



ANALYSIS OF CCI'S ACTIVE ROLE IN REGULARIZATION OF DYNAMIC INDIAN MARKET WITH THE HELP OF DIFFERENT CASES

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Part 1

A. Introduction:

The MRTP Act, 1969 was introduced to the Indian Economic Market in the year when India was slowly recovering after the Independence. MRTP Act was enacted to deal with the areas such as Restrictive Trade practices and Unfair trade practices. The authority under this act was empowered to discover and punish the enterprises for such practices. But with the establishment of the Consumer courts in the year 1986 caused the overlapping of the cases. But after the introduction of LPG policy in the year 1991 a new area related to corporate sector raised up which was Merger and Acquisition. And with that the Indian enterprises working area is now not only limited to India but also across the globe, even foreign MNC's started entering into the Indian Market which require some amendment or enactment of new law.

And with this the Government of India with the suggestion of Raghavan Committee and the suggestions of standing committee on Finance, enacted Competition Act, 2002. And this enactment gave birth to the Competition Commission of India, in Oct 2003 which preceded the Monopolies and Restrictive Trade Practices Commission¹. The Competition Commission have the

authority to keep check or an eye on all the contracts between big businesses in order to ensure healthy competition in Indian Market. Let us find out how CCI is playing an active role in ensuring fair trade, developing positive competitive market and creating better choices for consumers in the market.

B. Aim and Objectives:

CCI is India's most strict regulatory authority who deals with the regularization of the Indian consumer market. It is established to ensure fair market practices, positive competition, and the protection of interests of the consumers. The present Article makes an attempt to understand the functioning of the particular regulatory authority with the help of different cases of different sectors.

C. Research Methodology:

I am going to use the Doctrinal method along with Qualitative method for my whole Article. The study focuses on extensive study of secondary data collected from government websites, various national journals and articles, publications, government reports, newspapers, magazines which focused on various aspects of CCI and its role in the dynamic Indian Market.

D. Research Limitations/Implications:

The present study provides a starting-point for further research in this field. This study can further be explored with respect to changes which are or which can be brought to Indian Market to with changing time.

E. Research Questions:

- i. What law governs the competition in India?

¹ Competition Regulatory Authority of India:
Competition Commission of India: CCI and
Competition Advocacy, Chapter V.



- ii. When and how Competition Commission of India was established?
 - iii. What is the role, objective and functions of the Competition Commission of India?
 - iv. What all cases our Competition Commission of India deals with?
 - v. How active is our Competition Commission of India and by what all methods they try to ensure fair business and consumer friendly market?
2. To Promote and Sustain Competition in Markets
 3. To Protect the interests of consumers
 4. To Ensure Freedom of Trade
 5. To Prohibit anti-competitive agreements
 6. To Prohibit abuse of dominant Position
 7. To Regulate Combinations
 8. Competition Advocacy

B. Instants where CCI proved its activism:

The Competition Commission of India is one of the most active statutory regulators and has adorably been able to control the unbridled enterprises who are keen on making higher profits and want to think only for themselves and not for the consumers and about the healthy competitive market.

At many instances CCI fined different companies with huge amount of fines such as the Rs. 1,773 crores of fine was levied on a coal mining company for price fixing and supplying poor quality coal, another such instance was Rs. 2,500 Crore of combined fine on the 14 car makers of India for abusing their dominant position. In case of Cartels and Horizontal agreements we have big example of the 11 Cement Companies where they were fined of Rs. 6,307 Crore.

F. Chapterisation:

This Article consists of total three parts including Introduction and conclusion. Where Part one includes Introduction to the Article. Part two will deal with the main body of the Article. And the last part i.e., Part three will deal with the Analysis and conclusion of this whole Article, as well as the bibliography of the Article.

Part-2

A. Role, Objective and Functions of CCI:

The role of CCI is not mentioned anywhere under the Competition Act that is limited, which means all the areas of the Indian economy are under the lens of CCI whether it is government or private or semi in nature, and if any kind of enterprise enters into an agreement or contract which will affect the Indian market or its consumers is bound to get prior approval from the Commission. And if CCI not gets satisfied with such agreement or contract it can reject such agreement or contract by stating reasons to the parties and their decision shall be final. However, there are certain general role, objectives and functions of the CCI which are as follows:

1. To Prevent Malpractices



❖ *Let's see with the help of some of the important cases where CCI showed its Activism by ensuring fair market practices and taking action against cartelization:*

I. The Cement Cartel Cases²:

a. Facts of the case:

- i. There were actually two cases involved which lead to the landmark decisions one is the BAI (Builders Association of India) v. CMA (Cement Manufacturers Association) and the other one is In Re: Alleged Cartelization by Cement Manufacturers.
- ii. The Builders Association of India filed an information under section 19(1)(a)³ of the Competition Act, against the Cement Manufacturers Association along with the 11 Cement Manufacturing Companies, for the violation of Section 3 and 4 of the Act which deal with Anti-competitive Agreement and Abuse of Dominant Position respectively.
- iii. Taking note of the alleged allegation CCI found on 20th June, 2012 that the parties are in contravention of Section 3(3)(a) and (b) along with Section 3(1).
- iv. CCI imposed a monetary penalty on these companies along with that issued the directions to cease and desist from indulging in any kind of Anticompetitive activity.
- v. Also, the CCI prohibited Cement Manufacturers Association to engage and associate itself from any act of

Cartelization which will leads to changes in the wholesale and the retail prices of Cement.

- vi. The Second case was received by the CCI from the MRTP Commission under Section 66(6) of the Act, where the MRTP Commission had taken a Suo-moto cognizance of the matter and investigated the matter based on the reports published by the media which alleged that the Cement prices are increasing by the Cement Cartels. On 31st May, 2011 the CCI filed its report of investigation and found that the alleged violations have happened under Section 3(b) and Section 3(1), and imposed a penalty of Rs. 3 billion.

- vii. Aggrieved by both two decisions of the CCI the respondents appealed before the Competition Appellate Tribunal, on the grounds that the principle of Natural justice has been violated by the CCI and they should be given chance of fair hearing and there should be given unbiased and not pre-determined decision. Agreeing to these allegation COMPAT issued an order and referred back the matter to CCI for Fresh Adjudication of the issues of the alleged violation of Section 3(3)(a) and (b) read with section 3(1) of the Act.

b. Issues of the Case:

- i. Whether alleged conduct of the respondents was an anti-competitive agreement under Section 3.

² Builders Association of India v. Cement Manufactures of India Case No. 29 of 2010

³ The CCI may under S.19(1) may inquire into any alleged contravention of S.3(1) or S.4(1) either on its

own motion or receipt of any information from any person, consumer or their association or trade association



- ii. Whether alleged conduct of the respondents was amounted to abuse of dominance under Section 4 of the act.

c. Decision:

- i. CCI while relying on the Dyestuff's Case, held that "the clandestine nature of cartels, circumstantial evidence is of no less value than direct evidence to prove Cartelization. And also, in cartelization the parties are cautious to avoid explicit and direct evidence such as minutes, paper trails, call records to not get caught by the CCI."
- ii. It was also held that the Cement Manufacturers Association provided a platform for sharing of the prices, production, supply related information between the Cement manufacturing companies through its meetings and reports.
- iii. "It was also held that at points where there was a strong correlation between the parties, a positive inference was drawn towards price parallelism indicating concerted action." The Cement market is highly susceptible to these parallel price pattern as this market is highly volatile and prices depends on the seasons, and variable costs incurred.
- iv. It was also found by the CCI that these cement manufacturing companies had willfully reduced their production to create a kind of artificial situation of scarcity of the material and on that basis, they raised the prices of cement to earn high profits.
- v. And hence, CCI computed the penalty on the basis of net profits these companies earned over a

specific period by each manufacturer. And along with that CCI also imposed a penalty of 10% of total receipts over two-year period which is payable within 60 days of the issuance of order.

II. The Paper manufacturers cartel Case:

- i. The Competition Commission of India initiated Suo-moto case on the basis of the material they found in the ongoing investigation of the other two cases which the commission was investigating earlier. The DG investigated as many as 20 paper manufacturers and the association, and recorded findings of contravention of violation of the Section 3(1) and 3(3)(a) by the 10 such paper manufacturers and the association between the period from September 2012 till march 2013.
- ii. CCI held that these enterprises and paper manufacturer association colluded in the activities of Cartelization. The Paper Manufacturer Association provided the platform to these paper manufacturing companies for fixing prices of writing and printing papers.
- iii. The commission under Section 27(a) of the Act directed the paper companies who were held liable under section 48 of the Act to cease and desist in the future from indulging in such practices which have been found in the present investigation in contravention of the provisions of Section 3 of the Act.
- iv. The commission also imposed symbolic monetary penalty on these companies of Rs. 5 lakh each on the 10 paper manufacturers who have been found guilty. And along with



that imposed penalty of Rs. 2.5 Lakh on the Paper Manufacturing Association for providing a platform to these manufacturers for anti-competitive activities within 60 days of issuance of the order.

❖ *Now let's see with the help of case where CCI played an active role by controlling the mergers and acquisitions in India:*

IndusInd Bank Case⁴:

- i. IndusInd Bank is India's one of the private banks which was established under the banking regulations, and have over 700 branches across the globe. And was acquiring the diamond and Jewelry finance business of the Royal Bank of Scotland. The bank got approval from the RBI to establish its branch office in India.
- ii. Here in this case, it was there to determine before the CCI that what is the relevant Market in the area of gems and diamond Jewelry financing business.
- iii. And in this case CCI decided that the acquirer is purchasing only the banking portfolio of the customers who are engaged in gem jewelry business. And this indicates that the said banking services are provided to customers on the stand-alone basis and can form a separate relevant product market.
- iv. And hence as per the information received by the commission, that the customers of both the parties for availing the particular services from the branches of both the parties i.e.,

the acquirer and the seller have to travel about 15-20 Km, and hence it can be considered as a relevant geographic market for the particular combination and it would be considered as a local market.

- v. And therefore, the combination was approved by the CCI.

❖ *Now let's see the case where the Commission took played an active role in ensuring fair market play by penalizing the bid riggers:*

Gail (India) Ltd. Bid Rigging case⁵:

- i. The Gail India limited in the year 2008 issued a tender for invitation of bids for restoring well sites which were located in Ahmedabad and Anand districts of Gujarat.
- ii. During that process two firms did a bid from a same premises of one of the firms located in Ahmedabad and from the same Internet Protocol Address with one day gap.
- iii. And this all was found by the Director General who submitted its report to CCI which further states that both firms were in contact with each other for the common intention i.e., their purpose of communication was the tender which was floated by the GAIL. And even after submitting their bids both the firms remained in touch with each other.
- iv. And hence CCI held that such kind of practices will be covered under the provisions of Competition Act which prohibits anti-competitive agreements which also includes Bid-rigging.

⁴ IndusInd Bank acquired diamond jewelry financing business of Royal Bank of Scotland.

⁵ Case No. 41 of 2019.



v. Along with that CCI imposed a penalty of Rs. 25 Lakh on one of the firms along with Rs. 2.5 lakh penalty on the other firm and also CCI imposed penalty of Rs. 1 lakh and Rs. 50,000 respectively on the individuals who manages and controls those firms.

❖ *Now Let us see a case where CCI played an active role for the protection of the Indian Consumers:*

Maruti Suzuki India Ltd. Retail Price maintenance case⁶:

- i. In the year 2017 CCI received a collective complaint from the dealers of Maruti Suzuki India Limited (MSIL) through an anonymous e-mail, where it was stated that the company's sales policy is against the interest of the customers as well as the provisions of the Competition Act, 2002. And on taking note of the e-mail the Commission took a Suo-moto Cognizance of the alleged matter.
- ii. During its preliminary inquiry by the Director-General, it was found that MSIL had issued a "Discount Control Policy" for the dealers, and according to that policy dealers were restricted to offer discounts beyond the limits prescribed by the company. And along with that they imposed restrictions on the dealers to not to provide freebies to the consumers beyond the limit set by the company. And hence it leads to the occurrence of Resale Price Maintenance which in turn was being monitored by the company by appointing Mystery

- iii. Shopping Agencies and was enforced through the imposition of penalties. And hence CCI on 31st August, 2021 held that such agreements are considered as anti-competitive agreements. And also imposed a cease-and-desist order along with penalty of Rs. 200 Crore on MSIL for indulging in such unfair business practices.
- iv. However, this particular matter is under appeal in NCLAT, where NCLAT stayed the fine imposed by the commission till the further orders.

Part-3

A. Analysis and the Conclusion:

From the above Discussion we can find out that CCI as compared with other regulatory bodies have a kind of strong, fearful and a strict position in the Indian Market. We have SEBI also present in the financial market but it lacks monitoring mechanism to survey potential violators. RBI have regulatory framework but it lacks judicial mechanism which is the power to punish. Violations of Competition Law we can see cannot be entered for a small or nominal profits, instead companies use these methods for disturbing market equilibrium to gain huge profits.

Role and function of CCI is nowhere mentioned in the Act or any regulations but after reviewing the above cases we can find out the Jurisdiction as well as areas of market which are under the governance of CCI. We can see from the above cases, what all matters are dealt by the commission which are as follows:

⁶ Suo Moto Case No. 01 of 2019.



- i. Matters related to Cartelization or disturbing the equilibrium of the market.
- ii. Matters related to unfair business and trade practices such as big rigging or entering into anti-competitive agreements.
- iii. Matters related to the Mergers and Acquisition.
- iv. Matters related to the protection of Consumers Interest and Market Interest, and much more....

II. Legislations:
The Competition Act, 2002

III. Newspapers, Articles and publications:

- i. www.moneycontrol.com
- ii. www.mondaq.com
- iii. www.manupatra.com
- iv. www.cci.gov.in
- v. www.ssrana.in
- vi. www.economicstimes.com
- vii. www.financialexpress.com

Competition law is treated as the Magna Carta of the activities of the enterprises. And with the growth of the Indian Economy and Market this law is also growing and getting better day by day with these issues. And with all this CCI played very significant role in putting bar on these anti-competitive practices by doing a detailed investigations in such matters and imposing penalties on the enterprises which can be treated as exemplary to the other such enterprises. And CCI seems to ensure that Indian markets are ready for new innovations and healthy deals which will surely help to improve our GDP and our fair market quality with increasing investments, combinations and changing consumer behavior.

B. Bibliography:

I. Cases:

- i. Builders Association of India v. Cement Manufactures of India Case No. 29 of 2010
- ii. IndusInd Bank acquired diamond jewelry financing business of Royal Bank of Scotland approval order.
- iii. Case No. 41 of 2019.
- iv. Suo Moto Case No. 01 of 2019.