

COMPETITION LAW

UNIT – IV

Competition Commission of India
Composition • Duties • Powers • Functions

20 slides • ss.7–19, 26–29, 33, 36 and case law

What this unit covers

1. Why a commission

2. s.7 establishment

3. Composition s.8–10

4. Selection & term

5. Resignation removal

6. s.18 duty

7. Functions map

8. s.19 inquiry

9. s.26 procedure

10. Prima facie order

11. DG reference

12. Hearings & orders

13. Interim s.33

14. s.27 remedies

15. Extra-territory s.32

16. s.36 procedure powers

17. Relation with sector regulators

18. Cases

19. Takeaways

20. Close

Why a specialist commission

Competition cases are economic. A multi-member expert body is meant to mix law, economics and public administration. Appeals then go to a tribunal and the Supreme Court.

Not a ministry desk

Independence from the business department that also promotes industry.

Not a civil court only

Needs suo motu reach, dawn raids through DG, and structural remedies.

Raghavan design

Investigate, decide, advocate – three hats.

2007 repair

Separated the old 'prosecutorial DG inside the bench' anxiety; appeal to COMPAT, now NCLAT.

Establishment and composition

s.7

CCI is a body corporate with perpetual succession.

s.8

Chairperson + Members (the number has been statutory-capped and amended over time).

Qualifications

Law, economics, business, public affairs, international trade – plus integrity and standing.

s.9 Selection

Committee chaired by the CJI or a nominee – a judicial element in appointment.

s.10 Term

Fixed term; age cap; no reappointment as member in some earlier frames – check current text.

Whole-time

Members are whole-time; the point is professional attention.

Vacancy, resignation, removal

Institutional independence dies if members can be removed at pleasure. The Act therefore lists grounds and a process.

Resignation

Addressed to the Central Government.

Removal

Insolvency, paid employment, infirmity, abuse of position – typically after a Supreme Court inquiry on some grounds.

Vacancy

Does not invalidate completed work if the quorum rule is met.

Quorum / Benches

Commission may work in benches; Chairperson can transfer matters.

Section 18 – the duty clause

It is the duty of the Commission to eliminate practices having AAEC, promote and sustain competition, protect consumer interest, and ensure freedom of trade by other participants.

Four limbs

Eliminate / promote / protect consumers / keep freedom of trade.

Not optional

s.18 colours discretion under ss.19, 26, 27.

Consumer

Market consumer, not every individual CPA claimant.

Freedom of trade

Connects back to Art. 19(1)(g) and Unit I.

Functions at a glance

Adjudicatory

Inquiries under ss.3, 4 and combinations under s.6.

Regulatory

Merger review, modifications, monitoring.

Investigatory (indirect)

Directs the DG; may also inquire.

Advisory

s.21 / 21A references to and from statutory authorities.

Advocacy

s.49 – policy comments, training, market studies.

International

MoUs with foreign agencies; extra-territorial s.32.

Section 19 – how an inquiry starts

CCI may inquire on receipt of information, on a reference from the Government or a statutory authority, or on its own motion. s.19(3) and (4) list AAEC and dominance factors.

Informant

Any person, consumer or association – wide standing.

Own motion

Important for cartels where victims fear filing.

s.19(3)

Barriers, foreclosure, benefits, innovation – the AAEC list.

s.19(4)

Share, size, entry, buyer power – the dominance list.

Section 26 – the procedural spine

s.26 is the map from information to final order. SAIL held that the s.26(1) prima facie direction is not a final decision and is not ordinarily appealable.

s.26(1)

Prima facie case → direct DG to investigate.

s.26(2)

No prima facie case → close, with reasons.

s.26(3)–(5)

DG report; objections; further investigation if needed.

s.26(6)–(8)

If no contravention after report, close; if yes, go forward to order.

Commission and the Director General

DG is the investigator

Office under s.16; duties in Unit V.

CCI directs

DG does not open a s.3/4 case on his own for adjudication.

Report

Evidence spine of the later hearing.

Not bound blindly

CCI may agree, disagree, or send back.

Natural justice

Parties get the report and a hearing before a s.27 order.

SAIL lesson

Do not treat every CCI paper as a quasi-final decree.

Section 27 – orders after inquiry

If contravention of s.3 or s.4 is found, CCI may pass a menu of orders.

Cease and desist

Stop the agreement or abuse.

Modify agreement

Rewrite the offending clauses.

Penalty

On the enterprise and, in some cases, persons in charge (s.27 + s.48).

Direction / residual

Other orders as the Commission deems fit – used carefully.

Interim, extra-territory, combinations clock

s.33

Interim restraint during inquiry – needs a prima facie contravention and urgency.

s.32

Acts outside India with an AAEC in India are reachable.

s.6 + s.29

Combination notice, show-cause on AAEC, remedies.

Deemed approval

If clocks expire without an order (as amended).

Modifications

Structural or behavioural commitments.

Gun-jumping

Closing before approval – penalty under s.43A.

Section 36 – powers of a civil court (limited)

For specified purposes CCI has civil-court powers: summons, documents, receiving evidence, affidavits, requisitioning public records, and commission for examination.

Not a full civil court

No general decree power beyond the Act.

False evidence

Covered through penal provisions of the Act.

Discovery

Document calls are the practical heart of cartel cases.

Confidentiality

s.57 and regulations protect business secrets with public-version orders.

CCI and sector regulators

s.21 / 21A

Mutual reference when overlap appears (TRAI, CERC, PNGRB, SEBI).

Principle

Competition issue → CCI. Technical tariff → regulator.

BCCI / TRAI fights

Jurisdictional skirmishes are a running exam theme.

Coal / ports / steel

PSU + regulator + CCI triangle.

No blanket immunity

A licence from a regulator does not legalise a cartel.

Advocacy

s.49 opinions on proposed policy of ministries and regulators.

Appeals and review architecture

Orders of CCI go to NCLAT (earlier COMPAT). From NCLAT, a statutory appeal lies to the Supreme Court on law.

What appeals

Final s.27 / combination orders; not every s.26(1) paper (SAIL).

Stay

NCLAT may stay penalty; often on deposit terms.

Review / rectify

Limited in-house correction of clerical error.

Writ

Still possible on jurisdiction or natural-justice grounds, used sparingly.

Institutional cases

CCI v. SAIL (2010 SC)

s.26(1) prima facie order not appealable as a rule; CCI's procedure mapped.

Excel Crop Care (2017 SC)

Penalty on relevant turnover; proportionality.

Google Inc. v. CCI (Del HC line)

Extra-territorial reach and investigation powers.

CCI v. Bharti Airtel (2019 SC)

Sector regulator first on some telecom issues; then CCI if needed.

Mahindra Electric / combination line

Gun-jumping and notification discipline.

Brahm Dutt (2005)

Early constitutional challenge to CCI design – led to 2007 amendments.

Process and natural justice

Competition Bar Association practice

Right to report and hearing before penalty.

Interglobe / MakeMyTrip interim line

s.33 used in platform-visibility fights.

Lafarge / Holcim modifications

Combination remedies as a function of CCI.

Board of Control for Cricket

s.27 directions to a dominant sports body.

PSU cases after Coal India

s.18 duty applies inside public sector markets.

Confidentiality disputes

How much of a DG report the informant sees.

Procedure sequence to memorise

Information / suo motu

s.19.

Prima facie

s.26(1) or close under s.26(2).

DG report

s.26(3).

Hearing

Natural justice + s.36 powers.

Final order

s.27; interim was s.33.

Appeal

NCLAT, then Supreme Court.

Key takeaways

- 01 CCI is a statutory expert body – s.7 composition, s.9 selection, protected removal.
- 02 s.18 duty: eliminate AAEC, sustain competition, protect consumers, keep trade free.
- 03 s.19 starts the case; s.26 is the procedure; s.27 is the remedy.
- 04 s.26(1) is prima facie (SAIL). DG investigates; CCI decides.
- 05 s.32 extra-territory; s.33 interim; s.36 court-like process powers.
- 06 Cite SAIL, Excel Crop Care, Bharti Airtel, Coal India, Brahm Dutt.

End of UNIT – IV

Next: UNIT-V • DG, penalties, advocacy, case law

20 slides • **Light academic edition**