



सत्यमेव जयते



Fair Competition
For Greater Good

COMPETITION LAW & POLICY

INTRODUCTION TO COMPETITION LAW

Smita Jhingran, Secretary, CCI

Introduction

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- ❑ **What is competition in a market place?**
 - The process of rivalry between business enterprises for customers

- ❑ **Competition the key driver**
 - Consumers (choice, quality, price)
 - Economy (Productivity, Growth, Wealth Creation)
 - Society (Innovation, Welfare)

- ❑ **Competition is not automatic**

- ❑ **Need for the market regulator**

Competition law in India

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- ❑ **The Monopolies and Restrictive Trade Practices Act**
- ❑ **The liberalized economy post 1991**
- ❑ **The Competition Act, 2002/2007**
- ❑ **Enforcement functions from May 2009**
- ❑ **Combination review from June 2011**

Objective of the Competition Act

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□ The Preamble

- ❖ To prevent practices having an adverse effect on Competition
- ❖ To promote and sustain Competition in markets
- ❖ To protect the interests of consumers
- ❖ To ensure freedom of trade carried on by other participants in markets in India.

□ Duties of the Commission (S18)



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Pillars of the Act

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- ❑ **Prohibits anti-competitive agreements (S 3)**
- ❑ **Prohibits abuse of dominant position (S 4)**
- ❑ **Regulates combinations (S 6)**
- ❑ **Mandates Competition Advocacy (S 49)**
- ❑ **Advisory (S 21)**

What is Agreement

- ❑ **Defined under Section 2(b) of the Competition Act, 2002, which includes any :**
 - Arrangement
 - Understanding or
 - Action in concert

- ❑ **Whether or not**
 - In writing;
 - Intended to be legally enforceable

Concept of Relevant Market



- **Relevant Market**
- **Relevant Geographic Market**
- **Relevant Product Market**

Enterprise

Section 2(h) defines ‘ Enterprise’.

Includes:

- Person or Department of Government
- Engaged in any activity relating to production, storage, supply, distribution, acquisition, or control of articles or goods or provision of services etc.

Excludes:

Sovereign Functions viz. atomic energy, currency, defence and space.

Anti-Competitive Agreements

□ Anti-Competitive Agreements

- **Horizontal Agreements**, Section 3(3) – cartel, bid-rigging etc.
- **Vertical Agreements**, Section 3(4) – exclusive supply, tie in arrangement etc.

Exceptions to Anti-Competitive Agreements



Horizontal and Vertical Agreements imposing **reasonable restrictions** for protecting rights conferred under following statutes:

- ❑ Copyright Act, 1957;
- ❑ Patents Act, 1970;
- ❑ Trade and Merchandise Marks Act, 1958 or the Trade Marks Act, 1999;
- ❑ Geographical Indications of Goods (Registration and Protection) Act, 1999;
- ❑ Designs Act, 2000;
- ❑ Semi-conductor Integrated Circuits Layout-Design Act, 2000.

Abuse of Dominance

- Dominance is not anti-competitive per se**
- Abuse of dominance is prohibited**
- Abuse of dominant position by an enterprise detailed in Section 4**
- Exception not available in Section 4.**

Process of Enquiry under Section 3&4



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□ **Initiation of inquiry**

- Suo-motu
- On receipt of an information, or
- On receipt of a reference from the Central Government/ State Government/ statutory authority.

□ **Decision of the Commission**

- Prima facie view
- Director General to investigate and report
- Final order



Combinations Review: Key Features

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❑ **What is a Combination?**

Acquisition (of shares, voting rights, assets or control) or merger or amalgamation, where the value of assets or turnover of combining parties exceed the thresholds detailed in the Act.

- ❑ Mandatory notification regime applicable from June 1, 2011
- ❑ De minimis exemption for target enterprises.
- ❑ In three cases of phase II investigations structural remedies have been ordered.

Coverage of the Act

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- ❑ **All enterprises** - whether public or private, Government Departments except when engaged in discharge of sovereign functions: Currency, Atomic energy, Space and Defence specifically indicated
- ❑ **Level Playing Field** - no discrimination between domestic and foreign, between public sector and private sector, and between small and large enterprises
- ❑ **Extra-territoriality** - Powers to inquire into conduct taking place outside India but having effect on competition in India -(Sec. 32)

Competition Act : Remedies

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- ❑ **Temporary restraint**
- ❑ **Cease and desist** - directing parties to discontinue and not to repeat anti-competitive acts
- ❑ **Penalty** - up to 10% of 3 years average turnover; in case of cartels - penalty 10% of turnover or three times of profit of each year of continuance of conduct, whichever is higher.
- ❑ **Modification** - order to modify agreement
- ❑ **Order Division of Enterprise** – To ensure that a dominant enterprise does not abuse its position.
- ❑ **Compensation claim** – Only before COMPAT, after CCI decision
- ❑ **Fines and Prosecution** – 10 crores/25 crores/ 3 year imprisonment for non-compliance of Commissions order.

Remedies Classified

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- Preventive measures (Advocacy, Advisory)
- Punitive measures (Monetary penalties, fines)
- Remedial measures (Cease and desist, modification of agreements)
- Compensatory measures (Compensation to victim-only by COMPAT)
- Any other remedy the Commission deems fit

Sector-wise break-up of cases up to 31/3/2016

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Sector	No. of cases	Storec	No. of cases
Film/Entertainment/TV	52	Iron and Steel	12
Real Estate	168	Cement	-
Education (Technical and Management Studies)	-	Automobiles	28
Petroleum/Gas	36	Shipping & Transport	-
Civil aviation	23	Railways	23
Banking/Insurance/Fin. Institute/ Stock Exch.	53	Coal	15
Electricity	17	Telecommunication	-
Textile	-	Food Processing	-
Health/Medical/ Pharmaceuticals	42	Miscellaneous. (Visa/Water/Lenses/Paper/ glass/Xerox/jewelers/Games & Sports, Ceramic Tiles, Mobiles Phones, Public Works, RO System, etc.)	192
Chemical & Fertilizer	16		
Information Technology	30		
		TOTAL	707

ADVOCACY & COMMUNICATION

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- ❑ Advocacy with stakeholders and central/state governments
- ❑ Publishing quarterly – ‘Fairplay’
- ❑ Publication of competition tracker
- ❑ Annual day lecture series

New initiatives

- ❑ Resource persons scheme
- ❑ Focused group discussion
- ❑ Competition assessment of economic legislations
- ❑ Dissemination of videos/AV spots through cinema screens

- ❑ First Appeal to COMPAT
- ❑ Second Appeal to Supreme Court
- ❑ Direct writs before the High Courts



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THANK YOU