ECONOMICS OF COMPETITION LAW IN INDIA: PREVENTION OF EXPLOITATION IN THE GENERAL MARKET

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Abstract

Indian markets are primarily non-monopolistic, with several players in each market category. It is impossible to classify the Indian market as a single sort of market. As a mixed economy, it has a wide range of market segments that are not necessarily monopolized, but rather many players (cartel, firm, or person) of varying sizes freely operate in the markets. Another challenge derives from the multitude of enterprises, as they all tend to fight for the same pool of customers. At first glance, corporate rivalry does not appear to be a threat; rather, it should be encouraged to raise the general standard of goods and services given and to benefit society. The large players dominate their presence with a larger customer base and creating a sense of monopoly. This article delves into the economic character of competition control and its importance to prevent exploitation of producers, suppliers as well as consumers across the general market.

Keywords: *Monopolistic practice, Trade practice, Dominating position, Exploitation Conglomerate Mergers.*

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INTRODUCTION

It is impossible to categorically characterize the Indian market as a single type of market. As a mixed economy, it features a variety of market segments not necessarily controlled by monopoly but rather a huge number of players' (cartel, enterprise, or person) disregarding their size freely operate in the marketplaces. Another difficulty stems from the abundance of businesses, as they all tend to compete with one another for the same pool of customers. Prima facie, competition between businesses does not appear to be a threat at all; rather, it should be encouraged to raise the general standard of goods and services and to benefit society as a whole.[1] To keep the competition among the businesses fair and establish reasonable restrictions The Competition Control of India was established to maintain fair competition among enterprises, impose appropriate limitations, arbitrate, and settle disputes involving unfair competition. The Monopolies and Restrictive Trade Practices (MRTP) Act of 1969 established India as one of the first developing countries to have its own competition legislation. The Raghavan Committee was formed in 1999, and it suggested replacing the MRTP Act with the current competition law in order to facilitate market competition and reduce anti-competitive practices in the economy. Then, in June 2011, the Ministry of Corporate Affairs (MCA) established a committee on National Competition Policy, which declared that the competition policy should aim to facilitate competitive market structure in the economy in order to increase productivity and encourage inclusive growth.

[1] The Constitution of India, Art 38, 39

The Supreme Court of India ruled in *Competition Control of India* v. *Steel Authority of India Ltd and Another (2010)*[2] that the government of India made[3] the decision to liberalize the economy with the goal of removing obstacles and enacting legislation to create checks and balances in the free market. The primary reasons that the rules had to be passed were to prevent anti-competitive agreements and abuses of dominance, as well as to control mergers and takeovers that skew the market. The case also established deficiencies in the earlier MRTP Act[4] to be inadequate and outdated.

While deciding in the *Competition Commission of India* v. *Co-ordination Committee or Artists and Technicians of W.B film and television & Ors*[5] the Supreme Court of India ruled that the CCI's schemes are intended to safeguard fair competition by prohibiting trade practices that have a significant negative impact on competition markets within India. CCI has been tasked with reducing the negative sides of competition.

The Competition Act of 2002 was passed to serve the primary purpose to maintain market competition, safeguard consumer interests, and guarantee the freedom of trade for market participants. The Competition Commission of India (CCI) was set up to ban business practices that restrict market competition. The Act forbids three types of anti-competitive behavior: the abuse of dominant positions, mergers, and acquisitions (combinations), and anti-competitive agreements. The essential criteria for anti-competitive behavior management are that it should not seriously harm competition within India. The Act prohibits businesses from making anti-

[2] (2010) 10 SCC 744

[3] GR Bhatia, "Institutional Framework under the Indian Competition Act, 2002" ILJ (2018)

[4] Monopolies and Restrictive Trade Practices Act, 1969, ss. 3

[5] Civil Appeal No. 6691 of 2014.

competitive arrangements that would significantly harm Indian competition or misuse their dominating position. Additionally, neither individuals nor companies are allowed to collaborate in a way that materially reduces competition in the relevant Indian market. Anti-competitive agreements are defined in Section 3 of the Act and are divided into two categories: horizontal agreements and vertical agreements[6]. It states that any anti-competitive agreements that could significantly undermine competition in India are void and unenforceable, with the exception of a few situations outlined in Section 3(5)[7].

Indian marketplaces have expanded tremendously since the Competition Act went into effect. With the rise of digital internet-based businesses and new age markets integrating technology, there have also been changes in how firms operate. The Competition Law Review Committee was established by the Ministry of Corporate Affairs in 2018 to make sure that the Competition Act is consistent with India's economic fundamentals. The Committee acknowledged throughout its discussions that the current regulatory system does not sufficiently address certain market activities. In its 2019 report, the Committee made several recommendations for reforms to the Act and to the regulatory framework governing market competition. Reviewing the suggestions made by the Competition Law Reform Committee[8] led to the introduction of the Competition (Amendment) Bill, 2022. The Bill aims to widen the definition of anti-competitive agreements, provide for the value of transactions to be taken into account when evaluating combinations, shorten the approval period for combinations, and

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[6] Competition Act, 2002, ss. 3

[7] Ibid

[8] Law Commission of India, "*Report of the Competition Law Review Committee*", (PRS Legislative Research, April 2020)

provide a framework for settlement and commitment to help avoid litigation. The amendments to the existing provisions of the Act emphasize the regulation of mergers and acquisitions and amalgamations of enterprises. The Act also provides scope for control and managerial influence.

RECENT INSTANCES OF JUDICIAL INTERVENTION IN COMPETITION CONTROL

The economics component of competition law is primarily concerned with market analysis with the goal of ensuring that there is rivalry among suppliers on any given market and that this rivalry benefits the consumer, hence promoting economic growth and development. Competition control laws in India operate with a clear objective of preventing monopoly or monopolistic practices in the market. Competition law's everyday function is to identify markets and determine whether the competition is equitable and fair in those markets. It also entails determining how the company's decisions may impact clients and rivals. These are the principal economic concerns. It is a well-established fact in today's society that lawsuits of any kind are injurious to any person or business.

In the case of *XYZ(Confidential)* v. *Alphabet Inc. (2020)*[9], The CCI noted that the prohibitions outlined in Section 4 of the Competition Act are clear-cut, and it is forbidden to misuse a dominating position by imposing unfair conditions, denying access to the market, using leverage, imposing supplemental responsibilities, etc. According to the CCI, Google cannot claim that it had no anti-competitive intent after enforcing unfair terms and participating in other actions that violated Section 4 of the Act. The Act's

[9] *XYZ(Confidential)* v. *Alphabet Inc.* Case No. 7 of 2020 & 32 of 2021

requirements must be followed by the dominating undertakings. As a result, Google's argument was dismissed as being without validity.

In *Together we fight Society* v. *Apple Inc.*[10], According to the CCI, it is unlawful to abuse a dominant position by enforcing unfair terms, restricting access to the market, employing leverage, imposing additional obligations, etc. The prohibitions listed in Section 4 of the Competition Act are unambiguous. Then, Apple limits app developers' ability to select a payment processing system of their choosing, especially as Apple charges a 30% commission while other payment processing solutions charge a substantially lesser rate for processing payments. To offer digital in-app content to their users, app developers must use Apple's in-app payment mechanism, i.e., In-App Purchase ('IAP'). According to the Commission's initial assessment, Apple has breached the provisions of sections 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), and 4(2)(e) of the Act, and as a result, a thorough inquiry is necessary. CCI ordered the Director-General to conduct an investigation into the situation in accordance with Section 26(1).

In *Rohit Arora* v. *Zomato (P) Ltd.*[11], The Informant claimed that Zomato had exploited its dominating position by increasing food delivery fees and by charging its customers for delivery services that were unfair, discriminatory, and extortionate. Furthermore, it was claimed that Zomato was preventing food delivery from unfavorable eateries by vertically preventing them from doing so and by failing to assign delivery executives. According to CCI, Zomato attempted to contradict the three alleged personal incidences of abuse by the Informant with evidence already on file, but the Informant did not seriously contest the facts, so the Commission determined that no abuse

[10] *Together we fight Society* v. *Apple Inc.* Case No. 24 of 2021

[11] *Rohit Arora* v. *Zomato (P) Ltd.* Case No. 54 of 2020

case had been established against the Zomato. According to the facts and circumstances of the case, the Commission believed that there was no evidence to support a prima facie case of the OP violating the Act's provisions. As a result, the Information submitted has been ordered to be immediately closed in accordance with Section 26(2) of the Act.

CCI has the power to adjudicate over instances when companies make obscure efforts to gain unfair advantage of their dominant position. It is necessary for companies to understand the consequences of their actions to prevent lawsuits. For businesses of any size, the sheer amount of resources needed to defend a name or organization in court may be taxing. Large companies are not always more prone to be sued, but when their cases make headlines, they are more likely to suffer a loss of public reputation. Working with a business that has recently been served with a lawsuit can be unsettling for many clients. The business might lose some of its current customers as word of the case spreads, and prospective customers who are doing research on the business will eventually find out about the lawsuit.

ECONOMICS OF COMPETITION AS A BASIS OF SOCIAL WELFARE AND JUSTICE

The growth of industries is essential for a nation like India that is predominately agrarian. In actuality, the country has experienced significant industrial progress since gaining independence. There is a compelling argument for industrializing nations with enormous populations, abundant and diverse natural resources, and continental sizes like India. The primary justification for industrialization is that it increases money. The main justification is that industrial development alone can offer a stable foundation for swift economic expansion. The use of constantly evolving technology is essential for the development of industries. According to actual data, there is a strong correlation between a high level of income and industrial development. Beyond a certain point, the general public only wants industrial products. After the demand for food has been satisfied, the majority of the population's income is spent on non-food products. The amount of natural raw materials in finished products has increased with industrial advancement, creating a need for natural raw resources. Additionally, industrialization aids in bridging differences in import and export elasticity. The imbalances in the trade balance make it difficult to get enough foreign currency. Therefore, the only way to address the situation marked by differences in the elasticities of foreign commerce is through industrialization. India's economy is distinguished by a workforce surplus and a fast-expanding population. The issue of workers being rendered unnecessary in the agriculture industry due to rapid technological advancement has been added to this dilemma. It is vital to industrialize the nation swiftly in order to absorb the excess manpower internally. To do this, we must create more jobs at a rate proportional to the growth in the work force. The creation of new industries is the only factor that can speed up the creation of new jobs. Additionally, industrialization offers the components it needs to be strengthened. Additionally, it is necessary to ensure the security of the nation.

According to Article 38 of the Indian Constitution, the government must specifically focus its policies on securing equal rights for citizens to adequate means of subsistence, ownership distribution, the avoidance of wealth and resource concentration, equal pay for equal work for all citizens, as well as other socialist ideals. Social justice is justice that is in the best interests of society. To ensure that income is distributed as evenly as possible to ensure citizens' right to life, social justice works to remedy the injustice of uneven birth and opportunity. The Monopolistic and Restrictive Trade Practice Act (MRTP Act) of 1969, the Industrial (Development Regulation) Act of 1951, the Equal Remuneration Act of 1976, and other laws have been incorporated by the state. These enactments serve the purpose of Article 38, however a question must me asked is whether these enactments too repressive for the expansion of industrialization. The idea of "welfare economics," in which welfare is applied to such tools for specific economic situations to maximize economic wellbeing, is modified to maintain harmonious relations between the general public and industries. However, this theory is not complete and is not helpful in the complex geopolitical environment of today. The welfare of its population has long been a concern for the government. As a result, the idea of a welfare state differs between industrialized and developing nations. In developing nations, welfare states promote labour welfare through a variety of measures that are either directly or indirectly aimed at raising the general standard of living for the less fortunate members of society, in addition to maintaining services like social insurance and steps to lessen extreme income and wealth disparities.

COMPETITION CONTROL FROM A MATHEMATICAL PERSPECTIVE

In the advanced market countries, economics now plays an unduly large role in the study and enforcement of competition legislation and policy. This assignment intends to provide a non-technical introduction to three economic methods: (i) vertical arithmetic, (ii) upward pricing pressure, and (iii) critical loss analysis. These approaches have become widely used in competition law enforcement in general and in the study of proposed mergers in particular. The role of economics in analyzing and enforcing competition law and policy has grown significantly in recent years[12] in developed market economies. Competition law itself has only existed for twenty to twenty-five years at most, and in some cases much less. CCI intends to safeguard the interests of every aspect of a market from producers to consumers, by ensuring fair operations and preventing non-competitive agreements. For the sake of clarification and demarcation of jurisdiction Section 2(r) of the Act distinguishes 'relevant markets' on the basis of geography and product.

In younger and developing market countries, economic techniques that have aided competition law enforcement in developed market economies focus investigations and assist decision-makers in differentiating between primary and secondary issues are ineluctably less understood. Cost push and demand pull inflation is one of the most common forms of inflation which arises within the domestic economy[13]. Any agreement relating to the production, supply, storage, or control of products or services that have the potential to significantly harm competition in India is considered an anti-competitive arrangement under the Act. This step is crucial to avoid inflation in the prices of goods due to excessive hoarding or buffer stock manipulation by large producers.[14] Any agreement between organizations or individuals operating in the same or similar industries will have a negative impact on competition if it fits specific requirements. Usually, they include (i) setting purchase or sale prices directly or indirectly, (ii) managing production,

12 Louis Kaplow and Steven Shavell, *Economic Analysis of Law,* Harvard Law School and National Bureau of Economic Research, (1999)

13 Ibid

14 Chris Sagers, *Antitrust Law as a Problem in Economics,* Cleveland-Marshall College of Law, Oxford Research Encyclopedia of Economics and Finance, (2018)

supply, markets, or service delivery, or (iii) directly or indirectly encouraging collusive bidding. The Act further states that businesses or individuals who are not operating in the same or a related industry shall be deemed to be parties to such agreements if they take an active role in advancing such accords.

Critical Loss Analysis

Critical loss analysis is becoming increasingly important in the subject of competition law. The quantity of output or sales necessary to render a certain price increase unprofitable is known as a "critical loss"; as a result, it specifies the volume of substitution required to extend a preliminary definition of a relevant market. The current definition of market, which overemphasizes product features and absolute price discrepancies while ignoring the profitability of hypothetical price hikes, has a number of faults that critical loss analysis corrects. It is a relatively simple calculation that more precisely captures the market definition test and fills a gap in the approach used to determine market definition. This exam is also known as the Hypothetical Monopolist exam (HMT).

The profit margin denoted as the group of businesses proposing to raise prices is the only factor taken into account in the calculation used to determine the critical loss.

The critical loss is expressed in its simplest form as Y/ (Y + CM) (100%) where Y is denoted as the hypothesized price increase expressed as a proportion and CM is the contribution margin.

When the critical loss is compared to company, industry, and general market data to determine whether substitution effects greater than or less than the critical loss seem plausible and reasonable, the critical loss provides important information on the magnitude of the output effects needed for market definition purposes. The first instance of the term "critical loss" in American law was in *FTC v. Occidental Petroleum Corp*[15]. Cost projections are a part of this strategy. The margin between pricing (or, occasionally, marginal revenue) and marginal cost is the foundation for the profit maximization derivations used in SSNIP tests to examine the motivations of either individual businesses or the hypothetical monopolist. Yet, in the normal course of business, business enterprises typically compute "variable cost" rather than "marginal cost." Variable cost changes depending on industrial production and costs. A marginal cost emerges when the total cost of production changes. Since fixed costs are constant, they have no impact on variations in the total cost of production. Marginal cost, the first derivative of total cost, at the very least indirectly includes the rental value of capital. This phrase might start to mean more and more as business and/or industry production approaches its limit. We will go deeper into the rising pricing pressure as a different tactic.

Devices for Determining Pricing

a. *Upward Pricing Pressure:* Upward pricing pressure[16] refers to a market force that drives prices higher. It is typically caused by an increase in demand for a product or service, a decrease in supply, or a combination of both. When there is upward pricing pressure in a market, sellers have an incentive to raise prices to maximize their profits, which can result in higher prices for consumers. Conversely,

[15] *United States* v. *Occidental Petroleum Corporation*, SEC 873 F, 2d 325

[16] Jan Peter van der Veer, *UPP- Frequently Asked Questions,* Wolters Kluwer Competition Law Blog, (December 2012)

when there is downward pricing pressure, sellers may be forced to lower prices to remain competitive, which can benefit consumers. For instance, merger between A and B may have unilateral consequences because consumers who would have switched from A to B in reaction to a price increase are now "internalized" by the combined company. The price-cost margin for the output of good b was successful.

b. *Vertical Agreements:* This economic strategy is crucial when vertical agreements are involved. The issue of how pricing will change and how competition will be affected when two companies with established market positions and complementary products merge emerges. This comprises vertical mergers involving businesses at various supply-chain levels as well as conglomerate mergers involving vendors of goods that customers incorporate into a single system. The two most applicable neoclassical economics models, the twofold marginalization problem and the free-rider dilemma, will need to be reviewed in this context.

CONCLUSION

Competition law promotes economic efficiency by ensuring that firms operate in a competitive market environment. This encourages firms to innovate and improve their products and services, leading to lower prices, better quality products, and more choices for consumers. A competitive market environment encourages entrepreneurship and innovation as new players enter the market and challenge established players. This creates a more dynamic and innovative business environment, leading to new products, services, and business models[17]. Competition law prohibits firms from abusing their dominant position in the market. This prevents dominant firms from engaging in anti-competitive practices, such as predatory pricing, tying and bundling, exclusive dealing, and refusal to deal, which can harm consumers and restrict competition. A competition law's implementation and enforcement are two very different things. It cannot be denied that the Indian economy is currently experiencing a period of stark disparity between those who have and those who do not. The stark gap between various groups of people from the bottom of the economic ladder to the top is a dreadful reality. There is a sense of desperation at one end of the continuum because we don't know where the next meal will come from, while at the other end, there is an almost indecent display of wealth. Of course, there are many reasons for this discrepancy, but with the implementation of legal safeguards against anti-competitive behavior, the focus has shifted from battling monopolies and unfair trade practices to promoting competition for the good of common people. The executive and those tasked with carrying out and realizing the purposes of the Competition Act, 2002, are assigned in a way that serves the general welfare and ensures the operation in order to fulfil the Constitution's mandate to ensure fairness in social, economic, and political matters as well as the ownership and control of the material resources of the society.

[17] Altamas Kabir, "Competition Laws and the Indian Economy" 23 (1) *NLSIR* (2011) 1-8 *available at:* https://www.jstor.org/stable/44283735