



**COMPETITION COMMISSION OF INDIA**

**Case No. 20 of 2018**

**In Re:**

**All India Online Vendors Association  
H-501, Rajyash Reevanta  
Opp. APMC Market NR. Sahaj  
Solarium, Opp. Arath Appt  
Vasna Ahmedabad, Gujarat-380007**

**Informant**

**And**

**1. Flipkart India Private Limited  
Vaishnavi Summit Ground Floor  
7th Main, 80 Feet Road  
3rd Block, Koramangala  
Industrial Layout  
Bengaluru-560034**

**Opposite Party No. 1**

**2. Flipkart Internet Private Limited  
Vaishnavi Summit Ground Floor  
7th Main, 80 Feet Road  
3rd Block, Koramangala  
Industrial Layout  
Bengaluru-560034**

**Opposite Party No. 2**

**CORAM**

**Mr. Sudhir Mital  
Chairperson**

**Mr. Augustine Peter  
Member**

**Mr. U.C. Nahta  
Member**



**Present:**

For the Informant	Shri Chanakya Basa, Advocate
For the Opposite Parties	Shri Rajshekhar Rao, Shri Bharat Budholia, Ms. Smita Andrews, Shri Yaman Verma and Ms. Aakarshi Agarwal, Advocates
For Amazon Seller Services Private Limited	Mr. Arun Kathpalia, Senior Advocate with Mr. Anand S. Pathak, Mr. Shashank Gautam, Ms. Sreemoyee Deb, Mr. Abhinav Meena and Mr. Parth Sehan, Advocates alongwith Mr. Rakesh Bakshi, Vice President & AGC, Mr. Ankur Sharma, AGC, Mr. Rahul Sundaram, Senior Corporate Counsel and Ms. Swati Agarwal, Corporate Counsel

**Order under Section 26 (2) of the Competition Act, 2002**

1. The present information has been filed under Section 19(1)(a) of the Competition Act, 2002 (**'the Act'**) by All India Online Vendors Association (**'the Informant'**) against Flipkart India Private Limited (**Flipkart India/ 'OP-1'**) and Flipkart Internet Private Limited (**Flipkart Internet/ 'OP-2'**) (collectively, **OPs/ Flipkart**) alleging *inter alia* contravention of the provisions of Section 4 of the Act.
2. The Informant, a company registered under the provisions of the Companies Act, 2013, is a group of more than 2000 sellers selling on e-commerce marketplaces such as Flipkart, Amazon, Snapdeal *etc.*
3. OP-1, a company having its head office at Bengaluru, is engaged in wholesale trading/ distribution of books, mobiles, computers and related accessories. OP-2 is also a company having its head office at Bengaluru



and is engaged in e-commerce marketplace business under the brand name Flipkart.com.

4. It is averred in the information that OP-2 connects buyers and sellers on its electronic marketplace platform, for which it receives platform fee from the registered sellers.
5. Based on an article published in ET Retail.com, an initiative of The Economic Times, under the heading, “Small online sellers ally with big vendors”, dated 07.04.2018, the Informant has stated that small vendors have become allies of the big vendors and suppliers to leading sellers such as Cloudbtail, WS Retail *etc.* on the Flipkart and Amazon platforms, rather than selling directly to consumers through the online ecommerce marketplace sites.
6. The Informant stated that OP-1 sells goods to companies like WS Retail Services Private Limited, which was owned by founders of OP-2 till 2012, at a discounted price and thereafter, these are sold on the platform operated by OP-2. The Informant further stated that such practices amounted to preferential treatment to certain sellers. Further, it was apprehended that unfair trade practices are being carried and corporate veil on it is required to be lifted to assess the economic nexus and the wrongdoings being committed. The Informant averred that OPs have a direct conflict of interest with other manufacturers selling on their platform and their own brands like ‘*Smartbuy*’ and ‘*Billion*’.
7. Based on the above averments and allegations, the present information has been filed by the Informant against the Opposite Parties alleging contravention of the provisions of Section 4 of the Act and made the following prayers to the Commission:



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(i) To provide an interim relief under Section 33 of the Act by ordering OPs to abstain from indulging in any discriminatory practice until the final order. Any further delay will put multiple sellers out of business and cause irreparable damage to the market.

(ii) Not to approve any combination with respect to OPs under Section 5 of the Act, until the investigation is completed and final order is passed.

(iii) To invite objections under Section 29(3) of the Act, if there has been a notice filed for Combination under Section 6 of the Act with OPs as parties because the above mentioned facts prove beyond reasonable doubt that OPs' actions are causing appreciable adverse effect on competition. As the sellers are key stakeholders in such transactions and as their livelihood are at stake, not giving them an opportunity to be heard will be against the principles of natural justice.

(iv) To thoroughly investigate the e-commerce sector at large, as multiple players are indulging in sophisticated discriminatory practices.

(v) If any combination in the relevant market is allowed without a detailed sector study being carried out, it would have an appreciable adverse effect on competition and cause an irreparable damage to the market.

(vi) To impose a severe penalty on OPs so that no other platform indulges in such blatant abuse of dominance in near future.

8. Subsequent to filing of the Information, the Informant filed additional Information and again reiterated its prayer for interim relief and more specifically sought an interim order in terms of the provisions of Section 33 of the Act to restrict the alleged preferred sellers and brands to participate in upcoming Big Billion Days sales and other sales events on Flipkart.com and related marketplace platforms until the final order.



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9. The Commission held preliminary conference with the parties besides perusing the material available on record. The Commission, in order to comprehend the nuances of the online retail sector, also held preliminary conference with Amazon Seller Services Private Limited ('Amazon').
10. It is averred in the information that OP-2, which is stated to be the marketplace for selling of goods online in India, is dominant in the aforesaid market. Further, it is alleged that OP-2 has abused its dominant position in the said market, as detailed in the succeeding paragraphs.
11. Referring to an order dated 25.04.2018 passed by the Hon'ble Income Tax Appellate Tribunal in the case of *Flipkart India Private Limited v. Assistant Commissioner of Income Tax*, ITA No. 202/Bang/2018 (Asst. Year : 2015-16), it is alleged that the strategy of OP-1 was to acquire goods from various persons and to immediately sell the same to WS Retail Services Private Limited at a discount which would, in turn, sell such goods as sellers on the internet platform of OP-2 *i.e.* Flipkart.com. Such conduct of OP-2 was alleged to be in contravention of Section 4 (2) (a) of the Act. It was also pointed out that OPs are able to sell goods at discounted price as they have access to Venture Capital ('VC') funds and are financially backed by big investors.
12. It is further alleged that such acts of OPs of selling goods below cost price also result in denial of market access to the individual sellers who are not backed by VC funds and investors and thereby such acts also contravene the provisions of Section 4 (2) (c) of the Act.
13. Lastly, it is alleged that OP-2 is using its dominance in the relevant market by leveraging its position to enter into another market by way of extending discounts and manufacturing products under private labels. This was stated to be in violation of Section 4 (2) (e) of the Act.



14. To examine any allegation of abuse of dominant position, it is first appropriate to define the relevant market(s).
15. At the outset, the Commission notes that the Informant had filed the instant information alleging abuse of dominance by Flipkart Internet (OP-2) by defining the relevant market as “services provided by online marketplaces for selling of goods in India”. The counsels appearing on behalf of the OPs submitted that Flipkart entities engaged in two distinct businesses. While the markets in which they operate form a part of the overall retail supply chain, they are, nevertheless, part of two distinct markets, with different end-consumers, characteristics and an entirely separate competitive landscape. Wholesalers, like Flipkart India, sell products primarily to resellers, who in turn sell such products to consumers. Therefore, although, all products sold by Flipkart India may eventually end up on the Business to Consumers (‘B2C’) market, Flipkart India does not operate in the B2C market, given the restriction on B2C sales under the foreign direct investment regime. Hence, keeping in view the existing ground realities, it was urged that there is a need to define two separate relevant markets in relation to Flipkart India and Flipkart Internet’s activities.
16. It was further submitted that if Flipkart India’s conduct was to be assessed under Section 4 of the Act, such assessment will need to be undertaken with regard to the Business to Business (‘B2B’) market in India, in which Flipkart India is active and any reference to the B2C market in this context would be completely misplaced. Similarly, in relation to Flipkart Internet (which operates Flipkart marketplace), it was submitted that the definition of the relevant should be the pan-India market for retail *i.e.* B2C, including online and offline channels of distribution.
17. The Commission has examined the rival contentions on the relevant market advanced by both parties carefully and is of the considered opinion



that the submissions made by the counsel appearing on behalf of Flipkart suggesting delineation of two distinct markets, are thoroughly misplaced.

18. Perusal of the Information reveals that the Informant has essentially made allegations against Flipkart Internet/ OP-2. It is alleged in the information that OP-2, which operates the Flipkart marketplace for selling of goods online in India, has abused its dominant position in the said market by facilitating discounts and by further leveraging its position to enter into another market of manufacturing products through private labels. In this connection, the Informant alluded to the role of OP-1 by pointing out that the strategy of OP-1 was to acquire goods from various persons and to immediately sell the same to WS Retail Services Private Limited at a discount which would, in turn, sell such goods as sellers on the internet platform Flipkart.com of OP-2.
19. Thus, it is evident that there is no need to define two relevant markets as urged by the counsel appearing on behalf of Flipkart and the impugned conduct can be examined with reference to delineation of one relevant market alone which is relatable to OP-2.
20. At this stage, it is observed that Flipkart Internet (OP-2) operates a marketplace-based e-commerce platform, which facilitates trade between end-customers and third party sellers.
21. It was, however, submitted by the counsel appearing on behalf of Flipkart that any analysis conducted by considering the perspective of the end-consumers on the marketplace-based e-commerce platforms will necessarily evidence that such platforms are merely an alternate distribution channel to offline distribution (or brick and mortar stores). It was further submitted that the substitutability between these two modes of retail sales is also evident on account of the “omni-channel” or “multi-



channel” approach, which signifies convergence of all platforms (whether online or offline) to create a seamless shopping experience for customers, and several players in the B2C market are adopting this approach. On the other hand, sellers on the Flipkart Marketplace not only have the option but also the ability and choice to sell their products on other marketplace-based e-commerce platforms as also through offline modes of retail distribution. Based on the above, the counsel argued that the definition of the relevant market in relation to the Flipkart marketplace should be the pan-India market for retail or B2C, including online and offline channels of distribution.

22. Having examined the issue, the Commission notes that e-commerce marketplaces are connecting link between the buyers and sellers. It provides them a platform to interact and transact their business. E-commerce market in India is still an emerging market. Several e-commerce companies are opening physical offline stores to offer online buyers the touch-and-feel experience, thus offering an integrated shopping experience. On the other hand, various offline retailers have started their online ventures or partnered with leading e-commerce companies to attract customers on the electronic marketplace.
23. No doubt, to the end consumers, the distinction line between online and offline sellers is sometimes blurry, yet it cannot be denied that online marketplaces offer convenience for sellers as well as the buyers. For the sellers, they save costs in terms of setting up of a store, sales staff, electricity and other maintenance charges. The benefits afforded to buyers includes comfort of shopping from their homes thus saving time, commuting charges and at the same time they can compare multiple goods. Be that as it may, nothing significant turns upon such convergence on the outcome of this case as even if the market is confined to online space, the present market construct, as detailed later, would not indicate any player with such a market power so as to confer a dominant position upon it.



24. However, at this stage, it may be appropriate to note that there is a difference between online retail store and online marketplace platform. In online retail store, a particular seller, who may or may not own a brick and mortar retail store, owns his portal to sell products thorough online website. Whereas in an online marketplace platform such as Amazon or Flipkart, the owner of the online portal offers a platform for buyers and sellers to transact. Hence, the sellers would be interested in selling on the platforms when increasingly high number of buyers visit an online platform, thus characterising the online platforms with network effects. In the case of online retail stores, there are hardly any network effects though there may be efficiencies of scale. Further, as per the Guidelines for Foreign Direct Investment (FDI) on E-commerce issued by Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Government of India, FDI is not permitted in inventory based model of e-commerce. However, 100% FDI under automatic route is permitted in marketplace model of e-commerce.
25. In view of the above discussion, the relevant product market in this case may be considered as “Services provided by online marketplace platforms”.
26. Further, as per the provisions of the Act, relevant geographic market comprises the area in which conditions of competition are distinctly homogeneous. For online market platforms, the conditions of competition are homogeneous pan- India and as such, the relevant geographic market in this case may be taken as ‘India’.
27. Resultantly, the relevant market in the instant case may be defined as “*Services provided by online marketplace platforms for selling goods in India*”.



28. On the issue of dominance, the Informant has stated that the OPs hold over 40% market share. In this regard, it is observed that the Informant has not given any credible source for the market share data. Moreover, there are multiple players in the online marketplace platforms. As per the data available in the public domain, it appears that presently Flipkart and Amazon are the bigger competitors; moreover, there are other players like Paytm Mall, SnapDeal, Shopclues *etc.* No doubt, the size and resources of Flipkart are large; yet, it cannot be disputed that the closest competitor to Flipkart is Amazon which has a valuation of around 700 billion dollars and has a global presence. With regards to entry barriers, it has to be noted that it is possible for new entrants to create online marketplace platforms, but the advantage gained by incumbents due to network effects may be difficult to breach. However, Flipkart has pointed out that there are several new players which have entered or propose to enter the e-commerce segment, such as Paytm Mall, thus indicative of low entry barriers.
29. Be that as it may, looking at the present market construct and structure of online marketplace platforms market in India, it does not appear that any one player in the market is commanding any dominant position at this stage of evolution of market.
30. As discussed earlier, Flipkart India is not dominant in the relevant market of “Services provided by online marketplace platforms for selling goods in India”; therefore, the issue of abuse of dominant position does not arise. The Commission, however, deems it appropriate to take on record the submissions made by Flipkart denying abusive conduct by its entities. In regards to Flipkart India, it has been submitted by Flipkart that the arrangements of Flipkart India with its B2B customers are neither exclusive nor do they impose any restraints on any reseller who chooses to sell their products on the Flipkart platform. Further, Flipkart India does not impose any exclusivity requirements on its B2B customers with respect to either procuring the products from Flipkart India or with respect to



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reselling these products to any third parties, or selling on/ through the Flipkart marketplace. The option of dealing with Flipkart India is available to any vendor. There is no restriction on any entity desirous of dealing with Flipkart India as a B2B customer. Further, the B2B customers are independent third party vendors with whom Flipkart India has arm's length arrangement.

31. The Commission also observes that so far as the issue of preferential treatment given by OP-1 to exclusive seller (WS Retail Services Private Limited) which is stated to be owned by OP-2, suffice to point out that the Informant itself has admitted in the Information of such structural link between OP-2 and WS Retail existed only till 2012. Hence, no such concern is present today. Additionally, Flipkart has pointed out that WS Retail Services Pvt. Ltd. is no longer a seller on the Flipkart Marketplace post 11 April 2017. On the other allegations also, the Informant has not placed any material to substantiate the same. With reference to abusive conduct attributable to Flipkart Internet, it was submitted that the terms and conditions on which sellers access the Flipkart marketplace are standard and the incentive are based on objective criteria such as quality of product and volume and value of sales. Any person/ entity desirous of selling its products through the Flipkart marketplace can register on it, subject to satisfaction of standard terms and conditions. The Flipkart marketplace is required to comply with conditions applicable to entities involved in the business of e-commerce, as set out in the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017. As such, Flipkart Internet is bound by these laws, the compliance of which is ensured by the relevant authorities.
32. In view of the foregoing, the Commission is of the opinion that no case of contravention of the provisions of Section 4 of the Act is made out against the Opposite Parties and the Information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.



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33. Before parting with this order, it may be pointed out that though the Information was filed against Flipkart entities, the Commission deemed it appropriate to hold preliminary conference with Amazon Seller Services Private Limited as it is also a key player in the relevant market. However, looking at the market construct as discussed above and for the reasons given in the context of examining allegations against Flipkart, the Commission is of the considered opinion that no case of contravention of the provisions of Section 4 of the Act is made out against Amazon as well.
34. Lastly, the Commission observes that the marketplace based e-commerce model is still a relatively nascent and evolving model of retail distribution in India and the Commission is cognizant of the technology-driven nature of this model. Recognizing the growth potential as well as the efficiencies and consumer benefits that such markets can provide, the Commission is of the considered opinion that any intervention in such markets needs to be carefully crafted lest it stifles innovation.
35. The Secretary is directed to communicate to the parties and Amazon, accordingly.

**Sd/-**

**(Sudhir Mital)**  
**Chairperson**

**Sd/-**

**(Augustine Peter)**  
**Member**

**Sd/-**

**(U.C. Nahta)**  
**Member**

New Delhi  
Date: 06/11/2018