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COMPETITION LAW AND ECONOMIC THEORY

AUTHORED BY - SHUBHANGI SHARMA

ABSTRACT

The research paper titled "Relation of Competition Law and Economic Theory" explores the intersection of competition law and economic theory. The paper analyzes the fundamental principles of competition law and economic theory and how they are interconnected. The paper also examines the historical evolution of competition law and the role of economic theory in shaping its development.

The paper argues that economic theory has played a vital role in shaping the evolution of competition law by providing a theoretical framework for understanding the economic effects of anti-competitive practices. Finally, the paper discusses the future of competition law and the potential impact of new economic theories and technologies on its development.

Overall, this research paper provides a comprehensive analysis of the relation between competition law and economic theory, highlighting the critical role of economic theory in shaping competition law and its future trajectory.

Key words- Competition Law, Economic Theory, Game Theory, Appreciable Adverse Effect on Competition, Anti-competitive Agreements, Mergers and acquisitions, Dominant Position

INTRODUCTION

Economics plays a vital role in competition law by offering a framework for analyzing the impact of business practices on competition and consumer welfare and assisting in the creation of remedies to restore market competition. Economic analysis is frequently used to examine the probable influence on market competition to determine if a certain activity breaches competition legislation.

In this paper, the study examines the fundamental principles of competition law and economic theory, as well as the ways in which they are related. The paper also deals with the historical evolution of competition law and the role of economic theory in shaping its development. The study believes that economic theory has influenced the growth of competition law by offering a theoretical foundation for understanding the economic implications of anti-competitive practices. The study goes on to examine fundamental provisions of competition law. It then studies how competition law is applied in practice, as well as the influence of enforcement on economic outcomes. Finally, the paper considers the future of competition law and the role of economic theory in guiding its evolution.

ECONOMICS

Economics is the study of how resources in society are allocated among competing uses. In the context of competition law, economics is critical in analyzing the competitive impacts of business practices and evaluating their impact on market results.

Economists working in the field of competition law apply economic concepts to determine if a certain corporate practice, such as reducing output, raising prices, or limiting innovation, is harmful to competition. They examine market data in order to identify relevant product and geographic markets, assess market strength, and assess the potential competitive results of proposed mergers or other business arrangements. Economists contribute to the development and implementation of competition policy, including the development of rules and regulations that promote competition and discourage anti-competitive behaviors. They advise competition authorities on how to assess and resolve competition issues, and they help to enforce competition legislation by offering expert testimony in court procedures.

EVOLUTION OF COMPETITION ACT,2000

The Monopolies and Restrictive Trade Practices (MRTP) Act was enacted in India in 1969 to prevent the concentration of economic power and to regulate monopolies and restrictive trade practices in the country. However, the MRTP Act was inadequate to address the challenges of a rapidly changing and liberalizing economy, the MRTP Act did not adequately address issues such as abuse of dominance, anti-competitive mergers and acquisitions, and competition advocacy. Moreover, the Act had a narrow focus on regulating monopolies and restrictive trade practices, which limited its scope in promoting competition and consumer welfare.

In response to these challenges, the Government of India enacted the Competition Act, 2002, which repealed the MRTP. The Competition Act aims to promote competition and protect consumers by prohibiting anti-competitive agreements, abuse of dominance, and regulating mergers and acquisitions that have adverse effects on competition in the market. The Competition Act also establishes the Competition Commission of India (CCI), which is responsible for enforcing the provisions of the Act and promoting competition advocacy in India.

SIGNIFICANCE OF ECONOMICS IN SHAPING COMPETITION LAW

Economic theory has a significant impact on the evolution of competition law. Economic theory offers a conceptual framework for understanding market functioning and firm behaviour, which is critical in the design and enforcement of competition law. Economic theory also contributes to the development of competition law rules and remedies. Economic theory, for example, suggests that a merger may be anticompetitive if it results in a significant reduction in competition, and that structural remedies should be implemented. Economic theory also provides guidance on the appropriate level of enforcement, taking into account the costs and benefits of competition law enforcement. The impact of competition law enforcement on market outcomes such as prices, output, and innovation can be assessed using economic analysis. Economic theory can also be used to assess the effectiveness of competition law and the need for revisions and improvements to make sure it continues to serve its intended purpose.

ANALYSING COMPETITION LAW

Competition law in India has been in existence for over a decade, and since its inception, it has undergone significant changes. The law is aimed at promoting fair competition and preventing anti-competitive practices in the market. In this analysis, we will discuss the economic aspects of Indian competition law, its key provisions, and its impact on the Indian economy.

➤ Economic aspect of Competition Law

The economic aspect of Indian competition law is guided by the principles of promoting competition, innovation, and consumer welfare. It is a key tool for regulating the behavior of market players and ensuring a level playing field for all. Through its enforcement, the law aims to prevent market distortions and protect consumers from the negative impacts of anti-competitive practices such as price fixing, predatory pricing, and abuse of dominance. In doing so, it promotes the efficient allocation of resources, encourages innovation, and ultimately contributes to the development of a dynamic economy in India.

➤ Key Provisions of Competition Law in India

1. *Anti-Competitive agreements*

Anti-competitive agreements are agreements among competitors that prevent, restrict, or distort competition in a market. These agreements are considered anti-competitive because they harm other businesses or consumers by reducing competition and increasing prices. The Competition Act, 2002, decisions, and practices that are anti-competitive. A particularly serious type of anti-competitive agreement is made by cartels, which are groups of businesses that collude to fix prices, allocate markets, and restrict output.

Anti-Competitive Agreement Prohibition: Section 3 (1) of the Act states that:

“No enterprise shall enter into any agreement with respect of production, supply, distribution, storage, acquisition or control of goods/provision of services, which causes or is likely to cause appreciable adverse effect on competition within India”

Thus, there are two essential requirements of Anti-Competitive Agreements:

- i. There should be an agreement.
- ii. Such agreement must cause or is likely to cause an appreciable adverse effect on competition in a relevant market in India.

The relevant market may be *a geographical or the market of a product*.

A relevant market is a market in which a particular product or service is sold, and it is the intersection of a relevant product market and a relevant geographic market.

The relevant product market is the market for a specific product or group of products, whereas the relevant geographic market is the area in which the firms involved, supply products or services and where competition conditions are consistent. The geographic market is a region in which the conditions of competition for the product in question are the same for all dealers. The relevant global market considers the location of the relevant company as well as the type of the relevant product, and the most essential factor in defining a geographic market is the homogeneity of competitive parameters across geographical areas. Geographic marketplaces vary in size and definition, and they can be regions, countries, and population density.

Section 3 mentions the term “**Appreciable Adverse Effect on Competition**” (AAEC). AAEC is a phenomenon which is observed when the provisions of the Act are contravened to negatively affect the market players and healthy competition in market. Sub clause (3) also mentions determining factors while having presumption of the fact that AAEC has been caused. This presumption can be made if the agreement in question or a mutual or multilateral decision taken between more than one market players, leads to any of the four mentioned factors under sub clause (3)¹

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- a) ¹directly or indirectly determines purchase or sale prices;
 - b) limits or controls production, supply, markets, technical development, investment or provision of services;
 - c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;
 - d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition:

TYPES OF ANTI-COMPETITIVE AGREEMENTS

Section 2(b)² of the act defines ‘Agreement’ and section 3(3) and 3(4) although not directly but indirectly discusses two different types of agreements,

i. Horizontal Agreements

These are defined under section 3(3) of the act, Horizontal agreements are agreements between enterprises group of enterprises, persons or group of persons, engaged in trade of identical or similar products. Horizontal agreements are entered between **two or more competitors at same level** of activity, for example- producers, distributors, manufacturers. Usually, the essence and purpose of horizontal agreements is to generate policies regarding production, distribution and price fixation. Also, such agreements provide a channel for sharing of information which can usually be price sensitive and may influence the market. Such practices adversely affect competition by prompting antitrust law violations.

ii. Vertical Agreements

Vertical agreements are the agreements at different stages or different levels of market chain. Franchising is a form of vertical agreement, where the agreement is for leasing the right to use a brand’s business model and name by a retailer. Under the Competition Act 2002, section 3(4) provides for agreements which are entered by entities at different stages of production chain: The section provides for various types of vertical agreements under sub clauses (a) to (e).

If AAEC is found to have been or is likely to have been caused by such agreements, then it would be considered to be in contravention to section 3(1); i.e. Such agreements shall be considered as agreements in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.

Apart from this, **Section 19(3)**³ of the Competition Act expressly mentions the factors which the

² “agreement” includes any arrangement or understanding or action in concert,

(i) whether or not, such arrangement, understanding or action is formal or in writing; or

(ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;

a) ³ creation of barriers to new entrants in the market;

Competition Commission shall consider while adjudging whether an agreement or an arrangement has caused or is likely to cause AAEC

Exceptions

In the Competition Act 2002, some agreements specifically find a mention for being exempted from the purview of being anti-competitive in nature even if they are likely to cause an AAEC to the competition. Section 3(4)(i) protects the intellectual property rights of a person. Indian legal system has certain legislations mentioned under sub clauses (a) to (f) of section 3(4) (i), which provide for intellectual property rights. section 3(4)(i) also provides for agreements which are entered for export related purposes to be kept out of the purview of section 3(1) and 3(2) for being adjudged as anti-competitive.

CASE LAW- FICCI Multiplex Association of India v United Producers/Distributors Forum and Ors⁴

In the present case, the competition commission of India imposed a penalty of 1 lakh rupees upon United producers/distributors forum, The informant alleged that the parties were enjoying a 100% monopolistic market position for production and distribution of hindi films in the multiplexes in India. It was alleged briefly that the concerted action of the said parties resulted in arbitrary price fixation, against the interests of the multiplex owners. The commission explained the term cartelization by stating that “Even a single series of meetings or concerted action with the clear intent to limiting output or fixing prices is sufficient condition for a cartel”.

Commission ordered a detailed enquiry of the matter after which it agreed with the observations of the enquiry regarding the infringement of section 3(3) and section 3(4) of the competition act 2002, based upon the principles enlisted under section 19(3) of the said act which lays down grounds for presumption of the fact that an agreement or arrangement has caused AAEC.

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- b) driving existing competitors out of the market;
 - c) foreclosure of competition by hindering entry into the market;
 - d) accrual of benefits to consumers;
 - e) improvements in production or distribution of goods or provision of services;
 - f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

⁴ FICCI Multiplex Association of India v United Producers/Distributors Forum and Ors , 25th May, 2011

In the view of the commission, none of the opposite parties, in their replies, could justify their conduct and successfully rebut the presumption imposed upon them. Hence the penalty was levied, and the association was ordered to be withheld for being engaged in anti competitive practices.

2. Abuse of dominant position

Abuse of dominant position is a term used in competition law to refer to a situation where a company with a dominant market position engages in anti-competitive behavior that harms competition, consumers, or other market participants. In general, a company is said to have a dominant position in a market if it has a significant degree of market power, which allows it to act independently of its competitors, customers, and suppliers.

Section 4(2) of the Competition Act provides that there shall be an abuse of a dominant position if an enterprise or a group:

- directly or indirectly imposes unfair or discriminatory conditions or prices in the purchase or sale of goods or services;
- restricts or limits production of goods or services in the market; etc.
- As per Section 4(2)(c) of Act of the Act, there shall be an abuse of dominant position if any enterprise indulges in a practice resulting in denial of market access in any manner.

RELEVANT PRODUCT MARKET AND RELEVANT GEOGRAPHIC MARKET

A relevant product market is one in which the products are interchangeable in the eyes of consumers, allowing them to switch from one product to another without incurring major expenses or trouble. The relevant product market is often determined by elements such as the physical attributes, intended use, and price of the product. The relevant geographic market, on the other hand, is the area in which businesses compete to offer their goods or services. It is determined by characteristics such as the geographic extent of customer demand, supplier location, the availability of substitute products or services, and entry or expansion restrictions.

Competition authorities typically define the relevant product and geographic markets before examining market shares and competitive circumstances within those markets to determine whether a company has a dominant position. Once a corporation is determined to have a dominant

position, competition authorities will investigate whether that position has been exploited. Excessive price, discriminatory treatment of customers or suppliers, linking or bundling products or services, or predatory pricing aimed at forcing competitors out of the market are all examples of abuse of dominance.

Example, a company with a dominant position in one product market may engage in behavior that affects competition in a related product market, such as by tying the sale of two products together. In this case, the relevant product market may need to be defined more broadly to include both products, in order to assess whether the behavior constitutes abuse of dominance.

3. *Regulations of Combinations*

Section 6 of the Competition Act, 2002 deals with regulation of acquisitions, mergers and amalgamations that may have an adverse effect on competition within the relevant market in India. Under this section, any acquisition or merger that exceeds certain financial thresholds or market share thresholds requires the prior approval of the Competition Commission of India (CCI).

The **financial thresholds** are as follows:

- ✓ The combined assets of the merging or acquiring firms in India must exceed INR 20 billion, or
- ✓ The combined turnover of the merging or acquiring firms in India must exceed INR 60 billion.

The **market share thresholds** are as follows:

- ✓ The post-merger or acquisition market share of the combined entity **must exceed 25%** in the relevant market in India, or
- ✓ The post-merger or acquisition market share of the combined entity **must exceed 5%** in each of the relevant markets in India.

If a merger or acquisition meets any of the above thresholds, the parties must notify the CCI of the proposed transaction and seek its approval before proceeding with the transaction. The CCI will evaluate the transaction to determine whether it is likely to have an appreciable adverse effect on competition in India.

Mergers and acquisitions can have a substantial impact on market competition. They can improve competition and efficiency in some circumstances, but they may also decrease competition and establish monopolistic or oligopolistic markets in others. Antitrust laws and regulations are in place to prevent mergers and acquisitions that would significantly harm market competition. Authorities may mandate merging companies to surrender specific assets or take other actions to preserve competition, such as installing firewalls or safeguards to prevent proprietary information from being shared between competitors.

Thus, the impacts of mergers and acquisitions on competition are determined by the market's specific circumstances, the size and market power of the enterprises involved, and regulatory actions.

REMEDIES UNDER SECTION 27

Under Section 27⁵ of the Competition Act, 2002, if the Competition Commission finds that any agreement referred to in Section 3 or action of an enterprise in a dominant position is in contravention of Section 3 or Section 4, respectively, it may pass orders to discontinue and not re-enter such anti-competitive agreements. The Commission may also impose a penalty on each party involved in such an agreement, which should not be more than 10% of the average of the turnover for the last three preceding financial years. In addition to these remedies, the Commission may also pass any other order or direction as it may deem fit.

Section 26 of the Competition Act, 2002, allows the Competition Commission of India (CCI) to ask for the Director General's investigation in case of "prima facie" violations of the Act. The result

⁵ Orders by Commission after inquiry into agreements or abuse of dominant position., Where after inquiry the Commission finds that any agreement referred to in section 3 or action of an enterprise in a dominant position, is in contravention of section 3 or section 4, as the case may be, it may pass all or any of the following orders, namely-

- (a) direct to discontinue and not to re-enter such agreement or discontinue such abuse of dominant position, as the case may be;
- (b) impose such penalty, as it may deem fit
- (c) award compensation to parties according to section 34;
- (d) direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order
- (e) direct the enterprises to abide by such other orders as the Commission may pass and comply with the directions
- (f) recommend to the Central Government for the division of an enterprise enjoying dominant position;
- (g) pass such other order as it may deem fit.

of such an investigation under no circumstance is bound to influence the final decision. The Competition Act, 2002, has provisions for the establishment of the Competition Appellate Tribunal (COMPAT), which is an appellate body that hears appeals against the orders of the Competition Commission.

GAME THEORY AND COMPETITION LAW

Game theory and competition law are closely related because game theory can provide a framework for understanding and analyzing the behavior of firms and markets in the context of competition law. In India, the Competition Act of 2002 regulates competition and prohibits anti-competitive agreements, abuse of dominance, and mergers and acquisitions that have adverse effects on competition in the market. Game theory can be used to analyze the behavior of firms in such situations and predict the likely outcomes of different strategies.

For example, game theory can *help to analyze the behavior of firms in a cartel or collusion*, where they agree to fix prices or limit production to maintain their market power. Game theory models can help to understand the incentives and payoffs for each firm in such situations and predict the likely outcome of the cartel agreement. Similarly, game theory can also be used *to analyze the behavior of firms in cases of abuse of dominance*, where a dominant firm engages in anti-competitive practices such as predatory pricing or exclusive dealing. By modeling the behavior of the dominant firm and its competitors, game theory can help to predict the likely outcome of such practices on market competition.

FUTURE OF COMPETITION LAW

According to some articles, the government should use competition law to promote fair competition and prevent anti-competitive behaviour. Others study the history and economic implications of Indian competition law. There were numerous investigations into various sectors in 2023, indicating an active competition law framework. There are also ongoing discussions about long run India's competition law and proposed changes that could have far-reaching consequences. Overall, it appears that India's competition law will continue to change and adapt to shifting market and economic circumstances.

CONCLUSION

In conclusion, economics and competition law are closely intertwined, with economics playing a critical role in shaping the evolution and implementation of competition law. Economics provides a framework for analyzing the behavior of firms and markets, and competition law relies heavily on economic theories and principles to identify anti-competitive practices and promote market efficiency.

The evolution of competition law has been marked by a gradual shift towards a more economic approach, this has led to more effective enforcement of competition law and a better understanding of the impact of antitrust regulation on market outcomes. The significance of economics in shaping competition law cannot be overstated. Economic theories are essential for determining the competitive effects of business practices, and for assessing the potential impact of mergers and acquisitions on market competition.

The key provisions of competition law aim to prevent anti-competitive behavior, promote market efficiency and protect consumers. The future of competition law is likely to be shaped by emerging technologies and new business models, and will require continued collaboration between economists, regulators, and policymakers.

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