

Corporate Restructuring

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Unit 4: Legal and Regulatory Framework of M&A

- Provisions of Companies Act 2013,
- SEBI Takeover Code 2011,
- Provisions of Competition Act 2002.

The Competition Act, 2002 (Summary)

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- Prohibition of agreements (section 3)
- Prohibition of abuse of dominant position (section 4) – 19(4)
- Regulation of combinations (section 5,6) – June 1, 2011

The Competition Act, 2002 (Summary)

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- **Prohibition of agreements (section 3)**
 - Anti-competitive agreements – AAEC
 - Horizontal – deemed to be anti-competitive—between competitors
 - Vertical – CCI establish – AAEC - 19(3)
- Section 3(1): Anti-competitive agreements
- Section 3(2): Void agreements
- Section 3(3): Agreements presumed to have appreciable adverse effect on competition in India
- Section 3(4): Agreements may have appreciable adverse effect on the competition in India
- Section 3(5): Rights under different other Acts.
- Section 19(3): Conditions warranting AAEC for agreements
- Section 2(c): Cartel

The Competition Act, 2002

Prohibition of agreements

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Anti-competitive agreements

- 3(1) No enterprise or association of enterprises or person or association of persons shall enter into 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 within India**.
- 3(2) Any agreement entered into in contravention of the provisions contained in subsection (1) shall be **void**.

The Competition Act, 2002

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Prohibition of agreements: Horizontal Ag.

Anti-competitive agreements

- 3(3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which—
 - a) directly or indirectly determines purchase or sale prices;
 - b) limits or controls production, supply, markets, technical development, investment or provision of services;
 - c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;
 - d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition:

Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.

The Competition Act, 2002

Prohibition of agreements

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- Explanation.—For the purposes of this sub-section, “bid rigging” means any agreement, between enterprises or persons referred to in sub-section (3) engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.

Section 2(c)

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“cartel” includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services;

The Competition Act, 2002

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Prohibition of agreements: Vertical Ag.

- 3(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.**

The Competition Act, 2002

Prohibition of agreements

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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.

The Competition Act, 2002

Prohibition of agreements

- 3(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—
 - a) the Copyright Act, 1957 (14 of 1957);
 - b) the Patents Act, 1970 (39 of 1970);
 - c) the Trade and Merchandise Marks Act, 1958 (43 of 1958) or the Trade Marks Act, 1999 (47 of 1999);
 - d) the Geographical Indications of Goods (Registration and Protection) Act, 1999 (48 of 1999);
 - e) the Designs Act, 2000 (16 of 2000);
 - f) the Semi-conductor Integrated Circuits Layout-Design Act, 2000 (37 of 2000);

The Competition Act, 2002

Prohibition of agreements

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- 3(5) Nothing contained in this section shall restrict—
 - (i) Previous slide
 - (ii) the right of any person to export goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export.

The Competition Act, 2002

Inquiry into certain agreements and dominant position of enterprise

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19(3) The Commission shall, while determining whether an agreement has an appreciable adverse effect on competition under section 3, have due regard to all or any of the following factors, namely:—

- a) creation of barriers to new entrants in the market;
- b) driving existing competitors out of the market;
- c) foreclosure of competition by hindering entry into the market;
- d) accrual of benefits to consumers;
- e) improvements in production or distribution of goods or provision of services; or
- f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

The Competition Act, 2002 (Summary)

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Prohibition of abuse of dominant position (section 4) – 19(4)

- Section 4(1): Dominant position.
- Section 4(2): Abuse (Conditions for abuse of dominant position)
- Section 19(4): Conditions warranting AAEC for dominant position
- Section 2(r): Relevant market
- Section 2(s): Relevant Geographical market
- Section 2(d): Relevant Product market
- Predatory Pricing

The Competition Act, 2002

14 Prohibition of abuse of dominant position

- 4(1) No enterprise or group shall abuse its dominant position.
- 4(2) There shall be an abuse of dominant position under subsection (1), if an enterprise or a group:
 - a) directly or indirectly, imposes unfair or discriminatory:
 - i. condition in purchase or sale of goods or service; or
 - ii. price in purchase or sale (including predatory price) of goods or service.

Explanation: For the purposes of this clause, the unfair or discriminatory condition in purchase or sale of goods or service referred to in sub-clause (i) and unfair or discriminatory price in purchase or sale of goods (including predatory price) or service referred to in sub-clause (ii) shall not include such discriminatory condition or price which may be adopted to meet the competition; or

The Competition Act, 2002

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Prohibition of abuse of dominant position

- 4(1) No enterprise or group shall abuse its dominant position.
- 4(2) There shall be an abuse of dominant position under subsection (1), if an enterprise or a group:
 - a) directly or indirectly, imposes unfair or discriminatory.....
 - b) limits or restricts:
 - i. production of goods or provision of services or market therefore; or
 - ii. technical or scientific development relating to goods or services to the prejudice of consumers; or
 - c) indulges in practice or practices resulting in denial of market access [in any manner]; or
 - d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or
 - e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

The Competition Act, 2002

16 Prohibition of abuse of dominant position

Explanation: For the purposes of this section, the expression:

- a) “**dominant position**” means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to:
 - i. operate independently of competitive forces prevailing in the relevant market; or
 - ii. affect its competitors or consumers or the relevant market in its favour.
- b) “**predatory price**” means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, or production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

The Competition Act, 2002

Inquiry into certain agreements and dominant position of enterprise

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19(4) The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not under section 4, have due regard to all or any of the following factors, namely:

- a) market share of the enterprise;
- b) size and resources of the enterprise;
- c) size and importance of the competitors;
- d) economic power of the enterprise including commercial advantages over competitors;
- e) vertical integration of the enterprises or sale or service network of such enterprises;
- f) dependence of consumers on the enterprise;
- g) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;

The Competition Act, 2002

Inquiry into certain agreements and dominant position of enterprise

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- h) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;
- i) countervailing buying power;
- j) market structure and size of market;
- k) social obligations and social costs;
- l) relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition;
- m) any other factor which the Commission may consider relevant for the inquiry.

Relevant Market & Relevant Geographic Market & Relevant Product Market

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- Section 2(r): “relevant market” means the market which may be determined by the commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets;
- Section 2(s): “relevant geographic market” means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas;
- Section 2(t): “relevant product market” means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use;

The Competition Act, 2002 (Summary)

- Regulation of combinations (section 5,6) – June 1, 2011
- Combination Limits revision:
 - vide notification S. O. No. 480 (E) dated 4 March 2011
 - vide notification S. O. No. 675 (E) dated 4th March, 2016
 - vide notification S.O. 1131 (E) dated 7th March, 2024
 - **150% over the original value Competition Act, 2002**
- Section 5(a): Combinations limits
- Section 5(b): Combinations limits
- Section 5(c): Combinations limits
- Section 6(1): Combination are void which cause AECC
- Section 6(2): Notice to commission for combination
- Section 6(3): Procedure
- Section 6(4): Exceptions
- Section 6(5): Procedure

The Competition Act, 2002

Regulation of combinations 2002

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- 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

The Competition Act, 2002

Regulation of combinations 2002

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- 5(a)(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

The Competition Act, 2002

Regulation of combinations 2002

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- 5(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

The Competition Act, 2002

Regulation of combinations 2002

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- 5(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—
 - (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

The Competition Act, 2002

Regulation of combinations 2002

- 5(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

The Competition Act, 2002

Regulation of combinations 2002

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- 5(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,—
 - (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*

The Competition Act, 2002

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Combination Thresholds 2016

In India	Individual Company	Combined assests OR Turnover of Company	More than 2000 Cr OR More than 6000 Cr	
In India	Groups Entities	Combined assests OR Turnover of Company	More than 8000 Cr OR More than 24000 Cr	
In India and Outside India	Individual Company	Combined assests OR Turnover of Company	More than Total 1 Billion USD OR More than Total 3 Billion USD	Including Minimum assets in India 1000 Cr Including Minimum turnover in India 3000 Cr
In India and Outside India	Groups Entities	Combined assests OR Turnover of Company	More than Total 4 Billion USD OR More than Total 12 Billion USD	Including Minimum assets in India 1000 Cr Including Minimum turnover in India 3000 Cr

The Competition Act, 2002

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Combination Thresholds 2024

In India	Individual Company	Combined assests OR Turnover of Company	More than 2500 Cr OR More than 7500 Cr	
In India	Groups Entities	Combined assests OR Turnover of Company	More than 10000 Cr OR More than 30000 Cr	
In India and Outside India	Individual Company	Combined assests OR Turnover of Company	More than Total 1.25 Billion USD OR More than Total 3.75 Billion USD	Including Minimum assets in India 1250 Cr Including Minimum turnover in India 3750 Cr
In India and Outside India	Groups Entities	Combined assests OR Turnover of Company	More than Total 5 Billion USD OR More than Total 15 Billion USD	Including Minimum assets in India 1250 Cr Including Minimum turnover in India 3750 Cr

The Competition Act, 2002

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Exemptions:

- Banks, financial institutions & venture capital funds, foreign investors- loan agreement
- De-minimis

De-minimis Thresholds 2024

Acquired	Target Company	Rs. 350 CR	Rs. 450 CR	Assets
Acquired	Target Company	Rs. 1000 CR	Rs. 1250 CR	Turnover

The Competition Act, 2002

Regulation of combinations

- 6(1) No person or enterprise shall enter into a combination which causes or is likely to cause an **appreciable adverse effect on competition** within the relevant market in India and such a combination shall be void.
- 6(2) Subject to the provisions contained in sub-section (1), any person or enterprise, who or which proposes to enter into a combination, shall give **notice to the Commission**, in the form as may be specified, and the fee which may be determined, by regulations, disclosing the details of the proposed combination, within *thirty* days of—
 - (a) approval of the proposal relating to merger or amalgamation, referred to in clause (c) of section 5, by the board of directors of the enterprises concerned with such merger or amalgamation, as the case may be;
 - (b) execution of any agreement or other document for acquisition referred to in clause (a) of section 5 or acquiring of control referred to in clause (b) of that section.

The Competition Act, 2002

Regulation of combinations

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- (2A) No combination shall come into effect until **two hundred and ten days** have passed from the day on which the notice has been given to the Commission under sub-section(2) or the Commission has passed orders under section 31, whichever is earlier.

The Competition Act, 2002

Regulation of combinations

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- 6(3) The Commission shall, after receipt of notice under sub-section (2), deal with such notice in accordance with the provisions contained in sections 29, 30 and 31.
- 6(4) The provisions of this section shall not apply to share subscription or financing facility or any acquisition, by a **public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement.**
- 6(5) The public financial institution, foreign institutional investor, bank or venture capital fund, referred to in sub-section (4), shall, within seven days from the date of the acquisition, **file**, in the form as may be specified by regulations, with the Commission the details of the acquisition including the details of control, the circumstances for exercise of such control and the consequences of default arising out of such loan agreement or investment agreement, as the case may be.

The Competition Act, 2002 (Summary)

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- Section 7: Establishment of Commission
- Section 8, 10, 16, : Composition of Commission
- Section 18: Duties of Commission
- Section 19: Inquiry into agreements and dominant position
- Section 20: Inquiry into combinations
- Section 26: Procedure for inquiry under section 19
- Section 27: Orders by Commission after inquiry into agreements or abuse of dominant position
- Section 29(1): Procedure for investigation of combination
- Section 30: Procedure in case of notice under section 6(2)
- Section 31: Orders of Commission on certain combinations
- Section 32: Acts taking place outside India but having an effect on competition in India

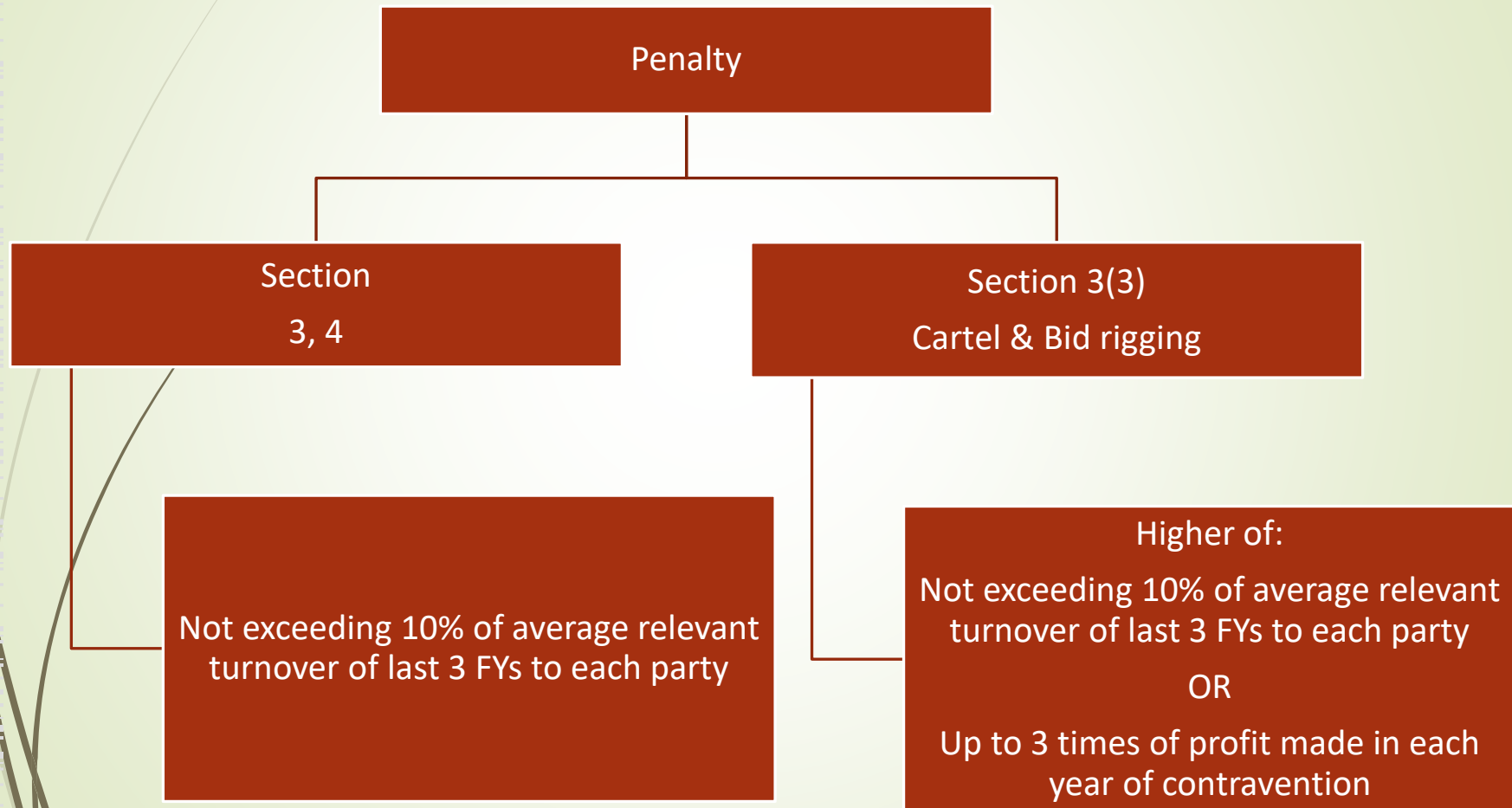
The Competition Act, 2002 (Summary)

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- Section 33: Power to issue interim orders
- Section 43: Appearance before Commission
- Section 36: Power of Commission to regulate its own procedure
- Section 38: Rectification of orders
- Section 39: Execution of orders of Commission imposing monetary penalty
- Section 42: Penalties: Contravention of orders of Commission
- Section 43: Penalty for failure to comply with directions of Commission and Director General
- Section 44: Penalty for making false statement or omission to furnish material information
- Section 45: Penalty for offences in relation to furnishing of information
- Section 46: Power to impose lesser penalty
- Section 47: Crediting sums realised by way of penalties to Consolidated Fund of India
- Section 53: Appeal to Appellate Tribunal & Appeal to Supreme Court

The Competition Act, 2002 (Summary)

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The Competition Act, 2002

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CCI issues order against Google for search bias, imposes penalty

- The Competition Commission of India (CCI) has found Google to have abused its dominant position in online general web search and web search advertising services in India.
- CCI imposed a penalty of Rs.135.86 crore upon Google after taking into account its revenue from its India operations only.

The Competition Act, 2002

CCI imposes penalty on Ghaziabad Development Authority (GDA) for Abuse of its Dominant Position

- ➔ CCI held that conduct of GDA is in violation of Section 4(2)(a)(i) of the Act. Resultantly, CCI has imposed a penalty of Rs. 1,00,60,794/- (Rupees one crore sixty thousand seven hundred ninety four only) on GDA for the said anti-competitive conduct.

The Competition (Amendment) Act, 2023

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The Competition (Amendment) Act, 2023 was passed by Parliament in April 2023.

The Amendment Act has received assent of President on 11-4-2023.

Some amendments have been notified and made effective on 18-5-2023, 18-7-2023 and 26-10-2023.

Section 2(t): Relevant Product Market Act, 2023

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- ▶ Section 2(t): relevant product market" means a market comprising of all those products or services:
 - i. which are regarded as inter-changeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use; or
 - ii. the production or supply of, which are regarded as interchangeable or substitutable by the supplier, by reason of the ease of switching production between such products and services and marketing them in the short term without incurring significant additional costs or risks in response to small and permanent changes in relative prices;

Full Act

The Competition Act, 2002

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- 66 Sections and IX chapters
- It extends to the whole of India except the State of Jammu and Kashmir.
- It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

The Competition Act, 2002

Prohibition of agreements

Anti-competitive agreements

- 3(1) No enterprise or association of enterprises or person or association of persons shall enter into 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 within India**.
- 3(2) Any agreement entered into in contravention of the provisions contained in subsection (1) shall be **void**.

The Competition Act, 2002

Prohibition of agreements

Anti-competitive agreements

- 3(3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which—
 - a) directly or indirectly determines purchase or sale prices;
 - b) limits or controls production, supply, markets, technical development, investment or provision of services;
 - c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;
 - d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition:

Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.

The Competition Act, 2002

Prohibition of agreements

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- Explanation.—For the purposes of this sub-section, “bid rigging” means any agreement, between enterprises or persons referred to in sub-section (3) engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.

The Competition Act, 2002

Prohibition of agreements

45

- 3(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.**

The Competition Act, 2002

Prohibition of agreements

46

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.

The Competition Act, 2002

Prohibition of agreements

- 3(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—
 - a) the Copyright Act, 1957 (14 of 1957);
 - b) the Patents Act, 1970 (39 of 1970);
 - c) the Trade and Merchandise Marks Act, 1958 (43 of 1958) or the Trade Marks Act, 1999 (47 of 1999);
 - d) the Geographical Indications of Goods (Registration and Protection) Act, 1999 (48 of 1999);
 - e) the Designs Act, 2000 (16 of 2000);
 - f) the Semi-conductor Integrated Circuits Layout-Design Act, 2000 (37 of 2000);

The Competition Act, 2002

Prohibition of agreements

- 3(5) Nothing contained in this section shall restrict—
 - (i) Previous slide
 - (ii) the right of any person to export goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export.

The Competition Act, 2002

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Prohibition of abuse of dominant position

- 4(1) No enterprise or group shall abuse its dominant position.
- 4(2) There shall be an abuse of dominant position under sub-section (1), if an enterprise or a group--
 - (a) directly or indirectly, imposes unfair or discriminatory—
 - (i) condition in purchase or sale of goods or service; or
 - (ii) price in purchase or sale (including predatory price) of goods or service.

Explanation.— For the purposes of this clause, the unfair or discriminatory condition in purchase or sale of goods or service referred to in sub-clause (i) and unfair or discriminatory price in purchase or sale of goods (including predatory price) or service referred to in sub-clause (ii) shall not include such discriminatory condition or price which may be adopted to meet the competition; or

The Competition Act, 2002

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Prohibition of abuse of dominant position

- 4(1) No enterprise or group shall abuse its dominant position.
- 4(2) There shall be an abuse of dominant position under subsection (1), if an enterprise or a group--
 - (a) directly or indirectly, imposes unfair or discriminatory.....
 - (b) limits or restricts—
 - (i) production of goods or provision of services or market therefore; or
 - (ii) technical or scientific development relating to goods or services to the prejudice of consumers; or
 - (c) indulges in practice or practices resulting in denial of market access [in any manner]; or
 - (d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or
 - (e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

The Competition Act, 2002

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Prohibition of abuse of dominant position

Explanation.—For the purposes of this section, the expression—

- (a) “dominant position” means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to—
 - (i) operate independently of competitive forces prevailing in the relevant market; or
 - (ii) affect its competitors or consumers or the relevant market in its favour.
- (b) “predatory price” means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, or production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

The Competition Act, 2002

Regulation of combinations

- 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

The Competition Act, 2002

Regulation of combinations

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- 5(a)(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

The Competition Act, 2002

Regulation of combinations

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- 5(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

The Competition Act, 2002

Regulation of combinations

55

- 5(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—
 - (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

The Competition Act, 2002

Regulation of combinations

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- 5(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

The Competition Act, 2002

Regulation of combinations

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- 5(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,—
 - (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*

The Competition Act, 2002

Regulation of combinations

- 6(1) No person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void.
- 6(2) Subject to the provisions contained in sub-section (1), any person or enterprise, who or which proposes to enter into a combination, shall give notice to the Commission, in the form as may be specified, and the fee which may be determined, by regulations, disclosing the details of the proposed combination, within *thirty* days of—
 - (a) approval of the proposal relating to merger or amalgamation, referred to in clause (c) of section 5, by the board of directors of the enterprises concerned with such merger or amalgamation, as the case may be;
 - (b) execution of any agreement or other document for acquisition referred to in clause (a) of section 5 or acquiring of control referred to in clause (b) of that section.

The Competition Act, 2002

Regulation of combinations

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- *(2A) No combination shall come into effect until two hundred and ten days have passed from the day on which the notice has been given to the Commission under sub-section(2) or the Commission has passed orders under section 31, whichever is earlier.*

The Competition Act, 2002

Regulation of combinations

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- 6(3) The Commission shall, after receipt of notice under subsection (2), deal with such notice in accordance with the provisions contained in sections 29, 30 and 31.
- 6(4) The provisions of this section shall not apply to share subscription or financing facility or any acquisition, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement.
- 6(5) The public financial institution, foreign institutional investor, bank or venture capital fund, referred to in subsection (4), shall, within seven days from the date of the acquisition, file, in the form as may be specified by regulations, with the Commission the details of the acquisition including the details of control, the circumstances for exercise of such control and the consequences of default arising out of such loan agreement or investment agreement, as the case may be.

The Competition Act, 2002

Establishment of Commission

61

- 7(1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Commission to be called the “Competition Commission of India”.
- (2) **The Commission shall be a body corporate** by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.
- (3) The head office of the Commission shall be at such place as the Government may decide from time to time.
- (4) The Commission may establish offices at other places in India.

The Competition Act, 2002

Composition of Commission

- 8(1) The Commission shall consist of a Chairperson and not less than two and not more than ~~six~~ other Members to be appointed by the Central Government.

Term of office of Chairperson and other Members

- **10(1)** The Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment:
- **Provided** that the Chairperson or other Members shall not hold office as such after he has attained the age of sixty-five years.

The Competition Act, 2002

Appointment of Director General

63

- 16(1) The Central Government may, by notification, appoint a Director General for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of this Act and for performing such other functions as are, or may be, provided by or under this Act.
- (1A) The number of other Additional, Joint, Deputy or Assistant Directors General or such officers or other employees in the office of Director General and the manner of appointment of such Additional, Joint, Deputy or Assistant Directors General or such officers or other employees shall be such as may be prescribed.”

The Competition Act, 2002

64 Duties, Powers And Functions Of Commission

Duties of Commission

- (18) Subject to the provisions of this Act, it shall be the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India:

Provided that the Commission may, for the purpose of discharging its duties or performing its functions under this Act, enter into any memorandum or arrangement with the prior approval of the Central Government, with any agency of any foreign country.

The Competition Act, 2002

Inquiry into certain agreements and dominant position of enterprise

65

19(1) The Commission may inquire into any alleged contravention of the provisions contained in subsection (1) of section 3 or sub-section (1) of section 4 either on its own motion or on—

- (a) receipt of any information, in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association; or
- (b) a reference made to it by the Central Government or a State Government or a statutory authority.

The Competition Act, 2002

Inquiry into certain agreements and dominant position of enterprise

66

19(3) The Commission shall, while determining whether an agreement has an appreciable adverse effect on competition under section 3, have due regard to all or any of the following factors, namely:—

- (a) creation of barriers to new entrants in the market;
- (b) driving existing competitors out of the market;
- (c) foreclosure of competition by hindering entry into the market;
- (d) accrual of benefits to consumers;
- (e) improvements in production or distribution of goods or provision of services; or
- (f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

The Competition Act, 2002

Inquiry into certain agreements and dominant position of enterprise

67

19(4) The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not under section 4, have due regard to all or any of the following factors, namely:—

- a) market share of the enterprise;
- b) size and resources of the enterprise;
- c) size and importance of the competitors;
- d) economic power of the enterprise including commercial advantages over competitors;
- e) vertical integration of the enterprises or sale or service network of such enterprises;
- f) dependence of consumers on the enterprise;
- g) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;

The Competition Act, 2002

Inquiry into certain agreements and dominant position of enterprise

68

19(4) The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not under section 4, have due regard to all or any of the following factors, namely:—

- h) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;
- i) countervailing buying power;
- j) market structure and size of market;
- k) social obligations and social costs;
- l) relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition;
- m) any other factor which the Commission may consider relevant for the inquiry.

The Competition Act, 2002

69

Inquiry into combination by Commission

- **20(1)** The Commission may, upon its own knowledge or information relating to acquisition referred to in clause (a) of section 5 or acquiring of control referred to in clause (b) of section 5 or merger or amalgamation referred to in clause (c) of that section, inquire into whether such a combination has caused or is likely to cause an appreciable adverse effect on competition in India:

Provided that the Commission shall not initiate any inquiry under this subsection after the expiry of one year from the date on which such combination has taken effect.

- **20(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.

The Competition Act, 2002

70

Inquiry into combination by Commission

- **20(4)** For the purposes of determining whether a combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market, the Commission shall have due regard to all or any of the following factors, namely:—
- (a) actual and potential level of competition through imports in the market
- (b) extent of barriers to entry into the market;
- (c) level of combination in the market;
- (d) degree of countervailing power in the market;
- (e) likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;
- (f) extent of effective competition likely to sustain in a market;
- (g) extent to which substitutes are available or are likely to be available in the market;

The Competition Act, 2002

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Inquiry into combination by Commission

- **20(4)** For the purposes of determining whether a combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market, the Commission shall have due regard to all or any of the following factors, namely:—
- (h) market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination;
- (i) likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market;
- (j) nature and extent of vertical integration in the market;
- (k) possibility of a failing business;
- (l) nature and extent of innovation;
- (m) relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition;
- (n) whether the benefits of the combination outweigh the adverse impact of the combination, if any.

The Competition Act, 2002

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Procedure for inquiry under section 19

- 26(1) On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under section 19, if the Commission is of the opinion that there exists a *prima facie* case, it shall direct the Director General to cause an investigation to be made into the matter:

Provided that if the subject matter of an information received is, in the opinion of the Commission, substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.

- (2) Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under section 19, the Commission is of the opinion that there exists no *prima facie* case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

The Competition Act, 2002

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Procedure for inquiry under section 19

- 26(3) The Director General shall, on receipt of direction under sub-section (1), submit a report on his findings within such period as may be specified by the Commission.
- (4) The Commission may forward a copy of the report referred to in sub section(3) to the parties concerned:

Provided that in case the investigation is caused to be made based on reference received from the Central Government or the State Government or the statutory authority, the Commission shall forward a copy of the report referred to in sub- section (3) to the Central Government or the State Government or the statutory authority, as the case may be.

- (5) If the report of the Director General referred to in sub-section (3) recommends that there is no contravention of the provisions of this Act, the Commission shall **invite objections** or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be, on such report of the Director General.

The Competition Act, 2002

74

Procedure for inquiry under section 19

- 26(6) If, after consideration of the objections and suggestions referred to in sub section (5), if any, the Commission agrees with the recommendation of the Director General, it shall close the matter forthwith and pass such orders as it deems fit and communicate its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.
- (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 investigations is called for, it may direct further investigation in the matter by the Director General or cause further inquiry to be made by 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 2002

75

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:—

- (a) direct any enterprise or association of enterprises or person or association of persons, as the case may be, involved in such agreement, or abuse of dominant position, to discontinue and not to re-enter such agreement or discontinue such abuse of dominant position, as the case may be;
- (b) impose such penalty, as it may deem fit which shall be not more than ten percent 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 percent of its turnover for each year of the continuance of such agreement, whichever is higher.

The Competition Act, 2002

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

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- (c) [Omitted by Competition (Amendment) Act, 2007]
- (d) direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission;
- (e) direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any;
- (f) [Omitted by Competition (Amendment) Act, 2007]
- (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.

The Competition Act, 2002

77 Procedure for investigation of combination

- **29(1)** Where the Commission is of the *prima facie* opinion that a combination is likely to cause, or has caused an appreciable adverse effect on competition within the relevant market in India, it shall issue a notice **to show cause to the parties to combination calling upon them to respond within thirty days of the receipt of the notice**, as to why investigation in respect of such combination should not be conducted.
- **1(A)** *After receipt of the response of the parties to the combination under sub- section (1), the Commission may call for a report from the Director General and such report shall be submitted by the Director General within such time as the Commission may direct.*

The Competition Act, 2002

78 Procedure for investigation of combination

- 29(2) The Commission, if it is *prima facie* of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall, within seven working days from the date of receipt of the response of the parties to the combination, *or the receipt of the report from Director General called under sub section (1A), whichever is later* direct the parties to the said combination to publish details of the combination within ten working days of such direction, in such manner, as it thinks appropriate, for bringing the combination to the knowledge or information of the public and persons affected or likely to be affected by such combination.
- (3) The Commission may invite any person or member of the public, affected or likely to be affected by the said combination, to file his written objections, if any, before the Commission within fifteen working days from the date on which the details of the combination were published under sub-section (2).

The Competition Act, 2002

79 Procedure for investigation of combination

- 29(4) The Commission may, within fifteen working days from the expiry of the period specified in sub-section (3), call for such additional or other information as it may deem fit from the parties to the said combination.
- (5) The additional or other information called for by the Commission shall be furnished by the parties referred to in sub-section (4) within fifteen days from the expiry of the period specified in sub-section (4).
- (6) After receipt of all information and within a period of forty-five working days from the expiry of the period specified in sub-section (5), the Commission shall proceed to deal with the case in accordance with the provisions contained in section 31.

The Competition Act, 2002

Procedure in case of notice under sub-section (2) of section 6

80

- **30.** *Where any person or enterprises has given a notice under sub-section (2) of section 6, the Commission shall examine such notice and form its prima facie opinion as provided in sub-section (1) of section 29 and proceed as per provisions contained in that section.*

The Competition Act, 2002

81 Orders of Commission on certain combinations

- 31(1) Where the Commission is of the opinion that any combination **does not, or is not likely to, have an appreciable adverse effect on competition**, it shall, by order, **approve that combination**, including the combination in respect of which a notice has been given under sub-section (2) of section 6.
- (2) Where the Commission is of the opinion that the combination has, or is likely to have, an **appreciable adverse effect on competition**, it shall direct that the **combination shall not take effect**.
- (3) Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition but such **adverse effect can be eliminated by suitable modification** to such combination, it may propose **appropriate modification to the combination**, to the parties to such combination.

The Competition Act, 2002

82 Orders of Commission on certain combinations

- (4) The parties, who **accept the modification proposed** by the Commission under subsection (3), shall **carry out such modification** within the period specified by the Commission.
- (5) If the parties to the combination, who have accepted the modification under subsection (4), fail to carry out the modification within the period specified by the Commission, such combination shall be **deemed to have an appreciable adverse effect on competition** and the Commission shall deal with such combination in accordance with the provisions of this Act.
- (6) If the parties to the combination do **not accept the modification proposed** by the Commission under subsection (3), such parties may, **within thirty working days of the modification proposed by the Commission, submit amendment to the modification** proposed by the Commission under that sub-section.

The Competition Act, 2002

83 Orders of Commission on certain combinations

- (7) If the Commission **agrees with the amendment** submitted by the parties under subsection (6), it shall, by order, **approve the combination**.
- (8) If the Commission does not accept the amendment submitted under sub section (6), then, the parties shall be allowed a further period of **thirty working days** within which such parties shall **accept the modification** proposed by the Commission under sub-section (3).
- (9) If the parties fail to accept the modification proposed by the Commission within thirty working days referred to in sub-section (6) or within a further period of thirty working days referred to in sub-section (8), the combination shall be **deemed to have an appreciable adverse effect on competition** and be dealt with in accordance with the provisions of this Act.

The Competition Act, 2002

84 Orders of Commission on certain combinations

- (10) Where the Commission has directed under sub-section (2) that the combination shall not take effect or the combination is deemed to have an appreciable adverse effect on competition under sub-section (9), then, without prejudice to any penalty which may be imposed or any prosecution which may be initiated under this Act, the Commission may order that
 - (a) the acquisition referred to in clause (a) of section 5; or
 - (b) the acquiring of control referred to in clause (b) of section 5; or
 - (c) the merger or amalgamation referred to in clause (c) of section 5, shall not be given effect to:

Provided that the Commission may, if it considers appropriate, frame a scheme to implement its order under this sub-section.

The Competition Act, 2002

85 Orders of Commission on certain combinations

- (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 subsection (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 subsection, 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.

The Competition Act, 2002

86 Orders of Commission on certain combinations

- (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.
- (13) Where the Commission has ordered a combination to be void, the acquisition or acquiring of control or merger or amalgamation referred to in section 5, shall be dealt with by the authorities under any other law for the time being in force as if such acquisition or acquiring of control or merger or amalgamation had not taken place and the parties to the combination shall be dealt with accordingly.
- (14) Nothing contained in this Chapter shall affect any proceeding initiated or which may be initiated under any other law for the time being in force.

The Competition Act, 2002

Acts taking place outside India but having an effect on competition in India

87

- **32** The Commission shall, notwithstanding that,—
 - (a) an agreement referred to in section 3 has been entered into outside India; or
 - (b) any party to such agreement is outside India; or
 - (c) any enterprise abusing the dominant position is outside India; or
 - (d) a combination has taken place outside India; or
 - (e) any party to combination is outside India; or
 - (f) any other matter or practice or action arising out of such agreement or dominant position or combination is outside India,

have power to inquire in accordance with the provisions contained in sections 19, 20, 26, 29 and 30 of the Act into such agreement or abuse of dominant position or combination if such agreement or dominant position or combination has, or is likely to have, an appreciable adverse effect on competition in the relevant market in India and pass such orders as it may deem fit in accordance with the provisions of this Act.

The Competition Act, 2002

Power to issue interim orders

88

- **33** Where during an inquiry, the Commission is satisfied that an act in contravention of sub-section (1) of section 3 or sub-section (1) of section 4 or section 6 has been committed and continues to be committed or that such act is about to be committed, the Commission may, by order, **temporarily restrain any party from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party, where it deems it necessary.**

The Competition Act, 2002

Appearance before Commission

89

- **35** A person or an enterprise or the Director General may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of his or its officers to present his or its case before the Commission.

The Competition Act, 2002

90

Power of Commission to regulate its own procedure

- **36(1)** In the discharge of its functions, the Commission shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Commission shall have the powers to regulate its own procedure.

The Competition Act, 2002

Rectification of orders

91

- **38(1)** With a view to rectifying any mistake apparent from the record, the Commission may amend any order passed by it under the provisions of this Act.
- **(2)** Subject to the other provisions of this Act, the Commission may make—
 - (a) an amendment under sub-section (1) of its own motion;
 - (b) an amendment for rectifying any such mistake which has been brought to its notice by any party to the order.
- *Explanation.*— For the removal of doubts, it is hereby declared that the Commission shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act.

The Competition Act, 2002

Execution of orders of Commission imposing monetary penalty

92

- **39(1)** If a person fails to pay any monetary penalty imposed on him under this Act, the Commission shall proceed to recover such penalty, in such manner as may be specified by the regulations.
- **(2)** In a case where the Commission is of the opinion that it would be expedient to recover the penalty imposed under this Act in accordance with the provisions of the Income-tax Act, 1961 (43 of 1961), it may make a reference to this effect to the concerned income-tax authority under that Act for recovery of the penalty as tax due under the said Act.

The Competition Act, 2002

Execution of orders of Commission imposing monetary penalty

93

- (3) Where a reference has been made by the Commission under sub-section (2) for recovery of penalty, the person upon whom the penalty has been imposed shall be deemed to be the assessee in default under the Income Tax Act, 1961 (43 of 1961) and the provisions contained in sections 221 to 227, 228A, 229, 231 and 232 of the said Act and the Second Schedule to that Act and any rules made there under shall, in so far as may be, apply as if the said provisions were the provisions of this Act and referred to sums by way of penalty imposed under this Act instead of to income-tax and sums imposed by way of penalty, fine, and interest under the Income-tax Act, 1961 (43 of 1961) and to the Commission instead of the Assessing Officer.

The Competition Act, 2002

94

Penalties: Contravention of orders of Commission

- 42(1) The Commission may cause an inquiry to be made into compliance of its orders or directions made in exercise of its powers under the Act.
- (2) If any person, without reasonable cause, fails to comply with the orders or directions of the Commission issued under sections 27, 28, 31, 32, 33, 42A and 43A of the Act, he shall **be punishable with fine which may extend to rupees one lakh for each day during which such non-compliance occurs, subject to a maximum of rupees ten crore, as the Commission may determine.**
- (3) If any person does not comply with the orders or directions issued, or fails to pay the fine imposed under sub-section (2), he shall, without prejudice to any proceeding under section 39, be punishable **with imprisonment for a term which may extend to three years, or with fine which may extend to rupees twenty-five crore, or with both,** as the Chief Metropolitan Magistrate, Delhi may deem fit:

Provided that the Chief Metropolitan Magistrate, Delhi shall not take cognizance of any offence under this section save on a complaint filed by the Commission or any of its officers authorized by it.

The Competition Act, 2002

Compensation in case of contravention of orders of Commission

95

- **42A.** Without prejudice to the provisions of this Act, any person may make an application to the Appellate Tribunal for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of the said enterprise violating directions issued by the Commission or contravening, without any reasonable ground, any decision or order of the Commission issued under sections 27, 28, 31, 32 and 33 or any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made or granted under this Act or delaying in carrying out such orders or directions of the Commission.

The Competition Act, 2002

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

96

- **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,

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.

The Competition Act, 2002

97

Power to impose penalty for non-furnishing of information on combinations

- **43A.** If any person or enterprise who fails to give notice to the Commission under sub- section(2) of section 6, the Commission shall impose on such person or enterprise a penalty which may extend to one percent, of the total turnover or the assets, whichever is higher, of such a combination.

The Competition Act, 2002

Penalty for making false statement or omission to furnish material information

98

- **44.** If any person, being a party to a combination,—
 - (a) makes a statement which is false in any material particular, or knowing it to be false; or
 - (b) 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 rupees fifty lakhs but which may extend to rupees one crore, as may be determined by the Commission.

The Competition Act, 2002

Penalty for offences in relation to furnishing of information

99

- **45.(1)** Without prejudice to the provisions of section 44, if a person, who furnishes or is required to furnish under this Act any particulars, documents or any information,—
 - (a) makes any statement or furnishes any document which he knows or has reason to believe to be false in any material particular; or
 - (b) omits to state any material fact knowing it to be material; or
 - (c) wilfully alters, suppresses or destroys any document which is required to be furnished as aforesaid,such person shall be punishable with fine which may extend to rupees one crore as may be determined by the Commission.
- **(2)** Without prejudice to the provisions of sub-section(1), the Commission may also pass such other order as it deems fit.

The Competition Act, 2002

Power to impose lesser penalty

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- **46.** The Commission may, if it is satisfied that any producer, seller, distributor, trader or service provider included in any cartel, which is alleged to have violated section 3, has made a full and true disclosure in respect of the alleged violations and such disclosure is vital, impose upon such producer, seller, distributor, trader or service provider a lesser penalty as it may deem fit, than levyable under this Act or the rules or the regulations:
- **Provided** that lesser penalty shall not be imposed by the Commission in cases where the report of investigation directed under section 26 has been received before making of such disclosure.
- **Provided** further that lesser penalty shall be imposed by the Commission only in respect of a producer, seller, distributor, trader or service provider included in the cartel, who has made the full, true and vital disclosures under this section.

The Competition Act, 2002

Power to impose lesser penalty

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- **Provided** also that lesser penalty shall not be imposed by the Commission if the person making the disclosure does not continue to cooperate with the Commission till the completion of the proceedings before the Commission.
- **Provided** also that the Commission may, if it is satisfied that such producer, seller, distributor, trader or service provider included in the cartel had in the course of proceedings,—
 - (a) not complied with the condition on which the lesser penalty was imposed by the Commission; or
 - (b) had given false evidence; or
 - (c) the disclosure made is not vital,and thereupon such producer, seller, distributor, trader or service provider may be tried for the offence with respect to which the lesser penalty was imposed and shall also be liable to the imposition of penalty to which such person has been liable, had lesser penalty not been imposed.

The Competition Act, 2002

Crediting sums realised by way of penalties to Consolidated Fund of India

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- **47.** All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

The Competition Act, 2002

Appeal to Appellate Tribunal

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- **53B.** (1) The Central Government or the State Government or a local authority or enterprise or any person, aggrieved by any direction, decision or order referred to in clause (a) of section 53A may prefer an appeal to the Appellate Tribunal.
- (2) Every appeal under sub-section (1) shall be filed within a period of **sixty days** from the date on which a copy of the direction or decision or order made by the Commission is received by the Central Government or the State Government or a local authority or enterprise or any person referred to in that sub-section and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.

The Competition Act, 2002

Appeal to Appellate Tribunal

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- (3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the direction, decision or order appealed against.
- (4) The Appellate Tribunal shall send a copy of every order made by it to the Commission and the parties to the appeal.
- (5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within six months from the date of receipt of the appeal.

The Competition Act, 2002

Appeal to Supreme Court

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- **53T.** The Central Government or any State Government or the Commission or any statutory authority or any local authority or any enterprise or any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the **Supreme Court within sixty days** from the date of communication of the decision or order of the Appellate Tribunal to them;
- **Provided** that the Supreme court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed after the expiry of the said period of sixty days.

SEBI (Takeover Code) 2011

106 Substantial Acquisition of Shares and Takeover Code

SEBI (Takeover Code) 2011

107 Substantial Acquisition of Shares And Takeover Code

- Code
- Acquisition
- Takeover

Act vs Code

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- **Act:** An Act is a specific piece of legislation passed by the Parliament or a State Legislature. It addresses a particular issue or set of issues. For example, Contract Act, Company Act.
- **Code:** A Code is a comprehensive and systematic collection of laws, rules, or regulations that cover a particular area of law. Codes are intended to be exhaustive in nature, encompassing all aspects of the subject they govern.
- ➡ Codes are laws which are arranged by subject.

SEBI Takeover Code 2011

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Section 2(1)(b): **acquisition** means, directly or indirectly, acquiring or agreeing to **acquire shares** or **voting rights** in, or **control** over, a target company;

Section 2(1)(27): “**Control**” shall include the **right to appoint majority of the directors** or to **control the management** or **policy decisions exercisable** by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;

Provided that a director or officer of a target company shall not be considered to be in control over such target company, merely by virtue of holding such position;

SEBI Takeover Code 2011

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Section 2(1)(a): **acquirer** means any person who, **directly or indirectly, acquires or agrees to acquire** whether by **himself, or through, or with persons acting in concert** with him, **shares or voting rights** in, or **control** over a **target company**;

SEBI Takeover Code 2011

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- Section 2(1)(v): “**shares**” means shares in the **equity share** capital of a target company **carrying voting rights**, and includes **any security** which entitles the holder thereof to exercise **voting rights**;

Explanation.— For the purpose of this clause shares will include **all depository receipts** carrying an entitlement to exercise **voting rights** in the target company;

SEBI (Takeover Code) 2011

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Define and Deemed – onus of proof

Section 2(1)(q): persons acting in concert means:

- (1) persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company.
- (2) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be **deemed** to be persons acting in concert with other persons within the same category, unless the contrary is established,—
 - i. a company, its holding company, subsidiary company and any company under the same management or control;
 - ii. a company, its directors, and any person entrusted with the management of the company;
 - iii. directors of companies referred to in item (i) and (ii) of this sub-clause and associates of such directors;
 - iv. promoters and members of the promoter group;
 - v. immediate relatives;

SEBI (Takeover Code) 2011

Deemed

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Section 2(1)(q): persons acting in concert means (Contd.):

- vi. a mutual fund, its sponsor, trustees, trustee company, and asset management company;
- vii. a collective investment scheme and its collective investment management company, trustees and trustee company;
- viii. a venture capital fund and its sponsor, trustees, trustee company and asset management company;
(viii a) an alternative investment fund and its sponsor, trustees, trustee company and manager;
- ix. Omitted
- x. a merchant banker and its client, who is an acquirer;
- xi. a portfolio manager and its client, who is an acquirer;
- xii. banks, financial advisors and stock brokers of the acquirer, or of any company which is a holding company or subsidiary of the acquirer, and where the acquirer is an individual, of the immediate relative of such individual:
Provided that this sub-clause shall not apply to a bank whose sole role is that of providing normal commercial banking services or activities in relation to an open offer under these regulations;

SEBI (Takeover Code) 2011

Deemed

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Section 2(1)(q): persons acting in concert means (Contd.):

- xiii. an investment company or fund and any person who has an interest in such investment company or fund as a shareholder or unitholder having not less than 10 per cent of the paid-up capital of the investment company or unit capital of the fund, and any other investment company or fund in which such person or his associate holds not less than 10 per cent of the paid-up capital of that investment company or unit capital of that fund:

Provided that nothing contained in this sub-clause shall apply to holding of units of mutual funds registered with the Board;

➤ *Explanation.*—For the purposes of this clause “associate” of a person means,—

- (a) any immediate relative of such person;
 - (b) trusts of which such person or his immediate relative is a trustee;
 - (c) partnership firm in which such person or his immediate relative is a partner; and
 - (d) members of Hindu undivided families of which such person is a coparcener;
- 2(1)(l) immediate relative means any spouse of a person, and includes parent, brother, sister or child of such person or of the spouse;

SEBI (Takeover Code) 2011

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- **Section 2(1)(z):** Target company
- target company means a company and includes a body corporate or corporation established under a Central legislation, State legislation or Provincial legislation for the time being in force, whose shares are listed on a stock exchange

SEBI (Takeover Code) 2011

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Definition of Promoter

- 2(1)(s) promoter has the same meaning as in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 and includes a member of the promoter group;
- 2(1)(t) promoter group has the same meaning as in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;

SEBI (Issue of Capital and Disclosure Requirements) Regulations

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The Securities and Exchange Board of India (**'SEBI'**) notified the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (**'ICDR 2018'**) on September 11, 2018, which came into effect on November 10, 2018, thereby rescinding and repealing the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (**'ICDR 2009'**).

Definition of Promoter

- (i) The definition of 'promoter' has been aligned with the definition provided under Section 2(69) of the Companies Act, 2013. Accordingly the following persons can be classified as promoters:
 - (a) persons named as such in the offer document or identified by the Issuer in the annual return;
 - (b) persons who have control over the affairs of the Issuer, directly or indirectly whether as a shareholder, director or otherwise; and
 - (c) persons in accordance with whose instructions the board of the Issuer is accustomed to act (except a person acting in a professional capacity).

Definition of Promoter

- (ii) The threshold of shareholding which exempts a person from being categorized as a promoter has been increased from 10% to 20%. Further, venture capital funds, alternate investment funds (**'AIFs'**), foreign venture capital investors (**'FVCIs'**) and insurance companies have been added to the list of investors who (in addition to financial institutions, scheduled commercial banks, foreign portfolio investors other than Category III foreign portfolio investors, mutual funds) will not be deemed to be promoters merely because they hold 20% or more in the Issuer. Consequential changes have been made in various provisions, including, the definition of promoter group.

Definition of Promoter Contd.

- (iii) Persons instrumental in formulation of a plan or programme of the offer have now been excluded from the definition of promoter.
- (iv) The proviso under the definition of 'promoter' under ICDR 2009 in relation to a financial institution, scheduled commercial bank, foreign portfolio investor other than Category III foreign portfolio investor and mutual funds, continuing to be deemed promoters of the subsidiaries or companies promoted by them or mutual funds sponsored by them has been done away with.

SEBI (Takeover Code) 2011

Companies Act

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Section 2(69) **promoter** means a person:

- (a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or
- (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- (c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;

SEBI (Takeover Code) 2011 History

Before
1991
Based
On
Listing
Agreement

SEBI
Act
1992

1st
Regulation
in 1994
SEBI
Regulation
Nov, 1994

Bhagwati
Committee
Justice PN
Bhagwati
Chairman
1995

2nd
Regulation
SAST
Regulation
1997
Feb 20,
1997
Based 12
study of 12
countries
23 times
amendments

Achutan
Committee
in 2009

3rd
Regulation
SAST
Regulation
2011

SEBI Takeover Code 2011

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These regulations shall **not apply** to direct and indirect acquisition of shares or voting rights in, or control over a company listed without making a public issue, on the [Innovators Growth Platform] of a recognised stock exchange.

SEBI Takeover Code 2011 - Objectives

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To provide exit opportunities to the public at the time of acquisition.

SEBI (Takeover Code) 2011

Regulatory Framework

- Chapter I: Introduction and Definitions (Regulation 1, 2)
- Chapter II: Substantial Acquisition of Shares, voting rights or control, Threshold limit for open offer, exemptions (Regulation 3 to 11)
- Chapter III: Open offer process (Regulation 12 to 23)
- Chapter IV: Obligation of Target company, acquirer, manager (Regulation 24-27)
- Chapter V: Disclosure of shareholding and control (Regulation 28 to 31)
- Chapter VI: Powers of SEBI (Regulation 31-35)

(Summary) Trigger and Open Offer

Regulation		
R3(1)	25% or more - Initial Trigger (VR) 49% (IGP)	PA & OO Mandatory min 26% of total shares
R3(2)	25% + Upto 5% 25% + Exceed 5% in 1 FY gross- Creeping Trigger (VR)	No PA & OO PA & OO Mandatory 26% Shares
R3(3)	25% or 5% Individually (VR)	PA & OO Mandatory
R4	Acq + PAC = Control (VR)	PA & OO Mandatory
R5(1)	Indirect Acquisition - Holding control	PA & OO Mandatory
R5(2)	Indirect Acquisition - treated as deemed to be direct acquisition	Asset value, sales, market cap is in excess of 80% as per the most recent audited annual financial statements
R5A(1)	R3, 4, 5	Delisting Offer
R6 R7(2)	Pre-holding 25% / 49% Offer size – Min 10%	Voluntary Offer
R19	Acquired – min level of acceptance or rescinded	Conditional Offer
R20	Min offer size by A2 = A1 pre-holding + A1 Sh PA + OO – A2 pre-holding	Competing Offer

(Summary) Disclosure – Event Based

Disclosure of acquisition and disposal

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Regulation	Made by	Trigger	Time period	Disclosure Made to
R29(1)	Acquirer	Acq + PAC 5% or more / 10% IGP	within 2 working days of the receipt of intimation of the allotment of shares, or the acquisition of shares or voting rights	Disclosure R29(3) – SE where the shares are listed and the target company
R29(2)	Acquirer	Acq + PAC Already hold 5% S, VR Further more than 2% increase / 5% IGP OR Decrease / sell share - fall below 5%	within 2 working days of the receipt of intimation of the allotment of shares, or the acquisition of shares or voting rights	Disclosure R29(3) – SE where the shares are listed and the target company
R29(4)	Lender	Pledge/ Lien - 29(1) & 29(2)	Deemed Acquisition or disposal by Lender / Acquirer	
R30		Omitted		

(Summary) Disclosure

Disclosure of encumbered shares

Regulation	Made by	Trigger	Time period	Disclosure Made to
31(1) 31(2)	Promoter TC disclosure of Encumbered Shares	Promoter + PAC Create - Always Repay/release Non Repay/ Invoke	within 7 working days from the creation, release or invocation of pledge	SE where the shares are listed and the target company
31(4)	Promoter TC disclosure of Encumbered Shares	Promoter + PAC Create – Always, Annually	within 7 working days from the creation, release or invocation of pledge	SE where the shares are listed and the audit committee of the target company

SEBI Takeover Code 2011

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Particular	Time Limit	To Whom
Public Announcement	On the same day	All the stock exchanges on which the shares of the target company are listed. The stock exchanges shall forthwith disseminate such information to the public.
Public Announcement	Within one working day from the date of public announcement	The acquirer shall sent copy of PA to <ul style="list-style-type: none">• SEBI and• to the target company at its registered office.
Detailed Public Announcement	Within five working day from the date of public announcement	Publication in the following newspaper: <ul style="list-style-type: none">• National Language daily – Hindi, English, Regional• Regional language daily with wide circulation at the place of the stock exchange where the maximum volume of trading in the shares of the target co. is recorded during the 60 trading days preceding the date of the public announcement.
Detailed Public Announcement		A copy of Detailed Public statement shall be sent to the followings: <ul style="list-style-type: none">• All the stock exchanges in which the shares of the target company are listed and• The target company at its registered office.

SEBI Takeover Code 2011

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Procedure under Takeover Code

Submission of draft letter of offer (SEBI has 15 days to give any comments)	The acquirer shall submit a draft letter of offer to SEBI within 5 working days from the date of detailed public announcement along with non-refundable fees as applicable. Simultaneously, a copy of the draft letter of offer shall be send to the target company at its registered office and to all the stock exchanges were the shares of the company are listed.
Dispatch of letter of offer	The acquirer shall ensure that the letter of offer is dispatched to the shareholders whose names appear on the register of members of the target company as of the identified date.
Opening of the offer	Shall remain open for 10 working days.
Completion of the requirements	Within 10 working days from he last date of the tendering period, the acquirer shall complete all requirements as prescribed under these regulations and other applicable law relating to the open offer including payment of the consideration to the shareholders who have accepted the open offer.

SEBI (Takeover Code) 2011

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R3: Shares & Voting rights	: Direct
R4: Control	: Direct
R5: Indirect Acquisition	: Indirect
R6: Voluntary open offer	

SEBI (Takeover Code) 2011

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Substantial acquisition of shares or voting rights

R 3(1)

- ➡ No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise **twenty-five per cent** or more of the voting rights in such target company unless the acquirer makes a **public announcement of an open offer** for acquiring shares of such target company in accordance with these regulations.
- ➡ First 25% or more
- ➡ Initial trigger

SEBI (Takeover Code) 2011

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- R 3(2) No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise **twenty-five per cent or more** of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire **within any financial year** additional shares or voting rights in such target company entitling them to exercise **more than five per cent** of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations:

Provided that the acquisition beyond five per cent but up to ten per cent of the voting rights in the target company shall be permitted for the financial year 2020-21 only in respect of acquisition by a promoter pursuant to preferential issue of equity shares by the target company.

Provided that such acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding.

- Next more than 5% in FY up to 75%
- Creeping acquisition trigger

SEBI (Takeover Code) 2011

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- Section 3(3) For the purposes of sub-regulation (1) and sub-regulation (2), acquisition of shares by any person, such that the individual shareholding of such person acquiring shares exceeds the stipulated thresholds, shall also be attracting the obligation to make an open offer for acquiring shares of the target company irrespective of whether there is a change in the aggregate shareholding with persons acting in concert.
- Individual acquisition 25% or/and 5%

SEBI (Takeover Code) 2011

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- R3(4) Nothing contained in this regulation shall apply to acquisition of shares or voting rights of a company by the promoters or shareholders in control, in terms of the provisions of Chapter VI-A of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.
- R3(5) For the purpose of this regulation, any reference to “twenty-five per cent” in case of listed entity which has listed its specified securities on **Innovators Growth Platform** shall be read as “**forty-nine per cent**”.

SEBI (Takeover Code) 2011

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Acquisition of control

- R4 Irrespective of acquisition or holding of shares or voting rights in a target company, no acquirer shall acquire, directly or indirectly, control over such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.
- Acq+PAC – if acquire control then make Public announcement for open offer

SEBI (Takeover Code) 2011

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Indirect acquisition of shares or control

- R5(1) For the purposes of regulation 3 and regulation 4, acquisition of shares or voting rights in, or control over, any company or other entity, that would enable any person and persons acting in concert with him to **exercise or direct the exercise of such percentage of voting rights in, or control over, a target company, the acquisition of which would otherwise attract the obligation to make a public announcement of an open offer** for acquiring shares under these regulations, shall be considered as an indirect acquisition of shares or voting rights in, or control over the target company.

SEBI (Takeover Code) 2011

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R5(2) Notwithstanding anything contained in these regulations, in the case of an indirect acquisition attracting the provisions of sub-regulation (1) where,—

- (a) the proportionate net asset value of the target company as a percentage of the consolidated net asset value of the entity or business being acquired;
- (b) the proportionate sales turnover of the target company as a percentage of the consolidated sales turnover of the entity or business being acquired; or
- (c) the proportionate market capitalisation of the target company as a percentage of the enterprise value for the entity or business being acquired;

is in **excess of eighty per cent, on the basis of the most recent audited annual financial statements**, such indirect acquisition shall be regarded as a direct acquisition of the target company for all purposes of these regulations including without limitation, the obligations relating to timing, pricing and other compliance requirements for the open offer.

SEBI (Takeover Code) 2011

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Voluntary Offer

- R6(1) An acquirer, who together with persons acting in concert with him, holds shares or voting rights in a target company entitling them to exercise twenty-five per cent or more but less than the maximum permissible non-public shareholding, shall be entitled to voluntarily make a public announcement of an open offer for acquiring shares in accordance with these regulations, subject to their aggregate shareholding after completion of the open offer not exceeding the maximum permissible non-public shareholding
- Prerequisite: 25% holding

SEBI (Takeover Code) 2011

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- R6(2) An acquirer and persons acting in concert with him, who have made a public announcement under this regulation to acquire shares of a target company **shall not be entitled to acquire any shares of the target company for a period of six months after completion of the open offer except pursuant to another voluntary open offer.**
- R6(3) Shares acquired through **bonus issue or stock splits** shall **not be considered** for purposes of the dis-entitlement set out in this regulation.
- R6(4) For the purpose of this regulation, any reference to “twenty-five per cent” in case of listed entity which has listed its specified securities on **Innovators Growth Platform** shall be read as “**forty-nine per cent**”.

SEBI (Takeover Code) 2011

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Offer Size

- R7(1) The open offer for acquiring shares to be made by the acquirer and persons acting in concert with him under regulation 3 and regulation 4 shall be for **at least twenty six per cent of total shares of the target company**, as of tenth working day from the closure of the tendering period.

SEBI (Takeover Code) 2011

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Offer Price

- R8(1) The open offer for acquiring shares under regulation 3, regulation 4, regulation 5 or regulation 6 shall be made **at a price not lower than** the price determined in accordance with sub-regulation (2) or sub-regulation (3), as the case may be.

SEBI (Takeover Code) 2011

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Offer Price

- R8(2) In the case of **direct acquisition** of shares or voting rights in, or control over the target company, and **indirect acquisition** of shares or voting rights in, or control over the target company where the parameters referred to in sub-regulation (2) of regulation 5 are **met**, the offer price shall be the highest of,—
 - (a) the **highest negotiated price per share** of the target company for any acquisition under the agreement attracting the obligation to make a public announcement of an open offer;
 - (b) the **volume-weighted average price paid or payable** for acquisitions, whether by the acquirer or by any person acting in concert with him, during the fifty-two weeks immediately preceding the date of the public announcement;
 - (c) the **highest price paid or payable for any acquisition**, whether by the acquirer or by any person acting in concert with him, during the twenty-six weeks immediately preceding the date of the public announcement;
 - (d) the **volume-weighted average market price of such shares for a period of sixty trading days** immediately preceding the date of the public announcement as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, provided such shares are frequently traded;
 - (e) where the **shares are not frequently traded**, the **price determined by the acquirer and the manager** to the open offer taking into account valuation parameters including, book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies; and
 - (f) the **per share value computed under sub-regulation (5)**, if applicable.

SEBI (Takeover Code) 2011

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Offer Price

- R8(3) In the case of an **indirect acquisition** of shares or voting rights in, or control over the target company, where the parameter referred to in sub-regulation (2) of regulation 5 are **not met**, the offer price shall be the highest of,—
 - (a) the **highest negotiated price per share**, if any, of the target company for any acquisition under the agreement attracting the obligation to make a public announcement of an open offer;
 - (b) the **volume-weighted average price paid or payable** for any acquisition, whether by the acquirer or by any person acting in concert with him, during the fifty-two weeks immediately preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain;
 - (c) the **highest price paid or payable for any acquisition**, whether by the acquirer or by any person acting in concert with him, during the twenty-six weeks immediately preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain;
 - (d) the **highest price paid or payable for any acquisition**, whether by the acquirer or by any person acting in concert with him, between the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain, and the date of the public announcement of the open offer for shares of the target company made under these regulations;
 - (e) the **volume-weighted average market price of the shares for a period of sixty trading days** immediately preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain, as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, provided such shares are frequently traded;
 - (f) the **per share value computed** under sub-regulation (5).

SEBI (Takeover Code) 2011

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R2(j) Frequently traded shares means

- shares of a target company, in which the traded turnover on any stock exchange during the **twelve calendar months** preceding the calendar month in which the public announcement is made, is at **least ten percent** of the total number of shares of **such class** of the target company:
- **Provided** that where the share capital of a particular class of shares of the target company is not identical throughout such period, the **weighted average number of total shares** of such class of the target company shall represent the total number of shares;

SEBI (Takeover Code) 2011

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Mode of payment

- R9(1) The offer price may be paid, —
 - (a) in **cash**;
 - (b) by issue, exchange or transfer of **listed shares** in the equity share capital of the acquirer or of any person acting in concert;
 - (c) by issue, exchange or transfer of **listed secured debt instruments** issued by the acquirer or any person acting in concert with a rating not inferior to investment grade as rated by a credit rating agency registered with the Board;
 - (d) by issue, exchange or transfer of **convertible debt securities** entitling the holder thereof to acquire listed shares in the equity share capital of the acquirer or of any person acting in concert; or
 - (e) a **combination** of the mode of payment of consideration stated in clause (a), clause (b), clause (c) and clause (d):

SEBI (Takeover Code) 2011

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OPEN OFFER PROCESS

- R12 Manager to the open offer
- R13 Timing
- R14 Publication
- R15 Contents
- R16 Filing of letter of offer with the Board
- R17 Provision of escrow
- R18 Other procedures

SEBI (Takeover Code) 2011

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- Who can participate in open offer – Others and Promoters
- Who cannot participate in open offer –
 - Acquirer
 - PAC
 - Person with whom agreement to sell shares

SEBI (Takeover Code) 2011

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Conditional offer – Min acceptance % level

- R19(1) An acquirer may make an open offer conditional as to the minimum level of acceptance:

Provided that where the open offer is pursuant to an agreement, such agreement shall contain a condition to the effect that in the event the **desired level of acceptance** of the open offer is not received the acquirer shall not acquire any shares under the open offer and the agreement attracting the obligation to make the open offer shall stand rescinded.

- R19(2) Where an open offer is made conditional upon minimum level of acceptances, the acquirer and persons acting in concert with him **shall not acquire, during the offer period**, any shares in the target company except under the open offer and any underlying agreement for the sale of shares of the target company pursuant to which the open offer is made.

SEBI (Takeover Code) 2011

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Competing offers – Not voluntary offer

- R20(1) Upon a public announcement of an open offer for acquiring shares of a target company being made, any person, other than the acquirer who has made such public announcement, shall be entitled to make a public announcement of an open offer **within fifteen working days of the date of the detailed public statement made by the acquirer** who has made the first public announcement.
- R20(2) The open offer made under sub-regulation (1) shall be for **such number of shares** which, when taken together with shares held by such acquirer along with persons acting in concert with him, shall be at least equal to the holding of the acquirer who has made the first public announcement, including the number of shares proposed to be acquired by him under the offer and any underlying agreement for the sale of shares of the target company pursuant to which the open offer is made.

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Competing offers Contd.

- R20(3) Notwithstanding anything contained in these regulations, an open offer made within the period referred to in sub-regulation (1) shall **not be regarded as a voluntary open offer** under regulation 6, and the provisions of these regulations shall apply accordingly.
- R20(4) Every open offer made under sub-regulation (1) and the open offer first made shall be regarded as competing offers for purposes of these regulations.
- R20(5) No person shall be entitled to make a public announcement of an open offer for acquiring shares, or enter into any transaction that would attract the obligation to make a public announcement of an open offer for acquiring shares under these regulations, after the period of fifteen working days referred to in sub-regulation (1) and until the expiry of the offer period for such open offer.
- R20(6) Unless the open offer first made is an open offer conditional as to the minimum level of acceptances, **no acquirer** making a competing offer may be made **conditional** as to the minimum level of acceptances.

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Competing offers Contd.

- R20(7) No person shall be entitled to make a public announcement of an open offer for acquiring shares, or enter into any transaction that would attract the obligation to make a public announcement of an open offer under these regulations until the expiry of the offer period where,—
 - (a) the open offer is for acquisition of shares pursuant to disinvestment, in terms of clause (d) of sub-regulation (2) of regulation 13; or
 - (b) the open offer is pursuant to a relaxation from strict compliance with the provisions of Chapter III or Chapter IV granted by the Board under sub-regulation (2) of regulation 11.
- R20(8) The schedule of activities and the tendering period for all competing offers shall be carried out with identical timelines and the last date for tendering shares in acceptance of the every competing offer shall stand revised to the last date for tendering shares in acceptance of the competing offer last made.

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Competing offers Contd.

- R20(9) Upon the public announcement of a competing offer, an acquirer who had made a preceding competing offer shall be entitled to revise the terms of his open offer provided the revised terms are more favourable to the shareholders of the target company:

Provided that the acquirers making the competing offers shall be entitled to make upward revisions of the offer price at any time up to one working day prior to the commencement of the tendering period.

- R20(10) Except for variations made under this regulation, all the provisions of these regulations shall apply to every competing offer.

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- R21 Payment of consideration
- R22 Completion of acquisition
- R23 Withdrawal of open offer
- R24 Directors of the target company
- R25 Obligations of the acquirer
- R26 Obligations of the target company
- R27 Obligations of the manager to the open offer

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Disclosures of Shareholding and Control

Disclosure-related provisions

- R28(1) The disclosures under this Chapter shall be of the aggregated shareholding and voting rights of the acquirer or promoter of the target company or every person acting in concert with him.
- R28(2) For the purposes of this Chapter, the acquisition and holding of any convertible security shall also be regarded as shares, and disclosures of such acquisitions and holdings shall be made accordingly.
- R28(3) For the purposes of this Chapter, the term “encumbrance” shall include,-
 - (a) any restriction on the free and marketable title to shares, by whatever name called, whether executed directly or indirectly;
 - (b) pledge, lien, negative lien, non-disposal undertaking; or
 - (c) any covenant, transaction, condition or arrangement in the nature of encumbrance, by whatever name called, whether executed directly or indirectly.
- R28(4) Upon receipt of the disclosures required under this Chapter, the stock exchange shall forthwith disseminate the information so received.

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Disclosures of Shareholding and Control

Disclosure of acquisition and disposal

- **R29(1)** Any acquirer, together with persons acting in concert with him acquiring shares or voting rights in a target company, which taken together aggregates to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified
- **R29(2)** Any person together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.

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Disclosures of Shareholding and Control

Disclosure of acquisition and disposal

- R29(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition or the disposal of shares or voting rights in the target company to,—
 - (a) every stock exchange where the shares of the target company are listed; and
 - (b) the target company at its registered office.
- R29(4) For the purposes of this regulation, shares taken by way of encumbrance shall be treated as an acquisition, shares given upon release of encumbrance shall be treated as a disposal, and disclosures shall be made by such person accordingly in such form as may be specified:

Provided that such requirement shall not apply to a scheduled commercial bank or public financial institution 99[or a housing finance company or a systemically important non-banking financial company] as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business.

Explanation. - For the purpose of this sub-regulation, -

- A. a “housing finance company” means a housing finance company registered with the National Housing Bank for carrying on the business of housing finance and is either deposit taking or having asset size worth rupees five hundred crores or more; and
- B. a “systemically important non-banking financial company” shall have the same meaning as assigned to it in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.]

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Disclosures of Shareholding and Control

Disclosure of encumbered shares

- **R31(1)** The promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such form as may be specified:

Provided that the aforesaid disclosure requirement shall not be applicable where such encumbrance is undertaken in a depository.

- **R31(2)** The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified:

Provided that the aforesaid disclosure requirement shall not be applicable where such encumbrance is undertaken in a depository.]

- **R31(3)** The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within **seven working days** from the creation or invocation or release of encumbrance, as the case may be to,—
 - (a) every stock exchange where the shares of the target company are listed; and
 - (b) the target company at its registered office.
- **R31(4)** The promoter of every target company shall declare on a yearly basis that he, along with persons acting in concert, has not made any encumbrance, directly or indirectly, other than those already disclosed during the financial year.
- **R31(5)** The declaration required under sub-regulation (4) shall be made within **seven working days** from the end of each financial year to —
 - (a) every stock exchange where the shares of the target company are listed; and
 - (b) the audit committee of the target company.]

Thank You