INTRODUCTION TO COMPETITION LAW

(Part 1- Basic Introduction)

भारतीय प्रतिस्पर्धा आयोग

Competition Commission of India

Preface

The Competition Commission of India (Commission) has been established under the Competition Act, 2002[1] (the Act) to prevent practices having adverse effect on competition, to promote and sustain competition in Indian 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. It is mandated, inter alia, to take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues. It, therefore, pursues its objectives through two sets of instruments, namely, advocacy and enforcement targeted at enterprises. These measures are complementary and are expected to promote and ensure thereby freedom of trade by enterprises and consumer welfare to achieve 'fair competition for greater good'.

As a measure to promote competition advocacy, that is, to disseminate the message of competition law, promote competition culture and competition compliance, the Commission has proposed to maintain a panel of "Competition Resource Persons", to organise competition advocacy programmes for groups of stakeholders to supplement its own efforts on competition advocacy. In order to provide training to the selected Resource Persons and to equip them with adequate knowledge of competition law, the present study material has been prepared. This material will be used as advocacy material by the Resource Persons for educating the different stakeholders. This study material has been prepared for the benefit of the following stakeholders:

- Consumers, and Consumer Associations
- Trade/ Industry Associations
- Government Bodies
- Regulatory Bodies
- Compliance Professionals and Associations of Compliance Professionals

The study material is divided into six parts. The first part gives an overview of the Competition Law. The remaining five parts contain information and understanding of the law from the perspective of the stakeholders. The first part is a general introduction, while the others are stakeholder specific.

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Edited and prepared by Advocacy Division with inputs from other divisions.[2]

Date of preparation: August, 2016

Disclaimer: This document is prepared for information purpose and should not be treated as legal view/ stand of CCI. Data used have been taken from various sources and should be verified by the user.

1. The Competition Act 2002 can be accessed at http://www.cci.gov.in/competition-act

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Guide to Competition Law

1. Introduction

Capitalism has become a pervasive system worldwide. It emerged during the 17th century with the demise of mercantilism. It is basically an economic system which is based on the premise of lack of government intervention, means of production owned by private firms and the prices of goods and services determined by market forces. Capitalism is said to bring in efficiency and economic growth as it gives economic freedom to the market players. However, there exist certain drawbacks of capitalism. It gives rise to monopoly power, increases income inequality and gives more importance to economic benefits over social benefits. The presence of these downsides necessitates the need of regulating capitalism with the help of state intervention. However, too much of regulation takes away the economic freedom of the players and therefore state intervention needs to be as minimal as possible. But, the degree of competition in markets and the extent of state intervention vary across different models of capitalism.

1.1 Role of Competition

Competition is as old as evolution of civilisation. Competition in a marketplace-the process of rivalry between business enterprises for customers – is a fundamental feature of a flexible and dynamic market economy. In order to respond to demand for better products at lower prices, competing producers, suppliers or service providers are encouraged to innovate, lower their costs by reducing slack and increase productivity. Though, the motivation of economic agents is driven by self-interest, the benefits accrue to the society at large.

Competition is beneficial to all, be it the consumers, the businesses and the economy. It benefits consumers as they can choose from a wide array of quality products at affordable prices. Businesses benefit from lower prices as consumers of raw material or intermediate products, which augment their competitiveness. Economy benefits through efficient allocation of scarce resources which fosters innovation leading to dynamic efficiency. This in turn increases productivity and leads to high economic growth rate. Competitive markets by securing efficient use of resources, maximises output and contribute towards improving the standard of living of the masses.[3] Contrary to this, when there is a lack of competition, whether it is a price-fixing cartel or abuse of market power by a dominant business, both the economy and consumers suffer on a long term.[4]

3. Competition law and policy: Drivers of economic growth and development, OECD, 2015

4. For more information and understanding of allocative inefficiency caused by cartels and abuse of dominance please see Chapter 1 of 'Global Antitrust Law and Economics' by EinerElhauge and Damien Geradinby Thomson Reuters/Foundation Press, 2011, New York USA

2. What is Competition Law?

The process of competition is, however, not automatic. In a laissez-faire economy, the invisible hands of the market forces are basically able to address the distortions, if any. However, the modern economies are not laissez faire economies and therefore, distortions in the market are more often not a result of interaction of competitive forces, but a well-planned strategy of market players who are able to exercise control. In such a scenario, it is important for the state to monitor the markets with a view to keep an eye on any type of impediments and distortions and correct them. The law which takes cognizance of such situations is the competition (or anti-trust) law and the institution that oversees the functioning of the markets is the competition regulator.[5]

Competition Law is codification of rules designed to promote and sustain market competition. Across the globe, these laws are prevalent with active enforcement & advocacy functions. Today, over 100 countries have competition law regimes and competition law enforcement agencies. Though the practice of competition law varies from jurisdiction to jurisdiction, the substance of these laws is primarily the same. World over, it prohibits practices that restrict competition between businesses and prohibits behaviour which is most prejudiced to the interest of the consumer. Businesses have certain obligations under competition law and it is important for them to understand and abide by these laws.

2. 1 History of Competition Law in India

In India, the first legislation to restrain abuse of market power was enacted in 1969, i.e., Monopolies and Restrictive Trade Practices Act (MRTP Act). The MRTP Act was enacted to ensure that the economic system didn't result in concentration of economic power, to provide for control of monopolies and to prohibit monopolistic and restrictive trade practices. As India moved steadily on the path of reforms comprising of Liberalisation, Privatisation and Globalisation, it did away with the MRTP Act, 1969 as it was realised that the Act had outlived its utility and control of monopoly was not appropriate to support the growth aspirations of more than 1 billion Indians. Indeed, need was felt to promote and sustain competition in the market place. The then Finance Minister (Shri. Yashwant Sinha) in the budget speech in 1999 had announced:

"The Monopolies and Restrictive Trade Practices Act has become obsolete in certain areas in the light of international economic developments relating to competition laws. We need to shift our focus from curbing monopolies to promoting competition. Government has decided to appoint a Committee to examine this range of issues and propose a modern Competition Law suitable for our conditions."

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5. 'Competition Commission of India' is the Competition Regulator in India

Accordingly, a High Level Committee on Competition Policy and Law was constituted under chairmanship of Mr. Raghavan.[6] The Committee submitted its report on 22nd May 2000 recommending replacement of the MRTP Act with a modern competition law for fostering competition and for eliminating anti-competitive practices in the economy. After consulting the stakeholders, Competition Bill, 2001 was introduced in the Parliament which eventually became the Competition Act, 2002. The purpose of the Competition Act, as stated in its preamble is:

"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."

The new system emphasizes the role of market and supplemented by regulation, aims to create a favourable business environment in the country.

3. The Competition Act, 2002

The Competition Act, 2002 ("Competition Act"), as amended by the Competition (Amendment) Act, 2007, follows the philosophy of modern competition laws.

Objectives of the Competition Act

The objective of the Act is

- 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.

The Act prohibits anti-competitive practices which causes or are likely to cause an appreciable adverse effect on competition within India. The Competition Act provides for the establishment of a quasi-judicial body, namely, the Competition Commission of India (Commission) for the administration of the Act.

Competition Commission of India and its Evolution

The Commission was established in October, 2003, but due to a legal challenge in the case of (BrahmDutt vs. Union of India, (Writ Petition (Civil) 490 of 2003),[7] it did not become fully operational till 2007. The Commission during its initial years focussed its efforts on advocacy initiatives. The Hon'ble Supreme Court disposed of

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6. Refer to Report of High Level Committee on Competition Policy and Law (2000)- S.V.S. Raghavan Committee.
7. For more information, see http://judis.nic.in/supremecourt/CaseRes1.aspx

the writ with an observation that if an expert body is to be created, it might be appropriate to consider the creation of two separate bodies, one with expertise for advisory and regulatory functions and the other for adjudicatory functions, along with an appellate body based on the doctrine of separation of powers recognised by the Constitution of India. The Amendment Act of 2007[8] created two separate bodies, namely, (a) the Commission as a seven-member (one chairperson and 2-6 members) expert Body to function as a market regulator for preventing and regulating anti-competitive practices in the country and to carry on the advisory and advocacy functions in its role as a regulator; and(b) the Competition Appellate Tribunal (COMPAT) as a three-member quasi-judicial body to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission.

Further, pursuant to an amendment, with effect from 14 October 2009,[9] all pending cases and pending investigations were transferred to COMPAT and CCI respectively from the MRTP Commission whereas the MRTP Act was repealed. The substantive provisions, namely, Anti-competitive agreements (Section 3) and Abuse of dominant position (Section 4) came into force on 20th May, 2009. The provisions relating to 'Regulation of Combinations' (sections 5 and 6) came into force on 1st June, 2011

The Commission comprises the Chairperson and six members.[10] As on 31st March 2016, it has considered more than seven hundred cases related to section 3 and section 4 i.e. anti-competitive agreements and/ or abuse of dominance (See Appendix 1 for details). These cases are from diverse sectors ranging from real estate, pharmaceuticals, cement, steel, civil aviation and commodities among others. More than Fifty percent of cases filed with the Commission under Section 3 and 4 of the Act were not considered fit for investigation and thus, were closed at the prima-facie stage. The cases that have been investigated and adjudicated upon pertain to large enterprises, trade associations, including the public sector. In case of mergers & acquisitions under section 6, since 2011,nearly four hundred (400) notices have been received with more than 99.9% combinations approved in less than 21 days (See Appendix 1).

Some Important Definitions of the Act[11]

a. Agreement:[12] The Act has a wide and inclusive definition of an “agreement”. It is an arrangement/understanding or action in concert. It includes both written and oral agreements. It need not to be enforceable by law. Any communication among competitors, either in person or by telephone, letters, e-mail or through any other means even a wink or a nod can be construed as an agreement.[13]

8. Competition (Amendment) Act 2007, 39 0f 2007
9. Competition (Amendment) Act 2009, 39 of 2009
10. For the present composition of the Commission, please visit http://www.cci.gov.in/commission
11. Section 2 of the Act
12. Section 2(b) of the Act
13. In Competition law parlance it is said, ‘even a wink or nod is an agreement’

b. Enterprise:[14] "enterprise" means a person[15] or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

c. Consumers:[16] The Act defines "consumers" as any person who purchase goods either for personal use or for resale or for any commercial purpose. It also includes those consumers who hires or avails any service either for personal or commercial purpose.

d. Practice:[17] includes any practice relating to the carrying on of any trade by a person or an enterprise

Substantive Provisions of the Act

The Act focuses on the following four areas:

- Anti-competitive Agreement (Section 3)
- Abuse of Dominance (Section 4)
- Regulation of Combinations (Section 5 & 6)
- Competition Advocacy and Reference (Section 49 and 21)

Anti-competitive agreements and abuse of dominance are considered as potential impediments to free and fair competition in the markets and penalty is imposed wherever the Commission concludes that the enterprise has/ had indulged in anti-competitive practices resulting in appreciable adverse effect on competition (AAEC). Regulation of combinations aim at ex-ante screening of mergers and acquisitions for possible anti-competitive effects. Competition advocacy is about sensitizing the market players and other participants on the competition issues and

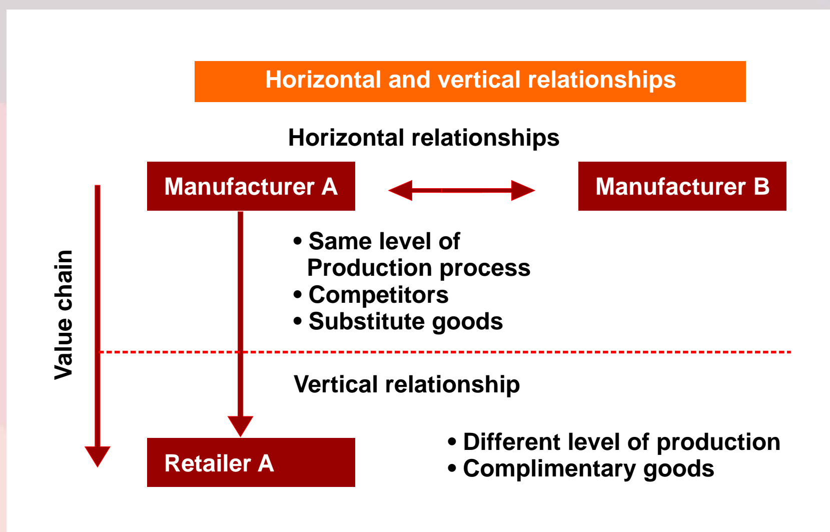
14. Section 2(h) of the Act
15. Section 2(l) of the Act: "person" includes— (i) an individual; (ii) a Hindu undivided family; (iii) a company; (iv) a firm; (v) an association of persons or a body of individuals, whether incorporated or not, in India or outside India; or (vi) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956); (vii) any body corporate incorporated by or under the laws of a country outside India; (viii) a co-operative society registered under any law relating to cooperative societies; (ix) a local authority; (x) every artificial juridical person, not falling within any of the preceding sub-clauses;
16. Section 2(f) of the Act
17. Section 2(m) of the Act

creating awareness about the benefits of competition. The Act provides for a reference to/ by other Statutory Authorities (Regulatory Institutions) and also with the Central or the State Government. These provisions are discussed in detail below:

3.1 Prohibition of Anti-competitive Agreements (Section 3)

Section 3 provides that any agreement which restricts the production, supply, distribution, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition (AAEC) within India, is prohibited and void. Anti-competitive agreements may include Horizontal and Vertical Agreements.

Figure 1: Horizontal and Vertical Agreement



Source: Price water house Coopers

1.1.1 Horizontal agreements (Section 3(3)

"Horizontal Agreement" means an agreement between enterprises, each of which operates at the same level in the production or distribution chain.

Defined under Section 3(3) of the Act, horizontal agreements include agreement which:

a) **Directly or indirectly determine purchase or sale prices: Fixing of prices** by competitors is a horizontal agreement wherein competitors conspire to raise, decrease, fix or stabilize prices in a specific market. The prices in a competitive market should be determined freely on the basis of demand and supply and not as a result of an agreement between the competitors. An understanding between the competitors under which the competitors agree to take actions to raise, decrease,

fix or stabilize prices would be anticompetitive. Such agreements are often done in secret but can be unearthed through circumstantial evidence.

Example 1:

Businessman 1: Every shop in the mall is slashing their prices.

Businessman 2: Now we have to lower our prices too.

Businessman 1: Look, we'll all end up making less if we go on like this. Why don't we talk to other owners and stop the price war? Let's fix the prices together. Then we can keep our margin.

Businessman 2: That sounds like a smart plan. Let's talk to other owner

Businessman 3: Smart Plan? If you're smart, you'll know this is against the Competition Law.

Businessman 1: Come on! No one cares about small businesses like us.

Businessman 3: That's not right! It's got nothing to do with the business size. Price fixing is wrong. I am not going to do anything illegal.

Inference: Price-fixing is serious anti-competitive conduct under the Competition Law. No business, big or small, should agree with their competitors to fix prices. Don't cheat. Compete.

b) **Limit or control output, technical development, services etc**: Production control involves competitors agreeing to limit the quantity of goods or services available in the market. Competitors agreeing to specialise in certain products, ranges of products or in particular technologies could also be deemed to be anti-competitive.

Example 2:

Producer 1: None of us have really been doing well recently. We must think of something to boost the profit. I've been thinking to reduce the supply together. When there's less supply, we can raise the price. Things are only precious when they are rare.

Producer 2: Ok. You are right. Things are only precious when they are rare. You're the industry leader. We'll take our cue from you.

Producer 3: Have you considered the implication of such agreement? This is an illegal act and in contravention of the competition laws

Inference: Output restriction agreed between competitors is serious anti-competitive conduct under the Competition Law. Businesses should make independent commercial decisions and never collude with each other to restrict output.

c) **Share or divide markets:** This could include competitors agreeing to allocate customers between themselves or agreeing to stay out of each other's geographic territory or customer base.

Example 3:

Businessman 1: I didn't know that operating bus services for business units was so lucrative.

Businessman 2: Smartly, We agreed among ourselves to send out quotations to different business units respectively. Now they don't really have a choice. And we will virtually monopolize the shuttle bus business. We can charge whatever we like!

Businessman 1: Even if your clients ask me for quotation, I am not going to reply.

Businessman 2: So, how are we going to share those estates this year?

Businessman 1: Same as usual, let's split the districts between us. I'll send you the list when it's done.

After a month:

Businessman 1: No wonder the bus fares are getting higher and higher. It's all because of our agreement to share the market!

Inference: Such agreement is in contravention of the law and is considered as a serious anti-competitive conduct under the Competition Law.

d). Indulge in bid-rigging or collusive bidding:

Taking turns to win competitive tender contracts is an example of bid-rigging. This could include:

- parties agreeing to submit cover bids (high) that are intended not to be successful – where the unsuccessful bidders may get kick-backs;
- bid suppression where parties agree that only one of them will submit a bid for the contract;
- bid rotation where the parties to the agreement take turns to win contracts.

  More than one of these bid-rigging practices can occur at the same time. For example, if one party to the agreement is designated to win a particular contract, the other parties could avoid winning either by not bidding (”bid suppression”) or by submitting a high bid (”cover bidding”).This is an arrangement between competitors whereby one of them agrees to refrain from bidding, in exchange of acting as a sub-contractor.

Example 4:

Company XYZ: Let's invite bids. We need to procure pipes.

Employee XYZ: All the bids are in! It is so strange… They all have similar prices and they're all very high too. We have compared all the tender submissions. Only ABC Enterprises quoted the lowest price.

Company XYZ: Alright then, we'll go for ABC Enterprises!

Employee XYZ calls ABC Enterprises and informed that he had won the tender!

ABC Enterprises call other bidders: It is celebration time! We won the bid. Thanks guys for jacking up your prices; we'll be making a huge profit from this contract.

Other bidders: Don't be silly! We are partners – we all win from this!

ABC Enterprises: That's right; it'll be your turn to win next time! I will not submit my bid next time. We're in this together, and we'll all make profit from this!

Newspaper headlines: CCI Fined ABC Enterprises and other companies for Bid-Rigging. Directors Disqualified.

Inference: Bid rigging is a violation of the Competition Law. Businesses might appear to win by not competing with each other, but they too can become victims.

3.1.2 Vertical Agreements (Section 3(4)

Vertical Agreements are agreements between firms at different levels of the manufacturing or distribution processes. For example, an agreement between the manufacturer and a distributor is a vertical agreement. Defined by Section 3(4) of the Act, vertical agreements include:

a) **Tie-in arrangements-** Tying occurs when customers buy a product they want (the tying product) but are required (forced) to buy a product (the tied product) from a different market that they may not want. Tying would be anti-competitive as it would restrict access to the tied product market by competitors. Bundling could be distinguished from tying, as bundling would normally involve products from the same market which consumers generally would buy together. For example, a car which is sold (bundled) together with tyres.

Example 5:

Hospital XYZ: Our new contract negotiation with ABC Enterprises is under way. But they request for an additional clause specifying that if we want to buy the medical device that only ABC Enterprises makes, we must buy other medical supplies including medical masks, gloves, syringes etc. as well.

Employee XYZ: But our current suppliers of these equipment offer lower prices and better quality. There's no reason for us to switch to ABC Enterprises.

Hospital XYZ: But if we do not agree, ABC Enterprises will not sell us their medical device and we can't provide proper care without this device. That leaves us no choice at all.

Employee XYZ: Calm down. This tying clause might contravene the Competition

Law. ABC Enterprises cannot make such request.

Inference: Tie-in agreement are anti-competitive as per Section 3 (4) of the Competition Act and thereby punishable with penalty under Section 27.

b) **Exclusive distribution agreements-** In an exclusive distribution agreement, the supplier agrees to sell his products only to one distributor for resale in a particular territory. At the same time, the distributor is usually limited in his active selling into other exclusively allocated territories.

Example 6: Enterprise X is a producer of laptops who distributes throughout India through its distributors. However, it gives only one distributorship for East, West, North and South India and it does not allow distributors to sell in each other's territory. Such an arrangement by enterprise X will prevent competition among distributors.

Inference: Exclusive distribution agreement are considered to impinge on competition.

c) **Refusal to deal-** It means restricting by any method any person/classes of persons to whom goods are sold. Businesses have the right to use their discretion in choosing whom to do business with. However, if this choice is made through a conspiracy with another competitor, business, or individual, they will likely be in contravention of the law. A refusal to deal is a violation of competition law because it harms the boycotted business by cutting them off from a facility, product supply, or market. By harming the boycotted business in this way, the competing businesses controls or monopolizes the market by unreasonably restricting competition.

Example 7: Enterprise A is an enterprise in the market for lead used to make pencils. Enterprise B is a major manufacturer of pencil in the market but its production is dependent on supply of lead by enterprise A. Enterprise A suddenly refuses to supply lead to B because a new company, C has entered the pencil market in direct competition to B and though A can supply to both B and C, A refuses to deal with B on entry of C in market. In such situation B can approach the Commission with information filed under Section 3 (4).

Inference: Refusal to deal is Anti-competitive.

d) **Resale price maintenance-** It means selling goods with condition on resale at stipulated prices. It generally occurs when an upstream seller (Producer) imposes a fixed or a minimum price that a downstream buyer (Distributor or Retailer) must resell. For example, a manufacturer sets the price for which its products are sold at the retail level. The result is that resellers (e.g. retailers) do not compete on price. This is considered to be anti-competitive.

Example 8:

Producer: What brings you here? Is there any problem with my products?

Chain Store Owner: It's not about your products. I'm just not happy with the small competitors! If I sell something for Rs.500 in my chain stores, smaller retailers sell the same for Rs.400, then my customers all ask me for discount.

Producer: Why don't you fix a resale price for each product and make sure that all the retailers will sell your products at your fixed prices. So everyone can make a profit, the customers don't have to shop around and we don't have to get into a price war.

Chain Store Owner: My business is built on reputation and integrity. I won't play dirty tricks to get business.

Inference: Resale price maintenance may restrict competition by preventing businesses setting their prices independently

3.1.3. Horizontal Versus Vertical Agreement

The Act treats horizontal agreements differently when compared with vertical agreements. There is a presumption in the Act that the four types of horizontal agreements mentioned above are presumed to have adverse effect on competition which is similar to per se rule.[18] In other words, they are per se illegal and the burden of proof will be on the defendant to prove that the agreement in question is not causing an appreciable adverse effect on competition.

The presumptive rule is not applicable to vertical agreements which are subject to the rule of reason[19] analysis i.e. the positive as well as the negative impact of such agreements on competition will have to be taken into account before coming to any conclusion. This also applies to agreements entered into by way of joint ventures that increase efficiency in production, supply, distribution, storage etc. It is to be noted that Section 3(5) recognizes and protects intellectual property rights, permitting imposition of reasonable restrictions by their owners. Also agreements relating to exports to the extent to which they relate exclusively to the production, supply, distribution or control of goods or services are exempted.

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18. a per seviolation doesn't lead to any further inquiry on the conduct's actual effect on the market or on the inyention of the individuals who engaged in such conduct.
19. Rule of reason approach leads to further inquiry into conduct's actual effect and takes into account both the positive and negative impact of theconduct on competition.

3.1.4. Factors considered for Inquiring into Agreements[20]

The Commission while determining whether an agreement has an appreciable adverse effect on competition under section 3, gives due regard to all or any of the following factors, namely:-

(a) creation of barriers to new entrants in the market;

(b) driving existing competitors out of the market;

(c) foreclosure of competition by hindering entry into the market;

(d) accrual of benefits to consumers;

(e) improvements in production or distribution of goods or provision of services;

(f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services

3.1.5 Important Cases of Anti-competitive Agreements

Bid Rigging by Insurance Companies, Case. No. 02 of 2014[21]

CCI imposed a Rs. 671 crore penalty on four state-run insurance companies— National Insurance, New India Assurance, Oriental Insurance and United India Insurance for cartelisation and indulging in anti-competitive practices. It was observed that the four companies colluded with each other and manipulated the tendering process initiated by the Kerala government by forming a cartel and quoting higher premium rates.

Bid Rigging in LPG Cylinder, Case No. 03 of 2011[22]

The Commission initiated suo moto proceedings against LPG cylinder manufactures who were found to be involved in bid rigging in supplying LPG cylinders to M/s Indian Oil Corporation Ltd. pursuant to a tender floated by it. It was noted by the Commission that the identical price quotations submitted by the opposite parties therein pursuant to the impugned tender were actuated by mutual understanding/ arrangements. The Commission apart from issuing a cease and desist order imposed a penalty upon each of the contravening party @ 7% of the average turnover of the company. In COMPAT's 2013 judgment, the CCI's order was upheld on its merits and CCI was directed to reconsider the penalties it had imposed on the manufacturers

3.2. Prohibition of Abuse of Dominance (Section 4)

The Act prohibits a dominant player from abusing its market power by either restricting competition or by imposing unfair terms and conditions on its customers. A company has a dominant position if it enjoys a position of economic strength (and

20. Section 19 (3) of the Act
21. For details see: http://www.cci.gov.in/sites/default/files/022014S.pdf
22. For details see: http://www.cci.gov.in/sites/default/files/LPGMainfeb2.pdf

market power) to behave independently of its competitors, customers, and consumers to an appreciable extent. In other words, dominant position is a position of strength enjoyed by a firm which enables it to behave/act independently of the market forces i.e. in the determination of price of the product. A dominant position in itself is notillegal. However, abuse of dominance is. Dominant companies have a special responsibility to behave responsibly. They have to comply with special rules that are designed to protect competitors, customers and market structure from abusive behaviour. Abuse of dominance is violation of section 4 of the Competition Act.

The Act specifies a number of factors such as market share, size and resources of the firm, market structure etc. that should be taken into account while determining whether an enterprise is dominant or not. For example: very large market shares, maintained stable for a long time can be considered as evidence for the existence of a dominant position in the relevant market.

Relevant market[23] is defined on the basis of geographical and product market. Relevant geographic market[24] is a geographical territory in which competition conditions in a relevant market of a product are sufficiently the same for all participants in such market and therefore this territory can be separated from other territories. The relevant geographic market is affected by factors like consumption and shipment patterns, transportation costs, perishability and existence of barriers to the shipment of products between adjoining geographic areas. For example, in view of the high transportation costs in cement, the relevant geographical market may be the region close to the manufacturing facility.

Relevant product market[25] is defined in terms of substitutability. It comprises of all those products and/or services which are regarded as interchangeable or substitutable by the consumer by reason of the products' characteristics, their prices and their intended use. The market for cars, for example, may consist of separate 'relevant product markets' for small cars, mid-size cars, luxury cars etc. as these are not substitutable for each other on a small change in price.

The Commission while determining the “relevant geographic market[26]”, gives due regard to all or any of the following factors, namely:- regulatory trade barriers; local specification requirements; national procurement policies; adequate distribution facilities; transport costs; language; consumer preferences; need for secure or regular supplies or rapid after-sales service. In case of “relevant product market”[27], the Commission gives due regard to all or any of the following factors, namely:- physical characteristics or end-use of goods; price of goods or service;

23. Section 2(r) of the Act
24. Section 2(s) of the Act
25. Section 2(t) of the Act
26. Section 19(6) of the Act
27. Section 19(7) of the Act

consumer preferences; exclusion of in-house production; existence of specialized producers; classification of industrial products.

The Act applies only to abuse by the dominant firms because the presumption is that a small firm will lose its customers to its competitors if it charges excessive prices. Customers might have nowhere to turn if a dominant firm charges an excessive price.

The abuse of dominant position is broadly classified into exploitative and exclusionary practices. The following are examples of abuse under each of the practices:

3.2.1 Exploitative Practices

a. **Directly or indirectly imposing unfair or discriminatory prices in purchase or sale of goods or service**

- **Discriminatory pricing:** Price discrimination occurs when customers in different market segments are charged different prices for the same good or service, for reasons unrelated to costs.

Example 9: Suppose Delhi is divided into two parts and both the areas are inaccessible to one another. Suppose firm X is dominant in the market of tyres. Since it can easily segregate the market it may charge higher prices in one part and lower prices from other consumers for the same tyre in spite of its cost being same in both the markets.

- **Predatory pricing:** selling a product or service below cost to drive competitors out of the market or create barriers to expansion for such competitors or to create barriers to entry for potential new competitors.

Example 10: Enterprise A, a manufacturer of pens is a dominant enterprise in the pen market. Earlier it used to charge a price of INR 10 per pen . However, it has recently started selling its pen at a loss making price of INR 6 knowing that its competitors will not be able to match its price as their cost of production is higher than Rs. 6. As a result of this, A's competitors would be forced to exit the market, after which, A, as a monopolist, would be free to charge any price that it wants. This is an example of a monopoly abusing its dominance by indulging in predatory pricing.

- **Excessive pricing:** charging excessive prices due to lack of competition. Since the firm has has no competition, it can charge higher prices.

b. **Directly or indirectly, imposes unfair or discriminatory condition in purchase or sale of goods or service.**

The imposition of unfair or discriminatory condition has a negative effect on the consumer welfare.

Example 11: XYZ abused its dominant position in the market of 'high end' residential accommodation, in Mumbai by imposing unfair and one-sided conditions in agreement, say by changing the layout plan without buyer consent. Imposition of such conditions is violation of section 4 of the Act.

3.2.2 Exclusionary Practices

c. Limiting production of goods or provision of services or limiting or restricting technical or scientific development

The dominant firm can restrict the production of its goods and services in order to create artificial scarcity in the market. As a result of which demand will be greater than supply and hence the price of the product would increase. Moreover, the dominant firm can also restrict scientific and technical innovations as it has no incentive to indulge in it. Other competitive companies innovate to achieve dominance but this is not the case with dominant firm as it might have no or very less competition.

d. Indulges in practice or practices resulting in denial of market access

A dominant firm in order to maintain its dominance may indulge in practices which results in denial of market access to its competitors. For instance: it can create entry barriers like by pricing below cost (predatory pricing). It can also indulge in lobbying with government to create/modify regulations which may restrict new entry. Denial of market access by the dominant firm has a negative impact on consumer welfare as it limits competitive prices and product choices.

e. Imposing conditions which are irrelevant to the contract entered into

According to it, a dominant firm imposes conditions which impose an unnecessary onus on the other party to the contract which may be completely irrelevant.

Example 12: Suppose Arun purchases a luxury flat from XYZ builders in a high end residential accommodation. Also, XYZ has a dominant position in the high end residential accommodation market. Further, XYZ imposes an unnecessary condition on Arun that he can't rent his flat to students but he can rent it to families. This condition is completely irrelevant to the contract entered into and is hence a violation of section 4 of the Act.

f. Using its dominant position in one relevant market to enter into, or protect, other relevant market

According to it, a dominant firm would condition the purchase of the product by the consumer with another product. The two products would have different relevant markets.

Example 13: A printer manufacturer who is dominant in the printer market would force the consumer to also buy ink toner from him. Since, printer and toner are different products; they have a separate relevant market. Consequently, the competition in the ink market gets affected as ink producers would lose their customers to the printer manufacturer.

3.2.3 Factors considered for Inquiring into Section 4[28]

The Commission while inquiring whether an enterprise enjoys a dominant position or not under section 4, gives due regard to all or any of the following factors, namely:— (a) market share of the enterprise; (b) size and resources of the enterprise; (c) size and importance of the competitors; (d) economic power of the enterprise including commercial advantages over competitors; (e) vertical integration of the enterprises or sale or service network of such enterprises; (f) dependence of consumers on the enterprise; (g) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise; (h) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers; (i) countervailing buying power; (j) market structure and size of market; (k) social obligations and social costs; (I) relative advantage by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition; (m) any other factor which the Commission may consider relevant for the inquiry

3.2.4 Important cases on Abuse of Dominance

1. Belaire Owner's Association and DLF Limited: Case No. 19 of 2010[29]

DLF abused its dominant position in the market of 'high-end' residential accommodation, in Gurgaon by imposing unfair and one-sided conditions in agreement. These includes unilateral changes can be made by the builder without the buyers' consent, builder has the right to change the layout plan without buyer consent , can unilaterally change inter se areas for different uses like residential, commercial, etc, without informing anyone etc. CCI levied a penalty of Rs. 630 crore because of its anti-competitive behaviour. The Supreme Court upheld the decision of CCI and has asked DLF to deposit the penalty.

2. MCX Stock Exchange Ltd and the National Stock Exchange (NSE), Case No. 13 of 2009[30]

Competition Commission of India (CCI) directed the National Stock Exchange (NSE) to pay a penalty of Rs 55 crore for the alleged abuse of its dominant position

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28. Section 19 (4)
29 For details see: http://www.cci.gov.in/sites/default/files/132155_0.pdf
30 For details see: http://www.cci.gov.in/sites/default/files/MCXMainOrder240611_0.pdf

via indulging in unfair practices. The case traces back to 2009 when MCX Stock Exchange moved the CCI against NSE's decision to offer currency derivatives trading free of cost to investors. It argued that NSE enjoyed a dominant position, which was abused.

Note: Section 4 can only apply to firms which enjoy a dominant position in the market and are abusing their position. Dominance is necessary but not a sufficient condition to invite violation of section 4.

3.3. Combination Regulation (Section 5 & 6)

Combinations mean mergers, amalgamations of companies or acquisitions of control, shares, voting rights or assets of one company by another company or group. Good combinations lead to a more efficient business which passes on some of those efficiency savings to its customers. On the other hand, bad mergers lead to a situation where one or more businesses have the power to raise their prices to their customers. That is, they substantially lessen competition.

3.3.1 Ex-ante regulation of Combinations

Combination review is based on age-old dictum, 'Prevention is better than cure' and therefore ex-ante in nature.

Rationale for Ex-ante regulation of Combinations (Mergers & Acquisitions):

- Combinations should not be permitted to create, enhance, or entrench market power or to facilitate its exercise
- Combinations enhances market power if it is likely to encourage one or more firms to raise price, reduce output, diminish innovation, or otherwise harm consumers as a result of diminished competitive constraints or incentives
- Unilateral effects - Firms can enhance market power simply because of elimination of competition through merger or acquisition.
- Coordinated effects - merger can also result in increased risk of joint dominance through coordinated, accommodating, or concerted behavior among remaining market players in relevant market
- Post-combination, unscrambling a merger may also involve high socio-economic costs.
- Regulation of combination provides legal certainty to business, had the combining enterprises taken clearance after filing notification

The Act provides for mandatory filing of notice with CCI regarding the combination based on asset/turnover. The failure to notify and obtain required approval attracts penalties (up to 1% of total turnover or the assets, whichever is higher) under Section 43A of the Act. The Commission also has the power to take suo-moto action by calling for notice from parties to the mergers, which do not comply with the mandatory filing requirements. The transaction would be rendered void, if the CCI

subsequently determines that the combination has an 'appreciable adverse effect on competition in India'. Provisions of 'Regulation of Combinations' in the Act intend to ensurethat the firms do not acquire such a degree of market power in the market so as to harm the interest of consumers, the economy and society as a whole.

Example 14: Suppose there are four firms in a market having the following market shares:

Table 1

FIRM NAME	MARKET SHARE(%)
A	50
B	40
C	5
D	5

If a firm 'A' merges with firm 'B' then such post-merger entity A+B will capture almost the whole market thereby impinging on the competition in the market. Such market power may incentivize the businesses in exploiting the consumers. The Competition Commission's role is to screen mergers for potential anti-competitive effects. The Commission decides whether the combination should be approved, prohibitedor approved with modifications to the combination. The modifications are made on the basis of how the anti-competitive effects could be alleviated. In competition parlance such modifications are termed as 'Remedies'. Remedies can either be: a) Structural; or b) Behavioural.[31]

3.3.2 Thresholds for Combinations

Current thresholds as enhanced vide Govt. Notification dated 4th March 2016 for the purpose of Section 5 of the Act are as follows:

Table 2: Thresholds for Combinations

Thresholds for the purpose of Section 5 are as follows:			
Criteria	**Assets**	**Turnover**	
Only within India	**No Group**	>Rs. 2,000 cr	>Rs. 6,000 cr
	Group	>Rs. 8,000 cr	>Rs 24,000 cr
Within and Outside India	**No Group**	>US $ 1 billion (with at least Rs. 1,000 cr in India)	>US $ 3 billion (with at least Rs. 3,000 cr in India)
	Group	>US$ 12 billion (with at least Rs. 3,000 cr in India)	>US $ 4 billion (with at least Rs. 1,000 cr in India)

31. For more details on Remedies please refer to In Focus Article in Fair-play (Volume 15) October-December 2015 edition. Can be accessed at http://www.cci.gov.in/fair-play

3.3.3 Forms for Filing notice for a Combination

The acquirer has the obligation to file the notice in Form I[32] or Form II[17], as the case may be. Form I is simple, short & relatively user friendly requiring basic information on the Combination. Form II is a detailed form requiring much more information. The Commission recommends this form to be used in cases where the transaction involve parties that have:

- A horizontal overlap with combined market shareof over 15%
- Vertical relationship with market share of over 25% in respective product / market

Any share subscription or financing facility or any acquisition by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement are exempted from filing notices regarding combination under the Competition Act. However, the CCI is required to be notified within 7 days of such share subscription or financing facility or acquisition by a public financial institution, foreign institutional investor, bank or venture capital fund in Form III17.

3.3.3 Timelines and Framework for Assessment

The Competition Act, 2002 provides a timeline of 210 days to CCI to take a decision on a Combination filing.

Pre-Investigation phase: The commission has to form a prima facie opinion within 30 days as to whether the combination is likely to cause an appreciable adverse effect on competition. In pursuance of this provision, most filings are likely to be approved in this shorter time frame. Only few filings with serious competition concerns are likely to go beyond this period to the second stage of investigation. These will be deemed cleared at the end of 210 days, if no order is passed.

Investigation phase: If Commission is of the Prima-facie opinion that the combination is likely to cause or has caused Appreciable Adverse Effect on Competition (AAEC) within the relevant market in India and investigation in terms of Section 29 of the Act then the Commission by its order can either

- **Approve** the Combination if there is **No likelihood of AAEC**
- Approve with **modifications**[33] - Structural (divestiture) and/or Behavioral remedies (price ceiling etc.) if the AAEC concerns are addressed through such remedies
- **Not approve,** in case the Commission considers that there is sufficient likelihood of AAEC and the same can't be addressed through modifications

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32. For downloading respective Form visit www.cci.gov.in and go to Tab – Combination Form for Filing Form I, Form II or Form III as per the requirement
33. Modifications are also termed as Remedies in some jurisdictions.

3.3.4. Factors considered for Inquiring into Combination[34]

For the purposes of determining whether a combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market, the Commission gives due regard to all or any of the following factors, namely:-

(a) actual and potential level of competition through imports in the market

(b) extent of barriers to entry into the market;

(c) level of combination in the market;

(d) degree of countervailing power in the market;

(e) likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;

(f) extent of effective competition likely to sustain in a market; (g) extent to which substitutes are available or arc likely to be available in the market;

(h) market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination;

(i) likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market;

(j) nature and extent of vertical integration in the market;

(k) possibility of a failing business;

(I) nature and extent of innovation;

(m) relative advantage, by way of the contribution to the economic development, by any combination having or likely to have

(n) whether the benefits of the combination outweigh the adverse impact of the combination, if any.

3.3.5 Important Cases on Combinations

Acquisition of Bina Power Supply Limited (BINA/SPV) by JSW Energy Limited (JSWEL)[35]

The Proposed Transaction relates to an acquisition of a 100% stake (i.e. all securities including equity shares and non-convertible debentures) in the SPV by JSWEL. The Proposed Transaction is, therefore, in the nature of an acquisition of shares within the meaning of Section 5(a) of the Act. The relevant market in relation to the Proposed Transaction is “the market for generation of power in India” However, currently the SPV is not involved in any business operation. The combination was approved by the commission under section 31(1) of the Act

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34. Section 20(4) of the Act
35. Combination Registration No 2016/08/420

PVR's acquisition of DT Cinema's multiplexes/single screen theatres in Delhi NCR and Chandigarh[36]

The proposed combination relates to the acquisition by PVR of DLF's film exhibition business 'DT Cinemas', comprising 39 screens (29 existing and 10 upcoming) as a going concern on a slump-sale basis. For the purpose of competition assessment of the proposed combination, the Commission defined the relevant geographic markets as Gurgaon, South Delhi, North, West and Central Delhi, Noida, and Chandigarh. The relevant product market was defined as the market for multiplexes and high end single screen theatres. The commission observed that the proposed combination is likely to cause AAEC in the relevant markets of Noida, Gurgaon and South Delhi and hence subjected the deal to public scrutiny. During the course of the inquiry, behavorial remedies were offered by the Acquirer, However, the commission approved the proposed combination under section 31(7) with certain modifications by offering structural remedies, which inter alia include exclusion of DT Savitri (one screen) and DT Saket (six screens) from the proposed combination to address anti-competitive concerns.

3.4. Competition Advocacy (Section 49) and Reference (Section 21)

In order to make competition regime successful vigorous advocacy is required, in addition to the enforcement of the competition law. Competition advocacy is a process of outreach to influence the economic behavior of enterprises, elicit support for adhering to the principles of competition and convince the stakeholders about the innate advantages as a result of the fair competition. Section 49 of the Indian Competition Act enjoins the Commission to take suitable measures to for the promotion of competition culture and impart training for competition awareness. Competition advocacy has two dimensions. First, as a proponent for increased public understanding and acceptance of competition principles (Section 49 (2)). And the second is, about the advisory role of the Commission. It reflects Commission's role as advocate to government promoting such legislation and policies that follows the fair market principle and do not impinge on the Competition (Section 49(1)). A similar mandate of sending a reference/ providing an opinion on a reference received to/ from a statutory authority (other regulatory institutions) has been enjoined through Section 21 and Section 21 A respectively.

4. Orders of the Commission

The Commission is empowered to inquire into any cartel and abuse of its position by a dominant enterprise and is further empowered to issue any of the following directions:

1) Direct the parties to discontinue and not to re-enter such agreement;
2) Direct the enterprise concerned to modify the agreement.

36. Combination Registration No. 2015/07/288

3) Direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any;

4) Pass such other orders or issue such directions as it may deem fit.

5) Can impose such penalty as it may deem fit.

Table 3: Penalty Provisions		
Infringement	**Fine/Penalty**	**Who is liable?**
Anti-competitive agreements	Penalties of up to 10% of turnover upon each of the person or enterprise that are parties to such agreement. In case of a Cartel penalties up to 3 times of the profit or 10% of the turnover for each year of continuance of such cartel or agreement	• Enterprises who enter into an anti competitive agreement • Directors/officials also liable[38]
Abuse of dominance	• Penalties of up to 10% of turnover5 • Division of dominant enterprise	• Enterprises abusing dominant position • Directors/officials also liable[39]
Failure to notify a reportable combination	Fine of up to 1% of combined turnover/assets	• Person or enterprise • Directors/officials also liable[40]

6) Direct division of an enterprise enjoying dominant position to ensure that such enterprise does not abuse its dominant position[41]

The commission can also impose a monetary penalty for non-furnishing of information on combinations.

4.1. Penalty on Individuals (Key Managerial Person)

The commission has the power to hold guilty if an individual while working as Director or Manager or Secretary or any other officer of the Company (or enterprise) is found to be responsible for the actions that lead to the contravention of the Act. Such person is liable to be proceeded against and punished with severe personal penalty as per the provisions of Section 48 read with Section 27 of the Act.

5. Leniency Provisions

In case of cartels, the Act provides for a leniency provision to incentivize to those cartel members who choose to share the information and cooperate with the Commission. Itis a type of whistle-blower protection, i.e. an official system of offering lenient treatment to such member of the cartel who is willing to cooperate

37. Section 27 (b). For more details see Section 27 a to g
38. Section 48
39. Section 28
40. Section 43 A
41. Section 28

with the enquiry and the investigation process. It is a protection as-well-as an incentive to those who come forward on realizing that their actions were in contravention with the provisions of the Act and submit information to avoid stringent action and penalties by the Commission.

A set of conditions are required to be satisfied for getting benefits under the leniency programme. These are:

1) To provide information, before the commission gets knowledge of it from other sources;

2) Cease to participate in the cartel thereafter;

3) Provide all relevant information, evidence and documents as required by the commission; and

4) Co-operate genuinely, fully, continuously and expeditiously throughout the investigation and other proceedings.

However, in case the cartel member doesn't cooperate continuously and fully with the commission till the end of the investigation and issuance of final order, the benefit of leniency stands forfeited. Other conditions under which such enterprise (or person) loses the leniency benefit are:

1) When such enterprise provides false evidence;

2) If it doesn't comply with the condition on which the lesser penalty was imposed; and

3) The disclosures made are not vital for proceeding with and proving the cartel.

The reduction in monetary penalty depends upon the stage at which the applicant offers the disclosure. Other important factors include the evidence already in possession of the Commission, the quality of the information provided by such applicant and the entire facts and circumstances of the case. The benefit meted out to such cartel member is up-to 100 % reduction in penalty up to first such applicant who makes a vital disclosure. The second and third applicant in such cases may be considered by the Commission for a reduction in the penalty up-to the 50% and 30 % of the maximum applicable penalty.[42] The identity of the applicant seeking leniency and the information received are kept confidential.

6. Restriction on Disclosure of Information

The CCI is obligated under section 57 of the Act to not to disclose any information relating to any enterprise without the previous permission (in writing) of the enterprise. Under Regulation 35 of the Competition Commission of India (General) Regulations, 2009 (General Regulations) any party may request the Commission to treat any relevant document as confidential, which in the view of the party, if

42. Penalty is decided as per Section 27 of the Act

disclosed in public will reveal trade secrets of the party and would prove detrimental to it. The parties must state out cogent reasons for the documents to be treated as confidential. However, the Commission has the discretion to accept or reject the request for confidential treatment of all or a part of the documents thereof. The Commission while arriving at such decision takes into consideration the following factors:[43]

(a) the extent to which the information is known to outside public;

(b) the extent to which the information is known to the employees, suppliers, distributors and others involved in the party's business;

(c) the measures taken by the party to guard the secrecy of the information;

(d) the ease or difficulty with which the information could be acquired or duplicated by others.

7. Some Myths about Competition Law

Due to the legacy of the MRTPC Act and the lack of awareness among the market participants there are quite-a-few common myths about competition law. These result in mis-construing the provisions and benefits arising out of this pro-market Act. Some of the common myths are:

- **Myth 1: Monopoly / Dominance is Bad**

  As explained in section 3.2, monopoly/dominance is not bad per se in Indian Competition Law, but its abuse is. High concentration by one firm doesn't mean that there is absence of competition. If a firm is providing better quality goods and services to the market efficiently as it enjoys economies of scale then the Competition law does not consider it anti-competitive. It is the abuse of dominance that is prohibited under the Act.

- **Myth 2: Competition is a Side Show or A Panacea**

  Competition is very important but it is neither a side-show nor a cure for everything. It is important for the benefits it gives out, so it shouldn't be side-lined. Similarly, fair competition is not a panacea; a healthy economy also needs an enabling business environment and a sound regulatory structure that includes proper enforcement of property rights and contract provisions.

- **Myth 3: Everything that can be defined as Anti-Competitive is Illegal**

  The Indian Competition law doesn't treat every activity that can be theoretically defined as anti-competitive as illegal per-se. Under the Section 3.1, the vertical agreements are restrained only if these cause AAEC i.e. the provision enjoins the Commission to adopt the rule of reason approach. Similarly abuse of dominance can be penalized only when the actions of the dominant player result in AAEC.

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43. As per Regulation 35 (9) of CCI (General) Regulation, 2009

- **Myth 4: Competition is Automatic**

  Competition is not automatic as it can be impacted by social environment, capacity of the market players, counter-vailing power of new entrants, government policies and legislation. In a real market, entry and exit of market players is not instant and thus allows market players to charge supra-competitive prices. Information asymmetry, local preferences, geographic location and the brand preference are other factors that cause some degree of market distortion. Therefore, markets in a modern economy is a complex system and proper regulatory framework is necessary to promote competition.

- **Myth 5: Competition is the Responsibility of the Competition Regulator only**

  Competition is not the sole responsibility of the Commission. It is the responsibility of every business organisation to remain compliant to the provisions of the Act and also to promote competition. Following the principles of fair competition and competitive neutrality is the responsibility of the policy makers and those enjoined with sectoral regulation.

- **Myth 6: Regulation is a substitute to Competition**

  Regulationis not a substitute to competition as the objectives differ. Forexample, the competition would be driven by profit motive, whereas, the regulated entity is denied high profits, may be allowed to suffer from losses as long as its decisions are deemed to support the social objective. However, both the Regulation and the Competition are complementary to each other. Regulations may hinder or promote competition on the basis of its objectives. Neither, the Regulatory institutions have the capacity to identify anti-competitive behaviour nor do they have the power to penalise such conduct. To avoid conflict with the sectoral regulators, the Act provides for reference under Section 21 and 21 A to enable consultation between the sector regulator and the Commission.

- **Myth 7: Certain sectors are not amenable to competition**

  In order to achieve an efficient outcome, competition is necessary. All sectors needs to be open up for competition. Regulation is necessary to protect certain strategic industries and also for creating a basic infrastructure. However, after achieving a certain level and a self-sustaining competitive market structure, it is necessary that the sectoris opened up for competition. There are possibilities of unbundling of various services within the sector e.g. in power sector there is now an open competition among the generation companies, through common national grid and also among the power utilities for buying/ selling additional power as per their demand or available supply.

8. What to do if you observe anti-competitive behaviour

If you suspect a competitor, supplier, customer or any business of engaging in anti-competitive activity you should report it to the Competition Commission of India either formally by filing an information under section 19 (1) (a) or may provide a miscellaneous information using the feedback section or the miscellaneous information tab on the Commission Website at http://www.cci.gov.in/feedback.

Contact Us

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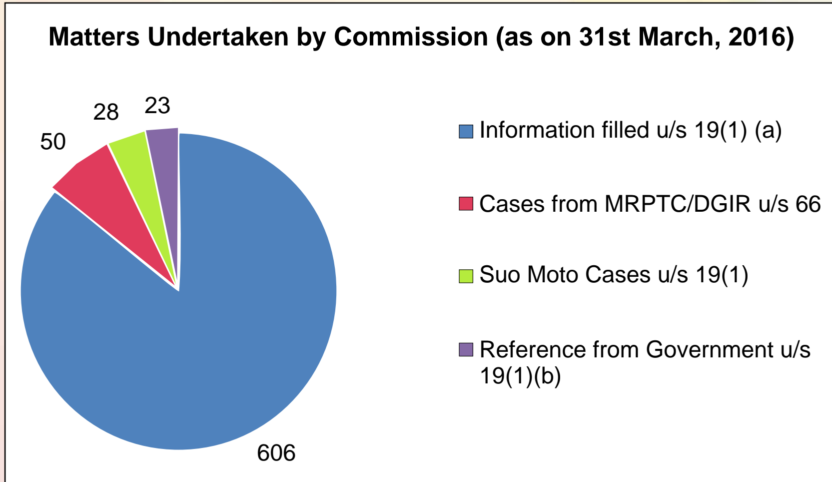
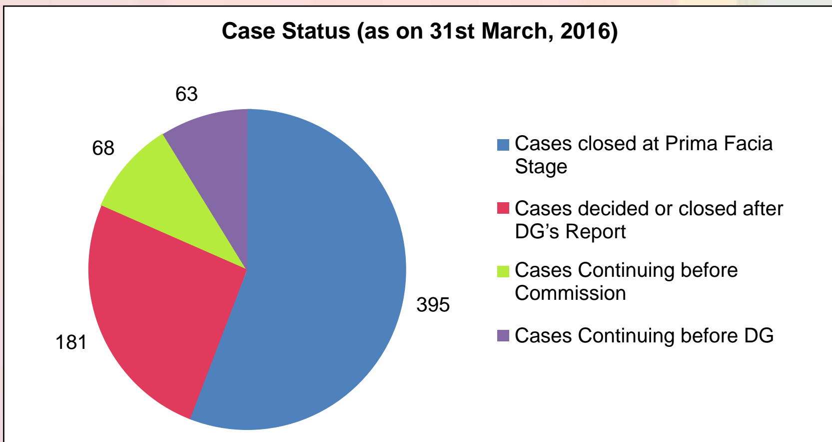
FAX Number +91-11-237 046 86
Website: cci.gov.in
Email your feedback/ information to: secy@cci.gov.in

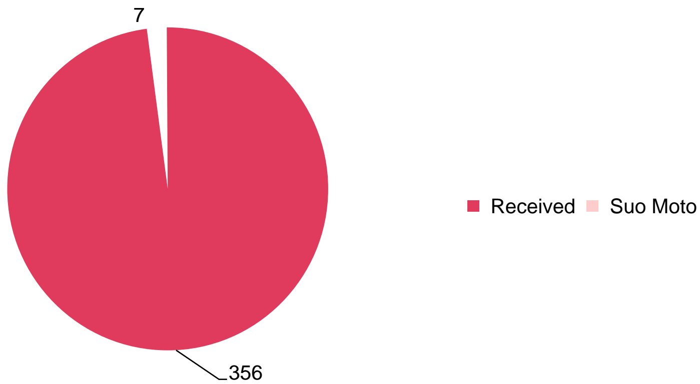
Annexure 1

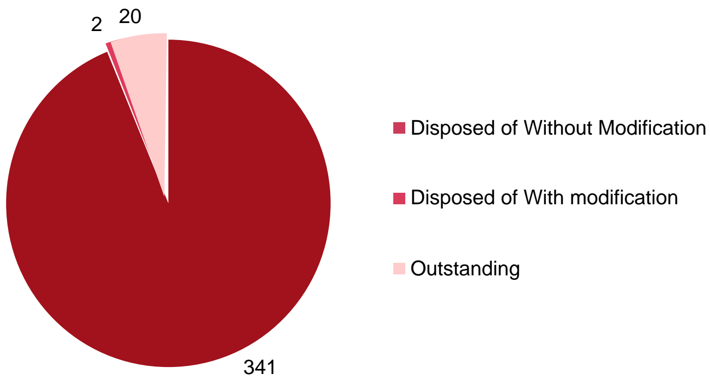
Anti-Trust Cases (Section 3 & 4)





Combination Cases (Section 6)





Suggested Further Readings

CCI. (n.d.). Advocacy Booklets. Retrieved from http://www.cci.gov.in/ advocacy-booklet/78

OECD (n.d). Policy Roundtables on Cartels and anti-competitive agreements. Retrieved from http://www.oecd.org/daf/competition/cartels-competition roundtables.htm

OECD (n.d). Policy Roundtables on Best Practice Roundtables on Competition Policy. Retrieved from http://www.oecd.org/daf/competition/ abuse-of-dominance-competition roundtables.htm

OECD (n.d). Policy Roundtables on Mergers: Best Practice Roundtables on Competition Policy. Retrieved from http://www.oecd.org/daf/competition/ mergers-competition roundtables.htm

Other Resource Persons' Material

Part 2: Consumer Associations

Part 3: Trade/Industry Associations

Part 4: Public Procurement – Government and Public Sector Enterprise

Part 5: Regulatory Bodies

Part 6: Competition Compliance Programme

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Please visit www.cci.gov.in for more information about the Commission.

For any query/comment/suggestion, please write to advocacy@cci.gov.in

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