CCI chief pitches for redefining 'Control'

Updated: 23 Aug 2022, 06:22 AM IST

- **‘Control must consider evolving relationship between shareholders, firms’**
- **The Competition Act currently defines ‘control’ as controlling the affairs or management.**

The control exercised by investors in a company needs to be redefined more broadly in the law to make merger regulations in sync with a dynamic market, Competition Commission of India (CCI) chairperson Ashok Kumar Gupta said in an interview.

Gupta’s suggestion for a more nuanced redefining of control in the context of corporate mergers and acquisition (M&A) deals points to the new direction that CCI’s regulations will take once the Parliament approves the proposed amendments to the law. The Competition Amendment Bill is currently being examined by the Parliamentary standing committee on finance led by Bharatiya Janata Party leader Jayant Sinha, and is expected to be taken up in the winter session of Parliament.

Currently, Competition Act defines it as controlling the affairs or management. The proposal is to define it as the ability to exercise material influence, in any manner whatsoever, over the management or affairs or strategic commercial decisions of the company.

Gupta explained that competition is a highly dynamic activity and, therefore, competition law, if it is to fulfil its mandate, has to be equally dynamic. Moreover, the relationship between shareholders or investors and enterprises is fast evolving, and the concept of ‘control’, therefore, needs to enable the assessment of such relationship in the proper perspective, Gupta said.

“Accordingly, it is felt that the concept of ‘control’ needs to be linked with the ability to influence the strategic commercial decisions which cause the change in market dynamics. This approach complements the conventional concept of control rooted in shareholding or affirmative/veto rights," Gupta said.

CCI’s approval is vital for businesses to complete transactions as the regulator can suggest modifications to transactions to prevent any adverse effect on competition due to the deal. A broader definition, which introduces the concept of ‘material influence’, could bring more deals into the ambit of CCI’s review.

Assessing material influence requires a case-by-case analysis of the overall relationship between the acquirer and the target, Gupta said. “In making its assessment, we will have regard to all circumstances of the case. Material influence may arise through factors such as representation on the board of the target (entity), contractually agreed on consultation rights/veto rights, the voting percentage held by acquirer, etc.," the chairperson said.

The new definition of ‘control’ proposed in the bill is on the lines of the CCI’s decisional practice and does not change the practical parameters followed, but they aim to bring more clarity and certainty by clearly specifying the control threshold in the Competition Act itself, Gupta said. It is expected that the change will make stakeholders more aware of their statutory obligations and prevent any unintended non-compliance, he said.

One of the key proposals in the bill is to do away with the requirement of prior approval of CCI in case of transactions involving open offers or acquisition of shares through regulated stock exchanges. Gupta said that in case of market purchases where prices are volatile, if a person is required to wait for CCI approval, he might lose the opportunity to buy the shares at the best price.

Presently, parties to M&As are required to notify CCI and wait for its approval or 210 days before consummating the transaction, whichever is earlier.