



# Competing In Constraints: Unraveling The Limitations Of India's Competition Act

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## Abstract

The Competition Act of India stands as a pivotal legislation to foster fair competition, safeguard consumer interests, and promote market efficiency. This research paper critically examines the key provisions of the Competition Act, focusing on its significance and impact on India's economic landscape. Delving into the important sections of the Act, such as those addressing anti-competitive agreements, abuse of dominance, and regulation of combinations, this study evaluates their efficacy in curbing monopolistic practices and fostering a competitive marketplace. Additionally, the paper sheds light on the shortcomings of the Competition Act, highlighting areas where the legislation may fall short in addressing emerging challenges and effectively promoting competition. Through a comprehensive analysis, this research aims to provide valuable insights into the strengths and weaknesses of the Competition Act of India, paving the way for informed discussions and potential reforms to enhance its effectiveness in promoting fair competition and economic growth.

**Keywords:** Competition, CCI, Abuse of Dominance

## I. Introduction

The former Prime Minister of India, Dr Manmohan Singh, delivered a thought-provoking speech at the Asian-African Conference. He stated- "Increased competition- internal and external- helps those who are strong enough to benefit from new opportunities. However, it can hurt those who are ill-equipped to face the challenges of competition. We must adopt concerted measures, both at the national and international level, for equitable management of the increased global interdependence of nations. At the national level, the state must be modernised to create an environment conducive to creativity and growth and also to ensure that the fruits of growth are fairly and equitably distributed."<sup>1</sup>

The Competition Act of 2002, championed by Arun Jaitley, the former Minister of State for Finance of India, took effect on March 31, 2003, following assent on January 13, 2003.<sup>2</sup> This legislation was introduced to promote healthy market competition, protect consumer interests, and facilitate unhindered trade among Indian market players. Its objectives encompass preventing monopolistic practices, fostering market competition, safeguarding consumer rights, and promoting free trade. This Act replaced the outdated Monopolies and Restrictive Trade Practices Act of 1969 (MRTP Act) in 2009, reflecting India's evolving economic landscape and global integration. Under the Competition Act, the Competition Commission of

<sup>1</sup> Statement by Prime Minister Dr Manmohan Singh at Asian-African Conference, Manohar Parrikar Institute for defence studies and analyses. Last accessed 7 April, 2024. <https://www.idsa.in/resources/speech/Asian-AfricanConference-ManmohanSingh>

<sup>2</sup> Chikhale Varun, 'Competition law in India and the perils it faces' Issue 2, no.2 (2022). Last accessed 7 April, 2024. <https://www.juscopus.com/journal/issue-2-dec-21/>

India (CCI) was established to regulate the market and curb anti-competitive practices, alongside the establishment of the quasi-judicial Competition Appellate Tribunal (COMPACT) to address appeals against CCI decisions.<sup>3</sup>

Competition law serves as a crucial catalyst in ensuring fair competition and preventing anti-competitive behaviour in markets. Its core aim is to create an equitable playing field for businesses, fostering fair competition and benefiting consumers through competitive pricing, innovation, and choice. Typically, competition law addresses practices such as monopolies, cartels, price-fixing, abuse of dominance, and mergers that may impede competition. Enforcement of competition law involves government agencies or regulatory bodies overseeing markets and taking action against violations through investigations, fines, and other remedies.

Recognizing competition as a vital driver of economic progress, innovation, and consumer welfare, jurisdictions worldwide have implemented competition laws. In India, the Competition Act of 2002 plays a pivotal role in regulating and nurturing competition, with ongoing evaluation of its provisions, enforcement, and effectiveness in fostering a competitive environment.<sup>4</sup>

## **II. Evolution of Competition Law in India**

The pre-independent era witnessed a degree of industrialization among certain individuals who rose to entrepreneurial status despite the challenges posed by colonial rule. Following independence, the country fully embraced the Industrial Policy to foster and safeguard economic development, outlining the government's role in commercial growth. A significant step was taken in 1956 to initiate government regulation of industries, with a focus on promoting public sector dominance in key areas like steel and coal, while imposing limitations on private sector licensing. With the government controlling commercial activities, high tariffs were imposed, limiting fair competition. Commercial licenses were selectively granted to successful entrepreneurs who made substantial contributions to the economy and engaged in global collaborations. However, this system also fostered anti-competitive practices among certain business groups, adversely affecting public interests. As a result of this, the Monopolies and Restrictive Trade Practices (MRTP) Act of 1969 was enacted to curb monopolistic behaviours and trade practices that were detrimental to both consumers and service providers.

### **1. The Monopolies and Restrictive Trade Practices Act of 1969**

Three key studies significantly influenced the formulation of the MRTP Act:

- (a) The Hazari Committee Report on Industrial Licensing Procedure, 1955: This report highlighted the biased allocation of industrial licenses by states, favouring wealthy and influential entrepreneurs leading to uneven industrial growth.
- (b) The Mahalanobis Committee Report on Distribution and Levels of Income, 1964: This report underscored how the economic model disproportionately benefited successful industrialists, with a few influential groups controlling a large portion of income.
- (c) The Monopolies Inquiry Commission Report of Das Gupta, 1965: This report emphasised the concentration of economic power in the hands of a few commercial houses and the prevalence of restrictive and monopolistic trade practices.

Observing these market irregularities, extensive state control and a lenient legal framework, the Monopolies Inquiry Commission (MIC) proposed a bill, which later evolved into the Monopolies and Restrictive Trade Practices Act of 1969.

<sup>3</sup> Nitesh Desai Associates, 'Competition law in India' Last accessed on 7 April, 2024.

<https://www.nishithdesai.com/Content/document/pdf/ResearchPapers/Competition-Law-in-India.pdf>

<sup>4</sup> Chikhale Varun, 'Competition law in India and the perils it faces' Issue 2, no.2 (2022). Last accessed 7 April, 2024.

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Enacted in June 1970 this legislation drew its legislative foundation from the Directive Principles of State policy outlined in the Constitution of India.

Specifically, Article 39 (b) and (c) of the constitution stipulate that the state should aim to distribute material resources for the common good and prevent the concentration of wealth and means of production to the detriment of the public.

The primary objectives of the MRTP Act were to curb monopolies and prohibit monopolistic trade practices, restrictive trade practices and unfair trade practices.

Section 10 of the MRTP Act granted the MRTP Commission the authority to investigate matters concerning monopolistic or restrictive trade practices upon referral by the Central Government. Further, Section 36 dealt with unfair trade practices. Additionally, the Act provided for the appointment of a Director General of Investigation and Registration to assist the MRTP Commission in inquiries and maintain records related to restrictive trade practices. Complaints were received by the MRTP commission from consumers, trade associations or individuals either directly or through various government departments. Upon a consumer filing a complaint, the Director General of Investigation and Registration conducted a preliminary investigation. Subsequently, the findings were submitted to the MRTP commission for further investigation as per the relevant provisions of the MRTP Act, 1969.

In 1984, the MRTP Act underwent amendments due to the absence of provisions safeguarding consumers against unfair practices, such as misleading advertisements conducted by industries. The Sanchar Committee in 1978, recommended the incorporation of separate provisions within the Act outlining various unfair trade practices. This was proposed to facilitate easier identification and action against such practices by producers, suppliers and consumers.

Post the 1984 amendment, the Act underwent yet another amendment in 1991. Provisions relating to government approvals for establishing new subsidiaries, expanding existing companies and regulating the concentration of wealth and power among monopoly firms were eliminated. Instead, the focus shifted towards identifying and addressing Monopolistic, Restrictive and Unfair Trade Practices to safeguard the interests of consumers, producers, suppliers and industries of all sizes and standings.

The implementation of the MRTP Act since its inception in 1969 has been fraught with challenges due to provisions deemed generic, outdated and insufficient in addressing various offensive trade practices. The Supreme Court rulings and the MRTP Commission decisions underscored the necessity for stronger provisions. Cases falling under the MRTP Act highlighted its inadequacy in addressing practices such as bid rigging, cartels, collusions, price fixing and abuse of dominant positions.

Many lawmakers and scholars argued that while general provisions against restrictive and monopolistic trade practices existed, specific identification of anti-competitive behaviours was necessary to protect consumers effectively and penalize wrongdoers. Furthermore, significant changes in international and domestic trade, especially following the 1991 economic reforms, prompted the government to rethink its approach.<sup>5</sup> The then finance minister, Yashwant Sinha, in his budget speech in 1999 stated “The MRTP Act has become obsolete in certain areas in the light of international economic developments relating to competition laws. We need to shift our focus from curbing monopolies to promoting competition. The government has decided to appoint a committee to examine this range of issues and propose a modern competition law suitable for our conditions.”

Thus, there was a need for a stronger and more comprehensive law to adapt to the evolving economic and trade landscape. This led to the enactment of the Competition Act 2002, aimed at promoting free and fair competition in India.<sup>6</sup>

<sup>5</sup> Kumar Advash, ‘The evolution of competition law and policy in India’ Last accessed on 14 March, 2024

<https://www.nascollege.org/e%20cotent%2010-4-20/sh%20avdshesh%20kumar/Evolution%20of%20Competition%20Law%20II%20m%20IV%2022-4.pdf>

<sup>6</sup> Chikhale Varun, ‘Competition law in India and the perils it faces’ Issue 2, no.2 (2022). Last accessed 7 April, 2024.

<https://www.juscopus.com/journal/issue-2-dec-21/>

## 2. Competition Act, 2002

In response to shifting paradigms of ‘true competition’ in the globalized economy, India recognized the necessity of updating its competition policy. This transition aimed not only to prevent monopolies but also to actively nurture open competition among market players, aligning Indian competition law with global standards.

The era of liberalization highlighted the urgency of addressing trade barriers and restrictions that hindered competition. Consequently, the Competition Bill was introduced in the parliament, culminating in the enactment of the Competition Act of 2002. After receiving presidential assent on January 13, 2003, and publication in the Gazette of India on January 14, 2003, the Act came into force.

Although partially enforced on May 20, 2009, focusing on anti-competitive agreements and abuse of dominant position, the combination regulations were notified in May 2011, taking effect on June 1, 2011.

The preamble of the Competition Act of 2002 delineates its objectives, including preventing practices harmful to competition, fostering competitive markets, protecting consumer interests, and ensuring trade freedom for all market participants in India. The Act established the Competition Commission of India (CCI), which commenced operations on October 14, 2003.

As a quasi-judicial body, the CCI investigates alleged violations independently or upon receiving information from various sources, including government bodies. Decisions of the CCI can be appealed to the Competition Appellate Tribunal (COMPACT), with further recourse available in the Supreme Court.

The Competition Act 2002 encompasses four primary areas of competition law: anti-competitive agreements (Section 3), Abuse of dominance (Section 4), regulation of combinations (mergers and acquisitions) (Sections 5 and 6), and competition advocacy (Section 49).<sup>7</sup>

### III. Key provisions of the Competition Act, 2002

#### 1. Anti-Competitive agreements

Section 3 of the Act establishes that any agreement that causes or is likely to cause appreciable adverse effect on the competition (AAEC) in India is considered anti-competitive. Section 3(1) of the Act prohibits agreements concerning the production, supply, distribution, storage and acquisition of control of goods or services if they result in or are likely to result in a significant adverse effect on competition within India. While the Act does not offer a precise definition of AAEC or clear guidelines for determining when an agreement leads to or is likely to lead to AAEC, section 19(3) outlines certain factors to consider, including-creation of barriers to new entrants in the market; driving existing competitors out of the market; foreclosure of competition by hindering entry into the market; accrual of benefits to consumers; improvements in production or distribution of goods or provisions of services; promotion of technical, scientific and economic development by means of production or distribution of goods or provisions or services.<sup>8</sup>

In the case of *Automobiles Dealers Association v. Global Automobiles Limited & Anr.*, the Competition Commission of India emphasized considering all factors mentioned in Section 19(3) when evaluating actions.<sup>9</sup>

Although the Act doesn't categorize agreements into horizontal or vertical, the language of Sections 3(3) and 3(4) indicates that the former targets horizontal agreements, while the latter focuses on vertical agreements. Horizontal agreements related to activities outlined in Section 3(3) are presumed to have an appreciable adverse effect on competition within India. The Supreme Court in *Sodhi Transport Co. v. State of U.P.* interpreted this presumption as indicative of the burden of proof but not as evidence itself.<sup>10</sup>

<sup>7</sup>Kumar Advash, 'The evolution of competition law and policy in India' Last accessed on 14 March, 2024 <https://www.nascollege.org/e%20cotent%2010-4-20/sh%20avdshesh%20kumar/Evolution%20of%20Competition%20Law%20II%20m%20IV%2022-4.pdf>

<sup>8</sup> Section 3, Competition Act, 2002. Last accessed 7 April, 2024. <https://www.cci.gov.in/images/legalframeworkact/en/the-competition-act-20021652103427.pdf>

<sup>9</sup> Case no. 33 of 2011, decided on 3.07.2012

<sup>10</sup> AIR 1986 SC 1099

Section 3 (3) states that agreements or practices conducted by enterprises or individuals engaged in trade of identical or similar products, including cartels, are presumed to have an appreciable adverse effect on competition in India if they- directly or indirectly fix purchase or sale prices; restrict or control production, supply, markets, technical development, investments, or service provisions; result in sharing markets or production sources or engage in bid-rigging or collusive bidding. These behaviours may involve firms coordinating to act as a monopoly, sharing monopoly profits or collaborating to restrict competition in response to tender invitations.<sup>11</sup>

In the case of Alleged Cartelization in the supply of LPG cylinders procured through tenders by Hindustan Petroleum Corporation Ltd., the Competition Commission of India imposed penalties on bidders who withdrew their bids using similar language and formats. The CCI established the existence of cartels by conducting analysis and discussions on price revision and minimum percentage of price increase.<sup>12</sup>

In Nagrik Chetna Manch v. Fortified Securities Solutions & ors., the Competition Commission of India rejected the arguments that parties engaging in bid rigging are not competitors, emphasizing that such exclusion may undermine the purpose of the act. The CCI found all six bidders guilty of bid rigging and allowed leniency for four of them under the Lesser Penalty Regulations.<sup>13</sup>

The only exception to this rule is joint venture arrangements that enhance efficiency in the production, supply, distribution, storage, acquisition or control of goods or services, provided there is a direct link between cost/quality efficiencies and consumer benefits.

Section 3 (4) states that agreements among enterprises or individuals at different stages of the production chain in different markets, concerning production, supply, distribution, storage, sale or price of goods or provisions of services, including tie -in-arrangements, exclusive supply or distribution agreements, refusal to deal and resale price maintenance are deemed to contravene section 3 (1) if they cause or are likely to cause appreciable adverse effect on the competition in India.<sup>14</sup>

In Meru Travel Solutions Pvt. Ltd v. Ani Technologies and Uber India and Ors., the CCI noted that incentives provided by Ola and Uber to their drivers and prospective drivers did not constitute anti-competitive agreements as there was no written or oral agreement.

In M/s Jasper Infotech Private Limited v. M/s Kaff Appliances Pvt. Ltd, the CCI found that displaying products below determined prices or imposing restrictions on dealers to deal with competing brands violates Section 3(4)(e) of the Act.<sup>15</sup>

The Act recognizes the need for protectionist measures with respect to rights granted under intellectual property laws. Agreements imposing reasonable conditions to protect or restrain infringement of these rights are exempted from anti-competitive restraints under certain circumstances.

The commission examines agreements and their effects in two stages: first, when an order is passed directing further investigation by the Directorate General for Competition under Section 26(1) of the Act, and Second, when an order is ultimately passed after the Directorate General submits its report and comments are taken from all parties. The Commission may pass an order closing the case under Section 26(6) depending on facts and evidence or pass an order under Section 27 of the Act if it concludes that there is a contravention of Section 3 of the Act.<sup>16</sup>

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<sup>11</sup> Nitesh Desai Associates, 'Competition law in India' Last accessed on 7 April, 2024.

<https://www.nishithdesai.com/Content/document/pdf/ResearchPapers/Competition-Law-in-India.pdf>

<sup>12</sup> Case no. 1 of 2014 decided on 9.08.2019

<sup>13</sup> Case no. 5 of 2015 decided on 1.05.2018

<sup>14</sup> Section 3, Competition Act, 2002. Last accessed 7 April, 2024. <https://www.cci.gov.in/images/legalframeworkact/en/the-competition-act-20021652103427.pdf>

<sup>15</sup> Case 25-28 of 2017 decided on 20.06.2018

<sup>16</sup> Section 26 and 27 of the Competition Act, 2002 Last accessed 7 April, 2024.

<https://www.cci.gov.in/images/legalframeworkact/en/the-competition-act-20021652103427.pdf>

## 2. Abuse of Dominance

Section 4 of the Competition Act of 2002 deals with abuse of dominance. This provision is based on Article 102 of the 'Treaty on the Functioning of the European Union'.

Section 4 of the Act prohibits an enterprise from abusing its position of dominance. The term 'dominant position' has been defined in the Act as "a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to operate independently of competitive forces prevailing in the relevant market; or affect its competitors or consumers or the relevant market in its favour."<sup>17</sup>

The definition of dominant position in the Act is very similar to the court's observation in the case *United Brand v. Commission of the European Communities*, wherein the court observed that a dominant position is "a position of strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitor, customers and ultimately of its consumers"<sup>18</sup>

The Act sets out the following factors for the Competition Commission of India to keep in mind while analyzing the dominant position of an enterprise: market share of the enterprise; size and resources of the enterprise; size and importance of the competitors; economic power of the enterprise including commercial advantage of such enterprise; dependence of consumers on the enterprise or sale or service network of such enterprise; dependence of consumers on the enterprise; monopoly of dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise; entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or services for consumers; countervailing buying power; market structure and size of market; social obligations and social costs; relative advantage, by way of contribution to the economic development, the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition; any other factor which the commission may consider relevant for the inquiry.<sup>19</sup>

The act further goes on to divide the relevant market into two- 'relevant geographical market' and 'relevant product market'. Section 2 (s) of the Act defines the relevant geographic market as a market comprising the area in which conditions of competition for supply of goods or provisions of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas.

Section 19 (6) further provides that the Competition Commission of India shall determine the relevant geographic market based on the following factors- regulatory trade barriers; local specification requirements; national procurement policies; adequate distribution facilities; transport costs; language; consumer preferences; need for secure or regular supplies or rapid after-sales services.<sup>20</sup>

Section 2 (r) of the Act defines the relevant product market as a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of the characteristics of the products or services, their prices and intended use.

Section 19 (7) of the Act lays down factors that the CCI must keep in mind while determining the relevant product market. Following are the factors- physical characteristics or end-use of goods; price of goods or services; consumer preferences; exclusion of in-house production; existence of specialized producers; classification of industrial products.<sup>21</sup>

The process of analysing whether an enterprise is abusing its position of dominance begins with determining the market, once the relevant market has been determined, the CCI determines whether such an enterprise is

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<sup>17</sup> Section 4 of the Competition Act, 2002 Last accessed 7 April, 2024. <https://www.cci.gov.in/images/legalframeworkact/en/the-competition-act-20021652103427.pdf>

<sup>18</sup> Nitesh Desai Associates, 'Competition law in India' Last accessed on 7 April, 2024.

<https://www.nishithdesai.com/Content/document/pdf/ResearchPapers/Competition-Law-in-India.pdf>

<sup>19</sup> Section 4 of the Competition Act, 2002 Last accessed 7 April, 2024. <https://www.cci.gov.in/images/legalframeworkact/en/the-competition-act-20021652103427.pdf>

<sup>20</sup> Section 2(s) and Section 19(6) of the Competition Act, 2002 Last accessed 7 April, 2024.

<https://www.cci.gov.in/images/legalframeworkact/en/the-competition-act-20021652103427.pdf>

<sup>21</sup> Section 2(r) and Section 19(7) of the Competition Act, 2002 Last accessed 7 April, 2024.

<https://www.cci.gov.in/images/legalframeworkact/en/the-competition-act-20021652103427.pdf>

enjoying a dominant position. Under the Act, a dominant position is not per se bad, it is the abuse of the dominant position that triggers the applicability of Section 4. Section 4 (2) lists out activities that shall be deemed to be an abuse of dominance- anti-competitive practices of imposing unfair or discriminatory trading conditions or process or predatory prices; limiting the supply of goods or services, or a market or technical or scientific development, denying market access; imposing supplementary obligations having no connection with the subject of the contract; or using dominance in one market to enter into or protect another relevant market.<sup>22</sup>

In the case of Harshita Chawla v. WhatsApp and Facebook Inc., the Competition Commission of India examined the complaints made against both companies on the grounds of abuse of dominance in the instant messaging application market. After careful analysis, the CCI rejected the contentions raised for violations of section 4(2)(d) and held that the mere existence of an application does not ensure its usage. Full discretion of usage lies in the hands of the consumers and mere provision of service by a popular entity cannot amount to abuse of dominance.<sup>23</sup>

### **3. Regulation of combination**

Sections 5 and 6 of the Competition Act of 2002, deal with the regulation of combinations. Combination, as delineated in Section 5, encompasses both the amalgamation of business through mergers and the acquisition of enterprises. This acquisition involves obtaining shares, voting rights, or assets of another enterprise where the assets involved surpass a specified value. Under Section 5, the Competition Commission of India has the power to review combinations that may have an appreciable adverse effect on competition within the relevant market in India. The CCI evaluates various factors such as market shares of the merging entities, the likelihood of market dominance, potential barriers to entry for competitors and the effect on consumers and innovation.<sup>24</sup>

In 2018, Walmart, the prominent American retail corporation, obtained a majority stake in Flipkart, a prominent player in India's e-commerce market. This transition underwent scrutiny under Section 5 of the Competition Act as the acquisition met the threshold limits. Following a thorough evaluation of its impact on competition within the e-commerce sector, the CCI approved the merger.<sup>25</sup>

Section 6 of the Act prohibits any combination that either directly causes or is likely to lead to a significant adverse impact on competition within the relevant market in India, rendering such combinations void. Section 6 also outlines the regulatory procedures for overseeing combinations. In certain instances, a merger could serve as a means to eliminate competition. Before the 2002 Act, the Companies Act of 1956 did not contain explicit provisions prohibiting anti-competitive mergers and acquisitions.<sup>26</sup>

### **4. Competition Advocacy**

The Competition Act extends the scope of the Competition Commission of India (CCI) beyond mere regulatory oversight to encompass competition advocacy and the fostering of a competitive business environment. Competition advocacy, outlined in Section 49 of the Competition Act 2002, involves initiatives aimed at raising public awareness about the importance of fostering competitive industries. The legislation places a responsibility on customers, whose welfare is a primary concern, to advocate for compliance with competition law under the guidance of the CCI. The CCI has engaged in competition advocacy efforts at both the national and state levels, collaborating with various stakeholders including corporate entities, consumer advocates, and regulatory bodies comprising professionals such as lawyers, accountants, and corporate executives. The role of competition advocacy may vary depending on the political and economic context of the government.

<sup>22</sup> Section 4 of the Competition Act, 2002 Last accessed 7 April, 2024. <https://www.cci.gov.in/images/legalframeworkact/en/the-competition-act-20021652103427.pdf>

<sup>23</sup> Case 15 of 2020, decided on 18.08.2020

<sup>24</sup> Section 5 of the Competition Act, 2002 Last accessed 7 April, 2024. <https://www.cci.gov.in/images/legalframeworkact/en/the-competition-act-20021652103427.pdf>

<sup>25</sup> 'Demystifying Section 5 & 6 of Indian Competition Act 2002: Understanding "combination" and its "regulation"', TaxGuru, 11 August, 2023. Last Accessed 8 April. <https://taxguru.in/corporate-law/section-5-6-indian-competition-act-2002-combination-regulations.html#:~:text=The%20section%20empowers%20CCI%20to,the%20potential%20effect%20on%20consumers>.

<sup>26</sup> Section 6 of the Competition act, 2002 Last accessed 7 April, 2024. <https://www.cci.gov.in/images/legalframeworkact/en/the-competition-act-20021652103427.pdf>

The central government may seek guidance from the CCI or form its own opinion on the potential implications of a policy on development or relevant competition laws. The Commission is mandated to furnish its recommendations to the central government within a sixty-day timeframe upon such a request. Consequently, the CCI assumes the role of a competition advocate, striving to shape government policies that foster free trade, reduce entry barriers, and promote competition within the market.

The Act aims to establish a direct connection between the enforcement of competition law and competition advocacy. One of the key objectives of competition advocacy is to cultivate environments conducive to corporate behaviour and increased competition in market structures, without resorting to penalties imposed by the CCI. Within the legal framework, the opinion of the CCI holds significant weight in guiding the government's decision-making process in implementing laws or policies related to competition.<sup>27</sup>

#### **IV. The perils faced by Competition Law in India**

The Competition Law in India, as enshrined in the Competition Act of 2002, represents a significant step forward in regulating market competition and safeguarding consumer interests. However, despite its commendable efforts, the law grapples with several shortcomings that hinder its effectiveness in fostering a truly competitive marketplace.

One glaring issue revolves around the delayed resolution of cases and the backlog of pending matters within the adjudicatory bodies established under the Competition Act, namely the Competition Commission of India (CCI) and the Competition Appellate Tribunal (COMPACT). This protracted litigation process not only undermines the deterrent effect of enforcement actions but also allows anti-competitive practices to persist unchecked. Moreover, resource constraints and manpower shortages exacerbate the problem, leading to prolonged delays in delivering justice and fostering uncertainty among market participants.

Additionally, the enforcement capacity of regulatory authorities tasked with implementing the Competition Act remains constrained by resource limitations and the complexity of cases. While the CCI possesses investigatory and adjudicatory powers, thereby undermining the law's deterrent effect on anti-competitive behaviour.

Furthermore, the legal framework governing competition law in India lacks clarity and coherence in certain areas, leading to ambiguity and interpretation challenges for market participants. The absence of well-defined criteria for assessing anti-competitive conduct hampers enforcement efforts and complicated dispute resolution. The overlapping jurisdiction of multiple regulatory bodies in sectors such as telecommunications and pharmaceuticals further muddle the regulatory landscape and fosters uncertainty.

Moreover, the Competition Act's focus on ex-post enforcement mechanisms overlooks the importance of proactive measures to prevent anti-competitive conduct and promote competition advocacy. The absence of robust mechanisms for market monitoring and early intervention limits the law's ability to address emerging anti-competitive trends proactively.

Addressing these shortcomings necessitates concerted efforts to enhance the enforcement capacity of regulatory authorities, streamline procedural mechanisms, clarify legal provisions and adopt proactive measures to prevent anti-competitive behaviour. Furthermore, attention must be given to issues such as non-compliance with principles of natural justice, procedural delays in the appellate process, and the influence of new-age algorithms on market competition. By addressing these challenges and embracing comprehensive reforms, India's Competition Law can realize its full potential in fostering a dynamic and competitive marketplace conducive to economic growth and consumer welfare.<sup>28</sup>

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<sup>27</sup> Garg, Rachit, 'Competition Law in India' ipleaders, 24 August 2022. Last Accessed 8 April, 2024  
<https://blog.ipleaders.in/competition-law-in-india-2/>

<sup>28</sup> Chikhale Varun, 'Competition law in India and the perils it faces' Issue 2, no.2 (2022). Last accessed 7 April, 2024.  
<https://www.juscorpus.com/journal/issue-2-dec-21/>



## V. The way forward

Improving competition law in India requires a comprehensive approach that addresses various challenges and enhances the effectiveness of regulatory mechanisms. One critical aspect is streamlining adjudicatory processes to ensure timely resolution of cases and reduce the backlog of pending matters before bodies like the Competition Commission of India (CCI) and the Competition Appellate Tribunal (COMPACT). This entails implementing strict timelines for case adjudication, bolstering judicial capacity, and leveraging technology for efficient case management. Additionally, it's essential to enhance the enforcement capacity of regulatory authorities by providing adequate resources, including funding, manpower, and technological infrastructure. Investing in training programs to equip enforcement officials with the necessary skills and tools to investigate and prosecute anti-competitive practices is imperative.

Clarifying legal provisions within the competition law framework is another crucial step in addressing ambiguity and interpretation challenges. By establishing clear criteria for assessing anti-competitive conduct and providing guidance on enforcement actions, regulatory certainty can be enhanced, facilitating compliance among market participants. Moreover, promoting competition advocacy is essential to raise awareness about the benefits of competitive markets among policymakers, businesses and consumers. Collaborative efforts between regulatory authorities, industry stakeholders, and civil society organizations can advocate for pro-competitive policies and regulations that foster innovation and economic growth.

Strengthening the merger control regime is vital to address consolidation and market concentration issues effectively. This involves improving assessment criteria for merger reviews, increasing transparency in decision-making processes, and enhancing cooperation with international competition authorities to address cross-border mergers and acquisitions. Addressing regulatory overlaps and inconsistencies in sectoral regulations, particularly in sectors like telecommunications and pharmaceuticals, is crucial to minimize regulatory burden and promote regulatory certainty.

Furthermore, adapting competition law to the challenges posed by the digital economy is essential. Regulations tailored to digital markets, including those related to data privacy, platform dominance, and algorithm market, including those related data privacy, platform dominance, and algorithm pricing can ensure fair competition and consumer protection in the rapidly evolving digital landscape. Emphasizing consumer welfare in competition law enforcement is paramount, focusing on investigations and enforcement actions that directly impact consumer prices, choice and the quality of goods and services.

Fostering greater international cooperation and information-sharing with global competition authorities can help address cross-border anti-competitive practices and promote convergence of competition policies and enforcement practices. Establishing mechanisms to monitor and evaluate the impact of competition law reforms on market competition, consumer welfare and economic growth is essential. By leveraging empirical research and data analysis, policymakers can assess the effectiveness of competition law interventions and identify for further improvements. Through these concerted efforts, India can strengthen its competition law framework, promote a competitive business environment, and enhance consumer welfare, ultimately fostering economic growth, innovation, and prosperity in the Indian market.<sup>29</sup>

## VI. Conclusion

In conclusion, the Competition Act of India, with its key provisions aimed at regulating market competition and safeguarding consumer interests, represents a significant step towards fostering a competitive business environment. However, despite its commendable objectives, the Act is not without its shortcomings. The delayed resolution of cases, backlog of pending matters, and procedural inefficiencies within adjudicatory bodies such as the Competition Commission of India (CCI) and the Competition Appellate Tribunal (COMPACT) undermine the law's effectiveness in curbing anti-competitive practices. Furthermore, resource constraints and lack of clarity in legal provisions and regulatory overlaps in sectoral regulations contribute to regulatory uncertainty and hinder enforcement efforts.

<sup>29</sup> Nitesh Desai Associates, 'Competition law in India' Last accessed on 7 April, 2024.

<https://www.nishithdesai.com/Content/document/pdf/ResearchPapers/Competition-Law-in-India.pdf>

Addressing these shortcomings requires concerted efforts from policymakers, regulatory authorities, and other stakeholders. Measures such as streamlining adjudicatory processes, enhancing enforcement capacity, clarifying legal provisions, and promoting competition advocacy can help strengthen the effectiveness of the Competition Act. Additionally, reforms to the merger control regime and adaptation to challenges posed by the digital economy and fostering international cooperation are essential to modernize competition law and address emerging market dynamics.

By implementing these recommendations, India can overcome the limitations of the Competition Act and create a more dynamic and competitive marketplace conducive to economic growth and consumer welfare. It is imperative for policymakers to prioritize reforms that enhance regulatory efficiency, promote transparency and ensure fair competition.

Ultimately, a robust competition law framework is crucial for fostering innovation, stimulating investment and driving sustainable economic development in India. Thus, Peter Kropotkin rightly stated “Competition is the law of the jungle, but cooperation is the law of civilization”

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### Bare act

Competition law, 2002