

Competition Law

STATEMENT OF CAPABILITY

2011

Nishith Desai Associates

Legal & Tax Counseling Worldwide

Mumbai • Silicon Valley • Bangalore • Singapore • Basel • New Delhi

Nishith Desai Associates (NDA) is a research based international law firm with offices in Mumbai, Bangalore, Silicon Valley, Singapore, Basel and New Delhi. We specialize in strategic legal, regulatory and tax advice coupled with industry expertise in an integrated manner. We focus on niche areas in which we provide significant value and are invariably involved in select highly complex, innovative transactions. Our key clients include marquee repeat Fortune 500 clientele, of which over 60 per cent are US corporations.

Core practice areas include International Tax, International Tax Litigation, Litigation & Dispute Resolution, Fund Formation, Fund Investments, Capital Markets, Employment and HR, Intellectual Property, Corporate & Securities Law, Competition Law, Mergers & Acquisitions, JVs & Restructuring, General Commercial Law and Succession and Estate Planning. Our specialized industry niches include financial services, IT and telecom, education, pharma and life sciences, media and entertainment, real estate and infrastructure.

Our Tax, Investment Funds and Technology-Media-Telecom (TMT) practices have been consistently ranked in tier 1 by Legal 500, while Chambers & Partners have ranked us # 1 for Tax, TMT and Real Estate - FDI. We've received honorable mentions in Asian - Counsel Magazine for Alternative Investment Funds, International Arbitration, Real Estate and Taxation for the year 2010. We have been adjudged the winner of the Indian Law Firm of the Year 2010 for TMT by IFLR. We have won the prestigious "Asian-Counsel's Social Responsible Deals of the Year 2009" by Pacific Business Press, in addition to being Asian-Counsel Firm of the Year 2009 for the practice areas of Private Equity and Taxation in India. Indian Business Law Journal listed our Tax, PE & VC and Technology-Media-Telecom (TMT) practices in the India Law Firm Awards 2009 as also Legal 500 (Asia-Pacific) that has ranked us #1 in these practices for 2009-2010. We have been ranked the highest for 'Quality' in the Financial Times – RSG Consulting ranking of Indian law firms in 2009. The Tax Directors Handbook, 2009 lauded us for our constant and innovative out-of-the-box ideas. Other past recognitions include being named the Indian Law Firm of the Year 2000 and Asian Law Firm of the Year (Pro Bono) 2001 by the International Financial Law Review, a Euromoney publication. In an Asia survey by International Tax Review (September 2003), we were voted as a top-ranking law firm and recognized for our cross-border structuring work.

Our research oriented approach has also led to the team members being recognized and felicitated for thought leadership. Consecutively for the fifth year in 2010, NDAs have won the global competition for dissertations at the International Bar Association. Nishith Desai, Founder of Nishith Desai Associates, has been voted 'External Counsel of the Year 2009' by Asian-Counsel and Pacific Business Press and the 'Most in Demand Practitioners' by Chambers Asia 2009. He has also been ranked No. 28 in a global Top 50 "Gold List" by Tax Business, a UK-based journal for the international tax community. Nishith Desai is listed in the Lex Witness 'Hall of fame: Top 50' individuals who have helped shape the legal landscape of modern India.

Our Competition Law Expertise

In pursuit of globalization, India has responded by opening up its economy, easing licensing requirements and resorting to liberalization. Inevitably, globalization and liberalization also leads to competition in the market place. As a corollary to this, India has enacted a new competition law called the Competition Act, 2002 ("**Competition Act**") which is meant to replace the extant Monopolies and Restrictive Trade Practices Act, 1969 ("**MRTP Act**"), and provide institutional support to healthy and fair competition. The Competition Act, which has not been brought into force fully as yet, will play a pivotal role in consummation of any transaction *inter alia* domestic, inbound or outbound or any overseas transaction which has an effect on competition in India.

Competition Law is an area of practice in which Nishith Desai Associates ("NDA" or the "Firm") has built a significant expertise. The Competition Law Practice at NDA endeavors to combine its rich international experience and expertise in domestic laws / regulations and international antitrust regulations combined with its research capabilities to devise innovative structures and provide strategic advice on combination clearance, behavioral pattern of the entities viz. anti competitive agreements and abuse of dominance. We have developed a unique set of skills in Competition Law by successfully leveraging our cross-border specialization, experience and research capabilities to develop a vibrant Competition Law practice.

The provisions regulating 'anti-competitive agreements' and 'abuse of dominance' were recently brought into force in mid 2009 through a notification. Further, the year 2009 also saw the creation of the "Competition Commission of India" for the enforcement of the provisions against anti-competitive agreements and abuse of dominance. The archaic Monopolies and Restrictive Trade Practices ("MRTP") Act, 1969 ("MRTP Act") and the MRTP Commission was also repealed and replaced with the Competition Act, 2002 in September 2009.

There has been increased activity in light of the above developments and transactions we are currently advising on (including ongoing advice on show cause notices being issued by the CCI under provisions relating to anti competitive agreements). Importantly, the provision on 'combinations' i.e., merger control is yet to be brought into force. Once notified, we expect it to largely affect our competition law practice.

Some of our accolades are:

- Legal 500 (Asia-Pacific) 2009/10 has mentioned Siddharth as "...particularly recommended by clients" for real estate. He is also listed among the highly recommended professionals in India by PLC Which Lawyer? 2009 for capital markets.
- Vaibhav Parikh has been nominated as one of the world's leading practitioners in 'Who's Who Legal' for Regulatory Communications. He has also been acknowledged as a 'Highly Recommended Lawyer' for Outsourcing, and Telecom and IT and 'Recommended Lawyer' for Intellectual Property by the PLC Which Lawyer? 2009.
- Nishchal Joshipura is a senior member of the Real Estate Practice Group and has been recommended by PLC Which Lawyer? 2009 for the real estate practice.

Scope of Services

Our Competition Law practice area encompasses the following areas:

- **Strategic advice on Competition Law issues:** The Firm advises on legal, strategic and compliance issues related to the Competition Act. The Firm provides practical solutions, on the basis of the extensive domain knowledge of the relevant industries, to complex legal problems that arise in the competition law space.
- **Documentation:** The Firm undertakes drafting and review of term sheets, definitive agreements, non-compete agreements, non-disclosure agreements, franchise agreements, escrow agreements, stock swap agreements, employment agreements *et al.*, to minimize the issues of competition law viz: anti competitive agreements and / or abuse of dominance which could arise before the Competition Commission of India ("CCI").
- **Competition Law Applications and Filings:** Once the substantive provisions of the Competition Act are in force, the Firm shall undertake filings for and representing clients before the CCI, in conjunction with other experts, with respect to applications for the clearance of combinations where such combinations exceed the applicable threshold limits specified in the Competition Act in terms of assets or turnover.

- **Regulatory advice:** The Firm provides regulatory review and advice with respect to issues and behavioral pattern of enterprises and / or transactions undertaken by foreign / domestic enterprises, which could have implications under the Competition Act.
- **Litigation:** The Firm has a robust Dispute Resolution Practice with members having skill and expertise to represent clients in different forums ranging from the CCI to the Supreme Court of India.

Representative Clients

Lafarge, Bang & Olufsen, Allen & Gledhill, ACC Limited, Indian Films Company, GlaxoSmithKline, Organisation of Pharmaceutical Producers of India

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