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Market Collusion and Cartelization in India: Assessing the Economic and Social Ramifications

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ABSTRACT

A cartel is a group of independent market participants who collude to control competition and increase prices. They can adopt vertical or horizontal structures but are unstable due to their drive to outdo each other. Cartels face severe sanctions under competition law. Competition improves product quality, lowers pricing, and increases consumer awareness. The Competition Act assesses if an agreement has an Appreciable Adverse Effects on Competition (AAEC) and Maintain the market's competitive structure. The Rule of Reason analysis is a legal tool used by competition regulators in India to assess the detrimental impact of an agreement on competition. It involves a thorough study of the businesses involved, their performance before and after restraint, and the type of restraint and its effect. The analysis focuses on the counterfactual test, which states that the agreement is likely to harm competition by increasing prices, profitability, or reducing output, quality of the product, or service. The analysis considers both positive and negative factors, such as the creation of new barriers, driving existing competitors out of the market, foreclosure of competition, and improvements in production or distribution. A cartel is an association of producers who control production scale and price to obtain a monopoly. International cartels involve collusion between countries to manipulate pricing, divide markets, restrict production, and control profit distribution. Domestic cartels involve collaboration between rival enterprises to influence marketing techniques, often engaging in price-fixing, setting production quotas, or entering into market sharing agreements. Antitrust laws are often implemented to deter and penalize domestic cartels, but they can have detrimental effects on customers and the availability of life-saving therapies. In India, anti-competitive agreements are classified as horizontal or vertical. Horizontal agreements between firms or individuals operating identical or homogeneous products can be beneficial, such as price fixing or market sharing, but they can also have anti-competitive effects. Price fixing occurs when competing businesses form a collaboration to control or maintain the price of goods and services. Market sharing involves partitioning the market among rivals, while output restrictions limit production. Bid-rigging is a practice where competitors agree to refrain from genuine competition for specific tenders. The existence of a cartel can be proven through direct evidence, indirect evidence (circumstantial evidence), or a combination of both. In most cases, direct evidence is not available, and circumstantial and indirect evidence play a vital role in providing proof. The existence of an anti-competitive agreement can be inferred from the intention and conduct of the parties. The Central Court of India (CCI) established the rule of preponderance and probability in the Aluminium Tablet Manufacturer's case, emphasizing the importance of communication and information exchange among competitors.

INTRODUCTION

A cartel is a group of independent market participants who collude with each other to ensure individual

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financial benefits and achieve a dominant position in the market. A cartel is a consortium formed by producers with the aim of curbing competition and increasing prices by intentionally creating a shortage of commodities through the enforcement of limited production quotas. Cartels can adopt either a vertical or horizontal organisational structure, but they are inherently unstable due to the innate drive to outdo one another and the subsequent reduction in costs for all participants. Furthermore, advancements in technology or the introduction of alternative products might undermine the ability of cartels to control prices, leading to the dissolution of the business necessary to sustain the cartel.
Cartels can be categorised as harmful arrangements that cause substantial damage to both customers and the economy. Cartels are widely recognised as one of the most disruptive types of activity inside any global competition framework. It involves unfair behaviour by competitors in the form of customers. Cartelization in the market might potentially manipulate prices and negatively impact the entire competitive framework. Cartels have faced the most stringent sanctions under competition law. Competition improves the quality of products or services, lowers pricing, and increases consumer awareness of the appeal of buying such items. It has been argued that the greatest benefits are obtained when both production and supply are carried out. Monopoly, which is the opposite of competition, usually occurs when a few manufacturers come together to create an association or cartel instead of competing with each other.

UNDERSTANDING OF APPRECIABLE ADVERSE EFFECTS ON COMPETITION

The **Appreciable Adverse Effects on Competition ("AAEC")** refers to a substantial negative impact on the competition within a particular market or industry. It happens when actions that reduce competition, such as anti-competitive behaviour or agreements, lead to negative impacts on market dynamics, consumer choice, and overall economic welfare.[1]
The Competition Act helps evaluate if a practice or agreement has an AAEC. The CCI assesses these effects based on factors like market concentration, entry barriers, competition with other companies, and impact on consumer welfare. As per Section 3(1) of the Competition Act 2002, "No enterprise or association of enterprise or person or association of person shall enter into any agreement in respect of production, supply, distribution, storage, acquisition, or control of goods or provision of services that cause or are likely to cause an appreciable adverse effect on competition within India."[2] Section 3(1) explicitly prohibits businesses involved in production, supply, distribution, or services from entering agreements that harm competition through actions like creating scarcity or restricting production. Engaging in agreements that lead to anti-competitive effects in India will result in actions taken in accordance with Section 3 of the Act. CCI is responsible for maintaining the competitive structure of the market.

MODUS OPERANDI OF RULE OF REASON ANALYSIS

The Rule of Reason analysis is a legal tool used by competition regulators in India to evaluate the significant detrimental impact on competition. It involves a thorough study before determining if an arrangement is anti-competitive. In India, agreements are considered void only if they have a significant negative impact on competition, including per se illegal agreements. The informant and the

[1] Abir Roy & Jayant Kumar, Competition Law 42 Eastern Law House 2019
[2] Competition Act, 2002, §3(1), No. 12, Acts of Parliament, 2002 (India)

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Competition Commission of India challenge the competitive harm in the relevant market using the Rule of Reason Analysis.

The rule of reason requires the person who finds the facts to decide if the practices in question unfairly limit competition. They must look at specific details about the businesses involved, their performance before and after the restraint was put in place, and the type of restraint and its effect. The burden of proof is on the informant to prove that the agreement is a violation of the principle of competition law. The rule of reason analysis also focuses on the counterfactual test, which states that the relevant agreement is likely to harm competition by increasing prices or profitability or reducing output, quality of the product, or service. It requires a flexible inquiry to evaluate the nature of the agreement and market circumstances.

If the initial examination of the nature of the agreement indicates possible competition concern but the agreement is not wherein it would be challenged without a detailed market analysis, the competition authorities will look into a detailed market structure. If an agreement is not reflective of competition by its object, it must be examined to determine whether it has any appreciable adverse effect on competition and its potential and actual effect.

Under Section 3 of the Act, the agreement must have had an appreciable adverse effect on competition in India. Therefore, one of the key points under the rule of reason analysis is determining the market share and power of the enterprise involved in the agreement.

As per the Indian competition regime, an analysis of the factors which are enumerated under Section 19(3) of the act, it has both positive and negative factors for evaluation of AAEC.

a. **Creation of New Barriers:**A robust competition law framework guarantees unrestricted access and availability of goods and services for enterprises, facilitating their entry and exit from the market. This, in turn, contributes to the preservation of equitable pricing and the well-being of consumers. However, another participant in the market may quit the competition or erect an obstacle to admission. Barriers may be due to: Government Intervention, Barrier Naturally Prevalent in the Market, and Strategic Barriers.

b. **Driving Existing Competitors out of the Market:**It refers to the capacity of big firms to drive competitors out of the market owning to their monopolistic advantages used to maintain favourable price due to efficiency of large-scale production. A usual tool could be price or margin squeeze, which is an exclusionary practice used by a vertically integrated firms to leverage its market power the upstream to squeeze the margins of its downstream competitors.

c. **Foreclosure of Competition:**It refer to the ability of firms singularly or jointly (collective foreclosure) prevent the entry of the other firms in the market including potential entrants.

d. **Accrual of Benefits to Consumer:**It is one of the positive factors entitled under section 19(3) for the assessment of anti-competitive agreements. As a result of anti-competitive agreements. As a result of anti-competitive agreements, price may escalate leading to enhancement in profit.

e. Improvement in production and distribution of goods or provision of services and promotion of technical, scientific, and economic development by means of production or distribution of goods or provision of services:This component evaluates the beneficial impacts of the agreement in question on enhancements in the production or distribution of goods or the provision of services. During the analysis of the anti-competitive agreement, both the objective industry perspective and the subjective viewpoints of the agreement parties are examined. The primary objective of this effort is to delineate the several categories of efficiency improvements that must be taken into account while analysing the significant negative impact on competitiveness in India.For instance, if there is an improvement in efficiency and the consumer benefits from it, exclusive distribution agreements between an e-commerce company and a phone maker would be permitted.

CARTELIZATION

As per the section 2 (d) "**Cartel is an association of producer who, by agreement among themselves, attempt to control production scale and price of product to obtain a monopoly.**" Basically, A cartel can be defined as an organisation or consortium of businesses or individuals that reach a consensus to coordinate efforts to manipulate market prices through control over the production, distribution, and scope of particular products and services. The market participants comprising a cartel engage in clandestine conspiracies and profit at their customers' expense through their illicit activities. The customer pays more for the respective products and services as a direct result of the cartel than they would in an efficient, competitive market.

International Cartel

An international cartel refers to a collusion or explicit agreement between two or more countries to manipulate pricing, divide markets, restrict production, and control profit distribution. The primary objective of such a cartel is to establish a monopoly or enhance the profits of a particular country. An example of an international cartel is the Organisation of the Petroleum Exporting Countries (OPEC). The Organisation of the Petroleum Exporting Countries (OPEC) comprises Algeria, the Republic of the Congo, Equatorial Guinea, Gabon, Iran, Iraq, Kuwait, Libya, Nigeria, Saudi Arabia, the United Arab Emirates, and Venezuela. These countries are part of a single organisation that controls oil exports.

Domestic Cartel

A Domestic cartel refers to a deliberate collaboration or agreement between rival enterprises operating inside a specific industry or offering similar goods or services within a country, with the aim of influencing marketing techniques. This form of cooperation commonly entails engaged in price-fixing, setting production quotas, or entering into market sharing agreements with the intention of restricting competition and maximising profits for all participating parties. Domestic cartels can exert a deleterious influence on customers by the imposition of elevated costs, diminished options, and the suppression of innovation within the industry.

Antitrust laws are frequently implemented by governments to deter and penalise the establishment of domestic cartels, with the aim of safeguarding market competition and guaranteeing equitable pricing for consumers.

In the pharmaceutical sector, it is seen that domestic cartels engage in collusion to manipulate prices of vital pharmaceuticals, resulting in escalated expenses for customers and restricted availability of life-saving therapies. Engaging in these practices can have detrimental effects on susceptible populations who depend on these medications for their physical and mental well. Nevertheless, there are instances where antitrust rules may be insufficient in deterring the establishment of cartels.

Legal Framework of Cartel inIndia

The prior legislation lacks clear definitions for terms such as cartels, collusion, price fixing, bid rigging, and market sharing. Notwithstanding this, the newly enacted legislation implemented many enhancements to these principles and essentially classified anti-competitive agreements as either horizontal or vertical in nature. Section 3(4) of the Act covers vertical agreements, while Section 3(3) of the Act covers horizontal agreements. A cartel is defined by Indian law as an association of producers, sellers, distributors, traders, or service providers who, by mutual agreement, restrict, control, or attempt to control the production, distribution, sale, or price of goods or the provision of services.

Under Indian competition law, section 3(3) deals with horizontal agreements "Any agreement between enterprise or association of enterprise, or person or association of person or between any person and enterprise or practice carried on or decision taken by any association of enterprise or association of person including cartels engaging in identical or similar trade of goods or provision of services which (a) directly or indirectly determine purchase or sale prices (b) limit to control, production, supply, market, technical development, investment or provision of services. (c) share the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods and services or number of customers or any other similar way. (d) directly or indirectly result in bid rigging or collusive bidding are presumed to cause an appreciable adverse effect on competition in India."

A horizontal agreement refers to an agreement between two or more firms or individuals who are in the same stage of operating or dealing with identical or homogeneous products. Cartels are a component of a horizontal arrangement. In the oil sector, multiple oil corporations may engage in price fixing or output restrictions to artificially increase prices and diminish competition. The aforementioned form of collaboration is deemed unlawful and may lead to substantial monetary sanctions and penalties for the individuals implicated. Not all horizontal agreements have a detrimental impact on competition. However, specific horizontal agreements can be advantageous as they promote efficiency, mitigate risk, facilitate the development of novel or enhanced products or distribution channels, and enhance the flow of information. Consequently, these agreements contribute to the competitive functioning of the market. It is imperative to differentiate between the impacts that have pro-competitive effects and those that have anti-competitive effects.

1. **Price Fixing:**Price fixing occurs when competing businesses form a collaboration that has the purpose or effect of fixing, controlling, or maintaining the price of goods and services. Business collaborators sell homogenous or identical types of goods and services in the relevant market place. The agreement might be determined by factors like price, discounts, offers, or any other form of consideration that is applicable to goods and services.

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2. **Market Sharing:**A market-sharing agreement involves the partitioning of the relevant market among rivals or participants. The agreement can involve the establishment of specified operational areas by one company and the prohibition of interference by other competitors. It may also pertain to transactions involving individual customers. The trademark sharing agreement prohibits the manufacturing of competing items, the sale of goods in each other's designated geographic territories, and the solicitation or sale to each other's current customers.

   For example, let's consider a hypothesis statement where two brothers divided the market for rental motorcycles in Goa. The elder brother only supplies the motorcycle in North Goa, and the younger brother supplies the motorcycle in South Goa.
3. **Output Restriction:**Limiting production can be implemented through production or sales quota agreements among rivals to restrict the quantity or variety of specific goods and services that are offered in the market. Output or production limitations are agreements made between competitors in which they mutually decide to reduce output or limit production. There is an assumption that these types of arrangements are created to restrict the availability of goods and services and to have the power to increase prices. These agreements are considered inherently illegitimate.
4. **Bid-Rigging:**Bid rigging is a practice in which two or more competitors reach an agreement to refrain from genuine competition for specific tenders. Bid rigging agreements refer to agreements made between competing bidders or potential bidders that impact the prices they would bid for, or the covert attempt to manipulate the outcome of, a contract or series of contracts. Bid rigging is significant in cases where there is an agreement regarding the lowest bid, the amount that each bidder will bid, and the bidder who will ultimately be awarded the contract.

EXISTENCE OF A CARTEL

The existence of cartel may be proved by direct evidence, indirect evidence (circumstantial evidence) or combination of both. Direct evidence includes written agreement among cartel members, who attended a meeting and reached an agreement with competitors, a memorandum written a company to report a meeting with competitors, or a statement of person who was approached by the cartel to join it.

Direct evidence may include:

- Audio/ Video recordings
- Written Agreements
- Statement of an individual who has attended a meeting that involved discussion on the agreement
- Written Memo circulated within the company regarding a meeting with the parties where the anti-competitive agreement was reached.
- Records of telephone conversations between competing parties
- Statement of an individual who was approached to join the anti-competitive agreements by a competitor/s.

The availability of this direct evidence serves as conclusive proof for the existence of anti-competitive

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agreements. However, in the absence of availability of direct evidence, indirect and circumstantial evidence is taken into account.

Conversely, the availability of direct evidence is limited due to the tendency of cartel members to not verbally reach a consensus but rather enter into an agreement. Circumstantial evidence can be valuable in bolstering direct evidence. Indirect evidence should be interpreted cautiously, as it may potentially confirm the presence of a cartel on its own. In the case of Circumstantial Evidence may play a vital role in providing proof, even in the absence of any formal agreement amongst the parties.

In the majority of cases examining the existence of an anti-competitive agreement, direct evidence is not available, and circumstantial & indirect evidence plays a vital role in providing the proof of agreement. There have been various instances where convictions have been made solely on circumstantial evidence.

The existence of the anti-competitive agreement can be inferred from the intention and conduct of the parties. Laws make no distinction between direct and circumstantial evidence when analysing anti-competitive agreements in the light of appreciable adverse effect on competition in India. The bottom line is that before convicting a defendant- there should be the satisfaction of the defendant's guilt beyond a reasonable doubt in light of all the evidence in the case.

VITAL PRINCIPLES IN ESTABLISHING THE THRESHOLD OF EVIDENCE:

Greatest Probative Value comes from contemporary documents-like formal agreements, emails, & notes of meetings provide strong evidence of the existence of anti-competitive standards.

Assessment of anti-competitive agreement based on circumstantial evidence where an overall pattern of guilt emerges and there's no reasonable hypothesis that could be predicted on the basis of evidence can be taken as conclusive proof for establishing the existence of an anti-competitive agreement.

Initially, there existed interpretational ambiguity in Indian Law where diverging standards emerge with the application of the rule of preponderance and probability as well as proof beyond reasonable doubt however CCI in the Aluminium Tablet Manufacturer's case established the standard of proof as to the rule of preponderance and probability.

CCI has further observed with circumstantial evidence, it is necessary to prove conspiracy among competitors:

- Evidence of communication between the opposite parties is very important;
- The mere exchange of information alone is not sufficient- the exchange of information should facilitate competitors to act upon it on a common scheme of conduct.

LANDMARK CASE LAW ON CARTELISATION

CASE I: BUILDER ASSOCIATION OF INDIA V. CEMENT MANUFACTURE'S ASSOCIATION & ORS.

The Competition Commission of India, in its order dated 20th June 2012, levied a penalty of around 6,000 Crores on cement manufacturers in India. This penalty was imposed after finding them guilty of engaging in cartelization in the cement business. The penalty has been levied at a rate of 0.5 times the net profit of these manufacturers during the last two years. In addition, the cement manufacturers association ("CAM") has been penalised with a fine amounting to 10% of its total revenue for the past two years due to its involvement as the platform for the cartel activity.

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The CCI's decision is based on the information submitted by the Builders' Association of India on 26 July 2010. The complaint was filed against CMA and ACC, Gujarat Ambuja Cements Limited (now Ambuja Cements Limited), Ultratech Cements, Grasim Cements (now merged with Ultratech Cements), JK Cements, India Cements, Madras Cements, Century Textiles & Industries Limited, Binani Cements, Lafarge India, and Jaiprakash Associates Limited.

On September 15, 2010, the CCI formed an initial opinion that there was a violation of the Competition Act, 2002 and ordered investigations into the subject. The Director General (DG) issued his findings (the findings) on 31 May 2011, which outlined the respondents' violation of the Competition Act.

The CCI requested comments and objections from the respondents, and after reviewing their submissions, determined that the respondents had violated sections 3(3) (a) and (b) of the Competition Act. Prior to discussing the main conclusions of the CCI, it is crucial to mention that the CCI focused exclusively on the cement businesses included in the information. This decision was based on the fact that these companies were the major participants in the market and had a significant role in the entire arrangement.

Furthermore, the CCI specifically defined the period of infringement as starting on 20 May 2009 and ending on 31 March 2011. Nevertheless, it was explicitly stated that this restriction solely applied to the current situation and would not affect any other cases.

Preliminary Issues

Jurisdiction: The respondents expressed apprehension regarding the Director General's inquiry and dependence on data previous to May 20, 2009 (the day when the regulations of Section 3 of the Competition Act were implemented). The CCI determined that analysing data before May 20, 2009 does not imply that the Competition Act has been applied retroactively. In addition, based on the ruling of the Bombay High Court in the case of Kingfisher Airlines v CCI, the CCI determined that it had the authority to investigate behaviour that occurred before 20 May 2009 if its repercussions were still ongoing.

Failureto provide opportunity to cross examination: The respondents argued that the DG did not provide them with an opportunity to cross-examine the witnesses he relied on. The CCI dismissed this submission and affirmed that the proceedings adhered to the norms of natural justice by affording the respondents the opportunity to present both oral and written evidence.

Incorrectreliance on motivated information and press reports:The respondents asserted that the information submitted by the Builders' Association was driven by a specific motive. Once again, the CCI rejected this. According to the provisions of the Competition Act, the ultimate result was to be decided by an investigation into whether particular anti-competitive activity was hindering competition forces.

Substantive Issues

The primary issue under consideration by the CCI was whether the actions of the cement industry breached sections 3 (pertaining to anti-competitive agreements) (elaborated upon later). The CCI also investigated the possibility of a dominant firm abusing its position, but determined that the market had multiple players and no single company or group had the ability to operate independently of competition or manipulate its competitors or consumers in its favour (as stated in explanation (a) to section 4 of the Competition Act).

The CCI analysed the facts and submissions related to the infringement of sections 3(1) (a) and (b).

The market structure of the cement industry refers to the organisation and characteristics of the market in which cement is bought and sold. As said before, the CCI determined that there is no player who can be considered dominant in India based on the current market structure. In India, the cement business is dominated by twelve companies, who collectively hold over 75% of the total capacity. Furthermore, around 21 companies have control over 90% of the market share in terms of capacity. Due to the oligopolistic character of the market, each company considers the anticipated responses of other competitors when making decisions, especially about pricing. In this situation, it is conceivable for corporations to collude, and this can be proven by circumstantial evidence.

The cement businesses objected to the lack of direct evidence supporting the findings of the DG, arguing that circumstantial evidence alone is enough to prove the breach. The CCI, based on international precedent, observed that due to the secretive nature of cartels, circumstantial evidence holds equal importance as direct evidence in establishing cartelization.

Section 3 does not necessitate the specification of the pertinent market boundaries: The Competition Commission of India (CCI) has determined that, when conducting an investigation under section 3 of the Competition Act, it is not necessary to establish a 'relevant market' as mandated by the Competition Act. The Commission asserts that there is a differentiation between the term 'market' as employed in section 3 and the term 'relevant market' as delineated in section 4 of the Competition Act.

The CMA is involved in the collection of data that is sensitive to competition. The answers argued that CMA gathers data on retail and wholesale prices from various regions of the country and sends it to the Ministry of Commerce, as requested by the ministry. The CCI determined that the competitors were engaging in price-fixing by utilising the CMA platform for their interactions. Being under the instruction of DIPP did not exempt them from accountability.

In addition, the CCI observed that the CMA releases data on the production and distribution of each company, categorised by factory, and shares this information with its members. Sharing price, production, and dispatch data facilitates coordination among cement companies.

The CCI observed that cement prices rose shortly after the High-Power Committee Meetings of the CMA, which were attended by cement producers in January and February 2011. Additionally, it was seen that ACC and ACL, despite no longer being part of the CMA, nonetheless participated in these sessions. The CCI noted that ACC and ACL acknowledged their attendance at these sessions, whereas CMA and JAL denied being present. The discrepancies in the responses of the various respondents indicated their deliberate attempt to conceal significant information.

Revisions to the CMA constitutional documents: Some of the rules and regulations of the CMA raised significant concerns regarding competition. These were emphasised during a CMA meeting on November 30, 2009. Nevertheless, the modifications to those rules and regulations were implemented solely after the Director General issued a notification to the individuals involved in the current instance.

Price Parallelism: The Director General (DG) performed an economic analysis on price data, revealing a significant and positive correlation among the prices of all enterprises. According to the DG, this confirmed the existence of pricing parallelism. The respondents contended that the correlation threshold of 0.5 chosen by the DG was arbitrary. Furthermore, the prices utilised by the DG were not comparable due to variations in the prices reported by different companies (some provided gross

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pricing, while others provided depot prices, average retail prices, etc.). The CCI rejected these arguments and concluded that, due to the nature of the data shared between the parties, price parallelism could not be attributed to non-collusive oligopolistic market conditions.

The DG's Report indicated that although capacity utilisation has risen in the past four years, production has not increased proportionally during this time. The responders presented data to challenge these estimates and demonstrate that capacity use was rising. Furthermore, it was contended that the DG had erroneously based its calculations on the 'name plate' capacity, without considering factors such as raw materials, plant stabilisation time, and power supply. Consequently, if these factors are taken into consideration, the actual capacity utilisation would be significantly greater. The CCI found that these submissions were not valid, as it noticed a drop in capacity utilisation across the respondents on a year-on-year and plant-wise basis.

The CCI noted that the shipment figures should have been equivalent to or greater than the consumption of cement in the corresponding time of the preceding year, as determined by the dynamics of demand and supply. However, during the months of November and December 2010, the amount of goods sent out was less than the amount actually used during the same months in 2009. The market's ability to absorb supplies was not the issue. Rather, the decrease in dispatches and utilisation indicated that the cement producers deliberately controlled and restricted the supply of cement in the market.

Manufacturing Parallelism: The production figures among cement companies in a specific geographical region exhibited a robust positive association. As per the CCI, the cement businesses collectively decreased their production in November-December 2010. However, the production of the cement industry varied during the same time in 2009. This was a conspicuous manifestation of synchronised conduct.

Dispatch Parallelism: The cement businesses' dispatches remained nearly identical from January 2009 to December 2010. The cement businesses contended that the similarity in both production and dispatch is due to the standardised nature of cement, the cyclical patterns inherent in the cement industry, and the competitors' capacity to strategically react to their rivals' actions. The CCI observed that the decline in output and dispatch in November 2010 was atypical, particularly in comparison to the varied pattern observed in November 2009. Surprisingly, the Competition Commission of India (CCI) determined that members of a cartel may not constantly coordinate their actions; from time to time, their behaviour may represent a competitive market. When coordination is beneficial, parties will replace competition with cooperation.

Rise in price: The intentional reduction in production and supply by cement businesses, together with the relatively unresponsive demand for cement in the market, led to an increase in cement prices. The CCI determined that there was no evident limitation in demand that could justify the decreased utilisation of capacity. In addition, there were no limitations on demand during November and December 2010. Furthermore, the construction industry experienced a favourable expansion in the third quarter of 2010-11.

Price Leadership: The CCI observed that due to the limited number of dominant cement makers, the leading companies communicated price information through sophisticated media reporting, facilitating the coordination of strategies among other manufacturers.

The Commission analysed the profit margins of all cement businesses and determined that certain companies had a greater Return on Capital Employed and EBITDA in 2010-11 compared to 2009-10.

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In addition, the CCI noted that the respondents generated substantial profit margins above the cost of sales.

The factors outlined in Section 19(3) of the Competition Act: It is important to mention that the CCI has indicated that if violations of sections 3(3) (a) and (b) are proven, the negative impact on competition is assumed. However, due to the counterarguments presented by the respondents, the elements specified in section 19(3) were taken into consideration to assess whether there has been a significant negative impact on competition.

Despite not examining the reasons outlined in section 19 (3) (a), (b), and (c), the Commission concluded that the rise in price and decrease in supply in the market were harmful to consumers. In addition, the efficiency defences outlined in section 19 (e) and (f) were not applicable because the actions of the respondents did not result in any enhancements to the production or distribution of commodities, nor did they contribute to the advancement of technical, scientific, and economic progress.

Based on the evidence and the consideration of the elements discussed in sections 19(d) to (f), it is clear that the violations of sections 3(3) (a) and (b) have been proven.

Directions of the CCI

In cartel cases, the CCI has the power to fine parties up to three times of its profit for each year of the continuance of the cartel or 10% of its turnover for each year of the continuance of the cartel, whichever is higher. The turnover and profit for the cement companies were examined and accordingly the following penalties were levied on the cement companies.

Company	Penalty (INR in Crores)
ACCLtd.	1147.59
AmbujaCements Ltd.	1163.91
BinaniCements Ltd.	167.32
CenturyTextiles Ltd.	274.02
IndiaCements Ltd.	187.48
JK Cements Ltd.	128.54
LafargeIndia Pvt. Ltd.	480.01
MadrasCements Ltd.	258.68
UltratechCement Ltd.	1175.49
JaiprakashAssociates Ltd.	1323.60

In addition, the CMA was fined 10% of its total receipts for the past two years. The respondents have been directed to pay the above penalties within 90 days of the receipt of the CCI order.

The CCI also directed the companies to 'cease and desist' from indulging in agreement or understanding on prices, production and supply of cement in the market. Similarly, the CMA has been directed to disengage and disassociate itself from collecting wholesale and retail prices through the member cement companies and also from circulating the details on production and dispatches of cement companies to its members.