CORPORATE GOVERNANCE ALIGNED WITH COMPETITION

(RESEARCH PAPER PREPARED UNDER THE INTERNSHIP PROGRAMME OF COMPETITION COMMISSION OF INDIA)

Submitted To: Dr. Seema Gaur, Adviser (Economics)

Submitted By: CS. Ankit Das
(Email: ankitcs4@gmail.com)

Student: NALSAR Law University, Hyderabad
(Masters in Business Laws and Administration 2011-13)

Month: August 2012
I express by sincere gratitude to the Competition Commission of India, New Delhi, for giving me an opportunity to intern at the Commission. In specific, I am extremely grateful and remain indebted to Dr. Seema Gaur, Adviser (Economics), Competition Commission of India (CCI), for her constant support right from designing, implementing and evaluation of this Project. She has been kind and patient throughout, to share with me her precious time, thoughts and insights. I am also thankful for her invaluable suggestions and constructive criticism, which benefited me a lot while developing this project. Through this column, it would be my utmost pleasure to express my sincere thanks to her for her encouragement, cooperation and consent without which I might not be able to accomplish this Project.

I also express my gratitude to library staff for their help and cooperation in access to all the resourceful material and the related data and all staff members who were directly and indirectly instrumental in enabling me to stay committed for the Project.

Last but not the least, this project was not possible without the blessings of my parents and cooperation of my fellow interns Ms. Roopika Rastogi, Ms. Shagun Badhwar and Ms. Shriya Luke, for supporting me in successfully completing this Project.

CS. ANKIT DAS
This project report has been prepared by the Author as an Intern under the Internship Programme of the Competition Commission of India for academic purpose only. The views expressed in the report are personal to the Intern and do not reflect the view of the Commission or any of its staff or personnel and do not bind the Commission in any manner. This report is the intellectual property of the Competition Commission of India and the same or any part thereof may not be used in any manner whatsoever, without express permission of the Competition Commission of India in writing.
TABLE OF CONTENTS

1. INTRODUCTION 6
   1.1 Research Objectives 6
   1.2 Research Methodology 6

2. GOVERNANCE LINKED WITH COMPETITION 9
   2.1 How Competition and Corporate Governance are interlinked? 9
   2.2 Outcome of Corporate Governance and Competition 11

3. AREA OF GOVERNANCE IN COMPETITION LAWS IN INDIA 14
   3.1 Section 3: Anti Competitive Agreements 14
   3.2 Section 4: Abuse of Dominant Position 14
   3.3 Section 5: Regulation of Combinations 16

4. COMPETITION COMPLIANCE 17
   4.1 Objectives of Competition Compliance 17
   4.2 Benefits of Compliance 17
   4.3 Comparison of Competition Compliance Programme (CCP) 18
       4.3.1 Comparison with CCP of United Kingdom (UK) 18
       4.3.2 Comparison with CCP of United States of America (USA) 19
   4.4 Implementation of Compliance Programme in Organization 21
       4.4.1 Constitute a Compliance Committee 21
       4.4.2 Creating a Competition Compliance Manual 22
       4.4.3 Establishing a Monitoring System 23
   4.5 Enforcement, Reporting and Verification 30

5. CONCLUSION 31

BIBLIOGRAPHY

References 32
List of Websites visited 33
Annexure-1- Reporting Format of Quarterly Compliance on Competition Laws 34
Annexure 2- Personal Confirmation under Competition Compliance Programme 39
Annexure 3- Compliance Programme- Competitor Contact Form 40
1. INTRODUCTION

The term ‘Corporate Governance’ means the set of institutional arrangements that lead managers to pursue shareholders interests rather than their own goals. The relationship between the Corporate Governance and Competition is a rather complex, but crucial one to the design of appropriate economic policies, including Competition policy. The relationship between Competition and Corporate Governance is to explore how Governance structure of an organisation must incorporate the policy of Competition and to identify the possible concerns which have come up in many jurisdictions in relation to Compliance Programmes. It is also relevant in the context of the economic crisis, as a failure can be triggered in the market if incentives are not aligned for the long term and instead focus on short term goals. Competition is typically regarded as the main force that disciplines firms by keeping them responsive to their markets, inducing them to adopt efficient practices (including good Corporate Governance arrangements) and encouraging them to maximize efficiency.

Competitive Markets needs accompanying Governance in order to prevent the self-destruction of Competition\(^1\). Competitive markets generally represent the best available coordination mechanism for economic activities. More precisely, competitive markets contribute to optimal allocation, innovation, consumer sovereignty, economic freedom and flexibility and responsiveness of the economy. In contrast Corporate Governance primarily concerns the relationship between officers, directors and shareholders. The result is two relatively separate bodies of law, with a times Competition Policy strong and Corporate Governance weaker and vice-versa\(^2\). Competitive business environment and appropriate good Corporate Governance have a nexus, the former fuelling, influencing and impacting the latter and the latter seeking to meet the challenges of the former. For Corporate Governance, inhering Competition principles in policy making would appear sine qua non. Corporate Governance consequently needs to fashion itself to meet Competition and prevent enterprises indulge in (inadvertently or otherwise) anti-competitive practices. Corporate

---

\(^2\) OECD Hearings Competition and Corporate Governance 2010, pp.5-6
Governance needs to incorporate the interests of consumers and economic development.³

Competition maximizes incentives to innovate, engage in new promising activities, offer better services and wider choices at lower prices. The continuous quest for efficiency and improvement is not merely a result of the competitive process, it is the competitive process, where companies - small, medium-sized or large - concentrate on becoming as efficient as possible, rather than on surviving by other (illegal) means, their competitiveness will increase whether they operate in their domestic market or in the worldwide stage.

The need for implementation of good Corporate Governance strategy is not only social, but there are good economic reasons also. The Companies possessing Governance practices are more likely to gain a competitive advantage over their counterparts. The benefits that the enterprise receives from society implies certain responsibilities, including keys elements of Corporate Governance, such as “transparency, honouring of contracts, and respect for the institutions of the larger society.” The broadening of the perception of social needs by enterprises, in terms of extending their liabilities beyond the needs of the stakeholders, can become an important asset for the company. It can build new unique competencies distinctive from its competitors and can yield good reputation and credibility for the enterprise.⁴

1.1 Research Objectives

The project topic attempts to explore the linkages between Competition and Corporate Governance and how companies can align the policies of Competition laws into Corporate Governance framework.

1.2 Research Methodology

The research-methodology adopted is mainly Non-doctrinal and descriptive. The sources of data include secondary sources like Articles, books and Journals. Various search engines and websites also provided the requisite information.


⁴ Anand Agrawal and Sanjay Fuloria, “Corporate Governance for Competitive Credibility”, pp. 1
Corporate Governance

The word ‘Corporate’ is associated by legal enactment for the transaction of a business. Similarly, the word ‘Governance’ means exercise of Authority, Direction or Control. Thus, the concept of ‘Corporate Governance’ is the system by which the management of a business entity directs and controls the activities in the best interest of the stakeholder. Corporate Governance refers to the way a corporation is governed. It is the technique by which companies are directed and managed. It is all about balancing individual and societal goals, as well as, economic and social goals. It includes both social and institutional aspects. Corporate Governance encourages a trustworthy, moral, as well as ethical environment. Corporate Governance has competing definitions, but in Margaret Blair’s estimation encompasses the “the whole set of legal, cultural and institutional arrangements that determine what publicly traded corporations can do, who controls them, how that control is exercised, and how the risks and returns from the activities they undertake are allocated”.5

As per N.R Narayana Murthy, Chairman, Committee on Corporate Governance, SEBI, Mumbai, February 8, 2003

“Corporate Governance is the acceptance by management of the inalienable rights of shareholders as the true owners of the corporation and of their own role as trustees on behalf of the shareholders. It is about commitment to values, about ethical business conduct and about making a distinction between personal and Corporate funds in the management of a Company.”

OECD originally defined Corporate Governance as the system by which business corporations are directed and controlled. The Corporate Governance structure specifies the distribution of rights and responsibilities among different participants in the Corporation, such as the Board, Managers, Shareholders and other Stakeholders and spells out the rules and procedures for making decisions on Corporate Affairs. By doing this, it also provides the structure through which the Company objectives are set, and the means of attaining those objectives and monitoring performance. The OECD also

5 Thomas Clarke and Marie Dela Rama, “Fundamentals of Corporate Governance”, pp.1-2
offers a broader definition as Corporate Governance refers to the Private and Public institutions, including laws, regulations and accepted business practices, which together govern the relationship in a market economy between Corporate managers and entrepreneurs (Corporate insiders) on one hand, and those who invest resources in corporations, on the other hand.\(^6\)

**Competition**

As per Oxford dictionary, the meaning of Competition is the activity or condition of striving to gain or win something by defeating or establishing superiority over others. Competition in the market means sellers striving independently for buyers patronage to maximize profit or other business objectives. A buyer prefers to buy a product at a price that maximizes his benefits whereas the seller prefers to sell the product at a price that maximizes his profit. Competition makes enterprise more efficient and offers wider choice to consumers at lower prices. This ensures optimum utilization of available resources. It also enhances consumer welfare since consumers can buy more of better quality products at lower prices. Fair Competition is beneficial for the consumers, producers/sellers and finally for the whole society since it induces economic growth. The objective of Competition is free and fair market. It will lead to enhancement of economic freedom and lower barriers to entry for new firms and competitors.

Competition is a dynamic concept with no unique definition, except what is understood in common parlance in the context of Market and Trade. In the manner of speaking, Competition can be likened to what is antithetical to monopoly. While monopoly is pernicious to consumer interest and free and fair trade, Competition affords wide ranging benefits to the consumers. Adam Smith (1776) captured this altruism in his famous book “Wealth of Nations”, when he observed:

“By a perpetual monopoly, all the other subjects of the State are taxed very absurdly in two different ways, first by the high price of goods, which, in case of free trade, could be bought at much cheaper rates and secondly, by their total exclusion from a branch of business, which it might be both convenient and profitable for many of them to carry on.”

\(^6\) OECD, Corporate Governance and National Development, Technical Paper No. 180 (2001), available at: http://www.oecd.org/home/02987en_2649_201185_1_1_1_1_1_100.html, visited on 28\(^{th}\) August 2012.
2.1 How Competition and Corporate Governance are interlinked?

As per definition of Corporate Governance given by the Institute of Company Secretaries of India (ICSI) “Corporate Governance is the application of best Management practices, Compliance of law in true letter and spirit and adherence to ethical standards for effective Management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders.”

Fundamentally if we observe the definition of Corporate Governance, the following components of the definition creates a linkage between Corporate Governance and Competition.

- Adherence to Ethical Standards;
- Compliance of law in true letter and spirit;
- Discharge of Social Responsibility for Sustainable Development; and
- Best Management Practice

There is no doubt that there is perfect linkage between the internal Governance mechanism and the performance of an enterprise. In recommendations of many of the Committees set up on Corporate Governance in different parts of the world it was observed that the Corporate Governance framework in many countries of the world is largely inward-focused which mainly focus on the composition of the management structure at various levels, the assumption being that the right structure will automatically ensure quality of delivery. But it has to be remembered at the same time...
that external Governance mechanism including Competition, is also of vital importance, though there has been a very little attention been given to the interaction between in internal and external Governance mechanism in emerging market economies.

For the purpose of studying Governance aspects of an enterprise, while it is expedient to examine the influence of various variables on the performance of the Competition, it is also useful to study the mutual interactions of these variables amongst themselves. It is possible that these variables constrain the managerial discretion while acting independently or even they can induce managers to subservient their interest against the interests of shareholders. At the same time, these variables may be complementary or substitutable to each other. Specially, Competition and Corporate Governance variables may move together in the same direction or sometimes even in opposite direction, thereby affecting productivity of the Corporation. When their movement is in the same direction, they are said to be complementary to each other. Otherwise if they move in the opposite direction, they become substitutes of one another7.

The nature of Competition and efficiency is complementary to each other. To ensure good Corporate Governance, the Competition Policy should be focused on fostering Competition in the economy. Corporate Governance practices at the firm level do not improve dramatically unless the Competitive environment in the country is strengthened. It is argued that Competition among the enterprise(s) can act as the most efficient mechanism for ensuring the Corporate Governance. It can definitely be claimed that Competition provides a benchmark for measuring the performance of a Company from inside, i.e. the management. The globalization of markets and Competition across the world calls for better Governance structure within an organization to meet Competition headlong without contravening the policies laid down under various jurisdictions. Competition puts pressure on the participating factors, in particular on enterprises, and it is this pressure which is predominantly responsible for the efficiency and welfare gains due to competitive markets.

---

2.2 Outcome of Corporate Governance and Competition

The outcomes of Competition and Corporate Governance can be examined from three aspects i.e.

1) Sustainable Development of Business Entity

Corporate Sustainability indicates new philosophy as an alternative to the traditional growth and profit maximization model under which sustainable development comprising environmental protection, social justice and equity and economic development are given more significant focus while recognizing simultaneous corporate growth and profitability. Corporate Sustainability is a business approach towards creating shareholder value in long run.

What is needed is appropriate behaviour on the part of the manufacturers/suppliers and service renderers, a significant proportion of whom constitute Corporate entities not only in terms of complying with the applicable laws and regulations and, in particular, complying with Corporate Laws and Competition Law but also in terms of sub-serving the large societal interest. Competition Policy seeks to maintain and encourage the competitive process with a view to promoting economic efficiency and consumer welfare. Its objective is to spur firms and individual players in the market to compete with each other to secure the patronage of customers in terms of, inter alia, Competitive prices, good quality and greater choices for them. The most common objectives, applied with varying emphasis in different countries are economic
efficiency, consumer welfare and public interest. For Corporate Governance, therefore, inhering Competition principles in policy making would appear sine qua non.

Meeting Competition means enhanced operational efficiency, cutting costs, keeping down administrative expenses and affording quality products at reasonable prices to the consumers. Corporate Governance should ensure that the Corporate do not indulge in anti-competitive practices, despite the temptation to cartelise and fix prices, a business entity or firm should not lend itself to join other entities in the same line of production or service with the object of colluding with them and drive the market with higher prices and lower output. In particular, Corporate should avoid colluding with competitors to the detriment of the consumers. Collusive practices include cartelisation, price fixing, limiting outputs, bid-rigging, market allocation by territories or customers, limiting technical development etc. In the long run, firms which believe in good Corporate Governance are likely to succeed in the market and also to foster a healthy Competition in the market.

2) Fair Competition in Market

Fair Competition set standards relating to transactions within the business community and also transactions between the business community and consumers. It creates an environment in which all businesses- large, medium and small- can operate according to the same set of clearly defined rules and standards. This environment will also offer the consumer a measure of protection and support in terms of efficiency and prices.

Since Competition influences and impacts Corporate Governance, the Policy of Governance in an organization must include strategies in the lines of Fair Competition where businesses are done in a market driven economy and they observe certain rules which are designed to help the economy grow. If the business environment is reasonably competitive, Corporate Governance cannot afford to be slack or to be unmindful of competitors and potential Competition. Corporate Governance manifests itself in terms of supervision and timely decision making by the Board of Directors or the Management. Where Competition is inadequate or sub-optimal, Corporate Governance tends to become loose or slack, with decision making in business matters by enterprises delayed or postponed.
c) Consumer Interest

All Corporate activities ultimately have at their consummating point, the consumer. Consumer welfare and interest aim at unrestrained interaction of competitive forces, maximum material progress through rational allocation of economic resources, availability of goods and services of acceptable and good quality at reasonable prices and finally a just and fair deal to the consumers. Corporate Governance has to factor these, if it has to live up to its responsibilities by the country and its subjects.

As the number, size and scope of activities of multi-national companies, corporations and firms (MNC’s) increase, more and more of them are forging and operating strategic alliances and their commercial practices are having increasing international dimensions than ever before. Corporate sector is not only made up of MNC’s but also is mostly constituting of small and medium industries. With increase in number of Small and medium enterprises, the Governance structure should be suitably designed in these enterprises to compete in the world market. All Corporate need to inhere Competition principles in their Governance be they big, medium or small in size and operations. The Corporate Governance needs to be moulded in such a way that the markets are driven by Competition and that consumer interests are protected.
3.1 Section 3 (Anti Competitive Agreements)

Section 3 prohibits companies from entering into agreements in respect of the production, supply, distribution, storage, acquisition or control of goods or provision of services which cause or are likely to cause an appreciable adverse effect on Competition in India. Section 3 covers two kinds of agreements, viz., Horizontal and Vertical. Horizontal agreements\(^8\) are usually agreements between direct competitors, and therefore have the propensity to cause the greatest harm to Competition. For this reason the Competition Act states that certain horizontal agreements are presumed to cause an appreciable adverse effect on Competition. These relate to agreements to fix prices, control output, share markets or customers, and bid rigging. Vertical agreements\(^9\) are those between entities in different levels and include tying, exclusive supply or distribution agreements, and resale price maintenance. These agreements may be pro-competitive and hence are to be judged by the rule of reason.

The area of Governance in Section 3 for Competition Law purposes is to examine the term “Agreement” which has a very wide meaning and includes all types of collusive arrangements and understandings between two or more competitors. By entering into these collusive agreements, independent competitors attempt to avoid the rigours and uncertainty of the competitive marketplace. These collusive agreements may be formal or tacit, written or oral, signed or unsigned, legally binding or not, applied or not. The Governance structure of the organisation must be so designed to keep a check on the agreements which are been entered into by the organisation with vendors, suppliers, clients etc, so that the agreements approved or finalised by the management/directors in the Board Meeting, do not violate any of the provisions of the Section 3 of the Competition Act, 2002.

3.2 Section 4 (Prohibition of abuse of dominant Position)

Section 4 prohibits the Abuse of Dominant Position by an enterprise. Conduct amounting to an abuse of dominant position may also be such that it affects its competitors or consumers or the structure of the market in its favour. This results when

---

\(^8\) Section 3(3) of the Competition Act, 2002

\(^9\) Section 3(4) of the Competition Act, 2002
abuse of a dominant position would impair the ability of the competitors to compete as they would and consumers would, as a consequence, have to accept higher prices or reduced quality. It is important to note however, that an act or practice can constitute a violation under this section only if it first found that the enterprise in question holds a position of dominance in the relevant market.

The abuse of a dominant position is one way of interfering with Competition in the market place. Stated simply, ‘abuse of dominance’ refers to the conduct of an enterprise that enjoys a ‘dominant position’ which is defined under the Indian Competition Act, 2002 (the Act) to mean a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to –

- Operate independently of competitive forces prevailing in the relevant market;
  
  or

- Affects its competitors or consumers or the relevant market in its favour.

The Indian marketplace is a highly concentrated one depending on how the relevant market is defined. This is why one of the main concerns of the Competition Act (as with any Competition law in the world) is regarding enterprises that are in a position to exercise a considerable amount of influence in the market. This ‘market power’ is measured in relation to the product in question (includes ‘goods’ and ‘services’) and a Geographical area for that product. In the Act therefore, the relevant market is defined in terms of the ‘relevant geographic market’ and the ‘relevant product market.’

The Area of Governance under Section 4 will particularly focus on determining whether the organization enjoys a dominant position or if it enjoys position of economic strength (and market power) which enables it to prevent effective Competition and to behave independently of its competitors, customers and consumers to an appreciable extent thereby, taking into consideration the factors mentioned under Section 19(4) of the Competition Act, 2002 and if the dominance is proved in the market, the enterprise

10 “Relevant Geographic Market” and “Relevant Product Market” defined under Sections 2(s) and 2(t) of the Competition Act. These provisions will be read along with Sections 19(6) and 19(7) which set out the parameters which the CCI has to take into account while determining these markets.
has to develop a policy framework so that the enterprise does not end up abusing its
dominance and hence violating Section 4 of the Competition Act, 2002.

3.3 Section 5 (Regulation of Combination)

Section 5 of the Competition Act deals with regulating ‘Combinations.’ A combination for the purposes of the Competition Act covers three kinds of transactions when the total value of assets or turnover of all the parties to the Combination cross the threshold limits specified in Section 5 –

(1) Acquisition of shares, voting rights or assets by a person or enterprise of
   another;

(2) Acquiring of control by a person over an enterprise;

(3) Merger or amalgamation between or amongst enterprises.

Area of Governance in Section 5 will primarily involve determining whether or not a proposed transaction triggers the mandatory notice filing requirement under the Competition Act. Approval is very often required before completion of the intended concentration and must be notified before any consummation.

The Competition Compliance Checklist can be designed by an enterprise so that the Board of Directors can review the agreements being entered into during each quarters and the Compliance status can be checked under the relevant provisions mentioned above of the Competition Act, 2002. The Checklist for quarterly compliance can be designed as mentioned in Annexure-I

---

11 In terms of Section 6(2A), no combination can take effect unless the CCI has passed an order to that effect or the passing of 210 days from the date of filing of a valid notice with the CCI. Consequent to the 2007 amendments to the Competition Act, India now has a “Mandatory Notice Filing System” and is a “Suspensive Jurisdiction” which essentially means that no proposed combination can be consummated unless and until the CCI approves the same.
4. COMPETITION COMPLIANCE

4.1 Objectives of Competition Compliance

Competition Compliance Programs (CCPs) are necessarily required to be set up within the organization or the requisite services may be outsourced. Essentially, CCPs are required because all enterprises are expected to act in consonance with the Competition laws of the country. This would ensure that the markets are competitive and there is no abuse of dominance by any player in the market. The basic objectives that make CCP a necessary requirement are:

- To prevent violation of Competition laws;
- To encourage healthy culture of compliance; and
- To adopt best practices of Corporate Governance to enhance the reputation of the enterprise.

Competition Compliance is necessary in all kinds and sizes of organizations. They may not be a formalized CCP framework in small organizations but the same must be implemented in some other way in order to generate awareness. It is an important management tool for good business practice as it clearly defines behavioural standards. Defined standards give the employees knowledge of the regulatory risk faced by the organization in case of violating standards. This in long run will be beneficial to both, the enterprises as well as the consumers.

4.2 Benefits of Compliance

The major advantages of Competition Compliance are:

- Low risk of an investigation into the enterprise by the Competition Authorities;
- Lesser chances of agreements being void and unenforceable;
- Lesser risk of reputation being hampered; and
- Avoidance of litigation due to unlawful conduct

Competition Compliance Programme not only generates awareness regarding the concerned laws but also train the personnel in an enterprise to follow the said laws. They also help identify the potential discrepancies or disputes that may arise in the near future. The knowledge of Competition laws will prepare the employees in a manner to recognize and handle the issues when the enterprise is affected by any anti-competitive
agreements. Also, the legal costs of the enterprise are reduced by avoiding violation of Competition laws. The enterprises, thus, save time and money by reducing the tedious litigation caused due to anti-competitive behaviour.

At the outset, it is necessary to identify the application of Competition laws in the sector in which the particular enterprise falls. The risks involved in the said sector should be adjudged and if the same are high, then a convoluted CCP should be set up. The market position of the organization should also be kept in mind while developing a CCP for it. The possibility of the organization having a ‘dominant position’ in the market should also be taken into consideration. All the above mentioned factors will help in devising a suitable CCP for the organization.

4.3 Comparison of Competition Compliance Programme

It may be pertinent to discuss the Competition Compliance Programmes (CCPs) being introduced by a few other jurisdictions and their comparison with the Indian CCP. It will be relevant to begin with the Competition Compliance Programmes of the United Kingdom (UK) introduced by the Office of Fair Trading (OFT).

4.3.1 Comparison with CCP of United Kingdom (UK)\textsuperscript{12}

According to the Office of Fair Trading (OFT), the most important factor leading to an effective CCP is the management’s commitment to compliance. The OFT has also identified the key steps to an effective CCP which are:

- risk identification;
- risk assessment;
- risk mitigation; and
- process review.

These four steps would ensure that the enterprise is able to identify the potential risks of anti-competitive agreements and violations of Competition laws. They would

also assist the enterprise assessing the said risks beforehand and having solutions to cope with them. The OFT does not stress on a standard or a rigid CCP but defines four essential elements of a CCP. These may be listed as:

- support of senior management;
- appropriate policies and procedures;
- effective training; and
- regular evaluation.

The Office of Fair Trading (OFT) stresses upon updating the CCPs from time to time in order to keep up with the current best practices. The OFT does not endorse individual compliance programs. According to the OFT, compliance programs must be capable of meeting the changing requirements of the industry and the enterprise must make efforts as part of the regular evaluation process to ensure that the compliance program continues to be relevant. The OFT states that in addition to their powers under the Competition Act 1998, the sector regulators continue to have powers under the legislation specific to the sectors they regulate. In certain circumstances they may use these powers to order a business to submit a compliance program. This does not, however, mean that OFT would be willing to endorse individual program.

**4.3.2 Comparison with CCP of United States of America (USA)**

Antitrust laws in the USA are regulated by two agencies namely, the Federal Trade Commission’s (FTC) Bureau of Competition and the U.S. Department of Justice Antitrust Division. According to these agencies, a sound antitrust compliance program should have two principal objectives, *prevention* and *detection*.

These agencies state that a Corporate Compliance program generally does not protect the enterprise from prosecution neither does it protect it from potential liability. Therefore, every enterprise’s first objective in its compliance program should be to prevent wrongdoing. A well-designed compliance program may also, in some circumstances; help the enterprise qualify for sentence mitigation under the sentencing guidelines of the agencies. But it may be relevant to stress upon the fact that once a

---

13 *Supra 14*
violation occurs, a compliance program can do little, if anything, to persuade the Antitrust Division of the U.S. Department of Justice not to prosecute.

The U.S. sentencing guidelines set down seven minimum requirements that a compliance program must satisfy in order to qualify for sentence mitigation. These are:

- clearly established compliance standards;
- assigning overall responsibility to oversee compliance to high-level executives within the company;
- exercising due care not to delegate responsibility to employees who have a propensity to engage in illegal conduct;
- taking reasonable steps to communicate standards and procedures effectively to all employees;
- taking reasonable steps to achieve compliance with standards;
- consistent enforcement of standards through appropriate disciplinary mechanisms;
- taking reasonable steps when an offense occurs to respond and to prevent future violations.

It has been further stated by the agencies that culture of Competition must be inculcated at the top management level of the company. Senior management must value Competition and must be vocal in making that commitment known to employees. In addition to strong, positive leadership, it is important also that an enterprise should have sound incentive structures in place. There should be strong negative incentives against violating the antitrust laws and strong positive incentives for reporting and deterring violations. But enterprises should also have incentives that reward tough Competition, not collusion.

Lastly, it would be relevant to take a look at the guidelines issued by the European Commission (EC) to devise a sound CCP for the enterprises in the European Union countries. According to the EC, the risks of non compliance of Competition laws are:

- employment sanctions;
- criminal sanctions;
- actions against the plan; large civil damage awards, disclosure of confidential commercial information, loss of time and business losses.

The European Commission (EC) further stresses upon the importance of a compliance officer in every enterprise and his duties. EC states that the compliance officer has an overall responsibility for ensuring compliance with the enterprise’s anti-Competition policy. Potential violations of the anti-Competition policy or the anti-Competition laws should be reported to such officers and the officer has a duty to take it up to the senior management.

After looking into the CCP guidelines laid down by the various jurisdictions including India, it may reasonably concluded that a well planned and exhaustive CCP would be beneficial to all enterprises irrespective of their size, area of operation, jurisdiction involved, nature of products supplied or services rendered. Such a CCP would also facilitate the enterprise to make better use of the Authorities in taking remedial action if it is affected or likely to be affected by any anti-competitive behaviour of its competitors. It may be suggested that enterprises need to undertake review of their marketing arrangements, market position and policies, restructuring, if any, in the pipeline so that they can take timely corrective measures or align their policies conforming to Competition laws in their respective jurisdictions.

### 4.4 Implementation of Compliance Programme

Competition Compliance Programme (CCP) is a multipronged tool to ensure compliance with Competition law and rapid detection in case of any unintended violation. It works on the principle that ‘prevention in better then cure’. An effective CCP is also a proof of the bona fide of the entity. It shows that the entity is genuinely concerned about complying with the Competition law and any violation was unintentional and without any mala fide. Moreover, global experience shows that Competition authorities show leniency towards entities which have a CCP. It is developed keeping in mind the specific requirements of an enterprise and has the following fundamental targets:
- It can impart education and training to the employees and officials of the market participants and encourage them to carry out their duties in a manner which is compliant with the laws of the land;
- It can have the effect of encouraging companies to pursue their legitimate business activities with confidence because CCPs tend to foster a culture of compliance;
- It enables market participants to prescribe “Guidelines” and “Best Practices” as per the commercial requirements of the organizations and thereby inculcate a culture of compliance throughout the organization;
- It can help reducing the risk of a violation of the Competition laws, and reinforce among employees the fact that the company will not tolerate anticompetitive conduct;
- It can substantially increase the early detection of violations, both by educating employees as to signs of illegal conduct by co-workers and by providing clear and safe avenues for reporting suspected violations;
- It can enable market participants to detect signs of violations and anticompetitive conduct on the part of its suppliers, service providers and competitors;
- It can have the effect of obviating or reducing the costs and negative effects of litigation and regulatory intervention

4.4.1 Constitute a Compliance Committee

The organization must constitute a Committee consisting of members from various backgrounds comprising of law, economics, accounts etc, or professionals in relevant field to develop a framework on Competition Compliance relevant to the industry in which the organization operates and incorporating the laws relating to Competition. The function of this Committee will provide and includes for:

- Timely reporting to the Board of Directors about the Competition Compliance;
- Drafting of Competition Compliance Manual for the Organisation;
- Evaluation and updatation of the Competition Compliance Manual;
- Implementation of Competition Compliance across the organisation based on organisational levels, strength and nature of industry in which it operates;
➢ Timely check and review of transactions or agreement been entered into by the Management and updating the Board of Directors about the shortcomings in the deals from Competition point of view;

➢ Facilitating training programs in Competition laws for the employees and the persons involved in the organisation;

➢ Advising the Board on the matters of Combinations involving mergers, acquisitions, takeovers etc;

➢ To coordinate with the departments in various levels of the organisation and get their feedback on Competition issues involving their department;

➢ To adopt the best practices of Competition in the organisation; and

➢ To file timely information with the authorities administering Competition laws.

4.4.2 Creating a Competition Compliance Manual

Putting a Competition Compliance Manual in place is simple and not as expensive as it sounds. Many companies already have a company policy either physically handed in the form of a manual or more often in the form of a computer based tool or web page. Some even stress the need for compliance with trade practice laws.14 While this is commendable, it may not be sufficient to prevent violations and prosecution in the event enforcement activities are taken up in right earnest by the CCI.15 It is important to understand that when there is a well prepared Compliance Manual in place, the chances of breaching the provisions of the Competition Act are minimized and the very existence of a strong Compliance Manual reflecting the eagerness of the management of a

---

14 See for example http://www.ranbaxy.com/codeofconductemp.htm#26, which states: “26. Compliance with Trade Practice and Other Laws –Needless to mention, Ranbaxy is committed to comply with all laws and regulations in all the regions in which it operates and the same is expected of all its employees. It is our policy to go beyond the letter and honour the spirit of the law. Laws relating to trade practices are designed to prevent practices that have an adverse effect on Competition, discourage monopolies and promote and sustain Competition in markets and protect the interests of consumers. It is the responsibility of the Manager to make himself/herself conversant with permissible and ethical trade practices to ensure that the Company fully complies with all the laws/regulations of the regions in which it operates including trade practice laws as applicable. Contacts with competitors should, therefore, be handled prudently and with circumspection. Certain practices like predatory pricing, collusion with competitors, pricefixing, cartels, etc. are strictly prohibited. However, all our employees are not expected to have a deep knowledge or understanding of all the laws that apply to the Company’s business. When in doubt, therefore, refer to the Head Corporate Legal or legal counsel at your location, for advice.”

company to comply with the law could itself tone down the severity of the penalties and fines which are liveable under the Competition Act.

At the outset it is critical to understand that it is not possible to design a Compliance Manual which suits or fits the requirements of all companies. An effective Manual depends squarely on the business and commercial strategy of the organization in question. The best approach to Compliance Manual is to understand the business and design a programme that addresses relevant risks while facilitating Company’s ability to compete effectively. Healthy Competition always makes the company stronger and stimulates the forces that drive long-term prosperity for the company. Whereas, indulgence in anti competitive practices, for example price fixing, boycott and bid rigging, tend to limit growth and damage the incentives to innovate & respond to customer needs.\(^\text{16}\)

### 4.4.3 Establishing a Monitoring System

The Competition Compliance must be designed in a way which is easy to implement, understand and which can be monitored on a periodical basis. It can be designed to help understand that how Competition law applies to the organisation. It can be categorized into:

- What employees in the organization **cannot do**;
- What employees in the organization **can do**; and
- When the employees in the organization **seek advice**.

It can be categorised into a colour code system as under\(^\text{17}\):

<table>
<thead>
<tr>
<th>Colour</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>RED</strong></td>
<td>shows the behaviour or agreements which are generally considered illegal in most countries and therefore <strong>FOREBIDDEN</strong>. They should <strong>NEVER</strong> be engaged in or entered into or entered into by anyone in the organisation.</td>
</tr>
<tr>
<td><strong>GREEN</strong></td>
<td>shows lawful commercial behaviour. This is <strong>PERMITTED</strong>.</td>
</tr>
<tr>
<td><strong>AMBER</strong></td>
<td>or yellow shows potential risk areas where <strong>ADVICE MUST BE TAKEN</strong> from legal Department.</td>
</tr>
</tbody>
</table>

\(^{16}\) Kapoor, Sandeep, *Competition Compliance Programme: Indian Perspective*.  

\(^{17}\) *Competition Compliance Policy*, available at [http://www.agilitylogistics.com/EN/GIL/Documents/Agility_PDF/CompliancePolicy.pdf](http://www.agilitylogistics.com/EN/GIL/Documents/Agility_PDF/CompliancePolicy.pdf), last visited on 17 August 2012 at 11.00 am
CONTACT WITH COMPETITORS

1.1 What is Forbidden?
Never enter into an agreement, arrangement, understanding or discussion with any of the Competitors about any of the following:

a) **Pricing:** Pricing is critical in terms of Competition. Enterprise must determine their own pricing policy independently. Any agreement which seeks to agree or fix prices (either directly or indirectly) will be prohibited. Price Fixing can take many forms, including agreement on:
   - Minimum and/or maximum prices.
   - Published price lists (whether these prevent one party from offering discounts)
   - Fixing part of price (eg a surcharge or other charge)
   - Profit Margins (where parties agree to base prices on a set profit margin)
   - Consultation (eg where one party agrees not to quote a price without consulting its competitors)
   - Passing on surcharges at cost
   - Agreeing not on discount surcharges or additional charges.

b) **Market Sharing or Allocation:** Market sharing occurs where one or more competitors agree to divide a market- for example, so they each get an equal or agreed amount of business, or so that one will do business in one area or with one group of customers, while another does business in a different area or with a different group of customers. The management must make own decisions about how and where the organisation’s business must operate, this includes making decision about:
   1. Whether to bid for contracts or jobs;
   2. On what terms bid will be made;
   3. The prices and conditions to be offered to customer or prospective customer; and
   4. Terms and conditions relating to commercial issues such as liability.

c) **Sharing Information:** Information exchange between the competing firms can be a serious Competition law problem. Each competitor must set independently the
policy which it intends to adopt. Information sharing between competitors is illegal when the type of information being shared is commercially sensitive.

- The organization must be particularly vigilant not to share any kind of information with competitors which would allow them to understand or estimate current or future market position or commercial strategy or enable the organization or competitors to understand or predict market trends, supplier pricing and capacity.
- The former employee of a competitor hired by organization must destroy the material or return it to previous employer any confidential pricing information which he/she may have brought with them.
- It is also forbidden to get competitors prices by pretending to be a prospective customer, as this is a form of deceit and is an improper form of business behaviour.

**d) Collective Boycotts** (collective refusal to do business): A collective boycott occurs when two or more competitors agree not to do business with a particular firm. This is illegal. Organization must make their own decisions about whom they do business with. It is also illegal for competitors to agree that only one of them will refuse to do business or if two or more competitors threaten or force one business not to deal with another business, such as competitor or supplier.

One must not indulge in any of the below mentioned practices or agreements under any circumstances:

1. Discuss how to keep a company (eg. A competitor) out of any market.
2. Divide up different projects or work with another competitor or competitors.
3. Agree to leave another competitors customers, locations, areas or opportunities alone; or
4. Make any agreement or reach any understanding with a competitor which allocate sales, territories, customers, tenders, opportunities or services between us and that competitor or other competitors.
1.2 What is Permitted

Any contracts with competitors are a highly sensitive area from a Competition law perspective. There are therefore very few contacts that are allowed, though discussions which will not and could not have any impact on the commercial behaviour of the parties are likely to give rise to concern. Discussion on the following is unlikely to be problematic:

1. Regulatory changes and compliance
2. Government Policy
3. Industry lobbying and promotion initiatives
4. Healthy and safety information.
5. Industry employment and training issues.

1.3 When Advice to be taken from Legal Department

If any doubts whether the discussion is likely to or could:
1. Affect future commercial strategy, product or service composition;
2. Lead to a change of strategy in the short to medium term;
3. Lead to an immediate or short term change in behaviour relating to:
   - Price
   - Service offered
   - Discounts
   - Surcharges

TRADE ASSOCIATION

2.1 What is forbidden?

One must not discuss (nor even appear to discuss) any of the following types of information at any trade association meeting:

1. Pricing or other terms given to customer, including agreeing the extent to which fuel, war or other surcharges will be passed on to customers.
2. Industry wide and or individual company price changes, price differentials,
mark-ups, discounts, allowances, credit terms or related financial issues;
3. services capacity of individual companies or changes in industry production capacity or inventories;
4. Bids on contracts for particular products and the procedures for replying to bid invitations;
5. Any individual company’s costs;
6. Terms on which organization usually do business;
7. Allocation of customers, contracts, sites, regional areas or types of services.
8. Details about potential individual suppliers or customers which might exclude them from the market or influence other companies behaviour towards those suppliers or customers; or any company-specific business plans, marketing initiatives, market share data or any other confidential information including proposed territories or customers.

2.2 What is Permitted

Any contracts with competitors are a highly sensitive area from a Competition law perspective. There are therefore very few contacts that are allowed, though discussions which will not and could not have any impact on the commercial behaviour of the parties are likely to give rise to concern. Discussion on the following is unlikely to be problematic:
1. Regulatory changes and compliance
2. Government Policy
3. Industry lobbying and promotion initiatives
4. Healthy and safety information.
5. Industry employment and training issues.
6. Research and Development

2.3 When advice to be taken from legal department

It is not always easy to distinguish between legitimate trade association activity and unlawful activity. In case of doubt, legal advice can be resorted to.
CONTACT WITH CUSTOMERS AND SUPPLIERS

3.1 Exclusivity

In principle, there is no objection to entering into exclusive arrangements with customers or suppliers provided the term (duration) of the agreement is not excessive.

3.2 Dealing with competitors as customers

This area often raises concerns under Competition Law. While negotiating with competitors as customers not to reveal commercial sensitive information. For example, do not disclose:

1. Prices and terms offered to other customers;
2. Details of such customers or services where they are not already known;
3. Our costs; or
4. Any marketing initiatives or confidential information which would enable the competitor to adjust its behaviour.

Any preferential terms offered to competitors as customers in exchange for an agreement to withdraw from one of markets would be clear breach of Competition law. Similarly, no agreement or commitment should be made to a competitor to behave in a certain way (i.e. staying out of a market, not bidding in a tender etc.) in exchange for payment of a higher price or a contract/subcontract award.

3.3 Dealing with competitors as suppliers

This area can raise concerns under Competition law, so Legal department must be consulted before entering into any agreement with suppliers who are competitors.
4.5 Enforcement and Reporting

The Compliance Programme should be implemented and enforced throughout the organisation and translated into local language. The CCP must be widely communicated to all relevant employees (i.e those who are directly or indirectly involved in commercial activities and/or who come into contact with customers, suppliers and competitors) and all relevant business partners. Do’s and Don’t’s can be issued and tailor made to best fit with the Competition Compliance Requirements. In countries where Competition Laws are well developed and mature, the Compliance Programme must be developed in line with country’s requirements, whereas in countries where there is no antitrust legislation, appropriate procedures should be designed with a view to adapting the anti-trust rules and standards contained in the Competition Policy of the enterprise to the specific legal and business background of the relevant country.

Reporting about the Policy implementation is normally achieved through Competition Compliance Committee. In this context, Annual Questionnaire shall be used as basis for such reporting. Reported information is essential in order to get a fair view of the implementation of the Compliance Programme in various levels of the management. Internal verifications can be conducted from time to time in any of the business units by the Competition Committee, with a view to verifying the proper application of Compliance Programme. A Yearly verification plan shall be agreed in advance and it shall be kept confidential and updated on a regular basis if needed. Unless otherwise decided, those verifications shall be communicated in advance only to a limited number of people in order to ensure proper efficiency. Conclusions of such verifications shall be placed before the Board of Directors and any corrective action required shall be decided accordingly.
Designing a model to evolve Indian competitiveness requires a delicate acknowledgement of the current business environment along with a positive approach to future development. Businesses must connect the fibres between profit maximization, stakeholder optimization and ethical competitiveness in order to create sustainable growth. Profit maximization, market leverage and global competitiveness must take an equal precedence with ethical behaviour and Corporate Governance.

The enterprise must analyze stakeholder priorities to develop a strategy for strengthening competitiveness. Enterprises must develop a structural framework and create standards to make it more competitive. Setting short-term and long-term targets for ethical compliance is important because it creates standards that make a company more competitive on the global marketplace. Constantly adjusting these standards will enable a business to enter new markets and improve image as the Indian businesses approach multinational status. Therefore the enterprises must include the compliance of Competition laws into their Governance structure so that the enterprises can avoid contravene the provisions of Competition law.

Creating a code that defines proper decision making will give all stakeholders a model that is, at best, a path for success and competitiveness, while also shifting power dynamics within an organization. While competitiveness is the responsibility of all stakeholders, ethical behaviour starts at the top because enforcement begins and ends there. The goal is to create long-term stakeholder value by taking advantage of opportunities and managing risks related to economic, environmental and social developments. Success for all enlightened corporations today includes, among other factors, the ability to build a brand that inspires and breeds trust. Finally the defined standards on Competition and its timely Compliance by the enterprise will surely achieve the objectives of Competition Law i.e. Prevention anti-competitive practices; Promotion and Sustained competition; Protection of consumers Interest; and Freedom of trade.
References:

1. Anand Agrawal and Sanjay Fuloria, “Corporate Governance for Competitive Credibility”.


5. OECD Hearings Competition and Corporate Governance 2010.


7. Thomas Clarke and Marie Dela Rama, “Fundamentals of Corporate Governance”.


12. Corporate Governance, Reputation and Competitive Credibility
http://www.academyofcg.org/CMSAdmin/DATA/8_12_2010_4_51_4_October_2002-2.pdf last visited on 13-08-2012 at 16.50 pm


**List of Websites Visited:**

1. www.cci.gov.in
2. www.legalservicesindia.com
3. www.jurisonline.in
4. www.oecd.org
5. www.oft.gov.uk
7. www.icsi.edu
8. www.lawyersclubindia.com
9. www.academyofcg.org
10. www.lexvidhi.com
11. www.agilitylogistics.com
Annexure-1:

**Reporting Format of Quarterly Compliance on Competition Laws**

The Competition Committee shall submit a quarterly compliance report on Competition laws to the Board of Directors presiding in the Board Meeting in each quarter as per the format given below. The report shall be submitted either by the Compliance Officer or the Head of the Compliance Committee appointed after obtaining due approvals.

**Name of the Company:** .................. **Public/Pvt. Ltd**

**Quarter ending on:** .................. **Apr/July/Oct/Jan**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Options (Tick the appropriate Box)</th>
<th>Section in the Competition Law</th>
<th>Compliance status (Yes/No/N.A.)</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>I. ANTI COMPETITIVE AGREEMENTS</td>
<td>Section 3</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status of the Party/Client</td>
<td>Individual</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Corporate</td>
<td>(Sec 3(1))</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Firm</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Association of Person</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Enterprise</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is the Agreement related to ?</td>
<td>Production</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Supply</td>
<td>(Sec 3(1))</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Distribution</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Storage</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Acquisition</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Control of Goods</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Provision of Services</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is the Party/Client with whom the agreement has been entered into is engaged in similar trade of goods</td>
<td>Yes</td>
<td>(Sec 3(3))</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Question</td>
<td>Yes</td>
<td>No</td>
<td>(Section)</td>
<td></td>
</tr>
<tr>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-----</td>
<td>----</td>
<td>-----------</td>
<td></td>
</tr>
<tr>
<td>Is the agreement directly or indirectly determines purchase of sale price?</td>
<td>☐</td>
<td>☐</td>
<td>(Sec 3(3)(a))</td>
<td></td>
</tr>
<tr>
<td>Will the agreement limits or controls production, supply, markets, technical development, investment or provision of services?</td>
<td>☐</td>
<td>☐</td>
<td>(Sec 3(3)(b))</td>
<td></td>
</tr>
<tr>
<td>Is the agreement contains any clause, sharing the market by way of allocation of geographical area or number of customers?</td>
<td>☐</td>
<td>☐</td>
<td>(Sec 3(3)(c))</td>
<td></td>
</tr>
<tr>
<td>Will the agreement results in bid rigging or collusive bidding?</td>
<td>☐</td>
<td>☐</td>
<td>(Sec 3(3)(d))*</td>
<td></td>
</tr>
<tr>
<td>Is the Agreement includes?</td>
<td>☐ Tie-in Arrangement†</td>
<td>☐</td>
<td></td>
<td></td>
</tr>
<tr>
<td>☐ Exclusive supply Agreement®</td>
<td>☐ Exclusive Distribution Agreement#</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>☐ Refusal to Deal§</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>☐ Resale Price Maintenance%</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is the Agreement imposes reasonable conditions, for protecting rights which have been or may be conferred upon under?</td>
<td>☐ Yes</td>
<td>☐ No</td>
<td>(Sec 3(5)(i))</td>
<td></td>
</tr>
<tr>
<td>a) The Copyrights Act, 1957;</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>b) The Patents Act, 1970;</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c) The Trade and Merchandise Marks Act, 1958 or The Trade Marks Act, 1999</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| d) The Geographical Indications of Goods (Registration and
| Protection) Act, 1999  

Is the Agreement gives right to any person to export goods from India exclusively to the production, supply, distribution or control of goods or provision of services for such export?  
- Yes  
- No  
(Section 3(5)(i))

**II. ABUSE OF DOMINANCE**

Is the enterprise enjoying dominant position in the market?  
- Yes  
- No

If the enterprise is enjoying dominant position, determine whether that enterprise is not imposing whether directly or indirectly unfair or discriminatory condition in  
- a) Purchase or Sale of goods and services  
- b) Price* in purchase or sale of goods or services  
- Examined by the Competition Compliance Team  
- Not Examined  
(Section 4(2)(a))

The examination of discriminatory or unfair condition would be done by the Competition Compliance team, following the procedure prescribed under Competition Compliance Manual of the Organization

Is discriminatory condition or price has been adopted as a strategy to meet Competition?  
- Yes  
- No  
(Explanation to Section 4(2)(a))

There is no abuse of dominance

Is there restriction on production of goods or services or market or technical or scientific development relating to goods or services to the prejudice of consumers?  
- Yes  
- No  
(Section 4(2)(b))

Is the Organization is indulging in any practice or practices resulting in denial of market access in any manner?  
- Yes  
- No  
(Section 4(2)(c))

Are supplementary obligations
being imposed on conclusion of contract, which have no connection with the subject of the contract in commercial usage or business parlance?

<table>
<thead>
<tr>
<th>☐ Yes</th>
<th>☐ No</th>
<th>(Sec 4(2)(d))</th>
</tr>
</thead>
</table>

Is the organization using its dominance in one relevant market to enter into or protect other relevant market?

<table>
<thead>
<tr>
<th>☐ Yes</th>
<th>☐ No</th>
<th>(Sec 4(2)(e))</th>
</tr>
</thead>
</table>

### III. COMBINATIONS

Is the organization planning for acquisition of shares, voting rights or assets crossing the threshold limits? 

<table>
<thead>
<tr>
<th>☐ Yes</th>
<th>☐ No</th>
<th>(Sec 5(a))</th>
<th>If yes, Competition Commission approval to be taken.</th>
</tr>
</thead>
</table>

Is the organization planning for acquiring control over an enterprise crossing the threshold limits?

<table>
<thead>
<tr>
<th>☐ Yes</th>
<th>☐ No</th>
<th>(Sec 5(b))</th>
<th>If yes, Competition Commission approval to be taken.</th>
</tr>
</thead>
</table>

Is the organization planning for any merger or amalgamation crossing the threshold limits?

<table>
<thead>
<tr>
<th>☐ Yes</th>
<th>☐ No</th>
<th>(Sec 5(c))</th>
<th>If yes, Competition Commission approval to be taken.</th>
</tr>
</thead>
</table>

1) The details under each head shall be provided to incorporate all the information required as per the provisions of the Section 3, 4 and 5 of the Competition Act, 2002.

2) In the remarks column, reasons for non-compliance may be indicated.

* Will not apply to Joint Venture Agreement

† Tie-in Arrangement includes any agreement requiring a purchaser of goods as a condition of such purchase, to purchase some other goods.

@ Exclusive Supply Agreement includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person

# Exclusive Distribution Agreement includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods.

$ Refusal to Deal includes any agreement which restricts or is likely to restrict by any method the persons or classes of persons to whom goods are sold or from whom goods are bought.
% Resale Price Maintenance includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that the prices lower than those prices may be charged.

@ Dominant Position means a position of strength enjoyed by an enterprise, in the relevant market, in India, which enables it to-

i) Operate independently of competitive forces prevailing in the relevant market; or

ii) Affect its competitors or consumers or the relevant market in its favour.

* Predatory Price means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce Competition or eliminate the competitors.

^ Threshold limits

In Case of Section 5(a)(i) where no group Companies are involved:

<table>
<thead>
<tr>
<th>Assets</th>
<th>In India(Rs.)</th>
<th>In India + Outside India ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>More than 1000 crores</td>
<td>More than 500 million (including Rs. 500 crores in India)</td>
</tr>
</tbody>
</table>

| Turnover        | More than 3000 crores | More than 1500 million (including Rs.1500 crores in India) |

In case of Section 5(a)(ii) where Group\(^{18}\) Companies are involved:

<table>
<thead>
<tr>
<th>Assets</th>
<th>In India(Rs.)</th>
<th>In India + Outside India ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>More than 4000 crores</td>
<td>More than 2 billion (including Rs. 500 crores in India)</td>
</tr>
</tbody>
</table>

| Turnover        | More than 12000 crores | More than 6 billion (including Rs.1500 crores in India) |

The threshold limits prescribed under Sec 5 (b) and (c) are same as above and the approval of Competition Commission shall be required for effecting the Combination.

\(^{18}\) Group means two or more enterprises which, directly or indirectly are in a position to ---

i) Exercise twenty-six percent or more of the voting rights in the other enterprise; or

ii) Appoint more than fifty percent of the members of the board of directors in the other enterprise; or

iii) Control the management or affair of the other enterprise;
Annexure 2:

*Personal Confirmation under Competition Compliance Programme*

a) I have received a copy of the Competition Compliance Manual;
b) I have received training and awareness about the Competition Compliance Programme;
c) I have understood about the Monitoring system of the Competition Compliance Manual;
d) I will comply fully with the provisions of the Competition Compliance Programme; and
e) I am aware that any serious breach of the Competition Law or Competition Compliance Programme may render me liable to disciplinary action.

Name in Capitals: ...........................................................................................................

Position: ....................................................................................................................

Date: ...............................................

Comments: ..............................................................................................................

Signature: ..............................................................................................................
Annexure 3:

Compliance Programme- Competitor Contact Form

Title of Meeting: ...........................................................................................................................................................................

Held at the offices of: ......................................................................................................................................................................

Minutes taken by: ........................................Time/date..................................................................................................................

This document confirms that there will be no discussion on subjects that are prohibited by the Competition Compliance Manual. In particular the subject of prices and market share or any other matters to our knowledge that are prohibited by the Competition Compliance Programme, will not be raised at the meeting.

<table>
<thead>
<tr>
<th>Company</th>
<th>Name</th>
<th>Position</th>
<th>Signed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>