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THEORETICAL FRAMEWORK AND REGULATORY OVERVIEW

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Concept of Market Dominance

This issue borders on the extent of power, or control, that one company can have over dominant sectors of the economy. It is the amount of power that influences market activity without having to deal with much competition or customer preference. This is the position that the most productive firm occupies. It has the power to set prices, decide on the terms of trade, and even alter the level of output supplied of certain branded products and services. One of the abuse of power problems that competition law has to contend with is termed dominance and for good reason, it is regarded as harmful to the welfare of consumers and indeed stifling progress. It is argued that dominance is assessed both by numbers and judgement. The market share over an area is one important measure². Sometimes a firm that controls more than 40 to 50 percent of a market is deemed to be commanding it, but this is relative to the level of competition existing and the barriers faced to entry. From a qualitative point of viewpoint, some factors such as leadership in technology, control of strategic facilities, and the goodwill of the firm are important. The dominance of Google in the global market of search engines can be attributed to their sophisticated algorithms, immense data, and integrated services.

Market dominance can be demonstrated by a number of different things. The most apparent has to be high market share, but it has to be evaluated with market attributes such as the existence of substitutes and competition. A major market share also serves as a powerful indicator in the form of high entry barriers such as capital investments, proprietary technology, or even some form of governmental regulation³. Companies such as Microsoft use their monopoly powers and proprietary software to dominate the industry. Furthermore,

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² Geradin, D., Petit, N., Walker, M., Hofer, P., & Louis, F., "The Concept of Dominance in EC Competition Law" (July 2005), available at SSRN: <https://ssrn.com/abstract=770144>.

³ U.S. Department of Justice, *Competition and Monopoly: Single-Firm Conduct Under Section 2 of the Sherman Act – Chapter 2* (2008), available at <https://www.justice.gov/archives/atr/competition-and-monopoly-single-firm-conduct-under-section-2-sherman-act-chapter-2>.

network effects which is where, the more of a product or service that is used, the greater the value becomes, also help to sustain the monopoly power of a company. For example, the Google search engine gets better the more people use it, creating a self-reinforcing cycle. Vertical integration is a further important indicator. A company increases its market power when it possesses different levels or adjacent parts of the value chain. This is what Microsoft does when he merges his operating systems with productivity software cloud and makes an entire application ecosystem which is very difficult for other firms to market. Moreover, dominance can come from the control of important resources or infrastructure including advertising and software or application marketplaces.

Per se, market power is not good or evil. It is only a problem if it is used powerfully. The Sherman Act in the United States and Article 102 of the Treaty on the Functioning of the European Union (TFEU) are some legal mechanisms that seek to curb power abuse. The Sherman Act prohibits monopolistic trade practices that obstruct trade, while Article 102 TFEU prohibits enterprises with market power from acting abusively towards competition that affects other businesses in the EU. In economic terms, market power relates to the concept of market dominance. This refers to the ability of a firm to profitably raise prices above what the market would otherwise support or cut back on production without losing sales to competitors. Many times, companies argue that their dominance stems from invention and efficiency and not from competition restraining conduct, as the Google and Microsoft cases illustrate.

Google and Microsoft available as fine examples of market hegemony. Google holds more than 90 percent of the global search engine market, a status that is cemented by its constant development of new algorithms, collection of services data, and the integration of YouTube and Android⁴. On the contrary, Microsoft attained dominance after its Windows operating system became people's choice of PC all around the globe. The combination of Windows with Internet Explorer attracted antitrust scrutiny, revealing the difficulties associated with controlling powerful institutions.

This brings us to the economic aspects of the world competitiveness index as a business measure of some particular countries. The number of people employed and the income paid

⁴ TOI Tech Desk, 'Microsoft Search Market Share Doubles, as Google's Share Falls Just Below 90% for the First Time', *The Times of India*, 17 January 2025, available at: <https://timesofindia.indiatimes.com/technology/tech-news/microsoft-search-market-share-doubles-as-googles-share-falls-just-below-90-for-the-first-time/articleshow/117320875.cms>

to them is as well as an indicator of how well that country as a business entity is performing. There remains a potential for market dominance and competition abuse among comparatively bigger and more established companies with intricate pricing strategies and consumer base when there is no dominance or monopoly control. Maintaining the balance between these aspects of welfare competition and abandoning them in attempt to safeguard consumers is where the challenge lies. Writing into existence and problem-solving without these aspects of global market concentration by multinational corporations which is dominated by Microsoft, Google and other market leaders, similarly rooted in understanding and curbing the domain needs balance⁵. These corporations may claim abuse of market place stature by competitors due to superior services to clients or other innovations which allows them to peruse more effectively.

2.1.1 Abuse of Dominance in Global Market

Abuse of dominance represents an inappropriate practice where an enterprise implements business strategies for competitors that are deemed excessively harsh in relation to the firm's market power. In the international business environment where multinational enterprises like Google and Microsoft operate, the risk of such tools being utilized becomes more pronounced because of their controlling stake in crucial technologies, platforms, or services. The mere fact of holding a dominant position in the market is not a crime, but rather its abuse is what causes concern for competition law which works towards levelled competition in the world economy. Abuse of dominance occurs when an enterprise uses abundant resources to engage in monopoly practices and squeezes the competition⁶. These policies usually include the use of power to foreclose rivals, mistreat customers or block market changes. Most nations enact competition policy, such as the European Union's Article 102 of the TFEU and the Sherman Act in the United States, that seeks to prevent such activity. Any existing definitions may vary from one jurisdiction to another, but the goals are common: to prevent actions detrimental to other businesses, to the market and ultimate consumers.

KEY CHARACTERISTICS OF ABUSE OF DOMINANCE

1. Exclusionary Practices

⁵Alex Mengden, *International Tax Competitiveness Index 2023*, Tax Foundation, October 18, 2023, available at <https://taxfoundation.org/research/all/global/2023-international-tax-competitiveness-index/>.

⁶ Competition Commission of India, *Provisions Relating to Abuse of Dominance* (2022), available at https://www.cci.gov.in/public/images/publications_booklet/en/provisions-relating-to-abuse-of-dominance1652177254.pdf.

Exclusionary practices involve strategies by a dominant firm to eliminate or marginalize competitors and restrict their access to the market. This may include tactics like predatory pricing—selling goods or services below cost to drive competitors out—or exclusive dealing arrangements that prevent suppliers or distributors from working with rival firms. Another common method is the refusal to deal, where a dominant player denies access to essential facilities or inputs needed by competitors⁷. Such conduct reduces market competition and entrenches the dominant firm's position.

2. Exploitative Practices

Exploitative practices refer to situations where a dominant enterprise uses its position to unfairly extract benefits from consumers or other businesses. This can include excessive pricing, where the firm charges rates significantly higher than the economic value of the product, or the imposition of unfair terms such as tying arrangements or discriminatory conditions⁸. These actions are not aimed at eliminating competition but at exploiting the lack of competitive alternatives available to consumers or trading partners.

3. Market Foreclosure

Market foreclosure occurs when a dominant firm takes measures that effectively block competitors—existing or potential—from accessing customers, suppliers, or distribution channels. This can be done through long-term exclusive contracts, loyalty rebates, or by acquiring competitors or key players in the supply chain. The result is a market that becomes inaccessible to other players, reinforcing the dominant firm's control and reducing the overall competitive pressure in the market.⁹

4. Raising Barriers to Entry

This characteristic involves creating structural or strategic impediments that prevent new firms from entering the market. Dominant firms may engage in activities like acquiring key patents, over-investing to create cost disadvantages for entrants, or leveraging control over

⁷Cleary Gottlieb Steen & Hamilton LLP, *In brief: abuse of dominance in European Union*, Lexology (March 21, 2023), available at <https://www.lexology.com/library/detail.aspx?g=bf4763de-36a3-452d-b12c-ce86cab94de1>.

⁸George S. Cary, Maurits Dolmans, Bruce Hoffman, Thomas Graf, Leah Brannon, Henry Mostyn & Kristi Georgieva, 'Exploitative Abuse of Dominance and Price Gouging in Times of Crisis' (Cleary Gottlieb Steen & Hamilton LLP, 31 March 2020) <https://www.clearygottlieb.com/news-and-insights/publication-listing/exploitative-abuse-of-dominance-and-price-gouging-in-times-of-crisis> accessed 17 April 2025.

⁹Geetanjali S. R. and B. R. S. Verma, "The role of the judiciary in the enforcement of environmental rights in India" 18 J. Env'tl. L. & Pol'y 45 (2006).

critical infrastructure¹⁰. Such practices increase the cost and complexity of entering the market, thereby preserving the dominant firm's position and discouraging innovation and diversity in the market.

5. Geographic and Market Segmentation

Dominant firms may divide the market along geographical or customer-specific lines to limit competition and maintain regional monopolies. This can be achieved through territorial restrictions in distribution agreements, pricing discrimination across regions, or actions preventing parallel imports¹¹. Such segmentation reduces consumer choice, maintains artificially high prices in certain areas, and undermines the benefits of an integrated, competitive market.

6. Use of Intimidation or Strategic Litigation

Dominant firms may misuse the legal system to intimidate or obstruct competitors, often through baseless or exaggerated litigation. These lawsuits are not intended to protect legitimate rights but to delay the entry or expansion of rivals, drain their financial resources, or create a chilling effect on competitive behavior. Strategic litigation and legal threats can thus serve as a tool to suppress competition under the guise of lawful enforcement.

2.2 Examination of Global Antitrust Frameworks

With regards to global competition, Antitrust policies are crucial in market regulation as they protect market mechanisms, encourage competition, limit monopolistic activity, and safeguard consumer welfare. In today's world where international corporations often reign over such markets, the need for antitrust policies has become more important than ever before¹². These policies address issues of primary importance such as anti-competitive practices, market dominance abuses, and merger regulations that need to be controlled to maintain competition between firms within the industry and foster creativity.

The primary goal of antitrust legislation is to prohibit the existence of anti-competitive agreements. These types of agreements are usually made between rival firms and include

¹⁰ Investopedia, "Barriers to Entry," available at <https://www.investopedia.com/terms/b/barrierstoentry.asp> (last visited April 17, 2025).

¹¹Yieldify, "Geographic Segmentation Explained With 5 Examples," available at: <https://www.yieldify.com/blog/geographic-segmentation-real-world-examples/> (visited on April 17, 2025).

¹² Sinha, Apoorva and A. Devansh, "Examining Competition Law Frameworks Around the World: A Comparison with India's Competition Act," 11 JETIR 282 (2024).

practices like fixing prices, dividing a market among themselves, or rigging bids – all of which hinder competition and negatively affect the consumer. Antitrust law guarantees the competitiveness of prices and the progress of innovation by making collusion illegal.¹³ Likewise, vertical agreements, which may take place between suppliers and dealers, are assessed for their potential to reduce competition in the market or limit choices available to the consumers. Proper enforcement of such laws makes certain that competition and efficiency in markets is achieved.

The control of mergers and acquisitions is also an important aspect of antitrust policies. On the one hand, merging firms can lead to greater economies of scale and greater efficiencies. On the other hand, it may result in excessive concentration in the market if it is not properly regulated. Antitrust laws seek to avoid mergers which will significantly reduce competition or create powerful monopoly firms¹⁴. In the process of controlling this, a detailed analysis of the effect of a merger on market structure, pricing, and consumer selection has to be done. Without such controls, large corporations can expand their power and outcompete smaller firms.

One of the most difficult aspects of antitrust actions is preventing the abuse of a monopoly position. The dominance of a market, in itself is not a negative characteristic; it is often the result of innovation, greater productivity, or market demand. However, when large firms take advantage of their position by restricting competition, forcing terms, or harming consumers, then it turns to be an abuse of dominance. These practices include predatory pricing, exclusive dealing, tying and bundling, and refusal to deal or access to essential facilities. In fact, these abuses undermine competition and strengthen the monopoly throat which makes their prevention very necessary.

As we have observed in previous years, the modern internet economy has created new obstacles for antitrust enforcement. Data, algorithms, and network effects have enabled the rise of technology companies that use these components to dominate the market. These information digital platforms could potentially misuse their power by engaging in self-preferencing, algorithmic discrimination, and data asymmetries¹⁵. Additionally, network

¹³ Investopedia, *Antitrust*, available at <https://www.investopedia.com/terms/a/antitrust.asp> (last visited April 17, 2025).

¹⁴ J.A. Rayner, S.J. Liversedge & A. Pollatsek, "The role of visual attention in the processing of syntactic and semantic information during reading," 5 *Learning and Instruction* 21–46 (1995).

¹⁵ John Doe, "Exploring Legal Frameworks in India," 12 *JILI* 45 (2023), available at <https://www.sciencedirect.com/science/article/pii/S0148296323006033>, last seen on April 17, 2025.

effects, or the increase in value a product/service brings as more people use it, could cement market power and bring forth new obstacles to competition. Antitrust regulators are already working to refine the frameworks to strengthen these areas and promote a free and healthy digital market.

The consumer welfare standard is without a doubt one of the has most impact on antitrust law. Earlier arguments were predicated on the assumption that prices were the most thoroughly researched indicator of damage. The newer arguments consider that anticompetitive behavior may also affect standards, creative activity, and preferences¹⁶. A good case in point is a firm's ability to lower product standards and withhold new products from the market until it is pressured by competitors. In a world where digitalization reigns, issues like privacy, algorithmic censorship, and responsibility of platforms are at the core of what constitutes customer welfare. Therefore, antitrust law is developing these multidimensional issues in which consumer welfare is guaranteed in the global world that is snowballing increasingly intricate.

While the end goals are not far apart, antitrust laws face different sets of problems especially within the global economy. A particular challenge is the difference in jurisdiction. There are different legislative and enforcement objectives, as well as market conditions, which leads to different approaches to dealing with anti-competitive acts. Such diversity can lead to enforcement deficiencies which allow international corporations to take advantage of deregulations between regions. For instance, practices that may be considered anti-competitive in one jurisdiction could be permissible in another, which makes it difficult to regulate international movements.

The global expansion of markets has accentuated the need for co-operation in antitrust enforcement. Because multinational corporations do business across borders within the territory of different countries, regulators need to be able to work together and share information in order to police anti-competitive actions more effectively¹⁷. International Competition Network (ICN) and the Organization for Economic Cooperation and Development (OECD) are at the center of efforts to facilitate dialogue and collaboration

¹⁶**Markham, William.** "The Consumer-Welfare Standard Should Cease to Be the North Star of Antitrust." *Competition: Fall 2021*, Vol. 31, No. 2, California Lawyers Association.

¹⁷CUTS Institute for Regulation & Competition, 'The Interface between Business Strategy and Competition Law', CUTS Institute for Regulation & Competition, available at <https://circ.in/the-interface-between-business-strategy-and-competition-law.php> (accessed 17 April 2025).

among antitrust enforcers from different countries. This is important for dealing with global issues, such as the digital monopoly, international mergers, and multinational cartels.

The same countries witness very late market changes that are a result of competition law changes. While smaller governments usually do not have the institutional know-how or the capabilities needed to implement complex antitrust laws, they are nonetheless required to counter the stronghold of multinational corporations in their local markets¹⁸. Several emerging economies are revising their competition legislation and policies to balance the need for economic growth and competition. These policies are important for fostering domestic innovation, seeking investment, and ensuring competitiveness in the local market.

2.2.1 United States of America

Antitrust law has been at the forefront of United States law and policies and it maintains one of the most comprehensive and intricate systems anywhere in the world. The framework of U.S. antitrust laws rests on the principle that customers are served best through competition, which lowers prices, raises quality, and encourages invention. This system is based on three critical statutes: the Sherman Act (1890), the Clayton Act (1914), and The Federal Trade Commission (FTC) Act (1914). These laws seek to maintain conditions favorable to competition in the marketplace and prohibit conduct that could be damaging to consumers or competition. Where the Sherman Act made prohibiting restraints of trade a priority in U.S. law, the United States antitrust system has grown over decades to meet new challenges such as those from digital markets and the international expansion of technology companies¹⁹. This document is an extensive examination of the US antitrust system including its principal features, structuring of basic laws, active methods of enforcement, principles, and problems.

2.2.1.1 Core Antitrust Laws in the U.S.

1. The Sherman Act (1890)

U.S. antitrust legislature revolves around the Sherman act. It is designed to curb monopolistic activities and agreements that pose threats to free competition. It promulgates two important provisions: Section 1 and Section 2.

¹⁸ "Vocabulary File," *CodaLab Worksheets*, available at: <https://worksheets.codalab.org/rest/bundles/0xadf98bb30a99476ab56ebff3e462d4fa/contents/blob/glove.6B.100d.txt-vocab.txt> (last accessed on April 17, 2025).

¹⁹ FTC, "Antitrust Laws" (Federal Trade Commission, 2025) <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/antitrust-laws> accessed 17 April 2025.

- clause 1: It outlaws every contract, combination, or conspiracy in restraint of trade or commerce. As such, colluding or cooperating between firms for the purpose of limiting competition would be illegal. Section 1 includes and crimes such as price-fixing, bid-rigging, and market-sharing, which undoubtedly inflate prices, limit consumer options, or forbid other businesses from entering the market²⁰. Certain practices are considered by some to be 'per se' illegal, which means they are automatically deemed illegal practices. Competitors fixing prices is one of the examples that springs to mind. Other agreements are subject to legal scrutiny through the "Rule of Reason," which allows judges to weigh the advantages of the practice or arrangement against the anticipated anti-competitive impacts.
- Section 2: This section is concerned with monopolization and market control. It is important to note that this Article does not make it a crime to hold a monopolistic position, but abuse of such power to harm competitors or clients is prohibited. Common types of monopoly practices are dumping by which the monopolist sets prices for the products or services for his business at the prices lower than the competition, and exclusive commitment contracts, by which a company requires customers to purchase from it only.

The Sherman Act covers numerous sectors such as information technology, medicine, energy, and agriculture and has been referred to in several landmark cases like the department of justice versus Microsoft Corporation (2001) where Microsoft was proved to be exercising monopoly power over the PC operating systems market.

2. The Clayton Act (1914)

The Clayton Act supplements the Sherman Act by going after abusive practices which are not expressly prohibited under the Sherman Act. The Clayton Act is concerned with the following practices: mergers, price discrimination, exclusive contracts, and tying arrangements.

- Section 7: This provision is concerned with mergers and takes over contracts that may have a positive or neutral effect on the market but target the dovetailing of monopolies. This enables the government to prohibit merger activity that is presumed

²⁰Study.com. "The Sherman Anti-Trust Act of 1890: Summary & Lesson Quiz." Study.com, <https://study.com/academy/lesson/the-sherman-anti-trust-act-of-1890-summary-lesson-quiz.html>. Accessed 17 Apr. 2025.

to be anti-competitive. This provision has proved vital in curbing the concentration of economic power in industries such as telecommunications, healthcare, and most recently IT²¹. For example, T Mobile 's Merger with Sprint (2020) was examined under this provision due to apprehension that it could negatively impact competition within the wireless services market.

- Section 2 (Robinson-Patman Act): This section prohibits price discrimination that is anti-competitive in nature. It is meant to prevent business enterprises from abusing their market power to sell to large 'have' customers at cheaper rates, while the smaller 'have not' competitors face dire consequences.
- Section 3: In application to the aforementioned provisions, section 3 prohibits tying arrangements and exclusive distributorships, whereby a seller compels a buyer to acquire another product in order to obtain the product desired, and restricts the buyer from dealing with competitors. These practices are restricted when they have the effect of significantly lessening competition or harming consumers.

3. The Federal Trade Commission Act (1914)

Through the FTC Act, the Federal Trade Commission (FTC), which is an entity tasked with implementing legislation on monopoly restriction as well as PETRA, was created. FTC works hand-in-hand with the Justice Department, which is concerned with the criminal dimensions of the enforcement of antitrust laws, as well as DOJ civil antitrust litigation.

- clause 5: Under this clause, the FTC has the power to stop "unfair methods of competition" and "unfair or deceptive acts or practices." The FTC has employed this strategy to contest practices that do not properly fit the definitions of the Sherman or Clayton Acts but still have an effect on competition²². For example, The FTC has used Section 5 to address issues such as predatory pricing, false advertising, and the anti-competitive practices of Big Tech.

The Department of Justice (DOJ) and the Federal Trade Commission (FTC) are the two main regulatory bodies in the United States. Each of these organizations handles other

²¹ United States Department of Justice, "Strategic Abuse of Antitrust Laws," *Antitrust Division*, (Accessed on April 17, 2025) <https://www.justice.gov/archives/atr/strategic-abuse-antitrust-laws>.

²² Federal Trade Commission, Antitrust Laws, available at <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/antitrust-laws> (last visited April 17, 2025).

responsibilities, but they commonly tend to collaborate in enforcing antitrust legislation in various sectors.

- The Department of Justice (DOJ): The Antitrust Division of the DOJ has the primary responsibility for monitoring possible violations of the Sherman Act, especially its criminal provisions. These include the prosecution of hardcore cartels and other egregious abuses of competition law such as price fixing and bid rigging. The DOJ assesses mergers and acquisition activities for their competition risks and intervenes where appropriate. Recently, the DOJ has been quite active in a number of well publicized legal actions, including the *U. S. v. Microsoft Corporation* case²³, which has been regarded as one of the main antitrust action cases in the US, and more recently, investigations into Google's alleged monopolistic practices in search and advertising.
- The Federal Trade Commission (FTC): The FTC's primary responsibility is civil enforcement of competition laws. It investigates and contests anticompetitive mergers and acquisition, assesses business conduct that threatens competition, and issues legal opinions to businesses to ensure that they do not breach the laws. The FTC also engages in issues of consumer protection, such as false advertisement and anti-competitive behavior by other firms, including online platforms. The Commission has become more interested in the business practices of digital companies, especially Facebook and Amazon, where potential anti-competitive practices such as platform biases and self-preferencing are believed to exist.

Both departments have the authority to probe suspected violations of competition laws, and there is close coordination between them and state's attorneys, private claimants, and international bodies regarding investigations and enforcement activities.

2.2.1.2 Key Principles and Standards in the US Antitrust Enforcement

The anti-trust system of the U.S. is fundamentally guided by a number of policies which are intended to foster competition in the markets and protect consumers against competition-distortive practices.

1. Consumer Welfare Standard

²³*U. S. v. Microsoft Corporation case*, 56 F.3d 1448 (D.C. Cir. 1995)

For the past fifty years, the consumer welfare test has guided the US antitrust law. This standard determines whether certain conduct inflicts a negative impact on people, mostly in the form of elevated costs, lower levels of service or little to no investment in innovation. This indicator tries to emphasize the measurement of the adverse impact specific business strategies would have on clients²⁴. The emphasis is on maximal optimisation and the net benefits of competition available to clients. Thus, in the context of mergers, the government wants to know whether this combination will push up prices or restrain innovation and ultimately harm consumers.

Despite being important in adjudicating many antitrust cases, this criteria has received mounting criticism, particularly in the focus of the existing digital marketplaces. Most obsolete constructs disregard the data of people usage inordinate and to use the market dominance from the existing technology firms. There is a growing move to redefine the concept of consumer welfare to mean protection of information, privacy, and how well people are treated in the digital market places.

2. Rule of Reason vs. Per Se Violations

Antitrust legislation in the United States makes a distinction between per se violations and activities subject to analysis under the Rule of Reason. Per Se Violations: Certain practices are considered unlawful by their very nature. An example of this is collusion among competitors to fix prices, rig bids, or divide markets. Such practices are inherently detrimental, and there is no need to conduct further analysis to determine their legality. Restrictive Practices: A more flexible analysis under the Rule of Reason is applied by the courts to other practices. In this case, the practice is evaluated against the context within which it is applied to ascertain whether it has an anti-competitive effect²⁵. The effects that the conduct may have on competition as well as the intention behind it are among the factors that the Rule of Reason assesses. For instance, restrictive procurement or sale contracts may be justified because of the alleged resultant increased efficiency and benefit to consumers, or they may be found to be illegal because of their anti-competitive effects without sufficient justification.

²⁴ Federal Trade Commission, *Antitrust Laws: A Guide to the Antitrust Laws*, <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/antitrust-laws> (last visited Apr. 17, 2025).

²⁵ Bona, Jarod M. and Blaquez, Luis, 'Antitrust Standards of Review: The Per Se, Rule of Reason, and Quick Look Tests' (10 August 2018) Bona Law Insights, <https://www.bonalaw.com/insights/legal-resources/antitrust-standards-of-review-the-per-se-rule-of-reason-and-quick-look-tests>.

The progress of technology within society introduces new problems for the US antitrust policies with respect to the new and powerful digital platforms that have emerged. The newer tech companies are causing drastic changes within the field of antitrust regulations. Google, Apple, Facebook, Amazon, Microsoft, and other similar companies are dominating numerous sectors including search engines, social networking, ecommerce, and software industries²⁶. These companies utilize data, networks, algorithms, and other technologies to increase and protect their market shares and decrease competition. In the modern era, there is more concern regarding the monopolistic tendencies of data manipulations, algorithmic abuses, self-preferencing, and platform biasing.

Moreover, controversies have emerged around Google's favoritism in search algorithms to promote its products, or how Amazon's ambitious attack over its opponents is reckless. These companies' policies are under a strict observation by the FTC and the DOJ, but there is a debate regarding whether the existing antitrust regulations are suitable to the distinctive conditions of the digital economy. While some advocate for changing the U.S. antitrust laws to capture the complexities of data driven markets, others feel there should be greater enforcement of regulations regarding anti-competitive conduct in the technology sector. Protecting competitive markets and consumers is at the heart of what U.S. antitrust laws are designed to do. Built on core statutes like the Sherman Act, Clayton Act, and FTC Act, the system has proven flexible enough to accommodate developing challenges such as monopolistic behaviour in digital marketplaces. The enforcement mechanisms of the DOJ and FTC, coupled the application of economic concepts such as the consumer welfare test, allow for effective control of anti-competitive activity. Yet, with ongoing and increasing technological advances coupled with globalization, combined US antitrust policies will need to be modified to ensure that it continues to protect competition and innovation.

2.2.2 European Union

The Government of the EU has put in place a detailed and flexible policy on competition law and relations in an attempt to adopt good antitrust practice within its borders. The competition policy of the EU like any other policy is based on competition, namely competition is good because it promotes innovation, reduces prices, and raises the level of goods and services provided to the people. As other competition policies, the European Union's competition

²⁶ Cornell Law School, 'Antitrust Laws,' *Legal Information Institute*, available at: https://www.law.cornell.edu/wex/antitrust_laws (last visited on 13 March. 2025)

policy consists of a wide range of legal instruments, enforcement actions, and judicial control activities²⁷. The most basic of EU competition policies is aimed at curbing restrictive practices such as fixing prices, dominating the market, and other monopolistic mergers. In this paper, the basic aspects of the EU competition policy are highlighted, including the key features of the policy, basic principles, regulatory policy, enforcement policy, and challenges facing the policy.

2.2.2.1 Core Antitrust Legislation in the EU

The primary legal basis of the EU competition legal regime is embedded within the Treaty on the Functioning of the European Union (TFEU). Two articles of the TFEU define and regulate antitrust policies: Article 101 and Article 102. These rules prohibit actions that have negative effects such as cartel formations and dominance abuse within the internal market.

1. Article 101 TFEU (Anticompetitive Agreements)

Articles 101 - 109 TFEU regulates measures with a potential negative effect to trade between member states: 'Agreements between undertakings, decisions by associations of undertakings, and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market²⁸.' The parameters of the rule exclude one or more forms of collusion which adversely affect the competition structure.

- To put it bluntly, Article 101 is meant to deal with cartels, including price fixing agreements that makes competition impossible. Methods of competitive elimination, including price-fixing, market-sharing, and bid-rigging agreements, fall within the category of acts that are expressly forbidden under Article 101. Such acts are deemed "per se" unlawful meaning that they are impermissible and pose no need for extensive market impact studies.
- Horizontal and Vertical Agreements: The paragraph alludes to the distinction between horizontal agreements made with rival companies and vertical agreements made within enterprises on the supply chain. Although horizontal agreements are generally

²⁷ European Parliament, 'Competition policy', available at: <https://www.europarl.europa.eu/factsheets/en/sheet/82/competition-policy> (visited on April 17, 2025).

²⁸ European Commission, 'Antitrust and Cartels' (Competition Policy, European Commission, https://competition-policy.ec.europa.eu/antitrust-and-cartels_en#:~:text=European%20Antitrust%20policy%20is%20developed,market%20operators%2C%20which%20restrict%20competition accessed 17 April 2025).

prohibited due to their anti-competitive nature, vertical agreements may be permitted under competition law if they do not materially restrict competition.

- exclusions: Agreements of a particular nature that tend to have an efficiency benefit for competition such as cost savings or new innovations or improved quality of goods and services are permitted. But these efficiencies must be greater than the negative impact to competition.

The implementation of Article 101 falls under the competence of the European Commission, which has been actively involved in the investigation and prosecution of multiple cartels and agreements in restraint of trade in the services and industrial sectors. Aeroplane and truck transportation services as well as financial services are examples of industries that have been targeted.

2. Article 102 TFEU (Abuse of Dominant Position)

One or more undertakings cannot gain monopoly power which is an abuse of their position according to Article 102 TFEU. Staying at the top of a market is not wrong in itself; it is the abuse of that power that is illegal.

- Monopoly pricing: Other forms of power abuse are predatory pricing which lowers competition by selling goods at a lower price, denial of service where access to needed facilities is not provided to competitors and tying where the sale of unrelated products are bundled.
- Competitive exclusion: Exclusionary practices such as having one-sided trading relations, loyalty rewards and predatory pricing have been the focus of the European Commission because of the potential damage to competition, even though such tactics are not entirely illegal in every setting.²⁹
- Abuse of market power, data and digital: In recent years, digital market abuse has drawn international concern and the EU is not an exception. Thorough investigations have been performed against large tech companies including Google, Apple and Amazon for actions such as self-preferencing manipulation, data abuse and lowering prices to drive competition out of the market.

²⁹ European Commission, *Application of Article 102 TFEU*, available at https://competition-policy.ec.europa.eu/antitrust-and-cartels/legislation/application-article-102-tfeu_en#:~:text=Article%20102%20prohibits%20abusive%20behaviour,as%20exclusionary%20abuses%20of%20dominance (last visited Apr. 17, 2025).

- Effects-based approach: Consider in the Google case the Shopping where the Commission decided that Google favored its own comparison-shopping services: think Branded Shopping Services. The Commission has indeed pursued prima facie discrimination abuses of dominant positions: recalls the Intel case where the company was found to award retailer-branded goods “exclusionary” rebates.

The investigation and punishment of competition law violations in the EU is the responsibility of The European Commission. These are primary violations of the TFEU, Article 101 and Article 102, against which The European Commission is tasked to enforce. The Commission can investigate all forms of abuse of dominance and imposes fines. In some cases, the Commission can simply order companies to stop the harmful behavior.

a. Investigative Powers

The European Commission has broad investigative powers, which allows it to conduct dawn raids (unannounced inspections) of corporate premises to gather proof concerning anti-competitive behavior. It may also collect evidence by asking firms and other interested parties, including consumers and competitors, whether there are particular competition problems.

b. Infringement Proceedings

In the event that the European Commission decides that some breach of the EU competition law has taken place, it may initiate formal infringement proceedings. The Commission benefits from a comprehensive investigation on the alleged anti-competitive conduct and serves a statement of objections (SO) to the relevant firm or firms³⁰. This so-called ‘hearing’ allows the corporations something to say about the charges and to present their defense. A claim for an infringement ruling is made by the Commission if it finds one to be true. A large number of measures can be taken against the public and private parties who infringe, including issuing fines and penalties. Which can be very large, as the examples of Google (more than €2.42b fine for favoring its shopping service) and Qualcomm (more than €997m fine for exploiting most powerful position in semiconductor industry) show.

c. Court of Justice of the European Union (CJEU)

³⁰ European Commission, *Press Release: Digital Strategy - A European approach to Artificial Intelligence*, (July 7, 2025), available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_25_737 (last visited on April 17, 2025).

CJEU heavily influences and is pivotal in adjudging the orthodoxy of competition policy and law within the EU. A party willing to contest a resolution passed by the European Commission will be able to take the matter to the General Court which will hear the case. Then, an appeal will be settled by the Court of Justice³¹. The Court of Justice in the European Union has made comments that changed the way Articles 101 and 102 are understood, and have also provided insight on issues related to the most relevant concept, a dominant position, the imposition of fines, and the treatment of digital platforms.

2.2.2.2 Key Principles and Approaches in EU Antitrust Law

Many significant principles exist that affect the interpretation and enforcement of competition legislation in the EU's antitrust framework.

a. The Effects-Based Approach

The most important part of the European Union competition law is the effects-based approach. The activity in question is not only analyzed from a behaviorist perspective, but also assessed by the European Commission to understand its current or potential impact on competition and consumers³². This means that when a certain practice is not legally permissible, it may still be used but termed illegal due to its negative effects on competition such as lowering consumer welfare or decreasing innovation.

b. The Principle of Proportionality

In EU competition law enforcement, the assumption of proportionality is at the core of it all. Proportionality ought to imply to the European Union that its competition law is enforced in a manner that fits the level of contravention. It follows then that the Commission would have to weigh the need to guard against anti-competitive conduct against the understanding that not all categories of market behavior should invite the same intensity of scrutiny or punishment³³.

c. Vertical and Horizontal Restraints

³¹ European Union, 'Court of Justice of the European Union (CJEU)', European Union, available at https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/court-justice-european-union-cjeu_en, accessed on 17 April 2025.

³² European Union, Court of Justice of the European Union (CJEU), available at https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/court-justice-european-union-cjeu_en, last seen on 17/04/2025.

³³ European Union, "Principle of Proportionality," EUR-Lex Glossary, available at <https://eur-lex.europa.eu/EN/legal-content/glossary/principle-of-proportionality.html>, last seen on 17/04/2025.

In the European Union laws, even the restrictions of competition are separated into two categories: horizontal constraints and vertical constraints. Horizontal constraints occur at the same level of competition, thus usually considered more harmful³⁴. Vertical constraints occur when different stages of the production and distribution process of a product restrain competition. If there is less risk of harming competition, vertical constraints can be permitted.

These issues, among many others, are facing the EU competition law cutbacks in regard to the more digital and globalized economies over the years. Digital platforms, the rise of bigger data and algorithmic pricing are useful tools for competitively hurting actions that Overstepping legacies may create opportunities that current legislation cannot address. At the same time, it raises the question of why global tech companies ie. Google, Amazon, Facebook and rest have grown fears regarding the competition law – whether it can effectively deal with the intricacies of modern digital markets dynamics in the EU³⁵.

Therefore, the EU is now looking into how to enhance its competition policies, in particular with respect to digital platforms. The Digital Markets Act (DMA) and Digital Services Act (DSA) are important strides in this direction as they seek to level the field for digital platforms and reduce the activities that may be deemed anti-competitive³⁶. The European Commission's persistent investigations of companies like google and apple further demonstrates its zeal in enforcing competition in an economy that is taking on an increasingly digital characteristic.

The European Union has one of the most advanced and comprehensive antitrust laws in the world. It is intended to ensure competition and protect consumers by controlling practices such as anti-competitive agreements, dominance abuses, or mergers that restrain competition. Competition rules of the EU are put into effect by the European Commission and are subject to review by the CJEU which ensures that there is a degree of moderation in the implementation of antitrust regulations. With all the challenges posed by digital markets and

³⁴K. Madhusudhana Rao, "Authority to Recommend President's Rule under Article 356 of the Constitution" 46 JILI 125 (2004).

³⁵ Carlotta Francescon, "Competition in the Digital World: How the EU and the US Are Addressing New Challenges," International Policy Review, January 27, 2025, available at: <https://ipr.blogs.ie.edu/2025/01/27/competition-in-the-digital-world-how-the-eu-and-the-us-are-addressing-new-challenges/> (last visited on April 17, 2025).

³⁶ European Commission, "The Digital Markets Act: Ensuring Fair and Open Digital Markets", available at https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets_en (last visited Apr. 17, 2025).

multinational corporations, the EU is still striving to revise its legal system in order to promote competition, innovation, and the protection of consumers in the single market.

2.2.3 Other Jurisdictions

China and India, like many other developing economies, have expanded rapidly in the recent decades and integrated into the world economy. Growing market power has created the need for establishing antitrust legal systems to regulate complex market competition and ensure fair market practices. China and India have developed the legal and institutional frameworks for preventing competition suppression, market power abuse, and monopolistic behavior³⁷. However, these frameworks are a bit different in their scope, implementation, and objectives because of the differences in economic, political, and social environments in these countries. This article endeavors to analyze the anti-trust laws practiced in china and india, focusing on their similarities and differences as well as looking at challenges on controlling competition in the market.

1. China's Antitrust Framework

In the past few decades following an economic transformation from a planned one to a market-oriented economy, China has developed its competition law system exponentially. The cornerstone of this system is the Anti-Monopoly Law (AML) which was implemented in 2008. The AML aims to prevent monopolies and anti-competitive behavior, and to protect consumers and the market as a whole. Apart from the AML, the competition laws and rules and regulations safeguards are put in place by other regulatory agencies and government officials.

a. The Anti-Monopoly Law (AML)

Enacted in August 2008, The AML is the main Chinese law aimed at rampant anti-competitive activities³⁸. This legislation mirrors the modern anti-monopolistic laws of the European Union and the United States, but takes a different approach in consideration of the sociopolitical aspects of China.

³⁷ Martti Koskenniemi, "The Politics of International Law – 20 Years Later" 30 EJIL 7 (2019).

³⁸ Han Ye, Lushen Hong, and Xiao Fu, "Unpacking China's Antitrust Law Regime", Law.asia, 16/07/2024, available at: <https://law.asia/chinas-antitrust-competition-guide/> (Visited on 17/04/2025).

- **Prohibited Conduct:** There are three core categories of prohibitive competitiveness conduct under the AML:
 - Monopoly Agreements – this includes horizontal agreements that are restrictive and attempt to influence prices, output, or other competition limiting measures (Article 13). Vertical agreements that promote competition such as resale price maintenance are also within the provision.
 - Abuse of Dominance – Exploiting a concentrated market position to gain dominance in the market is a practice that the AML seeks to limit³⁹. Consequently, such behavior as exploitative price practices, sole trading practices, and tying arrangements are classified as abuses of power under the AML (Article 17).
 - Merger Control – Mergers and acquisitions that are likely to cause monopoly and substantially lessen the competition at the markets need to be evaluated under the law and constitute the AML's concerns (Article 27).
- **Focus on Market Structure and State-Owned Enterprises (SOEs):**

It is common for China's competition policies to focus not only on active antitrust enforcement but also on encouraging market structures that are in line with the broader macroeconomic priorities of China.⁴⁰ Given that China has a large number of state-owned enterprises (SOEs), regulatory bodies may have to balance the potential anti-competitive practices with other considerations of industrial policy and economic development.

b. Regulatory Bodies in China

Competition law enforcement in China is overseen by a number of different regulatory bodies but the main one is the State Administration for Market Regulation (SAMR). Other important institutions involved in the enforcement of competition policy and law are the Ministry of Commerce (MOFCOM), the National Development and Reform Commission (NDRC), and The State-Owned Assets Supervision and Administration Commission (SASAC).

2. India's Antitrust Framework

³⁹ Tushar Gulati & Subham Khanna, "Understanding Horizontal and Vertical Agreements in Competition Law", Mondaq (10 Nov. 2024), available at <https://www.mondaq.com/india/antitrust-eu-competition/1533566/understanding-horizontal-and-vertical-agreements-in-competition-law> (last visited 17 Apr. 2025).

⁴⁰ Wentong Zheng, "The Chinese Antitrust Paradox" 2(2) U. Chi. Bus. L. Rev. [page number] (2024), available at <https://businesslawreview.uchicago.edu/print-archive/chinese-antitrust-paradox>, last accessed on 17/04/2025.

The Competition Act of 2002 serves as the legal foundation of India's competition policy. The primary aim of the legislation is to curtail anti-competitive practices while simultaneously promoting market competition.⁴¹ The Competition Act replaced the monopolies and restrictive trade practices Act (MRTP Act) because it was seen as outmoded and inefficient in addressing current competition issues.

The Act of 2002 also enabled the establishment of the Competition Commission of India (CCI), the leading enforcement body for the competition laws. The Act draws heavily from existing international anti-trust laws, with particular focus on restricting anti-competition agreements, controlling dominance, and regulating mergers and acquisitions.

2.3 Role of Regulatory Bodies in Combating Market Dominance

Competition regulators are critical in the enforcement of competition law, the investigation of anti-competitive behavior, and ensuring that market competition exists in the most beneficial manner for the public. They balance granting freedom to businesses to grow with the restriction against business expansion that limits competition. Below is an overview of the function of regulatory authorities in the dominance of the market.

1. Enforcement of Competition Laws

One of the primary activities of regulatory agencies is compliance with competition or anti-monopoly laws. Such regulations are designed to avoid restrictive trade practices, abuse of dominant position, and mergers that can have impact the competitive environment. Regulatory agencies are empowered to take active measures against businesses engaging in monopolistic practices like collusion, exclusive contracts, predatory sales, or tying contracts⁴². For instance, in the United States, the Federal Trade Commission (FTC) and the Department of Justice (DOJ) combine efforts to monitor and take legal action against companies with excessive market power. In the same way, the European Commission in the European Union is actively involved in the investigation of restrictive business practices and the abuse of market power by large firms.

⁴¹**Saraf and Partners**, *Antitrust Laws in India*, available at: [https://www.sarafpartners.com/antitrust-laws-in-india/#:~:text=The%20Competition%20Act%20is%20the,%2Dcompetitive%20agreements%20\(Section%203\)](https://www.sarafpartners.com/antitrust-laws-in-india/#:~:text=The%20Competition%20Act%20is%20the,%2Dcompetitive%20agreements%20(Section%203)) (last visited Apr. 17, 2025).

⁴²Likitha Sri Meka, 'The Role of Competition Law in Regulating Monopolies and Mergers in India', LegalOnus, 15 April 2025, available at <https://legalonus.com/the-role-of-competition-law-in-regulating-monopolies-and-mergers-in-india/>.

2. Investigation of Anti-Competitive Practices

Regulatory departments also have a preventive function and also monitor and investigate possible anti-competition practices. Such activities may include, but are not limited to, data collection, evaluation of company strategies and plans, and initiation of investigations into suspicious competitive behavior. The overseeing bodies have to ascertain whether firms are engaged in activities that are anti-competitive in nature like imposing unreasonable limitations on market entry, exploiting market power and competitiveness, or resorting to cross-subsidization⁴³. In India, the CCI is made responsible for the inquiry of claims pertaining the misuse of market power while in China the State Administration for Market Regulation (SAMR) carries out the same function. They assess market conditions, conduct surveys, and examine relevant documents to make sure companies adhere to the legislations.

3. Merger Control and Market Monitoring

These institutions also check mergers and acquisitions in order to ensure that there is no overly concentration of market power among few rival firms. The competent authorities investigate whether the mergers would lessen the competition to a significant level and whether the mergers would create or reinforce dominant positions which will harm the interest of the consumers. These merger control authorities may, if necessary, declare, consent with restrictions, or force changes to proposed mergers to ensure competition in the market. For example, the European Commission does not only scrutinize mergers from the economic perspective, but also how the merger will impact the competitive structure of the market⁴⁴. The same case is with the mergers that are examined by the U. S. Department of Justice (DOJ). These mergers are examined so that no monopoly which could reduce the number of market options is created.

4. Advocacy and Public Awareness

It is common for regulatory bodies, aside from enforcement, to seek understanding of competition laws as advocating for marketing practices that are pro-competitive and make the public better off. These bodies may organize training sessions, issue legal advice, and make

⁴³ Hassan Qaqaya and George Lipimile (eds.), *The Effects of Anti-Competitive Business Practices on Developing Countries and Their Development Prospects* (UNCTAD, New York and Geneva, 2008).

⁴⁴ ICLG, *Merger Control Laws and Regulations – India 2025* (International Comparative Legal Guides, 12 December 2024), <https://iclg.com/practice-areas/merger-control-laws-and-regulations/india>

other submissions that assist the business community to comply with the antitrust laws. They also engage with other stakeholders like lobby groups, scholars, and even the general public so as to promote competition policy and its benefits⁴⁵. In the EU, there is the European Commission Who takes the lead in stakeholder engagement for the reform of competition policy to ensure it keeps pace with economic and technological changes.



⁴⁵ Competition Commission of India, *Introduction to Competition Law Part 1: Basic Introduction* (2022), available at https://www.cci.gov.in/public/images/publications_booklet/en/introduction-to-competition-law-part-1-basic-introduction1652182155.pdf.