

ALL INDIA ONLINE VENDORS ASSOCIATION VS. FLIPKART INDIA PRIVATE LIMITED &

OTHER

Case No. 20/2018

Decision date: 06/11/2018

Keywords: online marketplace, preferential treatment, abuse of dominant position

Issue: Whether refusal to modify low credit score, allegedly calculated based on fake data and causing breach of privacy concerns would amount to a contravention under Section 4 of the Act.

Rule: Sec. 4 of the Competition Act, 2002.

The case arose out of allegations made by the All India Online Vendors Association (“AIOVA”) against Flipkart India Pvt Ltd (“Flipkart”), wherein AIOVA contended that Flipkart was selling goods to WS Retail Services Pvt Ltd (“WS Retail”), an subsidiary of Flipkart till 2012, at a price lower than what is listed on Flipkart’s internet platform, and this amounted to preferential treatment to certain sellers. Additionally, it was submitted that Flipkart’s internet platform was using its dominance in order to enter another market of manufacturing products by providing discounts under private labels.

In order to determine whether there was any abuse of dominant position, the CCI first held the relevant market to be the “services provided by online marketplace platforms for selling goods in India”. The CCI observed that while Flipkart’s size and resources are undeniably large, there are multiple players in the relevant market and no one player commands a dominant position in the relevant market at this stage of evolution of the market. Since Flipkart does not command a dominant position in the relevant market, a case of abuse of dominance would not arise. However, the CCI considered some of the submissions made by Flipkart favourable, and the same are discussed below.

First, the CCI observed that there was no abusive conduct by Flipkart, since B2B arrangements are neither exclusive, nor do they impose restraints on reseller’s making a choice to sell their products through Flipkart’s internet platform. *Second*, the structural link with WS Retail existed only till 2012, and it is no longer a seller on Flipkart’s marketplace. *Third*, the terms and conditions for sellers across Flipkart Internet’s marketplace are standard. *Fourth*, the marketplace is statutorily bound by and complaint to the FEMA (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017.

The CCI held that no case of contravention of the provisions of Section can be made out against Flipkart. The CCI also explicitly mentions that this decision was arrived at subsequent to holding preliminary conferences with Amazon Seller Services (a key player in the relevant market), and opines that any intervention in the evolving model of retail distribution in India ought to be carefully crafted in a manner so as to not stifle innovation.