



Competition Commission of India

An Overview of the Competition Act, 2002

September, 2004



Competition – what ?

- A situation in a market, in which sellers independently strive for buyer's patronage to achieve business objectives such as profits, sales or market share.
- It is the foundation of an efficiently working market system.



Competition – why ?

- The ultimate objective of competition is to secure the interest of the Consumer - it empowers the consumer, best guarantee for consumer protection.
- It is a means of reducing cost and improving quality.
- It also implies an open market where shortages are rapidly eliminated through the best allocation of resources.
- It accelerates growth and development; preserves economic and political democracy.



Why a competition policy ?

- Competition policy is defined as those Government measures that affect the behaviour of enterprises and structure of the industry. It is to promote efficiency and maximise welfare. (Sum of consumers' surplus & producers' surplus and taxes collected by the Government).
- There are two elements of competition policy.
- First, a set of competition enhancing policies, such as liberalised trade policy, relaxed FDI policy, de-regulation, etc.



Why a competition policy ? (Continued..)

- Second, competition law to prevent anti-competitive practices with minimal government intervention. Competition law also prevents artificial entry barriers, facilitates market access and compliments other competition promoting activities.
- An effective Competition policy promotes creation of a business environment which improves efficiencies, leads to allocation of resources in the best manner and in which abuse of market power is prevented through competition. (Where it is not possible, it requires creation of a suitable, regulatory frame work).



Competition Act 2002 - Background

- Government constituted a committee in 1999 to examine MRTP Act, 1969 for shifting the focus of the law from curbing monopolies to promoting competition and to suggest a modern competition law in line with international developments to suit Indian conditions.
- As a sequel to the Report of the Committee, the Competition Act, 2002 was enacted and notified in January, 2003.



Establishment of Competition Commission of India

Competition Act 2002 provides for establishment of a Commission to prevent practices having adverse effect on competition etc.

[Preamble of the Act]



Duties of the Commission

- To eliminate practices having adverse effect on competition
- To promote and sustain competition
- To protect interests of consumers, etc.

[Section 18 of the Act]



JURISDICTION

- For achieving the foresaid duties, the Commission has jurisdiction to:
 - i) Enquire into Anti-Competitive Agreements (eg. Cartel, bid-rigging, etc.) [Section 3]
 - ii) Enquire into abuse of dominant position (eg. Predatory Pricing, etc.) [Section 4]
 - iii) Regulate combinations (Mergers, Acquisitions, etc.), [Section 5 & 6]



JURISDICTION

(continued)

- iv) Undertake Competition Advocacy (including advise on policy issues), create public awareness, impart training on competition issues, [Section 49].



Additional Features

“Effects Doctrine”

- Power to inquire into anti-competitive practices taking place outside India but having an appreciable adverse effect on competition in India.

Exclusions from Jurisdiction

- Reasonable Rights under IPRs, etc. protected under Competition Act.
- Agreements exclusively for exports exempted [Section 3(5)]



Legal Status of the Commission

- Commission has regulatory and quasi-judicial powers.
- It is to function through Benches [Section 22(1)].
- Each Bench shall consist of at least two Members, and at least one of such Members must be a judicial Member [Section 22(3)].
- Regional Benches contemplated [Section 22(6)].



Complaints / References can be filed against whom?

- **Enterprise** includes a person or Government Department / Unit engaged in production of goods and provision of services but does not include sovereign functions viz. defence, atomic energy, space and currency [Section 2(h)].
- **Person** means - both legal & natural person viz., individual, company, statutory body, firm, etc. [Section 2(l)].



Anti – Competitive Agreements between Enterprises

- Horizontal Agreements – Agreements between enterprises at the same stage of production, services, etc.

Examples :

- (i) directly or indirectly determines purchase or sale prices;
 - (ii) limits or controls production, supply, markets, technical development, investment or provision of services;
 - (iii) Shares the market or source production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or in any other similar way;
 - (iv) Directly or indirectly results in bid rigging or collusive bidding.
- Above agreements are presumed to cause appreciable adverse effect on competition in the markets.



Anti Competitive Agreements between Enterprises (continued)

- Vertical Agreements - Agreements between enterprises at different stages of production, distribution, etc.

Examples :

- (i) Tie-in arrangement;
- (ii) Exclusive supply agreement;
- (iii) Exclusive distribution agreement;
- (iv) Refusal to deal;
- (v) Re-sale price maintenance.



Abuse of dominance

- Dominance per se is not illegal but the abuse of dominance is illegal - the new law is behaviour based not size based.

Examples :

- (i) Predatory pricing;
- (ii) Directly or indirectly imposes unfair or discriminatory conditions;
- (iii) Limits or restricts production of goods or provision of services;
- (iv) Denial of market access, etc.



Regulation of Combinations

Combinations :

- Acquisitions
 - Mergers
 - Amalgamations
 - Acquiring Control
- Threshold Limits in India:-
 - Rs.1,000 Crores (assets)
 - Rs.3,000 Crores (turn over)
 - ❖ In case of a group:-
 - Rs.4,000 Crores (assets)
 - Rs.12,000 Crores (turn over)
 - Threshold Limits in case of combination involving a foreign enterprises:-
 - US \$ 500 million (assets)
 - US \$ 1500 million (turnover)
 - ❖ In case of a group:-
 - US \$ 6 billion (turnover)
 - US \$ 6 billion (turnover)



Regulation of Combinations (Continued..)

- Enterprises intending to enter into combination may give notice to the Commission
- Notification is voluntary
- Commission to pass order on combination within 90 days

[Sections 5, 6]



Suo Moto Inquiry

- Commission has suo moto power to enquire whether an anti-competitive agreement or abuse of dominant position causes or is likely to cause an appreciable adverse effect on competition

[Section 19(1)]



Suo Moto Inquiry (continued..)

- Commission has suo moto power to enquire whether a combination causes or is likely to cause an appreciable adverse effect on competition [Section 20(1)]
- This power must be exercised within one year from the date combination has taken effect [Proviso to section 20(1)]



Orders of Commission in case of anti competitive agreement and abuse of dominant position:

- Impose a penalty not more than 10% of turn-over
- In case of Cartel – 3 times of the amount of profit made out of cartel or 10% of turn-over
- Pass a cease and desist order
[Section 27 (a) & (b)]
- Award Compensation [Section 27(c) read with Section 34]
- Order modification of agreement [Section 27(d)]
- Order costs [Section 27(e)]
- In case of abuse by dominant enterprise, may recommend division of the enterprise to the Central Government
[Section 27(f)]
- Pass such other order as deem fit [Section 27(g)]



Orders in respect of combinations

- Shall approve the combination if no appreciable adverse effect is found [Section 31(1)]
- Shall direct that combination not to take place if it appreciably affects competition [Section 31(2)]
- May propose suitable modification as accepted by parties [Section 31(4)]
- If not accepted, parties to submit modifications with 30 days [Section 31(6)]
- If modifications accepted, combination will be allowed



Penalties for non-compliance with Commission's orders:-

- Penalty not less than Rs. 10 lacs [Section 42(1)]
- For failure to comply with a direction of Commission or DG – Rs 1 lac per day of failure [Section 43]
- If party to a combination makes a false statement or omits a material particular – not less than Rs. 50 lacs up to Rs. 1 crore [Section 44]
- For willfully omitting to furnish information – penalty up to Rs. 10 lacs [Section 45]



Competition Advocacy

- Commission is required to take measures for promotion of Competition Advocacy, creating Awareness and imparting Training about competition issues
[Section 49(3)]
- Advocacy means competition promotion through non-enforcement measures
- For promotion of competition advocacy and creation of awareness about competition issues, the Commission may:-
 - i) Undertake appropriate programmes / activities etc.;



Competition Advocacy (continued..)

- ii) Encourage and interact with the organizations of stakeholders, academic community etc. to undertake activities, programmes, studies, research work, etc. on competition issues;
 - iii) Encourage the academic / professional institutions to include competition policy & law in the curriculum;
 - iv) Undertake appropriate capacity building programmes and arrange training for its officers / staff and stakeholders etc.
- The Commission is required to give opinion to the Central Government on matters relating to Competition Policies, but such opinion is not binding on the Central Government [Section 49(1)].



Government Announcement

- In the first year of establishment – Commission to undertake Competition Advocacy work only.
- In the Second year it would undertake adjudication work relating to Anti-Competitive Agreements and Abuse of Dominance.
- In the third year, work relating to Combinations (mergers, acquisitions, etc.) would be undertaken.



Part-II

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Competition Commission of India

- Established by Government Notification in October 2003
- Following appointments notified by Government:-

Shri Dipak Chatterjee, Chairperson

Shri Vinod Dhall, Member

Shri Vinod Dhall entered office in October 2003; was designated as Member Administration

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Work currently being undertaken by Commission

- Administrative work
- Establishment work
- Competition Advocacy & Awareness
- Preparation of Draft Regulations etc.
- Preparation of draft Recruitment & Service Condition Rules for DG's Office
- Draft Recruitment Regulation for CCI officers & staff prepared and submitted to the Ministry for vetting
- Draft service condition rules for CCI officers & staff – under finalization by CCI
- Draft Advocacy Rules prepared and submitted to Ministry for Notification



Administrative Work

- Taken up temporary Office premises in Paryavaran Bhavan
- Procured office equipment furniture, telephone, fax, etc.
- Provision of Office support services
- Obtained budget/funds from Government
- Action to seek project from World Bank and USAID for capacity building of CCI – at advance stage

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Administrative Work (continued)

- Identification of regular premises completed and formalities finalized with the approval of Ministry of Finance
- Layout for internal construction / furnishing finalized and given to UTI-ISL
- Sanction of funds issued and funds placed at the disposal of UTI-ISL by Ministry of Finance for starting internal construction / furnishing work – CCI is proactively following up with UTI – ISL in this regard
- The work is likely to be started by UTI shortly



Establishment Work

- Obtained core staff on loan basis from MRTPC/DG(I&R) and elsewhere
- Secretary, CCI and DG, CCI appointed
- Obtained sanction/approval for posts for the first year
- Process to place a core team initiated


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Competition Advocacy & Awareness

- Undertaken interaction with leading Chambers, i.e., CII, FICCI, ASSOCHAM, PHD
- Set up Competition Advocacy Committee and first and second meetings held; action being taken for implementing its recommendations
- Prepared some initial Competition Advocacy literature and circulated to stakeholders and institutions. Work to develop more literature is on

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Competition Advocacy & Awareness (continued..)

- Facilitating Advocacy seminars/workshops
- Draft Competition Advocacy Rules prepared and sent to MCA for notification
- Taken up with academic/professional institutions for including competition law in curriculum
- Draft Advocacy Action Plan for the period from July-Aug 2004 has been finalized in the meeting of Advisory Committee held on 14th June 2004

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MISCELLANEOUS

- Research Projects being finalized – proposed to be undertaken through Delhi School of Economics (DSE) & IIM (Bangalore)
- Outsourcing for designing & hosting of web-site being finalized
- Library being set-up-first set of books purchased
- Designing of Logo/Emblem by National Institute of Designs (NID)



Draft Regulations on Procedure

- Draft General Regulations for conduct of CCI business prepared and sent to experts for views/comments
- Regulations are voluminous and technical; have been prepared after extensive study of similar competition authorities overseas
- Advisory Committee on Regulations set-up
- Fortnightly 'talk / discussion' is held with experts for capacity building of Commission's staff and for improving perspectives on important aspects of Competition Law and Policy



Writ Petition

- Pending before Hon'ble Supreme Court challenging certain matters relating to CCI
- Undertaking given by Ld. AG before Hon'ble Supreme Court that no judicial work will be done by the CCI



Submissions

- Efforts be made to make the Commission operational at the earliest in the interest of Indian Economy and in view of Govt.'s commitment to WTO
- Preparatory activities are being undertaken by CCI currently to enable the Commission to become functional at appropriate stage, without further loss of time at that stage
- For enabling/facilitating these preparatory activities, it is necessary to provide adequate officers/staff in CCI & DG office, and appropriate administrative and financial powers to the Commission, and review certain restrictions placed on appointments by deputation from MRTPC/DG(I&R)
- Sanctioned strength needs to be enhanced with emphasis on right skills to man the posts
- Shortage of office accommodation – even 122 employees currently sanctioned, cannot be accommodated