



# Jurisdictional Issues of Competition Commission of India: A critical Analysis

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## I. INTRODUCTION

The renowned Anglo-Irish Economist, Edmund Burke, had once said, "Free trade is not based on utility, but on justice. The makers of the Indian Constitution were ardent supporters of free flow of trade. They believed it was more so necessary as in a country like India, which is so diverse, the working of a single economic unit would prove to be a source of sustaining stability of the federal polity<sup>1</sup>. The 1990s were a momentous time for our country globalization and liberalization were introduced and an overhaul of the economic structure was in full swing. Meanwhile, the Monopolistic and Restrictive Trade Practices Act (MRTP), 1969 was observed to have loopholes and proved to be inadequate at several instances during this time of change. In 1999, Government of India appointed a committee under the chairmanship of SVS Raghavan, entrusting upon it the task of framing modern competition laws for the country that would be aligned with international developments. The committee was also expected to formulate a legislative framework that would either amend the existing MRTP (1969) or give a new law altogether. Deriving its authority from the Competition act 2002, Competition Commission of India has as its primary function elimination of discriminatory practices that have adverse effect on competition, to aid domestic industries that may face suppression due to increased globalization and liberalization as well as protecting interests of consumers by ensuring no enterprise exploits its position in the market, specifically those enjoying dominance in their particular arena. The preamble of the Competition Act, itself, declares its commitment towards development of India's economy by promotive constructive competition and avoid

practices that are unfair in nature. Though the commission was enacted on 14<sup>th</sup> October 2003, it became fully operational in May of the 2009. Dhanendra Kumar was its first chairman.

The Competition Commission of India has been in limelight for the unending controversies pertaining to its jurisdiction. The competency of the commission to try out certain matters has been challenged time and again, in courts. In India, Competition Commission possesses exclusive jurisdiction over complaints with regards to any breach of the competition act, 2002. Judicial courts of the country do not have any primary jurisdiction over these matters. Moreover, there is no "Private right of action" under the competition act.<sup>2</sup> The gist of Section 61 of the competition act 2002 is that it confers upon the commission exclusive power to deal with matters that are forbidden to be heard by civil courts in the country.

## Which sections of the Competition Act are causing friction?

Section 62, 60, 21A, 21, 18 are the most commonly contested in courts as these sections may cause jurisdictional issues between competition commission and the sectoral regulators. These sectoral regulators were introduced with the similar purposes as those of the competition commission. So it comes as no surprise that, CCI often finds itself in amidst of jurisdiction controversies and lawsuits. The plethora of cases that have been filed stand testimony to this. In 2018, the competition commission of India made serious allegations of anti-competitive conduct against taxi aggregators, OLA and Uber. It was stated that the price fixing agreement between the two was in contravention of section 3 (1) when read in consonance with section 3 (3)(a) and their engagement in resale of price maintenance was in contravention with section 3 (1) read with Section 3(4)(e) of the competition

<sup>1</sup> — 'Freedom of Trade, Commerce and Intercourse: Articles 301 - 307 of the Indian Constitution' (iPleaders) <<https://blog.iPLEaders.in/freedom-trade-commerce-intercourse-articles-301-307-indian-constitution/>> accessed 2 August 2023

<sup>2</sup> — 'The Competition Act, 2002 - iPleaders' (iPleaders) <<https://blog.iPLEaders.in/the-competition-act-2002/>> accessed 4 August 2023



act, 2002. It was further alleged that no room for possible negotiation was possible for individual trips between the riders and customer, owing to the strict algorithmic pricing. The rationale behind this was that such pricing takes away freedom of the customers to make an informed decision with regards to the best price possible and was, therefore anti-competitive. The Apex Court, in its judgement dated 15<sup>th</sup> December 2020, post analyzing the provisions of competition act, 2002 and Competition Commission of India (General) Regulations, 2009, stated that the definition of "person" under section 2 (1) was an inclusive one, which is extremely wide and would contrast with the definition of consumer under section 2(f) of the act which states that only persons who buy goods for any consideration, or hire or avail of services for a consideration, are recognized as consumers. Further, the court upheld the rejection of National Company Law Appellate Tribunal (NCLAT) allegation of use of algorithmic pricing for facilitating price fixing cartel made against taxi aggregators, Ola and Uber.

### **Tussle of Jurisdiction between CCI and Telecom Regulatory Authority Of India**

In 2017, Reliance Jio Infocom Limited (RJIL), a promising newcomer in the telecommunications arena, embarked on a legal journey that would shape the dynamics of whole industry. RJIL's approach to the Competition Commission of India (CCI) marked a pivotal moment, as it lodged a complaint against incumbent players, accusing them of orchestrating a cartel to stifle market entry.

Before coming to this decision, RJIL had already knocked the doors of the Telecom Regulatory Authority of India (TRAI). Their plea to TRAI had focused on the incumbents' alleged refusal to provide sufficient points of interconnection, a move which was seen by RJIL as an obstacle to fair competition.

The subsequent order passed by the Competition Commission of India (CCI) in favor of RJIL marked a momentous turning point. However, the plot thickened as the decision was met with opposition. The order was swiftly challenged in the esteemed Bombay High Court, and eventually, the case found itself in the chambers of the Supreme Court of India.

This legal odyssey breathed a breath of fresh air into every tier of the Indian judiciary, leaving an indelible mark on the country's legal framework. The case not only spotlighted the telecommunications sector's intricacies but also spotlighted the delicate interplay between CCI and

sectoral regulators like TRAI. In particular, it cast a spotlight on the conundrums that arise when issues simultaneously fall under the purview of both regulatory bodies.

Ultimately, this landmark decision played a significant role in shaping the evolving landscape of telecommunications regulations in India. It underscored the importance of delineating the roles of regulatory bodies, especially when faced with complex issues that straddle their respective jurisdictions. As the curtains fell on this legal saga, a newfound clarity emerged, providing a roadmap for addressing similar challenges in the future.

### **Analysis of Delhi High Court's Verdict on ICAI's CPE Program Investigation**

In a truly momentous verdict, the Delhi High Court in June 2023 held that the decisions taken by regulatory authorities while in course of their regulatory functions are not subject to be reviewed by the competition commission of India. This decision by the court rules out the investigation initiated by the CCI against the Institute of Chartered Accountants of India (ICIA) alleging that the Continuing Professional Education Programme, that requires professionals to undertake continuous training in order to retain their license of certified professional, was an abuse of dominant position<sup>3</sup>. It was said that this programme does not allow other players to get a fair chance to conduct similar courses. One of the contentions put forward was that the institute of ICIA must allow members enrolled to obtain CPE credits by attending seminars of their own discretion, which may be conducted by other Associations or institutes. However, the recent judgement of High Court highlights that the Competition Commission of India (CCI) can only assess real-world economic effects on the market, as it is a market regulator and not assess hypothetical scenarios created solely for examination. The CCI's jurisdiction does not extend to redress of grievances against arbitrary actions done by governmental bodies. The ICIA being a statutory body is empowered with requisite powers to make decisions regarding CPE Programme for maintaining certain professional standards and this is not a subject matter of the CCI. A regulator is normally authorized to use its statutory powers and

<sup>3</sup>— 'CCI vs ICAI: Delhi HC quashes CCI investigation against ICAI' (Business Line) <[www.thehindubusinessline.com/economy/cci-vs-icai-delhi-hc-quashes-cci-investigation-against-icai/article66924689.ece](http://www.thehindubusinessline.com/economy/cci-vs-icai-delhi-hc-quashes-cci-investigation-against-icai/article66924689.ece)> accessed 14 August 2023



carry out its statutory tasks of regulating the specialized field over which it has authority. Unless expressly authorized by statute, no other statutory authority may intervene with the judgement of such a regulator. According to Justice Vibhu Bakhru of the Delhi High Court, the Competition Act, 2002 forbids the CCI from acting as an appellate court or grievance redressal cell against decisions made by statutory regulators in the exercise of statutory authorities unrelated to trade or commerce.

### Comparative Analysis Of Market Regulator in India and other countries

#### United States

As Competition commission of India serves the function of the same, United States also has a regulatory body ,called ,US Securities and Exchange Commission (SEC).Jurisdiction of SEC pertains to issuance of securities as well as trading .Further, it oversees financial disclosures made by companies ,takes action against cases of security frauds and maintaining a just and fair market in the country .The Securities and Exchange Commission (SEC) is a broad-reaching regulatory organization that primarily oversees the securities industry. The CCI is India's major competition regulating authority. Its mission is to promote fair competition, prevent anti-competitive practices, and maintain a level playing field for firms of all sizes and industries. The CCI has authority over a wide range of competition law issues, including anti-competitive agreements, abuse of dominance, and mergers and acquisitions that potentially harm competition. It seeks to foster a competitive market environment that benefits customers, encourages innovation, and improves economic efficiency.However, the two have similar features as well. The CCI and the SEC both have the authority to take action against violators of their respective regulations. The CCI has the authority to examine and penalize anti-competitive practices, abuse of dominance, and mergers that may harm competition. To ensure the fairness of the securities market, the SEC enforces securities laws by investigating and prosecuting cases of fraud, insider trading, and other infractions. Moreover, both regulatory authorities stress the necessity of timely and correct disclosures. The CCI's emphasis on transparency ensures that customers have accurate information about products and services, allowing them to make educated decisions. Companies must disclose complete financial disclosures to the SEC, ensuring that investors have access to important information before making investment decisions.

#### United Kingdom

In the United Kingdom, market regulator responsible for ensuring fair competition and preventing anti-competitive practices is the Competition and Markets Authority ,which became operational on 1<sup>st</sup> April 2014.<sup>4</sup>The introduction of the National Security and Investment Act 2021 (the NSI Act) was an important milestone affecting life sciences in the United Kingdom. Concerns about the shifting balances of global economic and military power, increasing competition among states, and the emergence of powerful non-state actors have led the UK government to consider modernizing its powers to intervene in certain transactions that could jeopardize the UK's national security. While the Secretary of State previously had authorities to intervene on national security grounds in mergers subject to the ordinary merger control regime, these were deemed insufficient to defend national security, ensure the success of the economy, and citizens' safety.The NSI Act's 'national security' reach is broad and could include areas such as supply security in life sciences (e.g., perhaps, vaccinations).During the early stages of the covid-19 pandemic, the CMA issued a warning to pharmaceutical suppliers not to take advantage of the situation, but also issued guidance, stating that it would not take enforcement action where temporary, necessary measures were taken to coordinate activities to ensure supply of essential products affected by the crisis.

An indirect effect of the epidemic has been an increase in the number of employees working from home. As a result, the government has suggested giving the CMA the authority to seize and sift' evidence while conducting warranted dawn raids on home properties, as well as strengthening the CMA's ability to collect information kept remotely.The CMA now has merger control jurisdiction over a deal if two businesses cease to be distinct and either the target's UK turnover is at least £70 million; or the deal generates or enhances a 25% or greater UK share of supply in the UK or a portion of it (the share-of-supply test (SOST)).The criteria for assessing mergers differs between the market regulators of India and UK. The CCI uses a "substantial lessening of competition" (SLC) test to evaluate whether a merger would harm competition

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<sup>4</sup>Contributors to Wikimedia projects, 'Competition and Markets Authority - Wikipedia' (Wikipedia, the free encyclopedia, 1 April 2013)  
<[https://en.wikipedia.org/wiki/Competition\\_and\\_Markets\\_Authority](https://en.wikipedia.org/wiki/Competition_and_Markets_Authority)> accessed 16 August 2023



in India whereas, CMA, considers factors like turnover and market share in its assessment. Market studies can be conducted by the CCI and the CMA to assess the competitiveness of specific sectors or industries. These studies can assist in identifying competitive impediments and recommending governmental measures to improve market dynamics. Both organizations work with other competition authorities throughout the world to address cross-border anti-competitive practices and guarantee that competition rules are consistently enforced.

### **Singapore**

Although Singapore has not yet amended its competition law to address the challenges posed by online marketplaces, the Competition and Consumer Commission of Singapore (CCCS) has taken a proactive approach in recent years, analyzing each transaction on a case-by-case basis and checking them by imposing deterrent fines if any competition law violation is found<sup>5</sup>.

The CCI has also called attention in its report to its investigative jurisdiction under Section 3(4) of the Competition Act, 2002 to investigate the unreasonable contract terms imposed on sellers by marketplaces due to their dominant position. The CCI was cautious to note that exclusive agreements can be both pro- and anti-competitive, and hence there is no blanket prohibition on them.

### **France**

France: A groundbreaking law has been enacted by the National Digital Council and is now part of the French legal framework. This legislation requires e-commerce marketplaces, which serve as dynamic centres of economic activity, to adhere to the values of justice, transparency, and informational clarity. This obligation is especially relevant when vendor distinction extends beyond the sphere of service quality. The resonance of this revolutionary project with the extensive insights supplied by the Competition Commission of France (CCI) has increased its relevance. The CCI has unambiguously said that these digital marketplaces, in their capacity as builders of their own operational frameworks, should proactively develop and define regulations

that radiate transparency. This is especially true when it comes to the many criteria that govern search result rankings, the intricate tapestry of discounting algorithms, the scrupulous use of user-generated data, and the all-important area of user reviews. In essence, the convergence of legislative effort and regulatory encouragement signals watershed moment in the internet commerce domain. It exemplifies France's commitment to cultivating a landscape in which ethical considerations coexist happily with commercial dynamism, ultimately providing an environment in which informed choices reign supreme.

### **Navigating jurisdiction in the age of digital economy**

The development of India's digital economy has fundamentally changed how individuals communicate, transact business, and share information. The issue of jurisdiction becomes essential given the sizeable online user base and the flourishing e-commerce activity. Digital technologies enable cross-border data flows and the delivery of digital services by international enterprises without a physical presence in the country, blurring traditional territorial boundaries. The idea of data localization is one of the main obstacles. Comparable to many other comparable legislation throughout the world, India's recently proposed Data Protection Bill of 2023 emphasizes tougher data localization rules to protect its residents' personal data. This program attempts to improve data privacy and make regulatory supervision more practical. The viability of implementation also comes into question with this strategy, especially for multinational tech corporations that operate across numerous jurisdictions. The rapid growth of India's digital economy has transformed communication, economic transactions, and information sharing. This progress, however, has given birth to complex obstacles, particularly regarding jurisdictional issues and the role of sectoral regulators in contrast to the Competition Commission of India (CCI). As India's online user base grows and e-commerce thrives, the intricacies of jurisdiction become increasingly important. Because of digital technologies' potential to promote cross-border data flows and worldwide delivery of digital services, traditional geographical boundaries have blurred, forcing a reevaluation of regulatory regimes. The Internet of Things (IoT) has the potential to transform not only technological landscapes, but also the settlement of jurisdictional concerns confronting the Competition Commission of India (CCI). The capacity of IoT to cross

<sup>5</sup>— 'CCI's E-commerce Report: A Cross-Jurisdictional Analysis - IndiaCorpLaw' (IndiaCorpLaw) <<https://indiacorplaw.in/2020/01/ccis-e-commerce-report-cross-jurisdictional-analysis.html>> accessed 17 August 2023



geographical boundaries to forming interconnected networks may provide innovative solutions to the problems of defining and enforcing jurisdiction in the digital age.