



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

ADVOCACY BOOKLET

# COMPETITION COMPLIANCE PROGRAMME

FOR  
ENTERPRISES

(A Suggested Framework for  
Compliance of the Competition Act,  
2002 by Enterprises)

B-WING, HUDCO VISHALA,  
14 BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Website:  
[www.competitioncommission.gov.in](http://www.competitioncommission.gov.in)

## Guiding Principles

The Competition Commission of India is being guided by the following principles in its approach to its work:

1. To be in sync with markets; have good understanding of market forces.
2. To minimize cost of compliance by enterprises, and cost of enforcement by Commission.
3. To maintain confidentiality of business information; to maintain transparency in Commission's own operations.
4. To be a professional body, equipped with requisite skills.
5. To maintain a consultative approach.



---

**COMPETITION COMMISSION OF INDIA**  
B-WING, HUDCO VISHALA, 14 BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Website : [www.competitioncommission.gov.in](http://www.competitioncommission.gov.in)  
Tel.: + 91-11-26701600  
Fax: + 91-11-26103861



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

---

## Disclaimer

This Competition Compliance Programme is published as part of the Competition Advocacy and Awareness 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.



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

---

## Foreword

The Competition Act, 2002 provides “for the establishment of a commission to prevent practices having an adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India ...”. Thus the Competition Commission of India is an independent statutory authority established under the Competition Act for the purpose of implementing the Act.

Competition benefits the economy through higher levels of efficiency, productivity and greater innovation, and thereby increases the competitiveness of the national economy. It also enhances consumer welfare through lower prices, wider choice and better products and services. Therefore the Commission's activities, through protecting competition in the markets, contributes to the national welfare.

Apart from enforcing the provisions of the Act, the Commission is also given the mandate by the Act to undertake competition advocacy, public awareness and training. As part of this mandate, the Commission has *inter alia* undertaken programmes and activities for encouraging self compliance by enterprises and their associations.

Compliance of competition law is the best policy for enterprises



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

---

because violation of the Act can have heavy costs in terms of loss of revenue, business and reputation. This framework for a 'Competition Compliance Programme' has been prepared with the intention of providing broad guidance to enterprises in creating and implementing an internal Competition Compliance Programme. There cannot be a one-size-fits-all approach; each enterprise must take into account its position in the market, the types of products it is dealing in, the geographical coverage of operations, etc. and prepare a customized Compliance Programme.

The framework has been prepared by Competition Commission based on the results of a study commissioned by it from the Institute of Company Secretaries of India. It also draws on material made available in the public domain by competition authorities and other organizations in other countries. However, this is only a general guidance. Enterprises may like to seek further legal or specialist advice; their attention is also drawn to the disclaimer in this document.

It is hoped this framework would be found useful by enterprises in their efforts to have a Competition Compliance Programme.

New Delhi  
June, 2008

**Vinod Dhall**  
Member and acting Chairman  
Competition Commission of India



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

---

## **COMPETITION COMPLIANCE PROGRAMME FOR ENTERPRISES**

**(A Suggested Framework for Compliance of the Competition  
Act, 2002 by Enterprises)**

### **PART I THE COMPETITION ACT, 2002**

The Competition Act 2002 as amended by the Competition (Amendment) Act, 2007, is the new competition law of India. The Act has been enacted with the following objective:

“An Act to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.”

Towards the above objective, the Act prohibits anti-competitive agreements and abuse of dominance, and regulates combinations (mergers and amalgamations, and acquisitions). It also gives to the Competition Commission of India the mandate to undertake competition advocacy, awareness and training on competition issues.



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

---

Compliance with the law is the duty of every business. It also brings benefits in various ways. A specific Competition Compliance Programme (CCP) makes it easy for enterprises to remain in compliance. The CCP provides a formal internal framework for ensuring that businesses, i.e. the management and individual employees, comply with the provisions of the Act. It helps in identifying actual and potential infringements at an early stage, enabling enterprises to take appropriate remedial action. In the case of a cartel, an early detection may also provide the opportunity to avail of the leniency (lesser penalty) provisions under the Act.

### **Highlights of the Competition Act**

It is important for the management and the employees of any enterprise to be fully aware of the provisions of the Competition Act. Knowledge of the law is particularly important for those employees whose work is especially sensitive to the provisions of the Act, such as marketing, purchase and corporate strategies relating to the mergers and acquisitions.

The provisions of the Act are summarized below in an easy to understand form:

#### **Q. What does the Act prohibit or regulate?**

**Ans.** The Act prohibits anti-competitive agreements including cartels.

The Act prohibits abuse of dominant position.

The Act regulates combinations (mergers and amalgamations, and acquisitions)



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
COMPETITION COMMISSION OF INDIA

---

**Q. What is an "agreement" under the Act ?**

**Ans.** 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.

**Q. What is an anti-competitive agreement?**

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

*Horizontal Agreements :*

- agreement to fix prices
- agreement to limit production and/or supply
- agreement to allocate markets
- bid rigging or collusive bidding

*Vertical Agreements , including :*

- conditional purchase/ sale (tie-in arrangement)
- exclusive supply arrangement
- exclusive distribution arrangement
- refusal to deal and
- resale price maintenance

The four types of horizontal agreements mentioned above are presumed to have adverse effect on competition which is similar to the *per se* rule. Other horizontal agreements and vertical agreements including those mentioned above are dealt with based on the *rule of reason*.



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

---

**Q. What is a cartel ?**

**Ans.** According to the Act, "cartel includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services."

A cartel is regarded as the most pernicious form of violation of the competition law and is liable to the most severe penalties under the law.

**Q. What constitutes abuse of dominance?**

**Ans.** 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.

**Q. When may the Commission initiate inquiry into anti-competitive agreements/ abuse of dominance?**

**Ans.** The Commission may initiate inquiry:

- On its own on the basis of information and knowledge in its possession, or
- On receipt of an information, or



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

---

On receipt of a reference from the Central Government or a State Government or a statutory authority

**Q. Who can provide information?**

**Ans.** 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, body of individuals, 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

**Q. Who can make a reference for an inquiry?**

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

**Q. Can the Commission initiate inquiry on its own?**

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

**Q. How will the Commission proceed with an inquiry?**

**Ans.** 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



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

---

direct the Director General, appointed under the Act, to investigate the matter and report his findings to the Commission.

**Q. What will the Commission do after investigation?**

**Ans.** 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.

**Q. What orders the Commission can pass in case of anti-competitive agreements and abuse of dominant position?**

**Ans.** The orders that the Commission can pass are the following:

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 per cent 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-



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

---

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

**Q. What is the leniency provision ?**

**Ans.** The Act provides for imposition of a lesser penalty, if any producer, seller, distributor, trader or service provider included in any cartel which is alleged to have violated Section 3, who has made a full and true disclosure in respect of the alleged violation and such disclosure is vital, provided that the party continues to cooperate with the Commission till the completion of the proceedings before the Commission. A further condition is that the disclosure should be made before the report of the investigation by the Director General, as directed by the Commission, has been received.

The leniency provision has proved a powerful tool in the hands of competition authorities in detecting and investigating cartels and proving their existence. The provision has also served to seriously destabilize cartels and provide an incentive to parties to disclose their existence to the competition authorities.

**Q. What is a combination under the Act?**

**Ans.** Broadly, combination includes acquisition of control, shares, voting rights or assets, acquisition of control by a person over an enterprise



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

where such person has control over another enterprise engaged in competing businesses, and a merger or amalgamation 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.

**Q. What are the thresholds in case of combinations?**

**Ans.** The thresholds for the joint assets/turnover are:

Joint assets of the enterprises value more than Rs. 1,000 crore or joint turnover is more than Rs. 3,000 crore. In case either or both of the enterprises have assets/turnover in and outside India then the joint assets of the enterprises value more than US\$ 500 million including at least Rs. 500 crore in India or turnover is more than US\$ 1,500 million, including at least Rs. 1,500 crore in India .

Joint assets of the enterprises value more than Rs. 4,000 crore or joint turnover is more than Rs. 12,000 crore, 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 in and outside India, then the joint assets of the group value more than US\$ 2 billion, including at least Rs. 500 crore in India or turnover is more than US\$6 billion including at least Rs. 1,500 crore 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. 1,000 cr.		Rs. 3,000 cr.	
	Group	Rs. 4,000 cr.		Rs. 12,000 cr.	
		<u>ASSETS</u>		<u>TURNOVER</u>	
<b>In India and outside</b>		Total	India	Total	India
	No group	\$500 m	Rs. 500 cr.	\$1,500 m	Rs. 1,500 cr.
	Group	\$ 2,000 m	Rs. 500 cr.	\$ 6,000 m	Rs. 1,500 cr.

1 Crore = 10 million; US\$ 1 = Rs.42 (approx.) in June, 2008

**Q. Does a firm proposing to combine have to notify the Commission?**

**Ans.** 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.

**Q. Is there compulsory wait period for a combination to take effect?**

**Ans.** Yes. The proposed combination cannot take effect for a period of 210 days from the date it is notified to the Commission or till the



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

---

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.

**Q. What is the procedure for investigation of combinations?**

**Ans.** If the Commission is of the *prima facie* opinion that a combination has caused or is likely to cause appreciable adverse effect on competition, it shall issue a show cause notice 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 determine whether the combination is likely to have an adverse effect on competition. The Commission may also inquire whether the disclosure made in the notice is correct.

**Q. What orders the Commission can pass in case of a combination?**

**Ans.** The Commission:

shall approve the combination if no appreciable adverse effect on competition is found

shall disapprove of the combination in case of appreciable adverse effect on competition

may propose suitable modifications



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

---

**Q. Who can represent the parties before the Commission?**

**Ans.** 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.

***The above are only highlights of the Competition Act. Details of the law will be explained in training programmes arranged by the enterprise.***



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
COMPETITION COMMISSION OF INDIA

---

## PART II COMPLIANCE ARRANGEMENTS BY ENTERPRISES

### **Q. What is meant by a Competition Compliance Programme (CCP)?**

**Ans.** Compliance involves the active efforts on the part of an enterprise to comply with the provisions of the Act. When the enterprise takes certain necessary and concrete steps to ensure that knowingly or unknowingly it does not infringe the provisions of the Act, it can be stated to maintain a 'Competition Compliance Programme'.

### **Q. What are the objectives of Competition Compliance Programme?**

**Ans.** The Competition Compliance Programme should have the following three main objectives:

- (i) Prevent violation of law, i.e. the Competition Act 2002 and all Rules, Regulations & Orders made there-under;
- (ii) Promote a culture of compliance; and
- (iii) Encourage good corporate citizenship.

As the consequences of non-compliance may be serious, enterprises are expected to design their compliance programmes in such a way as to avoid any violation of the competition law and to promote the culture of compliance down the value chain.

### **Q. What are the advantages of maintaining a Competition Compliance Programme?**

**Ans.** With a well prepared Compliance Programme in place there is



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

---

limited chance of breaching competition law provisions. The existence of a strong Compliance Programme reflecting the eagerness of the management to comply may temper the severity of the punishment that may be meted out for violation.

Competition Compliance Programme offers various advantages to the enterprise during its ordinary course of business. Broadly, Competition Compliance Programme offers the following advantages:

- Inculcates a culture of compliance throughout the organization which in turn can be a business enhancer offering positive benefits to business

- Provides enterprises with a competitive advantage by enabling them to detect any violation at an early stage and take corrective measures to their advantage

- Assists enterprises to enhance reputation and build goodwill. Enterprises that contravene the provisions of the Act may suffer damage to their reputation, damaging years of careful marketing and brand development

- Obviates or reduces the costs and negative effects of litigation and regulatory intervention

**Q. What are some of the major costs of non-compliance ?**

**Ans.** Non compliance can be very costly for enterprises. The law vests the Competition Commission with adequate powers of investigation and decision. The chances of conviction are, therefore, high for non compliant enterprises. The consequent cost to the enterprise may be



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
COMPETITION COMMISSION OF INDIA

---

one or more of the following:

Damage to reputation that has been built at very high cost

Heavy fines: Ten per cent of the average of the turn over for the preceding three years of violation, for anti-competitive agreements and abuse of dominance. In the case of a cartel there are provisions for imposing on each member of the cartel a monetary penalty of up to three times of its profit for each year of the continuance of such cartel or ten per cent of its turnover for each year of the continuance of such cartel, whichever is higher

Abuse of dominance can also result in division of the dominant enterprise being ordered by the Commission

In case a violation is determined by the Commission, affected parties can approach the Competition Appellate Tribunal (CAT) for compensation, which can be very large depending on the type of violation involved

Drain of resources in handling competition law infringement cases

**Q. What are the benefits of compliance with Competition Act?**

**Ans.** The benefits of compliance include the following:

Helps avoid fines or mitigate the level of the fine

Potentially void agreements can be avoided

Potential action for compensation can be avoided



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

---

A number of indirect costs, that may otherwise be avoidable, can be avoided

Helps benefit from 'leniency' provisions in the Act

Helps increased awareness on competition law among employees

**Q. What are the elements of a Competition Compliance Programme ?**

**Ans.** A well formulated and adequate compliance programme should address the business realities faced by the enterprise concerned.

The basic issue is its situation in the market whether it is a dominant player, going by the definition in the Act. A dominant enterprise needs to be particularly cautious about its behaviour in the market as the law explicitly prohibits certain types of behaviour by dominant enterprises. The law also recognizes group dominance. Every dominant enterprise should make it a point to educate its employees, especially senior executives, about the type of behaviour that should be carefully avoided.

Enterprises that have entered into agreements or are in the process of negotiating agreements, especially agreements with competitors should take precautions to ensure that they remain on the correct side of law.

Enterprises that are members of industry/business associations need to have a clear policy regarding participation in association



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

---

meetings and the need to keep the legal counsel in the picture when there is doubt.

A Compliance Programme should be implemented to ensure that it is of practical use on a day-to-day basis.

Compliance Programmes will have to be custom-made for each enterprise and an “off the shelf” programme is very unlikely to serve the purpose.

Practical guidelines should be made available to reflect the market position of the company. Company's position in the supply chain needs to be kept in mind. A manufacturing company may have a different position compared to a wholesaler and both of them will have a different position compared to a retailer.

**Some of the areas that may be covered in Guidelines are:**

- Types of external discussion that will always be prohibited (e.g. about pricing)
- Guidelines on the information that can be legitimately exchanged and what constitutes confidential or commercially sensitive information
- Guidelines for the proper conduct of meetings with competitors (or suppliers/customers)
- Guidelines on direct and indirect price fixing (including re-sale price maintenance, where suitable)
- Guidance on how to deal with complaints from customers and/or suppliers



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

---

Guidance for dominant companies on the care to be taken while dealing with customers/suppliers

Practical examples of 'Dos & Don'ts', along with real-life examples from the company's business would turn out to be very effective

**Q. What are the essential features of a Competition Compliance Programme ?**

**Ans.** The essential features of a Competition Compliance Programme are:

Explicit statement of the commitment of senior management to the Compliance Programme

Availability of an Enterprise's Compliance Policy

Training and education of employees

Compliance manual

The main principles of the compliance policy should be set out in simple and plain language that is easily understandable. An effective Compliance Policy may include seeking a written undertaking from employees to conduct their business dealings within the compliance framework and taking disciplinary action against employees whose actions result in an infringement of the law. The relevant procedures should enable the employees to seek advice on whether a particular transaction complies with competition law and report activities that they suspect infringe the law.



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

---

The enterprises may consider the following as essential elements for devising an effective Compliance Policy:

An overarching commitment to comply with the Competition Act and regulations, orders and directions issued by the Government and Competition Commission of India

Placing a duty on all employees and directors to conduct their business dealings within this overarching policy and seeking a written undertaking from them to this effect

A commitment to take disciplinary action against employees/directors for intentionally or negligently involving the company in an infringement of the provisions of the Act

**Q. How can the commitment of Senior Management be made explicit ?**

**Ans.** The support of Senior Management must be visible, active and regularly reinforced. Commitment of senior management must be driven from Board level to take responsibility for its implementation. The element of commitment can best be achieved in a number of ways, including:

A personal message to staff from the most senior officials in the enterprise stating their commitment to the compliance programme

Referring to the compliance policy in the company's 'Mission Statement' or 'Code of Conduct and Ethics'

Making adherence to the programme one of the overall objectives of the enterprise



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

---

Designating a member of senior management team to take overall responsibility (Compliance Officer) for ensuring that the compliance programme is :

- properly designed
- regularly monitored
- effectively implemented
- reported upon at regular intervals to the Board

Effectiveness of a Compliance Policy will be enhanced if it is linked to an enterprise's human resource (HR) and disciplinary policy. This would prompt employees to attach seriousness to the compliance issues. Besides, this would reflect the seriousness of the management to compliance, as far as the competition authority is concerned. Different levels of infringements can be dealt with by increasing levels of sanction, resulting ultimately in dismissal for the most serious infringement.

Competition compliance can also be built into the existing staff appraisal procedures, so that employees are regularly asked to sign a form to confirm that they are not aware of any existing compliance breaches. This will help detect any anti-competitive practice that may exist at early stage.

Most of the enterprises have a policy in place for retaining financial information for accounting and tax purposes. Documents relevant to prove the compliance of the enterprise and its employees with competition law provisions will have to be retained for sufficiently long period to save the embarrassment of not being able to defend in case of allegation related to infringement.



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

---

**Q. What is the role of training in a Competition Compliance Programme?**

**Ans.** An enterprise should consider having an active training programme that includes instruction by knowledgeable professionals having expertise and experience in corporate compliances. The training should be as practical as possible, including case studies drawn from the enterprise's actual experiences. It should also highlight the consequences of violations.

The objective is to enable all officers and employees to develop capabilities to recognize and identify law-violating activity related to their business. Compliance education must contain sufficient practical explanation/examples on difficult legal concepts and issues. It is, therefore, advisable that enterprises integrate compliance education as part of overall training and education programme of the enterprise.

It is advisable for an enterprise introducing the Compliance Programme for the first time to make the compliance education mandatory for all officers and employees, in respect of the enterprise's compliance policy, purpose of the programme, and compliance measures.

Those enterprises which are effectively operating and implementing the Compliance Programme should regularly revise the programme rather than repeating the same year after year, keeping in view the :

changes in business environment



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

---

market share  
competition in relevant market  
changes in competition regime

### **Preparing the employees for investigations**

When faced with an inquiry, investigators will interact with the employees responsible for the task. However, employees, in general, should be aware of the possibility of such investigations. A 'dawn raid', for example, is a possibility when the Competition Commission, like competition authorities everywhere, is cracking down, for example, on cartels, vigorously. Every employee in the organization should have basic knowledge about the law so that he/she is able to react suitably when faced with investigating team all of a sudden in the office premises.

### **Identify employees and divisions at risk**

It is necessary to identify the employees and divisions that are likely to be exposed to competition law risks. These can normally be:

- those doing sales and marketing
- anyone having direct contact with competitors
- those engaged in setting up and operation of distribution arrangements

Engagement of senior management is a must for the compliance programme to be taken seriously by employees.



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

---

### **Confidentiality**

Unless confidentiality is assured employees may not turn up to inform about alleged infringement, especially if known people are involved. Contacting the Compliance Officer to inform verbally in the first instance may work towards confidentiality. Documentation has to follow and action taken report also will have to be documented so as to ensure that the issue has not been ignored or tacitly approved.

### **Mock dawn raids**

Mock 'dawn raids' are effective instrument in monitoring the effectiveness of compliance programme. Such mock 'dawn raids' might also throw up some suspicion of infringement at the end of it. In case there is suspicion about ongoing infringement, 'dawn raids' can be used to unearth it and tackle it.

### **Q. What is active risk management (ARM) and why is ARM approach to compliance important?**

**Ans.** Compliance Programme is aimed at avoiding or minimizing the risk of infringement /non compliance, with all its consequences for the enterprise.

However, law evolves, procedures and regulations are regularly streamlined and views and outlook on issues change. A static policy towards risk management through Compliance Programme may not serve the purpose; it may even turn out to be counter productive.



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

A dynamic environment necessitates active risk management. What is consistent with the competition law yesterday may be declared inconsistent today; or the conditions under which a behaviour is considered consistent today may become consistent only under different conditions tomorrow. Therefore, an active risk management is called for. This is all the more important in the case of agreements.

### **Active Risk Management** **The case of agreements**

It is important to keep a record of all the agreements signed by the company and assessed for competition compatibility. The risk from an agreement being found null and void by the Commission may be very costly for the enterprise

Agreements that are of very high commercial value for the enterprise should be entrusted to senior executive involved in the implementation of that agreement to do active risk management of that agreement

There should be a time table for review of the status of the agreement from competition angle. There should be a system for reminding the official concerned about this. The responsibility could be entrusted to a senior executive of the commercial division since the risk is most felt by the commercial wing

Marketing department should liaise with the legal department. Every agreement on record should be subjected to competition review every three to five years. For very large enterprises such review could be on yearly basis

When such active risk management is not found feasible in-house, assistance of specialized external agencies should be sought



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

---

An effective Compliance Programme may also include a system of audit. At the time of the start of the compliance programme an internal audit of procedures and documents, including email, may be introduced. This may be repeated at intervals to ascertain if the policy is working. The nature of such audit will have to be tailored to the nature of the enterprise concerned.

While auditing the procedures, documents and emails of each and every employee may be a herculean task it would be always possible to identify those individuals who are most at risk and to conduct an audit of a "snap shot" of their e-mails on a given day. External legal advisers could be employed to do such auditing to avoid embarrassment to the employees concerned while auditing their correspondence/email.

**Q. Is it essential to evaluate and review the Competition Compliance Programme ?**

**Ans.** Enterprises are advised to ensure that the Compliance Programme represents current best practices, remains relevant, comprehensive and effective. Periodic evaluation of Compliance Programme is suggested to keep it relevant. The process may include evaluation of individual employees' knowledge of law, policy and procedures. Adherence to compliance policy could also be used as one of the criteria for individual's and department's/division's performance appraisal. It is important to ensure that the evaluation process remains as transparent and open as possible.



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

---

The evaluation should also include as to whether the Compliance Programme achieves expected results, and whether the system is appropriate and effective. The evaluation findings should be appropriately reflected in the overall operational system, including compliance monitoring, education programs, and the compliance manual.

It is worth emphasizing that evaluating implementation of Compliance Programme depends on motivation for compliance, distribution of authority and responsibility, support of human and physical resources, and communication within the enterprise. The enterprises are, therefore, advised to set evaluation criteria conforming to their compliance policy.

**Q. What are the performance indices for evaluation of Competition Compliance Programme ?**

**Ans.** The enterprises may also consider devising performance indices to evaluate the Compliance Programme. An illustrative list of performance indices may include:

How well are officers and employees aware of the chief executive's determination and commitment as regards compliance?

Do officers and employees have a clear understanding of what kind of conduct violates competition law?



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

---

Do officers and employees properly recognize the 'dos and don'ts' of preventing violations of law?

Is compliance accountability accurately perceived at all levels of management?

To what extent do the enterprise's business practices conform to the provisions of competition law and other related regulations?

How high is the enterprise's level of conformity compared to other enterprises engaging in the same business activities?

How many violations took place and how serious were they?

What kind of corrective action was taken against those violations, and how effective have they been?

How often is internal monitoring carried out and has the monitoring proved effective in preventing and detecting violations of law?

To whom and to what extent is compliance education provided, and how effective are education programs?

**Q. What care should be taken by executives/employees while dealing with Trade Associations?**

**Ans.** Executives/employees of enterprises should avoid discussing the following topics while dealing with trade associations and/or with competitors:

Past, current or future prices

What constitutes a 'fair profit level'



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

---

Pricing policy and actual costs of individual enterprises  
Possible increase or decrease in prices  
Standardization or stabilization of prices  
Bidding prices for projects  
Collusive tendering (bid rigging)  
Standardization of credit and trade terms  
Control of production  
Division or allocation of markets  
Select customers to deal or not to deal because of the above reasons

**Q. What is the role of Compliance Officer?**

**Ans.** In order to ensure effectiveness of compliance programme, it is desirable that a Compliance Officer with appropriate delegation of authority be appointed to enforce the Compliance Programme. The Compliance Officer should preferably be an independent professional with expertise and core competency in compliance and compliance management. He should be a focal point and in charge of designing a program, motivating officers and employees, managing any accompanying administrative/ organizational issue, preparing compliance manual, and auditing compliance.

**Q. How is the Compliance Manual important?**

**Ans.** To facilitate compliance, the enterprises should develop a Compliance Manual and distribute it to their officers and employees as detailed guidelines for compliance with the provisions of the Act. The manual should incorporate the features set out above and contain up-to-date information regarding its



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

---

business(es), its operational environment, and relevant competition regimes. It may be necessary that the manual incorporates full, relevant and correct information and is properly distributed.

The Compliance Manual should be developed, distributed and implemented under the overall supervision of Compliance Officer. In-charge(s) of Departments/Divisions should be put under obligation to inform the Compliance Officer of any changes in the business environment and market scenario that may have bearing on compliance, including the opinion of subordinates concerning the Compliance Manual.

#### **Compliance Committee**

The Enterprises are advised to constitute a Compliance Committee comprising senior management, with ultimate responsibility of overseeing the Compliance Programme, including conducting periodic review of its effectiveness.



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
COMPETITION COMMISSION OF INDIA

## Annexure

### **Competition Compliance Programme CHECK LIST**

Compliance Programme will have to be tailor-made for each enterprise, though number of elements will be similar

Compliance Officer: Identify a senior management personnel to oversee the implementation and monitoring of compliance programme

Regular and adequate training on points of law as well as in identifying potential violations

Have a comprehensive compliance manual, intelligible to employees in general. It should contain useful illustrations

Every enterprise should have a guidance or clearance procedure for situations where there may be doubt about possible course of action by employees for fear of violation of competition provisions

Agreements will invariably have to be processed in consultation with the legal department to ensure that the provisions therein are consistent with the provisions of Competition Act, 2002. These should be reviewed periodically from the competition angle

Familiarize the employees with a likely 'dawn raid'. In relatively large enterprises it would be useful to arrange mock 'dawn raid' to keep employees vigilant against possible violations



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
**COMPETITION COMMISSION OF INDIA**

---

Employees should be educated about the use of language while communicating, whether it be verbal or written. Special care should be taken to ensure that the language used in email communication is appropriate

Ensure a proper system of recording/ minuting of meetings and other events that may serve as evidence of non-participation in anti-trust practices by the enterprise or its employees

Compliance Programme should be suited to the situation in all countries where the enterprise is operating

Active/dynamic risk management programme should be an essential element of the Compliance Programme

It would be advisable to integrate the competition Compliance Programme into the overall compliance programmes of the enterprise



सत्यमेव जयते



भारतीय प्रतिस्पर्धा आयोग  
COMPETITION COMMISSION OF INDIA

---

**Member and acting Chairman**

Vinod Dhall

E-mail: cci-vinoddhall@nic.in; dhall.vinod1@gmail.com

Tel. No.: 91-11-26177175, 26701605(O), 23381005(R), Mobile: 91-9811322324,

Fax No.: 91-11-26169278

**Officers**

S. L. Bunker, IDAS

Secretary

E-mail: cci-bunker@nic.in

Tel. No.: 91-26701619(O), 26103529(R), Fax: 91-11-26103859

Amitabh Kumar, IRS

Director General

E-mail: cci-amitabh@nic.in

Tel. No: 91-11-26701603(O), 26882853(R), Fax No.: 91-11-26103853

Augustine Peter, IES

Economic Adviser

E-mail: paugustine@nic.in

Tel. No.: 91-11-26701681(O), 25553757(R), Fax No. : 91-11-26107131

K. K. Sharma, IRS

Advisor (Law)

E-mail: cci-kksharma@nic.in ; Tel. No. 91-11-26701680(O), 64515859(R)

Sunil Barthwal, IAS

Director (Investigation)

E-mail: cci-sbarthwal@nic.in ; Tel. No.: 91-11-26701610(O), 24101583(R)

Comdt. M. M. Sharma

Addl. Registrar

E-mail: cci-mms@nic.in; Tel.No.: 91-11-26701672(O), 26874268(R)

R.K. Verma,

Director (Admn.)

Tel. No.: 91-11-26701618(O), 22010161(R)

K.M. Damodaran

Director (HR)

Tel. No.: 91-11-26701616(O), 65635174(R)

Virendra Singh

Under Secretary (Admn.)

E-mail: vsrawat@nic.in; Tel. No.: 91-11-26701664(O), 26167647(R)