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# **REGULATION UNDER THE COMPETITION ACT: A CRITICAL ANALYSIS OF INDIA'S ANTITRUST FRAMEWORK AND ITS ENFORCEMENT**

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## **Introduction**

The regulation of market competition is among the most consequential functions of the modern state. In a market economy, competition is the principal mechanism through which resources are allocated efficiently, consumer welfare is protected, and innovation is incentivised. When competition is distorted — by cartels, by the abuse of dominant market positions, or by anti-competitive mergers — the consequences extend beyond the affected market to encompass the broader economy, democratic governance, and social equity. It is for these reasons that virtually every major economy in the world has enacted a body of law dedicated to the preservation and promotion of competitive markets.

India's journey toward a modern competition law regime was long and halting. The Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter 'the MRTP Act'), which governed competition for over three decades, was a product of the licence-raj era — designed not to promote competition but to prevent the concentration of economic power and protect small enterprises from large ones. As India liberalised its economy following the landmark reforms of 1991, the inadequacy of the MRTP Act became increasingly apparent. A law designed for a closed, state-controlled economy was manifestly ill-suited to regulate an open, globalised market in which domestic firms competed with multinational corporations and market dominance was determined by innovation and efficiency as much as by size.

The Competition Act, 2002 (hereinafter 'the Act') was enacted to fill this void.<sup>1</sup> Drawing upon the recommendations of the Raghavan Committee Report of 2000 and international best practices — particularly those of the European Union and the United States — the Act

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<sup>1</sup> Competition Act, 2002, No. 12, Acts of Parliament, 2003 (India).

established a new competition law framework rooted in the promotion of consumer welfare and economic efficiency. It prohibited anti-competitive agreements, proscribed the abuse of dominant positions, regulated combinations (mergers and acquisitions) with anti-competitive effects, and established the Competition Commission of India (CCI) as the dedicated regulatory authority for its enforcement.

Two decades after the Act's enactment, India's competition law landscape has matured considerably. The CCI has adjudicated hundreds of cases, imposed substantial penalties, and developed a body of jurisprudence that engages with complex market realities — from digital platforms to pharmaceutical pricing, from bid-rigging in public procurement to vertical restraints in distribution. The Competition (Amendment) Act, 2023 has introduced significant reforms, including deal-value thresholds for merger review and provisions targeting anti-competitive conduct in digital markets.

This paper undertakes a comprehensive analysis of regulation under the Competition Act, 2002. It examines the institutional architecture of the CCI, the substantive prohibitions of the Act, landmark enforcement decisions and judicial precedents, the interface between competition law and sector-specific regulation, and the reforms introduced by the 2023 Amendment. It argues that while India's competition law framework has achieved considerable institutional maturity, significant challenges remain in the areas of cartel enforcement, digital market regulation, and the harmonisation of competition and sector-specific regulatory mandates.

### **Historical Background: From MRTP to the Competition Act**

The Monopolies and Restrictive Trade Practices Act, 1969 was enacted against the backdrop of the Nehruvian socialist model of economic development. Its foundational concern was not the promotion of competition but the prevention of the concentration of economic power 'to the common detriment.'<sup>2</sup> The MRTP Act established the Monopolies and Restrictive Trade Practices Commission (MRTPC) with jurisdiction over 'monopolistic trade practices,' 'restrictive trade practices,' and 'unfair trade practices.' Large undertakings — those with assets exceeding a specified threshold — were required to obtain prior approval from the central government for expansion, merger, or acquisition.

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<sup>2</sup> Monopolies and Restrictive Trade Practices Act, 1969, Preamble, No. 54, Acts of Parliament, 1969 (India).

The structural weaknesses of the MRTP Act were considerable. Its focus on market structure (size of enterprise) rather than market conduct (competitive effects of behaviour) meant that it could penalise efficient large firms while permitting harmful conduct by smaller ones. The MRTPC lacked independent enforcement powers and could not impose penalties; it could only recommend remedies, the implementation of which depended on governmental action. The Act had no provision for merger control in the modern sense — pre-merger notification was not a feature of its regime. And critically, the MRTP Act was silent on the facilitation of consumer welfare: it did not directly equate competition with consumer benefit.

As economic liberalisation gathered pace through the 1990s, the inadequacy of the MRTP framework became undeniable. Foreign direct investment brought global competitors into Indian markets; the privatisation of state enterprises created powerful private actors; and the growth of information technology introduced entirely new market dynamics. The MRTPC, operating under a law designed for a closed, planned economy, was structurally incapable of responding to these developments.

In 1999, the Government of India constituted a High Level Committee on Competition Policy and Law under the chairmanship of S.V.S. Raghavan, a retired civil servant with expertise in economic policy. The Raghavan Committee's report, submitted in May 2000, recommended the repeal of the MRTP Act and its replacement with a new competition law modelled on contemporary international standards. The Committee drew heavily on the competition law frameworks of the European Union, the United States, and Australia, and emphasised that the new law should be directed at promoting consumer welfare and economic efficiency rather than merely curbing bigness.

The Competition Act was enacted in 2002 and brought into force in stages between 2003 and 2009. The Competition Commission of India was established as an independent statutory authority, initially in an advisory capacity, and was granted full enforcement powers upon the coming into force of the substantive provisions of the Act in 2009. The MRTP Act was repealed, and the MRTPC was wound up, with its pending cases — particularly unfair trade practice matters — transferred to the National Consumer Disputes Redressal Commission.

## **Institutional Architecture: The Competition Commission of India**

The Competition Commission of India is constituted under Chapter III of the Act. It consists of a Chairperson and not less than two and not more than six Members, appointed by the Central Government. The Act requires that the Chairperson and Members possess special knowledge of, and professional experience in, competition law, economics, business, commerce, law, or public affairs — a requirement designed to ensure technical competence in what is an inherently multidisciplinary field. The Competition (Amendment) Act, 2023 has modified certain aspects of the appointment process, including the introduction of a search-cum-selection committee to recommend appointments, a reform intended to enhance the independence and quality of Commission membership.

The CCI operates both as an investigative and adjudicatory body, a dual function that has attracted sustained criticism. The Director General (DG), appointed by the Central Government in consultation with the CCI, functions as the investigative arm of the Commission. Upon receiving information or a reference, the CCI may direct the DG to investigate the matter; the DG's report is then considered by the Commission before it passes final orders. Critics have argued that this structure compromises procedural fairness, as the adjudicatory body directs and receives the investigation rather than receiving it from an independent investigative agency.

The CCI's jurisdiction extends to all enterprises operating in India, whether incorporated in India or abroad, and to all agreements and conduct that have an appreciable adverse effect on competition in India. The extra-territorial reach of the Act — established by Section 32 — mirrors comparable provisions in EU and US competition law and enables the CCI to address anti-competitive conduct originating outside India but affecting Indian markets.

The Commission's enforcement powers are substantial. It may impose penalties on enterprises found to have violated the Act of up to ten per cent of the average relevant turnover for the preceding three financial years. In cartel cases — which are treated with particular severity — the penalty may be up to three times the profit derived from the cartel, or ten per cent of average turnover, whichever is higher. The CCI may also pass 'cease and desist' orders, order the division of dominant enterprises, and recommend the modification of mergers. The 2023 Amendment has introduced a leniency-plus programme, under which a party that discloses a separate cartel while seeking leniency in another investigation may receive an additional

penalty reduction — a reform designed to enhance cartel detection.

Orders of the CCI are appealable to the National Company Law Appellate Tribunal (NCLAT) under Section 53A of the Act. Prior to the Competition (Amendment) Act, 2017, appeals lay to a dedicated Competition Appellate Tribunal (COMPAT); that body was merged into the NCLAT by the 2017 amendment. Appeals from the NCLAT lie to the Supreme Court of India on questions of law. This appellate structure has generated concern, as the NCLAT is primarily a corporate law tribunal and its competition law expertise has been questioned. Several significant CCI orders have been substantially modified or set aside by the NCLAT, occasionally on grounds that competition law practitioners have found difficult to reconcile with established principles.

### **Anti-Competitive Agreements: Section 3**

Section 3 of the Competition Act prohibits agreements between enterprises or persons that cause or are likely to cause an 'appreciable adverse effect on competition' (AAEC) within India. The section draws a fundamental distinction between horizontal agreements — those between enterprises at the same level of the production or distribution chain — and vertical agreements — those between enterprises at different levels.

Horizontal agreements relating to price-fixing, market allocation, bid-rigging, and output limitation are treated as presumptively anti-competitive under Section 3(3). Unlike other prohibited agreements, which require a case-by-case analysis of competitive effects, these 'hard-core' horizontal restrictions are subject to a rebuttable presumption of AAEC. This approach is broadly consistent with the treatment of per se offences in US antitrust law and the 'object' restrictions under Article 101(1) TFEU, though the Indian presumption is technically rebuttable — a feature that distinguishes it from the absolute prohibition applicable to per se offences in the United States.

Vertical agreements — including exclusive supply and distribution arrangements, tie-in arrangements, resale price maintenance, and refusal to deal — are assessed under the Rule of Reason, requiring an examination of actual or likely competitive effects in the relevant market. Section 3(4) sets out the categories of vertical restraint subject to the Act's prohibition; the CCI must determine, by reference to the factors enumerated in Section 19(3), whether the agreement has an AAEC.

Cartel enforcement has been among the most active areas of CCI enforcement. The Commission's decision in *In re: Alleged Cartelisation in the Flashlight Industry*<sup>3</sup> established that circumstantial evidence, including parallel pricing and opportunities to collude, could be sufficient to establish cartel conduct in the absence of direct evidence of agreement. This approach — drawing on the concept of 'plus factors' familiar from US antitrust law — has been consistently applied in subsequent cartel investigations.

The CCI's investigation into alleged cartelisation by the cement industry — initiated following a reference by the Ministry of Corporate Affairs — resulted in penalties of approximately Rs. 6,300 crore being imposed on major cement manufacturers in 2012.<sup>4</sup> The COMPAT substantially upheld the CCI's findings on appeal, affirming that coordinated price increases accompanied by capacity limitation could constitute cartel conduct even absent a formal agreement. The cement cartel case remains the largest competition enforcement action in Indian history by penalty quantum.

In the pharmaceuticals sector, the CCI's investigation into alleged price coordination among manufacturers of anti-diabetes and cardiovascular drugs has illustrated the difficulties of cartel enforcement in markets where pricing is also subject to government regulation. The interaction between competition law and price control mechanisms — administered by the National Pharmaceutical Pricing Authority under the Drugs (Prices Control) Order — has generated complex questions about the boundary between regulatory compliance and anti-competitive coordination.

The Competition Commission of India (Lesser Penalty) Regulations, 2024 — substantially revised pursuant to the 2023 Amendment — govern the leniency programme under which cartel participants may receive reductions in penalty in exchange for disclosing cartel conduct and cooperating with the investigation. The leniency programme has been instrumental in a number of significant cartel investigations, though its uptake has historically been lower than in comparable jurisdictions, a phenomenon attributed to uncertainty about the scope of leniency protection and the absence of criminal sanctions for individuals (which are a powerful driver of leniency applications in the United States and several EU member states). The

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<sup>3</sup> *In re: Alleged Cartelisation in the Flashlight Industry*, Case No. 02/2014 (Competition Commission of India, 2017).

<sup>4</sup> *In re: Alleged Cartelisation in the Cement Industry*, Case No. 29/2010 (Competition Commission of India, 2012).

introduction of the leniency-plus mechanism by the 2023 Amendment is expected to incentivise more comprehensive disclosure.

The 2023 Amendment also introduced a settlement and commitment mechanism under Sections 48A and 48B of the Act, enabling enterprises under investigation to offer commitments to remedy competition concerns (in cases not involving cartels) or to settle with the CCI on agreed terms. These mechanisms, modelled on analogous procedures under EU competition law, are intended to enable faster resolution of cases and conserve regulatory resources for the most egregious violations.

### **Abuse of Dominant Position: Section 4**

Section 4 of the Competition Act prohibits enterprises from abusing a dominant position. Dominance is defined in the Explanation to Section 4 as 'a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to operate independently of competitive forces prevailing in the relevant market, or affect its competitors or consumers or the relevant market in its favour.' This definition — which focuses on the ability to act independently of competitive constraints rather than on market share alone — is broadly consistent with the 'substantial market power' standard applied in the United States and the 'dominant position' concept under Article 102 TFEU.

The CCI determines the existence of dominance by reference to the factors set out in Section 19(4), including market share, size and resources of the enterprise, economic power, vertical integration, dependence of consumers, entry barriers, countervailing buying power, and the degree of regulation. Market share is an important but not determinative indicator; the Commission has found enterprises dominant with market shares below fifty per cent where other factors — particularly entry barriers and consumer dependence — supported the finding. Section 4(2) enumerates the categories of conduct that constitute abuse of dominant position. These include: imposing unfair or discriminatory conditions in purchase or sale; imposing unfair or discriminatory prices, including predatory pricing; limiting or restricting production, markets, or technical development; denying market access; imposing supplementary obligations not connected to the subject of the contract (tying); and using a dominant position in one market to enter or protect another market (leveraging).

The CCI's decision in *Belaire Owner's Association v. DLF Ltd.*<sup>5</sup> was a watershed in the development of Indian abuse of dominance jurisprudence. The Commission found that DLF, the real estate developer, held a dominant position in the relevant market for high-end residential apartments in Gurgaon and had abused that position by imposing unfair and one-sided contractual conditions on apartment buyers — including the right to unilaterally alter apartment plans, increase prices, and impose penalties for delayed payment while incurring no symmetrical liability for its own defaults. The CCI imposed a penalty of Rs. 630 crore, and its finding that abusive contractual conditions could constitute Section 4 violations established an important precedent for consumer-facing markets.

The CCI's investigation into Google's conduct in relation to Android and the Play Store ecosystem — resulting in penalties totalling Rs. 2,274 crore across two separate orders in 2022<sup>6</sup> — represents the most significant abuse of dominance enforcement action in Indian competition history. The Commission found that Google had abused its dominant position in the markets for licensable mobile operating systems and app stores by mandating pre-installation of Google applications on Android devices, restricting the development of Android forks, and imposing anti-competitive conditions through the Mobile Application Distribution Agreement and the Android Compatibility Commitments. The Google decisions affirm the CCI's capacity and willingness to engage with complex, multi-sided digital market dynamics.

Predatory pricing — the practice of pricing below cost to exclude competitors, with the intention of recouping supra-competitive profits once competition is eliminated — is expressly prohibited by Section 4(2)(a)(ii) of the Act. The CCI has adopted the average variable cost (AVC) standard as the primary benchmark for predation, consistent with the approach in EU competition law. Pricing below AVC is presumed predatory; pricing between AVC and average total cost (ATC) may be predatory if accompanied by evidence of predatory intent.

The application of predatory pricing analysis to digital markets — where marginal cost is often close to zero and 'free' services are the norm — presents significant conceptual challenges. The

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<sup>5</sup> *Belaire Owner's Association v. DLF Ltd.*, Case No. 19/2010 (Competition Commission of India, 2011)

<sup>6</sup> In re: *XYZ v. Alphabet Inc. & Ors. (Android)*, Case No. 39/2018 (Competition Commission of India, 2022); In re: *Anonymous v. Google LLC (Play Store)*, Case No. 14/2021 (Competition Commission of India, 2022).

CCI's investigations into allegations of predatory pricing in the food delivery and e-commerce sectors have required the Commission to grapple with multi-sided platform economics, where apparent below-cost pricing on one side of the platform may be recouped through revenue on the other side. These cases highlight the need for analytical frameworks adapted to digital market realities.

### **Combinations Regulation: Sections 5 and 6**

Sections 5 and 6 of the Competition Act establish a mandatory pre-notification regime for combinations mergers, amalgamations, and acquisitions — that meet specified jurisdictional thresholds. Prior to the 2023 Amendment, these thresholds were based on the assets and turnover of the parties to the combination. A combination was notifiable if the combined assets of the acquirer and target exceeded Rs. 2,000 crore in India (or USD 1 billion globally), or if combined turnover exceeded Rs. 6,000 crore in India (or USD 3 billion globally). These thresholds were periodically revised by the government to account for inflation and the growth of the Indian economy.

The 2023 Amendment introduced a significant reform: a deal-value threshold of Rs. 2,000 crore for combinations involving enterprises with 'substantial business operations in India,' regardless of whether the parties meet the asset or turnover thresholds. This threshold is specifically designed to capture acquisitions of nascent or fast-growing companies — particularly in the digital sector — that may not yet have significant assets or revenues but whose acquisition could foreclose competitive potential. The deal-value threshold addresses the so-called 'killer acquisition' problem, where dominant platforms acquire innovative start-ups pre-emptively to eliminate future competitive threats.

The CCI assesses combinations by reference to their likely effect on competition in the relevant market. Section 20(4) sets out a non-exhaustive list of factors to be considered, including actual and potential competition, market share, entry barriers, countervailing buying power, the likelihood of the combination resulting in the removal of a vigorous competitor, and the nature and extent of innovation in the relevant market. The Commission may approve a combination unconditionally, approve it subject to modifications (structural or behavioural remedies), or prohibit it.

The vast majority of combinations notified to the CCI are approved unconditionally within the

statutory review periods — initially thirty days, extendable to two hundred and ten days for complex cases. The Commission has prohibited very few combinations outright; it has more commonly approved combinations subject to remedies, particularly divestitures in markets where the parties' products are close substitutes. The CCI's decision in *Holcim/Lafarge*<sup>7</sup> — approving the global merger of the two cement giants subject to the divestiture of assets in specific Indian markets — established the template for remedy-based merger clearance in concentrated industries.

The CCI introduced the Green Channel mechanism in 2019, enabling automatic approval — upon filing of notification — for combinations that do not give rise to horizontal, vertical, or complementary overlaps between the parties. Green Channel approvals have significantly reduced regulatory delay for straightforward combinations. The 2023 Amendment has codified and expanded this mechanism, and has also introduced provisions enabling the CCI to call in combinations that fall below the notification thresholds where there are reasonable grounds to believe that competition may be significantly impeded.

### **Competition Regulation in Digital Markets**

The regulation of competition in digital platform markets has emerged as the defining challenge of contemporary competition law globally, and India is no exception. Digital platforms — including search engines, app stores, social media networks, e-commerce marketplaces, and ride-hailing services - exhibit distinctive economic characteristics that complicate the application of traditional competition law tools. Network effects (the increase in value of a service as more users adopt it), data advantages, switching costs, multi-sidedness (platforms serving two or more distinct user groups), and the 'winner-takes-most' dynamics of platform markets collectively create conditions under which dominant positions, once established, are extremely difficult to contest.

The CCI has demonstrated an increasing willingness to apply competition law to digital platforms, albeit with varying degrees of analytical sophistication. In addition to the Google-Android and Google Play Store investigations, the Commission has examined the conduct of Amazon and Flipkart in relation to their e-commerce marketplace operations, the practices of WhatsApp in relation to its updated privacy policy and its integration with the Facebook

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<sup>7</sup> Holcim Ltd./Lafarge S.A., Combination Registration No. C-2014/07/190 (Competition Commission of India, 2014).

ecosystem, and the business model of Apple's App Store.

A recurring issue in digital platform competition cases is self-preferencing — the practice of a platform operator giving preferential treatment to its own downstream products or services over competing products or services on the same platform. The CCI's investigation into Google's search and search advertising practices examined allegations that Google favoured its own specialised search services (for shopping, travel, and local information) in its general search results — a pattern of conduct also found abusive by the European Commission in a series of landmark decisions.

Tying and bundling by dominant platforms — particularly the practice of conditioning access to one product on the acceptance of another — has been examined by the CCI in multiple contexts, including the pre-installation of Google applications on Android devices and the linking of WhatsApp's messaging services to data sharing with Meta's advertising business. These cases raise complex questions about the boundaries between legitimate product integration and anti-competitive foreclosure.

The Competition (Amendment) Act, 2023 represents a significant step toward a more robust regulatory framework for digital markets, though it stops short of the ex-ante regulatory obligations introduced by the European Union's Digital Markets Act (DMA). The Amendment introduces provisions addressing anti-competitive conduct in digital markets, including self-preferencing, tying, and the use of data obtained from one market to gain advantages in another. It also broadens the definition of 'enterprise' to encompass entities that provide digital services, ensuring that platform businesses are unambiguously within the Act's scope.

The Ministry of Corporate Affairs has also released a report of the Committee on Digital Competition Law (2024), which recommended the enactment of a separate Digital Competition Act to impose ex ante obligations on 'Systemically Important Digital Enterprises' (SIDEs) — large digital platforms whose conduct has the potential to significantly affect competition across the economy. The proposed regime, if enacted, would require SIDEs to avoid self-preferencing, ensure interoperability, and provide data access to business users — obligations that would be enforceable without the need to establish market dominance or AAEC in each individual case. The Digital Competition Act, if enacted, will represent the most significant development in Indian competition law since the Competition Act itself.

## Competition Law and Sector-Specific Regulation

India's economy is characterised by a multiplicity of sector-specific regulators — the Telecom Regulatory Authority of India (TRAI), the Securities and Exchange Board of India (SEBI), the Insurance Regulatory and Development Authority (IRDAI), the Petroleum and Natural Gas Regulatory Board (PNGRB), and others — each with jurisdiction over economic conduct in their respective sectors. The relationship between the CCI and these sector regulators has been an important and often contested area of Indian competition law.

The Competition Act provides for consultation between the CCI and sector regulators: Section 21 enables the CCI to refer competition issues to a sector regulator, and Section 21A enables sector regulators to refer issues to the CCI. The Act also provides that sector-specific legislation takes precedence over the Competition Act to the extent of any inconsistency, though the Supreme Court has interpreted this provision narrowly to avoid displacing the CCI's jurisdiction over conduct that has competition law dimensions regardless of its regulatory context.

The jurisdictional boundary between the CCI and the TRAI has been a recurring source of litigation. In *Competition Commission of India v. Bharti Airtel Ltd. & Ors.*,<sup>8</sup> the Supreme Court held that the CCI should await the outcome of regulatory proceedings before TRAI before taking cognisance of competition complaints relating to telecom sector conduct, on the ground that TRAI's specialised expertise made it the more appropriate first-instance forum for matters that were 'primarily and predominantly' regulatory in nature. This decision has been criticised for introducing uncertainty about the CCI's ability to act promptly in competition matters involving regulated industries.

Conversely, the CCI's jurisdiction over the conduct of stock exchanges — entities regulated by SEBI — was affirmed in proceedings examining allegations of anti-competitive practices in the trading of currency derivatives. The Commission held that SEBI's regulatory oversight of exchanges for investor protection and market integrity purposes did not preclude the CCI from examining whether the exchanges' conduct had anti-competitive effects in the relevant market for exchange services. This functional approach — distinguishing between the regulatory purpose of sector oversight and the competition law purpose of preventing AAEC — has been

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<sup>8</sup> *Competition Commission of India v. Bharti Airtel Ltd. & Ors.*, (2019) 2 SCC 521.

broadly endorsed by the appellate tribunals.

### **Judicial Precedents and the Development of Competition Jurisprudence**

The Supreme Court of India has made several landmark contributions to Indian competition jurisprudence. In *Excel Crop Care Ltd. v. Competition Commission of India*,<sup>9</sup> the Court examined the scope of the CCI's penalty jurisdiction and the principles applicable to penalty determination under Section 27. The Court held that the 'relevant turnover' for the purpose of penalty calculation in cases involving multi-product enterprises should be the turnover attributable to the products or services in relation to which the violation occurred, rather than the enterprise's total turnover. This ruling substantially limited the maximum penalty exposure of diversified enterprises facing competition enforcement.

In *Competition Commission of India v. Steel Authority of India Ltd.*,<sup>10</sup> the Supreme Court elaborated the procedural rights of parties in CCI proceedings, holding that the Commission was required to provide parties with an adequate opportunity to respond to the Director General's investigation report before passing final orders. The Court's affirmation of procedural fairness as a cornerstone of CCI enforcement has shaped the Commission's investigative practice.

The definition of the 'relevant market' — comprising the relevant product market and the relevant geographic market — is foundational to competition analysis under both Sections 3 and 4. The CCI has developed a substantial body of case law on market definition, drawing upon the hypothetical monopolist test (or SSNIP test) and qualitative analysis of demand and supply substitutability. The Commission's market definition decisions in digital cases have attracted particular attention, as the multi-sided nature of platforms complicates the application of conventional substitutability analysis.

In the Ola and Uber cases, the CCI grappled with whether the relevant market should be defined as the market for radio taxi services, the market for app-based taxi aggregation services, or the market for all point-to-point urban transportation (including traditional taxis and auto-rickshaws). The Commission's conclusion that app-based taxi aggregation constituted a distinct relevant market — insulated from substitution by traditional transport modes by reason

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<sup>9</sup> *Excel Crop Care Ltd. v. Competition Commission of India*, (2017) 8 SCC 47.

<sup>10</sup> *Competition Commission of India v. Steel Authority of India Ltd.*, (2010) 10 SCC 744.

of convenience, real-time tracking, and assured fare calculation — has significant implications for the assessment of dominance in platform markets.

### **The Competition (Amendment) Act, 2023: A Critical Appraisal**

The Competition (Amendment) Act, 2023 is the most significant revision to the Indian competition law framework since the original enactment. Its principal reforms may be summarised as follows.

**Deal-Value Threshold:** As noted above, the introduction of a Rs. 2,000 crore deal-value threshold for combinations involving enterprises with substantial business operations in India addresses the 'killer acquisition' concern and aligns India with jurisdictions including Germany and Austria that have adopted similar thresholds.

**Timelines for Merger Review:** The Amendment reduces the primary review period from thirty to thirty days (no change) but importantly introduces a deemed approval mechanism — combinations not disposed of within the statutory timelines are deemed approved. This reform provides greater certainty for transacting parties.

**Leniency Plus:** The introduction of the leniency-plus mechanism — enabling a party under investigation for one cartel to obtain an additional penalty reduction by disclosing a separate, previously unknown cartel — is a sophisticated tool that has proven highly effective in US Department of Justice cartel enforcement. Its introduction in India is expected to enhance cartel detection.

**Settlements and Commitments:** The settlement mechanism (for cases other than cartel cases) and the commitment mechanism (for any case prior to the issue of a final order) enable consensual resolution of competition cases, reducing enforcement timelines and enabling the CCI to allocate resources more efficiently. The exclusion of cartel cases from settlement eligibility is consistent with international practice, which treats cartel conduct as warranting adversarial rather than consensual resolution.

**Hub-and-Spoke Cartels:** The 2023 Amendment expressly extends the prohibition on anti-competitive horizontal agreements to 'hub-and-spoke' arrangements — where a common platform or intermediary facilitates coordination between competitors at the same level — by

deeming participants in such arrangements to be parties to the underlying agreement. This reform addresses a significant gap in the original Act that had been exploited in digital marketplace contexts.

Notwithstanding these significant reforms, the 2023 Amendment has been criticised for failing to address certain persistent weaknesses in the Indian competition law framework, including the absence of individual criminal liability for cartel conduct (available in the United States, United Kingdom, and several other major jurisdictions), the continued absence of a formal remedy of interim measures (injunctions) pending investigation, and the limited institutional resources of the CCI relative to the complexity and volume of its caseload.

### **Conclusion and Recommendations**

The Competition Act, 2002 and its regulatory institution, the Competition Commission of India, have fundamentally transformed India's approach to market regulation. In two decades, the CCI has evolved from a nascent regulatory body into a sophisticated competition authority with a substantial body of enforcement decisions, a developing jurisprudence, and an increasingly assertive posture toward dominant enterprises — including global technology giants. The 2023 Amendment has introduced meaningful reforms that address some of the most pressing gaps in the framework.

Nevertheless, significant challenges remain. The following recommendations are advanced for strengthening India's competition law framework.

Individuality criminal liability for cartel conduct should be introduced. The absence of personal criminal sanctions for individuals who participate in hard-core cartels is a structural weakness that limits the deterrent effect of the competition law regime. The experience of jurisdictions with criminal cartel enforcement — particularly the United States and the United Kingdom — demonstrates that the prospect of imprisonment is a uniquely powerful deterrent. India's competition law reform agenda should include the introduction of criminal penalties for individuals, coupled with appropriate procedural safeguards.

The CCI's institutional resources must be substantially augmented. The Commission's caseload has grown exponentially while its human and financial resources have not kept pace. The quality and timeliness of competition enforcement depend on the availability of sufficient

investigative, economic, and legal expertise. Adequate resourcing of the CCI is a precondition for effective enforcement.

The proposed Digital Competition Act should be enacted with appropriate urgency. The ex ante regulatory framework for Systemically Important Digital Enterprises recommended by the Committee on Digital Competition Law would complement the CCI's ex post enforcement powers and provide a more effective and timely response to the structural competition problems of digital platform markets. Delay in enactment risks allowing digital market concentration to become entrenched and difficult to remedy.

The procedural separation between the investigative and adjudicatory functions of the CCI should be formalised. The current structure — in which the Commission both directs and adjudicates investigations — raises legitimate concerns about institutional fairness. The introduction of a formal separation, potentially through the establishment of an independent investigation division, would strengthen the credibility and procedural fairness of CCI enforcement.

The relationship between the CCI and sector-specific regulators should be clarified through primary legislation, establishing the CCI's jurisdiction as concurrent with and co-equal to that of sector regulators in matters that have a competition dimension, and providing clear mechanisms for the resolution of jurisdictional disputes. The current framework, dependent on judicial interpretation of sparse statutory provisions, generates unnecessary uncertainty and delay.

Competition law is ultimately about preserving the conditions under which markets can deliver welfare to consumers, innovation to the economy, and opportunity to entrepreneurs. The Competition Act, 2002 has established the foundation for this endeavour. The task of the next decade is to build upon that foundation with the institutional capacity, analytical sophistication, and regulatory boldness that India's rapidly evolving market economy demands.

## **Bibliography**

### **Primary Sources: Legislation**

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

Competition (Amendment) Act, 2023, No. 18, Acts of Parliament, 2023 (India). Competition

(Amendment) Act, 2007, No. 39, Acts of Parliament, 2007 (India).

Monopolies and Restrictive Trade Practices Act, 1969, No. 54, Acts of Parliament, 1969 (India). Treaty on the Functioning of the European Union, art. 101-102, 2012 O.J. (C 326) 47.

Sherman Antitrust Act, 15 U.S.C. sections 1-7 (1890) (United States).

### **Case Laws Referred**

- Competition Commission of India v. Steel Authority of India Ltd., (2010) 10 SCC 744.
- Belaire Owner's Association v. DLF Ltd., Case No. 19/2010 (Competition Commission of India, 2011).
- In re: Alleged Cartelisation in the Cement Industry, Case No. 29/2010 (Competition Commission of India, 2012).
- Excel Crop Care Ltd. v. Competition Commission of India, (2017) 8 SCC 47.
- Competition Commission of India v. Bharti Airtel Ltd. & Ors., (2019) 2 SCC 521.
- In re: XYZ v. Alphabet Inc. & Ors. (Android), Case No. 39/2018 (Competition Commission of India, 2022).

### **Reports and Official Documents**

- High Level Committee on Competition Policy and Law (Raghavan Committee), Report (May 2000), Ministry of Commerce and Industry, Government of India.
- Ministry of Corporate Affairs, Report of the Committee on Digital Competition Law (2024), Government of India.
- Competition Commission of India, Annual Reports (2010-2024).

### **Books and Articles**

- T. Ramappa, *Competition Law in India: Policy, Issues and Developments* (4th ed., Oxford University Press, 2020).
- Pradeep S. Mehta (ed.), *A Functional Competition Policy for India* (Academic Foundation, 2006).