

Anti-Trust Agreement in Indian Real Estate Sector: A Comparative Legal and Policy Analysis with Us and Canada

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Abstract

This research paper do a comparative legal and policy analysis of anti-trust agreements in real estate sector in India with the United States and Canada using doctrinal research methodology and case study analysis method to analyse the effectiveness of India's Competition Act 2002. This paper show that on the one hand, India has a strong legal regime to deal with competition, on the other hand, a lot of challenges are there in enforcement of competition regulation laws particularly in case of real estate sector which involve cartelization of cement manufacturers and builders associations, as can be seen from the Builders Association of India vs Cement Manufacturer Association case and many more such cases like Belaire Owners' Associations v. DLF Limited. This research is based on five comparative tables analyzing the legislative architecture, enforcement mechanism and sectoral impact of cement cartelization. In major cities, there has been a price rise of 20-40% owing to cement cartelization which transgresses the vision of "Housing for All by 2022". On the contrary, Competition Commission of India suffers from institutional capacity constraints as shown by its paltry penalty collection of 0.4% unlike Government of US which is backed up by robust enforcement mechanism as seen in Standard Oil break-up and AT&T divestiture including Canada which follows streamlined administrative approach. The study finds crucial gaps like lack of regulatory coordination, sector-specific knowledge and lack of deterrence-related mechanisms. As such this study provides evidence-based recommendation for the establishment of a Cement Regulatory Authority, strengthening the institutional capacity of CCI, implementation of comprehensive whistleblower protection and creation of sector-specific enforcement protocols. Furthermore, this will assist in fair and healthy competition, consumer welfare, and support infrastructure development goals of India. In 2019-20 India's real estate sector contributed 6.5% to GDP and is also the second-largest employment generator after agriculture.

Keywords: Anti-trust law, Competition policy, Real estate sector, Cartelization, Comparative legal analysis, Market regulation

1. Introduction

1.1 Context and Background

The real estate sector is the backbone of the economic development as it is the second-largest employment generator in India after agriculture as per Dhrubajyoti Ray & Dr. Sanjay Bhattacharya, 2024. The real estate sector is directly and indirectly connected to over 200 industrial ancillaries like cement, steel, aluminum, electrical appliances, and others. It contributes over 6.5% of the GDP of India as per Dhrubajyoti Ray & Dr. Sanjay Bhattacharya, 2024. This sector has five sub-sectors namely residential, commercial, hospitality, retail and industrial real estate. As per Dhrubajyoti Ray & Dr. Sanjay Bhattacharya, 2024, almost 30% growth per annum was recorded in the above sectors. The competition law also called the antitrust law in the USA is the basic regulatory mechanism to promote market competition. In order to regulate anti-competitive conduct, competition

law was enacted as per Ruchika Singh, 2022. The primary aim of competition law is to prevent private players from restricting the market economy and monopolizing the market. Further, it enables free and fair competition in the market which benefits consumers, improves efficiency in the production of goods Kashyap, et al - 2021.

1.2 Problem Statement and Research Significance

The Indian real estate sector suffers from anti-competitive practices such as cartelization among cement manufacturers and the builders' association A. Kashyap et al. in 2021 states that due to such practices the price levels have artificially increased restricting choices and entry to the market. The significance of this research is heightened since India wants to provide 'Housing for All' by 2022 (under PM Awas Yojana) and with COVID-19 pandemic the situation has worsened market conditions A. Kashyap et al., 2021.

2. Literature Review

2.1 Historical Evolution of Competition Law

Notwithstanding the enlistment into the Competition Act 2002, enforcement is a challenge that inhibits anti-trust regulation. There has been an uptick in the anti-competitive practices in the commercial real estate sector and it harms the economy A. According to Kashyap et al., 2021, the competition law has aged a lot with its first example being Lex Julia De Annona in the Roman Empire in 50 B.C. Competition law is said to have emerged towards the close of the nineteenth century with Canada enacting the first competition law in 1889 followed by USA's Sherman Act in 1890, Ruchika Singh, 2022. The Sherman Act is often regarded as the bedrock of the contemporary competition regime as it enjoins certain principles under which anti-competitive conduct may be controlled.

2.2 Indian Competition Law Development

India's competition law journey began with the Monopolies and Restrictive Trade Practices (MRTP) Act 1969, enacted during the era of licenses, permits, and controls A. Following the introduction of the MRTP Act, the Competition Act 2002 has taken its place. Subsequently, this act came into being with the establishment of the Competition Commission of India (CCI). In other words, the above indicates a shift from a regulated one to a market-led economy. As a result, this means that Indian regulations on competition law have been laid down in the above-mentioned legislation. In addition to these, competition policy can be traced back to the Constitution of India. There terms have been enlisted in a manner that helps the execution of policies. The Indian Constitution may help in facilitating the process of justice, as well as, providing opportunities to all through Article 38. 39 and so on. Most importantly, it aims to equal the distribution of wealth in the community Ruchika Singh, 2022.

2.3 Real Estate Sector Dynamics

Due to fast urbanization, segmental rise in household income and emergence of nuclear families, the real estate market is likely to increase from INR 12,000 crores in 2019 to INR 65,000 crores by 2040 Dhrubajyoti Ray & Dr. Sanjay Bhattacharya 2024. However, it is also seeing rise in anti-competitive practices. With A. According to Kashyap et al 2021, corporate real estate sector has become rife with cartelization.

3. Research Objectives

3.1 Primary Objectives

1. To analyze the legal framework governing anti-trust agreements in India's real estate sector
2. To conduct comprehensive comparative analysis of competition law frameworks in India, US, and Canada
3. To examine the effectiveness of enforcement mechanisms in addressing real estate sector cartels
4. To identify gaps and challenges in India's competition law implementation

3.2 Secondary Objectives

1. To evaluate case studies of cartelization in India’s real estate sector
2. To assess the role of regulatory bodies in competition law enforcement
3. To propose evidence-based recommendations for strengthening anti-trust regulation

4. Research Methodology

This study employs a doctrinal research methodology, combining explanatory and analytical approaches A. Kashyap et al., 2021. The research methodology comprises:

- ❖ Primary Sources Analysis: Examination of statutory provisions, acts, notifications, and regulatory reports
- ❖ Secondary Sources Review: Analysis of books, journals, case studies, and academic literature
- ❖ Comparative Legal Analysis: Cross-jurisdictional comparison of legal frameworks and enforcement mechanisms
- ❖ Case Study Method: Detailed analysis of significant cartelization cases in India’s real estate sector
- ❖ Qualitative Data Analysis: Interpretation of regulatory decisions and market impact assessments

5. Comparative Legal Framework Analysis

5.1 Legislative Frameworks Comparison

Table 1: Comparative Analysis of Competition Law Frameworks

Aspect	India	United States	Canada
Primary Legislation	Competition Act 2002	Sherman Act 1890, Clayton Act 1914, FTC Act 1914	Competition Act
Regulatory Authority	Competition Commission of India (CCI)	Department of Justice (DOJ), Federal Trade Commission (FTC)	Competition Bureau
Constitutional Basis	Articles 38 & 39 (DPSP)	Commerce Clause	Federal trade regulation powers
Enforcement Approach	Administrative with rule of reason	Criminal and civil enforcement	Administrative penalties
Penalty Structure	Up to 10% of average turnover	Criminal fines up to \$100 million, civil penalties	Administrative monetary penalties
Leniency Program	Available under Section 46	Comprehensive amnesty program	Immunity and leniency programs
Merger Threshold	Asset/turnover based with deal value threshold (2023)	Size of transaction and parties	Size of transaction based

5.2 Anti-Competitive Agreement Provisions

Table 2: Anti-Competitive Agreement Categories across Jurisdictions

Agreement Type	India (Section 3)	United States	Canada
<i>Horizontal Agreements</i>			
Price Fixing	Per se prohibited (Section 3(3)(a))	Per se illegal under Sherman Act	Criminal offense
Bid Rigging	Per se prohibited (Section 3(3)(c))	Per se illegal	Criminal offense
Market Allocation	Per se prohibited (Section 3(3)(d))	Per se illegal	Criminal offense
Production Control	Per se prohibited (Section 3(3)(b))	Rule of reason analysis	Case-by-case analysis
<i>Vertical Agreements</i>			
Tie-in Arrangements	Rule of reason (Section 3(4)(a))	Rule of reason under Clayton Act	Reviewable practices
Exclusive Dealing	Rule of reason (Section 3(4)(b))	Rule of reason	Reviewable practices
Resale Price Maintenance	Rule of reason (Section 3(4)(e))	Rule of reason (since 2007)	Per se prohibited
Territorial Restrictions	Rule of reason (Section 3(4)(c))	Rule of reason	Case-by-case analysis

6. Case Studies Analysis

6.1 Indian Real Estate Sector Cases

6.1.1 Cement Cartelization: Builders Association of India vs. Cement Manufacturer Association.

Background and Facts In 2012 the Builders Association of India made a detailed complaint with the Cement Manufacturers Association (CMA) regarding the breach of the Competition Act A. Kashyap et al., 2021. The case concerned such large cement producers, as Grasim, Lafarge, and Birla, who were suspected of forming a cartel to create a price and production control of cement in 2000-2001.

Evidence and Investigation:

- The CCI investigation found that:
- Combined production and dispatching patterns between cement companies.
- Division of market into five zones whereby price and supply is controlled.
- CMA to be used in price coordination with high-power committee meetings.
- Artificial scarcity because of the creation of systematic prices.

CCI Decision and Impact: The Commission was found to have limited and manipulated the production and supply of cement, which had resulted in an increase in prices A. Kashyap et al., 2021. The case was groundbreaking because it has unequivocally established that written contracts are not required to prove the existence of a cartel, parallel conduct and coordinated activity is sufficient to prove the existence of cartelization.

Economic Consequence on the Real Estate Industry: Cement cartelization had a direct effect of increasing prices by 20-40 percent of the major cities even with low demand which directly influenced the construction cost and the vision of the government of housing simply called Housing for All A. Kashyap et al., 2021.

6.1.2 Cartelization of Builders: Belaire Owners/Associations vs. DLF Limited.

Case Overview DLF Limited was suspected of taking advantage of its dominant status, by introducing unjust and one-sided conditions in buyer-builder contracts A. Kashyap et al., 2021. Information asymmetry between the buyers and the builders was evident in the case, as the nature of the contracts was unequal.

Key Legal Issues

- Misuse of superior market.
- Unsafe terms of contracts in favor of builders.
- Consumer choice information asymmetry.
- Practices industry-wide that imply possible collusion.

CCI Findings and Decision: The Commission determined that DLF had violated its dominant status by misusing its dominant position and fined it and ordered it to stop its unfair practices. This ruling was supported by the Competition Appellate Tribunal, and later by the Supreme Court A. Kashyap et al., 2021.

Wider Implications: The case revealed the grey areas of competition and consumer law, where CCI found that it was possible to imitate conduct among the other real estate players A. Kashyap et al., 2021.

6.2 Comparative International Cases

6.2.1 United States: Standard Oil Breakup (1911)

Historical Background Standard Oil, under the leadership of John D. Rockefeller, was a monopoly employing aggressive business tactics such as predatory pricing, getting favorable railroad rates and bullying its rivals Sene, 2025]. Both the horizontal and vertical integration allowed the company to control all the supply chain of oil and win rebates with oil railroad companies that the small competitors were not able to win.

Criminal Case and Ruling In 1911, the Supreme Court of the U.S. ruled that Standard Oil had committed a crime against the Sherman Act and dissolved it into 34 smaller organizations A. Ramkumar and Mariama Sène, 2025. The disintegration set a very important legal precedent that monopolies could be abolished in case they were found to be detrimental to competition and customers.

Post Breakup Effect: The break-up resulted in the competition in the oil industry with companies such as Exxon, Chevron and Mobil emerging as strong rhetors. This led to the decreased price of oil, the development of new methods of refining oil, and the enhancement of distribution channels A. Ramkumar and Mariama Sene, 2025.

6.2.2 United States: AT&T Divestiture (1982)

Background AT&T was a regulated monopoly that dominates the local and long-distance phone services using its control of the infrastructure to prevent new entrants into the market A. Ramkumar & Mariama Sene, 2025.

Settlement and Restructuring: In 1982, the case was resolved when AT&T decided to separate its monopoly into seven local “Baby Bells” but retained long-distance services A. Ramkumar & Mariama Sene, 2025.

Economic Benefits: The disintegration led to lower long-distance charges, wireless communication and internet innovation, and faster mobile phone and fiber-optic technology growth A. Ramkumar & Mariama Sene, 2025.

Table 3: Case Studies Comparative Analysis

Case	Jurisdiction	Sector	Anti-Competitive Practice	Outcome	Economic Impact
Cement Cartel	India	Real Estate/Construction	Price fixing, production control	Penalties imposed, cease & desist order	20-40% price increase in major cities
DLF Case	India	Real Estate	Abuse of dominant position	Penalty, unfair terms cessation	Improved consumer protection standards
Standard Oil	United States	Oil & Gas	Monopolization, predatory pricing	Company breakup into 34 entities	Lower prices, increased innovation
AT&T Divestiture	United States	Telecommunications	Monopoly control, market foreclosure	Breakup into regional companies	Reduced rates, technological advancement
Railway Monopolies	United States	Transportation	Price manipulation, service control	Interstate Commerce Act 1887	Regulated pricing, improved services

7. Enforcement Mechanisms and Regulatory Analysis

7.1 Institutional Framework Comparison

Table 4: Regulatory Bodies and Enforcement Powers

Aspect	India (CCI)	United States (DOJ/FTC)	Canada (Competition Bureau)
Establishment	2003 (Competition Act 2002)	DOJ: 1870, FTC: 1914	1986
Composition	Chairperson + 6 Members	Attorney General + Commissioners	Commissioner + Deputy Commissioners
Investigation Powers	Director-General investigation	FBI, FTC investigators	Competition Bureau investigators
Penalty Authority	Administrative penalties up to 10% turnover	Criminal prosecution, civil penalties	Administrative monetary penalties
Appeal Mechanism	National Company Law Appellate Tribunal	Federal Courts	Federal Court of Canada
Leniency Programs	Section 46 - reduced penalties	Corporate amnesty program	Immunity and leniency programs
Merger Review	Mandatory above thresholds	Hart-Scott-Rodino Act	Mandatory notification system
Sector Expertise	General competition authority	Specialized industry knowledge	Sector-specific analysis

7.2 Enforcement Challenges in India

The Indian competition law regime faces several enforcement challenges that limit its effectiveness in addressing real estate sector cartels:

- ❖ **Institutional Capacity Limitations:** The CCI lacks sufficient funding and specialized professionals for comprehensive monitoring and regulation A. Ramkumar & Mariama Sène, 2025.
- ❖ **Penalty Collection Issues:** Of total fines imposed, the CCI has been able to collect merely 0.4%, raising questions over its executive powers A. Kashyap et al., 2021.
- ❖ **Regulatory Overlap:** Different agencies like the Ministry of Railways and CCI have overlapping mandates, leading to enforcement inefficiencies A. Ramkumar & Mariama Sène, 2025.
- ❖ **Proving Cartelization:** Establishing “meeting of minds” behind parallel practices among builder’s remains challenging under Indian competition law A. Kashyap et al., 2021.

8. Data Analysis and Sectoral Impact

8.1 Real Estate Sector Performance and Competition Issues

Table 5: Real Estate Sector Impact Analysis

Indicator	Pre-Competition Act (2000-2002)	Post-Competition Act (2010-2020)	Impact of Cartels
Cement Prices	Baseline pricing	20-40% increase in major cities	Artificial inflation due to cartelization
Housing Affordability	Moderate accessibility	Reduced affordability	Direct impact on “Housing for All” vision
Market Concentration	Fragmented market	Increased consolidation	Barriers to new entrants
Consumer Complaints	Limited formal channels	Increased CCI complaints	8 years post-enforcement: highest complaints in real estate
FDI Inflows	Limited foreign investment	Increased FDI attraction	Potential deterrent due to cartel practices
Construction Costs	Stable input costs	Volatile due to cartel pricing	Unpredictable project economics
Innovation	Limited technological adoption	Gradual modernization	Stifled by monopolistic practices

8.2 Comparative Effectiveness Analysis

There are big differences between India and other known jurisdictions in how something is enforced.

- In the USA, the dual enforcement system of the DOJ and FTC with criminal prosecution sets a strong deterrent.
- Administrative efficiency with sectoral expertise enables resolution of cases in Canada. R. Ramkumar & Mariama Sène, 2025.
- In India a comprehensive legislation notwithstanding, enforcement gaps exist on the ground as a result of a institutional shortages and regulatory complexity- Sanchaniya et al., 2023 Kashyap et al. (2021)

9. COVID-19 Impact and Regulatory Response

9.1 Pandemic-Era Cartelization

The impact of COVID-19 and the regulatory response 11th April: Global Transmission and Impact. Cartelization during a Pandemic There were interesting challenges for competition law enforcement due to COVID-19.

9.2 Regulatory Adaptations

The CCI issued advisory guidelines in 2020 permitting businesses to engage in coordinated activities including:

- Sharing data on stock levels and operation timings
- Collaborative use of distribution networks and infrastructure
- Joint research and development initiatives
- Coordinated transport and logistics arrangements
- These measures aimed to balance competition concerns with economic recovery needs while warning against abuse of prevailing situations A. Kashyap et al., 2021.

10. Recommendations and Policy Implications

10.1 Institutional Strengthening

- Enhanced CCI Capacity: Increase funding and specialized personnel for effective monitoring and enforcement
- Sector-Specific Expertise: Develop real estate sector specialization within CCI
- Improved Penalty Collection: Strengthen executive powers for penalty enforcement
- Whistleblower Protection: Implement comprehensive protection mechanisms to encourage cartel reporting

10.2 Regulatory Framework Reforms

- Cement Regulatory Authority: Establish specialized regulatory body for cement industry oversight, as demanded by CREDAI A. Kashyap et al., 2021
- Consumer Education Fund: Create fund under Competition Act for consumer awareness and education
- Streamlined Appeal Process: Reduce regulatory overlap and expedite case resolution
- Digital Market Regulation: Adapt framework for emerging digital platforms in real estate

10.3 Sectoral Interventions

- Real Estate Regulatory Integration: Coordinate between CCI and Real Estate Regulatory Authority (RERA)
- Infrastructure Sharing Mandates: Promote competitive infrastructure access
- Transparency Requirements: Mandate disclosure of pricing mechanisms and cost structures
- Market Entry Facilitation: Reduce barriers for new entrants in real estate sector

11. Limitations and Future Research

11.1 Study Limitations

This research acknowledges several limitations:

- Limited availability of historical data for the specified 1900-1947 period
- Focus primarily on contemporary legal frameworks and recent case studies
- Reliance on secondary sources for comparative analysis
- Limited access to confidential regulatory proceedings

11.2 Future Research Directions

- Empirical analysis of competition law impact on real estate pricing
- Sector-specific competition policy framework development
- Digital platform regulation in real estate markets
- Cross-border cartel enforcement mechanisms

12. Conclusion

According to this analysis, while India has a robust competition regulatory framework in place due to the Competition Act 2002, enforcement challenges in the real estate sector are large. The comparison with the US and Canada shows that effective antitrust enforcement is not just a well-written law but also requires institutions with sufficient capacity, resources and sector knowledge. The case studies that highlight the cement cartelization and the builders' anti-competitive practices show how cartels impact prices in India's real estate sector. They affect the governmental housing goal and consumer welfare. According to the findings of the research, India's competition law regime is insufficient on various counts as compared to developed nations like the US and Canada; hence, reforms must be done urgently.

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