

# Competition & Antitrust



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This newsletter is authored by the Competition & Antitrust team at Lakshmikumaran & Sridharan. It includes original articles and research pieces on competition law. It also reviews recent case laws and details regulatory as well as news updates on the subject.



# ARTICLE



## Leniency, dawn raid & penalty

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### A case of cartelization in the beer market

The Competition Commission of India (“**CCI**”) in September 2021, imposed a record penalty of INR 870 crore on three major beer companies in India i.e. ,United Breweries, Carlsberg and Anheuser Busch InBev for cartelizing. The investigation was initiated upon receipt of a whistle-blower complaint filed by Anheuser Busch InBev after it acquired the operations of SABMiller India. After the long drawn investigation, which included a surprise search and seizure operation on the premises of the beer companies, it was found that the companies have been operating a cartel since 2009.

In this article, **Neelambara Sandeepan** (Joint Partner) and **Barkha Dwivedi** (Associate) discuss the assessment made by the CCI in holding the beer companies in violation of Competition Act, 2002 and deciding the penalty for the same.

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# ***RATIO DECIDENDI***

## **1. CCI passes a cease-and-desist order in a case of bid rigging in tenders floated by Indian Railways**

### **KEY POINTS**

At the stage of forming a *prima facie* opinion to investigate a conduct, based on limited material, CCI cannot predicate the extent of anti-competitive conduct, the duration thereof and the parties involved. It is rather presumptuous to delineate any perimeter for the purposes of investigation in cartel matters beforehand.

The proceedings before CCI are inquisitorial in nature and the remedies issued are *in rem*. As such, the investigating arm of the CCI i.e., the office of the DG need not be restricted to or by the specific facts or the named parties or time period stated in the information / reference or the *prima facie* directions of the CCI.

### **BRIEF FACTS**

A reference was filed by Mr. Rizwanul Haq Khan, Deputy Chief Material Manager, Southern Railway ("**Informant**") against Mersen (India) Private Limited ("**MPL**") and Assam Carbon Products Limited ("**ACPL**"), collectively ("**OPs**") alleging cartelisation in the tenders for carbon brushes.

It was alleged that Southern Railway procures carbon brushes for Hitachi Traction Motor Type from the OPs, who are the only two Research Designs and Standards Organisation approved vendors of the product concerned. Thus, the Informant can procure the product only from the OPs. It was further alleged that jointly the OPs had been consistently hiking the price of carbon brushes for the past 5 years.

The CCI found a *prima facie* case and ordered an investigation.

### **OBSERVATIONS OF THE CCI**

**Whether the DG is empowered to conduct investigation beyond the period mentioned in the *prima facie* order?**

The CCI noted that it had not limited the period of investigation for the DG. It is not possible nor feasible to order investigation into a specific time frame with

any exactitude as at the stage of forming *prima facie* administrative opinion based on limited material, CCI cannot predicate the extent of anti-competitive conduct, the duration thereof and the parties involved. It is rather presumptuous to delineate any perimeter for the purposes of investigation in cartel matters beforehand. The proceedings before CCI are inquisitorial in nature and the remedies issued are *in rem*. In this statutory scheme and considering the judgements of constitutional courts, it is axiomatic that the DG need not be restricted to or hidebound by the specific facts or specific parties or time period stated in the information / reference or the *prima facie* directions of the CCI.

After disposing this preliminary issue, CCI noted that the allegations pertain to bid rigging in tenders floated by Indian Railways for procurement of carbon brushes. However, DG could not find evidence of cartelisation for the period till 2014 which was complained of in the reference filed. Instead, DG found evidence for the period beyond 2014.

### **Whether there was an agreement between the OPs in violation of the Act?**

CCI noted that the definition of agreement is wide so as to include even situations where parties act on the basis of a nod or wink.

The CCI examined evidence collected by the DG in the form of WhatsApp messages and e-mail exchanges. CCI noted that the communication between Managing Director of MPL and Chairman of ACPL showed a clear exchange of thought and meeting of minds regarding the prices to be quoted in the tenders which showed manipulation of process of bidding and eliminating process of competitive pricing.

CCI also referred to various e-mails exchanged between the OPs and their employees inter-se. The e-mails showed that the OPs discussed prospective bid prices in order to share the tenders between them by either split provisions or rotation of bids. Further, the OPs and their officials had admitted that they were communicating with each other regarding prices of carbon brushes, to be quoted in the tenders.



## **CONCLUSION**

The CCI observed that the OPs through their concerted conduct increased the prices of carbon brushes. Further, where only two vendors are available, if they collude and quote inflated prices, Railways will have no option but to procure

from them. The OPs manipulated tenders in a manner which allowed increase in prices as well as distribution of tender between them. Thus, CCI held that the OPs and their officials violated Section 3(3)(d) of the Act and issued a cease and desist order. However, the CCI refrained from imposing a penalty in light of the fact that the OPs were MSMEs operating under losses, exacerbated by COVID-19. Further, they had also cooperated with the CCI via leniency applications. (*Mr. Rizwanul Haq Khan, Dy. Chief Material Manager Office of the Controller of Stores Southern Railway vs Mersen (India) Private Limited and Anr.*, Case No. 02 of 2016, Order dated 01.11.2021)

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## 2. CCI orders cartel members to cease and desist from rigging the tenders for axle bearings by Railways

### KEY POINTS

Exchange of commercial information by competitors amongst themselves is clearly beyond the legitimate domain of interactions amongst bidders who are otherwise competing with each other to secure tenders.

Once the priority status granted under the Lesser Penalty (“**LP**”) regulations is forfeited, it becomes null and void. If a party whose priority status is forfeited is still desirous of availing the benefit of the lesser penalty regulations, it is required to submit a new application. Even then, its priority status would not be restored. It would only get a place in the queue which is available at the time of a new application.

### BRIEF FACTS

A reference was filed by Eastern Railways (“**Informant**”) against M/s Chandra Brothers (“**OP-1**”), M/s Chandra Udyog (“**OP-2**”), M/s Sriguru Melters & Engineers (“**OP-3**”), M/s Rama Engineering Works (“**OP-4**”) and M/s Krishna Engineering Works (“**OP-5**”), collectively (“**OPs**”) alleging cartelisation in the tenders for axle bearings. The Informant alleged that during a vigilance investigation, it found that some of the OPs had quoted identical prices in its tenders.

The CCI after analysing the bids, observed that prices quoted by OPs in all tenders were same and even after negotiation, the prices were same. Thus, CCI formed a *prima facie* opinion of cartelisation and directed the DG to cause an investigation

### OBSERVATIONS OF THE CCI

#### Whether the OPs had indulged in bid rigging of tenders?

The CCI perused the communicative evidence contained in e-mails, statements of representatives of OPs etc. to conclude that there was overwhelming evidence to show that there was an agreement/arrangement amongst the suppliers of axle bearings to share quantities offered in Railway tenders issued by different Railway zones. Various representatives of the OPs admitted that there existed a cartel of axle bearing suppliers to the Railways, which was sharing axle bearing

quantities in Railway tenders. They also admitted that the price bids for the tenders were discussed and decided through telephonic calls and informed individually through SMS/telephonic calls.

The CCI noted that the emails relied upon by the DG were direct evidence of involvement of OPs and their respective officials in the cartel. The emails show that the OPs discussed quantity allocation with respect to the tenders of the Indian Railways for axle bearings amongst themselves and rigged the bids in accordance with their agreement. They also discussed the compensation mechanism if some of them did not win the allocated quantities, as agreed amongst them, from previous or earlier tenders. Such emails, along with the other evidence of call data records and the statements given by the officials of OPs were found sufficient to hold them liable for bid-rigging.

### **Whether a non-cooperating leniency applicant expect to benefit from the leniency regime?**

The CCI observed that OP-3 had been granted a priority status which was forfeited for not submitting the requisite information in terms of the LP regulations. As such, once the priority status granted under the LP regulations is forfeited, it becomes null and void. If a party whose priority status is forfeited is still desirous of availing the benefit of LP regulations, it is required to submit a new application. Even then, its priority status would not be restored. It would only get a place in the queue which is available at the time of a new application. In any case, according to the provisions of the Act, such an application cannot be made once the investigation report is submitted by the DG. Further, the plea of bona fide omission cannot be accepted when a clear position is already laid down in the Act and regulations. Such contentions, if accepted, would have wide-ranging ramifications and would make the provisions of the Act as well as LP regulations meaningless. Thus, it was held that OP-3 cannot be granted benefit under the Act read with the provisions of LP regulations. However, the admission of cartel and cooperation extended by OP-3 during investigation can be considered as mitigating factors while imposing penalty.



## **CONCLUSION**

The CCI held that the OPs and their respective officials indulged in cartelisation in the supply of axle bearings to the Informant by means of directly or indirectly determining prices, allocating tenders, coordinating bid prices and manipulating the bidding process in contravention of the provisions of Section 3(3)(d) r/w Section 3(1) of the Act. Hence, the CCI directed the OPs to cease and desist from indulging in such practices in future. However, the CCI refrained from imposing a penalty in light of the fact that the OPs were



MSMEs with small turnovers, which were already reeling under loss due to COVID-19. Further, they had admitted their conduct and cooperated with the CCI. Thus, the CCI noted that the objectives of the Act would be met if the parties ceased the cartel behaviour. (*Eastern Railway, Kolkata vs M/s Chandra Brothers and Ors.*, Reference Case No. 02 of 2018, Order dated 12.10.2021)

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### 3. CCI penalized collusive bidding in GAIL tenders

#### KEY POINTS

Assessment of fulfillment of pre-conditions of tender is the prerogative of tendering authority.

The Act envisages civil liability, therefore the standard of proof of an agreement would be preponderance of probabilities and not beyond reasonable doubt.

It is egregious for competitors to use the same office premises and systems to submit competing bids.

#### BRIEF FACTS

An information was filed by GAIL (India) Limited ("**GAIL**") against PMP Infratech Pvt. Ltd. ("**PMP**") and Rati Engineering ("**Rati**"), collectively ("**OPs**"), alleging collusive bidding in the tenders for contract hiring of services and restoration of well site locations in a GAIL operated block.

GAIL has alleged that in the first tender ("**T1**"), Rati participated without satisfying the pre-condition of the tender. Further, in the second tender ("**T2**"), the IP address used by PMP (lowest bidder) and Rati (second lowest bidder) was same. Additionally, the bids submitted by PMP and Rati have always been submitted with a one day gap.

The CCI found a *prima facie* case of bid rigging and directed an investigation by the DG.

#### OBSERVATIONS OF THE CCI

The CCI noted at the outset that the issue pertains to the alleged bid rigging by OPs in respect of T2 as the DG in its investigation had refrained from drawing any conclusion for T1 stating that assessment of fulfillment of pre-conditions of tender is the prerogative of tendering authority. As such participation in a tender by an enterprise which does not fulfill the criteria in itself is not anti-competitive.

#### What constitutes an agreement under the Act?

The CCI referred to the definition of agreement from the Act and stated that

the definition requires an arrangement or understanding or action in concert, whether or not formal or in writing or intended to be enforceable by legal proceedings. Thus, the definition being inclusive and not exhaustive is a wide one. An understanding may be tacit and covers situations where parties act on the basis of a nod or a wink.

### **What is the standard of proof of agreement under the Act?**

CCI noted that the Act envisages civil liability, therefore the standard of proof of an agreement would be preponderance of probabilities and not beyond reasonable doubt. There is rarely any direct evidence and CCI has to determine whether those involved in the alleged anti-competitive agreement had some form of understanding.

### **Whether the OPs had indulged in bid rigging in the tenders floated by GAIL?**

CCI noted that the e-mail dumps analyzed by the DG revealed that OPs were in regular touch with each other during the period when T2 was issued. GAIL forwarded the information regarding the tender to its prospective bidders. PMP forwarded this email to an employee of Rati. Both PMP and Rati participated in T2 and submitted their bids with a one-day gap from the same IP address and same office premises (of PMP).

It was further noted that during the assessment of the bids, some queries were raised to Rati pertaining to technical and commercial aspects. CCI emphasized that an employee of PMP admitted on oath that queries raised by GAIL to Rati were sent to PMP for appropriate response on behalf of Rati. Employee of Rati submitted confidential information related to bid submitted by Rati to PMP and employee of PMP prepared a suitable reply for Rati to be submitted to GAIL.

The CCI further referred to the reply of director of PMP to state that the bids were submitted from the office of PMP. However, the director stated technical glitch at Rati's office as the reason for submitting bid at PMP's office. The CCI observed that the plea was unsubstantiated and moreover, it was egregious for competitors to use the same office premises and systems to submit competing bids.



## **CONCLUSION**

**On the basis of the facts mentioned above, CCI noted that OPs indulged in collusive bid rigging of T2. CCI also held the director of PMP and partner of**

Rati liable under Section 48(1) of the Act, as they were managing and controlling PMP and Rati respectively. Thus, in terms of Section 27(a) of the Act, CCI ordered OPs and their officials to cease and desist in future from indulging in such activities. The CCI imposed nominal penalties on the OPs and their officials in light of mitigating factors such as Rati no longer being in business and PMP being in financial distress. (*GAIL (India) Limited vs PMP Infratech Private Ltd. and Anr.*, Case No. 41 of 2019; Order dated 11.10.2021)

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## 4. CCI directs investigation into vertical restraint by digital cinema equipment suppliers

### KEY POINTS

The tying of services of one entity to services of another entity may cause AAEC by driving out competitors who offer the tied product.

Restrictive clauses by a player with market power create captive consumers who may not be able to benefit from better terms offered by other players.

### BRIEF FACTS

An information was filed by PF Digital Media Services Ltd. ("**PF/Informant 1**") and Mr. Ravinder Walia ("**Informant 2**"), collectively ("**Informants**") against UFO Moviez India Ltd. ("**UFO**"), Scrabble Digital Ltd. ("**Scrabble**") and Qube Cinema Technologies Pvt. Ltd. ("**Qube**"), collectively ("**OPs**").

PF is engaged in the business of post-production processing ("**PPP**") of cinematograph films. It converts cinematograph films from their traditional formats to digital formats. Informant 2 is client of PF.

UFO supplies Digital Cinema equipment ("**DCE**") to Cinema Theatre Owners ("**CTOs**"). Scrabble is a wholly owned subsidiary of UFO and is engaged in PPP like PF. Qube is also a supplier of DCE like UFO.

The Informants have alleged that UFO has abused its dominance in the relevant market for "cinema theatre screen playing digital format of cinematograph films". UFO restricts the CTOs from using the DCE supplied by UFO, to accept or play any movie whose PPP is not carried out by Scrabble. This is also ensured through acceptance in the DCE, of Key Delivery Message ("**KDM**") generated only by Scrabble. Hence, KDM generated by PF will not be accepted by CTOs to whom DCE is supplied by UFO. Further, allegations with respect to existence of vertical agreements violating the Act, between UFO and CTOs are also made, along with horizontal agreement between UFO and Scrabble.

### OBSERVATIONS OF THE CCI

CCI noted that the allegations pertain to imposition of technological restrictions in the DCE supplied on lease by UFO to CTOs, by way of agreements.

## **Whether there is an abuse of dominance by UFO and Scrabble in the relevant market?**

To assess the allegations of abuse of dominance, CCI delineated the relevant market. Since the allegations are also with respect to use of dominant position to protect other relevant market, CCI delineated two relevant markets.

CCI noted that there are two business models for supply of DCE by Digital Cinema Service Providers ("**DCSPs**") like UFO and Qube, viz. sale model and lease model. In lease model, the control of DCE remains with the DCSPs. Hence the first relevant market would be - market for provision of services of supply of DCE by a DCSP on lease/rent to CTOs in India ("**First Relevant Market**"). The second relevant market would be market for provision of PPP services in India ("**Second Relevant Market**").

CCI noted that UFO and Scrabble are enterprises as per the Act as they undertake economic activities. Further, it noted that Scrabble is a wholly owned subsidiary of UFO, thus the part of same group, UFO group.

Based on data supplied by the Informants and the OPs, UFO and Qube both appear to be significant market players in the First Relevant Market. Hence UFO cannot be said to be dominant. As such, ascertaining dominance of Scrabble is not relevant as it only benefits from the anti-competitive practices of UFO. It also noted that since UFO is not *prima facie* dominant in the First Relevant Market, it is irrelevant to assess the dominance of Scrabble.

## **Whether there is an existence of anti-competitive vertical agreements?**

The CCI further noted that CTOs seek the services of DCE suppliers such as UFO and Qube for exhibiting cinematographic films. Thus, CTOs are in a vertical relationship with the DCE suppliers.

UFO has introduced clauses in the equipment lease agreement such that PPP services have to be mandatorily availed from its subsidiary Scrabble. For producers/exhibitors/CTOs, it *prima facie* becomes a tie-in-relationship viz. to avail PPP (tied product) for getting DCE (tying product), in violation of the Act. CCI also noted that *prima facie*, there is a violation of the Act, as there exists an exclusive supply agreement in the facts and circumstances of the case between exhibitors and UFO. In the present case, the purchaser of services is restricted by UFO from approaching a competitor of Scrabble.

The CCI also found a *prima facie* existence of a refusal to deal in violation of the Act. The CCI observed that a competitor's KDM does not run on DCE that has been taken on lease by a CTO from UFO which controls a large number of screens and locations in the market. Further, by virtue of restrictive clauses in

the equipment lease agreement, there seems to be an effective refusal to deal on the part of exhibitors/producers with service providers of PPP other than that of Scrabble.

### **Whether there is an AAEC?**

CCI observed that the tie-in arrangement has the potential to cause AAEC, as existing competitors of Scrabble like PF, are driven out of the market for PPP in India. Further, entry of new players is hindered as screens and locations are in control of UFO. This *prima facie* also appears to thwart development of technology and innovation in PPP market in India in the absence of effective competition. Even if newer technologies were to be developed in PPP, there cannot be any promotion of innovation unless the same is compatible with DCE (controlled by UFO). Given that the producers/exhibitors necessarily require the services of PPP as well of DCE, the restrictive clauses imposed by a player with market power in the DCE lease market may have the effect of making such exhibitors/producers captive customers of Scrabble for PPP even if competitors like PF are ready to offer such services at cheaper rates. For availing services of DCE of UFO, exhibitors/producers/CTOs have no choice but to also buy PPP services offered by UFO's subsidiary, Scrabble.

CCI noted the fact that UFO appears to have market power with a market share of around 30-40 % in the market for the supply of DCE on lease/rent to CTOs, through which it controls the PPP services in India for the benefit of its subsidiary, Scrabble. The conduct of UFO is likely to cause AAEC by creating barriers for players like PF. Further, the viewers, as well as the CTOs and producers of cinematographic films are precluded from services offered by other players and any innovation that can accrue in such services.

With respect to Qube, CCI noted it is a significant player in the First Relevant Market. The practice of supplying DCE along with film content and putting fetters on CTOs/distributors/producers on procurement of such content from another entity appears to be in the nature of restrictive tie-in arrangement. This is likely to result in an exclusive supply agreement and refusal to deal with other content providers, which has or is likely to violate the Act.

CCI further noted that *prima facie* this conduct has the potential to cause AAEC by thwarting the development of technology and innovation in PPP services market in India and also create entry barriers for new players and even stifle the business of the existing players offering such services.

### **Whether there existed an anti-competitive horizontal agreement?**

The CCI noted that UFO and Scrabble are not in a horizontal relationship and are

not competing with each other and moreover form part of the UFO group. Thus, there is no horizontal relationship between the two.



## CONCLUSION

In light of the above, the CCI directed the DG to cause an investigation under Section 26(1) of the Act. (*PF Digital Media Services Ltd. and Anr. vs UFO Moviez India Ltd. and Ors.*, Case No. 11 of 2020, Order dated 17.09.2021).

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## 5. CCI dismisses allegations of abuse of dominance against the Indian Railways

### BRIEF FACTS

An information was filed by two individuals, collectively ("**Informants**") against the Indian Railways ("**Indian Railways**") alleging abuse of dominance.

The Informants alleged that Indian Railways, in a press release during the pandemic mentioned that special trains shall operate in the country. However, these trains were the same trains running on identical routes under different names, albeit with lower charges. Further, Indian Railways hiked the fares for short-distance trains under the garb of proactive measures against Covid-19 pandemic.

The Informants stated that Indian Railways has 100% market share, thus dominant in the relevant market, without defining the relevant market. It was also alleged that Indian Railways charged discriminatory prices. Further, it also charged excessive prices and limited and restricted the operations of trains. The Informants highlighted the fact that despite higher prices, the quality of services being offered was poor. The Informants also alleged that Indian Railways has used its dominance to protect other relevant market as IRCTC is the only website for booking railway tickets which is being used to promote apps related to catering, tourism etc.

### OBSERVATIONS OF THE CCI

The CCI noted that the allegations pertain to charging of higher ticket fares by Indian Railways under the garb of Covid-19 pandemic, which allegedly amounts to abuse of dominance.

#### **Whether the Indian Railways is dominant in the relevant market?**

The CCI relied on its earlier orders where it had held Indian Railways to be dominant in the market of transportation of passengers through railways across India, including ancillary segments like ticketing, catering on board, platform facilities, etc. CCI observed that relevant market and dominance remain unchanged in the present case.

#### **Whether Indian Railways has abused its dominant position?**

CCI observed that Indian Railways had increased the fares to discourage people from undertaking unnecessary travel during the pandemic which was based on

its policy decisions based on the decisions of central and state governments. It was also noted that although allegations of excessive and discriminatory pricing and use of dominant position in one relevant market to enter or protect other relevant market have been made, these are not supplemented with evidence.

Further, the Indian Railways in its press release dated 24.02.2021 had stated that the slightly higher fares for passenger and other short distance trains had been introduced to discourage people from avoidable travels and those which are not most necessary. The CCI stated that based on the reasons provided by Indian Railways and information in the public domain, there is no merit in the allegations of the Informants.



## CONCLUSION

Accordingly, the CCI did not find a *prima facie* case for investigation and closed the information under Section 26(2) of the Act. (*Harshit Vijayvergia and Anr. vs Indian Railways*, Case No. 04 of 2021; Order dated 06.10.2021)

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## 6. CCI dismisses allegations of collusive restriction on provision of services against Tamil Nadu Theatre and Multiplex Owners Association

### BRIEF FACTS

An information was filed against Tamil Nadu Theatre and Multiplex Owners Association ("**Theatre Association**") alleging existence of anti-competitive agreement.

The informant alleged that theatre owners in Tamil Nadu followed a strict policy which did not allow a movie to premiere on Over-The-Top Platforms ("**OTT**") for a period of 30 days of its theatrical release for small and medium budget films and for a period of 50 days for big budget movies. It was alleged that the Theatre Association demanded a written undertaking to this effect prior to screen movies in theatres. This restriction inhibits evolution of OTT as an alternate medium of movie distribution. In addition to restricting the provision of services, the Theatre Association has also limited the incentive of OTT to invest in technical development.

The informant further alleged that this restriction forecloses the simultaneous distribution of new Tamil movies to OTT. Moreover, the choice to producers as a consumer of exhibition services of OTT is lost.

### OBSERVATIONS OF THE CCI

#### **Whether the Theatre Association entered into an anti-competitive agreement?**

The CCI referred to the reply of the Theatre Association to note that the informant failed to adduce any evidence to show the existence of an agreement between the theatre owners. The allegations made are vague without specific reference to any theatre and the reason for its inability to release movies.

CCI also noted from the Theatre Association's reply that it is absurd to suggest that exhibitors deny releasing films on their screens when they are desperate to make ends meet during the pandemic. Further, expression of displeasure by a few theatre owners in their personal capacities cannot be a ground to impute anti-competitive behavior to the Theatre Association.

The CCI also referred to the reply filed by the Tamil Film Producers Council ("**TFPC**") that decision regarding medium of release is the discretion of producers, and they enter into individual agreements with distributors and

financiers which delineate their respective rights and liabilities.



## CONCLUSION

The CCI noted that the informant failed to adduce any evidence to support its allegations and has not even filed a rejoinder to the denials made by Theatre Association and TFPC. Thus, the informant could not show the *prima facie* existence of an anti-competitive agreement. Accordingly, the information was closed as per Section 26(2) of the Act. (*C. Prabhu Daniel vs M/s Tamil Nadu Theatre and Multiplex Owners Association*, Case No. 07 of 2021; Order dated 21.10.2021)

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## 7. CCI dismisses allegations of cartelization in the tender of installation of Reverse Osmosis plants

### BRIEF FACTS

An information was filed by Together We Fight Society ("**Society**") against SR Paryavaran Engineers Pvt. Ltd. ("**SR**"), Doshion Veolia Water Solution Pvt. Ltd. ("**Doshion**"), Water Life India Pvt. Ltd. ("**Water Life**"), LVJ Projects Pvt. Ltd. ("**LVJ**"), Hi-Tech Water Solutions Pvt. Ltd. ("**Hi-tech**") and GA Infra Pvt. Ltd. ("**GA**"), collectively ("**OPs**") alleging cartelization in the tenders for the provision, installation and commissioning of Reverse Osmosis ("**RO**") plants in certain districts in the State of Rajasthan.

The Society stated that the chief engineer of Rural, Public Health Engineering Department, Jaipur ("**Tenderer**") invited 2 tenders for installation and commissioning of RO plants. It was further stated that the second tender was issued on similar terms and conditions as the first tender. However, the rates received for the second tender were high. After considering the impact of appreciation in US dollars for imported parts etc., the Standing Negotiation Committee ("**SNC**") received the rates. The SNC noted that the lowest rates offered were much higher compared to the previous tender. Further, even Doshion and Water Life who won the first tender, had also quoted higher rates. Doshion and Water Life clarified that the first tender was a pilot work based on the Punjab model, and thus no realistic assessments could be made at that time, leading to lower quoted prices. Thus, the rates quoted for the first tender should not be made the basis of rates for the second tender.

Finally, after negotiations, the work orders were issued to the OPs.

The Society relied on the Comptroller and Auditor General of India ("**CAG's**") report which stated that the rates quoted in the second tender were higher by around INR 5,14,000-5,87,000. Further, the rates quoted by OPs and reasons thereof were similar, indicating cartelization.

Thus, the Society alleged collusion amongst the OPs in directly or indirectly determining the bid price for the second tender and sought imposition of penalty on the OPs.

### OBSERVATIONS OF THE CCI

#### Whether there is an existence of a cartel?

The CCI noted that the information pertains to alleged cartelization in the

second tender. However, the Society has failed to *prima facie* disclose the existence of any concerted action on the part of the OPs in submitting bids for the second tender.



## CONCLUSION

CCI noted that there exists no *prima facie* case and accordingly closed the information under Section 26(2) of the Act. (*Together we Fight Society vs SR Parayavaran Engineers Pvt Ltd. and Ors.*, Case No. 20 of 2021; Order dated 16.09.2021)

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## 8. CCI dismisses allegations of abuse of dominance and anti-competitive agreements due to absence of evidence

### KEY POINTS

Remedy of a purely consumer/contractual issue, not revealing a competition issue is not covered by the Act.

### BRIEF FACTS

An information was filed by Mr. Kuldeep Dahiya ("**Informant**") against Nishad N.P. ("**Nishad/OP 1**"), Abdul Nazer N.P. ("**Abdul/OP 2**"), Nashid N.P. ("**Nashid/OP 3**"), Noushad Ali Akbarkhan N.P. ("**Noushad/OP 4**"), Way One Resorts LLP ("**Way One/OP 5**"), Nucleus Premium Properties Pvt. Ltd. ("**Nucleus/OP 6**"), Nucleus Hotels and Resorts LLP ("**Nucleus Hotels/OP 7**"), collectively ("**OPs**").

The Informant entered into an investment agreement with the OPs and paid INR 15,00,000. It was stated that Nucleus is a builder with OP 1- OP 4 as its directors. Nucleus formed Way One with OP 1- OP 4 as designated partners. To operate Way One, Nucleus Hotels was formed, with OP 1- OP 4 as designated partners. The Informant stated that in this manner, Way One, Nucleus and Nucleus Hotels form a single entity run by OP 1-OP 4.

The Informant stated that shares of Way One were floated and general public was also invited to subscribe to them. Further, Nucleus Hotels in a presentation promised certain returns and benefits of subscribing to the shares. The Informant based on this presentation executed an investment agreement. Way One executed a lease agreement with Nucleus Hotels to run and manage Way One. However, the OPs delayed the project on one pretext or the other. Thereafter, the Informant sought surrender of his share and refund of money. Multiple legal notices were also sent to the OPs but to no avail. Thus, on examining the investment agreement, the Informant found several anti-competitive clauses and alleged that the OPs had abused their dominance.

### OBSERVATIONS OF THE CCI

The CCI stated that the Informant did not show how the clauses of the investment agreement and lease agreement were anti-competitive or abuse of dominance. It was further stated that the issues appear to be purely individual consumer/contractual in nature, remedies for which lie elsewhere.



## CONCLUSION

The CCI found no contravention of the Act and closed the information under Section 26(2) of the Act. (*Mr. Kuldeep Dahiya vs Nishad N.P. and Ors.*, Case No. 23 of 2021; Order dated 13.09.2021)

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## 9. CCI dismisses allegations of abuse of dominance and existence of anti-competitive agreement

### BRIEF FACTS

An information was filed by Mr. Anand Moudgil ("**Informant**") against Orbit Aviation Private Limited ("**Orbit**"). The Informant was in the business of running buses between the IGI Airport, Delhi and certain cities of Punjab. However, he received threats from his competitor M/s Indo-Canadian Transport Company ("**ICTC**"), which is a sister concern of Orbit.

The Informant stated that Orbit made a complaint before State Transport Commissioner, Punjab ("**STC**") and Delhi Airport Parking Services, that Informant obtained the permits on false premises. Thereafter, STC temporarily suspended Informant's permits. Thereafter the Informant filed Writ Petition ("**WP**") in the Hon'ble High Court of Punjab and Haryana ("**HC**") to set aside the suspension. ICTC also filed a WP in HC to set aside permits issued by STC to Informant. On an order to the STC by HC to decide the claims expeditiously, finally, STC cancelled the permits of the Informant, in response to which the Informant obtained a stay from the HC.

However, even after getting a stay, the Informant continued to receive threats from ICTC. Thereafter, the Informant sold its buses to Orbit by entering into an agreement which contained a Non-Compete Clause ("**NCC**") requiring the Informant not to undertake similar business as that of Orbit on the route between any town/city of Punjab and Delhi airport. Thereafter, Informant bought new buses and received permits for all India tourist vehicles. Before it could commence operations on the Punjab-Delhi IGI Airport route, Orbit sought an ad-interim injunction based on the NCC, which was granted by the trial court of Ludhiana. The Informant appealed this decision which was dismissed. Finally, the Informant approached the CCI alleging that the NCC is an anti-competitive agreement and an abuse of dominance.

### OBSERVATIONS OF THE CCI

The CCI noted that the Informant's grievance is that he is restricted from re-entering into business of running buses on the IGI Airport, Delhi- Punjab route on the basis of NCC. However, the Informant could not produce any evidence to show any entry barrier. It was also noted that the Informant has re-entered the business without difficulties. Further, no other entry barrier was pleaded. Additionally, as per the NCC, only the Informant is restricted to enter the market and no other person or enterprise was restricted.



## CONCLUSION

CCI observed that there was an absence of foreclosure or entry barrier due to the NCC and the Informant could not make any case of contravention of the Act. Accordingly, the Information was dismissed under Section 26(2) of the Act. (*Mr. Anand Moudgil vs Orbit Aviation Private Limited*, Case No. 27 of 2021, Order dated 12.10.2021)

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## 10. CCI dismissed allegations of abuse of dominance against Kerala State Beverages Corporation

### KEY POINTS

Government companies engaged in economic activities are enterprises under the Act.

Periodicity of tenders although a prerogative of the procurer, cannot be arbitrary.

A monopoly right granting exclusive right to do business is not without limitation and the exclusivity is to be construed as per the law.

### BRIEF FACTS

An information was filed by Confederation of Indian Alcoholic Beverage Companies ("**CIABC**") and Association of Distillers, Brewers and Vintners of India ("**ADBVI**"), collectively ("**Informants**") against Kerala State Beverages (Manufacturing and Marketing) Corporation Ltd. ("**KSBC**") and Travancore Sugar & Chemicals Ltd. ("**TSCL**"), collectively ("**OPs**") alleging abuse of dominance.

The Informants have stated that KSBC is a monopoly and has complete control over the entire supply chain of alcoholic beverages in Kerala. KSBC procures and distributes all kinds of branded liquor in the State of Kerala and hence the relevant market would be market for "procurement and distribution of branded alcoholic beverages in the State of Kerala".

KSBC invites tenders for supply of alcoholic beverages in an arbitrary manner and has unilateral power to accept/ reject price offered by manufacturers. Further, since KSBC operates in a monopsony market, manufacturers were even forced to sell their products at a loss. It has also been stated that despite a negotiation clause being present, it has never been used. Further, complete control to increase prices rests with KSBC. While the price of raw materials has risen by over 150%, the price increase granted by KSBC is less than 30%. Additionally, the periodicity of tenders is laggard and the suppliers are expected to keep supplying at old rates.

Informants also alleged that KSBC gives preferential treatment to government brands, thereby placing private suppliers at a competitive disadvantage. Additionally, KSBC charges up to 1/5th of the price for new or non-ranked brands as discounts, which hampers the economic viability of the suppliers.

## OBSERVATIONS OF THE CCI

The CCI noted that the allegation of the Informants pertains to abuse of dominance by OPs in respect to procurement and distribution of branded alcoholic beverages in Kerala.

### **Whether KSBC is an enterprise?**

CCI noted that KSBC is a company owned by the Government of Kerala, entrusted with monopoly rights of purchase and distribution of Indian made foreign liquor, beer, wine etc. in Kerala and TSCL is a company under Government of Kerala engaged in manufacture of Indian made foreign liquor. KSBC undertakes retail sales through its outlets. Hence, the OPs are engaged in economic activities and thus qualify as an enterprise for the purposes of the Act.

### **Whether KSBC is dominant in the relevant market?**

CCI noted that KSBC has exclusive right of wholesale purchase of branded alcoholic beverages in Kerala by virtue of Abkari Act and analogous rules. The relevant market was thus delineated as market for wholesale procurement and distribution of branded alcoholic beverages in State of Kerala.

Further, KSBC is a statutory monopsonist having sole right of wholesale procurement and distribution of alcoholic beverages in Kerala. Thus, the CCI *prima facie* held KSBC to be dominant in the relevant market.

### **Whether KSBC abused its dominance?**

CCI noted the Informants' averments that while manufacturers can quote base price, decision of KSBC to accept or reject the price is final. The Informants have no option but to sell to KSBC on terms decided by it. The OPs in response had stated that to ascertain the reasonableness of rates, cost sheet is invited from Informants, including profit margin. Based on this, the rates are accepted.

Further, the allegation of Informants that due to lack of tenders every year, the rate contract for a particular year is applicable in succeeding years, despite changing cost structures, leading to losses to the suppliers. The revision happens with a lag of 3-5 years. As such, while cost of production has gone up by 150%, meagre escalations of rates (30%) have caused losses to suppliers. However, Informants could not substantiate the claim of suffering losses due to supplies made to KSBC. Further, many manufacturers were supplying their products regularly which indicates no loss. Additionally, Informants could not provide evidence relating to manufacturers who exited market due to KSBC.

The CCI noted that although periodicity is the prerogative of the procurer, albeit the same cannot be arbitrary. Further, a monopoly right granting exclusive right to do business is not without limitation and the exclusivity is to be construed as per the law. However, in the present case, the conduct of OPs cannot be faulted as Informants have not substantiated the loss to suppliers.

The CCI also noted that prices of alcoholic beverages may be required to be fixed until the State decides to free the sector of its control. CCI stated that since KSBC is a procurer of a regulated commodity, the clause controlling price liquor cannot be said to be abusive and thus it is not for CCI to decide the appropriate price. Although, competitive price fixation should be an outcome of demand and supply, the State or its instrumentality is free to determine prices within the legal and policy framework.

With regards to preferential treatment to TSCL, KSBC has accepted the same. Although, grant of preference to one brand over other is discriminatory, however, KSBC has done this under a policy. Moreover, TSCL is supplying only one brand and Informants could not show how preference to TSCL was adversely affecting competition in general when so many brands exist in the market or distorted demand or choice of consumer.

Dealing with cash discounts being offered (lower the better) and allegation that lower cash discount is provided to TSCL, the CCI noted that OPs have stated that discounts are offered based on cost sheet and difference based on difference between fast and slow-moving goods. Informants have not shown how this has resulted into losses to manufacturers or impaired the capability to effective supply of their brands.

The CCI also noted that based on the submissions of Informants and OPs, TSCL has no role in perpetuating the anti-competitive conduct, except that it is the beneficiary of terms decided by KSBC.



## CONCLUSION

Based on the reasoning provided above, the CCI did not find a case of abuse of dominance and ordered to close the information under Section 26(2) of the Act. (*Confederation of Indian Alcoholic Beverage Companies and Anr. vs Kerala State Beverages (Manufacturing and Marketing) Corporation Ltd. and Anr.*, Case No. 10 of 2021; Order dated 21.10.2021)

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# **MERGER CONTROL**

## **1. Acquisition of minority shareholding in ONGC Tripura Power Corporation Ltd. by GAIL**

GAIL (India) Limited ("**GAIL/Acquirer**") is a Central Public Sector Undertaking ("**CPSU**") under the Ministry of Petroleum & Natural Gas ("**MoPNG**"). GAIL is a natural gas company with diversified interests across the natural gas value chain of trading, transmission, LPG production and transmission etc. It owns and operates natural gas pipelines across India. It is also engaged in power-generation activities through renewable sources of wind and solar energy.

ONGC Tripura Power Corporation Limited ("**OTPC/Target**") is a public limited company engaged in the business of generation and supply of electricity through a natural gas-fired power plant at Palatana, Tripura, which supplies power in North-East India. It holds a 26% equity stake in North East Transmission Company Limited ("**NETCL**"), which is engaged in the transmission of electricity in the north-eastern states of Assam, Meghalaya and Tripura.

The proposed combination relates to the acquisition of 26% equity share capital of OTPC by GAIL from IL&FS Energy Development Company Limited ("**IL&FS Energy**") and IL&FS Financial Services Limited ("**IL&FS FIN**") (collectively referred to as "**Sellers/IL&FS Group**"). OTPC and GAIL are hereinafter referred to as ("**Parties**").

With respect to horizontal overlaps, CCI observed that they existed in the broader market for generation of power in India. However, within narrower segments of generation of power, GAIL is engaged in the generation of power through renewable sources of energy, *viz.*, solar and wind, whereas OTPC is engaged in generation of power through non-renewable energy *i.e.*, natural gas.

With regards to the vertical relationships, CCI observed that there may be two potential vertical relationships between the Parties, *viz.*, i) supply of natural gas by GAIL (upstream level) and power generation by OTPC (downstream level); and ii) power generation by GAIL (upstream level) and transmission of power by NETCL (downstream level). In relation to the first potential vertical relationship, CCI noted that OTPC already has a long-term supply agreement with Oil and Natural Gas Corporation ("**ONGC**") regarding natural gas supply and in relation to the second, NETCL has a transmission line between Palatana, Tripura and Bongaigaon, Assam, whereas GAIL has power plants in Rajasthan, Karnataka and Tamil Nadu. Further, power generated by GAIL is not transmitted to the North-East region, where OTPC operates.

CCI decided to leave the exact delineation of the relevant market open, as the proposed combination is not likely to cause an AAEC in any of the relevant markets. Further, the combined market share of the Parties in the market for power generation in India is 0-5%. The CCI observed that the Proposed Combination is not likely to foreclose competition in any market.

Accordingly, the Proposed Combination was approved under Section 31(1) of the Act.

## **2. Acquisition of additional equity shareholding in Bikaji by Lighthouse India**

Lighthouse India Fund III Limited ("**Lighthouse Fund III/Acquirer 1**") is a private equity fund sponsored by Lighthouse Funds, LLC ("**Lighthouse Funds**"), a US-based private equity firm that acts as a sponsor and controls private equity funds that make investments in consumer companies in India.

Lighthouse India III Employee Trust ("**Lighthouse Employee Trust/Acquirer 2**") is a trust settled in India formed for the benefit of certain employees of Lighthouse Funds. As per an existing co-investment agreement between Lighthouse Fund III and Lighthouse Employee Trust, the latter makes investments based on former's investment decisions.

Bikaji Foods International Limited ("**Bikaji/Target**"), is engaged in the manufacture and sale of snacks. Bikaji's products are sold in India and are exported to countries like Australia, US, Singapore and Mauritius. Bikaji also runs two retail outlets under the name Bikaji Food Junxon in Mumbai, which also offer the services of a Quick Service Restaurant ("**QSR**").

The proposed combination relates to the acquisition of 2.697% and 0.03% of the total share capital of Bikaji by Lighthouse Fund III and Lighthouse Employee Trust respectively, by way of share subscription. Lighthouse funds currently holds (i) 7.472% equity shareholding in Bikaji through one of its private equity funds ("**Maharaja Funds**"), and (ii) the right to nominate one director to the board of directors of Bikaji, along with certain affirmative rights. Pursuant to the proposed combination, equity shareholding of Lighthouse Funds and Lighthouse Employee Trust in Bikaji would collectively increase from 7.472% to 9.995% on a fully diluted basis.

With respect to horizontal overlaps, CCI noted that one of the portfolio companies of Lighthouse Funds, viz., Wow Momo Foods Private Limited ("**Wow Momo**"), runs a chain of QSR restaurants across India, which may exhibit

overlaps with the activities of Bikaji Food Junxon in the overall QSR segment. CCI, however, observed that since Bikaji has limited presence in the QSR segment, the proposed combination is not likely to cause an AAEC in any of the plausible relevant markets that could be delineated. Therefore, the delineation of the relevant market was left open.

With regards to vertical relationships, CCI noted that one of the portfolio companies of Lighthouse Funds, viz., FSN E-Commerce Private Limited ("**Nykaa**"), is an e-commerce platform primarily for cosmetic products as well as health and wellness products. It was submitted that there is no actual or potential vertical link between Bikaji and Nykaa considering the product offerings and distribution channels of Bikaji. Therefore, CCI observed that any potential link between Nykaa and Bikaji is likely to be insignificant to cause any change in competition dynamics.

Accordingly, the Proposed Combination was approved under Section 31(1) of the Act.

### **3. Acquisition of Jaypee Infratech Ltd. by Suraksha Realty Ltd. and Lakshdeep Investments and Finance Pvt. Ltd. under Corporate Insolvency Process**

Suraksha Realty Limited ("**Suraksha/Acquirer**"), a public unlisted company, is engaged in real estate development and construction of residential and commercial projects through joint ventures with various developers in and around Mumbai.

Lakshdeep Investments and Finance Private Limited ("**Lakshdeep/Acquirer**") is a registered Non-Banking Financial Company ("**NBFC**") with the Reserve Bank of India ("**RBI**"), with investments in various companies engaged in lending and real estate activities in Mumbai. Lakshdeep also holds shares in Sun Pharmaceuticals Industries Limited and Sun Pharma Advanced Research Company Limited. Suraksha and Lakshdeep are part of the Suraksha Group, which has presence in the areas of real estate, revival of stressed assets, financial services, power generation infrastructure and pharmaceuticals.

Jaypee Infratech Ltd. ("**Jaypee Infra/Target**"), a public limited company, is a Special Purpose Vehicle incorporated to undertake the Yamuna Expressway Project and is part of the Jaypee Group. Jaypee Infra has its presence in real estate and healthcare sectors across Uttar Pradesh.

The proposed combination relates to the subscription of 100% equity share



capital of Jaypee Infra by Suraksha and Lakshdeep under a Corporate Insolvency Resolution Process ("**CIRP**") after reducing the existing equity share capital of Jaypee Infra to nil by way of capital reduction. Suraksha, Lakshdeep and Jaypee Infra are hereinafter referred to as the ("**Parties**").

With respect to horizontal overlaps, CCI observed that the same existed in the real estate business in India at a broader level. Within India, Suraksha, Lakshdeep and their group entities are engaged in real estate development in residential and commercial spaces in Mumbai and Thane and have no operations outside the state of Maharashtra, and Jaypee Infra is engaged in real estate development and construction in Uttar Pradesh. CCI decided to leave the exact delineation of the relevant market open since the presence of the Parties was not significant to result in any AAEC in any plausible narrowly defined market at the city/state level or broader pan-India market.

With regards to the vertical overlaps, none of the Parties or their respective groups entities are engaged in any activity at different stages or levels of the production chain in which any other party to the combination is involved. Therefore, CCI was of the opinion that the proposed combination is not likely to have any AAEC in India.

Accordingly, the Proposed Combination was approved under Section 31(1) of the Act.

#### **4. Acquisition of minority stake and rights in Grofers India by Zomato**

Zomato Limited ("**Zomato/Acquirer**") is a public limited company primarily operating in food services market and provides a platform to connect customers, restaurant partners and delivery partners. Zomato Internet Pvt. Ltd. ("**ZIPL**"), a Zomato subsidiary, is in control of Hyperpure which supplies fresh, high-quality ingredients, such as vegetables, fruits and meats, to Zomato's restaurant partners.

Grofers India Private Limited ("**Grofers India/Target 1**") operates an e-commerce marketplace that acts as a facilitator between potential buyers and third-party sellers of various products, such as, grocery, fruits and vegetables, bakery items, personal care, health and hygiene etc.

Hands on Trades Pvt. Ltd. ("**HoT/Target 2**") is engaged in business to business ("**B2B**") wholesale trading with third-party merchants. HoT also engages in contract manufacturing of grocery, food-related products and other goods for

the purpose of onward sale on a wholesale basis and providing warehouse services for the purpose of storing groceries and food-related products. Grofers International Pte Ltd. ("**Grofers International/Traget 3**") is an investment holding company incorporated in Singapore. It is the holding company of Grofers India and HoT.

The proposed combination relates to the acquisition by Zomato of approximately 9.3% stake in Grofers India and HoT. Along with this, Zomato will have one board seat and affirmative voting rights ("**AVRs**") in the Grofers International, Grofers India and HoT (collectively, along with Zomato, referred to as "**Parties**").

It was submitted that activities of the Parties overlap in terms of providing fruits, vegetables and other food-related products on a B2B level. Accordingly, in terms of horizontal overlaps the Parties can be said to be active within the overall market for the supply of groceries, household items, general merchandise, personal hygiene products, fruits and vegetables in India and narrower segment of B2B supply of groceries, household items, general merchandise, personal hygiene products, fruits and vegetables in India.

With regards to vertical relationships, it was submitted that there currently exists one minor relationship between the Parties. However, the same is insignificant since the relationship has led to revenues of less than INR 5 lakhs for Zomato till May 2021.

Based on the information provided, CCI defined the relevant market as under:

- a. A market for supply of groceries, household items, general merchandise, personal hygiene products, fruits and vegetables in India ("**Broad Relevant Market**");
- b. Segment of B2B supply of groceries, household items, general merchandise, personal hygiene products, fruits and vegetables in India ("**Narrower Relevant Segment**");
- c. Market for supply of groceries, fruits and vegetable in India ("**Narrowest Relevant Segment**");
- d. Market for services provided by online platforms for the sale of groceries, household items, general merchandise, personal hygiene products, fruits and vegetables in India ("**Online Marketplace Market**").

The CCI, however, decided to leave the exact delineation of the relevant market open, as the proposed combination was not likely to cause an AAEC in India in any of the alternative relevant markets. CCI observed that the combined market shares of the Parties in Broad Relevant Market, Narrower Relevant Segment and Narrowest Relevant Segment stood at less than 1%. With regards to the Online Marketplace Market, the combined market share of the Parties was in the range

of 10-15%, however, the incremental market share was still less than 1%. CCI further observed that the Narrower Relevant Segment is marked by the presence of other players, such as, Metro, Walmart, and Indiamart, and in the Online Marketplace Market, such as, BigBazaar, Bigbasket, Amazon and Flipkart. Therefore, the Parties, post combination, will continue to face competitive constraints from these players in the market.

Accordingly, the Proposed Combination was approved under Section 31(1) of the Act.

## 5. Internal reorganization of the TVS Group

TS Rajam Rubbers Private Limited ("**Rajam Rubbers/Acquirer 1**") and Dhinrama Mobility Solution Private Limited ("**Dhinrama Mobility/Acquirer 2**") are wholly owned subsidiaries of TVS Mobility Private Limited ("**TVS Mobility**"), which is owned and controlled by the TS Rajam Family. The TS Rajam Family holds 25% shareholding in TV Sundram Iyengar & Sons Private Limited ("**TVS & Sons**"), the ultimate holding entity of the TVS Group. The remaining shareholding of TVS & Sons is held by the respective families of the three other children of Mr. TV Sundaram Iyengar.

TVS Supply Chain Solutions Limited ("**TVS Solutions/Target**") along with its affiliates, is engaged in the provision of logistics services in India and abroad which, *inter alia*, includes contract logistics, warehousing, transportation, freight forwarding, packaging design and solutions, and material handling and management. TVS & Sons and the TS Rajam Family holds 31% and 0.98% in TVS Solutions respectively.

The proposed combination relates to the acquisition by Rajam Rubbers and Dhinrama Mobility of 35.33% of the paid up share capital of TVS Solutions, on a fully diluted basis from CDPQ Private Equity Asia Pte. Ltd. ("**CDPQ**") pursuant to a Share Purchase Agreement ("**SPA**"). Pursuant to the proposed combination, the TS Rajam Family will be able to exercise greater control over TVS Solutions. Subsequently, a part of the shareholding of Rajam Rubbers and Dhinrama Mobility will be transferred to unconnected third parties, affiliates of TVS & Sons and members of TS Rajam Family. Pursuant to this transfer of shares, TS Rajam Family will hold a shareholding of 25-30% in TVS Solutions.

Given the change in the degree of control of TS Rajam Family over TVS Solutions pursuant to the proposed combination, CCI decided to consider the relevant activities of TVS Solutions and TS Rajam Family, other than through TVS Solutions, for the assessment.

With respect to the horizontal agreements, CCI observed that TVS Solutions and Southern Roadways Private Limited ("**SRPL**"), an affiliate of TS Rajam Family, exhibit horizontal overlaps in the – (i) market for provision of logistics services in India ("**Broad Market**"), (ii) market for provision of surface transportation services ("**Narrow Market**"), which may be further segmented into (iii) road transportation and rail transportation segments ("**Narrower Market**"). However, CCI noted that the presence of TS Rajam Family other than through TVS Solutions, is not significant enough to cause any AAEC in any plausible relevant market.

With respect to vertical/complementary relationships, CCI noted that there is a complementary overlap between Tagbox Solutions Private Limited ("**Tagbox**"), an affiliate of the TS Rajam Family, and TVS Solutions. Tagbox is engaged in providing artificial intelligence and information technology based solutions in the logistics sector. However, it was submitted that the market share of Tagbox is not significant to cause any change in the ability or incentives of the TS Rajam Family to foreclose competition in any of the markets.

CCI decided to leave the exact delineation of the relevant market open, as it was observed that the Proposed Combination is not likely to cause an AAEC in any of the relevant markets.

Accordingly, Proposed Combination was approved under Section 31(1) of the Act.

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## ***REGULATORY UPDATE***

CCI on 06.09.2021 amended the Competition Commission of India (General) Regulations, 2009. In regulation 14 which deals with the powers and functions of secretary, a proviso was inserted in sub-section 3. Sub-section 3 provides that the secretary shall be, the nodal officer on behalf of the CCI for making all statutory communications and entering into any formal relationships. The new proviso envisages that the chairperson of CCI may also authorize other officers of CCI for this purpose.

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# **NEWS NUGGETS**

## **1. Google allows third party app payments in South Korea**

Google is planning to open up third-party payment systems in South Korea to comply with a new law, which seeks to curb the likes of Google and Apple from forcing app developers to use their payment systems. Thereby, effectively stopping them from charging commission on in-app purchases. The US tech giant has amended its payment policy for the first time in response to Korea Communications Commission's request for app store operators to comply with the new law.

## **2. Cartel allegation levelled against more than 100 companies by French watchdog**

The French competition authority, Autorité de la concurrence, has accused more than 100 companies, including Nestlé and 14 trade associations, of colluding to not communicate about the presence of certain chemicals used in food packaging, to the detriment of the consumers. The allegation pertains to the presence of chemical bisphenol A, which is used to make plastic hard and is used in products like CD, helmets etc. The authority has sent statement of objections to all the accused companies and trade associations in the matter.

## **3. UK competition watchdog plans to launch a market study into music streaming market**

In a latest attempt to ramp up antitrust enforcement in digital market, Competition and Markets Authority ("**CMA**") has announced its intention to launch a market study into the music streaming market. According to CMA, the music industry is evolving rapidly, where streaming of music accounts for 80% of all music listened to in the country and therefore, it is important to understand the dynamic changes and ensure competition in the sector.

## **4. EU General court upholds the fine of €2.42 billion imposed on Google**

The General Court of European Union largely dismissed Google's appeal against the decision of European Commission holding that Google had abused its dominant position in the market for online general search services by favouring its own comparison shopping service. The General Court believed a dominant entity, even one on the scale of Google, cannot be criticised merely on the basis

of its dominance, even if it is planning to expand into a neighbouring market. However, the General Court held that Google, by favouring its own comparison shopping service on its general results pages, departed from competition on the merits.

## **5. European Commission invites comments on draft amendment to the General Block Exemption Regulation**

The European Commission has invited Member States and interested parties to submit their comments on the draft proposal for certain amendments to the General Block Exemption Regulation ("**GBER**") by 08.12.2021. The proposal aims to promote public funding to aid the Green Deal and the European Industrial and Digital Strategies, while aligning with the most recent market and technological developments. The changes will exempt state aid, subject to specific conditions of the GBER, from prior notification to and approval by the Commission.

## **6. FRL Independent Directors urge CCI to revoke approval for Amazon-Future Coupons deal**

The independent directors of Future Retail Limited ("**FRL**"), in a letter to CCI Chairperson, have urged the CCI to revoke the approval given for Amazon's acquisition of 49% stake in Future Coupons Pvt. Ltd. ("**FCPL**") two years ago. The same was urged on the ground that Amazon did not disclose its strategic interest over FRL, of which FCPL is a shareholder. It was also alleged that Amazon's investment was done with a view to restrain the independent directors of FRL from discharging their fiduciary duties.

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# TEAM PROFILE



## L BADRI NARAYANAN

PARTNER  
(Advisory, Corporate, Competition and Regulatory)

Badri specialises in Corporate, Competition and Regulatory matters. He is qualified to practice as a lawyer in India and New York. He advises on various issues involving consortiums and joint ventures such as contract manufacturing scenarios, valuation, secondment, royalties and license fee arrangements. He has represented parties before various fora in tax and commercial disputes. He practiced as a patent attorney in the United States before moving to L&S.



## CHARANYA LAKSHMIKUMARAN

PARTNER  
(Disputes, Competition and Regulatory)

Charanya has over a decade of experience working in the fields of intellectual property, taxation and regulatory litigation. She is an Advocate-on-Record designated by the Supreme Court and was a former associate in the chambers of the Attorney General of India. Charanya regularly appears before the Supreme Court and focuses on competition and regulatory litigation before the NCLT and the NCLAT.



## ADITYA BHATTACHARYA

PARTNER  
(Disputes, Competition and Regulatory)

Aditya has worked with L&S since 2010 and regularly appears before the Supreme Court of India, various High Courts, the Competition Commission, NCLT and the NCLAT. His practice is focused on litigation emanating from the manufacturing sector, including matters of taxation, competition and regulatory issues.



## NEELAMBERA SANDEEPAN

JOINT PARTNER  
(Competition and Antitrust)

Neelambere advises on the full range of competition law matters including cartel enforcement, abuse of dominance, leniency applications, merger control, audits and compliance. She appears before the CCI, NCLAT and various High Courts. Neelambere has represented clients in high-profile, precedent setting behavioral cases (Cement Cartel case) and advised on complex M&A transactions. She has previously worked at the WTO in Geneva.



## RISHABH CHOPRA

JOINT PARTNER  
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Rishabh advises companies across various sectors on competition law issues such as anti-competitive/restrictive practices, cartel investigations and market dominance. Along with the team, he is also adept in running bespoke competition compliance programs, audits and trainings for various clients. He also leads the firm's initiatives on business development, communication and account management.



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Business Law Journal Law Firm Awards  
2021**

ALB's Super 50 Dispute Lawyers in Asia  
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**Asian Legal Business**

LakshmiKumaran & Sridharan recognised  
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Competition & Antitrust category **Legal  
500**

Recommended practice for its trusted  
advice in abuse of dominance, cartel  
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AMBIENCE Island, Sector 25-A,

Gurugram 122 001

PHONE: 0124-477 1300

E-MAIL: Lsgurgaon@lakshmisri.com

### PRAYAGRAJ (ALLAHABAD)

3/1A/3, (Opp. Auto Sales)

Colvin Road, Lohia Marg,

Prayagraj 211 001

PHONE: 0532-242 1037/242 0359

E-MAIL: Lsallahabad@lakshmisri.com

### KOCHI

1<sup>st</sup> Floor, PDR Bhavan,

Palliyil Lane, Foreshore Road,

Ernakulam, Kochi 682016

PHONE: 0484-486 9018/486 7852

E-MAIL: Lskochi@lakshmisri.com

### JAIPUR

2<sup>nd</sup> Floor (Front side),

Unique Destination, Tonk Road,

Near Laxmi Mandir Cinema Crossing,

Jaipur, Rajasthan 302 015

PHONE: 0141-456 1200

E-MAIL: Lsjaipur@lakshmisri.com

### NAGPUR

1<sup>st</sup> Floor, HRM Design Space,

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Ramnagar, Nagpur 440033

PHONE: 0712-2959038/2959048

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