



Staying Ahead of the Game

The Role of Proactive Compliance in Fostering Healthy Competition

Competition is a key driver of innovation, productivity, and economic growth. However, businesses must operate within the bounds of antitrust laws that prohibit anti-competitive behavior, such as predatory pricing, bid-rigging, and market-sharing agreements.



CCI has the power to investigate and penalize anti-competitive conduct

USD 163 Mn

INR 13,357 Mn was imposed as penalty in 2021-22

The Competition Commission of India (CCI) is the primary regulator responsible for ensuring competitive markets and enforcing competition laws in India. The CCI has the power to investigate mergers and penalize anti-competitive behavior. In recent years, the CCI has investigated anti-competitive conduct in multiple sectors, including pharmaceuticals, cement, and automobiles.

Violations of antitrust laws can result in significant fines, legal costs, reputational damage, and even criminal sanctions. Therefore, it is critical for businesses to have a proactive compliance program that mitigates the risks of antitrust violations and demonstrates their commitment to fair competition.

To this end, CCI has kept pace with the latest tools, technologies, and resources, deploying them for investigative purposes.¹ It has the power to summon employees, conduct raids, confiscate IT equipment as per Section 41 of Companies Act, 2002² and Section 220 of the Companies Act, 2013.³

As a result, there has been a rise in the penalties imposed for breach of competition law in India. As per the annual report of CCI for 2021-22, INR 13,357 Mn (USD 163 Mn) was imposed as penalty for the financial year which is approximately 205% higher than the penalty imposed in 2017-18.⁴

The quantum of penalties are likely to remain high as the Competition Amendment Bill, 2023, has enabled penalties based on global turnover of the entities under investigation (as opposed to 'relevant turnover' earlier).⁵

Organizations need to ensure that their employees are not partaking in anti-competitive behavior such as price-fixing, group boycotts, and exclusionary exclusive dealing contracts or trade association rules.

The CCI is known to take a considerate view of the efforts made by a company to curb violation of Competition Act, in case of an enforcement action.⁶ To avoid penalties and

reputational damage, businesses must have a robust compliance program that is tailored to their specific risks and operations.

The following outlines key elements of a compliance program that will help organizations avoid the many adverse potential consequences of competition law infringement.



Risk Assessment

A thorough risk assessment should be conducted to identify the potential antitrust risks associated with a company's operations, including its relationships with competitors, suppliers, distributors, and customers. This would also include an assessment of the relevant market(s) the company operates in, its market share/market power in these markets, and CCI's enforcement priorities in these markets. This assessment should be reviewed periodically to ensure that the program remains effective in mitigating risks.



Policies and Procedures

Written policies and procedures should be established that prohibit anti-competitive behavior and provide guidance on how to identify and report potential violations. The policies and procedures should be communicated to all employees, and they should be trained on how to implement them effectively.



Internal Controls

A compliance program should have internal controls in place to monitor and detect potential antitrust violations. This may include regular audits, monitoring of sales and pricing data, and analysis of industry trends and developments.



Auditing, Monitoring, and Evaluation

The compliance program should be subject to regular monitoring to ensure that it is effective. Effectiveness can be tested through surveys, training evaluations, interviews to verify knowledge and attitude towards compliance. Further, the company can establish an investigative protocol in case of a breach of antitrust policies.



Trainings

The compliance program must include annual mandatory compliance awareness training for all staff. Further, for risk-prone departments, focused trainings should be carried out including case studies.



Dawn Raid Preparedness

The CCI and Directorate General can receive a warrant to conduct a raid of companies under investigation. The officials may conduct employee interviews and seize evidence. To develop an effective response strategy to dawn raids, potential mitigation steps include:

- Identifying names and contact information of company lawyers and external legal counsel who should be contacted in case of a dawn raid;
- Providing awareness trainings to handle dawn raids conducted by the officials of the CCI and enhancing awareness of anti-competitive conduct; and
- Identifying data points and personnel responsible for providing information to the CCI during such raids to ensure cooperation with the agency, and at the same time, provide accurate disclosures.



Adequate Reporting Channels

Organizations must ensure that employees can report wrongdoings or infringements confidentially and without the threat of retaliation. Establish a hotline for the firm's employees, vendors, and other third parties to provide a reporting channel. Further, complaints regarding anti-trust behavior should be tracked, and action should be taken immediately.



On-going Reviews

Organizations may put in place mechanisms that periodically review infringements that have occurred and identify measures to strengthen compliance and prevent recurrence of such issues.

By implementing a comprehensive and hands-on compliance program, organizations can demonstrate their commitment to compliance and avoid costly penalties and reputational damage. While there is no one-size-fits-all approach to implementation, solutions do not have to be burdensome. Companies do not need to overspend on advanced tools, instead, with the right amount of planning, a business can seamlessly incorporate an antitrust compliance program to ensure healthy competition.

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Endnotes

- ¹ Press Trust of India, December 5, 2022, [CCI chief calls for devising new tools to check anti-competitive practices.](#)
- ² [The Competition Act, 2002](#) n.d Competition Commission of India.
- ³ [The Companies Act, 2013](#) n.d Ministry of Corporate Affairs, Government of India.
- ⁴ [Annual Report 2021-22](#) n.d Competition Commission of India.
- ⁵ The Indian Express, March 31, 2023, [Competition \(Amendment\) Bill pass in Lok Sabha: How it affects Big Tech.](#)
- ⁶ [Competition Act 2002 – Leniency Programme](#) n.d Competition Commission of India.