Syllabus subtopic: Government Policies and Interventions for Development in various sectors and Issues arising out of their Design and Implementation.

Prelims and Mains focus: about the key changes proposed in the bill; about CCI

News: The Ministry of Corporate Affairs has put the draft Competition (Amendment) Bill, 2020, in the public domain seeking feedback from all stakeholders.

About the draft Bill

- The Competition Commission of India (CCI) is set to get more powers to oversee mergers and acquisitions (M&As) involving technology companies, which are currently out of its purview. The regulator may also see changes in its structure and functioning to ensure fair practices when it comes to scrutinising business processes.

- According to the proposed bill, the Centre will also have the option to prescribe new criteria for mergers, other than the asset size and revenue of companies—so far the only criteria for competition scrutiny.

- The bill also proposes that it is mandatory for the Commission to give parties to a combination an opportunity for being heard in case any adverse order is going to be passed.

- Buyers forming a cartel may be penalised if the changes proposed by the Ministry of Corporate Affairs (MCA) to the Competition Act are enacted. Buyer cartels were not covered under the Competition Act and hence the proposed changes would give clarity to this aspect.

- The draft amendments also seek to empower the director general for investigation to send a person to prison for up to six months or impose a fine of Rs 1 crore if the latter refuses to produce any book, paper, or document the former has asked for. Currently, the CCI imposes penalties on companies on the basis of their turnover if they flout competition rules. When
it comes to directors of companies or proprietorship firms, penalties are imposed on the basis of their income. However, the law does not have any provision to empower the CCI to impose penalties on the income of individuals.

- To remove the lacunae, the MCA suggested the Bill has a provision of income, on which penalty could be imposed under Section 27 of the Competition Act. Including the word ‘income’ in the Act may provide a legal basis to the CCI to impose penalties on individuals.

- However, the amendment does not take into consideration the concept of “relevant turnover” as decided by the Supreme Court in the Excel Crop Care matter in 2017. The existing rules, according to the ministry, were not adequate as new-age technology companies have huge valuations, but their assets and turnover in India keep them out of the purview of the competition law.

- The draft amendments also call for introducing a “commitment and settlement” clause in the Competition Act. The enabling clause will allow those found in contravention of the competition law to “commit” to correct their ways to avoid action even before investigation is completed. Even in cases where investigation is over, evidence has been found, and the adjudicating process has started, the companies can still enter a settlement. The companies will have to pay a certain amount as fine and avoid legal proceedings after ensuring that any anti-competitive practice will be corrected.

- The proposed amendments also seek to provide clarity to “hub and spoke cartels”. The MCA suggested hubs also be covered under Section 3(3), which deals with cartels that hinder competition. A hub-and-spoke cartel is basically an arrangement between companies where a dominant player, called hub, is wooed by other firms, called spoke, to destroy competition by, say, increasing or lowering prices. The hub-and-spoke agreements were not specifically covered under the Competition Act.
The proposed amendments also seek to expand the composition of the CCI by including part-time members in the Commission. The Commission is currently a four-member body, including the chairman.