



CRITICAL COMPETITION  
COMPETITION LAW NEWSLETTER  
NOVEMBER, 2022

## ENFORCEMENT ORDERS

### **1. A PROBE ORDERED AGAINST STATE-OWNED IREL FOR ALLEGED ABUSE OF DOMINANT POSITION**

Beach Mineral Producers Association (Informant) filed an information against IREL (India) Ltd. (OP) alleging violation of Section 4 of the 2002 Act. It was alleged that OP is the only entity owned/controlled by the government which is engaged in the production/ mining/ manufacture or supply of beach sand ilmenite in India and enjoys dominant position in the said relevant market. It was further alleged that due to policies of the OP, the Informant and its members are facing shortage of ilmenite supply. Thus, the OP is in contravention of provisions of Section 4 of the Act.

The CCI observed that the OP was in a dominant position because its share in the production of beach sand ilmenite is more than 80% which enables the OP to operate independently. Further, CCI observed that the OP did not deny the allegations of abuse of dominant position in relation to the restrictions placed by the OP on private players from mining and supply, increase of prices of ilmenite by the OP resulting in substantial increase in OP's revenue during the same period, and supply of ilmenite by OP to foreign entities at a lower rate but to domestic entities at a higher rate. Due to such non-denial of abusive practices, CCI held that it is safe to presume that the OP is engaging in abusive practices and directed the DG to investigate the matter under Section 26(1).

### **2. THE CCI DISMISSED A COMPLAINT ALLEGING ANTI-COMPETITIVE CONDUCT BY VIFOR INTERNATIONAL (AG)**

The CCI dismissed a complaint (information) against Vifor International (AG) (Vifor) alleging contravention of Sections 3(4) (which prohibits anti-competitive agreements) and Section 4 (prohibits abuse of dominance) of the Competition Act, 2002 (Act).

It was alleged that Vifor held patent and imposed one sided and unreasonable conditions on the use of the patent that harmed the competitive environment which encouraged free entry of other manufacturer of soluble iron injectables. It was held by CCI that the clauses of the agreement do not appear to be one sided or unreasonable in relation to protection of right of a patent holder qua its licensees, when seen from the perspective of Section 3(4) of the Act.

The CCI also reiterated the freedom to be given to Vifor to choose its trading partner and that any company requesting for grant of access to the patent should be able to demonstrate its ability to the patent holder, to satisfy the requirements specified for receipt of such grant of license. Vifor's contention regarding CCI not having jurisdiction over their conduct as they are a Swiss company and therefore only Swiss authorities may apply coercive measures on Swiss territory as part of their judicial sovereignty; and secondly that having regard to Section 3(5) of the Act the Commission does not have the jurisdiction to deal with the allegations contained in the



Information filed as they fall within the exclusive domain of the Patents Act, as exempted by Section 3(5) of the Act were all rejected by CCI and it reiterated its jurisdiction to look into any such matter applying the principles of competition law.

### **3. CCI FINDS MANUFACTURERS OF AXLE BEARINGS GUILTY OF BID RIGGING AND CARTELIZATION IN THE EASTERN RAILWAY TENDERS**

The CCI finds manufacturers of axle bearings guilty of bid rigging and cartelization in the Eastern Railway tenders and held that the conduct of the opposite parties amounted to contravention of Section 3(3)(d) read with Section 3(1) of the Act. The Hon'ble Commission also held the responsible officials of the opposite parties liable under Section 48(1) of the Act.

The Informant alleged that six of the ICF-approved vendors namely Krishna Engineering Works, Chandra Brothers, Rama Engineering Works, Sriguru Melters & Engineers, Chandra Udyog and Janardan Engineering Industries (Opposite Parties) had indulged in cartelisation in the bidding process for the procurement of Axle Bearing (Plain Sleeve Bearing - Top and Bottom Halves) for BHEL Traction Motor used for Railway EMU by quoting identical Total Unit Rate (TUR) and its break-up. The CCI vide an order dated 02.02.2021 u/s 26(1) of the Act, directed the DG to further investigate the matter.

The Commission after consideration of the DG report and hearing the parties held that the Opposite Parties were involved in collecting, tabulating, and sharing the details of order quantity

received by each of them in the Railway tenders. In reaching to an adverse finding against the parties of the parties, CCI placed reliance on the findings in Ref. Case No. 02 of 2018, wherein the product for procurement and the approved vendors participating in the impugned tender of western railways were the same.

However, in light of the economic situation arising from the outbreak of the COVID 19 pandemic, cooperative approached by some of the parties in coming forward to seek leniency and the nature of these MSMEs the Hon'ble Commission deemed fit to only pass a cease-and-desist order against the Opposite Parties.

### **4. THE CCI CLOSED A CARTELIZATION INQUIRY AGAINST GLOBAL AGRO-COMMODITY TRADERS.**

The CCI closed an inquiry alleging cartelization for increasing pulse prices by 11 agro-commodity companies in India. It was held by CCI that the Director General (DG) has failed to take into consideration factors such as the role of global prices responsible for determination of domestic prices, the nuances of the industry and market dynamics in the said industry. It was furthermore held by CCI that the DG relied primarily on internal communications as recovered by income tax authorities and did not analyze the nature of the trade carried out by importers and whether such information regarding stock positions is available to the public and all competitors and buyers.

The CCI held that there exists a buyer-seller relationship between



the impugned agro-commodity companies which leads to regular interactions between them. The CCI noted the investigation has not disclosed any indications of price parallelism amongst the companies and there was not enough evidence which pointed to the existence of a cartel. Accordingly, the CCI held that there is no contravention of Section 3 (which prohibits horizontal agreements) of the Act made out by the agro-commodity companies and accordingly closed the inquiry under Section 26(2) of the Act.

#### **5. THE CCI HOLDS THAT BLACKLISTING CLAUSES ARE NOT ANTI-COMPETITIVE PER-SE; THEIR EXCESSIVENESS AND EXTENT OF INVOCATION IS SUBJECT TO SCRUTINY**

Ravinder Singh Bawa Chairman & Managing Director of MG Well Solutions Project International Private Limited (Informant) filed an information against Oil and Natural Gas Corporation Limited (ONGC/OP) alleging violation of Section 4 of the 2002 Act. The informant which is a MSME and an Indian company providing cementing services to oil companies alleged abuse of dominance by the OP by way of imposing unfair and additional conditions in the tender for cementing service and unfairly and discriminatorily banning business dealing with it for a period of two years.

The CCI passed an order under Section 26(2) and held that ONGC did not violate any provisions Act as but was of the opinion that even though blacklisting clauses in a contract per se are not bad under competition law, yet the same needs to be scrutinized from the

perspective of the interpretation of such clauses and any exploitative and/or exclusionary abuse that may stem out of it when applied in a particular factual setting.

#### **6. THE CCI CLOSED A CASE AGAINST MEDCINA COMMUNITY PHARMACY AND OTHERS ALLEGING ABUSE OF DOMINANCE**

Mr. V. Radhakrishnan (Informant) filed an information against Medcina Community Pharmacy and others (OPs) alleging violation of Section 4 of the 2002 Act. It was alleged by the informant that the OPs offered deep discounts and sold various drugs/medicines to customers at a price lower than the wholesale price. It was also alleged that the OPs were dominant entities, and they extensively marketed their predatory pricing through misleading advertisements with the intention to kill the competition in the market of pharmaceutical retail business in Kerala, especially in the district of Kollam, and eliminate the retailers, including the Informant, from this business. The Informant was also apprehensive that the OPs may charge monopoly prices to recoup their losses. Thus, the OP is in contravention of Section 4 of the Act.

The CCI held that the facts of the case do not, *prima facie*, disclose any contravention of provisions of Section 4 of the Act by any of the OPs. Further, there is no evidence to suggest that discounts are being given by the OPs through any concerted action on their part. Accordingly, the CCI directed the case to be closed forthwith under Section 26(2) and found no *prima facie* violation.



## **7. THE CCI CLOSED A CASE AGAINST PUNJAB MEDICAL COUNCIL AND OMNICURIS HEALTHCARE PVT. LTD.**

Medicos Legal Action Group Trust (Informant) filed an information against Punjab Medical Council (OP 1) and Omnicuris Healthcare Pvt. Ltd. (OP 2) alleging violation of Sections 3 and Section 4 of the Act. The informant stated that OP 1 issued guidelines approving only the Omnicuris digital platform of OP 2 for conducting Continuing Medical Education (CME) programme, debarring all other online platforms.

This was being forced upon medical professionals/bodies if they are required to conduct any online CME program, and accordingly, had the effect of limiting or controlling technical development in the field of medical practice which is in violation of the provisions of Section 3 of the Act. Informant also stated that Registered Medical Practitioners (RMPs) are required to achieve a specific number of credit hours—50 credit hours in case of OP 1, in order to be eligible for renewal of registration and continue their medical practice as an RMP. It was also alleged that OP 1 as a dominant player has directly or indirectly imposed unfair and discriminatory condition in the purchase of service, i.e., credit hours for online CME.

It was furthermore stated that Competition has been foreclosed for other similar online digital platforms as the above stated conduct of the OP 1 has resulted into hindering entry into the relevant market, which has the effect of limiting/restricting technical and scientific development relating to medical

practice and its continuity as well as denial of market access, as the organizers of online CMEs are no longer allowed to access any other available digital platform. Thus, the conduct of OP 1 and OP 2 was alleged to be in violation of the provisions of Sections 3 and 4 of the Act, considering that they restrict and control the market of online CME conferences to a single platform, i.e., that of OP 2.

The CCI held that Punjab Medical Council is well within its jurisdiction to prescribe certain standards, guidelines, etc., for the purpose of maintaining quality in medical education and practice. The Commission was of the opinion that no case of contravention of the provisions of the Act is made out and directed the matter to be closed forthwith under Section 26(2) of the Act.

## **8. THE CCI DIRECTED THE CASE TO BE CLOSED SANOFI INDIA LIMITED UNDEER SECTION 26(2)**

Mr. Pinesh S. Doriwala (Informant) filed an information against Sanofi India Limited (OP) alleging violation of Section 3(4)(d) of the 2002 Act. The informant Shri Shriman Narayan Rahat Dava Centre (SSNRDC) was primarily aggrieved by OPs refusal to deal with it. It was averred by the informant that the *de facto* vertical agreement between the OP and its distributors restricts the distributors to supply OP's products at a wholesale price to another wholesaler such as SSNRDC, leading to constructive/implied refusal to deal in the Indian pharmaceutical market.



The CCI in the instant matter upheld the autonomy of the manufacturer to deal with their good the way they want and held that the allegations of the informant under Section 3(4)(d) remains unsubstantiated as it has been unable to show any Appreciable Adverse Effect on Competition (AAEC) in the market as a result of OP not dealing directly with SSNRDC. It furthermore alleged that in cases where refusal to deal is alleged, the same should be manifested to have or likely to have AAEC in the market in which the concerned party operates, to be held to be anti-competitive in terms of the provisions of Section 3(4)(d) of the Act read with Section 3(1) of the Act, in terms of adversely affecting intra-brand competition and/or inter brand competition, as the case may be.

The CCI directed the case to be closed under Section 26(2) of the Act as no case of contravention of the provisions of Section 3(4) of the Act warranting an investigation into the matter was made.

#### **9. THE CCI DIRECTED KRAFT PAPER MANUFACTURERS TO 'CEASE AND DESIST' FROM ANTI-COMPETITIVE PRACTICES**

Federation of Corrugated Box Manufacturers of India (Informant 1), Andhra Pradesh Corrugated Box Manufacturers Association (Informant 2) and Uttar Pradesh Corrugated Box Manufacturers Association (Informant 3), [Collectively hereinafter, 'Informants'] were engaged in the manufacture of corrugated boxes. The Informants alleged that the 4 Kraft Paper Mill Associations and their members, viz. kraft paper mills (collectively, 'OPs'), by way of

periodic meetings and correspondences between 2010-19 directed their members to- (i) increase and decide the price of kraft paper to be sold to the buyers, i.e., corrugated box manufacturers and, (ii) create a condition of shortage to enforce the unjust price increase and shut the operation of the paper mills in a region collectively and closing of factories by OPs in a co-ordinated manner resulted in limiting supply of kraft paper to them, which is in violation of Section 3(3) read with Section 3(1) of the Act. Upon consideration, an order dated 17.08.2017 under section 26(1) of the Competition Act, 2002, was passed by CCI directing the DG to investigate.

Basis the DG findings, the CCI reached to an adverse finding against the paper manufacturers (OPs) [except for OP No. 120]. However, after taking into consideration various factors such as the fact that these OPs were MSMEs and first time offenders, several of these OPs faced a period of economic and financial stress during the COVID-19 pandemic and admission of guilt by 31 OP's under Section 46 of the Act, the Hon'ble Commission in the interest of justice did not impose any monetary penalty.

Lastly, observing that the OPs made available their platforms for anti-competitive practices such as taking decisions relating to collectively shut down of paper mills, The CCI directed 4 Kraft Paper Mill Associations and their members, viz. kraft paper mills (collectively, 'OPs') to cease and desist from indulging in anti-competitive practices, on finding that the OPs engaged in cartel behaviour.



## 10. CCI IMPOSES RS. 392 CRORES PENALTIES ON MAKEMYTRIP, GOIBIBO, OYO FOR ANTI-COMPETITIVE CONDUCT

The CCI imposed a penalty of Rs. 392.36 Crores on online travel aggregators, i.e., MakeMyTrip India Pvt. Ltd and Golbibo (MMT-Go) and Oravel Stays Pvt. Ltd (Oyo) for indulging in unfair business practices amounting to a violation of Section 3 (which prohibits anti-competitive agreements) and Section 4 (abuse of dominance) of the Act.

The information (complaint) was filed by Federation of Hotel and Restaurant Associations of India (FHRAI) and Treebo Hotels (Treebo) which alleged abuse of dominance by MMT-Go by entering into price parity agreements with the hotels partners that list on their platform and through deep discounting practices leading to expansion of their network and retention of customers. It furthermore alleged that MMT-Go in addition to charging exorbitant commission brokerage gives preferential treatment to OYO on its platform leading to denial of market access to Treebo and Fab Hotels.

The CCI held that deep discounts in conjunction with the parity conditions creates an ecosystem which strengthens MMT-Go's dominant position in the relevant market for '*market for online intermediation services for booking of hotels in India*'. It helps MMT-Go retain and expand its network of users, hinders competition on commission between other online travel aggregators, increases dependency of users on the MMT-Go platform, thereby creating a

bargaining power imbalance in favor of MMT-Go. The CCI also took note of the allegation that MMT-Go misrepresents information by showing certain hotels/properties as 'sold out' while the same is merely delisted and may have rooms available for booking. The CCI noted that such practice by a dominant player could play a role in dissuading the consumer from searching on alternative channels for the same hotel on the assumption that it is sold out and thereby hamper the business of such hotels.

It was also alleged that MMT-Go has a vertical agreement with OYO which is anti-competitive by way of which OYO's competitor, i.e., Treebo was delisted from the MMT-Go platform. The CCI held that such conduct resulted in denial of market access to an important channel of distribution for OYO's competitors and is an anti-competitive arrangement.

Accordingly, the CCI imposed a penalty of Rs. 223.48 crores and Rs. 168.88 crores on MMT-Go and Oyo respectively and directed MMT-Go to modify its agreement with hotels and ensure that price and room parity obligations are modified to ensure fair, transparent and non-discriminatory access is given to all hotels by ensuring that the terms and conditions of the platform are formulated objectively.

## 11. CCI IMPOSED PENALTY OF RS. 1,337 CRORES ON GOOGLE FOR ABUSING ITS DOMINANCE

Three consumers of the Android based smartphones (Informants) filed information against Google LLC and Google India (OPs) alleging inter-alia abuse of dominant



position by OPs in the mobile operating system related market. Informants stated that Android was among the core business activities of the OPs. Indicating that a majority of smartphones and tablet manufacturers in India used the Android operating system in combination with a range of OPs' proprietary applications and services, Informants highlighted that depending upon which Android device Original Equipment Manufacturers (OEMs) / device manufacturers wanted to offer, they had to sign one or more agreements with the OPs.

It was alleged that the OPs mandated smartphone and tablet manufacturers to exclusively pre-install OPs' own applications or services in order to get any part of Google Mobile Services (GMS) in smartphones manufactured in / sold in / exported to / marketed in India. OPs tied or bundled certain applications and services (Google Chrome, YouTube, Google Search, etc.) distributed on Android devices in India with their other applications, services and / or Application Programming Interfaces (APIs).

Further, OPs prevented smartphone and tablet manufacturers in India from developing and marketing modified and potentially competing versions of Android (Android forks) on other devices. Thus, OPs were in contravention of section 4 read with section 32 of the Act.

CCI held that the OPs enjoy a dominant position in the relevant markets in India including market for licensable operating system for smart mobile devices through

Android; market for app stores for Android OS through Play Store; market for online general web search service through Google Search; market for non-OS specific mobile web browsers through Google Chrome and market for online video hosting platform.

Further, CCI held that the OPs compel OEMs with Android to sign Mobile Application Distribution Agreements (MADAs) with the OPs for pre-installation and premium placement of Google Mobile Services (GMS), even if unwillingly.

All smart mobile devices with Play Store pre-installed also have Google Search services tied, based on obligations arising from cumulative application of various agreements signed with OEMs. The CCI also stated that pre-installation is an important channel for distribution of web browsers and with OPs securing 100% pre-installation of Chrome on Android devices, the competitors are unable to set and cement their position in the browser market. The CCI also found that the conduct of OPs of tying Play Store with YouTube, significantly restricts competition in the relevant market by foreclosing distribution channels for competitors and thereby, deterring their incentive to innovate and offer choice to users.

The CCI further held that the anti-fragmentation obligations to restrict competition are reinforced by the unavailability of OPs' proprietary APIs to fork developers, which makes it more difficult for Android forks to attract app developers or to port apps from Google Android to forks. Thus, conduct of OPs also tends to harm consumers, who as a result of OPs'





interference in the competitive process may see less choice of smart mobile OS ecosystems.

Accordingly, the CCI found OPs to have abused their dominant position in contravention of the provisions of sections 4(2)(a)(i), Section 4(2)(b)(ii), Section 4(2)(c), Section 4(2)(d) and Section 4(2)(e) of the Act and directed them to cease and desist from aforesaid anti-competitive practices with a list of measures to ensure the same. The CCI found it appropriate to impose a penalty on OPs @ 10% of its average of the relevant turnover, for the last three preceding financial years 2018-19, 2019-2020 and 2020 to the tune of Rs. 1337.76 crores.

## **12. THE CCI IMPOSES A PENALTY OF RS. 936.44 CR. ON GOOGLE FOR ABUSING ITS DOMINANT POSITION REGARDING LICENSABLE MOBILE OS FOR SMART MOBILE DEVICES, APP STORES FOR ANDROID OS IN INDIA**

XYZ (Confidential), Match Group, Inc. and Alliance of Digital India Foundation (Informants) alleged that Google mandated the use of Google Play Billing System (GPBS) for distributing paid apps as well as in-app paid content by the app developers to the users. It was further alleged that Google unfairly pre-installs and prominently places Google Pay on Android smartphones at the time of initial set-up resulting in a “status-quo bias” to the detriment of other apps facilitating payments through UPI as well as other methods of payment, thus, this conduct is in violation of Section 4(2)(a) of the Act.

The CCI held that the mandatory requirement to use GPBS impacts

the developers’ ability to improve their services and compete effectively in their respective domain as the financial transaction data pertaining to their own users is in the complete control of Google and not shared with them in full. Further, by having access to the financial transaction data along with other data, Google is in a position to distort competition in the downstream markets by setting rules for controlling the whole process of development and distributions of apps.

It was further held that Google has failed to provide the data in the manner sought by the Commission despite grant of sufficient time, as sought by it. The Hon’ble Commission opines that Google being a dominant player in the app store for Android OS, has a special responsibility that access to its platform are available at non-discriminatory terms for all trading partners and that simply because, Google Pay UPI app is an in-house app, does not grant Google any right to self-preference and offer dissimilar treatment to other competing UPI apps.

Moreover, considering the issue as to whether pre-installation and prominence of Google Pay UPI App (GPay) by Google is in violation of Section 4(2), the Hon’ble Commission observes that the setting Google Pay UPI app as the default payment application can outweigh, or even nullify, the benefits of having multiple payment applications pre-installed. The CCI held Google to be dominant in the market for licensable OS for smart mobile devices in India and market for app store for Android smart mobile OS in India, accordingly, Commission directed Google to cease and desist



from indulging in anti-competitive practices that have been found to be in contravention of the provisions of Section 4.

### COMBINATION ORDERS

#### **13. CCI APPROVED THE ACQUISITION OF 100% SHAREHOLDING OF REMCO BY BWIL UNDER THE GREEN CHANNEL ROUTE**

The CCI under the Green Channel Route approved the proposed combination pertaining to the acquisition of 100% shareholding of Rabo Equity Management Company Ltd. (REMCO) and certain minor ancillary inter-connected transactions, by BW Investment Ltd. (BWIL). The Acquirer is indirectly owned by the Kroll Group which provides various professional services worldwide. The Target belongs to the Rabobank Group and is the investment manager of India Agri Business Fund II (IABF II), a fund incorporated in Mauritius.

#### **14. CCI APPROVED THE ACQUISITION OF SOLE CONTROL BY SCINTIA OVER BEIERSDORF AND TRIVIUM OVER TCHIBO UNDER THE GREEN CHANNEL ROUTE**

The CCI under the Green Channel Route approved the proposed combination pertaining to the restructuring of the Group's operational control structure that would, in particular, result in a change from joint control over Beiersdorf AG (Beiersdorf) and the TCHIBO Group (TCHIBO)- (TCHIBO AnlagenVerwaltungsgesellschaft mbH & TCHIBO GmbH) by Scintia Vermögensverwaltungs GmbH (Scintia), and Trivium Vermögensverwaltungs GmbH

(Trivium), to sole control by Scintia over Beiersdorf and sole control by Trivium over TCHIBO, respectively. The Acquirers are limited liability companies incorporated under the laws of Germany acting as investment vehicles. The Target Beiersdorf is a worldwide active skin care company, headquartered in Germany, with its entities having presence in India. The Target TCHIBO is a German consumer goods and retail company with limited presence in India.

#### **15. CCI APPROVED FINQUEST'S SUBSCRIPTION OF MAJORITY EQUITY SHAREHOLDING OF PAID-UP CAPITAL OF BILT UNDER THE GREEN CHANNEL ROUTE**

The CCI under the Green Channel Route approved the proposed combination pertaining to the subscription of majority equity shareholding of the paid-up capital of Ballarpur Industries Limited (BILT) by Finquest Financial Solutions Private Limited (Finquest). The Acquirer is a Non-Deposit taking Systemically Important Non-Banking Financial Corporation (NBFC-ND-SI) – Investment and Credit Company (ICC) registered with the Reserve Bank of India (RBI) under Section 45-IA of the RBI, Act 1934. The Target and its subsidiaries are engaged primarily in the resolution of stressed assets, offering customised loans to the corporates and textiles sector. The Target is a public listed company incorporated in India under the Companies Act, 1956 engaged in the manufacture and sale of writing, printing, and food grade papers in India. The Target is currently under Corporate Insolvency Resolution Process



under the Insolvency and Bankruptcy Code, 2017.

**16. CCI APPROVED CA BASQUE'S ACQUISITION OF UP TO 10% OF THE TOTAL PAID UP SHARE CAPITAL AND VOTING RIGHTS OF YES BANK**

The CCI approved the proposed combination pertaining to acquisition of up to 10% of the total paid up share capital and voting rights of YES Bank Limited (YES Bank), by way of subscription to equity shares and warrants, by CA Basque Investments (CA Basque). The Acquirer is a newly incorporated, special purpose vehicle, controlled by an investment fund that is advised by the affiliates of The Carlyle Group Inc. The Target is a banking company engaged in providing a wide range of banking and financial services offerings, catering to retail, Micro, Small & Medium Enterprise as well as corporate clients. It is a publicly held company, listed on the National Stock Exchange of India Ltd. and BSE Ltd.

**17. THE CCI APPROVED INDINFRAVIT'S ACQUISITION OF 100% EQUITY SHAREHOLDING AND COMPULSORILY CONVERTIBLE DEBENTURES OF FIVE TARGET SPVS AND SUBSEQUENT UNIT ALLOTMENT TO CPHI-4**

The CCI approved the proposed combination pertaining to acquisition of 100% equity shareholding and compulsorily convertible debentures of Simhapuri Expressway Limited, Rayalseema Expressway Private Limited, Kosi Bridge Infrastructure Company Private Limited, Mumbai

Nasik Expressway Private Limited, and Gorakhpur Infrastructure Company Private Limited (Target SPVs) by IndInfravit Trust (IndInfravit). The Acquirer is registered as an infrastructure investment trust under the SEBI (Infrastructure Investment Trusts) Regulations, 2014 (as amended) to invest in road infrastructure assets in India. The Target SPVs are engaged in the operation and maintenance of highways in the states of Andhra Pradesh, Uttar Pradesh, Bihar and Maharashtra.

The CCI also approved the next step of allotment of units of IndInfravit to CPP Investment Board Private Holdings (4) Inc. (CPHI-4) for the purpose of part-funding the SPV Acquisition. CPHI-4 is a Canadian corporation and an investment holding company which invests in a diversified portfolio of assets.

**18. THE CCI APPROVED PLATINUM OWL'S SECONDARY ACQUISITION OF 3% OF THE EQUITY SHAREHOLDING OF INTAS**

The CCI approved the proposed transaction involving a secondary acquisition by Platinum Jasmine A 2018 Trust (Platinum Owl) of 3% of the equity shareholding (on an outstanding shares basis) of Intas Pharmaceuticals Limited (Intas). The Acquirer is a private limited company incorporated in Abu Dhabi Global Market (AGDM), acting in its capacity as a trustee of Platinum Jasmine Trust. The Abu Dhabi Investment Authority (ADIA) is the sole beneficiary and settlor of the Platinum Jasmine Trust. The Target is a public company engaged in the business of development, manufacture and marketing of pharmaceutical



formulations and is the ultimate parent company of the Intas group.

### **19. THE CCI APPROVED THE PROPOSED TRANSACTION BETWEEN ZEEL, BEPL AND CME SUBJECT TO COMPLIANCE WITH REMEDIES**

The proposed combination pertained to amalgamation of each- Zee Entertainment Enterprises Limited (ZEEL) and Bangla Entertainment Private Limited (BEPL) with and into Culver Max Entertainment Private Limited (CME) and; preferential allotment of certain shares by CME to Essel Holdings Limited now known as Sunbright International Holdings Limited (Essel Mauritius) and Sunbright Mauritius Investments Limited (Essel Mauritius SPV).

CME is an indirect wholly owned subsidiary of Sony Group Corporation (SGC). It is engaged in the business of creating, owning, operating, transmitting, distributing, and promoting, etc. of non-news program services/audio-visual content, including sports program services, delivered by any means, primarily to viewers in India and the Indian diaspora. BEPL also belongs to SGC Group. It is an indirect wholly owned subsidiary of SGC and part of SGC Group. It is broadly engaged in acquisition of rights for motion pictures, events, and other TV content; and generating advertising revenue from TV telecast. ZEEL is a media and entertainment company, listed on the BSE Limited (BSE) and the National Stock Exchange of India Limited (NSE), engaged in the business of TV content

development, broadcasting of regional and international entertainment satellite television channels, movies etc.

The CCI approved the transaction subject to composite voluntary remedy proposed by the Parties to address the prima facie concerns of a likely appreciable adverse effect on competition.

### **MARKET STUDY ON FILM DISTRIBUTION CHAIN IN INDIA PUBLISHED ON 14.10.2022**

The CCI in its study gives a tripartite value chain for the film industry comprising three segments:

- i. **Production:**  
This can be understood in two phases: pre-production (Filmmaking generally begins with a story converted into screenplay which is pitched to a producer who then signs an agreement with the writer. Producers must also cultivate several other aspects of pre-production, such as selecting a director, casting, etc.) and post-production (After shooting, dubbing, adding special effects, and the soundtrack etc. are undertaken).
- ii. **Distribution:** Distributors typically market a film and take it to theatres, television broadcasters, and OTT players.
- iii. **Exhibition:** Exhibitors are stakeholders that enable consumers to view the film product. They can be theatrical, television, and digital.

### **CHARACTERISTICS OF THE FILM DISTRIBUTION VALUE CHAIN: A "MONOPOLISTICALLY COMPETITIVE" MARKET**



The market for films holds an interplay of competitive and monopolistic forces, i.e., films are imperfect substitutes, and each film production value chain has the power of price setting and strategizing. A film has the legal status of a copyright, and in that sense, it is regarded as a monopoly. However, it is grouped with other films, and together, they form an industry or field of economic activity which is competitive.

Thus, the value of a movie, as a copyright product, is best viewed as a monopolist maximizing profit within a market where equilibrium is primarily dependent on competitive demand and supply forces.

## OVERVIEW OF ANTI-TRUST ENFORCEMENT IN INDIA

A total of 35 cases and 34 orders were reviewed for this study. 24 of these cases involved associations, 7 cases involved issues related to digital cinema, and 5 pertained to a miscellaneous set of issues arising in relation to different aspects of movie releases.

CCI has noted that specific to the film value chain, existing research shows that both horizontal and vertical integration have benefits for market constituents and the sector, even though they might seem anti-competitive in the first instant. Some notable models used by industry stakeholders to maximise revenues discussed in the report are:

- i. **Dynamic pricing:** Through diverse business models enables stakeholders in the industry to charge consumers in accordance with the value they ascribe to content.
- ii. **Tiered product offerings:** Such as the intertemporal price

discrimination (eg. higher prices on weekends); variable pricing variable pricing which is determined by the quality of the viewers' experience (eg. higher charge for 4DX compared to 2D fare); premium offerings (eg. PVR Director's Cut) etc.

- iii. **Bundling:** Stakeholders in the film industry often rely on complements to cross-subsidize content costs.
- iv. **Micro-scheduling:** Coordinating release dates to avoid too many competing movies from being released at the same time. Legitimacy of this practice has also been affirmed by CCI in *Shri Kshitiz Arya & Anr. vs. Viacom18 Media Pvt. Ltd & Ors.*
- v. **Holdbacks:** A holdback or window is a clause in an agreement between a producer and an exhibitor for exclusive exploitation rights. Holdbacks involve carving out exclusive temporal periods within specified geographies to enable producers to repeatedly exploit their intellectual property to recoup their investment.

## FOCUS ON SELF-REGULATION

The Commission acknowledged that industry stakeholders may be better placed to resolve the issues related to competition in the film distribution value chain, as there are multiple dynamics at play. It is in this context that the Commission has relied on the findings from this study to devise a charter of self-regulation for stakeholders in the industry to follow in order to minimize future interventions and encourage the development of a thriving film industry with minimum friction.



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