Competition (Amendment) Bill

Published On: 31-03-2023

Why is in news? The lower house of Parliament passed the Competition (Amendment) Bill, 2023 which seeks to amend the Competition Act, 2022.

Brief about Competition Act 2002

The Competition Act, 2002 was enacted to promote and sustain competition in markets, protect the interest of consumers, and ensure freedom of trade for market participants

It established the Competition Commission of India (CCI) to eliminate practices having adverse effect on market competition

Under the Act, enterprises are not allowed to enter into anti-competitive agreements which can cause an appreciable adverse effect on competition in India or abuse their dominant position

Persons and enterprises are also not allowed to enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India

Combinations are defined as the acquisition, merger or amalgamation of one or more enterprisesCombinations that meet certain thresholds based on their assets or turnover have to be notified for CCI's approval.

Since the Competition Act came into force, Indian markets have grown significantly.There has also been changes in the way businesses operate with the emergence of digital internet based companies and new age markets involving technology.

In 2018, the Ministry of Corporate Affairs constituted the Competition Law Review Committee to ensure that the Competition Act is in line with India's economic fundamentals

In its deliberations, the Committee noted that certain market practices are not adequately covered by the current regulatory framework

The Committee released its report in 2019 and suggested several amendments to the Act and changes in the regulatory structure dealing with matters of market competition.

Key proposals under the bill: Changes in definition of 'turnover' in India

A major change in the Bill is the provision relating to penalties that the competition watchdog can levy. Presently, the CCI can impose a penalty of up to 10% of a company's average turnover in the "relevant market."

Now, the phrase "turnover" will refer to the "global turnover derived from all the products and services by a person or an enterprise"

The definition of "turnover" had been a widely debated subject in the competition law landscape, and it was in 2017 when the Supreme Court had fixed how it should be determined in such cases.

On 8 May, 2017, in a landmark judgement, the top court had upheld the principle of "relevant turnover" for determination of penalties in competition law contraventions.

In a case related to alleged contravention of the Competition Act, 2002 in the public procurement of Aluminium Phosphide tablets by the Food Corporation of India, the CCI had imposed a penalty at the rate of 9 per cent of the total turnover of the concerned tablet manufacturers, Excel Corp. Care Limited, United Phosphorus Limited, and Sandhya Organic Chemicals Private Limited.

The Competition Appellate Tribunal (COMPAT) had however later said that the turnover will have to be "relevant" turnover that is turnover derived from the sales of goods or services.

Ultimately, the Supreme Court had held that the imposition of penalty adopting the criteria of "relevant turnover" will be "more in tune with ethos of the Act and the legal principles which surround matters pertaining to imposition of penalties."

Other proposed amendments

The changes in the Competition (Amendment) Bill, 2023 afford the CCI a greater say in mergers and acquisitions as entities will have to seek its approval in case a deal value is worth more than Rs 2,000 crore, and both the parties have a substantial business operation in India.

The CCI could also incentivise parties in ongoing cartel investigations in terms of lesser penalty to disclose information regarding other cartels.

The bill has also reduced the time limit for approval of mergers and acquisitions from the existing 210 days to 150 days.