

Chapter-III Identification and Listing of Anti - Competitive Provisions and Practice

3.1 In this chapter, an attempt has been made to identify the provisions under various laws related to agriculture, that affect limit, restricts or distort the elements of competition, based on identified impediments. For the sake proper under standing the issues, the impeding legal provisions have been grouped under different categories i.e. Agricultural Marketing laws, Agricultural Produce related laws, plant protection etc.

3.2 Agricultural Marketing

3.2.1 The Essential Commodities Act, 1995

Objective of the Act:

To control and regulate production, Manufacturing and distribution of and trade and commerce in certain essential commodities in India in the interest of general public.

Section No	Nature and Scope of the Section	Nature of Impediments*
Section-3 (1)	Powers to control production, supply, distribution, etc. "of essential commodities: Confers power upon government to control regulate or prohibit the production, supply and distribution of essential commodities	
03 (2) (a)	The Government is empowered to make orders for regulating by licences, permits or otherwise the productions or manufacture of any essential commodity	A-2 Authorises the government to grant a license, permit or authorisation process as a requirement of operation. Creates natural barriers affecting prospective entrants or significantly raises cost of entry or exit by a supplier.
3 (2) (c)	The Government has the power to controlling the price at which any essential commodity may be bought or sold.	
3 (2) (d)	The Government has the power to regulating by licenses, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of any essential	d) Regulatory and policy barriers

* Please refer to Annexure 3.1 for the details of nature of impediments (Annexure III of Terms of Reference of this study. The legal provisions identified in this chapter, almost in all sections, more than one impediments are associated. We have, however, restricted the reference of major impediments.

<p>3 (2) (e)</p> <p>Section 3 (3) (a)</p>	<p>commodities.</p> <p>The Government has the power to prohibiting the withholding from sale of any essential commodity ordinarily kept for sale</p> <p>Where any person sells any essential commodity in compliance with the order passed by government made with reference to clause (f) of sub-section (2), there shall be paid to him the price, therefore, as hereinafter provided:</p> <p>(a) Where the price can, consistently with the controlled price, if any fixed under this section, be agreed upon, the agreed price;</p> <p>(b) where no such agreement can be reached, the price calculated with reference to the control price, if any;</p> <p>(c) Where neither clause (a) nor clause (6) applies, the price calculated at the market rate prevailing in the locality at the date of sale.</p>	<p>(E) Limits the choices and information available to customers</p> <p>(A) Limits the number or range of suppliers</p> <p>(B) Limits the ability of suppliers to compete</p>
<p>Section 6 (E)</p>	<p>Bar of jurisdiction in certain cases:</p> <p>Whenever any essential commodity is seized in pursuance of an order made under section 3 in relation thereto, or any package, covering or receptacle in which such essential commodity is found, the controller, judicial authority appointed under section 6C shall have, and, any other court, tribunal or authority shall not have jurisdiction to make orders with regards to the possession, delivery, disposal, release or distribution of such essential commodity, package, covering, receptacle, animal, vehicle, vessel, or other conveyance.</p>	<p>(D) Regulatory and policy barriers</p>

3.2.2 The Food Corporations Act, 1964

Objectives of the Act:

- (i) To procure a portion of the marketed surplus of food grains and other agricultural commodities at incentive prices from farmers on behalf of central or state government.

- (ii) To make timely releases of the stocks through PDS so as to ensure that the price payable by the final consumer of food grains and other food stuffs do not go up unnecessarily.
- (iii) To minimize seasonal price fluctuations and inter regional price variations in agricultural commodities by establishing a purchasing and distribution network.
- (iv) To build buffer stock to food grains of prescribed size to meet situations that may arise as a result of shortfall in internal procurement and imports.

Section No.	Nature and Scope of the Section	Nature of Impediments
Section 13 2 (a) 2 (b)	<p>Function of Corporation: The primary duty of Corporation is to purchase, storage, movement, transport, distribution and sale food grains and other food stuffs.</p> <p>The FCI promote the production of such food grain and other food stuffs</p> <p>FCI to set up or also assist in the setting up rice mills, flour mills and other undertaking for the processing of food grains and other foodstuffs</p>	<p>(A) Limits the number or range of suppliers</p> <p>(D) Regulatory and policy barriers</p>
Section 28	<p>Lending by food Corporation on security of foodgrains:</p> <p>FCI to lend or advance money to any Person who engaged in security of food grain production should also take care of other securities connected with such production.</p>	<p>(B) Limits the ability of suppliers to compete</p>
Section 29	<p>Power to enter into agreement for purchase of foodgrains after harvest: FCI is empowered to enter into any agreement with any grower of food crops for the purchase of foodgrains after the harvest and such agreement may provide that any sum payable by the Corporation to the grower under such agreement shall be payable to any scheduled bank or other financing agency nominated by the grower in this behalf to such extent as may be specified in the agreement.</p>	<p>(A) Limits the number or range of suppliers</p> <p>(B) Limits the ability of suppliers to compete</p> <p>(E) Limits the choices and information available to customers</p>
Section 30	<p>Guarantee by food corporation: FCI is empowered to guarantee any loan And</p>	<p>(C) Reduces the incentive of suppliers to compete</p>

	also other loan raised by a grower of the food crops.	(E) Limits the choices and information available to customers
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3.3 Agriculture produce

3.3.1 Agriculture Produce (Grading and marking) Act, 1937

Objective of the Act:

To provide grading and marking of agricultural and other produce

Section No.	Nature and Scope of the Section	Nature of Impediments
Section 3B Section 3B (2)	Power of authorised officer to seize agricultural produce : Any officer with prior authorization made in Sub-section (1) of section 3A may seize and detain any agricultural produce, if he finds an offence under this act and rule made. Section 102 of CRPc, 1973 shall apply to every seizure made under this section.	(B) Limits the ability of suppliers to compete (C) Reduces the incentive of suppliers to compete
Section 5B (1) 5B (3) 5B (4)	Power to prescribe compulsory grade designations in respect of certain articles The central government is empowered in public interest or protection of the consumer to restrict the sale or not to sold any schedule article or class of articles with the grade designation mark No person shall sell or offer to sell or distribute or offer where notification under sub-section (1) issued in respect of any area or areas. Contravention of the provisions of this section shall be punishable with imprisonment for a term not exceeding six months and fine not exceeding five thousand.	(B) Limits the ability of suppliers to compete (D) Regulatory and policy barriers

3.3.3 The warehousing (Development and Regulation) Act, 2007

Objective of the Act:

To make provisions for the development and regulation of warehouses, negotiability of warehouse receipts establishment of warehousing development and regulatory authority and connected matters.

Section No.	Nature and Scope of the Section	Nature of Impediments
Section 3 (1)	Requirement of Registration for warehouses issuing negotiable warehouse receipt: (1) No person shall commence or carry on the warehousing business unless he has obtained a registration certificate in respect of the concerned warehouse or warehouses granted by the Authority under this Act:	(A) Limits the number or range of suppliers (B) Limits the ability of suppliers to compete (D) Regulatory and policy barriers
Section 5 (1)	Registration of accreditation agencies: The authority has the power to determine the number of accreditation agencies time to time and issue certificate of accreditation to warehouse issuing negotiable warehouse receipt.	(A) Limits the number or range of suppliers (B) Limits the ability of suppliers to compete
Section 35 (b)	Powers and Functions of Authority: to regulate the registration and functioning of accreditation agency, renew, modify, withdraw, suspend or cancel such registration, and specify the code of conduct for officials of accreditation agencies for accreditation of the warehouses	(A) Limits the number or range of suppliers (B) Limits the ability of suppliers to compete (D) Regulatory and policy barriers

3.4 Mechanization and Technology

3.4.1 The Dangerous Machines (regulation) Act, 1983

Objective of the Act:

To provide for the regulation of trade and commerce in and production, supply, distribution and use of the product of any industry producing dangerous machines with a view, to securing the welfare of labour operating any such machine and for payment of compensation for the death or bodily injury suffered by any labourer while operating any such machine, and for other connected matters.

Section No	Nature and Scope of the Section	Nature of Impediments
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Section-6	Power of controller to issue order: The controller has the power to issue order to carry out the provisions of the act	(A) Limits the number or range of suppliers
Section-9	Issue, Renewal and cancellation of Licences to Manufactures and dealers : No person shall manufacture, or carry out business without a valid licence issued by the Controller	(A) Limits the number or range of suppliers

3.5 Plant Protection

3.5.1 The Protection of Plant Varieties and Farmers' Rights Act, 2001

Objectives of the Act:

- (i) To provide an effective system for protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants.
- (ii) To provide for the rights of farmers and plant breeders and right to stimulate investment for research and development and to facilitate growth of the seed industry which will ensure availability of high quality seeds and planting materials of improved varieties to farmers, moreover to accelerate agricultural development.

Section No	Nature and Scope of the Section	Nature of Impediments
Section 14	Every person specified in section 16 make application for registration of any variety of clause (a), (b) and (C) of this section.	(A) Limits the number or range of suppliers (D) Regulatory and policy barriers
Section 18(1).	Form of application: Every application for registration under section 14 shall (a) be with respect to a variety; (b) state the denomination assigned to such variety by the applicant; (c) be accompanied by an affidavit sworn by the applicant that such variety does not contain any gene or gene sequence involving terminator technology; (d) be in such form as may be specified by regulations; (e) contain a complete passport data of the parental lines from which the variety has been derived along with the geographical	(A) Limits the number or range of suppliers (B) Limits the ability of suppliers to compete

	<p>location in India from where the genetic material has been taken and all such information relating to the contribution, if any, of any farmer, village community, institution or organization in breeding, evolving or developing the variety;</p> <p>(f) be accompanied by a statement containing a brief description of the variety bringing out its characteristics of novelty, distinctiveness, uniformity and stability as required for registration; (g) be accompanied by such fees as may be prescribed;</p> <p>(h) contain a declaration that the genetic material or parental material acquired for breeding, evolving or developing the variety has been lawfully acquired; and</p> <p>(i) be accompanied by such other particulars as may be prescribed</p>	
<p>Section 20 (1)</p>	<p>Acceptance of application or amendment thereof: Registrar after receiving of application under section 14, he will start enquiry and if he satisfy fit to the particulars contained in such application, accept the application absolutely or subject to such conditions or limitations as he deems fit.</p>	<p>(A) Limits the number or range of suppliers</p>
<p>Section 29</p>	<p>Exclusion of certain varieties : No registration of a variety shall be made where commercial exploitation of such variety affects human, animal, plant life and health or environmental concerns.</p> <p>The central government is vested with power to specify the genera or species for the purposes of registration of varieties other than extant varieties and farmers' varieties by notification.</p> <p>There are certain Special provisions relating to Application and registration under this act where any technology involved which is injurious to the life or health of human beings, animals or plants cannot be registered</p>	<p>(A) Limits the number or range of suppliers</p>

	No person can sell, dispose of any stock in his possession which was ordered under rule 30 by the insecticide inspector.	number or range of suppliers
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3.6 Cooperation

3.6.1 National Cooperative development Corporation Act, 1962

Objective of the Act:

to provide for the incorporation and regulation of a corporation for the purpose of planning and promoting programmes for the production, processing, marketing, storage, foodstuffs and certain other commodities on cooperative principles and other connected matters.

Section No.	Nature and Scope of the Section	Nature of Impediments
Section 9	Function of corporation : The function of the corporation is to plan, promote and start finance programmes through cooperative societies	(B) Limits the ability of suppliers to compete (C) Reduces the incentive of suppliers to compete (D) Regulatory and policy barriers

3.6.2 Cooperative Laws

1. The State Governments have got the power to enact law on the subject 'cooperation' by virtue of entry 32 of State List. II of the seventh schedule of the Indian Constitution. Equally, the Union Government, by virtue of entry 43 and 44 of List. I have also got the power to enact the law on the subject Cooperation in respect of cooperative societies having area of operation beyond one state.

2. By virtue of exercise of the said Power, the Union Government enacted the Multi-State Cooperative Societies Act, 2002 thereby repealing the earlier Act passed in the year 1984. This enactment is considered as a liberal legislation, hence, does not call for elaborate study in relation to the objective of this sector study.

3. The State Governments started enacting cooperative laws since 1925 for their states by conferring enormous discretionary powers upon the government and Registrar of Cooperative Societies (popularly called RCS), which came under attack from several quarters including judiciary.

4. Bated on the recommendation of a Committee on Model Cooperative Act, 1991, nearly a dozen State Governments have enacted a new liberal legislation in addition to the existing rigid law (s). Many of the Cooperative Societies registered under the new liberal Acts, at least in a couple of states have worked against, the interest of the Members, hence, the state governments are seriously thinking of not permitting registration under the new liberal Act.

The Cooperatives, however, are engaged exclusively in certain activities such as Public Distribution System. Monopoly channel is created almost in the entire process of PDS ie. at each stage (procurement, storage, distribution, sale etc.). There is a need, therefore, to permit institutions other than cooperatives in the process of PDS.

Leaving it apart, the Cooperative Societies Acts passed by State Governments do not call for elaborate study for the purpose of this sector study.

3.7 Seeds

3.7.1 The Seeds Act, 1966

Objective of the Act:

To legislative framework for regulating the quality of certain seeds for sale, and for other connected matters.

Section No.	Nature and Scope of the Section	Nature of Impediments
Section-7	<p>Regulation of sale of seeds of notified kinds or varieties: In this section no person shall sell, offering to sell and bartering or supply any seed of any notified kind or variety, unless that seed is matched under clause (a) (b) of section 6 and other requirements as may be prescribed.</p>	<p>(A) Limits the number or range of suppliers (C) Reduces the incentive of suppliers to compete (D) Regulatory and policy barriers</p>

Section14	Powers of seed Inspector: The seed inspector have the power of taking samples and send it to sees analyst for analysis any notified kind or variety from any person selling such seed and person who delivering or preparing o deliver such seeds.	(A) Limits the number or range of suppliers
Section 17	Restriction on export and import of seeds of notified kinds or varieties: This section states no person shall export or import or cause to be exported and imported any seed of notified kind or variety unless it conforms under clause (a) (b) of section 6	(A) Limits the number or range of suppliers (C) Reduces the incentive of suppliers to compete (D) Regulatory and policy barriers
Order, 1989 Section 3 General conditions for import (Section 3) (1) (3) 5(I)	General conditions for Import : No consignment shall be imported into India without a valid permit issued under clause (3) The competent authority has the power to issue permits to applicant in Form ‘C’ and Form ‘D’ to import seeds. All consignments imported into India entry through only Central government notified entry point time to time for different consignments from different countries. And no consignment shall be allowed unless it certified an official Phytosanitary Certificate issued by the authorized officer of the country of origin	(D) Regulatory and policy barriers (A) Limits the number or range of suppliers (D) Regulatory and policy barriers (E) Limits the choices and information available to customers (D) Regulatory and policy barriers (E) Limits the choices and information available to customers

3.8 Agriculture Produce market committee Acts, enacted by State Governments/UTS

3.8.1 As on 31st July, 2011 all the state governments and UTs except kerala, Manipur, Andaman & Nicobar Island, Dadra & Nagpur haveli, Daman Diu and Lakhyadeep have enacted Agricultural Produce Market Committee Acts. These Acts contain several provisions which limit, restrict or distort the elements of competition. Due to the large number of legislations enacted by various state governments as mentioned above, it has become difficult to study and

analyze all the said legislation for the purpose of identifying the nature of impediments affecting the elements of competition.

3.8.2 However, the study on “ Competition and Regulation in Agriculture Markets in India” in the year 2009 carried out by CUTS international have analyzed all the said State Acts and identified the factors impeding effective competition. The same are reproduced below for the sake of brevity.

Competition Assessment of Agricultural Market Regulation *

SL No.	Factors Impeding Effective Competition	Present Status
1	Large number of buyers and sellers	Participation in the market, where agricultural commodities are sold and bought (exchanged), is regulated through the APMC Act. The Act results in regulated agricultural markets with near monopsonistic elements-large number of sellers but a few buyers. This impedes competition.
2	Freedom of entry and exit	Freedom of entry and exit apply to sellers. Exchanges take place at two levels-first when the farmer enters and sells his produce in the market called a mandi, and the second when the consumers buy the produce. For the producers of agricultural commodities-the farmers-there is freedom of entry and exit. So is the case for the intermediaries who are the sellers in the next stage. However, the tow sets of sellers and the mutually exclusive.
3	Barriers to participation	The farmer can sell his produce in the market place only to licensed traders and cannot sell directly to urban consumers. Therefore, there are barriers to participation in the market place, both for the suppliers as well as the buyers. The buyers cannot participate in exchange with primary producers while the primary producers cannot deal with final consumers. This barrier to participation comes in because of the law-the APMC Act, which impedes competition.

SL No.	Factors Impeding Effective Competition	Present Status
4	Price discovery	<p>The government does not regulate prices directly, but its policies hamper price discovery by the primary producers and therefore dampen growth of the sector.</p> <p>By setting minimum prices and also procuring certain items like wheat and rice, the government kills incentives for improving quality as well as for private trade to thrive.</p> <p>Moreover, with no director marketing and lack of infrastructure, the sellers have to sell the perishable items once they get it into the market place. Thus, price discovery is not possible.</p>
5	Barriers to raising finances	<p>Farmers are allowed to raise finances but lack of organised financial markets in rural areas coupled with high transaction costs and risk of default stemming from likely crop failure and other uncertainty make the farmers unsuitable for debt.</p> <p>They are also not able to produce collaterals. Thus, their debt ridden state and lack of credit history become barriers to raising finances.</p>
6	Grants of exclusive rights to operate	<p>Since the APMC Act mandate licenses for intermediary players, only those with licenses trade, and as a result of their small number capture a large part of the purchasing power of consumers.</p>
7	Lack of competitive neutrality	<p>To the extent that the MSP has ended up becoming higher than the market price for several years now (applicable to 25 major agricultural commodities, covering most important cereals, pulses, oilseeds, cotton, Jute, sugarcane and tobacco), it has become a highly inefficient subsidy. Large scale public sector procurement and storage has led to a shriveling of the private sector in the trade, storage and transportation of commodities. Thus, in effect there is a lack of competitive neutrality.</p>
8	Limitations in provision	<p>There are supply side constraints in general. These are as follow:</p> <ul style="list-style-type: none"> • Small agricultural land holdings; • Low investments; • Inadequate irrigation facilities; • Lack of market infrastructure; • Low productivity;

		<ul style="list-style-type: none"> • Little value addition; and • Unorganised marketing activities.
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9	Reduction in potential for competition	The mandatory provisions of the APMC Act need to be scrapped as these hamper competition by limiting participation from traders. Direct marketing should be allowed and contract farming encourage.
10	Do farmers have enough information?	<p>Information is the key to better produce and realization of better prices. Extension services are practically absent and so key information on seeds, weather and markets is absent.</p> <p>To bring in transparency the supply chain needs to be shortened, i.e. the number of intermediaries needs to be lowered. Marginal farms should pool their information requirements so that information on weather, seeds and markets is not costly.</p>

* Reproduced from the study “Competition and Regulation in Agricultural Markets in India 2009” carried out by CUTS International, India.