



CCLP

Centre for Competition Law and Policy

NATIONAL

The CCI dismisses allegations of anti-competitive conduct against Amazon

The Competition Commission of India (“CCI”) has dismissed allegations of anti-competitive conduct against Amazon Seller Services Pvt. Ltd. (“OP”). The informant, Lifestyle Equities C.V, the proprietor of the brand Beverly Hills Polo Club (“BHPC”), had alleged that OP had abused its dominance in the market of ‘online fashion retail in India’. The informant submitted that it only sells its products through its own website, and OP-1 is selling counterfeit/unauthorized products with the informants’ BHPC Brand at unfair and discriminatory prices. This has led to diversion of online traffic from the informant’s website. The informant had further alleged that the agreements entered by OP to sell such unauthorised products, and give preferential treatment to certain sellers and enter into exclusive arrangements with certain brands, are in violation of Section 3(4) of the Act. The same has created significant entry barriers, and foreclosed the market for other competitors. The CCI defined the relevant market as ‘*market for services provided by online platforms for selling fashion merchandise in India*’, and concluded that OP-1 is not dominant therein. However, the CCI has noted that even though it is restricted

from delving into the abuse of dominance allegations, “*the issue of counterfeit may be addressed through other regulatory instruments in view of the adverse implications it has on sellers and buyers in general*”. Further, regarding the allegations under Section 3(4) of the Act with respect to exclusive arrangements, deep discounting and preferential listing, the CCI has noted that there are no exclusive tie ups between platforms and fashion brands and there are plenty of channels of intermediation available for fashion brands, sellers/retailers and consumers.

Source: [Case No. 09 of 2020.](#)

The CCI dismisses allegations of abuse of dominance against Yamaha Motor Pvt. Ltd.

The CCI has dismissed allegations of abuse of dominance against Yamaha Motor Pvt. Ltd (“OP”). The informant, Mr. Vijay Chaudhry, had alleged that OP had terminated decades long agreement with the informant without providing plausible reasons for the same, causing a loss of approximately ₹66 lakhs due to unsold stock. Moreover, that OP had caused hindrance in the informant’s work by revoking use of its name, restricting financing of the informant’s vehicles, and creating obstructions in the registration of such vehicles. The CCI categorized the relevant markets as ‘*manufacture and sale of scooters in India*’ and ‘*manufacture and sale*

of motorcycles in India'. In this relevant market, OP was not found to be dominant at the relevant time, i.e., 2017, as it had less than 10% market share. Therefore, the CCI *prima facie* found that the case for contravention of Section 4 was liable to be dismissed.

Source: [Case No. 27 of 2020](#).

The CCI approves the acquisition of Nutrition & Bioscience, Inc. by International Flavor & Fragrances Inc.

The CCI has approved the acquisition of Nutrition & Biosciences, Inc. (“SpinCo”) by International Flavors & Fragrances Inc. (“IFF”) under section 31(1) of the Competition Act, 2002 (“the Act”). SpinCo is a company newly formed by DuPont de Nemours, Inc. (“DuPont”) and to which DuPont will transfer its Nutrition & Biosciences (“N&B”) Business. Thus, via the proposed combination, IFF will acquire the sole control over DuPont’s N&B Business.

IFF is a public company based in New York. IFF is active worldwide in the development, creation, and sale of flavours and fragrances that are used in consumer goods industries (such as food and beverage). The N&B Business is active worldwide in the development, production, and marketing of food science, taste, and texture applications, and biotechnology products that are used in various industries, including food and beverage, dietary supplements, home and personal care, animal nutrition and pharmaceutical excipients.

Source: [Acquisition of Nutrition & Bioscience, Inc. by International Flavor & Fragrances Inc.](#)

INTERNATIONAL

The Department of Justice – Antitrust Division issues new manual on merger guidelines

The Antitrust Division of the United States Department of Justice (“DOJ”) has issued a new Merger Remedies Manual (“Manual”). The Manual provides guidelines to remedy anticompetitive mergers, and is a revision to the 2004 Policy Guide to Merger Remedies. The major changes brought in the merger guidelines through the Manual, *inter alia*, are:

- It stresses upon the DOJ’s preference to use structural remedies, such as divestiture, over conduct-related remedies. The Manual outlines the exceptionally narrow instances where conduct agreements may be necessary.
- It lays down the procedure for the DOJ to ensure that the consent decrees are fully implemented. It highlights standard consent decree provisions designed to improve their effectiveness as well as enforcement.
- It identifies the key role of the DOJ’s newly created Office of Decree Enforcement Compliance. The Office will be responsible for overseeing remedies to which companies agree during merger reviews; and will monitor commitments made by companies. If it is concluded that a Party to the merger has violated a consent decree, the DOJ can implement a civil or criminal enforcement action, depending on the nature of the alleged violations.

Source: [DOJ Antitrust Division Issues New Manual on Merger Guidelines](#); [Merger Remedies Manual](#)

Spotify alleges that Apple has abused its dominance through its new subscription bundle offer

Spotify has alleged that Apple Inc. has abused its dominance in the market through the new subscription bundle offer (“AppleOne”) by favoring its own Apple Music service. Spotify has called for “*competition authorities to act urgently to restrict Apple’s anti-competitive behavior, which if left unchecked, will cause irreparable harm to the developer community and threaten our collective freedoms to listen, learn, create, and connect*”. It has claimed that Apple has resorted to “*unfair practices to disadvantage competitors and deprive consumers by favoring its own services*”. Spotify and Apple charge \$10 a month for their streaming music service, but the Apple One package bundles it with other services such as television or video games that start at \$15 per month. Thus, the AppleOne subscription stands to pull more music streamers towards Apple, while other streaming services, including Spotify, stand to lose their customers.

Source: [Spotify criticizes new Apple services bundle on antitrust grounds.](#)

French antitrust authority releases new merger control guidelines

The French Competition Authority (“FCA”) has published new merger control guidelines (“Guidelines”), which has replaced the 2013 Guidelines. The Guidelines provide a better guide and a more transparent system, thus, enabling companies to anticipate the aspects taken into account by the FCA when examining a merger. The Guidelines recall the constraints weighing in on the companies when submitting a merger notification and the behaviours they must adopt during the preparation period for the transaction. Further, the Guidelines identify

transactions which are not, a priori, likely to give rise to competition concerns.

In order to anticipate the forthcoming notification of a transaction, companies can now turn to the Mergers Unit of the FCA with a view to submitting a request for a team to be appointed to review the case. Following this request, the name of the Deputy Head of Unit in charge of reviewing the case is communicated to the notifying party within five working days. Further, the team in charge of the notification will indicate the status of the file (complete or incomplete) to companies, generally, within 10 working days of the notification date. Moreover, the Guidelines specify that the FCA might demand for internal documents from the transacting parties.

Source: [Press Release, ‘The Autorité de la concurrence publishes its new guidelines regarding merger control’](#); [New Guidelines.](#)

Apple is amidst an ‘Epic’ legal battle

Epic Games (“Epic”) has filed a legal suit against Apple after the latter had banned its popular ‘Fortnite’ game and attempted to block Epic from using iOS development tools. Epic has claimed that “*Apple maintains an illegal monopoly on App distribution through its App store*”, and uses that monopoly to impose conditions such as In-App Purchase system (“IAP”), on those who want to reach the iOS market. IAP takes a 30% cut off of all revenue made on iOS. Apple had removed Fortnite from its App Store after Epic Games introduced a direct payment option in the App for its in-game currency, V-Bucks, thus defying the App Store rules. Apple, on the other hand, has claimed that Epic merely wants to use the services, without paying the price for the same, when the price was

disclosed upfront. Epic has claimed that such restrictive conditions lead to closed platforms, thereby stifling innovation.

It is to be noted that the European Commission had opened antitrust investigations against Apple in June, 2020, to assess whether Apple's rules for App developers on the distribution of apps via the App Store violate EU competition rules. The focus of the investigation is on two restrictions imposed by Apple:

- The mandatory use of Apple's IAP for the distribution of paid digital content.
- Restrictions on the ability of developers to inform users of alternative purchasing possibilities outside of the App store.

Source: [‘Fortnite’ maker Epic faces uphill antitrust battle with Apple; Apple and Epic Games Spar Over Returning Fortnite to the App Store.](#)

Amazon Japan pledges to repay sellers nearly \$19 million to settle antitrust probe

Amazon.com Inc.'s Japan unit has pledged to return around ¥2 billion (\$18.8 million) to around 1,400 suppliers. The pledge was part of Amazon Japan' proposed settlement reforms submitted to the Japan Fair Trade Commission (“JFTC”) in late August. With the reform plan approved by the JFTC, Amazon Japan is exempted from penalties and there will be no decision on the merits of the allegations of antitrust violation.

Amazon Japan is said to have forced, since 2016, the suppliers across ten industries, to cover discount costs to continue selling their products through its wide sales network. In addition, the Japan unit requested suppliers pay fees for system usage and marketing costs that amounted to up to 10% of their delivery prices, without

giving detailed reasoning behind the demands. The repayment, which covers up to a three-year period, is unusual for its scale. The company has also vowed to correct the above-mentioned practices in the settlement offer.

Source: [Amazon's Japan unit to return ¥2 billion to suppliers, FTC says](#)