
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

ANTI-COMPETITIVE AGREEMENTS AND LEGAL FRAMEWORKS- Mohak Mehrotra¹**ABSTRACT**

Competition has a crucial role in fostering economic and scientific progress in several emerging countries. Similar to India, other developing countries have adopted economic reforms that prioritize a free-market economy based on competition rather than government control. Amidst a growing global economy that is becoming more integrated, domestic firms and industries will be protected from external competitive forces. The rapidity of liberalization posed many obstacles for developing countries in their efforts to address competition, notably in terms of overseeing anti-competitive conduct. The primary objective of c is to promote unfettered and equitable competition in the market by thwarting and redressing various manifestations of anti-competitive conduct. This may be attributed to the fact that regulations controlling competition are created to function as a comprehensive proclamation of economic freedom, advocating for competition to be the prevailing practice in the business realm. Unrestricted cooperation between conflicting forces will provide the greatest development in material products, the lowest price, the finest quality, and the most efficient use of the nation's financial resources. The research offers significant insights on behavior that may be seen as anti-competitive, as well as agreements that are believed to be anti-competitive.

Key words: Competition, Regulations, Free and Fair Market, Anti-Competitive Agreements, Cartels

OVERVIEW OF THE ACT

Indian commercial competition is controlled by the 2002 Competition Act. It superseded the 1969 Monopolies & Restrictive Trade Practices Act. Consumer interests, market competition, and trade freedom for Indian enterprises were the goals of the Competition Act. In its

¹ Student at Amity Law School, Noida

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

competition policy report, India accepts that imperfect markets may provide suboptimal outcomes. The 2002 Competition Act in India restricts merger bans, corporate abuse of dominant positions, and anti-competitive agreements. Supreme Court Judge KC Das Gupta established the Monopolies Inquiry Commission. The group sought to understand monopolies and trade obstacles in key Indian economic sectors. The 2002 Competition Act assures fair market competition and forbids superfluous or inefficient government action.

It superseded the 1969 Monopolies & Restrictive Trade Practices Act. This concept was outdated and inadequate to prevent monopolistic behavior and wealth concentration. Parliament approved the laws in January 2003 and updated them in 2007. The 2002 Competition Act aims to establish the competition commission. Competition Act 2002 definitions from the 2002 Competition Act: Acquisitions include buying a company's assets, shares, or voting rights. Cartels are pre-arranged agreements between producers and merchants that limit product advertising, sales, and distribution. Position: A company's market dominance determines its power. It lets the firm operate autonomously and capitalize on market changes.²

Predatory pricing lowers prices to reduce competition. It evaluates a decision based on its influence on customers, competitors, and corporate strategy. The 2002 Competition Act aims the 2002 Competition Act protects consumer rights, promotes market competition, stops anti-competitive action, and protects other market actors' trade freedom. The new law replaced India's unique MRTP Act, which banned monopolies and other trade restrictions. The Competition Appellate Tribunal, Competition Commission of India (CCI), and National Competition Policy (NCP) formed the basis for the Competition Act. This regulation ensures customers have a wider range of affordable items and market competition works as intended. The Competition Commission was created to promote trade agreements. The Competition Act 2002 has been used to punish firms and people for particular infractions and for illogically defying instructions and directions under sections 27, 28, 31, etc. With each violation, the cost might exceed one lakh. The Competition Commission of India (CCI) selects the Director-General under the 2002 Competition Act to assist legitimate commercial

² G.R. Bhatia, Abdullah Hussain & Ravishekhar Nair, 'Law in Focus: Competition Law in India', (The Indian Journal of International Economic Law, Vol. 1, 2008 p. 182).

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

activities. The Appellate Tribunal may award the corporation compensation under Section 53N of the 2002 Competition Act.

The Competition Act of 2002 defines abuse of dominant position as unfair or discriminatory behavior by a firm or its affiliates. Authorities will investigate charges of position abuse. A legal combination is a series of actions that culminate in mergers or acquisitions. The Competition Commission of India will investigate whether the relevant firms' agreements exceed the 2002 Competition Act's prohibitions. This impartial body may engage into agreements and sue parties for breaching them. As many as six members of the Commission protect and advance consumer interests to promote economic competition. The 2002 Competition Act mandates the Commission to educate the public and advise the Indian government on economic competition.³

Section 3 of the 2002 Competition Act A contract between two persons or firms that might severely impair competition in India is illegal under Section 3 of the Competition Act, 2002. Section 3(3) of the 2002 Competition Act lists certain anti-competitive activities. These approaches include:

Any arrangement between firms, groups of companies, individuals, or groups of people to produce, distribute, allocate, store, collect, or acquire products or services .Develop technical data standards and evaluate resources, including access to export-focused technology marketing campaigns.The company's financial success depends on its competitive advantages, such as patents, licenses, and permits. Business vertical integration, including forward and backward integration; A commodity or raw material supplier that relies on other enterprises must have access to these sources to compete. To compete, one must enter markets where other enterprises provide goods or services. After acquiring a fundamental comprehension of the Competition Act of 2002, it becomes crucial to examine the judicial interpretation and application of the legislation in competition law issues. These are some notable selections that have received further refinement.

³ Mark R.A. Palim, 'The worldwide growth of competition law: an empirical analysis', The Antitrust Bulletin 1998 p. 10.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

*Google Inc. &Ors v. Competition Commission of India (2015)*⁴The writ petition was brought by three parties: Google Inc., headquartered in California, USA; Google Ireland Ltd., headquartered in Dublin, Ireland; and Google India Pvt. Ltd., headquartered in Bangalore. The CCI launched an inquiry on Google's policies regarding Google apps and Android smartphones. The plaintiffs in this lawsuit accused Google of engaging in anti-competitive behavior. The primary subject matter of this complaint, filed with the CCI in 2012, was to the internet giant's search results that were deemed "unfair."

The Competition Commission of India (CCI) alleges that Google is using its significant market share to engage in anti-competitive practices, such as blocking access to rivals' products and manipulating search results. The CCI also examined the agreements that Google has with Original Equipment Manufacturers (OEMs). There are resemblances between this case and the European Commission's antitrust lawsuit against the largest search engine, resulting in a penalty of \$5 billion. In the European case concluded in 2018, the Commission determined that Google maintained and enhanced its market dominance via the implementation of a mobile device strategy. Initially, Google Search was preloaded on Android handsets by the business as the default search engine. In this case, the Delhi High Court concluded that the Competition Commission of India (CCI) has the ability to review or rethink its decision, but only in limited situations. Specifically, the CCI would not do so for every occasion where an investigation was conducted without a complete hearing.

The case of *M/S Voltas Limited, Bombay v. Union Of India &Ors*⁵ is being referred to. The MRTP Act was adopted, including all of India excluding Jammu and Kashmir, in accordance with the proposal of the Dutt Committee. The objective behind the enactment of this legislation was to thwart the monopolistic control of the whole economy by a small group of wealthy individuals. The Act promoted the regulation of businesses and the prevention of restrictive and monopolistic behaviors. This statute does not apply to trade unions, government-takeover corporations, cooperative society registrations, enterprises under government control, firms founded by any federal or state statute, and financial institutions. In the case of *M/S Voltas Ltd., Bombay v. Union of India (1995)*, the court analyzed behavior that fell under the category of "restrictive trade practices" and had a negative impact

⁴2023 SCC OnLine NCLAT 147.

⁵ 1995 AIR 1881.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

on the public interest. An appeal has been lodged against the verdict and direction of the Monopolies and Restrictive Trade Practices Commission ("the Commission") in accordance with Section 55 of the Monopolies and Restrictive Trade Practices Act, 1969. The Commission was tasked with reassessing the relevant matters and rescinding the order it had issued after fifteen investigations, based on the information supplied by the parties involved. The appeals were approved. The Commission has the authority to solicit further written or oral testimony from any party to assist in its decision-making process. There will be no issuance of spending orders; instead, careful evaluation will be conducted for each individual situation.

The court concluded that the defendants engaged in trade practices that were detrimental to the public interest and restrictive in nature. The year 2016 saw the legal case of *Vinod Kumar Gupta v. WhatsApp Inc.*⁶ On January 24, 2021, the Competition Commission of India joined a distinguished panel of experts to discuss the intersection between competition law and privacy. The Competition Commission of India (CCI) initiated an investigation into Whatsapp based on its own initiative, due to concerns of potential misuse of power arising from the recently revised privacy policy. The policy is set to be implemented in 2021, in accordance with the provisions of the Competition Act of 2002. This is a significant advancement compared to the previous ruling in *Vinod Kumar Gupta v. WhatsApp Inc.* (2016), when the Competition Commission of India (CCI) declined to examine privacy concerns, as they were already addressed by existing legislation governing information technology.⁷

On January 22, 2021, CCI issued a market evaluation of the telecom business, in which it advised a significant shift in thinking. Privacy may be seen as a kind of non-price competition. Upon discovering that WhatsApp had departed from its prior verdict in the *Vinod Kumar Gupta* case, the CCI promptly initiated a suo motu probe against the firm. This directive asserts that when powerful businesses acquire and distribute unjustified data in order to gain a competitive edge, it might lead to abusive dominance. This paper examines the alleged exploitative strategies used by Whatsapp, focusing on the intersection between competitiveness and privacy legislation. Additionally, there will be a thorough analysis of the

⁶ Case No. 99/2016,

⁷ T. Ramappa, *Competition Law in India*, (Oxford University Press, New Delhi, 2006, p. 183).

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

scope and approach of CCI. The year 2015. The case is titled "*M/s Fast Track Call Cab Private Limited v. M/s ANI Technologies Pvt. Ltd.*"⁸ The verdict rendered the temporary remedy sought by M/s Fast Track Call Cab Private Limited unnecessary in its claim under Section 33 of the Competition Act, 2002. The informant's primary request was for the Commission to issue a directive to M/s ANI Technologies Pvt. Ltd. in order to prevent what it deems as unjust pricing. Disruptive pricing is deemed unlawful according to Section 4 of the 2002 Act due to its ability to deter existing market players and impede potential rivals from entering the market. Drivers and consumers get additional discounts and incentives that beyond the monetary value.

When looking for actions that violate Section 4, it is important to consider other important factors such as the availability of diverse resources and the need for consumers in the relevant market to have no other alternatives. An early example of leveraging a dominant position is said to have taken place in the 2011 legal dispute between *the National Stock Exchange of India and Mcx Stock Exchange Ltd. &Ors.*⁹The lawsuit originated from the information disclosed by MCX Stock Exchange Ltd. (MCX-SX) on November 16, 2009. Pursuant to Section 26(l) of the Act of 2002, the Commission issued an order on March 30, 2010, instructing the Director General to conduct an investigation into the complaint.

The Commission expressed its belief that there was enough evidence to support the accusation. Additional research was conducted in accordance with the requirements of the Competition Act of 2002 and any applicable rules imposed under it. The National Stock Exchange (NSE), MCX-SX, and other parties were given enough time to thoroughly review all pertinent documents and present their reasons, both orally and in writing, before the Commission. Upon completing the whole process, the Commission determined that there were infringements of sections 4(2)(a)(ii), 4(2)(b)(i)&(ii), 4(2)(c), 4(2)(d), and 4(2)(e) of the Competition Act, 2002.

Consistent with the prevailing verdict, it was imperative to emphasize that the NSE received a show cause notice for violating the provisions of the Act, and it was essential to await their response before determining any penalties or other measures. *The case of M/s Flipkart India*

⁸ Case No.06/2015.

⁹ CASE NO. 13/2009.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

*Pvt. Ltd. &Ors v. Mohit Manglani*¹⁰in 2015. Mr. Mohit Manglani filed a complaint according to Section 19(1)(a) of the Competition Act, 2002, alleging that many e-commerce and portal enterprises had contravened Section 4 in the present instance. According to the informant, these internet merchants engaged in "exclusive agreements" with providers of products and services, which amounted to anti-competitive conduct. As to the informant, these methods led to the buyer feeling compelled to either make a purchase based on the conditions stated on the website or refrain from buying altogether, regardless of the limitations and expenses involved with the products and services. This ruling might potentially impact the legislation surrounding equitable commerce, as well as the promotion of openness and responsibility within the judicial system. The Indian Competition Commission subsequently investigated if any agreements pertaining to resale pricing between manufacturers and online sellers contravened any competition regulations. It was highly acclaimed.

RECENT AMENDEMENT OF COMPETITION ACT

The Competition Commission of India (CCI) is inviting input from interested parties on the Competition Commission of India (Lesser Penalty) Regulations, 2023 (LPR 2023) till November 6, 2023. Upon receiving notice, the LPR 2023 will revise the Competition Commission of India (Lesser Penalty) Regulations, 2009 (LPR 2009).

The Leniency Program, governed by the LPR 2009, offers a penalty reduction to individuals and companies that voluntarily report their participation in a cartel to the CCI and cooperate with subsequent investigations. The Competition (Amendment) Act, 2023 introduced the reduced penalty plus/leniency plus facility,¹¹ which will be put into effect by the LPR 2023. Significant revelations discovered Furthermore, indulgence: The purpose of the leniency plus facility is to motivate a pre-existing cartel (referred to as a "Existing Applicant") to provide information on a second cartel that has not yet been discovered. The benefits of enhanced clemency Choosing leniency plus will result in two financial benefits: (i) the applicant will be eligible for a bonus penalty reduction of up to 100% in the newly disclosed cartel; and (ii) they will receive an additional penalty reduction of up to 30%, on top of the original cartel penalty (as specified here). Y is a member of both Cartels A and B. In an attempt to obtain

¹⁰ Case No, 80/2014.

¹¹ Dr. S.C. Tripathi, Competition Law, (Central Law Publications, 2012, p. 114).

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

their forgiveness, Y confesses to them the existence of Cartel A. Regarding Cartel A, Y is eligible for a 50% reduction (while maintaining the second marker status). By accepting leniency plus, Y will qualify for an additional reduction of up to 30%, resulting in a potential total reduction of up to 80% for Cartel A. Y subsequently reveals Cartel B in accordance with the provisions of LPR 2023 Rule 7. In addition, Y will get a discount of up to or equivalent to 100% on Cartel B, as long as it meets the standards outlined in LPR 2023. Instructions and protocol for the leniency plus: Specific information must be provided: The candidate must give the following details: (i) the key aspects of the ongoing investigation into the existing cartel, which has been given high priority; (ii) the provision of crucial information, which entails the thorough and accurate disclosure of data or supporting documents required by the CCI to establish initial evidence of a newly revealed cartel's existence; and (iii) an elucidation of the specific ways in which the newly revealed cartel differs from the existing one.

In order to qualify for the benefits of leniency plus, the applicant must submit their application prior to the Director General furnishing the CCI with its investigative report on the current cartel. Other variables to take into account: Without the presence of leniency incentives or any other factors that the CCI may consider important, the CCI's ability to uncover the recently exposed cartel would be thoroughly considered, giving the CCI significant discretion.¹²

Further notable modifications Application retraction allowed. Applicants will have the option to retract their applications before the CCI receives the Director General's report, as per LPR 2023. Withdrawal of the application: If an applicant for leniency or leniency plus does not meet the terms and conditions of the facility, provides false evidence or intentionally withholds important information, or makes disclosures that do not align with the definition of "vital disclosures" in LPR 2023, they will lose the benefits associated with the leniency or leniency plus facility. Regarding forfeiture, the offender who has not received any leniency or leniency plus will be compared against the application for leniency or leniency plus.

To be eligible for consideration, submissions must be submitted in written form. To benefit from the penalty reductions provided by the leniency/leniency plus provision, any party must

¹² Rajkumar S. Adukia, 'An overview of provisions relating to Competition laws & Consumer Protection Laws in India' Retrieved from <http://www.caaa.in>.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

submit a written application. Oral applications are now obsolete and will not be considered. Cartels characterized by a central hub and radiating spokes: The LPR 2009 government only acknowledged the existence of "horizontal" cartels, which refer to cartels formed between competing parties. Hub and spoke cartels, which include collaboration between competitors and vertically integrated businesses or other market facilitators, will now be eligible for leniency and leniency plus facility advantages under the LPR 2023. This acknowledgment of these forms of cartels is outlined in the Amendment Act. The technique of cascading with leniency According to the LPR 2023, only a single applicant who fulfills the criteria for leniency plus will get the prize. Consequently, the CCI will only evaluate one leniency application at a time. Any further petitions will not be considered until the CCI rejects the leniency plus application filed by the first petitioner. It is uncertain if applicants who meet the criteria for "subsequent leniency plus" will get notification or whether they will need to independently learn that their applications are being placed in a queue and will not be assessed now owing to time limitations.

Preliminary concepts the subsequent revelations may lead to repercussions for both the present candidate and others: Except for an acknowledgment of wrongdoing by the applicant, the Competition Commission of India (CCI) and the Director General have the authority to use any disclosures or evidence provided by a leniency/leniency plus applicant, regardless of whether the application is accepted, denied, or withdrawn. The current applicant's identity will be kept secret. Exercising prudence In addition, according to the LPR 2023, the CCI has the authority to disclose the information or evidence submitted by the leniency or leniency plus applicants, after they get the report from the Director General.¹³

An applicant may be discouraged from selecting the leniency or leniency plus option if they are aware that any supplied information might be shared with third parties or used by the CCI / Director General in any Act-related procedures. Moreover, it is unclear what specific information the Director General and CCI may provide on these disclosures. The applicant's interactions include indulgence or indulgence plus: Apologies are inherently meant to be kept confidential. The effectiveness of the CCI in reconciling the opposing stances of leniency and leniency plus petitioner for a hypothetical second cartel remains uncertain.

¹³ Abir Roy and Jayant Kumar, *Competition Law in India*, Eastern Law Company, Kolkata, 2008.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

When comparing to global standards: Most wealthy nations have a limit on the maximum discount, usually below thirty percent. However, some countries do not have any regulations regarding the extent to which additional reductions may be made under the leniency plus option. Reductions above the global average might motivate the present application or applicants to provide the CCI with relevant, comprehensive, and accurate data.

OVERVIEW OF PROVISIONS OF THE COMPETITION ACT RELATING TO ANTI-COMPETITIVE AGREEMENTS

The Competition legislation of 2002 gave protection against domination, cartels, and unfair economic practices a fresh lease of life. This statute demonstrates a major divergence from the Monopolies and Restrictive Trade Practices Act of 1969, for example. Making use of anti-competitive tactics

The focus of this inquiry will be the actions that have been taken to achieve this goal and the justifications for these policies from a legal and substantive perspective. The authors of this paper clarify the ways in which legislation has advanced our understanding of competition law in India while also highlighting the flaws in the legislation that cast doubt on judicial decisions. This article covers both of these subjects. The performance of the Competition Commission of India is believed to have the potential to be greatly enhanced, which would offer the much-required certainty and clarity in the understanding of the law. This is something that should be considered, given that competition laws in India are still in the early phases of development.¹⁴

The Competition Act, 2002 (referred to as the "Competition Act") was implemented in a phased manner from 2002 to 2011. The Competition Commission of India (CCI) was established during this period to regulate and enforce the provisions of the Competition Act. The Competition Act, which followed the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act), laid the groundwork for a new framework of competition law in India. The development of this framework was motivated by the recognition that several developed countries, particularly the European Union, had successfully enacted more favorable

¹⁴ Adi P. Talati and Nahar S. Mahala, *Commercial's Competition Act, 2002: Law, Practice and Procedure*, Commercial's Law Publishers (India) Pvt. Ltd., Delhi, 2006.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

competition regulations, and that the business and economic landscape in India had undergone significant changes.

The Competition Act conferred more jurisdictions and expanded the scope of penalties for the Competition Commission of India (CCI) in comparison to the old Monopolies and Restrictive Trade Practices Commission. Furthermore, there are significant distinctions between the Competition Act and the MRTP Act in terms of their substantive limitations.¹⁵ The key sections of the Competition Act relating to the misuse of dominant market position and anti-competitive agreements were implemented on May 20, 2009. The CCI released its first findings on potential violations of the Act on February 4, 2010. The Competition Act's combination-related transaction rules, which serve as a framework for evaluating mergers and acquisitions, became effective on June 1, 2011. This article primarily focuses on Section 3 of the Competition Act, which provides detailed regulations on agreements that hinder competition. This article's Part I provides an overview of Section 3 of the Competition Act and highlights some of the main differences between its regulations and the competition law framework of the European Union. Part II provides a summary of important CCI decisions related to Section 3 of the Competition Act.

RELATING TO ANTI-COMPETITIVE AGREEMENTS

Section 3(1) of the Competition Act prohibits agreements between businesses, individuals, or organizations regarding the production, supply, distribution, storage, purchase, or control of goods or services that have the potential to materially harm competition in India. Furthermore, Section 3(2) renders each of these agreements null and invalid.

There is no definition for "appreciable adverse effect on competition" under the Competition Act. Section 19(3) of the Competition Act states that while evaluating whether an agreement has a significantly unfavorable impact on competition, a number of considerations must be addressed.

HORIZONTAL AGREEMENTS

Certain horizontal agreements are believed to be the origin of cartels and other major detrimental effects on competition, according to Section 3(3) of the Competition Act. The

¹⁵ Uniglobe Mod Travels Pvt. Ltd. v. Travel Agents Association of India & Ors. MANU/CO/0052/2011.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

burden of evidence, however, will be on the individual who is thought to have participated in the contested agreement to refute this finding. This presumption is debatable. Thus, counter benefits of agreements arguments may be used to refute this premise, but this would be difficult in the case of cartels.

Additionally, the Competition Act offers an exception to the presumption of a materially adverse effect on competition for horizontal agreements entered into through joint ventures: an agreement will be presumed not to materially harm competition if it improves efficiency in the production, supply, distribution, storage, acquisition, or control of goods or services.¹⁶

VERTICAL AGREEMENT

Vertical agreements, or agreements between businesses at various stages of the production chain in different markets for products or services, are prohibited under Section 3(4) of the Competition Act if they have the potential to materially harm competition in India. These include agreements like tie-ins, exclusive supply and distribution contracts, refusals to deal, and resale price maintenance that might significantly harm Indian competition.

This degree of review is compatible with the "rule of reason" approach to anti-competitive agreement analysis, which involves weighing an agreement's potential benefits and drawbacks for the market and determining whether it will likely have a significant negative impact on competition. In this way, "resale price maintenance" is categorized as a practice that has to be evaluated using the American method's "rule of reason" examination. On the other hand, "resale price maintenance" is considered a "hardcore restriction" that likely restricts competition in accordance with European competition law.

STANDARDS OF ASSESSMENT UNDER SECTION 3 OF THE COMPETITION ACT

There are two primary methods for determining whether an agreement is anti-competitive under the Competition Act. First, there is a defensible assumption that horizontal arrangements, such as cartels, would seriously impair competition. Secondly, an examination based on the "rule of reason" must be applied to all other agreements, including vertical agreements. It is important to highlight that the Competition Act employs a "effects"-based

¹⁶ *Belaire Owner's Association v. DLF Limited and HUDA*, [2011] 104 CLA 398

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

methodology, considering the possible or actual anti-competitive impacts of a certain agreement. Agreements that only aim to impede competition are not punished; instead, those that are unlikely to do so or do not are rewarded.¹⁷

There are regulations in place in several other countries, most notably the European Union, that prohibit agreements having the "object or effect" of impeding, distorting, or adversely affecting competition. Moreover, agreements pertaining only to the production, distribution, control, or supply of goods or services for export are exempt from Section 3 of the Competition Act. In a similar vein, reasonable limitations for the protection of intellectual property rights are excluded under a number of special laws.

RELEVANT MARKET

The Competition Act requires consideration of many factors for determining the relevant product market. These factors include customer preferences, the pricing of goods or services, the physical characteristics or final use of commodities, and the classification of industrial products. The right regional market should be determined by considering local requirements, an adequate distribution network, transportation costs, and consumer preferences. These are the relevant markets that must be taken into account (if applicable) in order to assess whether a behavior has a demonstrable detrimental effect on competition.¹⁸

PENALTIES

If the CCI finds that an agreement is anti-competitive, it has the authority to: (a) mandate that the parties terminate the relevant agreement and not enter into one again; (b) mandate that the relevant agreement be modified; and/or (c) impose a penalty that cannot be greater than 10% of the average turnover for the three previous fiscal years. The CCI has the authority to penalize any member of a cartel up to: (a) three times the profit for each year the agreement is in place, or (b) 10% of the participant's revenue for each year the agreement is in place, whichever is higher. Criminal penalties are not stipulated in the Competition Act for individuals involved in anti-competitive arrangements, such as cartels.¹⁹

¹⁷ M/s Abir Infrastructure Private Limited. v. M/s Emaar MGF Land Limited, 2012 CompLR 13 (CCI).

¹⁸ Alice Pham, Competition Law and Intellectual Property Rights: Controlling Abuse or Abusing Control, CUTS Centre for Competition, Investment & Economic Regulation, Jaipur, 2008.

¹⁹ M/s Royal Energy v. M/s Indian Oil, MRTP Case No. 1/28 (C-97/2009/DGIR).

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

The CCI has declared that it will consider any aggravating or mitigating circumstances when figuring out the right amount of money to fine someone for breaking the Competition Act. It has also hinted that it might consider the establishment of a successful compliance program as a pertinent consideration when figuring out how much to fine someone.

LENIENCY

The Competition Commission of India (CCI) has developed a leniency program for cartel members in compliance with the Competition Commission of India (Lesser Penalty) Regulations, 2009 (the "Leniency Regulations"). Before completing the inquiry report, the application for leniency must be received by the Director General, Competition, the CCI's investigative branch.²⁰ As per the Leniency Regulations, applicants might be assigned priority markers that indicate their position in the "queue" for leniency among members of the cartel.

The CCI may lessen penalties for leniency applicants in the following ways, per the Leniency Regulations, as long as the previously indicated conditions are satisfied: a. The first applicant who furnishes vital information pertaining to a cartel, which enables the Director General to establish a breach or the Competition Commission of India to formulate a preliminary finding, stands to gain a penalty reduction of 100% or an exemption from prosecution; b. Should a second applicant provide substantial "added value" to the investigation, they may be eligible for a reduction of up to 50% of the financial penalty; and c. For the third application, there might be a thirty percent decrease in the financial penalty.²¹

CCI'S ORDERS IN RELATION TO ANTI-COMPETITIVE AGREEMENTS SCOPE OF THE COMPETITION ACT

A large part of the CCI's initial orders under Section 3 of the Act consisted of dismissals of complaints filed with the CCI on the grounds that the facts of those complaints did not constitute a prima facie case under the Competition Act.⁹ Some of these complaints, which included individual commercial disputes, complaints under the MRTP Act, and regular consumer complaints, were based on an incorrect interpretation of the Act's scope. The

²⁰ Internet Service Providers Association of India v. Department of Telecommunications, MANU/CO/0018/2010.

²¹ *Achintya Mukherjee v. Loop Telecom Pvt. Limited & Ors.*, 2011 CompLR 56 (CCI).

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

Competition Act did not apply to these issues, as the CCI made clear in its decisions, and the complainant had other alternatives for regulatory action. Even though they did not completely establish the CCI's view of the major limits under Sections 3 and 4 of the Competition Act, these preliminary rulings served to clarify the CCI's position on the topic²².

RELIEF GRANTED BY THE CCI

The Competition Act also allows the Competition Appellate Tribunal ("COMPAT"), upon a finding of such a violation by the Competition Commission of India (CCI) or the COMPAT, to reimburse individuals for losses that can be proven to have arisen from a breach of the substantive prohibitions of the Competition Act. These powers supplement those already provided to the CCI (described in Part I above) to punish parties engaging in anti-competitive agreements and to impose behavioral adjustments. Regarding this, the CCI has made it clear that it is not permitted to award damages for tortious liability resulting from torture, mental anguish, or harassment. Furthermore, with regard to the CCI's jurisdiction to review government policies, the CCI has noted that if a government policy results in anti-competitive activity.

SECTORAL OVERLAP

The Competition Act allows for potential overlaps between the CCI's and sectoral regulators' jurisdictions. It says that in order to get a thoughtful judgment on matters pertaining to competition law, statutory authorities and the CCI may mutually refer concerns arising in each of their procedures to one another. Furthermore, the Competition Act's Section 62 makes it clear that its provisions are meant to be used in addition to current laws, not in instead of them. A large number of the complaints filed with the CCI pertain to economic domains that are within the jurisdiction of certain sectoral regulators. Broadly speaking, the CCI has taken the stance that it has authority over matters pertaining to competition across all sectors, but it would yield to the technical rules of the relevant sectoral authorities.²³

In the case of *Neeraj Malhotra v. North Delhi Power Ltd. &Ors.*,²⁴a complainant alleged that the three electricity distribution companies in Delhi were abusing their dominant position

²² Dish TV v. Prasar Bharti, Case 44/2010.

²³ *FICCI -Multiplex Association of India v. United Producers/ Distributors Forum &Ors.*, 2011 CompLR 0079 (CCI)

²⁴ Case No, 06/2009.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

by installing meters that ran faster than the legitimate rate, and not permitting consumers to install meters of their own choice. The complainant alleged that this resulted in foreclosure of markets for meters, cartel behaviour among the electricity distribution companies and an unfair and discriminatory price determination based on faulty meters.

The CCI referred to the Delhi Electricity Regulatory Commission (the "DERC") for its view in relation to the jurisdiction of the CCI to examine matters in the complaint. The DERC responded stating that while the CCI was not the correct forum to decide matters relating to the electricity tariff under the Electricity Act, 2003 and related legislations, issues pertaining to competition could be examined by the CCI. On the basis of the DERC's view, the CCI proceeded to deal with the competition issues raised in the complaint, and stated as follows in its final order in the matter: "Sectoral regulators have necessary technical expertise to determine access, maintain standard, ensure safety and determine tariff. The laws governing entry requirements, technical requirements, tariffs, and safety restrictions are established by them."²⁵

They also directly affect quantity, quality, and pricing. Sectoral regulators concentrate on the inner workings of certain sectors, whereas the CCI views markets more broadly, emphasizing competition as a means of increasing productivity. Similar to this, the complaint in *Neeraj Malhotra v. Deutsche Post Bank house Finance Ltd. & Ors.*²⁶ claimed that many banks had colluded to levy prepayment penalties for early house loan repayment. After reviewing the commercial and regulatory framework surrounding pre-payment penalties, the CCI made this observation. It also noted that, in light of the possibility of jurisdictional overlap between the CCI and sectoral regulators, the CCI must "adopt an approach of harmonious construction of the relevant provisions of the statutes and deal with issues before us in a manner which helps to bring greater clarity and consensus in the respective roles of CCI and other existing regulations."

²⁵ Vijay Gupta v. M/s Paper Merchants Association, Delhi & Ors., MANU/CO/0010/2011.

²⁶ Case No, 05/2009.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

DEFINITION OF "ENTERPRISE"

The Competition Act's definition of "enterprise" has traditionally been construed generously by the CCI. In the case of *Jindal Steel & Power Ltd. v. Steel Authority of India Ltd*²⁷ the CCI rejected the argument that Indian Railways is not an entity under the Competition Act since it performs sovereign functions. In a related decision, the CCI dismissed claims that a public sector firm such as Steel Aut may be treated differently based on public policy. Rather, it concluded that Indian Railways is a "enterprise" since it is involved in "transport," which is included by the Competition Act's Section 2(u) definition of "service."

HORIZONTAL AGREEMENTS

Cartels: The Cement Case

In the case of *Builders Association of India v. Cement Manufacturers' Association & Ors*²⁸, the CCI came to the conclusion that eleven cement manufacturers had colluded to control and restrict cement production and supply in India and had worked together to keep cement prices high. ("Cement case"). The Competition Act defined a "cartel" as any action taken by cement manufacturers or the Cement Manufacturers Association ("CMA") that moved cement prices in parallel across different Indian geographic zones (despite differences in the cost of production for individual companies), collected and disseminated production and capacity data to its members, and demonstrated a purposeful restriction on cement supply at particular times were the basis for the CCI's conclusion.²⁹

Based on the claims made by executives of certain smaller cement firms that they followed pricing trends established by the bigger cement companies, the CCI came to the conclusion that the cement producers had participated in price signaling techniques, leading to price coordination between cement makers. 50% of the cement producers' earnings during the period of the cartel after 2009, when the Competition Act came into force, were punished by the CCI to a total of around Rs. 6300 crores (or about US\$1.2 billion at an exchange rate of US\$1= Rs. 50). While the COMPAT is now examining this decision in preparation for an appeal, it is nonetheless useful to explore a few significant consequences from the order.

²⁷ Case No. 11 /2009.

²⁸ Case No, 29/2010.

²⁹ *Cine PrekshakulaViniyoga Darula Sangh v. Hindustan Coca Cola Beverages Pvt. Ltd. &Ors., MANU/CO/0084/2011.*

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

under general, this is compatible with the wide meaning of "agreement" under the Competition Act, as highlighted by the CCI in its ruling that "the concurrence of parties or the consensus amongst them can, therefore, be gathered from their common motive and concerted conduct." At first, the CCI took the position that there was no need to demonstrate the presence of an express agreement between the relevant parties in order to establish the existence of an anti-competitive arrangement. However, the decision makes no recommendations about the standard of circumstantial evidence that would be required to prove the existence of an agreement. Second, the CCI applied its judgment on the broad definition of "agreement" using the circumstantial evidence of "price parallelism" in the cement market. The CCI held that "circumstantial evidence concerning the market and the conduct of market participants may also establish an anticompetitive agreement and suggest concerted action." More specifically, the CCI held that in cases where parallel behavior "cannot be explained but for some sort of anticompetitive agreement and action in concert," this would indicate collusion. In other words, the CCI held that parallel behavior in price or sales is indicative of a coordinated behavior among market participants. In this case, the CCI's negative assessment was supported by the CMA's activity records, the idea that member meetings are related to price increases, and the cement companies' overall underutilization of their capacity.

Third, the Department of Industrial Policy and Promotion ("DIPP") of the Indian government directed the CMA to gather certain data, and the CCI has considered the particular circumstances of the parties sharing information in compliance with this mandate. The CCI rejected allegations that the CMA was mandated by the DIPP to obtain such information, noting that it is being done under the direction of DIPP does not exonerate CMA or the cement businesses engaging in this exercise from falling afoul of the terms of the Act³⁴). However, the CCI hasn't given a convincing reason for dismissing these allegations. Moreover, the CCI could not provide enough evidence to support the quality and relevance of the data supplied on the CMA's website. Moreover, the CCI refrained from answering the cement companies' assertion that the data collected and shared by the CMA had little value since it was past price information. The order briefly notes that the information shared by the CMA contained "details of production and dispatch"³⁴ and that the minutes of the CMA's meetings demonstrate that the cement companies were "discussing the price of cement"

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

These points support the order's conclusion that the information shared among the members was sensitive. All things considered, the CCI's decision in the Cement case was significant because it showed the organization's willingness to take strong action against major cartels and its preparedness to penalize them harshly. It may, however, also be criticized.

VERTICAL AGREEMENTS

Exclusive Arrangements under Section 3(4)

Darula Sangh Cine Prekshakula Viniyoga vs. Hindustan Coca-Cola Beverages Pvt. Ltd. & Ors,³⁰ the CCI investigated the possibility of an exclusive supply agreement between Hindustan Coca Cola Beverages Pvt. and a theater operator. Ltd. ("HCC") and the practice of establishing a higher maximum retail price for soft drinks at movie theaters constituted an anti-competitive agreement or the abuse of a dominant position. The CCI disagreed with the DG's determination that the theater operator's multiplexes' closed market constituted the relevant market. Any exclusive supply agreement a restaurant, retail store, or outlet entered into would be deemed anti-competitive under such an interpretation, according to the CCI.

The CCI did not provide a convincing explanation for its interpretation of the relevant market in this specific case, even though it disagreed with the DG's narrow view of the relevant market. Based only on the fact that the relevant market is larger than the boundaries established by the DG, the CCI concluded that neither the movie theater operator nor the HCC had a dominant position in the relevant markets. Furthermore, since the exclusive supply agreement was for a short four-month period and could be canceled by either party with thirty days' notice, the CCI concluded that it did not include a stipulation that would have considerably negatively impacted competition in India. Therefore, it is untrue to say that the agreement barred rivals from entering the market. *Jindal Steel & Power Ltd. v. Steel Authority of India Ltd.* claimed that the agreement between Indian Railways ("IR") and Steel Authority of India Ltd. ("SAIL") for the exclusive supply of rails by SAIL to IR violated the Competition Act because it caused the market for such rails to be foreclosed to new entrants.

In this case, the relevant market was found to be the market for long rail steel supplied across India that meets the appropriate technical requirements. It was concluded that IR was a

³⁰ Case No. 29/2018.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

monopolist purchaser of long rail steel and SAIL was a monopolist provider of such steel at the time the contract was executed, up until Jindal Steel had the capacity to produce such long rail steel. The CCI investigated whether the exclusive deal was anti-competitive since it disregarded recent rivals (like Jindal Steel). The idea of a "complete contract" was essential to the CCI's economic study of the exclusive agreement. The CCI went on to outline certain essential conditions of a "complete" contract, including (i) a specified duration, (ii) a review process, and (iii) an exit clause for either party.⁴³ The CCI further stated that a "long term price-and-quantity agreement, which is complete and is common knowledge among all potential market participants, is not inherently exclusionary in nature, even though the agreement is between bilateral monopolists (emphasis supplied)".³¹

The contract was incomplete as it was clear that none of these three conditions had been satisfied in this case. Nevertheless, the CCI continued to examine the impact of the unfinished contract on competition "in terms of ground reality". SAIL was not more efficient than Jindal Steel, and it seemed "more likely that SAIL had been persuaded to provide rail to IR" due to the small portion of SAIL's total revenues that came from sales to IR, among other factors that the CCI took into account.⁴⁴ Ultimately, the CCI looked at the business rationality of SAIL and IR's choice to join into the exclusive agreement. It concluded that the decision was "rational" because it took into account IR's concerns about safety standards and the stability of the long rail supply, as well as SAIL's compensation for the investment made in its forced shift to long rail production in the interest of the nation.⁴⁶ It also concluded that the agreement did not lead to the foreclosure of the market because Jindal Steel had not proven to be a viable rival of SAIL and that non-IR private sidings, which accounted for 25% of the rail market, could purchase rails from the agreement.

Tie-in arrangements

This complaint was brought in the matter of In Re: IELTS Australia Pty Ltd., IDP Education Pty Ltd., and IDP Education India Pvt. Under Section 3(4) of the Competition Act, the CCI issued the following remarks on tie-in agreements: "In a 'tie-in' arrangement, as a condition of purchase, a purchaser is also made to buy some other good." The Planet EDU Pvt. Ltd. Ltd..

³¹Anderman, Steven D. *The Interface between Intellectual Property Rights and Competition Policy*. New York: Cambridge University Press, 2008.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

The complaint provided counseling services to students who want to study in Australia. The lawsuit claimed that by providing counseling services to students for free, IELTS, the company that gives the examinations required for students to study in Australia, was distorting competition in the counseling services market. The fundamental idea behind the claim that a "tie-in arrangement" violates competition law is that it misleads the customer by forcing him to purchase a linked good at a time when he may not have wanted to. For this reason, the consumer may find it more appealing to have the things offered individually. Due to ridership, low-quality items may also profit from "tie-in" by obtaining a larger market share than they otherwise would. Based on the case's circumstances, the CCI determined that there was no anti-competitive action since consumers benefitted and there was insufficient evidence to establish an anti-competitive impact.

Market power in vertical arrangements

Although the Competition Act does not set any such standards, the CCI has indicated in several of its rulings that both parties to a vertical agreement must have some degree of market power in order for the agreement to clearly harm competition. *Global Automobiles & Ors. v. Automobile Dealers Association, Hathras, UP*³². The CCI made the following observation regarding and Pooja Expo India Private Limited: "Normally, the competition in the different level of production-supply chain may possibly be adversely effected when both entities to the agreement possess some market power. Since the two involved enterprises had "insignificant presence in the market in which they are operating and are fringe players none of them is capable of causing any AAEC in any of the market. This is probably the cause of the lack of consideration given to vertical agreements in the EU unless both parties have at least a 30% market share in their respective sectors.

The scope of the Competition Act is much different from that of the MRTP Act. The MRTP's feeble defense against dominance, cartels, and unfair business practices has been replaced with a framework that encourages competition and prevents anti-competitive activity with the passing of the Competition Act. The Competition Commission of India (CCI) has brought about a considerable advancement in the knowledge of competition law in India with the passage of the Competition Act and the imposition of severe penalties on offenders. It has

³² Case No. 33/2011.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

also acknowledged and attempted to address complex issues that may emerge under the Competition Act, such the information-sharing issues raised in the Cement Case. The CCI's performance could be improved in a number of areas, most notably the reason it gives for rejecting parties' claims and the clarity of its decisions, as would be expected in the early stages of any body of law's development. Given that competition law in India is still in its infancy, this is important for raising public understanding of the legal framework as well as for the relevant problem at hand. Finally, advice from the CCI would be extremely beneficial.³³

Instructions that address topics including de-minimis levels, fine regulations, and particular advice on business agreements. In the end, this may be anticipated once the CCI has solid internal opinions on the matter.³⁴

ANTI-AGREEMENTS UNDER THE MRTP ACT

The Indian government first adopted the Monopolies and Restrictive Trade Practices Act (MRTP Act), previously known as the Indian Law on the subject, in 1969. From the perspective of competition law, the Act's main goal was to control monopolistic, unjust, and restrictive corporate practices that lessen competition in the industrial and commercial sectors and harm consumers' interests. The MRTP Act aimed to prohibit both monopolistic conduct and the concentration of economic power in a limited number of hands. The laws also aimed to prohibit unfair, monopolistic, or restrictive trading practices. This was done to protect the interests of consumers as well as to stop riches from accumulating. It did hold, however, that the public interest, the common good, and the need to monitor and regulate the nation's economic system to prevent the apparent concentration of economic power are the fundamental elements and highest priorities woven throughout the statute. In the *Raymond Woolen Mills Ltd. v. MRTP Commission case*,³⁵ this was said. Restrictive trade practices, or RTPs, are what Raymond Woolen Mills Ltd. Generally speaking, a commercial conduct that has the effect of preventing, distorting, or limiting competition is seen as discriminatory. The phrase "restrictive trade practice" specifically refers to a method that tends to impede the flow

³³ Arvind Subramanian, "India as User and Creator of Intellectual Property: The Challenges Post-Doha", Aaditya Mattoo and Robert M. Stern (eds.), India and the WTO, World Bank and Oxford University Press, Washington D.C., 2003.

³⁴ Anurag K. Agarwal, Competition Law-Emerging Trends, P. Satyanarayana Prasad (Ed.), Amicus Books, ICFAI University Press, Hyderabad.

³⁵ 1993 SCR (2) 127

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

of capital or resources into the production stream. This process is known as RTPs, which denotes that it limits output and manages expenses. Interpretation of "Unfair Trade Practices" (UTPs) A trade practice that employs any unfair technique or deceptive practice with the ultimate goal of advancing the sale, utilization, or supply of any good or for the provision of any service is called a "unfair trade practice." Concerning the case of *Dr. VallalPeruman v. Godfrey Phillips (India) Ltd.*,³⁶ the concept that unfair trade practices could develop or be produced by the misuse, manipulation, distortion, contrivance, and embellishment of ideas presented by the complainant is deemed to be an authoritative opinion.³⁷

COMPARATIVE ANALYSIS OF THE USA, UK, AND EU

Examining anticompetitive agreements under Section 3 of the Act and the legislation pertaining to them in other countries would be useful, given competition law in the USA, EU, and UK is substantially more developed than in India.

Competition Law in the USA

In the US, competition law is regarded as antitrust law. The antitrust laws provide a broad definition of prohibited conduct; the court will determine whether a given activity is unlawful based on the unique facts and circumstances of each case. Antitrust law has two basic purposes: it protects the free-market activities of businesses and it creates adequate competition to meet the needs of consumers. The main laws that come after it in the US are the Sherman Act of 1890, the Clayton Act of 1914, and the Federal Trade Commission Act of 1914.

Competition Law in the UK

The UK has enacted two notable laws that restrict commerce via illicit means and prohibit anti-agreements, both of which are detrimental to competition. The Enterprise Act of 2002 and the Competition Act of 1998 are the two primary laws that control competition in the United Kingdom.

Competition Law in EU

The 1957 Treaty of Rome established the primary competition regulations. The Treaty of

³⁶ Writ Petition (civil) 567 of 1994.

³⁷ Avtar Singh and Harpreet Kaur, *Competition Law*, Eastern Book Company, Lucknow, 2012.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

Rome created the European Economic Community (EEC). The European Community is referred to as the (EC). The treaty's Articles 101 and 102 (formerly Articles 81 and 82, respectively) address a wide range of topics related to competition law. Agreements that are anti-competitive within the European Community are governed under Article 101 of the treaty. Article 102 deals with the misuse of a dominating position.³⁸



³⁸ chao, Yang Ching, Gee San, Changta Lo, and Jiming Ho. International and Comparative Competition Law and Policies. New Delhi: Wolters Kluwer(India) Pvt. Ltd., 2008.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in