

SECTIONS OF THE COMPETITION ACT NOTIFIED

June 2009

The Ministry of Corporate Affairs has finally brought into force the “more” substantive sections of the Competition Act, 2002 (“**Act**”) (*vide notification S.O 1241 (E) and S.O 1242 (E), both dated May 15, 2009*) relating to anti-competitive agreements (section 3) and abuse of dominant position (section 4) along with other related and miscellaneous provisions. Almost all the provisions of Act are now notified except a few which still require some more deliberation. Section 5 (combinations) and section 6 (regulation of combinations), for instance, are still not in force.

Starting May 20, 2009, the Competition Commission of India (“**CCI**”) can take cognizance of offences and initiate proceedings against the allegedly defaulting party for entering into anti-competitive agreements or for abusing their dominant position.

Per section 3 of the Act, any agreement which causes or is *likely* to cause any appreciable adverse impact on competition will be deemed void. Since the scope of this provision is very wide, a lot of agreements that were previously executed without any fear of being declared invalid will now have to be re-assessed and wisely drafted. For instance, any exclusive supply agreement or a tie-in arrangement which is *likely* to cause any adverse impact on competition, will now be considered void notwithstanding the fact that such agreements may be a general industry practice to protect the interest of the company.

Section 4 of the Act specifically prohibits an abuse of dominant position. There is, *per se*, no restriction or prohibition on having a dominant position in the market as long as it is not “abused.” A party will be deemed to be enjoying a dominant position if it can operate independent of competitive forces prevailing in the relevant market or if it is in a position to affect its competitors, consumers or the market in its favour.

The Central Government has also notified the establishment of a Competition Appellate Tribunal (“**CAT**”) with effect from May 20, 2009. CAT will hear appeals against the decisions of the CCI and also adjudicate on the compensation claims. It is currently chaired by Dr. Justice Arijit Pasayat, retired Supreme Court judge.

These notifications have finally set the ball rolling for anti-trust laws or competition laws in India. Companies will have to ensure that fair competition exists in their relevant market and agreements are carefully drafted to limit the scope of an “anti-competitive” clause, if any. In case there is any violation, a heavy monetary penalty will be imposed on the accused. With a more stable government at the center, we expect the remaining provisions of the Act to be notified in the near future.

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