Syllabus subtopic: Statutory, regulatory and various quasi-judicial bodies

Prelims and Mains focus: about the govt.’s move; M&As and their impact on competition in the market; about CCI and its functions

News: Global mergers and acquisitions (M&As) among technology giants that could disturb the competition landscape in India may soon require clearance from the Competition Commission of India (CCI).

About the move and its significance

The Ministry of Corporate Affairs is working on a bill to amend the nearly two decade-old Competition Act of 2002, which is likely to be introduced in the budget session of Parliament.

• The change will incorporate deal size, which is currently not among the criteria for vetting global M&A deals with relevance to the Indian market, in CCI’s merger regulations.

• The change will bring mega deals such as the 2014 acquisition of WhatsApp by Facebook within the ambit of CCI. Facebook’s $19 billion acquisition of WhatsApp escaped CCI assessment.

• This move (of adding deal size as a criterion) will be very useful for regulating M&As involving digital economy giants as the present threshold for regulation based on assets and turnover may not apply to them.

• Even if the asset or turnover of the combined entity is below the threshold specified in the law, if their deal size is above a certain threshold, which is to be decided after deliberations, they may have to refer the case to CCI.

• The proposed change will impact transactions involving domestic digital e-commerce firms, including taxi aggregators and e-commerce companies, which may command huge valuation because of their unique business models or access to user base.
What is the present scenario?

- India has seen several acquisitions in the digital economy space in recent years, including of Myntra by Flipkart and TaxiForSure by Ola.

- Currently, **asset size and revenue in an M&A are the only criteria for competition scrutiny**. This has **proved to be inadequate** as new-age technology companies have huge valuations, but their assets and turnover in India keep them out of the purview of local competition law. Their valuations come in part from their access to customer base and data, and India is a huge market for them.

- Individual firms involved in M&As have to seek CCI clearance now if their combined assets in India are worth over ₹1,000 crore or their revenue is over ₹3,000 crore. Deals involving firms having combined global assets of $500 million or sales of $1500 million need CCI’s approval if they have assets worth at least ₹500 crore or sales worth ₹1,500 crore in India.

Impacts of M&As deals on competition

- A deal’s impact on competition is assessed on several factors including a **reduction in the number of players** in the market and the **entry barriers created for new players**.
- In the case of global transactions among digital economy firms, their nexus with the Indian market has to be established in order to assess whether their M&As impact competition in the local market.
- Whenever global transactions are referred to national competition authorities, they suggest modifications to certain parts of the transaction if competition in the local market is adversely affected.

About Competition Commission of India:

It is a statutory body of the Government of India, responsible for enforcing the Competition Act, 2002 throughout India and to prevent activities that have an adverse effect on competition.

Objectives:
To prevent practices having adverse effect on competition.
To promote and sustain competition in markets.
To protect the interests of consumers.
To ensure freedom of trade.

Functions:

- It is the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade in the markets of India.
- The Commission is also required to give opinion on competition issues on a reference received from a statutory authority established under any law and to undertake competition advocacy, create public awareness and impart training on competition issues.

Competition Act 2002

The Competition Act, 2002, as amended by the Competition (Amendment) Act, 2007, prohibits anti-competitive agreements, abuse of dominant position by enterprises and regulates combinations (acquisition, acquiring of control and M&A), which causes or likely to cause an appreciable adverse effect on competition within India.