



FIRST EDITION

CNLU-CCI NATIONAL MOOT COURT COMPETITION

in association with
Lakshmikumaran & Sridharan Attorneys

Knowledge Partners:



PROPOSITION

1. The Union of Westeros is a sovereign, socialist, secular, democratic republic with a population of about 1.39 billion people. In 1950, Westeros adopted a written Constitution and a federal government with a tilt to the centre. The Constitution of Westeros, being a welfare state recognizes the Directive Principles of State Policy as a welfare state along with the fundamental rights guaranteed to the citizens.
2. In 1991, the Westerosian Government brought reforms to its economic policies to liberalise the market and opened its economy to multinational corporations and foreign investment. Thereafter, in the early 2000s it brought about changes to the legislative framework governing competition in the Westerosian markets. The archaic Anti-Monopoly and Restrictive Trade Practice Act, 1969 was replaced with the Competition Act of Westeros, 2002 (“**Act**”), which came into force in 2009. The primary objective of the Act is to promote and sustain competition in markets and to protect consumer interests. The Act established the Competition Commission of Westeros (“**CCW**”) to promote competition and take cognizance of the competition concerns arising in the Westerosian markets. The Westerosian competition regime is modelled primarily after the European Union (“**EU**”) competition law framework and the jurisprudence laid down in EU and United States of America (“**USA**”) is held in high regard. Further, the laws in Westeros including the Act are in *pari materia* with the laws in India and the decisional practices of the competition regulator, appellate forum and courts in India have high persuasive value before the CCW.
3. In recent times, Westeros has witnessed one of the fastest growing digital markets, owing to the youth demography, a surge in smart phone usage, good internet connectivity, a considerable decline in the telecom tariffs, and the emergence of varied payment options. This has resulted in an influx of multi-national digital companies in various sectors such as e-commerce, ride-sharing, food delivery, handyman services etc.
4. Mockingbird, Inc. (“**Mockingbird**”), a leading technology conglomerate headquartered in California, USA entered Westeros in 2009. Mockingbird is a social networking platform which connects users through its products and services and also operates a platform for businesses to advertise their products and services.

Mockingbird is a market leader in the market for social networking in Westeros and the world over.

5. The other companies that are part of the Mockingbird group are Finstapost, a photo blogging social networking platform where users can share their photos and videos, and ZappDeal, an e-commerce marketplace.
6. ZappDeal, which facilitates third party sellers to sell their goods to customers on its online marketplace, was launched in the e-commerce market of Westeros in 2012 and was subsequently acquired by Mockingbird in 2015. ZappDeal is one of the largest players in the Westerosian e-commerce market, reaching millions of users through its website and mobile application. A wide range of product categories are offered on ZappDeal, including electronics, fashion & beauty, furniture & furnishing, sportswear & equipment etc. Apart from providing platform for B2C (business-to-consumer) transaction, ZappDeal also offers paid one-stop-solution, namely Guaranteed by ZappDeal (“**GBZ**”), to sellers listed on its platform, whereby, ZappDeal undertakes to manage the inventory, packaging, shipping and delivery of the products on behalf of its sellers.
7. ZappDeal has a separate platform for luxury brands called ZappDealuxe. The segment offers an exclusive range of designer apparel, handbags, footwear, accessories etc. from luxury brands such as Pucchi, Galmain, Vermani, Fom Tord etc. from across the globe. Majority of luxury brands that list their products on the platform have limited physical stores and online distribution channels in Westeros.
8. In 2021, a documentary called The Digital Dilemma released on BetBlix, an Over the Top streaming platform, documented the ills of social media and how it impacts human behaviour. Several technologists, activists and researchers elaborated on how the social media networking platforms are introducing design techniques to keep the users hooked to the platform and endlessly scroll through the feeds, which consists of constant influx of information. This in turn enables such platforms to analyse and map user’s activities online and create a buyer’s persona i.e., a user profile built on the basis of the online activities of users, that when shared with brands/companies, helps them

to identify their target audience and deliver personalized advertisements. The digital activists considered this manipulated processing of user's data, without their informed consent as gross violations of their privacy. In addition, a majority of these platforms do not charge users for availing their services and digital activists believe that the users are in fact paying a high price for accessing seemingly free social media platforms in the form of their personal data.

9. The documentary created an uproar worldwide as well as in Westeros. A non-government organization called Free My Internet, which aims to defend the digital rights of the citizens of Westeros, took cognizance of the activities of Mockingbird group of companies around data collection and usage.
10. Upon independent investigation, Free My Internet found that creation of an account on ZappDeal was conditional upon the user's acceptance of the terms of service prompted upon registration. The terms of service stipulated that ZappDeal will collect and share the user data across other Mockingbird companies. Clause 7.8 of the terms of service are as follows:

“As part of the Mockingbird group of companies, ZappDeal shares data collected by it with Mockingbird companies who may use such data to improve their services and offerings. The data collected includes the information provided by the users upon registering or making an account on ZappDeal, transaction data, order history, IP address, mobile device data and any other relevant data that may be necessary to fulfil businesses' legitimate interests.”

11. Free My Internet filed an information with the CCW alleging that the sharing and collective processing of data by Mockingbird and ZappDeal breaches the users' privacy. It further alleged that the terms of service are in the form of 'take it or leave it', wherein the creation of a ZappDeal account is conditional upon acceptance of these terms. This constitutes the imposition of unfair and unreasonable terms by ZappDeal. Further, it was stated that Mockingbird is an advertising funded social media platform i.e., it funds the free services provided by it on its platform through online advertisements offered to publishers. In this backdrop, the data collected and shared

by ZappDeal with Mockingbird ceases to be non-rivalrous and such processing of data amounts to abuse of dominant position by Mockingbird.

12. The CCW considered the allegations made by Free My Internet and found a *prima facie* case against Mockingbird Inc. and ZappDeal. Accordingly, the CCW directed the Director General (“**DG**”), the investigative arm of CCW, to investigate the matter (“**Prima Facie Order**”). The CCW also directed the DG to investigate into other activities of ZappDeal and Mockingbird Inc., under the Act. (“**Case No. 01 of 2021**”).
13. Based on the Prima Facie Order of the CCW, the DG conducted an investigation. During the investigation, the DG looked into the agreements that ZappDeal enters into with sellers and brands listed on its platform.
14. Additionally, it was found that ZappDeal also enters into agreements with various brands that sell their products through its platform via various retailers/distributors. One such agreement was with a company called XN Ltd. (“**XN**”), an entity incorporated pursuant to a joint venture agreement (“**JV**”) between Xolcè Ltd. and Namana Ltd. which are international luxury brands.
15. As per the terms of the JV, XN will manufacture luxury sportswear, including shoes, watches, sunglasses and sports apparel etc. in categories of men, women, boys and girls. In addition to regularly available products, XN will also launch limited edition products exclusively on ZappDealuxe.
16. XN has entered into an agreement with ZappDealuxe to be listed as a brand for the sale of its products exclusively through its authorised sellers on ZappDealuxe. Further, as a precondition to listing as a brand via its authorized sellers on ZappDealuxe, XN was required to execute a “Brand Listing Agreement” (“**BLA**”).

Clause 5.4 of the BLA states that:

“XN will ensure at all times that the price of its products displayed on ZappDealuxe, through any of the sellers, authorized by it to sell on the platform, contains all discounts and offers that it has offered on its own website or other e-commerce platforms.”

17. Based on the above investigation, the DG in its report dated 25.01.2022 (“**DG Report**”) observed that Mockingbird is a dominant player in the market for social networking and also holds a significant position in the market for digital advertising. Further, ZappDeal holds significant market power in the e-commerce market in Westeros. Accordingly, the cross-linking and integration of user data based on the terms of service of ZappDeal can further strengthen data advantage besides safeguarding and reinforcing market power of such dominant firms. As such, the data sharing provision appears to leverage the position of Mockingbird and lead to exclusionary effects which has the potential to undermine the competitive process and create barriers to market entry.
18. The DG noted that the price parity clause imposed by ZappDealuxe on XN along with the exclusive launch of XN’s products on ZappDealuxe also creates entry barriers and prevents effective competition from other platforms. It also may have the effect of raising prices for consumers.
19. Mockingbird, ZappDeal and ZappDealuxe denied all the allegations and argued as follows:
- (a) Mockingbird challenged its inclusion as a party to the case as the impugned privacy clause was part of ZappDeal’s terms of service and was not imposed by Mockingbird.
 - (b) ZappDeal challenged that data privacy was not a competition law concern and as such, the CCW had no authority to investigate into allegations of data privacy.
 - (c) The DG had *suo moto* expanded the scope of its investigation by analysing agreements entered into by ZappDealuxe which was not one of the parties in the information filed by the Informant.
 - (d) The price parity clause and/or the exclusive launch of certain products on the ZappDealuxe platform did not result in denial of market access and there was no evidence to show any appreciable adverse effect on the market.
20. The CCW considered the findings of the DG Report and forwarded the same to the parties for their consideration. The CCW issued an order to list the matter for

consideration on 11.03.2022. Accordingly, written and oral arguments before the CCW are invited on behalf of the Informant and Mockingbird, ZappDeal and ZappDealuxe.

NOTA BENE

*The laws of Westeros are *pari materia* with the laws of India.

**The CCW regards the decisions of the Competition Commission of India to have high persuasive value. Further, the CCW considers the decision of the competition authorities of mature jurisdiction to have persuasive value.

***Apart from arguing on the issues framed in the moot proposition, the participants may also argue on the procedural and jurisdictional issue.

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