



COMPETITION COMMISSION OF INDIA

Case No. 29 of 2020

In Re:

AIOVA Sellers Association

Informant

H-501, Rajyash Reevanta,
Opp. APMC Market Nr. Sahaj Solarium, Opp. Arath Appts.
Vasna Ahmedabad, Gujarat-380007

And

Amazon Seller Services Pvt. Ltd.

Opposite Party No. 1

No.26/1 ,8th floor, Brigade Gateway
Dr. Raj Kumar Road Malleshwaram (West),
Bengaluru-560055, Karnataka

Amazon Wholesale India Pvt. Ltd

Opposite Party No. 2

Unit 504, 5th Floor,
Salcon Rasvilas Building,
Plot No. D-1, Saket
District Centre, Saket,
New Delhi, India-110017

Amazon Retail India Pvt. Ltd

Opposite Party No. 3

Ground Floor, Eros Plaza,
Eros Corporate Centre,
Nehru Place, New Delhi-110019

Cloudtail India Pvt. Ltd.

Opposite Party No. 4

Ground Floor Rear,
Portion, H-9, Block B-1,



Mohan Cooperative Industrial Area,
Mathura Road, New Delhi-110019

Prione Business Services Pvt. Ltd.

Opposite Party No. 5

H-9, Block B-1,
Mohan Cooperative Industrial Area,
Mathura Road, New Delhi-110019

CORAM

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

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

1. The present information has been filed by All India Online Vendors Association (hereinafter, 'AIOVA'/'Informant') under Section 19(1)(a) of the Competition Act (hereinafter, the 'Act') alleging contravention of provisions of Sections 3(4) of the Act by Amazon Seller Services Pvt. Ltd. (hereinafter, 'OP-1'), Amazon Wholesale India Pvt. Ltd. (hereinafter, 'OP-2'), Amazon Retail India Pvt. Ltd. (hereinafter, 'OP-3'), Cloudtail India Pvt. Ltd. (hereinafter, 'OP-4'), and Prione Business Services Pvt. Ltd. (hereinafter, 'OP-5') (collectively referred to as 'Opposite Parties'/'OPs').



Facts and allegations as stated in the Information

2. The Informant claims to be an association comprising more than 2000 sellers across the country, with its members selling various products on e-commerce marketplaces such as Flipkart, Amazon, Snapdeal, etc. The Informant is stated to be engaged, *inter alia*, in facilitating discussion and assistance to its member traders with various administrative and government agencies, creating a code of conduct and streamlining existing systems, *etc.*
3. The Informant has submitted that OP-1 operates the e-commerce marketplace ‘Amazon.in’ in India, wherein sellers register and sell their goods on OP-1’s platform by paying certain referral fees, closing fees, weight handling fees, storage fees, pick and pack fees, *etc.* OP-2 is stated to be a wholesale arm (B2B) of OP-1, which buys goods from the manufacturers in bulk at lesser prices, and further, sells at a loss to its related vendors, namely, OP-3 and OP-4, who also operate on the marketplace operated by OP-1.
4. OP-4 is owned by OP-5. OP-5 is a joint venture between Amazon Asia Pacific Resources Pvt. Ltd. and Catamaran Advisors LLP (acting as a trustee of Hober Mallow Trust). Till 2018, Amazon Asia Pacific Resources Pvt. Ltd. held a 48% share in OP-5, but in 2019, its shareholding was reduced to 23%. It has been further stated that Amazon Corporate Holdings Pvt. Ltd., a Singapore based entity, owns OP-2 and OP-3, with about 99% shareholding in each.
5. The Informant states that OP-1 (Amazon.in) is one of the largest marketplaces in the world, and most sellers/manufacturers have no option but to sell on this platform or run the risk of losing out on significant market presence. Thus, most brands invest capital and time to appear at the top of search results under the ‘Best Seller’ or ‘Sponsored’ category. This has created a lock-in effect as brands/sellers, if intending to shift to other platform, cannot transfer their ‘Reviews/Ratings’ or ‘Best Seller’ status or its top position to other marketplaces. All these factors make OP-1’s marketplace a ‘market’.
6. The Informant alleges that the *modus operandi* of the OPs falls under the vertical restraint as defined under Section 3(4) of the Act, which can be broadly classified into two categories of



‘deep discounting’ and ‘lack of platform neutrality’ on OP-1’s marketplace. The same is detailed in the following paragraphs.

7. The Informant has alleged that OP-2 buys goods in large quantities worth hundreds of crores directly from manufacturers, then sells it at a loss, unlike other wholesalers, who would sell at a profit, to OP-3 and OP-4 who, in turn, sell their products to consumers at massive discounts on OP-1’s platform. Most sellers selling similar categories of goods as OP-3 and OP-4 on OP-1’s platform are unable to sell at such losses. This anti-competitive arrangement amongst the OPs is driving existing and independent sellers out of the marketplace, resulting in the foreclosure of competition.
8. Relying on financial statements, the Informant states that OP-2 suffered a financial loss of approximately ₹140.80 crores for the financial year ending on 31.03.2019 and approximately ₹131.40 crores for the financial year ending on 31.03.2018. Further, the Informant states that OP-3 suffered a financial loss of approximately ₹127.40 crores for the financial year ending on 31.03.2019 and approximately ₹6.40 crores for the financial year ending on 31.03.2018. The Informant asserts that the loss of hundreds of crores for OP-2 and OP-3 for the year 2018 and 2019 indicates that the discounts are being given by them.
9. The Informant has further alleged that OP-3 and OP-4 work on a two-fold business model wherein, firstly, they act as retailers/sellers and sell goods of third party brands at massive discounts on OP-1’s marketplace under the name ‘Amazon Pantry’. Secondly, they also sell private labels under various categories of products, such as ‘Vedaka’, ‘Presto’, ‘Solimo’, *etc.* at massive discounts. Therefore, OP-3 and OP-4 act as retailers/sellers as well as manufacturers selling goods at massive discounts on OP-1’s marketplace. The OPs together ‘in collusion’ have been offering massive discounts for years on various categories of products.
10. The Informant states that, during COVID-19, OP-1, instead of accommodating more sales to independent sellers, exploited the situation by facilitating the sales of essential commodities sold by its own sellers, *viz.* OP-3 and OP-4. The Informant also alleges that massive discounts



were offered on various product categories, such as 20% on groceries, 15% on snacks, 15% on beverages, 25% on household supplies, 25% on personal care, 30% on beauty products and 35% on baby products.

11. The Informant has further alleged that OPs 'in collusion' use the data of successful manufacturers/sellers on its marketplace to float private labels and sell them at massive discounts to underpin competition. They exploit 'competitors' data to build their products, without having to invest the time and resources in testing the products, unlike their 'competitors', and get a better placement on the marketplace of OP-1, which is a paid service for the 'competitors'.
12. It is alleged that OP-1 charges higher platform fees from independent sellers compared to what is being charged from OP-3 and OP-4. This funds the discounts while inflating the prices of the goods sold by independent sellers, resulting in ineffective competition. Relying on the financial statements of OP-4 for the year 2019, the Informant alleges that the platform fee paid by OP-4 to OP-1 for the sale of traded goods comprising consumer electronics, apparel, household items, consumer products, *etc.*, worth approximately ₹8,816 crores, is approximately ₹561 crores, which is about 6.3%, whereas the platform fee (excluding GST) calculated on OP-1's website for independent sellers using automated fee calculator was about 28.1% for electronics, 17.6% for groceries, and 28.6% for apparel. Thus, most independent sellers spend resources in the form of platform fees, advertisement fees, *etc.*, to improve search ranking on the platform of OP-1.
13. Thus, it is alleged that OP-2, 'in collusion' with OP-3 and OP-4, sells goods at massive discounts, rendering independent sellers unable to compete on the platform of OP-1. The 'lack of platform neutrality' on the marketplace owing to the aforementioned private labels and preferential treatment (reduced platform fee) is resulting in a foreclosure of competition on the marketplace.



14. In order to substantiate its allegations of lack of platform neutrality, the Informant placed reliance upon, *inter alia*, the Commission's *Market Study on E-Commerce*, published on 08.01.2020; the testimony of the Institute for Local Self Reliance (ILSR) against Amazon before the United States House of Representatives Committee on the Judiciary, Subcommittee on Antitrust, Commercial and Administrative Law. The Informant also placed reliance upon an article titled *Mission Accomplished Saving Private Labels in Covid-19 season* (ET: 30.04.2020); and screenshots from the website of OP-1's marketplace to further support its allegations of lack of platform neutrality.
15. Moreover, the Informant states that the alleged anti-competitive agreements between the OPs result in aggravating factors under Section 19(3) (a), (b) and (c) of the Act, without the benefit of ameliorating factors under Section 19(3)(d), (e) and (f) of the Act, thereby leading to appreciable adverse effect on competition in India.
16. Under aggravating factors, the conduct of the OPs of indulging in deep discounts is creating distortionary effects on the market rather than creating efficiency gains. It is alleged that money is being flushed into OP-2 and OP-3 by the parent company to facilitate discounts during festivals as well as all around the year, resulting in anti-competitive effects. This conduct is driving existing competitors out of OP-1's marketplace and creating barriers to new entrants, resulting in the foreclosure of competition. Further, OP-1's marketplace lacks platform neutrality, resulting in the foreclosure of competition on the marketplace and leading to appreciable adverse effect on competition.
17. Under ameliorating factors, it is alleged that OP-1 failed to make significant improvements in building a distribution network, which was exposed during the pandemic. OPs' conduct has resulted in the closure of a decentralised network of *kirana* shops. Larger platform fees and discounts leave companies with less revenue to invest in research and development, which impairs innovation and economy. Overall, there has been a deterioration of supply chains and closure of smaller independent businesses, resulting in appreciable adverse effect on competition under Section 19(3) of the Act.



18. The Informant has prayed for the imposition of penalty on all the colluding entities along with OP-1 to OP-5.
19. The Informant has prayed, under Section 33 of the Act, for an interim relief that OP-2 to OP-5 and all other entities indulging in similar conduct be restrained from operating on OP-1's platform until final orders. The interim relief is sought on the grounds that the *prima facie* anti-competitive agreement between the OPs is driving existing competitors out of OP-1's marketplace and creating barriers to new entrants in the marketplace, resulting in the foreclosure of competition. OP-1 has a significant market share in India. Thus, the balance of convenience lies in its favour, and granting interim relief would prevent further irreparable harm to the market.
20. On 07.10.2020, the Commission considered the Information and directed the Informant, *inter alia*, to file a certificate under Section 65B of the Indian Evidence Act, 1872, in support of the electronic evidence relied upon in the Information filed.
21. Further, *vide* orders dated 07.10.2020 and 24.11.2020, the Commission had directed the Informant to file certain additional Information in the matter. The same was filed by the Informant *vide* email dated 02.12.2020. Thereafter, *vide* order dated 17.12.2020, the Commission, while observing certain discrepancies in the additional Information so filed, directed the Informant to remove the discrepancies within a time stipulated therein.
22. Pursuant to the directions of the Commission, the Informant again filed the additional Information *vide* email dated 08.01.2021, but the same was also found to be not in order.
23. On 12.02.2021, the Commission considered the response of the Informant filed through email on 08.01.2021 and decided to seek further response of the Informant thereupon, besides directing the Informant to remove the discrepancies as observed.



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24. On 01.06.2021 and 20.07.2021, the Commission again directed the Informant to comply with its directions in order dated 12.02.2021 and granted further time for the purpose.
25. On 15.09.2021, the Commission noted that the Informant had not complied with the requirements despite numerous opportunities and also noted that the Informant had not filed the certificate under Section 65B of the Indian Evidence Act, 1872. The Commission thereupon decided to pass an appropriate order in due course based on such material on record as could be considered in terms of the Competition Commission of India (General) Regulations, 2009.
26. The Commission has perused the admissible material on record and notes that the crux of the Informant's allegations against the OPs is that there exist anti-competitive arrangements amongst the OPs, resulting in alleged 'lack of platform neutrality' on OP-1's marketplace.
27. The Commission observes from the record that the Informant has not provided certain information and clarification(s) sought. Further, the Commission had directed the Informant, *inter alia*, to file a certificate under Section 65B of the Indian Evidence Act, 1872, in respect of the electronic evidence submitted in the additional Information. Despite giving ample opportunities to the Informant, the Commission notes that the Informant chose not to respond to any of the orders of the Commission dated 12.02.2021, 01.06.2021, and 20.07.2021.
28. In these circumstances, the Commission notes that the Information contains allegations that are devoid of admissible/requisite evidence. Thus, the Information filed lacks actionable material for further examination under the Act.
29. In view of the above, the Commission is constrained to note that there does not exist sufficient material to form a *prima facie* view in the matter, and the Information filed is directed to be closed forthwith against the Opposite Parties under Section 26(2) of the Act. Consequently, no case for grant for relief(s) as sought under Section 33 of the Act arises, and the same is also rejected.



30. The Secretary is directed to communicate to the Informant accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 03/03/2022