IMPACT OF CARTEL ACTIVITIES ON CONSUMER WELFARE IN INDIA: PRICE EFFECTS AND MARKET DISTORTIONS

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ABSTRACT

Globalization and increased liberalization of trade in recent years have posed significant challenges for nations worldwide, compelling them to reassess trade policies, customs regulations, and economic strategies. In response to World Trade Organisation (WTO) treaties, countries are enhancing competitiveness domestically and internationally. In India, the Competition Act, 2002 replaced the Monopolies and Restrictive Trade Practices Act of 1969 to foster fair competition, prevent practices hindering market competition, protect consumer interests, and ensure free trade. This article provides a concise exploration of cartels under the Competition Act, 2002, defining them and highlighting their various forms such as anti-competitive agreements, bid rigging, and abuse of market dominance. It discusses measures by the Competition Commission of India, including inquiry commissions and penalties, to combat cartels. The paper also examines how cartels manipulate markets and impact consumers, emphasizing the Act's role in addressing such practices. The study includes an overview of cartel origins, types, effects on markets, and an analysis of the Competition Act, 2002, supported by case studies. Ultimately, it underscores the threat cartels pose to business alliances and highlights the Competition Commission of India's pivotal role in ensuring fair market practices and consumer protection.

Keywords: Cartels, Consumers, Cartelization, Anti- competitive agreement, etc.

INTRODUCTION

Cartels play an important role in the manipulation of market by limiting competition and controlling prices. Cartel" includes 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;' as defined under Section 2, clause (c) of the Competition Act,2002.[1]

An international cartel is recognized when not all participating enterprises are situated within a single country, or when the cartel's operations extend to affect markets across multiple countries. This form of cartel typically involves businesses from different nations collaborating tomanipulate market conditions, such as prices or supply, often to the detriment of fair competition and consumer welfare.

An import cartel involves enterprises, including associations of enterprises, that collaborate specifically to influence and control the importation of goods into a particular country. These entities work together to manipulate the market dynamics related to imported goods, which can include coordinating prices, restricting quantities, or dividing market territories. Import cartels are significant because they can distort competition in the domestic market, potentially leading to higher prices for consumers and reduced options An export cartel consists of enterprises originating from one country that collaborate to control markets in other countries through agreements. Under the Competition Act 2002, cartels formed solely for exporting from India are explicitly exempted from the provisions concerning anti- competitive agreements.[2]

Cartels disrupt market mechanisms by reducing competition, efficiency, and ultimately harming consumers through higher prices, poorer quality, and limited innovation. Government and regulatory authorities actively take measures to detect cartel behaviour to safeguard market integrity and consumer welfare. Common cartel strategies include price fixing, market allocation, output quotas, and coordinated actions.

In markets, consumers often lack complete information about products and substitutes, which further distorts fair competition. Protecting free and fair competition is crucial, leading to the

[1] The Competition Act, No. 12 of 2003, Section 2(c), India Code (2003).
[2] The Competition Act, No. 12 of 2003, Section 3, India Code (2003).

establishment of regulations and regulatory authorities tasked with enforcement.

These measures aim to ensure that markets operate competitively, promoting choice, quality, and innovation while preventing anti-competitive practices that undermine consumer interests. Regulatory oversight plays a vital role in maintaining market fairness and supporting economic efficiency.

EMERGENCE OF CARTEL

Cartels originated in the late 19th and early 20th centuries as businesses sought to counteract competition and secure higher profits through coordinated efforts to control production, prices, and markets. Initially formed to respond to industrialization and increased market pressures, cartels became more organized and internationalized, impacting major industries such as oil, steel, and pharmaceuticals. In response to their detrimental effects on market integrity and consumer welfare, regulatory frameworks were established, including key measures like the Sherman Act in the U.S. and the Treaty of Rome in Europe. Today, global enforcement against cartels is robust, with authorities employing advanced investigative techniques and international cooperation to combat and dismantle such anti-competitive practices.

Cartels were not defined in the MRTP Act, 1969, but the understanding of cartels could possibly be drawn from the Section 2(o) of the MRTP Act[3] i.e., restrictive trade practice. The Competition act, 2002 explicitly defines "cartels" under Section 2(c) of the Act[4]. A plain and outright reading of the substantive law on cartelization in the Act shows that the drafters had a 'seller-oriented. cartel' in mind. This could be inferred from the fact that the definition of cartel provided in the Act is an inclusive one and mentions explicitly the aspects related to a seller

TYPES OF CARTELS

1. Price Fixing

When competing business enterprise enter in to an agreement with an objective of fixing, controlling, or maintaining the price of goods and services it is called as price fixing. Price fixing controls the market and it may result in fixing unreasonable and high prices over the

[3] The Monopolies and Restrictive Trade Practices Act, No. 54 of 1969, Section 2(o), India Code (1969).
[4] The Competition Act, No. 12 of 2003, Section 2(c), India Code (2003).

goods and services. Price fixing agreement is a form of elimination of competition in the market thus it is unlawful per se.

2. Market Sharing

When competing business enterprises enter in to an agreement, they do not produce any goods in competition each other or they will not sell in each other's allocated geographic areas or they will not sell to each other's existing customers it is called as market sharing agreement. Here the competitors are dividing or allocating the market thus they are removing competition in the market.

3. Quantity Limiting

When competing business enterprises enter in to an agreement to cut down volume of output or restrict amount of production thus, they can limit the supply of products and raise the prices these agreements are called as quality limiting agreements and they are illegal per se.

4. Bid Rigging

It is also called as collusive tendering. When 2 or more competitors enter in to an agreement that they will not fight for a particular tender, this agreement is called as bid rigging agreement. Here the participants of the bid are helping on participant to win the tender.

IMPACT OF CARTELIZATION ON MARKET AND CONSUMERS

Cartels are often regarded as detrimental alliances within the business world due to their disruptive nature and negative impact on market competition. By reducing competition among producers, cartels undermine economic performance over time. Their existence limits consumer choice and innovation, as cartel members collectively set higher prices and restrict market forces. This collusion results in consumers facing inflated prices and limited options, often forcing them to either purchase goods at exorbitant rates or forgo them altogether.

The adverse effects of cartels extend beyond higher prices. The lack of competitive pressure leads to reduced investment in innovation and research and development. Cartels create an environment where dominant companies have little incentive to improve existing products or develop new ones. Without competition, there is less drive to enhance products or bring innovative solutions to market, leading to stagnation in technological advancement and product quality.

Despite global efforts to combat anti-competitive practices through antitrust laws, many industries continue to engage in cartel behaviour, exploiting consumers. Cartels often create artificial scarcities, driving up prices while maintaining production constraints that hinder efficiency. This manipulation not only keeps prices high but also results in market inefficiencies and consumer exploitation. To mitigate these effects, it is crucial for consumers to be aware of unfair trade practices and support policies that promote fair competition and market integrity.

LEGAL IMPLICATIONS OF CARTELS

The sole purpose of any anti-competitive law in a country is to prevent any such activities that shall have adverse effects on the competition, as to protect the interest of consumers. In India, cartelization is classified as a civil offense under the Competition Act, 2002, with strict prohibitions outlined in Section 3(1)[5] and elaborated in Section 3(3).[6] Section 3 of the Act prohibits agreements among business partners related to the production, supply, distribution, storage, or provision of goods and services if such agreements significantly harm competition in India. Specifically, Section 3[7] forbids anti-competitive practices among cartel members, including explicit or implicit agreements to fix purchase and sale prices, limit production, investment, and sales, allocate geographic markets, and engage in collusive bidding. These provisions are designed to prevent practices that undermine market competition and consumer welfare.

The Competition Commission of India (CCI)[8] plays a pivotal role in addressing and prohibiting cartel formation under the Competition Act, 2002. As the primary regulatory authority, the CCI

is responsible for investigating allegations of cartel behaviour, which involves scrutinizing business practices and gathering evidence to identify anti-competitive agreements. Should a cartel be found, the CCI has the authority to impose significant penalties to deter such practices and ensure market integrity. Additionally, the CCI administers a leniency program that

[5] The Competition Act, No. 12 of 2003, Section 3(1), India Code (2003).
[6] The Competition Act, No. 12 of 2003, Section 3(3), India Code (2003).
[7] The Competition Act, No. 12 of 2003, Section 3, India Code (2003).
[8] Competition Commission of India, available at https://www.cci.gov.in.

encourages whistleblowing and cooperation from businesses, offering reduced penalties to those who disclose cartel activities and assist in investigations. Beyond enforcement, the CCI also provides guidance and advocacy to help businesses understand and comply with competition laws, fostering a fair competitive environment and protecting consumer interests in India.

LENIENCY SCHEME

Section 46 of the Competition Act, 2002[9], empowers the Competition Commission of India (CCI) to grant leniency to cartel members who provide complete, truthful, and crucial information about the cartel's operations. This leniency scheme aims to incentivize cartel members to cooperate with the CCI in detecting and investigating cartel activities by offering reduced penalties. The underlying principle of this scheme is that the successful prosecution of cartels often relies on evidence provided by insiders who are willing to break ranks.

The leniency program has proven effective in various jurisdictions around the world by encouraging cartel members to come forward and assist authorities, thereby facilitating more successful enforcement actions. To implement this scheme, the CCI has established the Competition Commission of India (Lesser Penalty) Regulations, 2009.[10] These regulations outline the procedures and criteria for granting leniency, including the process for applying, the conditions that must be met, and the methodology for determining the extent of the reduced penalty.

By offering a reduced penalty to whistleblowers and cooperating members, the CCI aims to enhance its ability to uncover and address cartel behaviour, ultimately promoting fair competition and protecting consumer interests. The regulations ensure a structured approach to leniency, fostering greater transparency and effectiveness in tackling anti-competitive practices within the market.

CASE LAWS

In the case of Director General, *All India Chess Federation Vs. Competition Commission of*

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[9] The Competition Act, No. 12 of 2003, Section 46, India Code (2003).
[10] Competition Commission of India (Lesser Penalty) Regulations, 2009, Gazette of India, Reg. No. 206 (2009).

India & Ors.[11], the Supreme Court of India addressed collusion among companies in the steel industry. The Competition Commission of India (CCI) found that these companies were involved in anti- competitive practices, including price-fixing, which negatively impacted consumer welfare. The court upheld the CCI's findings, reinforcing the importance of maintaining competitive market practices.

In the 2017 case *Competition Commission of India v. Excel Crop Care Ltd*[12]., the Supreme Court examined claims of pesticide sector cartelization. The CCI's conclusion that Excel Crop Care Ltd. had engaged in collusive acts that hurt consumers and distorted market competition was upheld by the court. The judiciary's position on stopping anti-competitive activity in vital industries is highlighted by this case.

Competition Commission of India v. Indian Oil Corporation Ltd. (2018)[13] is another noteworthy case in which the Supreme Court addressed claims of large oil companies engaging in cartel conduct. The court upheld the CCI's determination to punish these businesses, emphasizing the harm that coordinated pricing practices on customers.

Finally, the Supreme Court addressed claims of cartelization in the cement business in *Cement Manufacturers Association v. Competition Commission of India (2014)*[14]. The court noted the detrimental effects on consumer prices and market competition while upholding the CCI's findings of collusive behaviour. This case demonstrates the judiciary's dedication to maintaining free and fair markets.

CONCLUSION

In conclusion, cartel activities in India, regulated under the Competition Act 2002, present a significant threat to both market competition and consumer welfare. Cartels, by their nature, disrupt the free functioning of markets through various anti-competitive practices such as price fixing, market allocation, output limitation, and bid rigging. These practices distort prices, reduce the availability of goods, and stifle innovation. Consumers bear the brunt of these effects, facing inflated prices and limited product choices while being deprived of the benefits that arise from healthy competition, such as innovation and improved quality. Cartels also

[11] All India Chess Fed'n v. Competition Comm'n of India & Ors., Competition App. (AT) No. 74 of 2018 (India).
[12] Competition Comm'n of India v. Excel Crop Care Ltd., Civ. App. No. 2480 of 2014 (India).
[13] Competition Commission of India v. Indian Oil Corp. Ltd., Case No. 05 of 2018 (India).
[14] Cement Mfrs. Ass'n v. Competition Comm'n of India, Case No. 29 of 2010 (2014) (India).

dampen the incentive for businesses to invest in research and development, leading to stagnation in technological advancement and product improvement.

The Competition Commission of India (CCI) is tasked with curbing such behavior and ensuring market integrity. Its mandate includes investigating cartel formations, imposing penalties, and administering a leniency scheme that encourages whistleblowers to expose cartel operations in exchange for reduced penalties. This leniency program has proven to be a valuable tool in uncovering cartel behavior that would otherwise remain hidden due to the covert nature of such agreements. However, despite these regulatory efforts, cartel activities persist in several industries, continuing to exploit consumers and compromise market efficiency.

Several landmark cases, such as those involving Excel Crop Care Ltd. and the Cement Manufacturers Association, illustrate the judiciary's firm stance on combating cartelization in vital sectors. These cases reinforce the critical role of enforcement agencies and courts in upholding competitive market practices. Ultimately, while regulatory frameworks like the Competition Act 2002 and CCI interventions are essential in addressing cartelization, continued vigilance, consumer awareness, and stronger enforcement mechanisms are necessary to ensure a fair, competitive market environment in India. Effective policies that promote competition, innovation, and transparency are vital not only for protecting consumer interests but also for fostering long-term economic growth and market efficiency.