

The Ethical Corporation
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Lecture – 37
What is NOT Fair Competition

Hello, welcome back to this module 8, lecture 37. We have very interesting topic today What is NOT Fair Competition, that is, what is unfair competition, why it is unfair competition and what are the kinds of unfair competition.

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So, we will talk in a two basic categories of unfair competition; one is known as insufficient competition the other one is over competition. So, what are the ethical problems with each of these and then we will talk about why unfair competition is not sustainable.

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Competition

- Can be described as a process of rivalry among businesses to win customers
- Competition is important as a motivator

However,

Competition becomes **unfair** when companies engage in harming the abilities of their rivals to compete in the market

- By engaging in unethical practices to win
- By ensuring the loss of their rivals through various manipulative strategies

So, this is how we will start today's lecture. See, we have already mentioned this, but I will repeat for today's lecture also that competition as such is not bad. In fact, it is natural process whenever you have more than one player in a race or in a business context, whenever you have more than one business trying to vie for the same market segment there will be a process of rivalry among the businesses. What is the rivalry about? To attract customers to themselves and not to their rivals.

It is an important factor for business, it is a great motivator for business to excel to innovate we have discussed this in our last lecture. Now, where is the problem? The problem comes up when competition becomes unfair. Specifically, when the competitors do not play a fair game and companies in business context companies start to engage in practices that harm the abilities of their rivals to compete in the market. So, they do things, so that the rivals cannot play the game equally well. This is where the unfairness creeps in.

So, there might be sometimes strategies practices which are basically wrong ethically wrong as well as legally wrong at times or they can simply go towards sabotaging or harming the interest of their rivals through various kind of techniques which are not very nice. So, we are going to talk about this particularly group namely the unfair competition, its nature, what are the kinds and what exactly are the problems.

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Ethical issues in Competition among businesses

- Two extremes may lead to unfair competition:

1. Insufficient competition or too little competition among the competitors: When a company or a group of companies try to restrict competition in a market. It is unethical / unfair, as it only benefits the companies and not the customer.
2. Over-competition or too much, too aggressive competition: When a company or companies adopt excessive measures that are beyond a reasonable limit to harm, or to neutralize, the competitor. It is unethical / unfair, as the means are not acceptable.

In a unfair competition there you can probably look at the range where there are two extremes and both the extremes may lead to unfair competition, in between there may be many shades. What are the two ends? One is known as insufficient competition. You know this is the situation when there is very little competition among the competitors. Very little competition sounds to may sound to you like a peaceful situation, but that is not the case.

This is when artificially a situation is created by one of the competitors such that slowly the other competitors are wiped out from the field insufficient competition. So, there is a some sort of manipulation of the market is going on by one of the competitors such that other rivals are restricted in their operations. This is highly unethical, unfair and also illegal because it only benefits the companies who get to stay and not it is subtly does not benefit the customer because customer does not get enough choices.

The other extreme kind of a problem is a over competition; if this is too little this is too much competition. Too must competition as in not just there are many competitors, but the level of competition is very fierce and very aggressive too much competition. So, this is where you get to see a lot of excessive measures being adopted. So, companies this is what we call cut throat competition in colloquial terms you know, everybody is get out to get the other opponent.

So, they adopt excessive measures that is beyond the reasonable limit to harm, to neutralize, to eliminate the competitors. This is again unethical and unfair because we will talk about it because the means adopted are not at all ethically approvable. This is also highly illegal. So, we will go by one by one. First we will talk about the problems related to insufficient competition. We will first take a look at then the kinds of activities that come under insufficient competition.

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Problems of Too Little Competition: I

1. **Cartels**: Horizontal agreement among firms to fix the price. Competition is intentionally reduced. Selling open only to the cartel members, no other competitor can enter.

Aim is mutual benefit, not the benefit of customers. The market remains in possession of the cartel members: They fix the price at a rate that maximize their own profit.

E.g. CCI, India (2018) penalized three airlines (Jet Airways, Inter-Globe and Spice Jet) INR 54.36 Crores for fixing and revising fuel surcharge on cargo transport "in a concerted manner".

Artificially restricting competition: **Not fair competition**

Both illegal and unethical.

WHEN IT COMES TO SHARE MARKETS, CARTELS CAN BE SAFE AND UNFAIR.

The first example of insufficient or too little competition will be this artificial creation of cartels. Cartels this is nothing, but a collusion a group that colludes. It is an agreement among firms their rivals, but they come to an agreement horizontal in the sense in the same segment to fix the price or to form a group which will rule the entire market. So, competition is intentionally reduced because you are not competing with each other really, but because you have agreed on for example, the price; you have also formed a group, what is the advantage of that?

That selling or trading in that market will be open only to the cartel members. You have to be the member of the community that cartel community and no other competitor will be allowed to enter. Now, what happens is that the cartel members benefit. It is a mutual benefit situation because you have now controlled this market and whoever the customer goes to the price remains the same therefore, everybody benefits just as much. Just think

about the opposite situation of where the customer goes to seller A and seller B and finds there is a price difference.

So, customer wins in the case the product is available at a lower price. Note that, that is never going to happen in a cartel because the price has been fixed and typically the cartel fixes the price at a rate that is max that maximizes their profit. They are not concerned about the benefit to the customer they are only concerned about their own benefit and the market remains in their possession. So, this is what cartel are.

They artificially manipulate the market to restrict competition one and also to restrict the consumers choices because you know it is only those items that they will sell, that is why the consumers are going to get at a price that they have decided. So, this is what happens. Now, this is you as you can understand it is not fair competitive behaviour. It is also not fair competition. Customer is always on the loss here.

So, this is illegal and unethical I will give you one example from competition commission of India which happened only in 2018, where three airlines were penalized for apparently deciding on the fuel surcharge on cargo transport in a concerted manner meaning discussion with each other, so that the bottom line is fixed. So, this is both illegal and unethical all right. So, cartels are one kind of insufficient competition.

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Problems of Too Little Competition:II

2. Abuse of market dominance: Happens when a dominant firm in the market engages in practices that is intended (a) to eliminate or to restrict the operations of an existing competitor, or competitors; or (b) to prevent future competitors from entering the market.

Dominance: Position of strength in the market.

Artificially, competition is prevented, or reduced substantially. The market leader tries to wipe out the small competitors through conniving measures.

Benefit of such a market goes to the dominant firm, The company may fix any price that maximizes its profit without any fear from competing firms.

Abuse of market dominance implies pushing the market towards a monopoly. A **monopoly** means exclusive possession of the market by a company, with a product or service, for which there is no substitute

The second one is even more interesting. This is abuse of market dominance. Abuse of market dominance; what we are talking about is a dominant firm. In the market one business is dominant. The dominance here means position of strength in the market. So, we are talking about the company that has a very large market share. So, it is the most powerful company in that segment in that market.

This dominance is an economic dominance is a power and when that company abuses that power to create further dominance in the market. Typically, when this dominant business tries to do certain things to eliminate competition. So, when they engage in practices that is intentionally to eliminate or to restrict the operations of the existing competitor.

It is an artificially created situation where the dominant company is taking advantage of their powerful position in the market to eliminate or to artificially restrict the businesses of rival firms in such a way that they cannot play, not like the dominant market dominant business or even to prevent the future competitors from entering the market. So, what is the net result here that this dominant firm or business is actually preventing competition or artificially reducing it substantially.

The benefit is then the market share increases and the dominant firm becomes more dominant in a market. When all the small competitors are out, medium competitors are out slowly the market share increases as you can understand. So, this is practically pushing the market towards a monopoly. Monopoly means exclusive possession of the market by one company and that company sells the product or a service for which there is no substitute in the market.

What happens then that the company can fix any price of its choice for the product or the service because first of all it is not even available otherwise right and then they fix it the price with the clear knowledge that there is no other competitor here. I do not have to be afraid about any rival firm trying to undercut my price, there is none practically.

So, this is what happens in a when there is abuse of market dominance. The market sort of slowly sees the disappearance of the rival firms and this one dominant business becomes even larger. It was large and it becomes larger and then it has the entire market in it is position. All the benefit of the market goes to that dominant firm and this is all artificially being done by manipulating the market.

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Abuse of market dominance

It is anti-competitive behaviour: **Both illegal and unethical.**

It restricts the operations of the competitors, and also the choices of the consumer. Result is artificially created too little competition.

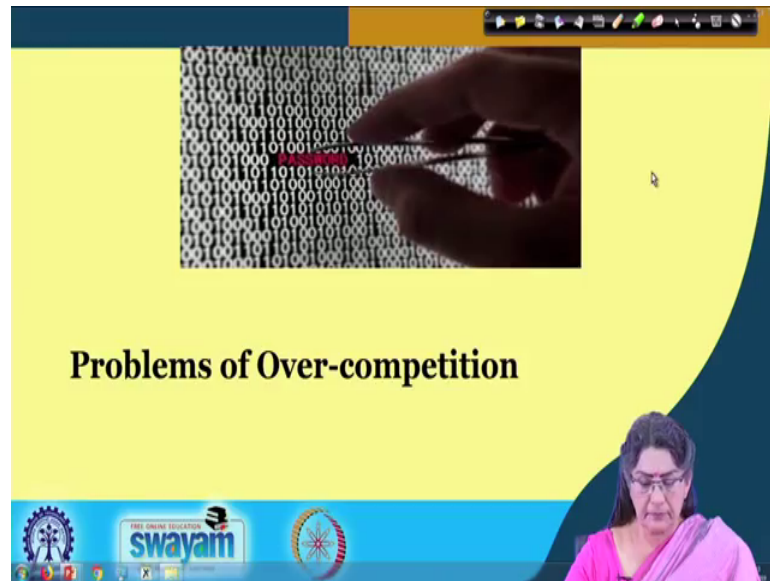
E.g. March 2019: Google was fined 1.5 Billion Euro by **European Union** for its **anti-trust behavior**: For 10 years, Google abused its dominant position by forcing customers of its **AdSense** business to sign a contract they would not accept advertisements from its rival search engines. It denied its rivals the opportunity to compete on merit.

The problem here is that this abuse of market dominance is anti-competitive behaviour. There is no doubt about it. It is certainly illegal and it is also unethical. As said that the results of the outcome of such abuse is not beneficial for everybody. It only benefits the dominant firm, specifically who suffers are the rival firms and the consumers because consumers are not left with any choice, but to go along with whatever the dominant firm dictates. So, this is something very objectionable.

And again I will cite the recent case of our times this is March, 2019 just few months back when Google was fined 1.5 billion Euro by European Union for this sort of behavioural that they call antitrust or anti-competitive behaviour. Google obviously, is a dominant business in specifically in its internet search business and they abused the allegation is the Google abused its powerful position by forcing the customers of its another business AdSense to sign a contract that they would not accept advertisements from its rival search engines right.

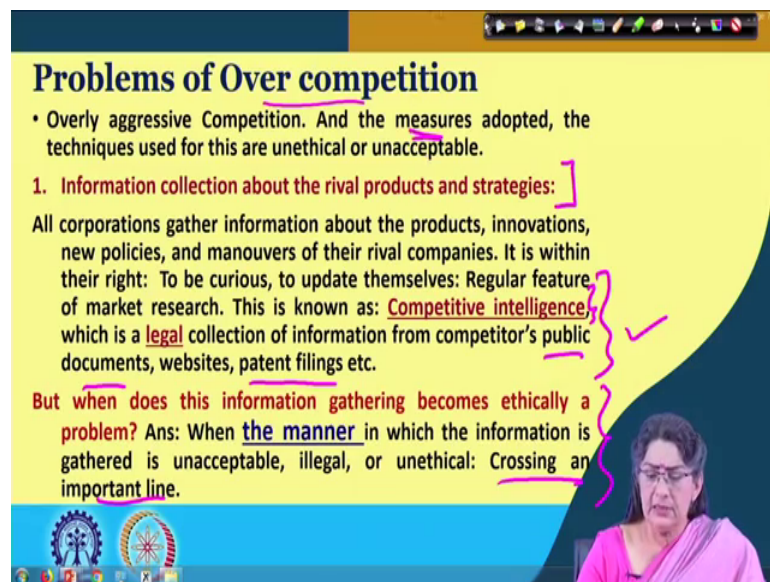
So, they the customers are will have to agree to this that they will not accept the advertisement from the rival search engines. So, in a way this is restricting operations of the rival companies and that is why they were fined for such activity.

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So, those two were the examples of too little or insufficient competition. Now we are going to talk about the problems of over competition.

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You see a what we are talking about here is overly aggressive competition and here once more the problems are the measures, the methods or the strategies or the tactics that are adopted for it ok. And the methods are so aggressive, so intrusive that it becomes again illegal and unethical too. Let us talk about such specific examples.

First of all see the issue here is the information gathering about rival products. When you are trying to do a business and if there are direct competitors for you, you will require as a business to remain in the market you will require to know what the other firms are doing, what kind of a product they have, what is their USP, why people are going there to buy their product you would like to know.

So, there is as such nothing wrong in collection of information about the rival products. In fact, that is known as competitive intelligence which is very legal and also ethical that you have every right to collect information about the competitors product, but where do you collect it from? From public domain, from public documents that have been made available by the competitor.

For example, in the website there might be the product description, the specifications might be available to everybody or even patent filings you can go and check in the patent offices. These are made available to the public by the competitor firm. So, this is perfectly all right to do that. So, when does this become a problem, this information gathering about the rivals when does it become a problem of over competition?

And the answer is when you start to adopt very questionable, ethically controversial or condemnable practices, sometimes even illegal strategies to collect the information. So, there you cross a very important line all right, where it cannot be said you are just simply collecting competitive intelligence; you are doing something more than that because your methods are so wrong. Let us give you some examples.

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A. Information through Corporate espionage

- **Illegal and unethical accessing, or stealing of, trade secrets** by a competitor corporation for competitive advantage. Goal is commercial gain. It includes ethically problematic covert activities, e.g. : (a) Copying or recording of valuable, confidential information about a competitor. E.g. Information about manufacturing process, techniques, creative ideas.

Methods adopted: (i) Bribing an 'insider' employee, (ii) Using questionable ways: Hiring private detectives, using hidden cameras, placing 'spies' in competing firms, spying on cell phone records; (iii) By illegal and unethical means: Breaking & entering into competitor's office to steal data, picking through garbage, using a 'spy' to hack into the competitor's server or database, misrepresenting oneself by posing as a customer or investor interested in the product, etc.

(b) **Technological surveillance:** Implanting 'seeing' and 'listening' devices,

(c) Blocking the competitor's use of their information or facilities through computer malware, or spyware.

So, one example of unethical and overly aggressive information gathering is something called corporate espionage right. Espionage, as you hear in the spy, thriller you watch in the movies so, even among the businesses there is espionage that can happen. What is that about? It is about illegally or unethically accessing or stealing trade secrets or business secrets or business related data by a competitor corporation. Why do you do that? In order to benefit from it in your own business ok.

So, it is a very selfish motive and you want to know about what they are doing, but you are accessing it illegally and unethically. What kind of methods you employ are the key that is the key here. For example, you might copy or record very valuable confidential information from the rival. For example, how what is their unique manufacturing process or if they have a creative idea then you try to look into that and try to copy it as your own. Before they bring the launch that creative idea in the market you also try to do that, so that if the competition now is open. So, the customer does not know who is any better.

There, for this sort of things there are many documented activities which are all covered, hidden and very questionable. Say for example, in a bribing an insider employee; to get to that information you bribe an employee in the rival firm ok, not at all very fair. Second, you know questionable methods such as you know hiring private detectives to watch secretly watch people or follow people or see what they do or use hidden cameras, place spies in the competing firms you know just like you see in the military movies,

spying on cell phone records, you over hear people you use drops on other peoples conversations.

And sometimes it can go to this length of absurd measures, illegal, highly illegal and unethical. For example, breaking and entering into somebody else's office or in a rival firm. You know this is not at all condonable by any kind of justification. Or picking through garbage cans to see what kind of documents are being shredded or thrown away; hacking into the rival firms server database – you hire somebody to hack into their website or the database misrepresenting oneself as a customer or investor in order to find out more about the product.

There can be also technology aided surveillance we are talking about you know implanting some devices in strategic positions so, where they have them most important meetings, may be a listening devices may be implanted or a hidden video camera has been implanted. And then also this is sabotage where the competitors use of the key information is blocked or impaired by planting some computer virus malware or spyware you know, so that you know you cannot access it hampering their ordinary operations.

These are obviously, strange, but widely done practices among the businesses. This is why I said this is cut throat competitions where people forget businesses forget the limits of decency and of course, morality.

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Why corporate espionage is not fair competition?

1. If the methods / tactics used are unethical, and often illegal:

Procter & Gamble, US (2001): Spies were caught at going through the trash bins outside of Unilever office to find out about their **Clairol haircare product**. P&G admitted to spying on Unilever, and was **fined..**

Volkswagen stole trade secrets from General Motors, Branch in Germany (1993): 8 GM managers left GM and joined VW. Some GM documents went missing. Some of them were found in the house of one of these managers. That led to investigation. VW was fined \$100 Million in espionage lawsuit (1997).

The ways adopted are **dishonest** ploys to win the competition at any cost. End does not justify these means: Non-consequentialist reasoning. They are **not** part of fair competition.

If you want real life examples then I have some here for example, Proctor and Gamble and Unilever. Both are direct competitors in the hair care market. We are talking about hair colour. So, when the special hair care was coming out Unilever was trying to bring out a new product and Proctor and Gamble people were found the spies from Proctor and Gamble were found to go through the garbage bins, trash bins outside the Unilever office to find documents bits and pieces of document, so that they can gather data about the hair care product.

Proctor and Gamble admitted to spying and they were fined for this anticompetitive behaviour. This is between Volkswagen and General Motors, once more direct competitors in the automobile sector. And this is not a case of going through the trash bins, but this is absolutely intentional intellectual property theft. Take a look. 8 General Motor managers left General Motors and joined Volkswagen. So, they joined a rival firm and along with their departure, some of the General Motors documents were missing.

Some of these papers were recovered from the house of one of these managers and which started the investigation and finally, it was shown, it was proven that Volkswagen actually tempted them, lured them to join their firm along with the secrets about some of the automobiles that General Motors have come up with. So, this was an espionage lawsuit and you can see the fine amount also and this was only 1997.

So, the ways that they were adopted were they dishonest measures, dishonest unfair method. So, this is what it makes the whole activity not a part of the fair competition. This is why we are calling it unfair competition.

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Why corporate espionage is not fair competition?

2. If the nature of data gathered crosses the confidentiality or privacy, IPR line:

Though a corporate business entity is a publicly visible and present entity, it too has domains that are its private domain: E.g. Patents, trade secrets, copyrights, innovations, processing techniques, software, music, designs.

These are 'private' and 'confidential': Intellectual property of the company. Funds, time, effort invested in them. They are under legal and ethical protection.

When rival companies do not respect the intellectual property rights (IPRs): They breach property rights and confidentiality. Unethical and unacceptable.

X E.g. (i) Reverse engineering: Rival products are analyzed in order to copy them, violating patent rights

Not fair. Not approved by Kant's Universalizability, and Reversibility criteria.

When else we can say that corporate espionage can become a problem, ethical problem? One when the nature of the data collected crosses a very important line namely the line drawn by confidentiality or privacy or intellectual property rights. See, a business will have certain property tangible property they will also have some intellectual property; what we are talking about is for example, software developed by the company for its own or innovations that they their R and D department or their themes are developed with company resources.

Copyrights, patents, trade secrets, these are all examples of intellectual property and there are laws that protected and there are also ethical norms which protect those rights. You cannot simply use over it, that is the wrong thing to do. Now, when rival companies do not respect those intellectual property rights and they simply override over the IPRs, that is when corporate espionage will become fairly unfair competition. What are we talking about?

One great example would be the example of reverse engineering. You know where you do not spend any resources on innovation yourself you do not develop anything, but you simply take the rivals product, analyze it and analyze it reverse way, so that it goes back to the; goes back to the very basics. Why? So that you can copy it. Again, you would start from the scratch and you rebuild it and sell it.

So, now you know the process by which this whole thing was designed and way we can do it. This is known as reverse engineering. Why is reverse engineering unethical and illegal? Because it violates patent rights, it violates intellectual property rights. Somebody made original research and they came up with the product. You on the other hand you are not doing anything original you are simply breaking it down to the very basic level and then copy it.

So, it is sort of you can say why we call plagiarism is unethical you know instead of writing a book you simply copy the book and sell it in your name that is what reverse engineering is. So, this is absolutely not approved by any kind of ethics and this is also illegal.

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Why corporate espionage is not fair competition?

3. If the purposes for data gathering go **against the public interest** :

Companies obtaining access to information that is linked to national and international security.

Companies who work in military funded research and development, government data, work with information that is sensitive for national security.

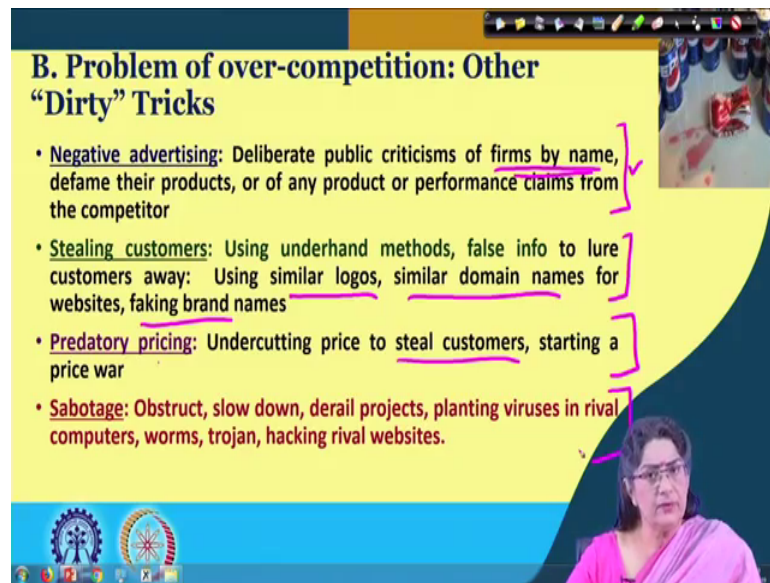
Accessing these by unauthorized rival companies is potentially harmful in national interest.

- **Decline in desirable utility: Utilitarianism. More negative consequences than positive.**

And one more thing a corporate espionage can certainly be unfair if it again goes against public interest. I mean you are collecting data from rival firms, but if the data is sensitive to national security for example, we are talking about you know the firms that work in defence; defence related research, sometimes companies work with military funding to develop some products for the military and government data. And these are all sensitive data sensitive to national security.

Accessing these unauthorised way is hampering with national security. So, this is these are some of the very extreme sort of a way in which corporate espionage can become extremely problematic ethically.

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B. Problem of over-competition: Other “Dirty” Tricks

- **Negative advertising:** Deliberate public criticisms of firms by name, defame their products, or of any product or performance claims from the competitor
- **Stealing customers:** Using underhand methods, false info to lure customers away: Using similar logos, similar domain names for websites, faking brand names
- **Predatory pricing:** Undercutting price to steal customers, starting a price war
- **Sabotage:** Obstruct, slow down, derail projects, planting viruses in rival computers, worms, trojan, hacking rival websites.

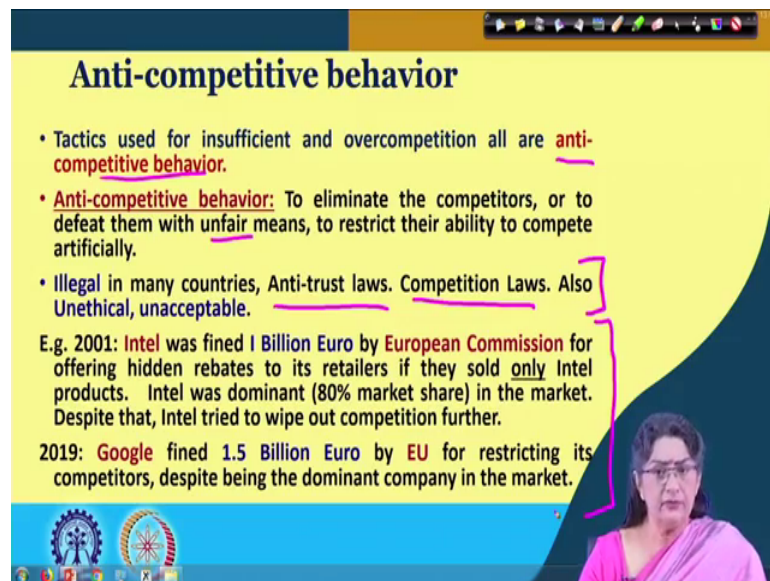
There are other very more very obvious more known cases of overly aggressive competition. For example, you know negative advertising, where you simply slander the rivals, you defame their products or you find out faults about the rivals product and publicize it all over. These days it is not even done through advertising, you can simply start the rumour of such and such things about the rivals in social media and then let it go viral over the social media; that is negative advertising where you are criticising the firms by name.

You use so and so is actually engaged in this. Then stealing customers; stealing customers as in you know you pretend to be your rival firm. So, may be similar logos can be used, may be similar domain names can be used for web based companies or simply go for a fake. There are very well known cases where you might see that there is the brand store and right in the sidewalk some people are selling stuff with that brand name on it.

This happens a lot with apparels; this happens a lot with shoes. So, we are talking about fake products. What you are trying to do is to mislead the customers, to cheat the customers and if the customers are not very careful or they are ignorant or they do not care then you will get some of the customers of that brand store for your own benefit. So, stealing customers and this is through pricing you are trying to steal customers through pricing.

So, you set the pricing so low this is known as predatory pricing which we have discussed you undercut the price to steal away the customers and you start a price war in the sense that everybody tries to undercut that price. Or this is the most extreme where you obstruct your rivals business, you try to slow down their operations or derail some of their projects and the measures could be again atrociously different in the sense putting some malware in their computers or sending some virus or hacking into the rival websites etcetera.

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Anti-competitive behavior

- Tactics used for insufficient and overcompetition all are **anti-competitive behavior**.
- **Anti-competitive behavior**: To eliminate the competitors, or to defeat them with **unfair means**, to restrict their ability to compete artificially.
- Illegal in many countries, Anti-trust laws. Competition Laws. Also Unethical, unacceptable.

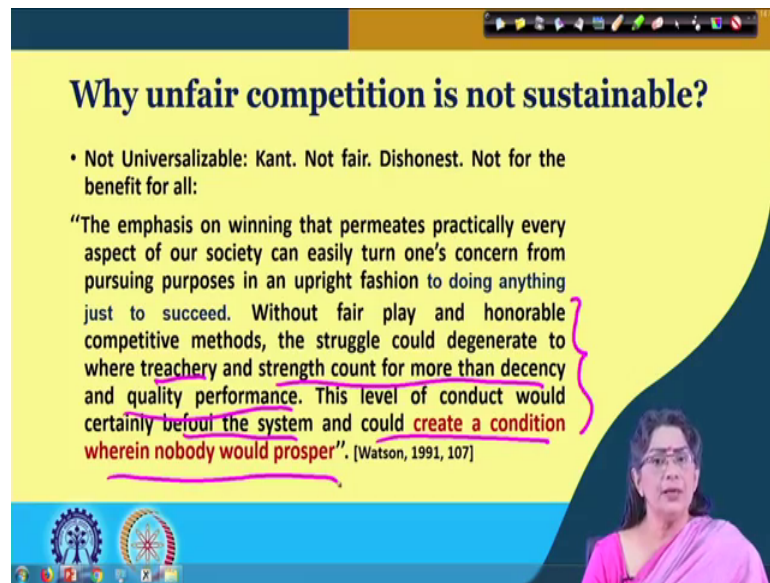
E.g. 2001: Intel was fined 1 Billion Euro by European Commission for offering hidden rebates to its retailers if they sold only Intel products. Intel was dominant (80% market share) in the market. Despite that, Intel tried to wipe out competition further.

2019: Google fined 1.5 Billion Euro by EU for restricting its competitors, despite being the dominant company in the market.

So, this all that we have discussed comes under the generic description as anticompetitive behaviour. This is not what where the competition is all about and means are that being adopted which are also unfair. Artificially, the market is being restricted, consumer choices are being restricted. This has been noted by different countries governments and it is announced as illegal in many countries. The antitrust laws or competition laws came into being specifically to stop this sort of activities anticompetitive behaviour.

And there are number of companies you can see who have been fined for such activities and these are all big names such as Intel, such as Google and the behaviour that they were fined for were anticompetitive.

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Why unfair competition is not sustainable?

- Not Universalizable: Kant. Not fair. Dishonest. Not for the benefit for all:

“The emphasis on winning that permeates practically every aspect of our society can easily turn one’s concern from pursuing purposes in an upright fashion to doing anything just to succeed. Without fair play and honorable competitive methods, the struggle could degenerate to where treachery and strength count for more than decency and quality performance. This level of conduct would certainly befoul the system and could create a condition wherein nobody would prosper”. [Watson, 1991, 107]

Now, we come to also the point that you can win probably a short term game by being so unfair either aggressively overly competitive or restricting your competition, so that it becomes insufficient competition, but it is not sustainable. Why is it not sustainable? As Watson has tried to say that if everybody starts to do this, if everybody tries to be anticompetitive, then the market place would be reduced to only treachery and strength count for more than decency and quality performance. So, you are only playing with treachery and strength.

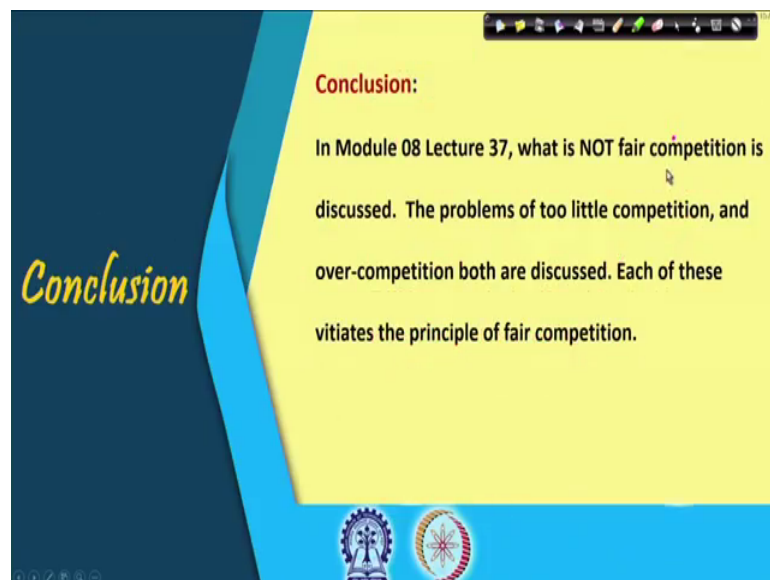
And this level of conduct would certainly befoul the system. It will further dirty the system such that it could create a condition wherein nobody would prosper. If you know the businesses are also overly competitive that they would know there is no bar at where they would stop nobody would be able to prosper in that kind of business scenario. It will be so fierce fully competitive. So, there was a healthy dose of competition, this is what we mean and this is what is desirable.

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With that I am going to stop today's lecture, we have talked about what is not fair competition.

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So, will meet again, but this is where we stop for today.

Thank you.