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## A Slap on Anti-Competitive Activities: CCI's Anti-Trust Dawn Raids in India

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*Antitrust dawn raids are a potent tool employed by competition authorities worldwide, including the Competition Commission of India (CCI), to investigate and combat anticompetitive practices. Antitrust dawn raids serve as a means to detect and deter various forms of anticompetitive behavior, such as cartels, abuse of dominance, price-fixing, and anticompetitive agreements. This study assesses their effectiveness by analyzing several key dimensions. First, it examines the extent to which these raids have successfully detected anticompetitive practices and resulted in enforcement actions, including penalties and remedies imposed on violators. The deterrence effect of dawn raids is another crucial aspect under consideration. By evaluating their role in discouraging businesses from engaging in anticompetitive behavior, this study seeks to determine whether the prospect of such investigations serves as a strong deterrent against violations of competition laws. Legal and procedural aspects are also addressed. By undertaking a comprehensive analysis of these facets, this study sheds light on the effectiveness of antitrust dawn raids in India and their implications for competition law enforcement, the business environment, and consumer welfare.*

**Keywords:** *antitrust dawn raids, cci, anti-competitive practices, cartels, deterrence effect, competition act.*

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## INTRODUCTION

'More the competition, happier will be the customer'. Consumers tend to get better service and options when there is competition in the market. With more competition, the producers tend to be more innovative in their production and this competition will thus decrease the prices of the good. Although to gain more profit, certain business people began indulging in anti-competitive activities. Due to such anti-competitive activities taking place, the term dawn raids came into the picture. Anti-trust dawn raids are a potent tool employed by the Competition Commission of India (CCI) to investigate and combat anticompetitive practices. The word 'Dawn Raids' is nowhere formally defined but is frequently used colloquial expression.

Dawn raids are sudden unannounced raids that happen at a time when there is the least chance for the suspect to get alert and when they are least prepared. Generally, such raids are conducted in the early morning time or during holidays. After getting the necessary authorizations only the director general of investigation is authorized by section 41(3)<sup>1</sup> which empowers the Office of the Director General to conduct dawn raids with respect to the matters that are under investigation and section 220<sup>2</sup> which makes it expressly requisite to get a warrant from a judicial magistrate before initiating a search and seizure operation.

Dawn raids conducted by the Competition Commission of India are a powerful tool in the commission's arsenal to combat anti-competitive practices. It helps in uncovering those anti-competitive elements of society which tend to decrease the competition for profit

## UNCOVERING ANTI-COMPETITIVE PRACTICES IN INDIA

The first-ever dawn raid conducted in India was in 2014. It was conducted on the premises of JCB India Limited<sup>3</sup>. The raid was conducted because there were allegations of abuse of dominant power on JCB<sup>4</sup>. The chain of such raids continued thereafter. In 2016, the CCI took Suo-moto

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<sup>1</sup> Competition Act 2002, s 41(3)

<sup>2</sup> Companies Act 2013, s 220

<sup>3</sup> *Competition Commission of India v JCB India Ltd. & Ors* (2020) 17 SCC 446

<sup>4</sup> MM Sharma, 'India: Dawn Riads- When CCI(India) Comes Knocking?' (*Mondaq*, 22 December 2014)

<<https://www.mondaq.com/india/AntitrustCompetition->

cognizance after an application was filed by Panasonic Energy. The raid was conducted as the three companies: Eveready Industries Limited, Indo National Limited, and Panasonic Energy Co. Limited, were accused of price fixing, limiting supplies of batteries, and dividing the market and consumers amongst themselves<sup>5</sup>. Another similar cartel happened in the Beer Bottle Case<sup>6</sup>, where the commission was informed about the existence of a cartel engaged in price fixing. Several other cartel formation cases were also reported and CCI conducted the dawn raid. Collusive bidding, price determination agreements, refusal to supply, and abuse of dominant power are some of the targeted anti-competitive practices. If CCI gets intimidation and enough proof of the existence of such practices then it conducts these sudden raids.

JCB served as a precedent for dawn raid jurisprudence in India and since then several cases involved in anti-competitive activity were noted and dawn raid was conducted.

## THE DETERRENCE EFFECT OF DAWN RAIDS

The deterrence effect of dawn raids is instrumental in maintaining a fair and competitive market. This is done in the following ways:

- **Discouraging Anticompetitive Behaviour:** Since CCI has notified businesses that it is actively monitoring and investigating potential antitrust violations, the prospect of being subject to a dawn raid discourages companies from engaging in such activities.
- **Enhancing transparency and Fair Competition:** as businesses are aware of the harm caused due to indulgence in anti-trust practices, they lay greater emphasis on transparency and fair competition. Not doing so can draw them into the clutches of CCI.

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[Law/362196/#:~:text=According%20to%20news%20reports%2C%20the%20raid%20was%20conducted,in%20an%20allegation%20of%20abuse%20of%20dominant%20position](#)> accessed 19 September 2023

<sup>5</sup> 'India: The Indian Perspective of Attorney-Client Privilege over Documents Seized During Raids Under The Competition Act, 2002' (Mondaq, 29 April 2020) <<https://www.mondaq.com/india/cartels-monopolies/924524/the-indian-perspective-of-attorney-client-privilege-over-documents-seized-during-raids-under-the-competition-act>

[2002#:~:text=In%20August%202016%20the%20offices%20of%20Eveready%20Industries,2016%20under%20the%20CCI%27s%20Lesser%20Penalty%20Regulations%2C%202009](#)> accessed 19 September 2023

<sup>6</sup> Aditi Kalra et al., 'Top brewers in India raided by antitrust watchdog CCI in price-fixing probe: Sources' (*The Economics Times*, 11 October 2018) <<https://www.reuters.com/article/india-regulator-brewers-idINKCN1MM0BW>> accessed 19 September 2023

- The strict rules laid down by the Competition Act deter companies from entering into any sort of price determination agreements or collusive bidding. Companies become more proactive in seeking legal advice and adhering to antitrust regulations.
- Since 2014 there has been a slew of raids conducted by the CCI as mentioned earlier, this shows the vigilance of the CCI and serves as a deterrent not only to potential violators but also to the broader business community.
- One of the primary targets of dawn raids is cartels, which can have severe anticompetitive effects. Successful dawn raids and prosecutions can disrupt existing cartels and deter the formation of new ones.

All such activities that have undesirable effects on the competition in India are claimed as anti-competitive under section 37.

Cartelization is strictly prohibited under the Competition Act 2002<sup>8</sup> which specifies that no entity shall enter into any agreement in respect of production, supply, distribution, storage, acquisition, or control of goods or provision of services that causes or is likely to cause an appreciable adverse effect on competition within India. The commission can also pass orders against the companies who are involved in such anti-competitive activities like cartelization, wherein the company can be compelled to pay a penalty of up to three times of total collective profits or 10% of the turnover<sup>9</sup>. Such agreements that promote anti-competitive practice are violative of the Competition Act<sup>10</sup>.

The punishments that are imposed for such activities prove as a strong deterrent for companies to not indulge in such practices. CCI on the other hand keeps a strict check on anti-fishy activity in the market. The CCI has the power to deal with and inquire about any cartelization taking place outside India or any foreign company forming a cartel within India. This prohibits not

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<sup>7</sup> Competition Act 2002

<sup>8</sup> Competition Act 2002, s 3(1)

<sup>9</sup> Competition Act 2002, s 27

<sup>10</sup> Competition Act 2002, s 3(1)

only domestic cartelization cases but also cases involving foreign parties. Such investigations serve as a strong deterrent against violations of competition laws.<sup>11</sup>

## LEGAL AND PROCEDURAL ASPECTS OF DAWN RAIDS

The CCI may direct the director general to investigate any anti-competitive practices which are prohibited under the Competition Act 2002. The director general may conduct unexpected raids if there are reasonable grounds to suspect that important papers or documents can be tampered, destroyed, mutilated or secreted. But before any such raid is conducted<sup>12</sup>, a search warrant from the Chief Metropolitan Magistrate, New Delhi has to be taken<sup>13</sup>.

During such raids, the director general has the power to ask for the production of documents and may also seize the same if required<sup>14</sup>. The DG may also if required, record statements on oath and require the presence of any person it is empowered with the powers of a civil court. Such investigations/ raids can be conducted on intimation from CCI. The party being raided must comply with the orders of the CCI and the failure to do so may amount to a penalty that can extend up to INR 0.1 million per day, a maximum of INR 10 million<sup>15</sup>, and also penal actions can be taken for obstructing a public officer in discharging of its function<sup>16</sup>, including imprisonment up to 3 months.

The company being raided must not hide any document or information required during the raid, this may lead to further serious actions. Although the company being raided also has rights during a dawn raid. It can ask for the identifications of the officers conducting a raid, the warrant authenticity can be verified too. It can avoid any self-incriminating questions. It can ask for an independent witness to be present during the whole investigation process and also to get a copy of the seizure memo<sup>17</sup> at the end.

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<sup>11</sup> Competition Act 2002, s 19(1)

<sup>12</sup> Competition Act 2002, s 41

<sup>13</sup> Companies Act 2013, s 219

<sup>14</sup> Companies Act 2013

<sup>15</sup> Competition Act 2002

<sup>16</sup> Indian Penal Code 1860

<sup>17</sup> *Shyam Lal Sharma, etc. v State of Madhya Pradesh* (1972) SCR 3 422

## THE EFFECTIVENESS OF ANTITRUST DAWN RAIDS IN INDIA

Anti-trust dawn raids in India have helped in combating anti-competitive activities harmful to consumers. Various facets are achieved by antitrust dawn raids. Some of them are:

**Uncovering Anticompetitive Practices:** Antitrust dawn raids have proven effective in uncovering anticompetitive practices such as cartels, bid-rigging, price-fixing, and abuse of dominance. The evidence collected during these raids serves as a cornerstone for successful enforcement actions by the Competition Commission of India (CCI).

**Deterrence and Compliance:** Dawn raids serve as a powerful deterrent against anticompetitive behavior. The fear of being subject to unannounced inspections and potential legal consequences encourages businesses to adopt pro-competitive practices and adhere to competition laws. This leads to a culture of compliance within the business community.

**Enhancing Fair Competition:** By detecting and penalizing anticompetitive practices, dawn raids help level the playing field for businesses, ensuring that no entity gains unfair advantages through antitrust violations. This promotes fair competition, benefiting both businesses and consumers.

**Protection of Consumer Interests:** Effective enforcement through dawn raids safeguards consumer interests by preventing price-fixing, collusion, and other practices that can result in higher prices and reduced choices. It maintains competitive pricing and quality standards, ultimately benefiting consumers.

**Legal Framework Adherence:** Dawn raids are conducted within a legal framework, ensuring that due process and individual rights are respected. This adherence to legal principles upholds the integrity of competition law enforcement.

**Business Impact:** Companies subject to dawn raids may experience reputational damage and financial penalties. The threat of such consequences incentivizes businesses to prioritize compliance and ethical business practices.

**Cooperation with International Authorities:** Collaboration with international competition authorities strengthens the effectiveness of dawn raids by addressing global anti-competitive practices. This cooperation underscores India's commitment to global antitrust enforcement standards.

**Consumer Awareness:** Dawn raids and subsequent enforcement actions raise consumer awareness about the importance of competition law. Informed consumers can make choices that align with their interests, fostering a more competitive marketplace.

**Challenges and Balance:** There are challenges, including potential violations of individual rights and the need to strike a balance between enforcement and business interests. Ensuring a fair and balanced approach is essential for maintaining public confidence in competition law.

Antitrust dawn raids in India are a vital tool for competition law enforcement, significantly impacting the business environment, consumer welfare, and fair competition. Their effectiveness in uncovering violations, deterring anticompetitive behavior, and promoting compliance is instrumental in ensuring that markets remain competitive and consumers benefit from a variety of choices and fair prices.

## **SUGGESTIVE MEASURES**

Dawn raids are an effective tool to keep a watch on anti-trust activities prevalent so it further becomes important to ensure that well-defined legal frameworks are set up that empower competition authorities to conduct dawn raids. Although these raids are sudden and if done by providing notice, they might lose their significance but in certain cases, the CCI should consider providing advance notice about the upcoming dawn raid to minimize disruptions and to ensure that potentially relevant evidence is not destroyed. Those who are going to conduct the actual raid must be given clear and detailed guidelines on the conduct of dawn raids, emphasizing respect for the rights of individuals and companies being investigated. Every company under raid has the right of legal representation and the same must be given to them. The record of the whole process should be maintained effectively, not leaving a single detail about the duration of the raid and any documents and data seized. Protecting the confidentiality of sensitive

business information is not only the duty of the employees but also the authority in whose hands this information is passed. For ensuring transparency and accountability an independent body or mechanism for reviewing the conduct of dawn raids should be established. There is a need to conduct awareness campaigns and outreach programs to educate businesses and the public about the purpose and procedure of dawn raids, as well as their rights and responsibilities.

These measures should be designed to strike a balance between the need to investigate potential antitrust violations and the protection of individual's and companies' rights. They can help ensure that dawn raids are conducted in a fair, transparent, and lawful manner in the pursuit of healthy competition and consumer welfare.

## CONCLUSION

In conclusion, antitrust dawn raids carried out by the Competition Commission of India (CCI) are essential to the upkeep of fair and competitive markets in India as well as the implementation of competition law. These unexpected inspections are a proactive and effective strategy for identifying and discouraging anticompetitive behavior. As shown by the aforementioned study, these raids have been successful in identifying and exposing a variety of anticompetitive behavior, such as cartels, price-fixing, bid-rigging, and abuse of dominance.

The threat of a dawn raid and the ensuing legal repercussions alone acts as a potent deterrent, motivating companies to follow the law and engage in pro-competitive behavior. Businesses are deterred from engaging in such illegal acts by the sanctions and punishments. Dawn raids prohibit companies from getting undue benefits through antitrust infractions, helping to ensure a level playing field. In turn, this drives innovation and efficiency while also promoting fair competition. By stopping practices that might result in greater costs, fewer options, and lower-quality goods and services, effective enforcement through dawn raids protects the interests of consumers.

Dawn raids are carried out within a clear legal framework, guaranteeing that due process rights and individual liberties are observed and the integrity of competition law enforcement is maintained. By targeting worldwide anticompetitive practices and coordinating India's efforts



with international antitrust enforcement guidelines, collaboration with international competition authorities improves the efficacy of dawn raids. Dawn raids and related enforcement actions raise awareness among consumers about the importance of competition law, empowering them to make informed choices in the marketplace. Challenges exist, including concerns about individual rights and the need to strike a balance between enforcement and business interests. Ensuring a fair and balanced approach is essential for maintaining public confidence in competition law. Overall, dawn raids are a key component of India's competition law enforcement. They preserve consumer welfare, foster a work environment where moral and competitive behavior is valued, and contribute to the integrity and competitiveness of Indian markets. The judicious use of dawn raids remains crucial in maintaining and fostering fair and competitive markets for the benefit of all stakeholders as the Indian economy continues to change.