

LEGAL REGIME OF COMPETITION IN INDIA

Lecturer Ovidiu Horia MAICAN¹

Abstract

The study of the competition legislation in India has as justification the fact that the Indian economy has one of the biggest growth rates in the world, India being the biggest democracy in the world. At the beginning, India had its own competition law, called the Monopolies and Restrictive Trade Practices Act 1969 (MRTP Act). After the initiation of the economic liberalization in 1991, it became imperative to put in place a competition law regime that was more responsive to the economic realities of the nation and in accordance with international practices. In 2002, the Indian Parliament voted a new law, Competition Act, to regulate business practices in India. The Competition Act has as goal to regulate three types of conduct (anti-competitive agreements, abuse of a dominant position and combinations). The Competition Act was amended by the Competition (Amendment) Act in 2007 and 2009. The Competition Act has also created a new enforcement body, the Competition Commission of India (CCI), which is responsible for the enforcement of the Competition Act. According to the provisions of the Competition Act, is allowed to make an appeal to the Competition Appellate Tribunal (COMPAT) against the decisions of the CCI. A further appeal from the decision of the COMPAT may be submitted before the Supreme Court of India. In the same, the Competition Act is taking into consideration its enforcement with the aid of mutual international support and enforcement networks across the world.

Keywords: India, Economic Liberalization, Competition, Competition Act, Competition Commission.

JEL Classification: K33

1. Introduction

India adopted a economic and financial reform called New Economic Policy (NEP) in 1991 which consisted of three core factors, Liberalisation, Privatisation and Globalisation (LPG). It led India to open up its economy and which in turn led to “Competition” in almost each and every area of Indian economic system.

In the wake of LPG policy, the Monopolistic and Restrictive Trade Practices Act, 1969 (MRTP Act, 1969) was not outfitted properly sufficient to address the competition environment of the Indian economic system.

It was replaced in 2002 by Competition Act.

The Competition Act, 2002 has provided for the establishment of a regulatory body, the Competition Commission of India (CCI).

2. General aspects

The competition policy and competition law are two different concepts.²

The competition policy consists of a range of government insurance policies that have an effect on the functioning of the markets like competition law, change policy, industrial policy, disinvestment policy, Foreign Direct Investment policy, fiscal policy, labour policy etc.

The competition law is a means to put in force competition policy and stop anti-competitive practices through corporations and useless authorities interventions.

Competition policy is a wider concept than competition law.

The foundation of competition policy in India is laid down in the Directive Principles of State Policy (DPSP) beneath Article 38 and 39 of the Constitution of India, 1950. The Article 38 stipulates an obligation on the State to secure a social order for the merchandising of welfare of the people.³

In India, the Competition Act, 2002, has four objectives (to stop practices having negative

¹ Ovidiu Horia Maican – Faculty of Law, Bucharest University of Economic Studies, Romania, ovidium716@gmail.com.

² Singh, P., Lohiya, R., M., *Competition policy and law vis-à-vis consumer welfare*, International Journal of Law, Volume 4, Issue 5, September 2018, p. 19.

³ Ibid, p. 19.

impact on competition, to promote and preserve competition in markets, to protect the pursuits of consumers and to make certain freedom of alternate carried on by using different members in markets, in India, and for things connected therewith or incidental thereto).⁴

India's Competition Act, 2002, enacted to fulfill the twin targets of legislation of anti-competitive practices and give impact to the World Trade Organization (WTO) Agreements.

India's pursuit of globalization has resulted in elimination of controls and liberalization of the economy. A key step in India's march towards going through competition, from within the country and from international actors. is the inception of a competition regulation regime.⁵

Competition laws are delivered to modify the manner in which businesses are performed in India, so as to create a level taking part in area with tremendous competition in the market.⁶

The underlying intent for this statute is for companies to compete on merit, and not with the aid of anti-competitive agreements and/or conduct. Having stated that, however, it may additionally be mentioned that even although opposition legal guidelines can be used by companies as a sword to make certain 'level playing field' in the market, the intent of this especially new statute is no longer to make it less complicated for the weaker companies to survive in the market.⁷

The Competition Act, 2002 was once stalled through public activity litigation concerning to certain issues regarding the Competition Commission of India, difficult the constitutional validity of the Act. The Supreme Court has recommended changes to be incorporated in the Act, before it can be enforceable. In the backdrop of Supreme Court ruling the Government then has proposed to amend the Competition Act, 2002 which inter alia led to bifurcating Competition Commission and a Competition Appellate Tribunal in 2007. This is supplemented by means of Ministry of Corporate Affairs, has issued a notification in 2009, whereby the most controversial the Monopolies and Restrictive Trade Practices Act, 1969 stands repealed and is replaced by the Competition Act, 2002, with effect from September 1, 2009.⁸

On December 10, 2012, the Indian government delivered the Competition (Amendment) Bill, 2012 in the parliament. This Bill aims to adjust certain provisions of the Act as well as insert some new provisions to meet the evolving wants of industry. The Bill nonetheless has to be debated and passed via two houses of the parliament earlier than it turns into law.⁹

The paradigmatic structure of rules of anti-competitive practices in India is ingrained under Section three of the Act. It prohibits agreements which restrict the production, supply, distribution, acquisition or manipulate of items or provision of services, which cause or are likely to motive an considerable destructive impact on competition within India. Further Section 3(2) gives that any settlement in contravention of this provision shall be void.

The ambit and need of the provision is to be examined, it units out the accepted prohibition of any settlement having an appreciable unfavourable effect on competition inside India.

Agreements entered into between corporations or associations of enterprises, or men and women or associations of men and women or companies (including cartels) that directly or indirectly determine buy or sale prices, limit or manipulate production, supply, markets or technical development, investment or provision of services, without delay or in a roundabout way end result in bid rigging or collusive bidding; or share the market or supply of production with the aid of way of allocation of geographical place of markets or the kind of items or offerings or the quantity of clients in the market are presumed to have an damaging effect on competition and are considered to be per se illegal. There is a presumption that such agreements would have an appreciable adverse effect on competition. However, such presumption is now not applicable in case of any agreement entered into by way of way of joint ventures if such agreement increases effectivity in production,

⁴ Ibid, p. 19.

⁵ Gupta, P, *Competition Laws in India An Overview*, Kochhar & Company, 2019, p. 3.

⁶ Ibid, p. 3.

⁷ Ibid, p. 3.

⁸ Nomani, Z., M., Rahman, F. *Regulation of Anti-Competitive Practices and Trade Secret Laws under Competition Legislation of India: A Paradigmatic Analysis*, COMPLR (Competition Law Report) 2 (August), 2013, p. 99.

⁹ Ibid, p. 99.

supply, distribution, storage, acquisition or manipulate of goods or provision of services.¹⁰

Other classes of horizontal agreements are analyzed under a rule of reason, balancing the advantages springing up from the agreements towards the restrictions on competition.¹¹

Section 3(4) offers with vertical agreement. It lists, in particulars, five classes of vertical agreements, namely, tie-in-agreement, different furnish agreement, one-of-a-kind distribution agreement, refusal to deal and resale for maintenance. The approach for all vertical agreements is uniform: these are to be analyzed beneath a rule of reason. This softer cure acknowledges that vertical can have advisable aspects as well, and these need to be weighed towards the hazardous results to see if the settlement is on balance anti-competitive. The detrimental impact may additionally include restrictions on intra-brand competition, foreclosure of competition, and compartmentalization of markets, and the pro-competitive effects can consist of effectivity gains, make bigger in inter-brand competition, and preventing of free-riding.¹²

Section 3 (5) provide exemption to the regular rule. The prohibition does no longer practice to reasonable prerequisites in agreements that aim to guard sure mental property rights (for occasion patents, copyrights and trademarks). Similarly, although agreements pertaining to to the export of items are capable of being prohibited beneath competition legal guidelines outdoor India, they are unimpeachable under the Indian Act. The regulation will want to strengthen on how these policies are to operate in practice.¹³

The remedies that can be ordered by means of the Commission in case of contravention of Section three (relating to anticompetitive agreements), has been provided in Section 27 of the Act. The Competition Commission of India (CCI) can enjoin an infringing party from persevering with or re-entering an illegal settlement and, in addition, impose upon such a birthday party fines not exceeding 10 per cent of the common turnover for the last three monetary years. For any firm, such a sanction is considerable. The CCI can impose any different associated order or direction. In respect of cartels, sanctions are doubtlessly even greater severe. The CCI may additionally impose on each cartel member a penalty for each 12 months of the cartel of up to three times its earnings or 10 per cent of its turnover, whichever is higher.¹⁴

Any contravention of the CCI's orders can entail imposition of further penalties, and ultimately, the CCI can file a complaint in opposition to contravention of its orders in the criminal court, which, in turn, may order additional fines and even a jail term up to three years.

The Act consists of a leniency programme, in the case of a cartel. The CCI will operate a leniency programme to companies that disclose evidence and statistics on cartels to the CCI beneath this programme can acquire decreased fines or keep away from fines altogether. It is worth noting that the leniency provision may also save the cooperating birthday celebration from a large penalty, but it does now not protect the party from a claim for compensation for loss or injury suffered through a character on account of the alleged violation by using the party, or from any different path or order of the Commission.¹⁵

The provisions of Competition Act (CA), 2002 dealing with abuse of dominance attracts heavily from European Community (EC) jurisprudence on the topic and article 82 of the EC Treaty. Abuse of dominant role via an enterprise or a group is also prohibited under the Act.

An organisation or team ought to evaluate whether it has a dominant position in the market, and whether it has abused its dominance. The key questions to be addressed are what is dominant position and what kind of behavior constitutes abuse of dominant position.¹⁶

Dominant position refers to a role of strength wherein the company has won such a role in the market by means of way of large market share or in any other case that he is capable to play impartial of market forces. It refers to the position the place the player can manipulate the markets.

¹⁰ Ibid, p. 100.

¹¹ Ibid, p. 100.

¹² Ibid, p. 100.

¹³ Ibid, p. 100.

¹⁴ Ibid, p. 100.

¹⁵ Ibid, p. 100.

¹⁶ Ibid, p. 100.

The competition act does no longer prohibit the dominant positions as was once the case in MRTP act but it prohibits the abuse of the same.

The Act beneath Section four prohibits abuse of dominant position through any enterprise. The time period “dominant position” has been defined in the Explanation under Section 4, which states that the dominant function capability a position of strength, enjoyed through an enterprise, in the applicable market in India. Such a role permits a firm to function independently of competitive forces prevailing in the relevant market or affect its opponents or shoppers or the applicable market in its favor.

Dominance is now not incriminating on its own. A company holding such a position need to have engaged in habits characterised as an abuse. In this regard, the Act incorporates an exhaustive list of potentially prohibited practices.¹⁷

According to the Section 4(2), abuse of dominance through an enterprise has been defined in the Competition Act to consist of at once or circuitously imposing unfair or discriminatory stipulations or prices in buy or sale of items or services, limiting or limiting production of goods and services, or the market, or limiting technical or scientific improvement touching on to goods or offerings to the prejudice of consumers, indulging in practices ensuing in denial of market access, or the usage of dominance in one market to pass into or guard different market.

All the sanctions described in the case of anticompetitive agreements are available to the CCI towards abuse of dominance. If the CCI is blissful that there has been an abuse dominance, it may also difficulty a cease and desist order, it can direct the organisation to desist from practices which constitute such abuse and impose a penalti of up to 10 percentage of the common turnover of closing three previous monetary years. In addition, the CCI can impose structural remedies. It can order division of a dominant firm with a view to make certain that the mission does no longer abuse its dominant position. It appears that such an order can be solely corrective, no longer pre-emptive, the CCI should pick out an ongoing abuse before ordering division of a dominant enterprise; however, the route in which the law will boost has to be watched.¹⁸

One of the biggest threat to competitions is the mergers and acquisition activities by using which the factors governing the opposition in the market are grabbed by a few or a single enterprise. But now not all the mixtures (mergers and acquisitions) are inside the purview of the Act, it specifies a restriction beyond which all to be approved by means of the competition commission to see the light of the day. The Act regulates the various forms of commercial enterprise mixtures and not prohibits their formation.

Under the Act, no man or woman or agency shall enter into a combination, in the structure of an acquisition, merger or amalgamation, which motives or is in all likelihood to purpose an considerable damaging effect on opposition in the relevant market and such a mixture shall be void. But, all combinations do now not name for scrutiny unless the resulting mixture exceeds the threshold limits in phrases of property or turnover as targeted by way of the Competition Commission of India.¹⁹

The Commission whilst regulating a combination shall think about some factors (genuine and viable import competition, barriers to entry, the diploma of market concentration; diploma of countervailing power in the market, the probability that the mixture would enable the parties to substantially and sustainably enlarge expenditures or income margins, the extent of probably positive competition, the extent to which substitutes are accessible or probable to be handy in the market, the market share, and the nature and extent of vertical integration in the market). The evaluation additionally consists of consideration of whether or not one of the corporations in the mixture is a failing enterprise and the nature and extent of innovation. In addition, the Commission should think about the possible benefits that would possibly waft from the mixture that would contribute to economic development and whether or not the benefits outweigh the unfavourable

¹⁷ Ibid, p. 101.

¹⁸ Ibid, p. 101.

¹⁹ Ibid, p. 101.

have an effect on of the combination, if any.²⁰

The threshold limits varies according to whether the combination is by means of an organization or through a group, and additionally varies in accordance to whether or not employer or team has property or turnover only in India or has these worldwide. The threshold limits have been prescribed for the motive of aggregate under the Competition Act. The Act units a threshold beneath which a merger, acquisition or obtaining of control is no longer viewed as a mixture and is consequently backyard the merger regime of the Act. The threshold is pretty excessive and is described in terms of assets or turnover. The threshold varies in accordance to whether the combination is by means of an organisation or by a group, and additionally varies according to whether employer or group has assets or turnover solely in India or has these worldwide.²¹

3. Institutional aspects

The administrative structure for the competition regime id coordinated by the Competition Commission of India. The Commission was once established on 14th October, 2003 and commenced accepting cases according with the the Act after 1st September, 2009, is an expert body which functions as a regulator for preventing anti-competitive practices in the us of a and also has advisory and advocacy functions. CCI is a quasi-judicial body, with power to acquire, maintain and dispose of property, both movable and immovable and can contract in its personal name. In the discharge of its functions, the CCI shall be guided through the principles of justice, and has the strength to regulate its very own procedures. The commission consists of a chairperson and no longer much less than two and now not greater than six other participants appointed by means of central government.

The Commission is vested with both regulatory and quasi-judicial powers to eliminate practices having an negative impact on competition, promote and preserve Competition, protect interests of consumers, and facilitate competition advocacy and unfold awareness.²²

The Commission would no longer be hamstrung to act against cases of infringing conduct if situations come to its attention thru any source, formal or informal. Further, the CCI can intervene successfully as it can direct any corporation or their association to discontinue their anti-competitive behavior and can demand the manufacturing of particular documents and records from an enterprise.

Thus, the CCI can make the fee of crime high to deter such unlawful conduct. The CCI may, if it finds after enquiry that an settlement is anti-competitive, or that its motion constitutes abuse of dominance, pass an order directing the culprit to discontinue such settlement or abuse of dominant position. It may additionally impose such penalty as it may deem fit, which shall no longer exceed 10% of the average of the turnover for the ultimate three previous economic years, upon each of such persons or agencies that are parties to such agreements or abuse. If such an agreement has been entered into by way of a Cartel, the CCI may additionally impose upon the offending party a penalty up to three times its profits for every yr of the lifestyles of such agreement or 10% of its turnover for every yr of the lifestyles of the agreement, whichever is higher. The Commission can additionally problem instructions that such settlement shall be modified to the extent and in such manner as may also be specified. It can also additionally problem instructions to the concerned events for fee of fees and for obeying the orders as the Commission may additionally pass. The Commission may additionally additionally skip such different orders or issue such instructions as it might also deem fit.²³

The mandate of the Competition Commission extends beyond the boundaries of India. It has been explicitly supplied that acts taking area backyard India however having effect on opposition in India additionally fall inside the ambit of the Commission. The Commission has been vested with

²⁰ Ibid, p. 101.

²¹ Ibid, p. 101.

²² Ibid, p. 102.

²³ Ibid, p. 102.

the powers of a civil courtroom, inclusive the power to summon and examine any character on oath, requiring the discovery and production of archives and receiving proof on affidavits. To complement and supplement the area of the CCI in deciding and getting rid of anti aggressive practices, the Act especially prohibits civil courts to entertain any suit or intending which the Commission is empowered to determine. The jurisdiction of Competition Act extends to all the sectors of the economy and region regulated with the aid of quarter unique laws. Hence inside the purview of the Act the CCI can make reference to a statutory authority or acquire reference from statutory authority. Further where in the direction of a intending before any statutory authority an trouble is raised through any birthday celebration that any decision which such statutory authority has taken or endorse to take, is or would be, contrary to any of the provisions of this Act, then such statutory authority can make a reference in appreciate of such problem to the commission. The statutory authority can also make the reference suo motu to Commission. The CCI can omit closing order as well as intervening time order. However it can't overview its own order it can only rectify it.²⁴

The decision of competition dispute is administered thru appointment and function of directorate of competition and appellate tribunal. The director regularly occurring (DG) is an investigation arm of the CCI in conducting inquiry into contravention of any provisions of the Act. This act as watch dog and function other functions as furnished with the aid of or below the Act. The director shall, when so directed by using the commission, aid the Commission investigating into any contravention of the provisions of this Act or any policies or regulations made there under. Although, the CCI is no longer bound by way of the findings in the record of the DG, it is obligatory for the CCI to refer the count for investigation to the DG and are searching for an investigation document as soon as it forms a prima facie opinion that a case of infringement of Section 3 or 4 has occurred. In case of enquiries into combination, the report from DG can also be referred to as upon through the CCI. The DG can also look at the conduct of related entities, of course, with the authorization from the CCI. The Deputy and Assistant Director General or such officers or other employees so appointed shall workout his powers and discharge his functions, concern to the supervision and direction of the Director General.²⁵

The Competition Appellate Tribunal (CAT) as an appellate mechanism hears all appeals in opposition to the order of the CCI. It is a quasi judicial body and consists of Chairperson and no longer extra than two different individuals appointed by way of Central Government. The CAT shall no longer be sure by means of the Code of Civil Procedure, 1908 but by using the principles of natural justice and any guidelines made by using the Central Government. However, CAT will have all the powers of a civil court. The lawsuits before CAT are deemed to be judicial proceedings. The attraction against the order of the CCI can be filed earlier than CAT.²⁶

The CAT will hear and dispose of appeals against any route issued or decision made or order exceeded by way of the CCI and adjudicate claims for compensation and ignore orders for healing of compensation. The attraction can be filed with the aid of Central Government, State Government or enterprise or any character who is aggrieved via decision, course or order of CCI. Appeal should be filed within 60 days. The tribunal will supply possibility of hearing to different party and then will skip the order. Copy of order will be despatched to the parties to attraction and CCI. CAT can overview its personal decisions. In case of contraventions of CATS order without real looking grounds, punishment is imprisonment up to 3 years. Every order made by way of the CAT shall be enforced in the equal manner as if it were a decree of a courtroom in a suit. Appeal in opposition to CATS order can be made to Supreme Court within 60 days from the date of receipt of an order of the CAT.²⁷

India is one of the closing foremost frequent regulation democracies to adopt the modern-day competition law, therefore, it has the benefit of drawing persuasive values from matured

²⁴ Ibid, p. 103.

²⁵ Ibid, p. 103.

²⁶ Ibid, p. 103.

²⁷ Ibid, p. 103.

jurisdictions.²⁸

The Preamble of the Act offers an institutional context to the CCI. It states that is an Act to provide, maintaining in view of the monetary development of the country. This is a instead special and unambiguous endorsement of the hyperlink between the micro functioning of individual markets and the larger improvement imperatives of the country.

The social dreams impacting the interpretation and implementation of the Indian competition regulation are evolving and are exceedingly established on the institutional and political contexts. However, it is vital that the software of regulation be guided through greater goal economic dreams for it to serve and what better goal can this law fulfil other than an 'efficiency' objective. Adopting an economic approach to the application of opposition regulation offers a reasonably sound and capable framework for generating client welfare and financial efficiency.²⁹

4. Comparative law aspects

Indian competition law is a great deal younger than U.S. competition law.³⁰

The fundamental statute that governs opposition regulation in the U.S., the Sherman Antitrust Act, was once enacted 77 years before India existed as an independent country. Development of competition law in India also was delayed with the aid of the lack of enthusiasm for a market-based economy that was once shared by most of the populace and political leadership of India for countless many years after India got its independence.³¹

The first Indian competition statute, the Monopolies and Restrictive Trade Practices Act of 1969, used to be replaced with the aid of the Competition Act of 2002 (CA). That statute prohibits any agreement which causes or is likely to cause a considerable destructive impact on opposition inside India. They are unlawful except they can be shown to create effectivity gains. They correspond roughly to the sorts of agreements that stay problem to a certified per se prohibition in U.S. law, agreements to determine price, agreements to restrict supply, agreements to share a market, and agreements to have interaction in collusive bidding. Other kinds of agreements are unlawful solely if they can be established and they do not create efficiency gains. The statute also prohibits abuse of dominant position.

The Competition Act also regulates mergers however those provisions did not go into impact until 2011. Large firms that advise to merge or to collect other giant firms have to notify the government in advance.³²

The Competition Commission of India (CCI) consists of a Chair and two to 6 other members. They are appointed with the aid of the Central Government based on the tips of a committee consisting of the Chief Justice of India, the Secretary of the Ministry of Corporate Affairs, the Secretary of the Ministry of Law and Justice and two reputed experts. The Chair and the contributors serve a time period of 5 years and they can be removed through the central Government only for cause.³³

The CCI has the electricity to decide that any practice violates the CA. It has the strength to ban any such exercise and to ban it on an intervening time groundwork throughout the duration in which it is investigating the practice. It can impose civil penalties and criminal penalties of up to three years in jail for violations of the CA. It has the equal powers as a civil courtroom and it has one-of-a-kind jurisdiction over disputes that arise under the CA. It additionally has the energy to

²⁸ Pingali, V., Chaudhuri, M., K., Malik, P., & Tamara, R., Kakkar, A., Chatterjee, C., Mondal, S., Sokol, D. *Competition Law in India: Perspectives*, The Journal for Decision Makers 41(2), Indian Institute of Management, Ahmedabad SAGE Publications, 2016, p. 177.

²⁹ Ibid, p. 177.

³⁰ Pierce Jr, R., J., *Comparing the Competition Law Regimes of the United States and India*, GWU Law School Public Law Research Paper No. 27, 2017, p. 12.

³¹ Ibid, p. 12.

³² Ibid, p. 14.

³³ Ibid, p. 14.

determine its very own procedures.³⁴

The Director General (DG) is the investigative arm of the CCI. The DG is appointed by means of the Central Government. The DG has a duty to investigate any alleged violation of the CA or the guidelines of the CCI when requested to do so through the CCI. At the give up of his investigation, the DG need to problem a record that is now not binding on the CCI. The DG has many of the powers of a civil court, which include the energy to require the production of files and the strength to catch documents. The DG has the strength to difficulty orders, the violation of which can be punished by the CCI.³⁵

The Competition Appellate Tribunal (COMPAT) has one-of-a-kind jurisdiction to hear appeals from choices of the CCI. It consists of a chair and two members who are appointed with the aid of the Central Government from a listing organized by using a consultative committee. Members can be eliminated only for cause through the Central Government in session with the Chief Justice of India. COMPAT has the powers of a civil court and can difficulty its very own rules of procedure (Pierce, 2017).³⁶

The Supreme Court of India has distinctive jurisdiction to hear appeals against decisions of COMPAT.

Private parties can supply information that can shape the basis for an inquiry by way of the CCI and can apply for compensation from the COMPAT based totally on the findings of the CCI or the orders of COMPAT. Notably, however, non-public events can not in reality provoke complaints to decide whether or not a firm has violated the CA.³⁷

The primary factors of the Indian competition regulation regime are excellent. The statutes are drafted in methods that understand the want for the institutions to determine when a unique kind of habits is likely to produce horrific consequences on the overall performance of a market and when that identical type of habits is unlikely to produce terrible results and has as an alternative the practicable to produce socially desirable results.³⁸

The simple factors of the Indian competition regulation regime are better than their U.S. counterparts in several important ways. First, unlike the Federal Trade Comission and Ddepartment Of Justice, the CCI has the electricity to trouble great guidelines to put into effect the CA. Second, in contrast to the U.S., India has avoided the threat that personal events will create awful criminal precedents by means of litigating cases earlier than courts of widespread jurisdiction whose judges lack the information required. Third, the Indian Competition Commission has the energy to decide its own rules of procedure. Used wisely, that strength lets in the Commission to adopt techniques that are sufficient to the task but do now not produce the interminable delays that plague the choice making processes of the FTC and U.S. courts.³⁹

India can entire the method of developing an excellent competition regulation regime through taking simply a few vital steps.

First, and most important, India wants to pay a lot of interest to fantastic staffing of the institutions. The U.S. elevated its competition regulation regime dramatically when it delivered giant numbers of proficient economists to the FTC Bureau of Competition and the DOJ Antitrust Division and gave economists a predominant voice in the method of shaping and applying competition law.

Second, India can keep away from the crippling delays in the U.S. competition regulation regime by using adopting rules of procedure that recognize that paper hearings are at least as appropriate as oral evidentiary hearings for functions of resolving the normal disputes that arise in proceedings earlier than competition law tribunals.⁴⁰

Third, India can make good use of the CCI's power to difficulty policies by issuing rules

³⁴ Ibid, p. 14.

³⁵ Ibid, p. 14.

³⁶ Ibid, p. 15.

³⁷ Ibid, p. 15.

³⁸ Ibid, p. 16.

³⁹ Ibid, p. 16.

⁴⁰ Ibid, p. 17.

that describe in element the way the CCI makes selections about whether a unique type of behavior violates the CA situations.

Fourth, India must think about amending the CA to allow COMPAT to award treble damages to non-public parties who have been injured by means of violations of the CA as decided by using the CCI. The treble damage treatment in U.S. competition regulation gives a effective deterrent to firms that are tempted to violate the competition laws.⁴¹

The Act does envisage a cartel leniency policy, which used to be added into force in August 2009 thru separate enforcing regulations.⁴²

Although the regulations envisage the opportunity of making oral leniency applications, these ought to be observed with the aid of a written application, giving upward shove to issues as to the possible disclosability of such functions in foreign (particularly US) damages actions.⁴³

A dominant position is defined as a position of strength, enjoyed via an enterprise, in the relevant market, in India, which permits it to function independently of competitive forces prevailing in the applicable market; or (ii) affect its opponents or buyers or the relevant market in its favour, a definition that corresponds nearly exactly to that underneath EC law other than in the probably extensive reference to affecting the relevant market in favour of the dominant enterprise.⁴⁴ In identifying whether an business enterprise enjoys a dominant position, the CCI is required by using part 19(4) of the Act to have regard to thirteen listed factors. Ten of these are wellknown financial standards recognised in other opposition law systems, but there are additionally three standards referring to social responsibilities and social costs, 'relative advantage, via way of the contribution to the monetary development, with the aid of the corporation taking part in a dominant position' and any different component which the CCI might also think about relevant for the inquiry. The effect of these provisions may be to absolve an otherwise dominant business enterprise from a discovering of dominance — and consequently legal responsibility for abuse of that dominance on social, political, or economic development grounds.⁴⁵

Most far-reaching is the provision under area 28 of the Act permitting the CCI to ruin up a dominant firm to make certain that it does no longer abuse its dominant position, besides requiring proof that it has already performed so. While this provision is possibly to be used rarely in practice, it offers upward push to professional issues as to the capacity of the CCI to penalise dominance per se, instead than only the abuse of that dominance.

Section 6 of the Act gives that no character or company shall enter into a aggregate which reasons or is probably to cause an adverse affect inside the relevant market in India and such a aggregate shall be void. The introduction of a merger manage regime has been the most controversial phase of the Act in India, with Indian business hobbies retaining that Indian businesses need to have freedom to consolidate substantially in order to compete internationally. At the time of writing, the Indian government used to be persevering with to seek advice from with industry (on the groundwork of draft Combination Regulations) on both procedural problems and the timing of the introduction of the regime.⁴⁶

The Act defines a combination as an acquisition of shares, voting rights, assets, or manage in which the combined property or turnover of the parties exceed positive thresholds. Although separate thresholds are given for group and non-group combinations, the wide definition of the former class ability that its thresholds will apply in nearly each case. Those thresholds are blended property of 30,000 million indian rupees (420 million Euros) or blended turnover of 120,000 million indian rupees (roughly 1,700 million Euros). Where either or both corporations have property or turnover outdoor of India, the thresholds are combined property of 2,000 million US dollars, together with at least 5,000 million indian rupees (70 million Euros) in India, or blended

⁴¹ Ibid, p. 17.

⁴² Sansom, M., Christian P, *India's New Competition Regime: The Elephant Who Became a Tiger*, Journal of European Competition Law & Practice, 2010, Vol. 1, No. 1, (2010), p. 62.

⁴³ Ibid, p. 63.

⁴⁴ Ibid, p. 63.

⁴⁵ Ibid, p. 64.

⁴⁶ Ibid, p. 64.

turnover of 6,000 million US dollars, such as at least 15,000 million Indian rupees (210 million Euros) in India. Although these thresholds may want to be met when only the corporation being obtained has property or turnover in India, the draft Combination Regulations provide that combinations where at least two events to the aggregate do not have property of 2,000 million Indian rupees (28 million Euros) in India, or turnover of 6,000 million Indian rupees (85 million Euros) in India, will be deemed not going to supply upward shove to an adverse effect on competition.⁴⁷

Notification of qualifying mergers is obligatory and no such merger can come into effect till the expiry of 210 days (a lengthy length through worldwide standards) or CCI clearance, whichever is sooner. It is currently envisaged that this length will incorporate a 30-day segment I inquiry for cases raising no or solely minor issues, a 60-day section I duration for combos raising more noticeable issues, and the remainder of the 210 day period for designated investigation of combos which show up prima facie to supply upward shove to an adverse effect on competition.⁴⁸

As with the evaluation of dominance in section four cases, however, the evaluation of an adverse effect on competition in merger instances additionally consists of reference to the 'economic development' criterion described above. It is doubtful how frequently this provision will be relied on in exercise to clear mergers that are probable to lead to an adverse effect on competition.⁴⁹

5. Conclusions

In readapting its competition laws, the Indian government selected to undertake a competition enforcement regime stimulated by the laws that have matured within developed nations. The Competition Act borrows statutory language from competition law in the western world and thus benefits from the evolution of antitrust enforcement that has taken place over the last century. But whilst Commission's beginning factor is an amalgamation of Western competition law, its enforcement has been unique. India ought to continue to strengthen enforcement priorities and interpret its guiding statute in a way that is congruent with its special economic situation.

The Commission has chosen to depart from U.S. and EU antitrust jurisprudence in some aspects. While I have criticized its abuse of dominance analysis, some might also argue that the Commission's heavy scrutiny of conduct by way of dominant entities is sensible. The Commission may wish to ensure that dominant corporations are no longer the usage of their strength and leverage to exclude smaller firms. An enforcement regime that handicaps dominant firms in order to protect competitors (who are likely to be smaller start-up firms) departs from the U.S. model but may promote financial mobility.

The Commission will harm India's market competitiveness if it punishes efficiency. This could cripple essential industries and harm the global competitiveness of its strongest sectors.

Only the future will show us if the Commission will be able or not to move between these objectives.

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