



A CRITICAL ANALYSIS ON COMPETITION AMENDMENT ACT, 2023

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Abstract

The Competition (Amendment) Act, 2023, has been passed in India to strengthen competition regulation, streamline operations, and create a business-friendly environment. The amendment introduces a new deal value threshold for mergers, acquisitions, or combinations, which will be reviewed by the Competition Commission of India (CCI). It also introduces a commitments and settlements mechanism for proceedings initiated by the CCI, reducing time and resources spent on lengthy investigations. The maximum penalty for abuse of the dominant position has been increased from 10% of the turnover to 20%, aiming for more effective enforcement of competition law. The Act also provides the CCI with the authority to appoint a Director General with the central government's approval. The Act aims to align Indian competition law with international best practices, helping India maintain a competitive edge in the global market. One of the biggest markets in the world for both producers and consumers is the Indian market. The Monopolies and Restrictive Trade behaviours Act, 1969 was designed to regulate the same with the goals of limiting monopolistic behaviours and reducing the concentration of wealth in fewer hands.

To encourage healthy competition in the Indian market, however, regulations regarding competitive markets and abuse of dominant position were necessary in the era of privatisation, globalisation, and liberalisation. The Monopolies and Restrictive Trade Practices Act, 1969 was repealed and the Competition Act, 2002 was adopted to accommodate the needs of the expanding market. As per the need and requirements of the current time it has been amended in the competition act amendment act, 2023.

Introduction

One of the biggest markets in the world for both producers and consumers is the Indian market. The Monopolies and Restrictive Trade behaviours Act, 1969 was designed to regulate the same with the goals of limiting monopolistic behaviours and reducing the concentration of wealth in fewer hands. To encourage healthy competition in the Indian market, however, regulations regarding competitive markets and abuse of dominant position were necessary in the era of privatisation, globalisation, and liberalisation. The Monopolies and Restrictive Trade Practices Act, 1969 was repealed and the Competition Act, 2002 was adopted to accommodate the needs of the expanding market. India has recently approved the Competition (Amendment) Act, 2023, also known as "the Act." The Competition Act, 2002, the main competition statute in the nation, is changed in several ways by the Act. The changes are intended to improve the control of competition, simplify procedures, and create an atmosphere that is conducive to business. The amendment's introduction of a new deal value threshold is one of the biggest modifications. According to this clause, the Competition Commission of India (CCI) must provide its clearance for every acquisition, merger, or amalgamation deal that involves firms with significant business operations in India and meets or exceeds INR 2,000 Cr. By allowing transactions that would normally qualify for the minimal exemption to be scrutinised if their deal value exceeds the set threshold, this threshold broadens the purview of CCI assessment. A significant modification pertains to the redefined term "control," incorporating the notion of "material influence." This modification recognises that a crucial component of control is the capacity to exercise substantial influence on the operations, affairs, or strategic business choices of an entity or set of entities. The Competition Commission of India (CCI) have the jurisdiction to formulate regulations that delineate supplementary standards for defining "material influence." With the help of this update, it should be easier to define control and less uncertain when assessing its scope in different business arrangements. India's competition law framework has undergone substantial modifications with the introduction of the Competition Amendment Act, 2023 (CAA 2023). although the Act seeks to increase efficacy and efficiency, it has also sparked discussion and presented several issues. A more effective and efficient framework for competition law is possible with the Competition Amendment Act, 2023. Its successful implementation, however, depends on addressing concerns about stakeholder involvement, enforcing rules with clarity, and making sure that a nuanced approach strikes a balance between research and competition. It is pertinent to mention here that under the said Amendment Act 2023, the Competition Commission of India has the power to appoint the Director General for assisting in conducting an investigation/enquiry into contravention of the Competition Act. This broadens the definition of a cartel by including hubs and spokes, i.e., those who do not directly participate in supply or production but participate indirectly at the horizontal levels, such as trade associates, consultants, or intermediaries. The Amendment Act, 2023 also gives the Director General additional investigative authority to carry out the

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investigation, including the ability to question any officer or agent of the party under investigation with prior permission from the Competition Commission of India.¹

REVIEW OF LITERATURE PRIMARY SOURCES

BOOKS :

Avtar Singh, Competition Law, Eastern Law House, Kolkata, 2012.

This book provides a comprehensive study of competition law which provides a significant sources and delves into the historical background of competition law.

Guide to competition law (containing commentary on the competition act, 2002 MRTP Act, 1969 and consumer protection act) meticulously covers recent legislative changes, including the Competition Acts, and highlights vital aspects like corporate social responsibility and shareholder rights. A valuable resource for understanding contemporary competition law in India .

Its provides a comprehensive and up-to-date resource for competition law. With a focus on corporate governance, the book offers valuable insights into the legal framework governing companies. Its relevance and contribution to understanding corporate governance within the context of company law is valuable.

SECONDARY SOURCES

ARTICLES:

- Girish Chandra (23 April, 2023): "Reforms in competition law await key CCI appointments", Mint <https://www.livemint.com/news/india/competition-law-reforms-in-india-stalled-as-cci-remains-without-chairman-and-members-ccinews-competitionlaw-india-11682268015778.html>
- Shivam Tripathi (6 May, 2020): "Introduction of Competition (Amendment) Bill, 2020: A step towards revamping Indian Market",
- Narula, A. Mathur, N. Absalom (09 August, 2023): "The Competition (Amendment) Act, 2023: Significance and Implications for Competition Regulation in India", Invest India
- Khaitan & Co (15 February, 2023): "India: Competition Amendment Bill, 2023: More Than Just A Facelift Of The 2022 Bill" Khaitan & Co LLP
- Sarvesh Mathi (04 April, 2023) "Key Features: Indian Parliament Passes Competition (Amendment) Bill, 2023" Medianama
- Vidhi Madan Chadda (May, 2023): "The Competition (Amendment) Act, 2023: Power, Penalties, Perplexity and Proposal" ICSI

¹The Competition (Amendment) Act, 2023: A Game Changer for Mergers and Acquisitions by Aayushi Singh† and Pavitra Dubey.

RESEARCH HYPOTHESIS

India's main competition law, the Competition Act, 2002, was recently amended with the passage of the Competition (Amendment) Act, 2023. The changes are intended to improve the control of competition, simplify procedures, and create an atmosphere that is conducive to business. A new deal value threshold, a commitments and settlements mechanism, and an extension of the Competition Act's current provisions regarding anti-competitive horizontal agreements are just a few of the major changes brought about by the Act to India's competition regulatory environment. The change offers hope to nascent companies and small enterprises wishing to participate in mergers, acquisitions, or combinations because it will shorten the duration required to carry out these transactions. The Act gives the Competition Commission of India (CCI) more jurisdiction by granting it the ability to select Director Generals with greater authority, bringing antitrust legislation in India up to date with the evolving Indian and international markets. The law will be helpful in the context of the digital market since CCI will be reviewing the agreements' scope following the implementation of the Deal Value threshold limit. However, because the act has only been partially developed, it is too soon to evaluate the effects it has had.

RESEARCH OBJECTIVE

This seminar paper aims to critically analyse the competition law amendment act, 2023. The Competition (Amendment) Act, 2023 is a recent amendment to the Competition Act, 2002, which is India's primary competition law. The objective of the amendment is to strengthen competition regulation, streamline operations, and foster a business-friendly environment. The amendment introduces a new mechanism for settlements and commitments, which aims to reduce the time and resources expended on lengthy investigations and foster efficient and compliant business practices. The amendment also establishes a clear and efficient competition enforcement framework, which will benefit businesses and consumers alike. The amendment brings hope for budding startups and small businesses that seek to engage in mergers, acquisitions, or combinations, as the time period of execution of such combinations will significantly reduce. The amendment also provides more powers to the Competition Commission of India by providing the authority to appoint Director General with more powers. The amendment aims to bring antitrust law at par with changing markets and is a step towards promoting competition in India. However, it has its own implication which has been broadly studied in this paper.

RESEARCH QUESTION

1. What is the potential Impact of hub and spoke cartels and its impact on penalties in anti-competitive agreement?
2. What are the implications for leniency regime?
3. How will the competition amendment act, 2023 affect small businesses?
4. What are the potential negative impacts of the competition amendment act, 2023 on consumers

RESEARCH METHODOLOGY

In this paper, in order to meet the challenges, the researcher has used the doctrinal method because it is a precise paper and is limited by words due to paucity of time empirical research cannot be taken. Though this topic is fit for empirical study the researcher has been confined to the doctrinal method ensure the objectivity of this study, the researcher underwent a delearning of her own experience and observation. Secondary data was used be reanalysing, interpreting and reviewing existing publications-texts, articles, journals. The data has been reviewed from websites and legal documents. In addition, most of the information has been gathered from books and articles.

CHAPTER-2 HISTORICAL BACKGROUND OF COMPETITION LAW IN INDIA

The goal of stopping monopolistic behaviours and fostering fair competition in the Indian market, the Monopolies and Restrictive Trade behaviours Act (MRTP) of 1969 signalled the establishment of competition law in India. But as time went on, it became evident that the MRTP was unable to deal with India's shifting economic conditions. The Indian government formed a high-level committee in 1999 with the goal of recommending contemporary competition laws that follow international trends. The Committee conducted a comprehensive analysis of global competition laws to find salient features that would be applicable in the current context of India. The Competition Act was passed in 2002 as a result of the Raghavan Committee's findings, which were presented to the government in May 2004. In order to uphold the Act's requirements and safeguard consumers from anti-competitive behaviour, the Competition Commission of India (CCI) was established. The Competition Act has undergone a number of amendments since it was passed, including provisions for mergers and acquisitions in 2007 and increased fines for anti-competitive behaviour in 2009.⁶ In 2023, both Houses of Parliament pass a new amendment bill that aims to strengthen enforcement mechanisms and increase fines for breaking CCI orders. India's current competition law is set to be revised by the planned Competition (Amendment) Bill, 2023 in response to instances of anti-competitive behaviour by large firms, particularly in the technology sector. Among these are well-known issues concerning Amazon's purported anti-competitive actions in India and Google's legal dispute with the Competition Commission of India (CCI). The Facebook-WhatsApp acquisition sparked concerns about data privacy and competition in the messaging app market, which led to the proposed legislation: (a) Google was fined US\$ 21 million in 2018 by the CCI for abusing its dominant position in online search advertising; the Competition Appellate Tribunal upheld this decision in 2020. This case serves as an example of how strong companies can stifle competition and hurt customers by abusing their market dominance. Since data is more important than an entity's financial worth, internet behemoths like Google relish the chance to acquire companies that are important in the data processing space but don't produce a lot of revenue. Under the proposed change, a "deal value threshold" would be introduced, thereby bringing these occurrences under the jurisdiction of CCI. Additionally, the present amendment's enlargement of the penalty clauses would result in higher penalties being levied over an enterprise's "global turnover." These conditions would enable CCI to apply harsher sanctions

like to those imposed by the European Union, where Google was forced to pay a fine exceeding \$4 billion USD. (a) In a similar vein, allegations against Amazon of predatory pricing and giving specific vendors on its platform preferential treatment prompted the CCI to launch an inquiry and find that the company had broken the law governing competition. (c) Lastly, worries regarding data privacy and competitiveness in the messaging app industry were also raised by the Facebook-WhatsApp acquisition. However, the CCI discovered that the purchase had loosened market restrictions on competition. Though the issue affected almost 130 million people, the Commission was unable to look into it because of threshold restrictions.²

CHAPTER-3 KEY CHANGES INTRODUCED BY THE AMENDMENT ACT

Hub and spoke cartels

Any organisation that “participates or intends to participate in the furtherance of such agreements” is now subject to the Competition Act's more expansive provisions for anti-competitive horizontal agreements. By including all participants and facilitators, cartels are now defined more broadly, irrespective of whether they engage in the same or comparable trades as the other parties. As a result, under the context of the Competition Act's cartel provisions, the Competition Commission of India (CCI) is now empowered to investigate and assess instances of anti-competitive coordination that take place through hub-and-spoke systems, including cooperation enabled by trade groups. The Competition Act of India used to solely cover agreements between businesses or persons involved in comparable or identical trades or services. Demonstration of a cartel structure required proving collaboration on the horizontal or vertical plane. This does not include hub-and-spoke configurations, in which a single centre manages several players on the same horizontal plane. Hub and spoke cartels are hard to prove since it's hard to prove individual individuals' collusion, which makes it hard to include them in the cartel context.

The 2022 Bill sought to close this disparity by instituting a presumption that any organisation or business that actively advances a cartel agreement would be deemed a member of the group, even if they did not engage in related transactions. Industry associations, however, expressed alarm about the ambiguous phrasing because they believe it may unintentionally entangle e-commerce platforms and associations that offer communication platforms but do not wish to engage in cartel actions. The MCA contended that the assumption was rebuttable and that agreements that set pricing or divide markets are frequently facilitated by industry associations. The Parliamentary Committee did, however, recognise the ambiguity and suggested that the rule should only apply to organisations that can be shown to have meant to actively engage. The 2023 Amendment Act, however, now stipulates that if a business, association, or individual participates in or intends to participate in the agreement's furthering, they shall be deemed to be a part of it even if they do not engage in similar trades. This covers both involvement and

Shivam Tripathi (6 May, 2020): “Introduction of Competition (Amendment) Bill, 2020: A step towards revamping Indian Market”,

the intention to participate in such accords, and it does so in defiance of the proposal made by the Parliamentary Committee. Consequently, the ambiguity brought forth by industry associations and the Parliamentary Committee remains unresolved.³

Deal value Threshold

In India, the world of mergers and acquisitions, or M&A, is constantly changing. An innovative DV Threshold) to strengthen the regulatory framework for combinations that could negatively effect competition has been adopted by the Competition Amendment Act, 2023, bringing interesting amendments to the Competition Act, 2002. This new concept is especially important for acquisitions in the digital space, where standard turnover and asset requirements frequently fall short of fully capturing the potential impact and genuine value of a deal. However, to what extent does this new legislation take into account the subtleties and complexity of M&A transactions.⁴

The Competition Commission of India (CCI) would now need to approve combinations in advance according to two new criteria introduced by the DV Threshold. This concerns both the acquired company's "substantial business operations in India" and the transaction amount surpassing INR 2,000 crores. Some of the uncertainties surrounding these standards are addressed in the most recent draft of the Competition Commission of India (Combination) Regulations, 2023. For example, it explains that "substantial business operations" are defined by the number of users, gross merchandise value, or turnover in India, and that the "value of the transaction" include both direct and indirect considerations. Still, a number of questions are unresolved. For example, how would the value of a transaction be determined for an international target that conducts substantial business in India? Would the CCI take into account the acquisition price in its whole or simply the amount related to the India portion of the deal? Furthermore, it's possible that certain transactions will be missed by the DV Threshold. For example, the composite payments made for the acquisition and these services over time may surpass the DV Threshold if acquirers need allied services from promoters or promoter-run businesses for a period of time after closure. However, since these individual transactions are not regarded as combinations, they might avoid the CCI's regulatory approval.⁵

Value of Transaction

There is also ambiguity in the definition of the "value of the transaction." Will the target's enterprise value or the equity value paid for the target's acquisition be referred to by this value? Businesses with a high enterprise value but a low equity value may get away with it if only the equity value is taken into account. Last but not least, the Regulations provide no advice for transactions in which a portion of the consideration is based on arbitrary and variable metrics like enterprise value or EBITDA. This ambiguity may cause administrative bottlenecks and even hinder transactions that

³ A Critical Analysis of the Leniency Regime in India by Mohsin Rahim

⁴ Avaantika Kakkar, Kirthi Srinivas (Cyril Amarchand Mangaldas)/May 4, 2023 Public Consultation on Amendments to the Competition Act – Summary of Feedback

⁵ By Robin Spillette, Tony Di Domenico, Chris Margison, Shazad Omarali & Adele Ambrose on September 28, 2023 <https://www.impriindia.com/insights/competition-amendment-act-update/>

otherwise do not require regulatory approval. In order to fully capture the genuine value and potential anti-competitive impact of M&A transactions, a major step has been taken with the adoption of the DV Threshold in the Indian Competition Code. This threshold was inspired by comparable procedures in Germany and Austria. But in order for this new regulation to be effective, it is imperative that the uncertainties around it are sufficiently addressed. If this is not done, transactions that do not meet the DV Threshold may be subject to ambiguous regulatory interpretation. To provide a strong and complete regulatory framework for M&A transactions in India, these shortcomings must be filled in the next iteration of the Regulations, which will be made after public input.

“Material Influence” as the determining factor for “control”

The present paradigm defines "control" as the ability of one or more enterprises, acting alone or jointly, to manage the affairs of another enterprise or group, or the ability of one or more groups, acting alone or jointly, to manage another enterprise or group. According to the CCI's FAQs, the degree of shareholding, any statutory rights attached to the shareholding, and any contractual rights—such as the right to veto, consult, or participate in management and affairs—can all be used to determine an entity's ability to control its management and operations. Special rights and veto rights, however, are not the sole foundation for assuming the power to manage or control an enterprise's operations; other bases of control may also exist, such as an enterprise's or an individual's standing and experience, board representation, structural and financial arrangements, etc. In the practice of competition law, control is seen as a degree issue. Control, however, is comprised of all degrees and forms of control. According to the CCI's decision-making process, "control" has come to mean "material influence" over time. The term "material influence" refers to the existence of elements that allow one organisation or individual to have a say in the operations and administration of another organisation. Examples of these elements include investor representation on the board, particular rights that the organisation may exercise, potential negative rights, etc. The definition of "control" has been revised to expressly include the capacity to exert "material influence" on the management, affairs, or strategic commercial choices of a company or group of entities in accordance with the Amendment Act and the CCI's decision-making practice. The CCI's approach to determining control over a target entity will be streamlined, and any ambiguity around it will be resolved, if the regulations it issues contain an indicative list for determining "material influence."⁶

Framework for settlement and commitment

Any business that has been the subject of an investigation for abuse of dominance or anti-competitive agreements may be eligible to use a commitment or settlement method. An organisation that has been the subject of an investigation for abuse of a dominant position or anti-competitive agreements may elect to file a settlement application with the CCI, paying the required fees. The enterprise must file the application for settlement following receipt of the Director General's report pursuant to Section 26(3), but before the CCI issues an order under the

⁶ Narula, A. Mathur, N. Absalom (09 August, 2023): “The Competition (Amendment) Act, 2023: Significance and Implications for Competition Regulation in India”, Invest India

Act. Rules will outline the precise timetable and procedures. After taking into account the type, seriousness, and consequences of the violations, the CCI may accept the settlement offer, subject to the conditions and mode of implementation of the settlement as well as the applicant's payment of any amounts required by regulations or monitoring. However, if the CCI determines that settlement in that specific case is inappropriate or if the CCI and the party in question are unable to come to a settlement agreement, the CCI may reject the application for settlement. In that scenario, the CCI would carry out its investigation. A similar process has been established for commitments as well. Following the CCI's directive to the Director General to investigate on the basis of a prima facie opinion, but prior to the Director General sending their report to the relevant parties, businesses may apply to offer commitments to the CCI regarding an inquiry into abuse of dominant position or vertical anti-competitive agreements. Before accepting or rejecting the proposed commitments, the CCI may take into account their efficacy in addition to the type, seriousness, and impact of the claimed violations. Regulations will specify the in-depth process for the commitment and settlement procedures. There will be no appellate process for the CCI's rulings regarding the aforementioned commitment or settlement. The CCI's order will be rescinded and withdrawn in either scenario if (i) the applicant disobeys the order regarding settlement or commitments, (ii) the applicant submitted false or incomplete disclosures, or (iii) there is a major change in the facts. In addition to facing legal fees of up to INR 1 crore, the applicant might be required to start or continue an investigation into possible abuses of dominant position or anti-competitive agreements. The settlement and commitment framework should help in reducing litigation and resolving complaints at a faster pace and with more flexibility. However, the Amendment Act clarifies that compensation may also be awarded in cases of settlement, which would add to the potential liability of entities looking to avail of the settlement mechanism.⁷

Leniency regime

1. Incoherent Methodology-The efficacy of the leniency programme may be harmed by inconsistent reductions and secrecy guarantees. Businesses that feel that the leniency process lacks fairness or consistency may be reluctant to come forward with information. Applying leniency measures inconsistently may also make it more difficult to enforce competition law and recognise and punish anti-competitive behaviour in a variety of situations.
2. Impairments to Competition- Concerns over unforeseen effects are raised by the Competition Commission of India's (CCI) wide discretion in imposing fines for cartel proceedings. Companies may be dissuaded from taking part in the leniency programme if they believe that the fines are unjustified or excessive. Furthermore, the absence of precise criteria for determining penalties may have a detrimental effect on competition as they may not serve as a powerful disincentive for cartel behaviour.

⁷ Pranav Vijay Sonar Competition (Amendment) Act 2023: A Step Towards Promoting ...

3. Inadequate Rewards for Disclosure of Information- The lack of incentives for informants who uncover potential anti-competitive behaviour but do not request leniency could lead to a loss of opportunity in identifying and combating such behaviour. The efficiency of competition law enforcement may be negatively impacted by the lack of incentives for whistle-blowers, who are essential in exposing misconduct. Encouraging and compensating whistle-blowers can contribute to expanding the scope of detection and improving the likelihood of cartel discovery.

4. Reforms Needed-The suggestion to implement the idea of "leniency plus" is a sign that the leniency regime still needs to be reformed. By offering creative incentives like leniency plus, businesses may be encouraged to reveal details about several cartels, which could boost the program's efficacy. Nonetheless, the ambiguity around the efficacy and execution of these changes emphasises how crucial it is to keep assessing and enhancing the leniency programme.⁸



⁸ A Critical Analysis of the Leniency Regime in India by Mohsin Rahim

CHAPTER-4 POTENTIAL IMPACTS OF THE ACT

Increased scrutiny

To preserve fair competition and stop anticompetitive behaviour, mergers and acquisitions (M&A) must be scrutinised more closely. Setting a shorter deadline for the Competition Commission of India (CCI) to examine these deals, meanwhile, can have unintended consequences. This is an illustration of how a shortened review period could result in hasty decisions and the omission of important competitive factors:

1. **Case Complexity-** Complex financial, operational, and legal factors are frequently present in mergers and acquisitions. Scurrying through the review process could prevent the CCI from having enough time to fully evaluate the complexities of a given case. A thorough examination of market dynamics, any anti-competitive consequences, and the overall impact on consumers may be necessary in complex circumstances.
2. **Analysis and Data Gathering-** Sufficient time is essential for gathering and evaluating pertinent data. Hasty evaluations could take into account erroneous or inadequate data, which could result in findings that are not correct. To comprehend market structures, spot possible monopolies or anti-competitive behaviour, and gauge the expected effect on consumer welfare, a thorough data analysis is required.
3. **Participant Feedback-** Requesting feedback from a range of stakeholders, such as rivals, customers, and industry experts, is a common practice in the review process. A shorter deadline can make it more difficult for these stakeholders to offer insightful feedback. Insufficient engagement with stakeholders could lead to a deficiency of varied viewpoints, which could result in an inadequate comprehension of the competitive environment.
4. **Legal and Regulatory Compliance-** A number of legal and regulatory standards must be met by M&A transactions. Hasty evaluations could lead to the omission of important legal details, putting the transaction at risk of legal troubles or compliance problems. The stability of the corporate environment depends on making sure the merger or acquisition complies with current rules and regulations.
5. **The Dynamics of the Market-** Because markets are dynamic, any potential long-term effects on competition must be carefully considered. Hasty judgements could overlook long-term changes in market dynamics in favour of more pressing issues. This can result in lost chances to stop long-term harm to the competition. The possibility of legal challenges and appeals may rise in the event of incomplete or hurried reviews.⁹

Impact of stakeholders to competition amendment act,2023.

⁹ **Analysis of Competition (Amendment) Act, 2023**

*This article is written by Shivam pursuing **Diploma in M&A, Institutional Finance and Investment Laws (PE and VC transactions)**. This article discusses the various nuances of the Competition (Amendment) Act, 2023.*

*by **Rachit Garg**.*

The Competition (Amendment) Act, 2023 in India has the following detrimental effects on stakeholders:

Financial Burden: Businesses may experience considerable financial hardships as a result of the imposition of harsher fines based on worldwide turnover, which may have an impact on their operations and profitability. Companies found to have violated competition regulations may incur higher costs as a result of this change in the penalty calculation.

Challenges with Uncertainty and Compliance: Stakeholders may experience ambiguity as a result of the act's enlarged scope and regulatory modifications, particularly with regard to comprehending and adhering to the new rules. This unpredictability may make it difficult to adjust to the revised competition laws, which could have an impact on corporate plans and operations Effect on

Acquisitions and Mergers: Stakeholders in these transactions may be impacted by the Competition Commission of India's (CCI) shortened review period for mergers and acquisitions. The shorter review period may cause hasty choices, which would impair a careful analysis of the implications for competition.

Deterrence for Genuine Parties: Because of their limited financial resources, genuine parties may be discouraged from pursuing acquisitions or mergers by the modified act's requirement for a sizeable deposit for some transactions. This can restrict market activity and obstruct chances for corporate expansion.¹⁰

Impact of penalties on anti-competitive agreements

It is intended that stiffer penalties for anti-competitive activity will discourage companies from engaging in such behaviour. However, if these fines are calculated using global turnover, there can be problems and consequences for businesses.

1. **Disproportionate Impact:** Penalties calculated as a percentage of global turnover may have a disproportionate impact, particularly on multinational corporations with substantial revenue streams. It's probable that this tactic disregards the particular economic circumstances of the local market in which the anti-competitive activity occurred. It may be more difficult for a business to recover and compete if the fine is disproportionate to the actual harm caused.
2. **Excessive Penalties for Small Infractions:** When anti-competitive behaviour was unintentional or relatively mild, penalties based on global turnover may be considered excessively severe. This approach might not be able to discriminate between less serious violations that could be dealt with with suitable sanctions and more serious offences that require hefty fines.
3. **Restraining Innovation and Competition:** Businesses may be discouraged from taking risks or exploring innovative ideas by excessive fines if they fear severe financial consequences. This could stifle competition and prevent the development of innovative products or company plans.

¹⁰ Vidhi Madan Chadda (May, 2023): "The Competition (Amendment) Act, 2023: Power, Penalties, Perplexity and Proposal" ICSI

Businesses may be deterred from implementing audacious but legal strategies that benefit customers if they fear facing harsh penalties.

Impact on SMEs (small and medium-sized enterprises):

Due to their potential for lower global turnover than larger companies, SMEs may be disproportionately harmed by penalties based on global revenue. These fines have the potential to be extremely costly for smaller companies, either driving them out of business or limiting their ability to grow. This could reduce the market's diversity and competitiveness.

5. The Chilling Effect of Investment: The possibility of harsh penalties may discourage foreign direct investment since companies may be hesitant to expand into regions where they perceive a high risk of incurring hefty fines for potential regulatory violations. This might limit foreign investment and prevent global markets from growing.

6. Need for Uniformity: Regulations need to be predictable for firms to be able to make educated choices. Businesses may find it challenging to assess and manage risks effectively if they believe that fines are arbitrary or inconsistently imposed. This uncertainty might undermine investor confidence and impede economic growth. To alleviate these concerns, regulatory agencies should appropriately evaluate the proportionality of the penalty by taking into account the seriousness of the violation, specific market conditions, and the size of the offending firm. To create a regulatory framework that fosters competition and protects businesses from unintended harm, it is imperative to strike a balance between the need for deterrence and the concepts of justice and proportionality.¹¹

Potential impact on the Market Dynamics

1. Market Dominance and Monopoly Power-Stifling competition can result from a single company or a small number of powerful companies maintaining a monopoly on a given market. Customer can experience less innovation, more expensive costs, and fewer options. It could be difficult for small enterprises to break into the market.

2. Cartels and Collusion - Collusive activities, in which rivals band together to fix prices or impose restrictions on production, erode the principles of fair competition. Costs that are unnecessarily inflated result in increased pricing for consumers. Additionally, cartels can impede investment and innovation in the market.

3. Barriers to Entry - High barriers to entry make it difficult for new rivals to enter the industry. Decreased competition lessens the incentives for innovation and permits established businesses to keep their higher prices. Customers can lose out on advantages that new competitors could offer.

¹¹ Majmudar & Partners Pranav Vijay Sonar M&A impact due to changes in India's competition law

4. **Predatory Pricing and Anti-competitive tactics-** Businesses that engage in these tactics run the risk of hurting both customers and rival businesses. A monopolistic situation could result from predatory pricing driving away rivals. Although there may be immediate benefits for consumers, as competition wanes, costs may rise.
5. **Information Asymmetry-** Different market actors' access to information might skew competitiveness. A less competitive market may result from smaller players being at a disadvantage. Because some businesses take use of information advantages, consumers may not make well-informed decisions.
6. **Cross-ownership and Interlocking Directorates-** Businesses that hold substantial shares in several rival companies or have common board members may find that their competition is diminished. Shared interests may have an influence on decision-making processes, limiting competition possibly hurting consumers through decreased innovation and increased costs
7. **Regulative Gathering -** Competition may suffer if regulatory bodies are unduly influenced by the industries they are supposed to oversee. Barriers to entry for new businesses may be created by regulations that are crafted to favour established enterprises. As a result, the market becomes less vibrant and competitive.
8. **Network Impacts:** The dominant company may solidify its position in markets where the value of a good or service rises with the number of consumers (network effects). Competitiveness may be hampered by new competitors' inability to draw users. Because of the dominating player's widespread presence, consumers may find it difficult to move to alternatives.
9. **Market Distortions Caused by Subsidies-** Governmental or other forms of subsidies might favour particular businesses or industries, distorting the competitive landscape. Giving certain players unfair advantages can stifle competition, which may result in wasteful use of resources and a decline in innovation. Robust enforcement of antitrust laws, watchful regulatory agencies, and policies that support transparent and equitable markets are necessary to counter these detrimental effects. Competition authorities can support innovation, give consumers options, and advance economic efficiency by spotting and resolving market dynamics imbalances.¹²

¹² Sarvesh Mathi (04 April, 2023) "Key Features: Indian Parliament Passes Competition (Amendment) Bill, 2023" Medianama <https://www.medianama.com/2023/04/223-key-features-competition-amendment-bill-2023/>

CHAPTER-5 CONCLUSION

Businesses, particularly smaller companies, may face an unduly complex compliance burden as a result of the tighter rules and more scrutiny. Stricter sanctions and a more circumspect stance from the CCI may deter some acceptable corporate practices and impede innovation. Although the Act attempts to address these transactions, the definition is still a little ambiguous, which could cause firms to become confused when they are merging or acquiring. The Act's opponents contend that insufficient public input was obtained before it was passed, which raises questions about possible unexpected repercussions. It is unclear if the Act will be successful in keeping regulators from being swayed by the sectors they are responsible for supervising. To guarantee seamless operation in a globalised market, additional research is necessary to determine how well the Act complies with frameworks for international competition law. The Act falls short in addressing the issues raised by the dominance of data and the digital era. It may be necessary to make other changes to guarantee fair competition in the tech industry. In general, India's enforcement of competition law has strengthened thanks to the Competition (Amendment) Act, 2023. Its efficacy will rely on the specifics of implementation, handling any ambiguities, and adjusting to the changing business environment. Although the Competition (Amendment) Act, 2023 seeks to enhance competition law in India, it also presents obstacles that firms must successfully manage, including extended inspection periods, severe fines, changes in market dynamics, and regulatory uncertainty. A more effective and efficient leniency programme will require addressing significant concerns like inconsistent approaches, potential negative effects on competition, lack of incentives for whistleblowers, and the need for ongoing reforms. The leniency regime in competition law aims to encourage companies to provide valuable information and detect cartels. For efficiency, expediting the review process can be beneficial, but it's crucial to strike a balance so that the CCI has enough time to do in-depth evaluations. Hasty decisions may result in reviews being of a poorer calibre and may also prevent anti-competitive activity from being noticed or remedied. The regulatory agencies should appropriately evaluate the proportionality of the penalty by taking into account the seriousness of the violation, specific market conditions, and the size of the offending firm. To create a regulatory framework that fosters competition and protects businesses from unintended harm, it is imperative to strike a balance between the need for deterrence and the concepts of justice and proportionality. It brings with it a number of new difficulties for companies and authorities, but it also offers a great deal of chances to advance fair competition, safeguard consumer interests, and bolster enforcement. The acknowledgement of hub-and-spoke cartels and the requirement for public engagement before rules or guidelines are noteworthy achievements.

Research Through Innovation

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