



JSA Newsletter Competition Law



February 2022

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Competition Commission of India

Enforcement

CCI finds Signage Companies guilty of indulging in cartelisation

The Competition Commission of India (CCI) found Diamond Display Solutions Private Limited (**Diamond**), AGX Retail Solutions Private Limited (**AGX**), Opal Signs Private Limited (**Opal**), Avery Dennison Private Limited (**Avery Dennison**), Amreesh Neon Private Limited (**Amreesh**), Macromedia Digital Imaging Private Limited (**Macromedia**), and Hith Impex Private Limited (**Hith**) (collectively referred to as the '**Signage Companies**') including their office bearers, guilty of indulging in bid rigging in relation to the tender floated by SBI Infra Management Solutions Private Limited (**SBI**) for the supply and installation of new signages and/or replacement of existing signages for branches, offices, ATMs of State Bank of India in different cities in India (**Tender**).

The case was *suo moto* initiated by the CCI pursuant to a complaint alleging that the Signage Companies: (i) coordinated and fixed prices to be quoted in the Tender; and (ii) allocated market amongst themselves to distort competition. The CCI directed the Director General (**DG**) to investigate the matter. While the DG was investigating, Avery Dennison filed a leniency application with the CCI disclosing the existence of the cartel.

The DG *inter-alia* concluded that the Signage Companies indulged in anti-competitive practices thereby contravening Section 3(3)(c) and 3(3)(d) of the Competition Act, 2002 (**Competition Act**).

The CCI agreed with the findings of the DG and *inter-alia* noted that: (i) the Signage Companies exchanged e-mails containing excel sheets setting out the price to be quoted and the cities to be divided amongst themselves in the Tender; (ii) the final bid price quoted by the Signage Companies matched with the prices that were discussed previously amongst themselves and the same could not be a mere co-incidence; and (iii) representatives of the Signage Companies were in regular touch with each other, which was evident from their call data records prior to, during and post the bidding process of the Tender.

The CCI while computing penalty took into consideration mitigating factors and noted that: (i) the Signage Companies are micro, small and medium enterprise; and (ii) some of them acknowledged their respective conduct during depositions. Accordingly, the CCI imposed a penalty on the parties at 1 per cent of the average of their relevant amounting to approximately: (i) INR 23.86 lakh (USD 32,041) on Diamond; (ii) INR 6.32 lakh (USD 8,493.12) on AGX; (iii) INR 3.14 lakh (USD 4,225.29) on Opal; (iv) INR 32.15 lakh (USD 43,170.82); (v) INR 51.77 lakh (USD 69,508); and (vi) INR 5.94 lakh (USD 7,982.53). Further, the CCI imposed a penalty of approximately INR 1.25 lakh (USD 1,678) on Avery Dennison after granting a reduction of 90 per cent in penalty under the lesser penalty regulations.

(Source: CCI order dated February 03, 2022)

CCI finds Dumper Truck Union and its members guilty of indulging in anti-competitive practices

The CCI found the Dumper and Dumper Truck Union Limestone and its members (**Dumper Truck Union**)¹ including its office bearer guilty of indulging in anti-competitive practices by forcing a logistic company, CJ Darcl Logistics Limited (**CJD**)² to use trucks and drivers of the members of Dumper Truck Union at arbitrary rates.

In May 2020, the CCI directed the DG to investigate the conduct of the Dumper Truck Union pursuant to a complaint by CJD. The DG *inter-alia* concluded that the Dumper Truck Union indulged in anti-competitive practices in violation of Section 3(3) of the Competition Act by: (i) preventing CJD from using its own trucks for transportation of limestone to its customer, JSW Energy Barmer Limited (**JSW**) and forced them to use the trucks of the members of Dumper Truck

¹ An association of truckers and transporters in Jaisalmer.

² It is engaged in logistics and transportation of goods by rail and road in India.

Union at arbitrary rates which was higher than what CJD was offering; (ii) fixing the price at which CJD will supply trucks to JSW (**Interim Arrangement**).

With respect to abuse of dominance, the DG noted that there is no conclusive proof that the Dumper Truck Union is an 'enterprise' under the Competition Act³. Nonetheless, the DG noted that the Dumper Truck Union has abused its dominant position by imposing unfair conditions on CJD not to ply their own trucks and insisting on the use of trucks and drivers of the Dumper Truck Union at arbitrary rates and using physical force against CJD to ensure the same.

The CCI disagreed with the DG findings and noted that the Dumper Truck Union does not qualify as an 'enterprise' for the purposes of the Competition Act. On anti-competitive practices, the CCI agreed with the DG findings and noted that: (i) Dumper Truck Union determined the price of providing transportation services of limestone by way of the Interim Arrangement; (ii) the Dumper Truck Union controlled the provision of services by CJD and insisted that CJD used the trucks of the Dumper Truck Union by using physical force against CJD.

Accordingly, the CCI directed the Dumper Truck Union and its office bearer to cease and desist from engaging in anti-competitive conduct⁴.

(Source: [CCI Order dated February 2, 2022](#))

CCI finds tyre manufacturers guilty of indulging in cartelisation

The CCI found Apollo Tyres Limited (**Apollo**), MRF Limited (**MRF**), CEAT Limited (**CEAT**), JK Tyre & Industries Limited (**JK Tyre**), Birla Tyres Limited (**Birla Tyre**) (collectively referred to as the '**Tyre Manufacturers**') and their association, Automotive Tyre Manufacturers' Association (**ATMA**), including their office bearers, guilty of cartelisation by increasing the prices of cross ply/bias tire variants sold by each of them in the replacement market and to limit and control production and supply in that market in 2011-12, thereby contravening Section 3(3) of the Competition Act.

All India Tyre Dealers' Federation (**AITDF**) made a representation to the Ministry of Corporate Affairs (**MCA**), Government of India alleging that the Tyre Manufacturers *inter-alia* indulged in cartelisation by increasing the price of tyre in a concerted manner when price of raw material i.e., nature rubber and other inputs, increased. However, with the corresponding decrease in the price of raw materials, there was no decrease in the price of tyres. The MCA forwarded the representation to the CCI.

The CCI directed the DG to investigate the alleged conduct of the Tyre Manufactures and ATMA. The DG *inter- alia* concluded that the Tyre Manufacturers, under the aegis of ATMA, indulged in cartel activity by determining the sale price of tyres in the domestic tyre market.

The CCI agreed with the DG findings and *inter- alia* noted that: (i) Indian tyre industry is highly concentrated with the Tyre Manufactures controlling over 80 per cent of the tyre market in India; (ii) although the cost of raw materials has decreased, the Tyre Manufacturers have increased the price for their top selling variants of tyres, showing price parallelism. The said price increase led to an increase of their operating margins; (iii) ATMA organised various meetings, for which no minutes of the meetings was prepared showing malicious intent, that served as a platform for the Tyre Manufactures to discuss and implement price increase of tyres; (vi) ATMA collected monthly category wise and company wise production and export data from its members and circulated the same amongst members after compiling it, thereby facilitating cartelisation.

³ An entity can be held to have abused its dominant position under Section 4 of the Competition Act, if it qualifies as an 'enterprise' under Section 2(h) of the Competition Act.

⁴ Given that the Dumper Truck Union and its office bearer did not provide their financial statements and income tax returns, despite specific directions and sufficient notice, the CCI noted that it would consider passing a separate order for imposing monetary penalty on the Dumper Truck Union and its office bearer.

The CCI imposed penalties (at the rate of 5per cent of average turnover) of INR 425.53 crore (USD 56.74 million) on Apollo, INR 622.09 crores (USD 82.95 million) on MRF, INR 252.16 crores (USD 33.62 million) on CEAT, INR 309.95 crores (USD 41.33 million) on JK Tyre and INR 178.33 crore (USD 23.78 million) on Birla Tyre and issued a cease-and-desist order prohibiting the anti-competitive cartelisation conduct. In addition, a penalty of INR 0.084 crore (USD 11,191) was also imposed on ATMA. ATMA was directed to disengage and disassociate itself from collecting wholesale and retail price information through the member tire companies or otherwise. Apart from the companies, the CCI has also penalised eight office bearers of tire companies (at the rate of 5per cent of the average of income) who were in charge of and responsible for the conduct of the company.

(Source: CCI order dated August 31, 2018)

Merger Control

CCI approves acquisition of additional shareholding of Future Generali by Generali Group

The CCI approved the acquisition of an additional 22 per cent of the equity share capital of Future Generali India Life Insurance Company Limited⁵ (**Future Generali** by Assicurazioni Generali S.p.A⁶ (**Generali Group**)⁷ (referred to as the '**Proposed Transaction**'). Pursuant to the Proposed Transaction, the shareholding of Generali Group will increase from 49 per cent to 71 per cent, in Future Generali.

The CCI noted that there is a horizontal overlap between the activities of the Generali Group and Future Generali in the market of the provision of life insurance services in India. However, given the low market shares of the parties with the presence of several significant players in the relevant market, the CCI noted that the Proposed Transaction is not likely to raise competition concerns.

Further, the CCI noted that there is an existing vertical relationship between the activities of the parties in the upstream market of the provision of life insurance services in India and the downstream market of the distribution of life insurance services in India⁸. However, given the insignificant presence of the parties and the presence of several players in the market, the same is not likely to raise foreclosure concerns.

(Source: CCI Order dated January 20, 2022)

CCI approves acquisition of JPL by NTPC and certain secured financial creditors

The CCI approved the acquisition of 50 per cent equity share capital and non-convertible debentures (**NCDs**) of Jhabua Power Limited (**JPL**)⁹ by NTPC Limited (**NTPC**)¹⁰ and certain secured financial creditors under the Insolvency and Bankruptcy Code, 2016 (collectively referred to as the '**Proposed Transaction**').

The CCI noted that there are horizontal overlaps between the activities of NTPC, secured financial creditors (including their investee entities) and JPL, in the market of power generation in India. However, given the low market share of

⁵ It is a life insurance company and is a joint venture between three groups i.e., Generali Group, Future Group and Industrial Investment Trust Limited. It is engaged in the provision of life insurance services/products in India.

⁶ It is an Italian insurance group. In India, it is engaged in the insurance business.

⁷ Through Generali Participations Netherlands N.V. It is an investment holding company which it holds shares in joint ventures with Future Group, which are engaged in the provision of insurance services.

⁸ Future Generali is present in the upstream market of provision of life insurance services in India which can be distributed by FG&G Distribution Private Limited, a joint venture company of the Generali Group and Future group, which is present in the downstream market of distribution of life insurance services in India.

⁹ It is engaged in the business of power generation through coal based thermal power stations.

¹⁰ It is primarily engaged in electric power generation.

JPL with presence of several players in the market, the CCI noted that the Proposed Transaction is not likely to raise competition concerns.

Further, the CCI noted that there are potential vertical links between the activities of the parties in the upstream market of power generation in India¹¹ and downstream markets for: (i) deployment of credit for the power industry; (ii) manufacturing transformers, conductors, and cables; and (iii) provision of consultancy services in the power sector. However, given the insignificant presence of the parties in the vertical markets, the same is not likely to raise foreclosure concerns.

(Source: CCI Order dated December 29, 2021)

CCI approves acquisition of majority shareholding of Jindal Power by Jindal group

The CCI approved the acquisition of 96.42 per cent equity share capital of Jindal Power Limited (**JPL**)¹² by Worldone Private Limited (**Worldone**)¹³ whose shareholding is held by Mr. Naveen Jindal and his family (**Acquirer Group**)¹⁴ (referred to as the '**Proposed Transaction**').

The CCI noted that there are horizontal overlaps between the activities of the Acquirer Group and JPL in the: (i) broad market of power generation in India and the narrow market of coal based thermal power generation in India; and (ii) market of transmission of power in India. However, given the low market shares of the parties with the presence of several significant players in each relevant market, the CCI noted that the Proposed Transaction is not likely to raise competition concerns.

Further, the CCI noted that there are existing and /or potential vertical relationships between the activities of the parties in the following markets:

1. coal based power generation in India (upstream) and power transmission in India (downstream)¹⁵;
2. power transmission in India (upstream) and power distribution in the State of Chhattisgarh (market)¹⁶; and
3. coal based power generation in India (upstream) and power distribution in the State of Chhattisgarh (downstream)¹⁷. However, given the insignificant presence of the parties in the vertical markets, the same is not likely to raise foreclosure concerns.

(Source: CCI Order dated December 29, 2021)

¹¹ JPL is present in the upstream market of power generation in India and can provide inputs to: (i) secured financial creditors in the downstream market of deployment of credit for the power industry; (ii) certain investee entities of secured financial creditors in the downstream market of manufacturing transformers, conductors and cables; and (iii) Power Finance Corporation Limited and REC Limited in the downstream market of provision of consultancy services in the power sector.

¹² It is engaged in coal-based power generation. It is a subsidiary of JSPL and is indirectly controlled by the Jindal group, i.e., the Acquirer Group.

¹³ It is an investment holding company.

¹⁴ Mr. Naveen Jindal and his family are referred to as the Acquirer Group. They have shareholding in various entities including JSPL, Nalwa Steel and Power Limited, OP Jindal Industrial Park etc.

¹⁵ JPL is present in the upstream market of coal-based power generation in India and can provide power to Jindal Steel Private Limited (**JSPL**) of the Acquirer Group, present in the downstream market of power transmission in India.

¹⁶ JPL is present in the upstream market of power transmission in India and can provide power to JSPL, present in the downstream market of power distribution in the State of Chhattisgarh.

¹⁷ JPL is present in the upstream market of coal-based power generation in India and can provide power to JSPL, present in the downstream market of power distribution in the State of Chhattisgarh.

CCI approves acquisition of minority shareholding of IRB Infrastructure by GIC group

The CCI approved the acquisition of 16.94 per cent equity share capital of IRB Infrastructure Developers Limited (**IRB Infrastructure**)¹⁸ by GIC group¹⁹ (hereinafter referred to as '**Proposed Transaction**').

The CCI noted that there are horizontal overlaps between the activities of the portfolio companies of GIC group and IRB Infrastructure in the broad market of power generation in India and narrow market of power generation from wind energy in India. However, given the low market shares of the parties in the markets, the CCI noted that the Proposed Transaction is not likely to raise competition concerns.

(Source: [CCI Order dated December 20, 2021](#))

CCI approves acquisition of majority shareholding of Forbes Enviro Solutions group by Advent International

The CCI approved the acquisition of up to 98.56 per cent of the equity share capital of Forbes Enviro Solutions Limited (**FESL**)²⁰ (a group company of Eureka Forbes) by Advent International Corporation (**Advent Corporation**)²¹ (referred to as the '**Proposed Transaction**'). Pursuant to the Proposed Transaction, Advent International will exercise control over the health and safety business of Eureka Forbes group.

The CCI noted that there is a horizontal overlap between the activities of portfolio companies of Advent International²² and FESL in the market of water purification and water filtration products in India. However, given the low market shares of the parties with the presence of several significant players, the CCI noted that the Proposed Transaction is not likely to raise competition concerns.

(Source: [CCI Order dated December 20, 2021](#))

CCI approves acquisition of at least 40 per cent shareholding of Stirling and Wilson Renewable Energy by Reliance group

The CCI approved the acquisition of at least 40 per cent equity²³ share capital of Stirling and Wilson Renewable Energy Limited (**Stirling and Wilson Solar**)²⁴ by Reliance group²⁵ (referred to as the '**Proposed Transaction**').

The CCI noted that there are no horizontal overlaps between the activities of the parties. However, there is a potential vertical link between the activities of REC Solar, part of the Reliance group, and Stirling and Wilson Solar in the upstream market of solar photovoltaic modules which can be purchased for the downstream market of solar engineering procurement and constructions (**EPC**) contractors²⁶. However, given the low market share of the parties

¹⁸ It is engaged in the business of construction works in accordance with engineering, procurement and construction contracts, providing operation and maintenance services of roads and highways and undertakes trading activities.

¹⁹ It made the acquisition in IRB Infrastructure through a special purpose vehicle incorporated in Singapore i.e., Bricklayers Investment Pte. Limited.

²⁰ FESL is engaged in the business of manufacture and sale of range of various types of water purifiers and water filters.

²¹ Through Lunolux Limited which is a special purpose vehicle incorporated by AI Global Investments Cyprus PCC Limited for the purposes of the Proposed Transaction.

²² Culligan International.

²³ Which could go up to 51.07 per cent equity share capital.

²⁴ It belongs to the Shapoorji Pallonji group. It is an end-to-end solar EPC solutions provider in India and globally.

²⁵ Reliance Industries Limited is the ultimate holding company of the Reliance group. It has recently also announced the acquisition of shareholding in REC Solar, which is engaged in manufacturing of photovoltaic modules.

²⁶ REC Solar is present in the upstream market of the manufacture of solar photovoltaic modules and can provide solar photovoltaic modules to Stirling and Wilson Solar, present in the downstream market of EPC contractors.

with the presence of several significant players present in each relevant market, the Proposed Transaction is not likely to raise foreclosure concerns.

(Source: [CCI Order dated December 14, 2021](#))

CCI approves acquisition of sole control of Global Content Alpha Partners by Baring group

The CCI approved the acquisition of up to 100 per cent equity share capital and sole control of Global Content Alpha Partners Holdco. Pte. Ltd. (**GCAPH**)²⁷ by the Baring group²⁸ (referred to as the '**Proposed Transaction**').

The CCI noted that there are horizontal overlaps between the activities of the portfolio companies of the Baring group and GCAPH in the broad market of Information Technology (**IT**) and Information Technology Enabled Services (**ITES**) in India and the narrow market of business process outsourcing (**BPO**) in India (**Narrow Relevant Market**). Within the Narrow Relevant Market, there were overlaps in the provision of: (i) IT and ITES services to customers engaged in the communications, media and services (**CMS**) sector in India; and (ii) BPO services to customers engaged in the CMS sector in India. However, given the low market shares of the parties with the presence of several significant players in each relevant market, the CCI noted that Proposed Transaction is not likely to raise competition concerns.

(Source: [CCI Order dated October 18, 2021](#))

CCI approves acquisition of certain shareholding of Brainbees Solutions by National Investment and Infrastructure under Green Channel

The CCI approved the acquisition of certain equity share capital of Brainbees Solutions Private Limited²⁹ by National Investment and Infrastructure Fund-II³⁰ (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 minority shareholding of Busybees Logistics by ChrysCapital, Anchor Partners and Sage Investment under Green Channel

The CCI approved the acquisition of minority equity share capital of Busybees Logistics Solutions Private Limited³¹ by ChrysCapital VIII, LLC (through Sienna Limited³²), Anchor Partners³³, and Sage Investment Trust³⁴ (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](#))

²⁷ It is the ultimate holding company of all the companies within its group and has a global presence. It is present in India through its subsidiaries that are engaged in the provision of services within the IT & ITES sector.

²⁸ It is an international private equity firm with a focus on private equity investments in Asia.

²⁹ It is engaged in the business of wholesale trading, single brand trading, manufacture, and sale of utility products such as products for infants.

³⁰ It is a trust established under the Category II Alternative Investment Fund with Securities and Exchange Board of India.

³¹ It is engaged in the business of providing logistics and delivery solution services.

³² It is an investment company and is owned and controlled by ChrysCapital VIII, LLC.

³³ It is a partnership firm formed under the laws of India that is engaged in the business of making investments.

³⁴ It is a private trust incorporated in India that is engaged in making investments.

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