



# Competition Law: General Overview



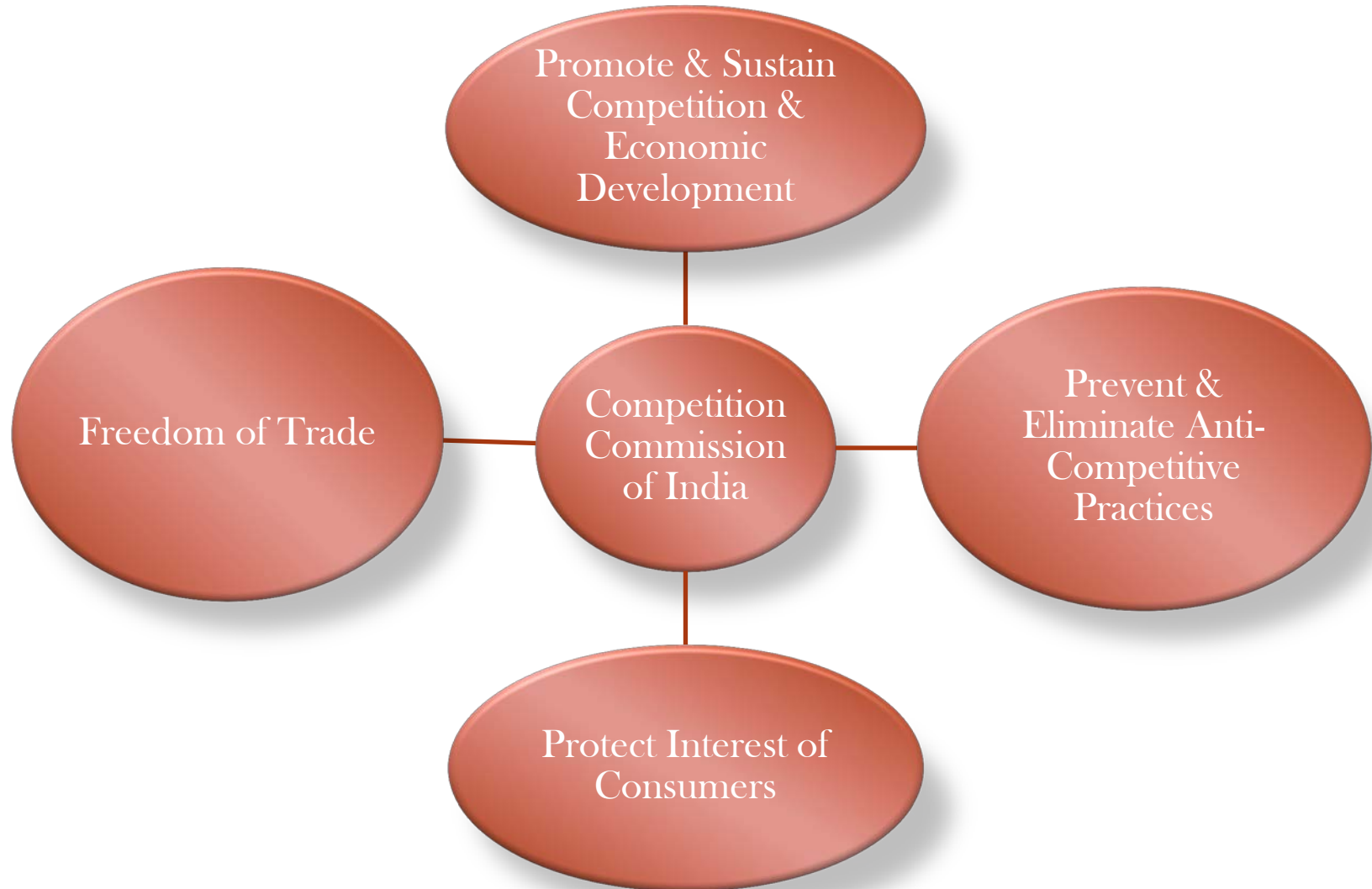
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# Preamble of the Competition Act, 2002

## OBJECTIVE





# CCI: Regulating Markets for Fair Play



- Multipronged strategy for promoting and sustaining competition
- Enforcement functions
  - Penalizing anti-competitive conduct (ex-post)
    - Anti-competitive agreement between enterprises/persons [Section 3]
    - Abuse of dominance by enterprises [Section 4]
  - Approval for major mergers and acquisitions (ex-ante) [Section 5 & 6]
- Advisory functions [Sections 49(1), 21]
- Advocacy functions [Section 49 (3)]
- Legislative functions [Section 64]



# Reach of the Act

- **All Enterprises:** Whether public or private; all Government Departments except when engaged in discharge of sovereign functions: Currency, Atomic energy, Space and Defence
- **Competitive Neutrality:** No discrimination between domestic and foreign, between public and private sector, and between small and large enterprise



# Anti-competitive Agreements



**Agreement:** Defined under Section 2(b) of the Competition Act, 2002, which includes any :

- Arrangement
- Understanding or
- Action in concert

Whether or not

- in writing;
- intended to be legally enforceable

Agreements having Appreciable Adverse Effect on Competition (AAEC) within India prohibited [Section 3 (1)]

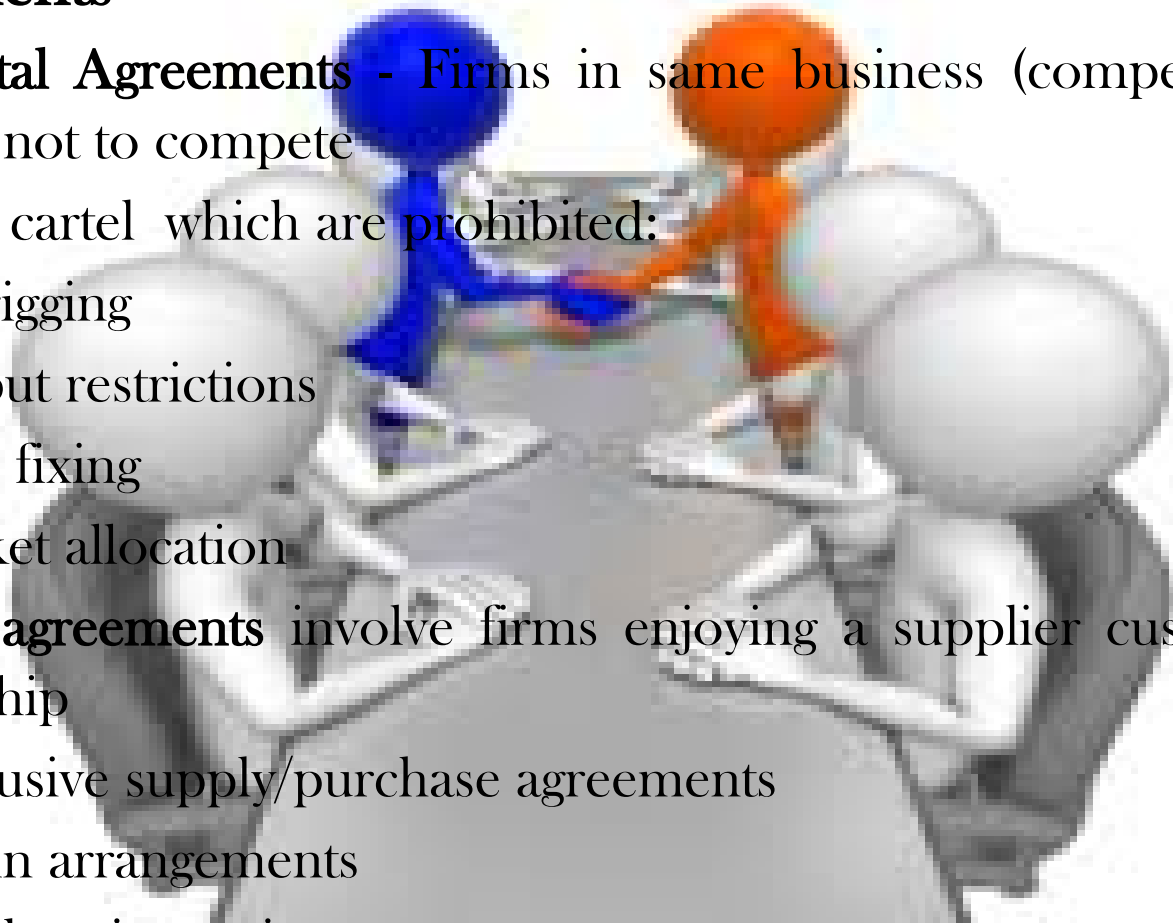


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# Anti-competitive Agreements

- Agreements are of two types: **Horizontal and Vertical Agreements**
- **Horizontal Agreements** - Firms in same business (competitors) agreeing not to compete
- Includes cartel which are prohibited:
  - Bid rigging
  - Output restrictions
  - Price fixing
  - Market allocation
- **Vertical agreements** involve firms enjoying a supplier customer relationship
  - Exclusive supply/purchase agreements
  - Tie-in arrangements
  - Resale price maintenance





# Abuse of Dominant Position



- Abuse of dominance is prohibited and not dominance *per se*
- ‘Dominant position’ means
  - a position of strength which enables an enterprise to operate independently of competitive forces prevailing in the market
- Commission considers *inter alia* the following factors to determine whether an enterprise is dominant;
  - market share; size and resources/ importance of the enterprise/ competitors; dependence of consumers on enterprise; structure and size of market; social obligations/costs; any other factor relevant
- Abuse of dominant position [section 4(2)]:
  - Unfair or discriminatory pricing (including predatory pricing)
  - Limiting production or technical development
  - Denial of market access, in any manner
  - Conclusion of contracts subject to supplementary obligations which have no connection with the subject of the contract
  - Use of dominant position in one market to enter into or protect other **relevant market**



# Concept of Relevant Market

- **Relevant Market** [Section 2(r)] - Comprises of either/or both relevant geographic market and relevant product market
- **Relevant Geographic Market** [Section 2(s)] - Area in which conditions of competition for supply or demand of goods/services are homogenous and can be distinguished from other areas;
- **Relevant Product Market** [Section 2(t)] - Market comprising all goods/services which are substitutable by reason of characteristics, usage and prices.

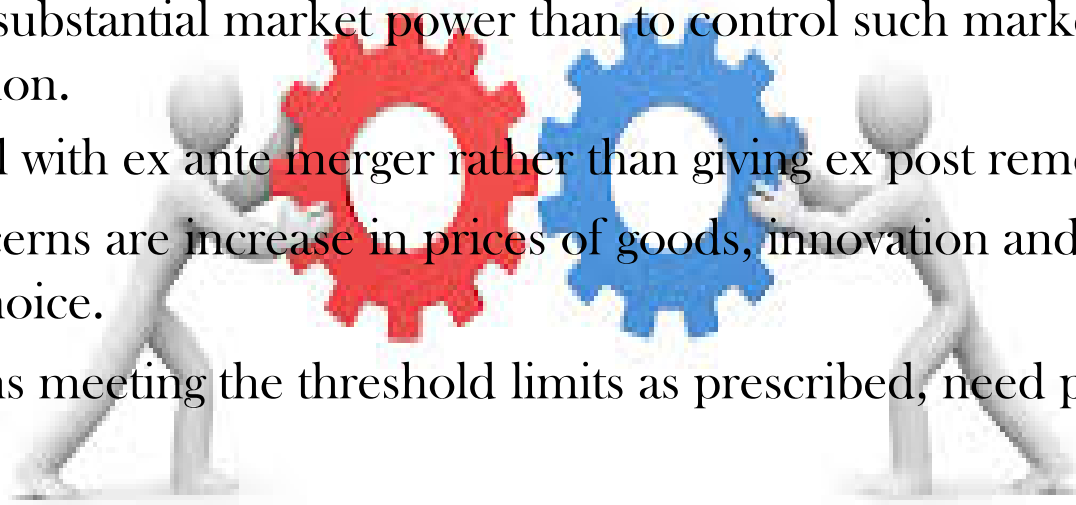




# Regulation of Combinations



- Sections 5 & 6 deals with Regulation of Combinations.
- **Objective:** to examine the potential effect of a combination (mergers and acquisitions) of shares/assets of enterprises in the markets.
  - Better to prevent firms which may affect the competition in markets in India after gaining substantial market power than to control such market power after its creation.
  - Easier to deal with ex ante merger rather than giving ex post remedies.
- The major concerns are increase in prices of goods, innovation and the impact on consumer choice.
- All combinations meeting the threshold limits as prescribed, need pre approval of CCI.
- Any Person/ Enterprise, who/ which proposes to enter into a combination, shall give notice to the Commission within 30 days
- Act provides **210 days** for the Commission to decide
- **Deeming provision** - on expiry of the prescribed period if no order is passed, the combination is deemed to be approved





# How to file Information



- **Who can file the information ?**
- ❑ Any person (includes an individual, HUF, firm, company, local authority, cooperative or any artificial juridical person)
- ❑ Consumer or their association
- ❑ Trade association
- ❑ Central Government
- ❑ State Government
- ❑ Statutory authority
- ❑ Suo Moto power



# Procedure & Process



- Existence of prima facie case
- Direction to Director General for Investigation
- Circulation of Investigation Report to the parties
- Interim Order
- Inquiry and Final Order
- Power of Civil Court under Code of Civil Procedure
- Reference to Sectoral Regulators
- Confidentiality
- Appeal to Competition Appellate Tribunal
- Appeal to Supreme Court
- Leniency Provisions
- Competition Advocacy
- Exclusion of Courts



# Remedies

- Cease and desist order
- Penalty upto 10% of average turnover for last three preceding financial years
- In case of cartels, penalty upto 10% of turnover for each year of continuance of such agreement or three times of profit for each year of continuance of such agreement, whichever is higher.
- Agreements having AAEC void
- Modification of agreements
- In case of dominant position of an enterprise-order for division of enterprise
- In case of combination-CCI has power to approve or approve with modifications or refuse



# Conclusion



Fair and Efficient Competition is good for the economy for many reasons. It enables-

- More choice to consumers
- Better quality of products and services
- Low prices for all
- Innovation and R&D
- Best value for money in Procurements
- Sub serve the Constitutional goal

