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"COMPARATIVE STUDY OF COMPETITION ENFORCEMENT IN INDIA, GERMANY AND THE UNITED STATES"

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ABSTRACT

The advent of the *laissez-faire* economy has proved to be a boon for markets and consumers alike. With minimal interference from the state, the market is able to adjust to the demand as and when required. The interests of the consumers receive maximum response and they have a chance to choose goods and services from various producers and manufacturers. Thus, a free market economy is characterised by heavy competition between various producers to serve the best interests of the consumers. To uphold and protect this competitive structure of the market, a legal framework is absolutely necessary. This framework ensures that producers do not engage in activities which are detrimental to the interests of the consumers. It has been observed that competition and consumer protection play a direct and important role in promoting economic growth and reducing poverty. It stimulates innovation, productivity and competitiveness, contributing to an effective business environment[1].

Competition watchdogs play a quintessential role in actual enforcement of the law. An effective enforcement of the law leads to its effective implementation assisting in building a body of precedents which clarifies the meaning of the law for the competition agencies and enterprises alike and lends robustness and vibrancy to the legislation.

[1] *Why Competition and Consumer Protection matter?* United Nations Conference on Trade and Development, (Last visited May 25, 2020) Available at: https://unctad.org/en/Pages/DITC/CompetitionLaw/why-competition-matters.aspx.

This paper aims to do a comparative study of the structure of competition enforcement agencies in India, Germany & the United States. Following a brief outline of competition law in the countries, a detailed doctrinal study would be undertaken to understand the fundamentals of competition enforcement in those countries. A broad conclusion would then be drawn understanding the possible defects in the enforcement regimes of all the countries.

KEYWORDS:

Competition, Sherman Act, GWB, CCI, Anti-trust, Enforcement

INTRODUCTION

The jurisprudence of competition policy in India, which started way back in 1969 through the Monopolies and Restrictive Trade Practices Act, has now culminated in the Competition Act, 2002. The competition policy in India, though older than its immediate neighbours, is quite new as compared to its counterparts in the United States and the European Union. It therefore becomes necessary to do a detailed comparison between various competition regimes to merge their best practices within our framework in consonance with the Indian market and if possible to study the loopholes in other legal systems The United States has the oldest competition regime in the world whereas German competition law is considered to be the most pro-active amongst EU member states. The enforcement systems of both the countries have been tried and tested and their experience could provide a much needed guidance to India's nascent competition jurisprudence and regime.

THE ANTI-TRUST LAW AND ITS ENFORCEMENT IN THE U.S.

The Anti-Trust law of the United States does not have a single framework. Rather, multiple legislation govern the competition policy of the US market. However, two legislation are the foundation of the anti-trust policy of the United States:

The Sherman Anti-Trust Act, 1890[2]

§ 1 of the Sherman Act declares any contract, in the form of trust, conspiracy or otherwise, to be illegal if they are in restraint of trade and imposes hefty penalty in case of contravention. The prohibition of contracts in restraint of trade prohibits

[2] Sherman Act of 1890, 15 U.S.C §§ 1-7.

only those contracts which unreasonably restrain trade.[3] The United States Supreme Court in *Standard Oil Co. v. United States*[4] evolved the 'rule of reason' to interpret this provision and observed that reasonable or insignificant restraints do not violate the provisions of this section.

§ 2 of the Act further declares monopolizing, attempting to monopolize, combination or conspiracy to monopolize any part of trade or commerce to be illegal and imposes heavy penalty. However, monopoly is not always detrimental and is actually beneficial in certain cases. The courts in the United States have recognized that while monopoly has detrimental effect on the market, attempts to obtain monopoly power through legitimate means are essential for the effective performance of free-market based economy[5]. What the section prohibits is *unlawful* monopoly which requires a two-pronged test to be satisfied.[6] The person or group of persons has/have:

(i) power to exclude actual or potential competition;

(ii) Purpose to exercise that power[7].

The other provisions of the act deal with jurisdiction of courts and matters pertaining to procedure.

The Clayton Act, 1914[8]

This Act further supplements the provisions of the Sherman Act. § 2 of the Act declares illegal for any person to engage in price discrimination between different purchasers where the purchase involves commodities of same grade and quality. However, price discrimination is not per se illegal but can be claimed only when the discrimination substantially lessens competition or tends to create a monopoly or to injure, destroy or prevent competition. The section also prohibits any commission, brokerage, compensation, discount or allowance for sale or purchase of goods except for services rendered in that connection. It also declares unlawful any inducement or receiving of discriminatory price.

[3] Richard J. Pierce Jr, *Comparing the Competition Law Regimes of the United States and India*, GW L. FACULTY PUBLICATIONS (2017) https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2523&context=faculty_publications.

[4] Standard Oil Co. of New Jersey v. United States, 221 U.S. 1, 42-43 (1910).

[5] Verizon Communications v. Law Offices of Curtis v. Trinko, 540 U.S. 398,407 (2004).

[6] United States v. Griffith, 334 U.S. 100 at 107 (1947).

[7] Ibid.

[8] Clayton Act of 1914, 15 U.S.C §§ 12-27.

§ 3 of the Act further declares illegal for any person to lease, make a sale or a contract for sale of goods and other commodities, whether patented or unpatented, for use, consumption or resale or fix a price or discount or rebate on such price on the condition that the lessee or buyer shall not use or deal in the products of the competitors of the lessor or seller, where it substantially lessens competition or tends to create a monopoly. Further §7 to 9 deal with requirements for mergers and acquisitions and prohibits such M&A's which substantially lessens competition. The other sections deal with exemptions of the Act and rules of procedure.

Anti-Trust Law in the United States is enforced at the Federal level, the State Level and at the private level:

1. *The Federal Government*: At the Federal level, the enforcement of the anti-trust regime is overseen by two bodies viz.

(i) The Anti-Trust Division of the Department of Justice (D.O.J) headed by an Assistant Attorney General.

The D.O.J engages in prosecution of violations of anti-trust laws by filing criminal suits which could lead to large jail sentences or hefty fines. It can even institute a civil action through a court order forbidding future violations and requiring steps to remedy the anti-competitive effects of past violations[9]. The D.O.J also plays an advisory role and provides guidance to businesses regarding permissible conduct and also assists companies to structure and organize their operations in accordance with the legal framework.

(ii) The Federal Trade Commission (FTC)

The Federal Trade Commission or FTC was established under the Federal Trade Commission Act[10]. § 5 of the Act prohibits 'unfair methods of competition' and grants powers to the Commission to prevent such practices. The other provisions of the act ban 'unfair or deceptive acts or practices'. Though the Act is the primary statute of the FTC, a decision of the U.S. Supreme Court has made it clear that all violations of the Sherman Act entail violation of the FTC Act[11]. Therefore, the FTC has also been granted concurrent powers to enforce

[9] *Mission*, THE UNITED STATES DEPARTMENT OF JUSTICE, (Last visited at May 18, 2020) Available at: https://www.justice.gov/atr/mission.
[10] 15 U.S.C. §§ 41-58.
[11] *The Antitrust Laws*, FEDERAL TRADE COMMISSION, (Last Visited at May 18, 2020) Available at: https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws.

the Sherman Act as well as the Clayton Act[12]. When the Commissioners of the FTC have a 'reason to believe' that an anti-trust violation has occurred, they vote on whether or not to issue an administrative complaint. Once the complaint is issued, internal administrative proceedings are conducted before an Administrative Law Judge much like the regular trials. In brief, the ALJ oversees discovery, makes evidentiary rulings, conducts a trial, renders an initial decision, and drafts a written opinion containing the factual and legal basis for the decision[13]. The decision by the ALJ can be appealed to the FTC itself, which also acts in an adjudicative capacity. The FTC is not required to pay heed to the factual and legal determinations made by the ALJ and proceeds to hear the case *de novo.* A further appeal then lies to the Federal District Court consisting of generalist judges.

The authorities of both these bodies overlap to some extent, however both these agencies complement each other. The agencies divide particular industries or markets according to their expertise. Enforcement actions which include penalties are brought by both these bodies however only the D.O.J can bring criminal action. Criminal actions for violation of anti-trust laws are typically conducted before a grand jury and the D.O.J. has to prove that crime against the defendant 'beyond reasonable doubt' rather than 'preponderance of probabilities' as is the usually the test in civil matters[14].

Enforcement actions and prosecutions usually take place before Federal Courts consisting of Federal Judges, with little or no-prior experience in anti-trust, who are appointed for life. However, as mentioned above, the FTC also has an option to conduct hearings before its specialised Administrative Law judges (ALJ's).

2. *The State Government*: At the State Level, State Attorney Generals may file suits for enforcement of both state and federal laws on behalf of their citizens.
3. *Private Level*: Private parties are also entitled to file suits alleging violation of the Sherman and Clayton Acts. They can also seek court order and injunctive reliefs to prevent an anti-competitive agreement or conduct from coming into force. They may

[12] Supra note 3.

[13] DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS COMPETITION COMMITTEE Working Party No. 3 on Co-operation and Enforcement, *The standard of review by courts in competition cases – Note by the United States,* ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT 5 (June 4, 2019). Available at https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2010-present-other-international-competition-fora/standard_of_review_us-oecd.pdf

[14] Ibid at 4.

also sue for compensation and the Sherman Act grants power to the Courts to give treble damages to affected litigants.

THE GERMAN COMPETITION LAW AND THE BUNDESKARTELLAMT

The competition regime of Germany is governed by the *Gesetz gegen Wettbewerbsbeschränkungen* (GWB) or the Act against Restraints of Competition. Germany appears to have the most developed and pro-competition law of any European nation. § 1 of the Act prohibits agreements between undertakings, associations etc. which have as their object or effect the prevention, restriction or distortion of competition. The enforcement of Anti-trust law in Germany is primarily done by two bodies: The Bundeskartellamt (Federal Cartel Office) and Bundesminister fur Wirtschaft (Federal Minister for Economics). Aside from these two, there also exist State Cartel Offices, a Monopolies Commission which do not play a significant role. Even private parties may institute proceedings The European Commission also has jurisdiction over restraints of trade which affect member states of the EU. The GWB aims to prevent the following practices:

1. *Preventing Cartelization*: Price-fixing agreements and anti-competitive agreements are generally banned. However, certain agreements may be exempted if they improve production of goods or technical progress. § 3 of the Act specifically exempts cartels of small and medium enterprises if competition is not significantly affected or agreement improves competitiveness of such enterprises.
2. *Control on Abusive Practices*: § 19 of the Act prohibits the abuse of dominant position by one or several undertakings. German law considers a company to be dominant if it is not exposed to any substantial competition or has a paramount market position in relation to its competitors. § 19(2) lays down certain conditions to check whether there exists an abuse of dominant position.
3. *Merger Control:* Not all forms of merger transactions invite interference by the FCO. Only those transactions which are concentrations within the meaning of Chapter 7 § 35 of the Act and which exceed the permissible threshold of combined aggregate worldwide turnover of more than 500 million euros must be notified to the *Bundeskartellamt.*
4. *Consumer Protection:* By virtue of the 9th Amendment to the Act, the FCO can launch sector inquiries in cases of severe violations of consumer laws such as *Gesetz gegen*

den unlauteren Wettbewerb (Act against Unfair Competition). If the FCO suspects that substantial, permanent or repeated infringement of consumer protection laws will harm a large number of consumers, it can launch such inquiries. However, it cannot intervene in such matters and prosecute the violators. It only holds advisory jurisdiction.

The FCO plays the most important role in the enforcement of the GWB and does not share its authority with any other federal agency. The FCO is a completely independent agency and has no political influence. Thus, where the FCO is an independent agency, the Federal Minister of Economics is a political figure and hence its actions heavily depend on the policies of the ruling party in the Government. This sometimes leads to conflicts between the two bodies.

The structure of the FCO consists of a President, ten *Beschluflabteilunge* (Decisions Division), one Fundamental Policy Division, a European & International Division & an appeals division. The President and the Directors of the Decisions Division are appointed by the Federal Minister of Economics. The FCO initiates administrative proceedings against enterprises engaged in the violations of the GWB. The FCO also has broad powers of investigation and recovery of documents. The decisions of the FCO, given by one of its Decisions Division, can be appealed to the Higher Regional Court at Dusseldorf[15], which has a specialised anti-trust division for the purpose of hearing competition matters[16]. A further appeal only on points of law may be presented to the *Bundesgerichtshof* (Federal Court of Justice/German Supreme Court) if the Higher Regional Court grants a leave to appeal[17].

The role of the Federal Minister of Economics (FME) is extremely limited and its most significant power is the *Ministererlaubnis* or Minister Authorization which relates to granting exemptions to Cartels from certain provisions of the GWB if necessary for general economy and common welfare[18]. The FME may also override the decision of the FCO. Thus, the FCO is essentially a branch of the FME.

THE COMPETITION ACT, 2002 AND THE CCI

The Indian competition law can be found in the Competition Act, 2002, which replaced the obsolete Monopolies and Restrictive Trade Practices Act, 1969. The Competition Act primarily governs prohibits three activities:

[15] Gesetz gegen Wettbewerbsbeschränkungen [GWB] [Competition Act], Aug.26, 1998, BGBl. I, § 63, (Ger.).
[16] ibid, § 91 (Ger.).
[17] ibid, § 74 (Ger.).
[18] ibid, § 42, (Ger.).

1. Anti-Competitive Agreements: Section 3 of the Act prohibits agreements which are anti-competitive in nature. Sub-sections (3) and (4) then lists out the agreements which are considered to be anti-competitive consisting of Horizontal Agreement and Vertical Agreements respectively. Not every agreement is anti-competitive if it falls amongst the one listed out under Sections 3(3) and (4). The deciding criteria whether an agreement is prohibited depends on whether it causes Appreciable Adverse Effect on Competition (AAEC) in India. AAEC is determined on a case-by-case analysis and certain factors have been listed out under Section 19(3) of the Act which must be considered to determine AAEC.
2. Abuse of Dominant Position: Section 4 of the Act prohibits abuse of monopoly power or dominant position by any enterprise. The Explanation appended to Section 4 defines dominant position to be a position of strength by virtue of which an enterprise can operate independently of competitive forces and can also affect its competitors or consumers or the relevant market in its favour. A firm which enjoys a dominant position is said to abuse it if it does acts corresponding to those mentioned in clauses (a), (b),(c),(d) or (e) of Section 4(2) of the Act. Furthermore, certain factors laid down under Section 19(4) must be considered to determine whether abuse of dominant position exists.
3. Combinations causing AAEC: Section 5 of the Act has defined combinations which include mergers, acquisitions and amalgamations and has laid down thresholds. Any combination which exceeds the thresholds mentioned under Section 5 must notify the competition regulator i.e. the Competition Commission of India by a notice under Section 6(2). If the Commission is of the opinion that the said combination causes AAEC in India, it shall direct that such combination shall not take effect.

The competition watchdog in India is the Competition Commission of India. The Commission consists of a Chairperson and not more than six other members. They are appointed on the basis of the recommendation of a Selection Committee consisting of the Chief Justice of India or his nominee, Secretary in the Ministry of Corporate Affairs, Secretary in the Ministry of Law and Justice and two eminent experts in the field of economics, business, commerce, law international trade etc.[19]

[19] The Competition Act, No. 12 of 2003, INDIA CODE, § 9.

The Commission conducts inquiries into anti-competitive agreements and abuse of dominant position suo moto or upon information or upon reference by the Government or Statutory authority. The Commission is assisted by the Office of the Director General who conducts investigations into alleged contravention of the provisions of the Act when so directed by the Commission[20]. The decisions passed by the Competition Commission of India can be appealed to the Appellate Tribunal i.e. the National Company Law Appellate Tribunal. A further appeal then lies to the Supreme Court of India[21].

NOTABLE SHORTCOMINGS IN THE GERMAN AND AMERICAN ENFORCEMENT SYSTEMS

The Competition Act, 2002 is mostly drawn from the anti-trust regimes of the United States and Germany. The legislation is two decades old whereas its counterparts in the US and Germany have a rich history and the Indian competition authorities can refer to these to construct a regime suitable to the Indian market. While the Competition Act draws most of its substantive provisions from the U.S. law and the German GWB, there are, in the author's opinion, certain points of defect in the enforcement procedures of these systems, which are absent in India:

1. *Private litigation of Competition Matters in the United States and Germany:*
   The United States regime allows private parties to initiate anti-trust proceedings against enterprises in Federal Courts. This proves to be extremely harmful as, without the expertise of the Department of Justice and the Federal Trade Commission, the Federal Courts, which are inexperienced in microeconomics and competition policy, may give decisions of unsound reasoning. Since neither the D.O.J nor the FTC are parties to such litigations, lack of relevant expertise of the Federal Courts is apparent. When a court decides a case in which the only participants are private parties, they often make serious errors that have the potential to cause a great deal of harm to the performance of markets[22]. In such private competition litigations, parties hire their own economic experts to conduct analysis and submit a report as expert testimony. In most cases, the

[20] Ibid, § 41.
[21] Ibid, § 53T.
[22] Supra note 3.

judge does not appoint a neutral economic expert and leaves it to the parties to litigate the economic analysis underlying the theory of the case[23].

Even in Germany, private suits can be brought for the violation of the GWB, however, the Courts always decide such cases in close consultation with the Federal Cartel Office. Hence, as far as Germany is concerned, sound interpretation is ensured.

2. *Jurisdiction of Civil Courts in the United States:*

The enforcement actions by the D.O.J and the FTC are usually brought before the Federal Courts, which are again inexperienced in competition litigation, microeconomics and anti-trust policy. The FTC has an option of conducting a hearing in-house before one of its experienced Administrative Law judges (ALJ's) after which appeals invariably go to the full Commission. A further appeal then lies to the Federal Appeals Court which are, similar to Federal District Court, less skilled to determine such decisions. The process is also extremely time-consuming taking 12-24 months[24]. While the Federal Judges are excellent lawyers with superb legal training, they have no formal training as far as economics is concerned and have to completely depend on the assistance of the D.O.J and the FTC. Where the D.O.J and FTC are not parties, Courts are completely on the mercy of the lawyers litigating before them which leads to unsound judgments.

3. *Considerable Political Influence over Enforcement Agencies:*

The most substantial defect in the U.S. and German anti-trust regime is that the enforcement agencies of both the systems, though highly experienced, can be politically influenced to a great extent.

I. The United States

The United States Department of Justice is headed by the Assistant Attorney General for Anti-Trust who reports to the Attorney General, both of whom are appointed by the President subject to confirmation of the Senate. The Department of Justice is essentially an executive department of the government of the United States" with the Attorney General as its head[25].

The Commissioners of the FTC are also appointed by the President subject to the confirmation of the Senate but the characteristics of the FTC are believed to

[23] Supra note 13 at 6.
[24] Supra note 3.
[25] *An Act to establish the Department of Justice*, LIBRARY OF CONGRESS, (Last Visited at May 22, 2020) Available at: https://www.loc.gov/law/help/statutes-at-large/41st-congress/session-2/c41s2ch150.pdf

make it somewhat more independent of the President and somewhat more responsive to the wishes of Congress[26]. Though vastly experienced in anti-trust policy, Commissioners belong to either the Republican or Democratic Party. In a capitalist market system, if the Government and Regulatory agencies go hand-in-hand, achieving true consumer protection is difficult. Often the President does not treat appointments to the Commission as seriously as they treat appointments to the Cabinet Departments and without a compelling incentive to select candidates with superior qualifications, the President may be more likely to use appointments to reward the politically faithful[27]. The application of the antitrust laws is influenced to a large degree by the public policy of the current administration[28].

II. The Federal Republic of Germany

There is a 'natural relationship of tension' between the Federal Cartel Office and the Federal Minister of Economics. This is because the FCO is subordinate to the FME and since the FME is a governmental cabinet, it is politically responsive whereas the FCO is bound only by the instructions of the GWB and not political considerations. Tension arises when FME tries to mould competition for political purposes. Further points of conflict arise when the FME tries to pursue industrial policy objectives which are in conflict with the dogmatic application of the GWB which the FCO pursues. The FME is politically responsible for the success of the economy. Its interests are therefore not necessarily in maintaining a competitive market, but rather in the short term success of the economy as defined by the electorate[29].

A very recent example was the Joint Venture between Miba AG and Zollern GmbH wherein both the companies had planned to conduct their respective activities in hydrodynamic plain bearings in a joint venture in which Miba was to hold 74.9 percent and Zollern 25.1 percent. The FCO prohibited the JV as the two companies were major competitors in the market which was already highly

[26] Supra note 20.
[27] William E. Kovacic, *The Quality of Appointments and the Capability of the Federal Trade Commission*, 49 ADM. L. REV. 915 (1997).
[28] Andre R. Fiebig, *The German Federal Cartel Office and the Application of Competition Law in Reunified Germany*, U. PA. J. INT'L BUS. L. (2003) https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1531&context=jil.
[29] Supra note 26.

concentrated. Both the companies had a very strong position in the supply of bearings and if the merger were to go through buyers of plain bearings in the respective industrial sectors in Germany and other European countries would lose an important alternative supplier[30]. The FCO also took into consideration that no new companies would enter the market due to lack of extensive knowledge of technological development, manufacturing processes and heavy investment.[31] Miba and Zollern applied for Ministerial Authorization to the FME under Section 42 of the GWB which was granted. The Federal Minister of Economics held that the positive effects of the transaction for the environment and climate protection outweigh the competitive disadvantages of the merger[32]. Such a political intervention in the application of competition law is defined as the 'natural relationship of tension between the FCO and the FME as it conflicts with the purely legalistic approach to competition law which the FCO adopts.

SUGGESTION AND CONCLUSION

The Competition Commission of India applies a strictly legalistic approach in the application of the Competition Act. Provisions have been incorporated in the Act itself to ensure exemption of provisions if enterprises act in public interest. Provisions also exist by which certain firms engaging in anti-competitive agreements can be exempted if they promote supply-distribution chain, technical efficiency, consumer benefits etc. The factors laid down under Section 19(3), Section 19(4), Section 20(4) of the Act have inherent exceptions in them. . *In Neeraj Malhotra v Deustche Post Bank Home Fund Limited (Deustche Bank) and ors*[33] the Competition Commission had held that it is mandatory for the Commission to refer to factors under Section 19(3) to determine whether the agreement actually causes an appreciable adverse effect on competition (AAEC). In *Association of Third Party Administrators v. General Insurers (Public*

[30] *Bundeskartellamt prohibits merger between Miba and Zollern in bearing production sector,* BUNDESKARTELLAMT.DE (Jan. 17, 2019) https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2019/17_01_2019_Miba_Zollern.html.

[31] Ibid.

[32] Dr. Daniela Seeliger et al, *German Federal Minister of Economics and Energy overrides the prohibition of a slide-bearing business joint venture for environmental policy reason,* LINKLATERS (Aug. 27, 2019) https://www.linklaters.com/en/insights/publications/2019/august/german-federal-minister-overrides-the-prohibition-of-a-slide-bearing-business-joint-venture.

[33] Neeraj Malhotra v Deustche Post Bank Home Fund Limited (Deustche Bank) and ors, Case No. 05 of 2009.

Sector) Association of India[34] the Competition Commission further held that a JV which was made with an object to enhance efficiencies cannot be construed as cartel like conduit. If the proposed JV proves to be inefficient, gradually customers would start switching to other companies and the inter-brand competition would resolve the position in the market. Thus the legalistic approach is benefitted by the fact that the basic elements of the Act are precise and excellent. Unlike the United States and Germany where multiple departments enforce competition law, India is benefited by a single unified independent body, considerably free from political influence and is able apply the competition law strictly and legally.

However, India can learn a lot from its counterparts in Germany and the United States. Substantive provisions of the Act can benefit from rich jurisprudence of both the systems. As far as procedural enforcement is concerned, India can consider adopting following changes:

1. A system can be adopted wherein private parties who have faced damages due to the violation may file suits for compensation against enterprises, only if the CCI or the NCLAT has declared that the enterprise has violated the Competition Act. The treble damages remedy in the U.S. anti-trust law has proved to be a powerful deterrent against potential violators.
2. The Appeal system of Germany is most sophisticated as the GWB ensures that civil courts to which appeals from the FCO lie are specialised in competition matters. Separate anti-trust division in the Courts ensures that a uniform body of competition policy emerges and is sustained. An appeal to the Federal Court of Justice lies only on points of law and only when the Higher Regional Court grants leave to appeal. India needs to look towards Germany and improve its competition procedure.
3. The current appeal system needs to be relooked at as NCLAT is already dealing with multiple appeals from the CCI, NCLT and the Insolvency and Bankruptcy Board. It is not new that the Supreme Court of India is also severely burdened with a huge pendency of cases. The appeal granted under Section 53T of the Competition Act must also be qualified and be allowed only on points of law. A two-tier system suffices for Competition purposes.

Lastly, the Competition Act is relatively a new legislation and has ample space to grow. While this growth gains momentum, best practices from throughout the world should be incorporated and moulded so as to suit our needs.

[34] Association of Third Party Administrators v. General Insurers (Public Sector) Association of India, Case No. 107 of 2013.