Meaning of Competition

- Competition can be defined as a process of economic rivalry between market players to attract customers.
- In pursuit to outdo rival enterprises market players either adopt fair means or indulge in unfair measures.
- However, in the interest of consumers and the economy as a whole it is necessary to promote an environment that facilitates fair competitive outcomes in the market, curb anti- competitive behaviour and discourage market players from adopting unfair means.

Benefit and Need of Competition

- Competition is now universally acknowledged as the best means of ensuring that consumers have access to the broadest range of services at the most competitive prices.
- Competition is beneficial as it provides to consumers wider choice and provides sellers with stronger incentives to minimize costs, so eliminating waste.
- Competition thus promotes allocative and productive efficiency.
- But all this requires healthy market conditions and governments across the globe are increasingly trying to remove market imperfections through appropriate regulations to promote competition.

What Constitutes Competition Law and Policy?

Competition law and policy is defined as those Government measures that affect the behaviour of enterprises and structure of the industry with a view to promote efficiency and maximize welfare. The two elements of such Government measures are:

Competition Policy: Set of policies, such as liberalized trade policy, relaxed FDI policy, de-regulation, etc., that enhances competition in the markets.

Competition Law: To prevent anti-competitive practices with minimal intervention such as Competition Act. Other legislations dealing with competition include Consumer Protection Act, 2019, the Patents Act 1970 etc.

Background to the MRTP Act and Its scheme

The Monopolistic and Restrictive Trade Practices Act, 1969, was enacted-

- To ensure that the operation of the economic system does not result in the concentration of economic power in hands of few,
- To provide for the control of monopolies, and
- To prohibit monopolistic and restrictive trade practices.
  The Monopolies and Restrictive Trade Practices Act, 1969 was not only found to be inadequate but also obsolete in certain respects, particularly, in the light of international economic developments relating to competition law.

MRTP Act repealed and is replaced by the Competition Act, 2002 w.e.f. sept. 1, 2009. Though MRTP Act underwent amendments in 1974, 1980, 1982, 1984, 1986 and 1991 still the provisions of MRTP Act were rigid and turned obsolete in the dynamic environment and a shift was necessary.

Restrictive Trade Practice

A restrictive trade practice is a trade practice which prevents, distorts or restricts competition in any manner or obstructs the flow of capital or resources into the stream of production or which tends to bring about manipulation of prices or conditions of delivery or effected the flow of supplies in the market of any goods or services, imposing on the consumers unjustified cost or restrictions.

Monopolistic Trade Practice

The word monopoly has not been defined in the MRTP Act. A single undertaking is the only supplier or atleast has to its credit a very large portion of the market as compared to its competitors. Such an undertaking has the power to dictate the price of the commodity or services it supplies and to regulate its volume of production in such a manner as to maximize its profits. This power is generally understood by the words 'monopoly power'

Unfair Trade Practice

An unfair trade practice means a trade practice, which, for the purpose of promoting any sale, use or supply of any goods or services, adopts unfair method, or unfair or deceptive practice. Eg.-Creating impression that something is being offered free alongwith the goods, when in fact the price is wholly or partly covered by the price of the article sold or Falsely suggesting that the services are of a particular standard, quantity or grade.

Sachar Committee

- The Government of India appointed a Committee in August, 1977 under the Chairmanship of Justice Rajinder Sachar to look into the simplification of the working of the companies and the MRTP Act.
- An obligation is to be cast on the seller to speak the truth when he advertises and also to avoid half truths, the purpose being preventing false or misleading advertisements.
- The Committee also noted that fictitious bargain was another common form of deception
- **The Committee observed**: Prices may be advertised as greatly reduced and cut when in reality the goods may be sold at sellers regular prices.
- Committee specified certain unfair trade practices which were notorious and suggested prohibition of such practices.
- Eg. misleading advertisements and false representations (b) bargain sale, bait and switch selling; (c) offering gifts or prizes with the intention of not providing them and conducting promotional contests; (d) supplying goods not conforming to safety standards; and (e) hoarding and destruction of goods.

Raghavan Committee

The then Finance Minister (Shri.Yashwant Sinha) in the budget speech in 1999 had announced: "The Monopolies and Restrictive Trade Practices Act has become obsolete in certain areas in the light of international economic developments relating to competition laws. We need to shift our focus from curbing monopolies to promoting competition. Government has decided to appoint a Committee to examine this range of issues and propose a modern Competition Law suitable for our conditions."

- Accordingly, a High Level Committee on Competition Policy and Law was constituted under Chairmanship of Mr. S.V.S Raghavan.
- The Committee in its report recommended replacement of the MRTP Act with a modern competition law.

Horizontal Agreement

Horizontal agreements are those between parties at the same level of the supply chain (for example, competing manufacturers, distributors or retailers). An example is a price-fixing agreement between two competing retailers.

Horizontal agreements are generally contrasted in competition law and economics with vertical agreements, which are agreements between parties at different levels of the supply chain (for example, an agreement between a manufacturer and distributor). An example of a vertical agreement is an exclusive dealing agreement between a supplier and a retailer, whereby the retailer agrees to only sell the supplier's products.

Certain types of illegal horizontal agreements (for example, price-fixing agreements between competitors) are often referred to as per se illegal or naked restraints based on the fact that they do not have any pro-competitive effects. Price-fixing, market division, output restriction and bid-rigging agreements are also enforcement priorities for the Competition Bureau, as they are for other international competition law enforcement authorities.

HORIZONTAL AGREEMENTS- Horizontal agreements are arrangements between enterprises at the same stage of production. Section 3(3) of the Act provides that such agreements includes cartels, engaged in identical or similar trade of goods or provision of services, which-

1. Directly or indirectly determines purchase or sale prices
2. Limits or controls production, supply
3. Shares the market or source of production
4. Directly or indirectly results in bid rigging or collusive bidding

Under the Act **horizontal agreements are placed in a special category and are subject to the adverse presumption of being anti-competitive. This is also known as *'per se'* rule**

What is resale price maintenance? It includes any agreement to sell goods on condition that the prices be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

What is an Anti-competitive Agreement?

The Act under Section 3(1) prevents any enterprise or association from entering into any agreement which causes or is likely to cause an **appreciable adverse effect on competition (AAEC)** within India.

How to determine AAEC?

The Act provides that any agreement including cartels, which-

- Directly or indirectly determines purchase or sale prices;
- Limits production, supply, technical development or provision of services in market;
- Results in bid rigging or collusive bidding

Cartels:

cartel can be described as a mutual agreement which can be written or oralor oralaimed atregulating trade terms and conditions between buyers and sellers. Put simply, a cartel is an agreement between competitors not to compete with each other. Indiarecognised cartelisation as a crime against the public as early as in 400 BC. Kautilay in his treatise 'Arthashastra'visualised price fixing and cartels like situations in the market and thus prescribed standards and punishments for dealing with traders indulging in cartels.From the writings in Arthashastra, it appears that traders cannot be trusted as they have apropensity to form cartels to fix prices and make excessive profits as also to deal in stolen property. Arthashastra prescribedheavy fines to discourage such offences by traders and with a view to protect consumers.

Example - International Vitamins Cartel

Leading producers of vitamins including Roche AG and BASF of Germany, Rhone-Poulenc of France, Takeda Chemical of Japan formed a cartel dividing up the world market and price fixing for different types of vitamins during the 1990s. The cartel operated for over 10 years and later prosecuted with the help of Rhone-Poulenc which defected from cartel and cooperated with US authorities. Roche paid fines of US $ 500 million and total fine collected exceeded US $ 1 billion in the US alone. The overcharges paid by 90 countries importing vitamins were estimated to the tune of US $ 2700 million during the 1990s.(Source: Clarke andEvenett, 2003

Definition of MRTP Act

MRTP Act or otherwise known as Monopolistic and Restrictive Trade Practices Act, was the first-time ever, competition law in India, that came into force in the year 1970. However, it underwent amendment in different years. It aimed at:

- Controlling and regulating the centralization of economic power.
- Controlling monopolies, restrictive, unfair trade practices.
- Prohibit monopolistic activities

Further, the act makes a distinction between Monopolistic Trade Practices and Restrictive Trade Practices, summarized as under:

1. **Monopolistic Practices**: The practices adopted by the undertaking, on account of their dominance, which harm the public interest. It includes:
    - Charging unreasonably high prices.
    - Policy the lessens existing and potential competition.
    - Restricting capital investment and technical development.
2. **Restrictive Practices**: Acts that prevent, distort or restrict competition comes under restrictive practices. These are adopted by a few dominant firm with an agreement to hinder the growth of competition, called as cartelization. It includes:
    - Restricting the sale or purchase of goods to/from specified persons.
    - Tie-in-sale, i.e. forcing the customer to purchase a particular product, so as to purchase another product.
    - Restricting areas of sale.
    - Boycott
    - Formation of cartels
    - Predatory pricing

Definition of Competition Act

Competition Act, 2002 is meant to create a Commission that prevents activities which adversely affect competition and initiate and sustain competition in the industry. Further, it aims at protecting consumer interest and corroborating freedom of trade. The commission is empowered to:

- **Ban certain agreements**: Agreements which are anti-competitive in nature are prohibited. It includes:
    - Tie-in arrangement
    - Refusal to deal
    - Exclusive Dealings
    - Resale price maintenance

- **Abuse of dominant position**: It includes activities such as limiting production of goods or services, the imposition of unfair conditions or engaging in such activities which lead to denial of market access.
- **Regulation of combination**: It regulates the activities of combinations, i.e. mergers, acquisition, amalgamation, which is likely to adversely affect competition.

The following are the definitions cited under the Competition Act

- **1. Acquisition:** Acquisition is defined as the direct or indirect agreement to acquire shares, voting rights or control of assets over any enterprise.
- **2. Cartel**: A cartel is defined as an association of producers, sellers who limit control distribution, sale or promotions on goods through an arrangement previously made.
- **3. Position:** A dominant position means a position of power held by an enterprise in the related market. It enables the enterprise to function freely and influence the market to its directions.
- **4. Predatory pricing:** Predatory pricing is where the price of goods and services is reduced to well below the cost of production in order to eliminate competition.
- **5. Rule of reason:** The interpretation of activity on the basis of business justification, market impact on competition and on the consumer.

Salient Features

The following are the features of the Competition Act:

1. Anti Agreements: Any individual or enterprises shall not deal in production supply or distribution that may cause a negative impact regarding competition in India. Any existence of such agreements is considered illegal.

2. Abuse of dominant position: In the event, an enterprise or an associated individual, it is found to indulge in practices that are unfair or discriminatory in nature shall be considered an abuse of dominant position. If a party is found to be in abuse of its position, then they will be subjected to an investigation from the concerned authorities.

3. **Combinations:** As per the act a combination is defined as terms which lead to acquisitions or mergers. But should such combinations cross the limits as put forth by the Act, then the parties involved would be under the scrutiny of the Competition Commission of India.

4. Competition Commission of India: The Competition Commission of India is an independent body with the powers to enter into contracts and should the contracts be broken they can sue the parties involved. The Commission consists of a maximum of six members who are tasked with sustaining and promoting the interests of consumers in order to foster an ideal environment for economic competition.

What are anti-competitive agreements and why are they bad?

Anti-competitive agreements are agreements among competitors to prevent, restrict or distort competition. Section 34 of the Competition Act prohibits agreements, decisions and practices that are anti-competitive.

A particularly serious type of anti-competitive agreement would be those made by cartels. Cartel agreements are usually to fix prices, to rig competitive tendering process, to divide up markets or to limit production. As a result, the cartelists have little or no incentive to lower prices or provide better quality goods or services. Based on economic studies, cartels overcharge by 30 per cent on average. There are four main types of cartel agreements:

- **Price Fixing**
  Price fixing involves competitors agreeing to fix, control or maintain the prices of goods or services. It can be 'direct' fixing of prices, where there is an agreement to increase or maintain actual prices. Price fixing activities can also take the form of 'indirect' fixing of prices, for example, where competitors agree to offer the same discounts or credit terms. Price fixing agreements do not have to be in writing, a verbal understanding at, for instance a trade association meeting or at a social event, may be sufficient to show that there was a price fixing agreement. It does not matter how the agreement was reached or whether it has been carried out. What matters is that the competitors have agreed to collude.

- **Bid Rigging**
  Bid rigging occurs when competitors agree on who should win a tender. To support the cartel member that has been designated to 'win' the tender bid, other cartel members may refrain from bidding, withdraw their bid, or submit bids with higher prices or unacceptable terms. The cartel members may agree amongst themselves to take turns to be the designated 'winner' or to reward 'supporters' of the winning bid, for example, by giving sub-contracts to them. As a result of bid rigging, the party inviting the tender is likely to pay more than it would if the tender was competitive.

- **Market Sharing**
  In a market sharing agreement competitors divide up markets in various ways, such as geographical area or size or type of customer (e.g. business/non-business) and agree to sell only to their allotted segment of the market. As a result they do not compete for each other's allotted market. Customers are affected as they would not be able to shop around for the best deals.

- **Production Control**
  Production control involves an agreement between competitors to limit the quantity of goods or services available in the market. By controlling the supply or production of goods or services, the cartel is able to, indirectly, increase prices to maximise their profits.

Sherman Anti-Trust Act of 1890

There are two types of restrictions under the Sherman Anti-Trust Act. A horizontal agreement between competing businesses includes price fixing, and a vertical agreement between sellers and buyers includes engaging in resale price maintenance. Learn about both types of agreements in this lesson.

The **Sherman Anti-Trust Act of 1890** was enacted to disband monopolies and cartels to prevent unfair competition. The purpose of the act was to ensure that all businesses that engage in interstate commerce retain their right to fair competition. The Sherman Anti-Trust Act **Section 1** states 'no company may engage in interstate commerce with the intention to scheme between competitors to level the competition or gain market control.' Said a different way, it is illegal to unreasonably restrain trade amongst competitors, and these agreements can be either horizontal or vertical.

A **horizontal agreement** is made between competing businesses to manipulate competition amongst all competitors in the marketplace. In contrast, a **vertical agreement** is made between a seller and a buyer in where a retailer can buy products from one manufacturer but in the agreement is restricted from buying from a competing manufacturer. Here are some examples of both types of agreements:

- Price fixing
- Market allocations
- Boycotts
- Tying agreements
- Monopolies

Price fixing is a horizontal agreement involving competitors conspiring to raise, decrease, fix or stabilize prices in a specific market. It sounds confusing, but it is really quite simple. Companies who intentionally engage in price fixing do so primarily to manipulate prices to cause an unfair advantage. This price manipulation creates a situation where, in many cases, competitors set same prices on their products and it negatively affects others in the marketplace.

For example, Stone's Filling Station is located on the eastbound side of Route 1, and Hillbilly Millie's Gas N' Go is located on the westbound side of the same highway. Both Stone and Millie may set the same price of $1.68 per gallon. There is nothing illegal about it. However, if one can prove that the owners made the decision to sell at the exact same price in order to affect the natural market fluctuation that results from supply and demand, it would be illegal.

Both Stone and Millie know that there is going to be a big concert in town. People will be traveling from the east and west to arrive at the destination. The destination, coincidentally, only has two filling stations: one owned by Millie and one by Stone. There is no other place to get gas for up to at least 100 miles in either direction.

If Millie and Stone conspire to raise gas prices to $3.98 per gallon, they are messing with the natural ebb and flow of supply and demand. In other words, customers may need to fill up when they arrive or before they leave the concert. They are given no choice but to pay a **gouged**, or unfairly inflated price, for their fuel.

Market Allocations

Market allocations are also horizontal agreements and happen when competing companies choose specific territories to sell products and neither company sells to the other company's customers. What makes this arrangement illegal is it creates a monopoly for each territory. Let's see if we can break this down. Suppose there were only two manufacturers of office copy machines, Conglom Copier Co. and Comp-U-Copiers, Inc. and both make very similar products.

If the two companies decide to split the country into two, say north and south, with Conglom selling copiers to the lower states and Comp-U-Copiers selling to the upper states, they will create a monopoly in where the businesses in their territory have only one choice, which is to buy from the company that sells exclusively in their location. With this type of illegal agreement between the two companies, they have the ability to fix prices to whatever they desire because the businesses that need to buy from them have no choice.

Boycotts

Boycotts are illegal vertical agreements between a group of businesses to stop using a company's product or services in order to negatively affect their ability to compete in a market. Don't get me wrong. A business has every right to choose whom to do business with. There is nothing illegal about making prudent product choices. It becomes illegal when it is a concerted and deliberate group effort to kick one company to the curb.

Let's say We Care Insurance Company decides to increase their payouts to doctors in a certain territory only if they accept their insurance exclusively. We Care Insurance may contact all of the doctors in the area to tell them about the new payment schedule. Since most doctors take several insurances, there is built-in competition. However, by making an attractive offer to several hundred doctors in one region, it could wipe out business for all other insurance carriers. On a side note, it would be awfully inconvenient for patients who do not subscribe to We Care as well.

What is a Per Se Rule?

Firstly, in the class, after finishing the vertical agreements under Section 3(4) of the Competition Act, 2002, Per Se Rule was taught. Per Se Rule is simply when one person on whom are the offences or the allegations which pertain to a specific issue is alleged in front of any Court of Law, such alleged person has the onus to prove that such allegation is a falsified one. In regular cases, should there be an allegation filed against a person, the Courts would demand conclusive evidence to prove and hold the accusation as admitted.

In these cases, the accused person need not prove anything unless some form of conclusive proof is held against them. Wherein, in the Per Se Rule, the accused person, from the moment of alleging, the burden to claim innocence falls on them. This rule will be employed only in the horizontal agreements as admitted under Section 3(3) of the Competition Act, 2002. This is also called the Rule of Presumption as the defendant party must prove that there is no such arrangements made by them in the first place.

Rule of Reason

The rule of reason is exactly opposite to the Per Se Rule, that is, the informant holds the onus of proving the information alleged by them or any anti-competitive agreement claimed by them. Section 3 (1) of the

act might cause or likely may cause an appreciable adverse effect.

The reason being the application of Rule of Reason where the onus on the informant to prove the facts, it causes an appreciable adverse effect, as there is the preponderance of probability as applied by the Competition Commission of India. So, in Section 3 (1), Rule of Reason is applied and not Per Se Rule. Similarly, in Section 3 (4), in the vertical agreements, as there are different stages or levels or production chain, it may cause an appreciable adverse effect. Consequently, the Rule of Reason is applied.

What is a Legal Monopoly?

A legal monopoly, also known as a statutory monopoly, is a firm that is protected by law from competitors. In other words, a legal monopoly is a firm that receives a government mandate to operate as a monopoly.

Legal monopolies can be established through:

- A public franchise
- A government license

A patent Intangible Assets According to the IFRS, intangible assets are identifiable, non-monetary assets without physical substance. Like all assets, intangible assets or copyright

Rationale Behind a Legal Monopoly

A legal monopoly is a situation in which the government grants a firm to be the exclusive provider of a good and/or service in exchange for the right to be monitored and regulated.

Recall the disadvantages of a monopoly:

- Higher prices and lower output
- Consumer exploitation and bullying
- Poor quality and service
- A potential limitation of innovation

A legal monopoly is able to remedy some of the disadvantages described above. Legal monopolies arise when a government deems that allowing a single firm as the sole service (or product) provider would be in the best interest of citizens.

In a legal monopoly, the government is able to regulate pricesInflationInflation is an economic concept that refers to increases in the price level of goods over a set period of time. The rise in the price level signifies that the currency in a given economy loses purchasing power (i.e., less can be bought with the same amount of money). and provide the population with widely accessible services/goods, oversee firm operations, and ideally shift the monopoly to act in the best interest of consumers.

Major Disadvantage of a Legal Monopoly

As mentioned above, a legal monopoly rectifies a number of disadvantages in a monopoly. However, the biggest disadvantage behind such a monopoly is the lack of incentive to improve the product or service offered and a potential limitation of innovation. Monopolies don't need to innovate on their products/services or provide exceptional customer service as there are no competitors in the marketplace.

Example of a Legal Monopoly

AT&T Corp. is a classic example of a legal monopoly, operating as one until 1982.

With the invention of the telephone in 1876 by Alexander Graham Bell, the firm the inventor formed (now AT&T) was able to establish itself as a monopoly by 1907. With the company's service used by all citizens in the United States, many believed that the government would step in and take over AT&T to prevent the firm from gaining too much power.

In 1913, the Justice Department reached a settlement with AT&T, and the firm was allowed to operate as a monopoly for the next seven decades. The rationale was that the government believed that it was vital to have reliable phone services available nationwide.

In the 1970s, the Federal Communications Commission allowed limited competition in long-distance telephone services. In 1974, MCI and other long-distance service providers filed an antitrust lawsuit against AT&T. In 1982, all concerned parties reached a settlement, which required AT&T to divest its operating companies. With this, the government felt that there was no need for AT&T to maintain its monopoly status, and the monopoly that AT&T held for seven decades came to an end in 1982.

Key Takeaways

- A legal monopoly is used to describe a firm that receives a government mandate to operate as a monopoly.
- It is regulated and monitored by the government.
- It acts in the interest of consumers by setting prices at an affordable range for the general public.
- One major disadvantage with any monopoly is the lack of competition, which often leads to a lack of incentive to improve the product or service offered.