

The Competition Amendment Bill, 2020

Why in News?

The Competition Amendment Bill, 2020 has proposed some key changes to the Competition Act, 2002.

What are the proposed changes?

- The key changes that are proposed include organisational structure, investigation procedure and combination laws.
- The two proposed amendments that would significantly alter the enforcement of competition law in India are,
 1. The hub-and-spoke arrangement which is welcomed,
 2. The res judicata proposal that needs to be reconsidered.

Why is the Hub-and-spoke arrangement welcomed?

- Currently, the agreements amongst players operating in the same market (horizontal level) with respect to price fixing, customer/territory allocation, etc., were included under the definition of cartels.
- The Bill proposes to increase the scope of agreement by including enterprises that act in furtherance of any anticompetitive agreement.
- This proposed amendment would cover enterprises facilitating the operation of cartels, too.
- By way of this proposed amendment, the jurisdiction of the CCI would extend to hub-and-spoke arrangement.
- A participant who was not in the horizontal level but acts in furtherance of the said arrangement by virtue of the hub-and-spoke model may be caught as being a participant in anticompetitive agreement.

What does the Bill say about penalty?

- Earlier, if the hub-and-spoke arrangement was covered, the penalty would have been limited to cases of non-cartel offences.
- With this proposed amendment, the penalty would be applicable for cartel offences too.
- By virtue of the Bill, such arrangements that are adopted in furtherance of a cartel by upstream players may also be caught in this Bill's proviso.

What are the provisions about channel partners?

- Companies would have to ensure that not only their employees, but also the channel partners are well-trained on competition law principles.
- Any agreement with channel partners must contain a clause to mandate the adoption of competition law compliance manual by such partners.
- This said clause should be scrupulously followed to avoid the liability under the Act.
- This assumes significance as the Bill provides for settlement and commitment option, which is not available for cartel offences.
- The proposed amendment, if incorporated, would be a great step forward in terms of enforcement.

What is the res judicata provision?

- [Res judicata - A matter that has been adjudicated by a competent court and therefore may not be pursued further by the same parties.]
- The Bill proposes that the CCI would not inquire into information, if substantially same facts have been decided by the CCI in previous orders.
- But, this provision fails to take into account that market dynamics and state of competition keep on evolving.

Why this provision needs to be reconsidered?

- A classic example of why this provision needs to be relooked is the entire e-commerce analysis.
- In 2014, the CCI took the view that online and offline are not two different markets.
- Conversely, in 2019-20, it took a view that online is a different market.
- Thus, the CCI, based on the market dynamics and evidence on record, has flexibly adopted a different approach than earlier.
- Since the principle of res judicata may be counter-intuitive, it must need a relook to adopt flexibility.

Source: Financial Express