

**FACILITATING LEGISLATIVE AND ADMINISTRATIVE REFORMS IN
AGRICULTURE MARKETING BY LEVERAGING THE COMPETITION
COMMISSION OF INDIA¹**

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I. Introduction

The headlines of The Hindustan Times, one of the leading national newspapers in India, on January 18, 2011 stated “Free Up Veggie Trade to Fix Crisis: Montek says farmers should get to sell to whoever they want.” Mr. Montek Singh Ahluwalia is the Deputy Chairperson of the Planning Commission of India and he was elaborating on the recent spike in food prices and identified the state level Agricultural Produce Marketing laws as one of the main bottlenecks to the distribution of agricultural products which was leading to increased prices.

This statement is a surprisingly candid admission that the elaborate system of government intervention and price and regulatory control, which have been the key features characterizing agricultural marketing in India since the 1950s, has failed to work and instead is having the completely opposite effect (of market capture and uncontrolled price

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rise without real benefits to the actual farmers), to prevent which, the system had been sought to be established in the first place.

India is a federal state, and legislative powers and jurisdiction between the Central and State Governments are demarcated under the Constitution of India. ‘Agriculture’ is a ‘state’ subject (i.e., the jurisdiction to enact laws and regulations in relation to agriculture has been vested with the state government). Laws and regulations at the level of each state play a key role in the regulation of this sector.

Marketing of agricultural products in India is governed by the state level statutory bodies – the Agricultural Produce Marketing Committees (“APMC”) established under the Agricultural Produce Marketing Acts (hereinafter referred to as APMA) which has been enacted by a majority of states in India.

Agricultural procurement systems in India is governed under the framework of the Food Corporation of India (FCI) which was established in 1965 under the FCI Act as the public-sector agency responsible for implementing government price policy through procurement and public distribution operations. The FCI is the sole agent of the Central Government in food-grain procurement. It uses the services of state government agencies and cooperatives in its operations.

This paper seeks to examine competition issues in agricultural markets in India at two levels: (i) at the stage of sale and purchase of agricultural produce (broadly called as “agricultural marketing”), which is governed by the state level APMCs ; and (ii) at the stage of procurement of food-grains by the FCI.

This paper will then discuss the potential pathways that the fairly new Competition Commission of India (“CCI”) may have in examining a case of legislative and administrative reforms.

At the outset, it would be useful to have a brief background on the CCI and its role in regulating competition in India. The Competition Commission of India Act in India was enacted in 2002, but after several legal and legislative hurdles, it was finally notified and has been effective since May 2009. It seeks to put in place a framework that largely draws on competition law principles from advanced jurisdictions such as the U.S., EU, Canada and Australia. The CCI which has been established under the Act has as its objectives preventing practices having adverse effect on competition, promoting and sustaining competition in markets, protecting the interests of consumers and ensuring freedom of trade carried on by other participants in markets in India.

The Competition Act seeks to achieve its objectives through provisions dealing with anti-competitive agreements, abuse of dominant position and regulation of combinations. The last set of provisions of the Competition Act relating to combinations is yet to be made effective. The aspects that are most relevant for our present assessment are those relating to assessing the anti-competitive impact of any commercial dealing or agreement, and situations involving abuse of dominance. 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 are those relating to the 'sovereign functions of the Government'- such as defence, security, currency.

The Competition Commission of India potentially has far-reaching powers. Apart from its role in an adversarial framework of making determinations of anti-competitive behaviour and enforcing its rulings, a very important and unique role of the Commission in India, not present in other jurisdictions, is that of *competition advocacy*. This is essentially the function of the Commission to advocate principles of competition in different contexts. The ability and political will of the Competition Commission to initiate legislative reforms through competition assessments of different situations, however, is yet to be seen.

II. Agricultural Marketing and the APMCs

As highlighted above, the sale, storage and marketing of agricultural produce in each state is regulated and governed by the Agricultural Produce Marketing Act ('APMA') which establish the Agricultural Produce Marketing Committee ('APMC') for each state.

2.1 Framework of the APMA

The APMA vests the state government with the authority to notify areas within which the purchase and sale of agricultural produce, livestock or products of livestock can occur. Most states have notified either the entire state or all the main agriculture areas within a state.

The APMA provides for the constitution of the Agriculture Produce Marketing Committee. An APMC usually comprises of about 12-14 members. In some states all of

the members of the APMC are nominated by the State Government² while in some of the states a majority of the members are elected from the notified market areas³, with the remaining members being nominated by the state government.

2.2 Powers and Functions of the APMC

APMCs are vested with wide powers and functions to regulate the sale, storage and marketing of agricultural produce within the state. The general scope of powers and functions vested with APMCs include the following:

- a) to construct, maintain and manage the market yards and sub-market yards and promote development of bazaars/markets in the notified areas;
- b) provide the necessary facilities for the marketing of agricultural produce in the market yard;
- c) grant or refuse licences to the market functionaries and renew, suspend or cancel such licences;
- d) supervise the conduct of the market functionaries;
- e) regulate the opening, closing and suspending of trading in the market yards;
- f) enforce the conditions of the licences;
- g) regulate the making, carrying, out and enforcement or cancellation of agreement of sales, the weighment, delivery, payment and all other matters relating to the marketing of notified agricultural produce;
- h) provide for the settlement of all disputes between the seller and the buyer arising out of any kind of transaction connected with the marketing of notified agricultural produce and all matters ancillary thereto.
- i) power to levy market fees at such rates as may be approved by the State Government - (i) on the sale of notified agricultural produce whether brought from within the State or from outside the State into the market area; and (ii) on the notified agricultural produce whether brought from within the State or from outside the State into the market areas and used for processing;
- j) power to order production of accounts and powers of entry, inspection and seizure;

² For example in Andhra Pradesh, Punjab and Delhi all members are nominated by the State Government

³ Himachal Pradesh, Madhya Pradesh provides for 10 members to be elected.

- k) power to remove encroachment in market yard and the expenses of such removal shall be paid by the person who has caused the said encroachment;
- l) power to stop vehicles: it has power to seize any notified agricultural produce brought into or taken out or proposed to be taken out of the market area in any vehicle, vessel or other conveyance, if such person has reason to believe that any fee or other amount due under this Act or the value payable to the seller in respect of such produce has not been paid;
- m) power to borrow: A market committee with the previous sanction of the state government, borrow money from the Board or Bank or any other public financial institution, required for carrying out the purposes of the Act.

2.3 Anti-Competitive Practices of APMCs

To understand the impact of competition in the agricultural marketing sector, it would first be useful to have an overview of which aspects in the agricultural chain are currently 'regulated' by state control under the APMC Act and which are not. The chain in the marketing of agricultural produce that exists is as follows:

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

As seen in the outline of the APMC's powers and functions above, they have been statutorily vested with the power to regulate both the *creation* of markets as well as the entities that can participate in such markets for agricultural produce. This range of exercise of powers by APMCs has resulted in a hardening of the existing chain of agricultural marketing and closed any venues for the farmer to other means of selling his/her produce. APMCs have therefore become bottlenecks as they regulate *who* the farmer can sell to and *who* can participate in the market and even *where* markets can be established. In the process, a natural fall-out has also been the limited access of consumers and retailers. Although the APMCs are statutory authorities with sufficient powers to regulate, they have effectively been captured by the very interests that they set out to regulate and have become the major cause of the price discrepancy in the procurement, storage, release, marketing and sale of agricultural produce. Instead of acting as effective regulators in the procurement and marketing of agricultural produce, the APMC system has been captured by the people it was created to regulate.

In fact it is a well known fact that the chain of middlemen in the agricultural marketing is so large that the share of farmers has reduced substantially. For instance, it has been estimated that farmers obtain only about 53% of any increase in prices of agricultural commodities, with 31% being the share of middlemen and the remaining 16% being market cost.⁴ In case of vegetables and fruits the share of the farmer was even less: only 39% for vegetables and 34% for fruits. The share of the middlemen in the case of vegetables was 29.5% and in the case of fruits was 46.5%.⁵

Some of the intermediaries or the 'middle-men' in the agricultural marketing system are village traders, *kutchra arhatiyas*, *arhatiyas*, brokers, wholesalers, money lenders etc. The presence of middlemen is essentially supported by the lack of marketing facilities and supporting infrastructure that prevent the farmer from accessing viable purchasers. There is a lack of proper warehousing, a lack of grading and standardization, lack of information, malpractices and inadequate transport facilities. The APMCs were established with a view to develop such facilities and provide the required facilities to farmers for marketing their produce.

The hardening of walls around agricultural production and marketing created under the APMC framework is also becoming a significant bottleneck in the development of structured retail chains and major food product chains that are fast restructuring other retail markets in India. Structured retail chains have the ability to procure, store, transport large quantities of agricultural produce without the requirement for the agricultural markets created by APMCs and threaten the existence of the established middle men in the agricultural market. A significant pre-condition for such chains to flourish is to have direct access to farmers. This is not possible within the existing framework.

To operate within the existing framework, structured retail chains can be established only with required licenses from the APMCs in order to have the permission to procure, store, transport and market the agricultural products. However, as will be explained below, other than a handful of states where the APMC laws have been amended to allow private markets and long term authorizations to be granted, the APMCs of various states are effectively preventing any reasonable access to the private retail chains and are also effectively preventing the farmer from obtaining access to creditworthy bulk purchasers and more end-consumers.

⁴ http://www.world-agriculture.com/agricultural_marketing/agricultural-marketing-inadequacies-marketing-system.php

⁵ http://www.world-agriculture.com/agricultural_marketing/agricultural-marketing-inadequacies-marketing-system.php

The rationale for establishing APMCs was to ensure control over terms and conditions of agricultural trade within the state so as to ensure regulated facilities for enabling farmers to sell their produce. The objective of the APMC laws is to provide for regulation of agricultural produce markets to provide access to farmers to large orderly regulated markets. In reality, however, APMCs have been wielding their powers in an unreasonable manner which has the impact of excluding new entrants, making terms and conditions extremely difficult for existing players⁶ and consequently, restricting growth of robust agricultural markets based on competition principles. Their behavior in keeping out the growth of retail chains is nothing short of monopolistic and oligopolistic conduct aimed at market capture.

To initiate legislative reform in this sector, the Central Government drafted the Model Agriculture Produce Marketing Act in 2004 (Model Act), pursuant to which a few states have amended their APMA. The Model Act provides the State Marketing Boards or other identified nodal bodies the power to issue licenses to private entities to set up markets. To overcome the limitations of the licensing system, the Central Government further created a template for public private partnerships under which market operators could set up and operate markets over a much longer time frame on BOT/BOO basis and formalized the license/concession agreement as “Guidelines for Operationalising the Terminal Markets.”

While the Model Act has a number of progressive pointers, competition concerns remain on several counts. The competition issue that arises in the context of APMCs is that they are not exercising their statutory power to develop robust and efficient markets. What we seek to do in this section is to summarize the various anti-competitive practices in the agricultural marketing systems in India.

(i) APMCs are engaged in establishing and managing agricultural markets, participate in the market as well as act as the licensor/regulator of the participants in the market.

(ii) APMCs do not issue new licenses to private players easily and thereby prevent competition to existing licensees. The APMC statutes mandate that no person can buy, sell, store or deal in any manner with agricultural produce within notified areas, other than through markets that are licensed or created by the APMC. Typically, most major areas in a state are ‘notified areas’, which effectively means that any marketing throughout the state would need to have an APMC license.

⁶ promote inefficient practices leading to increased losses in the system and offer no incentives for players / operators to invest in development of infrastructure.

(iii) Issues relating to imperfect competition in agricultural markets or *mandis* also arise because of the unequal bargaining power between market participants on account of limited licenses issued to a handful of wholesalers and traders who dominate the business.

(iv) There is no clarity as to how APMC issues the licenses. Although APMCs have regulations governing the issuance of licenses, the system of granting is opaque and applications of certain applicants may be kept pending for long period of time, effectively ruling out any cause of action for appeal or review. Furthermore, licenses for establishing markets are location specific, thus if a person intends to create additional warehouses or create additional markets, it would require another license.

It should be noted that although APMCs are statutory bodies created under the APMC Acts, a large number of the limitations including the terms and conditions of the licenses and providing licenses are decisions taken by the APMC under regulations formulated by the APMC and not stipulated in the statutes themselves.

There have also been instances of arbitrary behavior by APMCs, resulting in uncertainties. For example, one organized retail company was given a single license for procurement for the states of Uttar Pradesh and Madhya Pradesh through a Government Order. They were then subject to an arbitrary shut-down through another Government Order.

(v) A significant limitation is variations in the duration of a license. In some states such as UP and Tamil Nadu, the licenses not for both wholesalers and for authorizing the establishment of markets are issued only for one year. In states such as Madhya Pradesh, licenses for establishing markets are given for a period of five years. The short period for which licenses are granted adds an unreasonable amount of power and control by APMCs over the licensees. Other adverse effects that result from the licensing process and short duration of licenses are: (a) prevention of any long term planning or incentives for investment by licensees in either infrastructure or market maintenance, (b) prevention of any planning towards loans from banks and (c) regulatory capture as only persons who control and regulate the functioning of the APMCs would be able to retain their licenses.

(vi) Imperfect information, lack of transparency in price discovery and non-standardization of goods, are some of the other factors in agricultural markets or *mandis* that has adverse impacts on competition.

APMA has a major impact on the market structure and the supply chain particularly in food grains and horticulture produce, and the current nature of its functioning is leading to several inefficiencies.

(vii) Another aspect that enhances the market failures is also the fact that traders are not prohibited from undertaking multiple roles such as money lending, supply of inputs, storage etc. and from deducting the charges for the same against the value of the produce sold through them. Such practices could potentially be characterized as anti-competitive tie-in arrangements. As in the case of other jurisdictions, India's Competition Act prohibits tie-in or bundling agreements based on their adverse effects on competition.

(viii) APMCs are clearly distorting the market to the detriment of both farmers and the end consumer of the agricultural products by preventing direct access of framers to retailers and to end-consumers.

Direct marketing encourages farmers to undertake grading of farm produce at the farm-gate and obviates the necessity to haul produce to regulated markets for sale. Direct marketing enables farmers and processors and other bulk buyers to economize on transportation costs and to considerably improve price realization. In South Korea, for instance, as a consequence of expansion of direct marketing of agricultural products, consumer prices declined by 20 to 30 per cent and producer-received prices rose by 10 to 20 per cent. This also provided incentive to large-scale marketing companies to increase their purchases directly from producing areas.

Direct marketing by farmers to the consumers has been only experimented in the country through Apni Mandis in Punjab and Haryana. The concept, with certain improvements has been popularized in Andhra Pradesh through Rythu Bazars and in Tamil Nadu as Uzhavar Santhaigal. At present, these markets are being run at the expense of the State exchequer, as a promotional measure, to encourage marketing by small and marginal producers of fruit and vegetables without the help of the middlemen⁷.

A study undertaken by V.P. Gandhi and N.V. Namboodri in relation to the functioning of these few experimental direct marketing markets, clearly indicates that in such markets, where the farmers sell directly to the consumers the share of the farmers in the consumer rupee was as high as 85 to 95.4% for vegetables (where in the traditional APMC controlled markets where there are wholesales, commission agents and other licensed middlemen the farmers share in the consumer rupee falls drastically to a high of 40% to as low as 15% depending on the nature of the commodity and its perishable nature).

⁷ <http://www.mospi.gov.in/Manual-on-Agricultural-Prices-and-Marketing.pdf>

The study indicates that the system of sale followed by commission agents in the APMC market is also secret and closed. Although open bidding/open auction is a stipulated mechanism, the open auction system only accounts for about 20-30% of market transactions and 40% of transactions take place through secret bidding and the remaining transactions are simple transactions.

The study also points out to the control of middlemen arising from the need for transportation of the agricultural produce from the fields to the authorized market areas. Transportation costs accounted for almost 31% of the costs in case of potatoes to as high as 75% in case of fruits and it also clearly reveals that the costs borne by the farmers is the highest in the whole chain. The marketing cost incurred by farmers in the total cost of vegetables ranged from 15.7% (for cauliflower) to 29.53% (for tomato), and in case of fruits ranged from 30.1% (for pomegranate) to 74% (for apples).

The experimental direct marketing markets are not able to serve any significant number of farmers or areas as the farmer is required to transport the commodities to the market himself. Other than allowing for direct marketing no other required infrastructure or assistance is provided to such markets by the APMC. It was also found that the marketing costs added by the entire chain under the regulated APMC market structure in the consumer rupee ranged from 22.17% (for green peas) to 50.25% (for tomatoes) and in relation to fruits ranged from 33.14% (for sapota) to 69.43% (for apples).

2.4 Evaluation of Agricultural Marketing under the lens of the Competition Commission of India Act

The issues that arise in relation to the functioning of the APMCs is that they are adopting policies and practices that: (i) limit the market for the farmers, (ii) prevent purchasers from accessing markets directly from the farmer or at the level of the initial wholesale market, (iii) prevent development of infrastructure to support marketing of agricultural produce, and (iv) prevent development 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 cases 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.⁸

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. An 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 services⁹; or (b) limits or restricts production of goods or provision of services or market therefor¹⁰; (c) indulges in practice or practices resulting in denial of market access in any manner¹¹.

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 relevant market or (ii) affect its competitors or consumers or the relevant market in its favour¹².

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 have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.¹³

The ambit of scrutiny under the Competition Act therefore, is fairly wide, provided the impact of an ‘anti-competitive’ effect, or of ‘abuse of dominance’, can be clearly established. Based on the discussion above, the two main strands of assessment which can potentially be undertaken by the CCI in relation to agricultural marketing include the following:

- (i) Licensing related activities: The manner of selection of licensees, issuing licenses and the terms of the licenses, have an adverse impact on competition. The

⁸ s. 19(3) Competition Act

⁹ s. 4(2)(a)(i) Competition Act

¹⁰ s. 4(2)(b)(i) Competition Act

¹¹ s. 4(2)(c) Competition Act

¹² s.4(a) Competition Act

¹³ s. 60 Competition Act

licensing system is highly controlled and has characteristics of situations reflective an abuse of dominance and in some cases, cartelization.¹⁴ The opaque methods of licensing, lack of information, and unpredictability on the time taken for decisions on applications, add to the anti-competitive effects. This can also be said to be the result of both exploitative and exclusionary conduct of the dominant market player- the APMCs.

The impact of licensing terms such as short duration of licenses on lack of investments in agricultural infrastructure, are factors that need to be considered in terms of their long-term anti-competitive on farmers and consumers.

(ii) Lack of Direct Access of Retailers to Farmers, and its Impact on Farmers and End-Consumers: By preventing the direct access of the framers to retailers and to end-consumers, APMCs are clearly distorting the market to the detriment of both the farmers and the end consumer of the agricultural products.

APMCs' capture and consolidation of the agricultural marketing system and the very fact that such an obviously inefficient system is flourishing under the apparent regulated regime of APMCs, clearly points to the subversion of the basic objectives of the APMCs and the capture by the very elements that it was created to regulate.

Considering the vastness of India, more and more such markets need to come up in the organized sector so that they can be developed in tune with the backward and forward linkages. The regulations and practices of APMCs and the APMC Acts need to be reviewed by the CCI and directed to be amended in lines with the model APMC Act and regulations, to permit private and cooperative sectors to take up direct marketing of agricultural commodities from the producing areas and the farmers' fields, without the necessity of going through licensed traders and regulated markets.

The public interest and national interest requirements of such intervention from the CCI cannot be overstated, as also unequivocally recognized by the Planning Commission's Deputy Chairman, as quoted in the introduction to this paper. Fruits and vegetables constitute an exceptionally import part of the daily diet of Indians. India now ranks first in the world in the combined production of fruits and vegetables. India's share in world fruit production is very significant, it is the largest producer of mangoes and bananas in

¹⁴ The term "cartel" is defined in s. 2(c) of the Competition Act, 2002 to include an association of producers, sellers, distributors, traders, or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or proceeding or, trade in goods or provision of services.

the world and fifth in the production of pineapples, sixth in the production of oranges and tenth in the production of apples. Similarly in vegetables, India's presence is very significant. India also occupies the first position in cauliflower production, second in onion, third in cabbage and sixth in potato production in the world. The diverse soil and climactic conditions in the country gives great promise to cultivate a wide variety of fruits and vegetables and correct regulation in the marketing of agricultural produce can provide huge impetus to rural economy and spur greater growth more uniformly than being focused only in urbanized areas.

The high presence of middlemen in the entire agricultural produce marketing sector that has thrived under the APMCs regulated regime, the relatively lower penetration of regulated markets combined with the anti-competitive practices being adopted by APMCs across India in order to prevent direct access of farmers to alternate bulk purchasers and preventing investment in infrastructure to support wider reach of structured agricultural produce marketing is a great cause of concern. The high presence of middlemen in India results directly in low fractions of the end consumer rupee reaching the producing farmers and thereby causes a grave economic injustice as well.

III. Food Corporation of India and Competition Issues

The Food Corporation of India ('FCI') was established under the Food Corporations Act, 1964 to implement the following objectives of the National Food Policy: (i) Effective price support operations for safeguarding the interests of the farmers' (ii) Distribution of food-grains throughout the country for public distribution system' (iii) Maintaining satisfactory level of operational and buffer stocks of foodgrains to ensure National Food Security.

The FCI is the nodal agency of the Government of India to undertake procurement of specified agricultural commodities at the Minimum Support Price (MSP). The implementation strategy that has been adopted by the government/FCI while procuring commodities, is not dictated by the MSP regulations, but has evolved on the basis of perceived logistical advantage and cost efficiencies of procurement in this belt. These practices however have significant anti-competitive effects, especially on the private sector.

The administered price mechanism that is presently being administered is as follows:

- (i) Minimum support prices (MSP) for 24 commodities including seven cereals (paddy, wheat, barley, jowar, bajra, maize and ragi); five pulses (gram, arhar/tur, moong, urad and lentil); eight oilseeds (groundnut, rapeseed/mustard, toria, soyabean, sunflower seed, sesamum, safflower seed and nigerseed); copra, raw cotton, raw jute and virginia flu cured (VFC) tobacco;
- (ii) Statutory minimum prices for sugarcane;
- (iii) Levy prices for rice and sugar; and
- (iv) Central issue prices for rice, wheat and coarse cereals for sale under public distribution system (PDS).

Before each crop season, the Government of India announces the MSP for procurement on the basis of the recommendation of the Commission of Agricultural Costs and Prices, which along with other factors, takes into consideration the cost of various agricultural inputs and the reasonable margin for the farmers for their produce.

The manner in which FCI undertakes the procurement of the food grains is the essential issue for scrutiny under principles of competition law. Based on the Agricultural Produce Procurement Policy formulated by the Government of India before each season, each State Government issues a corresponding procurement policy specifying the framework within which the roll out of the procurement would occur within the State. Essentially, to facilitate the procurement of food grains, the state level procurement policies provide that identified state level agencies and cooperatives will coordinate with FCI. The state level policies also identify the locations where purchase centers would be established. The procurement policies also establish the quality of the food-grains that would be eligible for procurement under the MSP

It has been noted that invariably the majority of the purchase centers are almost always mandis and APMC authorized markets leading to the control of the APMC licensed middlemen in the process and limiting the same to them.

Furthermore, in certain states, in order to expand the procurement operations under the MSP system, tenders are issued to appoint non-government agencies that have some investment by banks/financial institutions and at least one nominee Director on the Board and are service providers can be engaged on a limited basis.¹⁵ This policy further stipulates that the appointment of such agencies should result in cost savings of at least 10% of the incidentals of FCI.

¹⁵ Letter No. 167(2)2007-Py.I, Government of India, Ministry of Consumer Affairs & Public Distribution Department of Food & Public Distribution dated 30th October 2007
<http://www.fcinez.com/fciprocurement.htm>

Although the procurement price under the MSP is certain, the variables that are determined in an opaque manner and which result in substantial competition law issues are how the identity of the purchase centers where MSP terms are offers are determined and who are the entities/sellers from whom the stocks are purchased at such purchase centers.

It should be noted that it is not mandatory for farmers to sell only under the MSP mechanism to FCI/FCI agents; however, the presence of MSP in certain markets/areas provides the base price for any other market transactions thereby providing a clear reference floor price for the relevant agricultural produce. Interactions with private sector have revealed that companies typically buy only at MSP under the license issued for direct purchase from farmers, *irrespective of quality*.

Thus, the manner in which the location where the MSP would have made available and identification of the agencies that can undertake procurement under the MSP framework for onward transfer to FCI is critical for efficient functioning of markets. Presently there are no guidelines or clear policies in their determination.

The linkage of the marketing centers where the MSP is identified as being available and the fact that majority of them are always APMC regulated market yards provides a clear nexus between the APMC protected middlemen and the identification of areas where MSP is made available. The fact that APMCs are not actively expanding marketing infrastructure in order to limit the number of MSP centers in a state is a further indication of this nexus.

There are clear indications of cartelization between the State Agencies, APMCs and the middlemen licensed by APMCs in each state in the process of MSP procurement by FCI. In this regard since FCI itself has not intervened to obtain more direct control over the MSP procurement process on its behalf also indicates implicit acceptance of the cartelization by FCI.

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

Assessment of Competition Issues relating to the FCI

As discussed in Section 2.4 above, the Competition Commission of India has the necessary powers to investigate any form of anti-competitive behavior. The nexus between FCI and APMCs and the intermediaries, has clear shades of cartelization, which would need to be disbanded in order to make room for a competitive framework. This is essential for both the farmer-producer and end-consumers.

IV Conclusions

The practices of most of the existing APMCs are clearly in violation of competition laws and are preventing direct access of farmers to a sizeable segment of consumers. The practices of the APMCs is distorting the market and is also impacting the end consumer and are against public policy.

There is a clear case for a comprehensive investigation by the CCI and CCI has the powers to issue specific orders that the APMCs would have to adopt and abide by.

Furthermore, the linkage between APMCs, the APMC licensed middlemen and the MSP procurement by FCI is obvious and is clearly anti-competitive in light of the absence of any clear guidelines or direct presence of FCI in the MSP procurement chain and also needs investigation by the CCI.