COLLABORATIVE DEALS, REBATES, AND COMPETITION LAW - EFFECTS ON MARKET DYNAMICS IN INDIAN E-COMMERCE

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ABSTRACT

In today's highly competitive business environment, companies often form collaborative arrangements to strengthen market presence, attract consumers, and improve efficiency. These strategies—ranging from loyalty programs to integrated offerings—can benefit both businesses and consumers, supporting overall market growth. However, while such practices may appear pro-competitive, they can sometimes conceal conduct that harms fair competition and restricts choice. Not all inter-business agreements are inherently harmful. Their impact depends on how they affect market dynamics, requiring careful assessment of both potential benefits and anti-competitive risks. Practices that seem similar may be judged differently depending on context. Consumer preferences also shape this landscape. Modern consumers increasingly value core product quality over superficial incentives, making it vital to examine whether a practice truly enhances value or entrenches market power. Still, certain tactics—especially when used by firms with significant influence—can raise concerns. Strategies like bundling, tying, or aggressive pricing may limit competition, discourage new entrants, and reduce consumer options. Though they may seem beneficial short term, they can undermine long-term market health. This paper explores the distinction between collaborations that foster competition and those that hinder it, emphasising the need for contextual analysis to assess whether such strategies support or threaten a fair and open market.

Keywords: Competition, Rebates, E-Commerce, Deals.

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ASSESSING ANTI-COMPETITIVE AGREEMENTS: BALANCING CONSUMER WELFARE AND MARKET GROWTH

Section 3(1) of the Competition Act[1] addresses anti-competitive agreements, declaring them unlawful if they have a significant adverse effect on competition (AAEC), as outlined in the Act. Section 19[2] further details the criteria for determining AAEC, including both positive and negative impacts on the market. However, in practice, most such agreements do not result in AAEC. This is because modern consumers prioritise the intrinsic value and quality of a product over additional incentives. Customers today are more interested in the core benefits or features of a product rather than peripheral offers or discounts that may accompany it.

Collaborative business arrangements, such as strategic partnerships and coalitions, often fulfil the positive criteria set out in the Act. These collaborations are designed to enhance the distribution and production of goods and services, fostering broader economic growth. For instance, the partnership between Airtel and Netflix in India was widely praised for making services more accessible and beneficial to consumers. Similarly, the deal between Verizon and Apple Inc. was well received, as it simplified the consumer experience. Such collaborations are also evident in customer loyalty programs. Examples include coalitions involving Sam's Clubs, Mastercard, Walmart, Murphy USA petrol stations, and neighbourhood markets. These programs offer tangible benefits, such as 1–3% cashback on purchases for the Walmart credit card and money card users[3], along with additional savings on various products, including fuel. These strategies not only provide value to customers but also drive market efficiency and growth.

BUNDLING DISCOUNTS AND THE RISKS OF MARKET DOMINANCE

While collaborative arrangements and bundled offers can often benefit consumers and promote market efficiency, the Competition Act draws a clear distinction when such practices are used by dominant enterprises to stifle competition.

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[1] The Competition Act, 2002, §3, No.12 Acts of Parliament, 2003.
[2] The Competition Act, 2002, §19, No.12 Acts of Parliament, 2003.
[3] https://www.walmartmoneycard.com/

Bundling Discounts: Abuse of Dominance: Section 4 of the Competition Act[4] defines a "dominant position" as one that allows an enterprise to operate independently of competitive forces or influence the market in its favour. When a dominant firm conditions the sale of one product on the purchase of another—offering bundled discounts unrelated to commercial usage—it may cross into anti-competitive territory. This practice, known as "bundled discounting," becomes problematic when it leads to exclusion, effectively shutting out competitors and limiting consumer choice.

The Carrot and Stick Approach, exemplified in SmithKline Corp. v. Eli Lilly & Co.[5], illustrates how a dominant firm's aggressive bundling can harm competition. In this case, Eli Lilly bundled two unique antibiotics with others at a discounted rate, creating strong financial incentives for customers to accept the package. The court found that such a strategy, while seemingly beneficial in the short term, could eventually drive out competitors and extend the dominant firm's monopoly, violating antitrust laws. This demonstrates that when bundling is used as a tool for exclusion rather than consumer benefit, it is considered an abuse of dominance.

CONNECTING THE DOTS: COLLABORATION VS. EXCLUSION

While many collaborative business arrangements and bundled offers enhance consumer welfare and market growth, the law is vigilant against their misuse by dominant enterprises. When bundling is leveraged to exclude competitors and entrench market power, it shifts from being pro-competitive to anti-competitive, warranting regulatory intervention. The key distinction lies in whether such practices genuinely add value for consumers or are designed to limit competition and choice.

TYING ARRANGEMENTS: COERCIVE PRACTICES AND THE RISK OF COMPETITIVE FORECLOSURE

Building on the distinction between pro-competitive collaborations and anti-competitive bundling by dominant firms, tying and tie-in agreements represent another practice where market power can be abused to the detriment of competition and consumers. Tying agreements occur when a seller uses its dominance in one market to compel customers to purchase a

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[4] The Competition Act, 2002, §4, No.12 Acts of Parliament, 2003.

[5] SmithKline Corp. v. Eli Lilly & Co., 427 F. Supp. 1089 (E.D. Pa. 1976).

separate, often unrelated, product. This compulsion does not stem from the superiority or price of the tied product, but from the seller's leverage in another market. By restricting consumer choice and limiting access to rival products, tying can significantly boost the seller's market power and hinder the entry or growth of competitors.

The Competition Act recognises the potential harm of such practices, noting that even the possibility of foreclosure—where competitors are prevented from accessing the market—is sufficient to warrant scrutiny, without requiring concrete evidence of market exclusion. As stated in Kapoor Glass Pvt. Ltd. v. Schott Glass India Pvt. Ltd[6], "The wording of Sec. 4(2)(d) of the act does not require factual evidence of foreclosure, but it is enough to show that tying may have a possible foreclosure effect on the market."

The formal analysis of tying involves:

- Determining whether the seller holds dominance in the market for the tying product.
- Identifying the existence of tying, which means customers are forced to buy two distinct products together.
- Assessing the impact of tying on competition.
- Considering whether there is any legitimate justification for the tying arrangement.

When tying involves products or services from different markets, its anti-competitive effects become more pronounced. It can reduce the incentive for consumers to choose among competing suppliers and discourage the dominant firm's customers from seeking alternatives for the tied product. When evaluating the impact on competition between two products from different markets, it's crucial to consider, among other things, whether the products are tied together in a way that discourages users from switching to other services.[7]

When two services are bundled in a mutually beneficial arrangement, it can discourage or even prevent users from choosing alternative services. This happens because the costs or disadvantages of switching are significant enough that users prefer to remain with the bundled service. Such arrangements can create an anti-competitive environment by making it harder for

[6] Kapoor Glass Pvt. Ltd. v. Schott Glass India Pvt. Ltd., [2012]111 CL A137(CCI).
[7] Microsoft v Commission, Case T-201/04, EU:T:2007:289.

new competitors to enter the market or for users to switch, ultimately leading to the foreclosure of competition.

Additionally, these tie-in arrangements can sometimes conflict with the concept of net neutrality. By locking customers into a particular ecosystem or "walled garden," even in systems that appear open, users may feel compelled to stay because switching is either unnecessary or too costly. As a result, competition is further restricted[8]. There is also an element of coercion in these arrangements. Although it may seem that customers have a choice, in practice, the choice is often not meaningful. The structure of the offer can pressure customers into accepting it, fulfilling the requirement for coercion and potentially harming consumers. This coercion can be technical, contractual, or take other forms. Notably, coercion can exist even if the tied product is not sold separately or priced individually.[9]

LEVERAGING AND PREDATORY PRICING AS EXTENSIONS OF TYING AND BUNDLING

When assessing the competitive effects of products from different markets, it is essential to recognise how dominant firms use various strategies to maintain or extend their market power. Beyond tying and bundling—where products are linked in a way that discourages users from switching to alternatives—companies may also engage in leveraging and predatory pricing to restrict competition further.

Leveraging occurs when a dominant firm exploits its strong position in one market to gain an unfair advantage in another related market.[10] This tactic can involve various methods such as technological innovation, refusal to supply, or other exclusionary practices[11]. The Competition Act's Section 4(2)(e)[12] explicitly addresses such conduct, emphasising how leveraging can foreclose competition by using dominance in one area to influence outcomes in another.

Similarly, predatory pricing is a powerful tool used by dominant companies to eliminate competition by setting prices below cost, making it unsustainable for rivals to compete. As outlined in Section 4(2) of the Competition Act[13], this practice aims to reduce or remove

[8] https://www.cci.gov.in/images/marketstudie/en/market-study-on-the-telecom-sector-in-india1652267616.pdf
[9] Microsoft v Commission, supra note 8
[10] Kapoor Glass Pvt. Ltd. v. Schott Glass India Pvt. Ltd, supra note 7.
[11] VERSHA VAHINI, INDIAN COMPETITION LAW, 217 (1ST Ed, 2016).
[12] The Competition Act, 2002, §4, No.12 Acts of Parliament, 2003.
[13] Ibid, note 13

competitors from the market, ultimately harming consumer choice and market health. The Supreme Court's observation in Uber India Systems Pvt. Ltd v CCI[14] highlights how aggressive discounting by a dominant firm can signal anti-competitive intent.

Together with tying and bundling, leveraging and predatory pricing form a suite of anti-competitive strategies that can coerce consumers into staying within a particular ecosystem, limit market entry for competitors, and undermine the principles of fair competition and net neutrality. Understanding these interconnected practices is crucial for evaluating how dominant firms may restrict competition and harm consumer welfare across multiple markets.

PRO-CONSUMER JUSTIFICATIONS FOR BUNDLING, DISCOUNTS, AND DIFFERENTIAL PRICING

While tying, bundling, and related strategies are often criticised for restricting competition, they can also have significant pro-consumer benefits. For example, bundled discounts—where customers receive free or discounted access to one product or service when they use another—are sometimes viewed as consumer-friendly. This perspective was recognised in Schott Glass India Pvt. Ltd. and Ors. v Competition Commission of India and Ors[15], where the Competition Appellate Tribunal determined that offering different discounts to various buyers was justified when there were real differences in their purchasing power. As long as such differences exist, the pricing cannot be considered discriminatory.

Similarly, in Dhruv Suri v Mundra Port and Special Economic Zone Ltd.[16], the court highlighted that a customer's decision to switch providers is influenced by multiple factors, such as business needs and the range of services available, rather than just discounts or port-related offers. The tribunal noted that longstanding business relationships and port discounts alone are not sufficient reasons for clients to move to another terminal, emphasising the complexity of customer decision-making.

The Competition Commission of India (CCI) has also found that large discounts offered by dominant firms are not always anti-competitive. In Pawan Kumar Agarwal V. Rashtriya Ispat Nigam Ltd.[17], it was held that conditional discounts do not automatically amount to unfair or

[14] Uber India Systems Pvt. Ltd v CCI, AIRONLINE 2019 SC 1110
[15] Schott Glass (India) (P) Ltd. v. CCI, 2014 SCC OnLine Comp AT 3
[16] Dhruv Suri Vs. Mundra Port and Special Economic Zone Ltd., 2011 CompLR 62 (CCI); See also: Khemsons Agencies v. Mondelez India Foods Private Limited, 2018 SCC OnLine CCI 75
[17] Pawan Kumar Agarwal v. Rashtriya Ispat Nigam Limited, 2011 SCC OnLine CCI 47

discriminatory practices, especially if similar offers are available from multiple suppliers. This principle was further clarified in the Intel judgement[18], where the European Court of Justice observed that discounts provided to distributors for purchasing most or all of their CPU requirements from Intel were not considered exclusive or anti-competitive, as customers were still free to choose alternatives.

These cases illustrate that while practices like tying, bundling, leveraging, and predatory pricing can sometimes be used to foreclose competition, they may also enhance consumer welfare by offering better prices or more choices, so long as they do not unduly restrict market access or genuine consumer freedom.

CONCLUSION

Therefore, whether or not collaborative agreements are competitive or anti-competitive cannot be established by a clear line of rules and regulations. It depends on the facts and circumstances of each case. Whether there has been an abuse of dominance primarily rests on the fact that the market is such that it is subject to multi-homing by consumers. Thus, collaborative agreements can be viewed as anti-competitive or pro-consumer.

[18] Intel Corp. v European Commission, ECLI:EU:T:2014:547