

The Role of Competition Commission of India in tackling Anti-Competitive Practices: An Evaluation of Commission's Effectiveness

The Competition Commission of India (CCI) is an autonomous regulator established to ensure healthy competition in the Indian market and prevent anti-competitive practices. This paper evaluates the effectiveness of CCI in addressing anti-competitive practices and promoting fair competition in India. The study assesses the prevalence of anti-competitive practices in India and the role of CCI in regulating them. The findings indicate that CCI has successfully identified and penalized instances of anti-competitive practices in various sectors.



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INTRODUCTION

The CCI is an independent regulator established in 2003 to ensure fair competition in the Indian market. Its principal responsibility is to prevent anti-competitive practices including the fixing of prices, rigging of bids, and misuse of dominant position, which can hurt consumers and hamper innovation. Over the years, the CCI has investigated and penalized several companies for such practices.

ANTI-COMPETITIVE PRACTICES IN INDIA

Anti-competitive practices in India have been a cause of concern for a long time. The Indian market is characterized by a large number of small firms, which are often at a disadvantage compared to larger, dominant firms. Some of the most common anti-competitive practices in India include:

Cartels: Cartels are groups of businesses that collude to fix prices, limit production, and share markets. In India, cartels are prevalent in industries such as cement, sugar, and steel.

Abuse of dominant position: Dominant firms can abuse their market power to limit competition. For

example, a dominant firm can charge unreasonable prices, impose unfair conditions, or engage in predatory pricing.

Bid rigging: Bid rigging is a form of collusion in which bidders agree to coordinate their bids to manipulate the outcome of a tender. This practice is common in government contracts and public procurement.

ROLE OF CCI

The CCI was formed to regulate competition in the Indian market and prevent anti-competitive practices. Its functions include:

Investigating and penalizing anti-competitive practices: The CCI has the authority to investigate and penalise companies that engage in unlawful competition. It can impose fines, order the breakup of cartels, and require companies to change their business practices.

Promoting competition: The CCI promotes competition by encouraging new entrants, preventing abuse of dominance, and removing barriers to entry.

Advising the government: The CCI advises the government on competition-related issues and makes recommendations for policy changes.

REVIEW OF LITERATURE

Kapoor, S., & Mehra, S. (2014) The authors find that the CCI has been effective in regulating anti-competitive practices in the Indian pharmaceutical industry. Specifically, the CCI has been successful in identifying and penalizing instances of misuse of dominating position, price fixing, and collusion. The article notes that the CCI's success can be attributed to its robust legal framework, well-defined procedures, and strong enforcement mechanisms.

However, the authors also identify some limitations in the CCI's effectiveness. For instance, the CCI's limited resources and the complex nature of anti-competitive

practices in the pharmaceutical industry pose challenges to the CCI's effectiveness. Additionally, the study highlights the need for greater awareness among stakeholders about the CCI's role and the benefits of competition.

Mishra, A. K., & Rao, G. (2015) The authors find that anti-competitive practices are prevalent in the Indian telecom industry, with the leading operators engaging in practices such as predatory pricing, cartelization, and abuse of dominance. The study notes that these practices have negative effects on consumers, including higher prices, reduced choice, and poor quality of service.

The authors argue that the Competition Commission of India (CCI) needs to take a more proactive role in regulating anti-competitive behaviour in the Indian telecom industry. Specifically, the authors suggest that the CCI should increase its monitoring and enforcement activities, as well as collaborate with other regulators to address issues of regulatory overlap.

Chakraborty, S., & Sarkar, S. (2016) The authors find that the CCI has been effective in regulating anti-competitive practices in the Indian cement industry. They point out that the CCI has investigated and penalised many cement businesses for pricing manipulation, market sharing, and bidding frauds. The study also highlights the role of the CCI in promoting competition in the cement industry by encouraging new entrants and promoting transparency in the industry.

The authors believe that the CCI has played a significant role in increasing competition in the Indian cement business, but they also point out that there is potential for improvement. They recommend that the CCI should increase its monitoring and enforcement activities, and also work closely with other regulatory bodies to address issues of regulatory overlap.

Das, S., & Choudhury, N. (2020) The study provides an overview of the e-commerce market in India, identifies various anti-competitive practices prevalent in the market, and examines the role of CCI in regulating such practices. The authors analyse the cases where CCI has intervened in the e-commerce sector and evaluate the effectiveness of its interventions in ensuring fair competition. The study highlights that although CCI has played a proactive role in regulating anti-competitive practices in the e-commerce sector, there are still certain challenges that need to be addressed. The authors suggest that CCI needs to adopt a proactive approach in identifying and addressing emerging anti-competitive practices in the e-commerce sector. The paper indicates that CCI may play a key role in promoting fair competition in the e-commerce sector, and it proposes that more investigation is required to understand the obstacles and prospects for successful regulation in this field.

OBJECTIVE OF THE STUDY

This paper aims to evaluate the effectiveness of the CCI in tackling anti-competitive practices and its role in promoting competition in India.

The purpose of the study is to evaluate the effectiveness of the CCI in tackling anti-competitive practices in the Indian market. The study aims to analyse the role of CCI in regulating anti-competitive practices, identify the challenges faced by CCI in its regulatory role, and assess the impact of CCI's interventions in ensuring fair competition in the market. The study also aims to provide insights and recommendations to improve the effectiveness of CCI's role in curbing anti-competitive practices in the Indian market.

RESEARCH METHODOLOGY

Secondary data analysis is used in this research paper to acquire a thorough knowledge of "The Role of the CCI in Tackling Anti-Competitive Practices". The secondary data was gathered from government official website and circulars.

IMPACT OF THE COMMISSION'S ENFORCEMENT ACTIONS

The Competition Act aims to increase market competition while also safeguarding consumers. The CCI examines claims of infringement of two parts of the Act (parts 3 and 4).

Section 3 of the Act addresses anti-competitive contracts, which are corporate agreements that limit competition.

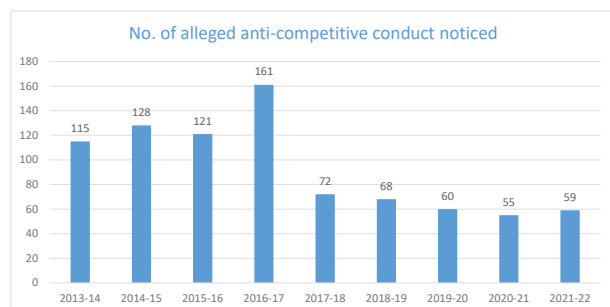
Section 4 addresses dominant position misconduct, which happens when a corporation with great market influence misuses that authority to damage competitors or customers.

The Commission can investigate alleged violations of these sections in three ways. Firstly, it can take *Suo motu* action, meaning it can initiate an investigation on its own initiative. Secondly, under Section 19(1)(a) of the Act, it may conduct an investigation after obtaining information from any individual, consumer, or member of their association or business association. Finally, it has the competence to investigate if it receives a referral from the Central Government, a State Government, or a statutory body under Section 19(1)(b) of the Act.

The Commission investigates the claimed infringement to see if there is a *prima facie* case, which means there is enough a proof to suggest a violation occurred. If the Commission determines that there is a *prima facie* case, it will instruct the Director General (DG) to begin an inquiry under Section 26(1) of the Act. If the Commission, on the contrary, acknowledges no *prima facie* case, it will conclude the investigation by issuing an order under Section 26(2) of the Act.

INVESTIGATIONS AND INQUIRIES ORDERED BY THE COMMISSION

Figure 1: No. of alleged anti-competitive conduct noticed u/s 19(1)(a), 19(1)(b) and Suo-Motu.



Source: Competition Commission of India. (2013-14 to 2021-22) Annual report [PDF file]. Retrieved from <https://www.cci.gov.in/annual-report#>.

Figure 1 summarises the Commission's performance from 2013-14 to 2021-22. Under the Act, the commission took notice of 839 accusations of anti-competitive arrangements and misuse of dominant position offences. According to the above statistics, complaints of anti-competitive arrangements and misuse of dominant position rose from 2013-14 to 2016-17,

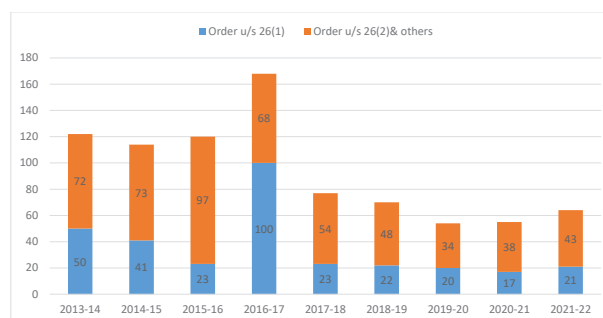
Figure 2: Total number of prima facie orders issued for alleged anti-competitive behaviour



Source: Competition Commission of India. (2013-14 to 2021-22) Annual report [PDF file]. Retrieved from <https://www.cci.gov.in/annual-report#>.

The Commission evaluates if a prima-facie case exists in the matter after reviewing the violation. If it identifies a prima facie case, it authorizes the DG to initiate an investigation under Section 26(1) of the Act. If, on the contrary, the Commission concludes that no prima-facie case exists, the matter is terminated by an order issued under Section 26(2) of the Act. Figure 3 depicts situations involving suspected breaches of Sections 3 and 4 of the Act, as well as their disposal under Sections 26(1) and 26(2) of the Act after a prima facie determination.

Figure 3: Total no of disposed of Order u/s 26(1) and 26(2) & others.



Source: Competition Commission of India. (2013-14 to 2021-22) Annual report [PDF file]. Retrieved from <https://www.cci.gov.in/annual-report#>.

There are certain cases that are pending at the end of the fiscal year and are carried forward to the next year.

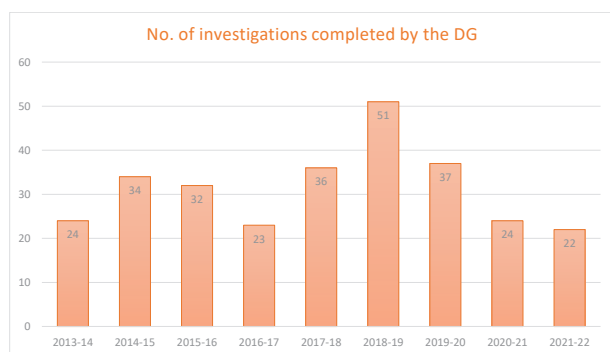
Table 1: Year wise disposal of alleged violations of Sections 3 and 4 of the Act.

| Year | Opening balance | No. of Cases Noticed | Disposed of by Order u/s | | Balance at the end of year |
|---------|-----------------|----------------------|--------------------------|----------------|----------------------------|
| | | | 26(1) | 26(2) & others | |
| 2013-14 | 26 | 115 | 50 | 72 | 19 |
| 2014-15 | 19 | 128 | 41 | 73 | 33 |
| 2015-16 | 33 | 121 | 23 | 97 | 34 |
| 2016-17 | 34 | 161 | 100 | 68 | 27 |
| 2017-18 | 27 | 72 | 23 | 54 | 22 |
| 2018-19 | 22 | 68 | 22 | 48 | 20 |
| 2019-20 | 20 | 60 | 20 | 34 | 25 |
| 2020-21 | 25 | 55 | 17 | 38 | 25 |
| 2021-22 | 25 | 59 | 21 | 43 | 20 |
| Total | - | 839 | 317 | 527 | |

Source: Competition Commission of India. (2013-14 to 2021-22) Annual report [PDF file]. Retrieved from <https://www.cci.gov.in/annual-report#>.

INVESTIGATIONS AND INQUIRIES UNDERTAKEN BY DIRECTOR GENERAL

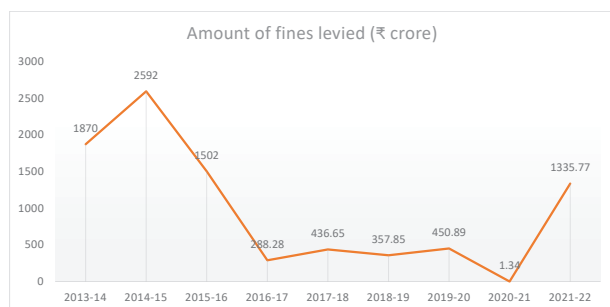
When approved by the Commission, the DG undertakes investigations into alleged breaches of the Act, or the regulations or laws imposed thereunder. The Commission renders final orders under various subsections of the Act based on the results of the inquiry and processes carried out in line with natural justice principles.

Figure 4: Investigations and enquiries undertaken by Director General

Source: Competition Commission of India. (2013-14 to 2021-22) Annual report [PDF file]. Retrieved from <https://www.cci.gov.in/annual-report#>.

MONETARY PENALTIES

- In cases where Sections 3 or 4 of the Act are violated, Section 27 of the Act empowers the CCI to levy a monetary fine in addition to other appropriate directions such as cease and desist.
- Sections 42, 43, and 43A of the Act empower the Commission to levy a monetary fine if an opposing party is unable to comply with the Commission's directions or fails to provide the necessary evidence/notice regarding the combination.
- Sections 44 and 45 of the Act empower the CCI to levy penalties if an affected party makes misleading statements or produces fraudulent paperwork.
- Section 48 of the Act empowers the CCI to pursue those who manage and are liable for the corporation and commit breaches on its part in the case of corporate infractions. Such people incur financial fines.

Figure 5: Monetary fines Imposed by the Commission.

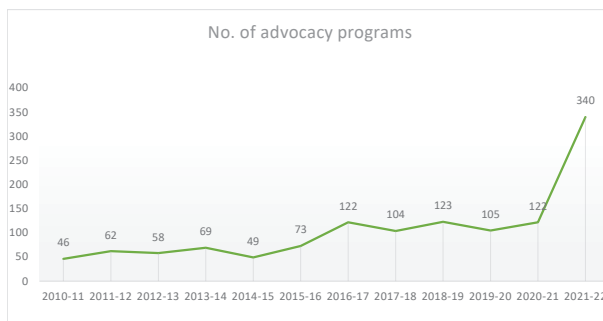
Source: Competition Commission of India. (2013-14 to 2021-22) Annual report [PDF file]. Retrieved from <https://www.cci.gov.in/annual-report#>.

Anti-competitive practices in India have been a cause of concern for a long time. The Indian market is characterized by a large number of small firms, which are often at a disadvantage compared to larger, dominant firms.

COMPETITION ADVOCACY

The competition legislation comprises two key components: enforcement and advocacy, both of which are critical in establishing an atmosphere of competition in the country. Section 49(3) of the 2002 Competition Act mandates the Commission to take activities to promote competition advocacy, raise awareness, and provide competition training. The Commission works with a wide range of stakeholders to carry out its mandate, including the courts, businesses educational institutions, central government, and state governments, federal and PSUs, professional organisations, trade groups, and training centres.

Competition promotion is a strategy for reaching out to stakeholders to influence their economic behaviour, get endorsement of competitive economic values, and educate them on the benefits of competition law. The statutory requirement for competition awareness stresses the fact that prosecution alone cannot accomplish all the goals of competition rules. As a result, both enforcement and advocacy are being used in combination to address both visible and hidden market inefficiencies and anomalies in the economy.

Figure 6: A overview of the Commission's many campaigning during the previous twelve years

Source: Competition Commission of India. (2010-11 to 2021-22) Annual report [PDF file]. Retrieved from <https://www.cci.gov.in/annual-report#>.

CONCLUSION

The CCI has been making remarkable strides in the regulation of anti-competitive practices in the Indian



market. The Commission's unwavering commitment to identifying and penalizing instances of anti-competitive practices has led to a steady decrease in the number of cases disposed of by the Commission in recent years. The Annual Report of the Commission confirms this trend, showing a consistent decrease in the cases of anti-competitive practices from financial year 2016-17 to 2021-22. Even though there has been a slow increase in cases after that, the Commission's efficiency in handling these cases remains commendable.

Moreover, the Commission's enforcement actions have had a positive impact on the market. For example, the Commission's imposition of a penalty of INR 136 crore on Google in 2018 for abusing its top spot in the internet search advertising business resulted in a significant decline in Google's market share. From 97% in 2012, the market share of Google declined to 88% in 2018, which is a clear indication of the effectiveness of the Commission's enforcement actions in promoting competition in the Indian market.

Apart from enforcement actions, the CCI is also involved in competition advocacy, which raises awareness and provides training on competition concerns to stakeholders. The Commission has engaged in numerous advocacy initiatives over the years, which has helped increase awareness about the importance of competition legislation and its advantages. The CCI's efforts in promoting fair competition in the Indian market

are commendable and reflect its commitment to its mandate.

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