

COMPETITION ACT, 2002

BRIEF PRESENTATION

TO

IES OFFICERS

By

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DUTIES OF COMPETITION COMMISSION

Competition Act, 2002 notified in Gazette in January, 2003. Preamble's stated objective is to establish the Commission which has the duty to:

- **Eliminate practices having adverse effect on competition;**
- **Promote and sustain competition**
- **Protect consumers' interests**
- **Ensure freedom of trade carried on by other participants in markets, in India**

[Section 18]



MAIN FEATURES OF COMPETITION ACT - 1

With the above objective, the Act:

- **Prohibits Anti-Competitive Agreements.**
- **Prohibits Abuse of Dominant Position.**
- **Provides for Regulation of Combinations, and**
- **Enjoins Competition Advocacy**

[Sections 3, 4, 5, 6 and 49(3)]

COMPETITION ADVOCACY



- **With Government/Regulators**, to promote pro competition policies, laws, regulations
- Competition principles interface with policies relating to: disinvestment, concessions, industrial policy, international agreements, entry/exist policies etc.
- **Public awareness**: with industry, trade associations etc. to strengthen competition culture and improve compliance
- Under Sec 49 **Central Government /State governments may make references to the CCI**. CCI is required to give opinion in 60 days. CCI opinion advisory
- **Under Sec 21 statutory authorities may make references to CCI. CCI could also make reference to statutory authorities (Sec 21A)**

COVERAGE OF THE ACT



- **All enterprises, whether public or private**
- **Government Departments covered (in CA, 2002), except when engaged in discharge of sovereign functions: Currency, Atomic energy, Space and Defence specifically indicated**
- **Extra-territoriality (Sec. 32)**
- **Provision to enter into MOUs with foreign competition authorities**

ANTI COMPETITIVE AGREEMENTS



Horizontal Agreements, including cartels

Four types presumed to have appreciable adverse effect (AAEC) on competition:

- **Price fixing**
- **Quantity/supply limiting**
- **Market sharing**
- **Bid rigging/collusive bid**

Anti-competitive Agreements



AGREEMENT DEFINED

- **Agreement includes any arrangement or understanding or action in concert**
- **Agreement need not be formal or reduced to writing**
- **Agreement need not be enforceable**

Anti-competitive Agreements

UNDERSTANDING SUFFICES



- Siem Reap in Cambodia - popular tourist town, housing the famous Angkor Wat temples.
- There are three means of transportation from Phnom Penh, capital of Cambodia to Siem Reap – boat, road and air.
- 8 boat companies: The price for one way travel is 40,000 Riels (about US \$ 10). Because of competition prices plummeted to as low as 20,000 Riels, below profitable level.
- The boaters entered into an ‘understanding’ to fix prices at 40,000 Riels. They further agreed that they would not compete with each other and would share their departure schedules.
- There was no written agreement but only an understanding.
- The understanding constitutes a cartel agreement.

Anti-competitive Agreements

PRESUMPTION RULE AND RULE OF REASON

- Agreements having appreciable adverse effect on competition in market in India are void

Presumptive logic

- Agreements between competitors - including 'Cartels' - (horizontal agreements) *presumed* to have *appreciable adverse effect* on competition: **Burden of proof on the defendant**
 - price fixing
 - sharing of market
 - limiting production, supply
 - bid rigging/collusive bidding

Anti-competitive Agreements

PRESUMPTION RULE AND RULE OF REASON *contd.*

- *Presumption Vs per se*
- *Treatment of JVs; efficiency enhancing JVs*
- *Treatment of Production for Exports*
(Section 3)

Anti-competitive Agreements

PRESUMPTION RULE AND RULE OF REASON (contd.)



‘Rule of reason’

- (i) Other Horizontal Agreements
- (ii) Vertical Agreements: Agreements between enterprises at different stages of the production, distribution etc. chain

(burden of proof of appreciable adverse effect on competition lies on the prosecutor).

- These include:
 - tie-in arrangement,
 - exclusive supply agreement
 - exclusive distribution agreement
 - refusal to deal
 - resale price maintenance
- List not exhaustive
- Treatment of IPRs in Section 3 on Agreements (3.5.1)

FACTORS FOR ASSESSING



APPRECIABLE ADVERSE EFFECTS ON COMPETITION FOR AGREEMENTS

- (a) Creation of barriers to new entrants in the market;**
 - (b) Driving existing competitors out of the market;**
 - (c) Foreclosure of competition by hindering entry into the market;**
-
- (a) Accrual of benefits to consumers;**
 - (b) Improvements in production or distribution of goods or provision of services;**
 - (c) Promotion of technical, scientific and economic developments by means of production or distribution of goods or provision of services**



CARTELS

WHAT ARE CARTELS ?



As per Competition Act, 2002:

- “ ***Cartel includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, trade in goods or provision of services”***
Sec. 2 (c)
- Cartels are in the nature of prohibited horizontal agreements and are **presumed to have appreciable adverse effect on competition**

CARTELS

SOME CASES: UNDER MRTPA



SODA ASH CARTEL

- In September, 1996, American Natural Soda Ash Corporation (ANSAC) comprising of six American producers of soda ash attempted to ship a consignment of soda ash at cartelized price to India.
- Based on the ANSAC membership agreement, the M.R.T.P. Commission held it as a prima facie cartel and granted interim injunction in exercise of its powers in terms of Section 14 of the M.R.T.P. Act. The Supreme Court, however, overturned the order of the Commission inter alia, on the ground that it did not have authority to prohibit imports

CARTELS

SOME CASES: UNDER MRTPA



TRUCKING CARTEL

- Eliminating competition in the market by fixing the freight rates without liberty to the members of the truck operator union to negotiate freight rates individually is common in the trucking industry.
- The M.R.T.P. Commission passed 'Cease & Desist' order against Bharatpur Truck Operators Union, Goods Truck Operators Union, Faridabad, and Rohtak Public Goods Motor Union.
- In the absence of any penalty provision, however, no fines could be imposed.

CARTELS

DETECTING CARTELS NOT EASY

- **Cartels being secretive and cartelists taking pain to conceal it necessitates the Competition Authorities to undertake great efforts to detect concealed cartels;**
- **Competition Authority needs extraordinary powers and skill to collect sufficient evidence to mount a viable case against uncooperative defendants;**
- **Cartels are conspiracies and to destabilize them, Competition Authority needs to heavily bank upon “Leniency Programme”**

CARTELS

DETECTION: CCI POWERS



- Competition Commission of India (CCI) has **powers of a civil court**
- After *prima facie* determination CCI has to ask DG to investigate
- Director General is empowered to investigate into cartels and has the **powers of a civil court** for summoning and enforcing attendance of any person and examining him on oath; requiring the discovery and production of documents; receiving evidence on affidavits; issuing commissions for the examination of witnesses or documents; requisitioning any public record or document or copy of such record or document from any office. {Section 41(1) & (2)}

CARTELS DETECTION



- Director General of CCI has powers as are vested in the 'Inspector' in terms of Section 240 & 240 A of the Companies Act, 1956.
- These powers inter-alia include seizure of documents with the approval of the Chief Metropolitan Magistrate, Delhi, when there is reasonable ground to believe that books, papers or documents may be destroyed, mutilated, altered, falsified or secreted. {Section 41(3)}

CARTELS

DETERRENCE & PENALTY



- CCI is **empowered to pass following orders** against anti-competitive agreements including cartels :
- **Pass temporary orders**– during the pendency of inquiry. {Section 33}
- **Cease and desist order** - directing offending parties to a cartel to discontinue and not to repeat such agreements.

CARTELS

DETERRENCE & PENALTY



- **Modification of agreement** - directing offending parties to modify the agreements to the extent and in the manner as may be specified in the order.
- **Heavy penalty** – imposing on each member of **cartel**, a monetary penalty of **up to three times of its profit for each year of the continuance of such agreement or 10% of its turnover for each year of the continuance of such agreement, whichever is higher.**

{Section 27(a) (b) (d) (e) & (g)}

DETECTING CARTEL LENIENCY PROVISION



- Cartels are conspiracies (generally entered into in secrecy) and to destabilize them, Competition Authorities need to heavily bank upon “Leniency Programme”
- When a member of a Cartel breaks the rank and **makes full, true and vital disclosures which results in bursting the ‘Cartel’**, the Commission has been empowered to levy lesser penalty.
- The scheme is designed to induce member(s) of a Cartel to defect from the cartel agreement.
- The party making disclosure will, however, be subject to other directions of the Commission as per provisions of the Act.
- **Clarity, certainty and fairness** are critical to make leniency programme effective and, for this, Commission can take suitable measures including **formulation of Regulations** etc.

{Section 46}

CARTELS

EFFECTIVENESS OF CCI



CCI will be effective at addressing the cartel menace because of:

- The availability of explicit **definition of 'Cartel' in the Act**
- **Adequate powers of investigation**
- **Leniency programme** for members of a cartel to defect
- **Power to impose deterrent penalty** linked with profits or turnover on each member of the cartel during the continuance of cartel
- **Effective extra-territorial reach:** Explicit provisions to exercise jurisdiction in respect of overseas acts having adverse effects on competition in India, coupled with provisions to enter into cooperation agreement with contemporary overseas competition agencies
- Efforts to build **strong competition culture** including **encouragement to public to submit information by ensuring confidentiality**

CASE - 1

MARKET SHARING AGREEMENT IN SEAMLESS STEEL TUBES, EC - 1

- 8 companies (4 European and 4 Japanese) were fined by EC in 1999 for an illegal market sharing cartel
- British Steel Ltd; Vallourec SA; Dalmine SpA; Salzgitter Mannesmann GmbH (4 European companies) and Nippon Steel Corp; Sumitomo Metal Industries Ltd; Kawasaki Steel Corp; NKK Corp (4 Japanese cos).
- Total fines € 99 million
- The **Europe -Japan Club** requiring that the domestic markets of the different producers should be respected
- Commission found it to be a very serious infringement of Art 81 (1) of EU Treaty
- 7 of these 8 cos appealed to the Court of First Instance, which upheld Commission's decision in substance, but reduced fees by 13 million on appealing cos as Commission had not produced sufficient evidence covering the entire duration of the infringement

CASE - 1

MARKET SHARING AGREEMENT IN SEAMLESS STEEL TUBES – EC - 2

- **Four cos appealed this decision**
- **In January 2007 the European Court of Justice (joined cases C-403/04 P and C-405/04 P, Case C-407/04 and Case C-411/04 P) confirmed the existence of cartel and participation of the appealing parties therein**
- **Court confirmed European Commission's approach as regards the calculation of the fines imposed on the companies.**
- **The court also confirmed that in the case of cartels there is no need to prove the actual existence of harm to intra Community trade, since it is sufficient to prove that an agreement is potentially capable of producing such an effect**

CASE - 1

MARKET SHARING AGREEMENT IN SEAMLESS STEEL TUBES – EC - 3

The following fines were confirmed:

Name of Company*	Fine (€ millions)
Sumitomo Metal Industries Ltd	10.935
Nippon Steel Corp	10.935
Dalmine SpA	10.080
Salzgitter Mannesmann GmbH	12.600
* All four companies had to pay Commission's cost of the appeal	

CASE - 2

PROSECUTING CARTELS

WITHOUT DIRECT EVIDENCE

- **Brazilian case of price fixing cartel in flat rolled steel products**
- **Until 1992 these products were subject to price controls, which were administered in part by SEAE**
- **In July 1996 representatives of the Brazilian Steel Institute met with officials of SEAE and informed them that its members intended to increase their prices on these products by certain specified amounts on a specific day**
- **On the day after the meeting SEAE informed the Institute by fax that such an agreement was a violation of competition law and illegal.**
- **Nevertheless, the three producers each increased price of these products in early August that year. The increases were approximately as indicated to SEAE by the Steel Institute.**

CASE - 2

PROSECUTING CARTELS WITHOUT DIRECT EVIDENCE

- Aside from the presentation to the SEAE by the Institute there was no direct evidence of concerted action
- CADE (Competition Authority of Brazil) expressly stated that it was possible to condemn a cartel based exclusively on economic evidence, if all other possible rational explanation for the fact were excluded

CASE - 2

PROSECUTING CARTELS WITHOUT DIRECT EVIDENCE

- CADE's decision that parties were guilty was based on the "parallelism plus" theory, because in addition to the economic evidence, some circumstantial event was associated to the price parallelism
- The first issue taken into account was the fact that price increase of the companies at similar rates and dates could not be explained just by referring to it as oligopoly's interdependence
- Although CADE did not consider the meeting as direct evidence of collusion, the Commissioners understood that it constituted a strong indication that there had been previous meeting among the companies to discuss matters before actually taking them to the government

OTHER HORIZONTAL AGREEMENTS & VERTICAL AGREEMENTS

- Other horizontal agreements and Vertical Agreements
 - >> Assessed based on *'rule of reason'*

Vertical agreements include:

- Tie-in-sale
- Refusal to deal
- Exclusive supply arrangement
- Exclusive distribution arrangement,
- Resale price maintenance,

EXEMPTIONS

- Joint Ventures (JVs)
 - Efficiency enhancing joint ventures to be examined based on *'rule of reason'*
- Intellectual Property Rights (IPRs)
 - Copyright
 - Patent
 - Trade mark
 - Geographical indicators
 - Industrial designs
 - Semi-conductor Integrated Circuits Layout Designs
- Nothing in sec. 3 would restrain an IPR holder from imposing reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under the above IPRs

DOMINANCE DEFINITION



- Position of strength enjoyed by an enterprise in the **relevant market** which enables it to:
 - Operate independently of competitive forces prevailing in relevant market; or
 - Affect its competitors or consumers or the relevant market in its favour
- Ability to prevent effective competition and
- Ability to behave independently of two sets of market actors, namely:
 - Competitors
 - Consumers

RELEVANT MARKET



- **The relevant market means “the market that may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets”.**
- **The Act lays down the factors, any one or all of which shall be taken into account by the Commission while defining the relevant product/geographic market as the case may be.**

RELEVANT PRODUCT MARKET

- **Relevant product market is defined in terms of substitutability of products. It means the “a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use.”**
- **It can be taken as the smallest set of products which are substitutable given a small but significant non-transitory increase in price (SSNIP).**

RELEVANT GEOGRAPHIC MARKET

- **Relevant geographic market** is defined in the Act in terms of “the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas”.

RELEVANT PRODUCT MARKET-1



- Relevant product market is the smallest set of close substitutes
- **Determination of substitutability of products:**
 - **Demand side substitutability-** shift of demand to competing product on price rise
 - **Supply side substitutability-** shift of production to meet demand

RELEVANT MARKET

RELEVANT PRODUCT MARKET



(CA, 2002)

In determining 'Relevant Product Market', CCI is required to consider:

- Physical characteristics or end-use of goods
- Price of goods or service
- Consumer preferences
- Existence of specialized producers
- Classification of industrial products

RELEVANT MARKET

RELEVANT GEOGRAPHIC MARKET

(CA, 2002)

In determining 'Relevant Geographic Market', CCI is required to consider:

- Regulatory trade barriers
- Local specification requirements
- National procurement policies
- Adequate distribution facilities
- Transport costs
- Language
- Consumer preferences
- Need for secure or regular supplies or rapid after sales services

EXISTENCE AND EXERCISE

- Existence of dominance is not frowned upon
- Exercise of dominant position if it falls in the category of 'abuse' is void under the Act

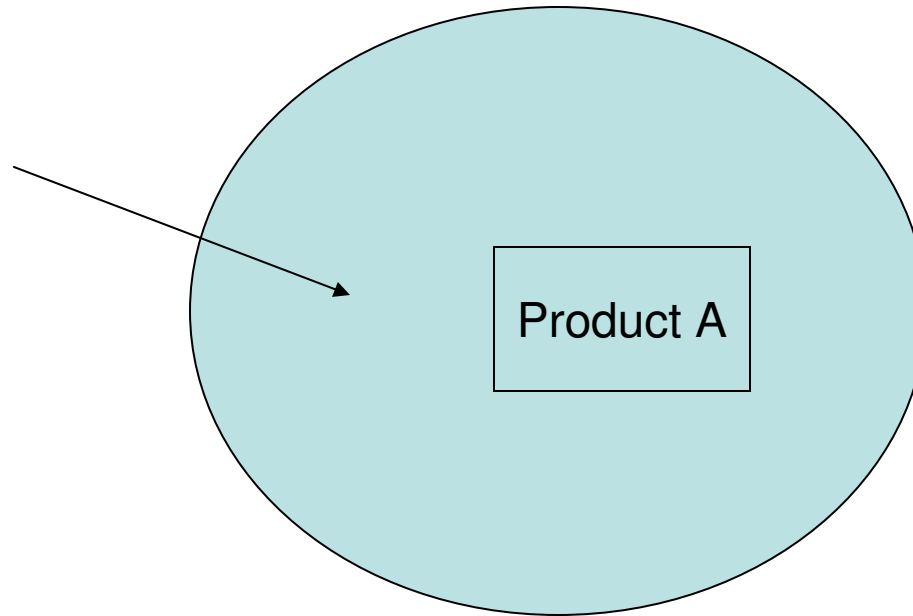
MARKET DEFINITION

SSNIP TEST

- Hypothetical monopolist test defined on the basis of the 'SSNIP' (Small But Significant Non Transitory Increase in Price) will cover most of the competitive constraints posed by demand side and supply side substitution.
- A relevant market is worth monopolizing
- And it is worth monopolizing in case if monopolization permits prices to be profitably increased

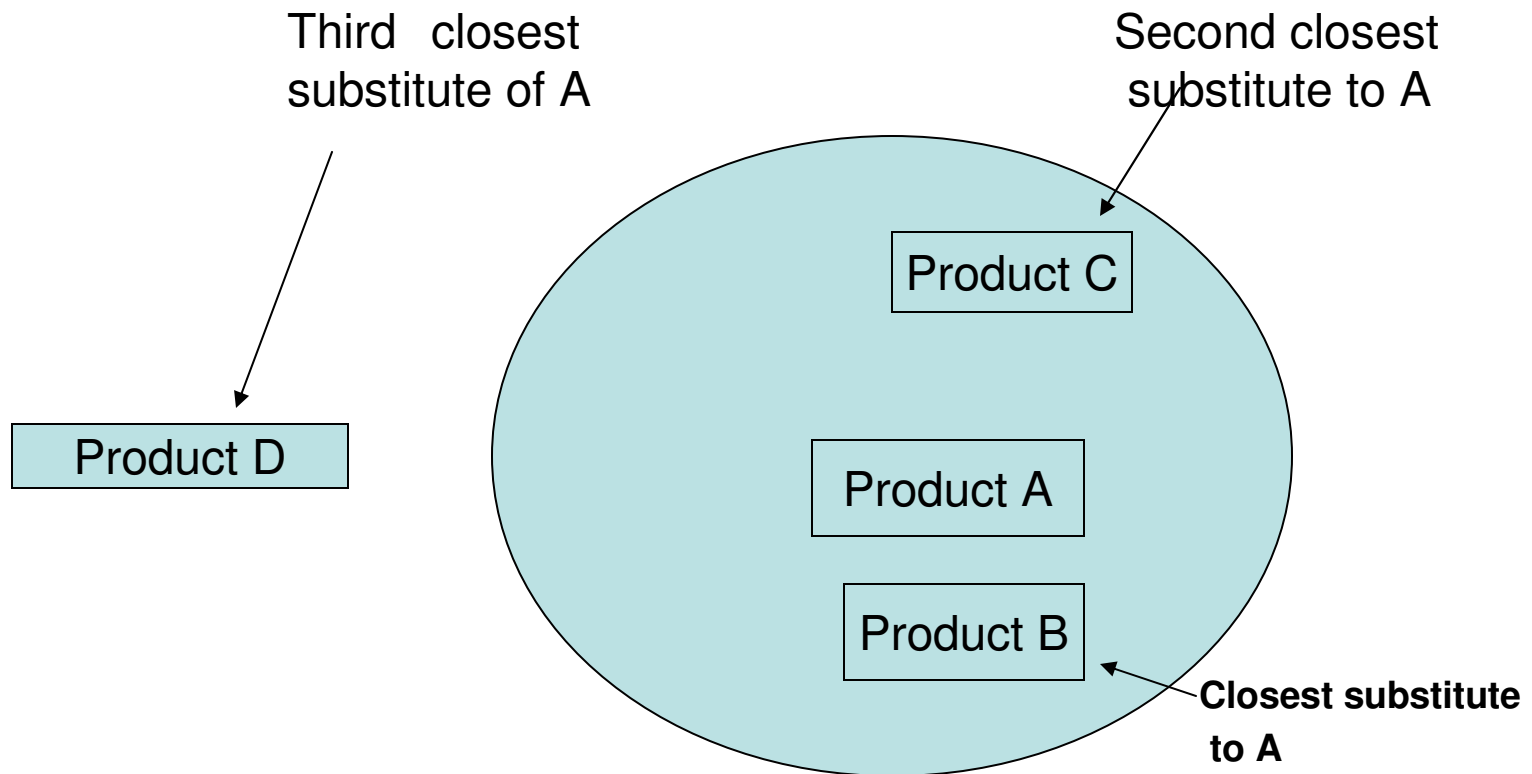
HYPOTHETICAL MONOPOLIST - PRODUCT MARKET (I)

**Product
Subject of
investigation**



Can the hypothetical monopolist of product **A** profitably sustain price 5-10 per cent above competitive levels ? If yes, test complete. If no, assume Hypothetical Monopolist controls closest substitute to **A** as well....

HYPOTHETICAL MONOPOLIST TEST: PRODUCT MARKET (2)



Can Hypothetical Monopolist of A and B profitably sustain prices 5-10 per cent above competitive levels? If yes, test complete. If no, add in Brand C and repeat process. And so on

MARKET DEFINITION

MATEL - 1

- In this case, Mattel contested the findings of the case-handler of the French Competition Council who found that the relevant market was that for fashion dolls.
- Mattel argued that there was no specific market for fashion dolls but a market which encompassed at least fashion dolls, traditional dolls, artistic games and plushes. Mattel argued that tests of cross-elasticity were the only relevant method to define the market and provided an econometric study which demonstrated that the relevant market was not that of fashion dolls.

MARKET DEFINITION

MATEL - 2

- The Competition Council stated that the market definition must be made by examining successively, and in the case of contradiction, by combining the different findings of the investigation.
- Accordingly, the econometric study presented by Mattel had been taken into account but not exclusively, as there were other relevant elements.

MARKET DEFINITION

MATEL - 3

- Competition Council scrutinized the different criteria for the assessment of the market. It took into account the:
 - specific characteristics of the product (the typical allure of fashion dolls) compared to other games,
 - price differences between fashion dolls and other games,
 - studies about children behaviour which revealed that fashion dolls and traditional dolls did not have the same psychologic and game potentialities.

MARKET DEFINITION

MATEL - 4

- Mattel argued that the fact that children behaved differently with a fashion doll and a traditional doll was irrelevant as both types of dolls satisfied children's needs for play. It also argued that demand analysis could not be limited to children's demand, as such a demand was different from parents' purchases.
- The econometric studies provided by Mattel showed, on the one hand, that sales of Barbies would decrease by 15.4% if their price increased by 10% and, on the other hand, that a price increase of 5% would lead to a decrease in the benefits of Mattel.

MARKET DEFINITION

MATEL - 5

- The Competition Council observed that these findings were not sufficient to define the market as they could be coherent either with the Mattel thesis (a situation in which fashion dolls compete with other dolls or games) or with a situation where Mattel would be in a monopolistic situation (fashion dolls being un-substitutable to other dolls or games)
- In this latter case, if Mattel's price was already fixed at a level to maximize its profits, any increase of such price will necessarily lead to a decrease in its benefits (Cellophane fallacy)

MARKET DEFINITION

MATEL - 6

- In view of all those elements, the Competition Council stated that the relevant market was that of fashion dolls
- It is interesting to note that in 1997, the issue of market definition was also discussed during the in-depth investigation of the merger between Mattel and Tyco by the Belgian Competition Commission.

RELEVANT MAREKT

RELEVANT GEOGRAPHIC MARKET

- Relevant geographic market for the purpose of competition law is some geographic area in which a firm can increase its price without:
 - Large number of customers turning to alternative supply sources outside the area; *or*
 - Producers outside the area quickly flooding the area with substitute products

DEMAND SIDE AND SUPPLY SIDE SUBSTITUTION

- Assessing the likely extent of lost sales requires a case by case assessment and that assessment will generally focus on three aspects:
 - Demand side substitution
 - Supply side substitution

DEMAND SIDE SUBSTITUTION

‘TOOTHLESS FALLACY’

- It is the marginal consumer and not the average consumer that matters
- The mistake of focusing on one segment of consumers rather than the marginal consumers has come to be known as the ‘Toothless Fallacy’, after the *United Brands* decision
- In this case the Commission argued that bananas defined a separate relevant market because the very young and the very old ((i.e. those without teeth) did not consider other fruits a suitable substitute for bananas

DOMINANCE - 2

FACTORS TO BE CONSIDERED IN DETERMINING...



Dominant position linked to a host of factors

- Market share of enterprise
- Size and resources of enterprise
- Size and importance of competitors
- Commercial advantage of enterprise over competitors
- Vertical integration
- Dependence of consumers
- Dominant position as a result of a statute
- Entry barriers
- Countervailing buying power
- Market structure and size of market
- Social obligations and costs
- Contribution to economic development
- Any other factor

DOMINANCE - 3

ABUSE OF DOMINANCE



- **Imposing unfair or discriminatory price or condition in purchase or sale, including predatory pricing**
- **Limits or restricts production of goods or provision of services or market therefor**
- **Limiting scientific development to the prejudice of consumers**
- **Denial of market access in any manner**
- **Conclusion of contract subject to supplementary obligations**
- **Use of position in one relevant market to enter into or protect other relevant market**

ABUSE OF DOMINANCE

EFFECTIVELY PER SE PROHIBITION

- Abuses are broadly of two types:
 - > Exploitative (predatory pricing, e.g.)
 - > Exclusionary
- **No enterprise or group of enterprises shall abuse its dominance position (sec. 4)**
- Act envisages **per se prohibition** of abuse of dominant position
- **No provision for rebuttal**
- **IPRs, as such, do not enjoy exemption: unreasonable exercise of IPR to be caught under this provision**

ANTI-COMPETITIVE AGREEMENTS AND ABUSE OF DOMINANCE REMEDIES



- Cease and desist order
- Specifying future terms and conditions
- Imposition of penalties
- Structural remedies include ‘division of enterprise’
- Such other order as may be deemed appropriate by Commission

COMBINATIONS

(Sec 5, 6)



- Combination covers
 - Merger & Amalgamation
 - Acquisition
 - Acquiring control
- Any combination which causes or is likely to cause appreciable adverse effect on competition (AAEC) is void

WHY REGULATE MERGERS? - I



I. Mergers are likely to have adverse effect on competition

- **Unilateral effects:** Due to increase in market power of the merged entity. Higher concentration is associated with higher market power, which enables post-merger prices to move up, in spite of efficiency gains of merger.

A merger may be profitable even in the absence of efficiency gains

- **Coordinated effects:** Merger may raise the prospects of coordinated effects arising in which a reduction in the number of industry participants increases the threat of tacit coordination

WHY REGULATE MERGERS ? - 2



II. Avoid Heavy Social Cost

- Easier to deal with proposed merger than to *post facto* control market power or collusion
- De-merger could have high social and economic costs
- Collusive enterprises could escape punishment by resorting to merger, thereby defeating purpose of law
- Mergers then would have to be dealt with as agreements under Sec. 3
- For such reasons older jurisdictions like USA & EU introduced merger regulations

WHY REGULATE MERGERS? - 5



III. Market power from merger not same as that gained through fair competition /sheer efficiency in operation. Sec 4 does not suffice

- Merger involves willful acquisition of market power as distinct from growth or development on account of superior product, business acumen or historical accident (a la Dominance)
- When two enterprises combine to increase their profitability the source of profitability may be increased 'market power' and not increased 'efficiency'

WHY REGULATE MERGERS? - 4



IV. Conglomerate mergers can harm competition through agreement to remove potential competitors

- Conglomerate mergers in neighbouring markets (markets for substitutes or complements) results in leveraging problems like:
 - Tying
 - Pure bundling
 - Fore closure
 - Financial leverage and predation (in imperfect financial markets)
- Market extension/ product extension mergers



WHY REGULATE MERGERS? - 5

- V. While horizontal merger works through higher market power, vertical mergers give rise to market fore-closure**
- For example, depriving rival producer of a distribution network if a producer merges with a retail chain (Case of vertical integration)
 - Or “foreclosure of a share of the market otherwise open to competitors” e.g. the acquisition of ready mixed concrete firms by cement suppliers was said to foreclose the market for cement to non-integrated cement suppliers
 - Or by raising rival’s costs, through:
 - > Input fore-closure; or
 - > Customer fore-closure

WHY REGULATE MERGERS? - 0



VI. Anti-competitive issues raised by vertical mergers are similar to exclusive dealing

Vertical Merger: Anti-competitive theories:

- Vertical mergers may put potential competition at a disadvantage by raising the cost of entry (Entry deterrence)
- A vertical merger may put existing competitors at a disadvantage by raising their costs (Raising rival's costs) (e.g. by locking up rival's necessary inputs)

WHY REGULATE MERGERS? - /



Vertical Merger: Potential Competition Theory

Harm to consumers by removing a potential entrant. This can affect competition and consumer welfare in two ways:

- **Potential competition would have put pressure on the incumbent(s), reducing their market power**
- **Actual entry at a later stage would bring more competition in the market (Benefits to consumers in the future: Can be estimated in the form of present value)**

COMBINATION - 2

THRESHOLD LEVELS



		Assets	Turn over
India	No Group	Rs. 1000 cr	Rs. 3000 cr
	Group	Rs. 4000 cr	Rs. 12000 cr
In India and Outside India		Assets	Turn over
		Total	Total
		In India	In India
	No Group	US \$ 500 ml Rs. 500 cr	US \$ 1500 ml - Rs. 1500 cr
Group	US \$ 2000 ml Rs. 500 cr	US\$ 6000 ml Rs. 1500 cr	



COMBINATIONS - 3

APPRECIABLE ADVERSE EFFECT

While determining whether a combination has appreciable adverse effect on competition in the relevant market the Commission shall have due regard for all or any of the following factors:

- Actual and potential level of competition through imports
- Extent of barriers to entry into the market
- Level of concentration in the market (HHI, CR)
- Degree or countervailing power in the market
- Likelihood of post combination price/profit increase

COMBINATIONS - 3



APPRECIABLE ADVERSE EFFECT *(Contd.)*

- **Extent of effective competition in the market - post combination**
- **Removal of vigorous and effective competitor from the market**
- **Nature and extent of vertical integration in the market**
- **Possibility of failing business**
- **Nature and extent of innovation**
- **Contribution to economic development**
- **Whether the benefit of combination outweigh adverse effect of combination**



COMBINATIONS - 4

REMEDY AND ORDER OF THE COMMISSION

Competition Commission of India can:

- **Approve**
 - **Approve with modifications**
 - **Not approve**
- **If no order by CCI within 210 days, the combination is deemed to have been approved**
 - **CCI Regulations to specify time limits**
 - **Only less than 10-15 per cent of notified combinations seen to have adverse effect on competition (international experience)**
 - **Very few (less than one in hundred) blocked**
 - **Approval with Structural and/or Behavioural remedies**



COMPETITION COMPLIANCE PROGRAMME

COMPLIANCE OF COMPETITION LAW

- **Why compliance of Competition Law is necessary ?**
 - Ignorance of law cannot be an excuse
 - Compliance is the best policy for the enterprise
 - Compliance of law results in social welfare enhancement
- **Non compliance can be costly for enterprises**
 - Inquiry by Competition Commission of India
 - Financial penalties
 - Diversion of time and energy while facing inquiry
 - Agreements become unenforceable, and void
 - Adverse publicity
 - Possibility of being sued for Compensation.
- **Need for Competition Compliance Programme**

COMPLIANCE PROGRAMME FOR ENTERPRISES - CHECKLIST

- Should be tailored to suit the business needs of the organization
- A Senior management personnel as compliance officer
- Regular and adequate training in identifying potential anti competition issues and developments in the industry environment.
- Prepare and make available a comprehensive compliance Manual for reference.
- Illustrations of likely violations
- Adopt guidance or clearance procedure for situations where there may be a problem.

COMPLIANCE PROGRAMME CHECKLIST (Contd..)

- Adopt a **clearance procedure** for all agreements from the legal department to ensure compliance.
- Integrate a **competition-compliant information management system** into the overall document management system of the company.
- Make provision for a possible **surprise investigation/checks / dawn raids** by the Competition Commission.
- Ensure a proper **recording system** for all **documents, minutes of meetings, and other events** which may provide useful evidence of non-participation in anti-competitive practices.

COMPLIANCE PROGRAMME FOR ASSOCIATIONS - 1

- Associations of enterprises serve a number of benign and useful objectives
- However, there is tendency for such associations to be used as a platform for anti-competitive activities: sometimes this could be unintentional.
- However, intent is not always a pre-condition for infringement

COMPLIANCE PROGRAMME FOR ASSOCIATIONS - 2

General Operational Procedure

- Issue a statement of the association's **intention to comply with CA, 2002**
- All office bearers of the Association to have **Compliance Guide with 'do's and don'ts'**
- Have a an **'Association's compliance programme'**
- **Association's meetings** are regularly held, with agenda prepared in advance and, if necessary, in consultation with legal experts
- **Minutes of meetings of Board of Directors** should reflect the association's guideline of complying with CA, 2002

COMPLIANCE PROGRAMME FOR ASSOCIATIONS - 3

Membership Policy

- Should not exclude certain competitors from membership, when the applicant meets all the required conditions
- Should not restrict Members from dealing with non Members
- Should not prevent non members from obtaining access to information which, if denied would limit latter's ability to compete effectively with members of the association

COMPLIANCE PROGRAMME FOR ASSOCIATIONS - 4

(List of topics for discussion to be avoided: (Non exhaustive))

- Past current or future price
- What constitutes a 'fair profit level'
- Pricing policy and actual costs of individual enterprises
- Possible increase or decrease in prices
- Bidding prices for projects
- Standardization or stabilization of prices
- Collusive tendering (bid rigging)
- Standardization of credit and trade terms
- Control of production
- Division or allocation of markets
- Select customers to deal or not to deal because of the above reasons

CONCLUSIONS

- **Competition policy and law are beneficial for individual enterprises and groups of enterprises. It benefits consumers as well**
- **Compliance of Competition law is the best policy for enterprises**
- **CCI has sufficient powers to crack on cartels and other anti-competitive offences**
- **A well thought out compliance programme has to be in place at each enterprise**
- **Industry associations should serve as 'ambassadors' of competition policy and law and should not allow themselves to be used as platforms for anti-competitive activities**

THANK YOU

