July 2022

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CCI finds several trailer owners associations guilty of indulging in cartelisation

The Competition Commission of India ("**CCI**") found Tamil Nadu based 10 (ten) trailer owners' associations (collectively referred to as the "**TOAs**") guilty of indulging in cartelisation, by fixing the freight tariff rate ("**Tariff**") for providing transport services, and imposing restrictions on container freight operators ("**CFOs**") not to expand their existing fleet, in contravention of Sections 3(3) of the Competition Act, 2002 ("**Competition Act**").

The complaint was filed by the National Association of Container Freight Stations ("**Complainant**"), which consists of CFOs . To move the container from port to container freight stations ("**CFS**"), the CFS operators either use their own trailers or hire the services of various trailer owners including the members of TOAs. TOAs comprises of companies which provide trailers, drivers etc., for the movement of cargo.

The Complainant *inter-alia* alleged that TOAs: (i) colluded and increased the Tariff for providing transport/ trailer services from port to CFS and *vice versa* and imposed the same on the members of the Complainant[1] without any rationale; and (ii) mandated that the Complainant will not ply more than 20 (twenty) trailers of its own, for movement of containers. Any requirement for operating more than 6 (six) trailers will only be given to members of TOAs.

The Director General ("**DG**") *inter-alia* concluded that: (i) TOAs had several meetings wherein the Tariff was discussed and increased, and the same was imposed on the members of the Complainant. Further, the increase had no co-relation with the increase in the corresponding cost of inputs like cost of fuel, tyres, driver salary, etc.; and (iii) the restriction imposed on the members of the Complainant not to expand their existing fleet amounted to limiting and controlling the provision of transport services at the Chennai (Tamil Nadu) Port.

The CCI agreed with the finding of the DG and *inter alia* noted that fixing prices and restricting the provision of services under the aegis of trade associations cannot be held as a legitimate activity under the Competition Act. Accordingly, the CCI directed TOAs to cease and desist from engaging in anti-competitive conduct.

(*Source: CCI order dated July 20, 2022*)

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

The CCI received a complaint from Hiveloop Technology Pvt. Ltd.[2] ("**Complainant**") against Parle Products Private Limited ("**Parle**")[3] for indulging in anti- competitive practices, in violation of Sections 3(4) and 4 of the Competition Act.

1 Since the Chennai Port was following a practice of issuing passes for the entry of trailers and drivers only when such passes were endorsed by TOAs, members of the Complainant had no option but to agree to the demands of the TOAs.

2 It 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.

3 It is engaged in the business of manufacturing and selling biscuits and confectionery products, including Parle- G.

The Complainant *inter alia* alleged that Parle abused its dominant position and engaged in anti-competitive practices by: (i) refusing to deal with the Complainant, thereby causing harm to its business interest; and (ii) restricting its distributors from dealing with the Complainant.

The CCI noted that the market could be broadly stated as the market for biscuits in India. Parle: (i) has market share of approximately 27%; (ii) faces intense competition from Britannia, ITC, Cremica, Patanjali, etc.; and (iii) has a vast distribution network. Further, the CCI noted that Parle has some degree of market power.

In relation to the allegations against Parle, the CCI noted that: (i) there is no evidence to support that the distributors were restricted from dealing with the Complainant; (ii) any prospective partner that is yet to be accepted as a distributor cannot be entitled to similar rights that are available with the existing distributors; and (iii) companies have the autonomy to choose their business partner and the CCI cannot *ipso facto* substitute its regulatory wisdom to that of the commercial wisdom, till the time the said practice is not in contravention of the Competition Act. Accordingly, the CCI dismissed the case.

(Source: CCI order dated July 6, 2022)

CCI dismisses case against Chemist and Druggist Association for indulging in alleged anti-competitive practices

The CCI received a complaint in 2019 against the Chhattisgarh Chemist and Druggist Association ("**CCDA**")[4], an association of wholesalers and retailers of medicines in the state of Chhattisgarh, alleging that the CCDA had coerced pharmaceutical companies to pay product information service ("**PIS**") charges to CCDA as a pre-condition for the launch of new medicines in the state of Chhattisgarh. These charges were purportedly being collected under the garb of payments towards the CCDA's building and bulletin fund.

The CCI directed the DG to investigate the alleged conduct of CCDA. The DG *inter alia* concluded that CCDA had coerced pharmaceutical companies to make payments to CCDA prior to the launch of new medicines, thereby violating Section 3(3) of the Competition Act.

The CCI perused the replies filed by third parties (including pharmaceutical companies) with the DG and observed that the launch of medicines was not impeded by the CCDA for want of PIS charges and the payment of PIS charges was on a voluntary basis towards the publication of information on new launches in the CCDA bulletin and therefore, there was no violation of any of the provisions of the Competition Act. Accordingly, the CCI dismissed the case.

(Source: CCI Order dated July 5, 2022)

Merger Control

CCI imposes a penalty on SABIC for gun-jumping

The CCI imposed a penalty of INR 45,00,000 (Indian Rupees forty five lakhs)[5] on SABIC International Holdings B.V ("**SABIC**") for: (i) failing to notify its acquisition of 24.99% shareholding of Clariant AG ("**Clariant**") (referred to as the

4 It has about 7000 (seven thousand) members comprising wholesalers and retailers of medicine.
5 Approx USD 57,228 (US Dollar fifty seven thousand two hundred twenty eight).

"**First Acquisition**"); and (ii) consummating its acquisition of 6.51% additional shareholding of Clariant through open market purchases in part, prior to receiving the CCI approval (referred to as the "**Second Acquisition**").

Brief Background

On September 17, 2018, SABIC consummated the First Acquisition. On February 27, 2020, SABIC placed the shares it acquired in the Second Acquisition, in a securities/escrow account. As per the escrow and control agreement, the said shares could be released to SABIC pursuant to receiving regulatory approvals. Until receipt of regulatory approvals, SABIC imposed a contractual obligation on itself not to exercise voting rights on the shares acquired through the Second Acquisition.

On May 29, 2020, SABIC notified the Second Acquisition to the CCI which was approved *vide* order dated September 2, 2020. In the notice to the CCI, SABIC disclosed its existing stake of 24.99% in Clariant along with a right to nominate up to 4 (four) directors to its board i.e., the First Acquisition.

On August 18, 2020, and September 20, 2020, the CCI issued separate show cause notices to SABIC for: (i) closing the First Acquisition without seeking its approval; and (ii) consummating the Second Acquisition in part by transferring the shares in an escrow account, prior to receiving the CCI approval.

In relation to the First Acquisition, SABIC *inter- alia* contended that: (i) it was purely an offshore transaction as the parties are incorporated outside India, and that the CCI has jurisdiction in offshore transactions only if they cause or are likely to cause an appreciable adverse effect on competition ("**AAEC"**) in India. The CCI rejected the contention and noted that once the thresholds prescribed under Section 5 of the Competition Act are met, the CCI can inquire into combinations taking place outside India, and the residential status of the parties to the combination is immaterial and further, AAEC is not a precondition for notification; and (ii) it could claim benefit of Item 1 Exemption[6] as it did not result in the acquisition of control by SABIC over Clariant, and SABIC does not have the ability to influence the strategic matters of Clariant. The CCI rejected the contention and noted that the parties had *inter alia* executed a Governance Agreement ("**GA"**) which granted SABIC certain rights including the right to nominate director on Clariant's board, which is a control conferring right as per the CCI's decisional practice. Further, the GA indicates SABIC's intention to participate in the affairs and management of Clariant.

In relation to the Second Acquisition, SABIC *inter-alia* contended that SABIC was not recognised as a shareholder of the escrow shares since the registration of shares was not carried out as per Swiss laws[7] and accordingly, SABIC could not exercise any voting rights. Therefore, there was no (part) consummation of the Second Acquisition. The CCI rejected this contention and noted that the decision not to exercise voting rights over the escrow shares was voluntary and the Competition Act and its regulations do not exempt a situation wherein a buyer acquires shares but decides not to exercise legal/ beneficial rights in them. Further, SABIC is vested with legal and beneficial ownership over the escrow shares even though it does not exercise control/ rights over the same.

The CCI while computing the penalty took into consideration the cooperation extended by SABIC and accordingly, imposed a total penalty of INR 45,00,000 (Indian Rupees forty five lakhs)[8].

(Source: CCI orders dated July 15, 2022 and July 19, 2022)

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[6] The benefit of Item 1 Exemption is provided to the acquisition of shareholding or voting rights less than 25% and which are in the 'ordinary course of business' or 'solely as an investment'. The objective of this provision is to distinguish between instances of ordinary shareholding and strategic shareholding, falling short of position of acquisition of control.

[7] Under the Swiss law, the registration of shares with a company is mandatory to exercise voting rights.

[8] Approx USD 57,228 (US Dollar fifty seven thousand two hundred twenty eight)

CCI approves acquisition of joint control of Citrix by Vista and Elliott

The CCI approved the acquisition of joint control of Citrix Systems, INC[9] (“**Citrix”**) by funds managed by Vista Equity Partners Management, LLC[10] (“**Vista”**) and Elliott Investment Management L.P.[11] (“**Elliott”**) (referred to as the “**Proposed Transaction**”).

The CCI noted that there are horizontal overlaps between the activities of the parties[12] in the market for the provision of networking and IT security software in India. However, given the low combined 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.

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

CCI approves acquisition of minority shareholding of IIFLWM by Bain and CPPIB

The CCI approved the acquisition of 24.98% shareholding in IIFL Wealth Management Limited[13] (“**IIFLWM”**) by the Bain group[14] and Canada Pension Plan Investment Board[15] (“**CPPIB”**) (referred to as the **“Proposed Transaction”).**

The CCI noted that there are horizontal overlaps between the activities of the parties[16] in the broad markets for the provision of: (i) mutual funds (“**MF”**) and narrow markets of equity, debt and liquid MF schemes; (ii) wealth management services; (iii) portfolio management services (“**PMS”**) and narrow markets of discretionary and non-discretionary PMS; and (iv) alternate investment funds (“**AIF”**) and narrow markets of AIF II and AIF III categories, in India. However, given the low market combined shares of the parties with the presence of several significant competitors in each of the relevant markets, 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 for MF[17] and the downstream market for distribution of MF[18], in India. However, given the insignificant market presence of the parties and the presence of several significant competitors in the market, the same is not likely to raise foreclosure concerns.

(Source: CCI order dated June 13, 2022)

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9 It is active in the broad sector of virtual client computing, work solutions, and network and IT security software.

10 It is a US-based investment firm, active in the provision of IT services (through its portfolio companies).

11 It is an investment firm.

12 Portfolio companies of Vista and Elliott and Citrix.

13 It is engaged in the financial services sector offering services such as wealth management, portfolio management, estate planning, provision of alternative investment funds, and mutual funds.

14 Through BC Asia Investments X Limited belonging to the Bain group. Bain Capital Investors, LLC is a private equity investment firm that invests in companies across many industries. It is the ultimate controlling entity/general partner for Bain private equity entities.

15 It is a Canadian professional investment management organisation that invests the funds transferred to it by the Canada Pension Plan Fund. CPPIB has one Indian subsidiary, CPPIB India, which does not hold or control any portfolio company and does not generate any investment-related turnover.

16 IIFLWM and Axis Bank Limited (portfolio company of Bain group).

17 Through IIFLWM

18 Through Axis Bank Limited (portfolio company of Bain group)

CCI approves acquisition of sole control of global biosimilar business of Viatris by Biocon group

The CCI approved the acquisition of: (i) sole control of global biosimilar business of Viatris Inc. ("**Viatris**")[19] by Biocon Biologics Limited ("**Biocon Biologics**")[20]; (ii) at least 12.9% shareholding of Biocon Biologics by Mylan Inc. ("**Mylan**")[21]; and (iii) certain shareholding of Biocon Biologics by Biocon Limited[22] and Serum Institute Life Sciences Private Limited[23] (referred to as the "**Proposed Transaction**").

The CCI noted that there are horizontal overlaps between the activities of the parties[24] in the market for: (i) biological drugs based on Trastuzumab, including its biosimilars in India; (ii) biological drugs based on Bevacizumab, including its biosimilars in India[25]; and (iii) certain non- acquired products. However, given the low combined market shares of parties with the presence of several significant players in each of the relevant markets, the CCI noted that the Proposed Transaction is not likely to raise competition concerns.

(Source: CCI order dated June 13, 2022)

CCI approves acquisition of majority shareholding of SMW Ispat by OFB

The CCI approved the acquisition of 97.77% shareholding[26] of SMW Ispat Private Limited[27] ("**SMW Ispat**") by OFB Tech Private Limited[28] **("OFB Tech")** (referred to as the **"Proposed Transaction").**[29]

The CCI noted that there are horizontal overlaps between the activities of the parties[30] in the market for: (i) sponge iron; (ii) mild steel ("**MS**") billets; and (iii) MS TMT bars, in India. However, given the low combined market shares of 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.

(Source CCI order dated May 17, 2022)

19 It is a global pharmaceutical company, engaged in the business of offering a variety of medicines.

20 It is engaged in the manufacturing and commercialization of pharmaceutical formulations such as biosimilars, insulins and drug substances in India.

21 It is an indirect, wholly owned subsidiary of Viatris. The acquisition of 12.9% shareholding of Biocon Biologics by Mylan is a part of consideration for the acquisition of global biosimilar business of Viatris.

22 It is the holding company of Biocon Biologics.

23 It is the subsidiary of Serum group and is engaged in the business of development and commercialization of vaccines and therapies against COVID-19. Serum sells its COVID-19 vaccine under the brand name 'Covishield' in India and exports the same to foreign countries.

24 The horizontal overlap between the parties is in relation: (a) acquired products i.e., products that will be acquired by Biocon Biologics post the Proposed Transaction; and (b) non- acquired products i.e., products in which both Viatris and Biocon Biologics will continue to compete post the Proposed Transaction.

25 Biocon Biologics and Viatris have an existing collaboration with respect to Trastuzumab and Bevacizumab, wherein: (i) Biocon Biologics manufactures and supplies these products to Viatris; and (ii) Both Biocon Biologics and Viatris have commercialization rights in India.

26 By acquiring 93.50% equity share capital and 100% of the compulsorily convertible preference shares.

27 It is engaged in the business of manufacturing of steel products including TMT bars and billets.

28 It is engaged in the business of wholesale trading of bulk raw materials of different kinds, including steel, and non-ferrous metals. Through its affiliates, it is engaged in the sale of sponge iron and MS billets.

29 The Proposed Transaction envisages that Sangam E-Com Limited and Santosh Hybrid Seeds Co. Private Limited (i.e., the current shareholders of SMW Ispat), will purchase non-convertible redeemable preference shares (convertible to compulsorily convertible preference shares) of SMW Ispat. Further, SMW Ispat and OFB Tech will enter into an inter-corporate loan agreement to repay certain debts of SMW Ispat.

30 OFB Tech (including its portfolio companies) and SMW Ispat.

CCI approves merger of CTPL into Biocon Biologics

The CCI approved the merger of Covidshield Technologies Private Limited[31] ("**CTPL"**), a wholly owned subsidiary of Serum Institute Life Sciences Private Limited[32] ("**Serum"**) into Biocon Biologics Limited[33] ("**Biocon"**). In consideration, Serum will acquire 15% shareholding of Biocon (referred to as the "**Proposed Transaction**").

The CCI noted that there are horizontal overlaps between the activities of the parties[34] in the: (i) broad market for manufacture and supply of erythropoiesis stimulating agents in India and the narrow market for manufacture and supply of recombinant human erythropoietin injection in India; and (ii) market for the supply of Terlipressin in India. However, given the low market shares of the parties with the presence of several significant players in each of the relevant markets, the CCI noted that the Proposed Transaction is not likely to raise competition concerns.

The CCI noted that there is an existing vertical relationship between the activities of the parties[35] in the upstream market for the supply of vials in India and the downstream market for the manufacture of glargine in India[36]. Further, the CCI noted that there are potential vertical links between the activities of the parties in the: (i) upstream market for supply of ampoules, pre-filled syringes and cartridges and downstream market for the manufacture of insulin, bevacizumab and trastuzumab, in India[37]; and (ii) upstream market for the supply of vaccines used for immunization against COVID-19 and the downstream market for distribution of vaccines used for immunization against COVID-19[38], in India. However, given the insignificant presence of the parties and the presence of several players in these markets, the Proposed Transaction is not likely to raise foreclosure concerns.

(Source: CCI order dated May 17, 2022)

CCI approves acquisition of shareholding of Highway and Galaxy by OTPPB under Green Channel

The CCI approved the acquisition of: (i) certain shareholding of Highway Concessions One Private Limited[39] and unitholding of Highway Infrastructure Trust[40] (collectively referred to as "**Highway**"); and (ii) certain rights in Galaxy Investments Pte. Limited[41] by Ontario Teachers' Pension Plan Board[42] ("**OTPPB"**) (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.

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31 It is currently not engaged in any business activities. CTPL has been appointed by Serum Institute Life Sciences Private Limited as its non-exclusive distributor to market, sell, distribute, and commercialize licensed vaccines, being manufactured and/or distributed by Serum Institute Life Sciences Private Limited.

32 It is part of the Serum group, and it was established for development and commercialization of vaccines and therapies against COVID-19 in India.

33 It is a subsidiary of Biocon Limited and is engaged in the business of providing treatment for chronic and acute diseases such as diabetes, oncology, nephrology, cancer, and autoimmune diseases.

34 Serum group and Biocon

35 Serum group and Biocon

36 Through Schott Kaisha Private Limited ("**Schott"**), a joint venture jointly controlled by the Serum Group and Schott AG., Serum Group is supplying vials to Biocon which it is using to store liquid injectables by the name glargine.

37 Through Schott, Serum Group is engaged in supply of glass ampoules, pre-filled syringes, and cartridges and Biocon is engaged in manufacturing insulin. Therefore, Biocon can potentially purchase such products from Schott to store insulin.

38 Serum proposes to supply licensed identified vaccines to Biocon.

39 It is engaged in the business of development, project and toll management services, maintenance, operations, construction, administration, consultation, and providing financial assistance to the infrastructure sector.

40 It is an infrastructure investment trust registered with the Securities and Exchange Board of India.

41 It is controlled by KKR Asia Pacific Infrastructure Holdings Pte. Ltd. and does not have any direct operations in India.

42 Through 2452991 Ontario Limited and ACME SPV Private Limited. OTPPB administers pension benefits and investment of pension plan assets of active and retired teachers in the Canadian province of Ontario worldwide.

(Source: Summary)

CCI approves acquisition of sole control of Tenneco by Pegasus under Green Channel

The CCI approved the acquisition of sole control of Tenneco Inc., global supplier of components for motor vehicles, by Pegasus Holdings III, LLC[43] (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)

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 with its dedicated competition law practice group. 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 raids before the Competition Commission of India and the appellate courts. The team regularly advises clients on general competition law issues arising from day-to-day business strategies and conducts competition compliance trainings 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, the team has been involved in drafting statutory regulations and has represented the Indian competition law fraternity at various competition law seminars, workshops, and advocacy & public awareness programs across the world. The team's expertise 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.

[43] It is an investment vehicle and a controlled affiliate of the investment funds, affiliated with Apollo Global Management, Inc.

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14 Practices and
23 Ranked Lawyers

15 Practices and
18 Ranked Lawyers

7 Practices and
2 Ranked Lawyers

IFLR1000 India Awards 2021

10 Practices and
34 Ranked Partners

Banking & Finance Team
of the Year

Fintech Team of the Year

Restructuring & Insolvency
Team of the Year

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

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13 winning Deals in
IBLJ Deals of the Year

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6 A List Lawyers in
IBLJ Top 100 Lawyer List

Banking & Financial Services
Law Firm of the Year 2022

Dispute Resolution Law
Firm of the Year 2022

Equity Market Deal of the
Year (Premium) 2022

Energy Law Firm of the Year 2021

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