



FACULTY OF JURIDICAL SCIENCES

COURSE: B.B.A.LL.B. IX th

Semester

SUBJECT: COMPETITION LAW

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LECTURE 17

TOPIC: HORIZONTAL AND VERTICAL AGREEMENT

The Act under Section 3 of the Act also prohibits any agreement amongst enterprises which materialize in:

- **Tie-in arrangement**

What is a tie-in arrangement? According to the Statute it includes any agreement requiring purchaser of goods, as a condition of purchase, to purchase some other goods. In the case of *Sonam Sharma v. Apple & Ors.*, the CCI stated that in order to have a tying arrangement, the following ingredients must be present:

1. **There must be two products that the seller can tie together.** Further, there must be a sale or an agreement to sell one product or service on the condition that the buyer purchases the other product or service. In other words, the requirement is that purchase of a commodity is conditioned upon the purchase of another commodity.
 2. **The seller must have sufficient market power** with respect to the tying product to appreciably restrain free competition in the market for the tied product. That is, the seller has to have such power in the market for the tying product that it can force the buyer to purchase the tied product; and
 3. **The tying arrangement must affect a “not insubstantial” amount of commerce.** Tying arrangements are generally not perceived as being anti-competitive when substantial portion of market is not affected.
- **Exclusive supply agreement-** The Act defines such agreements to include any agreement restricting in any manner the purchaser in the course of his trade from

acquiring or otherwise dealing in any goods other than those of the seller or any other person.

- **Exclusive distribution agreement-** This includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of goods.
- **Refusal to deal-** The Act states that this criterion includes agreement which restricts by any method the persons or classes of persons to whom the goods are sold or from whom goods are bought.

Shri Shamsheer Kataria v. Honda SIEL Cars India Ltd. & Ors- Important case law on Anti-competitive Agreements

In the case of ***Shri Shamsheer Kataria v. Honda SIEL Cars India Ltd. & Ors***, the concept of vertical agreements including exclusive supply agreements, exclusive distribution agreements and refusal to deal were deliberated by the Commission.

Facts– The informant in the case had alleged anti-competitive practices on part of the Opposite Parties (OPs) whereby the genuine spare parts of automobiles manufactured by some of the OPs were not made freely available in the open market and most of the OEMs (original equipment suppliers) and the authorized dealers had clauses in their agreements requiring the authorized dealers to source spare parts only from the OEMs and their authorized vendors only.

CCI's decision– The Commission held that such agreements were in the nature of exclusive supply, exclusive distribution agreements and refusal to deal under Section 3(4) of the Act and hence the Commission had to determine whether such agreements would have an AAEC in India.

The Commission held the impugned agreements were in contravention of Section 3 of the Act and remarked that the network of such agreements allowed the OEMs to become monopolistic players in the aftermarkets for their model of cars, create entry barriers and foreclose competition from the independent service providers.

The Commission further stated that such a distribution structure allowed the OEMs to seek exploitative prices from their locked-in consumers, enhance revenue margin from the sale of auto component parts as compared to the automobiles themselves besides having potential long term anti-competitive structural effects on the automobile market in India.

- **Resale price maintenance**

What is resale price maintenance? It includes any agreement to sell goods on condition that the prices 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.

The concept of resale price maintenance was discussed by the Commission in the case of *Fx Enterprise Solutions India Pvt. Ltd. v. Hyundai Motor India Limited*. In the case, the Informant had alleged that according to the agreement with Hyundai, dealers were mandated to procure all automobile parts and accessories from Hyundai or through their vendors only. While collaborating on alleged anti-competitive practices of Hyundai, the Informant stated that Hyundai imposed a “Discount Control Mechanism”, whereby dealers were only permitted to provide a maximum permissible discount and dealers were also not authorized to give discount beyond a recommended range, thereby amounting to “resale price maintenance” in contravention of Section 3(4)(e) of the Act.

The CCI in the case observed that Hyundai through exclusive agreements and arrangements contravened provisions of Section 3(4)(e) read with Section 3(1) of the Act through arrangements which resulted into **Resale Price Maintenance**. The CCI while imposing penalty of INR 87 Crore on Hyundai noted that the infringing anti-competitive conduct of Hyundai in the case included *putting in place arrangements, which resulted into Resale Price Maintenance by way of monitoring maximum permissible discount level through a Discount Control Mechanism and also a penalty mechanism for non-compliance of the discount scheme.*

Exercise:

1. Anti-Competitive agreement may be of _____ Kinds
 - a) 3
 - b) 2
 - c) 4
 - d) 9

2. Horizontal agreement is made between parties at _____ of production and distribution chain
 - a) Same
 - b) Different
 - c) Equal
 - d) None

3. Vertical Agreement are made between the parties occupying the field at _____ levels of production and distribution chain
 - a) Same
 - b) Different
 - c) Equal
 - d) None

4. Notably, horizontal arrangement (agreement) is _____ affect the competition
 - a) Less likely
 - b) more likely
 - c) reluctant
 - d) not worth

5. Which agreement is more likely to affect the competition?

- a) Horizontal
- b) Vertical
- c) Straight
- d) Triangular