

# An Introduction to Competition Commission in India

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**Abstract – Section 7 provides for the establishment of competition commission of India. Competition is a situation in a market, in which sellers independently strive for buyer's patronage profits, sales or market share. It is a means of reducing cost and improving quality. It accelerates growth and development. It preserves economic and political democracy. It shall be the duty of the Commission to eliminate practices having adverse effect on competition, to promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India. The Commission may inquire into any matter related with anti-competitive agreement. Key words: Competition, Agreement, Association, Person, MRTP etc.**

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## COMPETITION COMMISSION OF INDIA

The Competition Act, 2002 provides for the establishment of competition commission of India. Section 7 provides for the establishment of competition commission of India. Section 7 says –

- (1) With effect from such Date<sup>9</sup> as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Commission to be called the "Competition Commission of India".
- (2) The Commission shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.
- (3) The head office of the Commission shall be at such place as the Government may decide from time to time.
- (4) The Commission may establish offices at other places in India.

Here question arises that what is competition? Competition is a situation in a market, in which sellers independently strive for buyer's patronage profits, sales or market share. It is the foundation of an efficiently working in market system. The ultimate objective of competition is to secure the interest of the Consumer. It empowers the consumer, gives best guarantee for consumer protection. It is a

means of reducing cost and improving quality. It accelerates growth and development. It preserves economic and political democracy.

Competition Act 2002 provides for establishment of a Commission to prevent practices having adverse effect on competition etc.<sup>10</sup>

### Duties of Competition Commission of India:

Subject to the provisions of the Competition Act, it shall be the duty of the Commission to eliminate practices having adverse effect on competition, to promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India.

Provided that the Commission may, for the purpose of discharging its duties or performing its functions under this Act, enter into any memorandum or arrangement with the prior approval of the Central Government, with any agency of any foreign country.<sup>11</sup>

**Inquiry by the competition commission:** the Commission may inquire into any alleged contravention of the provisions contained in subsection (1) of section 3 or sub-section (1) of section 4 either on its own motion or on<sup>12</sup>—

- (a) Receipt of any information, in such manner and accompanied by such fee as may be determined by regulations, from any

<sup>9</sup> 14th October, 2003 vide S.O. 1198(E) dated 14 October, 2003.

<sup>10</sup> Preamble of The Competition Act, 2002

<sup>11</sup> Section 18 of The Competition Act, 2002

<sup>12</sup> Section 19 of The Competition Act, 2002

person, consumer or their association or trade association; or

- (b) A reference made to it by the Central Government or a State Government or a statutory authority.

**Functions and powers of the competition commission:** Section 19 (2) says - without prejudice to the provisions contained in sub-section (1), the powers and functions of the Commission shall include the powers and functions specified in sub-sections (3) to (7).

Sub section (3) - The Commission shall, while determining whether an agreement has an appreciable adverse effect on competition under section 3 of the Act, have due regard to all or any of the following factors, namely:—

- (a) Creation of barriers to new entrants in the market;
  - (b) Driving existing competitors out of the market;
  - (c) Foreclosure of competition by hindering entry into the market;
  - (d) Accrual of benefits to consumers;
  - (e) Improvements in production or distribution of goods or provision of services; or
  - (f) Promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.
- (4) The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not under section 4, have due regard to all or any of the following factors, namely:—
- (a) Market share of the enterprise;
  - (b) Size and resources of the enterprise;
  - (c) Size and importance of the competitors;
  - (d) Economic power of the enterprise including commercial advantages over competitors;
  - (e) Vertical integration of the enterprises or sale or service network of such enterprises;
  - (f) Dependence of consumers on the enterprise;
  - (g) Monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;

- (h) Entry barriers including 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;
  - (i) Countervailing buying power;
  - (j) Market structure and size of market;
  - (k) Social obligations and social costs;
  - (l) Relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition;
  - (m) Any other factor which the Commission may consider relevant for the inquiry.
- (5) For determining whether a market constitutes a “relevant market” for the purposes of this Act, the Commission shall have due regard to the “relevant geographic market” and “relevant product market”.
- (6) The Commission shall, while determining the “relevant geographic market”, have due regard to all or any of the following factors, namely:—
- (a) Regulatory trade barriers;
  - (b) Local specification requirements;
  - (c) National procurement policies;
  - (d) Adequate distribution facilities;
  - (e) Transport costs;
  - (f) Language;
  - (g) Consumer preferences;
  - (h) Need for secure or regular supplies or rapid after-sales services.
- (7) The Commission shall, while determining the “relevant product market”, have due regard to all or any of the following factors, namely:—
- (a) Physical characteristics or end-use of goods;
  - (b) Price of goods or service
  - (c) Consumer preferences;
  - (d) Exclusion of in-house production;

- (e) Existence of specialized producers;
- (f) Classification of industrial products.

**Difference between MRTP Act and Competition Act:** The fundamental points of difference between MRTP Act and Competition Act are given as follows:

1. MRTP Act is a competition law that was created in India, in 1970 to prevent concentration of economic power in few hands. On the other hand, Competition Act emerged as an improvement over MRTP act to shift the focus from controlling monopoly to initiating competition in the economy.
2. MRTP Act is reformatory in nature, whereas Competition Act is punitive.
3. In Monopolies and Restrictive Trade Practices (MRTP) Act, the dominance of a firm is determined by its size. On the other hand, the dominance of a firm in the market is determined by its structure in the case of Competition Act.
4. MRTP Act focuses on the interest of consumers. Conversely, Competition Act focuses on the interest of the public at large.
5. In MRTP Act, there are 14 offenses, which are against the rule of natural justice. On the contrary, there are only four offenses listed out by the competition act which violates the principle of natural justice.
6. MRTP Act does not specify any penalty for offenses but Competition Act states penalty for the offence.
7. The basic motto of MRTP Act is to control monopolies. As against this, the Competition Act intends to initiate and sustain competition.
8. Monopolies and Restrictive Trade Practices (MRTP) Act, requires that the agreement to be registered. In contrast, the Competition Act is silent on the registration of agreement.<sup>13</sup>

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