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MONOPSONY POWER IN INDIAN AGRICULTURAL MARKET: ASSESSING THE ADEQUACY OF COMPETITION LAW IN PROTECTING THE FARMERS

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Abstract

Though agriculture was now the mainstay of Indian economy it still provided income to a large section of the people. However, farmers may not always be able to get a decent price for their crops because of the imbalance in bargaining power between the buyer and the seller in the agricultural market. In a few procurement markets, few traders, processors, cooperatives, or purchasing agencies have a significant say in the terms of trade. An important question in this context is whether or not there exists monopsony power and its effects on the welfare of the farmers.

In the present study, the nature and extent of monopsony power in the agricultural markets in India is examined and whether the current competition law framework can effectively resolve these issues. The provisions of the Competition Act 2002 regarding anti-competitive agreements, abuse of dominant position and market concentration are given particular attention. The study also examines the procurement processes in a few selected sectors, such as dairy, sugarcane, cotton, and food grains, where the buyer power can have a significant impact on farmers.

Chapter 1: INTRODUCTION

Agriculture plays a pivotal role in the Indian economy and is one of the primary livelihoods in India for a large part of the population.[1] The agriculture sector not only contributes to food security, but is also a key contributor to employment, rural development, raw materials for industries, and overall economic development. Although the industrial and service sectors are

[1] Government of India, *Economic Survey 2024–25* (Ministry of Finance 2025) https://www.indiabudget.gov.in/economicsurvey/doc/eschapter/echap06.pdf

growing in significance, agriculture is still closely related with the socio-economic conditions of millions of families all over the country. Accordingly, farm welfare and the proper working of the agricultural markets have always been significant goals of public policy in India.

Indian agricultural markets are characterized by the presence of large number farmers, who are involved in the production and selling of different types of agricultural commodities. These commodities are sold to various types of buyers such as traders, processers, exporters, cooperatives, procurement agencies, organized retail chains and large agri-business corporations. In many sectors however, agricultural production is spread across many small and marginal farmers, and the number of buyers in some sectors is comparatively small. This disproportion often puts the farm at an unbalanced negotiating position and diminishes their capacity to negotiate preferential prices and contract conditions. Recently there have been major changes in the structures of agricultural supply chains. Concentrations on the purchasing side of the agricultural market have grown in recent years due to the growth of large food processing companies, organized retail networks, exporters and agri-business enterprises. There are a few high-volume purchasers for a relatively small share of procurement in several sectors. This concentration can increase the strength of farmers' negotiating position and limit the range of farmers' buying options, especially if they do not have other choices available for buying.

The tendency towards greater concentration of buyers has introduced many important issues over buyer power in agriculture. In general, buyer power grows as buyers have the power to affect the market, such as prices they pay to suppliers. If a few buyers get produce from large number of farmers, the market may have the properties of monopsony or oligopsony. These may negatively impact the income of farmers, market access opportunities, and even market outcomes. These concerns have been raised by international bodies like the Organisation for Economic Co-operation and Development (OECD)[2] and the International Competition Network (ICN) that have placed a priority on the need to take account of the power of buyers in competition policy.[3]

Traditionally, competition law has been about ensuring that the market power of sellers

[2] Organisation for Economic Co-operation and Development (OECD), *Competition Issues in the Food Chain Industry*(OECD Policy Roundtables 2014) 21–26. https://www.oecd.org/content/dam/oecd/en/publications/reports/ 2013/10/competition-issues-in-the-food-chain-industry_7c2b38e8/09b968a9-en.pdf
[3] International Competition Network, Report on Abuse of Superior Bargaining Position and Buyer Power (ICN 2020) . https://www.internationalcompetitionnetwork.org/wp-content/uploads/2019/11/SP_ASBP2008.pdf

(monopolies and cartels) is not used in an anti-competitive way. But in today's competitive world, it is accepted that there can be competition policy issues stemming from too much buyer power. The monopsony or oligopsony power of dominant buyers in agricultural procurement markets can negatively impact farmers' ability to achieve fair market conditions and sell their produce at competitive prices.

Chapter - 2: Understanding Monopsony Power in Agricultural Markets

Meaning of Monopsony

Monopsony is a market condition where there is a single buyer and several sellers. Buyer has great bargaining power in such a market and he/she can affect the price and terms of goods bought. In a monopsony, there is one buyer who has a large control over the demand for a product, as opposed to a monopoly, in which one seller has a large control over the supply of a product. This can result in fewer options for the seller and the buyer may be able to set the price and terms of sale for the seller. In the agricultural market, the situation of monopsony can occur when a processing company, a procurement agency, a local buyer is the sole major buyer of the farmer's produce. Farmers are often the most susceptible to the exercise of monopsony power as they need to sell their agricultural products in the short-term after the harvest.[4]

Buyer Power and Market Concentration

Monopsony is highly related to buyer power. Buyer power is the power of buyers to be able to affect prices, terms of trade and outcomes due to their economic strength and market position. Typically, this type of power is found in the buyer who represents a significant percentage of purchases in a relevant market. The higher the level of purchasing power, the more buyers can bargain from the sellers point of view.

Buyer power may be especially pronounced in agricultural procurement markets because farmers are typically small-scale and fragmented, whereas buyers may have access to more information, transportation systems, and storage facilities, and they may be more financially able. This imbalance can provide buyers with the opportunity to set the terms and prices of procurement. Buyer power and purchaser concentration have been identified as significant competition issues by international organisations like the Organisation for Economic Co-operation and Development (OECD) and the International Competition Network. They have stressed that putting too much emphasis on the buying side of the market could create

[4] Roger D Blair and Jeffrey L Harrison, *Monopsony in Law and Economics* (Cambridge University Press 2010) 1–5. https://assets.cambridge.org/97805217/62304/frontmatter/9780521762304_frontmatter.pdf

market aberrations, which will have a negative impact on producers[5]

Economic Impact of Buyer Power on Farmers

When there is too much buyer power for farmers and agricultural producers, there are a number of negative impacts. One of the biggest impacts is a decrease in leverage. With few buyers available, farmers may not have the power to command fair prices for their goods. Farmers might be forced to accept less than the best price because agricultural commodities are frequently perishable and can't be kept around forever.

This is another significant impact as it lowers the farm-gate prices. The price obtained for the agricultural produce by powerful buyers could be lower than the competitive market price. This has a direct impact on the farmers' revenue and can diminish the incentives to farm. Low prices, if not sustainable over time, can jeopardise the economic viability of farming practices, especially for small and marginal farmers[6]

Purchasing power can also lead to market dependency. If the farmer is dependent upon one buyer for a large proportion of the product, then the farmer is economically dependent on the one buyer. This dependency makes them more susceptible to forms of exploitation such as unfair commercial practices, delayed payments, restrictive contract terms, etc. Furthermore, the possibility of market access could be compromised due to excessive concentration among buyers as the number of farmers would be limited to sell their produce in competitive markets. Consequently, farmers could miss out on the advantages gained from competition among buyers.

Monopsony Issues in Agricultural Procurement Markets

Agricultural purchasing markets often have the attributes of monopsony power. On the demand side, the number of farmers producing agricultural commodities is often in the thousands. At the demand side, procurement can be centralized in the hands of one big processor, government agency, cooperative, exporter, retail chain or agri-business corporation. This imbalance in structures can foster the emergence of buyer power and its impact on market outcomes.

Buyer power is a recurring theme in agricultural markets, as a small number of buyers may represent a significant share of purchasing from farmers, the OECD has noted. In the same

[5] Peter C Carstensen, 'Buyer Power, Competition Policy and Antitrust' (2017) 72 *Business Lawyer* 37, 42–47. https:// www.e-elgar.com/shop/gbp/competition-policy-and-the-control-of-buyer-power-9781782540571.html?srsltid=AfmBOop-qCun1W8bntktYEmZy3v81xt4eyVqQK0uGnKLt973Qtgqe0XX

[6] Organisation for Economic Co-operation and Development (OECD), *Competition in the Food Supply Chain* (OECD 2024) https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/11/competition-in-the-food-supply-chain_08e34da9/37d6b801-en.pdf

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manner, research on Competition Policy in Agriculture in India has shown that a lower level of competition can have a detrimental impact on the agricultural producers, particularly the small and less resourceful farmers who do not have any other marketing channel. Farmers in certain sectors like dairy, sugarcane, cotton and food-grain procurement may have restricted options when it comes to the choice of purchasers.[7]

The fact that there are monopsony concerns in agricultural procurement markets brings up several questions of the role of competition law. Given the traditional focus of competition law on market power on the 'seller side', it is important to consider whether competition law is adequate to tackle buyers' market power. Therefore an evaluation of the Competition Act, 2002 is needed to see if it is sufficient to eliminate anti-competitive behavior by dominant buyers and to keep agriculture markets competitive, efficient and fair for farmers.

Chapter 3: Competition Law Framework and Buyer Power

3.1. Objectives of the Competition Act 2002

The Competition Act, 2002 was passed to ensure and encourage competition in Indian markets, to safeguard consumer interests and ensure freedom of trade exercised by the persons operating in the Indian markets. The Act aims to stop practices that could have a significant negative effect on competition and to promote the efficient working of markets. Although competition law is usually thought of in terms of countering monopoly power and consumer protection, competition law provisions are sufficiently wide to cover anti-competitive practices based on buyer power. As a result, the Act offers a legal structure for considering and tackling concerns over monopsony power in agricultural procurement markets[8]

3.2 Section 3 – Anti-Competitive Agreements

Section 3 of the Competition Act bans agreements which result in or are likely to result in an appreciable adverse effect on competition (AAEC) in India. The term references in particular the price-fixing, market allocation, output or supply restriction, and bid-rigging agreements. Section 3 is generally used in the context of seller cartels, but the term does not preclude the existence of cartels on the selling side of the market. The provision can also be exercised against buyers who arrange the procurement price or purchase conditions in an anti-competitive way

[7] ibid

[8] Competition Commission of India, Advocacy Booklet on Competition Act, 2002 (CCI 2026) https://www.cci.gov.in/ images/publications_booklet/en/competition-advocacy-booklet-2026-english1779277830.pdf

that is detrimental to suppliers. In agricultural markets, collective agreement by market actors to lower procurement prices or to practice coordinated purchasing may lead to a decrease in competition among the buyers and diminish the bargaining power of the farmers. As such, Section 3 is a significant tool to deal with collusive behaviour which could be used to increase monopsony power[9]

3.3 Section 4 – Abuse of Dominant Position

Chapter 4: No abuse of a dominant position by an enterprise. The Competition Act does not say that dominance is per se illegal, but only that dominance is illegal when misused. The unfair or discriminatory imposition of conditions, the unfair price, limitation of production or technical development, denial of market access and the use of the dominant position in one market to obtain a dominant position in another market are all ways in which an enterprise may be said to be abusing its dominant position. While the emphasis of discussion around Section 4 is on a dominant seller, Section 4 is also relevant to a dominant buyer. An unfair procurement term or a position to dictate prices or take advantage of a supplier without other buyers can be achieved by a purchaser with substantial market power. In agricultural procurement markets, such behaviour could have a negative impact on farmers and lead to market distortions. Thus, the legal foundation to address issues arising from monopsony is substantial in Section 4[10]

3.4 Section -19 The assessment of Appreciable Adverse Effect on Competition

Section 19 gives the Competition Commission of India (CCI) powers to investigate cases of alleged contravention of Sections 3 and 4 and gives directions on the factors to be taken into consideration when determining if the conduct has an appreciable adverse effect on competition. This is done by a variety of factors such as barrier to entry, foreclosure of competition, consumer benefits, production or distribution enhancements, and technical, scientific, and economic development. These factors could help the CCI consider if the actions of dominant purchasing entities are likely to breaches competition, narrow the farmer's market opportunities, or lead to unfair procurement practices for farmers in the context of agricultural procurement markets. Hence, the importance of Section 19 in determining the impact of buyer power in the market[11]

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[9] Competition Act 2002, s 3 https://www.cci.gov.in/images/legalframeworkact/en/the-competition-act-20021652103427.pdf
[10] Competition Act 2002, s 4 https://www.cci.gov.in/images/legalframeworkact/en/the-competition-act-20021652103427.pdf
[11] ibid

3.5 Can Buyer Power be tackled with the help of the Competition Act?

The term monopsony is not specifically mentioned in the Competition Act, 2002. The language of the Act, however, is sufficiently general to include buyer-side market power. Section 3 can be used when purchasers are involved in collusive behaviour to reduce the price of procurement or to plan the procurement. Likewise, Section 4 can be triggered if a dominant purchaser takes advantage of suppliers by imposing unfair conditions or has an undue bargaining power. International competition authorities and organisations have also come to understand that competition issues can be raised not only because of seller power, but also because of excessive buyer power. It is especially significant in agricultural markets where many farmers might sell their products to few buyers. Thus, the Competition Act can provide a framework that can be used to tackle monopsony power, but the scope of its application and effectiveness will depend on its interpretation and enforcement in practice.[12]

In agriculture, buyer power can occur in a number of realistic scenarios. For instance, if the sugarcane is sold only to a single sugar mill in a given area the farmers may have no other real options to sell the sugarcane. The behaviour of the mill, if it is to impose unfair conditions for the procurement, payment delays or unusually low prices could give rise to concerns under Section 4 of the Competition Act. The Competition Commission of India (CCI) can look into whether such acts constitute an abuse of dominant position. Another potential concern of buyer power may be when a food-processing company, exporter, or agri-business firm puts discriminatory terms and conditions on procurement from farmers or imposes lower prices on farm produce.

Section 3 may apply in cases where the co-ordinated purchase by the competing purchasers becomes relevant. For example, where there is more than one cotton ginning mill, grain traders, or procurement agency who agree amongst themselves to buy the agricultural produce at a fixed low price, it could lead to reduction in competition among the buyers, and have a negative impact on the farmers. It can be considered as an anti-competitive agreement as it also denies the market pricing power and reduces the bargaining power of the agricultural producers.

Chapter 4: Buyer Power in Indian Agricultural Procurement Markets

4.1 Agricultural Marketing System in India

Agricultural procurement markets include markets where farmers sell their agricultural products to processors, traders, exporters, cooperatives, government agencies and agri-business

[12] Peter C Carstensen, 'Buyer Power and Competition Policy' (2017) 72 *Business Lawyer* 37, https://ideas.repec.org/b/ elg/eebook/15260.html

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firms. Markets play an important role in connect and transfer agricultural commodities from farms to processing units, industries, and retail markets. Agricultural procurement market in India is usually dominated by a large number of farmers and few number of buyers. This may lead to a situation where sellers and buyers of a product have unequal bargaining power. Farmers tend to be small-scale and often selling perishable goods that require rapid sales, whereas customers may have more capital, storage, transportation and market information. This imbalance can affect the price of procurement, contract terms and access for buyers, which could lead to a situation where buyer power arises.

4.2 Sugar Cane Procurement and Sugar Mills

One of the most prominent examples of India's agriculture being a market with buyer concentration is the sugar industry. Sugar cane is bulky, expensive to transport and regulatory provisions may tie certain farmers to specific sugar mills in specific zones. This explains why sugar cane farmers are mainly marketing to the adjacent sugar mills. Hence, there are few alternatives for the farmers and they are dependent on local sugar mills for selling their sugarcane yield[13]. This dependency can lead to a better bargaining position for the mill and the farmers' negotiating power can diminish. The government's scheme of Fair and Remunerative Price (FRP) is meant to safeguard the interests of the sugarcane farmers, but there are still some apprehensions about the delayed payment, less choice of buyers and reliance on the local mills. The sugar sector is thus a good case in point of the role that structural conditions can play in raising buyer power in agricultural procurement markets.[14]

4.3 Dairy Procurement Markets

Another key area of agriculture procurement in which buyer power issues can occur is in the dairy industry. Most of the milk producers sell the produce to the dairy cooperatives or to various private dairy companies. In some areas, very few buyers carry a large network of buyers, processors and distributors, which gives them the ability to procure milk. Dairy farmers have limited options for alternative buyers, as milk is highly perishable and must be sold immediately. This can give the buyer a better negotiation advantage when buying. While cooperative models have been instrumental in aiding dairy farmers in India, the rise of big dairy

[13] Commission for Agricultural Costs and Prices (CACP), *Price Policy for Sugarcane 2024–25 Season* (Government of India 2024) 7-12 https://cacp.da.gov.in/Document/EnglishReports/Sugarcane_202526_20250825135750397.pdf

[14] https://timesofindia.indiatimes.com/city/bengaluru/farmers-protest-turns-violent-15-sugarcane-tractors-set-ablaze-in-karnataka-highways-blocked/articleshow/125313772.cms

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companies has raised issues about procurement systems, pricing models, and the possibility of small farmers getting fair prices for their output[15]

4.4 Food Grain Procurement Markets

In India, both the government and private bodies procure food grains. Wheat and rice are purchased by government agencies, such as the Food Corporation of India, through a system called the Minimum Support Price (MSP) that is designed to guarantee food security and support farmers' prices. Some crops and areas are protected from buyer exploitation by the fact that there is government procurement. But, it is not all agricultural products and all geographical areas that are to be included in MSP procurement. Private traders, commission agents, processors and wholesalers still play a significant role in many situations where farmers sell their produce. If there are only a few effective purchasers, buyer concentration can affect procurement prices and can have a negative effect on the bargaining power of farmers. Therefore, it is important to use the food grain procurement markets as a framework to study the role of government intervention in food grain procurement, private procurement and the power of buyers.

4.5 Agricultural Supply Chains and Market Concentration

One of the risks is the concentration of agricultural supply chains. The risk of concentration in agricultural supply chains is one of them.

In general, agricultural products go through multiple steps before they are consumed by the final users. These include procurement, storage, processing, transportation, distribution and retail sale, which are believed to constitute an agricultural supply chain. Over the past few years, large processors, exporters, retail chains, and agri-business corporations have made a more significant entry into the agricultural supply chains in India. These have helped to include more concentration throughout different stages of the chain. Companies' purchasing power could grow significantly as they extend their procurement chains, gain more influence over downstream activities. Decreasing the number of competing buyers can make procurement markets less competitive and limit the options for producers. International bodies like the Organisation for Economic Co-operation and Development and the International Competition Network have noted the potential for concentration within the agricultural supply chain to give rise to competition concerns, by strengthening the buying power of buyers and by reducing the

[15] Government of India, *Basic Animal Husbandry Statistics 2024* (Department of Animal Husbandry and Dairying 2024) https://dahd.gov.in/sites/default/files/2024-11/BAHS-2024.pdf

bargaining power of producers[16]

4.6 The Onion Price Case: Market Structure and Concerns of Competition in Agricultural Markets[17]

4.6.1 Background of the case

At the end of December 2010, the prices of onions experienced a hitherto unprecedented rise throughout the country, with allegations of cartels, hoarding and price manipulation by traders. In light of these concerns, the Competition Commission of India (CCI) launched Suo Motu Case No. 01 of 2011: Rise in Onion Prices. The Director General (DG), was instructed to ascertain the cause of the price rise either because of anti-competitive behaviour or true market conditions.

The DG visited the major onion markets like Lasalgaon, Pimpalgaon, and Azadpur Mandi and gathered data on market arrivals, auction process, commission agents, traders and market participants.

4.6.2. Findings of Director General and Majority Order

The Director General's findings and Majority Order are included.The findings of the Director General and Majority Order are included.

The main reason the onion prices increased was the supply side factors like unseasonal rainfall, damage of crops, and lesser arrivals in the markets, the DG opined. No significant evidence was found of collusion between traders in the form of a cartel, price fixing agreements, collusive bidding or organised trading in and around hoarding.

The DG also noted that there were open auctions with many players in the market for onion transactions. Therefore, the market was deemed to be competitive, and there was little possibility of concerted price manipulation. The Commission accepted the majority of these conclusions, and closed the proceedings.

4.6.3 Minority Order and Re-examination of Market Structure

Member Geeta Gouri disagreed with the majority and gave a separate minority opinion that further investigation should be done. The minority order said the case should not be closed because of a lack of concrete evidence of cartelisation.

The minority order stated that the DG had paid too much attention to the number of trades conducted in auctions and, in its own view, not taken the time to analyse the nature of the

[16] ibid
[17] Competition Commission of India, *In Re: Rise in Onion Prices*, Suo Moto Case No 01 of 2011, Order dated 10 April 2012

competition in agricultural markets. The minority order highlighted that competition can be significantly influenced by the market concentration, licensing conditions, credit network and social relationships between the traders even in the presence of several market players[18]

4.6.4 Relevance of the Onion Case to Buyer Power and Monopsony Analysis

The minority order offers important insights into buyer-side market power in agricultural markets, albeit the Onion Case was looked at as a possible sellers' cartelisation.

(a) Dependence on Intermediaries

During the investigation, it was found that the farmers do not directly sell to the end user consumers. Rather, agricultural produce goes through a chain of Kaccha Arhtiya, Pucca Arhtiya, trade, wholesaler, and retailers. This can diminish the bargaining power of farmers and cause them to rely on a few market actors.

(b) Requirements and barriers for entry into the market for licensing.

The minority order noted that the APMC markets involve a permission to participate and entry into the major mandis has not been wide open. These limits could make it more difficult to find buyers and can lead to concentration in procurement markets.

(c) Market Concentration Despite Numerous Traders

The minority argued that market shares, not the number of traders, should be used to evaluate competition. There might be a few large traders that purchase a big share of the procurement, and they don't put much competitive pressure on the market.

(d) Credit Interlinkages and Farmer Dependence

The minority order noted that the farmers are usually given loans or advances from traders and commission agents. These credit relations can make it more difficult for farmers to change buyers, and have a negative impact on their ability to negotiate with procurers.

(e) The implications of monopsony analysis

The minority opinion does not find monopsony power in the onion market. They show, however, that the markets may have structural features that are conducive to the exercise of buyer power in agriculture. These are all factors that include farmer dependency on intermediaries, limited farmer mobility with the buyer, restricted market entry and concentrated procurement.

4.6.5 Critical Evaluation

The Onion Case illustrates the difference between establishing a true competition law violation

[18] Competition Commission of India, *In Re: Rise in Onion Prices* (Minority Order of Member Geeta Gouri), Suo Moto Case No 01 of 2011, Order dated 10 April 2012

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and establishing market structures that could give rise to market power. The minority opinion raised issues of underlying market distortion, while the majority opinion did not find sufficient evidence of cartelisation.

The value of the case to the monopsony analysis is in the recognition of concentration, entry barriers, intermediary dependence and credit linked procurement relationships. These aspects are often linked to buyer power and thus should be closely looked at under the competition law lens.

In this context, the Onion Case is a valuable example of market conditions that can be conducive to the exercise of buyer power even if a clear case of a violation of the Competition Act can be established.

4.7 The impact of buyer power on farmers

Farmers' and agricultural markets' power depends on the buyer's power. The first is the decrease in bargaining power. If there are only a few buyers willing to buy, the farmers might be forced to take prices set by buyers and contractual terms. This issue becomes especially significant in areas with perishable agricultural products that are not able to be stored for long periods. Buyer power can also lead to lower prices for purchases than would occur in a competitive market, which can reduce prices to farms and lead to lower agricultural investment incentives.

Another is depending on the market. Current small number of buyers makes farmers susceptible to changes in procurement policies, delayed payments, restrictive contractual conditions and other commercial practices. Buyer concentration can also affect market access since fewer other buyers are available to agricultural producers. These can have a negative impact on farmers' welfare in terms of lower income, more economic uncertainty and lower growth and investment potential. Small and marginal farmers are more vulnerable as they may not have adequate bargaining power, resources, and market information to negotiate with the large farmers.

The problems considered above illustrates that power of buyers is not only a theoretical problem but is also a practical problem for some agricultural procurement markets in India. The concentration of purchasing power in certain sectors like sugarcane, dairy and food grains poses important questions concerning sufficiency of legal and regulatory mechanisms. The concerns serve as the basis to consider the ability of the Competition Act, 2002 to adequately address buyer-side market power and to ensure fair competition in agricultural procurement markets in the interests of farmers.[19]

CHAPTER - 5 Comparative Analysis with Foreign Jurisdiction

5.1 Understand the U.S. method of Monopsony Power.

The US has been one of the jurisdictions that have taken a particular interest in the concept of monopsony as a competition law issue. The abuse of monopsony power, like the abuse of monopoly power in sellers, can be addressed by antitrust law, such as the Sherman Antitrust Act, 1890 and the Clayton Act, 1914.

The case is **Mandeville Island Farms v. American Crystal Sugar Co**.[20] where sugar refiners conspired to cut the amount paid to sugar beet farmers. The Supreme Court in the U.S. case agreed that any agreement to maintain low prices by buyers would be subject to antitrust laws the same as would any agreement by sellers to raise prices. The Court pointed out that the competition law is not limited to the sellers, but also to the buyers and that even collusion between buyers can significantly affect the sellers, namely the producers.

The United States approach shows that buyer-side market power is given the same consideration as seller-side market power, and that antitrust law can be applied to prevent anti-competitive conduct by buyers, such as farmers.

5.2 Australia: Buyer Power in agricultural markets

The Australian experience is relevant as a good example of the capacity of competition authorities and governments to address buyer power in agriculture. The Competition and Consumer Act 2010 regulates competition law in Australia and is enforced by the Australian Competition and Consumer Commission (ACCC). The Act prohibits anti-competitive agreements, the abuse of market power and mergers which significantly reduce competition. Perhaps more importantly, the Australian competition law recognizes that a situation of market power may exist on the buyer's side of the market as well as the seller's side of the market. The ACCC has therefore taken an active examination into issues of buyer power that impact farmers and agricultural producers.

One of the most apparent is the Australian dairy industry. The ACCC explored the relationship between dairy farmers and milk processors in its Dairy Inquiry[21], and identified that there often

[19] ibid

[20] Mandeville Island Farms v American Crystal Sugar Co 334 US 219 (1948). https://supreme.justia.com/cases/federal/ us/334/219/

[21] Australian Competition and Consumer Commission, *Dairy Inquiry Final Report* (2018) https://www.accc.gov.au/ system/files/1395_Dairy inquiry final report.pdf

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was an imbalance in bargaining power as a result of limited processors procuring all the milk. The inquiry addressed issues of unfair contract terms, lack of price transparency and farmers' reliance on a few buyers. The Australian Government followed this up with the Dairy Industry Code of Conduct being introduced in 2020. The Code requires a written agreement with the milk supply and includes a requirement for transparency in the pricing agreement, requiring the processors and the farmers to be good faith partners and prohibits any reduction in the price after the milk is sold. The Code's introduction highlights ACCC action in response to concerns about competition, and the resulting changes in the regulation that provide protection for farmers against excessive buyer power.[22]

Australia has also considered the impacts of buyer concentration in their agricultural supply chains, particularly dominant large processors, wholesalers and supermarket groups. The ACCC has noted that significant levels of concentration by buyers could have a negative impact on competition between buyers, the prices they pay producers and the bargaining power of farmers. Australia has therefore taken a more holistic stance where competition law enforcement and specific sectoral regulation are used together to remedy market imbalances in agriculture.

The Australian experience shows how competition authorities are able to be pro-active in mitigating the detrimental impact of buyer power on agricultural producers. In contrast, in India, there are only general provisions in the Competition Act, 2002 which attempt to prevent any kind of monopsony. Wherever possible, specific regulatory mechanisms have been used in Australia to prevent the existence of monopsonies such as the Dairy Industry Code of Conduct. The approach is based on a blueprint for how the two approaches to tackling the monopsony problem can work together, to bring greater transparency and help farmers to negotiate better prices, and to establish a level playing field for competition in agricultural procurement markets.

5.3 OECD and International Competition Network (ICN) Perspective

There has been an increasing emphasis on the role of buyers in competition law by international organisations. The Organisation for Economic Co-operation and Development (OECD) has also pointed out that markets can be very concentrated on the buyer side of agricultural trade and monopsony power can reduce farm incomes and stall competition. But, according to OECD, the structure of a market and the competitive effects of the market power should be

[22] https://www.agriculture.gov.au/agriculture-land/farm-food-drought/meat-wool-dairy/dairy-dairycode

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looked at on both sides, the seller side and the buyer side.[23]

Similarly, the International Competition Network (ICN) has recognised buyer power as a significant competition issue. ICN understands that more buyers can lead to reduced prices paid to suppliers, fewer market opportunities and market distortions of competitive processes. As a result, many competition authorities around the world have broadened their interest in the impacts of buyer power and monopsony from the traditional monopoly concerns.

5.4 Comparison with India

Comparing the analysis of the treatment of monopsony power and buyer concentration in India and foreign jurisdictions, there are some similarities and differences. As in the United States, the European Union and Australia, India's Competition Act, 2002 has some very general provisions that can be used to tackle buyer power via anti-competitive agreements and abuse of a dominant position. The Act in sections 3 and 4 is silent about the power of the seller as compared to the buyer and could apply to the situation of monopsony or too high a concentration of power among buyers. However, monopsony power has not been expressly recognised by the courts in India, as it was in the United States of America in the cases of Mandeville Island Farms and Weyerhaeuser which set a precedent. Similarly, the EU has also provided a list of special measures for producers in the agricultural sector in the Directive on Unfair Trading Practices in the Agricultural and Food Supply Chain along with the competition law. Australia has taken it a step further, and is implementing part of the competition law in addition to sector specific regulation, such as the Dairy Industry Code of Conduct or market studies conducted by the ACCC.

In contrast, India is primarily relying on the general provisions of the Competition Act, 2002 and sector specific agricultural provisions, such as Minimum Support Price (MSP) procurement, Agricultural Produce Market Committee (APMC) regulations and other agricultural marketing reforms. Although these measures will give some protection to farmers, they do not specifically focus on competition law to combat monopsony power. Thus, in this context, a more sophisticated approach by the regulators and a clearer judicial system is required to overcome problems related to buyer power in the Indian agricultural market.

[23] ibid

CHAPTER - 6 FINDINGS, CONCLUSION AND RECOMMENDATIONS

6.1 Findings

The present study show that the market structure of a number of agricultural markets in India may help to build up the buyer power. In India agricultural production is very fragmented with millions of small and marginal farmers producing agricultural commodities. Conversely, the market for buying is usually controlled by a few traders, processors, exporters, co-operatives, procurement agencies and big agri-business firms. With many sellers and relatively few buyers, a possible monopsony or oligopsony power exists, especially in areas where farmers have only limited alternative ways of disposing of their products.

The study also indicates that the competitiveness of farmers and the welfare of the farmers can be significantly affected by the buyer power. The limited number of customers affects the bargaining power of the farmers and will make it more difficult to negotiate with customers for good price and contract. The consumers with higher purchasing power can influence the procurement prices or they can impose conditions in trade or restrict farmers to other markets. This may not necessarily be an abuse of dominance but can have a negative impact on the competitive process and the return to farmers' through excessive buyer concentration.

The study also gives some indication that the Competition Act 2002 does have some provisions which are sufficiently broadly drafted as to capture cases of buyer-side market power. Although the Act does not explicitly refer to either monopsony or oligopsony, Sections 3 and 4 offer a legal structure that can be used to deal with anti-competitive agreements and anti-competitive abuses whether they are imposed by a buyer or a seller. Thus, it is not the legal system that precludes the regulation of buyer power. However, these provisions are not applicable to agricultural procurement markets.

The other major finding of the study is that Indian competition law enforcement has been previously geared towards anti-competitive conduct on the part of the seller. Most investigations and decisions have been in the area of cartels, bid-rigging and price fixing and abuse of dominance by sellers. On the other hand, the markets for procurement and the power of the buyers has received little attention, compared to the attention given to the markets for production and the power of the producers. However, due to this, there is limited case law that has been decided on the issue of monopsony in agriculture; although the issue is becoming more relevant.

The comparative analysis carried out within the current study shows that, during the years, buyer power has been recognized by different fora and competition authorities around the world as a legitimate competition problem. The OECD, the United States and the European Union have learned over the years that an overemphasis on the buying side of the market can have negative repercussions for suppliers and competition. These jurisdictions, for instance, have been expanding the consideration of the market effects of buyer power. This provides India with a direction to improve its agriculture procurement strategy.

Lastly, the study concludes that competition law is not the only solution that can solve all the problems of farmers. Other factors that affect the bargaining power include lack of market infrastructure, information gap, reliance on local buyers and lack of access to other marketing channels. Competition law enforcement, however, can also be an effective instrument to prevent anti-competitive practices that can contribute to increasing competition in agriculture producers' markets.

6.2 Conclusion

Still agriculture holds a tremendous importance in the Indian economy and it remains to be the main means of livelihood for the large masses of people in India. An efficient, fair and competitive agricultural market is essential for the welfare, competitiveness and development of farmers and rural communities, particularly in this critical sector. A number of markets for agricultural products have seen the concentration of buyers, which has worried some about the exercise of buyer power and its influence on farmers.

The study concludes that a monopsony and oligopsony power is a very real issue of competition that must be placed on a higher pedestal in the Indian competition law regime. Although the concept of buyer power has been raised when talking about competition law (monopolies and seller-side dominance), the present situation in the agricultural supply chain offers a good example of the contrary: buyer power is also harmful. Farmers might have less negotiating power with consumers, fewer marketing choices and lower prices if only a small percentage of consumers are buying a large percentage of a product.

The study also establishes that the Competition Act, 2002 has ample legal flexibility to deal with buyer-side market power. Sections 3 and 4 are quite general and can be used in the cases of monopsony and oligopsony conduct. But enforcement priorities, market analysis and competition authorities' recognition of the competition concerns from the procurement side play a significant role in the effectiveness of these provisions. The term monopsony is nowhere mentioned, but the buyer power should be more institutionalized and should be called into question.

The paper therefore suggests that in general the current legal framework is suitable, but that it is not well enforced, knowledge of buyer power problems is limited and the markets for

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agricultural products are poorly understood. Improving the enforcement of the competition law in this sector can lead to a fairer market result, to a stronger position of farmers in their bargaining power and a healthy competition in the agricultural value chain.

6.3 Recommendations

6.3.1 Recognition of Buyer power

Competition Commission of India (CCI) needs to explicitly acknowledge monopsony and oligopsony power as a significant issue of competition in agricultural procurement markets. This recognition would stimulate further study of situations where there are very few buyers, but they have significant influence on the farmers. The Commission's analysis will benefit from the clearer inclusion of buyer power in the analytical framework, so it can have a competition law framework that tackles distortions of competition on both the supply and demand side.

6.3.2 Greater Scrutiny of Agricultural Procurement Markets

When a significant degree of buyer concentration is present the Commission will take a closer look at the sectors. The agricultural markets like sugarcane procurement, dairy procurement, food grain purchasing, cotton marketing and other commodities may need to be looked at. Monitoring procurement practices regularly can be useful in detecting anti-competitive behaviour early and help to avoid undesirable market structures which may have a negative impact on farmers.

6.3.3 Conducting studies of markets within sectors

There should be a detailed market study conducted by the Competition Commission of India on agriculture procurement sectors. These studies can assess concentration, entry barriers, conditions for market access, pricing practices and the extent of buyer and farmer bargaining power. Empirical data would be helpful to policy makers to grasp the competitive nature of agricultural markets and take appropriate policy measures.

6.3.4 Understand how to keep Farmers' Markets competitive

The number of buyers should be expanded and the number of marketing outlets should be expanded so as to enhance access of farmers. When there are more buyers, there is more competition which can lead to better bargaining position and farmers can fetch better prices for their produce. The development of market infrastructure, expanding digital trading platforms, developing farmer-producer organisations and lowering market entry barriers can help to improve the competitive procurement system.

6.3.5 Develop guidelines to evaluate buyer power:

The Competition Commission of India might need to draw up definite guidelines on the assessment of buyer-side market power. These guidelines might provide guidance on the elements to consider when measuring monopsony power, including market concentration, supplier dependence, the presence of alternative buyers and the effect on competition of procurement practices. There should be more clarity, this would give legal certainty and more effective enforcement.

6.3.6 Capacity building and awareness

The Commission should also raise awareness and engagement of market actors, researchers, policy makers and farmers with farmer power concerns. Understanding of issues related to monopsony can be developed by the participation in training programmes, workshops and research projects of agricultural competition concerns. Moreover, the higher the awareness, the more likely the competitors will report anti-competitive behaviour, which will lead to better overall performance of competition law enforcement.