



Competition Commission of India



Competition Law and its benefits to the Government

**Yogender Chaudhary, IRS (Adviser-Law) &
Sukesh Mishra, Joint Director(Law),
Competition Commission of India**

Competition Law



What is Competition ?

- **The process of rivalry between firms striving to gain maximum sales and make profits**
- **Motive: Self-interest, but outcome mostly beneficial for the society**
- **Competition is not just an event, but a process**
- **Competition is vital for proper functioning of economy**
- **It is not automatic – needs to be nurtured and promoted**

Benefits of Competition

- **Efficiency and Innovation**
- **Economic growth (Private & Public sector development)**
- **Consumer welfare**
 - **Lower prices**
 - **Better quality**
 - **More choice**
 - **Easy access**

Impediments to Competition?

- **Government Policies & Laws**
 - **Difficult entry/exit conditions**
 - **Non-transparent public procurement**
 - **Implications of other policies**
- **Anti-competitive Practices**
 - **Cartel, Bid Rigging**
 - **Abuse of Dominance**
 - **Combinations**

National Competition Policy

Soul of competition law

National Competition Policy Statement

- **Government commitment to promote competition in all sectors and industries**
- **Could result in refinement of other policies (trade policy, industrial policy, investment policy, public procurement policy, etc.)**
- **Ideally, a precursor to a competition law**

Very few countries have a national competition policy (e.g., Australia, Botswana, Mozambique, etc.)

Competition Law

- **Sub-set of Competition Policy**
- **Aims to protect process of competition and not competitors**
- **Consist of a set of rules to curb Anti-Competitive Practices**
- **Sets up the Competition Authority**
- **Over 120 countries have adopted**
- **National and Regional Competition Law**

Indian Competition Act, 2002

Preamble

The philosophy of Competition Act is envisaged as under:

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

Indian Competition Act, 2002

- **Anti-competitive practices which are prohibited under the Competition Act, fall under three categories:**
 - **Anticompetitive agreements (Section 3)**
 - **Abuse of Dominance (Section 4)**
 - **Combination (Section 5 & 6)**

Important definitions

- **Section 2(b) defines Agreements which includes**
 - **Arrangement**
 - **Understanding**
 - **Action in concert**
 - **Formal or in writing**
 - **Enforceable under law or otherwise**

Important Definitions

- **Section 2(h) Enterprise means person or Department of the Government engaged in**
 - **Production**
 - **Storage**
 - **Supply**
 - **Distribution**
 - **Acquisition or control of articles or goods or**
 - **Provision of services**
 - **Sovereign functions of the State are exempted viz atomic energy, currency, defence and space**

Anti-Competitive Agreements



Anti-competitive Agreements

- **Agreements are of two types: Horizontal and Vertical Agreements**
- **Horizontal Agreements - Firms in same business level (competitors) agreeing not to compete**
- **Example:**
 - Manufacturer A - Manufacturer B**
 - Supplier A – Supplier B**
 - Dealer A – Dealer B**
- **Types:**
 - **Cartels**
 - **Bid rigging agreements**
 - **Output restrictions**
 - **Price fixing**
 - **Market allocation**

Anti-competitive Agreements

- **Vertical agreements are between business entities operating at different level of chain**
- **Examples:**
 - **Supplier and Distributor**
 - **Manufacturer and Supplier**
 - **Distributor and Manufacturer**

Types :

- **Exclusive supply/purchase agreements**
- **Tie-in arrangements**
- **Resale price maintenance**
- **Refusal to deal**

Exemptions

- **Agreements which contribute to improving the production and/or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit and do not:**
 - **impose on the competitors concerned restrictions that are not indispensable to the attainment of the above objectives, and**
 - **afford such competitors the possibility of eliminating competition in respect of a substantial part of the products in question.**
- **Enterprise discharging sovereign functions. S 2(h)**
- **IPR related protection. S 3(5)**

Abuse of Dominance



Abuse of Dominance

- **A firm dominant in position prohibited from abusing its dominant position**
- **Dominance *per se* is not prohibited**
- **Occurs in two ways: Exploitative and Exclusionary practices**
- **Exploitative practices are those meant to exploit customers of the dominant firm**
 - **Excessive pricing**
 - **Discrimination**
 - **Tied selling**
- **Exclusionary practices are those aimed at driving competitors out of business**
 - **Predatory pricing**
 - **Refusal to deal**
 - **Hoarding raw materials**

Abuse of Dominant Position

- **Section 4 of the Competition Act prohibits abuse of dominant position to the detriment of other competitors or consumers,**
- **Section 4 of the Competition Act offers a non-exhaustive list of types of abusive conduct:**
 - **Unfair or discriminatory conditions of prices in purchase or sale of goods or services**
 - **Limiting or restricting goods and services**
 - **Limiting or restricting technical and scientific development relating to goods and services**
 - **Practices leading to denial of market access**
 - **Contracts are subject to conditions which have no connection with the contracts**
 - **Dominant firm uses its position in one market to enter/protect other market.**

Combinations



Combinations

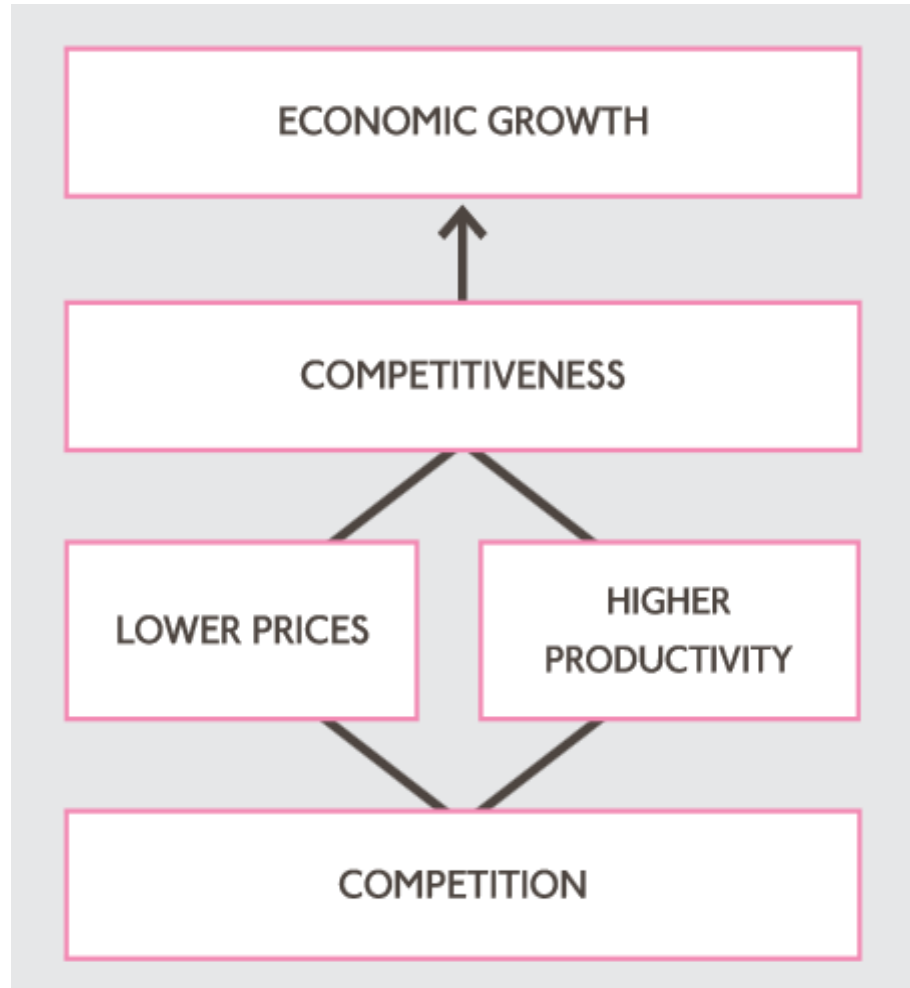
The mergers or “concentration of competitors” subject to the Competition Act:

- **Merger or amalgamation (consolidation) of two or more competitors who were previously independent entities;**
- **Acquisition of an enterprise of another competitor or a substantial part thereof by way of an agreement;**
- **Acquisition of control (directly or indirectly) over another competitor either by acquisition of shares or ownership interest of such other competitor;**

Combinations

- **Firms may try to reduce competition through mergers.**
- **Three types of mergers: Horizontal; Vertical and conglomerate**
- **Horizontal mergers involve competitors and are most harmful to competition as they reduce the number of players**
- **Vertical mergers include firms in a supplier-customer relationship and can result in foreclosure**
- **Conglomerate mergers involve firms in different lines of business, and the fear is the “deep pockets” concern where firms become so huge with big financial resources which they can abuse.**

Benefits to Government



Benefits to Government through Competition

- **To achieve socio-economic goals enshrined under the Constitution.**
- **Prevent concentration and promote equal distribution of wealth through effective competition**
- **Preservation and best utilization of public funds in Public Procurement**
- **Fair Play**
- **Consumer friendly**
- **Market friendly**
- **Curb Cartels**
- **Promote innovations**

Public Procurement

- **Ultimate goal is the preservation of public funds, via competitive bidding in a competitive climate.**
- **Ultimate beneficiary of free and fair competition is Consumer and Economy**
- **Ensure free and open competition between:**
 - **Manufacturers**
 - **Distributors/Suppliers**

Public Procurement

- **Public Procurement System operates through Article 53 of the Constitution and Govt. of India (Transaction of business) Rules, General Financial Rules (GFR) and Delegation of Financial Powers Rules (DFPR)**
- **Objectives of Public Procurement System**
 - i) **Value for money – fair and transparent.**
 - ii) **Promoting domestic capacity of supplier**
 - iii) **Equality of opportunity – level playing**
 - iv) **Widen supplier base**
 - v) **Higher quality and technology**

Regulators

- **Central Vigilance Commission (CVC)**
- **Comptroller and Auditor General (CAG)**
- **Competition Commission of India (CCI)**

- **CVC : Issues guidelines and instructions to curb corruption in PPS**

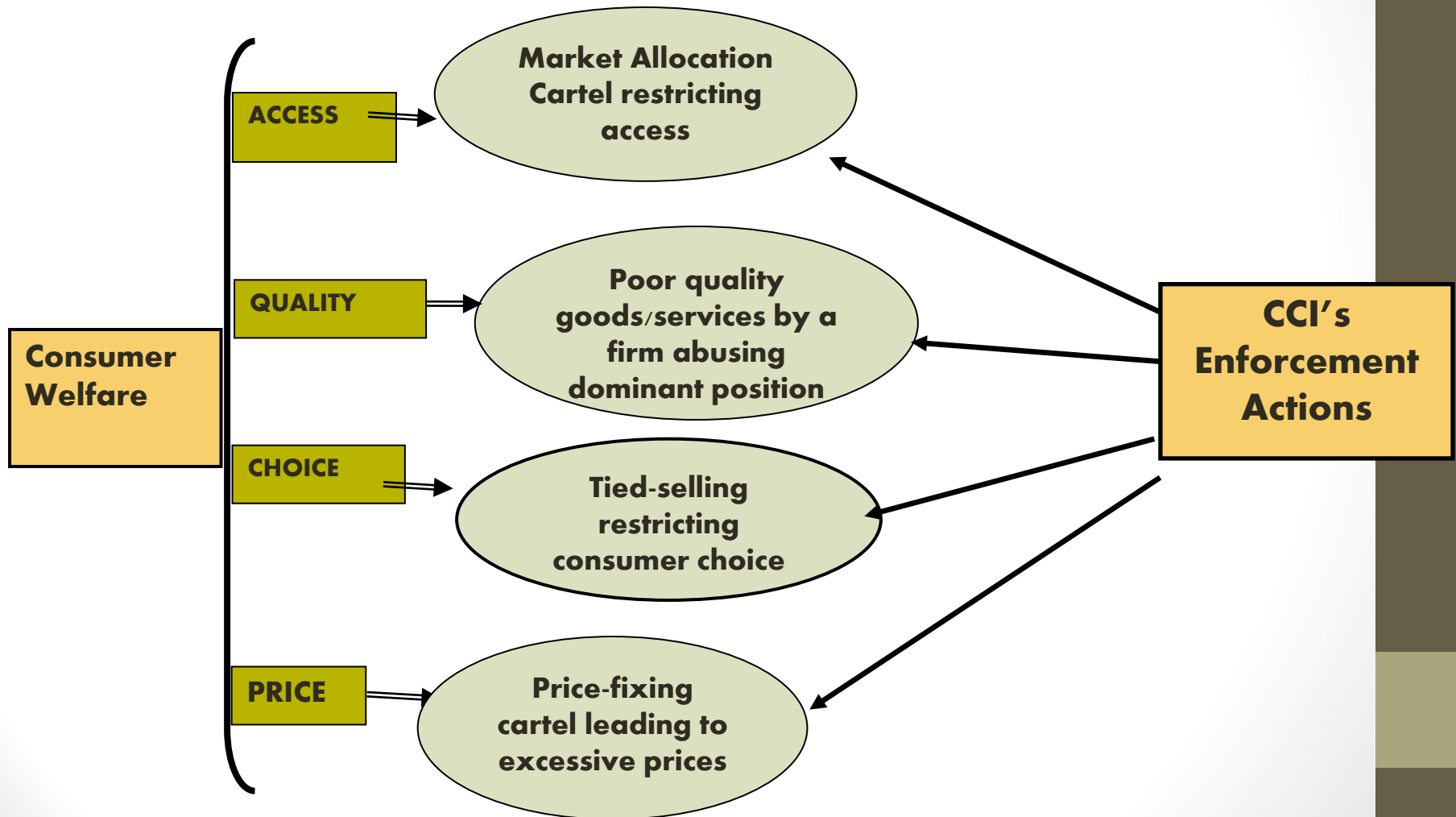
- **CAG : Monitors the deficiency and violations in the procedures and mechanism of PPS**

- **CCI : Regulates competition in PPS – prevents and punishes anti competitive conduct or practices by Govt. Departments and other enterprises**

Role of CCI in Public Procurement

- **Promote transparent and efficient competitive bidding system :**
 - a) **maximizing participation of bidders & wider selection base**
 - b) **remove entry barriers**
 - c) **remove all factors of AAEC in the terms and conditions of tender documents**
- **Prevent and punish :**
 - a) **Anti competitive practices by the bidders (Section 3)**
 - b) **Anti competitive clauses in the tender documents – to favour some [Section 3(4)]**
 - c) **Abuse of dominance (Section 4)**

Competition Enforcement and Consumer Welfare



Penalties

- **Section 27 of the Act deals with contravention of Sections 3 and 4**
- **Section 3: Up to three times of its profit for each year of the continuance of such agreement or ten per cent of its turnover for each year of the continuance of such agreement, whichever is higher**
- **Section 4: 10% of the average of the turnover for the last three preceding financial years**

Landmark cases

- **In re: Alleged Cartelization by Cement Manufacturers**
- **Before Competition Act, 2002, MRTP Commission had taken suo-motu cognizance of this matter**
- **Transferred and decided by Competition Commission after coming into force of the Act**
- **Cement companies acted collusively to limit, control and also attempted to control the production and price of cement in the market in India**
- **The act and conduct of the cement companies was found to be a 'Cartel'**
- **Penalty of Rs. 6307 crore was imposed on the cement companies, fixed at 50 per cent of their profits during FY 2009-10 and FY 2010-11.**

Landmark cases

- **In re: Suo Motu case against LPG Cylinder Manufacturers**
- **2011 - Indian Oil invited bids for supply of 105 lakh 14.2 kg LPG cylinders**
- **The Competition Commission took suo-motu cognizance of reports of manipulation of the bids by manufactures of LPG cylinders**
- **CCI found that LPG cylinder manufacturers had procured order for supply of LPG cylinders by collusively quoting identical rates in violation of Section 3(3) (d) of the Act**
- **Collusive bidding deprived Indian Oil from getting competitive prices and led to increase in costs.**
- **Cease and Desist orders passed and penalty of 165.69 crores @ 7% of average turnover imposed.**

Who can approach CCI ?

Section 19(1) (a) deals with filing of 'information' before the CCI

- **Any person,**
- **Consumer**
- **Trade Association**
- **Central Government**
- **State Government**
- **Statutory Authorities**
- **Suo Moto power**

Procedure & Process

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

Conclusion



- **Fair and Efficient Competition is good for:**
 - (a) **Consumers**
 - (b) **Traders**
 - (c) **Government Agencies**
 - (d) **Overall Economic Growth**

Benefits of Competition



Thank You

