



KHAITAN  
&CO

*Advocates since 1911*

# OVERVIEW OF THE COMPETITION ACT, 2002

MANAS KUMAR CHAUDHURI, PARTNER

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# Salient Provisions

- Prohibition of Anti-Competitive Agreement
- Prohibition of Abuse of Dominant position
- Regulation of Combinations
- CCI is the only authority
- Civil Courts are barred
- Specialised Appeal processes
- Effects Theory - cross-border cases



# Exhaustive Definitions

- Agreement
- Trade
- Goods
- Price
- Enterprise
- Relevant market
- Turnover
- Assets
- Predatory pricing
- Dominant Position



# Procedural Law

- Behavioural cases – primarily adjudicatory
- Market concentration cases – regulatory, compulsory and suspensory
- Office of the DG
- Rule of Reason
- Penal consequences including individual liability cases
- Additional penal consequences for non-compliance of orders
- Right of Appeals



# Issues of Glass Industry

- Overseas offence and its impact in India
- Cross-border impact
- CCI has Cooperation Agreements with several overseas Competition Law Agencies
- Quite a number of overseas cartel cases in other sectors are investigated now
- Joint ventures, normally pro-competitive but have exceptions



# Decisional Practice

- Sharing of commercial information – held to be cartel
- Dawn Raids and Lesser Penalty to prove cartel
  - Domestic companies have started filing Lesser Penalty Applications
  - Marginalised cartel members prone to filing
  - Warning for bigger players
- Usage of forensic technology as tool of evidence gathering
- Government Companies penalised for bid rigging
- Few competitors – high risk – Oligopoly markets – Cement cartel case confirmed in Appeal
- Cross-border cartels via LPA several investigations are on



## Decisional Practice (Contd.)

- Minimum RPM in vertical chain – risk
- E-commerce vs Brick and Mortar challenges
- Hub & Spoke cartel
- Trade Association – Do's and Don'ts
- Joint Venture
- IPRs – collusive Algorithm or misuse of Patent
- Modification orders in complex mergers



# Overlapping Laws - Risks

- Anti-dumping and Cartel
- Companies Act, 2013 and the Competition Act
- Evidence Act and Competition Act
- Writ Jurisdiction of High Courts
- IPR and Competition Act
- IBC and Competition Act
- Data Protection (Artificial Intelligence) and Competition Act





# Way Forward

## **Ratios of the Supreme Court in final Appeals**

- Computation of penalties rationalised
- Definition of Enterprise settled
- Gun Jumping in merger control settled

## **In-house health check**

- Genuine internal compliance
- Building of regular documentation of economic efficiency reasons
- Top management must lead by example
- Transparent data retention and IT policies