

APRIL 2024

CRITICAL COMPETITION

Competition Law Newsletter

Saraf and Partners is delighted to share with you the latest edition of our Competition Law Newsletter, titled '*Critical Competition*' (April 2024).

This edition offers a comprehensive update on the recent developments in the field of Competition Law in India. We invite all our valued readers to peruse this newsletter and gain valuable insights into the current state of the law.



In This Issue

- The CCI Holds Google *Prima Facie* Liable of Abuse of Dominant Position through its User's Choice Billing Policy
- The CCI Dismissed the Allegations of Abuse of Dominance by MGF Development Ltd. & Ors.
- The Committee on Digital Competition Law released its report and draft Digital Competition Bill

...and more

ENFORCEMENT ORDERS

1. THE CCI HOLDS GOOGLE PRIMA FACIE LIABLE OF ABUSE OF DOMINANT POSITION THROUGH ITS USER'S CHOICE BILLING POLICY

People Interactive India Private Limited (PIIPL) along with others (collectively referred to as **Informants**) filed an information alleging abuse of dominance by Alphabet Inc., Google LLC, Google India Private Limited and Google India Digital Services Pvt. Ltd. (collectively referred to as **Google / Opposite Parties**) before the Competition Commission of India (CCI).

The Informants alleged that Google through its updated payments policy, in relation to its proprietary app store, i.e., Google Play Store, was violating provisions of Section 4 of the Competition Act, 2002 (**Competition Act**). The Informant alleged that for the app developers to be able to distribute their apps through the Google Play Store, they are *inter alia* required to accept Google Play Store's non-negotiable payment policies. The CCI had previously, by way of order dated 25.10.2022, held the Google Play Billing System (**GPBS**) to be anti-competitive and had *inter alia* directed Google to cease and desist from engaging in such conduct. The CCI had also directed Google to implement certain necessary changes and modify the applicable agreements/ policies.

In the present case, the Informants alleged that in the backdrop of CCI's order on GPBS, Google's alternate billing policy- User's Choice Billing (**UCB**) was offering an *illusory choice* for users to opt

for an alternative billing option next to Google Play's billing system. It has been alleged that UCB is discriminatory and unfair, as it skewed competition in the downstream app markets (favouring Google's own apps) and cemented Google's position in the payment processing market as well. Furthermore, Google is allegedly selectively and arbitrarily imposing its payments policy upon developers in a discriminatory manner and was imposing exorbitant service fee/ commission without any commensurate additional services. Since such a conduct is likely to cause an appreciable adverse effect on competition (**AAEC**), the Informants *inter alia* prayed for an inquiry into Google's conduct.

While Google contended that the CCI is not a price regulator, the CCI noted that antitrust regulators may intervene "in cases where the market is characterized by significant entry barriers coupled with the presence of a dominant player", if such a dominant player "engages in pricing practices that harm consumers or stifle competition". It was also noted that intervention by antitrust regulators to prevent unfair pricing is of particular significance in critical internet based economic activities.

In its *prima facie* analysis, the CCI defined two relevant markets, i.e., market for licensable OS for smart mobile devices in India and the market for app store for Android smart mobile OS in India. Basis its earlier assessments in the Google Android Case and Google Play

Case, the CCI was of the *prima facie* view that Google was dominant in both the relevant markets. The CCI observed that Google appeared to be charging a service fee ranging from 10% to 30% in case of GPBS and 6% to 26% in case of UCB. Based on break-even revenue share disclosed by the Informants (@6%), it concluded that the service fee being charged by Google *prima facie* substantially exceeded its cost of providing the services and thus, was excessive.

Furthermore, pointing to lack of competition due to Google's virtual monopoly power, the CCI stated that app developers appear to have insignificant bargaining power vis-à-vis Google and are forced to accept terms that deter legitimate competition and increase their costs of operation. The app developer has no choice but to agree to the terms and conditions unilaterally decided by Google, otherwise they will not be able to access a vast pool of potential Android users in India. Ultimately, the CCI recorded a *prima facie* finding that Google's conduct amounted to imposition of unfair price, which was constraining the growth of the app market, leading to denial/obstruction of market access to developers, and curtailing the freedom of app developers to select their business model and user engagement methods. Accordingly, the CCI directed the Director General (DG) to investigate into the matter under the provisions of Section 26(1) of the Competition Act.

Additionally, on 20.03.2024, the Informants had sought interim relief from the CCI under Section 33 of the Competition Act. The

Informants prayed for, *inter alia*, prohibition on levy of fees or commissions, non-delisting of apps on the Play Store on non-compliance with its policies, restraint on collection of data from app developers, and suspension of mandatory guidelines including UI/UX Guidelines. The CCI reiterated its position in *CCI v. Steel Authority of India Ltd.*, noting that its power under Section 33 of the Competition Act can only be exercised under exceptional circumstances, basis satisfaction of degree higher than a *prima facie* view, necessity of such relief, and likelihood of irreparable and irretrievable damage to the parties. It highlighted that there must be a clear nexus between the relief sought and issues under investigation. In the present case, while observing that various interim relief prayers lack a corresponding issue, it dismissed them.

The CCI recognised the costs and responsibilities associated with maintaining and operating app stores and thus, did not impose complete restraint on Google from collection of its fee. Lastly, since the Informants did not demonstrate either a higher level of *prima facie* case or any irreparable harm, the CCI dismissed the applications.

2. THE CCI DISMISSED THE ALLEGATIONS OF ANTI-COMPETITIVE CONDUCT BY LAERDAL MEDICAL, ADISON EQUIPMENT COMPANY, TULIPS GLOBAL, AND SHREYA ENTERPRISES

The CCI dismissed an information filed by Mr. Manohar Rawat (**Informant**) alleging anti-competitive conduct by Laerdal

Medical Private Ltd. (**Laerdal Medical / OP1**), Adison Equipment Company (**Adison Equipment / OP2**), Tulips Global (**Tulips / OP3**), and Shreya Enterprises (**Shreya / OP4**). Laerdal Medical is a manufacturer of manikins and simulators. The Informant alleged cartelization in Tender No. Gem/2023/B/3149411 dated 17.02.2023 (**Tender**) floated by Government Medical College, Haldawani, Uttarakhand wherein OP2 – OP4 were selected to participate, and they also quoted bids on behalf of OP 1. Further, the Informant also established that OP3 is a connected company of OP2.

In support of his allegations, the Informant furnished documents such as purchase orders and letters, raising questions about their authenticity. The CCI observed that the documents, *prima facie*, do not substantiate the allegations of collusion/cartelisation as raised by the Informant and that the material furnished by the Informant does not point to bid rigging or collusive bidding. Accordingly, the CCI passed an order under Section 26(2) of the Competition Act and held that no case of contravention of provisions of Sections 3 of the Competition Act warranting an investigation into the matter is made out.

3. THE CCI DISMISSED THE ALLEGATIONS OF ABUSE OF DOMINANCE BY MGF DEVELOPMENT LTD. & ORS.

The CCI dismissed an Information filed against MGF Development Ltd. (**MGF**), MGF Mall Management (**MGF Management**), MGF Promotion and Events Pvt. Ltd., Mr. Sharavan Gupta, Mr. Sidharth

Gupta, Mr. Rajiv Gupta, NSR Farms Pvt. Ltd., the Motor & General Finance Ltd., Columbia Holdings Pvt. Ltd., MGF Metropolitan Mall & MGF Events Co., the Town and Country Planning through Director General, Dakshin Haryana Bijli Vitran Nigam and Haryana Electricity Regulatory Commission (collectively referred to as **Opposite Parties/OPs**) for alleged contravention of provisions of Sections 3 and 4 of the Competition Act.

The Informants are retail shop owners in the Metropolitan Mall, Gurugram (**Metropolitan Mall**) and are aggrieved by the management of the Metropolitan Mall, which is carried out by one of the OPs i.e., MGF Management. The Informants have alleged that the OPs charge high maintenance and electricity charges and sell joint common areas without consent of the shop owners. The Informants defined the relevant market to be Metropolitan Mall and also alleged that the dominant conduct of the OPs has resulted in denial of market access to the owners/occupiers of the Metropolitan Mall, thereby, violating Section 4 of the Competition Act.

The CCI observed that Metropolitan Mall is not the only mall situated in Gurugram and there are other malls situated in the city and in nearby areas. Further, there exists no *prima facie* case of contravention of the provisions of Section 3 and Section 4 of the Competition Act. There are no competition concerns as the dispute is a contractual/ civil dispute. Therefore, the matter was closed forthwith under Section 26(2) of the Competition Act.

COMBINATION ORDERS

1. THE CCI APPROVED THE ACQUISITION OF SHAREHOLDING OF API HOLDINGS LIMITED

The CCI approved the acquisition of class B compulsorily convertible preference shares of API Holdings Limited (**API**) by MEMG Family Office LLP (**MEMG LLP**) and 360 ONE Private Equity Fund (**360 One**) through its investment manager, 360 ONE Asset Management Limited (**AML**). MEMG LLP is engaged in the provision of consulting and advisory services to customers in India. 360 One is a Category II Alternate Investment Fund (**AIF**) which invests in various sectors in India and worldwide. AML provides investment management services to 360 ONE Mutual Fund and other AIFs. API is engaged in various activities in the pharmaceutical and healthcare sectors in India, such as wholesale and distribution of drugs, provision of diagnostics services, marketing, and sale of products etc.

2. THE CCI APPROVED THE ACQUISITION OF 59.25% SHAREHOLDING IN MAINI PRECISION PRODUCTS LIMITED AND THE ACQUISITION OF ENTIRE SHAREHOLDING OF JK FILES AND ENGINEERING LIMITED

The CCI approved the acquisition of 59.25% shareholding in Maini Precision Products Limited (**MPPL**) by Ring Plus Aqua Limited (**RPAL**), the acquisition of the entire shareholding of JK Files & Engineering Limited (**JK Files**) in JK Talabot Limited (**JKTL**) by a wholly owned subsidiary (**New Company**) of Raymond Limited (**Raymond**), and merger of RPAL, MPPL and the engineering business of JK Files

into the New Company. Raymond and the New Company are engaged in the manufacture and sale of textiles, lifestyle products, branded apparel, hardware and tools, certain automotive parts, and real estate. JK Files, a wholly owned subsidiary of Raymond, is engaged in the business of manufacturing, sale and distribution of hand tools, files and cutting tools. JKTL, a subsidiary of JK Files, is engaged in the engineering business together with JK Files. RPAL, a subsidiary of JK Files, is engaged in the business of manufacturing and exporting ring gears, flex plates, and water pump bearings. MPPL is engaged in the manufacturing of precision products for different industries and manufactures products based on the design requirements of its customers.

3. THE CCI APPROVED THE ACQUISITION OF SHAREHOLDING IN ASIAN INSTITUTE OF NEPHROLOGY AND UROLOGY PRIVATE LIMITED

The CCI approved the acquisition of fresh redeemable preference shares in Asia Healthcare Holdings Pte. Ltd. (**AHH**) by TPG Growth V SF Markets Pte. Ltd. (**TPGG**) and Waverly Pte. Ltd. (**WPL**). Further, it approved the subsequent acquisition of majority shareholding in Asian Institute of Nephrology and Urology Private Limited (**AINU**) by AHH. TPGG is an investment fund of TPG Inc. (**TPG**), a global investment firm, which operates in multiple sectors such as financial services, technology, consumer etc. WPL is a wholly owned subsidiary and a special purpose vehicle part of a group of investment holding companies managed by GIC Special Investments Private Limited. AHH

is engaged in long-term investment holding activities and is active in providing healthcare services. It is owned jointly by TPG and WPL. AINU is a single-specialty centre in South India, focuses on providing healthcare services through hospitals, specialising in urology care, nephrology care, dialysis, and kidney transplant.

4. THE CCI APPROVED THE MERGER OF GARAGEPRENEURS INTERNET PRIVATE LIMITED WITH NORTH-EAST SMALL FINANCE BANK

The CCI approved the merger of Garagepreneurs Internet Private Limited (GIPL) (including Quadrillion Finance Private Limited and Intergalactory Foundry Private Limited) with North-East Small Finance Bank Limited (NESFB) (including RGVN (North-East) Microfinance Limited). GIPL operates under the brand name "Slice" and focuses on facilitating payments and credit products through digital means in India. It primarily focuses on enabling access to financial services for underbanked customers through affordable and transparent cost solutions and structures. NESFB is a private sector small finance bank which has multiple branches in the Northeastern States.

5. THE CCI APPROVED THE ACQUISITION OF SHAREHOLDING OF SHRIRAM INVESTMENT HOLDINGS PRIVATE LIMITED BY SHRIRAM OWNERSHIP TRUST

The CCI approved Shriram Ownership Trust's (SOT) acquisition of 9.44% and 20% stake of Shriram Investment Holdings Private Limited (SIHL) held by APRN Enterprises Private Limited

(APRN) and Piramal Enterprises Limited (PEL), respectively. APRN and PEL were minority shareholders who wished to exist SIHL and post transaction, 100% shareholding of SIHL will be held by SOT and SCPL. SIHL is an unregistered core investment company which does not have any business of its own except investments in various companies, most of which are its wholly owned subsidiaries.

6. THE CCI APPROVED ACQUISITION OF KESORAM CEMENT BUSINESS BY ULTRATECH CEMENT LIMITED

The CCI approved the acquisition of the grey cement business of Kesoram Industries Limited (KIL) by UltraTech Cement Limited (UCL). UCL is engaged in the business of manufacture and sale of grey cement, white cement, ready-mix concrete, clinker, and building products in India. It is a public listed subsidiary of Grasim Industries Limited and is also engaged in the provision of building solutions in India. KIL is engaged in the manufacture of grey cement and is also engaged in the businesses of rayon, transparent paper, and chemicals in India.

7. THE CCI APPROVED 100% ACQUISITION OF LANCO AMARKANTAK POWER LIMITED BY ADANI POWER LIMITED

The CCI approved acquisition of 100% of the equity share capital of Lanco Amarkantak Power Limited (LAPL) by Adani Power Limited (APL). APL, a part of the Adani Group, is engaged in the business of thermal power generation in India. It operates its thermal power plants across multiple states in

India, including Gujarat, Maharashtra, Karnataka etc. LAPL, a part of the Lanco Group, is engaged in the business of thermal power generation in India. It is currently undergoing Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016.

OTHER DEVELOPMENTS

1. THE COMMITTEE ON DIGITAL COMPETITION LAW RELEASED ITS REPORT AND DRAFT DIGITAL COMPETITION BILL ON 12.03.2024

On 12.03.2024, the Ministry of Corporate Affairs (MCA) released the report and draft bill prepared by the Committee on Digital Competition Law (CDCL), inviting public comments by 15.04.2024. CDCL's Report titled 'Anti-Competitive Practices by Big Tech Companies' (**Report**) along with the Draft Digital Competition Bill (DCB) recommends the introduction of *ex-ante* measures to complement the existing *ex-post* framework. CDCL has proposed proactive monitoring of the behaviours of large digital enterprises through strengthening of capacity of the CCI for early intervention and technical regulation. To strike a balance between increased regulation and

enabling innovation under an *ex-ante* model, these measures shall be applicable only to 'systematically significant digital enterprises' (SSDE) which have a 'significant presence' in India. Further, the *de novo ex-ante* framework is to be implemented in a manner that does not hinder opportunities and incentives for innovation for small enterprises. Thus, it will have a major impact on the big tech enterprises which will have to comply with the *ex-ante* as well as the *ex post* regulatory regimes.

2. CCI TO REVIEW ALL COMPETITION REGULATIONS

The Chairperson of CCI, Ms. Ravneet Kaur, stated that CCI will be reviewing all regulations under the Competition Act. She stated that in the future, comprehensive amendments of general regulations and other regulations will be released. Furthermore, there will be a process of public consultation and concerns of stakeholders will be taken into consideration. In the last round of amendments, CCI defined a new deal value threshold, reduced the timeline for the implementation of M&As to 150 days, and introduced the settlement and commitment mechanism.

KEY CONTACTS



Mohit Saraf

Founder & Managing Partner
Mohit.Saraf@sarafpartners.com



Akshay S Nanda

Partner, Competition &
Personal Data Protection Law
Akshayys.Nanda@sarafpartners.com

***Disclaimer:** The contents of this document are provided for informational purposes only and should not be construed as legal advice on any subject matter. You should not act or refrain from acting on the basis of any content included in this newsletter without seeking legal or other professional advice.*

DELHI NCR

Bhaskar House
Sector 16 A, Filmcity
Noida – 201301
+91 (120) 463 0600
delhi@sarafpartners.com

MUMBAI

2402, Tower 2, One International Center
Senapati Bapat Marg, Prabhadevi West
Mumbai – 400013
+91 (22) 4405 0600
mumbai@sarafpartners.com

BENGALURU

Unit No 201, Embassy Square, 148, Infantry Road,
Opp. Police Commissioner's Residence
Vasanth Nagar, Bengaluru- 560001
+91 (80) 4405 0600
bengaluru@sarafpartners.com

HYDERABAD

8-2-619/ 1, 3rd Floor, SAHA Complex
Road No.11, Banjara Hills
Hyderabad – 500034
+91 98188 15128
hyderabad@sarafpartners.com