

Kluwer Competition Law Blog

Competition Commission of India Initiates Investigation in relation to Resale Price Maintenance –impact on business operations

Abir Roy (Lakshmikumaran & Sridharan, India) · Sunday, June 28th, 2015

The Competition Commission of India (CCI) has recently launched investigations in relation to RPM in two sectors: the e-commerce sector (Jasper Infotech Private Limited and Kaff Appliances, Case No 61 of 2014) and the automobile sector (F/X Enterprise and Hyundai, Case No 36 of 2014). This is the first time where CCI will consider the competitive concerns emanating from RPM. A small factual snapshot, with respect to the issue of RPM, of each of the cases is as below:-

– Jasper and KAFF: Jasper owns and operates an online market place under the name of snapdeal.com. It was alleged that KAFF, a player in the kitchen appliance market, was imposing RPM and adduced an email exchange sent by an official of KAFF to Jasper as evidence. In the email adduced as evidence, the official of KAFF had stated that KAFF will not allow the sales of its products on snapdeal if the Market Operating Price (MOP) is not maintained. The CCI considered the email evidence from the official of the KAFF to determine the existence of a minimum RPM imposed and implemented. Based on the email, CCI observed on a prima facie basis that the prescription of a MOP and an insistence to follow a MOP was prima facie in contravention of Section 3 (4) (e) of the Competition Act [provision which relates to RPM]

– FX Enterprise and Hyundai: This case relates to information filed by an authorized dealer of a car manufacturer (Hyundai) wherein the dealer had alleged that Hyundai has imposed a maximum permissible discount that may be given by a dealer to the end-consumer. It was alleged that the permissible discount level was followed by the dealers through a Discount Control Mechanism (DCM). It was alleged that a strict monitoring mechanism was put in place to check the discounts put in place by HMIL and the employees of HMIL avoided the use of their official email address to coordinate the DCM. It was also alleged that HMIL encouraged the dealers to report instances of discounting below the recommended range and a penalty sheet was circulated every month where penalty was levied on all those dealers who discounted below the recommended range. The CCI also found prima facie that the averments on the restrictions imposed by HMIL on the maximum permissible discount that may be given by a dealer to the end-consumer amounted to resale price maintenance prima facie in violation of Section 3.

It must be noted that under the Indian law, RPM is not recognized as hard-core restraint but it has to be tested on rule of reason and will be bad only if such practice causes or is likely to cause any appreciable adverse effect on competition in India. There can be certain benefits which can accrue as a result of RPM like Inter-brand Competition – reducing price competition amongst distributors,

better services and reducing free riding and facilitating new entry. While the final outcome of the CCI will take some time to come since the matter is now being investigated by the Director General (DG), it will be interesting to view the observations the CCI in the final order since it will have huge repercussions on the manner in which business operations are done in India. Agreements entered into between the companies with its channel partners i.e dealers, distributors are the hallmark of any business. For a company to operate well in the market and to ensure penetration into the market, it is quintessential for a company to have a good and robust distribution mechanism. Further, companies must take step from time to time to ensure that their distribution channel are maintained and proper incentives are given to distributors to recoup their investment. Further, companies may wish to prescribe a minimum amount (below which dealers should not go in selling the product to end customer) so that their brand value of the good is maintained. Therefore, this investigation by CCI and final outcome thereto will have huge business repercussions and it has the chance to revamp the way business is to be done in India. Based on the same, CCI will have to undertake a robust market assessment and lay down criterion which the business can follow while entering into dealings with their channel/ business partners. Therefore, it is essential for business people and legal practitioners to watch this space!!

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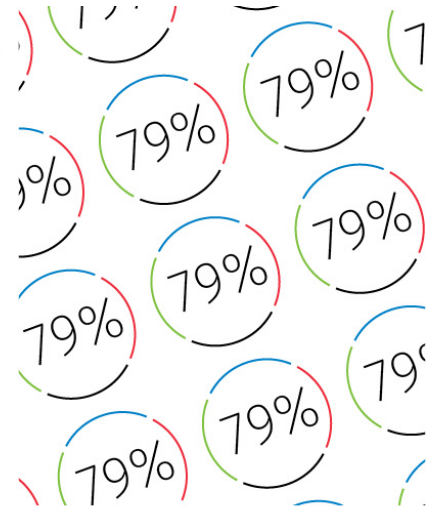
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