UNIT 13 COMPETITION LAW

Objectives

After studying this unit, you should be able to:

- Understand the Objectives of Competition Law and Brief Historical Overview of Indian Competition Law
- Describe Monopolies and Restrictive Trade Practices Act, 1969, and Competition Act, 2002
- Appreciate different Anti-competitive Agreements and Vertical Agreements
- Explain the different Enforcement Authorities of Competition Law

Structure

13.1 INTRODUCTION

Competition law, which is also referred to as antitrust law in some jurisdictions, plays a pivotal role in ensuring smooth functioning of a dynamic market economy. Competition law takes diverse measures and approaches for ensuring fair competition among firms, which in turn can augment customer welfare by offering quality products at lowest possible prices. Fair competition in markets is important for all, be it the consumers, the competing firms, and the economy.

13.2 OBJECTIVES OF COMPETITION LAW

Competition law concerns itself with firms enjoying undisputed market power, which opens up the possibility of hindering consumer welfare by increasing prices, reducing output, diminishing product quality and suppressing innovation.[1] Competition law also keeps a check on the possibility of business firms from colluding with each other, affecting the supply of a product or a service, thereby proving detrimental for the consumers. The basic assumption is that markets populated by a few participants may prove to be less competitive than markets housing multiple participants, as oligopolistic and monopolistic enterprises can exert their dominance to hinder the entry of new participants.[2]

13.3 BRIEF HISTORICAL OVERVIEW OF INDIAN COMPETITION LAW

The Indian Constitution has been drafted carefully with several measures aimed at safeguarding diverse rights that can contribute to the flourishing of the country as well as its citizens. Articles 38 and 39, though having been placed in part IV of the Constitution as Directive Principles of State Policy and unenforceable in a court of law, have proven extremely significant in laying down directions for good governance of a State. They direct the State to frame policies for ensuring that the ownership and control of the material resources are adequately distributed, and that the operation of the economic system does not lead to a concentration of wealth to the common detriment.[3]

The first phase of market regulation in India began in 1950-1951, which was characterized by an increased reliance on the government to take the initiative in economic activities. Also known as the closed economy model, policies at that time were less focused on ensuring competition and more on the prevention of concentration of economic power. The Government of India ordered the formation of a committee, the Mahalanobis Committee, to assess the income distribution in the society owing to rising monopolistic and restrictive trade practices in the country. This led to the formation of the Monopolies Inquiry Committee and, the report submitted by the former paved the way for the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act). This way, the Constitution of India, specifically Article 39, sowed the seeds for the genesis of competition laws in India.[4]

13.4 MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969

The MRTP Act was enacted to control monopolies, to ensure that the economic system does not culminate in concentration of economic power and, to disallow monopolistic and restrictive trade practices.[5] What highlighted the second phase, ranging from 1991 to present, was bringing forth market-oriented economic policies with the coming of the New Economic Policy (NEP), that needed to be in tune with the rise of globalization, liberalization and privatization policies.[6] These policies led to de-licensing and deregulation of sectors, that were priorly under the control of the public sector. Industrial activities which were exclusively operated by the public sector were opened up for entry by the private sector. The MRTP Act was observed to be incompatible with this shift in industrial policies, which focused on competition and market orientation. Thus, arose the need for a regulator which could facilitate market functioning in accordance with the country's changing industrial policies.[7]

13.5 RAGHAVAN COMMITTEE REPORT

The call seeking a shift of focus from restraining monopolies to the promotion of competition was one of the primary reasons for the MRTP Act becoming obsolete, thereby paving way for a new legislation.[8] What ensued was the appointment of a High-Level Committee on Competition Policy and Law in 1999, often referred to as the "Raghavan Committee".[9] The Committee was responsible for providing suggestions for the establishment of a suitable legislative framework for competition law and recommended changes in relation to restrictive trade practices. The Committee, in its final report submitted to the Government in May 2000, highlighted the need for a Competition Policy to attain efficient allocation of resources, to regulate concentration of economic power and to promote consumer welfare.[10] It was submitted that Competition Policy has its primary economic goal as the preservation and promotion of competition, which can further contribute in making the process of production and allocation of goods structured and more efficient.[11] The Committee pressed on the need to balance the conflict between the existing government policies and the competition policy and, highlighted the requirement for a law and a law enforcement authority in the form of Competition Act and Competition Commission of India (referred as CCI or Commission hereinafter), respectively.[12]

13.6 COMPETITION ACT, 2002

The Competition Act was enacted in 2002, based on the recommendations of the Raghavan Committee for ensuring fair competition and ushering economic development in the country. The primary aim of this piece of legislation is to avert practices having anti-competitive effects, for the advancement of competition in the markets, to safeguard the interests of the consumers and, to guarantee freedom of trade to the market participants. This legislation is the successor to Monopolies and Restrictive Trade Practices Act, 1961. The Act lays down provisions relating to horizontal and vertical anti-competitive agreements having an adverse effect on competition, prohibition of abuse of dominance, and rules for combinations and their regulation. The Competition Act also contains certain provisions to promote competition advocacy.

13.7 ANTI COMPETITIVE AGREEMENTS

Agreements entered between enterprises, persons, or association of enterprises or persons in pursuance of production, distribution, supply, storage or control of products or services, which have a tendency to result in Appreciable Adverse Effect on Competition (AAEC) within the jurisdiction are referred to as anti-competitive agreements[13] and they shall be declared void.[14] To determine if an agreement has an appreciable adverse effect on competition, the Commission shall have due regard to factors including, creation of barriers to new entrants, driving off existing competitors, foreclosure of competition by hindering entry, improvement of production or distribution of goods, etc.[15]

In a competitive market set-up, firms vying for the business or the consumers are supposed to compete with one another, not collude and cooperate to alter the process of competition. Cartels are horizontal agreements made for the purpose of market allocation, price fixing, output restriction and, the submission of collusive tenders to rig the outcome of competitive tenders are some of the techniques employed by conniving firms to distort competition.[16]

Under the Competition Act, 2002, section 2(c) puts forth an inclusive definition of 'cartel', as "an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services." In the ***cartelization by public sector insurance companies***'[17]case, the CCI took suo motu cognizance to investigate if four public sector insurance companies had formed a cartel and engaged in bid-rigging in response to a tender issued by the Kerala Government. Rejecting the argument of the insurance companies that they formed a single economic entity and were thus subject to the control of the central government, the CCI held that the submission of separate bids by the companies for the tender, along with the resolution regarding determination of bid amounts being taken voluntarily through an internal meeting without the supervision by the Finance Ministry, proved the contrary. Based on the business sharing agreement and the evidence of the Opposite Parties (OPs) having met one day before the submission of tender, the CCI held that there was a conclusive proof of bid rigging and collusive bidding by the OPs, satisfying the requirements for contravention under section 3(3)(d) of the Competition Act.

Any agreement entered or decision taken amongst enterprises, persons, association of enterprises or persons or, between a person and an enterprise, including cartels, shall be presumed to have an appreciable adverse effect on competition and shall be considered anti-competitive per se, if they result in the following:[18]

a) Determination of sale prices:

The competition regulatory framework not only concerns itself with blatant price fixing, but also agreements having an effect on suppressing price competition. In other words, the act of price fixing does not just encompass the final price but also instances having an indirect impact on the final price.

Reducing price competition by agreeing not to offer discounts, making use of an open information scheme and, charging uniform delivered prices may also be instances of price fixing.[19] Market participants forming a cartel, agreeing to offer identical discounts and applying the same in the downstream market was also held to be another facet of price fixing and declared to be anticompetitive in nature.[20]

b) Output control

An agreement among firms to control or limit production, supply, technical progress, markets or provision of goods and services shall be presumed to be anticompetitive.[21] The CCI generally focuses on factors such as production capacity, capacity utilization of the competitors, demand for the product in question to decipher any patterns of output control for the concerned product.[22] In the ***Cement Cartel***[23]case, the Commission found evidences regarding the formation of understanding and agreement among the Opposite Parties (OPs) via the Cement Manufacturing Association(CMA) for communicating and information sharing in relation to manufacture of cement. The Commission also unearthed low-capacity utilization leading to controlled supply of cement by the companies, which was in clear contravention of section 3(3)(b) of the Competition Act. The commission opined that limiting the supplies of cement over the course of years and giving rise to shortages had led to an upward demand, resulting in a hike in prices thereafter. In the absence of any efficiency or improvement in manufacture owing to the coordinated behavior of the cement manufacturing companies, the OPs were held to have formed a cartel.

Recently, the CCI passed a final order against three beer companies, viz., United Breweries Limited, SABMiller India Limited (renamed as Anheuser Busch InBev India Ltd.) and, Carlsberg India Private Limited for forming a cartel and selling beer in many States and Union Territories, in conjunction with the All-India Brewers' Association. The cartel had engaged in price parallelism which was in contravention of Section 3(3)(a) of the Competition Act, 2002.[24]

c) **Market allocation**

Competition may also be threatened by an agreement between the firms to apportion segments of market amongst themselves, to be handled exclusively by each seller such that they no longer have to compete with each other. When the participating firms concur to share particular markets based on geographical area, classes of customers or, on the basis of the product, such agreements may be referred to as horizontal market sharing agreements.[25] In ***HFB Holding v. Commission***, the opposite parties were penalized for forming a cartel and indulging in sharing of the entire European market among themselves. They further engaged in acts to hinder the only substantial competitor not forming a part of the cartel, driving it away from the concerned market.[26]

d) **Bid rigging or collusive bidding**

Agreements capable of lessening or wiping off competition for bids or, which have the effect of manipulating the process of bidding are held to be anticompetitive per se. Bid rigging or collusive tendering is said to occur when competing bidders decide not to compete genuinely, or endeavor to secretly influence the outcome of a bidding process by submission of identical or cover bids.[27]

In the case *of* ***cartelization in tenders of Pune Municipal Corporation for Solid Waste Processing***[28], a *prima facie* opinion was formed by the CCI against the OPs for having engaged in the acts of bid rigging or collusive bidding violating Section 3(3)(d) of the Competition Act, 2002. The CCI opined that bid rigging under Section 3(3)(d) shall be presumed to have an adverse effect on the competition irrespective of the purpose or duration of the cartel and, it is immaterial if the act culminated in a benefit being accrued from the cartelization. The CCI also held that so long as a subset of bidders are found rigging the bidding process by colluding, the onus shall shift on the OPs to rebut the presumption of having caused an AAEC. Disagreeing with the contention of the OPs that the latter were engaged in different business activities at the time of the bidding process, and thus not amenable under section 3, the commission held that the activity for which bidding was held and in pursuance of which the alleged violation of law took place is what proves significant in determination of cartels.

13.8 VERTICAL AGREEMENTS

Vertical agreements are agreements between persons or enterprises at different levels of the production chain in distinct markets in relation to production, distribution, supply, storage or price of goods or provision of services.[29] Unlike horizontal agreements, vertical agreements are not anti-competitive per se, and it needs to be established that the alleged activity has caused an appreciable adverse effect on competition (AAEC) in the country.[30] Vertical agreements also comprise the following:

i) Tie-in arrangement

Tying is the practice of supplying a product, the tying product, while also making the buyer purchase a second product, known as the tied product. Tying may be employed by a dominant firm for increasing the sales of the tied product in the market by leveraging its position with respect to the tying product, leading to a horizontal foreclosure of market.[31] A tie-in arrangement is detrimental for competition as a consumer is coerced into purchasing a product (the tied product) which she or he may not necessarily require.[32] In ***Hilti AG v. Commission,*** Tetra Pak, a company engaged in the sale of liquid packaging machines, required customers to also buy cartons from it, further insisting that services for repair and maintenance should be provided by them. The Commission opined that sale of cartons along with the machines was not customary, with the former forming a separate market upon which Tetra Pak was trying to eliminate competition.[33]

ii) Exclusive supply agreement:

Agreements restricting the buyer from purchasing goods or services other than those of a particular supplier are termed as exclusive supply agreements. Such agreements can also be referred to as exclusive purchasing or single branding agreements. By employing such agreements, the purchaser is barred from acquiring products from other competing sellers, defeating the process of market competition.[34] In ***Jindal Steel & Power Ltd. v Steel Authority of India Ltd,*** it was alleged that the agreement between Steel Authority of India Limited (SAIL) and Indian Railways (IR) for exclusive supply of rails to IR was anti-competitive, resulting in foreclosure of market for new entrants, including Jindal Steel. The Commission held that the exclusive arrangement between SAIL and IR was not in violation of the provisions of competition law, as only a small segment of SAIL's total sales made up the sales to IR. Also, IR required assurances for steadiness of supply of long rails which was being offered by SAIL, with Jindal having failed to establish itself as a viable competitor to SAIL.[35]

iii) Exclusive distribution agreement:

Agreements requiring the supplier to sell its goods to one specific distributor in a particular territory, thereby restricting the output or supply of any products, falls under the category of exclusive distribution agreements. These may diminish intra-brand competition and heighten the risks of market partitioning or market allocation for the sale of goods, facilitating price discrimination.[36]

iv) Refusal to deal:

Refusal to deal refers to scenarios wherein restrictions are placed on persons or classes of persons to whom goods may be sold or from whom the goods may be bought.[37] Refusal to deal agreements result in market foreclosure for new entrants, making it difficult for the latter to compete. In ***English Welsh & Scottish Railway Ltd. v. E. ON UK plc***, the railway company was fined for entering into exclusive agreements with various power stations for the carriage of coal.[38]

v) **Resale price maintenance:**

Resale Price Maintenance occurs when a seller (mostly, manufacturer) demands that the buyer (mostly retailers) should engage in resale of that good only at a price fixed by the seller and the buyer cannot resell at prices lower than the prices suggested by the seller. In ***Fx Enterprise Solutions India Pvt. Ltd v. M/s Hyundai Motor India Limited*** [39], the CCI found Hyundai Motors placing restrictions on its dealers by imposing a maximum permissible discount at which the vehicles may be sold to an end-consumer. Dealers not adhering to the upper limits on discount prices were being penalized. The CCI held that the imposition of minimum resale price prevents the dealers from effectively competing on the price factor, and is anti-competitive in nature.

Section 3(5) of the Competition Act holds that such agreements shall not affect the rights of any person to restrain infringement or, from laying down reasonable conditions imperative to protect her or his intellectual property rights, including patents, copyright, trademarks, designs, and geographical indications.

13.9 RELEVANT MARKET

Under the statutory framework of the Competition Act, the delineation of a relevant market is of utmost significance. For an abuse of dominance investigation, an enterprise shall be considered dominant only if it has attained a position of strength in the relevant market. Determination of a relevant market is also significant in a combination analysis, where the CCI has to ensure that the proposed combination does not result in appreciable adverse effect on competition. In the case of ***Competition Commission of India (CCI) v. Coordination Committee of Artists and Technicians of West Bengal Film and Television Industry***, the Supreme Court had held that the delineation of relevant market is not a necessary precondition for investigations under Section 3 of the Act, as there is a presumption of AAEC in an agreement between market participants under that provision.

Relevant market may be determined by the CCI with respect to the relevant product market or the relevant geographic market or with regards to both.[40] Relevant product market is referred to as a market with products or services considered interchangeable or substitutable by a consumer due to factors such as characteristics of the products, price, or use.[41] In the case of ***In Re Matrimony.com and Google***, Google was charged with abusing its dominant position by granting preference to its own services and its verticals by manipulating the search results. The relevant market in this case was delineated to be - the market for online web search services in India and, the market for online search advertising in India. This was done by differentiating between offline and online sections of advertising, on the basis that they are not substitutable.[42] Relevant geographic market is referred to as a market comprising the area where the conditions of competition for supply of goods or provision of services are distinctly homogeneous and can be differentiated from the conditions existing in the adjacent areas.[43] In ***Re Harshita Chawla and Others,*** since conditions for the functionality of OTT messaging apps through smartphones were found to be homogeneous throughout India, the entire geographic area of India was delineated to be the relevant geographic market.[44]

13.10 ABUSE OF DOMINANCE

Under Competition law, mere dominance exerted by a firm is neither considered bad nor held punishable. However, the abuse of its dominance by an enterprise merits investigation by the competition authorities. This is in contrast with the earlier legislative framework, as under the erstwhile MRTP Act, violation was gauged based on the size of an enterprise, rather than the abusive conduct of the latter.[45]

An enterprise is said to be in a dominant position, when it is able to operate independent of other competitive forces existing in the relevant market and has the power to affect the consumers or its competitors in its favour.[46] Competition law makes abuse of dominance by an enterprise punishable under law. Some of the acts considered to be an abuse of dominant position includes, imposing of conditions or prices which are unfair or discriminatory either through direct or indirect means (which includes price discrimination and predatory pricing) and, restricting the production of goods or provision of services.[47] The Commission seeks to capture conduct which may be exploitative (wherein the acts of the enterprise prove detrimental to the consumers in the form of rise in prices, reducing output or imposition of other unfair terms and conditions) and, exclusionary (affecting the competitors of the dominant firm through the acts of exclusive dealing, margin squeezing, denying market entry etc. to name a few).

In the case of ***European Union v. Google,*** also known as Google Search (shopping) case, Google was fined €2.42 billion by the European Commission for abusing its dominance in the general search market, and stifling market competition by granting primacy to its own vertical comparison-shopping services. It was held that Google's self-preferencing conduct had foreclosed competition in the shopping services market, which represented a separate market from the search market. Leveraging its position in the general search market, Google had resorted to bumping down other rival sites down the list, distorting competition.[48]

The three important steps required in every abuse of dominance investigation are as follows:

- Determination of the relevant market.
- Determining if the enterprise is dominant in the relevant market.
- If found dominant, investigating whether the dominant entity has engaged in acts falling under the purview of abuse of dominance.

The CCI, while inquiring into the dominance of an enterprise, shall consider the factors provided under Section 19(4) of the Competition Act, which include market share, size and resources, countervailing buyer power, market structure, and dependence of consumers.[49]

Section 4 of the Indian Competition Act also takes into account the use of dominance in one market to enter into another relevant market. In the case of ***Harshita Chawla and WhatsApp***[50] the issue was whether WhatsApp was using its dominance in the relevant market of internet based instant messaging apps to gain entry into another relevant market, being Unified Payments Interface (UPI) digital payments app market (WhatsApp Pay), which was aided by pre-installation of WhatsApp on mobile phones. The Commission, post investigation, held that there was no abuse of dominance as the users were allowed discretion before usage of the payment app along with separate registration requirements (terms and conditions) prior to initiation of services.

13.11 MERGERS AND COMBINATIONS

One of the significant business developments in the field of corporate law has been a plethora of transactions encompassing mergers and acquisitions. The rationale behind companies opting to merge may range from increasing market power, economies of scope, economies of scale, synergistic gains, eliminating competition, obtaining access to R&D and technological knowhow.

Competition law is entrusted with the task of scrutinizing mergers that have a potential for undermining competition. While assessing a merger, the competition authorities investigate if the merger will generate horizontal effects (effects borne out of mergers between actual or potential competitors at the same level of the production chain and dealing with the same product or geographic markets), vertical effects (effects occurring as a result of merger between enterprises operating in different albeit complementary stages or levels in the market for the same final product)[51]or, conglomerate effects (effects originating due to mergers, which is neither functionally vertical or horizontal, but enables the merged entity to foreclose competition in two distinct but related/unrelated markets by exercise of its market power.[52]

Merger control, as a means to keep a check on the market power of dominant firms on an ex-ante basis, is essential to preserve competitive market structures and for achieving pro-competitive effects for the consumers.[53] A complicated element of merger control is that its role is forward looking in nature, focusing on whether a proposed merger will lead to detrimental effects on competition in the future.[54] Numerous theories of competitive harm have been brought forth to highlight the negative impact of a merger on consumer welfare, which includes unilateral effects (resulting entity of a merger exercising market power post-merger)[55], coordinated effects (resulting entity of a merger able to harmonize competitive behaviour with other firms in the market), vertical effects and conglomerate effects.[56] Competition authorities conduct merger assessment by weighing the pro-competitive effects of a combination on the market against the anti-competitive ramifications if the merger is allowed to be consummated.

Under the Indian Competition Act, Sections 5 and 6 are the significant provisions regulating combinations, encompassing corporate restructuring methods such as mergers, acquisitions & amalgamations. According to these provisions, enterprises or persons choosing to enter into combinations crossing the specified assets or turnover thresholds mentioned in Section 5 have to inform the CCI, divulging the details of the proposed combination.[57] A combination likely to result in an AAEC within the relevant market shall be void, in accordance with section 6. The various factors providing guidance to the Commission for approving or rejecting a combination are given under section 20(4) of the Competition Act and includes factors such as, extent of barriers to entry, the extent of countervailing power present in the market, market share of the enterprise, the presence of substitutes, etc. The notifications are handled with reference to Procedure in Regard to the Transaction of Business Relating to Combinations Regulations

2011. Within 210 days after the notification of the proposed combination gets served, the CCI performs analysis if the combination causes or is likely to cause an appreciable adverse effect on competition (AAEC) which is done based on the factors enlisted under section 20(4) of the Competition Act.[58] The commission can approve[59] a combination to take effect if found not to be causing an AAEC or disallow[60]otherwise.

The assessment of significant AAEC that may arise as a result of a combination and the subsequent decision in case of the former can also be assuaged by remedies or notifications, termed as 'modifications.[61] Under the Act, modifications may be suggested by the CCI[62]or the parties, who can also propose changes to the suggested modifications[63]in order to bring about a mutually workable feature within the specified time. Merger modifications rather than outright rejections is slowly gaining momentum for resolving combination issues threatening to disturb the status quo in the market framework.[64]

For instance, in ***Abbott Laboratories & St. Jude Medical, Inc.***, a proposed combination was notified to the CCI under section 6(2) of the Competition Act, 2002 between Abbott laboratories and St. Jude Medical, Inc (SJM). Abbott dealt in manufacture, sale and research of global healthcare products. SJM, on the other hand, is a global medical device company in the United States, engaged in the production, development and research of cardiovascular medical devices. It was observed that the functions of both the parties intersected in the manufacture of 'small hole' VCDs (VCDs are healthcare devices used in covering the holes arising out of the arteries). As a result of the combination, the market share of the combined entity would be elevated to around 90-100 percent in the small hole segment, and the other active competitor would only have a market share of 5 percent. The entities proposed a voluntary modification by agreeing to engage in a divestiture involving the small hole VCD segment of SJM to Terumo Corporation, a third-party provider of cardiovascular products based in Japan not having any structural or financial linkages with the parties on a world-wide scale, and this was approved by the CCI.[65]

Also, one of the recent developments in the area of combinations is the advent of **'green channel'** for combinations that are unlikely to have any anti-competitive effects in the relevant market. The merging parties, based on their self-assessment, specified criteria and subsequent consultation with the Commission may qualify for green channel and, after notifying the CCI may consummate their combination through an automatic approval, whereby they may avoid the 210-day statutory standstill period.[66] An example for a transaction that has taken the green channel route is the acquisition of ***Dodla Dairy Limited*** (Dodla), a public limited company engaged in sale and processing of milk and milk products, by, ***Industrial Finance Corporation*** (IFC), a multilateral finance institution, under sec 6(2) read with sec 5(a)(i)(A) of the Competition Act. Since the proposed combination was not likely to result in any AAEC concerns, the relevant market definition was kept open. After ensuring that the acquirer was not engaged in any activities of production, distribution etc. which were similar to that of the target, the combination was given a go-ahead under the green channel route.

Interestingly, when it comes to digital platforms, the conventional methods employed to assess anti-competitive effects may fall short. With the advent of Big Data, strong network effects and the significance of personal data in the digital ecosystems, relying on traditional thresholds for gauging market power may not yield fruitful results. Different jurisdictions have opened up investigations to ensure that dominant online platforms do not engage in anti-competitive practices. The European Commission had initiated a formal antitrust investigation to unearth if Amazon's utilization of sensitive data obtained from independent retailers doing business in its marketplace is in contravention of EU competition rules.[67] The CCI, has also acknowledged the dual role played by data as an input and as a currency for monetizing services while investigating abuse of dominance and combination cases.[68] In ***Re Updated Terms of Service and Privacy Policy for WhatsApp Users and WhatsApp LLC & Facebook,*** the CCI stated that factors such as, innovation, customer service and quality have been elevated as non-price parameters of competition on the basis of which market participants compete.[69] Recently, a probe conducted by CCI found tech giant Google guilty of stifling competition and engaging in practices leading to denial of market access to extend its dominance in services such as, browser, search, app library among others for ensuring that its services serve as default options for achieving highest user preference.[70] There have been calls in multiple jurisdictions to revisit the traditional thresholds in accordance with challenges posed in the digital markets.[71] The Competition Law Review Committee has also recommended inclusion of data deals as one of the thresholds to be employed during merger control.[72]

13.12 ENFORCEMENT OF COMPETITION LAW

The Competition Act also provides a multi-tiered enforcement mechanism. As per the provisions of the Competition Act, the Commission can inquire into any alleged infringement of Section 3(1) or Section 4(1) of the Competition Act, based on its own motion or on the receipt of any information or, by a reference received from the Central Government, State Government or any statutory authority.[73] Under the statute, there is no *locus standi* requirement. The CCI, after the receipt of the information, is expected to satisfy itself as to the existence of a *prima facie* case, and pass directions to the Director General under Section 26(1) for initiating investigation.[74]

Director-General:

The Director General or the DG, is duty bound to assist the Commission whilst conducting investigation for infringement of any provisions, rules or regulations made under the Competition Act, for which the DG shall be empowered with all the powers that are conferred on the Commission by the Act.[75] Where the Commission considers that a *prima facie* case exists, it directs the DG to investigate the matter. In ***Excel Crop Care Limited v. Competition Commission of India & Another,*** the Supreme Court held that an investigation by the DG must cover all the relevant facts and evidence in order to assess any anti-competitive conduct complained of. The Court held that the *"the starting point of the inquiry would be the allegations contained in the complaint but during the course of the investigation if other facts also get revealed and are brought to light, the DG would be well within his powers to include those as well in his report"*.[76]

Competition Commission of India (CCI):

The Director General shall, after conducting investigation, submit his findings to the Commission. The Commission, based on the findings of the DG may either choose to close the matter and pass such orders as it deems fit (if no contravention of the provision of the Act is found) or, call for further investigation if required.[77] The Competition Commission of India, being the statutory regulatory authority entrusted to promote and sustain competition in the markets in India is empowered to issue interim orders in the course of inquiry to prevent acts that may have an appreciable adverse effect on competition or culminates in abuse of dominance by a group or an enterprise.[78]The Commission also has the power to impose penalties for non-compliance with the directions of Commission and the Director General[79] and for failing to provide adequate information on combinations when sought by the CCI.[80] Aside from the power to impose penalties for omission, willful alteration or furnishing a false statement before the Commission,[81] the CCI also has the power to impose lesser penalty on a person included in a cartel, provided he makes a full disclosure regarding the violations. However, it needs to be noted that this feature of imposing lesser penalty shall not be available if the investigation report pertaining to the cartel has been received from the Director General by the Commission before making of such disclosure.[82] The CCI is also required to provide its opinion to the Government in the formulation of competition policy.[83]

Appellate authorities:

The National Company Law Appellate Tribunal (NCLAT) has been designated as the Appellate Tribunal for handling the appeals arising from the CCI. The Appellate body has been empowered to hear and dispose of appeals against any order, direction or decision issued by the CCI. Additionally, the NCLAT has been empowered to adjudicate on claims for compensation arising from the findings of the Commission as well as passing of orders for the recovery of compensation.[84]The Appellate Tribunal, after providing parties to the appeal an opportunity of being heard, is empowered to pass orders modifying, affirming or setting aside the decision, direction or order appealed against.[85]The Appellate Tribunal need not be bound by the Code of Civil Procedure, 1908 but must conform to the principles of natural justice while conducting its procedure. The Tribunal shall be vested with all the powers that are vested in a civil court for performing its functions during the trial of suit.[86] Appeals from the Appellate Tribunal shall lie to the Supreme Court which needs to be filed within sixty days from the date of communication of the decision or order passed by the Appellate Tribunal.[87]

13.13 SUMMARY

Competition law is an economic legislation of immense significance and plays an important role in managing the dynamics of the market. The provisions related to anti-competitive arguments, abuse of dominance and combinations help to ensure fair competition in the market and thereby augment consumer welfare. With the rise in online platforms and the rapid shift to e-markets, competition authorities are also forced to recognize the significance of non-price parameters of competition such as quality, innovation, privacy, etc. Ensuring fair competition in digital markets poses far more challenges for the competition enforcement authorities as compared to the traditional markets. But the dynamic character of the markets and the constant emergence of new challenges also make competition law one of the most interesting areas of law for students as well as practitioners.

13.14 SELF ASSESSMENT QUESTIONS

1) Competition Law facilitates in-

   a) increasing prices　　b) diminishing output

   c) thwarting innovation　　d) improving product quality

2) Which of the following legislation was the predecessor to the Competition Act, 2002?

   a) Consumer Protection Act, 1986

   b) Monopolies and Restrictive Trade Practices Act, 1969

   c) Unfair Trade Practices Act, 1972

   d) Companies Act, 1956

3) Which Committee was constituted by the Government before enacting the Competition Act, 2002?

   a) Mahalanobis Committee　　b) Dr. J J Irani Committee

   c) Bhabha Committee　　d) Raghavan Committee

4) Competition Commission of India (CCI) is a -

   a) Statutory body　b) Administrative body　c) Quasi-judicial body

5) What are the different kinds of horizontal and vertical agreements? Explain with relevant examples.

6) What is meant by abuse of dominance? Mention the three important steps required in every abuse of dominance investigation.

7) How are mergers and combinations regulated under the Competition Act, 2002?

8) What do you understand by the term "Green Channel" under the Competition Act, 2002?

9) Write a brief note on the powers and functions of the Competition Commission of India (CCI) under the Competition Act, 2002.

13.15 FURTHER READINGS/REFERENCES

Books:

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