





Nishith Desai Associates
LEGAL AND TAX COUNSELING WORLDWIDE

Price Control and Competition

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In partnership with

8th CUTS-CIRC Biennial Conference on Competition, Regulation and Development

Prioritising Socially Sensitive Sectors

09-10 October 2023 | The Metropolitan Hotel, New Delhi
(Hybrid Event)

Competition is a situation where two or more people or organizations are trying to achieve, obtain, etc. the same thing or to be better than somebody else ...Oxford

Competition in the market means sellers striving independently for buyers' patronage (support) to maximize profit (or other business objectives)

Competition is always debated in health care and pharmaceuticals being that the supply side is private industry, worldwide.

“Product vs Pricing”



Pricing under the Competition Act

“Determination of price of a drug and the aspects pertaining to its labelling may not be in the domain of the CCI, however, any unfair or discriminatory conduct in relation thereto by a dominant entity can be assessed by it, provided that the facts disclose a violation of the relevant provisions of the Act”

- Competition Commission of India
[Ashwani Kumar Singla v. Sun Pharmaceutical Industries]



Key Points

- Abuse of Dominant Position
 - Dominant if it enjoys a position of strength in relevant market
 - Exploitative , Exclusionary dominant position
 - Relevant Market – Geographic, Product
 - Price Discrimination v. Discriminatory Pricing
- Anti-Competitive Agreements
 - Vertical vs Horizontal Agreements
 - Agreements with End-Consumer
 - Dual Position of Hospitals
 - Appreciable Adverse Effect on Competition
- Price Determination
 - Pricing Practices that May Attract Scrutiny
 - Dual Distribution
 - Interaction with Competitors

Position
Agreements
Determination



Factors to Consider

- Bundling of products should be avoided.
- Terms of exclusivity should be avoided.
- Assess the market power of the entity in order to assess dominant position held by the entity
- Providing monetary or other incentives for ensuring exclusivity may also give rise to risk.
- Resale terms and pricing should not be dictated by the manufacturer.
- Differential pricing for consumers is permissible, but there should be no unfair or discriminatory practices.
- While determining prices, balance should be struck between competitive pricing and predatory pricing.
- Conditions or prices adopted by entities to meet competition should not trigger unfair or discriminatory practices in determining abuse of dominant position.





Don't compete with Rivals

~~Make them Irrelevant~~



Thank You

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