

AN ANALYSIS OF HUB AND SPOKE CARTELS IN THE E – COMMERCE SECTOR

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ABSTRACT

The Covid – 19 pandemic has caused unprecedented havoc on society in the year 2020. The effects of the pandemic have been felt across varied spheres of human activity, be it the economy or the health sector. Most countries across the world-imposed lockdowns in order to effectively curb the spread of this highly infectious disease.

Naturally, these lockdowns resulted in a number of hurdles to business and their working models. They could no longer profit by selling their products and services at traditional brick and mortar outlets and they now had to rely on new ways to reach their customers.

These challenges were faced by businesses in India as well. Offices, educational establishments, public spaces, etc, were all mandated to stay shut. However, the demands for products did not take a hit. There was in fact an increase in demand which led to shortages in essential products. These shortages may potentially influence firms to resort to exploitative pricing strategies of firms.

The forced shift to eCommerce has enabled entities to enter into pricing parity agreements with various eCommerce platforms/ websites. This has resulted in the formation of Hub – and – Spoke cartels. In this paper, the characteristics, economic incentives and treatment under the laws of various jurisdictions to hub – and – spoke cartels has been discussed. In the Indian context, the shortcomings of decided cases on hub – and – spoke cartels has been delved into along with an analysis of the food delivery service market vis- a – vis Hub and Spoke Cartels.

1. Introduction

A common practice when engaging in competition analysis is to draw a distinction between horizontal and vertical agreements. Horizontal agreements are generally entered into in order to reduce competition to benefit the parties. Vertical agreements, on the other hand are entered into in order to reduce inefficiencies that may exist in the production chain. The distinction between vertical and horizontal agreements helps competition authorities in prosecuting cartels, arising out of horizontal agreements.

However, ever now so often there arise situations wherein a cartel cannot be classified as arising out of a horizontal or a vertical agreement. Sometimes a cartel may have both horizontal as well as vertical elements at play. Such a cartel is called a hub and spoke cartel. A hub and spoke cartel entail horizontal collusive behaviour between competitors as well as a vertical relationship between firms functioning on different levels of the supply chain.¹

The anti-competitive effects that arise out of the operation of a hub and spoke cartel vary. It could lead to anti-competitive effects by foreclosing competition between manufactures; it could lead to foreclosure of competition between distributors or; it could lead to foreclosure of competition at both levels i.e., among the manufacturers and the distributors. Such arrangements are unique in their ability to go undetected and have been given considerable attention across jurisdictions.

In this piece, the concept of a hub and spoke cartels is discussed along with the economic incentives for players to participate in such arrangements. The approach of various competition authorities in different jurisdictions is also delved into. Finally, the scope for the formation of such systems in today's age of e – commerce is touched upon. The piece concludes with instances, avenues and possibilities of formation and functioning of hub and spoke cartels in the Indian e – commerce and the way forward.

2. Cartels

¹ Hub and Spoke Cartels: Incentives, Mechanisms and Stability, 3 Eur. Competition & Reg. L. Rev. 4 (2019).

Cartels are said to be the anathema to market competition across the world.² A cartel is said to exist when a two or more enterprises work together to protect common interests. In India, the Competition Act, 2002, defines a cartel as an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services.³

When a cartel is in existence, the members of the cartel agree to fix price or limit production quantities to ensure that competition on these parameters are avoided. These actions inadvertently lead to certain negative effects that are felt by consumers.

They result in higher costs of goods and services. This is due to the fact that when a cartel is in existence, the members can raise prices in a co – ordinated manner without fear of losing out on customer preference to their products and market share. When multiple members in a market raise prices at the same time, consumers do not have a cheaper alternative that they can switch to.

Cartels can also result in restricted output of a good or service.⁴ This is detrimental to customers as there is likely to be a need for a ready supply of the goods or services of the cartel members especially during times of emergency (a good example of this would be the demand for facemasks during the Covid – 19 pandemic). Additionally, cartel members may also divide certain geographic markets amongst themselves. When this is done, consumers from a particular region would only be able to avail of the products and services of a single member of the cartel. This invariably leads to a restriction in choice and higher prices.

Competition authorities have evolved various ways to detect, deter and penalise cartels across the world. Measures such as leniency programmes⁵, enhanced punishments, etc., are being implemented across the world. However, there has been an increase in the instances of a new kind of cartel called a hub and spoke cartel, which will be discussed henceforth.

3. Hub and Spoke Cartels

² OECD, Policy Roundtables, Crisis Cartels, 2011, available at - <http://www.oecd.org/daf/competition/cartels/48948847.pdf>.

³ Section 2(c), Competition Act, 2002, No. 13, Acts of Parliament, 2003 (India).

⁴ Investopedia, Cartel, (Dec. 29, 2020, 06:02 PM), available at - <https://www.investopedia.com/terms/c/cartel.asp>.

⁵ UNCTAD, Competition Guidelines: Leniency Programmes, (Dec. 29, 2020, 06:02 PM), available at https://unctad.org/system/files/official-document/ditcclp2016d3_en.pdf.

Hub and spoke cartels are characterised by a vertical relationship between enterprises that have a presence at one level of the production chain with a common enterprise that exists at another level of the supply chain. The enterprises that exist at one level of the supply chain constitute the spokes and the common enterprise in a different level of the supply chain constitutes the hub. These types of cartels too are regulated by competition law as they can result in similar anti – competitive effect that a traditional cartel would result in.

3.1. Characteristics of Hub and Spoke Cartels

The foundations for the assessment of Hub and Spoke cartels were laid down in the landmark cases of **Toys “R” Us**⁶ and the case of **Interstate Circuit, Inc. v. United States**.⁷ These cases are considered to be important precedents on which competition authorities conduct competition analysis on such arrangements.

In the case of **Interstate Circuit, Inc. v. United States**⁸, the manager of the defendant theatre sent similar letters to each of its distributors, with all the other distributors named in the latter as addressees. The letter stipulated that the distributors were not to charge below a specified rate while selling a particular movie.

In the Toys “R” Us case⁹, Toys “R” Us used its dominant position in the retail toy store market to enforce parallel agreements with ten other competitors in the relevant product market in order to preclude competition from price cutting warehouses. In order to do this, Toys “R” Us, obtained an acquiescence from one of the manufactures, to orchestrate an agreement between 7 other manufacturers.

The most important characteristic that was ascertaining from the abovementioned cases was the fact that there does *not exist any direct communication* between the competitors at the same level of the production chain i.e., the spokes. Instead, all the communication that occurs between competitors is indirect and is carried out through the hub.

⁶ Toys “R” Us, Inc. v. FTC, 221 F.3d 928, 932 – 33 (7th Cir. 2000).

⁷ 306 U.S. 208 (1939).

⁸ *Id.*

⁹ *Supra* note 6.

This poses a significant hurdle to competition authorities as they need to establish when exactly a horizontal agreement should be presumed when there is no explicit information sharing between horizontal competitors and when all that exist are vertical agreements which would otherwise be perfectly legal.

3.2. Economic Incentives for Hub and Spoke Cartels

The first economic incentive for enterprises to enter into hub and spoke arrangements is the fact that such arrangements are purely indirect and are entered into through vertical agreements. Hence, there is no apparent horizontal agreement that exist which does not raise the presumption of economic harm.

Secondly, since hub and spoke cartels involve vertical agreements, they can be disguised as efficiency increasing measures. Vertical agreements occur on a regular basis in various markets and are entered into for the purpose of enhancing efficiency. These types of agreements are regularly entered into for the purpose of eradicating commitment matters and increasing competition between competitors.

Thirdly, in situations where the manufacturer holds a monopoly, it is said that a monopolist will not be able to exert its monopoly if there is perfect competition at the retail level¹⁰. This is due to the fact that if there are confidential vertical agreements, retail price will decrease which leads to greater sales and an increase in the combined profits of the retailers and the monopolistic distributor.

Fourthly, in situations wherein a hub promotes collusion between the spokes, the spokes can increase the prices at which their products are sold. This could result in an increase in profits for both the spokes and the manufacturing hub.

3.3. Types of Hub and Spoke Cartels

3.3.1. Manufacturing Spokes – Distributor Hub

¹⁰ Daniel P O'Brien and Greg Shaffer, 'Vertical control with bilateral contracts' (1992) 23(3) RAND Journal of Economics 299.

Hub and spoke cartels can broadly be classified into three types. The *first* type of hub and spoke cartel is one where there is a vertical agreement between a manufacturer and a distributor and such agreement facilitates an indirect horizontal agreement between the manufacturer and its competitors. In such a case, the manufacturer forms the spokes and the distributor forms the hub.

In such a type of hub and spoke cartel, the distributor benefits directly due to the fact that price competition is eliminated between it and its competitors. The Toys “R” Us case¹¹ is a classic example of such a hub and spoke cartel. In this particular case, Toys “R” Us had a significant market share in the toys distribution market and convinced various manufacturers to give up competing distribution channels.

3.3.2. Manufacturing Hub – Distributor Spokes

In such a type of hub and spoke cartel, distributors are in fierce competition. In order to reduce the losses suffered in competition with each other, they enter into vertical agreements with the producer to maintain price across its distributors, in order to avail of retail margins. For such an arrangement to be successful, it is essential that the distributors do not undercut each other by reducing their respective margins. In this situation, the manufacturer plays a role of the monitor.

3.3.3. Publishing Spokes – distributor hubs

This is a type of hub and spoke cartel where competition is reduced at both the publisher level and the distributor level. This type of hub and spoke cartel was seen in the e – book market between Apple and Amazon and five of their main book publishers. In this particular case, Apple entered into agreements with its publishers to shift from a wholesale pricing model to an agency model, where the prices of the books were no longer in the domain of Apple, but rather were controlled by the publishers. As a stipulation in their agreements, Apple included Most Favoured Customer (MFC) clauses in these agreements wherein it stipulated that the publishers were not to offer a lower price to Amazon, its main competitor, at any point in time.

4. Treatment of Hub and Spoke Cartels Under Law

4.1. Position in The United States

¹¹ *Supra* note 4.

The metaphor of the “hub and spoke” originated in the United States. The Courts in the United States have been dealing with cases involving hub and spoke cartels since the 1930s. Through the decisions of the United States’ courts, the inference standard has evolved and come to be.

In the 20th century, the Supreme Court of the United States has dealt with five cases that serve as landmark judgements when it comes to hub and spoke cartels. They are the **Interstate Circuit**, **Masonite**, **Klor’s**, **Parke Davis** and the **General Motors** cases.¹² These case laws have established that it is the inferred “rim” that turns a legal vertical agreement to an illegal horizontal one. When there has arisen a case where the rim could not be inferred, the United States courts have held such conduct to just be parallel conduct and have not penalised the actors. In the landmark case of **United States v. Apple, Inc.**, 791 F.3d 290 (2nd Cir. 2015), it was held that “parallel action is not, by itself, sufficient to prove the existence of a conspiracy; such behaviour could be the result of “coincidence, independent responses to common stimuli, or mere interdependence unaided by an advance understanding among the parties.”¹³

In the **PepsiCo case**¹⁴, there were allegations that were raised by Coca – Cola that there was a presence of a hub and spoke cartel between coca cola and its independent food distributors. The court held that this was not the case as the particular factual matrix was unlike other cases where hub and spoke cartels were established. It held that these actions of the parties were merely parallel conduct and were not conspiracies to fix prices.

The requirement for the existence of certain “plus factors” to establish the presence of a hub and spoke cartel was laid down in the **Musical Instruments case**.¹⁵ It was further held that even parallel behaviour which has consciously been entered into would not attract section 1 of the Sherman Act.¹⁶ Once the rim has been established, a presumption arises that the conduct in question is per se illegal.

4.2. Position in The European Union

¹² Interstate Circuit v. United States, 306 U.S. 208 (1939); United States v. Masonite Corp., 316 U.S. 265 (1942); Klor’s Inc. v. Broadway – Hale Stores, Inc., 359 U.S. 207 (1959); United States v. Parke, Davis & Co., 362 U.S. 29 (1960); United States v. Gen. Motors Corp., 384 U.S. 127 (1966).

¹³ 550 U.S. at 556 n. 4, 127 S.Ct. 1955.

¹⁴ PepsiCo, Inc., v. The Coca – Cola Company, 315 F.3d 101.

¹⁵ Musical Instruments and Equipment Antitrust Litigation, 798 F.3d 1186 (2015).

¹⁶ Id.

The number of cases that involved the issue of hub and spoke cartels/ arrangements in Europe are few compared to the jurisprudence on the same from the United States.

4.2.1. Estonia

One of the few cases that have dealt with hub and spoke cartels in Europe has been from the country of Estonia. This particular case involved a vodka cartel.

In this case, the four major vodka retailers in the country, which held about sixty-six per cent of the market share, agreed through their common supplier that the retailers that had lower priced vodkas would raise their prices to match the price of the other retailers that sold at a higher price. The Estonian Competition Agency imposed fines on the members of this hub and spoke cartel in the year 2017.

4.2.2. Belgium

In Belgium, there was a case in which 18 enterprises at different levels of the production chain increased the retail prices of hygiene, drugs and perfume products in the year 2015. The Belgian Competition Authority found that these undertakings had been exchanging price sensitive information since 2002 and imposed a total fine of 173 million Euros on these enterprises.¹⁷

4.2.3. Poland

In Poland, a paint manufacturing enterprise introduced a system to stabilise prices in order to convince retailers who were in strong competition with each other to stick to the recommended price range under the stabilising system. If the retailers refused to comply with the system, the manufacturer would threaten to stop the supply of products to the said retailer. The decision of the regulating authority stated that the agreement in the instant case was horizontal in nature as it established a cartel of retailers that were supervised by the supplier.¹⁸

These are several instances wherein a hub and spoke cartel was involved in the European Continent. However, the situation in the United Kingdom is quite similar as there have been several cases wherein courts have deliberated on hub and spoke cartels. The same is discussed below.

¹⁷ Decision No. ABC – 2015 – I/O -19 -AUD of 22 June 2015 in Case CONC-I/O-06/0038.

¹⁸ UOKIK Decision DOK 1 – 410/2/06/AS.

4.3. Position in The United Kingdom

In the year 2003, the Office of Fair Trading in the United Kingdom fined Argos, Littlewoods and Hasbro for being parties to hub and spoke cartels. In this particular case, Hasbro had entered into agreements with Argos and Littlewoods to fix price. Hasbro persuaded its retailers to sell their products at a recommended price. There were conversations that Hasbro representatives had with the representatives of both Argos and Littlewoods and communicated to each retailer what the other retailer agreed to charge for the products.

In another case,¹⁹ nine supermarket and dairy processing enterprises had shared price sensitive information among themselves in order to hike retail prices on dairy products. In this case, the supermarkets constituted the spokes and the dairy processor constituted the hub, and it was found by the Office of Fair Trading that the supermarkets had used the processor to exchange price sensitive information between themselves. In this case, there were settlements that were reached between the supermarket chains and the Office of Fair Trading. One particular supermarket (TESCO) believed that it was not a party to this arrangement and appealed the decision of the Office of Fair Trading.

5. Hub and Spoke Cartels and E – Commerce

With the onset of technology, an increasing portion of the population rely heavily on services that are delivered over the internet. This reliance has been deepened with the onset of the Covid – 19 pandemic, with people being stuck indoors due to State imposed lockdowns, they have turned to e – commerce platforms in order to shop for a variety of commodities and services. Pricing algorithms that are used on online shopping platforms give rise to several competition concerns which are similar to those that occur in hub and spoke cartels, by facilitating horizontal collusion.

In the e – commerce world, prices of products are regularly tweaked using pricing algorithms. In addition to this, pricing algorithms can keep a close watch on the price setting behaviours of other enterprises in the market. A troubling aspect (from the competition point of view) of price fixing in the e – commerce market is the presence of Across Platform Parity Agreements (APPAs) and Most Favoured Customer (MFC) clauses.

¹⁹ Decision of the OFT in Case No. CA98/03/2011, Dairy retail price initiatives.

Several authors have identified the fact that, in the e – commerce space, enterprise that are in direct combination with each other use the same algorithms to figure out market demand and interest in their products and price them accordingly. There could also be instances wherein two competitors use the same Information Technology services to optimise their collection of information on the preferences of customers.

These situations would lead to a tacit collusion between competitors. Collusion is said to be tacit when nether party has the knowledge or intention to collude with each other. This collusion is not facilitated by a downstream/ upstream player like in the case of a traditional hub and spoke cartel, but rather, by a common intermediary/ service provider.

A relatively recent example of this was seen in the European Union in 2018 when the consumer electronics manufacturer Asus, Denon & Marantz and Pioneer were fined a staggering 111 million Euros by the European Commission for the imposition of resale price maintenance on their retailers.²⁰ What was unique in this case was the fact that these companies used sophisticated tools to track the prices of their online retailers and would intervene in an expedited manner when there was any contravention.

In addition to this, it was found that the manufacturers focussed their attention on the retailers who were setting the lowest prices due to the fact that the pricing algorithms of the other retailers would automatically adjust their prices to match the prices offered by the lowest priced retailer. This resulted in the interventions of the manufacturers which in turn had a large impact on the entire consumer electronics market as a whole. Further there were also found several trails of email communications between the various parties involved.

The question then arises as to whether there needs to be evolved new competition law frameworks in order to bring such online price fixing concerns under the ambit of competition law. It has been the shared opinion of several scholars of competition law that the pre-existing frameworks that exist would be applicable for analysing hub and spoke cartels that pertain to online price fixing.²¹ Similar to traditional cartels, competition authorities cannot hold each and every instance of price

²⁰ Case AT.40465 – Asus; Case AT.40181 – Philips and Case AT.40469 – Denon & Marantz.

²¹ OECD, Directorate For Financial and Enterprise Affairs Competition Committee, Roundtable on Hub – and – Spoke Arrangements, DAF/COMP(2019)14.

changes on online market places to be illegal. They will have to look for certain “plus factors” that indicate that there has been collusion to fix prices between competitors.²²

In terms of detection, the perceived hurdles to detect such price fixing agreements are, counterintuitively, not that high. There needs to be the presence of circumstantial evidence that reasonably tends to prove that the parties had a conscious commitment to a common scheme designed to achieve an unlawful objective.²³ While it is difficult to know if there is direct communication between enterprises due to the fact that algorithms do not leave behind a paper trail, the fact remains that traditional forms of communication techniques will have to be relied upon to detect future plans to fix prices and this is where competition authorities can step in.

5.1. Across Platform Parity Agreements (APPAs)

In today’s online marketplace, there exist several two-way platforms that connect sellers to potential buyers. Examples of such platforms would be Amazon, Zomato, UBER, Oyo, etc. These platforms add on to the value chain of the product by increasing the convenience with which products can be accessed, offering buy back schemes, secured payment transactions, etc. and raise revenue through commissions.

In order for suppliers to use their platform, these online marketplace platforms impose several vertical restraints that could play a role in the formation of a hub and spoke cartel. APPAs are a type of vertical restraint. They could either be clauses incorporated into an agreement or an agreement as a whole. These agreements stipulate that the seller is to sell their product in the particular platform at a rate that is no higher than the price that is offered for the product on another similar/ competing platform. The acceptance of such a condition is usually a precondition for availing of the services of the platform.

Online platforms consider the presence of this type of arrangement to be essential to the up - keep of their business model. If there are better prices being offered on a different platform, no prudent customer will be willing to buy the product from the online platform offering a higher price. Consequently, such a platform would lose out on the commission that it could have earned.

²² R. Marshall & L. Marx, Plus Factors and Agreement in Antitrust Law, 110 MICH. L. REV. 392, 405 no. 3 (2011).

²³ Monsanto Company v. Spray – Rite Service Corporation, 465 U.S. 752 (1984) paras 760 – 764.

APPAs set up a type of hub and spoke cartel. The seller in such a case constitutes the hub of the cartel and the various platforms, the spokes. The seller facilitates the sharing of price sensitive information between the spokes by way of the APPAs. These agreements result in the alignment of prices at the retail level of the product, which in turn affects the interest of customers as competition is killed.

5.2. The Indian Experience

In India, the lawmakers have realised that there is an ever increasing need to amend the existing competition laws in India for the law to keep abreast with the contemporary developments in the e – commerce sector. In pursuance of this, the Indian Government had introduced the draft Competition (Amendment) Bill, in March 2020.

One among the numerous proposed changes to the Act include widening the spoke of the term ‘cartel’ to bring under its ambit ‘hub and spoke’ cartels. This move was touted as a welcome change, especially considering the fact that due to the onset of the Covid – 19 pandemic, online e – commerce marketplaces have grown exponentially.²⁴

5.2.1. Decided Cases and their shortcomings-

The matter pertaining to hub and spoke cartels in India came up in the noted case of **Samir Agrawal vs. ANI Technologies Pvt. Ltd.**²⁵ In this instant case, the allegation was that there was a hub and spoke cartel at play between the cab aggregators, Ola and Uber and their agents. The allegations against the cab aggregators in this instant case was that the competing drivers were acting as the “spokes” and that the cab aggregator was the “hub” through which sensitive pricing information was being exchanged between the drivers. On appeal, the NCLAT held that since the cab aggregators rely on price algorithms which meant that there were no agreements between the parties to fix price, which is a requirement for the establishment of a cartel under competition law. Further, since the drivers were not employed by Ola or Uber, there does not exist a hub and spoke cartel.

²⁴ OECD Policy Responses to Coronavirus, E – Commerce in the time of COVID – 19, OECD (Dec. 29, 2020, 5:44 PM) <http://www.oecd.org/coronavirus/policy-responses/e-commerce-in-the-time-of-covid-19-3a2b78e8/>.

²⁵ Competition Commission of India, Case No. 37 of 2018.

However, it in the opinion of the author, that the approach taken by the Competition Commission of India as well as the NCLAT was not the right approach. As has been discussed earlier in this paper, it is clear that when two or more online platforms make use of a common IT service, there is a high probability of concerted practices being undertaken. A more proper approach in these cases would have been to examine where the use of these pricing algorithms, in fact, resulted in tacit collusion. However, the authorities in this instant case limited themselves to examining the nature of the relationship between the aggregator and the drivers and simply observe that pricing algorithms rely on Big Data and hence that there was no collusion.

The Competition Commission of India as well as the NCLAT decided to not rely on the rationale of the United States' decision in the case of **Spenser Meyer v. Travis Kalanick**²⁶ on the ground that the business models of both Ola and Uber do not have an effect of restricting price competition and on the further ground that the drivers do not have any means to share pricing information among themselves as the price is algorithmically fixed.

Perhaps a more prudent approach by the Competition Commission of India would be to look at the *De Facto* effects of such arrangements rather than construing statutory provisions strictly and dismissing cases when the statutory criterion is not met. The Competition Commission of India could also perhaps take a leaf out of the books of various competition authorities. As was discussed earlier, the courts in the United States have evolved the 'Inference Standard' while investigating hub and spoke cartels. Under this standard, the courts attempt to read between the lines to see if there is any *de facto* collusive behaviour in occurrence.

5.2.2. Food Delivery Service markets vis – a - vis Hub and Spoke Cartels

Another area in which there is a possibility of hub and spoke cartels arising in India is in the food service aggregator market. The Indian food service aggregator market constitutes of players such as Zomato, Swiggy, Food Panda and Uber eats.

²⁶ Spenser Meyer v. Travis Kalanick, 2016 U.S. Dist. Lexis 43944.

These players act as two-way platforms that cater to, on the one hand, restaurants who can list their food products on the platform of the food delivery service provider, and on the other hand, the customers who order their food on the food delivery service platform.

There is also evidence that suggests that due to the convenience that these platforms offer the customers (Food is delivered within the hour from the time when an order is placed; payment is quick and secure, etc.), there has been a shift from customers choosing to dine out at brick-and-mortar outlets, to them opting to order their food home. This shift has made the food service aggregators dominant players in the food service market.

Due to the dominance that these food service aggregators have in the market, restaurant owners who have their own independent delivery services are forced to list their products on the food service aggregator platforms. If they opt not to do so, they risk losing out on a large chunk of their customer base, as customers increasingly prefer to order from these platforms due to the offers, discounts and value that is added on to the food products by these platforms.

Food service aggregators enter into agreements with restaurant owners wherein the restaurant owners are compelled to price their food products similarly on all food service aggregator platforms. This is done through agreements known as Across Platform Parity Agreements (APPAs) as has already been discussed earlier. What these agreements ensure is that an individual food service aggregator is assured that the same food product is not offered for a better price on a competing platform. Such aggregators justify entering into such agreements on the ground that their business models depend upon such agreements as all their income is dependent on food actually being sold on their platform.

These sorts of arrangements could lead to the establishment of hub and spoke cartels. The restaurants in this case constitute the hub and the food service aggregators are the spokes. Sensitive pricing information is passed between the spoke through the hub by means of the APPAs. Similar arrangements are also seen in the online retail market space.

6. Conclusion

Therefore, it is imperative that the Competition Commission of India, while conducting competition analysis on hub and spoke cartels in the e – commerce sector, does not stick to the

traditional approach of construing statutory provisions literally and letting enterprises off the hook. It will have to be diligent and rely on the *de facto* evidence. It will also have to account for the effect that price setting algorithms have on competition in the relevant market. In these times, the presence of an agreement between competitors should not be a pre – requisite, as these algorithms are able to achieve the same results without an agreement being in place.

Another reason as to why APPAs have to be closely monitored is due to the fact that such agreements raise significant entry barriers in the relevant market. New entrants may not be able to enter in to the market due to the fact that the APPAs will preclude them from charging lower prices on their products in order to penetrate the market.

It remains to be seen what the approach of the Competition Commission of India will be after the enactment of the Competition (Amendment) Act, 2020. Will the Commission step in to regulate the e – commerce market more closely in order to prevent the proliferation of hub and spoke cartels or will it allow status quo to remain? Only time will tell.