

Overview of Competition Law - Provisions of Competition Act, 2002



**A Presentation
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Delhi, 21st June 2012**



Discussion Points

- 1. Background of Competition Law in India**
- 2. Legal Framework of Competition Law in India.**
- 3. Anti- Competitive Agreements**
- 4. Abuse of Dominance**
- 5. Combinations**
- 6. Procurement and Bid-Rigging**
- 7. Inquiries, Remedies and Penalties.**
- 8. Benefits of Competition**

Background of Competition Laws

- **Dates Back to Ancient India - Cartelisation finds mention in Arthashastra, Kautilya**
- **In modern period, Monopolies and Restrictive Trade Practices Act was enacted in 1969 to;**
 - **Prevent the concentration of economic power.**
 - **Provide for the control of monopolies.**
 - **Prohibit monopolistic and restrictive trade practices.**

Economic Reforms of 1991

- **Post 1991 policy of Liberalisation, Privatisation and Globalisation introduced.**
- **MRTTP Act was found inadequate to meet the challenges of a modern globalised economy.**
- **Government of India in October 1999 appointed a high level Committee on Competition Policy and Law (the Raghavan Committee) to advise on the competition law in consonance with international developments.**

The Competition Act, 2002

- Acting on the report of the Committee, the Government of India passed the Competition Act in the year 2002; to which the President accorded assent in 2003. It was subsequently amended by the Competition (Amendment) Act, 2007.
- The broad objectives of the Competition Act, as laid down in its preamble, are:

“to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interest of the consumers and to ensure freedom of trade carried on by other participants in markets in India”



Competition Commission of India

- In accordance with the provisions of the Competition Amendment Act, the Commission was duly constituted in March 2009.
- The Commission has a Chairperson and six members.



Competition enforcement scenario in World

- **US Sherman Act, 1890 (Canada had introduced anti-trust laws in 1889)**
- **European Union introduced Competition Laws with Treaty of Rome in 1957**
- **Adoption of Competition Laws since 1991**
- **Today around 120 countries have introduced competition laws**

2. Legal Framework in India- Contd.

2.1 Competition Act, 2002;

- Prohibits Anti-Competitive Agreements (Sec 3)
- Regulates Acquisitions, Mergers and Combinations (Sec 5&6)



- Prohibits Abuse of Dominant Position (Sec 4)



Legal Framework-Contd

Mandates Competition Advocacy (Sec 49)



Legal Framework –Contd.

- **Under the ambit of section 2(h), government ministries and departments engaged in commercial activities in any manner are covered (exception sovereign functions of Govt. Ministries/Departments, Defence, Space, Atomic Energy, Currency).**



3. Horizontal Agreements and Cartels

3.1 Provisions of Section 3 and agreements

- **Section 3 of Competition Act deals with anti-competitive agreements - both horizontal and vertical.**

Agreements - Contd.

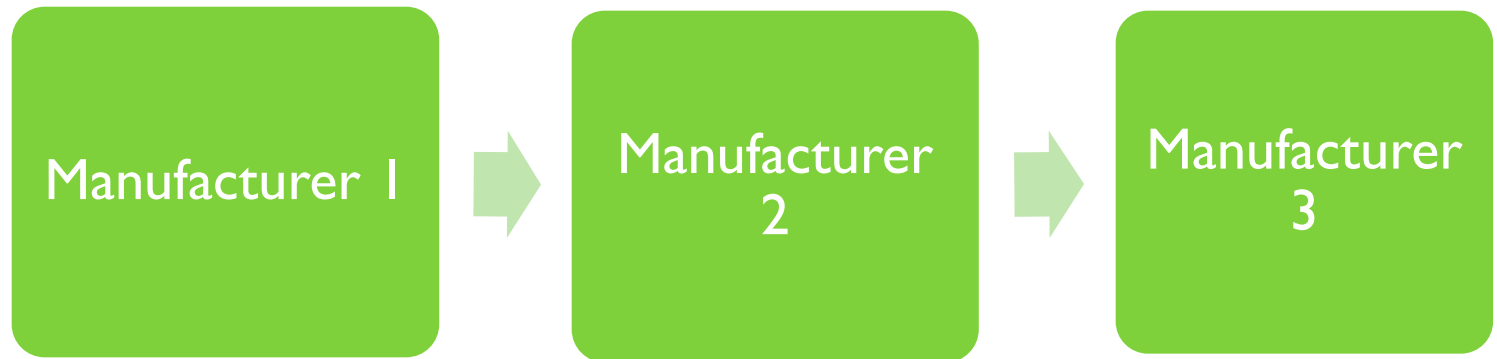
3.2 PROVISIONS AS REGARDS HORIZONTAL AGREEMENTS – Section 3(3)

- **Any agreement** entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprises **or practice carried on, or decisions taken by, any association of enterprises or association of persons, including cartels**, engaged in identical or similar trade of goods or provision of services, shall be presumed to have appreciable adverse effect on competition and therefore void if it :
 - ✓ **directly or indirectly determines purchase or sales prices.**

Horizontal Agreements –Contd.

- ✓ limits or controls production, supply, markets, technical development, investment or provision of services.
- ✓ shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way.
- ✓ **directly or indirectly results in bid rigging or collusive bidding.**

Horizontal Agreements

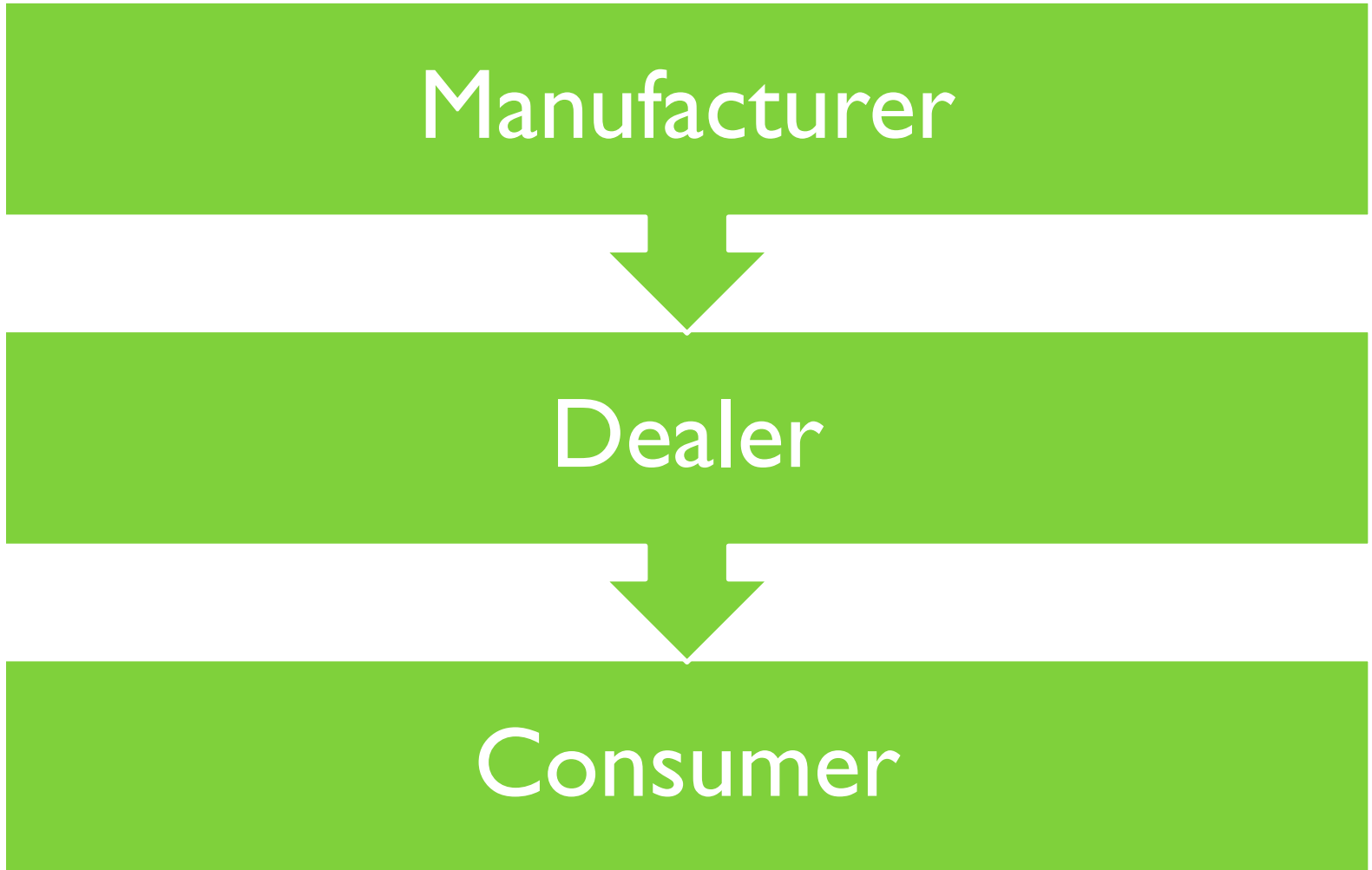


Vertical Agreements

3.3 Vertical agreements in Section 3(4)

- Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets , in respect of production , supply, distribution, storage, sale or price of, or trade in goods or provision of services, including
 - **Tie-in agreement**
 - **Exclusive supply agreement**
 - **Exclusive distribution agreement**
 - **Refusal to deal**
 - **Resale price maintenance**
- ✓ shall be anti-competitive if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.

Vertical Agreements



4. Provisions on Abuse of Dominance

4.1 Provisions

- As per Section 4 of Indian Competition Act, enterprises or groups are prohibited from abusing their dominant position.
- The Act defines dominant position as a position of strength , enjoyed by an enterprise, in the relevant market in India , which enables it to;
 - Operate independently of the competitive forces prevailing in the relevant market
 - Affect its competitors or consumers or the relevant market in its favour.
- Dominance per se is not bad. However, its abuse has been considered bad.

Provisions on Abuse of Dominance-Contd.

- **Act provides that there shall be an abuse of dominant position if an enterprise or group ;**
 - i) Directly or indirectly , imposes unfair or discriminatory –**
 - ✓ **Condition in purchase or sale of goods or services; or**
 - ✓ **Price in purchase or sale (including predatory price) of goods or services**
 - ii) limits or restricts ;**
 - ✓ **Production of goods or provision of services or market; or**
 - ✓ **Technical or scientific development relating to goods or services to the prejudice of customers; or**



Provisions on Abuse of Dominance- Contd.

- iii) indulges in practice or practices resulting in denial of market access in any manner; or
- iv) Makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or
- v) Uses its dominant position in one relevant market to enter into, or protect, other relevant market.

5. Combinations- Contd.

- **The Commission regulates combinations (acquisitions , control and mergers) if certain turnover and asset thresholds are met.**
- **If the combinations are causing appreciable adverse effect on competition , the mergers can be blocked or approved with some remedies.**

6. Procurement and Bid-Rigging

Procuring agencies - Demand side

Firms - Supply side

- **Competition Agencies take care of supply side.**
- **Rules and Regulations of Government take care of Demand side.**
- **Competition Agencies - Enforcement as well as advocacy .**



Bid-Rigging

6.1 Bid-Rigging under explanation to Section 3(3)

Bid rigging means any agreement, between enterprises or persons referred to in sub-section (3) of Section 3, engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.

Consider this :Tender and Meetings of Participants

- **Tender**
- **Sector:** Civil Works
Location: XYZ - India
Tender Value: 890 Lakh
- **Closing Date:** 09 - May - 2012
- **Repair and Maintenance of Roads**



Forms of Bid-Rigging

- **Bid rigging may take many forms, but most bid rigging conspiracies usually fall into one or more of the following categories:**
 - **Bid Suppression**
 - **In bid suppression schemes, one or more competitors who otherwise would be expected to bid, or who have previously bid, agree to refrain from bidding or withdraw a previously submitted bid so that the designated winning competitor's bid will be accepted.**

Forms of Bid-Rigging

□ Complementary Bidding

- Complementary bidding (‘cover’ or ‘courtesy’ bidding) occurs when some competitors agree to submit bids that are either too high to be accepted or contain special terms that will not be acceptable to the buyer. Such bids are not intended to secure the buyer’s acceptance, but are merely designed to give the appearance of genuine competitive bidding.
- Complementary biddings are the most frequently occurring forms of bid rigging, and the bidders defraud purchasers by creating the appearance of competition to conceal secretly inflated prices.

Forms of Bidding

- Complementary Bids

ITEM -X

ITEM-Y

Year 1	A	Rs. 100	B	Rs. 110
	B	Rs. 130	A	Rs. 140

Year 2	A	Rs. 120	B	Rs. 130
	B	Rs. 150	A	Rs.160

- Year 3

Year 3	A	Rs. 140	B	Rs.150
	B	Rs. 170	A	Rs.180



Forms of Bid-Rigging

Bid Rotation

- **In bid rotation schemes, all parties submit bids but take turns to be the lowest bidder.**
- **The terms of the rotation may vary; competitors may take turns on contracts according to the size of the contract, allocating equal amounts to each party in agreement or allocating volumes that correspond to the size of each such party.**



Bid-Rotation

- All parties submit bids, but take turns being the lowest bidder
- The terms of the rotation may vary
 - Company X submits the low bid first time
 - Company Y submits the low bid next time
 - Company Z submits the low bid third time

Rotation of Bids

ITEM - A

	Year 1	Year 2	
• Firm A	Rs.100	Rs. 140	Firm B
• Firm B	Rs.120	Rs. 120	Firm C
• Firm C	Rs.130	Rs.130	Firm D
• Firm D	Rs.140	Rs. 100	Firm A

ITEM-B

Year 1	Year 2	
Rs.100	Rs.140	Firm B
Rs.120	Rs.130	Firm C
Rs.130	Rs.120	Firm D
Rs.140	Rs. 100	Firm A

ITEM-C

	Year 1	Year 2	
• Firm D	Rs. 100	Rs. 140	Firm C
• Firm A	Rs. 120	Rs. 130	Firm D
• Firm B	Rs. 130	Rs. 120	Firm A
• Firm C	Rs. 140	Rs. 100	Firm B

ITEM-D

Year 1	Year 2	
Rs. 100	Rs. 140	Firm C
Rs. 120	Rs. 120	Firm D
Rs. 130	Rs. 130	Firm A
Rs. 140	Rs. 100	Firm B

Forms of Bid-Rigging

Subcontracting

- **Subcontracting arrangements are often part of a bid rigging scheme.**
- **Competitors, who agree not to bid or to submit a losing bid, frequently receive subcontracts or supply contracts in exchange from the successful bidder.**
- **In some schemes, a low bidder will agree to withdraw its bid in favor of the next low bidder in exchange for a lucrative subcontract that divides the illegally obtained higher price between them.**



Forms of Bidding

Market Allocation

- **Agreements by which competitors divide markets among themselves.**
- **Division could be by territory, by customer type or by Product. For example;**
- **Company A only submits bids for north;**
- **Company B only submits bids for south ;**

7. Inquiry in Commission

7.1 Steps of Inquiry

- **The Commission is empowered to inquire into cases of anti-competitive agreements and cartels;**
 - **either on its own motion or**
 - **on receipt of information or**
 - **on reference made to it by the Central Government or State Govt. or statutory authority.**
- **In case the Commission is convinced that prima facie case exists, it shall direct the Director General to investigate and furnish report.**



Remedies and Penalties under Indian Competition Act

7.2 After inquiry if contravention is established, the Commission may pass all or any of the following orders;

- ✓ **Cease and desist**
- ✓ **impose such penalty as it may deem fit not exceeding 10% of the average of the turnover for the last three preceding financial years upon each of person or enterprise**

(In case of cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten percent of its turnover for each year of the continuance of such agreement, which ever is higher each producer, seller, distributor, trader, or service provider included in that cartel,)

Remedies and Penalties- Contd.

- ✓ **direct that agreements shall stand modified to the extent and in the manner as may be specified in the order of the Commission.**
- ✓ **Direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any.**
- ✓ **Pass any other order or issue directions as it may deem fit.**

8. Benefits of Competition

The benefits of competition work through the economy by enhancing allocative, productive and dynamic efficiency, and thereby benefit the consumers, businesses and the government.

CONSUMERS

- Wider choice of goods, services and suppliers
- Better quality and improved value for money

BUSINESSES

- Level playing field; redressal against anti-competitive practices
- Competitively priced inputs
- Greater productivity and ability to compete in global markets

GOVERNMENTS (Central and State)

- Optimal realization from sale of assets
- Savings of public money in procurement
- Enhanced availability of resources for social sector



Thanks

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