

**DE JURE NEXUS LAW JOURNAL**

Author:

Smriti Gupta

Symbiosis Law School, Noida

2<sup>nd</sup> Year, BBA LL.B.

**CASE ANALYSIS: MOHIT MANGLANI v. M/s FLIPKART INDIA PVT.  
LTD & ORS.**

**Court:** Competition Commission of India

**Citation:** case no. 80 of 2014

**Coram:** Ashok Chawla, Chairperson, S.L.

Bunker, Sudhir Mital, Augustine Peter, and  
U.C. Nahta.

**Theme:** exclusive rights to sell  
products/services.

**Subject:** The Competition Act, 2002

**Judgement:** India

**BRIEF FACTS OF THE CASE**

The companies Flipkart pvt. Ltd., Jasper Infotech Pvt. Ltd., Xerion Retail Pvt. Ltd., Amazon Seller Services Pvt. Ltd., Vector E-commerce Pvt. Ltd. and other e-

commerce/portal companies are e-commerce sites which can be used by consumers to shop for various items. These companies often sign deals with the manufacturer which gives them the exclusive right to sell certain products in the market.

Such agreements force the consumer to buy the goods/services at the fixed price from the only e-commerce website that it is

available at or not buy the product at all. To support the claims the informant gives several examples along with the example of the book 'half girlfriend' by 'Chetan bhagat'.

**ISSUES**

The informant, Mohit Manglani has filed a case against the companies Flipkart Pvt. Ltd., Jasper Infotech Pvt. Ltd., Xerion Retail Pvt. Ltd., Amazon Seller Services Pvt. Ltd., Vector e-commerce Pvt. Ltd. and other e-commerce/portal companies under the section 19(1)(a) of the Competition Act, 2002. The informant alleges that the act of these companies to come into agreements to exclusively sell goods and services are against the competition act, 2002. He claims that these practises are anti-competitive and hence should be void.

Since the company is the sole decider of important terms like the mode and period of delivery, the price of the product, the quality and the standards of service. The consumer has to abide by them if they want to purchase the product from the only place it is available at. This is also used by such brands to create the idea of 'scarcity' by the way of advertisements and alleged holding of the product or manipulating its supply.

The informant claims that these practices shall come under 'exclusive supply agreement' and 'exclusive distribution agreement' as given under section 3(1) and section 3(4) of The Competition Act, 2002. This can be said to be a strategy to rule out the small or physical players in the market and create a product specific monopoly.

## ANALYSIS

The respondents are third-party e-commerce platforms that offer products to a very large number of people. They offer the products that are produced by the manufacturer over a large market, where the customers can make their purchases. The e-commerce websites act as a mere medium for the customers to get access to such products and make their informed decision. It creates healthy competition as they give the consumer a chance to compare all the prices of the products and analyse different products that are available in the market.

It can be noted that exclusive agreements are ways by which these portals stop or exclude other e-commerce sites, physical stores or any other distribution channel from selling the particular good/service. This enables the authorised seller to be the sole decider of important decisions regarding the sale. The only seller then has a monopoly on terms like the price of the product, terms and the mode of payment, the conditions of re-sale (if allowed), etc.

The example of the book 'half girlfriend', states that the sole rights to sell the books on e-commerce is with the company Flipkart. They campaign in the online and print media about the book that is published by Rupa publications. As the book can only

be bought on the e-commerce website, Flipkart, the buyers are at a disadvantage and have to enter into a non-negotiable contract. This can be said to have an 'applicable adverse effect on the competition'.

A product specific monopoly further gives the holder of such monopoly to manipulate the terms of the contract like price, production and supply, according to their will. Such restrictive trade practices are detrimental to the interests of the customers.

The sites also have a 100% of the market share of the concerned product which leaves no scope for any other competitor to exist. The same can be seen in the case of the book, half girlfriend, being exclusively sold on Flipkart. This gives them a dominant position in the market place which can lead to unfair business practices. Hence, being violative of section 4(a), section 4(b) and section 4(c) of the competition act, 2002.

## JUDGEMENT

In the present case, the coram observed that the director general had also forwarded a letter of complaint by the president of All Delhi computer trader association (ADCTA), against the e-portals that are the respondents in the case. The letter shared

similar concerns as that of the informant. So, the commission decided to hear shri Mahinder Aggarwal as well.

Section 3(1) of the competition act, 2002, only makes those agreements or arrangements illegal that are anti-competitive in nature. To conclude if the same was true, the commission took various factors under consideration such as:

- a) "Creation of barriers to new entrants in the market;
- b) driving existing competitors out of the market;
- c) foreclosure of competition by hindering entry into the market;
- d) accrual of benefits to consumers;
- e) improvements in production or distribution of goods or provision of services; and
- f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services to assess the effect of such exclusive arrangement between manufacturers and e-portals."

To come to a conclusion first the question of dominating relevant market share was to be determined. It was then proved in the court that the way the informant was considering the area of market share was wrong. The product market share is not to

be concluded on the basis of a particular brand market share in themselves but the availability of substitutes of the product in the market. It also noted the fact that online and offline should not be considered as separate relevant market as they do serve the same customers just use different mediums of distribution channel.

It was established that the e-commerce websites did not in fact have exclusive contracts which could be concluded by examining the original agreements between the companies and the manufacturers. The exclusivity, if any, that existed was only in terms of the online platform and did not affect the sales or distribution of the product via any brick-and-mortar companies. This also excluded the manufacturer selling his products on his own website.

So, the agreements were not found to be violative of section 3(4) of the competition act, 2002, as it could not be found to have created any appreciable adverse effect on the competition in the relevant market place. It was seen that the retail market, even after these agreements, had enough competition and even the e-market place did not see any major shift in competition.

## CONCLUSION

The e-commerce site has seen an exponential growth. With the use of digital

media there will arise questions of validity of their agreements. The companies with their current practices did not create any entry barrier in the market for any smaller companies to enter. They also do not create monopoly in the market by selling a particular brand of the product.

With the availability of so many alternatives and substitutes along with the diverse consumer preference no single manufacturer or e-commerce site is capable of shifting the demand completely or create a position dominant enough to cause any competition concern. So, the commission did not find the agreements to create any applicable adverse effect on the competition.

Brand target market are not considered when we analyse a product specific market.

So, every individual product does not make the relevant market. No competition is distorted in the relevant market. Also, exclusivity itself does not mean that the practices are anti-competitive unless it goes against the terms of the competition act, 2002.

So, the above discussion would conclude that the exclusive sale of a product on a e-commerce website will not be considered as anti-competitive or to be creating any barriers of entry or exit in the market.

**PRESENT STATUS OF JUDGEMENT**

With the increase in such agreements, we can note the expansion of the e-commerce market place which results in more competition and fair competition. This judgement has been cited in other cases to determine that the laws for e-commerce and brick and mortar companies will be similar.

It also helps in understanding the importance of regulating the market and what can be considered the use of dominant position.



# De Jure Nexus

---

## LAW JOURNAL