



Chandrawat
& Partners



ANTITRUST AND COMPETITION SECTOR IN INDIA

AN EXTENSIVE GUIDE

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OVERVIEW

The Competition Act of 2002 was enacted by the Parliament of India on January 13, 2003, signifying the legislative repeal of the Monopolies and Restrictive Trade Practices Act of 1969 (“MRTP”). Its provisions were subsequently enforced and came into effect on March 31st, 2003. Notably, the Competition Act of 2002 underwent two subsequent amendments following its enactment, namely the Competition (Amendment) Act of 2007 and the Competition (Amendment) Act of 2009. These amendments were implemented as a direct response to India's concerted efforts towards embracing globalization and fostering economic liberalization.

The overarching objective of the Act is to regulate and mitigate the occurrence of anti-competitive conduct exhibited by firms or companies, which detrimentally impact competition within India's market. By doing so, the Act endeavors to proactively cultivate and sustain a competitive marketplace, while concurrently safeguarding the interests of consumers and preserving the principles of market freedom within our nation.

The Competition Act of 2002 was enacted in India to fulfill two main objectives: regulating anti-competitive conduct and aligning with the agreements of the World Trade Organization (“WTO”). This legislation establishes the Competition Commission of India (“CCI”) as the regulatory authority responsible for preventing and controlling anti-competitive behavior within the country. Additionally, it establishes the Competition Appellate Tribunal (“COMPAT”), a quasi-judicial body entrusted with hearing and adjudicating appeals against directives or decisions issued by the CCI.

INDIAN ECONOMIC OVERVIEW

Competition law, often known as antitrust or anti-monopoly legislation, is critical in creating and sustaining a competitive market economy. It is intended to ensure fair competition, discourage anti-competitive behavior and protect market freedom. Competition law aims to provide a level playing field for enterprises, fosters innovation, improves consumer welfare and promotes economic efficiency by regulating and correcting anti-competitive behavior such as monopolies, cartels and unfair trade practices.

Effective competition law enforcement aids in the prevention of market power abuse, the protection of consumer interests, the encouragement of market entrance and competition and the stimulation of economic growth. It encourages a competitive atmosphere that encourages efficiency, innovation and choice. Furthermore, competition legislation can have ramifications for other elements of the economy, including price, market structure, investment and overall economic performance.

Market competition may be defined as rivalry between firms which results in customers benefit. It has now become an essential feature of the economy. The economic agent's motive might be individual, yet the outcome of the competition benefits society. Consumers, businesses and the economy as a whole benefit from competition. Competition provides customers with a wide range of options at lower costs, it promotes development and productivity and it results in the most efficient use of resources.



GOVERNING RULES AND LAWS

The Indian Parliament passed the Competition Act in 2002 to regulate corporations' anti-competitive activities in the Indian market. It was created to prevent actions that have a Appreciable Adverse Effect on Competition ("AAEC"). The Competition Act of 2002 aims to create and maintain an open, fair, competitive and innovative environment that protects consumer's interest and foster long-term economic success in the country.

The Competition Act is the primary legislation that regulates and promotes fair competition in India. It replaces the former Monopolies and Restrictive Trade Practices Act, of 1969 and establishes the Competition Commission of India ("CCI") as the regulatory authority responsible for enforcing competition laws. According to the Act, ("MRTP") has become obsolete and redundant due to global economic changes. As a result, there is a need to shift from 'curtailing monopolies' to 'supporting competition'.

The Competition Act aims to prevent anti-competitive practices, promote and sustain competition in the market, protect the interest of consumers and ensure freedom of trade and fair competition. It covers a wide range of activities, including anti-competitive agreements, abuse of dominant positions, regulation of combinations (mergers and acquisitions) and competition advocacy.

Under the Competition Act, the CCI has the power to investigate and take appropriate action against anti-competitive practices. It can initiate inquiries, impose penalties, issue cease-and-desist orders and recommend structural remedies to address anti-competitive conduct. The Act also provides for the establishment of the Competition Appellate Tribunal ("COMPAT"), which has the authority to hear and dispose of appeals against the orders of the ("CCI").

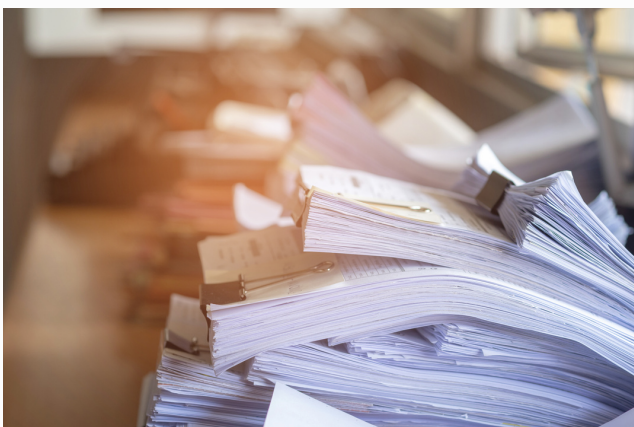
The Competition Act has undergone amendments over the years to strengthen competition regulation in India. These amendments have expanded the scope of the Act, introduced new provisions and enhanced the powers of the CCI to ensure effective enforcement of competition law in the country.

FUNDAMENTAL ELEMENTS OF THE COMPETITION ACT

Anti-competitive agreements: agreements or arrangements between two or more companies that aim to restrict competition within a market. These agreements are typically formed to reduce or eliminate competition, leading to higher prices, limited consumer choices and hindered innovation. Such agreements are generally considered illegal and antitrust laws exist in many jurisdictions to prohibit and penalize these practices. Examples of anti-competitive agreements include price-fixing, where competitors agree to set prices at a certain level, creating an artificial market price. Another example is market allocation, where companies agree to divide markets or customers among themselves, limiting competition in specific regions or sectors. Similarly, bid-rigging occurs when competitors collaborate to determine the winner of a bidding process, thereby manipulating the competitive nature of the process.

Dominance-abuse prevention: Any company that abuses its dominant position will face penalties. The key focus of dominance-abuse prevention is to challenge power imbalances and dismantle systems of oppression. It recognizes that dominance and abuse can manifest in various forms, including physical, emotional, sexual and financial abuse, as well as coercive control and manipulation. Dominance-abuse prevention seeks to foster safe, inclusive and equitable spaces for everyone by addressing these issues.

Anti-cartels: A cartel is an agreement between competing firms or businesses to coordinate their actions and manipulate market conditions to their advantage, often through price-fixing, bid-rigging, market allocation and other anti-competitive practices. The primary objective of anti-cartel efforts is to promote fair competition, protect consumer interests and ensure market efficiency. Cartels typically lead to higher prices, reduced product choices and decreased innovation, resulting in negative consequences for consumers and the overall economy.



Mergers and acquisitions: Mergers and acquisitions will be approved by the Commission only if they do not damage market competition. They evaluate the potential effects of the merger or acquisition on various factors, including market concentration, consumer choice, innovation and pricing. If a transaction is found to significantly impede competition, it may be blocked or subjected to conditions that address the anti-competitive concerns.

The Commission's approval process involves a thorough analysis of the potential impact on market competition. This analysis may consider factors such as the market shares of the merging companies, the likelihood of barriers to entry for new competitors, the level of concentration in the relevant market and the potential effects on pricing and consumer welfare. The Commission also takes into account the specific market dynamics, industry trends and any potential benefits that the merger or acquisition may bring.

To enhance its decision-making process, the Commission employs various mechanisms to gather the necessary information and insights. These mechanisms include requesting supplementary data from the merging entities, conducting comprehensive market studies and soliciting input from pertinent stakeholders such as competitors, customers and industry experts. The overarching objective is to obtain a comprehensive and nuanced understanding of the potential impact on competition before making a decision.

Notifying the Competition Commission of India: To promote transparency and prevent misunderstandings in business dealings, firms or individuals must notify the Competition Commission of India ("CCI") when engaging in activities or entering into arrangements that have the potential to undermine market competition. This notification requirement serves as a means to ensure compliance with competition laws and regulations as well as facilitate the ("CCI")'s role in maintaining fair and competitive markets.

The notification process typically involves providing detailed information about the proposed activity or arrangement, including its scope, purpose, participants and expected effects on competition. This information allows the ("CCI") to conduct a thorough evaluation and determine whether the proposed action raises any concerns related to anti-competitive behavior or practices.

By notifying the ("CCI") in advance, businesses can ensure compliance with the law and mitigate the risk of engaging in activities that may harm competition. It also provides an opportunity for the ("CCI") to assess potential risks and take appropriate measures, such as imposing conditions or even blocking the proposed action, to safeguard market competition.

Furthermore, the notification requirement helps establish a culture of transparency and accountability in business practices. It encourages firms and individuals to be proactive in assessing the potential impact of their actions on competition and seek guidance from the regulatory authority when necessary. This farsighted approach promotes a healthy competitive environment and helps prevent anti-competitive practices from taking root.

DISPUTE RESOLUTION

In India, competition law disputes are resolved through a systematic procedure overseen largely by the Competition Commission of India (“CCI”) and the Competition Appellate Tribunal (“COMPAT”). The following is an outline of the important steps in the dispute resolution process:

FILLING

Complaints can be filed by any individual, consumer, or corporate organization claiming anti-competitive behavior with the (“CCI”). The complaint should include pertinent data and proof to back up the charges.

PRELIMINARY EXAMINATION

After receiving a complaint, the (“CCI”) conducts a preliminary examination to assess whether a prima facie case of anti-competitive behavior exists. If a prima facie case is established, the (“CCI”) conducts a thorough investigation.

INVESTIGATION

The (“CCI”) undertakes an extensive investigation, gathering evidence, holding hearings and scrutinizing pertinent documents. It may also request more information from the parties involved or from other stakeholders.

SHOW CAUSE NOTICE

If the (“CCI”) discovers evidence of anti-competitive behavior following an investigation, it issues show cause notice to the parties involved, describing the alleged breaches and giving them the chance to submit their defense.

HEARING AND DECISION

The ("CCI") holds a hearing at which the parties submit their arguments and evidence. The ("CCI") makes a conclusion and issues an order based on the results of the hearing and inquiry. The order may contain sanctions, remedies or orders to stop anti-competitive behavior.

APPEAL

Parties that are dissatisfied with the ("CCI")'s decision may submit an appeal to the competition appellate tribunal ("COMPAT") within the period specified. The ("COMPAT") is a quasi-judicial authority that hears and decides on CCI order appeals.

FURTHER APPEALS

If parties are unsatisfied with the ("COMPAT")'s ruling, they can appeal to the competent appellate body, which is now the National Company Law Appellate Tribunal ("NCLAT"). However, it is worth noting that recent suggestions have been made to replace the "COMPAT" and ("NCLAT") with a new appeal system.

JUDICIAL REVIEW

The ultimate alternative accessible to parties is to seek judicial review by filing a writ petition contesting the judgement of the appellate body before the relevant High Court or the Supreme Court of India.



HOW WE CAN HELP?

Our professionals can provide valuable expertise and support to clients in navigating complex competition issues in the following ways:

1.Competition Policy Analysis: Our team provides clients with in-depth analysis and insights into competition policies and regulatory frameworks. Help them to understand the implications of new legislation or amendments to existing laws and advise on strategies to align their business practices accordingly.

2.Merger and Acquisition Support: Our professionals assist clients in evaluating the potential antitrust implications of mergers, acquisitions and joint ventures. Conduct competition assessments, prepare required filings, and engage in pre-merger consultations with relevant regulatory authorities to ensure compliance and mitigate potential risks.

3.Market Research and Analysis: Our experts conduct market research and analysis to help clients understand market dynamics, competitive landscapes and market concentration. Identify potential anti-competitive practices and advise on strategies to enhance market competition and prevent anti-competitive behavior.

4.Competition Advocacy: Our team serves as advocates for clients during engagements with competition authorities, representing their interests throughout investigations, inquiries and enforcement proceedings. Provide expert advice and assist in preparing responses to inquiries or allegations of anti-competitive behavior.

SERVING CLIENTS WORLDWIDE



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