

Tussle between the regulators

Why in news?

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The Supreme Court recently rejected Competition Commission of India's (CCI) plea to probe Reliance Jio Infocomm Ltd.'s allegation of cartelisation against its older rivals.

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What is the case about?

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- Reliance Jio had approached the CCI alleging that Bharti Airtel Ltd., and Idea Cellular Ltd. and Vodafone India (merged) were acting in concert to create hurdles for its entry into the telecom sector.

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- The telecom companies had denied Jio's requests for requisite number of points of interconnect or a gateway between two networks for completing calls.

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- Thus the CCI found a prima facie case against the companies and asked its director general to conduct an investigation.

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- Against the ruling, the three operators approached the Bombay High Court.

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- The High court ruled that since the contracts are regulated by the TRAI Act, only the sectoral regulator (TRAI) under the law has to decide these disputes.

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- The CCI challenged the HC order in the Supreme Court, which tried to balance the roles of the two regulators.

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- The SC ruled that TRAI has the power to deal with and decide the jurisdictional aspects, which falls under the TRAI act in this case.

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- However, if TRAI finds that the incumbent dominant operators indulged in anti-competitive practices, then the CCI can be allowed to investigate the matter.

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- Hence, the CCI can come in only after the sector regulator (TRAI) finds anti-competitive behaviour, ensuring a balance between the roles of a sectoral regulator (TRAI) and the market regulator (the CCI).

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What are the other such related cases?

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- **SEBI - ICAI case** - SEBI had issued notice to an auditor for what was essentially fault-finding with the quality of audit.
- The issue went to the Bombay High Court on the ground that the Institute of Chartered Accountants of India alone had jurisdiction to regulate and pronounce upon the quality of an audit.
- The court ruled in that case that if there were merely a finding of poor quality of audit, the SEBI would have no jurisdiction but if it found evidence of collusion and fraud, it would have jurisdiction.
- **SEBI - PMLA case** - SEBI felt a certain broker did not discharge his duty to report, and hence proceedings were initiated and a penalty was imposed.
- Under the Prevention of Money Laundering Act (PMLA), sectoral regulators such as SEBI and RBI are required to issue circulars on the circumstances and manner in which suspicious transactions must be reported to the Financial Intelligence Unit under that law.
- While stipulating such a circular, the SEBI not only quoted the provisions of the PMLA but also cited its own powers under Section 11 of the SEBI Act.
- The Securities Appellate Tribunal ruled that since the provisions of the SEBI Act had also been invoked, the market regulator would indeed have jurisdiction in parallel to the entire apparatus under the PMLA to enforce that law.

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Has the power of CCI been curtailed?

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- The recent SC ruling would not mean that only the respective sectoral regulators can take actions against their own market participants before the CCI in any cases.

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- There could be some facets of operations, where the CCI can consider it under its jurisdiction. These are when -

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1. No specific standard for certain operations specified by the sectoral regulator.

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2. Authorities are not full-fledged licensing authorities to impose punishments.

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3. State agencies that are not statutorily empowered to regulate and enforce the disputes under a law.

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4. A regulatory agency has specific restricted statutory roles to perform.

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- In all such cases, the CCI may have jurisdiction to have a go at investigations directly.

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- Thus, the powers of CCI against anti-competitive practices has not been curtailed by the SC and hence market participants in regulated sectors must still ensure a free and fair competition within their jurisdictions.

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Source: Business Standard

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Quick Facts

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Competition Commission of India(CCI)

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- CCI is a statutory body of the Government of India responsible for enforcing The Competition Act, 2002 throughout India.

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- CCI consists of a Chairperson and 6 Members appointed by the Central Government.

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- It is the duty of the Commission to -

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1. Eliminate practices having adverse effect on competition

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2. Promote and sustain competition

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3. Protect the interests of consumers

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4. Ensure freedom of trade in the markets of India.

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- The Commission can also undertake competition advocacy, create public awareness and impart training on competition issues.

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