Anti Competitive Agreements

Dr. A. Sridhar

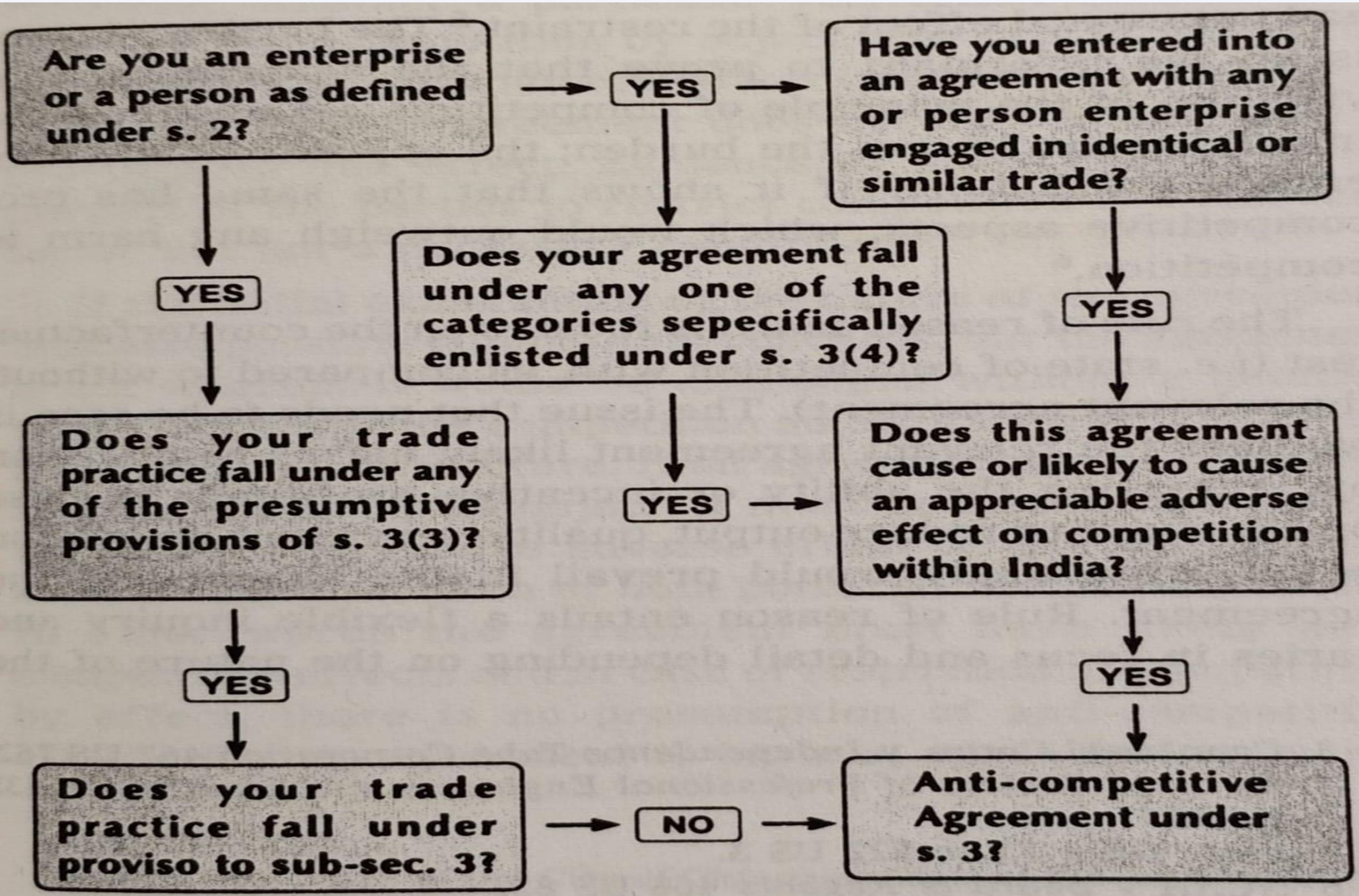
FCS, LL.M, Ph.D in Law

Assistant Professor

NALSAR University of Law

Rational For prohibition of Anti-Competitive Agreements

- No enterprise or association of enterprises or person or association of persons, shall enter into any agreement which relates to production, supply or distribution of goods or provision of services which causes or is likely to cause an appreciable effect on competition in their country and that such an agreement would be declared void. (Section 3 of the Act)


Are you an enterprise or a person as defined under s. 2?
YES
Have you entered into an agreement with any or person enterprise engaged in identical or similar trade?
YES
Does your agreement fall under any one of the categories sepecifically enlisted under s. 3(4)?
YES
Does your trade practice fall under any of the presumptive provisions of s. 3(3)?
YES
YES
Does this agreement cause or likely to cause an appreciable adverse effect on competition within India?
YES
YES
Does your trade practice fall under proviso to sub-sec. 3?
NO
Anti-competitive Agreement under s. 3?

- Tested on “Rule of Reasons” analysis
- Mr. Ramakant Kini v Dr. L.H. Hiranandani Hospital, Powai, Mumbai
- Article 81(1) of EU Law gives the scenarios which do not amount to appreciably Restrict Competition .
- Factors considered under Indian Law Section 19(3)
  - Creation of new barriers
  - Driving existing competitors out of the market
  - Foreclosure of competition
  - Accrual of benefits to consumers
  - Improvement in production and distribution of goods or provision of services and promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services

- Contours of anti-competitive agreement
- Cartels
- Types of Cartels
    - Horizontal agreements
    - Price Fixing
    - Market Sharing
    - Output controls/limiting Production
    - Limiting Production-Distribution under Section 3(3)
    - Bid Rigging

Impact of Trade association in a cartel case

- Efficacy of sharing of information-Rule of Reason or per se illegal rule
- Safe harbours
  - Availability of data to the public
  - Efficiency
  - Aggregation of data
  - Historical
  - Other methods of sharing of information (The hub and spoke model)

- Indian Jurisprudence on Cartels
  - Indian Standard of burden of proof and nature of evidence
    - Standard of rule of preponderance and probability
    - Standard of proof beyond reasonable doubt
  - Association of parties (Section 3(3))
  - Determination of relevant market (Section 19(3))

- Price Parallelism and its legal implications
  - Plus factors-elements and significance
  - Limitations posed by plus factors
  - Indian Jurisprudence on Price Parallelism
- Structural Factors aiding cartelization
  - High Concentrated Market
  - Demand and Supply conditions
  - Homogeneous product
  - Entry barriers
  - Active trade association

- Defenses and exemptions to cartels
  - Joint venture defence
  - Increase of efficiencies in the market
  - Allowing the consumer a fair share of the resultant benefits
  - Agreements relating to Intellectual Property rights
  - Exemption for export cartels
  - Leniency Regime
- Vertical Agreements [Section 3(4)]
- Vertical Agreements and role of market power
- Economic Analysis-pros versus cons of vertical agreements
  - Tying
  - Exclusivity
  - Refusal to Deal
  - Resale price Maintenance [Scope of 3(4)(e)]

Thank you