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“Unveiling Antitrust: Exploring the Nuances of Competition Law”

Dr. Aarti Gandotra¹, Shuchi Sharma²

^{1,2}Assistant Professor, Dogra Law College

Abstract— Competition law exists to protect producers and consumers by outlawing unfair business practices that aim to get a larger market share than would be possible via honest competition. Among many other instances of anti-competitive behaviour are predatory pricing, in which a monopoly or oligopoly charges an extraordinarily high price for a product that the consumer is forced to buy; price fixing, in which prospective rivals conspire to fix similar prices for goods; bid rigging, in which parties conspire to determine the outcome of a contract in advance; and dumping, in which goods are sold at such a low cost that smaller businesses are unable to compete and may be driven from the market.

Keywords— Competition, Anti-competitive, Anti-trust, Laws and Pricing.

I. INTRODUCTION

The complex of laws known as competition law is designed to stop market distortion brought on by companies engaging in anti-competitive behavior. The first competition rule, which forbade the blockade of supply ships, was imposed in 50 B.C. to safeguard the Roman Empire’s grain economy. Competition law is also referred to as antitrust law in the US, Canada, and the EU. In India, business competition is governed by the Competition Act, 2002. The previous Monopolies and Restrictive Trade Practices Act, 1969 was superseded by it. Leveling the playing field for all businesses and fostering and safeguarding the competitive process are the goals of competition policy. Better economic efficiency, growth, and development as well as consumer welfare are all facilitated by fair and effective competition.¹ In essence, competition policy deals with Policies that promote competition in regional and national markets include measures to remove trade barriers, promote market entry and exit, reduce needless government interference, and depend more on market forces.

A competition law made up of specific laws and regulations designed to prevent anti-competitive mergers, abuses of dominance, and agreements.² Even though each country has different laws, competition law typically forbids those kinds of tactics. An essential part of regulatory systems around the world is competition law, which is sometimes referred to as antitrust law in certain places. By prohibiting anti-competitive actions that can endanger customers, rival companies, and the economy as a whole, it seeks to maintain honest and open competition in the market. By preserving market competition and preventing excessive restrictions, competition law essentially aims to promote efficiency, innovation, and consumer welfare. A government strategy that supports the degree of competition in markets can be broadly characterized as competition policy. This covers actions taken by the government that have a direct impact on how businesses behave as well as how marketplaces and industries are developed.

When it comes to tackling issues with private financial strength, antitrust law is the first instrument that springs to mind. Three parties seem to be having an apparent discussion about the next phase of antitrust law. The first category could be referred to as conservatives. The argument put out is that the current state of antitrust law is adequate, and that market concentration is a temporary phenomenon that, when it persists or does not indicate greater efficiency, is primarily due to excessive regulation rather than being an inherent aspect of economic operations.³ When it comes to changing antitrust doctrine, they usually support expanding the application of restrictive doctrinal provisions, like the price-cost test for predatory pricing, to more sophisticated forms of conduct, like loyalty discounts, and modifying doctrinal provisions that facilitate enforcement, like the market-share presumptions in horizontal merger cases.⁴

² V.Jeyaseelan, Competition Law, The Tamil Nadu Dr. Ambedkar Law University, https://www.tndalu.ac.in/econtent/7_Competition_Law.pdf.

³ Tyler Cowen (2019), Big Business: A Love Letter To An American Anti-Hero 83-84, 91.

⁴ Douglas H. Ginsburg & Joshua D. Wright(2015) , Philadelphia National Bank: Bad Economics,

¹ Asean Competition Conference (2023), “From Innovation to Impact: Synergizing Antitrust and IP Regulation for a Stronger Asean, Manila, <https://www.asean-competition.org/>.



Progressives in the mainstream could refer to the second group. According to them, antitrust laws should be modified while still adhering to the dominant consumer welfare paradigm since antitrust enforcement has been very lax. Opposition populists could be a term for the third group. Some of them have more radical and far-reaching ideas, while others are self-described “New Brandeis” proponents.⁵ But in actuality, there are actually two quite different speeches. How antitrust regulation might best advance economic welfare is one point of contention between conservatives and progressives. The other, which is mostly being advocated by the populism, focuses on how to replace the current antitrust law with alternatives that will further goals other than economic benefit, like fostering a fair distribution of wealth and political and economic power. Seldom do the two discussions really come together.⁶

II. ORIGIN OF COMPETITION LAW

The Statute of Monopolies, which was passed in 1623, provides information about the origins of the traditional restrictions against monopolies. The Anti-combines Act of 1889, which was passed in Canada and later by the USA with the Sherman Act of 1890, is credited with laying the groundwork for modern competition law. Senator John Sherman authorized this act, which regulated competition, leveled the playing field for businesses, and safeguarded the interests of consumers in the marketplace. Enacting economic laws is primarily done to keep the state’s economy in order and to allow government intervention in social and economic affairs. Compared to the US, the European Union (EU) occasionally has stronger antitrust enforcement, especially when it comes to actions that exclude others.⁷ Articles 38 and 39 of the Indian Constitution’s directive principles of state policy are where competition regulation in India originates.⁸

Federal Anti-Trust Laws

Statute	Features
‘Sherman Antitrust Act’,1890 ⁹	<p>Congress in the United States passed the Sherman Antitrust Act to outlaw cartels, monopolies, and trusts.</p> <p>Its goals included regulating interstate commerce and advancing economic justice and competition.</p> <p>It was introduced and enacted in 1890 by Senator John Sherman of Ohio.</p> <p>The act represented a significant change in the way American regulations approached trade and the market.</p>
‘Clayton Antitrust Act’,1914 ¹⁰	<p>The Clayton Antitrust Act of 1914 addressed certain behaviors that the Sherman Act did not forbid, therefore amending the Sherman Act.</p> <p>The United States Congress passed the Clayton Antitrust Act, which was ratified in 1914 and specifies immoral economic practices including monopolies and price fixing while also defending certain labor rights.</p>
‘Federal Trade Commission Act’,1890 ¹¹	<p>Fair or deceptive activities or practices, as well as “unfair methods of competition,” are prohibited by the Federal Trade Commission Act. According to the Supreme Court, any infraction of the FTC Act also constitutes a violation of the Sherman Act. Since the FTC can file lawsuits under the FTC Act against the same kind of actions that violate the Sherman Act, it can technically enforce the Sherman Act even if it does not. The Sherman Act’s formal prohibitions on some forms of conduct may not always apply to actions that negatively impact competition, as covered under the FTC Act. Under the FTC Act, cases are only brought by the FTC.</p>

Bad Law, Good Riddance, 80 Antitrust L.J. 377.

⁵ Eric A. Posner & E. Glen Weyl(2018).Radical Markets: Uprooting Capitalism

And Democracy For A Just Society, 250-76.

⁶ A. Douglas Melamed(2020). Antitrust Law And Its Critics Antitrust Law Journal 83 (2) 2(pp 270-271). Antitrust Law Section American Bar Association.

⁷ Baker, J. B. (2019). Recalibrating Error Costs and Presumptions. In The Antitrust Paradigm: Restoring a Competitive Economy (pp. 71–80). Harvard University Press. <http://www.jstor.org/stable/j.ctv24w648z.7>

⁸Will Kenton (2022). Sherman Antitrust Act: Definition, History, and What It Does <https://www.investopedia.com/terms/s/sherman-antiturst-act.asp>.

⁹ Govinfo.gov. Sherman Act (2004).To protect trade and commerce against unlawful restraints and monopolies. U.S. Government Publishing Office. Public Law (pp.108-237).<https://www.govinfo.gov/app/details/COMPS-3055>.

¹⁰ Troy Segal ,Michael J Boyle (2023). Clayton Antitrust Act of 1914: History, Amendments, Significance. U.S. House of Representatives.<https://www.investopedia.com/terms/c/clayton-antitrust-act.asp>.

¹¹ Adam Hayes, Caitlin Clarke (2022). Federal Trade Commission (FTC): What It Is and What It Does. <https://www.investopedia.com/terms/f/ftc.asp>.

The Robinson-Patman, 1936 ¹²	firm must charge the same price for its goods regardless of the customer, according to the Robinson-Patman Act. It was designed to keep purchasers who purchase in bulk from having an edge over those who purchase in modest quantities. The statute only covers sales of physical things that are identical in quality and are finished in a relatively short amount of time. Real estate leases, cable television, and cell phone service are among the services for which the act does not apply.
'Celler-Kefauver Act', 1950 ¹³	An important first step in eradicating corporate greed was the Celler-Kefauver Act. The following corporate alliances were the focus of the act: Vertical Consolidations: Antitrust issues may arise from these acquisitions if the merged company purchases the suppliers of its rivals. If the company does this, it may be able to successfully prevent competitors from obtaining raw materials or other necessities. Conglomerate mergers: When two giants merge to form one, there's a chance that they will use their combined name recognition and financial clout to drive out competitors, and after there's no one left, raise prices at the expense of customers.
'Hart-Scott-Rodino ¹⁴ Antitrust Improvements Act', 1976	Companies must submit premerger notices to the Federal Trade Commission and the Justice Department's Antitrust Division for specific acquisitions under this Act, which amends the Clayton Act. In accordance with Section 7 of the Clayton Act, the Act specifies waiting periods that must pass before such acquisitions can be completed and permits the enforcement agencies to extend those periods until the companies furnish specific supplementary data regarding the possibility that the proposed transaction would materially reduce competition.

Judge KC Das Gupta of the SC oversaw the creation of the 'Monopolies Inquiry Commission' in April 1964.¹⁵ Asking questions concerning the impact and scope of trade restrictions and monopolies in significant areas of the Indian economy was the commission's goal. Though the definitions of 'monopolistic practice' were too outdated, the Monopolies and Restrictive Practices Act of 1969 was intended to prevent wealth concentration in a small number of hands and to restrict monopolistic practices. Under the chairmanship of the Secretary, MCA, the Ministry of Corporate Affairs (MCA) established the Committee on Digital Competition Law (CDCL) to investigate the necessity of a distinct law on competition in digital markets based on the recommendations of the 53rd report of the Parliamentary Standing Committee on Finance on the topic of "Anti-Competitive Practices by Technology Companies." Both the draft bill on digital competition law and the committee's report has been presented.¹⁶ This led to the decision that India needed new competition legislation. In light with the aforementioned goal; the Competition Act was presented to the Lok Sabha on August 6, 2001.

III. DEFINITIONS UNDER THE COMPETITION ACT

The following are the definitions cited under the Competition Act 2002:

- i. *Acquisitions*: A merger or acquisition is an agreement, either orally or in writing, to purchase stock, rights to vote, or financial ownership in any business.
- ii. *Antitrust Laws*: Competition laws, sometimes referred to as antitrust laws in some jurisdictions, are rules intended to avoid monopolies, encourage fair competition, and outlaw anti-competitive behavior that could endanger customers or other companies.
- iii. *Cartel*: A cartel is an organization of manufacturers and sellers who, by prearranged agreement, restrict control over the distribution, sale, or marketing of commodities.
- iv. *Stance*: An organization that holds an advantageous position in a connected market is one that is powerful. It gives the business the freedom to operate and sway the market in its favor.

¹² Robert C. Kelly (2023), Robinson-Patman Act, Definition and Criticisms. <https://www.investopedia.com/terms/r/robinson-patman-act.asp>.

¹³ Adam Hayes, Margaret James (2021). Celler-Kefauver Act. <https://www.investopedia.com/terms/c/celler-kefauber-act.asp>.

¹⁴ Adam Hayes Thomas Brock (2022). Hart-Scott-Rodino Antitrust Improvements Act, 1976 Overview. <https://www.investopedia.com/terms/h/hart-scott-rodino-antitrust-improvements-act-of-1976.asp>.

¹⁵ Mahindra Electric Mobility Limited And ... vs Cci And Anr. W.P.(C) 11467/2018, CM APPL. 44376-44378/2018.

¹⁶ Ministry of Corporate Affairs (MCA), 53rd report of the Parliamentary Standing Committee on Finance on the subject titled 'Anti-Competitive Practices by Big Tech Companies' available at <https://www.mca.gov.in/bin/dms/getdocument?mcs=gzGtvSkE3zI VhAuBe2pbow%253D%253D&type=open>.

- v. *Price Fixing*: Competitive pricing refers to the practice of lowering the price of goods and services much below the cost of production with the aim of stifling competition.
 - vi. *Principle of logic*: The analysis of actions based on their impact on consumers, competitors, and business reasons.
 - vii. *Monopoly*: A situation in which a single entity controls a large portion of a particular market, giving it significant market power and the ability to influence prices and exclude competitors.
 - viii. *Market Allocation*: A strategy used by rivals to reduce competition and deny consumers choices by agreeing to split markets or clients among themselves.
 - ix. *Bid-Rigging*: In order to manipulate the bidding process and raise prices, competitors may collude in advance to choose who will win a contract. This is known as bid rigging, and it typically involves submitting fictitiously high bids or abstaining from bidding entirely.
 - x. *Abuse of dominating Position*: This occurs when a company with a dominating position in a market uses tactics like exclusive dealing, tying, or predatory pricing to bolster or preserve its position at the expense of customers or other rivals.
 - xi. *Merger control*: Acquisition and merger approval procedures are governed by regulations known as “merger control,” which guards against deals that could significantly reduce market competition.
 - xii. *Competition Authority*: An organization that is in charge of upholding anti-competitive activity, encouraging market competition, and enforcing competition rules is known as the Competition Authority.
 - xiii. *Leniency scheme*: Competition authorities have a scheme called the Leniency scheme, which encourages self-reporting and cooperation in cartel investigations by offering immunity or reduced penalties to corporations who come forward and provide evidence of their involvement in anti-competitive conduct.
- i. *Anti-Agreements*: Any individual or enterprises shall not deal in production supply or distribution that may cause a negative impact regarding competition in India. Any existence of such agreements is considered illegal.
 - ii. *Abuse of dominant position*: In the event, an enterprise or an associated individual, it is found to indulge in practices that are unfair or discriminatory in nature shall be considered an abuse of dominant position. If a party is found to be in abuse of its position, then they will be subjected to an investigation from the concerned authorities.
 - iii. *Combinations*: As per the act a combination is defined as terms which lead to acquisitions or mergers. But should such combinations cross the limits as put forth by the Act, and then the parties involved would be under the scrutiny of the Competition Commission of India.
 - iv. *Competition Commission of India*: The Competition Commission of India is an independent body with the powers to enter into contracts and should the contracts be broken they can sue the parties involved. The Commission consists of a maximum of six members who are tasked with sustaining and promoting the interests of consumers in order to foster an ideal environment for economic competition. The other function of the Commission is to advise the Government of India regarding competition in the economy and create public awareness on the same issue.

V. FUNDAMENTAL REASONS

A few basic explanations on why competition is deemed necessary are:

- i) *Price reduction*: Businesses lower their pricing to attract more customers. In order to capture a larger portion of the market, rival businesses lower their prices so that more people can purchase their goods. This promotes production by companies and strengthens the economy overall.
- ii) *Improved quality*: In order to attract more customers, businesses will unavoidably begin producing goods and services of a higher calibre. This can include using raw materials of higher quality, offering warranties or guarantees, producing sustainable goods, and providing superior customer service.
- iii) *Many options*: In a competitive market, identical products will be long abandoned. Every company will make an effort to set itself apart from the competition.

IV. SALIENT FEATURES OF COMPETITION ACT, 2002

Anti-competitive tactics can lead to higher consumer pricing, worse service, and a lack of innovation in addition to making it harder for smaller businesses to enter or flourish in a market. The following are the features of the Competition Act 2002:

As was mentioned at the beginning of this heading, this will provide the customer with a number of options from which to select the product that will be most beneficial to them.

- iv) *Innovation*: Businesses are compelled to be inventive in their conceptualization, design, production techniques, service offerings, and other aspects of their product line in an effort to generate better goods.

The main goal of competition law is to stop anti-competitive behaviour with the least amount of regulatory action. The Competition Commission of India (CCI), the country's competition regulatory body, was founded in 2003 with the goals of preventing anti-competitive behaviour, fostering and maintaining market competition, safeguarding consumer interests, ensuring other market participant's freedom of trade, and handling other matters related to or incidental to these goals.

VI. FORBIDDEN PRACTICES

Three major categories of forbidden behaviour exist that have the potential to negatively impact competitiveness. Let's talk about each one as it appears in the Act:

❖ *Anti-Competitive Agreements are prohibited*

Anti-competitive agreements are any contracts between a business, an organisation of enterprises, an individual, or an association of individuals that could seriously impair competition in India. The agreements typically encompass the production, delivery, distribution, storage, purchase or control of goods, or the provision of services. The Act's Section 3 prohibits these kinds of agreements. Anti-competitive agreements of all kinds are prohibited by this Act, including the following:

- When a buyer may only purchase a product by purchasing another product from the manufacturer, this is known as a tie-in offer. Example: To receive a direct-to-home (DTH) broadcasting service, you must have the service provider's set-top box.
- This type of deal is called an exclusive supply agreement, wherein the customer is restricted to making purchases from a single seller only. Example: When a multiplex enters into an agreement to buy beverages only from one brand, it forfeits the right to let clients choose other beverages, and other beverage companies are forced out of the multiplex market.
- If an exclusive distribution agreement is in place, the supplier gives the distributor the sole right to sell the products to a specific clientele or in a specific region.

An example of this would be if a car distributor was only allowed to deal with customers inside a specific, designated area and was not allowed to deal with people from other locations. As a result of the partnership, customers will have fewer options and less competition than they otherwise would have.

- A refuse to deal agreement is an agreement that restricts, or is likely to restrict, the party to whom products are sold or purchased. Competition law is violated because the boycotting enterprise suffers from being cut off from a facility, product supply, or market. An illustration of this would be if a metro rail organisation solely collaborates with one firm to obtain rail fastening systems and believes that other companies are ineligible for bidding.
- Resale price maintenance is the phrase used to describe any agreement to sell goods with the condition that the seller's pricing be applied to the buyer's resale (unless it is specifically stated that prices lower than the MRP may be charged). Example: When a tyre company instructs its dealers to sell at a specific price, this is known as resale price maintenance.

It is imperative to acknowledge that Section 19(3) must be employed to scrutinise the aforementioned agreements in order to determine if they constitute anti-competitive agreements. This section addresses topics such as creating barriers to entrance into the market and providing consumers with a cumulative benefit.

❖ *Forbidding the misuse of power positions*

Because of its strength, a corporation is in an advantageous position. The company must be in the lead in order to:

- a) Operate independently of any competitive elements present in the relevant market;
- b) Avoid competitors; and
- c) Avoid being influenced by clients or the industry in question for its personal benefit. Section 4 prohibits the abuse of a dominant position by any business or group.

Also listed in the Section as instances of abuse are the following actions:

- Restrict or limit competition;
- Use its dominance in one relevant market to enter or protect another;



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- Impose an unfair or discriminatory term or cost during the sale or acquisition of goods or services.¹⁷
- Limit or restrict the development of goods or services;
- Limit or restrict the advancement of science or technology associated with goods or services at the expense of consumers;

❖ *Having command over combinations*

In general, a combination occurs when a corporation or individual buys assets, voting rights, or shares from another business that it competes with. Business mergers and combinations are also covered. Businesses and organisations are required by Section 5 of the Competition Act to notify the CCI in the event that their assets and turnover reach specific thresholds. Section 6 prohibits an individual or corporation from engaging in a combination that would be void and significantly reduce competition in the relevant Indian market.

The Competition Commission of India is able to investigate activities like lottery-related services even if they are (i) *res extra commercium*;¹⁸ (ii) governed by other statutes; or (iii) both. This is because the Supreme Court of India ruled on January 19, 2022, that the definition of “service” under the Competition Act, 2002 is broad. The SC noted the following on the extent of the CCI’s authority over acts that are *res extra commercium* and/or subject to other statutes: “Service” is broadly and inclusively defined as “any service of any description to be made available to potential users and includes...” under Section 2(u) of the Competition Act. In light of this, the buyer of a lottery ticket is a potential user, and in the purpose of the Competition Act, the selling agents are providing a “service.” Consequently, the Competition Act requires the CCI to investigate any alleged bid-rigging or cartelization during the bidding process related to the “production, supply, distribution, storage, acquisition or control of goods or provision of services.” Because of this, the Competition Act requires the CCI to investigate any alleged bid-rigging or cartelization in the form of tenders for the “production, supply, distribution, storage, acquisition or control of goods or provision of services.”

In this instance, the CCI looked into possible bid-rigging in the procurement process for the appointment of distributors and selling agents for the lottery industry in Mizoram, or the “service” provision. As the Regulation Act oversees the carrying out, regulation, and prohibition of the lottery industry, which is outside the purview of the CCI, there is no conflict between the two Acts that necessitates reconciliation or ban against either. Lotteries may therefore be regarded as *res extra commercium* or a regulated commodity; yet, the CCI is authorised to investigate their tendering procedure from the standpoint of competition law.¹⁹

VII. CONCLUSION

Fair, dependable, and transparent procedures are crucial since they support the authority of competition authorities in their endeavours. Regardless of the legislative framework, openness regarding legal standards, agency policies, practices, and procedures, as well as the judicial review process, can promote uniformity, predictability, and fairness in decision-making processes. Additionally, sound economic analysis is required. Any evaluation of competition, whether done for wider policy objectives or law enforcement, would need to be grounded in a solid understanding of economic concepts and based on a meticulous examination of the available data, maybe using statistical and other data analysis tools. This analysis doesn’t have to be complex, but all experts working in the competition should be ready to respond to such evidence that interested parties present, or to take into account and apply complex econometric or other methodologies as necessary. By enforcing an exclusive supply agreement and prohibiting paint dealers from selling the informant’s paint, the paint producer, known as “OP,” was charged by the informant of breaking sections 3 and 4. But since there was insufficient proof to back up these claims, it was impossible to prove that section 3 or section 4 had been broken. Based on the Director General’s (DG) conclusions, the Competition Commission of India (CCI) concluded that there should be strong evidence, demonstrating a high probability, that a dominant and well-established market player is using tactics to drive out a smaller rival or a new entrant.

¹⁷ *Jasper Infotech Private Limited ... vs Kaff Appliances (India) Pvt. Ltd. ...* on 15 January, 2019

¹⁸ The doctrine of *res extra commercium* holds that the right to carry on any business granted to all citizens under the Constitution of India, 1947, would not be available for activities that are inherently immoral or criminal, e.g., gambling, sale and manufacture of alcohol, lotteries, etc.

¹⁹ *Competition Commission of India v. State of Mizoram & others*, available at:

https://main.sci.gov.in/supremecourt/2014/31973/31973_2014_36_1501_32612_Judgement_19-Jan-2022.pdf



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This holds true regardless of the size or natural advantages of the lesser player in the competition. These tactics could entail influencing or coercing downstream organisations to stop interacting with or endorsing the newcomers.²⁰The Court notes that the primary goal of competition legislation is to enhance economic efficiency by supporting the emergence of a market that is sensitive to the needs of consumers through competition.

The Supreme Court of the United States, the United Kingdom, and Australia cite pertinent legislation from other jurisdictions while emphasising the goals of competition law in the *CCI v. SAIL*²¹ ruling. Arguing that the court has subtly implied that it will consider the competition law jurisprudence established in these nations when making decisions on controversial matters in the future would not be implausible.

²⁰ JSW Paints (P.) Ltd. v. Asian Paints Ltd., Case No. 36 of 2019.

²¹ *Jindal Steel And Power Ltd. v. Steel Authority Of India Limited*. LAWS (CI)-2011-12-1. Central Information Commission. Decided On December 20, 2011.