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Competition (Amendment) Bill passed in Lok Sabha: How it affects Big Tech

One of the major changes in the amended law is that it affords the Competition Commission of India (CCI) the ability to penalise entities found engaging in anti-competitive behaviour based on their global turnover.

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While the new provision on global turnover will not be exclusively applicable to tech companies, they are likely to be the most aggrieved by it. (File)

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Just as the National Company Law Appellate Tribunal released its final verdict upholding the competition's regulator's findings that Google abused its market dominance in the Android ecosystem, the Lok Sabha passed a piece of competition-related legislation which could pose a new frontier of challenges for Google and other global technology companies.

The lower house of Parliament passed the Competition (Amendment) Bill, 2023 Wednesday, which seeks to amend the Competition Act, 2022. One of the major changes in the amended law is that it affords the Competition Commission of India (CCI) the ability to penalise entities found engaging in anti-competitive behaviour based on their global turnover.

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So far, the penalties were decided as a percentage of erring entities' "relevant" turnover, which typically means their annual domestic turnover.

Why global turnover provision could spell trouble for the Big Tech

To be sure, while the new provision on global turnover will not be exclusively applicable to **tech companies**, they are likely to be the most aggrieved by it given the nature of their business which cuts across geographies. Typically, the revenue these businesses earn from their India operations is much smaller than their income in other regions such as the US and Europe.

"From a business' point of view, the consideration of total turnover may lead to unfair and punitive outcomes and would also lead to discrimination between enterprises who commit a similar contravention but are penalised differently depending on the expanse of their business," said Avantika Kakkar, partner and head of competition at law firm Cyril Amarchand Mangaldas.

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In the European Union, the penalty imposed on an entity for anti-competitive activity has been limited to 10 per cent of the overall annual turnover of the company. The 10 per cent limit can be based on the turnover of the group to which the company belongs if the parent of that group "exercised decisive influence over the operations of the subsidiary during the infringement period".

The jurisprudence on the definition of 'turnover' in India

The definition of "turnover" had been a widely debated subject in the competition law landscape, and it was in 2017 when the Supreme Court had fixed how it should be determined in such cases. On 8 May, 2017, in a landmark judgement, the top

court had upheld the principle of “relevant turnover” for determination of penalties in competition law contraventions.

In a case related to alleged contravention of the Competition Act, 2002 in the public procurement of Aluminium Phosphide tablets by the Food Corporation of India, the CCI had imposed a penalty at the rate of 9 per cent of the total turnover of the concerned tablet manufacturers, Excel Corp. Care Limited, United Phosphorus Limited, and Sandhya Organic Chemicals Private Limited.

The Competition Appellate Tribunal (COMPAT) had however later said that the turnover will have to be “relevant” turnover, that is turnover derived from the sales of goods or services.

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Ultimately, the Supreme Court had held that the imposition of penalty adopting the criteria of “relevant turnover” will be “more in tune with ethos of the Act and the legal principles which surround matters pertaining to imposition of penalties.”

Other amendments

The changes in the Competition (Amendment) Bill, 2023 afford the CCI a greater say in mergers and acquisitions as entities will have to seek its approval in case a deal value is worth more than Rs 2,000 crore, and both the parties have a substantial business operation in India.

The CCI could also incentivise parties in ongoing cartel investigations in terms of lesser penalty to disclose information regarding other cartels.

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