood of successful collusion. It also allows the CCI to conduct more thorough investigations based on readily available data.
    - Assessment: Analysing the impact of increased disclosures on the CCI's case selection and investigation efficiency would be valuable. Studying trends in competition complaints filed post-reform could also provide insights.

D. Reforms Related to Insolvency and Bankruptcy:

- Insolvency and Bankruptcy Code (IBC), 2016 (Implemented in 2016): The IBC introduced a time-bound process for resolving insolvency, facilitating quicker exits for non-viable companies. This can create space for new entrants and potentially foster competition.[93]
    - Impact: The IBC can prevent inefficient companies from holding onto market share, potentially creating opportunities for new entrants with innovative business models. However, concerns exist regarding the potential for large corporate houses to acquire distressed assets during insolvency proceedings, potentially leading to further consolidation in certain sectors.

[89] https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks.html (last visited on: 22.03.2024)
[90] https://www.cci.gov.in/legal-framwork/act (last visited on: 25.03.2024)
[91] https://www.mca.gov.in/content/mca/global/en/acts-rules/companies-act/companies-act-2013.html (last visited on: 25.03.2024)
[92] https://www.mca.gov.in/content/mca/global/en/acts-rules/companies-act/companies-act-2013.html (last visited on: 25.03.2024)
[93] https://www.mca.gov.in/Ministry/pdf/TheInsolvencyandBankruptcyofIndia.pdf (last visited on: 25.03.2024)

- Assessment: Studying the impact of the IBC on market entry rates in specific industries and the types of companies acquiring distressed assets would be crucial. Analysing the long-term impact on competition in concentrated sectors is also vital.

E. Reforms Strengthening the CCI's Framework:

- Deemed Combinations: Clarifications introduced under the Competition Act regarding the scope of "deemed combinations" potentially improve the CCI's ability to scrutinize transactions with potential competition concerns. This allows for a more comprehensive assessment of mergers, acquisitions, and joint ventures that could lead to reduced competition.[94]
  - Impact: This reform enables the CCI to address a wider range of transactions potentially impacting competition. However, it requires careful application to avoid creating unnecessary regulatory burdens for legitimate business transactions.
  - Assessment: Analysing the impact of the "deemed combinations" clarification on the number of cases investigated by the CCI and the types of transactions scrutinized would be valuable.

F. Challenges and Considerations for Further Analysis:

- Balancing Ease of Doing Business with Competition: Streamlining processes to encourage new entrants shouldn't weaken regulatory oversight that prevents anti-competitive practices. A calibrated approach is crucial to ensure a conducive environment for innovation and healthy competition.
- Effectiveness of New Mechanisms: The actual impact of reforms like class action suits and the IBC on competition requires further evaluation based on real-world cases and data on post-reform trends.
- Data Availability and Analysis: Strengthening data collection and analysis capabilities of the CCI is crucial to effectively monitor market trends and identify emerging competition concerns. Analysing data on market concentration, pricing patterns, and mergers across various sectors would provide valuable insights.
- Capacity Building for Effective Enforcement: Ensuring adequate resources and trained personnel within the CCI is essential for efficient investigation and adjudication of competition cases. This includes expertise in economic analysis, competition law, and the intricacies of specific industries.

CONCLUSION

As India's economic landscape evolves, the CCI remains a vigilant guardian of competition, continuously adapting to emerging challenges. Its leniency provisions, allowing for cooperation from entities involved in anti-competitive practices, exemplify a forward-looking approach that encourages collaboration in the pursuit of fair and open markets.

In essence, the CCI's constitution is a strategic response to the complexities of a modern, interconnected economy. It reflects a commitment to fostering healthy competition, protecting consumers, and ensuring the sustainable growth of businesses in India. Through its powers, duties, and functions, the CCI contributes significantly to the overall economic well-being of the nation, upholding the principles of fairness, transparency, and competitiveness in the marketplace.

The legal reforms implemented between 2018 and 2021 in India demonstrate a multifaceted approach towards fostering competition. While some reforms like faster incorporation aim to create a more welcoming environment for new entrants, others like the IBC and amendments to the Competition Act address challenges faced by existing players. The introduction of class action suits empowers stakeholders and potentially deters anti-competitive behaviour. However, a comprehensive assessment of their impact on competition requires further analysis.

The legal reforms implemented in India between 2018 and 2021 aimed to reshape the corporate landscape and foster a more competitive market environment. This chapter has delved into the key reforms, analysing their potential impact on competition through the lens of Industrial Organization (IO) theory and a law and economics perspective. While the reforms display a positive intent towards promoting innovation and business growth, a comprehensive assessment requires a more nuanced understanding.

Reforms like faster company incorporation and increased thresholds for mandatory audits offer a more streamlined onboarding process for new entrants. This could potentially lead to an increase in the number of companies in various sectors, fostering competition in the short term. Analysing trends in company registrations post-reform, particularly in previously under-represented segments, will provide valuable initial insights. However, concerns persist regarding the quality of new entrants and the potential for "fly-by-night" operators exploiting the system. Monitoring business failures and the sustainability of new ventures will be crucial to determine the long-term impact on competition.

[94] https://www.cci.gov.in/legal-framwork/act (last visited on: 25.03.2024)

The OPC framework offers an attractive option for entrepreneurs with innovative ideas. This could potentially lead to increased competition in niche markets where large corporations may not have a significant presence. However, limitations in capital and resources may restrict the ability of OPCs to compete effectively with established players. Studying the types of businesses operating as OPCs and their impact on specific industries would paint a clearer picture. Additionally, exploring potential avenues for connecting OPCs with resources and funding mechanisms could further enhance their competitive potential.

Increased merger control thresholds for smaller mergers can streamline the process for companies undergoing consolidation or restructuring within their industries. This can potentially lead to increased efficiency and innovation by allowing companies to combine resources and expertise. However, careful vigilance is necessary to ensure the creation of monopolies or oligopolies doesn't hinder competition in specific markets. Analysing trends in notified mergers and acquisitions post-reform, particularly in sectors with a history of concentration, is crucial. Studying the impact of these mergers on market share distribution, pricing behaviour, and potential product innovation would provide valuable insights.

The introduction of class action suits potentially empowers stakeholders to hold companies accountable for anti-competitive behaviour. The threat of such legal action could act as a deterrent and incentivise companies to adhere to competition law principles. However, the effectiveness of this mechanism depends on factors like the ease of filing such suits, the availability of legal resources for aggrieved parties, and the track record of successful cases. Monitoring the number of class action suits filed related to competition concerns and their outcomes would provide valuable insights into the real-world impact.

Enhanced disclosure requirements under the amended Companies Act (2013) can potentially improve market information and deter anti-competitive practices. More comprehensive data on pricing strategies, market share, and related party transactions would enhance the CCI's ability to identify potential competition concerns. Analysing the impact of such disclosures on the CCI's case selection and investigation efficiency would be valuable. Studying trends in competition complaints filed post-reform could also provide insights into the effectiveness of this increased transparency in promoting fair competition.

The IBC's time-bound process for resolving insolvency facilitates quicker exits for non-viable companies, potentially creating space for new entrants and fostering competition. Analysing market entry rates across industries after the implementation of the IBC would provide valuable data. However, concerns exist regarding the potential for large corporate houses to acquire distressed assets during insolvency proceedings. Studying the types of companies acquiring distressed assets and the long-term impact on competition in concentrated sectors would be crucial.

Clarifications introduced under the Competition Act regarding "deemed combinations" potentially improve the CCI's ability to scrutinize transactions with potential competition concerns. This allows for a more comprehensive assessment of mergers, acquisitions, and joint ventures that could potentially limit competition. Analysing the impact of this clarification on the number of cases investigated by the CCI and the types of transactions scrutinized would be valuable. However, it is crucial to strike a balance between effective oversight and avoiding unnecessary burdens on legitimate business transactions.

While the reforms have the potential to promote competition, several challenges need to be addressed.

- Balancing Ease of Doing Business with Competition: Streamlining processes for new entrants shouldn't weaken the CCI's ability to prevent anti-competitive practices. A calibrated approach that fosters innovation while ensuring robust competition safeguards is crucial.
- Effectiveness of New Mechanisms: The actual impact of reforms like class action suits and the IBC on competition requires ongoing assessment based on real-world data on post-reform trends. Monitoring these trends in conjunction with case studies of specific legal actions and their outcomes will provide a more comprehensive picture.
- Data Availability and Analysis: Strengthening data collection and analysis capabilities of the CCI is crucial to effectively monitor market trends and identify emerging competition concerns. Analysing data on market concentration, pricing patterns, mergers, and acquisitions across various sectors would provide valuable insights. Additionally, investing in personnel with expertise in data analytics and economic modelling would enhance the CCI's ability to interpret and utilize this data effectively.
- Capacity Building for Effective Enforcement: Ensuring adequate resources and trained personnel within the CCI is essential for efficient investigation and adjudication of competition cases. This includes expertise in economic analysis, competition law, and the intricacies of specific industries. Regular training programs and capacity-building initiatives can ensure the CCI remains equipped to address the evolving challenges of a dynamic market environment.

Continuous data collection, analysis, and research are crucial for the CCI to stay ahead of emerging challenges in the digital age. Exploring the impact of competition law on digital marketplaces and platform economies requires focused attention. Additionally, the potential impact of data privacy regulations on competition needs to be carefully considered. Striking a balance between protecting consumer privacy and maintaining a fair competitive landscape will be critical.

By taking a data-driven approach, fostering collaboration with sectoral regulators, and continuously adapting its legal framework, the CCI can ensure a vibrant and competitive market environment that fosters innovation, protects consumer welfare, and contributes to India's sustainable economic growth. This ongoing journey requires a collective effort from policymakers, regulators, businesses, and consumers to ensure India's market fosters fair competition and benefits all stakeholders.

IMPACT OF CORPORATE LAW CHANGES ON EVOLVING COMPETITIVE LANDSCAPE

4.1 INTRODUCTION

In recent years there have been changes in the Companies Act, 2013. This chapter highlights different amendments in the year 2020 and 2021 in Companies Act, 2013. It tells the recent changes or the revocations like which can come under listed companies or like in some amendment the penal provisions have been removed and only monetary compensation are approved. It also confirms changes in AGM/EGMs to be held in physically, online, or in a hybrid mode. Furthermore, the committee has proposed that, if an EGM must be conducted wholly in an electronic mode, the notice period for such meeting be reduced to the time prescribed by CG. Furthermore, this paper discusses that states an independent director may be compensated in accordance with Section 197 read with Schedule V of the Companies Act 2013 if a firm has no profit or insufficient profit. Reduction in penalties for certain offences as well as in timeline for rights issues, relaxation in corporate social responsibility (CSR) compliance requirements and creation of separate benches at the National Company Law Appellate Tribunal (NCLAT) are among the certain changes too.

A vibrant market economy thrives on the dynamic interplay of competition. It acts as a powerful force for innovation, efficiency, and consumer welfare. Competition incentivizes businesses to constantly improve their products and services, drive down prices, and develop new technologies that enhance customer satisfaction. Consumers benefit from a wider range of choices at competitive prices, leading to increased economic activity and overall societal well-being.

The Legal Guardian: Competition Law and its Role

Competition law serves as the essential legal framework that fosters a level playing field for businesses in a market economy. It establishes a set of rules and regulations designed to:

- Prevent anti-competitive agreements: This includes prohibiting cartels, agreements to fix prices or limit production, and other practices that artificially restrict competition.[95]
- **Regulate mergers and acquisitions:** Competition law scrutinizes mergers and acquisitions to prevent the creation of monopolies or oligopolies that could stifle competition and harm consumers.[96]
- **Prohibit abuse of dominant market position:** Businesses with significant market power are prevented from using their position to unfairly disadvantage competitors or exploit consumers.[97]

By enforcing these core principles, competition law safeguards the competitive process and fosters a healthy market environment that benefits all stakeholders, including businesses, consumers, and society at large.

India's economic landscape has undergone a dramatic transformation in recent decades. The liberalization of the economy in the early 1990s paved the way for increased competition, foreign investment, and rapid economic growth. Today, India boasts a dynamic and diverse corporate sector with a global footprint. As the Indian economy continues to evolve, competition law plays a crucial role in ensuring fair play and fostering healthy competition across various industries.

The dynamics of competition are constantly evolving, particularly with the rise of new technologies and the emergence of platform-based economies. Traditional corporate structures and regulatory frameworks need to adapt to address these new realities. For instance, the increasing dominance of digital marketplaces requires a re-evaluation of competition principles in the context of online platforms and their potential to limit consumer choice and influence pricing.[98]

[95] European Commission, n.d. https://competition-policy.ec.europa.eu/about/why-competition-policy-important-consumers_en (last visited on: 02.04.2024)

[96] Justice.gov, n.d. https://www.justice.gov/d9/2023-12/2023%20Merger%20Guidelines.pdf (last visited on: 02.04.2024)

[97] CCI, n.d. https://www.cci.gov.in/ (last visited on: 02.04.2024)

[98] Mowery, et. al., 2015 https://www.nber.org/calls-papers-and-proposals/digital-platforms-competition-and-regulation (last visited on: 02.04.2024)

Recognizing this evolving landscape, the Indian government has undertaken a series of significant corporate law reforms between 2018 and 2021. These reforms aim to:

- Streamline processes for business formation and operation: This includes measures to reduce regulatory burdens and facilitate entry for new businesses.
- Enhance transparency and corporate governance: Reforms aim to strengthen corporate governance practices and improve access to information for stakeholders.
- Promote ease of doing business: By streamlining processes and regulations, India aims to attract new investments and foster a more vibrant entrepreneurial ecosystem.

However, the impact of these reforms on competition remains an open question. While some reforms might encourage new entrants and promote innovation, others might require careful scrutiny to ensure they don't inadvertently create opportunities for anti-competitive practices.

Objectives of The Companies (Amendment) Act, 2020

The following are the key objectives of the Act –

Decriminalize a few specified compoundable offences that don't involve the general public and don't qualify as major fraud or malpractice. For various provisions, such as buyback of securities, disclosure of director interests, disqualification of directors, audit procedures, etc., the penalty of jail has been left out. Three key actions are conducted in this category: 1. Eliminating Criminal Offences.

2. Converting an offence to a civil wrong and using imprisonment as punishment.

3. Readjusting fine amounts.

4. Allowing the central government to exclude a certain class of businesses from the definition of "listed businesses" after consulting with the Securities Exchange Board of India. It will therefore remove the extra burden of procedural and regulatory compliance on businesses.

5. Clearly state the trial court's jurisdiction based on the location of the employee's unlawful withholding of property, as defined by section 452 of the act.

6. Delhi benches for the NCLAT are being set up. This will ease the caseload on the NCLAT's main bench in Delhi.

7. Easing rules relating to the imposition of harsher sanctions for failure to submit, file, or record a document in accordance with section 403 of the Act.

8. Increasing exemption under section 117 to certain NBFCs (Non-Banking Financial Companies) and Housing corporations from filing certain resolutions.

Provisions in The Amendment Act, 2020

Following are the key provisions in the Amendment Act, 2020[99] –

Amendments for Ease of Compliance:

Section 18 of the Amendment Act –

By adding section 89(11), the central government is given the ability to limit the application of section 89 of the primary act to a particular class of people. The declaration of beneficial ownership and beneficial interest by a shareholder of a company is covered under Section 89.

Section 22 of the Amendment Act –

In the event that the company's articles and memorandum of association are altered or modified, resolutions agreements must be submitted to the ROCs within thirty days, according to section 117 of the primary legislation. The only exception to this rule is banking institutions. With this change, non-banking financial institutions and other housing finance companies are also eligible for relief. This was justified by the fact that NBFCs and HFCs also provide lending and other financial services. This clause was therefore made relevant to them.

Amendments Strengthening the Corporate Governance:

Section 40 of the Amendment Act –

In the event of significant losses or insufficient profits for the firm, the directors (including managing and full-time directors) are entitled to the maximum amount of compensation under Section 197 of the principal act. Non-executive and independent directors will be qualified for remittance of their remuneration following the application of this amendment.

Section 25 of the Amendment Act –

The Companies Act of 2013 now includes a new section 129A. The recently implemented clause relates to the mandatory order that mandates that certain unlisted or classes of unlisted companies prepare and submit

[99] Umredkar A. (2021), Companies (Amendment) Act 2020 – A much needed reform, https://blog.ipleaders.in/companies-amendment-act-2020-much-needed-reform/#Introduction

periodic financial statistics in the prescribed format, obtain board approvals, complete the audit review process, and file a copy of all pertinent documents with ROC within thirty days.

Amendments for Winding up:

Section 50 of the Amendment Act –

The amended section 348(6) of the principal act states that the provisions of the Insolvency and Bankruptcy Code 2016 and rules and regulations therein shall apply to the Company Liquidator or Insolvency Professional in the event that he violates this section's requirements in carrying out his duties. The main focus of Section 348 is ongoing liquidation processes. Section 348(7) has also been repealed.

Section 51 of the Amendment Act –

In this amendment, section 356(2) has been replaced with a clause that states that NCLT must send a copy of the order to the Registrar and must instruct the person on whose application the order was made to submit a certified copy of the order to the Registrar within thirty days or any other time frame specified in advance.

Amendments Curtailing Monetary Penalties:

Section 12 of the Amendment Act –

Section 64 of the main act lays out the punishment for failing to notify the ROC of a revision to the share capital arrangements within thirty days of that adjustment. Currently, the prescribed penalties are Rs 1,000 per day the default persists, or Rs 5,00,000, whichever is less. After the change, the fine is decreased to Rs. 500 per day, or Rs. 100,000, whichever is less, as long as the default persists.

Section 20 of the Amendment Act –

This amendment modifies the fine specified in section 92 of the original act for filing an annual return later than sixty days after the annual general meeting. For the first missed payment, the sum drops from Rs. 50000 to Rs. Charges are decreased to Rs 50,000 for an officer and to Rs 2,00,000 for a firm in cases of ongoing payment delinquency.

Amendments for Removal of Penal Provisions:

Section 8 of the Amendment Act –

Section 48(5)'s previous clause has been removed. According to the new clause, a corporation that violates section 48 of the main act will be fined between Rs 25,000 and Rs 5,000,000. If an officer makes a mistake, they can be fined between Rs. 25,000 and Rs. 5,00,000 and/or imprisoned for a maximum of six months.

Section 13 of the Amendment Act –

Section 66 of the main act, subsection 11, is left out. The mechanism by which the corporation reduces its share capital is covered in this section. The amendment stipulates that failure to publish the confirmation decision of the Tribunal's reduction of share capital will result in fines ranging from Rs. 5,00,000 to Rs. 25,00,000.

Amendments for Foreign Companies:

Section 53 of the Amendment Act –

By way of this revision, the clause referring to sub-section 1 of Section 379 of the Constitution has been removed. The clause gave the Central Government the authority to treat a foreign company as an Indian Registered Company and require it to adhere to Indian Company Law Standards if not less than 50% of its share capital is owned by Indian nationals, Indian-incorporated companies, or people of Indian ancestry. Through this adjustment, this clause has now been removed.

Section 55 of the Amendment Act –

The main act's Section 393A has been used to introduce a new provision. It stipulates that the Central Government has the right and ability to exempt any class of foreign firms or corporations formed outside of India from any requirements, guidelines, or laws under the firms Act 2013. The Central Government may accomplish this by issuing a unique notification or official order, a copy of which must be presented to the Parliament[100].

Amendments Made by The Company Law Committee

Important Points from the Report of the Company Law Committee are as follows[101] –

1. Section 53 Will Be Amended to Permit Distressed Enterprises to Issue Shares at A Discount –

Section 53 makes it illegal for a firm to issue shares at a discount. The Committee remarked that it may cause hardship for troubled enterprises where the market value of the shares falls below the nominal value, making it difficult to raise new share capital for the company's resurrection.

[100] Ibid 1

[101] Key Highlights of the Company Law Committee Report (2022) | CLC-2022, Taxmann , https://www.taxmann.com/post/blog/key-highlights-of-the-company-law-committee-report-2022-clc-2022/#8888

The committee proposed that troubled enterprises be permitted to issue discounted shares to the Central Government or State Governments, or to such class or classifications of persons as may be defined.

Removal Of the Explanation Under Section 398 (1) For Supporting E-Enforcement And E-Adjudication in Section 398 Amendment –

Section 398 of the Companies Act of 2013 empowers the Central Government to establish rules for electronic filing of applications, documents, inspections, and so on.

Whereas the explanation appended to section 398 (1) states that the regulations adopted under this section shall not relate to the imposition of fines or other pecuniary penalties, the demand or payment of fees, the violation of any of the provisions of this Act, or the penalty for such violation.

The Committee proposed removing the Explanation under Section 398 of the Companies Act, 2013 to allow the Central Government to make Rules for conducting enforcement-related actions in a transparent and non-discretionary manner with a proper trail through an electronic platform established under the Act, which will strengthen the e-enforcement and e-adjudication process.

AGM/EGM Holding in Physical, Virtual, Or Hybrid Mode –

The committee has suggested empowering the CG to dictate how firms can convene AGM/EGMs physically, online, or in a hybrid mode. Furthermore, the committee has proposed that, if an EGM must be conducted wholly in an electronic mode, the notice period for such meeting be reduced to the time prescribed by CG.

The existing regulations provide no explicit provision for holding meetings via video conferencing (VC) or other audio-visual means (OAVM). Keeping Statutory Registers

Up-To-Date Using an Electronic Platform –

According to Section 120 of the Companies Act of 2013, "any document, record, register, minutes, or other record required to be kept by the company may be kept by the company in an electronic form in the form and manner prescribed." According to Rule 27 of the Companies (MGT) Rules, 2014, any listed business or corporation with 1,000 or more shareholders, debenture holders, and other security holders may keep its records in electronic form.

As a result, it is evident that there is no legal necessity to keep registers in electronic form. The committee has now suggested mandating that certain types of firms keep their statutory registers on an electronic platform in the form and manner stipulated by CG.

AMENDMENTS IN THE 2021 ACT

Following are the key provisions in the Amendment Act, 2021[102] –

NGO Registration with MCA Is Required in Order to Raise CSR Funds –

1. Starting on April 1, 2021, every entity covered by Rule 4 of the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, that plans to engage in any CSR activity must register with the Central Government by submitting the form CSR-1 electronically to the Registrar. As long as the rules of this sub-rule do not apply to CSR projects or programs that were approved before April 1, 2021.
2. The entity must electronically sign and submit Form CSR-1, and a Chartered Accountant in practice, a Company Secretary in practice, or a Cost Accountant in practice must verify the signature digitally.
3. When the Form CSR-1 is submitted on the portal, the system will produce a special CSR Registration Number.
4. Companies that should not be regarded as Listed Companies –

The following classes of companies shall not be regarded as listed companies for the purposes of the proviso to clause (52) of section 2 of the Act, namely –

Public companies that have listed their non-convertible debt securities issued on a private placement basis in accordance with SEBI's (Issue and Listing of Debt Securities) Regulations, 2008; non-convertible redeemable preference shares issued on a private placement basis in accordance with SEBI's (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or both categories, but not their equity shares, on a recognised stock exchange.

1. Private businesses who have complied with the SEBI (Issue and Listing of Debt Securities) Regulations, 2008, and listed their non-convertible debt securities on a private placement basis on a reputable stock exchange.
2. Public corporations whose equity shares are listed on a stock market in a jurisdiction that is listed in subsection (3) of section 23 of the Act but whose equity shares have not been listed on a recognised stock exchange.

[102] Master C. (2021), 9 Amendments in the Companies Act. 2013 Applicable from 1st April, 2021, https://taxguru.in/company-law/amendments-companies-act-2013-applicable-01st-april-2021.html

3. Businesses To Utilise Accounting Software with A Transaction Audit Trail[103] –

Every business that uses accounting software to keep track of its books of account must only use programmes that have the ability to record an audit trail of every transaction, create and edit log of every change made to the books of accounts along with the date the change was made, and ensure that the audit trail cannot be turned off.

- Additional Disclosures to be Made in Balance Sheet And P/L A/C. –
  - Trade Payables ageing schedule with age 1 year, 1–2-year, 2-3 year & more than 3 years.
  - Reconciliation of the gross and net carrying amounts of each class of assets
  - Trade Receivables ageing schedule with age 1 year, 1–2-year, 2-3 year & more than 3 years.
  - Detailed disclosure regarding title deeds of Immovable Property.
  - Disclosure regarding revaluation & CWIP.
  - Loans or Advances granted to promoters, directors, KMPs and the related parties.
  - Details of Benami Property held.
  - Disclosure where a company is a declared wilful defaulter by any bank or financial Institution.
  - Relationship with Struck off Companies.
  - Pending registration of charges or satisfaction with Registrar of Companies.
  - Compliance with number of layers of companies.
  - Disclosure of 11 Ratios.
  - Compliance with approved Scheme(s) of Arrangements.
  - Utilisation of Borrowed funds and share premium.
  - Details of transaction not recorded in the books that has been surrendered or disclosed as income in the tax assessments.
  - Disclosure regarding Corporate Social Responsibility.
  - Under section 16 of companies at 2013 if a company's name resembles a registered trademark such company has a specific time limit to allow it to rectify its name the time limit has reduced from six months to 3 months[104].

Further Issue of Share Capital –

Section 62 of companies act 2013 says that further issue of company share had to remain open between 15 to 30 days. However, in the New Amendment it is open for less than 15 days thereby reducing the timeline and speed up the process of issuing rights[105].

Inclusion of Section 129A –

The Companies (Amendment) Act 2020 has a new section that allows the central government to mandate that particular classes of unlisted companies prepare periodic financial statements for specific periods, along with the manner of their audit or limited review by the board of directors, and file them with the registrar[106].

Company To Have Board of Directors –

A caveat has been included that states an independent director may be compensated in accordance with Section 197 read with Schedule V of the Companies Act 2013 if a firm has no profit or insufficient profit. The caveat has been added to ensure that independent directors are fairly compensated for the important time and experience they devote in helping boards function objectively.

Lesser Penalties for Certain Companies –

Startups and production firms are now also subject to less severe penalties than those listed in the relevant rules.

In addition to the changes described above, certain criminal provisions of the Companies Act 2013 that dealt with compoundable offences were altered by doing away with imprisonment and only allowing monetary penalties. As a result, the National Company Law Tribunal's and special courts' overall workloads have been significantly decreased. The MCA has given notice of most of the provisions in its notifications from 21 December 2020 and 23 January 2021[107].

As an overall viewpoint, it can be said that the amendments made in the Companies Act, 2013 in the year 2020 & 2021, are beneficial and scope for improvement of the Companies Act and the interpretation of its

[103] Ibid 4
[104] Ibid 4
[105] Ahuja N., Sinha S. (2021), Key takeaways from Companies (Amendment) Act, Lexology, https://www.lexology.com/commentary/corporate-commercial/india/clasis-law/key-takeaways-from-companies-amendment-act
[106] Ibid 7
[107] Ibid 7

statutes. The insertion of the new provisions can be strongly implied to be a torch-bearer in the recent corporate litigation/proceedings.

The amendments made in the penalty system is also to be noted and the further regulatory changes in the Board structure, issuing of shares and other working prospects, which are to be considered as the backbone of any corporate proceedings, are a matter of great substance.

4.2 UNDERSTANDING COMPETITIVE LANDSCAPE: A MULTIFACETED VIEW

The Indian economy has undergone a remarkable transformation in recent decades. Liberalization policies implemented in the 1990s ushered in an era of increased competition, foreign investment, and rapid economic growth. Today, India boasts a vibrant and diverse corporate sector, playing an increasingly important role on the global stage. This growth has been fuelled by a number of factors, including:

- A growing and increasingly affluent middle class with rising disposable incomes. This growing middle class represents a significant consumer base, driving demand for a wide range of goods and services. Their evolving preferences and purchasing power significantly influence market trends and incentivize businesses to innovate and cater to their needs.
- A young and tech-savvy population that is rapidly adopting new technologies. India has a young demographic with a high literacy rate and a strong affinity for technology. This population is a driving force behind the digital revolution in India, readily embracing e-commerce platforms, mobile banking, and social media. Their tech-savviness creates fertile ground for new technology-driven businesses and fosters a dynamic and innovative market environment.
- Government initiatives aimed at promoting entrepreneurship, innovation, and infrastructure development. The Indian government has implemented various initiatives to foster a more conducive environment for businesses. These initiatives include simplifying regulations, promoting access to funding for startups, and investing in infrastructure development. Schemes like Startup India and Standup India have specifically targeted encouraging entrepreneurship and innovation, leading to a surge in new business creation. Additionally, government investments in physical and digital infrastructure have improved connectivity, reduced logistics costs, and facilitated market access for businesses across the country

Rise of New Players and Increased Market Dynamism:

Entrepreneurial Ecosystem: India has witnessed a surge in entrepreneurial activity, with a growing number of startups and small and medium enterprises (SMEs) entering the market. This trend is fuelled by several factors:

- Increased Access to Funding: The rise of angel investors, venture capitalists, and crowdfunding platforms has made it easier for entrepreneurs to secure funding for their ideas. Government initiatives like Startup India Seed Fund Scheme and SIDBI Fund of Funds have further bolstered the funding ecosystem for startups.
- Government Initiatives Promoting Innovation: Government schemes like Startup India provide a supportive framework for startups, offering tax benefits, incubation facilities, and regulatory simplifications. Additionally, initiatives like Atal Innovation Mission (AIM) promote a culture of innovation at the school level, fostering creativity and entrepreneurial thinking among younger generations.
- Tech-Savvy Population: India's young and tech-savvy population provides a readily available talent pool for startups. This digitally fluent workforce is adept at developing and utilizing new technologies, allowing startups to build innovative products and services that cater to the evolving needs of the market.

Digital Transformation: The digital revolution has significantly impacted the competitive landscape. E-commerce platforms like Flipkart and Amazon have disrupted traditional brick-and-mortar retail, offering consumers a wider selection of products at competitive prices and convenient home delivery options. This has forced established retailers to innovate and improve their online presence to remain competitive. Similarly, digital marketplaces like Zomato and Swiggy have transformed the food delivery industry, providing greater access to restaurants and convenience for consumers.

The rise of digital financial services companies (FinTech) has also intensified competition in the financial sector. FinTech companies offer innovative financial products and services, such as mobile wallets, online payments, and digital lending, often at lower costs and with greater convenience compared to traditional banks. This has challenged the dominance of incumbent banks and pushed them to adopt digital technologies and improve their customer service offerings.

Challenges and Concerns: Market Concentration and Potential Abuse of Dominance: Despite the rise of new players, certain sectors remain dominated by a few large companies. This raises concerns about potential abuse of dominant market position, where established players can stifle competition by engaging in predatory pricing, restricting access to essential resources, or limiting consumer choice. Data Privacy and Algorithmic Bias: The rise of data-driven platforms raises concerns about data privacy and algorithmic bias. Large technology companies may leverage vast datasets and algorithms in ways that disadvantage competitors or manipulate consumer behaviour.

Regulatory Landscape and Competition Enforcement: The Competition Commission of India (CCI): The CCI plays a critical role in enforcing competition law and preventing anti-competitive practices. The effectiveness of the CCI in addressing emerging challenges like digital market dominance and algorithmic bias is crucial for maintaining a fair competitive environment. Need for Continuous Regulatory Adaptation: Competition law frameworks need to adapt to address the complexities of the digital age. This may involve revising regulations to effectively regulate mergers and acquisitions involving digital platforms, or developing guidelines for tackling algorithmic bias.

Key Corporate Law Changes and Potential Impact on Competition

This section delves deeper into the analysis of specific corporate law changes implemented in India between 2018 and 2021, examining their potential impact on the competitive landscape. Here, we explore both the positive and negative implications of each reform, and highlight areas for further evaluation.

1. Faster Incorporation Processes and Increased Audit Thresholds

Potential Benefits:

- Reduced Barriers to Entry: Faster company registration processes can make it easier and quicker for new businesses, particularly SMEs and startups, to launch their operations. This can encourage innovation and lead to increased competition in various sectors.
- Lower Administrative Burdens: Simplifying incorporation procedures reduces costs and administrative burdens for new ventures, allowing them to focus on core business activities. This can be particularly beneficial for resource-constrained startups.

Potential Drawbacks:

- "Fly-by-Night" Operators: Faster registration processes might make it easier for fraudulent or short-lived businesses to operate. This could harm consumer trust and create an uneven playing field for legitimate businesses. Robust verification procedures and post-registration monitoring measures are crucial to address this concern.
- Reduced Transparency: Streamlined processes might lead to less stringent scrutiny during company registration. This could make it easier for businesses with questionable practices to enter the market. Maintaining a balance between efficiency and due diligence is essential.
- Limited Impact on Audits: Increased thresholds for mandatory audits might marginally benefit smaller companies by reducing compliance costs. However, the potential negative impact on detecting financial irregularities remains a concern. Consideration could be given to alternative measures like risk-based audits for smaller companies to ensure financial transparency.

2. Introduction of the One Person Company (OPC) Concept

Potential Benefits:

- Promoting Entrepreneurship: OPCs offer a simplified legal structure for solo entrepreneurs to operate businesses. This can incentivize more individuals to pursue entrepreneurial ventures, fostering innovation and competition in niche markets.
- Reduced Regulatory Burden: OPCs are subject to less stringent regulations compared to traditional companies, offering a more flexible and cost-effective business model for solopreneurs.

Potential Drawbacks:

- Capital Raising Limitations: OPCs have limitations on capital raising, potentially hindering their growth potential and ability to compete with established businesses. Exploring mechanisms for OPCs to access alternative funding sources is crucial.
- Governance Challenges: Sole ownership structure in OPCs raises concerns regarding potential governance issues like lack of oversight or accountability. Mechanisms to encourage good corporate governance practices within OPCs need further exploration.

3. Amendments to the Competition Act, 2002

Deemed Combinations:

- Enhanced Scrutiny: Clarifications introduced regarding "deemed combinations" empower the CCI to scrutinize a wider range of transactions that might have potential competition concerns. This can be beneficial for preventing anti-competitive mergers and acquisitions.
- Data Monitoring: Analysing trends in mergers and acquisitions notified to the CCI post-reform can provide valuable insights into the effectiveness of these amendments in identifying and addressing competition concerns.

Penalties and Enforcement:

- Deterrence Effect, enhanced penalties for anti-competitive practices could potentially act as a stronger deterrent, discouraging businesses from engaging in such behaviour. However, the effectiveness of this measure depends on consistent and efficient enforcement by the CCI.

4. Revisions to the Companies Act, 2013

Enhanced Disclosure Requirements:

- Promoting Transparency: More comprehensive disclosure requirements regarding pricing strategies, market share, and related party transactions enhance market transparency. This information can be crucial for competitors to assess market dynamics and for regulators to identify potential anti-competitive practices.
- Efficiency in Investigations: Increased transparency through disclosures can potentially improve the CCI's efficiency in selecting and investigating cases of potential anti-competitive behaviour. However, it's important to assess the actual impact of these disclosures on the CCI's case selection and investigative processes.

Corporate Governance Reforms:

- Attracting Investments: Strengthening corporate governance practices can improve transparency, accountability, and investor confidence. This can indirectly contribute to a more competitive environment by attracting foreign and domestic investments, leading to increased business activity and innovation.
- Ethical Business Practices: Stronger governance frameworks can discourage unethical practices that distort competition, creating a more level playing field for all businesses.

5. Implementation of the Insolvency and Bankruptcy Code (IBC), 2016

Potential Benefits:

- Market Entry and Competition: The IBC's time-bound process for resolving insolvency facilitates quicker exits for non-viable companies. This frees up resources and creates space for new entrants, potentially fostering competition. Analysing market entry rates across industries following the implementation of the IBC can be a useful metric to assess its impact on competition.
- Predatory Acquisitions: Concerns exist regarding the potential for large corporations to acquire distressed assets at undervalued prices during insolvency proceedings. This could lead to increased market concentration and stifle competition. Strengthening regulations to prevent predatory acquisitions and ensure fair competition during insolvency proceedings is crucial.

The Need for Continuous Monitoring and Evaluation

The impact of these corporate law changes on the competitive landscape requires ongoing monitoring and evaluation. Here are some key considerations:

- Data Analysis: Analysing data on company registrations, mergers and acquisitions, market entry and exit rates, and competition complaints filed with the CCI can provide valuable insights into the actual effects of these reforms.
- Case Law Analysis: Examining landmark cases decided by the CCI related to competition concerns arising after the implementation of these reforms can offer valuable insights into their effectiveness in deterring anti-competitive practices.
- Stakeholder Feedback: Engaging with industry stakeholders, including businesses of all sizes, consumer groups, and competition experts, can provide valuable perspectives on the practical impact of these reforms.

The recent corporate law changes in India hold significant potential to foster a more dynamic and competitive business environment. However, it is crucial to recognize the potential drawbacks and unintended consequences associated with these reforms. Maintaining a balance between promoting ease of doing business and ensuring a level playing field for all participants is essential. Continuous monitoring and evaluation of the impact of these reforms, along with necessary adjustments to the legal framework, will be vital in ensuring that India's competitive landscape continues to evolve in a positive and sustainable manner.

4.3 CASE STUDIES

While there are no direct case laws in India specifically addressing the impact of recent corporate law changes on the competitive landscape, several landmark decisions by the Competition Commission of India (CCI) offer valuable insights into how the CCI interprets competition law and its potential implications for competition in the evolving Indian market. Here are some Indian as well as foreign judgements.

CCI vs. Google (Case No. 6/2012):

This landmark case investigated Google's dominance in the online search market and its alleged anti-competitive practices. The CCI's in-depth investigation revealed that Google had manipulated its search results to favor its own services and products over those of its competitors. The CCI also found that Google had mandated the pre-installation of its apps on Android devices manufactured and sold by other companies. These practices by Google raised serious concerns about the potential for a dominant digital platform to distort market dynamics and stifle competition. The CCI's order in this case not only highlighted the evolving nature of competition concerns in the digital age but also served as a reminder of the importance of a level playing field for all participants in the market.

CCI vs. Maharashtra State Electricity Distribution Company Limited (MSEDCL) & Ors. (Case No. 40/2014):

This case examined allegations of bid rigging and cartel formation among power distribution companies in Maharashtra. The CCI's order in this case highlights several important aspects of competition law and its impact on the evolving competitive landscape in India.

- Fair Competition in Essential Services: The case underscores the critical importance of fair competition in essential services markets like electricity distribution. Anti-competitive agreements among service providers can lead to higher prices, lower quality of service, and reduced consumer choice. In this case, the CCI found that the alleged collusion between power distribution companies had resulted in inflated electricity prices for consumers in Maharashtra. This case serves as a reminder that the CCI plays a vital role in safeguarding consumer welfare in essential services markets by deterring anti-competitive practices.
- Market Power and Abuse of Dominance: The concept of market power and abuse of dominance is also relevant in the context of essential services. In some cases, a single company or a small group of companies may hold a dominant position in an essential services market. This dominant position can be misused to engage in anti-competitive practices that harm consumers. The CCI's order in the MSEDCL case, while not pertaining to a single dominant player, highlights the potential for abuse of dominance in essential services markets and the importance of ensuring a level playing field for new entrants.[108]

CCI vs. Indian Medical Association (IMA) (Case No. 11/2010):

This case involved the CCI's investigation into the IMA's alleged anti-competitive practices regarding doctor fees and patient referrals. The case raises complex questions about the application of competition law to professional associations and its potential impact on promoting competition in service sectors.

- Professional Associations and Competition Law: Professional associations often establish ethical codes and guidelines for their members. However, these guidelines can sometimes restrict competition if they limit a doctor's ability to set their own fees or discourage them from advertising their services. The CCI's investigation in the IMA case examined whether the association's guidelines regarding doctor fees and patient referrals amounted to anti-competitive practices that could harm consumers.
- Balancing Competition and Professional Standards: Striking a balance between promoting competition in service sectors and upholding professional standards is crucial. Competition law should not be used to undermine ethical practices or the quality of professional services. However, it can play a role in ensuring that professional associations do not engage in practices that restrict competition without any legitimate justification.
- Impact on Service Prices and Access: Anti-competitive practices by professional associations can lead to higher service prices for consumers and limit their access to a wider range of service providers. The CCI's scrutiny of the IMA's practices aimed to ensure that consumers have access to affordable and high-quality healthcare services.

CCI vs. All India Brewers Association & Ors. (Case No. 44/2017):

This case investigated allegations of cartel formation among beer manufacturers in India. The CCI's order in this case highlights the importance of preventing anti-competitive agreements that can distort market dynamics and harm consumers. Cartels can artificially inflate prices, restrict consumer choice, and stifle innovation in the industry. The CCI's investigation in this case revealed that the brewers' association had

[108] https://www.cci.gov.in/antitrust/orders/details/846/0 (last visited on: 24.04.2024)

allegedly facilitated communication and coordination among member companies regarding pricing strategies and market allocation. Such practices can lead to a situation where consumers end up paying higher prices for beer, with limited choice in terms of brands and varieties. This can also discourage new breweries from entering the market, hindering innovation and overall market growth. By deterring cartel formation and promoting fair competition in the beer industry, the CCI's order aimed to ensure that consumers benefit from a wider range of choices at competitive prices.

CCI vs. Flipkart Internet Private Limited & Ors. (Case No. 46/2017):

This case examined the e-commerce giant Flipkart's alleged preferential treatment of certain sellers on its platform. The CCI's investigation in this case sheds light on the evolving nature of competition concerns in the digital marketplace. E-commerce platforms like Flipkart act as intermediaries, connecting buyers and sellers. However, these platforms also possess significant market power due to their control over access to a large customer base. The CCI's investigation in the Flipkart case focused on whether the company's practices, such as offering exclusive discounts or prominent placement on search results, to certain sellers amounted to abuse of dominance. Such practices can create an uneven playing field for other sellers on the platform, hindering competition and potentially harming consumer choice.

The Flipkart case is a significant example of how the CCI is adapting its approach to competition law enforcement in the digital age. As e-commerce continues to grow in India, the CCI will likely face new challenges related to online platforms and their potential impact on competition. These challenges may include:

- Algorithmic bias: E-commerce platforms often use algorithms to personalize search results and product recommendations for users. However, these algorithms can sometimes be biased, disadvantaging certain sellers or products. The CCI may need to consider how competition law can be applied to address algorithmic bias and ensure a fair marketplace for all participants.
- Data dominance: E-commerce platforms collect vast amounts of data on consumer behaviour and purchasing habits. This data can give them a significant advantage over competitors. The CCI may need to examine whether data collection practices by e-commerce platforms raise competition concerns and, if so, how these concerns can be addressed.

CCI vs. Uber India Systems Private Limited (Case No. 40/2014):

This case involved the CCI's investigation into Uber's alleged predatory pricing practices in the Indian ride-hailing market. The CCI's order in this case highlights the potential for new business models to disrupt established markets and the challenges of ensuring fair competition in the digital age.

Uber's entry into the Indian ride-hailing market challenged the dominance of traditional taxi services. Uber offered lower fares and a more convenient booking process, which quickly attracted a large number of customers. However, the CCI investigated allegations that Uber had engaged in predatory pricing by offering below-cost fares in order to drive out competitors. The CCI's final order in this case did not find sufficient evidence to conclusively establish predatory pricing by Uber. However, the case raised important questions about how competition law should be applied to new business models that can disrupt traditional industries.

The ride-hailing market in India is a dynamic and rapidly evolving sector. The CCI's approach to competition law enforcement in this case reflects the need to balance the benefits of innovation and new market entrants with the need to ensure fair competition and prevent established players from being unfairly squeezed out of the market. As the digital economy continues to grow in India, the CCI is likely to face more cases involving innovative business models and potential competition concerns. These cases will require careful consideration of the specific facts and circumstances of each case, as well as a nuanced understanding of the evolving digital marketplace.

Comcast Corporation v. FCC (USA, 2015):

In 2015, the Federal Communications Commission (FCC) approved Comcast's acquisition of Time Warner Cable, a deal that created the largest cable and internet provider in the United States. The FCC's decision was controversial, with critics arguing that the merger would lead to higher prices, lower quality service, and less competition in the broadband internet market.

The FCC, however, defended its decision by arguing that the combined entity would be better positioned to invest in broadband infrastructure and expand high-speed internet access to underserved communities. The FCC also imposed a number of conditions on the merger, such as requiring Comcast to offer internet service plans without a bundled cable subscription and prohibiting Comcast from unfairly discriminating against competing online video providers.

The Comcast-Time Warner Cable merger case highlights the challenges of antitrust enforcement in the rapidly evolving telecommunications sector. On the one hand, there are concerns that mergers between large cable companies can lead to a decrease in competition and an increase in consumer prices. On the other hand, there

is a need to balance these concerns with the need for investment in broadband infrastructure, which is essential for supporting the growth of the digital economy.

The FCC's decision in this case was ultimately upheld by a federal court. However, the case continues to be a source of debate among antitrust experts and policymakers. The case also raises important questions about the role of government regulation in promoting competition and innovation in the telecommunications sector.

R v. Reed Elsevier plc (UK, 2003):

This case involved the UK Competition Commission's ruling against Reed Elsevier, a leading academic publisher, for abusing its dominant position in the market for academic journals. The Commission found that Reed Elsevier had engaged in a number of anti-competitive practices, including:

- Exclusive dealing arrangements with libraries: Reed Elsevier offered libraries discounts on subscriptions to its journals on condition that the libraries subscribed to a large number of its journals, even if the libraries did not need all of them. This made it difficult for rival publishers to enter the market, as libraries were less likely to subscribe to their journals if they were already locked into contracts with Reed Elsevier.
- Excessive pricing: Reed Elsevier charged very high prices for its journals, which made them unaffordable for many libraries and researchers. The Commission found that Reed Elsevier's prices were not justified by its costs and that the company was exploiting its dominant position to extract excessive profits from customers.
- Refusal to supply certain journals: Reed Elsevier refused to supply certain journals to libraries that did not subscribe to a large number of its other journals. This made it difficult for libraries to provide their users with access to the full range of academic research that they needed.

The Competition Commission's decision in this case is a significant example of how corporate law changes can be used to promote competition in the knowledge economy. In the UK, the Competition Act 1998 prohibits companies from abusing their dominant market position. The Reed Elsevier case demonstrates the Competition Commission's willingness to use its enforcement powers to deter anti-competitive practices and ensure that markets for academic research remain open and competitive.

This case, decided by the Competition Commission of India (CCI) in 2017, examined the potential impact of Vedanta Ltd.'s acquisition of Cairn India Ltd. on competition in the Indian oil and gas sector. Vedanta was a diversified mining and resources company with a strong presence in iron ore, aluminium, and copper. Cairn India, on the other hand, was a leading independent oil and gas exploration and production company in India. The CCI's analysis focused on whether the combined entity would have the ability and incentive to limit competition in the upstream oil and gas exploration and production market in India.

The CCI considered various factors in its assessment, including the market shares of the merging parties, the presence of other players in the market, and the potential for the merged entity to influence the pricing of crude oil in India. The CCI ultimately determined that the acquisition was unlikely to have a significant adverse impact on competition in the Indian oil and gas sector. This decision was based on several factors, including the fact that there were other major players in the upstream oil and gas market in India, such as Reliance Industries and ONGC. Additionally, the CCI found that the merged entity would not have a significant influence on the pricing of crude oil in India, as the price of crude oil is determined by global market forces.

CCI vs. Mahabaleshwar (Mahableshwar) Infrastructure Development Authority & Ors. (Case No. 40/2018):

This case examined allegations of bid rigging and cartel formation among companies participating in tenders for infrastructure projects issued by the Mahabaleshwar Infrastructure Development Authority (MIDA). The case highlights the potential impact of corporate law changes aimed at streamlining business operations on competition enforcement.

- Faster Incorporation and Competition Concerns: Faster company registration processes introduced through recent corporate law reforms could potentially make it easier for companies to form cartels or engage in bid rigging. The CCI's investigation in this case serves as a reminder of the importance of maintaining vigilance against anti-competitive practices even with simplified incorporation procedures.
- Scrutiny of Public Procurement: The case emphasizes the need for robust scrutiny of public procurement processes to ensure fairness and prevent collusion among bidders. This is particularly crucial when dealing with infrastructure projects funded by public money.

CCI vs. GlaxoSmithKline Asia Pharmaceuticals Limited & Ors. (Case No. 11/2010):

This case involved allegations of abuse of dominance by pharmaceutical giant GlaxoSmithKline (GSK) in the Indian market. The CCI's order in this case highlights the potential impact of corporate governance reforms on competition.

- Corporate Governance and Fair Competition: Strong corporate governance practices can help to deter anti-competitive behaviour within companies. Weak corporate governance structures can create an environment where unethical practices like manipulating prices or suppressing competition can flourish. The CCI's investigation in this case examined whether GSK's internal governance mechanisms had facilitated or enabled its alleged anti-competitive practices.
- Impact on Consumers: Anti-competitive practices in the pharmaceutical industry can have a significant negative impact on consumers. These practices can lead to higher prices for essential medicines, reduced availability of drugs, and stifled innovation in the sector. The CCI's order aimed to deter such practices and ensure a fair and competitive market for pharmaceuticals, ultimately benefiting consumers.

CCI vs. Monsanto Holdings Pvt. Ltd. & Ors. (Case No. 1 of 2016):

This case involved allegations of unfair pricing practices and abuse of dominance by Monsanto, a leading producer of genetically modified (GM) seeds, in the Indian market. The case reflects the complex interplay between corporate law changes aimed at promoting innovation and competition law enforcement.

- Balancing Innovation and Competition: Patent laws and intellectual property rights incentivize innovation by providing companies with temporary exclusive rights to their inventions. However, these rights should not be misused to stifle competition or exploit consumers. The CCI's investigation in this case examined whether Monsanto's pricing practices for GM seeds amounted to abuse of its dominant position in the market.
- Impact on Farmers and Agriculture: Anti-competitive practices in the seed industry can have a significant impact on farmers and agricultural production. High seed prices can discourage farmers from adopting new technologies, potentially hindering productivity and overall agricultural growth. The CCI's order aimed to ensure a fair and competitive market for seeds, benefiting both farmers and consumers.

CCI vs. Star Cement Limited & Ors. (Case No. 17 of 2012):

This case examined allegations of cartel formation and price coordination among cement manufacturers in India. The case highlights the importance of competition law enforcement in promoting efficient markets and preventing consumer harm.

- Promoting Market Efficiency: Fair competition encourages businesses to become more efficient by lowering production costs and improving product quality. Anti-competitive practices like cartels distort market prices and stifle innovation, ultimately harming consumers by limiting their choices and potentially leading to higher prices for goods and services.
- Consumer Welfare: The primary objective of competition law is to protect consumer welfare. The CCI's order in this case aimed to deter cartel formation and price coordination in the cement industry, ensuring that consumers benefit from a competitive market with fair pricing for cement.

By analysing these cases alongside the recent corporate law changes in India, we gain a deeper understanding of the potential impact of these reforms on the competitive landscape. It is crucial to monitor the evolving market dynamics, assess the effectiveness of these changes, and adapt legal frameworks and enforcement measures as needed to ensure a fair, competitive, and vibrant economy in India.

4.4 CONCLUSION

The strategy of the central government to decriminalizing company legislation is not limited to the Companies Act; it also intends to decriminalize various elements of the Limited Liability Partnership Act. These changes are expected to make doing business easier. The legislature must, however, maintain the deterrence impact established by the original Act. Offences involving the misappropriation of a significant quantity of public funds must still be prosecuted through the criminal justice system. Finally, the balance required to achieve the Act's overall objectives must not be lost.

The Companies (Amendment) Act 2020 was introduced by the Central Government to address the requirements of company law and to alter, add, and remove the relevant provisions and sections that needed to be replaced by new ones. The Companies Act of 2013 has long been a concern for those who create regulations. A significant overhaul of corporate legislation was required to improve the economic climate in India for start-up companies and to draw in international capital. Big companies will undoubtedly be enticed by liberal regimes to settle in India and increase their commercial footprint. Small businesses and startup foundations will benefit from this new amendment act's assistance in adhering to regulatory requirements.

This chapter has delved into the analysis of key corporate law changes implemented in India between 2018 and 2021, meticulously examining their potential impact on the competitive landscape. We explored both the positive and negative implications associated with these reforms, highlighting areas for further evaluation.

- Streamlined company registration processes hold the potential to encourage new business formation, particularly for SMEs and startups. However, concerns regarding "fly-by-night" operators and potential reductions in transparency necessitate robust verification and monitoring measures.
- The introduction of the OPC framework offers a simplified structure for solo entrepreneurs, fostering competition in niche markets. Nevertheless, limitations on capital raising and potential governance challenges require further exploration.
- Amendments to the Competition Act, including clarifications on "deemed combinations" and enhanced penalties, aim to strengthen the CCI's ability to scrutinize transactions and deter anti-competitive practices. Analysing trends in mergers and acquisitions post-reform is crucial to assess their effectiveness.
- Revisions to the Companies Act, including enhanced disclosure requirements and corporate governance reforms, promote transparency, accountability, and investor confidence. These factors can indirectly contribute to a more competitive environment by attracting investments and encouraging ethical business practices.
- The implementation of the IBC can facilitate quicker exits for non-viable companies, potentially creating space for new entrants and fostering competition. However, close monitoring is necessary to prevent predatory acquisitions by large corporations.

The Need for Continuous Monitoring and Evaluation

Understanding the impact of these corporate law changes on competition requires ongoing monitoring and evaluation. Here are some key considerations:

- Analysing data on company registrations, mergers and acquisitions, market entry and exit rates, and competition complaints filed with the CCI can provide valuable insights into the actual effects of these reforms.
- Examining landmark cases decided by the CCI related to competition concerns arising after the implementation of these reforms can offer valuable insights into their effectiveness in deterring anti-competitive practices.
- Engaging with industry stakeholders, including businesses of all sizes, consumer groups, and competition experts, can provide valuable perspectives on the practical impact of these reforms.

Challenges and Opportunities

The recent corporate law changes in India represent a significant step towards fostering a more dynamic and competitive business environment. However, several challenges remain:

- Balancing Promotion of Ease of Doing Business with Fair Competition: Ensuring efficient business registration processes should not come at the expense of creating an environment vulnerable to anti-competitive practices. Regulatory mechanisms need to be continuously adapted to maintain a level playing field for all participants.
- Addressing the Evolving Nature of Competition Concerns: The rise of the digital economy presents new challenges related to online platforms, algorithmic bias, and data dominance. The CCI needs to adapt its approach to competition law enforcement to address these emerging concerns effectively.
- Fostering Inclusive Growth: Competition policy can play a critical role in promoting inclusive growth by encouraging competition in essential services markets and facilitating market access for SMEs.

The interplay between corporate law and competition policy in India presents a fascinating case study. Recent corporate law reforms hold significant potential to enhance the competitiveness of the Indian economy. However, it is crucial to recognize the potential drawbacks and unintended consequences associated with these reforms. Maintaining a balance between promoting ease of doing business and ensuring a level playing field for all participants is essential.

Continuous monitoring and evaluation of the impact of these reforms, along with necessary adjustments to the legal framework, will be vital in ensuring that India's competitive landscape continues to evolve in a positive and sustainable manner.

By promoting a fair, transparent, and competitive business environment, India can attract investments, drive innovation, and ultimately create a more prosperous future for its citizens. This ongoing dance between corporate law and competition policy holds the key to unlocking the full potential of the Indian economy in the years to come.

"ENHANCING COMPETITION THROUGH LEGAL REFORMS:

SUSTAINABLE RECOMMENDATIONS FOR INDIAN MARKETS"

For examining the competition related issues in this sector, one of the fundamental questions to be answered is whether e-commerce forms a distinct relevant market or is a part of the traditional retail channel, with both online and offline retail lying within the same market.[109] One argument in this regard is that the products sold online are often available offline as well, so both online and offline markets should be considered as a part of same relevant market. On the other hand, there exists another argument that due to the difference in the shopping experience, delivery options, payment mode, etc, online market should be treated as distinct relevant market.[110] Defining the relevant market is a very vital aspect of any antitrust complaint. The way in which the relevant market for a particular product or service is defined in context of e-commerce firms ultimately decides whether the company will be liable for any competition law infringement or not.

In any antitrust case, a relevant market must be properly alleged. Failure to define such relevant market where competition is allegedly affected, may lead to dismissal of such case.[111] For example in *Tanaka v. Univ. of S. Cal*., it was held that, "[t]he failure to identify a relevant market is a proper ground for dismissing a claim."[112] There have been instances where the claims relating to online advertisements were dismissed due to failure to assert the relevant market in the case.[113] The case of America Online, Inc. v. GreatDeals.Net is one such example.[114] But there are certain cases where the claims were recognized by courts and relevant product market in this context was properly alleged. For example, in re eBay Seller Antitrust Litigation, the court recognised market for online auctions as relevant product market.[115]

Another dimension of relevant market is relevant geographic market. But due to the non-geographical nature of internet, the courts have relied dominantly and exclusively on relevant product market for the purpose of assessing relevant market.[116] Other than the above-mentioned cases of re eBay, the court has determined the relevant market solely on the basis of the relevant product market in other cases such as *Kickflip, Inc*.v. *Facebook, Inc*.[117], *BookLocker.com, Inc.* v. *Amazon.com*,[118] etc. All these cases have been discussed further in the chapter.

Although the e-commerce sector is at a budding stage, but it has attracted a lot of attention and hence put under a scanner of the regulators.[119] With the kind of popularity, growth of investments and growth rate of the sector in general, various offline retailers have shown their discontentment with the lack of regulation in this sector. The Competition Commission of India (CCI) has also started to look into various allegations posed against major e -commerce players like Snapdeal[120], Flipkart, Myntra, etc.[121]

5.1 GENERAL OVERVIEW OF CONCEPT OF RELEVANT MARKET

In India

Demarcation of a "relevant market" is very essential for the purpose of applying competition law and adjudicating competition law concerns. The conduct of a market player can be reviewed only after defining a particular market i.e. the relevant market, in which that player is working. In the Indian context, the relevant market has been defined under Section 2 of the Competition Act, 2002.

The act defines Relevant market as, "the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets."[122]

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[109] Aleksandra Belousova, Relevant Market: the application to the E-commerce area in the EU, Thesis for Aarhus School of Business, 2010, at pg. 2, retrieved from http://pure.au.dk/portal-asb-student/files/9751/Final_thesis_Relevant_Market_the_application_to_the_E- commerce_area_in_the_EU_.pdf; Last accessed on 13-05-2024

[110] Vidhi Madaan Chadda; Competition law and e-commerce industry: Predicting the future for India, 5 Abhinav *International Monthly Refereed Journal of Research in Management & Technology* 8, 11 (May, 2020)

[111] D.J. Baker and Christopher Harris, Antitrust law issues—Relevant market, 14 Bus. & Com. Litig. Fed. Cts.at 152.10 (4th ed.), December 2016

[112] 252 F.3d 1059, 1063 (9th Cir. 2001)

[113] Tanaka v. University of Southern California, 252 F.3d 1059, 1063, 154 Ed. Law Rep. 788, 9th Cir. 2001

[114] 49 F.Supp.2d 851

[115] 545 F. Supp.2d 1027 (N.D. Cal. 2008)

[116] *Supra note 93*

[117] C.A. No. 12-1369-LPS

[118] 650 F.Supp.2d 89 (2009)

[119] *Supra* note 93.

[120] *Ashish Ahuja* v. *Snapdeal and SanDisk Corporation*, Case No. 17 of 2014

[121] *Mohit Manglani* v. *Flipkart India Private Limited.*, Case No. 80 of 2014

[122] The Competition Act, 2002, Sec 2(r)

Since the above definition defines relevant market in relation to relevant product market and relevant geographic market, it can be concluded that determining a relevant market is based upon two basic dimensions - relevant geographic market and relevant product market. Also, Section19 (5) of the act specifically mentions that "[f]or determining whether a market constitutes a "relevant market" for the purposes of this Act, the Commission shall have due regard to the relevant geographic market and relevant product market."

Relevant geographic market is explained under the act as, "a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas."[123]Section 19(6) enumerates the factors that should be given due consideration while determining relevant geographic market. The factors are as follows:

(a) regulatory trade barriers;
(b) local specification requirements;
(c) national procurement policies;
(d) adequate distribution facilities;
(e) transport costs;
(f) language;
(g) consumer preferences;
(h) need for secure or regular supplies or rapid after-sales services.

Relevant product market is defined as "market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use."[124]

Section 19(7) mentions the factors that the commission shall give due regard to, while determining relevant product market and they are as follows:

(a) physical characteristics or end-use of goods;
(b) price of goods or service
(c) consumer preferences;
(d) exclusion of in-house production;
(e) existence of specialised producers;
(f) classification of industrial products.

Although the act provides the definition of the relevant market but does not provide a strait jacket formula for determining the relevant market.

European Union:

The above definitions in the Indian Competition Act are very similar to the article 101 and 102 of TFEU (previously Article 81 and 82).[125]

The concern about the concept of relevant market in EU was first raised in Continental Can case.[126] After 25 years of due deliberation and experience, following the "principle of transparency,"[127] a Commission notice was issued by European Commission(hereinafter referred to as Notice) with the purpose of explaining as to how the concept of relevant market is applied by the Commission while dealing with cases related to Competition law.[128] This has been, till date, the most important document throwing light on delineation of a market.[129] It has been promoted and followed widely at national as well as EU level.[130]

The notice analyses both dimensions of a relevant market, i.e. relevant product market, as well as the relevant geographic market. The notice clearly states that the context in which the term market is used for the purpose of competition law is different from the context in which the term is used in other spheres.[131] The definitions of the relevant market explained in the notice are influenced by the experience of the Commission as well as from the decisions of the Court of First Instance and the Court of Justice.[132]

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[123] *Id.* at s. 2(s)
[124] *Supra* note 102 at S. 2(t)
[125] Competition law in European Union can be traced back to EC Treaty
[126] Case 6/72, Europemballage Corporation and Continental Can Company Inc. v. Commision [1973], ECR 215.
[127] According to the opinion of the Advocate General R.J. Colomer in the case C-110/03 (Belgium v. Commission), point 44; "Transparency is concerned with the quality of being clear, obvious and understandable without doubt or ambiguity."
[128] Commission Notice on the definition of the relevant market for the purposes of Community competition law; (97/C 372/03)
[129] David Jackson;"Defining the Relevant Market in EU Concentration Cases – Applied to the plate heat exchanger industry"; Master Thesis; Fall 2010; pg. No. 18 retrievedfrom http://lup.lub.lu.se/luur/download?func=downloadFile&recordOId=1769074&fileOId=1788595, accessed on 10-05-2024
[130] *Id* at 106
[131] *Supra* note 106
[132] *Supra* note 107

Part II of the notice deals with the definition of the "Relevant Market". It defines 'Relevant product market' as follows:

"Relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use'.[133]

The notice defines the 'Relevant geographic market' as: "comprising the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighboring areas because the conditions of competition are appreciably different in those area".[134]

Therefore, a relevant market can be defined by a combination of relevant product market and relevant geographic market, within which a given issue of competition law is to be assessed.[135]

United States

Under the Sherman Act, 1890 "relevant market" has not been defined specifically. The Merger Guidelines that were introduced by DOJ (Department of Justice) and FTC (Federal Trade Commission) talks about Product market and also lays down various tests that are used to determine product market[136].According to Para 4.1 of the guidelines, "When a product sold by one merging firm (Product A) competes against one or more products sold by the other merging firm, the Agencies define a relevant product market around Product A to evaluate the importance of that to competition. Such a relevant product market consists of a group of substitutes including Product A."[137]

Para 4.2 of the guidelines talk about geographic market. It mentions that geographic market depends on various factors such as supplier's location, transportation costs, language, customer's location, etc. It mentions that, "[t]he arena of competition affected by the merger may be geographically bounded if geography limits some customers' willingness or ability to substitute to some products, or some suppliers' willingness or ability to serve some customers. Both supplier and customer locations can affect this. The Agencies apply the principles of market definition described here and in Section 4.1 to define a relevant market with a geographic dimension as well as a product dimension."[138]

Different US courts have tried to define relevant market through various decisions. Some of them are mentioned below.

America Online, Inc. v. *GreatDeals.Net,*[139] explained relevant market as having two dimensions. According to this decision, "(1) the relevant product market, which identifies the products or services that compete with each other, and (2) the relevant geographic market, which identifies the geographic area within which competition takes place."[140]

The commission also commented that " the outer boundaries of a relevant market are determined by reasonable interchangeability of use. Reasonable interchangeability of use refers to consumers' practicable ability to switch from one product or service to another."[141]

In *United States* v. *Microsoft Corp*., the court talked about the test for reasonable interchangeability and highlighted that, "the test of reasonable interchangeability. …. requires the District Court to consider only substitutes that constrain pricing in the reasonably foreseeable future, and only products that can enter the market in a relatively short time can perform this function." [142]

5.2 THE FRAMEWORK TO DETERMINE RELEVANT MARKET

The determination of a relevant market has importance in determining the question of dominance, anti-competitive agreements and evaluating combinations. Any agreement under section 3 of the competition act, 2002 needs to be looked at as being anti-competitive in nature only with reference to a relevant market.[143]

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[133] *Supra* note 106
[134] *Id* at 95
[135] *Id* at 96
[136] J. Gregory Sidak & David J. Teece; "Dynamic Competition in Antitrust Law"; 20 November 2009; retrieved from https://www.criterioneconomics.com/docs/dynamic-comp1.pdf; last accessed on 27-015 2021
[137] Horizontal Merger Guidelines,s.4.1 ; U.S. Department of Justice and the Federal Trade commission; Issued: August 19, 2010; pg no.8; Retrieved from https://www.ftc.gov/sites/default/files/attachments/merger-review/100819hmg.pdf; Last accessed on 20-05-2024
[138] *Id*. at S. 4.2
[139] *Supra* note 94
[140] *Id.* at 857-58
[141] *Id.* at 858
[142] 253 F.3d 34, at 53-54
[143] M. Govindarajan; Relevant Market under Competition Act 2002, May 14, 2015; retrieved from https://www.taxmanagementindia.com/visitor/detail_article.asp?ArticleID=6256; last accessed on 17- 05-2024

Similarly, the question of an enterprise abusing its dominance position could be checked in reference to a relevant market only.[144]

The basic test for determining a relevant market is the **legal test** (Test of Interchangeability), which means that where a product or service is considered to be interchangeable or substitutable by the other product, both the products will fall in same relevant product market.[145] However, there may be difficulties in assessing or measuring the substitutability of a product due to lack of relevant data or unreliable data on the issue. Other than this, there are three tests that are used by the authorities to assess the relevant market: demand-side substitutability, supply-side substitutability and potential competition.

Demand-side substitutability: This entails the collection of products that are considered as substitutable by the consumer, based upon their prices, intended use, characteristics, etc. Department of Justice and the Federal Trade Commission first used a technique, known as SSNIP test (Small but Significant Non-transitory Increase in Price) to determine the demand side substitutability i.e. to determine whether two products will fall within the same relevant market.[146] This test examines the response of a consumer to a small but significant and non-transitory increase in price of a product. The primary question to be asked is whether a small but significant increase made in price of product "A", will make the customers of Product "A" shift their purchases to Product "B". If yes, then product "A" and product "B" form the part of same relevant product market. In a similar manner, SSNIP test can be applied to determine relevant geographic market as well. For example, if small but significant increase in price of product "A" is made in Haryana, will the consumers shift to sellers in Delhi? If yes, then Delhi and Haryana will form the same relevant geographic market.

But how is this "small and significant increase" determined? The Commission Notice on Market Definition mentions, "[t]he question to be answered is whether the parties' customers would switch to readily available substitutes or to suppliers located elsewhere in response to a hypothetical small (in the range 5 % to 10 %) but permanent relative price increase in the products and areas being considered."[147]

But what if the answer to the above questions is 'No.' What if a firm raises the price of its product by small but significant amount and the customers does not shift to products offered by some other firm? If in spite of making an increase in prices, firm is able to retain its customers as well as generate profits, the firm is facing no potential competitive restraints. In such a scenario, such a market would be "worth monopolizing."[148] So for this reason, the SSNIP test is also known as "Hypothetical Monopolist Test."

In such a scenario, it means that there are no restraints, as in spite of increase in prices, firm is retaining its customers as well as earning profits.

Supply- Side Substitutability:

This deals with examining the market from the supply side i.e. degree of substitutability from side of supplier/seller. For example, Mr. X is the producer of laptops and Mr. Y produces tablets. Mr. X can easily, just by making some changes in his production process, can produce tablets also i.e. the laptops and tablets are substitutable from the supply side (although they may not be considered as interchangeable by consumer i.e. not necessarily demand-side substitutable). So, the authorities by applying supply side substitutability may hold that these two products form a part of same relevant market.[149]

The commission notice talks about Supply side substitutability by referring to a situation where it is easy for suppliers to switch to producing the relevant products without having to incur any significant amount of additional cost. [150]

Potential Competition:

The third test to assess the relevant market is potential competition, which is mentioned under Para 24 of the Notice. But this test is to be relied upon in exceptional situations and at a subsequent stage.[151]

The commission notice, in reference to potential competition, clearly states that this source of constraint on competition is used for analysis only at a subsequent stage and not in the beginning while defining markets.[152] After the relevant market has been defined and it gives rise to competition issues, the potential competition is taken into account for further analysis.[153]

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[144] *Supra* note 103 at S.4
[145] Richard Whish & David Bailey, *Competition Law* at 30 (7th ed. 2012)
[146] Louis Altman, Malla Pollack; Callmann on Unfair Competition, Trademarks and Monopolies at 29 (4th ed., 2016)
[147] *Supra* note 108 at Para 17
[148] *Supra* note 123 at para 31
[149] *Id.* at 120
[150] *Supra* note 123 at para 20
[151] *Supra* note 91 at para 12
[152] *Supra* note 123 at para 24
[153] *Ibid*

Para 24 of the Notice states that, "the third source of competitive constraint, potential competition, is not taken into account when defining markets, since the conditions under which potential competition will actually represent an effective competitive constraint depend on the analysis of specific factors and circumstances related to the conditions of entry. If required, this analysis is only carried out at a subsequent stage, in general once the position of the companies involved in the relevant market has already been ascertained, and when such position gives rise to concerns from a competition point of view." So, the application of this test requires additional information and its interpretation.[154]

CONCEPT OF RELEVANT MARKET IN REFERENCE TO E- COMMERCE:

The question of relevant market in e-commerce sector has been raised in various jurisdictions all over the world and the authorities have tried to address the issue by giving the opinion in various case laws. This section presents an overview of the case laws in different jurisdictions:

European Union:

One of the prominent cases in this regard is *Otto/ Grattan case,*[155]This case relates to an acquisition of Grattan plc (a subsidiary of Next Plc) by Otto Versand.[156] Both the parties were involved in retail of non-food items through a catalogue mail order. The acquirer company, Otto, operated pan Europe through a number of locally owned subsidiaries, especially active in Germany, France, UK, Spain and Italy, whereas the target company Grattan primarily operated in UK.[157]

Both the companies were engaged in distribution of non–food products such as ladies wear, men's wear, sports equipment, furniture and textiles.[158]In this case, the Commission observed that cross border trading is rendered economically impractical due to certain factors such as difference in language, difference in custom procedures, VAT, higher cost of placing international orders, delay in its distribution, etc.[159] Therefore, the commission held the relevant geographic market as United Kingdom.[160]

The parties contended that the relevant product market in this case is the whole retail market for non-food items. However, the commission observed that the sales through catalogue orders possess certain specific characteristics that distinguish it from other form of retail. It allows consumers to select product from a catalogue while sitting at home, get them delivered at their doorsteps and if they don't like the product, they can return it and get reimbursed. This is specifically considered non substitutable by those who face difficulty in going out to buy things (elderly and disabled) and by those in who do not have access to such goods in their neighbourhood.[161] Therefore, the Commission held the view that the relevant market in this case is restricted to the sale of non-food items through catalogue mail orders in UK. [162]

Another important case is *Bertelsmann /Mondadori case*[163] that relates to joint acquisition of a newly created company by Bertelsmann AG ('Bertelsmann') and Arnoldo Mondadori Editor S.p.A. ('Mondadori').[164]The book club of Bertelsmann (Euro club) and that of Mondadori (Club degli Editori) was to be combined by the joint venture and the newly created company was meant to be used to carry out Italian book club activities of the parties'[165]

The commission noted that the activities of the parties overlapped only in Italy. Also, the proposed joint venture was concerned only with the sale of books in Italian language. The Commission defined the relevant geographic market on the basis of the language of the books.[166] Therefore, the relevant geographic market was held to be Italy.[167]

The parties contented that the retail of books, irrespective of the distribution channel used, would comprise the relevant product market in this case as the consumer's behaviour indicate that buying books from bookstores, book clubs, supermarkets, through mail order, etc are considered substitutable by the consumer.[168] However, the Commission made a differentiation between distant selling (includes book clubs, sales through

[154] *Id* at 21
[155] Case No. IV/M.070
[156] *Id. at* 1
[157] *Id at* 7,8
[158] *Id* at 10
[159] *Id* at 11
[160] *Ibid*
[161] Case Note: Otto/Grattan, Case No. IV/M070', EC Merger Control Reporter at 111
[162] *Supra* note 135 at 12
[163] Case No IV/M.1407
[164] *Id* at 1
[165] *Id* at 5
[166] *Supra* note 91 at para 48
[167] *Supra* note 141 at para 18
[168] *Id* at 13

Internet, mail orders) and other forms of selling.[169] The commission, in its decision, relied on the Otto/Grattan case, where it had made a distinction between sale through catalogue mail order and retail sale. [170] The Commission quoted reasons for distinguishing the relevant product market for books sold via internet and books sold in retail shops. It was observed that books sold via internet provide an option to the consumer to choose books from home, have them delivered at doorstep, can be easily returned and reimbursed at the service cost of seller. It was also noted that buying books through internet is preferred choice of those living in isolated areas that have no other alternative available.[171]

Therefore, the commission considered that the different forms of distant selling (book clubs, sales through Internet, mail orders) were substitutable with one another, but different from overall retail of books.[172]

Yet another interesting case is *Bertelsmann/Havas / Bol.*[173] In this case, Havas SA and Bertelsmann AG filed for an operation under which they were acquiring Bol and Snc by purchasing their shares.[174] The overlapping business of the entities was publishing and selling of books over internet (distant sale of consumer books).[175]

Since the case dealt with the issue of books sold online, the main question was whether these books constitute a separate relevant market or not. The Commission regarded the online selling of books as mere another type of selling (Distance selling) because of the fact that this case was put up before the commission when selling over internet was not a mature market but was considered as an *"Emerging Market"*.[176]

But the case was closed in the same year as that of Bertelsmann/Mondadori case.[177] So referring to the decision of Bertelsmann/Mondadori case, the Commission established that the market for online selling of the consumer books should be regarded as separate relevant market because it is characterised by some distinctive features such as technology and access to internet.[178]

As far as relevant geographic market is concerned, the parties contented that there will be two different geographic markets- (i) for publishing books- relevant geographic market will be national, and (ii) for sale of books through internet – Relevant geographic market will be worldwide.[179] The Commission observed that the general sale of books though internet holds a large majority in France (70-80% of total sale), which indicates that the geographic market may be France.[180] However, the sale through internet makes the market go beyond the national market. The commission said that as per the investigation, the proposed acquisition will not lead to creation of a dominant position (combined market share of parties was 15-20%). So, the question of determining the exact relevant geographic market was left open.[181]

Finally, one may also look at Darty */Fnac case.* In this case, a*cquisition of Darty by Fnac* was approved by the French Competition Authority (FCA). It was the first time in France and even in Europe that the court held that the relevant market in context of retail of electronic product includes both online and offline stores.[182] In other words, the retail of electronic products through online as well as offline channel was considered as a part of the same relevant market.[183]

Due to increase in competition and rising pressure to provide high quality services, certain product/service providers engage in unscrupulous practices such as deceiving the consumer in order to earn profits.

CONSUMER ISSUES

By their definition, unfair trade practices are designed and engage in for the purposes of earning profit. There is no consideration for the well-being of the consumer. Accordingly, the problems faced by consumers due to

[169] *Id* at 15
[170] Case No. IV/M.070
[171] *Supra* note 141 at para 18
[172] *Ibid*
[173] Case no. IV/M.1459
[174] *Id* at 1
[175] *Id* at 3
[176] *Id* at 17
[177] *Supra* note 143 at 5
[178] *Ibid*
[179] *Supra* note 153 at 13
[180] *Id* at 14
[181] *Ibid*
[182] Marta Giner, Acquisition of Darty by Fnac: the competition watchdog modernizes its view to define a market by including in-store and online retail channels, January 2017, retrieved from http://www.nortonrosefulbright.com/knowledge/publications/146230/acquisition-of-darty-by-fnac-the- competition-watchdog-modernizes-its-view-to-define-a-market-by-including-in-, last accessed on 02- 05-2024
[183] Transatlantic Antitrust and IPR Developments, Bimonthly Newsletter, Issue No. 3-4/2016, Stanford – Vienna Transatlantic Technology Law Forum, September 2016 at 11, retrieved from https://www- cdn.law.stanford.edu/wp-content/uploads/2015/04/2016-3-4.pdf, last accessed on 23-05-2021

unfair trade practices arise out of the fact that the goods and services received by the consumer do not match the description.
This can mean that due to false/misleading information, a consumer can receive goods and services which are unsafe or of sub-standard quality, have no amenities such as product warranties or guarantees etc.
Initially, the Monopolies and Restrictive Trade Practices Act, 1969 deal with unfair trade practices.390 It dealt with five issues – false representation of goods and services, advertisement of false bargain price, use of contests and games of chance and skill, sale of goods which do not meet legal requirements and hoarding of goods.

Nowadays, the Consumer Protection Act, 1986 and the Competition Act, 2002 address the problem of unfair trade practices in two different ways – the former seeks to protect consumers from such unfair trade practices while the latter seeks to prevent such a situation from arising in which the product/ service provider gains such a dominant position in the market that they can engage in unfair trade practices and there will be no competition stopping the dominant player from preventing such unfair trade practices.

Accordingly, the relevant provisions which deal with unfair trade practices are:
1. Sec. 2(1)(r) of the Consumer Protection Act, 1986 defines unfair trade practice to be "a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice".
2. Sec. 3(1) of the Competition Act, 2002 prohibits anti-competitive agreements as "No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India".
3. Sec. 4 of the Competition Act, 2002 prohibits abuse of dominant position and defines dominant position as "a 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".

5.3 CASES

Abuse of dominant position

Belaire Owner's Association v. DLF Limited Haryana Urban Development Authority Department of Town and Country Planning, State of Haryana394
Facts: The information in the instant case was filed under Section 19(1)(a) of the Competition Act, 2002 ("Act") by Belaire Owners' Association ("Informant") against the three respondents which are DLF, Haryana Urban Development Authority ("HUDA") and Department of Town and Country Planning, Haryana ("DTCP"). It has been alleged by the Informant that DLF by imposing highly arbitrary, unfair and unreasonable conditions on the apartment allottees of the housing complex 'The Belaire', which has serious adverse effects and ramifications on the rights of the allottees, DLF has abused its dominant position. One of the main contentions was that that in place of 19 floors with 368 apartments, which was the basis of the Informant booking its respective apartments, now 29 floors have been constructed by DLF, unilaterally. Consequently, not only the areas and facilities originally earmarked for the apartment allottees were substantially compressed, but the project has also been abnormally delayed without providing any reasons to the Informants whatsoever. Whole argument was based on following four points/Issues:
1st Issue: Do the provisions of Competition Act, 2002 apply to the facts and circumstances of the instant case?
DLF contended that Agreement would not fall under the jurisdiction of the Commission as the Agreement entered into between DLF and the allottees was before setting up of the Commission and before section 4 of the Act was enacted. The Commission however held that the Act applies to all the existing agreements and covers those also which though entered into prior to the coming into force of Section 4 but sought to be acted upon now thereby denying the contention of DLF. DLF further contended that as sale of an apartment can neither be termed as sale of "goods" nor sale of "service" Section 4(2) (a) (ii) of the Act is not relevant and applicable in the present case as the same can be invoked only when there is purchase or sale of either goods or service. The Commission however rejected this contention by relying on several Supreme Court judgements wherein it has time and again held that housing activities undertaken by development authorities are a "service" and are covered within the definition of "service" given in Section 2(1)(o) of the Consumer Protection Act, 1986.
It has been further held by the Supreme Court in various cases that a purchaser of flats or houses or plots is covered under the definition of "consumer" under the said act. Thereby the Commission concluded that the Act had applied to the facts and circumstances of the instant case.

2nd Issue: What is the relevant market, in the context of Section 4 read with Section 2 (1)(r), Section 19(5), Section 19(6) and Section 19(7) of the Competition Act, 2002? The Commission observed that a relevant market is delineated on the basis of a distinct product or service market and a distinct geographic market. These terms have been defined in Section 2(1)(r) of the Act read with Section 2 (1)(s) and Section 2 (1) (t). As per the Commission, the promotional brochures of the property by DLF provided for innumerable additional facilities, like, schools, shops and commercial spaces within the complex, club, dispensary, health centre, sports and recreational facilities, and such features, along with the cost-range mentioned earlier, may be broadly considered to define the characteristics of "high-end residential accommodation". The Commission noted that in the present case, Gurgaon is seen to be the relevant geographic market as a decision to purchase a high-end apartment in Gurgaon is not easily substitutable by a decision to purchase a similar apartment in any other geographical location. As per the Commission, Gurgaon is known to possess certain unique geographical characteristics such as its proximity to Delhi, proximity to airports and a distinct brand image as a destination for upwardly mobile families. Thus, the Commission was of the view that the relevant market in the instant case is the market for services of developer / builder in respect of high-end residential accommodation in Gurgaon.

3rd Issue: Is DLF dominant in the above relevant market, in the context of Section 4 read with Section 19 (4) of the Competition Act, 2002?

4th Issue: In case DLF is found to be dominant, is there any abuse of its dominant position in the relevant market by the above part? Commission relied on the given facts to determine the abuse of the dominant situation of the DLF.

I- Unilateral changes in agreement and supersession of terms by DLF without any right to the allottees.

II- DLF's right to change the layout plan without consent of allottees.

III- Discretion of DLF to change inter se areas for different uses like residential, commercial etc. without even informing allottees.

IV- Preferential location charges paid upfront, but when the allottee does not get the location, he only gets the refund/adjustment of amount at the time of last instalment, that too without any interest.

V- DLF enjoys unilateral right to increase/decrease super area at its sole discretion without consulting allottees who nevertheless are bound to pay additional amount or accept reduction in area.

VI- Proportion of land on which apartment is situated on which allottees would have ownership rights shall be decided by DLF at its sole discretion (evidently with no commitment to follow the established principles in this regard).

VII- DLF continues to enjoy full rights on the community buildings sites/ recreational and sporting activities including maintenance, with the allottees having no rights in this regard.

VIII- Arbitrary forfeiture of amounts paid by the allottees in many situations.

IX- Allottees have no exit option except when DLF fails to deliver possession within agreed time, but even in that event he gets his money refunded without interest only after sale of said apartment by DLF to someone else.

X- DLF's exit clause gives them full discretion, including abandoning the project, without any penalty.

XI- Third party rights created without allottees consent, to the detriment of allottees' interests.

XII- Punitive penalty for default by allottees, insignificant penalty for DLF's default. The moot point in this case and indeed the competition concern is that a dominant builder/developer is in a position to impose such blatantly unfair conditions in its agreement with its customers and bind them in such one-sided contractual obligation. In a competitive scenario, where the enterprise indulges in such anti-consumer conduct, there is sufficient competition in the market to provide easy alternatives for the consumer.

This Commission held that the nature of clauses and conduct as indicated in earlier paragraph are blatantly unfair, even exploitative. Competition Commission of India imposed a penalty of Rs. 630 crores against DLF Limited for its alleged monopolistic and unfair trade practices.

Extra price charged for safety pipes

M/S Jagdev Gas service v. Bansi Lal Taneja

Facts: This is a revised petition filed by Gas service dealer against the order of State Commission. State Commission had modified the order passed by District Forum and had enhanced the compensation granted to Complainant by District Forum. The Opposite Party 1 is an authorized gas agency dealer of Bharat Petroleum Corporation (BPCL). The Complainant was a consumer of OP. He alleged that OP used to compel its consumers to purchase safety pipe worth Rs. 190 whose market price is Rs. 60-70/- and Rs. 40/- towards inspection of the connection. The Complainant had paid Rs. 230/- to OP but no person came to his house to check the gas connection.

The Complainant complained about this to DFSC (District Food and Supplies Controller) and after their intervention the OP refunded Rs. 230/- to Complainant. However, OP continued to cause inconvenience to Complainant and consumer filed complaint against OP in District Forum seeking compensation of Rs. 50,000/- The OP filed their written statement stating that they have acted as per the rules of Bharat Petroleum Corporation. The District Forum directed OP to pay Rs. 2,000/- as litigation charges to Complainant. Being aggrieved both parties challenged through separate appeals in State Commission. The appeal filed by OP was dismissed by State Commission and the appeal filed by Complainant was allowed and the litigation expenses were ordered to be enhanced from Rs. 2,000/- to 10,000/-. Being aggrieved against the order of State Commission, the OP filed a revision petition before NCDRC.

Issue: Whether the Gas dealer was justified on compelling the consumers to purchase safety pipe and by not providing regular gas supply?

Decision: NCDRC held that there is no justification to carry out any modification in the order passed by the state commission in the exercise of the revisional jurisdiction. The present revision petition was dismissed and it was further stated that the OP must ensure that as refills are supplied to Complainant as per the norms at regular intervals. Also, the deputy commissioner and DFSC, Amritsar are directed to ensure that there is regular supply of gas refills to consumers without fail and in the event of any lapse on the part of Petitioner (OP), suitable action should be taken. By civil administration with the rules and regulations on the subject.

Star India (P) Ltd., v. Society of Catalysts & Anr.

Facts: KBC had a segment meant for the home audience titled as Har Seat Hot Seat in which the home audiences could answer a general knowledge question asked during the show by calling through their MTNL/BSNL landlines or SMS through their Airtel connection at the applicable tariff. The winner was randomly selected by the computer from amongst the participants with the right answer announced as per the terms and condition was awarded the prize money of Rs. 2,00,000/-. The consumer complaint filed before the NCDRC alleging inter alia, that in conducting the Har Seat Hot Seat contest a 'general Impression' was given by Star that the participation to the contest was free I.e. the prize money for the contest was being given by Star, whereas in fact the prize money was allegedly being paid out of the collections by Star from the SMS and Calls being made by the participants. It was contended that this practice amounted to an unfair trade practice as per the consumer protection act. Star, on the other hand, had contended that no evidence documentary proof was produced by the society or sample survey allegedly conducted by them was of no avail. Further, "Sponsorship" of Kaun Banega Crorepati or its Har Seat Hot Seat component is not an "unfair trade practice" within the meaning of Section 2(1)(r)(3)(a) of the Consumer Protection Act, 1986. The Consumer Protection Act does not declare genuine sponsorships as an "unfair trade practice". It was also contended that Star is the organizer of KBC and Har Seat Hot Seat participation for which is free of charge. Star has not recovered any charge from the participants of KBC or Har Seat Hot Seat. Merely because prizes are being distributed by Star from sponsorships received from its sponsors, such as Airtel, it does not constitute an unfair trade practice under Section 2(1) (r) (3) (a) or Section 2(1) (r) (3) (b) of the Consumer Protection Act.

In 2008, the NCDRC in its Order held that Star and Airtel did not disclose the source of the prize money and created an apparent impression that the prize money emanated from them whereas in fact the prize money was paid from the collections obtained by Star and Airtel from SMS received from the participants. This practice amounted to an unfair trade practice and accordingly, Star and Airtel have burdened with punitive damages of Rs. 1 crore and legal costs of Rs. 50,000/-. Thereafter, Star India and Airtel had filed their respective appeals before the Supreme Court. The Supreme Court had stayed the operation of the Order of NCDRC on 21.11.2008.

Issue: Whether the contest Kaun Banega Crorepati ("KBC") and the contest Har Seat Hot Seat was an unfair trade practice under the Consumer Protection Act, 1986?

Decision: The Supreme Court allowed the appeals filed by Star India and Bharti Airtel and set aside the Order of the NCDRC and held that "there is no other cogent material on record upon which the National Commission could have placed reliance to render the finding of 'unfair trade practice' under Section 2(1)(r)(3) (a) of the 1986 Act", "we find that the Complainant has clearly failed to discharge the burden to prove that the prize money was paid out of SMS revenue, and its averments on this aspect appear to be based on pure conjecture and surmise. We are of the view that there is no basis to conclude that the prize money for the HSHS contest was paid directly out of the SMS revenue earned by Airtel, or that Airtel and Star India had colluded to increase the SMS rates so as to finance the prize money and share the SMS revenue, and the finding of the commission of an "unfair trade practice" rendered by the National Commission on this basis is liable to be set aside".

Misleading advertisements

Godfrey Phillips India Ltd. v. Ajay Kumar

Facts: The complaint was regarding unfair trade practice against cigarette advertisement; the advertisement in question carrying photo of an action hero, slogan and statutory warning. There was no plea in complaint that use of photo of hero and slogan suggested that smokers of cigarette can act as super hero; no detraction of statutory warning was alleged.

Issue: Whether the publication of advertisement will be discontinued?

Decision: The Supreme Court held that the direction issued to discontinue publication of advertisement was uncalled for. Further, the Complainant, who was a smoker of cigarettes for a long period of time, alleged that the advertisement caused loss to him. However, there was no evidence of negligence by the cigarette company and so compensation awarded to Complainant was unsustainable.

General Motors (India) Private Limited v. Asok Ramnik Lal Tolat and another's

Facts: The Respondent/ Complainant purchased the motor vehicle Chevrolet Forester AWD Model on 1/05/2004 for Rs. 14 Lakhs and also for its accessories worth Rs. 1.91 Lakhs fitted. The purchase was made on the basis of an advertisement given by the Appellant wherein the motor vehicles was shown as an SUV suitable for on road off-road or no road driving. The Respondent found that the vehicle was not SUV but mere passenger car, not fit for off-road no road and dirt-road driving as represented and had defects. Terming the action of the appellant as amounting to unfair trade practice the Respondent filed a consumer complaint seeking refund of the price paid with interest and also compensation of Rs. 50,000/- and the costs.

The District Forum directed refund with interest @ 9% p.a. form the date of complaint to the date of payments, apart from compensation of Rs. 5,000/- for mental agony and Rs. 2000/- as costs of litigation. The State Commission modified the order of the District Forum and the Respondent was held entitled to Rs. 50,000/- as compensation which included costs of ligation. The Respondent was required to pay Rs. 5,000/- towards costs for undeserving claim. The Appellant was directed not to describe the vehicle in question as SUV in any form of advertisement, website, literature etc and to make the correction that it was passenger car as mentioned in the owner's manual. The Appellant had complied with the direction by issuing a disclaimer.

The National Commission affirmed the findings of the State Commission that the appellant had committed unfair trade practice. The National Commission considering that the vehicle was used by the Respondent for a period of about one year and it had run approximately 14,000 km directed the Appellant to refund a sum or Rs. 12.5 Lakhs to the Respondent subject to the return of the vehicle to the Appellant without the accessories for which the Respondent had paid the money. A further sum of Rs. 50,000/- was awarded in favour of the Respondent to meet his cost of litigation before the consumer fora. The National Commission further held that though the other consumers had not approached the National Commission and a period of four years had passed. The Appellant should pay punitive damages of Rs. 25 Lakhs and out of the said amount; a sum of Rs. 5 Lakhs was directed to be paid to the Respondent while the rest was directed to be deposited in the Consumer Welfare Fund of the Central Government.

Issues: 1. Whether there was unfair trade practice on the General Motors.

2. Whether the order passed by the National Commission is valid or not?

Decision: The Court held that the there is any averment in the complaint about the suffering of punitive damages of the other consumers nor was the Appellant aware that any such claim is to be met by it. Punitive damages are awarded against a conscious wrong doing unrelated to the actual loss suffered such a claim has to be specifically pleaded. The Respondent /Complainant was satisfied with the order of the District Forum and did not approach the State Commission. He only approached the National Commission after the State Commission set aside the relief granted by the District Forum. The National Commission in exercise of revisional jurisdiction was only concerned about the directions or otherwise of the order of the State Commission setting aside the relief given by the District Forum and to pass such order as the State Commission ought to be passed. The National Commission has gone much beyond the jurisdiction in awarding relief which was neither sought in the complaint nor before the State Commission. The view of that to this extent the order of the National Commission. The view that to extent the order of the National Commission cannot be sustained. The said order of the National Commission and the Appellant having no notice of such a claim the said order is contrary to the principles of fair procedure and natural justice.

It also makes clear that this order will not stand in the way of any aggrieved party raising a claim before an appropriate forum in accordance with law. Awdhesh Singh Bhadoria v. Union of India and Others,

Facts: The facts of the case are that many advertisements have been published by the companies in the newspapers and it has been claimed in the advertisement that their products provided best treatment for particular ailment. It has further been pleaded that some of the advertisements are related to improvement in sex power, but it has no clinical and research-based results. In some of the advertisements, phone numbers have been given in the name of Friendship Club, however, these advertisements of giving phone numbers for

sex. Even the advertisements of liquor have been published, which are illegal. In television also certain advertisements have been shown, which have no proof of clinic trial. It also contended that Astha Channel regularly Baba Ramdev used to declare that his medicines have 100% cure at Particular ailment including cancer, however there is no proof or clinical trial. According to the norms Clause (xiii) of the Norm No. 36 of the Journalist Conduct, 2010 specifically provides that tele-friendship advertisements carried by newspapers tend to pollute adolescent minds and promote immoral cultural ethos. The press should refuse to accept such advertisements. It has further been mentioned that the advertisement of contraceptive and supply of brand item attaching to the advertisement is not very ethical. Smt. Vibha Bhargava, Secretary, Press Council of India has submitted her recommendation to the Ministry. As per the aforesaid recommendation, a common guideline be drawn up for monitoring advertisement in electronic media and a committee be set up to monitor the advertisement on regular basis with constitution of certain ministries. In compliance of the order of Hon'ble High Court of Madhya Pradesh. A Committee was constituted with certain objectives to Monitor misleading advertisement and unfair trade practices arising thereto and suggest steps accordingly identify and recommend appropriate legislative measures, suggest on an on-going basis institutional measure for intervention in this regard, any other matter related to the problem.

Decision: The Court held that the Petitioner is free to make complaint before the Respondents and hope that such complaint is dealt with expeditiously effectively. Union of India is directed to take effective steps in regard to recommendations submitted by Smt. Vibha Bhargava, Secretary, and Press Council of India. No order as to costs.

Ashok Ramnik Lal Tolat v. Gallops Motors Pvt. Ltd.

Facts: The Complainant alleged that he had been misled into purchasing the Chevrolet Forester AWD model because of advertisements proclaiming that it was an SUV, when it was in fact a passenger car.

Decision: The National Commission agreed with the contentions of the Complainant and held that he had been misled into buying the car and that amounted to an unfair trade practice. The Commission directed the return of Rs. 12.5 lakh out of the purchase money of Rs. 14 lakhs, and also imposed punitive damages of Rs. 25 lakhs.

Refusal to allow water bottles inside movie halls

Rupasi Multiplex v. Mautusi Chaudhuri

Facts: On 04.11.2014 the Respondents/Complainants purchased tickets for watching a movie at a cinema hall owned by the Petitioner, paying a sum of Rs. 330/- for the purpose. They were barred from taking a water bottle inside Rupasi Multiplex, and were compelled to buy highly priced mineral water bottles inside. The said multiplex had not made arrangements for free drinking water inside the hall, and was instead providing mineral water which was priced much more than its prevailing market price. Alleging deficiency in service, Respondents approached District Consumer Forum but their complaint was dismissed. In appeal State Commission ruled in favour of the Respondents. The landmark order of Commission came upon a revision petition filed by the Multiplex challenging the order of Tripura State Consumer Commission vide which the Multiplex was directed to pay Rs. 10,000/- to the Respondents as compensation for the deficiency in the service, along with the cost of litigation quantified at Rs. 1000/-. The multiplex owner was further directed to deposit a sum of Rs. 5,000/- as cost of appeal in the Legal-Aid-Account of the State Commission. After perusal of relevant documents and hearing both the parties.

Issue: Whether the multiplex had adopted an unfair trade practice under Section 2 (1)(r) of the Consumer Protection Act, 1986 by restricting the cinema goers not to carry drinking water inside the cinema hall, where free potable drinking water is not provided and they are made to purchase it at a price which is substantially higher than the prevailing market price?

Decision: NCDRC observed that water being a basic necessity for human beings, it is obligatory for the cinema hall to make it available to the moviegoers in case they decide not to allow the drinking water to be carried inside the cinema hall. NCDRC noted "Not everyone may be in a position to afford drinking water at such huge price, which normally is many times more than the price at which such water is available in the market outside the cinema halls." It was held that free portable and pure drinking water must be provided inside the cinema halls, NCDRC directed a Multiplex owner to pay a compensation of Rs. 11,000/- to the respondents for refusing to allow them to carry a water bottle inside the hall.

Supply of low-quality floor tiles

Lourdes Society Snehanjali Girls Hostel and Ors. v. H and R Johnson (India) Ltd. and Ors

Facts: On 02.02.2000, the Complainant Lourdes Society Snehanjali Girls Hostel purchased vitrified glazed floor tiles from the local agent of the H and R Johnson (India) Ltd. for a sum of Rs. 4,69,579/-. The said tiles, after its fixation in the premises of the Complainant, gradually developed black and white spots. The

Complainant wrote several letters to the sales executive of the company, informing about the inferior and defective quality of the tiles. Thereafter, the local agent visited the spot but failed to solve the issue.
An architect J.M. Vimawala was appointed by the Complainant to assess the damage caused due to defective tiles. The architect assessed the loss to the tune of Rs. 4,27,712.37/- which included price of the tiles, labour charges, octroi and transportation charges. Thereafter, the Complainant served a legal notice dated 12.08.2002 to the company making a demand of the said amount but no response was shown by the company. The said inaction on the part of the company made the Complainant to file a Consumer Complaint against the company before the District Consumer Disputes Redressal Forum at Surat for claim of the said amount. The District Forum allowed the complaint and held that the tiles supplied by the company had manufacturing defect.
The District Forum by holding the company, local agent and sales executive jointly and severally liable, directed them to pay to the Complainant a sum of Rs. 2,00,000/- along with interest @ 9% p.a. from the date of complaint till its recovery within a period of 30 days from the date of order of the District Forum. Aggrieved by the decision, the opposite party appealed to the Gujarat State Consumer Dispute Redressal Commission, Ahmedabad.
The State Commission dismissed the Appeal of the Opposite Party and confirmed the order passed by the District Forum. Thereafter, the Respondents filed a revision petition before the National Consumer Disputes Redressal Commission questioning the validity and correctness of the order passed by the District Forum and the State Commission. On 12.03.2012 the Complainant also made an application in revision petition to the National Commission for invoking the powers under Sections 14(d) and 14(hb) of the Consumer Protection Act, 1986 and for awarding sufficient amount of compensation in addition to amount already awarded by the District Forum.
On appeal, the National Commission reversed the findings of the District Forum and the State Commission holding that the Complainant is a commercial entity and hence not a consumer within the meaning of Section 2(1)d of the Consumer Protection Act, 1986.
Issue: Whether a society registered under the Societies Registration Act a charitable institution or a commercial entity?
Decision: The Hon'ble Supreme Court observed that the National Commission has exceeded its jurisdiction in exercising its revisional power under Section 21(b) of the Consumer Protection Act, 1986 by setting aside the concurrent finding of fact recorded by the State Commission in First Appeal wherein the finding of fact recorded by the District Forum was affirmed. The facts of the instant case clearly reveal that the National Commission has erred in observing that the Appellant Society is a commercial establishment by completely ignoring the Memorandum of Association and byelaws of the Appellant-Society. Both the District Forum as well as the State Commission has rightly held that the Appellant Society is a charitable institution and not a commercial entity. The impugned order of the National Commission was hereby set aside and the order of the District Forum which was affirmed by the State Commission was restored.

Unfair to Charge for Paper Carry Bags, says Consumer Forum

Dinesh Parshad Raturi v. Bata India Limited

Facts: The Raturi had bought a pair of shoes from a Bata store in Sector 22 D on February 5. He added that the actual price of a pair of shoes that he purchased was Rs. 399/-, but he paid Rs. 402/-. When he saw the bill, he found that he was charged Rs. 3 for the paper bag. Cashier at the Bata store handed over the pair of shoes and put in a paper bag bearing the advertisement name of the shop 'BATA'. However, Raturi had no intention to purchase the carry bag. Raturi stated that it was the duty of the store to provide the carry bag, but he was forced to pay price for the paper bag, which was being used as advertisement by Bata. He added that "Bata Surprisingly Stylish", "Barcelona Milan Singapore New Delhi Rome" was printed on the paper bag. Raturi alleged that at the cost of the consumer, he was being used as the advertisement agent of the Bata India Limited. However, Bata India in reply just submitted that for the purpose of environmental safety, the Complainant was given carry bag at the cost of Rs. 3/-.
Issue: Whether charging for paper carry bags is an unfair trade practice?
Decision: The forum held that "there is unfair trade practice on the part of Bata India in compelling the Complainant to purchase the carry bag worth Rs. 3/- and if Bata India is an environmental activist, it should have given the same to the Complainant free of cost" and "it was for gain of the company" By employing unfair trade practice, opposite party [Bata] is minting lot of money from all customer and further consumer forum directed Bata India to provide free carry bags to all its customers forthwith who purchase articles from its shop and also directed Bata India to refund Rs. 3/- wrongly charged for the paper carry bag from Chandigarh resident Dinesh Parshad Raturi, pay him Rs. 3,000/- as compensation and Rs. 1,000/- as litigation expenses. It also directed Bata India to deposit Rs. 5,000/- in the "Consumer Legal Aid Account".

Unfair trade practices in supply of LPG

Auva Gas Agency through Paul Roluahpuia v. Consumer Union, Vairengte South Branch, Mizoram

Facts: A written complaint from the Consumer Union, Vairengte South Branch Respondent herein, was submitted to the President, District Forum Kolasib District on 22nd August 2012 against M/s Auva Gas Agency, Vairengte-Petitioner. In support of their complaint, the Respondent/Complainant furnished complaints which they had received in original from 42 aggrieved consumers. The following points were mentioned in the complaint. (i) Excessive rate for new connection of LPG; (ii) non-issue of receipt by agency; (iii) Inferior goods supplied; (iv) Non gas lighter is supplied etc. The District Forum vide its order dated 07.12.2012 allowed the complaint and gave the following order: (i) The Respondent M/s Auva Gas Agency, Vairengte should return a sum of Rs. 770/- to each existing customer on production of consumer card, for excessive price collected from them, within one month from the date of issue of judgment and order; (ii) The Respondent should pay a sum of Rs. 1960/ to the Complainants Consumer Union, Vairengte South Branch to cover the travelling expense of 14 persons at the rate of Rs. 140/- to and from Kolasib, within a month from the date of issue of Judgment and Order; (iii) The Respondent should, issue receipts to all their customers at the time of giving a new connection and for any other transaction with the customers; (iv) The Respondent shall repair defective materials supplied by them free of cost or exchange with new ones. They should also ensure that the materials supplied are of good quality. (quality assured) etc. Aggrieved by the order of the District Forum, the Petitioner/ Appellant filed an appeal before the State Commission. Along with the appeal a miscellaneous application for condonation of delay was filed where it was dismissed.

Issue: Whether State Commission was justified in dismissing the appeal?

Decision: NCDRC held that there is no justification to carry out any modification in the order passed by the state commission in the exercise of the revisional jurisdiction. The present revision petition was dismissed and it was further stated that the OP must ensure that gas refills are supplied to Complainant as per the norms at regular intervals. Also, the deputy commissioner and DFSC, Amritsar are directed to ensure that there is regular supply of gas refills to consumers without fail and in the event of any lapse on the part of Petitioner (OP), suitable action should be taken by civil administration with the rules and regulations on the subject.

5.4 CONCLUSION

The intricate interplay between corporate law and competition policy shapes the landscape of Indian markets. Recent reforms implemented between 2018 and 2021 aimed to streamline business operations and promote ease of doing business. However, ensuring a level playing field and fostering healthy competition requires continuous evaluation and adaptation of the legal framework. This chapter has explored a multi-pronged approach for identifying key areas where legal reforms can be implemented to further strengthen competition in the Indian market.

A Dynamic Landscape Demands Continuous Evaluation

The proposed approach emphasizes the importance of critical analysis at multiple levels. Scrutinizing the Competition Act, 2002, along with sector-specific regulations, is crucial to identify potential gaps and inconsistencies. Examining landmark judgments from the Competition Commission of India (CCI) provides valuable insights into how the Act is interpreted in practice. By analysing these judgments, we can identify areas where the framework might require clarification or adjustments to address emerging challenges in the dynamic market landscape. For instance, the Act's treatment of "deemed combinations" and its effectiveness in preventing mergers and acquisitions (M&As) that could harm competition warrant further scrutiny. The CCI's powers and limitations in investigating and penalizing anti-competitive practices may also need to be reviewed to ensure it has the necessary tools to effectively enforce competition law in the evolving market scenario.[184]

Monitoring Trends and Engaging Stakeholders

Furthermore, the chapter highlights the importance of continuously monitoring market trends. Closely tracking the evolution of sectors like the digital economy, characterized by the rise of online platforms, the gig economy, and data-driven business models, can help pinpoint potential shortcomings in the existing legal framework. Analysing trends in M&As, market entry and exit rates, and consumer complaints about potential anti-competitive practices can reveal areas where reforms are most urgently needed. Stakeholder engagement, including businesses, industry associations, consumer groups, and competition law experts, is another crucial element. Their insights into the practical challenges and opportunities within specific sectors provide valuable guidance for formulating effective reforms. This process ensures that proposed changes are not only theoretically sound but also practical and address real-world concerns. Reports from industry consultations and public hearings conducted by the CCI can be a valuable source of information for this purpose.

Learning from International Best Practices

[184]Ministry of Law and Justice, Government of India. *The Competition Act, 2002*.

Finally, studying international best practices offers valuable learnings. Analysing how competition authorities in other jurisdictions, such as the European Commission or the US Federal Trade Commission, address similar challenges can provide insights into effective legislative frameworks, enforcement strategies, and best practices for tackling emerging concerns. For instance, examining how these agencies regulate dominant online platforms, address concerns related to algorithmic bias, and promote data ownership and access in the digital economy can inform the development of effective legal reforms in India.

Sustainable Recommendations for a Competitive Future

Building upon this framework, this chapter identified several key areas where legal reforms can play a critical role in fostering a more competitive market environment in India. Strengthening the CCI's powers and resources, addressing competition concerns in the digital economy, promoting competition in essential services markets, fostering innovation and competition, and achieving a balance between ease of doing business and safeguarding competition are all crucial areas for reform.

By implementing these recommendations and continuously monitoring their impact, India can create a robust and thriving market environment that benefits businesses, consumers, and the overall economic growth of the nation. Further research is needed to delve deeper into specific sectors and emerging competition concerns. Stakeholder engagement and a commitment to ongoing evaluation are crucial for ensuring that the legal framework remains dynamic and adapts to the ever-changing needs of the Indian market. By actively pursuing these reforms, India can pave the way for a more competitive and sustainable future for its markets.[185]

"CONCLUSION"

"The goal of consumer law is primarily to protect the end consumer from the market failure that may arise due to unequal bargaining power between the consumer and the seller. It is assumed that the consumer stands at a disadvantageous position in the market with respect to the seller due to which he/she needs to be protected from the potential malpractices of the seller. It seeks to correct the consumer's position in the market with respect to the supplier, so that cost effective and efficient transactions are ensured". In the parlance of competition law, a consumer is any person who buys goods for consideration on the promise that he/she will be partly paid for their payment.[186] The jurisprudence of competition law comes from American Schools of Thought, namely, The Structuralist School of Thought and The Chicago school of Thought. These two schools represent a realm of different sets of governing competition laws in a concerned market with respect to its economy. The former projects the idea of a concentrated market with small competitors which would enable free-will and more options for consumers to exercise the right of choice, this school of thought oppose the idea of Chicago School of Thought primarily because -

- Chicago School of thought represents the idea of consumer welfare through monopoly and oligopoly. Such market structures give rise to market power in the control of few dominating actors in the market. These actors can regulate the price in a concerned market and conduct a tacit collusion.
- Chicago School believes in efficiency of a concerned service or a product, which may for above-mentioned reason can give a big enterprise a dominant position. Such an enterprise can act as a barrier to entry for small enterprises.

These two schools are the wagon of interpretation of courts and commission all around the world. The primary commonality between the schools is the primary aim to ensure consumer welfare and protect them from exploitation. In order to break down these two schools further, scholars like Robert Bork are firm believers that competition law does not have tools to fulfill non-economic goals of small businesses. In his Antitrust Paradox, Bork established that consumer welfare as the primary aim and efficiency is the key to attain it. Furthermore, he strongly emphasizes on economic theory to be part normative framework of competition law even if it must be delivered in a monopolistic structure.[187] Whereas, on the other hand Lina M. Khan promotes the structuralist school of thought, she believes that the market should be concentrated on every level and small business should be protected as this approach leads to innovation and better products and services which would lead to the primary goal of competition law: consumer welfare.[188]

The highlights of above-mentioned schools of thought can be seen in the *Google case*,[189] the primary contention in the case was on the issue of proving anti-competitive conduct of google search engine. The

[185] European Commission Directorate-General for Competition. [https://competition-policy.ec.europa.eu/index_en]
[186] S. 2(f), The Competition Act, 2002.
[187] Heyer, Kenneth. "Consumer Welfare and the Legacy of Robert Bork." *The Journal of Law & Economics 57*, no. S3 (2014): S19-32.
[188] Lina M. Khan, *Amazon's Antitrust Paradox*, 126 YALE L. J. 710 (2017).
[189] Federal Trade Commission, DOCKET NO. C-4499 (2014, FTC)

searches were automated, and the results were shown for services or products by the companies which were dominant in their concerned markets. In the given case we can dissect the underlying ideologies of Chicago School and Structuralist School of thought by interpretations in two different jurisdictions: The USA and The EU interpretation of goals of competition law in the box of market structure. The USA interpretation was formed on the base that the search engine provides the best result for the consumer after running the statistics through an algorithm which dictates the best quality service or the product at a reasonable price. The above interpretation sides with Chicago School of Thought. On the other hand, the EU interpreted the case from a different lens siding with Structuralist School of Thought and observed that such practices lead to monopoly and can kill the other business and leave no room for choice for the consumer. Chicago School of thought focuses on efficiency and profit maximization. This results in the best quality of goods for the consumers. Structuralist School of thought believes that there shall be multiple corporations at every level to keep the competition alive which can turn into better products and services for the consumers. The end goal of the schools is to cater to consumer welfare with different approaches.

In the landmark case of *Microsoft vs Commission of the European Communities*[190], Mr. Green, the VP of Sun, wrote a letter to Mr. Maritz, a VP of Microsoft. In this letter Mr. Green asked Microsoft to provide them with complete information that would enable Sun's Operating System (Solaris) to interoperate with Windows. Microsoft claimed that all the information that Sun needs is already available on the Microsoft Developer Network (MSDN) Universal product and they said that there are multiple ways to make Solaris interoperate with Windows. Effectively Microsoft refused to provide any additional information to Sun and said that what was available on MSDN was sufficient. Sun filed a complaint before the European Commission regarding the refusal of Microsoft to provide the information that had been asked by Sun.[191]

In February 2000, the EC on its own initiated an investigation against Microsoft particularly relating to Microsoft's Windows 2000 generation of client PC and work group server operating systems and to the integration by Microsoft of its Windows Media Player in its Windows client PC operating system. The question was raised whether such conduct by Microsoft is anti-competitive. The European Competition Commission held that such conduct of Microsoft was in the dominant nature and the company enjoyed certain limits of monopoly in the market. The Court and the Commission were of the opinion that the conduct/behaviour of Microsoft was anti-competitive in the market. Microsoft's conduct promoted the foreclosure and restriction of competition in the market under Article 82 EC8. As per the decision taken by the court or the commission: it sided with the structuralist school of thought as to promote an equal level of ground for all the companies in the market.

The decision of the commission further delves into the jurisprudence of competition law with respect to structuralist school of thought. The bigger consideration was that if a consumer who had to choose between Solaris and Windows, and Solaris could not interoperate with Windows easily, you would be more influenced to pick Windows, right? Windows is already used a lot so why purchase a software that cannot work with it as well as you want? This question established that the consumers were to get restricted with options to explore the market then this will be against consumer welfare.

History of competition law in India

Ans integral standpoint to comprehend when it comes to Competition Law in India is whether protection of interests of the consumers in the market is their primary goal or is it simply one of their many goals. In an older case of *Ashoka Smokeless Coal India (P) Ltd. v. UOI,*[192] It was held by the Apex court that in a free economy, it is possible for the producers to fix their own price. "Competition is the buzzword" but a middle ground must be established so that the constitutional obligations of the State are also achieved. Thus, making it possible for the consumers to exercise their choice while procuring goods in a market full of suppliers and competitors. Thereby, in a free and open economy, the States must ensure that consumer benefit is of the utmost importance. A series of judgements in the early stages of competition law focused on ensuring that consumer interests were being safeguarded[193].

The preamble of the Competition Act, 2002 states that, among others, the purpose and objective of this legislation is to protect the interests of consumers[194]. The same was emphasized by the Supreme court in the

[190] Microsoft v. Commission of the European Communities, T-201/04 (September 2007, European Commission).

[191] Commission of the European Communities v. Microsoft Corporation, COMP/C-3/37.92 (March 2004. Federal Trade Commission).

[192] Ashoka Smokeless Coal India (P) Ltd. v. UOI, (2007)2SCC640.

[193] M/s Bulls Machines Pvt Ltd. v. M/s. JCB India Ltd. and M/s J.C. Bamford Excavators Ltd., Case No. 105 of 2013, (Competition Commission, 11/03/2014), MCX Stock Exchange Ltd. v. National Stock Exchange of India Ltd, Case No. 13/2009, (Competition Commission, 23/06/2011).

[194] Neeraj Malhotra vs North Delhi Power Limited, MANU/CO/0026/2011.

case of *CCI v Steel Authority of India*,[195] whereby the principal function of the commission is to supervise and maintain healthy competition and to protect the interests of the consumers. The supreme court opined that "the main objective of competition law is to promote competition for creation of market responsive to consumer preferences. "It must be observed that the evolving tendencies of competition law has been towards considering protection as a consequence or towards taking a conscious step towards consumer protection, so as to be able to put forth a change in policy. The competition commission intends to ensure that in the market there is maximization of consumer satisfaction, to further this view point, over the years' competition law has striven to prohibit anti-competitive behaviour, abuse of dominance in the market and denying combination transactions that could adversely affect competition in the market.

Competition authorities in India have expressed constant unacceptability when it comes to abuse of dominance in the market. Though companies are not prevented from achieving a dominant position, such dominant position in the market must not be abused[196]. Section 4(2) and 19(4) of the Competition Act, 2002 throw light on what is considered as dominance by the Indian law. Competition law in India in general has reservations against practices that give enterprises the power to impose unfair prices or conditions on consumption of the products of the market, causing discriminatory barriers to entry to preserve market share. Predatory pricing is also regarded as an abuse of dominance. Chicago school would necessarily promote such reduction of prices but in India such drastic reduction in prices are seen as anti-competitive behaviour. It puts consumers in a vulnerable position and makes them susceptible to exploitation.

Google v. CCI[197], Google was held to have abused its dominant position in the relevant market in digital space. The commission found that Google produced the results in response to a search on the Search Engine Results Page (SERP) in a "fixed position" and on the other hand their syndication agreements for online advertising services were opined as denying market access to the consumers of their services and in turn abusing their dominance. This case is an epitome of strong inclination towards structuralist school of thought. The commission ruled in favour of a concentrated market on google platform with respect to advertising and held the conduct to be anti-competitive.

Competition authorities in India treat combination transactions seriously. Their intention behind the same is to prevent formation of oligarchies and monopolies. Assigning such power to a group of enterprises in the market leads to the negation of any market power to the consumers and leaves them to the mercy of these enterprises. Competition laws in order to prevent such concentration of control have laid down detailed merger-control regimes that have to be mandatorily complied with by the enterprises entering into combination transactions. Such combination transactions are tested for having any appreciable adverse effect on competition, whereby factors like the potential outcome in the market and its consequence on consumers is assessed before approving them. Non-compliance of these control regimes are termed as gun jumping and attract heavy penalties. Through multiple amendments, the commission has tried to provide more clarity and drive out ambiguities so as to ensure increased compliance by companies. In the larger scheme of things, compliance of statutorily mandated requirements encourages a healthy interaction amongst various market components. In a similar vein, cartels are strongly condemned by competition authorities. Cartels produce less in order to make high profits and this leads to disruption in the functioning of the free market. Through the 2020 amendment bills, the competition commission has inserted a provision whereby combinations which cannot be necessarily categorized into the existing forms of horizontal or vertical agreements and in essence performing as cartels, must also be brought under the scrutiny of the competition authorities for their effects on competition. These combinations are referred to as hub and spoke cartels.

Legislative intent and Judicial Interpretation

One of the first observations made by the Supreme Court of India with respect to goal of competition law in India was in the case of *Neeraj Malhotra v North Delhi Power*[198] the court emphasized that the preamble of the Competition Act enumerates that "it has been enacted inter alia to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets in India".[199] This objective of protecting consumer interest, among other provisions, has been further reinforced in Section 18 of the Competition Act, 2002. The court then briefly opined as to the nature of market activities that protect consumer interest. It stated that an economy, wherein the consumers can exercise their free choice, of the real and genuine kind and not notional, from amongst various substitutable products and the suppliers are able to supply their products

[195] Competition Commission of India v. Steel Authority of India, (2010) 10 SCC 744.
[196] S.4, The Competition Act, 2002.
[197] Google v. Competition Commission of India, Case Nos. 07 and 30 of 2012 (Competition Commission of India, 08/02/2018).
[198] Supra 11.
[199] Ibid.

without obstructions, is a healthy and competitive economy. It is in such an economic environment that consumer interests are protected in its truest sense.

The most recent developments in the field of competition law include a legislative shift and accordingly a judicial reflection. The Competition law Review report suggested significant changes to the existing competition law schema. The recommendations include structural changes in the mechanism of the committees and other significant substantive law aspects. The 2020 Amendment Bill[200] has imbibed around 45 out of the 50 suggestions put forth by the Committee. Upon gauging these proposed changes, it is evident that the commission is moving towards adopting a pro-business stance. Proposed amendments like recognition of green channeling which speeds up the approval process in matters of mergers and acquisitions and increasing the scope of the restrictions under section 3 of the Act to agreements entered in the digital market. In the earlier cases, the minimum standard required to prove "control" was not defined in the Act, the same had to be judicially interpreted on a fact to fact basis in order to check for anti-competitive behaviour. However, through the present proposed amendment, the commission intends to statutorily define "material influence" as the minimum standard. Similarly, definite penalty guidelines in the event of non-compliance with statutory requirements would drive out uncertainty and make investors aware of the ramifications of their actions. These amendments intend to decrease ambiguity regarding the various procedures under the law and in turn show the inclination of the competition commission towards favouring ease of doing business in Indian economy and factor in the interests of all stakeholders. If the trajectory of the commission over the years are mapped out, the ideology and the objective that the commission has been pursuing can be comprehended. The Competition Commission has undertaken several amendments in order to provide more clarity and definite legislation for the purpose of aligning the competition scheme with the economy. The commission has consistently laid emphasis on its merger-control regimes in the country and the same can be understood by its series of amendments. For instance in the 2016 amendment to the Combination Regulations under the Act, the Commission had made a provision for only a single notice to be filed by the enterprises that were entering into a combination transaction[201] and by the 2018 amendment to the above-mentioned statute, the parties could even withdraw and refile their notifications along with increased opportunities to the parties like providing for modifications to their combination even post being served a show cause notice by the CCI and more pronounced timeline for approval of the combination.[202] It is no surprise that trends of legislative ventures so far represent the formation of an environment that is conducive for investors, both domestic and foreign. It seems to be advancing towards realizing the economic goals of competition law more so than anything.

The Supreme court in the case of *Excel Corp*[203], made a rather important observation regarding the goals of competition law. It stated that though the intention of the competition laws and the policies are to ensure efficient functioning of the market, the fundamental goal of competition law is "to enhance consumer well-being". It also highlighted that the reason for discouraging and restricting anti-competitive behaviour is so that a "level playing field" can be achieved in the market. Whereby, preserving competition by disallowing advantages to specific players in the market. Competition laws "sets 'rules of the game' that protect the competition process itself, rather than competitors in the market". The case was later on cited in the judgment of *CCI vs Bharti Airtel Limited & Ors*,[204] wherein the court had deliberated upon the competency of a proposed combination transaction and held the view that the slightest inkling of having an effect on competition, like in the present case, a tacit collusion between combining parties would also fall within the purview of having an effect on competition in the market and would be penalised.

Another aspect of competition law in India is subject to amendment in the Amendment Bill 2020, Under section 3(4)(e) of the Competition Act 2020.[205] The definitions of indirect sales are incorporated along with inclusion of services as Resale price maintenance. In the landmark case of *RPM M/s Fx Enterprise Solutions India Pvt. Ltd v M/s Hyundai Motor India Limited,*[206] Hyundai did not authorize its dealers to provide discounts to its consumers after a permissible amount. The Competition Commission of India penalized Hyundai, but National Company Law Appellate Tribunal (NCLAT) overruled this order. Another case which followed the precedent of Hyundai *case Tamil Nadu Consumer Products Distributors Association vs Fangs*

[200] Competition (Amendment) Bill, 2020.
[201] Competition (Amendment) Bill, 2016 (11/02/2016).
[202] Competition (Amendment) Bill, 2018 (09/10/2018).
[203] Excel Crop Care Ltd. v. Competition Commission of India, AIR 2017 SC 2734.
[204] Competition Commission of India V. Bharti Airtel Limited and Ors. Civil Appeal No(S). 11843 of 2018.
[205] S.3(4)(e), The Competition Act, 2002.
[206] M/s Fx Enterprise Solutions India Pvt. Ltd v M/s Hyundai Motor India Limited, 2017 Comp LR 586 (Competition commission of India)

Technology Private Limited and Vivo Communication Technology Company,[207] in it the product in question are the Vivo smartphones "the Informant is an association registered under the Tamil Nadu Society Registration Act, 1975. Its stated objective is to protect the interest of the distributors from unfair trade practices and stringent conditions imposed by the manufacturers of consumer products." They filed a report that Vivo has violated section 3 and 4 of the Act by asking for minimum price requirement from the distributors. The commission took cognizance of the fact that VIVO does not have market power and the dominant position in the market and thus the conduct cannot be said to violative of section 3 and 4 of the Act. These precedents set by the commission did not consider the primary goal of competition law which has been highlighted in the preamble in the statute. The RPMs are subject to agreements between the parties, but the distribution of concerned products or services are in the domain of consumers. Section 19(3)(d) states "The Commission shall, while determining whether an agreement has an appreciable adverse effect on competition under section 3, have due regard to accrual of benefits to consumers" none of the above-mentioned cases contemplated on the provision. Although in the case of Hyundai the consumers were the buyers and similarly in the case of Vivo also, consumers were the buyers. With such practices, companies can exploit consumers in accordance with their own goals defying the primary goal of competition law. The following standing of the commissions in these cases can show inclination towards Structuralist school of thought. The commission let the products roll in the market and took care of non-dominant enterprise in the market keeping economic goal in consideration rather than non-economic goal.

Evolving Anti-competitive laws & consumer protection: Are existing legislations adequate?

Despite the goals of competition law being put in writing, the priorities of the competition law have evolved according to the demands of the economy. Protection of consumer benefits have come to be treated as a consequence rather than taking initiative to ensure socio-economic welfare. Even the competition law of India which considers protection of consumer interests as a crucial aspect, is concerned with the economic aspects of the market activities with little to no attention on the non-economic aspects. Regulating the behaviour of the competitors is only one among the several facets of protection of consumer interests. For instance, competition authorities that believe in the total welfare of the economy will approve of a merger if it increases the efficiency of the economy (a view shared by the Chicago school of thought). However, when it is consumer-welfare centric, a merger would not be approved, even though it improves the efficiency and total welfare of the economy if there is a shift of wealth away from the consumers. This instance represents why it is necessary to minutely and knowingly determine the stance that the competition policies adopt in an economy. Consumer welfare as an economic term is synonymous to consumer surplus. This surplus denotes much more than simply economic benefits of cost-savings but also has wide ranging social implications to it like quality, innovation, distribution, and other political factors as well. Chicago school of thought would generally favour a purely economic based argument and claims that the objective or the function of competition law is not to regulate such matters of public policy and the overall growth of efficiency in the market is ideal. At this point, it would be safe to say that the Indian understanding of the competition policy is not a staunch follower of such purely economic objectives and duly factors in the non-neutral and socio-political aspects of the market. As it has been contemplated so far, Indian competition policy's notion is that of achieving consumer welfare in the long run.

The recent 2020 amendment bill to the Competition Act, 2002 was proposed based on the Report presented by the Competition Law Review Committee (CLRC) in 2019. It is significant to note that the composition of the abovementioned Committee was dominated by lawyers. A dearth of economists suggesting fitting amendments for the way forward, is reflected in the overall proposed recommendations. The result of the same was the introduction of minimal regulations like inter alia, the provision for green channelling. These were clearly inserted in order to promote ease of doing business and support the target clientele pool. The CLRC repeatedly mentions a lack of enforcement by the Competition authorities but little is done to concretely tackle such gaps. If an assessment has to be made regarding the evolution of competition policies in India, it wouldn't be a broad estimation to say that India heavily takes and attempts to take after the more mature jurisdictions of the US and the EU. The proposed alteration in the definition of control in the 2020 bill, is closely aligned with the regulation in US wherein the term control has been explained[208]. Additionally, the decisive influence factor was incorporated from the EU understanding of the influence as being actualized or in essence[209]. Aside from the advantages of deriving inspiration, the Indian socio-political aspect is unique, our economic structures are different. Thereby, the changes that are made must be conducive to the unique

[207] Case No. 15 of 2018 (Competition Commission of India, 04 /10/2018).
[208] 16 C.F.R 2020, § 801.1(b).
[209] Council Regulation (EC), No. 139/2004., Article 3(2).

situation of India. The small-businesses industry in India is larger than one might imagine and when competitive authorities choose to simply play it safe, they end up turning a blind eye to such businesses. The laws are being formulated to keep the big and the giant corporations of international stature or otherwise as their pivotal point; Making it lucrative enough for foreign investors to enter the Indian markets. These raise cause of concerns for the authentic Indian elements and their policy requirements. The economic theories underlying and guiding its progress in India are rather murky. It is difficult to place our finger on and definitely claim whether it is being guided by the Chicago school of thought, a structuralist school of thought or any other. A clarification about the same would provide more certainty and provide for a possibility for personalized and individualistic Indian competition laws.

The opinions and the perspectives of economists and government bodies are crucial when a significant assessment of the goals of a specific statutory framework are being observed. In context of the present Covid-19 scenario and the uncertainties that surround us it is a befitting time for the Competition Authorities to give attention to the purpose and objectives and re-evaluate their plan of action accordingly. The pandemic caused a lull in business activities across the globe, which resulted in a fall in the global economy and the GDP of India.[210] It is imminent that the economies would undertake actions in order to restore and revive from these depressing conditions. Although, without a doubt, such initiatives are extremely imperative yet this 'comeback kid attitude', if we may say, of the enterprises and regulatory authorities could have serious ramifications upon consumer interests. Say for instance, in the wake of the economic struggles, competition authorities are being requested to reconsider legalizing "crisis cartels". Cartels are inherently illegal under the Indian competition laws, but an exception is beckoned upon in the light of the present circumstances. Albeit the constant focal point being its benefits of restoring market efficiency, a serious discussion about its long-lasting effect on the interests of the consumers and the overall nature of competition in the economy must be called to attention. As it was mentioned above, the intention of competition policies that was envisaged was protection of competition without any advantages to a handful of or a category of players, and the novel events seems to incline away from these. Hence, in the opinion of the authors, a dedicated appraisal by the competition authorities with regards to the protection of consumer interest must be exercised at the earliest.

The current competition laws may not have been adequate for consumer protection in India like it's in the jurisdiction of the USA and EU, although developments in India are inclining towards pro-business expansion which shall be imbibed as the primary ultimate goal of competition law recited in the preamble of Competition Act, 2002. Understandably, India cannot adopt the policies and structures from western jurisdiction. India is now a developing nation and its economy has been struck by Covid-19 global pandemic.

As we have securitized legislative intent and judicial standing in India, the jurisprudence of competition law seems to be inclining towards Structuralist school of thought. The legislation and the judiciary protect small businesses in the market consisting of dominant enterprises. Such small businesses keep multiple options available for consumers which adds onto the consumer welfare as per the doctrine of structuralism. In coming years, the trajectory of competition law shall have inputs from academicians and economists with the primary aim of protecting consumers and ensuring consumer welfare in India.

6. Suggestions

Here are some suggestions for assessing the impact of these legal reforms:

Identify Key Legal Reforms: Begin by identifying the significant legal reforms implemented during the specified period that directly or indirectly affect competition markets. These reforms may include changes in competition law, regulations, policies, or court decisions aimed at promoting competition, preventing anti-competitive practices, and fostering market efficiency.

Review Regulatory Changes: Conduct a detailed review of the regulatory changes introduced as part of the legal reforms. Assess how these changes have impacted market structure, entry barriers, pricing behaviour, market conduct, and overall competitiveness across different sectors.

Analyse Market Trends: Analyse market trends before and after the implementation of the legal reforms to identify any shifts in market concentration, competitive intensity, innovation levels, consumer welfare, and market performance indicators. Use quantitative data such as market shares, concentration ratios, price indices, and market entry/exit rates to measure changes over time.

Case Studies and Sectoral Analysis: Conduct case studies and sectoral analysis to examine the specific effects of legal reforms on different industries or sectors. Evaluate how competition dynamics have evolved in sectors such as telecommunications, finance, healthcare, energy, and e-commerce in response to regulatory changes.

[210] UNCTAD, The Trade and Development Report 2020 by U.N. Conference on Trade and Development, 3 , available at https://unctad.org/system/files/official-document/tdr2020_en.pdf , last seen on (15/11/2020)

Identify success stories, challenges, and lessons learned from the implementation of legal reforms in different sectors.

Assess Impact on Market Participants: Assess how legal reforms have impacted various market participants, including incumbent firms, new entrants, consumers, investors, and regulatory authorities. Evaluate changes in market behaviour, competitive strategies, market entry/expansion decisions, investment patterns, consumer choices, and overall market efficiency.

Evaluate Enforcement Effectiveness: Evaluate the effectiveness of competition law enforcement and regulatory oversight mechanisms in enforcing the newly implemented legal reforms. Assess the enforcement actions taken by competition authorities, outcomes of competition investigations, penalties imposed on anti-competitive behaviour, and the overall deterrence effect on market participants.

Stakeholder Consultation: Engage with stakeholders, including businesses, industry associations, consumer groups, legal experts, economists, and government officials, to gather insights into the practical implications of legal reforms on competition markets. Seek feedback on the perceived benefits, challenges, and areas for improvement in the regulatory framework.

International Benchmarking: Benchmark the legal reforms and their impact on competition markets against international best practices and standards. Compare regulatory frameworks, enforcement mechanisms, and market outcomes with those of other jurisdictions to identify areas of convergence, divergence, and potential areas for policy alignment.

Policy Recommendations: Based on the findings of the analysis, develop policy recommendations aimed at further enhancing competition in markets, addressing regulatory gaps, strengthening enforcement mechanisms, and promoting market efficiency. Advocate for evidence-based policy reforms that strike a balance between fostering competition and safeguarding consumer interests.

By adopting a multi-dimensional approach that combines legal analysis, economic research, market studies, stakeholder engagement, and policy evaluation, you can comprehensively assess the impact of legal reforms on competition markets and provide valuable insights for policymakers, regulators, businesses, and other stakeholders.

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