



HORIZONTAL AGREEMENTS UNDER COMPETITION ACT

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INTRODUCTION:

A dynamic market with multiple participants who strive hard to develop new products at low costs to meet the consumers demand is ideal. One of the easy ways to ensure healthy competition amongst the market players. The Monopolies and Restrictive Trade Practices Act, 1969 (“MRTP”) was the first Indian competition law that controlled anti-competitive activities. Due to varying nature of marketplaces and economies within and outside India, the need to have new rigorous legislation was felt and the Competition Act, 2002 (“Act”) was passed in 2003. The main objects behind promulgating this Act were to encourage and maintain competition in the market and to protect consumers best interests.

HORIZONTAL AGREEMENTS:

The anti-competitive agreements under the Act cover various arrangements amongst enterprises that have an appreciable adverse effect on competition. The subject of this article

¹ The Article reflects the general work of the authors and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

is horizontal arrangements and covered under section 3 (3) of the Act as:

A horizontal agreement can be any agreement that is entered into between enterprises or association of enterprises, or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by any association of enterprises or association of persons, including cartels², engaged in identical or similar trade of goods or provisions of services.

Thus, horizontal agreements are the arrangements between rival distributors, manufacturer, retailers who operate at the same level of supply chain.

APPRECIABLE ADVERSE EFFECT OF COMPETITION

Appreciable Adverse effect occurs when some activities of the marketers restrict the competition in the market. Anti- Competitive Agreement, Abuse of Dominance, Combinations etc. and activities under these forms are presumed to have an appreciable adverse effect on the competition. As per the Act, a horizontal agreement shall be presumed to have an appreciable adverse effect on competition (“AAEC”) if it results in either of the following:

² Cartel “includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services”

Price Fixing	Output Control	Market Sharing	Bid Rigging ³
When competitors directly or indirectly fix the cost of the goods or services.	When competitors mutually create an artificial scarcity by collectively controlling production or manufacturing or supply of the products.	When competitors identify and/or share their specific market location to the exclusion of others and their production of or provisions of supply or delivery of services by splitting the market area.	When competitors collude, with each other and file similar bids.
TECHNIQUES			
Raise or cut the cost or retain the same price /discounts or identical accounting techniques etc.	When there is scarcity there is a high demand for any product and thus the price of that product ultimately rises.	Geographical division of markets by the competitors amongst themselves.	
APPRECIABLE ADVERSE EFFECT ON COMPETITION			
Competitors are already familiar with each other's price techniques.	Consumers are deprived of the goods or services and may be required to pay higher.	Consumers have limited choice and are deprived from purchasing from other retailers. This also gives an unfair advantage of overcharging in their particular allocated areas.	It weakens the bidding process and can lead to a manipulated price that is higher than what might have been resulted in a free market

To understand this better, we will look at two important case laws pertaining to various horizontal arrangements

Ministry of Corporate Affairs v. Apollo Tyres & ors⁴.

This case was initiated on the basis of a reference received from the Ministry of Corporate Affairs (MCA) under Section 19(1)(b) of the Act wherein it was alleged that domestic tyre manufacturers

³ “bid rigging” means any agreement, between enterprise or persons referred to in sub-section (3) of Act engaged in identical or similar products or trading of goods or provisions of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.

⁴ Reference Case No. 08 of 2013.

such as Apollo Tyres Limited, MRF Ltd., CEAT Ltd., JK Tyre and Industries Ltd. , Birla Tyres Ltd. and Automotive Tyre Manufacturers' Association ('ATMA') have violated the provisions of Section 3 of the Act.

It was noted that collective decisions on prices of tyres were made by ATMA, and they also had exchanged price-sensitive data amongst them through their association. The Commission found that ATMA collected and compiled information relating to price sensitive information including the data of production, sales and exports. The CCI held the five tyre manufacturers and ATMA guilty of contravention of the provisions of Section 3 of the Act, which prohibits anti-competitive agreements including cartels, during 2011-2012. **The CCI imposed collective penalties of Rs. 1,788.06 crores. In addition, Rs. 0.084 crores penalty was imposed on ATMA as well.**

[Samir Agrawal Vs. Competition Commission Of India & Ors⁵](#)

In this case, the appellant requested the Competition Commission of India to investigate into the matter related to the anti-competitive practice of platforms, that provide cab services i.e., Ani Technologies Pvt. Ltd. (referred to as "Ola") and Uber India Systems Pvt. Ltd., Uber B.V. and Uber Technologies Inc. (referred to as "Uber"). The appellant alleged that these two platforms have entered into a price fixing arrangement and manipulate the prices of the rides, because of which, riders and drivers are unable to choose best offer. It is compulsory for drivers to accept the fare displayed on the app at the end of the ride without having any option in this regard, despite the fact that they are independent contractors and not employees of either Ola or Uber. He further alleged that Ola and Uber intentionally control the supply and demand. After considering this information, the Competition Commission of India ("CCI") dismissed the case under Section 26(2) of the Act stating that Ola and Uber operated independently from their driver. When a rider books a cab, an anonymous driver on the location will accept it which leaves the apps no time to even coordinate with other drivers. Hence this may not be considered as price fixing activity and there is no case of contravention of the provisions of Section 3 of the Act. Aggrieved by the CCI decision appellant filed an appeal before NCLAT which was dismissed. After considering the judgement passed by the CCI and NCLAT Supreme Court has disposed the appeal and held that:

⁵ Civil Appeal No. 3100 of 2020.

“It has been found that Ola and Uber do not facilitate cartelization and Anti- competitive practices, between drivers, who are independent individuals, who act independently of each other”.

Exemption Granted Under Section 3 (3):

It is to be noted that Section 3(3) is not applicable to a joint venture, if it increases the efficiency of production, supply, distribution, storage, acquisition or provisions of services. Joint Venture signifies a beneficial arrangement that seeks to increase the efficiency of the parties to the arrangement. Such exclusion is practically justifiable as well as it is essential for companies or enterprises to enter into such agreement which strengthen their efficiency and benefit them.

CONCLUSION:

Horizontal agreements resulting in AAEC, are generally more challenging to regulate than the other anti-competitive agreements, considering the nature of arrangement between the parties involved. However, it is important to regulate and control the horizontal agreement as these arrangements affect the consumers and are harmful for the market and economy at large.

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