ANTI-COMPETITIVE AGREEMENTS UNDER THE COMPETITION ACT, 2002: A LEGAL ANALYSIS

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ABSTRACT

Anti-competitive agreements pose a serious threat to free and fair competition by distorting market forces, restricting consumer choice, and creating artificial barriers to entry. The Competition Act, 2002 was enacted in India with the objective of preventing practices that have an appreciable adverse effect on competition, promoting and sustaining market competition, and protecting consumer interests. This research article examines the concept of anti-competitive agreements under Section 3 of the Competition Act, 2002, with a particular focus on horizontal and vertical agreements. It analyzes various forms of prohibited agreements such as price-fixing, bid-rigging, cartels, market allocation, and restrictive vertical arrangements, supported by landmark decisions of the Competition Commission of India (CCI) and the judiciary. The article also discusses exceptions provided under the Act, interpretative rules such as the rule of reason and per se rule, and the evolving jurisprudence in India. Through case law analysis and statutory interpretation, this article highlights the role of the CCI in maintaining competitive markets and ensuring economic efficiency in India.

Introduction

In a liberalized and market-driven economy, competition plays a vital role in ensuring efficiency, innovation, and consumer welfare. Healthy competition encourages enterprises to improve product quality, reduce prices, and offer better choices to consumers. However, when enterprises enter into agreements that restrict or distort competition, the very foundation of a free market is undermined. Such agreements, known as anti-competitive agreements, adversely affect market dynamics by limiting production, fixing prices, allocating markets, and eliminating fair competition.

To address these concerns, the Indian legislature enacted the Competition Act, 2002, replacing the Monopolies and Restrictive Trade Practices Act, 1969. The Competition Act seeks to prevent practices having an appreciable adverse effect on competition, promote and sustain competition in markets, protect consumer interests, and ensure freedom of trade. Section 3 of the Act specifically deals with anti-competitive agreements and declares certain categories of agreements void if they harm competition in the relevant market within India.

Anti-competitive agreements may broadly be classified into horizontal and vertical agreements. Horizontal agreements are entered into between competitors operating at the same level of the production or distribution chain, such as cartels and price-fixing arrangements, and are presumed to have an adverse effect on competition. Vertical agreements, on the other hand, are entered into between enterprises operating at different stages of the supply chain and are assessed under the rule of reason. The Competition Commission of India plays a pivotal role in examining these agreements, balancing pro-competitive efficiencies against their anti-competitive effects.

Concept of an Agreement

The Competition Act adopts a broad interpretation of the term "agreement." According to Section 2(b), an agreement includes any understanding, arrangement, or coordinated action between parties. It is not necessary for such an agreement to be written, formal, or legally enforceable. Even informal or implied coordination between parties can fall within the scope of the Act.

Meaning of Anti-Competitive Agreements

Section 3(1) of the Act defines an anti-competitive agreement as any arrangement between enterprises, associations, or individuals involved in the production, supply, distribution, storage, or provision of services that negatively affects competition in the relevant Indian market. The focus of the law is not merely on the form of the agreement but on its impact on market competition.

Legal Nature of Anti-Competitive Agreements

As per Section 3(2) of the Competition Act, any agreement that results in an appreciable adverse effect on competition is void. This means such agreements have no legal validity and cannot be enforced, regardless of the intention of the parties involved.

Classification of Anti-Competitive Agreements

Anti-competitive agreements are generally divided into two categories:

1. Horizontal agreements

2. Vertical agreements

1. Horizontal Agreements

1.1 **Meaning**

Horizontal agreements are arrangements made between enterprises or individuals operating at the same level of the market, such as competitors producing or selling similar goods or services. Section 3(3) of the Competition Act deals with such agreements and presumes them to be harmful to competition.

1.2 **Types of Horizontal Agreements**

A. Price-Fixing Agreements

Market participants may enter into horizontal arrangements where they agree to charge identical or similar prices instead of competing independently. Price-fixing is one of the most common and clearly identifiable forms of horizontal agreements and is a core feature of cartel behaviour. This type of conduct is governed by **Section 3(3)(a) of the Competition Act, 2002**. Any coordination—whether direct or indirect—between competitors that influences the pricing of goods or services amounts to a price-fixing arrangement.

Illustration:

Suppose two sellers, A and B, operate in a small umbrella market. Instead of selling umbrellas at ₹200, they mutually decide to sell them at ₹250 during the rainy season. Since consumers have no alternative sellers, both firms earn higher profits without competing on price.

Other forms of price-fixing arrangements include:

- Agreements to increase or maintain prices at a fixed level
- Adoption of uniform pricing policies
- Elimination or standardization of discounts
- Fixing a common base price for negotiations
- Offering services without discounts
- Imposing compulsory surcharges
- Restricting or prohibiting price-related advertisements

B. Agreements Restricting or Controlling Production or Supply

Another category of horizontal agreements involves collective decisions by producers or enterprises to reduce or regulate the availability of goods or services in the market. Such agreements fall under **Section 3(3)(b) of the Act**. By deliberately limiting supply—often through practices like hoarding—firms create artificial scarcity, which enables them to increase prices.

Illustration:

Certain firms may mutually decide to withhold the sale of product B for a specific period, thereby creating an artificial shortage. This scarcity allows them to charge inflated prices and maximize profits. Agreements that restrict or control production, supply, or the provision of services are deemed void under competition law.

C. Allocation of Areas or Geographic Markets

In market-sharing arrangements, competing enterprises divide the market among themselves based on factors such as geographic regions, types of products or services, or specific customer groups. Each firm agrees to operate only within its allotted segment, avoiding competition with others. Such arrangements result in exclusive control within designated territories and undermine free competition. Consequently, agreements involving market or geographic allocation are generally considered invalid under competition law.

D. Bid Rigging

Bid rigging is a form of **horizontal anti-competitive agreement** that is presumed to cause an appreciable adverse effect on competition under **Section 3 of the Competition Act, 2002**. As clarified under **Section 3(3)**, bid rigging arises when enterprises or individuals engaged in the same or similar line of business collude to influence or distort the bidding process. Such arrangements reduce genuine competition by predetermining outcomes rather than allowing bids to be decided independently.

In essence, bid rigging involves **prior coordination among bidders**, where the terms or prices of bids are decided before the bidding or tendering process actually takes place, thereby undermining transparency and fairness.

❖ Common Methods of Bid Rigging

Bid rigging can take place through several coordinated practices, including:

i) An understanding among bidders to submit **identical or near-identical bids**.

ii) An agreement determining **which participant will quote the lowest bid**.

iii) A mutual decision among competitors **not to compete against one another** in the bidding process.

iv) Use of a **shared formula, calculation method, or bidding criteria** to fix bid amounts or conditions.

v) Pre-arranged agreements regarding the **rotation of winning bids**, especially in auctions or repeated tenders.

❖ **Forms of Bid Rigging**

Bid rigging commonly manifests in the following forms:

i) **Bid Rotation** – Competing bidders take turns in being the successful bidder across different tenders.

ii) **Sub-contracting** – The winning bidder sub-contracts work to other cartel members to share profits.

iii) **Complementary Bidding** – Certain bidders intentionally submit higher or non-competitive bids to give the appearance of competition.

iv) **Bid Suppression** – Some participants agree to refrain from bidding or withdraw bids to ensure a predetermined bidder succeeds

Bid Rigging by Insurance Companies (Case No. 02 of 2014)[1]

In this case, the Competition Commission of India (CCI) found four public sector insurance companies, namely National Insurance Company Ltd., New India Assurance Company Ltd., Oriental Insurance Company Ltd., and United India Insurance Company Ltd., guilty of cartelisation and anti-competitive conduct. The investigation revealed that these insurers had entered into a collusive arrangement while participating in a tender issued by the Government of Kerala. Instead of competing independently, the companies coordinated their actions and quoted inflated premium rates, thereby manipulating the tendering process. Such conduct amounted to bid rigging under the Competition Act, 2002. Taking note of the serious impact on competition and public interest, the CCI imposed a cumulative penalty of ₹671 crore on the four insurance companies for indulging in cartel behaviour.

[1] *http://www.cci.gov.in/sites/default/files/0220145.pdf 22*

Bid Rigging in LPG Cylinders (Case No. 03 of 2011)[2]

The Competition Commission of India initiated suo moto proceedings against certain LPG cylinder manufacturers who were supplying cylinders to Indian Oil Corporation Ltd. pursuant to a tender floated by it. Upon examination, the Commission observed that the manufacturers had submitted identical price bids in response to the tender, which could not be explained by normal market conditions. The CCI concluded that the uniformity in pricing was the result of a prior understanding and concerted action among the bidders, clearly indicating bid rigging.

Consequently, the Commission issued a cease-and-desist order and imposed penalties on each of the defaulting manufacturers at the rate of 7% of their average turnover. On appeal, the Competition Appellate Tribunal (COMPAT), in its 2013 decision, upheld the CCI's findings on the existence of cartelisation but directed the Commission to reconsider the quantum of penalties imposed on the manufacturers.

Bid Rigging in Pune Tender – Klassy Enterprises Case[3]

In this matter, the National Company Law Appellate Tribunal (NCLAT) affirmed the decision of the Competition Commission of India (CCI) imposing a monetary penalty of ₹10 lakh on Klassy Enterprises for engaging in bid-rigging, in violation of Section 3(3)(d) of the Competition Act, 2002.

The Tribunal observed that the existence of a formal or written agreement is not mandatory to establish collusion. It held that cartel behaviour may be inferred from surrounding circumstances. In this case, factors such as the use of common IP addresses and financial connections between the parties were considered sufficient to demonstrate coordination and manipulation of the tender process.

Accordingly, the NCLAT concluded that circumstantial and indirect evidence can validly be relied upon to prove anti-competitive conduct in bidding arrangements.

Bid-Rigging in UP Government Soil-Testing Tenders[4]

[2] *www.cci.gov.in/sites/default/files/LPGMainfeb2.pdf 16*
[3] *Klassy Enterprises v. Competition Commission of India,Competition Appeal (AT) No. 86 of 2019,*
[4] *Austere Systems Pvt. Ltd. Vs Competition Commission of India,2025 TAXSCAN (NCLAT) 324, Competition Appeal (AT) No. 36 of 2022*

In this matter, the National Company Law Appellate Tribunal (NCLAT) affirmed the findings of the Competition Commission of India (CCI) that certain companies had colluded in government soil-testing tenders in Uttar Pradesh. The Tribunal agreed that the conduct amounted to bid-rigging and market allocation, in contravention of Sections 3(3)(c) and 3(3)(d) of the Competition Act, 2002. Upholding the CCI's decision, NCLAT confirmed the imposition of penalties calculated at five per cent of the average turnover of the enterprises found to be involved in the anti-competitive arrangement.

SBI Tender Cartelization Case (Vendors)[5]

In this matter, several vendors participating in a tender floated by State Bank of India Infrastructure Management Services (SBIIMS) were accused of colluding in the bidding process. The Competition Commission of India (CCI) observed that the bidders had coordinated their price quotations, which resulted in suppression of genuine competition in the tender. Such conduct was held to amount to cartelization and bid-rigging in violation of Sections 3(3)(c) and 3(3)(d) of the Competition Act, 2002.

On appeal, the National Company Law Appellate Tribunal (NCLAT) agreed with the CCI's assessment and affirmed its findings. The Tribunal upheld the imposition of penalties calculated at 1% of the respective vendors' turnover, reiterating that coordinated bidding and price alignment in public tenders undermines fair competition and attracts strict action under the Act.

Composite Brake Blocks Bid-Rigging Case (Indian Railways)[6]

In this matter, manufacturers engaged in supplying composite brake blocks to Indian Railways were investigated for collusive conduct in railway tenders during the period from 2009 to 2017. The Competition Commission of India (CCI) found that the suppliers had coordinated their bids, amounting to bid-rigging and cartelisation.

On appeal, the National Company Law Appellate Tribunal (NCLAT) affirmed the CCI's conclusion that anti-competitive conduct had taken place. However, considering that the

[5] *In Re: Alleged Anti-Competitive Conduct by Various Bidders in Supply and Installation of Signages at Specified Locations of State Bank of India Across India, Suo Moto Case No. 02 of 2020*

[6] ***Chief Materials Manager, South Eastern Railway v. Hindustan Composites Ltd. & Ors.****, Competition Commission of India,* ***Order dated 10 July 2020****.*

involved enterprises were Micro, Small and Medium Enterprises (MSMEs) and had extended cooperation during the investigation, the CCI exercised its discretion and refrained from imposing monetary penalties. Despite this, the determination that bid-rigging occurred was maintained and remained legally valid.

E) Group Boycott

These arrangements involve a collective decision by businesses to refuse or limit dealings with specific market participants, such as certain suppliers, distributors, or retailers, with the aim of excluding them from the market or restricting competition.

- **CARTELS**

Under Section 2(c) of the Competition Act, a cartel refers to an arrangement among enterprises or entities engaged in the supply of goods or services, whereby they collectively agree to influence or control market conditions. In a competitive market, businesses are expected to compete independently by offering better prices, quality, or innovation to attract consumers. However, when a cartel is formed, a limited number of market participants coordinate their conduct to dominate the market. Such coordination often results in uniform and inflated prices, restricted output, and deliberate limitation of supply, creating an artificial scarcity and preventing the entry of new competitors. Consequently, a cartel can be understood as an association of market participants who collude to keep prices at an elevated level, thereby causing an appreciable adverse effect on competition in the market.

Builders Association of India v. Cement Manufacturers Association & Ors.[7]

This case stands as one of the most significant cartelisation rulings delivered by the Competition Commission of India (CCI). The Commission imposed a penalty of approximately ₹6,000 crore on eleven major cement manufacturers after finding them guilty of engaging in cartelistic conduct. The investigation revealed that the cement companies had coordinated their actions to regulate production levels, control supply, and influence cement prices in the market.

The CCI concluded that the conduct of the cement manufacturers, including mutual understanding and concerted practices, amounted to an anti-competitive agreement under the

[7] *Builders Association of India v. Cement Manufacturers Association & Ors., (2012) 10 SCC 743*

Competition Act, 2002. Such coordinated behaviour was held to have appreciably adversely affected competition, thereby violating the statutory provisions aimed at ensuring free and fair competition in the market.

In ***Sunshine Pictures Ltd. v. Central Cine Circuit Association***, [8]allegations were raised that the Central Cine Circuit Association was being used as a common forum to facilitate collusive conduct within the film distribution sector. It was contended that film distributors, who were otherwise competitors in the market, coordinated through the association by circulating letters and circulars among themselves. These communications were aimed at controlling and restricting the screening and exhibition of certain films, thereby limiting market access and free competition.

Upon examining the facts and material on record, the **Competition Commission of India (CCI)** found that the association was not merely performing a representative or welfare function. Instead, it was actively enabling coordination among distributors, leading to concerted practices that distorted competition in the market. The CCI observed that the competing distributors had effectively formed a cartel under the guise of the association, resulting in anti-competitive restraints on film exhibition.

Accordingly, the Commission held the conduct to be in violation of the provisions of the Competition Act, 2002, and imposed monetary penalties on the parties involved for engaging in cartelisation and anti-competitive practices.

FICCI Multiplex Association of India v. United Producers/Distributors Forum[9]

In this case Competition Commission of India examined the conduct of film producers and distributors in relation to the exhibition of films in multiplex theatres. The Commission observed that the producers and distributors, acting collectively through their forum, exercised significant market power and adopted a concerted strategy against multiplex owners.

It was found that the producers and distributors sought to pressure multiplex operators by refusing to supply films for exhibition unless the multiplexes agreed to revised terms that

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[8] *Sunshine Pictures Private Limited v. Central Circuit Cine Association & Ors., CCI Case Nos. 52 of 2010 & 56 of 2010, Order dated 16 February 2012*
[9] *FICCI – Multiplex Association of India v. United Producers/Distributors Forum & Ors.Case No. 1 of 2009, Order dated 25 May 2011*

provided a higher share of revenue to the producers. This coordinated refusal to deal effectively restricted the ability of multiplex owners to access films on fair and competitive terms and left them with little choice but to accept the proposed increase in revenue sharing.

The CCI concluded that such collective action amounted to cartel-like behaviour, as the producers and distributors acted in agreement rather than independently. This conduct was held to fall squarely within the scope of Section 3(3) of the Competition Act, 2002, which prohibits agreements among competitors that have the object or effect of causing an appreciable adverse effect on competition. Accordingly, the Commission held that the actions of the producers and distributors distorted competition in the relevant market and were in violation of the Competition Act.

Re: Alleged Cartelisation in the Flashlights Market in India (2017)[10]

In this case, the Competition Commission of India examined allegations concerning the existence of a cartel among participants in the flashlight market in India. The Commission analysed whether the exchange of commercially sensitive information between the parties could be construed as evidence of cartel formation.

The CCI held that the mere exchange of information, even if commercially sensitive, does not by itself establish the existence of a cartel. In the absence of any concrete evidence indicating an agreement or coordinated implementation of anti-competitive practices, the Commission concluded that no cartelisation had taken place. Consequently, the allegations were dismissed for want of sufficient proof of collusive conduct.

Samir Agarwal v. Competition Commission of India (2020)[11]

In this matter, the informant alleged that cab aggregators, namely Ola and Uber, were facilitating price-fixing among drivers through the use of algorithm-based pricing mechanisms. It was contended that the dynamic pricing models employed by these platforms enabled drivers to fix fares collectively, thereby excluding other transport service providers and distorting

[10] ***In Re***: *Alleged Cartelisation in Flashlights Market in India* **Suo Motu *Case No. 01 of 2017*** *Order dated* ***November 2018***

[11] *Samir Agrawal v. Competition Commission of India & Ors.,Civil Appeal No. 3100 of 2020; [2020] 13 S.C.R. 1044; AIR 2021 SC 199; AIROnline 2020 SC 890*

competition.

Ola and Uber denied the allegations, arguing that no agreement existed between the drivers or between the platforms and drivers. They maintained that surge pricing was a natural outcome of market forces, driven by real-time demand and supply conditions. Furthermore, they contended that cab aggregators operate at a different level of the market compared to other transportation service providers.

The Supreme Court upheld the findings of the CCI and held that no prima facie case of cartelisation was made out. The Court observed that passengers are matched with drivers anonymously and that drivers do not have the opportunity or means to coordinate with each other before accepting a ride. Importantly, the Court emphasized that in cases involving hub-and-spoke cartels, the presence of *mens rea* or intentional collusion is a sine qua non. In the absence of such intent or evidence of coordination, allegations of cartelisation could not be sustained.

Competition Commission of India (CCI) vs. Kerala Film Exhibitors Federation [12]

The Competition Commission of India had found the Kerala Film Exhibitors Federation (KFEF) and its office-bearers guilty of cartel-like anti-competitive conduct under Section 3(1) read with Section 3(3)(b) of the Competition Act, 2002. The Federation allegedly pressured film distributors and coordinated a boycott of Crown Theatre by its members, thereby restricting competition in film exhibition and behavioural directions including debarment of the office-bearers from association activities.

The Supreme Court restored the CCI's order in full. The Court held that the single notice forwarding the DG's report inviting replies and financial particulars sufficed as compliant with the Competition Act no separate second notice was mandated.The CCI is empowered to impose both monetary and behavioural/structural remedies under Section 27, including debarment and other directions, to effectively curb anti-competitive conduct .Office-bearers identified as responsible decision-makers can be held personally liable under Section 48 alongside the entity.

[12] ***Competition Commission of India v. Kerala Film Exhibitors Federation & Ors.,*** *2025 INSC 1167, Civil Appeal No. 9726 of 2016 (Supreme Court of India) — reported as* ***2025 INSC 1167****.*

***Bid-Rigging Established Through Circumstantial Evidence – NCLAT*[13]**

In a decision delivered in January 2026, the National Company Law Appellate Tribunal (NCLAT) reaffirmed the Competition Commission of India's (CCI) findings on bid-rigging and cartelisation in a public procurement process. The Tribunal upheld the imposition of a monetary penalty of approximately ₹10 lakh on the enterprise involved for contravention of Section 3(3)(d) of the Competition Act, 2002.

A key aspect of the ruling was NCLAT's recognition that the existence of a cartel need not be proved through a formal or written agreement. The Tribunal observed that anti-competitive coordination can be inferred from surrounding facts and conduct of the parties. In the present case, indicators such as the use of common IP addresses, closely connected bid submissions, and financial linkages in payment processes were considered sufficient to establish collusive behaviour.

The Tribunal held that such circumstantial evidence, when viewed cumulatively, clearly demonstrated a concerted effort to manipulate the bidding process and undermine competition. Accordingly, NCLAT dismissed the appeal and confirmed the penalty imposed by the CCI, reinforcing the principle that indirect evidence can validly be relied upon to prove cartel conduct in bid-rigging cases.

2. Vertical Agreements

2.1 Meaning

Vertical agreements are arrangements between enterprises operating at different stages of the supply chain, such as manufacturers and distributors. Section 3(4) of the Act governs such agreements.

2.2 Types of Vertical Agreements

1. **Tie-in Arrangement**

   A tie-in arrangement refers to an agreement where the sale of one product is made conditional upon the purchase of another, separate product. In such cases, the buyer is

[13] ***Competition Appeal (AT) No. 33 of 2022 –*** *Klassy Enterprises v. Competition Commission of India*

compelled to obtain an additional product in order to access the desired one. For example, a consumer may be required to purchase a gas stove as a mandatory condition for obtaining a domestic LPG connection.

2. **Exclusive Supply Agreement**

   An exclusive supply agreement arises when a supplier imposes restrictions on the buyer, preventing them from purchasing or dealing in competing goods from other suppliers. Under such an arrangement, the buyer is obligated to source goods exclusively from a particular manufacturer or supplier. For instance, a retailer may be required to sell only the products of one manufacturer and refrain from stocking rival brands.

3. **Exclusive Distribution Agreement**

   An exclusive distribution agreement involves the allocation of a specific geographical area or customer base to a distributor, limiting where and to whom the distributor can sell the goods. The distributor is prohibited from selling outside the assigned territory. For example, a distributor may be authorised to sell a product only within a designated region and not beyond its boundaries.

4. **Refusal to Deal**

   Refusal to deal refers to an agreement that restricts the freedom of parties to choose their trading partners. Such arrangements may limit the sale or purchase of goods or services to certain entities or prohibit dealings with competitors. For example, a franchisee may be restrained from selling or purchasing similar products from alternative sources for a specified duration.

In the landmark case of ***Shamsher Kataria v. Honda Siel Cars India Ltd. & Ors[14].***, the Competition Commission of India examined allegations of anti-competitive conduct by leading automobile manufacturers operating in India. The informant, Shamsher Kataria, contended that several original equipment manufacturers had adopted practices that restricted competition in

[14] ***Shamsher Kataria v. Honda Siel Cars India Ltd. & Ors.***,*2017 SCC OnLine CCI 1*

the aftermarket for automobile spare parts and repair services.

Upon investigation, the Commission found that fourteen automobile companies had entered into arrangements that limited the supply of genuine spare parts to independent repairers and consumers. These manufacturers also imposed restrictions through their dealership and service agreements, effectively compelling vehicle owners to rely solely on authorised service centres. Such conduct was held to be an anti-competitive vertical arrangement under Section 3(4) of the Competition Act, 2002.

The CCI further observed that the manufacturers enjoyed a position of dominance in the market for spare parts and after-sales services of their respective brands. By denying access to spare parts, technical information, and diagnostic tools, they abused their dominant position in contravention of Section 4 of the Act. These practices resulted in higher prices, reduced consumer choice, and foreclosure of independent service providers from the market. Considering the serious impact of these violations on competition and consumers, the Competition Commission imposed a cumulative penalty of approximately ₹2,544 crore on the automobile manufacturers. The decision reaffirmed the principle that restrictive practices in aftermarkets can amount to abuse of dominance and anti-competitive agreements, even when competition exists in the primary market for vehicles.

***PF Digital Media Services Ltd v. UFO Moviez India Ltd & Others*[15]**

In this case, the Competition Commission of India examined exclusive content supply arrangements imposed by UFO Moviez on cinema theatre owners. The Commission held that such arrangements amounted to restrictive vertical practices, as they limited the freedom of theatres to source digital cinema services from competing providers.

The CCI concluded that these exclusivity conditions resulted in an appreciable adverse effect on competition in the relevant market and therefore violated Sections 3(4)(a), 3(4)(b), and 3(4)(d) of the Competition Act, 2002. This decision is significant as it reinforces the regulatory approach toward vertical restraints, particularly exclusive supply and distribution agreements, by recognising their potential to distort market competition even in technology-driven sectors.

[15] PF Digital Media Services Ltd. & Anr. V. UFO Moviez India Ltd. & Ors., Case No. 11 of 2020 (Competition Commission of India), Order dated 17 September 2021

Agreements Which Are Not Considered Anti-Competitive

Not every agreement that restricts trade or competition is prohibited under Indian competition law. The Competition Act, 2002 primarily targets agreements that cause or are likely to cause an appreciable adverse effect on competition in the market. However, the Act also recognises that certain restraints are necessary for legitimate business and legal purposes. Accordingly, Section 3(5) of the Act provides specific exceptions where such agreements are not treated as anti-competitive.

1. Exception Relating to Protection of Intellectual Property Rights (IPR)

Agreements entered into for the purpose of protecting intellectual property rights are exempted from the application of Section 3, provided such restraints are reasonable and necessary. The rationale behind this exception is to encourage innovation, creativity, and technological advancement by safeguarding the exclusive rights of creators and inventors. This exception applies to rights granted under the following statutes:

- The Copyright Act, 1957
- The Patents Act, 1970
- The Trade and Merchandise Marks Act, 1958 or the Trade Marks Act, 1999
- The Geographical Indications of Goods (Registration and Protection) Act, 1999
- The Designs Act, 2000
- The Semiconductor Integrated Circuits Layout-Design Act, 2000

Agreements that impose reasonable conditions to protect these statutory rights do not fall within the ambit of anti-competitive agreements.

2. Exception for Export-Related Agreements

The Competition Act also excludes agreements that relate exclusively to the production, supply, distribution, or control of goods or services meant for export. Since such agreements do not impact competition within the domestic Indian market, they are not considered anti-competitive under the Act.

3. Exception for Joint Venture Agreements

Joint venture agreements are another recognised exception, provided they enhance efficiency in production, supply, distribution, storage, acquisition, or control of goods and services. When joint ventures lead to technological advancement, improved consumer benefits, or increased economic efficiency, they are not regarded as anti-competitive arrangements.

Rules of Interpretation in Relation to Anti-Competitive Agreements

1. **Rule of Presumption** – Section 3 of the Competition Act uses the expression *"shall be presumed."* As per the Indian Evidence Act, 1872, when the law employs the term *shall presume*, the court or authority is required to accept the existence of a fact as proved unless the contrary is established by the opposing party. In such cases, the adjudicating body does not have the discretion to independently seek evidence to disprove the presumption; the burden lies squarely on the party challenging it.

2. **Rule of Reason** – Under this principle of interpretation, the Competition Commission of India (CCI) is required to assess the rationale behind a specific conduct, arrangement, or understanding adopted by an enterprise. This involves examining the economic benefits, costs, and overall impact of the activity. The CCI evaluates the actual and potential effects on competition, the prevailing market conditions, and the underlying intent or objective of the conduct before arriving at a conclusion.

3. **Per Se Rule of Interpretation** – According to this rule, certain acts or practices expressly mentioned in the Competition Act are automatically presumed to cause an appreciable adverse effect on competition and are therefore prohibited. When applying this rule, the CCI interprets and enforces the statutory provision strictly, without undertaking a detailed inquiry into the effects or justifications of the conduct.

Overall, Indian competition law predominantly adopts the **rule of reason** approach while examining anti-competitive agreements, ensuring that the determination is based on a comprehensive assessment of market realities and competitive impact.

In ***Sodhi Transport v. State of Uttar Pradesh***[16], the Supreme Court clarified the nature of

[16] *Sodhi Transport Co. & Anr. vs State of U.P. & Anr.1986 AIR 1099*

statutory presumptions by holding that a presumption is not absolute but rebuttable. Applying this principle in the competition law context, it can be understood that the presumption of appreciable adverse effect on competition under Section 3(3) of the Competition Act is not conclusive. While horizontal agreements, including cartels, are presumed to have an adverse impact on competition, this presumption merely shifts the burden of proof onto the opposite party. The alleged violator is entitled to rebut the presumption by producing evidence and making appropriate representations to show that the agreement does not, in fact, cause appreciable harm to competition.

With respect to vertical agreements covered under Section 3(4) of the Act, the Competition Commission of India does not apply any statutory presumption. Instead, it adopts the rule of reason approach, wherein the likely pro-competitive benefits of the agreement are weighed against its potential anti-competitive effects. The Commission assesses whether such agreements are likely to cause an appreciable adverse effect on competition based on market conditions and the factors enumerated under the Act.

In ***Neeraj Malhotra v. Deutsche Post Bank***[17] the Competition Commission of India reiterated that although the language of Section 3(3) appears to incorporate a per se approach, it does not establish automatic or irrefutable liability. The provision only creates a rebuttable presumption of appreciable adverse effect on competition in cases of certain horizontal agreements. The Commission emphasized that the parties against whom such a presumption operates are free to invoke the factors listed under Section 19(3) of the Act to demonstrate that the agreement does not harm competition.

The CCI further observed that Indian competition law predominantly favors the rule of reason over a strict per se rule. Even in cases falling under Section 3(3), the statutory framework allows for an analysis of surrounding circumstances and competitive effects, thereby ensuring that liability is determined on the basis of economic realities rather than on rigid legal presumptions alone.

Conclusion

Anti-competitive agreements have a serious and far-reaching impact on the functioning of

[17] In *Neeraj Malhotra v. Deutsche Post Bank* Home Finance Ltd. & Ors. Home Finance Ltd. & Ors. (2010) 12 CCI CK 0008 **, Case No:**5 of 2009[17]

markets, as they distort competition, restrict consumer choice, and ultimately harm consumer welfare. Such arrangements interfere with the natural forces of demand and supply, leading to higher prices, reduced innovation, and inefficient allocation of resources. Recognizing these adverse effects, the Competition Act, 2002 provides a comprehensive legal framework to prohibit and regulate agreements that cause or are likely to cause an appreciable adverse effect on competition in India.

The Competition Commission of India plays a pivotal role in enforcing these provisions by investigating unlawful conduct, imposing penalties, and issuing corrective directions. By addressing both horizontal agreements, such as cartels and bid-rigging, and vertical agreements, including exclusive dealing and tie-in arrangements, the law ensures that businesses operate within fair and transparent competitive norms. This regulatory oversight not only curbs market abuse and concentration of economic power but also fosters a level playing field, encourages innovation, and safeguards the interests of consumers. Overall, the effective regulation of anti-competitive agreements contributes to a robust and healthy economic environment that balances the interests of enterprises with the broader goal of consumer welfare and sustainable market growth.