

Competition Law Hotline

September 08, 2009

NEW COMPETITION LAW FINALLY REPEALS THE OLD REGIME

The archaic Monopolies and Restrictive Trade Practices ("MRTP") Act, 1969 ("MRTP Act") and the MRTP Commission are set to be phased out in the next two years commencing from September 1, 2009. Under a notification dated August 28, 2009, Section 66 of the Competition Act, 2002 (the "Competition Act") has been brought into force by virtue of which the Competition Act will now replace the MRTP Act.

Until the notification of this section, there was some uncertainty over which law would regulate anti competitive practices given that certain provisions of the MRTP Act as also the Competition Act, which overlapped to some degree, were both in force. The notification of Section 66 resolves this issue by providing that the MRTP Act will now stand repealed and the two year period for dissolution of the MRTP Commission begins on September 1, 2009.

Therefore, as regards pending cases (i.e., cases or proceedings filed before the commencement of the Competition Act), a two year time frame has been provided during which the MRTP Commission may continue to exercise its jurisdiction and power under the MRTP Act (for which limited purpose alone the MRTP Act will continue to have validity). Upon the expiry of the two year time frame, the MRTP Commission shall stand dissolved and all cases pending before it shall be transferred either to the Competition Appellate Tribunal or the National Commission constituted under the Consumer Protection Act, 1986 depending upon the nature of the cases. Thus starting September 01, 2009, the MRTP Commission shall no longer be entitled to entertain any new case arising under the MRTP Act. In its place, the Competition Commission of India ("CCI") will now be presiding over cases / carrying out investigations under the provisions of the Competition Act, thus ensuring that the MRTP Commission only works towards completing all matters currently pending before it.

The repeal of the MRTP Act will however not affect (i) anything duly done under the MRTP Act, (ii) any right, privilege, obligation or liability acquired, accrued or incurred previously under the MRTP Act, (iii) any penalty, confiscation or punishment incurred in respect of any contravention under the MRTP Act and (iv) any proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, confiscation or punishment as above under the MRTP Act, which may continue as noted above.

"With the repeal of the MRTP Act, and the commencement of the time period for winding up of the MRTP Commission, we now witness the dawn of a new and welcome era in competition law in India. India will now have a new regime that is at par in many ways with internationally accepted standards in this field of law." said Kartik Ganapathy, Partner, Nishith Desai Associates.

- Akshay Bhargav & Nishchal Joshipura

References:

- Enforcement of Section 66 of Competition Act, 2002 and Section 50 of Competition (Amendment) Act, 2007 - Notification No. S.O. 2204(E), dated 28-8-2009 – http://www.taxmann.net/datafolder/Flash/Flashst2-9-09_1.htm

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