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**INTERACTIONS BETWEEN COMPETITION AUTHORITIES AND SECTOR REGULATORS –
Contribution from India**

- Session III -

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More documentation related to this discussion can be found at: oe.cd/icar.

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Interactions between Competition Authorities and Sector Regulators

- Contribution from India -

1. Introduction:

1. The wide-ranging economic reforms of the nineties laid the foundation for a new India. Marking a radical departure from the regime of ‘command and control’, the new industrial policy placed reliance on market forces. Guided by the objective of improving efficiency, the new policy regime recognised the need for subjecting Indian industry to the forces of competition. The reform measures altered the operating environment of Indian firms. There was a gradual dismantling of trade, investment and entry barriers, thus unleashing competitive forces. What followed was a story of unprecedented dynamism in Indian industry, which evolved from a frail entity insulated from the global economy into a strong and vibrant sector driving India’s economic growth.

2. The goal of the new economic order was to empower the ‘invisible hand’ of the market. However, liberalised markets cannot be presumed to be competitive per se. There may be distortions caused by vested interest groups, large monopolistic firms or groups of firms in concert, which break the link between the liberalised markets, productivity and innovation gains that they are believed to yield. Competition law and policy guide and moderate the influence of these visible hands, thereby strengthening the invisible hand of the market. Thus, competition law is essentially part of the larger framework for developing a free market economy.

3. The enactment of the Competition Act, 2002 (‘the Act’) and the establishment of the Competition Commission of India (CCI/‘the Commission’) were to lay the foundation of a competition ecosystem in the country. By protecting the process of competition and fair play in markets, the Act aims to ensure freedom of businesses to compete on merits. It promotes competition rather than curbing monopolies, which was previously the position under the Monopolies and Restrictive Trade Practices Act, 1969. Moreover, one important aspect of the Act is its competitive neutrality. All public sector enterprises as well as departments of the governments at the Centre and State, except for their sovereign functions as identified under Section 2(h), are enterprises under the Act. They can be enquired into for any alleged infringement of the Act.

4. However, competition is only one aspect of economic regulation. With its evolution into an increasingly market-driven economy, India also needed robust regulators at the sectoral level to deal with sector-specific matters, which are often technical in nature, to ensure that goals specific to the sector and serving the overall economic paradigm are met. Towards this end, ‘sectoral’ regulators were set up to monitor and regulate specific markets and perform functions such as regulating tariff rates, quality of product and process, granting of licence and licence fees, etc. The next section provides a brief snapshot of regulators at the sectoral level in India.

2. Some Major Sector Regulators in India:

5. In India, many sectors are regulated by sectoral regulators. In this section, we have identified the following regulators, whose legislative mandates have an interface with the area of competition.

2.1. Insurance Sector

6. The insurance sector covers the broad spectrum of financial and risk management activities and has several types of insurance products covering risk management of areas such as health risk, property risk, business risk, general risk, re-insurance risk, financing risk, etc.

7. Further, insurance companies, insurance brokers, consumers and companies dealing with investment activities primarily comprise the broad gamut of the insurance sector. Thus, core activities related to risk management are regulated by the Insurance Regulatory and Development Authority (IRDA), which is a sector regulator, but risk related to the investment of premium funds received from insured customers are, to some extent, regulated by the banking regulator (Reserve Bank of India; RBI) and the security market regulator (Securities and Exchange Board of India; SEBI).

8. Insurance Regulatory and Development Authority (IRDA): As per the IRDA Act, 1999, IRDA discharges under Section 14 the duty to regulate, promote and ensure orderly growth of the insurance business and re-insurance business; to issue to the applicant a certificate of registration, renew, modify, withdraw, suspend or cancel such registration for doing business related to insurance sector; to protect the interests of the policy holders in matters concerning assigning of policy, nomination by policy holders, insurable interest, settlement of insurance claim, surrender value of policy and other terms and conditions of contracts of insurance; to specify requisite qualifications, code of conduct and practical training for intermediary or insurance intermediaries and agents; to specify the code of conduct for surveyors and loss assessors; to promote efficiency in the conduct of insurance business; to promote and regulate professional organisations connected with the insurance and re-insurance business; to control and regulate the rates, terms and conditions that may be offered by insurers in respect of general insurance business not so controlled and regulated by the Tariff Advisory Committee under section 64U of the Insurance Act, 1938 (4 of 1938); to regulate investment of funds by insurance companies, etc.

9. CCI also enquires into activities of market participants in the insurance sector, such as insurance companies, re-insurance companies, insurance brokers, surveyors, etc., related to cartel, abuse of dominant position and mergers and acquisitions having turnover and assets values beyond a certain threshold.

10. Given the multidimensional role played by IRDA, there appears to be an interface between CCI and IRDA.

2.2. Banking Sector

11. The Banking Sector is regulated under the provision of the Banking Regulation Act, 1949 ('BR Act') and the Reserve Bank of India Act, 1934 ('RBI Act'). Under Section 19 of the BR Act, RBI indirectly controls the formation of subsidiary companies in India and outside India and also indirectly controls the merger and acquisitions of the business of banking companies including their subsidiaries. Section 44 A of the said Act empowers RBI to regulate mergers of banks.

12. As the monetary authority, RBI also regulates and monitors activities of banks, such as licencing norms for operating a bank, norms for loans and advances dealt by banks, currency and liquidity systems of the country, such as adopting monetary measures to control inflation rate, regulate forex flows and maintain and regulate the credit system of the country which, in turn, maintains the confidence of financial stakeholders.

13. CCI also enquires into the anti-competitive activities of banking companies, including stake holders operating in financial sectors which are not regulated by RBI. Under Sections 5 and 6, it also regulates the merger and acquisitions of banking companies which have turnover and assets value beyond the threshold provided for.

14. Given the multidimensional role played by RBI, there appears to be an interface between CCI and RBI.

2.3. Telecommunications Sector

15. Prior to the establishment of a regulatory authority in the telecommunications sector, the Government of India was directly controlling this sector. However, the government opened this sector for private players after 1991 and established the Telecom Regulatory Authority of India (TRAI) as the sectoral regulator.

16. Under Section 11 of the TRAI Act, 1997, TRAI makes recommendations, either *suo motu* or on demand from the government, related to issues of telecom licences, timing of licences, revocation of licences, suspension of licences, etc.; supervises technological improvement and measures to be adopted for technological improvement in the telephone service sector; endeavours measures to be adopted for the improvement of competition among telephone service providers; ensures compliance of terms and conditions of licences; maintains compatibility for seamless transmission of telecommunications; regulates rates and provisions of issues of inter-connectivity in the telecommunications sector; ensures effective compliance of Universal Service Obligations, etc.

17. TRAI, under said section, regulates competition issues among telephone service providers, and CCI also regulates competition issues under Sections 3 and 4 of the Competition Act.

18. Given the multidimensional role played by TRAI, there appears to be an interface between CCI and TRAI.

2.4. Securities Market Sector

19. The government established the Securities and Exchange Board of India (SEBI) in 1992 through a parliamentary law, Securities and Exchange Board of India Act, 1992 ('SEBI Act') for regulation of the securities market.

20. As per Section 11 of the SEBI Act, SEBI regulates the business of stock exchanges and any other security market in India; registers and regulates the business of stockbrokers, stock sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, merchant bankers, underwriters, portfolio managers, investment advisors and other market participants; registers and regulates the function of depositors, custodians of securities, foreign institutional investors, credit rating agencies, etc.; registers and regulates the activities of venture capital fund, mutual fund, collective investment schemes, etc.; prohibits unfair trade practices and insider trading; regulates substantial acquisition of shares and takeover of companies, etc.

21. Thus, SEBI regulates unfair trade practices, including competition issues and regulates substantial acquisition of shares and takeover of companies. CCI also regulates the competition issues of share market participants, including acquisition of shares and takeover of companies having value of turnover or assets beyond a certain threshold limit.

22. Given the multidimensional role played by the SEBI, there appears to be an interface between CCI and SEBI.

2.5. Petroleum and Natural Gas Sector

23. The government established the Petroleum and Natural Gas Regulatory Board (PNGRB) to regulate this sector. The Board was established under the Petroleum and Natural Gas Regulatory Board Act, 2006 ('PNGRB Act').

24. Section 11 of the PNGRB Act has enshrined duties and responsibilities on the Board to protect the interest of consumers by fostering fair trade and competition amongst the entities; to register

entities to market notified petroleum and petroleum products and natural gas, subject to the contractual obligations of the Central Government; to register entities to establish and operate liquefied natural gas terminals; to register entities to establish storage facilities for petroleum, petroleum products or natural gas exceeding such capacity as may be specified by regulations; to authorise entities to lay, build, operate or expand a common carrier or contract carrier; to declare pipelines as common carrier or contract carrier; to regulate through regulations, access to common carrier or contract carrier so as to ensure fair trade and competition amongst entities and, for that purpose, specify pipeline access code; to ensure adequate availability of notified petroleum, petroleum products and natural gas, etc.

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

2.6. Electricity Sector

26. The Electricity Act, 2003 provides for the establishment of regulators in the electricity sector, apart from other provisions, with an aim to attract more private participation in this sector. With the objectives to make the electricity sector self-sustainable, the Central Electricity Regulatory Commission (CERC) at the Central level and State Electricity Commissions (SERC) at the State levels were established.

27. As per Section 79 of the Electricity Act, 2003, the main functions of CERC are to regulate the tariff of generating companies owned or controlled by the Central Government; to regulate inter-State transmission, including tariff of transmission utilities; to regulate inter-State sale of power; and to aid and advise the Central Government in the formulation of tariff policy.

28. As per Section 86 of the Electricity Act, 2003, the main functions of SERC are to determine the tariff for electricity, wholesale, bulk, grid and retail; to determine the tariff payable for use of transmission facilities; to regulate power purchase and procurement process of transmission utilities, etc.

29. Thus, CERC/SERC as well as CCI regulate the competition related activities of enterprises operating in the electricity sector.

3. Relevance and Necessity for Interaction between Sector Regulators and Competition Authority:

3.1. Overlapping Legal Provisions

30. While CCI and sectoral regulators have been established with specific mandates, certain legal provisions in the respective legislations governing the regulatory framework blur the drawn lines and leave them open to interpretation.

31. For instance:

- Various provisions of the SEBI Act, 1992 direct it to prohibit unfair and fraudulent trade practices. It also regulates the acquisitions of shares and mergers.
- The Insurance Regulatory and Development Authority (IRDA) Regulations, 2016, authorises IRDA to regulate combinations in the insurance sector.
- Section 60 of the Electricity Act, 2003 confers powers over market dominance issues with the sector regulator. It also empowers the Central Electricity Regulatory Commission to “issue directions” to a licensee if it “enters into any agreement or

abuses its dominant position or enters into a combination which is likely to cause or causes an adverse effect on competition.”

- Section 44A of the Banking Regulations Act, 1949 provides for the provisions of merging banking companies and also authorises RBI to approve various mergers.
- The Petroleum and Natural Gas Regulatory Board Act, 2006 requires the Petroleum and Natural Gas Regulatory Board to “foster fair trade and competition.”
- The TRAI Act mandates TRAI to take measures to “facilitate competition” and “promote efficiency in the operation of telecommunications services.”

32. These regulatory overlaps give rise to potential issues of jurisdiction, which necessitate regular interaction between the competition authority and sectoral regulators to provide mutual clarity and understanding to deal with such issues as it may also help in curbing forum shopping.

33. Sector regulators formulate and monitor sector-specific regulations for the development of the sector in the long term. They assign significantly broad ranges of goals to develop the particular sector, induct technological development in the sector, continuously monitor the regulated entities, promote entries of market players, and take best-suited decisions in public interest, among other responsibilities. Sector regulators control the activities of regulated entities through regulation and continuous monitoring of the conducts of said entities.

34. On the other hand, CCI is a competition-specific regulator mandated to ensure the promotion and sustenance of competition in markets in India. It enforces the Competition Act, 2002 by investigating and penalising activities having appreciable adverse effect on competition, penalising enterprises abusing their dominance and regulating combinations. CCI applies the *ex-post* enforcement approach, except in case of merger review, while sector regulators apply *ex-ante* prescriptive approach. The end goal is to ensure high levels of competition in markets and regulate activities that harm competition.

35. Competition advocacy provision under Section 49 of the Act complements the statutory interface provisions for interacting between CCI and sector regulator.

36. In the end, both approaches—that of sectoral regulators and CCI—lead to the same end. However, for efficient use of regulatory resources and to provide clarity to businesses for the larger goal of ease of doing business, removal of ambiguities in the regulatory framework and procedure is important. Interactions between sectoral regulators and CCI will increase the synergies of regulatory resources and balance the abilities of regulatory capture.

4. The Indian Experience

37. The provisions of the Competition Act, 2002 mandate the way forward for the process of interactions with the sector regulator. Further, CCI has interacted with sector regulators on several occasions, and the Hon’ble Supreme Court of India has already settled the issue of jurisdictional overlap with sector regulators.

4.1. Provisions of the Competition Act, 2002 for Interactions with Sector Regulators

38. The Government of India recognised the significance of interactions between sector regulators and CCI while formulating the provisions of the Competition Act, 2002. Accordingly, specific sections were incorporated in the Act. Section 21 and 21A of the Act are reproduced herewith:

Section 21 of the Act:

“Reference by statutory authority.

(1) 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 proposed to take, is or would be, contrary to any of the provisions of this Act, then such statutory authority may make a reference in respect of such issue to the Commission.

Provided that any Statutory authority may, suo motu, make such a reference to the Commission.

(2) On receipt of a reference under sub-section (1), 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, give its findings recording reasons therefor on the issues referred to in the said opinion.”

Section 21 A of the Act:

“Reference by Commission.

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

Provided that the Commission may, suo motu, make such a reference to the statutory authority.

(2) On receipt of a reference under sub-section (1), the statutory authority shall give its opinion, within sixty days of receipt of such reference, to the Commission which shall consider the opinion of the statutory authority, and thereafter give its findings recording reasons therefor on the issues referred to in the said opinion.”

39. Further, Section 62 of the Act lays down that the provisions of the Competition Act, 2002 are in addition to, and not in derogation of, any other law, thereby underlining the spirit of inter-regulatory understanding while dealing with matters of overlap.

4.2. Provision of the Competition (Amendment) Bill, 2022 for Intensive Interactions with Sector Regulators (Pending before Parliament of India)

40. The Competition Law Review Committee was set up on 1st October 2018 to review the Act and the rules and regulations framed thereunder. The Committee was tasked with the responsibility to review and recommend a robust competition regime by taking the inputs of key stakeholders and suggesting changes in both the substantive and procedural aspects of the law.

41. The Review Committee submitted its report to the Government in July 2019. The Report suggested amendments in the Act and the subordinate legislations. The Competition (Amendment) Bill, 2022 was introduced in the Lok Sabha on 5th August 2022.

42. The Competition (Amendment) Bill, 2022 has proposed to broaden the scope of interaction between CCI and sector regulators.

43. The proposed Section 21 of the said bill provides that any statutory authority, in the course of a proceeding before it, may *suo motu* make a reference to CCI on any issue that involves any provision of the Competition Act, 2002 or is related to promoting the objectives of the Act.

44. Further, the proposed Section 21A of the said bill provides that CCI, in the course of a proceeding before it, may *suo motu* make a reference to a statutory authority on any issue that involves provisions of an Act whose implementation is entrusted to that statutory authority.

45. Thus, the said bill wishes to broaden the ambit of interactions between the sector regulators and CCI and also acknowledges the importance of such interactions.

4.3. Judicial Decision

46. The issue of jurisdiction of CCI vis-à-vis sectoral regulators in sector-specific cases has been taken up before courts in many cases. The courts have upheld the jurisdiction of CCI on competition issues; however, there are still some cases pending final adjudication.

47. In Civil Appeal No. 11843 of 2018 *CCI v. Bharti Airtel Limited & Others*, the Supreme Court of India delivered a verdict on the issue of jurisdiction of CCI in a case pertaining to the telecom sector, which is regulated by the sector regulator TRAI. In this case, CCI, acting on an information filed by telecom player RJio, ordered an investigation against the alleged cartelisation by incumbent telecom operators in denying points of interconnection to the new entrant RJio. The investigation order was challenged by the telecom operators at the Bombay High Court on grounds of jurisdiction. The Bombay High Court, by an order dated 21st September 2017, held that the powers of CCI are not sufficient to deal with the technical aspects associated with the telecom sector, which solely arise out of the TRAI Act and remained regulated.

48. CCI and RJio preferred an appeal before the Supreme Court. The Supreme Court, *vide* its ruling dated 5th December 2018, held that TRAI's functions include: (i) ensuring technical compatibility and effective interrelationship between different service providers; (ii) ensuring compliance of licence conditions by all service providers; and (iii) settlement of disputes between service providers. The SC noted that "[Jio's] disputes in this case touches upon these aspects." Further, the apex court observed that Jio itself had also specifically approached TRAI for settlement of these disputes. It was further noted that the specific purposes of the TRAI Act and Competition Act have to be kept in mind before deciding on jurisdiction; while CCI has the sole jurisdiction to address allegations of anti-competitive agreements and investigate against cartels, a comity has to be maintained between CCI and TRAI's roles in the present case. CCI's jurisdiction is not ousted insofar as the telecom sector is concerned but only pushed to a later stage in limited cases where a technical determination is pending before a sectoral regulator.

49. The Hon'ble Supreme Court observed that CCI is the experienced body in conducting competition analysis. CCI is more likely to opt for structural remedies which would lead the sector to evolve to a point where sufficient new entry is induced thereby promoting genuine competition. This specific and important role assigned to CCI cannot be completely wished away, and the comity between sectoral regulator and the market regulator is to be maintained.

Further, para 91 of said Judgement of Hon'ble Supreme Court states:

"91) The conclusion of the aforesaid discussion is to give primacy to the respective objections of the two regulators under the two Acts. At the same time, since the matter pertains to the telecom sector which is specifically regulated by the TRAI Act, balance is maintained by permitting TRAI in the first instance to deal with and decide the jurisdictional aspects which can be more competently handled by it. Once that exercise is done and there are findings returned by the TRAI which lead to the prima facie conclusion that the IDOs have indulged in anti-competitive practices, the CCI can be activated to investigate the matter going by the criteria laid down in the relevant provisions of the Competition Act and take it to its logical conclusion."

50. Considering the above judgement, it may be concluded that the Hon'ble Court has duly recognised the need for interaction between CCI and sector regulator and established the scope of interactions.

4.4. Specific Interactions

51. CCI has demanded expert opinion from the sector regulators on various occasions in the past. The details of a few cases are provided herewith:

- Consultation with the RBI in Case No. 08/2020 (Mr. Sampathrao Sudhakar v. Shriram City Union Finance Ltd. and others)

In an Information filed before CCI against a Non-Banking Finance Company (NBFC) alleging certain irregularities with respect to loans provided by such NBFC, which included imposition of unfair clauses, non-provision of copy of agreement, execution of loan agreement in non-vernacular, alleged violation of fair practices code guidelines issued by RBI, charging rate of interest higher than stipulated in the agreement, arbitration proceedings in breach of arbitration laws, etc. CCI sought the opinion of the sectoral regulator, namely, RBI, in exercise of its powers under Section 21A of the Act. RBI, pursuant to the reference made under Section 21A, shared vital information with CCI.

The case was closed by CCI under Section 26(2), as there existed no *prima facie* case.

- Consultation with the Central Registrar of Cooperative Societies in Case No. 12/2020 (Vardaan Agriculturist Development Cooperative Society Limited v. Deputy Commissioner & Deputy Registrar Cooperative), Saharanpur Division and others)

The information was filed by Vardaan Agriculturist Development Cooperative Society Limited against Deputy Commissioner and Deputy Registrar (Cooperative), Saharanpur Division, and Assistant Commissioner and Assistant Registrar (Cooperative), Muzaffarnagar, alleging that Deputy Commissioner and Deputy Registrar (Cooperative), Saharanpur Division, had issued a direction to Assistant Registrar (Cooperative), Muzaffarnagar, to issue directions to the District Cooperative Development Federation (DCDF) and Pradeshik Co-operative Federation (PCF) to not release or dispatch material to the Informant in the districts of Muzaffarnagar and Saharanpur in case KRIBHCO invoices its fertilisers to the Informant. Further, he had alleged that Deputy Commissioner and Deputy Registrar (Cooperative), Saharanpur Division, were not authorised to impose any limitations/restrictions on the business of the Informant and KRIBHCO under the provision of the Multi State Co-operative Societies Act, 2002.

The Informant had claimed to be a multi-state cooperative society established in 2005 under Section 7 of the Multi State Co-operative Societies Act, 2002. Considering the nature of the information and allegations, CCI had made a reference under Section 21A of the Act to the Joint Secretary (Cooperative) & Central Registrar, Department of Agriculture, Cooperation and Farmers Welfare, Ministry of Agriculture, Government of India ('Statutory Authority') to seek its opinion. The said statutory authority gave its opinion, *inter alia*, stating that, the Informant, being a multi-state cooperative society, comes under the jurisdiction of the Central Registrar of Cooperative Societies. However, the Registrar of Cooperative Society of the respective state, in furtherance of the principle and spirit of the cooperative sector, could give directions to any society in the state.

The said case was closed by CCI based on materials available on record.

- Consultation with the IRDA in Case No. 12/2019 (Indian Chemical Council v. GIC)

The Indian Chemical Council had filed Information against General Insurance Corporation of India (GIC), alleging that a circular dated 12th February 2019 was

issued by GIC to all insurance companies with whom it had entered into reinsurance treaties, notifying certain amendments to the method of calculating premium that the insurance companies needed to comply with, within the fire insurance segment. On account of such direction by GIC, the insurance companies, in the fire insurance segment, had charged premiums multiple times that of the existing premium.

CCI had decided to make a reference to IRDA (Statutory Regulator) in terms of the provisions of Section 21A of the Act for seeking its opinion on the issues raised/allegations made in the information. Opinion of the IRDA was also sought on “whether circular issued by GIC was violative of the provision of IRDA Guidelines for pricing or provision of any act, rule or regulation related to various insurance Acts”.

The said case was closed by CCI based on materials available on record.

- Consultation with TRAI in Case No. 32/2019/ (Ajinder Singh v. Vodafone Idea Ltd. and others)

Mr. Ajinder Singh, on behalf of Teleclub Alberta Ltd., filed Information against Vodafone Idea Limited, Reliance Jio Infocomm Limited, Airtel Limited and Sify Technologies Limited, alleging that, during the course of business, Indian telecom operators held a conference in Hawaii, USA, and decided to charge a standard rate of USD 0.0053 for inbound calls terminating on their network in India instead of the rates fixed by TRAI’s notifications, i.e., INR 0.30 per minute. The Informant had no option but to agree to these terms as all telecom operators provided the same rate.

CCI made a reference to TRAI under Section 21A of the Act for seeking TRAI’s opinion on the issues raised/allegations made. TRAI forwarded its opinion to CCI.

The CCI closed the case after considering all facts on record.

52. CCI and sector regulators have been organising meetings on topics of relevance, such as the Colloquium for the Chairpersons under forum of Indian Regulators. An interactive session between TRAI and CCI was also organised on topic of media ownership.

5. Challenges:

53. Given the statutory landscape of framework, there appears potential for challenges as sector regulators and CCI may exercise concurrent jurisdiction in some of the matters before them. In this perspective, comity and regular interactions amongst sector regulators and CCI may mitigate potential challenges.