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***“Investigation Procedure under The Competition Law with Special Reference to Powers of  
CCI And DG”***

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### ***Abstract***

The intention behind the enactment of Competition Act 2002 is to provide equal playground to the players to play in the market. Under the said Act to achieve the above-mentioned purpose an investigating Body Competition Commission of India was established with the crucial power to investigate the alleged illegal activities having AAEC (Appreciable Adverse Effect on Competition). The Union Government appoints Director General to provide assistance to CCI in conducting investigation in the said anti-trust practices.

However, there is always been a controversial issue about how wide the powers of the Director General are in providing aid to the Commission under the said Act. The judgement in the **Excel Case** by the Apex Court of this country and the various interpretation made by the Apex Court of the States has increased the scope of the investigative power of the Director General because if restrictive interpretation is there then the very purpose of the Investigation against anti-competitive practises would fail if a limit is put on such Powers of the DG.

Still the power of DG is as yet limited by the language in which the CCI direct the manner of investigation and assure that the DG doesn't have free powers to convey out inquiry requests against irrelevant individuals, enterprises etc.

**Keywords:** Competition Act 2002, Competition commission of India (CCI), Director General (DG), Appreciable Adverse Effect on Competition, Investigation Procedure, Anti-Competitive Practices

## ILLEGAL PRACTICES UNDER THE ACT: AN OVERVIEW

The Rationale behind the enactment of the Competition Act 2002 in India is to have a free and competitive market in the country. Under the Act there are the following provisions:

1. Where Central Government is under the obligation to set up Competition Commission of India
2. Practices which are considered to be anti- Competitive in India and the process to remediate such practices.
3. Monetary Punishment or Penalties imposed by the CCI
4. To provide an equal playground to play in the Indian Market. Thus, protecting needs and interest of the participants which include consumers as well.

### 2.1 Types of Anti- Competitive Practices

- **ANTI-COMPETITIVE AGREEMENTS**-These arrangements are those where a gathering of people framed the agreement identifying with creation, supply or dissemination of labor and products which will demolish the opposition on the lookout or give them the excessive benefit over the other market members in a similar market. Such arrangements are announced void under Section 3 of the Competition Act 2002. However, this doesn't imply that all arrangements being entered are against serious on the off chance that they have obvious unfavorable impact on the Competition. According to the part referenced over the accompanying arrangements can be additionally separated into Horizontal and Vertical arrangements.

- **Horizontal Agreements**- These arrangements dared to have Appreciable unfriendly impact on the opposition according to se rule is followed. This sort of arrangements is made between the gatherings at a similar degree of creation and dispersion chain. Rivalry Act, 2002 restricts following kinds of even arrangements specifically:
  - (i) Agreements in regards to fixing of procurement or selling costs of an item either straightforwardly or by implication.
  - (ii) Concurrences as to restrict, control creation, supply, speculation, arrangement of administrations of specific items and for a specific amount.
  - (iii) Agreement in regards to sharing of market

- (iv) Bid Rigging Agreements. Clarification to Section 3(3)(d) characterizes bid fixing "as an arrangement between parties occupied with indistinguishable business, which wipes out or diminishing the opposition for offers or antagonistically influencing or controlling the interaction for offering."
- (v) Agreements as Cartels. Cartels are made by hostile to serious flat arrangements among business ventures. They represent an incredible danger to rivalry and at last will in general annihilate the deregulation. Indeed, cartels are secret arrangements between business firms with the sole goal of fixing costs or dividing markets among them.<sup>1</sup>
  - **Vertical Agreements-** This sort of arrangements is made between the gatherings possessing field at various degree of creation and dissemination. For instance, any arrangement among producer and distributor which can unfavorably influence rivalry in the market will be named as a vertical enemy of serious understanding. Vertical arrangements are not represented by the Per Se Rule, so it isn't required for these arrangements to have AAEC. It incorporates the accompanying sorts of arrangements:
    - 1) Tie-in-game plan
    - 2) Exclusive inventory arrangement
    - 3) Exclusive dispersion understanding
    - 4) Refusal to bargain
    - 5) Resale value support

The Competition Commission of India while asking whether the Agreement have Appreciable Adverse Effect on Competition will consider the accompanying variables according to Section 19(3) of the go about as follows:

*“The Commission will, while deciding if an arrangement has a calculable antagonistic impact on rivalry under segment 3, have due respect to all or any of the accompanying variables, namely: —*

- *“Formation of boundaries to new contestants on the lookout;*
- *driving existing contenders out of the market;*

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<sup>1</sup> Section 3 of the Competition Act 2002

- *abandonment of rivalry by ruining passage into the market;*
- *accumulation of advantages to customers;*
- *upgrades underway or conveyance of products or arrangement of administrations; or*
- *advancement of specialized, logical and monetary improvement through creation or conveyance of products or arrangement of administrations.”*

**2. ABUSE OF DOMINANT POSITION-** Holding Dominant Position in the market is not wrong but using this position to disrupt the competition and cause suffering on the other is illegal.<sup>2</sup> The section further stated that the following conduct of the enterprises will amount to abuse of dominant Position:

- 1) Purchaser is prevented from purchasing competing products other than from Dominant Firms
- 2) Discriminating Pricing
- 3) Unfair Pricing
- 4) Predatory Pricing
- 5) Denial of Market Access
- 6) Dependence of Consumers
- 7) Monopoly or Dominance by company in which Union or State Executives hold 50% of the shares.

**3. COMBINATIONS-** The Threshold limit<sup>3</sup> has been given under the role so that all the corporate restructuring being done in India stays away from disrupting competition in the market. The primary support behind recommending such cutoff points can be the explanation that acquisition between small enterprises or endeavors might not have AAEC in Indian business sectors.

A mandatory notice within the time period of thirty days from the date the resolution regarding the same has been granted from BOD containing the description of combination which the enterprises are planning to enter is to be given to the Competition Commission. After the notice is served or any information of the CCI on

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<sup>2</sup> Section 4 of the Competition Act 2002

<sup>3</sup> Section 5 of the Competition Act 2002

the receipt of the above-mentioned notice is received then within 210 days the combination will come into effect as per **section 6**.

In any case, exemption has been given for public monetary establishment, foreign institutional financial backers, bank or investment reserve if there should be an occurrence of any covenant of credit arrangement or a venture arrangement.

The CCI under **Section 20(4)** have to take into account the following factors to decide whether the alleged combination is having AAEC in India:

4. *genuine and expected degree of rivalry through imports on the lookout*
5. *degree of hindrances to passage into the market;*
6. *level of mix on the lookout;*
7. *level of countervailing power on the lookout;*
8. *probability that the blend would bring about the gatherings to the mix having the option to altogether and reasonably increment costs or overall revenues;*
9. *degree of viable rivalry prone to support in a market; \*
10. *degree to which substitutes are accessible or curve prone to be accessible on the lookout;*
11. *piece of the overall industry, in the applicable market, of the people or undertaking in a mix, independently and as a mix;*
12. *probability that the mix would bring about the expulsion of a lively and successful contender or rivals on the lookout;*
13. *nature and degree of vertical mix on the lookout;*
14. *plausibility of a weak business;*
15. *nature and degree of development;*
16. *relative benefit, via the commitment to the financial turn of events, by any mix having or liable to have obvious unfavourable impact on rivalry;*
17. *regardless of whether the advantages of the blend exceed the unfriendly effect of the mix, assuming any"*

## **PROCEDURE FOR EXAMINATION IN CASE OF VIOLATIONS**

### **2.1 Procedure of investigating in case of any Violation relating agreement**

For investigating the alleged illegal activities having AAEC, a Commission was established. To full fill this very purpose of the CCI, Union Government appoints Director General to provide assistance to CCI and to conduct investigation.

**1) INFORMATION RELATING ANY VIOLATION<sup>4</sup>**

Information relating to any violations is received from any person or any reference by the Union or State Executives or by any institution setup as per any law or Suo moto.

According to section 2(l) person includes the following:

*““person” includes—*

- (i) an individual;*
- (ii) a Hindu undivided family;*
- (iii) a company;*
- (iv) a firm;*
- (v) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;*
- (vi) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);*
- (vii) anybody corporate incorporated by or under the laws of a country outside India;*
- (viii) a co-operative society registered under any law relating to co-operative societies;*
- (ix) a local authority;*
- (x) every artificial juridical person, not falling within any of the preceding sub-clauses;”*

The **Apex Court of Madras** has stated that:

*“According to Section 19 (1) (a) of the Act, the CCI can ask into any supposed endless supply of any data from any individual which is joined by such expense as found in the guidelines. Subsequent to analysing the meaning of the term 'individual' as characterized in Section 2 (l) of the Act, the court inferred that 'individual' incorporates each counterfeit juridical individual and henceforth DG would be covered by the definition.”<sup>5</sup>*

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<sup>4</sup> Section 19 of the Competition Act 2002

<sup>5</sup> Hyundai Motor India Limited v. Competition Commission of India (Competition Appeal (AT) No. 6 of 2017, decided on 19-9- 2018.), at, <https://nclat.nic.in/Useradmin/upload/6594600435ba2337253f81.pdf>

## 2) SECTION 26(1) – ORDER FOR INQUIRY OF THE MATTER

On the receipt such information the CCI will form prima facie opinion based on the information along with some materials submitted with it to the CCI.

- *As per the satisfaction of the CCI if such violations have taken place, it will pass the Order to the DG to conduct examination.*
- *As per the satisfaction of the CCI if no such violations have taken place it will pass direction for its closing to the parties concerned.*

**Apex Court of Madras<sup>6</sup>**, stated that:

*“To lead examination by the Director General, a by all appearance’s assessment of the CCI is sin qua, endless supply of any data under Section 19. On the off chance that any additional data which is like the data got as of now or to the data recently got by the CCI no by all appearance’s assessment is needed to be structure for examination.”*

## 3) SECTION 26(3-4)- INVESTIGATION BY DIRECTOR GENERAL

After receiving the direction from the CCI the Director General will proceed to conduct investigation and within the specified time as given in the direction of the CCI will submit the report containing his/her findings of the investigation to the CCI. The report will be forwarded to the party concerned and in case of reference then to the Union or State Executives or by any institution setup as per any law.

## 4) SECTION 26(5-8)- PROCEEDINGS BEFORE THE CCI

- **The Report submitted by Direct General states that no contravention has taken place-** CCI will provide opportunities to the both Union or State executives or by institution setup as per any law or parties concerned to file their objections relating to the report.
- **Objections and Suggestion**
  - After taking into account the objections made by the parties mentioned above if CCI is satisfied that the findings of DG does not create any case for which inquiry is required it will close the matter and pass the order of it.

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<sup>6</sup> *Ibid.*

- After taking into account the objections mentioned above as per the satisfaction of the Commission, further investigation is required so it can order the DG for the same or it can on its own proceed with the further inquiry

➤ **The Report submitted by Direct General states that the contravention of the said provisions has taken place- If further investigation or inquiry is necessary as per the report then Commission will proceed on its own.**

## 5) SECTION 27- ORDER OF PENALTY FOR VIOLATION

**Power to CCI to impose penalty** after the inquiry is completed. The Competition can pass the orders mentioned down:

- i. Order to discontinue and not to re-enter any anti-competitive agreement or discontinuance of the abuse of dominant position
- ii. Order of penalty of not more than 10% of the average turnover for last 3 previous financial years and in the case of **Cartel** it is equivalent to three times of the amount of profits made out of such agreement or 10% of the average turnover of the Cartel for last 3 previous financial years, *whichever is Higher*
- iii. Further, will give the direction that such illegal agreements shall stand amended as far as possible and the enterprises should abide by such orders

**Obligation of the CCI to impose punishment lower than the general punishment given under the law** on the individual seller, distributor, producer, trade provider involved in the cartel on its satisfaction that the disclosures made by such individual is true on the condition that such disclosures relating to violation should be made before the investigation report under section 26 is submitted to CCI.<sup>7</sup>

## 2.2 Investigation Procedure for Regulation of Combination

### 1) SECTION 20 - INITIATION OF INQUIRY

The CCI can conduct an inquiry if it is satisfied that any acquisition or merger or amalgamation having AAEC either Suo moto or on the basis of information relating to such anti-competitive combination on a condition such inquiry have to be initiated within 1 year from the date such combination has come into effect.

### 2) PROCEDURE OF INQUIRY<sup>8</sup>

<sup>7</sup> Section 46 of the Competition Act 2002

<sup>8</sup> Section 29 of the Competition Act 2002

- **If the CCI is satisfied that the alleged combination will have AAEC-** A notice for explaining why no investigation proceedings should be conducted against them will be issued by CCI to the enterprises entered into combination. The reply for the same is to be filed within **Thirty days** by the parties.
  - After receiving the above-mentioned reply from the parties entered into combination the next step is take get the report from the DG on the same matter.
  - Further after receiving the above mentioned reply the CCI within 7 days of that reply or report of the director either of which is received later, will command the parties to make disclosures to the public who are being affected by it within 10 days of such direction.
  - **Objections-** CCI can invite objections in writing from any person or public member. The same is to be submitted to CCI within 15 days from such disclosures. Further, after the expiry of the said 15 days the CCI can also ask for extra data on the same subject from the public to be submitted with another 15 days.
  - Within the 45 days from the date the above 15 days got expired the CCI will proceed the inquiry.
- 3) SECTION 31-Orders to be directed** in case a **Combination** in India as per as follows:
- **No AAEC** -pass the order for its approval
  - **Has AAEC-** pass the order that combination will not take place and such order will be passed without affecting any penalty which may be imposed on such combination after completion of inquiry under this Act.
  - Has AAEC **but it can be removed** by certain changes/modifications- pass the order for such appropriate changes
  - In case the **parties do not agree with the changes ordered by the CCI** can submit within 30 days of such order an amendment to such changes- the CCI can pass the order for its approval or if does not accept the amendment can pass an order of providing extra 30 days' time to the parties to accept the order of Modification.
  - If parties failed to comply with any such orders, then the Combination will be considered to have AAEC and will be dealt with provisions of this Act.
  - Further **as per 43 A** the obligation of the CCI to inflict on to the parties involved in the combination such punishment if they do not provide a notice regarding their interests to merge or acquire or to amalgamate or to enter into combination is one percent of the assets or turnover, whichever is more.

## CCI AND DG

### 3.1 CCI

The CCI is a **Market Regulator** for safeguarding perfect competition, it operates in all the sectors where business transaction is taking place and all other Sectoral Regulators can seek its advisory and advocacy functions.

#### 3.1.1 Power/Objectives/ Duties/Function of CCI

**The law in research**<sup>9</sup> cast some duties to be fulfilled by the CCI as follows:

- 1) To prohibit/ check any kind of practices having AAEC in India
- 2) To safeguard the freedom of trade or Business in the market.
- 3) To enhance the consumer welfare by positively enhancing competition in the market.
- 4) Provide assurance constructed competition in Financial market i.e., opportunities for all market participants to establish themselves without facing any kind of Discrimination.
- 5) Spreading and Creating Awareness regarding anti-competitive practices to market players.

The section mentioned above also stated that the CCI can also collaborate or sign any MOU or agreement with the institution of the any Country of the world with the prior approval of CG in order to fulfil the above stated duties.

The backbone of this section is to carry out the role that Indian Constitution cast on the State under **Article 38** and under **Article 39**.

#### 1) **Power of Commission if there are certain illegal agreements impacting the market competition**

The CCI is bound **to conduct inquiry** on the receipt of information where such information is related to any illegal practices, therefore where such actions limit the free flow competition in the Market. The information can reach the Commission by way of reference by Central or State Government or any Statutory Body as per **Section 21** of the said act or by any person or CCI can also conduct the inquiry Suo moto.

- 4) **As per Section 21A, the Commission an refer to a body or institution set up under any law** an issue raised by the parties during proceedings before it or Suo moto that its decision

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<sup>9</sup> Section 18 of the Competition Act 2002

will be affecting any law in force, where the implementation of such law is in the hands of that Statutory Authority.

5) Responsibility of the **CCI to inflict such punishment necessary** after the inquiry is completed. It can pass the following orders:

- iv. Order to discontinue and not to re-enter any anti-competitive agreement or discontinuance of the abuse of dominant position
- v. Order of penalty of not more than 10% of the average turnover for last 3 previous financial years and in the case of **Cartel** it is equivalent to three times of the amount of profits made out of such agreement or 10% of the average turnover of the Cartel for last 3 previous financial years, *whichever is Higher*
- vi. Further, direct the agreements shall stand modified to such an extent and the enterprises should abide by such orders and comply with the directions including **payment of costs** if any.<sup>10</sup>

6) **Power of the Commission to order which should be in writing, the division of enterprises enjoying dominant position in the market in order to prevent the abuse of such position as per section 28** of the Competition Act 2002

7) **Obligation of the CCI to impose punishment lower than the general punishment given under the law** on the individual seller, distributor, producer, trade provider involved in the cartel on its satisfaction that the disclosures made by such individual is true on the condition that such disclosures relating to violation should be made before the investigation report under section 26 is submitted to CCI.<sup>11</sup>

**2) Power of Commission if there is a combination having AAEC in India**

- 1) The **Power of the CCI to inquire into Combinations** can be conducted under two circumstances, firstly **Before the Approval for combination is given** read with section 29,30 and 31 and in **Section 20 (when the Combination has come into effect)** but a **Proviso** attached to this section makes it clear that such power can be exercised by CCI within 1 year from the date the combination came into effect and after one year even though the combination has AAEC, no inquiry can be instituted against it.
- 2) **Orders to be directed** in case a **Combination** in India as per **Section 31** as follows:
  - o **No AAEC** -pass the order for its approval

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<sup>10</sup> Section 27 of the Competition Act 2002

<sup>11</sup> Section 46 of the Competition Act 2002

- **Has AAEC**- pass the order that combination will not take place and such order will be passed without affecting any penalty which may be imposed on such combination after completion of inquiry under this Act.
  - Has AAEC **but it can be removed** by certain changes/modifications- pass the order for such appropriate changes
  - In case the **parties do not agree with the changes ordered by the CCI** can submit within 30 days of such order an amendment to such changes- the CCI can pass the order for its approval or if does not accept the amendment can pass an order of providing extra 30 days' time to the parties to accept the order of Modification.
  - If parties failed to comply with any such orders, then the Combination will be considered to have AAEC and will be dealt with provisions of this Act.
  - Further **as per 43 A** the obligation of the **CCI to inflict on** to the parties involved in the combination such punishment if they do not provide a notice regarding their interests to merge or acquire or to amalgamate or to enter into combination is one percent of the assets or turnover, whichever is more.
- 3) **Section 32** cast the Power to the CCI to conduct an inquiry or to pass such orders that are necessary in case an anti-competitive practise is being conducted outside of India or any party involved in such practise is residing outside India, if such practices have AAEC in India.

### 3) Power of Commission to Pass Interim Orders

The commission while conducting inquiry against illegal practices having AAEC believes that such anti-competitive practice is being practiced or continues to be in practice or will be practiced in the future can pass an **order to stopped** any party involved in such practice from carrying it out without intimating such party where commission believes it necessary.<sup>12</sup>

The **Apex Court of India**<sup>13</sup> Stated that:

*“The function of the CCI to pass a brief limitation request, must be practiced by the Commission when it has framed at first sight assessment and coordinated examination.”*

<sup>12</sup> Section 33 of the Competition Act 2002

<sup>13</sup> Competition Commission of India vs. Steel Authority of India Ltd. (2010) 10 SCC 744.

*“Further, the CCI is needed to record a fulfilment that there has been repudiation of the arrangements referenced and that such contradiction has been submitted, keeps on being submitted or is going to be submitted. This fulfilment must be seen uniquely in contrast to what is required while communicating an at first sight see as far as segment 26(1) of the Act. The previous is a complete articulation of the fulfilment recorded by the Commission upon due utilization of brain while the last is a conditional view at that stage”*

Thus, it is clear from the wordings of the Apex Court that this power of CCI can be exercised only when there are exceptional and compelling circumstances and CCI has to provide higher degree satisfaction of existence of such circumstances.

- 4) Power to regulate its own Procedures-** The CCI should while implementing their duties under the Act must keep in mind that while executing any plenary action against any participant in the market must provide him an opportunity to defend his actions after hearing a reasoned order should be passed by it and are vested with the **Powers of Civil Court**. Further it also gave the power to the cci to take an opinion of any expert in the field of economics, commerce, accountancy, international trade etc. and can direct any individual to provide any book, document or information in his/her possession for assisting in the Commission or DG.
- 5) Power to Rectify its own orders (Section 38) -** The CCI can amend its own order in case of any mistake apparent brought to its notice or on its own but **no substantive part** of the order can be amended.
- 6) Power of the Commission to use such techniques and practices for Spreading and Creating Awareness regarding anti-competitive practices to market players.**

### **3.2 Director General**

The DG responsibility begins when under segment 26(1) of the Competition Act 2002 CCI frames its opinion against the supposed enemy of serious practices, to lead examination.

**Section 2(g)** defines director general as:

*“Director General” means the Director General appointed under sub- section (1) of section 16 and includes any Additional, Joint, Deputy or Assistant Directors General appointed under that section;”*

The Responsibility of appointing an individual to be DG is on the Union Executive by way of notification along with other ADG, DDG, JDG or Assis. DG who will work under the authority of the DG.<sup>14</sup>

Consequently, the DG is a person "of uprightness and exceptional capacity and who have insight in examination, and information on bookkeeping, the executives, business, policy management, global exchange, law or financial aspects and such different capabilities" designated by Central Government to lead examination" on the Order of the CCI.

**Apex Court of Madras** stated that:

*"the assertion of items and reasons of the Competition Act, 2002 states that the DG would have the option to act just assuming this is the case, coordinated by the CCI yet won't have any Suo moto powers for starting examinations."*<sup>15</sup>

### **3.2.1 Power of the Director General**

**Chapter-5** cast several powers on the Director General as follows:

- ❖ Directions given by the CCI in their order makes DG bound by such directions to look into matters before it in case of violation of the provisions of the Competition Act 2002 or against Anti-Competitive Practises for providing aid to the CCI.
- ❖ Powers of Civil Court are vested on DG as it is vested on the CCI under section 36(2).<sup>16</sup>

*Hence, the role of the investigative hand of the CCI is to conduct investigation on the order passed by the CCI. The scope of this investigative power of the Director General has been laid down by various High Courts and Supreme Court throughout years.*

The **Apex Court of India** makes the following interpretation:

*"The reason for a DG examination is to test all vital realities and proof. Along these lines, albeit the beginning stage of the request was the claims in the data, if different realities were uncovered throughout the examination, the DG would be well inside its forces to incorporate those as well. Further, in the underlying stages, the CCI couldn't have anticipated or anticipated whether the examination would uncover any infringement of the Competition Act*

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<sup>14</sup> Section 16 of the Competition Act 2002

<sup>15</sup> *Supra Note 5.*

<sup>16</sup> Section 41 of the Competition Act 2002

*and, provided that this is true, what the idea of the infringement so uncovered, would be. In like manner, the SC held that any limitation of the examination interaction would invalidate the actual point of the Anti-Trust Act.*<sup>17</sup>

But the above-mentioned judgement does not provide any guidelines or principles relating to investigative power of the DG and leaves it open to the Apex Courts of the States to interpret it on their own.

The **Apex Court of Delhi** interpreted the scope of Investigative power of DG after relying on the Excel judgement as follows:

*“the stage when the CCI takes perception of data and coordinates examination, it doesn't really have total data or realities identifying with the example of conduct that influences the commercial centre. It can just pass by the data gave at that point; thus, the DG is approached to investigate the matter. The DG's examination may likewise uncover more undertakings that may have contradicted the arrangements of the Competition Act. Accordingly, the DG's force isn't restricted or confined to issue just included inside the Order.”*<sup>18</sup>

Further in the **Grasim Case**<sup>19</sup> the Apex Court of Delhi concluded that:

*“By depending on the SC choice in SAIL case, that the CCI's Prima Facie Order isn't intended to confine the assessment that might be shaped by the DG upon such examination. In the current case, the course to the DG was to examine "the matter", which not just empowered the DG to explore the infringement set out in the Orde of the CCI, yet in addition whatever other infringement that may have gone to its notification during the examination. The DHC saw that the Order mentioned under section 26 just triggers examination. The DG is needed to explore the whole matter, i.e., the charges made in the data, with all the proof, reports, proclamations or examination gathered during the examination. The examination should be exhaustive, and the charges and data referenced in the Prima Facie Order can't confine or oblige the DG from inspecting the infringement of different arrangements of the Competition Act”*

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<sup>17</sup> Excel Crop Care Limited v Competition Commission of India & Others 2017 8 SCC 47 (SC), at, <https://www.livelaw.in/penalty-anti-trust-violations-must-based-relevant-turnover-not-total-turnover-sc-read-judgment/?infinitescroll=1>

<sup>18</sup> Cadila Health Care Limited & Others v Competition Commission of India & Others 2018 252 DLT 647 (DHC), at, <https://www.manupatrafast.com/NewsletterArchives/listing/CNB%20Vaish/2018/October-2018.pdf>

<sup>19</sup> Competition Commission of India v Grasim Industries [2019 ] 265 DLT 535 (DHC), at, <https://indiankanoon.org/doc/8815488/>

**The precedents stipulates that the intention of the Court is that the investigative power of the CCI which is delegated to the DG under said law is to provide broad and wide powers which includes additional enterprises (on the condition that it is required to inform the CCI and take direction from it), facts, events, as well as additional allegations, not originally included in the Prima Facie Order.**

## CONCLUSION

The Commission has made participants of the market to realise how competent the commission is to safeguard their interests and even for providing equal opportunities to all of them in the Open Market and then by inflicting profoundly reformatory punishments on the substances occupied with against serious rehearses. A definitive advantage of such activities has gone to the shopper who now appreciates the advantage of solid rivalry on the lookout and gets an opportunity to choose the modest and most ideal alternative accessible for him.

The judgement in the **Excel Case** by the Apex Court of this country and the various interpretation made by the Apex Court of the States has increased the scope of the investigative power of the Director General. However, this wide investigative power of the DG initiated only when a Prima Facie order is passed by the CCI that the competitive practices are having AAEC. The reason for avoiding restrictive interpretation of the Investigative powers of the DG the Courts stated that the very purpose of the Investigation against anti-competitive practises would fail if a limit is put on such Powers of the DG. The pattern is moving towards accomplishing the goals which the Indian Parliament wants to achieve by bringing into force such a law by uncovering any data that excites doubt regarding such illegal exercises might having AAEC leads to be inquired.

This practice of Courts not to make restrictive interpretation of the investigative powers of DG is in accordance with the **SAIL Case** that is if at the time the CCI is forming its prima facie opinion relating any competitive practice such opinion will be based only upon the information that is received as in this stage no comprehensive inquiry is taken place so there can be many facts and evidences against such practices which are left out, and these facts and evidences can be identify at the stage of Investigation.

However, the investigative power of DG is as yet limited by the language in which the CCI direct the manner of investigation and assure that the DG doesn't have free powers to convey out inquiry requests against irrelevant individuals, enterprises etc.

## REFERENCES

### Articles

- Ms. Ela Bali and Ms. Aditi Khanna, “scope of director general’s investigation under the competition act, 2002”, *Indian competition law review*, volume vi, issue 1, at, <https://www.jsalaw.com/wp-content/uploads/2021/02/Scope-of-Director-Generals-Investigation-Under-The-Competition-Act-2002.pdf>
- Dhruv Rajain, Siddhant Khetawat and Shreya Josh, “Clipping the DG’s and CCI’s Investigative Power: Recent Trends”, cited at (2020) PL (Comp. L) January 75, at, <https://www.sconline.com/blog/post/2020/01/13/clipping-the-dgs-and-ccis-investigative-power-recent-trends/>
- Shreya Prabhakar Tambe, “Procedure for Investigation of Combination by the Competition Commission of India under the Scheme of the Act”, *International Journal of Law Management & Humanities*, VOLUME 4 ISSUE 2, 2021, at, <https://www.ijlmh.com/paper/procedure-for-investigation-of-combination-by-the-competition-commission-of-india-under-the-scheme-of-the-act/>
- Satish Padhi, Huzefa Tayawalla and Gowree Gokhle, “Director General and Competition Commission Powers Clarified”, *Law Street India Portal*, March 9, 2015, at, <https://www.mondaq.com/india/cartels-monopolies/388946/director-general-and-competition-commission-powers-clarified>

### Bare Act

- Competition Act 2002

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- <sup>1</sup> Section 3 of the Competition Act 2002
- <sup>1</sup> Section 4 of the Competition Act 2002
- <sup>1</sup> Section 5 of the Competition Act 2002
- <sup>1</sup> Section 19 of the Competition Act 2002
- <sup>1</sup> Hyundai Motor India Limited v. Competition Commission of India (Competition Appeal (AT) No. 6 of 2017, decided on 19-9- 2018.), at, <https://nclat.nic.in/Useradmin/upload/6594600435ba2337253f81.pdf>
- <sup>1</sup> *Ibid.*
- <sup>1</sup> Section 46 of the Competition Act 2002
- <sup>1</sup> Section 29 of the Competition Act 2002
- <sup>1</sup> Section 18 of the Competition Act 2002
- <sup>1</sup> Section 27 of the Competition Act 2002
- <sup>1</sup> Section 46 of the Competition Act 2002
- <sup>1</sup> Section 33 of the Competition Act 2002
- <sup>1</sup> Competition Commission of India vs. Steel Authority of India Ltd. (2010) 10 SCC 744.
- <sup>1</sup> Section 16 of the Competition Act 2002
- <sup>1</sup> *Supra Note 5.*
- <sup>1</sup> Section 41 of the Competition Act 2002
- <sup>1</sup> Excel Crop Care Limited v Competition Commission of India & Others 2017 8 SCC 47 (SC), at, <https://www.livelaw.in/penalty-anti-trust-violations-must-based-relevant-turnover-not-total-turnover-sc-read-judgment/?infinitescroll=1>
- <sup>1</sup> Cadila Health Care Limited & Others v Competition Commission of India & Others 2018 252 DLT 647 (DHC), at, <https://www.manupatrafast.com/NewsletterArchives/listing/CNB%20Vaish/2018/October-2018.pdf>
- <sup>1</sup> Competition Commission of India v Grasim Industries [2019 ] 265 DLT 535 (DHC), at, <https://indiankanoon.org/doc/8815488/>