



## **2<sup>nd</sup> WORKSHOP ON COMPETITION POLICY AND LAW**

**“ANTI COMPETITIVE AGREEMENTS”**

**Presentation**

**by**

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## ● **Competition in markets:**

- ♥ **promotes efficiency;**
- ♥ **encourages innovation;**
- ♥ **leads to higher productivity**
- ♥ **punishes the laggards;**
- ♥ **facilitates better governance;**
- ♥ **boosts choice, improves quality, reduce costs;**
- ♥ **ensures availability of goods in abundance of acceptable quality at affordable price.**



# Competition is benign

## **For consumers:**

- lower prices
- improved quality
- better services
- wider choice

## **For business:**

- availability of inputs at competitive price,
- level playing field,
- redressal against denial of market access and other anti-competitive practices



# Empirical evidence of benefits

- Australia:
  - Average household income was up by A\$ 7,000/- per annum on account of the competition policy (APC study quoted by OECD).
  - Gains from reform~ 5.5% of GDP (Paul Crampton, OECD-IADB).
- EU: White Paper on Growth, Competitiveness and Employment, 1993-Ensuring fair competition in market is essential ingredient for enhancing and maintaining competitiveness in economy.
- New Zealand, UK: Pro-competition policy in New Zealand and UK added around 2.5% to their employment rate over 1978-1998 (OECD).
- USA: Fall in prices following deregulation of certain industries.(OECD) In 1990s, competition contributed most to economic growth; raised productivity by 4% p.a. (Paul London).
- **India: Benefits since reforms - increased consumer welfare, enhanced growth, greater competitiveness – Example: Newspaper, mobile phones, mobile phone calls, Air travel**



## Why do we need Competition Law

- Enterprise can resort to anti-competitive behaviour / practices to the prejudice of user / consumer / competitors if these are not regulated by law
- To curb cross border anti-competitive behaviour / combinations



## Evolution of Competition Law

- In 1980, less than 40 countries had competition law
- Currently over 100 countries have competition law
- Over 30 countries are in the process of enacting competition law.
- India is in the family of those which have modernised their competition law



# Competition Law and Policy

Both Competition Law and Policy have roles in maintaining free & fair competition:

- Competition Policy – set of market based policies that enhance competition, facilitate entry and exit, reduce administrative controls, minimize regulations, etc. Increasing number of countries migrating to competition oriented policies.
- Competition Law – a law to prohibit and penalize anti-competitive practices by enterprises and regulate potentially anti-competitive mergers. (Market Failures).  
Could also provide for Competition Advocacy.



## Preamble of the Act says:

- to prevent practices having appreciable adverse effect on competition;
- to promote and sustain competition in trade and industry;
- to protect the interest of consumers;
- to ensure freedom of trade carried on by the participants in market in India;
- The objectives to be achieved through the of the Competition Commission of India (CCI).





## Elements of CA02

- **Three enforcement areas of Act are:-**
  - **Prohibiting anti competitive agreements**
  - **Prohibiting abuse of dominant position**
  - **Regulating combinations**
- **The fourth dimension is :**
  - **Competition Advocacy – least intervention with maximum impact**



## Competition law is applicable to:

- Enterprise which includes 'person' or Department of Government engaged in commercial activities
- 'Enterprise' includes subsidiary
- Applies to goods and services
- Consumer includes commercial buyer
- Law is not applicable to sovereign functions and functions relating to:
  - Atomic Energy - Currency – Defence - Space



# Why you need to be sensitized

- Government Departments are in business
- Government Departments are consumer
- Anti-competitive practices emanates from Government policies, statues, rules, procedures, regulations etc.
- To make you trainers for trainees
- To make you enlightened consumers



## Definition – coverage of agreement

- Agreement is defined very widely
- Inclusive definition – includes any arrangement or understanding or action in concert
- Includes formal and informal, written or oral agreements
- Includes agreements not meant to be legally enforced



# Anti-competitive agreements - 1

- Agreements in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services
- that cause or are likely to cause appreciable adverse effects on competition within India



## Anti-competitive agreements - 2

- Such agreements are prohibited by law
- Such agreements are void
- Under the MRTP Act, 1969 only clause which is anti-competitive is void
- Unlike MRTP Act, there is no requirement to file anti-competitive agreement with DG,CCI



# Horizontal agreements

- Agreements between enterprise engaged in trade of identical or similar products (including cartel ) are presumed to have AAEC if they
  - Fix prices
  - Limit output
  - Share markets
  - Indulge in bid-rigging or collusive bidding



# Cartels

- Regarded as most pernicious form of anti competitive behaviour
- Hard core cartels is on top of the agenda of most competition authorities
- Leniency programs have resulted in higher rate of detection
- Vitamins cartel, electro-graphite cartel, etc.
- Loss to developing countries enormous





## Cartel – a landmark case

- Amino Acid Lysine cartel is one of the landmark cases decided in the US –
  - Two Japanese, two South Korean and one US company agreed not to compete on price
  - Price of lysine rose on account of collusion from 68 cents per month to 98 cents in 1990 and continued at that level until detection in 1995
  - Evidence collected by DOJ with the assistance of FBI included documents / transcripts of secretly recorded conversations.



## Bid – rigging/collusive bidding

- Affects public procurement
- Overcharge of 15 – 20%
- Not an uncommon practice in India



# Vertical agreements

- Examples given in CA02
  - Tie in sales
  - Exclusive supply agreements
  - Exclusive distribution agreements
  - Refusal to deal
  - Resale price maintenance
- Inclusive list
- Prohibited only if AAEC is established
- Case by case analysis



## Treatment of IPRs and Export

- Agreements involving 6 IPR laws that impose reasonable restrictions are out of purview of the general prohibition
- Agreements exclusively for exports are excluded from the rigours of the law



## Factors prescribed to determine AAEC:

- Creation of barriers to entry
- Driving out existing competitors
- Foreclosure of market by hindering entry into market
- Accrual of benefits to consumers
- Improvements in production or distribution
- Promotion of technical, scientific and economic development



## What can CCI do:

- Cease & Desist order
- Grant temporary stay during enquiry
- Declare anti-competitive agreement void
- Impose penalties –
  - Penalty of 3 times of profits or 10% of the turnover of the enterprises whichever is more in respect of ‘cartels’
  - Penalty upto 10% of the turnover of enterprises in respect of other contravention
- Award compensation to aggrieved persons
- Violation of Commission order attract civil imprisonment beside heavy monetary penalty



## What you can do:

- Furnish information relating to anti-competitive practices
- Make a reference for enquiry
- Make a reference for opinion
- File application for award of compensation
- Necessity to have competition compliance programme

NB: There is a provision to accord confidentiality



# Thank you

**Website:**  
**[www.competitioncommission.gov.in](http://www.competitioncommission.gov.in)**