

DECODING COMPETITION: A COMPREHENSIVE ANALYSIS OF THE EVOLUTIONARY LANDSCAPE THROUGH THE LENS OF THE COMPETITION AMENDMENT ACT, 2023

AUTHOR – ANSHIKA GUPTA, STUDENT AT RAJIV GANDHI NATIONAL UNIVERSITY OF LAW, PUNJAB

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Abstract:

This research explores the complex dynamics of market competition and looks at how the Competition Amendment Act, 2023 has changed the evolutionary environment. The Act, a crucial piece of legislative reform, attempts to meet the intricacies of modern market conditions that are marked by globalization and quick technology improvements. This article investigates the effects of the modifications on encouraging fair competition, discouraging anti-competitive behaviour, and advancing consumer welfare through a thorough analysis. Important clauses including strengthening merger control laws, establishing a settlement process, and giving the Competition Commission of India (CCI) more authority is carefully considered. The study evaluates how these modifications rebalance the power between major players in the market and smaller companies in an effort to foster a fairer and more equal competitive environment. Additionally, the study looks into how the Act would affect digital marketplaces, specifically with regard to data protection and the dominance of tech companies. The study clarifies the practical consequences of the legal amendments by looking at case studies and actual data, showing both achievements and difficulties. The analysis emphasizes how important it is to have strong enforcement mechanisms and ongoing regulatory adaption in order to maintain competitive marketplaces. In summary, the Competition Amendment Act, 2023, is a significant change to India's foundation for competition law and reflects a proactive response to changing market conditions.

The Competition Act, 2002 was enacted by Parliament of India and presides over the Indian Competition Law. The President acceded to the act in 2003. The Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act) was repealed and replaced by the Competition Act, 2002. The act was recommended by the Raghavan Committee. The act was introduced when Indian economy in 2002 resembled a single-engine airplane. The majority of the growth was attributed to consumer spending. A small amount came from net exports, but virtually nothing from government spending or investments⁴³. The act aims to prohibit anti-competition agreements. The anti-competition

agreement is an agreement, which causes or is likely to cause an appreciable adverse effect of competition within India.⁴⁴ The Act adheres to the theory of contemporary competition laws. The purpose of the Act is to control how “combinations”, a term that includes acquisitions, mergers, and amalgamations, operate and carry put their activities. The Commission may examine any combination that surpasses the asset or turnover threshold limits set forth in the Act and that has the potential to materially harm competition in the relevant Indian market. The Competition (Amendment) Act, 2023 aimed to strengthen competition regulation, streamline operations,

⁴³ Economic Survey 2001-2002: Ministry of Finance, Government of India (l). (n.d.). https://www.indiabudget.gov.in/budget_archive/es2001-02/welcome.html

⁴⁴ The Competition Act, 2002, § 3(1), Act No. 12, Acts of Parliament, 2002 (ind.)

and foster a business-friendly environment⁴⁵. The amendment introduced number of significant changes to the competition regulatory landscape in India.

☒ Threshold-based reporting and its impact on merger control

According to Section 5 of the Act, a merger or amalgamation of enterprises that surpasses the prescribed threshold, or the acquisition of one or more enterprises by one or more individuals, shall be considered a combination for the purpose of the Act⁴⁶. The application of threshold based reporting is a significant development in the field of merger control, as it has transformed the way regulatory agencies monitor and assess corporate mergers and acquisitions. One of the most important amendments was that made in Section 5 of the act. As per the Amendment Act, the value of any transaction, in connection with acquisition, merger or amalgamation exceeding Rs.2000 Crores must be reported to the Competition Commission of India, if it has substantial business operations in India, as may be specified by regulations. Earlier, the combination deals would be needed to be reported to the Competition Commission of India based upon the value of the asset or turnover. The Amendment Act, 2023 also reduces the overall time limit for assessment of mergers and acquisitions by the Competition Commission of India from 210 days to 150 days⁴⁷. Threshold-based reporting has multifaceted impacts on merger control. The merger control focuses on the targeted approach that lessens the burden on authorities and merging parties, improves review speed and efficiency, it further helps businesses navigate mergers more quickly and confidently by allowing regulatory bodies to concentrate on transactions with

significant competitive effects. A more business-friendly regulatory environment is created by threshold-based reporting, which improves predictability and transparency in merger control and helps companies prepare for regulatory scrutiny. This allows for informed decision-making and strategic planning. Therefore, threshold-based reporting represents a transformative development in the field of merger control.

☒ The legal and business implications of the broadened scope of anti-competitive agreements and cartels.

The Bill broadens the list of organizations that may be found to have participated in anti-competitive agreements. The Bill broadens this to encompass businesses or individuals who do not operate in related industries. This broadened scope has numerous legal as well as business implications. Enhanced Jurisprudence is considered as one of the important implications. Companies are under more scrutiny as the definition of agreements that are anti- competitive grows. Agreements that were formerly regarded as benign might now be covered by competition Law. The broadening scope further necessitated more comprehensive compliance efforts. This particular scope helps to control risk in businesses, further reassessing business relationships. Therefore, companies must be proactive in their compliance efforts, risk management, and business strategies to navigate the changing legal landscape and maintain a competitive and lawful business environment given the broader definition of anti-competitive agreements and cartels.

☒ The potential impact of introducing settlements and commitments on enforcement proceedings and regulatory compliance.

One of the milestones achieved by the introduction of amendments is the inclusion of the 'Settlement' and 'Commitment' provisions by incorporating Section 48(A) and 48(B). The main objective of the introduction of the 'Settlement' and 'Commitment' provisions is to

⁴⁵ Absalom, A. M. N. D. (n.d.). *The Competition (Amendment) Act, 2023: Significance and I . . . Invest India*. <https://www.investindia.gov.in/team-india-blogs/competition-amendment-act-2023-significance-and-implications-competition#%3A~%3Atext%3DThe%20amendments%20aim%20to%20strengthen%2Ca%20new%20deal%20value%20threshold>

⁴⁶ The Competition Act, 2002, § 5, Act No, 12, Acts of Parliament, 2002 (ind.)

⁴⁷ Manchanda, S. (2023, June 1). *Analysis Of The Competition (Amendment) Act, 2023*. <https://www.mondaq.com/india/cartels-monopolies/1323672/analysis-of-the-competition-amendment-act-2023>

avoid lengthy litigation by the parties against the orders of the Competition Commission of India (CCI). The proposed "Settlement" and "Commitment" mechanisms empower enterprises to resolve cases with the CCI without incurring findings of liability or contravention⁴⁸. It leads to quicker resolution of enforcement proceedings compared to lengthy trials. It is anticipated to assist tech firms found guilty of abusing their dominant position or engaging in anti-competitive behavior. Following an investigation by the Director General of CCI, a company found to have violated the Competition Act's provisions would be able to file a settlement application under the draft settlement regulations, whereby it would be required to modify its behavior and pay the maximum penalty. Therefore, striking the right balance is crucial for fostering a regulatory environment that encourages compliance while addressing violations in a fair and timely manner.

☒ Enhancing transparency and accountability in competition law enforcement through statements of objections and modifications.

The Competition Commission of India may issue a statement of objections under the Amendment Act, 2023, if it believes that a combination has or is likely to have a negative impact on market competition. This iterative process ensures that the competition authority considers all relevant information before making a final decision. The transparency allows the public, including competitors, consumers, and investors, to understand the nature of the alleged anti-competitive behaviour. Modification further allows consideration of new evidence and therefore, this responsiveness enhances the legitimacy of the enforcement process. Hence, Statement of Objections and modifications improve accountability by enabling a fair and iterative process that takes into account the viewpoints

of all pertinent parties in competition law enforcement. They also promote transparency by offering comprehensive information. Therefore, transparency and accountability are an important gamut of any law being enforced and hence, Statement of Objections and Modifications enhanced the viability of the Competition Act.

☒ Limitation on Entertaining Complaints: Warranted or not?

The Act also introduced a three-year limitation period for entertaining information or references regarding alleged complaints under the Act. Limitation on entertaining complaints may be warranted supported by various reasons, firstly, limitation will help in increasing efficacy of CCI as it will deal with cases that have a substantial impact on competition, the CCI can allocate its resources more effectively. Secondly, this will further increase resource management. CCI being a regulatory authority has limited resources and therefore, limiting its workload will help in more structured resource management. Furthermore, there is a flip side to everything, and therefore, this limitation may impact the Competition environment in the country. Firstly, this will hinder the CCI's aim of inclusive approach and impact its flexibility. Secondly, limitation may affect the small players in the market, who do not have sufficient resources to demonstrate an "appreciable adverse effect on competition". Therefore, limitation has both pros and cons and hence, the effectiveness of limitations would depend on how well they align with the overarching goals of promoting fair competition and preventing anti-competitive practices.

☒ The impact of the 'Leniency Plus' provision on cartel investigations and its shortcomings.

Leniency means discounts on fine for disclosing an anti-competitive cartel. 'Leniency Plus' programs allows companies already under investigation to make full, true and vital disclosures about the existence of another

⁴⁸ *A Closer Look at CCI's Proposed Settlement and Commitment Regulations* | lawstreetindia.com. (n.d.).
<https://www.lawstreetindia.com/experts/column?sid=766>

cartel (second cartel) unknown to CCI⁴⁹. Its impact often leads to more effective enforcement by enabling authorities to gather evidence, identify cartel participants, and impose sanctions. It further leads to a balance between the culture of compliance and deterrence within the business community. Leniency plus provision includes various shortcomings. If the advantages of collusion exceed the possible consequences, leniency programs might not be able to effectively prevent cartels. Also, fairness of leniency programs can be a concern. This leads to selective enforcement, where only those cartels that self-report is prosecuted, leaving others undetected. Therefore, leniency provisions play an indispensable role in cartel investigations within the realm of competition law.

In conclusion, the Competition (Amendment) Act, 2023 played a leading role in growth and development of competition culture in India. This amendment addresses the gap pertinent to existing framework. Most important out of all could be enhancing the idea of threshold-based reporting. This brought a prominent change in the existing The Competition Act, 2002. However, there exist certain lacunas that could be addressed such as the there should be more clarification provided in related to the provision of Settlements and Commitments, also, the limitation timeline should be checked and balanced keeping in mind the benefits of consumer. Therefore, The Competition (Amendment) Bill, 2023 aims to enhance market competition, protect consumer interests, and promote trade freedom, paving the way for a dynamic competition law framework.

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⁴⁹ Kriti, P., & Law, L. (2023, October 31). *Live Law.* <https://livelaw.in/news-updates/cci-publishes-draft-for-leniency-plus-invites-comments-from-stakeholders-241277#:~:text=The%20commission%20will%20also%20consider,2023>