Competition Commission of India (‘CCI’) is aggressive and assertive in its enforcement outlook and levying hefty fines for violations; it is imperative that every company and the officers in charge are aware of the canons of competition law while conducting their business.
Every company needs expert and up to date competition law advice in every activity that it undertakes:

- inorganic growth by way of entering into mergers or acquisitions;
- entering into / reviewing existing marketing and distribution strategies;
- implementation of sales strategies (including discount methods) for a new / innovative product or;
- discussions with competitors at the level of trade association.

Competition law is all pervasive and it percolates every level of a company (whether at the level of board of directors, senior management, project managers, suppliers, distributors and all other business partners).

The CCI has the power to levy fines, both on individual and also at the company / group level. As such, the CCI has started levying fines on not only the delinquent enterprises but also on the officers in charge. Based on the above, it is essential that companies must engage with experts who can guide them in conducting the business in a manner compliant with competition law. Such an "investment" made now will be the differentiator between commercial success and non compliance, the impact of non compliance will be fines and huge reputational loss, in the future.

The chairperson of the CCI, has observed recently that “Compliance is like the Truth, and not a mathematical formula to match the juggle. There are penalties and fines for non-compliance. The companies also lose credibility if found violating the Competition Compliance. So, the costs of violations are extremely high. There are no formulas defining the violations but there are host of factors derived from the behavioural aspects”.

Khare Legal Chambers' antitrust team offers to its clients a “one stop” competition law legal service in relation to:

- competition law litigation, i.e representing clients both for the informant and defendant in cases of anti competitive agreement and abuse of dominance, including class action litigations;
- compliance and risk management;
- merger filings and transaction advisory; and
- competition law advisory.
competition law dispute resolution

Competition law is revamping the roadmap as to how businesses are to be run in India. Any litigation strategy thus adopted must be in line with the nuances of the fast emerging competition law. The strategy must be attuned to the jurisprudence of the CCI and also EU jurisprudence, considering that the Competition Act is largely patterned on EU law. Litigation strategies can range from proper econometric analysis, market assessment, conduct, filing of whistle blower application (if required), appropriate damage calculation (for claiming compensation) etc.

The Firm has a robust litigation expertise and has leveraged this expertise to represent clients (both as a counsel for the complainant / informant and for the defendant). Our expertise inter alia encompasses the following:

- Filing information / written submissions before the CCI and the Director General, the investigating arm of the CCI;
- Undertaking an econometric analysis of the data for presentation before the Director General and the CCI;
- Representing clients before the CCI, the Competition Appellate Tribunal, High Courts and the Supreme Court of India;
- Filing of follow on complaints / damages complaints before the Competition Appellate Tribunal and making appropriate damage calculation analysis;
- Working with leading economists to appropriately analyze the market structure.
The various stages of an enforcement process, and the scope of services undertaken by the Firm in each of the stages:

**information**
- Entails a detailed market research assessment;
- Economic analysis of data;
- Drafting of the information and providing all evidences to ensure that CCI directs the Director General to investigate the matter.

**director general**
- Economic analysis of data and presenting before Director General (both for informant and opposite party);
- Advice on submissions before Director General.
- Co-ordination with economists and drafting of market assessment report, if required and making submissions before the Director General.

**hearing before competition commission of india**
- Oral hearing and written submissions before the Competition Commission of India;
- Preparing written submissions on the report prepared by the Director General, including economic analysis;
- Analysis (including interaction with economist and conducting customer interviews) to delineate the relevant market, if required.

**merger control**
The Firm has requisite expertise to represent clients in the merger filing before the CCI.
The scope of Khare Legal Chambers' services includes the following:
- Determination of merger control notification - includes review of the financial statements, analysis of the structure of the transaction and when to file the merger notification, if required;
- Assessment of the relevant market and filing of short form (Form I) / long form (Form II), as the case may be;
- Filing of the merger notification and subsequent responses;
- Undertaking an econometric analysis of the data to form part of the merger notification and subsequent responses to the CCI;
- Gun jumping compliance;
- Negotiation on commitments.
compliance and risk management

Every company faces increased scrutiny and penalties for antitrust and competition violations. Non-compliance with competition law, amongst others, can result in huge, and increasing, fines to the enterprise as well as officers in charge; exposure to huge compensation claims (for both actual loss and loss in profits); individual liability on directors and other officers in charge; illegality of business models and practices; unenforceability of key business contracts and reputational loss.

The Firm guides clients and provides all stages of competition compliance counselling, including offering effective strategies to improve compliance and mitigating risk, including obtaining immunity from fines for past conduct.
To have an effective compliance & risk management process, we offer following services:

1. **Competition Audit**: Our experienced and trained competition lawyers undertake a detailed audit of the practices and agreements of the company to analyze whether the practices are in compliance with the principles of Competition Law.

As a part of the audit, our team meets with and interviews key employees to understand, amongst others, the client’s:
- Existing business partnering arrangements;
- interactions and communications with competitors, such as participation in trade associations;
- interactions with customers or suppliers;
- plans for potential mergers, joint ventures or alliances; and
- pricing and distribution practices and strategies.

Compliance audit unearths any anti-competitive conduct that a company has knowingly or unknowingly engaged in.

Post the audit, and as a matter of risk assessment, a risk matrix is prepared in the following manner:

<table>
<thead>
<tr>
<th>RISK MANAGEMENT MODEL</th>
<th>PROBABILITY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>LOW</strong></td>
</tr>
<tr>
<td><strong>IMPACT</strong></td>
<td></td>
</tr>
<tr>
<td>Severe / Critical</td>
<td>Management effort required</td>
</tr>
<tr>
<td>Moderate</td>
<td>May accept risks and monitor them</td>
</tr>
<tr>
<td>Limited / Minor</td>
<td>Accept risks</td>
</tr>
</tbody>
</table>
... compliance and risk management

2. **Adoption of best practices and imparting training**: Audit is just one step in the overall compliance and risk management services. Once the risks from the audit are identified, an effective and tailored compliance program is rolled out at all levels of company (level of board of directors, senior management, project managers, suppliers, distributors and all other business partners) to make them aware of the principles of competition law and at the same time, ensuring that the business is run in a commercially successful manner.

An effective competition law compliance programme helps to minimise the risk of infringement and ensures that systems are in place to deal with such infringement. The Firm offers in-house compliance training seminars and audits. The training seminars are informative and interactive, and designed to expediently coach the company on the nuances of competition law compliance programs. These seminars can be tailored to suit any company, industry, or audience.
3. **General compliance counselling**: The Firm’s team of lawyers and experts work with clients as they periodically reassess their compliance programs. We advise clients contemplating a change in their pricing policies, distribution systems or relationships with a major customer or supplier, marketing strategy of a new product or change in their marketing strategy and analyze the same with respect to the competition law compliance risk.

4. **Dawn raid training**: The Competition Amendment Bill gives a lot of teeth to the CCI on their power of search and seizure, by way of dawn raids. Once the bill sees the light of the day and becomes enforceable, CCI will exercise its power of raids to gather evidence of an anti-competitive conduct. Regulatory search and seizure operations can occur when least expected. Such dawn raids require expert handling and incorrect handling of such raids can have an instant and dramatic impact on the business and reputation of the company. It is essential that policies and procedures are in place and ensuring that such procedures are followed during the course of dawn raids, the impact can be minimized during the course of proceedings.

In the event of a dawn raid, companies need immediate legal assistance. The Firm gives guidance and dawn raid training, effective measures to handle every stage of a dawn raid from the first moment that the CCI officials come to the premises of the clients to post raid debriefing. The Firm can assist the clients in developing and implementing effective procedures and training the senior management and other key employees. We believe in providing a 24*7 support. We will work with clients to ensure that they are prepared for a dawn raid by:

- advising on and preparing dawn raid guidelines and procedures for employees to follow in the event of an inspection by competition authorities, as a part of the overall compliance program;
- conducting a dawn raid response audit to test client procedures for dealing with a dawn raid; and
- providing training to the employees of the company on handling a dawn raid.
competition law advisory

We also provide day to day counselling to enterprises on competition law. The scope of Khare Legal Chambers’ services includes the following:

- Review of the agreements entered into by companies / practices adopted by companies to do a sanity check whether their practices are in compliance with the Act;
- Advise on financial statements for merger notification;
- Gun jumping compliance;
- Strategy memorandums to companies to mitigate the risk of non compliance.

experience

- Filed information and obtained a favourable order from the Competition Commission of India against the abuse of dominance by Coal India and its subsidiaries in supply of coal to the core industries like sponge iron. This is one of the biggest competition action initiated against Coal India, a public enterprise enjoying statutory monopoly, in recent history
- We regularly advice FMCG / FMCD companies on issues relating to dominance, market share, concentration, pricing, distributorships, discounts, free gifts etc., bundling, market placement, promotional pricing and the likes
- Advised, drafted and negotiated International Distributorship Agreement between a leading Indian home appliance manufacturing company with its Distributors in the United States of America, the United Kingdom and Canada which involved inter alia trans-border competition law issues and structuring aspects
- Represented one of the largest infrastructure finance companies in their action, before the CCI, prosecuting an abuse of dominance action
- Representing a housing complex and residents in their action against the developer for abuse of dominance and unfair trade practice

* Please note that the experience mentioned above is only representative, some engagements / assignments / instructions cannot be mentioned for reasons of confidentiality.
Khare Legal Chambers LLP is a registered Limited Liability Partnership as per Indian laws having its registered office at D-1, Sai Nagri, Kalyani Nagar, Pune - 411006, Maharashtra, India.

© Khare Legal Chambers LLP, 2016