

Supply Chains in the Competition Yard: All Vertical Arrangements, a Red Card?

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1. Introduction- What is the current scenario of competition in the Indian market?

In the thriving Indian market, competition is the driving force behind innovation, quality, and consumer choice. A pivotal aspect of this competition lies in the realm of vertical arrangements – agreements that govern relationships between entities operating at different levels of the supply chain. These arrangements, while essential for business growth, have the potential to either enhance or undermine competition. Competition Act also lays down certain categorical rules about horizontal arrangements which have been covered by our earlier article [here](#). [2]

2. Concept- What does Vertical Arrangement mean?

Vertical arrangements are fundamental contractual agreements that shape the relationships between entities operating at different levels of the supply chain. These agreements establish the rules and obligations governing manufacturers, wholesalers, distributors, and retailers, impacting how products and services flow through the market. Under the Competition Act, 2002, these arrangements are subject to scrutiny if they have an adverse impact on competition in India.

3. What are the various types of Vertical Arrangements?

Tie-in Agreement [Section 3 (4)(a)]:	Any agreement requiring a purchaser of goods or services, as a condition of such purchase, to purchase some other distinct goods or services.
Exclusive Dealing Agreement [Section 3 (4)(b)]:	Any agreement restricting in any manner the purchaser or the seller, as the case may be, in the course of his trade from acquiring or selling or otherwise dealing in any goods or services other than those of the seller or the purchaser or any other person.
Exclusive Distribution Agreement [Section 3 (4)(c)]:	Any contract that restricts the amount of goods or services supplied or designates specific regions or markets for selling those goods or services.

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

[2] Earlier article by Sanika: please insert the YNZ link

Refusal to Deal [Section 3 (4)(d)]:

Any agreement that, through various means, restricts or has the potential to restrict the individuals or groups to whom goods or services are sold or from whom goods or services are acquired.

Resale Price Maintenance [Section 3 (4)(e)]:

This includes, in case of any agreement to sell goods or provide services, any direct or indirect restriction that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

4. Analysis of Appreciable Adverse Effect (AAEC)- are all vertical arrangements anti-competitive?

Any vertical restraint that causes, or is likely to cause, an appreciable adverse effect on competition in India is prohibited. In the realm of competition law, it is imperative to recognize that not all vertical arrangements are automatically deemed illicit. Any vertical restraint that causes, or is likely to cause, an appreciable adverse effect on competition in India is prohibited. Assessment is carried out by the Competition Commission of India (CCI) on a case-to-case basis. To ascertain AAEC, the CCI meticulously evaluates the relation of relevant market dynamics and the average turnover of pertinent industry participants. Vertical arrangements are an integral facet of routine business practices and their acceptability pivots significantly on the underlying intent and the impact they may have on market competitiveness.



5. What are the exceptions to such arrangements that shall not be considered anti-competitive?

Under Section 3(5) of the Act, it is stated that vertical arrangements shall not be considered anti-competitive for:

The right of any person to restrain any infringement under-

- a) The Copyright Act, 1957
- b) The Patents Act, 1970
- c) The Trade and Merchandise Marks Act, 1958
- d) The Geographical Indications of Goods (Registration and Protection) Act, 1999
- e) The Designs Act, 2000
- f) The Semi-conductor Integrated Circuits Layout-Design Act, 2000

The right of any person to export goods from India to the extent to which the agreement or such export relates exclusively to-

- production
- supply
- distribution or
- control of goods or
- provision of services

- A new proviso in the Act states that nothing contained in this sub-section shall apply to an agreement entered into between an enterprise and an end consumer.

6. Case Law:

Federation Of Hotel & Restaurant vs Makemytrip India Pvt. Ltd. (Mmt) 2022[3]

The Competition Commission of India (CCI) identified that the agreement between MMT Go and OYO violated Section 3(4)(d) in conjunction with Section 3(1) of the Competition Act. These commercial agreements were established with the intent of removing OYO's competitors, such as FabHotels and Treebo, from the MMT Go online portal in 2018. The Commission concluded that OYO and MMT Go had an arrangement that constituted a refusal to deal, a type of vertical agreement falling under Section 3(4)(d) of the Act, which had a detrimental impact on market competition by restricting access to a vital distribution channel. In its 2019 order, CCI instructed the Director General (DG) to thoroughly investigate this matter. In 2022, after the DG's investigation, CCI ordered MMT Go to promptly reinstate these companies to promote transparency, consumer choice, and healthy competition in the market. [Further CCI imposed on MMT-Go and OYO, a monetary penalty @5% of their relevant turnover amounting to Rs. 223.48 crores and Rs. 168.88 crores respectively.](#)

[3] <https://www.cci.gov.in/images/antitrustorder/en/odrer1666182873.pdf>

7. Conclusion:

Vertical arrangements play a vital role in shaping the competitive landscape. As we've seen, these agreements can generally enhance efficiency and improve consumer access to goods and services. However, they also have the potential to be abused, limiting competition and consumer choice. Corporates should evaluate whether they unintentionally are creating vertical arrangements that have appreciable adverse effect on competition.

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