

**IN RE: M/S KARNI COMMUNICATION PVT LTD & ANR V. HAICHENG VIVO MOBILE (INDIA)
PVT LTD. & ORS.**

Decision date: 19/06/2019

Keywords: anti-competitive practice, vertical arrangement, appreciable adverse effect on competition

Issue: Whether the sub-distributorship agreement was anti-competitive due to restriction on online sales, MOP violation and penalty for MIP imposed by the OP?

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

OP-1 was in the business of trading and distribution of mobile handsets in India. OP-1, entered into a 'Distributor Agreement', with Informant No. 1 wherein it was appointed as the non-exclusive distributor for a region, for distribution of mobile handsets under the brand name, '*Vivo*'.

According to the Informants, OP-1 had strict policy of prohibiting online sales of its products and the penalty to be imposed on the members of sales team, in case they failed to adhere to these conditions. They alleged that OP-1 was levying heavy penalties on the Informants and its retailers, in case sales were made *via* online marketplace. As regards Market Infiltration Policy (MIP), the Informants submitted that in gross violation of provisions of the Act, the OPs were collectively imposing a scheme of penalising the distributors/ retailers in the event they were found to be indulging in MIP. Further, the Informants alleged that practice of the OPs mandating a MOP (Minimum Operation Price) is Anti-competitive and in violation of the Act.

The Commission noted that in terms of relative market share, OPs do not appear to command a position which can have enough influencing power to adversely affect competition in India. Further, it noted that *Vivo* products are readily available online on various e-commerce portals., and that the Primary Distribution Agreement between OP-1 and OP-2 was in respect of offline sales and not with respect to online sales of products. Therefore, the question of restricting online sales by OP-1, with respect to sub-distributors, such as the Informants, would not arise.

As regards MIP, the Commission observed that in the instant matter, the MIP did not appear to have caused or is likely to cause AAEC in the market for sale and distribution of smart phones in India and consequently, no case was made out for contravention of Section 3(4)(c) of the Act. As regards the MOP violation, it noted that the adverse effect on competition has

not been established by the Informants. The imposition of RPM through the MOP Policy did not appear to have caused AAEC in the market for sale and distribution of smartphones in India since there is intense inter-brand competition in the said market in India.

The Commission observed that the market of smart phones is highly competitive with presence of many players, and thus there is enough competition in the market to discipline an enterprise from imposing restrictive conditions on a downstream market player. Thus, it found no competition concern in the entire matter.