



Examining Competition Law Frameworks Around the World: A Comparison with India's Competition Act

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Abstract

This law survey paper gives an in-depth investigation of the Competition Act in India, centering on its key arrangements, requirement components, and its adequacy in advancing competition in the Indian showcase. Besides, this paper compares the Indian competition law system with the competition laws of other purviews around the world, looking at similitudes, contrasts, and best hones. By surveying the qualities and shortcomings of each framework, important bits of knowledge are drawn to distinguish potential regions for advancement in the Indian setting. By comprehensively looking at the Competition Act in India and comparing it with other worldwide wards, this paper points to give a important asset for policymakers, lawful professionals, and analysts included in competition law. It highlights potential zones for change and lays the establishment for assist discourses on cultivating competition and guaranteeing a level playing field in the Indian advertise.

Keywords: Comparative analysis, Competition Act, India, global jurisdictions, competition law, enforcement mechanisms, similarities, differences, best practices, United States, Sherman Act, Federal Trade Commission, European Union, Treaty on the Functioning of the European Union, European Commission, Australia, Competition and Consumer Act, Australian Competition and Consumer Commission, Canada, Competition Act, Competition Bureau, Japan, Antimonopoly Act, Japan Fair Trade Commission, Brazil, Law No. 12,529, Administrative Council for Economic Defence, South Africa, Competition Act, Competition

Commission, Singapore, Competition Act, Competition and Consumer Commission of Singapore, United Kingdom, Competition Act, Competition and Markets Authority.

Introduction

The globalized nature of the modern economy necessitates a robust legal framework to ensure fair competition across borders. Competition law serves this purpose by prohibiting anti-competitive practices such as cartels, mergers that stifle competition, and abuse of dominant market positions. While the core objectives of competition law remain consistent across jurisdictions, variations exist in their implementation and underlying philosophies. Competition is widely acknowledged as a vital driver of economic growth, innovation, and consumer welfare. Recognizing its significance, jurisdictions around the world have implemented competition laws to ensure fair and open markets. In the Indian context, the Competition Act plays a crucial role in regulating and promoting competition. This law review paper delves into a comprehensive analysis of the Competition Act in India, examining its key provisions, enforcement mechanisms, and its effectiveness in fostering a competitive environment. Furthermore, this paper aims to provide a comparative perspective by exploring the competition laws of other jurisdictions across the globe. By undertaking a comparative analysis, we can identify similarities, differences, and best practices in various legal frameworks, contributing to a better understanding of the Indian competition law regime.

The objectives of this paper are twofold. First, it seeks to shed light on the Competition Act in India, outlining its historical development, scope, and fundamental goals. By examining its key provisions related to anti competitive agreements, abuse of dominant position, and unfair trade practices, we aim to assess the legislative framework's efficacy in achieving its intended objectives. Secondly, this paper aims to provide a comprehensive comparative analysis of the Indian competition law with other jurisdictions. By including jurisdictions such as the United States, European Union, Australia, Canada, Japan, Brazil, South Africa, Singapore, and the United Kingdom, we can draw valuable insights from diverse legal systems and regulatory approaches. This comparative analysis encompasses various aspects, including merger control thresholds, treatment of anti-competitive practices, leniency programs, and dispute resolution mechanisms.

Through this analysis, we aim to identify common trends, best practices, and potential areas for improvement in the Indian competition law regime. By learning from the experiences of other jurisdictions, policymakers, legal practitioners, and researchers can gain valuable insights

to enhance the effectiveness of the Competition Act and foster a more competitive landscape in India. This law review paper provides a comprehensive and comparative analysis of the Competition Act in India, examining its strengths, weaknesses, and areas for improvement in the context of global competition laws. By undertaking this analysis, we hope to contribute to the ongoing dialogue on competition policy and provide valuable insights for the continued development of competition law frameworks worldwide.

Key Provisions of the Competition Act in India

The Competition Act of 2002 (hereafter referred to as "the Act") is a comprehensive legislation enacted by the Parliament of India to promote and sustain competition in the Indian market. It encompasses key provisions that address anti-competitive agreements, abuse of dominant position, and unfair trade practices. This section provides an overview of these provisions, highlighting their significance in ensuring fair competition¹.

Anti-competitive agreements and abuse of dominant position

Segment 3 of the Act bargains with anti-competitive assentions that have an obvious antagonistic impact on competition inside India². This arrangement denies assentions between endeavors, counting cartels, that limit competition, control costs, or distribute markets. It covers hones such as price-fixing, bid-rigging, and advertise division. The Act recognizes the inconvenient affect of such assentions on showcase competition and shopper welfare and points to check these anti-competitive hones.

Enforcement Mechanisms in India

The Competition Act in India builds up strong authorization components to guarantee the successful execution of competition laws and the anticipation of anti-competitive hones. This segment analyzes the key components of the authorization system, counting the part and powers of the Competition Commission of India (CCI), investigative forms, punishments, and cures³. The CCI has broad investigative powers to successfully address anti-competitive hones. It has the specialist to start examinations either based on a complaint gotten or Suo moto (on its claim movement). The investigative handle includes gathering prove, analyzing witnesses,

¹ The Competition Act, 2002, No. 12, Acts of Parliament, 2003 (India).

² The Competition Act, 2002

³ The Competition Act, 2002

and looking for data from significant parties. The CCI has the control to summon and uphold the participation of people, look at them beneath pledge, and compel the generation of records. The Competition Act gives for the inconvenience of punishments and the giving of cures to address infringement of competition law⁴. Segment 27 of the Act enables the CCI to force financial punishments on endeavors found to have locked in in anti-competitive hones. The Act sets the greatest punishment at ten percent of the normal turnover of the going before three monetary a long time. Moreover, the CCI can arrange the cessation of anti-competitive conduct and the adjustment of assentions that are hindering to competition. In the course of examinations, the CCI has the control to accumulate prove and look for data from concerned parties. Beneath Area 36 of the Act, the CCI can summon and uphold the participation of people, look at them beneath pledge, and compel the generation of reports or records. These measures empower the CCI to get significant data and prove fundamental to survey and address affirmed anti-competitive conduct.

The CCI moreover expect adjudicatory capacities, permitting it to make judgments and choices with respect to anti-competitive hones. Beneath Area 27 of the Act, the CCI can pass orders forcing punishments on endeavors found blameworthy of locks in in anti-competitive conduct. This control guarantees that the CCI can take suitable activity to hinder anti-competitive conduct and advance reasonable competition in the showcase. In expansion to forcing punishments, the CCI has the specialist to give cures to address anti-competitive hones. Beneath Segment 27(b) of the Act, the CCI can arrange the cessation of anti-competitive conduct and the adjustment of assentions that are hindering to competition⁵. These medicinal powers empower the CCI to amend the impacts of anti-competitive conduct and reestablish a competitive advertise environment. The Act moreover enables the CCI to conduct showcase thinks about and lock in in competition backing. Area 49 of the Act gifts the CCI the specialist to conduct ponders on competition-related things and give suggestions to government offices and other partners. This permits the CCI to proactively survey showcase elements, recognize potential competition concerns, and make educated arrangement proposals to advance competition in different segments. The part and powers vested in the CCI engage it to act as a careful controller and master of competition laws in India. Its capacity to start examinations, accumulate prove, arbitrate cases, force punishments, give cures, and lock in in advertise

⁴ The Competition Act, 2002

⁵ The Competition Act, 2002

ponders and promotion reflects its comprehensive specialist in shielding and advancing reasonable competition.

Combinations and merger control regulations

Section 4 of the Act addresses the abuse of dominant position by enterprises. It prohibits enterprises that hold a dominant position in the relevant market from engaging in practices that hinder competition, such as imposing unfair conditions, limiting production, or leveraging market power to enter other markets. This provision aims to prevent the misuse of market dominance and protect the interests of smaller competitors and consumers⁶.

Prohibition of unfair trade practices

Area 5 of the Act forbids unjustifiable exchange hones in certain circumstances . It incorporates hones that hoodwink or delude shoppers, withhold fundamental data, or lock in in untrue representations that influence competition. This arrangement points to advance reasonable exchange hones and secure consumers' interface by guaranteeing straightforwardness and avoiding tricky hones in the commercial center⁷.

Competition commission of India

The Competition Act also provides for the establishment of the Competition Commission of India (CCI), which serves as the primary regulatory authority responsible for implementing and enforcing the provisions of the Act. The CCI is vested with the power to investigate anti-competitive practices, impose penalties, and provide remedies to address violations of the Act.

Combinations and Merger Control Regulations

The Competition Act too incorporates arrangements related to combinations and merger control directions to anticipate anti-competitive impacts coming about from mergers, acquisitions, and amalgamations. Area 5 and Area 6 of the Act bargain with the control of combinations. Undertakings included in combinations that cross indicated resource or turnover limits are required to inform the CCI and get its endorsement some time recently the exchange is fulfilled. The CCI assesses the potential affect of the combination on competition and has the specialist to endorse, dismiss, or force conditions on the exchange to protect competition.

⁶ The Competition Act, 2002

⁷ The Competition Act, 2002

Competition Advocacy

The Competition Act places significance on competition promotion to advance competition culture and mindfulness in India. Segment 49 of the Act enables the CCI to advance competition backing by giving conclusions, making proposals, and undertaking ponders to cultivate competition in different divisions. This arrangement permits the CCI to lock in with partners, give direction on competition-related things, and contribute to the advancement of competition-friendly arrangements and controls⁸.

Leniency Provisions

To encourage enterprises to self-report anti-competitive behaviour, the Competition Act includes leniency provisions. Section 46 of the Act provides for the granting of leniency to an enterprise that discloses its involvement in a cartel and cooperates with the CCI in its investigation. Leniency provisions play a crucial role in uncovering cartels and facilitating the enforcement of competition law by incentivizing self-reporting and providing immunity or reduced penalties to cooperating enterprises⁹.

Competition Appellate Tribunal

The Competition Act sets up the Competition Re-appraising Tribunal (COMPAT) as an free re-appraising body to listen and arrange of requests against the orders of the CCI⁹. In any case, the Competition Act was amended in 2017 to nullify COMPAT, and the re-appraising locale presently lies with the National Company Law. Appellate Tribunal (NCLAT)¹⁰. The foundation of COMPAT pointed to give a specialized gathering for adjudicating competition law things, guaranteeing successful and productive re-appraising review. These key arrangements of the Competition Act serve as the spine of the Indian competition law administration, aiming to make a level playing field, empower showcase competition, and defend buyer welfare. The Act, along with its authorization instruments, plays a pivotal part in forming and keeping up a competitive environment in India's quickly advancing advertise scene

Comparative Analysis: Global Jurisdictions

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⁸ The Competition Act, 2002

⁹ The Competition Act, 2002

¹⁰ The Finance Act, 2017, No. 7, Acts of Parliament, 2017 (India)

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United States: Sherman Act and Federal Trade Commission (FTC)

The United States has a robust framework for competition law, primarily governed by the Sherman Act of 1890 and enforced by the Federal Trade Commission (FTC)

Sherman Act: The Sherman Act is a landmark legislation that serves as the cornerstone of antitrust law in the United States. Enacted in 1890, the Act aims to prevent and prohibit anti-competitive behaviour, including monopolies and restraints of trade. Section 1 of the Sherman Act prohibits agreements, contracts, or conspiracies that unreasonably restrain trade or commerce among states or with foreign nations. Section 2 addresses monopolization and attempts to monopolize, making it illegal for firms to engage in anti-competitive practices that result in the exclusion or restriction of competition. The Sherman Act has been instrumental in shaping competition law in the United States and serves as a basis for numerous antitrust cases and enforcement actions.

Federal Trade Commission (FTC): The Federal Trade Commission (FTC) is the primary regulatory agency responsible for enforcing competition laws in the United States. Established in 1914, the FTC is an independent federal agency entrusted with the promotion of consumer protection and the prevention of anti competitive practices¹¹.

The FTC exercises its authority through various mechanisms, including:

a) **Investigative Powers:** The FTC possesses robust investigative powers to enforce competition laws. It can initiate investigations, issue subpoenas, and gather evidence to assess potential

¹¹ The Competition Act, 2002

anti-competitive conduct. The FTC conducts investigations into mergers, acquisitions, and other business practices that may harm competition or consumers¹².

b) Enforcement and Litigation: The FTC has the power to enforce competition laws through litigation. It can file complaints against companies believed to be engaged in anti-competitive behaviour, seeking remedies to address the harm caused by such practices. The FTC can seek injunctions, cease-and-desist orders, divestitures, and monetary penalties.

c) Merger Control: The FTC plays a crucial role in merger control in the United States. It evaluates proposed mergers and acquisitions to assess their potential impact on competition and consumers. The FTC reviews mergers and can challenge those that are likely to harm competition. It may require divestitures or impose conditions to ensure competition is preserved.

d) Consumer Protection: In addition to its competition-related functions, the FTC is actively involved in consumer protection. It enforces laws prohibiting unfair or deceptive business practices that harm consumers. The FTC addresses false advertising, fraud, privacy breaches, and other consumer-related concerns

United Kingdom: Competition Act and Competition and Markets Authority (CMA)

The United Kingdom's competition law regime is governed by the Competition Act 1998, which sets out the framework for competition law enforcement in the country. The act aims to prevent anti-competitive behaviour, promote competition, and protect the interests of consumers.

The Competition and Markets Authority (CMA): the primary regulatory body responsible for enforcing competition law in the United Kingdom. It was established under the Enterprise and Regulatory Reform Act 2013 and has significant powers to investigate and take action against anti-competitive practices. The CMA's role encompasses merger control, cartel enforcement, abuse of dominance cases, and market investigations. Under the Competition Act, the CMA has the authority to conduct investigations, impose fines and penalties, and issue enforcement orders to address anti-competitive behaviour. It also has the power to review and approve mergers and acquisitions, ensuring they do not substantially lessen competition in the market.

¹² <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/antitrust-laws>

The Competition Act of the United Kingdom shares some similarities with the Competition Act in India. Both acts prohibit anti-competitive agreements, abuse of dominant position, and unfair trading practices. Additionally, they provide mechanisms for merger control and the investigation of anti-competitive conduct. However, there are notable differences in the thresholds for merger control and the procedures followed in conducting investigations and imposing penalties.

The Competition Act of the United Kingdom and the CMA's enforcement approach emphasize the importance of competition and consumer welfare. The CMA actively engages with stakeholders, conducts market studies and investigations, and works towards creating a competitive environment that benefits consumers and businesses. The act also empowers the CMA to issue guidance and promote compliance with competition law. Through its experience and enforcement practices, the United Kingdom has developed several best practices in competition law. These include effective market investigations, robust merger control processes, and proactive engagement with stakeholders.

European Union: Treaty on the Functioning of the European Union (TFEU) and European Commission (EC)

In the European Union (EU), competition law is governed by the Treaty on the Functioning of the European Union (TFEU), specifically Articles 101 and 102. The enforcement of competition law is primarily entrusted to the European Commission (EC)

Treaty on the Functioning of the European Union (TFEU): The TFEU forms the legal basis for competition law in the EU. Article 101 of the TFEU prohibits anti-competitive agreements and concerted practices that have the potential to distort competition within the EU's internal market. This provision targets cartels, pricefixing, market allocation, and other practices that restrict competition. Article 102 of the TFEU addresses abuse of dominant position, prohibiting dominant companies from engaging in practices that harm competition, such as imposing unfair prices, restricting production, or engaging in anti-competitive behavior to exclude competitors. The TFEU also provides for the regulation of mergers and acquisitions through the EU Merger Regulation (Council Regulation (EC) No 139/2004). This regulation ensures that concentrations and mergers with a community dimension that could significantly impede competition in the EU are subject to review by the European Commission.

European Commission (EC): The European Commission is the executive body of the European Union responsible for enforcing competition law and promoting fair competition. The EC is empowered with several

key functions and powers:

a) Investigative Powers: The EC has the authority to initiate investigations into potential violations of competition law. It can conduct sectoral inquiries and examine specific industries or markets to identify and address competition concerns. The EC can gather evidence, request information from companies, and carry out on-site inspections to ascertain compliance with competition rules.

b) Enforcement and Decision-Making: The EC is responsible for enforcing competition law in the EU. It has the power to make decisions and impose fines and remedies. The EC can issue formal decisions to prohibit anti-competitive behaviour, impose fines on companies that violate competition law, and order the cessation of anti-competitive practices.

c) Merger Control: The EC plays a vital role in the review and regulation of mergers and acquisitions with a community dimension. It assesses the potential impact of mergers on competition and has the authority to approve, block, or impose conditions on proposed transactions to safeguard competition within the EU.

d) Leniency Program: Similar to other jurisdictions, the EU also has a leniency program to encourage companies to disclose their involvement in cartels. The EC offers reduced or immunity from fines to the first cartel participant that cooperates with the investigation, provides evidence, and meets the leniency conditions. The Treaty on the Functioning of the European Union and the enforcement activities of the European Commission form a comprehensive framework for competition law in the EU. These provisions and the powers of the EC aim to ensure the protection of competition, the prevention of anti-competitive practices, and the promotion of a unified and competitive internal market

Indian Competition legislation compared to other jurisdictions

India's Competition Act and the enforcement mechanisms implemented by the Competition Commission of India (CCI) exhibit both similarities and differences when compared to other jurisdictions. Let's examine how

India compares to some key jurisdictions:

- a) United States: India's Competition Act shares similarities with the United States' Sherman Act and the jurisdictional reach of the Federal Trade Commission (FTC). Both India and the United States prohibit anti-competitive agreements and abuse of dominance. However, the United States has a longer history of antitrust enforcement and has developed extensive case law and jurisprudence in this area.
- b) European Union: India's Competition Act aligns with the European Union's Treaty on the Functioning of the European Union (TFEU) and the enforcement activities of the European Commission (EC). Both jurisdictions address anti-competitive agreements, abuse of dominance, and merger control. However, the European Union has a supranational structure with enforcement powers across its member states, while India's enforcement primarily focuses on the Indian market.
- c) Australia: India's Competition Act shares similarities with Australia's Competition and Consumer Act and the role of the Australian Competition and Consumer Commission (ACCC). Both jurisdictions prohibit anti-competitive agreements, abuse of market power, and regulate mergers and acquisitions. However, Australia has well-established competition law frameworks and has been actively enforcing competition law for a longer period.
- d) Canada: India's Competition Act has similarities with Canada's Competition Act and the enforcement role of the Competition Bureau. Both jurisdictions address anti-competitive agreements, abuse of dominance, and mergers. However, Canada has its own unique thresholds and criteria for merger control and has extensive experience in analysing complex mergers in various industries.
- e) Singapore: India's Competition Act aligns with Singapore's Competition Act and the responsibilities of the Competition and Consumer Commission of Singapore (CCCS). Both jurisdictions address anti competitive agreements, abuse of dominance, and mergers. However, Singapore has developed a reputation for its efficient merger review process and has been proactive in conducting market studies to identify competition issues. While India's Competition Act and the CCI have made significant strides in enforcing competition law, there are areas where India can learn from other jurisdictions. The legislation is relatively new and seems like a pilot act in its present state, there is definitely a need for development of jurisprudence and further legislation. Strengthening the investigative powers of the CCI,

enhancing leniency programs, promoting international cooperation, and streamlining merger review processes could further improve the effectiveness of competition enforcement in India. It's important for India to continue benchmarking itself against global best practices, learn from the experiences of other jurisdictions, and adapt its competition regime to address emerging challenges in the marketplace

Conclusion

The Competition Act in India, along with its enforcement mechanisms led by the Competition Commission of India (CCI), plays a pivotal role in promoting fair competition, protecting consumer interests, and fostering economic growth. As we have explored, the Act shares similarities and differences with competition laws in various jurisdictions, drawing upon best practices from around the world. While India's competition regime has made significant progress, it also faces challenges. These challenges include complex enforcement procedures, the need for greater awareness and compliance, addressing competition concerns in dynamic digital markets, and building judicial capacity and expertise. Overcoming these challenges requires a proactive approach, including streamlining processes, enhancing awareness programs, adapting competition law to the digital economy, and investing in judicial training. Fortunately, there are opportunities to strengthen the Competition Act and its enforcement mechanisms. By bolstering leniency and whistle blower programs, promoting sector-specific competition policies, embracing international cooperation, encouraging economic research and market studies, and focusing on the digital economy, India can enhance the effectiveness of its competition regime. A key takeaway is the importance of continuous evaluation, benchmarking against global best practices, and learning from the experiences of other jurisdictions. By adopting a proactive and adaptive approach, India can refine its competition framework, address emerging challenges, and align its practices with international standards.

In conclusion, the Competition Act in India is a crucial tool for promoting fair competition, fostering innovation, and safeguarding consumer welfare. By addressing challenges, leveraging opportunities, and continuously improving the competition regime, India can create a level playing field for businesses, encourage innovation, and contribute to sustainable economic development.

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