

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. The proposed combination cannot take effect for a period of 210 days from the date it is notified to 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. In case a notifiable merger is not notified by the parties to the Commission, the Commission can inquire into it within one year from the date on which such combination has taken effect and the parties are liable for penalty for not notifying the combination.

If the Commission is of the *prima facie* opinion that a combination has caused or is likely to cause appreciable adverse effect on competition, it shall issue a show cause to the parties as to why investigation in respect of such combination should not be conducted. On receipt of the response, if the Commission is of the *prima facie* opinion that the combination has or is likely to have appreciable adverse effect on competition, it shall direct publication of details, invite objections from the public and persons affected or likely to be affected by such combination. If considered appropriate, the Commission may invite any person, likely to be affected by the combination, to file his objections. After receipt of all information, the Commission shall proceed to deal with the case in accordance with the provisions of the Act.

*Note: For details of the procedures related to inquiry and investigations please refer to Sections 29, 30 and 31 of the Act.*

#### ORDERS BY THE COMMISSION

After receipt of the investigation report from the DG, the Commission shall determine whether the behaviour under inquiry is anti-competitive, or whether the proposed combination causes or is likely to cause appreciable adverse effect on competition, as the case may be, after hearing the concerned parties and pass appropriate orders.

#### In cases of anti-competitive agreement or abuse of dominance

- During the course of inquiry, the Commission can pass interim order restraining a party from continuing with anti-competitive agreement or abuse of dominant position.
- The Commission can impose a penalty of not more than 10 per cent of the average turnover for the last 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 profits for each year of the continuance of such agreement or up to 10 per cent of its turnover for each year of continuance of such agreement, whichever is higher.
- After the inquiry, the Commission may direct the enterprise concerned to cease and desist and not to re-enter the anti-competitive agreement or abuse its dominant position. The Commission may also direct modification of such agreement.

- The Commission has the power to direct division of enterprise in case it enjoys a dominant position and if that is found essential to ensure that such enterprise does not abuse its dominant position.

#### In cases of combinations

- The Commission shall approve the combination if no appreciable adverse effect on competition is found.
- The Commission shall disapprove of the combination in case of appreciable adverse effect on competition.
- The Commission may propose suitable modifications.
- The Commission is authorized to impose fine which may extend to 1 per cent of the total turnover or the assets of the combination, whichever is higher, for failure to notify, or in case the parties implement the combination without waiting for the statutory period of 210 days.

#### APPEALS

Competition Appellate Tribunal (COMPAT) is the appellate authority to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under the Act. Only those orders are appealable before the COMPAT which are specifically mentioned in the Act.

An appeal has to be filed within 60 days of receipt of the order/direction/decision of the Commission. The COMPAT has also the power to award compensation to the parties upon receipt of application. The decisions of COMPAT are subject to appeal before the Supreme Court of India.

#### REGULATIONS UNDER THE ACT

- The Competition Commission of India (General) Regulations, 2009
- The Competition Commission of India (Lesser Penalty) Regulations, 2009
- Competition Commission of India (Determination of Cost of Production) Regulations, 2009
- Competition Commission of India (Procedure in regard to the Transaction of Business relating to Combination) Regulation, 2011
- The Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations, 2011
- The Competition Commission of India (Procedure for Engagement of Experts and Professionals) Regulations 2009

*Note: The Commission's Regulations can be accessed at- <http://www.cci.gov.in/Regulation>*

#### ADVOCACY BOOKLETS BY THE COMMISSION

- Overview of the Competition Act, 2002
- Frequently Asked Questions
- Provisions relating to Cartels
- Provisions relating to Bid Rigging
- Provisions relating to Abuse of Dominance
- Provisions relating to Combinations
- Competition Compliance Programme for Enterprises
- How to file information?
- Leniency Programme

#### Read Advocacy Booklets at-

<http://www.cci.gov.in/advocacy-booklet/78>

#### DISCLAIMER

This document is published as part of the Competition Advocacy and Awareness Program of the Competition Commission of India. Its contents should, in no way, be treated as official views of the Commission. Readers are advised to carefully study the Competition Act, 2002 with amendments, and seek legal advice, wherever necessary.

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सत्यमेव जयते  
Government of India



Fair Competition  
For Greater Good

भारतीय प्रतिस्पर्धा आयोग  
COMPETITION COMMISSION OF INDIA

## The Competition Act, 2002 An Overview



## INTRODUCTION

Competition is universally considered as the best means of ensuring economic efficiency and consumer welfare. Through effective competition in the markets the consumer has access to the broadest range of goods and services at a cheaper price. There are more incentives for business to flourish and prosper in the markets. The producers of goods are required to innovate and update their products to remain in the markets in a fast changing world. Nurturing effective competition requires healthy market conditions and pro-competitive government policies which results in the evolution of a healthy competition culture.

Competition laws all over the world are primarily concerned with the abuse of market power by enterprises or group of enterprises.

## THE LAW

In India, Competition Act, 2002 (the Act) was enacted on January 13, 2003. Enforcement of anti-competitive agreements and abuse of dominance related provisions commenced on May 20, 2009 and the Act is fully operational since the year 2011. The Act broadly follows the philosophy of modern competition laws and aims at fostering competition and protecting Indian markets against anti-competitive practices by persons, enterprises, or group of enterprises. The Act prohibits anti-competitive agreements, abuse of dominant position by enterprise/group, and regulates combinations (consisting of mergers, amalgamations, acquisitions and acquisition of control) wherever the aforesaid cause or are likely to cause appreciable adverse effect on competition (AAEC) in markets in India.

The Act prohibits three types of potential violations which can affect competition in the markets. Section 3 prohibits anti-competitive agreements. Section 4 prohibits abuse of dominant position by enterprises or group of enterprises as the case may be. Section 5 and 6 regulates combinations.

The Act may be read at:  
[http://cci.gov.in/sites/default/files/cci\\_pdf/competitionact2012.pdf](http://cci.gov.in/sites/default/files/cci_pdf/competitionact2012.pdf)

## THE ORGANISATION

The Competition Commission of India ('Commission') has been established to enforce the competition law under the Act. The Commission consists of a Chairperson and 6 Members appointed by the Central Government.

It is the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India as provided in the Preamble as well as Section 18 of the Act.

The Commission is also mandated to give its opinion on competition issues to the government or statutory authority and to undertake competition advocacy for creating awareness of competition law.

To know about the present composition of the Commission please visit - <http://www.cci.gov.in/commission>

## ANTI-COMPETITIVE AGREEMENTS (SECTION 3)

An agreement includes any arrangement, understanding or concerted action entered into between parties. It may or may not be in writing. Anti-competitive agreements are broadly classified into two categories, the Horizontal Agreement and Vertical Agreement.

### Horizontal Agreements-Section 3(3)

Horizontal Agreements are those agreements where enterprises engaged in identical or similar trade of goods or services collude amongst each other to distort competition in the markets. Any such agreement having an appreciable adverse effect on competition shall be void. The following four categories of such agreements amongst competitors are presumed to have AAEC -

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

However such presumption is rebuttable.

### Vertical Agreements-Section 3(4)

Vertical Agreements are those agreements which are entered into by enterprises at different levels of production, distribution, supply, storage etc. Such vertical restrains include:

- tie-in arrangement;
- exclusive supply/distribution arrangement;
- refusal to deal; and
- resale price maintenance.

Imposition of reasonable conditions as may be necessary for protection of Intellectual Property Rights which are listed under Section 3(5), is generally not to be treated as violative of the Act.

They are however, subject to scrutiny by the Commission to decide whether such conditions are reasonable and necessary to protect IPR.

### Abuse of Dominant Position (Section 4)

Dominance refers to a position of strength which enables an enterprise to operate independently of competitive forces in the market or to affect its competitors or consumers in its favour. Dominant position of an enterprise itself is not prohibited; however, if the enterprise by virtue of having dominant position in the relevant market abuses its dominance then the same stands prohibited. Abuse of dominant position impedes fair competition between firms, exploits consumers and makes it difficult for the other players in the market to compete with the dominant undertaking. Abuse of dominant position covers:

- imposing unfair conditions or price, including predatory pricing;
- limiting production/market or technical or scientific development ,
- denying market access, and
- using dominant position in one relevant market to gain advantages in another relevant market.

Dominance of an enterprise is measured by the Commission in the relevant market. The **relevant market** means "the market that may be determined by the Commission with reference to the **relevant product market** or the **relevant geographic market** or with reference to both the markets". A dominant player, abusing its position through conduct as indicated above is liable for penalties under the Act.

## COMBINATIONS (SECTION 5 & 6)

Combination refers to mergers, amalgamations, acquisition of control, shares, voting rights or assets, amongst enterprises provided the threshold limits specified in the Act in terms of assets or turnover are satisfied and do not benefit from: (i) exemption notifications; (ii) are not covered under any Item of Schedule 1 of Combination regulations. If a combination causes or is likely to cause an appreciable adverse effect on competition (AAEC) within the relevant market in India, it can be prohibited/modified by the Commission after an investigation.

The revised thresholds for notification to the Commission are:

	Applicable To	Assets		Turnover	
		Total	Minimum Indian Component out of Total	Total	Minimum Indian Component out of Total
In India	Individual Parties	₹ 2,000 cr.		₹ 6,000 cr.	
	Group	₹ 8,000 cr.		₹ 24,000 cr.	
In India and outside		Assets		Turnover	
		Total	Minimum Indian Component out of Total	Total	Minimum Indian Component out of Total
	Individual Parties	US\$ 1 bn.	₹ 1000 cr.	US\$ 3 bn.	₹ 3,000 cr.
Group	US\$ 4 bn.	₹ 1000 cr.	US\$ 12 bn.	₹ 3,000 cr.	

*Pursuant to notification No. S.O. 688(E) dated March 29, 2017, the Government of India has exempted from notification all combinations where the value of assets being acquired, taken control of, merged or amalgamated is not more than rupees three hundred and fifty crores in India or turnover of not more than rupees one thousand crores in India.*

*Where a portion of an enterprise or division or business is being acquired, taken control of, merged or amalgamated with another enterprise, the value of assets of the said portion or division or business and or attributable to it, shall be the relevant assets and turnover to be taken into account for the purpose of calculating the thresholds under section 5 of the Act.*

The notification dated March 29, 2017 is available at:

<http://www.cci.gov.in/sites/default/files/notification/S.O.%20988%20%28E%29%20and%20S.O.%20989%28E%29.pdf>

## INITIATION OF INQUIRY (SECTION 19)

### The Commission may initiate an inquiry

- On its own or 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.

Any person, consumer, consumer association or trade association can file information relating to anti-competitive agreements and/or abuse of dominant position as per The Competition Commission of India (General) Regulations. Central Govt. or a State Govt. or a statutory authority can also make a reference to the Commission for initiating an inquiry. "Person" includes an individual, HUF, firm, company, local authority, cooperative society or any artificial juridical person, an association of persons or a body of individuals whether incorporated or not, in India or outside India and anybody corporate incorporated by or under the laws of a country outside India. Information may be filed in the prescribed format accompanied with the requisite fee as per regulations. However, no fees is required to be paid for making a reference to the Commission by government departments or statutory bodies.

## INQUIRY PROCESS (SECTION 26)

### In cases of anti-competitive agreement or abuse of dominant position

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 ('DG'), appointed under the Act, to investigate the matter and submit its findings to the Commission within a specified time frame. After receipt of the investigation report from the DG, the Commission shall determine whether the behaviour under inquiry is anti-competitive after hearing the concerned parties and pass appropriate orders.

For details regarding the procedure followed by the Commission, please see Section 26 of the Act & Regulation 21 of The Competition Commission of India (General) Regulations.

### In cases of combinations

An enterprise or person proposing to enter into a combination, shall notify the