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An Analysis of Extra-territorial Jurisdiction of Competition Commission of India

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ABSTRACT

The Extra-Territorial Jurisdiction of the Competition Commission of India (CCI) has gained significance within the globalized economy. This jurisdiction allows the CCI to address arrangements made outside Indian jurisdiction but affecting the Indian market adversely. This paper explores the concept of Extra-Territorial Jurisdiction as outlined in Section 32 of the Competition Act, 2002, and its implications for the CCI. It discusses the application of Extra-Territorial Jurisdiction under both the Monopolistic and Restrictive Trade Practices (MRTP) Act, 1969, and the Competition Act, 2002, considering the effects doctrine's scope in domestic and international law. The powers and procedures of the CCI are analyzed concerning enforcement and challenges faced by the CCI in implementing these measures. Comparison and comparative analysis of the Extra-Territorial Jurisdiction principle in the United States (US) and the European Union (EU) aim to uncover whether these jurisdictions prioritize harmonization with international law or give precedence to domestic law. The Challenges encountered by the CCI in exercising Extra-Territorial Jurisdiction are examined, alongside relevant legal frameworks and case laws, shedding light on potential impacts on cross-border business activities. Through a thorough analysis of the complexities and implications of Extra-Territorial Jurisdiction, this paper contributes insights into the evolving landscape of competition law enforcement in India, US and EU. Some recommendations are offered to address these challenges, providing a comprehensive conclusion to the study.

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1. Introduction

As India's economy integrates further into the global market, the role of the CCI in regulating extra-territorial activities and fostering international cooperation becomes increasingly vital, underscoring the Commission's significance in shaping the country's economic trajectory.

Normally, the primary goal of a state legislature's enactment of a statute or legislation is to regulate, guide, or mold the behavior of those who live there. In the modern era of globalization, when it seems as though the entire world is a single community, there are times when the state must take action to regulate the conduct of events occurring outside of its borders in order to promote good governance and the general welfare of the populace. As the process of globalization, trade, and investment began, it opened national borders to foreign enterprises and investors, resulting in an ever-increasing amount of international commercial transactions. The traditional method of acquiring a firm or business on a global scale involves mergers, acquisitions, combinations, etc., in which the participants have diverse nationalities as their place of residence or domicile.[3] Due to an economic downturn, India saw a surge of liberalization, privatization, and globalization in 1991. The primary danger to the Indian economy was competition from international businesses operating there. The MRTP[4] Act of 1969, which was in place to regulate it at the time, was deemed insufficient, and as a result, it was replaced by the Competition Act of 2002. The CCI regulating body at the time of MRTP Act, 1969, handled Act infractions on the basis of individual complaints, referrals from the federal, state, or any other statutory authority, and other information.

In order to ensure that players in the Indian market participate in free and ethical commerce, the Competition Act of 2002 (also known as the "Act") was designed to close the gaps left by the Monopolies and Restrictive trade practices Act of 1969. It also aims to combat unfair activities while preserving competition. In order to do this, the Competition Commission of India (CCI) is enabled, under Section 32 of the Act, to take action against foreign activities that adversely affect competition inside India in addition to being authorized to keep an eye out for anti-competitive activity within the nation. The Act empowers the CCI to take action against imports and foreign cartels that engage in anti-competitive conduct that potentially damage the Indian market by providing the commission extraterritorial authority.

Despite being granted such autonomy; it is unclear how the CCI would use its infrastructure to balance its domestic responsibilities with keeping up with global trends. This article looks at the effects of giving the CCI authority under Section 32[5] and what happens thereafter.

[3] Pradeep S. Mehta, A Functional Competition Policy for India, 41 (2006)
[4] Monopolistic and Restrictive Trade Practices Act, 1969
[5] The Competition Act, 2002, s (32).

The Competition Commission of India (CCI), formed under Section 7[6] of the Competition Act, investigates breaches of the Act based on suo moto or complaints filed by people, as well as references made by the state or central government or statutory agencies. The Commission will be responsible for eradicating anti-competitive behaviors, fostering and maintaining competition, safeguarding consumer interests, and guaranteeing other player's freedom of trade in Indian markets.[7]. In accordance with this intent, the Competition Commission of India (CCI) is not only empowered to monitor anti-competitive behaviour within the country, but it is also empowered under Section 32 of the Act to take cognizance of an act committed outside of India but having an adverse effect on competition within India. According to Section 32, the CCI has the authority to look into any agreements or abuses of dominant positions or combinations if they have, or are likely to have, a noticeably negative impact on competition in the relevant Indian market, regardless of the event, violation, or act occurring outside of India. This Section appears to have been explicitly inserted to fill a loophole in the MRTP Act, in which the Supreme Court held that the Commission established under the MRTP Act lacked extraterritorial power based on the language of the MRTP Act provisions.[8]

The establishment of the CCI marked a significant milestone in India's economic liberalization journey, signalling the government's commitment to creating a level playing field for businesses and fostering a competitive market environment. The CCI operates as an autonomous regulatory body, tasked with enforcing competition law and adjudicating on matters related to anti-competitive behavior, abuse of dominance, and mergers and acquisitions that may have adverse effects on competition. Since its inception, the CCI has played a crucial role in shaping competition policy in India, striving to strike a balance between promoting competition and preventing practices detrimental to consumer welfare. Over the years, the Commission has evolved its regulatory approach, adapting to the changing dynamics of the Indian economy and the global marketplace.[9]

With its mandate to ensure fair competition, the CCI has emerged as a key player in promoting economic efficiency, innovation, and consumer welfare in India. Through its enforcement actions, advocacy initiatives, and market studies, the Commission continues to address challenges such as cartelization, predatory pricing, and monopolistic practices, contributing to the vibrancy and resilience of India's competitive landscape.[10]

2. The Concept of Extra-territorial Jurisdiction

[6] The Competition Act, 2002, s (7).
[7] The Competition Act, 2002 (Act 12 of 2003), s.18.
[8] S. M. Dugar, Commentary on MRTP Law, Competition Law & Consumer Protection Law, Wadhwa and Company Nagpur, Volume I, 4th Edition
[9] Shubhya Pandey and Mohammad Umar, "Extraterritorial Jurisdiction of Competition Commission of India: Enforcement and application", *Competition Law Reports*, June 2012.
[10] Fair Play – Special Issue of Competition Commission of India, 2022

The extra-territorial jurisdiction of the Competition Commission of India (CCI) holds paramount importance in an era of globalization where economic activities transcend national boundaries. This jurisdiction allows the CCI to address anti-competitive practices that have implications beyond India's borders, ensuring the integrity of the domestic market and safeguarding consumer welfare. By extending its reach to activities occurring abroad, the CCI can effectively regulate the conduct of multinational corporations (MNCs) operating in India, preventing them from engaging in practices that could distort competition or harm domestic businesses.[11]

Moreover, the extra-territorial jurisdiction of the CCI facilitates harmonization with global competition standards and fosters cooperation with foreign regulatory authorities. As economies become increasingly interconnected, collaboration among competition authorities is essential to combatting cross-border anti-competitive behavior effectively. Through its extra-territorial jurisdiction, the CCI can engage in information-sharing, joint investigations, and enforcement actions with international counterparts, contributing to the development of a cohesive global competition regime.

Furthermore, the exercise of extra-territorial jurisdiction by the CCI enhances investor confidence and promotes a level playing field in the Indian market. Foreign investors are reassured that their investments are protected from anti-competitive practices, irrespective of the geographic origin of the offenders. [12] This fosters a conducive environment for investment, innovation, and economic growth, ultimately benefiting consumers and businesses alike. Overall, the importance of the extra-territorial jurisdiction of the CCI lies in its ability to uphold fair competition, promote economic efficiency, and integrate India into the global marketplace while ensuring compliance with competition law standards on a global scale.[13]

Many nations enact extraterritorial legislation to shield their citizens and businesses from anti-competitive agreements and actions. Put simply, a nation imposes its competition laws on businesses and corporations that are incorporated or created in another nation, yet their actions also have an impact on the home market.[14] For instance, the US uses the "effects test" to determine the jurisdiction of its laws. This is met when a business participates in anti-competitive behavior in a global market that encompasses the US. This implies that the US has the authority to enforce its competition rules against any behavior that occurs outside of US borders.

The Section 32 of the Competition Act, 2002 states that Acts taking place outside India but having an effect on competition in India. –The commission shall notwithstanding that-

(a) An agreement referred to in section 3 has been entered into outside India or

(b) Any party to such agreement is outside India or

(c) Any enterprise abusing the dominant position is outside

[11] Pradeep S. Mehta, A Functional Competition Policy for India, 50 (2006).
[12] S.M.Dugar, Law of Restrictive Trade Practices, xl (1976)
[13] Kanchan Modak," Extraterritorial application of the competition law in India: an analysis". *Company law journal*, 2014 p 134.
[14] Richard Which, Competition Law, Oxford Univ, Press, 6th Ed., 2009, Pg. 472

(d) A combination has taken place outside or

(e) Any party to combination is outside India or

(f) Any other matter or practice or action arising out of such agreement or dominant position or combination is outside India, have power to inquire in accordance with the provisions contained in section 19, 20, 26, 29 and 30 of the act[15] into such agreement or dominant position or combination if such agreement or dominant position or combination has or likely to have an appreciable adverse effect on competition in the relevant market in India and pass such orders as it may deem fit in accordance with the provisions of this act

This section addresses any combination that has occurred outside of India that involves an anti-competitive agreement(s) or an entity abusing a dominating position. The section makes it clear that activities occurring outside of India that have an impact on competition within India will be covered by its provisions.

3. Extra-Territorial Jurisdiction under various Laws

3.1. Extra-Territorial Jurisdiction under US Laws:

The effects doctrine, also known as the "effects test", is a legal principle used in antitrust and competition law to determine jurisdiction over conduct that occurs outside a country's borders but has significant effects within that country's market. Under the effects doctrine, a competition authority may assert jurisdiction over conduct that, although occurring abroad, has a substantial and foreseeable impact on competition within its jurisdiction. This principle is often employed to regulate anti-competitive practices by foreign entities that affect domestic markets.[16]

Thus, "effects doctrine", gives regulators the authority to extend their jurisdiction beyond the "principle of territoriality", which is the foundation of Section 32 of the Competition Act, 2002. Legally speaking, the majority of nations hold that such activities are covered by their domestic competition laws even in cases where the guilty firm is not based there as long as the anti-competitive act has an impact on the nation.

The U.S. Court of Appeals for the Second Circuit held in the case of **US v. Aluminum Company of America**[17], also famously knowns as the "Alcoa case", that "any State may impose liabilities, even upon persons not within its allegiance, for conduct outside its borders that has consequences within its borders." The Alcoa case occurred during a period when the US was attempting to liberalize commerce with other countries.

This ruling established the effects doctrine and established a test of intended and actual effects on commerce within the US that had to be satisfied in order for US jurisdiction to be asserted over the foreign company. The

[15] The Competition Act, 2002
[16] Alison Jones and Brenda Surfin, "EC Competition Law" Second Edition, Oxford University Press, 2004.
[17] 326 US 310 (1945)

court found that a Canadian firm had violated the Sherman Act when it consented to share global markets for aluminum production with European manufacturers rather than supplying the American market. The International Antitrust Enforcement Assistance Act of 1994 gave the effects theory legal standing in the United States.

In this landmark case, the US Supreme Court applied the effects doctrine to assert jurisdiction over Alcoa, a US-based aluminium producer, for its conduct abroad. Alcoa was accused of engaging in anti-competitive practices, including price fixing and monopolization, that had a substantial effect on the US market. The Court held that Alcoa's actions, despite occurring outside the US, significantly impacted domestic commerce, thereby justifying the exercise of jurisdiction under US antitrust laws. In such situations when American courts have expanded the application of American antitrust laws to cover international action that is intended to have an effect on the United States.

In case of, **Empagran S.A. v. F. Hoffmann-La Roche Ltd.**[18] (2004), The US Supreme Court addressed the extraterritorial reach of the Sherman Act in this case involving allegations of price-fixing by pharmaceutical companies. The Court ruled that the Sherman Act applies to anti-competitive conduct that causes direct and substantial effects on US commerce, even if the conduct occurs entirely outside the United States. However, the Court also established limitations on the extraterritorial application of US antitrust laws, emphasizing the need for a direct impact on domestic markets.

Under the US legal system, if a company is organized or has its principal place of business in the state where the federal court is situated, the federal courts have jurisdiction over the applicant corporation. If a non-resident corporation has "continuous and systemic", connections with the forum state, the court has broad jurisdiction over the corporation. If a court does not have general jurisdiction over a non-resident company, it may still exercise special jurisdiction over the non-resident corporation by applying the "minimum touch principle".[19] Whether a corporation is incorporated or has its main office in the state where the federal court is situated, it is subject to the jurisdiction of federal courts in the United States legal system.

In case of **Timberlane**[20], the court established the various tests that the effects doctrine was applicable to on the basis of facts and circumstances of the case. The underlying impact must fall into the categories of what is considered to be reasonable, foreseeable, immediate, and substantial. These tests are as follows:

a) Is there a direct or indirect effect on American trade and business.

[18] F. Hoffman-La Roche Ltd. v. Empagran S. A., 542 U.S. 155 (2004)
[19] International Shoe Co. v. State of Wash., Office of Unemployment Compensation and Placement 326 US 310 (1945)
[20] Timberlane Lumber Co. v Bank of America, NT & SA [1976] 549 F 2d 597 (9th Cir)

b) Is there an injury that the US is aware of and that falls within the category of being cognizable, i.e., there has to be a violation of US antitrust laws.
c) Is there a sufficient ground, i.e., when the courts exercise jurisdiction over a foreign organization, they must do so for compelling grounds that are supported by reasonable logic.

3.2. Extra-Territorial Jurisdiction Under EU Laws:

The Treaty of Rome and the European Commission's (EC) competition regulations control the EU's extraterritorial jurisdiction. Even though it does not render much in the mentioned field, they are still used to combat anti-competitive issues. There are three legal theories that are used by EC to address the same issue: the Effects Doctrine, the Economic Entity Doctrine, and the Implementation Doctrine. It changed when Articles 81 and 82 were added, which imposed extraterritorial jurisdiction in cases when court rulings were needed. It is impossible to address the topic of extraterritoriality in EC competition law without first reviewing the position in US law. The Sherman Act, the primary antitrust legislation in the United States, is a federal act that makes violations of it illegal. It can, however, also be implemented by private initiative. Given that the Sherman Act was passed in 1890, its extraterritoriality was likely established long before the EEC. The Hartford[21] case ruling is quite similar to the procedure used in European courts. In the Hartford case, the US Supreme Court held that an actual conflict between foreign and domestic laws only arises when a person governed by two states is unable to abide by the laws of both countries and is required by foreign law to act illegally under domestic law. Only in this scenario can the international comity analysis be applied. This ruling has drawn a lot of criticism since it practically forbids US courts from considering foreign interests and greatly reduces the likelihood of using comity in instances when genuine conflicts exist.

In the case of **A. Ahlostron Osakeytio v. Commission**[22] (known as Wood Pulp case), the European Court of Justice granted permission for the extraterritorial application of EU antitrust rules to multinational corporations operating in foreign nations that had an impact on commerce between Member States.

The Wood Pulp case[23] is a landmark decision by the European Court of Justice (ECJ) that addressed the extraterritorial jurisdiction of the European Economic Community (EEC) in the enforcement of its competition laws. The case involved a Swedish company engaged in the production and export of wood pulp. The Swedish company entered into agreements with its customers outside the EEC, primarily in Canada and the United States, to fix prices and allocate sales volumes for wood pulp exports to the EEC market. The European Commission,

[21] Hartford-Empire Co. v. United States, 323 U.S. 386 (1945)
[22] A. Ahlstrom Osakeyhtio et al. v. Commission of the European Communities (Wood Pulp) European Union Court of Justice 1988 E.C.R. I-05193 (1988)
[23] Ibid 13

acting on complaints from competitors, initiated proceedings against Swedish company for violating Article 85 (now Article 101) of the Treaty of Rome, which prohibits anti-competitive agreements. Swedish company argued that the agreements were made entirely outside the EEC's territorial boundaries and thus fell outside the jurisdiction of EEC competition law. However, the Commission asserted that the agreements had foreseeable and substantial effects on competition within the EEC market, justifying the application of EEC competition rules.

In its judgment, the ECJ ruled in favor of the European Commission, establishing the principle that EEC competition law could apply extraterritorially to conduct occurring outside the EEC if it had an immediate and foreseeable impact on the EEC market. The Court held that Swedish company's agreements, although concluded outside the EEC, directly affected competition within the EEC by allocating sales volumes and fixing prices for wood pulp sold in the EEC market. Therefore, the conduct fell within the scope of Article 85 of the Treaty of Rome, and the EEC had jurisdiction to enforce its competition rules.

The **Wood Pulp**[24] case clarified the extraterritorial reach of EEC competition law, emphasizing the EEC's authority to regulate conduct that affects competition within its internal market, irrespective of where the conduct originated. This landmark decision underscored the ECJ's commitment to maintaining a level playing field and protecting competition within the EEC by ensuring the effective enforcement of competition rules against anti-competitive conduct with cross-border effects.

In the **Toshiba**[25] case, the European Commission fined several companies, including Toshiba, for participating in a cartel in the market for cathode ray tubes (CRTs), which are used in televisions and computer monitors. The Commission found that the cartel had engaged in price-fixing and market-sharing agreements that directly affected competition within the EU. Despite Toshiba being a Japanese company, the Commission asserted jurisdiction based on the substantial impact of the cartel's conduct on the EU market.

The Effects doctrine is still not recognized by the European Court of Justice (ECJ), but it is applied in accordance with other theories. In the event that an anti-competitive activity occurs and has an impact on EU territory, the court may nonetheless consider cases that are extraterritorial in character.

3.3. Extra-Territorial Under Indian Law:

[24] Ibid 13
[25] Toshiba Corporation v European Commission (2017) Case C-180/16 P

The authority of Indian courts and tribunals over the system for controlling anti-competitive conduct is immediately applicable to people having a place of business in India. Enterprises without a permanent location in India may be able to observe other business operations in a way that undermines India's competitive environment. For this reason, shareholding is inappropriate as it can be done through an exclusive trade agreement, a price-fixing plan, or a sales agreement with the intention of dividing the market or keeping the competitors out. International cartels exist that operate from different nations and conspire to carry out anti-competitive activities that are extremely concerning to industrialized nations. These cartels deal with the problem of how to collaborate to render these cartels ineffective, since it is well known that domestic law only affects a country's borders.[26] Controlling agreements that may have an "appreciable adverse impact on competition" in India is the establishment's main goal. Such activities are not limited to India, which is why it gives birth to the concept of extra-territorial control. According to Section 32 of the Act, any agreement or combination that has or is anticipated to have a materially negative impact on competition in the relevant Indian market may be investigated by the Commission.

The Commission's jurisdiction encompasses the following:

i) investigating anti-competitive agreements (such as cartels and bid-rigging);
ii) investigating abuses of dominant position (such as predatory pricing);
iii) regulating combinations (such as mergers and amalgamations, acquisition of shares or controls);
iv) engaging in competition advocacy, which includes advising the Central Government on matters pertaining to competition policy.

The Commission's authority encompasses the pursuit of fulfilling its purpose through the implementation of enforcement and non-compliance measures. The former comprise inquiries and regulations, while the latter comprise competition advocacy, public awareness-raising, and competition-related training.

The MRTP Act, did not contain explicit provisions regarding the operation of an extraterritorial jurisdiction. However, section 147 does imply the existence of such a jurisdiction, which is a significant rule that was addressed in the well-known landmark ruling in the case of Haridas Exports v. All India Float Glass Manufacturers Association[27], wherein an Indonesian company's restrictive and unfair trade practices were brought to the attention of the MRTP Commission through a complaint filed under section 33(1)(j), (ja), and section 36A when read with section 2(o), But the same could not be adjudicated as MRTP does not have any explicit provisions regarding this kind of jurisdiction.[28] In another case, the majority of soda ash companies in

[26] Ankesh Jain, 2012. "Extra-territorial jurisdiction of Competition Commission of India", Journal of Financial Crime, Emerald Group Publishing Limited, vol. 19(1), pages 112-119, January.
[27] Haridas Exports v All India Float Glass Manufacturers Association (2002) 6SCC 600
[28] S. Krishnamurthi, Principles of Law Relating to MRTP, 173 (1990)

India were among the members of the Alkali Manufactures Association of India (AMAI)[29], who filed a complaint alleging that ANSAC had broken many MRTP Act, 1969 rules. Numerous elements were analyzed, including the Effects Doctrine and court decisions from the US and the EU. However, the concept was still in its nascent stages in India at the time, therefore the Commission was unable to stop imports or take action against foreign cartels or the price of exports to India. As a result, it was considered that the act itself needed a particular provision, and the revised Act eventually included the same under Section 32.

Now as per section 32, When a company violates the effects doctrine and harms national competition, the regulatory body may use its jurisdiction over it, like in **Cement Cartel Case**[30], where CCI investigated allegations of cartelization among cement manufacturers operating in India. Despite some cartel meetings taking place outside India, the CCI asserted its jurisdiction based on the substantial impact of the cartel's conduct on competition within the Indian market.

The CCI has also addressed cases involving abuse of dominance by technology companies with global operations. In the case of **XYZ (Confidential) v. Alphabet Inc**[31], the CCI initiated an investigation into allegations of anti-competitive practices by a leading technology company. The investigation focused on whether the company abused its dominant position by imposing unfair conditions on developers and app providers globally, including in India. Despite the conduct originating outside India, the CCI asserted its jurisdiction based on the substantial effects on competition within the Indian market, highlighting its commitment to regulating cross-border anti-competitive conduct. These cases illustrate the CCI's willingness to regulate anti-competitive behaviour & abuse of dominance with cross-border effects.

Procedure followed by CCI: Following the 2007 amendment to the Competition Act, the Competition Commission of India (CCI) gained both inquiry and adjudicatory powers against anti-competitive practices. Section 36 of the Act, prior to the amendment, indicated the legislature's intent to exempt the CCI from adhering to the procedures outlined in the Code of Civil Procedure, 1908 (CPC). This exemption was apparent in the language of Clause 1 of Section 36. General Regulation 2 of 2009, particularly Paragraph 12, delineates the procedure for filing information or references with the CCI. Within sixty days, the CCI forms and records its opinion on the prima facie existence of a contravention of the Act. Additionally, the Commission may convene a preliminary conference to assess the prima facie case and, if deemed necessary, direct investigations by the Director General, which marks the commencement of the inquiry under Section 26 of the Act.

Section 36(2) of the Act empowers the CCI with the authority to examine parties and witnesses, akin to the powers granted to civil courts under the CPC. Despite no mandatory requirement for notice issuance to

[29] Alkali Manufacturers v. American Natural Soda Ash, (1998) 3 Comp LJ 152 MRTPC.
[30] Builders Association of India v. Cement Manufacturers Association, Case No. 29/2010
[31] XYZ (Confidential) v. Alphabet Inc. Case Nos. 07 of 2020, 14 of 2021 and 35 of 2021 (CCI)

defendants, Order V of the CPC and Para 22 of General Regulations, 2009 delineate the mode of service of summons, notices, and other documents. While the regulations do not outline procedures for examining parties or witnesses, Section 36(2) of the Act grants the CCI the authority to conduct such examinations. The Commission may reduce the substance of such examinations to writing, and failure to answer material questions may result in adverse orders against the non-compliant party, at the discretion of the Commission.

Power of CCI: The amended Competition Act has conferred upon the Competition Commission of India (CCI) the authority not only to investigate anti-competitive practices but also to issue appropriate orders as it deems necessary. Following inquiries conducted under Sections 19, 20, 26, 29, and 30 of the Act, if the CCI determines that there is no contravention of the Act's provisions, it may approve such agreements or combinations by order. Conversely, if the Commission finds that an anti-competitive agreement, abuse of dominance, or combination exists, causing or likely to cause an appreciable adverse effect on the Indian competitive market, it can direct the relevant party or enterprise to cease and desist from such conduct, regardless of whether it occurred outside India.

Sections 27 and 31 of the Act outline the remedial measures available to the CCI following the completion of the inquiry process. Section 27 pertains to the issuance of orders by the Commission after investigating agreements or abuse of dominant positions, while Section 31 addresses orders related to certain combinations. In cases where the CCI exercises its extraterritorial jurisdiction under Section 32 and imposes penalties under Section 27, 31, or other provisions of Chapter VI, and the penalized party fails to comply, Section 39 empowers the CCI to recover such penalties through specified regulatory means. If the penalized party complies with the Commission's order, the penalty must be paid, with notice provided to the concerned party, either through the Commission or independently, as per the procedures outlined in the Act.

4. Comparative Analysis

The United States uses a framework with several agencies and laws for competition enforcement, in contrast to India's single statute and agency. The US Department of Justice's Antitrust Division and the Federal Trade Commission (FTC) are the main agencies in charge of enforcing antitrust laws in the US. The latter serves as an independent administrative agency, akin to India's Competition Commission of India (CCI), whereas the former is housed under the executive branch. The Sherman Act of 1890, which deals with anti-competitive agreements and monopolies, and the Clayton Act of 1914[32], which regulates certain commercial activities including mergers and pricing discrimination, are the main federal legislation governing antitrust in the United States. The DoJ and FTC share enforcement of these statutes where DoJ is in charge of criminal prosecutions. The TFEU[33], the TEU[34], and several additional legislations regulate EU antitrust law. The European Commission is tasked with ensuring the creation, enforcement, and application of European competition legislation under Article 106 of the

[32] The Clayton Act of 1914
[33] The Treaty on the Functioning of the European Union, 1958
[34] The Treaty on European Union, 1993

TFEU[35]. Furthermore, the Advisory Committee[36] also specifies that the EC must consult the Advisory Committee before making any decisions.

Article 101 of the TFEU[37], Section 1[38] of the Sherman Act, and Section 3[39] of the Competition Act 2002 are the pertinent sections pertaining to anti-competitive agreements. Indian law does not divide agreements into horizontal and vertical agreements, in contrast to US and EU law. Nonetheless, the clause's wording allows it to address each of the two agreements independently. As a result, the methods used by the legislation of the three nations to oversee such agreements is somewhat same.

Article 102 of the TFEU[40] and Section 4[41] of the Competition Act address abuse of dominant position and enumerate the abusive actions that are covered by the laws. The lists are essentially the same. Comparably, Section 2[42] of the Sherman Act prohibits attempts to monopolize the market and regulates this kind of abuse of position in it. Nevertheless, this Section does not provide a list of practices; rather, it only specifies the provisions and penalties for such activities. Furthermore, "abuse of dominant position" encompasses more acts than just "an attempt to monopolize," such as using one's dominating position in one market to join another. So here EU law and Indian law are similar.

The Competition Act of 2002's Section 32, which establishes the Doctrine of Effects, gives the CCI the authority to enforce its jurisdiction outside of the nation. Despite the fact that this theory was developed and is still extensively used by US courts, it is not mentioned in the relevant laws. Similarly, while the EU Competition legislation makes reference to many theories that allow it to extend its jurisdiction outside of the EU, these doctrines are either hardly mentioned or entirely absent from the laws.

Foreign cartel activity is not illegal under U.S. antitrust laws if it does not have a "direct, substantial, and reasonably foreseeable effect" on trade or commerce within the United States, as defined by the Foreign Trade Antitrust Improvements Act of 1982 and international comity standards.[43] The EU has bilateral cooperation agreements with several non-EU nations, most notably the United States, Canada, Japan, Korea, and Brazil. The commission may be able to get information and proof from sources outside of the EU with the use of these agreements. The Competition Commission of India's extraterritorial authority is addressed under Section 32 of

[35] The Treaty on the Functioning of the European Union, 1958
[36] Established under Article 14 of Regulation1/2003 of the EC
[37] Article 101, The Treaty on the Functioning of the European Union, 1958
[38] Section 1, Sherman Act, 1890
[39] The Competition Act, 2002 s. (3)
[40] Article 102, The Treaty on the Functioning of the European Union, 1958
[41] The Competition Act, 2002. s. (4)
[42] Section 2, Sherman Act, 1890
[43] Andrew T. Guzman: Is International Antitrust Possible, 73 NYLU Rev 1501, 1507 (1998)

the Competition Act, 2002. The Competition Commission may, in order to carry out its obligations under the terms of this Act, engage into any Memorandum or agreement with any agency of any foreign nation with the previous consent of the Central Government, according to the Proviso of Section 18.[44]

The competition authorities in neither the EU nor the USA are explicitly granted such immense jurisdiction by their respective competition statutes. In layman terms, Section 32 grants the CCI the immense authority regardless of whether the anti-competitive act occurred outside of India's borders or if the party to the agreement is based outside of the country. Prior to the 2007 Amendment Act[45], CCI was limited to conducting inquiries in these situations; however, the 2007 Amendment Act increased the Commission's overall dynamic. It increased the range of its authority, resulting in strict anti-competitive actions. It is evident that the Indian Competition Commission is more powerful than the competition authorities in the US or the EU when the provisions of Indian competition law are contrasted with those of EU or US competition legislation. This may be because we've taken the required changes and learned from their errors. The other argument may be that the commission is not expressly authorized to exercise such authority under Articles 81 and 82 of the European Community Law or the relevant section of US competition law. Implementation doctrine, economic entity theory, and effects doctrine are three concepts that support the judicially established authority of these competition agencies to exercise extraterritorial jurisdiction in the US or the EU.[46]

Challenges for CCI:

The Competition Commission of India (CCI) may face several challenges in exercising its extra-territorial jurisdiction, particularly when addressing anti-competitive practices with cross-border implications. One significant challenge is the coordination and cooperation with foreign competition authorities. The CCI often encounters difficulties in obtaining evidence, securing cooperation from foreign entities, and navigating differences in legal systems and enforcement priorities. These challenges can hinder the effectiveness of investigations and enforcement actions, leading to delays or limitations in addressing anti-competitive conduct originating outside India's borders.[47]

Moreover, jurisdictional conflicts may arise when multiple competition authorities assert authority over the same conduct. The CCI must navigate complex legal issues and establish the basis for asserting jurisdiction, especially in cases where the conduct has effects in multiple jurisdictions. This can lead to legal uncertainties, forum shopping by parties involved, and potential conflicts with foreign regulatory bodies, complicating the enforcement process and potentially undermining the CCI's efforts to regulate extra-territorial conduct

[44] Payel Chatterjee and Shashank Gautam, Competition in India v. USA And EU
[45] The Competition (Amendment) Act, 2007.
[46] Massimo Motta, Competition Policy: Theory and Practice, 338 (2004)
[47] Pradeep S. Mehta, A Functional Competition Policy for India (2006)

effectively.[48] Additionally, challenges related to the collection and authentication of evidence, particularly in cross-border cases, can further impede the CCI's ability to investigate and prosecute anti-competitive practices occurring abroad, limiting its enforcement capabilities and effectiveness in ensuring fair competition within the Indian market.

The implementation of antitrust laws transnationally would eventually result in disputes about jurisdiction, given the prevalence of international commerce among states in the modern world. When competition laws are applied to foreign activities, it frequently results in opposition to the country's legal system, suspicion of its laws, and reluctance to exercise jurisdiction. The international aspect of these laws may result in an overzealous application of competition laws against their jurisdiction, which would be detrimental to the goals the laws are intended to accomplish if done incorrectly.[49]

5. Conclusion & Recommendations

This study has been conducted to examine the several facets of the Competition Commission of India's extraterritorial jurisdiction, including its powers, methods, and implementation of these orders. Although India's competition policy is on par with that of the world's two most developed economies the US and the EU certain ambiguities and gaps remain in the Act. The Act specifies CCI's extraterritorial jurisdiction and grants it the authority to conduct investigations and issue whatever orders it sees fit. It also grants CCI the freedom to control its own processes. Consequently, the CCI plays a significant role in regulating India's competitive market. Similar to sections 1 and 2 of the U.S. Sherman Act as well as Articles 81 and 82 of the EC treaty, Section 32 of the Act establishes the CCI as a powerful and proactive regulatory authority. The issue with extraterritorial jurisdiction is that it can potentially harm the nation's foreign policy. However, section 18[50] gives the CCI the authority to make any kind of agreement with any foreign agency that it chooses, thereby establishing a strong framework for collaboration. Since the situation is still in its infancy in the Indian setting, adopting a comity concept would undoubtedly be beneficial. The Competition Commission of India must ratify a number of bilateral, multilateral, and plurilateral treaties in accordance with section 18[51], which will enable it to exercise its authority and enact specific laws. It is imperative to contemplate the inclusion of certain aspects of competition law, such as extraterritorial consequences, within universal jurisdiction. To improve cooperation, the US, India, the EU, and other nations might change the values upheld in their own states. If there is a disagreement or conflict, they can quickly resolve it by using an alternate dispute resolution process. to find a solution for the extraterritorial jurisdiction issue. It goes without saying that minimizing barriers to Indian market

[48] T. Ramappa, Competition Law in India: Pol icy, Issues and Developments (2006)
[49] Calvin S. Goldman, Q.C. and J.D. Bodrug (Co-Editors), "COMPETITION LAW OF CANADA", Volume 2, Juris Publication, 2005, p. 13-3.0
[50] The Competition Act, 2002
[51] The Competition Act, 2002

competitiveness is in the best interests of those traders as well as India overall. When making decisions based on extraterritoriality, India should also take the Hague Convention on Recognition and Enforcement of Foreign Civil and Commercial Judgements into account. The Act was implemented to safeguard Indian interests outside of its borders as well as to control anti-competitive behavior in India. Rightfully, Section 32 creates a balance between India's limited extraterritorial capabilities and its sovereignty. Even if Section 32 is clearly expressed in writing, it remains to be seen if CCI will have the same ease of handling issues pertaining to foreign organizations.

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