

Competition Act, 2002

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Objectives of the Act

- To provide for **establishment of a Commission** to prevent practices having adverse effect on competition;
- To **promote and sustain competition in markets**;
- To **protect the interests of consumers**;
- To **ensure freedom of trade** carried on by participants in markets, in India;
- To provide for **matters connected or incidental** to abovesaid objectives

Definitions [Section 2]

Acquisition: It means:

- directly or indirectly
- acquiring or agreeing to acquire
 1. shares, voting rights or assets of any enterprise; or
 2. control over the management any enterprise; or
 3. control over the assets of any enterprise

Definitions [Section 2]

Agreement: It includes:

- any arrangement; **or**
- understanding; **or**
- action in concert
 1. whether or not such AUA is formal or in writing; **or**
 2. whether or not such AUA is intended to be enforceable by legal proceedings

Union of thought and action amongst the parties concerned essential element of an agreement [**Re Delhi Automobiles (P) Ltd and Others**]

Definitions [Section 2]

Cartel: It includes

- an association of producers, sellers, distributors, traders, 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

Chairperson: It means the chairperson of the Commission appointed u/s 9(1) of the Act;

Commission: It means Competition Commission of India established u/s 7(1) of the Act

Definitions [Section 2]

Consumer [Section 2(f)]: It means any person who:

- buys any goods; **or**
- hires or avails of any service;
- for consideration
- **Other Points:**
 1. It is immaterial whether consideration:
 - has been paid; or
 - has been promised to be paid; or
 - has been partly paid & partly promised; or
 - is under deferred payment system
 2. It is also immaterial that such purchase of goods or such hiring or availing of services is for:
 - resale; or
 - any commercial purpose; or
 - personal use
 3. Consumer **includes** any user (beneficiary) of such goods (services) other than the person who buys (hires/ avails) such goods (services) **if** such use is made with the approval of consumer

Definitions [Section 2]

Enterprise: It means:

- a **person**; or
- a department of the Govt.;

engaged in any activity relating to:

1. the **production, storage, supply, distribution, acquisition or control** of articles or goods of any kind; **or**
2. the **provision of services** of any kind; **or**
3. 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

Definitions [Section 2]

• **Enterprise does not include**

1. any activity of the Govt. relating to sovereign functions of the Govt.; **including**
2. all the activities carried on by the departments of CG dealing with
 - atomic energy,
 - currency,
 - defence, and
 - space

Definitions [Section 2]

• **Goods:**

- It **means** goods as defined in the SGA, 1930;
- It **includes**:
 1. products manufactured, processed or mined;
 2. debentures, stocks and shares **after allotment**;
 3. goods imported into India

Definitions [Section 2]

- **Person:** It includes:
 1. an Individual;
 2. a HUF;
 3. a Company;
 4. a Firm;
 5. AOP or BOI, whether incorporated or not;
 6. any Corporation established by or under any Central/ State/ Provincial Act/ a Govt. Co.;
 7. a Cooperative Society;
 8. a Local Authority;
 9. every Artificial Juridical person, not falling within any of above

Definitions [Section 2]

- **Practice:** It includes:
 1. any practice relating to carrying on of any trade by a **person** or an **enterprise**
- **Price:** It includes every valuable consideration:
 1. given for the **sale of any goods** or for the **performance of any services**;
 2. whether such consideration is direct/ indirect or deferred

Definitions [Section 2]

- **Public Financial Institution:**
 1. It **means** PFI u/s 4A of Companies Act; and
 2. **includes** State Financial, Industrial or Investment Corporation (**NBFC??**)
- **Relevant Market:** It means the market which may be determined by the Commission with reference to:
 1. the relevant **product market**; or
 2. the relevant **geographic market**; or
 3. both the markets

Definitions [Section 2]

- **Relevant Product Market:** It means:
 1. a market comprising all those products or services;
 2. which are regarded as interchangeable or substitutable;
 3. by the consumer;
 4. by reason of;
 5. price/ intended use/ characteristics;
 6. of the products or services

Definitions [Section 2]

- **Relevant Geographic Market:** It means:
 1. a market comprising the area;
 2. in which the conditions of competition for demand and supply of goods or services
 - are directly homogeneous; and
 - can be distinguished from the conditions prevailing in the neighbouring areas

Definitions [Section 2]

- **Service:**
 1. It **means** service of any description which is made available to potential users;
 2. It **includes** the provision of services in connection with the business of any industrial or commercial matters
 - such as:
 - banking, communication, education, financing;
 - insurance, chit funds, transport, storage;
 - material treatment, processing, supply of electrical or other energy;
 - boarding, lodging, entertainment, amusement;
 - construction, repair;
 - conveying of news or information and advertising

Definitions [Section 2]

- **Shares:**

1. It **means** shares in the share capital of a company carrying voting rights;
2. It **includes**:
 - any security which entitles the holder to receive shares with voting rights;
 - stock (except where a distinction between stock and share is expressed or implied)

Definitions [Section 2]

- **Statutory Authority:** It means:

1. any authority, board, corporation, council, institute, university or any other body corporate;
2. established by or under any Central/ State/ Provincial Act for the purposes of:
 - regulating production or supply of goods; or
 - regulating provision of any services; or
 - regulating markets of goods and services; or
 - any matter connected therewith or incidental thereto

Definitions [Section 2]

- **Trade:** It **means**:

1. any **trade**, business, industry, profession or occupation;
2. relating to production, supply, distribution, storage or control of goods; **and includes**
3. the provision of any services

- **Turnover:** It includes the **value of sale** of goods or services

Competition Commission of India [Section 7]

- **CCI** come into existence **by CG N/N in OGz**;
- **HO of CCI** to be at place decided **by CG**;
- **Other offices** may be established **by CCI**;
- CCI have:
 1. Body corporate status;
 2. Perpetual succession;
 3. Common seal;
 4. Power to contract;
 5. Power to sue in its own name;
 6. Power to acquire, hold and dispose off property

Vacancy etc. and CCI proceedings [Section 15]

- **No act or proceeding of CCI shall be invalid** merely by reason of:
 1. any **vacancy** in CCI; **or**
 2. any **defect in constitution** of CCI; **or**
 3. any **defect in appointment** of Chairperson or a Member of CCI; **or**
 4. any **irregularity in the procedure** of CCI not affecting the merits of the case

Composition of CCI [Section 8]

- **Chairperson: 1;**
- **Senior-most Member:**
 1. to act as Chairperson in case of vacancy;
 2. to discharge Chairperson's functions in case of his inability;
 3. (1) or (2) until new assumes/ he resumes the office
- **Members:** ≤ 2 but > 6 ;

Composition of CCI [Section 8]
Common Prov. for Chairperson and Members

• **Manner of Appointment:**

1. **appointed by CG** on Selection Committee (SLC) recommendations;
2. SLC shall consist of:
 - Chief justice of India or his nominee – as the Chairperson of the SLC;
 - Secretary in MCA – as a Member of SLC;
 - Secretary in Ministry of Law & Justice – as a Member of SLC;
 - 2 experts of repute having special knowledge of prescribed disciplines and professional experience – as Members of SLC

Composition of CCI [Section 8]
Common Prov. for Chairperson and Members

- **Nature of office:** Whole time members;
- **Tenure:** 5 years => Reappointment Possible;
- **Age:** Not to hold office after he has attained the age of 65 years;
- **Variation in Salary and T&C:** can't be prejudicial;
- **Qualifications & Experience:** Prescribed qualifications with $\geq$ 15 years experience

Resignation, Removal and Suspension of Chairperson and other Members [Section 11]

• **Resignation:**

1. Notice in writing under his hand;
2. Notice to be addressed to CG;
3. They cannot relinquish office sooner unless permitted by CG;
4. Shall continue to hold office to the earliest of:
 - Expiry of 3 months from the date of receipt of such notice;
 - Appointment and entry of a person as his successor in the office;
 - Expiry of his term of office

Resignation, Removal and Suspension of Chairperson and other Members [Section 11]

- **Removal and Suspension:** If the Chairperson or Member, as the case may be:
 1. Is or at any time has been **adjudged as insolvent**;
 2. Has engaged at any time, during his term of office, in any **paid employment**;
 3. Convicted of an offence which in CG opinion involves **moral turpitude**;
 4. Has acquired **financial or other interest** as is likely to affect prejudicially his functions;
 5. Has so **abused his position** so as to render his continuance in office prejudicial to public interest;
 6. Has become **physical or mentally incapable**

Restriction on Employment of Chairperson and Other Members [Section 12]

- **Chairperson and every member:**
 1. can take **no employment**;
 2. in **any enterprise**;
 3. which has **been a party to any proceeding before CCI**
 4. For 2 years from the date of cessation of office
- **Exempted Enterprise:**
 1. CG;
 2. SG;
 3. Local Authority;
 4. Statutory Authority;
 5. A Corp. established by Central/ State/ Provincial Act;
 6. Govt. Co.

Administrative Powers of Chairperson [Section 13]

- **Shall have powers of:**
 1. General superintendence,
 2. Direction, and
 3. Control

in respect of all administrative matters of CCI
- **Powers can be delegated** by him to any other Member or Officer of CCI

Vacancy, etc. not to invalidate proceedings of Commission [Section 15]

- No act or proceeding of the Commission shall be invalid merely by reason of:
 1. Any vacancy in or any defect in **constitution of CCI**;
 2. Any defect in the **appointment of its Chairman or Member**;
 3. Any irregularity in the **procedure of the CCI** not affecting the merits of the case

Appointment of Director General, etc. [Section 16]

- DG appointed by CG N/N;
- **Functions:**
 1. Conducting enquiry into contravention of the Act;
 2. Performing other functions as may be provided under the Act
- Additional/ Joint/ Deputy/ Assistant DG or other officers/ employees may be also be appointed by CG;
- Above persons to act under DG Control, Supervision and Direction;
- Salary and T&C determined by CG Rules;
- Prescribed qualifications and experience required

Appointments u/s 17

- Secretary, Experts, Professionals and Officers and Other employees of CCI;
- Salary and T&C determined by CG Rules;
- Prescribed Qualifications and Experience required

Meetings of the Commission [Section 22]

- CCI Meetings at **such times** and **such places** as may be provided in Regulations;
- To **observe such rules of procedure** in regard to transaction of business at its meeting as may be provided in Regulations;
- **Chairman absence** for any reason = **Senior most member shall preside** at the meeting;
- **Quorum** = 3 members
- **Decisions by Majority** (Chairman has casting vote)

Powers of Commission [Section 36]

- Powers to be guided by **Principal of natural justice**;
- Has powers to regulate its own procedure subject to Act and Rules;
- Powers of **Civil Court** as to:
 1. Summoning and enforcing the attendance of any person;
 2. Examining him on oath;
 3. Discovery and production of documents;
 4. Receiving evidence on Affidavits;
 5. Issuing commissions for examination of witness or documents;
 6. Requisition of any public record or document or their copies thereof

Powers of Commission [Section 36]

- Power to **issue directions** to any person to
 1. produce books, accounts or other documents;
 2. furnish any info. relating to trade which is in his possession
- Power to **conduct inquiry** for the purposes of:
 1. section 3 (anti-competitive agreement), or
 2. section 4 (abusing of dominant position), or
 3. section 6 (combination agreements)

Competition Advocacy [Section 49]

- Following to **make a reference to the CCI** for its opinion on possible effect on competition:
 1. **CG** while formulating policy on competition (including review of laws relating to competition) or on any other matter; **and**
 2. **SG** while formulating policy on competition or on any other matter;
- CCI to give its **opinion within 60 days**;
- CG or SG then may take further action;
- CCI opinion not binding on CG or SG
- CCI to take adequate measures for:
 1. Promoting competition advocacy;
 2. Creating awareness about competition issues;
 3. Imparting training about competition issues

Accounts and Audit [Section 52]

- Proper accounts and records to be maintained;
- Annual accounts to be in Form prescribed by CG in consultation with CAG;
- CAG entitled to Audit;
- **CCI orders being appealable to Appellate Tribunal/ SC, shall not be subject to audit**;
- Audit to be conducted at CAG specified intervals;
- CCI to pay audit expenses to CAG;
- CAG (or any person appointed by him) shall have same rights as if it is the audit of Govt. Accounts;
- Audited Accounts and Audit Report to be laid before each house of Parliament
- U/s 53, CCI required to file with CG such Returns and Statements as prescribed;
- CCI to prepare and file annual report once in every year with CG

Power to Exempt [Section 54]

- **CG** may by **N/N in OGz** exempt from application of Act or any provisions of Act;
- **Period of exemption** shall be specified in N/N;
- **Exemption to:**
 1. Any class of **enterprise if in public interest** or interest of security of State;
 2. Any **practice or agreement arising out of any obligation assumed by India** under any treaty, agreement or convention with any other country (s);
 3. Any enterprise which performs a **sovereign function on behalf of CG or SG**

Powers to issue directions to CCI [Section 55]

- **CG has power** to issue Directions;
- CG to decide about **Directions** and these can be given **on question of policy only**;
- **No direction** can be given on **any technical or administrative matter**;
- CCI to be given **opportunity to express** its views before any such direction is given;
- **Directions binding** on CCI and has to comply with them

Power to supersede CCI [Section 56]

- **CG has the power** to supersede;
- **Reasons for supersession**: CG opines that:
 1. CCI **unable to discharge its functions**/ perform duties on account of circumstances beyond control of CCI; **or**
 2. CCI **defaulted** persistently in complying with **CG directions or performing its functions** or duties **and** as a result financial position or administration of CCI has suffered; **or**
 3. Its necessary in **public interest**

Power to supersede CCI [Section 56]

- **Conditions for making the order**:
 1. **Opportunity** shall be given to CCI for making **representations**;
 2. Representations not **binding on CG**;
 3. **N/N to be issued in OGz** and be effective from the date of its publication;
 4. Period of **supersession** **≤ 6 months**
- **Effects of supersession**:
 1. Vacation of offices of chairperson and other members;
 2. Powers, functions and duties shall vests with CG;
 3. Properties owned or controlled by CCI shall vest in CG

Power to supersede CCI [Section 56]

- **Reconstitution of CCI:**
 1. CG **shall reconstitute** CCI on or before the expiration of period of supersession;
 2. **Person who had vacated** b'coz of supersession **shall not be** deemed to be **disqualified for appointment** at the time of reconstitution;
 3. Powers, functions and duties shall again be with CCI;
 4. Properties owned or controlled by CCI shall again vest with CCI
- **Documents** relating to supersession shall be **laid for Parliament** along with full report of action taken by CG

Anti Competitive Agreements [Section 3]

- No **enterprise or person** shall:
 1. enter into any **agreement in respect of**;
 2. production, supply, distribution, storage, acquisition or control of **goods or provision of services**;
 3. which **causes or is likely to cause**;
 4. an **appreciable adverse effect on competition** within India
- **Agreement void** if in contravention of above;
- Section 3 does not apply to Copyrights, Patents, Exports, Registered Design/ Layout Design

Anti Competitive Agreements [Section 3]

- **Appreciable Adverse effect on competition:**
The following **agreements between competitors** which:
 1. directly or indirectly **determines purchase or sale prices**;
 2. **limits or controls** production, supply, markets, technical development, investment or provision of services;
 3. **shares the market or source of 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 any other similar way;
 4. directly or indirectly results in **bid rigging or collusive bidding**
shall be presumed to have appreciable adverse effect on competition

Dominant Position [Section 4]

- Abuse of Dominant Position prohibited u/s 4;
- **Dominant Position:** It means:
 1. a position of strength;
 2. enjoyed by an enterprise;
 3. in the relevant market, whether in India or outside India;
 4. which enables it to:
 - operate independently of competitive forces prevailing in the relevant market; or
 - affect its competitors or consumers or the relevant market in its favour

Dominant Position [Section 4]

- As per Section 4, there shall be an abuse of dominant position, if an enterprise:
 1. directly or indirectly imposes unfair or discriminatory:
 - condition in purchase or sale of goods or services; or
 - price in purchase or sale (including predatory price) of goods or service; **or**
 2. limits or restricts:
 - production of goods or provision of services or market therefor; or
 - technical or scientific development relating to goods or services to the prejudice of consumers; **or**
 3. indulges in practice resulting in denial of market access; **or**
 4. uses its dominant position in one relevant market to enter or protect other relevant market

Predatory Price [Section 4(2)]

- It means:
 1. the sale of goods; **or**
 2. provision of services;
 3. at a price which is below the cost of production of the goods or provision of services;
 4. as may be determined by regulations;
 5. with a view to reduce competition; **or**
 6. eliminate the competitors

Combinations

- **Combination [Section 5]:**
- 1. The acquisition of one or more enterprises by one or more persons; **or**
- 2. Merger or amalgamation of enterprises; shall be treated as 'combination' of such enterprises and persons or enterprises in the following cases

Combinations Cases

1. **Acquisition by Large Enterprises:**
 - **Combination means where:** Acquirer + Enterprise Acquired,
 - have assets (in India) > Rs. 1,000 crores; **OR** Turnover > Rs. 3,000 crores; **OR**
 - Has in India + Outside India, Assets > US\$ 500 Million (of which ≤ Rs. 500 cr. must be in India) **OR** Turnover > US\$ 1500 Million (of which ≤ Rs. 1500 cr. must be in India)
2. **Acquisition of Enterprise having similar Goods/ Services:** Same as (1)

Combinations Cases

3. **Acquisition by Group:** Combination means:
 - Group to which the enterprise will, after acquisition belong, have or would have:
 - in India, Assets < Rs. 4,000 crores **OR** Turnover < Rs. 12,000 crores; **OR**
 - in India or outside India, Assets < US\$ 2 Billion (of which ≤ Rs. 500 cr. must be in India) **OR** Turnover < US\$ 6 Billion (of which ≤ Rs. 1500 cr. must be in India)
4. **Acquiring Enterprise having similar Goods/ Services by a Group:** Same as (3)
5. **Merger of Enterprise:** Same as (1);
6. **Merger in Group Company:** Same as (3)

Combination Cases

- **Group:**
- It means:
 - two or more enterprises which, directly or indirectly, are in a position to:
 - a. exercise $\geq 26\%$ of voting rights in the other enterprise; **or**
 - b. appoint $> 50\%$ of the members of BOD in the other enterprise; **or**
 - c. control the management or affairs of the other enterprise

Combination Cases

- **Control:**
- It includes control of the affairs or management by:
 1. one or more enterprises, either jointly or singly, over another enterprise or group;
 2. one or more groups, either jointly or singly, over another group or enterprise

Combination Cases

- **Value of assets:**
- 1. The value of assets shall be determined by taking the **book value of the assets as shown, in the audited books of account of the enterprise;**
- 2. In the financial year immediately preceding the financial year in which the date of proposed merger falls, **as reduced by the amount of any depreciation**

MCA Notification (March 4, 2011)

- 'Group' exercising < 50% of voting rights in other enterprise exempted from the provisions of Section 5 for a period of 5 years;
- An Enterprise, whose control, shares, voting rights or assets are being acquired, exempted from the provisions of Section 5 Act for a period of 5 years, if either assets of the value of ≤ Rs. 250 crores in India or turnover of ≤ Rs. 750 crores in India

Regulation of Combinations [Section 6]

- Section 6(1):
 - prohibits any person or enterprise,
 - to enter into a combination,
 - **having an appreciable adverse effect,**
 - on competition within relevant market in India;
- **Combination, thus, altogether is not prohibited;**
- Person/ Enterprise to disclose details of combination to CCI;
- CCI to follow provisions of Section 29 (as to investigation of combinations), Section 30 (as to inquiry into disclosures) and Section 31 (as to CCI orders on certain combinations);
- Section 6 does not apply to share subscription or financing facility or any acquisition by a PFI, FII, Bank or VCF as a result of any covenant of loan agreement or investment agreement

Competition Fund [Section 51]

- Fund Administration with Committee of Commission;
- Committee members determined by Chairperson of CCI;
- Govt. Grants/ Fees recd under the Act/ Interest accrued on these, can be credited to the Fund;
- **Utilisation:**
 1. Salaries, allowances and other administrative expenses;
 2. Other expenses of CCI for discharging its functions;
 3. Other permitted objects

Competition Appellate Tribunal (Sec 53A)

- **CG shall by Notification** establish CAT;
- **CAT Headquarter to be at a place notified by CG;**
- **CAT Functions:**
 1. To **hear and dispose of appeals** against any direction issued or decision made or order passed by CCI;
 2. To **adjudicate on claim for compensation** that may arise from the findings of CCI or orders of the Appellate Tribunal in an appeal against any finding of the Commission and **pass orders for the recovery of compensation**

Accounts and Audit (Section 52)

- **CCI shall maintain proper accounts and other records and prepare an annual statement of accounts** in prescribed form;
- The **accounts shall be audited by C&AG**, at such intervals as may be specified;
- **C&AG and any other person** appointed by him, shall have the **same rights, privileges and authority as for audit of Government accounts**;
- **Accounts and Audit Report thereon** shall be forwarded annually to CG and that Government shall cause the same to **be laid before each House of Parliament**

Furnishing of Returns etc. to CG (Section 53)

- **CCI shall furnish to CG** at such time and in the prescribed form and manner, **such returns and statements in regard to any proposed or existing measures for promotion of competition advocacy**, creating awareness and imparting training about competition issues, as the CG may, from time to time, require.
- **CCI shall prepare once in every year, an annual report giving a true and full account of its activities** during the previous year and copies of the report shall be forwarded to the Central Government.
- **A copy of the report** received shall be **laid before each House of Parliament**

Other Topics

1. INQUIRY INTO CERTAIN AGREEMENTS AND DOMINANT POSITION OF ENTERPRISE (Section 19) = Para 17 of the Allied Laws Booklet;
2. ORDERS BY COMMISSION AFTER INQUIRY INTO AGREEMENTS OR ABUSE OF DOMINANT POSITION (Section 27) = Para 18 of the Allied Laws Booklet;
3. DIVISION OF ENTERPRISE ENJOYING DOMINANT POSITION (Section 28) = Para 19 of the Allied Laws Booklet;
4. INQUIRY INTO COMBINATION BY COMMISSION (Section 20) = Para 20 of the Allied Laws Booklet;
5. PROCEDURE FOR INVESTIGATION OF COMBINATION (Section 29) = Para 21 of the Allied Laws Booklet;
6. ORDERS OF COMMISSION ON CERTAIN COMBINATIONS (Section 31) = Para 22 of the Allied Laws Booklet;
7. ACTS TAKING PLACE OUTSIDE INDIA BUT HAVING AN EFFECT ON COMPETITION IN INDIA (Section 32) = Para 23 of the Allied Laws Booklet;
8. APPEARANCE BEFORE COMMISSION (Section 35) = Para 24 of the Allied Laws Booklet;
9. RECTIFICATION OF ORDERS (Section 38) = Para 25 of the Allied Laws Booklet
