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6th CCI-NUJS NATIONAL COMPETITION LAW MOOT

In association with Shivadassa & Shivadass

MOOT PROPOSITION

NUJS

SITC
Society for
International Trade
and Competition Law



MOOT PROPOSITION

A. FACTUAL BACKGROUND

1. Vyapaar Online is an online e-commerce marketplace in the nation of Galactica. It hosts thousands of independent third-party retail sellers across the electronics and lifestyle categories. Vyapaar Online has a market share of approximately 35% in the e-commerce market. Vyapaar Online has two other significant, well-funded competitors: Pamatron (29% market share) and Blipnart (27% market share). The remaining market share is fragmented among smaller e-commerce platforms. Although quick commerce is considered as a separate and fragmented segment, some argue that due to expanded inventory hosted by quick commerce players - they now compete with e-commerce entities as well.

2. Vyapaar Online is the latest entrant in this market, having been launched only four years ago. The e-commerce market in Galactica has grown rapidly but remains relatively nascent. Listing requirements vary across platforms, and sellers incur costs in adapting their listings, inventory-management systems, and advertising strategies across platforms. Consumer-side multi-homing is relatively limited. In one of its blogs, however, Vyapaar Online contended that sellers can, and frequently do, list products across multiple platforms and that switching costs do not constitute a material barrier to entry or expansion in the e-commerce market. In a separate blog, it highlighted that it now considers quick commerce entities as its competitors in this new age of commerce, stating that as per its estimates, it had a market share of 28% in this market.

3. Solaris Analytics (Solaris) in which Vyapaar Online holds 27% shareholding, is one of upcoming software companies which develop and license a SaaS-based dynamic pricing tool. Solaris' pricing tool - Pricelytics is exclusively for use by sellers operating on its marketplace. Astrix Retail is a highly successful seller that competes with other sellers operating on the marketplace. It is exclusive with Vyapaar Online. Clearhead Retail is another seller operating on Vyapaar Online.

4. Nimbus Retail operates as a mid-sized independent seller on Vyapaar Online. As e-commerce has grown substantially in Galactica over the last ten years, online marketplaces have become an important distribution channel for retail sellers. Nimbus Retail derives approximately 60% of its online sales from Vyapaar Online.

5. .The Competition Commission of Galactica (CCG) is Galactica's competition regulator and is constituted under the Galactica Competition Act (GCA). The relevant provisions of the GCA are pari materia with the corresponding provisions of the Competition Act, 2002 of India.

6. .In response to the rapid growth of e-commerce in Galactica and concerns regarding consumer exploitation and fraud on e-commerce platforms, the Government of Galactica established the E-Commerce Regulatory Authority of Galactica (ECRAG) under a newly enacted statute, the E-Commerce (Regulation and Fair Digital Trade) Act (ECRFDTA).

7. Under this Act, ECRAG is a specialised sectoral body vested with statutory powers to regulate e-commerce platforms, enforce platform-fairness standards, and investigate practices including deceptive interface designs, dark patterns and default opt-in mechanics (definitions in Annexure 1). The Act confers jurisdiction on ECRAG over matters concerning compliance with the obligations imposed under the ECRFDTA. The Act only allows ECRAG to pass cease-and-desist orders in case of a contravention finding.

B. IMPUGNED CODUCT

8. With a stated objective of improving seller efficiency, Vyapaar Online introduced Pricelytics to the sellers on its platform as an optional feature. Sellers using Pricelytics receive a "recommended price", calculated by the tool after analysing real-time customer demand, competitor prices, sales, margins and historical sales data to suggest an optimal price for each listing - metrics that were specifically decided by Vyapaar Online, given that the version of Pricelytics licensed by Solaris only uses public and historical information to generate a recommended price. Vyapaar Online represented to the sellers on its platform that following the recommended price would increase their likelihood of completing a sale.

9. Two months later, citing increased adoption and higher sales among users, Vyapaar Online made Pricelytics the default setting for all sellers. The exponential increase in sales of Clearhead Retail, which sold all its products by adhering to Pricelytics' "recommended price" was highlighted as a case study to show the benefits of Pricelytics. Consequently, all sellers were automatically assigned a recommended price unless they manually opted out. Sellers wishing to disable the feature were required to navigate multiple layers of platform settings. Each major policy update automatically re-enabled the feature unless a seller opted out again.

10. Around the same time as Pricelytics was enabled by default, Vyapaar Online amended its search-ranking algorithm by introducing an opaque "pricing competitiveness" parameter. In its public communications to sellers, Vyapaar Online stated that "pricing competitiveness" would constitute one of several parameters relevant to search-rankings and that use of Pricelytics could assist sellers in maintaining competitive prices. It did not disclose how the parameter operated, the weight assigned to it, or whether using or adhering to Pricelytics recommendations independently affected a seller's search-ranking.

11. After suspecting that Pricelytics was generating recommended prices that were higher than those Nimbus Retail would independently have selected, Nimbus Retail disabled Pricelytics. Within three months of disabling Pricelytics, Nimbus Retail's sales through Vyapaar Online declined by approximately 35%, even though it did not materially alter its product range, inventory levels, delivery standards or advertising expenditure. Nimbus Retail also observed, through searches conducted using third-party accounts, that its products appeared lower in search results, even though its other seller-performance indicators remained materially unchanged.

12. An independent e-commerce industry association conducted a study tracking the use of Pricelytics by sellers on Vyapaar Online and its impact on seller performance. The study observed materially greater price clustering among sellers using Pricelytics than among sellers who had opted out. The study did not determine whether this clustering resulted from Pricelytics itself, sellers independently responding to similar market conditions, or other common factors.

13. The study also examined whether disabling Pricelytics adversely affected search-rankings but reached no definitive conclusion. Some sellers experienced a noticeable decline in search-rankings after opting out, while others did not. The study separately observed that Astrix Retail experienced relatively stable or improving search visibility and sales during the relevant period.



C. PROCEEDINGS BEFORE THE CCG/ ECRAG AND DG INVESTIGATION

14. Following the decline in its sales and the resulting commercial losses, Nimbus Retail (Informant) filed an information under Section 19(1)(a) of the GCA before the CCG against Vyapaar Online, Solaris, Astrix Retail, and Clearhead Retail (OP-1, OP-2, OP-3 & OP-4, collectively Opposite Parties), alleging a contravention of Section 4 of the GCA.

15. The Informant also filed a complaint before ECRAG on the grounds that Vyapaar Online's default opt-in mechanism in relation to Pricelytics, along with introducing the "pricing competitiveness" parameter amounted to "Dark Pattern" and was illegal under the ECRFDTA. ECRAG accepted the Informant's complaint.

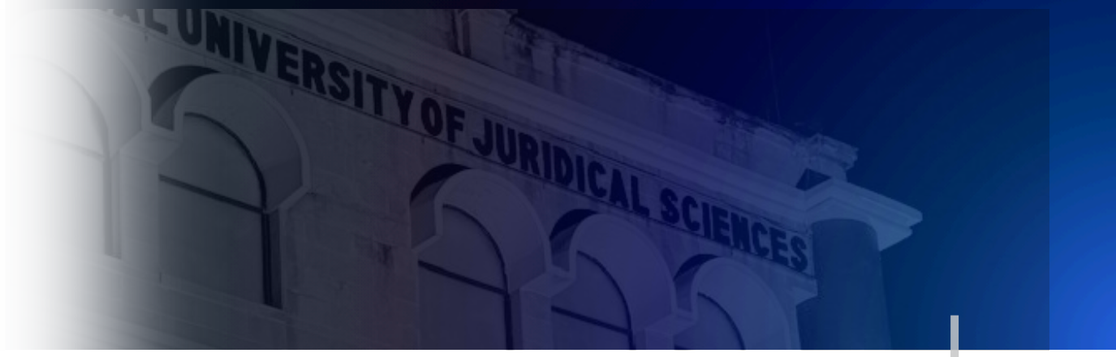
16. Separately, upon considering the information filed by Nimbus Retail, the CCG passed a prima facie order under Section 26(1) of the GCA directing the Director General, CCG (DG) to initiate an investigation into whether Vyapaar Online and Solaris contravened Section 4 of the GCA. CCG's 26(1) order states "the Commission is of the view that there exists a prima facie case of contravention of provisions of section 4 of the Act by OPs and it is a fit case for investigation by the Director General (DG). Accordingly, under the provisions of section 26(1) of the Act, the Commission directs the DG to cause an investigation into aforesaid and to complete the investigation within a period of 60 days from the receipt of this order."

17. During its investigation, the DG obtained a search warrant from the competent Chief Metropolitan Magistrate (CMM). During the search, the DG officials found two internal documents.

    a. The first document comprised confidential legal advice prepared by an external law firm for Vyapaar Online, over which Vyapaar Online claimed legal professional privilege. The advice recorded, on the basis of technical information provided to the law firm, that the updated version of Pricelytics processed contemporaneous pricing, profit margins, demand, and sales information relating to all competing sellers who had signed up to use this service when generating recommended prices. The advice identified a potential competition-law risk that, depending on the manner in which sellers understood and used the tool, Pricelytics could be viewed as facilitating price coordination between competing sellers. It stated, however, that the information then available was insufficient to determine whether sellers knew how Pricelytics operated or understood that competing sellers were simultaneously receiving recommendations generated through the same optimisation process since that was dependent on whether they had read the fine print of the terms and conditions of accessing Pricelytics.

    b. The second document, which was an internal memorandum, indicated that Vyapaar Online granted certain affiliated sellers, such as Astrix Retail, improved search ranking visibility, specialised access to aggregated platform level data showing market trends, and access to growth initiatives of Vyapaar Online subject to the seller entering into an exclusive arrangement with Vyapaar Online. The note highlighted that Astrix Retail's performance saw an upward growth due to the above-mentioned factors, despite it never having sold its products based on Pricelytics recommended price.

18. During the search, DG officials separately questioned certain employees of Vyapaar Online regarding the operation of Pricelytics. Vyapaar Online's external counsel requested permission to remain present during the questioning. The DG declined the request and required counsel to remain outside the room in which the employees were questioned. The employees' statements were recorded and subsequently formed part of the DG's investigative record.



19. Separately, during the investigation, the DG issued a Request for Information (RFI) to Vyapaar Online seeking information concerning the functioning of Pricelytics, including whether the tool utilised contemporaneous prices of competing sellers in generating recommended prices; the extent to which sellers were informed of the functioning of the tool; whether sellers were aware that competing sellers were simultaneously receiving recommendations generated by Pricelytics; and whether Vyapaar Online had taken any steps to encourage or secure adherence to those recommendations.

20. After seeking multiple extensions from the CCG to finalise the investigation report (DG Report), the DG submitted the DG Report to the CCG and the CCG circulated non-confidential versions of the DG Report to the Informant, and the Opposite Parties. The DG report found the Vyapaar Online (OP-1) in contravention of Sections 3, and 4 of the GCA, and Solaris in contravention of Section 3 of GCA. Pertinently, the ECRAG still had not decided on the complaint filed by Nimbus Retail.

21. The DG's contravention findings extensively relied on (i) documentary evidence collected during the dawn raid including the two memos, and (ii) the deposition statements recorded during the dawn raid. Perplexed at the contravention finding in relation to 1.Section 3, Vyapaar Online's counsel inspected the case records and did not find any records of the DG requesting the CCG's approval to expand the scope of the investigation to include issues relating to anti-competitive agreements.

22. The CCG has granted an opportunity to respond to the DG Report and present oral arguments to the Informant, and the Opposite Parties before concluding its inquiry and passing a final order. Based on the findings of the DG Report, the following issues are to be argued in the final hearing(s).

D. ISSUES FOR CONSIDERATION

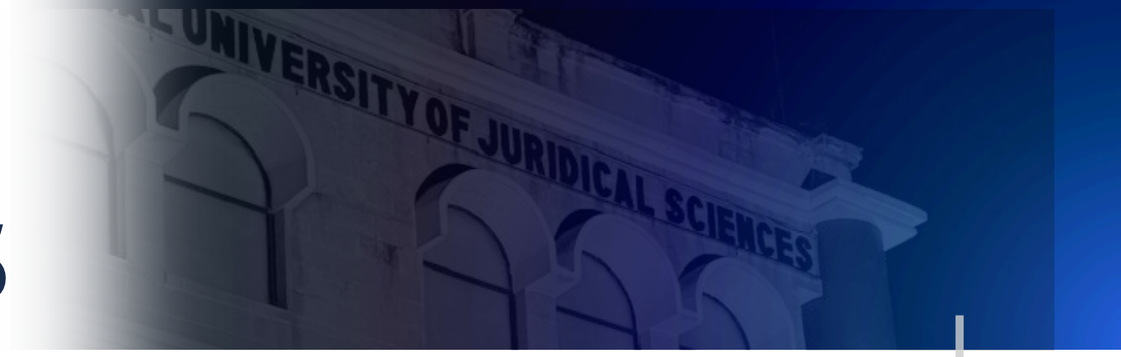
1. Whether the CCG has jurisdiction to investigate the impugned conduct notwithstanding ECRAG's statutory jurisdiction under the ECRFDTA?

2. Whether the DG is empowered to investigate a potential contravention of Section 3 of the GCA where the CCG's prima facie order under Section 26(1) directed an investigation into an alleged contravention of Section 4 of the GCA?

3. Whether the design, operation and/or use of Pricelytics gives rise to an "agreement" between competing sellers within the meaning of Section 3 of the GCA, and if so, whether the Opposite Parties may be held liable for a contravention of Section 3?

4. Whether Vyapaar Online holds a dominant position in the relevant market(s) under the GCA and, if so, whether any of its impugned practices, including the operation of Pricelytics, its search-ranking practices, differential treatment of sellers constitute an abuse of dominant position under Section 4 of the GCA?

Participants may frame and argue any other issue(s) and/or sub-issue(s) arising from the facts of the moot proposition, including procedural or substantive issues, in addition to the issues stated above.



ANNEXURE 1
RELEVANT PROVISIONS OF THE ECRFDTA

1**. Definitions**

a. “Dark Pattern” shall mean any practice or deceptive design pattern using user interface or user experience interactions on any digital interface that is designed to mislead or trick users to do something they originally did not intend or want to do, by subverting or impairing the consumer autonomy, decision making or choice, amounting to misleading advertisement or unfair trade practice or violation of consumer rights. Dark Pattern includes practices such as, but not limited to:

i. "Forced action" - directly or indirectly forcing a user to take an action that would require the user to buy any additional goods or subscribe to or sign up for an unrelated service, or share personal information in order to buy or subscribe to the product or service originally intended by the user;

ii. "Subscription Trap" - the process of:

(i) making cancellation of a paid/ unpaid subscription impossible or a complex and lengthy process; or

(ii) hiding the cancellation option for a subscription; or

(iii) forcing a user to provide payment details or authorization for auto debits for availing a free subscription; or

(iv) making the instructions related to cancellation of subscription ambiguous, latent, confusing, or cumbersome to execute.

iii. "Repeated Re-enablement" - automatically restoring or reactivating a feature or setting previously declined or disabled by a user without providing a meaningful opportunity to make a fresh choice.

b. “Digital Interface” means any website, application, software, digital environment, or other electronic interface through which an e-commerce platform interacts with a user or seller.

c. “Default Opt-In” means a mechanism by which a feature, service, setting, or functionality is automatically activated or applied unless the user takes affirmative steps to decline or disable it.

d. “Deceptive Interface Designs” means any user interface layout, configuration, navigation flow, or system setting deployed on a digital interface that visually, structurally, or procedurally obscures, complicates, or alters choices available to a user or seller - including the pre-selection, automatic activation, or persistent re-enablement of features without explicit, informed, and affirmative user consent - thereby impairing autonomous decision-making or coercing continued engagement with platform settings.