



CRITICAL COMPETITION  
COMPETITION LAW NEWSLETTER  
AUGUST, 2022

## **ENFORCEMENT ORDERS**

### **I. COMPETITION COMMISSION OF INDIA (CCI) DISMISSED ALLEGATIONS OF ANTI-COMPETITIVE CONDUCT BY PARLE PRODUCTS PRIVATE LIMITED**

Hiveloop Technology Private Limited (**Hiveloop**) filed an information (complaint) against Parle Products Private Limited (**Parle**) alleging contravention of the provisions of the Competition Act, 2002 (**Act**).

Hiveloop is a B2B online marketplace for traders, retailers, wholesalers, and brands in India. Hiveloop averred that despite several requests, Parle never supplied its 'Parle G' product, which is a 'must stock' item for retailers and distributors, directly to Hiveloop's platform. Hiveloop alleged that this conduct of 'refusal to deal' with Hiveloop is an abuse of Parle's alleged dominant position under Section 4(2) of the Act. It was also alleged that Parle's refusal to directly deal with Hiveloop is borne out of agreements between Parle and its distributors in the nature of 'refusal to deal' on part of Parle which is also prohibited under Section 3(4)(d) of the Act (which prohibits vertical agreements).

The CCI noted that Hiveloop was free to obtain Parle's products from the open market and no evidence was placed on record which indicated that Parle imposed a vertical restraint on its distributors not to deal with Hiveloop. It was further noted by the CCI that Parle is not obligated to deal with Hiveloop and has the

autonomy to conduct its business in alignment with its commercial wisdom. The CCI noted that the alleged non-dealing of Parle with Hiveloop has neither caused nor is likely to cause any appreciable adverse effect on competition in India (**AAEC**).

The CCI did not find any abuse by Parle in the broad relevant market, i.e., '*market for biscuits in India*'. It was noted that a narrow market based on segmentation is not justified in this case and thereby, does not warrant any further assessment of dominance. Accordingly, the CCI noted that Hiveloop was not able to *prima facie* establish any exclusionary practice by Parle which necessitated an investigation and dismissed the case.

### **II. CCI DISMISSED A COMPLAINT FILED AGAINST VARTHANA FINANCE PRIVATE LIMITED FOR ALLEGED ABUSE OF DOMINANCE**

The CCI dismissed an information (complaint) filed against Varthana Finance Private Limited (**VFPL**) for alleged abuse of dominance. The information (complaint) was filed by MB Geeta Education Society (**MBGES**). In 2019, MBGES entered into a loan agreement with VFPL to construct a school. Subsequently, owing to the COVID-19 pandemic, MBGES was unable to pay some loan installments which were repaid later with due interest. MBGES alleged that VFPL abused its alleged dominant position by initiating proceedings against MBGES under Section 25 of the Payment and Settlement Systems Act, 2007 for "*dishonor of*



*electronic funds transfer for insufficiency, etc., of funds in the account” before the Metropolitan Magistrate, Calcutta.*

The CCI noted that MBGES has neither delineated the relevant market nor substantiated its allegations of VFPL’s dominance. It was also noted by the CCI that VFPL does not hold significant market power and there are several bigger players in the market. On the basis of the aforesaid, the CCI dismissed the information filed against VFPL.

### III. THE CCI DISMISSED A COMPLAINT AGAINST NIIT LIMITED FOR ALLEGED ANTI-COMPETITIVE CONDUCT

The CCI dismissed an information (complaint) filed by Mr. Pankaj Rai alleging contravention of Section 3 and 4 of the Act by NIIT Limited (NIIT). In 2017, CCI had dismissed a case filed by Mr. Rai against NIIT alleging contravention of the Act in Case Nos. 47, 48 and 49 of 2017 (2017 Order). Mr. Rai averred that NIIT contravened Section 3 and 4 of the Act, however the same was dismissed by the CCI. Subsequently, the 2017 Order was challenged by Mr. Rai in various forums including the High Court of Hyderabad, Supreme Court and the National Company Law Appellate Tribunal.

Therefore, after exhausting all possible legal avenues and having lost at every stage, Mr. Rai approached the CCI to reopen issues decided by it in the 2017 Order. Mr. Rai averred before the CCI that even though the 2017 Order has attained finality, the present information filed before

the CCI is not barred by *res judicata* and that there is a ‘*fresh cause of action*’. Mr. Rai contended that NIIT misled him into signing an exclusive supply agreement by claiming to be an ‘honest business entity’. It was alleged that NIIT’s concealment about their pending criminal proceedings, ‘dishonest’ business dealings and signing the exclusive supply agreement allegedly allowed NIIT to become dominant.

The CCI dismissed the complaint and held that the submissions of Mr. Rai have no bearing on any competition law issues and held that Mr. Rai is abusing the judicial process by initiating frivolous litigations.

### IV. CCI HELD CHHATTISGARH CHEMIST AND DRUGGIST ASSOCIATION NOT IN VIOLATION OF COMPETITION LAWS.

The CCI, after an investigation by the Director General held that Chhattisgarh Chemist and Druggist Association (CCDA) has not violated the competition laws and are not in contravention of Section 3(3)(b) of the Act.

It was alleged that members of the CCDA collectively ensure that no new medicines can be launched by pharmaceutical companies in the markets of Chhattisgarh unless INR 5000 per medicine fee is paid to the CCDA. These payments are collected towards Product Information Services (Fees) and Letter of Consent/No Objection Certificate. It was noted that pharmaceutical companies are bound to pay the Fees to avoid any hindrance in the distribution/supply of the new pharmaceutical



products/drugs, by CCDA or any other local chemist or druggist association in the State of Chhattisgarh.

The CCI noted that pharmaceutical companies categorically stated before the Director General that they have not faced any issues in respect of the launch of new drugs at the hands of CCDA for want of the Fees. CCI further noted that this is indicative of the fact that distribution of pharmaceutical products is not adversely affected to the detriment of any of the stakeholders in the value chain including the end consumer. Further, in the absence of cogent evidence that suggests that collection of the Fees by CCDA is mandatory, the CCI held that there is no contravention of Section 3 of the Act.

#### V. CCI DIRECTED 10 TRAILER OWNER ASSOCIATIONS TO CEASE AND DESIST FROM INDULGING IN ANTI-COMPETITIVE PRACTICES

The CCI directed 10 Trailer Owner Associations (TOAs) to cease and desist from engaging in anti-competitive practices in contravention of Section 3(3) read with Section 3(1) (which prohibits horizontal agreements) of the Act. The TOAs allegedly interfered in the fixation of tariffs for trailers and imposed a restriction upon the members of the National Association of Container Freight Station (NACFS) and their sister concerns, with regard to plying of their own trailers for movement of containers. NACFS alleged that such decisions were taken in association meetings where these

conditions were made to be agreed upon by the members of NACFS on alleged threat of strikes and lock outs.

The TOAs in the meetings facilitated collusive decision making by fixing prices and restricting CFS operators to reduce their rates from those decided by the TOAs. There were also restrictions placed on the members of the NACFS and their sister concerns by mandating them to not ply more than 20 trailers of their own for movement of containers. The conduct of TOA's was held to be in contravention of Section 3(3)(a) (which prohibits price fixation) and Section 3(3)(b) (which prohibits limiting/controlling the provisioning of services) of the Act.

#### **COMBINATION ORDERS**

#### I. CCI APPROVED 100% ACQUISITION OF 10 ROAD INFRA SPVS BY SHREM INVIT

The CCI approved the acquisition of 100% shareholding in 10 road infra special purpose vehicles (SPVs) which have concession agreements with the National Highway Authority of India by Shrem InvIT. The SPVs are involved in construction, development, and maintenance of road assets in line with the concession agreements. The purpose of the combination is strategic investment by Shrem InvIT within SEBI (InvIT) Regulations 2014.



II. CCI APPROVED THE INDIRECT SUBSCRIPTION OF OVER 30% OF TOTAL ISSUED SHARES OF CITRUSTECH BY BAIN CAPITAL INVESTORS AND BAIN CAPITAL CREDIT MEMBER II, LTD

The CCI approved the indirect subscription of over 30% of the total number of issued shares of CitiusTech by Bain Capital Investors (**Bain Capital**) and Bain Capital Credit Member, LLC and Bain Capital Credit Member II, Ltd. (**Bain Credit**), which represents approximately half the economic interest in CitrusTech. Bain Capital is a private equity investment firm that invests across many industries. Bain Credit is a credit specialist. CitrusTech holds 80% interest in CitiusTech Healthcare Technology Private Limited which is a healthcare technology service provider.

III. CCI APPROVED SHELL BV'S ACQUISITION OF 100% SHAREHOLDING AND SOLE CONTROL OF SOLENGRI POWER PRIVATE LIMITED FROM ACTIS SOLENGRI LIMITED

The CCI approved Shell Overseas Investments B. V's (**Shell BV**) acquisition of 100% shareholding and sole control of Solenergi Power Private Limited (**Solenergi**) from Actis Solenergi Limited. Shell BV is part of the Shell group which is a global group of energy and petrochemical companies. Solengri is an investment company incorporated in Mauritius which currently has investments in the renewable energy sector in India.

IV. CCI APPROVED THE ACQUISITION OF 11.43% SHARES OF TATA POWER RENEWABLE ENERGY LIMITED BY GREENFOREST NEW ENERGIES BIDCO LIMITED

The CCI approved the acquisition of up to 11.43% of the equity share capital of Tata Power Renewable Energy Limited (**TPREL**) by Greenforest New Energies Bidco Limited (**Greenforest**). Greenforest is an investment vehicle jointly and indirectly incorporated by BlackRock Alternatives Management, LLC. TPREL's primary business is generation of power through renewable sources of energy.

V. CCI APPROVED THE SLUMP SALE BY CITIBANK, N.A. AND CITICORP FINANCE (INDIA) LIMITED OF AN UNDERTAKING COMPRISING THEIR CONSUMER BANKING ACTIVITIES TO AXIS BANK LIMITED

The CCI approved the transaction involving slump sales by Citibank, N.A (**Citi**) and Citicorp Finance (India) Limited (**Citicorp**) of an undertaking comprising their consumer banking activities to Axis Bank Limited (**Axis Bank**) on a going concern basis. Axis Bank is a private sector bank engaged in the provision of retail banking services, commercial and wholesale banking services, and treasury services. Citi offers a full range of consumer and institutional banking products and services in India. Citicorp offers NBFC business services in India and provides personal loans and asset backed finance.



VI. CCI APPROVED THE ACQUISITION OF 25% SHAREHOLDING IN AGEAS FEDERAL LIFE INSURANCE COMPANY LIMITED BY AGEAS INSURANCE INTERNATIONAL NV FROM IDBI BANK LIMITED

The CCI approved the acquisition of 25% shareholding in Insurance International NV (AFLI) by Ageas Insurance International NV (Ageas) from IDBI Bank Limited. Ageas is an international insurance group having business activities in Europe and Asia. AFLI is engaged in the business of providing life insurance products in India.

VII. CCI APPROVED TRANSACTIONS INVOLVING ACQUISITION BY 2452991 ONTARIO LIMITED AND ACME SPV PRIVATE LIMITED IN GALAXY INVESTMENTS PTE. LTD, HIGHWAYS INFRASTRUCTURE TRUST AND HIGHWAY CONCESSIONS ONE PRIVATE LIMITED

The CCI approved certain interconnected transactions involving the acquisition of (i) equity stake in Highway Concessions One Private Limited (HC One), (ii) unitholding in Highways Infrastructure Trust (HIT), and (iii) certain rights in Galaxy Investments Pte. Ltd. (Galaxy), by 2452991 Ontario Limited (OTPP) and ACME SPV Private Limited (ACME). OTPP and

ACME are controlled by the Ontario Teachers' Pension Plan Board which administers pension plan benefits and investment of pension plan assets of teachers in Ontario, Canada. HIT is an infrastructure investment trust registered with SEBI. Galaxy does not have any direct business operations in India. HC One is engaged in the infrastructure sector in India.

VIII. CCI APPROVED THE SHARE REPURCHASE PROGRAM OF RENEW ENERGY GLOBAL PLC TO BUYBACK SHARES IN CANADA PENSION PLAN INVESTMENT BOARD

The CCI approved the share repurchase program of ReNew Energy Global plc (ReNew) by way of an open market purchase. On completion of and as a result of such buyback, the aggregate number of voting shares of ReNew is expected to decrease, which may lead to a corresponding increase in the proportion of voting rights held by Canada Pension Plan Investment Board (CPPIB) beyond the threshold of 25% voting rights. CPPIB is a professional investment management organization registered in Canada. ReNew is engaged in the business of electricity generation through non-conventional and renewable energy sources.



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