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ANTI-COMPETITIVE TIE-INS IN INDIA

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ABSTRACT

This article explores the concept of anti-competitive tie-in arrangements within the framework of Indian competition law. A tie-in occurs when the purchase of one product or service is made conditional upon buying another, often unrelated, product. While such practices may appear commercially strategic, they can raise significant concerns when they limit consumer choice, restrict market access for competitors, or distort fair competition. The article explains how tie-in arrangements are assessed not solely based on their structure but on their actual or potential impact on the market. It emphasizes the importance of evaluating factors such as consumer coercion, the seller's influence over the market, and the broader effect on market dynamics. Additionally, the paper highlights the need to define the relevant market context clearly to understand the competitive harm involved. By analyzing the objectives of competition law and its enforcement approach, the article sheds light on how regulators distinguish between legitimate business practices and those that may harm consumer welfare and market fairness. It concludes by suggesting that a balanced assessment of both the benefits and risks of tie-in arrangements is essential in promoting a competitive, innovative, and consumer-friendly marketplace.

INTRODUCTION

In a liberalized and rapidly growing economy like India's, the need to ensure fair market practices is crucial. Competition law provides the legal framework to prevent anti-competitive behavior, protect consumer interests, and promote healthy economic rivalry. Governed by the Competition Act, 2002, this legal regime replaced the Monopolies and Restrictive Trade Practices (MRTP) Act, marking a shift from control-based regulation to a modern, market-oriented approach.

The Act prohibits anti-competitive agreements, prevents the abuse of dominant positions, and regulates mergers and acquisitions that may harm market competition. Its core objectives,

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outlined in the Preamble and Sections 3 to 6, include protecting consumer welfare, promoting fair competition, enhancing market efficiency, and ensuring freedom of trade.

By guaranteeing access to diverse and affordable goods and services, the law empowers consumers while encouraging businesses to innovate and compete ethically. The Competition Commission of India (CCI), the regulatory body under the Act, plays a key role in enforcing these principles and maintaining the integrity of India's markets.

THE CONCEPT OF ANTI-COMPETITIVE AGREEMENTS

Section 3 of the Competition Act, 2002² prohibits any agreement, whether written or oral, formal or informal, that relates to the production, supply, distribution, storage, acquisition, or control of goods or services and has, or is likely to have, an appreciable adverse effect on competition (AAEC) within India. Any anti-competitive agreement violating Section 3(3) would lead to a presumption of an Appreciable Adverse Effect on Competition.³ Such agreements are declared void and unenforceable in law. The aim is to ensure that business practices do not harm the competitive structure of the market or limit consumer choices.

These anti-competitive agreements are broadly divided into two categories: horizontal and vertical agreements.⁴

- Horizontal agreements are made between businesses operating at the same level in the supply chain, usually competitors. Common examples include price-fixing, division of markets, limiting production or supply, and bid-rigging. These practices are presumed to have a negative impact on competition under Section 3(3) of the Act and are generally considered to be per se illegal, meaning that their anti-competitive nature is assumed without needing detailed investigation.
- Vertical agreements, on the other hand, are entered into by businesses at different stages of the supply chain, such as manufacturers and distributors. These include practices like exclusive supply and distribution agreements, resale price maintenance, refusal to deal, and tie-in arrangements. These agreements fall under Section 3(4) and are not automatically presumed to be anti-competitive. Instead, they are evaluated under the “rule of reason”, meaning their legality depends on whether they actually harm

² The Competition Act, No. 12 of 2003, § 3, India Code (2002), <https://indiacode.nic.in>.

³ National Insurance Co Ltd v Competition Commission of India Appeal No 94 of 2015 (CompAT)

⁴ Competition Commission of India, Antitrust, CCI (last visited June 15, 2025), <https://www.cci.gov.in/antitrust>.

competition in a significant way.

To determine whether an agreement has an appreciable adverse effect on competition, Section 19(3) of the Act provides guiding factors. These include whether the agreement creates barriers to market entry, eliminates existing competitors, restricts consumer choices, or hinders innovation. The overall market context and impact are carefully considered by the Competition Commission of India (CCI) in each case.

UNDERSTANDING TIE-IN ARRANGEMENTS

A tie-in arrangement, as described under Section 3(4)(a) of the Act⁵, occurs when a seller makes the purchase of one product or service conditional upon the purchase of another, separate product or service. In other words, the buyer is compelled to take an additional item they may not want, just to access the product they do need.⁶

This kind of practice can raise serious concerns under competition law. It may restrict the freedom of consumer choice, make it difficult for other businesses to enter or survive in the tied product market, and even result in market foreclosure, where competitors are effectively pushed out of the market.

Unlike horizontal agreements, tie-in arrangements are not automatically considered illegal. The CCI examines them under the rule of reason standard. This involves a thorough analysis of the agreement's actual or likely effect on the market. Key factors include the market power of the seller, the structure of the market, the nature of the tied products, and whether the arrangement results in efficiency gains or consumer benefits.⁷

If a tie-in arrangement significantly harms market competition and cannot be justified on grounds of efficiency or consumer welfare, it may be declared void under the Act.

Tie-in Arrangements under Indian Competition Law

Section 3(4)(a) deals with tie-in arrangements, which arise when a seller makes the purchase of one product or service (the *tying product*) conditional upon the purchase of another distinct

⁵ The Competition Act, No. 12 of 2003, § 3(4)(a), India Code (2002), <https://indiacode.nic.in>.

⁶ Tying Arrangement, Wex Legal Encyclopedia, Cornell Law School, LII (last reviewed 10 June 2024), https://www.law.cornell.edu/wex/tying_arrangement.

⁷ Avtar Singh, Competition Law (1st ed. 2012).

product or service (the *tied product*). These arrangements are not per se illegal. They are considered anti-competitive only if they cause or are likely to cause an appreciable adverse effect on competition (AAEC) in India. This effect must be demonstrated based on factual analysis, and only then are such agreements rendered void.

Understanding Vertical Agreements and Rule of Reason Analysis

Tie-in arrangements are a subset of vertical agreements, which involve entities at different levels of the supply chain such as manufacturers, distributors, and retailers. Other examples include exclusive supply and distribution, resale price maintenance, and refusal to deal. Vertical agreements are assessed using the rule of reason, which involves a careful evaluation of both their potential harms and benefits.

Under this framework, the Competition Commission of India (CCI) examines whether such agreements restrict competition by creating barriers to entry, foreclosing market access, or eliminating competitors. Conversely, the agreement may be allowed if it promotes efficiency, improves distribution, ensures quality control, or benefits consumers.⁸

RELEVANT MARKET

A critical component in evaluating tie-in arrangements is defining the relevant market, as the effect on competition can only be assessed within a clearly demarcated market. This principle is echoed in the landmark U.S. Supreme Court case, *United States v. E. I. du Pont de Nemours & Co*⁹, where the Court held that “*the relevant product market in a Section 2 case is composed of products that have reasonable interchangeability for the purposes for which they are produced price, use, and qualities considered.*” This definition underscores the importance of identifying substitute goods based on consumer perception, functionality, and price sensitivity, which is directly relevant to vertical restraints and tie-in practices.

In India, the CCI adopted a similar approach in *Surinder Singh Barmi v. Board of Control for Cricket in India (BCCI)*¹⁰. The Commission clarified that a market is defined by three core elements: the producer on the supply side, the consumer on the demand side, and the underlying product or service. This tripartite model is essential for assessing whether a tie-in arrangement

⁸ Abir Roy & Jayant Kumar, *Competition Law in India* (2d ed. 2018).

⁹ *United States v. E. I. du Pont de Nemours & Co. (Cellophane)*, 351 U.S. 377, 404 (1956)

¹⁰ *Surinder Singh Burmi v. BCCI*, Case 61 of 2010 (CCI)

limits consumer choice or excludes competitors.

For example, if the tying and tied products serve functionally different purposes, such as a platform for selling goods and a separate one for secure payment processing, they may not fall within the same relevant market, and any potential anti-competitive effects must be judged accordingly. These judicial and regulatory interpretations reinforce the idea that tie-in arrangements must be evaluated within a properly defined market context, with attention to market structure, product substitutability, and consumer behavior.

BURDEN OF PROOF AND MARKET IMPACT

In tie-in cases under Section 3(4), the burden of proof lies on the party alleging anti-competitive conduct. The CCI must be convinced, based on evidence, that the tie-in restricts competition significantly. This is especially crucial in cases involving dominant enterprises, which are held to higher standards of market responsibility. If the anti-competitive harm outweighs any efficiency justifications, such arrangements may be declared void and penalized accordingly.

UNDERSTANDING AAEC: THE CORNERSTONE OF COMPETITION LAW ENFORCEMENT

One of the most critical thresholds under Indian competition law is the concept of Appreciable Adverse Effect on Competition (AAEC). It refers to a significant negative impact on competition in a relevant market, considering factors such as price levels, output, innovation, consumer choice, and barriers to market access.

AAEC serves as the legal standard under the Competition Act, 2002 to determine whether an agreement or conduct warrants regulatory intervention by the Competition Commission of India (CCI).

Tie-in arrangements are often not just vertical restraints but can also reflect an **abuse of dominant position** under Section 4 of the Competition Act. When a dominant firm in one market uses its position to compel buyers to purchase an unrelated product¹¹, it may amount to

¹¹ Abuse of Dominant Position under Competition Act, 2002 (Manupatra, 20 June 2022) <https://articles.manupatra.com/article-details/ABUSE-OF-DOMINANT-POSITION-UNDER-> (accessed 17 June 2025)

both a **tie-in under Section 3(4)** and an **abuse under Section 4(2)(d)**¹². This dual violation occurs because the dominant entity is leveraging its market power to restrict consumer choice and foreclose competition in the tied product market.

While **Section 3** of the Act prohibits anti-competitive agreements that result in AAEC, the detailed criteria for assessing such an effect are outlined in **Section 19(3)**. This provision mandates that the CCI consider a range of factors, including:

- The creation of barriers to entry in the market,
- The foreclosure of existing competition,
- Driving competitors out of the market,
- Potential benefits to consumers,
- Improvements in production or distribution efficiency, and
- Advancement of technology or innovation.

This **effects-based approach** ensures that regulatory action is not based on mere form or structure, but on **actual economic outcomes**.

Application Across Agreement Types

The burden of establishing AAEC differs depending on the **nature of the agreement**:

- **Horizontal agreements**, such as cartels, price-fixing, and market allocation, are presumed to cause AAEC. The law assumes these arrangements are anti-competitive unless the parties can prove otherwise.¹³
- **Vertical agreements**, including **tie-in arrangements**, exclusive supply, and resale price maintenance, are assessed under the "**rule of reason**". This means AAEC must be **positively demonstrated** through a contextual analysis of the agreement's actual or likely market impact.

A landmark example that illustrates the AAEC test in tying arrangements is the case of **Shri Sonam Sharma v. Apple Inc.**¹⁴ Here, the CCI laid down **three essential elements** to determine whether a tie-in violates competition law:

1. **Two separate products or services** must exist, capable of being tied. The sale of one product must be conditional upon the purchase of another.

¹² The Competition Act, No. 12 of 2003, § 4(2)(d), India Code (2002).

¹³ Anti-Competitive Agreements under the Competition Act, 2002, National Law School of India Review, National Law School of India University Institutional Repository, NLSIR Paper No. 1233 (2023), available at <https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1233&context=nlsir>.

¹⁴ Shri Sonam Sharma v Apple Inc USA Case No 24 of 2011 (CCI)

2. The seller must possess **sufficient market power** in the tying product to influence the buyer's choice and restrict competition in the tied product market.
3. The tie-in must affect a **not insubstantial volume of commerce**, i.e., the conduct must significantly impact a portion of the market. This framework ensures that not all tie-ins are deemed unlawful, only those where a powerful entity uses its position in one market to **distort competition in another**, causing measurable harm to competitors or consumers.

CONDITIONS FOR ANTI-COMPETITIVE TIE-INS

To determine whether a tie-in arrangement violates Section 3(4)(a) of the Competition Act, and truly results in an **Appreciable Adverse Effect on Competition (AAEC)**, the CCI applies a structured analysis. This goes beyond the mere presence of a bundled sale and considers the **economic and competitive impact** of the practice in real-market conditions. Three key factors are central to this inquiry:

1. Existence of Distinct Products and Coercion

A tie-in arrangement is considered anti-competitive only when the tying and tied products are distinct and independently marketable. The tied product must not be a natural or necessary component of the tying product. What distinguishes a tie-in from normal bundling is the presence of coercion, where a consumer or downstream party is left with no genuine choice but to accept both products together. This lack of freedom in choice transforms a commercial practice into a potential legal concern. In *Sonam Sharma v. Apple Inc*¹⁵, Apple was accused of forcing users to buy iPhones that could only be used with selected network providers like Vodafone and Airtel. While the CCI acknowledged this as a tie-in arrangement, it did not find it anti-competitive, since Apple lacked sufficient market share in India and there was no significant adverse effect on competition.

2. Seller's Market Power in the Tying Product

An essential element that makes a tie-in arrangement legally problematic is when the seller holds substantial market power in the market of the tying product. In the absence of such power, buyers can opt for alternatives and are not truly compelled to accept the tie-in. However, if the seller enjoys dominance or significant influence, they may leverage it to distort competition in

¹⁵ Fx Enterprise Solutions India Pvt. Ltd. v. Hyundai Motor India Ltd., Case Nos. 36 & 82 of 2014, Competition Comm'n of India (June 14, 2017).

the tied product market. This was evident in *Fx Enterprise Solutions v. Hyundai Motor India Ltd*¹⁶, where Hyundai required dealers to purchase lubricants only from its approved vendors, warning that failure to comply would result in loss of warranty coverage. The CCI found this to be an abuse of Hyundai's strong market position in the automobile sector, as it restricted dealer freedom and limited competition in the aftermarket for lubricants. A penalty of ₹87 crore was imposed on Hyundai.

3. Impact on Substantial Commerce and Market Dynamics

For a tie-in to attract liability under the Competition Act, it must affect a substantial portion of commerce and alter market conditions in a way that harms competition. The Commission examines whether such arrangements raise costs for consumers, restrict choices, create entry barriers for rivals, or discourage innovation. These effects are assessed under the lens of causing an "Appreciable Adverse Effect on Competition" (AAEC). In *Consumer Online Foundation v. Tata Sky*¹⁷, the concern was that DTH operators were selling services exclusively with their own set-top boxes, which could not be used with other providers. The Director General flagged this as a possible violation of Section 3(4), particularly in view of high market concentration and the lack of viable aftermarket alternatives. While the CCI did not ultimately penalize the conduct, the case highlighted how such bundling can lead to consumer lock-in and reduced market flexibility.

¹⁶ Sonam Sharma v. Apple Inc. & Ors., Case No. 24 of 2011, Competition Comm'n of India (Mar. 19, 2014).

¹⁷ Consumer Online Foundation v. Tata Sky Ltd., Case No. 02 of 2011, Competition Comm'n of India, Director Gen. Investigation Report.