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RESEARCH ARTICLE

ROLE OF COMPETITION COMMISSION OF INDIA IN PROTECTING THE INTERESTS OF THE CONSUMERS

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Abstract

Competition Act is a breed of anti-trust laws which are globally prevalent to protect the consumers at macro level, instead of micro level and also to protect the small and medium businesses from the abuse of dominant position of large enterprises or entities. Every government works towards protecting and safeguarding their consumers. At micro level, one has easy remedy. In case of any issue one can go to the service center and get the issue rectified if it is pertaining to purchase of a product and further can approach the Tribunal under Consumer Protection Act 2019. This protection or safeguard is at micro level. At macro level, business enterprises go to an extent that in the beginning it is difficult to assess the loss or the damage, but by the time one realizes, the damage is already caused. This is where, the Competition Act, 2002 comes to the rescue of the consumers by protecting them at macro level from the monopoly of big business enterprises, thereby favouring competition. The main aim of Competition Policy is to promote consumer welfare, and this can be achieved by setting minimum specifications and standards for safety for both goods as well as services. Moreover, all this can be achieved by establishing mechanisms to redress the grievances of consumers. To administer, implement and enforce the Competition Act, 2002, the Competition Commission of India (CCI) was established. CCI performs advocacy and advisory functions apart from being a regulator of market in India. Key to consumer welfare is fair competition, which can be achieved through the purposes of the Competition Act, 2020 for protecting and promoting fair competition in the markets in India. The main aim of the research is focused upon the role of CCI and how it deals with the enterprises abusing their dominant position, thereby protecting the interests of the consumers.

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Introduction:-

The Competition Act 2002 is a breed of Anti-trust laws which favours competition, and it is against monopoly by big business enterprises. This Act replaced the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act). Competition is good for the economy in the long run. Competition benefits both, the producers and the consumers. It helps in triggering innovation, wider choices, adequate supply, improved quality, easy access and economic

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efficiency¹. But many a times, businesses indulge in limiting or distorting or eliminating competition in the market by resorting to unfair trade practices. This is where the Competition Commission of India (CCI) helps in regulating competition in the market through Competition Act 2002. This Commission was established in the year 2003 but it became fully functional only by 2009². The main aim of CCI is to create and establish a competitive environment in the market with the help of various key players such as the government, the stakeholders and also in the international jurisdiction.

Aims And Objectives:-

1. To understand the definition of 'enterprise' and 'relevant market' under the Competition Act, 2002.
2. To study the powers and functions of CCI.
3. To evaluate abuse of dominant position by enterprises.
4. To understand the role of CCI in protecting and safeguarding the interests of the consumers.

Research Question:

How does CCI deal with the enterprises abusing their dominant position, thereby protecting the interests of the consumers?

Research Methodology:-

The research is solely analytical in nature thereby acquiring legally relevant information by analyzing and interpreting legal provisions under the Competition Act, 2002 to resolve the issue in hand. Case laws have been taken into consideration to analyze abuse of dominant position by the enterprises and the role of CCI in protecting and safeguarding the interests of the consumers in India. Apart from this, information has been collected from various websites, newspapers, government publications, books etc.

Literature Review:-

Belikova (2016) focused upon general approaches to dominant market position, market structure control and prohibition of abuse of market power within the BRICS Countries. The research is on general approaches taken by BRICS countries by taking into consideration legal orders and through legislation to counteract anti-competitive market strategies. These strategies were abuse of market power and market structure control. The research was focused on current legislation of the BRICS countries.

Dewani et al. (2022) states that in India abuse of dominant position and unfair practices are prohibited because these activities tend to hamper healthy competition in India. Whenever any activity tends to cause detrimental effect upon competition then such entities or companies are held liable under Section 3 of the Competition Act 2002. The researchers have focused upon covering threat of dominance abuse.

Mihai (2018) stated that one of the threats to a free market is abuse of dominant position. The researcher has focused upon European Union area and the impact of anti-competitive practices in this field. The main objective of the research paper is focused upon implications and effect of anti-competitive practices from theoretical approach to a practical approach and its adverse effects upon the market.

Oliver (2015) conducted research on the concept of "abuse" of a dominant position under Article 82 of EC and recent developments with relation to pricing. According to the researcher the behaviour of an enterprise in a dominant position weakens the competition as dominant position influences the structure of market share.

Rizvi (2020) studied the trends in European Union and India thereby decrypting the concept of abuse of dominant market position. In a marketplace, healthy competition is necessary and moreover the Act does not forbid market dominance or monopoly or strength of an enterprise. The Act does forbid abuse of dominant position. Through this research they have examined various factors resulting in abuse of market dominance.

¹<https://incsoc.net/pdf/consumer-protection-under-the-competition-law-surendra-knastiya.pdf>

²<https://byjus.com/free-ias-prep/the-competition-commission-of-india/>

Singh (2013) conducted research on competition policy thereby dividing the markets into two schools of thoughts. One school is based on framework in advanced countries and the other school is based on economic as well as non-economic goals. The researcher took Indian market as the base thereby focusing on abuse of dominant position.

Werden (2021) on research on exploitative abuse of a dominant position states that it is a bad idea which need to be abandoned. Each abuse results into breach of faith in the market and such abuse is an exploitative abuse of dominant position.

Sandra conducted a study on unfair trade practices in India thereby indulging in deceptive and misrepresentative practices prohibited by various laws and statutes and thereby they become actionable under the court of law. The researcher had analyzed the acts of unfair trade practices undertaken in various sectors.

Enterprise

Sec. 2(h) of the Competition Act, 2002 defines the word 'enterprise', which has been broadly defined under the said Act as:

1. any person or
2. any department of the government that is engaged in any type of activities that are relating to the provisions of any type or kind of services.

Services include storage, distribution, production, acquisition, supply or control of goods or articles including investment services or business acquisition, underwriting, holding, dealing in debentures or shares or any type of securities etc. Securities means any type of security, the holding of which entitles voting rights. For an entity to be termed as 'enterprise', it is necessary that the enterprise be engaged in any type of activity which is 'relatable to the commercial as well as economic activities'³. Moreover, as far as regulatory functions of a Body are concerned, *per se* they do not fall under the jurisdiction of the Competition Commission of India (CCI). For example, when an issue was brought before CCI, whether Bar Council of India (BCI) be brought under the ambit of an 'enterprise' u/s 2(h) of the Competition Act, as it had misused its dominant position, CCI opined that the functions and objectives of BCI are regulatory in nature with respect to the legal profession and as such BCI does not fall under the ambit of 'enterprise'⁴.

On the other hand, the said Act has covered in its ambit the Institute of Chartered Accountants of India (ICAI), thereby treating it as an enterprise⁵. After acquiring Chartered Accountant (CA) Degree, all the CAs were supposed to undertake 'Continuous Professional Education Hours' (CPE Hours) within one year. This concept was introduced by the ICAI to maintain high standards of excellence and professional competence in relation to professional activities to ensure high quality in the professional services for both – CAs holding 'Certificate of Practice' and CAs not holding the 'Certificate of Practice'. As per the CPE Hours Policy, all the CAs in practice (i.e., holding the 'Certificate of Practice') had to mandatorily attain annually 20 hours of structured CPE credits and 10 hours of un-structured CPE credits. In case of CAs not holding Certificate of Practice, they had to attain annually 15 hours of un-structured CPE credits. The CPE policy stated that structured CPE credits could be attained by attending conferences, seminars or workshops organized by ICAI or any organs of the ICAI or by being a faculty in such conferences, seminars or workshops organized by any of the ICAI organs or by writing an article in the ICAI Journal.

As for unstructured CPE credits, the policy stated that this could be obtained by reading any business literature or professional journals or by attending any internal training programs of the CA Firms having 07 or more than 07 partners, etc.⁶ For every conference, seminars or workshops organized by any of the ICAI organs or by ICAI itself, a fee had to be paid by the CAs. So, to acquire these structured CPE Hours credits, the CAs had to pay and attend such conferences, seminars or workshops organized by the ICAI or any of the ICAI organs and inform the ICAI that they have attended these programs for these many hours and ICAI then used to record these hours against their names. Thus, if a conference, seminar or workshop was for 06 hours, then all those CAs who attended it would get

³<https://www.sconline.com/blog/post/2021/02/02/cci-can-bci-be-covered-under-the-ambit-of-an-enterprise-under-s-2h-of-competition-act-read-why-it-was-asserted-that-bci-misused-its-dominant-position/>

⁴Ibid

⁵Mr. Arun Anandagiri and The Institute of Chartered Accountants of India (ICAI), Case no. 93/2013.

⁶https://www.cci.gov.in/sites/default/files/932013_0.pdf

06 hours to their credit. Now issue was not that one had to pay to attend these conferences, seminars or workshops which were organized by the ICAI or any of the ICAI organs, but the problem here was that the CAs had to personally attend these events as compared to those CAs who were not into practice. In case of an unstructured CPE Hours credits, which was applicable to those CAs who were not into practice, they could acquire these CPE Hours by simply reading any business literature or professional journal or by attending any internal training programs of CA Firms having 07 or more than 07 partners. As such a complaint was filed against ICAI alleging abuse of dominant position u/s 4 of the Competition Act, 2002 pertaining to discriminatory and unfair conditions of CPE Hours credits policy. ICAI objected by stating that it is a Statutory Body for the regulation of the profession of Chartered Accountants in India and is established under a separate Act i.e., the Chartered Accountants Act, 1949, as such CCI has no jurisdiction to try this issue. But CCI examined the information provided including the CPE Hours credit policy and realized that ICAI was organizing conferences, seminars or workshops for acquiring these credits and the 'relevant market' in this case would be "the market for organizing recognized CPE conferences, seminars or workshops in India".

CCI found that though ICAI had powers to grant recognition to any other organization for conducting CPE Hours credit conferences, seminars or workshops but not a single external organization had been given recognition by the ICAI and that there are around 100 study circles that organizes CPE Hours credit conferences, seminars or workshops in India. Though many reputed external organizations had applied to ICAI for seeking permission to hold CPE Hours credit conferences, seminars or workshops, but it was rejected every time by the ICAI. Across India there are number of conferences, seminars or workshops organized by reputed Chambers of Commerce like ASSOCHAM, FICCI, NASSCOM, CCI etc. but however, their conferences, seminars or workshops were not recognized by ICAI for CPE Hours credits. CCI also held that though the ICAI is a regulator of accounting profession in India, and it also has powers to prescribe any policy for continuous upgradation of its members i.e., the CAs but organizing CPE Hours credits through conferences, seminars or workshops is non-regulatory function whereby fees was being charged for the same and *prima facie* it appears to be an arbitrary use of its powers by the ICAI which are in contravention of the provisions of Sec. 4 of the Competition Act 2002. As such, CCI on the basis of the facts and investigations brought the ICAI under the ambit of 'enterprise'⁷.

Thus, government departments qualify as an 'enterprise' and even the autonomous bodies such as BCCI or Hockey India do fall under the ambit of 'enterprise' as they perform the dual role as a regulator as well as a commercial body⁸.

Relevant Market

To determine, whether there is abuse of dominant position in a relevant market or not, CCI first determines a relevant market. It is a market where competition takes place and where a particular product or a service is sold. Relevant market is categorized by the Commission under two heads⁹:

1. Relevant Product Market
2. Relevant Geographic Market

Relevant means related or connected to. Competition is good but only where there is a relevancy. Say for example in village "X" everyone possesses Maruti Suzuki cars, but there is no BMW in the village. Is it abuse of dominant position by Maruti Suzuki? – No – because village area has no relevancy with luxurious cars. CCI will not check for abuse of any dominant position or entry barrier in village as this is not a relevant product market. The same BMW car will sell in Mumbai, Delhi, Indore, Kolkata etc. as this is a relevant product market as compared to a village. In simple terms, there should be competition but not everywhere. CCI will check for fair competition only at relevant places or in relevant market. Relevant market is determined by the Commission i.e., CCI with reference to product market or geographic market. Example: If there are just 1-2 showrooms of Lloyd Air Conditioners in Meghalaya, then CCI will not jump in to determine whether there is abuse of dominant position by Lloyd or not and why other Air Conditioner companies like Blue Star or Samsung are unable to enter the market or is there any entry barriers in the market so that other companies are not able to enter the market. Reason being, the sale of air conditioners in Meghalaya is very less, people hardly buy air conditioners as the climate remains cool throughout the year because of the geographical area. But if, there is only one company supplying raincoats in Meghalaya, then

⁷https://www.cci.gov.in/sites/default/files/932013_0.pdf

⁸<https://www.mondaq.com/india/antitrust-eu-competition-/494670/are-you-an-enterprise>

⁹<https://taxguru.in/corporate-law/analysis-abuse-dominance-competition-act-2002.html>

CCI will try to probe whether there are any entry barriers in the market or not, as this is a relevant geographic market. Similarly, in case of Rajasthan, the demand of air conditioners would be high as compared to raincoats, so this is a relevant geographic market for airconditioners. Thus, CCI will probe only if there is a relevant product market or relevant geographic market.

Consumer Protection under Competition Law, 2002:

The Competition Act, 2002 tends to protect the interests of the consumers. The word consumer has not been defined under the Competition Act, 2002 but is defined under the Consumer Protection Act, 1986. Consumer means any person who buys the goods for a consideration or user of any such goods or anyone who avails or hires any services for a consideration (paid for promised or partly paid or partly promised)¹⁰. In simple terms, consumer means those who use goods or services for individual use or individual purpose. On the other hand, under the Competition Act, 2002, the word 'consumer' has wider scope. Under the Competition Act, 2002, even a trader is a consumer, who buys goods for commercial purposes, but under the Consumer Protection Act, a trader is not considered as a consumer. This is the reason, the scope of consumer under the Competition Act is larger than the Consumer Protection Act. Under the Competition Act, anyone who buys goods for resale can challenge anti-competitive practices as a consumer¹¹.

Dominant Position and Abuse of Dominant Position:

Abuse of dominant position takes place when a dominant business or group of businesses engage in any type of activity that tends to stop or reduce competition in the market. These activities are termed as anti-competitive activities. Any practice that results in denial of market access is abuse of dominant position. It is important to note that dominance *per se* is not illegal, but abuse of dominance is illegal¹². Thus, any agreement that tends to create adverse effect on market are called anti-competitive agreements. So, such types of agreements can be for goods or services which has appreciable adverse effect on competition in India and such types of agreements are prohibited. As such these agreements are void in nature.

Section 4 of the Competition Act, 2002 deals with prohibition of abuse of dominant position. Dominant position means superior position whereby a company is not scared of any type of competition or its competitors. In fact, the company scares its competitors and competition. So, whoever scares other competitors is in a dominant position and any agreement that tends to create adverse effect on market is called anti-competitive agreement. such types of agreements can be for goods or services which has appreciable adverse effect on competition in India and such types of agreements are prohibited as they are void in nature. Examples of anti-competitive agreements include price-fixing or bid prices wherein competitors collude with one another to fix prices of goods or services, rather than allow prices to be determined by market forces.

Generally big enterprises tend to create monopoly, they do not care for the small enterprises. So, the Competition Act tends to ensure that big companies or enterprises do not end the small companies. In normal parlance if anyone in an individual capacity, wants to listen to any music, they can download it through internet and can enjoy that as an individual customer. But in case of Radio stations or FM channels, they need to seek permit and pay royalty for running songs of the music companies. So, T-series came out with a novel idea of creating monopoly by stating that all the radio stations should play their song, otherwise T-series will not allow these channels to play their upcoming songs. So, here there was not the question of royalty, but was of permission to play the songs. Now imagine, if this is agreed upon, then all the radio channels would be running only and only T-series songs. So, this will create a monopoly then. As such a case was filed against T-series and CCI found that this was an anti-competitive agreement and a *cease-and-desist order* was passed by CCI, thereby also imposing penalty upon them.

Similarly, in the case of Sun Pharmaceuticals & Ranbaxy (now Ranbaxy has been takeover by Sun Pharma), Sun Pharma had indulged in lot of acquisitions and started growing at a faster pace. Now when a large company tends to acquire/takeover/merges with any company then it tends to create monopoly and market gets shaken. So, when Sun Pharma acquired Ranbaxy, other pharma companies filed a suit against Sun Pharma stating that Sun Pharma is trying to create a monopoly in the market, thereby dominating the pharma sector. Now, CCI is never against acquisitions/takeovers/mergers/combinations etc. but CCI has powers to restrict it so that there is no abuse of

¹⁰<https://www.ijsr.net/archive/v3i6/MTcwNjE0MDE=.pdf>

¹¹Ibid

¹²<https://taxguru.in/corporate-law/analysis-abuse-dominance-competition-act-2002.html>

dominant position. So, in the said case, CCI laid down certain restrictions that this merger is allowed, but for the next 3-4 years Sun Pharma will not acquire any other company.

The CCI had also approved the acquisition by PVR related to DT Cinemas. The order was subjected to checking of anti-competitive concerns subject to exclusion of certain assets. In this case, DLF (a real estate company) entered into theatre business by opening theatres in north India. They opened around 39 multiplexes in north India. But the multiplexes of DLF did not go well and DLF wanted to sell these multiplexes. So PVR Cinemas emerged as a powerful buyer and acquired all the 39 multiplexes. The moment this news came out, INOX, IMAX and other cinema theatres filed a complaint against PVR that PVR is trying to create monopoly in the market. So CCI investigated and approved this acquisition but stated that for the next 5 years neither PVR will start any other new multiplex, nor will they acquire or merge with any other multiplex.

So, Competition Act favours competition but it is against monopoly. Competition Act breaks monopoly to create competition. Competition is best for consumers and for the economy in the long run. Competition is a situation in a market in which firms or sellers independently strive for the buyer's patronage in order to achieve a particular business objective. For example, profit, sales or market share etc.

Whether there is an abuse of dominant position or not, depends upon the type of agreement/s entered between the parties. There are two types of agreements:

1. Vertical Agreement
2. Horizontal Agreement

Vertical agreements are those wherein there is a chain from supplier of raw materials to manufacturer who manufactures finished goods to distributor and then to the retailer. The one who dominates under this chain is the manufacturer as for example, if "A" wants to buy Yamaha bike, then he/she is least bothered to know, who the supplier of raw material is or who the distributors or the retailers are, "A" is concerned with the Yamaha company i.e., the manufacturer. So, the king here is the manufacturer. Now, these manufacturers tend to enter into an agreement with their distributors, thereby restricting them to sell the products of their rivals. For example, Yamaha bikes showroom restricting the dealer to sell Honda bikes. Such agreements are not anti-competitive in nature. On the other hand, horizontal agreements are between two different manufacturers, who actually are competitors at the same level. In case of vertical agreements, the agreement is between the friends and not the competitors, whereas in case of horizontal agreements, the agreement is between the enemies who are competitors. Thus, horizontal agreements are always presumed to cause "*Appreciable Adverse Effect on Competition*" (AAEC). In case of horizontal agreements, courts will always presume that an agreement is causing AAEC whereas in case of vertical agreements it is not presumed to cause AAEC until proven.

Powers and Functions of CCI:

The Commission, at the time of inquiry, pass interim orders thereby restraining a party from abusing dominant position and continuing with anti-competitive agreement. The Commission has powers to impose a penalty, which shall not be more than 10% of the average turnover for the last 03 preceding financial years of the entity.

Unfair Trade Practices and Role of CCI:

In April 2022, the CCI had slapped penalties amounting to Rs. 1.16 crores on 24 enterprises and 14 individuals, who were found guilty of violating competition norms as they were indulged in cartelization and bid rigging in tenders floated by the Indian Railways. CCI also directed them to *cease and desist* from anti-competitive practices. These entities were indulged in cartelization in supply of "High Performance Polyamide Bushes" (HPPB) and "Self-Lubricating Polyester Resin Bushes (SLPRB) to the Indian Railways by directly or indirectly determining prices, controlling supply and market, allocating tenders, coordinating bid prices and as well as manipulating the bidding process. In this case, 04 firms had applied for lesser penalties. Lesser penalties can be applied for under the Competition Law, in case an entity is ready to provide full, true and important disclosures in relation to the alleged

abuse of dominant position¹³. CCI had imposed penalties @5% of average turnover income of the entities and their respective individuals, who were found guilty of violating provisions under the Competition Act¹⁴.

In Nov. 2021, CCI had issued a final order against 06 Firms viz; Climax Synthetics Pvt. Ltd., Shalimar Plastic Industries, Shivalik Agro Poly Products Ltd., Arun Manufacturing Services Pvt. Ltd., Dhanshree Agro Poly Product and Bag Poly International Pvt. Ltd. who were found to have indulged in cartelization in the supply of Low-Density Polyethylene Covers (LDPE) to Food Corporation of India (FCI). They were directly or indirectly indulged in determining prices, coordinating bid prices, allocating tenders and even manipulating the bidding process. Though no monetary penalty was imposed on these 06 firms, as they fully cooperated with CCI during investigations and confessed to their *modus operandi* and moreover all these firms were Micro, Small and Medium Enterprises (MSMEs) with limited turnover and staff. In this case, CCI had issued *cease and desist* order against all the 06 firms who were guilty of cartelization and bid rigging in FCI tenders¹⁵.

Analysis of Research Problem:

The main aim of the Competition Act 2002, which is based upon the philosophy of modern competition laws is to foster competition, thereby protecting the markets in India against the anti-competitive practices by entities. The Act prohibits agreements that are anti-competitive in nature, prohibits abuse of dominant position by the enterprises, prohibits unfair trade practices and it also regulates combinations so as to ensure that there is no adverse effect on the competition in India. All these aims and objectives of the said Act are achieved through the CCI. CCI thus ensures that competition remains healthy, and the interests of the consumers is protected and that the consumers have access to the wide range of services at most competitive prices. It is also a known fact that innovation benefits consumers as consumers have easy access to better and new products and this in turn helps in driving economic growth thereby increasing the standards of living. Therefore, as far as consumer protection is concerned, CCI tends to eliminate all such practices from the market that have adverse effect upon competition thereby promoting and sustaining competition in markets thereby also protecting the interests of the consumers and also ensuring freedom of trade¹⁶.

Conclusion:-

The Consumer Protection Policy and Law and Competition Policy and Law have lot of similarities, but effective competition policy tends to lower the entry and exit barriers thereby making the environment most conducive in promoting entrepreneurship. This helps in providing space for small as well as medium enterprises. As far as Competition Law is considered, it focusses upon maintaining the process of competition between enterprises and ensures effective competition in the market. This is the reason that the consumers experience greater availability of goods and a wide range of choices at affordable prices. On the other hand, the Consumer Protection Policy and Law is concerned with the nature of transactions between the consumers and focuses upon “improving the market conditions for effective exercises of consumer choice¹⁷.”

As such, the two disciplines are focused upon different market failures and thus offer different remedies. But both are aimed towards maintaining competition in the market, thereby promoting consumer welfare and therefore, it can be stated that both disciplines are “mutually re-enforcing”¹⁸.

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