



## JSA Newsletter Competition Law



June 2022

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# Competition Commission of India

## Enforcement

### CCI orders investigation against BookMyShow for indulging in alleged anti-competitive practices

The Competition Commission of India (“CCI”) received a complaint from Mr. Vijay Gopal, founder of an online movie ticketing portal, Showtyme against, Big Tree Entertainment Pvt. Ltd. (“**BookMyShow**”) for indulging in anti-competitive practices, in violation of Sections 3 and 4 of the Competition Act, 2002 (“**Competition Act**”).

The complainant *inter alia* alleged that BookMyShow had entered into exclusive agreements with certain cinemas in Hyderabad whereby cinemas were not allowed to list their tickets on other e-ticketing platforms like Showtyme. Further, despite giving a higher commission to standalone/single-screen theatres as compared to BookMyShow, the said theatres are not associating with Showtyme as huge ‘cash loans’/ monetary deposits are being offered by BookMyShow at a zero-interest rate.

The CCI noted that BookMyShow holds a dominant position in the market for online intermediation services for booking of movie tickets in India with a market share of 78%. In relation to the conduct of BookMyShow, the CCI noted that the same is *prima facie* anti-competitive as it is executing exclusive agreements with single-screen theatres and multiplexes which restrict cinemas and cine-goers in their choice of alternate booking platforms and result in denial of market access to new e-ticketing platforms. Further, the exclusivity also extends to data ownership and sharing which can increase the bargaining power of BookMyShow and limit inter-platform competition in the long run. Accordingly, the CCI referred the matter to the Director General for investigation.

(Source: CCI order dated June 16, 2022)

### CCI dismisses the case against the State of Punjab and its warehousing corporation for indulging in alleged anti-competitive practices

The CCI received a complaint from Private Entrepreneurs Godowns Association (“**Complainant**”)<sup>1</sup> against Punjab State Warehousing Corporation (“**PSWC**”)<sup>2</sup>, and the State of Punjab for indulging in alleged anti-competitive practices, in violation of Sections 3(3) and 4 of the Competition Act. PSWC and the State of Punjab are collectively referred to as the ‘**OPs**’.

The Complainant *inter alia* alleged that: (i) PSWC is abusing its dominant position by imposing unfair conditions on the members of the Complainant in relation to purchasing godown storage services for storing food grains; and (ii) OPs colluded by deciding not to increase the rent payable to private godown owners.

The CCI *inter alia* noted that PSWC is not dominant in the market for storage of food grains within the territory of the State of Punjab as there is an existence of several other state procuring agencies who can avail godown storage services from private godown owners for storing food grains. In absence of a dominant position, there is no requirement for assessing the alleged abuse of the dominant position by PSWC. Further, the agreement between OPs pertaining to the procurement of food grains for storage and hiring of godowns cannot be analysed under Section 3(3) of the Competition Act as OPs are not engaged in identical or similar trade of goods or provision of goods and services. Accordingly, the CCI dismissed the case.

<sup>1</sup> It is an association of private entrepreneurs in the State of Punjab providing storage facilities for food grains to procurement/ warehouse agencies in Punjab.

<sup>2</sup> It is a statutory body established for the purposes of warehousing of agriculture products under the Warehousing Corporations Act, 1962.

(Source: CCI Order dated June 16, 2022)

## CCI dismisses case against Britannia for indulging in alleged anti-competitive practices

The CCI received a complaint from Hiveloop Technology Private Limited (“**Complainant**”) against Britannia Industries Limited (“**Britannia**”)<sup>3</sup> for indulging in anti-competitive practices, in violation of Section 3(4) of the Competition Act. The Complainant is running a business-to-business online trade platform/marketplace under the name 'Udaan', which allows retailers and businesses to source merchandise from the manufacturers, brands, labels, and importers etc., directly.

The Complainant *inter alia* alleged that Britannia had: (i) restricted its distributors from dealing with the Complainant; (ii) imposed restrictive terms and did not supply the requisite quantity of products specifically the ‘must have’ stock of certain biscuits; and (iii) not extended the same terms as other distributors due to which the Complainant was unable to provide better margins to retailers.

The CCI noted that Britannia with a market share of 32% in the market for biscuits, closely followed by Parle (approximately 27% market share), cannot be said to have market power. In relation to the allegations against Britannia, the CCI noted that: (i) Britannia is not restricting its distributor from supplying products to the Complainant as it was able to source products to fulfil the demands of the retailers, to some extent; (ii) the alleged non-dealing of Britannia with the Complainant is not causing an adverse impact on the market since none of the distributors of Britannia have exited the market leading to market foreclosure. The CCI also noted that there must be some autonomy available to Britannia to deal with its goods in alignment with their business requirements and can refuse to conclude contracts based on objective justifications. Accordingly, the CCI dismissed the case.

(Source: CCI Order dated June 16, 2022)

## CCI finds protective tube vendors guilty of indulging in bid-rigging cartel

On June 9, 2022, the CCI penalised 7 (seven) companies<sup>4</sup> (collectively referred to as the “**Vendors**”) including their officer bearers for indulging in bid-rigging cartel in relation to the tenders floated by the Indian Railways (“**Tenders**”) for the procurement of polyacetal protective tubes, in violation of Section 3(3) of the Competition Act.

The CCI initiated the investigation pursuant to a leniency application filed by Jai Polypan Private Limited (“**JPPL**”) under the CCI (Lesser Penalty) Regulations, 2009 disclosing the existence of bid-rigging cartel in the supply of protective tubes to the Indian Railways by quoting mutually agreed prices and allocating tenders amongst themselves.

The CCI *inter alia* noted that the Vendors: (i) communicated amongst each other through emails regarding the price to be quoted in the Tenders; (ii) used a common internet protocol address to submit bids and some of them were sister concerns with common partners/directors; (iii) indulged in controlling supply and the market, and (iv) co-ordinated bid prices and manipulated the bidding process.

Accordingly, the CCI imposed a penalty at the rate of 5% of the average turnover generated from the sale of protective tubes on the Vendors. JPPL was granted 100% reduction on the penalty.

(Source: CCI order dated June 9, 2022)

## CCI finds Amateur Baseball Federation guilty of abusing dominant position

<sup>3</sup> It is one of the largest food companies and it is engaged in manufacture and sale of various products including biscuits, breads, cakes, rusk, and dairy products.

<sup>4</sup> M/s Polyset Plastics Private Limited, M/s Anju Techno Industries, M/s Power Mould, Jai Polypan Private Limited, M/s Rama Engineering Works, M/s Polymer Products of India, M/s Hari Narayan Bihani

On June 3, 2022, the CCI penalised the Amateur Baseball Federation of India (“**ABFI**”)<sup>5</sup> for abusing its dominant position by restricting players to participate in any tournaments organized by unrecognized bodies, in violation of Section 4 of the Competition Act.

The CCI initiated the investigation pursuant to a complaint filed by the Confederation of Professional Baseball Softball Clubs (“**Complainant**”)<sup>6</sup> alleging that ABFI had abused its dominant position by: (i) issuing a circular to its affiliated state baseball associations asking them not to deal with unrecognized bodies and not to allow state-level players to participate in any of the events organized by them (“**Circular**”); and (ii) threatening to take strict action against the players who participate in such events.

During the course of the investigation, the CCI granted interim relief to the Complainant by: (i) restraining ABFI from issuing any further communication to its affiliated state associations disallowing their players to participate in events organised by other bodies/federations; and (ii) directing ABFI not to threaten the players who want to participate in such events.

ABFI challenged the jurisdiction of the CCI contending that ABFI is not an enterprise under the Competition Act. The CCI rejected the jurisdictional plea and noted that even non-commercial economic activities/philanthropic activities will be subject to the Competition Act as it does not distinguish economic activities based on commercial or non-commercial nature. Given that ABFI is *inter alia* involved in controlling baseball, therefore, ABFI is an enterprise under the Competition Act.

The CCI *inter alia* observed that ABFI is dominant in the market for organization of baseball leagues/events/ tournaments in India. In relation to the abuse, it noted that ABFI by issuing the Circular, had denied market access to other associations who wished to conduct similar tournaments. Further, it imposed unfair conditions on the players by restricting them from participating in tournaments organised by bodies that are not recognised by ABFI, thereby violating Section 4 of the Competition Act.

Accordingly, the CCI directed ABFI to cease and desist its conduct. However, it refrained from imposing any monetary penalty since ABFI had already withdrawn the Circular which led to a market correction.

(Source: CCI order dated June 3, 2022)

## CCI dismisses case against Atos India for indulging in alleged anti- competitive practices

The CCI received a complaint from Hexa Communications Private Limited (“**Complainant**”)<sup>7</sup> against Atos India Private Limited (“**Atos**”)<sup>8</sup>, for indulging in alleged anti-competitive practices, in violation of Sections 3(4) and 4 of the Competition Act.

The Complainant *inter alia* alleged that Atos: (i) in concert with its authorised channel partners, restricted supply of its genuine spare parts and provision of after-sales services in the open market; (ii) restricted inter-brand operability as the after-sales services offered by Atos are not substitutable; (iii) precluded the Complainant from providing support services

<sup>5</sup> It is recognized as National Sports Federation by the Ministry of Youth Affairs and Sports, Government of India and is primarily working for the general promotion of baseball and players. It is affiliated to Baseball Federation of Asia and World Baseball and Softball Confederation. It is responsible to conduct zonal, national and international baseball tournaments, in India.

<sup>6</sup> It is a not-for-profit organisation with the sole objective of promoting and developing sports of baseball and softball in India. The Informant, as a member of the baseball ecosystem, engages with players, coaches, clubs, and other partners in India and abroad.

<sup>7</sup> It is engaged in the business of hardware and software products, including telecommunication devices and related support services

<sup>8</sup> It is an original equipment manufacturer that specialises in hi-tech transactional services, unified communications, cloud, big data, and cyber security services.

in respect of its products by circulating various communications to the customers and public at large; and (iv) refrained from providing warranty for products sold by the Complainant in India.

The CCI *inter alia* noted that Atos cannot be obligated to give a warranty for products sold by an unauthorised partner (i.e., the Complainant) and therefore, the said conduct cannot be termed as exclusionary/ abusive. Further, the genuine spare parts manufactured by Atos are adequately available with independent service providers and there is sufficient inter-brand operability as the products/software manufactured/ developed by Atos can swiftly work with products/software manufactured/ developed by its competitors. Accordingly, the CCI dismissed the case.

(Source: CCI order dated June 3, 2022)

## Merger Control

### CCI approves the acquisition of minority shareholding of BDR Pharmaceuticals by the Multiples group and other financial investors

The CCI approved the acquisition of minority shareholding of BDR Pharmaceuticals International Private Limited (“**BDR Pharmaceuticals**”)<sup>9</sup> by Multiples Private Equity Fund III (“**Multiples Fund III**”)<sup>10</sup>, and certain other financial investors.<sup>11</sup>

The CCI noted that there are no horizontal or vertical overlaps between the activities of the parties in India. However, it noted that there is a complementary relationship between the activities of QRG Investments and Holdings Limited (“**QRG**”) group (through its affiliates)<sup>12</sup> and the BDR Pharmaceutical group as the retail sale of pharmaceuticals is complementary to the manufacture and sale of pharmaceutical products in India. However, given the insignificant presence of the parties and the presence of several players in the markets, the Proposed Transaction is not likely to raise competition concerns.

JSA represented the Multiples group and other financial investors before the CCI.

(Source: CCI Order dated April 13, 2022)

### CCI approves acquisition of minority shareholding of Hero FinCorp by the Apollo group

The CCI approved the acquisition of approximately 10.24% of the equity share capital of Hero FinCorp Limited<sup>13</sup> (“**HFL**”) by Apollo group<sup>14</sup> (referred to as the “**Proposed Transaction**”).

The CCI noted that there are horizontal overlaps between HFL and Apollo group (through its portfolio companies)<sup>15</sup> (collectively referred to as “**Parties**”) in the market for: (i) provision of loans and lending services in India and (ii) distribution of insurance products, in India. However, given the low combined market shares of Parties with the presence

<sup>9</sup> BDR is controlled/owned by the promoters. BDR has a shareholding in various affiliates in India as well as outside India. It is engaged in: (a) manufacture and sale of active pharmaceutical ingredients; (b) manufacture and sale of formulations (including pellets); and (c) contract development and manufacturing services.

<sup>10</sup> Multiples Fund III is a SEBI registered Category II Alternative Investment Fund and is being managed by Multiples Alternate Asset Management Private Limited (**MAAMPL**). Apart from Multiples Fund III, MAAMPL is the investment manager of certain other Multiples Group funds.

<sup>11</sup> SRF Transnational Holdings Limited, Balkrishna Industries Limited, Dharmayug Investments Limited, QRG, Mr. Nishant K. Agarwal, and Ms. Mallika Srinivasan

<sup>12</sup> QRG group through its affiliates: (i) Marengo Asia Healthcare Private Limited, operates two super/multi-speciality hospitals in Faridabad and Ahmedabad; and (ii) Aartas Care Private Limited, is engaged in the provision of retail sale of pharmaceuticals in India.

<sup>13</sup> It is engaged in the provision of financing of two-wheelers, personal loan, etc. and offers various products to its corporate customers, such as bill/invoice discounting, loans etc.

<sup>14</sup> Through AHVF II Holdings Singapore II Pte. Ltd. It is owned by investment funds managed by affiliates of Apollo Management LP.

<sup>15</sup> Clix Capital (including its subsidiaries) and AIF

of several competitors in the market, the CCI noted that the Proposed Transaction is not likely to raise competition concerns.

*(Source: CCI order dated April 4, 2022)*

## CCI approves the acquisition of majority shareholding of Magma HDI General Insurance by the Rising Sun group

The CCI approved the acquisition of 55.39% equity share capital of Magma HDI General Insurance Company Limited ("**Magma HDI**")<sup>16</sup> by Rising Sun Group of Companies ("**Rising Sun Group**")<sup>17</sup>.

The CCI noted that there is a vertical relationship between the activities of the parties in the upstream market for the provision of general/ non-life insurance products/ services and the downstream market for the distribution of general/ non-life insurance products/ services, in India.<sup>18</sup> However, given the insignificant presence of the parties with the presence of several competitors in the market, the same is not likely to raise foreclosure concerns.

*(Source: CCI order dated May 17, 2022)*

## CCI approves the appointment of Trian's representative, on the board of Unilever under Green Channel

The CCI approved the appointment of Mr. Nelson Peltz, Chief Executive Officer and Founding Partner of Trian Fund Management, L.P.<sup>19</sup> on the board of Unilever PLC ("**Unilever**")<sup>20</sup>, pursuant to an invitation by Unilever (hereinafter 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 non-performing assets of JBF Industries by Madelin Enterprises under Green Channel

The CCI approved the acquisition of non-performing assets of JBF Industries Limited<sup>21</sup> by Madelin Enterprises Private Limited<sup>22</sup> (referred to as the "**Proposed Transaction**"). The parties notified the Proposed Transaction under the Green Channel Route as there were no horizontal, vertical, or complementary overlaps between the activities of the parties in India.

*(Source: Summary)*

<sup>16</sup> It is registered with the Insurance and Regulatory and Development Authority of India and is permitted to distribute general/non-life insurance products and life insurance products.

<sup>17</sup> Through Sanoti Properties LLP, a partnership between Mr. Adar C. Poonawalla and Rising Sun Holdings Private Limited. It is a limited liability partnership and is engaged in the development of commercial and residential real estate projects.

<sup>18</sup> Magma HDI is present in the provision of non-life insurance products/services in India which can be distributed by Rising Sun Group (through Poonawalla Fincorp Limited) which is present in the distribution of non-life insurance products/ services in India.

<sup>19</sup> It is a global investment management firm based out of United States of America.

<sup>20</sup> It is the parent company of the Unilever group, which was incorporated under the laws of England and Wales in 1894. It is engaged in selling fast moving consumers goods, primarily in three segments (i) beauty and personal care, (ii) food and refreshment, and (iii) home care.

<sup>21</sup> It is engaged in manufacturing, supply, distribution and sale of polyester - textile grade and PET chips and polyester filament yarns.

<sup>22</sup> It is not engaged in any business activities as yet.



## Competition Practice

Since the inception of the Indian competition regime, JSA has been a one-stop shop for all types of competition and anti-trust-related matters. As such, the team's in-depth understanding of the competition law, coupled with its commercially focused litigation skills has been the cornerstone on which it deals with matters relating to cartelisation (including leniency), abuse of dominance, vertical agreements, and dawn raid before the Competition Commission of India and appellate courts. The team regularly advises clients on general competition law issues arising from day-to-day business strategies and conducts competition compliance training for clients. Given the team's continued involvement with the regulator, coupled with its balanced and practical approach to competition law, it has been instrumental in shaping the competition law jurisprudence in India.

Over the years, the team has developed a reputation of not only being well regarded by its peers but also for having developed a good working relationship with the regulatory authorities. As such our lawyers have been involved in drafting statutory regulations and have represented the Indian competition law fraternity at various competition law seminars, workshops, and advocacy & public awareness programs across the world. The team's expertise (including team members) has been widely recognised by various leading international rankings and publications including Chambers and Partners, Who's Who Legal, Global Competition Review, Benchmark Litigation, Asialaw, and the Legal 500.

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13 Practices and  
22 Ranked Lawyers



15 Practices and  
18 Ranked Lawyers



7 Practices and  
2 Ranked Lawyers



IFLR1000 India Awards 2021



Among Top 7 Best Overall  
Law Firms in India and  
10 Ranked Practices



Banking & Financial Services  
Law Firm of the Year 2022

10 Practices and  
34 Ranked Partners

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Banking & Finance Team  
of the Year

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13 winning Deals in  
IBLJ Deals of the Year

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Dispute Resolution Law  
Firm of the Year 2022

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Fintech Team of the Year

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6 A List Lawyers in  
IBLJ Top 100 Lawyer List

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Equity Market Deal of the  
Year (Premium) 2022

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Restructuring & Insolvency  
Team of the Year

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Energy Law Firm of the Year 2021

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