

1. Supreme Court dismisses the Special Leave Petitions filed by Amazon and Flipkart against the order of Karnataka High Court Order, paving way for Competition Commission of India Probe

The Supreme Court of India has dismissed the Special Leave Petitions filed by Amazon Seller Services Pvt. Ltd. ("Amazon") and Flipkart Internet Pvt. Ltd. ("Flipkart"), against the order of Division Bench of the Karnataka High Court ("Kar HC") dismissing the writ petitions by Amazon and Flipkart with a prayer to quash a probe ordered by the Competition Commission of India ("CCI"), to probe into alleged anti-competitive practises by them.

The CCI by its order dated 13 January 2020 had directed an investigation under Section 26(1) of the Competition Act, 2002 ("the Act") by the Director General against Amazon and Flipkart. Against this, the said e-commerce companies, filed writ petitions before the Kar HC, which were dismissed on 11 June 2021. Against this order, writ appeals were filed before a division bench of the Kar HC, which were also dismissed.

The Supreme Court by its order dated 9 August 2021 held that there was no reason to interfere with the impugned orders passed by the Kar HC dismissing the writ appeals of the petitioners. Thus, the Supreme Court has paved way for the CCI probe.

[Case: *Flipkart Internet Private Limited. & Anr. vs. Competition Commission of India & Ors., Petition for Special Leave to Appeal (C) No.11558/2021 with SLP(C) No. 11615/2021. Order dated 9 August 2021. The full text of the order may be accessed here*]

2. CCI dismisses a complaint by Meru alleging abuse of dominance by Uber, given significant competition by Ola

The CCI has dismissed a complaint by Meru Travel Solutions Pvt. Ltd. ("Meru"/"Informant") alleging that Uber India Systems Pvt. Ltd. & Ors. ("Uber"/"OPs") had contravened the Act by indulging in predatory pricing with an intention to drive out its

competitors like Meru, thereby abusing its dominant position.

As per the Informant, owing to its dominant position, Uber adopted certain abusive practices, which inter-alia included offering unreasonable discounts to the customers leading to low/predatory prices. Further, as per the Informant, Uber employed an incentive policy which was not economically justified, and it was only aimed at exclusively engaging the drivers to its network so as to exclude its competitors having access to such drivers, thus violating Section 4(2) and 3(1) of the Act.

The CCI after considering the submissions and the Director General's ("DG") Investigation Report, observed that the relevant market was the market for 'Radio Taxi services in Delhi NCR'. The CCI further observed that given the highly competitive market with fluctuating market shares of Uber and Ola, Uber was not dominant in the relevant market. It was also observed that despite the alleged practices of Uber, which have been argued to be anti-competitive, Ola had grown in the market in almost equal measure and the competitive constraints posed by Ola and Uber on each other outweigh the anti-competitive effects alleged by Meru.

As regards, the exclusive contracts with the drivers, the CCI observed that the impugned conduct of exclusivity of drivers to the cab aggregator platform through an 'agreement' driven by incentives did not meet the legal test of an exclusionary agreement causing an appreciable adverse effect on competition ("AAEC") in this particular case.

Accordingly, the CCI did not find merit in the argument of Meru that the incentives and rating mechanism adopted by Uber for its driver partners led to any AAEC in the market. The CCI accordingly closed the case.

[Case: *Meru Travel Solutions Pvt. Ltd. vs. Uber India Systems Pvt. Ltd. & Ors., Case No. 96 of 2015. Order dated 14 July 2021. The full text of the judgment may be accessed here*]

3. CCI imposes Rs. 200 Crores penalty on Maruti Suzuki India Ltd. for anti-competitive conduct

The CCI has imposed a penalty of Rs. 200 Crores on Maruti Suzuki India Ltd. ("Maruti") for indulging in Resale Price Maintenance ("RPM") by imposing a Discount Control Policy ("DCP") on its dealers. CCI also directed Maruti to cease and desist from continuing with such conduct.

The present case was taken up *suo motu* by the CCI based on an anonymous e-mail received from a purported Maruti dealer, wherein it was, inter alia, alleged that Maruti sales policy was against the interest of customers as well as the provisions of the Act. It was alleged that the dealers of Maruti in the West-2 Region (Maharashtra State other than Mumbai & Goa) were not permitted to give discounts to their customers beyond that was prescribed by Maruti, in the announced 'consumer offer', and if a dealer was found giving extra discounts, a penalty was levied upon by Maruti. It was further alleged that a cartel was formed by Maruti within the dealerships, which was a policy of Maruti. Further, similar DCP was implemented by Maruti across India, specifically in cities where more than 4 to 5 dealerships operated.

The CCI after considering the submissions by Maruti and the DG Investigation Report, noted that Maruti not only imposed the DCP on dealers, but also enforced the same by monitoring dealers through Mystery Shopping Agencies, imposing penalties on them and threatening strict action like stoppage of supply, collection and recovery of penalty and utilisation of the same. The CCI concluded that the imposition of maximum discount limits by Maruti upon its dealers amounts to RPM within the meaning of Section 3(4) of the Act. Further, it was held that the RPM enforced upon the dealers by Maruti led to denial of benefits to the consumers in terms of competitive prices being offered by Maruti dealers. In addition, such arrangements perpetuated by Maruti restricted intra-brand competition amongst Maruti dealers, as it impaired their ability to compete with respect to prices in the sale and distribution of Maruti brand cars and also leads to the lowering of inter-brand competition in

the passenger vehicles market. The CCI also observed that the arrangement/agreement put in place by Maruti also resulted in creation of barriers to new entrants/dealers in the market as the new dealers would take into consideration restrictions on their ability to compete with respect to prices in the intra-brand competition of Maruti brand of cars.

[**Case:** *In Re: Alleged anti-competitive conduct by Maruti Suzuki India Limited in implementing discount control policy vis-à-vis dealers. Suo Motu Case No. 01 of 2019. Order dated 23 August 2021.* The full text of the judgment may be accessed [here](#)]

4. CCI find Grasim Industries Limited to have abused its dominant position

The CCI has found that Grasim Industries Limited ("GIL") abused its dominant position by charging discriminatory prices to its customers, denying market access and imposing supplementary obligations upon its customers in violation of Section 4 of the Act.

In this case, three information were filed in the year 2017 against GIL alleging, inter alia, contravention of the provisions of Sections 3(4) and 4 of the Act. It was alleged that GIL did not disclose its discount policies, provided differential treatment to customers, contractually forced its customers to disclose information like production and export as a precondition for supply and discounts etc. It was also alleged by the Informants that GIL had withdrawn / delayed sales terms (credits / discounts) and refused to supply Viscose Staple Fibre ("VSF"), resulting in a wipe-out of business of one of the informants.

CCI held that GIL, being a dominant entity, manufacturing and supplying an indispensable input/raw material to downstream domestic spinners, is entrusted with a special responsibility not to discriminate amongst its buyers. Accordingly, the CCI held that such conduct of GIL was unfair and discriminatory in violation of Section 4(2)(a)(ii) read with Section 4(1) of the Act.

The CCI further held that GIL had abused its dominant position in the relevant market of 'the market for supply of VSF to spinners in India' by

charging discriminatory prices to its customers, denying market access and imposing supplementary obligations upon its customers in violation of the provisions of Sections 4(2)(a)(ii), 4(2)(c) and 4(2)(d) read with 4(1) of the Act. The CCI further directed GIL to cease and desist from indulging in such practices, which were found to be in contravention of the provisions of the Act.

[Case: *Informant (Confidential) vs. Grasim Industries Limited (GIL), Case No. 51 & 54 of 2017. Order dated 6 August 2021. The full text of the judgment may be accessed here*]

5. CCI dismisses complaint filed against Siemens Limited and Ors. filed by Star Imaging and Path Labs alleging violation of Section 3(4) and Section 4 of the Act

The CCI has dismissed a complaint filed against Siemens Limited, Siemens Aktiengesellschaft (Siemens AG) and Siemens Healthcare Pvt. Ltd. ("OPs"), by Star Imaging and Path Lab Pvt. Ltd. and Janta X-Ray Clinic Pvt. Ltd. (collectively "Informants") alleging violation of Section 3(4) and Section 4 of the Act.

The Informants are involved in providing diagnostics and pathology lab services in Delhi. They had purchased CT Scan Machines and MRI Machines (Machines) from the OPs and alleged that the OPs imposed unfair and discriminatory conditions on the use of Machines. As per the Informants, the OPs used various tactics to exploit the allegedly locked-in consumer status of Informants, and such acts, inter alia, included the encrypted protection of the machinery/equipment, which restricted the choice of aftersales provider, excessive pricing charged for the spare parts and option of upgrading the equipment by charging exorbitant prices. The Informants also claimed that OPs were charging different customers different prices, which was an abusive conduct in violation of the provisions of the Act.

The CCI after considering the submissions, held that in the present case, for determination of the issues, there was no requirement of defining precise relevant markets. Further, given the fact that the Informants had the ability to undertake the whole life cost analysis

of buying both the CT scan machines as well as the MRI machines before and at the time of purchase, only a unified systems market was required to be defined.

As regards dominance and abusive conduct, the CCI held that the Informants were not able to demonstrate that at the time of purchase of respective machines (being the subject of the present information) nor at the time of alleged abusive conduct of Ops, there were no alternatives available from other manufacturers. The CCI further held that rather, the Informants were having MRI and CT scan machines of other manufacturers, which they had employed in their path lab for use in diagnostic services.

The CCI also held that OPs were not in a dominant position, in view of the significant presence of other players in the markets. The CCI further highlighted the availability of spare parts and after sales services through various Independent Service Operators.

The CCI accordingly held that there was no *prima facie* case under Section 3(4) and Section 4 of the Act, and the information filed was closed.

[Case: *Star Imaging and Path Lab Pvt. Ltd. & Anr. vs. M/s Siemens Ltd. & Ors., Case No. 06 of 2020. Order dated 13 August 2021. The full text of the judgment may be accessed here*]

This update is intended merely as an announcement to highlight recent developments. The information is general and should not be considered or relied on as legal advice.

For any further enquiries, please contact the following:



Sita Khosla
sita@duaassociates.com



Gautam Shahi

gautam@duaassociates.com



Nirvaan Gupta

nirvaan@duaassociates.com



Prashant Kumar

prashantkumar@duaassociates.com