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CCI AND ITS JURISDICTION ISSUES

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INTRODUCTION

An economy is built up with several blocks consisting of several sectors which interplay with each other with a common objective to meet demands of the population living in such an economy. It enables the chain of Production, distribution, trade & consumption of goods and services to satisfy the desires of the human population. Similarly, all sectors in the Indian economy work in harmony to achieve the end goal. Earlier, each of these essential sectors were managed and operated by the Government. It was basically a “command and control” based economy. Economic activities in such a closed economy were mainly dominated by the government companies. Apart from economic activities the government also controlled most of the factors that determine the level of competition in the economy, such as entry, price, scale, location, etc.

However, India opened up its economy in 1991 amidst the Balance of payment crisis, by adopting the LPG model. There was an induction of laissez-faire, policy of minimum governmental interference in the economic affairs of individuals and society. This led to a shift from a government-controlled closed economy to a market-controlled economy i.e. Market open to fix its parameter freely.

Earlier model did not call for an independent regulator as the government was generally believed to be acting in the interest of the public. However, free markets are susceptible to “Market Failure” which is when free market fail to operate efficiently (arising from information asymmetries, collusive practices etc, though the basis of free markets is economic efficiency through optimum resources allocation) and thus there was a need to establish **sectoral regulators to govern and regulate** each of the essential sectors with a view to protect the interest of the consumers at large. With this the regulators were tasked to create structural & procedural regulations to ensure/resolve any issues within its sector. Thus, leading to the setting up of multiple sectoral regulators like the Telecom Regulatory Authority of India (TRAI) set up in 1997, Petroleum and Natural Gas Regulatory Board (PNGRB) in 2006, Airports

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Economic Regulatory Authority (AERA) established in 2008, Securities and Exchange Board of India (SEBI) set up in 1992, Central Electricity Regulatory Commission (CERC) constituted in 1998, etc.

With the tectonic shift in the approach by opening the markets for private players and to operate freely, it was necessary that the end goal/vision is not side-lined i.e. to ensure common good of the people at large. Though the market was liberated to operate freely, such freedom should not be misused or abused. A liberalized market can unleash efficiency and growth only when they are fair and competitive. But when dominant firms misuse their market power to fence off competition or cartels drive up the price of essential inputs or anti-competitive mergers, it weakens the competitive structure of markets & the businesses get affected. Therefore, a free economy requires a regulator to regulate the competitiveness in the market. This led to the setting up of the Competition Commission of India to curb actual and anticipated private player behaviour and other structural issues in the competition arena which spreads across sectors.

HISTORICAL & LEGAL BACKGROUND

A committee (Raghavan Committee) was appointed by the Government of India in 1999 to advise on a new Competition Law in India. The committee submitted its report in 2000 and recommended the enactment of a new competition law in line with international developments. On the basis of this report the Competition Act 2002 (the Act) was enacted.

The **Competition Act, 2002[3],** has been legislated with the following objective as enumerated in the **Preamble of the legislation** as:

"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 connected therewith or incidental thereto"*

The Act prohibits:

- **anti-competitive agreements**,

[3] as **amended** by the Competition **(Amendment) Act, 2007** and **Competition (Amendment) Act, 2023**

- **abuse** of **dominant position** by enterprises
- **regulates combinations** (acquisition, acquiring of control and M&A),

which causes or likely to cause an appreciable adverse effect on competition within India.

For achieving these objectives, **Section 7** of the aforesaid Act, provides for establishment of a commission called as **"The Competition Commission of India"**, colloquially referred to as "CCI", with effect from such date, as the Central Government may, by notification, appoint.

The Competition Commission of India, being a corporate body, having a common seal and perpetual succession has been established by the Central Government with effect from **14th October 2003**.

Section 18 of the act[4] provides for the **duty of the commission**, which states as under:

*"Subject to the provisions of this Act, it shall be the **duty of the Commission** to **eliminate** practices having **adverse effect on competition, promote and sustain competition, protect the interests of consumers** and ensure freedom of trade carried on by other participants, in markets in India:*

*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 prior approval of the Central Government, with any agency of any foreign country**:*

*Provided further 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 any statutory authority or department of Government**."*

The Mandates and Obligations of the CCI (apart from above) has been summarized as under for quick reference:

[4] as amended by 2023 act.

Provision	**Nature**	**Particulars**
Sec19 & 27**	Function & Power	Function to Inquire into any **alleged contravention** of the provisions contained in **section 3(1) (Anti-Competitive Agreement) or section 4(1) (Abuse of Dominant Position)** On inquiry/investigation by Director General, CCI may pass such order as provided under Section 27 as it may deem fit
Sec 20 & 31**	Function & Power	Function to Inquire into whether a **combination** has caused or is likely to cause an Appreciable adverse effect on competition in India, prohibited under **Section 6(1) of the Act** On investigation, CCI may approve, disallow or modify the combination
Sec 28	Power	Direct by order in writing, **division of an enterprise enjoying dominant position** to ensure that such enterprise does not abuse its dominant position.
Chapter VI Sec 42 to 48	Power	Power to levy Penalty in the event of contravention of order of CCI or non-furnishing of information etc
Chapter VII Sec 49	Duty	Duty to take suitable measures for the promotion of competition advocacy or culture, creating awareness and imparting training about competition issues. Duty to opine on possible effect of any policy on competition as referred by the Central and State Government
Sec 64	Power	Power to make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act

** Note: Under Section 32, the CCI shall have the power to inquire in accordance with the provisions contained in sections 19, 20, 26, 29 and 30 of the Act into agreement or abuse of dominant position or combination entered **into outside India** if such agreement or dominant position or combination has, or is likely to have, an appreciable adverse effect on **competition**

in the relevant market in India and pass such orders as it may deem fit in accordance with the provisions of this Act.

OTHER WORTHWHILE PROVISIONS

Section 60:

"The provisions of this Act shall have effect ***notwithstanding anything inconsistent therewith contained in any other law*** *for the time being in force."*

Section 62:

"The provisions of this Act shall ***be in addition to, and not in derogation of, the provisions of any other law*** *for the time being in force."*

Section 64B:

"(1) The Commission may ***publish guidelines*** *on the* ***provisions of this Act or the rules and regulations*** *made thereunder either on a request made by a person or on its own motion.*

(2) Guidelines issued under sub-section (1) ***shall not be construed*** *as determination of any question of fact or law by the Commission, its Members or officers and* ***shall not be binding*** *on the Commission, its Members or officers"*

REFERENCE TO OR BY STATUTORY AUTHORITY

Section 21:

"Where in the course of a proceeding before any statutory authority an issue is raised by any party that any decision which such ***statutory authority has taken*** *or proposes to take is or would be,* ***contrary to any of the provisions of this Act, then such statutory authority may make a reference in respect of such issue to the Commission****:*

Provided that any statutory authority, ***may,*** *suo motu, make such a reference to the Commission on any issue that* ***involves any provision of this Act or is related to promoting the objectives of this Act****, as the case may be."*

Section 21A:

"Where in the course of a proceeding before the Commission an issue is raised by any party that any decision which, the Commission has taken during such proceeding or proposes to take, is or would be ***contrary to any provision of an Act whose implementation is entrusted to a statutory authority,*** *then the Commission may make* ***a reference*** *in respect of such issue* ***to the statutory authority****:*

Provided that the Commission, ***may, suo motu, make a reference to a statutory authority on any issue that involves provisions of an Act whose implementation is entrusted*** *to that statutory authority"*

<u>CONSTITUTIONAL VALIDITY OF COMPETITION ACT & THE COMPETITION COMMISSION OF INDIA</u>

Now the question arises does the provisions of the Competition Act violate / restrict the fundamental right of occupation & business. Article 19(1)(g) provides that all citizen shall have the right to practice any profession, or to carry on any occupation, trade or business. However, Supreme Court[5] provides, **"The Fundamental Right under Article 19(1)(g) of the Constitution, does not extend to shutting down the competition"**

<u>INTERNATIONAL EXPERIENCE IN ADDRESSING CONFLICT OF JURISDICTION</u>

International Experience reveals that countries have broadly implemented two approaches to harmonize conflict between sectoral regulator and competition agencies. The first approach has been to entrust only one body with the exclusive jurisdiction to deal with overlapping issues. The second approach has recognized the need for both bodies to have concurrent jurisdiction in overlapping cases.

A. <u>Exclusive Jurisdiction Model</u>

The essence of this model lies in the fact that it provides power to only one body i.e. either regulator or competition agency to circumvent the problem of overlapping jurisdiction powers. It has been implemented in two ways worldwide. Firstly, competition enforcement in the sector

[5] Mithilesh Garg & others vs. Union of India & others 1992 1 SCC 168

can be exclusively allocated to the concerned sector regulators in addition to technical, economic and access regulation. Secondly, certain aspects of economic and access regulation along with competition enforcement can be vested solely with the competition agencies leaving the sector regulator to undertake only technical regulation. Even though the model can be broadly implemented in the above-mentioned ways, many countries have implemented the essential characteristics of this model with varying effect.

Australia provides an excellent illustration of the implementation of this model. It has sought to give the sole mandate in dealing with overlapping cases to its competition agency called the Australian Competition and Consumer Commission. In addition to the competition function, it has transferred some aspects of access and economic regulations from sectoral regulators to the Australian Competition and Consumer Commission.

This model will ensure competition is enforced in a uniform and consistent manner by single body across sectors while saving time, money and duplication of effort. However, the disadvantage is lack of sector specific knowledge on the part of competition agency and in such overlapping cases it would constantly have to seek assistance of the knowledge of the regulator.

Another manner of enforcing the exclusivity model is by giving the power to enforce competition concerns to the industry specific regulator apart from the economic, access and technical regulation they already handle. Countries like Kenya entrust the regulator with the exclusive mandate of enforcing competition in the sector. Although it may seem like doing away with the powers of one body i.e. competition agency would be more convenient than reducing the powers of multiple regulators, this option too suffers from disadvantages like lack of knowledge with regulator to deal with complex competition matter, non-uniform approach across sectors, overburdening the regulators with competition matters among others.

B. Concurrency Model

The economic and access regulation of a particular sector has a close nexus with competition issues and this makes it difficult to draw watertight compartmentalization of the functions of regulators and competition agencies. For instance, TRAI’s act of fixing tariff rates (economic regulation) has direct impact on the intensity of competition in the sector. this model aims to combine the best of both bodies and put them to use in overlapping issues. By this approach, the sector specific regulator can be ably guided by the competition agencies to enforce competition law. On the other hand, the competition agencies will also get help from the sectorial regulators to navigate the complex technicalities of a particular sector. Some of the countries which follow a concurrent model but with varying degrees/structure of cooperation include UK, US, Netherlands South Korea, Brazil, Turkey, Argentina, Mexico, Zambia, Finland, South Africa and Ireland.

SECTORS

Let us analyze some of the key sectors and the key conclusion reached vis-a-vis the conflict in jurisdiction:

1. Telecom Sector

Regulated by Telecom Regulatory Authority of India (TRAI) established under The Telecom Regulatory Act, 1997

Aim: to regulate the telecommunication industry in the country and to protect the interests of the investors and the consumers.

Conflict: Section 11[6] delegates power to TRAI to "facilitate competition and promote **efficiency in the operation** of telecommunication services so as to facilitate growth in such services"

As discussed, the preamble of the Competition Act, 2002 read with Section 18 of the legislation delegates to the CCI the duty of "promoting and sustaining competition" in the Indian economy & thereby protecting the interest of consumers.

Since the two statues talk about the same objective i.e. fair competition, protection of the interest of the participants and the consumers and building up an environment which promotes healthy competition, the jurisdiction of TRAI and the CCI overlaps resulting in conflict. Although the watchdogs (the CCI and TRAI) share a common goal, they **differ in their mandate and approach**.

[6] TRAI Act,1992.

Resolution: On 5 December 2018, a two-judge bench of the Supreme Court in Competition Commission of India v. Bharti Airtel Limited and Others [7]addressed and settled the issue of the ongoing jurisdictional battle between the CCI and TRAI. The judgment was given with the help of the doctrine of harmonious construction.

The Supreme Court said that the TRAI regulates the telecom sector and is a specialized body and ensures healthy growth of this sector in India on the other hand CCI's objective is to encourage fair competition and ensure freedom to trade in markets and products. TRAI manages only a particular sector and CCI is the general regulator in the market. The dispute in question was related to interconnectivity agreements, terms of licenses of the telecommunications and it became mandatory for the sectoral regulator to act on it. The objective of CCI is different from the objective of TRAI and so is their functions. It is within the jurisdiction of CCI to observe an agreement which is anti-competitive in nature and the effect of that agreement in the market. This function is only covered by the CCI and the TRAI has no jurisdiction in such matters. The Supreme Court did not agree that in such matters the jurisdiction of CCI can be taken away.

Lastly, Supreme Court said that it is the TRAI who shall exercise its jurisdiction first in case of telecom disputes and CCI will have a follow up jurisdiction i.e., if the TRAI feels that an anti-competitive practice is adopted, it shall refer the dispute for adjudication to the CCI.

TRAI is set to supersede antitrust peer CCI when it comes to powers to draw up predatory pricing norms in the telecom sector. Under the new proposed draft Telecom Bill (2022), the powers to draw up norms defining predatory prices will now be with the TRAI and the CCI will no longer be defining or investigating such issues. The draft Bill empowers TRAI in this area by adding new clauses to sub section (2) of Section 11 of the TRAI Act.

Criticism: Though, SC has confirmed the jurisdiction of CCI in such matters, it has deferred the invocation till the completion of the action by TRAI by which irreversible damage would have been caused already.

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[7] Competition Commission of India v. Bharti Airtel Limited and Others (CIVIL APPEAL Numbers 11843 OF 2018)

2. **Banking**

Regulated by Reserve Bank of India (RBI) established under Reserve Bank of India Act 1934

Aim: To regulate the banking industry and to protect the financial interest of people.

Conflict: Earlier, under the Monopolies and Restrictive Trade Practices Act, 1969, mergers and amalgamations of banks were exempted from any kind of scrutiny. The absence of exclusion of bank mergers from the purview of the CCI to determine whether it is anti-competitive or not, has given birth to a new conflict i.e. the tussle of jurisdiction between CCI and RBI. Thus, CCI has the statutory authority to examine consolidation of banks but the recent stand of RBI has sparked off a new controversy. RBI being the sectoral or prudential regulator has sought exemption from the Ministry of Finance for review bank mergers and acquisition by the CCI under Competition Act, 2002. In a note addressed to the Ministry of Finance, RBI has stated that the aforementioned exemption should be granted following the urgency and unique nature of bank mergers, **especially forced mergers.** RBI has based its argument on the fact that it is well versed with the banking sector and is in a better position to be the final authority to decide about M&A activities involving banks.

Whereas on the other hand CCI has disagreed with the RBI's proposal and has stated that RBI should restrict itself to prudential regulation and leave competition issues to CCI. It has further stated that the public sector banks already have unfair advantage over the private banks on account of certain entry barriers etc.

The basic objective of any economic regulation is to reduce transaction costs and address information asymmetries, externalities and distributional issues, the need for which is heightened in case of "natural monopolies". Thus, effective specific regulations are necessary to prevent inefficient use of resources and protect consumers. Whereas, Competition law also aims at preventing market power, thereby ensuring efficiency and consumer welfare. In essence, therefore, sectoral regulations are specific, while competition law is generic, but both are intended to be complementary. However, the intended complementarities between sectoral regulation and competition law may suffer on account of **legislative ambiguity or interpretational bias**. Since the basic objectives of both are consumer oriented, overlaps cannot be avoided by drafting skills alone. The functions and objectives of both the prudential regulator and CCI needs to be aligned and synced.

3. Securities Market

Regulated by the Securities Exchange Board of India (SEBI) established under Securities and Exchange Board of India Act, 1992

Aim: SEBI's primary role, as the preamble[8], states, is to regulate the securities markets which includes the Credit Rating Agencies (CRAs). CRAs rate the issue of securities to enable prospective investors in deciphering the level of risks and creditworthiness of the securities. CRAs are governed under the SEBI (Credit Rating Agencies) Regulations, 1999 ('CRA Regulations') and are regulated by SEBI.

Conflict: In Re: Brickwork Ratings India Pvt. Ltd. and CRISIL Ltd. and Others[9] (decided 29 December 2020), the National Highways Authority of India had invited tenders from the CRAs to rate its bond issuances, pursuant to which CRISIL Ltd., India Ratings and Research Pvt. Ltd., CARE Ratings Ltd. and ICRA Ltd. (collectively the 'Opposite Parties') submitted their price quotes. The Informant averred that the Opposite Parties cartelised and quoted identical rates (as well as very low rates - Predatory pricing) in the bid and, hence, indulged in anti-competitive practices in contravention of section 3 of the Competition Act, 2002. The CRA Regulations have laid down a Code of Conduct in their Third Schedule which mandates that a CRA **'shall observe high standards of integrity, dignity and fairness in the conduct of its business'** **and it 'shall not indulge in any unfair competition'**. Since, SEBI is the authority to inspect, investigate and initiate proceedings against a CRA in case of contravention of the CRA Regulations, the Opposite Parties contended that the CCI lacks the jurisdiction to proceed against them.

Resolution: Rejecting above contention, the CCI relied upon the Bharti Airtel Judgement to rule that the mere presence of a sectoral regulator, viz. SEBI does not extinguish the jurisdiction of the CCI. Although the subject matter of CRAs falls within the domain expertise of SEBI,

[8] SEBI Act 1992
[9] In Re: Brickwork Ratings India Pvt. Ltd. and CRISIL Ltd. and Others Case No. 47 of 2019

examining any conduct of a CRA alleged to be anti-competitive is within the jurisdictional ambit of the CCI.

Having sought comments from SEBI, it objected to the jurisdiction of the CCI but did provide any information with respect to the case or any action proposed/taken by SEBI. Therefore, the CCI proceeded to deal with the matter. However, since no prima facie case could be established with regard to the allegations of cartel or predatory pricing, the matter was closed.

4. Oil And Natural Gas

Regulated by the Petroleum and Natural Gas Regulatory Board (PNGRB) established under the Petroleum and Natural Gas Regulatory Board Act, 2006 ('PNGRB Act').

Aim: To protect the interest of consumers (Section 11) by fostering fair trade and competition amongst the entities; to register entities to establish and operate LNG terminals, storage facilities for petroleum, petroleum products or natural gas exceeding such capacity as may be specified by regulations & authorize entities to lay, build, operate or expand a common carrier or contract carrier; to ensure adequate availability of notified petroleum, petroleum products and natural gas, etc.

Conflict: PNGRB as well as CCI have authority over the competition-related activities of enterprises operating in the petroleum and natural gas sectors.

In the Gujarat Textile Processing v. Gujarat Gas Company[10], the allegation was that the opposing party was abusing its dominant position by imposing unilateral, unreasonable and arbitrary conditions in the supply of gas under the Gas Supply Agreements. The Commission sought an opinion of the PNGRB but the latter threw the ball back in the CCI's court by stating that it can adjudicate on the matter after considering relevant regulations.

Few years ago, three public sector[11] enterprises had approached the Delhi High Court[12] challenging the jurisdiction of the CCI with regard to cases pertaining to the oil and petroleum

[10] Gujarat Textile Processors Association, Surat, Gujarat v Gujarat Gas Company Ltd., Ahmedabad, Gujarat, Case No. 50 of 2011, MANU/CO/0114/2011, Competition Commission of India (December 12, 2011).
[11] Indian Oil Corporation Ltd (IOCL), Bharat Petroleum Corporation Ltd (BPCL) and Hindustan Petroleum Corporation
Ltd (HPCL)
[12] M/s Royal Energy Ltd. v.M/s Indian Oil Corporation Ltd., M/s Bharat Petroleum Corporation Ltd. and M/s Hindustan Petroleum Corporation Ltd (2012) CompLR 563 (CCI)

sector. Reliance had filed a complaint before the CCI alleging that the State Public Sector Enterprises had formed a cartel in the market for supply of aviation fuel to Air India. The High Court, interestingly, disallowed the CCI from hearing the issue as an order on this issue had already been passed by the PNGRB.

The above cases show that that the CCI has never taken a consistent approach to cases where overlap of jurisdiction can occur, **sometimes seeking reference, in others refusing to step into domain of PNGRB**

5. Electricity Sector

Regulated by the Central Electricity Regulatory Commission (CERC) at the Central level and State Electricity Commissions (SERC) at the State levels established under the Electricity Act, 2003

Aim: As per Section 79 & 86[13], the main functions of CERC & SERCs are to regulate the tariff for electricity, wholesale, bulk, grid and retail including tariff of transmission utilities; to regulate interstate sale & transmission of power;

Conflict: Under the Electricity Act, 2003, SERCs and CERC have the mandate to ensure fair competition in the electricity sector, by virtue of Section 60 of the Electricity Act giving SERCs and CERC powers to take corrective action if a licensee or a generating company enters into an anticompetitive agreement, abuses its dominant position or enters into a combination which causes an adverse effect on competition in electricity industry. Further, section 174, provides an overriding power to itself. Thus, CERC/SERC as well as CCI can regulate the competition related activities of enterprises operating in the electricity sector under its independent mandates.

In the case titled Anand Prakash Agrawal v Dakshin Haryana Bijli Vitram Nigam and Ors[14] before COMPAT information was filed before the CCI by a consumer (Anand Prakash Agarwal) of DHBVN (sole supplier of electricity in the area of residence) that it was charging higher Fuel and Power Purchase Cost Surcharge Adjustment charge (FSA) from the consumers whose consumption of electricity was higher thereby discriminating between its consumers.

[13] Electricity Act 2003
[14] Anand Prakash Agrawal v Dakshin Haryana Bijli Vitram Nigam and Ors ., Appeal No. 33 of 2016

CCI, while agreeing that DHBVN is dominant, did not agree that the differential pricing amounted to abuse of dominant position. Further CCI held that case essentially related to the functions discharged by the Electricity Distribution Company and the State Electricity Regulatory Commission in respect of fixation of FSA and no competition issue was discernible from the facts presented in the information. Case was subsequently closed under Section 26(2) of the Act. Appeal was filed before COMPAT by the informant.

Resolution: The Appellate Tribunal observed that even though Section 60 of the Act contains a "non-obstante clause", the Electricity Act (2003) would prevail as it is a "later special statute". In addition to this, the COMPAT observed that the Act (2003) has its own system to check on abuse of dominance and the Electricity Act specifically mentions certain Acts which would have an overriding effect on it, and the Competition Act is not mentioned.

However, contrary to above view of the erstwhile COMPAT, the Supreme Court[15] held that Section 60 of the Act, gives it an overriding effect in case of a clash with other statutes, keeping in mind the economic development of the country as a whole.

Since, each regulator is set up with different legislative mandates and as a result of which their perspective and approach towards competition matters may also be different, which results in multiplicity of complications and consequences.

Consequences of such Jurisdictional overlap/conflict:

- Ambiguity for stakeholders to deal with grievances
- Forum Shopping
- Delays & escalated cost
- Multiplicity of proceedings
- Investment Risk (Unclear Investment environment)
- Duplication of Time and Efforts

[15] Competition Commission of India vs. Fastway Transmissions Pvt. Ltd Civil Appeal No. 7215/2014

Possible Solutions to Avoid Jurisdictional Turf-war:

1. **Binding Consultation:**

Though there is a legislative mandate for the CCI to consult any sector regulator, the root problem for the continuing turf war is mainly because such consultations are not mandatory and binding. The changes brought via amendments to the Competition Act in 2007 – giving *suo motu* powers to CCI to initiate such consultations – the glaring loophole continues to remain because opinions received from consultations under **Sections 21 and 21A of the Act are not binding**. **In addition, the corresponding sector regulation should provide for mandatory consultation.**

This recommendation was also made by the Planning Commission's policy document of December 2007 and the draft National Competition Policy, 2011. Such a provision will ensure the responsibility of every regulator to keep in loop other regulators exercising overlapping domains over the same issue. The European Union member states have also resolved the overlap issues by providing mandatory consultation between the competition authority and sector regulators under both the competition law and sector regulatory laws. Unfortunately, the Competition (Amendment) Act 2023, does not provide for considering such opinions as binding.

2. **Regular Forums for exchange of ideas:**

The CCI and the sectoral regulators need to cooperate and establish a forum for regular exchange of ideas. The mechanism adopted via an Ordinance (2010) to resolve a jurisdictional conflict between SEBI and IRDA over Unit-linked Insurance Plans (ULIPs) could be a helpful guide in this regard. Another good example could be the Financial Stability Forum chaired by the finance minister to coordinate all financial regulators, including RBI and SEBI. The Forum of Indian Regulators (FOIR), established in 2000, may be developed into a formal forum where coordination between various regulators could be institutionalized. Its membership may be expanded by including all the sector regulators in India.

3. **Other Practices:**

- Right to participate/observe proceedings before the other;
- Use of experts from each other for facilitating inquiry/investigations;

- Exchange of personnel on deputation or internship basis;
- Participation in each other's training programmes, workshops, seminars, etc;
- Conducting regular training programmes by CCI for representatives of the sector regulators so that they are in a better position to appreciate various competition issues.
- Cooperation Agreements and MoUs
- Technical Panels and Joint committee
- Guidelines and Memorandum

CONCLUSION: COMPLEMENTARITIES OF REGULATORY BODIES

In the overall scheme of the regulatory landscape, cooperation among regulatory bodies may ensure an outcome where various regulatory agencies are complementary for the overall growth of economy and consumer welfare.

These are as follows:

1. Sectoral regulators are best suited for laying down standards for ensuring quantity and quality of products. Thus, their focus is on what to do and how to do while CCI's focus is on curbing anti-competitive activities of enterprises.
2. Since technical regulation is generally a structural issue and competition enforcement qualifies more as a behavioural issue, sector regulators are primarily responsible for structural and *ex-ante* issues, while the competition authority looks into the behavioural and *ex-post* issues. Sectoral regulators regulate specific sectors with an "Ex ante" approach i.e. they address issues before they occur. CCI on the other hand primarily addresses behavioural issues after a problem arises.
3. Sectoral regulators' emphasis is on organized development of a sector that would ensure consumer welfare. CCI on the other hand ensures consumer welfare by ensuring that market players do not abuse their market power or
4. Section 60 of the Competition Act is a non obstante clause asserting the supremacy of competition legislation within the domain of competition enforcement.
5. At the same time, cooperation of various regulatory agencies with CCI can be beneficial for both consumers and the economy. The spirit of complementarity is also envisaged in the Section 62 of the Competition Act. Section 62 of the Competition Act declares that competition legislation ought to work along with other enactments.

6. A platform for consultation is provided for under Sections 21 and 21A of the Competition Act. Under these provisions, both CCI and the sector regulators may cooperate when it comes to dealing with issues that appear to have an impact on the jurisdiction of the other. If a sector regulator is handling a case and it turns out that there is a possibility of the decision to be taken infringing the Competition Act, the sector regulator may refer the matter to CCI for its opinion. CCI is obliged to give its opinion within sixty days.
7. In a similar fashion, if CCI is investigating a case and it is pointed out that there is a possibility of the decision being contrary to the provision of the law entrusted to a sector regulator, then CCI may make a reference to the sector regulator, asking for its opinion and input into the matter. However, opinions from both the sector regulator and CCI will not be binding.

Thus, “complementarity and not conflict” is the spirit of the regulatory landscape of India.