



King's Student Law Review



Title: The Future of Competition Law and the Need for Technological Advancement for Digital Markets: A Comparative Study of UK and Indian Competition Law

Author: Monalisa Choudhury & Ankur Madhia

Source: *The King's Student Law Review*, Vol XIV, Issue I, pp 1-11

Cite as: Monalisa Choudhury & Ankur Madhia (2024) *The Future of Competition Law and the Need for Technological Advancement for Digital Markets: A Comparative Study of UK and Indian Competition Law* The King's Student Law Review, Vol XIV, Issue I, pp 1-11

Published by: King's College London on behalf of The King's Student Law Review

Opinions and views expressed in our published content belong solely to the authors and are not necessarily those of the KSLR Editorial Board or King's College London as a whole.

This journal has been created for educational and information purposes only. It is not intended to constitute legal advice and must not be relied upon as such. Although every effort has been made to ensure the accuracy of information, the KSLR does not assume responsibility for any errors, omissions, or discrepancies of the information contained herein. All information is believed to be correct at the date of publication but may become obsolete or inaccurate over time.

No part of this publication may be reproduced, transmitted, in any form or by any means, electronic, mechanical, recording or otherwise, or stored in any retrieval system of any nature, without the prior, express written permission of the KSLR. Within the UK, exceptions are allowed in respect of any fair dealing for the purpose of private study, non-commercial research, criticism or review, as permitted under the Copyrights, Designs and Patents Act 1988. Enquiries concerning reproducing outside these terms and in other countries should be sent to the KSLR Management Board at kclstudentlawreview@gmail.com.

The KSLR is an independent, not-for-profit, online academic publication managed by researchers and students at the Dickson Poon School of Law. The Review seeks to publish high-quality legal scholarship written by undergraduate and graduate students at King's and other leading law schools across the globe. For more information about the KSLR, please contact kclstudentlawreview@gmail.com.



© King's Student Law Review 2024. All rights reserved.

The Future of Competition Law and the Need for Technological Advancement for Digital Markets: A Comparative Study of UK and Indian Competition Law

Monalisa Choudhury* & Ankur Madhia*

Abstract

Protecting “underdog” business or customers against autocratic contracts and the misuse of dominating trade structures is the objective of UK competition law. The UK government released the Digital Markets, Competition and Consumers Bill, commonly referred to as the UK Bill. The Bill seeks to amend the UK's consumer and competition laws, including what is required of online portals which have been given the title of “strategic market status” (SMS).

Whereas the Competition Law in India has faced rapid development like other laws in the world. The Competition (Amendment) Act, 2023 brought in recent trends of competition law such as de minimis exception, evidence to establish bid-rigging, cartels, delineation of the digital market, digitalization, procedural and jurisdictional issues in India. A comparison of Indian and UK competition laws shall highlight the necessity for technical innovation in digital markets and the future of competition law in both the countries.

I. Introduction

Competition law of any country does not only ensure healthy competition in the market but it proactively checks malpractices in the market which might be deteriorating the competition in the market. It is an act which the competitive authorities are required to do to prohibit anti-competitive activities which interferes with the free enterprises and leads to monopolistic and inefficient markets in the country. Competition law, in its broadest sense, has been a part of the English legal system for a long time.

The theory of the constraint of trade, while it served as a basis for the development of antitrust law elsewhere, only ever served as a lingering restriction on the liberty of business owners in Britain.¹ Ever since Brexit, the Competition and Markets Authority (“CMA”) is said to have been significantly more active than it was in the past now that it has more jurisdiction and lawyers are allegedly seeing this increased activity in the realm of merger control.² Hence, with the introduction of the Digital Markets, Competition and Consumers Bill UK competition enforcement and investigation will be more focused, efficient and timely. Adequate rights of defence will be provided as well. The recent competition reforms in the United Kingdom will help create a level playing field for businesses, rewarding those who innovate and meet customer demands with greater market shares while swift action will target those who prefer to get involved in unfair practices.

Whereas, there has been a pragmatic shift in the ways competition matters are handled by the Competition Commission of India (CCI) in Indian Courts. In the last few years CCI and the Hon’ble Supreme Court of India has passed landmark orders and judgment which has helped in

*LLM Candidate at King’s College London.

* Assistant Professor of Law at National Law University and Judicial Academy, Assam. Email: ankurmadhia@nluassam.ac.in.

¹ Andrew Scott, ‘The Evolution of Competition Law and Policy in the United Kingdom’ (2009) 9 LSE Law, Society and Economy Working Papers <https://eprints.lse.ac.uk/24564/1/WPS2009-09_Scott.pdf> accessed 20 November 2023

² Christian Clare, ‘The State of the UK Competition Law Landscape in 2023’ (*Chambers and Partners*, 2 May 2023) <<https://chambers.com/topics/the-state-of-the-uk-competition-law-landscape-in-2023>> accessed 20 November 2023

significant development of competition regime in India. In a very short span of time CCI has made an impact on business enterprises in India by imposing heavy fines and creating a competitive environment in the Indian markets.³

Ever since there is a change in market conditions and players owing to technological development the CCI has been applying the laws relating to competition as per the Competition Act, 2002 (CA) to match the significant changes brought in by the tech companies to ensure that they do not disrupt the competition in the market.⁴ Lately, there has been enormous growth in the digital market as people prefer buying and selling through digital platforms. The growth of digital market has brought in challenges for the CCI as giant tech companies abuse their dominant position in the global markets thus creating an entry barrier for the new players by engaging in deep discounting which results into denial of market access to offline players.⁵

CCI has been quite active in past few years for enforcing competition law in digital markets. CCI started investigating against the tech giants like Flipkart and Amazon against exclusive vertical agreement entered with third party sellers for operation through their digital platforms.⁶ CCI is also investigating food delivery apps like Swiggy and Zomato for delay in payment cycle, one-sided clauses in their agreement, charging exorbitant commission, price parity clauses and data masking practices.⁸ Director General (“DG”) under CCI is also investigating Apple for abusing its dominant position for App Store for iOS in India where it has been alleged that Apple imposed restrictive terms in its agreement on the developers and also charged high commission fees.⁷ CCI has also started *suo motu* investigation against WhatsApp for collecting data from its users and sharing it with its parent company Meta. WhatsApp is alleged to abuse its dominant position by mandatory updating its privacy policy in 2021 where the user does not have an option to opt-out from providing personal data to the company.⁸ CCI also initiated enquiry against BookMyShow for exclusive ownership and access of data by BookMyShow which might result into exclusive and restrictive agreements with theatre owners which has potential to deny market access to other platforms and potential entrants.⁹

CCI in the year 2022 passed an order against MakeMyTrip and Go-Ibibo (MMT-GO) for abusing its dominant position by entering into an exclusive agreement with OYO. As per the agreement between the parties it was decided that MMT-Go will provide preferential treatment to OYO on its platform. It was also found that MMT-Go has entered into price parity agreement with hotel partners restricting them from selling their rooms to other players at lower prices.¹⁰ CCI in its two different orders as per section 27 of the CA 2002, imposed fines on Google Android OS and Google Play Store for abusing its dominant position where the CCI directed them to unbundle apps and restricted them from imposing unfair and discriminatory terms by denying

³ Abir Roy & Jayant Kumar, *Competition Law in India* (2nd edn., Eastern Law House 2023) 1.

⁴ *ibid* S3.

⁵ Philip Mansfield et al, ‘Abuse of Dominance Enforcement Paves Path for Digital Reform’ (*Allen & Overy*, 20 March 2023) <<https://www.allenoverly.com/en-gb/global/news-and-insights/publications/abuse-of-dominance-enforcement-paves-path-for-digital-reform>> accessed 1 September 2023.

⁶ *Delhi VyaparMahasangh v Flipkart Internet Pvt. Ltd.*, Case No. 40 of [2019].

⁸ *National Restaurant Association of India v Zomato & Swiggy*, Case No. 16 of [2021].

⁷ *Together We Fight Society v Apple Inc.*, Case No. 24 of [2021].

⁸ *In Re: Updated Terms of Service and Privacy Policy for WhatsApp Users*, *Suo Moto* Case No. 01 of [2021].

⁹ *Vijay Kumar v Big Tree Entertainment Pvt. Ltd.* (BookMyShow), Case No. 46 of [2021].

¹⁰ *Federation of Hotel & Restaurant Associations of India v MMT-Co*, Case No. 14 of [2019] and Case No. 01 of [2020].

access to its stakeholders.^{11,12,13}

The aim of this research article is to carve out a thorough study of the current competition legal regimes in both the countries and also understand the progress of India as well as United Kingdom with regard to protecting the competitive behaviour in this era of digital networking in the best comparative manner. This piece shall focus on the overall progress of the competition laws in both the countries and the need for further advancements to ensure a healthy competition among the sellers of both the countries.

II. Substantive Issues in Competition Law Enforcement

A non-ministerial department namely Competition & Markets Authority (CMA) regulates the competition in the UK and primarily holds the position of maintaining and implementing the regulations pertaining to competition law. The UK framework was formed by the Competition Act 1998 and the Enterprise Act 2002, which were amended by the Enterprise and Regulatory Reform Act 2013, thus creating the CMA.¹⁴ The administration's intervention in market investigation or merger evaluations is somewhat restricted. Similar powers to look into competition in their specific industries is granted to individual sector regulators, such as the Financial Conduct Authority (financial services), Ofcom (communications) and Ofgem (gas and electricity).¹⁵

The UK has witnessed a steady increase in the private enforcement of competition law in recent years. This has been achieved through a combination of independent acts, especially by means of joint meetings and personal remedy cases that adhere to infringement precedents with regard to competition law.¹⁶ The obligations imposed on the CMA may reach at an unprecedented level simultaneously, considering the way Brexit may affect the nature and scope of activities related to enforcement of competition law in the UK.

Henceforth, the eagerly anticipated Digital Markets, Competition and Consumers Bill (Bill) was released on the 25 April 2023 by the UK authorities.¹⁷ Among other things, the Bill does establish an additional pre-emptive regulatory structure for online marketplaces. This piece of legislation primarily adopts recommendations from administration's consultative statements regarding the newly established system from Spring 2022.

A. Merger Control in the UK

Merger evaluations of CMA shall primarily focus on deals which will have the greatest ability to minimise competition. Small business mergers shall not be subjected to scrutiny because of the fact that they are less likely to negatively impact the competitive behaviour of the market

¹¹ *Umar Javeed v Google LLC*, Case No. 39 of [2018].

¹² *XYZ v Alphabet Inc.*, Case No. 07 of [2020] and Case Nos. 14 & 35 of [2021].

¹³ Prashanth Shivadass & Nandini Nair, 'The Future of Competition Law – II: Digital Markets' (*Bar and Bench*, 31 May 2023) <<https://www.barandbench.com/law-firms/view-point/the-future-of-competition-law-ii-digital-markets>> accessed 20 September 2023.

¹⁴ Ali Shalchi, 'The UK Competition Regime' (*House of Commons Library*, 25 May 2021)

<<https://researchbriefings.files.parliament.uk/documents/SN04814/SN04814.pdf>> accessed 19 November 2023.

¹⁵ *ibid.*

¹⁶ Competition and Markets Authority and Sarah Cardell, 'Private Actions and Public Enforcement' (*Gov UK*, 5 May 2023) <<https://www.gov.uk/government/speeches/private-actions-and-public-enforcement>> accessed 15 November 2023.

¹⁷ 'Digital Markets, Competition and Consumers Bill' (*UK Parliament*, 24 November 2023), <<https://bills.parliament.uk/bills/3453>> accessed 25 November 2023.

structure. The organization under acquisition (which is the target company) now has higher UK control over mergers amounting to turnover thresholds of GBP 100 million as opposed to GBP 70 million.¹⁸ In order to create a “safe harbour”, the ratio of supply test was modified with an inclusion of a requirement that in any case at least one of the companies intending to merge is required to possess a UK turnover higher than GBP 10 million.¹⁹

Furthermore, a criterion focusing on acquirers has been brought into consideration and thus introduced to target certain vertical and conglomerate mergers. Although it covers “killer acquisitions” in the digital sector, this will probably have broader implications. The acquirer of merging businesses must hold more than GBP 350 million UK turnover and a minimum of 33 percent share of the supply of products or services within the UK or in a significant portion of the UK for this threshold to be made applicable.²⁰ Notably, there will not be any requirement for an increase in the supply share in order to satisfy the test. A revised swift procedure shall be implemented under the said Bill enabling several merging companies to move quickly towards a thorough Phase 2 review.²¹

In accordance with the aforesaid procedure, the CMA may expedite a merger upon proposal from either of the merging parties, at any point prior to the conclusion of the “initial period”, during which CMA is obligated to conclude the Phase 1 inquiry.²² This Bill additionally permits the CMA and the merging parties to mutually decide to extend, by no more than 11 weeks, the statutory timeline for Phase 2 investigations. Crucially, firms that were given the designation of SMS position according to the online market requests will have to submit to an essential merger declaring requirement before the deal closes, particularly in case the SMS firm purchases at least 15 percent of the shares or voting rights in a business that operates within the UK or provides products as well as services therein. In case the firm’s stake rises to 25 per cent or 50 per cent, additional reports will be needed.²³

B. Automatic Approvals for Combinations in the UK

The Prioritisation Statement on Combination Therapies was published on the 17 November 2023. It was stated that the CMA shall not give priority to investigating exchanges of data or agreements in compliance with the terms of the combination therapy medications in accordance with the provisions of the Competition Act of 1998 (CA 1998).²⁴

The Prioritization Statement was developed as a reaction to the information received from the Association of the British Pharmaceutical Industry (ABPI) and its member companies indicating that concerns related to competition law are impeding the development of the licensing agreements necessary to enable access for patients to combination therapies.

¹⁸ Dr. Saskia King and Tenisha Cramer, ‘UK Competition Law Powers: Sharper Teeth, Larger Fines – New Bill Bolsters Investigative and Enforcement Powers of the CMA’ (*Bird & Bird*, 14 June 2023). <<https://www.twobirds.com/en/insights/2023/uk/uk-competition-law-powers-sharper-teeth-larger-fines-new-bill>> accessed 19 November 2023.

¹⁹ *ibid.*

²⁰ *ibid.*

²¹ *ibid.*

²² *ibid.*

²³ *ibid.*

²⁴ Andrew Morrison & Uwen Yap, ‘A Dose of Legal Certainty: CMA’s Prioritisation Statement Provides Guidance for Co-operation Between Suppliers of Combination Therapies’ (*Macfarlanes*, 21 November 2023) <<https://blog.macfarlanes.com/post/102it2s/a-dose-of-legal-certainty-cmas-prioritisation-statement-provides-guidance-for-c#:~:text=The%20Competition%20and%20Markets%20Authority,to%20the%20provision%20of%20combination>> accessed 22 November 2023.

Hence, CMA did set out a clear framework to allow producers to collaborate so that productive combination treatments can be introduced to the market without giving a rise to competition concerns.

Similarly, in India in recent years CCI has played a pivotal role in the development of Competition Law. CCI is a budding regulator in competition regime of India which is in its 13th year of establishment. In this short period of time CCI has made a significant impact on the markets in India by imposing heavy fines on Companies to bring a positive change in the market for fair and healthy competition.²⁵ Still there is an urgency of certain substantive issues in competition law enforcement and its regulation in last few years which needs to be addressed. These issues can be categorized as:

C. Issues related to Merger Control in India

On 4 March 2016, the Ministry of Corporate Affairs (MCA) notified revision in threshold limit for mergers of two or more corporate entities which is termed as “*de minimis* exemption”.²⁸ By revising “*de minimis* exemption” now certain transactions are exempted from seeking permission of CCI for merger. There have been constant exemptions made according to the sector specific industries keeping in mind the growth of Indian economy for effective and efficient functioning of Competition Law. MCA has revised the target company’s asset value to 350 Cr. INR from previously 250 Cr. INR, and target company’s turnover was revised to 1000 Cr. INR from previously 750 Cr. INR. On 27 March 2017, the *de minimis* exemption was extended for next five years which is till year 2022 to cover small transactions for mergers or amalgamation which was previously applicable to acquisition only.^{29,26} On 16 March 2022,²⁷ the *de minimis* exemption was further extended to 2027. MCA has made exemption for various industries like Regional Rural Banks, Nationalized Banks, Banking Companies and Central Public Sector Enterprises operating in Oil and Gas Sectors from seeking permission from CCI before merger and acquisition as per section 5 & 6 of the Competition Act.^{32,33,34,35}

D. Automatic Approvals for Combinations in India

The Competition Law Review Committee (CLRC) has recommended the “Green Channel”, which basically is a mechanism where combinations will be approved automatically if they are unlikely to result into Appreciable Adverse Effect on Competition (“AAEC”) in the market. This recommendation of CLRC was implemented in 2019 by amending the Competition Commission of India (Procedure in Regard to the Transaction of Business Relating to Combinations) Regulation 2011²⁸ and inserting Regulation No. 5A for approving combinations through the Green Channel filing mechanism. Under Green Channel filing a combination is deemed to be approved once notice is filed in the prescribed format by skipping the statutory period of 210 days’ time limit for the ex-ante proceeding of the CCI. Until February 2023, the

²⁵ Government of India, ‘Report of Competition Law Review Committee’ (Ministry of Corporate Affairs, July 2019), < <https://www.ies.gov.in/pdfs/Report-Competition-CLRC.pdf> > accessed 15 September 2023.

²⁸ Ministry of Corporate Affairs Notification: S.O. 673(E), 674(E), 675(E). Date 04.03.2016.

²⁹ Ministry of Corporate Affairs Notification: S.O. 988(E), 989(E). Date 29.03.2017.

²⁶ Ministry of Corporate Affairs Notification: S.O. 673(E), 674(E), 675(E). Date 04.03.2016.

²⁷ Ministry of Corporate Affairs Notification: S.O. 988(E), 1192(E). Date 16.03.2022.

³² Ministry of Corporate Affairs Notification: S.O. 2561(E). Date 10.08.2017.

³³ Ministry of Corporate Affairs Notification: S.O. 2828(E). Date 30.08.2017.

³⁴ Ministry of Corporate Affairs Notification: S.O. 1034(E). Date 11.03.2020.

³⁵ Ministry of Corporate Affairs Notification: S.O. 3714(E). Date 22.11.2017.

²⁸ Competition Commission of India Notification: F. No. CCI/CD/Amend/Comb. Regl./2019. Date 13.08.2019 (w.e.f. 15.8.2019).

number of combinations which got approval under Green Channel mechanism stands at 73.²⁹ The Sectors where Green Channel applications were filed ranges from investment holding companies, life insurance services, alternative asset managing companies, pharmaceutical companies, security services, airport services and cash services companies.

After examining the laws related to combinations in UK and India. It has been witnessed that both the jurisdictions have made provisions for facilitating the process of corporate restructuring in a time bound manner. This is done with the view to promote entrepreneurship in both the jurisdictions and to promote foreign investment in the country.

III. Issues Related to Bid-Rigging Cartels and Due Process

Bid-rigging occurs when two or more competitors enter into an agreement that they will not compete genuinely for the bidding of the tender. In this process one competitor allows the other competitor to win the tender through rigging the bid or they may take turns and be the winners. This sort of agreement to rig a bid comes under the definition of anti-competitive agreements which causes appreciable adverse effect on the market competition or has the potential to do so. The definition of anti-competitive agreement is wide and it even covers the situation where an agreement or arrangement is made between the competitors by a nod or a wink without any direct or written agreement as evidence of such activity. To establish and prove bid-rigging there must be an evidence to show coordination between the competitors with an actual intention to manipulate the process of bidding.

Agreements, coordinated procedures or choices made by groups of businesses that either prioritise or have an impact on the deterrence, limitation or deformation of competition across the UK and that could have an impact on businesses within the UK are prohibited under Chapter I Prohibition.³⁰ The CMA is in charge of enforcing this prohibition. Simultaneously, the courts are also responsible for the enforcement of the Chapter I Prohibition.³¹ Customers of cartel members, for instance, may file private lawsuits to recover damages for violations of the Chapter I Prohibition. In addition, the courts hold the authority to declare a contract that violates competition law void (in whole or in parts) and can also order its termination. The abuse of dominance is prohibited under civil regime as well under Chapter II Prohibition, which is implemented by the same authorities and usually carries the same legal ramifications as Chapter I Prohibition.³² If found guilty for conspiring with one or more others to carry out, or cause to be carried out, arrangements for the fixing of prices, market-sharing, bid-rigging, or restricting supply or production, person faces a maximum prison term of five-years and possibly an indefinite punishment.³³ The criminal cartel offence has a more limited reach than its civil equivalent as the purpose of the crime is to target only “hard-core” cartel behaviour and a cartel needs to be a reciprocal agreement that is intentionally entered into in order to be considered as an offence.

A. Due Process in UK and India

The CMA is authorised to look into and investigate claims of criminal cartels in Wales, England and Northern Ireland. A number of penalties can be imposed by CMA (as well as the

²⁹ Roy (n4) S7.

³⁰ Competition Act 1998.

³¹ *ibid.*

³² *ibid.*

³³ Giles Warrington & Rachel Cannon, ‘Cartel Laws and Regulations | United Kingdom’ (*Global Legal Insights*) <<https://www.globallegalinsights.com/practice-areas/cartels-laws-and-regulations/united-kingdom>> accessed 19 November 2023.

sectoral regulators) if they determine that there has been a civil law violation of the Chapter I Prohibition.³⁴

Following a 2019 Competition and Markets Authority (CMA) investigation, ten construction companies with headquarters in the UK were penalized by a fine of £59,334,597 for engaging in unlawful cartel agreements to collude on prices when presenting bids in competitive tenders for contracts. These bids were manipulated to give an impression that they had been competitive enough when they weren't. Each of the ten companies were found to be engaged in at least one bid-rigging incident.³⁵ The CMA succeeded in having three of the companies' directors engaged in the illegal activity disqualified from their positions.

To establish bid-rigging, CCI looks into evidence for corroboration that there was actual meeting of competitors before the bid took place and the competitors were in contact with each other.³⁶ To prove anti-competition agreement for bid-rigging the CCI needs to establish the parallel conduct of the competitors and market allocation which further needs to be corroborated by evidence like bidders purchasing the tenders simultaneously, bogus entries in the books and communication between the bidders.³⁷ In case of *People's All India Anti-Corruption and Crime Prevention Society v. Usha International Ltd*, there was an allegation of bid-rigging on the tender which were announced by the Pune Municipal Corporation for distribution of sewing machines amongst the poor and backward class people for its procurement.³⁸ On investigation CCI found out that the bids were identical and the bid-riggers used the same IP address for bidding. They communicated with each other and had close coordination with each other. Hence, CCI came to conclusion that there was contravention of Section 3(3)(d) of CA.

Due Process Issues as such does not invalidate the proceeding of CCI such as lack of Judicial Member in the CCI. The Delhi High Court and NCLAT recently clarified that mere absence of judicial member in the CCI would not stop CCI from performing its duty. Delhi High Court in *Mahindra Electric Mobility Ltd. v. CCI (Mahindra & Mahindra)* directed government of India to appoint a judicial member in CCI within 6 months of judgment.³⁹ However, in the case of *CADD Systems & Services Pvt. Ltd. v CCI*⁴⁰ (CADD Systems), Delhi High Court relied on 'Ganga Clause' as per the Supreme Court's judgment of *B.K. Srinivasan v. State of Karnataka*⁴¹ and validated the final order of CCI which was passed in the absence of Judicial Member. As per Section 15 of the CA, proceeding of CCI will not be invalidated due to any vacancy and defect in the constitution of the statutory body. Further, defects of procedure which do not lead to any substantial prejudice will not invalidate the orders of CCI. In the case of *Amazon.com NV Investment Holding LLC v. CCI*, NCLAT held that no proceeding of CCI will be invalidated due to vacancy in the quorum and the tribunal relied on section 22(3) of Competition Act which lays the legislative intent that absence of a judicial member does not prohibit the functioning of CCI.⁴² After the 2007 amendment in the Competition Act, CCI requires at least three members for discharging functions and it does not mandate presence of judicial member in the quorum. In the case of *Pawan Jagetia v. CCI*, NCLAT

³⁴ *ibid.*

³⁵ Competition and Markets Authority, 'Construction Firms Fined Nearly £60 Million for Breaking Competition Law by Bid Rigging' (*Gov UK*, 23 March 2023) <<https://www.gov.uk/government/news/construction-firms-fined-nearly-60-million-for-breaking-competition-law-by-bid-rigging>> accessed 17 November 2023.

³⁶ *GAIL (India) Pvt. V PMP Infratech Private Ltd.*, Case No. 41 of [2019].

³⁷ *Re, Surendra Prasad (MAHAGENCO's Tender for Coal Liaison service in Maharashtra)*, Case No. 61 of [2013].

³⁸ Case No. 90 of [2016].

³⁹ Writ Petition (Civil) 1146/[2018].

⁴⁰ AIR [2019] Del 94.

⁴¹ [1987]1 SCC 658.

⁴² Competition Appeal (AT) No. 1 of [2022].

held that absence of judicial member in the CCI does not make its order void.⁴³ It also pointed out that in section 8 and section 9 of the Competition Act, 2002 there is no mentioning of mandatory requirement of judicial member in CCI for adjudication.

Both UK and India view collusion and cartels very strongly and the code provides for criminal liability and penalties in UK whereas there are provisions for monetary penalties in case of Indian Law. Both jurisdictions have dealt strictly with the cases of bid-rigging where huge penalties have been imposed on the wrongdoer as such activities hampers the economic growth of a country.

IV. Adjudicatory and Investigation Power of Authorities

A. Adjudicatory and Investigation Power in the UK

The Digital Markets, Competition and Consumers Bill suggests limiting the scope of the CMA's market investigations to those specific market elements that give rise to competitive concerns. The proposed legislation eliminates the deadline for the CMA to either start a consultation regarding a proposal to make a reference to a market investigation, or is obligated to publish notice of its decision not to make a reference, once a market investigation has begun.⁴⁴ Nevertheless, within a year of the market study notice's release, the CMA must still finish the procedure and make a determination regarding the market investigation reference.

Furthermore, this legislation will impose an additional authority on CMA to evaluate particular solutions applicable to competition-related problems in order to make sure that these function effectively prior to settling on a final remedy package. The CMA shall have an additional responsibility to keep an eye on the success of the productivity of the orders that are either issued or accepted. It is within the CMA's power to summon anyone rather than only individuals with a link to a pertinent undertaking for an interview at a designated time and location and to provide answers for the purpose of the inquiry.⁴⁵ The CMA shall hold the power to impose civil fines for noncompliance with information requests and investigation procedures.

Hence, the powers and duties of CMA are expanded placing a new expeditionary duty which emphasises the necessity of making decisions quickly without sacrificing the value of sound judgments and legal rights.

B. Adjudicatory and Investigation Power of CCI and DG in India

The powers of CCI and Director General (DG) are distinct and separate as per Competition Act, 2002. The act provides for adjudicatory power to CCI so that it can act as a watchdog on anti-competitive practices in the market whereas DG is empowered with the investigating powers as per the Act. CCI can initiate investigation upon receiving information about any anti-competitive practice under section 19 (1) of the Act. It can also *suo motu* initiate investigation by directing DG upon *prima facie* evidence under section 26(1) of the Act. CCI may also dismiss the case by passing an order under section 26(2) of the Act. Upon investigation of the matter the DG has to submit a report to CCI about the contravention of the Act by the enterprise upon which the CCI can penalise the enterprise, absolve the enterprise else pass an order directing DG to investigate further. The DG's investigation upon direction of CCI involves detailed analysis

⁴³ Competition Appeal (AT) No. 16 of [2021].

⁴⁴ King (n20).

⁴⁵ *ibid.*

of facts and circumstances from all angles and finding out every possible contravention of the Act.⁴⁶ In the case of *Excel Corp Care Ltd. v. CCI* (Excel Corp.) the Hon'ble Supreme Court discussed in detail the scope of DG's investigation where it was held that DG should not restrict its investigation outside the scope of *prima facie* order.⁴⁷ DG is required to investigate on necessary facts and circumstances to make sure that there is no contravention of the Act by the alleged enterprise. DG will be well within its power to investigate upon another enterprise whose is involved in contravention of the Act revealed during the investigation of the *prima facie* order. As it is not possible to foresee and predict the violation of the Act in a *prima facie* order. In case of *Cadila Healthcare Ltd. v. CCI*, Cadila Healthcare Ltd. objected to the investigation conducted by DG upon it as it was not impleaded as an opposite party in the CCI's *prima facie* order.⁴⁸ The court held that DG's investigation should not be restricted to enterprises named in CCI's *prima facie* order. DG can extend its investigation to collect new facts, additional enterprises and additional information which were not available in the *prima facie* order.

Both UK and Indian competition law provides for a well-established procedure to conduct the investigation in case of allegation for anti-competitive behaviour by the CMA under UK law and CCI under Indian Law. The code provides enough power to the authorities to conduct investigation on the basis of an allegation for anti-competitive conduct by an enterprise.

V. Conclusion

Not just Big Tech will bear the effects of the Digital Markets, Competition and Consumers Bill, but every industry will be impacted by the modifications introduced to the CMA's overall structure of competition law, which includes revised merger criteria and a reinterpretation of the Chapter I restriction. This will serve as an additional motivating factor for the CMA to consistently act in an appropriate manner and investigate the intervention that has the highest chance of producing the optimum results for the end users.

However, as an additional step the UK may adopt the idea of "Green Channel" from India to expedite and facilitate the mechanism of automatic approvals for combinations as it shall automatically filter out the combinations which shall have appreciable adverse effect on the competitive nature of the market thus lessening the burden of CMA to some extent.

Nevertheless, the Bill aims to strengthen the regulatory mechanism prohibiting the anti-competitive behaviour thus streamlining the merger control system and expanding investigative as well as enforcement capabilities of CMA which is a step forward to protect competition amongst sellers and ensuring a healthy competitive market structure in the United Kingdom.

Similarly, the recent amendments in the Competition Act, 2002 would definitely bring in a significant change in the competition regime of India. It provides CCI with new set of enforcement tools for better and efficient functioning of the Act. The Amendment Act of 2023 is a step forward to meet the technical advancement much needed to handle the investigation against tech giants in digital markets in India. Through these latest amendments CCI will be able to promote fair and healthy competition in Indian markets which will benefit the entire Indian economy thus, creating confidence amongst the customer and the investors within India and abroad. Henceforth, India shall have to adopt a policy element of bringing in 'Digital India Competition Act' to deal with new age development in technology and tech giants in Indian digital markets so that they do not engage in anti-competitive practices. Life sciences sector is the next

⁴⁶ *CCI v SAIL* [2010]10 SCC 744.

⁴⁷ [2017]8 SCC 47.

⁴⁸ [2018] SCC OnLine Del 1129.

sector to be looked out at for abuse of dominance, pharmaceutical companies in particular needs a special look for its dominance and abuse. In the near future the life sciences sector is likely to be on the radar of CCI for anti-competitive practices. The continuing of excessive pricing in pharmaceutical and alleged misuse of patent systems to create entry barriers for new enterprises and to eliminate the existing rivals are likely to shape the approach of anti-competitive authorities in near future.

Hence, it can be concluded that the competition regime in both India and the United Kingdom is undergoing a major transformation with regard to enhancing protection of healthy competitive behaviour in digital space across borders through the much needed amendments as the legislations pertaining to the antitrust must be enacted to achieve the directed goals and be progressive enough to adapt to possible changes. Hence, competition laws serve to safeguard national competition in the market, thereby enhancing the interests of all market participants and boosting global economic growth.