



CRITICAL COMPETITION

COMPETITION LAW NEWSLETTER

JUNE, 2022

COMPETITION COMMISSION OF INDIA'S 13TH ANNUAL DAY

The Competition Commission of India (CCI) recently celebrated its 13th Annual Day in New Delhi. The Union Minister of Finance and Corporate Affairs, Ms. Nirmala Sitharaman participated as the Chief Guest and also launched the upgraded website of the CCI and released the CCI's Competition Advocacy Booklets translated into Kannada and Malayalam. The Union Minister in her address outlined the challenges to competition in the global and Indian contexts, highlighting the need for understanding the technological nuances of digital markets and ensuring that such markets are used fairly, effectively and transparently for the benefit of consumers.

ENFORCEMENT ORDERS

I. CCI DISMISSED A COMPLAINT AGAINST CENTRAL RAILSIDE WAREHOUSE COMPANY LIMITED ALLEGING ANTI-COMPETITIVE CONDUCT.

The CCI dismissed an information (**complaint**) against Central Railside Warehouse Company Limited (**CRWC**), alleging contravention of the Competition Act, 2002 (**Act**). CRWC is a government enterprise incorporated for the purpose of providing warehousing facilities on land leased or acquired from the Indian Railways. For the provision of such facilities, CRWC issues various notice inviting tenders. The informant submitted a bid in one such tender, however, their bid was rejected due to a '*conflict of interest*' clause, whereunder CRWC has the right to reject a bid if the bidder is engaged in the same line of business as that of CRWC. Further, in case of a breach of such clause, the tenderer shall be disqualified/blacklisted for the next three years from participating in any tender floated by CRWC.

The CCI noted that the '*conflict of interest*' clause is not anti-competitive by nature and is a standard condition in tenders floated by other procurers of services as well.

Further, the presence of several players who operate in businesses like CRWC establishes that CRWC does not command any market power and no concerns of abuse of dominance arise. The CCI dismissed the complaint and iterated that a procurer can stipulate certain technical specifications/ conditions/ clauses in the tender document as per its requirements which cannot be deemed anti-competitive if the same appear to be commercially justifiable.

II. CCI DISMISSED A COMPLAINT AGAINST NANDAL FINANCE & LEASING PRIVATE LIMITED AND JPM INDUSTRIES LIMITED FOR ALLEGED BIG RIGGING.

The CCI dismissed an information (**complaint**) against Nandal Finance & Leasing Private Limited (**Nandal**) and JPM Industries Limited (**JPM**) for bid rigging in the bids submitted for the disinvestment process of Central Electronics Limited (**CEL**). It was averred that the estimated value of assets of CEL was Rs 957 crores (approx.), however, the reserve price estimated by the asset valuers appointed by the Government was 194 crores. It was also averred that group companies of Nandal and JPM have common directors and the bids submitted by them (210 Crores and 190 Crores respectively), are indicative of knowledge regarding the reserve price and subsequently quoting bid prices in concert.

The CCI noted that mere link between the directors is not indicative of manipulation of the bidding process. The CCI further noted that the disinvestment of CEL was a policy decision of the Government and there was no substantial evidence indicating that Nandal and JPM were aware of the reserve price set by the Government.

III. CCI DISMISSED ALLEGATIONS OF ABUSE OF DOMINANCE BY DLF COMMERCIAL COMPLEXES LIMITED.

The CCI dismissed an information (**complaint**) filed against DLF Commercial Complexes Limited (**DLF**) alleging abuse of dominance. It was alleged that DLF



abused its dominant position in the relevant market in Kolkata by imposing unfair and unilateral conditions in favor of DLF in its project for sale of commercial space.

The CCI noted that DLF is a new entrant in developing commercial space in Kolkata and has only one property related to commercial retail space. It was further noted that Kolkata has several players in both office and retail space and therefore, DLF does not hold a dominant position in the relevant market. Accordingly, in the absence of ascertainment of dominance or thereafter any conduct indicating abuse by DLF, the CCI dismissed the complaint.

IV. NATIONAL COMPANY LAW APPELLATE TRIBUNAL (NCLAT) DISMISSED AN APPEAL FILED BY PRASHANT PROPERTIES PRIVATE LIMITED.

The NCLAT dismissed an appeal filed by Prashant Properties Private Limited (**Prashant Properties**) against the CCI's order passed in Case No. 17 of 2020 (**CCI order**) wherein the CCI dismissed an information (complaint) filed by Prashant Properties alleging contravention of Section 4 of the Act (which prohibits abuse of dominance) by SPS Steels Rolling Mills Ltd (**SPS Steels**) and Shakambhari Ispat & Power Ltd. (**SIPL**).

In the CCI order, the CCI noted that Prashant Properties had advanced loans to SPS Steels for which they were partially repaid by entering into an agreement which allowed them to use SPS Steels' trademark named '*Elegant*' and its variants. SPS Steels was allowed to adjust royalties from the trademarks, from the amount it owed to Prashant Properties. Subsequently, an insolvency proceeding was initiated against SPS Steels, however, under the resolution plan approved by the NCLT, Prashant Properties did not get its claim for recovery of Rs 15.15 crores which was outstanding after adjustment of royalty payments.

Thereafter, pursuant to the approval of the resolution plan, SPS Steels came under the control of SIPL. SIPL issued a public notice on behalf of SPS Steels, stating that anyone using '*Elegant*' or associated trademarks would be liable for prosecution. Prashant Properties alleged that prohibiting the use of the '*Elegant*' trademark by SPS Steels and SIPL amounted to abuse of dominance. However, the CCI dismissed these allegations noting that to ascertain abuse, Prashant Properties ought to have shown that it possessed a right and such right has been infringed by the alleged conduct of SPS Steels and SIPL.

Thereafter, in the appeal before the NCLAT, Prashant Properties submitted that the CCI order had been passed without an opportunity for personal hearing and the CCI did not conduct a market analysis as required under Section 4 of the Act. However, the NCLAT noted that the CCI is only required to determine the existence of a *prima facie* case and personal hearing and preliminary conferences are not mandatory. Further, the CCI is empowered to consider any factor it deems relevant for enquiry for determining the dominant position of an enterprise. Accordingly, the NCLAT found that the CCI order was well reasoned in forming the opinion that no competition concerns arose in the impugned matter and dismissed the appeal.

V. NCLAT DISMISSED AN APPEAL FILED CHALLENGING THE CCI'S ORDER IN FAVOUR OF PERNOD RICARD INDIA PRIVATE LIMITED.

The NCLAT dismissed an appeal filed by Mr. Ashok Suchde, the proprietor of Vyn Marketing (**Vyn**) against the CCI's order passed in Case No 25 of 2019 (**CCI order**). The CCI dismissed the information (complaint) filed by Mr. Suchde alleging contravention of Section 3(4) (which prohibits vertical agreements) and Section 4 (abuse of dominance) by Pernod Ricard India Private Limited (**Pernod Ricard**). Pernod Ricard is engaged in the manufacturing, sale and distribution of alcoholic products in India.



Vyn had been a service provider for Pernod Ricard in Silvassa and Gujarat for ten years. In 2016, they entered into an agreement under which Vyn would assist Pernod Ricard in the carrying out certain services pertaining to supply, distribution and providing marketing intelligence regarding Pernod Ricard products. In 2017, Pernod Ricard unilaterally terminated the agreement and compensated Vyn towards pending services charges. It was alleged that the unilateral termination without advance notice and subsequent appointment of ZK Marketing as a service provider to replace Vyn due to ZK Marketing's alleged political influence was anti-competitive in nature. However, the CCI dismissed these allegations for lack of any competition concerns.

In light of the bald allegations made by Mr. Suchde regarding the agreement between Pernod Ricard and ZK Marketing having an appreciable adverse effect on competition, the NCLAT dismissed the appeal and concurred with the CCIs well-reasoned order and noted that the complaint filed before the CCI is vindictive litigation and an abuse of the process of law.

GUN JUMPING

I. CCI IMPOSED A PENALTY ON ALLCARGO LOGISTICS LIMITED FOR GUN JUMPING.

The CCI imposed a penalty on Allcargo Logistics Limited (**Allcargo**) for gun jumping in relation to the acquisition of 46.86% of the equity share capital in GATI Ltd. (**GATI**).

The CCI observed from the information available in the public domain that Allcargo had not notified the CCI regarding the acquisition of shares in GATI in terms of Section 6(2) of the Act. On initiating the inquiry, Allcargo submitted to the CCI that the transaction was not notified because the same was considered to fall under the De Minimis Target Exemption (**De Minimis Exemption**).

However, upon examination, it was observed that Allcargo considered the

assets and turnover of only the Target on a standalone basis and not the Target group, as required in terms of the definition of 'enterprise' in the Act. The CCI was of the view that Allcargo ought to have considered the target 'enterprise' as 'target consolidated with its subsidiaries' and not on a standalone basis.

The CCI imposed a nominal penalty of INR 20,00,000 for gun-jumping.

II. CCI IMPOSED A PENALTY ON VEOLIA ENVIRONNEMENT S.A. FOR GUN JUMPING.

The CCI imposed a penalty on Veolia Environnement S.A. (**Veolia**) in relation to the acquisition of 29.9% shareholding in Suez S.A. (**Suez**) from an existing shareholder, i.e., Engie S.A (**Engie Block Transaction**), and Veolia launching a public bid for the remaining Suez shares. Due to the hostile nature of the takeover, Veolia relied on the publicly available financial records of Suez and concluded that the transaction would benefit from the De Minimis Exemption.

The CCI, based on the available records, noted that the transaction would not benefit from the De Minimis Exemption and that Veolia failed to consider all of Suez's Indian subsidiaries while ascertaining the applicability of the De Minimis Exemption. Further, the CCI also noted that instead of seeking clarification from the CCI regarding the applicability of the De Minimis Exemption before the Engie Block Transaction took place, Veolia approached the CCI after the transaction was consummated.

The CCI imposed a penalty of INR 1,00,00,000 on Veolia for gun jumping.



DAWN RAID

Based on media reports, on 6 May 2022, the office of the Director General (the investigative arm of the CCI), raided the offices of several mining services companies in Kolkata and Jharkhand in relation to alleged bid rigging in tenders worth 20 billion rupees while offering services to Coal India. The complaint is in furtherance of complaints from Bharat Coking Coal Limited, a unit of Coal India.

COMBINATION ORDERS

I. CCI APPROVED THE ACQUISITION OF MINORITY SHAREHOLDING IN SAGAR CEMENTS LIMITED BY PI OPPURTUNITIES FUND I – SCHEME II

The CCI approved the acquisition of 10.10% minority shareholding of Sagar Cements Limited (**Sagar**) by PI Opportunities Fund I – Scheme II (**PIOF**) under the Green Channel Route. PIOF is a Category II Alternative Investment Fund, registered with the SEBI and is an affiliate of Premji Invest which is the private equity and venture capital investments arm of Premji Foundation. Sagar is engaged in manufacturing and selling various kinds of cements.

II. CCI APPROVED THE ACQUISITION OF ADDITIONAL 25% SHARES IN AVIVA LIFE INSURANCE COMPANY INDIA LIMITED BY AVIVA INTERNATIONAL HOLDINGS LIMITED.

The CCI approved the acquisition of additional 25% of the issued and paid-up equity share capital in Aviva Life Insurance Company India Limited (**Aviva LIC**) by Aviva International Holdings Limited (**Aviva**) from its existing joint venture partner, Dabur Invest Corp. After the proposed transaction, Aviva will become the majority shareholder of Aviva LIC, holding 74% of its equity share capital. The combination was approved under the Green Channel Route. Aviva is a holding company that does not carry out any business operations. Aviva LIC is a life insurance company registered with the

Insurance Regulatory and Development Authority of India.

III. CCI APPROVED THE ACQUISITION OF 15% SHAREHOLDING BY SERUM INSTITUTE LIFE SCIENCES PRIVATE LIMITED IN BIOCON BIOLOGICS LIMITED

The CCI approved the merger by absorption of Covidshield Technologies Private Limited (**CTPL**), a wholly owned subsidiary of Serum Institute Life Sciences Private Limited (**Serum**) into Biocon Biologics Limited (**BBL**) pursuant to which Serum will acquire approximately 15% equity shareholding in BBL. Serum is engaged in the development and commercialization of vaccines and therapies against Covid-19. BBL is a pharmaceutical company which offers various therapeutic treatments.

IV. CCI APPROVED THE ACQUISITION OF MAJORITY STAKE IN SNW ISPAT PRIVATE LIMITED BY OFB TECH PRIVATE LIMITED.

The CCI approved the acquisition of majority stake in SMW Ispat Private Limited (**SMW**) by OFB Tech Private Limited (**OFB**). OFB is engaged in the business of wholesale trading of bulk raw materials of all kinds including steel, industrial chemicals etc. and facilitates transactions between businesses through its online or offline channels. SMW is engaged in the business of manufacturing TMT steel bars, steel billets and sponge iron.

V. CCI APPROVED THE ACQUISITION OF 55.39% SHAREHOLDING IN MAGMA HDI GENERAL INSURANCE COMPANY LIMITED BY SANOTI PROPERTIES LLP.

The CCI approved the acquisition of 55.39% shareholding in Magma HDI General Insurance Company Limited (**Magma**) by Sanoti Properties LLP (**Sanoti**). Sanoti is engaged in the business of development of commercial and residential real estate properties. Magma is engaged in the business of general/non-life insurance in India.



VI. CCI APPROVED THE SUBSCRIPTION OF COMPULSORILY AND MANDATORILY CONVERTIBLE DEBENTURES OF CRYSTAL CROP PROTECTION LIMITED BY INTERNATIONAL FINANCE CORPORATION AND IFC EMERGING ASIA FUND, LP

The CCI approved the subscription of compulsorily and mandatorily convertible debentures of Crystal Crop Protection Limited (**Crystal**) by International Finance Corporation (**IFC**) and FC Emerging Asia Fund, LP (**EAF**). IFC is a multilateral organization which provides financial assistance and asset management services and EAF is a fund managed by IFC Asset Management Company, which is a division of IFC. Crystal is engaged in the manufacturing and sale of seeds, crop protection and agri-equipment products.

VII. CCI APPROVED ACQUISITION OF STAKE IN HITACHI CONSTRUCTION MACHINERY CO. BY HCJI HOLDINGS, CITRUS INVESTMENT, HCJI HOLDINGS G.K

The CCI approved the acquisition of 26% in Hitachi Construction Machinery Limited Co., Ltd (**HCM**) by Citrus Investments LLC (**Citrus**) and HCJ Holdings 2 G.K. (**HCJ Holdings**) through HCJI Holdings G.K. (**HCJI**) on a fully diluted basis. The proposed transaction was approved under the Green Channel Route. HCJI is a wholly owned subsidiary of Japan Industrial Partners Inc. and was established to hold shares in HCM. HCM is engaged in the manufacturing of mining and construction machinery and solution businesses globally.



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