



भारतीय प्रतिस्पर्धा आयोग
Competition Commission of India

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MOOT COURT SOCIETY

1st CCI-CUSB NATIONAL
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MOOT PROPOSITION

1. Pistaland is a Sovereign Republic having a booming GDP and is considered a top 5 economy when it comes to developing countries in the world. The Pistaland post introduction of its liberalisation policy in 1991 ensured the proper economic development while keeping any suit of restrictive or unfair trade practice in check.
2. Pistaland introduced a competition law legislation called The Anti-Competition and Combination Act, 2012 (“ACCA”), the primary aim of the legislation was to promote fair trade, prevention of activities which adversely affect the competition or the markets and regulate the increasing merger activity in the state considering the growing needs of the country. The Act of 2012 introduced a regulatory body called the Competition Commission (“CC”) and an appellate tribunal to be called as National Competition Appellate Tribunal.
3. The efforts of the Competition Commission were recognized all over the world as such swooping deals were being conducted post the incorporation of ACCA and the markets responded positively to the regulation of competition thus making it model legislation for other countries.
4. Considering, Pistaland as a huge market and all other multinationals were earning supra profits due to the aspirational youth, SnapIt LLC, (SnapIt), a global technology S-Corp incorporated in Palo Alto, California, United States of America (USA) wanted to enter India. It was essentially an e-commerce company that is slowly becoming the global giant of e-commerce. It had operations in all major economies either through its own company or through its subsidiaries. SnapIt served as both marketplace as well as sold its self-owned inventory goods directly or indirectly on the platform. SnapIt started its operation at a slow pace in 2014 in Pistaland wherein its market presence was only 3%. Then slowly SnapIt with its attractive discount policy and seller incentive increased its market share to 19% by 2016.
5. In order to expand quickly and to utilize first-mover advantage SnapIt entered a joint venture with an entity formed by one of the famous tech moguls Mr Virat Menon who was the founder of software giant Utk Ltd. The Joint venture was called Cloudblaze, which began offering

goods on SnapIt.in after it was set up in August 2015 and in its policy document it declared that Cloudblaze is an independent seller on its marketplace. SnapIt maintained that no privileges were extended to Cloudblaze and it served as just another seller on the platform.

6. Due to its increasing presence, the Traders Association called Association for protection of MSME (“APM”) launched a nationwide protest and complained to the government in 2018 wherein a representation on behalf of both brick-and-mortar and smaller online sellers stating that SnapIt primarily only benefits SnapIt and its big sellers which have also used restrictive practices such as predatory pricing that hurt the domestic retailers and sellers. SnapIT subsequently stated in its press release providing that it complies with Indian law and is different to that in the United States, where it can both act as a middleman and sell goods directly to consumers.
7. In May 2020, SnapIt released its annual sale event called “SastiLoot” wherein it was an annual consumer-oriented sale. The sale this time included the exclusive launch of mobile phones by the e-commerce firms which utilized certain preferred sellers on their websites and allowed them to utilize a controversial strategy called “deep discounting”. The APM filed a complaint before ACCA alleging that the e-commerce giant’s conduct fell under vertical restraint and has pointed out a ‘lack of platform neutrality’ on SnapIt India.
8. The Government meanwhile updated and adopted an FDI circular dated 17.05.2014 on 28.09.2020 wherein Clause 6.1 stated: “25 per cent maximum sales from a single vendor”. The Government considered several representations and considered this as a levelling measure wherein all e-commerce companies could now compete with each other fairly. SnapIt thus had to reduce its share in Blaze to 25% or less.
9. The new rule also introduced via Clause 6.4 is “E-commerce entities providing marketplace cannot exercise control or ownership over the inventory, i.e. the goods professed to be sold. Such control or ownership over the inventory renders the e-commerce business into an inventory-based model. This became a huge problem for SnapIt as it was utilizing Blaze inventory as its own. SnapIt moved its mobile division to wholesale and then supplied it to small retailers who then sold it on SnapIt as it did not violate any FDI circular. This was again objected to by the APM it being violative and circumventing the FDI policy of Pistaland.

10. In 2019, SnapIt in order to expand its footprint in brick-mortar bought a stake in Nukkad Retailer which was 48% and was worth Rs 2,310 crore. This was considered the biggest retail deal in India. SnapIt filed its Notice in notifying the combination deal to CC as per the ACC Act. The substantial acquisition was keeping in mind that FDI was capped in retail and upon the opening up of the policy SnapIt wanted to poise itself as the largest investor in the company. On 08th February 2020 CC gave its approval to the combination as it will benefit the e-commerce and retail platforms.
11. In 2021, a complaint was filed by a whistleblower to CC stating that SnapIt had suppressed certain relevant material and termed it as a clear, conscious, and willful case of omission to state the actual purpose of the Combination despite the disclosure requirement. The CC cancelled the approval as SnapIt knowingly misrepresented, suppressed relevant and material facts as well as failed to provide sufficient disclosures in the Notice. The CC and the Government wanted a thorough investigation into the allegations.
12. Finding a prima facie case, CC directed its investigation arm – the Director General (DG) – to investigate the allegations and started investigating claims of the wholesale arm of SnapIt was in collusion with SnapIT Retail as the goods were being sold at deep discounts thus creating lopsided competition. Further, it was also alleged that there was misuse of third-party data as third-party sellers bear the initial costs and uncertainties when introducing new products and SnapIt would use this data of success rate for its own profit.
13. DG in its investigation on compliance by APM found internal communications that Blaze was given preferential treatment and termed it as a “Priority Retailer (PR). Blaze since its inception was provided with a fast-track approach for it to expand and scale the throbbing Pistaland Markets. Further, the documents also showcased that Blazed had a 50% share in the sale component of SnapIt making it the largest seller on the platform. The deep discounting and key exclusive contracts with mobile companies garnered such a whooping growth.
14. Meanwhile, the due date for compliance with the 25% rule in the 2020 FDI Circular was due on 5th June 2021 and SnapIt sold Blaze share to itself and got the necessary approval from CC.
15. The DG of CC in its report dated 18th June 2021, reported that SnapIt was explicitly violating

the Government's FDI policy wherein it was influencing the prices of the goods as alleged by the trader's association APM. The report also stated there was another Priority Seller named Nimit which was also getting priority and was given a subsidized fee and key access to its international channels. Thus, it was observed that the compliance of the FDI 2020 policy document was only on paper and not in actuality. DG recommended the initiation of the case for violation of the CC as it was promoting its owned companies and then indulging in predatory pricing.

16. The CC, approved the case against SnapIt by APM for it being listed before the Roster Bench along with the reconsideration of combination approval of Nukkad Retailers on the same day. SnapIt in its detailed filings and submissions stated that CC has exceeded its mandate as it did not have powers to regulate FDI related issues under ACCA. Further, SnapIt was in full compliance at all times with the ACCA as the pricing norms and equity stake was never misused. SnapIt also contends that externalities and efficiency gained it the market share it has and not pricing policy in the relevant market. The SnapIt also interalia contends that CC post Comination approval cannot revoke the same at conditions as it is violative of the basic principles of law.

NOTES:

- A. No precedent/judgment/rulings shall be utilized of the Indian Jurisdiction post-2017.
- B. The economy and market conditions in India are a good proxy for the markets in Pistaland.
- C. The CC relies on established competition law precedents in the European Union and the United States of America.
- D. The parties have to formulate arguments on the following issues:–
 1. Whether SnapIt is dominant and abusive in the relevant market?
 2. Whether the actions of SnapIt is in violation of Section 3 of ACCA?
 3. Whether Competition Commission has the jurisdiction to entertain matters falling under the FDI Policy of Pistaland?
 4. Whether the CC can re-open its combination proceedings post-approval?