Competition Law: General Overview

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Competition Commission of India
Preamble of the Competition Act, 2002

OBJECTIVE

- Promote & Sustain Competition & Economic Development
- Prevent & Eliminate Anti-Competitive Practices
- Protect Interest of Consumers
- Freedom of Trade
- Competition Commission of India
CCI: Regulating Markets for Fair Play

- **Multipronged strategy for promoting and sustaining competition**
- **Enforcement functions**
  - Penalizing anti-competitive conduct (ex-post)
    - Anti-competitive agreement between enterprises/persons [Section 3]
    - Abuse of dominance by enterprises [Section 4]
  - Approval for major mergers and acquisitions (ex-ante) [Section 5 & 6]
- **Advisory functions** [Sections 49(1), 21]
- **Advocacy functions** [Section 49 (3)]
- **Legislative functions** [Section 64]
Reach of the Act

• **All Enterprises**: Whether public or private; all Government Departments except when engaged in discharge of sovereign functions: Currency, Atomic energy, Space and Defence

• **Competitive Neutrality**: No discrimination between domestic and foreign, between public and private sector, and between small and large enterprise
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

Agreements having Appreciable Adverse Effect on Competition (AAEC) within India prohibited [Section 3 (1)]
Anti-competitive Agreements

- Agreements are of two types: Horizontal and Vertical Agreements
- **Horizontal Agreements** - Firms in same business (competitors) agreeing not to compete
  - Includes cartel which are prohibited:
    - Bid rigging
    - Output restrictions
    - Price fixing
    - Market allocation
- **Vertical agreements** involve firms enjoying a supplier-customer relationship
  - Exclusive supply/purchase agreements
  - Tie-in arrangements
  - Resale price maintenance
Abuse of Dominant Position

- **Abuse of dominance** is prohibited and not dominance *per se*
- ‘**Dominant position**’ means
  - a position of strength which enables an enterprise to operate independently of competitive forces prevailing in the market
- Commission considers *inter alia* the following factors to determine whether an enterprise is dominant;
  - market share; size and resources/ importance of the enterprise/ competitors; dependence of consumers on enterprise; structure and size of market; social obligations/costs; any other factor relevant
- Abuse of dominant position [section 4(2)]:
  - Unfair or discriminatory pricing (including predatory pricing)
  - Limiting production or technical development
  - Denial of market access, in any manner
  - Conclusion of contracts subject to supplementary obligations which have no connection with the subject of the contract
  - Use of dominant position in one market to enter into or protect other relevant market
Concept of Relevant Market

- **Relevant Market** [Section 2(r)] - Comprises of either/or both relevant geographic market and relevant product market

- **Relevant Geographic Market** [Section 2(s)] - Area in which conditions of competition for supply or demand of goods/services are homogenous and can be distinguished from other areas;

- **Relevant Product Market** [Section 2(t)] - Market comprising all goods/services which are substitutable by reason of characteristics, usage and prices.
Regulation of Combinations

- **Sections 5 & 6 deals** with Regulation of Combinations.

- **Objective**: to examine the potential effect of a combination (mergers and acquisitions) of shares/assets of enterprises in the markets.
  - Better to prevent firms which may affect the competition in markets in India after gaining substantial market power than to control such market power after its creation.
  - Easier to deal with ex ante merger rather than giving ex post remedies.

- The major concerns are increase in prices of goods, innovation and the impact on consumer choice.

- All combinations meeting the threshold limits as prescribed, need pre approval of CCI.

- Any Person/ Enterprise, who/ which proposes to enter into a combination, shall give notice to the Commission within 30 days.

- Act provides **210 days** for the Commission to decide.

- **Deeming provision** - on expiry of the prescribed period if no order is passed, the combination is deemed to be approved.
How to file Information

Who can file the information?

- Any person (includes an individual, HUF, firm, company, local authority, cooperative or any artificial juridical person)
- Consumer or their association
- Trade association
- Central Government
- State Government
- Statutory authority
- Suo Moto power
Procedure & Process

- Existence of prima facie case
- Direction to Director General for Investigation
- Circulation of Investigation Report to the parties
- Interim Order
- Inquiry and Final Order
- Power of Civil Court under Code of Civil Procedure
- Reference to Sectoral Regulators
- Confidentiality
- Appeal to Competition Appellate Tribunal
- Appeal to Supreme Court
- Leniency Provisions
- Competition Advocacy
- Exclusion of Courts
Remedies

- Cease and desist order
- Penalty upto 10% of average turnover for last three preceding financial years
- In case of cartels, penalty upto 10% of turnover for each year of continuance of such agreement or three times of profit for each year of continuance of such agreement, whichever is higher.
- Agreements having AAEC void
- Modification of agreements
- In case of dominant position of an enterprise-order for division of enterprise
- In case of combination-CCI has power to approve or approve with modifications or refuse
Conclusion

Fair and Efficient Competition is good for the economy for many reasons. It enables-

- More choice to consumers
- Better quality of products and services
- Low prices for all
- Innovation and R&D
- Best value for money in Procurements
- Sub serve the Constitutional goal
Thank you...