

## Competition Law In India - Recent Changes

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### Competition Law In India

The Competition Act, 2002 was passed in India to safeguard the viability of market competition, take consumer interests into account, and foster the participation of market players in free commerce and trade. It encourages healthy entrepreneurial rivalry and frees the market from controlling more powerful trade companies. The act's primary goals aim to discourage or entirely halt acts that might harm competition, encourage and maintain competition in markets and safeguard consumers' interests while also overseeing trade freedom [1].

Some key provisions referred to in this act are:

- Anti-competitive agreements (cartels, insider trading) under Section 3.
- Abuse of dominant positions under Section 4.
- Arrangements such as mergers/acquisitions under Sections 5 and 6.
- Advisory by statutory authority under Sections 21 and 21A.

Although the act aims to cover all such aspects to ensure a competitive market, there are certain areas which are left unaddressed by it. The parliament is undertaking amendments to the Competition Act of 2002 centred around the Competition Commission of India (CCI) and the need to promote accountability and agency. Fluctuations in the market following economic upheavals such as the Ukrainian crisis and the pandemic have rocked the market in the last two years and digitization in India is not slowing down. Modifications to the act were inevitable

### Recent Changes To The Act

#### I. Competition Commission of India (General) Amendment Regulations, 2022

The Competition Commission of India issued the Competition Commission of India (General) Amendment Regulations, 2022 via a notification on April 8th 2022. The amendment states that, upon written request, the Commission will safeguard the secrecy of an informant's identity [2]. Some highlights include:

- A party requesting confidentiality concerning any information or documents provided must offer a compelling justification for the request in addition to self-certifying that making any part of the information public will expose important trade secrets, destroy data, significantly reduce their commercial value, or be reasonably expected to result in serious harm.

- Additionally, the party shall certify the following on a self-certification basis, together with the date on which such confidential treatments shall expire:
  - (a) That the information is not in the public domain;
  - (b) That a small number of the party's employees, distributors, and suppliers are aware of it;
  - (c) That the party has taken adequate steps to protect the information's confidentiality; and
  - (d) That the information cannot be obtained or duplicated by others.
- A complete version of the uncensored document must be shared by the party as well and must have the words, 'Restriction of Publication Claimed' placed on the top of the first page with the word 'Confidential' clearly and legibly marked in red ink near the top on each page. It must be submitted with a non-confidential version, which shall have any confidential information redacted/omitted and the omissions of confidential information need to be indicated conspicuously. In all other aspects, however, copies of the non-confidential versions of the documents must resemble the confidential versions.

## II. The Competition (Amendments) Bill, 2022

The Ministry of Corporate Affairs established the Competition Law Review Committee in 2018 to review the Competition Act of 2002. The Committee was tasked with examining whether the Act of 2002 was sufficient to address the altering market policies. With the advent of technological and digitalisation, the economy has undergone major fluctuation as corporations evolve quicker than regulatory bodies can monitor their actions. The committee intended to propose procedural and structural amendments to the Act to address the state of the market. In 2019, the committee turned in its report, which resulted in a draft Competition Amendment Bill, 2020. The bill was then introduced to the public for comments [3].

After much deliberation, the Competition Amendment Bill 2022 was introduced and approved by the cabinet [4]. A major change is that the governing structure of The Competition Commission of India will be altered by the proposed bill, and legal requirements will be changed to better suit the demands of modern markets. Changes involve broadening the definition of illegal anti-competitive agreements to include new-age marketing strategies that do not fit neatly into traditional supply chain arrangements for which the law contains clear regulatory restrictions.

Some more significant changes that the bill intends to bring are:

- A board will oversee CCI operations with part-time members.
  - Mandatory publication of penalty criteria by CCI and explanation of any deviations will occur.
  - To be at par with the Securities and Exchange Board of India, CCI must be able to engage in structured conversations with parties and reach mutually agreeable solutions without having to go through drawn-out official procedures.
  - National Company Law Appellate Tribunal appeals may be subject to a pre-deposit of up to 25% of the CCI's penalty as a prerequisite.
  - A green channel for merging applications shall be introduced.
- The law also acknowledges other types of cartels, such as hub-and-spoke cartels. It includes a catch-all clause that allows the CCI to deal with

anti-competitive agreements regardless of how the parties are structured [5].

Why Are Such Changes Essential?

Data is sometimes referred to as 'the oil of the 21st century', and the collection of data is a driving force behind such regulation. Data about users, their habits, needs, and patterns has given corporations an unprecedented amount of power over the way the markets shift and churn. India's current legal framework is not yet sufficiently structured to address these shifting data usage trends. Predatory pricing, misuse of dominance, and discriminatory behaviour are just a few of the wrongdoings committed by IT corporations that frequently go unpunished.

Hence, the recent changes are quintessential to overseeing and regulating the disruption being caused by the advent of technology. The government must maintain a balance between a robust administrative structure and a system sympathetic to the market if it is to benefit as much as possible from the sizable market. The changes mentioned above are on similar lines, which is a good sign for the competition regime. However, it will be crucial to keep an eye on the possible implications of the introduced changes.

References:

1. <https://cleartax.in/s/>
2. <https://taxguru.in/corporate-law/competition-commission-india>
3. <https://www.barandbench.com/>
4. <https://www.businesstoday.in/>
5. <https://www.outlookindia.com/>