

Karnataka HC Upholds CCI's Order to Investigate Amazon

June 14, 2021

In a setback to e-commerce majors Amazon and Flipkart, the Karnataka High Court upheld the Competition Commission of India's decision to conduct an investigation through its Director General into whether they had entered into anti-competitive agreements in violation of the provisions of the Competition Act 2002. Justice P.S. Dinesh Kumar passed the order while dismissing the petitions filed by the e-commerce giants.

In news: Karnataka HC allows CCI to investigate Amazon, Flipkart

Placing it in syllabus: Economy

Dimensions

- CCI's Order
- Karnataka HC Ruling
- Importance of the ruling
- What is CCI?

Content:

CCI's Order:

- The CCI ordered the probe after the **Confederation of All India Traders (CAIT) and the Delhi Vyapar Mahasangh (DVM)**, representing micro, small and medium enterprises (MSMEs) and traders, **accused the e-commerce firms of unfair trade practices**.
- The complaint alleged that Amazon and Flipkart were giving preference to select sellers and offering deep discounts by **indulging in anti-competitive agreements**.
- On January 13, 2020, the CCI had ordered an

investigation through its Director General into the matter.

Karnataka HC Ruling:

- Amazon and Flipkart had challenged the January 20, 2013 order of the Competition Commission of India (CCI) in the Karnataka High Court
- The court had earlier stayed the probe through an interim order when Amazon and Flipkart had challenged the CCI order against them in February 2020.
- The Competition Commission of India had challenged this stay before the Supreme Court, which had directed the regulator to approach the high court for relief.
- In its latest order, The Karnataka High Court has dismissed a petition filed by e-commerce giants, Amazon and Flipkart.
- The court upheld the CCI's decision to conduct an investigation through its Director General into whether e-commerce giants had entered into anti-competitive agreements in violation of the **provisions of the Competition Act 2002**.
- The High Court order said that "it is expected that an order directing investigation be supported by 'some reasoning', which the Commission has fulfilled.
- Now, the Director-General of CCI can proceed with the process of investigation.

Allegations by Traders body

In October 2019, Delhi Vyapar Mahasangh (DVM) had filed an appeal before CCI alleging:

- **Anticompetitive vertical agreements** between Flipkart and Amazon with their respective preferred sellers giving them an edge over other sellers.
- Most of these **preferred sellers are affiliated with or controlled by Flipkart or Amazon**, either directly or

indirectly.

- **influencing the price being charged by sellers** by providing several discounts and inventory to them.
- **Predatory Pricing:** these platforms used the gathered data on consumer preferences for providing deep discounts to their users despite incurring losses.
- **'Preferential Listing' of their products** by categorising the products sold by its preferred sellers as "Assured Seller" and "Fulfilled", and allegedly created a bias in favour of preferred sellers to the detriment of other sellers.
- **Exclusive tie-ups** in the relevant market with the smartphone companies provides exclusivity through discounting and preferential listings, which leads to other competitors being excluded and foreclosed from the market.

E-Commerce giants' Petition

- Both Amazon and Flipkart challenged the earlier orders passed by CCI directing investigations contending that the orders violated on the grounds that the **impugned order suffered from non-application of mind.**
- They claimed that they were not provided with any notice or opportunity of hearing before forming, passing the orders.
- The petitioners also said that the CCI order was not a reasoned order as the jurisdiction of CCI is barred on account of a pending investigation by the Enforcement Directorate etc. //

Importance of the ruling:

- The High Court dismissed the writ petitions challenging the jurisdiction of CCI and paved the way for the investigations to continue.
- The Court also noted that the order passed by the Commission is an **'administrative direction'** to one of

its wings departmentally and without entering upon any adjudicatory process.

- It also pointed out that **Section 26(1) of the Competition Act, 2002, does not mention about issuance of any notice to any party before or at the time of formation of an opinion** by the Commission on the basis of information received by it.
- This section is related to procedure for inquiry based on information or complaint and if the commission is of the opinion that there exists a prima facie case.
- The judgement helps in creating and sustaining fair competition in the economy that will provide a 'level playing field' to the producers and make the markets work for the welfare of the consumers.

What is CCI?

Origin , Composition, Functions and Powers

- Competition Commission of India is the competition regulator in India.
- It is a **statutory body** of the Government of India responsible for **enforcing The Competition Act, 2002** and promoting competition throughout India and to prevent activities that have an appreciable adverse effect on competition in India.

Origin

- It was established on 14 October 2003. It became fully functional in May 2009
- The idea of Competition Commission was conceived and introduced in the form of The Competition Act, 2002.
- A need was felt to promote competition and private enterprise especially in the light of 1991 Indian economic liberalisation

Composition:

- The Commission comprises a Chairperson and not less than 2 and not more than 6 other members appointed by the Central Government.

Functions and powers:

It is the duty of the Commission to:

- eliminate practices having adverse effects on competition,
- promote and sustain competition,
- protect the interests of consumers and
- ensure freedom of trade in the markets of India.

The Commission is also required to **give opinion on competition issues** on a reference received from a statutory authority established under any law and to undertake competition advocacy, create public awareness and impart training on competition issues.

The Competition Commission of India endeavors to do the following:

- Make the markets work for the benefit and welfare of consumers.
- Ensure fair and healthy competition in economic activities in the country for faster and inclusive growth and development of the economy.
- Implement competition policies with an aim to effectuate the most efficient utilization of economic resources.
- Develop and nurture effective relations and interactions with sectoral regulators to ensure smooth alignment of sectoral regulatory laws in tandem with the competition law.
- Effectively carry out competition advocacy and spread the information on benefits of competition among all stakeholders to establish and nurture competition culture in Indian economy.

The **Competition Act, 2002**, as amended by the Competition (Amendment) Act, 2007, follows the philosophy of modern competition laws.

The Act prohibits anti-competitive agreements, abuse of dominant position by enterprises and regulates combinations (acquisition, acquiring of control and M&A), which causes or likely to cause an appreciable adverse effect on competition within India.

Comparison with MRTP Commission

- **Monopolies and Restrictive Trade Practices (MRTP) Act, 1969** was revoked and replaced by Competition Act, 2002.
- While the old act belongs to the pre-liberalisation period, the new Act came into force after liberalization. The arrangement and language of the new act are much simpler than the old one.
- In other words, Competition Act is an improvement over the MRTP Act. So, there are vast differences between the two regarding scope, focus, purpose, etc.

The fundamental points of difference between MRTP Act and Competition Act are given as follows:

- MRTP Act is a competition law that was created in India, in 1970 to prevent concentration of economic power in a few hands. On the other hand, Competition Act emerged as an improvement over the MRTP act to shift the focus from controlling monopoly to initiating competition in the economy.
- MRTP Act is reformatory in nature, whereas Competition Act is punitive.
- In Monopolies and Restrictive Trade Practices (MRTP) Act, the dominance of a firm is determined by its size. On the other hand, the dominance of a firm in the market is determined by its structure in the case of the Competition Act.

- In the MRTP Act, there are 14 offenses, which are against the rule of natural justice. On the contrary, there are only four offenses listed out by the competition act.
- MRTP Act does not specify any penalty for offenses but Competition Act states penalty for the offences.
- The basic motto of the MRTP Act is to control monopolies. As against this, the Competition Act intends to initiate and sustain competition.

Mould your thought: “Probe into anti-competitive agreements entered into by e-commerce majors is necessary for fair competition in India.” Comment based on the order by the Karnataka High Court order allowing CCI to continue investigation.

Approach to the answer:

- Introduction
- Discuss the allegations by trade bodies
- Discuss the CCI's order and the objections by the e-commerce majors
- Discuss the significance of the order for competition in India
- Conclusion