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COMPETITION LAW IN TELECOM SECTOR: A CASE STUDY OF INDIA

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ABSTRACT

The **telecom sector in India** has seen a rapid growth and consolidation, which has raised concerns about **anti-competitive practices**. This paper examines the effectiveness as well as the application of competition law in the telecom sector of India. This paper uses a case study approach to analyse significant decisions of the **Competition Commission of India (CCI)** and courts. The paper highlights issues of cartelization, abuse of dominance and merger control. The study also focuses on the challenges that are faced in enforcing the competition law which includes the regulatory overlaps and inadequate penalties.

Keywords: Competition law, Telecom sector in India, CCI, Anti- competitive Practices

I. INTRODUCTION

India as a country has undergone significant transformations after the liberalization in the 1990's⁷³⁹. Many industries emerged as a result of the liberalization. The telecom industry has emerged as one of the fastest growing industries in India. The more population meant that more people needed to be in communication with each other and therefore India's telecom market has become one of the largest globally⁷⁴⁰. With the growth witnessed in this sector, it has been accompanied by various concerns with regard to anti-competitive practices that prompted the regulatory authorities to increase scrutiny.

The Competition Act, 2002⁷⁴¹ was brought in primarily to stimulate competition and protect the interest of the consumers. It also provided for establishing the CCI as the main enforcement agency. The CCI, since its establishment, has investigated several high-profile cases regarding the telecom sector. These are issues at which CCI has addressed-

one, cartelization⁷⁴²; two, abuse of dominance⁷⁴³ in many of these cases. The paper discusses the application and effectiveness of Competition Law in the Indian telecom sector. This paper takes a case study approach, wherein it analyzes decisions and judgments pronounced by CCI and various courts on this matter. In addition, the research paper points out the challenges faced while enforcing competition law and does not fail to suggest reforms for further strengthening enforcement powers bestowed upon CCI.

II. LITERATURE REVIEW

In his article titled "**Competition law and Regulation in Telecom Sector : An Indian Perspective**"⁷⁴⁴ by Arun Kumar, the author argues that India's competition law framework needs strengthening to address the anti-competitive practices in the telecom sector.

In the article titled "**Telecom Regulations and Competition law : A Critical Analysis**"⁷⁴⁵ by S. Ravi, the author examines the intersection of

⁷³⁹ R.K. Jain, Economic Reforms in India (Taxmann Publications 2015)

⁷⁴⁰ India's Telecom Market: A Global Leader, Economic Times (Oct. 15, 2020)

⁷⁴¹ Competition Act, No. 12 of 2002.

⁷⁴² CCI v. cartelisation in the telecom sector, Case No. 34 of 2010

⁷⁴³ CCI v. Bharti Airtel Ltd., Case No. 50 of 2012

⁷⁴⁴ Arun Kumar, Competition Law and Regulation in the Telecom Sector: An Indian Perspective, 12 J. Comp. L. & Econ. 123 (2018).

⁷⁴⁵ S. Ravi, Telecom Regulation and Competition Law: A Critical Analysis, 7 Nat'l L. Sch. India Rev. 53 (2015).

regulations in telecom sector and competition law while highlighting the challenges related to jurisdiction.

In the article titled “**Competition law enforcement in India’s Telecom sector : An Empirical Analysis**”⁷⁴⁶ by Swaminathan, the author tries to analyse the various decisions of CCI in telecommunication sector and highlights the limitations.

In the paper titled as “**Competition law and Policy in India’s Telecom sector**”⁷⁴⁷ CUTS International has argued for a stronger competition law enforcement to promote the innovation and welfare of the consumers.

III. OBJECTIVES

This research aims to:

1. To analyze the competition law framework in India.
2. To examine the regulatory challenges such as licensing and regulatory frameworks, anti-competitive agreements and practices.
3. To evaluate the CCI’s effectiveness through its decisions, orders in promoting competition.

IV. RESEARCH QUESTIONS

1. How effective is the enforcement of competition law by the CCI in the telecom sector?
2. What impact does the CCI’s decisions had on market dynamics and consumer interests?
3. What are the regulatory challenges that still persist and how can they be addressed?

V. COMPETITION LAW FRAMEWORK IN INDIA

HISTORICAL BACKGROUND

Competition law in India has undergone many changes since independence and reflects the growing contours of the economy and the will of

the state to ensure fair competition in markets⁷⁴⁸. Arguably, the MRTP Act, 1969⁷⁴⁹, was the first major legislative attempt at tackling anti-competitive practices. Coming as it did during a period of high industrialization and state-driven economic growth, the MRTP Act sought to prevent concentrated economic power and, in effect, promote competition⁷⁵⁰. However, its inadequacy was soon realized. This Act laid more emphasis on curbing monopolies and not on promoting competition, besides narrowly defining restrictive trade practices. Thus, it failed to get effectively enforced. Secondly, the pre-merger approval under the MRTP Act has resulted in bureaucratic delays in mergers and acquisitions cases, becoming a hindrance to business. Keeping these lacunae in mind, the government has enacted the Competition Act, 2002, so as to provide a comprehensive and formidable competition law regime⁷⁵¹. This marked a shift from ‘curbing monopoly’ to ‘promotion of competition’. It contained the requisite provisions on anti-competitive agreements, abuse of dominant position, and combination regulations⁷⁵². The Competition Act, 2002, further provided for a Competition Commission of India as the main regulator, with powers to investigate and adjudicate upon matters relating to competition. This legislative remaking has indeed strengthened India’s competition law, regulating anti-competitive practices more effectively and facilitating an atmosphere that is even more competitive in business ventures⁷⁵³.

COMPETITION ACT

The basic framework for the promotion of competition in India was given in three pivotal provisions contained in the Competition Act, 2002. First, Section 3 inhibits anti-competitive agreements wherein any enterprise could

⁷⁴⁶ Shivprasad Swaminathan, Competition Law Enforcement in India’s Telecom Sector: An Empirical Analysis, 12 J. Indian L. & Soc’y 101 (2020).

⁷⁴⁷ CUTS Int’l, Competition Law and Policy in India’s Telecom Sector (2019) available at <https://cuts-ccier.org/pdf/Report-ICRR2019.pdf>

⁷⁴⁸ R.K. Jain, Competition Law in India (Taxmann Publications 2015)

⁷⁴⁹ Monopolies and Restrictive Trade Practices Act, No. 54 of 1969.

⁷⁵⁰ V.K. Agarwal, Competition Law and Policy in India (Bharat Law House 2017).

⁷⁵¹ V.K. Agarwal, supra note 3

⁷⁵² Competition Act, Sec 3 & 4

⁷⁵³ R. Kumar, Effectiveness of Competition Law in Indian Business, 12 J. Comp. L. & Econ. 1 (2016)

engage in collusive practices against competition⁷⁵⁴. It targets agreements that involve price determination either directly or indirectly, limit production, or share markets to cause harm to consumers and undermine market dynamics. While Section 4 prevents dominant enterprises from abusing their position, recognizing that market dominance in itself is not anti-competitive, dominant enterprises may misuse their position to cause unfair disadvantage to competitors or consumers. The CCI can intervene to restore competitive balance. Finally, Sections 5 and 6 regulate combinations such as mergers, acquisitions, and amalgamations with a view to ensuring that such transactions do not substantially lessen competition. This lapse of the regulatory authority, in effect, empowers the CCI to investigate proposed combinations in respect of their effects on competition, with an eye towards approval or objection⁷⁵⁵.

COMPETITION COMMISSION OF INDIA

The Competition Commission of India, which came into existence in 2003, is the major regulator in terms of promotion and enforcement of competition law in India⁷⁵⁶. The CCI has the aim of promoting competition and preventing anti-competitive agreements, hence it is of utmost importance regarding the concept of fair market competition⁷⁵⁷. The mandate of the CCI regarding regulation involves three major functions: first, an inquiry into or investigation of alleged anti-competitive agreements/practices, to amass evidence regarding any infringement thereof using its inquiry/investigation powers. Upon prima facie evidence, the CCI undertakes adjudication proceedings to decide upon the extent of violation. It issues orders and directions aimed at ceasing or curbing anti-competitive conduct. These include the issuance of cease and desist orders, divestiture of assets, modification of business practices, among others, with a view

to bringing back the balance in the competitive economy to protect consumer interests. The CCI, therefore, penalizes such defaulting enterprises through fines to disgorgement of profits with a view to discourage future non-compliance and hold them accountable.

Key powers of CCI:

1. Inquiry and investigation-Section 19
2. Passing interim orders-Section 33
3. Penalties-Section 27
4. Passing orders for divestiture or modification of business practices-Section 28
5. Suo motu proceedings-Section 19

OTHER REGULATORY BODIES

There are two important regulators that jointly govern the telecommunications sector in India. The TRAI is the sector regulator, entrusted with framing regulations, fixation of tariff, and quality of service standards. DoT under the Ministry of Communications carries out the most important policy-making, licensing, and spectrum management⁷⁵⁸. While TRAI aims at competitiveness and consumer interest, the DoT governs this sector from an infrastructural and operations perspective. Individually, together they ensure a smooth working and growth of the ever-changing dynamism in Indian telecommunications⁷⁵⁹.

JURISDICTIONAL CHALLENGES

Problems exist on account of overlapping jurisdiction between Telecom Regulatory Authority of India and the Department of Telecommunications, which make the CCI's job to regulate anti-competitive practices in the sector difficult⁷⁶⁰. Competing mandates and responsibilities blur boundaries, rendering enforcement non-effective⁷⁶¹. More importantly, ambiguous regulatory frameworks and policies

⁷⁵⁴ V.K. Agarwal, *Competition Law in India* (Bharat Law House 2017)

⁷⁵⁵ CCI's Role in Merger Review, *Economic Times* (Oct. 15, 2020)

⁷⁵⁶ 2. V.K. Agarwal, *Competition Law in India* (Bharat Law House 2017)

⁷⁵⁷ Competition Act, 2002, Sec 3

⁷⁵⁸ Telecom Regulatory Authority of India Act, 1997, No. 24 of 1997.

⁷⁵⁹ National Digital Communications Policy 2018.

⁷⁶⁰ S. Singh, "Challenges in Enforcing Competition Law in Telecom Sector," 25 *J. Comp. L. & Econ.* 1 (2009).

⁷⁶¹ P. Mohan, "Telecom Regulation in India: Challenges and Opportunities," 15 *Nat'l L. Sch. India U. L. Rev.* 1 (2012).

have built uncertainty with regard to what constitutes anti-competitive conduct and have made detection difficult for CCI. Thus, these challenges do presuppose some increased inter-regulatory coordination, clarity of policy frameworks, and streamlined jurisdictional definition to ensure more effective competition law enforcement in the telecom sector in India⁷⁶².

VI. REGULATORY CHALLENGES IN TELECOM SECTOR

The telecom sector in India faces unique regulatory challenges that impact the competition law enforcement.

SPECTRUM ALLOCATION AND MANAGEMENT

The most critical regulatory challenges in the Indian telecom sector relate to the issue of spectrum allocation and its management⁷⁶³. The inability of India to put adequate spectrum up for sale reduces competition, with many operators also having to favor incumbent operators. The complicated auction process might also lead to anti-competitive behavior such as bids in a collusive way. Besides, there is spectrum hoarding by incumbent operators, which sees fair competition compromised due to underutilized spectrum that denies entry to new players. These call for similar transparent and efficient mechanisms of spectrum allocation, which ensure access to this very scarce resource is duly exercised fairly. Effective regulation can help promote competition, enhance services, and be beneficial to consumers⁷⁶⁴.

LICENSING AND REGULATORY FRAMEWORKS

The Indian telecom sector is beset with licensing and regulatory ambiguities that deter effective competition⁷⁶⁵. Unclear licensing terms allow anti-competitive behavior to prevail while the

almost overlapping regulations between TRAI, DoT, and CCI create a jurisdictional tug-of-war⁷⁶⁶. Poorly articulated policy frameworks are bereft of any clarity and frustrate regulation⁷⁶⁷. Unclear licensing conditions, fragmented regulatory oversight, and policy vagueness facilitate market dominance, stifle innovation, and harm consumers⁷⁶⁸. Clarity on licensing terms, clarity on the roles of regulators, and strengthening of policy frameworks are key to ensuring competition, fair market conduct, and, therefore, the growth of the sector⁷⁶⁹.

MERGERS AND ACQUISITIONS

M&A deals involving India's telecom industry have raised serious competition concerns⁷⁷⁰. Consolidation through mergers diminishes competition, resulting in increased prices and reduced innovation⁷⁷¹. Anti-competitive agreements, veiled or even implicit, enable market dominance. Laxity in regulatory review processes has resulted in harmful transactions going through since the authorities are unable to correctly evaluate complicated deals. This works against consumer interest and clouds sectoral competition. Effective regulation, proper impact assessments, and clear guidelines will be crucial in ensuring that anti-competitive mergers are prevented⁷⁷², the market conditions remain fair, and consumer benefits are safeguarded.

EMERGING CHALLENGES

These emerging technologies and business models have brought new challenges that need

⁷⁶² R.K. Mitra, "Challenges in Enforcing Competition Law in Telecom Sector" (CUTS International Working Paper No. 2019-01, 2019)

⁷⁶³ R. Kumar, "Spectrum Allocation in India: Challenges and Opportunities" (ICRIER Working Paper No. 278, 2016).

⁷⁶⁴ S. Jain, "Effective Regulation of Telecom Sector in India: A Consumer Perspective," 5 Nat'l L. U. J. 1 (2012)

⁷⁶⁵ S. Singh, "Regulatory Ambiguities in Indian Telecom Sector," Journal of Telecommunications Management, Vol. 12, No. 1 (2017), pp. 1-15.

⁷⁶⁶ A. K. Bhattacharya, "Licensing Terms and Anti-Competitive Behavior in Indian Telecom Sector," Journal of Competition Law and Economics, Vol. 14, No. 2 (2020), pp. 201-220.

⁷⁶⁷ P. Mohan, "Policy Frameworks in Indian Telecom Sector: Challenges and Opportunities," Journal of Regulatory Economics, Vol. 58, No. 1 (2020), pp. 1-18.

⁷⁶⁸ R. Kumar, "Impact of Regulatory Ambiguities on Competition in Indian Telecom Sector," Journal of Economic Behavior, Vol. 22, No. 1 (2020), pp. 1-12.

⁷⁶⁹ R. K. Mitra, "Strengthening Policy Frameworks in Indian Telecom Sector: Challenges and Opportunities," Journal of Indian Law Institute, Vol. 60, No. 2 (2018), pp. 201-220.

⁷⁷⁰ S. Singh, "Competition Concerns in Indian Telecom M&A," Journal of Telecommunications Management, Vol. 13, No. 1 (2018), pp. 1-15

⁷⁷¹ A. K. Bhattacharya, "Impact of Consolidation on Competition in Indian Telecom Sector," Journal of Competition Law and Economics, Vol. 15, No. 2 (2021), pp. 201-220

⁷⁷² A. Singh, "Clear Guidelines for Telecom M&A Review," Journal of Telecommunications Policy, Vol. 45, No. 1 (2021), pp. 1-12.

critical consideration in the sector: complicated issues of spectrum management; data security in 5G and IoT; digital markets with their uncertainty about platform competition; OTT services and VoIP—issues of regulatory ambiguity. These call for flexible regulation that would ensure competition, security, and protection for consumers⁷⁷³.

Effective frameworks must address:

1. Spectrum allocation for 5G and IoT
2. Competition and fairness in the digital platform
3. Regulatory clarity on OTT and VoIP

VII. CASE STUDIES

This chapter examines the notable cases illustrating competition law challenges in telecom sector.

BHARTI AIRTEL- TATA TELESERVICES MERGER(2019)⁷⁷⁴

The Bharti Airtel-Tata Teleservices merger in 2019 marked a significant consolidation in India's telecom sector. The Competition Commission of India approved the acquisition with various conditions to allay apprehensions regarding reduced competition and dominance in the market. Airtel was compelled to divest the spectrum of Tata Teleservices in 19 circles, along with its 20-million-strong customer base and related infrastructure. Such divestiture had been crucial for ensuring a competitive market structure, prevention of hoarding of spectrum, and facilitation of fair market access to and for other players.

The conditional clearance by the CCI showed its proactive approach towards the regulation of consolidation in the telecom sector. The CCI ensured consumer interest and competition—a precedence for future mergers and acquisitions in the sector—through ordering divestiture.

⁷⁷³ V. K. Agarwal, "Spectrum Allocation for 5G and IoT: Challenges and Opportunities," National Law University Journal, Vol. 13, No. 1 (2021), pp. 1-12.

⁷⁷⁴ Competition Commission of India (CCI) Case No. C-2017/06/512 - Bharti Airtel/Tata Teleservices

RELIANCE JIO-INFOTEL BROADBAND (2016)⁷⁷⁵

The acquisition by Reliance Jio of Infotel Broadband in 2016 was the starting point that proved to be the tipping point for India's telecom sector. The CCI approved the proposed acquisition and prima facie opinion that the acquisition would not have an appreciable adverse effect on competition in India. It reflected the progressiveness of the regulator in dealing with new emerging market players and technology.

The Competition Commission of India looked upon the entry of Reliance Jio as an entrant who widens competition and, therefore, is good for consumers. The clearance accorded ease to Jio's plan for rolling out its 4G network, a game-changing event in the data space of India. The order also underlined CCI's commitment to incentivizing innovation and the entry of new players, fostering competition in emerging markets, and encouraging consumer interests. The deal between Reliance Jio-Infotel Broadband has set a precedent regarding regulatory approvals in India's fast-changing telecom market.

VODAFONE -IDEA CELLULAR MERGER(2018)⁷⁷⁶

The 2018 merger between Vodafone and Idea Cellular formed India's biggest telecom entity. The Competition Commission of India approved the aforementioned merger but did so subject to divestiture of the following:

1. Spectrum in 7 circles
2. More than 6,300 towers

The conditional approval was a reflection of the regulator's concern for the promotion of competition. Divestiture would ensure the following:

1. Market dominance is reduced
2. The competition amongst remaining players would increase
3. New entrant accessibility to the market would be fair

⁷⁷⁵ Case No. C-2016/06/410 - Reliance Industries Limited/Infotel Broadband Services Limited

⁷⁷⁶ Case No. C-2018/03/558 - Vodafone India Limited/Idea Cellular Limited

The CCI protected the interests of consumers and ensured the continuance of market competition by making asset divestiture binding. The above commitment of the regulator was towards the following tenets:

Anti-competitive practices would not be allowed to persist

Competition within markets would be promoted

Consumer welfare would be taken care of

This then created a Vodafone-Idea merger precedent for future consolidations in the telecom sector.

AIRTEL'S ACQUISITION OF VIDEOCON SPECTRUM (2016)⁷⁷⁷

In 2016, a major development in the Indian telecom sector was when Airtel acquired the spectrum of Videocon. The CCI had approved the deal provided Airtel complied with the spectrum caps. This again reflected the judicious approach of the regulator as far as the spectrum allocation is concerned.

The CCI ensured Airtel's spectrum holding did not exceed:

1. 25% in any circle
2. 50% of total spectrum allocated

This decision:

1. Prevented spectrum hoarding
2. Promoted competition among operators
3. Ensured fair market access

The conditional approval by CCI Essar's case has reflected the commitments of the former towards:

1. Transparent spectrum allocation
2. Competitive market conditions
3. Consumer benefit

This deal had set a precedent for future spectrum transactions.

VIII. ANALYSIS AND FINDINGS

The growth of the telecom sector in India has been very rapid, and continuous consolidation has raised several concerns with regard to competition⁷⁷⁸. Various case studies like Bharti Airtel-Tata Teleservices, Reliance Jio-Infotel Broadband, Vodafone-Idea Cellular, and Airtel-Videocon Spectrum have brought into sharp focus some pressing issues: consolidation and market dominance, spectrum allocation and management, and regulatory challenges of emerging technologies⁷⁷⁹.

These case studies spell out a set of alarming trends: growing consolidation implies less competition, which in turn suggests higher prices for consumers. The level of efficient spectrum allocation and management determines the level of competition; regulation usually cannot keep pace with new emerging technologies. Consumer interests are usually sacrificed in the process when effective regulation lacks.

These findings point to the dire need for strong regulatory measures. The process of consolidation drastically reduced the number of players from eight to four and, hence, increased competition concerns manifold. Spectrum allocation and management issues result in uneven distribution and further evidence a dismal competitive scenario. Rapid evolution in technologies like 5G and IoT further adds to the complications arising in regulatory matters.

Questions concerning the same can be satisfactorily answered only if the top priorities are competition and consumer protection through efficient regulation, transparent spectrum allocation, and proactive monitoring. If these challenges are met effectively, the Indian telecom sector will be in a position to foster competition, encourage innovation, and protect consumer interest.

⁷⁷⁷ Case No. C-2016/03/394, Competition Commission of India, In re: Bharti Airtel Ltd./Videocon Telecommunications Ltd., Order dated March 24, 2016.

⁷⁷⁸ S. Singh, Consolidation in Indian Telecom Sector: Challenges and Opportunities, 16 J. Telecomm. Mgmt. 1 (2021).

⁷⁷⁹ A.K. Bhattacharya, Regulatory Challenges in Emerging Telecom Technologies, 18 J. Competition L. & Econ. 201 (2023)

IX. CONCLUSION

The Indian telecom sector witnessed rapid growth, but at the same time, this consolidation spurred many critical concerns about competition. There is indeed an increasing requirement to go through the dynamics of the industry comprehensively. The report has reviewed key mergers and acquisitions, bringing out the relevant issues relating to consolidation, spectrum allocation, and regulatory frameworks. This underlines very strongly that for the sustainable growth of the sector, regulation, competition, and consumer protection become preconditions.

The analysis indicated that consolidation has led to reduced competition, higher prices, and a loss of consumer interest. Issues in the management and allocation of spectrum hindered healthy competition and regulations did not keep pace with emerging technologies. The report, thus, advocated reforms in the method of spectrum management, restructuring of the regulatory framework, merger review guidelines, more monitoring, and efficient mechanisms for consumer protection.

These will encourage a competitive market, innovate, protect consumer interest, ensure quality services, and at fair pricing. The sector represents a delicate balance between regulatory and competitive concerns and consumer interests. This therefore calls for priorities that will unlock the full potential of the telecom sector in India for world-class services to its citizens.

The growth of the telecom sector is a factor that underpins the importance of India's economy and its society. The ever-evolving characteristic of this industry hence keeps the policymakers on their toes to adapt the regulatory frameworks to the emerging technologies and market dynamics. In a nutshell, what India needs to do is to unleash the transformational force of telecommunications for economic growth, social development, and digital inclusion.

The present report epitomizes conclusions on the dire need for effective regulation, competition, and consumer protection in the telecom industry of India. If these concerns are duly attended to and targeted reforms effectively implemented, India will have a vibrant, competitive, and consumer-centric telecom market that will spur growth, innovation, and well-being across the board.