

Bill No. 136 of 2012

THE COMPETITION (AMENDMENT) BILL, 2012

A

BILL

further to amend the Competition Act, 2002.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Competition (Amendment) Act, 2012.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

12 of 2003. 5

2. In the Competition Act, 2002 (hereinafter referred to as the principal Act), in section 2, in clause (y), after the words "goods or services", the words "excluding the taxes, if any, levied on sale of such goods or provision of services" shall be substituted.

Amendment of section 2.

Amendment
of section 3.

3. In section 3 of the principal Act,—

(A) in sub-section (4), for the *Explanation*, the following *Explanation* shall be substituted, namely:—

Explanation.—For the purposes of this sub-section,—

(a) "tie-in arrangement" includes any agreement requiring a purchaser of goods or recipient of services, as a condition of such purchase or provision of such services, to purchase some other goods or availing of some other services; 5

(b) "exclusive supply agreement" includes any agreement restricting in any manner the purchaser of goods or recipient of services in the course of his trade from acquiring or otherwise dealing in any goods or services other than those of the seller or service provider or any other person; 10

(c) "exclusive distribution agreement" includes any agreement to limit, restrict or withhold the output or supply of any goods or provision of services or allocate any area or market for the disposal or sale of the goods or provision of services; 15

(d) "refusal to deal" includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or services are provided or from whom goods are bought or services are availed of; 20

(e) "resale price maintenance",—

(i) in case of goods includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged; 25

(ii) in case of services includes any agreement to provide services on condition that the prices to be charged on retailing of services by the recipient of services shall be the prices stipulated by the service provider unless it is clearly stated that prices lower than those prices may be charged; 30

(B) in sub-section (5), in clause (i) after sub-clause (f), the following sub-clause shall be inserted, namely:—

"(g) any other law for the time being in force relating to the protection of other intellectual property rights;" 35

Amendment
of section 4.

4. In section 4 of the principal Act, in sub-section (1), after the words "or group", the words "jointly or singly" shall be inserted.

Amendment
of section 5.

5. In section 5 of the principal Act, in the *Explanation*, in clause (b), in sub-clause (i), for the words "twenty-six per cent.", the words "fifty per cent." shall be substituted.

Insertion of
new section 5A.

6. After section 5 of the principal Act, the following section shall be inserted, 40
namely:—

Power to
specify
different
value of assets
and turnover.

"5A. Notwithstanding anything in section 5, the Central Government may, in consultation with the Commission, by notification, specify different value of assets and turnover for any class or classes of enterprise for the purpose of section 5."

Amendment
of section 9.

7. In section 9 of the principal Act,— 45

(a) in sub-section (1), the words "and other Members" shall be omitted;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) The Members of the Commission shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of—

- 5 (a) the Chief Justice of India or his nominee — Chairperson;
 (b) the Secretary in the Ministry of Corporate Affairs — Member;
 (c) the Secretary in the Ministry of Law and Justice — Member;
 (d) the Chairperson of the Commission — Member;
 (e) one expert of repute who has special knowledge of, and
 10 professional experience in, international trade, economics, business,
 commerce, law, finance, accountancy, management, industry, public affairs
 or competition matters including competition law and policy — Member."

8. In section 20 of the principal Act, in sub-section (2), the words "or reference" shall be omitted. Amendment of section 20.

15 9. In section 21 of the principal Act, in sub-section (1),— Amendment of section 21.

(a) for the words "is raised by any party", the word "arises" shall be substituted;

(b) for the words "authority may", the words "authority shall" shall be substituted;

(c) the proviso shall be omitted.

20 10. In section 21A of the principal Act, in sub-section (1),— Amendment of section 21A.

(a) for the words "is raised by any party", the word "arises" shall be substituted;

(b) for the words "this Act", the words "any Act" shall be substituted;

(c) for the words "Commission may", the words "Commission shall" shall be substituted;

25 (d) the proviso shall be omitted.

11. In section 26 of the principal Act,—

(a) in sub-section (7), after the words "in accordance with the provisions of this Act", the words "and make appropriate orders thereon after hearing the concerned parties" shall be inserted;

30 (b) in sub-section (8), after the words "in accordance with the provisions of this Act", the words "and make appropriate orders thereon after hearing the concerned parties" shall be inserted.

12. In section 27 of the principal Act,—

35 (i) in clause (b), after the proviso, the following proviso shall be inserted, namely:— Amendment of section 27.

"Provided further that no such penalty shall be imposed by the Commission under this section without giving an opportunity of being heard to the producer, seller, distributor, trader or service provider, as the case may be;"

40 (ii) in clause (g), after the proviso, the following proviso shall be inserted, namely:—

"Provided further that while passing orders under this section, the Commission shall give due regard to the opinion given by the statutory authority, where such opinion has been obtained under the provisions of sub-section (1) of section 21A of this Act."

Amendment
of section 31.

13. In section 31 of the principal Act,—

(a) in sub-section (11), for the words "two hundred and ten days", at both the places where they occur, the words "one hundred and eighty days" shall be substituted;

(b) in sub-section (12), for the words "ninety working days" the words "one hundred and eighty days" shall be substituted. 5

Amendment
of section 41.

14. In section 41 of the principal Act,—

(a) for sub-section (3), the following sub-sections shall be substituted, namely:—

"(3) Where in the course of investigation, the Director General has reason to believe that any person or enterprise, to whom a notice under sub-section (2) has been issued,— 10

(a) has omitted or failed to provide the information or produce documents as required notice; or

(b) would not provide the information or produce documents which will be useful for, or relevant to, the investigation; or 15

(c) would destroy, mutilate, alter, falsify or secrete the information or documents useful for, or relevant to, the investigation, then,

he may, after obtaining the authorisation from the Chairperson of the Commission,— 20

(i) enter, with such assistance and force, as may be required, the place or places where such information or documents are expected to be kept;

(ii) search such place or places, as the case may be;

(iii) seize documents and take copies of information, including electronic mail, hard disk of computer and such other media; 25

(iv) record on oath statements of persons having knowledge of the information or documents referred to in sub-clause (iii).

(4) The provisions of the Code of Criminal Procedure, 1973, relating to searches and seizure shall apply, so far as may be, to searches and seizure under sub-section (3)."; 30 2 of 1974.

(b) the Explanation shall be omitted.

Amendment
of section 43.

15. In section 43 of the principal Act, for the words "punishable with fine", the words "liable to a penalty" shall be substituted.

Amendment
of section 51.

16. In section 51 of the principal Act, in sub-section (2), in clause (a), for the words "the Registrar", the words "the Secretary" shall be substituted. 35

Amendment
of section
53A.

17. In section 53A of the principal Act, in sub-section (1), in clause (a), for the words, brackets and figures "sub-sections (2) and (6)", the words, brackets and figures "sub-sections (2), (6), (7) and (8)" shall be substituted.

Amendment
of section 63.

18. In section 63 of the principal Act, in sub-section (3), after the words "Every notification issued under", the word, figure and letter "section 5A", shall be inserted. 40

STATEMENT OF OBJECTS AND REASONS

The Competition Act was enacted in 2002 keeping in view the economic developments that resulted in opening up of the Indian economy, removal of controls and consequent economic liberalisation which required that the Indian economy be enabled to allow competition in the market from within the country and outside. It was subsequently amended in 2007 and 2009. The Competition Act, 2002, *inter alia*, provides for the following, namely:—

(a) establishment of the Competition Commission of India, which shall be an expert body and would function as a market regulator for preventing and regulating anti-competitive practices in the country in accordance with the provisions of the Act and it would also have advisory and advocacy functions in its role as a regulator which can also impose a penalty in certain cases specified in the Act;

(b) establishment of the Competition Appellate Tribunal, which shall be a three member quasi-judicial body headed by a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court to hear and dispose of appeals against any direction issued or decision made or order passed by the Competition Commission and to adjudicate claims on compensation and for passing of orders for the recovery of compensation from any enterprise for any loss or damage suffered as a result of any contravention of the provisions of the Act.

2. The Competition Commission of India (the Commission) has become fully functional since 2009. In the light of the experiences gained in its operation and the working of the Commission, the Government of India in June, 2011, constituted an Expert Committee to examine and suggest the modifications in the Competition Act, 2002. As suggested by the Expert Committee, the Central Government has decided to amend the said Act and therefore, the Competition (Amendment) Bill, 2012 is being introduced.

3. The Competition (Amendment) Bill, 2012, *inter alia*, provides the following, namely:—

(a) to insert a new sub-clause (g) in clause (i) of sub-section (5) of section 3 so as to provide that anti-competitive agreements shall not restrict the matters regarding the protection of intellectual property rights for the purposes of clause (i) of sub-section (5) of the said section;

(b) to amend section 4 of the Act relating to abuse of dominant position so as to provide that no enterprise or group either jointly or singly shall abuse its dominant position;

(c) to amend sub-clause (i) of clause (b) in the *Explanation* to section 5 so as to increase the percentage of voting rights from twenty-six per cent. or more to fifty per cent. or more for the purpose of regulation of combinations;

(d) to insert a new section 5A in the Act so as to confer power upon the Central Government to specify, in consultation with the Commission, different value of assets and turnover for any class of enterprises for the purpose of section 5 of the Act;

(e) the reference of issues by the Statutory Authority to the Commission and the Commission to the Statutory Authority are made mandatory;

(f) to empower the Commission to decide the matter after hearing the concerned parties in cases where the Commission may not agree with Director General's investigation;

(g) to make provision that no penalty shall be imposed by the Commission for contravention of the provisions of section 3 or section 4 without giving an opportunity of being heard to the concerned person;

(h) to amend sub-section (11) of section 31 so as to reduce the period from two hundred and ten days to one hundred and eighty days within which the Commission has to pass an order or issue direction on combinations and also to amend sub-section (12) of the said section so as to increase the period from ninety working days to one hundred and eighty days to bring the time period on par with sub-section (11);

(i) to amend section 51 of the Act so as to substitute the expression “the Secretary” in place of the “the Registrar” in clause (a) of sub-section (2) of the said section as there is no post of the Registrar in the Commission.

4. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 16th November, 2012.

SACHIN PILOT

ANNEXURE
EXTRACTS FROM THE COMPETITION ACT, 2002
(12 OF 2003)

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2. In this Act, unless the context otherwise requires,— Definitions.

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(y) "turnover" includes value of sale of goods or services;

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CHAPTER II

PROHIBITION OF CERTAIN AGREEMENTS, ABUSE OF DOMINANT POSITION AND REGULATION OF
COMBINATIONS

Prohibition of agreements

3. (1) * * * * * Anti-competitive agreements.

(4) Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including—

- (a) tie-in arrangement;
- (b) exclusive supply agreement;
- (c) exclusive distribution agreement;
- (d) refusal to deal;
- (e) resale price maintenance,

shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.

Explanation.—For the purposes of this sub-section,—

(a) "tie-in arrangement" includes any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;

(b) "exclusive supply agreement" includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person;

(c) "exclusive distribution agreement" includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods;

(d) "refusal to deal" includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought;

(e) "resale price maintenance" includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

(5) Nothing contained in this section shall restrict—

(i) the right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under—

* * * * *

Prohibition of abuse of dominant position

Abuse of
dominant
position.

4. (1) No enterprise or group shall abuse its dominant position.

* * * * *

Regulation of combinations

Combination.

5. The acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises, if—

(a) any acquisition where—

(i) the parties to the acquisition, being the acquirer and the enterprise, whose control, shares, voting rights or assets have been acquired or are being acquired jointly have,—

(A) either, in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or

(B) in india or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or

(ii) the group, to which the enterprise whose control, shares, assets or voting rights have been acquired or are being acquired, would belong after the acquisition, jointly have or would jointly have,—

(A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India; or

(b) acquiring of control by a person over an enterprise when such person has already direct or indirect control over another enterprise engaged in production, distribution or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service, if—

(i) the enterprise over which control has been acquired along with the enterprise over which the acquirer already has direct or indirect control jointly have,—

(A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or

(ii) the group, to which enterprise whose control has been acquired, or is being acquired, would belong after the acquisition, jointly have or would jointly have,—

(A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India; or

(c) any merger or amalgamation in which—

(i) the enterprise remaining after merger or the enterprise created as a result of the amalgamation, as the case may be, have,—

(A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or

(ii) the group, to which the enterprise remaining after the merger or the enterprise created as a result of the amalgamation, would belong after the merger or the amalgamation, as the case may be, have or would have,—

(A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or

(B) in India or outside India, in aggregate the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India.

Explanation.—For the purposes of this section,—

* * * * *

(b) "group" means two or more enterprises which, directly or indirectly, are in a position to—

(i) exercise twenty-six per cent. or more of the voting rights in the other enterprise; or

* * * * *

9. (1) The Chairperson and other Members of the Commission shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of—

Selection Committee for Chairperson and Members of Commission.

* * * * *

20. (1) * * * * *

Inquiry into combination by Commission.

(2) The Commission shall, on receipt of a notice under sub-section (2) of section 6, inquire whether a combination referred to in that notice or reference has caused or is likely to cause an appreciable adverse effect on competition in India.

* * * * *

21. (1) Where in the course of a proceeding before any statutory authority an issue is raised by any party that any decision which such statutory authority has taken or proposes to take, is or would be, contrary to any of the provisions of this Act, then such statutory authority may make a reference in respect of such issue to the Commission:

Reference by statutory authority.

Provided that any statutory authority, may, *suo motu* make such a reference to the Commission.

* * * * *

Reference by Commission.

21A. (1) Where in the course of a proceeding before the Commission an issue is raised by any party that any decision which, the Commission has taken during such proceeding or proposes to take, is or would be contrary to any provision of this Act whose implementation is entrusted to a statutory authority, then the Commission may make a reference in respect of such issue to the statutory authority:

Provided that the Commission, may, *suo motu*, make such a reference to the statutory authority.

* * * * *

Procedure for inquiry under section 19.

26. (1) * * * * *

(7) If, after consideration of the objections or suggestions referred to in sub-section (5), if any, the Commission is of the opinion that further investigation is called for, it may direct further investigation in the matter by the Director General or cause further inquiry to be made in the matter or itself proceed with further inquiry in the matter in accordance with the provisions of this Act.

(8) If the report of the Director General referred to in sub-section (3) recommends that there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act.

Orders by Commission after inquiry into agreements or abuse of dominant position.

27. Where after inquiry the Commission finds that any agreement referred to in section 3 or action of an enterprise in a dominant position, is in contravention of section 3 or section 4, as the case may be, it may pass all or any of the following orders, namely:—

* * * * *

(b) impose such penalty, as it may deem fit which shall be not more than ten per cent. of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse:

Provided that in case any agreement referred to in section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten per cent. of its turnover for each year of the continuance of such agreement, whichever is higher.

* * * * *

(g) pass such other order or issue such directions as it may deem fit:

Provided that while passing orders under this section, if the Commission comes to a finding, that an enterprise in contravention to section 3 or section 4 of the Act is a member of a group as defined in clause (b) of the *Explanation* to section 5 of the Act, and other members of such a group are also responsible for, or have contributed to, such a contravention, then it may pass orders, under this section, against such members of the group.

Orders of Commission on certain combinations.

31. (1) * * * * *

(11) If the Commission does not, on the expiry of a period of two hundred and ten days from the date of notice given to the Commission under sub-section (2) of section 6, pass an order or issue direction in accordance with the provisions of sub-section (1) or sub-section (2) or sub-section (7), the combination shall be deemed to have been approved by the Commission.

Explanation.—For the purposes of determining the period of two hundred and ten days specified in this sub-section, the period of thirty working days specified in sub-section (6) and a further period of thirty working days specified in sub-section (8) shall be excluded.

(12) Where any extension of time is sought by the parties to the combination, the period of ninety working days shall be reckoned after deducting the extended time granted at the request of the parties.

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CHAPTER V

DUTIES OF DIRECTOR GENERAL

41. (1) * * * * *

1 of 1956

(3) Without prejudice to the provisions of sub-section (2), sections 240 and 240A of the Companies Act, 1956 so far as may be, shall apply to an investigation made by the Director General or any other person investigating under his authority, as they apply to an inspector appointed under that Act.

Director General to investigate contraventions.

Explanation.—For the purposes of this section,—

1 of 1956

(a) the words “the Central Government” under section 240 of the Companies Act, 1956 shall be construed as “the Commission”;

1 of 1956

(b) the word “Magistrate” under section 240A of the Companies Act, 1956 shall be construed as the “the Chief Metropolitan Magistrate, Delhi”.

* * * * *

43. If any person fails to comply, without reasonable cause, with a direction given by—

(a) the Commission under sub-sections (2) and (4) of section 36; or

(b) the Director General while exercising powers referred to in sub-section (2) of section 41,

Penalty for failure to comply with directions of Commission and Director General.

such person shall be punishable with fine which may extend to rupees one lakh for each day during which such failure continues subject to a maximum of rupees one crore, as may be determined by the Commission.

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51. (1) * * * * *

Constitution of Fund.

(2) The Fund shall be applied for meeting—

(a) the salaries and allowances payable to the Chairperson and other Members and the administrative expenses including the salaries, allowances and pension payable to the Director General, Additional, Joint, Deputy or Assistant Directors General, the Registrar and officers and other employees of the Commission;

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CHAPTER VIII A

COMPETITION APPELLATE TRIBUNAL

53A. (1) The Central Government shall, by notification establish an Appellate Tribunal to be known as Competition Appellate Tribunal,—

Establishment of Appellate Tribunal.

(a) to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under sub-sections (2) and (6) of section 26, section 27, section 28, section 31, section 32, section 33, section 38, section 39, section 43, section 43A, section 44, section 45 or section 46 of this Act;

* * * * *

Power to
make rules.

63. (1) * * * * *

(3) Every notification issued under sub-section (3) of section 20 and section 54 and every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or rule, or both Houses agree that the notification should not be issued or rule should not be made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule, as the case may be.

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LOK SABHA

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BILL
further to amend the Competition Act, 2002.

(Shri Sachin Pilot, Minister of State for Corporate Affairs)