

Cross Border Cartelization and its Regulation in India: A Comprehensive Analysis

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Abstract - Cartelization, the unlawful collaboration of competitors to restrict competition, constitutes a serious antitrust violation detrimental to consumers, businesses, and the economy. Due to divergent legal frameworks, complex jurisdictional challenges, and the necessity for coordination among multiple competition authorities, the operation of cartels across international borders presents unique regulatory and enforcement challenges in India. This paper provides a comprehensive analysis of cross-border cartelization and its regulation within the Indian legal context. The Competition Commission of India's sector-neutral approach to addressing anti-competitive behaviour has facilitated the implementation of pro-competitive reforms across various industries. In this regard, the Commission has demonstrated a strong commitment to combating cartelization. This paper outlines the methods employed by the Competition Commission of India to identify and assign liability to cartels, with the goal of enhancing regulatory compliance and fostering competitive markets. Additionally, it explores the procedural obstacles typically faced during cartel investigations, covering topics such as the historical backdrop, economic impact, legal framework, challenges, and best practices for deterrence, investigation, and detection.

Keywords - cartelization, cross border, regulation, antitrust, competition, enforcement.

I. INTRODUCTION

Cartelization constitutes a pernicious form of anti-competitive conduct that undermines market efficiency and compromises consumer welfare. It is legally characterized as an agreement or collusion among competitors aimed at manipulating prices, controlling output, or allocating markets, thereby violating principles of fair competition. The proliferation of cross-border cartels presents substantial regulatory and enforcement challenges due to the expansion of multinational corporations, globalization of markets, and the increased economic interdependence of nations. Addressing such conduct necessitates the implementation of robust regulatory frameworks and enforcement mechanisms to mitigate its adverse economic and social consequences, including price inflation, restriction of competition, and consumer exploitation. Currently, over 130 jurisdictions, including both established regulatory authorities and newly emerging competition agencies from developing economies, adhere to antitrust laws. However, the enforcement of these laws remains inconsistent, particularly where anti-competitive enterprises operate beyond national borders. As global economies become more interdependent, multinational corporations increasingly engage in collusive practices that transcend jurisdictional boundaries. The proliferation of competition laws, expansion of antitrust authorities, and growth in international trade and technological advancements have introduced novel complexities in the enforcement of competition law. The globalized economic environment has inadvertently facilitated anti-competitive practices across foreign markets, necessitating an internationalized approach to cross-border antitrust enforcement.

From 2000 to 2016, approximately 75 large-scale cartels were identified annually on a global scale. Despite this, numerous cross-border cartels remain undetected. Enterprises wielding significant market power exploit international cartels to expand their market dominance and amplify profits, thereby inflicting irreparable economic harm upon emerging and developing economies. These cartels effectively drain the gross domestic product (GDP) of vulnerable economies while national and regional antitrust enforcement mechanisms struggle to impose effective penalties due to jurisdictional and procedural constraints. Furthermore, these illicit practices undermine the economic benefits of international trade that are otherwise safeguarded by multilateral treaties and international organizations. Even when penalized, the financial sanctions imposed on global cartels remain insufficient to deter such conduct. Consequently, major international institutions, including the United Nations Conference on Trade and Development (UNCTAD), the World Trade Organization (WTO), the International Competition Network (ICN), and the Organization for Economic Co-operation and Development (OECD), are actively engaged in addressing this pervasive issue through coordinated regulatory efforts.

India's regulatory framework for addressing cross-border cartelization is fraught with legal ambiguities and enforcement gaps. The absence of standardized international agreements on cross-border cartel regulation, coupled with limitations in the extraterritorial applicability of the Competition Act, 2002, has impeded India's ability to effectively curb such practices. While the Act contains robust provisions against domestic cartels, its enforcement mechanisms remain inadequate in the context of transnational anti-competitive activities. This inadequacy exacerbates challenges related to enforcement, international cooperation, and the safeguarding of Indian markets and consumers from the detrimental effects of global cartel conduct.

Moreover, the effectiveness of cross-border cartel enforcement is constrained by difficulties in gathering evidence and coordinating investigative efforts across multiple jurisdictions. Given the complexity of global supply chains and market interconnectivity, detecting and prosecuting cartel participation at an international level is inherently challenging. Additionally, the disparity in penalties and sanctions across jurisdictions contributes to regulatory arbitrage, wherein cartel participants deliberately operate in regions with weaker enforcement regimes to evade stringent legal consequences. These inconsistencies hinder deterrence and punishment, thereby diminishing the overall effectiveness of cross-border cartel enforcement.

India's regulatory approach to cross-border cartelization reflects an intricate interplay between domestic competition laws and international cooperation agreements, showcasing both strengths and limitations in combatting global anti-competitive practices and ensuring market equity. This research paper examines the dual nature of India's regulatory landscape, recognizing existing

enforcement mechanisms while identifying gaps in effectively addressing international cartelization. The paper is structured into four sections: a historical overview, an analysis of the prevailing legal framework, a discussion on enforcement challenges, and an exploration of potential legal and policy solutions to strengthen India's response to cross-border cartelization.

II. HISTORICAL CONTEXT

The term "cross-border cartelization" refers to the formation and operation of cartels, which are agreements among competing enterprises to coordinate their activities with the objective of manipulating prices, restricting output, and suppressing competition. While cartelization has historical roots dating back to ancient times, its modern manifestation gained prominence during the Industrial Revolution in the 19th century. Several significant instances of cross-border cartelization emerged across various industries during the late 19th and early 20th centuries. One of the earliest known examples is the *International Salt Union*, a cartel established in Europe in the late 19th century. This cartel sought to regulate the production and distribution of salt across multiple jurisdictions, including Germany, France, Austria, and Italy, by imposing price controls and restricting competition¹. Similarly, the formation of the *Steel Trust in the United States* during the late 19th century represents another landmark case.² This cartel, which included Carnegie Steel and U.S. Steel, engaged in anti-competitive practices such as price-fixing, market allocation, and production control within the steel industry. Another significant instance of cross-border cartelization was the *IG Farben cartel*, established in Germany during the 1920s. This transnational cartel exerted extensive control over the chemical industry, overseeing the distribution, pricing, and production of a wide range of chemical products on a global scale.³ More recently, global competition authorities have continued to investigate and prosecute cross-border cartelization. A notable example is the *Vitamin Cartel case* of the 1990s, wherein major chemical and pharmaceutical corporations colluded to manipulate prices and divide international vitamin markets. This resulted in substantial legal penalties and enforcement actions across multiple jurisdictions.⁴ The historical trajectory of cross-border cartelization demonstrates its persistent presence across different industries and national boundaries, significantly impacting market dynamics, pricing structures, and competitive environments. In response to these challenges, competition laws and enforcement mechanisms have evolved to mitigate the adverse effects of cartelization and promote market fairness. Recognizing the growing threat of cross-border cartelization, India undertook significant reforms in its competition laws to enhance regulatory oversight. The Monopolies and Restrictive Trade Practices (MRTP) Act, 1969, which served as India's primary antitrust legislation for several decades, was deemed insufficient to address modern forms of cartelization, particularly those originating beyond Indian territory.⁵ This legislative gap led to the enactment of the Competition Act, 2002, which repealed the MRTP Act and introduced a comprehensive framework to regulate both domestic and cross-border anti-competitive practices. The Competition Act empowered the Competition Commission of India (CCI) with enhanced regulatory authority and enforcement tools to detect, investigate, and penalize cartelization more effectively, thereby ensuring a fair and competitive market environment in India.⁶

III. LEGAL FRAMEWORK FOR REGULATING CARTELS IN INDIA

India's legislative and regulatory framework for combating cross-border cartelization is primarily governed by the Competition Act, 2002. The Act is designed to promote and sustain competition, protect consumer interests, and ensure fair trade practices within the Indian market. The following are key provisions of the Act that address cross-border cartelization.

1. Competition Act, 2002

- Section 3 deals with Prohibition of Anti-Competitive Agreements. Section 3 prohibits anti-competitive agreements that have an appreciable adverse effect on competition (AAEC) within India. This provision extends to cross-border cartels if their impact is felt in the Indian market, even if the collusive agreement was executed outside India. Agreements involving price-fixing, production limitation, and market allocation fall within the purview of this prohibition. Consequently, the Competition Commission of India (CCI) is empowered to investigate and take enforcement actions against foreign entities engaged in cartel activities that affect competition in India.⁷

- Section 32: Extraterritorial Jurisdiction - Section 32 explicitly grants the CCI the authority to investigate anti-competitive practices occurring outside India if they have or are likely to have an appreciable adverse effect on competition within the Indian market. This provision is instrumental in regulating cross-border cartelization as it allows Indian authorities to assert jurisdiction over foreign enterprises engaged in cartel practices that distort competition in India.⁸

- Section 19: Power of Inquiry - Section 19 empowers the CCI to initiate investigations into enterprises or associations suspected of engaging in anti-competitive behaviour. This includes cross-border cartels, provided their activities have an adverse effect on competition in India.⁹

- Section 27: Imposition of Penalties - The CCI is vested with the authority under Section 27 to impose stringent penalties on enterprises found guilty of engaging in anti-competitive agreements, including those forming cross-border cartels. These penalties serve as a deterrent against collusive conduct that harms the Indian economy.¹⁰

2. Role of the Competition Commission of India (CCI)¹¹

¹ United States v. International Salt Co., 332 U.S. 392 (1947).

² United States v. United States Steel Corp., 251 U.S. 417 (1920).

³ United States v. IG Farbenindustrie AG, 28 F. Supp. 737 (D. Nuremberg 1946), aff'd, 46 F. Supp. 278 (D. Nuremberg 1947), aff'd sub nom. United States v. Krauch, 338 U.S. 611 (1950).

⁴ United States v. Andreas Kranzler et al., Case No. 99-0161 (D.D.C. 1999).

⁵ Monopolies and Restrictive Trade Practices (MRTP) Act, 1969.

⁶ The Competition Act, 2002.

⁷ Section 3 of Competition Act, 2002.

⁸ Section 32 of Competition Act, 2002.

⁹ Section 19 of Competition Act, 2002.

¹⁰ Section 27 of Competition Act, 2002.

¹¹ The Competition Commission of India.

The CCI serves as the primary regulatory authority for enforcing the Competition Act, 2002, and plays a critical role in combatting cross-border cartelization through:

- **Investigation and Enforcement:** The CCI has the power to conduct inquiries, gather evidence, and impose penalties on entities involved in cartelization, including those operating across borders.
- **International Cooperation:** Recognizing the global nature of cartelization, the CCI collaborates with foreign competition authorities to facilitate investigations, share information, and enhance enforcement efforts.
- **Leniency Program:** The CCI operates a leniency program that incentivizes cartel participants to voluntarily disclose information in exchange for reduced penalties, thereby aiding in the detection and dismantling of cartel operations, including those spanning multiple jurisdictions.

3. International Cooperation and Regulatory Frameworks

Given the complexities associated with cross-border cartel enforcement, various international frameworks and agreements facilitate coordination among competition authorities worldwide:¹²

- **International Competition Network (ICN):** A global forum comprising competition agencies that promotes cooperation, harmonization of competition laws, and the exchange of best practices to enhance cartel detection and enforcement.
- **Organization for Economic Co-operation and Development (OECD):** Through its Competition Committee, the OECD issues policy recommendations and best practice guidelines to improve cartel enforcement strategies among member nations.
- **United Nations Conference on Trade and Development (UNCTAD):** UNCTAD provides technical assistance and policy guidance to developing nations, fostering global coordination in cartel enforcement and competition law compliance.
- **Regional Competition Authorities and Agreements:** Various regional organizations oversee competition regulation, such as European Union (EU). The European Commission, along with the national competition authorities of EU member states, enforces competition laws against cartels operating across Europe. African Competition forum focuses on fostering cooperation between African nations in cartel enforcement. Competition Commission of India (CCI) actively engages in cross-border collaborations to strengthen India's competition law enforcement.
- **Bilateral and Multilateral Cooperation Agreements:** Nations often enter into bilateral or multilateral agreements to enhance cooperation in cartel investigations, such as Mutual Legal Assistance Treaties (MLATs) that facilitate evidence-sharing and legal coordination in cartel enforcement.
- **Leniency Programmes and Whistle-blower Protections:** Whistle-blower protections and leniency programs play a pivotal role in detecting and prosecuting cross-border cartels. These programs encourage cartel members to self-report and cooperate with regulatory authorities in exchange for reduced penalties or immunity.
- **Sanctions and Deterrence Mechanisms:** To deter anti-competitive behaviour, regulatory authorities impose severe penalties, including monetary fines, disgorgement of illegal gains, and injunctive relief. The penalties are structured to correspond to the severity of the violation and the economic harm caused by the cartel.
- **Extraterritorial Application of Competition Laws:** Many jurisdictions include extraterritorial jurisdiction provisions in their competition laws, empowering regulators to take action against foreign cartels that affect their domestic markets. This prevents jurisdictional arbitrage, where cartel members exploit lenient enforcement in certain countries to evade prosecution.

IV. JUDICIAL APPROACH TOWARDS CROSS BORDER CARTELIZATION IN INDIA

Competition Appellate Tribunal (COMPAT): Established under the Competition Act, 2002, the Competition Appellate Tribunal (COMPAT) functioned as the appellate authority empowered to adjudicate upon appeals filed against the orders of the Competition Commission of India (CCI). It possessed the statutory authority to review and reassess the decisions of the CCI, particularly in cases involving anti-competitive practices, including those related to cross-border cartelization, until its dissolution in 2022. The Tribunal adjudicated on various matters concerning appreciable adverse effects on competition (AAEC) within the Indian market, particularly in cases where global cartels were alleged to have an impact on domestic trade and commerce. For instance, in cases involving international cartel arrangements, the Tribunal assessed whether such conduct had a substantial and direct impact on the Indian economy and whether the CCI's determinations were legally and factually justified.

Supreme Court of India: As the apex judicial authority, the Supreme Court of India exercises final appellate jurisdiction over matters arising under the Competition Act, 2002, including appeals from the COMPAT. The Court has played a pivotal role in the interpretation and enforcement of competition law, particularly in cases concerning cross-border anti-competitive conduct. In *Director General vs. CCI*, the Supreme Court underscored the necessity of a comprehensive and rigorous investigation while determining the impact of international cartels on Indian markets. Similarly, in the *Western Union Case* (2021), the Court clarified the legal threshold for establishing the extraterritorial impact of foreign anti-competitive practices on the Indian economy. The ruling reinforced the principle that while the CCI retains jurisdiction over cross-border cartels, it must substantiate that such practices have materially and significantly distorted competition within India.

Cross-Border Cartel Cases Under the Competition Act, 2002 provides that following the enactment of the Competition Act, 2002, India witnessed several high-profile cross-border cartel investigations, wherein the CCI exercised its regulatory and enforcement powers to safeguard domestic markets from anti-competitive collusion orchestrated by international enterprises.

The *Air Cargo Cartel* case,¹³ which emerged in the early 2000s, was one of the most significant cross-border cartel investigations affecting India. Several leading international airlines were found to have colluded in fixing prices for fuel surcharges and other ancillary fees associated with air cargo transportation. Such practices had an adverse impact on Indian exporters and importers, leading to a substantial distortion in market competition. The CCI imposed substantial pecuniary penalties on major carriers, including British Airways and Singapore Airlines, marking a landmark enforcement action against global cartelization. The matter was part of a multi-

¹² Samuel K. C. Kopper, "The International Regulation of Cartels. Current Proposals." *Virginia Law Review*, vol. 40, no. 8, 1954, pp. 1005–28 (24 pages).

¹³ Case C- 122/16 *British Airways v Commission* (Air cargo cartel).

jurisdictional antitrust probe, with concurrent investigations conducted by competition regulators in the European Union, the United States, and other jurisdictions. This case underscored the imperative of international regulatory cooperation in tackling cross-border anti-competitive conduct. The *Cement Cartel Case* while primarily a domestic competition matter, the Cement Cartel case revealed certain cross-border dimensions, as some market participants had global operations and were influenced by international market dynamics. The CCI's investigation unearthed collusive practices that led to artificial price inflation in the cement sector, thereby affecting infrastructure projects, real estate, and housing markets.¹⁴ In the *Auto Parts Cartel Case*, the Auto Parts Cartel involved leading global suppliers of automotive components, who engaged in price-fixing and bid-rigging strategies that directly impacted the Indian automobile industry. Given India's significant reliance on imported auto components, such anti-competitive agreements had a cascading effect on automobile manufacturing costs and consumer pricing. The CCI, in collaboration with competition authorities from the European Union, the United States, and Japan, initiated joint enforcement actions, culminating in substantial penalties against the offending entities.

V. CHALLENGES IN COMBATING CROSS BORDER CARTELIZATION

Lack of cooperation from competition enforcement authorities: The proactive collaboration of competition enforcement agencies is crucial to the successful identification and prosecution of transnational cartels. Without comprehensive investigations, cartels might carry on with their anti-competitive behaviour without being held accountable. To guarantee effective enforcement of competition rules, regulatory bodies must conduct thorough investigations, compile substantial evidence, and promote interjurisdictional collaboration. The problem of jurisdictional restrictions is one of the main obstacles in the fight against global cartelisation. Some cartels are not directly governed by the laws of the countries where their anti-competitive behaviour is most detrimental. While some nations take enforcement action only when there is a clearly negative impact on their domestic markets, others specifically exempt cartels from the scope of their competition laws. This disjointed strategy leads to enforcement loopholes, especially when it comes to export cartels, which can have substantial market power even if they are set up as ostensibly legal trade agreements. Cross-border collaboration in cartel investigation is severely hampered by worries about the sharing of private and sensitive data. The type of enforcement system in each jurisdiction whether it employs administrative, civil, or criminal penalties and the availability of private enforcement tools have an impact on the degree of regulatory cooperation. Restrictions on cross-border data transmission may make investigations more difficult and restrict legal options because efficient competition law enforcement depends on information sharing. As a result, the overall efficacy of antitrust regulation and deterrence may be weakened in jurisdictions where consumers are most harmed by international cartels because they may not have access to crucial evidence that would enable them to hold offenders accountable. It is frequently difficult for nations where cartel violations take place to obtain the proof required to prove culpability, which makes prosecution challenging. Cartels may be able to operate with impunity if authorities lack the knowledge necessary to assess whether an entity is guilty or innocent. Since the 1990s, the OECD has been instrumental in promoting global collaboration in the fight against cartels, acknowledging this difficulty. The significance of regulatory cooperation in combating cross-border anti-competitive behaviour is demonstrated by cases such as *Kodak v. Fuji*.¹⁵ However, many cartels are able to avoid detection due to authorities' ongoing lack of collaboration, which emphasises the urgent need to improve cross-border regulatory coordination and fortify international enforcement systems.

The Financial Burden of Cartel Investigations and the Role of Cooperation: The substantial cost of conducting investigations is one of the main obstacles to implementing legislation against global cartels. These issues are frequently related because a lack of coordination between jurisdictions can result in redundant investigations, which costs competition authorities needless money. Without efficient coordination, resources may be strained as several regulatory agencies individually carry out the same investigation procedures. Cross-border collaboration, on the other hand, improves efficiency and speeds investigative procedures by eliminating duplication. International cooperation greatly reduces the overall cost of cartel investigations by promoting information exchange and cooperative efforts, which improves enforcement and makes it more financially viable for all participating authorities.

Time-consuming Aspect: As mentioned earlier, enforcement efforts are made more difficult by the absence of collaboration between competition authorities in various jurisdictions. The investigation and prosecution of cross-border cartel cases are inherently time-consuming since they involve several nations, each of which operates under a different set of laws. The requirement for collaboration across many authorities frequently leads to protracted investigations, delays, and inefficient procedures. Authorities encounter major challenges in obtaining evidence, exchanging information, and carrying out enforcement measures promptly in the absence of efficient cooperation. To overcome these obstacles and guarantee that cartel cases are handled effectively and efficiently, international cooperation must be strengthened. Competition authorities must carry out in-depth investigations when enforcing laws against cross-border cartels. But when one jurisdiction is ready to look into it and the other is unwilling or taking too long, it presents a big problem. A contradiction results from this lack of coordination since enforcement actions frequently have to follow the slower jurisdiction's pace, which may have conflicting priorities. Evidence that is found in a foreign jurisdiction adds to the complexity and necessitates close coordination. It is already difficult to obtain enough evidence of cartels' existence at the national level since they operate in secret. The challenge is exacerbated in cross-border cases, when authorities have to deal with jurisdictional restrictions, legal obstacles, and procedural hold-ups. This makes gathering evidence and starting legal procedures a time-consuming process. Legal cartel cases take a long time, even if they might not be as challenging as cross-border cartel investigations. Cartels are extremely covert since they are considered a crime against the free flow of competition by the majority of competition law systems.

Absence or Inadequate Evidence: Cross-border cartels provide a great deal of potential for collaboration amongst competition law enforcement. For example, raiding the places where the evidence is stored typically the corporate headquarters, but sometimes occasionally the regional headquarters or other locations is essential to the investigation and evidence gathering process. Given the situation where officials are not working together to plan raids to gather evidence, there will surely be little to no evidence. In cross-

¹⁴ Builders Association Of India vs Cement Manufacturers' Association, Case No. 29 of 2010.

¹⁵ *Eastman Kodak Co. v. Image Technical Services, Inc.*, 504 U.S. 451 (1992); *United States v. Eastman Kodak Co.*, 63 F.3d 95 (2d Cir. 1995).

border cartel investigations, where the cartel being investigated is situated in a different country or jurisdiction, distance can also have a detrimental effect on the collection of evidence. Because the other party might find it difficult to obtain the evidence the court needs, cross-border cartel enforcement could be difficult (as in some developing nations). Lastly, and this relates to the non-cooperation issue once more, the inability of one party to share evidence with the other may also result in a lack of proof.

A difference in substantive rules: It's critical to acknowledge that economic and legal conditions will differ from one country to another, as many multinational firms are accustomed to dealing with different approaches in several countries. Experts in competition have discussed the problems caused by different substantive rules. Take, for example, the *GE Honeywell case*. In this case, different methods were used to assess a merger between suppliers of related items, which led to different decisions from US and EU regulators.¹⁶ There are circumstances in which the law itself may lead to notable deviations. Legislation may incorporate many evaluation criteria, such as safeguarding small sellers against large sellers or considering the impact on employment. There are authorities who are more focused on market shares or vertical linkages than others. Each of these factors could have an impact on various government actions.

Extraterritorial jurisdiction: There are several facets to the jurisdiction problem. Jurisdiction is an important, if not essential, component of state sovereignty. According to the essence of state sovereignty, a state cannot interfere in the internal affairs of other nations, even if it has internal supremacy, or authority within its own borders. Establishing rules that regulate the boundaries of a state's sovereign authority is the aim of international law. The doctrine of domestic jurisdiction still has some validity because it recognises the indisputable foundation of state sovereignty within its own borders as the foundation of international law as it has evolved and of the global political and legal framework, despite the United Nations' expanding power having limited its scope. Although there is a general presumption against it, certain states most notably the United States seek to apply their laws outside of their borders when economic hardships arise. Despite the fact that all of the alleged activity takes place in another state, they have assumed jurisdiction based on the effects doctrine. The US Supreme Court's historic decision in the *Alcoa case* states that any state can hold anybody accountable, even those who are not its citizens, for actions taken outside its boundaries that have repercussions inside those borders that the state recognises.¹⁷ Authorities should pay attention to the following list of current issues in order to make improvements. They're problems in gathering cross-border evidence; the absence of legal force in international legislation; the drawn-out and challenging investigation procedure; the growth of numerous international cartel enforcement intuitions; the need for efficient information-sharing systems; and the laws of opposing jurisdictions Inconsistent implementation of the Leniency programme; discrepancy between the governing principles of the ICN, UNCTAD, and WTO; National economic interests that are at odds; There is no criminal penalty; administrative and civil law procedures are different, and the enforcement awards scheme is unclear.

VI. POTENTIAL SOLUTIONS FOR COMBATING CROSS BORDER CARTELIZATION

Dealing with cross-border cartelization, in which cartels operate in several distinct nations, can be tough and complex. However, there are a few techniques and treatments that can be utilised to halt such behaviour:

Encourage International Cooperation: Preventing cross-border cartelisation requires encouraging international cooperation and collaboration. Governments should establish and strengthen bilateral or multilateral agreements to exchange information, intelligence, and evidence of cartel activities. International organisations like Interpol and the development of cross-border relationships between law enforcement agencies can help achieve this. As part of its continuous efforts to promote innovation in collaboration, the OECD has expanded the definition of the notion of comity in international law. The concept of positive comity, which allows competition authorities to request that another jurisdiction address anti-competitive behaviour that might be best resolved with an enforcement action in the recipient country, goes beyond the traditional boundaries established by public law, also referred to as tradition or negative comity. Positive comity is often referenced in bilateral cooperation agreements between countries nowadays.

Legislative Actions: Lawmakers have the authority to enact or amend legislation that expressly makes cartel activity illegal and punishes members of global cartels severely. Establishing extraterritorial jurisdiction allows countries to target individuals and groups involved in cartel activity, even if those activities took place outside of their borders.¹⁸

Committees and organizations established to promote global competition: The "Havana Charter" and the establishment of the ITO in the 1940s are two examples of committees and organisations created to support international competition. After then, the General Agreement on Tariffs and Trade was established. At the regional level, the 1957 European Treaty.

Enhanced Enforcement: Governments should adequately support enforcement organisations in order to effectively investigate and prosecute transnational cartels. To do this, law enforcement officials must receive specialised training, units or task forces dedicated to combating cartels must be established, and innovative techniques such as data analysis, forensic accounting, and tracking must be used to gather evidence.

Programs and Incentives for Whistle-blowers: Governments can develop or enhance initiatives that protect those who report cartel conduct. Giving whistle-blowers financial rewards or immunity from reprisals can motivate individuals to cooperate with law enforcement and provide vital information that can dismantle global cartels.

International Antitrust Cooperation: To investigate and bring charges against global cartels, competition and antitrust authorities from different countries can collaborate and coordinate their activities. By exchanging best practices, harmonising competition laws, and conducting collaborative investigations, it is possible to disrupt cartel operations and guarantee consistent enforcement across jurisdictions.

Public Education and Awareness: Fighting transnational cartelisation can be aided by raising public awareness of the risks posed by cartels and the importance of reporting suspicious activities. Companies, consumers, and workers can all benefit from educational initiatives that encourage moral behaviour, competition, and a culture that opposes cartel action.

Better Customs Cooperation and Border Control: Improving customs cooperation and border security can help halt the flow of illicit goods, such as counterfeit or smuggled goods, which often fund cartel operations. By using advanced technologies, sharing

¹⁶ General Electric Co. v. European Commission, Case T-210/01 (2002).

¹⁷ United States v. Aluminum Co. of America, 148 F.2d 416 (2d Cir. 1945).

¹⁸ Ann O'Brien (BakerHostetler), "Top Takeaways from ICN Guidance on Enhancing Cross-Border Leniency Cooperation", Competition Policy International, September 2020 (Pages 1-7).

intelligence, and conducting joint operations, it will be easier to detect and intercept cartel-related activities.

International Sanctions and Asset Freezing: Governments have the power to impose financial penalties on people and organizations participating in international cartelization. These acts can make it more complicated for cartels to function and gain money from their unlawful activities. Examples of such actions include freezing assets, putting travel restrictions, and blocking access to financial systems.

A fundamental step in addressing transnational cartel violations is the establishment of a robust domestic regulatory framework. The limitations of a passive enforcement approach should prompt a shift in regulatory strategy. Competition authorities should proactively assert their jurisdiction over multinational cartel cases, acknowledging the associated challenges while seizing opportunities to enhance enforcement capabilities. Practical experience remains essential, as multinational cartels often affect multiple jurisdictions where enforcement expertise may already exist. Effective enforcement requires strong relationships between competition authorities across borders, fostering collaboration and knowledge exchange. Agencies should also proactively share information on their enforcement activities preferably in English to facilitate learning and improve overall regulatory effectiveness. The fragmented and inconsistent nature of current competition regulations allows cartel operators to evade accountability. Despite increased agency interactions, disparities persist, with some authorities engaging in cross-border enforcement more actively than others. International organizations such as the International Competition Network (ICN), the Organisation for Economic Co-operation and Development (OECD), and the United Nations Conference on Trade and Development (UNCTAD) continue to play a vital role in promoting cooperation. However, a centralized information clearinghouse could further streamline enforcement efforts by systematically compiling and disseminating data on cartel enforcement actions, drawing lessons from the European Competition Network (ECN). Given its diverse membership, expertise, and institutional framework, UNCTAD is well-positioned to take on this role, enhancing global enforcement efficiency.¹⁹

One of the most significant challenges in cartel enforcement is the requirement for authorities in each affected jurisdiction to independently establish the existence of a global cartel before imposing sanctions. This applies to both large-scale international cartels and smaller cross-border agreements. The need for separate investigations in multiple jurisdictions results in duplicative costs and inefficiencies, leading to under-enforcement, particularly in jurisdictions lacking the necessary resources. The *LIBOR cartel* serves as a prime example, as only about ten jurisdictions conducted investigations despite its global impact.²⁰ Furthermore, penalties imposed are often limited to domestic harm, reducing their overall deterrent effect. To address these challenges, competition authorities should be permitted to rely on decisions, verdicts, and settlements from other jurisdictions as preliminary evidence of a cartel's existence. There is no legal barrier preventing courts from recognizing and admitting the findings of foreign competition authorities in subsequent cases. The European Union (EU) has adopted a similar approach, encouraging private follow-up enforcement. Agencies should only be required to establish a direct domestic connection to claim that a cartel contributed to market harm within their jurisdiction. The OECD has recognized the potential benefits of this approach in lowering enforcement costs and improving deterrence, a position that has also been advocated within the UNCTAD framework. The United States, based on its experience in disclosing guilty pleas in cartel cases to facilitate international prosecutions, has expressed support for this strategy. There are already precedents demonstrating its effectiveness. For instance, U.S. enforcement actions provided crucial evidence in Mexico's prosecution of the global lysine cartel, marking South America's first transnational cartel case. Similarly, Brazil's investigation into the global *vitamins cartel* relied on EU rulings and U.S. guilty pleas to substantiate its case.²¹ Stronger penalties should also be imposed on international cartels to enhance deterrence. While there is increasing interest in criminal liability for cartel offenses, corporate fines remain the predominant sanction. The most common fine-setting method links penalties to an entity's domestic revenue, which often results in inadequate deterrence. Under the current framework, multinational cartels can exploit these limitations, as effective punishment would require enforcement in every affected jurisdiction an impractical expectation. Additionally, most jurisdictions impose upper limits on fines, either as a fixed monetary sum under domestic law or as a percentage (typically 10%) of the company's annual turnover in the relevant market. These thresholds are not only theoretically unfounded but are rarely met in practice. Even within jurisdictions that do impose fines, the penalties remain disproportionately low compared to the illicit gains derived from cartel activities. Given the practical challenges of prosecuting global cartels in every affected jurisdiction, those nations with the capacity to pursue international enforcement should impose stricter sanctions. This includes increasing maximum fine thresholds and fully utilizing all available legal penalties to ensure meaningful deterrence.

VII. CONCLUSION AND SUGGESTIONS

The legal framework governing international competition is subject to continuous evolution. To effectively address cross-border competition concerns, the establishment of regional competition authorities is imperative. Such entities facilitate enhanced regulatory cooperation, legislative harmonization, and policy convergence. However, these efforts are often hindered by the absence of uniform legal standards, jurisdictional conflicts, and the voluntary nature of international collaboration. Given that globalization, trade liberalization, and technological advancements contribute to transnational anti-competitive practices, it is essential to assess the effectiveness of competition policy in cross-border enforcement. Developing economies must strengthen their domestic, regional, and international regulatory institutions to ensure compliance with competition laws. Furthermore, fostering mutual cooperation at the national, regional, and global levels is essential to addressing emerging competition law challenges and enhancing market regulation and enforcement mechanisms.²²

Proposals

- Adoption of programmes for unanimity of leniency
- The requirement for local or regional evidence-sharing agreements
- The need for a uniform investigative methodology across the globe

¹⁹ OECD/ICN (2021), OECD/ICN "Report on International Co-operation in Competition Enforcement", Pages 1- 316.

²⁰ United States v. Hayes, Case No. 13-cr-00101 (S.D.N.Y. 2013).

²¹ United States v. Andreas Kranzler et al., Case No. 99-0161 (D.D.C. 1999).

²² UNCTAD, "Report on the Working Group on cross-border cartels to the 20th session of the Intergovernmental Group of Experts on Competition Law and Policy." (IGE Competition) (4 Pages).

- Use of recommendations that are legally enforceable for Member States
- Compatible Merger Approval Requirements

The Way Forward:

1. Jurisdictional Challenges in Cross-Border Cartel Enforcement

The enforcement of competition law against cross-border cartels necessitates the application of multiple legal frameworks and a sophisticated enforcement strategy. When the offending entity is domiciled in a foreign jurisdiction and lacks assets or a physical presence within the investigating state, enforcing domestic competition law becomes particularly challenging. To enable the extraterritorial application of competition law to cartel conduct occurring beyond national borders, it is imperative to establish explicit statutory provisions authorizing such enforcement.

2. Legislative Measures to Enhance Cross-Border Cooperation

Strengthening cooperation between national competition authorities is essential for effective cross-border cartel enforcement. This requires additional legislative initiatives, including mechanisms for information-sharing between competition regulators, the establishment of confidentiality safeguards throughout investigative proceedings, and the mutual recognition and application of positive comity principles. The principle of positive comity allows jurisdictions with a greater nexus to the cartel to assume primary enforcement responsibilities, thereby optimizing regulatory efficiency.

3. Harmonization of Legal Frameworks for Transparency and Compliance

The harmonization of competition laws across jurisdictions is crucial to enhancing enforcement effectiveness, ensuring procedural transparency, and improving corporate compliance. One significant measure in this regard is the leniency program, which provides penalty reductions or full immunity in exchange for a complete confession and cooperation in cartel investigations. However, the absence of a leniency program in a jurisdiction where a cross-border cartel has caused anti-competitive harm may discourage cartel participants from seeking leniency in other countries, thereby undermining global enforcement efforts.

4. Strengthening Legal Sanctions for Cross-Border Cartels

Given the complexities of cross-border cartel enforcement, legal provisions governing competition law must be more stringent and enforceable. In cases where severe anti-competitive practices significantly harm market competition, jurisdictions should consider imposing harsher penalties, including potential life imprisonment, to deter cartel activity and eliminate barriers to fair competition.²³

5. Legal Framework Harmonization to Resolve Jurisdictional Conflicts

To mitigate jurisdictional conflicts and enhance regulatory effectiveness in cross-border cartel enforcement, it is necessary to harmonize legal frameworks governing such offenses. Enhanced legal alignment among jurisdictions will facilitate coordinated enforcement actions, reduce procedural inconsistencies, and improve overall regulatory cooperation.

6. Addressing deficiencies in the Current Regulatory Framework

The existing competition law framework consists of fragmented regulations and enforcement mechanisms that often fail to address cross-border cartels effectively. The current regulatory patchwork must be restructured to close loopholes that allow transnational hardcore cartels to evade liability. A cohesive and comprehensive international enforcement framework is essential to ensuring robust and consistent prosecution of cross-border cartel activities.

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