Competition News Bulletin

VAISH ASSOCIATES ADVOCATES
Delhi • Mumbai • Bengaluru
Celebrating over 45 years of professional excellence

February, 2019

New Year Greetings

Inside..

I. CARTELS AND ANTICOMPETITIVE AGREEMENTS

CCI imposes penalty on Godrej and Boyce for being a member of bilateral "ancillary" cartel. *(Page 2-3)*

CCI Imposes Penalty on Chemists and Druggists Association of Baroda. *(Page 3-4)*

CCI finds no evidence of resale price maintenance on sale of KAFF appliances on Snapdeal *(Page 4-5)*

II. ABUSE OF DOMINANT POSITION/MARKET POWER

CCI cedes jurisdiction to SEBI to decide upon complaint of abuse of dominance against National Stock Exchange. *(Page 8-9)*

III. COMBINATIONS

CCI approves acquisition of 40% equity share capital of Royal Sundaram General Insurance Company Limited by Ageas *(Page 9-10)*

Integral Corporation acquires optionally convertible preferential stock in Tokyo engineering Corporation *(Page 10)*

Zydus/Cadila acquire 100 percent shareholding of Heinz India *(Page 10-11)*

Shell Gas B.V acquire 100% shares and sole control of HPPL and HLPL *(Page 11)*

IV. MISCELLANEOUS NEWS

CCI defines online sale platform as a separate relevant market *(Page 12-13)*

Jurisdictions covered in this issue

India

European Union

For Private Circulation - Educational & Information purpose only

Vaish Associates Advocates ...Distinct. By Experience.

I. CARTELS AND ANTI-COMPETITIVE AGREEMENTS

INDIA

CCI imposes penalty on Godrej and Boyce for being a member of bilateral "ancillary" cartel

The Competition Commission of India ("CCI/ Commission"), by way of order dated 15.01.2019, has imposed a penalty of INR 85,01,364/-on Godrej and Boyce manufacturing Co. Limited ("Godrej") for acting in violation of Section 3(3) read with Section 3(1) of the Competition Act, 2002 ("the Act").

This is the second case (first being *Sou Motu* Case No. 02/2017) initiated *suo motu* by the Commission on the basis of a Leniency/ Lesser Penalty Application ("LP Application") filed by Panasonic Corporation, Japan on behalf of itself and its Indian subsidiary , Panasonic Energy India Co. Limited and their respective Directors, officers and employees on 7th September 2016 and subsequent submissions dated 22nd September 2016 which disclosed the existence of a *"bilateral ancillary cartel"* between Panasonic (India) and Godrej in the institutional sales of dry cell batteries. It was further deduced from the LP application that *Panasonic (India) had a primary cartel with Everyday Industries India (Everyday) and Indo National Limited (Nippo),* whereby they coordinated the market prices of zinc-carbon dry-cell batteries and, therefore, Panasonic (India) had the fore knowledge about the time of price increase and it used the fore knowledge as a leverage to negotiate and increase the basic price of the batteries being sold by it to Godrej. It was further disclosed in the LP application that Panasonic (India) and Godrej used to agree on the market price of the batteries being sold by them, so as to maintain price parity. Such price parity was in consonance with the prices determined by the Primary cartel consisting of Panasonic, Eveready and Nippo.

The Commission observed that the language of Clause 8.2 of the Product Supply Agreement ("PSA") imposed specific obligations on both Panasonic (India) and Godrej, not to take detrimental steps against each other. CCI rejected that it was merely a mutual comfort' clause (as claimed by Godrej), between Panasonic (India) and Godrej, who, as per Clause 17, were independent principals in commercial transactions. Accordingly, CCI observed that the very existence of Clause 8.2 when put in context by a holistic reading of other clauses of the PSA can be very well called anti-competitive. The Commission, in addition to the above, focused on the email communications between the parties which clearly showed that clause 8.2 was not only a 'dead letter' clause but was a deliberate clause whereby they agreed not to undercut each other in the market for dry cell batteries, by offering lower prices than what was agreed upon from time to time.

The Commission observed that both Godrej and Panasonic (India) had themselves agreed that no joint venture, partnership or agency relationship has been constituted between them rather they would operate as two independent principals in commercial transactions. Thus, clause 8.2 of the PSA and the email exchange between the parties cannot be read in the context of buyer-seller relationship. In addition to this, it was also observed by the Commission that, though Godrej procured dry cell batteries from Panasonic (India), it sold the same under its own brand name and not as a distributor of Panasonic (India). Thus, when seen from the demand side (eyes of the consumer), the two were competitors of each other in the market of distribution and/or sale of dry cell batteries in India.

(Source: CCI order dated 15.01.2019; for full text see CCI website)

CCI Imposes Penalty on Chemists and Druggists Association of Baroda

CCI, by way of order dated 15.01.2019 has found the Chemists and Druggists Association of Baroda ('CDAB') to be in contravention of the Act by indulging in the activity of limiting and controlling the supply of drugs and medicines in the market by mandating (i) 'No Objection Certificate' ('NOC') prior to appointment of stockists and (ii) payment of 'Product Information Service' ('PIS') charges prior to introduction of new products in the market by pharmaceutical companies. The information was originally filed before the Monopolies and Restrictive Trade Practices Commission (MRTPC) in 2009 alleging that the CDAB has indulged in restrictive trade practices. Besides allegations of mandating NOC and PIS charges, there were allegationsregarding fixing of trade margins for the wholesalers/retailers. Subsequently, the case was transferred to the Commission by MRTPC under the provisions of Section 66(6) of the Act.

After a detailed enquiry, the Commission passed an order dated 05.09.2012 wherein it was found that the CDAB was imposing the requirement of mandatory NOC and was also fixing margins for the wholesalers and retailers by enforcing the norms laid down by AIOCD. Accordingly, the Commission imposed a monetary penalty, in addition to cease and desist directions, under Section 27 of the Act.

Pursuant to an appeal filed by CDAB, the erstwhile Hon'ble Competition Appellate Tribunal ("COMPAT"), vide its order dated 18.11.2016, set aside the Commission's order dated 05.09.2012 on a procedural issue and remanded the matter back to the Commission for fresh adjudication. Accordingly, the matter was considered afresh. After allowing CDAB with an opportunity to cross-examine various witnesses, the Commission allowed parties to file their written submissions and conducted a detailed hearing in the matter. Based on the material available on record, the Commission concluded that CDAB was indulging in the anti-competitive practice of insisting NOC prior to the appointment of new stockists by pharmaceutical companies and was also fixing/prescribing the trade margins during the relevant time

period, in contravention of the provisions of Section 3(3)(a) and 3(3)(b) read with Section 3(1) of the Act. Accordingly, CDAB was directed to cease and desist from indulging in the aforesaid anticompetitive practice. Further, the Commission imposed a monetary penalty of INR 32,724/- calculated at the rate of 10% of the average relevant income of CDAB for the relevant period, under the provisions of Section 27 of the Act.

(Source: CCI order dated 15.01.2019; for full text visit CCI website)

CCI finds no evidence of resale price maintenance on sale of KAFF appliances on Snapdeal

CCI, by way of order dated 15.01.2019 under Section 26(6) the Act, has dismissed allegations of Resale Price Maintenance ("RPM") against Kaff Appliances (India) Pvt. Ltd. ("KAFF/ OP").The information was filed by Jasper lnfotech Private Limited ("Snapdeal / Informant").

It was alleged that KAFF being aggrieved by the sale of its products (variety of kitchen appliances) at discounted prices on Snapdeal, displayed a caution notice on its website indicating that the product sold on Snapdeal were counterfeit, infringing its trademark, deceiving the public by trading on the goodwill of Kaff and were also undercutting the prices of authorized dealers. Further, KAFF mentioned in the notice that it will not honour the warranties of the products sold in its brand name through Snapdeal. In addition to this, an email was sent on behalf of Kaff, wherein a warning was given that Kaff will not allow sale of products on Snapdeal's portal if MOP is not maintained. This raised to the grievance of Snapdeal in the sense that Kaff was allegedly attempting to impose a price restriction in the form of Minimum Operating Price ("MOP") on the products sold on Snap deal's website.

The DG surveyed 211 dealers/distributors of Kaff, however, the said survey did not bring out the existence of any agreement/understanding. The dealers/distributors denied selling their products below net landing prices and negated requiring an approval for online selling. The survey further revealed that the dealers used to offer their respective prices for products displayed on the online portal of the Informant or other online portals, and any extra discount/cash-back was funded by those online retailers themselves. Thus, vis-à-vis the dealers, CCI could not find any evidence of an imposition of a minimum RPM.

Further, as far as 3 pieces of evidence, the E-mail, the Caution Notice and the Legal notice, Kaff did not deny its existence and preferred justifying them. Kaff claimed that the Caution Notice was issued to warn the general public about the selling of counterfeit products on the online portals. Similarly, the Legal Notice was issued to give an opportunity to Snapdeal to remove Kaff's products from its online portal as the same were counterfeit and were procured from unauthorized/unverified sources. With regard to the E-mail dated 04.02.2014 sent by Mr. Mohit Seth of Kaff, wherein a warning was given that Kaff will not

allow sale of products on Snapdeal's portal if MOP is not maintained, the Commission observed that this E-mail was sent 2 months prior to the 'Caution Notice' dated 16.04.2014.

Though the existence of the E-mail, Caution Notice and Legal Notice were established, the Commission was of the view that the justifications offered cannot be completely disregarded and the right of the manufacturer to choose the most efficient distribution channel ought not to be interfered with, unless the said choice leads to anti-competitive effects.

Further, the presence of a large number of dealers who were competing with each other suggested a fair degree of intra-brand competition. Moreover, competition among distributors was found to be even stiffer as they were exclusively dealing with the OP's products. Thus, the Commission noted that vis-à-vis the dealers the evidence did not reveal the existence of any price restriction or minimum RPM. As regards the Informant, though the existence of Caution Notice, Legal Notice and Email were established, it was not conclusively established that they were used as instruments for imposing RPM on the Informant.

(Source: CCI order dated 15.01.2019; for full text see CCI website)

B. INTERNATIONAL

Germany: Bundeskartellamt imposes fine on bicycle wholesaler ZEG for vertical price-fixing

The German federal cartel office, Bundeskartellamt, has imposed a fine of around €13.4 million on the bicycle wholesaler ZEG Zweirad-Einkaufs-GenossenschafteG ("ZEG"), Cologone and its representatives for fixing prices with 47 bicycle retailers. Interestingly, the proceeding was triggered by a tip-off from the trade. Under the agreement, the independent retailers were not to undercut the minimum sales prices set by ZEG for different bicycle models and this practice restricted price competition to the detriment of the consumer. Although, under the German and European law, short term resale price maintenance is allowed for associations, the measures taken in this case led to a situation similar to a sales cartel and, thus, far exceeded the permissible limit.

It was also found that the representatives of ZEG kept a check on whether the prices set were adhered to by the retailers, by way of conducting independent researches and complaints received from retailers with respect to non-adherence by other retailer(s).

Interestingly, for discretionary reasons, no proceedings were initiated against the retailers, keeping in mind their secondary role in the matter as compared to ZEG and were not accused of any cartel offence.

(Source: Bundeskartellamt press release dated 29.01.2019)

EU: Mastercard fined for Restricting Cross-Border card paymentaccess to merchants

The European Commission ("EC") has imposed a penalty of around €571million on Mastercard for limiting the possibility for merchants to benefit from better conditions offered by banks established elsewhere in the EU.Mastercard is the second-largest card scheme in the European Economic Area (EEA) in terms of consumer card issuing and value of transactions.

When a consumer uses a debit or credit card in a shop or online, the retailer's bank (the "acquiring bank") pays a fee called an "interchange fee" to the cardholder's bank (the "issuing bank"). The acquiring bank passes this fee on to the retailer, who includes it, like any other cost, in the final prices for all consumers, even those who do not use cards. Mastercard's rules obliged acquiring banks to apply the interchange fees of the country where the retailer was located. As a result, theretailers in the high-interchange fee countries could not benefit from lower interchange fees offered by an acquiring bank located in another Member State. It was found by the EC that as a result of the cross border acquiring rules of Mastercard, the retailers paid more in bank services to receive card payments than if they had been free to shop around for lower-priced services. This resulted in (i) higher prices for retailers and consumers, (ii) limited cross-border competition and (iii) artificial segmentation of the Single market.

(Source: EU press release dated 22.01.2019)

UK Court analyses Restrictions Imposed by Online Portal

On 24.02.2019, the English Court of Appeal (CA) analysed a competition law claim from first principles. The case related to an online UK property sales portal-OnTheMarket, launched by Agents' Mutual Limited in January 2015. At the time, there were only two major portals in the UK — 'Rightmove', which was the market leader, and 'Zoopla', which traded using the brand Prime location and under its own name. Agents' Mutual was established by a number of estate agents. The documents establishing the business laid down three rules: the "One Other Portal Rule," the "Bricks and Mortar Rule" and the "Exclusive Promotion Rule." The One Other Portal Rule stipulated that a member could list its properties on no more than one other portal. The Bricks and Mortar Rule restricted

membership of the portal to full-service, office-based estate or letting agents, as opposed to those operating only an online business model. The Exclusive Promotion Rule required members to promote only on On The Market and no other portal, however, this rule was not considered in the CA case.

The CA was considering, on appeal from a lower court, a challenge to the rules by an estate agent member of Agents' Mutual called Gascoigne Halman. In an unusual detailed review of the law by a UK court, the CA found that the One Other Portal Rule was not a restriction of competition law "by object" (i.e., not an automatic restriction). Referring to previous case law, the CA held that, given the rule's nature and the specific legal and economic context, particularly including Agents' Mutual 's lack of market power, the rule did not reveal a sufficient degree of harm to competition such that it could be regarded, by its very nature, as harmful to the proper functioning of normal competition. The rule was ambivalent in terms of its effects on competition and could not be treated as an object restriction. The same was true in relation to the Bricks and Mortar Rule. In this case, as ever, the level of market power was crucial. The CA commented that "the absence of market power was directly relevant to whether the One Other Portal Rule was itself harmful to competition."

(Source: http://www.bailii.org/ew/cases/EWCA/Civ/2019/24.html)

EU: Commission sends Statement of Objections in European government bonds cartel

EC has informed eight banks of its preliminary view that they have breached EU antitrust rules by colluding during periods from 2007 to 2012 for distorting competition while acquiring and trading European government bonds. Traders employed by the banks exchanged commercially sensitive information and coordinated on trading strategies. These contacts would have taken place mainly - but not exclusively - through online chatrooms. EGBs are sovereign bonds issued in Euro by the central governments of the Eurozone Member States. If EC's preliminary view were confirmed, such behaviour would violate EU rules that prohibit anti-competitive business practices such as collusion on prices under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement.

(Source: EU press release dated 31.01.2019)

II. ABUSE OF DOMINANT POSITION

INDIA

CCI cedes jurisdiction to SEBI to decide upon complaint of abuse of dominance against National Stock Exchange

The Commission, in a surprise turn from its previous position in so many cases before, by way of order dated 07.01.2019, decided not to inquire into allegations of abuse of dominance against the National Stock exchange of India ("NSE").

This decision by the Commission is perceived to be influenced by the recent judgement dated 05 December 2018 of the Supreme Court in the case of *CCI vs. Bharti Airtel* in which the Apex court has cautioned CCI from entering into technical issues relating to the terms of the license granted by TRAI. Though the Apex Court in the said judgment has not discouraged CCI in dealing with anti-competitive issues and has acknowledged the possibility of co-ordination between the existing telecom players to challenge the maverick business model of Reliance Jio and has, therefore, left the determination of such competition issues open by CCI subsequent to the determination on the technical issues by TRAI.

The information in this case was filed by an Advocate namely Mr. Jitesh Maheshwari against the NSE alleging abuse of dominance in the sense of unfair and discriminatory treatment in the *"market for providing services of trading in securities to the trading members in India"*.

NSE provides the services of co-location to the trading members, who avail this facility as consumers on payment of prescribed fees. These services are offered in the form of full rack as well as half racks. The trading members who avail these services get access to information about traded prices of shares ahead of other traders, which makes a huge difference to the proprietary and high-frequency traders. The fees levied by NSE for these co-location services are the same and accordingly the trading members availing the services are expected to be kept in the same footing. However, the informant alleged that from 2010-2014, instead of providing equal and fair access to all the trading members, NSE provided preferential and unfair access to some trading members and this benefited the trading members to whom the preferential treatment was granted, in getting the price feed and other data.

The Commission acknowledged that the grievance of the informant is that the NSE by giving unfair preferential access to some trading members of its co-location services, has limited and restricted the

provisions of services to other trading members availing the co-location services which resulted in 'denial of market access' to others.

The CCI, however, decided not to go into the merits of the case and has closed the case mainly because the 'NSE Co-location Case' is currently under investigation by the Securities Exchange Board of India ("SEBI"). The Commission recognized that the genesis of the NSE Co-location case dates to 2015, when a whistle-blower wrote a letter to SEBI alleging that NSE gave preferential access to a few high-frequency traders and broker to its trading platform. The Commission accepted that SEBI is looking at similar issues alleged in the information, however, the exact role of NSE with respect to the preferential/ discriminatory services is still at the stage of investigation.

The Commission, however, also observed that the discriminatory and abusive conduct falls within the jurisdiction of the Commission and that it can be examined by the CCI based on cogent facts and evidence, and, was of the opinion that the allegations against NSE are yet to be established in an appropriate proceedings and there was also a lack of sufficient information about the role of NSE to arrive at a prima facie view. Accordingly, the case was closed under Section 26(2) of the Act.

(Source: CCI Order dated 07.01.2019; for full text visit CCI website)

III. COMBINATIONS

INDIA

CCI approves acquisition of 40% equity share capital of Royal Sundaram General Insurance Company Limited by Ageas

By way of order dated 19.12.2018, the Commission has approved the acquisition of 40% equity share capital of Royal Sundaram General Insurance Company Limited ("RSGI/ Target") by Agdeas ("Acquirer"), by way of share purchase from some of the current shareholders, pursuant to a Share Purchase Agreement.

Ageas is an international insurance solution provider, however its business in India is confined to its investment in IDBI Federal Life Insurance Company Ltd ("IFLI"), which is a joint venture between IDBI Bank Limited, the Federal Bank Ltd and Ageas. RSGI is a general (non-life) insurance company which offers motor, health, personal accident, home and travel insurance to individuals and also offers insurance products in fire, marine,

engineering, liability, motor and business interruption risks to commercial customers. The Commission noted that RSGI is a general i.e. non-life insurance company and Agdeas' presence in the insurance sector is through IFLI which is in life insurance services, and therefore, the activities of the acquirer and Target do not horizontally overlap. Further, as per the notice filed by the acquirer Ageas and RSGI are not engaged in vertically linked markets in India.

(Source: CCI order dated 19.12.2018; for full text see CCI website)

Integral Corporation acquires optionally convertible preferential stock in Tokyo engineering Corporation

The Commission, by way of order dated 19.12.2018, has approved the acquisition of optionally convertible preferential stock (without voting rights) of Tokyo Engineering Corporation ("Tokyo/Target") by Integral Corporation ("Integral/Acquirer"). On conversion, these preference shares would amount to 34.65% of common shares on a fully diluted basis with voting rights of Target. In addition, Integral will obtain a right to appoint two nominee outside Directors in the Target. Integral is a Japanese firm based in Tokyo which is engaged in making long term equity investments through which it provides support to investee companies in terms of management and finance. However, its presence in India is only through its stake of 29.2% shares of Ohizumi Mfg. Co. Ltd., engaged in the manufacture and sale of electronic parts and electric equipment. Tokyo is a Japanese engineering, procurement and construction ("EPC") company which provides services in various sectors such as Oil and Gas Development, Petrochemicals, Chemical and Biotechnology. The Commission noted that there does not exist any horizontal and vertical overlap in the activities of the acquirer and the Target and approved the combination.

(Source: CCI order dated 19.12.2018; for full text see CCI website)

Zydus/Cadila acquire 100 percent shareholding of Heinz India

CCI, by way of order dated 06.12.2018, approved the acquisition of Heinz India from Heinz Italia and Heinz Europe by Zydus/Cadila. By way of the acquisition, Zydus/Cadila ("acquirers") acquired businesses relating to four brands namely- Glucon-D, Nycil, Sampriti Ghee and Complan ("Target Business"). The acquirers viz. Cadila and Zydus have not yet decided who amongst them will acquire the Target Business. Both Zydus and Cadila belong to the Zydus Family Trust Group.

Heinz India manufactures food and other products, including tomato ketchup, energy drinks, ghee etc. through brands such as Complan, Glucon-D, Nycil, and Sampriti Ghee etc. Zydus operates in the consumer products segment with products such as fat spreads, personal care, sugar substitutes etc. and Cadila in engaged in the business of pharmaceutical formulations.It was submitted by the acquirers that prior to the combination a new company will be incorporated by Heinz Italia that will enter into a Business Transfer Agreement with Heinz India to acquire all the assets, facilities, employees, contracts etc. that are not related to the Target business. Therefore, by acquiring 100% shareholding, Zydus/Cadila acquired the business relating four brands viz. Glucon-D, Complan, Samriti Ghee and Nycil.

(CCI order dated 06.12.2018; for full text visit CCI website)

Shell Gas B.V acquire 100% shares and sole control of HPPL and HLPL

CCI, by way of order dated 06.12.2018, approved the acquisition of (i)26% shares in Hazira LNG Private Limited ("HLPL") and (ii) 26% shares in Hazira Port Private Limited ("HPPL"), by Shell Gas B.V ("Shell") from Total Gas Electricite Holdings France ("Total"). Prior to the combination, Shell was the single largest shareholder at 74% shares in both HLPL and HPPL, and pursuant to the combination has now acquired 100% shares and sole control of both. The Shell Group companies are engaged in India in the activities of (i) exploration and production of oil and natural gas (ii) supply of LNG into India (iii) provision of LNG regasification services (iv) wholesale and downstream supply of natural gas (v) provision of port facilities to LNG terminals and (vi) other activities such as supply of fuel products, supply of lubricants, chemicals and technical services to public/private sector oil companies.

HLPL and HPPL were both joint venture companies set up by Shell and Total. Prior to the combination, Shell held 74% of shareholding and Total held 26% in each of HPPL and HLPL. However, the acquisition of Total's 26% shareholding in HLPL and HPPL by Shell has led to a change from the erstwhile joint control of Shell and Total over HPPL and HLPL to the sole control by Shell.

(Source: CCI order dated 06.12.2018; for full text see CCI website)

Miscellaneous

CCI defines online sale platform as a separate relevant market -holds neither Flipkart nor Amazon as dominant in the market for online marketplace platforms

CCI, by way of order dated 06.11.2018 has dismissed allegations against Flipkart India Private Limited ("Flipkart India") and Flipkart Internet Private Limited ("Flipkart Internet") of abusing its dominant position by indulging in the activity of (i) selling goods below cost price to individual sellers who are not backed by Venture Capital funds, thereby causing denial of market access and (ii) using its dominance by leveraging its position to enter into another market by way of extending discounts and manufacturing products under private label.

The information before the CCI was filed by All India Vendors Association ("AIVA/informant") which is a group of more than 2000 sellers selling on e-commerce marketplace such as Flipkart, Amazon, and Snapdeal etc. The primary allegation was that Flipkart India sells goods to companies like WS Retail Services Private Limited ("WS Retail Service"), which was owned by the founders of Flipkart internet till 2012, at a discounted price and thereafter, these goods are sold on the platform operated by Flipkart Internet. As per the informant, this practice amounted to preferential treatment to certain sellers. In other words, the information revealed an alleged strategy of Flipkart India to acquire goods from various persons and to immediately sell them to WS Retail Services at a discount, which would, in turn, sell these goods as sellers on the internet platform Flipkart.com of Flipkart internet.

The Commission, while delineating the relevant market noted that even though the distinction line between online and offline sellers is sometimes blurry, however it cannot be denied that online marketplaces offer convenience for sellers (saving cost of setting up a store, sales staff, electricity/maintenance charges etc.) as well as the buyers (comfort of shopping, time saving, product comparison etc.). CCI observed that in case of an online retail store, a seller (who may or may not own a brick and mortar retail store) owns his portal to sell products through online websites, whereas, in case of an online marketplace platform such as Flipkart or Amazon the owner of the online portal offers a platform for buyers and sellers to interact. In other words, the sellers would be interested in selling on platforms when increasingly high number of buyers visit an online platform, and thus the online platforms are characterized with network effects. On the other hand, there is hardly any network effect in the case of online retail stores.

Further, the Commission also observed the Foreign Direct Investment ("FDI") policy on E-commerce issued by the DIPP which permits 100% FDI under automatic route to 'marketplace model' in e-commerce and no FDI in "inventory based" model.

Accordingly, the Commission delineated the relevant market as *'services provided by online marketplace platforms in India'*. The Commission was of the opinion that Flipkart is not in a dominant position in the relevant market due to the presence of Amazon (its closest competitor having a valuation around $700 billion) and other competitors such as Paytm Mall, SnapDeal, and Shopclues etc. In addition, new entrants such as Paytm Mall revealed the low entry barriers in the relevant market.

Interestingly, though the information was filed against the Flipkart entities, the Commission held a preliminary conference with Amazon Seller Services Private Limited ("Amazon"), as it was also a key player in the relevant market. However, looking at the present market construct and structure of online marketplace platforms in India, it was concluded by the Commission that no one player in the market can be said to be commanding any dominant position at this stage of evolution of the market.

Accordingly, the matter was closed by the CCI since Flipkart was not found to be dominant in the relevant market.

(Source: CCI order dated 06.11.2018; for full text see CCI website)

Disclaimer:

While every care has been taken in the preparation of this Bulletin to ensure its accuracy at the time of publication, Vaish Associates, Advocates assumes no responsibility for any errors which despite all precautions, may be found therein. Neither this bulletin nor the information contained herein constitutes a contract or will form the basis of a contract. The material contained in this document does not constitute/substitute professional advice that may be required before acting on any matter. All logos and trade marks appearing in the newsletter are property of their respective owners.

We may be contacted at: www.vaishlaw.com

NEW DELHI
1st, 9th & 11th Floor, Mohan Dev Bldg.
13 Tolstoy Marg
New Delhi - 110001, India
Phone: +91-11-4249 2525
Fax: +91-11-23320484
delhi@vaishlaw.com

MUMBAI
106, Peninsula Centre
Dr. S. S. Rao Road, Parel
Mumbai - 400012, India
Phone: +91-22-4213 4101
Fax: +91-22-4213 4102
mumbai@vaishlaw.com

BENGALURU
565/B, 7th Main HAL
2nd Stage, Indiranagar,
Bengaluru - 560038, India
Phone: +91-80-40903588 /89
Fax: +91-80-40903584
bangalore@vaishlaw.com

Editor: M M Sharma
Editorial Team: Vinay Vaish, Deepika Rajpal, Anand Sree

© Vaish Associates, 2019, India. All rights reserved with Vaish Associates, 1st, 9th & 11th Floor, 13, Tolstoy Marg, New Delhi-110001, India.