

# The Long Arm of Indian Competition Law: Examining the Extraterritorial Scope of the Competition Commission of India and the Effects Doctrine

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## ABSTRACT

*The aim of Competition Act, 2002 (the "Act") is to prevent any unfair trade practice taking place within India. But the enterprises especially the MNCs have opted a method of involving in unfair trade practices by entering into agreements with foreign companies, thereby causing appreciable adverse effect on competition (AAEC) in India. To address the broader aspect of cross-border anti-competitive practices, the Competition law in India allows the Competition Commission of India (CCI) to exercise its power extraterritorially. Additionally, the Effects Doctrine, as recognized by various countries, provides extra-territorial application of the Act, ensuring to regulate any unfair trade practices taking place within Indian & outside India as well. Despite existing legislative provision, CCI faces challenges in exercising its power over extraterritorial practices. Therefore, this paper aims to examine the CCI's extraterritorial reach. The paper aims to understand the role of CCI in combating unfair trade practices taking place even outside India & analyzes the long arm of Indian Competition law to foreign countries through Effects Doctrine. Furthermore, the paper seeks to evaluate the efficacy of the Memorandum of Understanding (MoUs) that the Indian CCI signs with the Anti-trust authorities from other nations.*

**Keywords:** Competition, Unfair Trade Practices, Effects Doctrine, Extraterritorial Jurisdiction, CCI.

## 1. Introduction

The competition law of various countries aims to prevent any unfair trade or anti-competitive practices followed by the companies to eliminate competition in the respective relevant markets. The Competition Act, 2002 (the "Act") is the primary legislation in India governing anti-competitive practices. The Act replaced the MRTP Act, 1969. The Act established a statutory body called the *Competition Commission of India* (the "CCI"), as a primary body overseeing the activities of companies ensuring they follow legal practices & ensure companies do not eliminate competition in the market. The Act promotes free & fair Competition, ensuring free flow of trade and protecting consumer interests by providing wider choices.

The objective of the Act is threefold:

- a. It prohibits anti-competitive agreements, which has an AAEC within India. It prohibits two types of agreements, i.e. Horizontal agreements & vertical agreements that prevents, restricts or controls the production, supply, markets or provision of services.<sup>3</sup>
- b. It also prohibits any abuse of dominant position held by the enterprises in a relevant market to reduce competition.<sup>4</sup>

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<sup>3</sup> Competition Act, 2002, § 3.

<sup>4</sup> Ibid, Sec 4

- c. It aims to regulate any combinations such as mergers & acquisitions between enterprises ensuring that such combinations do not have an AAEC in India.<sup>5</sup>

Further, under the Act, the CCI is enshrined with powers to inquire about any practice that has AAEC within India. Moreover, the Act also empowers the CCI to exercise its power beyond the “principle of territoriality”,<sup>6</sup> which means CCI has power to inquire into any agreements or practices followed by the foreign countries which have AAEC within India.<sup>7</sup>

The importance of the power of extra-territoriality plays a very important role in ensuring fair competition not only within a country but also prevents any such unfair practice outside the country. Today, the competition law is not only confined to national borders, but has extended its scope to cross-border practices as well.<sup>8</sup> The Act by providing the power aims to protect the domestic markets from any anti-competitive practices such as foreign cartels,<sup>9</sup> prevents cross-border mergers that restrict competition and lastly ensuring fair competition in global e-commerce.<sup>10</sup>

## 2. Competition Commission of India (CCI) & its extra-territorial jurisdiction: An Analysis

### 2.1 Extra-territorial Jurisdiction of Antitrust & Competition laws

The extra-territorial jurisdiction means the extra-territorial operation of a particular law. The law which establishes & grants certain powers to an authority has an extra-territorial effect. The extra-territorial operation is recognized by the Indian Constitution under Art.245(2)<sup>11</sup> which says that any law which has extra-territorial operation is a valid law. This has been also observed by the Supreme Court (SC) in *GVK Industries Case*,<sup>12</sup> an extra-territorial jurisdiction of an Indian law is valid for an extra-territorial operation.<sup>13</sup>

The principle of territoriality is a principle of public international law which enables a state to exercise its jurisdiction over individuals & legal persons outside its territory. This allows a sovereign state to exercise its jurisdiction over foreign affairs that has an effect on its own territory or domestic affairs. It can either exercise subjective or objective jurisdiction<sup>14</sup>, whereas the former allows a state to exercise its control within its boundaries

<sup>5</sup> Ibid, sec 5

<sup>6</sup> Janmejay Singh, *Extra Territoriality of Competition Commission of India under Competition Act 2002*, 3 INT’L J.L. MGMT. & HUMAN. 647 (2020)..

<sup>7</sup> Supra at 1, Sec 32.

<sup>8</sup> OECD, *International Cooperation in Competition Law Enforcement: Best Practices and Challenges*, OECD POLICY PAPERS (2023).

<sup>9</sup> Eleanor M. Fox, *Extraterritoriality and Competition Law: A Global Perspective*, HARV. L. REV. (2022).

<sup>10</sup> Ankur Kumar & Vishal Sharma, *The Effects Doctrine and its Role in India’s Competition Framework*, INDIAN J.L. & ECON. (2023)

<sup>11</sup> INDIA CONST. art. 245(2).

<sup>12</sup> *GVK Industries v Income Tax Officer*, (2011) 4 SCC 36

<sup>13</sup> Suhail Khan, *Extra-Territorial Jurisdiction of CCI - Harmonising International Enforcement with Domestic Law*, 3 JUS CORPUS L.J. 121 (March 2023).

<sup>14</sup> Laura Donnellan, *The Extraterritorial Reach of Antitrust Laws: A Comparative Analysis*, 4 HIBERNIAN L.J. 239 (2003).

and the latter allows the state to control the conduct that occurs outside its jurisdiction but has effects within the boundaries of the state.<sup>15</sup>

Extraterritoriality principle has significant importance in Antitrust & Competition Laws. This ensures that any practice affecting domestic markets due to foreign anti-competitive is regulated. Due to globalization, MNCs have emerged as a key player in economic development. but due to increasing competitive markets, the companies especially the MNCs engage in cross-border mergers, acquisitions & entering into anti-competitive agreements by forming cartels, with a view to reduce or eliminate competition. Hence it becomes necessary that Competition laws over the world play a role in regulating these practices beyond national boundaries.

## 2.2 Extra-territorial jurisdiction of CCI

CCI is a primary regulatory body established under the Act<sup>16</sup> that regulates companies ensuring that the practices adopted by them fall within the legal bounds. The commission plays a crucial role in maintaining a free & fair market, curb the abuse of dominant position & prohibits anti-competitive agreements that have AAEC.<sup>17</sup>

Given the increasing integration of global markets, many anti-competitive practices originate outside India significantly impacting the domestic markets & competition. In order to deal with this, the Competition Act, 2002 under Sec 32, grants CCI extraterritorial jurisdiction allowing it to regulate anti-competitive conduct by foreign entities if their actions have an adverse effect on competition in India.<sup>18</sup> This provision is broadly rooted in the *Effects Doctrine*, which allows a state to exercise its jurisdiction over foreign conduct if it substantially affects the domestic markets. By extending the power of CCI, the law exercises extra-territorial operation & can address the conduct of MNCs & TNCs, ensuring they do not distort competition.

The extraterritorial reach ensures that foreign companies do not exploit the consumers & businesses through monopolistic practices, thereby protecting domestic markets. This allows the CCI to prevent any export cartels from being investigated & penalized, ensuring fair global trade.<sup>19</sup> Furthermore, extraterritoriality allows the CCI to engage in information-sharing & allows it to jointly investigate matters & coordinate with partner countries.<sup>20</sup>

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<sup>15</sup> Raymond J. Friel, *Extra-Territorial Applications of Competition Law*, COM. L. PRAC. 118 (1996).

<sup>16</sup> Competition Act, 2002, § 7.

<sup>17</sup> Ibid, Sec 3,4,5.

<sup>18</sup> ibid, Sec 32.

<sup>19</sup> Supra note 9.

<sup>20</sup> Yogesh Rai & Dr. Taru Mishra, *An Analysis of Extra-Territorial Jurisdiction of CCI*, J. EMERGING TECH. & INNOVATIVE RES., vol. 11 (Apr. 2024), <https://www.jetir.org/papers/JETIR2404087.pdf> (last visited Apr. 1, 2025).

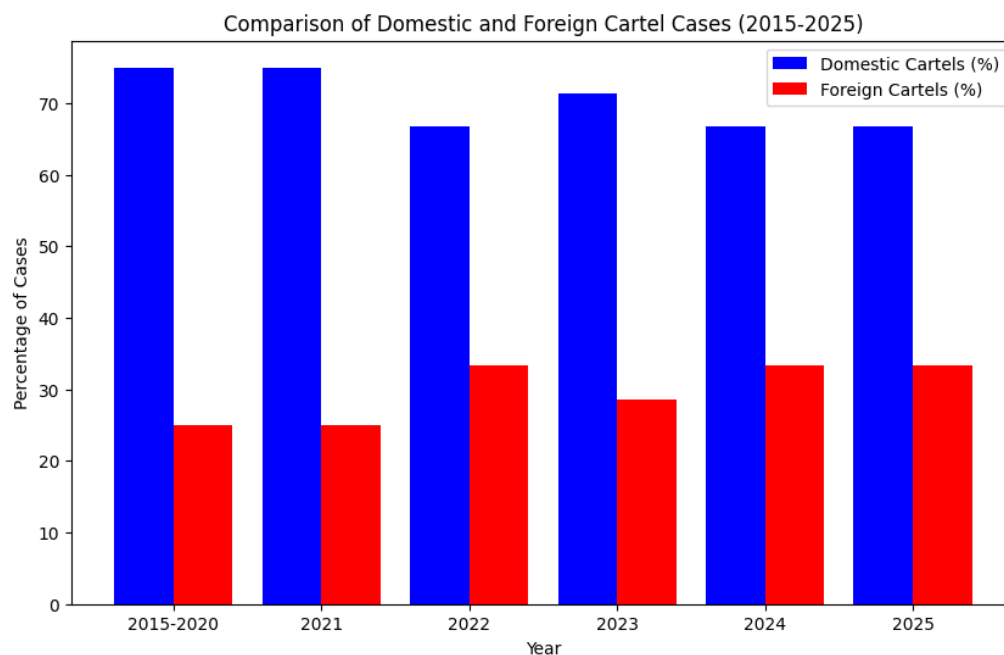


Figure 1

Figure 1 illustrates the growth of foreign cartels affecting Indian domestic markets. From 2015 to 2025, there has been a gradual increase in the growth of foreign cartels. In order to investigate & ensure free & fair competition, the extra-territorial jurisdiction of CCI is significant in addressing the anti-competitive practices beyond its territory, to protect global trade.

Note: The hypothetical figures used in fig 1 do not reflect from official statistics & it is only a statement that confirms the number of cases investigated by the CCI. However, Finance Minister Nirmala Sitharaman informed the Lok Sabha on March 24, 2025, that the CCI investigated a total of 35 cartel cases across various sectors over the last five financial years (up to March 13, 2025).<sup>21</sup>

### 2.3 International Anti-Competitive Arrangements investigated by CCI

#### 1. International Cartels

International cartels are a kind of arrangement by which the enterprises operating in more than one country enter into agreements and adopt unfair trade practices such as fixing prices, allocating markets, limiting production etc, to eliminate competition. These are usually formed by the Multinational corporations (MNCs) or Transnational corporations (TNCs). Hence, it becomes imperative to exercise extraterritorial jurisdiction to investigate matters falling under Sec 3 of the Act, 2002.<sup>22</sup>

#### 2. Cross-border mergers & acquisitions (M&A)

<sup>21</sup> Press Info. Bureau, <https://pib.gov.in/PressReleaseDetail.aspx?PRID=2114500&reg=3&lang=1> (last visited Apr. 1, 2025).

<sup>22</sup> Section 3, Competition Act, 2002

Cross-border M&As refers to the combinations of companies operating in different jurisdictions to create a single entity. These are usually referred to as international mergers & are regulated by the Act, 2002 under Sec 5, 6 & 20.<sup>23</sup> This can impact competition by reducing market players, dominance by a single entity leading to creating monopoly. By applying the effects doctrine, the CCI has jurisdiction to investigate these matters having an impact on the Indian market, even if transactions occur abroad. One of the significant cross-border merger investigations involved the *Walmart-Flipkart deal (2018)*,<sup>24</sup> where Walmart acquired a 77% stake in Flipkart for \$16 billion. CCI examined whether this acquisition would lead to abuse of dominance in India's e-commerce sector. While CCI approved the deal, it imposed restrictions to prevent anti-competitive practices. Thereby, exercising extraterritorial jurisdiction under sec 32.

### 3. Dumping & Anti-dumping practices

Dumping occurs when foreign firms export goods to India at low prices, often lower than domestic production costs, to capture market share and eliminate domestic competition. While anti-dumping duties are imposed by the Directorate General of Trade Remedies (DGTR), CCI plays a complementary role in assessing whether such pricing strategies amount to predatory pricing or abuse of dominance under Section 4 of the Competition Act.

### 3. The Effects Doctrine

The extra-territorial jurisdiction is exercised only after the recognition of the *Effects Doctrine* not only by Indian laws but across the world. The effects doctrine was first recognized in U.S in the *Alcoa case*<sup>25</sup> of the US, wherein the U.S Court of Appeals stated "a state may impose liabilities on any conduct by the foreign companies or even individuals which although occurs outside its borders but has impact within its borders." And the court held that a Canadian corporation violated the Sherman Act for entering into an agreement with a European Company. Thereby recognizing the doctrine & giving it a statutory recognition through enactment of International Antitrust Enforcement Assistance Act, 1994. Furthermore, the US Courts have laid down tests to investigate any activity that has physical link to the concerned country or application of the doctrine.<sup>26</sup> One such was laid in the *Timberlane case*<sup>27</sup> as follows:

- *Firstly*, In order to exercise the jurisdiction, it is important to constitute that any activity has direct or indirect effect on Nations trade & business.
- *Secondly*, there has to be an infringement or violation of Anti-trust laws. And a substantial large amount of injury should have been caused due to the conduct.
- *Thirdly*, the anti-competitive practice must have potentially a large impact on international trade, comity & fairness.

<sup>23</sup> Ankesh Jain, *Extra-Territorial Jurisdiction of Competition Commission of India*, 19 J. FIN. CRIME 114 (2012), <https://doi.org/10.1108/13590791211190768> (last visited Apr. 4, 2025).

<sup>24</sup> COMPETITION COMM'N OF INDIA, Order on Combination Registration No. C-2018/05/571 (2018).

<sup>25</sup> US vs. Aluminium Co of India, 148 F.2d 416

<sup>26</sup> Laura Donnellan, *The Extraterritorial Reach of Antitrust Laws: A Comparative Analysis*, 4 HIBERNIAN L.J. 242 (2003).

<sup>27</sup> *Timberlane Lumber Co. v. Bank of America, N.T. & S.A.*, 549 F.2d 597 (9th Cir.1976).

In relation to the Indian context, the doctrine has been widely recognized by the Indian courts. The same has also been given statutory recognition under Section 3, 4, 5, 6 & 32 of the Act.

#### 4. Section 32 of the Act- A Long Arm of Competition Law: An Analysis

##### 4.1 Section 32 of the Act

Section 32 of the Act, 2002, grants the CCI the authority to regulate and take action against anti-competitive conduct occurring outside India if it has a significant impact on competition within the Indian market. sec 32 says that 'any acts taking place outside India but having an effect on competition in India, can be investigated by the CCI.'<sup>28</sup> This principle broadly aligns with the Effects Doctrine. This ensures that any anti-competitive practices occurring outside the territory do not escape from the scrutiny of the Commission merely because it operates outside India. Under this sec, the CCI is granted with enormous power to inquire into any matter & pass orders in relation to any anti-competitive practice occurring outside territory of India. Prior to the 2007 Amendment of the Act, the CCI had limited powers where it could only inquire into matters but the amendment has given extraordinary powers to the CCI. The CCI has jurisdiction to deal with the following matters<sup>29</sup>:

- a. To enquire into any anti-competitive agreements including Horizontal or vertical agreements, such as cartels, bid-rigging, output control or market limitation.
- b. To enquire into Abuse of dominant position;
- c. To enquire or regulate Combinations involving mergers, amalgamations, acquisitions of share.

These matters can be investigated only if it causes or is likely to cause an AAEC in India. if any such practices does not cause AAEC in India, the commission shall not exercise extra-territorial jurisdiction. Further, the CCI is allowed to pass an interim order temporarily restraining such activities once the inquiry into such practices has begun.<sup>30</sup> The commission has its own procedure to inquire into the matter ensuring that principles of natural justice are followed.<sup>31</sup>

One of the most significant cases of extraterritorial application of the act, where CCI regulated foreign tech giants which had an effect on competition in India came in the *Google Android case*,<sup>32</sup> where CCI exercised its extra-territorial jurisdiction over Google LLC, a U.S.-based company, for violating Sec 4 by abusing its dominant position in the Android smartphone ecosystem. CCI investigated the matter & found that Google was abusing its position & was forcing the smartphone manufacturers in India to pre-install Google apps in the android phone, causing direct impact on the Indian market by restricting competition in Indian tech companies. Further, the commission imposed a penalty of Rs.1,337crores on Google LLC & the same was upheld by SC in appeal on 20.03.2023.

##### 4.2 Historical background:

Prior to the enactment of the Act, 2002, the MRTP Act, 1969 was the primary legislation dealing with restrictive or monopolistic practices opted by the enterprises to reduce competition. However, the Act was limited in nature

<sup>28</sup> Section 32, Competition Act, 2002

<sup>29</sup> *ibid.*

<sup>30</sup> *ibid*, sec 33

<sup>31</sup> *ibid*, sec 36.

<sup>32</sup> *Google LLC v. Competition Commission of India (CCI), Competition Appeal (AT) No.01 of 2023*

& did not extend its operation extraterritorially. The MRTP Commission did not have powers to investigate on foreign activities even though it affected Indian markets. This limitation was first recognized in the *Haridas case*,<sup>33</sup> wherein the SC underlined that the commission did not have extra-territorial jurisdiction to investigate & penalize the export/import cartels under the MRTP Act, 1969. Similarly, in the *ANSAC case*,<sup>34</sup> the SC had instituted an inquiry into the matter & passed a temporary injunction restraining ANSAC not to indulge into the practice of forming an export cartel as it affected the Indian market.<sup>35</sup>

Hence, to overcome this limitation, the Raghavan committee suggested introducing an independent body and giving it power to deal with export/import cartels. Thereby introducing Section 32 is an essential step to combat any anti-competitive practices occurring outside India as well. It gives extra-territorial power to the Commission thereby recognizing the effects doctrine. Further, the applicability of the doctrine arises when there is a “*direct, substantial, and reasonably foreseeable*” effect in the economy of India because of a conduct taking place outside India. It has been notified in the Competition Commission of India (General) Regulations 2009, that the extra-territorial jurisdiction can be enforced in accordance with the provisions of the Competition Act, 2002 and Code of Civil Procedure, 1908.

#### 4.3 Enforcement of CCI order

The Act under section 32 grants the commission with the power to pass any such order as it deems fit in regards to any anti-competitive practices outside India. The commission while inquiry shall follow the principles of natural justice. The CCI has been granted power to pass two types of order:

- i. As per the amendment Act, 2007, if the CCI finds that there exists no contravention of provisions of the Act, it shall pass an order by either approving such agreement or combination.
- ii. The commission, if it finds there exists any practice that causes AAEC in the Indian market, shall direct by order to discontinue such practice which distorts competition.

The commission shall further impose penalties for anti-competitive practices on such parties under Sec 27, 31 of the Act.

#### 4.4 International Cooperation: Memorandum of Understandings (MoUs) by CCI

Section 18 of the act further obliges a duty on CCI to enter into arrangements or understandings with the foreign authorities or competition regulators to achieve its objectives including eliminating practices that causes AAEC in India, to promote fair competition & protect the interests of consumers.<sup>36</sup> This includes entering into any bilateral or multilateral agreements with international authorities to promote & sustain competition. This allows the commission to collaborate with the international authorities for enforcement. The primary objective of this provision is to enhance cross-border cooperation & effectively combating anti-competitive practices involving

<sup>33</sup> *Haridas Exports v. All India Float Glass Association*, (2002) 6 SCC 6

<sup>34</sup> *American Natural Soda Ash Corporation (ANSAC) v Alkali Manufacturers Association (AMAI) & Ors*[1998] 94 Comp Cas 192 (MRTPC)

<sup>35</sup> Kartik Maheshwari & Simone Reis, *Extraterritorial Application of the Competition Act and Its Impact* (2012), [https://www.nishithdesai.com/fileadmin/user\\_upload/pdfs/Research%20Articles/Extraterritorial%20Application%20of%20the%20Competition%20Act%20and%20Its%20Impact.pdf](https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Articles/Extraterritorial%20Application%20of%20the%20Competition%20Act%20and%20Its%20Impact.pdf) (last visited Apr. 4, 2025).

<sup>36</sup> Section 18, Competition Act, 2002.

MNCs affecting the nation's economy. The very first MoUs entered by CCI was in 2011 with the Federal Trade Commission of the USA & Federal Anti-Monopoly Service (FAS) of Russia.<sup>37</sup> The recent MoUs entered by CCI includes in 2023 between CCI & Egyptian Competition Authority, in 2022 between CCI & Competition Commission of Mauritius etc.<sup>38</sup>

## 5. Conclusion

Section 32 of the Act, 2002 is a significant milestone in Indian Competition Law which ensures to promote & sustain competition by maintaining a free & fair competitive market in India by providing powers to the CCI to investigate any anti-competitive practices adopted by the foreign enterprises. CCI has successfully exercised the provision to regulate foreign cartels, abuse of dominance by foreign companies in India & foreign Combinations having AAEC in India. Section 32 perfectly aligns with Article 81 & 82 of the EC Treaty, EU & Sec 1 & 2 of the Sherman's Act of U.S, recognizing the effects doctrine. Further, this section aims to strike a balance between a nation's sovereignty & its extraterritorial reach.

## 5. References

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<sup>37</sup><https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=e2e09728ffca84f3465e6b5647c2f3b40b46c449> (last visited Apr. 4, 2025).

<sup>38</sup><https://www.cci.gov.in/public/international-cooperation/mous> (last visited Apr. 4, 2025).