



CCLP

Centre for Competition Law and Policy

NATIONAL

CCI's appeal against Amazon and Flipkart dismissed by the SC

The Supreme Court of India refused to entertain a petition filed by the Competition Commission of India (“CCI”) against an interim stay order given by the Karnataka High Court in the favour of Amazon and Flipkart in the month of February, 2020. The CCI, in the month of January, 2020, had initiated a probe into the alleged anti-competitive activities of Flipkart and Amazon under Section 26(1) of the Competition Act, 2002, on the basis of a complaint filed by Delhi Vyapar Mahasangh. The complaint primarily accused Flipkart and Amazon of allegedly entering into exclusive arrangements with smartphone brands as well as giving preferential treatment, in the form of discounts or listing, to some sellers in the market.

On this basis, the CCI ordered an investigation by the Director General into the matter, which was subsequently challenged by Amazon and Flipkart on the grounds that the CCI did not have the requisite ‘prima facie’ evidence to launch an investigation under Section 26(1) of the Competition Act, 2002. Subsequently, the Karnataka High Court ordered an interim stay on the above-mentioned investigation which was challenged by the CCI in the present dispute.

However, although the Supreme Court rejected the petition, it also observed that in case the Karnataka High Court does not conclusively adjudicate the matter within six weeks, then the petition can be revived and heard by the Supreme Court.

Source: [Supreme Court Dismisses CCI Appeal Against Amazon, Flipkart.](#)

Facebook informs CCI that data-sharing is not the prime purpose of the Jio deal

Facebook has assured the CCI that the \$5.7 billion investment in Reliance Jio will not lead to sharing of the other companies’ data. The data-sharing aspect of the deal will be confined to the extent of facilitation of e-commerce transactions. The agreement between the two entities involves limited data sharing between Facebook-owned WhatsApp and Reliance-owned JioMart. The Master Services Agreement entered into between the business partners of the companies prevent them from using each other’s data for their own commercial purposes or third-party disclosure. The CCI has made pertinent observations regarding the market position of these two businesses. While Reliance Jio owns one-third share of the mobile network users in the telecommunications sector, Facebook is leading the market in online advertisement services. The

CCI has notified the parties that it can scrutinize any anti-competitive conduct resulting from data-sharing in the future under Section(s) 3 or 4 of the Competition Act, 2002. It has warned the entities to refrain from providing unrestricted access to each other's resources.

However, despite these concerns, the CCI has approved the combination under Section 31(1) of the Competition Act, 2002, on the opinion that it is not likely to have any appreciable adverse effect on the competition in India.

Source: [Jio deal to only involve 'limited' data sharing for ecomm transactions, Facebook tells CCI](#); Combination order can be found/accessed [here](#).

CCI dismisses allegations of anticompetitive conduct against importers of Phenol

The CCI by a reference order passed under Section 26(6) of the Competition Act, 2002 ("Act") disposed an information filed against a group of importers together having more than 95% import of Phenol. The Indian Laminate Manufacturers Association ("Informant"), alleged that the opposite parties ("OPs") were colluding to control the prices of Phenol by misusing their dominant status in the market, thus contravening Section 3 and 4 of the Act.

The CCI directed the Director General ("DG") to start investigation under Section 3 but prima facie rejected the alleged contravention of Section 4 of the Act vide order dated 31.10.2017. The DG investigated on the issue as to whether the OPs have colluded to form a cartel and thereby controlling the price of Phenol during January 2016 to March 2016 and submitted a report. The CCI after perusing the investigation report along with the objections forwarded by the Informant

and reply by the OPs held, "*there is no corroborative evidence of anti-competitive agreement or arrangement amongst the OPs*". Albeit, the CCI found a correlation in the prices of Phenol fixed by some OPs in the alleged period, it held that it can't be the result of collusion due to lack of evidence directing to the same. The CCI was, thus, of the view that the OPs have not acted in contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act.

Source: Case No. 61 of 2016. Order can be found [here](#).

CCI dismisses allegations of anticompetitive conduct against Hindalco and Vedanta

The CCI has dismissed allegations of cartelization and bid-rigging filed under Section 19(1)(a) of the Competition Act, 2002 ("Act") against Hindalco Industries Ltd. and Vedanta Ltd ("OPs"). The Informant has alleged that the OPs formed cartels to determine the price of copper products, share the market of certain copper products through customer allocation and engage in bid-rigging in contravention of the provisions under Section 3 of the Act.

The information stated that the OPs enjoy a dominant position in the production of refined copper in India acquiring around 85-90% of the domestic production and around 75-80% of the domestic supply. It was alleged that the OPs issue their price circulars to buyers almost simultaneously, give discounts to their customers on the premium and distribute to certain customers amongst themselves. Further, it stated that the OPs, in addition to cartelizing prices in the open market, have also colluded in respect of supplies to India's defence industry. Therefore, the Informant asserts that the alleged conduct of

the OPs violates Section 3(1) read with Sections 3(3)(a), 3(3)(c) and 3(3)(d) of the Act.

The Commission examined the case based on the information available on record and observed that the available information is not sufficient to support the allegations made against the OPs in terms of price discussion, customer sharing and bid-rigging. Thus, the CCI held that there is nothing on record to prove the contravention of the provisions of Section 3 of the Act and hence, it ordered the matter to be closed under Section 26(2) of the Act.

Source: Case No. 18 of 2020. Order can be found [here](#).

INTERNATIONAL

Google hit by antitrust charges from the DOJ

The Department of Justice of the United States (“DOJ”), in the third week of October, pressed charges against the technology giant Google to preserve its monopoly over its online searches and online advertising. The charges were brought by the DOJ and 11 other states and were filed in the U.S. District Court for the District of Columbia. The officers alleged Google of causing foreclosure of competition in the market of online search by paying billions of dollars to ensure that it has made a default browser in mobile phones, controlling the distribution channels for 80% of the search queries in the United States. Further, other search engine competitors are denied vital distribution, scale and product recognition, ensuring they have no real chance to compete with Google.

Google, on the other hand, denied any such conduct, contending that its platform is intensely competitive and customers are its top priority. It

claimed that people choose Google over other alternatives, not forced to use it.

This is not the first time allegations of anticompetitive conduct have been made against Google. For instance, it was fined by the European Commission for abusive conduct over shopping results, promoting own apps on android software and blocking adverts from rival search engines. However, it is the first of such cases, where such an allegation has been made against it for ousting other competitors in the search engine market.

Source: Justice Department Sues Monopolist Google for Violating Antitrust Laws, available [here](#). Complaint can be found [here](#).

Google- The Elephant in the Room

The technology giant has been facing antitrust challenges throughout the world. Some of them are given below –

South Korea – The antitrust chief of the country said that the country will file a case against Google for undermining competition in the mobile application and operating system market by way of abuse of dominance. Earlier, GPay, the payment app of Google was also brought up for investigation for abusive conduct.

India – An information has been filed before the Competition Commission of India alleging Google of anticompetitive conduct. It is alleged that it has abused, by way of leveraging, its dominant position in the market of e-mail services to consolidate its position in the market of video-conferencing by integrating G-Mail with

Google Meet.

Italy – The Italian Competition regulator has started an investigation against Google over its digital ads. It is alleged that Google uses the vast amount of data it collects through its various services to prevent rivals in the digital advertising market from engaging in effective competition.

The House Judiciary Committee’s Antitrust Subcommittee has issued its report on competition in the digital market concerning the Big-Tech companies.

In an effort to address the prevailing anti-trust issues in the digital market, after a sixteen-month long investigation, the majority staff of the House Judiciary Subcommittee on Antitrust, Commercial and Administrative Law finally released its report titled “Investigation of Competition in Digital Markets” (“the Report”). Subsequent to holding several congressional hearings involving the participation of tech giants and receiving detailed information from the same, the Report emphasizes the role played by the Big Tech companies namely Google, Apple, Facebook, and Amazon in the modern digital economy.

While recognizing the market dominance exhibited by these Big-Tech companies, the Report characterised them as ‘gatekeepers’ to major distribution channels within the digital market. In doing so, the Report criticised the current state of the digital market which is prone to monopolistic practices and anti-competitive conduct of these companies. With the endgame being the restoration of competition and the strengthening of the anti-trust regime in the digital market, the Report makes a host of

legislative recommendations which could potentially mark a turning point in the history of competition law and enforcement.

Source: [Press Release, ‘Judiciary Antitrust Subcommittee Investigation Reveals Digital Economy Highly Concentrated, Impacted By Monopoly Power’](#)

Report can be accessed [here](#).

CMA requests EC to oversee the £31 billion merger between Virgin Media and O2.

A potential regulatory tussle, between the United Kingdom competition watchdog i.e. the Competition and Markets Authority (“CMA”) and the European Commission, was inevitable after the announcement of Brexit. Consequently, the high-profile merger worth £31 billion between Virgin Media and telecoms operator O2 has led to the materialization of this conflict.

According to the CMA, the proposed merger would primarily affect consumers located in the United Kingdom (“UK”) and the effects of such merger were to be felt only after the conclusion of the transition period on December 31, 2020 resulting in the separation of the UK from the European Union (“EU”) and the independent operation of the CMA. In light of these factors, whilst acknowledging the European Commission’s authority in the present matter, the CMA has officially requested the EU competition regulator for permission to review the tie-up between Virgin Media and O2. The primary stakeholders of the merger, Liberty Global and Telefónica i.e. the parent companies of Virgin Media and O2 respectively, have expressed their dissatisfaction at the jurisdictional conflict raised by the CMA as it may lead to a delay in the review process. The European Commission has an initial

deadline of November 15, 2020, to respond to the above-mentioned request by the CMA.

Source: [Press Release, 'CMA requests review of Virgin and O2 merger'](#).