Module 5 · The Competition Act, 2002

P13 · Section B · topics 5.1–5.2

SM pp. 273–294 (22 pages). **56 marks in 7 papers. A Competition long question in every paper** (Q7(b) or Q8(a), swapping with FEMA), plus an MCQ in the (x)–(xii) block almost every time. Section numbers the SM does not print are taken from the Act.

Paper	What was asked	Marks
Jun'23	MCQ: appeal to the SC within **60 days** (= SM MCQ 11) · Q5(b) **abuse of dominance** and **predatory pricing**	2 + 8
Dec'23	MCQ: abuse of dominance does not include a price-fixing agreement · Q7(b) **penalty for offences in furnishing information** (s.45)	2 + 7
Jun'24	MCQ: deemed approval of a combination · Q6(b) **division of a dominant enterprise** (s.28)	2 + 4
Dec'24	MCQ: combination turnover threshold (= SM MCQ 2) · Q6(b)(i) **abuse of dominant position**	2 + 4
Jun'25	MCQ: unfair competition (= SM MCQ 8) · Q6(b) **s.45 penalty again**	2 + 7
Dec'25	MCQ: a buyer for resale is a "consumer" · Q7(b) **car maker controls dealer discounts** (resale price maintenance)	2 + 7
Jun'26	Q8(a) **objectives and key provisions; role of the CCI** on agreements and dominance	7

HOW IT IS EXAMINED · DEC'26 PREDICTION

- **MCQs are SM exercise MCQs** (2, 8, 11; predatory pricing = MCQ 4; cartel = MCQ 9 in the PTP).
- Long favourites: **abuse of dominance** (3×), **s.45 penalties** (2×). Our Dec'26 picks: (1) **dominance + the s.19(4) factors** (ICMAI MQP Q7(b)); (2) **combinations and CCI orders** (PTP Q7(b), never asked long); (3) the **Director General's** role (postal).
- MCQ (x)–(xii): a **90%** chance of a Competition fact.

MAP

1. Background, objectives, definitions ★★
2. Anti-competitive agreements (s.3) ★★★
3. Abuse of dominance (s.4) and its factors ★★★
4. Combinations (s.5, 6, 20, 29, 31) ★★
5. CCI: constitution, powers, orders, s.28 division ★★
6. Penalties (s.42–46), appeals ★★
7. Model answers · SM exercise · numbers

5.1 Background, objectives, definitions · Jun'26 Q8(a)

BACKGROUND · OBJECTIVES

- The **MRTP Act, 1969** (in force 1 June 1970) aimed at curbing monopolies. A committee in **October 1999** recommended a modern law to **promote competition**, leading to the **Competition Act, 2002**, enacted on **13 Jan 2003** and amended in 2007. The MRTP Act was repealed (SM MCQ 1). [SM 275]
- The **CCI** was set up on **14 Oct 2003**; the agreements and dominance provisions were notified on **20 May 2009**. [SM 275]
- **Objectives:** (i) **prevent anti-competitive practices**; (ii) **promote and sustain competition**; (iii) **protect consumers' interests**; (iv) **ensure freedom of trade**; (v) **competition advocacy**. [SM 275]

KEY DEFINITIONS

- **Agreement**: any arrangement, understanding or action in concert, formal or not, written or not, enforceable or not. [SM 275]
- **Cartel**: an association of producers, sellers, distributors, traders or service providers who by agreement **limit or control production, distribution, sale or price** (SM MCQ 9). [SM 275–276]
- **Consumer**: a buyer of goods or hirer of services for consideration (paid, promised or deferred), **whether for resale, commercial purpose or personal use**. *Dec'25 MCQ: a refrigerator trader who bought for resale and has not yet paid **is a consumer** (option B).* [SM 276]
- **Enterprise**: a person or Government department in production, supply, distribution, services, investment or securities, but **not sovereign functions** (atomic energy, currency, defence, space). [SM 276]
- **Relevant market** = relevant **product** market (interchangeable or substitutable products) and/or relevant **geographic** market (an area of distinctly homogeneous conditions). [SM 277]
- Also: acquisition · goods (incl. shares after allotment, imports) · person · price. [SM 275–277]

s.3 Anti-competitive agreements · Dec'25 Q7(b)

WHAT IT IS Any agreement on production, supply, distribution, storage, acquisition or control of goods or services that **causes or is likely to cause an appreciable adverse effect on competition (AAEC)** in India is **void**. **Horizontal** agreements are between enterprises at the **same level** (competitors); **vertical** ones are between **different stages** of the production and distribution chain. [SM 277]

HORIZONTAL (incl. cartels): PRESUMED TO HAVE AAEC

a. directly or indirectly **fixing purchase or sale prices**
b. **limiting or controlling** production, supply, markets, technical development or investment
c. **sharing markets** or sources of production by geography
d. **bid rigging or collusive bidding** (reducing or manipulating competition in bids)

Joint-venture efficiency agreements are excepted. *Unfair competition = collusive price fixing, market allocation, discriminatory pricing: all of them (SM MCQ 8 = Jun'25 MCQ).* [SM 277–278]

VERTICAL: VOID IF THEY CAUSE AAEC

- **Tie-in arrangement**: buying one product is made a condition of buying another. [SM 278]
- **Exclusive supply**: the buyer cannot deal in others' goods (*SM example: Soni Brothers may not supply anyone but ABC*). [SM 278]
- **Exclusive distribution**: limiting supply, or allocating areas or markets. [SM 278]
- **Refusal to deal**: restricting to whom goods are sold or from whom bought. [SM 278]
- **Resale price maintenance**: the buyer must resell at prices the seller stipulates, unless lower prices are clearly allowed (hence the "MRP" printed on packs). [SM 278]

Not covered: (a) the right to restrain **infringement of IPRs** (copyright, patents, trade marks, GIs, designs, layout designs); (b) agreements relating **exclusively to exports**. **Leniency**: a cartel member who discloses honestly may get lenient treatment (s.46). [SM 277–278]

s.4 Abuse of dominant position · Jun'23 Q5(b), Dec'24 Q6(b), ICMAI MQP Q7(b)

DOMINANT POSITION · ABUSE

SM WORDS **"Dominant position"** means a position of strength, enjoyed by an enterprise, in the relevant market in India, which enables it to (i) **operate independently of competitive forces** in the relevant market; or (ii) **affect its competitors or consumers or the relevant market in its favour**. [SM 279]

Abuse (by an enterprise or group):

a. imposing **unfair or discriminatory conditions or prices**, including **predatory price**
b. **limiting production**, markets or technical development to consumers' prejudice
c. **denial of market access**
d. making contracts subject to **unconnected supplementary obligations**
e. **using dominance in one market to enter or protect another**

[SM 278–279]

SM WORDS **"Predatory price"** means the sale of goods or provision of services **at a price below cost** (as determined by regulations) of production, **with a view to reduce competition or eliminate competitors** (SM MCQ 4). [SM 279]
*Dec'23 MCQ: abuse does not include an **agreement to fix price**; that is s.3.*

FACTORS FOR DOMINANCE (s.19(4)): THE MQP ANSWER

a. **market share**
b. **size and resources** of the enterprise
c. size and importance of **competitors**
d. **economic power**, including commercial advantage
e. **vertical integration**
f. **dependence of consumers**
g. monopoly or dominant position by statute or as a public sector company
h. **entry barriers**: regulatory, financial risk, high capital cost, marketing, technical, economies of scale, high cost of substitutes
i. **countervailing buying power**
j. **market size**
k. social obligations and costs
l. contribution to **economic development**
m. any other relevant factor

[SM 284]

JUN'26 SUPPLEMENTARY: CCI (DETERMINATION OF COST OF PRODUCTION) REGULATIONS, 2025 (7 MAY 2025)

These replace the 2009 regulations for **predatory-pricing** cases under s.4. The main benchmark is **Average Variable Cost (AVC)** = total variable cost ÷ output (a proxy for marginal cost). Total cost, avoidable cost and LRAIC are also defined, and the CCI may use other measures (e.g. average total cost) with documented reasons. Expert advisers are formalised; the regulations apply prospectively. [Supp Jun'26 p.7]

s.5–6 Combinations (mergers and acquisitions) · ICMAI PTP Q7(b)

WHAT IT IS A **combination** is an acquisition of an enterprise, acquisition of control, or a merger or amalgamation, where the parties **exceed the asset or turnover thresholds**. A combination that causes or is likely to cause an **AAEC in the relevant market in India is void**. [SM 279–280]

Thresholds (SM)	In India	India + abroad
Enterprises (the parties) [SM 279]	assets **> ₹2,000 cr** or turnover **> ₹6,000 cr**	assets **> USD 1 bn** (incl. ₹1,000 cr in India) or turnover **> USD 3 bn** (incl. ₹3,000 cr in India)
Group [SM 279]	assets **> ₹8,000 cr** or turnover **> ₹24,000 cr**	assets **> USD 4 bn** (incl. ₹1,000 cr) or turnover **> USD 12 bn** (incl. ₹3,000 cr)

Assets are at **book value** (less depreciation), as in the last audited accounts of the preceding year, **including brand, goodwill and IPRs**. The "group" exemption for those exercising less than **50%** of votes was continued for **5 years** (2016). The CG revises thresholds every **2 years** (WPI and exchange rates). [SM 279–280]

NOTICE AND TIMELINE (SM)

- Notice to the CCI within **30 days** of (a) **Board approval** of the merger, or (b) **executing the agreement** for acquisition. [SM 280]
- No combination takes effect until **210 days** have passed or the CCI has passed orders, whichever is earlier. If there is no order in 210 days, it is **deemed approved** (SM MCQ 15; fill-in 3). [SM 280–282]
- **Exempt** from notice: share subscription, financing or acquisitions by a **PFI, FII, bank or VCF** under a loan or investment covenant, but details are filed within **7 days**. [SM 280]
- The CCI may inquire on its own within **1 year** after the combination takes effect. [SM 280]
- **Investigation:** show-cause, reply in **30 days** → DG's report → if prima facie AAEC, publication within **10 working days** of the CCI's direction (given within **7**), objections within **15 working days**, more information in **15** days → decision within **45 working days**. [SM 281]

CCI ORDERS ON COMBINATIONS (s.31): THE PTP ANSWER

1. **no AAEC → approve**
2. **AAEC** → direct that it **shall not take effect**
3. AAEC that a **modification** can remove → **propose modification**. The parties carry it out in time (else deemed AAEC), or submit an **amendment within 30 working days**. If the CCI does not agree, a further **30 working days** to accept, else deemed AAEC
4. a void combination is dealt with by other authorities **as if it never happened**

Factors (s.20(4)): import competition · entry barriers · level of combination · countervailing power · likely price or margin increase · effective competition · substitutes · **market share** · removal of a vigorous competitor · vertical integration · **failing business** · innovation · economic development · whether **benefits outweigh harm**. CCI quorum **3**; casting vote with the chair. [SM 280–282]

⚠ THE SM'S MERGER-CONTROL FIGURES ARE PRE-2023 (NOT IN SM)

The **Competition (Amendment) Act, 2023** and the 2024 notifications: overall time limit **150 days** (not 210), with the CCI's prima facie view within **30 days**; a new **deal-value threshold** (transactions above ₹2,000 crore with substantial business in India); thresholds raised to **₹2,500 cr assets / ₹7,500 cr turnover** (parties) and **₹10,000 cr / ₹30,000 cr** (group). The SM's exercise answers (₹6,000 cr, 210 days) follow the SM. **For an MCQ, choose the SM figure if it is an option**; in a long answer, add the update in a line.

5.2 The Competition Commission of India: constitution, powers, orders · Jun'24 Q6(b), postal Q5(a)

CONSTITUTION · DIRECTOR GENERAL

- A body corporate at **New Delhi**: a **Chairperson and 2 to 6 Members**, whole-time, appointed by the CG. Persons of ability, integrity and standing, with at least **15 years** in trade, economics, law, finance, accountancy, management, competition and similar fields. [SM 283]
- Term **5 years**, re-appointable (SM MCQ 12); retirement at **65**. [SM 283]
- The CG appoints a **Director General** to assist the CCI in **investigating contraventions**, plus a secretary, experts and officers (SM short essay: the DG's role). [SM 283]

DUTIES AND POWERS (s.18, 19)

- Eliminate practices with adverse effect, promote and sustain competition, protect consumers, ensure freedom of trade. [SM 283]
- Inquire **on its own motion**, on **information from any person** or association, or on a **reference** from the CG, a State Government or a statutory authority. [SM 283]
- **AAEC factors (s.19(3)):** barriers to new entrants · driving out competitors · foreclosure · **benefits to consumers** · better production or distribution · technical, scientific and economic development. [SM 283–284]
- **Relevant geographic market:** trade barriers, local specifications, procurement policy, distribution, transport cost, language, preferences, after-sales needs. **Product market:** characteristics or end-use, price, preferences, in-house production, specialised producers, industrial classification. [SM 284–285]

ORDERS AFTER INQUIRY (s.27)

a. **discontinue** the agreement or abuse and not re-enter it
b. **penalty**. **Cartels**: up to **3 times profit or 10% of turnover** for each year of continuance, **whichever is higher**
c. **modify** the agreement
d. abide by other orders, incl. **costs**
e. any other order; also against **other group members** responsible

[SM 285]

DIVISION OF A DOMINANT ENTERPRISE (s.28) (Jun'24 Q6(b))

The CCI may, notwithstanding any other law, **order the division** of a dominant enterprise so that it does not abuse its dominance because of its size. The order may provide for: (a) **transfer or vesting** of property, rights, liabilities and obligations; (b) **adjustment of contracts**; (c) creation, allotment, surrender or **cancellation of shares** and securities; (d) **formation or winding up** of an enterprise; (e) **amendment of the MOA or AOA** (SM MCQ 14: all of these). [SM 285–286]

Procedure (s.36): natural justice; **civil court powers**; interim orders; experts; may direct production of documents to the DG. **Extra-territorial (s.32):** orders even if the agreement, the dominant enterprise or the combination is **outside India**, if it affects competition in India. [SM 286]

s.42–46 Penalties, appeals, other · Dec'23 Q7(b), Jun'25 Q6(b)

Default	Penalty
non-compliance with **CCI orders** (s.42)	up to **₹1 lakh a day**, maximum **₹10 crore**; if still not complied with or the fine not paid → **imprisonment** [SM 287]
failure to comply with directions of the **CCI (s.36) or DG (s.41)** (s.43)	up to **₹1 lakh a day**, maximum **₹1 crore** [SM 287]
party to a combination making a **false statement or omitting material facts** (s.44)	**₹50 lakh to ₹1 crore** [SM 287]
s.45: offences in furnishing information: (a) a statement or document known to be **false** in a material particular; (b) **omitting a material fact**; (c) **wilfully altering, suppressing or destroying** a document	fine up to **₹1 crore** [SM 287]
failure to give notice of a combination (s.43A)	up to **1%** of turnover or assets, whichever is higher (SM MCQ 13)
contravening **NCLAT** orders	up to **₹1 crore** or up to **3 years** in jail, or both [SM 289]

LESSER PENALTY (s.46): PART OF THE s.45 ANSWER

- A **lesser penalty** is possible for a cartel member making a **full and true disclosure**. [SM 287]
- **Not** if the DG's investigation report (s.26) was received before the disclosure; **not** if the person stops **co-operating** until the proceedings end. [SM 287]
- **Withdrawn** if the conditions were breached, false evidence was given, or the disclosure was not vital; he may then be tried and penalised in full. [SM 287–288]
- **Companies (s.48):** the persons in charge are guilty too, unless they prove it was **without their knowledge** or they tried to prevent it; directors or officers who consented, connived or were negligent are liable. [SM 288]

APPEALS · CG POWERS

- **Appellate Tribunal = NCLAT** (since the COMPAT merged): hears appeals against CCI orders (s.26, 27, 28, 31, 32, 33, 38, 39, 43–46) and **compensation claims**. Appeal within **60 days** of receiving the order. [SM 288]
- The NCLAT has civil court powers but follows **natural justice**, not the CPC; its orders are executed as decrees. [SM 288–289]
- **Appeal to the Supreme Court within 60 days** (Jun'23 MCQ = SM MCQ 11). [SM 289]
- The CG may make rules, grant exemptions, give directions, and **supersede the CCI** for up to **6 months** in an emergency. The Act is **in addition to** other laws. [SM 289]

6 Model answers

MODEL ANSWER 1 · CAR MAKER CONTROLS DEALER DISCOUNTS (DEC'25 Q7(b)) · 7 MARKS

Facts: a car manufacturer set a customer-discount policy, told dealers not to discount beyond it, treated billing at old prices after a price rise as "unauthorised discounting", monitored this through agreements, and penalised dealers. Is it anti-competitive?

1. **Law:** s.3(1): an agreement causing an **AAEC** in India is void. s.3(4): **vertical** agreements between enterprises at different stages, including **resale price maintenance (RPM)**, are void if they cause an AAEC. RPM = selling goods on condition that the reseller charges the prices the seller stipulates, unless lower prices are clearly allowed. [SM 277–278]
2. **Applied:** the manufacturer and dealers are at **different stages**, so this is a vertical agreement. Capping discounts and penalising dealers who give more **fixes the minimum resale price**, which is RPM. It removes **intra-brand price competition** among dealers and harms consumers.
3. **AAEC factors (s.19(3)):** no **benefit to consumers**, who lose discounts; competition among dealers is **foreclosed**; no efficiency gain justifies it. [SM 283–284]
4. **Conclusion:** it is an anti-competitive vertical agreement (RPM) and **void**. The CCI may order the manufacturer to **cease and desist**, **modify** the agreements, and pay a **penalty** (s.27). [SM 285] (The CCI has penalised car makers on similar facts.)

MODEL ANSWER 2 · DOMINANT POSITION AND ITS ABUSE (JUN'23 Q5(b), DEC'24 Q6(b), MQP Q7(b))

(1) **Definition** of dominant position (s.4 Explanation), in the SM's words. (2) It is **not** an offence to be dominant; **abuse** is prohibited: list the five abuses (a)–(e). (3) **Predatory price** definition, and the 2025 cost regulations (AVC). (4) **Factors** the CCI considers (s.19(4)): market share, size and resources, competitors, economic power, vertical integration, consumer dependence, entry barriers, countervailing power, market size, and so on. (5) **Consequences**: s.27 orders (discontinue, penalty, modify) and **s.28 division** of the enterprise. [SM 278–286]

The SM's own exercise for Competition (SM 290–294)

1 the Act replaced	**MRTP Act, 1969**	8 unfair competition ★	**all of the above**
2 turnover threshold (enterprise, India) ★	**₹6,000 crore** (SM)	9 an association that limits production or price	**cartel**
3 not an objective of the CCI	**promoting start-ups** ⚠	11 appeal to the SC within ★	**60 days**
4 selling below cost	**predatory pricing**	12 term of members	**5 years**
5 group asset limit abroad	**USD 4 billion**	13 fine for no combination notice	**1%**
6 not unfair competition	**tie-in purchase** (key)	14 a division order may provide for	**all the above**
7 not an objective of the Act	**to prevent competition**	15 deemed approval after	**210 days** (SM)

⚠ The SM's printed key for MCQ 3 says (c) "protect the interests of consumers", which IS an objective. The odd one out is (a) "promote start-ups". MCQ 10 in the SM exercise is a misplaced CSR question (key: mutual trust).

True/False: freedom of trade is an objective **T** · it replaced the Consumer Protection Act **F** · exclusive distribution presumed AAEC **T** (key) · combinations based on paid-up capital **F** (assets and turnover) · merge beyond the threshold just by intimating **F**. **Fill-ins:** regulated by the **CCI** · anti-competitive agreements presumed to have an **appreciable adverse effect** · deemed approval after **210** days · CCI at **New Delhi** · combinations are based on **turnover** (and assets).

R Revision: numbers

Rule	Number	Rule	Number
MRTP in force / Act enacted	1 Jun 1970 / 13 Jan 2003	CCI members / experience / term / age	2–6 / 15 yrs / 5 yrs / 65
CCI set up / s.3–4 notified	14 Oct 2003 / 20 May 2009	CCI quorum	3
enterprise: assets / turnover (SM)	₹2,000 / ₹6,000 cr	cartel penalty	3× profit or 10% turnover
global: USD 1 bn / USD 3 bn	incl. ₹1,000 / ₹3,000 cr	s.42: per day / max	₹1 lakh / ₹10 cr
group: ₹8,000 / ₹24,000 cr	USD 4 / 12 bn	s.43: per day / max	₹1 lakh / ₹1 cr
notice within / deemed approval (SM)	30 / 210 days	s.44 / s.45	₹50 lakh–₹1 cr / ≤ ₹1 cr
FI covenant filing / CCI own inquiry within	7 days / 1 year	NCLAT appeal / SC appeal	60 / 60 days
modification: amend / accept	30 + 30 working days	NCLAT order breach	₹1 cr / 3 yrs
thresholds revised every	2 years	CG supersedes CCI up to	6 months