

# Competition Assessment

Model APMC Act, 2003<sup>1</sup>

## 1. Name of Legislation / Policy

The Model Act: The [State] Agriculture Produce Marketing (Development & Regulation) Act, 2003

Hereinafter it is also referred as “the Model APMC Act, 2003” or simply “Model Act”.

## 2. Current Status of the Legislation / Policy

It is a Model Act and a format recommended to state governments and is not binding on States. Few States have made amendments to their APMC Acts, based (of varying degree) on the Model Act.

As “agriculture” is a “state subject” under the Constitution, the regulation of agriculture produce marketing is governed by state governments. For this purpose, most states have legislations – the Agricultural Produce Marketing Acts (APMC Acts). Although, it is claimed that the objective of such market regulation is “to ensure that farmers are offered fair prices in a transparent manner”, the stated objective, in general, is “to develop and regulate agriculture produce market...”

Under such APMC Acts, state governments are empowered to notify the commodities, and designate markets and market areas where the regulated trade takes place. For operating the markets, the Acts provide constitution of Agricultural Produce Market Committees (APMCs) by the respective state government. Generally, the entire state is divided into various market areas to be managed by respective APMCs. Once a particular area is declared a “market area” and falls under the jurisdiction of a Market Committee, *no person or agency is allowed freely to carry on wholesale marketing activities. This establishes APMCs to dominant position in respective market areas, hence liable to be frowned upon for abuses of dominance.*

While coming out with the Model Act of 2003, the Sahini Committee had observed: “Such legally granted monopolies have resulted into:

- Prevention of development in the competitive marketing system;

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<sup>1</sup> This exercise was done for the Competition Commission of India in 2016. It may be noted that a new Model Act has come out in 2017, which is called as “Model Act: the Agriculture Produce and Livestock Marketing (Promotion and Facilitation) Act, 2017”, which can be found at: [http://agricoop.nic.in/sites/default/files/APLM\\_ACT\\_2017\\_1.pdf](http://agricoop.nic.in/sites/default/files/APLM_ACT_2017_1.pdf). Although there are some good improvements made in the Model Act of 2017, some of the competition concerns raised in the present assessment still remain. CUTS’s comments on the penultimate version of the Model Act of 2017 can be accessed at: [http://www.cuts-ccier.org/pdf/Advocacy-Submission\\_of\\_Comments\\_on\\_the\\_Draft\\_Model\\_APMC\\_Act-2016.pdf](http://www.cuts-ccier.org/pdf/Advocacy-Submission_of_Comments_on_the_Draft_Model_APMC_Act-2016.pdf)

- No help to farmers in direct marketing and organising retailing;
- Prevention of smooth raw material supply to agro-processing industries; and
- Hurdle to adoption of innovative marketing system and technologies.

An efficient agricultural marketing is essential for the development of the agriculture sector as it provides outlets and incentives for increased production, the marketing system contribute greatly to the commercialisation of subsistence farmers. Task Force on Agricultural Marketing Reforms set up by the Government of India has suggested:

- promotion of new and competitive Agricultural Market in private and cooperative sectors;
- to encourage direct marketing and contract farming programmes;
- facilitate industries and large trading companies to undertake procurement of agricultural commodities directly from the farmer's fields; and
- to establish effective linkages between the farm production and retail chains.

There is a necessity to integrate farm production with national and international markets to enable farmers to undertake market driven production plan and adoption of modern marketing practices. However, if agricultural markets are to be developed in private and cooperative sectors and to be provided a level competitive environment vis-à-vis regulated markets, the existing framework of State APMC Acts will have to undergo a change. The State has to facilitate varying models of ownership of markets to accelerate investment in the area and enable private investment in owning, establishing and operating markets. Working of existing Government regulated markets also need to be professionalised by promoting public private partnership in their management. Appropriate legal framework is also required to promote direct marketing and contract farming arrangements as alternative marketing mechanism. Therefore, there is a need to formulate a new model law for agricultural market.”<sup>2</sup>

While, in 2003, the Committee has had a futuristic vision re agriculture produce market, the Model Act that it proposed does not seem to be in sync with the vision. The present assessment of the Model Act corroborates this inference.

### **3. General Competition Assessment**

Although this Model APMC Act is for the “development and regulation” of agriculture produce market, more than 90% its texts are devoted to the structure, constitution, conduct of business, powers & duties etc. of various bodies set up under the Act, and a very small portion is devoted on the marketing aspect of agriculture produce. The Model Act recommends a vast bureaucracy for market regulation, which is neither required nor desirable, and hindrance to “professionalisation of the regulated market”.

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<sup>2</sup> Salient Features of the Model Act on Agricultural Marketing;  
<http://agmarknet.nic.in/amrscheme/modelact.htm> accessed on 24th June 2016.

Since, the Act allows *monopoly/dominance* of the APMC in a market area such an unprofessional market management structure can engender *collusive behaviour* as well as *abuse of dominance*.

“Definitions” under any piece of legislation contribute significantly in determining its scope. Some key definitions of the Model Act, singularly and cumulatively, *can act as entry barriers, can cause appreciable adverse effect on competition, and can limit free and fair market processes*. For instance, the effect of definition can discourage farmers (or a body of farmers like producers’ company or Farmer Producer Organisations) to set up their processing mechanism/units of their farm produce and also simultaneously taking up business/trading related with agriculture produce – entry barriers for potential new entrants. Similarly, the definition of “agriculture produce” – the subject matter of regulation – is wide enough to include roughly all the items to be sold and purchased in the monopolistic APMC markets.

The provisions related to the constitution of the Market Committees (APMCs) under the Model Act seem to allow the marketing of agriculture produce to be “*driven by vested interests under government protection*”. The structure does not seem to “*effectively prevent anti-competitive conducts*”, such as cartels amongst buyers. Further, the regulatory structure given by the Model Act is such that there is bound to be interference by local politicians, obstructing free flow of trade and commerce. To add to it, the Model Act allows *interference of State Government* in the regulatory mechanism.

As a pro-competition improvement over the pre-2003 APMC Acts of states, the Model Act allows setting up of private markets. However, the scope for the same remains too narrow as well as putting up various unnecessary quantitative restrictions for obtaining license (for instance, Rajasthan APMC Rules requires, *inter alia*, five hectare of land for setting up of a private market yard). Some states also proposes license fee and minimum cost for setting up of private markets. Not allowing or restrictively allowing setting up of private markets and farmer-consumer markets is the most *trade restrictive and anti-competitive* part of the Model Act.

According to the Model Act, even where private markets would be allowed, such markets have to be governed under the APMC Act. This will clearly prevent private players to invest in markets, hence reduced competitive rivalry in a given market area. Above all, there is a *conflict of interest* that arises on account of the powers conferred upon APMC and State Marketing Board, under the Act, relating to licensing and operation of private players. *This conflict of interest can have an adverse effect on competition*.

In light of the above, it can be inferred that the Model Act of 2003 does not seem relevant for the present day market dynamics, including e-commerce, and hence not good enough to be advocated as a starting point for agricultural market reform. It fails to recognise the principle that “competition amongst the buyers of agricultural produce would benefit the farmers (as sellers) most”. On the one hand, it tends to discourage

farmers who would like to hold/control a bigger portion of global agriculture value chain, including reaching consumers directly, and hence increase their profitability. On the other hand, it provides a regulatory structure which tends to inhibit competition amongst buyers.

The Sahini Committee that came out with the Model Act in September 2003, hoped that it will enable: (1) nationwide integration of agricultural markets, (2) facilitate emergence of competitive agriculture markets in private and cooperative sectors, (3) create environment conducive to massive investments in marketing related infrastructure, and (4) lead to modernisation and strengthening of existing markets. It is to be noted that the Model Act would not be able to deliver on these fronts, unless there is liberalised market structure. Private investment would not come unless they are allowed to operate freely in the market.

Since 2003, the architect of Indian market and marketing system has changed significantly. Innovation in marketing is making big changes to economy, for instance e-commerce, app-based marketing etc. The Model Act clearly does not reflect to allow such innovation in agriculture produce marketing. Therefore, the Model Act should cease to be a model for states to follow. It is appreciated that NITI Ayog is thinking to come out with a new Model APMC Act.<sup>3</sup> It is hoped that the new draft would remove all restrictions with respect to sale-purchase of agriculture produce so that “anybody is free to sell anybody at any place”.

In sum, the very soul of APMC Acts, including the Model APMC Act, is anti-competitive in nature, and hence requires change of orientation, with stated objective of “engendering competition amongst the buyers of agriculture produce”. This would be in the best interest of farmers, if it is the aim of agriculture market regulatory regime.

**4. Does the Legislation / Policy have any provision (including the manner of its implementation) which could cause appreciable adverse effect on competition in the relevant market in India?**

It would not be wrong to say that the Model Act is, in essence, an anticompetitive legislation and the pro-competitive provisions are mere exceptions to the Act. (The need, however, is just the opposite – a pro-competitive law in design, yet permitting certain restrictive clauses to achieve targeted objectives, if required). The *modus operandi* presented by the legislation is to establish monopoly to the APMC in a declared market area. The licensed traders, operating within the market area, are supposed to bid (pro-competitive) for the agriculture produce on arrival in the market yard. However, the bidding may have been responsible for better price realisation in earlier times, today in this Information & Communication Technology era, the price realisation does not happen due to bidding. Now the price is ‘known’ and ‘published’ prior to bidding process. In sum, the whole arrangement does not present a system whereby price realisation happens through a competitive process.

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<sup>3</sup> A new Model Act has been issued by the Central Government. Please see 8 above.

A question also arise – should the ‘relevant geographical market’ as understood in the competition law parlance be confined to the given ‘market area’ as determined under APMC Act?

If the answer is ‘yes’, then the scope of anti-competitiveness of the impugned legislation becomes narrow, and would largely revolve around the bidding process of price realisation. But if the answer to the question is ‘no’, then the scope of anti-competitiveness of the legislation becomes very wide and that would also include the very determination of ‘market area’ as against the spirit of competition law. This competition analysis is based on the latter proposition i.e. the whole of India is as relevant geographical market.

While clause-by-clause explanation is given below in tabular form, the identified provisions that pose competition concerns are:

- S.2. Definitions (Agriculture produce; agriculturist; marketing; processor; traders etc.)
- S.14 Constitution of Market Committee
- S.26. Powers & duties of APMCs (register or refuse registration of market functionaries; to promote PPP for extension activities etc.)
- S.27. Publication and circulation of arrival with rates
- S.38. Procedure & form of Contract Farming
- S.39 Regulation of marketing of notified agricultural produce
- S.40 Sale of notified agriculture produce in markets
- S.41 Terms & procedure of buying and selling
- S.42. Power to levy market fees
- S.44 Registration of Functionaries
- S.45, 46 and 47 Establishment of private yards; consumer-farmer market; grant/renewal of license for these

**5. Does the Legislation / Policy have any provision (including the manner of its implementation) which could humble any of the salient features of a competitive market, namely, free entry and free exit, number of participants, perfect symmetry of information, and ability and motivation of participants to compete?**

Yes there are provisions that humble salient features of a competitive market. These provisions are:

- S.2. Definitions (Agriculture produce; agriculturist; marketing; processor; traders etc.)
- S.26. Powers & duties of APMCs (register or refuse registration of market functionaries; to promote PPP for extension activities etc.)
- S.27. Publication and circulation of arrival with rates
- S.39 Regulation of marketing of notified agricultural produce
- S.41 Terms & procedure of buying and selling
- S.42. Power to levy market fees
- S.44 Registration of Functionaries

**6. Does the Legislation / Policy have any provision (including the manner of its implementation) which could restrict the freedom of producers, suppliers or consumers in the market or their choices?**

Yes there are provisions in the Model Act which tends to restrict freedom of Sellers (agriculturists/producers), Buyers (traders) and ultimate consumers. Following are such provisions:

- S.2. Definitions (retail sale)
- S.14 Constitution of Market Committee
- S.40 Sale of notified agriculture produce in markets
- S.41 Terms & procedure of buying and selling
- S.44 Registration of Functionaries
- S.46 consumer-farmer market

**7. Does the Legislation / Policy have any provision (including the manner of its implementation) which could be in disharmony with the objectives of the Competition Act, 2002, namely, prevention of practices having adverse effect on competition, promotion and sustenance of competition in markets, protection of the interests of consumers, and freedom of trade carried on by other participants in markets, in India?**

Yes. Please see elaborations as given below in tabular form.

**8. Comments on each of the anti-competitive (anti-competitive according to the assessor) provisions in the Legislation / Policy in the following format (Please have a separate table as under for each such anti-competitive provision)<sup>4</sup>:**

**(a) Clause 1/ Section 2/ Model Act**

Provisions in this Clause	S.2(1) "Agricultural Produce" means all produce and commodities, <u>whether processed or unprocessed</u> , of agriculture, horticulture, apiculture, sericulture, livestock and products of livestock, fleeces (raw wool) and skins of animals, forest produce etc. as are specified in the schedule or declared by the Government by notification from time to time and <u>also includes a mixture of two or more than two such products</u>
What are the likely effects of this Clause on competition?	<ul style="list-style-type: none"> <li>• <b>Cause appreciable adverse effect on competition in the relevant market in India</b></li> <li>• <b>Creates entry barrier</b></li> <li>• <b>Limits Free and fair market processes</b></li> </ul> <p>We have seen that the Model Act itself in essence an anti-competitive legislation mandated to create dominance in the market. Seen under this light, the definition is too wide and open, resulting in very wide range of agriculture products coming under the trade restrictive regime.</p>

<sup>4</sup> Please attach model, estimate, data, table, or graph, if any, in support of the assessment.

(b) Clause 2/ Section 2

Provisions in this Clause	S.2(2) "Agriculturist" means a person who is a resident of the notified area of the market and who is engaged in production of agricultural produce by himself or by hired labour or otherwise, <u>but does not include any market functionary</u>
What are the likely effects of this Clause on competition?	<ul style="list-style-type: none"><li>• <b>Creates entry barrier</b></li></ul> <p>The definition excludes any market functionary. That means a farmer cannot take up grading/processing/ trading etc. along with farming (see definition of 'marketing' below). Once farmer chose to grade or process its product, s/he would cease to be an "agriculturist" and hence disqualify for being member of the Market Committee. Thus it dis-incentivise potential entrants into relevant market.</p> <p>It may be noted here that restriction on multiple role applies only to farmers and not on other market functionaries.</p>

(c) Clause (5) and (31)/ Section 2

Provisions in this Clause	S.2(5) "Business" means purchase-sale, <u>processing, value addition, storage, transportation and connected activities of agricultural produce</u>  S.2(31) "Marketing" means all activities involved in the flow of Agricultural produce <u>from the production points commencing from the stage of harvest till these reach the ultimate consumers viz. grading, processing, storage, transport, channels of distribution and all other functions involved in the process.</u>
What are the likely effects of this Clause on competition?	<ul style="list-style-type: none"><li>• <b>Cause adverse effect on competition</b></li><li>• <b>creates entry barrier</b></li></ul> <p>The definitions include anything from the stage of harvest till it reaches the ultimate consumers. Activities like grading, processing, storage, transport, channel of distribution and all other functions involved in the process, comes within the ambit of "market".</p> <p>This again widens the scope of the restrictive regulatory regime, adversely affecting competition. It also creates hurdles on new entrants, particularly that from farming community.</p>

(d) Clause 36 / Section 2

Provisions in this Clause	S.2(36) "Processing" means any one or more of a series of treatments relating to <u>powdering, crushing, decorticating, de-husking, parboiling, polishing, ginning, pressing, curing</u> or any other manual, mechanical, chemical or physical treatment to which raw agricultural produce or its product is subjected to.
What are the likely effects of this Clause on competition?	<ul style="list-style-type: none"><li>• <b>Creates Entry Barriers</b></li></ul> <p>The definition of "processing" includes very basic activities related with farm produce, which can be done at the farm level to enhance farmers' income.</p> <p>Read with the definition of "agriculturist" a farmer cannot take up processing and qualify for a member of market committee at the same time. Thus dis-</p>

	incentivising potential players to enter into market (as buyers).
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(e) Clause 2 / Section 40

Provisions in this Clause	S.2(40) "Retail Sale" in relation to a notified agricultural produce means a sale <u>not exceeding such quantity as the Market Committee may by bye-laws, determine</u> to be a retail sale in respect thereof
What are the likely effects of this Clause on competition?	<ul style="list-style-type: none"> <li>• <b>Restricts the freedom of players in the market</b></li> </ul> <p>The definition caps the quantity to be sold by retailers. Such cap is also there if a producer (farmer) wants to directly sell to consumers.</p>

(f) Clause 46 / Section 2

Provisions in this Clause	S.2(46) "Trader" means a person who in his normal course of business buys or sells any notified agricultural produce, and includes a person engaged in processing of agricultural produce, <u>but does not include an agriculturist</u>
What are the likely effects of this Clause on competition?	<ul style="list-style-type: none"> <li>• <b>Creates Entry Barriers</b></li> </ul> <p>The definition expressly exclude farmer, but include a processor. Thus it creates entry barrier for farmers to simultaneously take up "trade" to enhance their profit.</p> <p>Such restriction on multiple roles applies only to farmers and not on other market functionaries.</p>

(g) Clause1/Section14

Provisions in this Clause	<p>Section14 (1) Save as provided in section 13, every Market Committee shall consist of the following members, namely</p> <p>Ten members shall be agriculturists possessing such qualifications as may be prescribed <u>to be elected by the Managing Committee members of the primary agricultural cooperative societies functioning in the market area and by the Sarapanch &amp; members of the village Panchayats of which 7 shall be elected from amongst the committee members of Primary Agricultural Societies</u></p> <p>Provided further out of 10 representatives of agriculturist atleast one shall belong to each of the following sections of the society.</p> <p>1. Scheduled Caste/Tribe (one member)</p> <p>2. Other Backward Class (one member)</p> <p>Woman (one member)</p> <p><u>Provided further that no agriculturist will be eligible to be elected as representative of agriculturists unless he has sold agricultural produce in the market in preceeding two successive years.</u></p> <p><u>Provided further if the committee is established first time, then no</u></p>
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	<p><u>agriculturist will qualify to be elected as a representative of agriculturist unless he has sold agricultural produce in the market during the last six months.</u></p> <p>(ii) Two members shall be licensed traders elected amongst them in the manner prescribed;</p> <p>One member shall be a representative of the Co-operative Marketing Society/, which has the headquarters within market area.</p> <p>Provided further if there are more than one such society the representative will be elected as prescribed.</p> <p>(iv) <u>Two members shall be the Government nominees</u> out of which one member shall be the representative of the State Department of Agricultural/ Cooperation/ Agricultural Marketing.</p> <p>One representative of the Hamal &amp; Weighmen to be nominated by the registered union of the Hamals &amp; Weighmen.</p> <p>One representative of Local authority (Chairman of Nagarpalika, Mahanagarpalika, Panchyat Samiti or Zilla Parishad as the case may be</p>
<p>What are the likely effects of this Clause on competition?</p>	<ul style="list-style-type: none"> <li>• <b>Driven by vested interests, promoted by the government</b></li> <li>• <b>Does not effectively prevent anti-competitive conduct</b></li> <li>• <b>Indirectly limits choice to sellers (farmers)</b></li> </ul> <p>S.14 (and also 14A) provides for the constitution of the marketing committee, which is highly bureaucratic and liable to political interference.</p> <p>For instance, it says that 10 “agriculturists” would have to be elected by the PACS (Primary Agriculture Cooperative Society) member of the Committee and by Sarapanch &amp; members of the village Panchayat. Further, it advocates as members of committee – an officer of the Agriculture Dept. of State, one representative of the Hamal &amp; Weighmen, one representative of the Gram Panchayat or Janpad Panchayat or Zilla Panchayat.</p> <p>All these make the regulatory body highly bureaucratic, political and unprofessional. <u>This leads to local politicians (on the name of farmers) making their way into regulatory system, and they collude with local traders who funds them during election period. This nexus, is not only anti-competitive (facilitating formation of cartels amongst the buyers of farm products) but also anti-farmer.</u></p> <p>In addition, although the Model Act allows agriculturist to sell their produce through private markets, however, such transactions could disqualify him from becoming a member of marketing committee. Thus it may indirectly limit the choice to agriculturists and lures him to sell his product through AMPC market.</p> <p>The Model Act discourages farmers to undertake multiple roles in agriculture value chain, while such restrictions are not there on other entities.</p>

(h) Sub clause (iii), Clause (a), Subsection (2), Section 26

Provisions in this Clause	<p>S.26(2)(a)(iii)</p> <p>Market Committee may...</p> <p>register or refuse registration to market functionaries and renew, suspend or cancel such registration, supervise the conduct of the market functionaries and enforce conditions of Registration</p> <p>S.26(2)(a)...</p> <p>Market Committee may...</p> <p>Set up and promote public private partnership in management of the Agricultural Markets. Promote public private partnership for carrying out extension activities in its area viz., collection, maintenance and dissemination of information in respect of production, sale storage, processing, prices and movement of notified agricultural produce.</p>
What are the likely effects of this Clause on competition?	<ul style="list-style-type: none"> <li>• <b>Conflict of interest (competitor having decisive say in licensing/registration)</b></li> <li>• <b>Limits Free and fair market processes</b></li> <li>• <b>Promote monopolistic behaviour/ abuse of dominance</b></li> </ul> <p>APMC is itself a regulator and a major player in the market – empowered not only to create a market but also to grant a license for private market. APMC also issues licenses to traders and commission agents for operation in the market. In addition, APMC also acts as a Registrar for licensed agents. Thus APMCs, appears to have power to decide who farmer can sell to; who can participate in the market; where the markets are to be established.</p> <p>It may also be possible that allowing public private partnerships (PPPs) in management and development of infrastructure like cold storage, pre-cooling facilities etc. may turn these PPP entities into a monopolist, which may result into imposition of unfair conditions on an agriculturist.</p>

(i) Section 27

Provisions in this Clause	<p>S.27 To publish and circulate from time to time the data of arrivals and rates of agricultural produces standard wise brought into the market area for sale as prescribed</p>
What are the likely effects of this Clause on competition?	<ul style="list-style-type: none"> <li>• <b>May promote cartelisation</b></li> </ul> <p>Complete transparency is not always good especially if market is conducive for cartelisation. Therefore, publishing and circulating data on arrivals and rates of agricultural produces brought into the market may lead to an environment conducive for collusion. In other words, this would affect the competitive bidding process for price realisation.</p>

(j) Section 38

Provisions in this Clause	<p>S.38. Contract Farming agreements shall be governed in the manner laid down hereinafter</p>
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	<p>(1) Contract farming Sponsor <u>shall register himself with the Market Committee</u> or with a prescribed officer in such a manner as may be prescribed</p> <p>(2) The Contract Farming Sponsor shall get the contract farming agreement recorded with the officer prescribed in this behalf. The contract farming agreement shall be in such form containing such particulars and terms and conditions as may be prescribed.</p> <p>(3) Disputes arising out of contract farming agreement may be referred to an authority prescribed in this behalf for settlement. The prescribed authority shall resolve the dispute in a summary manner within thirty days after giving the parties a reasonable opportunity of being heard, in the manner prescribed.</p> <p>(4) The party aggrieved by the decision of the prescribed authority under sub-section (3) may prefer an appeal to an Appellant Authority within thirty days from the date of decision. The Appellant Authority shall dispose off the appeal within thirty days after giving the parties a reasonable opportunity of being heard and the decision of the Appellant Authority shall be final.</p> <p>(5) The decision by the authority under sub section (3) and decision in appeal under sub section (4) shall have force of the decree of the civil court and shall be enforceable as such and decretal amount shall be recovered as arrears of land revenue.</p> <p>(6) Disputes relating to and arising out of contract farming agreement <u>shall not be called in question in any court of law</u> than otherwise provided herein above.</p>
<p>What are the likely effects of this Clause on competition?</p>	<ul style="list-style-type: none"> <li>• <b>Conflict of interest that may have adverse effect on competition</b></li> </ul> <p>The sponsor of contract farming has to register with the APMC and also dispute arising with respect to the contract may be settled by the APMC (<i>see S.26(1)(vii)</i>). This conflict of interest may result in discouragement of an additional channel for farmers to sell their produce, reducing the level of competition among the buyers of agriculture produce.</p> <p>It has been recommended by the Committee of States Ministers in-charge of Agricultural Marketing (2013) that APMC should not be the authority for registration/dispute settlement under contract farming.</p>

(k) Subsection (1) Section 39

<p>Provisions in this Clause</p>	<p>S.39(1) No person shall, <u>except in accordance with the provisions of this Act and the Rules and Bye-laws</u> made there under ;</p> <p>(i) use any place in the market area for the marketing of notified agricultural produce : or</p> <p>(ii) operate in the market area as a market functionary</p>
<p>What are the likely effects of this Clause on competition?</p>	<ul style="list-style-type: none"> <li>• <b>Creates Entry Barriers</b></li> <li>• <b>Limits free and fair market process</b></li> </ul> <p>This provision allows any marketing of agriculture produce in a market area only in accordance with the APMC Act/Rules/Bye laws. That means no one</p>

	<p>can operate in the market area as a market functionary without having a license to operate. Particularly when licensors are competitors themselves.</p> <p>This provision is trade restrictive and anti-competitive in nature. This may also contribute in formation of cartels by buyers in the market area, with the help of market committees.</p> <p>There are few exceptions to this rule but they are very narrow.</p>
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(l) Section 40

Provisions in this Clause	<p>S.40(1) All notified agricultural produce shall ordinarily be sold in the market yards/ sub market yards or in the private yards of the licence holder, subject to the provisions of sub-section (2).</p> <p>Provided that the notified agricultural produce may be sold at other places <u>also to a licence holder</u> especially permitted in this behalf under Section 45 of this Act</p> <p>Provided further that it will not be necessary to bring agricultural produce covered under contract farming to the market yard / sub market yard /private yard and it may be directly sold to contract farming sponsor from farmers' fields.</p> <p>(2) Such notified agricultural produce as may be brought by the licensed / registered traders from outside the market area or in the market area in the course of commercial transaction may be brought or sold anywhere in the market area.</p> <p><u>The price of the notified agricultural produce, brought for sale into the market yard, shall be settled by tender bid or open auction or any other transparent system</u> and no deduction shall be made from the agreed price on any account whatsoever from the seller.</p> <p>Provided that the price of notified agricultural produce in the private yards shall be settled in the manner prescribed</p>
What are the likely effects of this Clause on competition?	<ul style="list-style-type: none"> <li>• <b>Restricts Freedom of players (sellers) in the market</b></li> <li>• <b>Causes appreciable adverse effect on competition in the relevant market</b></li> <li>• <b>Promotes monopolies and their abuses</b></li> </ul> <p>According to this provision, baring few exceptions, the Model Act disallows sale of agriculture produce outside the market yard.</p>

(m) Subsection 1/Section 41

Provisions in this Clause	<p>S.41(1) <u>Except in the commercial transaction between two traders</u>, any other person who buys notified agricultural produce in the market area, shall execute an agreement in triplicate in such form, as may be prescribed in favour of the seller. One copy of the agreement shall be kept by the buyer, one copy shall be supplied to the seller and the remaining copy shall be kept in the record of Market Committee</p>
What are the	<ul style="list-style-type: none"> <li>• <b>Promotes cartelisation between first buyers and traders</b></li> </ul>

likely effects of this Clause on competition?	<p><b>resulting in skewed price</b></p> <ul style="list-style-type: none"> <li>• <b>Does not effectively prevent anti-competitive agreements</b></li> <li>• <b>Driven by vested interests promoted by the government</b></li> </ul> <p>This provision requires execution of agreement between first seller and buyer, but it does not apply between two traders. This is not only <u>discriminatory</u> but by not recording further trade of the goods it promotes collusion to fix the price (at which the goods would be bought at the first instance).</p> <p>For instance, if a farmer sells his produce (at say Rs.10/Kg) the same would have to be recorded and the market fees would have to be paid based on this sale. However, the buyer is then free to sell to other buyers at any amount (say Rs.20/Kg) as the same need not be recorded and also for the same the fees would not be paid. This presents an opaque system. Thus promoting formation of a syndicate (cartel) influencing price of the goods.</p>
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(n) Subsection 3/Section 41

Provisions in this Clause	S.41(3) No wholesale transaction of notified agricultural produce shall be entered directly by licensed/ registered traders with producers of such produce <u>except in the market yard/ sub market yard / private yard or in such place in accordance with the provisions in the bye-laws.</u>
What are the likely effects of this Clause on competition?	<ul style="list-style-type: none"> <li>• <b>Restrict freedom of players in the market</b></li> <li>• <b>Limits free and fair market process</b></li> <li>• <b>Promotes monopolies and their abuses</b></li> <li>• <b>Limits choice of agriculturists and consumers</b></li> </ul> <p>Prevents any wholesale transaction of notified agricultural produce between traders and farmers outside market yards, except that under contract farming.</p> <p>Producers cannot sell their products directly to consumers. This limits choice of the agriculturists as well as urban consumers, and may impede competition in the market.</p>

(o) Subsection 1 / Section 42

Provisions in this Clause	<p>S.42 (1) Every Market Committee shall levy market fee-</p> <p>(i)on the sale or purchase of notified agricultural produce , <u>whether brought from within the State or from outside the State</u>, into the market area: and</p> <p>(ii)on the notified agricultural produce whether brought from within the State or from outside the State, into the market area <u>for processing</u>:</p> <p>at such rates as may be fixed by the State Government from time to time subject to minimum rate of fifty paise and a maximum of two rupees for every one hundred rupees of the price in the manner prescribed</p>
What are the likely effects of this Clause on competition?	<ul style="list-style-type: none"> <li>• <b>Limits free and fair market process</b></li> </ul> <p>The Economic Survey 2014-15 notes that the levy of high market fee, which is not directly related to the services being provided by the APMC, acts as a major impediment to creating national common market in agriculture commodities and this provision should be removed to pave the way for creating greater competition.</p>

	Further, S.42 read with S.53 and S.54, of the Model APMC Act leads to the requirement that the buyers having to pay APMC charges even when the produce is sold in a market set up by private individuals, where no facility provided by the APMC is used. This amounts to a restriction on the freedom of private players.
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(p) Section 44

Provisions in this Clause	<p>S.44(1) Every person who, in respect of notified agricultural produce, desires to operate in the market area as trader, commission agent, Weighmen, hamma, surveyor, warehouseman, contract farming buyer, owner or occupier of processing factory or such other market functionary, shall apply to the Market Committee for registration or renewal of registration in such manner and within such period as may be prescribed.</p> <p>Provided further that any person who desires to trade or transact in any notified agricultural produce in more than one market areas, shall have to get his registration, for respective function, with the authority prescribed by the State Government/Director/Managing Director.</p> <p>(2) Every such application shall be <u>accompanied with such fee</u> as the State Govt./Director/ Managing Director may prescribe</p>
What are the likely effects of this Clause on competition?	<ul style="list-style-type: none"> <li>• <b>May create entry barrier</b></li> <li>• <b>Reduction of competitive rivalry</b></li> <li>• <b>Increased possibility of cartelisation</b></li> <li>• <b>Conflict of interest resulting in adverse effect on competition</b></li> </ul> <p>Licensing system decreases the number of market players in the market system. In addition, some states have set very high license fees and minimum cost criteria. For instance, Andhra Pradesh has set a license fee of Rs.50 thousand and Rs.10crore as minimum cost for setting up the private market. Such criteria may <u>create entry barriers</u> for new entrants, which may lead to the risk of <u>creation of market power and reduce competitive rivalry</u>. In addition, when number of players decline, the possibility of <u>collusion</u> among the remaining players increase.</p> <p>Then there is the case of <u>conflict of interest</u> that arises on account of the powers conferred upon APMC and the State Agricultural Marketing Board under the APMC Act relating to the licensing and operation of private players. Granting of licenses to competing players may not be in the general interest of APMCs. This dual power of APMC/Board could have an impact on number of players permitted in the market and their incentive to compete. Therefore, this conflict of interest can have <u>an adverse effect on competition</u>.</p> <p>The report of the Committee of State Ministers in-charge of Agricultural Marketing (2013) recommended that private markets should be treated at par with the existing APMCs and there should be simplified procedure for registration/licensing. The requirement of security and bank guarantee should be reasonable to facilitate entrepreneur for development of need based market infrastructure in the country. The minimum parameters for setting up of private market may be prescribed.</p> <p>From S.44 to S.47, the Act requires that licenses to be obtained prior to the setting up of a private market/yard. The states have provided criteria to be fulfilled for setting up the same. In this regard, <u>a licensing mechanism may be replaced by registration mechanism</u>.</p>

	Under such mechanism, any person may be free to set up a private market/yard provided certain standardised conditions are met, and can obtain registration for the same. The same would expedite the process of setting up non-APMC markets/yards and provide certainty to the process.
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(g) Sections 45, 46 & 47

Provisions in this Clause	<p>S.45 The Director/Managing Director/ Prescribed authority may grant licence to purchase agricultural produce by establishing private yard or direct from agriculturist, in one or more market area for</p> <p>(a) process of the notified agricultural produce;</p> <p>(b) trade of notified agricultural produce of particular specification</p> <p>(c) export of notified agricultural produce;</p> <p>(d) grading, packing and transaction in other way by value addition of notified agricultural produce</p> <p>S.46(1) Consumer/Farmer market may be established by developing infrastructure as prescribed, by any person in any market area. At such place, producer of agricultural produce himself may, as prescribed, sell his produce directly to the consumer</p> <p><u>Provided that the consumer may not purchase more than such quantity of a commodity at a time in the consumer market as may be prescribed</u></p> <p>(4) Licence for establishment of consumer/farmer market shall be granted by the State Govt./ Director/Managing Director</p> <p>S.47(1) Any person who, under Section 45 desires to purchase notified agricultural produce direct from the agriculturists or wishes to establish a private yard or under section 46 desires to establish consumer/ farmer market in one or more than one market area, shall apply to the Director/Managing Director for grant or renewal of license, as the case may be, in the manner and for the period, as may be prescribed by the State Government.</p> <p>(2) All the licences granted /renewed under this section <u>shall be subject to provisions of this Act, rules or bye-laws made there under.</u></p>
What are the likely effects of this Clause on competition?	<ul style="list-style-type: none"> <li>• <b>Pro-competition, but very limited</b></li> <li>• <b>Restrict freedom of players in the market</b></li> </ul> <p>Sections 45 and 46 are the two windows through which private markets yards can be established, of which the second one is farmer/consumer market – where producers can directly sell to consumers. These are the only provision that tends to bring in some competition to APMC markets.</p> <p>However, eligibility criteria to obtain license for private market yards or to purchase directly from farmers is too narrow. Similarly, in farmer/consumer market there is a restriction on the quantity that can be purchased in such markets.</p>

	<p>But the Act and bye-laws made therein would apply to such private markets. <u>That means the private markets yards do not have freedom to manage themselves.</u></p> <p>The lack of clarity as to how APMC issues/ grants the licenses may lead to imperfect competition in agriculture markets or <i>mandis</i> because of the unequal bargaining power between market participants on account of the limited licenses issues to a handful of wholesalers and traders who dominate the business.</p> <p>Furthermore, S.46(4) does not provide for any time period for license to farmer-consumer markets, which may lead to potential anti-competitive effects. There must be uniformity of the licenses prescribed.</p> <p>In fact, best option is that <u>there should be a registration system based on standardised conditions, instead of licensing system.</u></p>
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(r) Section 100

Provisions in this Clause	S.101(1) The State Government may give directions to the Board and Market Committees (2) The Board and the Market Committees shall be bound to comply with directions issued by the State Government under sub-section (1)
What are the likely effects of this Clause on competition?	<ul style="list-style-type: none"> <li>• <b>Limits institutional independence</b></li> </ul> <p>Government can interfere in the regulation of agriculture produce market. And as such the Model Act also applies to private market yards, the government can also interfere in such market.</p>

**Are the above provisions absolutely necessary in the present form to achieve the objectives of legislation/bill? (Please elaborate)**

No. In fact, the discussed provisions are hindrance to the achievement of the objectives of the Act. The stated objectives of the Model Act are:

- improved regulation in marketing of agricultural produce;
- development of efficient marketing system;
- promotion of agri-processing and agricultural export;
- the establishment and proper administration of markets for agricultural produce;
- to put in place an effective infrastructure for marketing of agricultural produce

The analysis above shows that the improvement over earlier regulation that the Model Act suggest is very less, i.e. it opens a very narrow window for private players and that too also be regulated under the Act. Thus there is hardly any real improvement. Although the vision is to attract private investment in developing market infrastructure, the provisions are such that it is not likely to attract such investment. Similarly, for agri-processing the regime curtails freedom of the processor to sell their processed product, because the definition of “agriculture produce” include processed product as well. In



addition, the structure of administration of markets is highly unprofessional and liable to political interference.

The Task Force, that had drafted the Model Act, thought to achieve following if state governments adhere to the same: (1) nationwide integration of agricultural markets, (2) emergence of competitive agriculture markets in private and cooperative sectors, (3) creating environment conducive to massive investments in marketing related infrastructure, and (4) modernization and strengthening of existing markets. However, the Task Force failed to suggest right provisions and states may not like to improve on their own due to vested interest with government support.

**Please suggest modification required in the legislation/bill in the interest of competition:**

Since 2003, the economic architect of Indian market and marketing system has changed significantly. Innovation in marketing is making big changes to economy. For instance e-commerce and app-based marketing etc. (e.g. Alibaba, Uber etc.) has given rise to marketing models that may not have been visualised in 2003. The Model Act clearly does not reflect to allow such innovation in agriculture produce marketing. It would be better if State governments, instead of amending APMC Act, should think to either repeal it with a "suitable transition arrangement". Or it if chose to amend the Act, it should be done in the way that the Act would remove all restrictions with respect to sale-purchase of agriculture produce vis-à-vis the AMPC operated market. The amended law should leave APMC operated market as mere one of the players amongst many. Let the regulated markets compete with emerging (non-APMC regulated) private markets. But the law should be such that anybody should be free to sell to anybody at any place.

**Do the above modification, if incorporated, come on the way of achieving the objectives of the legislation/bill?**

No. In fact, it would facilitate the objective for which the Model Act was drafted.

**Is there any countervailing factor that could possibly justify any anti-competitive element(s) in the legislation/bill?**

No. All the time justification has been given that the APMC Act is to protect the interest of farmers. However, it fails to include the principle that "competition amongst buyers" is in the best interest of farmers, as far as price realisation by them is concerned.