

# **FACILITATING COMPETITION IN INFRASTRUCTURE SECTOR – CHALLENGES AND WAY FORWARD**

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# OUTLINE

- **Some Myths**
- **Fair Competition for Greater Good**
- **Enemy of Competition is Enemy of Economy**
- **Competition Law and Competition Policy**
- **Features and Elements of Competition Law**
- **Markets for Infrastructure**
- **Competition Issues in Infrastructure**
- **Sample of Alleged Anti-Competitive Conduct**
- **Facilitating Competition in Infrastructure**

# MYTHS

- **Monopoly / Dominance is always Bad**
- **Competition is a Side Show; A Panacea**
- **Competition is an End in Itself**
- **Everything Anti-Competitive is Illegal**
- **Competition is a Per Se Rule**
- **Competition is Automatic**
- **Competition is the responsibility of CCI Only**
- **Infrastructure is not Tradeable**
- **Infrastructure is not amenable to Competition**
- **Regulation is a Substitute for Competition**

# FAIR COMPETITION FOR GREATER GOOD

- **Competition**
  - **Rivalry to do better than others**
  - **Resources : Competition : Innovation**
- **Competition is Important**
  - **Consumers**
  - **Economy**
  - **Society**
  - **Productive Efficiency**
  - **Allocative Efficiency**
  - **Dynamic Efficiency**
  - **Democratic Process**
  - **Regulatory Load**
- **Competition is not automatic**
  - **Perfect Competition is a Mirage**
  - **Some do not like it; Some others Strangle It**
  - **Requires Nurturing and Nurturer**
  - **Competition Policy & Competition Law**

# **ENEMY OF COMPETITION IS ENEMY OF ECONOMY**

- **Thrust of Economic Reforms**
  - **Laissez Faire**
  - **Laissez Aller**
  - **Regulator**
- **Measures of Freedom**
  - **Global Competitiveness Index**
  - **Economic Freedom of World Index**
  - **Ease of Doing Business**
- **Anti-Competition Sources**
  - **Enterprises / Associations**
  - **Institutions**
  - **State**
  - **Nature of Industry**

# **ENEMY OF COMPETITION**

- **Objectives, in view of Economic Development**
  - **Prevent Practices having AAEC**
  - **Promote and Sustain Competition in Markets**
  - **Protect the Interests of Consumers**
  - **Ensure Freedom of Trade**
- **Jurisdiction**
  - **India**
  - **Goods and Services**
  - **Enterprises / Regulators**
- **Changes in Law and Governance**
  - **Regulator**
  - **Incomplete Law**
- **Promote Competition; Control Abuse of Dominance**

# FEATURES OF COMPETITION LAW

- **Information**
- **In Rem**
- **Rule of Reason**
- **Ownership Neutral**
- **Sector Neutral**
- **Jurisdiction**
- **Volume Linked Penalty**
- **Personal Liability**
- **Advocacy**
- **Advisory**
- **Over Riding Effect**

# ANTI-COMPETITIVE AGREEMENTS

- **Agreements Void**
- **Understanding / Conduct**
- **Horizontal Agreements**
  - **Determine Price**
  - **Limit / Control Production / Supply / Market**
  - **Share Market**
  - **Collusive Bidding**
- **Vertical Agreements: AAEC**
  - **Tie-in Arrangement**
  - **Exclusive Supply**
  - **Exclusive Distribution**
  - **Refusal to Deal**
  - **Resale Price Maintenance**



# **ABUSE OF DOMINANCE**

- **Dominance**
- **Relevant Market**
- **Dominance Per Se is not Bad**
- **Prohibition on Abuse**
- **Unfair / Discriminatory Condition**
- **Predatory Pricing**
- **Limiting / Restricting Production**
- **Denial of Market**
- **One Market to another Market**
- **No AAEC**

# COMBINATIONS

- **Combination**
- **United to Compete**
- **Combination with AAEC is Void**
- **Control**
- **Threshold**
- **Prior Approval**
- **Non-Compete**
- **Confidentiality**

# ADVISORY AND ADVOCACY

- **References**
  - **To Statutory Authority**
  - **By Statutory Authority**
- **Policy on Competition or any other Matter**
  - **Central Government**
  - **State Governments**
- **Competition Advocacy**
  - **Enterprises**
  - **Consumers**
  - **Professionals**
  - **Governments / Regulators**
- **Awareness and Training**

# **DEMAND FOR & SUPPLY OF INFRASTRUCTURE**

- **Infra and Each Infra is Unique**
- **Demand**
  - **Public Goods**
  - **Huge Externalities**
  - **Poor Substitutes**
  - **Switching Cost**
- **Supply**
  - **Huge Investment**
  - **Economies of Scale & Scope**
  - **Natural Monopoly**
  - **Network Externality**
  - **Integrated Monopoly**
  - **Inter-Operability**

# **MARKET OUTCOME**

- **Under Supply / Excess Capacity**
- **Tariff Fixation / Dual Pricing**
- **Subsidy / Cross-Subsidy**
- **Concentration, with State Dominance**
- **Market Failure**
  - **Externalities**
  - **Market Power**
  - **Information Asymmetry**
- **Perfect Competition**
  - **No. of Participants**
  - **Free Entry & Exit**
  - **Perfect Information**
  - **Price Taker**

# **COMPETITION FACILITATORS**

- **Substantial Progress; Work-in-Progress**
- **Economic Liberty**
- **Rule of Law**
- **Level Playing Field**
- **Competition Neutrality**
- **International Competition**
- **Ease of Doing Business**
- **External Finance**
- **Free Entry / Exit**

# COMPETITION FACILITATORS

- **Essential Facilities**
  - **Division may Lead to Loss of Efficiencies**
  - **Access without Loss to Entrepreneur**
  - **Impossible to Duplicate the Facility**
  - **Denial of Access Hinders Competition**
- **Parallel Facilities**
- **Open Access / Pooling / Time Tabling**
- **Portability / Inter-Operability**
- **Unbundling**
- **Competitive Bidding**
- **Captive Facilities**

# REGULATORY ARCHITECTURE

- **Policy Maker-cum-Player**
- **Tariff vs. Competition**
- **Multiple Infra Regulators**
- **Input-Output Prices**
- **Relevant Product Market**
- **Mutual Consultation**
- **Overlap Provisions**
- **Overriding Provisions**



# COMPETITION MATTERS

<b>Sector</b>	<b>No. of Anti-Trust Matters</b>
<b>Power</b>	<b>17</b>
<b>Railways</b>	<b>23</b>
<b>Civil Aviation</b>	<b>23</b>
<b>Petroleum</b>	<b>26</b>
<b>Shipping &amp; Transport</b>	<b>13</b>
<b>Telecom</b>	<b>06</b>
<b>Total</b>	<b>707</b>

# **ALLEGED CONDUCT: Electricity**

- **Refusal to Give Open Access**
- **Refusal to Augment Capacity**
- **Discriminatory Pricing**
- **Unfair Pricing**
- **Preference to Inter-group Transactions**
- **Bid Terms Favouring a Party**
- **Fuel Surcharge Adjustment**
- **Fast / Faulty Meters**
- **Promoting an Adjacent Market**

# **ALLEGED CONDUCT: Civil Aviation**

- **Minimum Price**
- **Maximum Price**
- **Collusive / Surge Pricing**
- **Refusing to Refund**
- **Abolition / Reduction of Commission**
- **Refusal to Sell Tickets**
- **Uniform Fuel Surcharge**
- **Services from One Travel Agent**
- **Services from One Airline**
- **Collusive Bidding**
- **Unfair Price for Shops / Parking**
- **Limiting Self Ground Handling Services**

# **ALLEGED CONDUCT: Transport**

- **Railways**

- **Bid Rigging**

- **E-Ticket**

- **Tie-In**

- **Tatkal / VIP Quotas**

- **Road Transport**

- **Radio Taxi – Predatory Pricing**

- **Radio Taxi – Surge Pricing**

- **Role of Associations**

- **Chassis Procurement**

- **Sample Testing**

# ALLEGED CONDUCT

- **Ports**
  - **Unfair Pricing**
  - **Favour to Own Terminal**
  - **Limiting Stevedores / Dumpers**
- **Petroleum**
  - **Gas Pipe**
  - **Take or Pay**
  - **Joint Tender**
  - **Supply of ATF**
  - **Price Fixation**
  - **Bio-Diesel**

# CONCLUDING REMARKS

- **Competition is a Journey**
- **Capacity Building**
- **Mutual Respect among Regulators**
- **Effective Consultation**
- **Faith in Markets**
- **Price Discovery**
- **Competitive Neutrality**
- **Combinations**
- **Infrastructure for Infrastructure**

# GRABBING Vs. HELPING HANDS



"We need to take a holistic approach to the market: We want the whole market."

**THANK YOU**