

**INTRODUCTION  
TO  
COMPETITION LAW  
(PART 3- TRADE/ INDUSTRY ASSOCIATIONS)**



**भारतीय प्रतिस्पर्धा आयोग**  
Competition Commission of India

## Preface

The Competition Commission of India (Commission) has been established under the Competition Act, 2002<sup>1</sup> (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 provides an overview of the Competition Law. The third part (this document) deals with the issues and provisions in the Competition Act that are related to the 'Trade and Industry Associations'. The other four 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.<sup>2</sup>

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**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 & 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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## Trade/Industry Associations

### 1. Introduction

Trade associations<sup>3</sup> (or Industry Chamber, or Confederation or Trade Council) play an important role of mobilising voices of market players in a sector or across sectors, which help them in negotiating issues of common interest to the members. However, in the process, associations often go beyond their legal mandate and end up being avenues for anti-competitive behaviour.

Competition law has always had an impact on how trade or the industry associations should conduct their meetings. However, the competition law and of the risk of being drawn into a particular investigation does not mean that industry members should steer clear of membership. Trade associations carry out a valuable work of public benefit. Their activities and support helps in: 1) Improving standards; 2) Industry specific education and encouraging research; and 3) Pro-stakeholder policies by the Government that promote welfare of their members. All these are legitimate, important and necessary activities that enable growth of its stakeholders and in turn creates positive environment for investments and growth. However, casual discussions of prices, quantities, customers, territories, market shares, terms of sales and advertising restrictions and future business strategies can lead to agreements or informal understanding. This could easily spill over into illegal coordination, so called cartelisation. In addition, to the extent that the legitimate operations of an association may involve some sort of regulatory function, an association may contribute to the creation of barriers to entry or restrict the ability of competitors to compete in a given market such as through exclusive or closed discriminative industry standards. At the same time, trade association may distort the market competition by boycotting a member or product or colluding to raise price or limit supply of goods and services. In highly concentrated markets, such probability is higher but even in fragmented markets, trade associations have been found to indulge into.

Competition law simply enjoins the members, and their representatives at trade association meetings, to understand and appreciate the difference between legitimate association activity and anti-competitive practices. It treats the activities of trade associations much like any other form of cooperation between competitors. The Act does not create any exception for trade associations. Trade associations find explicit mention in Section 19(1) of the Act. Furthermore, trade associations may be covered under Section 2 (1) (v) of the Act under the heading “Association of

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3. A trade association, also known as an industry trade group, business association or sector association is an organization founded and funded by businesses that operate in a specific industry.

Persons”. Association of enterprise<sup>4</sup> as mentioned in Section 3 of the Act may also be considered as trade association. Most of the prohibited conduct of trade associations may fall in the category of cartelization and the Act provides for stringent penalty for cartel behavior. The penalty provided is ten per cent of the turnover or three times the profits, whichever is greater

## **2. The Dos and Don'ts of Competition Law**

### **2. 1. Dos**

- Train and educate their members about statutory provisions and obligations under the Act;
- Develop a Competition Law compliance policy for the association;
- Appoint or nominate an officer to administer the compliance efforts of the association;
- Take excessive care when collecting information from members and avoid any activity that directly or indirectly enables sharing of such sensitive information which may lead to supporting any anti-competitive practice;
- Make sure that membership of the association is granted on the basis of an objective and qualitative criteria;
- There are no entry or exit barrier on members or membership;
- There is a transparent and fair procedure to deal with appeals in case of refusal to grant or suspension of membership;
- Set up a code of conduct for members that entails enforcement of ethical and fair market practices; and
- If the association is involved in setting standards or industry policies relating to the supply of products or services, it is imperative to ensure that such standard setting process is open and transparent. Further that that the terms do not affect the prices adversely. The standard terms should also be non-binding and effectively accessible to members and non-members.

### **2. 2. Don'ts**

- Don't advise or require that members set particular prices for their products or services.
- Don't impose terms and conditions on members for selling their products.

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4. Enterprise ( see section 2(h) of the Act): “enterprise” means a person 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 relating 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

- Don't help members in dividing up their sales territories. For example by either geographic areas, types of customers or types of products or any other criteria.
- Don't set or advise production targets for members.
- Don't coordinate or facilitate collusive tendering by members.
- Don't help or facilitate sharing of competitively sensitive information by members. For example, information relating to the price and quantities of members' products or services is generally competitively sensitive.
- Don't organise or support a boycott by members against targeted businesses or individual.
- Never set up such rules or codes that restricts or reduces competition among members,
- Don't mandate membership of the Association or a No Objection Certificate from the Association for operating/dealing with other players in the market.
- Don't carry out activity(ies) of coordinated conduct by members of a trade association, such as fixing or 'freezing' prices or agreeing on trading conditions
- Don't undertake measures, for example- a concerted action to pressure (by any means) a 'rogue competitor' who is offering reduced
- Don't impose contractual conditions different from any association-developed standard conditions on members or restrict any member to offer/accept any kind of contractual conditions
- Don't allow discussions that go off agenda, especially on topics that are commercially sensitive

**The don't list is only indicative not exhaustive. There can be many other instances which may lead to violation of competition law.**

### **3. Competition Law Compliance for Trade Associations**

In order to promote competition, businesses and trade associations can try to ensure that they operate within Indian competition law by introducing and running an effective competition law compliance programme.<sup>5</sup> Having an effective compliance programme in place not only reduces the risk of contravention but helps create a culture of compliance which in turn gives the business a competitive edge and can lead to improved performance.

Trade associations are the first line of defence for preserving competition in the economy because advice given by them to their members to comply with law amounts to far more effective law enforcement than prosecuting violators after the act. Competition compliance leads to a systemic and active approach to run a

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5. For understanding of Competition compliance Programme please seed the advocacy booklet at : [http://www.cci.gov.in/sites/default/files/advocacy\\_booklet\\_document/CCP.pdf](http://www.cci.gov.in/sites/default/files/advocacy_booklet_document/CCP.pdf)

business in compliance with the written legal and unwritten ethical rules of competition and minimize risk of infringement of the law.

### 3. 1. Benefits of Compliance

A competition compliant business not only avoids the risks associated with non-compliance but also benefit from following potential advantages:

**Enhancement of reputation and goodwill:** Enterprises that contravene the provisions of the Act may suffer damage to their reputation, unraveling years of careful marketing and brand development.

**Early detection:** It can help in early detection of violation by educating employees about the signs of illegal conduct by co-workers and providing clear procedures for reporting suspected violations and taking remedial measures.

**Culture of Compliance:** A culture of compliance is inculcated throughout the organization at all levels, which allows companies to pursue their business with confidence and without fear.

### 3.2. Costs of Non-Compliance

All businesses have a duty to act lawfully, but there are more practical reasons why compliance with competition law is particularly important. The Act<sup>6</sup> vests the Competition Commission with adequate powers of investigation and penal actions (Please find some major cases on Trade Associations in the annexure). In case of any association is found contravening the provisions of the Act, the consequent cost to the enterprise may be one or more of the following:

- **Heavy Penalties:** Companies that infringe competition law can face heavy penalties, which can be as high as ten per cent of their turnover or up to three times of the profits in case of cartels (whichever is higher).<sup>7</sup>
- **Cease & Desist<sup>8</sup>:** In case of CCI determining violation, CCI can order the violator to stop implementing anti-competitive agreement or abusing its dominant position.
- **Liability of Officer Bearers Individually<sup>9</sup>:** In case of infringement, individual office bearers of the association responsible for the conduct of business of the association shall also be deemed to be guilty of that infringement and shall be liable to be proceeded against and punished accordingly.<sup>10</sup>

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6. The competition Act, 2002

7. Section 27 of the Act

8. Section 27 of the Act

9. Section 48

10. (CCI) had penalized Alkem Laboratories, its two officials, All Kerala Chemists and Druggists Association (AKCDA) and one of its officials for indulging in unfair business practices. (Case no. 28 of 2014)



- **Award of Compensation<sup>11</sup>**: In case an infringement is determined by CCI, affected parties can approach the Competition Appellate Tribunal for compensation, which can be quite large depending on the kind of violation involved and impose a heavy burden on the violating enterprise.
- **Unenforceability of Agreements<sup>12</sup>**: Any agreement, which infringes competition law is generally void and cannot be enforced in the courts.
- **Significant Legal Costs**: Handling competition law investigation, infringement and related appeal cases may impose huge legal costs and cause significant drain of financial resources.
- **Loss of Management Time and Distraction**: In case of competition law investigation, senior management may need to devote significant amount of its time and energy on handling the investigation and its consequences. This may adversely affect management of enterprise and its performance.
- **Damage to Reputation**: Negative publicity resulting from infringement of competition law may cause serious damage to image and reputation built over years at high cost.
- **Loss of Business**: Damage to reputation may subsequently lead to loss of business or shareholder value as potential customers and investors may be repelled.

## Conclusion

In line with the market friendly approach, CCI has been interacting with associations on a continuous basis right from the inception. The associations are encouraged to visit Commission's office, interact with the officials and invite them to speak to their members on ways to comply with the law. They can also be a good vehicle to help CCI in the advocacy efforts for reaching out to their members. The Commission would encourage all associations and their members to put in place a Competition Compliance Programme available on the Commission's website. Associations may also try to develop best practices guidelines for their members to create awareness of acceptable and unacceptable behaviour under the Act. Such guidelines by trade and professional associations are commonplace all over the world. To sum up, trade associations have a major responsibility in promoting compliance to competition law and develop a strong competition culture in the country. It is hoped that these associations will address this issue with the seriousness it deserves and help the Commission to carry forward the agenda of competition in India.

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11. Section 53N of the Act

12. Section 3 (2) of the Act

## **Annexure 1 -Cases on Trade Association**

### **India**

**(Please see the suggested reading list for more Cases)**

#### **M/s. Shri Ashtavinayak Cine Vision Limited vs PVR Picture Limited, New Delhi & Ors; (Case No. 71 of 2011)**

The informant Shri Ashtavinayak Cine Vision Limited, alleged that Opposite Party's Associations made it compulsory for every film distributor to become their member and/ or register its film with the Associations before the exhibition of such films. A distributor who refuses to become a member of the Association and/ or refuses to register his film with the Association is not allowed to distribute and exhibit its film in the territory which is regulated by such association. It is alleged that the Associations enforce such compulsion on distributors by threatening their members consisting of cinema distributors and exhibitors of serious consequences for exhibiting films of a distributor who is not a member of any of the Associations or whose film is not registered with the respective Association. It was found that the opposite parties violated section 3 of the Act and the Commission directed the OPs to cease and desist from the practices of pressurizing the distributors to settle the monetary disputes with its members.

#### **All India Motor Transport Congress for its Anti-competitive Activities SECTION 3 & 4 ORDERS (Case No. 61 of 2012)**

An information was filed by Indian Foundation of Transport Research and Training (IFTRT) alleging that AIMTC uniformly increased the truck freight by 15% across the country on account of diesel price hike of Rs. 5/- per litre w.e.f. 14.09.2012. The Commission found the impugned acts/conduct of AIMTC to be in contravention of the provisions of section 3(3) (a) read with section 3(1) of the Act. The Commission directed AIMTC to cease and desist from indulging in the act/ conduct which have been found to be in contravention of the provisions of the Act and directed it to refrain from issuing any announcements/ directions/ circulars etc. to its members which may contravene the provisions of the Act. The Commission found that AIMTC through its press releases/ media briefings/ telephone calls was instrumental in persuading its member associations to fix freight rates. Such collusive and concerted practices distorted the market dynamics and led the truckers to increase the prices through the decisions of associations instead of pricing the services through the market forces of demand and supply. The Commission held that any unfair and anti-competitive increase in price of freight rates has a cascading and inflationary impact upon the goods and services consumed by common man. The Commission imposed a penalty of Rs. 14.24 Lakhs (@10% of the average of the turnover for the last 3 financial years) on All India Motor Transport Congress (AIMTC) for contravening the provisions of section 3 of the Competition Act, 2002. The final order was passed by CCI on 16.02.2015

#### **Himachal Pradesh Society of Chemists and Druggists Alliance & Others (Case No. 78/2012)**

M/s Rohit Medical Stores approached the Commission alleging that various

pharmaceutical companies, under the aegis of HPSCDA, are engaged in anti-competitive practices of imposing the condition of obtaining 'No Objection Certificate' (NOC) prior to the appointment of stockists in the state of Himachal Pradesh. The Commission, prima facie, found merit in the allegations and directed the Director General (DG) to carry out investigation in the matter. Subsequent to detailed investigation, the Commission found that HPSCDA was indulging in anticompetitive practice of mandatory requirement of NOC prior to the appointment of stockists. Further, the Product Information Services (PIS) charge, that required to be made to HPSCDA before every launch of a new product by the pharmaceutical companies under the garb of dissemination of product information, was also found by the Commission to be anti-competitive. The Commission thus held that HPSCDA contravened the provisions of section 3(3)(b) read with section 3(1) of the Act for limiting and controlling the supplies or provision of services. The Commission also held that Mr. Sanjeev Pandit, the President of HPSCDA, responsible under section 48 of the Act. Accordingly, the Commission directed the HPSCDA to cease and desist from indulging in the practices which are found to be anti-competitive in terms of the provisions of section 3 of the Act. Keeping into consideration the facts of the case, the Commission imposed a penalty of Rs. 2, 65, 423/- (Rupees two lakh sixty five thousand four hundred and twenty three only) at the rate of 10% of the average receipts of HPSCDA for three financial years. Further, a penalty of Rs. 28,276/- (Rupees twenty eight thousand two hundred and seventy six only) at the rate of 8% of the average income of Mr. Sanjeev Pandit for three financial years was also imposed. Himachal Pradesh Society of Chemists and Druggists Alliance & Others have been Penalised for their Anti-Competitive Conduct.

### **United States of America**

#### **United States v. Ass'n of Retail Travel Agents, 1995-1**

In *United States v. Association of Retail Travel Agents (ARTA)*, it was found that the ARTA orchestrated a boycott of travel providers that did not adopted to ARTA's vision of an appropriate travel agent compensation system. ARTA had adopted a policy calling for a minimum ten percent commission on hotel and car rental sales by travel agents, the elimination of all distribution outlets for airline tickets other than travel agents, and the payment of commissions based on full fares rather than the actual discounted prices. It announced the content of the policy in the press conference and also declared that his travel agency would cease doing business with certain travel providers whose commission and sales practices did not comport with the policy, and invited other travel agents to do likewise. The ARTA by indulging in such activities violated section 1 of the Sherman Act. The case was settled by a consent decree in which ARTA was prohibited from "inviting or encouraging concerted action by travel agents or travel agencies to refuse to do business with specified suppliers of travel services or to do business with specified suppliers only on specified terms; and directly or indirectly adopting, disseminating, publishing, or seeking adherence to any rule, bylaw, resolution, policy, guideline, standard, objective, or statement made or ratified by an officer, director or other official of defendant that has the purpose or effect of advocating or encouraging any of the[se] practices."

### Further Suggested Readings

1. OECD. (2007). Policy Roundtable: Trade Associations. Retrieved from <http://www.oecd.org/regreform/sectors/41646059.pdf>
2. CCI. (2012). Trade Associations: An Antitrust Challenge. Fair Play, 2(September) [http://www.cci.gov.in/sites/default/files/Newsletter\\_document/Newsletter\\_Sept.pdf](http://www.cci.gov.in/sites/default/files/Newsletter_document/Newsletter_Sept.pdf)
3. Case No. Suo moto Case No. 02 of 2012 {In Re: Bengal Chemist and Druggist Association} and Ref. Case No. 01 of 2013 filed under section 19(1)(b) of the Competition Act, 2002 by Dr.Chintamoni Ghosh, Director, Directorate of Drugs. [http://www.cci.gov.in/sites/default/files/022012\\_0.pdf](http://www.cci.gov.in/sites/default/files/022012_0.pdf)
4. Case No. 60/2012 {M/s Arora Medical Hall, Ferozpur vs Chemists & Druggists Association, Ferozpur & Ors.} [http://www.cci.gov.in/sites/default/files/602012\\_0.pdf](http://www.cci.gov.in/sites/default/files/602012_0.pdf)
5. Case No. 30/2011 {M/s Peeveear Medical Agencies, Kerala vs All India Organization of Chemists and Druggists and Ors.} [http://www.cci.gov.in/sites/default/files/302011\\_1.pdf](http://www.cci.gov.in/sites/default/files/302011_1.pdf)
6. Case No. 58/2012 {Kannada GrahakaraKoota Shri Ganesh Chetan vs Karnataka Film Chamber of Commerce (KFCC) & others.} <http://www.cci.gov.in/sites/default/files/582012.pdf>
7. Case No. 45/2012 {Kerala Cine Exhibitors Association vs Kerala Film Exhibitors Federation and Others} [http://www.cci.gov.in/sites/default/files/06201245\\_0.pdf](http://www.cci.gov.in/sites/default/files/06201245_0.pdf)
8. Case No. 71/2011 {M/s Shri Ashtavinayak Cine Vision Limited vs PVR Picture Limited, New Delhi &Ors.} [http://www.cci.gov.in/sites/default/files/712011\\_0.pdf](http://www.cci.gov.in/sites/default/files/712011_0.pdf)
9. United States v. Ass'n of Retail Travel Agents, 1995-1 Trade Case. (CCH) 70,957 (D.D.C. Mar. 16, 1995)
10. National Society of Professional Engineers v. United States, 435 U.S. 679 (1978)

## Other Resource Persons' Material

Part 1: Basic Introduction

Part 2: Consumer Associations

Part 4: Public Procurement – Government and Public Sector Enterprise

Part 5: Regulatory Bodies

Part 6: Competition Compliance Programme



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