

Competition Act, 2002

Chapter 2 - Prohibition of Certain Agreements, Abuse of Dominant Position and Regulation of Combinations

1[(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.

(2) Any agreement entered into in contravention of the provisions contained in subsection (7) shall be void.

(3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which--

(a) directly or indirectly determines purchase or sale prices;

(b) limits or controls production, supply, markets, 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, shall be presumed to have an appreciable adverse effect on competition:

Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.

Explanation.--For the purposes of this sub-section, "bid rigging" means any agreement, between enterprises or persons referred to in sub-section (3) engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.

(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) resale 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 purchaser 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.

(5) Nothing contained in this section shall restrict--

(i) the 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--

- (a) the Copyright Act, 1957 (14 of 1957);
- (b) the Patents Act, 1970 (39 of 1970);
- (c) the Trade and Merchandise Marks Act, 1958 (43 of 1958) or the Trade Marks Act, 1999 (47 of 1999);
- (d) the Geographical Indications of Goods (Registration and Protection) Act, 1999 (48 of 1999),
- (e) the Designs Act, 2000 (16 of 2000);
- (f) the Semi-conductor Integrated Circuits Layout-Design Act, 2000 (37 of 2000);

(ii) 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

suchexport.]

1. Effective date :20th May 2009- notified vide Ministry of Corporate Affairs Notification No S.O.1241(E) dated 15.05.2009.

Section 4 - Prohibition of abuse of dominant position: Abuse of dominant position

⁴1[(1) No enterprise or group shall abuse its dominant position.]

(2) There shall be an abuse of dominant position ²[under sub-section (1), if an enterprise or a group],---

(a) directly or indirectly, imposes unfair or discriminatory--

(i) condition in purchase or sale of goods or service; or

(ii) price in purchase or sale (including predatory price) of goods or service.

Explanation.--For the purposes of this clause, the unfair or discriminatory condition in purchase or sale of goods or service referred to in sub-clause (i) and unfair or discriminatory price in purchase or sale of goods (including predatory price) or service referred to in sub-clause (ii) shall not include such discriminatory condition or price which may be adopted to meet the competition; or

(b) limits or restricts--

(i) production of goods or provision of services or market therefor; or

(ii) technical or scientific development relating to goods or services to the prejudice of consumers; or

(c) indulges in practice or practices resulting in denial of market access ³[in any manner]; or

(d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or

(e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

Explanation.--For the purposes of this section, the expression--

(a) "dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to--

(i) operate independently of competitive forces prevailing in the relevant market; or

(ii) affect its competitors or consumers or the relevant market in its favour;

(b) "predatory price" means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

3[(c) "group" shall have the same meaning as assigned to it in clause (b) of the Explanation to section 5.]]

1. Substituted for the following by the Competition (Amendment) Act, 2007 [Act No. 39 of 2007].

"(1) No enterprise shall abuse its dominant position."

2. Substituted by the Competition (Amendment) Act, 2007 [Act No. 39 of 2007] for the words, brackets and figure "under sub-section (1), if an enterprise".

3. Inserted by the Competition (Amendment) Act, 2007 [Act No. 39 of 2007].

4. Effective date :20th May 2009- notified vide Ministry of Corporate Affairs Notification No S.O.1241(E) dated 15.05.2009.

Section 5 - Combination

Regulation of combinations

5. Combination.--

The acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises, if--

(a) any acquisition where--

(i) the parties to the acquisition, being the acquirer and the enterprise, whose control shares, voting rights or assets have been acquired or are being acquired jointly have,--

(A) either, in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or

1[(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or]

(ii) the group, to which the enterprise whose control, shares, assets or voting rights have been acquired or are being acquired, would belong after the acquisition, jointly have or would jointly have,--

(A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or

2[(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India; or;]

(b) acquiring of control by a person over an enterprise when such person has already direct or indirect control over another enterprise engaged in production, distribution or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service, if--

(i) the enterprise over which control has been acquired along with the enterprise over which the acquirer already has direct or indirect control jointly have,--

(A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or

3[(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or;]

(ii) the group, to which enterprise whose control has been acquired, or is being acquired, would belong after the acquisition, jointly have or would jointly have,--

(A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or

4[(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India; or;]

(c) any merger or amalgamation in which--

(i) the enterprise remaining after merger or the enterprise created as a result of the amalgamation, as the case may be, have,--

(A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or

5[(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or;]

(ii) the group, to which the enterprise remaining after the merger or the enterprise created as a result of the amalgamation, would belong after the merger or the amalgamation, as the case may be, have or would have,--

(A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or

6[(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India.]

Explanation.--For the purposes of this section,--

(a) "control" includes controlling the affairs or management by--

(i) one or more enterprises, either jointly or singly, over another enterprise or group;

(ii) one or more groups, either jointly or singly, over another group or enterprise:

(b) "group" means two or more enterprises which, directly or indirectly, are in a position to ---

(i) exercise twenty-six per cent. or more of the voting rights in the other enterprise; or

(ii) appoint more than fifty per cent, of the members of the board of directors in the other enterprise: or

(iii) control the management or affairs of the other enterprise;

(c) the value of assets shall be determined by taking the book value of the assets as shown, in the audited books of account of the enterprise, in the financial year immediately preceding the financial year in which the date of proposed merger falls, as reduced by any depreciation, and the value of assets shall include the brand value, value of goodwill, or value of copyright, patent, permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout-design or similar other commercial rights, if any, referred to in sub-section (5) of section 3.

1. Substituted for the following by the Competition (Amendment) Act, 2007 [Act No. 39 of 2007].

"(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover more than fifteen hundred million US dollars; or"

2. Substituted for the following by the Competition (Amendment) Act, 2007 [Act No. 39 of 2007].

"(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars or turnover more than six billion US dollars; or"

3. Substituted for the following by the Competition (Amendment) Act, 2007 [Act No. 39 of 2007].

"(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover more than fifteen hundred million US dollars; or"

4. Substituted for the following by the Competition (Amendment) Act, 2007 [Act No. 39 of 2007].

"(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars or turnover more than six billion US dollars; or"

5. Substituted for the following by the Competition (Amendment) Act, 2007 [Act No. 39 of 2007].

"(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover more than fifteen hundred million US dollars; or"

6. Substituted for the following by the Competition (Amendment) Act, 2007 [Act No. 39 of 2007].

"(B) in India or outside India, the assets of the value of more than two billion US dollars or turnover more than six billion US dollars."

Section 6 - Regulation of combinations

Regulation of combinations

6. Regulation of Combinations.--

(1) No person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void.

(2) Subject to the provisions contained in sub-section (1), any person or enterprise, who or which proposes to enter into a combination, 1[shall], give notice to the Commission, in the form as may be specified, and the fee which may be determined, by regulations, disclosing the details of the proposed combination, within 2[thirty days] of--

(a) approval of the proposal relating to merger or amalgamation, referred to in clause (c) of section 5, by the board of directors of the enterprises concerned with such merger or amalgamation, as the case may be;

(b) execution of any agreement or other document for acquisition referred to in clause (a) of section 5 or acquiring of control referred to in clause (b) of that section.

3[(2A) No combination shall come into effect until two hundred and ten days have passed from the day on which the notice has been given to the Commission under sub-section (2) or the Commission has passed orders under section 31, whichever is earlier.]

(3) The Commission shall, after receipt of notice under sub-section (2), deal with such notice in accordance with the provisions contained in sections 29, 30 and 31.

(4) The provisions of this section shall not apply to share subscription or financing facility or any acquisition, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement.

(5) The public financial institution, foreign institutional investor, bank or venture capital fund, referred to in sub-section (4), shall, within seven days from the date of the acquisition, file, in the form as may be specified by regulations, with the Commission the details of the acquisition including the details of control, the circumstances for exercise of such control and the consequences of default arising out of such loan agreement or investment agreement, as the case may be.

Explanation.--For the purposes of this section, the expression--

(a) "foreign institutional investor" has the same meaning as assigned to it in clause (a) of the Explanation to section 115AD of the Income-tax Act, 1961 (43 of 1961);

(b) "venture capital fund" has the same meaning as assigned to it in clause (b) of the Explanation to clause (23FB) of section 10 of the Income-tax Act, 1961 (43 of 1961).

1. Substituted by the Competition (Amendment) Act, 2007 [Act No. 39 of 2007] for the words "may, at his or its option,".

2. Substituted by the Competition (Amendment) Act, 2007 [Act No. 39 of 2007] for the words "seven days".

3. Inserted by the Competition (Amendment) Act, 2007 [Act No. 39 of 2007].