

**COMPETITION (AMENDMENT) ACT, 2009**  
**MRTP REPEALED AND REPLACED BY THE COMPETITION ACT, 2002**

The Government of India has issued a Notification dated August 28, 2009, whereby the Monopolies and Restrictive Trade Practices Act, 1969 [the "Act"] stands repealed and is replaced by the Competition Act, 2002 with effect from September 1, 2009.

The Monopolies and Restrictive Trade Practices Commission will continue to handle all the old cases filed prior to September 1, 2009 for a period of two (2) years and will not entertain any new cases post September 1, 2009.

**Applicability of the Competition Act, 2002:**

1. The Competition Act, 2002 is applicable to any of the individuals, companies, partnerships, HUFs, association of persons (incorporated or not incorporated other artificial juridical persons and departments of Government not discharging sovereign functions. The Competition Act, 2002 is also applicable to the enterprises engaged in production, storage, supply, distribution, acquisition or control of goods or provision of services or investment or in the business of acquiring, holding, underwriting or dealing with securities of body corporates directly or indirectly through subsidiaries, units or divisions
2. The Competition Act, 2002 is applicable to any agreements which includes any arrangement or understanding or action in concert which is written, oral, formal, informal whether or not intended to be legally enforceable.

**Prohibition on Anti-Competitive Agreements:**

Section 3 (1) prohibits agreements which cause or are likely to cause substantial adverse effect on competition within India. Section 3 (2) provides that such agreements will be void. The Competition Act, 2002 also makes a distinction between treatment of (1) agreements between enterprises/persons or association of enterprises/persons or practice carried on, or decision taken by any association of enterprises/persons, including cartels, engaged in identical or similar trade of goods or provision of services and (2) agreements amongst enterprises or persons at different stages or levels of the production chain in different markets.

Agreements taking place outside India but having an effect within India are also covered under Section 32. The Competition Commission of India has jurisdiction when any party to the agreement is outside India or the agreement has been entered into outside India or any other matter or practice or action arising out of the agreement takes place outside India.

**Amendment in Section 66 and Repeal of Ordinance 6 of 2009:**

In Section 66 of the Competition Act, 2002 -

(a) in sub-section (1), the proviso and the explanation thereto shall be omitted;

(b) in sub-section (3) –

- (i) for the words, brackets and figure “after the expiry of two years referred to in the proviso to sub-section (1)”, the words, brackets and figures “on the commencement of the Competition (Amendment) Act, 2009, shall be substituted;
- (ii) the following Explanation shall be inserted, namely: - “Explanation – For the removal of doubts, it is hereby declared that all cases referred to in this sub-section, sub-section (4) and sub-section (5) shall be deemed to include all applications made for the losses or damages under Section 12 B of the Act (54 of 1969) as it stood before its repeal;

(c) in sub-section (4), -

- (i) for the words, brackets and figure “on or before the expiry of two years referred to in the proviso to sub-section (1)”, the words brackets and figures, “immediately before the commencement of the Competition (Amendment) Act, 2009, shall, on such commencement” shall be substituted;
- (ii) after the proviso, the following proviso shall be inserted, namely : - “**Provided** further that all the cases relating to the unfair trade practices pending before the National Commission under this sub-section, on or before the date on which the Competition (Amendment) Bill, 2009 receives the assent of the President, shall, on and from that date, stand transferred to the Appellate Tribunal and be adjudicated by the Appellate Tribunal in accordance with the provisions of the repealed Act as if that Act had not been repealed.”;

(d) in sub-section (5), for the words, brackets and figure “after the expiry of two years referred to in the proviso to sub-section (1)”, the words, brackets and figures “on the commencement of the Competition (Amendment) Act, 2009” shall be substituted;

(e) in sub-section (7), the following proviso shall be inserted, namely:- “**Provided** that all investigations or proceedings, relating to unfair trade practices pending before the National Commission, on or before the date on which the Competition (Amendment) Bill, 2009 receives the assent of the President shall on and from that date, stand transferred to the

Appellate Tribunal and the Appellate Tribunal may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit.”.

**Repeal and Savings** 3 (1) The Competition (Amendment) Ordinance, 2009 (Ord. 6 of 2009) is hereby repealed. (2) Notwithstanding such repeal, anything done or any action taken under the Competition Act, 2002 (12 of 2003), as amended by the said Ordinance, shall be deemed to have been done or taken under the said Act as amended by this Act.

**Provisions – the MRTP Act, 1969 to the Competition Act, 2002:**

As provided in Section 66 of the Competition Act, 2002 the following transitional powers would be applied with effect from September 1, 2009.

1. After the expiry of the specified two year period from September 1, 2009, the Monopolies and Restrictive Trade Practices Commission shall stand dissolved.
2. The cases pending before the Monopolies and Restrictive Trade Practices Commission after the expiry of two years from September 1, 2009 shall be transferred and shall be dealt with by the new authority as hereunder:
  - i. The Competition Appellate Tribunal would be handling all the pending cases transferred by the Monopolies and Restrictive Trade Practices Commission relating to giving false or misleading facts disparaging the goods, services or trade of another person under the Act in accordance with the provisions of repealed Act.
  - ii. Investigations undertaken by the Director General under the Act relating to Monopolistic/restrictive trade practices will be transferred to the Competition Commission of India, cases relating to unfair trade practices will be transferred to the National Commission under the Consumer Protection Act, 1986 which may in turn transfer such cases to a State Commission constituted under the said Act under circumstances it deems appropriate.

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