

TREATMENT OF CARTELS UNDER THE INDIAN LAW

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ABSTRACT

Cartels are one of the most severe forms of anti-competitive behavior, as they involve collusion between businesses to manipulate market conditions, restrict competitions and exploit consumers.

In India, cartels are governed by the Competition Act, 2002 which aims to prevent anti-competitive agreements, abuse of dominant positions and regulate combinations that adversely affect competition. The Competition Commission of India plays a crucial role in detecting, investigating, and penalizing cartel activities.

The act prohibits cartels under Section 3(3) presuming such agreements to have an appreciable adverse effect on competition. The penalty for cartelization includes fines of up to three times the involved parties' profit or 10% of their turnover, whichever is higher. The CCI also has the power to grant leniency program, encouraging cartel member to disclose information in exchange for reduced penalties. Despite this regulation, detecting and prosecute cartels remain challenging due to their secretive nature. The judiciary through various rulings, has reinforced the importance of strict enforcement to deter anti-competitive behavior. The effectiveness of Indian laws in tackling cartels is also shaped by global trends, require continuous updates to enforcement strategies and coordination with international regulatory bodies. This article examines the legal framework governing cartels in India, analyzing key case, evaluate enforcement challenges, and explores potential reforms to strengthen anti-cartels measures in the Indian Economy.

INTRODUCTION

A cartel is formed when enterprises agree to coordinate their activities instead of competing against each other, often engage in price-fixing, bid-rigging, market allocation and output restriction. These anti-competitive practices distort market conditions, limit consumer choice, and inflated prices ultimately reducing economic efficiency

The Competition Act, 2002 as amended by the Competition (Amendment) Act, 2007 came into the force in late 2007. Before that the Monopolistic and Restrictive Trade Practices Act, 1969 addressed cartels. The regime under the MRTP Commission required to be examined in the light of its jurisdiction. It had principally the power to issue cease and desist orders. Accordingly, it detected and gave orders in relation to the cartels existing in cement industry, the tire industry and the chemical industry.

CARTEL'S ANTI – COMPETITIVE BEHAVIOUR

In the case Firestone Tire and Rubber Co. of India (P) Ltd., MRTPC instituted an inquiry in 1978, but closed in early 1980s on the ground that respondent agreed not to indulge in the concerted price fixing in future and agreed to inform the prices increase to the Commission for constructive 3 years period.

In Bengal Tool Ltd., case, collusive tendering was proved as concerted effort. Quotes given by the respondent were totally identical for various sizes of sheer blades, knives and slitting cutters. The cost data provided by the respondent revealed stark differences in cost among the manufacturers through they quoted the same price. The respondent argued that the act was not prejudicial to public interest. The MRTPC passed a cease-and-desist order. The cases handled by the MRTPC had used the power well, which were granted to them by the MRTP Act. In some cases, it has examined public interest to determine whether the cartels were anti-competitive or not. The MTPC in India lacked extra territorial jurisdiction.

In the case of American National Soda Ash Corporation v. Akhil Manufacturers Association of India and other, ANSAC a joint venture of six soda ash producers USA attempted to ship a consignment of soda ash to India. Under the MRTP Act, 1969 cartels were not defined. Cartels were categorized as restrictive trade practices. Cartels was defined as trade practice which has or may have the effect of preventing, restricting competition. The Supreme held that MRTPC does not covers extra-territorial jurisdiction, thus could not take the actions of foreign cartels or the pricing of exports to India, not restrict imports. The Court held that the extent of interference by the superior courts in the award of contracts through tender process should be limited where the public sector undertaking has exercised bona fide discretion even if the tendering process revealed the existence of cartels. Mere quotation of identical prices and the attitude of three tendering companies after the bidding could not lead to the conclusion

that there existed a cartel unless there was some other satisfactory evidence, in the case like *Union of India and others v. Hindustan Development Corporation*.

According to Section 2(c), Competition Act, 2002, cartels include any association of producers, sellers, distributors, traders or services who, by agreeing amongst themselves limit, control or attempt to control the production, distribution or sale or price of, or trade in goods or provisions of services. The Supreme in the case like *BSN Joshi & Sons Ltd.*, suggested that public sector undertaking should take adequate measures to prevent such activities. Bidding contractors cannot form a cartel. They do so and even so their bids are considered, and they are given the opportunity to match their rates to those of the lowest tenders, the court said that the public interest should be given priority. Hence, the MRTP Act was beyond repair and could not serve the purpose of the new competitive environment. The pending cases in the MRTPC may be transferred to the concerned consumer courts under the Consumer Protection Act, 1986. Hence, the Competition Bill have been passed by both the House of Parliament in December 2002, and it replaced the MRTP Act, 1969 and become the Competition Act, 2002.

LESSONS FOR THE COMPETITION COMMISSION OF INDIA

The Competition Commission of India is presently functioning with strong laws in place, the Competition Act, 2002 as amended by the Competition (Amendment) Act, 2007. The Competition Commission of India was given the extra -territorial jurisdiction, as amended by the Competition (Amendment) Act 2007. The CCI has the power to investigate into anti-competitive activity, abuse of dominant position, and anti-competitive combinations taking place outside India. If the cartel cases investigated by the MRTPC from the 1970 to 1990s are studied, it will be observed that most of the cases that were detected were related to price fixing. There was lesser number of cases related to market-allocation, bid-rigging and output restrictions. May be such type of cartels were even more difficult to detect and establish. At the same time there were cases the MRTPC believed in the undertaking provided by alleged cartelists about not engaging in similar activities in future. The CCI should not follow the role of MRTPC in similar cases. The CCI should complete the investigation and take adequate steps to punish the cartelists according to the provisions enshrined by the new law.

CONCLUSION

In conclusion, it may be said that there were number of hurdles or barriers before the MRTPC which stood in the way for effective actions against hurdles. Firstly, the MRTPC did not have any other power other than for providing cease and desist order.

At the same time, MRTPC lacked extra-territorial jurisdiction. The cases could not be enforced or challenged before the Supreme Court by the respective foreign cartelists.

At the same time, different types of cartels like price-fixing, market allocation, or bid-rigging, etc., were categorized as restrictive trade practices under the MRTP Act, 1969. They were not defined in the way they were mentioned under the Competition Act, 2002 as amended by the Competition (Amendment) Act, 2007.

CCI should not cease their investigation on the undertakings of alleged members of the cartels and give their final report. Based on the report they should take adequate measures to stop the activity by enforcing the provisions of the new law. The other factors, that may act as a lesson for the CCI is that, just giving a warning to the cartelists could not prevent the cartel in the long run. The CCI's lessons from studying cartels include the importance of both economic and conduct-based evidence, the use of whistleblowers, and the need for a robust enforcement framework. The CCI's introduction of a whistleblower mechanism is crucial for uncovering and addressing cartel behaviour, providing access to valuable insider information. The CCI has signed the MOU's with various countries and international organization to cooperate in the field of competition law and policy. However, cartels can lead to higher prices, reduced product innovation, and a lack of consumer choice, ultimately harm the consumers and the economy.

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