

VERTICAL AGREEMENTS IN COMPETITION LAW -

STRIKING THE RIGHT BALANCE BETWEEN REGULATION AND COMPETITION

[ABSTRACT]

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The regulation of vertical agreements by competition law is anything but straightforward. Economic theories suggest that if inter brand competition exists, then restrictions on intra brand competition should not be capable of restricting competition and the efficiency enhancing effects of vertical agreements would outweigh any possible risks. Yet experience shows that vertical agreements could have anticompetitive effects which outweigh their pro-competitive effects, and hence they have to be brought within the purview of anti-trust law.

Countries are still searching for the perfect way to regulate vertical agreements. In this working paper, the author undertakes a brief study of the US and EC legal regimes for vertical agreements and analyses the problems faced in these jurisdictions while treating vertical restraints. The author then applies this analysis to critique the treatment given to vertical agreements under the Indian Competition Act.

The Indian Act, which has very recently come into force, has several ambiguities with respect to vertical restraints. The Indian law is similar to the US law, inasmuch as there is clear scope for application of the rule of reason to vertical agreements. However as US experience shows, there cannot be a uniform application of the rule of reason, since different vertical agreements would call for different standards. The Indian Act also has similarity with EC law in the sense that it lays down several criteria which can be taken into account for testing 'adverse effects' on competition. However unlike the EC, the competition authority in India is free to take into account *all* or *any* of the mentioned criteria. This is a dangerously open ended provision.

The author in this paper addresses the mentioned and various other loopholes in our present law, and finally aims at suggesting how the regulation of vertical agreements by competition law could be better achieved by the Indian Competition Act.

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