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INTRODUCTION TO COMPETITION LAW IN INDIA

COMPETITION LAW ASSOCIATION SEMINAR

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SNAPSHOT OF THE INDIAN COMPETITION ACT 2002



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● Anti-competitive agreements among enterprises

- Agreements that cause or are likely to cause an appreciable adverse effect on competition in India are void
- *Horizontal agreements* –
 - Presumed to have an appreciable adverse effect if they fix prices, limit or control production/supply, allocate customers/territories or relate to bid rigging
 - Presumption is rebuttable
- *Vertical agreements* –
 - Exclusivity obligations, tying and bundling offers, discount and incentive schemes, resale price maintenance etc. may be caught.
 - Rule of reason analysis based on certain factors

● Abuse of dominance

- Dominance is not a problem but an *abuse* of a dominant position is
- No market share threshold representative of dominance

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● Merger Control – Regulation of Combinations

- Effective from 1 June 2011
- Applies to mergers, acquisitions, amalgamations of enterprises, which may cause an anti-competitive effect in India
- Mandatory pre-notification for transactions over specified asset/turnover thresholds
- Up to 210 day suspensory review period
- Wide range of transactions potentially covered, even where there is no change of control
- Limited Exemptions:
 - Exemption from notification for *de minimis* targets and groups exercising less than 50% of voting rights
 - Few other exemptions under implementing regulations
- *Track record*: 4 published decisions so far — all cleared within 30 day *prima facie* review phase

PENALTIES



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- ***Anti-Competitive Agreements or Abuse of Dominance*** – up to 10% of the average turnover for the last 3 successive financial years (or, in cartel cases, 3 times the profit for each year of continuance of the cartel, whichever is higher)
 - Penalty of INR 6.3 billion (7% of avg turnover) imposed on DLF and INR 555 million (5% of avg turnover) imposed on NSE
- ***Preventative division of a dominant enterprise***
- ***Failure to notify a notifiable combination*** – fine of up to 1% of the assets or turnover of the combination and transaction void if causes an appreciable adverse effect on competition
- ***Failure to furnish information or furnishing false information*** – fine up to Rs. 10 million
- ***Failure to comply with CCI's orders or CAT's orders*** – fine of up to Rs 10 million or imprisonment up to 3 years
- Personal liability for persons responsible to the company for the conduct of its business



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