

## **DISCLAIMER**

This quick guide, is published as part of the advocacy programme of the Competition Commission of India (the Commission). Its contents should, in no way, be treated as official views of the Commission or of its officials. Readers are advised to carefully study the Competition Act, 2002, as amended by the Competition (Amendment) Act, 2007, and seek legal advice, wherever necessary.

## WHAT IS COMPETITION IN THE MARKET?

- In common parlance, competition in the market means sellers striving independently for buyers' patronage to maximize profit (or other business objectives).
- A buyer prefers to buy a product at a price that maximizes his benefits whereas the seller prefers to sell the product at a price that maximizes his profit.

## WHY DO WE NEED COMPETITION IN THE MARKET?

Competition makes enterprises more efficient and offers wider choice to consumers at lower prices. This ensures optimum utilization of available resources. It also enhances consumer welfare since consumers can buy more or better quality products at lower prices.

Fair competition is beneficial for the consumers, producers /distributors and finally for the whole society since it induces economic growth.

## WHAT IS MEANT BY UNFAIR COMPETITION?

Unfair competition means adoption of practices such as collusive price fixing, deliberate reduction in output in order to increase prices, creation of barriers to entry, allocation of markets, tie-in sales, predatory pricing, discriminatory pricing, etc.

## WHAT CONSTITUTES COMPETITION LAW AND POLICY?

Competition Law and policy is defined as those Government measures that affect the behaviour of enterprises and structure of the industry with a view to promote efficiency and maximize welfare.

There are two elements of competition policy:-

- Competition Policy: Set of policies, such as liberalized trade policy, relaxed FDI policy, de-regulation, etc., that enhances competition in the markets.
- Competition Law: To prevent anti-competitive practices with minimal intervention.

## WHEN WAS COMPETITION LAW ENACTED IN INDIA ?

The Monopolies and Restrictive Trade Practices Act, 1969 is the first enactment to deal with competition issues and came into effect on 1st June 1970.

The Government appointed a committee in October 1999 to examine the existing MRTP Act for shifting the focus of the law from curbing monopolies to promoting competition and to suggest a modern competition law. Pursuant to the recommendation of this committee, the Competition Act, 2002 was enacted on 13th January 2003.

It provides for different notifications for making different provisions of the Act effective including repeal of MRTP Act and dissolution of the MRTP Commission.

## WHETHER PROVISION RELATING TO REPEAL OF MRTP ACT HAS BEEN NOTIFIED?

Not as yet.

## WHETHER ALL PROVISIONS OF THE COMPETITION ACT HAVE BEEN NOTIFIED?

No, certain provisions such as those relating to establishment of the Commission, appointment of Chairperson and Members, appointment of staff, undertaking of competition advocacy have been notified.

Other provisions of the Act, those relating to inquiry into anti-competitive agreements, abuse of dominance and regulation of combinations, are yet to be notified

## WHAT ARE THE OBJECTIVES OF THE COMPETITION ACT?

The Preamble states that this is an Act to establish a Commission to prevent anti- competitive practices, promote and sustain competition, protect the interests of the consumers and ensure freedom of trade in markets in India.

## HOW WOULD THE OBJECTIVES OF THE ACT BE ACHIEVED?

The objectives of the Act are sought to be achieved through the instrumentality of the Competition Commission of India (CCI) which has been established by the Central Government with effect from 14th October 2003.

## WHAT ARE THE FUNCTIONS OF CCI?

CCI shall prohibit anti-competitive agreements and abuse of dominance, and also regulate combinations (mergers or amalgamations or acquisitions) through a process of inquiry/investigation.

It shall give opinion on competition issues on a reference received from an authority established under any law (statutory authority) /Central Government/ a State Government.

CCI is also mandated to undertake competition advocacy, create public awareness and impart training on competition issues.

## WHAT IS AN "AGREEMENT" UNDER THE ACT?

An agreement includes any arrangement, understanding or concerted action entered into between parties. It need not be in writing or formal or intended to be enforceable in law.

## WHAT IS AN ANTI-COMPETITIVE AGREEMENT?

An anti-competitive agreement is an agreement having appreciable adverse effect on competition. Anti-competitive agreements include, but are not limited to:-

- agreement to limit production and/or supply;
- agreement to allocate markets;

- agreement to fix price;
- bid rigging or collusive bidding;
- conditional purchase/ sale (tie-in arrangement);
- exclusive supply / distribution arrangement;
- resale price maintenance; and
- refusal to deal.

#### WHAT CONSTITUTES ABUSE OF DOMINANCE?

Dominance refers to a position of strength which enables an enterprise to operate independently of competitive forces or to affect its competitors or consumers or the market in its favour. Abuse of dominant position impedes fair competition between firms, exploits consumers and makes it difficult for the other players to compete with the dominant undertaking on merit. Abuse of dominant position includes imposing unfair conditions or price, predatory pricing, limiting production/market or technical development, creating barriers to entry, applying dissimilar conditions to similar transactions, denying market access, and using dominant position in one market to gain advantages in another market.

#### WHEN MAY THE COMMISSION INITIATE INQUIRY INTO ANTI-COMPETITIVE AGREEMENTS/ ABUSE OF DOMINANCE?

- On its own on the basis of information and knowledge in its possession, or
- On receipt of an information, or
- On receipt of a reference from the Central Government or a State Government or a statutory authority.

#### WHO CAN PROVIDE INFORMATION?

Any person, consumer, consumer association or trade association can provide information relating to anti-competitive agreements and abuse of dominant position.

- A person includes an individual, Hindu undivided family (HUF), company, firm, association of persons (AOP), body of individuals (BOI), statutory corporation, statutory authority, artificial juridical person, local authority and body incorporated outside India.
- A consumer is a person who buys products (goods and services) for personal use or for other purposes.
- Intermediate customers can also provide information.

#### WHO CAN MAKE A REFERENCE FOR AN INQUIRY?

The Central Government or a State Government or an authority established under any law may make a reference for an inquiry.

## CAN THE COMMISSION INITIATE INQUIRY ON IT'S OWN?

Yes, the Commission can initiate inquiry on its own on the basis of information or knowledge in its possession.

## HOW WILL THE COMMISSION PROCEED WITH AN INQUIRY?

On its own, or on receipt of information or reference, if the Commission is of the opinion that there is a *prima facie* case, it shall direct the Director General, appointed under the Act, to investigate the matter and report his findings to the Commission.

## WHAT WILL THE COMMISSION DO AFTER INVESTIGATION?

After receipt of the investigation report from the Director General, the Commission shall determine whether the behaviour under inquiry is anti-competitive after hearing the concerned parties and pass appropriate orders.

## WHAT ORDERS THE COMMISSION CAN PASS IN CASE OF ANTI-COMPETITIVE AGREEMENTS AND ABUSE OF DOMINANT POSITION?

- During the course of inquiry, the Commission can pass interim order restraining a party from continuing with anti competitive agreement or abuse of dominant position.
- The Commission can impose a penalty of not more than 10% of the average turnover for the last three preceding financial years of the enterprise. In case of a cartel, the Commission can impose on each member of the cartel, a penalty of up to three times its profit for each year of the continuance of such agreement or up to ten percent of its turnover for each year of continuance of such agreement, whichever is higher.
- After the inquiry, the Commission may direct a delinquent enterprise to discontinue and not to re-enter anti-competitive agreement or abuse its dominant position (cease and desist order). The Commission may also direct modification of such agreement.
- The Commission may direct division of enterprise in case it enjoys dominant position.

## WHAT IS A COMBINATION UNDER THE ACT?

Broadly, combination includes acquisition of control, shares, voting rights or assets, acquisition of control by a person over an enterprise where such person has control over another enterprise engaged in competing businesses, and mergers and amalgamations between or amongst enterprises where these exceed the thresholds specified in the Act in terms of assets or turnover. If a combination causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India, it is prohibited and can be scrutinized by the Commission.

## WHAT ARE THE THRESHOLDS IN CASE OF COMBINATIONS?

The thresholds for the joint assets/turnover are:

- Joint assets of the enterprises value more than Rs. 1000 crores or joint turnover is more than Rs. 3000 crores. In case either or both of the enterprises have assets/turnover also outside India then the combined assets of the enterprises value more than US\$ 500 millions including at least Rs. 500 crores in India or turnover more than US\$1500 millions, including at least Rs. 1500 crores in India .
- Combined assets of the enterprises value more than Rs. 4000 crores or joint turnover is more than Rs. 12000 crores, if the party being acquired or remaining after merger or created as a result of amalgamation belongs to a group. In case such party has assets/turnover outside India, then the combined assets of the group value more than US\$ 2 billion, including at least Rs. 500 crores in India or turnover is more than US\$6 billion including at least Rs. 1500 crores in India.

The above thresholds are presented in the form of a table below:

		<u>ASSETS</u>		<u>TURNOVER</u>	
<b>In India</b>	No group	Rs. 1000 cr.		Rs. 3000 cr.	
	Group	Rs. 4,000 cr.		Rs. 12,000 cr.	
<b>In India and outside</b>		<u>ASSETS</u>		<u>TURNOVER</u>	
		Total	India	Total	India
	No group	\$500 m	Rs. 500 cr.	\$1500 m	Rs.1500 cr.
	Group	\$ 2,000 m	Rs. 500 cr.	\$ 6000 m	Rs.1500 cr.

1 Crore = 10 million; US\$1=Rs.43.50 (approx.) in December, 2007

## DOES A FIRM PROPOSING TO COMBINE HAVE TO NOTIFY THE COMMISSION?

A firm proposing to enter into a combination, shall notify the Commission in the specified form disclosing the details of the proposed combination within 30 days of the approval of such proposal by the board of directors or execution of any agreement or other document.

## IS THERE COMPULSORY WAIT PERIOD FOR A COMBINATION TO TAKE EFFECT?

Yes. The proposed combination cannot take effect for a period of 210 days from the date it notifies the Commission or till the Commission passes an order, which ever is earlier. If the Commission does not pass an order during the said period of 210 days the combination shall be deemed to have been approved.

## WHAT IS THE PROCEDURE FOR INVESTIGATION OF COMBINATIONS?

If the Commission is of the opinion that a combination is likely to cause or has caused adverse effect on competition, it shall issue a show cause to the parties as to why investigation in respect of such combination should not be conducted. On receipt of the response, if Commission is of the *prima facie* opinion that the combination has or is likely to have appreciable adverse effect on competition, it may direct publication of details, inviting objections from the public and hear them, if considered appropriate. It may invite any person, likely to be affected by the combination, to file his objections. The Commission may also inquire whether the disclosure made in the notice is correct and combination is likely to have an adverse effect on competition.

## WHAT ORDERS THE COMMISSION CAN PASS IN CASE OF A COMBINATION?

- It shall approve the combination if no appreciable adverse effect on competition is found.
- It shall disapprove of combination in case of appreciable adverse effect on competition.
- It may propose suitable modifications.

## WHO CAN REPRESENT THE PARTIES BEFORE THE COMMISSION?

A person or an enterprise may either appear in person or through any of its officers or authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners to represent his or its case before the Commission.

## WHO CAN MAKE A REFERENCE ON A COMPETITION POLICY?

The Central Government or a State Government, in formulating a policy relating to competition or in any other matter, may seek the opinion of the Commission by making a reference to it.

## WHO CAN MAKE A REFERENCE ON A COMPETITION ISSUE?

Any statutory authority can make a reference to the Commission for opinion on a competition issue that may arise during the course of a proceeding before it either at the behest of a party to the proceeding or on its own motion.

CAN THE COMPETITION COMMISSION MAKE REFERENCE TO A STATUTORY AUTHORITY?

The Commission can make a reference to a statutory authority for opinion on a relevant issue that may arise during the course of proceeding before it, either at the behest of a party to the proceeding or on its own motion.

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