I. INTRODUCTION

The Competition Commission of India (CCI) has been vested with an unusually broad mandate under section 18 of the Competition Act, 2002. Competition law is an important instrument in the armoury of economic regulators to combat anti-competitive behaviour in the market. The CCI has been given exclusive jurisdiction to enforce all competition provisions under the Act. This, however, has led to a number of challenges. The CCI has to balance its mandate to enforce competition law with its other regulatory functions. The CCI has to ensure that its investigations and recommendations are not perceived as biased, and its decisions are not seen as unduly lenient.

II. OVERLAP BETWEEN SECTORAL REGULATION AND ANTI-TRUST: WHY PROBLEMATIC?

Sectoral regulators and competition authorities pursue the common goal of safeguarding consumer welfare. However, there are different legislative mandates and perspectives, which may lead them to adopt different models. The CCI has an exclusive jurisdiction to investigate and recommend remedies for anti-competitive behaviour. The sectoral regulators, on the other hand, have specific functions and mandates. The CCI is required to act in accordance with the Act, whereas the sectoral regulators act in accordance with their respective sectoral laws.

III. ADDRESSING JURISPRUDENTIAL OVERLAPS: POSSIBLE SOLUTIONS AND THE STANCE TAKEN BY THE INDIAN COURTS

A. Approaches used in other countries

Broadly put, there are three different models that can be used to address the problem of jurisdictional duplicity. The first is the exclusive model, under which either of the bodies is granted the exclusive competence to deal with competition issues. The second is the concurrency model, under which both the authorities enjoy competence and can act in the exercise of the same through a concurrent or parallel process. The third is the co-operative model, under which both parties cooperate for the better enforcement of the Act.

B. Position in India

In the Indian context, both the CCI and sectoral regulators have overlapping jurisdiction over matters related to competition. The Indian High Court has quashed the jurisdiction of the CCI to investigate anti-competitive practices in sectors regulated by the CCI. The Delhi High Court has quashed the jurisdiction of the CCI to investigate anti-competitive practices in sectors regulated by the sectoral regulator. This has, however, been reversed by the Supreme Court of India. The CCI has been given exclusive jurisdiction under the Act.

IV. THE MOST VIABLE APPROACH IN THE INDIAN CONTEXT

A. Problems with the exclusion of the CCI

The Indian courts have confirmed an exclusive competition regulatory process on the sectoral regulators having a competitive mandate. However, the exclusion of the CCI from such sectors has become problematic in light of three main reasons:

1. Functional separation between sectoral regulation and the competition authority is required for efficient implementation of the Act. The sectoral regulators, being economic regulators, have a different mandate and perspective. They have a different legislative mandate and perspective, which may lead them to adopt different models.

2. The existence of such divergences can imply that compliance with regulation may not work in a developing country like India where a hierarchical institutional culture and power structure may not work. The existence of such divergences can imply that compliance with regulation may not work. This may not be the case in developed countries where the hierarchical institutional culture and power structure may work.

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B. Suitability of the Concurrence model

Fixed with jurisdictional overlap, one possible policy choice would be the adoption of the concurrence model, as adopted in Japan. Under this model, the sectoral regulator and the competition authority have concurrent jurisdiction. The sectoral regulator and the competition authority have concurrent jurisdiction. This model has been adopted in many countries, including Japan, the United States, and the European Union. This model has been adopted in many countries, including Japan, the United States, and the European Union. The concurrence model has been adopted in many countries, including Japan, the United States, and the European Union.

C. Need for grant of priority and exclusivity to the CCI

Given the limitations of sectoral regulation, the enforcement of competition law exclusively by the CCI would go a long way in addressing the markets for the benefits of consumers. Competition authorities have an economy-wide perspective, possess the necessary expertise to evaluate anticompetitive conduct, and ensure consistency in the application of anti-competitive rules. The sectoral regulation and competition authorities are required to coordinate, while the sectoral regulation and competition authorities are required to coordinate.

Moreover, by giving primacy to the CCI, the CCI can take into account the sectoral regulators' advice from the competition law perspective. This would enhance the effectiveness of competition law enforcement. The sectoral regulators' advice would be considered by the CCI in determining the appropriate remedies and actions. This would enhance the effectiveness of competition law enforcement.
V. THE CASE OF NETWORK INDUSTRIES

When this paper proposes that competition law should be accorded primacy in regulated sectors in India, evaluation of competitive regulation may be critical in this case of network industries, such as telecommunications, energy, and transport. In the current scenario, the主管 Competition Act, which is the main tool of competition law, is considerably less effective as a regulatory tool, such as opening up access to essential facilities, which is necessary to facilitate the establishment of competitive conditions. In this regard, the主管 Competition Act allows the CCI to conduct an inquiry into any alleged anti-competitive conduct by the domestic entity. The CCI can also be tasked with supervising the conduct of competition impact assessments in order to ensure the proper functioning of such markets.

In order to encourage the use of competition law remedies, sectoral laws should mandate the regulators to refer matters to the CCI for ex-post evaluation wherever possible instead of resorting to regulatory remedies. In this regard, section 34(3) of the Competition Act allows the CCI to conduct an inquiry into any alleged anti-competitive conduct useful reference being made by a statutory authority. In this manner, sectoral regulators would not have to bear the costs to look into the enforcement jurisdiction of the CCI or deferring new regulations. This would also enhance competition enforcement, as without such authorities may not otherwise be able to clearly evaluate the conduct of serial number of enterprises which fall within their jurisdiction. Thus, these authorities should also be encouraged to refer matters to the CCI for ex-post evaluation wherever possible instead of resorting to regulatory remedies.

V. THE CASE OF NETWORK INDUSTRIES

With technological developments and due to the impact of regulation, network industries would attain sophistication with the emergence of new players. This would eventually lead the network industry to that of independent firms. In such industries, competition law, which relies on behavioural tools, is considered to be inadequate as structural changes, such as opening up access to essential facilities, are necessary to facilitate the establishment of competitive conditions. In this regard, the主管 Competition Act would continue to remain relevant in the case of network industries, in which case we need not resort to unsustainable competition.

Towards the end, as far as regulatory reform in such industries, the CCI should neither be excluded nor be rendered useless. Indeed, suitable regulatory amendments should be made to require such regulatory conduct to fall under the CCI's jurisdiction. In this regard, the主管 Competition Act should be amended to ensure effective enforcement in the event of such regulations.

To conclude, the model put forth in this post would help the Indian policy-makers in achieving the most balanced interplay between regulation and competition law. By bringing in the legislative changes suggested above, the law-makers would enhance market certainty, which would also lay a way for creating a more enabling business environment in India.
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