

**TAMIL NADU CONSUMER PRODUCTS DISTRIBUTORS ASSOCIATION VS. FANGS
TECHNOLOGY PRIVATE LIMITED & OTHER**

Case No 15/2018

Decision date: 04/10/2018

Keywords: distributorship agreement, resale price mechanism, abuse of dominant position

Issue: Whether the conditions imposed in the distributorship agreement would amount to abuse of dominance and imposition of vertical restraints in violation of Sections 3(4) and 4 of the Act.

Rule: Sec. 3(4), 4 of the Competition Act, 2002.

The case arose out of allegations of abuse of dominance made by the Tamil Nadu Consumer Products Distributors Association (“TNCPPDA”) against Fangs Technology Pvt Ltd (“Fangs”) and Vivo Communication Technology Company (“Vivo”) with respect to certain clauses in a Vivo Distributorship Agreement (“VDA”) entered into by Fangs with its distributors.

TNCPPDA pointed out several problems as regards the clauses of the VDA, among which was a concern that the conditions imposed would be unfair and unreasonable to the extent of foreclosing competition by creating entry barriers for distributors. It was also submitted that the VDA prohibited distributors from carrying out business with two specific brands of smartphones, as a result of which this conduct of Fangs and Vivo would be in violation of Section 3(4) and Section 4 of the Act.

In order to determine whether there was any abuse of dominant position, the CCI first held the relevant market to be the “market for smartphones in India”. Relying on the GFK Report, the CCI observed that the market in India is highly competitive with a large number of players. The Report also indicated a decline in the market share of Vivo in the period between 2017 and 2018, from 14.4% to 12.1%. Further, it was noted that other competitors in the market, such as Samsung and Xiaomi, held close to 33% and 16.6% respectively. Therefore, CCI held that Vivo could not be the dominant player in the relevant market, as a result of which no case can be made against it for violating Section 4 of the Act.

With respect to the allegation of resale price mechanism (“RPM”), under Section 3(4) of the Act, the CCI held that TNCPPDA had not submitted any evidence to prove that RPM was

imposed on it by Fangs. Further, it held that Fangs did not possess the significant market power required to impose anti-competitive vertical restraints, since there exists a high inter-brand competition in the Indian smartphone market. The CCI justified most of the contentious clauses as being reasonable restrictions imposed by Fangs, and ordered for the matter to be closed under Section 26(2) of the Act.