

# Competition News Alert

October, 2009



## Central Government promulgates the Competition (Amendment) Ordinance, 2009 - MRTP Commission ceases to exist with immediate effect

The Central Government has issued the Competition (Amendment) Ordinance, 2009 (“**Ordinance**”) on the **14th October, 2009**.

By this Ordinance, the MRTP Commission (MRTPC) has ceased to exist with immediate effect. The Ordinance has amended Section 66 of the Competition Act, 2002 (“**Act**”) relating to the “sun set” period for the continuance of the MRTPC i.e. for two years after the date of commencement of the said Act. Consequently, all the provisos and explanations included in the relevant sub-sections of the section 66 whereby the MRTPC was to continue to exercise jurisdiction and powers under the repealed MRTP Act, 1969 for a period of two years after the date of commencement of the said Act, have either been omitted or been substituted with the words “on the commencement of the Ordinance”. Since, as per sub-section (2) of section 1 of the Ordinance, the Ordinance comes into force at once, the MRTPC ceases to exist forthwith. The Ordinance will be replaced by an Amendment Act in the ensuing Session of the Parliament.

### Effect of the Ordinance

1. All cases pertaining to Monopolistic Trade Practices (MTP) or Restricted Trade Practices (RTP) [including such cases in which Unfair Trade Practice (UTP) has also been alleged] and all cases pertaining to UTP referred to in clause (X) of sub-section (1) of section 36A of the MRTP Act, 1969 shall be transferred to the Competition Appellate Tribunal with immediate effect. [Sub-sections (3) and (5) of section 66 of the Act].
2. All investigations or proceedings, other than those relating to UTP and all investigations or proceedings relating to UTP referred to in clause (X) of sub-section (1) of section 36A of the MRTP Act, 1969, pending before the Director General of Investigation and Registration [DG (I&R)], shall be transferred to the Competition Commission of India with immediate effect. [Sub-sections (6) and (8) of section 66 of the Act].
3. All cases, investigations or proceedings pertaining to UTP defined under section 36A of the MRTP Act, 1969, except those referred to in clause (X) of sub-section (1) of section 36A of the MRTP Act, 1969, shall be transferred to the National Commission constituted under the Consumer Protection Act, 1986 with immediate effect. [Sub-sections (4) and (7) of section 66 of the Act].

Further, on transfer as mentioned above, the cases, investigations or proceedings, as the case may be, shall be dealt with by the new authority as under:

1. The Competition Appellate Tribunal shall adjudicate the cases transferred from MRTPC in accordance with the provisions of the repealed MRTP Act, 1969 as if that Act had not been repealed.
2. Competition Commission of India may conduct or order for conduct of the investigations or proceedings so transferred to it from the DG (I&R), in the manner as it deems fit.
3. The National Commission constituted under the Consumer Protection Act, 1986 shall dispose the

pending cases so transferred to it from the MRTPC, in accordance with the provisions of the repealed MRTP Act, 1969 as if that Act had not been repealed. The National Commission may, if it considers appropriate, transfer any such case to the concerned State Commission established under the Consumer Protection Act, 1986 and that State Commission shall dispose of such case in accordance with the provisions of the MRTP Act, 1969 as if that Act had not been repealed.

4. The National Commission constituted under the Consumer Protection Act, 1986 may conduct or order for conduct of the investigations or proceedings so transferred to it from the DG (I&R), in the manner as it deems fit.

## Way forward

The Ordinance does not bring an end to the cases, investigations or proceedings, pending under the MRTP Act, 1969. It only transfers them to the three authorities as mentioned above. Of these three authorities, the Competition Commission of India and the National Commission under the Consumer protection Act, 1986, have the discretion to dispose the pending “investigations or proceedings”, in the manner deemed fit.

For any further queries or assistance on these pending matters, please contact or write to:

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