



## **Competition Law in India: Top 10 Things to Know About the Enforcement Regime**

**Commercial and Contracts**

**Government**



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## Key highlights:

- Anti-competitive agreements may be oral, written, or implicitly understood are covered under the Competition Act.
- The Competition Commission of India has comprehensive penalty procedures for both individuals and companies.

The enforcement regime of competition law in India came into effect on 20 May 2009, i.e., Sections 3 and 4 of the Competition Act, 2002 (as amended - the “Competition Act”). In its short tenure, the Competition Commission of India (“CCI”) has addressed several significant questions of law and fact and continues to evolve with the ever-changing dynamics of the Indian economy.

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Ten key issues are set out below to guide businesses for compliance with the Competition Act.

## **1. Main enforcement provisions**

The CCI is empowered under the Competition Act to regulate anti-competitive agreements and abuse of dominance in India. The Competition Act also empowers the CCI with extraterritorial jurisdiction to examine anti-competitive agreements and abuse of dominance outside India if such agreements or abuse cause (or are likely to cause) appreciable adverse effect on competition in India (“AAEC”).

Section 3 covers anti-competitive agreements, which may be oral, written, or implicitly understood. It prohibits horizontal agreements between competitors involving price fixing, bid rigging, geographic or customer market allocation, or limiting technological innovation, production, or supply. These actions are (rebuttably) presumed to breach the Competition Act. Vertical agreements such as tying, exclusivity (distribution and purchase), refusal to deal, and setting minimum or fixed resale prices are also prohibited to the extent such agreements cause an AAEC.

Section 4 of the Competition Act prohibits abuse of a dominant position by any enterprise or “group.” An abuse occurs when an enterprise or a group uses its dominant position in a relevant market in an exclusionary or exploitative manner.

The Competition Act specifically prohibits dominant entities from engaging in denial of market access, imposing unfair conditions on market participants, restricting production of goods, provision of services or technological or scientific development, and leveraging their dominance in one market to enter or protect their interests in another market.

## **2. CCI has sole jurisdiction in competition cases**

In India, the CCI has exclusive jurisdiction over complaints alleging a Competition Act breach. Judicial courts do not have primary jurisdiction, and there is no “private right of action” under the Competition Act.

The CCI does not allow withdrawal of a complaint or settlement without a final adjudication on the merits of the case. However, the Competition (Amendment) Bill, 2022 (the “Amendment Bill”) (which has yet to be passed by the Indian Parliament), proposes a mechanism for settlements and commitments for vertical agreements and abuse of dominance cases.

## **3. CCI's Director General's wide investigative powers**

The CCI's Director General (“DG”) is its investigative wing. The DG has the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (Section 41(2) read with Section 36(2) of the Competition Act). It can summon and compel the attendance of any person for examination under oath, require discovery and production of documents, receive evidence on affidavit, issue commissions (orders) for examination of witnesses or documents, requisition public records or documents, and take other measures.

## **4. CCI dawn raids**

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The DG also has power to conduct dawn raids under Section 41 of the Competition Act. During a dawn raid, the DG can seize a company's books, documents, and electronic devices. Like other competition authorities across the world, the DG takes particular interest in emails and electronic evidence. During a dawn raid, the DG can also depose employees or persons connected with the company.



Some companies scramble at unannounced inspections by competition authorities.  
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## 5. Competition Act penalties

The Competition Act provides only for civil consequences for breach of its provisions.

### Penalties on companies

Section 27 of the Competition Act lays down the penalties for contravention of Sections 3 and 4. In addition to issuing cease-and-desist orders, the CCI may also impose a monetary penalty of up to 10 percent of an enterprise's turnover for the three financial years preceding the date of the penalty order. In [Excel Crop Care Limited v. CCI and Ors.](#) (2017 (6) SCALE 241), the Supreme Court of India (the "Supreme Court") held that the CCI must consider the "relevant turnover" of the contravening company when determining penalties.

For cartels, the CCI can impose a penalty of up to the higher of three times the profit or 10 percent of the concerned enterprise's turnover for each year of the continuance of the cartel.

### Individual liability



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Section 48 of the Competition Act provides for liability of individuals who are actively or passively involved in the contravention of the Competition Act. Such individuals are those who oversee the enterprise and are responsible for its business.

The CCI can impose a penalty of up to 10 percent of the individual's average income calculated per their personal financial statements. The CCI's decision to impose penalties on directors and managers may also lead to their disqualification under the Companies Act, 2013.

## **6. Leniency for cartels: the Lesser Penalty Regulations**

India's leniency program is governed by Section 46 of the Competition Act and the Competition Commission of India (Lesser Penalty) Regulations, 2009 ("LPRs"). The CCI can grant the first applicant a penalty reduction of up to 100 percent. The second applicant may be granted a reduction of up to 50 percent. The third and subsequent applicants may receive a reduction of up to 30 percent. Leniency is not available once the CCI has received the DG's investigation report.

The LPRs provide for obligations to be met by the applicants and for the factors to be considered by the CCI while deciding a reduction of penalty. Such obligations include ceasing any further participation in the cartel, providing "vital disclosure" and relevant information, documents etc., and cooperating genuinely, fully, continuously, and expeditiously (Regulation 3(1) of the LPR).

In 2017, for the first time, the CCI granted a penalty reduction based on leniency applications in suo moto [Case No. 03 of 2014](#). This underlined the CCI's criteria in determining the reduction in penalties in line with Regulation 3(4) of the LPR, i.e., the stage at which the disclosure is made, the quality of evidence already in the CCI's possession, and the quality of evidence provided by the applicant.

In recent years, a majority of the CCI's cartel decisions have emanated from leniency applications. The leniency regime does not impact compensation claims by aggrieved persons.

## **7. CCI's treatment of vertical restraints**

Section 3(4) of the Competition Act provides that any agreement among enterprises or persons at different stages of a production chain in different markets contravenes Section 3(1), if the agreement causes or is likely to cause an AAEC in India.

Such vertical agreements include (a) tie-in arrangements; (b) exclusive supply agreements; (c) exclusive distribution agreements; (d) refusal to deals; and (e) resale price maintenance ("resale price maintenance" means situations where the upstream supplier of a product or service fixes or constrains the resale price of that product or service to be charged by the downstream reseller, such as distributors or retailers).

The CCI assesses vertical arrangements under the rule of reason test. Thus far, the CCI's practice has been to not hold vertical agreements anti-competitive where it finds the market generally competitive.

## **8. Appellate authorities**

If the Central Government of India, a State Government, a local authority, an enterprise, or any

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person is aggrieved by any CCI direction, decision, or order, they may appeal before the National Company Law Appellate Tribunal ("NCLAT"), under Section 53A(1)(a) of the Competition Act.

An NCLAT decision or order can be appealed before the Supreme Court under Section 53T of the Competition Act, which is the final appellate authority.

## 9. Compensation claims

In addition to penalties and other sanctions that can be imposed by the CCI, the Competition Act also allows aggrieved persons to bring compensation claims under Section 53N of the Competition Act. Aggrieved persons bringing such claims before the NCLAT must show they suffered a loss or damage because of conduct prohibited under the Competition Act.

## 10. Amendment Bill - revamping the Indian competition regime

The Amendment Bill proposes significant changes to India's competition law framework. Reforms to the Competition Act have been in the spotlight since 2019, when the Central Government set up the Competition Law Review Committee to review the existing framework and recommend modifications to the existing law to align it with international best practices.

Key proposed changes include:

- Appointment of DG: The CCI will be empowered to appoint the DG, as opposed to the existing regime under which the appointment is made by the Central Government.
- Limitation period for filing complaints: The Amendment Bill seeks to introduce a limitation period of three years for filing a complaint.
- "Hub-and-spoke" cartels: The Amendment Bill expressly clarifies that the CCI can proceed against entities at different levels of production and supply chains if they facilitate a cartel arrangement.
- Leniency plus: The Amendment Bill introduces a "leniency plus" option, allowing the CCI to grant additional leniency in penalty if a party being investigated for collusive conduct makes disclosure of another undisclosed cartel.
- Settlements and commitments: The Amendment Bill proposes a framework for settlements and commitments for vertical restraints and abuse of dominance cases. These will not be applicable to cartels.
- Mandatory deposit of penalty: The Amendment Bill requires appellants to deposit 25 percent of the penalty for filing an appeal to the NCLAT.

The Amendment Bill is pending with the Indian Parliament and may be passed in part or with revisions. If it is adopted, the amendments will likely be supplemented through regulations and guidelines of the CCI.

## Roadmap for in-house

Companies should introduce in-house competition compliance programs and run thorough compliance checks in their day-to-day dealings to assess risk and avoid a competition law breach.

A few helpful best practices for compliance are:

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1. Do **not** discuss, enter into any agreement, or indulge in any joint action with a competitor on price or quantity of goods offered or supplied, or the conditions on which they are offered, such as credit, sales, purchase, or billing terms, discounts, margins, transportation, freightage, distribution charges, commissions, or rebates.
  2. Do **not** discuss or communicate with competitors or rival bidders, while bidding for a tender floated by a third party.
  3. Do **not** discuss market or customer allocation with competitors.
  4. Due diligence exercise on a competitor should be conducted via the legal department or a third party, and **not** by any member of the company who is associated with its day-to-day operations.
  5. Discuss membership and participation in trade associations or industry representative bodies meetings beforehand with the legal department or external competition and antitrust counsel.

If any significant or unclear competition or antitrust issues arises, discuss these with internal and external advisors for appropriate guidance.

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Paku is an Executive Director in the Competition / Antitrust practice at Khaitan & Co and is based in the San Francisco Bay Area, US and New Delhi. Paku has over 30 years of competition, merger control, corporate and litigation/ADR-related experience. Prior to joining Khaitan & Co, Paku practiced competition in both the US and the EU and served as a competition regulator in both jurisdictions.

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Paku has been the lead or key lawyer / consultant on numerous complex merger cases in India, the EU and the US. His portfolio includes Pfizer/GSK's consumer healthcare joint venture, Ryanair's attempted acquisitions of the Irish airline Aer Lingus and Heineken's acquisition of parts of Scottish & Newcastle. Paku is acclaimed for his expertise by publications such as the International Who's Who of Competition Lawyers and Economists, Chambers & Partners UK, the Indian Business Law Journal, etc. Presently, as part of his practice, he regularly advises Indian and overseas clients on a wide array of competition / antitrust policies and legal / regulatory issues.

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Swati Bala is a principal associate with Khaitan & Co. in New Delhi. She has extensive experience in mergers and enforcement matters, including phase II merger investigations, litigations challenging merger deals, and cartel investigations. Her practice spans varied industry sectors such as e-commerce and digital platforms, banking, pharmaceutical, energy, multimedia and entertainment, telecom, and consumer goods. She has been actively involved in the legislative reforms of the Indian competition law, including the Competition

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(Amendment) Bill, 2022. Previously, she worked as a Judicial Law Clerk for Judges at the Supreme Court of India and holds a master's degree in competition law from the University of Cambridge. She has also been recognized by publications such as the Legal 500.

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