CCI VS SEBI: AN ANALYSIS OF OVERLAPPING REGIMES IN INDIA

Shweta Nimwal, NALSAR University of Law
Ekta Nimwal, Faculty of Law, University of Delhi
Korra Anand Nayak, NALSAR University of Law

ABSTRACT

In practicality, every nation throughout the world faces the overlap of jurisdiction between the sectoral regulator and the apex competition regulator as many authorities are working at the same time to evaluate if transactions are compliant with a plethora of regulations. India, like the rest of the world, has a slew of regulators that must approve the transactions between businesses. This paper sets out to identify securities regulators in the Indian economy that is Securities Exchange Board of India (SEBI) and critically analyse the overlapping jurisdiction between SEBI and the Competition Commission of India (CCI). Because of these authorities' overlapping responsibilities, transactions may be stalled unnecessarily due to the many (and sometimes contradictory) regulatory requirements that must be completed in order for a transaction to be approved. In India's multi-regulator system, coordination between regulators is critical to guarantee legal certainty and clarity, as well as to give corporates and market participant's confidence in the outcome of transactions and the extent of liability for their day-to-day business behaviour. The need for coordination arises from overlaps in the regulating legislation of such regulators, as well as different trigger points set forth in the legislation. The authors deals with two specific themes of overlapping and ambiguity, which are, 'mergers and acquisitions and 'credit rating agencies'. Finally, the research presented in this paper aims to provide a suggestion to the regulatory snag that has been a barrier to attracting investment from both India and overseas in a variety of areas.

1. INTRODUCTION

In the year 1997, David Boies a renowned American Lawyer had stated that:

"The interface between antitrust (competition law is referred to as antitrust in the United States) and regulation is a veritable no man's land for students and practitioners alike. Since the theories of antitrust and regulation reflect differing assumptions about government intervention in the marketplace, it is often difficult to rationalise their impact on particular industry behaviour. The antitrust laws, to borrow a phrase, are brooding omnipresence, with pervasive, almost constitutional meaning in our jurisprudence. Direct economic regulation (which is entrusted to agencies rather than the USA Courts) may supplant the antitrust laws and specific industries for carefully carved-out purposes. But at the edges, these purposes thin out and the antitrust laws inevitable reappear in the background. At this point it is no small matter to blend the policies of the two conflicting regimes into an overall regulatory purpose that preserves the values of both."[1]

In 1991, India implemented the Liberalisation, Privatisation, and Globalisation Policy, which involved opening up the Indian economy to the rest of the world. By virtue of its result of optimal resource allocation, a market-based economy was thought to ensure economic efficiency. The transition from a government-controlled closed economy to a market-controlled open economy occurred unexpectedly. To make the transition a success, a number of market reforms were required. To control the newly opened economy, a slew of structural changes were made. Before proceeding with a project, an investor must get approval from various authorities at various establishments. Multiplewindows are the technical term for this arrangement. This includes regulators from certain industries. It is in large part to a lack of coordination between the various government entities involved.

Various sector-specific regulators were brought into the scene after 1991. The Securities and Exchange Board of India was the first and most important of them, having been established in 1992. Other authorities were later established, such as the Competition Commission of India, the Telecom Regulatory Authority of India, etc. in the nation.

After the Government of India created an administrative body in 1988, the Securities and Exchange Board of India (SEBI) was established by enacting the SEBI Act in 1992. According

[1] *David Boies (1997), "The Control of Business, Public control of business", litttle brown ,1977*

to the Act's preamble, this body was established to support the orderly and healthy expansion of the securities market as well as investor protection.

India's principal national competition authority is the Competition Commission of India (CCI). It is a statutory authority within the Ministry of Corporate Affairs that is charged with executing the Competition Act, 2002. It promotes competition and prevents acts that have a significant negative impact on competition in India. As a result, the CCI's powers extend to sectors covered by special legislation and regulated by specialized sectoral regulators, resulting in an apparent jurisdictional dispute. The sectoral regulator deals in the executive domain whereas the competition authority deals with the adjudicatory process. However, the separation between the two is not perfect. For example, in the case of mergers, the CCI has the executive capacity and the sectoral regulator has adjudicatory functions. This jurisdictional issue may harm the corporations and consumers at large due to a lack of coordination on the decisions and processes.

The overlap of these authorities' jurisdictions, particularly those of SEBI and CCI, is the subject of this article. It aims to clarify which of the two must take precedence over the other in the event of a conflict. It goes on to explain how they exert control in the situation of acquisitions and take a stand of credit rating agencies. Before diving into this, it's important to understand the many regulators in the economy and their responsibilities.

2. SOME SECTOR-SPECIFIC REGULATORS AND COMPETITION ACT, 2002

2.1 SEBI

Before SEBI, the regulating authority was the Controller of Capital Issues, which had authority under the Capital Issues (Control) Act of 1947. The Securities and Exchange Board of India was established in 1988 to regulate India's financial markets. SEBI began as a non-statutory entity with no legislative authority. It was given autonomous and statutory powers with the passing of the SEBI Act by Parliament in 1992.

Section 32 of the Act[2] provides that the act shall be applicable, in addition to any other law in force at a particular time. As a result, SEBI's powers coexist with those of other market

[2] *The Securities Exchange Board of India Act, 1992*

regulators and cannot be used to override them. The SEBI Act contains a several number of regulations that govern various elements of the securities market.

2.2 TELECOM REGULATORY AUTHORITY OF INDIA

The emergence of private service providers necessitated the establishment of independent regulation. The Telecom Regulatory Authority of India (TRAI) was established by an Act of Parliament, the Telecom Regulatory Authority of India Act, 1997, with effect from February 20, 1997, to regulate telecom services, including the fixation and revision of tariffs for telecom services that were previously vested in the Central Government.

The Act provides that the provisions of the act shall be in addition to any act which devolves power on the Telegraph Authority to perform any role, function or authority[3].

2.3 INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY

In 1999, the Insurance Regulation and Development Authority (IRDA) was founded as an independent organization in response to the Malhotra Committee's recommendations. It was founded under the IRDA Act of 1999 with the goal of regulating the insurance business, protecting investors' interests, and promoting the industry's development. The IRDA, as a regulatory authority, will coexist alongside other regulatory agencies in the market, according to the Act[4].

2.4 SECTION 60 AND SECTION 62 OF THE COMPETITION ACT, 2002

Section 60 of the Act states that the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Section 62 of the Act provides that 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.

The Competition Act of 2002, includes a non-obstante clause under Section 60 of the Act, as well as a non-derogation clause under Section 62 of the Act. As a result, India employs a system of sector-specific regulators, each of whom has been given authority to oversee a certain industry. This is in contrast to the Competition Act of 2002, which is a broad antitrust law

[3] *Section 38 of TRAI Act, 1997*
[4] *Section 28 of IRDA Act, 1999*

aimed at promoting competition across all economic sectors. As a result, there is a lot of overlap between the jurisdictions of different regulators in the country, particularly between the general antitrust watchdog and the individual sector regulators.

3. A BATTLE

There have been occasions in the past where the application of various laws was overlapping in a circumstance where both laws included a 'non-obstante clause' in them. In such circumstances, Indian courts have adopted numerous principles, such as particular legislation trumps general legislation, newer legislation trumps older legislation[5], and so on.

The Hon'ble SC has often stated that "that interpretation is best which makes the textual interpretation match the contextual"[6]. When the aforementioned principles aren't applicable, a harmonious construction of the two statutes is sought.

There are instances where on a particular matter both the CCI and other sectoral regulator has jurisdiction. Isn't it a contradiction in the legal system that one industry has its own watchdog also have a broad antitrust monitor? Having a sector-specific competition regulator and a general competition regulator for the left space would be a logical corollary. Sector-specific regulators may be more knowledgeable about concerns relating to the sector than about antitrust legislation in general. If any discrepancy prevails in the adjudication of these regulators, this might make a mockery of the competition legislation as a whole. The ranking of these regulators in a hierarchy for assessing the binding value of their directives inter se would be a big issue.

Sectoral regulatory bodies were created because it’s considered that a body with in-depth technical knowledge of the sector can solve the complex and inherent difficulties that exist within the sector. However, this has created a jurisdictional conflict between sector-specific authorities and cross-sector regulators like SEBI. Such issues occur as a result of poorly drafted legislation that, on the one hand, give sector-specific regulators broad powers to oversee every part of the sector for which they were founded, while also giving cross-sector regulators similar powers.

[5] *Bank Of India v. Ketan Parekh & Ors, 2008(8) SCC 148, para 8.*
[6] *Reserve Bank of India v. Peerless General Finance and Investment Company Limited, 1987 (2) SCR 1*

4. MERGERS AND ACQUISITION UNDER THE INDIAN LEGAL SYSTEM

SEBI and CCI are the two regulatory bodies that must approve any merger, acquisition, or amalgamation that takes place in India.

4.1 APPROVAL ON ACQUISITION

4.1.1 COMPETITION ACT, 2002

Competition or antitrust laws are divided into three categories around the world. They are:

a) anti-competitive agreements are prohibited;

b) abuse of dominance is prohibited; and

c) mergers and acquisitions are regulated.

All of these anti-competitive practice laws are present in Indian law.

The CCI has a broader jurisdiction because it can investigate any combination[7] that occurred outside of India but has a significant negative impact on competition in the relevant market in India[8]. The Commission has the authority under the Act to examine the conduct of an enterprise on the merger if it had an effect in India. The Competition Act of 2002 defines a relevant market[9] as one that includes both a relevant geographical market and a relevant product market. A relevant Geographical Market refers to an area where competition circumstances are uniform and distinct from those in a neighboring location[10]. The relevant product market is made up of all the products or services that are deemed replacements for the product in question[11].

Only if one of the numerous thresholds outlined in Section 5 of the Competition Act is met may an application be submitted with the CCI. If that is the case, the application must be filed

[7] *Section 5 of the Competition Act, 2002*
[8] *Section 32 of the Competition Act, 2002*
[9] *Section 2(r) of the Competition Act, 2002, "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"*
[10] *Section 2(s) of the Competition Act, 2002, "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 homogenous and can be distinguished from the conditions prevailing in the neighbouring areas"*
[11] *Section 2(t) of the Competition Act, 2002, "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"*

within 30 days after the Board of Directors' approval of the proposal relating to any combination or the execution of any agreement to that effect. According to the Competition Act, no combination can take effect until 210 days have passed after the date of receiving the notification to combine or, if earlier, the date of passage.

Section 6 is devoted to the regulations governing the regulation of combinations. The merger of two or more businesses or firms is known as a combination. It states that no one may enter into a combination that causes injury or has a negative impact on competition in the relevant Indian market. Any person who engages in such a combination will be considered void. Before 2007 modification, the enterprise had the option of disclosing the combination to the CCI. The Competition (Amendment) Act of 2007 has now made it mandatory. Regulation 5 of the Competition Commission of India (Procedure concerning the transaction of business relevant to combinations) Regulations, 2011[12] requires the application to be filed with the CCI in Form I or Form II. Only when the parties to a horizontal combination[13] have a combined market share of 15% or more in the relevant market, or when the parties to a vertical combination have a combined market share of 25% or more in the relevant market, does Form II need to be filed?

4.1.2 SECURITIES EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011

The Securities and Exchange Board of India is the regulatory body in charge of firms that is or will be listed on Indian stock exchanges. The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011[14] limit and regulate the purchase of shares, voting rights, and control in publicly traded firms.

Acquisition of shares or voting rights in a publicly listed company, when it acquires more than 25% in the target company’s voting rights, or control, mandates the acquirer to make the offer to a target company's remaining shareholders[15]. Such a public notice must be issued on the day that the acquired company's shares, voting rights, or control are acquired[16]. Such notification must be sent to the stock exchanges where the acquired company's shares are traded, and they

[12] *Hereinafter referred to as Combination Regulations, 2011*
[13] *This kind of merger takes place between entities engaged in competing businesses which are at the same stage of the industrial process*
[14] *Hereinafter referred to as SAST Regulations*
[15] *Section 3 of the SAST Regulations*
[16] *Section 13(1) of the SAST Regulations*

must then distribute the information to the public[17]. Furthermore, according to Regulation 16 of the SAST Regulations, the acquisition enterprise must file a copy of the offer letter with SEBI. This is required in order to calculate the offer price.

The acquirer has a term of twenty-six weeks from the end of the offer period to execute the purchase under the agreements negotiated in support of the same[18].

Furthermore, if the acquirer already owns 25% or more but less than 75% of the target firm and acquires at least 5% of the target company's shares or voting rights during a financial year, it is required to make an open offer.

PERCENTAGE OF SHARES TO BE PURCHASED	**SEBI**	**CCI**
Acquisition resulting in control of less than 25% voting rights/quantum of shares	No approval	No approval
Acquisition of more than 5% over 25% threshold limit	Open offer and disclosure obligations triggered	Notice to be filed after payment of fees
Acquisition of 5% or less over 25% threshold but amounting to less than 50% of the total (pre or post transaction)	No approval required	Notice to be filed after payment of fees
Acquisition of 5% or less over the 75% threshold	Prohibited under the Minimum Public Shareholding norms	Transaction possible only for a private company.

[17] *Section 14(1) of the SAST Regulations*
[18] *Section 22(3) of the SAST Regulations*

4.1.3 AMBIGUITY

When the parties to a combination proceed with the combination, before the seven-month term for CCI approval has expired, once they have received authorization from SEBI, even before CCI permits it, a legal issue arises. There are gaps between two statutory entities in such a situation, it can lead to sanctions of the penalties.

Now, a newer piece of legislation takes precedence over an older piece of legislation based on an understanding of the general concept of law. The legislations must have a common ground on which to make decisions, especially when there is ambiguity. However, when imposing penalties on parties to a combination, the justification should take into account whether or not a sectoral authority has approved the combination. In cases where SEBI has granted affirmation, it should be notified to CCI as soon as possible, and the parties should approach CCI for further approval, given that the Competition Act takes precedence under the above-mentioned rationale. After that, if CCI does not take notice of the matter, the parties can continue with their merger.

4.2 CONTROL

4.2.1 SECURITIES EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011

The major topic in which "control" is mentioned in the Takeover Code is to establish whether or not an acquirer has "control" over a target firm and if other investors in the company should be given the choice to quit their interest if such a change in control has occurred. In this case, a finding of control would normally require the appropriate acquirer to make the offer to purchase that target company's shares from shareholders who chose to depart the firm as a result of the change in control.

In ***SEBI v. Subhkam Ventures Pvt Ltd***[19], the SAT differed with SEBI's judgement that Subhkam Ventures Pvt Ltd had obtained control over a target business as a result of the acquisition of certain interests in that target company in its ruling. Subhkam was granted the right to designate a nominee-director of that target firm, and they would be required to form a quorum in the board meetings. Furthermore, Subhkam had acquired positive rights regarding

[19] *Subhkam Ventures (I) (P) Ltd. v. SEBI, 2010 SCC OnLine SAT 35,*

certain actions taken by the target company, including the right to approve the target company's annual business plan, the appointment of key officers, and the target company's entry in strategic investments and joint venture.

The SAT determined Subhkam's rights were 'protective' and did not include day-to-day control of the target company. Negative rights, according to the SAT, does not equate to effective control over a firm. The Supreme Court did not decide in this case because the parties reached an out-of-court settlement. Furthermore, the Supreme Court stated in its order dismissing the case that the SAT's decision, in this case, would not set a precedent[20].

As a result, the scope of the Takeover Code's definition of "control," particularly when it comes to negative or veto rights over corporate acts, is not clear.

4.2.2 COMPETITION ACT, 2002

All "combinations" must be approved by the CCI under the Competition Act. A combination is a merger (including a control acquisition) in which the parties meet specific asset and turnover conditions.

In addition, Schedule I of CCI Regulations, 2011 lists certain types of combinations that do not "ordinarily" require CCI approval, unless they result in a change of control[21].

Furthermore, the term "control" is used in the context of deciding which of a company's "group" entities should be included when determining the asset and turnover thresholds that apply to "groups" that qualify as combinations[22].

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[20] *SEBI v. Subhkam Ventures (I) (P) Ltd., Civil Appeal No. 3371 of 2010, decided on 16-11-2011 (SC).*

[21] *"Paragraph 1 to this Schedule reads: "An acquisition of shares or voting rights... solely as an investment or in the ordinary course of business in so far as the total shares or voting rights held by the acquirer directly or indirectly, does not entitle the acquirer to hold twenty five percent (2500) or more of the total shares or voting rights of the company... not leading to acquisition of control of the enterprise whose shares or voting rights are being acquired".*
Paragraph IA to this Schedule reads: "An acquisition of additional shares or voting rights of an enterprise by the acquirer or its group, not resulting in gross acquisition of more than five per cent (500) of the shares or voting rights of such enterprise in a financial year, where the acquirer or its group, prior to acquisition, already holds twenty five per cent (25%) or more shares or voting rights of the enterprise, but does not hold fifty per cent (50%) or more of the shares or voting rights of the enterprise, either prior to or after such acquisition. Provided that such acquisition does not result in acquisition of sole or joint control of such enterprise by the acquirer or its group"."

[22] *Explanation (b) to Section 5(c), Competition Act, 2002*

There is no qualitative definition of control given in the Competition Act. The idea of "control" under the Competition Act has evolved as a result of the CCI's orders elaborating on its interpretation of control in the context of the Act. The CCI has issued three major judgements in this regard, which are discussed.

Century Tokyo Leasing Corporation and Tata Capital Financial Services Limited

In the matter, the parties engaged into a Business-Partnership Agreement, which granted Century Tokyo Leasing Corporation (Century Tokyo) certain rights relating to Tata Capital Financial Services Limited leasing division". This included the right for Century Tokyo to designate any person to the leasing division's supervisory committee, as well as the requirement that some leasing division decisions be made with the permission of Century Tokyo's nominee.

The Business Partnership Agreement gave Century Tokyo joint control over the leasing division's assets and activities, according to the CCI.

Multi-Screen Media Private Limited/SPE Mauritius Holdings Limited and SPE Mauritius Investments Limited

SPE Mauritius Holdings Limited along with SPE Mauritius Investments Limited bought 32.39 percent of Multi Screen Media Private Limited ("MSM") from Global Holdings Limited and Atlas Equifin Private Limited in the matter. MSM's equity shares were previously controlled by SPE, which owned 62 percent of the company.

Acquisitions of equity shares in a company where the acquirer already owns 50% or more of the company's equity shares are exempted from the notification and approval requirements applicable to combinations under Schedule I of the Combinations Regulations, unless the transaction results in the acquisition of "sole control" from "joint control."

In this case, even though that SPE owned more than 50% of the equity shares of MSM, the CCI determined that the combination resulted in a transfer from joint to sole control, necessitating CCI clearance. The CCI determined that MSM had joint control because certain actions, such as entering new lines of business or opening new locations, required the approval of at least 75% of MSM's shareholders, and the hiring and firing of key officers such as the CEO, CFO, and Head of Marketing, required the approval of at least 75% of MSM's shareholders.

Independent Media Trust/Network 18 Group

In this matter, the Independent Media Trust purchased 6 target companies zero coupon optionally convertible debentures ("ZOCDs"), which may be converted into equity shares at IMT's discretion within ten years of the subscription date. IMT would own more than 99.9% of each target company's equity share capital if the ZOCDs were converted. According to the CCI, such an option allowed IMT to exert decisive influence over the management and affairs of the target companies, resulting in control acquisition.

The Jet- Etihad

In 2013, the Indian government liberalized its foreign direct investment (FDI) policy in the civil aviation sector, allowing foreign airlines to own up to 49 percent of Indian airline businesses. Following that, on April 24, 2013, UAE's Etihad Airways PJSC sign an investment agreement with Jet Airways, a publicly-traded Indian firm, to buy 24 percent of Jet's equity shares (the "Jet-Etihad Transaction)[23].

After going through the Foreign Investment Facilitation Portal, SEBI, and CCI, the Jet-Etihad Transaction, the first foreign direct investment in the Indian civil aviation business, was eventually concluded on November 20, 2013[24]. The Jet-Etihad Transaction was also subject to a post-close review by SEBI, with SEBI finally accepting the Jet-Etihad Transaction on May 8, 2014[25], without needing Etihad to make an open bid.

In relation to this matter, the CCI stated in its order that "*Etihad 'acquisition of twenty-four (24) percent equity stake and the right to nominate two (2) directors, out of the six (6) shareholder directors, including the Vice-Chairman, in the Board of Directors of Jet, is considered as significant in terms of Etihad's ability to participate in the managerial affairs of Jet. The effect of these agreements including the governance structure envisaged in the CCA*

[23] Press Release- Jet Airways, Jet Airways and Etihad Airways Forge Strategic Alliance Under FDI Policy of Government of India (April 24, 2013) available at http://corporates.bseindia.com/xml data/corpfiling/Attach His/Jet Airways (India) Ltd 250413.pdf

[24] Press Release of Jet Airways, Etihad Airways-JJET Airways Move Ahead With Strategic Alliance Following Final Approvals (November 20, 2013) available at: http://corporates.bseindia. com/xml-data/corpfiling/Attach His/Jet Airways (India) Ltd2 201113.pdf

[25] SEBI's order dated May 8, 2014, available at http://www.sebi.gov.in/cms/sebi data/attach docs/1399545948533.pdf. ("SEBI Order")

establishes Etihad's joint control over Jet, more particularly over the assets and operations of Jet."

As a result, the CCI determined that the merger, in combination with the CCA's governance structure, gave Etihad "joint control" over Jet for the meaning of the Competition Act.

SEBI examined the Jet-Etihad Transaction in light of the CCI's control observation to see if the requirement to make an open offer had been triggered. SEBI determined that Etihad had not acquired "control" over Jet for the purposes of the Takeover Code in an order dated May 8, 2014.

LEGISLATION	**DEFINITION OF 'CONTROL'**
Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 2011	"control includes the right to appoint a majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or, management rights or share" [Regulation2(1)(e)]
Competition Act	"control includes controlling the affairs or management by- (i) one or more enterprises, either jointly or singly, over another enterprise or group; (ii) one or more groups, either jointly or singly, over another group or enterprise"

	[Explanation (a) to Section 5(c)]

4.2.3 AMBIGUITY

It is clear that control might have many meanings depending on the legislation. The Jet-Etihad deal exemplifies this point: the CCI determined that Etihad had gained joint control' over Jet under the Competition Act, but the SEBI viewed that this transaction does not result in an acquisition of control under the Takeover Code.

The CCI and SEBI judgements on the Jet-Etihad transaction further show that the Competition Act's "control" requirement is lower than the Takeover Codes. This may be due to the different goals of the two statutes in question: while the Competition Act aims to regulate transactions that may have an impact on an enterprise's strategic commercial behaviour, the Takeover Code views the acquisition of control as an event that requires other shareholders of a publicly-traded company to be allowed to sell the shares.

Furthermore, the CCI's jurisprudence typically recognizes that affirmative/veto powers in connection to a company's strategic commercial choices reflect a level of control; the Takeover Code's opinion on this point is unclear. Further judgements by the relevant regulators, as well as appellate authorities and courts, are likely to develop these concepts.

5. CONCLUSION: WAY FORWARD

In 2011, CUTS International published a detailed report[26] on the overlap conflicts between sectoral regulators and competition authorities, which was commissioned by the Ministry of Corporate Affairs.

Both competition agencies and sector regulators, according to the report, share the same purpose of encouraging economic growth through pro-competitive regulation. Despite the fact that they share a shared purpose, sector regulators and competition authorities have different

[26] *Harmonising Regulatory Conflicts; 2011, CUTS International; http://www.cuts ccier.org/IICA/pdf/Synthesis_Report-Harmonising_Regulatory_Conflicts.pdf*

legal powers, and hence their viewpoints on competition issues may differ.

Sector regulators are largely responsible for structural and ex-ante concerns, while the competition authority is responsible for behavioral and ex-post ones. Sector-specific regulators can be given collaborative powers. This paradigm is used in Mexico, where the Competition Commission decides on whether or not there is fair competition, and only the fines are made by the sector-specific sectoral regulator. According to Argentina's Law No. 25.156, for example, the competition regulator must first communicate with the sectoral regulator before taking notice of the situation or passing any orders.

Despite the fact that the CCI is required by law to contact any industry regulator, the ongoing turf war is largely due to the fact that such consultations are not mandatory or binding. The gaping loophole remains since comments gained through consultations under Sections 21 and 21A of the Act are not binding, despite the reforms made to the Competition Act in 2007 — providing CCI suo motu powers to undertake such consultations.

To avoid jurisdictional disputes between sector regulators and CCI, the CUTS report advises that both (sets of) laws – competition law and sector regulatory laws – provide for mandatory consultation between the two agencies on topics that fall under either's jurisdiction. The Planning Commission's policy document from December 2007 and the proposed National Competition Policy from 2011[27] both made this recommendation. This rule ensures that each regulator is responsible for keeping other regulators in the loop who have overlapping domains over the same issue. Member states of the European Union have also addressed the issue of overlap by requiring required consultation between the competition authority and sector regulators under both competition and sector regulatory rules[28].

Unfortunately, the draft Competition (Amendment) Bill, 2020, which was issued for public comment last year, did not address the lack of obligatory consultation. CUTS had made a submission in this regard to the Ministry of Corporate Affairs in the hopes that it would be adopted before the Bill was introduced in Parliament[29].

[27] *http://www.mca.gov.in/Ministry/pdf/Draft_National_Competition_Policy.pdf*
[28] *Pradeep S Mehta and Udai S Mehta; https://thewire.in/business/cci-trai-promoting-competition-anti-competitive-practices*
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