

COMPETITION ASSESSMENT AND COMPETITION COMPLIANCE- BUILDING A COMPETITION ECOSYSTEM

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Disclaimer: Views expressed in this Presentation are personal and do not necessarily reflect the views of the Commission.

Introduction

Competition

- Economic Efficiency
- Allocative Efficiency
- Productive efficiency

‘Competition is good for consumers for the simple reason that it compels producers to offer better deals - lower prices, better quality, new products, and more choice’ - **John Vickers**

Competition – is not an automatic process

- Markets are prone to distortion by market players
 - By Suppliers
 - By Buyers
 - And by intermediaries
- Information Asymmetry, Seasonal Variations in production and Demand and Trade Barriers impinge on competition
- Government regulation also sometimes impinge on free-markets

Competition Assessment and Compliance

- Ex-ante Approach to promote and ensure competition
- Competition Assessment: Prevents anti- competitive elements
from sneaking into the law
- Compliance: Ensures and promotes competition culture among
the enterprises

Competition Assessment of Legislation/Policies

Goals of the Government

Promote Social Policy

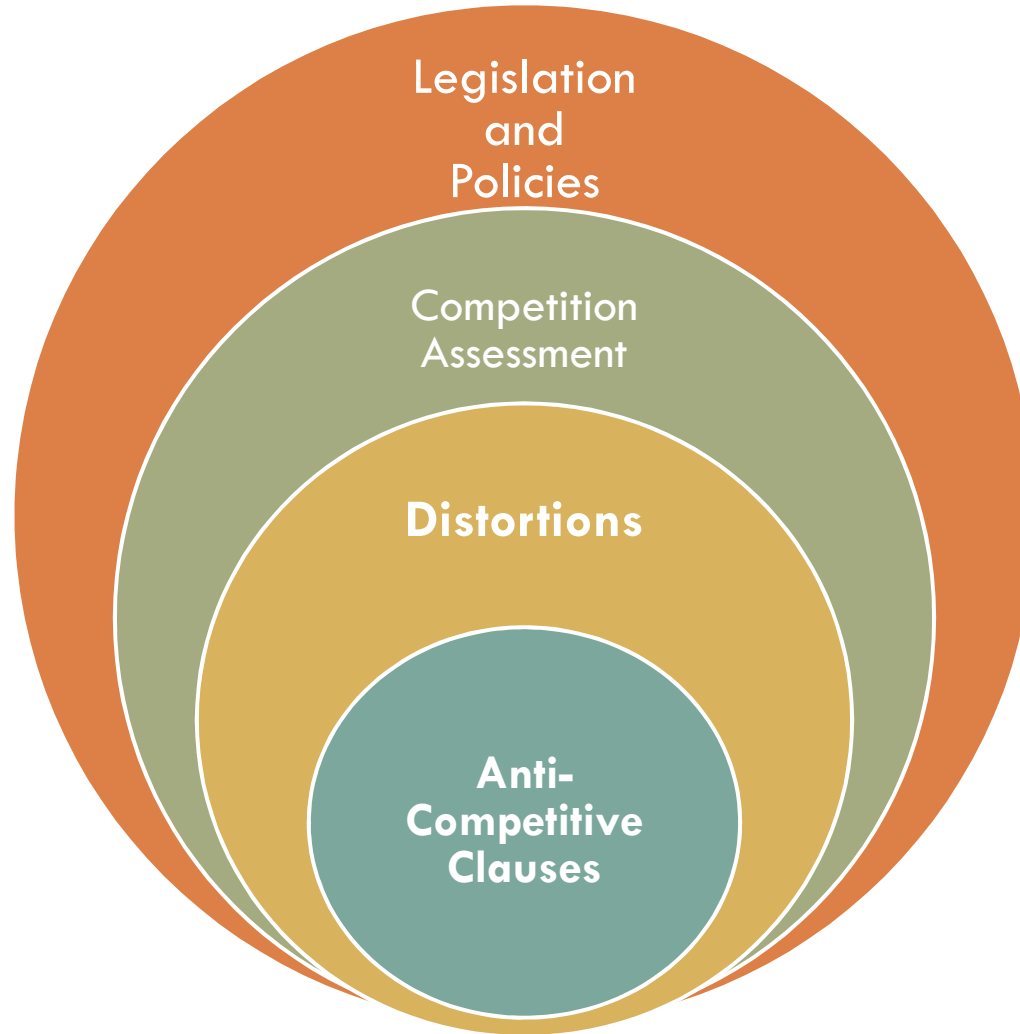
Protect Social Interest

Promote Economic Policy

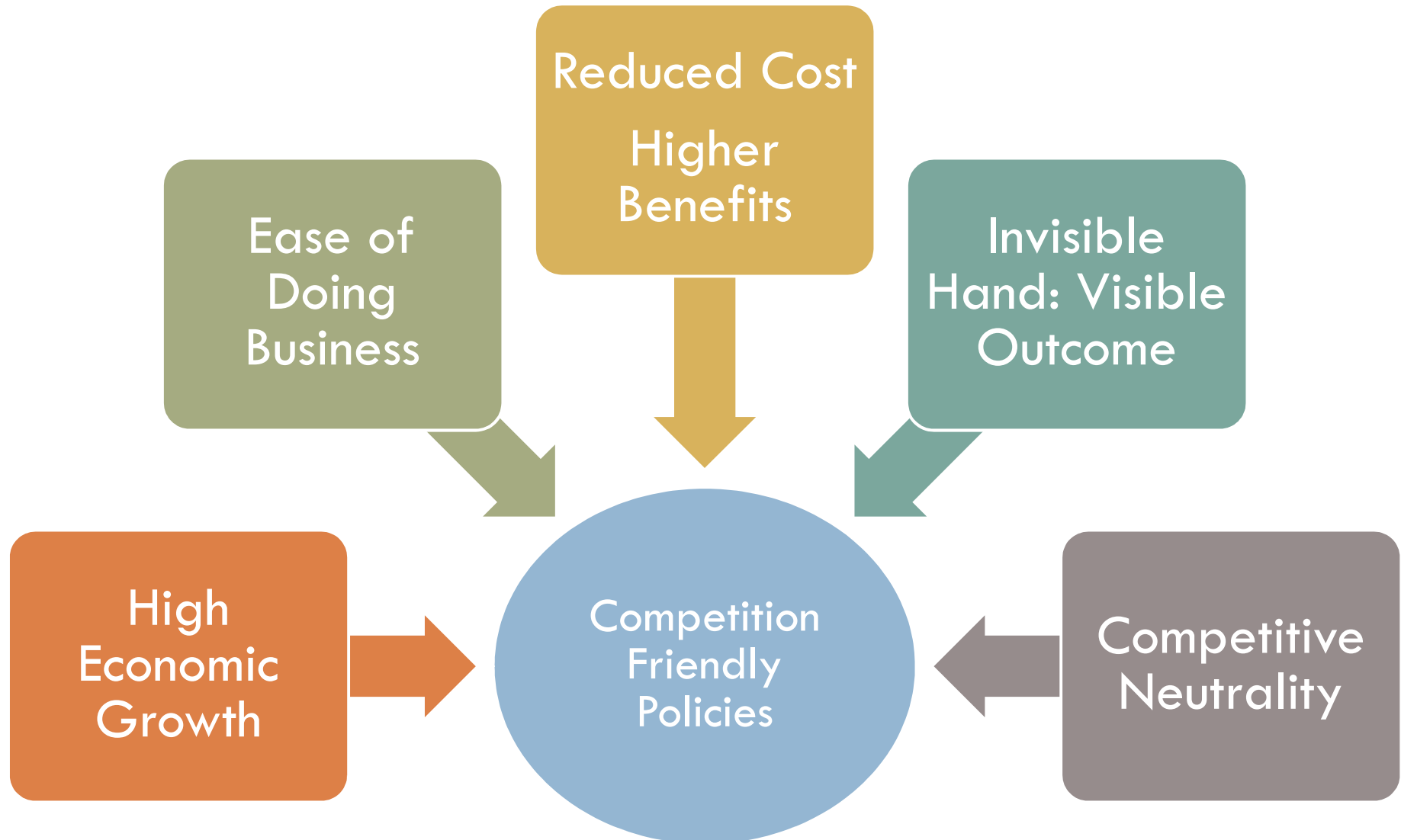
Protect Economic Interest

COMPETITION is the Building Block

Competition Assessment - Context



Importance of Competition Assessment



Why Competition Assessment?

- ❑ Markets do not always operate efficiently, need for state intervention = regulation
- ❑ Correctly designed regulation has very important beneficial effects for society (protection for consumers & environment, health & safety, etc.)
- ❑ BUT, badly designed regulation can also distort competition
- ❑ Regulation can sometimes go horribly wrong...

- ❑ Source: OECD –Competition Assessment

Why Competition Assessment? Contd...

- The objective is to assess the effect of regulation on Extent of competition in the markets
- Incentives for firms to engage in innovative activity
- Potential for growth of the markets
- A different way of stating the objectives - We want to avoid restricting competition when making policy

Source –OECD –Competition Assessment

Which Policies Merits CA?

- Laws, Regulations and Rules
- New and Existing Policies
- National, Regional, Local

OECD Checklist For Competition Assessment(CA)

When to carry out CA?

Limits the number or range of suppliers

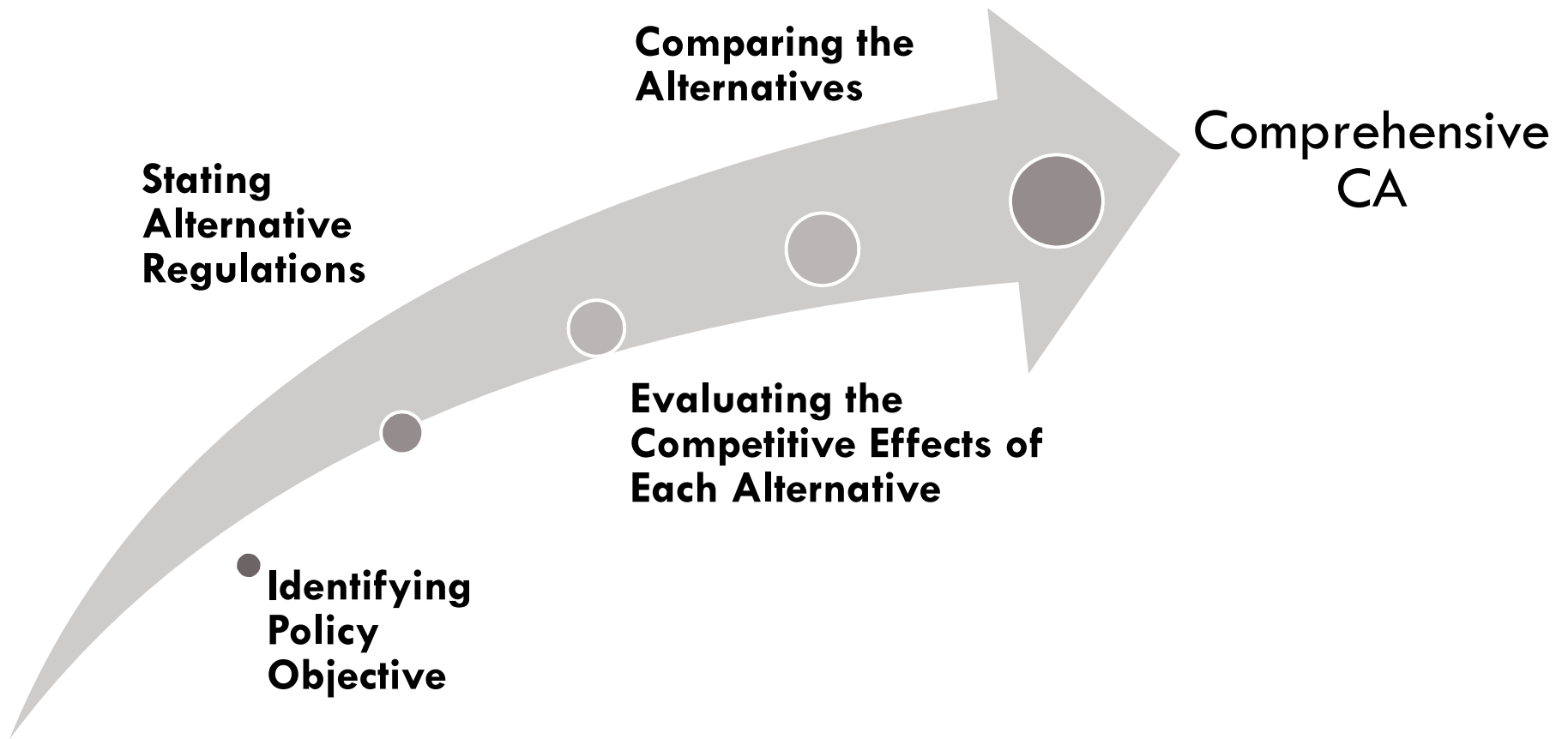
Limits the ability of suppliers to compete

Reduces the incentive of suppliers to compete

Limits the choices and information available to customers

Comprehensive CA

Integrating CA with Regulatory Impact Assessment



CA in India

- 11th five year Plan : Competition review of policies, statutes and regulations
- Draft National Competition policy: Competition Impact assessment
- CCI: section 49 (1) and (3) of the Competition Act, 2002
 - identify the upcoming / existing economic legislations and policies
 - Reference by any Government Agency
 - CA guidelines
 - Empanelled 7 Academic Institution
 - Capacity Building with OECD

Criteria for Assessment

- Appreciable adverse effect on competition in the relevant market in India;
- Hinder any of the salient features of a competitive market;
- Restrict the freedom of players in the market and choices of consumers; or
- Be in disharmony with the objectives of the Competition Act, 2002. While determining the above, the assessment should take into account the factors listed in section 19(3), 19(4) and 20(4) of the Act.

- **General Competition Assessment**

(Keeping in view the provisions of the Legislation/ Policy, in the context of overall economic environment to which the legislation/ policy relates to)

- **Identify provision(s) (including implementation) which could cause AAEC in the relevant market in India?**

(Keeping in view the relevant market as the assessor defines it)

- Any provision (including the manner of its implementation) which could humble competitive market, namely, free entry and free exit, number of participants, perfect symmetry of information, and ability and motivation of participants to compete?

- Any provision (including the manner of its implementation) which could restrict the freedom of producers, suppliers or consumers in the market or their choices?

- Any provision (including the manner of its implementation) which could be in disharmony with the objectives of the Competition Act, 2002, namely,
 - prevention of practices having adverse effect on competition;
 - promotion and sustenance of competition in markets;
 - protection of the interests of consumers; and
 - freedom of trade carried on by other participants in markets, in India?

8. Comments on each of the provision considered anti-competitive :

- Likely effects of the Clause on competition?
- Rationale behind the Clause?
- Is it absolutely necessary to achieve the objectives?
- Suggested modifications from competition perspective? (May include incorporation of sun-set clause.)
- Will the modifications, if accepted, impinge on the objectives ?
- Any countervailing factor that may justify continuing with the existing provision in the Clause?

An Example – APMC Model Act

APMC as legally granted monopolies have resulted into:

- ❑ Prevention of development in the competitive marketing system;
- ❑ No help to farmers in direct marketing and organising retailing;
- ❑ Prevention of smooth raw material supply to agro-processing industries; and
- ❑ Hurdle to adoption of innovative marketing system and technologies.

An Example – APMC Model Act ..contd

- Act allows *monopoly/dominance* of the APMC in a market area such an unprofessional market management structure can engender *collusive behaviour* as well as *abuse of dominance*.

An Example – APMC Model Act ..contd

<p>S.26(2)(a)(iii)</p> <p>Market Committee may...</p> <p>register or refuse registration to market functionaries and renew, suspend or cancel such registration, supervise the conduct of the market functionaries and enforce conditions of Registration</p>	<ul style="list-style-type: none">• Conflict of interest (competitor having decisive say in licensing/registration)• Limits Free and fair market processes• Promote monopolistic behaviour/abuse of dominance <p>APMC is itself a regulator and a major player in the market – empowered not only to create a market but also to grant a license for private market.</p>
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COMPETITION COMPLIANCE

- *“A formal internal framework to ensure businesses, i.e., the management and individual employees, comply with competition law” (CCS)*
- Based on principle **‘Prevention is better than cure’**

Objectives of Compliance Programme



Benefits

- Compliance Culture
- Competitive Advantage
- Goodwill & Reputation
- Reduce penalties
- Reduced Negative effect of Litigation



Cost

- Damage to reputation
- Heavy fines
- Drain of resources
- Loss of business opportunities
- Division of the dominant enterprise

Essential features of CCP

- ❑ Explicit commitment of Senior Management
- ❑ Design a Compliance Manual
- ❑ Training of Employees
- ❑ Identify Employees and Divisions at Risk
- ❑ Confidentiality

Compliance Manual

Provisions of Competition Law



Zero Tolerance Policy



Do's and Don'ts list



Consequences of Breach



Compliance Officers Details



COMPLIANCE MANUAL

Compliance during Inquiry and Investigation

- Understanding of leniency provisions
- Compliance of interim orders
- Compliance of Notices
- Search and seizures
- Furnishing of information and documents

Active Risk Management

Agreements

Dealing with Trade Associations – General; During the Meetings

Evaluation and Review of CCPs

Role of Compliance Officer

Anti -Trust Audit

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Thank You