



Volume I ♦ Issue IV ♦ Year 2009

DSK Legal Knowledge Center

Updates on

- IP
- **M RTP and Competition Law**

INTELLECTUAL PROPERTY

BARRIER TO TACKLE GREY MARKET

The Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007¹ ("Rules") have been notified vide notification No. 47 of 2007-Customs (Non Tariff) issued on May 8, 2007 and under the Rules, many MNCs have already registered their notices with the jurisdictional commissioners of the customs to stop the retailers from importing the goods, which otherwise would have amounted to infringement of the formers' intellectual property rights.

¹ (<http://www.cbec.gov.in/customs/cs-act/notifications/notfns-2k7/csnt47-2k7.htm>)

M RTP AND COMPETITION LAW

India's first enactment to deal with the competition issues is the Monopolies and Restrictive Trade Practices Act, 1969 ("the MRTP Act"). The MRTP Act underwent a number of amendments, most notably in 1984 and 1991. The MRTP Act, being limited in its scope, failed to fulfill the needs of a competition law in the context of market oriented policies adopted by the Government and growing influence of globalization. The Central Government, therefore, constituted a high level committee and after considering its report and the suggestions from trade, industry and the general public, enacted a new law called the Competition Act, 2002 ("the Act"). Enforcement of the Act is to be undertaken through the instrumentality of the Competition Commission of India ("the Commission").

The Act inter alia seeks to: a) prohibit anti-competitive agreements (including cartels) which limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services or result in bid rigging, etc., b) prohibit abuse of dominant position through unfair or discriminatory prices or conditions (including predatory pricing) limiting or restricting production or development, denying of market access, etc., c) regulate combinations (i.e., mergers, acquisitions, etc.) above certain threshold limits in terms of assets or turnover prescribed in the Act that cause or are likely to cause an appreciable adverse effect on competition. In addition, the Act gives the Commission the responsibility of undertaking competition advocacy, spreading awareness and imparting training regarding competition issues.

The Commission is empowered to pass cease and desist orders, impose penalties and approve, prohibit or modify combinations which are found to be anti-competitive. The Act provides for establishment of the Competition Appellate Tribunal ("the Tribunal") to hear and dispose of appeals against directions, decisions and orders passed by the Commission and to adjudicate on the claims for compensation in certain cases.

Till date, certain provisions of the Act have already been notified and are in force. The Act authorizes the Commission to make regulations to carry out the purposes of the Act. The draft regulations have already been prepared by the Commission. It is expected that the main substantive and procedural provisions of the Competition Act will come into force in early 2009.

DSK Legal Knowledge Center

Contact Details: dsklegal.knowledgecenter@dsklegal.com

Mumbai Office

4th Floor, Express Towers,
Nariman Point,
Mumbai 400 021
India
Tel: (91 - 22) 6658 8000
Fax: (91 - 22) 6658 8001

Delhi Office

46, Aradhana, Chanakyapuri,
New Delhi 110 066
India
Phone: (91 - 11) 2687 1122; 2687 1133;
2687 1144
Fax: (91 - 11) 2687 1155

Disclaimer

The update is intended for your general information only. The information and opinions contained in this document are derived from public sources which we believe to be reliable and accurate but which, without further investigation, cannot be warranted as to their accuracy, completeness or

correctness. It is not intended to be nor should be regarded as legal advice and no one should act on such information without appropriate professional advice. DSK Legal accepts no responsibility for any loss arising from any action taken or not taken by anyone using this material.