IJNRD.ORG ISSN : 2456-4184

INTERNATIONAL JOURNAL OF NOVEL RESEARCH AND DEVELOPMENT (IJNRD) | IJNRD.ORG
An International Open Access, Peer-reviewed, Refereed Journal

Anti-Trust Laws: Overview & Analysis

Chandroday Pratap Singh Tomar[1]

Abstract

Business rivalry is encouraged by antitrust regulations, which also ensure equitable economic growth and distribution of resources. Although antitrust laws are often thought of as primarily affecting the manufacturing industry, their effects are widespread. The logistics of shipping, reselling, and advertising. If a company wants to succeed, it needs to avoid certain practises. For instance, antitrust laws forbid businesses from engaging in predatory pricing, mergers that reduce competition, and other practises designed to establish or maintain monopolies. These operational problems were most noticeable when once-dominant companies like Reliance Industries, the Vedanta Group, Bajaj Auto, and Google were at the peak of their market power. Because of their enormous dominance, antitrust rules are rendered ineffective. To combat anti-competitive business practises, increase competition, and safeguard consumers' best interests, the Competition Commission of India (CCI) established this regulation in 2002. The Competition Act of 2002 establishes the framework for competition policy in India. The purpose of this research paper is to explore the concept, history, and anti-competitive practises of antitrust laws, examine recent case laws, and compare the legislation of the United States.

Keywords: *Antitrust laws, Monopoly, Anti-Competitive Agreements, Abuse of Dominance.*

Introduction

Since the passage of the Monopolies and Restrictive Trade Practises Act in 1969, India has had its own version of competition law; this law, based on command-and-control economic notions, prohibited the harmful concentration of economic power in a few hands. Monopolies and other forms of business restraint were outlawed by this legislation, which was founded on command-and-control economic principles. A competition legal framework that could better adapt to local economic realities while yet being compatible with international standards became essential once the economy was deregulated in 1991. The Competition Act 2002 (Competition Act)[2] was introduced by the Indian Parliament in 2002 to govern commercial operations in India and to prohibit conduct that has a "significant adverse effect on competition" (AAEC). Its primary focus is on preventing and punishing anticompetitive agreements, the abuse of a dominant position, and the consolidation of businesses

[1] Author is a 4th Year (8th Semester) law student at School of Law at Bennett University, Greater Noida, Uttar Pradesh, India.
[2] Competition Commission of India https://www.cci.gov.in/ (Last Visited on 21st April 2023)

(via mergers, acquisitions, and amalgamations) in violation of the Competition Act. The Government of India announced that the bans on anti-competitive agreements and abuse of dominant position included in the Competition Act, as amended by the Competition (Amendment) Act 2007, would go into force on May 20, 2009. Three years later, in June of 2010, merger control provisions of the Competition Act became law.

Innovation in Indian Competition Law

The business climate in India appears to be somewhat uncharted territory. Competition law is adopted significantly later in other emerging economies. Anti-competitive laws existed in India before. In the year 2000, India passed its very first piece of law, the Monopoly and Restrictive Trade Practises Act, 1969 (MRTP Act). India's competition law stands in stark contrast to those of the EU and the USA, highlighting the differences between the two.

A) The MRTP Act's Roots

The United States developed the idea of monopoly and applied monopolistic and protectionist trade practises throughout the latter half of the twentieth century (MRTP). The government's Command and Control (C-Control) strategy in international relations dictated the outcome. This group goes after monopolies and unfair commercial practises including monopolistic and restrictive trade practises to make it harder for the economic elite to take control of the economy.

Significant progress was made between 1969's MRTP Act and 2002's Competition Act.

The corporate sector in India has been rapidly evolving since economic reforms were implemented in the 1990s. Market conditions required regular revisions to the Monopoly and Restrictive Trade Practises Act of 1969 (MRTP). Despite these updates, it was concluded that the MRTP framework was still unable to satisfy the requirements of a dynamic economic environment.

B) From the 2009 Budget Address of Finance Minister Yashwant Sinha:

Changes in competition law have made it impossible to obtain a licence in areas of the country where the MRTP Act was in force before it was repealed. Instead of trying to rein in monopolies, we should be encouraging more of them. The purpose of this committee is to investigate these issues and recommend modifications to existing competition laws that are more suitable to our circumstances. To better advise the government on passing more competitive laws, a new and effective competition strategy was developed. As the head of the government's High-Level Committee on Competition Policy and Law, Mr. S. V. Raghavan oversaw the creation of modern, efficient competition law. A report from this group was released in May of 2000. In 2002, lawmakers finally addressed your worries by passing the Act. In November of 2000, the Indian government received the competition draught; afterwards, the Competition Bill was drafted and handed to the Indian Parliament.

The committee was urged to continue deliberating the bill. The Standing Committee was able to find a compromise, and in December of 2002, Parliament passed the Competition Act, 2002. On January 13, 2003, Congress passed, and President Bush signed into law the Competition Act. The Competition Bill and its associated Statement of Objects and Reasons are India's response to the elimination of barriers to entry and the promotion of competition. The basic goal of competition law is to ensure that when one or two businesses negatively affect the free market, those businesses are held accountable for the resulting situation. The adoption of the Act has increased India's competitiveness to world standards. The goals of the Act are to protect consumers' rights, keep markets competitive, and keep business costs low for everyone. After this law went into effect, it was immediately challenged as being invalid because of the strong feelings people had about it. The fact that the new Commission, which has the power to issue judicial rulings, will be headed by a former civil servant with the same authority as a judge was the main reason the Act was shot down. In order to expedite the various alterations, the government authorised the necessary adjustments to the Act, and the competition authority was split into two different agencies, as was originally envisioned in the legislation. The Competition Commission of India advises on administrative matters and is a government agency. The Competition Body's duties include acting as both a judge and an investigator. The law imposes measures to prevent anti-competitive activities that vary from jurisdiction to jurisdiction and have international ramifications.

Reinforcement System

While the United States has a complex system of laws and enforcement agencies, India has only one law and one government agency. to ensure compliance with antitrust laws, a responsibility primarily assigned to the DOJ's Antitrust Division together with the FTC (Federal Trade Commission). Comparing administrative agencies within the executive branch with those outside of it: The former can be better described by these expressions because of its ties to the executive branch, while the latter shares characteristics with the CCI.

According to this definition, the Sherman Act (1890) is the most well-known piece of federal antitrust legislation since it outlaws a wide range of anti-competitive business practises, such as price fixing and the creation of monopolies. Since its enactment in 1914, the Clayton Act has expanded to regulate practises like exclusive supply, mergers, pricing discrimination, and tying across numerous markets. The Department of Justice (DOJ) and the Federal Trade Commission (FTC) are two different federal organisations responsible for enforcing antitrust laws (the Sherman Act and the Clayton Act, respectively). It is, nevertheless, within the DOJ's purview to file charges in this case.

Anti-Competitive Agreements

Businesses are allowed to engage in agreements or practises that are substantially similar to, or identical to, those of other businesses under the law prohibiting anti-competitive agreements and cartels, so long as the deals are made by businesses that provide products or services with the same or the same. According to this clause,

the activities in which such a company engages are characterised as posing a clear and present danger to the industry's competitiveness. They are treated as though they actually violated the law. Please review Section 1 of the Sherman Act and Article 101 of the Treaty for a fuller understanding of the relevant provisions. Neither the existence of a significant negative impact on competitiveness nor the nature of such impact are indicated for this item. However, the Act's Section 19(3) mandates that the AAEC take into account certain criteria. For example, Section 19 (1) of the Act states, "The CCI must establish a competitive assessment that measures the competitive effect of the agreement but must also give due consideration to the pro-competitive aspects of the agreement," which is a mandated statement that captures the spirit of the legislation. The Act's Rule of Reason and Balance Method are similar to American and European Union case law on competition issues. A union is typically defined as a legal compact between two or more parties, even though the law does not require this. This is evident from the fact that the words "both parties" and "organisations and institutions" are all references to each other in Section 3(3).

Agreements in which India appoints the American Enterprise Economic Council (AAEC) and which are headquartered in India are deemed to have AAEC rather than all other agreements, which must be assessed under the rule of reason, on the provision in Section 3 (3) of the Act.

A) Abuse of Dominance

Any company that uses its dominant position in the market to unfairly discriminate against other businesses is in violation of Section 4(1) of the Competition Act, 2002. In India, one corporation holds a monopoly that gives it significant freedom from the effects of rivalry. Help your company (or your competitors') gain ground in the market. Types of anti-competitive conduct that constitute an abuse of a dominant position are specified in Section 4 (2) (a) of the Act. The list of abusive acts mentioned in the Trafficking Victims Protection Act includes exclusionary abuse and exploitative abuse. Abuse of power comes in many forms in India. For instance, they may overcharge for services that are functionally equivalent to what they offer. It entails implementing commercial practises related to product or service delivery in the course of production and distribution.

Article 102 of the Treaty has a list of harmful actions, and the Act includes similar lists of abusive behaviours. The Sherman Act, specifically Section 2, prohibits market monopolisation and monopolisation efforts. Even though the Sherman Act does not explicitly mention every practise that could be construed as monopolisation or attempted monopolisation, it is helpful to keep in mind the distinctions between the Act and the Clayton Act. The Supreme Court of the United States has interpreted Section 2 of the Sherman Act to forbid businesses from illegally acquiring or keeping monopoly power. The first step in an investigation under the Act is, like in the EU and the US, to identify the location and products of the relevant market.

B) Merger Regulation

When combination rules are implemented, the Competition Act, 2002's Sections 5 and 6 apply. By developing procedural rules for the operation, the CCI made the Combinations Regulations 2011 accessible to the process.

When paired with the Combination Regulation, the Act provides a strong framework for merger regulation in India. According to the Act, a combination includes an acquisition, a gain of control, and any merger or amalgamation of one or more firms by one or more persons. The Act specifies a threshold at which a combination is no longer considered a combination and is therefore exempt from the Act's merger regulation.

A threshold is established based on the asset's size or the number of sales. The threshold varies depending on whether the combination is comprised of one or more firms, whether the assets or revenue are created exclusively in India or internationally, and whether the assets or income are created exclusively in India or internationally. In the United States, mergers are controlled by the Clayton Act, which was amended in 1976 by the Hart–Scott–Rodino Antitrust Improvements Act. Section 7 of the Clayton Act prohibits mergers that will result in less competition or increased monopoly. The most significant distinction between the US and Indian control systems is that CCI, administered administratively, has the jurisdiction to approve or prohibit a merger. However, the US system, which courts regulate, requires federal agencies to obtain restraining orders.

To some extent, the difference between the Indian and United States control systems is that the CCI (the Indian system's administrative body) can approve or deny mergers. In contrast, the United States system (the judicial system) requires the agency to approach federal courts to enjoin a merger.

Anti-Trust Case against Google in the United States of America

Many different nations have common ground when it comes to competition legislation, as evidenced by the similarities between the European Commission's (EC) antitrust statutes and those of the United States. It may be argued that there are several core principles shared by all governments and all nations' competition laws. The laws may also achieve their goal by including safeguards to make sure each provision is followed to the letter. There are three fundamental concepts at the heart of all laws that can be uncovered by a comprehensive examination of the legal system. Contrary to these ideals are anti-competitive agreements, monopolistic practises, and their many permutations.

A) Key Points

In light of a recent lawsuit, the US Department of Justice has issued a press statement accusing Google of monopolistic behaviour in search that is bad for business and consumers. As reported by the United States House of Representatives' Special Committee on Issues Relating to the Digital Economy, Google, Facebook, Apple, and Amazon, along with three other companies, all impeded competition by exercising gatekeeping control in the digital economy and thus violated antitrust laws, prompting the lawsuit (also known as an antitrust action).[3]

[3] Antitrust and Competition in India available on https://www.globalcompliancenews.com/antitrust-andcompetition/antitrust-and-competition-in-india/ (Last Visited on 19th April 2023).

B) Google's Antitrust Defensive Position

The Justice Department is misrepresenting the legality of the cited transactions. If it can be proven that these deals between companies will hinder competition, then they will be considered illegal under antitrust law. Search engines like Microsoft's Bing and Yahoo Search are readily available as alternatives for users. Due to overwhelming demand, Google's search engine has established itself as the market leader.

In addition, its services have contributed to the affordable nature of modern smartphones. The following is a report from a subcommittee of the House of Representatives of the United States of America: As "gatekeepers," companies like Google, Facebook, Amazon, and Apple control who has access to what information.

Furthermore, gatekeepers may decide whether or not a message reaches a larger audience. These companies not only have a lot of power, but they abuse it by charging exorbitant prices, making customers sign onerous contracts, and snatching up sensitive information from the people and businesses who rely on them. Corporations dominated their respective markets while also fighting inside them, and to stay at the top, they often resorted to "self-preferencing, predatory pricing, or exclusionary behaviour."

When a company promotes its own products and services at the expense of competitors, it is engaging in self-preferencing. Predatory pricing is the strategy of artificially reducing prices to drive out rivals. Behaviour that develops or sustains monopolistic dominance at the expense of, and to the detriment of, competitors is known as exclusionary behaviour.

C) Significance

This shift is a response to the legislative conundrum of how to limit the power of the internet's behemoths, which wield outsized sway over economies, media, and public perception. Rather than merely imposing restrictions on Google's behaviour, as has been done in Europe, the US Department of Justice has advocated completely destroying the company. According to Google's detractors, the billions dollar fines and obligatory modifications to the company's strategies enforced by European authorities in recent years were not severe enough, and the company needs to make more fundamental changes to its behaviour.

Indian Scenario

Google is currently the subject of multiple antitrust probes in India. For a long time, Google has been at odds with authorities, especially the Indian Competition Commission (CCI). A number of concerns have been raised by the CCI over the past two years, including the company's commercial flight search option, its dominance of the search market, and its exploitation of its dominant positions in the Android phone and intelligent television markets.

Case in point: in 2019, India's Competition and Consumer Commission (CCI) found Google guilty of abusing its dominant position in the mobile Android market by imposing "unfair limitations" on device manufacturers,

thereby blocking them from utilising alternative operating systems. A recent analysis claims that Google's method of compensating developers whose apps appear in the Google Play Store is both too expensive and unfair.

Statutes that impair Trust

To ensure that markets remain competitive, and economies may flourish, antitrust laws govern the allocation of economic power within a company. Production, distribution, and promotion are all impacted by antitrust regulations, which exist in virtually every market and field. A wide range of harmful commercial practises are prohibited by these. Criminal conduct includes price-fixing schemes, mergers and acquisitions between companies that are likely to dampen competitive fervour in specific markets, and predatory action to obtain or preserve monopolistic power.

The Competition Act of 2002 (and its revisions) established the Competition Commission of India to ensure that anti-competitive practises are not tolerated, that competition is fostered and protected, that consumers' rights are upheld, and that market freedom is maintained in India's economic system.

The Competition Commission of India and the Amazon-Future Retail Deal

CCI banned Amazon's Rs 1500 crore 2019 deal with Future Retail (FRL) in December due to the company's apparent attempt to conceal information regarding the scope and purpose of the arrangement. Future Retail (FRL) has terminated Amazon's Rs 1500 crore 2019 arrangement on the grounds that Amazon hid key information about the nature of the agreement. Amazon was hit with a Rs 200 crore fine from the antitrust authorities and has 60 days to pay the fine.[4] The competition watchdog found in its 57-page judgement that the merger should be re-examined due to their relevance in both the online and physical marketplaces and conversations over strategic alignment. For the duration of the transition phase, it was announced that the 2019 CCI approval was "suspended."

After Amazon filed an appeal with the National Company Law Appellate Tribunal (NCLAT), the Competition Commission of India (CCI) blocked the 2019 agreement between the two companies. Sources say that an appeal of the CCI ruling from Amazon on at least five of those reasons will be filed this week.

To avoid an arbitration dispute over Future Retail's (FRL) asset sale to Reliance Industries (RIL), Amazon India has also petitioned the Supreme Court.

[4] Amazon pulls CCI to NCLAT challenging suspension of 2019 Future deal, published in Business Standard, Available on https://www.business-standard.com/article/companies/amazon-pulls-cci-to-nclat-challengingsuspension-of-2019-future-deal-122010900492_1.html (Last Visited 19th April 2023).

In its CCI file, Amazon made clear, say Amazon's strategy experts, that the company's investment in Future Coupons was strategic in anticipation of the government authorising investment in the multi-brand retail sector in the country.

The legal staff at Amazon claims that no information was omitted or distorted in any way.

After the initial 12-month period of approval, CCI will no longer have the ability to make changes to the agreement. No longer is "abeyance" a proper term to use. A person with knowledge of Amazon's plans said that the company had to receive approval for the transaction or have it revoked within a year. Even though CCI claims that everything was disclosed, Amazon might have disclosed the fact that FRL was not.

Amazon did not respond to a request for comment before this article went to press.

Sources familiar with Amazon's tactics also said that "Future Coupons, as a joint applicant and beneficiary after receiving payments from Amazon, is now a complainant and requesting annulment of the transaction."

Amazon started things off in August by purchasing a 49% share in Future Coupons, the promoter firm of FRL (Future Retail), for around Rs 1, 500 crores. The $3.4 billion asset acquisition between Future Group and Reliance Industries was finalised in August of 2020.

Amazon threatened Future with legal action in October 2020 for failing to reach an agreement with RIL. According to the lawsuit, Future broke an agreement with Amazon when it sold its assets to RIL for $3.4 billion. It defended itself by saying that it was bound by a non-compete clause in its contract with the Kishore Biyani-led company. In the event of a disagreement, both parties agreed to submit the matter to arbitration at the Singapore International Arbitration Centre. In October of 2020, Amazon received a good ruling from the SIAC anti-merger appeals court.

Future claimed in a complaint filed with the Delhi High Court (HC) in November 2020 that Amazon had improperly intervened in a contract it had with RIL.

Since then, FRL has filed a lawsuit against Amazon in an effort to prevent Future from signing a $3.4 billion contract with RIL.

The Supreme Court of India sided with Amazon in August of last year when it ruled that the emergency arbitrator's verdict against the Future-Reliance agreement was enforceable in India. However, Future Group breathed a sigh of relief in September when the Supreme Court stayed proceedings before the Delhi High Court, ordering no coercive action. The CCI and SEBI have also been told to wait four weeks before making a final judgement.

In November of last year, the Supreme Court granted a two-week extension to the Delhi High Court's deadline for CCI to give a ruling on the show-cause notice it issued to Amazon about the arrangement with Future Group.

On Wednesday, however, the Delhi High Court (HC) temporarily halted the Singapore tribunal's arbitration proceedings against Future Group and Amazon.

The news came as a huge relief to Kishore Biyani and his retail company Future. Two subsidiaries of Future Group had their appeals of a single judge's refusal to intervene in the case denied by a division bench on Tuesday. A single judge of the HC has previously declined to participate in current arbitration proceedings at the Singapore International Arbitration Centre (SIAC).

A 'conflict of laws' has been raised as an argument against the decision, claiming that it will discourage international companies from setting up shop in India by making it harder for them to uphold their end of a contract.

Cases that cannot be handled by a divisional bench have been sent to the Supreme Court per a Section 227 order by the Delhi High Court's single bench. To allow for a potential appeal. Someone who is conversant with Amazon's tactics has said as much.

They were able to get a court to issue an injunction stopping the arbitration proceeding. It's unprecedented for a government to interrupt a corporate arbitration in the middle of a hearing, and it looks bad for the government when it does.

Conclusion

For many reasons, India's antitrust laws have been under examination. The following suggestions are offered as a means of improving the current state of affairs.

To begin, the CCI has been criticised for being both slow to act and overly hasty.

Many people would wait the whole 180 days before making any kind of decision on whether or not to continue. Therefore, the first and foremost change that needs to be made to antitrust law is to make it possible for it to be enforced swiftly.

Second, the Federal Government considered putting a settlement provision into the Act.[5] The government and sanctioned corporations may come to an understanding if the corporation takes corrective action within its own structures. This benefits the company and the CCI because the CCI doesn't have to spend time deciding whether punishment is fair in each individual situation. The CCI is able to save money and time as a result, and the national economy benefits from more entrepreneurial activity as people are less reluctant to take risks out of fear of legal ramifications.

[5] Evernett and Simon J, what is the Relationship between Competition Law and Policy and Economic Development (Palgrave Macmillan 2016)

Similar to the previous proposal, India's competition statute needs a more robust enforcement mechanism. The rights of consumers and small and emerging market investors, both of which have the ability to significantly contribute to the nation's economic success, are directly impacted by the enforcement of competition legislation. It has already been established that monopolistic practises in India, as shown by companies like Reliance, have hindered the evolution of antitrust law.[6]

The CCI's already heavy schedule doesn't help matters any. The most efficient method of ensuring successful law enforcement may be to increase the number of forums for addressing complaints under competition law. If a person feels that a company has violated their rights, they can seek redress through alternative dispute resolution strategies like arbitration or mediation.

Put simply, India's antitrust law, like any other legal system, has room for development.

The following suggestions show that law enforcement is where improvements are most needed. Therefore, the present legal framework must first be appropriately executed to preserve the interests of the general public and the market in order to promote economic success in India, even if revisions to the constitution are required.

[6] V Venkateshwara Rao, 'The rise of monopolies in New India' (The Deccan Herald, 2020) (Last visited on 20th April 2023)