



JSA Newsletter **Competition Law**



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Contents

Competition Commission of India

Enforcement

- CCI finds PMP Infratech and Rati Engineering guilty of bid rigging
- CCI dismisses case against Orbit Aviation for alleged anti-competitive practices
- CCI finds axle bearings manufacturers guilty of bid-rigging
- CCI dismisses case against association of theatre and multiplex owners for alleged anti-competitive practices
- CCI dismisses case against bearing manufacturers for alleged bid rigging

Merger Control

- CCI approves acquisition of additional shareholding of TVS SCS by T S Rajam Family
- CCI approves acquisition of minority shareholding of ONGC Tripura Power Corporation by GAIL
- CCI approves acquisition of sole control of Gangavaram Port by Adani Ports
- CCI approves acquisition of majority shareholding of Hexaware Technologies by Carlyle Group under Green Channel
- CCI approves acquisition of certain shareholding of TVS Supply Chains Solutions by Exor Special Opportunities Master Fund under Green Channel

Media Updates

- Startup body ADIF moves CCI against Google's play store policy
- CCI conducted raids on alcohol manufacturers for alleged cartelization

Competition Commission of India

Enforcement

CCI finds PMP Infratech and Rati Engineering guilty of bid rigging

The Competition Commission of India (CCI) found PMP Infratech Private Ltd. (PMP)¹ and Rati Engineering (Rati)² including their office bearers (collectively referred to as 'Opposite Parties') guilty of indulging in bid rigging under Section 3(3)(d) of the Competition Act, 2002 (Competition Act).

The CCI initiated the investigation basis the complaint received from Gail (India) Limited which alleged that the Opposite Parties colluded in the tenders issued by it for availing services in relation to restoration of well sites and disposal of drilling waste.

The CCI referred the matter to the Director General (DG) for investigation who concluded that the Opposite Parties exchanged confidential and commercially sensitive information (CSI) in relation to bid price. The CCI agreed with the findings of the DG and *inter alia* noted that the Opposite Parties: (i) were in constant touch with each other *via* e-mail communication; and (ii) submitted their bids from the same office location and computer system.

Accordingly, the CCI directed the Opposite Parties to cease and desist from indulging in such practices and imposed a symbolic penalty of INR 25 lakh (USD 33,392) on PMP and INR 1 Lakh (USD 1,338) on its office bearer and INR 2.5 lakh (USD 3,341) and INR 50,000 (USD 669) on its office bearer.

(Source: CCI order dated October 11, 2021)

CCI dismisses case against Orbit Aviation for alleged anti-competitive practices

The CCI received a complaint from the sole proprietor of Hermes International³ (Complainant) against Orbit Aviation Private Limited (Orbit Aviation)⁴ for the alleged anti-competitive practices.

The Complainant and Orbit Aviation (through a group company) operate buses between Indira Gandhi International Airport, Delhi and certain cities of Punjab. In 2016, Orbit Aviation filed a complaint against the Complainant before the Punjab Transport Commissioner stating that the Complainant obtained the requisite permits for plying buses on false premises. As a result, the Complainant's permit was temporarily cancelled. Consequently, on February 2, 2017, the Complainant sold its business to Orbit Aviation by entering into a Sale of Buses Agreement (Agreement). Clause 10 of the Agreement restricted the Complainant from competing with the existing business of, and business transferred to, Orbit Aviation i.e., bus business.

On September 24, 2019, the Complainant got new permits and started operating buses on the Punjab-Delhi route. Orbit Aviation filed a complaint before the Trial Court alleging breach of Clause 10 of the Agreement and the case was decided against the Complainant. Thereafter, the Complainant filed a complaint before the CCI alleging that Clause 10 of the Agreement is anti-competitive, since he is restrained from re-entering the bus business.

The CCI noted that: (i) the non-compete clause only restricted the Complainant from entering the bus business; and did not create any foreclosure or entry barrier in the market; and (ii) there are low entry barriers to enter the bus business market since the Complainant himself got permits within a short span of time. Accordingly, the CCI dismissed the case.

(Source: CCI Order dated October 12, 2021)

CCI finds axle bearings manufacturers guilty of bid-rigging

The CCI found 8 companies⁵ (collectively referred to as 'Opposite Parties') engaged in the manufacture and supply of axle bearings to the Eastern Railway (ER), one of the zones of the Indian Railways (IR), guilty of bid-rigging under Section 3(3)(d) of the Competition Act.

The CCI initiated the investigation based on a complaint by the ER wherein it alleged that the Opposite Parties

¹ It is engaged in the business of pre-engineering business services, road construction and bridge construction services.

² It is engaged in the business of agricultural, engineering and serving services.

³ It is engaged in the business of running buses between the IGI Airport, Delhi and certain cities of Punjab.

⁴ Through its sister concern company i.e., Indo Canadian Transport Company is a competitor of the Complainant.

⁵ Chandra Brothers, Chandra Udyog, Sriguru Melters & Engineers, Rama Engineering Works, Krishna Engineering Works, Janardan Engineering Industries, V.K. Engineering Industries, Jai Bharat Industries.

submitted identical bid prices and allocated quantity in the tenders floated between 2012 - 2014 for procurement of axle bearings. After a detailed investigation, the CCI noted that the Opposite Parties had meetings, discussions over phone and SMS messages, where they exchanged bid price and other CSI prior to submission of bids. Further, some of the office bearers of the Opposite Parties admitted to indulging in bid rigging in their oral statements before the DG. Basis this, the Opposite Parties directly or indirectly determined prices, allocated axle bearing quantities in the tenders, *inter se*, coordinated bid prices and manipulated the bidding process.

The Opposite Parties contended that: (i) even though they indulged in bid-rigging, their behaviour did not cause any appreciable adverse effect on competition (**AAEC**) in the market for axle bearings in India; and (ii) IR was a monopolistic buyer and determines the price and quantity of axle bearings to be supplied to it, therefore, the Opposite Parties have no control over it.

The CCI rejected the arguments and noted that: (i) the Opposite Parties were unable to provide the required evidence to rebut the AAEC presumption; and (ii) considering overwhelming direct documentary evidence of bid rigging, the Opposite Parties could not rely on market conditions/ negotiations conducted by IR to exonerate their anti-competitive conduct. Accordingly, the CCI found the Opposite Parties including their officer bearers guilty of bid rigging.

The CCI decided not to impose any monetary penalty basis mitigating circumstances, namely: (i) cooperation extended by the Opposite Parties during the investigation; (ii) all Opposite Parties were micro, small and medium enterprises (**MSMEs**); (iii) the turnover derived by the Opposite Parties from axle bearings is minuscule; and (v) the prevailing economic situation arising due to COVID-19 and the various measures undertaken by the Government to protect MSMEs. Accordingly, the CCI directed the Opposite Parties and their respective office bearers to cease and desist from indulging in bid-rigging.

(Source: CCI order dated October 12, 2021)

CCI dismisses case against association of theatre and multiplex owners for alleged anti-competitive practices

The CCI received a complaint against Tamil Nadu Theatre and Multiplex Owners Association (**Association**) for the alleged anti-competitive practices.

The complainant *inter alia* alleged that the Association: (i) restricted film producers from simultaneously releasing movies in theatres as well on over the top (**OTT**) platforms; (ii) forced film producers to give written undertakings that they will not release movies on the OTT platforms for a period of 30 days from its theatrical release; and (iii) by imposing such restrictions, the Association is attempting to limit the evolution of OTT platforms market.

The CCI noted that the: (i) complainant failed to provide any material evidence to show the existence of an agreement among theatre owners; and (ii) hearsay statement, media reports and rumors cited by complainant were inadmissible and unreliable. Accordingly, the CCI dismissed the case.

(Source: CCI order dated October 21, 2021)

CCI dismisses case against bearing manufacturers for alleged bid rigging

The CCI dismissed the case of bid rigging against NSK Bearings India Private Limited (NSK), JTEKT Corporation and NTN Corporation (together referred to as the '**Bearing Manufacturers**') in relation to manufacture and supply of bearings in response to the Request for Quotation (**RFQ**) issued by the automobile and industrial original equipment manufacturers (**OEMs**).

The investigation was initiated pursuant to a leniency application filed by NSK disclosing that Bearing Manufacturers through various in-person contacts, phone calls etc. exchanged CSI, discussed bid prices and allocated the RFQs issued for the supply of bearings to OEMs between 2000 and 2011. Additionally, some of the office bearers admitted to indulging in bid rigging in their oral statements. Accordingly, the DG concluded that the Bearings Manufacturers indulged in bid rigging and even though such conduct took place outside India, it affected the Indian market. During the investigation, JTKET Corporation also filed a leniency application before the CCI.

NTN Corporation challenged the jurisdiction of the CCI on the ground that the CCI could not adjudicate its conduct as the relevant RFQ was issued prior to 2009 and Section 3 of the Competition Act dealing with bid rigging only

came into force on May 20, 2009. However, the CCI rejected the contention and noted that since the bearings were supplied in India post 2009, therefore competition law concerns arising from the RFQ could only arise after 2009.

The CCI disagreed with the findings of the DG and noted that: (i) the statements of the employees of parties were not in sync with each other and that there was a contradiction between the cross-examination of the employees of NSK and JTKET; (ii) the documentary evidence submitted by NSK and JTKET (i.e., computer printouts) were not supported by a certificate under Section 65B of the Indian Evidence Act, 1872. Therefore, the CCI could not place reliance on any such secondary evidence. The CCI also observed that the leniency applicants did not provide sufficient details and material particulars in support of the averments made by them in their leniency applications. Accordingly, the CCI dismissed the case.

(Source: Order dated October 21, 2021)

Merger Control

CCI approves acquisition of additional shareholding of TVS SCS by TS Rajam Family

The CCI approved the acquisition of additional 25 to 30 per cent of the equity share capital of TVS Supply Chain Solutions Limited (**TVS SCS**)⁶ by TS Rajam Family⁷ (referred to as the '**Proposed Transaction**').

The CCI noted that there are horizontal overlaps between the activities of the parties in the broad market for the provision of logistics services in India and narrow market for provision of surface transportation services specifically road transportation segment (collectively referred to as '**Relevant Markets**'). However, given the insignificant presence of TS Rajam Family in the Relevant Markets, the CCI noted that Proposed Transaction is not likely to raise competition concerns.

Further, the CCI noted that there are potential complementary links between the parties as Tagbox Solutions Private Limited (**TagBox**), an affiliate of the TS Rajam Family is engaged in providing artificial intelligence and information technology-based solutions in the logistics sector, and TVS SCS is present in the market for the provision of logistics services. However, given the insignificant presence of TagBox, the Proposed Transaction is not likely to raise foreclosure concerns.

(Source: CCI Order dated August 31, 2021)

CCI approves acquisition of minority shareholding of ONGC Tripura Power Corporation by GAIL

The CCI approved the acquisition of 26 per cent of the equity share capital of ONGC Tripura Power Corporation Limited (**OTPC**) by GAIL (India) Limited (**GAIL**) (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 power generation in India. However, given the insignificant presence of the parties in the relevant market, the CCI noted that the Proposed Transaction is not likely to raise any competition concerns.

Further, the CCI noted that there are potential vertical links between the parties in: (i) the upstream market for supply of natural gas by GAIL and downstream market for power generation by OTPC; and (ii) the upstream market for power generation by GAIL and downstream market for power transmission by OTPC⁸. However, given that: (i) OTPC already has a long-term supply agreement with Oil and Natural Gas Corporation; and (ii) the parties have transmission lines at different locations, the Proposed Transaction is not likely to raise foreclosure concerns.

(Source: CCI order dated September 9, 2021)

⁶ It is engaged in the provision of logistics services in India and abroad.

⁷ Through TS Rajam Rubbers Private Limited and Dhinrama Mobility Solution Private Limited, which are owned and controlled by the TS Rajam Family. TS Rajam Family already owns 7.75 per cent and members of TS Rajam Family in their individual capacity hold 0.98 per cent in TVS SCS.

⁸ Through North East Transmission Company Limited, an associate company of OTPC.

CCI approves acquisition of sole control of Gangavaram Port by Adani Ports

The CCI approved the acquisition of additional 10.40 per cent of equity share capital of Gangavaram Port Limited (**GPL**) by Adani Ports and Special Economic Zones Limited (**Adani**) (referred to as the '**Proposed Transaction**'). Post the Proposed Transaction, Adani will own 100 per cent equity share capital and acquire sole control of GPL.

The CCI noted that Adani had sought CCI's approval when it acquired 89.6 per cent of equity share capital of GPL, which was approved *vide* order dated [April 12, 2021](#). Therefore, the assessment of the Proposed Transaction largely remains the same as the earlier acquisition and the same is unlikely to cause AAEC. Accordingly, the CCI approved the Proposed Transaction.

(Source: CCI order dated September 20, 2021)

CCI approves acquisition of majority shareholding of Hexaware Technologies by Carlyle Group under Green Channel

The CCI approved the acquisition of majority shareholding of Hexaware Technologies Limited (**HTL**)⁹ by the Carlyle group¹⁰ (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.

JSA represented HTL in the Proposed Transaction before the CCI.

(Source: Summary)

CCI approves acquisition of certain shareholding of TVS Supply Chains Solutions by Exor Special Opportunities Master Fund under Green Channel

The CCI approved the acquisition of certain equity share capital of TVS Supply Chains Solutions Limited¹¹ by Exor Special Opportunities Master Fund ICAV¹² (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)

Media Reports

Startup body ADIF moves CCI against Google's new Play Store Policy

On [November 9, 2020](#) the CCI passed a *prima facie* order directing investigation against Google for abuse of dominant position as it made mandatory for app developers to exclusively use Google play store's payment system and Google play in-app billing for charging users who purchase apps on the play store (hereinafter referred to as the '**Policy**') and charges app developers a 30 per cent commission.

Based on media reports, Alliance of Digital India Foundation (**ADIF**), a think tank representing startups has approached the CCI *inter alia* seeking *status quo* of the Policy until the final disposal of the case by the CCI. ADIF alleged that the Policy imposes exorbitant commission at 30 per cent on the revenue earned by app-developers, as compared to the 2 per cent rate charged by other payment service providers and excludes other competing payment service providers from the market.

(Source: The Fortune)

CCI conducted raids on alcohol manufacturers for alleged cartelization

Based on media reports, the CCI raided the office premises of Associated Alcohols & Breweries Limited and Som Distilleries Limited across several cities for alleged cartelisation by fixing prices of country liquor.

(Source: Reuters)

⁹ It is engaged in the information technology/ business process outsourcing sector. The ultimate holding entity of the Target is Baring Private Equity Asia Group

¹⁰ Through CA Magnum Holdings.

¹¹ It is engaged in the provision of logistics services.

¹² It is an investment fund.

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