

# **WORKSHOP ON COMPETITION ACT, 2002**

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**JOINTLY ORGANISED BY  
LUCKNOW MGT. ASSCN/ PICUP/ CCI**

**“ANTI COMPETITIVE AGREEMENTS  
UNDER COMPETITION ACT, 2002 ”**

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# Competition in markets

- promotes efficiency;
- encourages innovation;
- leads to higher productivity
- punishes the laggards;
- facilitates better governance;
- boosts choice, improves quality, reduce costs;
- ensures availability of goods in abundance of acceptable quality at affordable price.

# Competition is benign

## For consumers:

- lower prices
- improved quality
- better services
- wider choice

## For business:

- availability of inputs at competitive price,
- level playing field,
- redressal against denial of market access and other anti-competitive practices
- ensures economic democracy

# Research Studies reveal

- Economic progress depends on increasing productivity which depends upon undistorted competition. (Study by McKenzie Global Institute.)
- On a question as what makes a country rich or poor, the crucial insight given by the McKenzie study is:-

*“the primary answer is the nature of competition in product markets. Competition is the mechanism that helps more productive and efficient companies to expand and take market share from less productive ones, which then go out of business our become more efficient.”*

- Studies reveal that high level of competition boosts productivity, pushing companies to innovate in order to beat the competitors.  
*(General Management Study by TOI)*
- Strong competition policy is not just a luxury to be enjoyed by rich countries but a real necessity for the countries striving to create democratic market economies.

JOSEPH STIGILITZ

*Renowned Economist*

# Positive co-relation between

- Level of competition & corporate governance.
- Level of competition & growth rate
- Level of competition & corruption
- Level of competition & rate of inflation.

## Where are we on the Act?

- Competition Act, 2002
- Challenge in Supreme Court
- Government moved Amendment Bill in 2006
- Bill referred to Standing Committee
- The Committee recommends further strengthening of the Act.
- Government seized of changes in the light of recommendations.
- The substantive provision of law not in force except relating to Competition Advocacy

# Preamble of the Competition Act, 2002 (CA 02):

- *to prevent practices having appreciable adverse effect on competition;*
- *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 Establishment of the Competition Commission of India (CCI).*



## Dimensions of CA 02 and duties of CCI

- To prohibit Anti-Competitive Agreements
- To prohibit Abuse of Dominant Position
- To regulate Combinations
- To undertake Competition Advocacy

# Competition law is applicable to

- Enterprise which includes “person” or “department of Government” engaged in commercial activities
- Enterprise includes “subsidiary”
- Applies to “goods” and “services”
- Cover overseas acts having effect on competition in India
- Consumer includes “commercial buyer”
- Law is inapplicable to sovereign functions and functions relating to Deptt. of Atomic Energy, currency, Defence & Space.

# What can CCI do

- Cease & desist order
- Grant interim relief during enquiry
- Declare anti-competitive agreement void.
- Impose penalties –
  - penalty of 3 times of profits or 10% of the turnover of the enterprises whichever is more in respect of cartels.
  - Penalty upto 10% of the turnover of enterprises in respect of other contravention.

## Contd...

- Award compensation to aggrieved persons
- Recommend 'division of dominant enterprise'
- Such other order as it may deem fit.
- Violation of Commission order attract civil imprisonment besides heavy monetary penalty.

# Why you need to be sensitized

- Government Departments in business are 'Enterprise' and are, therefore, subject to law
- Government officers are invariably on the Board of PSUs – negligent and deliberate violation entails liability of Directors.
- Government Departments/PSUs are buyer and hence consumer of “goods” and “services.
- Government Departments/PSUs are often vulnerable to “collusive bidding” or “bid rigging”.

## Contd.....

- Anti-competitive practices emanates from Government policies, statutes, rules, procedures, regulations, etc.
- Can assist in building strong competition culture
- Government Departments oversee statutory authorities which regulate specific markets.
- Power vests in Central Government to grant exemption subject to certain restraints.
- To make you enlightened consumers.
- To make you trainers for trainees

## Definition – Coverage of Agreement

- Agreement is defined widely
- Includes any arrangement or understanding or action in concert
- Includes formal and informal, written or oral agreements
- Includes agreements not meant to be legally enforceable.

# Anti-competitive agreements

- *No enterprise or association of enterprises or person or association of persons shall enter into any agreement*
- *in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services,*
- *which causes or is likely to cause an appreciable adverse effect on competition within India.*
- *Such agreement is prohibited and is void.*



## Contd...

- Under the MRTP Act, 1969 only clause of a trade agreement which is restrictive is void.
- Unlike the MRTP Act, there is no requirement to file Anti-Competitive Agreement with DG / CCI.
- Acquisition / Merger / Amalgamation are also trade agreements but do not relate to production/supply and hence treated separately.
- The focus is on “Effect on Competition” – Size – Behavioral – Effect Theory.

# Relevant Market

- AAEC has to be in the relevant market
- Unlike the MRTP Act, the concept of ‘Market’ has been rationalised.
- United Brand Company was prosecuted by European Commission:
  - ‘Banana’ fruit is distinct from other fruits
  - No substitutability
  - Refusal to supply resulted in excessive pricing.

# Horizontal Agreements

- Agreements between enterprises engaged in trade of identical or similar goods or services (including cartel) are presumed to have AAEC if they:
  - fix prices
    - *Alkali Mfrs. Association of India*
    - *Ghai Enterprises Pvt. Ltd. & Kwality Ice-creams*
    - *Goods Truck Operators' Union, Fbd.*
  - limit output / supply
    - *RRTA Vs. Incheck Tyres.*
    - *Indian Jute Mills Association.*

## Contd....

- share markets
- indulge in collusive bidding or bid rigging
  - *Bengal Tools Ltd.*
  - *Swastik Laminating Industries Ltd.*
- Efficiency enhancing JVs are not presumed to have AAEC.

# Cartels

- The trident requirements:
  - *an agreement*
  - *amongst producers/suppliers*
  - *to limit production, sale or price*
- What makes conducive to cartelise.
- In some jurisdictions, it is illegal
- Incorporation of leniency programs
  - a key tool to detect ‘cartel’
  - resulted in higher rate of detection

- Imposing penalties on individual a necessity
- Penalty need to be more than profit earned
- Need for intrusive surveillance and related power of property interference
- Vitamins cartel, electro-graphite cartel, etc.
- Loss to developing countries enormous – especially where competition law is not in force.

## 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 month 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

- Government procurement represents 10% to 15% of total GDP
- Affects public procurement
- Overcharge of 15 – 20%
- Not an uncommon practice in India.
- Specifications aimed at barrier to entry or to suit a particular player – inconsistent with CVC Guidelines
- Consortium pro-competitive



# Vertical Agreements

- Tie-in arrangement - condition on a purchaser to purchase some other goods/services.

*(Microsoft case / Radhakrishnan International School)*

- Exclusive supply agreements – restricting a purchaser from dealing in goods of others  
*(Telco / M & M / Spencer & Co.cases).*

## Contd...

- Exclusive Distribution Agreements – agreement to allocate markets / customers.
- Refusal to deal – Agreement which restricts persons to whom goods sold / purchased.
- Resale price maintenance- condition as to price at which goods will be sold.

*(Bajaj Electricals Ltd, United Breweries and Indo Lawenbrau Breweries Ltd).*

## Contd..

- Agreements involving 6 IPR laws - reasonable restrictions in exercise of IPRs – do not amount to anti-competitive.
- Agreements exclusively for exports are excluded from the rigours of the law.

# Other anti-competitive practices

- Differential concessions/ rebates / incentives / benefits / credit limits.
- Conscious price parallelism
- Boycott
- Restrictions on Employment of any machinery or manufacturing process.

## Factors prescribed to determine AAEC.

- Creation of barriers to entry
- Driving out existing competitors
- Foreclosure of market by hindering entry into market.
- Accrual of benefits to consumers.
- Improvements in production or distribution.
- Promotion of technical, scientific and economic development.

## What you can do:

- Furnish information relating to anti-competitive practices.
- Make a complaint or reference for enquiry.
- Make a reference for opinion.
- File application for award of compensation.
- File objections to proposed combination, if affected
- Initiate competition compliance programme – Need for and usefulness thereof.
- Review laws and procedures

Thank you