

# COMPETITION ACT, 2002.

It consists of 66 sections. These 66 sections are divided into 9 chapters.

1) Preliminary- ss. 1,2

2) Prohibition of certain agreements, abuse of dominant position and regulation of combinations- ss.3 to 6

3) Competition Commission of India- ss. 7 to 17

- 4) Duties, powers and functions of commission- ss. 18 to 40
- 5) Duties of Director General – ss. 41.
- 6) Penalties –ss. 42 to 48.
- 7) Competition Advocacy – ss. 49
- 8) Finance, Accounts and Audit-ss. 50 to 53
- 9) Miscellaneous –ss. 54 to 66.

- 1) U.K.Competition Act, 1998
- 2) Enterprises Act, 2002.
- 3) Enterprises and Regulation Reform Act, 2013
- 4) Robinson-Patman Act, 1936.
- 5) SHERMAN Anti Trust Act, 1890
- 6) CLAYTON'S ACT, 1914
- 7) Federal Trade Commission Act, 1914.

# OBJECTS OF THE ACT:-

Establishment of a CCI to:-

- a) Prevent practices having adverse effect on competition
- b) to promote and sustain competition in markets
- c) to protect the interests of consumers
- d) to ensure freedom of trade carried on by other participants in markets in India.

The Act proposes to control aspects of

- a) anti-competitive agreements,
- b) abuse of dominant position and
- c) regulation of competition.

The main purpose of the Act is to ensure free and fair competition in market.

## BACKGROUND:-

Monopolies and Restrictive Trade Practices Act (MRTP) was passed in 1969 to ensure that operation of economic system does not result in the concentration of economic power to common detriment.

The Act also provided for a) control of monopolies

and b) prohibition of i) monopolistic  
and ii) restrictive trade practices.

Subsequently, provisions in respect of  
iii) Unfair Trade Practices were  
inserted w.e.f.1-8-1984.

The Act is designed for the following purposes:-

- a) Prohibition of anti-competitive agreements
- b) Prohibition of abuse of dominant position
- c) Regulation of 'Combinations'.



On receipt of complaint or reference, CCI can issue order to Director General to investigate. His report will then be considered by CCI. The CCI will hear the concerned parties and then pass necessary orders. CCI is empowered to recommend division of dominant enterprises. It can order de-merger

in case of merger. Suitable powers are given to CCI and penalties are prescribed to ensure that orders of commission are disobeyed. Jurisdiction of Civil Court is barred and only appeals to Supreme Court only if substantial question of law is involved.

**NOTIFICATION:-** The sections relating to definition and formation of CCI have been made effective w.e.f. 31.3.03.

The Supreme Court had expressed displeasure over these provisions. CCI was established with head office at New Delhi vide notification No. 1198(E) dt. 14-10-03.

The Chairman could not assume office due to objection raised at the time of hearing before SC in a public interest litigation. ( Brahm Dutt v. UOI –(2005) 57 SCL 429 –SC – 3 member bench).

Basically there are two objections.

a) Chairman of CCI need not be a judicial person. Normally, CJI heads committee selecting Chairman of

Quasi-judicial body. In this case, Judiciary has been completely bypassed in selection and appointment of Chairman of Commission.

b) Section 39 of the Act provides that orders passed by CCI can be sent to jurisdictional High Court or the principal civil court for enforcement.

This implies that High Court is subordinate to CCI.

Subsequently, Government filed reply and agreed to make certain changes in law. So the SC held that the Government can go ahead with formation of CCI.

S.8. COMPOSITION OF CCI:-

S.9. SELECTION OF  
CHAIRPERSON AND OTHER  
MEMBERS.

INTERPRETATION CLAUSE:-

S.2(a). 'Acquisition

S.2(b). Agreement

S.2©. Cartel

S.2(f). Consumer:

S.2(h). Enterprise.

S.2(l). Person.(imp)

S.2(o). Price.

S.2®. Relevant market.

S.2(s). Relevant geographic market.

S.2(t). Relevant product market.

S.2(u). Service.

S.2(v). Share



S.2(x). Trade.

S.2(y) Turnover

## CHAPTER II

PROHIBITION OF CERTAIN  
AGREEMENTS, ABUSE OF  
DOMINANT POSITION AND  
REGULATION OF  
COMBINATIONS.

# MARKET STRUCTURES AND TYPES OF COMPETITION

## DEFINITION OF MARKET:-

Market is defined as a place or point at which buyers and sellers negotiate for exchange of well-defined products or services. Market is said to exist wherever there is a potential for trade.

# COMPETITIVE MARKET

## SITUATIONS:-

## TYPES OF COMPETITION:-

Based on the degree of competition, markets can be divided into perfect markets and imperfect markets. Perfect competition is said to exist when certain conditions are fulfilled. These conditions are ideal.

Ex:- Financial markets and agricultural products.

## PERFECT COMPETITION:-

The following are the features of perfect competition:-

- a) large number of buyers and sellers
- b) Homogeneous products or services
- c) Freedom to enter or exist the market

d) Perfect information available to buyers and sellers

e) Perfect mobility of factors of production

f) Each firm is a price taker

In such a market, no single buyer or seller play a significant role in determining the price. In other words, the price is determined by the industry

as a whole, which comprises both buyers and sellers.

## IMPERFECT COMPETITION:-

Competition is said to be imperfect when it is not perfect. Based on the number of buyers and sellers, imperfect markets are classified as follows.

“POLY” REFERS TO SELLER AND  
“PSONY” MEANS BUYER.

## A) MONOPOLY:-

Monopoly market is said to exist when there is only one seller. An extreme version of an imperfect market is monopoly. Here a single seller completely controls the entire industry.

## B) MONOPOLISTIC COMPETITION:-

When a large number of sellers produce differentiated products, monopolistic competition is said to exist. A Product is said to be differentiated when its important features vary.

For cameras, the important features include zoom lens, focal length,



focal length, memory, size of camera, flash, safety, digital day and date display, the overall picture quality and so on. Products with better features are differentiated from the others and can be sold at higher prices. Yashica, Nikon and Kodak are some of the leading players, among the many, in the market.

As in the case of perfect competition, there are many sellers but none of has a large share of the market. Each seller has a limited monopoly role as a far as his product is concerned. The extent of control over price depends upon the degree to which a firm can differentiate its product. The greater the degree of product differentiation, the more its

power to control the price.

### C) DUOPOLY:-

Duopoly is said to exist when there are two sellers. A soft drink market with two companies such as Pepsi and coke is called duopoly. Es.:- Mahanagar Telephones Nigam limited (MTNL) and Videsh Sanchar Nigam Limited (VSNL).

**D) OLIGOPOLY:-** A market with a few sellers, each having a significant share, is said to be an oligopoly.

Oligopoly may be homogenous oligopoly normally found in the case of agricultural products. Ex: Car manufacturing companies and newspapers.

**E) MONOPSONY:-** Monopsony market is said to exist when there is only one buyer . Ex:- FCI

**F) DUOPSONY:-** It is said to exist when there are two buyers.

**G) OLIGOPSONY:-** It is said to exist when there are a few buyers. There are a few newspaper publishing companies in India and all these buy news print

from the Government of India.

### S.3. ANTI-COMPETITIVE AGREEMENTS VOID:-

S.3(1). No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or

control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.

S.3(2). Any agreement entered into in contravention of the provisions contained in section 3(1) shall be void.

S.3(3). Presumed anti-competitive agreements is any agreement which-

- a) directly or indirectly determines purchase or sale prices
- b) Limits or controls production, supply, technical development, investment or provision of services
- c) 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

d) directly or indirectly results in bid rigging or collusive bidding.

S.3(4). Any agreement amongst enterprises or 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 services, including :-

- a) tie-in arrangement;
- b) exclusive supply agreement;
- c) exclusive distribution agreement;
- d) refusal to deal;
- e) re-sale price maintenance, shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on

competition in India.

Explanation:- For the purposes of this sub-section,-

a) “tie-in arrangement” includes any agreement requiring a purchases of goods, as a condition of such purchase, to purchase some other goods;

- 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;
- 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;

d) “refusal to deal” includes any agreement which restricts, 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;

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 prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

**AGREEMENTS NOT ANTI-COMEPTITIVE:-** Following are not anti-competitive.

**S.3(5)(i):- AGREEMENTS**

**PERMITTED BY LAW:-** Agreements permitted by law cannot be termed as 'anti-competitive'. Hence, right of any person to restrain any infringement of , or to impose reasonable conditions, as



may be necessary for protecting any of his rights which have been or may be conferred upon him under following Acts will not be held as Anti-Competitive.

a) The Copyright Act, 1957

b) The Patents Act, 1970

c) The Trade and Merchandise Marks Act, 1958 or the Trade marks Act, 1999

e) The Designs Act, 2000

f) The Semi-conductor Integrated  
Circuits layout-design Act, 2000

S.3(5) (ii). **RIGHT FOR EXCLUSIVE**

**EXPORT:-** The right of any person to

export goods from India to the extent to

which the agreement relates exclusively

to the production, supply, distribution

or control of goods or provision of

services for such export will not be held  
as anti-competitive.

This section prohibits the anti-competitive agreements and the section is based on the recommendation of the “Report of the High Level Committee on Competition Policy and Law”.

“Agreements between firms have the potential of restricting competition.

Most laws make a distinction between “horizontal” and “vertical” agreements between firms. Horizontal agreements refer to agreements among competitors and vertical agreements are agreements relating to an actual or potential relationship of buying or selling to each other. Generally, vertical agreements are treated more leniently than

Horizontal agreements as, prima facie, a horizontal agreement is more likely to reduce competition than an agreement between firms in a buyer-seller relationship.

## **HORIZONTAL AGREEMENTS:-**

Horizontal agreements are agreements between two or more enterprises that are at the same stage of the production

and, in the same market. The most obvious example would be that of agreements between enterprises dealing in the same products.

It is not possible to provide an exhaustive list of agreements that attract the attention of such provision and the “rule of reason” needs to be applied to individual cases.

An illustrative list would include the following:

- a) Agreements regarding fixing of purchase or selling prices;
- b) Agreements limiting quantities, markets, technical development or investment;
- c) Agreements regarding territories to be served and sources of supply;

d) Agreements regarding dissimilar treatment of equivalent transactions with other trading parties that place them at a disadvantage.

## AGREEMENTS INVOLVING A PRESUMPTION OF ILLEGALITY:-

The following kinds of horizontal agreements are often presumed to be anti-competitive.



- a) Agreements regarding prices:- This would include all agreements that directly or indirectly fix the purchase or sale price.
- b) Agreements regarding quantities:- This includes agreements aimed at limiting or controlling production and investment .

c) Agreement regarding bids (collusive tendering):- This includes tenders submitted as a result of any joint activity or agreement.

d) Agreements regarding market sharing:- These include agreements for sharing of markets by territory, type or size or customer or in any other way.

**VERTICAL AGREEMENTS:-** Vertical agreements, on the other hand, are agreements between enterprises that are at different stages or levels of the production chain and, therefore, in different markets. An example of this would be an agreement between producer and a distributor. Vertical restraints on competition include:

- a) Tie-in arrangements;
- b) Exclusive supply agreements;
- c) Refusal to deal;
- d) Resale Price Maintenance (RPM).

## **NONSOVEREIGN FUNCTIONS COVERED:-**

Since only sovereign functions are excluded, following case law under

MRTTP ACT is relevant.

Gir Prasad v. Govt. of U.P. A

Government department or

Government providing services after  
levying charges ( in this case- supply of  
water for irrigation on charging water  
rate) are governed by provisions of  
MRTTP Act.

In *Lothey (BK) v. Regional Director-*  
(1996) 10 SCL 3`16 it was held that  
National Savings Department of  
Government of India is rendering  
'service' and hence liable for  
compensation.

In *TMA Pai Foundation v. State of  
Karnataka* 2002 AIR SCW 4957 (SC  
11 member constitution Bench-

Even if there is any doubt about whether education is a profession or not, it does appear that education will fall within the meaning of expression ‘occupation’. Thus, education is service and will be covered under the Act.

Cartel: “Cartel” includes an association of producers, sellers, distributors, traders or service providers who,

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 (s.2(ba)).

Some examples of ‘cartels’ as decided under MRTP Act are:

a) all tyre manufacturers increasing price uniformly and simultaneously



by mutual agreement.

b) association of transporters fixing uniform price below which no member should quote;

c) various manufacturers quoting identical prices- it evidences cartel though direct proof in such matters cannot be made available

d) Trade Association asking their

Members not to sell below the rates announced by it, with a threat of expulsion in the event of non compliance. –Madras Jewellers and Diamond Merchant's Association decided on 10-5-94, 14 CLA 394 (MRTPC).