

FREQUENTLY ASKED QUESTIONS ON COMPETITION LAW IN INDIA



Globally, a competitive market is acknowledged as the best means of ensuring that consumers have access to the broadest range of services at the most competitive prices. Competition Laws are designed to promote and sustain such competitive market by removing market imperfections through appropriate regulations.

This primer deals with the principal laws and practices to regulate and promote competition in India.

1. What is a competitive market?

It is a business environment where different companies selling same or similar products have to compete with one another solely on the merits of their goods and services.

2. What is an uncompetitive market?

It is a business environment where certain companies receive special treatment and are protected from competition.

3. What are the major legislations in India to promote and sustain competition in markets?

In India, Monopolies and Restrictive Trade Practices Act, 1969 (MRTP) was the first legislation to restrain abuse of market power. In 2009, MRTP was replaced by the Competition Act, 2002 (Act). The Act is applicable to the entire territory of India.

4. What is the Competition Commission of India?

The Competition Commission of India (CCI) is a quasi-judicial body established under the Act which is responsible for enforcing the provisions of the Act.

5. What are the key focus areas of the Act?

The Act focuses on the following four areas, prohibiting anti-competitive agreements; prohibiting abuse of dominance by a firm; regulating certain combinations; and competition advocacy and reference.

6. What is an 'Agreement' under the Act?

An "agreement" includes any arrangement or understanding (whether or not it is written or executed) or concerted action entered into between parties.

7. What is an anti-competitive agreement?

An anti-competitive agreement is an agreement having appreciable adverse effect on competition in India. Such agreements are prohibited and void under the Act. Anti-competitive agreements include, but are not limited to:

- (i) agreement to limit production and/or supply;
- (ii) agreement to allocate markets;
- (iii) agreement to fix price;
- (iv) bid rigging or collusive bidding;
- (v) conditional purchase/ sale (tie-in arrangement);
- (vi) exclusive supply / distribution arrangement;
- (vii) resale price maintenance; and
- (viii) refusal to deal.



8. What are cartels?

Cartels are agreements between enterprises (including a person, a government department and association of persons / enterprises) not to compete on price, product (including goods and services) or customers. The objective of a cartel is to raise price above competitive levels, resulting in injury to consumers and to the economy. Such agreements being anti-competitive are prohibited and void by the Act.

9. What is 'Dominant' position?

Dominance refers to a position of strength which enables an enterprise to operate independently of competitive forces or being in a position to affect its competitors or consumers or the market in its favour.

10. What constitutes as abuse of dominant position?

Abuse of dominant position impedes fair competition between firms, exploits consumers and makes it difficult for the other players to compete with the dominant undertaking on merit. Abuse of dominant position includes:

- (i) imposing unfair conditions or price;
- (ii) limiting production/market or technical development;
- (iii) creating entry barriers or denying market access;
- (iv) applying dissimilar conditions to similar transactions;



- (v) using dominant position in one market to gain entry in another market.

11. What factors are considered by CCI while inquiring whether an enterprise enjoys a dominant position?

The CCI gives due regard to several factors including but not limited to:

- (i) market structure, size and share of relevant enterprise;
- (ii) size and resources of relevant enterprise and its competitors;
- (iii) whether such position is a result of any statute or by virtue of the enterprise being a Government company or a public sector undertaking or otherwise;
- (iv) any advantages the enterprise has over its competitors;
- (v) social obligations and social costs; or
- (vi) entry 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 service for consumers.



12. In which event the CCI may initiate inquiry into anti-competitive agreements/ abuse of dominance practices?

The CCI may initiate an inquiry of any anti-competitive agreements / abuse of dominant practices:

- (i) on its own, on the basis of information and knowledge in its possession;
- (ii) on the receipt of any such relevant information; and
- (iii) on receipt of a reference from the Central Government or a State Government or a statutory authority.

13. Who can provide information to CCI relating anti-competitive agreements / abuse of dominance practices?

Any person including, consumer, consumer association or trade association can provide such information to the CCI.

14. What happens on initiation of inquiry?

After initiation of inquiry, if the CCI is of the opinion that there is a possible case, it will direct the Director General (DG), appointed under the Act, to investigate the matter and report the findings to the CCI.

15. What does the CCI do on receipt of investigation report from the DG?

After receipt of the investigation report, the CCI will forward it to the concerned parties and statutory authority seeking their objections. After considering the objections received, if any, CCI may accept the report of the DG, or require further investigation to be made by the DG or make inquiries itself. The CCI will hear all the concerned parties and determine whether it is a case of anti-competitive agreement or abuse of dominant position or both and pass appropriate orders.

16. What orders can the CCI pass in case of anti-competitive agreement or abuse of dominant position?

During the course of inquiry, the CCI can pass interim order restraining a party from continuing with anti- competitive agreement or abuse of dominant position. In case of anti-competitive agreement or abuse of dominant position, the CCI can impose a penalty of up to 10% of the average turn over for the last 3 preceding financial years of the entities indulging in such practices. In case of a cartel, CCI can impose a penalty on each member of the cartel, of up to 3 times its profit for each year of the continuance of such agreement or up to 10% of its turnover for each year of continuance of such agreement, whichever is higher.

After the inquiry, the CCI may direct the relevant entities to discontinue and not to re-enter anti-competitive agreement or abuse its dominant position. The CCI may also direct modification of such agreement.

The CCI may direct division of enterprise in case it enjoys dominant position to ensure that such enterprise does not abuse its dominant position.

17. What is combination?

Combinations mean mergers, amalgamations of companies or acquisitions of control, shares, voting rights or assets of one company by another company or group. Good combinations lead to a more efficient business which passes on some of those efficiency savings to its customers. On the other hand, bad mergers lead to a situation where one or more businesses have the power to raise their prices on their customers by substantially reducing competition.

18. What are the provisions related to Combinations in the Act?

The Act provides for mandatory filing of notice with CCI regarding the combinations that meet the asset or turn over threshold. The CCI has the power to take action on its own against parties to the mergers which do not comply with the mandatory filing requirements. In such cases, the transaction may be rendered void, if the CCI determines that the combination has an

Two enterprises belong to a "group" if one is in position to exercise at least 26% voting rights or appoint at least 50% of the directors or controls the management or affairs in the other.

19. What is De minimis exemption?

De minimis exemption is a small target exemption granted to certain combinations from the mandatory notice filing and approval with CCI. This exemption is granted to those combinations where the target enterprise holds assets not more than INR 3.5 billion or has turnover of not more than INR10 billion in India.

20. What is pre-filing consultation?

Parties intending to file a notice with the CCI are encouraged to approach the CCI for an in formal pre-filing consultation in case of any doubts / queries. However, the advice given during pre-filing consultation is non-binding and may not necessarily reflect the views of the CCI.

21. What is the time line for CCI to decide on combination filing?

The Act provides a timeline of 210 days to the CCI to take a decision on the combination filing. Filing shall be deemed to be approved if no order is passed by the CCI at the end of 210 days.



22. What is the procedure for investigation of combinations?

The CCI has to form an opinion within 30 days as to whether the combination is likely to cause an appreciable adverse effect on competition in India. If yes, then CCI will issue a show cause notice to the parties as to why investigation in respect of such combination should not be conducted. On considering the response of the parties, the CCI may publish details of the combination and invite objections from the public / any stakeholder likely to be affected by the combination. After hearing all parties, the CCI may:

- (i) approve the combination if there is no likelihood of appreciable adverse effect on competition; or
- (ii) approve with modifications to remedy the appreciable adverse effect on competition, or
- (iii) not approve, in case of sufficient likelihood of appreciable adverse effect on competition that cannot be addressed through modifications.

23. What is the Green Channel route for approval of combination?

The Green Channel is a route for automatic approval of the CCI for specific combinations. Combinations qualifying for the Green Channel are deemed to be approved on the date of receipt of the acknowledgment of filing of the notice with the CCI.

24. What is the eligibility criterion for Green Channel route of approval?

For availing the Green Channel, the transacting parties should not have any

- (i) Horizontal overlaps (i.e., they must not be already producing any similar or substitutable products/services); or
- (ii) Vertical overlaps (i.e., they must not be engaged in activities at different stage or level of the production chain); or
- (iii) Complementary overlaps (i.e., products/services when combined and used together enhance the value of the combined good/service).

Further, the overlaps have to be checked not only between the parties to the combination and their respective group entities but also with any entity in which they may, directly or indirectly, hold shares and/or control.

25. What are non-compete clauses?

Non-compete clauses (NCC) are terms in an agreement which prevents one or both the contracting parties from competing with the other party in certain specified ways. The justification for NCC is that they help the acquiring company to derive full worth of the target business being acquired and gaining protection from the vendor with regard to the competition in the relevant market.

26. What are the provisions with respect to NCC in Competition Law in India?

Parties to a combination are required to furnish information on NCC to the CCI. While reviewing such provision in the agreement, the CCI generally looks at the product, its geographical market and duration of the applicability of NCC to come to a finding whether the NCC is anti-competitive or not.

27. What is competition advocacy?

Competition advocacy means those activities which are conducted to promote a competitive environment for economic activities. The Act mandates the CCI to undertake advocacy for promoting competition.



28. What initiatives have been undertaken by the CCI for promoting competition and creating awareness of Competition Law?

CCI has taken various initiatives simultaneously with Central and State governments, as follows:

- (i) National and State level workshops and seminars;
- (ii) Special lectures organised for CCI officers;
- (iii) Publication of papers and studies published for competition advocacy and for creating awareness of competition issues;
- (iv) Capacity building of stakeholders or for CCI officials to participate in competition regulatory process;
- (v) Competition related sectoral/ regulatory impact assessment; market studies and research projects carried out by the commission; and
- (vi) Press conferences and press releases.



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