INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 6 | Issue 6

2024

© 2024 International Journal of Legal Science and Innovation

Follow this and additional works at: https://www.ijlsi.com/

Under the aegis of VidhiAagaz – Inking Your Brain (https://www.vidhiaagaz.com)

This Article is brought to you for free and open access by the International Journal of Legal Science and Innovation at VidhiAagaz. It has been accepted for inclusion in International Journal of Legal Science and Innovation after due review.

In case of **any suggestion or complaint**, please contact **Gyan@vidhiaagaz.com.**

To submit your Manuscript for Publication at **International Journal of Legal Science and Innovation**, kindly email your Manuscript at **editor.ijlsi@gmail.com.**

Analysis of the Competition (Amendment) Act, 2023

DISHA KALRA[1]

ABSTRACT

The Monopiles and Restrictive Trade Practices Act, 1969(MRTP Act,1969) was the predecessor of The Competition Act, 2000. The MRTP Act,1969 was repealed, as, it couldn't meet the objectives for which it was made. The Competition Act,2000 got the presidential assent on 13 January 2003. The act was implemented, with the objective, of preventing anti-competitive practices in the market. The Act, 2002 has been amended many times, i.e., in 2007, when the Competition Appellate tribunal (COMPAT) was made the appellate tribunal, in 2009 when Unfair Trade Practices (UTPs) cases pending before National Consumers Disputes Redressal Commission (NCDRC) were transferred to Competition Appellate Tribunal (COMPAT) ,and, in 2017 when COMPAT was replaced with National Company law Appellate Authority (NCLAT) as Appellate Tribunal. The recent amendment introduced in The Competition Act, 2002 is in 2023. Many significant amendments have been brought in the Act , to meet the dynamic market structure. Many changes, like the changes in deal value threshold, reduction of the days for the approval of combinations, Hubs and spoke cartel etc. have been introduced. The amendment has been made to provide for consumer welfare and promote fair competition in the market. The changes in the primary law on competition has curbed various anti-competitive practices and monopolistic tendencies.

Keywords*: Competition Act, 2002, The Monopoles and Restrictive Trade Practices Act, 1969, The Competition Commission of India.*

I. INTRODUCTION

The Competition Act,2002 (hereinafter referred as 'The Act') got the presidential assent on January 13, 2002. The preamble of the Act states the objectives of the Act, states the objectives of the Act. The primary objective of the Act, as per the preamble is,

"*An Act to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters*

[1] Author is an Advocate in India.

© 2024. International Journal of Legal Science and Innovation [ISSN 2581-9453]

connected therewith or incidental thereto".[2]

The Act, is the successor to The Monopoles and Restrictive Trade Practices Act, 1969(hereinafter referred as The MRTP Act,1969), But, The MRTP Act, couldn't achieve the objectives, for which, it was enforced. The MRTP Act,1969 was repealed, and The Competition Act,2002 was enforced. The Competition Act, 2002 restricts any person or enterprise from entering into any arrangement which causes an appreciable adverse effect on the competition in the market.'[3] Section 3 of the Act, i.e., , Anti -competitive agreements , Section 4, i.e., abuse of dominant position and Section 5 ,i.e., Combinations , are some of the key provisions of the Act. The Competition Commission of India (hereinafter referred as The CCI) has been given various powers and functions under the Act. To curb the competition abuse by various IT companies, due to the ever-growing market, the CCI applies the Competition Act, 2002.

The sole law on Competition in India, was amended in the year 2023. The amended bill was introduced in the parliament on 3rd April, 2023. It got presidential assent on 11th April,2023. Many significant changes have been brought in the Act, through the 2023 Amendment, pertaining to 'Leniency regime, limitation period, introduction of deal value thresholds etc.'.

II. HISTORY OF THE COMPETITION ACT, 2002

The MRTP Act, 1969 'marks the introduction of the competition law in India'.[4] The MRTP Act came into existence in the year 1970. The preamble of the Act, states-

"*An Act to provide that the operation of the economic system does not result in the concentration of economic power to the common detriment, for the control of monopolies, for the prohibition of monopolistic and restrictive trade practices and for matters connected therewith or incidental thereto*."[5]

The MRTP Act was based on the principles as stated in Article 38 and Article 39 of the Constitution Article 38 of the Constitution states that

"The state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

[2] THE COMPETITION ACT, 2002 , Act 12 ,Acts Of Parliament, 2003 India
[3] Aayushi Singh and Pavitra Dubey, The Competition (Amendment) Act, 2023: A Game Changer for Mergers and Acquisitions ,SCC Online (June 5 , 2003) https://www.scconline.com.
[4] Supra note 3.
[5] The Monopiles and Restrictive Trade Practices Act, 1969, Act 54,Act of parliament, 1969, India

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations".[6]

Article 39 of the Constitution states-

"*The State shall, in particular, direct its policy towards securing—*

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."[7]

The MRTP Act, 1969 was introduced to curb any 'Monopolistic, restrictive and unfair trade practices in India'.[8] The MRTP Act also had an objective, to prevent the 'concentration of the economic power in the hands of few big economic powers'.[9]

But, after some time it was realized that The MRTP Act,1969 couldn't meet the objectives for which it has been implemented.

A committee of a high level, was formed by the Indian Government in the year 1997. This committee was formed by the Indian government to reconsider the MRTP Act, and to get recommendations of the committee on the same. Various suggestions were given by the committee, like the increasing of the power of the MRTP commission, removal of immunities for the public enterprises etc.

[6] INDIA CONST., Art. 38
[7] INDIA CONST., Art. 39
[8] Ibid.note2.
[9] Ibid note 2.

© 2024. International Journal of Legal Science and Innovation [ISSN 2581-9453]

The recommendations of the committee lead to the establishment of The Competition Act, 2002 , which replaced The MRTP Act,1969.

With the ever- growing and evolving market structure, The Competition Act has been amended many times. i.e., in 2007, 2009 and in 2023. 'With the significant growth of Indian markets and a transformational shift in the conduct of business, In 2018, the Government of India constituted Competition Law Review committee (CLRC) , to suggest the amendments in the Competition Act, 2002. The CLRC submitted its recommendations to the Government in 2019. After considering the recommendations proposed by CLRC and public consultations, amendments to the law were discussed. The aim was to provide regulatory certainty and trust-based business environment'.[10]

The Competition (Amendment) Act, 2003 (hereinafter referred as The Amendment Act) 'was introduced on April 3, 2023 in the Parliament. The Amendment Act got the assent of the President on April 11, 2023'.[11]

The various characteristic features of the Amendment Act are,-

- The Section 5 of the Act, i.e., Abuse of Dominance has been amended by the Act. The condition of 'deal value threshold'[12] has been included in section 5. The section, states that any transaction having a value of more than 2000 crore, needs to get the approval of the CCI, before going for acquisition, merger or amalgamation. The amended act also reduces the time frame for the CCI to pass orders from 210 days to 150 days.

Section 6 of the Amendment Act, states the amendment in section 5 of the Act .i.e.,

"*6. In section 5 of the principal Act,—*

(A) in clause (c), in sub-clause (ii), in item (B), for the word "India.", the words "India; or" shall be substituted;

(B) after clause (c), the following clauses shall be inserted, namely:—

"(d) value of any transaction, in connection with acquisition of any control, shares, voting rights or assets of an enterprise, merger or amalgamation exceeds rupees two thousand crore:

Provided that the enterprise which is being acquired, taken control of, merged or amalgamated has such substantial business operations in India as may be specified by regulations.

[10] Competition Commission of India , Competition (Amendment) Act, 2023 Salient Features,(Apr 11,2023) www.cci.gov.in/images/publications_booklet/en/competition-amendment-act-2023
[11] Abir Roy & Jayant Kumar, Competition Law in India, ed, 2023
[12] Supra note 10.

(e) notwithstanding anything contained in clause (a) or clause (b) or clause (c), where either the value of assets or turnover of the enterprise being acquired, taken control of, merged or amalgamated in India is not more than such value as may be prescribed, such acquisition, control, merger or amalgamation, shall not constitute a combination under section 5.".[13]

- The **Amendment Act has also changed the definition of 'Control' in section 5** of the Act, i.e.

"(a) "control" means the ability to exercise material influence, in any manner whatsoever, over the management or affairs or strategic commercial decisions by—

(i) one or more enterprises, either jointly or singly, over another enterprise or group; or

(ii) one or more groups, either jointly or singly, over another group or enterprise".[14]

- The **Amendment Act also gives the power to the CCI to appoint Director-general** i.e., the Amendment Act has amended Section 16 of the Act. Section 16 of the Act states that,

"*Appointment of Director General, etc.*

16. [(1)The Central Government may, by notification, appoint a Director General for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of this Act and for performing such other functions as are, or may be, provided by or under this Act.

(1A) The number of other Additional, Joint, Deputy or Assistant Directors General or such officers or other employees in the office of Director General and the manner of appointment of such Additional, Joint, Deputy or Assistant Directors General or such officers or other employees shall be such as may be prescribed."]

(2) Every Additional, Joint, Deputy and Assistant Directors General or 24[such officers or other employees,] shall exercise his powers, and discharge his functions, subject to the general control, supervision and direction of the Director General.

(3) The salary, allowances and other terms and conditions of service of the Director General and Additional, Joint, Deputy and Assistant Directors General or, 25 [such officers or other employees,] shall be such as may be prescribed.

(4) The Director General and Additional, Joint, Deputy and Assistant Directors General or 26[such officers or other employees,] shall be appointed from amongst persons of integrity and

[13]THE COMPETITION (AMENDMENT) ACT, 2023, Act 9 ,Act of parliament, 2023 India.
[14] Supra note 13.

outstanding ability and who have experience in investigation, and knowledge of accountancy, management, business, public administration, international trade, law or economics and such other qualifications as may be prescribed".[15]

The amended provision in the Amendment Act of 2023, states, under Section 12 of the Amended Act, i.e.

12*." In section 16 of the principal Act, in sub-section (1), for the words "Central Government may, by notification", the words "Commission may, with the prior approval of the Central Government" shall be substituted".*[16]

It is noteworthy that, under the Amendment Act 2023, the Competition Commission of India has the authority to appoint the Director General to help in conducting an investigation into a violation of the Competition Act.

The Amendment Act, 2023 also grants the Director General additional investigative powers for conducting the investigation, including the interrogation of any officer/agent of the party being investigated with the prior agreement of the Competition Commission of India(Amendment in Section 41B of the Act). The Amendment Act, 2023 also gives the Competition Commission of India the authority to call on experts to deliver expert views.

- **The Amendment Act has also introduced the concept of 'Hubs and Spokes cartel'**. The Amendment Act,2023 has widened the definition of the cartel by including hubs and spoke in the definition of cartel i.e., 'those who do not directly participate in supply or production but participate indirectly at the horizontal levels such as trade associates or consultants or intermediaries'.[17]
- **A Limitation period has been introduced, through amendment in the Act fo**r deciding the complaints coming before the Competition Commission of India:

The Amendment Act states that

"No complaints or reference is to be made to the Competition Commission of India unless the same is filed within the ***period of three years*** *from the date of cause of action, as per the Amendment Act, 2023".*[18]

- The **Act has also added the provision of 'Settlements and commitment'**. Section 48-A of the Amended Act states-

[15] Ibid note 12.
[16] Ibid note 12.
[17] THE COMPETITION (AMENDMENT) ACT, 2023, Act 9 ,Act of parliament, 2023 India.
[18] Supra note 17.

"48A. (1) Any enterprise, against whom any inquiry has been initiated under sub-section (1) of section 26 for contravention of sub-section (4) of section 3 or section 4, may, for settlement of the proceeding initiated for the alleged contraventions, submit an application in writing to the Commission in such form and upon payment of such fee as may be specified by regulations.

(2) An application under sub-section (1) may be submitted at any time after the receipt of the report of the Director General under sub-section (4) of section 26 but prior to such time before the passing of an order under section 27 or section 28 as maybe specified by regulations.

(3) The Commission may, after taking into consideration the nature, gravity and impact of the contraventions, agree to the proposal for settlement, on payment of such amount by the applicant or on such other terms and manner of implementation of settlement and monitoring as may be specified by regulations.

(4) While considering the proposal for settlement, the Commission shall provide an opportunity to the party concerned, the Director General, or any other party to submit their objections and suggestions, if any.

(5) If the Commission is of the opinion that the settlement offered under sub-section (1) is not appropriate in the circumstances or if the Commission and the party concerned do not reach an agreement on the terms of the settlement within such time as may be specified by regulations, it shall, by order, reject the settlement application and proceed with its inquiry under section 26.

(6) The procedure for conducting the settlement proceedings under this section shall be such as may be specified by regulations.

(7) No appeal shall lie under section 53B against any order passed by the Commission under this section.

(8) All settlement amounts, realised under this Act shall be credited to the Consolidated Fund of India"[19]

The provision of giving settlements and making promises is one of the most important amendments made by the aforementioned Amendment Act, 2023. After receiving the Director General's report, any interested party who has been the subject of an investigation for a violation of the provisions of the Competition Act, 2002, may approach the Competition Commission of India for resolution, but only before the Final Order is issued. The concerned party may also make commitments for change after the investigation has begun, but before the

[19] THE COMPETITION (AMENDMENT) ACT, 2023, Act 9 ,Act of parliament, 2023 India.

Director General issues/submits the report. The adoption of settlement and compromise will ensure a timely resolution of the enforcement processes.

- T**hrough the Amendment ,2023, Section 26(2A) has been introduced** in the Competition Act,2000. Section 26(2A) of the Amendment Act,2023 states,

"(*2A) The Commission may not inquire into agreement referred to in section 3 or conduct of an enterprise or group under section 4, if the same or substantially the same facts and issues raised in the information received under section 19 or reference from the Central Government or a State Government or a statutory authority has already been decided by the Commission in its previous order."*;

This provision empowers the CCI to dismiss any cases, having same facts, as of the already decided case. The provision will allow CCI to quickly and expeditiously decide the cases. However, as the clause uses 'may' in the provision, it is the discretion of the CCI to make an inquiry into the case, if it wants to.

- **The Amendment, 2023 also introduces the concept of the 'Leniency regime'**. This regime states that if any person, who is a part of the first cartel, and, an applicant of the leniency for the penalty, discloses material particulars about the first cartel, he would be free from the penalty of , or, will get a lesser penalty for the second cartel.
- **The Amendment Act, further widens the scope of Anti competitive agreement**. Section 3 of The Competition Act, 2000, takes only two types of agreements in consideration, Horizontal Anti competitive agreement and the Vertical Anti competitive agreement. Through the Amendment Act, 2023, the CCI can punish any form of Anti competitive agreement, having, an appreciable adverse effect on the market by interpreting the Section 3 more widely.
- The **Amendment Act, 2023 empowers the CCI to issue guidelines in to regulate the market**. These guidelines, which are issued by the CCI are not binding on the CCI. These are made to bring regularity and 'transparency' [20]in the market.
- The **Amendment Act, 2023 empowers the CCI, through amendment in Section 18 of** the principal act to –

Section 13 "Provided that the Commission may, for the purpose of discharging its duties or performing its functions under this Act, enter into any memorandum or arrangement with the

[20] Ibid note 18.

prior approval of the Central Government, with any agency of any foreign country".[21]

This provision facilitates easy transmission of information and in the imposition of the Competition laws in India.

- **Section 39 of the Amended Act, 2023 amends Section 53B of the principal Act.** It states, that for an appeal to Appellate tribunal , a person has to make a deposit.

Section 39"Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the Commission, shall be entertained by the Appellate Tribunal unless the appellant has deposited twenty-five per cent. of that amount in the manner as directed by the Appellate Tribunal."[22]

This provision has been added to stop any false appeals, made by the parties in order to postpone the enforcement proceedings of the CCI.

III. COMPETITION ACT 2002 VS. COMPETITION (AMENDMENT) ACT,2023

(A) On the basis of controlling transactions according to their size-

The Competition Act, 2000 prevents any person to enter into any combinations, which causes an appreciable adverse effect on the market. The Act fixes the maximum value as to the value, and, turnover, which when crossed can invoke the Competition law. The Act, fixed the value of assets at more then 1000 crores, and, the turnover at more than 3000 crores.

"*Section 5.The acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises, if—*

(a) any acquisition where—

(i) the parties to the acquisition, being the acquirer and the enterprise, whose control, shares, voting rights or assets have been acquired or are being acquired jointly have, —

(A) either, in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or"[23]

The Amendment Act, 2023 has now removed the condition of the value of assets, and. only takes the Turnover in consideration. It fixes the maximum value of turnover at 2000 crores. Any combination, where the total turnover is more than 2000 crores , can invoke the

[21] Ibid note 18.
[22] THE COMPETITION (AMENDMENT) ACT, 2023, Act 9 ,Act of parliament, 2023 India.
[23] Supra note 22.

Competition Law.

"Section 6. In section 5 of the principal Act, —

(A) in clause (c), in sub-clause (ii), in item (B), for the word "India.", the words "India; or" shall be substituted;

(B) after clause (c), the following clauses shall be inserted, namely: —

"(d) value of any transaction, in connection with acquisition of any control, shares, voting rights or assets of an enterprise, merger or amalgamation exceeds rupees two thousand crore:"[24]

(B) On the basis of time duration for approving combinations

The Competition Act, 2000 prescribed a time limit of 210 for the CCI to approve Combinations, in Section 6.

"Section 6(2A) No combination shall come into effect until two hundred and ten days have passed from the day on which the notice has been given to the Commission under sub-section (2) or the Commission has passed orders under section 31, whichever is earlier".[25]

But, the Amendment Act, 2023 has now reduced the time limit from 210 days to 150 days, i.e., now the CCI is has only 150 days to approve the combinations. If the CCI doesn't pass any order in 150 days, it is deemed to be approved by the CCI.

"Section 7. In section 6 of the principal Act, —

(b) in sub-section (2A), for the words "two hundred and ten days", the words "one hundred and fifty days" shall be substituted"[26].

(C) On the basis of the appointment of director general and other cci members

The Competition Act, 2000 gave the power to the Central Government to appoint the director general of the CCI, under S. 16 of the Act.

Appointment of Director General, etc.

"Section 16. (1) The Central Government may, by notification, appoint a Director General for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of this Act and for performing such other functions as are, or may be, provided by or under this Act."[27]

[24] THE COMPETITION (AMENDMENT) ACT, 2023, Act 9 , Act of parliament, 2023 India.
[25] Supra note 24.
[26] Supra note 24.
[27] THE COMPETITION (AMENDMENT) ACT, 2023, Act 9 ,Act of parliament, 2023 India.

The Section 12 of the Amendment Act, 2023 now gives the power of appointment of Director general to the CCI. The CCI can however not exercise the power without the approval of the Central government.

"Section 12. In section 16 of the principal Act, in sub-section (1), for the words "Central Government may, by notification", the words "Commission may, with the prior approval of the Central Government" shall be substituted".[28]

(D) On the basis of definition of relevant product market

Section 2(t) of the Competition Act, 2000 defined Relevant product market as-

"(*t) "relevant product market" means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use".*[29]

The Competition Act, 2000 states relevant product market, to be a market where the goods and services are regarded as interchangeable, by reason of their characteristics, price ,or, intended use.

The Amendment Act, 2023 has further expanded the scope of definition of 'Relevant Product Market'. It states-

"Section 3(f) for clause (t), the following clause shall be substituted, namely: —

'(t) "relevant product market" means a market comprising of all those products or services—

(i) which are regarded as inter-changeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use; or

(ii) the production or supply of, which are regarded as interchangeable or substitutable by the supplier, by reason of the ease of switching production between such products and services and marketing them in the short term without incurring significant additional costs or risks in response to small and permanent changes in relative prices;"[30]

The Act has expanded the definition of Relevant product market. It now includes all the products and services, which are interchangeable by the consumers, or, by the suppliers.

(E) On the basis of anti- competitive agreement

Section 3 of The Competition Act, 2000, takes only two types of agreements in consideration,

[28] Supra note 27.
[29] Supra note 27.
[30] Ibid note 26.

Horizontal Anti-competitive agreement and the Vertical Anti-competitive agreement.

Section 3 of The Competition Act,2000 "Anti-competitive agreements

Section3. (1) No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.

(2) Any agreement entered into in contravention of the provisions contained in subsection (1) shall be void.

(3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which—

(a) directly or indirectly determines purchase or sale prices;

(b) limits or controls production, supply, markets, technical development, investment or provision of services;

(c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;

(d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition:

Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services."[31]

Through the Amendment Act, 2023, the CCI can punish any form of Anti competitive agreement, having, an appreciable adverse effect on the market by interpreting the Section 3 more widely.

IV. INTRODUCTION OF SETTLEMENT AND COMMITMENTS MECHANISM

The Competition Act,2000 doesn't contain any provision regarding settlements and commitments. The Amendment Act,2023 has introduced the concept of Settlements and

[31] Ibid note 26.

commitments.

"48A. SETTLEMENTS (1) Any enterprise, against whom any inquiry has been initiated under sub-section (1) of section 26 for contravention of sub-section (4) of section 3 or section 4, may, for settlement of the proceeding initiated for the alleged contraventions, submit an application in writing to the Commission in such form and upon payment of such fee as may be specified by regulations.

(2) An application under sub-section (1) may be submitted at any time after the receipt of the report of the Director General under sub-section (4) of section 26 but prior to such time before the passing of an order under section 27 or section 28 as may be specified by regulations.

(3) The Commission may, after taking into consideration the nature, gravity and impact of the contraventions, agree to the proposal for settlement, on payment of such amount by the applicant or on such other terms and manner of implementation of settlement and monitoring as may be specified by regulations.

(4) While considering the proposal for settlement, the Commission shall provide an opportunity to the party concerned, the Director General, or any other party to submit their objections and suggestions, if any.

(5) If the Commission is of the opinion that the settlement offered under sub-section (1) is not appropriate in the circumstances or if the Commission and the party concerned do not reach an agreement on the terms of the settlement within such time as may be specified by regulations, it shall, by order, reject the settlement application and proceed with its inquiry under section 26.

(6) The procedure for conducting the settlement proceedings under this section shall be such as may be specified by regulations.

(7) No appeal shall lie under section 53B against any order passed by the Commission under this section.

(8) All settlement amounts, realised under this Act shall be credited to the Consolidated Fund of India".[32]

"48B COMMITMENTS (1) Any enterprise, against whom any inquiry has been initiated under sub-section (1) of section 26 for contravention of sub-section (4) of section 3 or section 4, as the case may be, may submit an application in writing to the Commission, in such form and on

[32] Ibid note 26.

payment of such fee as may be specified by regulations, offering commitments in respect of the alleged contraventions stated in the Commission's order under sub-section (1) of section 26.

(2) An offer for commitments under sub-section (1) may be submitted at any time after an order under sub-section (1) of section 26 has been passed by the Commission but within such time prior to the receipt by the party of the report of the Director General under sub-section (4) of section 26 as may be specified by regulations.

(3) The Commission may, after taking into consideration the nature, gravity and impact of the alleged contraventions and effectiveness of the proposed commitments, accept the commitments offered on such terms and the manner of implementation and monitoring as may be specified by regulations.

(4) While considering the proposal for commitment, the Commission shall provide an opportunity to the party concerned, the Director General, or any other party to submit their objections and suggestions, if any.

(5) If the Commission is of the opinion that the commitment offered under sub-section (1) is not appropriate in the circumstances or if the Commission and the party concerned do not reach an agreement on the terms of the commitment, it shall pass an order rejecting the commitment application and proceed with its inquiry under section 26 of the Act.

(6) The procedure for commitments offered under this section shall be such as may be specified by regulations.

(7) No appeal shall lie under section 53B against any order passed by the Commission under this section".[33]

V. EFFECTS OF THE COMPETITION (AMENDMENT) ACT, 2023

The Amendment Act, 2023 has multifarious effects on the Market competition, consumer welfare and the business environment of India. The various effects of the Amendment Act are-

1. The **reduction of the time limit for the confirmation of the combinations from 210 days to 150 days,** has reduced the waiting period for the enterprises and group of enterprises, for getting the confirmation of the Competition Commission of India (CCI).

Through the amendment in this provision, the confirmation process for combinations has become quick, hence promoting fair competition in the market.

[33] Ibid note 26.

2. The Amendment in Section 5 of The Competition Act, 2000, that now t**akes into account that any acquisition, merger and amalgamation, having a gross turnover of 2000 crores or more, needs the prior approval of the CCI.**

This provision helps prevent combination having an appreciable adverse effect on the market and hence promotes fair competition in the market.

3. The Amendment Act, 2023 has **increased the scope of the definition of the term 'Relevant Product Market**.' In The Competition Act, 2000 the term relevant product market was defined only from the perspective of the buyer. But, after the Amendment Act, 2023 the definition of relevant product market, takes both buyer's and suppliers perspective.

The amendment in this provision helps curb any form of Anti-competitive practices.

4. Section 41 of the Act, has also been amended by the Amendment Act, 2023. The section states, the powers of the Director general. Through the amendment, wide variety of powers have been given to the Director general to investigate into any form of infringements in The Act, 2000.

This provision helps the Director general to conduct investigations properly, and , also helps in better implementation of The Act, 2000.

This promotes free and fair market conditions ,and also promotes consumer welfare.

5. The Amendment Act, 2023 **mandates that for making any appeal against the CCI order before the appellate authority, there needs to be a 25% deposit of the amount before making an appeal.**

This will reduce any kind of false or frivolous and false appeals, and will help in the better implementation of The Act, 2000. This will also ensure a healthy market competition and consumer welfare.

VI. CONCLUSION

The Amendment of 2023 in The Competition Act,2002 has brought significant changes in more than two- decade old law. With the ever -growing market structure, the Competition Act, 2002 wasn't able to maintain its pace. Hence, various amendments were made to curb various monopolistic and anti-competitive practices, having an appreciable adverse effect on the market. It has introduced significant changes in various provisions like the gross turnover, definition of Control and relevant product market, leniency regime, introduction of the limitation period. The Amendment act has also given the power to CCI to issue various guidelines for effective competition in India .Though, many criticise the Amendment Act, 2023

but the entire economy will be benefitted because of these changes. It has curbed various such practices having an appreciable adverse effect on the market, by giving wide powers to the CCI.

*****

© 2024. International Journal of Legal Science and Innovation [ISSN 2581-9453]

VII. REFERENCES

1. The Monopiles and Restrictive Trade Practices Act, 1969
2. The Competition Act, 2002
3. The Competition (Amendment) Act, 2023
4. Abir Roy & Jayant Kumar, Competition Law in India, ed.2023
5. Aayushi Singh and Pavitra Dubey, The Competition (Amendment) Act, 2023: A Game Changer for Mergers and Acquisitions ,SCC Online

*****