

Role of Competition Law in preventing Corporate Monopolies in India – An Overview

Dr. Sanjay Chandralal Premchandani

Vivekanand Education Society's College of Arts, Science & Commerce (Autonomous), Sindhi
Society, Chembur
Affiliated to University of Mumbai

1. Introduction:

India's Competition Law (CL) framework is primarily governed by the Competition Act, 2002, which seeks to safeguard consumer interests while fostering and maintaining market competition. This law superseded its predecessor "Monopolies and Restrictive Trade Practices (MRTP) Act, 1969", addressing its inadequacies and adapting to the evolving economic landscape post-liberalization in 1991¹. The Competition Act, 2002, enforced by the Competition Commission of India (CCI), prohibits corporate monopolies by restricting anti-competitive agreements, preventing the abuse of dominant market positions, and regulating mergers (combinations). It focuses on fostering fair competition, enhancing economic efficiency, and protecting consumer interests.

The competition market of India is administered under the Competition Act of 2002. This Act controls the activities that would affect the market forces that may have an "adverse effect on competition in India". The Act is now insufficient to deal with the recent demands and changing business environment in telecommunications, and e-commerce sector, and an indirect role or an invisible hand of Government in eliminating such competition. The similar dearth plagues the rest of the globe - the dominance created in the market and a test of price "raises" bars the commission from challenging abuse.²

The Competition Act 2002 was introduced in the second phase of industrial reforms. The law was designed to create and facilitate market activity in accordance with the country's industrial policies.

¹ Schumpeter J.A., *Capitalism, socialism and democracy*, Harper & Brothers, 1942.

² Anand S Pathak, 'India - The Dominance and Monopolies Review - Edition 8 - TLR - The Law Reviews' (TheLawReviews.co.uk, 2020)

The Act was enacted in 2002. It remained suspended for nearly five years until it was amended in 2007. It took another three years before the CCI became operational. The long time lag between enactment and implementation had the potential of rendering the Act out of tune with market conditions which had by then evolved towards high tech markets since the Act was conceived and enacted. As an economics-based law, the implementation of the competition law by CCI has tended to be marked by tensions with a preference for legal regulatory interventions rather than for “economics of market facilitation.” The approach towards competition and markets was more “form-based” than “effects-based.” For instance, if a firm is dominant in terms of the criteria set out in the Act, abuse of dominance was considered but inevitable as in legal terminology “No enterprise or group shall abuse its dominant position” without the requirement of economic analysis to establish abuse. It is more appropriate to define CCI’s approach as “quasi per se” than “effects-based.”

There is also a separate chapter on competition advocacy (Chapter VII in the Act titled Competition Advocacy). No other regulatory commission in India has advocacy as a mandated activity. The Section deals with two issues. Firstly, Central Government or state governments in formulating policy on competition or any other matter related to competition will refer the matter to CCI for its opinion. This is similar to Section 21 mentioned earlier. Secondly, to inform stakeholders and the public on the importance of competition and the powers of CCI, advocacy encourages access to information on antitrust activities from the public, say of cartels from executives in bidding auctions etc. or apprehension on abuse of dominance. This is useful information that CCI follows up through suo moto investigations. Interestingly, the Act does not define “Competition,” neither does the phrase “appreciable adverse effect on competition (AAEC)” which, in my view, may allow for spaces required for an economics based law where every assertion must be contextually based and assessed in terms of competitiveness of the market structure. The Act stayed within the economics of competition referred to as the product market framework where competition is in binaries of competition versus monopoly.

³ Jayant kumar, A.B. (2026), Competition Law in India.

1.1 Features of Competition Act, 2002

The following are some of the main features of the Competition Act:

1. **Anti-cartels:** Any agreement between businesses or individuals that harms competition is a civil offence.
2. **Mergers and acquisitions:** The Commission will only approve mergers and acquisitions if they do not undermine market competition.
3. **Informative nature of this act:** In order to provide clarity and avoid misunderstandings between companies or people, a business must notify CCI of any interactions that are likely to harm market competition prior to adopting such action or engaging in such an agreement.
4. **Anti-competitive agreements:** The competition law forbids any agreement involving two or more firms or individuals to maintain market competition and serve the public interest in India.
5. **Dominance-abuse prevention:** Any firm that exploits its dominating position will be penalised.

1.2 Competition Commission of India

The Competition Act provides for the formation of a CCI. It acts as the regulator of competition in the Indian market. The commission was founded in 2003, but it did not become fully operational until 2009. The central government appoints a chairman and six members to the CCI. It is the commission's responsibility to eradicate anti-competitive activities, encourage and maintain competition, safeguard consumer rights, and guarantee free trade in India's marketplaces. It is a quasi-judicial body tasked with the following duties:

1. Safeguard the interests of all consumers.
2. Safeguard commercial liberty.
3. Investigate problems related to or ancillary to trade.
4. Prevent practices that have a negative effect on competition.
5. Encourage and maintain market competition.³

³ Jayant kumar, A.B. (2026), Competition Law in India.

1.3 Core Mechanisms of the Competition Act, 2002:

i. **Prohibition of Anti-Competitive Agreements (Section 3):** Bans agreements (cartels, price-fixing, bid-rigging) that cause an Appreciable Adverse Effect on Competition.

ii. **Abuse of Dominant Position (Section 4):** Does not penalize being dominant, but strictly prohibits using that position to limit production, fix unfair prices, or create barriers for competitors.

iii. **Regulation of Combinations (Section 5 & 6):** Requires mergers, acquisitions, or amalgamations surpassing specific financial thresholds to be approved by the CCI to prevent market concentration.

iv. **Competition Advocacy (Section 49):** The CCI promotes awareness and provides advice on competitive practices to the government and stakeholders.

Evolution from MRTP Act, 1969:

The 2002 Act replaced the outdated Monopolies and Restrictive Trade Practices Act (MRTP), 1969. While the MRTP act focused on curbing monopolies and industrial licensing, the modern, pro-market approach focuses on ensuring that competition—not a monopoly—dictates the market.

“Competition is not only the basis of protection to the consumer, but is the incentive to progress.” When a layman thinks of competition, he or she probably has one of two images in mind. The first is a sporting event, in which two evenly matched opponents, play a spirited, but closely contested, match like the recent Champions League Match between Real Madrid and Manchester United. The second is a market that resembles a scrum in a rugby match with numerous firms scrambling for every scrap of business - the more numerous, the more competitive. In India, The Competition Act, 2002, as amended by the Competition (Amendment) Act, 2007, (‘the Act’) prohibits any agreement which causes, or is likely to cause, appreciable adverse effect on competition in markets in India. Any such agreement is void.

2. Aims and Objectives:

The main aims and objectives of Research Scholar are:

- a) To study anti-competitive practices adopted by corporates in India.
- b) To understand effect of Competition Act, 2002 to promote, sustain and maintain healthy competition in the business.
- c) To review Competition Act, 2002 to protect consumer interests in India.
- d) To explore role of Competition law in preventing Corporate Monopolies in India.

3. Statement of Problem:

Competition Act doesn't help in preventing corporate monopolies in real life situation. Corporate monopolies are adopting anti-competitive practices in business and they are not protecting interest of customers.

4. Scope and Limitation:

Scope the Study: The research study will help academicians, students and teachers in the further research on the same topic. It will also help government in designing new provisions and amending provisions in the Competition Acts. Corporates will prevent anti-competitive practices in businesses.

Limitation of the Study: Research scholar had limited time and money. Hence, primary data couldn't be collected from large population. Secondary data was also not be collected from large number books, publications and thesis. The study have certain manifest limitations as the findings and conclusions arrived at will be mostly based on review of existing literature and analyses of views and opinions of experts on the subject and therefore, there is a possibility of a few of the findings going wrong. As there is very little chance of any field work for this study on a new piece of legislation given its recent origin and enforcement for a short period. However, the research work will be directly or indirectly useful to the policy makers towards further improving the new Competition Law.

5. Hypotheses:

Research scholar has made the following assumptions:

- a) **Corporates are adopting anti-competitive practices in businesses in India.**
- b) **Corporates are not protecting the interest of customers in businesses in India.**

6. Research Methodology:

Research Design: Research study will be Qualitative and Quantitative (Mixed methods). It will be Doctrinal and Non Doctrinal research. (Mixed research).

Population and Sampling: Cluster sampling method will be adopted to collect and analysis data.

Primary Data: Primary data was collected from the Committee reports, relevant statues, and authoritative texts on Competition law, debates and discussions in the Parliament at the time of initiation of the relevant Bills on competition law.

Secondary Data: It was collected from books, publication, magazines, web-sites and thesis. This information will be primarily gathered from the views and opinions articulated in print media and websites by the academia, competition law experts and advocates, chartered accountants, policy makers etc.,.

7. Review of Literature:

1. In Adani, the Tribunal apprehended that since Adani was the sole enterprise providing natural gas to industrial consumers in the district of Faridabad and there was no alternative available to natural gas in the city of Faridabad at the relevant time, Adani was thus dominant in the relevant market. The Tribunal also adjudged that the mere fact about the pipeline structure installed by Adani could be used by its competitors to distribute CNG did not have any impact or correlation on the finding

2. The topic of Monopoly would definitely attract the example and strategies used by Reliance to emerge as a monopoly in telecom Industries and maintain it. With that Reliance is now trying to expand its reach in other sectors as well. Most of it was also because of its partnership with Google, Facebook and Microsoft and some other strategies, one of them being making its customers used to the benefits of Jio by giving them high data and then increasing prices. Along with that, Reliance also introduced its keypad phones with network. All these strategies combined made Reliance what it is today.⁵

3. The Monopolies and Restrictive Trade Practices Act, 1969 put in place a regulatory mechanism and operated in a framework of checks and balances, and in the philosophical milieu of "Laissez Faire". It sought to curb the concentration of economic power in private hands to the common detriment of the community. Likewise, it encompassed monopolistic, restrictive and unfair trade practices that are baneful and prejudicial to the public interest.⁶

⁴ Anand S Pathak, 'India - The Dominance and Monopolies Review - Edition 8 - TLR - The Law Reviews' (Thelawreviews.co.uk, 2020)

⁵ Rohan Venkataramakrishnan and Rohan Venkataramakrishnan, 'What Use Will India's Internet Revolution Be If It Ends up with a Reliance Jio Monopoly?' (Scroll.in, 2020) that Adani was dominant.⁴

⁶ Provisions pertaining to the Unfair Trade Practices have been inserted into the MRTP Act, 1969 by an amendment in the year 1984 in pursuance of the Sachar Committee Report

4. It is increasingly realized more than ever before that competition in markets promotes efficiency, encourages innovation, improves quality, boosts choice of consumers, reduces costs, leads to lower prices of goods and services. It also ensures availability of goods and services in abundance of acceptable quality at affordable prices. It is also a driving engine for building up competitiveness of the domestic industry; businesses that do not face competition at home are less likely to be globally competitive. Competition improves quality, lower prices and makes people aware of the attraction of buying a product or service."⁷

5. The history

of modern competition law is generally traced to the United States, where the Sherman Act was enacted in 1890 out of the growing concern about the formation of trusts by the American companies. Competition Law and Antitrust Laws are used interchangeably in the US and in most western countries. The understanding of the subject will not be complete without tracing out the genesis of these laws. The U.S could be termed as the cradle of Antitrust Law.⁸

6. U.S.A was first to introduce a coherent competition system. The legislative framework in US is made in three Statutes: the Sherman Act of 1890, the Clayton Act of 1914 and the Federal Trade Commission Act of 1914, of which the Sherman Act, 1890 is the most important. The Sherman Act was a simple, short statute. It has been argued that 'American antitrust law is not only "law" but also a socio-political statement about our society.'⁹

⁷ Pradeep S Mehta, "Competition Regime and Consumer Welfare", Executive Chartered Secretary, July, 2006, vol.3 P. 641

⁸ Suresh T. Vishwanathan, Law and practice of Competition Act, 2002, 1st ed, 2003, p.3.

⁹ T. Sullivan, The Political Economy of the Sherman Act: The first one hundred years, 1st ed. 1991, p.3.

8. Data analysis and Findings:

a) Case Law: Fastway Transmission Pvt. Ltd. Case (**Case Citation:** (2018) 4 SCC 316): The Supreme Court noted that a dominant entity (85% market share) cannot terminate vertical agreements that hinder competitors' ability to access the relevant market.

b) Case Law: Coal India Ltd. (CIL) Cases [Case Citation:(2023) 9 SCC 179] : The Supreme Court affirmed that public sector undertakings are not exempt from the Competition Act. CIL was penalized for engaging in discriminatory practices against power producers. In a landmark 2023 ruling, the Supreme Court of India affirmed that Coal India Limited (CIL) is subject to the Competition Act, 2002, ruling that state-owned monopolies are not exempt from anti-competitive regulations when engaging in commercial activities. This decision upheld the CCI's authority to penalize CIL for abusing its dominant position through unfair fuel supply agreements (FSAs).

c) Corporates are adopting anti-competitive practices in businesses in India.

d) Corporates are not protecting the interest of customers in businesses in India.

e) Making false or misleading representation of facts or disparaging the goods, services or trade of another person also amounts to an unfair trade practice. The intention behind indulging in unfair trade practices by a business entity or individual is usually to promote sale of its goods or services by holding out untruthful, misleading, deceptive and inaccurate representations as to quality, properties, uses, affiliation, price etc of goods or services by luring the consumers to buy goods or hire services.

9. Conclusion:

“Competition is not only the basis of protection to the consumer, but is the incentive to progress.” When a layman thinks of competition, he or she probably has one of two images in mind. Corporates are adopting anti-competitive practices in businesses in India. Corporates are not protecting the interest of customers in businesses in India.

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