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Locating the Contours of Sustainability and Environmental Protection Within Competition Law in India: Swinging in Tandem or Isolation?

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ABSTRACT

Environmental policy plays a major role in integrating environmental protection goals into economic policy areas. Environmental deterioration will proceed rapidly until this intersection is successfully achieved. The paper uses European Green Deal as a reference for fostering sustainable development goals through competition laws. This paper discusses sustainability in the context of the competition laws of various jurisdictions such as the European Union (EU), the United States (US), the United Kingdom (UK), and India. While highlighting conflicts around the intersection of competition law and environmental policies, this paper also provides their solution for making competition law environment-friendly. It suggests implementing such laws to promote sustainability and progress toward climate neutrality.

INTRODUCTION

A recent ‘Hindu article titled “Climate change fueling the rise in extreme weather events” discussed the repercussions faced by forecasting agencies to make predictions accurately. The gist of the article revolved around how climate change has increased the instability in the atmosphere. One can assess that if the right actions, whether at an individual or global level, are not taken, it can further lead to tragic consequences. Environmental policy plays a major role in integrating environmental protection goals into economic policy areas. Environmental deterioration will proceed rapidly until this intersection is successfully achieved. Various efforts are being made, and initiatives are being taken to prioritize environmental protection through various laws, regulations, and schemes. The efforts of such nature are focused on one thing: Sustainable Development (World Commission on Environment and Development 1987). According to eminent economist Sir Nicholas Stern, “Climate change is a result of the greatest market failure the world has seen.” He opined that the market price does not include the “climate and environment cost” caused by greenhouse gas emissions and pollution, implying that the price of a product does not accurately reflect its true cost. Such “negative externalities” are not reflected in the price and are borne by society. The consumers and others pay these costs later, however, not in monetary terms but as a “tragedy of the commons” in the form of natural calamities, diseases, and health concerns caused by pollution, debilitated resources, or even societal instability. One can say that the market has a direct impact on our environment. The need of the hour is to bring both under the same regime (Stern 2007).

Governments have become more conscious of the market behavior in determining the goals they set to combat climate change, and their prime focus is to ensure that their efforts help them achieve the same. Competition law, therefore, plays a significant role in determining the nature of interactions in the market between competitors. From a legal and economic standpoint, there has been a concern about how economic and non-economic impacts on the environment are included in the competitive assessment. It is for policymakers to comprehend the application of competition law in a way that fosters sustainable development goals (Boushey & Knudsen 2017).

Until recently, sustainability discussions in the context of competition law did not attract much attention. The European Green Deal has sparked debates on making the competition law environment-friendly and how to implement such law to promote sustainability and progress toward climate neutrality. The deal was introduced in 2019. By 2050, the European Green Deal intends to make Europe the first continent to be climate-neutral. The deal strongly emphasizes promoting sustainable economic growth with the hindsight of environmental and social policy. It intends to decarbonize electricity, infrastructure, transportation, industry, and agriculture. (Ismail & Tebbe 2021). The competition law framework has more than a 'supportive' role in green policy objectives. One may say that competition law indirectly supports sustainable development by continuously improving economic governance. To achieve sustainability, companies constantly strive for innovation, seeking a better version and improving their product to sustain themselves in the competition. To appease consumers' environmental and social expectations, companies may seek to create new product lines or enhance existing ones. However, the theoretical and actual consumer behavior varies, especially in India, where meeting necessities daily is a priority. (Malinauskaite 2022) Therefore, our country should encourage greater equity facilitating economic growth while helping to eradicate poverty. Environmental considerations must play a part in assessing a company's behavior in the market. Environmental Impact Assessment (EIA) can be introduced in the competition law regime to evaluate the consequences. From a broader perspective, EIA is also part of ESG (environmental and social governance). ESG is a form of analysis considering non-financial factors to identify risks and growth opportunities.

Further, applying provisions for anti-competitive agreements, abuse of dominance, merger, and combination in terms of environmental policy only strengthens the goal of sustainability. The tendency to consider environmental arguments with prime importance in evaluating the impact of companies on the environment may become the new normal in the near future. The dilemma lies in maintaining an efficient environmental policy, competing with others in the market, and striving to be in consumer demand. (Qaqaya & Lipimile 2012) Efficient techniques may also lead to anti-competitive effects such as cartelization, which we will further analyze in the article.

BRIDGING THE GAP BETWEEN COMPETITION LAW AND ENVIRONMENTAL PROTECTION

While analyzing whether the relationship between the two is acrimonious or complementary, there is a greater need to understand that this determination is based on the nature of agreements. In agreements leading to synchronized availability of sustainable and non-sustainable products, as opposed to such agreements leading to withdrawals due to quality standards, it may be considered pro-competition. In contrast, the latter must undergo a cost-benefit analysis (Watson et al. 2022). From the other side of the pond, competition laws might not allow for the pursuance of agreements promoting sustainability, in which case, the environmental perspective would deem it anti-sustainability. While the thin line in between may be tough to walk, the growing concern for sustainability while promoting ethical market practices necessitates that the middle ground becomes a norm. A cost-benefit analysis is an equally complex process for two reasons: firstly, sustainability is tough to calibrate and quantify in absolute terms; and secondly, the nature of cost and benefit may be vastly different, prompting certain levels of conversion (Watson et al. 2022).

The Organization for Economic Co-operation and Development (OECD) promotes this idea of attaining sustainability with its constant effort to determine how the regulatory authorities can facilitate sustainable and pro-competitive business practices (OECD 2021). ESG and CSR (Corporate Social Responsibility) are important economic and social welfare concepts. While many areas of law have already adapted to these phenomena, competition law is yet to find its place in the "sustainability movement" (Arvidsson 1999).

CARTELS, GREENWASHING AND CLIMATE CHANGE

Collaborative efforts for sustainability stand to be tested beneath the ever-looming sword of cartels. In this space of collusion versus cooperation, many defend the pillars of antitrust on the ground that competition has a greater scope of incentivizing investment in green technology than cooperation (Nuys & Huerkamp 2021).

The perspective of competition runs the risk of assuming that consumers are willing to pay more for green technology. On the other hand, cooperative efforts risk getting slashed due to a bar on cartelization. However, certain reports asseverate that a competition policy may be the best way to improve the environment. This also warrants protecting products against greenwashing on the pretense of sustainability to bury investigations into what cartels are. In one such case concerning the Consumer-Detergents Cartel of the European Union, an environment-centric effort was a front for a cartel to synchronize price increases. Thus, the relationship between green efforts and competition is increasingly complicated due to this essential factor (European Commission 2005).

- When companies are working towards positive societal benefits, a big challenge lies ahead of them regarding the execution of the projects in such a way that does not result in cartelization by increasing prices or signing agreements horizontally or vertically, etc. This is where EIA or/and ESG come into play, requiring the companies to evaluate the pros and cons to ensure the project's positive impact. There are no predefined parameters for this category. The assessment shall be based on jurisdiction and facts. However, there are certain criteria a regulating authority can adhere to reduce risks (Malinauskaite 2022):

- Ensure that the required authorities are keeping an eye on the antitrust organization to prevent future issues.
- Ensure that adequate training and awareness are provided to such organizations regarding sustainable development goals.
- Ensure that the competition among the players is sustained.
- Analyze a project or proposal's environmental considerations, benefits, and impact.
- Ensure a compliance program is formulated to safeguard the consumers and society and avoid unforeseen risks.

UNDERSTANDING REGULATORY FRAMEWORKS

Any cooperation or collaboration agreement must be carefully analyzed to avoid violating the Competition Law. When assessing risk in the context of sustainability cooperation, factors to be taken into account are as follows:

- Which Government authorities are responsible for enforcing competition law?
- How often do regulatory authorities enforce sustainability agreements?
- What factors are the regulating authorities considering to investigate sustainability cooperation cases?
- What factors do regulatory authorities consider to determine whether the company's conduct violates the competition law?
- Does the regulating authority publish any additional notifications or guidelines?
- What is the standard of regulating authorities in resolving cases involving sustainability agreements?

The answers provided for these questions vary significantly among competition authorities across the jurisdictions (Herbert Smith Freehills 2022a).

One must note that certain environmental considerations may entail potentially anti-competitive behavior. However, it can lead to significant benefits to sustainability. Authorities have resorted to some criteria (stated above) that help to assess the status of the company's conduct. The environmental considerations can be perceived in a way that promotes sustainable development goals. Analyzing the factors provides us with the pros and cons, where the former benefits the individual and the society at large, and the latter is anti-competitive in its totality (OECD 2021).

ENVIRONMENTAL CONSIDERATIONS IN ANTI-COMPETITIVE AGREEMENTS

This category can be further categorized into cooperation agreements, Abuse of Dominance, and Mergers & Acquisitions. Co-operation Agreements can be of two types: Horizontal and Vertical.

A coordinated effort to phase out an environmentally damaging product, a shared environmental norm binding on the participants, or the sharing of resources to advance sustainability goals is among the examples of horizontal agreements. The European Commission has considered efficiency factors when dealing with such anti-competitive but sustainable conduct. It has permitted such agreements where certain criteria were met, as was evident from the Philips-Osram case. Philips and Osram formed a joint venture to manufacture and market lead glass tubing for incandescent and fluorescent lamps in this case. Unless expensive and efficient filters are installed, using lead glass causes environmental damage. The agreement intended "a lower total energy usage and a better prospect of realizing energy reduction and waste emission programs" (OECD 2021). Undoubtedly, this reduces the "negative externalities" on the environment.

ENVIRONMENTAL CONSIDERATIONS IN CASES OF ABUSE OF DOMINANCE

When a company holds a strong position due to its market share, it might exploit that position to boost profits or drive out competitors, which are clear examples of abuse of dominance. However, the company can also use its market dominance to achieve environmental goals. For example, the dominant company may refuse to deal with trade partners who do not meet its defined sustainability criteria or tie or bundle its products with green goods to increase the sales of those latter products (OCED 2021). In such cases, it is at the authorities' discretion to determine whether the dominant position is being abused in its totality or benefits the environment and society.

ENVIRONMENTAL CONSIDERATIONS IN MERGER CONTROL

The approach to merger control and acquisitions needs to adapt to changes in sustainability. The concept of combination regulation intends to analyze the 'structural changes' in the market due to the merger or acquisition. The aim is to avoid anti-competitive practices in disguise. The competition authorities can rely on certain factors to ensure that the merger is not intended with objectives that may result in environmental damages. Continuous technological advancements and stimulation of innovation are required to 'green' the competition law and achieve sustainable development goals. Attaining the same with positive outcomes would take a long period (OECD 2021). Therefore, when companies merge with one of their objectives to promote sustainability, analyzing the impact of the same on the environment can be a complex process. However, relying on certain parameters, setting up a compliance program, and keeping a tab on the mergers can help to strengthen the environmental goals.

PAINTING THE GLOBAL PICTURE

The international community and governments worldwide have acknowledged that immediate action is required to prevent the catastrophic effects of climate change. Since the Stockholm Conference of the United Nations (UN) in 1972, the debate on climate change has revolved around the influence of human activity and development proposals on the deterioration of the environment. Such debates have led to establishing a relationship between economic growth and pollution and providing efficient alternatives and mitigation strategies. The importance of private actors is repeatedly emphasized because of their significant social impact and ability to support public and government investments in environmental protection.

The 2030 Agenda for Sustainable Development, adopted by the UN General Assembly in 2015, intends a "plan of action for people, planet, and prosperity to guide all countries" toward sustainable development. The Paris Agreement seeks to strengthen the worldwide action plan toward climate change "through appropriate financial flows, a new technology framework, and an enhanced capacity building framework." The EU unveiled the European Green Deal in response to these international commitments, establishing it as an "integral part of the Commission's strategy to implement the United Nations' 2030 Agenda".

Both domestic and international analyses of various jurisdictions hint at two things: firstly, there are mostly general antitrust laws and not specific sui generis provisions designed to address environmental protection within competition law; secondly, there is a growing concern to incorporate sustainability and so, laws are now being interpreted to achieve the same.

Article 81 of the European Commission (EC) Treaty forbids agreements between businesses, decisions by groups of businesses, and collaborative practices which involve anti-competitive conduct such as prevention, restriction, or distorting of competition within the market. Clause (3) provides that certain agreements may be exempted from the prohibition. Article 81 employs tools of economic analysis to assess any agreement. The tools evaluate the impact of an agreement in terms of positive or negative impact. The article seems to allow for an exemption only if the agreement is advantageous economically.

Article 101(1) of the Treaty on the Functioning of the European Union (TEFU) has provisions on collusions and cartels, an example of which can be seen in the case of German carmakers case whereunder they were levied with heavy fines for collusions on technical development. While this may seem preventive, the EU and the Commission are taking promising steps, such as revising Horizontal Guidelines with a dedicated chapter on sustainability agreements. The EU Green Deal and certain private efforts to guide sustainability can also be seen in Europe. Even in the UK, while sustainability agreements are read into the general antitrust laws, they have come up with Guidelines to help this complexity further. Similar is the position in US and Australia. Austria has a dedicated Cartel Act, amended to incorporate sustainability-related exemptions in 2021. Even the Netherlands Authority for Consumers and Markets (ACM) has issued guidelines on placing sustainability within competition law. While this isn't an exhaustive list of European countries, efforts also come from Asia, such as China, which actively reads sustainability into its competition law. Cambodia and Malaysia's laws specifically address agreements with substantial and evident social welfare benefits. In its plan for 2021-25, the Malaysian Competition Commission stated that it would research and work towards greening its competition policy and how it can support the ESG agenda (OECD 2021). The Competition Commission of Singapore has spotlighted sustainability for the year 2022. The Business Roundtable pledged to "protect the environment by embracing sustainable practices across our businesses" in its 2019 "Statement on the Purpose of a Corporation" (ICC 2020). Rightfully, the various examples demonstrate that more countries are jumping onto the wagon to initiate a discussion domestically and take concrete steps accordingly.

CORRELATION BETWEEN ENVIRONMENTAL LAW AND COMPETITION ACT IN THE EUROPEAN UNION, THE UNITED STATES, AND THE UNITED KINGDOM

The European Union (EU)

When the European Union was first established, social considerations were not considered. However, with the surge in pollution and climate change, the debate on sustainability became the need of the hour. It led to discussions where strong initiatives for the execution and implementation of environmental policies were emphasized. The seriousness of the matter has led to the normalization of environmental agreements between the market players. In such agreements, the companies cooperate or collaborate to harmonize sustainable development goals in their businesses. These agreements can potentially jeopardize the environment at the risk of being anti-competitive under Article 101 of the Treaty on the Functioning of the European Union (TFEU).

Article 3 of TFEU highlights the objectives of the EU. According to clause (3), the internal market must be built on a social market economy with high levels of competition and environmental protection. The shift of the EU from a rigid economic project to considering social welfare factors is evident under Article 191. Clause (1) lists several environmental objectives such as "preserving, protecting and improving the quality of the environment, prudent and rational utilization of natural resources, promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change." All these objectives are crucial in attaining sustainable development goals. It is Article 11 that consolidates environmental protection and the EU's activities and policies to promote sustainability. It states, "Environmental protection requirements must be integrated into the definition and interpretation of the Union policies and activities, particularly to promote sustainable development." The inclusion of environmental protection into Union policies is emphasized even in Article 37 of the Charter of Fundamental Rights of the EU (Krause 2020). Article 101 of the Treaty prohibits agreements that limit competition between two or more independent market operators. This provision covers both horizontal agreements and vertical agreements. Only limited exceptions are permissible.

The factors to be considered in this article are:

- Whether the agreement intends to promote sustainability or, in disguise, aims to cover up price fixing, cartels, etc.
- If the agreement promotes sustainability, is it causing appreciable effects?

If four conditions are met, sustainability agreements restricting competition may be exempted under Article 101(3) TFEU. The article provides for 'Block Exemption Regulation.' It allows certain agreements to be exempted from the prohibition of restrictive agreements laid in Article 101(1).

The four conditions are as follows:

- Improving the production/distribution of goods or promoting technical or economic progress
- Consumers receive a fair share of benefits
- Indispensability
- No elimination of competition

The United Kingdom (UK)

In the UK, the Competition Act of 1998 (CA 1998) and the Enterprise Act 2002 are among the sources of competition law. Chapter I of the CA, 1998 provides for the assessment of the sustainability agreements. These agreements are subject to the same exemptions as laid under Treaty on the Functioning of the European Union (TFEU) under Section 9 of CA, 1998. It can exempt agreements that "contribute to improving the production or distribution … or to promoting technical progress while allowing consumers the fair share of the resulting benefit," provided they do not eliminate competition and do not impose any limitations that are not necessary for achieving the objectives laid. Thus, if an agreement is prohibited under Article 101(1) TFEU, it can still be held as permissible through the exemption provided by Article 101(3), provided it entails environmental protection objectives. In its Competition Policy Report 2016, the commission noted that 'competition law also intends to drive companies to make maximum use of scarce resources and thus includes an environmental protection perspective.'

The European Commission also relies on certain guidelines and rules such as Climate, Energy, and Environmental State Aid Guidelines (CEEAG), General Block Exemption Regulation (GBER), and Important Projects of Common European Interest (IPCEI) (CMS Law 2021).

The CEEAG includes facets such as 'Environmental Protection Costs,' 'Stricter Conditions for non-green infrastructure projects, etc. In 2021, GBER shifted to the green and digital economy, enabling its Member States to provide aid under certain conditions without prior notification. The rules on aid on Important Projects of Common European Interests govern cross-border initiatives that require joint investments from several EU Member States. The development of innovative technologies and industrial methods that advance the goals of the Green Deal will be aided by the updated IPCEI regulations. All these guidelines are employed to promote the objectives of the European Green Deal.

In 1999, the Commission in Conseil Européen de la Construction d'Appareils Domestiques (CECED) case considered broader environmental benefits. This case involved a deal between domestic washing machine manufacturers to stop making and importing the least energy-efficient models. Not only did this deal directly assist customers by lowering energy bills, but it also positively impacted the environment by reducing CO_2 emissions. The Commission determined that the agreement could be exempted under Article 101(3) of the TFEU despite the limitation on competition. The commission weighed the economic efficiency and environmental benefits on an equal footing. (European Commission 1999)

The United States (US)

Antitrust scholars consider non-economic policy objectives as falling outside the scope antitrust law regime. Many antitrust scholars argue that considering non-economic policy goals is against the very objective of antitrust laws. Some scholars have argued that antitrust analysis should include non-economic factors that affect consumers. Time and again, it is contended that antitrust laws must address social issues like climate change (Khan 2021).

Post the United Nations General Assembly of 2015, the emphasis has been on the sustainable development agenda. The main antitrust laws in the US are The Sherman Antitrust Act of 1890, the Federal Trade Commission Act of 1914 (The FTC Act), and the Clayton Antitrust Act of 1914. The Sherman Act provides for free competition in trade or commerce. The FTC Act established the Federal Trade Commission. It vests the commission with the power to “prevent unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.” The Clayton Act aims to prevent anti-competitive conduct. It strengthens the antitrust regime in the US. The act forbids predatory and discriminatory pricing, anti-competitive mergers, and other unethical practices. Section 1 of the Sherman Act, which prohibits “contracts, combinations, or conspiracies in restraint of trade or commerce, “ and Section 5 of the FTC Act, which prohibits “unfair methods of competition,” may apply to agreements between companies on sustainability issues.

The antitrust agencies in the US are the US Department of Justice and the Federal Trade Commission (Herbert Smith Freehills 2022). By assisting legislators and policymakers in understanding the competitive impacts of laws and warning them of potential unintended consequences of regulation, the agencies contribute significantly to the environmental regulation process. This enables legislators to weigh potentially conflicting policy concerns. Thereby, evaluating the legality of future collaborations or cooperation concerning sustainability agreements should consider the antitrust laws and guidelines. The antitrust agencies acknowledge that “competitive forces are driving firms toward complex collaborations to achieve goals such as expanding into foreign markets, funding expensive innovation efforts, and lowering production and other costs” and that these collaborations “often are not only benign but pro-competitive.” Collaborations that embrace the potential of the latest technological advancements to promote sustainability by establishing industry standards may be permissible under antitrust laws.

In 2021, US President Joseph R. Biden issued an Executive Order on “Promoting Competition in the American Economy.” The Order broadly reaffirmed the Administration’s position that it would pursue US antitrust laws by “combatting excessive concentration in the industry, abuses of market power, and the harmful effects of monopoly.” However, the Order did not outline any specific policy to promote sustainability or address how US antitrust laws would affect sustainability collaborations (Herbert Smith Freehills 2022b). It is important to note that preserving the environment and sustaining a competitive economy can go hand in hand.

The joint ventures among the competitors are assessed through the rule of reason. Rule of Reason analysis is applied as the scrutiny procedure for the agreements under the US antitrust law. The purported pro-competitive benefits of an agreement are weighed against its anti-competitive conduct in a fact-intensive, burden-shifting evaluation. If an agreement is per se unlawful, the courts, irrespective of its pro-competitive nature, will not inquire into it. However, if under Rule of Reason analysis, an agreement is shown to have specific pro-competitive effects, such as “higher output, lower costs, reduction in the effects of market failure, or promotion of the competitive process,” it shall render an agreement permissible. In light of this, if a competitor’s collaboration benefits the competition, it is not considered a violation of antitrust law. Another scrutiny standard applied in the US is the ‘reasonableness of the restraint.’ Market power and market impact are analyzed under this step (Herbert Smith Freehills 2022b).

In the *United States v. Automobile Mfrs. Ass’n,* 643 F.2d 1028 (9th Cir. 1981). The US sued to ‘prohibit an agreement between the manufacturers to stifle the advancement of ecologically friendly technology.’ The Department of Justice sued major automobile manufacturers for conspiring to eliminate competition in the design, development, and production of air pollution control technology. Such conduct was held in violation of the antitrust laws. The action was settled through a consent decree that forbade the defendants from participating in the allegedly illegal conduct.

Since the US does not have specific laws or guidelines dedicated to sustainable development goals, balancing the public policy goals of competitive markets and preservation of the environment depends on the interlinking of these areas and interpreting the law in a way that considers societal factors as well. The agreements relating to environmental objectives are treated the same as other agreements for purposes of antitrust analysis. (Hylton 2008)

India

The courts, tribunals, and policy-makers actively note India's obligations to promote sustainable development goals, especially since the Apex Court declared the right to a healthy environment a fundamental right under Article 21. However, the Competition Commission of India (CCI) hasn't yet incorporated, negatively or positively, into this discussion surrounding the interplay. No specific prohibition would only apply to company collaboration agreements on sustainability issues. EU and other regimes serve as a great example for India to realize and actuate the path it must take in the future and improve.

According to a report submitted to the CCI, the integration of environmental concerns into competition law in India is a complex issue due to the non-economic nature of environmental effects in the short term (Siddiqui 2022). However, the report concludes that the CCI's goal of preserving consumer welfare aligns well with the promotion of sustainable development, and consolidating exemptions related to public interest or India's treaty obligations under Section 54 of the Indian Competition Act, 2002 could be a potential solution. This approach would allow for a gradual incorporation of environmental concerns into competition law without the need for an immediate overhaul of the competition regime. India has the opportunity to take a leading role in promoting sustainable development through competition practices, and could also serve as an example for other developing countries. While economic practices differ between developed and developing countries, each jurisdiction has lessons to offer India, provided that it takes the necessary steps.

A common concern across the countries has regarded the formation of cartels to hold anti-competitive practices in disguise for promoting sustainability.

According to the Indian Competition Act 2002, there are three ways by which healthy competition and consumer welfare can be promoted:

- By prohibiting anti-competitive agreements and practices that cause appreciable adverse effect on competition in India (AAEC);
- By preventing abuse of dominant position in the market;
- By regulating mergers and acquisitions.

Governments and corporations are working towards including environment-friendly trade and manufacturing practices in their regular business practices supporting sustainable development. In light of the threat posed by climate change, the scope of consumer welfare can be broadened to encompass environmental sustainability goals in addition to consumer surplus.

In India, competition assessment can place greater emphasis on sustainability by utilizing section 54 of the Competition Act (the Act). This section empowers the Central Government to exempt the application of the Act or any of its provisions for a specified period. Given the importance of environmental protection and sustainability in policymaking, the government can use Section 54(a) to exempt certain provisions of the Act if the project's impact on the environment is thoroughly analyzed and evaluated and if the measures adopted by the company benefit society at large. Section 54(b) further enables the government to fulfill its commitment made at the Paris Summit 2015 by exempting the Act's provisions to fulfill any obligation assumed by India under a treaty, agreement, or convention with other countries (Bhatia 2017).

Therefore, the Competition Act of 2002 can be a valuable tool in addressing larger environmental concerns in India. Rather than amending the provisions, we should interpret the Act in a way that excludes climate change and promotes sustainability. The proposed framework can be applied when companies make efforts to improve quality, avoid pollution, stimulate innovation, and benefit society. After a thorough analysis of various jurisdictions, including India's, it can be concluded that companies may be eligible for an exemption from general prohibitions if their agreements or conduct promote sustainable development goals. However, it is crucial to interpret existing laws in a way that aligns with environmental policy and promotes consumer welfare.

To prevent anti-competitive practices under the guise of sustainability, authorities must ensure that guidelines are in place. For instance, the EU's dedicated chapter on sustainability agreements offers well-formed guidelines that facilitate better implementation and demonstrate the importance of environmental considerations. Implementing such guidelines in India would provide clarity and improve the effectiveness of competition assessments in promoting sustainability.

CONCLUSION

Several conflicts arise at the intersection of competition law and environmental policies. Some market players argue that competition law impedes sustainability collaboration, while regulators claim that they have not received any concrete proposals for sustainability collaboration from the industry. This emphasizes the need to focus on consumer behavior.

There is also a debate about whether easing competition rules would lead to eco-friendly proposals or whether promoting a competitive market while adhering to existing policies would be more effective in achieving greener results in practice.

Furthermore, quantifying "effectiveness" in complying with competition law principles is a complex process, creating challenges for cost-benefit analysis. Agreements that provide social benefits that cannot be measured in monetary terms can be problematic if they restrict competition. However, if the restriction is proportionate to its environmental benefits, such agreements may be permissible.

It is necessary to strike a balance between competition law and environmental policies by considering the specific circumstances of each case and evaluating the trade-offs between the benefits of competition and environmental protection. The solution to these conflicts is that the Competition Law regime incorporates sustainability, or the law is interpreted to supplement environmental goals. The former option can lead to a difficult balance between consumer welfare, environmental goals, and the aim of market players (which cannot be based on the factor of environmental betterment only). The former may lead to anti-competitive practices (Siddiqui 2022). That said, it does not mean the possible solutions aren't effective. It is on the government and regulatory authorities to adopt thorough guidelines and ensure that the difficulties mentioned above are eliminated.

In order to integrate environmental considerations in competitive assessment, several questions need to be addressed, including:

- To what extent can environmental factors be included when there are no direct consequences on competition in the market?
- At what stage should the impact of the project or proposal be assessed in relation to environmental factors?
- Can a common ground be reached between environmental factors and other factors in competitive assessment?

These questions are important to consider as competition law and environmental policies intersect and finding a balance between the two is necessary to achieve sustainable development goals.

Integrating environmental considerations in competitive assessment raises complex questions that lack straightforward solutions. Determining the scope of environmental consequences is difficult since they are non-economic in nature. To address this, practices like incorporating the cost of "negative externalities" can be adopted to ensure that products reflect their true cost. Regulators can also categorize the effects in economic terms, either positively or negatively, depending on the transaction or company conduct.

Formal quantification measures, such as the OECD guidelines for "cost-benefit analysis" of environmental initiatives, can also be used. These guidelines use shadow pricing and consider long-term environmental effects for future generations. The competition authorities of Greece and the Netherlands have already adopted this approach (Siddiqui 2022).

Sustainability discussions are inevitable in light of the European Green Deal and international commitments toward environmental goals. We cannot shield ourselves from discussions surrounding environmental protection within competition law. Further, the market is going to dictate a lot of what the repercussions of its actions will be on our climate. From a bird's eye view, Competition Law safeguards the effects of anti-competitive agreements, abuse of dominance, etc., on the consumer in the relevant market. However, sustainability benefits are more likely to translate into a combination of some direct benefit to the individual consumer, with other benefits being enjoyed by the wider society at large or even by the future wider society. The exigent nature of the problem demands that jurisdictions expressly read sustainability within the competition law's design and make any necessary modifications and amendments. While maintaining a pro-competition spirit, environmental exemptions can be accommodated in certain situations after a fact-based cost-benefit analysis (EIA; ESG), especially in complexities arising from collaborative agreements.

Apart from all the legal and economic regimes that must be followed to ensure sustainability, consumer awareness and sensitivity towards sustainable goals is of prime importance. It is their behavior that impacts the market. The preference for green products can act as a drive for competition between the market players/suppliers. A good environmental image can be an important marketing instrument for market players.

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