

Applicability of Competition Law in Agricultural markets

Mr. Vishal Kumar Rai

TRIP Fellow & Academic Tutor, O.P. Jindal Global University, Sonipat, India

Ms. Rupali Bansal

TRIP Fellow & Academic Tutor, O.P. Jindal Global University, Sonipat, India

(Corresponding Author email: rbansal@jgu.edu.in)

Abstract

According to India's Economic Survey 2020-21, the agricultural sector still employs 48.6% of the country's population while contributing only 14.4% of GDP. Agriculture is still plagued by problems after 70 years of independence, but agricultural marketing is at the top of the list of problems. Agricultural marketing is a multi-step process that begins with the decision to produce a marketable farm item and encompasses all parts of the market structure or system. It includes pre- and post-harvest procedures such as assembling, grading, storage, transportation, and distribution, and is based on technical and economic considerations. Agriculture marketing is a crucial component in promoting & sustaining agricultural production & productivity. APMC markets should integrate into the national market to get a desirable outcome for farmers as well as consumers. This research paper test the applicability of APMC act, 2002 in the agricultural market in India. The applicability of competition legislation in the agricultural sector is examined in this study. It is preferable to gain a basic awareness of the Competition Act of 2002, as well as the role and function of the Competition Commission of India (CCI). Every individual has the chance to succeed on a level playing field.

Keywords: Agricultural Market, Competition Law, APMC Act,2017.

Introduction

Agriculture is the lifeline as well as the backbone of the Indian economy. Economic survey 2020-21 stated that the Agriculture sector still employs 48.6% of people of the country & it only contributes 14.4% of GDP, which is again on the downslope than the previous year. In recent times with developments & growth of other sectors, the Agriculture sector still covers the major portion in the overall economic structure of India. As we know, without the agricultural sector the Indian economy can't survive & it is very crucial for food security too. After 70 years of independence agriculture is still plagued with many issues but Agricultural-marketing tops the list of the issues in the agriculture sector.

What is Agriculture Marketing?

According to the National Commission on Agriculture – “Agricultural Marketing is a process which starts with a decision to produce a saleable farm commodity, and it involves all the aspects of market structure or system, both functional and institutional, based on technical and

economic considerations, and include pre- and post-harvest operations viz., assembling, grading, storage, transportation, and distribution”.¹

According to Model APMC Act 2017-“Marketing” in relation to agriculture produce means all activities involved in the flow of agricultural produce from production point commencing at the stage of the harvest till the same reach the ultimate consumers viz. grading, processing, storage, transport, channels of distribution and all other functions involved in the process.²

The most important determinants for any commodities in the value chain are Marketing & trade. In every product, the marketing & trade stage includes all the input expenses for material, labor & capital, & get incentivized over & above inputs. Agriculture marketing is a crucial component in promoting & sustaining agricultural production & productivity & automatically it will lead to food security & inclusive growth.

In a developing country like India demand for the agricultural product is constant throughout the year but production is not constant, it is dependent on various factors like seasons, geographical location, etc. This will lead to a change in prices of agricultural produce & ultimately it will affect the profit of farmers. In addition to this, in a federal structure country that is very diverse in area & location, it creates problems in supply & demand. To ensure better functioning of agricultural marketing in the entire local market & APMC markets should integrate into the national market to get a desirable outcome for farmers as well as producers. It will be beneficial for the farmers as well as consumers if there's no demand in that region. Farmers can sell their produce in other regions & get a rewarding price. On the other hand, consumers will get agricultural produce at a reasonable price. As mentioned above there are many key issues in the agriculture sector, the most relevant is agricultural marketing. Due to tussle between central & state govt. These issues also get delayed & agriculture marketing reforms are long pending problems in India. Agricultural marketing is mainly a state subject & gets support from the central government under various central sector schemes like (Minimum Support Price) MSP, development of e-NAM, e-MANDI, etc. The marketing of agricultural produce in India holds no significance, which creates problems in the agriculture sector, which have a direct impact on producers and consumers as well.

This research paper test the applicability of completion act, 2002 in the agricultural market in India with two questions which gave rise to many other issues

- 1) Agricultural marketing of agricultural produce i.e. sale purchase of products under the framework of APMC act.
- 2) The system of the public procurement process followed by FCI.
 - Agriculture Marketing i.e. sale & purchase of Agricultural produce in the Indian economy is regulated by the state APMCs which is set up under the APMC act.
 - Food Corporation of India regulates & governs the agricultural procurement process, which was established in 1965 under the FCI act. The FCI works as a public sector agency responsible for the implementation of price policy i.e. MSP through procurement. FCI is the sole authority for the procurement process & it uses state agencies to do procurement.

¹ Ministry of Agriculture & Farmers' Welfare, Government of India. (2019, November 09). Ministry of Agriculture & Farmers' Welfare. <http://agriculture.gov.in>

² Agricultural Produce Marketing Committee Act 2016 Sec 2(26).

This paper is testing the applicability of competition law in the Agricultural market, it's better to get a brief understanding of Competition act 2002, as well as the role & function of CCI. In every economic structure competition is the way to ensure that consumers get access to the widest range of goods & services at the most competitive prices. It is very important for developing economies like India. A level playing field provides the opportunity for every individual to excel.

The competition commission of India is a statutory body under competition act 2002 with the mandate to enforce competition act. The core objective of the CCI is to ensure fair & reasonable competition in the market which will allow producers to excel in the relevant market. The mandate of CCI under competition act 2002 is to prohibit anti-competitive behavior & agreements of association or enterprise in similar goods, or the abuse of dominance or also regulate every action of stakeholder which can cause an appreciable adverse effect on the competition.

Competition Commission of India under Competition Act,2002 aspire to achieve its objective through provisions dealing with anti-competitive agreements, abuse of dominant position and regulation of combinations. The Competition Act provides a detailed set of principles and criteria for assessing each such situation. The other important feature of the CCI Act is that Government authorities, including statutory entities such as the APMC or others such as the FCI, would also be subject to scrutiny under its principles in relation to their impact on the production, storage, supply and distribution of agricultural commodities. The only aspect of Government activities that are exempt from competition law scrutiny is those relating to the "sovereign functions of the Government"- such as defense, security, and currency.

Agriculture marketing & APMCs-

The APMC Act regulates & governs the sale, storage & marketing of agriculture produce in every state, which establishes the APMC (Agricultural produce Marketing committee) for each state.

Agricultural Produce Market Committee (APMC) Act:

As per the Indian Constitution, Agriculture falls under State subject (Entry list No.14) & all the state governments enacted the APMC act to regulate the agricultural market & bring transparency. It's also aim is to end traders discretion & bring parity w.r.t all the stakeholders. The Act is the extension of the government. policy, which aims to ensure food security, remunerative selling prices to farmers & competitive prices to consumers. In the recent past the act didn't get the intended result also, it worked contrary to almost every stated objective.

It is very evident that though the existing mechanism controlled by APMC is inefficient, it is far better than the pre –APMC era. Pre-APMC there was no control at all. The one person regulates the whole market & behaves as a moneylender, trader's bankers, etc. this one intermediary brings indebtedness for the farmer.

After commencement of APMC acts, All the states categorized based on geographical location & headed by markets committees & all the production in that geographical location shall be brought to a market committee for sale.it is applicable on all the 'notified agricultural products' which may differ on basis geographical location (state-based) which includes cereals, vegetables & others horticulture products. Notification should be brought & sold or auctioned under the supervision of the market committee in the presence of a farmer.

What is the Market committee?

Under the APMC act, every geographical relevant Market constitutes a “Market committee” (popularly called Mandi) which includes agents (called arhatiyas). The agents get a license from the market committee & get a shop allotted in the market to facilitate the agricultural marketing of the product. Generally, every farmer is free to go to any of the agents for the sale of their products, even if they possess personal relations. The money lenders of the villagers are influential people who themselves act as agents or there must be a representative of them who basically forced the farmers to sell their produce through him or his agents. In every market committee, there is a huge number of commission agents that force the market to get the intended result i.e. constant price discovery & adjustment for that particular crop. On the other hand, Buyers come to procure this agricultural produce & make a bid to procure the particular agricultural produce at fair prices which in turn give the best return to farmers but unfortunately, this is not the case so far.

Anti-Competitive Practices of APMCs

To get a better understanding of the applicability of competition law in the agricultural marketing sector & anti-competitive behavior of APMCs, first, we have to decipher between regulated & unregulated stages of the agricultural product under the APMC act. The stages involved till marketing of agricultural produce

Farmer (unregulated) → Pre-Harvest Contractor (unregulated) → Commission Agent/Broker (APMC regulated) → Wholesaler (APMC regulated) → Retailer (unregulated) → Consumer.

APMCs are working in the contravention of Competition act 2002, they are not working in full capacity to make the agricultural market more efficient and robust so, here the research paper tries to summarize the anti-competitive practices of the agricultural marketing mechanism followed in India. These are following anti-competitive behavior followed in the existing regime-

- Monopolistic behavior of APMC-This behavior is not good for competitiveness of market whether it is done by some MNCs or government or Any APMC & it is not going to incentivize the farmer nor the consumers & also farmers are not getting better customers, as well as consumers, are not getting the product from the original suppliers i.e. farmers.
- Cartelization-This is a very general phenomena in APMC MANDI'S that agents collude together to form a cartel & try to do rig bidding or restraint from higher bidding. Agricultural produce is procured on lower prices & sold at higher prices & at the end farmers are not getting the remunerative prices & customers are paying high prices to intermediaries.
- Entry Barriers-To stop the small farmers to entered in to market the license fee kept at very high & unreasonable as well as farmers are not allowed to operate in certain APMC, and also over and above licenses fee rent for the shops are kept at very high which create trouble for small farmers & they keep themselves away from the market which in result create anti-competitive markets. Only elite villagers/urbanites get access to the APMC because of their better financial condition.
- Conflict of interest - APMC works as both regulator as well as Market, which creates a conflict of interest. Consequently, its role as regulator is undermined by vested interest in the lucrative trade. They don't want to lose control despite being inefficient. Generally, chairman & member are nominated/elected out of the agents operating in those markets.

- Taxes and High commission-this overburden the farmers because they have to pay commission, marketing fees, APMC cess. & In addition to this, some of the states levy value-added tax. This extra cost puts pressure on farmers to keep themselves away from APMC, which in return reduces the competitiveness of the market.

Analysis of applicability of Competition law in Agricultural Marketing under the Competition Act, 2002

The key issues that arise in the functioning of the APMCs

- (i) Restriction on the access to the market for the farmers
- (ii) Constraint on purchasers from accessing markets directly from the farmer or at the level of the initial wholesale market,
- (iii) APMC prevent infrastructural development to support the marketing of agricultural produce, and
- (iv) Prevent the development & growth of markets.

Section 3(1) of the Competition Act, 2002 prohibits anti-competitive agreements and stipulates that an enterprise shall not enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provisions of services, which causes or is likely to cause an “appreciable adverse effect” on competition within India. In determining whether an agreement has an “appreciable adverse effect” on competition, due regard would have to be taken in relation to the following factors namely: (i) creation of barriers to new entrants in the market, (ii) driving existing competitors out of the market, (iii) foreclosure of competition by hindering entry into the market; (iv) accrual of benefits to consumers.³

Section 4(1) of the Competition Act, 2002 is the provision dealing with abuse of dominant position and stipulates that no enterprise shall abuse its dominant position. Abuse of dominant position under the Competition Act exists if an enterprise either: (a) directly or indirectly imposes unfair or discriminatory conditions in the purchase or sale of goods or services⁴; or (b) limits or restricts the production of goods or provision of services or market therefore⁵; (c) indulges in practice or practices resulting in a denial of market access in any manner⁶.

The term “dominant position” is defined as a position of strength enjoyed by an enterprise in the relevant market in India which enables it to – (i) operate independently of competitive forces prevailing in the

³ Competition Act 2002 Sec 19(3).

⁴ Competition Act 2002 Sec 4(2)(a)(i).

⁵ Competition Act 2002 Sec 4(2)(b)(i).

⁶ Competition Act 2002 Sec 4(2)(c).

relevant market or (ii) affect its competitors or consumers or the relevant market in its favor⁷.

As pointed out in the Introduction to this paper, the term “enterprise” has been defined to include any department of the Government, which is or has been engaged in any activity relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind. While sovereign functions of the Government are exempted from the purview of the Competition Act, the APMC does not perform any sovereign function on behalf of either the Central Government or State Government and cannot, therefore, be exempted from the application of the Competition Act, 2002. It should also be noted that the Competition Act specifically states that its provisions shall affect anything inconsistent therewith contained in any other law for the time being in force.⁸

The purview of the Competition Act is wide and it is easy to established anti-competitive behavior of APMCs through Abuse of Dominance. Based on the discussion above there two potential threat to distortion of market and CCI must look into these two matters-

- 1- Activities which required licensing-There's no transparency in the selection of licensees, issuing licenses to agents and terms of licenses that cause an adverse impact on competition. The licenses are completely controlled by the APMC which arise the situation of abuse of dominance in some cases. This also creates a situation of exploitative and exclusionary conduct of the dominant market player-i.e. APMCs.
- 2- Lack of Direct Access of Retailers to Farmers, and its Impact on Farmers and End-Consumers: APMCs preventing farmers from direct access to retailers and to end-consumers is the way to distort the market which harms both farmers as well as consumers.

Recommendations:

- Considering the geographical length and breadth of India, India should need much more market than existing ones in the organized sector so they can be developed in tune with the backward and forward linkages.
- CCI must look into the APMC act & functioning of APMCs and direct APMC to comply with the Competition Act, 2002. Also, CCI must direct APMC to give the permit to private players and every producer to sell or purchase the agricultural goods.

Food Corporation of India and Competition Issues

Food Corporation Of India

The Food Corporation of India was set up under the Food Corporations Act 1964, in order to fulfill the following objectives of the Food Policy:

- Safeguarding the interest of the farmers by providing the remunerative price of agricultural produce i.e. minimum Support Price(MSP).

⁷ Competition Act 2002 Sec 4(a).

⁸ Competition Act 2002 Sec 60.

- To secure the Distribution of food grains throughout the country for the public distribution system, particularly for the vulnerable section of society.
- Maintaining a satisfactory level of operational and buffer stocks of food grains to ensure National Food Security

After the commencement of the FCI act 1964, FCI plays a very pivotal role to ensure the food security of India and stabilize the market.

In its 50 years of service to the nation, FCI has played a significant role in India's success in transforming the crisis management oriented food security into a stable security system.

Competition Distortions through Law & policy intervention:

Competition distortions can be done through many ways like formulation of such barriers which constraint the entry of new entrants into the relevant market; affect its competitors or consumers or the relevant market in its favour; Denial of passing benefits to consumers; Hindering the advancements in production or distribution of agricultural produce through government social welfare or provisions of services. Now it is a well-established fact worldwide that government policies & laws distort competition.

Public Procurement and Anti-competitive conduct of APMCs

The Central Government extends price support for procurement of wheat, paddy, and coarse grains through the FCI and State Agencies. All the food grains conforming to the prescribed specifications are procured by the public procurement agencies at the Minimum Support Price (MSP) plus incentive bonus announced if any. Procurement is undertaken both in *Decentralized Procurement Scheme (DCP)* & *Non- Decentralized Procurement Scheme (Non-DCP)* mode.

In the procurement process of specified agricultural produce on MSP, there is conduct based evidence of cartelization & nexus between state agencies, APMCs agents licensed by APMCs in each state as well as the involvement of bidders of produce. Technically, FCI adopted this cartelization because FCI does not interfere in the MSP procurement process even though FCI has the mandate to regulate the procurement process.

The fact that the Government policy directive indicates no regulation of APMC licensed middlemen in the MSP procurement process, while it requires institutional investment and presence of nominee directors on the Board of any other non- government MSP procurer, further reinforces the obviously visible linkages.

Violation of Competition Law due to Anti-competitive conduct of bidders in Procurement System:

1. Market Sharing and Cartel formation:

In the procurement process of agricultural produce, market sharing & cartel formation suggests that bidders form the cartel & agreed on dividing the market between them or agreed on prices or other terms. The bidders form the cartel to minimize the competitive procurement process and counterproductive for the whole process. The end result of the formation of cartels is higher prices & lower quality of Agricultural produce. Cartelization & Market sharing among the suppliers of agricultural goods in India is quite rampant. As found in most of the cases the price

quoted by bidders is the same in which the procurement agency distributes the quantum of procurement to all of them.

2. Bid rigging and Collusive bidding:

In the process of public procurement, horizontal agreements i.e. the agreement between bidders are common. Bid rigging is a fraud on the whole process of procurement with the purpose to fix the price & share market demand. Bid rigging causes harm to public procurers which is achieved under the alternate term of agreements between the bidders, Bid-rigging causes harm to the economy of the country & specifically the producers of agricultural products.

3. Abuse of Dominance:

Dominant or influential bidders in the public procurement process use their incumbent power to prevent any new entrants from entering into the market by indulging in predatory pricing. Predatory pricing is a method of selling a product at a low price & the objective of predatory pricing is to drive the competitor out of the market or create an adverse condition for the new entrant to survive. Competition law identifies predatory pricing as an anti-competitive.

4. Information asymmetry and its impact on Competition:

It may be seen that there is no projected information available in the public domain suggesting goods or services and their quantum to be procured by the public authorities. Sudden decision to procure any good or service strains the existing capacity of supply, which creates a price pull factor often leading to inefficient procurement. It is an accepted fact that there are limitations associated with the collection of information, its analysis and finally in its application. Life and time are finite; the flow of information is unending and varied. Decisions have to be made within the stipulated period giving due regard to biases of the parties. Therefore, information asymmetry continues to be an essential feature to identify in a market. This signifies that the continuation of market asymmetry keeps the challenge alive for advocacy programs of competition policies and also that of competition authorities.⁹

5. Monopsony in Agricultural market:

Monopsony reflects market power on the buying side of the market. When monopsony power is exercised, it causes economic inefficiency and a transfer of wealth to the buyer. As a result, competition concerns such as buyer cartels, predatory overbuying, and overbuying strategies designed to raise rivals' costs and mergers that create or enhance monopsony power arise.¹⁰

Analysis of Competition Issues relating to the FCI:

As a matter of fact, the Competition Commission of India has jurisdiction to take cognizance of anti-competitive behavior & also to investigate any form of nexus or cartels. To ensure a competitive environment in the agricultural marketing sector CCI & GOI have to breakdown the nexus & cartelization of the FCI APMCs & the intermediaries. To safeguard the interest of producers i.e. farmer & end consumers CCI has to disband the cartelization & nexus. CCI also needs to regulate predatory pricing to secure the environment for the new player to enter the market, which makes the market a

⁹ Malhotra, D. (2012). Study on government procurement. *Washington, DC: SPS* accessed on 09 November 2019.

¹⁰ Malhotra, D. (2012). Study on government procurement. *Washington, DC: SPS* accessed on 09 November 2019.

better place for competition.

Recommendations:

Agricultural markets have experienced different forms of government intervention at both the state and central levels, but the Indian government has recognized that economic inefficiency in agricultural markets requires major reforms-

- Firstly, the Public procurement system needs reforms at both level i.e. legal and institutional level in India. As the procurement mechanism distorts the agricultural market, which is a competition concern, hence public procurement needs, dedicated law. The law should technically be detailed rules and regulations; law should include penal action against violation by the procurers or the suppliers and also comply with competition Act, 2002.
- The procurement process should provide access to relevant markets to every stakeholder and the process should be documented.
- Competitive Bidding would be the norm for the public procurement process as well as public opening should be mandatory and allotment results of bidding should be put in public to ensure the transparency of the competition.
- In the public procurement process, all processes must comply with the Competition Act, 2002.

Conclusions:

The conduct followed by most of the existing APMCs is in contravention of Competition, which means it is a direct violation of competition act, 2002 & also constrains the farmers from relevant market access i.e. end consumers. The functioning of the APMCs distorts the relevant market & affects the end consumer & is not favorable to public policy. The CCI has all the mandate to direct all the existing APMCs to abide by the competition act 2002, & if they will not comply the CCI have all the jurisdiction to make them bound to comply with the specified orders. As findings of the research paper clearly show that, the linkages in the supply chain between APMCs, the APMC agents in the market committee FCI procurement of certain specified agricultural produce on MSP for food security of the country is anti-competitive in nature due to lack of rule & regulations. The European Union has a Common agricultural policy which regulates the agricultural market & this law also took precedence over European competition law but that doesn't give luxury to farmers to form cartelization & violate the competition law through collusion bidding or rig bidding or even through cartels. They get some exemption from competition law but they have to follow the norms of competition law, as the court of the European Union stated that the applicability of competition law is limited but not excluded entirely. Similarly, India should also have a public policy regarding agricultural marketing, which regulates the market, & it also limits the intervention of Government or government bodies & should also comply with competition law.

References

1. Ministry of Agriculture & Farmers' Welfare, Government of India. (2019, November 09). Ministry of Agriculture & Farmers' Welfare. <http://agriculture.gov.in>
2. Agricultural Produce Marketing Committee Act 2016 Sec 2(26).
3. Competition Act 2002 Sec 19(3).
4. Competition Act 2002 Sec 4(2)(a)(i).
5. Competition Act 2002 Sec 4(2)(b)(i).

Applicability of Competition Law in Agricultural markets

6. Competition Act 2002 Sec 4(2)(c).
7. Competition Act 2002 Sec 4(a).
8. Competition Act 2002 Sec 60.
9. Malhotra, D. (2012). Study on government procurement. *Washington, DC: SPS* accessed on 09 November 2019.