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# Antitrust Laws in India & USA: A Comparative Analysis

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**ABSTRACT**

*Antitrust laws foster business competition by guaranteeing that economic power distribution stays stable and economies continue to grow. Antitrust laws significantly influence practically every industry and sector of business, most notably in manufacturing, transportation, distribution, and marketing. There are certain business behaviours that organisations must avoid if they want to flourish. Antitrust laws, for example, prohibit price-fixing schemes, mergers that limit competition, and predatory behaviour aimed at acquiring or retaining a monopoly. When firms like Reliance Industries, the Vedanta Group, and Bajaj Auto, Google were at the top of their market dominance, these operational flaws were abundantly visible. Antitrust laws become useless as a result of this overwhelming domination. The Competition Commission of India (CCI) adopted this rule in 2002 to counteract anti-competitive corporate practices, promote competition, and protect the interests of consumers. In India, competition policy is governed by the 2002 Competition Act. This article aims to analyse the concept, evolution, and anti-competitive practices under antitrust laws, recent case laws and do a comparative study of the legislation of the USA.*

***Keywords**: Antitrust laws, Monopoly, Anti-Competitive Agreements, Abuse of Dominance.*

## I. INTRODUCTION

India has had its own form of competition law for more than 40 years, since 1969 when the Monopolies and Restrictive Trade Practices Act was enacted, this legislation, which was predicated on command-and-control economic notions, outlawed economic power concentration in a few hands that were damaging to the public good. This legislation, which was based on command-and-control economic doctrines, also forbade monopolies and restrictive commercial practices. After the economy was deregulated in 1991, it became critical to building a competition law framework that was more adaptable to local economic situations while remaining compatible with international standards. The Indian Parliament passed comprehensive competition law in 2002, dubbed the Competition Act 2002 (Competition Act),

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[2] to regulate commercial operations in India and to prohibit behaviour having a significant adverse impact on competition (AAEC) in India. It is principally concerned with enforcing the Competition Act's prohibition on three forms of behaviour: anticompetitive agreements, misuse of a dominating position, and groupings of enterprises for a common goal (i.e., mergers, acquisitions and amalgamations). The Competition Act, as modified by the Competition (Amendment) Act 2007, took effect on May 20, 2009, when the Government of India stated that the Competition Act's prohibitions on anti-competitive agreements and abuse of dominant position will take effect on that day. The Competition Act's merger control measures took effect three years later, in June of that year

## II. COMPETITION LAW DEVELOPMENTS IN INDIA

India seems to be a 'blank slate' environment for business. In other developing countries, competition law comes much later. India already had anti-competitive legislation. The Monopoly and Restrictive Trade Practices Act, 1969 (MRTP Act) was India's first legislation enacted in 2000. India's competition legislation contrasts with those of the United States and the European Union, demonstrating how it varies from those two systems (EU).

### (A) Origin of MRTP Act

Monopoly and restrictive trade practices were conceptualised and implemented in the United States throughout the second part of the twentieth century (MRTP). The outcome was determined by the government's Command and Control (C-Control) approach to foreign policy. To make it more difficult for the economic elite to take control of the economy, this organisation targets monopolies and unfair commercial practices, including monopolistic and restrictive trade practices.

Major step forward during the MRTP Act, 1969 to Competition Act, 2002

The economic reforms of the 1990s accelerated the transformation of India's corporate sector. The Monopoly and Restrictive Trade Practices Act, 1969 (MRTP) was updated periodically to reflect changes in the marketplace. Despite these modifications, it was determined that the MRTP framework was insufficient to meet the needs of a changing economic world.

### (B) Finance Minister Yashwant Sinha 2009 Budget Address, said the following:

Due to changes in competition legislation, it is no longer feasible to get a permit in portions of the nation where the MRTP Act was in effect prior to its repeal. We should be promoting competition rather than attempting to restrain monopolies. This committee has been tasked

[2] Competition Commission of India https://www.cci.gov.in/ (Last Visited on 5th june 2021)

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with the responsibility of examining these challenges and proposing new competition law that is tailored to our particular situation. A fresh and effective competition strategy was designed to assist the government in advising them on more competitive legislation. Mr S. V. Raghavan served as the chairman of the High-Level Committee on Competition Policy and Law, which advised the government on the development of new and effective competition legislation. In May 2000, this committee issued a report. After deliberating on your concerns, the Act was passed in 2002. The Indian government received the competition draft in November 2000, and the Competition Bill was subsequently prepared and presented to the Indian Parliament.

The committee was advised to take up the bill for further consideration. The Standing Committee reached a consensus, and Parliament enacted the Competition Act, 2002 in December 2002. The Competition Act was enacted on January 13, 2003, and took effect the next day. According to the Statement of Objects and Reasons accompanying the Competition Bill, this legislation is India's reaction to the removal of obstacles and encouragement of competition. Competition law's primary objective is to guarantee that when a single or two enterprises adversely affect the free market, these entities are held responsible for the ensuing condition of things. The Act's implementation has elevated competitiveness in India to worldwide norms. The Act's purpose is to prohibit firms from engaging in anti-competitive behaviour, defend consumer interests, and preserve free commerce. Due to the contentious nature of this act, a challenge to its legitimacy was filed after it took effect. The primary reason for rejecting the Act was the selection of a former civil servant with the same authority as a judge to head the new Commission, which is capable of issuing judicial judgements. To speed up the many changes, the government approved the required revisions to the Act, as envisaged in the original legislation, and the competition authority was separated into two distinct agencies. The Competition Commission of India, a governmental organisation, serves as an administrative affairs consultant. The Competition Body shall perform both adjudicatory and investigative functions. The law enacts measures to rein in anti-competitive behaviour that differ by jurisdiction, and it also has cross-border implications.

## III. ENFORCEMENT STRUCTURE

In the United States, a system of laws and law enforcement agencies is recruited, but in India, a single piece of legislation and a single government agency is appointed. to enforce antitrust laws, with the primary duty being with the Department of Justice's Antitrust Division (DOJ) and the Federal Trade Commission (FTC). Executive branch vs. non-executive branch administrative agencies: These phrases are more appropriate for describing how the former is

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connected to the executive branch of government, and the latter has traits with the CCI.

The Sherman Act (1890) is defined in this example as the most notable federal antitrust legislation, and it prohibits a variety of anti-competitive corporate practices, including price-fixing and the development of monopolies. The Clayton Act was enacted in 1914, and it covered a variety of industries, including exclusive supply, mergers, price discrimination, and tying. The DOJ and the FTC are two entirely separate federal agencies that implement their respective antitrust statutes under the Sherman Act and the Clayton Act. However, the DOJ has the authority to pursue charges in this instance.

## IV. ANTI-COMPETITIVE AGREEMENTS

The law prohibiting anti-competitive agreements and cartels includes provisions that grant businesses the right to engage in agreements or practices that are substantially similar or identical to other businesses as long as the deals are made by businesses that provide products or services with the same or the same. Under this section, the acts in which this kind of business participates are defined as having a demonstrable detrimental effect on the industry's competitiveness. They are considered offenders of the Act and handled as such. In order to better comprehend Section 1 of the Sherman Act and Article 101 of the Treaty, refer to Section 1 of the Sherman Act and Article 101 of the Treaty. This item is neither specified as to whether or not there is a substantial adverse effect on competitiveness nor what that effect entails. However, Section 19 (3) of the Act states that the AAEC must consider specific requirements.

The spirit of the legislation is captured in the legislation's mandatory wording, as it pertains to Section 19 (1) of the Act, which reads, "The CCI must establish a competitive assessment that measures the competitive effect of the agreement, but must also give due consideration to the pro-competitive aspects of the agreement." The Rule of Reason and the Balance Method of the Act are both analogous to the competition law jurisprudence of the United States and the European Union. While the law does not specify that a union must include two or more parties, we commonly describe a union as a legal compact between two or more parties. This may be proven from the text of Section 3(3), which says, "both parties, " and organisations and institutions, which all reference each other.

On the provision in Section 3 (3) of the Act, agreements which include India appointing the American Enterprise Economic Council (AAEC) and which are based inside India are considered to have AAEC rather than all other agreements which must be examined under the rule of reason.

### (A) Abuse of Dominance

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Section 4(1) of the Competition Act, 2002 bans any firm from utilising its market dominance to unduly or unfairly discriminate against competitors. The dominant position is held by a company in India, enabling it to operate independently of competitive pressures in the market. Gain an advantage for the customers or for the rivals or for the relevant market. Section 4 (2) (a) identifies what types of anti-competitive behaviour are seen as being an abuse of a dominating position under the Act. Exclusionary and exploitative abuse are both addressed under the list of abusive actions included in the Trafficking Victims Protection Act. There are a number of kinds of misuse of dominance in India. For example, they may charge exorbitant fees for products or services that are similar to those that they provide. It comprises adopting supply-related trade practices in the process of providing products or services.

Similar to the list of abusive activities contained in Article 102 of the Treaty, the lists of abusive behaviours included in the Act are practically identical. Section 2 of the Sherman Act forbids attempts to monopolise or the outright monopolisation of a market. Although the Sherman Act doesn't spell out a whole list of practices that might be seen as monopolisation or attempted monopolisation, it is useful to bear in mind the differences between that statute and the Act. The US Supreme Court has ruled that Section 2 of the Sherman Act is to be understood as barring companies from obtaining or maintaining monopolistic power by unlawful methods. As with the EU and the US, the location and products of the relevant market are determined as the first step for the inquiry under the Act.

**(B) Merger Regulation**

When combination rules are implemented, the Competition Act, 2002's Sections 5 and 6 apply. By developing procedural rules for the operation, the CCI made the Combinations Regulations 2011 accessible to the process. When paired with the Combination Regulation, the Act provides a strong framework for merger regulation in India. According to the Act, a combination includes an acquisition, a gain of control, and any merger or amalgamation of one or more firms by one or more persons. The Act specifies a threshold at which a combination is no longer considered a combination and is therefore exempt from the Act's merger regulation.

A threshold is established based on the asset's size or the number of sales. The threshold varies depending on whether the combination is comprised of one or more firms, whether the assets or revenue are created exclusively in India or internationally, and whether the assets or income are created exclusively in India or internationally. In the United States, mergers are controlled by the Clayton Act, which was amended in 1976 by the Hart–Scott–Rodino Antitrust Improvements Act. Section 7 of the Clayton Act prohibits mergers that will result in less

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competition or increased monopoly. The most significant distinction between the US and Indian control systems is that CCI, administered administratively, has the jurisdiction to approve or prohibit a merger. However, the US system, which courts regulate, requires federal agencies to obtain restraining orders.

To some extent, the difference between the Indian and United States control systems is that the CCI (the Indian system's administrative body) can approve or deny mergers. In contrast, the United States system (the judicial system) requires the agency to approach federal courts to enjoin a merger.

## V. ANTITRUST CASE AGAINST GOOGLE: USA

A wide range of countries have similar views on competition rules; the European Commission (EC) and the United States' Antitrust statutes shows me that there are many agreements with regards to competition regulations, the European Commission (EC), and U.S. antitrust laws (ATL). It may be claimed that all competition laws have many fundamental values, which are found in all countries, and all governments embrace them. Another option is that while the laws include mechanisms to ensure that each section of the laws is carried out correctly, they also fulfil the legislation's aim. In a survey of all the legislation, it is feasible to discover three main ideas that underlie all laws. Anti-competitive agreements, monopolistic practices, and various combinations are the opposite of these principles.

### (A) Key Points

Following a recent lawsuit against Google, the US Department of Justice accused the company of engaging in monopolistic behaviour in search that is harmful to both competitors and consumers, according to a press release. The lawsuit (also known as an antitrust action) was filed in response to a report by the Special Committee on Issues Relating to the Digital Economy of the United States House of Representatives, which discovered that Google, Facebook, Apple, and Amazon, as well as three other companies, all hindered competition by exercising gatekeeping control in the digital economy and thus violated antitrust laws.[3]

### (B) Defence took by Google on the antitrust issue

The transactions cited by the Justice Department are perfectly lawful. These business-to-business transactions violate antitrust law only if they can be demonstrated to obstruct competition. Users may easily switch to other search engines, such as Microsoft's Bing or

[3] Antitrust and Competition in India available on https://www.globalcompliancenews.com/antitrust-and-competition/antitrust-and-competition-in-india/ (Last Visited on 5th june 2021).

Yahoo Search, at any moment. Google's search engine is the undisputed industry leader, owing to widespread consumer preference.

Additionally, its services have aided in keeping smartphone pricing low. The following is a report by a committee of the United States House of Representatives: Google, Facebook, Amazon, and Apple all operate as "gatekeepers, " i.e. they can regulate access to information.

Additionally, gatekeepers may determine whether a message is distributed to a broader audience. Not only do these organisations possess enormous power, but they also misuse it by collecting outrageous fees, enforcing draconian contract conditions, and obtaining vital data from the individuals and businesses that depend on them. Corporations controlled the marketplace for their domains while simultaneously competing in it, and in order to maintain their number one position, the companies reverted to "self-preferencing, predatory pricing, or exclusionary behaviour."

Self-preferencing is a term that refers to activities taken by an organisation in order to favour its goods or services above those of rivals. Predatory pricing is the practice of intentionally lowering prices in order to remove competitors. Exclusionary behaviour is defined as behaviour that establishes or maintains monopolistic power via the disadvantage and injury of rivals.

### (C) Importance

The move is a reaction to the policy dilemma of what, if any, actions should be made to rein in today's internet titans, which have enormous influence over markets, communication, and even public opinion. The US Justice Department has proposed fundamentally dismantling Google, rather than just setting limits on its conduct, as has occurred in Europe. Critics argue that the multibillion-dollar penalties and mandatory modifications to Google's tactics enforced by European authorities in recent years were insufficiently harsh and that fundamental changes are necessary for Google to modify its behaviour.

### Indian Scenario

Several antitrust investigations on Google are now being conducted in India. Google has run afoul of regulators, most notably the Indian Competition Commission, for many years (CCI). A number of issues have been raised by the CCI, including the company's commercial flight search option, its dominance of the search market, and the company's exploitation of its dominant positions in the Android phone and intelligent television markets, among other things, over the previous two years.

For example, in 2019, the Competition and Consumer Commission of India (CCI) declared

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Google guilty of abusing its dominant position in the mobile Android market by putting "unfair limitations" on device manufacturers, preventing them from utilising rival operating systems.

Google has been accused of using an exorbitantly costly and unfair remuneration system for apps that are published on its Play Store, according to a recent investigation.

## VI. ANTI-TRUST LEGISLATION

Antitrust laws regulate how economic power is distributed inside a firm, ensuring that healthy competition exists and economies may thrive. Antitrust restrictions exist in almost every industry and sector, and they affect all stages of a business, including production, distribution, and marketing. These ban a broad variety of damaging business practices. Price-fixing schemes, corporate acquisitions that are likely to stifle competitive zeal in certain markets, and predatory behaviour to acquire or maintain monopolistic power are all instances of criminal behaviour.

The Competition Act of 2002 (and its amendments) created the Competition Commission of India to prohibit anti-competitive practices, promote and preserve competition, safeguard consumers' interests, and preserve market freedom in India's marketplaces.

### Amazon-Future Retail deal and Competition Commission of India

In December of last year, the CCI froze Amazon's Rs 1500 crore 2019 deal with Future Retail (FRL), citing the company's alleged purposeful attempt to conceal information about the transaction's scope and purpose. Future Retail (FRL) has stopped Amazon's Rs 1500 crore 2019 deal, citing the allegation that the business deliberately concealed facts regarding the scope and purpose of this deal. After the antitrust agency issued a fine of Rs 200 crore, Amazon was required to pay within 60 days of receiving the judgement.[4] Because of their significance in both the online and physical marketplaces, as well as their discussions regarding strategic alignment, the competition watchdog concluded that the merger should be re-examined in its 57-page order. For the length of the interim period, it stated that the CCI approval granted in 2019 would be "suspended."

Amazon's 2019 arrangement with Future Retail has been stopped by the Competition Commission of India (CCI) following an appeal by the US e-commerce giant to the National Company Law Appellate Tribunal (NCLAT). Amazon is appealing the CCI verdict on at least five of those grounds, and it is expected to be listed this week, according to sources.

[4] Amazon pulls CCI to NCLAT challenging suspension of 2019 Future deal, published in Business Standard, Available on https://www.business-standard.com/article/companies/amazon-pulls-cci-to-nclat-challenging-suspension-of-2019-future-deal-122010900492_1.html (Last Visited 11th March 2022)

Additionally, Amazon's Indian subsidiary has petitioned the Supreme Court to avert an arbitration dispute over Future Retail's (FRL) asset sale to Reliance Industries (RIL).

According to Amazon's strategy specialists, the firm made it clear in its CCI filing that its investment in Future Coupons was strategic in light of the possibility that the government will authorise investment in the multi-brand retail sector in the country at some point in the future. According to Amazon's legal team, there was no distortion of facts, and all information was given plainly.

CCI has no authority to renegotiate the arrangement beyond a 12-month approval term. The term "abeyance" is no longer acceptable. According to a source familiar with Amazon's plan, the transaction had to be granted or reversed within a year following Amazon's request. While CCI asserts that all information was available, Amazon could have made it known that FRL was not.

As of the time of publication, Amazon had not responded to an email seeking comment on this subject.

Additionally, the source aware of Amazon's strategy stated that "Future Coupons, as a joint applicant and beneficiary after receiving payments from Amazon, is now a complainant and requesting annulment of the transaction after receiving the money and spending it."

It all began in August when Amazon paid approximately Rs 1, 500 crores for a 49 per cent stake in Future Coupons, FRL's promoter firm (Future Retail). In August 2020, Future Group and Reliance Industries reached an agreement on a $3.4 billion asset transaction.

In October 2020, Amazon issued a legal warning to Future for failing to negotiate an agreement with RIL. It said that Future breached a contract with Amazon by selling its assets to RIL for $3.4 billion. It justified its actions by citing a non-compete agreement it had with the Kishore Biyani-led enterprise. It was agreed that if a dispute developed, it would be addressed through arbitration through the Singapore International Arbitration Centre. Amazon was successful in its SIAC anti-merger appeal and won a favourable judgement in the same month of October 2020.

In November 2020, Future filed a complaint against Amazon in the Delhi High Court (HC), alleging that the American company interjected itself into the contract between Future and RIL. Since then, FRL has sued Amazon to block Future from entering into a $3.4 billion contract with RIL.

When the SC declared in August last year that Amazon's emergency arbitrator ruling against

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the Future-Reliance agreement was enforceable in India, the SC sided with Amazon. However, the Supreme Court's stay of proceedings before the Delhi High Court in September, directing no coercive action, came as a major relief to Future Group. Additionally, the CCI and SEBI have been directed to postpone any final decisions on the matter for four weeks.

The deadline set by the Delhi High Court for CCI to reach a decision on the show-cause notice it issued to Amazon on the arrangement with Future Group was extended by the Supreme Court by two weeks in November last year.

However, the Delhi High Court (HC) on Wednesday stopped the arbitration proceedings against Future Group and Amazon before the Singapore tribunal for the remainder of the year. This is a tremendous relief for Kishore Biyani and his retail enterprise Future. On Tuesday, a division bench dismissed two Future Group subsidiaries' appeals against a single judge's reluctance to intervene in the case. A single judge of the HC has previously rejected involvement in the Singapore International Arbitration Centre's ongoing arbitration proceedings (SIAC).

The order, it has been argued, creates a 'conflict of laws' that undermines the entire contractual relationship and may dissuade foreign firms from entering India.

As a result of a ruling given by the Delhi High Court's single bench pursuant to Section 227, only the Supreme Court may consider cases that cannot be heard by a divisional bench. To provide for the possibility of an appeal. This is stated by someone who is familiar with Amazon's strategy.

"They obtained a court injunction to halt an already-commenced arbitration case. It is unheard of for a government to halt a corporate arbitration in the middle of a session, and it reflects ill on the government."

## VII. Conclusion

India's antitrust laws have come under scrutiny for a variety of reasons. The following recommendations are intended to resolve the situation.

To begin, the CCI has been repeatedly admonished for its tardiness and speed in addressing issues.

Often, individuals would wait the complete 180 days before deciding whether or not to continue. As a result, the first and most critical adjustment to antitrust law should be to ensure that it can be enforced rapidly.

Second, there were discussions within the Central Government about incorporating a

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settlement clause in the Act.[5]Corporations facing sanctions may reach an agreement with the government by implementing some type of corrective action inside their own institutions. This is favourable for both the firm and the CCI since it saves the CCI time in determining the appropriate punishment on a case-by-case basis. As a result, the CCI saves resources and money; and second, the economy of the country is strengthened because individuals are no longer afraid of legal repercussions before taking the risk of starting a business.

As with the first idea, a stronger enforcement mechanism is required for India's competition statute. Competition law enforcement is vital since it impacts not only the rights of consumers but also those of small and emerging market investors who have the potential to significantly contribute to the nation's economic progress. The long history of Indian monopolistic methods impeding the development of antitrust law has already been mentioned, as demonstrated by firms such as Reliance.[6]

This is exacerbated by the CCI's already excessive workload. Increasing the number of forums for resolving competition law complaints may be the most effective way to ensure successful law enforcement. Individuals who believe their interests have been violated by a firm or business may employ alternative dispute resolution techniques such as arbitration or mediation.

To summarise, India's antitrust law, like any other legal system, has potential for improvement. The following ideas demonstrate that the most critical area for development is law enforcement. As a result, even if amendments to the constitution are required, the existing legal framework must first be adequately implemented to safeguard the general public's and market's interests in order to foster economic progress in India.

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[5] Evernett and Simon J, What is the Relationship between Competition Law and Policy and Economic Development (Palgrave Macmillan 2016)

[6] V Venkateshwara Rao, 'The rise of monopolies in New India' (The Deccan Herald, 2020) <http / /www.deccanherald com/ opinion/panorama!the-rise-o-mnopoliesn-new-ndia-917337.htnl> (Last visited on July 31 2021)

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