



## NATIONAL

### **The Competition Commission of India accuses Amazon of concealing facts in deal for Future Group.**

The Competition Commission of India [“CCI”] has accused Amazon of concealing facts and making false allegations in its application for approval for an investment in a Future Group unit. The CCI issued a letter in which it alleged that Amazon concealed factual aspects of the deal by not revealing its strategic interest in Future Retail which was the foundation of its relationship with Future Group. CCI has pointed out two irregularities in the submissions made by Amazon. Firstly, the reason for investing in Future’s coupon unit by Amazon was to address gaps in India’s payment industry, however, in some other legal forum, the reason given was certain special rights it acquired over Future Retail. Secondly, CCI was told that Amazon had nothing to do with an agreement that was signed between two Future entities just days before the 2019 deal, however Amazon later claimed before an arbitrator that the agreement was an “integrated part” of the deal.

The allegations by the antitrust regulator can have implications on the legal battle going on before the Supreme Court against the Reliance industries

over the decision of Future Group to sell its retail assets to Reliance.

**Source:** [CCI accuses Amazon of hiding facts in deal for Future unit.](#)

### **The Commission dismisses complaint of anti-competitive behaviour initiated by Meru against Uber.**

The CCI has dismissed cab aggregator Meru's accusations of anti-competitive behaviour against Uber. Meru had accused Uber of providing low-cost trips to clients, and providing incentives to its drivers, with the goal of reducing competition in the cab market. Meru also claimed that Uber executed an agreement with its drivers, prohibiting them from working for any other taxi company.

The defence taken by Uber was that such incentives and agreements were part of the overall network expansion strategy. Further, the idea of giving incentives is to ensure that drivers are available for rides and the customers do not face inconvenience due to repeated cancellations. The CCI opined that the operational efficiency of a cab aggregator is directly proportional to its network strength and therefore, interference in such a matter would be counterproductive. Hence, the CCI dismissed any anti-competitive concerns raised by Meru against Uber.

Source: [CCI dismisses allegations of antitrust violations against Uber.](#)

*How a CCI order can be challenged in the High Court?*

As per the provisions of The Competition Act 2002, an order passed by CCI can not be appealed anywhere until the completion of investigation and once investigation is carried out, the order can be challenged before Competition Appellate Tribunal [“COMPAT”] and it has the right to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission. Further, a person dissatisfied by the direction, decision or order of the COMPAT can appeal before the Supreme Court.

However, at the preliminary stage if a party is aggrieved by the order of the CCI, the order of investigation can be challenged in the High Court despite no appeal being allowed under the Act. The Delhi High Court in the case of *Google Inc. & Ors v. Competition Commission of India & Anr*, cleared this ambiguity and held that parties can now challenge the proceedings even at the initial stage of investigation and seek opportunity of hearing in the absence of appeal provisions.

The Court has ruled that if there is a right to approach the High Court under Article 226, such a substantive right cannot be defeated on the ground that it would cause delay. Therefore, an order of CCI directing investigation can be challenged by a party before the High Court by filing of a writ petition under Article 226 and it shall be maintainable.

**Flipkart and Amazon file an appeal against the Karnataka High Court order in favour of the CCI’s investigation.**

Both Flipkart and Amazon filed separate petitions before the Supreme Court challenging the Karnataka High Court order, which gave a green signal to the CCI to continue the anti-trust investigation against them. Earlier, the High Court had dismissed the E-retailers’ pleas to restrain the CCI from resuming its probe relating to the alleged abuse of market dominance on their platforms on the basis of merit and substance. Further, the Court also noted that the e-commerce firms should not be fearful of the probe if they haven’t breached any antitrust laws.

After trade bodies such as CAIT and DVM alleged that Amazon India and Flipkart were offering deep discounts — which were predatory in nature — to customers, as well as favourable terms to select sellers, the CCI had ordered the probe in January 2020, against both the e-commerce platforms saying it had “prima facie” evidence to begin an investigation under Section 26(1) of the Competition Act, 2002.

However, Flipkart in its appeal has contended that the impugned order is unsustainable in the eyes of law as the CCI must form a prima facie opinion before ordering investigation and no seller agreement was placed on record, so the CCI lacked the jurisdictional facts while considering the information and it did not record its prima facie opinion which is required to initiate the investigation.

**Source:** [Flipkart challenges Karnataka HC order on CCI probe in Supreme Court.](#)

**The CCI concludes the case against Goa Taxi Union's anti-competitive conduct.**

The CCI took up suo moto cognizance against the 'Goa tourist taxi unions' in 2018 based on press reports alleging coordinated effort on their side to hinder the introduction of app-based taxi aggregator businesses, such as Ola and Uber, into Goa. In addition to the press stories, a petition was sent to the Goan Chief Minister for permission to allow the operation of app-based aggregator services. The CCI stated that taxi unions' actions of preventing any app-based service providers from operating in the state amounted to restricting services, reducing competition, technical advancement, and investment in the relevant services. Furthermore, the taxi unions' actions were blocking the State Government from enacting changes that would bring transparency and enhance service delivery. As a result, consumers' choices were limited, in direct violation of Section 3(3)(b) of the Act read with Section 3(1) of the Act. The Commission directed the Director-General (DG) to examine the situation and provide a report. In January 2020, the DG presented a report which pointed out that taxi drivers in Goa were overcharging visitors. The DG said that Ola and Uber, the two popular app-based cab aggregators, sought to enter the industry. However, Uber and Ola were denied market entry due to open protests by taxi unions and safety concerns.

According to the North Goa Tourist Taxi Owners Association, the study was based only on biased opinions, and no attempt was made to conduct an impartial investigation. They point out that the government established a policy for

the aggregators despite their protests and lobbying. According to the Tribunal, except for a few YouTube videos, Facebook blogs, and news articles, no material was put about the conduct of taxi unions engaging in strikes. It was determined that such information was uncorroborated and unauthenticated. The DG also refused to investigate the reasons given by the taxi unions for resorting to strikes, which included higher permit costs, backdoor entry of app-based taxi aggregators, and the installation of speed governors in cabs. The CCI also observed that Goa issued Guidelines for Taxi Operators. These rules allowed app-based taxi aggregators to operate and have range-bound dynamic pricing, which was similar to Ola and Uber's business model. CCI concluded that there was no case of contravention of the provisions of the Act and directed that the matter be closed immediately.

**Source:** [CCI takes suo moto action against anti-competitive conduct of 'Goa Taxi Union' towards app-based Taxi aggregators.](#)

**The Consumer Affairs Ministry proposes certain changes to the Consumer Protection Rules, 2020.**

The government has proposed tightening the rules for ecommerce marketplaces like Amazon and Flipkart, as well as preventing any preferential treatment that these businesses may provide to any of its suppliers, in a draft note produced by the Consumer Affairs Ministry. The Consumer Affairs Ministry's new guidelines aim to prohibit e-commerce companies from conducting "special flash deals". While traditional e-commerce flash sales are not prohibited, particular flash sales or back-to-back offers "which limit customer choice, raise costs, and impede a fair playing field" are not permitted,

according to the proposed amendments. The regulations also seek to prohibit e-commerce businesses from “manipulating search results or search indexes”, in response to the demand from retailers for equal treatment across platforms. The draft also details changes affecting antitrust practises within the jurisdiction of India's Competition Commission (CCI).

**Source:** [Flipkart, Amazon seen hit by proposed ban on flash sales, stricter rules.](#)

### **Cabinet approves of MoC between the CCI and the Japan Fair Trade Commission.**

The Union Cabinet adopted a Memorandum of Collaboration [“**MoC**”] between the Competition Commission of India and the Japan Fair Trade Commission [“**JFTC**”], with the goal of fostering and enhancing competition law and policy cooperation. A statement released by the Ministry of Corporate Affairs, stated that the MoC would allow CCI to strengthen cooperative ties its Japanese counterpart competition agency, resulting in increased efficiency. The MoC would allow for more comprehensive data sharing between the two agencies, which will offer CCI a chance to learn from JFTC’s experience and vice versa.

The MoC intends to promote and strengthen cooperation in the area of competition law and policy through information exchange, technical cooperation, experience sharing, and enforcement cooperation, according to the official release.

Section 18 of the Competition Act of 2002, empowers the CCI to enter into any memorandum or arrangement with any foreign country’s agency for the purpose of carrying out its duties or functions under the Act. In the past, the CCI has signed memorandums with countries

like U.S.A., Russia, Canada, Australia and various European countries.

**Source:** [Cabinet approves Memorandum on Cooperation between India, Japan.](#)

## **INTERNATIONAL**

### **The Google Saga**

The technology giant has been facing antitrust challenges throughout the world. Some of them are outlined below: -

### **US states sued Google for abusing its dominant position in the Play Store market.**

Thirty-seven US states have filed a lawsuit against Google alleging abuse of its dominant position over the sale and distribution of apps through the Google Play Store. The respective attorneys general of these states argued that the concerned company had used restrictive agreements and contractual clauses to ensure the monopoly of its application store on Android devices. Further, the attorneys contended that the app developers were left with no choice but to approach the company for selling and distributing their apps through Google Play Store at an exorbitant commission of up to 30% on app-related purchases. The company was also accused of secretly paying Samsung - the leading producer of Android phones, to prevent it from developing a competing Galaxy store.

The suit alleged that Google has generated massive profits from the Store by engaging in illegal tactics to preserve their monopoly in selling Android apps. It was stated in the suit that Google Play accounts for a 90% share of the downloading of Android apps in the US and no competing app has more than 5% share of this market. Google has expressed concerns over the lawsuit that it had limited the definition of app

marketplace to only Android devices while the company competes with Apple Inc. over the app marketplace for developers and consumers. The suit is still pending and yet to be admitted before the district court of California.

**Source:** [Case No. 3:21-cv-05227](#).

**European Commission initiates an investigation into Google's online advertising technology business.**

The European Commission has commenced a formal antitrust investigation into Google's online display Advertising Technology (AdTech) services. The purpose of this investigation is to examine whether the concerned company has engaged in anti-competitive practices by restricting the access to user data from third parties' usage for advertising purposes.

The company's estimated expenditure on AdTech in the EU was approximately €20 billion in 2019. The company acts as an intermediary between advertisers and publishers to display ads on websites or apps. The scope of this investigation will examine: a) the nature of Google's Display and Video 360 services and/or Google Ads to purchase online advertisements on YouTube; b) the obligation to use Google Ad Manager for online advertising on YouTube and/or any limitations placed by Google on competing services; and some other aspects.

The Commission will conduct an extensive investigation and ensure that the company complies with the General Data Protection Regulations and the EU law while ensuring fair competition in the display advertising markets. If the allegations are proven, then the Commission can be held liable under Article 101 and/or Article 102 of the Treaty on the Functioning of the European Union (TFEU) for indulging in

anti-competitive agreements and abusing its dominant position respectively.

**Source:** [European Commission Press Release](#)

**French competition authority hits google with a €500m fine.**

The French Competition Authority ["FCA"] has imposed a €500m fine on Google Inc. in light of the company failing to comply with an order passed by FCA last year. The concerned order directed the company to negotiate deals with news organisations to show extracts of articles in search results, news and other services.

In this regard, France became the first EU country to put a new Digital Copyright Directive into law in 2019 for compensating publishers and news agencies for the use of their material. However, Google refused to show content from the EU publishers in France on search and news unless they were allowed to do so for free. The organisations representing press publishers and Agence France-Presse ["AFP"], deemed it to be an abuse of Google's market power and consequently filed an antitrust complaint.

This ruling by FCA provides that the concerned tech giant must find ways to recompense the companies for using their news within the next two months, failing which it could face additional fines of €900,000 per day. Google responded that it was on the verge of finalising an agreement with AFP for including a global licensing agreement and payments for press publications.

**Source:** [FCA Press Release](#)

**The CCI to look into allegations of abuse of dominance by Google in the smart TV market.**

The Competition Commission of India asked the Director General ["DG"] to further investigate

the allegations of abuse of dominance by Google Inc. in relation to Android in India's smart television market. This order is in response to a complaint filed last year alleging that Google barred any company with a licence for its Android TV platform from working with its competitors. The informant in the matter contended that the tech-giant compelled the TV manufacturers to sign certain agreements for using its operating system. By way of these agreements, it barred such manufacturers from manufacturing any Android based devices.

In an order passed in June, the CCI found Google 'prima facie' in violation of India's antitrust regulations. Google, in its defence, contended that over-the-top ["OTT"] content is the major driver of competition in the smart TV market that can be accessed through other mediums such as set-top boxes and streaming sticks. Google asserted that it is competing in a fiercely competitive market, and the availability of other such mediums ensured the compliance of its licensing practices in line with the antitrust regulations.

**Source:** [Case no.19 of 2020.pdf](#)

### **Miscellaneous**

#### **Australian Court hands setback to Apple in their battle against Epic Games.**

Epic Games - a digital gaming company, has made allegations about Apple holding monopolistic power over iOS apps and allowing payments through its own payment platform only the use of the power in anti-competitive ways. The gaming company has alleged that the developers have no choice but to pay Apple a commission as high as 30%. Reportedly, Apple neither allows alternative payment methods nor

does it communicate to its users any alternative avenues to get a subscription.

A similar suit by Epic Games against Apple is pending in a US court. Apple insisted before the Australian court on not allowing the appeal before the US court gave its decision. This contention, though initially accepted, was dismissed on appeal as the Australian court gave the green light to Epic Games to move forward with its suit.

**Source:** [Epic Games antitrust case against Apple gets go-ahead in Australia as we await US ruling.](#)

#### **The European Commission slapped the German automakers (BMW & Volkswagen) with a fine of \$1 billion over "emissions cartel".**

The Volkswagen and BMW have been fined a total of \$1 billion on July 8, 2021 by the European Commission for colluding with Daimler to restrict the competition in emission cleaning technology. Daimler acted as a whistle-blower by revealing this deal to the European Commission and thus, received full immunity under the 2006 Leniency Notice. According to the Commission, between June 25, 2009, and October 1, 2014, Volkswagen, Audi, Porsche, BMW, and Mercedes-Benz parent company Daimler, held regular technical meetings to discuss the development of technologies to eliminate harmful nitrogen oxide emissions from diesel passenger vehicles. However, despite possessing the requisite technology, the automakers colluded to prevent competition on cleaning emissions better than what was legally required under the EU emission standards.

The discussion was centered around the development of the selective catalytic reduction (SCR)-technology which eliminates harmful

nitrogen oxide (NOx)-emissions from diesel passenger cars through the injection of urea (also called “AdBlue”) into the exhaust gas stream. They also agreed on sizes of AdBlue tanks and ranges, and exchanged commercially sensitive information on planned tank sizes and AdBlue consumption in future models. Thereby, restricting the competition on product characteristics relevant for the customers.

As per the Article 101(1)(b) of the Treaty and Article 53(1)(b) of the European Economic Area [“EEA”] Agreement, this conduct of the carmakers, constitutes an infringement by object in the form of a limitation of technical development. Hence, the fines were imposed on the basis of the Commission’s 2006 guidelines of fines. Consequently, Volkswagen, which owns Audi and Porsche, will have to pay around \$595 million, and BMW will pay \$442 million.

Volkswagen is considering filing an appeal and has expressed concerns that the ruling sets a questionable precedent by prosecuting technical cooperation as an antitrust violation.

**Source:** [European Commission Press Release](#).

**Facebook accepts a €9.6 million fine for failing to notify GIPHY acquisition in Austria.**

In May 2020, the merger worth \$400 million between two US based companies, namely, Facebook and GIPHY took place. According to the 2018 merger control notification of Austria, a threshold based on transaction value was added to the existing merger control thresholds. According to the new threshold, the competition authority must be informed of the merger beforehand, if there is a significant amount of high transactional value. For Austria, it is €200 million. Further, in line with the notification, the

target company must be active to a large extent in the domestic market, which was true in this case. Facebook did not notify the Austrian Federal Competition Authority [“AFCA”] of the merger. In June 2020, AFCA examined the relevant documents and the question revolved around whether GIPHY operates within the country, which according to Section 9(4)(iv) of the Federal Cartel Act (KartG) is a prerequisite for the transaction threshold to apply.

In March 2021, AFCA informed the parties concerned of the objections raised against them and the UK’s Competition and Markets Authority formally announced that the acquisition in question raises competition concerns. As a consequence, Facebook fully cooperated and made efforts for an amicable settlement. The fine imposed was around 10% of the last year’s turnover but cooperation can lead to a reduction of up to 20% of the fines to be imposed. In the end, Facebook accepted a fine of €9.6 million.

**Source: Facebook accepts EUR 9.6 million Big Techs have to deal with aftermath of recent US anti-trust order**

United States President Joe Biden signed a new order which has 72 actions and other recommendations for bringing a change to the scenario with respect to big-tech companies such as Google, Amazon and Apple. The new order highlights that big-tech firms collect enormous personal information, acquire competitors and dominate small corporate consolidations. There were five discussion draft bills which are as follows:

**Ending Platform Monopolies Act:** A platform with at least 50 million monthly active U.S. users and a market cap over \$600 billion to own or

operate a business that presents a clear conflict of interest will be unlawful. Conflicts refer to anything which incentivizes a business to favour its own services over those of a competitor or disadvantage potential competitors that use the platform.

Platform Competition and Opportunity Act: The burden of proof in merger cases would be shifted to dominant platforms to prove that their acquisitions are in fact lawful, rather than the government having to prove they will lessen competition.

American Choice and Innovation Online Act: Dominant platforms handing preferential treatment to their own products and services over those of competitors on the platform would be prohibited by this bill. A situation of cutting off a competitor that uses the platform from services offered by the platform would be considered as discriminatory and prohibited. Among several other prohibitions, this bill also bans dominant platforms from using data collected on their services that isn't public to others to fuel their own competing products.

Augmenting Compatibility and Competition by Enabling Service Switching (ACCESS) Act: This would mandate dominant platforms maintain certain standards of data portability and interoperability, making it easier for consumers to take their data with them to other platforms.

The State Antitrust Enforcement Venue Act: It clarifies potential jurisdictional tussles by appointing courts where tech antitrust cases would be heard. Plenty of so-called 'techlash' cases have piled up, especially over the last year with the state attorney generals, the US Justice Department and the FTC suing dominant US technology companies.

Merger Filing Fee Modernization Act: The bill would raise the fees that companies pay to notify the Federal Trade Commission and Department of Justice Antitrust Division of large mergers with the goal of raising money for those agencies. For India, this action could lead to a novel change as big-tech companies are investigated by the Competition Commission of India but there is not strict enforcement for them. For instance, Google was fined by CCI on the grounds of "Search Bias" but it was set aside by the National Company Law Appellate Tribunal (NCLAT). This development motivates different nations around the world to get on board to prevent accumulation of too much power and aims at creating a level playing field for other entities in the competition sphere.

**Source:** [Impact of U.S antitrust order.](#)

**UK government proposes new antitrust powers to regulate big tech sector.**

The British Government has announced its plans for new antitrust powers that would allow it to overrule commercial decisions made by tech giants, like Apple, which further created hindrance for these tech giants who have long since maintained the ideology that they only take the decisions which are in best interest of its customers. The proposed body shall be called Digital Markets Unit ["DMU"], which will act as a watchdog to suspend, block and reverse decisions and even issue fines up to 10% of the company's turnover involving serious code-breaching behaviour. It will also require those companies that hold a Strategic Market Status, i.e. companies with substantial entrenched market power with the effects of that market power being particularly widespread and significant, to follow new rules of acceptable behaviour with



competitors and customers. Given Apple's stature and market position, it will definitely fall under the category of holding strategic market status making it the direct target of these new regulations.

This decision is being taken with the intent of ensuring that tech giants, such as Apple, are not allowed to exploit their dominance in the market. However, this is merely a suggestion and announced plans are still under wraps. A public consultation will soon be carried out on the proposed powers as well.

**Source:** [UK government proposes new antitrust powers to overrule tech giants like Apple.](#)

**Tencent's \$5.3 billion video games merger under threat as it faces interference from the Chinese regulator.**

Tencent Holdings, a Chinese multinational technology conglomerate company, announced the merger of China's two most popular video game streaming sites: Huya and DouYu. The announcement came under scrutiny of the government and the plan was denied by China's market regulators on the grounds that the said merger can overly concentrate market power by forming a monopoly. The alarms against this merger were first raised after the regulator reviewed additional concessions proposed by Tencent to the two companies. These concerns then expanded due to the fact that Tencent Holdings not only has a combined market value of \$5.3 billion but also holds major shares in both, Huya and DouYu.

The State Administration of Market Regulation further stated that if the merger is allowed, Huya and DouYu's combined market share in the video game live streaming industry would be over 70%, further strengthening Tencent's dominance

in this market, given Tencent already has over 40% market share in the online games operations segment. Even though Tencent has publicly presented an umbrella statement of maintaining discipline and following a code of conduct by abiding by the anti-trust laws and regulations, the state council's anti-trust committee has argued that nonetheless, the merger and the resulting combined market value of Tencent will restrict, if not completely eliminate, fair competition in the market.

**Source:** [Chinese antitrust regulator blocks Tencent's \\$5.3 billion video games merger.](#)