

# Overview of Competition Law

92<sup>nd</sup> Foundation Course

At

Dr. MCR Human Resource Development Institute

Hyderabad

# Competition – key to functioning markets

- Competition is important
  - Consumers (Choice, Quality, Price)
  - Economy (Productivity, Growth, Wealth Creation)
  - Society (Innovation, Welfare)
  
- Markets are prone to distortion by market players
  - By Suppliers
  - By Buyers
  - And by intermediaries
  
- Information Asymmetry, Seasonal Variations in production and Demand and Trade Barriers impinge on competition
  
- Government regulation also sometimes impinge on free-markets

# Evolution of Competition Regime

- ❖ The Monopolies and Restrictive Trade Practices Act, 1969
- ❖ SVS Raghavan Committee
- ❖ The Competition Act, 2002
- ❖ Amendments in 2007 and 2009
- ❖ Enforcement in phases- 2009 and 2011

# CCI: A Regulatory Arm of the State

- Mandate of CCI
  - To prevent practices having adverse effect on competition;
  - To promote and sustain competition in markets;
  - To protect the interests of consumers; and
  - To ensure freedom of trade
- Jurisdiction
  - India
  - International
- Enterprises: Government and Private

# Institutional Framework

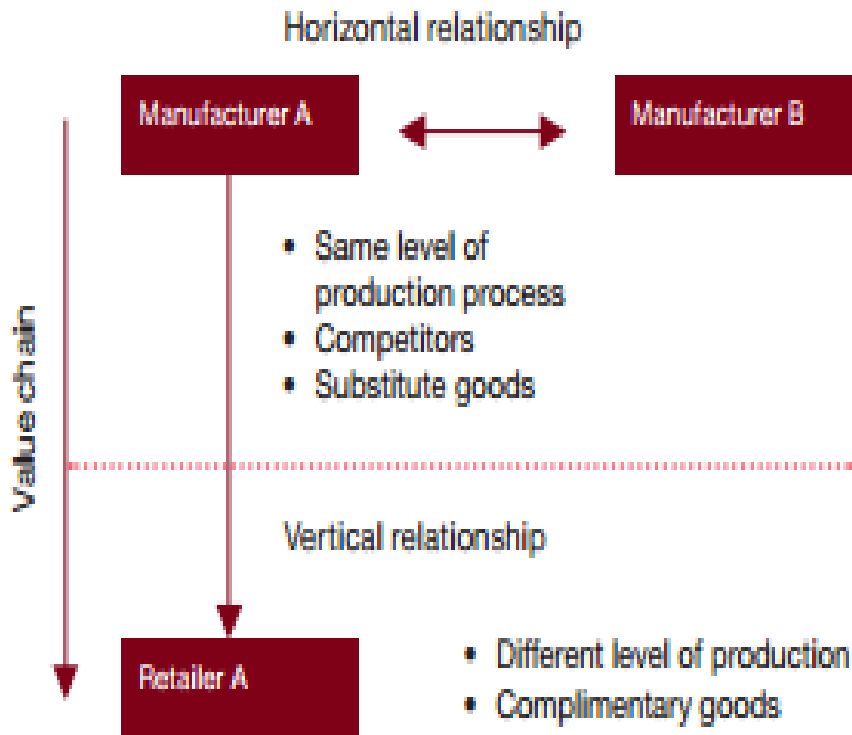
- Competition Commission of India
  - Enforcement and Regulatory function
  - Advocacy and Advisory function (Section 49)
  - Legislative function ( Section 64)
  
- Director General Investigation- Investigation arm of CCI
  
- Appellate body- National Company Law Appellate Tribunal (vide Finance Act, 2017)
  
- Supreme Court
  
- High Court (Writ petition)

# Main Thrusts Of Competition Law

- ❑ Anti-competitive Agreements: Section 3
- ❑ Abuse of Dominant Position : Section 4
- ❑ Mergers and Acquisitions : Section 5 and 6
- ❑ Advocacy: Section 49
- ❑ Advisory: Section 21
- ❑ Penal Provisions: Section 27

# Anti-Competitive Agreements

## Horizontal and vertical relationships



## Horizontal Agreement (Per se Approach)

- price fixing, limiting supply, market sharing, bid rigging

- Cases: Insurance Companies and Govt of Kerela- quoted higher insurance premium bids for Rashtriya Swasthya Bima Yojana, Penalty: Rs 671 crore

## Vertical Agreement (Rule of Reason)

- Tie-in , Exclusive Supply, Exclusive Distribution , Refusal to Deal and Resale Price Maintenance

- Cases: Hyundai Motor India – discount control mechanism via RPM on dealers, Penalty: Rs 87 crores

# Abuse of Dominant Position

- ▶ Dominance: Position of Strength
- ▶ Relevant Market: Relevant Product and Relevant Geographic Market
- ▶ Dominance is not bad per se but its abuse is
- ▶ Abusive Conduct : Exploitative Practices and Exclusionary Practices
- ▶ Cases: Coal India Limited and its subsidiaries- unfair terms and conditions of Fuel Supply Agreement, Penalty- Rs 591 crore

DLF- imposing unfair condition on buyers of high end residential property in Gurgaon, Penalty- Rs. 630 Crore



# Regulation of Combinations

- ▶ Relevant provisions of the Act -effective from June 01, 2011
  
- ▶ **Combination-**
  - Acquisition of control, shares, voting rights or assets
  - Mergers & Amalgamations

It will be termed as combination if the combining parties exceed the threshold in terms of the assets or turnover prescribed under the Act in India and abroad.

# Competition Advocacy and Advisory

## Competition Advocacy

- ▶ Legal Mandate under Section 49
- ▶ Interaction with all stakeholders at different levels
- ▶ Different strategies for creating Awareness
- ▶ Competition to be Demanded not Commanded

## Competition Advisory

- ▶ Section 21
- ▶ Non Binding
- ▶ Consultative Process

# Penal Provisions

## ▶ Section 27: Penalty on Enterprises

- ▶ Cease and desist ;
- ▶ Penalty up to 10% of average turnover for last three preceding financial years
- ▶ In case of cartels, penalty up to 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
- ▶ division of enterprise

## ▶ Section 43: Penalty on individuals

# Competition Compliance

- ▶ Checks and procedures for Compliance
  
- ▶ Compliance by all levels of business hierarchy
  
- ▶ Compliance with Reference to:
  - ▶ Section 3 and 4
  - ▶ Section 5 and 6
  
- ▶ Benefits of Compliance Vs Cost of Non Compliance

# Competition Assessment

- ▶ Markets do not always operate efficiently, need for state intervention = regulation
- ▶ Correctly designed regulation has very important beneficial effects for society (protection for consumers & environment, health & safety, etc.)
- ▶ BUT, even well designed regulation can also distort competition
- ▶ Competition Assessment of regulations has improved GDP in many jurisdictions such as Australia, Greece & Romania ...
- ▶ CCI: section 49 (1) and (3) of the Competition Act, 2002
  - ▶ identify the upcoming / existing economic legislations and policies
  - ▶ Reference by any Government Agency
  - ▶ Competition Assessment guidelines
  - ▶ Empanelled Academic Institution
  - ▶ Capacity Building

# Coordination with Departments

- ▶ Sharing of Information regarding
  - ▶ Industry
  - ▶ Enterprise (s)
  - ▶ Personnel(s)
  
- ▶ Case Laws
  
- ▶ Laws, Regulations, Guidelines, Procedure

# Challenges

- ❖ Changing markets because of technology
- ❖ Creation of economic environment conducive to competition
- ❖ Sectoral Regulators
- ❖ Pendency before Supreme Court and High Courts
- ❖ Competition Assessment of Legislations: Existing and New
- ❖ Government – the biggest economic player

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**Thank you**