

---

**INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH**

---

**COLLABORATION BETWEEN COMPETITION AUTHORITIES AND  
SECTOR REGULATORS IN INDIA: ENHANCING COOPERATION FOR  
EFFECTIVE SECTORAL REGULATION**- Raj Narayan Verma<sup>1</sup>**ABSTRACT**

Competition authorities and sector regulators both play critical roles in promoting economic competition and regulating industries to ensure fair and efficient markets. However, there are potential conflicts and overlaps between their respective mandates, which can lead to coordination challenges and inefficiencies. This paper examines the interactions between competition authorities and sector regulators, including their respective roles and responsibilities, potential conflicts and overlaps, and best practices for coordination and cooperation. The paper also explores case studies from various jurisdictions to highlight key issues and challenges in these interactions, and provides recommendations for improving coordination and promoting more effective regulatory outcomes.

**INTRODUCTION**

India's competition law regime underwent a considerable jurisprudential change as a result of the economic liberalization measures. The high-level Raghavan Committee considered several amendments, including the removal of the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act). The group proposed a new competition law that was consistent with changes in competition law around the world. The Competition Act 2002 was consequently passed, with a major goal of advancing both competition and consumer welfare. Moreover, the Act established

---

<sup>1</sup> Student at Chanakya National Law University

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

the Competition Commission of India (CCI) as the general antitrust authority. The evolution of India's regulatory framework for competition was supported by a philosophical shift that represented the spirit of privatization and liberalization.

The introduction of independent, statutory sector-specific regulatory authorities was another key development that occurred in India after 1991, coupled with the change in competition regulation. They included the Central Electricity Regulatory Commission (CERC), established in 1998, the Telecom Regulatory Authority of India (TRAI), established in 1997, and the Securities and Exchange Board of India (SEBI), founded in 1992. Independent regulators are created by law and carry out their duties without intervention from the government or the business world. Given that their goals are similar, their independence and interaction with the competition authorities are essential. Sector regulators and competition authorities, however, have separate legal responsibilities, and their viewpoints on competition-related matters may vary. Furthermore, while competition enforcement deals with behavioral issues, technical regulation largely addresses structural issues. As a result, structural and ex ante issues are the responsibility of sector regulators, whereas behavioral and ex post issues are the purview of the competition authority.

By maintaining a uniform and cohesive policy for the industry, sectoral regulators can play a significant role in enhancing the role of the antitrust watchdog. Sectoral regulators must avoid anti-competitive regulatory actions in order to do this, and they must work to improve regulation in order to encourage efficient competition. Interventions to resolve asymmetric information, lower entrance barriers, establish interoperability standards, and reduce the exploitation of behavioral biases may all be part of this regulation. Sectoral regulators can support a competitive and just market by putting such policies in place, which will benefit both consumers and market players.

### **CHALLENGES TO COOPERATIONS**

With some overlap in their objectives, economic regulation and competition policies are two connected but distinct methods of managing the economy. Promoting fair market competition and banning monopolistic behavior that results in the abuse of market power are the goals of

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

<https://www.ijalr.in/>

competition law. Economic regulation, on the other hand, is to impose state authority over market participants and solve market flaws. Notwithstanding their differences, both policies seek to promote economic performance and market efficiency by reducing market power concentration and avoiding excessive regulation. Due to their common goals, sectoral regulators and competition authorities frequently collaborate to enhance economic performance, and as a result, there may be overlaps and synergies between them.<sup>2</sup>

Since different legislative mandates were used to establish the various sectors regulators in India, different perspectives and strategies for dealing with competition challenges have resulted. Certain sector regulators were initially tasked with fostering competition within their respective fields; but, after the competition authority was established, this responsibility was transferred to it. Sectoral regulators were given authority to enforce competition in specific situations by sectoral regulations passed following the Competition Act of 2002. Overlapping jurisdictions and problems with the CCI's mission for competition enforcement have resulted as a result of this. Much criticism has been levelled at India's intricate and complex regulatory structure due to its ambiguity and propensity for divergent interpretations.

Even while competition policy and economic regulation have similar ends in mind, they have separate statutory aims and legislative mandates. The question of whether the industries that are being liberalized to encourage more competition should also be subject to general competition laws raises the issue of regulatory overlap and interface. While competition policy often imposes and monitors behavioral conditions on market participants, economic regulation frequently relies on structural remedies to remedy market infractions. When executing policies that entail both economic regulation and competition policy, this basic divergence in methodology can result in conflicts and difficulties.

The respective statutory frameworks of each regulator contain provisions defining its authority, responsibilities, and areas of jurisdiction. Due to different interpretations of legislative provisions, there have been instances of overlap in the past, particularly when both legislations

---

<sup>2</sup> Available at: <http://calloco.com/wp-content/uploads/2012/11/Harmonising-Regulatory-Conflicts111.pdf> visited on 10/02/2023

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

contain a "non-obstante clause." These laws give sectoral regulators the authority to promote competition and protect consumer interests without limiting anticompetitive behavior. On the other hand, the Competition Commission of India (CCI) has a duty to provide an even playing pitch, promote fair competition, and prevent anticompetitive conduct in all industries.

Indian courts have used a variety of guiding concepts in circumstances of conflicting laws, including the notions that specialized laws transcend general laws and that newer laws take precedence over older laws. The Supreme Court has ruled that because special legislation only covers that particular industry, it supersedes general legislation. Because the legislature is assumed to be aware of the existence of earlier laws, the rule that newer legislation takes precedence over older legislation makes sense. A "non-obstante provision" in newer legislation therefore denotes a desire to apply newer legislation before older legislation.

In several recent cases, the regulation of "debenture trustees" has given rise to jurisdictional disputes before Indian High Courts. These cases have prompted inquiries about the CCI's authority in relation to SEBI. The electricity industry also faces difficulties because the Central Electricity Regulatory Commission (CERC) is particularly empowered by the Electricity Act of 2003 to address anticompetitive conduct. The Electricity Act has an overriding impact over any other legislation that deviates from it, notwithstanding the fact that the CERC has not yet created any rules to execute this provision. This clause could make things more complicated if it is used.

It is clear that a number of variables, including ambiguous legislative frameworks, regulatory design, and judicial precedents, contribute to jurisdictional disputes between sectoral regulators and competition authorities. The telecom industry has long been troubled by this problem.

#### - **Interplay between Telecom Sector and Competition Act:**

##### **1. Legislative Framework**

Both the TRAI and the DoT are in charge of regulating the Indian telecoms sector. In accordance with the Telecom Regulatory Act of 1997, TRAI was established with the purpose of policing the industry and defending the interests of consumers and investors. According to Section 38 of the Act, its requirements are in addition to any laws granting the Telegraph Authority any

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

<https://www.ijalr.in/>



authority. Hence, TRAI has a clearly defined function under the Act, including the power to "promote efficiency and facilitate competition in the provision of telecommunication services, thereby stimulating their expansion," as stated in Section 11 of the TRAI Act.<sup>3</sup>

The Competition Commission of India (CCI) is given the duty of fostering and maintaining competition within the Indian economy by the Competition Act of 2002's preamble and Section 18 of the Act. This suggests that the CCI is principally in charge of policing the competitive environment in the pertinent Indian market.<sup>4</sup> Additionally, the CCI must promote fair competition and protect the interests of all participating parties, according to Section 18 of the Act. The CCI is in charge of preventing and ending any illegal or anti-competitive behavior while also fostering competition and defending the interests of consumers. In order to encourage fair competition and safeguard the interests of participants and consumers while maintaining a competitive environment, the two legislations have this in common.<sup>5</sup>

## 2. Judicial Pronouncement

The ongoing jurisdictional dispute between the CCI and TRAI was decided by a two-judge panel of the Supreme Court on December 5, 2018, in the matter of Competition Commission of India v. Bharti Airtel Ltd<sup>6</sup> and Others. To clarify who would have jurisdiction over telecom disputes, the Supreme Court applied the idea of harmonious construction.

According to the Supreme Court, TRAI, a specialized organization that supports the industry's healthy expansion in India, is in charge of regulating the telecom sector. On the other side, CCI's responsibility is to guarantee open markets and the freedom of commerce in goods. While CCI has a wider regulatory scope than TRAI, the latter's mandate is restricted to overseeing the telecommunications sector. The disagreement in question involved licensing conditions and interconnection agreements, both of which fell under the jurisdiction of the sectoral regulator. As it has the power to look into and address anticompetitive agreements and their repercussions on

<sup>3</sup> Available at: [https://cuts-ccier.org/pdf/Synthesis\\_Report-Harmonising\\_Regulatory\\_Conflicts.pdf](https://cuts-ccier.org/pdf/Synthesis_Report-Harmonising_Regulatory_Conflicts.pdf)

<sup>4</sup> <https://www.lakshmisri.com/insights/articles/regulatory-tussle-competition-commission-of-india-v-controller-of-patents-ors/> visited on 10/03/2021

<sup>5</sup> Available at: <http://competitionlawblog.kluwercompetitionlaw.com/2018/05/24/sectoral-regulation-competition-law-jurisdictional-overlaps-tracing-viable-solution-indian-context/> visited on 10/02/2021

<sup>6</sup> Available at: [https://cuts-ccier.org/pdf/Edition-11-Analysis\\_of\\_Competition\\_Cases\\_in\\_India.pdf](https://cuts-ccier.org/pdf/Edition-11-Analysis_of_Competition_Cases_in_India.pdf) visited on 10/01/2021

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

<https://www.ijalr.in/>

the market, CCI's mandate differs from TRAI's. According to the Supreme Court, CCI still has jurisdiction over these issues and that jurisdiction cannot be altered.<sup>7</sup>

The Supreme Court ultimately decided that TRAI should have primary jurisdiction over telecom disputes and that CCI should play a supporting role. If TRAI discovers an anti-competitive practice, CCI should be consulted to decide the case.

### 3. Present Scenario

According to the proposed draught Telecom Bill (2022), CCI will be replaced by TRAI in the role of defining predatory pricing regulations in the telecom industry. By adding provisions to Section 11's subsection (2), the new draught gives TRAI more authority. With this modification, CCI will no longer be in charge of looking into or defining standards for predatory pricing in the telecom industry.

### NEW COMPETITION (AMENDMENT) BILL: FAILURE TO ADDRESS OVERLAP

The Competition (Amendment) Bill 2022 seeks to increase and broaden the scope of discussions between the CCI and sectoral regulators. The proposed changes aim to increase communication and coordination between the two entities by enlarging the scope of these consultations.<sup>8</sup>

Legal professionals dispute over whether or not the Bill sufficiently handles all inter-regulatory cooperation difficulties. By amending Sections 21 and 21A of the Competition Act, 2002, the proposed modifications, Clauses 16 and 17 of the Bill, seek to resolve jurisdictional overlap between sectoral regulators and the Competition Commission of India. Although these changes are a positive beginning, it's possible that they don't totally resolve the jurisdictional conflicts that exist. The Standing Committee on Finance already conducted a thorough investigation into this matter during the 15th Lok Sabha's debates on the Competition (Amendment) Bill, 2012. In

---

<sup>7</sup> Available at: [https://cuts-ccier.org/pdf/Edition-11-Analysis\\_of\\_Competition\\_Cases\\_in\\_India.pdf](https://cuts-ccier.org/pdf/Edition-11-Analysis_of_Competition_Cases_in_India.pdf) visited on 10/01/2021

<sup>8</sup> Available at: <https://prsindia.org/billtrack/the-competition-amendment-bill-2022#:~:text=The%20Bill%20seeks%20to%20amend,rore%20will%20require%20CCI's%20approval> visited on 10/01/2021

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

<https://www.ijalr.in/>

Sections 21 and 21A of the Competition Act of 2002, the Committee suggested changing "may" to "must" in order to create a system of consultations between CCI and statutory authorities.<sup>9</sup>

It's crucial to understand that creating a consultation mechanism that is necessary for both the CCI and sector regulators is necessary to resolve the current issue. Sadly, such a framework is not established by the existing Bill.<sup>10</sup>

### NEED FOR COOPERATION: BEST PRACTICES

Due to the presence of numerous sector-specific regulators in India, the convergence between the CCI (Competition Commission of India) and regulatory agencies could potentially become a contentious issue. The intricacy of transactions frequently necessitates the involvement of multiple authorities, which makes it difficult to fully comprehend the situation. The simplicity of conducting business is hampered by this regulatory complexity. Moreover, the protection of consumers, which should be the top priority, is frequently ignored. Sectoral regulators in India have the capacity to fine commercial entities, but they are not able to compensate investors or consumers. The regulatory environment in India faces additional difficulties as a result of this restriction.

Foreign examples have shown that institutional frameworks can efficiently regulate the interaction between sectoral and competition regulators. Either competition law or sector-specific regulatory law may be assigned the primary authority. Alternately, a concurrent strategy can be used, in which industry or sectoral regulation law and competition law both have equal jurisdiction, and a consultation strategy is used.

In Europe, sector regulators and competition authorities are required to consult with one another. Similar to this, industry regulators and competition agencies are required to join into MoUs in nations like Mauritius and South Africa to achieve a harmonization of their jurisdictional powers. With multiple entities participating, Brazil has the most disjointed institutional system for

<sup>9</sup> Harmonising Regulatory Conflicts; 2011, CUTS International; <http://callolcoca.com/wpcontent/uploads/2012/11/Harmonising-Regulatory-Conflicts111.pdf>

<sup>10</sup> Available at: [https://cuts-cier.org/pdf/submission\\_to\\_parliament\\_standing\\_committee\\_on\\_competition\\_amendment\\_bill\\_2022.pdf](https://cuts-cier.org/pdf/submission_to_parliament_standing_committee_on_competition_amendment_bill_2022.pdf)

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

enforcing competition laws. Nonetheless, cooperation agreements exist between some regulatory organizations, such as Aneel, ANTT, and Anatel, and the competition authorities<sup>11</sup>. There is a legislative necessity in Argentina for the competition agency and sector regulators to confer with one another, although this requirement only pertains to the competition agency and not the sector regulators.

Considering the current difficulties, a change in strategy is required. The Spanish government has suggested combining the competition authority and some sector regulators into one body, although this consolidation may not be possible in a big country like India. Additionally, the sector-specific regulators bring a thorough knowledge of their respective fields. Therefore, it is necessary to take a more cooperative and collaborative strategy to handle the communication between sector regulators and competition authorities.<sup>12</sup>

Unlike to the UK, where the Competition Appellate Tribunal is an independent judicial body that supervises competition matters across sectors, each sector in India has its own appellate body. India might take a page from the UK's competition regime, where competition law is followed by regulators in a number of industries, including energy, communications, financial services, payments, health, railways, and aviation. For appeals from the UK Competition and Markets Authority (CMA) and all utility sector authorities, the Competition Appeal Tribunal acts as the unified appellate body. To promote a culture of competition in India, a similar concept might be used.

## WAY FORWARD

In India, it is critical to maintain the CCI's authority as the anti-monopoly watchdog for anti-competitive agreements in the financial industry. In contrast to other regulatory agencies, the CCI acts with a focus on fair markets, consumer and investor interests, and imposes harsher punishments. As a result, the CCI should continue to be responsible for conducting analyses of problems with competition like collusion, predatory pricing, and market power. Sectoral

---

<sup>11</sup> National Agency of Telecommunication (ANATEL), National Agency of Energy (ANEEL), National Agency of Terrestrial Transportation (ANTT)

<sup>12</sup> Available at: <http://iclr.in/wp-content/uploads/2019/08/Vol.1-OVERLAPPING-JURISDICTION-OF-REGULATORS-IN-INDIA-A-NEVER-ENDING-BATTLE.pdf>

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)



regulators lack the resources and antitrust tools required to address market competition challenges.

### **1. Mandatory Consultative Framework**

The best strategy for India is a contemporaneous framework with ongoing, required coordination and talks between sector regulators and competition authorities. Yet, as shown in other nations where roles and responsibilities are clearly defined, this would necessitate changes to the pertinent legislation. Although it was suggested to require consultation between competition and sectoral regulators more than ten years ago, during discussions to alter the law in 2011, the most recent proposal to amend the Competition law does not yet appear to have accepted this idea.

The required cooperation model would save duplication in the enforcement of antitrust laws, guarantee legal certainty, and preserve the CCI's credibility. The technical rules and structural difficulties, such as tariffs, third-party access, safety standards, and entry-exit requirements, should be the focus of sector authorities. This cooperative strategy would deter forum-shopping and stop market participants from breaking the rules to take advantage of market supremacy.

### **2. Formal and Informal Mechanisms**

To encourage harmonious coordination amongst regulators, official and informal consulting processes might be set up. The CCI and other regulators can communicate regularly in a forum to coordinate policies. The CMA and sectoral regulators can work together through the UK Competition Network to strengthen competition in the economy. Similar to this, the Ministry of Corporate Affairs was suggested a forum under India's National Competition Policy (NCP) (MCA). To give regulators all throughout India a unified platform, MCA founded the Forum of Indian Regulators (FOIR). For the objective of harmonious cooperation, steps should be done to reinvigorate and enhance the FOIR.<sup>13</sup>

Establishing formal institutions, such as the right to observe or participate in processes, official referrals, appeals to a shared authority, or the presence of a competition authority within sectoral

---

<sup>13</sup>

Available

at:

[https://iica.nic.in/FOIR\\_About.aspx#:~:text=FOIR%20Centre%20\(IICA\)%20performs%20functions,carrying%20out%20statutory%20compliances%20etc](https://iica.nic.in/FOIR_About.aspx#:~:text=FOIR%20Centre%20(IICA)%20performs%20functions,carrying%20out%20statutory%20compliances%20etc)

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

<https://www.ijalr.in/>

regulatory organizations, is one way to improve coordination. The employment of specialists from various agencies to facilitate inquiries and investigations, the interchange of personnel on a deputation or internship basis, the participation in each other's training programmes, workshops, seminars, etc. are all additional coordination methods that should be investigated. For representatives of sector regulators, the CCI may also regularly undertake training sessions to improve their comprehension of various competition-related topics.

Encourage formal and informal communication between CCI and other sectoral regulators as a matter of policy. To modify regulations and create a better regulatory environment, these organizations must collaborate closely. Such a partnership would facilitate trade, encourage capital expenditures, and foster economic development.

#### **REFERENCE:**

1. Baldwin, R. (2016). Better Regulation for the Single Market: How to make the EU regulatory framework more effective and efficient. CEPR Press.
2. Carree, M. A., & van Essen, M. (2014). Sector regulator or competition authority? An empirical analysis of the Dutch electricity market. *Energy Economics*, 43, 122-131.
3. European Commission. (2019). Guidelines on the interaction between the Commission and national courts in the enforcement of State aid law. Retrieved from [https://ec.europa.eu/competition/state\\_aid/overview/interaction\\_enforcement\\_en.pdf](https://ec.europa.eu/competition/state_aid/overview/interaction_enforcement_en.pdf)
4. Fairbairn, B. (2018). Competition law and sector regulation: Bridging the gap. *Journal of Antitrust Enforcement*, 6(2), 258-287.
5. Federal Trade Commission & Department of Justice. (2017). Antitrust guidelines for the licensing of intellectual property. Retrieved from <https://www.justice.gov/atr/IPguidelines/download>
6. Granger, C., & Tayebi, M. (2017). Competition and regulation in network industries: A survey. *Journal of Economic Surveys*, 31(1), 257-302.

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

<https://www.ijalr.in/>

7. Katsoulacos, Y., & Ulph, D. (2018). The interaction between competition and regulation: A review of the literature. *Oxford Review of Economic Policy*, 34(1), 98-118.
8. OECD. (2019). Best practices in regulatory policy. Retrieved from <https://www.oecd.org/gov/regulatory-policy/best-practices-in-regulatory-policy.htm>
9. OECD. (2020). Competition authorities and regulatory agencies: Comparing institutional approaches. Retrieved from <https://www.oecd.org/competition/competition-authorities-and-regulatory-agencies-comparing-institutional-approaches-18a909d1-en.htm>
10. UK Competition and Markets Authority. (2019). Memorandum of understanding between the Competition and Markets Authority and the Office of Communications. Retrieved from [https://www.ofcom.org.uk/data/assets/pdf\\_file/0017/170930/Ofcom\\_CMA\\_Memorandum\\_of\\_Understanding.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0017/170930/Ofcom_CMA_Memorandum_of_Understanding.pdf)

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

<https://www.ijalr.in/>