



CRITICAL COMPETITION
COMPETITION LAW NEWSLETTER
OCTOBER, 2022

ENFORCEMENT ORDERS

1. Competition Commission of India (CCI/Commission) dismissed allegations of anti-competitive conduct in the lottery business in the State of Mizoram

Tamarai Technologies Pvt. Ltd. (**Tamrai/Informant**), engaged in the business of marketing and selling paper and online lotteries across India, including State of Mizoram, filed an information alleging contravention of Sections 3 and 4 of the Competition Act, 2002 (**Act**), against Teesta Distributors, NV International, Ecool Gaming Solutions (P) Ltd., Summit Online Trade Solutions Pvt. Ltd., and the Government of Mizoram (**Opposite Parties / OPs**). The Opposite Parties are engaged in similar and identical business of promoting, conducting and marketing state lotteries across India via online lotteries and paper lotteries, including bumper draws.

In the present case, the State of Mizoram had invited bids for online and paper lotteries with bumper draws for appointment of lottery distributors and selling agents for the lotteries as per the Mizoram Lotteries (Regulation) Rules, 2011 and only four bids were found valid which were of the OPs.

The Informant alleged that the bids by the OPs had identical rates and that the OPs had colluded by entering into an anti-competitive agreement and formed a cartel. The CCI considered the information and passed a *prima*

facie order under Section 26(1) of the Act directing the Director General (DG) to investigate the allegations made in the Information.

The CCI, upon consideration of the investigation report submitted by the DG, noted that the conclusions drawn by the DG are only based on identical quoting of bids by the OPs, which were also the base price as per the extant rules. Further, the CCI held that parallel conduct cannot be equated with collusion in the absence of any corroborative evidence and cannot be termed as bid rigging because such benchmark price per draw was already available to all potential bidders and there is nothing on record which demonstrates prior concert or consultations between the OPs. The CCI also observed that in the State of Mizoram, it is a common practice that the procurer would negotiate with the successful bidders for further discounts / concessions and accordingly, the CCI dismissed the allegations against the OPs.

2. CCI dismissed allegations of anti-competitive conduct against Dawa Vyapar Mandal

Sh. Nadie Jauhri filed an information alleging contravention of Section 3 of the Act by Shri Sanjay Mehrotra, Chairman, Futkar Dawa Vyapar Mandal, Kanpur (**OP 1**) and Shri. Rajendra Saini, President, Dawa Vyapar Mandal, Kanpur (**OP 2**), collectively referred to as **Opposite Parties / OPs**.



It was alleged that the OPs issued a circular that was widely circulated stating that no chemist shall buy or sell products of Macleods Pharmaceuticals Ltd. (**Macleods**) till further information is received from Drug House and Srushti Drug House. It was also alleged that such conduct was unfair, corrupt, unlawful, arbitrary, and in contravention of the Drugs and Cosmetics Act, resulting in shortage and black marketing, and accordingly contravened Section 3(1) read with Section 3(3) of the Act.

The CCI held that the allegations had no source relating to the OPs and there was no evidence except some photographs of certain retailers displaying banners of such a ban. Thus, the CCI was of the opinion that there exists no *prima facie* case against the OPs and passed an order under Section 26(2) of the Act dismissing the information filed.

3. CCI dismissed complaint of an anti-competitive agreement causing appreciable adverse effect on competition (AAEC) against 'PVR - Inox Limited'

The Consumer Unity & Trust Society (**CUTS**) filed an information alleging contravention of Section 3 and Section 4 of the Act. It was alleged that post the proposed combination of PVR Limited and INOX Leisure Limited, the resultant entity would become the largest player in the relevant market for exhibition of films in multiplex theatres and high-end single screen theatres in different cities in India and would cause an

appreciable adverse effect on competition (**AAEC**) in India by reduction in consumer choice, impact on prices and deterioration of food quality, high bargaining power etc.

The CCI observed that the allegations cannot be made out as the facts and circumstances of the instant case merely rely on an apprehension that the agreement may give rise to a conduct in the future which would thereafter cause AAEC in the relevant market.

Therefore, the CCI held that conduct, much less of an anti-competitive nature, is missing in the present case for an analysis from the standpoint of provisions of Section 3 and Section 4 of the Act. Post-facto, if any matter of abusive conduct under the provisions of the Act is brought before it, the same may be examined at that stage in terms of the provisions of the Act.

4. CCI dismissed JSW Paints' information and found no merit in alleged anti-competitive conduct of Asian Paints

JSW Paints (**JSW**) had filed an information before the CCI against Asian Paints Limited (**Asian Paints**), alleging contravention of Sections 3(4) and 4 of the Act. JSW had alleged that Asian Paints directed its sales personnel to target dealers and distributors to remove and stop displaying the products of JSW and threatened them by not allowing discretionary discounts, schemes, etc. if they continued to deal in JSW's products.



It was alleged that the conduct of Asian Paints is a case of enforcing an exclusive supply agreement in terms of explanation (b) to Section 3(4) and refusal to deal under explanation (d) to Section 3(4) of the Act. It was also alleged that the said conduct caused an appreciable adverse effect on competition by creating entry barriers, driving existing competitors out of the market and foreclosure of competition.

The CCI passed an order directing an investigation under Section 26(1) of the Act and noted that denial of market access is a severe form of abuse of dominant position and the evidence provided by JSW is sufficient to *prima facie* establish that Asian Paints contravened the provisions of Section 4(2)(c) of the Act.

In a separate information filed before the CCI, Balaji Traders (**Balaji Traders**), had also alleged contravention of Section 3(4) and Section 4 of the Act by Asian Paints as it removed the tinting software installed on Balaji Traders' computer once they started dealing with JSW products. Upon consideration by the CCI, the aforementioned two matters were clubbed together and directed for investigation by the DG.

The CCI, after analyzing the investigation report of the DG, held that the entry of JSW into the market had not been impeded as claimed. The CCI was of the view that the allegation of denial of market access under Section 4(2)

of the Act was not substantiated through credible evidence. The allegations of denial of infrastructure facilities were found to be a result of some dispute between the provider and JSW and was not attributable to Asian Paints and therefore, no case of contravention of Section 4 of the Act was made out.

The CCI also observed that the act of reduction of credit limit by Asian Paints or stoppage of supplies is a part of the commercial plan of the company and cannot be associated with the association of dealers with the competitor. Therefore, on the basis of lack of concrete evidence of alleged restraints imposed by Asian Paints over the dealers, the alleged conduct was not in contravention of Sections 3(4) and 3(1) of the Act.

5. Delhi High Court rejects Facebook India's plea challenging CCI's probe into WhatsApp's 2021 Privacy Policy

The CCI had ordered a probe into the new privacy policy of WhatsApp and issued notices to WhatsApp and its parent company. The CCI had *prima facie* observed that the terms of the new policy of sharing of personal data with Facebook and its subsidiaries was neither transparent nor based on consent of the users and held that the "take-it-or-leave-it" clause in the policy *prima facie* amounted to abuse of dominant position and accordingly, directed the DG to investigate. Thereafter, WhatsApp and Meta had filed a writ before the



Delhi High Court challenging the jurisdiction of the CCI. The single judge bench of Justice Navin Chawla in April 2021 had dismissed the petition and refused to quash the DG investigation. Subsequently Letters Patent Appeal was filed before the Division Bench, wherein the order of the single judge was upheld with an observation that there exists a strong "lock-in effect" which renders its users incapable of shifting to another platform.

On 28.09.2022, the Delhi HC dismissed the writ filed by Facebook India Online Services Pvt. Ltd. (Petitioner) challenging the CCI order which directed probe into WhatsApp's 2021 Privacy Policy and Terms of Service, wherein the Petitioner too was being clubbed challenging its impleadment in the DG investigation. The Delhi HC held that the impugned order of the CCI of clubbing of the matters was not only justified but also imperative for the purposes of the investigation as they involved similar allegations, highlighting that the enquiry is founded on the sharing of data between WhatsApp, Facebook and its other companies. The Court further observed that the allegations were substantially the same and related to the same subject matter which formed part of the ongoing investigation which had commenced pursuant to the directions issued in the Suo Motu case. It was further asserted that the CCI order, thus, not only requires the DG to investigate the affairs of the two principal entities noted above but also other

companies which may fall under the umbrella of control and influence of the latter.

6. Bombay High Court dismissed writ challenging CCI's investigation into Star India on allegations of contravention of Section 4 of the Act

The CCI had directed the DG to cause an investigation on the basis of an information filed by Asianet Digital Network Pvt. Ltd. (ADNPL), alleging contravention of Section 4 of the Act by Star India (P) Ltd. (OP 1), Disney Broadcasting (India) Limited (OP 2) and Asianet Star Communications Private Limited (OP 3) collectively referred to as **Opposite Parties**. The primary allegation of ADNPL was that by offering additional discounts to select Multi System Operators (MSOs) who are the main competitors of ADNPL in Kerala, Star India and Kerala Communicators Cable Ltd. (KCCL) have placed MSOs like ADNPL at a huge disadvantage which is detrimental to competition in the market. Further, it was alleged that Star India had allegedly abused its dominant position in contravention of Section 4 of the Act by imposing unfair/discriminatory prices and denying market access to ADNPL and distorting the level playing field in the 'market for provision of broadcasting services in the State of Kerala'.

Asianet Star Communications, Disney Broadcasting (India) and Star India (P) Ltd. filed a writ



petition before the Bombay High Court challenging the jurisdiction of the CCI. The Court dismissed the writ petition filed on the ground of lack of 'territorial jurisdiction'.

The Hon'ble Division bench observed that the Petitioners had entered into agreements for providing marketing services in the relevant geographical market of the State of Kerala and the DG's investigation pursuant to allegation of discriminatory conduct of price discrimination and denial of market access by Star India and KCCL is also in the State of Kerala and therefore, the Court did not have territorial jurisdiction to entertain the writ. The Court rejected the Petitioners' contention that the Court has territorial jurisdiction since the Petitioners' had their offices in Maharashtra. The Court remarked that, *"only because the Petitioners carry on business in the State of Maharashtra would not give rise to the cause of action for the court to exercise its jurisdiction unless the part of cause of action has arisen within that territory. The mere fact that the business is carried on in a particular place, will not confer jurisdiction unless it is shown that the place of business is an integral part of the business."*

COMBINATION ORDERS

- 1. CCI approved the proposed acquisition in health insurance sector of shareholding of Aditya Birla Health Insurance by Platinum Owl under the green channel route**

The CCI approved the proposed acquisition pertaining to subscription of 9.99% of the post issue paid-up equity share capital (on fully diluted basis) of Aditya Birla Health Insurance Co. Limited (**Aditya Birla Health Insurance**) by Platinum Owl (**Platinum Owl**). 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. Aditya Birla Health Insurance is in the business of providing health insurance in India. The combination was notified to the CCI under the green channel route on account of absence of horizontal, vertical and complementary overlaps.

- 2. CCI approved the proposed acquisition of stake in Apraava Energy Private Limited by CDPQ Infrastructures Asia II Pte. Ltd.**

The CCI approved the proposed acquisition of an additional 10% shareholding by CDPQ Infrastructures Asia II Pte. Ltd. (**CDPQ**) in Apraava Energy Private Limited (**Apraava Energy**). CDPQ, which already held 40 % of the shares in Apraava Energy, is incorporated in Singapore and is a wholly owned subsidiary of Caisse de dépôt et placement du Québec, a long-term institutional investor that manages funds for public and para-public pension and insurance plans. Apraava Energy is a foreign investment in the Indian power sector with investments in



renewable energy, transmission, supercritical coal and gas fired generation.

3. CCI approved the proposed acquisition of 100% equity share capital of “Indiaideas.Com” by “Payu Payments”.

The CCI approved the proposed acquisition of 100% of equity share capital of IndiaIdeas.com (IIL) by PayU Payments (**PayU**). PayU is a payment aggregation service provider which enables merchants to receive payments from customers across various digital payment methods. IIL is an unlisted public company which primarily provides payment aggregation services that enables merchants to receive payments from their customers across various digital payment methods and uses “BillDesk” as its trading/brand name in India.

4. CCI approved the proposed amalgamation of Jio Cinema OTT with Viacom 18.

The proposed combination involved the amalgamation of Jio Cinema OTT with Viacom 18, following an investment by BTS Investment 1 Pte. Ltd. (**BTS1**) and Reliance Projects & Property Management Services Limited (**RPPMSL**). BTS1 is a company incorporated in Singapore and is currently raising capital from investors including reputed sovereign fund, multinationals, and global institutional investors. RPPMSL is a wholly owned subsidiary of Reliance Industries Limited and owns and operates Jio

Cinema OTT Platform and Viacom 18 operates in the media and entertainment sector in India.

5. CCI approved the acquisition of 25% shareholding in AFLI by Ageas Federal Life Insurance Company Limited from IDBI bank.

The proposed transaction involves the acquisition of 25% shareholding in Ageas Federal Life Insurance Company Limited (**AFLI**) by Ageas Insurance International NV (**Ageas**). Ageas is an international insurance group having business activities in Europe and Asia, while AFLI is engaged in business of providing life insurance products in India.

6. CCI approved an acquisition in the infrastructure sector under the green channel route.

The proposed acquisitions pertain to (i) Equity stake in Highway Concessions One Private Limited (**HC One**), (ii) unitholding in Highways Infrastructure Trust (**Target Trust**), and (iii) Certain rights in Galaxy Investments Pte. Ltd. (**Galaxy**) by 2452991 Ontario Limited (**Ontario**) and ACME SPV Private Limited (**ACME**), which are engaged in activities of administration of pension benefits and the investment of pension plan assets of active and retired teachers in Ontario, Canada.

The Target Trust is an infrastructure investment trust registered with SEBI, Galaxy is a company incorporated in Singapore and is engaged in financial intermediation, and HC One is



incorporated in India and manages and operates in the infrastructure sector and is engaged in the business of development, construction, etc.

7. CCI approves Bank of Baroda's acquisition of 21% shares of India First Life Insurance Company Limited from Union Bank of India.

Bank of Baroda ("Bank" / "Acquirer") acquired 21% shares of India First Life Insurance Company Limited ("IFLIC" / "Target") from Union Bank of India. Post the said transaction, the shareholding pattern of IFLIC is such that 65% will be held by the Bank, 9% will be held by Union Bank of India and 26% is held by Carmel Point Investments India Private Limited. The Acquirer is a leading commercial public sector bank in India and provides services such as commercial banking, investment banking, retail banking, wealth management, etc. The Target is one of the youngest and fastest growing insurance companies in India. It carries on business in the areas of life insurance, health insurance and pension.

OTHER DEVELOPMENTS

CCI published a market study pertaining to competition issues in the Taxi and Cab Aggregation Industry

On 09.09.2022, the CCI published a market study on "*Competition and Regulatory issues related to the Taxi and Cab Aggregator Industry:*

with special reference to surge pricing in the Indian context." The study was undertaken to explore the following issues:

1. Whether personalized pricing in the cab industry exists and, if so, does it necessitate regulatory intervention?
2. What are consumers'/riders' perceptions about surge pricing? Whether surge pricing is necessarily a rent-seeking behavior and, if so, does it require any regulatory intervention?
3. Are there concerns related to transparency regarding their pricing structure and fare calculation?

Based on the findings of the market study, the CCI made the following recommendations:

1. Addressing Ambiguity Regarding 'Total Fare' Calculation:

The surveys revealed that though the riders get to know the up-front fare or estimated fare before booking the ride on cab aggregators' platform, there is ambiguity as regards what all components or heads form the basis of such fare calculation. Thus, transparency regarding total fare in general and all its different components amongst drivers and riders needs to be promoted so that the customers know the different components of the fare being charged from them.



2. Surge Pricing need not necessarily be counterproductive:

Another finding pertains to the surge pricing. The CCI notes that surge pricing does motivate drivers to increase supply of their services when demand spikes. The study also finds that riders do not necessarily perceive surge as a deterrent to book a ride, though some of the riders have expressed that the surge had been higher than expected on some occasions. Thus, dynamic pricing may be an intrinsic feature of such markets and not necessarily counterproductive, however it may

be required to be addressed through regulation.

3. Addressing Information Asymmetries:

The study also revealed that there seems to be considerable asymmetries in the actual stated business practices of the CAs and the knowledge of the riders and drivers with respect to surge and base fare differentia. Hence, for promoting a conducive environment in the cab aggregator industry, it is important to address concerns regarding transparency at various levels, which have emerged during this study.

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