

# A retail of our times

## S.S. Rana & Co's Rupin Chopra and Ritika Mogha analyse competition claims asserted against online retailers in India. Where does the law stand?

Ecommerce in India is experiencing remarkable growth, changing the way people transact and think about business. According to recent research, the ecommerce market in India is set to grow the fastest of countries within the Asia Pacific region between 2012 and 2016. The various factors that are generally attributed to a rise in online retailing, including internet penetration, easier access to online retailing through mobile phones, easier modes of payment and enticing offers, are making online shopping a popular choice in India.

Among all of this growth and unprecedented progress that e-retailers in India are enjoying, there are certain regulatory and pricing issues that are putting a strain on the works. The courts and tribunals in India are dealing with more and more issues relating to ecommerce business, particularly abuses of dominant positions and anti-competitive agreements, of which some of the major Indian online retailers are being accused.

### **Mohit Manglani v M/s Flipkart India and Others (80 of 2014, CCI)**

Recently, the Competition Commission of India (CCI) received a complaint from Mohit Manglani against five online retailers, namely Flipkart India, Jasper Infotech (Snapdeal), Xerion Retail (Jabong), Amazon Seller Services and Vector E-Comm (Myntra).

The allegations levelled by Manglani against the online retailers were that they were liable for indulging in anti-competitive practices in the nature of 'exclusive agreements' with sellers of goods/services, which resulted in violations of the provisions under Sections 3 and 4 of the Competition Act. Manglani further alleged that the online retailers were responsible for slowly destroying players in physical market and creating a product-specific monopoly in the marketplace.

The online retailers responded to the allegations by stating that they were just acting as third-party platforms which offer ready-to-use environments to potentially large numbers of customers and manufactures.

The online retailers further contended that the act entails that there should be appreciable adverse effects on competition in the "relevant market" and the products cannot be construed as relevant product market in themselves.

The CCI ruled in favour of the online retailers and absolved them of charges under the act. The CCI observed that the impugned agreements do not result in an appreciable

adverse effect on competition, as such arrangements do not appear to create any entry barriers for new entrants.

Also, the creation of an entry barrier in view of an exclusive arrangement between a manufacturer and an e-portal seemed unlikely. With reference to "relevant market", the CCI opined that every product could not be taken as a relevant market in itself.

### **Ambitious Marketing v Snapdeal.com and SanDisk Corporation (17 of 2014)**

This case dealt with the issue of a company's warranty policy to protect its distribution channel on online portals. In this case, one Ashish Ahuja accused Snapdeal and SanDisk Corporation of engaging in anti-competitive practices and abuses of their dominant positions in contravention of Sections 3 and 4 of the Competition Act.

Ahuja was aggrieved by the fact that Snapdeal had stopped the sale of his products on its portal, which Snapdeal contested by stating that it had stopped the sale of his products in consequence of a list it received from SanDisk Corporation, specifying the names of authorised online channel partners.

The CCI ruled that the insistence by SanDisk that the storage devices sold through the online portals should be bought from its authorised distributors cannot, by itself, be considered as abusive, because it is within its rights to protect the sanctity of its distribution channel and that the sale of products emanating from unknown, unverified or unauthorised sources is not encouraged or allowed. The CCI further observed that Snapdeal could be called a dominant player in the case, as it was not engaged in the purchase or sale of storage devices, rather it owns and manages a web portal that enables those sellers to sell products through its web portal for a commission.

As a result, CCI has in a way validated a company's practice of insisting that products sold through online portals should be bought from its authorised distributors, through its warranty policy, as part of normal business practice and a prudent business policy.

The ecommerce sector in India is encountering initial glitches that are probably common. It cannot be denied that online retailing has comforted lives and has improved trade, so strengthening the existing policies and regulations to ensure and increase consumer trust and confidence in online retailing is an appreciable move. **IPPro**

**The Indian Competition Act prohibits anti-competitive agreements and lays out circumstances that lead to an abuse of a dominant position in a relevant market. According to Section 3 of the act, no enterprise shall enter into any agreement that causes, or is likely to cause, an appreciable adverse effect on competition within India.**

**Section 4 of the act provides that there would be abuse of dominance if an enterprise imposes unfair or discriminatory conditions in purchase and sale, or limits the production of goods or provisions of services to the prejudice of customers.**



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