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NAVIGATING JURISDICTIONAL COMPLEXITIES: THE INTERPLAY BETWEEN THE COMPETITION COMMISSION AND SECTORAL REGULATORS IN INDIA

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Abstract

*India's competition legislation is developing, and as a result, disputes over jurisdiction between the Competition Commission of India ('**CCI**') and sectoral regulators are more frequent and call for judicial intervention. An in-depth analysis of the complex interaction between sectoral regulators and the CCI is provided in this article, with a focus on the requirement for a unifying structure to align their roles. The essay starts by underlining the sectoral regulators' domain-specific competence and the CCI's extensive jurisdiction under the Competition Act of 2002. It highlights probable conflict-causing factors, such as legislative vagueness and conflicting regulatory law theories. The article highlights the significance of settling disputes resulting from overlapping authority by examining the jurisdictional extent of the CCI. It talks about how effective enforcement depends on coordination and collaboration between the CCI and sectoral regulators. To determine if they are compatible with the Competition Act of 2002, the article examines antitrust provisions in a few sectoral laws. By using examples from various nations, it also provides a comparison of the laws governing competition in India and other nations. The article promotes a consistent interpretation to reduce jurisdictional issues by addressing internal discrepancies within the Competition Act, especially between Sections 60 and 62. The article concludes by providing a thorough analysis of the interactions between the CCI and sectoral regulators in India and emphasising the necessity of a clearly established structure, legislative changes, and cooperative strategies to successfully traverse jurisdictional issues.*

I. INTRODUCTION

There are few legal precedents relevant to the power of the CCI because Indian competition law is still in its infancy. The judiciary now frequently grapples with situations where CCI and particular regulators have competing claims to authority.[1]

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[1]Paridhi Poddar, 'Sectoral Regulation, Competition Law, and Jurisdictional Overlaps: Tracing the Most Viable Solution in the Indian Context' (Kluwer Competition Law Blog, 24 May, 2018) <https://competitionlawblog.kluwercompetitionlaw.com/2018/05/24/sectoral-regulation-competition-law-jurisdictional-overlaps-tracing-viable-solution-indian-context/> accessed 01 July, 2023.

The dispute involving the CCI and industry-specific regulators has proven to be a recurrent cause of conflict amongst the parties concerned, who have often sought the assistance of the courts. The sectoral regulators and the CCI are connected through the legal system. These sectoral regulators' and competition agencies' primary goals are to protect and advance consumers' interests.[2]

The key tenet that needs to be grasped in this situation is that sectoral regulators are experts in their respective fields. While the Competition Act, 2002 ('**Act**') establishes specific guidelines for how the Commission may handle competition, the Commission has broad authority in this area. The necessity of a solid framework that encourages synchronization between CCI and the sectoral regulators cannot be overstated. Ex-post assessment, as the name suggests, is employed by the competition authorities when there is a violation of law, however to avoid such infringements, authorities may employ ex-ante rules as a preventive measure too.[3]

The Act's specific provisions further highlight the potential stress. The four branches of the Act's Sections 18, 21, 60, and 62 are principally responsible for regulating the relationship between the competition authority and particular regulators in India. Legislative ambiguity and jurisdictional overlapping might constitute the root of the disputes between CCI and the sectoral regulators. Conflicts may also be exacerbated by the administration's divergent approaches to interpreting regulatory law.

II. JURISDICTION OF THE CCI: NARROW OR BROAD

The way the regulations have been written makes it clear that CCI has broad jurisdiction and that there are few legal restrictions on it. The provisions of the act must have precedence over all other laws, according to Section 60 of the act; therefore, any inconsistency with a current statute does not render the provisions of the relevant act unlawful. This contributes to the understanding that CCI's investigative capabilities and limitless authority over the mentioned issues increase the reach of the company's involvement.

[2]Nipun Kalra, 'CCI and Sectoral Jurisdiction' (*RFMLR*, 30 May, 2022) < https://www.rfmlr.com/post/cci-and-sectoral-jurisdiction> accessed 03 July, 2023.

[3]Competition Commission of India, 'Introduction to Competition Law Fair Competition (Part 5- Regulatory Bodies and Coordination between the Competition Commission and Sectoral Regulator)' (August 2016) <https://www.cci.gov.in/public/images/publications_booklet/en/introduction-to-competition-law-part-5-regulatory-bodies-and-coordination-between-the-competi1652182541.pdf> accessed 10 July, 2023.

The jurisdiction of CCI has recently been the subject of several judicial hearings. A conflict arises when the scope of statutory regulating authorities and the power of CCI to undertake an investigation collide. The CCI's invasion of other regulators' or courts' jurisdiction in instances that are meant for them to handle and determine is the main reason for this. Whatever the cause of the conflict-whether it be due to ambiguity in the law, a mistake in jurisdiction, or errors in interpretation-the judiciary has always found it difficult to identify and resolve it.

III. DUAL OBJECTIVES: EXPLORING ANTITRUST PROVISIONS IN SECTORAL ACTS AND GLOBAL COMPARISONS IN COMPETITION LAW

The paper in question has two goals in mind. First, it aims to clarify the antitrust clauses in various sectoral organizations' acts. By examining the key provisions stated in different statutes such as the Competition Act of 2002, the SEBI Act of 1992, and the Electricity Act of 2003, we aim to assess whether these provisions tend to overlap with one another or whether they are individualistic on their own.

The second objective of this essay is to present a thorough comparison of the competition laws in India and other countries. We can learn a lot about other legal systems and regulatory frameworks by incorporating jurisdictions like the United States and the European Union. This comparative analysis covers several topics, such as how anti-competitive practices are handled and merger control levels.

Through our research, we want to find commonalities, best practices, and possible areas where the Indian competition law system needs to be strengthened. By learning from other nations' successes, policymakers, lawyers, and academics may enhance the effectiveness of the Competition Act and create a more competitive market in India.

IV. DECIPHERING JURISDICTIONAL INCONSISTENCIES

To begin with, internal inconsistencies within the Act must be rectified before shifting the focus to other statutes. One must acknowledge the tussle between these two sections of the Act, namely, Section 60 and Section 62. Section 60 establishes the supremacy of the Act over other statutes with the aid of a notwithstanding clause, stating that the Act will have effect irrespective of the presence of any other contrary provision in any other statute.

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A legal scholar would have comprehended the above-mentioned clause in light of precedents enshrined by the judiciary. It is held that a general law cannot override a special law even if there is a non-obstante clause in the former[4]. It is pertinent to note that the Competition Act is general legislation that was enacted to curb anti-competitive activities.[5] This suggests that competition law does not have the authority to supersede other laws per se; it is, however, crucial to determine the purpose of a notwithstanding clause.

The non-obstante phrase in Section 60 of the Act's phrasing makes clear that the authorities granted to other sectoral bodies by their statutes are not in any way violated by the Act. Unless there is a contrary provision in other acts with wording similar to that contained in the Competition Act, the problem won't exist. A harmonious construction does not mean that the jurisdiction of one body supersedes another; instead, it signifies that both jurisdictions co-exist without superseding the boundaries set by the respective statutes and case laws.[6]

The existence of a non-obstante clause only indicates that the CCI's jurisdiction will not be affected by other statutes, and consequently, other statutes will operate to confer jurisdiction on sectoral bodies, and the harmony is to be interpreted in the context of the time frame of the jurisdictions of each body. This will be discussed further.

The presence of Section 62 in the Act is troublesome. It mentions that other laws are not barred due to the presence of the Act, and thus it fosters harmonious construction between various statutes. It should be noted, nonetheless, that the doctrine of harmonious construction is one of the cornerstones of the Indian Constitution and has a strong foundation in Indian law due to the wealth of precedents that support it. First, it can be contended that the jurisdictions of other sectoral bodies would not have been negatively impacted by Section 62. On the contrary, due to its presence, other sectoral bodies might cross their jurisdictional limits to have an overlapping effect vis-à-vis CCI's jurisdiction to entertain a subject matter. If the lawmakers had intended to inculcate the doctrine of harmonious construction in the Act, they should not have inserted

[4] *M.P. Chothy* v. *Registrar General*, AIR 2020 SC 4333.

[5] Yashika Sood, 'Anti-Competitive Agreements Under The Competition Act, 2002' (*Comply Book,* 17 March, 2020) <https://www.complybook.com/blog/anti-competitive-agreements-under-the-competition-act-2002> accessed 10 July, 2023.

[6] Umar Saif Khan, 'Doctrine of Harmonious Construction: Preventing Conflict in Society' Lucknow Law Review(8 May, 2021) <https://www.lucknowlawreview.org/post/doctrine-of-harmonious-construction> accessed 11 July, 2023.

Section 62 and rather used the term 'subject to other laws' instead of 'notwithstanding' in Section 60.

Apart from this, if there is no express provision in a statute, subsequent clarification is sought from the judiciary. For instance, Section 238 of the Insolvency and Bankruptcy Code, 2016 has an overriding effect over other statutes; however, the apex court has limited the scope of this section in consonance with other acts.[7] An analogy can be created in the present case too, where the judiciary would have cleared the blurry image.

Secondly, there are certain areas where CCI is the sole custodian to assess the anti-competitive behaviour as of now. For example, zero-priced markets[8] and the arena of combinations to some extent This prompts the lawmakers to provide a marginally higher degree of jurisdictional limitation to CCI as compared to sectoral bodies. However, this suggestion is slightly modified while concluding the paper by offering the most effective legislative action plan.

V. SECURITIES AND EXCHANGE BOARD OF INDIA

CCI operates in an ex-post competition assessment segment. However, in the case of combinations, the picture becomes inverted because parties in a combination are mandated to notify the commission prior to such a combination.[9] One must ponder whether every deal in the M&A segment would come under the ambit of the commission's bird's-eye view, because if that's the case, then the procedural delay in getting approval for such combinations that are not substantial in monetary terms will derogate the ease of doing business.[10] The asset/turnover criteria for any M&A deal to be treated as a combination are stated in Section 5 of the Act and are (a) assets exceeding INR 2000 crore or a turnover surpassing INR 6000 crore.

On the flip side, SEBI is the regulator of the securities market. In particular, under the SAST Regulations, 2011, when an enterprise acquires more than 25% of the voting rights in the target

[7] *MCGM* v. *Abhilash and Others*, (2020) 13 SCC 234.

[8] Debargha Mukherjee, 'Market Definition, Power in Digital Economy and Challenge of Zero Price Markets: Time to Evolve?' (*IRCCL,* April 7, 2022) <https://www.irccl.in/post/market-definition-power-in-digital-economy-and-challenge-of-zero-price-markets-time-to-evolve> accessed 11 July, 2023.

[9] Competition Act 2022, §6(2).

[10] Apurv Umredkar, 'Green Channel Route: Resolving the Impediment and Procedural Infirmities' (*Kluwer Competition Law Blog*, June 28, 2021) <https://competitionlawblog.kluwercompetitionlaw.com/2021/06/28/green-channel-route-resolving-the-impediment-and-procedural-infirmities/> accessed 12 July, 2023.

entity, it will be considered a trigger point for SEBI's evaluation of the said acquisition.[11] However, discussing these mandates is not the purpose of this piece; what intrigues us is that there could be an inevitable conflict between both bodies, i.e., CCI and SEBI, because both operate in an ex-ante segment. A combination for the purpose of the CCI must be assessed by the CCI to avoid a potential appreciable adverse effect on competition ("AAEC"), and at the same time, it is the duty of SEBI to monitor such M&A deals on the aspect of compliance with regulations.

The term 'control' under the Act suggests that acquiring control would mean controlling the affairs and management, and the same term under SAST regulations considers the aspect of voting rights. It can be assumed that if an enterprise or person acquires the management of another entity, they are getting some rights that are more than equity or preferential voting rights, which could include veto rights, the right to nominate directors, etc. From the above-mentioned example, it could be understood that the ambit of control under the Act is wider than that of the SAST regulations.

This suggests that in many instances, the acquisition can be targeted by both SEBI and CCI, and there is no formula to predetermine whether the combination will be hit by both bodies. Such overlaps, not in the competition law aspect but in the procedural aspects, could lead to regulatory arbitrage where players can easily evade the compliance requirements enumerated by the commission, which is discussed later. If compliance under one statute is not fulfilled, then it is inevitable that the other statute will be condemned for not having inter-statute harmony.

This was discussed in the context of the formation of a combination. What is the situation when there is a jurisdictional tussle post-formation? For instance, under SAST regulations, if an entity already holds 25% of the voting rights in an enterprise, then acquiring 5% or more voting rights in a financial year will put the acquirer within the purview of SEBI. On the other hand, the threshold of 'control' would be neglected by the CCI to intervene once the combination is formed, and changes in the combination could affect the competition adversely. This implies an even greater conflict, because if a combination has AAEC post-formation, then CCI would intervene and penalize it. In such cases, if SEBI has some grounds to scrutinize the combination,

[11]Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, Regulation 3(1).

it must do so promptly and intimate it to the commission, thus resolving and respecting each other's jurisdiction.

An intriguing pathway to reduce the time delay getting approvals by the commission is introduced in the market, which is called the 'Green Channel An intriguing pathway to reduce the time delay of getting approvals by the commission is introduced in the market, which is called the "Green Channel Route".[12] Such pathways are encouraged because if approvals were granted automatically, it could potentially solve the jurisdictional conflict, and bodies like SEBI could scrutinize it thereon.

It is to be noted that, while there will be jurisdictional dilemmas in such cases, one must liberally interpret the statutes for harmonious construction. In such cases, where both bodies could assume jurisdiction, what is required is coordination amongst both bodies. For assessing combination deals, both bodies should scrutinize a deal, keeping in mind the common factors of a particular aspect. SEBI should first assess whether a particular deal would come under the ambit of combination as per the Act and then proceed further, keeping in mind the provisions of the Act.

This will eventually lead to a smooth investigation of both bodies if the body having jurisdiction in the first instance, viz. SEBI in this case, adjudicates sustainably. After attaining harmony in jurisdictional conduct, statutes must be amended in such a way as to reduce the time limit for approval by regulatory bodies. For instance, after getting approval from SEBI, a deal in M&A would proceed without obtaining the permission of CCI because of the time gap between notifying CCI of the combination and getting the commission's subsequent approval (up to 7 months[13]). Such grey areas must be filled by amending the statutes and putting in a mechanism where CCI must be immediately informed about the grant of permission from other sectoral regulators for fast assessment.

[12]Jayshree Navin Chandra and Naman Dutt, 'Green Channel Route: Automatic Approval of Combinations under the Competition Regime of India' (*LiveLaw,* 20 May, 2023) <https://www.livelaw.in/law-firms/law-firm-articles-/green-channel-route-competition-commission-of-india-acquisition-merger-zeus-law-229150.> accessed 05 July, 2023.

[13]Avaantika Kakkar and Vijay Pratap Singh Chauhan, 'India: Merger Control' (*GCR,* 25 March, 2022) <https://globalcompetitionreview.com/review/the-asia-pacific-antitrust-review/2022/article/india-merger-control> accessed 13 July, 2023.

The CCI revealed that despite the existence of a sectoral regulator, the CCI's jurisdiction would not be eliminated but would instead be deferred until the sectoral body's adjudication on the competition issue was concluded.[14] It is to be understood that if statutes other than the Act offer protection to competition in a market, explicitly or implicitly, then regulatory bodies under these statutes must function in consonance with the national custodian of competition, viz. the CCI. Given that specialized adjudication is carried out in accordance with several statutes, it is important to examine these statutes' provisions alongside those of the Act. However, the CCI should handle adjudication pertaining to competition in accordance with the Act.

VI. TELECOM REGULATORY AUTHORITY OF INDIA

The telecom sector is an oligopolistic market[15]. The presence of a few players is a testament to the fact that competition amongst these players is intense, and due to the homogenous nature of products offered in the said sector, there is a good possibility that the practice of cartelization can flourish here. The apex court precedent in Bharti Airtel[16] clarifies the position of jurisdictional conflict between the commission and the sectoral body.

The honourable Bombay HC delivered the judgment in 2017, stepping into the tussle of jurisdiction and observing that CCI, as a body to promote competition, can only scrutinize the alleged cartel after the sectoral body, viz., TRAI, has assessed the compliance of the players in accordance with the TRAI Act, 1997, and regulations. It is to be noted that under Section 13 of the said Act, the regulatory authority can 'issue directions' to service providers to effectuate its powers mentioned under Clause (b) of Section 11 of the said Act. These functions include regulating arrangements amongst service providers pertaining to their revenue sharing, maintaining registers of inter-connect agreements, etc.

This Act is very well drafted in a sense to harmonize potential jurisdictional conflicts on competition issues. Section 11 of the said Act bifurcates the powers of the regulatory body into two indexes, namely, 'make recommendations' and 'discharge functions'. According to the proviso of Section 13, TRAI can only issue directions for discharging its functions enumerated in

[14] *Brickwork Ratings India Pvt. Ltd.* v. *CRISIL Ltd.,* 2020 SCC OnLine CCI 49.

[15] Jessica, 'The Impact Of Oligopoly In The Telecommunications Industry: Potential Benefits And Drawbacks' (*OpenWorldLearning,* 23 January, 2023) <https://www.openworldlearning.org/the-impact-of-oligopoly-in-the-telecommunications-industry-potential-benefits-and-drawbacks/#google_vignette> accessed 10 July, 2023.

[16] *CCI* v. *Bharti Airtel,* AIR 2019 SC 113.

Clause (b) of Section 11. Section 11's first sentence allows TRAI to suggest specific actions to promote market competition. This separation in Section 11 preserves the modest variations between the ex-ante and ex-post parts.

The above-mentioned recommendation cannot be interpreted in a way to assume competition law jurisdiction, like ascertaining abuse of dominance, cartelization, etc. It can be interpreted that statutes that provide for promoting fair competition in the market can foster such principles by causing market players coming under their ambit to comply with their respective regulations and rules. In this sense, these sectoral bodies can issue directions in an ex-post market segment.

The appeal from the Bombay High Court was filed in the apex court. The Supreme Court upheld the subordinate's court judgment and attempted to declutter the muddied jurisprudence that sectoral bodies must assess a situation, and after their adjudications have finished, only the commission can step in to assess the competitive aspect of a deal. In its assessment, the commission can always invite opinions from the sectoral bodies on facets revolving around these bodies' expertise. CCI can also rely on the sectoral body's findings, which they uncovered in the process of their adjudication.

VII. ANALYSING THE PRECEDENCE OF THE ELECTRICITY ACT AND COMPETITION ACT: A CRITICAL EXAMINATION

COMPAT had to decide whether the Electricity Act of 2003 would take precedence over the Competition Act of 2002. COMPAT relied on the principle of lex posterior derogat priori and observed that newer laws would prevail over older legislation, and thus the Electricity Act would prevail over the Competition Act. However, this must be criticized for some reasons.[17]

While applying the said principle, it is to be understood that having an overriding effect over another statute means that interlinked concepts between both statutes should be interpreted according to the dominant legislation. Section 60 of the Act discusses agreements that cause or are likely to cause AAEC, as well as abuses of dominant position. It is ironic to know that nowhere in the legislation are there any definitions of dominance, abuse, etc. The authors pose a serious question as to how could one give precedence to the Electricity Act over the Competition Act, when there is an absence of interlinked provisions in the former?

[17] *Anand Parkash Agarwal* v. *Dakshin Haryana Bijli Vitran Nigam*, 2016 SCC OnLine CCI 13; [2016] CCI 7.

It can be safely assumed that such concepts are borrowed from the Act itself, considering that it was enacted previously. Now, it must be left to a layman's intellect to decide which body is more suited to adjudicate on such issues: one that imbibed such concepts in the jurisprudence or one that borrows them from the former.

The above-mentioned legal principle could be better interpreted in the sense that adjudication of CCI would be postponed until adjudication under the said Act is completed. It can also be interpreted that CCI is not in a position to delve into the mandates of the said Act, and they ought not to assess the parties on the compliances and grounds enumerated in the said Act in their deliberation.

Further, if it is to be assumed that the adjudicating authority issues directions to the players abusing their dominant position to abstain from doing so in accordance with the rules and regulations under their statutes, the penalty for abusing the dominant position will always be levied by the CCI only and not any other body per se. In light of these claims, matters relating to anti-competitive acts or agreements must only be handled by the CCI after sectoral adjudication has been completed by sectoral organizations.

VIII. COMPETITION AND REGULATORY OVERLAP IN OTHER COUNTRIES

Competition and regulatory overlaps are not unique to India; they exist in various forms in many countries around the world. The complexities arise from the need to balance different regulatory objectives while avoiding duplication and ensuring effective governance. Here are a few examples of competition and regulatory overlaps from different countries:

A. United States:

The United States has a number of sectoral regulators who manage particular markets and sectors. Within their respective industries, these regulators are in charge of guaranteeing fair competition, consumer protection, and adherence to pertinent laws and regulations. They are the FTC, FCC, SEC, CFTC, CFPB, and FDA.

When these sectoral regulators' and the Competition Commission's (often the FTC's) respective purviews overlap, potential conflicts or difficulties may occur, leaving it unclear as to which body ought to assume primary responsibility in a given circumstance. These disputes may entail matters of market dominance, mergers and acquisitions, anti-competitive behaviour, and consumer protection. To address these conflicts, the US government has adopted a number of measures, including:

Cooperation agreements: The DOJ and the FTC have made arrangements to work together with a number of sectoral authorities. These agreements lay out the processes by which the authorities will collaborate to examine mergers and other anticompetitive behaviour.[18]

Memoranda of Understanding: With a few sectoral regulators, the FTC and the DOJ have also released memoranda of understanding. The responsibilities of the regulators' different bodies and their procedures for handling jurisdictional disputes are made clear in these memoranda.

Statements of policy: The FTC and the DOJ have made statements of policy about competition in particular industries. The regulators' judgments about enforcement in such industries may be influenced by these statements.[19]

B. European Union:

The European Union's competition law, enforced by the European Commission, aims to prevent anti-competitive behaviour and ensure fair competition within the single market. However, regulatory overlaps can occur between competition law and sector-specific regulations enforced by national authorities. For instance, in the telecommunications sector, the European Commission's concerns about competition may overlap with national telecommunications regulators' duties to ensure efficient market operation.

Conflicts between the EC and EU sectoral regulators frequently arise in the following areas:

[18]OECD, 'Interactions Between Competition Authorities And Sector Regulators – Summaries of Contributions' OECD(2022) <https://one.oecd.org/document/DAF/COMP/GF/WD(2022)28/en/pdf> accessed 10 July, 2023

[19] 'FTC, DOJ Issue Joint Statement on Preserving Competition in the Defence Industry' (*Federal Trade Commission,* 12April, 2016) <https://www.ftc.gov/news-events/news/press-releases/2016/04/ftc-doj-issue-joint-statement-preserving-competition-defense-industry> accessed 12 July, 2023

Review of mergers: The EC is the only agency with the authority to examine mergers that have a community dimension or one that significantly affects competition inside the EU. ESMA and EBA, among others, might possess the power to examine mergers in the industries they regulate.

Monopoly pricing: The European Commission (EC) has the authority to challenge anticompetitive behaviour, such as price fixing and market sharing. ENISA and ERA, for example, are sectoral regulators who might additionally hold the power to control pricing in their particular industries.

IX. CONCLUSION

Jurisdictional boundaries must be carefully considered and harmonized due to the complex interactions between the Competition Act and numerous sectoral regulations. Internal contradictions in the Act, especially in sections 60 and 62, pose important difficulties that must be resolved to ensure successful enforcement. Although Section 60 declares that the Act is supreme, its non-obstante clause does not give CCI the power to pre-empt other laws; rather, it requires that other legislation be read in accordance with Section 60. Section 62 adds to the complexity and may result in a conflict of authority between the CCI and sectoral entities.

The regulatory environment's possible conflicts are highlighted in the essay, especially with regard to industries like stocks, communications, and energy. There are issues that need to be resolved as a result of the CCI and sectoral organizations like SEBI and TRAI developing overlapping responsibilities. The Bharti Airtel case emphasizes the value of sectoral bodies assessing adherence to sector-specific regulations first, followed by the CCI, with the latter addressing worries related to competition.

Coordination and cooperation between regulatory authorities are essential to addressing these difficulties. The "Green Channel Route," which would automatically approve specific deals to reduce jurisdictional issues, may offer a potential remedy. Legislative changes should also emphasize speeding up the approval process to ensure easier regulatory procedures. To accomplish harmonious building in circumstances of possible conflicts, it is crucial to adopt a broad reading of the law.

Ex-ante regulation is, by definition, intended to prevent undesirable activity. The role of CCI is when there has been wrongdoing or ex-post evaluation. Ex-post rules are ones that are

implemented after the fact to thwart market action that has already occurred. However, some sectoral organizations even attempt to engage in ex-post assessment by providing guidance, which is not CCI's responsibility. Even CCI now occasionally participates in ex-ante assessment, although there is no overlap. There should be clearly defined parameters where, even if sectoral bodies engage in ex-post evaluation, they may still issue directives, but only the CCI may set the penalty.

There have been numerous instances where TRAI or SEBI have been asked to rule on a matter involving some aspect of competition. Now, the sectoral bodies would rule on the entire matter, deciding on the element of competition law in the process. The sole recourse available to the party that was wronged if they are dissatisfied with the ruling is to appeal to the Supreme Court under Article 136 of the Indian Constitution. Every day, the highest court hears thousands of cases. There is no further recourse available to that side if the top court dismisses the case. The CCI should hear this 'appeal' based on the orders passed by tribunals adjudicating sectoral bodies' matters instead of the Supreme Court in order for the CCI to decide on matters involving competition law.

Three main models[20]—the exclusivity model, the concurrency model, and the consultation approach—address the conflicting global jurisdictions of competition and sector authorities.

Two well-known paradigms are the exclusive domain model, in which each body functions autonomously inside its own particular area, and the mandated consultation model, which requires communication between the two bodies. The development of an integrated regulatory collaboration model, however, where sectoral regulators and competition commissions come together, work together, and combine their knowledge for comprehensive supervision and flexible regulation, represents a new road ahead.

This paradigm eliminates the conventional barriers between sectoral regulators and competition commissioners, allowing for seamless collaboration. Rather than viewing their roles as mutually exclusive, both bodies collaborate from the outset, recognizing the symbiotic relationship between competition and sector-specific concerns. This integrated approach leverages the

[20]United Nations Conference on Trade and Development, 'Best Practices for Defining Respective Competences and Settling of Cases Which Involve Joint Action by Competition Authorities and Regulatory Bodies' (*United Nations*, 17 August 2006) <http://unctad.org/en/Docs/tdrbpconf6d13rev1_en.pdf> accessed 13 July, 2023.

strengths of each body, resulting in a more holistic understanding of market dynamics and regulatory challenges.

Taking inspiration from the USA, cooperation agreements, memoranda of understanding, and policy statements can be drawn between the sectoral bodies and the CCI of India. This will require harmony to be achieved between the sectoral bodies and the CCI.