

JULY 2024

CRITICAL COMPETITION

Competition Law Newsletter

Saraf and Partners is delighted to share with you the latest edition of the Firm's Competition Law Newsletter, titled '*Critical Competition*' (July 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.



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ENFORCEMENT ORDERS

1. THE CCI CLEARS GOOGLE OF ALLEGATIONS OF PREFERENTIAL TREATMENT TOWARDS TRUECALLER

The Competition Commission of India (CCI) dismissed the complaint filed by Ms. Rachna Khaira (Informant), alleging contravention of Section 4 of the Competition Act, 2002 (Competition Act) by Google India Private Limited (Google). The Informant claimed that Google favored Truecaller by allowing it exclusive access to users' contact information while prohibiting other apps from similar actions, thereby distorting the market for caller ID and spam protection apps and creating a monopoly for Truecaller. The Informant also cited Google's Developer Policy, which prohibits unauthorized disclosure of users' non-public contact information, asserting that Truecaller's practices violated this policy. Additionally, it was alleged that Google provided certain Android Application Programming Interface (APIs) to Truecaller, facilitating the sharing of contact book data, which was not made available to other app developers.

In response, Google argued that Google Play Store strictly prohibits unauthorized disclosure of users' non-public contacts. It also emphasized that Android APIs are open source and available to all developers, refuting claims of preferential treatment. Google also pointed out that its commercial arrangements with Truecaller regarding cloud computing and ad services did not contain any exclusivity provisions or competitive advantages. It addressed the policy change in May 2021, emphasizing the introduction of a "safety section" on Google Play to enhance users

understanding of data collection by apps.

The CCI delineated the relevant market as the market for app store for Android smart mobile OS in India and held Google to be dominant in the same. However, it noted that the presence of multiple caller ID and spam protection apps on the Play Store suggests no limitation imposed by Google on competition.

Moreover, a mere commercial relationship between two entities *ipso facto* cannot be assumed to grant any preferential treatment outside of those commercial arrangements. Moreover, users voluntarily provide the contact details data to Truecaller, thereby refuting the allegation of unauthorized publishing. Thus, CCI found the allegation of the Informant to be unsubstantiated and consequently, the information was dismissed under Section 26(2) of the Competition Act.

2. THE CCI DISMISSED ALLEGATIONS OF ABUSE OF DOMINANT POSITION BY MR. SARFARAZBHAI RAFIQUE BHAI RAVANI AND OTHERS

The CCI dismissed a complaint filed by Mr. Uday B. Bhatt (Informant), Senior Executive Secretary of the Ship Recycling Industries Association (SRIA), alleging contravention of provisions of Section 3 and Section 4 of the Competition Act by Mr. Sarfarazbhai Rafique Bhai Ravani and others (OPs). The Informant alleged that the OPs, acting as intermediaries in the market, manipulated the pricing system by spreading false rumors through WhatsApp groups, adversely affecting sellers and customers. As per the Informant, these intermediaries disseminated lower prices of the commodities (scrap iron and other materials obtained through the recycling of ship remnants),

compelling members of SRIA as well to sell at reduced prices. It was alleged that in the long run, the OPs would take complete control of prices which would lead to abuse of dominant position. An FIR was also filed against unknown persons for spreading false prices.

The CCI noted that while there are concerns about the OPs' conduct and potential abuse of dominant position, the provisions of the Competition Act do not provide for inquiry into cases of collective dominance. Consequently, no case of contravention under Section 4 of the Competition Act was established.

Regarding the alleged violation of Section 3 of the Competition Act, the CCI observed that the evidence presented, including the FIR and newspaper articles, did not *prima facie* indicate cartelization by the OPs. The pricing of commodities was determined through daily negotiation between multiple buyers and sellers. Therefore, the CCI dismissed the complaint under Section 26(2) of the Competition Act as no *prima facie* case was established by the informant.

3. THE CCI DISMISSED CASE AGAINST KARNATAKA FILM CHAMBER OF COMMERCE

The CCI dismissed a complaint filed by Kannada Film Chamber of Commerce (KFCC), through its President Mr. Krishnegowda (Informant) alleging contravention of provisions of Sections 3 and 4 of the Competition Act by the KFCC (OP-1) and others. The Informant alleged that despite the CCI's order dated 27.07.2015 in Case No. 58 of 2012, which directed OPs to cease anti-competitive practices, D.K. Ramakrishna @ Praveen Kumar (OP-3), Madhavananda Yogappa Shegunashi (OP-4), and S. Kumar

Shreenivasamurthy (OP-5) instigated members of KFCC, the Karnataka Television Association, and the Karnataka Film Producers Association (OP-2) to boycott the Informant and ban the release and broadcast of dubbed content. As per the Informant, OPs' actions, including spreading messages and audio clips on social media hurling abuses at President, were in violation of the CCI's previous order. The Informant also mentioned filing a complaint under Section 42(3) of the Competition Act with the Chief Metropolitan Magistrate, Patiala House District Court, New Delhi, which resulted in fines for the OPs.

The Informant sought interim relief under Section 33 of the Competition Act and requested that measures be taken to prevent the OPs from further provoking members. The CCI noted that despite a request for additional information on 07.02.2024, the Informant has neither provided the required clarifications nor sought any extension of time for filing the same. Consequently, the CCI found the matter to lack sufficient and credible information regarding the OPs' conduct. Therefore, the CCI decided to close the matter under Section 26(2) of the Competition Act.

COMBINATION ORDERS

4. THE CCI APPROVED IRB INFRASTRUCTURE TRUST'S ACQUISITION OF MEERUT BUDAUN EXPRESS LTD.

The CCI approved an infrastructure transaction involving IRB Infrastructure Developers Ltd. (IRB), IRB Infrastructure Trust (InvIT), and the GIC Unitholders, leading to the acquisition of Meerut Budaun Expressway Limited (MBEL). The deal includes subscription of Non-Convertible Debentures by IRB and

Anahera, issuance of trust units by InvIT, and acquisition of equity shares and debentures of MBEL.

The parties involved are key players in the infrastructure sector, with IRB as the sponsor and project manager of the InvIT, which holds a portfolio of toll road assets. The GIC Unitholders, part of the GIC Group managed by GIC Special Investments Private Limited, are Singapore-based entities that support the transaction. MBEL, the acquired entity, is responsible for the development of a significant section of the Ganga Expressway in Uttar Pradesh.

5. THE CCI APPROVED THE ACQUISITION OF 24% OF THE IRB INFRASTRUCTURE TRUST

The CCI approved the proposed combination involving the acquisition of approximately 24% of the issued and outstanding unitholding and equity shareholding by Cintra InvIT Investments B.V. (**Cintra SPV 1**) and Cintra IM Investments B.V (**Cintra SPV 2**), in IRB Infrastructure Trust (**IRB**) and MMK Toll Road Private Limited (**MMK**). Cintra SPV 1 and Cintra SPV 2 are Special Purpose Vehicles (SPVs) (wholly owned subsidiaries of Cintra Global S.E.) incorporated in Netherlands and are part of the Ferrovial group. They are currently not operational in India and have been incorporated only for the purpose of this transaction. IRB is a private trust registered under the Indian Trusts Act, operating 14 highway assets across various Indian states, and MMK is an investment manager registered with SEBI.

6. THE CCI APPROVED THE ACQUISITION OF STAKES IN TVS CERTIFIED PRIVATE LIMITED AND TVS VEHICLE MOBILITY SOLUTION PRIVATE LIMITED

The CCI sanctioned the acquisition of equity stakes in TVS Certified Private Limited (**TVS CPL**) and TVS Vehicle Mobility Solution Private Limited (**TVS MSPL**) by Mitsubishi Corporation (**MC**). MC, a global integrated business enterprise, operates across various industries including natural gas, industrial materials, automotive, food industry, etc.

TVS CPL is engaged in the business of sale of used vehicles through an auction transaction, while TVS MSPL deals in the dealership and distribution of commercial and passenger vehicles, including electric vehicles and construction equipment through an auto retail transaction. This combination is structured into two transactions: the Auction Transaction involving TVS CPL and the Auto Retail Transaction involving TVS MSPL.

7. THE CCI APPROVED BLACKROCK'S ACQUISITION OF GLOBAL INFRASTRUCTURE MANAGEMENT

The CCI approved the complete acquisition of Global Infrastructure Management, LLC (**GIM**) by BlackRock Funding, Inc. (**BFI**), a subsidiary of BlackRock Inc. This transaction involves BFI taking over 100% of the limited liability company interests in GIM. BFI is a newly formed wholly owned subsidiary of BlackRock Inc. (**BlackRock**), with no independent activities. BlackRock is a U.S. publicly traded company which manages assets on behalf of institutional and individual investors worldwide.

GIM is a global independent infrastructure fund manager, headquartered in U.S. which manages certain investment funds operating under the trading name Global Infrastructure Partners.

8. THE CCI APPROVED THE GODREJ'S FAMILY REORGANIZATION OF BUSINESS INTERESTS

The CCI approved the combination for the reorganization of business interests within the Godrej family, involving the ABG Family, NBG Family, JNG Family, and SVC Family, (collectively, **Family Branches**), and the GILAC Group Entities and G&B Group Entities (**Targets**). The combination involves the Family Branch realigning their interests, legal ownership and management across various entities within the Godrej group. The Family Branches conduct business through various entities within the Godrej Group and are engaged in diverse sectors, including consumer goods, real estate, agri-business, home care products, township projects, and IT services.

9. THE CCI APPROVED THE ACQUISITION AND SHAREHOLDING RESTRUCTURE IN WEWORK INDIA MANAGEMENT PRIVATE LIMITED

The CCI approved the acquisition and restructuring of shareholding in WeWork India Management Private Limited (**WeWork India**) involving Real Trustee Advisory Company Private Limited (**Real Trustee**), Volrado Venture Partners Fund II (**Volrado II**), Volrado Venture Partners Fund III - Beta (**Volrado III**), Embassy Buildcon LLP (**Embassy Buildcon**), and 1 Ariel Way Tenant Limited (**OAW**).

The transaction is structured in two steps: firstly, Real Trustee's acquisition of certain share capital of WeWork India from Embassy Buildcon, and secondly, independent co-investors acquiring a minority shareholding in WeWork India.

Following this, Embassy Buildcon will acquire 100% share capital of OAW from WeWork International Limited, thereby continuing to hold a majority shareholding in WeWork India.

Real Trustee is the trustee of Volrado Ventures, which are alternative investment funds (**AIFs**). Embassy Buildcon is engaged in the business of real estate development of residential and commercial assets. WeWork India is engaged in the operation of flexible workspaces and digital real estate workplace solutions for companies.

10. THE CCI APPROVED THE ACQUISITION OF SHAREHOLDING OF VASTU HOUSING FINANCE CORPORATION LIMITED BY TA FDI INVESTORS LIMITED UNDER THE GREEN CHANNEL ROUTE

The CCI approved the acquisition of up to approximately 11.7% equity shareholding of Vastu Housing Finance Corporation Limited (**VHFCL**) by TA FDI Investors Limited (**TFIL**) by way of a secondary purchase. TFIL is an investment holding company with no direct business activities in India apart from holding investments in companies operating in India. VHFCL is engaged in providing home, construction, property, and micro/MSME related loans. VHFCL also has a subsidiary, Vastu Finserve India Private Limited, which offers car, commercial vehicle, tractor, and construction equipment loans among others.

11. THE CCI APPROVED COFORGE'S ACQUISITION OF CIGNITI TECHNOLOGIES LIMITED

The CCI approved the acquisition of at least 50.21% and up to 54% shareholding of Cigniti Technologies Limited (**Cigniti**) by Coforge Limited (**Coforge**) and the subsequent merger of Cigniti with and into Coforge. The transaction involves the execution of share purchase agreements (SPAs) and a mandatory open offer in compliance with the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. Both Coforge and Cigniti are public companies listed on the National Stock Exchange of India Limited (**NSE**) and BSE Limited (**BSE**), specializing in information technology (IT) and IT-enabled services (ITES) in India.

12. THE CCI APPROVED MITSUI'S ACQUISITION OF SHAREHOLDING IN SNEHA FARMS PRIVATE LIMITED

The CCI has approved the proposed acquisition by Mitsui & Co., Ltd. (**Mitsui**) of a certain number of equity shares of Sneha Farms Private Limited (**Sneha Farms**) through a combination of primary subscription and secondary purchase. Mitsui is a global trading company engaged in various sectors, including energy, infrastructure, and food, and is listed on the Tokyo Stock Exchange. Sneha Farms is a private limited company established in 1994 which primarily operates in India's poultry industry, with activities ranging from breeding to distribution, and it also operates a network of outlets for fresh poultry and fish.

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