
DEFINING AND CRITICAL ANALYSIS OF LEGITIMATE COMPETITION AND ITS EXTENT AS PER THE COMPETITION ACT

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ABSTRACT

This research paper delves into the concept of legitimate competition within the framework of the Competition Act. It examines the legal and ethical dimensions of competition, exploring the boundaries within which firms can compete without violating antitrust laws. Through a critical analysis of relevant case law and regulatory provisions, the paper seeks to elucidate the extent to which competition can be deemed legitimate under the Competition Act. The findings shed light on the complexities of balancing competition and regulation in modern market economies.

1. INTRODUCTION

Competition is the cornerstone of market economies, driving innovation, efficiency, and consumer welfare. However, unchecked competition can lead to market distortions, monopolistic behaviour, and consumer harm. To address these concerns, governments enact competition laws aimed at promoting fair and open competition while preventing anticompetitive practices. The Competition Act serves as a primary legal framework for regulating competition in many jurisdictions, setting out rules and guidelines to ensure a level playing field for businesses. Within this context, the notion of legitimate competition becomes crucial, as firms navigate the fine line between aggressive market strategies and antitrust compliance.

2. DEFINING LEGITIMATE COMPETITION

Legitimate competition refers to competitive behaviour that adheres to legal and ethical standards while fostering innovation, efficiency, and consumer choice. It encompasses a range of business practices, including pricing strategies, advertising tactics, product differentiation, and market entry. Legitimate competitors seek to gain market share through superior performance and value proposition rather than through exclusionary or predatory tactics. Key principles underlying legitimate competition include transparency, non-discrimination, and respect for intellectual property rights.

3. EXTENT OF LEGITIMATE COMPETITION UNDER THE COMPETITION ACT

The Competition Act provides a legal framework for assessing the permissibility of competitive conduct and practices. Section 3 of the Act prohibits anti-competitive agreement, Sec 4 deals with abuse of dominance, and Section 5 deals with combinations such as mergers and acquisitions that substantially lessen competition in the market. However, not all forms of competition are considered anticompetitive under the Act. The law recognizes the procompetitive benefits of certain conduct, such as cost-cutting measures, product innovation, and vigorous price competition. To determine the extent of legitimate competition, courts and competition authorities apply a rule of reason analysis, weighing the anticompetitive effects against the procompetitive benefits of the conduct in question.

3.1 ANTICOMPETITIVE AGREEMENTS

The acceptance of an offer made by another person or individuals creates an agreement. It includes any agreement, understanding, or action taken in concert, whether formal or in writing. Anti-competitive agreements are those entered into by businesses or individuals that have the potential to impede competition in the Indian market. Such agreements typically result in excessive gain to one or a group of people at the expense of others.¹

Section 3 of the Competition Act of 2002² forbids anti-competitive agreements. According to the Act, anti-competitive agreements are divided into two categories: horizontal agreements and vertical agreements.

Horizontal agreements are those made between two or more businesses who operate in the same market and are competitors. These entities operate at the same supply chain level. Therefore, rival distributors, merchants, or manufacturers may enter into horizontal partnerships. Such agreements would be illegal if they had anti-competitive purpose. For example, an agreement between producers of a given commodity not to sell a specific product below a predetermined price in the market would be regarded horizontal anticompetitive agreements and thus forbidden.

The Competition Act of 2002 forbids the following sorts of horizontal agreements: direct or indirect fixation of a product's purchase or selling price [Sec. 3(3)(a)]. A practice of limiting or controlling production, supply, investment, technological advancement, or service delivery [Sec.3(3) (b)].

Market share or source of production [Sec. 3(3)(c)]. Bid rigging and collusive bidding arrangements. [Sec.3(3)(d) defines bid rigging as an agreement between people in comparable businesses to eliminate or reduce bid competition or to negatively impact or manipulate the bidding process.

Cartel agreements. A 'cartel' is defined as a group of manufacturers, distributors, traders, sellers, or service providers who agree to limit, control, or seek to control the production, sale,

¹ Sethi, Rajat, and Simran Dhir. "Anti-Competitive Agreements Under the Competition Act, 2002." *National Law School of India Review* 24, no. 2 (2013): 32–49. <http://www.jstor.org/stable/44283760>.

² Berwal, Paramjeet. "SECTION 3(5)(i) OF THE COMPETITION ACT – AN ANALYSIS." *National Law School of India Review* 27, no. 2 (2015): 168–84. <http://www.jstor.org/stable/44283656>.

distribution, or pricing of products or services (Sec.2(c)). Cartels are secret agreements between businesses with the primary goal of setting prices or sharing markets among them. Business enterprises form cartels by anticompetitive horizontal agreements. Cartels pose a significant danger to fair competition. They tend to distort fair trade.

“Vertical agreements” are agreements between firms at various stages of the production or supply chain, such as production, distribution, storage, sale, or price of goods, etc. [Section 3.4] For example, any agreement between a manufacturer and a distributor that may have a negative impact on market competition may be deemed a vertical anti-competitive arrangement.

Vertical agreements include Tie-in-Arrangement, which covers any arrangement that compels a purchaser of commodities to purchase other types of items as part of the transaction. Sellers typically sign into such arrangements to enhance their sales and earn a large profit. A tie-in agreement becomes illegal and thus forbidden when a company utilises its great market power as a result of a certain product to coerce a client to purchase another product that the³ company wants him to buy in order to receive its premium or exclusive product. For example, suppose a customer cannot buy a company's PC without also purchasing its printer. Exclusive Supply agreements require the purchaser of the commodities not to get or trade in goods other than those of the supplier or any other person. Typically, companies with market power enter into such partnerships.

Agreements between customers and sellers or manufacturers on specifications, quality, size, are lawful and do not violate competition. Exclusive Distribution Agreements include selling of goods, such as setting geographical or client limits. Such agreements are illegal if they significantly reduce competition or tend to create monopolies.

Refusal to Deal agreements, which restrict or are likely to restrict people from whom products are purchased or sold, are forbidden under the Act due to their anti-competitive nature. Resale price maintenance comprises an agreement to sell products on the condition that the purchaser's resale prices be the prices indicated by the seller, unless it is clearly stated that prices less than those stated prices may be charged. In other words, a resale price maintenance agreement is an attempt by an upstream supplier or manufacturer to regulate the price at which the product will

³ Bester, Keldon. “What Is Fair Competition?” Fair Competition for an Evolving Economy. Centre for International Governance Innovation, 2023. <http://www.jstor.org/stable/resrep53324.6..>

be resold by its client. This prevents resellers from competing too hard, lowering their revenues. Insisting on a specified margin for resale inhibits the reseller's right to determine his own price and is thus illegal. The mere advice of pricing to be followed by resellers or retailers does not constitute a breach of Section 3(4)(e) of the Competition Act, 2002.

Section 3(5) (ii) indicates that the ban on anti-competitive agreements does not apply to a person's right to export goods from India save to the extent that such agreement pertains to the export of goods or services.⁴

3.2 ABUSE OF DOMINANT POSITION

An enterprise is considered to be in a dominant position when it has a position of power in the market and operates independently of competitive forces in the relevant market or influences its competitor, consumers, or the relevant market in its favour.

According to the European Commission, 'a business is considered to be in a dominating position when it has the power to act independently of its competitors, suppliers, customers and, ultimately, the final consumer.' The Competition Act makes it illegal not just to have a monopoly or dominating position, but also to abuse the power that a monopoly may grant through exclusionary acts.

Thus, in order to make an abuse of dominance contention, the firm must first demonstrate that it has a dominant position in a specified product market and a defined geographic market for that product. If a corporation holds a dominating position, it has a special obligation not to allow its actions to harm competition in the common market.

Section 4 of the Competition Act of 2002 addresses misuse of dominant position. It asserts that no firm or organisation may exploit its dominating position. It goes on to outline incidents that constitute misuse of dominating position. The instances are (i) Direct or indirect imposition of unfair or discriminatory conditions in the purchase or sale of goods or services or prices in the purchase or sale (including predatory prices) of goods and services (ii) Limiting or restricting the production of goods or services or putting restrictions on technical or scientific development relating to goods or services to the prejudice of consumers (iii) Engaging in

⁴ Berwal, Paramjeet. "SECTION 3(5)(i) OF THE COMPETITION ACT – AN ANALYSIS." National Law School of India Review 27, no. 2 (2015): 168–84. <http://www.jstor.org/stable/44283656>.

practices that result in denial of market access in (iv) Using a dominating position in a certain market to defend or (iv) Using a dominating position in one important market to safeguard or penetrate another relevant market.⁵

The Competition Commission of India (CCI) is authorised to conduct investigations into alleged violations of the Act's provisions. It has the authority to impose penalties and issue orders prohibiting anti-competitive behaviour. It can also issue orders to amend agreements that hinder free trade.

4. CHALLENGES IN THE BOUNDARIES OF LEGITIMATE COMPETITION

Despite the clear legal framework provided by the Competition Act, challenges remain in delineating the boundaries of legitimate competition. Rapid technological advancements, globalized markets, and dynamic business models create novel competitive dynamics that may strain traditional regulatory paradigms. Moreover, subjective interpretations of competition law and varying enforcement priorities across jurisdictions can lead to inconsistencies and uncertainties for businesses.

4.1 Rapid Technological Advancements: The pace of technological change presents a significant challenge in defining the boundaries of legitimate competition. Emerging technologies such as artificial intelligence, big data analytics, and blockchain disrupt traditional market structures and business models, blurring the lines between competition and collaboration. Regulators grapple with assessing the competitive implications of innovative practices such as algorithmic pricing and platform-based ecosystems, which may raise concerns regarding data privacy, market concentration, and consumer protection.

4.2 Globalized Markets: In an era of globalization, markets are increasingly interconnected, with firms operating across multiple jurisdictions. This globalization poses challenges for competition authorities tasked with enforcing national antitrust laws while accounting for cross-border transactions and international mergers. Harmonizing competition regulations and fostering cooperation among regulatory agencies become imperative to address anticompetitive behavior effectively and prevent regulatory arbitrage.

⁵ Malik, Payal, Neha Malhotra, Ramji Tamarappoo, and Nisha Kaur Uberoi. "Legal Treatment of Abuse of Dominance in Indian Competition Law: Adopting an Effects-Based Approach." *Review of Industrial Organization* 54, no. 2 (2019): 435–64. <https://www.jstor.org/stable/48702964>.

4.3 Dynamic Business Models: The proliferation of dynamic business models, such as sharing economies, subscription services, and platform-based marketplaces, complicates the assessment of competitive behavior. These models often rely on network effects, economies of scale, and data-driven strategies to gain market dominance, raising questions about their impact on market competition and consumer welfare. Regulators must adapt their analytical frameworks to account for the unique features of these business models and ensure a level playing field for both incumbents and new entrants.

5 LANDMARK CASES:

5.1. JSW Paints (P.) Ltd. v. Asian Paints Ltd⁶: In the instant case, JSW Paints (P.) Ltd (the "Informant") filed the information against Asian Paints Limited under Section 19(1)(a), alleging a violation of Sections 3(4) and 4 of the Competition Act, 2002.

CCI Held:

- JSW Paints accused Asian Paints of targeting dealers, distributors, and retailers who partnered with them after the debut of their decorative paints. It told them to stop dealing with JSW Paints and threatened to cut off supply to certain dealers.
- Dealers were instructed to remove JSW Paints items from their retail shelves and threatened with no voluntary discounts.
- Further, Asian Paints was alleged to hinder the entry of JSW Paints by virtue of its dominance in the market for the manufacture and sale of decorative paints by the organised sector in India, in contravention of provisions of Section 4(2)(c) of the Act. Thus, the conduct of Asian Paints was aimed at preventing JSW Paints from establishing its presence in the said market
- The CCI ruled that Asian Paints violated Section 3(4) of the Act by imposing an exclusive supply agreement and refusing to do business. Thus, the aforementioned conduct had a significant negative impact on competition by erecting entry barriers,

⁶ JSW Paints (P.) Ltd. v. Asian Paints Ltd [2022] 142 (CCI) 210.

forcing existing rivals out of the market, and foreclosing competition by preventing JSW Paints from entering the market.

- According to the CCI, Asian Paints appears to have an overwhelming lead in the market for decorative paints manufactured and sold by the organised sector in India. Furthermore, in relation to the alleged violation of Section 3(4) of the Act, the CCI noted that Asian Paints' constraints appeared to be in the form of an exclusive supply agreement and refusal to trade. As a result, the CCI asked the DG to conduct an inquiry into the incident under the terms of Section 26(1) of the Act.
- Based on DG findings, the CCI determined that a strong player can use tactics to oust a smaller or new entrant to a market by incentivizing or coercing downstream players to boycott or not deal with them. JSW Paints did not have a clear advantage in this situation. Asian Paints was able to establish that certain of its conduct or procedures with the dealers were in accordance with its conditions of doing business with such dealers, rather than to keep JSW Paints out of the market."
- Henceforth, allegations of imposing exclusive supplier agreements and refusing to engage with Asian Paints were denied.

5.2. Rohit Arora v. Zomato (P.) Ltd [2022]⁷: Zomato and Swiggy, two online platforms facilitating food ordering and delivery, were engaged in competition within the same market segment, assessing various criteria. However, Zomato did not seem to assert a predominant position, and allegations of monopolistic behaviour such as abuse of dominance and bundling food ordering services with delivery services were disregarded.

Facts of the Case: In the case of Mr. Rohit Arora versus Zomato Private Limited (now Zomato Limited) [2022], an individual filed a complaint under Section 19(1)(a) of the Competition Act, 2002, accusing Zomato Private Limited (OP) of violating Sections 3(4) and 4 of the Act. The complainant, identified as a long-standing consumer of Zomato since 2018, claimed that Zomato abused its dominant market position by increasing food delivery fees and imposing unfair and excessively high delivery charges on consumers. Additionally, the complainant alleged that Zomato engaged in vertical restraints by preventing restaurants from directly

⁷ Rohit Arora v. Zomato (P.) Ltd [2022] 137 (CCI) 68.

delivering food and by limiting food delivery from less preferred restaurants by not assigning delivery personnel.

CCI Held: The Competition Commission of India (CCI) determined that Zomato effectively refuted the three instances of alleged abuse presented by the complainant with evidence that went uncontested. Consequently, the Commission found no evidence of abuse by Zomato in these instances. Regarding the delineation of two distinct relevant markets by the complainant, namely online food ordering services and food delivery services in India, the Commission noted Zomato's disagreement. After assessing the case's particulars, the Commission concluded that there was no apparent violation of the Act by Zomato. Consequently, the Commission decided to close the case under Section 26(2) of the Act.

5.3. ESYS Information Technologies v. Intel Corporation:⁸ The Competition Commission of India (CCI) determined that Intel merely provided recommendations for prices and monitored them, while the ultimate authority to set final prices rested with retailers. As a result, the Commission concluded that there was no infringement of the Competition Act.

CONCLUSION

Legitimate competition lies at the heart of a vibrant and dynamic marketplace, driving innovation, efficiency, and consumer welfare. As enshrined in the Competition Act, businesses are encouraged to compete vigorously within the bounds of the law, fostering a level playing field for all market participants. Through a nuanced understanding of competition law principles and careful compliance with regulatory requirements, firms can navigate the complexities of modern markets while contributing to overall economic growth and prosperity. Based on the findings of the Competition Commission of India (CCI), it can be concluded that legitimate competition Intel's actions of providing price recommendations and monitoring them without dictating final prices allowed retailers to maintain autonomy in pricing decisions. This approach fosters healthy competition by enabling retailers to make independent choices in setting prices, thereby promoting market efficiency and consumer welfare.

⁸ ESYS Information Technologies v. Intel Corporation Case No. 48 of 2011.