
UNIFYING REGULATORY APPROACHES: AN ANALYSIS OF COMPETITION GOVERNANCE IN INDIA

Balamurali. B, Assistant Professor (Law), SMVEC Centre of Legal Education, Puducherry

ABSTRACT

The coexistence of the Competition Commission of India (CCI) and sectoral regulators has significantly shaped India's regulatory landscape by promoting a fair competition while ensuring sector-specific oversight. However, the exercise of regulatory powers by these authorities at the same time has often resulted in uncertainty, overlapping interventions, procedural delays, conflicting decisions and inconsistent regulatory outcomes. Judicial pronouncements, particularly those of the Supreme Court and various High Courts, have attempted to clarify the respective roles of the CCI and sectoral regulators in case to case manner, yet the absence of a structured mechanism for institutional coordination continues to pose practical and legal challenges and discourages businesses and foreign investments.

This paper examines the interface between competition law enforcement and sectoral regulation in India by analysing the statutory frameworks. It further analyses leading judicial decisions that have shaped the regulatory relationship and identifies the persistent gaps in the existing framework. To address these challenges, the paper proposes a Model unifying the conflicts which is founded on institutional coordination, regulatory comity, and functional specialization. Under the proposed framework, the CCI would retain the exclusive authority to determine issues relating to anti-competitive conduct and market competition without excluding the sector regulators expertise. Such a collaborative mechanism seeks to eliminate regulatory uncertainty, prevent conflicting decisions, enhance administrative efficiency, and preserve the autonomy and certainty in decisions and jurisdiction of authorities

Keywords: Competition Commission of India (CCI); Sectoral Regulators; unifying the regulations; Competition Law.

Introduction

The Competition commission of India is entrusted with a vital role under the Competition Act, 2002 to maintain a fair competition in the market. The object of the Competition Act is achieved by eliminating practices causing the appreciable adverse effects in Indian market. To fulfil the mandate under the Competition Act, the CCI is entrusted with certain powers and functions. The competition commission of India is entrusted with wide jurisdiction in all the sectors for maintaining a fair competition in Indian market. At the same time the sectoral regulators such as TRAI, RBI etc. also have exclusive power and control in their specific market area. The ongoing jurisdictional conflicts between the Competition Commission of India (CCI) and various sectoral regulators have created significant challenges in India's regulatory landscape. These conflicts arise primarily due to overlapping mandates, while the CCI is entrusted with promoting fair competition and preventing anti-competitive practices across all sectors and entrusted with overriding wide powers, whereas the sectoral regulators such as TRAI (Telecom Regulatory Authority of India), SEBI (Securities and Exchange Board of India), IRDAI (Insurance Regulatory and Development Authority of India), and others are responsible for ensuring the stability and efficiency of their respective industries or sectors. The lack of clear demarcation between their roles has led to legal uncertainty, regulatory inefficiencies, conflicting decisions and delays in enforcement.

This issue has been at the center of numerous judicial interventions, with courts often called upon to decide whether competition concerns should be first addressed by sectoral regulators or whether the CCI should have the primary jurisdiction. Cases like *CCI v. Bharti Airtel*¹, *Monsanto Holdings*², these rulings have reinforced the need for a structured and harmonized approach to regulatory coordination. The absence of a clear legislative framework delineating the powers of competition and sectoral regulators has only increased the problem. With the Indian economy becoming more interconnected, these conflicts have broader implications. They do not just affect businesses and regulators, but also investors, consumers, and the overall efficiency of the Indian market with conflicting jurisdictions. This paper aims to propose solutions that will help foster better coordination between competition law enforcement and sectoral regulations.

¹ *Competition Commission of India v. Bharti Airtel Ltd.*, (2019) 2 SCC 521 (India).

² *Monsanto Holdings Pvt. Ltd. v. Competition Commission of India*, 2020 SCC OnLine Del 598 (Del.)

Analysis of conflicting points between CCI and sectoral regulators

The issue of jurisdictional conflicts between the Competition Commission of India (CCI) and sectoral regulators has been a persistent challenge in India's regulatory framework, which has an impact on fair competition. While competition law and sector-specific regulations share the common goal of ensuring market fairness, their overlap has led to judicial inconsistencies, regulatory inefficiencies, and legal uncertainty which posed challenges on effective enforcement.

A. Legal Framework Governing the Conflict

The Competition Act, 2002 was enacted to promote competition, prevent anti-competitive practices, and ensure consumer welfare. Section 18 of the Act mandates CCI to eliminate practices having an appreciable adverse effect on competition (AAEC) and ensure fair competition in the market. Sections 3, 4, 5, and 6 of the Act empower CCI to regulate anti-competitive agreements, abuse of dominant position, and combinations. However, multiple sectoral regulators have been established under various laws to regulate specific industries. Some of the most significant sectoral regulators include:

- The TRAI established under Telecom Regulatory Authority of India Act, 1997³ regulates telecom licensing, pricing, and competition-related matters.
- SEBI established under Securities and Exchange Board of India Act, 1992⁴ regulates the securities market, ensuring investor protection and market integrity.
- IRDAI being established under Insurance Regulatory and Development Authority Act, 1999⁵ oversees the insurance sector, ensuring fair practices.
- CERC an authority under the Electricity Act, 2003⁶ regulates the electricity sector, including tariff setting and market competition.
- PNGRB established under Petroleum and Natural Gas Regulatory Board Act, 2006⁷

³ The Telecom Regulatory Authority of India Act, 1997, No. 24 of 1997, Acts of Parliament, 1997 (India)

⁴ The Securities and Exchange Board of India Act, 1992, No. 15 of 1992, Acts of Parliament, 1992 (India)

⁵ The Insurance Regulatory and Development Authority Act, 1999, No. 41 of 1999, Acts of Parliament, 1999 (India)

⁶ The Electricity Act, 2003, No. 36 of 2003, Acts of Parliament, 2003 (India)

⁷ The Petroleum and Natural Gas Regulatory Board Act, 2006

regulates pricing and competition in the petroleum and natural gas sector.

Many of these sectoral laws contain competition related provisions to ensure fairness in the market, leading to ambiguity over whether sectoral regulators alone have jurisdiction or if CCI can intervene in competition related matters within their domains and respected sectors. Here there arises a question of law, which authority has the primary jurisdiction or in other words in matters where sectoral regulators were exist, who can initiate an action against violators to maintain a fair competition, CCI or the sectoral regulators. This question of law arises on reading the provisions of various acts. This question was answered by Hon'ble Supreme Court in various cases using different interpretations by Supreme Court of India.

B. Judicial Precedents and their impacts

The Indian judiciary has played a crucial role in shaping the discourse on jurisdictional conflicts between CCI and sectoral regulators. However, judicial pronouncements have often been inconsistent, further contributing to uncertainty instead of clearing the ambiguity. Some landmark cases include:

(i) CCI v. Bharti Airtel⁸

In this case, Bharti Airtel challenged CCI's jurisdiction over allegations of cartelization in the telecom sector, arguing that TRAI had the first right to adjudicate the matter as there is a sectoral specific regulator. The Supreme Court ruled that sectoral regulators should have the first opportunity to examine competition-related disputes before CCI intervenes because of the special knowledge possessed by the sectoral regulators, but in this case it is pertinent to note that, TRAI has first initiated the enquiry and CCI subsequently entered and that was challenged by the company. The ruling established the "first regulatory recourse" principle, prioritizing sectoral regulators over CCI in industry-specific matters.

(ii) Monsanto Holdings v. CCI⁹

In this case, the dispute revolved around was, Whether CCI could investigate

⁸ Supra note 1

⁹ Monsanto Holdings Pvt. Ltd. v. Competition Commission of India, 2020 SCC OnLine Del 598 (Del.)

restrictive licensing agreements involving genetically modified (GM) seeds, a sector regulated by the Patents Act, 1970 by showing the decision in the case of Bharathi Airtel. However, the Delhi High Court held that despite the existence of detailed provisions under the Patents Act, CCI has initiated the enquiry and it retains jurisdiction if anti-competitive behaviour affects market competition.

(iii) Amir Khan Productions v. Union of India¹⁰

The petitioner argued that film distribution and copyright-related disputes should fall solely under the Copyright Act, 1957, and not under CCI's jurisdiction, because copyright act governs the issues related to licensing and distribution. However, in this case, the Bombay High Court upheld CCI's authority, reinforcing that sectoral laws do not override CCI's power unless explicitly stated.

(iv) Ericsson v. CCI¹¹

The Delhi High Court ruled that patent licensing disputes should primarily be regulated by the Patents Act, with CCI intervening only in cases where clear anti-competitive conduct distorts market competition and further court ruled that, competition law cannot overrule the patent act, because it has upper hand in cases of patent enforcement. The ruling emphasized the need for legislative clarity on jurisdictional boundaries. These conflicting judicial interpretations highlight the absence of a consistent framework for resolving disputes between CCI and sectoral regulators, this is because of ambiguity in the provisions of various laws and authorities, and there is no uniformity or mechanism to resolve these disputes. Hence a law needs to be enacted to resolve these disputes.

C. Key Challenges Arising from conflicting Jurisdiction

The lack of statutory clarity and judicial inconsistency has resulted in several practical challenges which are experienced by various stakeholders involved in these issues directly or indirectly they are,

¹⁰ Aamir Khan Productions Pvt. Ltd. v. Union of India, (2010) 4 Comp LJ 580 (Bom.).

¹¹ Telefonaktiebolaget LM Ericsson (Publ) v. Competition Commission of India, 2023 SCC OnLine Del 4078 (Del.)

(i) Regulatory Uncertainty and Compliance Burden

Businesses are often uncertain or unclear as to which authority they need to approach first when facing regulatory scrutiny. This can lead to, Multiple parallel investigations by different regulators, Increased legal costs due to protracted litigation, Inconsistent enforcement of competition laws across sectors, Weak competition law enforcement. Conflicting decisions by different authority in competition related matters leads to regulatory uncertainty.

(ii) Inefficiency and Delays in Enforcement

The lack of coordination between CCI and sectoral regulators often results in delayed enforcement. Cases get stuck in jurisdictional disputes, delaying action against anti-Competition practices. Conflicting rulings from different authorities create legal ambiguities, which discourages the businesses from entering into India.

(iii) Contradictions in Competition Regulation across Sectors

Sectoral regulators prioritize industry-specific objectives that may conflict with CCI's broader competition goals, which affects the certainty in decisions. Example: TRAI focuses on ensuring fair telecom tariffs, whereas CCI evaluates cartelization in the telecom market. These dual perspectives can lead to contradictions in regulatory action.

Analysis of overlapping Jurisdiction between CCI and sectoral regulator

The regulatory overlap between the Competition Commission of India (CCI) and various sectoral regulators remains a complex issue, leading to legal uncertainty, contradictory decisions, and enforcement delays which has a heavy impact on competition regulation. While CCI is entrusted with ensuring fair market competition across all industries, sectoral regulators have been created to oversee specific industries with a more specialized focus with a specialised knowledge and understanding. This dual regulatory mechanism often leads to jurisdictional clashes, where both authorities claim the right to adjudicate disputes related to anti-competitive practices, market control, and sectoral regulations. Both the authority in order to prove their supremacy, they are violating the genuine interest of the stakeholders.

A. Regulatory conflicts between authorities

One of the primary issues leading to the jurisdictional conflict is the absence of a structured regulatory hierarchy between CCI and sectoral regulators. Sectoral regulators such as the Telecom Regulatory Authority of India (TRAI), the Reserve Bank of India (RBI), the Securities and Exchange Board of India (SEBI), and the Insurance Regulatory and Development Authority of India (IRDAI) are responsible for governing and stabilizing specific industries, ensuring compliance with regulations tailored to their respective sectors. However, CCI's role as a market wide competition regulator means that it often overlaps with these bodies, when issues related to monopolistic practices, cartelization, or abuse of dominance arise. For example, in the telecom sector, TRAI regulates pricing policies and service conditions, while CCI examines potential market distortions caused by unfair trade practices. The conflict became apparent in *CCI v. Bharti Airtel*¹², where the Supreme Court held that TRAI must first assess anti-competitive allegations within its regulatory framework before CCI could intervene. Similarly, in banking and financial services, RBI has comprehensive authority over monetary policies and institutional stability, but CCI investigates cartelization claims and merger impacts, leading to an overlap in authority. The absence of a pre-determined mechanism for resolving such jurisdictional conflicts continues to create unpredictability in regulatory enforcement.

B. Contradictory Perspectives: Competition Law vs. Sectoral Regulation

A significant source of friction arises from the differing objectives of CCI and sectoral regulators under respective acts. CCI's role is to foster a competitive market structure, eliminating anti-competitive agreements and abuse of dominant positions. Sectoral regulators, on the other hand, focus on industry-specific concerns, such as pricing controls, licensing, consumer protection, and service regulations. This difference in approach often leads to conflicting decisions on the same issues.

For instance, in the pharmaceutical sector, the National Pharmaceutical Pricing Authority (NPPA) regulates the pricing of essential drugs to ensure affordability for consumers. However, from a competition law standpoint, price regulation may be seen as an artificial distortion of free market competition, there arises a conflict of jurisdiction and powers. A

¹² *Competition Commission of India v. Bharti Airtel Ltd.*, (2019) 2 SCC 521 (India)

similar conflict arises in the electricity sector, where regulatory commissions oversee pricing and supply mechanisms, yet CCI has the power to investigate allegations of cartelization and price manipulation. This fundamental difference in regulatory objectives complicates the decision-making process, leaving businesses caught between competing legal interpretations and conflict between different regulatory authorities.

C. Judicial Dilemmas - Conflicting Rulings and Uncertain Precedents of courts

The judiciary has played a pivotal role in interpreting the extent of CCI's jurisdiction vis-à-vis sectoral regulators. However, court rulings have not always provided consistent guidance, leading to further ambiguity. In *CCI v. Bharti Airtel*¹³, the Supreme Court clarified that TRAI should be the first to examine disputes related to anti-competitive behaviour in the telecom sector before CCI could exercise jurisdiction. This ruling attempted to establish a procedural sequence, giving preference to the sectoral regulator in determining market practices. Conversely, in *Monsanto Holdings v. CCI*¹⁴, the Delhi High Court upheld CCI's jurisdiction in investigating competition related issues concerning patent licensing, even though the Patents Act governed intellectual property rights. This case suggested that competition law concerns could be examined independently of sectoral regulations, contradicting the approach taken in the *Bharti Airtel* case. Similarly, in *Ericsson v. CCI*¹⁵, the Delhi High Court had to decide whether patent licensing disputes involving excessive royalty charges should be addressed under the Patents Act or competition law. The ruling highlighted the lack of clarity on whether sectoral laws should take precedence over competition law in cases where both regulatory interests overlap. This inconsistency increases legal unpredictability, making it difficult for businesses and regulators to determine which body has the final authority in competition related matters.

D. Regulatory Ambiguity and Overlapping Jurisdiction

One of the most pressing unresolved issues is the ambiguity surrounding the extent of CCI's jurisdiction vis-à-vis sectoral regulators. While sectoral regulators such as the Telecom Regulatory Authority of India (TRAI), the Reserve Bank of India (RBI), and the Securities and Exchange Board of India (SEBI) govern their respective industries, CCI has a broad mandate

¹³ Supra note 1

¹⁴ Supra note 2

¹⁵ Supra note 5

to ensure market competition. However, the law does not explicitly clarify which regulator has the final authority in cases where competition concerns intersect with sectoral regulations.

For instance, in the *CCI v. Bharti Airtel*¹⁶ case, the Supreme Court ruled that TRAI should first determine whether there was a violation of sectoral regulations before CCI could step in to address anti-competitive behavior. This effectively limited CCI's powers in the telecom sector, raising concerns about whether similar precedents would be applied in other industries. A contrasting approach was seen in *Monsanto Holdings v. CCI*¹⁷, where the Delhi High Court upheld CCI's authority to examine issues related to competition law, even when the dispute involved patents. These conflicting judgments illustrate the unresolved nature of the issue, leaving businesses uncertain about the appropriate legal forum for resolving disputes.

E. Impact on Foreign Investment and Market Stability

The ongoing regulatory uncertainty has significant implications for foreign direct investment (FDI) and overall market stability. Investors prefer regulatory environments where laws are clearly defined, ensuring that legal disputes do not hinder business operations. However, the continuous jurisdictional conflicts between CCI and sectoral regulators create an unpredictable legal framework, discouraging foreign investors from entering highly regulated sectors such as banking, telecom, and pharmaceuticals. For instance, multinational corporations seeking to acquire Indian firms must navigate both CCI's competition assessment and sectoral regulations, leading to extended approval timelines and compliance burdens. The lack of a streamlined regulatory framework increases costs for businesses and makes India a less attractive destination for foreign investment compared to jurisdictions with clearer legal structures.

Need for a Coordinated Mechanism

To resolve these conflicts, many jurisdictions have established structured coordination mechanisms or some other mechanisms to eliminate these disputes. The UK's competition authority and sectoral regulators sign memorandums of understanding (MoUs) to coordinate regulatory efforts. The EU mandates a "one-stop-shop" approach, ensuring that either the

¹⁶ Competition Commission of India v. Bharti Airtel Ltd., (2019) 2 SCC 521 (India).

¹⁷ Monsanto Holdings Pvt. Ltd. v. Competition Commission of India, 2020 SCC OnLine Del 598 (Del.)

competition authority or the sectoral regulator takes the lead, preventing overlapping jurisdiction. In India, a similar mechanism is the need of the hour to ensure:

- ❖ Clarity on the sequence of regulatory intervention.
- ❖ Better coordination and information sharing between CCI and sectoral regulators.
- ❖ Legislative amendments to explicitly define jurisdictional boundaries.

The conflict between CCI and sectoral regulators stems from overlapping jurisdiction and conflicting regulatory mandates under different acts. While judicial decisions have provided some clarity, they have also highlighted the inconsistencies in India's regulatory framework. The lack of a structured coordination mechanism has led to duplicative investigations, prolonged litigation, and regulatory uncertainty for businesses. Addressing this issue requires legislative clarity, institutional coordination, and judicial consistency, ensuring that both competition law and sectoral regulations complement each other rather than operate in conflict.

Conclusion and Suggestions:

In this research, the researcher had analysed in detail about what are the laws that are in force that grant authority to various regulators for maintaining fair competition in the market. Further the competition act, 2002, its objectives and mandate on CCI for ensuring a fair competition in the market, and various authorities of competition commission of India conferred by the competition act, 2002. Further the researcher have analysed the role of sectoral regulators, and laws governing the sectoral regulators, their objectives and mandate over various sectoral regulators in maintaining a fair play in their particular sector. The researcher have further analysed various scenarios, where the conflict of authority arises and overlapping jurisdiction.

On taking into the view of different jurisdictions, it is clear that, there are several models for coordination between competition authorities and sectoral regulator, in the nature of consultation, coordination, memorandum of understanding and legal mandates for competition authority to consult and coordinate before any order is passed by competition authority. Hence this researcher, keeping in view the various overlapping jurisdictions, global models and judicial decisions, does not think any of these models can reduce the conflict

between them, rather this author suggests a different model for fair competition enforcement in India.

Way forward: striving to resolve the conflicts and unify the regulations

For resolving conflict between the competition commission of India and sectoral regulators on regulation and enforcement of fair competition in India, this researcher finds the model of having CCI as adjudicating authority and sectoral regulators as investigating authority, when there arises an anti-competitive behaviour in a particular sector by an alleged violator, i.e. a company or enterprise. This model gives certainty to the competition law enforcement and decisions without undermining the authority of the competition commission of India, at the same time without ignoring the sector specific expertise of the sectoral regulators as well.

For example - A company X doing a telecom business under the regulation of TRAI in India. It has fixed a price for its recharge plans, which are prima facie anti-competitive, now here in this case enquiry proceedings against the company X can be initiated by sectoral regulators before the competition commission of India and the sectoral regulator can investigate the matter and produce the report before the CCI along with witness against the alleged violator company X, and company X will also be given a fair opportunity to defend it before CCI and after all the submissions on both sides, CCI will pass order on merits and it is enforceable as decree of civil court.

1. Initiation of proceedings against alleged violators of competition act

If a company is violating the competition law and creates a appreciable adverse effect on competition by indulging in a anti- competitive practice, and that company is already regulated by a sectoral regulator then, enquiry proceedings can be initiated against the violator by the sectoral regulator. Further any person can make a complaint before the CCI regarding the anti-competitive practice of a particular company or an enterprise or CCI shall also have suo motto powers to initiate proceedings against an enterprise indulging in anticompetitive practice.

2. Investigation of anticompetitive practices

On initiation of proceedings against an alleged violator, investigation can be carried

out by the sectoral regulator on violators either on direction of CCI, if proceedings initiated not by the sectoral regulator before the CCI and sectoral regulator can submit its final report about the violation along with evidences before the competition commission of India.

3. Fair opportunity for opposite party

In all the proceedings before the CCI, the sectoral regulators shall act like a prosecuting authority similar to the criminal cases in India and whereas the alleged violators may be given a fair opportunity to defend themselves and present their side before the competition commission of India to ensure the compliance of natural justice principles.

4. CCI shall have powers of civil court

For the purpose of appearance, attendance and production of documents at the time of enquiry, CCI shall have all the powers of civil court for ensuring the appearance of witness and production of documents before the CCI and all other powers incidental thereto as conferred by CPC to civil courts in India.

5. Rules as to procedure before CCI

As far as the procedure for enquiry is concerned, CCI is not bound by the procedures of CPC or any other procedural law, but it is bound by the principles of natural justice and fairness.

6. Passing of orders and judgements

After all the enquiry and submissions by both the side that is sectoral regulators and the alleged violator, the CCI will have the powers to issue, orders and judgments in the interest of justice as empowered by the competition act, 2002 to competition commission of India, order of competition commission of India shall be enforced as a decree of a civil court throughout India as per Civil procedure code.

Therefore it is suggested that, the Competition Act, 2002 can be amended and to introduce a new chapter to include these changes in the powers of CCI and sectoral regulators

as a new chapter. Further the powers and functions of adjudicating authority i.e. CCI as well as the investigating authority sectoral regulators shall be demarcated in clear and unambiguous words, to avoid any further jurisdictional disputes between CCI and sectoral regulators in India. Original exclusive jurisdiction shall be given to competition commission of India to investigate upon the competition law violation and anti-competitive practices.