

ELP COMPETITION LAW & POLICY PRACTICE

ELP houses one of India's leading Competition Law & Policy practices. We have been closely involved in the evolution and continuing growth of jurisprudence under India's new competition regime and have actively collaborated with the Competition Commission of India (CCI) on various advocacy and regulatory initiatives. We have successfully represented the CCI between 2009 and 2011 before various courts in India and played a vital role in developing the jurisprudence that currently governs the operation of competition law in India today. **ELP** was also part of the "Law Firm Working Group" formed by the Ministry of Corporate Affairs to give a final shape to the merger regulations of the country.

Our dedicated Competition Law & Policy team, consisting of experienced lawyers and economists, has been engaged in representing national and multi-national clients in a diverse range of sectors including information technology, pharmaceuticals, fibre cement sheets, ports, power, steel, automobile manufacturing, automotive components, natural gas industry and sports. Our team advises on a full range of competition law matters, including merger control, anti-competitive agreements, including cartel enforcement, abuse of dominance, competition advisory, competition audit and compliance. We have also worked with the Department for International Development to re-write the competition and consumer laws in the Islamic Republic of Afghanistan.

Our integrated litigation and regulatory practices, which work together seamlessly, gives us and our clients an edge in contentious work. The team regularly acts for complainants and for defendants in various conduct/ behavioural inquiries before the CCI and the National Company Law Appellate Tribunal (NCLAT). The team also represents diverse clients before various High Courts and the Supreme Court of India in competition related matters. With a formidable reputation for its competition enforcement work, our team is currently representing some of the largest multinational and domestic companies in key contentious investigations that are currently underway in India.

SERVICES

Anti-Competitive Agreements

The Competition Act, 2002 (the Competition Act) empowers the CCI to scrutinise agreements - both horizontal and vertical, to see whether they result in an appreciable adverse effect on competition in the relevant market in India. Our team has advised numerous domestic and international companies in a number of sectors, on the compatibility of provisions contained in supply and distribution agreements, as well as other exclusive arrangements, cartel investigations, joint ventures etc. for compliance with the provisions of the Competition Act.

Abuse of Dominant Position

Preventing abuse of dominant position appears to be one of the key focus areas of the CCI's enforcement policy. **ELP's** Competition Law & Policy team has handled the first abuse of dominance case in India, on behalf of the complainant, where the CCI found in favour of the complainant. Our team continues to represent various enterprises for alleged abuse of dominance claim before the CCI, COMPAT and the Supreme Court of India. We have also advised several domestic and foreign firms with significant market power in designing their pricing and discount programmes with our clients ranging from sectors including information technology, polymer and automotive components.

Merger Control

ELP provides its clients a varied range of services from end to end of a transaction, which entails identifying competition law issues at the due diligence stage, determining application of merger control provisions in the earlier stages and preparing merger filings for it to be filed with the CCI at the start of the trigger to save timelines and get expedited approvals.

The team offers comprehensive merger control guidance, including:

- advice on structuring of transactions for the purposes of merger control;
- applicability of merger control provisions on transactions and where required, filing merger notifications with the CCI, including preparation of merger filings and follow-up responses to questions raised;
- preparing detailed economic market analysis, including engaging an economist (where required) to be presented to the CCI as part of the notification; and
- conducting pre-merger consultations with the CCI to seek clarity on contentious issues.

Our practice group has worked closely with domestic and multinational enterprises and international law firms to provide advice on various aspects of the merger control regulations. Members of our team have worked on various merger notifications, including some complex Form II merger notifications filed with the CCI.

Cartel Investigations

With a threat of heavy fines and wide powers of search and seizure enjoyed by the CCI, several large corporations are wary of potential cartel investigations. **ELP's** Competition Law & Policy team has represented clients in the most high-profile cartel investigations initiated by the CCI in cases dealing with anti-competitive horizontal agreements and cartels. Our team also advises clients on potential cartel investigations and provides solution-oriented advice on steps to be taken to avoid scrutiny by the CCI. Additionally, the team has also advised clients on filing 'information' before the CCI on cartelization as part of a broader leniency strategy and is representing various entities in pending cartel investigations before the CCI and COMPAT.

Competition Litigation

ELP has been involved in contentious competition matters since the commencement of the new competition law regime in India. Between 2009 and 2011, we represented the CCI in several cases including the first ever competition law case before the Supreme Court of India where we successfully challenged an order of the erstwhile COMPAT in a landmark decision. Since then, our competition litigation practice has been actively representing clients before the NCLAT, various High Courts as well as the Supreme Court of India.

Competition Compliance Programmes

ELP's Competition Law & Policy team offers tailor made "Competition Compliance" programmes to its clients. Such a competition compliance review program assists enterprises in understanding the various requirements of the Competition Act and taking steps to ensure that business is conducted in accordance with such requirements.

A typical competition compliance programme undertaken by **ELP** includes analysing provisions in standard agreements, structuring discount and pricing schemes, preparing for dawn raids, re-drafting corporate communications and various other functions in the day-to-day business of a company. Our team conducts the competition compliance reviews on the basis of structured questionnaires and ensures that our clients are made aware of areas of risk flowing from their business and operations with a view to providing them advice on steps designed to ameliorate those risks.