

**ICWAI-CCI-ASSOCHAM
SEMINAR**



**“Industry on High Growth
Trajectory under the New
Competition Regime”**

**COMPETITION LAW: WHAT IS
THERE FOR SMEs &
CONSUMERS**

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Competition in markets is benign

- Competition is benign to consumers, business (small, medium or big), Government and Economy,
- key driver to competitiveness, leads to better corporate governance, helps in reducing corruption.
- Infusing/maintaining/sustaining competition – a challenge in view of its unique characteristics, namely:-
 - *intense competition is inconsistent with human nature*
 - *competition kills competition*
 - *competition is unstable*
 - *contrary to ‘Live and let others live’ philosophy*

Empowering provisions

- Entry 21 of List III of VIIth Schedule to the Constitution empowers the State to control and regulate;

“Commercial and industrial monopolies, combines and trusts”

- India is in the family of those countries which have modernized competition regime

Preamble/duties of CCI are:

- to prevent practices having appreciable adverse effect on competition; (ACA/AOD/Merger)
- to promote and sustain competition in trade and industry:
- *to protect the interest of consumers;*
- *to ensure freedom of trade carried on by other participants in market in India;*
- The objectives to be achieved through the Competition Commission of India (CCI).

Applicability of law to enterprise including SME

- Means a person or a Department of the Government –engaged in activity relating to production----- of provisions of services
- Applies to goods, services including IPs
- ‘Activity’-includes occupation or profession
- Size immaterial –micro, small, medium or big-all are ‘enterprise’ and therefore subject to the discipline of Act.

What can CCI do

- Cease & desist order
- Grant interim relief during enquiry
- Declare anti-competitive agreement void.
- May impose –
 - penalty of 3 times of profits or 10% of the turnover of the enterprises whichever is more in respect of cartels.
 - Penalty up to 10% of the turnover of enterprises in respect of other contravention.
- Division of the dominant enterprise or group
- Approve/Approve with modification/Reject the combination
- On findings of contraventions, aggrieved persons can claim compensation.

Who is Consumer/SME

- Consumer – a wide coverage- one who buys goods or avails of services for consideration
 - includes “commercial buyer”
 - includes beneficiary
 - consideration-a must
- A consumer means a person which includes (an individual/HUF/company/firm/association./corporation established under law/overseas body corporate/coop society/local authority/every artificial juridical person).

How an inquiry into ACA/AOD may be instituted-Privilege for Consumers/SMEs

- On its own motion, or
- On an information from any person, consumer, consumer association, trade or trade association, or
- Upon a reference from Central Government/ State Government/ Statutory Authority.

Requirements of information

- Introduce yourself and the alleged contravening enterprise,
- Summary of alleged contravention,
- Presentation in support of contravention,
- Relief sought,
- verification,
- Provision for confidentiality
- Information to be accompanied by fee of Rs.50,000/-

Other avenues are:

- filing information in the manner prescribed is one of the option
- Information can be given to and the CCI can take up the matter on its own motion.
- Information about alleged contravention can be brought to notice of the Central/State Govts./ Statutory Authorities which may make a reference for enquiry.
- Information can be filed by Associations
- A summary of all orders to be put in public domain.

The Whole Competition Law revolves around

- Consumer welfare (inclusive of protection)
- To maintain competition process including protection of competitors
- To prevent enhancement of market power
- Action generally ex-post and exception to rule is regulation of combination which ex-ante.

Anti-Competitive Agreements- consumers/SMEs

- Cartels are harmful to consumers
- SMEs are generally not part of Cartel.
- On establishment of cartel, there is provision for penalty.
- Disgorgement of profits does not exist in MRTPA.

Vertical Agreements – Consumers & SMEs interest taken care of

- Tie-in arrangement, Exclusive supply agreements. Exclusive Distribution Agreements, Refusal to deal, Resale price maintenance,
- Unreasonable conditions by IP holder.
- Accrual of benefits to consumers.
- In determining ‘AAEC’, the factors inter alia to be considered are:
 - (a) Entry barriers.
 - (b) Ousting an existing competitor;
and
 - (c) Accrual of benefits to consumers.

Abuse of Dominance – Affects consumers & SMEs

- No enterprise or group shall abuse its dominant position
- Dominance not based on arithmetical figure, but on factors prescribed which include market share, economic power, dependence of consumers, countervailing buying power, contribution to economic development.
- The abuses are either Exploitative or Exclusionary:
 - Unfair or discriminatory pricing or conditions (including predatory pricing), Limiting production or technical development, Denial of market access in any manner, Conclusion of contracts subject to supplementary obligations, use of dominant position in one market to enter into or protect the other market

Regulation of Combinations – interest of Consumers & SMEs is taken care of

- SMEs are not expected to be covered in view of high threshold.
- During review, SMEs can file objections to public notice
- In review of merger, the CCI would see:
 - likelihood of increase in prices
 - post merger market share
 - possibility of failing business
 - nature and extent of innovation
 - contribution to economic development
 - benefits outweigh disadvantages.

Message for SMEs

- To enter the market and trade freely.
- Law does not restrict business models
- Advantage of differentiated products
- Absence of market power – No AAEC/Dominance
- Exclusion/exemption – Window exist
- Not to worry of frivolous complaint
- Need to know the law

Message for Consumers

- Longer we delay, the more we deprive the consumers the benefits of competition.
- Time is the essence of law/regulations.
- Competition issues are complex and intricate
 - need for extensive research
- Resort to advocacy pressure tactics when industry
 - as a whole is violating law.
- Assist CCI in advocacy measures.

CCI – Take Notice

- Joint purchasing by SMEs brings economic benefits which enables them to tame prices
- Encourage Association of SMEs to recommend prices jointly.
- Encourage joint bidding
- Need to accord priority to complaint of SMEs
- Need to filter frivolous complaint against SMEs

Contd..2..

- SMEs deserve encouragement to report price fixing, bid rigging and to take advantage of leniency.
- Consumer Association should be given grants out of Competition Fund
- Consumers & SMEs are lagging understanding – need for extensive advocacy.

Thank you

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