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The Competition Act in Transition: Evaluating Amendments and The Road Ahead

Dr. Sonali Yadav[a]

[a]Head of Department, Legal Studies, Seth M R Jaipuria School, Gomti Nagar, Lucknow, India

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The 2002 Competition Act was reformed into legislation when the Parliament enacted it into law, from monopoly control to good competition and consumer protection in the rapidly globalising economy. The new legislative tool, spearheaded most urgently by the Competition Act, 2023, is a direction pointer towards the revolution. The changes have brought in groundbreaking improvements, including the deal value threshold (DVT) to capture mergers and acquisitions on a broader basis than traditional asset/turnover thresholds, the settlement and commitment system to expedite the resolution of cases, and the leniency plus regime to encourage the detection of cartels. Additionally, the explicit definition of hub-and-spoke cartels, penalty rules, and regulatory rules for online markets also indicates a more focused attention to the issues of the day raised by technology-based economies and cross-border business models. This article analyses these trends in the light of global trends in antitrust and Indian judicial precedents. It is concerned with the enforcement practice of matters like the need for institution-building in the Competition Commission of India (CCI), transparency in commitment and settlement procedures, and challenging overreach while regulating the digital economy. Analysis places India's reforms within the comparative context of the European Union, the United States, and other emerging economies and looks at convergence and divergence in a regulatory framework. The future demands sectoral regulations, more reliance on economic data, and conformity to the highest attainable international standards. Ultimately, India's competition regime will be successful if the CCI and the judiciary strike a balance between market freedom and consumer protection, thereby fostering an innovative economy.

Keywords: *competition, amendments, deal value threshold, settlement and commitments, leniency plus.*

INTRODUCTION

Competition law is the foundation of a just and effective market economy since it makes trade take place within boundaries which render it innovative, efficient, and consumer-oriented. In India, this shift away from the Monopolies and Restrictive Trade Practices Act 1969 (MRTP Act)[1] and towards the Competition Act 2002[2] was a radical shift in regulatory thought away from monopoly control to fostering competition as the pedestal on which economic advancement would be realised and the interest of the consumer safeguarded.[3] The Competition Act empowered the Competition Commission of India (CCI) as the key enforcement agency, responsible for preventing anti-competitive agreements, abuse of market power, and mergers that may harm market competition.

The Indian economy has been impacted during the last two decades by globalisation, liberalisation, and the boondoggle of the digital economy. This has introduced new competition regulation dynamics, including data markets, platform power, and cross-border mergers that have a propensity to circumvent traditional regulation. The legislature has tried to update the framework to bring it in line with the world's best practices and ensure that it is in synchronisation with marketplace realities to combat the same. The Competition (Amendment) Act 2023[4] is a milestone to the extent that it brings deal value thresholds (DVT) to merger control, settlement and commitment tools for ease of enforcement, a leniency plus regime for cartels, direct recognition of hub-and-spoke cartels, and enhanced penalty provisions.

This article analyses the creation, reach, and impact of these amendments in the broader sweep of India's competition law development. It considers whether the reforms are appropriately sensitive to concerns arising in digital economies and cross-border organisational structures, and whether institutional capabilities of the CCI are aligned to enable effective enforcement. Furthermore, by situating India's reforms within a comparative worldwide experience, the analysis further identifies the possibilities and limitations of the amended regime. The key

[1] Monopolies and Restrictive Trade Practices Act 1969
[2] Competition Act 2002
[3] Ovidiu-Horia Maican, 'The legal regime of competition in India' (The 19th International Conference on Business Excellence, 2021)
[4] Competition (Amendment) Act, 2023

argument advanced is that while the 2023 amendments enhance the legislative framework, they will thrive upon successful implementation, judicial predictability, and institutional capacity to make a fair, particular, and innovation-encouraging marketplace.

EVOLUTION OF COMPETITION LAW IN INDIA

The development of the competition law in India mirrors the metamorphosis of its economy from a state-led to a liberal marketised pattern. Domestic needs and international tendencies have correspondingly impacted the policy and legal environment, moving away from the restrictive model of monopoly control towards promoting competition and consumer protection.

The MRTP Act, 1969: Controlling Monopolies: The Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act) was the first all-encompassing law of India in the context of economic power concentration. Promoting the socio-economic goals of the Constitution, more specifically the Directive Principles of State Policy, it sought to abolish monopolistic, restrictive, and unfair trade practices. The MRTP Commission was established as the enforcement body. However, the Act was primarily focused on controlling the size of enterprises rather than encouraging competitive markets. Over time, it proved inadequate due to:

- Excessive emphasis on pre-entry restrictions instead of regulating anti-competitive conduct.
- The MRTP Commission had limited powers, functioning like a quasi-consumer protection body.
- Inability to deal with new anti-competitive practices emerging in liberalised and globalised markets.

Liberalisation and the Need for a New Law: The 1991 economic reforms changed India's economic system dramatically by promoting private business, foreign investment, and global integration of the economy. The MRTP regime was incapable of dealing with this type of environment because it couldn't deal with abuse of dominance, cartels, and new merger control. Recognising these shortcomings, the Government constituted the Raghavan Committee in 1999 to examine the need for a modern competition law. The Committee recommended a shift in approach—from controlling monopolies to fostering competition, emphasising consumer welfare, efficiency, and innovation as central goals.

Enactment of the Competition Act 2002 –

Acting on the Raghavan Committee's report, Parliament enacted the Competition Act 2002, replacing the MRTP Act. The Act established the Competition Commission of India (CCI) as an autonomous regulator with a broad mandate, including:

- Prohibiting anti-competitive agreements (Section 3).
- Preventing abuse of dominant position (Section 4).
- Regulating combinations (mergers, acquisitions, and amalgamations) through merger control provisions (Sections 5 and 6).

Institutional and Judicial Evolutions: The initial period of the CCI witnessed judicial challenges to its constitutional legitimacy, and thus, the Competition Appellate Tribunal (COMPAT) was introduced with a view to appellate supervision. As time passed, the landmark judgments of DLF v CCI, Google v CCI, and Cement Cartel cases have helped evolve Indian competition jurisprudence. COMPAT was replaced by the National Company Law Appellate Tribunal (NCLAT) thereafter, and the interpretative clarity is decided by the Supreme Court of India.

Towards Modernisation and the 2023 Amendments: To meet new challenges, especially in digital markets, cross-border mergers, and cartel detection, the Government made some amendments year by year, the culmination of which was the Competition (Amendment) Act, 2023. Reforms introduced address deal value thresholds (DVTs), settlement and commitment regimes, leniency plus measures, and enhanced penalties. This change is one of shifting from static law that is distracted with structural market engagement to a dynamic system that can acclimate itself to the challenges of globalised and technology-based markets.

THE COMPETITION (AMENDMENT) ACT 2023 – KEY CHANGES

The Competition (Amendment) Act 2023 is the most revolutionary transformation of India's competition law regime after the Competition Act 2002. The amendments were motivated by the twin push factors of finding solutions to challenges in the digital and cross-border markets and harmonising Indian law with global antitrust practice. Some of the most high-profile reforms are summarised below:

Deal Value Threshold (DVT): Historically, the Competition Act has used asset- and turnover-based thresholds when considering whether to make mergers and acquisitions notifiable. Various digital economy takeovers, where targets had little turnover but great strategic importance (e.g., start-ups, platforms in the tech industry), escaped detection. The 2023 Amendment also has a threshold of deal value: notification to the CCI is obligatory for any such deal with a deal value of over INR 2,000 crore and the target having 'substantial business operations in India,' irrespective of asset or turnover size. This harmonises India with international practice (e.g., Germany and Austria) and seeks to catch so-called 'killer acquisitions.'

Settlement and Commitment Mechanisms –

The Act brings in a settlement and commitment mechanism to facilitate quicker resolution and lessen litigation.

- **Settlements:** Those parties being investigated for anti-competitive agreements or abuse of dominance can provide an offer to settle proceedings, subject to approval by CCI.
- **Commitments:** Parties can suggest commitments (behavioural or structural remedies) before the closing of the investigation, so as not to prolong the inquiry.
- This is borrowed from the EU system and intended to clear backlog cases, but risks undermining transparency and fairness in negotiations.

Leniency Plus Regime: The reform enhances the leniency scheme for cartel identification by adding a provision of leniency plus. A cartel participant under investigation who provides information on an independent, unrelated cartel can receive an additional penalty reduction for both cartels. This encourages whistle-blowing and expands the CCI's coverage to identify cartels that operate in secret, according to international best practices in economies such as the US and UK.

Hub-and-Spoke Cartels: The 2023 Amendment specifically identifies hub-and-spoke cartels, where a central player (the hub, typically a platform or supplier) coordinates collusion amongst competitors (the spokes) who might not have bilateral understandings with one another. This definition enhances the CCI's capacity to address collusion in digital platforms, e-commerce, and vertical supply chains where indirect coordination is progressively occurring.

Penalisation and Turnover Clarification: The Act now authorises the CCI to levy penalties on the basis of the worldwide turnover of the defaulting enterprise rather than the Indian turnover. The extension ensures that companies which operate on a multinational scale cannot escape unpunished by keeping their registered Indian operations minimal. The amendment also makes provision for calculating the penalty on the basis of income, profits, or turnover, thereby giving the CCI wider discretion to impose just sanctions.

Extended Definition of 'Control': The meaning of 'control' was extended to material influence, thus easing the test of identifying persons with substantial control over business policy. This synchronises Indian law with EU practice and catches more potentially anti-competitive mergers.

Focus on Digital Economy: Recognising the predominance of internet platforms, the amendments combine CCI's powers to regulate data-driven markets in a manner such that players benefiting from network effects and data concentration do not abuse their market positions to harm consumers and competition.

Rationalising Timelines: To facilitate efficiency, the amendment shortens the time period for the CCI to give a prima facie opinion on a combination to 30 calendar days from 30 working days, facilitating quicker clearances on transactions and heightened certainty for companies.

CRITICAL EVALUATION OF AMENDMENTS

While the Competition Act 2023, places onerous provisions for India to set out on competition legislation, the provisions of the Act are onerous but inspiring. Realistic examination of the Act takes into account enforcement realities and institutional capacity and makes the Act economically reality-friendly in India.

Deal Value Threshold (DVT): Scope and Uncertainty –

The inclusion of the requirement for deal value threshold (DVT) is a favourable direction to bring high-value deals in the pharmaceutical and technology industries into the ambit of exploration, beyond the comprehensive turnover-based investigation. Challenges preventing:

- **Uncertainty regarding 'Substantial Business Operations':** The Act does not define this explicitly, leaving new start-ups as well as foreign investors uncertain. Unless clarified by regulations or clarified by CCI, this has the potential to result in compliance expense and transaction delay.
- **Overloading the CCI:** Filing explosion may ensue, burdening the Commission's capacity, especially in evaluating new data-driven markets.
- **International Comparison:** Robust guidelines on DVT applicability by Germany and Austria; their lack can precipitate legal challenges to India's structure.

Settlement and Commitment Mechanisms: Efficiency versus Transparency – Settlement and commitment mechanism assures quick decisiveness of disputes, decreased litigation, and business confidence. The potential liabilities are self-evident:

- **Lack of Transparency:** The CCI negotiation process could be walled off from the public eye, and hence, there is a possibility of arbitrariness.
- **Weak Deterrence:** If companies can 'settle' conveniently, the deterrence role played by fines is lost.
- **Capacity to Implement:** The CCI would have to build in-house skills in examining commitments as well as tracking compliance, where even settled jurisdictions are struggling.

Leniency Plus Regime: Enabling Identification of Cartels –

Leniency plus is likely to make cartel identification more efficacious through the encouragement of whistleblowers. However:

- Its success relies on confidentiality assurances and certain reductions in penalties, in the absence of which companies will be reluctant to cooperate.
- Overlap with other leniency provisions can create procedural anarchy unless and until the CCI issues detailed guidelines.

In India, where cartelisation in unseen industries (transportation, cement, etc.) is common, this can be limited in scope compared to developed countries.

Hub-and-Spoke Cartels: Expanding Liability –

Direct exposure of hub-and-spoke cartels tracks global antitrust directions and resolves problems in e-commerce as well as online media. But:

- It is inherently difficult to establish ‘concerted action’ in such indirect understandings.
- Excessive enforcement will discourage vertical agreements, which are legitimate, like price resale maintenance or platform facilitation.
- Without economic proof, pro-competitive business models can be discouraged.

Penalties and Global Turnover: Deterrence vs. Disproportionality –

Granting penalties on global turnover is an aggressive step that raises deterrence against multinationals. But:

- It is proportionality punishing an international player for Indian conduct could be disproportionate.
- Palestine and foreign investment would be deterred were such penalties to be applied unless linked to clear principles of calculation and proportionality.
- Judicial intervention is likely to be requested, extending litigation and delaying enforcement.

Institutional Capacity of the CCI –

The amendments broaden the mandate of CCI, but do not necessarily address its institutional shortcomings:

- Limited human resources and expertise in digital markets, data analysis, and economic modelling can limit effective enforcement.
- The dual role of investigator and adjudicator in settlements creates concerns about due process.
- The forthcoming amendments might fail if structural changes enhance the CCI's power.

Global Practice Alignment: Convergence and Divergence –

Indian reforms strictly converge with EU and US competition policy. But convergence is yet to come:

- The Indian system still lacks a specialised competition appellate body (post-COMPAT), relying on the NCLAT, which may not have deep antitrust expertise.
- Over-reliance on ex-ante regulation in internet markets in the absence of complementary regulatory direction can lead to regulatory ambiguity.

ROAD AHEAD

The Competition (Amendment) Act 2023 has put India on the way to a more harmonised and responsive international competition regime. Law reform is merely one step in the right direction; implementation, institutional capability, and judicial clarity, however, will be the points of make or break towards achievement. Evolution next needs to be multi-dimensional so that the amendments are framed in successful outcomes.

Clarifying the Deal Value Threshold (DVT) Usage: To make the DVT function optimally, the CCI must provide clear instructions and direction on what is meant by 'substantial business operations in India.' Borrowing a page from Germany and Austria, illustrative examples, i.e., user base-based, digital presence-based, or local R&D-based thresholds, will make it more predictable. Periodic updating of the INR 2,000 crore threshold is also indispensable to prevent overreach or under-enforcement.

Guaranteeing Transparency of Settlement and Commitment Mechanisms –

To create business trust in the settlement and commitment mechanism, the CCI should:

- Form objective grounds for accepting or rejecting proposals.
- Publish non-confidential versions of decisions to the general public in an attempt to hold the authority accountable.
- Design monitoring mechanisms to guarantee compliance with commitments.
- Absent these safeguards, the regime can be characterised as arbitrary or prone to regulatory capture.

Institutional Capacity Building of the CCI –

The destiny of the amendments to a large extent will be dependent on the institutional capacity of the CCI. It involves:

- Recruitment of digital markets, data science, and competition economics expertise.
- Investing in technical infrastructure for market analysis and forensic analysis.
- Improving coordination with sectoral regulators (e.g., TRAI, RBI, SEBI) to manage overlaps.
- Capacity-building is necessary to enable the CCI to handle more sophisticated cases of low-resistance Big Tech and global supply chains.

Proportionality in Imposition of Fines: While the ability to fine global low-resistance turnover will more effectively deter behaviour, the CCI needs to apply clear proportionality principles in order not to over-penalise. Calculation guidelines on the lines of the European Commission's 2006 Fining Guidelines would give fairness and predictability, and encourage compliance without deterring investment.

Formulating a Digital Market Strategy –

The digital economy creates specific challenges like network effects, algorithmic collusion, and data concentration. India must take into account:

- Releasing guidelines for sectoral regulation of digital platforms and e-commerce.
- Conducting regular market studies of online platforms, fintech, and AI-based services.
- Assessing whether an ex-ante digital competition regime analogous to the EU's DMA is necessary.
- This will keep enforcement in line with technological innovation.

Strengthening Appellate and Judicial Infrastructures: With appellate jurisdiction resting over the NCLAT, which numerous times assumes insolvency proceedings, the possibility exists that competition cases would receive meagre expertise. Formalising a specialised competition bench or increasing judicial capacity in NCLAT may make the adjudication more consistent and faster.

International Harmonisation and Cross-Border Cooperation –

With globalisation, India needs to bring its competition law into accord with international standards by:

- Strengthening cooperation with global organisations such as the OECD, US FTC, and EU Commission.
- Cross-border investigation of cartels and e-mergers across borders.
- Imposing best practices in merger examination, leniency programs, and commitment proceedings.
- This cooperation will make India investment-competitive while securing domestic markets.

CONCLUSION

The journey of competition law in India reflects the nation's economic transformation—from the restrictive MRTP regime to the modern, pro-competition framework under the Competition Act, 2002, and now its progressive recalibration through the Competition (Amendment) Act, 2023. The recent amendments mark a decisive shift towards a more dynamic, flexible, and globally aligned framework, particularly suited to the complexities of the digital economy and cross-border commerce. By introducing deal value thresholds, settlement and commitment mechanisms, leniency plus provisions, recognition of hub-and-spoke cartels, and penalty reforms, the legislature has sought to balance deterrence with efficiency and promote consumer welfare and business certainty.

Yet, the efficacy of these reforms cannot be measured merely by legislative innovation. Their true test is one of operational application—whether the Competition Commission of India (CCI) can infuse clarity, consistency, and fairness into applying these provisions with limited capacity. No less critical is what role the judiciary can play in enforcing proportionality, ensuring due process, and promoting predictability in competition jurisprudence.

India's competition policy will have to be directed toward building institutions, governing the digital marketplace, and global cooperation in order to stay in sync with changing market forces. The challenge will be one of reconciling the need to prevent anti-competitive behaviour with promoting innovation and investment. If effectively enforced, the amended framework has the potential to not only safeguard the Indian marketplace but also position India as a leading jurisdiction in global competition law discourse.