



ADVOCACY SERIES

1

Competition Act, 2002

Frequently Asked Questions



Fair Competition
for Greater Good

भारतीय प्रतिस्पर्धा आयोग
COMPETITION COMMISSION OF INDIA



VISION

To promote and sustain an enabling competition culture through engagement and enforcement that would inspire businesses to be fair, competitive and innovative; enhance consumer welfare; and support economic growth.

MISSION 2020

Competition Commission of India aims to establish a robust competitive environment through

© proactive engagement with all stakeholders, including consumers, industry, government and international jurisdictions

© being a knowledge intensive organization with high competence levels

© professionalism, transparency, resolve and wisdom in enforcement.

DISCLAIMER

This quick guide 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. Readers are advised to carefully study the Competition Act, 2002, as amended by the Competition (Amendment) Act, 2007 and the Competition (Amendment) Act, 2009, and seek legal advice, wherever necessary.



Q.1 WHAT IS COMPETITION IN THE MARKET?

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

Q.2 WHY DO WE NEED COMPETITION IN THE MARKET?

Competition is now almost universally acknowledged as the best means of ensuring that consumers have access to the broadest range of services at the most competitive prices. Producers will have maximum incentive to innovate, reduce their costs and meet consumer demand. Competition thus promotes allocative and productive efficiency. But all this requires healthy market conditions and governments across the globe are increasingly trying to remove market imperfections through appropriate regulations to promote competition.

Q.3 WHAT IS MEANT BY UNFAIR COMPETITION?

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

Q.4 WHAT CONSTITUTES COMPETITION LAW AND POLICY?

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

There are two elements of such Government measures:-

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

Q.5 WHAT ARE THE OBJECTIVES OF THE COMPETITION ACT, 2002 (AS AMENDED), [THE ACT]?

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

Q.6 HOW WOULD THE OBJECTIVES OF THE ACT BE ACHIEVED?

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

Q.7 WHAT ARE THE FUNCTIONS OF CCI?

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

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

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

Q.8 WHAT IS AN “AGREEMENT” UNDER THE ACT?

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

Q.9 WHAT IS AN ANTI-COMPETITIVE AGREEMENT?

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



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

Q.10 WHAT CONSTITUTES ABUSE OF DOMINANCE?

Dominance refers to a position of strength which enables an enterprise to operate independently of competitive forces or to affect its competitors or consumers or the market in its favour. Abuse of dominant position impedes fair competition between firms, exploits consumers and makes it difficult for the other players to compete with the dominant undertaking on merit. Abuse of dominant position includes:

- ✓ imposing unfair conditions or price,

- ✓ predatory pricing,
- ✓ limiting production/market or technical development,
- ✓ creating barriers to entry,
- ✓ applying dissimilar conditions to similar transactions,
- ✓ denying market access, and
- ✓ using dominant position in one market to gain advantages in another market.

Q.11 WHEN THE COMMISSION MAY INITIATE INQUIRY INTO ANTI- COMPETITIVE AGREEMENTS/ ABUSE OF DOMINANCE?

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

Q.12 WHO CAN PROVIDE INFORMATION?

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

- ✓ A person includes an individual, Hindu undivided family (HUF), company, firm, association of persons (AOP), body of individuals (BOI), statutory corporation, cooperative society, 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.

This information is to be fixed as per prescribed format and accompanied with prescribed fees. Please refer answer to Q.30 & Q.31.

Q.13 WHO CAN MAKE A REFERENCE FOR AN INQUIRY?

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

Q.14 CAN THE COMMISSION INITIATE INQUIRY ON ITS OWN?

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

Q.15 HOW WILL THE COMMISSION PROCEED WITH AN INQUIRY?

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



Q.16 WHAT WILL THE COMMISSION DO AFTER INVESTIGATION?

After receipt of the investigation report from the Director General

- ✓ The Commission may forward it to the concerned parties.
- ✓ If the investigation is on a reference from a statutory authority, the forwarding of report to the concerned authority is mandatory.
- ✓ If the report of the DG does not find any contravention of the Act, the Commission shall seek objections from the concerned parties.
- ✓ After considering the objections received, if any, the Commission may accept the report of the DG, or require further investigation to be made by the DG or make inquiries itself.
- ✓ In conclusion of the above broad processes, the Commission shall determine whether it is a case of anti-competitive agreement or abuse of dominant position or both and after hearing the concerned parties and pass appropriate orders.

Q.17 WHAT ORDERS THE COMMISSION CAN PASS IN CASE OF ANTI- COMPETITIVE AGREEMENTS AND ABUSE OF DOMINANT POSITION?

- ✓ During the course of inquiry, the Commission can pass interim order restraining a party from continuing with anti competitive agreement or abuse of dominant position.

- ✓ The Commission can impose a penalty of not more than 10% of the average turnover for the last 3 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 3 times its profit for each year of the continuance of such agreement or up to 10% of its turnover for each year of continuance of such agreement, whichever is higher.
- ✓ After the inquiry, the Commission may direct a delinquent enterprise to discontinue and not to re-enter anti-competitive agreement or abuse its dominant position. The Commission may also direct modification of such agreement.
- ✓ The Commission may direct division of enterprise in case it enjoys dominant position to ensure that such enterprise does not abuse its dominant position.



Q.18 WHAT IS A COMBINATION UNDER THE ACT?

Vide Notification dated 4th March 2011, the Central Government has appointed 1st day of June 2011 as the date on which provisions relating to Combinations shall come into force.

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

on competition within the relevant market in India, it is prohibited and can be scrutinized by the Commission.

Q.19 WHAT ARE THE THRESHOLDS IN CASE OF COMBINATIONS?

The Competition Act provides for the following threshold limits:

- ✓ Combined assets of the enterprises value more than Rs.1,500 crores or combined turnover is more than Rs.4,500 crores. In case either or both of the enterprises have assets/turnover outside India also, then the combined assets of the enterprises value more than US\$ 750 millions, including at least Rs.750 crores in India, or turnover is more than US\$ 2250 millions, including at least Rs. 2,250 crores in India.
- ✓ Combined assets of the group to which the acquired enterprise would belong after combination being more than Rs.6,000 crores or such group having a joint turnover more than Rs. 18,000 crores after acquisition or merger. In case such group has assets/turnover outside India, then the combined assets of the group value more than US\$ 3,000 million, including at least Rs.750 crores in India or turnover is more than US\$ 9,000 million including at least Rs. 2,250 crores in India.
- ✓ Group is defined in the Act. Two enterprises belong to a “group” if one is in position to exercise at least 26% voting rights or appoint at least 50% of the directors or controls the management or affairs in the other.

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

	APPLICABLE TO	ASSETS		TURNOVER	
In India	Individual Parties	₹ 1,500 cr.		₹ 4,500 cr.	
	Group	₹ 6,000 cr.		₹ 18,000 cr.	
In India and outside		ASSETS		TURNOVER	
		Total	Minimum Indian Component out of Total	Total	Minimum Indian Component out of Total
	Individual Parties	\$ 750 m	₹ 750 cr.	\$ 2,250 m	₹ 2,250 cr.
	Group	\$ 3,000 m	₹ 750 cr.	\$ 9,000 m	₹ 2,250 cr.

1 Crore = 10 million

Q.20 DOES A FIRM PROPOSING TO COMBINE HAVE TO NOTIFY THE COMMISSION?

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

Q.21 IS THERE COMPULSORY WAIT PERIOD FOR A COMBINATION TO TAKE EFFECT?

Yes. The proposed combination can not take effect for a period of 210 days from the date it notifies the Commission or till the Commission passes an order, whichever 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.22 WHAT IS THE PROCEDURE FOR INVESTIGATION OF COMBINATIONS?

If the Commission is of the opinion that a combination is likely to cause or has caused adverse effect on competition, it shall issue a show cause 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 also inquire whether the disclosure made in the notice is correct and combination is likely to have an adverse effect on competition.

Q.23 WHAT ORDERS THE COMMISSION CAN PASS IN CASE OF A COMBINATION?

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

Q.24 IS THERE ANY LENIENCY ACCORDED TO ANYONE WHO PROVIDES INFORMATION ON ANY ANTI-COMPETITIVE AGREEMENT?

Section 46 of the Act empowers the Commission to grant leniency by levying a lesser penalty on a member of the cartel who provides full, true and vital information regarding the cartel. The scheme is designed to induce parties to any anti-competitive behaviour to break ranks to help in detection and investigation of cartels.

Q.25 WHO CAN REPRESENT THE PARTIES BEFORE THE COMMISSION?

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

Q.26 WHO CAN MAKE A REFERENCE ON A COMPETITION POLICY?

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

Q.27 WHO CAN MAKE A REFERENCE ON A COMPETITION ISSUE?

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

Q.28 CAN THE COMPETITION COMMISSION MAKE REFERENCE TO A STATUTORY AUTHORITY?

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

Q.29 WHAT ARE THE PROVISIONS OF APPEAL AGAINST ANY ORDER OF THE COMPETITION COMMISSION?

The Central Government has notified a Competition Appellate Tribunal (COMPAT) to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under specified sections of the Act, such as orders relating to notification of combination, inquiry by the Commission and penalties.

An appeal has to be filed within 60 days of receipt of the order / direction / decision of the Commission.

A person aggrieved with the direction, decision or order of the COMPAT can appeal to the Supreme Court of India within 60 days from the date of communication of the direction, decision or order.

Q.30 HOW TO FILE INFORMATION?

- ✓ Indicate your complete postal address with PIN code, telephone & fax number and email address. Mention legal name and address(es) of the enterprise(s) alleged to have contravened the provisions of the Act.
- ✓ The information should be duly signed by the authorised person in the form of statement of facts and

should contain details of the alleged contraventions of the Act. It should be accompanied by supporting documents, affidavits and evidence.

- ✓ Any information or reference or responses to the Commission should be sent to the Secretary, in person or by registered post or courier service or facsimile transmission addressed to the Secretary or to the authorized officer.
- ✓ The information you file with the Commission should be accompanied by proof of having paid the fee by tendering demand draft or pay order or banker's cheque, payable in favour of Competition Commission of India (Competition Fund), New Delhi or through Electronic Clearance Service (ECS) by direct remittance to the Competition Commission of India (Competition Fund), Account No. 1988002100187687 with "Punjab National Bank, Bhikaji Cama Place, New Delhi-110066.
- ✓ For complete details of the prescribed procedure for filing information, please refer to the booklet titled "How to File Information?" or refer the Competition Commission of India (General) Regulations, 2009 which is also available on the Commission's website.

Q.31 WHAT ARE THE PRESCRIBED FEES?

The prescribed fees are as under:

- a) Rupees 5000/- (Five thousand only) in case of individual, or Hindu undivided family (HUF), or Non Government Organisation (NGO), or Consumer Association, or Co-operative Society, or Trust, duly registered under the respective Acts,



b) Rupees 20,000/-(twenty thousand only) in case of firms, companies having turnover in the preceding year upto Rupees one crores, and

Rupees 50,000/- (fifty thousand only) in case not covered under clause (a) or (b) above.



ORGANOGRAM

Chairperson

Member

Member

Member

Member

Member

Member

Maximum 7 Members (including Chairperson)

Economic Division

Combination Division

Anti-Trust Division

Legal Division

Investigation Division

Advocacy Division

Capacity Building Division

Secretariat

DG Office

Regulations

notified by the Competition Commission of India

- ▶ The Competition Commission of India (Procedure for Engagement of Experts and Professionals) Regulations, 2009; (No. 1 of 2009)
- ▶ The Competition Commission of India (General) Regulations, 2009; (No. 2 of 2009)
- ▶ The Competition Commission of India (Meeting for Transaction of Business) Regulations, 2009; (No. 3 of 2009)
- ▶ The Competition Commission of India (Lesser Penalty) Regulations, 2009; (No. 4 of 2009)
- ▶ The Competition Commission of India (Determination of Cost of Production) Regulations, 2009; (No. 5 of 2009)
- ▶ The Competition Commission of India (General) Amendment Regulations, 2009; (No. 6 of 2009)
- ▶ The Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations, 2011; (No. 1 of 2011)
- ▶ The Competition Commission of India (Procedure in regard to the Transaction of Business relating to Combinations) Regulations, 2011

Above regulations
are available at
www.cci.gov.in

Advocacy Booklets
by
Competition Commission of India



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COMPETITION COMMISSION OF INDIA

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