REGULATORY FRAMEWORK OF COMPETITION ACT, 2002
2. INTRODUCTION:

Competition is the backbone of Economy. Lack of competitions results in a mass of complacency which leads to poor products that destroy creativity and ultimately hold back the progress in the markets. Competition is necessary for high economic growth and low unemployment. The need arises because market can suffer from failures and distortions and various players can resort to anti competitive activities such as cartels, abuse of dominance which adversely impact economic efficiency and society welfare. Fierce competition between companies both locally and globally is like a life ventilator support system of strong and effective markets. It encourages firms to replenish rejuvenate and innovate. Competition reduces slack, putting downward pressure on costs and providing incentives for efficient organization of production. It helps improving quality standards.

The liberalization process of the government meant cutting through the red-tape and making industrialization more entrepreneur-friendly, there has been emergence of independent regulatory authorities for several sectors of the economy. Indeed, economic reforms has led government to reinvent itself through doing less “rowing” and more “steering”. The Indian competition law regime is a nascent regime. It is barely four years since the new Competition Act has become operational. Prior to the operationalization of the Competition Act in May 2009, MRTP Act was the operational law that regulated certain aspects of competition. India has responded positively by opening up its economy to global players, removing controls and resorting to liberalization. Indian Market needed to gear up and face competition from within the country and outside. India was one of the first developing countries to have a

63 In Monnet Sugar Limited v. Union of India, MANU/UP/0823/2005 where the Allahabad High Court dealt with Industrial (Development and Regulation) Act, 1951 which prior to the process of liberalization was the epitome of license and permit controls.

64 For instance, when government though it fit that the department of telecom cannot be regulator as well player in the telecom sector it replaced the department of telecom with the Telecom Regulatory Authority of India. See also, Reliance Airport Developers Pvt. Ltd. v. Airports Authority of India, 2006 (11) SCALE 208; MANU/SC/4912/2006 where the Supreme Court of India endorsed the public private partnership approach to development.

FIG NO.1 BENEFITS OF COMPETITION:

A concerned Government, appointed a Committee in October, 1960 to look into the reasons of inequality in the distribution of income and levels of living (Mahalanobis Committee)\(^65\). Subsequently on account of such recommendations made by the Mahalanobis Committee, the Government constituted the Monopolies Inquiry Commission (MIC) in 1964 under chairmanship of Mr. Justice K.C. Das Gupta\(^66\), Judge of Supreme Court of India to enquire into the extent of and effect of concentration of power in the private sector and the prevalence of monopolistic practices in India. The MRTP Act was passed to enable the Government to control concentration of economic

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\(^{65}\) Mehta Pradeep S: *Competition and Regulation in India – Leveraging Economic Growth Through Better Regulation.*

\(^{66}\) There were other four members Mr. G.R. Rajagopaul, Mr. K.R.P. Iyengar, Mr. R.C. Dutta and Dr. I.G. Parel.
power in Indian industry\textsuperscript{67}. The MRTP Act was notified in the year 1970 and in August 1970, the MRTP Commission was set up.

\textbf{2.1 MRTP ACT - PREDECESSOR OF THE COMPETITION ACT, 2002:}

Monopoly imposes heavy costs in every society. Monopoly acts against the public, as it raises prices. The competition lowers prices to a level which is fair and competitive under a competitive environment.

Adam Smith spoke of “\textit{the wretched spirit of monopoly\textquoteright}, the “\textit{mean rapacity, the monopolizing spirit\textquoteright}” in which “\textit{the oppression of the poor must establish the monopoly of the rich}”\textsuperscript{68} The purpose of monopoly is to earn maximum profit at the cost of a fair and free competition. Monopoly destroys efficiency and discourages innovation.

The preamble provided that the MRTP Act is an

\textit{“Act to provide that the operation of the economic system does not result in the concentration of the economic power to the common detriment, for the control of monopolies, for the prohibition of monopolistic and restrictive trade practices and for matters connected therewith or incidental thereto\textsuperscript{69}.”}

The MRTP Act aimed at preventing

(a) economic power concentration in a few hands and curbing monopolistic behavior and (b) prohibition of monopolistic, unfair or restrictive traded practices.

The intention behind this was both to protect consumers as well as to avoid concentration of wealth\textsuperscript{70}.

The MRTP Act was a precursor to the Competition Act and sought to legislate over issues relating to restrictive and monopolistic trade practices. There are areas of similarities between the MRTP Act and the Competition Act.

\textsuperscript{67} It may be relevant to note that the Government had also formed the Hazari Committee which looked into aspects relating to industrial licensing procedure under the IRDA which indicated that the licensing system had resulted in disproportionate growth in respect of industrial houses. Subsequently, the Dutt Committee (Monopolies Inquiry Commission) was also constituted in 1964 to study monopolistic practices and the Dutt Committee also observed the economic concentration of power and suggested the introduction of the MRTP Bill.

\textsuperscript{68} http://www.press.umich.edu/pdf/9780472116157-ch1.pdf

\textsuperscript{69} MRTP Act, 1969 (54 of 1969) 27th December 1969.

\textsuperscript{70} Subsequent to the 1991 amendment to the MRTP Act, there was a shift in emphasis towards prohibition of monopolistic, unfair or restriction trade practice rather than on concentration of wealth and control of monopolies. See Jaivir Singh, Monopolistic Trade Practices and Concentration of Wealth: Some conceptual problems in MRTP Act, Economic and Political Weekly, Vol. 35, No. 50 (Dec. 9-15, 2000), pp. 4437-4444.
TRIGGER CAUSE FOR MONOPOLIES INQUIRY COMMISSION

There were essentially three enquiries/studies, which acted as the lodestar for the enactment of the MRTP Act. The first study was by a Committee chaired by Mr. Hazari, which studied the industrial licensing procedure under the Industries (Development and Regulation) Act, 1951. The report of this Committee concluded that the working of the licensing system had resulted in disproportionate growth of some of the big business houses in India.

The second study was by a Committee set up in October 1960 under the chairmanship of Professor Mahalanobis to study the distribution and levels of income in the country. The Committee, in its report presented in February 1964, noted that the top 10 percent of the population of India cornered as much as 40 percent of the income. The Committee further noted that big business houses were emerging because of the ‘planned economy’ model practised by the Government in the country and suggested the need to collect comprehensive information relating to the various aspects of concentration of economic power.

The third study was known as the Monopolies Inquiry Commission (MIC), which was appointed by the Government in April, 1964 under the Chairmanship of Mr. Das Gupta. It was enjoined to enquire into the extent and effects of concentration of economic power in private hands and the prevalence of monopolistic and restrictive trade practices in important sectors of economic activity (other than agriculture).

The Monopolies Inquiry Commission (1965) presented its report in October 1965, noting therein that there was concentration of economic power in the form of product-wise and industry-wise concentration. The Commission also noted that a few industrial houses were controlling a large number of companies and there existed in the country large-scale restrictive and monopolistic trade practices.

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71 The Monopolies Inquiry Commission also reviewed the various aspects pertaining Industrial Licensing and observed that industrial licensing system enabled big business houses to obtain disproportionately large share of licenses which had led to pre-emption and foreclosure of capacity. Dr. R K Hazari was appointed as a consultant in the Planning Commission to review the working of the licensing system. He submitted the report in 1967.

72 A series of reforms was initiated in the form of studies by some committees and commissions in the 1960s to tackle the problem of License Raj. First of them was Mahalanobis Committee. This committee is known as Distribution of Income and Levels of Living” and it was set up in 1960 to find an answer to the question that who was benefitted by the first and second five year plans, as there was no substantial increase in the per capita income of the people.

73 The Commissions of Inquiry Act 1952, a Monopolies Inquiry Commission was established in 1964. This commission was headed by Justice K.C. Dasguta and so also known as Dasgupta
The MRTP\textsuperscript{74} Act conceived and legislated more than 30 years ago, was a consequence of “Command-and-Control” policy approach of the Government.

There is an old saying that “Every coin has two sides.” This old adage applies properly on the “Command-and-Control” or “License Raj” regime. The consequences of planned and controlled economy were that there exists no healthy competition in the Indian economy. There was no incentive for cost reduction. There was clearly a climate for the existence of technical inefficiency.

Raghavan Committee report on Competition Law observed as follows: -
“...The absence of domestic competition, along with the unconditional protection from imports provided to domestic industry together with the other aspects of the licensing regime discussed above, fostered a high cost industrial structure which was domestically inefficient in the utilization of resources and not competitive abroad. In addition to the static mis-allocation and inefficient utilization of resources, the system was also dynamically inefficient insofar as it was not likely to encourage technical change. On the other hand, a competitive market structure with ‘right’ prices would have promoted a dynamic, efficient, productive and competitive industrial sector. Competitive financial sectors ensure better utilization of scarce financial resources and have had a positive impact on the productivity of industrial sector\textsuperscript{75}.”

Until the enactment of the Competition Act 2002 (Competition Act), restrictive business practices were regulated under the Monopolies and Restrictive Trade Practices Act 1969 Act. The Act 1969 reflected the socialist mindset of the Indian government at the time, and was designed to prevent the concentration of economic power in the hands of a few.

However, with the liberalisation of the Indian economy that began in the 1990s, the 1969 Act became largely redundant. The Indian government repealed the 1969 Act and replaced it with a new law that was better suited to the rapidly changing economic

\textsuperscript{74} The Ministry of Corporate Affairs, Government of India vide Notification dated August 28, 2009 w.e.f. from September 1, 2009, repealed the Monopolies and Restrictive Trade Practices Act, 1969.

\textsuperscript{75} D.P. Mittal Competition Law & Practice, P-1.1, Taxmann Publishers, New Delhi 2012
situation. Consequently, the Competition Act was enacted to promote and sustain competition in the markets and is now the primary anti-trust law in India.

Competition is not defined in law but is generally understood to mean the process of rivalry to attract more customers or enhance profit or both. Competition law deals with market failures on account of restrictive business practices in the market. Restrictive business practices can be of many kinds and include inter-alia agreements to restrict competition, cartelization, predatory pricing, tie-in sales, re-sale price maintenance, abuse of dominance etc. The history of competition law is usually traced back to the enactment of Sherman Act in 1890 in the US. This act was directed against the power and predations of the large trusts formed in the wake of the Industrial Revolution where a small control group acquired and held the stock of competitors, usually in asset, and controlled their business. Gradually, competition law came to be recognized as one of the key pillars of a market economy. This recognition led to enactment of competition law in many countries, including developing countries, and the number now stands at around

2.2 COMPETITION ACT, 2002

In today’s dynamic world when local companies are going global it is increasingly needed to be at the top. Any company will not survive if it does not compete. Case in point, the mills which were once a backbone of Mumbai economy, are completely decimated. Thus it was felt for a need of a comprehensive competition act. The Monopolies and Restrictive Trade practices act 1969 had become obsolete. There was a need of competition act keeping in mind the ever-changing dynamics both with and outside the country. However it is important to note that competition can also sow the seed of its own destruction i.e. when encouraged to compete, successful entrepreneurs may achieve positions where they are able to prevent others from competing and there by damage the process as a whole. Therefore the primary of competition law is to remedy some of the situations where the activities of one firm or two lead to the breakdown of the free market system, or to prevent such a breakdown by laying down rules by which businesses can rival with each other. Thus competition laws strive to achieve two things. The first, ensure that wherever competition already exists, it would deliver the goods efficiently. Thus it defines rules for the

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76 The history of competition law is usually traced back to the enactment of Sherman Act in 1890 in the US
firms to compete in the market place. Secondly, wherever competition doesn’t already exist, it would be encouraged to exist. Competition Act 2002 seeks to ensure fair competition in India by prohibiting trade practices which cause appreciable adverse effect on competition in markets within India and for this purpose provides for establishment of a quasi-judicial body to be called the competition commission of India which shall also undertake competition advocacy for creating awareness and imparting training on competition issues. The act aims at curbing negative aspects of competition through the medium of CCI.

India’s anti-trust law\footnote{Legislation enacted by the federal and various state governments to regulate trade and commerce by preventing unlawful restraints, price-fixing, and monopolies, to promote competition, and to encourage the production of quality goods and services at the lowest prices, with the primary goal of safeguarding public welfare by ensuring that consumer demands will be met by the manufacture and sale of goods at reasonable prices.} is embodied in the Competition Act, 2002 (amended by the Competition Amendment Act, 2007) and became fully operational from 1 June 2011 when the provisions regulating mergers and acquisitions were notified. While competition advocacy was notified in 2003, the provisions regulating anti-competitive agreements and abuse of dominance were notified with effect from 20 May 2009. Both the Competition Commission of India (CCI) (which administers the law) and the Competition Appellate Tribunal (CAT) are operational.

\textbf{2.2.1. OBJECTIVES OF THE COMPETITION ACT 2002:}

- Establish a Commission to prevent practices having adverse effect on competition
- Promote and sustain competition in markets
- Protect the interests of consumers
- Ensure freedom of trade in the Indian markets

\textbf{2.2.2. JURISDICTION OF THE COMPETITION ACT 2002}

The Act also has a jurisdiction beyond the geographical boundaries of India\footnote{The Act was brought into force not only to regulate anti-competitive practices in India but also to protect Indian interests beyond its territorial boundaries. Section 32 rightfully establishes a balance between India’s sovereignty and its limited extra-territorial powers.}. The competition commission of India has the power to enquire into an agreement, abuse of dominant position or combination, if it has or is likely to have an appreciable adverse effect on competition in the relevant market in India, notwithstanding that

1. An agreement has entered outside India;
2. Any party to such agreement is outside India
3. Any enterprise abusing the dominant position is outside India
4. Any party to combination is outside India
5. A combination has taken place outside India
6. Any other matter or practice or action arising out of such
7. Agreement or dominant position is outside India

Since its introduction in May 2009, the Indian anti-trust regulator, the Competition Commission of India (CCI), has been fairly pro-active in its enforcement endeavours. The current anti-trust regime in India and outlines the CCI's approach to handling cases under the Competition Act 2002 since its inception, particularly in relation to anti-competitive agreements, cases of abuse of dominance, penalties, and merger control.

The Competition Act regulates three types of practices:

- Anti-competitive agreements\(^79\).
- Abuse of a dominant position.
- Combinations (mergers, acquisitions and amalgamations).

### 2.2.3 ANTI-COMPETITIVE AGREEMENTS

The Competition Act is more heavy-handed with cartels than the 1969 Act which now prohibits horizontal and vertical anti-competitive agreements. Horizontal agreements\(^80\) the MRTP Act 1969 the CCI is not required to prove anti-competitive intent or effects to condemn agreements that:

- Fix prices.
- Limit or control production, supply, markets, technical development, investment or the provision of services.
- Share markets or sources of production or provision of services by allocating geographic areas, types of goods or services or number of customers.

Directly or indirectly result in bid rigging or collusive bidding.

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\(^79\) Sections 3 and 4. These relate to anti-competitive agreements (section 3) and abuse of a dominant position (section 4) and came into force in May 2009.

\(^80\) An agreement between competing businesses operating in the same economic sphere in which information on pricing, technology, and products is shared to create greater efficiencies and market advantages. Horizontal agreements that lead to price fixing and limiting competition violate anti-trust laws. Read more.
Vertical agreements\textsuperscript{81} are therefore only considered anti-competitive if they cause, or are likely to cause, an appreciable adverse effect on competition in India. The CCI also appears to be:

- Leaning towards a light-touch approach on vertical restraints.
- Open to accepting legitimate business justifications if exclusivity provisions are imposed in the context of vertical agreements.

\textbf{2.2.4 ABUSE OF DOMINANCE:}

The Competition Act, 2002 (the Act) prohibits any agreement which causes, or is likely to cause, appreciable adverse effect on competition in markets in India. Any such agreement is void. Cartels are agreements between enterprises\textsuperscript{82} (including association of enterprises) not to compete on price, product (including goods and services) or customers. The objective of a cartel\textsuperscript{83} is to raise price above competitive levels, resulting in injury to consumers and to the economy. For the consumers, cartelization results in higher prices, poor quality and less or no choice. A cartel is said to exist when two or more enterprises enter into an explicit or implicit agreement to fix prices, to limit production and supply, to allocate market share or sales quotas, or to engage in collusive bidding or bid-rigging in one or more markets.

\textbf{2.3 ABUSIVE CONDUCT}

The Competition Act sets out the types of conduct that will be considered abusive if carried out by a dominant enterprise. These include:

\textsuperscript{81} Section 3(1) of the Competition Act of India ("Indian Act") states that undertakings (or persons) or associations of undertakings (or persons) are prohibited from entering into agreements in respect of the production, supply, distribution, storage, acquisition, control etc of goods or services, which cause or are likely to cause an Appreciable Adverse Effect on Competition ("AAEC") in India.

\textsuperscript{82} Enterprise is defined in section 2 (h) of the Act as under: “Enterprise means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition, control or articles of goods or services, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defense and space”.

\textsuperscript{83} Cartel is defined in section 2 (c) of the Act as under; “Cartel” includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services;
• Imposing unfair or discriminatory conditions or prices in the purchase or sale of goods/services.
• Limiting production/supply of goods or technical development, therefore denying access to the market.
• Using dominance in one relevant market to enter into or protect another relevant market.

However, the Competition Act does not provide guidance on:

• What constitutes an unfair/discriminatory price.
• When certain conduct will result in a denial of market access.

The general scheme of the Competition Act is based on whether or not certain agreements and/or conduct cause, or are likely to cause, an appreciable adverse effect on competition in India (the effects doctrine). One would therefore assume there must be an assessment of possible pro- and anti-competitive outcomes of the conduct in question. The Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government. The Appellate Tribunal shall have, for the purposes of discharging its functions under the Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908). Every order made by the Appellate Tribunal shall be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein. If any person contravenes, without any reasonable ground, any order of the Appellate Tribunal, he shall be liable for a penalty of not exceeding rupees one crore or imprisonment for a term up to three years or with both as the Chief Metropolitan Magistrate, Delhi may deem fit

2.4 UNFAIR TRADE PRACTICE:

The concept of Unfair Trade Practice draws a parallel from the previously applicable Monopoly Restrictive Trade Practice (MRTP) Act, 1969 which has now been replaced by the Competition Act, 2002. Section 36A of the erstwhile Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act), where 'unfair trade practice' was defined as a trade practice, which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any services adopts any unfair method or unfair or deceptive practice including oral, written or visible misrepresentations regarding standard, quality, status, condition usefulness and price of goods or services; false warranty, guarantee or promise regarding goods or services;
disparaging of goods and services of another person; and false advertising and misrepresenting with regard to the gifts, prizes and offers in sale etc. But consequently, in the current Competition Act, there is no definition for the concept of unfair trade practices. In this situation it will be wrong to say that the concept is completely ignored, and hence it just has to be implicit that instead it is now categorized under other terms such as False Representation, False Offer, Price Scheme, Non-Compliance of prescribed standard, Hoarding etc of the Competition Act 2002.

Therefore, it is apparent that there is a huge distance concept of Unfair Trade Practice as it was defined under the now-abolished Monopolies and Restrictive Trade Practices (MRTP) Act but finds no mention in the new Competition legislation. So it solely depends on the Consumer Protection Act for clarity of this term.

The concept of Unfair Trade Practice in the 2011 Amendment Bill there is also an addition of three new clauses in the definition.

a) Failure to provide a bill, cash-memo or a receipt to a consumer will be deemed an unfair trade practice.

b) Failure to take back the goods or withdraw the services within a period of 30 days after the receipt of the goods by the consumer.

c) Disclosure of confidential personal information

So in this way, the act of failing to issue a bill, cash memo or a receipt would also constitute an Unfair Trade Practice and would in turn give the consumer a right to seek remedy for violation of such a right, and this privilege or protection was not given to the consumers earlier. The 2011 amendment also guarantees a right of return to the consumer and makes violation of this right an Unfair Trade Practice.

The changes that are proposed to be made to the term, but to what end will they be effective. For this we need to look into the requirement for such a change and the need for which can be understood through the case of *Akhil Bhartiya Upbhokta Congress v. Aggarwal Jewellers* where the respondent-jeweler issued cash memo which stated that in case of return of any of the products, only 80% value of the price will be returned. This consumer raised an objection to this condition, but the State

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84 Section 36A Monopoly Restrictive Trade Practice (MRTP) Act, 1969
85 Referred to http://cci.gov.in/images/media/ ResearchReports/SanchitInt260811.pdf, last visited 23 April 2014
Commission could not disallow the respondent-jeweler from having such a condition as there was no law which restricted this. But according to the proposed amendment, if the trader refuses or restricts the right to return the good or stops the service within 30 days, he would be liable for carrying on an unfair trade practice. Therefore, a requirement to improve the protection granted to consumers against unfair trade practices is gauged herein, which may be achieved by providing a wider scope to the term as proposed by the amendment.

2.5. UNFAIR TRADE PRACTICES IN COMPETITION ACT

Section 36A of erstwhile Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act) ‘unfair trade practice’ (UTP) was defined as a trade practice, which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any services adopts any unfair method or unfair or deceptive practice including oral, written or visible misrepresentations regarding standard, quality, status, condition usefulness and price of goods or services; false warranty, guarantee or promise regarding goods or services; disparaging of goods and services of another person; and false advertising and misrepresenting with regard to the gifts, prizes and offers in sale etc. But UTP’s are not included in the Competition Act.

An unfair trade practice means a trade practice, which, for the purpose of promoting any sale, use or supply of any goods or services, adopts unfair method, or unfair or deceptive practice. Any practice that permits the hoarding or destruction of goods, or refusal to sell the goods or provide any services, with an intention to raise the cost of those or other similar goods or services, shall be an unfair trade practice. The UTPs with reference to the consumers are now covered in the Consumer Protection Act, but the main problem is business to business transactions. They are neither covered by the Consumer Protection Act nor the Competition Act and there appears to be a vacuum. Now the term consumer’ under Consumer Protection Act does not include persons who buy goods or hire services for commercial purpose, whereas ‘consumer’ under Competition Act even includes persons who buy goods or hire services for commercial purpose. Thus majority of UTP’s come under the purview of

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88 The MCA has now taken up the matter with the anti-competitive practices watchdog and has asked it to explore the possibility of incorporating the definition of unfair trade practices in the competition legislation.

89 Consumer Protection Act, 1986 is an Act of the Parliament of India enacted in 1986 to protect interests of consumers in India. It makes provision for the establishment of consumer councils and other authorities for the settlement of consumers’ disputes and for matters connected therewith.
Consumer Protection Act, but the main problem is with UTP’s which relate to business
to business transactions as they are no covered under both of these Acts. Thus it is
suggested that all UTPs which relate to business to business transactions whether or not
they involve competition issues should come within the Commission’s purview i.e. all
practices which are allegedly unfair trade practices but have no bearing on competition
in the market.

2.6 COMPETITION COMMISSION OF INDIA:

Competition Commission of India is a body of the Government of India
responsible for enforcing the Competition Act, 2002\(^90\) throughout India and to prevent
activities that have an adverse effect on competition in India. It was established on 14
October 2003. It became fully functional in May 2009.\(^91\) The Competition Act, 2002, as
amended by the Competition (Amendment) Act, 2007, follows the philosophy of
modern competition laws. The Act prohibits anti-competitive agreements, abuse of
dominant position by enterprises and regulates combinations (acquisition, acquiring of
control and Merger and acquisition), which causes or likely to cause an appreciable
adverse effect on competition within India.\(^92\)

The objectives of the Act are sought to be achieved through the Competition
Commission of India (CCI), which has been established by the Central Government
with effect from 14 October 2003. CCI consists of a Chairperson and 6 Members
appointed by the Central Government. It is 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 in the markets of India.
The Commission is also required to give opinion on competition issues on a reference
received from a statutory authority established under any law and to undertake
competition advocacy, create public awareness and impart training on competition
issues.

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

\(^90\) The Competition Act, 2002 was enacted by the Parliament of India and governs Indian competition
law. It replaced the archaic Monopoly and Restrictive Trade Practices Act, 1969. Under this
legislation, the Competition Commission of India was established to prevent activities that have an
adverse effect on competition in India[Section 7(1)].

\(^91\) "CCI formation". CCI. Retrieved 4 January 2013.

\(^92\) The Competition Act – Act No. 12 of 2003". Competition Commission of India. Retrieved 10
October 2012.
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.

To achieve its objectives, the Competition Commission of India endeavours to do the following:

- Make the markets work for the benefit and welfare of consumers.
- Ensure fair and healthy competition in economic activities in the country for faster and inclusive growth and development of economy.
- Implement competition policies with an aim to effectuate the most efficient utilization of economic resources.
- Develop and nurture effective relations and interactions with sectoral regulators to ensure smooth alignment of sectoral regulatory laws in tandem with the competition law. Effectively carry out competition advocacy and spread the information on benefits of competition among all stakeholders to establish and nurture competition culture in Indian economy.

India’s regulatory landscape continues to evolve with change being the only constant. It’s been a legislative journey from the command and control mindset that prevailed at the time of Licence Raj to a more modern regulatory regime with the objective of enhancing consumer welfare by sustaining competition in the marketplace. In this globalized era, the business activities in any part of the world can impact the Indian market, and vice versa. This process of integration will only grow in the future. The Competition Commission of India (CCI) is empowered to take cognizance of such anti-competitive effects in the Indian market.

The legislative mandate of the sector regulator is to focus on the industry concerns within the terms of licences and policies issued by the government; frame regulations and consultation papers based on domain knowledge; and address economic issues like fixation of tariffs and issues relating to licences. The objective of CCI is to play an overarching role as a market regulator across all sectors with the focus on anti-competitive behaviour of enterprises that may distort competition.

The idea to oversee deals exante before they are executed is to pre-empt combinations that could potentially have an adverse impact on competition in the relevant market. The analysis of competition concerns in any market invariably require an assessment of market power to see if the market dynamics would allow the parties to
concentrate and deny market access to new entrants. Competition authorities intervene only for prevention of market failures, restriction or removal of anti-competitive practices, and promotion of public interest.

Commenting on the perceived conflict between CCI and sectoral regulators, CCI chairman Ashok Chawla\(^93\) says “…. broadly, the market regulator is a generalist while the sector regulator is a specialist. It is a misconception that when there are sector regulators, there isn’t the need for another (market) regulator…” While both competition authorities and sector regulators share the common goal of protecting public interest and play complementary roles in fostering competitive markets and safeguarding consumer welfare, they employ different approaches and have different perspectives on competition matters.

The starting point, however, is for both to try and appreciate the difference between the technical domain of the sector regulators and anti-competitive behaviour within the domain of competition authorities. This would help in delineating the roles of the two regulatory bodies. The chairperson of the Competition Appellate Tribunal, Justice V.S. Sirpurkar\(^94\), believes that the success of the competition regime lies in the benefit reaching the common man. The shift from the previous competition regime to the current one is from structure to conduct and from rule of law to rule of reason. To enable this task, robust powers are granted to CCI in terms of enhanced authority, penalizing provisions, and a dedicated appellate authority. A competition law expert can test all haphazard ways of commercial life to iron out distortions and market strategies that are not desirable for healthy competition. CCI is a new paradigm. No wonder the cartels in the cement industry and bid rigging in government procurements by liquid petroleum gas cylinder manufacturers and explosive manufacturers had not been brought to book till now. The Regulatory bodies are institutionalized for independent management of the sector. The Supreme Court has recently enunciated the important role of a regulator while considering the powers/competence of the Telecom Regulatory Authority of India. However, several high courts are failing to appreciate the role of regulators, particularly CCI, which was set up in 2009. Its jurisdiction is still questioned and high courts are brisk installing investigations initiated by them.

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\(^93\) Ashok Chawla, Chairperson, Competition Commission of India (CCI) is a distinguished civil servant with 40 years of experience in various sectors of the economy at Federal and State Government in India as well as at International Multilateral Agencies

\(^94\) V. S. Sirpurkar is a retired judge of the Supreme Court of India. He was appointed Supreme Court judge on January 12, 2007 and retired on August 21, 2011, completing a four-and-a-half-year tenure.
Competition Act, 2002 has been enacted to provide keeping in view of 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 carrying on by other participants in markets, in India, and for matters connected therewith or incidental thereto. Even though the Act has got the consent of the President in the year 2002 all the provisions of the Act has not made effective from the year 2002. The constitution of the Competition Commission of India has been challenged before the Court. The Government brought amendments to the constitution of Competition Commission of India during the year 2007 and the provisions relating to the commission came into effect from 12th October, 2007.

With effect from such date as the Central Government may, by notification appoint, there shall be established, for the purposes of this Act a Commission to be called 'Competition Commission of India\textsuperscript{95}'. The Commission shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both moveable and immovable and to contract and shall, by the said name, sue or to be sued. The head of the Commission shall be at Delhi.

\textsuperscript{95} The Competition Commission of India (CCI), which has been established by the Central Government with effect from 14th October 2003
COMPOSITION:

The Commission shall consist of a Chairperson and not less than two and not more than six other members to be appointed by the Central Government. The Chairperson and other members of the Commission shall be appointed by the Central Government from a panel of names recommended by a committee. The Chairperson and every other member shall be a person of ability, integrity and standing and who has special knowledge of, and such professional experience of not less than fifteen years in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs of competition matters, including competition law and policy, which in the opinion of the Central Government, may be used to the Commission. The Chairperson and other members shall be the whole time members.96

The Chairperson and every other member shall hold office as such for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment. The Chairperson or other members shall not hold office as such after he has attained the age of sixty five years. A vacancy caused by the resignation or removal of the Chairperson or any other member or by death or otherwise shall be filled by fresh appointment. In the event of the occurrence of a vacancy to the office of the Chairperson by reason of his death, resignation or otherwise, the senior most member shall act as the Chairperson, until the date on which a new Chairperson, appointed and enters upon his office. When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior most member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes the charge of the functions.

The Chairperson and other members shall not, for a period of two years from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any enterprise which has been a party to a

96 Subs. by Competition (Amendment) Act, 2007 for ;
(1) The Commission shall consist of a Chairperson and not less than two and not more than ten other Members to be appointed by the Central Government: Provided that the Central Government shall appoint the Chairperson and a Member during the first year of the establishment of the Commission.
(2) The Chairperson and every other Member shall be a person of ability, integrity and standing and who has been, or is qualified to be a judge of a High Court, or, has special knowledge of, and professional experience of not less than fifteen years in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which, in the opinion of the Central Government may be useful to the Commission.
(3) The Chairperson and other Members shall be whole-time Members.”
proceeding before the Commission under this Act.\footnote{Subs. by Competition (Amendment) Act, 2007 “The Chairperson and other Members shall be selected in the manner as may be prescribed.”} The Commission shall meet at such times and such places, and shall observe such rules of procedure in regard to the transaction of business of meeting as may be provided by regulations. All questions which come up before any meeting of the Commission shall be decided by a majority of the Members present and voting, and in the event of equality of votes, the Chairperson or in his absence, the Member presiding shall have a second or casting vote. 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. Any statutory authority, may, suo motu, make such a reference to the Commission. On receipt of such reference, the Commission shall give its opinion, within sixty days of receipt of such reference, to such statutory authority which shall consider the opinion of the Commission and thereafter, gives its findings recording reasons therefore on the issues referred to in the said opinion.

The provisions of Sec. 19 give power to the Commission for the inquiry into certain agreements and dominant position of enterprises. Sec. 26 deals with the procedure for inquiry under Sec. 19. Sec. 27 deals with the orders by Commission after inquiry into agreement or abuse of dominant position. Sec. 28 deals with the division of enterprise enjoying dominant position by the order of Commission. The provisions of Sec. 20 give power to the Commission for the inquiry into combinations. Sec. 29 of the Act deals with the procedure for investigation of combinations. Sec. 31 deals with the orders by Commission on certain combinations. Sec. 39 deals with execution of orders of Commission imposing monetary penalty. The power to inquire in accordance with the provisions of this Act into such agreement or abuse of dominant position or combination 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.

Where during an inquiry, the Commission is satisfied that an act in contravention of Sec. 3(1) or Sec. 4(1) or Sec. 6 has been committed and continues to be committed or that such act is about to be committed, the Government may, by order, temporarily restrain any party from carrying on such act until the conclusion of such
inquiry or until further orders, without giving notice to such party, where deems it necessary\(^{98}\).

In discharge of its functions, the Commission shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Commission shall have the powers to regulate its own procedure. The Commission shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, while trying a suit in respect of the following matters:

1. Summoning and enforcing the attendance of any person and examining him on oath;
2. Requiring the discovery and production of documents;
3. Receiving evidence on affidavit;
4. Issuing commissions for the examination of witnesses or documents;
5. Requisitioning, subject to the provisions of Sec. 123 and 124 of the Indian Evidence Act, 1872 any public record or document or copy of such record or document from any office;

The Commission may call upon such experts, from the fields of economics, commerce, accountancy, international trade or from any other disciplines it deems necessary to assist the Commission in the conduct of any inquiry by it.

\(^{98}\) Subs. by Competition (Amendment) Act, 2007 for “Power to grant interim relief”

Subs. by Competition (Amendment) Act, 2007 for:

(1) Where during an inquiry before the Commission, it is proved to the satisfaction of the Commission, by affidavit or otherwise, that an act in contravention of sub-section (1) of section 3 or sub-section (1) of section 4 or section 6 has been committed and continues to be committed or that such act is about to be committed, the Commission may, by order, grant a temporary injunction restraining any party from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to the opposite party, where it deems it necessary.

(2) Where during the inquiry before the Commission it is proved to the satisfaction of the Commission by affidavit or otherwise that import of any goods is likely to contravene subsection (1) of section 3 or subsection (1) of section 4 or section 6, it may, by order, grant a temporary injunction restraining any party from importing such goods until the conclusion of such inquiry or until further orders, without giving notice to the opposite party, where it deems it necessary and a copy of such order granting temporary injunction shall be sent to the concerned authorities.

(3) The provisions of rules 2A to 5 (both inclusive) of Order XXXIX of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall, as far as may be, apply to a temporary injunction issued by the Commission under this Act, as they apply to a temporary injunction issued by a civil court, and any reference in any such rule to a suit shall be construed as a reference to any inquiry before the Commission.
The Commission may direct any person-

I. To produce before the Director General or the Secretary or an officer authorized by it, such books or other documents in the custody or under the control of such person so directed as may be specified or described in the direction, being documents relating to any trade, the examination of which may be required for the purposes of this act;

II. To furnish to the Director General or the Secretary or any other Officer authorized by it, as respects the trade or such other information as may be in his possession in relation to the trade carried on by such person, as may be required for the purposes of this Act.

With a view to rectifying any mistake apparent from the record, the Commission may amend any order passed by it under the provisions of the Act. The Commission may make-

- An amendment on its own motion;
- An amendment for rectifying any such mistake which has been brought to the notice by any part to the order. The Commission shall not, while rectifying any mistake apparent from record amend substantial part of its order passed under this provisions of this Act.

A person or an enterprise or the Director General may either appear in person or authorize one or more Chartered Accountants or Company Secretaries or Cost Accountants or Legal practitioners or any of his or its officers to present his or its case before the Commission.
The competition commission of India is being guided by the following principles in its approach to its work:

1. To be in line with markets; have good understanding of market forces.
2. To minimize costs of compliance by enterprises and cost of enforcement by Commission
3. To maintain confidentiality of business information; to maintain transparency in Commission’s own operation
4. To maintain a consultative approach.
5. To be a professional body, equipped with requisite skills.

2.7 COMPETITION APPELLATE TRIBUNAL

The Competition Appellate Tribunal is a statutory organization established under the provisions of the Competition Act, 2002 to hear and dispose of appeals against any direction issued or decision made or order passed by the Competition Commission of India. The Appellate Tribunal shall also adjudicate on claim for compensation that may arise from the findings of the Competition Commission of India or the orders of

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99 Under sub-sections (2) and (6) of section 26, section 27, section 28, section 31, section 32, section 33, section 38, section 39, section 43, section 43A, section 44, section 45 or section 46 of the Competition Act, 2002
the Appellate Tribunal in an appeal against any findings of the Competition Commission of India100 and pass orders for the recovery of compensation101.

The Central Government has set up the Appellate Tribunal on 15th May, 2009 having its Headquarter at New Delhi. Hon’ble Dr. Justice Arijit Pasayat, former Judge of Supreme Court, has been appointed as the First Chairperson of the Appellate Tribunal. Besides, the Chairperson, the Appellate Tribunal shall consist of not more than two Members to be appointed by the Central Government. The Chairperson of the Appellate Tribunal shall be a person, who is, or has been a Judge of the Supreme Court or the Chief Justice of a High Court.

A Member of the Appellate Tribunal shall be a person of ability, integrity and standing having special knowledge of, and professional experience of not less than twenty-five years in, competition matters, including competition law and policy, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which in the opinion of the Central Government, may be useful to the Appellate Tribunal. The Chairperson or a Member of the Appellate Tribunal shall hold office for a term of five years and shall be eligible for re-appointment. Provided that no Chairperson or other Member of the Appellate Tribunal shall hold office after he has attained the age of sixty-eight years or sixty-five years respectively.

Every appeal shall be filed within a period of 60 days from the date on which a copy of the direction or decision or order made by the Competition Commission of India is received and it shall be in the prescribed form and be accompanied by the prescribed fees. The Appellate Tribunal may entertain an appeal after the expiry of the period of 60 days if it is satisfied that there was sufficient cause for not filing it within that period.

2.8 THE COMPETITION (AMENDMENT) ACT, 2007:

The amendment was passed on 24 September 2007 to amend the Competition Act, 2002 (the Act). Amendments relating to composition of Competition Commission of India (CCI), establishment of Competition Appellate Tribunal, imposing of penalty and other administrative powers/ changes etc. have been brought into effect from 12

100 Under section 42A or under sub-section (2) of section 53Q of the Act
101 Under Section 53N of the Act
October 2007/20 December 2007. Besides the above, following amendments have also been made.

- Provisions relating to abuse of dominant position extended to 'group' in addition to 'enterprise'.
- The financial limits for attracting provisions relating to 'combination' modified.
- For entering into a proposed 'combination', notice to the CCI shall be issued mandatorily as against earlier requirement of optional notice.
- Competition Commission to issue its order within 210 days from making of the application.

### 2.9 The Competition (Amendment) Act, 2009:

This was done to amend section 66 of the competition act and this section was amended to provide for continuation of the MRTP commission for 2 years to deal with the pending cases under the MRTP act and to empower Competition commission of India to deal with the cases under the MRTP act and pending Unfair Trade Practice cases to stand transferred to the National Commission establishment under the consumer protection act, 1986. Administration and enforcement of the competition law requires an administrative set up. The administrative set up should be favorable for the administration of competitive policy. The administrative setup should take a proactive stand to be specified and adopted to promote competition by enabling free and fair competition. The CCI in the Competition Act has been entrusted with the following basic conditions

A) Administration and enforcement of competition law and competition policy to enable economic efficiency and consumer welfare

B) Involvement proactively in government policy formulation to ensure that markets remain fair, free open flexible and adaptable.

After taking all the relevant factors into account in a given statute, there should be still some principles on which one can arrive at a conclusion on the effect of the anti-competitive conduct or practice on competition. The “rule of reason’ approach

102 The objectives of competition policy in India are the creation of an active competitive environment and to aid and abet the process of creating globally competitive firms with enhanced investment and technological capabilities. To achieve these objectives, the government will need to play a proactive role.
weighs the reasons of a certain action taken and the economic benefits and costs of that action before coming to a judgment. Under the rule of reason, the effect on competition is found on the facts of a particular case, and its effect on the market condition, and existing competition including the actual or probable limiting of competition in the relevant market\textsuperscript{103}. If the indication is very strong and there are no obvious efficiencies from the agreement and no good explanation that the agreement is the response of market or is helping to deliver something better or at lower prices, there is a presumption of anti-competitive effects and the defendant must come forward to show that there is no market harm. If there is no presumption, the plaintiff must produce more evidence of market power or its increase

\textit{Per se,} is a Latin phrase meaning —in itself —in legal terms it basically means that the courts will regard a certain action to always be harmful and therefore it must only be proved that the defendant has committed the action to find him guilty.

2.10 THE COMPETITION (AMENDMENT) BILL, 2012

Competition law in India is due to undergo a massive change in the near future. The Competition (Amendment) Bill 2012 (Bill), which is pending in the Indian Parliament, will introduce some fairly substantial amendments to the Competition Act. In particular, the Bill focuses on a few key areas:

- Introducing specific threshold levels for pre-merger notification, which could mean a sector-wise approach.
- Introducing the concept of "joint" or "collective" dominance.
- Extending the power of "search and seizure" of the Director General to cover dawn raids.
- Giving parties an opportunity to be heard on the issue of quantum of penalty after a contravention has been established.

The introduction of sector-specific thresholds for pre-merger notification is likely to have two consequences:

- Thresholds lower than the ones currently specified would deviate from the accepted principle that transactions below a certain size are unlikely to cause any appreciable adverse effect on competition.

\textsuperscript{103} The contours of the traditional “rule of reason” inquiry have remained largely unchanged since they were first defined in \textit{Chicago Board of Trade v. United States}. 
Particularly low thresholds could end up defeating the *de minimis*\(^{104}\) exception. Another area of concern is "joint" or "collective" dominance, which remain undefined. The possibility of scrutiny under both (vertical agreements)\(^{105}\) and (abuses of dominance)\(^{106}\) of the Competition Act, as well as the increased cost of compliance, are worrying. On the plus side, the possibility of dawn raids by the Director General will force businesses to strengthen their in-house competition compliance training, and giving parties the right to be heard on the quantum of a penalty is likely to bring relief to enterprises under investigation.

**2.11 COMPETITION ADVOCACY:**

The Competition Advocacy\(^{107}\) means (1)The Central Government may, in formulating a policy on competition (including review of laws related to competition) or on any other matter, and a State Government may, in formulating a policy on competition or on any other matter, as the case may be, make a reference to the Commission for its opinion on possible effect of such policy on competition and on the receipt of such a reference, the Commission shall, within sixty days of making such reference, give its opinion to the Central Government, or the State Government, as the case may be, which may thereafter take further action as it deems fit.

(2) The opinion given by the Commission under sub-section (1) shall not be binding upon the Central Government or the State Government, as the case may be, in formulating such policy.

(3) The Commission shall take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues. “(1) In formulating a policy on competition (including review of laws related to competition), the Central Government may make a reference to the Commission for its opinion on possible effect of such policy on competition and on receipt of such a reference, the Commission shall, within sixty days of making such reference, give its opinion to the Central Government, which may thereafter formulate the policy as it deems fit”\(^{108}\)

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\(^{104}\) The *De Minimis* Notice defines, with the help of market share thresholds, what is not an appreciable restriction of competition under Article 101 of the Treaty on the Functioning of the European Union (TFEU) (ex-Article 81(1) of the Treaty Establishing the European Community).

\(^{105}\) sections 3(3) of Competition Act 2002

\(^{106}\) sections 4 of Competition Act 2002

\(^{107}\) Sec.49 of the Competition Act 2002

\(^{108}\) Section 49 of the Competition Act 2002
In line with the High Level Committee’s recommendation\textsuperscript{109}, the Act extends the mandate of the Competition Commission of India beyond merely enforcing the law (High Level Committee, 2000). Competition advocacy creates a culture of competition. There are many possible valuable roles for competition advocacy, depending on a country’s legal and economic circumstances. The Regulatory Authority under the Act, namely, Competition Commission of India (CCI), in terms of the advocacy provisions in the Act, is enabled to participate in the formulation of the country’s economic policies and to participate in the reviewing of laws related to competition at the instance of the Central Government. The Central Government can make a reference to the CCI for its opinion on the possible effect of a policy under formulation or of an existing law related to competition. The Commission will therefore be assuming the role of competition advocate, action pro-actively to bring about Government policies that lower barriers to entry, that promote deregulation and trade liberalisation and that promote competition in the market place.

The mandate of the Competition Commission of India (CCI) needs to extend beyond merely enforcing the Competition Law. It needs to participate more broadly in the formulation of the country’s economic policies, which may adversely affect competitive market structure, business conduct and economic performance. The CCI, therefore, needs to assume the role of competition advocate, acting proactively to bring about Government policies that lower barriers to entry, promote de-regulation and trade liberalization and promote competition in the market place. There is a direct relationship between competition advocacy and enforcement of Competition Law. The aim of Competition advocacy is to foster conditions that will lead to a more competitive market structure and business behaviour without the direct intervention of the Competition Law Authority\textsuperscript{110}, namely the CCI.

\textsuperscript{109} the High Level Committee’s on Competition law and policy in its report submitted to Government in May 2000 observed that the MRTP Act 1969 is limited in its sweep and in the present competitive milieu it fails to fulfill the need of Competition Act 2002.

\textsuperscript{110} A competition regulator is a government agency, typically a statutory authority, sometimes called an economic regulator, which regulates and enforces competition laws, and may sometimes also enforce consumer protection laws. In addition to such agencies there is often another body responsible for formulating competition policy.
1. CCI must develop relationship with the Ministries and Departments of the Government, regulatory agencies and other bodies that formulate and administer policies affecting demand and supply positions in various markets. These initiatives will encourage communication and a search for alternatives that are less harmful to competition and consumer welfare.

2. CCI should encourage debate on competition and promote a better and more informed economic decision making.

3. Competition advocacy must be open and transparent to safeguard the integrity and capability of the CCI.

4. Competition advocacy can be enhanced by the CCI establishing good media relations and explaining the role and importance of Competition Policy/Law as an integral part of the Government’s economic framework.

2.11.1 Competition Advocacy and creation of awareness about competition issues:

i) Undertake programmes, activities etc. for the promotion of competition advocacy and creation of awareness about competition issues in India and abroad.

ii) Constitute Advocacy Advisory Committee with a view to have expert and stakeholder participation and consultation, on continuous basis, to carry forward the agenda of competition advocacy and creation of awareness about competition issues.

iii) Develop and disseminate advocacy literature with a view to promote competition advocacy and create awareness about competition issues.

iv) Make extensive use of the media, both print and electronic, for promotion of competition advocacy and creation of awareness on competition issues, and convene media meets, issue press notes, arrange publication and dissemination of articles/news, release advertisements and undertake other publicity related activities on competition issues.

v) Interact with the organizations of stakeholders, academic community, sectoral regulators, Central and State Governments, Civil society and other organisations concerned with competition matters and encourage debate on competition and promote a better and more informed economic decision making.

vi) Conduct studies and market research for the purpose of competition advocacy and creation of awareness about competition issues.
vii) Take up the role of a competition advocate and proactively interact with the Central and State Governments and other bodies in legislative policy and other areas, such as, trade liberalization, economic regulation, state aids, disinvestments; to bring about policies that lower barriers to entry, promote de-regulation and trade liberalization and promote competition in the market place.

viii) Encourage the academic and professional institutions to include competition law and policy in the curricula administered by them.

ix) Encourage undertaking activities, programmes, studies, research work etc. relating to competition issues and may support such endeavours financially

2.11.2 Initiatives of the CCI

The Commission has been in past engaged in undertaking advocacy with ministries, regulators, state governments and other authorities. The Commission has given its opinion on the draft of Petroleum and Natural Gas Regulatory Bill, 2005; Warehousing (Development and Regulation) Bill, 2006; Indian Post Office (Amendment) Bill, 2007; The Shipping Trade Practices Bill, 2007;

The Commission has also given its views on regulatory policies and practices in the fields of banking, telecommunications and intellectual property rights. Presentations on Competition law and policy to Ministries. In pursuance of creating awareness among stakeholders the Commission has held a series of lectures, seminars and conferences dedicated to the various issues related to competition in the economy.

2.12 Extraterritorial Reach

The Act has extra-territorial reach. Its arm extends beyond the geographical contours of India to deal with practices and actions outside India which have an appreciable adverse affect on competition in the relevant market in India. The Competition Commission of India has the power to enquire into an agreement, abuse of dominant position or combination, if it has or is likely to have an appreciable adverse affect on competition in the relevant market in India, notwithstanding that, The above provisions are based on what is known as the ‘effects doctrine’. This doctrine implies that even if an action or practice is outside the shores of India but has an impact or effect on competition in the relevant market in India, it can be brought within the ambit of the Act, provided the effect is appreciably adverse on competition.

The implementation of the Act, however, ran into problems on the account of the composition of the CCI, the competition authority entrusted with the responsibility
of implementing the act. A writ petition filed in the Supreme Court challenged that the CCI is more of a judicial body having judiciary powers and why the Chairman of the Commission necessarily has to be a retired judge.

Therefore the Competition is the thrust on which any economy can survive. The proposed Law provides for a Competition fund, which shall be utilized for promotion of competition advocacy, prohibiting abuse of dominance, creating awareness about competition issues and training in accordance with the rules that may be prescribed. The MRTP Act 1969, had been in existence for more than three decades. Due to quite a few inadequacies in the MRTP Act there was a need to change it. With the ever-changing world dynamics and fierce competition the competition act is just a perfect blend for India. The aim to become a superpower by 2020 can be fulfilled with the stringent competition act. Fair and healthy competition is what we believe in. The new act is definitely a step in right direction by harmonizing the competition policy with international trade and policy. The multilateral cooperation is vital to the protection of competition. While trade liberalization, privatization, deregulation and the great potential for borderless anti-competitive behavior all help to remove trade barriers these trends can also enhance opportunities for cross border anti-competitive behavior.

The scope of competition policy is broad and essentially includes all government measures that directly influence the conduct and behavior of enterprises and structure of industry with the objectives of promoting efficiency and maximizing welfare. The objective of competition policy is to promote efficiency and maximum welfare. There are two elements of a competition policy; one is a set of regulatory pieces that enhance competition in local and national markets, give primary to market forces, allow entry and exit, reduce administrative control and minimize regulations. The other area of competition policy is a law to prohibit anti-competitive business as well as practices and regulate merger and acquisitions that might adversely impact competition.

The message is loud and clear that a well-planned exhaustive competition compliance program can be of great benefit to all enterprises irrespective of their size, area of operation, jurisdiction involved, nature of products supplied or services rendered and the same is essential for companies, its directors and the delegate key corporate executives to avoid insurmountable.