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Before the Competition Commission of Westeros

Case No. 77 of 2023

Confederation of Westerosi Traders (COWT)

...Informant

v.

Burgin & Burkes LLC

...Opposite Party

1. Westeros is a developing country in the South Asian region, with a large population close to 1.4 billion and a diversified economy. Westeros had been a British colony for the last 300 years before its declaration of independence in 1950. As an independent state, Westeros adopted its own constitution and constituted its own parliament which enacted several laws to govern the newly independent state, modeled along the lines of its imperial history.
2. In the early 1990's, with the advent of liberalization and the entry of multi-national corporations into its economic landscape, Westeros witnessed an era of unprecedented economic and technological growth. In 1995, the Westerosi Government introduced the World Wide Web to the general public. Although the Government had a monopoly over the internet services in the initial few years, the provision of internet and broadband services were privatized by 2000. With the privatization of Internet services, the public's access to the internet was also greatly enhanced. In the last 10 years, the internet penetration in Westeros has increased to 45%, with most of the population accessing the internet through mobile phones.
3. The Westerosi parliament was aware that Westeros needed stronger and more versatile laws to regulate its evolving economy. While Westerosi laws historically sanctioned monopolies and restrictive trade practices, the Westerosi Parliament, in 2002, enacted the



Westerosi Competition Act, 2002 (“Competition Act”). The Competition Act was implemented in two phases: the provisions prohibiting anti-competitive agreements and abuse of dominance were brought into force in 2009; and the provisions regarding regulations of mergers, acquisitions and amalgamations were brought into force in 2011. The Competition Act also established the Competition Commission of Westeros (“CCW”) to promote competition and prohibit anticompetitive practices by orders imposing suitable remedies.

4. The CCW passes orders to direct its investigative arm, the Director General (“DG”) to open investigations against perceived anti-competitive conduct based on references received from the government or its agencies, or information received from citizens, upon finding that a prima facie case is made out. The CCW then passes final orders (including penalties, where applicable) after conducting hearings.
5. Since the Westerosi competition regime is relatively nascent, the CCW and the Westerosi Courts hold the decisional practice of competition regulators in the European Union, United States of America and India in high regard. Given that the laws of Westeros, including its competition laws, are *pari materia* with the laws of India, the Westerosi competition authorities, Courts and Tribunals consider orders and judgments of Indian courts and tribunals to have high persuasive value.
6. Burgin and Burkes LLC (“Burgin and Burkes”) is a technology company based in United States of America, with operations in Westeros and many other countries across the world. Burgin and Burkes have diverse business operations globally across the technology and e-commerce space. In 2013, Burgin and Burkes incorporated an indirect wholly-owned subsidiary in Westeros, called Diagon Alley Private Limited (“DAPL”). DAPL operates the e-commerce marketplace, www.DiagonAlley.com (“Diagon Alley”), which connects sellers with consumers and facilitates the sale of various products through the online channel. Any seller located in any part of Westeros may register as a seller on Diagon Alley and offer its products for sale to end consumers. End consumers may shop on the Diagon Alley webstore or use the Diagon Alley mobile application to purchase various products



offered by sellers. DAPL charges a commission from sellers as a percentage for every sale transaction concluded on the Diagon Alley marketplace, at the standard rate of 12%. Consumers are not charged any fees by DAPL to shop on Diagon Alley.

7. Diagon Alley is a pure-play marketplace – i.e., DAPL does not own the inventory offered for sale on Diagon Alley. All goods sold on Diagon Alley are owned and offered for sale to end consumers by third-party sellers, who have the sole discretion to determine the prices of the products being offered by them on Diagon Alley. Therefore, the success of Diagon Alley is largely dependent on these third-party sellers.
8. In the initial years post its launch in 2013, DAPL understood that in order to attract consumers, the sellers registered with the Diagon Alley marketplace should be able to offer a wide range of products at competitive prices. During these initial years, Diagon Alley struggled to onboard more sellers to achieve the desired scale. The internet penetration was relatively lower in Westeros around those times. As a result, while the sellers were hesitant to partner with e-commerce marketplaces, customers from Tier 2 and Tier 3 cities were hesitant to shop online, as they were skeptical of being duped during online purchase transactions.
9. In order to attract more sellers who could bring a wide range of products to the Diagon Alley marketplace, DAPL offered various incentive schemes to sellers. Sellers who were able to bring in at least 75% of the popular selection recommended by DAPL, were offered a 7% rebate on the commission charged by DAPL on a monthly basis. In addition to the aforesaid reduction in commission, sellers who achieved sales worth 50 Crore Galleons¹ in a month were offered an additional incentive worth 2% of the total value of sales made by them in the previous month. In 2014, there were 1,500 sellers registered with the Diagon Alley marketplace, and this number grew to 1 million sellers in 2023.
10. While many of these sellers also sell on other e-commerce marketplaces, including Madam Malkin's (the closest competitor of Diagon Alley and has been operating in Westeros since

¹ Galleons is the official currency of Westeros, with 1 Galleon = INR 1.



2011), most of the large sellers who qualify for the incentives offered by DAPL typically focus their resources to sell through one e-commerce marketplace, alongside their own websites or physical outlets. When these incentives were introduced in 2015, there were 65 sellers who qualified for these incentives. By 2023, this number had reduced to 6 sellers, who collectively contributed to 65% of the total sales generated on the Diagon Alley marketplace.

11. Further, to promote the adoption of e-commerce and inspire more confidence in customers for engaging in online transactions, Burgin and Burkes also offered other services which are integral to the e-commerce business, such as advertising, warehousing, logistics and delivery services provided to sellers on Diagon Alley. The payment gateway and processing services on Diagon Alley were directed through the proprietary payment app of Burgin and Burkes, 'Gringotts Pay'. To ease the process of completing online purchase transactions on the Diagon Alley webstore and mobile app, Burgin and Burkes technically integrated the Gringotts Pay payment gateway with the Diagon Alley mobile app. This helped customers to make secured payments for their transactions on the Diagon Alley webstore and mobile app. While customers were also free to use other payment processing apps, they preferred Gringotts Pay as a payment option as it offered a better and faster customer experience, since it was integrated as the default payment option with the Diagon Alley mobile app. Seeing the popularity of Gringotts Pay with customers, DAPL also introduced a policy to encourage sellers to adopt Gringotts Pay payment services. Under this policy, if customers use Gringotts Pay to complete their purchase transactions on the Diagon Alley marketplace, the commission charged to the seller would be reduced by 2%.
12. Over the last decade, with the growth of internet penetration and e-commerce in Westeros, Diagon Alley has been able to carve its niche as a popular e-commerce marketplace in Westeros, with approximately 39% share in the Westerosi e-retail segment, with Madam Malkin's being its closest competitor with 36% share. Madam Malkin's and Diagon Alley are the two most popular e-commerce marketplaces in Westeros, with 4-5 other small marketplaces. By 2023, Gringotts Pay had garnered a market share of 33% in Westeros and was competing with the incumbent payment service providers such as Marauders



Money (which commanded a share of 25%) and the Westerosi-Government-operated payment processing service provider, WestZip (which commanded a share of 39%).

13. The Confederation of Westerosi Traders (“COWT”) is a trade association for over 3 Lakh micro, small, and medium-sized traders who primarily operate in the offline channel of retail trading. Some of the member sellers of COWT recently started selling on Diagon Alley, since 2018. Over the last five years, these small traders have collectively accounted for approximately 25% - 28% of the total yearly sales on the Diagon Alley marketplace. Most of these sellers were not eligible for the rebate or incentive schemes offered by DAPL. As a result, these sellers felt that they were not able to effectively compete with other large sellers on the Diagon Alley marketplace.
14. In 2020, COWT filed an information with the CCW, wherein it alleged that Burgin and Burkes was: (i) tying its own payment services (Gringotts Pay) with its e-commerce marketplace services (Diagon Alley); (ii) leveraging its dominant position in the market for e-commerce marketplace services to strengthen its position in the market for payment processing services in Westeros; (iii) engaging in deep discounting by offering rebates on commission to a handful of large sellers; and (iv) distorted competition by entering into anti-competitive agreements with the 6 large sellers to accord them preferential treatment.
15. The CCW passed a prima facie order directing the DG to investigate into the matter. The DG submitted its report to the CCW in March 2024, wherein the DG concluded that:
 - (a) Burgin and Burkes engaged in an anti-competitive tying arrangement by integrating Gringotts Pay with the Diagon Alley marketplace.
 - (b) Burgin and Burkes occupied a dominant position in the market for e-commerce marketplace services in Westeros and leveraged said dominant position to strengthen its position in the market for payment processing services in Westeros.
 - (c) Burgin and Burkes engaged in the anti-competitive conduct of deep discounting, whereby it effectively charged significantly lower commissions to the 6 large sellers,



impeding the ability of the other sellers on the Diagon Alley marketplace to effectively compete with these 6 large sellers.

- (d) Burgin and Burkes was entering into an anti-competitive agreement with the 6 large sellers to accord them preferential treatment, which resulted in appreciable adverse effect on competition by distorting the level playing field to the detriment of small traders.

16. Burgin and Burkes submitted its objections to the DG's report and argued before the CCW that:

- (a) Both Diagon Alley and Gringotts Pay faced sufficient competition in their respective relevant markets, and therefore, integrating Gringotts Pay with the Diagon Alley marketplace would not result in any appreciable adverse effect on competition;
- (b) Burgin and Burkes cannot be said to be in a dominant position in the market for e-commerce marketplace services, as it faces tough competition from both the unorganized segment of the Westerosi retail sector as well as other e-commerce marketplaces, including Madam Malkin's. Without any dominant position, there would be no question of abuse through leveraging.
- (c) Deep discounting can only be dealt with as an abuse of dominant position and Burgin and Burkes did not occupy a dominant position in the relevant market for e-commerce marketplace services. Without prejudice to the aforesaid, Burgin and Burkes contended that its conduct was objectively justified as the incentive schemes were introduced to attract more sellers to the marketplace in the initial years of its operation and this was standard industry practice, as Madam Malkin's also offered similar incentives to sellers registered with its marketplace.
- (d) There were 1 million sellers on the Diagon Alley marketplace and most of these sellers also operated on Madam Malkin's. Therefore, there was no appreciable adverse effect on competition on account of the incentives granted to the 6 large sellers.



17. The CCW considered the findings in the DG's report as well as the objections and suggestions made by the parties and decided to enquire further into this matter. The CCW issued an order to list the matter for hearing on July, 2024. The Counsels were directed to confine themselves only to the four issues, in the terms set out below:

- (a) **Whether Burgin and Burkes engaged in anti-competitive tying by integrating Gringotts Pay with the Diagon Alley marketplace, in contravention of Section 3(4)(a) of the Competition Act?**
- (b) **Whether Burgin and Burkes leveraged its dominant position as an e-commerce marketplace to strengthen its position in the market for payment processing services in Westeros, in contravention of Section 4(2)(e) of the Competition Act?**
- (c) **Whether Burgin and Burkes engaged in deep discounting, in contravention of Section 3(4) and Section 4 of the Competition Act?**
- (d) **Whether Burgin and Burkes had entered into an anti-competitive agreement with the 6 large sellers to accord them preferential treatment, in contravention of Section 3(4) of the Competition Act?**

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