

ICSI:CCRT & CIRC

18th April 2007

Competition Law and Policy

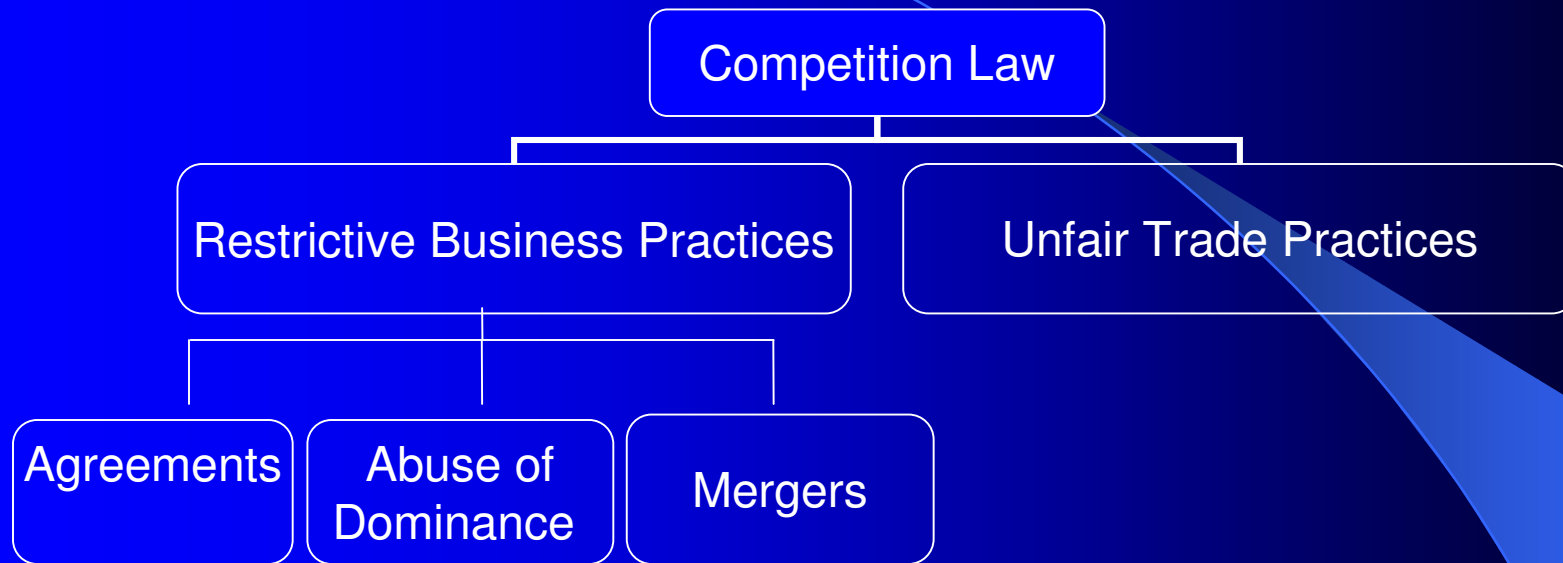
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“COMPETITION”, THE BEST FRIEND OF CONSUMERS

WHAT THE CONSUMERS WANT ?

- Low price;
- Good quality;
- Wider choice;
- Adequate supply.



THE MRTTP ACT, 1969 i

- CONCENTRATION OF ECONOMIC POWER: Central Govt. can, on the basis of recommendation of MRTTP Commission pass necessary order for division of any undertaking or severance of inter-connection between the undertakings.
- MONOPOLISTIC TRADE PRACTICES: Deemed to be against public interest. *Per se* bad.

THE MRTTP ACT, 1969 ii

- RESTRICTIVE TRADE PRACTICES:
Illustrative list of 14 practices given in the Act. They are deemed RTPs but not banned *per se*. Examined if they are **against public interest**. Gateways for exemption.
- UNFAIR TRADE PRACTICES: 5 practices listed in the Act and the list is conclusive.

FROM CONTROLLED ECONOMY TO FREE MARKET ECONOMY

- THE COMPETITION ACT,
2002
- THE COMPETITION
(AMDT.) BILL 2006

THE COMPETITION ACT, 2002: PREAMBLE

Establishment of a Commission:

- To prevent practices having adverse effect on competition
- To promote and sustain competition
- To protect interests of consumers
- To ensure freedom of trade carried on by other participants in markets

COMPETITION COMMISSION OF INDIA (CCI)

- A body corporate
- Composition: chairperson and two to six members.
 - Members: 15 yrs: international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs.

COMPETITION APPELLATE TRIBUNAL (CAT): Proposed

- To hear and dispose of appeals and to adjudicate on claim for compensation
- Chairperson: sitting/retd. : Judge of Supreme Court or Chief Justice of High Court.
- 2 Members: 25 yrs: competition, law, international trade, economics, business, finance, industry, public affairs, accountancy, management, administration or any other matter as may be decided by CG.

SELECTION COMMITTEE

- Selection Committee:

(a) the Chief Justice of India or his nominee.....

Chairperson;

(b) the Secretary in the Ministry of Company Affairs.....member;

(c) the Secretary in the Ministry of Law and Justice.....member.

Selection Committee to recommend the names to CG

ENTERPRISE

- PERSON OR GOVT. DEPTT. engaged in activity relating to production, supply, distribution, acquisition, control of goods; services, of any kind.
- PERSON: individual; firm; HUF; co.; AOP; corporation.; body corp.; coop. soc.; local authority; other artificial juridical persons.
- EXCLUDED: Govt. Deptt. performing sovereign functions: atomic energy, currency, defence; space

ANTI COMPETITIVE AGREEMENTS (ACA)

PRESUMED ANTI-COMPETITIVE AGREEMENTS (HORIZONTAL)

- PRICE: fixing of selling/purchase prices.
- QUANTITY: limiting production, supply, markets, technical development or investment.
- MARKET SHARING: consumer; markets; products
- BIDS: collusive bidding/rigging.

THESE ARE PER SE OFFENCES

Joint venture agreements if increase efficiency allowed.

AGREEMENTS PROHIBITED IF AFFECTS COMPETITION (VERTICAL)

- Tie-in arrangements.
- Exclusive supply agreements.
- Exclusive distribution agreements.
- Refusal to deal/vertical boycott.
- Resale price maintenance.

RULE OF REASON APPLIES

RULES OF REASON

NEGATIVE FACTORS (ENTRY BARRIERS)

- Creation of barrier to new entrant
- Pushing existing competitors out
- Foreclosure of competition by hindering entry into market

POSITIVE FACTORS (CONSUMER WELFARE)

- Accrual of benefits to consumers
- Improvement in goods / services
- Promotion of technical development

EXEMPT AGREEMENTS

Following agreements are not anti-competitive:

- * Agreements permitted by law

e.g. Copyright Act; Patents Act; Trade Marks Act; Designs Act etc.

- * Right for exclusive export

ABUSE OF DOMINANT POSITION

DOMINANT POSITION

- DOMINANCE means:
 - Capacity to act independent of competitive presence.
 - Affecting appreciably the *relevant market*, competition and consumers.
- No arithmetic figure for dominance
- Mere dominance no offence
- ***ABUSE OF DOMINANCE PROHIBITED.***

ABUSE OF DOMINANCE:PRACTICES

- EXCLUSIONARY : EXPLOITATIVE
- Unfair, discriminatory and predatory pricing
- Limiting production, markets or technical development
- Denial of market access
- Supplementary obligations unconnected to main contract: full line forcing
- Using dominant position to enter another market

FACTORS DETERMINING DOMINANCE

i

CHARACTERISTICS OF ENTERPRISE:

- Market share of enterprise
- Size & resources of enterprise
- Economic power of enterprise
- Dependence of consumers
- Dominance acquired by statute
- Entry barriers

FACTORS DETERMINING DOMINANCE

ii

CHARACTERISTICS OF MARKET:

- Size & importance of competitors
- Countervailing buying powers
- Market structure & market size
- Social obligations and social costs

RELEVANT MARKET

- For determining whether an agreement is anti-competitive or there is abuse of dominant position, CCI has to determine relevant market.
- Relevant market may be :
Relevant product market, or
Relevant geographic market

INQUIRY – ANTI COMPETITIVE AGREEMENTS OR ABUSE OF DOMINANCE

- A. On its own
- B. **Receipt of any information** from any person, consumer, trader or their association
- C. **Reference** by CG/SG/Statutory authority

PRIMA FACIE CASE

IF CCI OF THE OPINION THAT THERE IS NO
PRIMA FACIE CASE:

- Close the matter and pass necessary order

IF CCI OF THE OPINION THAT THERE IS
PRIMA FACIE CASE:

- Refer the matter to DG
- DG report : Shall be forwarded to CG/SG/SA
- May be forwarded to parties

DG REPORT

IF DG REPORTS NO CONTRAVENTION

- Invite comments from CG/ SG/SA/Parties
- Close the matter forthwith; OR
- Order further investigation by DG; OR
- Make further inquiries

IF DG REPORTS CONTRAVENTION

- Inquire into such contravention according to the provisions of the Act

ORDER AFTER INQUIRY

- To discontinue agreement /abuse
- Imposition of penalty
- Direction to modify agreement
- Costs
- Any other order/direction

DIVISION OF ENTERPRISE

- Overriding power to CCI.
- Notwithstanding anything contained in any other law
- Direct the division of enterprise enjoying dominant position

REGULATION OF COMBINATIONS

COMBINATIONS

- **Acquisition** of enterprise: acquisition of shares, voting rights or assets;
- **Acquiring of control** over an enterprise: when acquirer has already control over another enterprise engaged in production, distribution of same goods or service;
- **Merger**, amalgamation beyond threshold size.

TYPE OF COMBINATIONS

- Horizontal: between competitors and therefore generally harmful
- Vertical: for improving production and distribution efficiencies
- Conglomerate: unconnected activities

REGULATION

- Only those combinations which cause or are likely to cause an appreciable adverse effect on competition are void.
- Assets or turnover criteria for defining threshold.
- Recognition to the concept of GROUP.

COMBI. : NO GROUP

- If joint assets/turnover exceeds the following limits:

- **ASSETS**

- In India: Rs.1000 Cr
- Global:US \$500 Mn.

- **TURNOVER**

- In India: Rs.3000 Cr
- Global:US \$1500 Mn.

COMBI. : GROUP

- If group assets/ turnover exceeds the following limits

ASSETS

- In India: Rs.4000 Cr
- Global: US \$2 Bn.

● TURNOVER

- In India: Rs.12000 Cr
- Global:US \$6 Bn.

INCREASE/REDUCTION IN VALUE OF ASSETS/TURNOVER

- CG shall, in consultation with CCI, enhance/reduce the value of assets/turnover, every two years
- To be based on wholesale price index or fluctuation in exchange rate

EXEMPT ACQUISITIONS

Acquisition by:

- Public financial institution
- Foreign institutional investor
- Bank
- Venture capital fund

pursuant to any agreement.

*BUT MUST FILE DETAILS WITH CCI
WITHIN 7 DAYS OF ACQUISITION*

PRE NOTIFICATION

- A *notice* may be given by enterprise to CCI about combination
- With fee & within 7 days
- Fixed time-frame to decide - 90 days.

ACTION BY CCI

- CCI can enquire into combination :
- a. On its own (to be initiated only within 1 yr.)
- b. On receipt of notice by enterprise (inquiry mandatory)
- c. On receipt of reference by Statutory Authority (inquiry mandatory)

INVESTIGATION (i)

- If CCI of the *prima facie* opinion, that combination likely to cause/has caused appreciable adverse effect on competition, CCI to issue show cause notice to parties as to why investigation should not be conducted.
- Same procedure to be followed when an enterprise gives notice

INVESTIGATION (ii)

- Parties to respond within 30 days
- On receipt of response, CCI may call report from DG.
- DG to report within 60 days
- DG may get extension of 60 days

INVESTIGATION iii

- If CCI is *prima facie* of the opinion, that combination has adverse impact, CCI to (within 7 working days from the date of response from parties or DG Report, whichever is later) direct the parties to publish details of combination (within 10 working days of such direction)

INVESTIGATION iv

- A. CCI may invite public objections within 15 working days from the date of publication
- b. Call for other info. within next 15 working days
- c. Parties to furnish info within next 15 days
- d. Within 45 working days proceed to deal with the case

ORDERS i

- CCI to approve the combination, or direct that it shall not take effect, or propose modifications to combination
- The parties may propose amendment to modifications within 30 working days
- If CCI does not accept amendments, further pd. of 30 working days to accept modifications

ORDERS ii

- If not accepted: combination shall be deemed to have appreciable adverse effect on competition
- Combination shall not take effect
- CCI may frame a scheme to implement its order

DEEMED APPROVAL

- If no order by CCI within 90 working days from publication, the combination shall be deemed to have been approved
- Calculation of 90 working days as prescribed in the Act

FACTORS FOR CONSIDERATION

- Competition through imports
- Entry barriers
- Countervailing power
- Availability of substitutes
- Increase in price/profits
- Risk
- Innovation
- Market share

OTHER PROVISIONS

COMPETITION ADVOCACY

- CCI to take measures for promotion of competition advocacy; creating awareness and imparting training on competition issues
- While formulating a policy on competition, CG or SG may refer to CCI for its opinion
- CCI to give opinion within 60 days
- Opinion by CCI not binding

EXTRA-TERRITORIAL JURISDICTION

- The Act also covers agreements entered into outside India; abuse of dominant position outside India; combinations taking place outside India; if it has or is likely to have appreciable adverse effect on competition in India. with permission of CG, CCI can enter MOU with foreign competition agency.

WANTED

A functional Competition Policy