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Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJLAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

"HUB-AND-SPOKE CARTELS IN INDIA'S E-COMMERCE SECTOR: A CRITICAL ANALYSIS OF VERTICAL AGREEMENTS UNDER COMPETITION LAW"

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Abstract[1]

India's e-commerce business has grown so quickly that it has changed how market used to work. Now, there are many vertical linkages between platforms and sellers. The emergence of hub-and-spoke cartels makes it increasingly tougher to enforce competition laws in this changing world. A hub-and-spoke cartel usually features a main firm, such an e-commerce platform, that allows individual sellers work together. This frequently results in indirect price-fixing also market allocation devoid of explicit horizontal agreements.

This paper examines the enforcement of "Section 3 of the Competition Act, 2002", regarding these arrangements, particularly with vertical agreements as specified in Section 3(4). Indian competition law usually keeps horizontal and vertical agreements apart. But hub-and-spoke cartels make this distinction less clear, which makes it hard to show that someone planned to be anti-competitive and agreed to it. The research analyzes crucial decisions made by the Competition Commission of India, especially those concerning digital marketplaces, to evaluate the interpretation and reaction of authorities to such conduct.

The paper also looks at the problems that come up when trying to prove tacit coordination made possible by digital platforms, where algorithms, data sharing, and platform policies might unintentionally help collusion. A comparative examination with jurisdictions like the European Union and the United States is undertaken to identify best practices and shortcomings in the Indian system.

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The paper says that the current legal framework under the Competition Act is not ready to deal with the complicated nature of hub-and-spoke cartels in e-commerce. It says that digital marketplaces could be better controlled by having a wider meaning of "agreement," using economic data, and having clearer regulations for how to enforce the law. The research finishes by advocating adjustments to policy that would make it easier to enforce competition law while still striking a balance between new ideas and market efficiency in India's rapidly growing digital economy.

1. Introduction: Growth of E-Commerce and Emerging Competition Concerns in India

The digital economy in India has witnessed unprecedented growth over the past decade, with e-commerce platforms fundamentally transforming the manner in which goods and services are bought and sold. The proliferation of online marketplaces such as Amazon, Flipkart, and other platform-based intermediaries has not only enhanced consumer choice and convenience but has also redefined traditional supply chains and market dynamics. This rapid expansion has been supported by increased internet penetration, digital payment systems, and favourable government initiatives aimed at promoting a cashless economy.[2]

However, alongside these benefits, the rise of e-commerce has also given rise to complex competition law concerns. Unlike traditional markets, digital platforms operate as intermediaries connecting multiple stakeholders, including sellers, service providers, and consumers. This multi-sided nature of platforms often results in intricate vertical relationships, where the platform may exercise significant control over pricing, product visibility, and market access. Such control creates the potential for anti-competitive practices that may not fit neatly within conventional legal categories.

One such emerging concern is the possibility of hub-and-spoke cartelisation within e-commerce ecosystems. In such arrangements, a dominant platform (hub) may facilitate coordination among independent sellers (spokes), leading to indirect collusion without explicit horizontal agreements.

[2] Ariel Ezrachi & Maurice Stucke, Artificial Intelligence and Collusion

These practices challenge the traditional understanding of cartels, which typically require direct communication and agreement between competitors.[3]

In India, the Competition Act, 2002, serves as the primary legislation governing anti-competitive agreements. While the Act distinguishes between horizontal and vertical agreements, the evolving nature of digital markets blurs these distinctions, making enforcement increasingly complex. The Competition Commission of India (CCI) has begun addressing such issues, yet significant ambiguities remain in interpreting and applying the law to modern digital practices.[4]

Against this backdrop, this paper seeks to critically examine the phenomenon of hub-and-spoke cartels in India's e-commerce sector. It aims to analyse the adequacy of the existing legal framework, identify enforcement challenges, and explore the need for reform in order to ensure fair competition in the digital marketplace.

2. Conceptual Framework: Understanding Hub-and-Spoke Cartels and Vertical Agreements

The concept of hub-and-spoke cartels represents an evolving form of anti-competitive conduct that challenges traditional distinctions within competition law. Conventionally, cartels are understood as horizontal agreements between competitors operating at the same level of the market, involving practices such as price-fixing, market allocation, or bid-rigging. However, hub-and-spoke arrangements introduce a more complex structure, wherein a central entity (the "hub") facilitates coordination among multiple independent entities (the "spokes"), who may otherwise be competitors.[5]

In a typical hub-and-spoke cartel, the hub—often a distributor, platform, or intermediary—acts as a conduit for the exchange of sensitive information or the enforcement of uniform pricing strategies among the spokes. Importantly, there may be no direct communication between the spokes themselves. Instead, the coordination is achieved indirectly through the hub, making it

[3] Nicolas Petit, Hub-and-Spoke Cartels in Competition Law
[4] Competition Commission of India, E-commerce Market Study (2020)
[5] Richard Whish and David Bailey, Competition Law (10th edn, Oxford University Press 2021).

difficult to establish the existence of a traditional horizontal agreement. This raises critical legal questions regarding whether such arrangements should be treated as horizontal cartels, vertical agreements, or a hybrid of both.

Vertical agreements, on the other hand, refer to arrangements between enterprises operating at different levels of the production or distribution chain, such as manufacturers and retailers or platforms and sellers. Under competition law, vertical agreements are not per se illegal and are typically assessed based on their actual or potential adverse effect on competition. Common forms include exclusive supply agreements, resale price maintenance, and tie-in arrangements. While such agreements can promote efficiency and coordination within supply chains, they may also be used as tools to facilitate anti-competitive outcomes.[6]

The intersection of hub-and-spoke cartels and vertical agreements becomes particularly relevant in digital markets, especially within e-commerce platforms. These platforms often occupy a central position, enabling them to influence pricing, monitor seller behaviour, and impose contractual conditions. In such scenarios, vertical arrangements between the platform and sellers may inadvertently—or deliberately—serve as mechanisms for horizontal coordination among competing sellers.

Therefore, understanding hub-and-spoke cartels requires a re-examination of established legal concepts, particularly the notion of "agreement" and the evidentiary standards required to prove collusion. This conceptual ambiguity underscores the need for a more nuanced analytical framework capable of addressing the realities of modern, platform-driven markets.[7]

3. Legal Framework under the Competition Act, 2002: Section 3 and Its Interpretation

The regulation of anti-competitive agreements in India is primarily governed by the Competition Act, 2002, with Section 3 forming the cornerstone of this framework. Section 3(1) lays down a

[6] Massimo Motta, Competition Policy: Theory and Practice (Cambridge University Press 2004).
[7] Ariel Ezrachi, Virtual Competition: The Promise and Perils of the Algorithm-Driven Economy (Harvard University Press 2016).

broad prohibition against agreements that cause or are likely to cause an appreciable adverse effect on competition (AAEC) within India. The provision adopts a wide interpretation of the term "agreement," encompassing formal as well as informal arrangements, understandings, or actions in concert, thereby enabling authorities to capture a variety of anti-competitive practices beyond explicit contracts.

Section 3 further classifies agreements into horizontal and vertical categories. Under Section 3(3), horizontal agreements—those between competitors at the same level of the market—such as price-fixing, bid-rigging, and market allocation, are presumed to have an AAEC and are therefore considered per se anti-competitive. This presumption significantly reduces the evidentiary burden on the Competition Commission of India (CCI), as it need not prove actual harm once such conduct is established.[8]

In contrast, Section 3(4) deals with vertical agreements between enterprises at different stages of the production or supply chain. These include arrangements such as tie-in agreements, exclusive supply agreements, exclusive distribution agreements, refusal to deal, and resale price maintenance. Unlike horizontal agreements, vertical agreements are not inherently unlawful and are assessed under the "rule of reason," requiring a detailed analysis of their pro-competitive and anti-competitive effects.[9]

The complexity arises when addressing hub-and-spoke cartels, which do not fit neatly within this binary classification. Such arrangements often involve a vertical relationship between the hub (e.g., an e-commerce platform) and the spokes (sellers), while simultaneously facilitating horizontal coordination among the spokes. This hybrid nature complicates their legal characterization and raises questions about whether the presumption under Section 3(3) can be extended to such indirect collusion.

[8] Einer Elhauge, United States Antitrust Law and Economics (3rd edn, Foundation Press 2018).
[9] Alison Jones, Brenda Sufrin and Niamh Dunne, EU Competition Law: Text, Cases, and Materials (8th edn, OUP 2023).

The CCI and appellate authorities have, in certain cases, adopted a purposive interpretation of Section 3 to address such challenges, recognising that anti-competitive conduct may manifest in non-traditional forms. However, the absence of explicit statutory recognition of hub-and-spoke cartels creates ambiguity in enforcement. Additionally, proving the existence of a "meeting of minds" or concerted practice in such cases remains evidentially demanding.[10]

Thus, while the Competition Act, 2002 provides a flexible and comprehensive framework, its application to emerging digital market practices—particularly hub-and-spoke arrangements—reveals interpretational gaps that necessitate doctrinal clarity and potential legal reform.

4. Hub-and-Spoke Cartels in India's E-Commerce Sector: Case Analysis and CCI Approach

The emergence of hub-and-spoke cartelisation in India's e-commerce sector has increasingly drawn the attention of the Competition Commission of India (CCI). Digital marketplaces, by virtue of their intermediary position, possess the ability to influence market outcomes through pricing algorithms, discount policies, and contractual arrangements with sellers. This centralised control creates the potential for platforms to act as "hubs," enabling coordination among otherwise independent sellers.[11]

One of the prominent instances highlighting such concerns arose in cases involving leading e-commerce platforms like Amazon and Flipkart. Allegations were raised regarding preferential treatment to certain sellers, deep discounting practices, and exclusive arrangements, which were argued to distort competition. While these cases primarily focused on abuse of dominance and vertical restraints, they also hinted at the possibility of indirect coordination among sellers facilitated by the platform's policies and data-sharing mechanisms.[12]

[10] Nicolas Petit, 'The Oligopoly Problem in EU Competition Law' (2012) 8 European Competition Journal 259.
[11] Alison Jones, 'Hub-and-Spoke Arrangements: The Case for a More Nuanced Approach' (2016) 11 European Competition Journal 1.
[12] Ariel Ezrachi and Maurice E Stucke, 'Artificial Intelligence and Collusion: When Computers Inhibit Competition' (2017) 2017 University of Illinois Law Review 1775.

The CCI has generally approached such cases with caution, often analysing them within the framework of vertical agreements under Section 3(4) rather than explicitly recognising them as hub-and-spoke cartels. In doing so, the Commission has focused on whether the agreements between platforms and sellers result in an appreciable adverse effect on competition. However, this approach may overlook the horizontal dimension inherent in hub-and-spoke arrangements, where competing sellers may align their conduct through a common intermediary.[13]

A key challenge in these cases lies in establishing evidence of collusion. Unlike traditional cartels, where direct communication or explicit agreements can be demonstrated, hub-and-spoke cartels rely on indirect coordination. For instance, uniform pricing across sellers, adherence to platform-driven pricing strategies, or the use of common algorithms may indicate concerted behaviour, yet proving a "meeting of minds" remains difficult. The absence of clear legal standards for such indirect evidence further complicates enforcement.

Despite these challenges, the CCI has shown a growing awareness of the unique dynamics of digital markets. In its market studies and investigative orders, the Commission has acknowledged concerns relating to platform neutrality, information asymmetry, and the potential for anti-competitive coordination. However, there remains a lack of definitive jurisprudence explicitly addressing hub-and-spoke cartelisation in the Indian context.

Therefore, while the CCI's evolving approach reflects an attempt to adapt existing legal tools to new market realities, it also underscores the limitations of the current framework. A more explicit recognition of hub-and-spoke cartels, supported by clearer evidentiary standards and analytical guidelines, is essential for effectively addressing anti-competitive conduct in India's rapidly growing e-commerce sector.[14]

[13] Maurice E Stucke and Ariel Ezrachi, 'How Pricing Bots Could Form Cartels and Make Things More Expensive' (2016) 2 Harvard Business Review 1.
[14] Christopher R Leslie, 'Inferring Concerted Action' (2006) 63 Stanford Law Review 1.

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[15] Thibault Schrepel, 'Algorithms and Competition Law' (2018) 1 Journal of Law & Innovation 1.
[16] Michal Gal, 'Algorithms as Illegal Agreements' (2019) 34 Berkeley Technology Law Journal 67.

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5. Challenges in Detection and Enforcement: Role of Digital Platforms and Algorithms

The detection and enforcement of hub-and-spoke cartels in India's e-commerce sector present significant challenges, particularly due to the increasing role of digital platforms and algorithmic decision-making. Unlike traditional cartels, which often rely on explicit communication and documented agreements, modern anti-competitive practices in digital markets tend to be subtle, data-driven, and technologically mediated. This makes it considerably more difficult for competition authorities to identify and establish collusion.

One of the primary challenges lies in the use of pricing algorithms by e-commerce platforms and sellers. Algorithms can automatically adjust prices based on market conditions, competitor behaviour, and consumer demand. While such practices may enhance efficiency, they can also facilitate tacit collusion by enabling sellers to align prices without direct communication. In a hub-and-spoke scenario, the platform may act as the central coordinating mechanism by providing real-

[17] Salil Mehra, 'Antitrust and the Robo-Seller' (2016) 100 Minnesota Law Review 1323.

time data, pricing suggestions, or automated tools that indirectly influence seller behaviour. This blurs the line between independent decision-making and coordinated conduct.[18]

Another major issue is the lack of transparency in platform operations. E-commerce platforms often operate through complex and opaque systems involving data analytics, ranking algorithms, and recommendation engines. These mechanisms determine product visibility, pricing trends, and consumer access, yet their functioning is not fully disclosed to regulators or market participants. As a result, detecting whether a platform is facilitating anti-competitive coordination becomes a highly technical and resource-intensive exercise.

Evidentiary challenges further complicate enforcement. Competition law traditionally requires proof of an "agreement" or "concerted practice," often demonstrated through direct or circumstantial evidence of communication between parties. However, in digital markets, coordination may occur without any explicit exchange of information between competitors. Establishing a "meeting of minds" in such cases is inherently difficult, especially when the conduct can be plausibly justified as independent algorithmic responses to market signals.[19]

Additionally, jurisdictional and institutional limitations hinder effective enforcement. The rapidly evolving nature of digital markets demands specialised expertise in data science, economics, and technology, which may not always be readily available within regulatory bodies. The cross-border operations of major e-commerce platforms also raise issues of jurisdiction and regulatory coordination.

In light of these challenges, it becomes evident that traditional enforcement tools and legal standards may be insufficient to address the complexities of algorithm-driven markets. Strengthening investigative capabilities, enhancing transparency requirements, and developing new evidentiary frameworks are essential steps toward ensuring effective regulation of hub-and-spoke cartels in the digital age.[20]

[18] Daniel Sokol, 'Monopolists without Borders' (2019) 4 Stanford Law Review Online 1.
[19] V K Aggarwal, Competition Law in India (2nd edn, Wolters Kluwer 2019).
[20] CCI, Market Study on E-commerce in India (Competition Commission of India 2020).

6. Comparative Analysis and Reform Proposals: Lessons for Strengthening Indian Competition Law

A comparative analysis of international approaches to hub-and-spoke cartels provides valuable insights for strengthening India's competition law framework. Jurisdictions such as the European Union and the United States have demonstrated a more evolved understanding of indirect collusion, recognising that anti-competitive coordination may occur even in the absence of explicit horizontal agreements. These jurisdictions have increasingly relied on economic evidence, patterns of conduct, and circumstantial indicators to establish the existence of concerted practices.[21]

In the European Union, competition authorities have acknowledged hub-and-spoke arrangements in cases where a common intermediary facilitates the exchange of sensitive information among competitors. The focus has been on whether the parties were aware, or could reasonably foresee, that their conduct would contribute to a broader anti-competitive outcome. Similarly, in the United States, courts have examined vertical relationships that enable horizontal coordination, particularly in cases involving resale price maintenance and information exchange. These approaches reflect a shift from a purely formalistic interpretation of agreements to a more effects-based analysis.[22]

In contrast, the Indian framework under the Competition Act, 2002, while broad in scope, lacks explicit recognition of hub-and-spoke cartels. The absence of clear statutory provisions or detailed guidelines creates uncertainty in enforcement and limits the ability of the Competition Commission of India (CCI) to effectively address such practices. As digital markets continue to evolve, this gap becomes increasingly significant.

To address these challenges, several reforms may be considered. First, there is a need to adopt a more expansive and purposive interpretation of the term "agreement" under Section 3, explicitly incorporating indirect and facilitated collusion. Second, the development of specific guidelines on hub-and-spoke cartels would provide clarity to both regulators and market participants. Third,

[21] Ministry of Corporate Affairs, Report of the Competition Law Review Committee (2019).
[22] Surya Deva, 'Competition Law in India: Changing Landscape' (2018) 10 NUJS Law Review 1.

greater reliance on economic and data-driven evidence, including algorithmic analysis, should be encouraged to detect patterns of coordination.[23]

Further, enhancing institutional capacity through technical expertise in digital markets and data analytics is essential for effective enforcement. Introducing transparency obligations for e-commerce platforms, particularly regarding pricing algorithms and data-sharing practices, can also help mitigate the risk of anti-competitive conduct. Finally, increased cooperation with international competition authorities would enable India to align with global best practices and address cross-border challenges more effectively.

In conclusion, while India's competition law framework provides a strong foundation, adapting it to the realities of digital markets requires targeted reforms, doctrinal clarity, and a forward-looking regulatory approach.[24]

7. Conclusion

The rapid evolution of India's e-commerce sector has fundamentally altered the landscape of competition, introducing complex market structures and novel forms of anti-competitive conduct. Among these, hub-and-spoke cartels represent a particularly challenging phenomenon, as they blur the traditional distinction between horizontal and vertical agreements. By enabling indirect coordination among competing sellers through a central platform, such arrangements undermine the core objective of competition law—ensuring fair and free market conditions.

This paper has demonstrated that while the Competition Act, 2002 provides a broad and flexible framework to address anti-competitive agreements, its current structure is not fully equipped to deal with the nuanced realities of digital markets. The binary classification of agreements into horizontal and vertical categories fails to adequately capture hybrid arrangements like hub-and-spoke cartels. Moreover, the evidentiary requirement of establishing a clear "agreement" or

[23] Smriti Parsheera, 'Competition Issues in India's Digital Economy' (2019) Indian Journal of Law and Technology 1.
[24] Joseph E Harrington Jr, 'Behavioural Screening and the Detection of Cartels' (2008) European Competition Journal 1.

"meeting of minds" poses significant challenges in cases where coordination is facilitated through algorithms, data sharing, or platform-driven mechanisms.

The analysis of the Competition Commission of India's approach reveals a cautious yet evolving stance. While the CCI has acknowledged concerns related to platform neutrality and vertical restraints, it has not yet explicitly developed a consistent jurisprudence on hub-and-spoke cartelisation. This gap highlights the need for doctrinal clarity and a more proactive enforcement strategy.

Drawing from international practices, particularly in the European Union and the United States, it becomes evident that a shift towards an effects-based and economically informed analysis is essential. India must move beyond formalistic interpretations and embrace a more dynamic understanding of anti-competitive conduct in digital ecosystems.

In conclusion, addressing hub-and-spoke cartels in India requires a combination of legal reform, institutional strengthening, and technological expertise. By refining the interpretation of "agreement," enhancing transparency in digital platforms, and adopting advanced investigative tools, the Indian competition law regime can better respond to emerging challenges while fostering innovation and consumer welfare in the digital economy.