

LL.B. IV Term

LB - 4033 – COMPETITION LAW

Objective of the course

Competition plays a key role in ensuring productive, efficient, innovative and responsive markets. It is recognized that through Fair competition the consumers are ensured availability of 'goods' and 'services' in abundance of acceptable quality at affordable price. In this direction, competition law, also known as anti-trust law, aims at promoting or maintaining market competition by regulating anti-competitive conduct. In line with the international trend and to cope with changing realities, India has reviewed the Monopolies and Restrictive Trade Practices Act, 1969, and based on the recommendations of High Level Raghavan Committee the Competition Act, 2002, was enacted.

The course is designed to give students a thorough understanding of the Competition Law in India with related case studies to understand the basic concept of economics of law. It comprise of classroom lectures and arranged thematically with introduction to the development of Competition Act in India and the specific provisions of the Competition Act. It will provide an overview of the emerging law in corporate sector and consumer welfare. Contemporary issues related to interface between Intellectual Property Law and Competition Law as well as other sectoral regulators like TRAI is also covered.

The broad learning objectives of the course will be

- To provide an overview of the basic concepts of Competition Law with the help of the Indian decisions.
- To compare the Competition laws of India with the other jurisdictions especially US and EU.
- To appreciate and understand the economic underpinnings of the legal framework.
- To examine the applicability of Competition law to business agreements, the exercise of dominant position, the combinations between the firms and sellers
- To appreciate the Enforcement mechanisms and significance of Competition Advocacy and Leniency programme.
- To examine the pivotal role of Competition Commission of India (CCI) in ensuring competition in the Indian market across the sectors.
- To appreciate the emerging trends in Competition Law and its interface with Sectoral Regulator.
- To enable the students to take up professional practice in competition law and policy in India and abroad.

Topic 1: Introduction and Development of Competition Law

Basic Concepts –Constitutional aspect of Elimination of Concentration of Wealth and Distribution of Resources Article 39 (b) (c) Relation between Competition Policy and Competition Law –Objectives of Competition Law

History and Development of Competition Law/ Antitrust Law, Liberalization and Globalization, Raghavan Committee Report, Competition Act 2002; Difference between MRTP Act and Competition Act, Salient feature of Competition Act, Reference to EU and US laws.

Establishment and Constitution of Competition Commission of India, Powers and Functions- Jurisdiction of the CCI – adjudication and appeals, Director General of Investigation (DGI), Penalties and Enforcement

1. *Brahm Dutt v. Union of India*, AIR 2005 SC 730 1
2. *CCI v. Steel Authority of India Ltd.* (2010)10 SCC 7445
3. *Mahindra Electric Mobility Limited v. Competition Commission of India*
2019 OnLine Del 803223

Topic 2: Important Definitions

Important Definitions under the Competition Act, 2002.

Agreement, Cartel, Consumer, Enterprise, Goods, Services, Practice, Market, Relevant Market, Relevant Turnover

4. *Excel Crop Care Ltd v. CCI*, (2017) 8 SCC 4762
5. *CCI v. Co-Ordination Committee of Artists and Technicians of W.B. Film And Television*, civil appeal no. 6691 of 2014 decided on 7.03.2017 (SC).....89

Topic 3: Anti-Competitive Agreements

Anti- Competitive Agreements, Horizontal and Vertical agreement, Rule of Per se and Reason, Appreciable Adverse Effect on Competition (AAEC) in India, Exemption, Prohibition of Anti-competitive agreement/ Cartel/bid rigging, Buyers' cartel

6. *Builders Association of India v. Cement Manufacturers*, Case No. 29/2010,
decided on 20.6.2012 (CCI)102
7. *Exclusive Motors Pvt. Ltd v. Automobile Lamborghini SPA*, Case No. 52/2012,
decided on 6.11.2012 (CCI).....107
8. *Shamsher Kataria v. Honda Sael Cars India Ltd.*, 2014 Comp LR 1 (CCI)...113

9. *Rajasthan Cylinders and Containers Limited v. Union of India*, Civil Appeal No. 3546 of 2014 decided on 1.10.2018 (SC).....140
10. *Samir Agrawal v. CCI*, Civil Appeal No.3100 of 2020 decided on 15.12.2020 (SC).....171

Reference Cases

1. *All India Tyres Dealers Federation v. Tyres Manufacturers*, 2013 COMP LR 92 (CCI), Main Order dated October 30, 2012 and Minority Order by Mr. R Prasad (Member, CCI) dated October 30, 2012.
available at http://www.cci.gov.in/sites/default/files/202008_0.pdf
2. *Hyundai Motor India Ltd v. CCI*, Competition Appeal (AT)No.6 of 2017 order dated 19.09.2018 decided by National Company Law Appellate Tribunal available at <https://nclat.nic.in/Useradmin/upload/6594600435ba2337253f81.pdf>
3. *Association of Malayalam Movie Artists v. Competition Commission of India* Competition Appeal (AT) No. 05 of 2017 available at <https://nclat.nic.in/Useradmin/upload/17500597585e6c6948aa449.pdf>
4. *In re Delhi Jal Board and Grasim Industries Ltd*, Ref. C. No. 03 & 04 of 2013 available at <https://www.cci.gov.in/sites/default/files/Ref.C.%20Nos.%2003%20%26%2004%20of%202013%20%5BMajority%20Order%20%28p.1%20to%20p.90%29%2C%20Dissent%20Note%20by%20Member%20Sudhir%20>

Topic 4: Regulation of Abuse of Dominant Position

Dominance in Relevant Market, Abuse of dominance, Predatory Pricing.

11. *Belaire Apartment Owners' Association v. DLF Ltd & HUDA*, 2011 Comp LR 0239(CCI), Main Order dated August 12, 2011: Supplementary Order by Mr. R Prasad (Member, CCI) dated August 12, 2011 and Supplementary Order dated January 3, 2013, DLF Ltd. v. CCI,2014 CompLR 01 (CompAT)184
12. *Surinder Singh Barmi v. Board for Control of Cricket in India (BCCI)* [2013]113 CLA579 (CCI), 2013 CompLR 297 (CCI), [2013]118 SCL 226 (CCI).....207
13. *MCX Stock Exchange v. National Stock Exchange Ltd.*, 2011 Comp LR 129 (CCI); *National Stock Exchange Ltd. v. MCX Stock Exchange* 2014 Comp LR 304 (CompAT).216
14. *Indian Exhibition Industry Association v. Ministry of Commerce and Industry and Indian Trade Promotion Organisation*, 2014 Comp LR 87 (CCI); *Indian Trade Promotion Organisation v. CCI* (CompAT).....231

Reference Cases

1. *Jagmohan Chhabra And Shalini Chhabra v. Unitech*, 2011 Comp LR 31 (CCI); Main Order dated November 8, 2011 and Dissenting Order by Mr. R. Prasad (Member, CCI) dated 8.11.2011, Available at:

http://www.cci.gov.in/sites/default/files/Mr.%20J%20ChabraDissenting8Nov2011_0.pdf

2. *Matrimony.Com Limited v. Google Lic & Others*, CCI, Case Nos.07 &30 of 2012 order dated 31.10.2018 available at <https://www.cci.gov.in/sites/default/files/07%20%26%20%2030%20of%202012.pdf>
3. *All India Online Vendors Association v. Flipkart India Private Limited and Another* (Case No. 20 of 2018) decided on 6.11.2018 available at <https://www.cci.gov.in/sites/default/files/20-of-2018.pdf>
4. *Rico Auto Industries Limited and Others v. GAIL (India)* decided on 8.11.2018 available at <https://www.cci.gov.in/sites/default/files/Final-Order-Gail.pdf>

Topic 5: Regulation of Combinations

Combinations: Merger, Acquisition, Amalgamation and Takeover - Horizontal, Vertical and Conglomerate Mergers - Combinations Regulations, Penalties, Green Channel

15. *Etihad Airways and Jet Airways Combination* Order, CCI, Order dated 12.11.2013.....241
16. *Sun Pharma and Ranbaxy Combination* Order, CCI, Orders dated 5.12.2014 and 17.3. 2015.253
17. *Wal-Mart and Flip Kart Combination* Order, CCI, Order dated 4.8.2016 268
 *Note on the concept of Green Channel276

Reference Cases

1. *PVR and DT Cinemas*, C-2015/07/288, CCI, Order dated 4.5. 2016 Available at <http://www.cci.gov.in/sites/default/files/event%20document/C-2015-07-288.pdf>
2. *Schneider Electric India Private Limited and MacRitchie Investments Pte. Limited*, C-2018/07/586, order dated 18.04.2019 available at https://www.cci.gov.in/sites/default/files/Notice_order_document/Public1.pdf
3. *Jio Futuristic Digital Holdings Pvt. Ltd; Jio Digital Distribution Holdings Pvt. Ltd.; Jio Television Distribution Holdings Pvt. Ltd and Den Networks Ltd*, C-2018/10/609, order dated 21.1.2019 available at https://www.cci.gov.in/sites/default/files/Notice_order_document/2019Order.pdf
4. *Jio Content Distribution Holdings Private Limited, Jio Internet Distribution Holdings Private Limited, Jio Cable and Broadband Holdings Private Limited and Hathway Cable and Datacom Limited*, C-2018/10/610,21.01.2019 available at https://www.cci.gov.in/sites/default/files/Notice_order_document/2019Order.pdf

5. *Mitsui & Co. and IHH Healthcare Berhad*, C-2018/09/601, dated 14.2.2020 available at https://www.cci.gov.in/sites/default/files/Notice_order_document/C-2018-09-601O.pdf
6. *Adani Transmission Limited (Penalty for Gun-Jumping by CCI), Combination Registration No. C-2018/01/547* available at https://www.cci.gov.in/sites/default/files/Notice_order_document/Order%20under%20Section%2043A_1.pdf
7. *Northern TK Venture Pte Limited and Fortis Healthcare Limited*, Combination Registration No. C-2018/09/601, dated 29.10.2018 available at https://www.cci.gov.in/sites/default/files/Notice_order_document/C-2018-09-601O.pdf

Topic 6: Leniency Programme and Competition Advocacy

Leniency, Competition Advocacy in India

18. *In Re: Cartelization in respect of Zinc Carbon Dry Cell Batteries Market in India*, Suo Motu Case No. 02 of 2016.....279
19. *Nagrik Chetna Manch v. Fortified Security Solutions and others*, case No. 50 of 2015, order dated 01.05.2018 (CCI).....308
- *Concept note on Advocacy Activities of CCI..... 320

Reference Cases

1. Cartelization in respect of tenders floated by Indian Railways for supply of Brushless DC Fans and other electrical items, Suo Moto Case No. 03 of 2014, Available at: http://www.cci.gov.in/sites/default/files/Order_Suo_Moto_03_of_2014%20%28Final%29_1.pdf
2. Cartelization in respect of tender floated by Indian Railways for supply of brushless DC fans and other electric items, Suo motu case no. 3 of 2014 order dated 18.01.2017
3. Cartelization of broadcasting service providers by rigging the bids submitted in response to tender floated by sports broadcasters Suo motu case no. 02 of 2013, order dated 11. 07.2018
4. In re: Anticompetitive conduct in dry cell batteries market in India, Suo motu case no. 01 of 2017, order 30.08.2018
5. In re: Alleged Cartelization in flash light in market Suo motu case no. 01 of 2017, order dated 06.11.2018

Topic -7: Emerging Trends in Competition Law (Interface with Sectoral Regulator)

Intellectual Property Rights and Competition Law, Telecom Regulatory Authority of India and Competition Law

20. *Telefonaktiebolaget LM Ericsson (PUBL) v. Competition Commission of India*, 2016 OnLine Del 1951, (2016) 232 DLT (CN).....325
21. *Competition Commission of India v. Bharti Airtel Ltd*, Civil Appeal NO (S). 11843 OF 2018 decided on.....343

Reference cases

1. *Monsanto Holdings Private v. Competition Commission Of India*, W.P.(C) 1776/2016 and CM Nos. 7606/2016, 12396/2016 & 16685/2016, decided on 20.5.2020 (High Court of Delhi) available on <https://indiankanoon.org/doc/158839264/>

Suggested Readings:

Books

- Chatterji Souvik, *Competition law in India and Interface with Sectoral Regulators*, Thomson Reuters (2019).
- Abir Roy & Jayant Kumar, *Competition Law in India*, Eastern Law House (2018).
- Sinha Manoj and Mallaya, Susmitha P *Emerging Competition Law*, Wolters Kluwer, (2017).
- Richard Whish and David Bailey, *Competition Law*, 8th ed., Oxford University Press, (2015).
- T Ramappa, *Competition Law in India: Policy, Issues and Developments*, 3rd ed., Oxford University Press, New Delhi, (2014).
- Mark Furse, *Competition Law of the EC and UK*, 6th ed., Oxford University Press, (2008).
- Vinod Dhall (ed.), *Competition Law Today*, Oxford University Press, (2007).
- S.M. Dugar, *Commentary on MRTP Law, Competition Law & Consumer Protection Law*, 4th ed., Wadhwa Nagpur, (2006).

Journals

- Indian Competition Law Review (ICLR)*
- The Competition Law Review (Comp L Rev)*
- Competition Law Insight*
- Competition Law International*
- OECD Journal of Competition Law and Policy*
- European Competition Journal (ECJ)*
- Antitrust Law Journal (ALJ)*

Legislations:

The Sherman Anti-Trust Act, 1890
 The Clayton Act, 1914
 Federal Trade Commission Act, 1914
 Competition Act, 1998 (UK)
 Enterprise Act, 2002 (UK)
 MRTP Act, 1969 (India)
 The Competition Act, 2002 (India)
 The Competition Amendment Bill, 2012(India)
 Notifications issued by Competition Commission of India

*Some Important Notifications issued by the Ministry of Corporate Affairs,
 Government of India*

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IMPORTANT NOTE:

1. The topics and cases given above are not exhaustive. The teachers teaching the course shall be at liberty to add new topics/cases.
2. The students are required to study the legislations as amended up-to-date and consult the latest editions of books.
3. Reference cases mentioned indicates the additional suggested cases which the students can refer to enhance their knowledge in the concerned area.