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High Court

Delhi High Court sets aside review order passed by the CCI disqualifying Eaton Power

The Delhi High Court (**DHC**) set aside the review order passed by the Competition Commission of India (**CCI**) that disqualified Eaton Power Quality Pvt Ltd (**Eaton**) from participating in the bid process in relation to the Schneider Electric/ L&T transaction.

Brief Background

On [April 18, 2019](#), the CCI, conditionally approved the acquisition of the electrical and automation business of Larsen & Toubro Limited (**L&T**) by Schneider Electric India Private Limited (**Schneider**) and MacRitchie Investments Pte. Ltd. (hereinafter referred to as the '**Transaction**'). To alleviate competition concerns, the CCI imposed certain behavioural remedies on the parties as a pre-condition to granting its approval and appointed a monitoring agency for effective implementation of such remedies.

To implement the remedies, the monitoring agency invited expression of interest from various parties. Eaton, who was one of the bidders, did not submit the relevant documents within the stipulated timeline, and was, therefore, disqualified from the process. Aggrieved, it filed an application before the CCI for its inclusion in the process *inter alia* stating that because of a technical glitch, it could not submit the documents on time. The CCI, by way of order dated January 7, 2020, allowed its request with a view to permit wider participation in the bid process (**January Order**).

Consequently, Schneider sought review of the January Order by the CCI on the grounds that it was not heard before passing the January Order. Thereafter, the CCI passed an order recalling its January Order and directed Eaton to be excluded from the bid process as negotiations with the eligible participants were actively underway and allowing Eaton at that stage would further delay the implementation of remedies (**Review Order**). Aggrieved, Eaton challenged the Review Order before the DHC primarily on the ground that the CCI does not have the power to review its orders.

DHC Observations

The DHC set aside the Review Order, and *inter alia* held as follows:

1. the January Order is not sustainable in law as it was passed without affording an opportunity of hearing to Schneider as the said order was adjudicatory/ quasi-judicial in nature and substantially affected the rights of the parties; and
2. the Review Order was adjudicatory in nature and the scheme of the Competition Act, 2002 (**Competition Act**) only allows the CCI to review an administrative order/direction. Accordingly, the Review Order is also not sustainable in law.

(Source: DHC Judgement dated September 10, 2021)

DHC dismisses Google’s petition against CCI alleging leak of confidential information

The DHC dismissed the petition filed by Google LLC and Google India Private Limited (collectively referred to as ‘**Google**’) challenging the order passed by the CCI rejecting their confidentiality claims and seeking a direction from the DHC restraining the CCI from leaking confidential information about Google to media and third parties.

Brief Background

In 2019, the CCI ordered an investigation against Google for abusing its dominant position in its Android operating system market. During the course of investigation, Google claimed confidentiality over certain information that it submitted as a part of investigation, which was partially rejected by the Director General (**DG**). Against such rejection, Google approached the CCI which set aside Google’s challenge by way of order dated September 8, 2021 (**Impugned Order**).

Thereafter, Reuters, a media house, published a [story](#) that the DG, in its investigation report, has found Google to be abusing its dominant position and such conduct reduced “*the ability and incentive of device manufacturers to develop and sell devices operating on alternative versions of Android*”. The story also indicated that Google is yet to receive the copy of investigation report from the CCI. Aggrieved by leakage of confidential information, on September 23, 2021, Google filed a writ petition before the DHC challenging the Impugned Order and seeking a direction from the DHC restraining the CCI from leaking confidential information about Google, to media and third parties.

DHC Observations

The CCI submitted before the DHC that it never breached confidentiality or leaked any confidential information to any media house or any third party. However, to expedite the investigation, the CCI undertook to recall the Impugned Order and accept all confidentiality claims made by Google before the DG. In view of this, the DHC dismissed the writ petition but allowed Google to seek legal recourse for leakage of confidential information.

(Source: *DHC Order dated September 27, 2021*)

Competition Commission of India

Enforcement

CCI orders investigation against UFO Moviez for imposing vertical restraints on cinema owners

The CCI received a complaint from PF Digital Media Services Limited (**PF Digital**)¹ and Mr. Ravinder Walia² (collectively referred to as the ‘**Complainants**’) against UFO Moviez India Limited (**UFO Moviez**)³, its wholly owned subsidiary, Scrabble Digital Limited (**Scrabble**)⁴ and Qube Cinema Technologies Private Limited⁵ (collectively referred to as the ‘**Opposite Parties**’) alleging that UFO Moviez imposed various restrictions on usage of the Digital Cinema Equipment (**DCE**) leased by it to Cinema Theatre Owners (**CTO**) by way of an Equipment Lease Agreement (**Lease Agreement**).

The Complainants *inter alia* alleged that UFO Moviez imposed restrictive clauses in the Lease Agreement such that the CTOs: (i) could obtain content only from UFO Moviez through Scrabble; (ii) were prevented from approaching competitors of Scrabble for post-production processing; and (iii) could not play cinematographic films on the DCE which were not processed by Scrabble, thereby violating Section 3(4) of the Competition Act.

To analyse the allegations, the CCI defined the relevant markets as the ‘*market for supply of DCE by a digital cinema service provider on lease/rent to CTOs in the whole of India*’ (**DCE Market**) and ‘*market for provision of post-production processing services in the whole of India*’ (**Processing Market**).

The CCI *inter alia* noted that UFO Moviez, has market power in DCE Market, and its conduct is *prima facie* anti-competitive since: (i) the requirement to obtain post-production processing services only from Scrabble will result in tie-in arrangement; (ii) such an arrangement will result in exclusive supply agreement as UFO Moviez restricted CTOs from approaching competitors of Scrabble; and (iii) DCE supplied by UFO Moviez technologically precluded from playing content which was not processed by Scrabble, amounting to refusal to deal.

Accordingly, the CCI held that *prima facie* the restrictive conditions imposed by UFO Moviez in the Lease Agreement violate Section 3(4) of the Competition Act as they will result in driving the competitors of Scrabble out of the Processing Market and restrict the entry of new players in the said market. Therefore, the CCI referred the matter to the DG for investigation.

(Source: CCI Order dated September 17, 2021)

CCI finds beer manufacturers guilty of cartelisation

The CCI found Carlsberg India Private Limited (**Carlsberg**), United Breweries India Private Limited (**UBL**), SABMiller India Private Limited (**SABMiller**)/ Anheuser Busch InBev SA/NV (**AB InBev**),⁶ and the All-India Brewery Association (**AIBA**) including their office bearers (together referred to as the ‘**Opposite**

¹ It is engaged in the business of post-production processing of cinematograph films. It converts cinematograph films from their traditional format to digital format. It’s a subsidiary of Prime Focus Limited.

² He has produced films like *Roam Rome Mein*. PF Digital carried out post-production processing for this film.

³ It is *inter alia* engaged in the supply of DCE to CTOs.

⁴ It is the wholly owned subsidiary of UFO Moviez. It is engaged in the business of post-production processing of cinematograph films. It converts cinematograph films from their traditional format to digital format.

⁵ It is a supplier of DCE and is alleged to be under the control of UFO Moviez India.

⁶ SABMiller and Crown Beers India Private Limited (Crown Beers) are both ultimately held by AB InBev. SABMiller India was later renamed to Anheuser Busch InBev India Limited.

Parties’) guilty of indulging in cartelisation in relation to the sale and supply of beer in various states and union territories of India from May 2009 to October 2018, in contravention of Section 3(3) of the Competition Act.

The investigation was initiated by the CCI pursuant to a leniency application filed by SABMiller/ AB InBev disclosing the existence of the cartel. The said disclosure led to dawn raids conducted by the DG on the business premises of the Opposite Parties. SABMiller/ AB InBev disclosed that:

1. the Opposite Parties shared Commercially Sensitive Information (**CSI**) regarding pricing, stock held and sold, revenue earned, production, individual communication with various Government agencies, etc., in relation to the various beer markets; and
2. UBL and SABMiller cartelized for purchase of second-hand beer bottles for reuse in their breweries.

Subsequently, the other Opposite Parties also filed the leniency applications with the CCI.

The CCI relied on evidence gathered by the DG and provided by the Opposite Parties relating to communication between Opposite Parties *via* official emails, personal emails, SMS messages, WhatsApp messages, etc. and found it to be in contravention of Section 3(3) of the Competition Act. It noted that the exchange of CSI in itself is a contravention of the Competition Act, and its implementation is not an essential condition for the contravention of the Competition Act. In relation to the role of AIBA, the CCI observed that it provided a platform to the Opposite Parties for disseminating CSI.

Accordingly, the CCI directed the Opposite Parties and its office bearers to cease and desist from engaging in anti-competitive conduct. It granted 100 per cent immunity to SABMiller and its office bearers for disclosing the existence of the cartel in the beer market. UBL and its officials were granted a 40 per cent reduction from the fine, being the second leniency applicant, and was fined approx. INR 751.83 crore (USD 101.90 million) and lastly, Carlsberg and its officials, were granted a 20 per cent reduction from the fine, being the third leniency applicant, and was fined INR approx. 111.39 crore (USD 15.18 million). AIBA was fined INR 0.63 crore (USD 8472) for facilitating the cartel.

(Source: *CCI Order dated September 29, 2021 and CCI Order dated October 4, 2021*)

Merger Control

CCI approves acquisition of additional shareholding and sole control of Mukand Limited by the Bajaj group

The CCI approved acquisition of additional 16.57 per cent of the equity share capital of Mukand Limited (**ML**)⁷ by the Bajaj group⁸ (referred to as the ‘**Proposed Transaction**’). Post the Proposed Transaction, Bajaj group will hold approximately 74 per cent in ML with sole control over it. The CCI noted that in case of change of joint control to sole control, the extent to which the parties competed prior to change in control is primarily considered relevant for competition assessment.

The CCI noted that there are horizontal overlaps between the activities of the parties in the market for long steel products which, *inter alia*, include: (i) bars and rods; and (ii) billets and blooms. Further, there are existing supply arrangements between the parties as: (i) ML manufactures and supplies billets and blooms to

⁷ It is engaged in the business of specialty steel long product.

⁸ Through various group companies including Bajaj Sevashram Private Limited, which is the ultimate controlling entity of the Bajaj group.

Mukand Sumi Special Steel Limited (**MSSSL**), an indirect subsidiary of the Bajaj group; and (ii) MSSSL manufactures and supplies bars and wire rods to a subsidiary of ML.

The CCI noted that the Proposed Transaction is not likely to result in any significant changes in competition dynamics despite the change in control of ML.

(Source: CCI Order dated July 20, 2021)

CCI approves acquisition of additional shareholding of Bikaji Foods by Lighthouse Fund

The CCI approved acquisition of additional 2.7 per cent of equity share capital of Bikaji Foods International Limited⁹ (**Bikaji**) by Lighthouse Funds¹⁰ (**Acquirer**) (referred to as the '**Proposed Transaction**'). Post the Proposed Transaction, the Acquirer group will cumulatively hold approx. 9.9 per cent of the equity share capital of Bikaji and will be entitled to appoint an observer on the board of Bikaji in addition to its existing right to appoint a director on the board of Bikaji and certain affirmative rights.

The CCI noted that there are horizontal overlaps between the activities of the portfolio companies of Lighthouse Funds¹¹ and Bikaji¹² in the market for quick service restaurants (**QSR Market**). However, given the number and nature of Bikaji's outlets in the QSR Market, the CCI noted that Proposed Transaction is not likely to raise competition concerns.

(Source: CCI Order dated August 9, 2021)

CCI approves acquisition of Jaypee Infratech by Suraksha Group

The CCI approved the acquisition of 100 per cent equity share capital of Jaypee Infratech Limited (**JIL**)¹³ by Suraksha group¹⁴ under the Insolvency and Bankruptcy Code, 2016 (referred to as the '**Proposed Transaction**').

The CCI noted that there is a horizontal overlap between the activities of the parties in the broad market of real estate since both the parties are engaged in real-estate development work in India.¹⁵ However, given the insignificant presence of the parties, the CCI noted that the Proposed Transaction is not likely to raise competition concerns.

(Source: CCI Order dated August 9, 2021)

⁹ It is a private limited company incorporated in India, engaged in the manufacture and sale of snacks.

¹⁰ A private equity fund.

¹¹ Portfolio companies are engaged in running a chain of quick service restaurant, Wow Momo Foods Private Limited in India

¹² It is engaged in running two quick service restaurant outlets under the name, 'Bikaji Food Junxon' in Mumbai.

¹³ It is a part of the Jaypee Group and is a special purpose vehicle incorporated to undertake the Yamuna Expressway Project. It has presence in the areas of real estate and healthcare.

¹⁴ It is inter alia engaged in real estate development work.

¹⁵ Suraksha group is present in the real estate development in residential and commercial spaces in Mumbai and Thane and JIL is engaged in real estate development and construction in Uttar Pradesh.

CCI approves acquisition of minority shareholding of Grofers India by Zomato

The CCI approved the acquisition of 9.3 per cent of the equity share capital of each of Grofers India Private Limited (**Grofers India**)¹⁶ and Hands on Trades Private Limited (**HoT**)¹⁷ by Zomato Limited (**Zomato**)¹⁸ (referred to as the '**Proposed Transaction**').¹⁹

The CCI noted that there are horizontal overlaps between the activities of the parties in the market for online sale of groceries, personal hygiene products, fruits, and vegetables in India, which can be further segmented into the individual market for supply of groceries, fruits, and vegetables in India. However, given the low market share of the parties with presence of several significant players, the CCI noted that the Proposed Transaction is not likely to raise competition concerns.

(Source: CCI Order dated August 13, 2021)

CCI approves acquisition of Inox Leasing and Finance and its group companies by Promoters and Devansh Trademart LLP under Green Channel

The CCI approved the acquisition of: (i) Inox Leasing and Finance Limited²⁰, Gujarat Fluorochemicals Limited²¹, Inox Wind Energy Limited (**IWEL**)²² and Siddhapavan Trading LLP by their promoters; and (ii) certain shares of IWEL by Devansh Trademart LLP (referred to as the '**Proposed Transaction**'). The parties notified the Proposed Transaction under the green channel route (**GCR**) as there were no horizontal, vertical, or complementary overlaps between the activities of the parties in India.

(Source: Summary)

CCI approves acquisition of majority shareholding of Atria Convergence Technologies by PG ArtemisB under Green Channel

The CCI approved the acquisition of majority shareholding of Atria Convergence Technologies Limited²³ by PG ArtemisB Pte. Limited²⁴ (referred to as the '**Proposed Transaction**'). The parties notified the Proposed Transaction under the GCR as there were no horizontal, vertical, or complementary overlaps between the activities of the parties in India.

(Source: Summary)

¹⁶ It operates an e-commerce grocery marketplace in India.

¹⁷ It is engaged in the business of business-to-business wholesale trading of food related products.

¹⁸ It is engaged in the food services market and provides a platform that connects customers, restaurant partners and delivery partners, serving their multiple needs.

¹⁹ As part of the Proposed Transaction, Zomato will get one board seat and affirmative voting rights in Grofers International Pte Limited (**Grofers International**), Grofers India and HoT. Grofers International is an investment holding company incorporated in Singapore and the holding company of Grofers India and HoT.

²⁰ It is a non-banking finance company.

²¹ It manufactures chloromethane, refrigerants, and polytetrafluoroethylene.

²² It is engaged in the business of generation and sale of wind energy and providing related services and to make investment in the renewable energy business.

²³ It provides internet services through wired broadband and broadcasting services through retransmission of cable television signals and distribution of digital cable television services as a multi-system operator or local cable operator in India.

²⁴ It is a newly incorporated entity and does not presently carry on any business activity.

Media Reports

CCI raids offices of vegetable seeds companies for alleged price fixing cartel

Based on the media reports, the CCI raided the offices of BASF India Limited and at least three other vegetable seeds companies on suspicion of alleged price fixing cartel. The raid took place on the business premises of seed companies in Gurugram, Bengaluru and Hyderabad.

(Source: Reuters)

For more details, please contact km@jsalaw.com



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