

# Competition Law & Policy in India and Role of Chartered Accountants



Today, on the global map, India is seen as a rapidly growing developing country with a wide range of economic reforms taking place in its different facets of society. Prior to 1991, almost all economic policies in India were governed by extreme government interventions by way of license raj, permits, price controls, quota fixation, and similar measures. However, with the New Economic Policy in 1991, there have been considerable policy changes with increased reliance on market forces. Such a practice is in tune with the international recognition of market forces which calls for free-play of demand and supply. These market forces recognise competition as the main foundation to foster growth and acknowledge that fair competition amongst market participants is the best way of managing our natural resources and ensure its equitable distribution amongst all stakeholders. As this Competition Act is a mix of Economics, Law and Finance & Accounts, it paves a platform in the times to come and unfolds numerous opportunities for Chartered Accountants to contribute in the nation building.



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The word “competition” is a very commonly used connotation in our day-to-day activity which primarily means to contest. However, it would be surprising as well as appreciating to note that in economic parlance this word in itself engulfs a deep meaning and the economists/strategists firmly believe that it is the most effective tool to bring about healthy market reforms in the country. Competition Law and policy is defined as those Government measures that affect the behaviour of the enterprises and structure of the industry with a view to preserve and promote competition as a means to ensure efficient allocation of resources in an economy, thereby maximising the welfare of the nation as a whole. At this juncture, it becomes important

to first understand some basic concepts like what is competition, what is market, inter-link between market and competition, why there is a need for competition in the market and what are the benefits that competition derives.

### Basic Concepts

**(i) Competition** can be defined as a situation where the sellers of the *market* independently strive to gain the buyer's patronage through offering the most favourable terms in comparison to other firms.

**(ii) Market** can be defined as any exchange mechanism that provides a platform to bring together the buyers and the sellers of any product or service. Therefore, market facilitates the execution of a transaction where the buyer agrees to pay a price for the product that he buys from the seller.

Main ingredients of a market	Buyer	Seller
	Product/Service	Price

### (iii) Inter-link between market and competition

The presence of the above ingredients in a market in varying scales, decides the structure of the market and based on such structure the level of competition prevalent in the said market can be analysed. Thus, the forms of competition in the market can be distinguished according to the structural characteristic of the market such as number of buyers and sellers in the market, presence of identical or non-identical product/services, nature & extent of entry/exit barriers, etc. Accordingly, various categories of markets have been tabulated as under;

Types of Market	Key features
Perfect Market Competition	Large number of buyers & sellers, identical products/ services, free entry & exit of firms, single price prevails in market
Monopoly	Single seller and large number of buyers, no close substitutes, high barriers to entry, seller is price setter.
Oligopolistic Competition	Very few sellers and large number of buyers, presence of branded products, high entry barriers. Firms are strategically highly inter-dependent
Monopolistic Competition	Large number of buyers and sellers, close substitutes, product differentiation, brand loyalty.

### Role for Competition in Market & its Benefits

From the above discussion, it can be understood by now that competition is essentially concerned with the study of markets. A buyer would always prefer to buy a product at a price that maximises his benefits whereas the seller prefers to sell the product at a price that maximises his profit. Thus competition brings about competitiveness amongst the producers who try to offer their products at the most competitive prices so that he gains the maximum consumers in the market.

Also through various empirical studies, competition has been universally acknowledged as the best means of ensuring that the *consumers* have access to the broadest range of products/services at the most competitive prices. Simultaneously, competition persuades the *producers* to innovate, reduce their costs and meet customers' demand. Also, *market* is benefitted in terms of more customers, level playing fields for the producers and scope for punishing the lagers as well. All these collectively help in achieving *overall economic growth* of the country. Thus, competitions extends its benefits to almost all sections of the society covering the consumers, producers, the overall market thereby ultimately leading to economic development of the nation as a whole. Thus, competition promotes both micro as level as macro level growth and development.

### Need for Regulation

Since competition shall restrict the producers from charging excessive prices or shall compel them to charge competitive prices for their products/services, it shall result in lower profits to them. Needless to say, those producers shall undoubtedly seek to find ways to avoid competition in the market. The best way to which is to obtain market power and, therefore, create a situation where the producers develop the ability to control the price and/or the quantity. Such behaviour results in imperfect competition and is an indication of market failure. Thus, it is of utmost importance

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that healthy market conditions prevail in the economy by removing the market imperfections through appropriate and reasonable regulations/interventions to promote competition. Therefore, there is the glaring need to regulate the behaviour of firms to ensure that there is no manipulation in the market to evade the principles of competition.

### Evolution of Competition Law in India

With the growing need to allow the market forces of demand and supply to freely play in the economy, competition is considered to be the cornerstone for an efficient and vibrant market. However, the realisation that the probability of occasional market failure is also a reality, and there was a need for appropriate interventions in the market by the government. This led to the evolution of the competition law and policy.

### Historical Overview of Competition Law in India

Competition law is not a new concept to Indian Territory. Instead, it roots way back to 1969 when law was enacted to address issues related to anti-competitive practices in the form of Monopolies and Restrictive Trade Practices Act (MRTPA), 1969. Given the economic *milieu* prevalent in those times, the law was very much in place, though, with the change in the economic reforms in 1991 on LPG Model: *Liberalisation, Privatisation and Globalisation*, the MRTPA became out-of-tune and called for some new enactment to address competitive issues. The government took cognisance and constituted a high-level committee based on whose recommendations, the Competition Act 2002 was passed in India and received the assent of the President on 13<sup>th</sup> January 2003. Further amendments were made to the Act in 2007 and 2009 to address all the issues cropping since its inception and finally in May 2009, the provisions relating to anti-competitive agreements and abuse of dominance were notified and the

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### Objectives of the Competition Act, 2002

The objectives of Competition Act 2002 (CA02) can be drawn from the preamble to the Act which is as under;

*“An act to provide, keeping in view 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 market, to protect the interests of the consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.”*

Thus, to achieve the above objectives, a comprehensive competition law has been put in place which generally focuses on three areas;

1. Prohibition of anti-competitive agreements
2. Prohibition of abuse of dominance; and
3. Regulation of anti-competitive mergers and acquisitions.

The term competition law and competition policy are often used interchangeably and regarded as synonymous. However, there is much difference between the two terms. Competition policy is an integral part of the overall economic policy of the government and it refers to all the policies and reforms that serve to preserve and promote competition in the Indian market by harmonising all the other existing policies of the government that affect the consumers. As against this, competition law is merely a subset of the competition policy which seeks to regulate the effects of the policy. Thus, competition policy is a broader term to competition law.

### Main Areas targeted by CA02: ACA, AOD, ROC

Chapter II of the CA02 deals with the prohibition of certain agreements, abuse of dominant position and regulation of combinations. The provision of this law tends to curb and discourage all those practices entered into by market participants which can have adverse appreciable effect on competition. The detailed discussion is given here-under;

#### A. Anti-competitive agreements (ACA)

Section 3(1) of the CA02 states that “no enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply,

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distribution, storage, acquisition or control of goods or provision of services, which causes or likely to cause an appreciable adverse effect on competition within India.” Any such agreement entered into in contravention of the above provisions shall be void. The act also provides for certain category of agreements which have exceptions to the applicability of this provision.

The term agreement has been defined in Section 2(a) of CA02 as follows; “Agreement” includes any arrangement or understanding or action in concert,- (i) whether or not, such arrangement, understanding or action is formal or in writing; or (ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings.

The act further lays down a detailed provision to under Section 19.

### **B. Abuse of Dominance (AOD)**

As per Section 4(1) of the act “No enterprise or group shall abuse its dominant position” and the provision further enlists certain conduct of the firms which shall amount to abuse of dominant position.

“Dominant position” means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to (i) operate independently of competitive forces prevailing in the relevant market; or (ii) affect its competitors or consumers or the relevant market in its favour.

A very crucial decision to establish indulgence into anti-competitive practices or abuse of dominance requires the determination of the relevant market of the product/services. As per Section 2(r), “Relevant Market” means the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets.

Section 2(s) defines “Relevant geographic market” means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogeneous and can be distinguished from the conditions prevailing in the neighbouring areas.

As per Section 2(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.

The act prescribes elaborate provisions under Section 19 and Section 26 detailing the manner in which the inquiry has to be done in case of certain agreements and dominant position of enterprise. While determining whether an agreement has or abuse of dominant position by some enterprise leads to appreciable adverse effect on competition, the Commission shall have regard to various parameters prevailing in the relevant market. After the inquiry into the agreements or abuse of dominant position, the Commission has been empowered to pass appropriate orders under Section 27 and Section 28 of the Competition Act’ 2002. The aggrieved orders of the CCI can be appealed at the COMPAT i.e Competition Appellate Tribunal and then further to Supreme Court.

### **C. Regulation of anti-competitive mergers & acquisitions (ROC)**

Out of the three main dimensions looked in after by the CCI, the provisions relating to regulation of combinations became effective in the very recent past. The provisions of the Act with respect to mergers and acquisition were notified on 4<sup>th</sup> March 2011 and came into effect from 1<sup>st</sup> June 2011. The CA02 has empowered the anti-trust body to regulate the formation of combination by prescribing threshold limits in respect to assets and turnover of the newly formed combination.

As per Section 5, broadly speaking, “Combination” means acquisition of control, shares, voting rights or assets, acquisition of control by a person over an enterprise where such person has direct or indirect control over another enterprise engaged in competing businesses, and mergers and amalgamations between or amongst enterprises when the combining parties exceed the thresholds set in the Act, which are in terms of assets or turnover in India and outside India.

The prescribed thresholds in respect of combination have been tabled below;

	APPLICABLE TO	ASSETS	TURNOVER
IN INDIA	Individual	₹1,500 crore	₹4,500 crore
	Group	₹6,000 crore	₹8,000 crore

IN INDIA & OUT-SIDE INDIA		ASSETS		TURNOVER	
		Total	Minimum Indian Component	Total	Minimum Indian Component
INDIA	Individual	\$ 750 million	₹750 crore	\$ 2,250 million	₹2,250 crore
	Group	\$ 3 billion	₹750 crore	\$ 9 billion	₹2,250 crore

Section 6(1) states that entering into a combination by any person or enterprise which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India is prohibited and such combination shall be void. And it has been mandatory for any person or enterprise, who or which proposes to enter into a combination to give notice to the CCI within stipulated timeline.

The detailed guidelines for the process of combination and its formation have been notified by way of “*The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations’ 2011.*” Various forms namely Form I, II, III & IV have been prescribed in the regulations to deal with the various categories of likely combinations coming into picture and reporting thereof. Also, certain categories of enterprises as well as certain category of transactions have been given exemptions from the applicability of the above provisions.

Detailed provisions have been further laid down for the procedure for inquiry as well as investigation to be conducted in respect of the combination. While determining whether a combination would have the effect of or likely to have an appreciable adverse effect on competition in the relevant market, the CCI shall have regard to various parameters prevailing in the relevant market. Post investigation the Commission shall issue orders on certain combinations in accordance with Section 31.

**As per the provisions of Section 35 of CA02, “A person or an enterprise or the Director General may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners to present his or its case before the commission.” Also the domain expertise of CAs enables them to render advisory services in many verticals namely determination of combination threshold limits, filing of notices with the commission, financial analysis with competition perspective and ancillary services etc.**

### Competition Law & Economic Development

A good competition law, along with sound competition policy, helps in fostering competition, achieving economic efficiency, promoting consumer welfare and facilitating freedom of doing business. Though currently, the Competition Law in India is at a nascent stage, yet the effective implementation of this law is going to fetch India efficiency in all forms - be it *Allocative efficiency, Productive efficiency or Dynamic efficiency.*

Competition is a means to ensure efficient allocation of resources, giving a wider choice of products & services and improved quality to the consumers. For producers, it stimulates increased efficiency in innovation, production and resource use, which in turn leads to enterprise development and increased aggregate welfare.

Another benefit of effective competition law to the overall economic development of the country can be viewed from the investment perspective. Since competition law deals with the structure of the industries in the market, a potential investor shall always tend to develop confidence in the country having a transparent and predictable regulatory framework with respect to competition issues. Investors prefer such environment which is conducive and provides an opportunity of level playing field. Thus, an effective competition policy shall boost-up the investment potentials of India and attract fresh enterprises to the market.

In addition to above, competition policy and law also play crucial role in shaping the conduct/behaviour of the business which shall eventually inculcate a culture of competition compliances. It shall encourage enterprises to have moral responsibility, social conscience, economic ethics and national interest at heart.

### Role & Opportunities for Chartered Accountants

The importance of the role of Chartered Accountants in Competition law can be realised from the fact that at the time when it was felt to replace MRTP Act with a new enactment to address competitive issues, a High Level Committee was formed by the Government of India and one of the eminent panellists of such committee was a Chartered Accountant. Thus, it can be submitted that the role of CAs have been of prominence right from the inception of drafting this law and going forward it paves a bigger role for CAs to play. Also, as narrated above, since this statute has a mixed dimension of economics, law and finance, it calls for a comprehensive role to be played by the respective domain expert who need to work in close co-ordination with each other. The need of this law is not just to have an expert knowledge of one's domain but equally does it necessitate the fair understanding of the other domain in order to understand the overall impact on competition as a whole.

As per the provisions of Section 35 of CA02, "A person or an enterprise or the Director General may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners to present his

or its case before the commission." Also the domain expertise of CAs enables them to render advisory services in many verticals namely determination of combination threshold limits, filing of notices with the commission, financial analysis with competition perspective and ancillary services etc. Thus, undoubtedly, Chartered Accountants can play a big role as capacity building partners in the successful implementation and execution of the law in the desired spirit of the preamble of competition law and policy to achieve allocative efficiency, productive efficiency and dynamic efficiency.

### Conclusion

To summarise from the discussion in the above para, it can be submitted that the overarching provisions of competition law and competition policy which intends to bring within its purview not only the structural aspects but also the behavioural aspects, shall bear its fruits of success to all sectors of the economy and thereby lead to an overall economic development of the country. Undoubtedly, competition law and policy is the emerging catalyser to economic reforms in India and so does it equally promises a giant role for the financial experts to play in the times to come. ■

