ENVISIONING PUBLIC INTEREST IN INDIAN COMPETITION LAW REGIME THROUGH THE WOUTERS LENS

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ABSTRACT

The abstract delves into the intricate relationship between competition law and public interest, focusing on the Wouters Doctrine and its application in the European Union and India. It explores the foundational principles of competition law rooted in serving public welfare and consumer interests, as advocated by neo-classical economists and legal scholars. The analysis of the Wouters Doctrine, derived from the Wouters v Algemene Raad van de Nederlandse Orde van Advocaten case, emphasizes the importance of an effect-based examination of anti-competitive practices in achieving legitimate objectives while ensuring the means adopted are necessary and proportionate. The abstract also discusses the Consumer Welfare Test proposed by Professor Steven C. Salop, highlighting the significance of protecting consumer welfare in antitrust analysis. Transitioning to the Indian context, the abstract addresses the challenges in effectively implementing competition law principles, particularly the myopic view of scrutiny exemplified in the MCX-Stock Exchange v. National Stock Exchange & Ors case. It underscores the need for a nuanced approach in applying the Wouters Doctrine in India, considering practical market realities and conducting an objects-test to distinguish anti-competitive agreements from those with legitimate effects. The abstract concludes by emphasizing the importance of aligning legal frameworks with market dynamics and public interest considerations to achieve a harmonious balance between competition law objectives and societal welfare.

Keywords: Wouters Doctrine, Public Interest, Competition Law

HYPOTHESIS

Non-economic justifications to anti-competitive activities in the market should be incorporated in the Indian Competition Law Regime

INTRODUCTION

"In general, if any branch of trade, or any division of labour, be advantageous to the public, the freer and more general the competition, it will always be the more so."[1]

Deriving its roots from Adam Smith, Competition Law has always thrived upon serving public interest by establishing a competitive market. Theorists have believed that effective competition in the market shall lead to consumer welfare as firms shall indulge in the pursuit to deliver high quality products at lowest prices.[2]

Various neo-classical economists have believed that a combination of productive and allocative efficiency shall lead to maximization of consumer surplus and ultimately societal welfare. An additional combination of dynamic efficiency, which is nothing but inclusion of technology in the production and supply chain, shall further enhance the consumer welfare yield.[3]

Amidst the dynamic evolution and maturation of market structures, a contentious and complex issue has surfaced concerning the legality of anti-competitive practices purportedly serving public interests. This multifaceted matter has been extensively addressed and scrutinized by European courts through a series of judicial pronouncements, ultimately crystallizing into what is now known as the Wouters Doctrine.

Undoubtedly, the foundational pillars of India's competition law regime have been influenced and informed by the legal frameworks of the United States and the European Union. However, while acknowledging this transnational exchange of legal principles, it is crucial to recognize that the direct transplantation of foreign jurisprudence into the Indian legal landscape may yield unintended and adverse consequences. Therefore, it is incumbent upon legal scholars and practitioners to engage in a thorough and nuanced examination of the Wouters Doctrine and its potential ramifications within the specific contours of Indian jurisprudence. Such an inquiry

[1] Adam Smith, Wealth of Nations (first published in 1776, Pennsylvania State University 2005) 269
[2] Dr. Versha Vahini, *Indian Competition Law* (Lexis Nexis 2020)
[3] Richard Whish and David Bailey, *Competition Law* (9th edn, OUP 2018)

must carefully consider the unique socio-economic realities, regulatory dynamics, and legal principles that characterize the Indian legal system, ensuring a judicious and contextually appropriate approach to the application of foreign legal precedents.

ANALYSIS OF THE INTERSECTION OF COMPETITION LAW AND PUBLIC INTEREST IN EUROPEAN UNION IN CONTEXT OF THE WOUTERS DOCTRINE

Examining the Wouters Doctrine

The Wouters Doctrine finds its genesis in the case of *Wouters v Algemene Raad van de Nederlandse Orde van Advocaten*[4] and further elaboration in three major decisions of the Grand Chamber in *European Super League Company* [5](“**ESU**”) case, *International Skating Union*[6] (“**ISU**”) case and the *Royal Antwerp Football Club*[7] (“**Royal Antwerp**”) case. Although in the ESU, ISU and Royal Antwerp case, the Court went ahead to hold that the application of the Wouters Doctrine is restricted to professional associations and sporting associations, it is important that the idea at the inception stage is taken into consideration.

In the *Wouters v Algemene Raad van de Nederlandse Orde van Advocaten* case decided in 2000, the Court held that in determining whether an alleged anti-competitive practice is violative of Article 101 (1) of the Treaty on the Functioning of the European Union [8](“**TFEU**”) or not, an effect-based examination of the anti-competitive practices in achieving legitimate objectives has to be undertaken. The essential elements of such an examination involves analyzing the means adopted in achieving such objectives as well. If such means pass the test of necessity or the least-restrictive-means test, such a practice shall not attract liability under Article 101(1)[9] of the TFEU. A holistic understanding of the above-mentioned concepts conveys that the Wouters Doctrine provides for public interest to be an exception to anti-competitive agreements, though not absolute and provided that the means adopted must be legitimate and necessary.

[4] Case C-309/99 *Wouters v Algemene Raad van de Nederlandse Orde van Advocaten* (ECJ, 19 February 2002)
[5] Case C-333/21 European Superleague Company SL v Federation Internationale de Football Association (ECR, 21 December 2023)
[6] Case C-124/21 P International Skating Union v European Commission (ECR, 21 December 2023)
[7] Case C-680 SA Royal Antwerp Football Club v Union Royal Belge Des Societes de Football Association ASBL (ECR, 21 December 2023)
[8] Treaty on the Functioning of the European Union [2009] OJ C326/47 (TFEU)
[9] TFEU, art 101(1).

A harmonious reading of the ESL, ISU and Royal Antwerp Judgments clarifies regarding the ambit and scope of the application of the Wouters Exception:

1. Limiting the broader application of the Wouters Exception entails confining its scope specifically to "*rules adopted by an association, such as a professional or sporting association*," aimed at pursuing particular ethical and principled objectives. While this restriction does indeed narrow down the potential applications of the doctrine, it is essential to recognize that employing such a doctrine in its entirety necessitates a thorough and comprehensive analysis of its means and ends.

2. The Wouters Doctrine shall not only apply to Article 101[10] of the TFEU but also to Article 102[11]. Article 102 [12]provides for prohibition of abusive conduct by dominant players in the market. It is an undeniable fact that Article 101 [13]and Article 102 [14]of the TFEU are to be read in consonance. Both these articles regulate activities which are detrimental to the concept of fair market competition. Recently, Germany had also adopted the Wouters Exception in examination of the advertising restrictions that the Internation Olympic Committee imposes on Olympic athletes and their sponsors. Thus, by allowing the application of the Wouters Doctrine to Article 102[15], the Court has adopted the correct approach towards protecting public interest considerations.

3. The Court clarifies that the Wouters exception cannot apply to conduct inherently harmful to competition. Before invoking the exception, it must first be determined if the conduct constitutes a restriction by object. If not, the exception may be applied, possibly exempting the identified restriction from the prohibition under Article 101(1) [16]TFEU or Article 102 [17]TFEU.

   The Court argues that this limitation was implied from its previous judgment in the MOTOE case [18], despite no explicit reference to Wouters. However, the derivation of

[10] TFEU, art 101.
[11] TFEU, art 102.
[12] TFEU, art 102.
[13] TFEU, art 101.
[14] TFEU, art 102.
[15] TFEU, art 102.
[16] TFEU, art 101(1).
[17] TFEU, art 102.
[18] Case C-49/07 Motosykletistiki Omospondia Ellados NPID v Elliniko Dimosio (ECR I, 1 July 2008)

this conclusion remains unclear. Previous cases extended the exception to State measures coercing undertakings into anti-competitive practices. Nonetheless, the Court had not previously applied the Wouters exception to unilateral conduct. Even analogies with the ancillary restraint's doctrine do not suggest such a shift. The Court's rationale in MOTOE was different from that in Lupin[19]. Therefore, the assertion of implicit limitation is not entirely convincing.

4. The Court elucidates the relationship between the Wouters exception and the conventional rationale outlined in Article 101(3)[20] TFEU. It asserts that these frameworks are not mutually exclusive; however, in practical application, an efficiency defense pursuant to Article 101(3)[21] TFEU is unlikely to succeed if the conduct does not meet the criteria set forth by the Wouters test. The Court explicitly acknowledges that the Wouters exception provides greater flexibility, emphasizing that the standards for establishing an efficiency defense are more rigorous.[22]Apart from demonstrating significant objective benefits ("efficiency gains") and the necessity of the restrictions for attaining them, Article 101(3) [23]TFEU necessitates proof that a fair portion of these benefits is conveyed to consumers and that competition is not substantially eliminated for a significant portion of the relevant products or services. Additionally, according to case law, as part of the initial condition, there must be a balancing of the positive and negative effects on competition to ensure that the efficiency gains counterbalance the adverse impact on competition.

Remarkably, the Court contributes to greater alignment between the tests by suggesting that the condition of "no elimination of competition" equally applies to the Wouters exception, even though a rule would not necessarily fail the proportionality test merely due to its elimination of competition. In delineating the Wouters test, the Court underscores the necessity to evaluate whether the inherent anti-competitive effects do not surpass what is essential, particularly by obliterating all competition. Moreover, in addressing the proportionality requirement to fulfill the test of justification under Article 45 [24]TFEU – which conceptually corresponds to the

[19] Case T-680/14 Lupin Ltd v European Commission (GC, 12 December 2018)
[20] TFEU, art 101(3).
[21] TFEU, art 101(3).
[22] Case C-333/21 European Superleague Company SL v Federation Internationale de Football Association (ECR, 21 December 2023)
[23] TFEU, art 101(3).
[24] TFEU, art 45.

Wouters test – the Court in the Royal Antwerp case draws upon its examination of the third and fourth conditions of Article 101(3)[25] TFEU.

Presuming that the public interest benefits can be translated into economic efficiencies, the "fair share for consumers" condition under Article 101(3) [26]TFEU emerges as the most notable disparity between the two frameworks. The Court underscores in its ESL and Royal Antwerp rulings that this necessitates the defendants to substantiate that the sporting rule in question positively affects each of the diverse categories of users, including but not limited to national football associations, professional or amateur clubs, professional or amateur players, young players, and more broadly, consumers, whether as spectators or television viewers. This requirement presents a significantly more rigorous proposition compared to the comparatively open-ended proportionality test under the Wouters exception.

The Consumer Welfare Test: Analyzing Professor Salop's opinion

Professor Steven C. Salop, an esteemed American economist renowned for his expertise in antitrust policies, ardently advocates for the adoption of the Consumer Welfare Test as a foundational principle in antitrust analysis. His advocacy underscores the necessity for a more nuanced and expansive approach when assessing antitrust claims.

Central to Professor Salop's argument is the proposition that anticompetitive agreements and conduct should be thoroughly evaluated from the perspective of consumer welfare. In essence, he posits that any conduct should be deemed unlawful if it hampers competition within the market without sufficiently enhancing consumer welfare to offset the detrimental effects on competition. This stance reflects his belief in the paramount importance of protecting consumer interests and ensuring that market dynamics are conducive to fostering competitive environments.

Moreover, Professor Salop emphasizes the critical role of evidence in antitrust analysis. He contends that procompetitive benefits must be rigorously substantiated and demonstrated to outweigh any negative impacts on market competition. This evidentiary requirement serves as

[25] TFEU, art 101(3).
[26] TFEU, art 101(3).

a safeguard against the potential misuse or abuse of antitrust laws and ensures that interventions are justified by tangible benefits to consumers and the overall market efficiency.

In essence, Professor Salop's advocacy for the Consumer Welfare Test represents a commitment to advancing a balanced and informed approach to antitrust regulation. By prioritizing consumer welfare and demanding robust evidence of procompetitive effects, he seeks to promote fair competition, innovation, and economic efficiency within markets.[27]

COMPETITION LAW AND PUBLIC INTEREST IN INDIA AND ITS IMPEDIMENTS

MRTP Regime

Chapter IV of the Monopolistic and Restrictive Trade Practices [28](MRTP) Act addresses Monopolistic Trade Practices (MTPs), delineated in Section 2(i) as actions such as maintaining prices at an "unreasonable" level, unduly restricting competition, impeding technical progress or capital investment, or permitting a decline in quality. An amendment introduced in 1984 expanded this definition to include "unreasonably" escalating production costs, prices, or profits, albeit leaving the term "unreasonable" subjectively vague. The clause pertaining to competition restraint faintly resembles contemporary antitrust regulations on abuse of dominance, yet its scope was not limited to entities in dominant market positions.

Initially, under Section 32[29] of the original Act, an MTP was deemed "prejudicial to the public interest" only when practiced by a monopolistic undertaking—a firm, along with two independent counterparts, commanding a combined market share of one-half. However, the 1984 revision abolished the notion of a monopolistic undertaking and revised this provision to state that, barring legal authorization or government decree, "every monopolistic trade practice shall be deemed to be prejudicial to the public interest." Consequently, practices outlined in Section 2(i)[30] were condemned categorically, irrespective of the perpetrator's market share.

With MTPs defined in such an expansive manner, virtually any business conduct risked falling under scrutiny. Fortunately, there have been scarce inquiries under this chapter, and even then,

[27] Abel M. Mateus and Teresa Moreira, *Competition Law and Economics* (Edward Elgar Publishing Limited 2010)
[28] The Monopolies and Restrictive Trade Practice Act 1969 (IND) (MRTP)
[29] MRTP, sec 32.
[30] MRTP, sec 2(i).

the Commission was only empowered to relay its findings to the central government, which retained sole authority to address monopolistic trade practices.

Emphasis should be placed on enhancing the capacity of the Competition Commission of India (CCI) to effectively implement the numerous technical provisions outlined in the new Act. As elaborated in Section II, the Monopolistic and Restrictive Trade Practices (MRTP) Act employed markedly different criteria, often bypassed through per se condemnation or reliance on overarching concepts like "public interest" and "price manipulation," which frequently shaped case outcomes. The promising trajectory towards adopting a rule of reason approach was hindered by the 1984 amendment, which categorically condemned the "monopolistic" practices enumerated in Section 2(i)[31] and agreements delineated in Section 33(1)[32]. Concurrently, this amendment introduced the chapter on Unfair Trade Practices into the Act, diverting the MRTPC's limited resources over the subsequent two decades towards addressing a plethora of individual consumer complaints unrelated to competition concerns. Consequently, the MRTPC's efficacy in identifying collusion in cartel cases has been subpar. The dearth of specialized expertise poses distinct challenges for merger review, a responsibility removed from the MRTP Act in 1991 but reinstated under the Competition Act.

Applicability in India and its impediments

There are primarily two approaches for identifying anti-competitive effects which have evolved by virtue of jurisprudence evolved in many countries. These approaches are (i) per se approach (ii) the rule of reason or effects-based approach. The per se approach analyzes anti-competitive activities in a narrow sense with primarily looking into whether there exists, prima facie, anti-competitiveness or not[33]. The per se approach, as against the rule of reason or the effects-based approach, refrains from undergoing a cause-effect analysis and determining the outcomes of the alleged anti-competitive behavior.

[31] MRTP, sec 2 (i).
[32] MRTP, sec 33(1).
[33] Robert H. Bork, 'The Rule of Reason and the Per Se Concept: Price Fixing and Market Division' 1965 Yale Law Journal <https://openyls.law.yale.edu/bitstream/handle/20.500.13051/15012/59_74YaleLJ775_1964_1965_.pdf?sequence=2>accessed 2 March 2024

The Competition Act, 2002 [34]("**Act**"), under Section 3[35] and Section 4[36], have adopted a quasi per se approach by incorporating the word *'shall'* rather than *'may'*. Contrary to popular perception, *'shall'* signifies a higher degree of presumptiveness as compared to the word *'may'*.[37] It must be noted that Article 101 (1)[38] of the TFEU also adopts an effects-based approach by incorporating the word *'may'* and also stating that agreements having '*their object or effect'* to prevent or restrict competition shall be void.

This quasi per se approach restricts the application of the Wouters Doctrine in the Indian competition law regime. The minimum benchmark for undertaking an effect-based analysis in India is limited to ascertaining whether there is an 'appreciable adverse effect on competition'. Such an analysis restricts the adjudicatory mechanism to limit its area of scrutiny to ascertain measurable adverse effects on competition and refrain from including exclusions such as public interest and benefit.

This myopic view of scrutiny can be better appreciated by analyzing the case *MCX-Stock Exchange v. National Stock Exchange & Ors*[39]. The case pertained to the alleged attempts by National Stock Exchange ("**NSE**") for engaging in predatory pricing by charging zero transactional cost from traders engaged in trading of currency derivatives ("**CD**"). The Competition Commission of India ("**CCI**") analyzed the situation purely from an abuse of dominance perspective relegating larger questions of public interest. The CCI found NSE to be engaging in predatory pricing by making the transactional cost lower than the marginal cost. It is an undeniable fact that NSE very low operational expenditure which makes such schemes viable for NSE to undertake. CCI also erred in finding the 'relevant market'. CCI found the relevant market to be 'the stock exchange services in respect of the CD segment in India', instead I believe, that the stock exchanges are a platform and the CD market is a vertical segment of the platform.

The findings of the CCI in the present case indicates that the approach of the CCI has been superficial. Owing to the low operational expenditure and high capital expenditure, NSE can

[34] Competition Act, 2002 (IND) (Comp Act)
[35] Comp Act, sec 3.
[36] Comp Act, sec 4.
[37] Geeta Gouri, 'Convergence of competition policy, competition law and public interest in India' (2020) Russian Journal of Economics 6 <https://rujec.org/article/51303/> accessed 28 February 2024
[38] TFEU. Art 101(1).
[39] MCX-Stock Exchange v National Stock Exchange & Ors 2011 CCI 52

sought to come up with these innovatively priced schemes. Such a mechanism, in my humble opinion, cannot be termed as predatory pricing. Furthermore, zero transactional costs in trading in CD's shall have a trickle-down effect enabling small traders and businessmen to have better export strategies and enabling them to have a variety of hedging instruments. The intent of NSE to come up with such initiatives was to encourage exports among small enterprises instead of creating entry barriers for new entrants. It can be fairly concluded that the decision of the CCI in the present case was in consonance with the scheme of the Act, but its benefit to the larger public interest, is contentious.

A juxtaposition of the decision of the CCI to the larger market analysis leads us to the conclusion that the approach of the CCI is based on the premise that a monopolist sets higher prices for the goods while restricting output to a level where marginal revenue is equal to the marginal cost and generates monopoly profits which can be shown as:

$$P > MR = MC$$

Where P is the 'Price'

MR is 'Marginal Revenue'

MC is 'Marginal Cost'

It is evident that the CCI presupposes that an increase in producer surplus is at the detriment or decrease in the consumer surplus, which creates an anomalistic view of public interest. This has led in the Act becoming a binary contest between competition and monopoly and making certain key amendments to the Act, a necessity.

It is true that monopolists in the market behave detrimental to the larger interests of fair market competition, but for the CCI to merely have a restrictive approach towards determining anti-competitiveness amongst the players and neglecting the larger public interest is against the scheme and intent of the legislation.

Objects Test: Pre-Requisite for Application of Wouters Doctrine

An effective implementation of the Wouters Doctrine in India, it is important that due consideration is given to the practical realities of the market and not create a mechanism

whereby unreasonable application of the Wouters Doctrine becomes a norm. It is important to undertake an objects-test prior to the application of the Wouters Doctrine. If the agreement is, by its object, found to be anti-competitive, then there is no rationale for undertaking an effects-test. Furthermore, it is also essential that the anti-competitive object of such agreement outweighs the legitimate effect of the agreement, for it to be declared as void. A better understanding of the term '*object or effect'* can be done with the case *Consten and Grundig v. Commission*[40], In the Consten case, a contractual arrangement was established between a German radio manufacturer and a French distributor, designating the latter as the exclusive distributor of Grundig radios in France and imposing restrictions on the import and export of these radios.

Advocate General Roemer provided an opinion to the European Court of Justice (ECJ), asserting that the agreement did not contravene Article 85[41]. He argued that the agreement facilitated the entry of the German producer into the French market and contributed to market integration by granting access to France for a German company. However, the ECJ disagreed with Advocate General Roemer's assessment and ruled that the agreement indeed infringed upon Article 85. This was because the agreement's primary purpose was to impede competition by limiting the distribution channels for the radios and controlling their import and export processes. Consequently, as the agreement was deemed to have an anti-competitive intent, there was no necessity to evaluate its specific effects on the market. Essentially, if an agreement is designed to hinder competition, any potential positive impacts on market integration are disregarded.

The court held that there is no need for an examination on effects when the object of agreement is found to be anti-competitive. Thus, any legislative amendment in the future has to be based on or incorporate the Objects Test.

Legitimate Objectives

The ongoing discourse surrounding the Wouters exception centers on the scope of justifications permissible for its application. While some argue for limiting its invocation to objectives rooted in public law or those aligned with "national" interests to ensure input legitimacy, this stance

[40] Joined Cases 56/64 and 58/64 *Consten and Grundig v. Commission* [1966] ECR 301
[41] TFEU, art 85.

has faced opposition, particularly from sports-related cases that advocate for objectives extending beyond these categories. Alternatively, legitimate objectives have been defined as those safeguarding a public good, as articulated by AG Mazák[42].

In its ruling on the ISU Eligibility Rules[43], the European Commission introduced a criterion stipulating that only non-economic objectives qualify as legitimate. This limitation stems from the origins of the Wouters exception within free movement jurisprudence, where economic aims are excluded as justifications. Consequently, the Commission rejected the protection of financial interests as a legitimate objective, deeming the prevention of free-riding acceptable solely as an efficiency benefit. Notably, the Court of Justice refrains from addressing this specific criterion, opting instead to reference "legitimate objectives in the public interest" and "principles or ethical objectives." The Court appears inclined to consider identified legitimate sporting interests, such as promoting the recruitment and training of young professional football players, as valid justifications irrespective of the analytical framework. This pragmatic approach acknowledges the inherent ambiguity in distinguishing between economic and non-economic aims within the sports sector, rendering labels less decisive. For example, the pursuit of maximizing commercial revenue could be reframed as preserving the sports ecosystem and fostering grassroots development. The acceptance of such justification's hinges on the effectiveness of accompanying redistribution mechanisms [44].

RECOMMENDED AMENDMENT IN COMPETITION ACT, 2002

1. Insertion in Section 19(3), which provides for factors to be considered while determining appreciable adverse effect on competition, to provide for 'beneficial or detrimental to public interest and welfare'

2. Proviso to Section 4: Section 4 deals with abuse of dominant position and sub-section (2) of Section 4 provides for instances wherein an abuse of dominant position shall be deemed to exist. It is recommended to add a proviso to this clause, providing that

[42] Case C-439/09 Pierre Fabre Dermo-Cosmetique SAS v President de Autorite de la concurrence (ECR, 13 October 2011)
[43] International Skating Union's Eligibility Rules Case no. 40208 (Commission Decision, 8 December 2017)
[44] Case C-333/21 European Superleague Company SL v Federation Internationale de Football Association (ECR, 21 December 2023), para 234-237

> *'No abuse of dominant position shall be deemed to exist wherein the actions of the enterprise or group are in public interest and welfare and such public interest and welfare outweighs the effects of such actions of the enterprise or group.'*

CONCLUSION

The application of the Wouters Doctrine has been circumscribed by the ESL, ISL, and Royal Antwerp judgments. A comprehensive examination of these rulings elucidates that the ambit of the Wouters Doctrine is delimited to professional associations and sports associations. Furthermore, it is pertinent to note that its applicability extends solely to infringements falling under Article 102 of the Treaty on the Functioning of the European Union (TFEU), particularly in instances of abuse of dominance. Notably, the Wouters Doctrine cannot be invoked in cases involving agreements that are inherently anti-competitive in nature.

The implementation of this doctrine necessitates a departure from the quasi per se or presumption-based approach traditionally adopted. It is imperative for regulatory bodies, such as the Competition Commission of India (CCI), to embrace a holistic perspective in evaluating circumstances, eschewing strict adherence to interpretative norms. Given the dynamic nature of markets, adherence to rigid interpretative frameworks may impede the establishment of competitive market environments.

A critical aspect in this regard is the differentiation between consumer welfare and public welfare. While the former is characterized by a narrow, economics-driven interpretation, the latter encompasses broader societal ramifications. By incorporating considerations of public welfare, the objective is to accommodate non-economic justifications for anti-competitive agreements. Consequently, adjudicatory bodies are tasked with assessing the legitimacy of justifications rooted in public welfare and interest, weighing them against the anti-competitive nature of the agreement at hand.

In analyzing the Wouters Doctrine, it becomes evident that its application is not a one-size-fits-all approach but necessitates a thorough examination of the means and ends of anti-competitive practices. The doctrine's emphasis on legitimate objectives and necessity highlights the importance of ensuring that public interest considerations are not overshadowed by anti-competitive behaviors. Moreover, the delineation between conduct harmful to competition and

practices that serve legitimate purposes underscores the need for a nuanced approach in applying competition law.

The Consumer Welfare Test advocated by Professor Steven C. Salop adds another layer to the discourse on competition law by emphasizing the paramount importance of protecting consumer interests. By advocating for a rigorous assessment of procompetitive benefits and tangible evidence of market efficiency, Professor Salop underscores the need for a balanced and informed approach to antitrust regulation. This approach aligns with the broader goal of ensuring fair competition, innovation, and economic efficiency within markets.

Transitioning to the Indian context, where competition law has undergone significant developments under the Competition Act, 2002, challenges persist in effectively implementing the principles of competition law while considering public interest concerns. The quasi per se approach adopted in India, as opposed to a more effects-based analysis, limits the scope for applying doctrines like Wouters in a comprehensive manner. The case of MCX-Stock Exchange v. National Stock Exchange & Ors exemplifies how a myopic view of scrutiny can impact decisions related to anti-competitive practices, potentially overlooking broader public interest implications.

To enhance the application of the Wouters Doctrine in India, it is imperative to consider practical market realities and avoid creating mechanisms that could lead to unintended consequences. An objects-test prior to applying the doctrine can help distinguish between agreements with anti-competitive objectives and those with legitimate effects. Drawing insights from cases like Consten and Grundig v. Commission can provide valuable guidance on evaluating agreements based on their object or effect to ensure a judicious application of competition law principles.

In conclusion, navigating the intricate relationship between competition law and public interest requires a delicate balance that considers both economic efficiency and consumer welfare. The Wouters Doctrine, alongside perspectives like the Consumer Welfare Test, offers valuable insights into how competition law can be leveraged to promote fair markets while safeguarding public interests. As legal scholars and practitioners continue to engage with these concepts, it is essential to adapt legal frameworks to evolving market dynamics while upholding the core tenets of competition law – efficiency, fairness, and consumer protection. By fostering a

nuanced understanding of these principles and their practical implications, jurisdictions can strive towards achieving a harmonious balance between competition law objectives and public interest considerations in an ever-evolving global marketplace.