

Competition Act-2002

*Most dynamic, evolving and
Challenging Act*



Fair Competition
For Greater Good

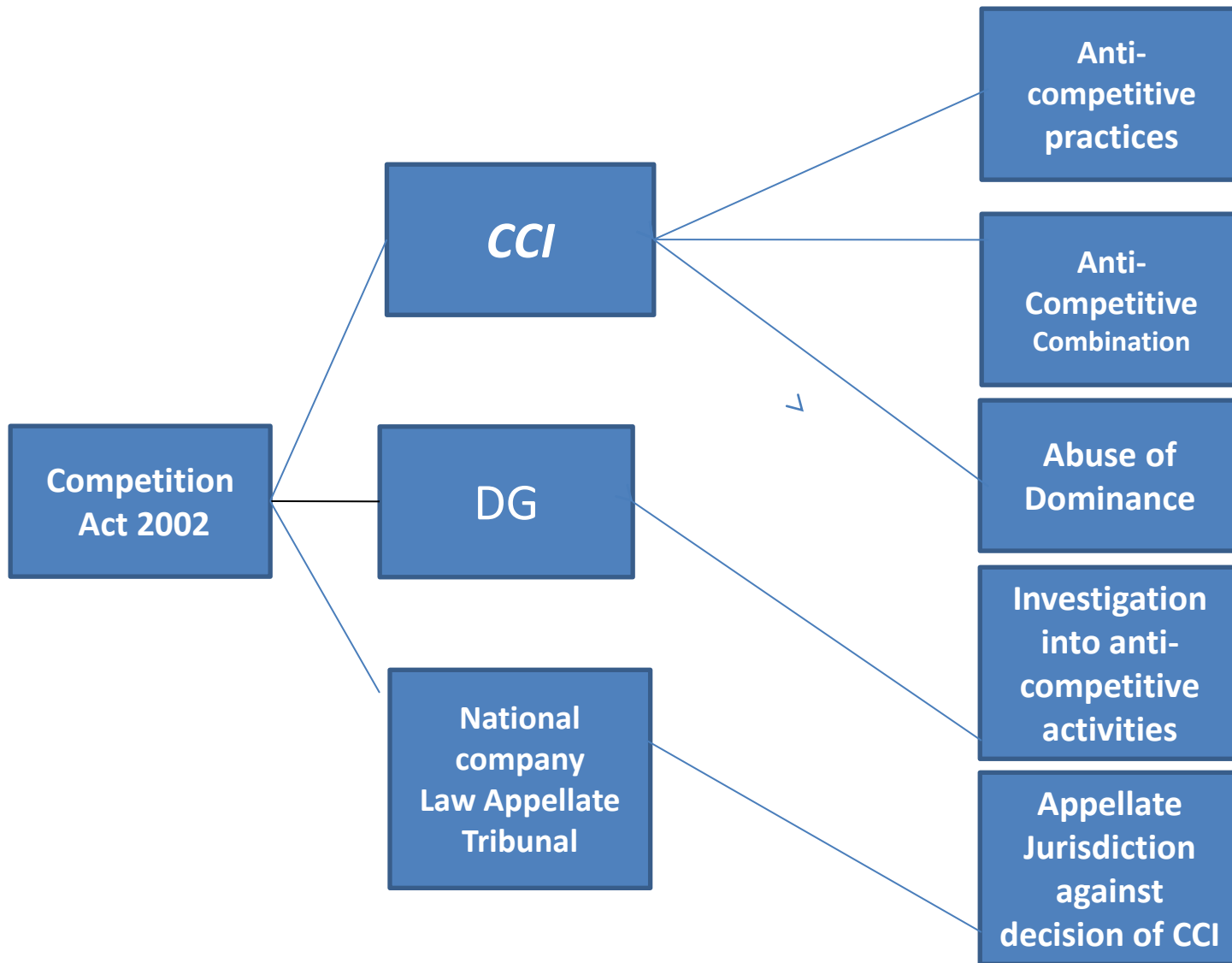
भारतीय प्रतिस्पर्धा आयोग

COMPETITION COMMISSION OF INDIA

Short Background of CA-2002

- From 1991, GOI initiated reforms, so LPG Policy gained ground and we entered into the market economy.
- New Economic and New Industrial Policy of 1991 marked watershed in Indian Economy.
- In 1999, the Raghavan Committee was constituted and it recommended enacting of the Competition Act-2002
- In 2003 our Parliament approved the Act.
- From 2009, the Act was Operationalized in India.
- Competition Act/Anti-trust is meant to regulate the Indian Market.
- Bottom-line of CA-2002 is to create fair competition (a level playing field) & welfare of the consumers, Com. culture

Competition Commission of India (CCI)



Objective of the Competition Act-2002

- **To strengthen the economic efficiency.**
- **To promote and sustain competition in markets.**
- **To protect the interest of consumers.**
- **To ensure freedom of trade and resource allocation**
- **To create competition culture through advocacy**
- **To prevent unfair / anti-competitive trade practices that have appreciable adverse effect on competition.**

Power and function of CCI

The CCI is empowered to enforce the section 3,4,5 & 6 of the Competition Act.

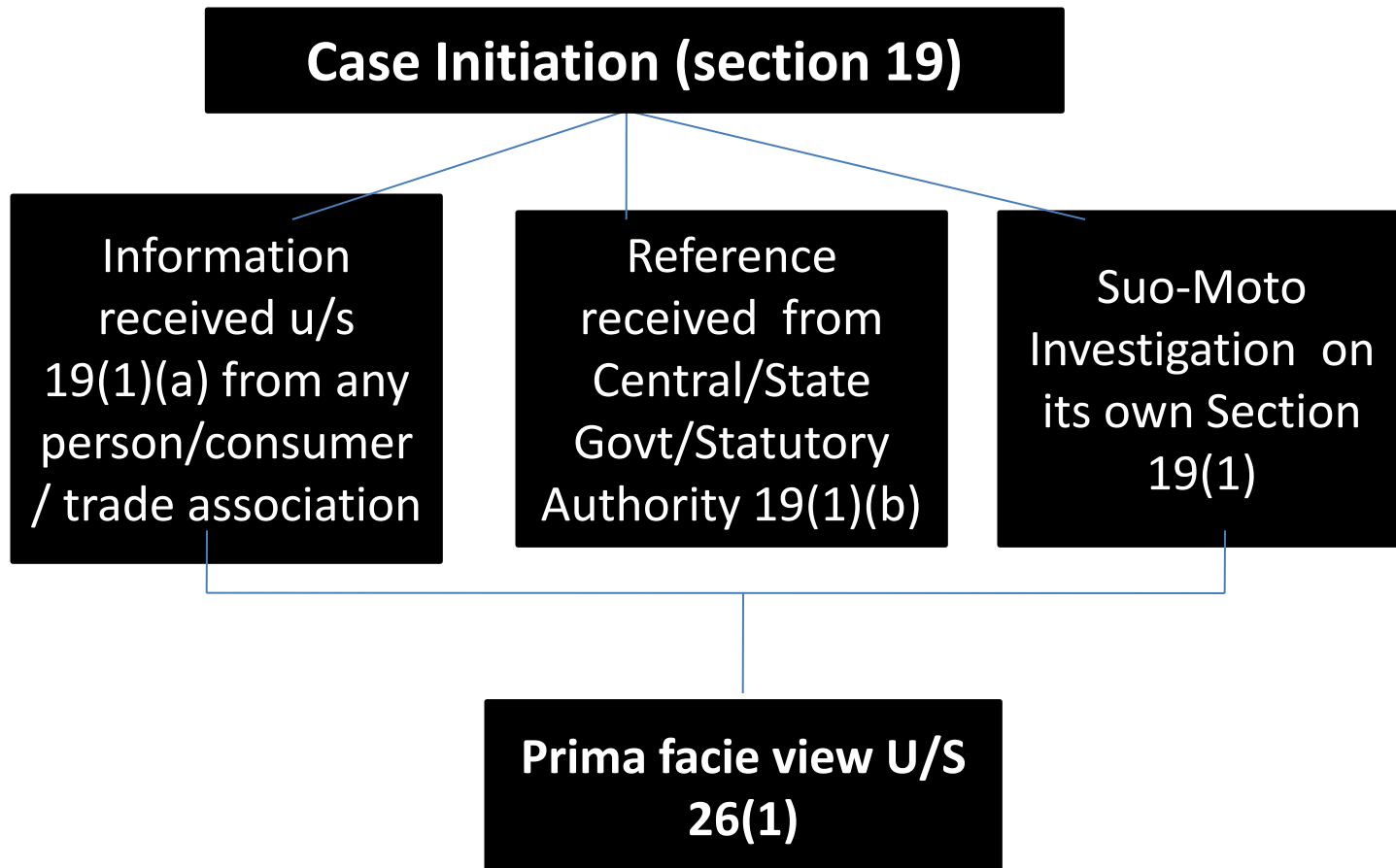
- **Section 3 prohibits anti-competitive agreement/practices**
- **Section 4 prohibits the abuse of dominant position**
- **Section 5&6 relates to Regulation of Combination (merger, amalgamation, acquisition of enterprises etc)**

Process of Enquiry U/S 3&4 of Competition Act

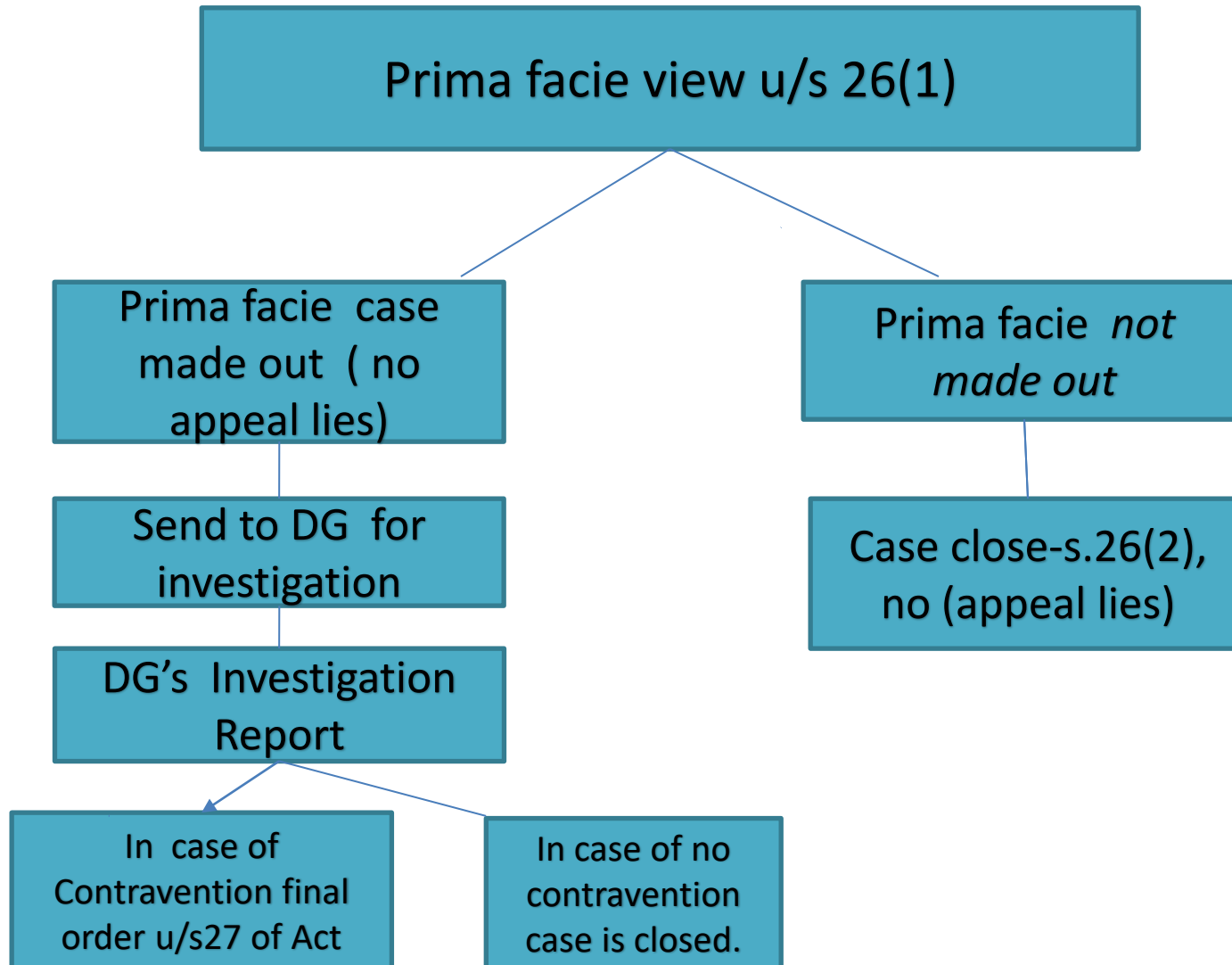
**The CCI can initiate the following action
against any anti-competitive practices.**

- **On receipt of information (from any person, consumer trade association etc. u/s19(1)(b)**
- **Suo-motto(on its own) from various sources u/s19(1).**
- **On receipt of a reference from Central / State Government/statutory authority u/s19(1)(a).**

Inquiry & Investigation



Inquiry & Investigation-Contd..



Important definition under the Competition Act 2002

- Section 2(b) defines 'Agreement'-Horizontal & Vertical ones.
- Section 2(h) defines 'Enterprise'
- Section 2(C) defines 'Cartel'
- Section 3 defines 'Anti-competitive agreements'
- Section 4 defines the 'Abuse of Dominance'
- Section 5&6 defines 'Combination'

Coverage of the Act

- **All enterprises - Whether public or private, government Departments except those engaged in sovereign function like Banking, Atomic energy, Space and defense are out of purview of the Act.**
- **Level Playing field -No discrimination between public and private, between domestic and foreign and between large and small enterprises.**
- **Extra-territoriality- Powers to enquire into conduct taking place outside India but having effect on competition in India(section.32)**

Powers of CCI and the DG

- CCI directs the DG to investigate the anti-competitive practices
- CCI can issue summon, enforce attendance of any person, examine on oath and receive evidence on affidavit as per provision of Code of civil procedure. Act as civil court/proceeding.
- DG can investigate after obtaining direction from the CCI and conduct down-raid.
- DG can also issue summon and enforce attendance of any person, examine on oath and receive evidence on affidavit as per provision of Code of civil procedure.

Powers of Commission

Orders and Penalties

- **Interim orders/Temporary restraint**
- **Cease & Desist and gives different orders.**
- **Order to modify/ not to re-enter into the agreement /division of enterprise in case abuse of dominance takes place.**
- **Penalty (Anti-competitive agreement & AOD)**
 1. **Upto10% of average turn over for last 3 preceding financial years.**
 2. **For cartels-10% of turn over or 3 times profit of each year of continuance of such agreement on each producer/seller/distributors/service providers.**
- **Fines:**
- **Non-compliance of order leads to fine of Rs.1/lakh each day.**
- **Failure to pay fine or comply order/decision/direction shall be punishable with imprisonment upto 3ys.,Or fine which extend upto 25 crore or both.**
- **Making false statement**
- **Penalty also on Officers of company.**

What is Public procurement

- Public/Govt procurement is the **procurement of goods, services at most reasonable terms and condition**. Govt across world spend more than **20Tri.USD annually for PP from private companies/agencies** etc. It amount to **15-20% of world GDP**.
- In India it is **25-30% of our GDP**
- Most Govt ministries, Depts, Statutory bodies like municipalities Panchayats are the major procurers in India.
- **PP is the life blood of Govt programme/services**, it can set the standard or quality of Govt services-like railway, airlines, health care , education services.

Objective of Public procurement

- ✓ **Efficient Procurement- best value for money** i.e to procure best possible goods and services at the lowest price/ most competitive prices at Market.
- ✓ Vigorous competition amongst suppliers/service providers, contractors help this objective of procurement

Case Records of Tyre Companies

- The CCI initiated a case of **cartelization, market distortion** and in controlling production and limiting supply, distribution in the market contravening of S.3(3)(a), S.3(3)(b) of competition Act 2002, against **Apollo Tyres, Jk Tyres, MRF, CeatTyre and Birla Tyres and ATMA.** The **Case filed by All India Tyre Dealer Association**
- CCI held that the **5 tyre companies were guilty of contravening** of S.3 of Act, who exchanged **pre-sensitive data through** the Automotive Tyre manufacture Association (ATMA) and **taken collective decision** on prices of tyres and thus **amassed huge profits illegally**
- CCI imposed penalty of **Rs.425cr on Apollo, Rs.622cr on MRF, Rs.252cr on Ceat, Rs.309cr on JK and Rs.178cr on Birla tyres and Rs.0.84 Cr on ATMA**
- **MRF appealed** before the HC(divi-bench) of Madras which dismissed it on **06/01/2022** and again their **Special leave petition** was also dismissed by SC on **28/01/2022**. All companies had to cough up the huge fines.
- Certain individuals of the said tyre companies were also made liable

Mauti-Suzuki(MS) Vs Dealers Case

- In 2019, **Maruti Suzuki Ltd** was fined **INR 100crore** for indulging in Anti-competitive conduct.
- MS Ltd, **restricted discounts** of some dealers of Maharashtra
- MS Ltd **imposed discount only as per company directive and not allowed dealers discount**
- This **resulted in serious restriction** in Competition at Dealers Level (**both intra and inter companies**) and it was a serious **distortion of competition**.
- MS Ltd even engaged '**Mystery Shopping Agency**' to ensure that no additional discount was offered to customer by dealership/distributors
- Dealers **filed a petition before the Commission** alleging restriction on Competition by MS Ltd
- Commission after long enquiry proved that the allegation was true and the MS Ltd **was fined Rs100 crores for anti-competitive business conduct**

Cartelization and bid rigging

- **Govt of Kerala** floated a tender for an insurance service provider for their flagship scheme “**Rastriya Swastha Bima Yogana Achoni** in 2009-2010
- Four big Govt-owned companies ,**United Insu,National Insu,New India and Orien Insu. participated and the United Insurance** bagged the contract.
- **United India, terminated the contract unilaterally and raised high premium value.**
- **Kerala Govt** had no other option so **had to retender** and this time too **United Insu** bagged the contract at a high premium value for 2011,2012,2013.
- **CCI** got an **anonymous letter about bid rigging by the Insurance companies** with a copy of minutes of the **Inter company co-ordination meeting** where top executive participated they agreed to a **business sharing model** and backed the **United insurance**
- **CCI** investigated the matter and found no reasonable explanation for enhanced premium and **found that the 4 companies pre-fixed the prices in their coordination meeting and formed cartel.**
- **CCI imposed** hefty fines amounting to **INR671 crores-Rs.271/on New India,Rs.162/on National Insu,Rs.156/on United Insu. and Rs.100/on Oriental Insu.**

Special Features of Competition Act-2002

- The Act makes provision **for Advocacy** which we find in no other act.
- The Act ensures **Competitive Neutrality** that makes no distinction between public & private, domestic & foreign, big & small enterprises.
- The Act **do not spare abuse of dominance** even by Govt-owned enterprises, it creates a level playing field for market players.
- The Act ensures **flexibility of entry and exit**, wherein enterprises can get in and get out of the market easily.
- The Act has **extra-territoriality reach**. Anti-competitive practices taking place outside India but causing AAEC in India. Such foreign companies can be brought under the purview of Competition Act-2002
- Some people say that **IPR Act and CA are contradictory** -as IPR grants exclusivity and hinders competition but they are in **fact complimentary both focus on -innovation and general welfare**
- The Act has provision **for leniency i.e. whistle blower protection** offering leniency treatment to cartel member who reports to Commission about any anti-competitive practices.

Thank you
Be safe and secure