

LEGAL UPDATES

CCI: INVESTIGATED ANTI-COMPETITIVE POLICIES IN APP STORE DUE TO APPLE'S PRIMA FACIE DOMINANCE IN THE APPS MARKET

In response to a complaint that alleged abusive conduct of Apple's dominant spot in the Apps market, CCI directed the DG to launch an investigation into the actions of Apple Inc. and Apple Distribution International Ltd. (an Apple entity that creates Apple-owned apps, information, and facilities accessible to users in its name and on its account and is in charge of the App Store). The issue raised was that Apple arbitrarily establishes App Store Review guidelines, which are implemented in an unanticipated, unpredictable, and discriminatory manner and have marked form contracts (also referred to as "take it or leave it" agreements). This interferes with the capability of app developers to conduct and run their normal operations in a proper manner. The Bench consisted of Mr. Ashok Kumar Gupta, Mr. Bhagwant Singh Bishnoi, and Sangeeta Verma. The aforesaid actions by Apple were tantamount to a breach of Sec. 4(2)(a)(i) of the Competition Act, which forbids a dominant entity from charging unjust or discriminatory conditions on the acquisition or sale of products or services. Additionally, the informant claimed that Apple necessitates app developers who want to sell digital in-app content to their customers to use Apple's in-app payment solution system, or "IAP," and pay a 30% commission. The informant said that, contrary to Apple's unreasonably high 30% costs, developers make their products available to consumers of Apple products in an open market with a variety of different payment choices and competitive processing rates that are around 10 times cheaper than Apple's prices. As a consequence, Apple's approach discourages entry, in violation of Sec. 4(2)(c), and the implementation of commission done by Apple may also constitute a sort of "margin squeeze," which is also against the letter of the statute. The Informant argued that Apple requires the usage of its In-App Purchase to the exclusion of competing alternatives in order to utilize its App Store, which constituted a per se unlawful tie-in arrangement, through its Guidelines/Agreement and discriminatory policies. Additionally, it is argued that Apple's actions have eliminated competition in the iOS In-App Payment Processing Market, having a significant impact on the amount of business conducted in these markets. This

anti-competitive tie-in arrangement is also alleged to violate Sec. 4(2)(d) and (e) of the Competition Act. The CCI identified the particular market for Apple as the "market for app stores for iOS in India" and asserted that prima facie Apple has an exclusive monopoly and domination in the market. The CCI also observed that Apple charges app developers a 30% commission on subscriptions purchased through the required IAP and forbids app developers from notifying app users about the option to purchase online. According to CCI, the use of Apple's IAP for paid applications and in-app purchases is ostensibly required, which limits the options open to app developers to choose a payment processing system of their choosing, especially given that it levies a fee of up to 30% for app and in-app sales, purchases, and transactions. Additionally, the Commission asserted that this behavior ties Apple's IAP payment processing facility to the App Store, meaning that app developers must consent to use Apple's IAP payment processing service to sell their apps to iOS users through Apple's App Store appears to be against Sec. 4(2). (d). It also leads to Apple violating Sec. 4(2)(e) by using its dominant position in the App Store market to penetrate or defend its market for IAP purchase payment processing. CCI came to the conclusion that Apple's arguments, such as that the App Store Review Guidelines are acceptable and justifiable and that the commission paid for IAP is Apple's fair compensation for offering a variety of services, need an in-depth evaluation that can be effectively conducted during an investigation. According to CCI, Apple appears to have violated Sec.s 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), and 4(2)(e) of the Competition Act, which calls for a thorough probe.