

Course Name – B.A.LL.B 6th Sem / LL.B 3rd Sem

Subject – Competition Law

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**Concept Covered –
UNIT-I**

COMPETITION ACT 2002

Background, Prohibitions, Competition Commission of India, Competition Advocacy

**What is
Competition –**

- “Competition is situation in a market in which firms or sellers independently strive for buyers’ patronage in order to achieve a particular business objectives” – **Defined by World Bank in 1999**

Competition – In Simple Words

- Competition means a struggle or contention for superiority, and in the corporate world, the term is generally understood as a process whereby the economic enterprise compete with each other to secure customers for their products.

**Competition
Law**

- Competition Law is the law enacted by parliament for regulation of business with the goal of preventing and prohibiting anti-competitive behaviour and unfair business practices

Reasons behind Competition Law

- Competition policy and law assume immense significance not only in the efficient allocation of resources in an economy but also in ensuring availability of goods and services at competitive prices to the consumers.
- The raison d'etre behind the competition policy and law is to preserve and promote competition as a means of ensuring efficient allocation of resources
in an economy in order to ensure faster growth and more equitable distribution of income.
- Competition law primarily deals with anti-competitive business agreements, abuse of dominant market position by enterprises and regulation of mergers, amalgamations and acquisitions. However, both aim at promoting and fostering competition, economic efficiency, consumer welfare and freedom of trade and therefore, they are complimentary to each other.

Objective of the Competition Act, 2002

An Act, keeping in view of the economic development of the country, was laid down to provide for an establishment of a commission with the following object:

-to prevent practices having adverse effect on competition,

-to promote and sustain competition in markets,

-to protect the interests of consumers,

-to ensure freedom of trade carried on by other participants in markets in India and -for matters connected therewith or incidental thereto.

Background of Competition Act – 2002

Our constitution makers were deeply influenced by the concept socialism so many provisions are provided by them in our constitution. Preamble of the Constitution of India declares India as a socialist Country. Not only preamble but Art 38 & Art 39 of the Indian Constitution make provisions for India as a socialist country.

Art 38 - State to secure a social order for the promotion of welfare of the people

(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life

(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations

Art 39 - Certain principles of policy to be followed by the State: The State shall, in particular, direct its policy towards securing

- (a) that the citizens, men and women equally, have the right to an adequate means to livelihood;
- (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- (d) that there is equal pay for equal work for both men and women;
- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment

So competition act 2002 was passed with the aim of achieving a socialistic pattern of Society that promoted equitable distribution of wealth and economic powers

We have crossed various levels before competition act 2002 which are given below.

1. Mahlanobis Committee (Oct, 1960) –

Reason Behind – Concentration of Economy in few hand and business groups

Object - to distribution of income and levels of

living

Findings of the Committee – Big business houses were emerging because of planned economy model practiced by the government and recommended **to look at the industrial structure level whether there was concentration**

2. Monopolies inquiry Committee (1964)–

Reason Behind – to investigate the effect of concentration of power & to suggest necessary legislation **Findings of the Committee** – Submitted its report on 31 Oct, 1965 and reported that economic power is concentrating in few hands and they were indulged in monopolistic and restrictive trade practices in over 85 % of industrial items. **Big business houses were at advantage in securing industrial license.**

No Legislation
Passed

3. Industrial Licensing Policy Inquiry Committee (1967)

Findings of the Committee – Licensing was unable to check concentration **Suggestions** - Monopolies and restrictive practices bill

4. First Competition Law (MRTP Act -1969)

Monopolies and Restrictive Trade Practices Act was passed with the

object to check concentration of economic power and to control the growth of monopolies considering the suggestions of industrial licensing policy inquiry committee (1967)

5. Raghavan Committee (1999)

Reason Behind – due to liberalization, privatization and globalization policy (1991) the government eliminated quantitative restrictions in 2001 and made the Indian industry open to competition from abroad so many provisions of MRTP Act become obsolete. **Findings of the Committee** – The Committee suggested a fully fledged Competition Law in India and to scrap the MRTP Act

6. Competition Act 2002

Considering the report of Raghavan Committee, Indian parliament passed COMPETITION ACT- 2002 Assent of President – 13 Jan, 2003

MRTP Act and Competition Act

MRTP Act, 1969 Competition Act, 2002 Objective

Prevention of concentration of

- economic power Prohibition of monopolistic,
- restrictive and unfair trade practices. Goal --- To Control Monopolies

Objective

Promote and sustain competition,

- Protect the interests of consumers and
 - ensure freedom of trade carried on by other participants, in markets in India. Goal ---- To Promote Competition Dominance per se is bad Abuse of dominance is bad No provision for regulation of mergers and acquisitions Regulations of mergers & acquisitions (Combinations) No provisions for penalties to be imposed.

Specific provisions for imposition of penalties for violations under the Act.

No Advocacy provisions for Monopolies and Restrictive Trade Practices

Commission (MRTPC)

The law mandates Competition Advocacy provisions for Competition Commission of India (CCI) No provision for seeking opinion from any Govt. /statutory bodies by the MRTPC regarding cases.

Provisions for seeking opinion from Govt. /statutory bodies by CCI regarding cases. (S 21 and 21A) Lacked Extra-territorial approach for cases

Provision for Extra-territorial reach if effect of any such behaviour/conduct of enterprise has AAEC in India.

PROHIBITIONS

All anti-competitive agreements are prohibited under Competition Act 2002

Salient Provisions

- Prohibition of **anti-competitive agreements** (Sec 3)
- Prohibition of abuse of dominant position (Sec 4) ➤ Regulation of combinations among enterprises (Sec 5 & 6) ➤ Advocacy (Sec 49) and Advisory (Sec 21 & 21A)

What is an Agreement?

Section **2(b)** of the Competition Act, 2002 which includes any : -

Arrangement
Understanding
or Action in
concert

Whether or

not

In writing; Intended to be legally enforceable

Anti-competitive agreements **[Section 3]**

Any agreement for goods or services which has ***appreciable adverse effect on competition*** in India is ***prohibited***. These kinds of agreements are known as anti- competitive agreements.

Anti competitive agreement of entered into shall be ***void***

Section 3 of the Act states that no enterprise shall enter into:

1. Any agreement With respect to ***production, supply distribution, storage, acquisition or control of goods/provision of services*** which is anti- competitive is prohibited and void.
2. Such agreements must cause or be likely to cause appreciable adverse effect

on competition (AAEC) in a relevant market in India. The relevant market may be a geographical or a products market.

There are two kinds of agreements

1. Horizontal agreements
2. Vertical agreements

Horizontal agreements (see Table 1)

They are Agreements between Parties in the same line of production.
Example - Agreement between Manufactures, Agreement between Distributors.

Horizontal agreements are presumed to have AAEC if they:

1. Directly or indirectly determine purchase or sale prices
2. Limit or control output, technical development, services etc.
3. Share or divide markets
4. Indulge in rigging or collusive bidding

Sec 2(c) “cartel” includes an association of producers, sellers, distributors, traders or service providers 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;

Cartels prohibited (Use the same definition Cartel and Horizontal Agreement) + Add

1. Agree to limit,
2. Control or attempt to control production, distribution, sale or price

Types of Horizontal Agreements

1) Price Fixing

Agreement

- a) Agreement to raise or stabilize price b) Establish uniform discount or eliminate discount
- c) Set uniform price as Starting point for negotiation d) Discontinue free service e) Impose Mandatorily surcharge f) Restrict price advertising

(2) Agreement regarding quantity and quality (Cartels)

Agreements **aimed at limiting or controlling** production, supply, markets, technical development or provision of services. This include agreements that make it easier for competitors to collectively exercise market power, and to avoid competing with each other

(3) Agreements for Market Sharing

Agreements for sharing of markets or sources 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 in any other similar way

(4) Agreements regarding bids (collusive bidding or bid-rigging)

Tenders submitted as a result of any joint activity or

agreement

Indicator of Bid-rigging

- ♣ Small number of companies little or no entry

- ♣ Market conditions

- ♣ Industry associations

- ♣ Repetitive bidding

- ♣ Identical or simple products or services

- ♣ Few if any substitutes

- ♣ Little or no technological change

How to identify warning signs for Bid Rigging

- ♣ The same supplier is often the lowest bidder.

- ♣ There is a geographic allocation of winning tenders

- ♣ Bids from different companies contain similar handwriting or typeface or use identical forms or stationery

- ♣ Whether the bid is coming from same IP, in case of online bidding
- ♣ Certain companies always submit bids but never win
- ♣ Sudden and identical increases in price or price ranges by bidders that cannot be explained by cost increases.
- ♣ Two or more businesses submit a joint bid even though at least one of them could have bid on its own.

Case Studies: Horizontal Agreement

Builder's association of India Vs Cement Manufacturer's Association (CMA) Case No 29/2010 Cement Manufacturer's Association (CMA) and 11 cement manufacturing companies were found to have entered into cartel, price fixing, limiting the production and supply of cement. Builder's association of India was the informant. CCI's imposed penalty above Rs. 6,714

Suomoto Case No 2/2014 (order date 10th July, 2015) : National Insurance Co Ltd., New India Assurance Co Ltd, Oriental Insurance Co, Ltd., and United India Insurance Co. Ltd. formed cartel and quoted higher insurance premium bids in response to tender issued by Government of Kerala for its Rashtriya Swasthya Bima Yojana. They also forced the Government to issue fresh tender every year, despite the three years duration of tender. CCI ordered to cease and desist and imposed penalty @2% of total turnover (Rs. 162.8 cr, 251.07 cr, 100.56 cr, and 156.62 cr.) Upheld by COMPAT order dtd 9.12.16 but penalty reduced to 1% of relevant turnover totaling Rs. 2 cr. Case now in Supreme Court. Case No 2/2011 (order date 23rd April, 2012): In public procurement of Aluminium Phosphide Tablets (ALP) by FCI, three

parties including Excel Crop Care Ltd. entered into collusive bidding from year 2002-2009- quoted identical rates, together boycotted tender in 2011. CCI imposed penalty of Rs.317.19 crore- upheld by COMPAT on 29.10.13 with reduced penalty of Rs. 9.86 cr. Supreme Court ruled in CCI's favour in 2017.

Vertical Agreements (see Table 1)

Vertical agreements are those agreements between Non-Competition undertaking operating at different levels of manufacturing and distribution process

EX- , the agreement between manufacturers of components , manufactures of products, between producers and whole- sellers or

between producers, whole sellers and retailers

They are prohibited if such agreements cause or are likely to cause AAEC

Types of Vertical Agreements

1. Tie-in arrangement

Agreement between manufacturer and distributor not to sell manufactures product at or above a price floor at or below a price ceiling (e.g. requiring a purchaser of goods to purchase some

other goods as condition of such purchase)

2. Exclusive supply arrangement

Agreement restricting the purchase in course of trade from acquiring the goods of trade from acquiring the goods of any other seller

(e.g. restricting a purchaser in course of his trade from dealing in any goods other than those of the seller)

3. Exclusive distribution arrangement

Agreement to limit or restrict the output or supply of any goods to any market or area (e.g. limiting/restricting supply of goods or allocate any area or market for sale of goods)

4. Refusal to deal

(e.g. restricting by any method any person/classes of persons to whom goods are sold)

5. Resale price maintenance

(e.g. selling goods with condition on resale at stipulated prices)

Vertica
I

Chain Of Production (Table No

:1)

Supplier Supplier Supplier Manufacturer Manufacturer
Manufacturer Distributor Distributor Distributor Retailer
Retailer Retailer

**Horizontal
al**

**Horizontal Vs vertical
agreements**

- Horizontal agreements **are presumed to have AAEC**
Vertical agreements, the onus / **Burden of proving AAEC**
lies

**on the
CCI.**

Horizontal Agreement :- (**Per Say**) Vertical Agreement :
(**Rule or**

Reason) Joint venture agreements are an exception to
horizontal

agreements, provided such agreements increases
efficiency in
production, supply, distribution, storage acquisition or
control of

goods or provisions of

services.

- Export agreements and agreements to protect intellectual property are allowed to have protective clauses.

Anti Competitive Agreement [Vertical Agreement - Rule of Reason] (Essay)

(ADD what is Anti competitive Agreements - Section 3 then)

Vertical agreements are those agreements between Non-Competition undertaking operating at different levels of manufacturing and distribution process

EX- , the agreement between manufacturers of components, manufactures

of products, between producers and whole- sellers or between producers, whole sellers and retailers

The Following Agreement may be considered as Ant Competitive by applying the rule of reason

1. Tied in Arrangement

Any agreement requiring a purchaser of goods as a condition to purchase some other goods. Tie in agreement is also known as conditional sale or purchase

2. Exclusive supply agreement

Agreement restricting the purchase in course of trade from acquiring the goods of trade from acquiring the goods of any other seller

(e.g. restricting a purchaser in course of his trade from dealing in any goods other than those of the seller)

3. Exclusive distribution

Agreement

Agreement to limit or restrict the output or supply of any goods to any market or area

(e.g. limiting/restricting supply of goods or allocate any area or market for sale of goods)

4. Refusal to deal

Any agreement which restrict or is likely to restrict by any method any person/classes of persons to whom goods are sold or from whom goods are brought

5. Resale price maintenance

Any Agreement to sell goods on condition that the price to be charged on the resale by the purchaser shall be stipulated by the seller unless it is clearly stated that prices lower than those price may be charged

(e.g. selling goods with condition on resale at stipulated prices)

Case Law Vertical

Agreements

Shamsher Kataria vs. Honda Sael Cars and 13 Ors.(Case No.03/2011) A first major Order passed under section 3(4) of the Competition Act,2002, CCI had imposed penalty of more than Rs.2500 Crores upon 14 major car manufacturers for violating the Act.

It was held that all the major auto manufactures were not allowing its spare parts and diagnostic tools to be sold in the open car market and forcing the consumers to buy it from their authorized dealers.

The CCI relied various judgments while passing the detailed order.

Some of the Car Manufacturers have filed writ petitions in different High Courts to stop the proceedings before the Commission and DG but unsuccessful.

The Appellate Tribunal upheld the order passed by the CCI on merits.

➤ **In another Case Hyundai Motor India was found to have been indulged in anti competitive** vertical agreement with its dealers ; - Through an exclusive dealership arrangement HMI imposed a discount control mechanism amounting to Resale Price Maintenance (RPM) - Forced a tie-in arrangement for use of lubricant oil Violation of Section 3(4)(e) and Section 3(4)(a) was established. Fine of Rs. 87 crore imposed on HMI.

Exception to Section 3

Any agreement protecting rights conferred under:

1. Copyright Act 1956

(1999)

2. Patent Act
2005

3. Trademarks
Act

4. Designs
Act

5. Geographical indication
Act

Abuse of Dominant position (Section 4) (essay)

Under the Competition Act of India, section 4 deals with Abuse of Dominance or dominant position by an enterprise or a group. It prohibits the use of market controlling position to prevent individual enterprises or a group from driving out competing businesses from the market as well as from dictating prices. The concept of abuse of dominant position of market power refers to anti-competitive business practices in which dominant firm may engage in order to maintain or increase its position in the market.

It means a position of **strength**, enjoyed by an enterprise, in the **relevant market** in India, which enables it to:

- **Operate independently** of competitive forces prevailing in the relevant market or,

- ***affects its competitors or consumers*** of the relevant market in its favor

Meaning of Relevant Market sec

2 (r)

In order to ascertain whether an enterprise has a dominant position it is to be determined on what the relevant market is. There are two kinds of relevant market

1. Relevant product Market sec 2

(t)

On the demand side, Relevant product market include all the close Substitutes to which the consumer will shift to, if the price of the product increases

On Supply side, Relevant product market include all the producers who can produce substitutes with the existing production facility

2. Relevant Geographical Market sec 2

(s)

The geographic dimension within which competition can take place in the relevant market can be local ,National, International or global depending upon the product , Here pattern of consumption , Transportation are important factors

Enterprise or group ***shall not abuse*** its dominant position. Agreement by enterprise or group abusing its dominant position is ***prohibited***

An Enterprise or group is said to have abused its dominant position if it ***directly or indirectly:***

- Imposes ***unfair condition or price***
- ***Predatory pricing***
- Limit or restrict :
 - ***Production*** of goods or provision of services or market
 - ***Technical or scientific development*** relating to goods or services
 - Creating ***barriers to entry***
 - Denying of market access
- Uses its dominant position in one market to ***gain advantage in other market*** Where there is abuse of dominant position then the CCI will issue the following orders Under Section 27 And Section 28

Criteria Considered by CCI while determining Abuse of Dominant position

1. Market Share
2. Size & importance of competitors
3. Economic Power of enterprise including Commercial advantage
4. Vertical integration of the enterprise

5. Dependence of consumers

6. Monopoly enjoyed by means of being a Government company or PSU

7. Counter veiling buying power

8. Market Structure

9. Social Obligation & Social Cost

10. Relative Advantage by way of contribution to economic development

11. Any other relevant factor considered by CCI

Orders by Commission after inquiry onto agreements [Section 27]

If the commission finds that the Act constitute Abuse of Dominant position, it can pass following orders

1. Direct any enterprise or person to engage in such agreement to discontinue such agreement 2. Impose penalty not more than 10% of the average turnover of last 3 financial

year
s

3. Modified the agreement to such extent and manner specified

by CCI

4. Order for payment of cost

5. Any other orders as the CCI thinks fit

If the commission finds any Division of Enterprise enjoying dominant position (Section 28)

Then the CCI can direct the Enterprise to divide in such manner that the Enterprise does not Abuse its dominant position for this purpose the CCI Can Provide for

1. Transfer of any existing liability or property 2. Adjustment or discharge of any Contract 3. Any other orders as the CCI thinks fit

Regulation of Combination (Section 5 to 6)

What is Combination

The Acquisition of one or more enterprise by way of ***merger or amalgamation or control over*** enterprise is regarded as combination

A Combination is an ***acquisition of one or more enterprises*** by one or more persons, ***merger or amalgamation*** of enterprises, if it meets the prescribed ***monetary thresholds*** and involves:

- Any acquisition of control, shares, voting rights or assets of any

enterprise

- Any acquisition of control by a person over an enterprise, where such person already has direct/indirect control over another enterprise in a similar business

• Any merger or amalgamation of enterprises Combinations above the defined monetary thresholds require filing and prior approval of the CCI before they can be made effective. CCI has powers to investigate combinations and modify/reject them.

Separate provisions exist in case of acquisitions pursuant to loan/ investment agreements of public financial institutions, FII, banks or VC funds.

The CCI must be notified within **30 days** of the '**trigger event**' of such combinations

Trigger Event

- **Board approval** of the enterprises in case of a **proposed merger/ amalgamation**; or
- **Execution of any agreement** or 'other document' in case of a proposed acquisition **Exemption of Notification to CCI**

Under the Combination Regulations, Decision taken for the Amalgamation, Mergers, Acquisition prior to June 1, 2011 have been exempted from notifying to CCI

When acquisition, Mergers or Amalgamation would constitute a Combination

When in individual

- If the parties to that process have an asset of more than 1000 Cr or

turnover of more than 3000Cr inside India or

- If it is an entity having operation inside & Outside India ,it has an asset of more than 500 million \$ including at least 500 crore in India or a turnover of 1500 Million USD of which at least 1500 crore in India

The Value of Asset & Turnover is based on Book Value

When in Group, If one of the parties of Combination belongs to a Group which control it,

- The Threshold limit is 4,000 Cr in terms of asset & 12,000 Cr in terms of Turnover.
- If the group has asset or turnover inside & outside India then the threshold limit is 2 billion \$ of assets or 6 billion \$ of turnover

When Combinations / Mergers are considered as anti –competitive practices?

Mergers attract the attentions of the competition policy makers because they generally have implications for the concentration of, and ability to use market power, which in turn, can impact negatively upon competition. Market power describes the ability of a business entity to act unconstrained by rivals and potential rivals in both price and non-price conduct. A Merger is bad, only if creates a dominant enterprise that subsequently abuses its dominance. To some extent the issue is analogous to that of agreements among enterprises and also overlaps with the issues of dominance. The reason that such a provision exists in most laws is to pre-empt the potential abuse of dominance where it is probable, as subsequent unbundling can be both difficult and socially costly. Thus, the general principle, in keeping with the overall goal, is that mergers should be challenged only if they reduce or harm competition and adversely affect welfare. It is worth to note

that, the Mergers impact upon the concentration and use of the market power lead to; A reduction in the number of business entities operating in a market; and π An increase in the market share controlled by the merged entity. Thus, the principle for exercising merger control is that, if a merger is likely to give rise to market power, it is better to prevent this from happening than to control the exercise of market power after the merger has taken place, i.e. prevention is better than cure. Also, the social and economic cost of demerging the firms after the merger is also heavy and thus, not an easy option for the Competition Authorities. Interestingly, the test of size and or the turnover has been laid down as a guide for the presumption about the illegality of the combination under section 6(1) of the Competition Act and also for investigation by Competition Commission of India for exemption under section 6(2) of the Competition Act. Section 6 of the Competition Act prohibits a person or an enterprise from entering into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India. Such a combination is void. A Combination leads to adverse effect only if it creates a dominant enterprise which is likely to abuse its dominance. The generally accepted proposition is that market dominance need not necessarily lead to abuse. But when the companies are too big, they can indulge in abuse and exploit the consumer through market manipulation. Bigness has its own advantages. Firstly it reduces the cost of production and distribution and secondly, it permits a larger expenditure on research. For examples in Pharmaceuticals, huge amount have to be invested. Certain combinations are not void. Provision of section 6 (1) is not applicable to public financial institutions , foreign institution investor capital fund entering into combination in pursuance of any covenant of loan or investment agreement for share subscription or financing facility or any acquisition . However, such organizations are required to file a return in respect of such an activity with the commission.

Regulation of Combination (Section 6) (Essay)

(ADD What is combination, then)

Any combination which has an adverse effect on competition can be declared void by the CCI.

Procedure to be followed for the combination

Any person or enterprise proposes to enter into combination shall give **notice to competition commission** in prescribed form **within 30 days** to

- **Approval of the Board of** Directors of proposal relating to **merger or amalgamation**

- **Execution of any agreement** relating to acquisition or acquiring control No combination shall come into effect **until 210** days from the day on which notice has been given to commission or order has been passed

Procedure for Investigation into Combination by CCI

Step

1

The CCI will issue a notice to the parties to the combination to reply within 30days of such combination for not declaring it as Void

The CCI will direct the Director General to submit a report on

combination, on receipt of such report, If the CCI is satisfied that the combination has an Adverse effect on competition, it can pass the following order

Step 2 (Section 31)

- It can direct the combination shall not be in effect
- If the Adverse effect can be rectified by suitable modification the CCI will order such modification should be performed by the parties. (In this case the parties shall submit the modified combination within 30 Working days if the CCI agrees with the modification, It can accept the Combination) Step 3

If the CCI is not satisfied by the modification effected by the parties, It can grant 30 Days further to the party to accept that modification proposed by the commission

Step 4

If the part still falls to accept the modification the commission can declare the combination as void as well as it can impose such penalties mentioned in the Act (1 % of Turnover)

Competition Commission of India

Powers and Function of CCI

The CCI can exercise power subject to the Act and the Rules. It should be guided by the principles of ***natural justice*** and provisions of the act

1. The Commission shall have the powers to ***regulate its own procedure***.

[Section 36
(1)]

2. Commission has a power of ***civil court*** [Section 36 (2)]

A. Summon & Enforcing Attendance of any person on oath

B. Requiring the Discovery and production of Document

C. Receiving evidence as affidavit

D. Issue commission for examination of witness or documents

E. Requisitioning any public record on document or copy of such

document from any
office

F. Power to conduct enquiry

3. Commission may ***call the experts*** on respective field i.e

Economics', Commerce, Accountancy which may be necessary [Section 36 (3)] 4. Direct any person [Section 36 (4)]

I. Produce Book , Accounts or other documents

II. Furnish information about trade in procession of such persons

5. Issue cease and desist orders

6. Impose **finances and penalties**
(Section 27)

7. Declare agreement having Appreciable adverse effect on competition (AAEC)
void

8. Pass orders modifying agreement

In case of abuse of dominance

9. order for division of dominant enterprise
(Section 28)

**In case of combinations:
(Section 31)**

10. Approve
Combination

11. Approve with
modifications

12. Direct that combinations shall not take effect

13. To order demerger

Other Powers

14. In case of companies, individuals may also be held liable if consent,

connivance or neglect is proved

15. CCI has extra-territorial reach

16. To order ***cost for frivolous complaint***

Functions of CCI

1. Make the markets work for the benefit and welfare of consumers.

2. Ensure fair and healthy competition in economic activities in the country

for faster and inclusive growth and development of economy.

3. Implement competition policies with an aim to effectuate the most efficient utilization of economic

resources.

4. Develop and nurture effective relations and interactions with sectorial regulators to ensure smooth alignment of sectorial regulatory laws in tandem with the competition law.

Effectively carry out competition advocacy and spread the information on benefits of competition among all stakeholders to establish and nurture competition culture in Indian economy.

Competition Advocacy

- Central government may **obtain opinion** of CCI on the possible effect of the policy on competition while formulating competition policy
- On receipt of deference, commission is required to give its opinion to central Government **within 60days**
- The **role** of commission is **advisory**
- Opinion given by commission is not binding upon the central Government
- The commission has also been assigned the role to take following suitable measures for:

Promotion of competition
advocacy

Creating awareness about
competition

Imparting Training about competition
issue

Major changes made by the Competition (Amendment) Act, 2007

The Competition (Amendment) Act, 2007 was approved by the Parliament in September 2007 and received Presidential assent on **24 September, 2007**. The amendment brought significant changes in the then existing regulatory infrastructure established under the Competition Act. The major changes are:

1. Notification of all “**combinations**” i.e. mergers, acquisitions and amalgamations to CCI made **compulsory**.
2. CCI to be an **expert body** which will function as a **market regulator** for preventing anti competitive practices in the country and would also have advisory role and advocacy functions.
3. CCI to function as a **collegium** and its decisions would be based on **simple majority**. Omits power of CCI to award compensation to parties against proven anti competitive practices indulged in by enterprises.
4. Establishment of a **Competition Appellate Tribunal** with a **three-member quasi judicial body** to be headed by a retired or serving Judge of the Supreme Court or Chief Justice of a High Court to hear and dispose of appeals against any direction issued or decision made or order passed by the CCI.

5. Competition Appellate Tribunal to also adjudicate upon claims of compensation and to pass orders for the recovery of compensation from any enterprise for any loss or damage suffered as a result of any contravention of the provisions of the Competition Act, 2002. 6. **Orders** of Competition **Appellate Tribunal** can be executed as a **decree of a civil court**. 7. **Appeal** against the orders of the Competition **Appellate Tribunal** to the

Supreme Court. 8. New Powers upon **sectorial regulators** to make **suo moto reference to CCI** on competition issues in addition to the earlier provision of making a reference on a request made by any party in a dispute before it. Also, similar powers conferred upon CCI. 9. Allows continuation of the **MRTPC till two years** after the constitution of CCI for trying pending cases under the MRTP Act and to dissolve the same thereafter. With the enforcement of **sections 3 and 4** of Competition Act, w.e.f. 20 May, 2009, there appeared **no valid reason to keep MRTPC** functional any more. More so, in terms of Section 66 of the Competition Act, MRTPC has to be dissolved within a period of two years of the constitution of the CCI and the MRTP Act repealed. The Government has now decided to remove this anomaly and **section 66 has been notified from 1 September, 2009**. Consequently, the **MRTPC will cease** to exist after a **“sun set “period of two years i.e. on 31 August, 2011**.