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Avinash Kumar

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship.He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi.Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi.He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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"CROSS-BORDER ANTITRUST ENFORCEMENT AND ITS IMPACT ON INTERNATIONAL TRADE LAW: CONFLICTS, CONVERGENCE, AND COOPERATION"

AUTHORED BY - ARSHI ALAM

ABSTRACT

Antitrust law is also known as competition law. it comprises statutes and regulations designed to preserve market competition by preventing monopolistic practices, cartels, and abuse of dominant positions. At its core, antitrust law seeks to ensure that firms compete on merit: by innovating, improving quality, and maintaining fair prices. While the specific contours of antitrust regimes vary across jurisdictions, they share common prohibitions against price-fixing agreements, market-sharing cartels, and exclusionary conduct by dominant firms. In a global economy where supply chains, digital platforms, and corporate holdings frequently cross-national boundaries, these domestic competition laws increasingly have extraterritorial reach, leading to cross-border enforcement actions.[1]

International Trade Law:

International trade law regulates the terms on which goods, services, and investment flow between nations. The General Agreement on Tariffs and Trade (GATT 1994) establishes the cornerstone principles of Most-Favored-Nation (MFN) treatment under Article I and National Treatment under Article III.[2] The Marrakesh Agreement establishes the World Trade Organization (WTO) and its dispute-settlement mechanism, under which violations of GATT obligations may be challenged.[3] Beyond the WTO, a proliferation of Free Trade Agreements (FTAs)—such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP, art. 17.6 on competition)[4], the United States-Mexico-Canada Agreement,[5] and the Regional Comprehensive Economic Partnership (RCEP, art. 18.2)—often contain dedicated competition or subsidy disciplines, reflecting "WTO-plus" commitments[6].

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[1] Sherman Act S. 1, 15 U.S.C. (2018)
[2] General Agreement on Tariffs and Trade art. I:1, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194
[3] Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154; Understanding on Rules and Procedures Governing the Settlement of Disputes, Apr. 15, 1994, 1869 U.N.T.S. 401.
[4] Comprehensive and Progressive Agreement for Trans-Pacific Partnership art. 17.6, signed Mar. 8, 2018,
[5] United States-Mexico-Canada Agreement ch. 19, signed Nov. 30, 2018,
[6] Regional Comprehensive Economic Partnership art. 18.2, signed Nov. 15, 2020,

Importance of Studying Their Intersection:

Despite their distinct objectives—antitrust law focusing on firm behavior and market structure, international trade law prioritising non-discrimination and liberalisation—these two bodies of law increasingly collide and coalesce. Cross-border mergers, global cartels, and digital platforms with worldwide footprints implicate both competition authorities and trade negotiators. For example, a global price-fixing cartel may distort trade flows, while an FTA's state-aid provisions may conflict with domestic subsidy control regimes. Understanding their intersection is vital for policymakers aiming to avoid duplicative regulation, for businesses seeking legal certainty, and for developing coherent enforcement strategies that respect sovereignty while fostering open markets.[7]

Research Objectives and Methodology:

This paper aims to:

1. **Trace the evolution** of cross-border antitrust enforcement in key jurisdictions.
2. **Identify conflicts and convergences** between competition law and trade law.
3. **Propose mechanisms** for administrative and institutional cooperation.

Methodologically, it applies a doctrinal analysis of statutes WTO dispute-settlement reports and landmark antitrust decisions, review of policy papers and case studies of cross-border cartel prosecutions and merger clearances involving multiple jurisdictions.

Keywords: Extraterritorial jurisdiction, International Trade Law, WTO, Antitrust laws, cartelization.

[7]D. Evans, Antitrust Provisions in Free Trade Agreements: Evolution and Impact, 20 Int'l Trade L.J. 123, 130–32 (2022) (analyzing overlaps and divergences between trade-law disciplines and domestic competition regimes).

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EVOLUTION OF COMPETITION LAW

Antitrust regulation began in the late nineteenth century with the United States' Sherman Act of 1890, targeting trusts that restrained trade.[8] Europe followed after World War II: the Treaty of Rome (1957) established Articles 101 and 102 TFEU to prohibit anti-competitive agreements and abuse of dominance, laying the foundation for the modern European Commission's Competition Directorate.[9] In Asia, Japan's Antimonopoly Act (1947) and South Korea's Monopoly Regulation and Fair Trade Act (1980) imported Western models,[10] while more recent entrants such as China (Anti-Monopoly Law, 2008) reflect a desire to align with global norms. Over time, enforcement practices have become more sophisticated: authorities now conduct dawn raids, impose hefty fines on multinational corporations, and cooperate through networks such as the International Competition Network (ICN).[11]

Under Article I GATT, Members grant "without discrimination" the same tariff concessions to all trading partners.[12] Article III GATT mandates that imported products must not be subject to internal taxes or regulations in excess of those applied to domestic products. The Anti-Dumping Agreement (Art. 9) prescribes injury tests and procedural fairness in imposing duties,[13] while the SCM Agreement regulates actionable subsidies and countervailing measures.[14] Free Trade Agreements often build upon these disciplines: for example, CPTPP Article 17.7 obliges Parties to implement "effective, proportionate and dissuasive measures" against cartels, echoing TFEU Article 101.[15] Dispute-settlement under CPTPP Chapter 28 mirrors WTO panels, ensuring enforcement continuity.

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[8] Sherman Act S. 1, 26 Stat. 209 (1890).
[9] Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11, arts. 101–02.
[10] Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Antimonopoly Act), Law No. 54 of 1947 (Japan); Monopoly Regulation and Fair Trade Act, Act No. 332 of 1980 (S. Kor.).
[11] International Competition Network, About ICN
[12] General Agreement on Tariffs and Trade art. I:1, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194.
[13] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 art. 9, Apr. 15, 1994, 1868 U.N.T.S. 201.
[14] Agreement on Subsidies and Countervailing Measures art. 1, Apr. 15, 1994, 1868 U.N.T.S. 14.
[15] Comprehensive and Progressive Agreement for Trans-Pacific Partnership art. 17.7, signed Mar. 8, 2018.

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WAYS IN WHICH ANTITRUST BEHAVIOR AFFECTS INTERNATIONAL TRADE:

Antitrust behavior profoundly shapes the dynamics of international trade in India by ensuring that market competition remains fair and that domestic consumers and businesses are not harmed by the anti-competitive practices of foreign firms. One of the clearest examples of this is the CCI's vigorous prosecution of global cartels whose illicit agreements drive up prices for Indian importers and end users. When major shipping lines or airlines collude to fix freight or surcharge rates, the cost of bringing essential goods into India increases, making Indian products less competitive on world markets and driving up prices at home. By imposing substantial penalties and ordering an end to such cartel behavior—even when it takes place entirely outside India—the Competition Commission of India (CCI) sends a signal that anti-competitive collusion will not be tolerated, thereby protecting India's trade corridors and preserving the competitiveness of its manufacturing and export sectors.[16]

Beyond cartel prosecution, the CCI's framework for addressing abuse of dominance also has significant trade implications. A foreign firm that enjoys a dominant position in a global market—say, in semiconductors or digital platforms—might seek to leverage its market power to foreclose Indian competitors, impose unfair terms on Indian buyers, or bundle products in ways that disadvantage local industry. By invoking Section 4 of the Competition Act, the CCI can investigate and remedy such exclusionary practices whenever they have an appreciable adverse effect on competition in India.[17] This intervention not only preserves market access for domestic firms but also ensures that Indian consumers enjoy the benefits of innovation and choice that arise from true competition, rather than from the market-power plays of large multinationals.

Predatory pricing—where a firm deliberately sets export prices below cost to drive competitors out of the market—is another antitrust behavior with direct trade repercussions. Under Indian trade remedies law, imports sold below a fair market value may trigger anti-dumping duties; under competition law, however, predatory pricing can be challenged even if it disregards the technical provisions of dumping.[18]

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[16] In re Alleged Cartelization in the Airlines Industry (Air Cargo Services Cartel), Suo Moto Case No. 03 of 2015, Competition Commission of India page no. 1–2 (Dec. 9, 2016).

[17] Competition Act, No. 12 of 2002, S. 4

[18] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 art. 2, Apr. 15, 1994, 1868 U.N.T.S. 201 (defining "dumping"); Brooke Group Ltd. v. Brown & Williamson Tobacco Corp., 509 U.S. 209, 224–25 (1993)

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COOPERATION IN INTERNATIONAL ANTITRUST ENFORCEMENT

There is no single, binding global treaty on antitrust (competition law) equivalent to the World Trade Organization's Dispute Settlement Understanding for trade in goods and services. However, over the past forty years a number of multilateral "soft-law" instruments and regional agreements have emerged to promote convergence in competition enforcement and encourage cooperation across borders:

UN Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (1980):

It was adopted by the United Nations Conference on Restrictive Business Practices, this was the first global effort to articulate common principles for tackling cartels, abuse of dominance, and mergers. It is not a treaty but a set of guidelines inviting Member States to bring their laws into alignment and to cooperate in investigation and enforcement.[19]

OECD Recommendations and Guidelines

The OECD has issued a series of non-binding Recommendations (first in 1995, updated in 1998 and since) that encourage Member countries to implement effective competition laws and to cooperate on cross-border cases. It also set up the OECD Competition Committee and "soft-law" instruments—such as the 2018 Recommendation on Hard Core Cartels—to share best practices and peer-review enforcement.[20]

International Competition Network (ICN)

Founded in 2001 by competition authorities from around the world (including India), the ICN is not a treaty but a formal network. Through working groups and annual conferences, it produces "Recommended Practices" on topics like merger notification, cartel investigation, and unilateral conduct, helping agencies align procedures and cooperate informally on cross-border cases.[21]

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[19] United Nations Conference on Restrictive Business Practices, UN Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, U.N. Doc. E/CONF.85/7 (1980).
[20] OECD, Recommendation of the Council Concerning Effective Action Against Hard Core Cartels, OECD/LEGAL/0399 (2018); OECD, Recommendation of the Council Concerning Cooperation Between Member Countries on Anticompetitive Practices Affecting International Trade, C(95)130/FINAL (1995).
[21] International Competition Network, About ICN

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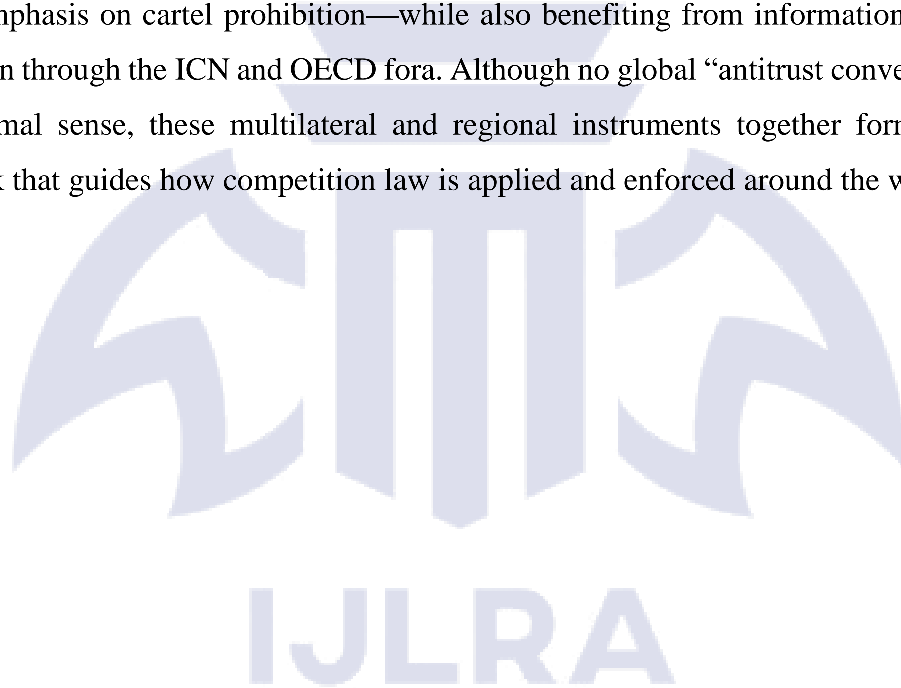
Regional and Bilateral Frameworks

European Union: The Treaty on the Functioning of the European Union (TFEU) contains directly applicable Articles 101 and 102 that ban anti-competitive agreements and abuse of dominance across all Member States.

ASEAN, MERCOSUR, COMESA, and others: Several economic blocs have adopted regional competition regulations that apply across member countries and include cooperation provisions.[22]

In practice, India's Competition Act and its enforcement under the CCI reflect many of these international principles—particularly the "effects doctrine" that enables extraterritorial reach and the emphasis on cartel prohibition—while also benefiting from information-sharing and cooperation through the ICN and OECD fora. Although no global "antitrust convention" exists in the formal sense, these multilateral and regional instruments together form a de-facto framework that guides how competition law is applied and enforced around the world.



[22] Ibid.

DEVELOPING COUNTRIES AND THE GLOBAL ANTITRUST REGIME

Developing countries confront a multitude of structural and institutional obstacles when attempting to enforce competition law against cross-border anticompetitive conduct. Many lack the legislative frameworks or the institutional capacity—trained investigators, economists, and legal experts—necessary to bring complex cartel or abuse of dominance cases to a successful conclusion. Budgetary constraints often restrict the ability of competition agencies to carry out dawn raids, analyze voluminous financial records, or participate effectively in multilateral cooperation forums.[23] In some jurisdictions, competition authorities remain embedded within ministries primarily focused on trade or industry promotion, leading to conflicts of interest when investigating powerful domestic conglomerates or state-owned enterprises.[24] Moreover, the reliance on donor-funded technical assistance projects can create dependencies that hinder the development of truly autonomous enforcement cultures.[25] As a result, many developing countries see only a handful of cartel prosecutions, and those that are undertaken often focus on small, localized cartels rather than large international cartels whose members are headquartered in advanced economies.[26]

Impact of international cartels on developing economies:

International cartels impose particularly severe burdens on developing economies. By coordinating to inflate prices or allocate markets, global cartels drain scarce foreign exchange reserves and raise the cost of imported intermediate goods critical for domestic manufacturing.[27] The removal of these anti-competitive premiums through competition enforcement can lower consumer prices, improve the competitiveness of local industries, and contribute to poverty reduction.[28] Yet, without robust domestic enforcement, developing countries must rely on extraterritorial judgments rendered by foreign competition authorities or on private damages actions filed in distant courts—remedies that are often inaccessible due to legal, financial, or procedural barriers.[29] Furthermore, trade remedy measures such as anti-dumping duties can inadvertently shield cartels, as they focus only on pricing conduct rather

[23] United Nations Conference on Trade and Development (UNCTAD), Review of Competition Law in Developing Countries 12–15 (2019).
[24] World Bank, Competition Policy Toolkit 73–78 (2020).
[25] UNCTAD, Competition Provisions in Regional Trade Agreements 42–44 (2018).
[26] OECD, Twinning and Technical Assistance in Competition Law 3–5 (2017).
[27] International Competition Network, Cartel Enforcement by ICN Members: 2023 Annual Survey 8–9 (2024)
[28] World Bank, Inclusive Growth and Competition Policy 101–03 (2018).
[29] Y. Katsoulacos & V. Ulph, Private Enforcement and International Cartels 56–58 (2017).

than the existence of collusive agreements.[30] In this way, the absence of effective competition law enforcement perpetuates a cycle of higher input costs and diminished investment in developing markets, undermining broader development objectives.

Debate on fairness and asymmetry in global competition enforcement:

The asymmetry between advanced and developing countries in global competition enforcement raises difficult questions of fairness and equity. Competition authorities in the United States, the European Union, and Japan wield extensive investigative and sanctioning powers, generating significant fines and setting global enforcement agendas through landmark cartel and merger cases.[31] In contrast, agencies in many low- and middle-income countries lack the political autonomy to challenge well-connected multinational firms or domestic interests that benefit from opaque regulatory exemptions.[32] This imbalance can lead to a form of regulatory colonialism, where the competition priorities of wealthier nations dictate global norms and divert attention from the specific market and development needs of emerging economies. Critics argue for a more inclusive multilateral regime—potentially under the auspices of UNCTAD or a reformed WTO—that would provide capacity building, standardized procedural safeguards, and a mechanism for small-economy representation in setting global competition policy.[33] Absent such reforms, the global antitrust regime risks entrenching rather than ameliorating the inequities that disadvantage developing countries in the world economy.

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[30] R. Prentice, Antidumping and Competition Law: Complementarity or Conflict? 44–46 (2016).
[31] U.S. Dep't of Justice, Cartel Enforcement Annual Report 5–12 (2023); European Commission, Competition Policy 2023 Report 14–18.
[32] S. Evenett & J. Stiglitz, Regulatory Autonomy and Competition Policy in Emerging Economies 22–25 (2022).
[33] UNCTAD, Manual on Competition Policy 175–80 (2020).

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ANTI-DUMPING AND COMPETITION LAW IN INDIA: A SYNERGISTIC FRAMEWORK FOR FAIR TRADE AND CONSUMER WELFARE

India's trade and regulatory landscape is shaped by two distinct yet complementary legal regimes: anti-dumping laws, which protect domestic industry from unfairly priced imports, and competition (antitrust) law, which safeguards the competitive process within markets.[34] While anti-dumping measures traditionally address pricing distortions originating abroad, competition law focuses on preventing and redressing anti-competitive conduct domestically. Together, these regimes work in tandem to ensure that markets remain open, efficient, and capable of delivering optimum benefits to consumers.

Under India's Customs Tariff Act and administered by the Directorate General of Trade Remedies (DGTR), anti-dumping investigations are initiated when domestic producers allege that foreign exporters are "dumping" goods—that is, selling below normal value—into the Indian market, causing injury to local industry. The DGTR conducts detailed inquiries to determine dumping margins and injury, and if warranted, recommends provisional or final duties to the government.[35] These duties restore a more level playing field, prevent price-based predation, and give domestic manufacturers time to restructure or improve efficiencies without being undercut by unfairly low import prices.

Concurrently, the Competition Act, 2002, enforced by the Competition Commission of India (CCI), addresses anti-competitive agreements (cartels, price-fixing, market-sharing), abuses of dominant position, and mergers or acquisitions that may substantially lessen competition. The CCI investigates complaints, conducts market studies, and issues remedial orders or penalties to dismantle or deter anti-competitive practices. Crucially, competition law is forward-looking: it seeks not merely to redress past harm but to preserve the structural and behavioral conditions necessary for markets to function competitively.[36]

Interplay and Complementarity:

Although anti-dumping and competition laws operate under different statutes and target different forms of market distortion, their objectives converge on promoting fair competition and protecting consumer welfare. For instance, a surge of dumped imports in a particular

[34] Customs Tariff Act, 1975, Fifth Schedule (Anti-Dumping Duties).
[35] Ministry of Commerce & Industry, *Annual Report 2023–24* 142–45.
[36] Competition Commission of India, *Annual Report 2023–24* 58–64.

industry might enable foreign suppliers to build market power, potentially paving the way for predatory pricing or exclusionary practices once duties lapse. Here, competition law serves as a backstop: if imports, even at fair prices, create a dominant position that can be abused, the CCI can step in to curb exclusionary conduct. Conversely, vigorous enforcement of antitrust rules can deter domestic firms from seeking protective duties under the guise of "injury," ensuring that anti-dumping relief is reserved for genuinely unfair trade practices.[37]

Ensuring Free Markets and Market Access:

Competition law underpins the very notion of a free market by prohibiting cartels and practices that partition or manipulate markets. By requiring transparent, non-discriminatory access to distribution channels and inputs, the CCI ensures that new entrants can challenge incumbents and that consumers enjoy greater choice. Merger control further prevents excessive concentration which might otherwise erect barriers to trade and innovation. In parallel, well-calibrated anti-dumping duties preserve market access for fairly traded imports, striking a balance between protecting domestic capacity and avoiding undue trade restrictions. Together, these tools foster an environment where both domestic and foreign firms compete on merits—price, quality, and innovation—rather than strategic manipulation.[38]

Protecting Consumer Interests:

Ultimately, the aim of both anti-dumping and competition law is consumer welfare. Anti-dumping duties, when justified, prevent the market from being flooded with unsustainably cheap products that could lead to monopolization and future price hikes. Competition law, on the other hand, directly addresses conduct—such as cartel price-fixing or abuse of dominance—that inflates prices, restricts output, or stifles innovation. Enforcement actions by the DGTR and the CCI thus complement one another: one shields the market from external unfair pricing, while the other removes internal distortions, ensuring that consumers pay competitive prices and reap the benefits of dynamic, innovation-driven markets.[39]

[37] S. Mehta, *The Interplay of Anti-Dumping and Competition Law in India*, ICRIER Working Paper No. 345 (2021).
[38] OECD, *Competition Policy Toolkit* 101–07 (2020).
[39] Economic Survey 2022–23, Ch. 4: Competition Policy and Consumer Welfare, at 112–16 (Ministry of Finance, Govt. of India).

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PRINCIPLES OF INTERNATIONAL TRADE AND THE APPLICATION OF COMPETITION LAW

International trade is governed by foundational principles such as Most Favoured Nation (MFN) treatment, National Treatment (NT), and the regulation of subsidies and tariffs that seek to create a level playing field among trading partners. Concurrently, competition law (or antitrust law) aims to preserve market competitiveness by prohibiting cartels, abuse of dominance, and other anti-competitive practices. Although these two bodies of law operate under distinct legal regimes, their objectives intersect: both strive to ensure that markets, whether domestic or international, operate on the basis of fair competition. This article examines how core WTO-style trade principles interact with competition law enforcement, highlighting complementarities and tensions in practice.[40]

Most Favoured Nation Treatment[41] and Competition Law

The MFN principle requires that any advantage or privilege granted by a country to one trading partner must immediately and unconditionally extend to all other WTO members.[42] Its purpose is to prevent discrimination among foreign suppliers. In the competition law context, MFN clauses can raise red flags when used by dominant firms in vertical agreements. For instance, if a dominant platform in one country demands that its international suppliers give it pricing terms no less favorable than those offered to any other distributor worldwide, it effectively imposes an MFN-type restraint that can foreclose competing local distributors. Competition authorities in India, the EU, and elsewhere have scrutinized such "wide MFN" or parity clauses as potential abuses of dominance because they can reduce intra-brand competition, dampen price innovation, and lock in incumbent platforms.[43] Thus, while MFN in the trade-law sense promotes non-discrimination among nations, in the competition-law sense it may facilitate anti-competitive foreclosure when wielded by a powerful market player.

National Treatment[44] and Competition Law

National Treatment requires that a country treat foreign-produced goods no less favorably than

[40] General Agreement on Tariffs and Trade art. I:1, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194.
[41] GATT, Art. 1
[42] Ibid.
[43] European Commission, Guidelines on Vertical Restraints § 3.4, 2010 O.J. (C 130) 1; Bundeskartellamt, Decision B6-75/11 (Aug. 20, 2013).
[44] GATT, Art. 2

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domestically produced ones, once they have cleared customs. This principle aims to ensure that imported products compete on equal terms with local products. From a competition law viewpoint, however, domestic firms sometimes exploit nondiscriminatory regulatory frameworks to insulate themselves from foreign competition through anti-competitive practices—such as exclusive supply agreements, predatory pricing, or tying arrangements. Competition authorities, therefore, must be vigilant to ensure that regulatory neutrality does not inadvertently cloak domestic cartels or exclusionary conduct. For example, if domestic producers coordinate to impose a uniform surcharge on all suppliers—foreign and domestic alike—their conduct may appear to respect National Treatment, yet still violate competition law by fixing prices. Conversely, competition law can reinforce National Treatment objectives by penalizing practices that, under the guise of regulatory parity, stifle the competitive pressure that foreign imports bring to a market.[45]

Subsidies, Tariffs, and Competition Law

Subsidies and tariffs are traditional tools of trade policy: tariffs protect domestic industries by raising the cost of imported goods, whereas subsidies boost local production by lowering the effective cost for domestic producers. While subsidies and tariffs fall squarely within trade policy, they can have profound competitive effects that fall within the ambit of competition law enforcement. Subsidized firms may gain unfair cost advantages that enable them to undercut rivals, not only abroad but also on global platforms. When such firms expand into markets like India, often leveraging deep government support so they may achieve dominant positions that later facilitate exclusionary conduct, such as below-cost pricing or loyalty rebates that lock out local competitors. Competition authorities can intervene under “abuse of dominance” provisions: if a subsidized firm uses its cost advantage to price below an economic cost benchmark and drive rivals from the market, those predatory pricing practices violate competition law.[46] Likewise, high tariffs on certain imports may entrench domestic incumbents, reducing the threat of foreign competition and fostering complacency or collusion among local producers. Competition law can counterbalance this effect by targeting cartels or arrangements that exploit tariff-induced market segmentation, ensuring that consumer prices remain driven by genuine supply-and-demand dynamics rather than by market power.

[45] Competition Act Section 3 (prohibiting cartels); Section 4 (prohibiting abuse of dominant position).
[46] Agreement on Subsidies and Countervailing Measures art. 1, Apr. 15, 1994, 1868 U.N.T.S. 14; Competition Act Section 4.

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CASES INVOLVING ENFORCEMENT OF COMPETITION LAW IN INTERNATIONAL TRADE

India's Competition Commission has, over the past decade, demonstrated an ever-widening reach of its mandate, wielding the Competition Act to police anti-competitive conduct that crosses national borders and directly affects India's importers, exporters, and consumers. Nowhere is this more evident than in the landmark Air Cargo Services Cartel case[47], where eleven leading international airlines—including Air France–KLM, British Airways, Cathay Pacific, and Lufthansa—were found to have colluded on fuel and security surcharges and agreed minimum price levels for air-cargo routes touching Indian soil. Though the conspiratorial meetings and email exchanges may have taken place in boardrooms scattered around Europe or North America, the CCI held that any conduct which has an appreciable adverse effect on competition in India falls squarely within its jurisdiction. The over ₹1,000 crore penalty imposed was not merely punitive; it was a declarative assertion that India will not tolerate cartels that undermine the efficiency of its global supply chains—a message that reverberates through ports, airports, and logistics corridors alike.

In a similar case, the Car-Carrier Services Cartel decision[48] reinforced how price-fixing in specialized shipping segments can distort trade flows into India. Eight major shipping lines—including Mitsui O.S.K. Lines, NYK Line, K Line, and Wallenius Wilhelmsen—had coordinated freight rates for transporting vehicles between Japan, the European Union, and India. The Commission's finding that these practices "distorted the competitively determined price" for imported automobiles underscored the critical nexus between fair pricing in the international freight market and affordable access to global goods for Indian consumers. By levying over ₹143 crore in fines and mandating an immediate cessation of collusive behavior, the CCI sent a clear signal: domestic market welfare cannot be sacrificed at the altar of tacit understandings forged in transnational shipping alliances.

The interplay of competition law with cross-border mergers crystallized most vividly in the scrutiny of Walmart's acquisition of Flipkart in 2018[49] and Qualcomm's proposed $47 billion takeover of NXP Semiconductor[50]. In the Walmart-Flipkart matter, the CCI recognized that a

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[47] Competition Commission of India, *In re Alleged Cartelization in the Airlines Industry (Air Cargo Services Cartel)*, Suo Moto Case No. 3 of 2015 (Dec. 9, 2016).

[48] Competition Commission of India, *Car-Carrier Services Cartel*, Suo Moto Case No. 10 of 2014 (Jan. 20, 2022).

[49] Competition Commission of India, *Order approving acquisition of Flipkart Online Services Pvt. Ltd. by Walmart Inc.*, Case No. 76 of 2018 (Aug. 6, 2018)

[50] Competition Commission of India, *Qualcomm Inc.–NXP Semiconductors NV*, Case No. C-2 of 2018

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foreign acquirer's deep pockets and global platform could tilt the competitive balance, potentially foreclosing rivals and disadvantaging small Indian merchants. Its conditional clearance—requiring robust "firewalls" to ensure non-discriminatory access for sellers and persistent reporting obligations—illustrates India's nuanced approach: it welcomes foreign investment but insists on behavioral and structural safeguards that preserve contestability. Similarly, in the Qualcomm-NXP review, the Commission probed potential harm to Indian handset manufacturers from increased chip-pricing power or restrictive licensing. By attaching quarterly pricing and licensing reports to its approval, the CCI again affirmed that international mergers must respect India's domestic industrial ecosystem if they are to proceed unimpeded.

What unites these diverse cases is a coherent enforcement philosophy: India will assert its competition law extraterritorially wherever anti-competitive practices, cartels, or mergers abroad have a tangible impact on its markets.[51] This extraterritorial gaze protects the integrity of India's trade corridors—be it the airflow of cargo surcharges, the roll-on, roll-off carriers moving vehicles, or the digital pathways connecting buyers and sellers online. At the same time, it places on foreign players and investors the onus of demonstrating that their cross-border strategies neither exploit loopholes in India's regulatory perimeter nor undermine the country's policy goal of affordable, competitive access to global goods and services. As India's economy becomes ever more enmeshed in global value chains, the CCI's jurisprudence will continue to be a crucial bulwark—ensuring that the benefits of international trade are not vitiated by cartels or unchecked market power, but are underpinned by robust competition and a level playing field for all.

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[51] Competition Act, No. 12 of 2002, Section 32

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EXTRATERRITORIAL JURISDICTION OF INDIAN COMPETITION ACT

India's Competition Act, 2002 was a landmark reform that empowered the Competition Commission of India (CCI) not only to regulate anti-competitive practices within the country but also to reach beyond its borders wherever foreign conduct harms Indian markets.[52] This "extraterritorial jurisdiction" ensures that global cartels, dominant multinationals, and cross-border mergers cannot evade Indian competition law simply by operating overseas.

Under Section 32 of the Act, the CCI may "inquire into and pass orders" against any anti-competitive agreement, abuse of dominant position, or combination (i.e., merger or acquisition) that is "entered into or having an effect" outside India but has an appreciable adverse effect on competition in India."[53] This "effects doctrine" is thus explicitly incorporated into Indian law, granting the CCI broad power to address conduct originating abroad whenever it distorts Indian markets or injures Indian consumers.

Section 32 applies if, inter alia, any one of the following is true:

- An agreement regulating production, supply, distribution, storage, acquisition of goods, or provision of services was executed outside India;[54]
- Any party to such an agreement resides or is incorporated outside India;[55]
- A combination is established or involves a party outside India;[56] or
- A foreign enterprise abuses its dominant position in India. In each case, the sole trigger is that the conduct "causes or is likely to cause an appreciable adverse effect on competition in India."[57]

The practical impact of this extraterritorial reach has been visible in several high-profile CCI actions. In the Air Cargo Services Cartel case[58], the CCI found that eleven international airlines colluded on fuel and security surcharges for air-cargo routes serving India, despite all meetings and agreements taking place abroad. The Commission imposed penalties exceeding ₹1,000

[52] Competition Act, No. 12 of 2002, § 32 (India).
[53] Ibid.
[54] Id. S. 32(1).
[55] Id. S.32(1)(a).
[56] Id. S. 32(1)(b).
[57] Id. S 32(1)(c).
[58] Competition Commission of India, *In re Alleged Cartelisation in the Airlines Industry (Air Cargo Services Cartel)*, Suo Moto Case No. 3 of 2015 (Dec. 9, 2016).

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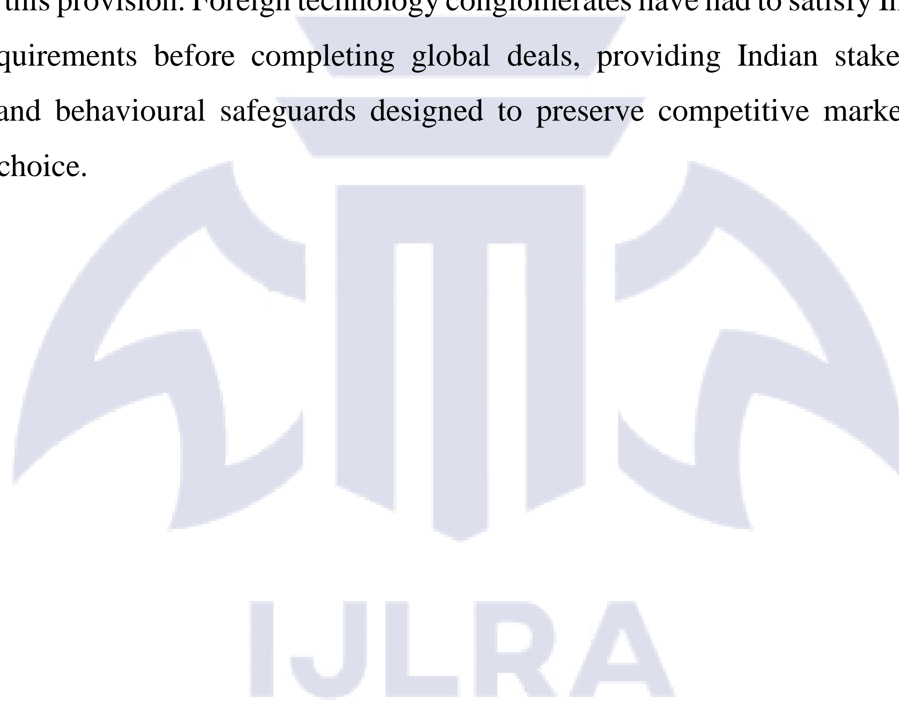
crore, underscoring that any cartel conduct with an appreciable adverse effect on Indian trade is subject to Indian scrutiny—even if wholly negotiated overseas.

Likewise, in the Car-Carrier Services Cartel, eight global shipping lines—including Nippon Yusen Kabushiki Kaisha (NYK Line) and Kawasaki Kisen Kaisha (K-Line)—were held to have fixed freight rates for pure-car-and-truck-carrier services transporting vehicles between Japan/EU and India.[59] In Suo Moto Case No. 10 of 2014, the CCI imposed fines totalling over ₹143 crore and directed an immediate cessation of the infringing conduct, reaffirming that price-fixing abroad with appreciable effects on Indian import markets cannot evade Indian law.

Moreover, major cross-border mergers have been conditioned on Indian approval precisely because of this provision. Foreign technology conglomerates have had to satisfy Indian merger-control requirements before completing global deals, providing Indian stakeholders with reporting and behavioural safeguards designed to preserve competitive market access and consumer choice.



[59] Competition Commission of India, *Car-Carrier Services Cartel*, Suo Moto Case No. 10 of 2014 (Jan. 20, 2022).

RECOMMENDATIONS AND CONCLUSION

Decisions of CCI are operational outside India as it has extraterritorial jurisdiction. Similarly, foreign decisions regarding antitrust issues in international law are enforceable in India. Although, there is need for an international convention for enforcement of anti trust laws in international trade in all the member countries. Procedural convergence including standardized notice requirements, rights of defence, and clear leniency frameworks ensures that global enforcement is both effective and fair. Model procedural rules, perhaps under UNCITRAL auspices, could help emerging authorities strengthen due-process protections while maintaining the flexibility needed for efficient cartel and merger review. Harmonized public enforcement should be complemented by predictable private-action regimes. Legislatures could consider adopting opt-in class-action procedures (inspired by U.S. practice) alongside robust damage-claim frameworks (as under EU law), enabling victims worldwide to seek redress based on a single set of consistent findings. Modernize inter-agency communication through secure digital platforms that allow for real-time coordination on evidence collection, economic analysis, and remedy monitoring. A shared case-management portal would reduce duplication of effort and accelerate the resolution of cross-border matters.