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## THE NEW FACE OF COMPETITION LAW: COMPETITION (AMENDMENT) ACT, 2023<sup>1</sup>

### Introduction

In the realm of developments and digital dominance ramifications, the Competition (Amendment) Act, of 2023 emerges as a pivotal legislative proposal for the changing needs and aspirations of the market dynamics and its forces. The Competition (Amendment) Act of 2023 seeks to have a major effect on the competition law jurisprudence while safeguarding the interest of the companies as well as the consumers. It's necessary to have an overview of the Competition Act of 2002 before looking into the highlights of the Competition (Amendment) Act of 2023. The Competition Act of 2002 was enacted to restrict unfair competition, and inequitable trade practices and suppress monopolies in all the sectors of the Indian economy. The main purpose behind bringing such a law to governance was to implement a sense of healthy competition among businesses and prevent anti-competitive business practices by various firms, companies, enterprises, and organizations. To prevent the concentration of wealth and promote a free and fair open market. The Competition Act of 2002 replaced the Monopolies and Restrictive Trade Practices Act, of 1969 and established a committee, the Competition Commission of India under the Ministry of Corporate Affairs to prevent practices and activities affecting business-related matters, trade-based business environment extending to the whole of India.

India has progressed drastically from the 2000s to today's era. The transformation and exponential growth of India's business market, the electronic industry, the technology-based industries, and the unicorns and startups have been quite remarkable and one of the reasons that led to amendments in the Competition Act of 2002. Driven by the factors of demographic changes, technological advancements, policy reforms, and entrepreneurial dynamism the amendments were necessary to be brought as to stay ahead in the rapidly evolving market. In a significant move to enhance the framework, the union

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announced certain amendments modifying the Competition Amendment Bill, thereby enforcing provisions, definitions clauses, and exemption of certain provisions.

## **Overview of Competition Act, 2002**

The Competition Act of 2002 laid certain provisions designed to ensure free trade practices and eliminate abuse of dominant position. The two major clauses of the Competition Act of 2002 included anti-competitive agreements and abuse of dominant position. Let's delve into each one of them separately.

### **1) Anti-competitive agreements (Section 3)**

The Competition Commission of India exempts any sort of anti-competitive agreements. Anti-competitive agreements are those agreements that influence the sale and price of the market goods and services that are done with malicious intent for personal gain. These agreements can also be used to control the production or the supply of market goods and services that will lead to collusive bidding. Collusive bidding or rig bidding refers to bidding where it is presumed that the agreement would influence the price of the thing even before it is put for bid. For example; Ambuja Cement, ACC Cement, and other varied cement companies create a cartel to unite and influence the market rate at an excessively high price, this is considered an anti-competitive agreement.

### **2) Abuse of Dominant Position (Section 4)**

The Competition Commission of India exempts any sort of abuse of the power residing in the hands of dominant position holders. The company with superior influence and power attempts to put discriminatory conditions over the sale and purchase of market goods and services for personal monetary gains. The abuse also involves restrictions over the production of goods and services and the denial of market access to consumers or other enterprises through corrupt practices. For example; suppose we start the business of selling salt. TATA Salts is an established business in this field and is in a bigger position than any other business. Now, if the TATA company by the use of their position dominates the small businesses to close their markets, this would be considered as an act of abuse of dominant position and power by the TATA company over other small enterprises.

## **Provisions of Competition Amendment Bill, 2023**

The Competition (Amendment) Act of 2023 has now partially been enacted and entered into force. The Supreme Court of India has also issued a landmark ruling on the relevance and applicability of the Competition Act 2002 (Competition Act) case involving Coal India, which settled jurisprudence surrounding the applicability of the Competition Act to public sector units and government-owned and controlled companies and a new chairperson to be appointed to the Competition Commission of India (CCI). Certain major changes included altering the definition clauses of terms like 'relevant product market' and 'exclusive supply agreement'. Definitions of terms such as 'party', 'settlements', and 'commitments' were given a broader perspective while new definitions were incorporated. The Ministry of Corporate Affairs has yet to enforce key provisions like penalties, thresholds, settlements, imposition on global turnover, and leniency. Let's delve into the elementary provisions and changes brought into the statute.

1) Role of CCI<sup>2</sup> in acquisition, mergers and amalgamation-

The Competition Commission of India plays a pivotal role in mergers, acquisitions, and amalgamation to prevent abuse of dominant positions and check Anti-competitive agreements.

The approval of CCI is required in cases when

- Both parties have assets of more than one thousand crores (1000 crores)
  - Turnover of both parties is more than three thousand crores (3000 crores)
  - Transactional value of the company i.e. the value at which the transaction takes place of buying, selling, or acquiring at a pre-determined amount is more than two thousand crores (2000 crores)
  - The company that is being sold has significant business operations in India
- 2) The controlling entity in the mergers, acquisitions, and amalgamations was amended from the one who manages the affairs of the company to the one company that would have 'Material Influence' over the management, economic matters, and decisions will be the controlling authority.
- 3) To promote a friendly business nation and support ease of businesses the time taken to give the final decision or judgment by the CCI over the case will be 150 days and can be extended by 30 days for special cases.
- 4) Punishment for Cartelization was broadened to include more cases where parties can be held liable for cartelization. The punishment for cartelization will be given to
- Parties involved in the Anti-Competitive Agreement Act of 2002.

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<sup>2</sup> Competition Commission of India

- Hub and spoke cartels (Non-competitive companies helping the other companies to enter into anti-competitive agreements) included by amendment.
  - Companies that are not part of the cartel but have an intention to enter the cartel.
- 5) The new provision by the amendment ruled the decision that the penalties determined on the companies will be based on 'Global turnover' i.e. money earned impacting all the goods and services including the entire turnover thereby impacting higher penalties over the companies and not 'relevant turnover' as per the old provisions.
- 6) The new bill states that if the parties want to do a settlement and companies want to give commitments by avoiding the case proceedings then the terms of such settlements, commitments, and compensation will be decided by the CCI.