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## Delhi High Court

### Delhi High Court upholds CCI's investigation against WhatsApp and Facebook

The Delhi High Court (**DHC**) dismissed the writ petitions preferred by WhatsApp LLC (**WhatsApp**) and Facebook Inc. (**Facebook**) challenging the jurisdiction of the Competition Commission of India (**CCI**) to order an investigation against WhatsApp's new privacy policy.

The CCI took *suo moto* cognizance of WhatsApp's new privacy policy which makes it mandatory for users to accept the terms and conditions to retain their WhatsApp account and mandates sharing of personalised user information with its parent company i.e., Facebook and its subsidiaries (referred to as the '**New Policy**'). [On March 24, 2021](#), the CCI passed the order directing investigation against WhatsApp for alleged abuse of dominant position for indulging in exploitative and exclusionary conduct under the garb of the New Policy (**Investigation Order**).

The Investigation Order was challenged by the petitioners, *inter alia*, alleging that the CCI does not have jurisdiction to order an investigation as the New Policy and its infringement tantamount to violation of the right of privacy of the users is pending adjudication before the Constitution Bench of the Supreme Court of India (**SC**) and the DHC.

The DHC dismissed the petitions and noted that while it would have been prudent for the CCI to have waited for outcome of petitions pending before the SC and the DHC, merely for its decision not to wait, the Investigation Order cannot be said to have been passed without jurisdiction. On the issue of Facebook's impleadment in the investigation, the DHC noted that Facebook is an integral part of the investigation and the allegations in relation to sharing of data by WhatsApp with Facebook will necessarily require the presence of Facebook in the investigation.

(Source: *DHC Judgment dated April 22, 2021*)

# Competition Commission of India

## Enforcement

### CCI dismisses complaint against Tamil Nadu's Highways Department for alleged abuse of dominant position

The CCI received a complaint against the Highways Department, State of Tamil Nadu (**Opposite Party**)<sup>1</sup> alleging that the Opposite Party has abused its dominant position by *inter alia* imposing unfair conditions in the tender for carrying out development of state highways and district roads. It was alleged that the Opposite Party introduced the system of Performance Based Model (**PBM**) which made it difficult for small players like the complainant to participate in the tender.

The CCI noted that the Opposite Party appears to be in a dominant position in the construction and maintenance of roads in the State of Tamil Nadu. On the issue of abuse, it noted that PBM system was a policy decision mandated by the Government of Tamil Nadu and was expected to yield benefits to the public at large by reducing travel time, lowering vehicle operation cost etc. Further, the Opposite Party being the procurer, based on its requirement and other commercial considerations, has the freedom to specify the kind of service, machineries, timelines, mode and the manner in which it requires the same; and the same cannot be dictated to the procurer i.e., a procurer must be allowed to exercise its consumer choice and freely select between competing products or services. Accordingly, the CCI dismissed the case.

*(Source: CCI Order dated April 08, 2021)*

### CCI dismisses case against Chettinad International for alleged abuse of dominant position

The CCI received a complaint against Chettinad International Coal Terminal Pvt. Ltd. (**CICTPL**)<sup>2</sup> and Kamarajar Port Limited (**KPL**)<sup>3</sup> from Tamil Nadu Power Producers Association (**Complainant**)<sup>4</sup> alleging that CICTPL abused its dominant position by *inter alia* forcing its users to pay a part of coal terminal charges in the name of Coordination and Liasoning Charges (**C&L Charges**) to third party service providers as a condition precedent for availing the coal terminal services of CICTPL. The CCI referred the matter to the Director General (**DG**) for investigation.

The DG concluded that CICTPL is not in a dominant position in the market for provision of common user coal terminal services at seaports in and around Kamarajar Port. Further, none of the allegations with regard to abuse could be established against it. The CCI agreed with the findings of the DG and noted that CICTPL is not a dominant player due to the presence of Krishnapatnam port on the same coastline which puts competitive constraint on the Kamarajar Port.

On the issue of abuse, the CCI noted that CICTPL did force its users to mandatorily use the coal terminal services, to ensure advantages to third-party service providers, who were indirectly related to the CICTPL group. However, such a conduct can be termed as opportunistic but not abusive, given the scheme of the Competition Act. Accordingly, the CCI dismissed the case against CICTPL.

*(Source: CCI order dated April 09, 2021)*

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<sup>1</sup> It is a government department, established to maintain and improve roads under the control of Government of Tamil Nadu.

<sup>2</sup> It is one of the terminal operators at Kamarajar Port and provided coal terminal services to the Complainant.

<sup>3</sup> It is situated on Coromander coast about 20 km north of Chennai Port.

<sup>4</sup> It is an association of power producers.

## Merger Control

### CCI approves acquisition of Varian Medical Systems by Siemens

The CCI approved acquisition of 100 per cent of the equity share capital of Varian Medical Systems Inc. (**Varian**)<sup>5</sup> by Siemens Healthineers AG (**Siemens**)<sup>6</sup> (referred to as the '**Proposed Transaction**').

The CCI noted that there are no horizontal overlaps between the activities of the parties in India. In relation to the vertical links between the activities of the parties, the CCI noted that Siemens is engaged in medical imaging and laboratory diagnostics business which could be used at the hospitals and oncology centers operated by Varian. However, given the insignificant presence of Varian and presence of several players, the Proposed Transaction is not likely to raise foreclosure concerns.

*(Source: CCI order dated February 10, 2021)*

### CCI approves acquisition of additional minority shareholding of API by CDPQ

The CCI approved acquisition of additional 2 per cent of the equity share capital of API Holdings Pvt. Ltd. (**API**)<sup>7</sup> by Caisse de Depot et Placement du Quebec (**CDPQ**)<sup>8</sup> (through CDPQ Private Equity Asia Pte. Ltd.) (referred to as the '**Proposed Transaction**'). By way of the Proposed Transaction, CDPQ will be entitled to certain additional rights in API.

The CCI noted that there are horizontal overlaps between the activities of CDPQ (through its portfolio companies) and API in the market of: (i) manufacture of pharmaceuticals; and (ii) provision of logistics services. Further, there are certain existing vertical relationships and potential vertical links between the activities of the parties in India. However, given the insignificant presence of API in these markets, the Proposed Transaction is not likely to raise competition/ foreclosure concerns.

*(Source: Order dated February 22, 2021)*

### CCI approves acquisition of Glass Business of Piramal, Filming Business of Ansapack and shareholding of Vivid Trading by Blackstone

The CCI approved acquisition of: (i) glass packaging and glass decoration business (**Glass Business**) of Piramal Glass Private Limited (**PGPL**)<sup>9</sup>; (ii) Vivid Glass Trading FZCO (**Vivid Trading**)<sup>10</sup>; and (iii) filming and corrugation business of Ansapack Private Limited (**Ansapack**)<sup>11</sup> by the Blackstone Group Inc.

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<sup>5</sup> It is a public company, headquartered in California, USA and a global provider of medical devices and software solutions for treating cancer with radiation therapy and other advanced treatments, *inter alia*: (i) oncology systems; (ii) proton solutions; and (iii) interventional solutions. In India, Varian is present through its subsidiaries.

<sup>6</sup> Siemens is a global provider of healthcare solutions and services, *inter alia*: (i) imaging; (ii) laboratory diagnostics; and (iii) advanced therapies.

<sup>7</sup> It is *inter alia* engaged in the pharmaceutical sector.

<sup>8</sup> In India, CDPQ is present in India through its various portfolio companies, *inter alia*, Piramal Enterprises Limited (engaged in the pharmaceutical segment) and TVS Supply Chain Solutions Limited (engaged in provision of logistics services).

<sup>9</sup> It is a private limited company, engaged in the Glass Business. PGPL is ultimately owned by Mr. Ajay Piramal and family and belongs to the Piramal Group. The Piramal Group is a global business conglomerate with diverse interests in pharmaceuticals, financial services, real estate and glass packaging.

<sup>10</sup> It is engaged in: (i) glass bottle trading, and (ii) introducing / marketing services for PGPL and Piramal Glass Europe. S.A.R.L. It is an independent company and is not a subsidiary or affiliate of PGPL.

<sup>11</sup> It is engaged in the manufacture and sale of packaging material, including corrugation boxes and plastic films. It is an independent company and is not a subsidiary or affiliate of PGPL.

(**Blackstone**) (referred to as the '**Proposed Transaction**'). PGPL, Vivid Trading and Ansapack are collectively referred to as the '**Targets**'.

The CCI noted that there is a horizontal overlap between the activities of Blackstone (through its portfolio companies) and Targets in the market of manufacture and sale of packaging products. However, given the insignificant presence of the parties and presence of several players in the packaging market, the Proposed Transaction is not likely to raise competition concerns.

*(Source: CCI Order dated February 22, 2021)*

## **CCI approves acquisition of minority shareholding of ATC TIPL by ATC APP under Green Channel**

The CCI granted deemed approval to the acquisition of additional 7.91 per cent of equity share capital of ATC Telecom Infrastructure Private Limited<sup>12</sup> (**Target**) by ATC Asia Pacific Pte. Ltd.<sup>13</sup> (**Acquirer**) (referred to as the '**Proposed Transaction**'). Prior to the Proposed Transaction, the Acquirer held 92.09 per cent of equity share capital of the Target. There were no horizontal, vertical or complementary overlaps between the activities of the parties in India and therefore, the parties notified the Proposed Transaction under the Green Channel Route (**GCR**).

*(Source: Summary)*

## **CCI approves acquisition of certain shareholding of Manipal Health by National Investment and Infrastructure Fund under Green Channel**

The CCI granted deemed approval to the acquisition of: (i) certain equity share capital of Manipal Health Enterprises Private Limited<sup>14</sup> and its subsidiaries; and (ii) certain optionally convertible debentures in Manipal Education and Medical Group India Private Limited<sup>15</sup> by National Investment and Infrastructure Fund-II<sup>16</sup> (referred to as the '**Proposed Transaction**'). There were no horizontal, vertical or complementary overlaps between the activities of the parties in India and therefore, the parties notified the Proposed Transaction under the GCR.

*(Source: Summary)*

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<sup>12</sup> It is one of the leading independent passive telecom infrastructure providers in India.

<sup>13</sup> It is an indirect wholly owned subsidiary of American Tower Corporation and is an investment holding company.

<sup>14</sup> It operates a network of hospitals in India providing multi-specialty care to both Indian and international patients.

<sup>15</sup> It is engaged in the provision of management consultancy services to Manipal Education and Medical Group.

<sup>16</sup> It is an alternative investment fund sponsored by the Indian government for making investments in growth and development stage companies in sectors that are important to the Indian economy.

## Miscellaneous

### CCI releases discussion paper on blockchain technology and competition

On April 9, 2021, the CCI, in collaboration with Ernst & Young, issued a discussion paper on the interface between blockchain technology and competition (**Discussion Paper**).

Blockchains are decentralized and distributed databases or ledgers where data of transactions between different individuals (known as ‘nodes’) are recorded and stored in ‘blocks’ in chronological order in a chain which can be traced back to the first block of the blockchain. The ‘blocks’ can store data such as sales records, payment transactions, purchase orders, pricing history, and account details. The technology differs from an ordinary ledger by making the stored information unalterable, secured, and decentralized, i.e., each member of the network has access to it as opposed to a single authority.

In the Discussion Paper, the CCI acknowledged that while most blockchains are efficiency-enhancing and pro-competitive, concerns arise with regard to accessibility of information on the blockchain to everybody alike within the peer-to-peer network, regardless of whether it is open for all or permission-based. The unfettered access or denial to sensitive/essential information by competing companies puts blockchains firmly into the crosshairs of competition law enforcement.

The Discussion Paper focuses on the various forms of possible anti-competitive practices, which can be implemented by using blockchain technology. These include information exchange, restrictions placed on accessing blockchains and industry standards, and the imposition of unfair and discriminatory conditions in contact for use of this technology.

Despite the above apprehensions, the CCI acknowledged that blockchain can assist in better implementation of competition law as well. Blockchain networks are essentially unalterable ledgers, and therefore can be reliable pieces of direct evidence in its investigations. Further, blockchain networks can be programmed to adhere to the directions of the CCI, resulting in less monitoring costs and better enforcement of competition provisions.

*(Source: Discussion Paper dated April 09, 2021)*

### CCI proposes amendments to the confidentiality provisions

On April 13, 2021, the CCI has issued draft amendment to the confidentiality provisions in the Competition Commission of India (General) Regulations, 2009 (**General Regulations**) for public comments. The key amendments are as follows:

- 1. Furnishing of undertaking:** Parties seeking confidentiality on any information from the CCI will have to submit an undertaking certifying that the confidentiality claims are in terms of the parameters of seeking confidentiality under the General Regulations.<sup>17</sup> Such undertaking shall be filed by a Company Secretary or Compliance Officer or any other Senior Officer authorised on behalf of the party concerned.
- 2. Incorporation of Confidentiality Ring:**

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<sup>17</sup> The requirements are: (i) the extent to which the information is known to outside public; (ii) the extent to which the information is known to the employees, suppliers, distributors and others involved in the party’s business; (iii) the measures taken by the party to guard the secrecy of the information; and (iv) the ease or difficulty with which the information can be acquired or duplicated by others.

- (a) A confidentiality ring may be set up by the CCI which will comprise the authorised representatives (internal as well as external) of the parties who will be able to review the confidential/unredacted case records of other parties. The internal authorized representatives in the confidentiality ring shall be from commercially non-operational streams (i.e., other than sales/marketing/commercial teams).
  - (b) Further, parties accessing confidential/unredacted case records will need to submit an undertaking against disclosure of such information other than for the purpose of the proceedings before the CCI/DG. Breach of undertaking will invite penal consequences under the relevant provisions of the Competition Act.
  - (c) A similar confidentiality ring may also be constituted at the level of the DG, if so required, for the purposes of investigation.
- 3. Complainant's identity to be revealed in certain cases:** The complainant's identity may be kept confidential in appropriate cases, if deemed necessary and expedient. However, the CCI, can revoke the same after recording reasons in writing.

*(Source: Draft General Regulations dated April 13, 2021)*

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