MARGIN SQUEEZE IN THE TELECOMUNICATION SECTOR

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Abstract

For a considerable amount of time, telecommunication sector has been subjected to natural monopolistic or oligopolistic conducts because of the peculiar characteristics of this sector such as high infrastructure development and technological competence. However, over the years, high profit earnings attracting the new firms and enhanced competition resulted in growth of the new entrants but the acts of the incumbent firms trying to prevent the sharing of their profits with the new entrants by following the practice of margin squeezing has also been frequently complained. The incumbent firms existing for a long period of time in the market gain the upper hand i.e. control over raw material, other factors etc. and indulge in practices suffice to prejudicially affect competition. Thus, attracting the national regulatory authorities, national competition authorities etc. to deal with the situation and maintain the necessary competition in the market.

This paper comprehends and analyzes the implications, conditions, judicial approach and regulation of such practice existing. The first chapter shall focus on the basic concept of margin squeezing explaining the essentials and the kinds of the conduct. The approaches to margin squeezing shall be dealt under the second chapter i.e. with regard to Unites States (US), European Union (EU) & India. The last chapter shall state the basis on which the margin squeezing should be considered as the stand-alone abuse, distinguishing between it and the other similar anti-competitive practices. This chapter shall also discuss the various issues existing in respect of the practice.

The conclusion shall state the importance to deal with such pricing strategy in the market to protect and foster the competition in the growing telecommunication sector.

INTRODUCTION

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During the last decade, Margin squeeze in the telecommunication sector has become a matter of concern as a result of post liberalized telecommunication markets. Not only the telecommunication sector but other newly liberalized network industries have even witnessed margin squeeze abuses in the past years. It has acquired the status of standalone abuse of dominance as a result of the high profile cases emerged in the recent years. As a result margin squeeze has become a practical issue to deal with.

Also referred to as the prize squeeze, margin squeeze is the abuse of the dominant position by the integrated firm hampering the competition in the markets[1]. Having a dominant position in the market is not troublesome but when the firm abuses its dominant position to distort competition, it becomes mandatory to regulate the conduct of such firm. Margin squeeze is one such conduct exhibited by the vertically integrated firm having a dominant position or monopolistic control in the upstream market (wholesale) i.e. over the input and has significant presence in the downstream market. In simple terms it is the process of curtailing the difference between the wholesale or retail price by the firm having control over the input indispensable for the downstream product in such a manner so as to avert the rival firms from entering the market or facilitating their exit as they become impotent to recover the downstream costs. Another plausible reason is to show the market less attractive to not only the existing competitors but even the potential ones by artificially playing with the prices[2].

There has been rise in the complaints by the new entrants, especially in telecommunication sector, because it is one such sector which easily satisfies the conditions for the implementation of the margin squeeze i.e. squeezing of the rival firms by the incumbent firms[3]. Combating these practices is important but lack of uniformity in the jurisprudential approach to margin squeeze

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[1] Gretar Þor Johannsson, 'Assessment of a Margin Squeeze as an Abuse of Dominant Position under EU Competition Law' (Master thesis, Lund University 2014)

[2] Tomasz Koziel, 'Margin Squeeze as a StandAlone Abuse of Dominant Position – Remarks to the Judgment of the European Court of Justice in TeliaSonera' (2011) 18 Colum. J. Eur. L. F. 58

[3] Damien Geradin & Robert O'Donoghue , 'The Concurrent Application of Competition Law and Regulation: the Case of Margin Squeeze Abuses in the Telecommunications Sector' (2005) GCLC Working Paper No. 04/05 <http://ssrn.com/abstract=671804> accessed 16 February 2016

poses another problem[4]. While the EU recognizes the margin squeeze as a separate abuse, the US doesn't consider the same.

Hence, as it is significantly important to understand this practice to curb the same and safeguard competition in the market, the author intends to throw light on this abuse.

1. WHAT IS MARGIN SQUEEZING ?

Margin squeeze is the squeezing of the margin between the price at which the input is sold to the rival undertakings (wholesale price) and the price at which the downstream product is sold in the market (retail price) in such a manner that such disproportionate margin renders the competitors uneconomic[5]. For instance, let us consider an undertaking existing in market for a suffice long time. Being in a market for a long time provides the undertaking with an opportunity to establish control or monopoly over the input or the raw material. Now suppose this undertaking vertically integrates (Vertical Integration is referred to as integration of one firm with another firm, both of them being at different levels of the supply chain. For instance, merger between a manufacturing undertaking and a supplier undertaking) with another firm, as a result of which it exhibits bottleneck or natural monopoly over an input essential to produce the downstream product such that there is no other substitute for such input. Also such undertaking has an influential position in the downstream market. Now such undertaking becomes the sole operator determining the price at which the other competitors shall buy the essential input. Obviously, the integrated firm will sell the input at an exorbitant high price. The other competitors left with nil options have to buy the input at the determined high price, thus inflating their cost of production. This situation worsens when the integrated firm reduces the price of the downstream product as a result of which the other rivals are thrown out for being unable to compete with such low price in the downstream market making the product specific costs unrecoverable. Thus, leading to the establishment of monopoly of the vertically integrated firm in both the upstream and the downstream market. Once the firm acquires monopoly, it can very

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[4] Niamh Dunne, 'Margin Squeeze: Theory, Practice, Policy' (March 2011) <https://www.mendeley.com/research/margin-squeeze-theory-practice-policy/> accessed 20 February 2016

[5] Aynur Gulcu, 'Margin Squeeze Abuses within the scope of EC Competition Law and Telecommunications Regulations' (Master thesis, University of Essex 2008)

well rise the price of the product making enormous profits, recoup the losses that might have occurred (while lowering of the price of the downstream product) and thus, prejudicially affect the interests of the consumers.

This is also referred to as the vertical exclusion with the upstream dominant undertaking excluding the rival firms in the downstream market[6].

Hence, the essential conditions for margin squeeze abuse can be summarized as under :

1. ***Vertical Integration*** : For the margin squeeze abuse there has to be a vertical integration i.e. integration of the one firm with another firm, both of them being at different levels of the supply chain or operating in different markets of the same supply chain. For instance, merger between a manufacturing undertaking and a supplier undertaking. The crucial point is that the upstream dominant undertaking must be also the one competing in the downstream market.
2. ***Dominant in the upstream market*** : The vital input for the production of downstream product is made by the integrated firm and has no good substitutes. Because if the economic substitutes are available than the rival firms can have access to the input without being highly charged. Also this input costs must constitute a significant proportion of the final downstream product costs to constitute margin squeezing.
3. Have sufficient market power, not necessarily dominant[7], in the ***downstream market with perfect competition*** i.e. the downstream products of the rivals and the integrated firm must be substitutes of each other.
4. ***Duration*** : For Margin squeeze abuse to fulfill its objective, it must be practiced for a suffice duration. As shorter duration will not result in the exclusionary effect[8].

1.1 Kinds of margin squeezing :

Margin squeezing can be implemented from three different sides i.e. upstream, downstream or both.

- ***Increasing the wholesale prices***

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[6] ibid

[7] Liam Colley and Sebastian Burnside, 'Margin Squeeze Abuse' (2006) 2 Eur. Competition J. 185

[8] Gulcu (n 6)

As mentioned in the example, the vertically integrated firm exhibiting monopoly or near monopoly in respect of the raw material necessary for the production in the downstream market increases the wholesale price for the rivals. With no near substitute available, it becomes mandatory for the rivals to buy it from them at high prices. This is similar to refusing the deal or vertical foreclosure etc.[9]. Here, while the integrated undertaking charges high prices to others, it charges low prices to its own downstream partner. Also as the downstream price remains profit maximizing, this type can be more propitious.

- ***Reducing the retail prices***

In this, the wholesale price remains constant while the retail prices are reduced (like priced below marginal costs) to drive out competition in such a manner that the difference between the retail & wholesale price is negative. It is more problematic when the integrated firm is in a position to fulfill the enhanced demand and switching costs is low[10]. Here, the firm might reduce its profit margin or even incur short term losses which may be recovered later after making the other rival firms incompetent to compete. This is similar to the process of profit sacrificing[11] or predation[12]. However, there are significant differences between predatory pricing (Predatory pricing means when the firm prices the product at such a low price in order to drive out the competitors from the market) and margin squeezing that are discussed in the fourth chapter.

- ***Reducing the profit margin (combination of the above two)***

The third kind of squeeze margin is when the vertically integrated firm reduces the margin between the wholesale and retail prices i.e. the profit margin is kept low. The wholesale prices are enhanced while the retail price is reduced. Further, there can be a situation in which the integrated firm charges higher wholesale and retail prices and yet make the rivals economically unviable. For instance, assume that the cost at which the input and downstream product is produced by the integrated firm is 12 and 6 respectively. So the final price of the product shall be 18. Now, even if the other rival firms were competent enough to produce the downstream product at the same cost of 6, the final price of the product would depend on the price of the

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[9] ibid

[10] ibid

[11] Koziel (n 3)

[12] Colley & Burnside (n 8)

input as charged by the dominant firm. Assuming the wholesale price is 15, their final price shall be 21 which is way too much more that of the integrated firm. Even if the integrated firm's downstream partner sells the product at 20, the rival undertaking's price shall be higher. Further, the integrated firm can't be charged with predatory pricing or excessive pricing (Excessive pricing means when market power or monopoly of a firm enables a firm to fix higher prices for the product, higher than the competition levels)

1.2 Determination of Margin Squeezing

Margin squeeze abuses are not easy to determine. These tests are required to be comprehensive[13]. In general, various tests may be performed to determine the abuse and anti-competitiveness after the initial conditions are fulfilled:

- ***The profit sacrifice test*** : It is based on the assumption that a firm will be willing to sacrifice their present profit only when they are assured of future profits on the exclusion of the rival firms[14].
- ***No economic sense test*** : This test has come up recently and laid down by the US judiciary in Trinko case[15]. This test is based on the fact that whether the firm's conduct is justified having economic sense or it is to foreclose the competitors.[16]. If the firm does an act to drive out competition for only its own economic benefit, then the liability arises[17]. This test is not applicable in case of short-term profit sacrifice as it is distinguished from the other tests[18].
- ***Consumer Welfare Balancing Test*** : This test has been applied in various cases in EU and US which deals with conduct that hampers the consumer's interest. The liability

[13] Colley & Burnside (n 8)
[14] OECD, 'What is Competition on the Merits?' (Policy Brief, 2006) <http://www.oecd.org/competition/mergers/37082099.pdf> accessed 21 February 2016
[15] *Verizon v. Trinko* 540 U.S. 398 (2004)
[16] OECD (n 15)
[17] ibid
[18] Gregory J. Werden, 'The "No Economic Sense" Test for Exclusionary Conduct' [2006] J. Corp. L. 293

arises when the firm reduces output and increases price without enhancing its own efficiency[19]. ICC suggests applying this test along with the other tests such as profit sacrificing and equally efficient test to determine the abuse of dominance[20].

- ***Equally efficient firm test*** : This test is employed to determine if the conduct of the firm is capable of eliminating competitors who are equally efficient as the abusive firm[21].

However, all these tests may not be necessarily useful in respect of margin squeezing. For the purpose of determining the margin squeeze several imputation tests may be applied as discussed below :

Imputation test : This test is employed to determine whether there is any resultant profit in respect of the implementation of the pricing policy of the integrated firm. EC Access Notice (Access notice dealt with problems and procedures to be implemented after the liberalization of the telecommunication sector) provides two methods for the purpose of determining the margin squeeze abuse :

1. ***Equally efficient operator test*** : For competition to be on merits, eliminating less competitive firms is permissible but if the conduct eliminates equally efficient firms, then it needs to be regulated. Here, the costs of the incumbent firm are taken into consideration for assessing the margin abuse[22]. The test is to determine whether the downstream partner of vertically integrated firm charged with the same wholesale price as the other rival firms is able to generate profits. If it is unable to do so or is utilizing the wholesale revenues for performing downstream operations, the margin squeezing is said to be taking place.
2. ***Reasonably efficient operator test*** : In this test, the costs and data of the rival firms is considered and not the incumbent firm[23]. It is employed to determine if the other rival firms that are reasonably efficient in the market are in a position to make a decent profit margin on the payment of the wholesale charges as demanded.

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[19] OECD (n 15)
[20] Gulcu (n 6)
[21] OECD (n 15)
[22] James Allen, 'Introducing Analysys Mason Expertise in margin squeeze' (2010) <http://www.analysysmason.com/PageFiles/16865/Analysys%20Mason%20Expertise%20-%20Margin%20Squeeze%20%5BRead-Only%5D.pdf> accessed 16 February 2016
[23] ibid

Both of these tests can be applied at any time either before the downstream product enters the market or after a complaint has been filed with the regulatory authorities[24]. However, pre-launch application can be tedious and inaccurate on account of market estimations, hypothetical models etc.[25] While determining margin squeeze abuse in respect of certain markets, it is essential to take into account the relevant timeframe[26].

After the application of the tests, with regard to the *exclusionary effect*, it is not essential that the firms must have been excluded or forced out of market for the authority to take action[27]. One of the reasons may be that there is no guarantee of any re-entries during the recoupment period[28]. Hence, the conduct need not have an exclusionary effect. This is further supported by the decisions of EU discussed in the following chapter.

2. APPROACHES TO MARGIN SQUEEZE : EU, US & INDIA

The origin of the concept of Margin squeeze in both the EU and US can be traced back to "constructive refusal to supply"[29]. Both of them have recognized the market strategy of margin squeeze. As it is already emanated that certain dominance is integral for the conduct of prize squeezing, this is dealt under the abuse of dominance within the competition law regimes.

2.1 European Union

Article 102 of TEFU emanates and prohibits the practices that might be undertaken by the dominant firms adversely affecting the competition[30]. Margin squeezing is a conduct having the potential of infringing this article. Initially it was the Article 82 of EC dealing with the abuse of

[24] Shouvik Kr. Guha & Shriyani Dutta, ‘When competition and communication meet – The Susceptibility of the Telecommunications Sector to Margin Squeeze Abuses’ (2014) 3 JTBL 91
[25] ibid
[26] ibid
[27] Colley & Burnside (n 8)
[28] ibid
[29] Kathryn McMahon, 'The Regulation of a Margin Squeeze in the European Union and the Intersection of Competition Law and Sector-Specific Regulation' (2014) 10 Comp. L. Rev. 167
[30]TEFU, sec 102

dominance[31]. After the liberalization in EU, it was in the access notice that the EC referred to the margin squeeze for the first time[32] as discussed above. In EU, judiciary had very well considered the margin squeezing as an abuse of dominance but the Commission in 2009 emanated it to be a form of constructive refusal to deal in its guidance on the application of Article 82 of EC[33].

The case laws in EU in respect of Margin Squeeze can be traced back to 1976 in the case of *National Carbonizing*[34] where it was alleged that the monopolistic and the dominant National Coal Board in the downstream and upstream market respectively was involved in the pricing practices. Though no abuse could be established but it can be inferred that the court set forth the probability of considering the act of the firm having suffice control over the input under the refusal to supply (generally the firms have the autonomous power to deal/ do business or not with anyone they are willing but certain times for the purposes of the maintenance of the effective competition in the market, this power is regulated by the legal regimes as the refusal to supply can hamper competition and violate the legal principles. This can be further understood in terms of 'essential facility doctrine' which mandates such firms to provide the bottleneck input at a certain reasonable price to other competitors). In another case[35] in 1988, British Sugar was accused and found guilty of practicing margin squeeze. However, till then margin squeeze wasn't considered to be a standalone abuse. The liability was incurred on the basis of determining whether there was an excessive wholesale price or predation.

The period before the liberalization of the telecommunications witnessed lesser cases of prize squeeze abuse but after the liberalization, there was a dramatic increase in such cases in the telecommunication sector and was the development of the concept of margin squeeze as a separate abuse.

Deutsche Telekom[36] is a significant case in respect of Margin squeeze where DT's conduct was declared to be abusive and violative of Art 102 of TFEU. DT was under a regulatory obligation to provide the local loop to the other competitors at a determined wholesale price, and

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[31] Guha & Dutta (n 25)
[32] Johannsson (n 2)
[33] ibid
[34] Ariel Ezrachi, *EU Competition Law: An Analytical Guide to the Leading Cases* (4th edn, Hart publishers 2014)
[35] *Napier Brown v British Sugar* (1988) OJ L284/41
[36] T-271/03 *Deutche Telekom AG v. Commission of European Communities* [2008] ECR II-000

at the retail level, the retail price of the narrow broadband connection was regulated while DT could charge ADSL at their own discretion. Accused of depreciating the margin, DT was found to be abusing its position by the Commission on the basis of the retail prices set by them and not the excessive wholesale price[37]. It was held that the price spread between the wholesale and retail price was unsuitable and that the retail price of the service by DT hampered competition. Also this decision was upheld by the Court of first Instance (Now the General Court, GC) and by the ECJ. This was the first time when margin squeeze was given the status of a separate abuse and price squeezing was dealt by court in the regulated market.

Another recent case is the *Telefónica*[38] where the firm was found to be dominant in both the upstream and downstream market and practicing pricing strategy. Thus, abusing its position from 2001 to 2006. Fine of €152 million was imposed by the Commission and upheld the General Court and CJEU. In this case also, the firm was under a regulatory obligation at the wholesale level.

In *TeliaSonera*[39], the facts were similar to Deutsche Telekom but the only difference was that the upstream market not being a regulated one didn't impose any obligation on TeliaSonera to provide the indispensible input at rival's expectation and the conduct was voluntary. It was held by ECJ that margin squeeze could occur even if the concerned firm is not obliged to provide access to the downstream rivals[40]. This has broadened the scope of margin squeeze abuse. Though not in line with the Commission's guidance and Advocate general’s opinion which was that margin squeeze is a form of refusal to deal, the independent character of this abuse was confirmed[41].

Hence, the following conclusions can be made at form the above recent judgments:

- Margin squeeze is considered to be a standalone abuse and it is immaterial if it is under any regulatory obligation or not.

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[37] ibid
[38] T-336/07 *Telefonica de Espania SA v. European Commission* [2012] ECR II-nyp
[39] C-52/09 Konkurrensverket v. TeliaSonera [2011] ECR I-527
[40] Freshfields Bruckhaus Deringer, 'TeliSoneria : ECJ defines margin squeeze infringement broadly' (Februrary 2011) <http://www.freshfields.com/uploadedFiles/SiteWide/Knowledge/TeliaSonera-%20ECJ%20defines%20margin%20squeeze%20infringement%20broadly.pdf> accessed 22 February 2016
[41] ibid

- Huge fines shall be imposed on the firms indulged in margin squeezing whether in a regulated or unregulated market.

2.2 Unites States

In US, Section 2 of the Sherman Act 1890 penalizes the act of monopolizing trade as well as the attempt of the same[42]. This section is employed to deal with the cases of prize squeeze as the vertically integrated firm implements the commercially viable strategy to wipe out the rivals from the market and thus, to establish monopoly.

The first case to deal with price squeezing in US was *Alcoa case*[43] where it was recognized as an antitrust liability. It was held that Alcoa on account of its monopolistic power sold the ingot to the rivals at a price that can't be considered to be a fair one and itself sold the sheet in the downstream market at such a low price such that it was impossible for the rivals to make a living profit[44]. It was considered violative of art 2 as unlawful monopolistic conduct. In 1990 there was another case where the judge agreed partially with the fact that margin squeeze can infringe Sec 2 in cases of unregulated market[45].

The significant case in this behalf was the *Trinko case*[46] in 2004, in the telecommunication sector, which was on refusal to deal but its explanation was well applicable in the case of margin squeeze. In this case, it was alleged that Verizon, the dominant in the upstream market with a regulatory obligation to permit others access to support services didn't provide the required assistance[47]. The court held that the insufficient service couldn't be equated to refusal to deal by emphasizing on the voluntary previous dealings which were absent in this case[48]. Also Venzon was dictated by regulation rather than determining the terms of agreement them self. Trinko

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[42] U.S. Code, sec 2
[43] *United States v. Aluminum Co. of America* 377 U.S. 271 (1964)
[44] ibid
[45] McMahon (n 30)
[46] *Verizon v. Trinko* (n 16)
[47] ibid
[48] ibid

holds that no antitrust duty or additional duties can be imposed apart from those provided by the comprehensive rules.

In 2009, opportunity was given to the US judiciary to step up and elucidate law in respect of margin squeeze in the *Linkline case*[49]. AT&T controlled the DSL access to the other rivals and also competed with them at the downstream level. It was mandatory for AT&T to provide the access until 2005 and after that they were required to sell it to an independent firm at a wholesale price that shall not be more than their own retail price in the downstream market. It was alleged that they indulged in act of margin squeezing. The two aspects were dealt separately. In respect of wholesale price, the court relying on the same explanation as in the Trinko case concluded that there wasn't any antitrust duty on the defendants to provide the input at a reasonable/favoured price and so there was no violation of the Sherman Act[50]. Further, in respect of the retail price also it was concluded by the Court that the firm wasn't indulged in the conduct of predatory pricing[51].

Hence, after the above decision it can be concluded that in US :

- the liability for margin squeeze is not determined separately but on the basis of already existing rules and regulation of refusal to deal and predation. Margin squeeze is not given the status of separate abuse of dominant position. Hence, after the *linkline case*, claim under sec 2 of the Sherman Act has been diluted and is questionable.
- There has to be antitrust duty to deal (if there is no antitrust duty to deal then there is no need to deal in a way which is commercially advantageous for the competitors) and predatory pricing at the downstream level to prove margin squeezing.

2.3 India

As mentioned above, for margin squeezing there is a pre requisite condition of having a dominant position in the concerned market. Abusing this dominant position is prohibited under the Competition Act 2002. Section 4 of the Competition Act 2002 describes the conducts that lead to abuse of dominance. Section 4(2)(e) provides that there shall be abuse of dominance if

[49] *Pacific Bell Telephone Co. v. linkLine Communications, Inc.,* 555 U.S. 438 (2009)
[50] ibid
[51] ibid

the enterprise "*uses its dominant position in one relevant market to enter into, or protect, other relevant market*". This is the provision where the abusive conduct of the firm is to be punished, having control over the inputs and its supply, charging high price in this market and low price in the downstream market for the purpose of protecting their interests in the downstream market where it is active.

Further, the Competition act 2002 has empowered the commission with wide authority for the protection of competition in the markets. With this wide power they can determine the ways to curb margin squeezing and determine the relevant tests to deal with the same.

3. MARGIN SQUEEZE AS A STANDALONE ABUSE

According to the author, margin squeeze must be considered as a standalone abuse separate from the predation, excessive pricing. Though there are significant similarities between them but even are the differences.

- Excessive pricing means when market power or monopoly of a firm enables a firm to fix higher prices for the product, higher than the competition levels. It is an exploitative abuse whereas margin squeezing is an exclusionary abuse[52]. Also in case of excessive pricing, the supplying costs of the firm's concerned product in relation to the other similar product is taken into account to determine the abuse while in case of margin squeezing the price is excessive in respect of the profit margin in the downstream market[53].
- Predatory pricing means when the firm prices the product at such a low price in order to drive out the competitors from the market. The difference between the two lies in the basic fact that while margin squeezing requires the firm to have an active role in both the downstream and upstream market, the same is not in the predatory pricing[54]. Further in predatory pricing, the firm undergoes a loss during the early periods and then there is the recoupment of loss in the later period[55]. While in the other case, the firm necessarily might not undergo any losses as it makes upstream profit, thus, the recoupment takes place

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[52] Geradin & O'Donoghue (n 4)
[53] ibid
[54] Fernando Diez, 'Telecoms Regulation, Antitrust and Margin Squeeze: Widening the Already Wide Gap between US and EU Competition Policy?' (2011) <http://ssrn.com/abstract=1828723> accessed 25 Feb 2016
[55] Geradin & O'Donoghue (n 4)

simultaneously[56]. Predation always benefits consumers (atleast for a short term) while that is not necessary in case of margin squeezing[57].

- The difference between refusal to deal and margin squeeze is an obvious one: the former conduct entails outright refusal to deal with a downstream costumer while the latter conduct entails dealing on terms that may be disadvantageous for the competitor. Thus, refusal to deal means when the firm completely refuses to deal with the downstream competitors. Thus, excluding them from the downstream market. However, in case of margin squeezing, the concerned enterprise does deal with the rivals but such dealing being disadvantageous results in eventual exclusion from the market.

3.1 Existing issues in margin squeezing

- Margin squeezing becomes difficult to be detected in case of emerging markets[58]. For instance some of the problems with the emerging markets is the less reliable data, lack of adequate information on costs etc. Telecommunication being one of the emerging markets is posed to the same threat.
- Whether for the conduct to be abusive, is it necessary to show the anti-competitive effects or not ?[59] While in EU, it is considered to be per se violative, the US judiciary has diverted its path here.
- Ex ante and ex post regulation : One of the major issue existing in respect of margin squeeze is the overlapping of the ex ante and ex post regulation[60]. The ex ante regulation are more intervening as compared to the other. Further, not only the market definition but the analysis, tests, remedies may also be different[61]. The problem is that both of them may be dealing with the same subject matter, thus leading to a dilemma of which one should be employed to

[56] ibid
[57] ibid
[58] Gulcu (n 6)
[59] ibid
[60] Manuel Kellerbauer, 'The Commission's new enforcement priorities in applying article 82 EC to dominant companies' exclusionary conduct: A shift towards a more economic approach? (2010) 31(5) ECLR 175
[61] Gulcu (n 6)

address the concerns[62]. Another one is the existence of various authorities under the different regulations, all capable of dealing with the issues[63]. The third issue is that while one authority might be competent to apply ex ante regulation, the other may be competent to apply only antitrust regulations[64]. For instance, in India while the telecom regulatory authority can apply only the telecom regulations, the Competition Commission of India can apply the competition rules only.

CONCLUSION

A vertical integration is not a problem per se. It is beneficial in various ways such as reducing not only the transaction costs but also the regulation's impact. However, it poses a problem when the vertically integrated firm abusing its market power provides the essential input at a price which results in foreclosing rivals at the different levels of supply chain. This is referred to as margin squeezing. Thus, in margin squeezing, the vertically integrated firm averts the other downstream firms from maintaining their price-cost margin. This is a matter of worry for the competition regulatory authorities. However, on the other side it is contended that there is no incentive for the vertically integrated firm to undergo price squeezing as in this process it even loses its customers in the upstream market which means it is not a worrisome issue[65]. Also, it is argued that consumer welfare is not the result of combating prize squeezing, as one remedy to curtail price squeezing is by increasing the retail price which is detrimental to the consumers[66].

Margin squeezing is not an easy issue to deal with. Especially the rising practice of margin squeezing in the telecommunication sector demands severe attention to curb all the existing issues in respect of margin squeezing. The uncertainty, difference in approaches, plethora of different tests that may be employed, the interface in the sector-specific and antitrust regulations

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[62] Geradin & O'Donoghue (n 4)
[63] ibid
[64] ibid
[65] D.W. Carlton, 'Should "Price Squeeze" be a Recognized Form of Anticompetitive Conduct?' (2008) 4(2) J. Comp. L. & Econ. 271
[66] J.G. Sidak, 'Abolishing the Price Squeeze as a Theory of Antitrust Liability' (2008) 4(2) J. Comp. L. & Econ. 279

leads to non-uniformity. The latter issue being the major hindrance in dealing with the margin squeezing requires the utmost attention. Cooperation between the two is imminent to effectively curb margin squeezing[67]. Also the divergent approaches further lead to uncertainty and lack of uniformity. While EU considers margin squeeze as a standalone abuse, relevant in every sector, United States has curtailed the application of the same to the predatory pricing in the downstream market.

In telecommunications, scarce resources and not many operators existing, makes it naturally difficult for the new entrants to enter the market[68]. Further, the incumbents trying to drive out the competitors by regulating prices hampers the competition on merits. Therefore, it is important to intervene before the entrants are excluded for the better competitive market situation[69].

[67] Guha & Dutta (n 25)
[68] Gulcu (n 6)
[69] ibid