ANTI-COMPETITIVE AGREEMENT IN CEMENT INDUSTRY

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ABSTRACT

Numerous agreements are entered into by businesses with other businesses and firms for business expansion, growth, and innovative technological assistance. A cartel is a group of independent market participants who collude with each other in order to improve their profits and dominate the market. The process is known as Cartelisation. It is a type of anti-competitive agreement that modern businesses have chosen to accelerate financial rewards.

This research paper delves into the prevalence and consequences of anti-competitive practices within the global cement industry. Cement is a vital component of infrastructure development, making it a key sector for economic growth. This study employs a combination of quantitative analysis and case studies to examine the impact of these practices on market competition, consumer welfare, and economic efficiency.

Keywords: Anti-competitive agreement; Cartel; collusion; cement; competition law

I. INTRODUCTION:-

The cement industry plays a pivotal role in the global construction sector, serving as the foundation for infrastructure development and economic growth. However, this crucial sector has not been immune to concerns related to anti-competitive practices, which have the potential to distort market dynamics, hinder innovation, and harm consumers and competitors alike. This research paper delves into the multifaceted issue of anticompetitive practices within the cement industry, aiming to shed light on the various dimensions, causes, and consequences of these practices. The cement industry is characterized by a high level of concentration, with a few major players dominating the market. This concentration can create an environment conducive to anticompetitive behaviour, such as collusion, price-fixing, and market allocation. Such practices can stifle competition and lead to higher prices for consumers, limiting their choices and impeding economic growth. Therefore, understanding the nature and extent of anticompetitive practices within the cement industry is of paramount importance. This research paper will begin by providing an overview of the cement industry, including its structure, key players, and market dynamics. It will then delve into a comprehensive examination of the various anticompetitive practices that have been identified within the industry, including bid-rigging, price-fixing, market allocation, and abuse of dominance. Due to inequality within the industry, the history of the cement industry is very dubious. Being cement has an inelastic demand due to its oligopolistic nature. The main market for cement is real estate or infrastructure. Despite the trend of rising demand and consumption, the growth of cement companies has been uneven. Maintains striking uncertainty about its actions, pointing somewhere suspicious in character. Without a doubt, the growth of the cement industry has greatly increased, but it is also true that a small number of sellers still control the majority of the market. Leading businesses use their monopoly power to maintain their dominance in order to generate enormous profit. They organise a conspiracy and collaborate with other businesses to do this in order to reduce competition. Some businesses are willing to participate in this collusion, and if some businesses object, then the market leaders will use deceptive strategies to plan their exit from the market. Because small businesses cannot compete for an extended period of time, the dominant companies purposefully keep their product prices low. If they don't, they are forced to engage in cartelization or leave the market. Some businesses may accept compensation or ancillary contracts in order to avoid entering the market if they are unable to combat such tactics.

Anti-competitive Agreement:- Anti-Competitive Agreement: Any arrangements or agreements which have appreciable adverse effect on competition (AAEC) are called as an anti-competitive agreement which is void under section 3 of Competition Act, 2002. All such arrangement or mutual understanding at any stage whether such agreement is made on considering the price of the product or agreement made for production of goods or distribution or agreement made on supply or it can be on provision of services, the same shall be void under competition law. There two different kind of anti-competitive agreement viz., horizontal agreement and vertical agreement. Horizontal agreements are those agreement which have appreciable adverse effect on competition by mutual understanding between competitors in a same stage including agreement between one firm with another firm in a same level either at production level, supply or distribution level[1]. Whereas, vertical agreement is those agreement which have appreciable adverse effect on competition having mutual understanding between different stage for instance one particular company have agreement with another company supply for not to enter into the market.

II. Historical perspective on anti-competitive practices in cement industry.

A historical perspective on anticompetitive practices in the cement industry reveals a long-standing pattern of behaviour characterized by collusion, market dominance, and regulatory responses. Here is an overview of key historical developments in this context:

1. Early History (19th Century - Early 20th Century):

- The cement industry began to emerge in the 19th century with the invention of Portland cement.
- Initially, the industry was highly fragmented with numerous small-scale producers.
- Limited competition due to regional market structures allowed some companies to gain dominant positions within their markets.

2. Formation of Cartels (Late 19th Century - Early 20th Century):

- In response to pricing pressures and competition, cement producers in various countries

[1]Vijay Kumar Singh, "Competition Law Dominant Position and Its Abuse: Meaning of Dominant Position" SSRN (September 2014) Available at SSRN: https://ssrn.com/abstract=2973770 or http://dx.doi.org/10.2139/ssrn.2973770

formed cartels or price-fixing agreements.

- The most notable example was the Cement Trust in the United States, formed in 1900, which controlled prices and production.

3. Interwar Period (1918 - 1939):

- Collusion and cartels continued during the interwar period, contributing to stability in cement prices.
- Governments in some countries, including the United States and the United Kingdom, took antitrust actions against cement cartels.

4. Post-World War II Era (1940s - 1960s):

- After World War II, many countries experienced rapid economic growth and increased demand for cement.
- Some cement companies continued to engage in price collusion and market-sharing agreement.
- Regulatory authorities in various countries, such as the U.S. Department of Justice, actively investigated and prosecuted anticompetitive practices.

5. 1970s - 1990s:

- The cement industry continued to consolidate, with larger companies acquiring smaller ones.
- Dominant multinational corporations emerged as key players in the global cement market.
- Regulatory efforts, particularly in the European Union, aimed at promoting competition within the industry.

6. Late 20th Century - Early 21st Century:

- Several high-profile cases of cartel behaviour came to light in different parts of the world, including Europe and North America.

- Regulatory agencies in various countries intensified their scrutiny of the industry.

7. 21st Century:

- The cement industry faces ongoing challenges related to anticompetitive practices, including allegations of price-fixing and market division.

- Some countries have implemented stricter antitrust regulations, while others have increased fines for anticompetitive behaviour.

8. Present Challenges and Trends:

- Despite regulatory efforts, market concentration and anticompetitive practices remain concerns in the cement industry, particularly in developing economies.

- Environmental sustainability concerns and the development of alternative construction materials are also shaping the industry's landscape.

In summary, the cement industry's history is marked by a recurring pattern of anticompetitive practices, including collusion and market dominance. While regulatory responses have evolved over time, addressing these challenges remains an ongoing endeavour for competition authorities and policymakers around the world.

III. COLLUSION IN CEMENT INDUSTRY

- **Definition of collusion**- A non-competitive, covert, and occasionally illegal agreement between rivals that aims to upset the market's equilibrium is called collusion. Collusion occurs when individuals or businesses that would ordinarily compete with one another decide to band together instead in order to gain an unfair competitive advantage[2]. The parties involved in a conspiracy may decide to work together to control the supply of a good on the market or to agree on a particular price point that will enable the partners to maximise their profits at the expense of other rivals. It is typical of duopolies.[3]

[2] "Algorithms and Collusion: Competition Policy in the Digital Age" OECD (2017), available at: www.oecd.org/competition/algorithms-collusioncompetition-policy-in-the-digital-age.htm

[3] Julie Young, " collusion: explanation, examples and preventive steps" Investopedia, December28,2020

Collusion is a common practice among firms in oligopolistic industries, where they often engage in secret agreements to dominate the market, exert control over prices, and mimic the behaviour of a monopoly. The clandestine nature of collusion is driven by its illegality in the United States under antitrust laws. Collusion can manifest in two primary forms: explicit collusion, involving formal agreements among industry rivals to manipulate the market, and implicit collusion, where firms coordinate their actions informally through interdependence. Oligopoly firms resort to collusion as one of two strategies to reduce competition, with the other being mergers.

Collusion serves as a defining characteristic of oligopolistic sectors, as intense competition and the interconnected decision-making processes among these firms often encourage them to cooperate. This cooperation is a means of minimizing competition among rival oligopolistic entities by acting in concert, ultimately affecting market dynamics and outcomes[4].

- **Types of collusion**

1. Tacit collusion:- Tacit collusion is a situation where market participants allow a dominant company to dictate price changes. This leading company wields significant influence over the pricing of goods and services within the industry.

   Once tacit collusion is established, the dominant firm typically sets prices at relatively high levels. This pricing strategy allows smaller, less cost-efficient firms in the market to still make profits. For instance, major players in industries like mortgages or petroleum might establish the pricing framework that other suppliers in the market follow.

   In most cases, consumers may not immediately notice any price increases, and they are unlikely to shift their demand because most companies in the market are applying similar prices. This practice is most commonly observed in markets where a small number of large-scale companies have substantial control, and it is often undertaken to reduce uncertainty within the industry.

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[4] "COLLUSION" AmosWEB LLC 2000-2024, Accessed: (January25 2024), available at: https://www.amosweb.com/cgi-bin/awb_nav.pl?s=wpd&c=dsp&k=collusion

2. Formal collusion:- Formal collusion refers to the cooperation of competing companies in a structured manner, where they agree to collaborate in setting prices instead of engaging in competitive pricing practices. This often takes the form of a cartel, which enables these companies to jointly determine an industry price that ensures profitability for all members.

   Within a cartel arrangement, the participating companies may decide to implement production quotas for each member to uphold the agreed-upon price. For instance, in the oil industry, OPEC serves as an example of an organization comprising oil-producing countries responsible for establishing and regulating oil prices.

3. Price leadership:- Price leadership collusion occurs when a single seller establishes a price for a product, and other sellers in the market follow suit by adopting that price as the prevailing market rate. This arrangement enables competing companies to charge elevated prices and, as a result, generate increased profits without the need for direct collusion with their rivals.[5]

IV. MARKET DOMINANCE

- Identification of major players in the global cement industry

The global cement industry is a highly competitive sector with numerous major players, each operating in various regions around the world. Some of the prominent companies in the global cement industry, include:

- Lafarge Holcim: Lafarge Holcim is one of the largest cement producers in the world, with a strong presence in various countries. It was formed through the merger of Lafarge and Holcim.

- Cemex: Cemex is a Mexican multinational company and one of the largest cement producers globally. It operates in over 50 countries.

- Heidelberg Cement: Based in Germany, Heidelberg Cement is another major player

[5] CFI TEAM "Collusion and its types" CFI TEAM, available at: https://corporatefinanceinstitute.com/resources/economics/collusion/ (Last modified: Jan 09, 2023)

with operations in more than 40 countries. It is known for its strong global presence.

- China National Building Material (CNBM): CNBM is a state-owned enterprise in China and one of the largest cement and building materials companies globally.
- Anhui Conch Cement: This Chinese company is one of the largest cement producers in the world, with a significant market share in China's domestic market.
- UltraTech Cement: UltraTech, based in India, is the largest manufacturer of grey cement, ready mix concrete, and white cement in the country. It is a subsidiary of Aditya Birla Group.
- Dangote Cement: Dangote Cement, headquartered in Nigeria, is one of the leading cement producers in Africa and has expanded its operations to other parts of the world.
- Votorantim Cimentos: This Brazilian cement company has a strong presence in Latin America and other international markets.
- Taiwan Cement: Taiwan Cement is one of the largest cement producers in Taiwan and has a growing international presence.
- Buzzi Unicem: Buzzi Unicem is an Italian multinational company with a significant presence in Europe and the United States.

- **Factors contributing to market dominance**

The Act expressly lays down factors that are to be taken into account to determine dominant positions in section 19(4) of the Act. The rationale behind this is that while assessing the dominant position of the undertaking it is important to consider all the constraints present in the market which hinders the enterprise's ability to act independently and affect the relevant market in its favour.[6]

- **Determination of Dominant position:-**

It's essential to emphasize that determining the dominance of an entity within a relevant market

[6] *Competition Act 2002, Provisions Relating To Cartels*, available at: www.cci.gov.in/menu/cartels.pdf

is a matter that depends on the specific circumstances and facts of each case. The selection of factors for assessing dominance should not be treated as a rigid checklist to be mechanically applied in every investigation. Instead, these factors must be thoroughly analyzed in the context of the unique factual details of each case.

When evaluating the relative position of strength based on parameters such as the size and resources of an enterprise or the significance of competitors, as outlined in clauses (b) and (c), it is crucial not to restrict this assessment solely to the confines of the relevant market. In fact, limiting the evaluation in this way would defeat the very purpose of these parameters. The comparison should encompass the overall size and resources of an enterprise or the overall significance of a competitor, rather than focusing solely on their specific presence in a particular product or geographic market.

V. Market share

The process of establishing dominance within an enterprise or group in the relevant market is a fundamental prerequisite before investigating any potential abuse of that dominant position. India, in alignment with global practices, has moved away from relying solely on a numerical criterion like a 25% market share to classify an undertaking as dominant. Instead, it has adopted a comprehensive approach that considers both structural and behavioral aspects. Nevertheless, the market share held by a particular entity in the relevant market remains a crucial factor when determining whether it holds a dominant position. In certain jurisdictions, having a market share exceeding a specified threshold creates a presumption of dominance, though this presumption can be challenged by presenting contrary evidence.

The primary focus for the Competition Commission of India (CCI) typically revolves around assessing the current market share, especially since the provisions pertain to existing dominance. However, historical data may hold relevance in markets where infrequent substantial bulk orders are common. It's worth noting that in-house production is generally not factored into the calculation of market share.

Additionally, insights from competition literature suggest that significant fluctuations in market share can be indicative of effective competition within the relevant market. Furthermore, if the market leader has managed to maintain or consistently increase their market share over time, it can be seen as evidence of a dominant position.

- **Calculation of market share**

When determining market share, there are several factors to consider in the choice of measurement:

1. Production, Sales, or Capacity: Typically, market share is calculated based on an undertaking's sales to direct customers within the relevant market rather than the total production, which can fluctuate with changes in inventory levels. Sometimes, market share may also be assessed based on an undertaking's capacity to meet the demand of the relevant market.

2. Sales Value: When assessing market share based on value, it is calculated by considering the price charged to an undertaking's direct customers. This takes into account the monetary value of the sales made in the market.

3. Choice of Exchange Rates: In cases where the relevant geographic market is international, determining market shares by value can be complex due to fluctuations in exchange rates over time. In such situations, it may be appropriate to consider a range of exchange rates over a period and assess how the analysis is affected by the use of different exchange rates.

These considerations help ensure a more accurate and comprehensive evaluation of an undertaking's market share, taking into account variations in production, sales, value, and exchange rates, particularly in international markets.

- **Examination of Market share and concentration ratios:-**

Examining market share and concentration ratios is crucial for understanding the competitive dynamics and market structure in the cement industry. These metrics provide insights into the level of competition and the dominance of key players. Here's an examination of market share and concentration ratios.

- **Market Share Analysis**

1. Identification of Key Players

To understand market share in the cement industry, it's essential to identify the major companies operating in the sector. These often include multinational corporations and regional players.

2. **Market Share Calculation**

Market share is typically calculated as the percentage of total industry sales or production volume held by a specific company. It can also be measured in terms of revenue or capacity.

3. **Regional Variations**

Market share analysis should account for regional variations. Some companies may dominate in specific geographical areas, while others have a more global presence.

VI. Concentration Ratios

Definition of Concentration Ratios

Concentration ratios, such as the Herfindahl-Hirschman Index (HHI), measure the degree of market concentration in an industry. HHI is calculated by squaring the market share of each firm in the industry and summing these values.

1. **Interpretation of Concentration Ratios**

A higher HHI score indicates greater market concentration, while a lower score suggests a more competitive market. Regulatory authorities often use concentration ratios to assess the competitive landscape.[7]

2. **Implications of High Concentration**

High concentration ratios can imply market dominance and potential anticompetitive behavior. Regulators may scrutinize industries with elevated concentration ratios more closely.

In the Indian scenario, regulatory challenges related to anticompetitive practices in the cement industry are of significant concern. Understanding the role of competition authorities and regulatory bodies, the challenges they face in detecting and prosecuting such practices, and

[7] Will Kenton,"concentration ratio :definition and how to calcite with formula"investopedia,(sep06,2020)

examining relevant case studies can provide insights into how competition regulation operates in India.

VII. Role of Competition Authorities and Regulatory Bodies in India

1. Competition Commission of India (CCI)

The CCI is the primary regulatory body responsible for enforcing competition laws in India. It plays a crucial role in investigating and penalizing anticompetitive practices in the cement industry.

2. Sectoral Regulators

In addition to the CCI, sectoral regulators like the Ministry of Commerce and Industry, and state-level agencies also oversee aspects of the cement industry, including pricing and quality standards.

VIII. Challenges in Detecting and Prosecuting Anticompetitive Practices in India

1. Lack of Awareness

Many businesses, especially small and medium-sized enterprises (SMEs), may not be fully aware of competition laws, hindering the reporting of anticompetitive behaviour.

2. Collusion in Bid Rigging

Detecting collusion and bid rigging, common anticompetitive practices in procurement and tender processes, can be challenging due to their secretive nature.

3. Complex Market Dynamics

The Indian cement industry exhibits complex market dynamics, with regional variations and a mix of large and small players. This complexity can make it harder to identify anticompetitive practices.

IX. Case Studies Highlighting Regulatory Responses and Outcomes in India

1. Cement Cartel Case

In 2016, the Competition Commission of India (CCI) investigated a complaint filed by the Builders Association of India (BAI) against cement firms and the Cement Manufacturers Association (CMA), accusing them of engaging in cartelization. The CCI concluded that ten cement companies, along with their trade association (CMA), had violated the Competition Act, 2002, which prohibits anti-competitive agreements, including cartels.

The CCI's order highlighted that these cement companies utilized the CMA platform to exchange information on prices, capacity utilization, production, and dispatch. This collaborative sharing of details led to a restriction in production and supplies within the market, thereby violating the provisions of competition law.

Additionally, the CCI determined that the cement companies were collectively involved in setting cement prices. As a consequence, the CCI levied a total penalty of ₹6,300 crore on the top ten cement companies and their trade association (CMA).

In the event of being found culpable of cartelization by the CCI, cement companies could potentially encounter substantial penalties. These penalties might amount to up to three times their annual profits for each year the cartel persists or ten percent of their annual turnover for each year of the cartel's continuation, whichever is greater.

This case highlighted the CCI's commitment to curbing anticompetitive practices.[8]

2. **Holcim-Lafarge Merger (2015)**

On July 14, 2014, the Competition Commission of India received a notice under Section 6(2) of the Competition Act, 2002, submitted by Holcim Ltd. and Lafarge S.A. This notice was filed with the Commission following the execution of a combination agreement between the two parties on July 7, 2014. The board of directors of Holcim and Lafarge issued an announcement on March 20, 2015, detailing revised terms in the Combination Agreement, including changes to the exchange ratio and certain governance provisions. These modifications were communicated to the Commission in a letter dated March 24, 2015.

The Commission received this information in accordance with Regulation 16 of the Competition Commission of India (Procedure in regard to the transaction of business relating

[8] Builders Assn. of India v. Cement Manufacturers Assn., 2012 CCI 42.

to combinations) Regulations, 2011. It was decided to take note of the information and review the Combination Agreement in light of the proposed changes. The Competition Commission of India (CCI) had approved the merger for a second time in February after Lafarge told the regulator that it would sell its entire assets worth about Rs. 10,000 crore. Lafarge faced obstacles in selling certain plants due to the enactment of the Mines and Minerals (Development and Regulation) (Amendment) Act, which prohibited the transfer of rights to limestone mines associated with cement plants. In response, Lafarge submitted a revised proposal for divesting its entire assets, which the CCI approved on February 2, 2016, incorporating the suggested modifications.

In its earlier order on March 30, 2015, the CCI had restricted entities with a stake exceeding 5% in the relevant markets from bidding on the assets offered for sale. The initial assets for sale were located in Chhattisgarh and Jharkhand. This restriction prevented Dalmia Cements from participating in the bidding process, becoming a contentious issue in the challenge against the initial allocation. The proposed merger between Holcim and Lafarge raised concerns about its impact on competition in the Indian cement market. The CCI approved the merger with certain divestiture conditions, demonstrating its role in safeguarding competition[9]

- **Ongoing Investigations**

The CCI continues to investigate anticompetitive practices in the cement industry, indicating ongoing regulatory scrutiny.

- **Fines and Penalties**

The CCI has imposed fines and penalties on cement companies found guilty of anticompetitive behavior, serving as a deterrent.[10]

- **Enforcement and Compliance**

Regulatory actions underscore the importance of enforcement and compliance with competition laws to ensure a competitive and fair business environment in India.

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[9] Lafarge India Ltd. V.CCI, 2015 COMPAT 892.
[10] The *Competition Act 2002,*available at:
www.cci.gov.in/menu/cartels.pdf, (accessed on: Feb 01,2015)

In the Indian context, competition authorities like the CCI play a critical role in addressing anticompetitive practices in the cement industry. Case studies demonstrate their efforts to enforce competition laws and promote fair competition.[11]

X. CONCLUSION:

In conclusion, anticompetitive practices in the cement industry have posed significant challenges to fair competition, economic efficiency, and consumer welfare. This analysis has examined various aspects of these practices, including collusion, market dominance, regulatory challenges, and policy implications. Here are the key takeaways:

1. Collusion and Market Dominance:

The cement industry has a historical record of collusion, with companies engaging in price-fixing agreements, production quotas, and market-sharing arrangements.

Market dominance is often driven by economies of scale, barriers to entry, and regional concentration, allowing dominant firms to exert pricing power.

2. Regulatory Challenges:

Competition authorities and regulatory bodies, such as the Competition Commission of India (CCI), play a critical role in combating anticompetitive practices.

Detecting and prosecuting anticompetitive practices in the cement industry can be challenging due to a lack of transparency and complex.

XI. Recommendations for Strengthening Competition in the Cement Industry

- **Enhanced Transparency**

Advocate for increased transparency in pricing, production, and distribution processes within the cement industry to discourage collusive practices.

- **Market Surveillance**

[11] The competition Act 2002, No. 12, Acts of Parliament, 2003, s.41

Propose the establishment of market surveillance mechanisms to monitor and detect anticompetitive behaviour, including collusion and predatory pricing.

- **Whistle blower Protection**

Suggest the implementation of whistle blower protection programs to encourage individuals within the industry to report anticompetitive practices without fear of retaliation.

- **Sector-Specific Regulation**

Consider sector-specific regulations addressing issues unique to the cement industry, such as capacity utilization and regional market dynamics.