

# Role of Price Fixing in Anti-Competitive Agreements under the Competition Act, 2002

Ramavtar Jalodia\*

Research Scholar, Shri Jagdishprasad Jhabarmal Tibrewala University, Jhunjhunu, Rajasthan

**Abstract – The Competition Act prohibits any enterprises or person or their association from entering into any anti-competitive agreement which causes or likely to cause an appreciable adverse effect on competition. Any such agreement, if made, shall be void. Clause (a) of section 3(3) of the Competition Act provides for the price fixing. It is the common form of anti-competitive agreements which directly or indirectly determines purchase or sale price. The aim and objective of the price fixing agreement is the elimination of competition. Such agreements are made by way of informal understanding as to prices for preventing competition and keeping the prices up. Clause (a) of section 3(3) of the Competition Act not only covers agreement between sellers but also between buyers. In India prior to the Competition Act, 2002, the practice or agreement of price fixing in concert was covered under clause (d) of section 33 of the MRTP Act.**

**Key words: Competition, Agreement, Price Fixing, Association, Person, MRTP etc.**

-----X-----

## INTRODUCTION

Sub-section (1) of section 3 of the Competition Act, 2002 provides that no enterprise or association of enterprises or person or enterprises of persons shall enter into an agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provisions of services, which causes or is likely to cause an appreciable adverse effect on competition within India. This provision prohibits any enterprises or person or their association from entering into any anti-competitive agreement which causes or likely to cause an appreciable adverse effect on competition. Any such agreement, if made, shall be void. Here it is necessary to know what the anti-competitive agreements are.

**Anti-Competitive Agreement:** Section 3 of the Competition Act provides that –

- (1) No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.
- (2) Any agreement entered into in contravention of the provisions contained in subsection (1) shall be void.
- (3) Any agreement entered into between enterprises or associations 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 cartels, engaged in identical or similar trade of goods or provision of services, which—

- (a) Directly or indirectly determines purchase or sale prices;
- (b) Limits or controls production, supply, markets, technical development, investment or provision of services;
- (c) Shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;
- (d) Directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition:

Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.

Explanation.—for the purposes of this sub-section, “bid rigging” means any agreement, between

enterprises or persons referred to in sub-section (3) engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding

Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including—

- (a) Tie-in arrangement;
- (b) Exclusive supply agreement;
- (c) Exclusive distribution agreement;
- (d) Refusal to deal;
- (e) Resale price maintenance,

Shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.

Explanation.—For the purposes of this sub-section,—

- (a) “tie-in arrangement” includes any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;
- (b) “exclusive supply agreement” includes 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;
- (c) “exclusive distribution agreement” 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 the goods;
- (d) “refusal to deal” includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought;
- (e) “Resale price maintenance” includes any agreement to sell goods on condition 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.

- (5) Nothing contained in this section shall restrict—(i) the right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under—
  - (a) The Copyright Act, 1957 (14 of 1957);
  - (b) The Patents Act, 1970 (39 of 1970);
  - (c) The Trade and Merchandise Marks Act, 1958 (43 of 1958) or the Trade Marks Act, 1999 (47 of 1999);
  - (d) The Geographical Indications of Goods (Registration and Protection) Act, 1999 (48 of 1999);
  - (e) The Designs Act, 2000 (16 of 2000);
  - (f) The Semi-conductor Integrated Circuits Layout-Design Act, 2000 (37 of 2000);
- (ii) The right of any person to export goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export.

**Price Fixing:** Clause (a) of section 3(3) of the Competition Act provides for the price fixing. It is the common form of anti-competitive agreements which directly or indirectly determines purchase or sale price. This is also referred to as a price cartel. It is to substitute prices determined by fiat of combination or concert. The aim and objective of the price fixing agreement is the elimination of competition. Such agreements are made by way of informal understanding as to prices for preventing competition and keeping the prices up.<sup>1</sup> Clause (a) of section 3(3) of the Competition Act not only covers agreement between sellers but also between buyers.

In the case of *FICCI Multiplex Association of India v. United Producers Forum* – there was a collective decision of the opposite parties (Producers and Distributors of the film) not to release film to the multiplexes with a view to pressurize the multiplexes into accepting the new terms of revenue sharing ratio. The purpose was extracting better revenue sharing ratio from multiplexes. Thus the competition Commission held that agreement entered into by the opposite parties is covered

<sup>1</sup>. Nature and Causes of wealth of Nations, (1776) (Book 1, Chap. X) Para 82

within the mischief of Clause (a) of section 3(3) of the Competition Act.

In another a case of *Surinder Bhakoo v. HDFC Bank Ltd*<sup>2</sup> - it was alleged that the opposite party was imposing pre-payment penalty on auto loan borrowers on early return of loans. But, there was no allegation that the HDFC bank had any agreement with other banks or Indian Bank Association in this regard. The competition commission therefore, held that section 03 the Competition Act has no application in this case. The commission further found that it could not be established that the opposite party was in a dominant position in auto loan segment and resultantly there was no violation of the Competition Act.

**Price fixing under MRTP Act:** in India prior to the Competition Act, 2002, the practice or agreement of price fixing in concert was covered under clause (d) of section 33 of the MRTP Act.<sup>3</sup> The clause provided that any agreement to purchase or sell goods or tender for the sale or purchase of goods only at prices or on terms or conditions agreed upon between the sellers or purchasers, shall be subject to registration u/s 35 of the Act. The MRTP Commission was empowered to initiate inquiry into the practice or agreement even if the agreement was not registered. Clause (d) was so widely worded that it covered all agreements or understanding which might have an adverse effect on competition. It covered not only the agreements between the sellers but also the agreement between the buyers.

The first inquiry instituted by the MRTP Commission was in the case of *Incheck tyres Ltd.*<sup>4</sup> – in this case the respondents were leading companies who manufactured (or got manufactured) and sold automotive tyres of all varieties and sizes. They had entered into an agreement called General Code of Conduct (G.C.C.) for members of automotive tyres industry of India. The Commission noted that the G.C.C. was intended to maintain prices and profits at an agreed level. The agreements made elaborate provisions for joint credit policy and trade prices for all the respondents. The agreement was held to be restrictive of competition and therefore, void.

## REFERENCES

1. Abir Roy and Jayanth Kumar S. (2008). **Competition law in India**, published by Eastern Law House Private Ltd , Kolkata 700013.
2. D.P. Mittal S. : **MRTP and Competition law in India** , published by Taxmann Allied Service(p) Ltd , New-Delhi.

3. Donald Dewwy S.: **Monopoly in Economics and Law**, by Duke University, Rand McNally and Company, Chicago.
4. S.M. Dugar S. : **MRTP Law, Competition Law and Consumer Protection Law**, volume 1, Fourth Edition, Wadhwa and Company Nagpur, New-Delhi -110 019.
5. T. Ramappa S.: **Competition Law in India, Policy, Issues and Development s**, published by Oxford University Press 2006-2009 , YMCA Library, Building, Jai Singh Road, New-Delhi 110001.

## BIBLIOGRAPHY

- <http://Indiacorplaw.blogspot.com>
- <http://jele.oxfordjournals.org/cgi/content/abstract/nhno21>
- <http://www.cuts-International.org/articlecomp.hmt#newlaw>
- [http://ec.europa.eu/comm/competition/index\\_en.html](http://ec.europa.eu/comm/competition/index_en.html)
- <http://www.antitrustworldwiki.com>
- <http://www.cci.gov.in/>
- <http://www.competition-commission.org.uk/>

## Corresponding Author

**Ramavtar Jalodia\***

Research Scholar, Shri Jagdishprasad Jhabarmal Tibrewala University, Jhunjhunu, Rajasthan

[jalodiadrramavtar@gmail.com](mailto:jalodiadrramavtar@gmail.com)

<sup>2</sup>. Case no. 15/2009 order dt. 22.03.11 (CCI)

<sup>3</sup>. Monopolies and Restrictive Trade practices Act, 1969

<sup>4</sup>. (1976) 46 Comp Cas 495 (MRTPC)