Reflecting on Competition Commission of India

What is the issue?

- The Competition Commission of India (CCI) turned a decade old recently.
- In this backdrop, here is an overview of CCI's performance and an assessment of the challenges ahead.

What is CCI?

- The Competition Commission of India (CCI) is India's competition regulator.
- The Competition Act, 2002 was passed by the Parliament in the year 2002, and was given President's assent in 2003.
- It was subsequently amended by the Competition (Amendment) Act, 2007.
- In accordance with the provisions of the Amendment Act, the CCI and the Competition Appellate Tribunal have been established.
- The provisions of the Act relating to anti-competitive agreements and abuse of dominant position were notified on May 20, 2009.
- The Act -
    i. prohibits anti-competitive agreements and abuse of dominant position by enterprises
    ii. regulates combinations which causes or are likely to cause an appreciable adverse effect on competition within India
- [Combinations include acquisition, acquiring of control and M&A (Mergers and acquisitions)]
- It is the duty of the Commission to -
    i. eliminate practices having adverse effect on competition
    ii. promote and sustain competition
    iii. protect the interests of consumers
    iv. ensure freedom of trade in the markets of India
- CCI now consists of a Chairperson and 6 Members appointed by the Central Government.

How has CCI's role been?

- The CCI has made course corrections across sectors, including entertainment, pharmaceuticals, public procurement, transport, and construction.
- It has also held individuals i.e., both current and former employees, to be

liable for their conduct.

- As part of its successful advocacy rollout, the CCI has passed 9 leniency orders.
- The leniency regime is where a cartel member points out or owns up to irregularities and gets away with a smaller penalty.
- [A cartel is an association of manufacturers or suppliers with the purpose of maintaining prices at a high level and restricting competition.]
- The leniency regime, as a whistleblower's tool, has given a boost to the CCI's cartel enforcement.
- This is particularly after the amendments in 2017, which removed the cap on the number of leniency applicants.
- The CCI, in the 8 years of the Indian merger control regime, allayed industry concerns of M&A timelines being impacted.
- It has done this by expeditiously clearing over 650 merger notifications with an average disposal time of 23 days in 2018.

What are the challenges ahead?

- Dealing with antitrust issues involving new age economy and evolving ways in which business is done globally is a key challenge ahead for the CCI.
- [Antitrust laws/competition laws are statutes to protect consumers from predatory business practices.]
- Antitrust regulators around the world are grappling with tools of analysis to examine issues involving the digital economy.
- These include the algorithm pricing, big data, or mergers where data and not turnover are of real relevance.
- It calls for hiring data scientists to work with competition regulators.
- Also, moving away from traditional measures of market share only to parameters which include access to data, network effects, and multi-sided markets is essential.
- In this regard, the US appears to be moving towards an EU type competition model.
- In this, new age economy companies will be scrutinised for market power and abuse of dominance.
- E.g., recently, the US House Judiciary Committee initiated an investigation to assess the effectiveness of current antitrust laws in regulating technology companies
- The Government of India has also set up the Competition Law Review Committee.
- This includes a working group on 'new age markets and big data' to examine the issues relating to the digital economy.

What is the way forward?

- The CCI has the ability to levy the highest economic penalties in India.
- It is statutorily mandated to prevent practices that have adverse effect on competition.
- However, the wide mandate exercised by the CCI emphasises the need for the formulation of penalty guidelines by the regulator.
- This is crucial now to serve as a barometer to guide industry.
- The CCI has nationwide relevance and in particular, a majority of the CCI's matters originate in Mumbai.
- Given this, the Central Government should consider setting up benches of the CCI to expeditiously decide on competition cases.
- This is also imperative in the interest of facilitating wider access to justice and ease of doing business in India.

Source: Business Line

