



## Overview

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India is on the threshold of ushering in a modernised competition regime with the Competition Act 2002 (CA02), which was significantly amended in 2007 following legal challenges before the Supreme Court of India. In a recent press release, the Indian minister of corporate affairs stated that: ‘the much-awaited competition watchdog Competition Commission of India (CCI) would become functional and replace existing Monopolies & Restrictive Trade Practices Commission (MRTPC) on 1 April 2009’.

The CA02 provides for the establishment of the Competition Commission of India (CCI) and the Competition Appellate Tribunal (CAT). The CCI was established by the government of India in October 2003 and the chairman and two members of the CCI have now been appointed. The government is also responsible for the establishment of the CAT and the selection and appointment of its members.

### Scope of the CA02

The CA02 is applicable to an enterprise that inter alia includes departments of government (central as well as state) performing non-sovereign functions, and also covers acts by overseas enterprises that have an appreciable adverse effect on competition in markets in India. The civil courts have no jurisdiction to try any matter that falls within the CA02. The law further provides that the MRTP Act 1969, which is currently in force, will be repealed when the provisions of the CA02 are fully in force.

### Duties and powers of the CCI

The CCI has a mandate to prohibit anti-competitive agreements and abuse of dominant position and to regulate certain combinations that include acquisition of shares, voting rights, assets, acquiring of control, and mergers or amalgamation between and among enterprises. The CA02 also provides for a ‘mirror image’ consultative mechanism on competition issues between the CCI and other sectoral regulators. The central or state government may also make a reference and seek the opinion of the CCI on the

possible implications of an existing or proposed policy, law, etc, relating to competition or any other matter.

The CCI is required to examine alleged anti-competitive practices through a process of ‘enquiry’. The key to these enquiries is the identification of the ‘relevant market’ and the determination of ‘appreciable adverse effect on competition’. For inquiries into abuse of a dominant position by an enterprise, the condition precedent is the determination of the ‘dominance’ and ‘abuse’. After an enquiry, if the CCI finds that the agreement under scrutiny is anti-competitive in terms of the parameters stipulated under the CA02 or that an enterprise or group has abused its dominant position, it may pass all or any of the following orders: a direction to discontinue and not to re-enter such agreement or discontinue abuse of dominance; impose penalty; direct modification of the agreement; direct the division of an enterprise or group; and a direction to abide by such other order including payment of costs.

Combinations, where the total value of ‘turnover’ or ‘assets’ exceeds the threshold limits prescribed in the CA02, are required to be notified and can be consummated only after approval by the CCI. After due and timely procedure, the CCI may approve, approve with modification or reject the proposed combination and declare the combination as void.

### Scope and powers of the CAT

The CAT will hear appeals filed against an order or direction passed by the CCI and also adjudicate claims for compensation by applicants who have suffered loss or damage consequent to an infringement of the provisions of the law. An appeal against an order of the CAT shall be made to the Supreme Court of India.

### Competition advocacy

In 2003, the government notified the provisions of the CA02 relating to ‘competition advocacy’. The CCI’s advocacy initiatives since 2003 include: undertaking market studies; organising workshops and seminars; the development and

circulation of competition literature; and training and capacity building.

Further, through a consultative approach, the CCI has developed draft regulations that lay down the procedure to be followed when enquiring into cases of anti-competitive agreements, abuse of dominance (including predatory pricing), combinations, procedure governing 'meetings'

and engagement of experts. The CCI has made public its guiding principles: to be in sync with markets; to minimise the cost of compliance and enforcement; to maintain transparency and confidentiality; and to adopt a consultative mechanism. It is hoped that such a positive and balanced approach will help the Indian economy attain new heights.

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Luthra & Luthra Law Offices is a full-service law firm with a legal practice focused in the areas of corporate and commercial, infrastructure and project finance, policy and regulatory, intellectual property, international trade laws, competition laws, and litigation and ADR.

With offices in New Delhi, Mumbai and Bangalore, Luthra & Luthra is one of the largest law firms in India. The firm enjoys the unique distinction of being India's first ISO 9001 certified law firm, a reflection of the standards of quality maintained by it.

The competition law practice group in the firm provides innovative and commercial solutions on antitrust and competition issues with specific focus on business houses, MNCs, SMEs, sensitising all stakeholders on various antitrust and competition issues emanating from existing and contemplated policies and laws of the government, statutory authorities and suggests pragmatic solutions to their concerns. The managing partner of the firm was nominated to the working group on the national competition policy for the 11th Five-Year Plan.

The firm has assisted the United States Federal Trade Commission and the antitrust division of the United States Department of Justice in a USAID programme to prepare the 'Internal Reference Material on Combinations', a training tool kit for the functionaries of the Competition Commission of India. The firm's interdisciplinary team of lawyers, economists and chartered accountants, who have several years of experience before the Monopolies Commission, gives it an edge in competition, consumer and trade protection investigations and enquiries.