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Fair Competition
For Greater Good

COMPETITION LAW

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Disclaimer: The views expressed in this presentation are personal



Plan of Presentation

- ❖ **What is Competition Law**
- ❖ **Benefits of Competition**
- ❖ **Applicability of Competition Law**
- ❖ **Competition Act, 2002**
- ❖ **Enforcement of Competition Law: Powers of the Commission**
- ❖ **How to file Information**
- ❖ **How to not fall foul of Competition Law: Dos and Don'ts**



What is Competition Law?

- ❖ The law which governs the conduct of enterprises in the market.
- ❖ The law that penalises cartels and prohibits abuse of dominance.
- ❖ The law that governs big mergers.

Objective: To protect and promote fair competition in markets in India.



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BENEFITS OF COMPETITION

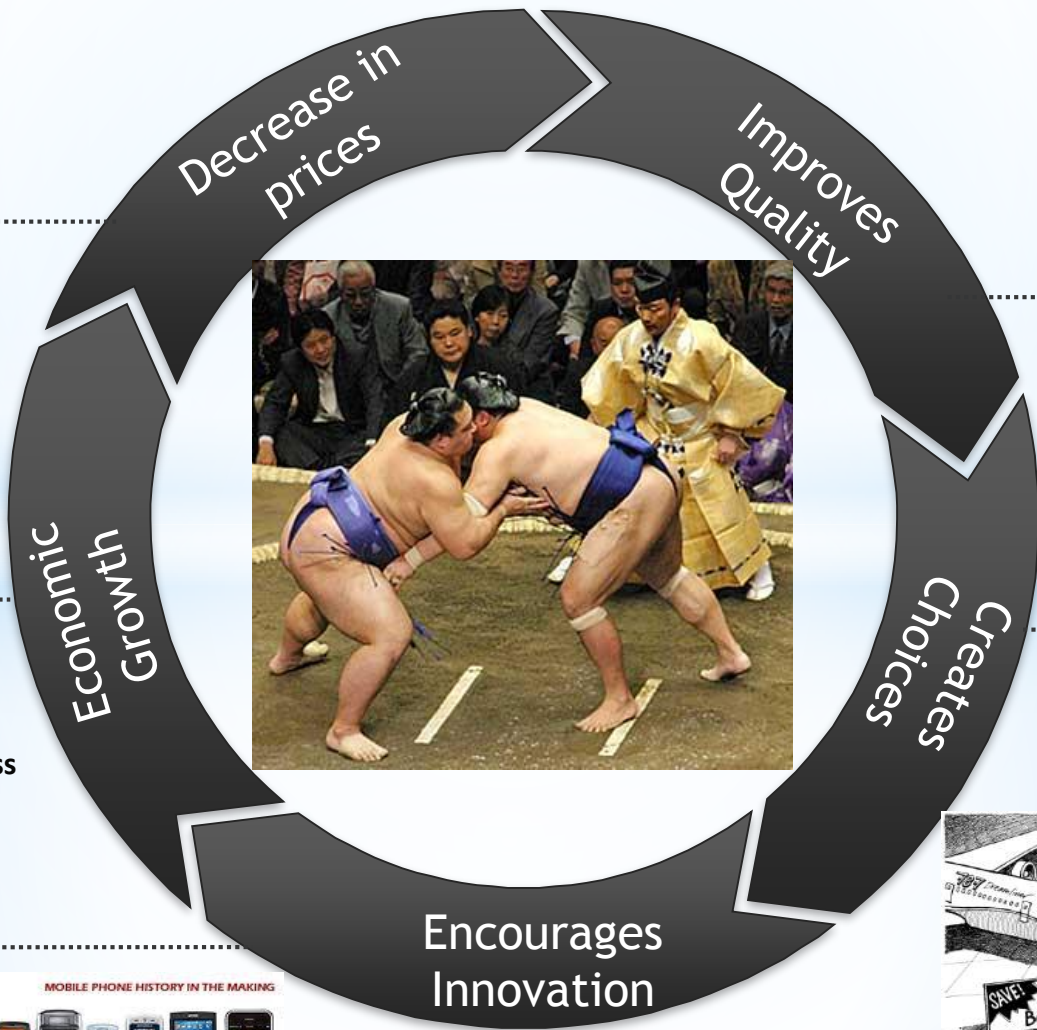


Mobile Segment
– From Rs.32 per minute to 1 paisa for 2 seconds O/g



India big market, leaders in growth

Witnessed across goods, be it electronics, mobiles, automobiles....



Two Wheelers – from 30 kmpl to 100 kmpl

...and choices lead to consumer achieving better quality at lower prices eg. airtravel





Applicability

- ❖ All enterprises including public sector enterprises and Department of Government engaged in commercial activities.
- ❖ Both goods and services

LIMITATION: Law is not applicable to sovereign functions and functions relating to:

Atomic Energy-Currency-Defence-Space



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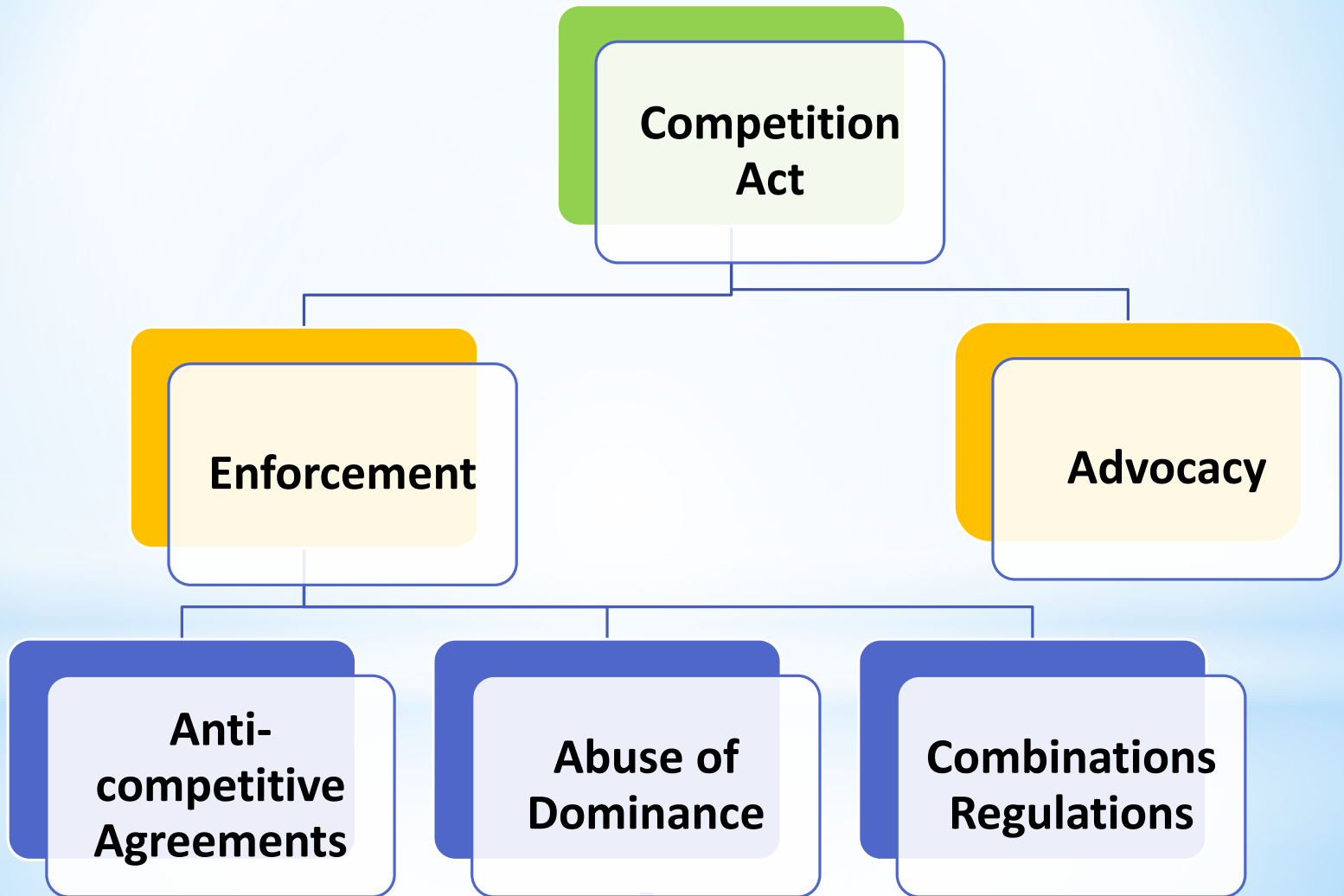
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Competition Act, 2002



Salient Features of the Act





Anti-competitive Agreements



Horizontal: The producers competing for the similar good or service i.e. at the same level of value chain may agree to:

Fix prices to avoid price competition; limit production and supply to create artificial scarcity in the market and to charge excessive prices.

Allocate markets, and

Bid Rigging



Price Fixing Agreements

- ❖ **Price fixing:** For Example; if there are only 3-4 Chocolate producers in Delhi and they agree to charge same price from the consumers; consequently, consumers will not have any choice and they have to buy Chocolate at higher prices.





Allocation of Markets

Sharing of market: For Ex. If there are only 5 cable operators in Delhi and they divide the whole city in 5 parts and they agree not to enter into one another's areas. Consumers will not have any choice.





Limiting Production

Limiting production & Supply: For Ex. If the producers or suppliers of milk & dairy products in Delhi agree to reduce production or supply; that will results into higher prices of the milk & dairy products in Delhi. Consumers have to pay more.





Bid Rigging

- ❖ Advance agreements about who is going to win a particular bid
- ❖ Bid rigging is harmful because it
 - Eliminates or reduces competition
 - Artificially raises prices
 - Generally found to increase prices between 20%-40%

Lets decide
who will win



CCI has imposed penalties in various cases related to Bid Rigging.



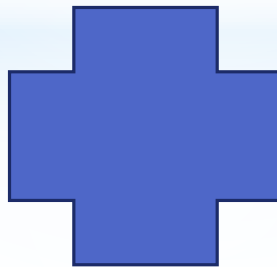
Vertical Agreements

The Agreements entered between players operating at different levels of value chain.

Example: Tie In and Bundling

- ❖ Suppose a consumer wants to have a cooking gas connection but he is given connection on the condition that he has to purchase cooking gas stove also, it becomes an instance of bundling.

Forcing consumers to buy another product alongwith the required





Abuse of Dominance

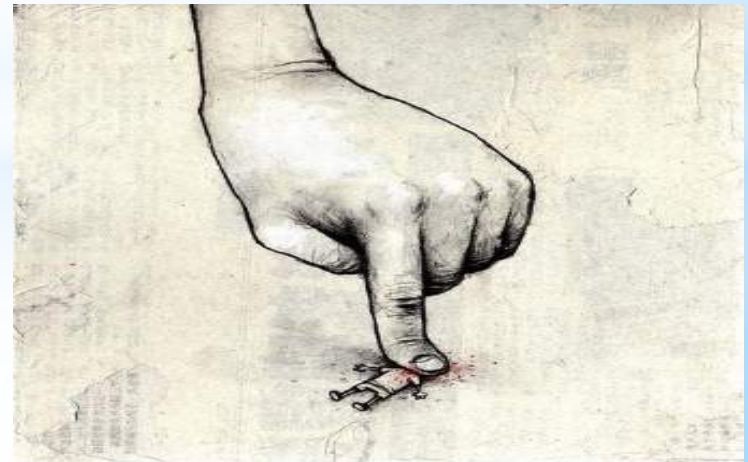
❖ What is Dominance?

- ❖ Ability of an enterprise to behave independently of the market forces. Or Strength of an enterprise to affect its competitors or consumers in its favor.

❖ What is abuse of dominance?

- ❖ When an enterprise uses its dominant position in the market in an exploitative manner.

❖ Not dominance, but its abuse is prohibited





Is it fair competition?



The weak player can be a consumer or another producer.



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Whatever....



....The result is clear.



Contd...

- ❖ If the weak player is another producer, dominant producer would throw him out of the market---Decrease in no. of producers and degree of competition---Decrease in Production--
--Increase in pricesconsumer welfare decreases.
- ❖ If the weak player is a consumer---Producer dictates the decision making--- Consumer given no say----Prices may not be proportionate to quality---consumer welfare decreases.

Instances of Abuse of Dominance

- ❖ Imposes unfair or discriminatory conditions in purchase or sale
- ❖ Imposes unfair or discriminatory price
- ❖ Limits/ restricts production or supply of goods or service
- ❖ Limits / restricts technical development
- ❖ Denies market access



Combinations Regulation

- ❖ **Examine potential effect of a Merger/Amalgamation/Acquisition on Competition in market.**
- ❖ **The major considerations are the change in ability of the combined enterprise to increase prices of goods, post merger and the impact on consumer choice.**
- ❖ **All combinations meeting thresholds as prescribed, need pre approval of CCI**



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POWERS OF THE COMMISSION



What Orders the Commission Can Pass? Cartel

- ❖ The **penalty** on cartel is up to **3 times of the profit earned** OR up to **10% of the turnover of each member for each year** of continuance of such agreement, whichever is higher.
- ❖ After the inquiry, the commission may direct the members of the cartel **to discontinue and not to re-enter** in anti-competitive agreement.



What Orders the Commission Can Pass? Agreements & AoD

- ❖ The Penalty can be **up to 10% of the average turnover for the last 3 preceding financial years** upon each of such persons or enterprises which are parties to such agreement or abuse.
- ❖ The Commission may **direct division of enterprise in case it is found to abuse its dominant position** in the market to ensure that such enterprise does not abuse its dominant position.



APPEAL PROVISIONS

National Company Law Appellate Tribunal (NCLAT)

- ❖ To hear and dispose of appeals against the specific order of the Commission.
- ❖ An appeal has to be filed within 60 days of receipt of the order / direction / decision of the Commission.
- ❖ A person aggrieved with the direction, decision or order of the NCLAT can appeal to the Supreme Court of India within 60 days from the date of communication of the direction, decision or order.



HOW TO FILE INFORMATION?



Who can Provide Information?

- ❖ Any person, consumer, consumer association or trade association can provide information.
- ❖ Central govt. State Govt. or salutatory authority can make a reference.
- ❖ or the Commission can take Suo-Moto action.



What Information can be Filed?

The information can be filed on;

- ❖ Anti-competitive activities
- ❖ Abuse of dominant position
- ❖ Or a Combination

Which causes or likely to cause an appreciable adverse effect on competition in the markets in India.

INQUIRY-PROCESS

Receipt of Information or Suo-moto or Reference




Preliminary Analysis; if commission is of the opinion that there is Prima Facie case




Direction to the DG for detailed investigation



DG submits investigation reports to the commission within a specific time period ;
if Commission feels so it may ask DG for further investigation



Commission sends DG report to both the parties for inviting their comments and
objections



After further analysis and hearing the concerned parties the commission pass
appropriate orders



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How to not fall foul of competition law: Don'ts



How to not fall foul of competition law: Don'ts

- ❖ **Price fixing:** Do not enter into an agreement, however informal it may seem, that fixes the price. This is a classic cartel behavior.
- ❖ **Market sharing:** Do not divide territories or customers between you and your competitors.
- ❖ **Information regarding future pricing:** Do not exchange commercially sensitive information with your competitors such as your price and cost etc.
- ❖ **Agreeing to limit sales or output:** Do not agree to production quotas or anything that could lead to a limitation of sales or output.

Leniency Provisions



Conclusion

- ❖ **Competition Act is People's Act that aims at maximizing social welfare by protecting consumers interest.**
- ❖ **Contributes to the sustainable and inclusive development of our country.**



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THANK YOU

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