Competition Law enforcement starts in India

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Introduction

In the wake of economic liberalization and widespread economic reforms introduced in 1991, and in its attempt to move from a 'command and control' regime to a regime based on free market principles, India decided to replace its then existing competition law - the Monopolies and Restrictive Trade Practices Act 1969, which was primarily designed to restrict the growth of monopolies in the market - with a modern competition law in sync with established competition law principles. As the first step towards this transformation, the Competition Act 2002 was enacted and received presidential assent on January 13 2003. The Competition Act seeks to achieve the following objectives:

l to prevent practices that have an adverse effect on competition;
l to promote and sustain competition in the markets;
l to protect the interests of consumers; and
l to ensure freedom of trade carried on by other participants in markets in India.

These objectives are sought to be achieved by the establishment of the Competition Commission of India, which was established by the central government with effect from October 14 2003. Accordingly, the commission is mandated to prohibit anti-competitive agreements and abuse of dominant positions by enterprises and to regulate combinations (ie, mergers, amalgamations or acquisitions) through a process of inquiry and investigation. However, before the commission could be fully constituted, a public interest litigation was filed in the Supreme Court challenging its constitution. This matter was finally disposed by the court in January 2005 after the government gave an assurance to amend the Competition Act and create a separate adjudicatory appellate authority, while leaving the expert regulatory space for the commission. Accordingly, the Competition Act was amended in September 2007 to provide for, among other things, the establishment of a Competition Appellate Tribunal to be headed by a judicial member to adjudicate appeals against commission orders and to determine compensation claims arising out of commission decisions. The appellate tribunal has since been constituted and is headed by a retired Supreme Court judge. The commission was also re-constituted on February 28 2009 and besides the chairperson, six other members have since been appointed. The government has notified selected portions of the Competition Act for enforcement, relating to anti-competitive agreements (Section 3) and abuse of dominant positions (Section 4) with effect from May 20 2009. The provisions of the act relating to the regulation of combinations (Section 6) are yet to be notified. Moreover, the Competition Commission General Regulations,(1) which contain the procedure for filing information relating to such anti-competitive agreements or allegations of abuse of dominance by enterprises or groups thereof and matters connected therewith, are displayed on the commission's website.(2) relating to such anti-competitive agreements or allegations of abuse of dominance by enterprises or groups thereof and matters connected therewith, are displayed on the commission's website.(2)

Competition Act 2002

Anti-competitive agreements (Section 3)

An agreement in respect of the production, supply, distribution, storage, acquisition or control of goods or the provision of services, which causes or is likely to cause an "***appreciable adverse effect on competition"*** within India, is defined as an 'anticompetitive agreement'. The Competition Act prohibits anti-competitive agreements and declares that such agreements shall be void. However, the prohibition contained in Section 3 is not absolute and permits joint venture agreements where certain parameters are met.(3) Anti-competitive agreements can be 'horizontal' (agreements between direct competitors), 'vertical' (agreements between enterprises at different levels of the production chain in different markets, such as agreements between a manufacturer and a distributor or a distributor and a retailer) or both.

Horizontal agreements include:
agreements to fix prices;
agreements to limit production, supply, markets, technical development, investments or provisions of services;
agreements to allocate markets or the source of production or provision of services through the allocation of, for example, geographical area, type of good or service or the number of customers; and
bid rigging or collusive bidding.

These horizontal agreements are presumed (4) to have an appreciable adverse effect on competition, which is similar to the *per se* rule. The 'cartel' is the most pernicious form of horizontal agreement and has been defined as an association of producers, sellers, distributors, traders or service providers which,

by an agreement among themselves, limit, control or attempt to control the production, distribution, sale or price of or trade in goods or the provision of services.

Vertical agreements include:
l tie-in arrangements;
l exclusive supply agreements;
l exclusive distribution agreements;
l refusal to deal; and
l resale price maintenance.

However, such arrangements are common business practices and infringe the law only if they reduce competition. The five above-mentioned categories of vertical agreement have the potential for foreclosing competition by hindering the entry of new players into the market and hence may be considered anti-competitive. Horizontal agreements other than those mentioned above and vertical agreements including those mentioned above are dealt with on a case-by-case basis.

Anti-competitive agreements and IPRs

Agreements that are entered into to protect the rights of holders of patents, copyrights and other IP rights under their respective statutes are not considered anti-competitive agreements, provided that they contain 'reasonable conditions' to permit the exercise of such rights.(5) Similarly, export agreements related exclusively to the production, supply, distribution or control of goods or the provision of services are also not considered anticompetitive as they do not have an effect on competition in India.

Implications of enforcement of Section 3

Any agreement which may cause an adverse effect on competition in the relevant market in India is likely to be challenged before the Competition Commission and, if proved to violate Section 3, declared null and void and hence legally unenforceable. Since such agreements are private agreements, they are unlikely to be known to the outside world, except either when any of the parties to the agreement chooses to file a complaint or when a third party likely to be affected by such agreement (e.g., customers or consumers) chooses to challenge the agreement before the commission. Therefore, it is advisable to have these agreements examined to reduce the possibility of a challenge.

Dominant position

The Competition Act defines what constitutes a 'dominant position'. However, the holding of a dominant position by an enterprise or a group in itself is not prohibited. The Competition Act prohibits abuse of such a dominant position by an enterprise or a group. The commission is empowered to enquire whether an enterprise or group has the dominant position and whether it has abused such dominant position on the basis of:
l its own motion;
l information received from any person, consumer or association or any trade association; or
l on a reference received from the central government, state government or a statutory authority.

Abuse of dominant position (Section 4)

The Competition Act provides for the following business practices which, if found to be conducted by an enterprise or a group, will lead to the inference of abuse of a dominant position, provided that the enterprise or group is found to be dominant in the relevant market:

l imposition of an unfair or discriminatory condition on the purchase or sale of goods or services, or on price in the purchase or sale of goods or services, including predatory pricing;
l the limitation or restriction of the production of goods or the provision of services or the market thereof;
l the limitation or restriction of technical or scientific development relating to goods or services to the prejudice of consumers;
l denial of market access in any manner;
l making the conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or commercial usage, have no connection with the subject of such contracts; or
l use of its dominant position in one relevant market to enter into or protect another relevant market.

Implications of enforcement of Section 4

The enforcement of Section 4 brings within its ambit all enterprises that enjoy a dominant position in the relevant market, including public sector enterprises or government departments engaged in any trade or business activity that is not covered under the sovereign functions of the state. In an inquiry under Section 4, unlike that under Section 3, an appreciable adverse effect on competition in the relevant market need not be proved. However, any of the six prohibited business practices listed in Section 4 is sufficient to bring the dominant enterprise within the ambit of the commission's scrutiny and instances of such prohibited activities in India are not scarce.

The Competition Act mandates the commission to follow 'competitive neutrality'(6) and the public sector no longer enjoys any special privileges or exemptions so far as violation of the Competition Act is concerned. For instance, if a public sector enterprise attempts to deny market access to a private enterprise that may be its competitor in any product market, a complaint of abuse of a dominant position would be brought against such public sector enterprise before the commission. Even multinational corporations that operate in India and have large market shares in the relevant market are subject to the commission's scrutiny if they are found to be indulging in any prohibited business practices. The consequences of enquiry by the commission into any such allegation of abuse of dominance by a large enterprise are too serious to be ignored, as it can order the division of such enterprise into smaller groups, which may have serious consequences for the business and investors. Therefore, expert advice may be considered in cases of enterprises with large market shares.

Regulation of combination (Section 6)

Under the Competition Act, 'combinations'(7) mean:

l acquisitions of control, shares, voting rights or assets;
l acquisition of control by a person over an enterprise where such person has control over another enterprise engaged in competing businesses; and
l mergers and amalgamations between or among enterprises when the combining parties exceed the thresholds set out in the act.

The thresholds are clearly specified in terms of assets or turnover in India and abroad. Entering into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India is prohibited and such combinations would be void. However, there is no merger control at present as the relevant sections have not yet been notified. Once notified, the relevant provisions of the Competition Act will provide for a mandatory notification regime. The threshold limits as prescribed by the act are provided below.

Thresholds

The threshold limits are as follows:
l combined assets of more than Rs10 billion in India;
l combined domestic turnover of more than Rs30 billion in India;
l combined worldwide assets of more than $500 million (including at least Rs5 billion of assets in India); or
l combined worldwide turnover of more than $1.5 billion (including at least Rs15 billion turnover in India).
If the merged entity belongs to a group, the threshold limits are as follows :(8)
l combined group assets in India of more than Rs40 billion;
l combined group turnover in India of more than Rs120 billion;
l combined worldwide assets of the group value of more than $2 billion (including at
least Rs5 billion group assets in India); or l combined worldwide group turnover of more than $6 billion (including at least Rs15 billion group turnover in India).

The thresholds refer to the preceding financial year and the following rules apply:

l There are no sector-specific rules for calculating the turnover for determining the thresholds. 'Turnover' includes value of sale of goods or services.(9) It is the overall turnover which is taken into consideration and not turnover limited to the relevant product market.

l The official exchange rate of the Indian rupee with the US dollar and the euro is announced daily by the Reserve Bank of India (RBI) as the RBI Reference Rate on its website. It is advisable to follow the reference rate to determine thresholds. l Market shares are not to be taken into account for the threshold test.

Stages

Unlike most jurisdictions, there are no well-defined Phase I and Phase II enquiries in India. The relevant provisions of the Competition Act prescribe a maximum waiting period of 210 calendar days for scrutiny of the proposed combination by the commission, after which the combination is deemed to have been approved.(10) However, the following identifiable steps are prescribed under the act for merger control.

Filing of notice

The notice, disclosing the details of the proposed combination (including acquisitions, acquisition of control, mergers and amalgamations) is compulsorily required to be given to the Competition Commission within 30 days of (i) approval of the proposal relating to the merger or amalgamation from the board of directors of the enterprises concerned; or (ii) execution of any agreement or other

document for the acquisition or acquisition of control.(11) There is a mandatory waiting period of a maximum of 210 calendar days from the notice filing date. On the expiry of the waiting period, the combination will be deemed to have been approved.

Issue of show cause notice

On filing the notice, the commission may either approve the combination or, if it is of the *prima facie* opinion that the combination may result in an appreciable adverse effect on competition within the relevant market in India, issue a show cause notice within 30 days of filing of such notice.(12) After issue of the show cause notice, the commission may also require a report from the director general of the Competition Commission.(13)

Publication of details of combination

On receipt of the parties' response to the show cause notice and the director general's report, if the commission is still of the *prima facie* opinion that the combination may result in an appreciable adverse effect on competition within the relevant market in India, it may, within seven working days of receipt, direct the publication of details of the combination within 10 working days, in a manner specified by the commission, to bring the combination into public knowledge. (14)

Invitation of comments and objections from the public

Within 15 working days of publication of the details, the commission may invite objections and comments from members of the public or call for such information from the parties as it deems fit. (15)

Passing of order

On receipt of all information, the commission may approve the combination unconditionally or with conditions and modifications, or it may disapprove the combination. The 'modifications' correspond to 'remedies' in other jurisdictions. (16) The well-known defenses of 'efficiency enhancement' and 'failing firm' are available under the Competition Act. (17)

Competition (Amendment) Act 2009

The Competition (Amendment) Act 2009, which was passed by Parliament on December 16 2009, received the assent of the president of India on December 22 2009. The amendment act was notified in the *Gazette of India* on December 23 2009 as Act 39/2009 and came into effect on October 14 2009 (i.e., the date of issue of the Competition (Amendment) Ordinance 2009). The effect of the amendment act is that the Competition Appellate Tribunal will now have to adjudicate not only on all pending unfair trade practices cases, including those filed under Section 36A(1)(x) of the Monopolies Act, but also on all pending applications for compensation filed under Section 12B of the Monopolies Act, and will have to dispose of all pending investigations or proceedings relating to unfair trade practices by ordering the Office of Director General of Investigation and Registration to conduct fresh investigations. The office has accordingly revived all such pending unfair trade practices complaints and started issuing fresh notices. Incidentally, no change has been made to Section 66(8) of the Competition Act; office has accordingly revived all such pending unfair trade practices complaints and started issuing fresh notices.
Incidentally, no change has been made to Section 66(8) of the Competition Act, according to which all investigations or proceedings relating to unfair trade practices referred to in Section 36A (1)(x) of the

Monopolies Act, relating to "giving false or misleading facts disparaging the goods, services or trade of another person", stand transferred to the commission, which is free to conduct or order the conduct of such investigations in the manner it deems fit. Similarly, in terms of Section 66(6) of the Competition Act, all investigations or proceedings, other than those relating to unfair trade practices (i.e., relating to monopolistic trade practices or restrictive trade practices), also stand transferred to the commission, which is free to conduct or order for conduct such investigations in the manner it deems fit.

Monopolies and Restrictive Trade Practices Commission dissolved

With the passing of the amendment act by Parliament, the Monopolies and Restrictive Trade Practices Commission stands dissolved and the governing statute, the Monopolies Act, stands repealed with effect from October 14 2009. The pending cases will be disposed by the Competition Appellate Tribunal and pending investigations or proceedings relating to unfair trade practices referred to in Section 36A(1)(x) of the Monopolies Act, relating to "giving false or misleading facts disparaging the goods, services or trade of another person", stand transferred to the Competition Commission from the said date.(18)

Part enforcement without merger control

The Competition Act is yet to be notified in full. Provisions related to only anticompetitive agreements (Section 3) and abuse of dominant positions (Section 4) have been notified with effect from May 20 2009. The provisions relating to the regulation of combinations (Section 6) are yet to be notified. This part enforcement of the Competition Act has left out merger control, which is under active consideration.

Competition Commission fully constituted

With the appointment of the chairperson and the other six full-time members by the central government, the Competition Commission stands fully constituted with effect from February 28 2009. The commission has started to receive a large number of complaints relating to allegations of abuse of dominance, as well as anti-competitive agreements, and has referred most of them to the director general for investigation.

Appellate tribunal passes first order against Competition Commission

In the first appeal filed under the Competition Act the Competition Appellate Tribunal decided in favor of the appellant. The Steel Authority of India Limited had appealed against a Competition Commission order dated December 8 2009 in Case 11/2009, through which the commission, after forming an opinion on the existence of a prima facie case, had referred the information filed by Jindal Steel & Power Limited against the Steel Authority (under Sections 3 and 4 of the Competition Act) for investigation to the director general, rejecting the Steel Authority's request for a time extension for filing reply to the commission's notice. The appellate tribunal, through a detailed order dated February 15 2010, directed the commission to take a fresh decision after considering the reply and additional reply, if any, to be filed by the Steel Authority. However, the appellate tribunal expressed no opinion on the merits of the case. The commission order dated December 8 2009 was quashed, mainly on the grounds of an absence of reasons for the rejection of the Steel Authority's request. The commission's request to be impleaded as a necessary party during the hearing of the appeal was also rejected by the appellate tribunal on the grounds that:

l the commission cannot become a respondent to support its own order as it has no adversarial role;
l it could not have justified its own order by an affidavit in support; and
l the order of an authority must stand on its own feet.(21)

Sectors lobby for block exemption

Even before notification of the merger-related provisions in the Competition Act, discontentment seemed to be widespread among regulators against the alleged overarching powers given to the commission as far as mergers and acquisitions (M&A) are concerned. It has been widely reported by the press that the RBI has suggested that the commission keep out of the banking sector because, due to its special nature, the sector does not require High Court approval for M&A transactions and therefore should not be subjected to the commission's jurisdiction. Similar concerns have been raised by the Telecommunications Regulatory Authority, as well as the Ship Liners Association. According to the press, the commission has opposed these suggestions. Under Section 54 of the Competition Act, central government is empowered to exempt any class of enterprise from the application of the Competition Act on fulfillment of certain conditions prescribed in the section. Although the commission is mandated to look into the macro picture of competition related issues across all sectors of the economy, the existence of competition-related provisions in the statutes governing the specific regulators, such as the Telecommunications Regulatory Authority and the Central Electricity Regulatory Commission, is bound to raise concerns of overlapping jurisdiction. The challenge in India for the commission is tougher than in advanced capitalist economies because of many policy-induced restrictions on competition, which is different than abuse of market power by individual firms, be it in the public sector or the private sector. This is the crux of the difference in approach between, for example, the RBI and the Competition Commission. Sector regulators, such as the RBI, are used to operating within a given policy domain which may not be competition friendly, but the commission has no mandate to force the sector regulators or the government to alter policies to suit competition. For example, public sector banks have an unfair advantage over private sector banks even after 60 years of independence. This may hamper the goal of a healthy competitive market, but it does not follow that public sector banks are abusing their dominance. Similarly, the Telecommunications Regulatory Authority has merger guidelines that give a narrow definition of 'merger' in terms of the acquisition of equity and the merging of licenses as opposed to the broader definition by the Competition Commission, which includes the acquisition of control, shares, voting rights or assets. The structural imbalance between the capacities of the erstwhile state electricity boards and the few private players, whether in generation or transmission of electricity, still remains, although the electricity sector was opened up for private participation by the Electricity Act 2003. Hence, the grey areas in the banking, telecommunications, electricity and shipping sectors need serious debate among all stakeholders, including the government, before the request for exemption from competition law from these sectors is allowed.(28)

Draft regulations for merger control likely to be notified

At the sixth Indo-US Economic Summit held on February 16 2010 in New Delhi, the chairman of the Competition Commission said that the commission is considering introducing pre-merger consultation clauses for vetting mergers under Sections 5 and 6 of the Competition Act, and that it is reasonable to expect that most M&A cases will be cleared within 40 days. The commission is also expected to release soon the draft merger regulations for public comment. The draft regulations will try to remove uncertainties and unnecessary delays for clearance of transactions that have no material impact on competition. The commission is expected to list all such possible innocuous transactions in the draft regulations. (30)

Penalties

The Competition Commission has vast powers in relation to anti-competitive agreements and abuse of dominant positions. If the commission concludes that there is an anti-competitive agreement which has caused or is likely to cause an appreciable adverse effect on competition within India, or that any enterprise has abused its dominant position in the market, it may pass all or any of the following orders:

l a cease and desist order, which directs the parties involved in such agreement or abuse of a dominant position to discontinue acting upon such agreement and not to re-enter such agreement, or to discontinue such abuse of a dominant position, as the case may be;

l an order which imposes a monetary penalty, as deemed fit but that does not exceed 10% of the average turnover for the last three preceding financial years, on each party to the agreement or abuse. Provided that in case any agreement referred to in Section 3 has been entered into by a cartel, the commission may impose on each producer, seller, distributor, trader or service provider included in that cartel a penalty of up to three times its profit for each year of the continuance of such agreement or 10% of its turnover for each year that it continues such agreement, whichever is higher;

l an order that directs that the agreement must stand modified to the extent and in the manner that may be specified in the order;

l an order that directs compliance with its orders and directions, including payment of costs;(31)

l an order that directs the division of an enterprise that is abusing its dominant position to ensure that it can no longer abuse its dominance; and

l any other order or direction as the commission deems fit.(32)

In addition, any person may apply to the appellate tribunal for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered by such person as a result of the enterprise:

l violating directions issued by the commission;

l contravening, with no reasonable ground, any decision or order of the commission issued under Sections 27, 28, 31, 32 and 33 or any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made or granted under the Competition Act; or

l delaying in carrying out such orders or directions.(33)

Execution of commission orders imposing monetary penalty

The commission is empowered to frame regulations for the recovery of monetary penalties imposed under the Competition Act, which may include a reference to the Income Tax Authority for recovery of the penalty as tax due under the Income Tax Act.(34) Consequences of contravention of commission orders The commission has vast powers to ensure compliance with its orders and directions, including

those relating to 'modifications' for combinations. The first non-compliance instance entails punishment with a fine of up to Rs100,000 for each day that such noncompliance occurs, subject to a maximum of Rs10 million. The second noncompliance instance is to be tried before the Delhi chief metropolitan magistrate on a complaint filed only by the commission and may entail imprisonment for up to three years or a fine of up to Rs250 million, or both.(35)

Penalty for failure to comply with commission directions

If a person fails to comply, without reasonable cause, with a commission direction given under Section 36(2) or (4) or a director general direction given under Section 41 (2), such person will be punishable with a fine of up to Rs100, 000 for each day during which such failure continues, subject to a maximum of Rs10 million. (36)

Power to impose penalty for non-furnishing of information on combinations

If any person or enterprise fails to give notice to the commission under Section 6(2), the commission will impose a penalty which may extend to 1% of the combination's total turnover or assets, whichever is higher.(37)

Penalty for making false statement or omission to furnish material information

If any party to a combination makes a statement which is false or is known to be false in any particular material, or omits to state any material that is known to be material, such party will be liable to a penalty of no less than Rs5 million, which may extend to Rs100 million, as may be determined by the commission.(38)

Penalty for offences in relation to furnishing of information

Without prejudice to Section 44, if a person knowingly furnishes false information or suppresses any material fact or willfully alters or destroys any document that is required to be furnished with the information, such person will be punishable with a fine of up to Rs100 million, as may be determined by the commission.(39)

Power to impose lesser penalty: leniency scheme for cartel members

If the commission is satisfied that any producer, seller, distributor, trader or service provider that is involved in a cartel which is alleged to have violated Section 3 has made a full and true disclosure in respect of the alleged violations and that such disclosure is vital, it may impose on such producer, seller, distributor, trader or service provider a lesser penalty than is leviable under Section 27 of the Competition Act. Such a lesser penalty must not be imposed in cases where the investigation report has already been received from the director general and where the member of the cartel refuses to cooperate with the commission until completion of the proceedings before it. (40) Further, the commission has made regulations to facilitate such disclosure by members of cartels wherein up to a 100% waiver of the penalty is permissible to such members on a first come, first served basis under a 'marker system'.(41)

Comments by the author

The implementation of the Competition Act in May 2009 marks the beginning of the modern competition law regime in India. Although the act was passed in 2002, it was delayed due to judicial intervention at the highest level because of the earlier proposed constitution of the Competition Commission, which included a judicial function, but did not have a judge as its chairperson. The 2007 amendment to the Competition Act removed this anomaly and created an appellate tribunal headed by a sitting or retired Supreme Court judge or a chief justice of a high court, while leaving the regulatory space for the Competition Commission as an expert body. Notwithstanding litigation in the Supreme Court relating to the constitution of the Competition Commission, for its part the commission continued primarily with competition advocacy (42) during the interregnum period from 2003 to 2007, together with drafting most of its implementing regulations under the Competition Act. It conducted a number of seminars and workshops to create awareness about the new law among various stakeholders, including the leading business chambers in India. It also created a small pool of talent through its internship programmes and commissioned a number of research studies and projects under its advocacy mandate, including some under the World Bank aid projects. After the reconstitution of the full Competition Commission under the amended act and the enforcement of the key provisions relating to anti-competitive agreements and abuse of dominant positions, the pace of disposal of complaints received by the commission has been rather slow. This could be due to the lack of a proper organizational setup. The commission is conducting a massive recruitment drive to engage a large number of employees and experts in the three core functional areas of legal, economic and financial analysis. It is hoped that by mid-2010 the commission will have inducted a sufficient number of staff and panel experts which will expedite the disposal of pending matters. The recent trend of investigating reports submitted by the director general of the Competition Commission perhaps indicates a tendency to inculpate. The reported recent appeal filed by the commission in the Supreme Court against an appellate tribunal order dated February 15 2010 in the appeal filed by the Steel Authority of India Limited against the making of an opinion on a prima facie case and referring the complaint of Jindal Steel & Power Limited to the director general for investigation under Section 26(1) of the Competition Act is another noticeable development. The outcome of the appeal will set an important judicial precedent. Similarly, the recent Bombay High Court decision that dismissed Kingfisher Airlines' petition against the commission's notice to investigate the reported alliance of Kingfisher Airlines with Jet Airways reported in 2009 is another welcome development. However, the merger control regulations under the Competition Act are yet to be notified. The draft regulations prepared by the Competition Commission are reportedly under examination by the Ministry of Corporate Affairs. Once notified, the act will come into force in its entirety and cohesive and modern competition legislation will be in place. Thus, the development of competition law jurisprudence has now begun in India and the first order to be passed by the Competition Commission in any ongoing matter is keenly awaited. However, given the nascent stage of its development and the high penalties contemplated under the Competition Act, international businesses with existing activities in or with India or those contemplating investing in business in India are advised to have their contracts and business practices reviewed to ensure that they reflect the changes brought about by the new law and that they will comply with it in future.

For further information on this topic please contact MM Sharma at Vaish Associates, Advocates by telephone (+91 11 4249 2525), fax (+91 11 2332 0484) or email (mmsharma@vaishlaw.com)

[Endnotes

(1) Competition Commission of India (General) Regulations 2009.

(2) www.cci.gov.in.
(3) The proviso to Section 3(3) of the Competition Act reads as follows:
"*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.*"
(4) Section 3(3) of the Competition Act.
(5) Section 3(5)(ii) of the Competition Act.
(6) Under Section 2(h) of the Competition Act, the definition of 'enterprise' includes:
"*a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place of at different places, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.*"
(7) Section 5 of the Competition Act.
(8) Explanation (b) to Section 5 of the Competition Act defines a 'group' as:
"*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.*"
(9) Section 2(y) of the Competition Act.
(10) Section 6(2A) read with Section 31(11) of the Competition Act.
(11) Section 6(2) of the Competition Act.
(12) Section 29(1) of the Competition Act.
(13) Section 29(1A) of the Competition Act.
(14) Section 29(2) of the Competition Act.
(15) Section 29(3) and (4) of the Competition Act.
(16) Section 31 of the Competition Act.
(17) Section 20(4)(k) and (n) of the Competition Act.
(18) Section 66(6) and (8) of the Competition Act.
(21) The full text of the Competition Appellate Tribunal's order dated February 15 2010 is available on its website http://compat.nic.in.
(28) *Competition Law Bulletin* by Vaish Associates, Volume I No 2, November/December 2009.
(29) *Competition Law Bulletin* by Vaish Associates, Volume II No 2, March/April 2010.
(30) *The Economic Times* and *Financial Express*, February 17 2010.
(31) Section 27 of the Competition Act.
(32) Section 28 of the Competition Act.
(33) Section 42A of the Competition Act.
(34) Section 39 of the Competition Act.
(35) Section 42 of the Competition Act.
(36) Section 43 of the Competition Act.
(37) Section 43A of the Competition Act.
(38) Section 44 of the Competition Act.
(39) Section 45 of the Competition Act
(40) Section 46 of the Competition Act.
(41) Competition Commission of India (Lesser Penalty) Regulations 2009.
(42) Section 49 of the Competition Act. This section was enforced from 2003 onwards and was not affected by the ongoing litigation in the Supreme Court.]