



JSA Newsletter Competition Law

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Competition Commission of India

Enforcement

CCI dismisses case against electric two-wheeler manufacturers for abusing dominant position

The Competition Commission of India (“**CCI**”) received a complaint against Ola Electric Ltd. (“**Ola**”)¹, VIDA Hero Moto Corp Limited (“**VIDA**”)², TVS Motors (“**TVS**”)³ and Ather Energy Private Limited (“**Ather**”)⁴, (together referred to as “**OPs**”) for violation of Section 4 of the Competition Act, 2002 (“**Competition Act**”) dealing with abuse of dominant position.

The Ministry of Heavy Industries and Public Enterprises, through Department of Heavy Industries introduced Faster Adoption and Manufacturing of Electric & Hybrid Vehicles Policy (“**FAME**”). The said policy provides a subsidy to the manufacturer of electric 2-wheeler (“**ETW**”) provided that the maximum ex-factory price of ETW to be INR 1,50,000 (Indian Rupees one lakh fifty thousand) per vehicle (“**Pricing Limit**”).

The complainant⁵ *inter alia* alleged that the OPs have taken undue advantage of FAME by pricing their ETWs below the Pricing Limit and charging additional price for essential components such as charger and proprietary software/upgrades separately. Thus, the OPs are abusing their dominant position by indulging in predatory pricing and foreclosing the benefit of subsidy to other manufacturers whose ETWs actually fall within the Pricing Limit resulting in denial of market access.

The CCI identified the relevant market as the *market for manufacture and sale of ETWs in India* (“**Relevant Market**”) and noted that the OPs are not dominant in the Relevant Market given that: (a) the market shares of the OPs are not stable; (b) there are several significant players and new entrants in the Relevant Market; and (c) the electric market is in the growth stage and the competition is expected to intensify. Accordingly, the CCI dismissed the case.

(Source: CCI Order dated January 23, 2024)

CCI dismisses case against PVR for abusing dominant position

The CCI received a complaint against PVR Limited (“**PVR**”)⁶ for violation of Section 4 of the Competition Act dealing with abuse of dominant position.

The complainant⁷ *inter alia* alleged that PVR has abused its dominant position in the film exhibition market by: (a) giving special treatment to films of large production houses by entering into special tie-ups with them thereby constraining the entry of films by independent filmmakers; (b) allocating all screens to large production houses which leaves no space for independent filmmakers thereby indulging in discrimination; (c) failing to disclose its commercial policy including film release parameters and relative placement of film by independent filmmakers *vis-à-vis* large production houses, thereby discriminating against the complainant. The complainant also alleged that PVR is a

¹ It is engaged in manufacture and sale of electric two-wheelers. It entered the electric mobility sector in 2017.

² It is engaged in manufacture and sale of electric two-wheelers. It is a unit of Hero Motocorp and was incorporated in 2022.

³ It is engaged in manufacture and sale of electric two-wheelers. It is an established player in the motorcycles and scooters market, launched its first electric scooter in January 2020.

⁴ It is engaged in manufacture and sale of electric two-wheelers. It entered the electric mobility sector in 2016.

⁵ The identity of the complainant is confidential.

⁶ It is engaged in exhibition of films in India through multiplexes as well as production, promotion and release of films.

⁷ Mr. Yogesh Pratap Singh, earlier held public office and subsequently, began practicing as a lawyer, along with being a novelist, script writer, lyricist and film maker.

vertically integrated player as it is engaged in film production, film distribution and film exhibition. By virtue of this, PVR is able to enjoy certain benefits which are not available to independent filmmakers.

The CCI *inter alia* noted that:

1. allocation of screens is done following criteria such as revenue generating potential of the movie, excitement/buzz around the film, marketing, advertising and promotions done, historical data etc. The commercial decisions of film exhibitors are largely governed by consumer demand and unless there is apparent harm to competition, intervention will lead to undesirable consequences such as taking away the exhibitor's autonomy to deal with movies the way they want in alignment with their business requirements and subject to provisions of the Competition Act.
2. in relation to vertical integration, the same is not prohibited under the Competition Act, and the complainant has not provided any evidence to substantiate the said allegation.
3. PVR exhibited films produced by independent directors alongside large production houses thereby not discriminating between the 2 (two).

Accordingly, the CCI dismissed the case.

(Source: CCI Order dated January 3, 2024)

Merger Control

CCI approves combination between Ind Swift Laboratories, Essix Bio Science and Synthimed Labs

The CCI approved the acquisition of: (a) certain identified businesses⁸ of Ind Swift Laboratories Limited ("**Ind Swift**")⁹ and Essix Biosciences Limited¹⁰ by Synthimed Labs Private Limited ("**Synthimed**")¹¹, belonging Bain Capital group and Piramal group; and (b) 8.42% shareholding of Synthimed by Ind Swift (collectively referred to as the '**Proposed Transaction**').

The CCI examined the horizontal overlaps between the activities of the parties¹² in the market for the manufacture and sale of Cinacalcet Hydrochloride active pharmaceutical ingredients ("**CH API**"). On the competition assessment, the CCI noted that: (a) an entity of Piramal group manufactures the CH API for captive consumption only; (b) market share of the target business is low; and (c) several significant players are present which will pose competitive constraints on the parties.

The CCI examined the potential vertical and complementary links between the activities of the parties¹³ in the upstream market for the manufacture and sale of active pharmaceutical ingredients ("**APIs**") and the downstream market for the manufacture and sale of finished dosage formulations ("**FDFs**"). Given that the target business does not manufacture and sell any API that Piramal group uses or can use in the manufacture and sale of any FDF, the CCI noted that the Proposed Transaction is not likely to raise foreclosure concerns.

The CCI approved the Proposed Transaction in 60 (sixty) calendar days.

(Source: CCI Order dated December 19, 2023)

⁸ Manufacturing plants in Punjab and Jammu and Kashmir that manufacture active pharmaceutical ingredients, facilities in Punjab that provide contract research and manufacturing services ("**CRAMS**") and manufacture intermediates ("**IMDs**").

⁹ It is a public listed company and primarily engaged in the manufacture and sale of APIs and IMDs, providing CRAMS, and supporting R&D.

¹⁰ It is engaged in the manufacture and sale of IMDs.

¹¹ It is a newly incorporated company for the Proposed Transaction.

¹² Bain Capital group (including its affiliates), Piramal group (including its affiliates), and Target Business.

¹³ Bain Capital group (including its affiliates), Piramal group (including its affiliates), and Target Business.

CCI approves acquisition of shareholding of Niva Bupa by India Business Excellence Fund IV

The CCI approved the acquisition of 2.85% shareholding of Niva Bupa Health Insurance Company Limited (“**Niva Bupa**”)¹⁴ by India Business Excellence Fund IV¹⁵, belonging to Motilal Oswal group (“**Proposed Transaction**”). The CCI noted that there are no horizontal overlaps between the activities of the parties.¹⁶

The CCI examined the vertical links between the activities of the parties¹⁷ in the upstream market for the provision of health insurance products in India, which may further be sub-segmented into travel insurance and other health insurance products in India, and the downstream market for distribution of insurance products (including the sub-segment of health insurance products) in India. 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 foreclosure concerns.

The CCI approved the Proposed Transaction in 53 (fifty-three) calendar days.

(Source: CCI Order dated December 12, 2023)

CCI approves acquisition of minority shareholding of Niva Bupa by Temasek

The CCI approved the acquisition of 2.63% shareholding of Niva Bupa Health Insurance Company Limited (“**Niva Bupa**”)¹⁸ by V-Sciences Investments Pte. Ltd. (“**V-Sciences**”), belonging to Temasek group¹⁹ (“**Proposed Transaction**”).

The CCI noted that there are no horizontal overlaps between the activities of parties²⁰.

The CCI examined the: (a) vertical link between the parties²¹ in the upstream market for provision of health insurance products and the downstream market for distribution of insurance products, in India; and (b) complementary link between the activities of parties²² in the market for provision of healthcare services, and the market for provision of health insurance products, in India. 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 foreclosure concerns.

Accordingly, the CCI approved the Proposed Transaction in 51 (fifty-one) calendar days.

(Source: CCI order dated December 12, 2023)

CCI approves acquisition of additional shareholding in Vodafone by Atlas

The CCI approved the acquisition of additional shareholding in Vodafone Group Plc. (“**Vodafone**”)²³ by Atlas 2022 Holdings Limited (“**Atlas**”)²⁴, belonging to Emirates Telecommunications group²⁵ (“**Proposed Transaction**”). Post the Proposed Transaction, Atlas will hold less than 25% and the right to appoint 2 (two) non-executive members on the board of directors of Vodafone.

¹⁴ It is a standalone health insurance company and registered under the laws of India. It is a joint venture between Fettle Tone LLP and Bupa Singapore Holdings Pte. Limited.

¹⁵ It is a trust set up under the Indian Trusts Act, 1882, and is registered with the Securities and Exchange Board of India as a Category II Alternative Investment Fund.

¹⁶ Motilal Oswal group and its affiliates and Niva Bupa and its affiliates.

¹⁷ Motilal Oswal group and its affiliates and Niva Bupa and its affiliates.

¹⁸ It is engaged in the business of providing insurance services in India.

¹⁹ V- Sciences is a wholly owned subsidiary of Temasek and does not have any business operations other than holding investments. Temasek is an investment company based in Singapore, who has investments in several sectors such as transportation and industrials, financial services, healthcare, life sciences and agri-food etc.

²⁰ Through Temasek group (including its affiliates) and Niva Bupa (including its affiliates).

²¹ Through Temasek group (including its affiliates) and Niva Bupa (including its affiliates).

²² Through Temasek group (including its affiliates) and Niva Bupa (including its affiliates).

²³ It is a British telecommunications operator, listed on the London Stock Exchange and the Nasdaq. In India, Vodafone is active in the telecommunications sector through Vodafone Idea Limited (VI India) and its step-down subsidiaries.

²⁴ It is a wholly owned subsidiary of Emirates Telecommunications Group Company PJSC and is a holding company. It does not undertake any business operations.

²⁵ Emirates Telecommunications Group Company PJSC is a telecommunications operator headquartered and based in Abu Dhabi, United Arab Emirates. It does not undertake any business operations in India. It is controlled by the UAE Federal Government.

The CCI noted that there are no horizontal overlaps and vertical links between the activities of parties²⁶.

The CCI examined the complementary link between the activities of parties²⁷ in the following markets:

- a) market for retail mobile telecommunications services in Afghanistan, Egypt, United Arab Emirates (“**UAE**”), Morocco and Kingdom of Saudi Arabia (“**Relevant Countries**”) and the market for wholesale international roaming services in India;
- b) market for retail fixed and mobile telecommunications services in the Relevant Countries and the market for wholesale fixed call termination services and mobile interconnection services in India;
- c) market for retail mobile telecommunications services in India and market for wholesale international roaming services in the Relevant Countries; and
- d) market for retail fixed and mobile telecommunications services in India and the market for wholesale fixed call termination services and mobile interconnection services in the Relevant Countries.

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 foreclosure concerns.

The CCI approved the Proposed Transaction in 56 (fifty-six) calendar days.

(Source: CCI Order dated November 29, 2023)

CCI approves acquisition of shareholding of Manipal Hospitals by Government of Abu Dhabi under Green Channel

The CCI approved the acquisition of equity shareholding of Manipal Health Enterprises Private Limited (“**Manipal Hospitals**”)²⁸ by Seventy Second Investment Company LLC, wholly owned by an investment vehicle of the Government of Abu Dhabi (“**Proposed Transaction**”). The parties notified the Proposed Transaction under green channel as there were no horizontal, vertical, or complementary overlaps between the activities of the parties in India.

JSA represented Manipal Hospitals before the CCI.

(Source: Summary)

CCI approves acquisition of shareholding of Data Infrastructure Trust and BIF IV Jarvis IM Holdco by GIC group under Green Channel

The CCI approved the acquisition of: (a) additional unitholding of Data Infrastructure Trust (“**DIT**”)²⁹ and rights in BIP India Infra Projects Management Services Private Limited³⁰; and (b) shareholding, along with certain rights in BIF IV Jarvis IM Holdco Pte. Ltd.³¹, by Valkyrie Investments Pte. Ltd. and Anahera Investment Pte. Ltd., both belonging to GIC group (“**Proposed Transaction**”). The parties notified the Proposed Transaction under green channel as there were no horizontal, vertical, or complementary overlaps between the activities of the parties in India.

(Source: Summary)

²⁶ Through Emirates Telecommunications group (including its affiliates) and Vodafone (including its affiliates).

²⁷ Through Emirates Telecommunications group (including its affiliates) and Vodafone (including its affiliates).

²⁸ It operates a network of hospitals providing multi-specialty care. It has a presence through 27 (twenty-seven) hospitals in 14 (fourteen) cities in India.

²⁹ It is an infrastructure investment trust registered under the Securities and Exchange Board of India and is engaged in the business of providing passive telecom infrastructure services in India.

³⁰ It has been appointed as the investment manager for DIT. It will primarily manage the operations and investments of DIT.

³¹ It has been incorporated solely for the purpose of simplifying the governance structure of DIT.

Miscellaneous

CCI amends Competition Commission of India (General) Regulations, 2009 to introduce filing fee for Interlocutory Applications

On January 12, 2024, the CCI, by way of a notification has brought into force the CCI (General) Amendment Regulations, 2024 ("**Amended General Regulations**") which amends the CCI (General) Regulations, 2009.

The Amended General Regulations *inter alia* provide as follows:

1. a party can file an interlocutory application ("**IA**") before the CCI in a case under section 19 of the Competition Act, except those filed in compliance of any order or direction of the CCI. These IAs include request for: (a) additional time; (b) cross-examination; (c) change of hearing date and creation of confidentiality ring, etc.
2. An IA will be scrutinised by the CCI within 7 (seven) days from receipt and any filing defects will be communicated to a party which are to be cured within 5 (five) days failing which, an IA will be treated as invalid.
3. The fee for filing an IA is as follows:
 - a) INR 500 (Indian Rupees five hundred) in case of individual or hindu undivided family; or
 - b) INR 1,000 (Indian Rupees one thousand) in case of Non-Government Organisation, Consumer Association, Co-operative Society, or Trust; or
 - c) INR 1,000 (Indian Rupees one thousand) in case of firm (including proprietorship, partnership or limited liability partnership) or company (including one person company) having turnover in the preceding year up to INR 2,00,00,000 (Indian Rupees two crore), or
 - d) INR 5,000 (Indian Rupees five thousand) in all other cases.

The said amendment does not apply to any application or request filed in the context of merger control or filed before the Director General during an investigation.

(Source: Notification dated January 12, 2024)

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.

This Newsletter has been prepared by:



Vaibhav Choukse

Partner & Head of Practice
(Competition Law)



Ela Bali

Partner










Nripi Jolly

Senior Associate



Faiz Siddiqui

Associate

		
<p>18 Practices and 25 Ranked Lawyers</p>	<p>13 Practices and 38 Ranked Lawyers</p>	<p>Recognised in World's 100 best competition practices of 2024</p>
		
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<p>Innovative Technologies Law Firm of the Year 2023 ----- 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 ----- Employer of Choice 2021</p>	<p>7 Practices and 2 Ranked Lawyers</p>	<p>Ranked #1 The Vahura Best Law Firms to Work Report, 2022 ----- Top 10 Best Law Firms for Women in 2022</p>

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