



# Anti-competitive agreements

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# Elements of CA02



- There are three elements:
  - ❑ Prohibiting anti-competitive agreements
  - ❑ Prohibiting abuse of dominant position
  - ❑ Regulating combinations
- There is a fourth element: competition advocacy.

# Definition



- Agreement is defined very widely.
- Inclusive definition – includes any arrangement or understanding or action in concert
- Includes formal and informal, written or oral agreements
- Includes agreements not meant to be legally enforced.

# Anti-competitive agreements-1



- Agreements in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services that cause or are likely to cause appreciable adverse effects on competition within India are anti-competitive agreements

# Anti-competitive agreements-2



- Such agreements are prohibited by law.
- Such agreements are VOID.

# Horizontal agreements



- Agreements between enterprises engaged in trade of identical or similar products (including cartels) are presumed to have AAEC if they
  - Fix prices
  - Limit output
  - Share markets
  - Indulge in bid-rigging or collusive bidding

# Cartels



- Regarded as most pernicious form of anti-competitive behaviour.
- Hard core cartels is on top of the agenda of most competition authorities
- Leniency programs have resulted in higher rate of detection
- Vitamins cartel, electro-graphite cartel, etc-heavy fines
- Loss to developing countries enormous

# Cartel – a landmark case



- Amino Acid Lysine cartel is one of the landmark cases decided in the US-
  - ★ Two Japanese, two South Korean and one US company agreed not to compete on price
  - ★ Price of lysine rose on account of collusion from 68 cents per pound to 98 cents in 1990 and continued at that level until detection in 1995.
  - ★ Evidence collected by DOJ with the assistance of FBI included documents/ transcripts of secretly recorded conversations.



# Bid-rigging/collusive bidding



- Affects public procurement
- Overcharge of 15-20%
- Not an uncommon practice in India

# Vertical agreements-1



- Agreements between enterprises at different stages or levels of the production chain
- No presumption of AAEC
- Rule of reason test

# Vertical agreements-2



- Examples given in the CA02
  - ❑ Tie-in sales
  - ❑ Exclusive supply agreements
  - ❑ Exclusive distribution agreements
  - ❑ Refusal to deal
  - ❑ Resale price maintenance
- Inclusive list
- Prohibited only if AAEC is established

# IPRs



- Agreements involving 6 IPR laws that impose reasonable restrictions are out of purview of the general prohibition

# Export cartels



- Agreements exclusively for exports are excluded from the rigours of the law.