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# Competition Act, 2002

27 March 2026

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| ACT NUMBER         | YEAR ENACTED | REPLACES  |
|--------------------|--------------|---|
| Act No. 12 of 2003 | 2002         | Monopolies and Restrictive Trade Practices (MRTP) Act, 1969 |

### KEY PROVISIONS

- 1 Prohibition of anti-competitive agreements including cartels, tie-in arrangements, and resale price maintenance (Section 3)
- 2 Prohibition of abuse of dominant position in the relevant market (Section 4)
- 3 Regulation of combinations (mergers, amalgamations, and acquisitions) above prescribed thresholds (Sections 5-6)
- 4 Establishment of Competition Commission of India (CCI) as a quasi-judicial body (Section 7)
- 5 Competition Appellate Tribunal replaced by National Company Law Appellate Tribunal (NCLAT) for appeals (Section 53A)
- 6 Leniency/lesser penalty provisions for whistle-blowers in cartel cases (Section 46)
- 7 Deal Value Threshold for combination regulation added by 2023 amendment (Section 5)

## BACKGROUND

The Competition Act, 2002 was enacted to prevent practices having an adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers, and to ensure freedom of trade. It replaced the Monopolies and Restrictive Trade Practices (MRTP) Act, 1969, which was considered inadequate for a liberalised economy. The Act was passed by Parliament in January 2003 and came into force in phases — the Competition Commission of India (CCI) was established on 14 October 2003, anti-competitive agreement and abuse of dominance provisions became operational on 20 May 2009, and combination (merger) regulation provisions came into effect on 1 June 2011.

The shift from the MRTP Act to the Competition Act was driven by the economic liberalisation of 1991. The MRTP Act focused on controlling monopolies and restrictive trade practices through a registration-based regime. The S.V.S. Raghavan Committee (2000) recommended replacing the MRTP framework with a modern

competition law aligned with global best practices. The new Act adopted a competition-advocacy approach rather than a monopoly-control approach, focusing on anti-competitive behaviour rather than size or market share alone.

The Competition (Amendment) Act, 2023 brought significant changes to align the law with the digital economy and global standards — including a deal value threshold for combination regulation (targeting high-value acquisitions of digital startups), a settlement and commitment framework, and time-bound combination review (150 days + 30 days extension).

## KEY CONCEPTS

- **Anti-Competitive Agreement (Section 3):** Any agreement in respect of production, supply, distribution, storage, acquisition, or control of goods, or provision of services, which causes or is likely to cause an appreciable adverse effect on competition (AAEC) in India. Horizontal agreements (between competitors) are presumed anti-competitive. Vertical agreements (between entities at different levels of the supply chain) are assessed under the “rule of reason.”
- **Dominant Position (Section 4, Explanation (a)):** A position of strength enjoyed by an enterprise in the relevant market which enables it to operate independently of competitive forces prevailing in the relevant market, or to affect its competitors, consumers, or the relevant market in its favour. Dominance itself is not prohibited — only the abuse of dominance.
- **Combination (Section 5):** An acquisition, merger, or amalgamation that exceeds prescribed asset or turnover thresholds. Post-2023 amendment: any transaction with a deal value exceeding Rs 2,000 crore where the target has “substantial business operations in India” also qualifies as a notifiable combination, regardless of asset/turnover size.
- **Relevant Market:** Determined by two parameters — Relevant Product Market (Section 2(t)) based on interchangeability, characteristics, prices, and intended use; and Relevant Geographic Market (Section 2(s)) based on homogeneous competition conditions, regulatory barriers, transport costs, and consumer preferences.
- **Cartel (Section 2©):** An association of producers, sellers, distributors, traders, or service providers who, by agreement among themselves, limit, control, or attempt to control production, distribution, sale, or price of, or trade in goods or provision of services. Cartels face the harshest penalties under the Act.
- **Leniency (Section 46):** CCI may impose lesser penalty on an enterprise that has made a full and true disclosure of its involvement in a cartel. The first applicant may receive up to 100% reduction in penalty, the second up to 50%, and subsequent applicants up to 30%.

## IMPORTANT PROVISIONS

- Section 3 — Anti-Competitive Agreements:** Horizontal agreements (between competitors) covering price-fixing, output limitation, market allocation, or bid-rigging are presumed to have an AAEC and are per se illegal. Vertical agreements (tie-in arrangements, exclusive supply, exclusive distribution, refusal to deal, resale price maintenance) are assessed under the rule of reason — whether they cause or are likely to cause an AAEC considering factors like accrual of benefits to consumers, improvement in efficiency, and promotion of technical/scientific development.
- Section 4 — Abuse of Dominant Position:** An enterprise shall not abuse its dominant position. Abuse includes: imposing unfair conditions or prices; limiting production or market or technical development to prejudice of consumers; denying market access to competitors; making conclusion of contracts subject to unrelated supplementary obligations; using dominant position to enter or protect another market.
- Section 5-6 — Combination Regulation:** Combinations above prescribed thresholds must be notified to CCI. CCI examines whether the combination causes or is likely to cause an AAEC. Post-2023: asset threshold (parties combined) — Rs 2,000 crore (India) or \$1 billion (global) with Rs 1,000 crore India turnover; turnover threshold — Rs 6,000 crore (India) or \$3 billion (global) with Rs 1,000 crore India turnover. New deal value threshold: Rs 2,000 crore.
- Section 27 — Orders After Inquiry (Anti-Competitive Agreements/Dominance):** CCI may direct discontinuation of agreement/abuse, impose penalty up to 10% of average turnover of the preceding three years (for anti-competitive agreements) or up to 10% of turnover for abuse of dominance. For cartels, penalty may extend to 3 times the profit or 10% of turnover for each year of cartel continuance.
- Section 42A — Settlement and Commitment (2023 Amendment):** Parties under investigation for abuse of dominance or vertical agreements may apply for settlement (paying a lesser amount) or commitment (offering behavioural/structural remedies). Not available for cartel cases or horizontal agreements.
- Section 53A — Appeal:** Any person aggrieved by a CCI order may appeal to the National Company Law Appellate Tribunal (NCLAT). The Competition Appellate Tribunal (COMPAT), which originally heard appeals, was abolished in 2017 and its jurisdiction transferred to NCLAT.

## LANDMARK JUDGMENTS

- CCI v. Steel Authority of India Ltd (SAIL) (2010):** The Supreme Court held that CCI's prima facie order under Section 26(1) directing investigation is an administrative direction, not a quasi-judicial order, and therefore not appealable. This clarified the procedural framework and expedited

CCI's investigative functions.

- **Excel Crop Care v. CCI (2017):** The Supreme Court upheld CCI's penalty on a cartel of manufacturers of aluminium phosphide tablets for bid-rigging in government procurement. The Court endorsed CCI's methodology of calculating penalties based on "relevant turnover" (turnover of the product in question) rather than total turnover, providing a more proportionate approach.
- **CCI v. Bharti Airtel (2019):** The Supreme Court upheld CCI's jurisdiction to investigate abuse of dominance by telecom companies, clarifying that sector-specific regulators (TRAI) and CCI have concurrent jurisdiction, and CCI's competition jurisdiction is not ousted by the existence of a sectoral regulator.
- **Google LLC v. CCI (2022-2023):** CCI imposed a penalty of Rs 1,337.76 crore on Google (October 2022) for abusing dominant position in the Android mobile device ecosystem — mandatory pre-installation of Google apps, anti-fragmentation obligations, and tying Google Search with Play Store. NCLAT largely upheld the penalty on 29 March 2023, scrapping some remedial directions but maintaining the fine. Google appealed to the Supreme Court; as of September 2024, the case remains pending before the SC (hearings adjourned multiple times).

## RECENT AMENDMENTS / DEVELOPMENTS

- **Competition (Amendment) Act, 2023 (effective 10 September 2024):** Received Presidential assent on 11 April 2023; key provisions notified on 9 September 2024 and came into force on 10 September 2024. Changes: introduced deal value threshold (Rs 2,000 crore) for combination notification where the target has "substantial business operations in India," targeting acquisitions of digital startups with low turnover but high value; introduced settlement and commitment mechanism (Section 42A) for non-cartel cases; reduced combination review timeline from 210 days to 150 days (+ 30-day extension); broadened "control" to mean ability to exercise "material influence" over management, affairs, or strategic commercial decisions; added provisions for penalising gun-jumping (completing mergers before CCI approval). The CCI also issued Competition Commission of India (Combinations) Regulations, 2024, providing detailed procedural guidelines.
- **Digital Markets Focus:** CCI has been increasingly active in digital markets — investigating Google (Android and ad-tech), Amazon and Flipkart (e-commerce practices), Apple (App Store policies), and WhatsApp (privacy policy). A Parliamentary Standing Committee recommended a Digital Competition Law, and the Committee on Digital Competition Law (CDCL) chaired by Manoj Govil submitted its report in March 2024, recommending an ex-ante regulatory framework for "Systematically Significant Digital Enterprises" (SSDEs).
- **Green Channel for Combinations:** CCI introduced a green channel route for certain combinations that do not raise competition concerns (where there are no horizontal, vertical, or complementary overlaps between parties). These are deemed approved upon filing.

- **National Competition Policy:** The government has been working on a National Competition Policy to mainstream competition principles across all sectors and levels of governance, as recommended by the Competition Law Review Committee (2019).

## UPSC RELEVANCE

CCI establishment year (2003); Act replaces MRTP Act (1969); anti-competitive agreements (Section 3); abuse of dominant position (Section 4); combination thresholds; NCLAT as appellate body; leniency provisions for cartels (Section 46); deal value threshold (Rs 2,000 crore – 2023 amendment); CCI chairperson appointment (by Central Government). **Mains GS-3:** Role of CCI in ensuring competitive markets; impact of digital economy on competition regulation; analysis of 2023 amendment – is India's competition law ready for Big Tech? Balance between ease of doing business and preventing anti-competitive behaviour; need for a Digital Competition Law. **Interview:** "Big Tech companies argue that their dominance benefits consumers through innovation and low prices. How should competition authorities balance innovation incentives with preventing monopolistic abuse?"

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