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**Review Document**

# THE COMPETITION ACT, 2002

**Author- Ms. Randita Paul**

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## ENACTMENT OF THE ACT

The Competition Act, 2002 was enacted by the Parliament of India and also governed by it. Earlier there was an Act naming The Monopolies and Restrictive Trade Policies Act, 1969, which was replaced by The Competition Act, 2002. This Act extends to the whole of India.

## OBJECTIVE OF THE ACT

The Competition Act, 2002, was enacted with the object of controlling competition in the Act. A Commission was established to prevent the adverse effect on competition and to promote and sustain competition in markets. Ensuring the freedom to carry on trade by any other participants in the market and any other things were kept in mind while framing this Act. The interests of the consumers are also protected under this Act.

## IMPORTANT DEFINITIONS UNDER THE ACT

- **Acquisition:** Section 2(a) of the Act, defines acquisition. It means acquiring or agreeing to acquire, either directly or indirectly, the shares, voting rights or assets of any enterprise or the control over management or control over the assets of any enterprise.
- **Cartel:** According to Section 2(c) of the Act, cartel means an association or a group of people who are mainly producers, sellers, distributors, traders or service providers. They make an agreement among themselves and limit, control or attempt to control the production, distribution, sale or price of goods and services in the market, or trade in goods or provision of services.
- **Dominant position:** *Explanation* (a) to Section 4 of the Act defines this. Every market has a person or an enterprise who rules and dominates the entire market. They enjoy a position in the market because of their strength. They operate independently in the market despite of the competitive forces which are prevailing in the market. Their strength affects the other competitors in the market because in most of the cases the consumers are also more prone to them. This does not allow the other competitors to prevail in the market in a fair manner.
- **Predatory pricing:** It is defined under the explanation (b) of Section 4 of the Act. It means that often in order to remove competition in the market, goods or services are sold at a very low price. The price at which the goods or services are sold are much

below the cost of production of such goods. This is done because it reduces and eliminates competitors and competition in the market.

- **Rule of reason:** Rule of reason is basically the logic behind the conclusion for any order. An activity may be challenged on the ground of business justification, intent of competition, impact on the market, competitive impact and the effect on the consumers. This is known as Rule of reason.

## SALIENT FEATURES OF THE ACT

### ➢ ANTI-COMPETITIVE AGREEMENTS

Section 3 of the Act states that the agreements which are not recognized by law and are hence void. Persons or enterprises or association of person or enterprises, including cartel, are not entitled to enter into any agreements which are related to the production, supply, distribution, storage, acquisition or control of goods or provisions of services. These are likely to create an "appreciable adverse impact" on the competition in India. These kinds of agreements are void in nature. Agreements which cause an appreciable adverse impact on the markets of India are as follows:

- Determining the sale or purchasing price, either directly or indirectly.
- Limit or control production, supply, markets, technical development, investment or provision of services.
- By allocating the geographical area of the market and sharing the market and source of production of goods and services from the market, or the types of goods and services in the market and sharing the number of consumers in the market.
- Bid rigging or collusive bidding, either directly or indirectly.

All this amounts to anti-competitive agreement. It is considered to have an adverse effect in the competition in the market.

### ➢ TYPES OF AGREEMENT

There are two types of agreement. They are:

- **Horizontal Agreement:** When two or more business competitors operate in the same market, an agreement of co-operation is formed between them. It is called horizontal agreement.

- **Vertical Agreement:** Like businesses, there are also firms operating at different levels of supply chain. An agreement for co-operation between different firms is termed as vertical agreement.

## ABUSE OF DOMINANT POSITION

Section 4 of the Act speaks about the abuse of dominant position. It states that an enterprise or any group of people should not abuse its dominant position. If an enterprise or any group imposes unfair or discriminatory conditions or price in purchase or sale of goods or service either directly or indirectly abuses the dominant position. If an enterprise restricts production or technical development or creates any sort of hindrances or barriers for new operators to enter into the market also abuses dominant positions. There must be determination of dominance in the market in order to abuse dominant positions according to the provisions of this section. This kind of dominant position creates monopoly in the market. The enterprises operate independently and other competitors in the market are affected by this.

## COMBINATIONS

Section 5 of the Act deals with combinations. It states that this Act which regulates the operation of business activities of combinations contemplates acquisition, mergers or amalgamations. The Commission scrutinizes the combination which exceeds the threshold limits of assets or turnover which are mentioned in the terms of the Act which causes an adverse effect on the competition in the market in India.

## COMPETITION COMMISSION OF INDIA



Section 7 and 8 of the Act deals with the establishment and composition of the Competition Commission in India. Section 7 of the Act states that the Competition Commission is an independent corporate body. It has a separate legal entity and possesses a common seal of its own. It has the authority to enter into any contract and can sue and be sued in its own name. It is a perpetual succession which means that the death, retirement or insolvency of any members of the Commission does not dissolve the Commission. The Head of the Office will have to move in different places at different times if the Government decides so. The Office may be set up at any place outside India. Section 8 of the Act states that the Central Government will appoint two to six members for the Commission. It shall also consist of a Chairperson. The Chairpersons or other members are permanent members of the

Commission. Section 10 of the Act states that the term of office of the Chairperson is 5 years.

Chapter IV of the Act imparts the duties, powers and functions of the Commission. The duty of the Chairperson are as follows:

i. To eliminate practices having adverse effect on the competition.
ii. To promote and sustain competition.
iii. To inquire into certain unfair agreements and dominant position of the enterprises.
iv. To inquire into the combinations which takes place in and also outside India.
v. To protect the interests of the consumers.
vi. To ensure freedom of trade in the markets of India.
vii. To give opinion on the issues of competition.
viii. To undertake competition advocacy.
ix. To create public awareness.
x. To impart training on competition law and competition issues.

If any of these following circumstances happen to exist, then it will have an adverse effect in the competition of India.

i. When any agreement is executed outside India.
ii. When any contracting party resides outside India.
iii. When any enterprise which abuses the dominant position is residing outside India.
iv. When a combination is established outside India.
v. When any party to a combination is residing outside India.
vi. When any other matter or practice or action is arising out of such agreement or dominant position or combination is outside India.

The Competition Commission is empowered to enter into any Memorandum of Understanding to deal with any of these issues broadly.

## ➢ DUTIES OF THE DIRECTOR GENERAL

Section 41 of the Act empowers the Director General to investigate regarding any contravention by orders of the Commission.

## ➢ PENALTY

Section 43 imposes penalty for failure to comply with the directions of the Commission or the Director General. If any person who commits an offence under Section 36(2) and 36(4) and Section 41(2) without any reason, then they shall be punishable with a fine up to Rs. 1 lakh for each day during which such non-compliance is likely to occur, subject to a maximum of Rs. 10 crores. This penalty shall be determined by the Commission. Failure to pay the penalty imposed under this section or non-compliance with the direction orders of the Commission, shall lead to imprisonment for up to 3 years or with a fine of Rs. 25 crores or may be with both.

Section 43A imposes penalty for non-furnishing of material information on combination. It states that in case any enterprise or person fails to give the material information under Section 6(2), then they must be penalized with about 1% of the total turnover or the assets of the person or the enterprise, whichever is higher as decided by the Commission.

Section 44 of the Act imposes penalty for making false statement or omission of furnishing material information. It provides that in case a person or a party to a combination misleads the Commission by making any false statement knowingly or willfully omits any material information and deems it to be immaterial, such person or party may be penalized with a minimum of Rs. 50 lakhs and a maximum of Rs. 1 crore.

Section 45 of the Act imposes penalty for committing any offence which is related to the furnishing of such material information. If any person commits the same offences as in Section 44 and also alters, suppresses or destroys any document, willfully which should have been furnished, then such person may be penalized up to Rs. 1 crore as per the direction of the Commission.



## CONCLUSION

The Competition Act, 2002, mainly deals with the prohibition of anti-competitive agreements, the prohibition of abuse of dominant position, the regulation of combinations like mergers and acquisitions and amalgamation. It also covers the establishment of Competition Commission of India and the duties, powers and functions of such commission. The Competition Commission of India (CCI) has rightly penalized the wrong doers and offenders under this Act. The Commission is exercising its duties in the best possible manner. By this the rights and interests of the consumers are also protected and this has given rise to fair competition in the Indian market in the recent years.

**REFERENCES**


- *https://www.indiacode.nic.in/handle/123456789/2010?view_type=browse&sam_handle=123456789/1362*
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# About the Author

I am Randita Paul from Surendranath Law College, University of Calcutta. I had got a marvellous opportunity for one-month internship under LegalEagle Law Forum. This internship was very enriching for me. I had gathered a lot of experience. An internship like this was very challenging. Reviewing the Bare Acts is tough as well as knowledgeable. I had to go through the Bare Act thoroughly and review the same. This internship was a supplement to my academic education. It allowed me to work with experts in the organisation. An internship like this has bridged the gap between my academic knowledge and practical field. I have gained an outstanding experience that will help me in my future for the real world.