

The Competition (Amendment) Bill, 2023

April 1, 2023

In news—Lokasabha has passed the Competition (Amendment) Bill, 2023 recently.

Key features of the bill-

- One of the major changes in the amended law is that **it affords the Competition Commission of India (CCI) the ability to penalise entities found engaging in anti-competitive behaviour** based on their global turnover.
- So far, the penalties were decided as a percentage of erring entities' "relevant" turnover, which typically means their annual domestic turnover.
- While the **new provision on global turnover will not be exclusively applicable to tech companies**, they are likely to be the most aggrieved by it given the nature of their business which cuts across geographies.
- In the European Union, the penalty imposed on an entity for anti-competitive activity has been limited to 10 per cent of the overall annual turnover of the company. The 10 per cent limit can be based on the turnover of the group to which the company belongs if the parent of that group "exercised decisive influence over the operations of the subsidiary during the infringement period".
- The **definition of "turnover"** had been a widely debated subject in the competition law landscape, and it was in 2017 when the Supreme Court had fixed how it should be determined in such cases. On 8 May, 2017, in a landmark judgement, **the top court had upheld the principle of "relevant turnover" for determination of penalties in competition law contraventions.**
- In a case related to alleged contravention of the Competition Act, 2002 in the public procurement of

Aluminium Phosphide tablets by the Food Corporation of India, the **CCI had imposed a penalty at the rate of 9 per cent of the total turnover of the concerned tablet manufacturers**, Excel Corp. Care Limited, United Phosphorus Limited, and Sandhya Organic Chemicals Private Limited.

- **The Competition Appellate Tribunal (COMPAT) had however later said that the turnover will have to be “relevant” turnover, that is turnover derived from the sales of goods or services.**
- **Ultimately, the Supreme Court had held that the imposition of penalty adopting the criteria of “relevant turnover” will be more in tune with ethos of the Act and the legal principles** which surround matters pertaining to imposition of penalties.
- **The changes in the Competition (Amendment) Bill, 2023 afford the CCI a greater say in mergers and acquisitions** as entities will have to seek its approval in case a deal value is worth more than Rs 2,000 crore, and both the parties have a substantial business operation in India.
- **The CCI could also incentivise parties in ongoing cartel investigations** in terms of lesser penalty to disclose information regarding other cartels.
- **The bill has also reduced the time limit for approval of mergers and acquisitions** from the existing 210 days to 150 days.
- It seeks to **broaden the scope of anti-competitive agreements.**
- It **introduces deal value threshold** as an additional criterion for notifying M&As to capture killer acquisitions in digital markets which were hitherto falling below the notification criteria due to asset and revenue-light business models of new age companies.
- It **provide a limitation period of three years** for filing cases relating to anti-competitive agreements and abuse of dominant position.

- It introduces a settlement **and commitment framework**.
- It intends to deepen the scope of inter-regulatory consultations.
- It proposes to **incentivise parties in ongoing cartel investigations** in terms of lesser penalty to disclose information regarding other cartels (leniency plus).

Further

reading:

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