



## COMBATING CARTELS AND POLICIES WITH REFERENCE TO COMPETITION ACT, 2002

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### ABSTRACT

Globalization and progressive liberalization of trade during last decade opened a widening atmosphere giving rise to certain inevitable tasks and challenges for every country Around the Globe. It, therefore, became imperative for many countries to have a new line of rethinking on the existing pattern of policies on trade, customs and usages. The world trade Organization's (WTO) treaties and agreements, their implications on trade and commerce have already compelled many countries to review their competitiveness of trade and economic policies not only within their economy but across the frontier of other countries also. In India the law which originally enacted to deal with Market and Competition (i.e. The Monopolies and Restrictive Trade Practice Act 1969) addressed the problems concerning to Monopolistic, Restrictive and unfair Trade Practices only. But for the Economic development of the India the Competition Act, 2002 was enacted for the purpose of to prevent practices having adverse effect on Competition, to promote and Sustain Competition in markets, to protect interest of Consumers. And to ensure freedom of trade carried on by other participants in markets as in India and for matters connected therewith or incidental thereto.

The present Article is brief study of Cartel and its impacts and policies under the Competition law in relation to Competition

Act 2002, that what is the Cartel and what are their types and how the effect the Competitive healthy market by making an Anti- Competitive Agreements and Bid rigging for doing an Abuse of Dominant position in the market and malpractices.

The Objective of this Article is also to analysis that if any cartel or Any Anti-Competitive Agreement formed then what are the legal steps taken by the Competition Commission of India to stop such Anti-competitive Agreements and Abuse of Dominant position in the market by way of set up an Enquiry Commission and giving punishments and impose penalties as prescribed in the Competition Act 2002.

### INTRODUCTION

In today's Competitive market some firms or Industry or Companies try to restrict the competition in the market by making formal or informal agreement among them, it is known as a cartel. Such agreements can be achieved by the means of setting a certain price of the product or service, setting product output or capacity limits or limitations on the type of product, dividing markets geographically or by restricting new entrants in the market by setting agreed measures to create monopoly in the industry. Such cartels can exist in any type of industry, be it related to goods or services and can exist at any level- procuring, manufacturing, distribution or retail. Such anti-competitive cartels are formed to have control of sales and prices in the industry.

By and large, the industries in the same line of business, form a cartel, which in turn having the potential of restricting competition in the market, is considered as unlawful conspiracy and thus is challenged in the court once identified.



## MEANING OF CARTEL:

In the basic understanding point of view A cartel is a group of industries /firms which collectively attempt to affect the market prices by controlling production and marketing. According to Wikipedia, a cartel is formal agreement among competing firms. It is formal organizations where there are a small number of sellers and usually involve homogenous products.

Cartel members may agree upon

- a) Price fixing
- b) Total industry output
- c) Market shares
- d) Allocation of customers
- e) Allocation of territories
- f) Bid rigging
- g) Establishment of common sales agencies
- h) Division of profits or combination of the above.<sup>1</sup>

The World Trade Organization defines the term as, an arrangement between firms to control a market – for example, to fix prices or limit competition between members of the cartel.<sup>2</sup>

<sup>1</sup> <http://en.wikipedia.org/wiki/Cartel>.

<sup>2</sup> Hoekman, Bernard M., Mattoo, Aaditya, et.al., *Development Trade and the WTO:A Handbook*, (The World Bank, Washington D.C., 2002) p.593.

<sup>3</sup> Available at [http://ec.europa.eu/competition/cartels/overview/index\\_en.html](http://ec.europa.eu/competition/cartels/overview/index_en.html)

<sup>4</sup> *Dictionary of International Trade Finance Terms*, (Financial World Publishing, UK, 2006)

Cartel as defined by the European Commission for Competition is a group of similar, independent companies which join together to fix prices, to limit production or to share markets or customers between them.<sup>3</sup>

In terms of Trade Finance, any group that comes together to monopolize a market, agreeing which of them is to preside over which area of operation. As well as applying to companies it can also apply to the group of individuals, as for example, when they act in unison to lower the price of unpaid and uncollected goods being auctioned off at a dock.<sup>4</sup>

The Supreme Court defined the term as, “the cartel is an association of producers who by agreement among themselves attempt to control production, sale and prices of the product to obtain a monopoly in any particular industry or commodity. It amounts to an unfair trade practice which is not in the public interest.”<sup>5</sup>

The problem with cartels is that they are very difficult to detect. In fact, it is near impossible to gather enough information about them through usual investigatory channels<sup>6</sup>

## HISTORICAL BACKGROUND

The term primarily originated for

<sup>5</sup> *Union of India v. Hindustan Development Corporation*, AIR 1994 SC 988, 1008

<sup>6</sup> Live mint, “With law in place, it’s now up to CCI to investigate cartels”, available at <<http://www.livemint.com/2009/08/16210101/With-law-in-place-it8217>>



alliances of enterprises roughly around 1880 in Germany.

Later in 1930s the English Economic structure imported the term, prior to this words like association, combination, combine or pool were used.<sup>7</sup>

The term was later given its due importance during the Great Depression in the United States of America. During which cartels (then referred to as 'Depression/ Crisis Cartels') were legalized. However, with the two World Wars the term owing to its Germanic origin was casted as enemy and therefore negative in nature.

With the objective of "protecting the consumers by preventing arrangements designed, or which tend, to advance the cost of goods to the consumer"<sup>8</sup>, the Sherman Act, 1890 also known as Anti-trust Act was enacted.

Over a period of time the concept of cartels has evolved and has attained great precision, fuller content and more regulatory meaning. A notable and fully worked out example of this term is provided by the OECD Council Recommendation of March 1998, specifically entitled Effective Action Against Hard Core Cartels. The Recommendation couples an explicit recognition of the objectionable character of cartels as: 'Considering that hard core cartels are the most egregious violations of competition law and that they injure consumers in many countries by raising prices and

restricting supply, thus making goods and services completely unavailable to some purchasers and unnecessarily expensive for others.<sup>9</sup>

*Kinds of cartel:*

*Cartels can be broadly defined as*

- a) **Public cartel:** Where a government is involved to enforce a cartel agreement and the government's sovereignty shields such cartels from legal action. This can be further explained through:

**Depression Cartel:** these are permitted by many countries in industries deemed to be requiring price and production stability and/ or to permit rationalization of industry structure and excess capacity. E.g., In Japan the arrangements permitted for steel, aluminum smelting, ship building and chemical industries. These draw their genesis from the Great Depression when some cartels were allowed so as to bring about price and production stability.

- i. **International Commodity Arrangement:** These cover products such as coffee, sugar, tin and more recently oil (OPEC) are examples of international cartels with publically entailed agreement between different national governments.
- ii. **Crisis Cartel:** These are organized by the government for various industries or products in different countries in order to fix prices and ration production and

<sup>7</sup> Ervin Hexner, *The International Steel Cartel*, Chapel Hill 1943, 8, pp. 32–35.

<sup>8</sup> Quote by John Sherman describing the purpose of the Act.

<sup>9</sup> OECD Paris, 27-28 April 1998 (C(98) 35/Final)



distribution in periods of acute shortage.

- b. **Private cartels:** These are subject to the legal liability under the anti-trust laws. Their primary purpose is to benefit only those individuals who constitute it. Private cartels entail an agreement on terms and conditions that provide members mutual advantage, but that are not known or likely to be detected by outside parties.

### CARTELS UNDER COMPETITION ACT, 2002

The term cartel is defined under the Competition Act, 2002. Section 2 (c) of the Act when dissected can be iterated as:

1. Association of producers, sellers, distributors, traders or service providers who
2. By agreement amongst themselves
3. Limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services.

The definition primarily indicates any association that tries to “limit, control or attempt to control the production,

distribution, sale or price of, or, trade in goods or provision of services” by concerting among themselves. But such arrangements are usually not that easily visible. The term cartel like an agreement has been given in an inclusive meaning. Thus an association for welfare of trade or formed for any other purpose not mentioned in aforesaid definition will not be cartel. Therefore an attempt must be made to analyze the section under the light of section 3 and section 4 of the Act.

Section 3 of the Competition Act discusses the ambit and nature of anti-competitive agreements. Section 3(1) talks about any enterprise or association that enters into an agreement with respect to the production, supply, distribution, storage, acquisition or control of goods or provision of services. Such an agreement is likely to cause an appreciable adverse effect on competition within India. All such agreements entered into in contravention of aforesaid prohibition shall be void.

Enterprise<sup>10</sup> in this section shall mean and include a person or a department of the Government. Therefore a cartel can be formed by sovereign or by companies<sup>11</sup>.

<sup>10</sup> Enterprise is defined in section 2 sub section (h) of the Act as under :

"Enterprise means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more

of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relating to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space".

<sup>11</sup> Sec 2(h) Competition Act, 2002.



Further, the conduct of a cartel is also determined by the Section, this can be ascertained from the reading of the Section 3(3) which states explicitly any cartel formed, “*engaged in identical or similar trade of goods or provision of services, which -*

- (a) *Directly or indirectly determines purchase or sale prices;*
- (b) *Limits or controls production, supply, markets, technical development, investment or provision of services;*
- (c) *Shares the market or shares of production or provision of services by way of allocation of geographical area of market, or types of goods or services, or number of customers in the market or any other similar way;*
- (d) *Directly or indirectly results in bid rigging or collusive bidding.”<sup>12</sup>*

Therefore, conduct of cartel can be forwarded as:

- a) **Price fixing** occurs when competitors agree on a pricing structure rather than compete against each other. Essentially an agreement among competitors to rise, fixes, or otherwise maintains the price at which their goods or services are sold. It is not necessary that the competitors agree to charge exactly the same price, or that every competitor in a given industry join the conspiracy. Price fixing can take many forms, and any agreement that restricts price competition violates the law.
- b) **Bid rigging** means any agreement, between enterprises or person engaged

in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.

- c) **Output restrictions** occur when the participants in an industry agree to prevent, restrict or limit supply. The purpose is to create scarcity in order to increase prices (or counter falling prices) while also protecting inefficient suppliers. Any business may independently decide to reduce output to respond to market demand. What is prohibited is an agreement with competitors on the coordinated restriction of output. Generally, the action needs the support of key market participants to achieve the cartel's desired result.

- d) **Market sharing** occurs when competitors agree to divide a market so participants thus circumventing from competition laws. By allocation schemes are agreements in which competitors divide markets among themselves. In such schemes, competing firms allocate specific customers or types of customers, products, or territories among themselves. For example, one competitor will be allowed to sell to, or bid on contracts let by, certain customers or types of customers. In return, he or she will not sell to, or bid on contracts let by, customers allocated to the other competitors. In other schemes, competitors agree to sell only to customers in certain geographic areas

<sup>12</sup> Section 3(3) Competition Act, 2002.



and refuse to sell to, or quote intentionally high prices to, customers in geographic areas allocated to conspirator companies.

Finally another aspect of cartels can be understood by interpretation of section 3(4) of the Act. Section 3(4) speaks of agreement between the parties at either different stage of production chain in different markets such an arrangement can be by way of –

1. Tie – in arrangement;
2. Exclusive supply agreement;
3. Exclusive distribution agreement;
4. Refusal to deal;
5. Resale price maintenance.

Provided that there is an appreciable adverse effect owing to such an arrangement.

The basic difference between Sec 3(3) and 3(4) is the nature of the agreement on the basis of which the cartel is formed. While S. 3(3) talks about the horizontal agreement, S. 3(4) speaks of vertical agreement.

Apart from section 3 cartels can further be understood from the perspective of S. 4 of the Competition Act. Section 4 related to the “*abuse of dominant position*”. The section begins with the line “*No enterprise shall abuse its dominant position.*”<sup>13</sup> The term “*enterprise*” is defined under section 2(h) to mean and include “*person or a department of Government*”. An association that forms

an agreement can be treated as a person and therefore such a person can assume a dominant position. The section does not restrict the presence of a dominant position but rather tries to stop abuse of such dominant position. Therefore, if a cartel assumes a dominant position and thereby if it goes ahead and abuses such a dominant position then the cartel falls within the ambit of section 4. The abuse of dominant position takes place if such an enterprise:

- 1) Directly or indirectly imposes unfair or discriminatory-
  - Condition in purchase or sale of goods or services;
  - Price in [purchase or sale (including predatory price<sup>14</sup>) of goods or services.
- 2) Limits or restricts –
  - a) Production of goods or provision of services or market thereof;
  - b) Technical or scientific development relating to goods or services to the prejudice of the consumers
- 3) Practices resulting in denial of market access
- 4) Entering contracts subject to acceptance of supplementary obligations of the other party;
- 5) Entering a relevant market

The Commission is empowered to inquire into any alleged contravention of

cost, as may be determined by regulations, of production of goods or provisions of services, with a view to reduce competition or eliminate the competitors.

<sup>13</sup> Sec 4(1) Competition Act, 2002

<sup>14</sup> Predatory price means the sale of goods and provision of services, at a price which is below the



the provisions contained in section 3(1) or section 4(1). In case the Commission is convinced that prima facie case exists against a cartel or such kinds of agreements, it shall direct the Director General to inquire and furnish report. Director General for the purpose of inquiries is vested with the powers of civil court besides powers to conduct 'search and seizure'

The duty of the DG is to assist the commission on investigation into any contravention of the provisions of the Act, or any rules or regulations made there under. The DG while reaching to his conclusion for holding an operator liable for forming a cartel has an inclination towards primary evidences - that is mostly agreements. But apart from these, DG also has the authority to adopt econometric models which it is unable to utilize to the fullest because of lack of understanding of underlying assumptions.

On receipt of a complaint or a reference, the Commission has to first satisfy itself of the existence of a prima facie case. A complaint can be filed under Section 19 of the Act; whereas, a reference from a statutory authority may also be directed to be investigated by the director-general. The Commission has also adopted the policy of *Suo Moto* cognizance. The prima facie existence of an agreement is essential. Any agreement, formal or informal, written or verbal would provide adequate proof for beginning investigation. In *ITC Ltd v MRTP Commission*<sup>15</sup> (- Three essential factors have been identified to establish the existence of a cartel, namely agreement by way of concerted action

suggesting conspiracy; the fixing of prices; and the intent to gain a monopoly or restrict/eliminate competition.

In the recent order in, *Builders Association of India v. Cement Manufacturers' Association and Ors.*, Section 2(b) of the Act has been interpreted. Section 2(b) defines agreement as under, "Agreement" includes any arrangement or understanding or action in concert,

1. Whether or not such agreement, understanding or action is formal or in writing; or
2. Whether or not such arrangement, understanding or action is intended to be enforceable by legal proceeding.

The order clearly supports the view that the definition of term agreement is inclusive definition. It inter-alia includes any arrangement, understanding or action in concert irrespective of whether formal/written or otherwise or intended to be legally enforceable.

Common Characteristics of Cartels

- Usually cartels function in secrecy.
- The members of a cartel, by and large, seek to camouflage their activities to avoid detection by the Commission.
- Perpetuation of cartels is ensured through retaliation threats. If any member cheats, the cartel members retaliate through temporary price cuts to take business away or can isolate the cheating member.<sup>16</sup>
- Another method, known as compensation scheme, is resorted to in order to discourage

<sup>15</sup> (1996) 46 Comp Cas 619)

<sup>16</sup> Dr. V.K. Agarwal, *Bharata's Competition Act*, 2002, Bharat Publishing House, New Delhi ed, 2012.



cheating. Under this scheme, if the member of a cartel was found to have sold more than its allocated share, it would have to compensate the other members.<sup>17</sup>

### CONDITIONS CONDUCTIVE TO FORMATION OF CARTELS

If there is effective competition in the market, cartels would find it difficult to be formed and sustained. Some of the conditions that are conducive to cartelization are<sup>18</sup>

- high concentration - few competitors
- high entry and exit barriers
- homogeneity of the products (similar products)
- similar production costs
- excess capacity
- high dependence of the consumers on the product
- history of collusion

### DETECTING CARTELS

The fight against Cartel is legally and practically a demanding task as:-

- Cartels<sup>19</sup> being secretive and cartelists taking pain to conceal it necessitates the Competition Authorities to undertake great efforts to detect concealed cartels,
- Competition Authority needs extraordinary powers and skill to collect sufficient evidence to mount a viable case against uncooperative defendants,

- Cartels are conspiracies and to destabilize them, Competition Authority needs to heavily bank upon “Leniency Programme<sup>20</sup>” or to encourage and motivate whistleblowers,
- the jurisdictional reach is often a restraint and constraint in the investigation and enforcement of overseas cartels; and
- The ever increasing trend to heavily penalize & criminalize cartel conduct has necessitated for Competition Authority to adopt a high standard of proof and procedure.
- Cartel busting requires certain specialist skills which differ from the skills required for investigation and prosecution of other infringements of competition law. In case of cartels the focus lies on proving the existence of the arrangement itself rather than demonstrating its impact on the market in economic terms. An increasing number of Competition Authorities, therefore, have set up special cartels branches and the motivation to do so is to develop centers of excellence with respect to expertise required in organizing search and raids, interviewing witnesses, covert surveillance beside successful implementation of leniency programs. There is an obvious need for intensive & extensive coordination and cooperation with other specialized agencies such as sector specific regulatory authorities, tax authorities, police, and ministries dealing with corporate bodies.

<sup>17</sup> S. M. Dugar & U. P. Mathur, S M. Dugar's Guide to Competition Law, 5<sup>th</sup> ed., Lexis- Nexis, New Delhi.

<sup>17</sup> The Competition Commission of India (General) Amendment Regulations, 2009 as amended by the CCI(General) Amendment Regulation, 2009

<sup>19</sup> Cartel under section 2(c) of the competition Act,2002

<sup>20</sup> Section 46 of competition Act,2002



**INQUIRY INTO CARTELS**

The Commission is empowered to inquire in to any alleged contravention of the provisions contained in section 3(1)<sup>21</sup> or section 4(1)<sup>22</sup> either on its own motion or on:-

- a) Receipt of any information in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association; or
- b) A reference made to it by the Central Government or State Government or a statutory authority.

Under the Act, the Director General, in discharge of his duties, has been vested with powers as are in a Civil Court which inter-alia includes; namely—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits; and
- (d) issuing commissions for the examination of witnesses or documents

The Director General including any person investigating under his authority is also having powers as are vested in the 'Inspector' in terms of Section 240 & 240 A of the Companies Act, 1956. These powers inter-alia include -

- i) production of documents and evidence in the custody of body corporate/other bodies corporate, and
- ii) search of place or places and seizure of documents with the approval of the First Class Magistrate/Presidency Magistrate, having jurisdiction, when there is reasonable ground to believe that books, papers or documents may be destroyed, mutilated, altered, falsified or secreted.

**POWERS OF THE COMMISSION:**

The Commission is empowered to inquire into any cartel, and to impose on each member of the cartel, a penalty of up to 3 times its profit for each year of the continuance of such agreement or 10% of its turnover for each year of continuance of such agreement, whichever is higher. In case an enterprise is

A 'company' its directors/officials who are guilty are also liable to be proceeded against.

In addition, the Commission has the power to pass *inter alia* any or all of the following orders<sup>23</sup>:

- direct the parties to a cartel agreement to discontinue and not to re- enter such agreement;
- Direct the enterprises concerned to modify the agreement.
- Direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any; and

<sup>21</sup> Section3(1) of Competition Act,2002

<sup>22</sup> Section4(1) of Competition Act,2002

<sup>23</sup> Section 27 Competition Act, 2002



- Pass such other order or issue such directions as it may deem fit.

### LENIENCY SCHEME

Section 46<sup>24</sup> of the Act empowers the Commission to grant leniency by levying a lesser penalty on a member of the cartel who provides full, true and vital information regarding the cartel. The scheme is designed to induce members to help in detection and investigation of cartels. This scheme is grounded on the premise that successful prosecution of cartels requires evidence supplied by a member of the cartel.<sup>25</sup> Similar leniency schemes have proved very helpful to competition authorities in successfully proceeding against cartels. The Commission has notified the Competition Commission of India (Lesser Penalty) Regulations, 2009 laying the process<sup>26</sup>, procedure and methodology for granting leniency to the cartel members who breaks the ranks of the cartel and becomes helpful to the Commission and instrumental in busting that alleged cartel.<sup>27</sup>

### INTERIM ORDER

Under section 33<sup>28</sup> of the Act, , During the

pendency of an inquiry if Commission is satisfied that an act in contravention of (1) of section 3 or sub section (1) of section 4 or section (6) has been committed and continues to be committed or that act such act is about to be committed the commission may by order temporarily restrain any party from continuing with the alleged contravention, until conclusion of the inquiry or until further orders, without giving notice to such party, where it deems it necessary.<sup>29</sup>

### PENALTIES

#### CONTRAVENTION OF ORDERS OF COMMISSION (SECTION 42)<sup>30</sup> -

If any person without reasonable clauses fails to comply with orders or directions of the commission issued under sections 27, 28, 31, 31, 33,42A and 43A of the Competition Act 2002, he shall be punishable with an fine which extend to rupee one lakh for each day during which such non compliance occurs, subject to maximum of rupees ten crore, as the commission may determine.

- **COMPENSATION IN CASE OF**

<sup>24</sup> Section 46 of Competition Act,2002

<sup>25</sup> Amit Sanduja, Report on Leniency Programme: A Key Tool to Detect Cartels available at

<[http://cci.gov.in/images/media/ResearchReport/s/leniencyproject\\_amitsanduja11032008\\_20080715104637.pdf](http://cci.gov.in/images/media/ResearchReport/s/leniencyproject_amitsanduja11032008_20080715104637.pdf)>

<sup>26</sup> Regulation No. 4, The Competition Commission of India (General) Amendment Regulations, 2009 as amended by the CCI(General) Amendment Regulation, 2009

<sup>27</sup> Cartel under Competition Act, 2002, AdvocacyBooklet,available at<<http://www.cci.gov.in/images/media/Advocacy/Cartels2012.pdf>>

<sup>28</sup> Section 33of Competition Act,2002

<sup>29</sup> Regulation No. 2, The Competition Commission of India (General) Amendment Regulations, 2009 as amended by the CCI(General) Amendment Regulation, 2009

<sup>30</sup> Section 42 of Competition Act,2002



**CONTRAVENTION OF ORDERS OF COMMISSION(SECTION 42A)<sup>31</sup>**

Any person may make an application to be appellate tribunal for an order for recovery of compensation from any loss or damage shown to have been suffered, by such person as a result of said enterprises violating directions issued by commission without any grounds any decision or order of commission issued under sections 27,28,31,32 and 33 or any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made, or granted under this act or delaying in carrying out such orders or directions of commission.

- **POWER TO IMPOSE PENALTY FOR NON-FURNISHING OF INFORMATION OR COMBINATION(SECTION 43A)<sup>32</sup>**

If any person or enterprise fails to give notice to the commission under subsection (2) of section 6<sup>33</sup>, the commission shall impose on such person penalty which may extend to one percent of total turnover or the assets, whichever is higher, of such a combination.

- **PENALTY FOR MAKING FALSE STATEMENT OR OMISSION TO FURNISH MATERIAL INFORMATION(SECTIO**

**N 44)<sup>34</sup>**

If any person being a party to a combination makes an statements which is false in any material particular, or knowing it to be false or omits to state any material particulars knowing it to be material, such person shall be liable to a penalty which shall not be less than rupees fifty lakhs but which may extends to one crore, as may be determined by the commission.

**APPEALS:**

The Competition Appellate Tribunal (CAT) is established under section 53A of the Competition Act 2002, to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under specified sections of the Act. And to adjudicate on claim for compensation that may arise from the findings of the commission or orders of the appellate tribunals in an appeal against any findings of commission. An appeal has to be filed within 60 days of receipt of the order /direction/ decision of the Commission.

**CONCLUSION**

The availability of explicit definition of 'Cartel', incorporation of a leniency programme for a member of a cartel to defect, the power to impose deterrent penalty linked with profits or turnover on each member, unique wing was set up by the Competitive Authority, proceedings of investigation should be more expeditious, Gigantic punishment ought to be imposed and penalized the person or entity engaged in forming

<sup>31</sup> Section 42(A) of Competition Act,2002

<sup>32</sup> Section 43(A) of Competition Act,2002

<sup>33</sup> Section 6 of Competition Act,2002

<sup>34</sup> Section 44 of Competition Act,2002



Cartel which hampers the market, and explicit provisions to exercise jurisdiction in respect of overseas acts having adverse effects on competition in India coupled with provisions to enter into cooperation agreement with contemporary overseas competition agencies along with efforts to build strong competition culture including encouragement to public to submit information by ensuring confidentiality, coordination with Government Departments & sectorial regulators and by stressing the need for strong sanctions in view of irredeemable harms caused, the Competition Commission will be able to effectively combat domestic as well as cross border cartels.

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