

**AN ANALYSIS OF THE WORKING OF CCI IN
REFERENCE TO ABUSE OF DOMINANT POSITION IN
MEDIA AND ENTERTAINMENT SECTOR DURING
2009- 2017**

Dissertation submitted to the Central University of Punjab

For the award of

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In

Department of Law

By

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May 2018

DECLARATION

I declare that the dissertation entitled “AN ANALYSIS OF THE WORKING OF CCI WITH REFERENCE TO ABUSE OF DOMINANT POSITION IN MEDIA AND ENTERTAINMENT SECTOR DURING 2009- 2017” has been prepared by me under the guidance of Dr. Puneet Pathak, Assistant Professor, Department of Law, School of Legal Studies and Governance, Central University of Punjab, Bathinda. No part of this dissertation has formed the basis for the award of any degree or fellowship previously.

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CERTIFICATE

I certify that PRATIBHA VERMA has prepared her dissertation entitled “AN ANALYSIS OF THE WORKING OF CCI WITH REFERENCE TO ABUSE OF DOMINANT POSITION IN MEDIA AND ENTERTAINMENT SECTOR DURING 2009- 2017” for the award of LL.M. degree of the Central University of Punjab, under my guidance. She has carried out this work at the Centre for Law, School of Legal Studies and Governance, Central University of Punjab.

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ABSTRACT

AN ANALYSIS OF THE WORKING OF CCI WITH REFERENCE TO ABUSE OF DOMINANT POSITION IN MEDIA AND ENTERTAINMENT SECTOR DURING 2009- 2017

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Problem relating to abuse of dominant position by an enterprise is present in almost every country in the world. Dominant position is the position of strength enjoyed by any enterprise in the market. It enables him to function independently of the various competitive forces that are prevalent in the market, or affect its competitors or consumers or the relevant market in its favor. Earlier MRTP Act, 1969 was in existence to prevent the concentration of economic power to the common detriment; to control monopolies and to prohibit monopolistic, restrictive and unfair trade practices. But this Act didn't mention abuse of dominance, cartels, collusion and price fixing, bid rigging, boycotts and refusal to deal, predatory pricing etc. Moreover it didn't contain any express provision for the application of the Act on any anti-competitive conduct outside India and affecting Indian market in an adverse manner. On the basis of the recommendations of the Raghavan committee, government of India enacted Competition Act in 2002. Competition Commission of India is the nodal agency under the Act to deal with the problem of abuse of dominant position. It started its working in 2009. 868 cases have been filled in the Commission up to 2017 regarding contravention of the provisions of the abuse of dominant position. The present study analyses the working of CCI in regard to abuse of dominant position

with the help of decided cases on the issues of abuse of dominant position. It further analysed the cases decided by Competition Commission of India in media and entertainment sector.

Pratibha Verma

Dr. Puneet Pathak

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LIST OF ABBREVIATIONS

S.No.	Full Form	Abbreviation
1.	Administrative Monetary Penalty	AMP
2.	Anti Monopoly Law	AML
3.	Antimonopoly Act	AMA
4.	Appreciable Adverse Effect on Competition	AAEC
5.	Australian Competition and Consumer Commission	ACCC
6.	Australian Consumer Law	ACL
7.	Bharat Sanchar Nigam Limited	BSNL
8.	Chief Justice of India	CJI
9.	Competition and Consumer Act	CCA
10.	Competition Appellate Tribunal	COMPAT
11.	Competition Commission	Comco
12.	Competition Commission of India	CCI
13.	Digital Cinema Initiatives	DCI
14.	Direct to Home Operations	DTH
15.	Eastern India Motion Picture Association	EIMPA
16.	Economic and Political Weekly	EPW
17.	European Community	EC
18.	Fair Trade Commission	FTC
19.	Federal Trade Commission	FTC
20.	Film Distributors Association	FDA
21.	Foreign Exchange Regulation Act	FERA
22.	Frequency Modulation	FM
23.	General Agreement on Tariffs and Trade	GATT
24.	General Agreement on Trade in Services	GATS
25.	Hindustan Coca Cola Beverages Pvt. Ltd	HCCBPL
26.	Hockey India	HI

27.	Indian Hockey Federation	IHF
28.	Indian Premier League	IPL
29.	Information and Broadcasting	I&B
30.	International Competition Network	ICN
31.	International Journal of Advance Research in Computer Science and Management Studies	IJARCSMS
32.	International Journal of Law and Legal Jurisprudence Studies	IJLLJS
33.	Internet Protocol Television Operators	IPTVO
34.	Karnataka Film Chamber of Commerce	KFCC
35.	Liberalization, Privatization and Globalization	LPG
36.	Local Cable Operators	LCO
37.	Maharishi Dayanand University	MDU
38.	Minimum Commitment Charges	MCC
39.	Monopolies and Restrictive Trade Practices Act	MRTPA
40.	Monopolies and Restrictive Trade Practices Commission	MRTPC
41.	Monopolistic Trade Practices	MTP
42.	Multinational Companies	MNCs
43.	Multisystem operators	MSO
44.	National Law School of India Review	NLSIR
45.	Office of Fair Trading	OFT
46.	Open General Licence	OGL
47.	Opposite Party	OP
48.	Reserve Bank of India	RBI
49.	Restrictive Trade Practices	RTP
50.	Section	Sec.
51.	The Board for Industrial and Financial Reconstruction	BIFR
52.	The Board of Control for Cricket in India	BCCI
53.	Trade Practices Act	TPA

54.	Trade-Related Aspects of Intellectual Property Rights	TRIPS
55.	Trade-Related Investment Measures	TRIMs
56.	Treaty on the Functioning of the European Union	TFEU
57.	Unfair Trade Practice	UTP
58.	United Kingdom	UK
59.	United States of America	USA
60.	World Series Hockey	WSH
61.	World Trade Organisations	WTO

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CHAPTER- I

INTRODUCTION

A. Framework of Study

Background of Study:

Competition may be defined as an act or process of competing. In economic terms, competition is a quarrel in which every selling person tries to get profit, sales, and market share by offering the best integration of quality, price, and service. It is the process of competitiveness to attract more customers or enhance profit.¹The ultimate aim of the competition is to protect the interest of the consumer in the market. The consumer's right to free and fair competition cannot be denied by any other consideration. It is useful for the consumers in a manner that it motivates transformation, efficiency, and widened the choice which allows the customer to purchase the products and avail services at an affordable price and contribute to our national competitiveness.

It is a universally accepted fact that competition law is a crucial weapon which keeps an eye on the quality of goods offered and also ensures that services provided to customers should be at reasonable price. The realization of this particular fact has made the policymakers of many countries in the world to formulate the competition law suited to their economic development for generating the process of competition, for promoting fair markets and protecting the interests of consumers. Canada was the first country to enact a competition law in 1889 followed by the United States of America in 1890. Although at international level there is no multilateral agreement on trade and competition policy, the issue is present in many of the provisions of the existing WTO agreements.²

¹ Learners Dictionary, *available at* <http://www.learnersdictionary.com/definition/competition> (Visited on October 5, 2017).

² The WTO agreement refers to following issues relating to competition: General Agreement on Trade in Services (GATS), Trade-Related Aspects of Intellectual Property Rights (TRIPS), and Trade-Related Investment Measures (TRIMs), Agreement on Safeguards, Article XVII of GATT 1994.

Abuse of dominant position is referred at regional and domestic level. Article 102 of the Treaty on the Functioning of the European Union (TFEU) prohibits abusive conduct by companies that have a dominant position on a particular market.³ It provides that any conduct which shows misuse of dominant position by one or more enterprises, or any conduct which affect trade between member states shall be banned. Such conducts are- directly or indirectly imposing unfair purchase or selling prices; limiting production, markets or technical development to the prejudice of consumers; applying dissimilar conditions to equivalent transactions with other trading parties; making the conclusion of contracts subject to acceptance by the other parties which have no connection with the subject of such contracts.⁴ Abuse of dominant position also has reference in the legislations of various other countries.⁵

Promoting competition and curbing baneful effects of monopolies is one of the constitutional imperatives visualized by the framers of the Indian Constitution. The prevention of concentration of economic power to the detriment of public, control of monopolies and prohibition of monopolistic trade practices are the constitutional imperatives for state policy.⁶ The Government of India appointed K C Das Gupta Committee⁷ in 1965 to provide necessary support and suggest suitable recommendations to achieve the goals of Directive Principles of State Policy under

³ European Commission, *available at*: http://ec.europa.eu/competition/antitrust/procedure_102_en.html (Visited on October 5, 2017).

⁴ Richard Whish and David Bailey, *Competition Law* 173 (Oxford University Press, New York, 7th edn., 2012).

⁵ Section 1 and 2 of The Sherman Act, 1890; Section 7 of Clayton Act, 1914 of USA; Article 102 of the Treaty on the Functioning of the European Union; Competition Act, 1998 and Enterprise Act, 2002 of UK; Part IV of the Competition and Consumer Act 2010 of Australia; The Competition Act, 1986 of Canada; Article 7 of Cartel Act, 1995 of Switzerland; Article 17 of Anti-Monopoly Law, 2007 of China; Article 3 of The Antimonopoly and Fair Trade Maintenance Act 1947 of Japan; Section 19 and 20 of German Act against Restraints of Competition, 1958.

⁶ Article 39 (b) & (c) of the Constitution of India provide that the ownership and control of the material resources of the community shall be so distributed as best to sub-serve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. These two directive principles were given primacy over the Fundamental Rights by the 25th Constitutional Amendment by inserting Article 31C into the Constitution.

⁷ The Monopolies Inquiry Committee was constituted by the central government to hold an enquiry into the concentration of economic power in the Indian economy and it submitted a report in the year 1965. The MIC noted that there was concentration of economic power in the form of product wise and industry wise concentration and that large scale restrictive and monopolistic trade practices existed in the market. As a corollary to its findings, the MIC drafted a Bill and which was later approved by the Parliament as the MRTP ACT, 1969.

the Constitution. On the basis of the report of the committee, the government enacted "Monopolies and Restrictive Trade Practices Act, 1969".⁸ In 1991, the Government of India unveiled the economic reforms agenda by increasing thrust on liberalization, privatization and globalization. In this process, a number of changes were introduced in existing policies relating to industrial policy, foreign direct investment, technology imports, government monopolies, import licensing, financial sector and ownership.⁹ The MRTP Act, 1969 was found to be obsolete as it was incompatible with the changing needs. An analysis of the MRTP Act showed that certain definition and offending trade practices which are restrictive in nature were not the part of the Act such as abuse of dominance position, price fixing and cartels, boycotts, bid riggings and refusal to deal and predatory pricing. With liberalization, a debate started regarding the relevancy of MRTP Act, 1969 and the commission. Question was raised whether it should continue to regulate the monopolies and restrictive trade practices in India or not. Raghavan Committee was constituted in 1999 to assess some of the likely changes which may be necessary in combating the trade-related anti-competitive practices of the Indian enterprises in the post-1991 economic liberalization scenario and to suggest a way forward including a legislative framework in this regard. Raghavan committee in its report recommended repealing of the MRTP Act and enacting a modern, comprehensive competition law to meet the challenges of Indian market.¹⁰ On the basis of the recommendations of the Raghavan committee, Indian Parliament enacted Competition Act, 2002. The main objectives of the Competition Act are to establish a commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers, to ensure freedom of trade carried on by other participants in markets. To achieve its objectives, mentioned in the Competition Act, 2002, the

⁸ The Act was passed for the purpose of prevention of concentration of economic power to the common detriment; to control monopolies and to prohibit MTP, RTP and UTP.

⁹ Kanika Bhatia, *A Study of Functioning and Performance of Competition Commission of India* (2015) (Ph.D. thesis, MDU Rohtak), available at: <http://shodhganga.inflibnet.ac.in/> (Visited on December 15, 2017).

¹⁰ Manas Kumar Chaudhry, "MRTP Act to Competition Act: The way forward" 41 *Vikalp* 169-175 (2016), available at: <https://www.khaitanco.com/PublicationsDocs/Vikalpa-KCOcoverage%20-%20Copy140716.pdf>.

Competition Commission of India was established in October 2003, which will endeavour to do the following:

1. Make the markets work for the benefit and welfare of consumers.
2. Ensure fair and healthy competition in economic activities in the country for faster and inclusive growth and development of economy.
3. Execute competition policies with a view to affecting the most productive usage of economic resources.
4. Effectively carry out competition advocacy and spread the information on benefits of competition among all stakeholders to establish and nurture competition culture in Indian economy.

Abuse of Dominant Position:

Dominant position has been defined position of strength in the relevant market which enables the enterprise to operate independently of competitive forces prevailing in that market, or affect its competitors or consumers or the relevant market in its favour. Abuse of dominant position has been defined in the Competition Act to include directly or indirectly imposing unfair or discriminatory conditions or prices in purchase or sale of goods or services; restricting or limiting production of goods/services or market or limiting technical or scientific development relating to goods or services to the prejudice of consumers; indulging in practices resulting in denial of market access; using dominance in one market to move into or protect other markets.¹¹ Certain factors such as market share, size and resources of enterprise, size and importance of competitors, economic power of the enterprise, vertical integration of enterprises, sale and services networks of enterprises, entry barriers, countervailing buying powers, market structure etc. would have to be given due regard by the CCI in determining 'dominant position' of enterprise in the relevant market.¹² The Act empowers CCI to order remedial measures including prohibitory direction to cease & desist, impose penalties, award compensation, direct modification of agreements, recommend division of a dominant enterprise and pass

¹¹ Section 4, Competition Act, 2002.

¹² Section 19 (4) of the Act.

such other order as it may deem fit.¹³ The Act also provides for penalties for contravention of the orders, failure to comply with directions of commission or furnishing of false information or suppression of material information etc.¹⁴

The Act has been amended thrice in the years 2007, 2009 and 2017. The amendment of 2007 provided for two separate institutions namely, a quasi-judicial body i.e. the Competition Commission of India for the administration of the Act and the Competition Appellate Tribunal (COMPAT) to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission. Pursuant to the amendment of 2009, all pending cases and pending investigations with MRTP Commission were transferred to COMPAT and CCI respectively and the MRTP Act was repealed. An amendment was effected to the Act in 2017, vide Finance Act, 2017, and the National Company Law Appellate Tribunal (NCLAT) became the appellate tribunal in place of erstwhile COMPAT since 26th May, 2017

Research Problem:

The Competition Commission of India has been established to prevent practices having an appreciable adverse effect on competition (AAEC), to promote and sustain competition in markets, to protect the interests of consumers. As per information available on the website of CCI the number of cases filed with the commission during 2009- 2017 has been increasing over the years. More than 53% cases are closed without investigation as per the data available on the website of CCI. It means that there exist no *prima facie* cases or frivolous cases have been filled. Strict actions (penalties imposed) have been taken only in 11% cases, which are very less in 8 years. The research work is intended to evaluate the working of CCI in regard to disposal of cases, appeal against the order of CCI, references made to CCI by central and state government. Further the reserach work also analyses the cases regarding abuse of dominant position in media and entertainment sector during 2009 to 2017.

¹³ Section 28, of the Act.

¹⁴ Section 42A, of the Act.

Objectives of the Study:

1. To analyze the role of CCI in preventing abuse of dominant position under Competition Act, 2002.
2. To evaluate the working of CCI on the basis of disposal of cases in regard to abuse of dominant position during 2009- 2017.
3. To analyze the cases regarding abuse of dominant position in media and entertainment sector decided by CCI during 2009-2017.
4. To make suitable suggestions for effecting functioning of CCI in regard to the prevention of abuse of dominant position.

Research Questions:

1. What are the relevant provisions in regard to abuse of dominant position in India?
2. What is the role of CCI in the prevention of abuse of dominant position?
3. How many cases have been filled, disposed of and penalties imposed by CCI in cases regarding abuse of dominant position during 2009-2017?
4. What is the role of CCI in preventing the abuse of dominant position in media and entertainment sector?

Limitations of the Study:

The study has certain limitations as the findings and conclusions arrived at are mostly based on review of existing literature and analyses of views and opinions of experts on the subject. The present study is limited to the working of Competition Commission of India to prevent abuse of dominant position in media and entertainment sector by analyzing various cases decided by CCI during 2009- 2017.

B. Project of study

Chapter- I – Introduction:

In this chapter, the researcher attempts to make brief study about the constitutional and institutional background for the competition law and policy in India. Further, the chapter also contains the research problems, objectives of the study, research

questions and limitations of the study. The chapter also include the project of the study having brief description of chapters of the present work.

Chapter- II - Review of Literature:

In this chapter, the researcher analyses the literature already available in the field of competition law. For this purpose the researcher analyses the various text books, cases, articles, reports of the various committees and commissions, journals, opinion of experts, annual reports etc. During the chapter, the researcher reviewed literature on issues relating to development of competition law in India; MRTP Act; functioning of CCI; amendments in Competition Act, 2002; competition law in other countries; special reference to abuse of dominant position and anti-competitive agreements.

Chapter- III - Research Methodology:

This chapter provides the methodology used by the researcher in conducting this research work. The researcher adopted the doctrinal method of research. Further, for the purpose of the research, the researcher has used both primary as well as secondary sources of data.

Chapter- IV – Detailed Discussion:

In this Chapter, the researcher discusses the evolution of the MRTP Act, 1969. It further discusses about the recommendations of various committees set up for establishing a Statute that could control and prevents the big business houses from turning into monopolies, abusing its monopoly in the market. The researcher makes a brief study about the objectives and features of the MRTP Act, 1969. The researcher highlights the loopholes and reasons for the downfall of the MRTP mechanism in India in the era of LPG started in India in 1991. The researcher also discusses the new competition regime of India. The researcher attempted to make a brief about the background of the Act and the concept of abuse of dominant position under the Act. The study also focused on the provision related to abuse of dominant position in other developed countries. Further, the chapter attempts to critically analyze the working of Competition Commission of India about abuse of dominant position based on its

decisions and orders. It also analyzed the cases decided by CCI in media and entertainment sector.

Chapter- V - Conclusion and Suggestions:

This Chapter provides conclusive remarks on the entire work. It provides major findings and suggestions drawn by the researcher during the course of the researcher work.

CHAPTER- II

REVIEW OF LITERATURE

Although the number of research has already been done in the field of competition policy in India, but very few research works has been done in regard to the working of CCI in special reference to abuse of dominant position as it started its working since 2009. The researcher reviewed the literature on the following aspects: development of competition law in India; MRTP Act; functioning of CCI; amendments in Competition Act, 2002; competition law in other countries; special reference to abuse of dominant position and anti competitive agreements.

H. K. Saharay (2012)¹ provided the general introduction of the competition law in Europe, U.K, U.S.A, Australia and overall policy of competition law. He has given the background of competition law in India. Earlier MRTP Act, 1969 was in existence to regulate the conduct of the parties in market in India which could not attain the desired results. It was replaced by the Competition Act, 2002 on the recommendation of the high level committee on competition policy and law (the Raghavan Committee). He further explained the complete Competition Act, 2002 with various case laws. T. Ramappa (2009)² and Abir Roy (2014)³ also explained the development of competition law in India and the concept of anti competitive agreements, abuse of dominant position and combination in a detailed manner. Abir Roy discussed the relation between the intellectual property and competition law. Competition law and intellectual property rights are complementary to each other. T. Ramappa argued that the dominant position of an enterprise be a question of fact to determined in each case, taking into consideration a no. of relevant factors, such as the product and geographic market, its market share, the market shares of the competitors and barriers to entry.

¹ H. K. Saharay, *Textbook on Competition Law* (Universal Law Publishing Co., New Delhi, 1st edn. 2012).

² T. Ramappa, *Competition Law in India: Policy, Issues, and Development* (Oxford University Press, New Delhi, 3rd edn., 2014).

³ Abir Roy and Jayant Kumar, *Competition Law in India* (Eastern Law House, New Delhi. 2nd edn., 2014).

Rini Violet Tigga (2017)⁴ attempted to critically analyse the competition law in India with special reference to the abuse of dominant position. Dominance is to obtain a power in market, which allows an enterprise to control the cost or its production. Some abuses explained by him are –unfair pricing policy, refusal to supply, limit the supply, barriers to entry etc and various cases relating to abuse of dominant position that was decided by CCI. He further explained that to solve the problem of abuse CCI has certain powers under Section 27 and 28. CCI can direct the enterprise to discontinue the action or can impose penalties. Rajat Sethi (2013)⁵ tried to explain the concept of anti competitive agreements in Competition Act. The Act prohibits the agreements among enterprises in regard to production, supply, distribution etc, which causes an appreciable effect on competition within India and such agreements are void. He explained the horizontal and vertical agreements with various cases and powers of the CCI in the case of an anti competitive agreement.

J C Sandesara (1994)⁶ evaluated the experience of Monopolies and Restrictive Trade Practices Commission under the MRTP Act, 1969 to control the restrictive trade practices in India and various provisions related to RTP in the Act. He analysed the RTP inquiries instituted and disposed of by the commission since the enactment of the Act till 1991. Jaivir Singh (2000)⁷ explained some conceptual problems in MRTP Act. It has been amended in 1984 and 1991. Major problem in the Act was only the MRTP commission can initiate inquiry into a monopolistic practice and not a private party. Commission had no power to pass any judgement, it could only pass report on to which the government makes a decision. Aditya Bhattacharjea (2001)⁸ analysed the impact of decisions at the WTO ministerial conference on the competition bill

⁴ Rini Violet Tigga, "The Critical Analysis of the Competition Law in India: With Special Reference to the Abuse of Dominant Position" 4 *IJLLJS* 178- 194 (2017), available at: ijlljs.in/wp-content/uploads/2017/04/Online_Paper.pdf (Visited on January 20, 2018).

⁵ Rajat Sethi, "Anti- Competitive Agreements under the Competition Act, 2002" 24 *NLSIR* 32- 49 (2013), available at: <http://www.jstor.org/stable/44283760> (Visited on January 20, 2018).

⁶ J C Sandesara, "Restrictive Trade Practices in India, 1969-91: Experience of Control and Agenda for Further Work" 29 *EPW* 2081-2094 (1994), available at: <http://www.jstor.org/stable/4401594> (Visited on January 27, 2018).

⁷ Jaivir Singh, "Monopolistic Trade Practices and Concentration of Economic Power: Some Conceptual Problems in MRTP" 35 *EPW* 4437-4444 (2000), available at: <http://www.jstor.org/stable/4410061> (Visited on January 26, 2018).

⁸ Aditya Bhattacharjea, "Competition Policy: India and the WTO" 36 *EPW* 4710-4713 (2001), available at: <http://www.jstor.org/stable/4411502> (Visited on January 26, 2018).

which was before Parliament in India. The bill covered the usual three areas of anti-competitive agreements between firms, abuses of a dominant position by a single firm, and mergers, with a much more modern approach. It avoided areas such as monopolistic pricing and 'unfair trade practices', which should not have been part of competition law in the first place. Unlike the MRTPA, anti-competitive practices such as predatory pricing are now clearly defined. Aditya Bhattacharjea (2003)⁹ analysed the various aspects of the situation of transition between MRTP Act and the new Competition Act. He reviewed various judgments of the SC that have set aside orders of the MRTP commission depriving it of extra territorial jurisdiction and the power to restrict imports. One of such judgment is *Haridas Exports v. All India Float Glass Manufacturers' Association*¹⁰ in which SC held that MRTP Act had extra territorial jurisdiction only with respect to RTP after the goods were imported into India. He also analysed various amendments that were introduced in the Competition Act and competition policy in various countries. Samita Tyagi (2015)¹¹ and Aditya Bhattacharjea (2010)¹² explained the reasons of passing of the Competition Act, 2002 and replacement of the MRTP Act, 1969. They explained anti competitive agreements and abuse of dominance and various case laws relating to this. On the basis of the cases it can be concluded that Competition Act did not prohibited competition in the market but the practices that have an adverse effect on the competition is prohibited. They also analysed the country's experience with the MRTP Act and the strengths and the weaknesses of the new law, the reasons for its delayed implementation.

Ravinder Vinayek (2015)¹³ made an empirical study on the performance of CCI. He focussed on the persons having different educational and professional backgrounds towards the perception of attempts of execution of Competition Act, 2002 and the

⁹ Aditya Bhattacharjea, "India's Competition Policy: An Assessment" 38 *EPW* 3561- 3574 (2003), available at: <http://www.jstor.org/stable/4413938> (Visited on January 26, 2018).

¹⁰ (2002) 6 SCC 600.

¹¹ Samita Tyagi, "Competition Law in India- Critical Analysis of Emerging Legal Issues" 7 *Gyanpratha* 34-37 (2015), available at: accman.in/gpj2015/Article4.pdf (Visited on January 20, 2018).

¹² Aditya Bhattacharjea, "Of Omissions and Commissions: India's Competition Laws" 45 *EPW* 31-37 (2010), available at: <http://www.jstor.org/stable/25742019> (Visited on January 26, 2018).

¹³ Ravinder Vinayek, "An Empirical Study of the Functioning and Performance of Competition Commission of India" 3 *IJARCSMS* 366-369 (2015), available at: www.ijarcsms.com (Visited on January 5, 2018).

operation of CCI. Through the study, the efficacy of CCI in achieving its goal was examined, which strengthened its functioning. He analysed the cases presented before CCI under various sections, which would act as a ready reference for the society in future. Kanika Bhatia (2015)¹⁴ attempted to discuss the working of Competition Commission of India and defined anti-competitive agreements, abuse of dominant position, combinations in detail. The author examined the modified Competition Act of India by analysing the functioning of its predecessor, the MRTP ACT, 1969. She explained the competition law and policy in top 10 nations of the world.

Ariel Ezrachi (2012)¹⁵ and Richard Whish (2012)¹⁶ explained Article 101 and 102 of Treaty on the Functioning of European Union (TFEU), horizontal and vertical agreements, mergers and acquisitions. According to Article 101 all agreements between undertakings which may impact trade among member states and which have aim to restrict the competition in market will be considered void. According to article 102 any practices of misusing dominant position by one or more enterprises within internal market which will impact trade will be banned. He has also mentioned various cases decided by the European Courts and the commission relating to competition law. Richard Whish also discussed the overview of the Competition Act, 1998 and Enterprises Act, 2002. These Acts fundamentally changed both the substantive provisions and the institutional architecture of the domestic competition law of the UK. K V Ramaswami (2006)¹⁷ analysed the competition policy and practice in Canada and its relevancy for India. Canada was the first country to adopt a competition policy even before the Sherman Act of the US. The aim of Competition Act, 1986 is to sustain positive and fair competition in Canada; to make sure that small and medium enterprises are getting equal opportunity as that of big players in

¹⁴ Kanika Bhatia, *A Study of Functioning and Performance of Competition Commission of India* (2015) (Ph.D. thesis, MDU Rohtak), available at: <http://shodhganga.inflibnet.ac.in/> (Visited on December 15, 2017).

¹⁵ Ariel Ezrachi, *EU Competition Law: An Analytical Guide to the Leading Cases* (Oxford and Portland, Oregon, 3rd edn., 2012).

¹⁶ Richard Whish and David Bailey, *Competition Law* 173 (Oxford University Press, New York, 7th edn., 2012).

¹⁷ K V Ramaswami, "Competition Policy and Practice in Canada: Salient Features and Some Perspectives for India" 41 *EPW* 1903-1911 (2006), available at: <http://www.jstor.org/stable/4418213> (Visited on January 26, 2018).

Canadian economy; and to provide customers with competitive prices and product choices. With a view to restricting anti competitive policies in market both civil and criminal provisions were mentioned in the act. Canada has similarities with India because of its relative small size and the federal structure of the constitution.

Sumita Patwari(2014)¹⁸ examined the similarity and the differences in the provisions of the competition law in EC, UK, the Antitrust Laws of the US and India. She explained that there are two types of competition laws in European countries, the domestic law and the European Community. The principle of abuse of dominant position is provided in article 82 of the EC. Chapter II of the Competition Act, 1998 of the UK relates to abuse of dominant position. The Indian Competition Act, 2002 also has similar provisions regarding abuse of dominant position in Chapter II. There are two Acts relating to competition in US – Sherman Act, 1890 and Clayton Act, 1914. After analysing all the laws it can be concluded that the basic principles governing the competition are almost similar.

Aditya Bhattacharjea (2012)¹⁹ explained the *Builders' Association of India v. Cement Manufacturers' Association and others* case. The CCI has imposed the fine of Rs. 6,307 Crore on 11 major cement manufacturers for cartelisation. It has been the biggest punishment that the body has imposed since it started functioning. He analysed that MRTP Act were ineffective to control the cartels. Only 7 cartel cases were decided by the MRTPC from 1991 to 2007. However some improvements are required in the new Act also regarding establishing transparency, clear cut criteria for penalties, collecting and using direct evidence rather than relying on circumstantial evidence. Ajit Kumar (2000)²⁰ explained the *United States of America v. Microsoft* case in detail and the remedy that has been given by the court. This case has relevance for India in the context of competition policy. Microsoft has used its monopoly in the market for PC operating systems to harm competition in the

¹⁸ Sumita Patwari, "Competition Law: A Trans- National Perspective" (2014) *available at* <https://ssrn.com/abstract=2381195> (Visited on January 22, 2018).

¹⁹ Aditya Bhattacharjea, "Cartels and the Competition Commission" 47 *EPW* 14-17 (2012), *available at* <http://www.jstor.org/stable/41720077> (Visited on January 26, 2018).

²⁰ Ajit Kumar, "Microsoft, Competition and Competition Policy" 35 *EPW* 2949-2958 (2000), *available at* <http://www.jstor.org/stable/4409623> (Visited on January 27, 2018).

applications market, and protecting its monopoly by applications barrier to entry. These acts of Microsoft harmed customers by depriving their choice of web browsers. The court proposed the remedy by preventing Microsoft from using its monopoly and restoring competition in browsers. The case has cleared that there is need of regulation in order to both engender and protect competition in an economy.

Nagesh Kumar (1982)²¹ examined the anti monopoly legislation for regulating multinational monopolies in India. MNCs are highly profitable commercial entities with a number of monopolistic advantages which enable them to discourage the local enterprises from entry into competition. Large no. of MNCs is connected through non resident undertaking and avoided registration under the MRTP Act. In India foreign enterprises was defined under Companies Act, 1956, FERA, 1973 and by RBI. There is a need for control of the foreign controlled enterprises in India. T. H. Chowdary (2003)²² tried to explain the unfair competition in telecom sector. BSNL, the corporate form of the telecom services, had to pay no taxes, no license fees, no entry fees, no revenue share because it was a government department. Government provides so many financial sops to the state owned companies. It is quite obvious that the competition between the states owned BSNL and the P- Telcos is unequal. He said that the BSNL must be broken up into state wide corporations just like P-Telcos which are having licences only state wide. Moreover the administrative control of BSNL is removed from the DoT and placed in some other ministry. Sai Deepak (2015)²³ tried to find out whether the Competition Act, 2002 has the power to check restrictive and abusive trade practices resorted to by a patentee, and if so, to what extent. It is clear that patent right granted under the Patents Act, is not absolute. There are general principles which are applicable to the working of patented inventions. Section 3 of the Competition Act does not apply to the action taken by the IP owner to restrain infringement of his right. Whether that action is reasonable or not, it will be decided by

²¹ Nagesh Kumar, "Regulating Multinational Monopolies in India" 17 *EPW* 909-917 (1982), *available at*: <http://www.jstor.org/stable/4370975> (Visited on January 27, 2018).

²² T. H. Chowdary, "Unfair Competition in Telecoms" 38 *EPW* 3868- 3869 (2003), *available at*: <http://www.jstor.org/stable/4414012> (Visited on January 26, 2018).

²³ Sai Deepak, "Patents and Competition Law: Identifying Jurisdictional Metes and Bounds in the Indian Context" *NLSIR* 1-10 (2015), *available at*: <https://login.westlawindia.com> (Visited on February 1, 2018).

the CCI. Although CLs under the Patents Act may be granted to remedy an anti competitive practice of a patentee, the Competition Act retains the power to adjudicate on the legality of the patentee's conduct. Murali Neelakantan (2015)²⁴ focussed on the situation of the Indian healthcare sector in his article. In India majority of the healthcare cost is self funded by the patients and it is they who suffer the most in this system. There is an abuse of dominance position by hospitals who insist the hospitalised patients to buy medicines only from the hospital pharmacy. He analysed that a patented drug which is protected by trade dress, creates barrier to entry for generics at the end of the patent monopoly period which is limited to 20 years because it is impossible for a new competitor to introduce a product that looks the same. Possible solution would be to allow the competitors to use the same trade dress after the end of patent term. Moreover for the patented drugs, the govt. could use public sector undertakings to manufacture these drugs.

Aditya Bhattacharjea (2006)²⁵ and Subhadip Ghosh (2008)²⁶ tried to describe the Competition (Amendment) Bill, 2006, Competition (Amendment) Bill, 2007 and critically examine its strength and weaknesses. After the amendment the key provisions of the Act include Sec.3 (anti-competitive agreements), Sec.4 (abuse of dominant position, Sec.5, 6 (combination) and Sec.7 (establishment of commission). In 2007, section 53A and 32 was added which provides for the establishment of Competition Appellate Tribunal and gives extraterritorial jurisdiction to CCI. Earlier the central govt. was given the power to order the division of any firm enjoying dominant position but after the amendment this power is confined on the CCI directly. Amendments to Sec. 19 and 26 allow the CCI to act on information received, not only upon receipt of a formal complaint. A change proposed in sec.12 which debarred the chairman and members from accepting employment with any private enterprise that has been party to any proceedings before it for a period of two years. Now both

²⁴ Murali Neelakantan, "Is Competition Law the Analgesic for the Indian Healthcare Sector?" *NLSIR* 1-12 (2015), *available at*: <https://login.westlawindia.com> (Visited on February 1, 2018).

²⁵ Aditya Bhattacharjea, "Amending India's Competition Act" 41 *EPW* 4314- 4317 (2006), *available at*: <http://www.jstor.org/stable/4418800> (Visited on January 26, 2018).

²⁶ Subhadip Ghosh, "The Competition (Amendment) Bill 2007: A Review and Critique" 43 *EPW* 35-40 (2008), *available at*: <http://www.jstor.org/stable/40278310> (Visited on January 26, 2018).

centre as well as state government can seek opinion of CCI under sec. 49 on formulating policy on competition.

Sowmya Sreenivasulu (2011)²⁷ discussed the history of corporate governance and evolution of competition legislation in India. The researcher has given the overview of competition act, 2002 and applicability of international precedent in India. He also explained the historical background of the various industrial policy of India and comparative overview of competition policy and law in US, UK, and European Union. Dnaizar Babu (2010)²⁸ discussed the impact of economic reforms on the MRTP Act, 1969 and various deficiencies in the Act. He explained the evolution of the Competition Act and its need in the present scenario. He also explained anti-competitive agreement and abuse of dominant position in a detailed manner but doesn't mention more cases decided by CCI.

H. K. Saharay, T. Ramappa and Abir Roy have explained the concept of development of competition law in India. Rini Tigga and Rajat Sethi dealt specially with abuse of dominant position and anti competitive agreements. J C Sandesara, Jaivir Singh and Aditya Bhattacharjea evaluated the main problems in the MRTP Act, 1969 and main reasons of passing of the Competition Act, 2002. Ravinder Vinayek and Kanika Bhatia have mainly focussed on the functioning of CCI. Ariel Ezrachi, Richard Whish and K V Ramaswami explained the provisions related to abuse of dominant position in other countries. Nagesh Kumar, T. H. Chowdary, Murali Neelakantan tried to explain the unfair competition in different sector like telecom, health, multinational companies. Aditya Bhattacharjea and Subhadip Ghosh tried to describe the Competition (Amendment) Bill, 2006, Competition (Amendment) Bill, 2007. In regard to media and entertainment sector there is no specific study focussing on the role of the CCI to curb the problem of abuse of dominant position in this sector. The

²⁷ Sowmya Sreenivasulu, *Inception, Intricacies and Implications of the New Competition Regime in India* (2011) (Ph.D. Thesis, University of Mysore), available at: <http://shodhganga.inflibnet.ac.in/> (Visited on December 15, 2017).

²⁸ Dnaizar Babu, *The Competition Act, 2002- A Critical Study*, (2010), (Ph.D Thesis, Sri Venkateshwara University, Tirupati), available at: <http://shodhganga.inflibnet.ac.in/> (Visited on December 15, 2017).

researcher found that there is a research gap in regard to abuse of dominant position in media and entertainment sector.

CHAPTER- III

RESEARCH METHODOLOGY

The present research is mainly aimed to examine the role of the Competition Commission of India to deal with the problem of abuse of dominant position generally and specially in media and entertainment sector. In pursuing the study, the researcher has adopted the doctrinal method of research. The researcher conducted the critical and analytical inquiry into the background, establishment and functioning of competition law in India. The researcher also tried to find the provisions relating to abuse of dominant position under competition law in other countries.

For the purpose of the research, the researcher has used primary as well as secondary sources of data. In particular, the texts of MRTP Act, Competition Act of India, and similar legislation in other regions, reports of the committees, commission, articles, journals, debates and discussion for establishing competition regime have been used. Further various literature in the form of text books, articles, write ups have been gathered by the researcher for the research work.

The researcher has procured information on the functioning of Competition Commission of India through website and annual report of Competition Commission of India. To analyse the working of CCI in media and entertainment sector regarding the abuse of dominant position, orders and decisions of CCI collected from its website and the online resources Manupatra, Indian Kanoon.com etc.

CHAPTER- IV

DETAILED DISCUSSION

Concept of Abuse of Dominant Position:

The dictionary meaning of the word dominant is overriding or influential. Dominance means acquiring the market power by an enterprise in a particular relevant market, which authorizes him to manipulate the price or its production independently of its competitors. It is the ability of an undertaking to behave independently or separately without the fear of its competitors, customers, suppliers and, the ultimate consumer. In order to promote free markets and the freedom of trade, holding a position of dominance is not prohibited. It is only the misuse of such market power or dominance which is prohibited.¹

Abuse of dominance provisions has three common elements. *Firstly*, it is important to establish the existence of a dominant position held by a firm or group of firms in a market. *Secondly*, it is necessary to identify specific practices that are baneful to competition. *Thirdly*, their overall effects in the relevant market have to be assessed. It may be of two types i.e. exploitative and exclusionary. Exploitative abuse refers to excessive or monopoly pricing where the enterprise, not being restrained by competitive pressures, is able to charge a high price and gets 'monopoly profits', though it is not always easy to decide what price is excessive. Similarly, the enterprise may abuse its dominance by imposing unfair conditions other than price. Most abuses of dominant position are of exclusionary nature. A dominant enterprise may resort to tying-in, which may have the effect of excluding competitors in the tied product market since customers are forced to buy the tied product from the dominant enterprise or the dominant enterprise may refuse to supply the product or service to a

¹ Rini Violet Tigga, "The Critical Analysis of the Competition Law in India: With Special Reference to the Abuse of Dominant Position" 4 *IJLLJS* 178- 194 (2017), available at: ijlljs.in/wp-content/uploads/2017/04/Online_Paper.pdf (Visited on January 20, 2018).

customer; since the enterprise is dominant, this could leave very little choice to the customer.²

Evolution of Competition Law in India:

India adopted the strategy of planned economic development since the early 1950's. The India's industry policy since independence in 1947 commenced with the industrial policy resolution of 1948. The next watershed in Industrial policy was the 1956 resolution which emphasized growth, social justice and self reliance. Government intervention and control during those years were prevalent in almost all areas of economic activity in the country. Government determined the plant sizes, location of the plants, prices in a number of sectors and allocation of scarce financial resources. It favored only big business houses for providing license. This led to the concentration of wealth in a few hands. Thus, the emergence of monopoly industries and industrial groups indulging in anti-competitive practices that were detrimental to general public came into force.

The first attempt to prohibit the monopolistic, restrictive and unfair trade practices in India was the enactment of MRTP Act, 1969. The beginning of the Act is traceable under Article 38 and 39 of the Constitution of India. Article 38 states that the state shall strive to promote the welfare of the people by securing and protecting as effectively, as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life,³ and under Article 39 the State shall in particular, direct its policy towards securing the following:

- That the ownership and control of material resources of the community are so distributed as best to sub serve the common good; and
- That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.⁴

² Dnaizar Babu, *The Competition Act, 2002- A Critical Study*, 110- 115 (2010) (Ph.D Thesis, Sri Venkateshwara University Tirupati), *available at*: <http://shodhganga.inflibnet.ac.in/> (Visited on Dec 15, 2017).

³ Article 38 of Indian Constitution.

⁴ Article 39(b) and (c) of the Constitution of India.

There are essentially three studies, which acted as the model for the enactment of the MRTP Act, 1969. The first study was conducted by a committee headed by Dr. R. K. Hazari, which contemplated the industrial licensing procedure under the Industries (Development and Regulation) Act 1951. The committee analyzed that the working of the licensing system had resulted in the growth of some big business houses in India.⁵ In 1964, the P C Mahalanobis Committee noted that the working of the economic system has resulted in an excessive concentration of wealth and income in private hands, and pleaded for more comprehensive inquiries into the questions and issues related to such concentration. In 1965, the K C Das Gupta Commission reported that a large number of companies were under the control of few industrial houses and that there existed in the country large scale restrictive and monopolistic trade practices. To prohibit such practices and to control monopolies and aggregate concentration, the commission recommended a number of non- legislative measures, and also an enactment for which it gave a draft of "The Monopolies and Restrictive Trade Practices Bill, 1965"⁶ which became MRTP Act, 1969. The main object of this Act was to prevent the concentration of economic power to the common detriment; to control monopolies and to prohibit monopolistic, restrictive and unfair trade practices in consonance with the DPSP of the constitution of India. The first two objects have been de-emphasized after 1991 amendments to the Act. The three phrases restrictive trade practices, monopolistic trade practices and unfair trade practice under MRTP Act are required to explain.

Restrictive Trade Practices (RTP): The provisions relating to restrictive trade practices, is substantially based on the UK legislation and particularly Restrictive Trade Practices Act 1956 and the Resale Price Act 1964. According to MRTP Act, 1969 RTP has the effect of preventing, distorting or restricting competition. In particular, a practice which tends to obstruct the flow of capital or resources into the stream of production, or which tends to bring about manipulation of prices, or conditions of delivery or to affect the flow of supplies in the market relating to goods

⁵ *Supra* note 2.

⁶ J C Sandesara, "Restrictive Trade Practices in India, 1969-91: Experience of Control and Agenda for Further Work" 29 *EPW* 2081-2094 (1994), available at: <http://www.jstor.org/stable/4401594> (Visited on January 27, 2018).

or services in such manner as to impose on the consumers unjustified costs or restrictions is deemed as RTP.⁷ The Act also mentioned certain types of RTP including refusal to deal, tie up sale, full line forcing, exclusive dealing, concerted practice, price discrimination, re-sale price maintenance, area restriction, discriminatory pricing etc.⁸ Section 37 to 41 of Chapter VI of the MRTP Act, provided for the control of certain RTP. All restrictive trade practice shall be deemed to be prejudicial to the public interest unless and until such trade practice falls within the ambit of any one or more of the gateways enumerated in the Act for e.g. the restriction is reasonably necessary, to protect the public against injury or to meet the requirements of the defence of India etc.⁹

Monopolistic Trade Practices (MTP): It is defined under MRTP Act, 1969 which means a trade practice which has, the effect of- maintaining the prices of goods at an unreasonable level by limiting, reducing or otherwise controlling the production, supply or distribution of goods or the supply of any services; unreasonably preventing or lessening competition; limiting technical development or capital investment to the common detriment; increasing unreasonably the cost of production of any goods or the prices at which goods are, or may be, sold or re-sold, or the charges at which the services are, or may be, provided by the adoption of unfair methods or unfair or deceptive practices.¹⁰ Every MTP shall be deemed to be prejudicial to the public interest, except where such trade practice is expressly authorized by any law; or the central government, being satisfied that such practice, is necessary to meet the requirements of the defence of India; or to guarantee the upkeep of supply of goods and services necessary to the community; to give effect to the terms of any agreement to which the central government is a party.¹¹ Thus, the Act recognized a per se rule in the case of MTP.

⁷ Section 2(o), MRTP Act, 1969.

⁸ Section 33, MRTP Act, 1969.

⁹ Section 38, MRTP Act, 1969.

¹⁰ Section 2(i), MRTP Act, 1969.

¹¹ Section 32, MRTP Act, 1969.

Unfair Trade Practice (UTP): The provisions on Unfair Trade Practices¹² are influenced by the UKs Fair Trading Act 1973, the antitrust legislations in US, notably the Sherman Act, the Clayton Act and Federal Trade Commission Act. The provisions relating to UTP was inserted by the 1984 amendment to the MRTP Act. It means a trade practice which, for the purpose of promoting the sale, use or supply of any goods for the provisions of any services, adopts any unfair method or unfair or deceptive practice. It includes false representation about the, standard, quality, quantity and composition etc of goods or the services; sponsorship; usefulness of any goods or services; guarantee of the performance, efficacy or length of life of a product or of any goods etc.¹³

The MRTP Act, 1969 has the various drawbacks: Before 1991 amendment in MRTP Act the law sought to control the concentration of economic power by those undertakings that had assets over Rs. 100 Crores. For further establishment of new units, to participate in mergers, amalgamation or takeover, permission had to be granted by the government to the undertaking. It would form an obstacle in the process of companies acquiring strength which make it competent in the international market. So by the amendment of 1991 the idea of limiting the assets was discarded. Only the MRTPC and not the private party have a power to initiate an inquiry into a monopolistic practice.¹⁴ Moreover It doesn't contain any explanation or any mention of some offending trade practices which are anti competitive in nature. Some of them are: abuse of dominance, cartels, collusion and price fixing, bid rigging, boycotts and refusal to deal, predatory pricing. One of the major fallacies of the MRTP Act is that it didn't contained any express provision for the application of the Act on any anti-competitive conduct outside India and affecting Indian market in an adverse manner. Termination and discontinuation was the only solution applicable with final appeal before the Supreme Court. No provision is mentioned in the law for the accountability

¹² Provisions pertaining to the Unfair Trade Practices have been inserted into the MRTP Act, 1969 by an amendment in the year 1984 in pursuance of the Sachar Committee Report.

¹³ Section 36A, MRTP Act, 1969.

¹⁴ Jaivir Singh, "Monopolistic Trade Practices and Concentration of Economic Power: Some Conceptual Problems in MRTP" 35 *EPW* 4437-4444 (2000), *available at*: <http://www.jstor.org/stable/4410061> (Visited on January 26, 2018).

of individual person. The government has discretion in regard to the composition of Competition Commission.

It was in 1991 that India took the initiative in favour of economic reforms consisting essentially of liberalization, privatization and globalization. As far as economic liberalization is concerned it was assumed that MRTP Act had unfavorable consequences in industrial development. It lacks provisions to deal with anti competitive practices that may support the working and execution of the WTO agreements. There was a growing demand from the international community that India should not only do away with the MRTP Act but also have specific law governing competition in business.

Raghavan Committee Report: In order to suggest the Indian government on competition matters, a high level committee was appointed in October 1999. It was asked to base its scheme and recommendations on global advancements and finally suggest reforms to the existing MRTP Act or may be a new law altogether. The committee collected its suggestions and presented them in the form of a report in May, 2002. The salient points of recommendations are: form Competition Commission and terminate MRTP commission; foreign companies and government monopolies should come under the regime of competition law; government should make a specific rule on mergers above a threshold investment limit and predatory pricing should be declared as an abuse if any dominant enterprise involved in it; all pending cases of MRTPC should pass on to Competition Commission of India.¹⁵

Further, it is suggested by the committee that for the proper administration and implementation of competition Law in India, a specialized court/tribunal titled "Competition Commission of India" may be established. It will hear competition cases and also promote competition advocacy. It is also recommended that principles governing competition law and authority are:

¹⁵ Raghavan committee, *available at*: <http://www.shareyouressays.com/knowledge/what-are-the-recommendation-given-by-raghavan-committee-competition-policy/112147> (Visited on April 2, 2018).

- a) CCI should comprise of those members who belonged to the field of judiciary, economics, law, international trade, commerce, industry, accountancy, public affairs and administration.
- b) CCI should be a body free from political pressure and budgetary controls of the government. The free functioning of CCI should be ensured and that can be done by having proper law for their dismissal, only after the permission of the Supreme Court.
- c) CCI should separate the investigative, prosecutorial and adjudicative functions.
- d) The proceedings of CCI should be transparent, unbiased and rule-bound.
- e) CCI should have a positive advocacy role in shaping policies affecting competition.¹⁶

Any complaint filed by an individual, a firm or an entity or the central or state governments related to the infringement of competition Act should be deal solely by Competition Commission of India. It will also have *suo moto* power to initiate legal action against any violation. Instead of being a unitary tribunal, as is the case with the MRTP Commission, it is suggested that the CCI should have benches in the metropolitan cities of the country.¹⁷

As per the suggestions given by the committee, Competition Act, 2002 was come into force with the purpose of forming a commission to restrict practices that have harmful effect on fair competition, to encourage and maintain competition in markets, to keep the consumers interest safe, to maintain freedom of trade which is continued by other participants in markets. Section 66 of the Act provided for the repeal of the MRTP Act, the dissolution of the MRTP commission and the disposal of the pending cases. The substantive provisions of the Act relating to anti competitive agreements and abuse of dominance were come into force on 20 May 2009 and on 4 Feb 2010.¹⁸ It could be brought into force earlier because a writ petition regarding the selection and

¹⁶ *Ibid.*

¹⁷ Raghavan committee, *available at: report_of_high_ level_committee _on_competition _policy_and_law.pdf* (Visited on April 2, 2018).

¹⁸ Rajat Sethi, "Anti- Competitive Agreements under the Competition Act, 2002", 24 *NLSIR* 32-49 (2013), *available at: http://www.jstor.org/stable/44283760* (Visited on January 20, 2018).

composition of the CCI has been filled in the SC.¹⁹ It was contended that since the CCI would exercise judicial functions, the doctrine of separation of powers in the Constitution required that it should be headed by a judge chosen by the Chief Justice of India (CJI), and not a bureaucrat chosen by the executive.²⁰

Abuse of Dominant Position in Other Countries:

Anti-Trust Legislation in USA- The anti-trust law of USA is a merger between federal and state government laws. Its main function is to control the activities and management of major business corporations, to actively encourage fair competition which is mainly for the ease of consumers. The Sherman Act, 1890 of the USA is the first anti-trust legislation. It was enacted due to the increase of formation of trusts by the American companies. Competition law and antitrust laws are used interchangeably in the US and in most western countries. The Sherman Act of 1890, the Clayton Act of 1914 and the Federal Trade Commission Act of 1914 are the three main statutes.

The purpose of the Act is to preserve the marketplace to protect consumers from abuses. The Act is divided into three sections. Section 1 says that, "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal." Section 2 of the Act makes it a felony for "every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person to monopolize any part of the trade or commerce among the several states or with foreign nations."²¹ Penalties of up to \$100 million for a corporation and \$1 million for an individual, along with imprisonment up to 10 years shall be imposed in case of violation of the Act. The US judiciary has a vital role in interpreting the provisions of the Sherman Act, 1890 and the U.S competition law system. In *United States v. Addyston Pipe & Steel Co. 1898*, the most important interpretation of Section I of the Act came which gave birth to the "rule of reason" commonly applied in Sherman Act, 1890. It means that the Act

¹⁹ *Brahm Dutt v. Union of India*, 2005 (2) SCC 431.

²⁰ Aditya Bhattacharjea, "Amending India's Competition Act" 41 *EPW* 4314- 4317 (2006), available at: <http://www.jstor.org/stable/4418800> (Visited on January 26, 2018).

²¹ Sherman Act, 1890, available at: <http://economics.fundamentalfinance.com/sherman-act.php> (Visited on February 10, 2018).

does not prohibit every restraint of trade but only those that are unreasonable. After the clear explanation of section 2 the scene became crystal clear that only acquiring the status of monopoly can't be counted as illegal action. A monopoly will not be count as crime until and unless the company uses unfair method to obtain that position or the company uses its monopoly power to continue its dominant position or to remove the other players from the competition. The SC of the United States in the *Standard Oil Company v. United States*²² has observed that the Anti-trust Act of 1890 was enacted not to restrain the right to make and enforce contract which do not unduly restrain inter-state or foreign commerce, but to protect that commerce from contracts by methods which would constitute an interference with, or an undue restraint upon it.

The Sherman Act, 1890 had few limitations. It left the matter on judges to decide that whether the limitation imposed or other actions were rationale or not. It did not deal with corporate amalgamations. In an effort to clear up the ambiguity, the Clayton Act, 1914 was passed. The Clayton act included some more features which were not mentioned in the previous Act like price discrimination between different purchasers, if such discrimination tends to create a monopoly, exclusive dealing agreements, tying arrangements, mergers and acquisitions that substantially reduce market competition. The most important section in the Act is the section 7 which prohibits any merger or acquisition of stock or assets where the effect of such acquisition may be substantially to lessen competition or to tend to create monopoly. It allows the Department of Justice to regulate all mergers, and gives the government discretion whether to give approval to a merger or not, which it still commonly does today.

As per the Federal Trade Commission Act of 1914, all the discriminatory ways of competition or any unfair, anti competitive act which impact trade and commerce shall be consider as unlawful. Commission is authorized to conduct enquiry against persons, partnerships, or corporations using unfair means. It also has an authority to

²² 221 U. S.1, 62 (1911).

strictly deal against the violation of Clayton Act, 1914 as well as some other unfair practices which do not fall within the scope of those Acts.²³

Competition Law of European Union- The concept of securing fair competition was first raised around 1890s, the same time at which United States introduced its first antitrust statute. The fundamental competition rules of the EC can be found in Chapter I of part III of the Treaty of European Union 1991. The Chapter consists of nine Articles. Article 102 of the Treaty on the Functioning of the European Union (TFEU) forbids any kind of abusive action of the companies that have a dominant position on a particular market. It provides that: any kind of activity which involves the abuse of dominant position by any undertaking in the respective market will be prohibited insofar as a result of which trade among the other members get impacted. Abuse may in particular consist in: directly or indirectly imposing unfair purchase or selling price or other unfair trading conditions; limiting production, markets or technical development to the prejudice of consumers; applying dissimilar conditions to equivalent transaction with other trading parties, thereby placing them at a competitive disadvantage; making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature have no connection with the subject of such contracts.²⁴

European Commission is authorised to take actions on these cases either upon receipt of a complaint or from its own investigation. The commission initiate its investigation by verifying that the enterprise related to case is actually at dominant position or not. The commission's investigative powers to enforce Article 102 are detailed in regulation 1/2003 (the Antitrust Regulation). A firm that has engaged in anti-competitive behaviour and so infringed competition law may be subject to fines imposed by the commission under regulation 1/2003. The first point for the fine is up to 30% of the company's annual sales of the product concerned in the infringement. This is then multiplied by the number of years and months the infringement lasted. The fine can be increased (e.g. repeat offender) or decreased (e.g. limited

²³ *Supra* note 2.

²⁴ Ariel Ezrachi, *EU Competition Law: An Analytical Guide to the Leading Cases* (Oxford and Portland, Oregon, 3rd edn., 2012).

involvement). The maximum amount of fine is 10% of the overall annual turnover of the company.²⁵

United Kingdom Competition Act, 1998- Some previous legislations like Restrictive Practices Court Act, 1976, the Restrictive Trade Practices Act, 1976, the Resale Prices Act, 1976, the Restrictive Trade Practices Act, 1977 and certain provisions of the competition Act, 1980 was repealed by the Competition Act, 1998. The main aim of the Act is to form the provisions regarding the fair competition and to keep an eye on the practices related to abuse of the dominant position in the market, to amend the Fair Trading Act, 1973 in relation to information which may be required in connection with investigations under those Act etc. It conferred powers upon the Office of Fair Trading (OFT) to deal with anti-competitive practices such as cartels and abuses of market dominance. Chapter II of the Act deals with the abuse of a dominant position by a firm who uses practices such as predatory pricing, excessive prices, refusal to supply, vertical restraints and price discrimination to maximise profit, gain competitive advantage or otherwise restrict competition. Fines of up to 10% of UK turnover can be imposed under the Act.²⁶

The Enterprise Act, 2002 provides for fair trading and for the establishment of the Competition Appeal Tribunal and the competition service, to amend the constitution and functions of the competition commission, to create an offence for those entering into certain anti-competitive agreements, to provide to the disqualification of directors of companies engaged In certain anti-competitive practices, to form other provision about competition law, to amend the provisions which are altogether in consumers' interests etc. Under this Act formation of cartel is seen as criminal offence for which five year imprisonment will be awarded. It also introduced a power to disqualify individuals from acting as directors where their company has been found guilty of a violation of relevant competition law.

²⁵ European Commission, *available at*: http://ec.europa.eu/competition/antitrust/procedures_102_en.html (Visited on February 10, 2018).

²⁶ Competition Act, 1998, *available at*: <http://www.legislation.gov.uk/ukpga/1998/41/contents> (Visited on February 10, 2018).

Competition Law of Australia- Australia's core competition law provisions are contained in Part IV of the Competition and Consumer Act 2010 (previously named the Trade Practices Act 1974). The object of this Act is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.²⁷ The Competition and Consumer Act is an act of the Parliament of Australia and so its application is limited by section 51 of the Australian Constitution, which sets out the division of powers between the federal and state parliaments. As a result, most of the CCA is drafted to apply only to corporations. The Australian Consumer Law is applied as state law through the Fair Trading Acts in each Australian state and territory, to extend the application of the ACL to individuals. The key provisions of Part IV of the TPA dealing with restrictive trade practices are considered to be-

- Contracts, arrangements, or understandings that restrict dealings or affect competition²⁸
- Contracts, arrangements, or understandings in relation to prices²⁹
- Secondary boycotts³⁰
- Misuse of market power³¹
- Exclusive dealing³²
- Resale price maintenance³³

A very distinct and major feature of competition law of Australia is the authority given by the Parliament to the national regulator of competition, the Australian Competition and Consumer Commission (ACCC) to grant protection, on a case by case basis, to certain types of restrictive trade practices. The ACCC can litigate in the Federal Court of Australia, and seek pecuniary penalties of up to \$10 million from corporations and \$500,000 from individuals. Private actions for compensation may also be available.

²⁷ Section 2 of Competition and Consumer Act 2010, *available at:* <https://www.legislation.gov.au/Details/C2017C00369> (Visited on February 15, 2018).

²⁸ Section 45 of the Act.

²⁹ Section 45 C of the Act.

³⁰ Section 45 D of the Act.

³¹ Section 46 A of the Act.

³² Section 47 of the Act.

³³ Section 48 of the Act.

The ACCC may grant exemptions. It may grant immunity based on assessment of the public benefits and anti-competitive detriments of the conduct, through the 'notification' or 'authorisation' process. Such exemptions do not apply to resale price maintenance or misuse of market power.

Competition Law of Canada- The first legislation in Canada dealing with competition was first introduced in 1889. The Competition Act, 1986 is a Canadian federal law governing competition law in Canada. The purpose of the Act is to maintain and encourage competition in Canada in order to promote efficiency and adaptability, ensure equitable opportunities for small business, and provide consumers with competitive prices and product prices. The purpose of the act is to prohibit anti competitive actions in the market and provisions for both criminal and civil offences are mentioned in the act.³⁴ Matters such as conspiracy to fix prices or allocate customers or markets and bid-rigging are prosecuted as criminal offences in the criminal courts. As such, each case must be proven beyond a reasonable doubt and strict rules of evidence apply. The Act specifically authorizes private actions for damages incurred as a result of criminal conduct that is prohibited by the Act. Mergers, certain agreements between competitors, abuse of dominant position, refusals to deal, resale price maintenance and various non-price vertical market constraints constitute some of the non-criminal reviewable practices. The Act is managed and legally enforced by an agency called Federal Competition Bureau chaired by the commissioner of competition.³⁵ Abuse of dominant position is a reviewable practice under the Act. The tribunal may make an order prohibiting a dominant firm or a group of dominant firms from engaging in a practice of anti-competitive acts that is likely to prevent or lessen competition substantially in a market. The tribunal may also order a firm to pay an administrative monetary penalty (AMP) of up to C\$10 million for the first occurrence of an abuse of dominance and up to C\$15 million for subsequent occurrences. However, party size (or market share)

³⁴ K V Ramaswami, "Competition Policy and Practice in Canada: Salient Features and Some Perspectives for India" 41 *EPW* 1903-1911 (2006), *available at*: <http://www.Jstor.org/stable/4418213> (Visited on January 26, 2018).

³⁵ Canadian Law, *available at*: <http://www.canadianadvertisinglaw.com/competition-law/> (Visited on February 15, 2018).

alone is not a ground for a finding of dominance. If the tribunal finds that a prohibition order is not likely to restore competition, it may also direct the dominant firm or firms to take such reasonable actions as are necessary to overcome the effects of the practice in the market, including the divestiture of assets or shares. If the tribunal issues either a prohibition order or non-monetary order, it may also order the party to pay an administrative monetary penalty.³⁶

Competition Law in Switzerland- Switzerland's first law on cartels was enacted in 1962. It was lenient, suffering from a lack of decision making powers and procedural weaknesses. In 1995, Cartel Act was passed for a stronger competition policy. The objective of the 1995 cartel law is "to prevent the adverse economic or social consequences of cartels and other restrictions on competition, and to promote competition in the interests of the market economy based liberal principles. According to Article 7 of the Cartel Act, market dominant undertakings act unlawfully if they abuse such position and thus hinder other undertakings from starting or continuing to compete, or disadvantage trading partners. The law grants the Competition Commission (Comco), which is the authority primarily in charge of pursuing violations of Swiss competition law, solely with the power to assess economic consequences of restrictions of competition and concentrations between undertakings.³⁷

A dominant position is defined as a position of economic strength that allows an enterprise to act independently and differently from other players of the market. Dominant position can be held by one or more companies and by either a buyer or seller. Significant factors for determining whether an undertaking enjoys a dominant position in a specific market include: its market share, barriers to entering or leaving the market, the number, quality and position of competitors, the structure of the market. According to Article 7 of the Cartel Act, it is not unlawful for an undertaking to hold a dominant position. This provision only bans abusive conduct of dominant

³⁶ Penalty under Canadian law, *available at:* www.mcmillan.ca/webfiles/Competition-and-Antitrust-in-Canada.pdf (Visited on February 15, 2018).

³⁷ Switzerland Dominance, *available at:* <https://gettingthedealthrough.com/area/10/jurisdiction/29/dominance-switzerland/> (Visited on February 20, 2018).

undertakings. They are subject to a fine of up to 10% of their total Swiss turnover for the last three business years.³⁸

Competition Law in China- The People's Republic of China, passed Anti Monopoly Law (AML) of China on 30 August 2007, and it came into effect on 1 August 2008. It prohibits monopolistic conduct which can be divided into three headings:

- Anti competitive agreement between undertakings;
- Abuse of dominant position;
- Mergers that have the effect of eliminating or restricting competition.

The basic principle of Abuse of dominance under AML is similar to Article 102 of TFEU. It is defined in Article 17 of AML as market position held by one or more undertakings that enable them to control price or affect the ability of other undertaking to enter the market. There are two types of abuses under AML i.e. exploitative (dominant company abuses its position by exploiting its customers) and exclusionary (abuse by excluding its customer's e.g. refusal to deal).³⁹ Article 47 explained that where any business operator abuses its dominant market status in violation of this law, it shall be ordered to cease doing so. The anti-monopoly authority shall confiscate its illegal gains and impose thereupon a fine of 1% up to 10% of the sales revenue in the previous year.⁴⁰

Competition Law in Japan- The Antimonopoly and Fair Trade Maintenance Act 1947 (Antimonopoly Act) is the main piece of legislation which regulates anti-competitive behaviour in Japan. Competition issue in Japan are dealt by the Fair Trade Commission (JFTC), which is an independent administrative body. It also has extraterritorial jurisdiction in case an agreement affects the Japanese market. There are two key concepts under the AMA: 'private monopolisation' and 'unfair trade practice'. Private monopolisation is banned in the first sentence of Article 3 of the

³⁸ Competition Law in Switzerland, *available at:* tavernierschanz.com//publications/Competition_law_Switzerland.pdf (Visited on February 20, 2018).

³⁹ China Competition, *available at:* <https://www.slaughterandmay.com/media/879862/competition-law-in-china.pdf> (Visited on Feb 22, 2018).

⁴⁰ Penalty, *available at:* http://www.china.org.cn/government/laws/200902/10/content_17254169.htm (Visited on Feb 22, 2018).

AMA. There are two types of private monopolisation: control type private monopolization and exclusionary type private monopolization.⁴¹ The Antimonopoly Act provides for surcharges, fines and imprisonment. If parties are accused of working in price fixing cartel then a penalty in the form of administrative surcharge up to 20% of sales during cartel may be imposed for a maximum period of 3 years. Penalty for the privately done monopolization is surcharge up to 15% of that sale. Penalties for other violations may vary from 1% to 3%. Individuals involved in any type of irrational restraints on trade or private monopolization may get confinement up to five years or can also be fined up to JPY5 million. The maximum mentioned fine against the monopoly is JPY 500 million. Other than the relief mentioned in the Antimonopoly Act, victims of anti-competitive act can also registered a complaint of civil damage as per the civil code of Japan.⁴²

Competition Law in Germany- German Act against restraints of competition came into force on 1st January 1958. It has been amended nine times since then. The Bundeskartellamt is an independent competition authority whose task is to protect competition in Germany. The abuse of a dominant position is prohibited by sections 19 and 20 of the German Act. As per the German law, the position a company is said to be dominant if it is not exposed to any considerable competition or has a supreme position in market as compare to its competitors. Whether a company holds such a paramount position on the relevant market is assessed on the basis of market shares of the company and its competitors, the availability of competition-relevant resources (e.g. patents, production sites, distribution networks), barriers to entry for newcomers, limits to the expansion of suppliers already active on the market, switching costs for customers and the buying power of the opposite side of the market. Abusive practices are actions that a dominant company can only pursue on account of its market power and that hinder or discriminate against other companies or their customers in a way that would not be possible if effective competition existed. There are two possible ways for the Bundeskartellamt to act

⁴¹ Japan Competition, *available at*: <https://gettingthedealthrough.com/area/10/jurisdiction/36/dominance-2016-japan/> (Visited on February 23, 2018).

⁴² <http://www.conventuslaw.com/report/japan-antitrust-competition-guide-2016/> (Visited on February 23, 2018).

against abusive conduct. Firstly, by means of administrative proceedings it can order that the conduct objected to be discontinued. Secondly, it can impose fines within the framework of administrative offence proceedings.⁴³ The amount that can be imposed as penalty is up to €1 million for private individuals. If an enterprise deliberately done any violation than fines can be reached up to 10 per cent of the worldwide group turnover in the last financial year prior to the decision (5 per cent for negligent infringements).⁴⁴

Abuse of Dominant Position under Competition Act, 2002:

Provision relating to abuse of dominant position is mentioned under section 4 of the Act. It means a position of strength, enjoyed by any enterprise, in the relevant market, in India, which enables it to operate independently of competitive forces prevailing in the relevant market, or affect its competitors or consumers or the relevant market in its favor. The Act provides three steps for the determination of abuse of dominance:- defining the relevant market; assessing dominance in the relevance market; establishing abuse of dominance. The Competition Act defines the relevant market as market determined by the commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets.⁴⁵ The relevant geographic market is defined as 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 neighboring areas.⁴⁶ The Act further provides that the CCI shall determine the relevant geographic market having due regard to all or any of the following factors:-

- Regulatory trade barriers
- Local specification requirements
- National procurement policies

⁴³ Japan Competition, *available at*: https://www.bundeskartellamt.de/EN/Abusecontrol/abuse_control_node.html (Visited on February 23, 2018).

⁴⁴ Japan Competition, *available at*: <https://globalcompetitionreview.com/jurisdiction/1004453/germany> (Visited on February 23, 2018).

⁴⁵ Section 2(r), Competition Act, 2002.

⁴⁶ Section 2(s), Competition Act, 2002.

- Adequate distribution facilities
- Transport costs
- Language
- Consumer preferences
- Need for secure or regular supplies or rapid after sale services.⁴⁷

The relevant product market is defined as a market comprising all those products or services which are regarded as substitutable or interchangeable by the consumer, by reason of characteristics of the products or services, their prices and intended use.⁴⁸ It provides that the CCI shall determine the relevant product market giving due regard to all or any of the following factors:-

- Physical characteristics or end use of goods
- Price of goods or services
- Consumer preferences
- Exclusion of in-house production
- Existence of specialized producers
- Classification of industrial products.⁴⁹

While determining the abuse of dominance, the CCI first determines the relevant market there after it determines whether or not a firm enjoys a dominant position. The Competition Act sets out the following factors which are followed by CCI to establish the dominant position of an enterprise:-

- The market share of the enterprise;
- Size and resources of the enterprise;
- Size and importance of the competitors;
- Economic power of the enterprise;
- Dependence of consumers on the enterprises.
- Monopoly or dominant position whether acquired as a result of any statute or by virtue of being a govt. company or a public sector undertaking or otherwise.

⁴⁷ Section 19(6), Competition Act, 2002.

⁴⁸ Section 2(t), Competition Act, 2002.

⁴⁹ Section 19(7), Competition Act, 2002.

- Entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economics of scale, high cost of substitutable goods or services for consumer.⁵⁰

According to section 4(2) there shall be an abuse of dominant position if an enterprise involves itself into activities mentioned below:

- Directly or indirectly imposing discriminatory conditions in the purchase or sale of goods or service, or setting prices in the purchase or sale (including predatory pricing) of goods or services;
- Limiting or restricting the production of goods or provision of services or market therefore; or limiting technical or scientific development relating to goods or services to the prejudice of customers;
- Indulging in practice or practices resulting in the denial of market access
- Making conclusion of contracts subject to acceptance by other parties of supplementary obligations, which has no connection with the subject of such contract;
- Utilization of the dominant position in one relevant market to enter into, or protect, another relevant market.⁵¹

Powers of CCI concerning Abuse of Dominant Position:

To achieve the objectives, mentioned in the preamble of the Competition Act, 2002 the Competition Commission of India was established. The main objectives of the commission is 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.⁵² The commission has the power to prevent the practices of misuse of dominant position by an enterprise. It may either on its own motion, or on receipt of any information from any person, consumer

⁵⁰ Section 19(4), Competition Act, 2002.

⁵¹ Kanika Bhatia, *A Study of Functioning and Performance of Competition Commission of India 20-21* (2015) (Ph.D. thesis, MDU Rohtak), available at: <http://shodhganga.inflibnet.ac.in/> (Visited on December 15, 2017).

⁵² Section 18, Competition Act, 2002.

or their association or trade association, or on receipt of a reference made to it by the central government or a state government or a statutory authority, may institute an enquiry in case of violation of the provisions of Sections 4 of the Act.⁵³ Under an examination of such contravention, if it finds that there exists a *prima facie* case, it directs the DG to cause an investigation to be made into the matter. On the other hand, if it finds that there exists no *prima facie* case, it closes the matter by passing such order as it deems fit.⁵⁴ Where after inquiry the commission finds that an action of an enterprise in a dominant position is in contravention of section 4, it may pass all or any of the following orders, namely:

- a) direct any enterprise or person involved in such abuse of dominant position, to discontinue such abuse of dominant position;
- 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 abuse.⁵⁵
- c) Direct division of an enterprise enjoying dominant position to ensure that such enterprise does not abuse its dominant position.⁵⁶
- d) Where during an inquiry, the commission is satisfied that an act in contravention of section 4 has been committed and continues to be committed, it may, by order, temporarily restrain any party from carrying on such act until the conclusion of such inquiry.⁵⁷

The commission has power in case of non-compliance of its order and directions issued under section 27, 28, 31, 32, 33, 42A, 43A to impose fine which may extend to Rs 1 Lakh for each day subject to maximum of Rs 10 Crores. Further if any person fails to pay the fine, the commission can file a complaint to Chief Metropolitan Magistrate, Delhi which may take cognizance of the offence punishable with imprisonment for a term which may extend to 3 years or a fine which may extend to

⁵³ Section 19, Competition Act, 2002.

⁵⁴ Section 26, Competition Act, 2002.

⁵⁵ Section 27, Competition Act, 2002.

⁵⁶ Section 28, Competition Act, 2002.

⁵⁷ Section 33, Competition Act, 2002.

25 Crores or with both.⁵⁸ Moreover 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 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 33.⁵⁹If any enterprise abusing the dominant position is outside India, The Commission shall have power to inquire in accordance with the provisions contained in sections 19 and 26 of the Act, if such dominant position 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.⁶⁰

Working of CCI and Abuse of Dominant Position:

The CCI has been entrusted with various powers to curb the problem of abuse of dominant position. In case of contravention of provisions of section 4, the commission may institute an enquiry either *suo moto* or on the basis of information from any person or reference by the central or state government. If the commission finds that the enterprise abuses its dominant position then it may direct the enterprise to discontinue the practice or may impose penalty.

⁵⁸ Section 42, Competition Act, 2002.

⁵⁹ Section 42A, Competition Act, 2002.

⁶⁰ Section 32, Competition Act, 2002.

**Table No. 1- Sector-wise Distribution of Anti-Trust Matters filed in CCI during
2009-2017 noted under Sections 3 and 4**

Sr. No.	SECTOR	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	TOTAL
1	Real Estate	0	17	28	21	25	43	34	22	190
2	Automobiles	4	1	3	3	7	8	2	72*	100
3	I & B	4	15	11	10	4	3	5	7	59
4	Financial Sector	17	9	5	4	8	7	3	3	56
5	Health	3	3	3	6	9	9	9	7	49
6	Petroleum/Gas	4	3	3	5	3	5	13	2	38
7	IT	2	3	4	4	6	4	7	5	35
8	Railways	2	3	2	1	6	8	1	3	26
9	Civil Aviation	6	3	1	3	3	1	6	0	23
10	Power	3	1	4	0	3	5	1	2	19
11	Chemicals & Fertilizers	3	0	0	2	6	4	1	0	16
12	Coal	0	1	1	5	3	1	4	4	19
13	Iron & Steel	3	1	3	2	2	1	0	0	12
14	Miscellaneous	30	16	24	28	30	29	35	34**	226
	Total	81	76	92	94	115	128	121	161	868

Source: Annual Report of CCI 2016-17

*Suo-Moto Case No. 02/2015 is segregated in to 66 sub cases w.e.f. July 2016 to facilitate exploration of investigation by DG. - Automobile Sector.

**Suo-Moto Case No. 07/2014 is segregated in to 02 sub cases w.e.f. August 2016 to facilitate exploration of investigation by DG. -Misc. Sector.

According to table no.1, regarding violations of anti-trust matters, the real estate sector tops the list every year since the law came into force. Although no case was filled in the year 2009-10 but gradually it has been increasing. But in 2016-17 it has been declined. The maximum no. of cases of real estate sector was filled in the year 2014-15. As per figure no. 1 other prominent sectors with a high incidence of alleged anti-trust conduct are the automobile sector, financial sector, entertainment, pharmaceuticals and health care. All the sectors except real estate and automobile have cases below 60 which are approximately 3 times lesser than the real estate sector. The maximum no. of cases in respect of I & B sector was filled in CCI in the year 2010-11. The no. of cases filled in the financial sector has been continuously decreasing since 2013. Iron and Steel sector has very less no. of cases, even in the

last two years not a single case has been filled. As per figure no. 2 the no. of cases filled in the CCI has been continuously increasing since 2009. In 2016-17 the maximum no. of cases has been filled in CCI under section 3 and 4.

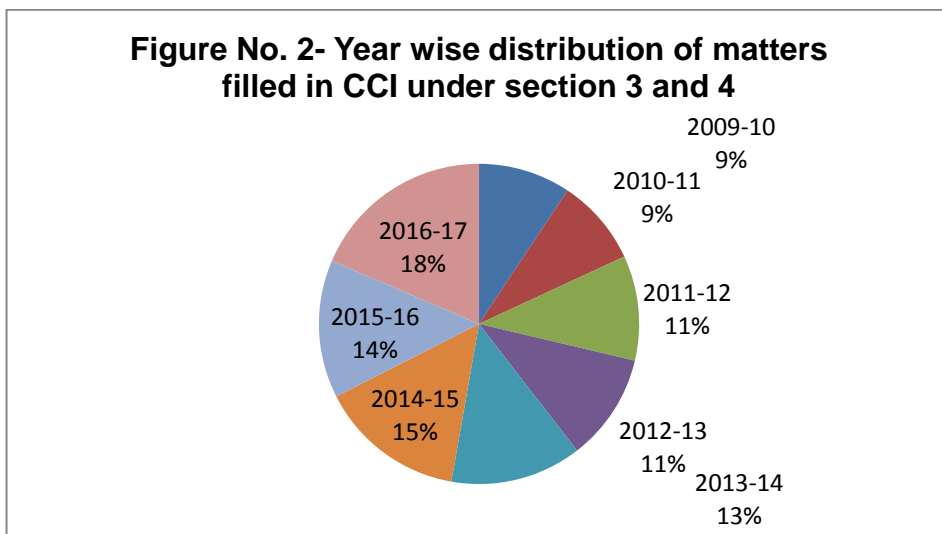
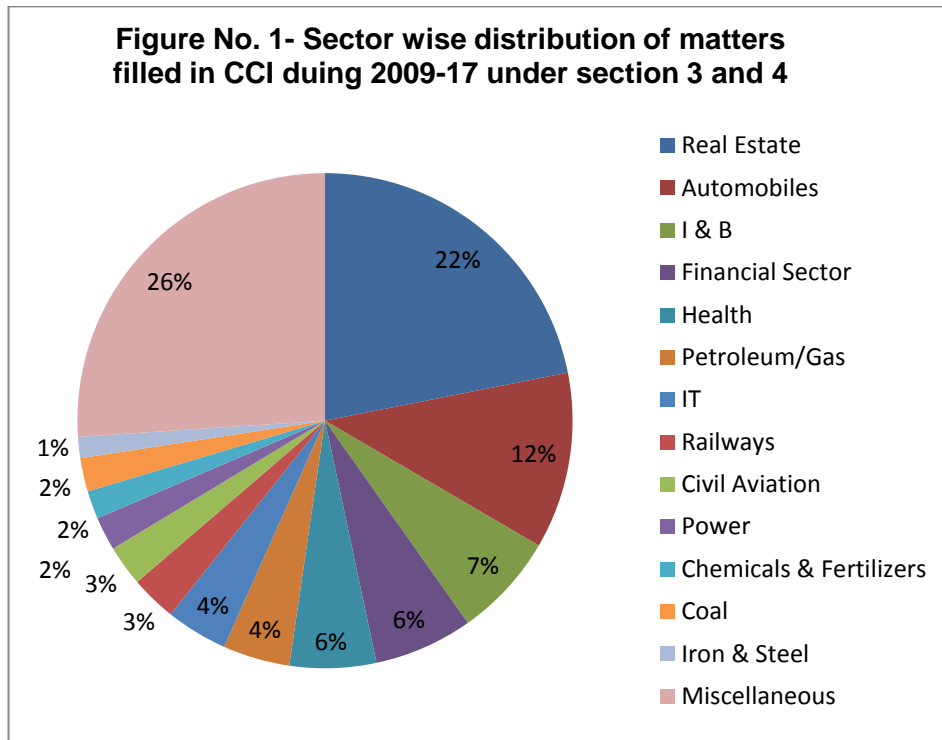


Table No. 2- Year-wise Disposal of Alleged Contraventions of Sections 3 and 4 of the Act

Year	Opening Balance	No. of Cases Noticed					Disposed of By Order U/S		Balance at the End of the Year
		MRTPC	19(1)(a)	19(1)(b)	SUO MOTO	TOTAL	26(1)	26(2)	
2009-10	-	50	31	-		81	23	6	52
2010-11	52	-	71	-	5	76	70	46	12
2011-12	12	-	89	3		92	38	51	15
2012-13	15	-	86	2	6	94	32	51	26
2013-14	26	-	102	8	5	115	50	72	19
2014-15	19	-	110	7	11	128	41	73	33
2015-16	33	-	117	3	1	121	23	97	34
2016-17	34	-	84	4	73*	161	101**	67	27
Total	-	50	690	27	101	868	378	463	-

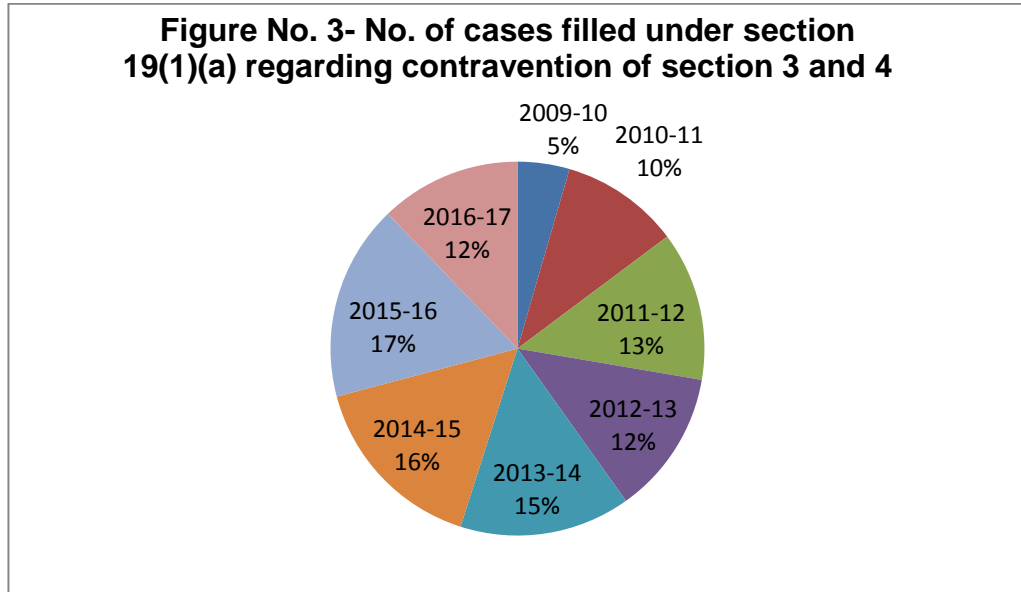
Source: Annual Report of CCI 2016-17

**Suo-Moto* Case No. 07/2014 is segregated in to 02 sub cases w.e.f. August 2016 and *Suo-Moto* Case No. 02/2015 is segregated in to 66 sub cases w.e.f. July 2016 to facilitate exploration of investigation by DG.

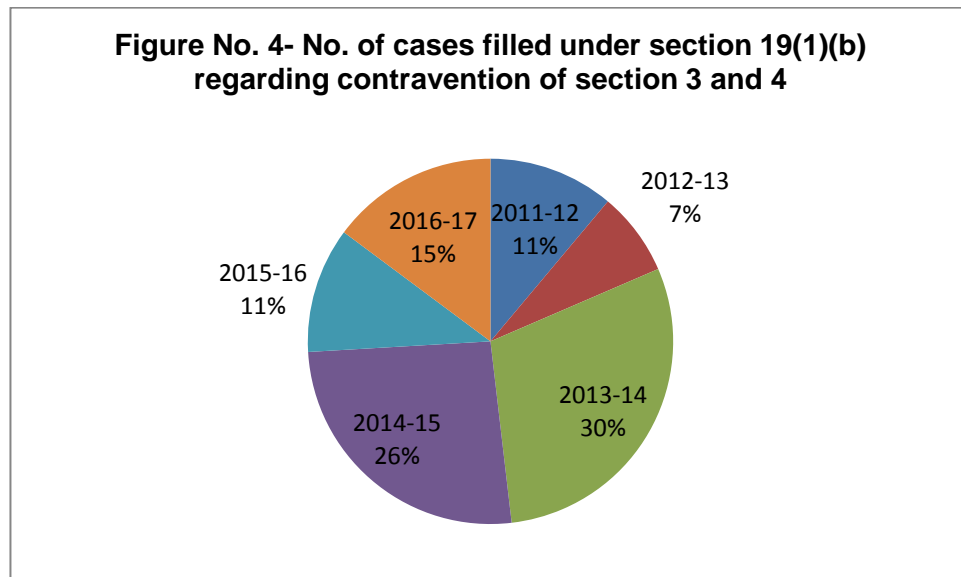
**Case No. 93/2015 decided along with Case No. 1/2014 which had been referred to DG.

According to section 19(1) the CCI has the power to enquire any contravention of the provisions of sections 3 and 4 of the Act either on its own motion or on receipt of any information from any person, consumer or their association or trade association under section 19(1) (a) of the Act; or on receipt of a reference made to it by the central or a state government or a statutory authority under section 19(1) (b) of the Act. If it finds that there exists a *prima facie* case, it directs the DG to cause an investigation to be made into the matter under section 26(1) of the Act. On the other hand, if it finds that there exists no *prima facie* case, it closes the matter by passing an order under section 26(2) of the Act. It is observed from table no. 2 that the number of information filed with the commission by any person or consumer etc. has been rising over the years, although comparatively less no. of cases are filled in the year 2016-17. Only 27 i.e. 3% cases are filled in S.19(1)(b) which means very less no. of cases are being referred by central, state government or statutory authority. No case has been referred by the government to CCI from 2009-11 and noticed *suo moto* by the CCI in 2009-10 and 2011-12 in regard to anti competitive practices. The higher ratio of cases

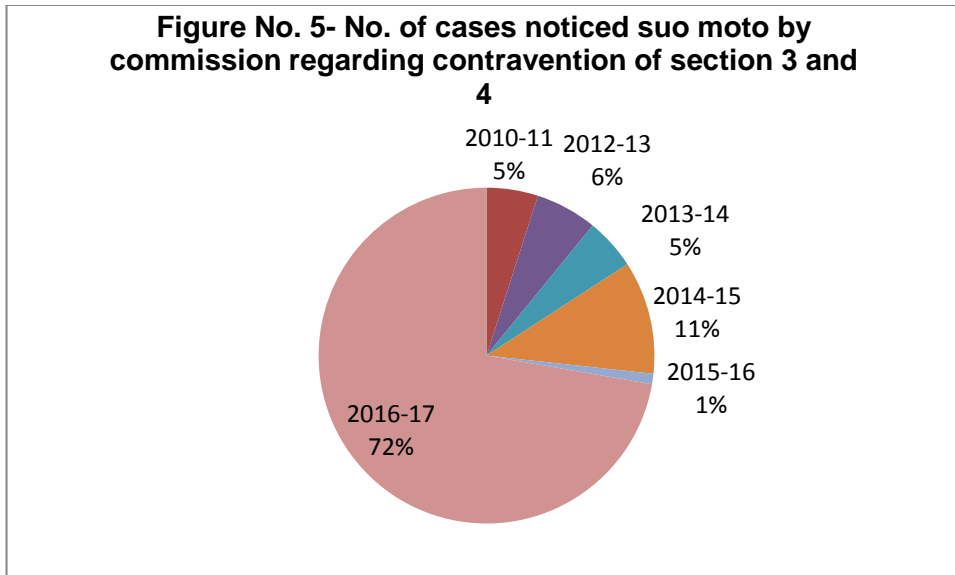
being closed under Section 26(2) reflects that no. of information is being filed on the issues that are not subject matter of the Act.



From the above figure it is clear that maximum number of cases filed in the Commission by any person or consumer in regard to contravention of section 3 and 4 was maximum in the year 2015-16 (17%) and minimum in 2009-10 (5%).

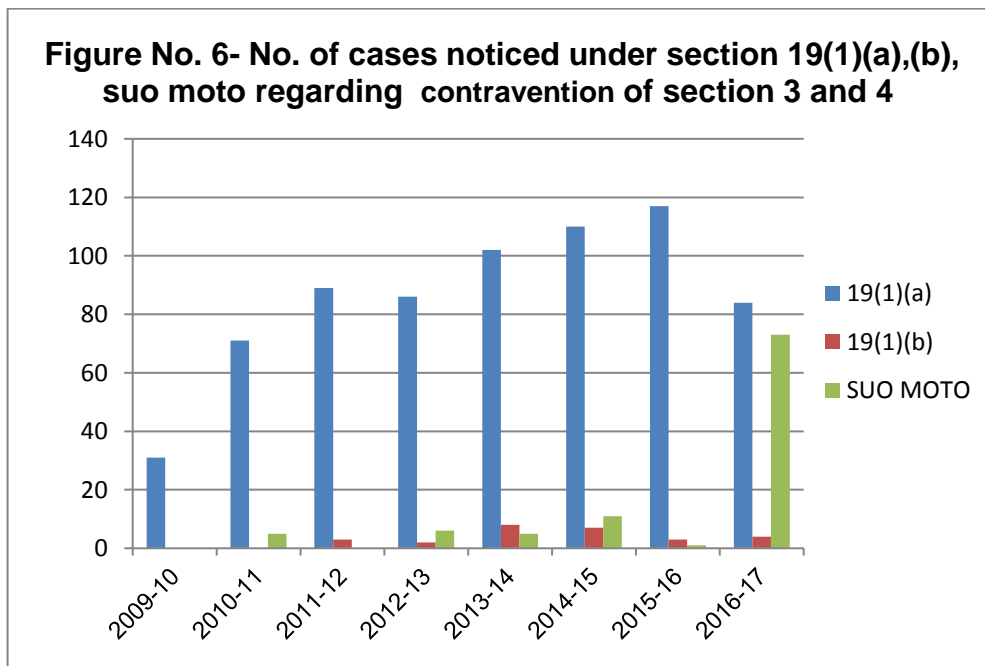


It is clear from the above figure that no case has been referred by central, state government or statutory authority in regard to contravention of section 3 and 4 in the year 2009-11 and maximum number of cases has been referred in 2013-14.

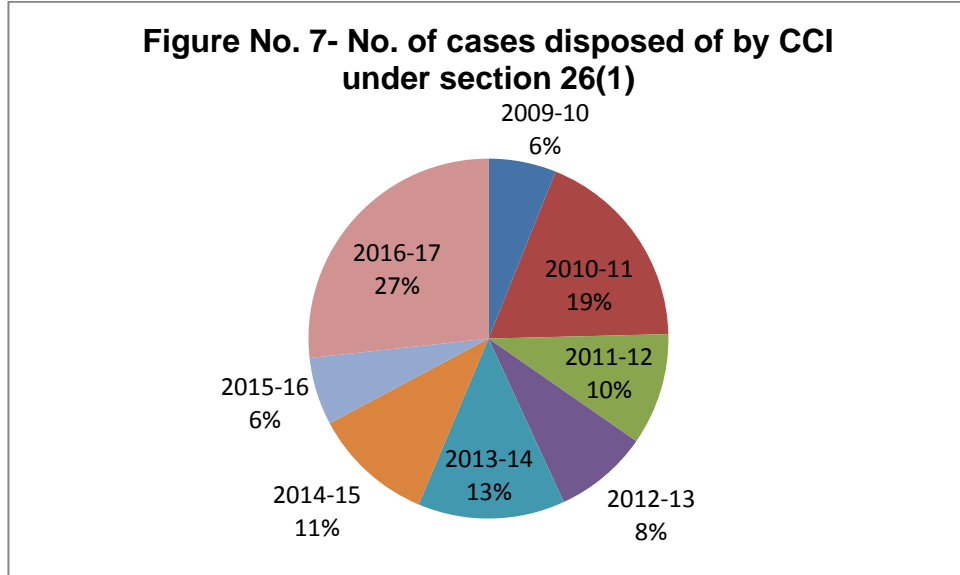


*In the year 2016-17, *Suo-Moto* Case No. 07/2014 is segregated in to 02 sub cases w.e.f. August 2016 and *Suo-Moto* Case No. 02/2015 is segregated in to 66 sub cases w.e.f. July 2016 to facilitate exploration of investigation by DG.

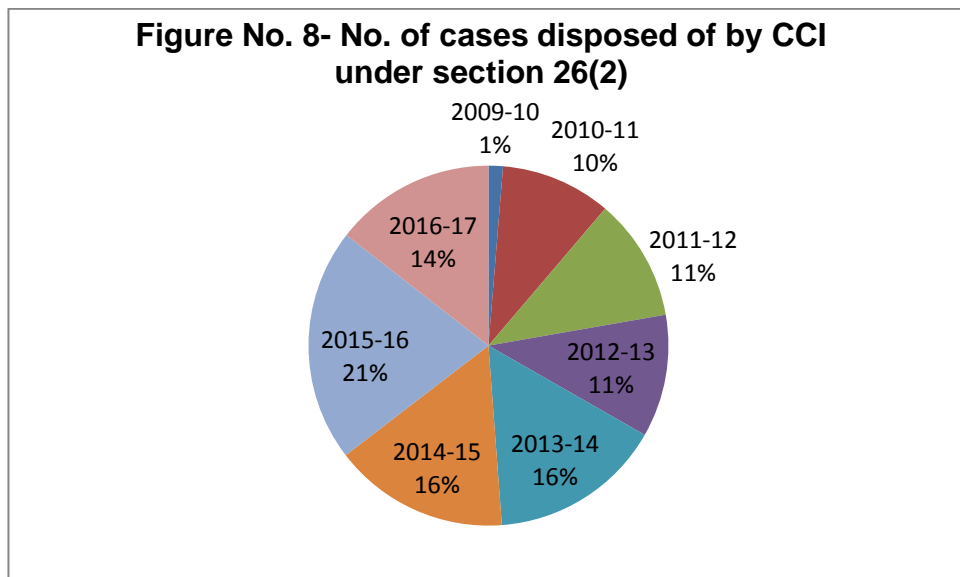
Only 101 i.e. 11% cases regarding contravention of section 3 and 4 was noticed suo moto by the commission. It clearly shows the lacuna in the working of CCI.



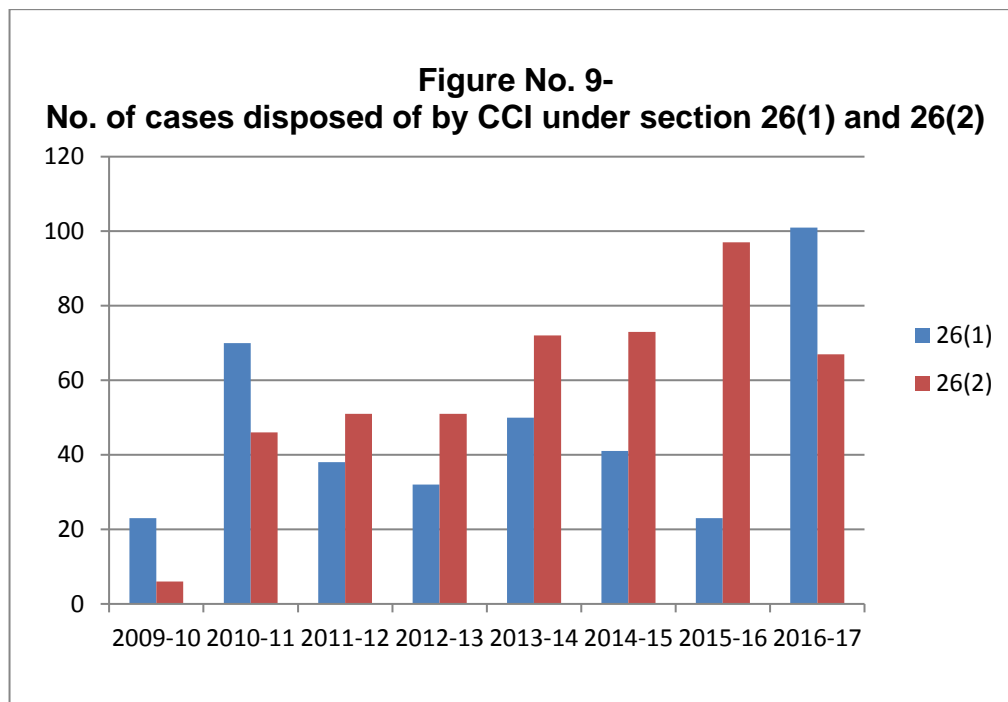
*In the year 2016-17, *Suo-Moto* Case No. 07/2014 is segregated in to 02 sub cases w.e.f. August 2016 and *Suo-Moto* Case No. 02/2015 is segregated in to 66 sub cases w.e.f. July 2016 to facilitate exploration of investigation by DG.



As per figure no. 7 in the year 2016-17 the commission has given direction to DG in maximum number of cases to cause the investigation on the basis of *prima facie* case of violation of section 3 and 4 and minimum in 2009-10. Total no. of cases in which order was passed by the commission to cause investigation was 378 out of 868 cases.



In the year 2015-16 maximum number of cases was closed by the commission without investigation as no *prima facie* case of violation of section 3 and 4 was found. However only 1% case was closed in 2009-10. Total number of cases closed under section 26(2) was 463 out of 868 cases.



*In the year 2016-17 under section 26(1) Case No. 93/2015 decided along with Case No. 1/2014 which had been referred to DG.

**Table No. 3- Disposal of Alleged Contraventions of Sections 3 and 4 till March
31, 2017**

S. No	MATTERS	No.of Cases	%
1	Matters taken note of through Information/Reference/Suo-Moto/MRTPC	868	100%
2	Closed without Investigations under Section 26(2)	462	53%
3	Investigations Ordered under Section 26(1)	377	43%
4	Investigations Completed	248*	28%
5	Orders passed after Investigations	192	22%
6	Orders passed under Section 27	101	11%
7	Orders passed under Section 26(6) & other orders	91	10%

Source: Annual Report of CCI 2016-17

* This refers to investigation reports received u/s 26(3). However, in 08 cases the matters have been referred back for supplementary investigation.

According to the above table 868 cases has been filled in CCI up to 2017. Out of which more than 53% cases were closed without investigations which mean that there exists no prima facie case or we can say that frivolous complaints have been filled. Investigations were ordered in 43% cases and completed in 28% only. Strict actions have been taken only in 11% cases which is very less. 10% cases are closed after the recommendations from the report of the DG that there is no contravention of the provisions of this Act. From figure no.10 it can be concluded that more matters are closed without investigation as compared to matters in which investigation completed or penalty imposed.

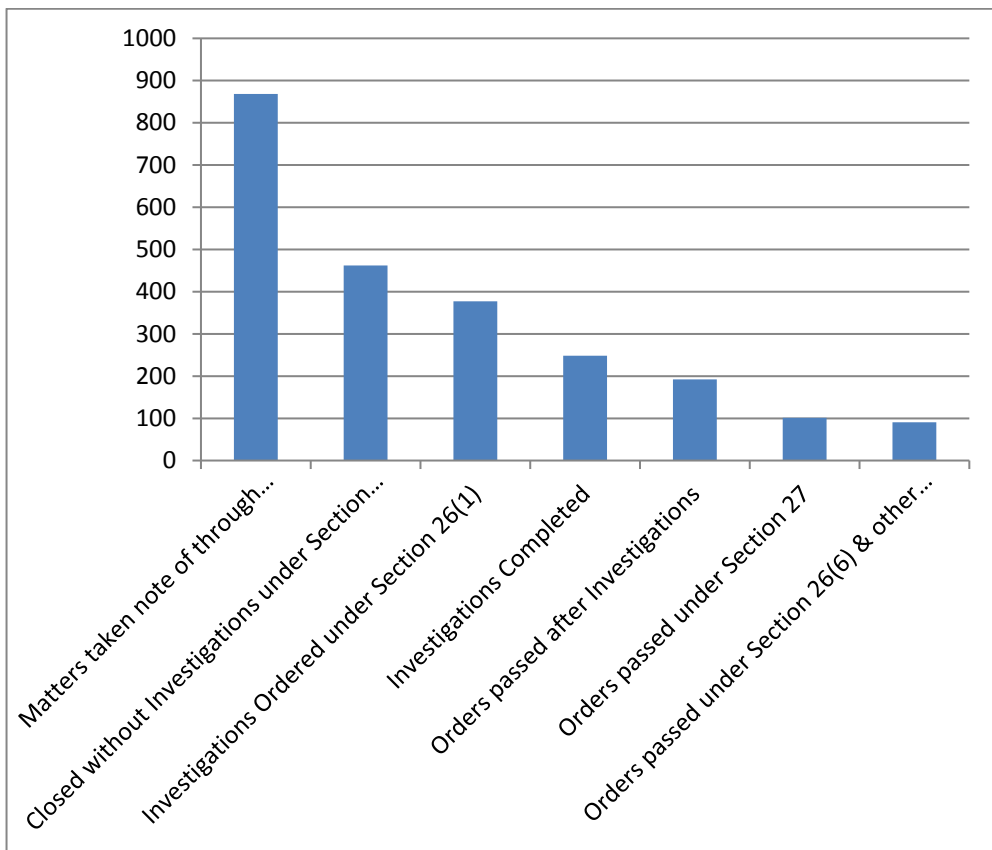


Figure No. 10- Disposal of Alleged Contraventions of Sections 3 and 4 till March 31, 2017

Table no. 4- Monetary Penalties Imposed and Realised by the Commission

Years	No. of cases where monetary penalty was imposed	Penalty (Rs in Cr.)			Net penalty realized as on 31 march , 2017 (Rs. Crore)		
		Imposed	Realised	Refunded	Realised without resorting to section 39(2)	Referred to IT Authorities for Realisation	Realised by IT authorities
2011-12	21	860.38	1.78	0.72	1.06	-	-
2012-13	17	7156.18	18.63	13.13	5.02	-	-
2013-14	18	1870.40	55.41	51.80	3.56	-	-
2014-15	21	2592.39	19.92	0.37	19.53	-	-
2015-16	15	1501.64	8.23	0.01	8.22	-	-
2016-17	17	288.28	5.68	-	5.68	-	-
TOTAL	109	13,087.23	109.71	66.04	43.07	-	-

Source: Annual Report of CCI 2016-17

In reference to table no. 4 the commission has the power to impose monetary penalty in following cases:- under section 27 in case of violations of sections 3 or 4 of the Act; under sections 42, 43 and 43A in case a party fails to comply with its directions or orders or to provide the required information; under sections 44 and 45 in case a party makes a false statement or furnishes false document. The commission has imposed an aggregate penalty of Rs.13, 087 crore in 109 cases. It is shown in figure no. 11 that in 2011-12 and 2014-15 monetary penalty was imposed in maximum no. of cases. However, most of the orders of the commission are under appeal before the COMPAT, or under challenge before various High Courts or at the Supreme Court. As shown in figure no. 12 maximum amount of penalty was imposed in year 2012-13 and minimum was imposed in 2016-17. No case has been referred to Income Tax Department for recovery of penalty as provided under Section 39(2) of the Act.



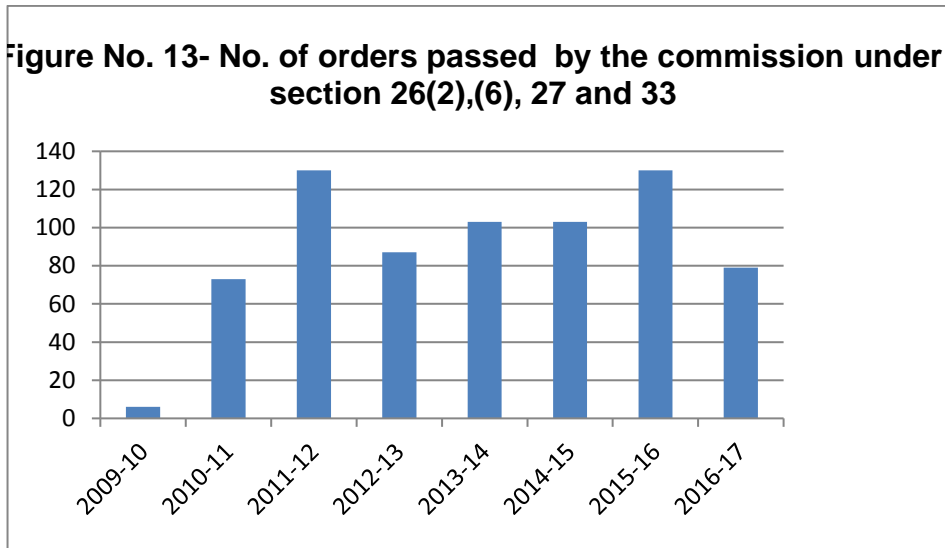
Table no. 5- Appeals against Orders* of the Commission

Years	No. of orders passed by the commission	No. of appeals filed against orders passed by the Commission	% of orders appealed
2009-10	6	2	33.33
2010-11	73	12	16.44
2011-12	130	40	30.77
2012-13	87	38	43.68
2013-14	103	33	32.04
2014-15	103	31	30.10
2015-16	130	34	26.15
2016-17	79	31	39.24
Total	711	221	31.08

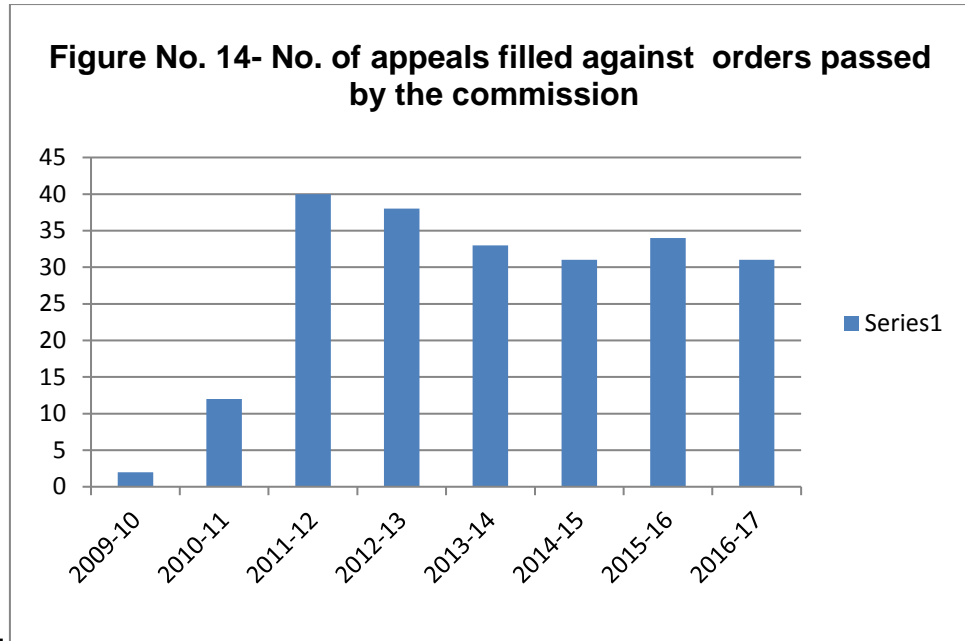
Source: Annual Report of CCI 2016-17

* Issued under Section 26(2), 26(6), 27 and 33 of the Act.

According to section 53B the central or the state government or local authority or any person aggrieved by any direction issued or decision made or order passed by the commission under sub-sections (2) and (6) of section 26-28, section 31-33, section 38-39, section 43, section 43A, section 44-46 of the Act may file an appeal to the COMPAT within 60 days from the date on which copy of decision or order made by the commission is received. A person aggrieved by an order of the COMPAT may prefer an appeal to the Supreme Court. It can be concluded from the table no. 5 that about one third of the orders passed by the commission was appealed.



It can be concluded from the above figure that maximum no. of orders passed by the commission in year 2011-12 and 2015-16 and minimum in 2009-10. However in comparison to previous years less number of orders passed by the commission in year 2016-17.



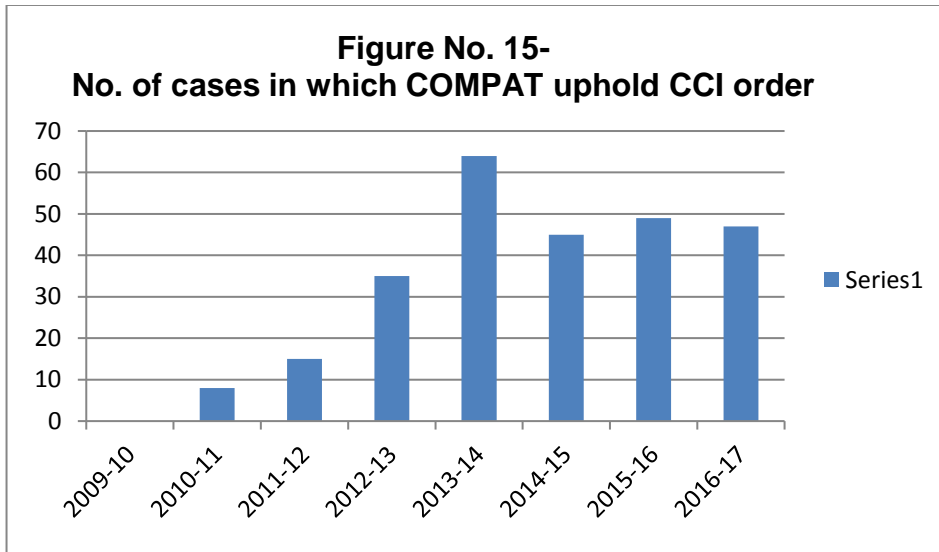
It can be find out from the above figure that in the year 2011-12 maximum numbers of appeals was filled against orders passed by the commission.

Table no. 6- Disposal of Appeals by the COMPAT

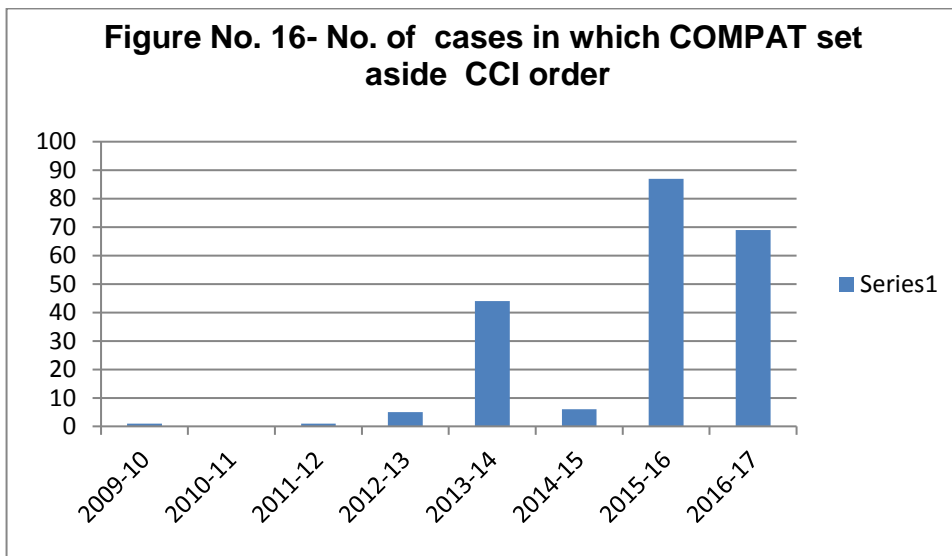
Years	No. of orders passed by the COMPAT			
	Upholding Commissions' order	Setting aside commissions' order	Out of Appeals allowed remanded to Commission	Total
2009-10	0	1	0	1
2010-11	8	0	0	8
2011-12	15	1	1	16
2012-13	35	5	0	40
2013-14	64	44	44	108
2014-15	45	6	2	51
2015-16	49	87	67	136
2016-17	47	69	19	116
Total	263	213	133	476

Source: Annual Report of CCI 2016-17

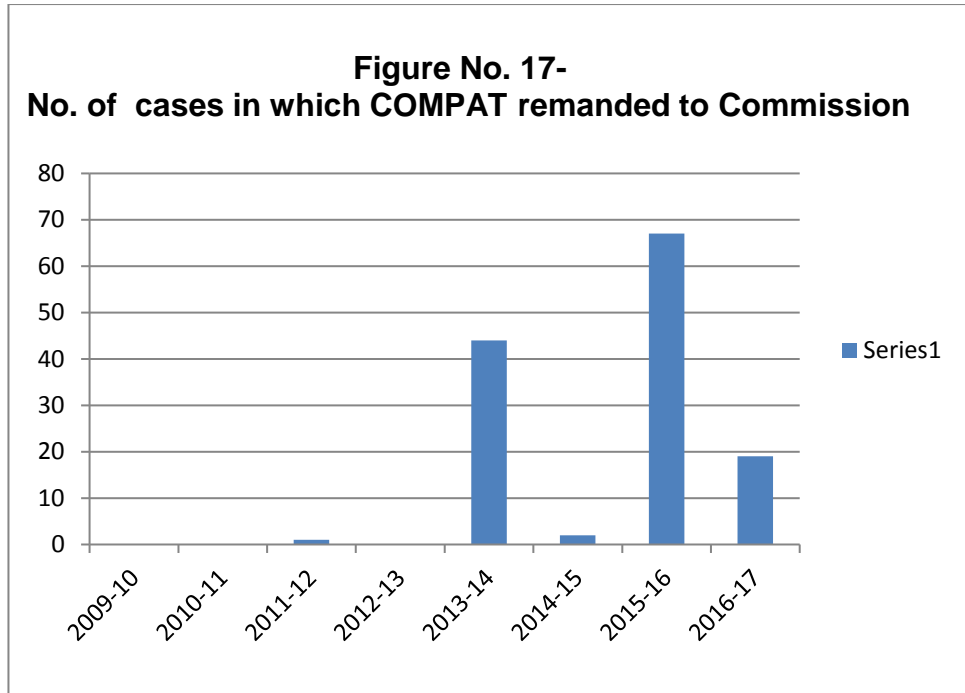
As per table no. 6, 55 % of cases were upheld by the commission, 44 % of cases were set aside and 27% cases were remanded to commission. Maximum number of orders was passed by the COMPAT in 2016-17.



From the above figure it is clear that maximum no. of cases uphold by COMPAT was in year 2013-14 and no case was uphold in 2009-10.



The COMPAT set aside maximum no. of cases in 2015-16 and no case was set aside in 2010-11.



No case was remanded to commission by COMPAT from 2009-11 and 2012-13.
Maximum number of cases was remanded in 2015-16.

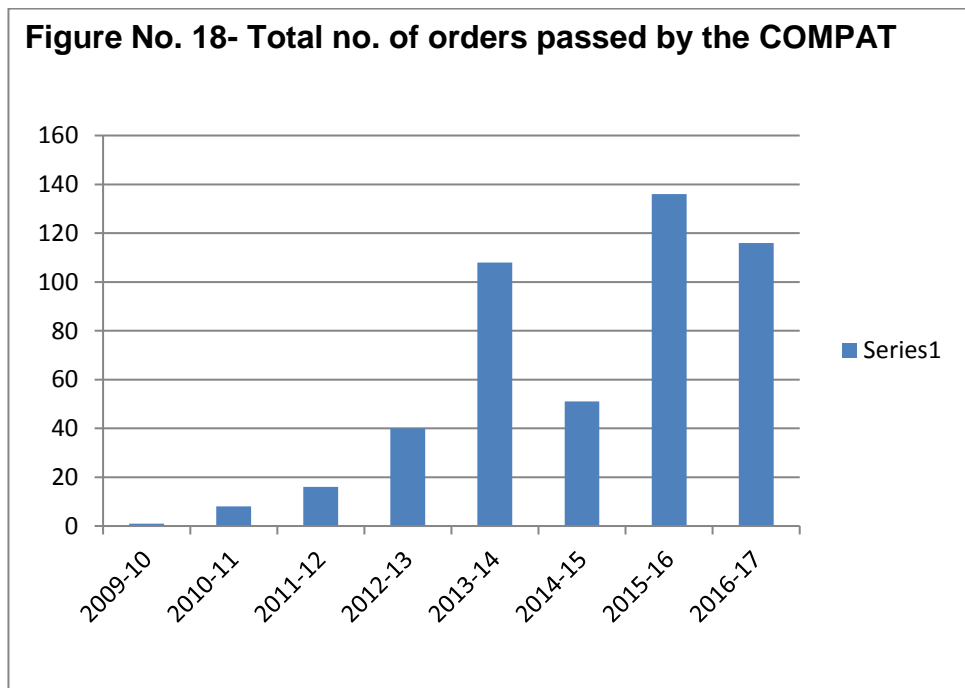


Table no.7- References received from Central Government

S.No	Description	Years						
		2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
1	Number of references pending at the beginning of the year	-	-	-	-	-	-	-
2	Number of references received during the year	-	1	-	-	1	-	-
3	Total	-	1	-	-	1	-	-
4	Number of references disposed of out of (i)	-	-	-	-	-	-	-
5	Number of references disposed of out of (ii)	-	1	-	-	1	-	-
6	Total number of references disposed of during the year	-	1	-	-	1	-	-
7	Number of references pending at the end of the year	-	-	-	-	-	-	-
8	Brief write up on opinions of the Commission accepted or not by the Central Government	NA	NA	NA	NA	NA	NA	NA

Source: Annual Report of CCI 2016-17

Table no. 8- References received from State Governments

S.No	Description	Years						
		2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
1	Number of references pending at the beginning of the year	-	-	-	-	-	-	-
2	Number of references received during the year	-	-	-	-	-	-	-
3	Total	-	-	-	-	-	-	-
4	Number of references disposed of out of (i)	-	-	-	-	-	-	-
5	Number of references disposed of out of (ii)	-	-	-	-	-	-	-
6	Total number of references disposed of during the year	-	-	-	-	-	-	-
7	Number of references pending at the end of the year	-	-	-	-	-	-	-
8	Brief write up on opinions of the Commission accepted or not by the Central Government	NA	NA	NA	NA	NA	NA	NA

Source: Annual Report of CCI 2016-17

While formulating a policy on competition, including review of laws related to competition, or some other issue, section 49 of the Act empowers central and the state governments, to make a reference to the commission for its opinion on possible effect of such policy on competition. On the receipt of such a reference, the commission is bound, within sixty days of making such reference, to give its opinion to the central or the state government, although such opinion of the commission is not binding. It can be concluded from the table No. 7 and 8 that no reference has been received from the state government and only a single reference is received from the central govt. in the year 2011-12 and 2014-15.

Analysis of Cases of Abuse of Dominant Position in Media and Entertainment Sector from 2009-2017:

*Cinergy Picture (P) Ltd. v. ETC Network Ltd.*⁶¹ It is stated that the informant has produced a movie by the name 'Rann'. According to the informant, a social message is given in the movie and with an aim to aware the public that how media is misused and abused, the informant published a 12 page advertisement through the newspaper named as 'Rann Times'. It is further asserted about the OP that it is one of the major broadcasters and broadcasts many TV channels namely 'ETC' and also provides information on the entertainment events like movies. It is alleged that the informant did not launch its movie 'RANN' trailer with the ETC channel as a result of which a programme 'movie meter' of OP gave a poor rating to the movie before its release and, gave higher rating to the movie 'Ishqiya' which gave its trailer for advertisement to it. Further allegation is that by using the vote meter method, the OP restricted the right of the informant to the audience for the movie. On scrutinizing the complete issue, the commission has concluded that, though the informant has made the allegation, but it has not been able to prove that the OP holds dominant position in the broadcasting. In this matter it may be further observed that just by giving low rating to its movie the OP has not prevented the level of competition in the market in any sense. The informant had made full publicity of the movie and it has full freedom to do

⁶¹ MANU/CO/0015/2010.

so at all available forums and platforms. Thus neither the market access is denied to the informant nor had the 'rating' done by the OP limited or restricted the market in which the informant operates. Thus the matter is, therefore, closed under Section 26(2) of the Competition Act forthwith.

*B. C. Aurora v. TV channels operators*⁶², this complaint has been transferred to the CCI under section 66 (6) of the Competition Act, 2002 upon the repeal of the MRTP Act. The informant has alleged that all T.V channels have joined together and decided that the advertisements are aired at all the channels at the same interval and durations. It will deprive the viewers of their right to view programme as per the choice at any given time, as it forces the viewers to see only one programme at a time. He further alleged that about 100-150 Channels are aired free by the Govt. and other media. The T.V channels operators are re-airing the same and charging the higher amount. The T.V channel operators have denied the allegations and have submitted that airing of T.V programme require huge funds and the advertisements is the main source of income for any TV channel. It was held by the commission that the informant has not supplied sufficient material to prove his allegations against the T.V. channel operators. Bare allegations cannot form the basis for referring the matter for investigation. So there is no need to refer the matter to DG and hence the matter is closed under section 26(2).

*Sh. Anuj Kumar Bhati v. Sony Entertainment Television (OP1)*⁶³, the informant tried to participate in the TV quiz show KBC 2 by answering questions asked by the Star India Pvt. Ltd. (OP3) through SMS service of Airtel (OP4). He was informed by the OP4 that his total score was 5875 and was asked to try more questions. But despite of the repeated attempts, he was unable to get more questions. The informant has alleged that OP3 and 4 are adopting unfair practices in selection of candidates. OP1 is allowing their employees to participate in the show which is against the rules. The commission has observed that the share of the viewers of the KBC is not so much as compared to other shows, on the basis of which it can be said that it has dominating position. In regard to section 3, it observed that there is no anti competitive

⁶² Decided on: 6 October, 2010.

⁶³ Decided on: 29th March 2011.

agreement among the OPs. So *prima facie* there is no violation of section 3 and 4 and thereby matter is closed under section 26(2).

*Consumer Guidance Society v. Hindustan Coca Cola Beverages Pvt. Ltd. and INOX Leisure Pvt. Ltd.*⁶⁴ The CCI received this case from the MRTPC on transfer under Section 66(6) of the Competition Act, 2002. The allegations by informant are that the OPs, involved into an agreement by which products has been supplied by HCCBPL including drinking water and soft drinks but at higher rate from normal price of same products in open market. Thus, the OPs started a discriminatory pricing policy by selling quality products at different prices to different buyers. It took higher prices from the buyers at ILPL complex and lower prices from the buyers in open market. Allegation on OPs is that such policies of HCCBPL imposed unjustified cost on the consumers and it also spoiled a positive environment of competition as ILPL is selling only HCCBPL products. The DG in his investigation has found that HCCBPL has complete dominance as a supplier to ILPL by the agreement signed with ILPL which gives it full right to supply the bottled water and other cold drinks in ILPL multiplexes. Further, the investigation brings out that ILPL enjoys complete monopoly in the sale of beverages within its multiplexes because it doesn't allow any vendor from outside in its premises. There are about 900 multi-screen theatres out of which HCCBPL has complete monopoly in supplying beverages to multiplexes having 214 screens and PEPSICO with multiplexes having 600 screens. It is also noted that ILPL has submitted that there are around 10000 screens in India out of which 9100 are single screen theatres and ILPL owns / operates 38 multiplexes in India. All this evidences are not sufficient in finding that who is at dominant position in the market either HCCBPL or ILPL. Furthermore, in the present case the impugned agreement, which is for a short period of four months and that too is terminable by either party by giving 30 days notice, cannot be said to have resulted in denial of market access to the competitors. Above observations doesn't prove violation of section 4 of the Act.

⁶⁴ MANU/CO/0030/2011.

*JAK Communications Pvt. Ltd. v. Sun Direct TV Pvt. Ltd.*⁶⁵ The informant, is a multi system operator, had an occupation of gathering signals of satellite TV channel, and then transfers the same to homes either directly or via local cable operators (LCOs). The informant transmits both free to air channels and pay channels. The OP is a company, which is mainly in the field of Direct to Home Operations (DTH) and signals of various satellite channels are received by them which later spread to subscribers through satellite. The Informant has said that TV signals is being transferred by them through the cable medium while the OP is using satellite medium to perform same activity. The allegation on OP is that it is indulging in predatory pricing by giving subsidy to its consumers in DTH services provided by it with an only aim of eliminating other players which is in violation of provisions of Section 4(2) of the Act. It has also been alleged that OP is also involved in the anti-competitive agreement with its consumers. On the matter of dominant position of the OP, DG has concluded that all the DTH operators in India other than Doordarshan have equal opportunity by showing free as well as paid channels so no question of dominant position of OP arises. DG, however, has concluded that subscribers' agreement between Sun Direct TV and its consumers is not in the nature of exclusive supply agreement or refusal to deal since it does not cast a condition on its consumers not to deal with other DTH operators. DG noted that subsidization of set-top box and other hard ware to the consumer is only with the aim of viewing and ownership rights are not transferred. OP remains the owner of the hardware and recovers it once the consumers discontinue the subscription. The Commission is of the opinion that case should be closed under Section 26(6) of the Act.

*Ajay Devgan Films v. Yash Raj Films Private Ltd.*⁶⁶, the informant is engaged in production of films and OP engaged in production and distribution of films. According to the informant, the OP which was dominant in the market of 'film industry in India' released its film *Ek Tha Tiger* with other film named as *Jab Tak Hai Jaan (JTHJ)*. A condition was imposed on single screen theatres that if they wanted to exhibit one film, they would have to agree to exhibit the other film. Otherwise they would not get

⁶⁵ 2011 Comp LR 519 (CCI).

⁶⁶ Case No. 66 of 2012.

the right to exhibit the single film. Due to this majority of single screen theatres entered into agreement for exhibition of both the films. The informant contended that it amounted to contravention of section 3(4)(a) and section 4(2)(a) and he would not get enough theatres for his own film *Son of Sardar*. As per the commission tie-in arrangements *per se* are not violative of section 3(4)(a) of the Act. Moreover single theatres contribute only 35% of revenue and multiplex theatres contribute about 65% of the revenue. The Informant can exhibit its film on other theatres which did not enter into agreement. The claim of the informant that OP was dominant players in the market 'film industry in India' cannot be accepted as it produced only 2-4 films each year. There is *prima facie* no contravention of section 3 and 4 of the Act. This case is, therefore, fit for closure under section 26(2) of the Act.

*Advertising Agencies Guild Informant v. Directorate of Advertising and Visual Publicity & Anr.*⁶⁷ The informant is an association of small and medium sized advertising agencies. According to the informant, the OP.1 is the nodal agency under Ministry of Information and Broadcasting (OP.2). It was created to undertake advertising and publicity for various Ministries and Departments of the Government of India. The print media provides special rates for advertising space to the OP.1, because OP1 and OP2 spent enormous budget on advertisements. According to information, the OP1 was the dominant and sole supplier of advertising services to the Government of India. Further, a circular was issued by the OP2 whereby all Government Ministries/Departments/Attached & Subordinate Offices/Field Offices were asked to route their advertisements through the OP1. The circular does not provide for any exit clause which may be used to exit the circular. So it was an anti-competitive act and likely to cause AAEC. The informant alleged that the OP1 was providing services at prices much below the prices offered by any other competing advertising agency which amounted to predatory pricing. While examining the contravention of section 4 of the Act, it was found that the total advertising market is worth Rs. 8,000 crores and with a turnover of Rs. 700 crores, the share of OP.1 in advertisement market is not even 10%. Moreover there exist more than 500 agencies in the country. OP.1 acts as a purchase department of OP.2 for purchase of advertising space and time. As a bulk

⁶⁷ Case No. 21 of 2012.

purchaser, OP.2 has a right to have its own purchase department to save costs. It can be concluded that the OP1 does not enjoy a position of strength, in the relevant market in India so the matter is closed under section 26(2) of the Act.

*Mr. Sajjan Khaitan Proprietor v. Eastern India Motion Picture Association*⁶⁸ The Informant is a distributor of video cinematographic TV serials and telecasting regional serials in Eastern India States. OP-1 is a regional association of the film producers, distributors and exhibitors. As per the information, M/s B.R. TV, Mumbai, producer of the TV serial 'Mahabharata' entrusted sole and exclusive rights to M/s Magnum TV Serials to dub the mention serial in Bengali language. M/s Magnum TV serials appointed the informant as sub-assignor. Accordingly, the informant dubbed the said serial. An agreement was implemented by the Informant for Time Slot on the basis of Revenue Sharing for the telecast dubbed version of previously mentioned serial. The two channels were given hard disks of four episodes of the serial. Thereafter, advertisement is done in daily newspaper that the serial would be started on Channel 10 at 10 AM in the morning and on CTVN Plus at 10 PM every Sunday. But in the interest of healthy growth of film industry in West Bengal the OP didn't allow the telecast of Mahabharata serial. It was also mentioned that the practice of restricting the telecast of Bengali dubbed National programs in Kolkata was prevailing for the last 13 years. The allegation by the informant is that the action of OP-1 and OP-2 in this matter is in conflicted with the provisions of the Act. The investigation of Commission has come to the point that the acts and the conduct of the OP-1 and OP-2 violated section 3(3) (b) read with section 3 (1) of the Act by restricting the distribution and exhibition of dubbed TV serials in their operating areas. The Commission has already imposed penalty on EIMPA, OP-1 in case no. 25 of 2010. Proceedings against the executive committee members are also being conducted and are in progress. Therefore, the Commission deems it fit not to impose penalty either on EIMPA or its office bearers in the present matter.

⁶⁸ 2012 Comp LR 914 (CCI).

*Shri Debapriyo Bhattacharya v. The Principal Secretary, Home (General A) Department A Block, A.P Secretariat, Hyderabad*⁶⁹ The commission in this case was contacted by informant after principal secretary issued an notification to Andhra Pradesh government which violated section 4 of the Competition Act as by this notification the State Government (OP-1) allow to give absolute license for e-ticketing to the OP-2. The first matter need to be investigated by the Commission was whether the State Government can be proceeded against before the Commission. As per the definition of enterprise a Government department involved in any activity relating to provision of service or control of service was covered under the definition. Undoubtedly, authority issuing license for providing cinema tickets to any party is not a supreme function of the State it is a power being performed under control of services. Thus, in this case AP government was covered within the jurisdiction of the Commission. A committee made by State Government to scrutinized whether a single state level operating agency is sufficient to introduce compute (sic) ticket booking or multiple agencies are needed. After studying the plan the Committee selected one agency i.e. OP-2. It was different from the report which was placed in front of the commission that it was not showing the matter of anti competition but it was a case showing the partiality in the method of selecting agent. We, therefore, concluded that there existed no evidence on the basis of which the Commission process this matter for investigation. The matter is closed herewith under Section 26(2) of the Competition Act.

*Jupiter Gaming Solutions Private Limited v. Government of Goa and Anr.*⁷⁰, allegations is that OP-1 misuses its dominant position in framing the pre-qualifying terms and conditions of the lottery tender . The informant has even informed that if one was failed to fulfill any of the condition then the participating member was rejected. Other allegation by informant is that tender conditions are framed in a way to support only one entity, viz., the M/s Martin Lottery Agency Limited (OP-2) among all the lottery service providers in the country, it's the only with minimum turnover of Rs.4000 Crores in last three years. Entry barrier was also present, to give final benefit

⁶⁹ 2012 Comp LR 172 9(CCI).

⁷⁰ 2012 Comp LR 56 (CCI).

to the OP-2 which is not good for other smaller entities including informant who otherwise fulfill all criteria of the Lottery Tender. According to the points mentioned in lotteries act no person is allowed to take charge of this activity in market without the prior permission of state government and accordingly, with its statutory power the State gave some of the entities an upper hand in the market, such entities enjoys strong position in this market. It clearly shows that OP-1 enjoys a dominant position in the market. There is no evidence to prove any intention to be biased in support of OP-1 for incorporating the impugned condition in the Lottery Tender. The truth behind is that the Tender at the end given to only one party and the conditions which were mentioned in the Lottery Tender were only to support OP-2 which is not good for the interest of other smaller entities such as the informant. The fact which OP-2 has showed are not only supporting itself but also the OP-1 but it doesn't proves that two were in a tacit arrangement in violation of section 3(3)(d) of the Act. The Commission is of the view that no violation of the provisions contained in sections 3 and 4 of the Act is made out against the OP's.

*Reliance Big Entertainment Limited etc. etc. v. Karnataka Film Chamber of Commerce and Ors.*⁷¹ KFCC is an association of film producers, distributors and theatre owners which maintains the production, distribution and exhibition of Kannada and non-Kannada films in the territory of Mysore and most of the other parts of Karnataka. Some famous producers, distributors and exhibitors of Indian film industry are informants in these cases. OPs in this case made it a compulsion for all film distributors either to become its member or to register his film with them or else distributor will not be permitted to distribute the film in OPs operating regions. The Informant has submitted that KFCC has issued a notice which mentioned that a non-Kannada film can be released only in 21 cinemas as opposed to a Kannada film which can be released in 200 cinemas in Karnataka. In this case, CCI third time found that KFCC has violated section 3 of the Competition Act, 2002 by taking some actions with the only aim of obstructing the release/ telecast of dubbed films/ TV-serial in the State of Karnataka. The plea of the associations which was stating that such actions were taken to preserve Kannada language was rejected by Commission. The

⁷¹ 2012 Comp LR 269 (CCI).

Commission was of the view that in absence of any statutory restriction of such nature, it is the viewer who has the right to choose that what they want to watch. It may be any dubbed programme or original language programme or any other programme. Trade associations cannot be the supreme controller of local language and culture. Penalty of Rs.16,82,204 was imposed on the KFCC.

*UTV Software Communications Limited, Mumbai v. Motion Pictures Association, Delhi*⁷² The informant is a producer, title holder and distributor of feature films. The OP is an association whose works are promoting and assisting the business of production, film distribution, film exhibition and also to prepare a common platform of grievances redressal for its members. The informant has allegations that the OP is taking advantage of its dominant position by imposing obstructive terms and conditions vide its Memorandum of Association and Articles of Association. The OP forcefully takes sign of its member on a Producer Distributor Certificate and an Acquiring Form for registration of the films. In this case the informant didn't signed any of the above mentioned as a result of which OP didn't let the film register and release in OP under control areas. It has some conditions on which the members have to convince for shifting of all commercial and non commercial rights of the film including the copyrights plus commercial video rights through any media including video parLOUR rights and telecasting rights to the distributor and imposes a hold back for the period of 5 years is imposed. It is a compulsion by OP for the producer/suppliers and distributors to sign the declaration and undertaking completing the registration process of a film before the releasing of the film in the territory. One more condition is that form need to be signed by the members without any corrections or editing made in the form. Further, there is a penalty mentioned in the Film Acquiring Rules if the premature satellite telecast of films disobeys the undertaking given by the producers/distributors. UTV had been forced by MPA for registering the movie "7 khoun maaf" and for depositing the acquiring form and affidavit as prescribed by it. Since the release date of movie was due so UTV left with no choice but to agree on the condition of MPA and to submit the required documents for easy release of the movie. So at the end Commission has decided that since MPA is not

⁷² MANU/CO/0053/2012.

involved in any of the activity mentioned in section 2(h) of the Act it does not recognize to be 'enterprise' and under section 4 its conduct also cannot be examined. The Commission has found rules of MPA as violative of section 3(3)(b) read with section 3(1) of the Act since the distribution and exhibition of films in its operating areas are restricted. The association rules are anti-competitive in nature and not in favor of free competition in the market. However, since penalty has already been imposed on MPA the Commission deems is not good to impose further.

*M/s Kansan News Pvt. Ltd. v. M/s Fast Way Transmission Pvt. Ltd.*⁷³ The informant is TV channel known as 'Day and Night News' and is operating in the states of Punjab, Haryana, Himachal Pradesh and Union Territory of Chandigarh. The Opposite Parties are the Multi System Operators. It has been averred in the case that the OP have control over 95 % of the cable network distribution system in the State of Punjab and Union Territory of Chandigarh. If in Punjab any broadcaster wants to telecast and approach the viewers then he is left with no other option but to approach the OPs as they have virtual monopoly over the entire cable network. The informant has alleged that OPs have formed cartel in Punjab and the Union Territory of Chandigarh, and are taking advantage of their dominant position by behaving in an illegal, arbitrary and discriminatory manner, and OPs even control the transmission and broadcasting services of TV channels in Punjab and Union Territory of Chandigarh, resulting in denial of market access to its channel, thus, breach section 4 of the Act. Owing to the previously mentioned illegal and anticompetitive act of the OPs, the informant issued a legal notice to the OP. In response of the legal notice, the OPs without mentioning any reason ended all the Channel Placement Agreements. Other allegation by informant is that the interruptions that caused interference with transmission of informant's channel were intentionally and was done with the only aim of and to force the informant to make them follow the dictates of OP in regard to non-telecast/non-coverage of news which are not in favour of the present ruling political party of Punjab. Because of all these informant has been facing huge financial losses as well as its reputation also spoil in the market. The Commission has found that the OP is accused of violation of section 4(2)(c) of the Act. The commission, as per the Section

⁷³ MANU/CO/ 0063/2012.

27 (b) of the Act, imposed penalty on the concerns of the OP group for the last three preceding financial years. The Commission imposes a penalty of Rs. 80,401,141 on the entities of the OP group. With the use of section 27 of the act commission also ordered the OPs to stop such anti competitive policy which resulted in denial of market access.

M/s. Shri Ashtavinayak Cine Vision Limited v. PVR Picture Limited and Ors. ⁷⁴

Informant is a company carrying on the business as a Production House and also a distributor of cinematographic films. The OP-1 is in the business of distribution and exhibition of feature films whereas the OP-2 to 17 are associations of distributors who are registered members under the Societies Registration Act or under the Trade Union Act of their respective States. The OP-18 is a company involved in the business of distribution of feature films. The informant has averred that in the film industry a very common procedure which is need to be followed by a distributor is that the distributor need to register a film through the distributors association for the territory in which the distributor wants to carry forward his business. Once the registration is completed distributor is permitted to book the theatres for the release of feature films. The allegation on OPs is that associations make a compulsion for every distributor to register itself with associations before the exhibition of such films. And distributor who doesn't follow their conditions is not permitted to exhibit its film in the region of association. The informant produced a film named "Khatta Meetha" and assigned the OP-1 as one of the distributors. Because of some conflict over the realization of the dues, the OP-1 and informant decided not to work together. Later informant produced another feature named 'Rockstar' and assigned the OP-18 as one of the distributor of the said film. When the OP-18 was finding a way to book the theaters for the film, OP-2 notified the OP-18 that registration of film could not be done as the film had already been registered with M/s. Puri Sons and secondly, a complaint also filed in association against the informant. It was found in DG investigation that OP1 and OP2 had breach the provisions of Section 3(3) (b) of the Act. The DG did not find any other member of associations the accused of violation of the provisions of the Act. The Commission ordered the OP-2 to stop these anti

⁷⁴ 2013 Comp LR 368 (CCI).

competitive policies and to resolve the monetary disputes with its members. As a penalty was imposed upon it in the previous case it is unnecessary to impose any penalty upon it in the present case.

*Sh. Surinder Singh Barmi v. BCCI*⁷⁵ BCCI is the regulator/custodian of the sport of cricket in India as well as it organizes cricket events and other associated activities such as media broadcasting. The informant in this case was a cricket fan who alleged that there is some misconduct relating to grant of franchise rights; media rights for coverage of the league; award of sponsorship rights and other local contracts related to organization of IPL. The CCI further held that BCCI was in a dominant position in the relevant market for the following reasons: (a) BCCI was a *de facto* regulator of cricket in India; (b) ICC by-laws empowered BCCI. In India BCCI has the right to sanction/approve cricket events and consequently, its approval is necessary by any private professional league; (c) BCCI was at a significant commercial advantage by owning infrastructure; (d) BCCI controlled many cricketers under contract. The CCI observed that BCCI's regulatory overlapped with commercial roles. For being the part of commercial agreements BCCI used regulatory power. Regarding to this, Clause 9.1(c)(i) of the IPL media rights agreement was scrutinized by the CCI by which BCCI had agreed to not organize, approve, recognize or support any other professional domestic T- 20 tournament which is competitive to the IPL. But CCI said that the mentioned restriction was anti-competitive in nature because this restriction will result in denial of market access to any big competitor in the market. This was seen as violation of Section 4(2)(c) of the competition Act. The CCI observed that BCCI had overreached its powers under ICC bye laws to sanction/approve cricket events to protect its market. For the above violation, the CCI penalized BCCI of Rs. 52.24 Crores.

*M/s. Reliance Big Entertainment Private Limited v. Tamil Nadu Film Exhibitors Association*⁷⁶ The informant is a company mainly involved in production and distribution of cinematographic films. The OP is a trade association and many film exhibitors/theaters in Tamil Nadu state are its members. According to an agreement

⁷⁵ 2013 Comp LR 297 (CCI).

⁷⁶ 2013 Comp LR 828 (CCI).

between the informant and M/s. Balaji Real Media Private Limited, the informant has got the right to distribute a film called *Osthe* in Tamil language, which was a remake of Hindi film *Dabang*. The informant received an e-mail from the association of OP in which it was mentioned that OP association is not going to release the mentioned film in any of the screens of its members as the mentioned film's Satellite Rights were granted to M/s. Sun TV. The informant further stated from various newspaper it came to its notice that M/s. Sun TV need to pay some money to few of the members of the OP association so to take their money back from M/s. Sun TV, the OP association imposed a ban to all the films either produced or distributed by M/s. Sun TV or even the films whose Satellite Rights are granted to M/s. Sun TV. The informant finally said that banning only because the rights of mentioned films are granted to M/s. Sun TV was totally unfair and it clearly violated the provisions of the Act. The Commission ordered the OP not to repeat such anti-competitive activities in future. The Commission imposed penalty upon the film associations @ 10% of their respective average receipts income i.e. Rs 41393.04.

*Sh. Dhanraj Pillay and Others v. M/s. Hockey India*⁷⁷ The informant in this case is a former Olympian and Captain of Indian Hockey Team and case is filed against Hockey India (HI). IHF (Indian Hockey Federation) and Nimbus (sports rights management and marketing company) called the WSH (World Series Hockey), designed and conducted on a franchisee model. The League was to feature 8 city based teams and players from India and overseas. It was averred by the informants that FIH and HI were forbidding the players from participating in WSH, on account of it being an unsanctioned event. Some particular allegations by the informants are as under: (i) Powers are being misused by HI with an aim of excluding WSH and to support its own League. Such action resulted in denial of market access to rivals, which is in violation of Section 4(2)(c) of the Act.(ii) HI is also taking advantage of its position in organizing international events in India which will give it a path to enter into the market of conducting a domestic event in India, which is in violation of Section 4(2)(e) of the Act.(iii) The restrictions mentioned in an Agreement between HI and players, constitute a breach of Section 3(4) of the Act. On the issue of jurisdiction of

⁷⁷ 2013 Comp LR 543 (CCI).

the Commission the DG in his report has observed that, while it is a well known fact that HI and FIH are non-profit organizations, however, the activities done by the HI as well as FIH such as grant of franchisee rights, media rights, television rights, sponsorship rights, and all other rights, involves generation of revenue and has a commercial component to it. Such activities have to be seen differently from the “not-for-profit” nature of certain other activities of HI and FIH. The prime purposes of these activities are to increase revenues and make profit and these activities are performed through commercial agreement. The HI and FIH are hence squarely covered within the meaning of the inclusive definition of “person” contained in the Act. The Commission after considering all the aspects and facts relating to the case came out with a decision that there is no violation of Section 3(3)(b), 3(4), 4(2)(a), 4(2)(c) and 4(2)(e) of the Act in this instance.

*Prasar Bharti (Broadcasting Corporation of India) v. TAM Media Research (P.) Ltd.*⁷⁸

The OP is alleged of violating section 4 of the act by abusing its dominant position because of being the only company in India for checking television viewership. The Informant is a public broadcasting corporation which runs Doordarshan and All India Radio Networks. As per the information, public broadcasting services along with broadcasting news and entertainment shows is provided by informant. It covers a vast area in rural as well as in urban areas. Doordarshan was the only TV broadcaster in the entire country by which services of terrestrial transmission is issued. Such services were free to air and could be caught by a usual antenna which is placed at roof top. In many broadcasting firms like that of informant advertisement plays a major role in earning. The advertisers/ advertising firms arrange their advertisements on various channels on the basis of viewership rating given by the OP. It is submitted with an intention of checking TRP/TVR the OP used an electronic gadget called 'People Meter' connected to TV sets in selected sample households. This gadget detected what was the mostly viewed channel/programme on the TV sets in the homes and for how long. All the data then arranged by the OP and published weekly/monthly reports in the form of TRP/TVR. The Informant further blamed OP of fully owned and commanded by advertising companies thus they had their own

⁷⁸ 2013 Comp LR 676 (CCI).

interest in producing the data beneficial for their owners. Such activities of OP disturbed fair competition which in further resulted in the contravention of the provisions of the Competition Act, 2002, especially section 4(2)(b)(i) and (ii). OP fixed 8000 meters in total and those are only in urban areas not in rural areas. It is a fact that rural and urban areas have different taste regarding cultural programmes and other programmes. Therefore, it was true that the original picture of TVR/TRP of Doordarshan which has a great influence in all rural areas was not displaying by OP. Due to showing such discriminatory behaviour between rural and urban viewers and to present TRP only on the choices of urban population, the OP was found to be engaged in acts of denial of advertisement market. As a result of which, the Commission is of the view that the evidences were sufficient to refer the case to the Director General (DG) to conduct an investigation against the OP under section 26(1) of the Act.

*Shri Yogesh Ganeshlaji Somani v. Zee Turner Ltd. and Star Den Media Services Pvt. Ltd.*⁷⁹ The Informant is a customer of satellite TV channels one who receives various channels from the local cable operator of his area. The OPs No. 1 & 2 is the companies registered under the provisions of the Companies Act, 1956. OP-1 is a partnership between Zee Entertainment Enterprises Ltd. and Turner International India Pvt. Ltd. and is an agent of several broadcasters or channel owners whose channels it is authorized to sell several distributors of channels like Multisystem operators (MSO), Direct to Home Operators (DTHO) and the Internet Protocol Television Operators (IPTVO). Same operations are performed by OP-2 also. Further, OP-2 is also a 50-50% partnership between STAR and DEN. OP-1 is also a 74:26% partnership between Zee and Turner. The Informant had got to know from the newspapers and other news items that Opposite Parties No. 1 & 2 were forming a 50:50 joint venture company, namely, Media Pro Enterprise India Pvt. Ltd. (JV) to combine issue of their respective channel bouquets following which JV would jointly aggregate and distribute channels licensed to Opposite Parties No. 1 & 2 and collect the subscription revenue of the combined entity. In total 63 channels were offered by both the Opposite Parties in different languages. The allegation is that the partnership

⁷⁹ 2013 Comp LR 492 (CCI).

between Opposite Parties No. 1 & 2 would strengthen their and affect other players in the market. The proposed JV would force the small players to close or to combine with each other. The JV in the market would not only affect the competition among the broadcasters/channel owners but also would adversely affect the interests of distributors like MSO, DTH operators and IPTV operators which in turn would adversely affect the interests of end subscribers/consumers. The Commission, after considering the information concluded that there exists a case in the matter and therefore, directed the DG under section 26(1) of the Act to conduct an investigation into the matter and submit an investigation report. DG has reported that in view of the market conditions and TRAI Regulations, there is no scope for the aggregators or broadcasters in the market to indulge in the anti-competitive conduct of controlling the supply of their channels to MSOs or other distribution platforms. The analysis of the conduct of pre and post JV formation has not revealed any evidence to show that, it has indulged in violation of the provisions of section 3(3) (h) of the Act. The investigation has therefore concluded that in view of the present regulatory framework, the formation of the JV has neither created any entry barriers for new broadcasters nor resulted in affecting the competition for existing broadcasters. The Commission is of the view that there is no evidence on record which can substantiate the allegations of the Informant that the Opposite Parties have violated provisions of section 3(3) (a) or 3(3) (b) of the Act in forming a JV which distribute their channels to the MSOs, DTHOs and IPTVOs. In view of the above discussion, the Commission observes that the Opposite Parties have not contravened either the provisions of Section 3(3) or Section 4 of the Act. Therefore, given the facts and circumstances of the case, the Commission is of the view that the proceedings in the instant case should be closed under section 26(6) of the Act as the Commission agrees with the recommendation of the DG in his report.

*Dish TV India Limited v. Hathway Cable & Datacom Limited and Ors.*⁸⁰ The information is filed by a Direct-to-Home ('DTH') operator in India. Multi System Operators ('MSOs'), are the OPs and they are operating in various states in India. The Informant's allegations, inter alia, relate to charging of high carriage and

⁸⁰ MANU/CO/0029/2014.

placement fee and under reporting of subscribers by the OPs. The Informant contended that the same amounts to abuse of dominance under the provisions of Section 4. By this move, the MSOs were damaging the fair play arena and the DTH operators with more effective technology and a higher quality product were not able to compete well. The Informant has attributed collective dominance to all the OPs together, in the geographical markets of their operation and collective abuse. Therefore, the point rises here is whether the abuse of collective dominance is covered under Section 4 of the Act. It is observed in Indian law there is no such concept called 'collective dominance'. In Section 4 of the Act the word group is not used to refer different and completely independent corporate entities or enterprises. So no evidences were found on the basis of which an investigation can be made by the Director General under Section 26(1) of the Act. It is a fit case for closure under 26(2) of the Act and the same is hereby closed.

*M/s. Consim Info Private Limited Informant v. M/s. Google Inc., USA and M/s. Google India Private Limited*⁸¹ A case under section 19(1)(a) was filed against M/s. Google Inc. and M/s. Google India Private Limited (collectively 'Google') by M/s. Consim Info Private Limited, with allegation that Google uses some discriminatory measures to operate its business of online search and search advertising which is creating an unfavorable environment for others by supporting only the services provided by itself and of its partners by manipulating search algorithms. Allegation on Google is that it provides several vertical services like YouTube, Google News, Google Maps etc. and for promoting these services, it mixes many of vertical results into organic search results. Due to such mechanism, whenever an internet user searches for some information, Google's vertical search partners will appear predominantly irrespective of the information search by the user. Subsequently, another informant is Consumer Unity & Trust Society (CUTS) against Google; here allegation against Google was abusing its dominant position by malpractices like search bias, search manipulation, denial of access and entry barriers was created for competing search engines etc. During investigations, it appears that the DG asks for certain information and documents from Google. It seems like Google did not provide the information as

⁸¹ 2014 Comp LR 338 (CCI).

required by the Office of the DG. Therefore, the DG took the matter to the Commission to start the proceedings against Google in terms of the provisions included in sections 43 and 45 of the Act. In such situation, the Commission took no pause in holding that the OP have provided themselves responsible to be preceded and punished according to the provisions contained in section 43 of the Act. A penalty of rupees 1 Crore have been imposed upon OP. The commission further ordered the OP to deposit the penalty within 60 days from the receipt of the order. The OP is also ordered to provide the information/documents required by the DG vide the notices under consideration within a period of 10 days from the receipt of this order, if not already furnished.

*HT Media Limited v. Super Cassettes Industries Limited*⁸² The informant is from one of the popular media companies in India and an FM radio channel called fever 104 launched by it, and is stated that Fever 104 largely plays Bollywood film music. OP works under the brand name of T series, involved in the business of manufacture, production and publication of music and videos in India and worldwide and also presents its collection of music to television stations, radio stations and mobile companies for use and broadcast. The OP has control over 70% of the latest Bollywood music, and allegation at OP is that it abused its dominant position by (i) by taking high amount in the form of licence fee from the informant for giving them the rights of using their music content on Fever 104 radio station; (ii) imposing minimum commitment charges ('MCC') to be paid to the OP per month irrespective of actual needle hour of broadcast of the opposite party's music content by the informant. And the above mentioned two conditions violated second 4 of the act. The informant has also alleged that the OP has violated section 3 of the Act by making it mandatory for radio channels including fever 104 to signed license agreement before using its music content and OP's conditions were highly anti competitive in nature. Further allegation on OP is that informant need to pay a large amount as MCC than the amount actually incurred by it based on the actual amount of needle hour consumed by the OP's music, which is unfair and abusive. The Commission found that OP has violated the provisions of section 4(2)(a)(i) of the Act by using discriminatory condition of MCC

⁸² 2014 Comp LR 129 (CCI).

against private FM radio stations. The Commission imposed penalty on the OP at the rate of 8% of its average turnover of the last three years of the company amounting to Rs. 2,83,28,000.

*Cinemax India Limited v. Film Distributors Association*⁸³ The Informant is a company working in the field of films exhibition at its cinema halls. The OP is an association of film distributors. Its aim is to fight for the film distributors in Kerala by uplifting and assisting proper distribution of feature films in the Kerala. It is informed that there are almost 241 distributors in Kerala, out of which 221 are the members of FDA (K) and 20 are not the members of FDA(K). It is also alleged that members of FDA (K) are behaving like a cartel. Together the FDA (K) members are distributors for almost all the regional language films in Kerala. By which it can be concluded that FDA(K) had an upper hand in the distribution of Malayalam language films in Kerala. Other allegation at FDA (K) is that it acts as a supreme body to control the revenue share as a result of which misuses its dominant position by imposing unjust, partial and inadequate revenue share terms on the Informant. The revenue which was imposed by the OP was bind on its members and exhibitors. So if members want to release Malayalam movie in their multiplexes they need to pay revenue share decided by the OP. If any member decided not to pay then OP didn't let the movie to be exhibited in other theaters in Kerala and OP also imposed fines/penalties on such distributors/members. The Commission is the view that impugned acts/conduct of FDA (K) is in violation of the provisions of section 3(3)(a)/3(3)(b) read with section 3(1) of the Act. The Commission imposes penalty of 5% i.e. Rs. 75315 of the average turnover of the last three years.

*K. Sera Sera Digital Cinema Pvt. Ltd. v. Digital Cinema Initiatives LLC and Ors.*⁸⁴ As per the information, the Informant, an ISO certified company, is a Digital Cinema service provider involved in the business of digital projection and screening of films in India through a specific technology known as its proprietary Sky Cinex Technology. It has been submitted that it is India's one of the leading digital cinema service provider having contacts with almost 300 cinema theatres across the country. The technology

⁸³ 2015 Comp LR 81 (CCI).

⁸⁴ 2015 Comp LR 482 (CCI).

used by the Informant same as that of other leading digital cinema service providers across the world. The Informant has further submitted that it has its projectors and servers installed in almost 300 movie theatres across India to provide its services. The cost of installation of one such system is stated to be Rs. 15,00,000/- approx per theatre, which is borne by the Informant itself being the service provider. The Informant is said to have invested huge money in the course of its business. With the help of its services and investments, the Informant is connected to more than 100 million viewers in a year in India through its digital cinema services and technology. It is further alleged that the studios of OP-2 to OP-7 signed an anti-competitive agreement among themselves to release their movies in India in digital form only through Digital Cinema Initiatives (DCI) compliant servers and projectors. The cartel of the OPs is alleged to have forced the Indian companies, engaged in the business of digital cinema technology, to follow their standards and conditions even if they have better technology. It is alleged that the Informant and other companies are not allowed by the OPs to exhibit the movies produced by them. The Informant has alleged violation of the provisions of section 3 and 4 of the Act. It is noted that DCI compliant is better than non-DCI compliant format as far as quality and security is concerned. Piracy is difficult in case of DCI compliant format of the Act is made out against the OPs in the instant matter. Accordingly, the matter is closed. The Commission found no evidence of violation of the provisions of section 3 and 4 under the provisions of section 26(2) of the Act.

*Ranbir Singh v. Department of Information and Public Relations, Government of Punjab and Ors.*⁸⁵ According to information, OPs are the distributors of almost all the advertisements and communications on behalf of their state government. These advertisements deliberately show the government's achievements and programs as well as also give statistics about their respective state government's programs, schemes etc. The Informant has alleged that OPs adopted a practice of withholding publication of advertisements and communications from those newspapers and publishing houses which have published Articles critical of policies and practices of the government in power in the respective state. The Informant has alleged that OPs

⁸⁵ 2015 Comp LR 888 (CCI).

have suppressed such publications which cause adverse impact on those read them as well as loss of income to the above mentioned publishing houses. The Informant has submitted that OPs have a dominant place as it is the primary and sometimes the only authority in their respective state are in main task of advertisements publishing and communication with several media. And if OPs didn't find any competitors their respective relevant market then OP's enjoy monopoly. Other allegation by informant is that OPs abused its dominant position by stopping the publication of government advertisements in some newspaper which is violation of the provisions of section 4(2)(b) (i), 4(2)(c) and section 4(2)(d) of the Act. It is noted that the government advertising at central or state level, does not feature in top 6 spenders on advertising. Therefore, Commission has a view that OPs are not dominating in their field. The Commission didn't find any evidence of violation of the provisions of section 4 of the Act which is filed against OPs in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.

*Cloudwalker Streaming Technologies Private Limited v. Bennett, Coleman and Co. Ltd.*⁸⁶ As per the case, the Informant is a movie distributor and this motive has own online portal. A French film festival was organized by the informant with 'unifrance films' as a result of which French movies were showed on informant's portal. Main objective was to promote French movies in other countries. With a view to bring the online film festival in the notice of large people and an aim to host the festival informant decided to advertise with Times group owned and run by OP. So OP gave the 'Times Group Entertainment Rate Card' ('entertainment card') to the Informant, which mentioned the prices of all cinema/entertainment advertisements. However, when the Informant reached to its daily newspaper 'Bombay Times', OP told informant that his/her advertisements come under 'display category' which cost approximately 3 times more the rate for 'entertainment category'.

As per the Informant, OP has a dominant position in Indian media and entertainment Industry; and in a position to charge higher rates for advertisements in an arbitrary manner. The Commission is of the view that although OP may be one of the leading

⁸⁶ MANU/CO/0085/2015.

English daily newspaper in Mumbai, but many other reputed English newspapers are present in Mumbai which gives a choice to informant to publish its advertisement in any other English newspaper which even prevents OP to show its monopoly and make other market forces independent. The Commission found no evidences of violation of the provisions of section 4 of the Act is filed against OP in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.

*Kerala Cine Exhibitors Association Film Chamber Building v. Kerala Film Exhibitors Federation Cee Pee Building and Ors.*⁸⁷ The Informant is an association of about 171 cinema theatre owners in Kerala and the members of the Informant are in the business of exhibition of cinema/running of theatres under licenses in Kerala. OP-1 is a group of film theatre owners present new films/fresh releases in Kerala, OP-2 is an association of film distributors, OP-3 is a film producers association of Malayalam film industry, OP-4 is a department under the Government of Kerala acts as a mediator between the industry and state and its complete funding is through government, OP-5, the Government of Kerala, according to an allegation of the informant the OPs divided the theatres under category A & B. However, there were some members theatres of the informant who doesn't come under any of the classification, and then OP-1, OP-2 and O-3 start some anti competitive policy i.e the OPs do not give any fresh release to the informant member. Other allegation is that OP-1 and OP-2 formed a cartel which didn't allow informant to release any new movies in their theatres. The Commission is of the view that by controlling and restricted the release of movies through an agreement is said to be the breach of provisions of section 3(3)(b) read with section 3(1) of the Act. However, no evidences against OP-3, OP-4 and OP-5 are found about violation of any of the provisions of section 3 of the Act in the present case. The Commission orders the OP-1 and OP-2 and its office bearers listed above to stop and abstain all the activities which are found to be anti competitive in nature in terms of the provisions of section 3 of the Act in the preceding paragraphs of the order. The commission also fined OP-1 of Rs. 56,134/ for two

⁸⁷ 2015 Comp LR 666 (CCI).

financial years 2010-11 and 2011-12. Resultantly, a penalty of Rs. 45,189/ is imposed on OP-2 for three financial years 2011-12, 2012-13, and 2013-14.

*Kannada Grahakara Koota and Ors. v. Karnataka Film Chamber of Commerce*⁸⁸ The Informant is an association of viewers within the State of Karnataka. The OP's are the various trade associations whose members are involved in the business of films and TV serials exhibition, production and distribution etc. The Informants have complained in the last five years OP's haven't telecast any shows/films other than Kannada language. The Commission directed OP-1, OP-2 and OP-4 to stop such practices which are anti-competitive in terms of the provisions of section 3(1) read with section 3(3)(b) of the Act. Finally, a penalty of Rs. 16,82,204 was imposed on OP-1 for three financial years. Similarly, a penalty of Rs. 1,74,293 and Rs. 1,68,124 was imposed on OP-2 and OP-4 respectively for three financial years.

*Makkal Tholai Kuzhumam Ltd. v. Tamil Nadu Arasu Cable TV Corporation Ltd.*⁸⁹ The informant has filed the case under Sec. 19(1)(a), alleging violation of the provisions of Sec. 3 and 4 of the Act. The Informant is a broadcaster disseminating TV signals through designated satellite. It transmits various programmes in Tamil language with intermittent news contents. Permission has been granted from Ministry of I & B for its TV Channel named as "Makkal TV". OP is a company fully owned by Tamil Nadu government; act as a Multi System Operator (MSO) in Tamil Nadu. To increase the signal quality and number of channels, Government of India has decided to digitalize the cable TV industry in a phased manner. The TV channel of the Informant is stated to be re-transmitted in the platforms of all the DTH service providers without any carriage fee. OP purposely moved the Informant's channel from S-4 band to U-40 band because the Informant was showing the state sponsored liquor raj and failure of State Government to impose prohibition on liquor in the State. Due to this move, the Informant's channel was not seen in almost all the parts in the network of OP in rural areas. It is an allegation on OP that it has passed a decree dismissed the plea of the informant and instead put the informant in an unjust condition to pay Rs.62,02,000/- and service tax per month to continue its transmission in the nearest Band, with the

⁸⁸ 2015 Comp LR 697 (CCI).

⁸⁹ MANU/CO/0084/2015.

only intention to discriminate, single out and deny access to market to the Informant. Such behaviour of OP is alleged to be in violation of the provisions of section 3(3)(b) of the Act. Further, OP neither left any room for negotiation nor gave a fair deal which shall be construed as total refusal to deal. Thus, it is alleged that OP has violated section 3(4)(d) of the Act as well. The Informant alleged at OP that it enjoys a virtual monopoly and supreme position with a market share of 95% in the market. It is said to be violation of the provisions of section 4(2)(a)(i) of the Act. It cannot be ignored that MSOs also suffer various expenses including the expenditure towards payment to 'pay channels' and as such floating of the tender by the OP to augment its revenue to meet such expenses, can neither be termed as unfair or discriminatory in any manner. In fact, the OP followed the process which was in terms of the policy framed by the Government which was fair and transparent until it adopted an open auction method. The Commission is of view that no case can be framed against the OP for breach of the provisions of section 4 of the Act and the information is ordered to be closed forthwith in terms of the provisions contained in section 26(2) of the Act.

*N. K. Prakash Babu HMT Cinema, Bangalore v. The President, South Indian Film Chamber of Commerce*⁹⁰, the Informant has alleged that due to the pressure of OPs, the producers/ distributors of Malayalam films have stopped the supply of Malayalam films to him. He said that the OPs have orally entered into an 'anti-competitive agreement' to not supply Malayalam films to him and have abused their dominant position. The Commission finds that it is the discretion of the individual producer/ distributor of a movie to engage theatres for exhibiting movies and OP and its office bearers have no role and power to insist an individual producer/ distributor to release a particular movie in a particular theatre. It is also noted that there were incidents of illegal recording of the Malayalam films for piracy in the Informant's theatre. The Commission finds that no case of contravention of the provisions of Sections 3 and 4 of the Act is made out against the OPs in the instant matter. Accordingly, the matter is closed under the provisions of Section 26(2) of the Act.

⁹⁰ CCI, Case No. 64 of 2016.

*Eskay Video Pvt. Ltd. v. Real Image Media Technologies Pvt. Ltd.*⁹¹, as per the information, OP 1 and OP 3 are manufacturing Digital Projection Systems (DPS), which are used for projection of films in cinema halls, under the brand names 'Qube' and 'UFO'. OP 2 and OP 4 is the sole distributor of 'Qube' and 'UFO' brand of DPS in the state of WB. The Informant is the distributor of 'UMW' brand of DPS in WB, which is being manufactured by other company. 450 cinema halls in WB are using DPS and they are fully dependent on the DPS manufacturers and distributors. The Informant has alleged that although it is possible for an exhibitor/ cinema hall owner to have more than one DPS for projection of different films at different times of the day, but the OPs through their anti-competitive practices are preventing this. The Informant has alleged that OP 2, by abusing its dominant position, stopped the distribution of its twelve films to 74 cinema halls in WB which had switched over to 'UMW' brand of DPS.

It is observed by the commission that such allegations do not hold any ground as there is no indication of any sort of anti-competitive agreement in violation of the provisions of Section 3 of the Act. The choice to use a certain kind of DPS is a legitimate business decision of a cinema hall owner. In regard to dominant position of OP, there are many established manufacturers of DPS such as Sony, Barco, Imax all over the country. The Commission finds that no case of contravention of the provisions of either Section 3 or 4 of the Act is made out against any of the OPs in the instant matter. Accordingly, the matter is closed under the provisions of Section 26(2) of the Act.

*Picasso Animation Private Limited (PAPL) v. Picasso Digital Media Pvt. Limited (PDMPL)*⁹² As per the case, the Informant is in the business of animation; 3D techniques etc. And running a brand called 'PICASSO'. Whereas OP has its own college named as 'PICASSO ANIMATION COLLEGE'- 'A venture of Maharishi Group'. Allegation at OP is that it is using informant brand 'Picasso' in partnership with Maharishi group at corporate level with an aim of reducing competition due to which informant trade practice got restricted. The Informant told that one promoter of

⁹¹ CCI, Case No. 57 of 2016.

⁹² MANU/CO/0062/2016.

OP, Mr. A.B.R.P. Reddy had applied for 'Picasso' trade name in his personal capacity in the year 2007 showing its use since 2003. Other allegation of informant is that his logo/brand name "Picasso" is being misused by OP by misusing its dominant position. Further allegation by Informant is that such act of OP has caused the loss of goodwill and business to the Informant. It is noted that other than OP, many other companies provides online and offline preparation in animation courses. In the time of huge competition with many other reputed institutions it can't be said that OP is dominating in the market. The Commission concluded that no case of violation of the provisions of either Section 3 or 4 of the Act can be framed against OP. The matter is accordingly closed under Section 26(2) of the Act.

*Justickets Pvt. Ltd. v. Big Tree Entertainment Pvt. Ltd. and Ors.*⁹³ As per the case, the Informant is in the business of online movie ticketing mainly in the states of Andhra Pradesh and Telangana, and informant also has a website called <https://www.justickets.in>. It also contains a software called 'Quick Tickets' which is provided by them for those who book tickets at counters in theatres at free of charge to sell tickets and also for interfacing with the Justickets website or with any other movie ticketing website. OP-1 is involved in the business of online movie ticketing through its website "BookMyShow.com" (BMS). It earns by charging a reasonable fee on the tickets sold through its website. OP-2 is a company incorporated in New Zealand. It provides box office ticketing software "Vista", OP-1 is the only distributor for Vista box office software in India. It is stated that OP-1 has been using online movie booking space since 2007 through BMS and is a leading contender with market share of almost 90%. OP-2, has almost 68% of market share in India. In india nearly 95% theatres including multiplexes are operating Vista on BMS portal. Also, many of famous players like PVR, Cinapolis and Inox, use the BMS portal. It is alleged that OP-1 is abusing its dominant position because of an easy access to Vista API which is an obstacle for others. OP-2 conducts of not allowing others portals to access Vista API is said to be abusive. Thus, the Informant has filed the case against each of the OPs in violation of Sections 4(2)(c) and 4(2)(e) of the Act. As per the

⁹³ 2017 Comp LR 410 (CCI).

Commission the OPs may have taken some time in giving API for the informant use but have never denied dealing. Further, the logic explained by OP's for late providing the access to Vista API was believable. Thus, the commission is of the view that no evidence proves the violation of Section 4 of the Act. Also, no evidence of violation of provisions of Section 3(4) is found in the case. Accordingly, the matter is closed forthwith in terms of the provisions of Section 26(2) of the Act.

*Thiruvananthapuram Entertainment Network (P) Ltd. v. Star India Pvt. Ltd.*⁹⁴ The informant has filed the information under Sec. 19(1)(a), accusing the violation of provisions of Sec. 3 and 4 of the Act. The Informant is a company involved in the business of Cable Television Distribution in the State of Kerala. The OP is a broadcaster of satellite-based T.V. Channels in India having various channels including Star Plus, Star Sports, Star Gold, etc. The informant has to sign agreements to provide OPs channels to its customer as a result of which the OP gives many channels to the Informant for monetary consideration. The allegation of the Informant is that OP has signed such agreements with many other T.V. Channels Distributors, including the Informant, which is anti-competitive in nature, as over a period of time, it started showing price discrimination. Once the previous agreement expired, the informant was forced by OP to implement the next agreement at an even higher rate than in previous agreement and a threat to stop major sports and regional channels, if such rate was not paid. Hence, the Informant, left with no option, was convinced to sign the agreements at such high rates. It is alleged that such disparity is done by the OP to eliminate small-scale broadcasters from the State of Kerala and creating a monopoly of only big players. The Commission found that violation of Sec. 3 of the Act is not made out in the present case but the OP has strong position in the relevant market. The Commission hereby directs the DG to investigate the matter to verify whether the OP has indulged in violation of the provisions of Sec. 4(2) (a) (ii) of the Act in the market.

⁹⁴ MANU/CO/0080/2017.

*Clear Media (India) Private Limited v. Prasar Bharti and Ors.*⁹⁵ The Informant is in the business of distributing Frequency Modulation (FM) Radio Broadcasting Services to public in various cities across the country. OP-1 is an entity of Government of India whose work is to provide infrastructure facility to FM radio broadcasters. OP-2 is the Ministry of Information and Broadcasting, which is mainly responsible for formulating guidelines/ regulations and also issuing policies and licenses for operation of FM radio broadcasters, such as the Informant. It is submitted that the Policy Guidelines of OP-2 on expansion of FM radio broadcasting services mandate, without exception, that all private FM radio broadcasters have to co-locate their transmission facilities with existing infrastructure of OP-1. Accordingly, the Informant came into an contact with OP-1 for usage of its Common Transmission Infrastructure. It is further said that CTI collapsed the Informant then signed another agreement with OP-1 for use of its Interim Transmission Infrastructure on an interim basis. However, OP-1, issued a provisional invoice, calling upon the Informant to pay advance license fee for the same. The Informant has further said that the OP has misused their dominant position. The Commission noticed that OP-2 is a government department, the impugned conduct of OP-2 is in relation with its policy making functions which does not involve any sort of economic activity. As a result, no case of violation is filed against OP-2. Not enough evidence in the case of contravention of Section 3 of the Act is made out against OP-1. OP-1 enjoys dominant position in the relevant market for provision of infrastructural facilities for FM radio broadcasting in Delhi. The Commission deems it fit to order an investigation in the present case.

*Next Radio Limited v. Prasar Bharti, Directorate General, All India Radio and Ors.*⁹⁶ The Informant is a company which is in the field of Frequency Modulation (FM) Radio broadcasting services in many cities across India. OP-1 is an entity under GOI which provides infrastructure facilities to the operators of Radio and FM. OP-2 is the nodal Ministry for Information and Broadcasting of the Government of India use to frame guidelines, regulations and policies. Licenses to the Radio and FM broadcasters in India are also issued by OP-2. An Agreement of license was signed between OP-1

⁹⁵ 2017 Comp LR 812 (CCI).

⁹⁶ 2017 Comp LR 714 (CCI).

and the Informant which allow OP-1 to utilize infrastructure facilities for the several stations/location/cities of the Informant on license fee. A grant of permission agreement was executed by the Informant executed with OP-2 on payment of necessary migration fee for migration of its existing licenses in six cities in India. OP 1 was the one who demanded extra license fee for using licensed infrastructure annually upon migration from FM Radio Policy for Phase II to FM Radio Policy for Phase III which completely shows abuse of dominant position. Because of increase in license fee informant had to put more financial burden on its business which forced the informant to raised his voice over this issue. OP-1 and OP-2, have never involved in identical trade of goods or provision of services or they never operated at various stages or levels of the same production chain. Based on the above observation, the Commission asserted that no evidence proves that any of the provisions of Section 3(3) or 3(4) is violated. The Commission observes that if OP-1 has infrastructure facilities in a given city, then the private FM broadcaster's service providers of that area have no option but to come in contact with OP-1. Thus, the Commission has an opinion that OP 1 enjoys dominant position and various clauses of the draft agreement put forward by OP-1 for Phase III FM Radio Policy are biased. So there are evidences of violation of the provisions of Section 4 of the Act by OP 1. Therefore, under Section 26(1) of the Act, the Commission directs the DG to cause an investigation into the matter and file an investigation report within a period of 60 days from the date of receipt of this order.

*P. V. Basheer Ahamed v. Film Distributors Association (Kerala)*⁹⁷, the Informant is the exhibitor of the movies in his theatres. He is also an office bearer of Kerala Film Exhibitors Federation. There was a pending dispute between OP-1 and KFEF with respect to revenue-sharing between distributors and exhibitors of Malayalam movies. It was decided that during the first week of movie releases in AC theatres, the share of distributors and exhibitors would be 60% and 40% respectively. Several distributors who had initially agreed to release movies in the theatres of the Informant refused to do the same on account of an unofficial ban imposed by the Opposite Parties. The Informant has alleged that such ban amounts to a cartel and abuse of dominant

⁹⁷ CCI, Case No. 7 of 2017.

position, in contravention of the provisions of Sections 3 and 4 of the Act. The Commission notes that the facts as alleged by the Informant, do not suggest dominant position on part of any enterprise or group. It is of the *prima facie* opinion that there is no sufficient material on record to suggest that the OP has put a ban upon the Informant which led to movies not being given to him for exhibition in his theatres. Thus, there is no case of contravention of Section 3 (3) of the Act or any other provision of the Act. The matter is ordered to be closed forthwith in terms of Section 26 (2) of the Act.

In regard to abuse of dominant position in media and entertainment sector 37 cases decided by CCI has been analysed during the study. Out of these cases, 16 cases are closed under section 26(2) of the Act as there exists no *prima facie* case; in 4 cases direction is given to DG to cause an investigation under section 26(1); penalty is imposed in only 9 cases; 5 cases are closed under section 26(6) and as penalty is imposed in previous case no penalty is imposed in 3 cases. It can be concluded that either more frivolous complaints has been filled or there is lacuna in the working of the CCI.

CHAPTER- V

CONCLUSION AND SUGGESTIONS

India adopted the strategy of planned economic development since the early 1950's. Industrial growth in India was commenced with the Industrial policy resolution of 1948. The next step was the 1956 resolution which emphasized growth, social justice and self reliance. Government intervention and control during those years were prevalent in almost all areas of economic activity in the country. It favored only big business houses for providing license. This led to the concentration of wealth in a few hands. Thus, the emergence of monopoly industries and industrial groups indulging in anti-competitive practices were come into force. To curb the problem of monopolistic, restrictive, unfair trade practices and concentration of economic power in the hands of big enterprises, MRTP Act was passed in 1969. The MRTP Act, 1969 was found to be obsolete as it was incompatible with the changing needs. An analysis of the MRTP Act showed that certain definition and offending trade practices which are restrictive in nature were not the part of the Act such as abuse of dominance, collusion, price fixing and cartels, boycotts, bid riggings and refusal to deal and predatory pricing. On the basis of the recommendations of the Raghavan committee, government of India enacted Competition Act in 2002. CCI is the nodal agency to deal with the problem of abuse of dominant position. After receiving the information either *suo moto* or from any person, consumer or reference from central or state government, it may initiate inquiry in regard to abuse of dominant position. If the commission came to the conclusion that there is a contravention of section 4 of the Act, it may impose penalty, direct the enterprise to discontinue the practice or any other order.

Major Findings:

On the basis of the analysis of data regarding working of CCI and cases decided by CCI in media and entertainment sector following are the major findings:-

- 1) Since 2009 maximum no. of cases has filled in CCI in regard to abuse of dominant position in real estate sector. So this particular sector has more cases in regard to abuse of dominant position but in the last year the no. of

complaints has reduced. This may be due to the impact of demonetisation policy. There is a need to have a special policy to curb the abuse of dominant position in this particular sector.

- 2) Out of 868 cases filled till 2017 only 101 cases taken by the commission *suo moto*. Though private individuals filed maximum number of the cases in the CCI under section 3 and 4. In case of abuse of dominant position the effected parties are numerous or sometimes not able to identify. Therefore it is the duty of the commission to take the matters of a dominant position *suo moto*.
- 3) Out of 868 cases only 27 cases are being referred by central, state government or statutory authority to CCI in respect of violation of section 3 and 4 of the Act. State being the welfare state is under obligation to protect the rights of the consumers against the abuse of dominant position. Therefore it is the duty of the government and the statutory authority to refer the matters whenever it found any matter in regard to abuse of dominant position. The data shows that in 8 years only 27 matters were referred to CCI. On an average of 3 cases per year.
- 4) Out of 868 cases 463 cases were closed without investigations under section 26(2) by CCI in last 8 years. It means either there is lacuna in the working of CCI or frivolous complaints have been filled in regard to abuse of dominant position.
- 5) Till date penalty were imposed in 109 cases out of 377 cases in which order for investigation were made by the CCI. This is 11% of total cases filed. The success rate under section 3 and 4 is very less and it required to take measures in this regard.
- 6) In regard to media and entertainment sector out of 37 cases in 16 cases it was found that no further investigation is required and liable to be rejected.

Suggestions:

In the light of above discussion following suggestions would be fulfilled in regard to the effective working of CCI:

- Heavy penalty should be imposed in case of frivolous complaints have been filled.
- Media and entertainment sector is the third largest area in regard to complaint related to abuse of dominant position. There is a need to have a specific policy to curb the problem of abuse of dominant position.
- In a large country like India Competition Commission has the major office only in the National Capital. So it may not able to deal with the anti competitive practices rise in retail sector at sub national level. Due to this, many wrong practices remains hidden as the affected parties are not aware of the legal rights available to them. So commission should take some firm step to spread awareness about the competition law and its implications by adapting some suitable strategies and creative methods. Further, the Act should be suitably amended to make suitable provisions for the constitution of benches of the commission in every State to handle the issue of anticompetitive practices efficiently at the very basic level.
- There is no provision for the claim of compensation by an aggrieved person from accused in Competition Act, 2002 which is a major demerit present in the Act. Therefore, Act should be amended accordingly.
- Abuse of dominance is just treated as a transgression of competition law under the Competition Act, 2002. High penalties are imposed but in some jurisdictions it is taken as a crime, entailing prosecution and sometime it even leads to imprisonment. Criminal sanctions against abusive market practices are proved to be a major weapon against these dominant firms involved in such serious abusive practices and hence, it is recommended to treat these serious abusive practices as criminal offence.
- The opinions given by the Competition Commission in its advocacy endeavors should be given due importance by the policy makers and further, in the event of discarding the opinion given by the Commission the reasons for the same should be given.
- The Commission should have authority to hire some specialists who have exclusive knowledge and have expertise on advocacy in certain sectors for allowing the growth of a specific advocacy skill inside competition agency.

- The CCI should enhance its communication with international competition firms like International Competition Network (ICN), World Competition Forum etc., and Competition Authorities of several developed and developing nations. The Commission should undertake advocacy in a transparent manner to encourage its integrity, reliability and credibility.
- According to section 54 of the Competition Act, 2002 the Central Government is authorized to exempt any class of enterprises from the application of the Act or from any of its provision, after releasing a notification in the official gazette, if such exemption in its view is crucial for state security or in public interest. Therefore, it is recommended that this power should be exercised after a discussion with Competition Commission of India, so that public can also be the part of debate.
- The power given to Central Government in article 56 to override the CCI mainly weakens the Commission. Therefore, it is recommended that if such rule is to be performed at all then such power should be practiced supported by strong evidences.
- The Indian Competition Act, 2002, clearly acknowledged the effects principle in S.32 but undoubtedly its effectiveness wants that the Competition Commission should try to create a constructive networking with competitive authorities in developed and developing jurisdictions and global agencies so that the territorial reach become more useful and productive.
- As per the act it is mandatory to pay large fees for filling cases which is an abusive trade practice hence it is recommended that minimum fees should be collected.
- The trend of appointing the retired bureaucrats as the member or chairman of Commission should be discontinued. Merit should be the only basis for their selection.

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