

“The Competition Act 2010: A Review of Market Behaviour”

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Targets in the Competition Act 2010



- **WHO? 'Enterprises'**

- Any entity carrying on commercial activities relating to goods or services
- Parent & subsidiary: a single enterprise where subsidiary has no real autonomy in determining actions in the market

- **WHAT? 'Commercial activity' (s.3(4))**

- Any activity of a commercial nature
- But does not include:
 - exercise of governmental authority
 - activity conducted based on principle of solidarity
 - purchase of goods or services not for the purposes of offering goods and services as part of an economic activity

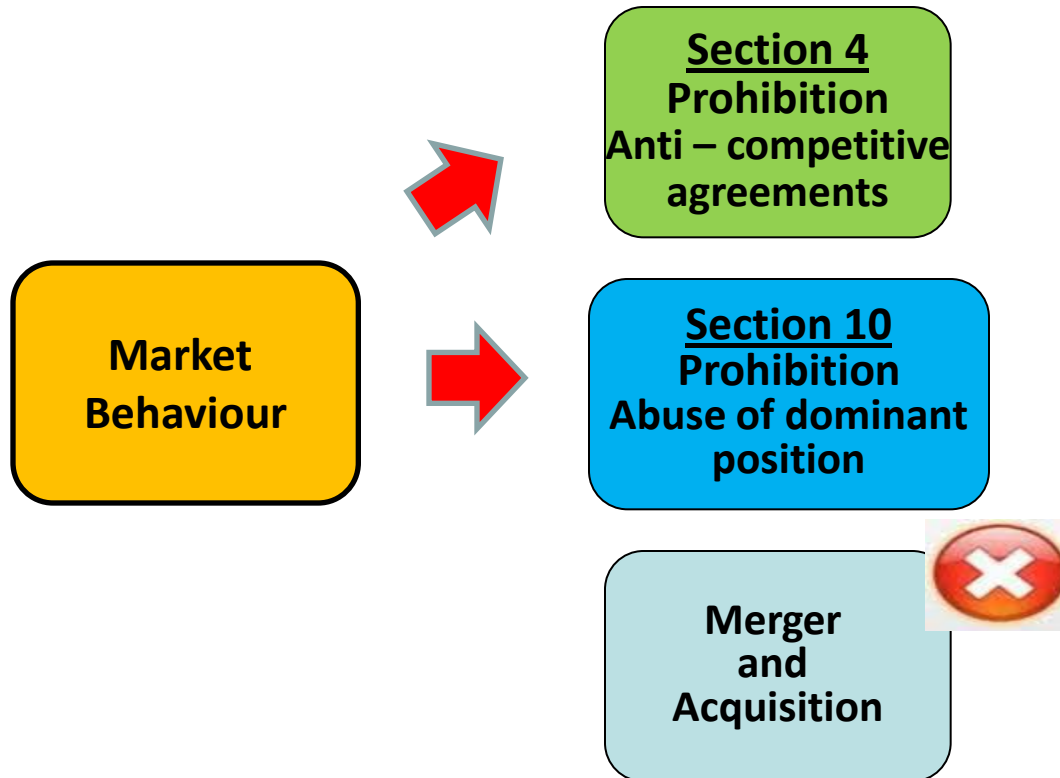


What is not Targeted in the Competition Act 2010?



- Does not replace existing law regulating competition in the communications and energy industries
 - New law does not apply to commercial activity regulated under the *Communications and Multimedia Act 1998* and the *Energy Commission Act 2001*
- Prohibitions do not apply to:
 - Agreement (or conduct) to the extent it is engaged in so as to comply with legislative requirement
 - Employment terms and conditions: collective bargaining and agreements
 - Enterprises entrusted with the operation of services of general economic interest or having character of revenue-producing monopoly

Main Prohibitions under the Act



Anti-Competitive Agreements

ANTI-COMPETITIVE PRACTICES

Chapter 1

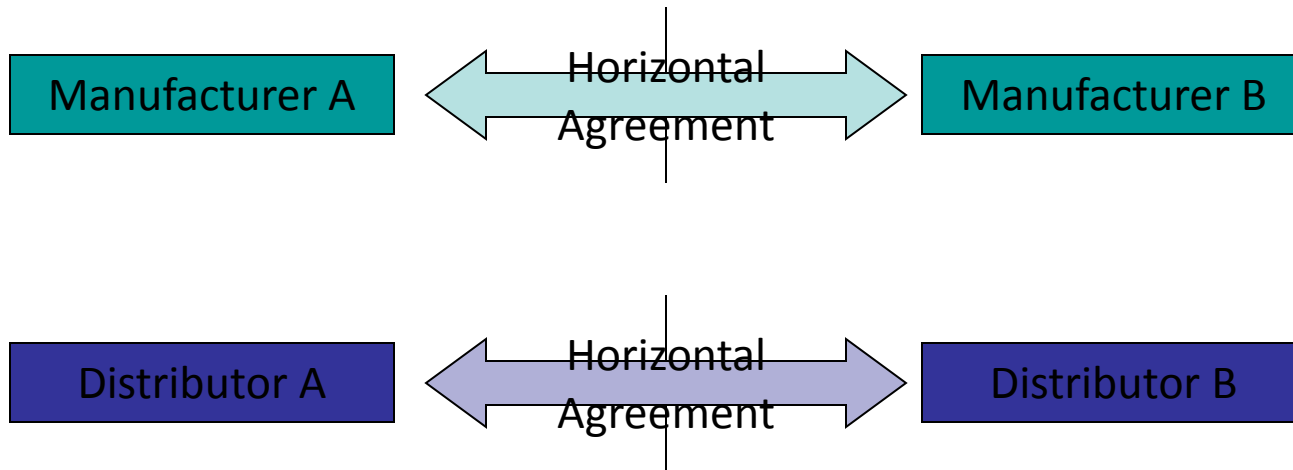
Anti-competitive agreement

Prohibited horizontal and vertical agreement

4. (1) A horizontal or vertical agreement between enterprises is prohibited insofar as the agreement has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services.



Horizontal Agreements



- Traditionally, competition policy regards horizontal agreements as being more objectionable as these agreements are made between competitors.
- Some horizontal agreements are considered Hard Core and are absolutely prohibited (S4(2)).

Some Horizontal Agreements Are Deemed Illegal

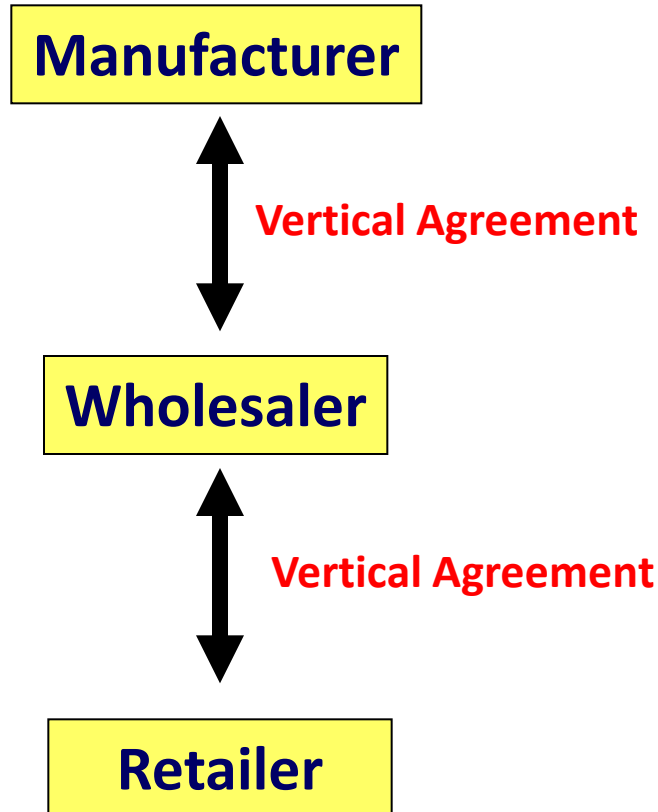


(2) Without prejudice to the generality of section (1), horizontal agreements between undertakings which have as their object or effect to—

- (a) fix, directly or indirectly, any prices, discounts, or other trading conditions;
- (b) share markets or sources of supply;
- (c) limit or control production, sales, or output;
- (i) purchase or sell exclusively from or to one or more undertakings;
- (ii) restrict or control the range of products or services offered;
- (iii) restrict or control the geographical area in which they may sell or purchase;
- (iv) restrict or control investment; or
- (d) perform an act of bid rigging,

is deemed to have as its object of significantly preventing, restricting, or distorting competition in any market for goods or services.

Vertical Agreements



Examples of Vertical Agreements



Resale price maintenance (RPM)

- A producer / manufacturer's contractual requirement that its product be retailed at a fixed or minimum price to consumers
- Specification of a maximum price and/or recommended resale price (RRP) is “usually OK” unless the specified price has the effect of fixing the retail terms of sale or dampening retail price competition. See latest CCS decision on fee guidelines.

Exclusive distribution

- A manufacturer supplies its (branded) product to only one distributor or wholesaler or retailer in a particular territory or geographical area
- It may have the effect of preventing “downstream” market entry and “intra – brand” competition

Selective distribution

- A manufacturer supplies its (branded) product to a limited number of dealers who are contractually restricted from selling other brands
- It may foreclose a market to inter – brand competition at the retail level

Relief for Section 4 Prohibition

- Need to satisfy 4 conditions :
 - Identifiable Benefits
 - Benefits could not have been provided without the 'anti competitive agreement'
 - Detrimental effect proportionate to the benefits provided and
 - Does not eliminate competition

***Hard core infringements** such as price fixing and bid rigging **unlikely to be exempted**

Abuse of Dominant Position

Chapter 2

Abuse of dominant position

Abuse of dominant position is prohibited

10. (1) An enterprise is prohibited from engaging, whether independently or collectively, in any conduct which amounts to an abuse of a dominant position in any market for goods or services.



Relief for Section 10 Prohibition

Dominant firm may take steps based on:

- ☐ Reasonable commercial justification
- ☐ Reasonable commercial response to b
conduct of competitor



THANK YOU



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