The Competition (Amendment) Bill, 2022

Why in news?

The long-awaited Bill to amend the Competition Act, 2002, was finally tabled in the Lok Sabha recently.

What is the need for the amendment?

The Competition Act, 2000 establishes the Competition Commission of India (CCI) for regulating market competition.

- The Indian Competition Act was passed in 2002, but it came into effect only seven years later.
- The Competition Commission primarily pursues three issues of anti-competitive practices in the market
    - Anti-competitive agreement
    - Abuse of dominance
    - Combinations (Combinations imply mergers, acquisitions, or amalgamation of enterprises)
- As the dynamics of the market changes rapidly due to technological advancements, amendments became necessary to sustain and promote market competition.
- Therefore, a review committee was established in 2019 to propose amendments.

How is the bill different from the existing Act?

S.No.	Features	Existing Act	New Bill
1	Regulation of combinations	The Act prohibits from entering into a combination which may cause an adverse effect on competition. It applies to transactions where • Cumulative assets of more than Rs 1,000 crore, or • Cumulative turnover of more than Rs 3,000 crore	The Bill expands the definition of combinations to include transactions with a value above Rs 2,000 crore.
2	Timeline for approval of combinations	The Commission has 210 days to approve the combination, after which it is automatically approved.	The Bill seeks to accelerate the timeline to 150 working days with a conservatory period of 30 days for extensions.

3	Anti-competitive agreements	Criteria for causing adverse effect on competition • Directly or indirectly determining purchase or sale prices • Controlling production, supply, markets, or provision of services • Directly or indirectly leading to collusive bidding	The Bill adds that enterprises/ persons not engaged in identical or similar businesses shall be presumed to be part of such agreements, if they actively participate in furtherance of such agreements.
4	Anti-competitive proceedings	Under the Act, CCI may initiate proceedings against enterprises for • Entering into anti-competitive agreements • Abuse of dominant position	The Bill permits CCI to close inquiry proceedings if the enterprise offers • Settlement (may involve payment) • Commitments (may be structural or behavioural)
5	Relevant product market	The Act defines relevant product market as products and services which are considered substitutable by the consumer.	The Bill includes production or supply of products and services substitutable by the suppliers.
6	Appointment of Director General	The Act empowers the central government to appoint a Director General to CCI.	The Bill empowers CCI to appoint Director General with prior approval of government.
7	Qualification of chairperson and members of CCI	They should have professional experience of at least 15 years in • Economics • Competition matters • Law • Management • Business	The Bill expands this to include experience in the field of technology.
8	Gun-jumping	The penalty for gun-jumping was a total of 1% of the asset or turnover.	This is now proposed to be 1% of the deal value.

If the combining parties close a notified transaction before the approval, or have consummated a reportable transaction without bringing it to the Commission's knowledge, it is seen as gun-jumping.

What are the other major amendments?

- **Leniency Plus**- A provision called 'Leniency Plus' allows the commission to give an additional waiver of penalties to an applicant who discloses the existence of another cartel in an unrelated market.
- **Filing false information**- A penalty of 5 crore will be imposed, and for failure to comply with the Commission directions, a penalty of 10 crore will be imposed.
- The Commission will develop guidelines regarding the amount of penalties for various competition violations.

- **Appeal**- For an appeal to be heard by the National Company Law Tribunal (NCLT) against the Commission's order, the party will have to deposit 25% of the penalty amount.

What is the significance of the amendment?

- **Regulation of combinations**- It will strengthen the Commission's review mechanism, particularly in the digital and infrastructure space.
- **Accelerating the approval time**- This will speed up the clearance of combinations and increase the importance of pre-filing consultations with the Commission.
- **Notifying in advance**- Similar to the European Union merger regulations, the present Bill proposes to exempt open market purchases and stock market transactions from the requirement to notify them to the Commission in advance.
- **Issue of Hub-and-Spoke Cartels-** A Hub-and-Spoke arrangement is a kind of cartelisation in which vertically related players act as a hub and place horizontal restrictions on suppliers/retailers (spokes).
- The amendment broadens the scope of 'anti-competitive agreements' to catch entities that facilitate cartelisation even if they are not engaged in identical trade practices.
- **Handling the new age market**- By implementing these amendments, the Commission should be better equipped to handle certain aspects of the new-age market and transform its functioning to be more robust.

References

1. https://www.thehindu.com/news/the-competition-amendment-bill-2022/article65805919.ece?homepage=true
2. https://prsindia.org/billtrack/the-competition-amendment-bill-2022

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