COMPETITION LAW

UNIT – II

Comparative Antitrust
Sherman · Clayton · FTC · UK 1998 & 2002

20 slides · Provisions and landmark foreign cases

ROADMAP

What this unit covers

1. Why compare	2. Sherman s.1	3. Sherman s.2	4. Standard Oil
5. Clayton overview	6. Clayton s.7 mergers	7. Robinson-Patman note	8. FTC Act s.5
9. US institutions	10. UK CA 1998 Ch.I	11. UK CA 1998 Ch.II	12. Cartel offence
13. Enterprise Act 2002	14. CMA & merger control	15. Market studies	16. Compare with India
17. Key US cases	18. Key UK cases	19. Takeaways	20. Close

01 · WHY

Why this unit is in an Indian syllabus

CA 2002 was drafted after a study of US and EU/UK models. Examiners expect you to know the parent provisions, not to litigate in Washington.

Sherman 1890

The first modern antitrust statute – agreements and monopolisation.

Clayton 1914

Fills Sherman gaps: mergers, tying, exclusive dealing, interlocking directors.

FTC 1914

A specialist commission and a flexible ‘unfair methods’ clause.

UK 1998 / 2002

Closer institutional cousin of CCI + CAT + CMA.

Sherman Act 1890 – Section 1

Every contract, combination or conspiracy in restraint of trade among the States or with foreign nations is illegal. The Supreme Court later read ‘every’ as ‘every unreasonable’ (rule of reason) except for hard-core cartels.

Per se

Price-fixing, bid-rigging, market-sharing – no elaborate effects proof (Trenton Potteries; Socony-Vacuum).

Rule of reason

Most vertical restraints after Sylvania; ancillary restraints.

Criminal + civil

DOJ can prosecute; private treble-damage suits.

Indian echo

s.3(3) CA 2002 is the per-se-style presumption; s.3(4) is closer to rule of reason.

Sherman Act – Section 2

Monopolisation, attempted monopolisation and conspiracy to monopolise. Mere size is not the offence. Acquisition or maintenance of monopoly by exclusionary conduct is.

Elements

Monopoly power in a relevant market + exclusionary conduct (Grinnell).

Not a crime to win

A firm may grow by skill, foresight and industry (Alcoa / United Shoe ideas).

Remedies

Break-up (Standard Oil), injunctions, conduct remedies (Microsoft).

Indian echo

s.4 – dominance + abuse. Dominance alone is lawful.

Clayton Act 1914 – relevant provisions

s.2 (now Robinson-Patman)

Price discrimination that harms competition.

s.3

Tying and exclusive dealing in goods – where effect may be to substantially lessen competition.

s.7

Mergers and acquisitions where effect may be to substantially lessen competition or tend to create a monopoly.

s.8

Interlocking directorates of competing companies – a structural clean-up rule.

Private actions

Clayton s.4 – treble damages; a US distinctive.

Why 1914

Sherman was vague; Clayton listed specific practices and pre-merger logic.

Clayton s.7 – merger control

The heart of US merger law. Amended by Celler-Kefauver (1950) to catch asset deals and vertical/conglomerate mergers.

Test

Substantial lessening of competition (SLC) – cousin of Indian AAEC.

Guidelines

DOJ/FTC Horizontal Merger Guidelines – HHI concentration bands.

HSR Act 1976

Pre-merger notification above thresholds – like Indian s.6 filing.

Remedies

Block, or structural divestiture, sometimes behavioural.

Federal Trade Commission Act 1914

Creates the FTC. s.5 prohibits unfair methods of competition and, later, unfair or deceptive acts or practices. It is broader and more flexible than Sherman.

Institution

Independent multi-member commission – a model CCI resembles more than DOJ.

s.5 competition

Can catch incipient or gap conduct that Sherman may miss.

Consumer wing

Deceptive practices – closer to Indian CPA than to CA 2002.

Process

Administrative adjudication + federal court review.

Who does what in the United States

DOJ Antitrust Division

Criminal cartels and civil Sherman/Clayton cases.

FTC

Civil competition + consumer protection; merger review shared with DOJ.

State AGs

State antitrust statutes; parens patriae suits.

Private plaintiffs

Treble damages – the engine of US private enforcement.

Courts

The real law-makers of US antitrust through precedent.

Contrast India

CCI + NCLAT + SC; limited private compensation culture so far.

UK Competition Act 1998 – Chapter I

Chapter I prohibits agreements that prevent, restrict or distort competition and that may affect trade within the UK. Modelled on TFEU Art. 101.

Object restrictions

Cartels on price, output, sharing – almost automatically unlawful.

Effect restrictions

Need proof that competition is appreciably affected.

Exemptions

Block exemptions and individual exemption logic (efficiency, consumer share of benefit).

Indian echo

s.3 + s.19(3) factors play a similar role to the exemption analysis.

Chapter II – abuse of dominance

Chapter II is the UK twin of TFEU Art. 102 and the ancestor-language of Indian s.4.

Dominance

Ability to behave independently of competitors and customers.

Abuse examples

Unfair price, limit production, tying, refusal to deal, discrimination.

No prohibition of dominance

Only of abuse – same as India.

Market definition

Often the battleground, as in CCI cases.

UK Enterprise Act 2002 – salient features

CMA ancestor

Reformed merger and market-investigation regime (now CMA).

Merger test

SLC – substantial lessening of competition.

Market investigations

System-wide inquiries where a market does not work well, even without a single offender.

Cartel offence

Criminal offence for dishonest hard-core cartels (later amended).

Disqualification

Directors can be banned for competition infringements.

Super-complaints

Designated consumer bodies can trigger a formal look.

UK institutional design students should sketch

The Competition and Markets Authority (today) investigates, decides many mergers, and runs market studies. Appeals go to the Competition Appeal Tribunal.

Investigation + decision

More concentrated than US DOJ/FTC split.

CAT

Specialist tribunal – cousin of NCLAT’s competition bench.

Concurrency

Sector regulators share competition powers in utilities.

Compare CCI

CCI is investigator-plus-adjudicator at first instance, with DG as investigator.

Quick comparison sheet

Agreements

Sherman s.1 / UK Ch.I / India s.3.

Monopoly / dominance

Sherman s.2 / UK Ch.II / India s.4.

Mergers

Clayton s.7 + HSR / Enterprise Act SLC / India ss.5–6 AAEC.

Agency

DOJ+FTC / CMA / CCI.

Appeal

US Article III courts / CAT / NCLAT then SC.

Private suits

Strong in US; growing in UK; thin in India.

United States landmarks

Standard Oil (1911)	s.2 break-up; rule of reason enters s.1 analysis.
Chicago Board of Trade (1918)	Brandeis – rule of reason factors.
Socony-Vacuum (1940)	Price-fixing per se illegal.
Alcoa (1945)	Monopoly power and the duty not to maintain it by acts.
GTE Sylvania (1977)	Non-price vertical restraints to rule of reason.
Microsoft (2001 D.C. Cir.)	Platform monopolisation; remedy short of break-up.

United Kingdom and EU markers

ICI / Dyestuffs (EU)	Concerted practice – parallelism plus facilitation.
United Brands (EU)	Dominance and unfair pricing – often cited in s.4 answers.
Hoffmann-La Roche (EU)	Loyalty rebates and dominance.
T-Mobile / replica-kit UK line	Cartel enforcement by OFT/CMA.
BSkyB / merger stories	SLC analysis in media mergers.
Mastercard / interchange (EU/UK)	Network pricing and object/effect debate.

What India borrowed

Conduct not size

Sherman/EU, not old MRTP working.

Per se cartels

s.3(3) presumption.

Abuse not dominance

s.4 structure from Art. 102 / Ch.II.

Mandatory merger file

HSR / EU / UK notification idea.

Specialist commission

FTC / CMA institutional idea.

Not borrowed

US treble damages; UK criminal cartel as a working Indian tool.

Comparative answer template

Name the parent

Sherman s.1 / s.2 or UK Ch.I / Ch.II.

State the test

Per se vs rule of reason; SLC vs AAEC.

Institution

DOJ+FTC / CMA+CAT / CCI+NCLAT.

One foreign case

Standard Oil or United Brands.

Indian hook

Always land on CA 2002 ss.3–6.

Do not import

US treble damages as if they applied in India.

REVISION

Key takeaways

01	Sherman s.1 = restraints of trade; s.2 = monopolisation.
02	Clayton s.7 is the parent of modern merger control; FTC s.5 adds flexibility.
03	UK 1998 Ch.I / Ch.II track TFEU 101 / 102 and Indian ss.3–4.
04	Enterprise Act 2002: SLC mergers, market investigations, cartel offence.
05	US: courts + private suits. UK/India: specialist agencies + tribunals.
06	Cite Standard Oil, Socony-Vacuum, Microsoft, United Brands, Hoffmann-La Roche.

End of UNIT – II

Next: UNIT-III · MRTP, CPA, Competition Act 2002 pillars

20 slides · Light academic edition