

Focus area of Competition Act

History about Competition Act

- Prohibition of certain agreement which are considered to be anti competitive in nature.
Ex- Tie in arrangement etc.
- Abuse of dominant position (by imposing unfair Conditions).
- Regulations of Combinations.

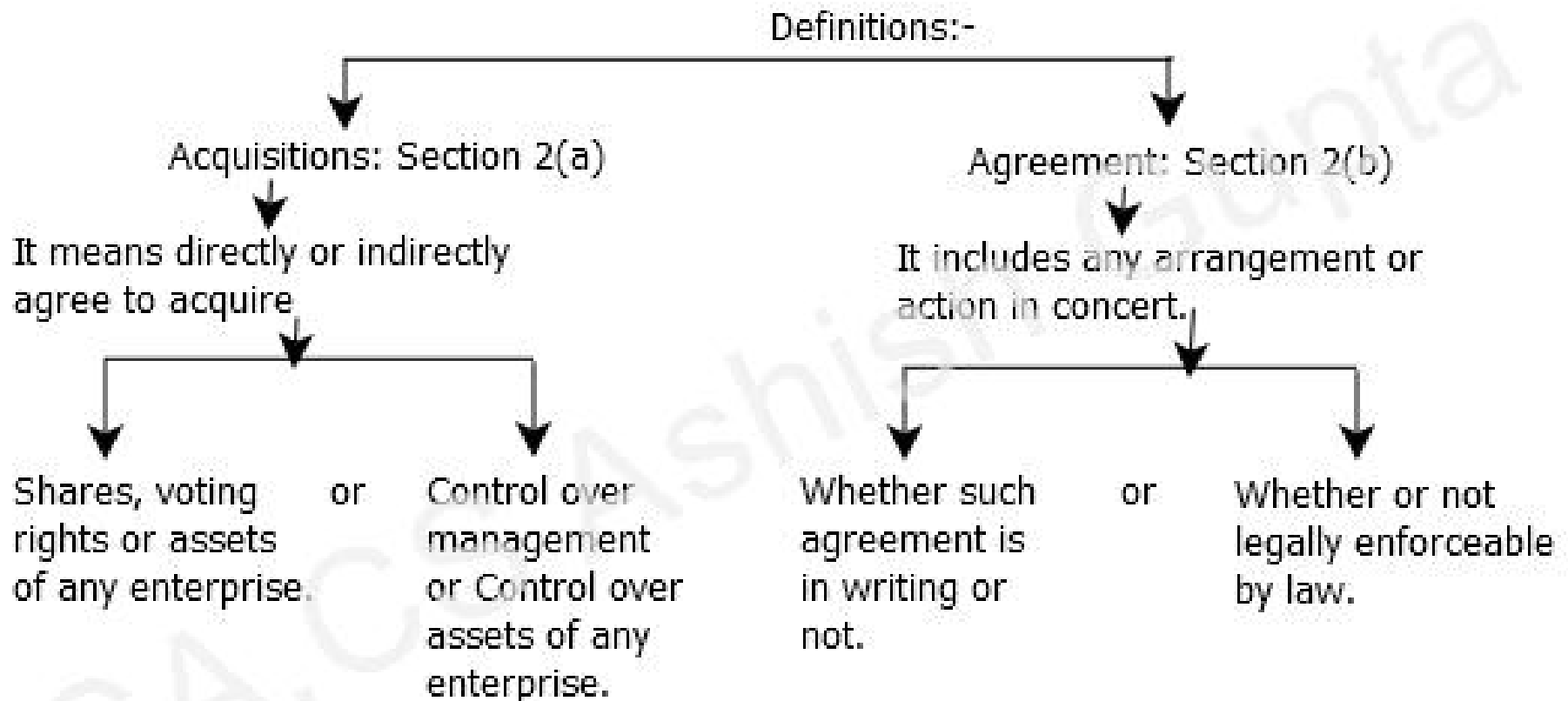
- MRTP Act repealed on 28.08.2009.
- Competition Act effective From 01.09.2009.
- CCI (Competition Commission of India) is a body of the Government of India.

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Responsible for enforcing this Act.
CCI → established on 14.10.2003.

- Mr. Ashok Chawla is the current Chairperson of the
- CCI.

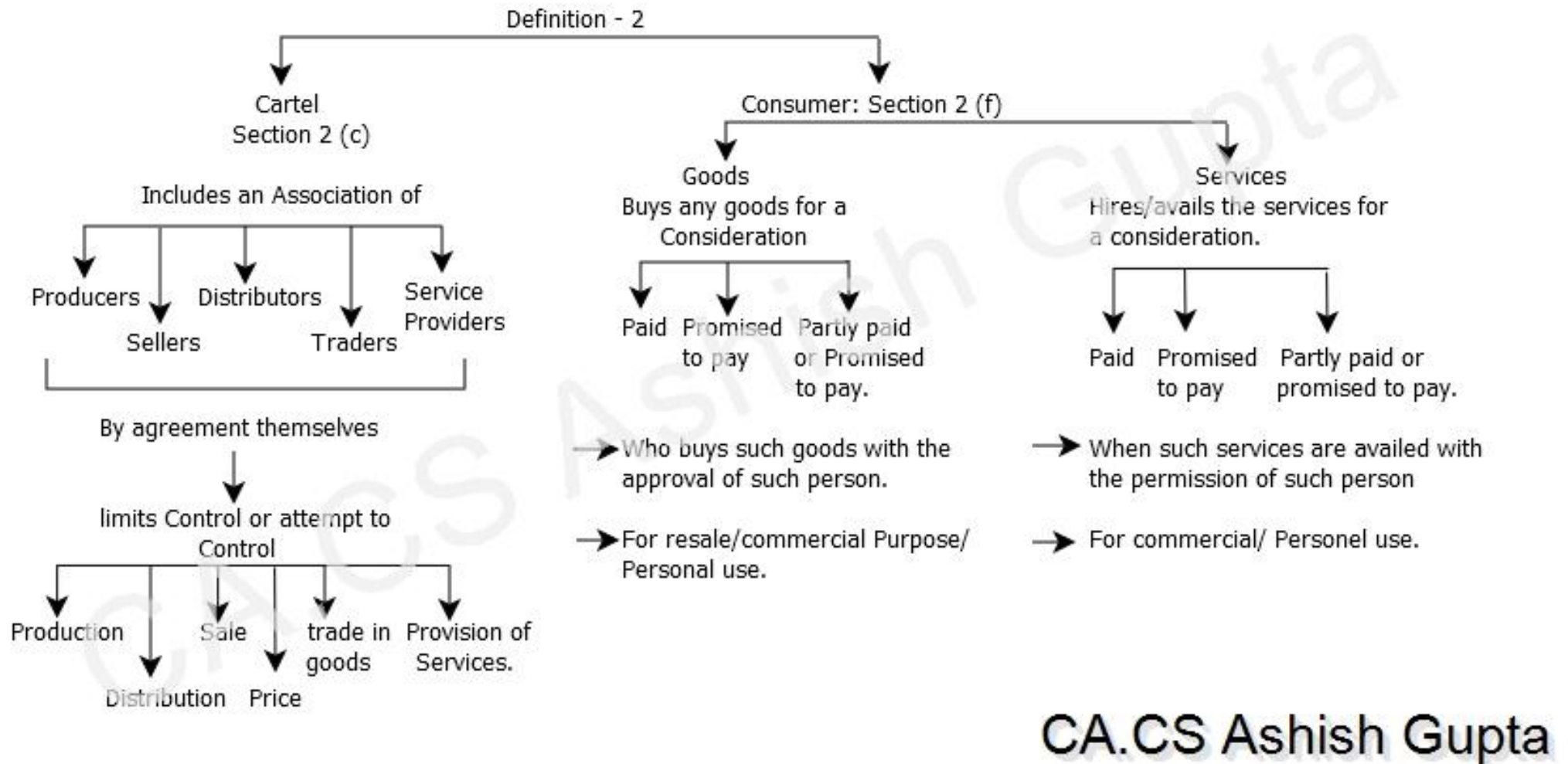
CA.CS Ashish Gupta

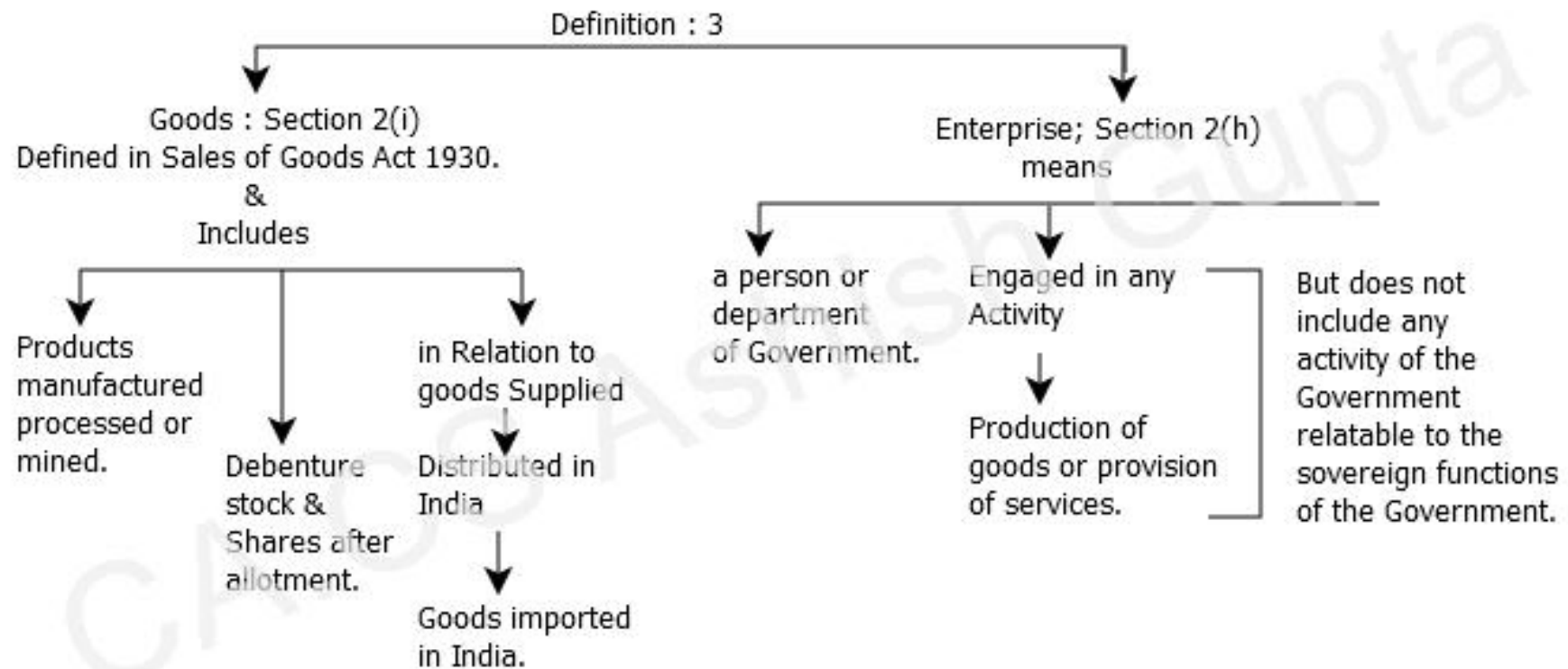
Total Charts of Company Law - 264 pages along with Questions 187.



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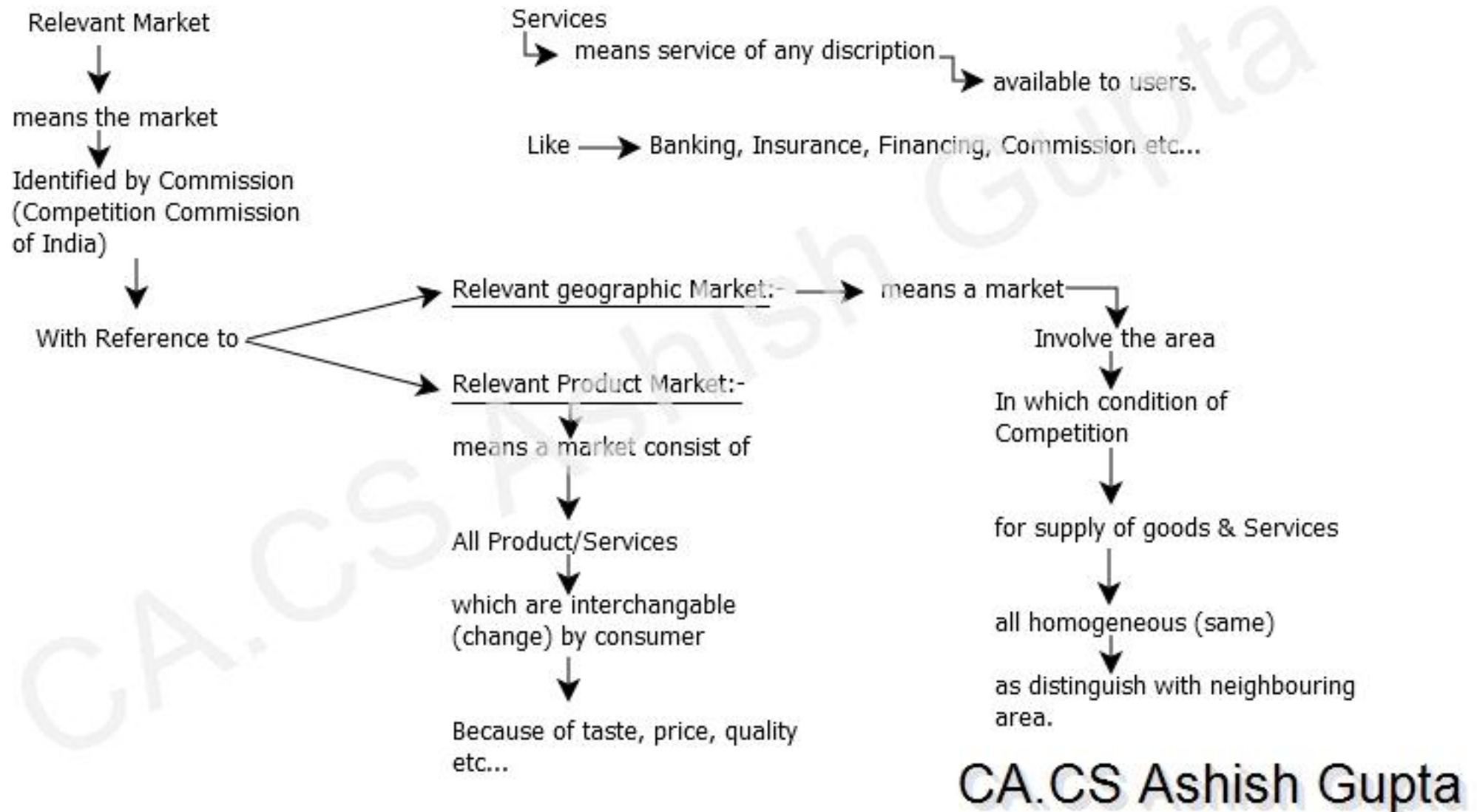
Total Charts of Allied law 154 Pages.





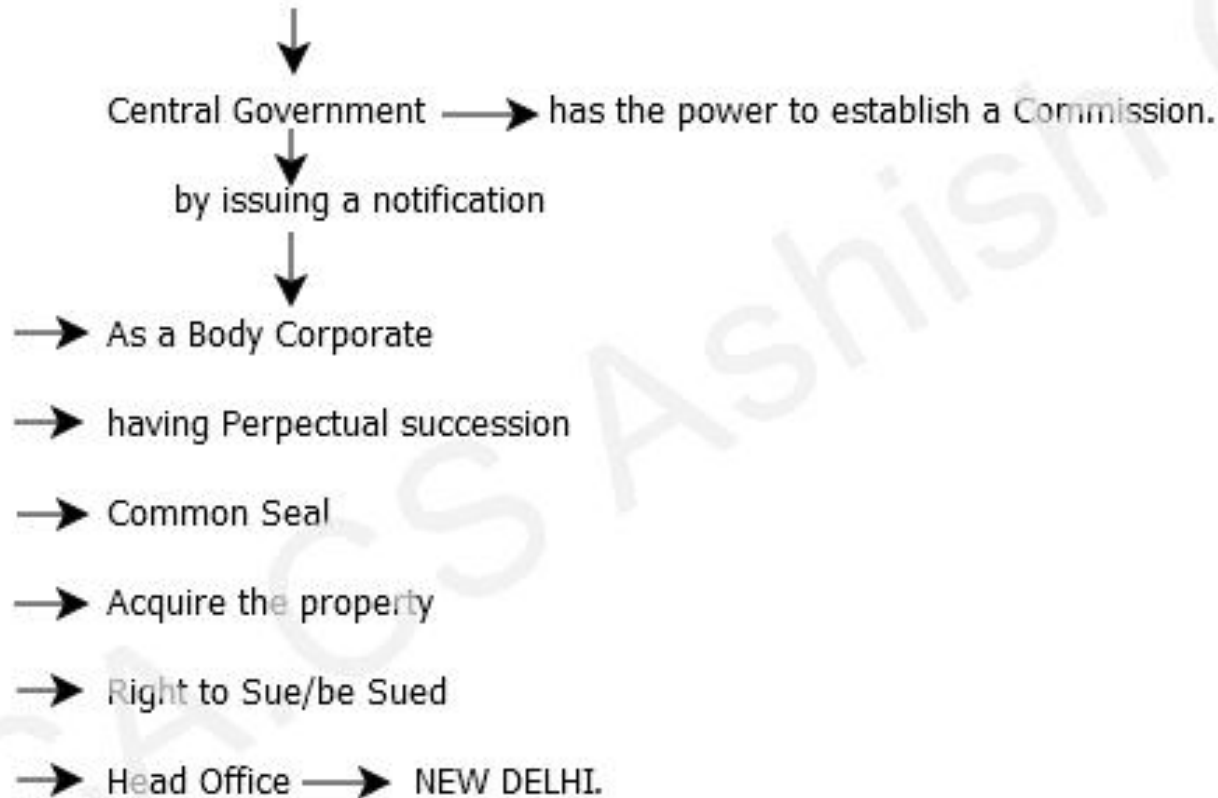
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Both books of Company Law & Allied law Contains Practicle questions

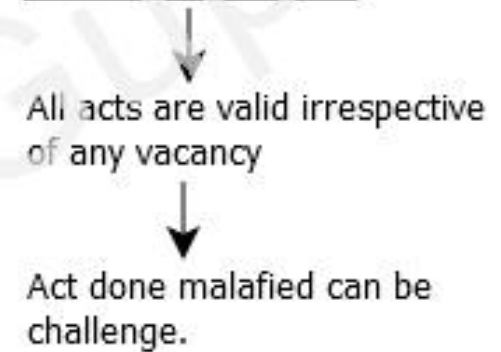


Competition Commission of India

Establishment (Under Section 7)

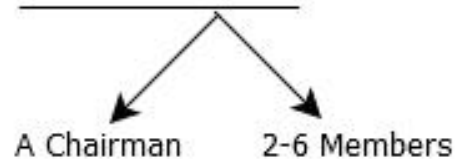


Validity of act of Competition Commission of India



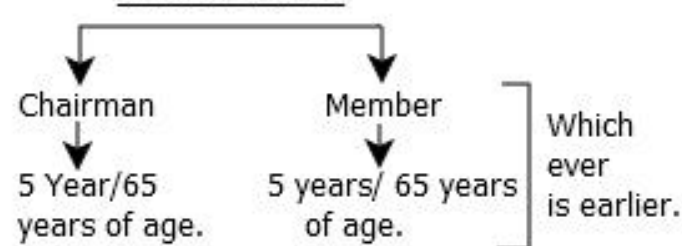
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Composition of Competition Commission of India



- Above person having experience of 15 Years/more.
- Above person are appointed on whole time basis.

Term of Office:-

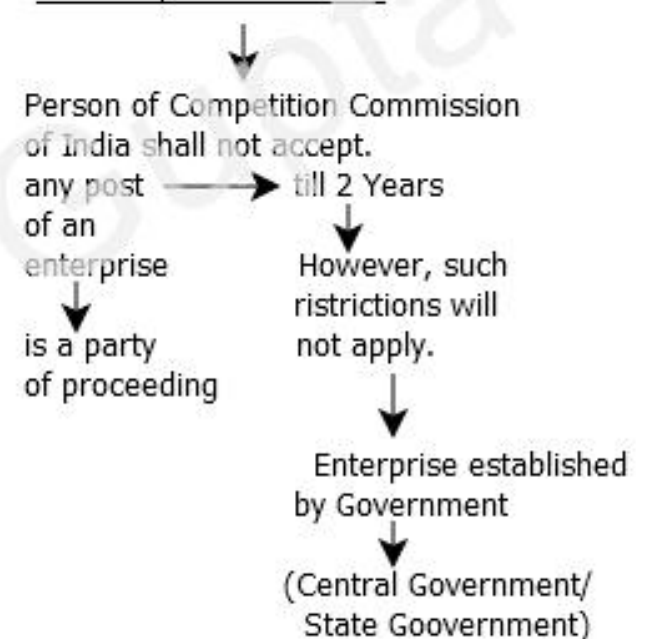


Removal of Chairman/Other members (Section 11)

Central Government → Remove.

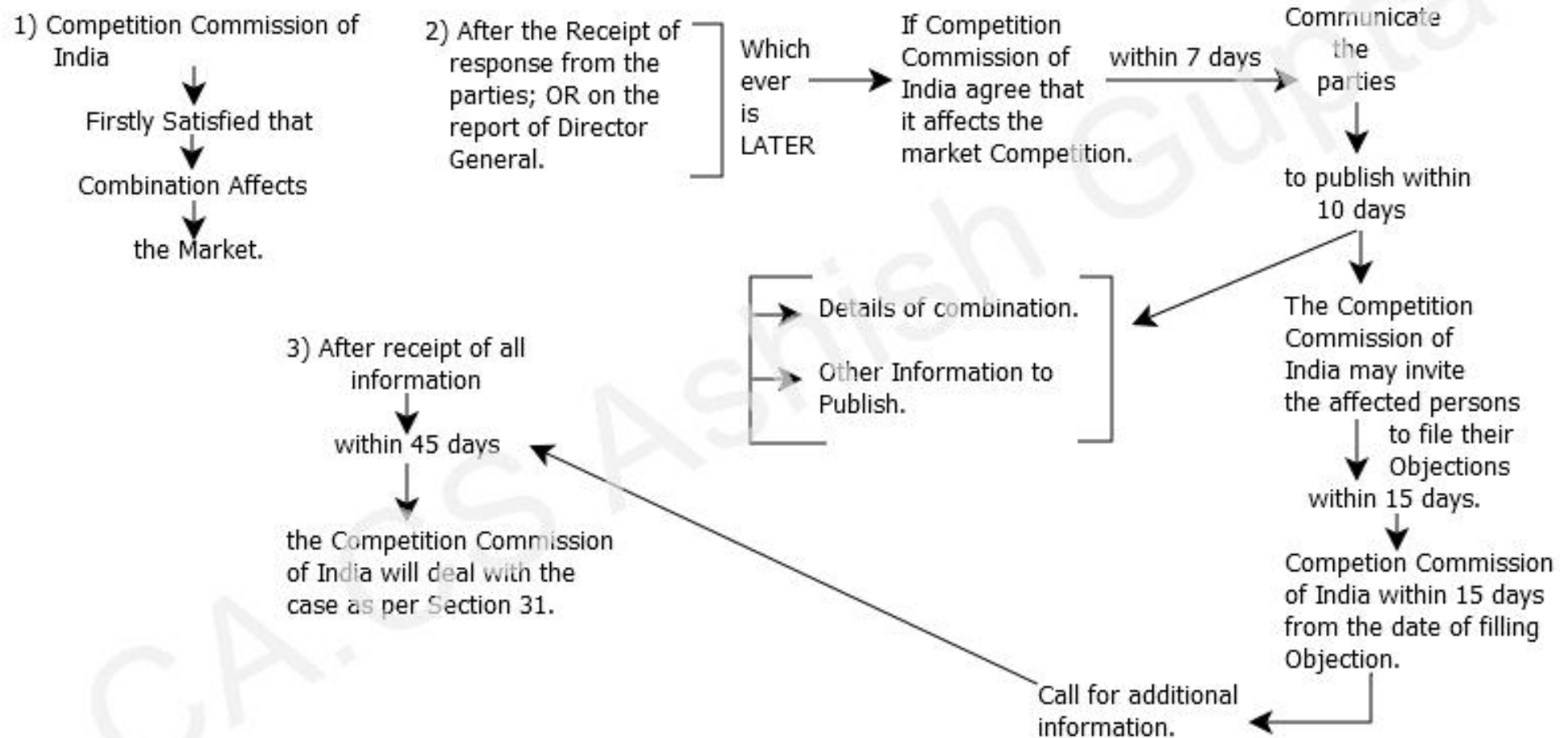
- Declared insolvent
- Engaged in any other employment during the term of Competition Commission of India.
- Involve in moral turpitude.
- Acquire any financial interest which affects interest prejudicially.
- Has physically/mentally incapable.

Restriction on Employment of Chairman/Other member.

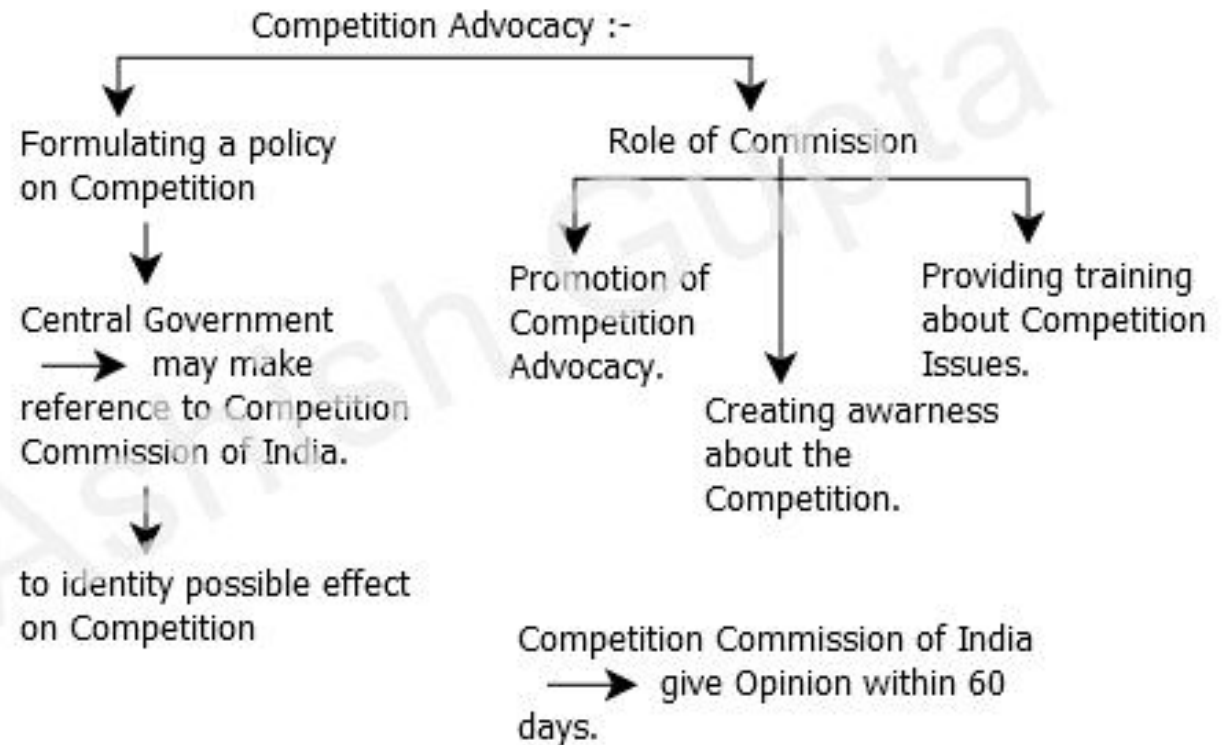
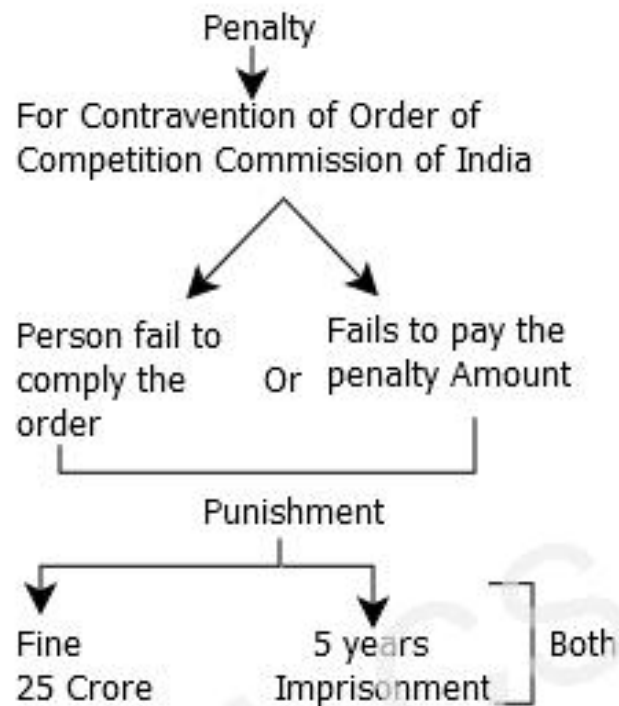


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Procedure for Investigation Of Combination :-

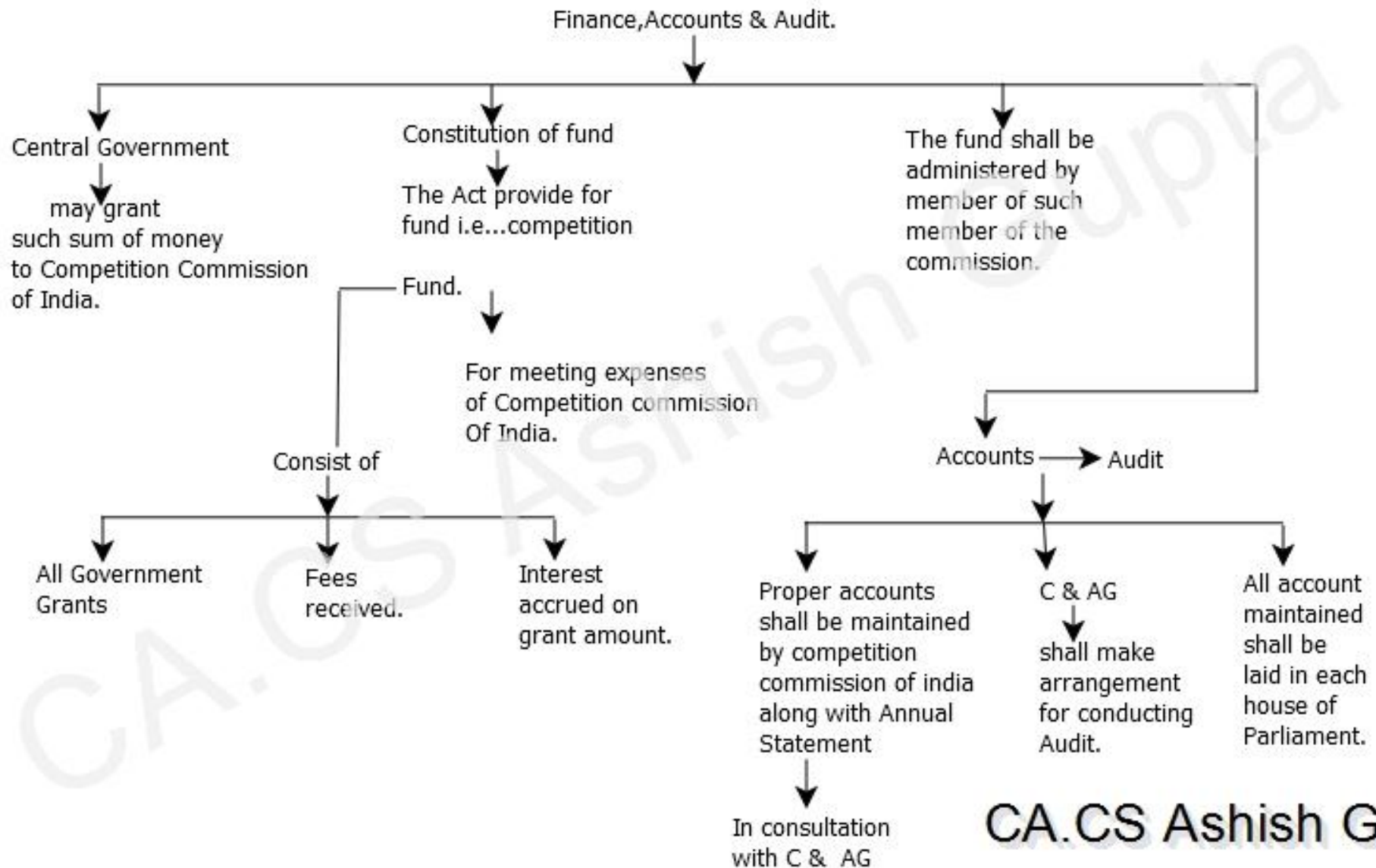


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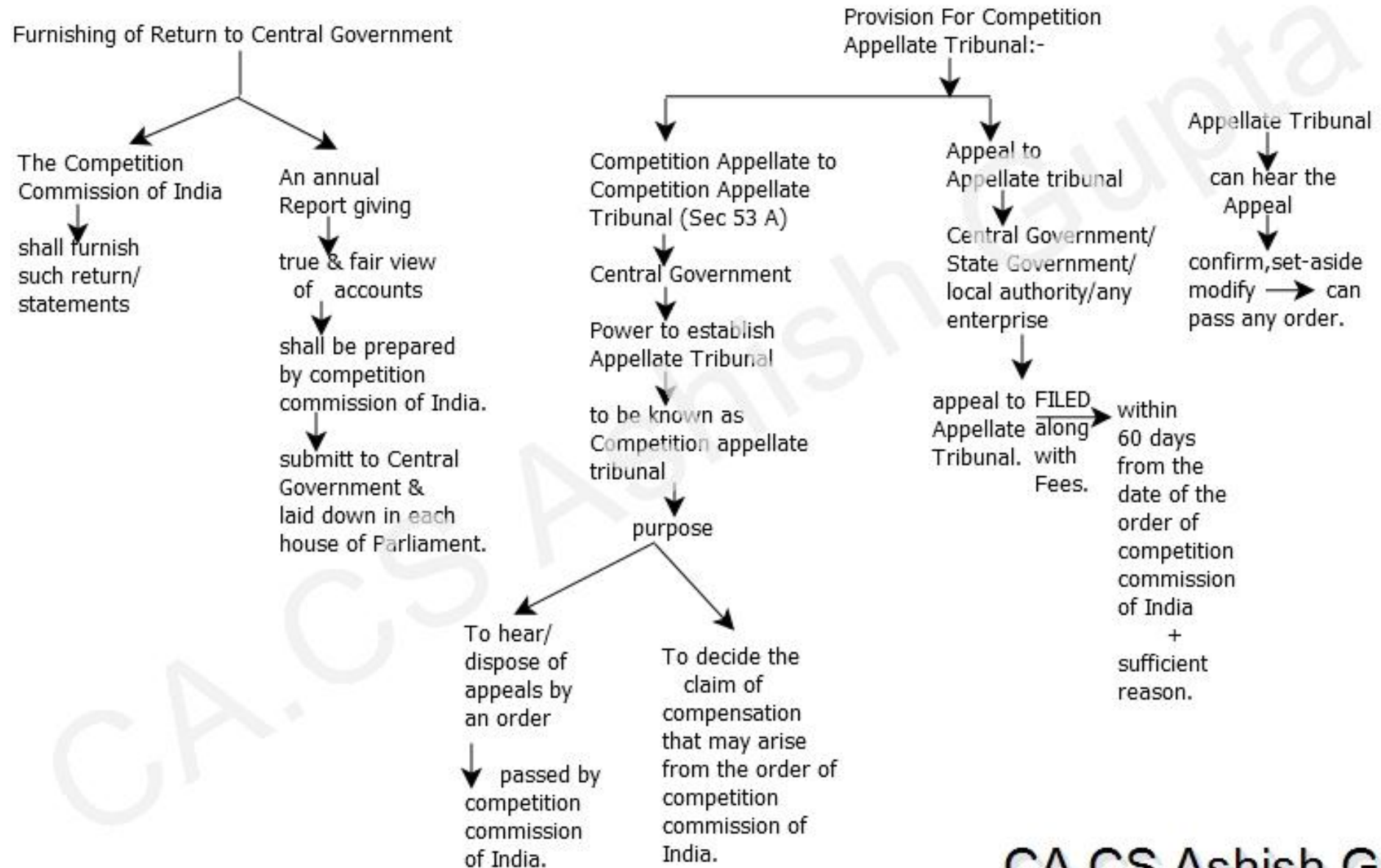


* Competition Commission of India opinion is not binding on the Central Government.

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Composition of Appellate Tribunal:-



#Resignation of Chairperson & Member of Appellate Tribunal.

Chairperson /other member

by in writing

a letter addressed to Central Government

However



#Qualification for Appointment of Chairperson & Members of Appellate tribunal.

1)Chairperson

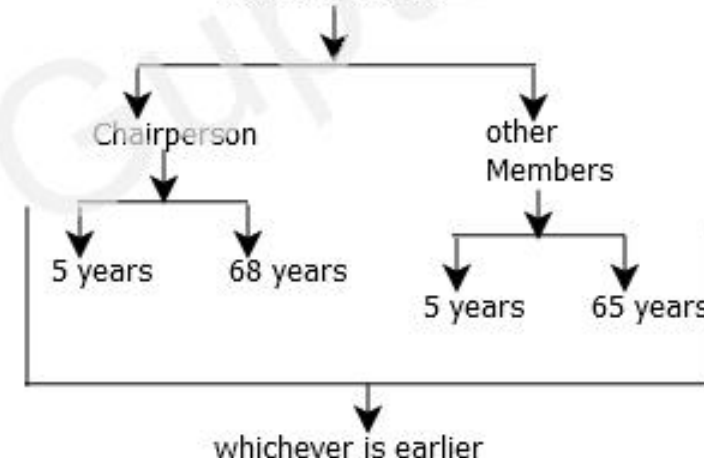
shall be a person, judge of Supreme Court/Chief Justice of High Court.

2)Members

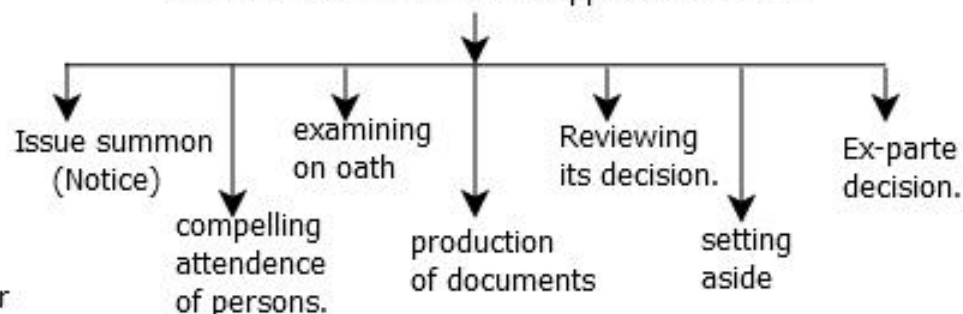
A person having experience of 25 years in all fields.

#Appellate Tribunal:-

Terms of Office:-



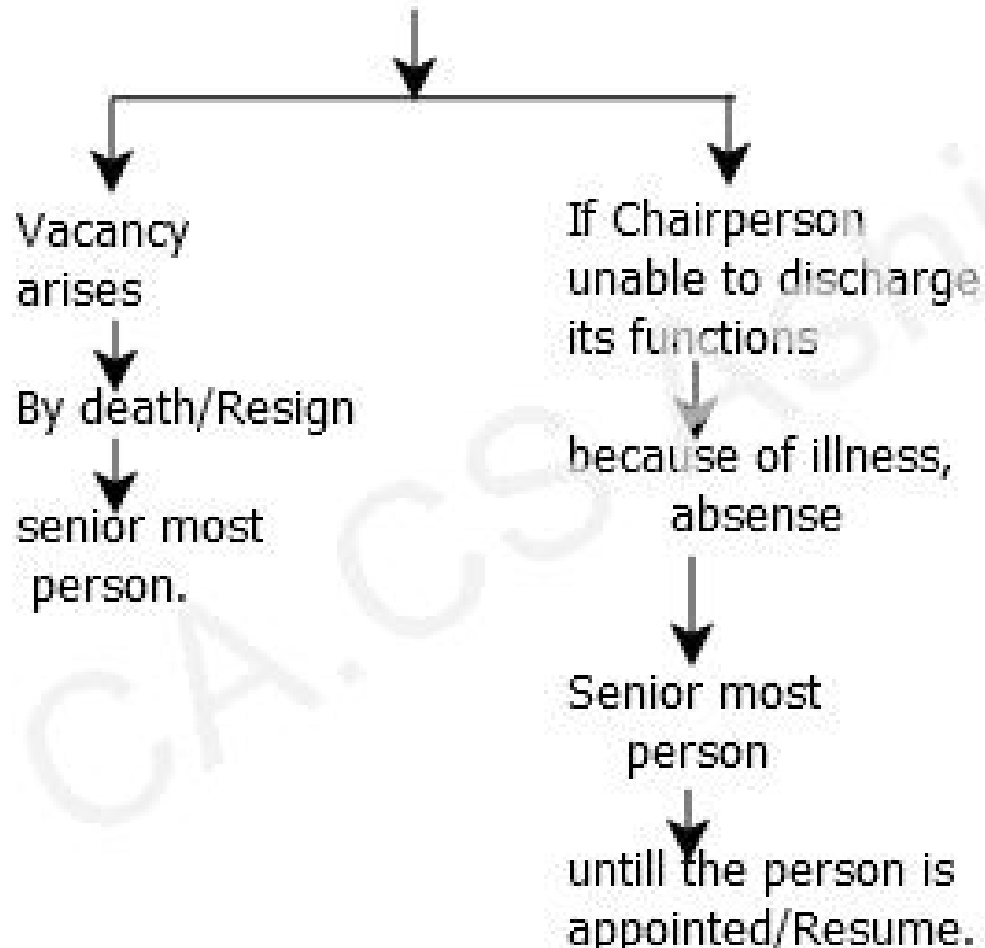
Power And Procedure Of Appellate Tribunal



CA.CS Ashish Gupta

#Member Of Appellate Tribunal:-

To act as its Chairman in certain
Cases:-



#Appeal to Supreme Court

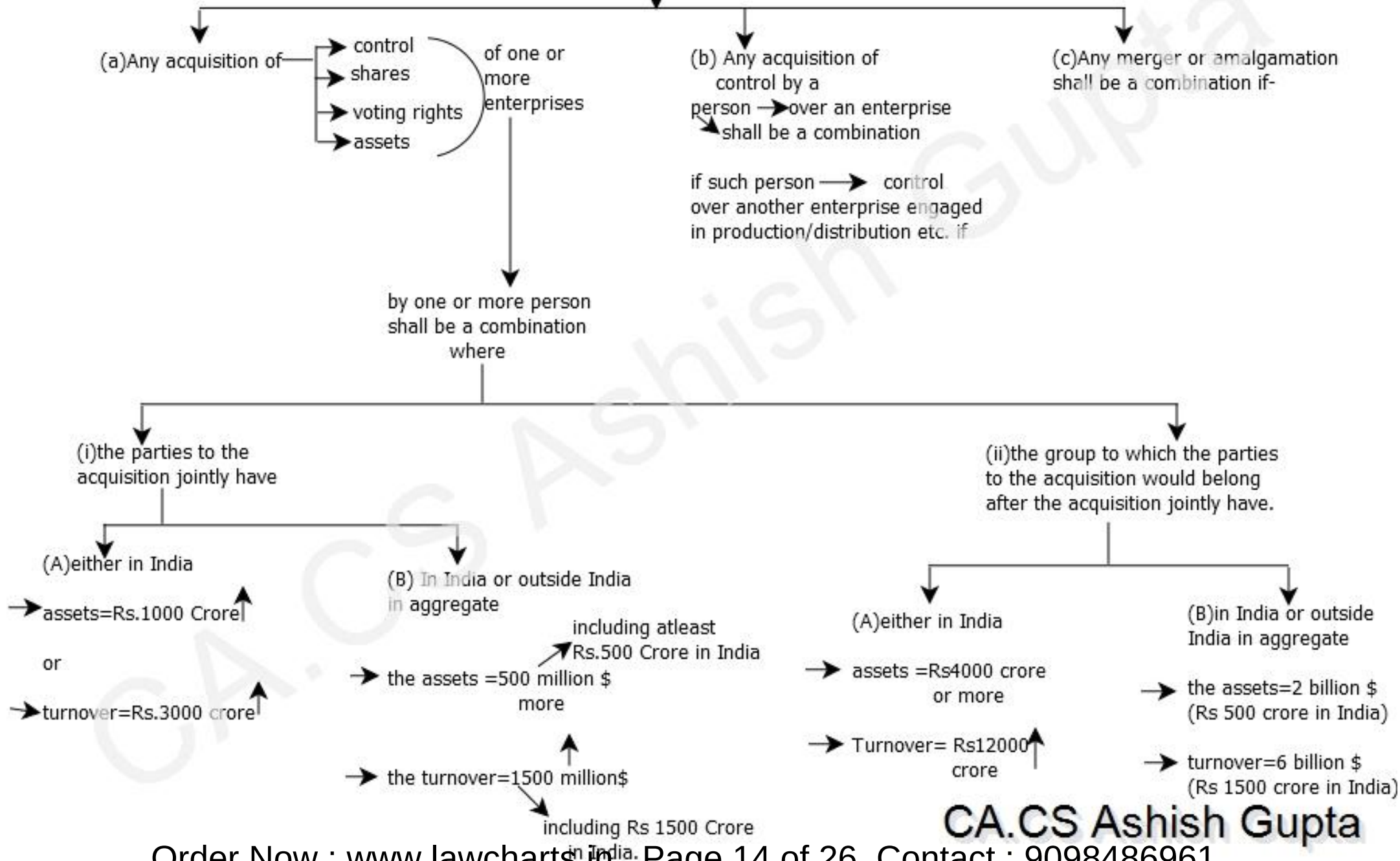
Central Government/State
Government/Local authority/
Enterprise

aggrieved by the order of
APPELLATE TRIBUNAL

60 days
↓
Supreme Court + Sufficient Reason.

CA.CS Ashish Gupta

Combination (Section 5)



Competition Act , 2002

Q.1 How will the Chairperson and other members of the Competition Commission of India be appointed? State whether the Chairperson shall be only a person, who has been or is qualified to be, a Judge of a High Court.

Answer : Competition Commission of India: The Competition Commission of India shall consist of a Chairperson and not less than two and not more than six other members to be appointed by the Central Government (Section 8) while the appointment is made by the Central Government, the Chairperson and other members shall be selected in the manner as may be prescribed (Section 9).

The Chairperson and every other member shall be a person of ability, integrity and standing and who has special knowledge of, and such professional experience of not less than 15 years in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters including competition law and policy and which, in the opinion of the Central Government may be useful to the commission [Section 8(2)]. As the qualification prescribed in the Act is the same for chairperson and other members, chairperson of commission may or may not be a judicial person.

Q.2 An understanding has been reached among the manufacturers of cement to control the price of cement, but the understanding is not in writing and it is also not intended to be enforced by legal proceedings. Examine whether the above understanding can be considered as an 'Agreement' with the meaning of Section 2(b) of the Competition Act, 2002.

Answer : Agreement

'Agreement' includes any arrangement or understanding or action in concert:

(i) Whether or not, such arrangement, understanding or action is formal or in writing or

(ii) Whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings. [Section 2(b)].

In view of the above definition of 'agreement', an understanding reached by the cement manufacturers to control the price of cement will be an 'agreement' within the meaning of section 2(b) of the Competition Act, 2002 even though the understanding is not in writing and it is not intended to be enforceable by legal proceedings.

Q.3 Poly Ltd., (hereinafter referred to as "Seller"), manufacturer of footwears entered into an agreement with City Traders (hereinafter referred to as "purchaser"), for sale of its products. The agreement includes, among others, the following clauses:

- i. That the Purchaser shall not deal with goods, products, articles, by whatever name called, manufactured by any person other than the Seller.
- ii. That the Purchaser shall not sell the goods manufactured by the Seller outside the municipal limits of the city of Secunderabad.
- iii. That the Purchaser shall sell the goods manufactured by the Seller at the price as embossed on the price label of the footwear. However, the purchaser is allowed to sell the

Competition Act , 2002

footwear at prices lower than those embossed on the price label.

You are required to examine with relevant provisions of the Competition Act 2002, the validity of the above clauses.

Answer : Provisions of section 3(1) of the Competition Act, 2002 prohibit any agreement for goods and/or services that may have an appreciable adverse effect on competition in India.

Provisions of section 3(2) of the said Act state that any agreement entered into in contravention of provision of section 3(1) of the said Act shall be void.

Sections 3(3) and 3(4) of the said Act enumerate the types of the agreements which are to be treated as contravening the provisions of the said section 3(1). According to section 3(4) of the said Act, any agreement among enterprises or persons at different stages of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services including the following shall be treated as agreements in contravention of the said section 3(1):

- (a) tie-in-arrangement;
- (b) exclusive supply agreement;
- (c) exclusive distribution agreement;
- (d) refusal to deal
- (e) re-sale price maintenance

The clauses of the agreement given in the question are covered by above mentioned provisions Clause at Sr. No.(i) comes under exclusive supply agreement; Clause at Sr. No.(ii) comes under exclusive distribution agreement and Clause at Sr. No.(iii) is covered by re-sale price maintenance.

Explanations to said section 3(4) explains the above terms.

According to Explanation (b), exclusive supply agreement includes any agreement restricting in any manner, the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person.

According to Explanation (c), exclusive distribution agreement includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods.

According to Explanation (e), "resale price maintenance" includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the price stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

In view of the above provisions of the Competition Act, 2002, validity of the clauses of the agreement as given in the question can be determined as follows:

Clause (i) restricts the purchaser to deal in the goods of manufacturers other than the seller.

Hence this is in contravention of the provisions of section 3(1) of the said Act.

Competition Act , 2002

Clause (ii) restricts the purchaser to sell the goods within a specified area. Hence this is in contravention of the provisions of section 3(1) of the said Act

Clause (iii) stipulates the resale price, but it allows the purchaser to sell the goods at lower prices than the stipulated prices. Hence this is a valid clause.

But, the law states that any such agreement containing any of the prohibited clause shall be void. Therefore, even if the agreement contains some valid clauses, it shall still be termed as void if it contains even one prohibited clause.

Q.4 Examine with reference to the relevant provisions of the Competition Act, 2002 the following:

(i) Whether a Government Department supplying water for irrigation to the Agriculturists after levying charges for water supplied (and not a water tax) can be considered as an 'Enterprise'.

(ii) Whether a person purchasing goods not for personal use, but for resale can be considered as a 'consumer.'

Answer

Enterprise: The term 'enterprise' is defined in section 2(h) of Competition Act, 2002.

Accordingly 'enterprise' means a person or a department of the Government, who or which is 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. But the term does not include any activity of the Government relating to 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.

Certain specific activities of Government departments like dealing with atomic energy, etc . and sovereign functions of the Government (like police, defence, etc.) are excluded from the purview of the said terms. Hence, a Government department engaged in the activity of providing service in the form of supply of water for irrigation to the agriculturists after levying charges can be considered as an 'enterprise' within the meaning of section 2(h) of Competition Act, 2002.

Consumer: The term 'consumer' is defined in section 2(f) of Competition Act, 2002.

Accordingly 'consumer' means any person who buys any goods for a consideration, which has been paid or promised or partly paid and partly promised, whether such purchase of goods is for resale or for any commercial purpose or for personal use.

Hence, it is not necessary that a person must purchase the goods for personal use in order to be considered as a 'consumer' under Competition Act, 2002. Even a person purchasing goods for resale or for any commercial purpose will also be considered as a 'consumer' within the meaning of Section 2(f) of Competition Act, 2002.

Q.5 (i) Mr. ZPM was appointed as a Member of the Competition Commission of India by Central Government. He has a professional experience in international business for a period of 12 years, which is not a proper qualification for appointment of a person as member.

Pointing out this defect in the Constitution of Commission, Mr. YKJ, against whom the commission gave a decision, wants to invalidate the proceedings of the commission.

Competition Act , 2002

Examine with reference to the provisions of the Competition Act, 2002 whether Mr. YKJ will succeed.

(ii) ABC Ltd. made an initial public offer of certain number of equity shares. Examine whether these shares can be considered as 'Goods' under the Competition Act, 2002 before allotment.

Answer

(i) As per section 15 of Competition Act 2002 any act or proceeding of the Commission shall not be invalidated merely on the ground of:

(a) any vacancy in, or any defect in the constitution of the Commission; or

(b) any defect in the appointment of a person acting as a Chairperson or as a member; or

(c) any irregularity in the procedure of the Commission not affecting the merits of the case.

Here in this case Mr. ZPM should have professional qualification of not less than 15 years as per section 8 of the Act but this disqualification will not invalidate the proceeding of the Commission.

(ii) Section 2(i) of Competition Act, 2002 defines 'goods' as follows:

'Goods' means goods as defined the Sale of Goods Act, 1930 and includes –

(a) products manufactured, processed or mined;

(b) debentures, stock and shares after allotment

(c) in relation to goods supplied, distributed or controlled in India, goods imported into India.

Hence, debentures and shares can be considered as 'goods' within the meaning of section 2(i) of Competition Act, 2002 only after allotment and not before allotment.

Q.6 Hon'ble Justice Mr. HCJ, a retired High Court Judge, attained the Age 61 years on 31 st December, 2004. The Central Government appointed him as the Chairperson of the Competition Commission of India with effect from 1st January, 2005. You are required to state, with reference to the provisions of the Competition Act, 2002, the term for which he may be appointed as Chairperson of the Competition Commission of India. Whether he can be reappointed as such and till when he can remain as Chairperson of the Competition Commission of India?

Answer : According to section 10(1) of the Competition Act, 2002, the Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment.

Provided that no Chairperson or other Member shall hold office as such after he has attained the age of sixty five years.

Based on the above provisions of the Competition Act, 2002, it can be concluded that Hon'ble retired Justice Mr. HCJ can be appointed as the Chairperson of the Competition Commission of India by the Central Government initially for a period of five years and he can also be re - appointed after his initial term of five years is over. But since he shall be attaining the age of 65 years as on 31st August, 2008, he will have to step down from the post on his attaining the age of 65 years.

Q.7 (i) In a proceeding before the Competition Commission of India involving two Pharmaceutical companies, the plaintiff requested the presiding officer to call upon the services of experts from the pharmaceutical sector to determine the truth of the allegations leveled

Competition Act , 2002

by it against the respondent. The respondent opposed the request on the ground that such action cannot be taken by the Competition Commission. You are required to state with reference to the provisions of the Competition Act, 2002, whether the contention of the respondent is tenable.

(ii) The Central Government has formed as opinion that Mr. CBM (a member of the Competition Commission of India) has acquired such financial interest that it may affect prejudicially his functions as a member of the Competition Commission and it wants to remove him from his office. You are required to state with reference to the provisions of the Competition Act, 2002, whether the Central Government can do so and if yes, how?

Answer

(i) As per provisions of section 36(3) of the Competition Act, 2002 the Competition Commission may call upon such experts from the fields of economics, commerce, accountancy, international trade or other disciplines as it deems necessary, to assist the Commission in the conduct of any enquiry or proceeding before it. As per regulation 54 of the Competition Commission (General) Regulations, 2004 made by the Commission under section 64 of the Competition Act, 2002, it may draw up a panel of such experts.

In view of the above stated specific powers given to the Competition Commission, it can call upon the services of an expert from the pharmaceutical sector to determine the truth of the allegations leveled by the plaintiff against the respondent. Hence, the contention of the respondent is not tenable.

(ii) Provisions of section 11(2) of the Competition Act, 2002 empower the Central Government to remove, by an order, a member of the

Competition Commission of India from his office if such member has acquired such financial interest as is likely to affect prejudicially his functions as a Member of the Competition Commission. However, provisions of section 11(3) of the said Act put some restrictions on such powers of the Central Government. According to this section, in case as stated in the question, the Central Government wants to remove a member of the Competition Commission from his office, it has to make a reference to the Supreme Court. The Supreme Court shall hold an enquiry in accordance with the procedure formulated by it and then report that the member in question ought to be removed from his office.

Thus, the Central Government can remove a member of Competition Commission from his office by following the above procedure.

Q.8 The Competition Commission of India has received a complaint that M/s ABC company has been abusing its dominant position in the food processing industry. Explain briefly the factors that will be considered by the Commissions to ascertain whether M/s ABC company enjoys a dominant position in the industry.

Answer

Abuse of Dominant position: The Competition commission while inquiring whether the enterprise ABC company enjoys a dominant position or not under sub-section (4) of section 19 of the Competition Act, 2002 will take the following factors into account:

(a) Market-share of the enterprise

(b) size and resources of the enterprise

(c) size and importance of the competitors.

Competition Act , 2002

(d) economic power of the enterprise including commercial advantages over competitors.

(e) vertical integration of the enterprises or sale or service net work of such enterprises.

(f) dependence of consumers on the enterprise.

(g) monopoly or dominant position whether acquired as 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 services for consumers.

(i) countervailing buying power.

(j) market structure and size of market.

(k) social obligations and social cost.

(l) relative advantage, by way of 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.

Q.9 The Central Government on the recommendation of selection committee appoints Mr. RKP aged 56 years as Member of the Competition Commission of India to be effective from 1 st January,

2009. State with reference to the provisions of Competition Act, 2002 the term for which he will be appointed and whether he can be reappointed as such and also if he resigns after two years whether the vacancy can be filled up by the Chairman of the commission. You are further required to mention the composition of the selection committee on whose recommendation the Central Government appoints chairman and other members of the Competition Commission of India.

Answer

Term of office of chairperson and other members are contained in Section 10 of the Competition Act, 2002: As per this section the chairperson and every other member shall hold office as such for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment. They shall not hold office as such after attaining the age of sixty-five years. [Section 10(1)]

A vacancy caused by the resignation or removal of the chairperson or any other member by death or otherwise shall be filled by fresh appointment in accordance with the provisions of sections 8 and 9 of the Act. [Section 10(2)]

Keeping the above provision in mind Mr. RKP can be appointed as member of the commission for a term of 5 years as he is aged 56 years on 1-1-09. He can also be reappointed but his reappointment will be only up to the age of 65 years. If Mr. RKP resigns as member after working for two years the resulting vacancy can be filled up by fresh appointment approved by the Selection Committee and the Chairman has no power to fill up the vacancy on his own.

Selection committee for chairperson and members of commission

Competition Act , 2002

The chairperson and other members of the commission shall be appointed by the Central Government from a panel of names recommended by a selection committee.

Selection committee shall consisting of –

- (a) The Chief Justice of India or his nominee ----- as chairperson;
- (b) The secretary in the Ministry of Corporate Affairs ----- as member;
- (c) The secretary in the Ministry of Law and Justice ----- as member;
- (d) Two experts of repute who have special knowledge of, and professional experience in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters including competition law and policy as members. (Section 9)

Q.10 (i) An arrangement has been made among the cotton producers that the cotton produced by them will not be sold to mills below a certain price. The arrangement is in writing but it is not intended to be enforced by legal proceeding. Examine whether the said arrangement can be considered as an agreement within the meaning of Section 2(b) of the Competition Act, 2002.

(ii) The orange producers of Nagpur have formed an association to control the production of oranges. Examine whether it will be considered as a cartel within the meaning of Section 2(c) of the Competition Act, 2002.

Answer

(i) As per section 2(b) of the Competition Act, 2002, an agreement includes any arrangement or understanding or action in concert:-

(1) whether or not, such arrangement, understanding or action is formal or in writing; or

(2) whether or not, such arrangement, or understanding or action is intended to be enforceable by legal proceedings.

In the given case the understanding reached among the cotton producers not to sell below a certain price shall amount to an agreement as defined under section 2(b) notwithstanding the fact that through the arrangement is in writing but not intended to be enforced by legal proceeding.

(ii) As per section 2(c) of the Competition Act, 2002 the term “cartel” includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control, or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services.

The term “cartel” has an inclusive meaning. Thus an association formed to control the production of oranges is within the aforesaid definition of a cartel. Hence the association of orange producers of Nagpur will be considered as a cartel under the provisions of the Act.

Q.11 The Competition Commission of India (CCI) has received a complaint from a State Government alleging that X Limited and Y Limited have entered into an informal agreement, not enforceable at law, to limit or control production, supply and market, to determine the sale price of their products. Such an action of these companies has an appreciable effect on competition.

Competition Act , 2002

Examining the provisions of the Competition Act, 2002:

(A) Decide whether the above agreement has appreciable effect on competition.

(B) What factors shall the Competition Commission of India consider while taking the above decision?

(C) What orders can the Competition Commission of India pass on completion of the inquiry?

Answer

(A) The term 'agreement' as defined in section 2 (b) of the Competition Act, 2002, includes any arrangement or understanding or action in concert.

(i) whether or not such arrangement, understanding or action is formal or in writing, or

(ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings.

Thus agreement between X Ltd. and Y Ltd. satisfies the above ingredients of an agreement as per section 2 (e) of the Act.

(B) Factors to be considered:

(1) creation of barriers to new entrants in the market.

(2) driving existing competitors out of the market.

(3) foreclosure of competition by hindering entry into the market.

(4) accrual of benefits to consumers.

(5) improvements in production or distribution of goods or provision of services

(C) Orders of CCI: If after enquiry by the Director General, the Commission finds the agreement entered into by X Ltd. and Y Ltd. are in contravention of section 3, it may pass all or any of the following orders:

(1) direct X Ltd. and Y Ltd. to discontinue and not to reenter such agreement.

(2) impose such penalty as it may deem fit which shall not be more than 10% of the average of the turnover for the last 3 preceding financial years, upon each of such person or enterprises which are parties to such agreement or abuse;

(3) direct that agreement shall stand modified to the extent and in the manner as may be specified in the order by the commission

(4) direct X Ltd and Y Ltd. to abide by such other orders as the commission may pass and comply with the directions including payment of cost, if any.

(5) pass such other orders or issue such directions as it may deem fit.

Q.12 P Ltd. and Q Ltd. both dealing in chemicals and fertilizers have entered into an agreement to jointly promote the sale of their products. A complaint has been received by the Competition Commission of India (CCI) stating that the agreement between the two is anti-competitive and against the interests of others in the trade. Examine with reference to the provisions of the Competition Act, 2002, what are factors the CCI will take into account to determine whether the agreement in question will have any appreciable adverse effect on competition in the market.

Answer

Competition Act , 2002

Factors determining appreciable adverse effect on competition: The Competition Commission of India (CCI), while determining whether an agreement is anti-competitive under section 3 of the competition Act, 2002, will take into account the following factors.

- (a) creation of barriers to new entrants in the market
- (b) driving existing completions 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 and
- (f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

Q.13 A dispute between PQR Limited and ABC Limited is pending in the Competition Commission of India. During the course of hearing, PQR Limited submitted an application that services of experts may be obtained for deciding an issue. ABC Limited raised objection that services of experts can not be obtained. Decide whether the Commission can obtain the services of experts under the provisions of the Competition Act, 2002.

Answer

Competition Commission of India

As per provisions of section 36(3) of the Competition Act, 2002, the Competition Commission may call upon such experts from the fields of

economics, commerce, accountancy, international trade or other disciplines as it deems necessary, to assist the Commission in the conduct of any inquiry or proceeding before it. As per regulation 54 of the Competition Commission (General) Regulations', 2004 made by the Commission under Section 64 of the Competition Act 2002, it may draw up a panel of such experts.

In view of the above stated specific powers given to the Competition Commission it can call upon the services of an expert to determine the truth of allegation or issue under consideration

Q.14 What are the agreements prohibited under section 3(1) of the Competition Act, 2002?

Answer

Agreements at different stage in different market are prohibited under section 3(1) of the Competition Act, 2002. Any agreement amongst enterprises or persons at different stage of the production chain in different markets, in respect of production, supply, distribution, storage, sale etc. shall be a void agreement if it causes or is likely to cause an appreciable adverse effect on Competition in India including:

- (1) Tie-in agreement: Tie in agreement includes any agreement requiring a purchaser of goods, as a condition of such purchase to purchase some other good;
- (2) Exclusive supply agreement: Exclusive supply agreement includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person;

Competition Act , 2002

(3) Exclusive distribution agreement: Exclusive distribution agreement includes any agreement to limit, restrict or withhold the output or supply of goods or allocate any area or market for the disposal or sale of the goods;

(4) Refusal to deal: Refusal to deal includes any agreement, which restrict, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought;

(5) Resale price maintenance: Resale price maintenance includes any agreement to sell goods on condition that the price to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

Q.15 Bombay Textiles Limited and Gujarat Textiles Limited marketing their products in India propose to be amalgamated. The enterprise created as a result of the said amalgamation will have assets of value of ` 300 crore and turnover of ` 1000 crore. Examine whether the proposed amalgamation attracts the provisions of the Competition Act, 2002?

Answer

Section 5 deals with combination of enterprises and persons. The amalgamation of enterprises shall be a combination of such enterprises if the enterprise created as a result of the amalgamation, as the case may be, have either in India, the assets of the value of more than ` 1,500 crores or turnover more than ` 4500 crores.

Hence, in the present case, the proposed amalgamation of Bombay Textiles Limited and Gujarat Textiles Limited will not attract the provisions of the Competition Act, 2002 as they have assets of value of ` 300 crore and turnover of ` 1000 crore which are less than specified under the provisions.

Q.16 A truck manufacturing company proposes to enter into distributorship agreements requiring the dealers not to sell trucks of other manufacturers and also not to sell the trucks outside the territory assigned to them. Examine with reference to the Provisions of the Competition Act, 2002 whether the proposed agreements will be considered as Anti-Competitive Agreements and void in case the company entered into such agreements.

Answer

Anti-Competitive Agreements: Under section 3 of the Competition Act, 2002 any agreement amongst enterprises of persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of service, shall be a void agreement if it causes or is likely to cause an appreciable adverse effect on competition. According to the problem, there are two conditions given in the agreement, which fall under the following stages-

(i) exclusive supply agreement: includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person.

(ii) exclusive distribution agreement: includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods.

In view of the above provisions of the Competition Act, 2002 validity of the clauses of the agreement as given in the question can be determined as follows:

Competition Act , 2002

Part (i) of the question restricts the dealer to deal in the goods of other manufacturers. Hence the proposed agreement is anti-competitive and void.

Part (ii) of the question restricts the dealers not to sell the goods outside the territory assigned to them. Hence, the proposed agreement is anti competitive and void.

Q.17 MNO Tyres Limited is in the business of manufacture of automotive tyres for the past one year. To increase its market share, the company has decided to reduce the prices of tyres.

The cost structure of the passenger car tyre is as under:

(i) Cost of production ` 5,000 per tyre

(ii) Selling price ` 6,000 per tyre

The company started selling tyres @ ` 5,200 per tyre and the other tyre manufacturers made a complaint to the Competition Commission of India stating that MNO Tyres Limited is guilty of predatory pricing having the effect of reducing the competition or eliminating the competition.

Advise MNO Tyres Limited as to the meaning of predatory pricing and whether the company can be said to have indulged in the said practice having regard to the provisions of the Competition Act, 2002.

Answer

Section 4(2)(a) of the Competition Act, 2002 prohibits abuse of dominant position by any enterprise or group. There shall be abuse of dominant position if an enterprise or a group directly or indirectly, imposes unfair or discriminatory-

(i) condition in purchase or sale of goods or services; or

(ii) price in purchase or sale (including predatory price) of goods or service.

“Predatory price” means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

In the present case, MNO Tyres Limited is in the business of manufacture of automotive tyres for the past one year. To increase its market share, the company has decided to reduce the prices of tyres. The cost of production is ` 5,000 and selling price is ` 6000. The company started selling tyres @ ` 5,200 per tyre. The other tyre manufacturers made a complaint to the Competition Commission of India stating that MNO Tyres Limited is guilty of predatory pricing having the effect of reducing the competition or eliminating the competition.

According to the provisions given under section 4(2)(a) of the Competition Act, 2002, MNO Tyres Limited cannot be said to have indulged in predatory pricing as the revised selling price (` 5,200 per tyre) is more than its cost of production (` 5,000 per tyre).

Q.18 X a member of the Competition Commission of India was removed by the Central Government on the grounds that he had acquired financial interest likely to affect prejudicially his functions as a member. X challenged his removal by the Central Government claiming that the Central Government had no authority to pass order for removal. Clarify whether X's contention is right as per the provisions under the Competition Act, 2002.

Answer

Competition Act , 2002

Removal of Member of Competition Commission (Section 11 of the Competition Act, 2002):

Provisions of section 11(2) of the Competition Act, 2002 empowers the Central Government to remove, by an order, a member of the Competition Commission of India from his office if such member has acquired such financial interest as is likely to affect prejudicially his functions as a Member of the Competition Commission.

However, provisions of section 11(3) of the said Act put some restrictions on such powers of the Central Government. According to this section, in case as stated in the question, the Central Government wants to remove a member of the Competition Commission from his office, it has to make a reference to the Supreme Court. The

Supreme Court shall hold an enquiry in accordance with the procedure formulated by it and then report that the member in question ought to be removed from his office.

Thus, the Central Government can remove a member of Competition Commission from his office by following the above procedure. So, contention of X is incorrect with respect to his removal by the Central Government.

Q.19 Mr. Chetan retired as a member of the Competition Commission of India (CCI) on 31st October, 2014. He was offered the post of Chief Executive Officer in LCD Limited, which was earlier a party in a proceeding before the CCI. Can Mr. Chetan join the company with effect from 1st November, 2015?

What will be the position if Mr. Chetan joins MONA Limited, a Government company with effect from 1st April, 2015, if MONA Limited was also a party in a proceeding before the CCI?

Answer : As per the provisions of Section 12 of the Competition Act, 2002, the Chairman and other Member of CCI shall not, for a period of two years from the date on which he ceased to hold office, accept any employment in or connected with the management or administration of any enterprise, which has been a party to a proceeding before the Commission. However, these provisions will not apply to any appointment in a Government Company or the Central Government or any State Government or local authority or any Corporation established by or under any Central or State or Provincial Act. In view of the aforesaid, Mr. Chetan cannot join M/s. LCD Ltd. On 1st November, 2015 as only one year has expired from the date of his retirement. However, there is no bar for him to join MONA Limited, on 1st April 2015 even earlier than two years of his retirement, since it is a Government Company.