



FACULTY OF JURIDICAL SCIENCES

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SUBJECT: COMPETITION LAW

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LECTURE 34

TOPIC: PENALTIES FOR OFFENCE SUNDER THE COMPETITION ACT, 2002

Penalties under the Competition Act

The Competition Act, unlike any of the formal regulations of the country, is cascaded with a set of obligations. These new-found obligations, which must be complied with by businesses of all kinds, are intended to ensure fairness in the Indian competitive market. Non-compliance with such provisions would force the defaulting businesses to face penal consequences. This article is a detailed account of various penalties under the Competition Act.

Designated Personnel

The powers pertaining to the administration and implementation of competition laws in India are vested with the Competition Commission of India (CCI), which came into existence with the introduction of the Act.

According to the Act, if the CCI discovers the existence of an anti-competitive agreement which may potentially cause an appreciable adverse effect on competition within India or finds out any instance abuse of dominant position, it may discreet to:

- Cease and desist the order of agreement or abuse, thereby directing the parties of such agreement or abuse to discontinue the perusal of such agreement with the assurance of not re-entering into it, or to discontinue the abuse of dominant position, as the case may be.
- Impose a monetary penalty which doesn't exceed 10% of the average turnover for the previous three financial years. On the same page, if the agreement has

been entered into by a cartel, the CCI may choose to impose a penalty that is three times the profit of the concerned business or 10% of its turnover for each year of the continuance of the agreement; whichever is higher. The penalty is imposed on the producer, seller, distributor, trader or service provider of the cartel.

- Issue an order conveying that the agreement must be modified in a manner which is specified in the order.
- Issue an order demanding the division of an enterprise that is abusing its dominant position so as to disable it from indulging in acts of dominance.
- Issue any other order as determined by the CCI.

Norms of Recovery

The CCI has come up with a set of directives for recovering the monetary penalties imposed under the Act, the likes of which includes a reference to the Income Tax Authority for the recovery of penalty as tax due under the income-tax law.

Consequences of Contravention of CCI Orders

The CCI is vested with the powers of ensuring compliance with its powers and directions, including the ones connected with modifications and combinations. The first non-compliance provision comprises of punishment and a fine of up to Rs. 1,00,000 for each instance of non-compliance. The fine can go up to Rs. 100 million.

Defaults in the remittance of penalties will be dealt with by the chief metropolitan magistrate of Delhi based on complaints filed by the CCI. The trial may result in imprisonment of up three years and/or a fine of up to Rs. 250 million.

Penalty for Non-Compliance with CCI Directions

Non-compliance of CCI directions issued under Section 36(2)(4) or non-adherence to the directions issued by a Director General (without sufficient cause for the same) is punishable with a fine of Rs. 1,00,000 for each day of default, subject to a maximum of

Rs. 10 million. On the other hand, if any person or enterprise fails to provide notice to the CCI under Section 6(2), the regulatory body would impose a penalty which may extend to 1% of the combination's total turnover or assets, whichever is higher.

Section 36(2) of the Competition Act

Section 36(2) of the Competition Act, 2002, entitles the CCI to:

- Summon and enforce the attendance of a person and examine him/her on oath.
- Demand the discovery and production of documents.
- Receive evidence on the affidavit.
- Issue commissions for examining the witnesses or documents.
- Requisitioning any public record, document or copy of such record or document from any office.

Section 6(2) of the Competition Act

We felt it essential to have a preview of Section 6(1) before going ahead with the provisions of the latter. Section 6(1) of the Competition Act specifies that people or enterprises are prohibited from entering into a combination which may potentially cause an appreciable adverse effect on competition within the relevant market in India.

Sub-section 2 conveys that any person or enterprise entering into a combination as specified above is required to issue a notice to the commission in the stipulated manner with particulars of the details of the proposed combination. This must be done within seven days of the endorsement of the merger or amalgamation or execution of any agreement or other documents for acquisition purposes.

Penalty for Issuing False Statements or Non-Furnishing of Material Information

If any party to a combination makes an incorrect statement or fails to furnish any material, the parties in question will be imposed with a penalty which is not less than Rs.5 million (can be as high as Rs. 100 million), as determined by the CCI.

Scheme of Leniency

The CCI is empowered to extend leniency towards the producers, sellers, distributors, traders, service providers or individuals involved in a cartel in the event of alleged violations of section 3. The leniency may be accorded if the concerned party has made a full and true disclosure of the alleged violations and if the disclosure is vital. Such a provision shouldn't be provided in a scenario where the investigation report has already been received from the director general and where the member of the cartel doesn't co-operate with the CCI until the completion of proceedings.

Also, a complete waiver of penalties is accorded for the members of cartels for making such disclosures, which will be rendered on a first come, first served basis.

Exercise:

1. The opinion given by CCI under Competition Advocacy clause is binding upon Central Government
 - a) True
 - b) False

2. Who is the chairperson of Selection Committee for appointment of Chairperson and members of Appellate Tribunal?
 - a) Chairperson, CCI
 - b) DG, CCI
 - c) Chief Justice, Delhi High Court
 - d) Chief Justice, Apex Court of India

3. The Competition Act has bestowed following responsibilities on the CCI
 - a) to prohibit anti-competitive agreements
 - b) to prohibit abuse of dominant position
 - c) to regulate combinations

d) all of these

4. The CCI has approved the deal where-in deal where-in Samare Capital-backed Witzing Advisory Services and _____ will acquire Aditya Birla Retail Ltd. which operates a super market store chain 'more'.

a) DLF

b) Snapdeal

c) Myntra

d) Amazon

5. The CCI celebrated its 10th Annual Day on

a) 20 Jan, 2019

b) 20 Feb, 2019

c) 20 April, 2019

d) 20 May, 2019