

Competition Act, 2002

Section 27 - Orders by Commission After Inquiry into Agreements or Abuse of Dominant Position

⁶[Where after inquiry the Commission finds that any agreement referred to in section 3 or action of an enterprise in a dominant position, is in contravention of section 3 or section 4, as the case may be, it may pass all or any of the following orders, namely:--

(a) direct any enterprise or association of enterprises or person or association of persons, as the case may be, involved in such agreement, or abuse of dominant position, to discontinue and not to re-enter such agreement or discontinue such abuse of dominant position, as the case may be;

(b) impose such penalty, as it may deem fit which shall be not more than ten per cent. of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse:

¹[Provided that in case any agreement referred to in section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten per cent, of its turnover for each year of the continuance of such agreement, whichever is higher.]

²[* * *]

(d) direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission;

(e) direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any;

³[* * *]

(g) pass such other ⁴[order or issue such directions] as it may deem fit.

⁵[Provided that while passing orders under this section, if the Commission comes to a finding, that an enterprise in contravention to section 3 or section 4 of the Act is a member of a group as defined in clause (b) of the Explanation to section 5 of the Act, and other members of such a group are also responsible for, or have contributed to, such a contravention, then it may pass orders, under this section, against such members of the group.]]

1. Proviso substituted by the Competition (Amendment) Act, 2007 [Act No. 39 of 2007]. Prior to substitution it read as:

"Provided that in case any agreement referred to in section 3 has been entered into by any cartel, the Commission shall impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty equivalent to three times of the amount of profits made out of such agreement by the cartel or ten per cent, of the average of the turnover of the cartel for the last preceding three financial years, whichever is higher;"

2. Clause (c) omitted by the Competition (Amendment) Act, 2007 [Act No. 39 of 2007]. Prior to omission it read as:

"(c) award compensation to parties in accordance with the provisions contained in section 34;"

3. Clause (f) omitted by the Competition (Amendment) Act, 2007 [Act No. 39 of 2007]. Prior to omission it read as:

"(f) recommend to the Central Government for the division of an enterprise enjoying dominant position;"

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

5. Proviso inserted by the Competition (Amendment) Act, 2007 [Act No. 39 of 2007].

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