Qn No 1:

Salient Features of the Competition Act 2002

Anti Agreembents : Enterprises, persons or associations of enterprises or persons, including cartels, shall not enter into agreements in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which cause or are likely to cause an "appreciable adverse impact" on competition in India. Such agreements would consequently be considered void. Agreements which would be considered to have an appreciable adverse impact would be those agreements which;

- Directly or indirectly determine sale or purchase prices,
- Limit or control production, supply, markets, technical development, investment or provision of services,
- Share the market or source of production or provision of services by allocation of inter alia geographical area of market, nature of goods or number of customers or any other similar way,
- Directly or indirectly result in bid rigging or collusive bidding.

Types of agreement : A 'horizontal agreement' is an agreement for co-operation between two or more competing businesses operating at the same level in the market. A vertical agreement is an agreement between firms at different levels of the supply chain. For instance, a manufacturer of consumer electronics might have a vertical agreement with a retailer according to which the latter would promote their products in return for lower prices.

Abuse of dominant position : There shall be an abuse of dominant position if an enterprise imposes directly or indirectly unfair or discriminatory conditions in purchase or sale of goods or services or restricts production or technical development or create hindrance in entry of new operators to the prejudice of consumers. The provisions relating to abuse of dominant position require determination of dominance in the relevant market. Dominant position enables an enterprise to operate independently or effect competitors by action.

Combinations : The Act is designed to regulate the operation and activities of combinations, a term, which contemplates acquisition, mergers or amalgamations. Combination that exceeds the threshold limits specified in the Act in terms of assets or turnover, which causes or is likely to cause adverse impact on competition within the relevant market in India, can be scrutinized by the Commission.

Objectives of CCI are;

Anti-competitive agreements : This covers both the horizontal and vertical agreements. It states that four types of horizontal agreements between enterprises involved in the same industry would be applied. These agreements are those that :

Lead to price fixing; limit or control quantities; share or divide markets; and result in bid-rigging. It also identifies a number of vertical agreements subject to review under rule of reach test.

Abuse of dominance : The Act lists five categories of abuse :

- Imposing unfair/discriminatory conditions in purchase of sale of goods or services (including predatory pricing);

Combinations Regulation (Merger and Amalgamation) : The Act states that any combination that exceeds the threshold limits in terms of value of assets or turnover can be scrutinized by the CCI to determine whether it will cause or is likely to cause an appreciable adverse effect on competition within the relevant market in India.

Enforcement : The CCI, the authority entrusted with the power to enforce the provisions of the Act, can enquire into possibly anti-competitive agreements or abuse of dominance either on its own initiative or on receipt of a complaint or information from any person, consumer, consumer's association, a trade association or on a reference by any statutory authority. It can issue 'cease and desist' orders and impose penalties. The CCI can also order the break-up of a dominant firm.

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The new competition law in India, despite some concerns expressed in certain quarters, is much more consistent with the current anti-trust thinking than the outgoing MRTP Act. Although the success of the new Indian model will now turn on its implementation, India would appear to have taken a very substantial step towards the adoption of a modem competition policy.

Commission has the power to inquire into unfair agreements or abuse of dominant position or combinations taking place outside India but having adverse effect on competition in India, if any of the circumstances exists :

- An agreement has been executed outside India.
- Any contracting party resides outside India.
- Any enterprise abusing dominant position is outside India.
- A combination has been established outside India.
- A party to a combination is located abroad.
- Any other matter or practice or action arising out of such agreement or dominant position or combination is outside India.

To deal with cross border issues, commission is empowered to enter into any memorandum of understanding or arrangement with any foreign agency of any foreign country with the prior approval of central Government.

- **Review of orders of Commission :** Any person aggrieved by an order of the Commission can apply to the Commission for review of its order within thirty days from the date of the order. Commission may entertain a review application after the expiry of thirty days, if it is satisfied

that the applicant was prevented by sufficient cause from preferring the application in time. No order

- shall be modified or set aside without giving an opportunity of being heard to the person in whose favour the order is given and the Director General where he was a party to the proceedings.
- **Appeal :** Any person aggrieved by any decision or order of the Commission may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Commission. No appeal shall lie against any decision or order of the Commission made with the consent of the parties.
- **Penalty :** If any person fails to comply with the orders or directions of the Commission shall be punishable with fine which may extend to 1 lakh for each day during which such non compliance occurs, subject to a maximum of 10 crore.
- If any person does not comply with the orders or directions issued, or fails to pay the fine imposed under this section, he shall be punishable with imprisonment for a term which will extend to three years, or with fine which may extend to 25 crores or with both.
- Section 44 provides that if any person, being a party to a combination makes a statement which is false in any material particular or knowing it to be false or omits to state any material particular knowing it to be material, such person shall be liable to a penalty which shall not be less than 50 lakhs but which may extend to 1 crore.