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DECODING COLLUSION: ANALYZING CARTEL PRACTICES AND THEIR IMPLICATIONS IN COMPETITION LAW

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I. ABSTRACT

The loopholes of the Monopolies and Restrictive Trade Practices Act, 1970, such as its outdated focus on curbing firm size rather than promoting competitive conduct, its limited enforcement capacity, absence of key definitions, and inability to address modern anti-competitive practices, led to the creation of the Competition Act 2002. This legal research paper will investigate the implications of collusive practices within the Competition Act, 2002 framework. Competition Law of India finds its jurisprudential and Constitutional basis in Articles 38 and 39 under Part IV (Directive Principles of State Policy) of the Constitution of India. At the outset, the Indian competition law was enacted in 1969 and christened the MRTP Act. Collusion, which is the agreement between competitors to manipulate prices or restrict output, poses significant challenges to market efficiency and consumer welfare. The role of the Competition Commission of India is imperative, as well as the landmark judgements regarding cartels and collusion practices, such as Union of India v. Hindustan Development Corporation and others [3] had a great significance in shaping new guidelines and regulations. Furthermore, the paper explores potential strategies for preventing collusion, including enhancing transparency, fostering competitive incentives, and imposing strict penalties for violators.

II. KEYWORDS

MRTP Act, Competition Act, Cartelization, Collusive practices, Digital cartels, Competition Commission of India, Article 38 and 39 under Part 4 DPSP.

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[3]Union of India v. Hindustan Development Corporation and others AIR 1993 SC 183

III. RESEARCH METHODOLOGY

The legal research paper is primarily based on the doctrinal method of research. It relies on secondary sources of information and data. Firstly, books written by various authors and that were available in the college library were referred to for the theoretical understanding of the subject. Secondly, data and information are collected from various credible online journals and publications such as the Journal on Competition Law and Policy, UN Trade and Development (UNCTAD), and articles from the Asia-Pacific Economic Cooperation and OECD. These sources provided peer-reviewed insights, case commentaries, and contemporary legal analysis relevant to the research. Further, case laws and constitutional provisions were also studied from authentic legal databases such as SCC Online and Manupatra. Quotations and statements are used to elaborate and define several topics. The enforcement structure, along with case laws, is analysed to enquire into the cartel detection mechanism of India.

IV. INTRODUCTION

The existence of the market is ubiquitous, and the market is fair when competition exists. Competition provides companies incentive to provide better quality products, lower prices, and encourages them to do more research and development, which enables creativity. This healthy battle is beneficial to consumers as well as the new players in the market. In 1969, India introduced its first antitrust law, which was implemented in 1970.

It became an arduous task to define cartels in the MRTP Act, 1970, as practices hampering competition were known as restrictive trade practices, and specifications such as bid rigging, price fixing, and extra-territorial jurisdiction powers were not defined, resulting in a lack of control over collusive practices. The enforcement of the MRTP Act was restricted to Indian territories only. Lack of power, which was only constrained to cease and desist for successful cartel detection, led to an increase in anti-competitive agreements in India.

The Competition Act 2002 filled the loopholes of the MRTP Act, where section 7 constitutes a commission called the Competition Commission. This commission enables effective investigation on a spontaneous basis or on complaints received. Additionally, the MRTP Act had gateways to escape punishments that acted as a barrier to charging companies for restrictive trade practices. A perusal of the MRTP Act makes it simpler to perceive that the Competition Act overcame many obstacles to maintaining competition in the Indian market.

Pondering upon the definition of cartel which is provided in the section2(C) stating that cartel is an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services. This definition provides an ease for the commission to identify practices that create hurdles to healthy competition. It is quite imperative to know about the legality of cartelism; more than 125 countries maintain a competition law regime.[4]

Before diving into the effects of cartels, collusive practices must be differentiated. On one hand, cartels are well and formally organised, whereas on the other hand, collusion is a secretive and informal agreement between firms. The Competition Commission is effective but still lacks instruments to successfully detect a cartel, as contracts are normally informal and by word of mouth; while the Competition Commission of India has demonstrated effectiveness through successful interventions on several markets, it lacks robust instruments to proactively detect cartels.

As observed by M. Chakraborty (2020)[5] And CCI's own annual reports, proactive detection remains limited due to the absence of advanced forensic, surveillance, and data-analysis tools used by competition authorities in jurisdictions like the EU and the USA. With the advent of technology, antitrust agreements are finding new escape, and to cope with these, law amendments are being made. Observing such developments, the Ministry of Corporate Affairs (MCA) in the year 2018, constituted **the Competition**

[4] OECD,2020
[5] Detection and Investigation of Cartels: Indian Approach and International Comparison' (2020) 11(2) Indian Journal of Law and Economics 134

Law Review Committee (CLRC)[6] To check the implementation of the Act and coherence with India's ever-growing economic fundamentals.

In 2019, certain lacunae were found in the existing framework, and therefore, several changes were recommended for structured dealing with the market competition.[7]Since 2002, amendments regarding mergers and acquisitions (2007) and penalties regarding anti-competitive behaviour (2009) strengthened competition law.

Recently, in 2023, another amendment Bill was passed by both Houses of Parliament, which aims to strengthen enforcement mechanisms and increase penalties for non-compliance with CCI orders. Prior to competition law, there were three key essentials to create a cartel precisely: equal price, mutual action regarding conspiracy, and control of revenue.[8]. The first essential is the existence of an arrangement or understanding between the competitors. Secondly, agreements are amongst producers, sellers, distributors, traders, or service providers, that is, parties are engaged in identical or similar trade of goods or provision of services. Lastly, the agreements aim to limit control, or attempt to control the production, distribution, sale, or price of, or trade in goods or provision of services. Although penalties were not defined.

The further study will elucidate the consequences of collusive agreements and how the scope of damage it contains is not limited to that particular industry but to the entire society, market hierarchies, and connected consuming industries. In the case of India, cement industries are prone to cartels, and it is more concerning as India is the second-largest producer of cement. Price manipulation can injure the economy. From the Sherman Act to competition law, antitrust laws are evolving and ever-changing.

V. ANTI-TRUST LAW & POLICY OF INDIA

The field of law regulating competition in the market is only effective with the enactment of the Competition Law 2002. It is the framework of rules and regulations

[6] Ministry of Corporate Affairs, Government of India, "Constitution of Competition Law Review Committee," Order No. 5/15/2007-CS (30 September 2018)
[7] Scc Online Times
[8] Union Of India V. Hindustan Development Corporation 1993 SC 183

designed to foster a competitive environment in the national economy, It consists of measures intended to promote a more competitive environment as well as enactments designed to prevent a reduction in competition. Before diving into the sections of competition law, it is essential to examine competition policy, which laid the foundation of the law. Competition policy was defined by the World Trade Organisation as "***the full range of measures that may be used to promote competitive market structures and behaviour, including but not limited to a comprehensive competition law dealing with anti-competitive practices of enterprises***".[9] Simply measures of government, legislature, statutes, and regulations.

This makes competition law a subset of competition policy, and implementation is done by the competition commission that fulfils the aim of the policy. While the Competition Commission of India (CCI) has played a pivotal role in promoting market fairness, its effectiveness in detecting cartels remains constrained by limited investigative tools. The Commission primarily depends on indirect evidence, leniency applications, and third-party complaints, rather than proactive detection methods such as wiretapping or dawn raids, which are utilized by more mature jurisdictions like the European Union and the United States. [10]The limited uptake of leniency applications further indicates a lack of robust deterrence or fear of reprisals among potential whistleblowers.[11]

Moreover, the absence of advanced digital forensic capabilities and direct seizure powers hampers the Commission's ability to uncover covert cartel conduct.[12] These challenges were also recognized in judicial pronouncements such as Excel Crop Care Ltd. v. CCI (2017), where the Supreme Court acknowledged the inherent difficulty in establishing cartel agreements. Hence, while the CCI has made significant strides,

[9] World Trade Organization, "Report of the Working Group on the Interaction between Trade and Competition Policy to the General Council," WT/WGTCP/2 (1998)
[10] S. Chakravarthy, Detection and Proof of Cartels: The Indian Experience, J. Antitrust Enforcement (2014)
[11] . CUTS International, "In Search of Effective Cartel Deterrence in India" (2019), https://cuts-ccier.org/pdf/research-report_in-search-of-effective-cartel-deterrence-in-india.pdf.
[12] Competition Law Reports (CLR), Commentary on the Investigative Powers of the Director General Under Section 41, CLR (2017).

structural and procedural limitations continue to hinder its capacity to successfully detect and prosecute cartels. The relation between policy and law is regarded as of genus and species, where the former is the broader concept that gave rise to the latter. Besides encompassing the law, competition policy includes sectoral regulatory laws and the various government policies that enhance competition and consumer welfare. [13]The Indian history of competition policy enshrines the industrial policy statement of 1980, encouraging competition in the domestic sector with technological enhancement, and post-liberalisation the industrial policy statement of 1991 emphasised international competitiveness.

The Union Ministry of Commerce established a group with expertise in 1997 to study the issues relating to trade and competition policy, and eventually, 2 years later '***Raghavan committee***' under the chairmanship of **S.V.S. Raghavan** suggested scrapping of MRTP 1969. Competition law deals with various aspects that prevent competition but primarily focuses on anti-competitive agreements, which will be analysed further as it includes cartels, which restrict freedom of trade and cause consumer harm by way of limiting production and distribution of goods and services and fixing prices higher than normal. The act prohibits abusive behaviour of a dominant firm, which, through its position of dominance, may restrict markets and create entry barriers to new players in the market[14]. Lastly sets the regulations regarding mergers and acquisitions of large corporations in order to safeguard competitive markets[15]. While greater focus is on the above-mentioned sections, competition advocacy is also provided. [16]

The competition law governs the composition of the competition commission. The main objective of competition law is to promote economic efficiency using competition as one of the means of assisting the creation of a market responsive to consumer preferences. The advantages of perfect competition are threefold: allocative efficiency, which ensures the effective allocation of resources; productive efficiency,

[13] CUTS International, "Competition and Regulation in India" (2007)
[14] Section 4 of the Competition Act, 2002
[15] Section 5 and 6 Competition Act, 2002
[16] Section 49 of the Competition Act,2002

which ensures that the cost of production is kept at a minimum; and dynamic efficiency, which promotes innovative practices. These factors, by and large, have been accepted all over the world as the guiding principles for effective implementation of Competition Law, and in view of the Preamble of the Competition Act, 2002, it requires not only protection of free trade but also protection of consumer interest.[17]

VI. CONSTITUTIONAL ASPECT OF COMPETITION LAW

Article 38: The State is to secure a social order for the promotion of the welfare of the people.

- "The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic, and political, shall inform all the institutions of the national life.
- "The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations."[18]

Article 39: The State shall, in particular, direct its policy towards securing.

- that the citizens, men and women equally, have the right to an adequate means of livelihood;
- that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- that there is equal pay for equal work for both men and women;
- that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

[17] CCI v. Steel Authority of India Ltd. & Anr., (2010) 10 SCC 744
[18] Constitution of India, 1950

- that childhood and youth are protected against exploitation and against moral and material abandonment."[19]

These articles reflect the aim of moving India towards a welfare state and building an equitable and just society. The emphasis is that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. The constitution embodies the jurisprudential doctrine of "distributive justice," denoting that a particular sphere of law-making aims to eradicate economic inequality, rectifying the injustice resulting from dealings and transactions between unequals in society. This in the true sense, is distributive justice.[20].

These discussions clarify that the Indian constitution obligates the State to direct the policies in order to secure the ownership and control of material resources of the community are so distributed as to best subserve the common good.[21]. This implies that the intervention of the government is essential to some extent in India to eliminate the concentration of wealth and to affect the distribution of resources in an equitable manner, upholding the vision of an egalitarian Indian society and markets.

VII. ENFORCEMENT STRUCTURE

The act has a set of objectives that are well discussed, and the structure to achieve those objectives is well defined as well. The act established an entire commission that fulfils the implementation and administration work, solely known as the Competition Commission of India. The act provides establishment of two major agencies, which are the office of the director general (DG) and the appellate tribunal (NCLAT). The CCI is recognized to ensure above mentioned objectives with the help of the Director General (DG), both are complementary to each other for conducting investigations and passing appropriate orders.

The commission comprises a chairperson, presently Ravneet Kaur, along with five other members. The least number of members can be two, and the maximum of six,

[19] Constitution of India, 1950
[20] Central Inland Water Transport Corp. v. Brajo Nath Ganguly, (1986) 3 SCC 156

who will be appointed by the government of India, having its head office in New Delhi. The commission can enquire into an AAEC (appreciable adverse effect on competition)[22] Although this term is not mentioned in the act, every case has to be examined individually, and facts should be considered. If the presence is found, it can nullify the AAEC in the relevant market and give warnings and guidelines if required. From anonymous complaints to a receipt of information or receipt of reference from a statutory body, the commission has all the power to investigate the corporate and commercial world where competition is being hampered. The action may be taken by the commission on its own or on the basis of notification by the firms proposing to enter into the combination. The powers are extensive, such as issuing summons and mandating the attendance of a particular person, examining them on oath, or receiving evidence on affidavits, and much more.

In October 2003, the CCI was established but was not functional due to the filing of the writ petition before the Supreme Court and the High Court, as this was supposed to be the judicial authority, and the chairperson must be a judge chosen by the Chief Justice of India[23]. Later, on this matter, the verdict came two years later stating that the expert body is to be created by the union government, and it might be considered for the government to create two separate bodies having different functions. One with the expertise for advisory and regulatory functions and the other for adjudicatory functions based on the doctrine of separation of powers[24].

The vision and mission of CCI is quite evolving with time from promoting and to sustain enabling competition culture through engagement and enforcement that would inspire businesses and corporations to be fair, competitive and innovative, to enhance consumer welfare and supporting economic growth.

The jurisdiction of the commission extends to private enterprises as well as government-owned and even government departments, i.e., Sections 18, 19, 26, 27, 60,

[22] SECTION 6 OF THE COMPETITION ACT 2002
[23] Ministry of Finance, Department of Corporate, Affairs, notification No. F.NO 1/10/2003 CL.V October 14,2003
[24] Brahm Dutt v. Union of India, AIR 2005 SC 730

and 61 of the Competition Act, 2002. The Competition Act empowers the CCI to take action with respect to conduct that has occurred outside India and with respect to the parties located outside India, provided that the conduct had an appreciable adverse effect on competition (AAEC) in the relevant market in India.[25]

In some highlights of leading case laws it was said that the Director-General does not hold ***Suo-moto*** power for initiating any investigation and the act provides for investigation by Director-General for the assistance of commission and only if commission directs to do so.[26] The commission has the power to issue interim orders during an inquiry if the commission is satisfied that an act in contravention of the stated provisions has been committed, continues to be committed, or is about to be committed.[27]

The Competition Appellate Tribunal (COMPAT) was established under the Competition Act, 2002, to hear appeals against decisions of the Competition Commission of India (CCI). However, with the enactment of the Finance Act, 2017, the Government of India merged several tribunals to streamline the tribunal system. As a result, COMPAT ceased to exist, and its functions were transferred to the National Company Law Appellate Tribunal (NCLAT), effective from 26 May 2017. Since then, the NCLAT serves as the appellate authority not only for decisions of the CCI but also for matters under the Companies Act and the Insolvency and Bankruptcy Code.

VIII. REGULATION OF ANTI-COMPETITIVE AGREEMENTS ACROSS JURISDICTIONS

Regulations concerning anti-competitive agreements are a fundamental aspect of competition law globally. These regulations are designed to prevent agreements that have the potential to distort, restrict, or prevent competition within any market. The specifics can vary by jurisdiction, but the core principles tend to be similar across

[25] SECTION 32 OF THE COMPETITION ACT
[26] Grasim Industries Ltd. V. competition commission of India MANU/DE/4658/2013
[27] Competition commission of India v. SAIL (2010) 10 SCC 744

different countries' competition laws, including the European Union (EU), the United States, India, and others. Basically, these agreements can be differentiated into two categories, namely, vertical agreements such as an exclusive distribution agreement between a car manufacturer and a dealership, where the dealer is prohibited from selling competitors' cars. This is a vertical agreement because it involves parties at different levels of the supply chain. Such agreements may or may not be anti-competitive, and horizontal agreements, such as cartels formed between four major cement manufacturers in India, like the well-known case involving ACC, Ambuja Cements, etc., where they fix prices and limit production to control market supply and inflate prices.[28] This is an agreement among competitors at the same level of the supply chain and is typically anti-competitive.

IX. MAJOR BARRIERS

A. Cartels

Cartels are considered harmful to competition and are often pursued vigorously by competition authorities. Section 2 (C) defines cartels, and this practice has the most stringent punishments. It includes fixed prices, limits production, shares markets, or rig bids. Cartels are formed from two to many members. Although OPEC has been widely referred to as a cartel due to its coordination of oil production and pricing among member countries, it is more accurately characterized with a mandate to stabilize oil markets. In the Indian context, the cement cartel is the largest as cement is a homogenous product, and India, being a developing country, is the second largest producer of cement.[29]Industries like automotive, electronics, air cargo, financials (for manipulating financial benchmarks), and more are home to cartels.

B. Bid-Rigging

Collusive tendering is another name for big-rigging, which occurs when two or more competitors agree they will not compete genuinely with each other for tenders,

[28] Builder's Association of India v Cement Manufacturers' Association and Others [2012] CCI 43, Case No 29 of 2010 (Competition Commission of India)
[29] World population review [statistics of year 2022]

allowing one of the cartel members to 'win' the tender. Participants in a bid rigging cartel may take turns to be the 'winner' by agreeing about the way they submit tenders, including some competitors agreeing not to tender. Various forms of big rigging can be submission of identical bids, one chosen to submit the lowest bid, agreement to "*squeeze out*" outside bidders, agreeing not to bid against each other, and so on. This leads to higher costs, reduced quality, and less innovation. Bid rigging is illegal and considered a serious anti-competitive practice in many jurisdictions worldwide. Bid suppression occurs when one or more competitors agree not to submit a bid so that a designated bidder can win. In bid rotation, the competing firms take turns being the winning bidder on a series of contracts. Over time, each company gets a "fair share" of winning bids, and proxy bidding is where one company submits multiple fake bids using shell companies to crowd out genuine competition and influence the outcome are several forms of bid rigging.

C. Resale price maintenance

refers to the practice where a manufacturer or supplier dictates the minimum price at which a retailer can sell a product. This means the retailer is not allowed to offer the product for sale below the price set by the manufacturer or supplier. RPM can take various forms, including explicit agreements, implied pressures, or the use of incentives and penalties to enforce minimum resale prices. RPM is a contentious issue because it can restrict competition at the retail level, leading to higher prices for consumers. The act prohibits it because it is a clog on the free play of the market forces, which alone shall determine the prices at which they are sold.[30] The case of Shubham Sanitary Wares v. Hindustan Sanitary Wares & Industries Ltd[31] Is a landmark case of the following practice.

X. IMPLICATION OF COLLUSIVE PRACTICES IN MARKET

While some critics might argue that cartel has positive effects rather than adverse effects on competition as stabilisation of markets, sustainability in times of crisis,

[30] Supra note 4, page 121
[31] Shubham Sanitary Wares v. Hindustan Sanitary Wares & Industries Ltd. Case no.99 of 2013

incentive to investment, and coordinated actions but these are temporary and have an overall adverse effect that hampers the competitiveness of the market, which will be discussed. When cartels control the market, they often keep prices higher and limit how much of a product is made. This means that people who want or need the product might not be able to get it at a fair price. As a result, resources aren't used in a way that best matches what people actually want or need, which economists call 'allocative inefficiency' and transfer wealth from consumers to the participants in the cartel by modifying output and or prices in comparison with market-driven levels.[32]

The adverse effects of cartels are broad and far-reaching, affecting not only the immediate market in which they operate but also the wider economy and society, such as –

A. Exploitation of consumers by high prices

By means of price fixation and supply control, the price is fixed at an artificially high level, which is not possible in a competitive market driven by market forces such as demand and supply. This leads to the decline of consumer class as the inferior section of society cannot afford basic goods and eventually ends the vision of an egalitarian society.

B. Lack of transparency

Members may agree to hide prices or withhold information, such as the hidden charges in credit card transactions. This breaks market ethics and trust of consumers.

C. Restricted output

An agreement between members of a cartel to limit production, OPEC and its oil quotas, can be a great example.

[32] European union XXXIInd report on competition policy (2002)

D. Reduced product quality and innovation

In a competitive market, companies are pushed to continuously enhance their offerings to gain an edge over competitors, benefiting consumers with better quality and new technologies.

E. Restriction in employment opportunities[33]

As the incentive to work is weakened, the company's actions are always pre-planned, and the employees remain stagnant. These situations create a lack of recruitment opportunities. In practice, companies are not yet always aware that agreements on employment conditions may constitute a cartel, resulting in high fines. The Periodic Labour Force Survey (PLFS)[34] by the National Statistical Office (NSO) often shows lower female labour force participation rates, especially among rural and less-educated women. A 2020 report by McKinsey Global Institute estimated that closing gender gaps in work could add $770 billion to India's GDP by 2025. [35]

F. Entry barrier

As the dominant players join hands to dominate the market, new player finds it difficult to enter even if their product is of higher quality and reasonable prices. The horizontal agreements make it arduous for them to have raw material and eventually abuse of dominant position takes place.

These are just some adverse effects of cartels. In view of this, the Indian lawmakers restricted and obligated that cartels should be illegal as they stifle economic efficiency.

XI. PRESERVATION, REGIME, AMENDMENTS

A continuous effort has been made to refine and modify the Competition Act, 2002, as the advent of technology has created new pathways for companies and firms to

[33] Matache, A., "Effects of Cartelization on Economy," Journal of Competition Law and Economics, 7(2) (2011), pp. 313-344.
[34] Periodic Labour Force Survey (PLFS) – Annual Report, July 2022 to June 2023.
[35] McKinsey Global Institute. (2020). *The power of parity: Advancing women's equality in Asia Pacific*. McKinsey & Company.
Retrieved from https://www.mckinsey.com/featured-insights/diversity-and-inclusion/the-power-of-parity-advancing-womens-equality-in-asia-pacific

secretly create anti-competitive agreements. Law-makers are conscious about the repercussions on the economy and since 2002, several amendments have been made in view to protect the interest of consumers.

A. 2007

The initial amendment took place 2007, where the key legislative changes were the definition of '*turnover*', which included the value of sale or supply of goods or services. The '*control*', '*merger control*' and '*group*' were the defined words. Some additional prominent changes were the enhancement of penalties which were determined on the percentage of the turnover of the concerned enterprise or a fixed amount whichever is higher.[36]

B. 2009

India made a significant amendment 2 years later, in 2009, where the regulations and scrutiny of '*merger control*' were elaborated, and powers to review and approve mergers and acquisitions were granted to the CCI. The term '*combination*' was introduced, and various forms of transactions with the potential to impact competition were also included. The amendments prescribed specific financial thresholds for mandatory notification of combinations to the CCI. This amendment empowered the suspension of a combination temporarily that has aec.[37]

C. 2018

In the year 2018, the '*green channel*' was introduced, a mechanism for faster approval of certain mergers and acquisitions that are unlikely to raise competition concerns. Under this mechanism, eligible combinations can be notified to CCI. The amendment empowered CCI to pass interim orders during investigations to prevent any conduct that may cause significant harm to competition in markets, settlement mechanisms were introduced, and penalties for non-compliance were imposed. New prohibition

[36] Government of India. (2007). The Competition (Amendment) Act, 2007. Ministry of Law and Justice, Legislative Department. Retrieved from https://egazette.nic.in
[37] Government of India. (2009). The Competition (Amendment) Act, 2009. Ministry of Law and Justice, Legislative Department. Retrieved from https://egazette.nic.in

on direct or indirect price fixing. The exemptions were provided to some Intellectual property rights agreements.[38]

The 2023 amendments to the Competition Act were introduced to address emerging post-pandemic market practices, particularly the rapid growth of the digital economy and new business models. A key provision is the introduction of a deal value threshold of ₹2,000 crore, allowing the CCI to scrutinize mergers and acquisitions that may escape traditional thresholds but have a significant market impact. The amendment also introduces settlement and commitment mechanisms, enabling quicker resolution of cases and reducing litigation. Additionally, it shortens the timeline for merger approvals from 210 to 150 days, promoting ease of doing business. These changes aim to make competition regulation more responsive, flexible, and in line with global practices.[39]

XII. GLOBAL NARRATIVE ON CARTELS

A. Cartels and Japan

The concept of Private monopolization is prevalent in Japan, but the definition that gives a more exact and clear picture is in the definition of *'unreasonable restraint of trade'*.[40] Under some circumstances, cartels are permitted in Japan. The regulation of cartels falls under the Antimonopoly Act (AMA). The Japan Fair Trade Commission (JFTC) can issue cease-and-desist orders and impose administrative surcharges. The standard surcharge rate is 10% of affected sales, applicable for up to three years. For small and medium-sized enterprises, the rate may be reduced to 4%. Repeat offenders or cartel leaders may face a 50% increase, and if both conditions apply, the rate can double to 20%. The penalties can Individuals involved in cartel activities may face

[38] Competition Commission of India. (2018. Ministry of Corporate Affairs, Government of India. Retrieved from https://www.cci.gov.in

[39] Ministry of Law and Justice. (2023). *The Competition (Amendment) Act, 2023*. Government of India. Retrieved from https://egazette.nic.in

[40] Section 3 of Antimonopoly act
Retrieved from https://www.jftc.go.jp/en/

imprisonment for up to five years and/or fines up to JPY 5 million. Companies can be fined up to JPY 500 million can be seen in the Antimonopoly Act.[41]

B. Cartels and the US

The initiative of the cartel control mechanism took place in the US with a pathway of the Sherman Act,1890. Cartelization has been declared illegal per se by the US court, and US government has constituted the Federal Trade Commission (FTC), which deals with cases pertaining to antitrust violations. Individuals found guilty of cartel conduct can face up to 10 years in prison and fines up to $1 million. Corporations may be fined up to $100 million, or twice the gain derived from the illegal activity or twice the loss suffered by the victims, whichever is greater.

C. Cartels and Canada

Like any other prosperous country, Canada also adopted antitrust law. The competition law in Canada is set out in a single federal statute, the Competition Act. The act is primarily administered and enforced by the Competition Bureau and the Public Prosecutions Service of Canada. It addresses three categories of conduct: mergers, criminal matters, and reviewable practices. Individuals convicted of cartel offenses may face imprisonment for up to 14 years and/or fines at the discretion of the court. On summary conviction, the penalties can include fines up to CAD 200,000 and/or imprisonment for up to one year.[42]

XIII. LEGAL PARADIGM

The MRTP Act of 1969 wielded control over anti-competitive acts within its extended territory. However, the Supreme Court clarified that MRTP did not possess additional territorial authority to manage imports.[43] It stated that if wrongful acts were committed by Indian entities, MRTP jurisdiction might apply. The question of

[41] Retrieved from https://www.japaneselawtranslation.go.jp/en/laws/view/1929/en
[42] Competition Act, RSC 1985, c. C-34, Section 45 (Cartels and Anti-Competitive Agreements). Retrieved from: https://laws-lois.justice.gc.ca/eng/acts/C-34/
[43] American Natural Soda Ash Corporation (ANISAC) v. Alkali Manufacturers Association of India & Ors, (2002) 2 SCC 617.

imposing penalties based on suspicion varies depending on the circumstances.[44]. Here, it was observed that following just two meetings by CMA, cement prices surged significantly, indicating mutual action and cartel formation among business players.

Furthermore, the Competition Commission of India (CCI) holds the authority to initiate cases Suo motu. In the landmark case of zinc-carbon cell batteries[45], CCI took action on its own accord, finding the defendants guilty under relevant sections and imposing fines. However, CCI's power to decide statutory agreements was challenged in the case of Reliance Jio v. Other Telcos.[46]. The Bombay High Court ruled in favour of cellular operators, including Idea, Vodafone, and Airtel, setting aside CCI's order against Reliance Jio.

The court held that CCI lacked jurisdiction to decide statutory agreements within the telecom sector. It also emphasized that not every majority decision made by business players could be categorized as cartelization. The interconnection agreement is a legally binding contract between telecom service providers that allows customers of one network to connect with customers of another. The dispute in question arose solely from non-provision or delayed provision of POIs, which is a sector-specific regulatory issue under TRAI's purview. TRAI has the expertise and statutory mandate to adjudicate on technical telecom matters. CCI can intervene only after TRAI has determined a prima facie abuse or anti-competitive behaviour beyond what is allowed by TRAI.[47]

XIV. RECENT TRENDS AND ADVANCES IN CORPORATE GOVERNANCE

In view of digitalisation, the government set up a committee to introduce a proposed Digital Competition Act to regulate digital players. In December 2022, the

[44] Builders Association of India v. Cement Manufacturers' Association & Ors., (2012) CompLR 629 (CCI).
[45] Zinc Carbon Cell Batteries Case No. 42 Of 2013
[46] Vodafone India Ltd. v. Competition Commission of India and Others, 2017 SCC OnLine Bom 8969
[47] Cellular Operators Association of India & Ors. v. Reliance Jio Infocom Ltd. & Ors., Bombay High Court, 2018

Parliamentary Standing Committee[48] On Finance finalised its Fifty Third Report: Anti-Competitive Practices by Big Tech Companies after extensive consultations with government departments, industry stakeholders, and the CCI.

A. Digital Cartels

The proliferation of digital platforms and online marketplaces has facilitated new forms of collusion, such as algorithmic price-fixing and data-driven coordination. Detecting and prosecuting digital cartels pose significant challenges for competition authorities due to the complexity of algorithms and the lack of transparency in online markets.

For instance, the CCI recently fined Google Rs. 936.44 crore for abusing its dominant position concerning Play Store policies. The CCI found that Google mandated app developers to use its proprietary billing system for in-app purchases, thereby restricting developers from using alternative payment methods. This practice was deemed anti-competitive and in violation of Section 4 of the Competition Act, 2002. Subsequently, in March 2025, the National Company Law Appellate Tribunal (NCLAT) upheld the CCI's findings but reduced the penalty to ₹216.69 crore, citing partial relief on certain remedial measures[49]

B. Big Data and Artificial Intelligence

Competition authorities are exploring the use of big data analytics and artificial intelligence (AI) tools to enhance cartel detection and investigation capabilities. For instance, Data Screening and Predictive Analytics are methods the European Commission's Directorate-General for Competition (DG COMP) uses for data mining and screening tools to analyse large volumes of procurement and bidding data. Whereas in the United Kingdom, the Competition and Markets Authority (CMA) launched a Data, Technology and Analytics unit to develop AI tools for cartel detection and to audit pricing algorithms used by firms in e-commerce. However,

[48] Parliamentary Standing Committee on Finance, "Fifty-Third Report: Anti-Competitive Practices by Big Tech Companies" (December 2022).
[49] Posted On: 25 OCT 2022 5:27PM by PIB Delhi
Retrieved from https://www.pib.gov.in/PressReleasePage.aspx?PRID=1870819

leveraging big data and AI in cartel enforcement raises concerns about data privacy, algorithmic bias, and the reliability of automated decision-making processes.

C. Civil Litigation and Private Enforcement

There is a growing trend towards increased civil litigation and private enforcement actions against cartels, as affected parties seek compensation for damages resulting from anti-competitive conduct. Private plaintiffs, including consumers, businesses, and competitors, play an active role in holding cartelists accountable through lawsuits alleging violations of competition law. However, challenges such as proving damages, accessing relevant evidence, and navigating complex legal procedures can impede effective private enforcement efforts.

XV. CONCLUSION

This research paper highlights several critical findings regarding the detection and regulation of cartels under Indian competition law. Firstly, it establishes that cartel agreements, particularly those among competitors to fix prices, limit production, or allocate markets, are among the most pernicious forms of anti-competitive behaviour, often leading to significant harm to consumers and the economy.

Secondly, the study finds that Section 3 of the Competition Act, 2002, provides a robust legal foundation to address such horizontal agreements, with a presumption of appreciable adverse effect on competition (AAEC) in cases of cartels. Thirdly, it is evident from the analysis that despite the statutory provisions, the practical detection of cartel conduct remains difficult due to its secretive and sophisticated nature.

Fourthly, the research identifies that while the Competition Commission of India (CCI) has made progress in penalizing and investigating cartel conduct, challenges such as lack of technological tools, limited manpower, and procedural inefficiencies continue to hinder its enforcement capability. Moreover, Global narratives and penalties are elucidated in the study. Lastly, the effectiveness of leniency provisions and whistleblower protections remains underutilized, suggesting the need for more strategic reforms and incentives to encourage voluntary disclosures.

In conclusion, to strengthen cartel detection and enforcement in India, it is imperative to enhance the CCI's investigative capacity through advanced data analytics, incentivize whistleblowers under a robust leniency program, and ensure closer coordination with sectoral regulators and international competition authorities. The competition law is evolving and law makers are shaping its regulations according to the modernisation in the corporate and commercial world.

It is imperative to find how CCI imposes stringent penalties and even negotiates at the point of time. This makes us understand that CCI is evolving and introducing new ways to combat digital and secretive cartels. Collusive practices are never-ending as they have a secretive nature and intentions might not always be clear, but mechanisms can be made to control and restrict cartels. So that competition can be smooth. The findings from this research paper indicates that CCI is performing righteously but some provision like lack of evidence, burden of proof on the informant may hinder detection of cartels.

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