



# Competition Commission of India

Presentation on

## Overview of

## Competition Law and Policy

by

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to

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# India's new Competition Law

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- Competition Act, 2002 enacted in January 2003.
- Competition Commission of India established in October 2003.
- Has one Member /Acting Chairman, plus small complement of staff.
- Provisions regarding Competition Advocacy notified.
- Substantive enforcement provisions not yet notified.
- Amendment Bill introduced and is under consideration of Parliament.

# Why Competition ?

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- Competition promotes:
  - allocative and productive efficiencies,
  - innovation,
  - consumer welfare, and
  - economic and political democracy.
- Is an essential condition for national competitiveness
- Empirical studies/evidence from several countries testify to benefits: Australia, US, UK, New Zealand.
- *Benefits in India already visible*

# Roles of Competition Law and Policy

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*Competition Policy has two elements:*

- Competition Policy – set of policies that enhance competition, give primacy to market forces, allow entry and exit, reduce controls, minimize regulation, etc. *Most countries migrating to competition-oriented, market-based policies.*
- Competition Law – Law to prohibit anti-competitive practices and regulate potentially anti-competitive mergers; and prevent unwarranted government/regulatory intervention. *Over 100 countries have adopted modern competition laws.*

# Role of Competition Commission of India

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- Act provides for a Commission to:
  - eliminate anti-competitive practices,
  - promote and sustain competition,
  - protect consumers' interests,
  - ensure freedom of trade.
- Commission's role is normally ex-post, not ex-ante (except in mergers).
- Commission is off-market, not in-market, regulator – unlike other regulators. *Can be likened to a referee.*

# What is Prohibited ?

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- Agreements having *AAEC\**, including cartels.
- Abuses of dominant position.
- Combinations that have, or likely to have, *AAEC\** - *provides for Regulation of Combinations*

\*AAEC: “appreciable adverse effect on competition”

# Anti Competitive Agreements - Examples

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- Horizontal Agreements, including cartels, which:
  - Fix (determine) prices
  - Limit or control production, supply, technical development, etc.
  - Allocate areas or customers
  - Bid rigging or collusive bidding.

Presumed to have 'AAEC'
- Vertical agreements such as:
  - Tie-in
  - Exclusive supply/distribution
  - Refusal to deal
  - Resale price maintenance

Subject to "rule of reason"

# Abuse of Dominance - Examples

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- Not dominance, but its abuse is prohibited.
- Dominance determined by several factors e.g. market share, share of competitors, entry barriers, size and resource of enterprise /competitors, etc.
- *Examples of abuse*
  - Exclusionary – predatory pricing, denying market access, use dominance in one market to enter other relevant market.
  - Exploitative – discriminatory price/condition



# Regulation of Combinations - Examples

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- Combination includes merger, amalgamation, acquisition of shares, acquiring of control. Can be horizontal, vertical, conglomerate.
- *Liberal Regime:-*
  - Very high threshold limit; smaller combinations outside regulation
  - Voluntary, not mandatory, notification
  - Disposal within 90 working days, failing which deemed approval.
  - But suo moto inquiry possible.
- Worldwide, vast majority of mergers not interfered with by competition authorities.

# Remedies in Competition Act

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- Cease and desist order
- Penalty up to 10% of turnover
- In case of cartels, penalty 10% of T.O. or three times of cartelized profit, whichever is higher.
- Compensation ( damages)
- Agreement having AAEC is void
- Order can modify agreement
- In case of Combination – can be approved, approved with modification, or refused approval.
- In case of dominant enterprise – order can recommend division.

# Who can approach Commission?

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- Any person; includes individual, company firm, association, statutory corporation, government company, body corporate, legal authority, etc.
- Consumer; means one who buys goods/avails services for consideration
- Association of persons or consumers or trade association
- Reference by central/state government, statutory authority

# Competition Act and MRTP Act

## Based on liberalized regime

- Competition concepts expressly defined; major role for economic analysis
- Provides for regulation of combinations
- Provides for advocacy
- Power to impose penalty – deterrence factor
- Statutory authority can seek CCI's opinion
- Government Departments within its ambit

## Based on command and control regime

- Competition concepts not expressly defined
- No regulation of combinations
- Has no advocacy role
- No power to impose penalty
- No provision for statutory authorities to seek opinion
- Government Departments outside its ambit

# Important concepts in Competition Act

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- Relevant market-- relevant product market, relevant geographic market.
- AAEC- based on appreciable adverse effect on competition
- Dominant position
- Effects doctrine
- Neutrality between private/government
- Economic analysis extensively used

# Competition Advocacy and Public Awareness

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## ➤ Competition Advocacy

- With Government/Regulators, to promote pro-competition policies, laws, regulations.
- Competition principles interface with policies relating to: disinvestment, concessions, industrial/sector policies, subsidies, international agreements, entry/exit policies, etc.

## ➤ Public Awareness

- with industry, chambers, trade associations, etc. to strengthen compliance and competition culture.

# Present activities of Competition Commission

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- Professional ground work:
  - Study of economic, legal concepts
  - Market studies/research projects through reputed institutions
  - Draft regulations
  - Competition Forum
  - Close networking with experts

# Present activities

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## ➤ Competition Advocacy:

- Advocacy with central government ministries; preparation of draft National Competition Policy
- Advocacy with state governments
- Seminars, workshops (So far 28)
- Interaction with chambers, associations, professional institutions
- Advocacy literature
- Advocacy with 140 universities/institutions



# Present activities

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- Administration and capacity building:
  - Training of staff, within and outside country
  - Implementation of capacity building projects, with overseas assistance
  - Library
  - Website
  - Model is lean, professional organisation

# How enterprises can achieve compliance?

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## A guide of OFT, UK states:

- Compliance important because consequences potentially serious: investigation, penalty, damages, voidance of agreements, adverse publicity.
- Businesses advised to raise awareness among employees, especially those in sales, marketing, purchasing.
- Large businesses advised to have formal compliance programme, with four suggested features:
  - Support of senior management
  - Appropriate policy and procedures; compliance manual incorporating clear policy statement, giving provisions of competition law, examples of prohibited behavior, etc.
  - Training
  - Regular evaluation
- Compliance programme is mitigating factor for OFT; involvement of senior management is aggravating factor.

# Role of Associations

## Observations in OFT's Guide:

- Functions of Trade Associations are useful to members
- May also be beneficial in increasing efficiency of markets.
- However, Trade Association may take care not to be used directly/indirectly as vehicle for anti-competitive activity.

*( Trade Association can facilitate compliance by generating awareness, educating members, etc)*

# Disclaimer

This presentation provides only an introduction to competition law, and should not be relied on as a substitute for the law itself.

Further, this presentation is subject to any changes which may be made in the competition law at anytime in future.



# Competition Commission of India

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