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Competition Law

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Competition Commission of India ("Commission")

ENFORCEMENT TRENDS

1. **Commission accepts settlement terms proposed by Google to address concerns relating to its Android TV business**

The Commission has debuted the settlement framework with Google settling an antitrust investigation into its Android TV business for INR 20.24 crore. Google licenses its Android TV Operating System ("**OS**") to smart TV manufacturers ("**OEMs**") in India by entering into two agreements: (i) the Television App Distribution Agreement ("**TADA**"); and (ii) Android Compatibility Commitments ("**ACC**"). The Commission had directed investigation into Google's abuse of its dominant position as it was *prima facie* found to be imposing restrictive covenants on OEMs under TADA and ACC, including mandatory preinstallation of Google's suite of apps, leveraging its dominance in the market for the Play Store app, to promote other services like YouTube and restrictions on the use or development of competing Android forks[1].

The Director General ("**DG**") had found that (i) the mandatory pre-installation of the full suite of Google applications ("**GTVS**") under the TADA constituted an imposition of unfair condition on OEMs; (ii) tying of the YouTube app with Play Store allowed Google to protect its position in the Online Video Hosting Platforms ("**OVHP**") market; (iii) Google reduced the ability and incentive of OEMs to develop and market devices based on alternative Android versions; and (iv) requirement to sign the ACC as a condition for accessing TADA restricted technical and scientific innovation and effectively blocked market access for developers of Android forks; and (v) ACC also prohibited OEMs from distributing non-GTVS versions of Android and barred them from engaging with Android forks altogether, thereby limiting OEMs' freedom across their entire device portfolio and not just those running Android TV OS.

To address these findings, Google proposed to introduce a standalone fee-based "New India Agreement" offering access to the Google Play Store and Play Services for compatible Android smart TV devices sold in India without any placement or default settings, alongside the existing TADA. Thus, OEMs will now have a choice between the bundled TADA model or the standalone New India Agreement. Google eliminated the requirement of TADA to have a valid ACC for devices shipped in India that do not preload Google apps. Google also committed to communicate to all its Android TV partners in India and remind them of the existing flexibility under their current agreements with Google to: (i) use the open-source Android OS for smart TVs without taking any apps from Google or signing an ACC; and (ii) develop smart TVs using other competing OSs including Tizen, WebOS, and Roku OS. Google committed to adhere to these terms for a period of five years.

The Commission observed that the New India Agreement offers meaningful flexibility to OEMs by allowing access to Google's Play Store and Play Services without any placement or default settings or mandatory app bundling. The Commission noted that providing both TADA and the New India Agreement enables OEMs to strategically select pre-installed apps,

1. Modified versions of the Android open-source OS that are not officially sanctioned by Google.

ensuring market choice and innovation, while acknowledging that the licensing fees will compensate for the revenue loss due to the exclusion of revenue generating bundled apps. Further, it was observed that the waiver of the requirement to have a valid ACC for accessing TADA effectively severed the link between ACC and access to the Play Store app.

Pertinently, the dissenting member noted that the dual licensing regime, offering a free but restrictive TADA alongside a paid but flexible New India Agreement, does not effectively address the competition concerns under the existing framework of TADA.

2. Commission penalises UFO and Qube for anti-competitive conduct in leasing digital cinema equipment to cinema theatre owners

Commission has imposed a penalty of INR 104.03 lakh and INR 165.8 lakh on UFO Movies India Ltd ("**UFO**") and Qube Cinema Technologies Pvt Ltd ("**Qube**") respectively for engaging in tie-in arrangements, exclusive dealing and refusal to deal in the leasing of Digital Cinema Equipment ("**DCE**") to Cinema Theatre Owners ("**CTO**").

The distribution of cinematographic films in India has evolved from physical film rolls to digital systems, introducing new players such as Post-Production Processing ("**PPP**") service providers and DCE suppliers. PPP service providers convert cinematographic films into Digital Cinema Packages ("**DCPs**"), which can be played on DCE compliant with Digital Cinema Initiatives[2] ("**DCI**") standards. DCEs are leased to CTOs who rely on them to screen films digitally. PPP service providers create DCPs that involves (a) mastering of content; (b) creation of cloned copies of content; (c) ensuring process of encryption and decryption through Key Delivery Message ("**KDM**") of such cloned copies; and (d) delivery of encrypted digital cinema/content to the CTOs. This DCP is the final format used for screening the film digitally and can be played by CTOs through a DCE. The DCPs are unlocked and played by DCE using the KDM i.e., a unique decryption key.

PF Digital Media Services Ltd. ("**PF Digital Media**"), a PPP service provider, along with a film producer filed an information before the Commission alleging that UFO and Qube entered into anti-competitive lease agreements with CTOs. Commission found that the respective lease agreements of UFO and Qube explicitly required CTOs to source content exclusively from UFO (its wholly owned subsidiary Scrabble Digital Ltd. which is engaged in providing PPP services) or Qube, as the case may be, effectively prohibiting use of third-party PPP service providers by the CTOs. Statements from CTOs and film producers confirmed that technical restrictions disabled third-party KDMs on the leased DCEs thereby not allowing PPP services of an independent party. The Commission concluded that the conduct created barriers for players engaged in the provision of PPP services and also blocked a significant portion of CTOs having DCI-Compliant DCEs from being served by any other player.

UFO and Qube have filed appeals before the National Company Law Appellate Tribunal ("**NCLAT**") against the order passed by the Commission. Notably, the NCLAT has refused to stay the operation of the order.

2. To achieve standardisation, an association of all major producers was formed which consisted of seven motion picture studios, namely, Disney, Fox, MGM, Paramount Pictures, Sony Pictures Entertainment, Universal Studios and Warner Brothers Studios. This association was formed to establish uniform specifications for digital cinema. DCE, which is compliant with international standards dictated by DCI, displays every digital print of any cinematograph film in compliance with such international standards.

3. Commission dismisses reference from Ministry of Railways alleging bid rigging

The Chief Material Manager of Loco Banaras Locomotive Works ("**BLW**") Varanasi, a unit of the Ministry of Railways, Government of India filed a reference before the Commission alleging cartelization and bid rigging by Kharagpur Metal Reforming Industries Private Limited, Kharagpur ("**KMRI**") and Kay Pee Equipment Private Limited, Howrah ("**KPEPL**") in the supply of electro locomotive item motor suspension unit ("**MSU**")[3] for WAP-7[4] and WAG-9[5] locomotives to various railway production units ("**PU**").The reference was stated to be filed pursuant to a detailed investigation by the Chief Vigilance Officer, BLW.

However, the Commission after examining the bid rates, IP addresses, date and time of submission of bids, award rates, total quantity awarded, etc. concluded that there were no indications or evidence of bid rigging. Pertinently, the Commission held that merely quoting bids in the range of 0.50% to 1.75% does not by itself prove bid rigging as there was nothing on record to show meeting of minds.

4. Commission dismisses allegation of abuse against J&K Bank

An information was filed against the Jammu and Kashmir Bank ("**J&K Bank**") alleging that J&K Bank, being a dominant entity in the retail banking services in the Union Territory of Jammu & Kashmir ("**UT of J&K**"), has entered into anti-competitive memorandum of understandings ("**MoUs**")/agreements with several entities. As per the informants, these MOUs constrained the employees working with the Government of J&K, University of Jammu, University of Kashmir and the J&K police to have their salary accounts exclusively with J&K Bank, which restricted their freedom of choice. In addition, it was alleged that, pursuant to these MOUs, various dealers/manufacturers of car/two-wheeler companies (like Royal Enfield, Maruti Suzuki and Tata Motors) had designated J&K Bank as their exclusive financier and Hindustan Petroleum Company Limited constrained its consumers to use J&K Bank's services for availing LPG subsidies provided by the Government.

3. A mild steel casting item required in the manufacturing of WAP-7 and WAG-9 locomotives.
4. Model name stands for broad gauge (W), AC Current (A), Passenger traffic (P) locomotive, 7th generation (7). WAP-7 has been serving passengers for Indian Railways since their introduction in 1999. It is a passenger variant of the WAG-9 freight locomotive.
5. Model name stands for broad gauge (W), AC Current (A), Goods traffic (G), 9th generation (9) locomotive. They entered service in 1996. WAG-9 class was built to haul freight trains

Upon consideration of the information, Commission noted that it is a common practice for institutions to enter into agreements with banks of their choice to provide banking services to their employees, and such arrangements are usually the result of mutual understanding between the parties on agreeable terms and conditions. The primary objective of the agreements was to offer hassle-free and uniform banking services to the consumers. The Commission noted that there was no prohibition for any entity and the banking institution from approaching each other for any services. The Commission dismissed the information noting that such issues do not fall under the perimeter of competition law as they do not disclose any competition concerns.

5. Commission dismisses allegations against Canara Bank

KSD Zonne Energie LLP ("**KSD**"), a limited liability partnership firm engaged in electric power generation using solar energy, filed an information before the Commission alleging anti-competitive conduct by Canara Bank Limited ("**Canara Bank**").

KSD had approached Canara Bank for financial assistance under the Priority Sector Lending Guidelines for a solar plant project. Although a term loan was sanctioned, the bank was alleged to have disbursed a lower amount and imposed higher interest rates than initially agreed. A subsequent interest rate concession by the Credit Approval Committee was allegedly not honoured during the reset period, with retrospective demands made citing internal errors. Further, during the COVID-19 pandemic, KSD had availed emergency credit under Guaranteed Emergency Credit Line 1.0 at concessional rates, which Canara Bank allegedly later increased without notice and initiated recovery proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**SARFAESI Act**"). Additionally, under the RBI's Resolution Framework 2.0, the bank restructured loans in a manner leading to 'interest on interest,' which KSD alleged was arbitrary and caused significant financial hardship.

Commission observed that Canara Bank, with a 5.73% market share and ranking sixth among public sector banks, operates in a competitive banking market and does not hold a position of dominance. Interest rates were found to be governed by mutually agreed terms, including provisions for revisions and resets. Retrospective interest revisions due to bank errors were held to be contractual disputes outside the scope of competition law. Allegations regarding collusion in SARFAESI proceedings and obstruction in loan transfers lacked supporting evidence. The Commission further noted that banks are entitled to retain collateral until dues are cleared. Consequently, Commission found no *prima facie* case of contravention of the Competition Act.

6. Commission dismisses allegations against Hindalco Industries and Vedanta Limited in the supply of copper

An information was filed by M/s Airen Metals Pvt Ltd. and M/s Airen Copper Pvt Ltd ("collectively referred to as **Airen**") against Hindalco Industries Limited ("**Hindalco**") and M/s Vedanta Limited ("**Vedanta**") alleging that Hindalco and Vedanta abuse their duopoly in the market for supply of copper in India. It was stated that Hindalco and Vedanta control almost 75% of the business of providing refined copper to companies who convert it to manufacture finished products.

It was averred that Hindalco and Vedanta impose unfair conditions in their marketing policies, which state that if the copper booked by the customers is not lifted by them within the prescribed time, they will have an option to liquidate the same and recover losses/other charges, however, no profit is shared in case of gains.

The Commission, at the outset, noted that the concept of collective dominance is not present in the provisions of the Competition Act. Further, the Commission observed that copper is a commodity whose prices fluctuate as per the price fluctuations in the international market, and therefore, there are certain risks undertaken by the suppliers when they enter into long-term supply arrangements for supply at future date at the prevent price at that point. Accordingly, the Commission held that a condition for recovery of losses in a commodity market which is prone to price risks cannot be considered to be unfair. Further, it was noted that the supplier's right to withhold any gains from liquidation arises only when the buyer refuses to lift the contracted material and fails to perform his part of the contractual obligations.

MERGER CONTROL

1. Commission grants approval to Hindustan Unilever's acquisition of Minimalist

The Commission has granted an unconditional approval to Hindustan Unilever Limited's ("**HUL**") acquisition of 100% share capital and control of Uprising Science Private Limited ("**Uprising Science**"). Uprising Science is the parent company of the direct-to-consumer (D2C) beauty brand Minimalist. It was observed that HUL and Uprising Science exhibited horizontal overlaps in the manufacture and sale of beauty and personal care products ("**BPC**") at the broader level and in the sub-segments of manufacture and sale of skincare products and haircare products at the narrower level. It was also noted that Uprising Science is a niche D2C brand that largely focuses on targeted skincare and haircare products addressing common concerns like acne, pigmentation, aging and hydration. Accordingly, the impact of the combination was assessed in the premium actives-led BPC products segment also ("**Premium Actives-led segment**").

The Commission noted that HUL is the biggest player in the broader level of BPC as well as the narrower segments of skincare and haircare products with a market share of 15-20%, 30-35% and 15-20% respectively, however, Uprising Science had insignificant presence with a market share of less than 1% in BPC and haircare and 2% in skincare. In the Premium Actives-led segment, the combined market share of HUL and Uprising Science was found to be in the range of 10-15%. The Commission, while acknowledging that the combination will have the effect of creating the biggest player, held that it is unlikely to cause significant changes in competition dynamics due as the overall combined market share is limited and the segment appears to be competitive with presence of other players such as Galderma, Loreal, Honasa, Elca and Forest Essentials.

2. Commission grants approval to 100% acquisition of Ayana Renewable Power by ONGC NTPC Green

ONGC NTPC Green Private Limited ("**ONGPL**") has been granted approval for its strategic acquisition of 100% equity share capital of Ayana Renewable Power Private Limited ("**Ayana**"). ONGPL is a 50:50 joint venture between ONGC Green Limited and NTPC Green

Energy Limited, and is jointly controlled by the ONGC Group and the NTPC Group. ONGC, NTPC and Ayana are in the business of generation and transmission of power in India. Commission noted that in the overall segment of power generation, power generation through renewable sources, power transmission and the sub-segments of solar and wind energy, the incremental market share post combination was insignificant to cause competition concerns. Further, the presence of Ayana in any of the markets was not found as such to cause any competition concerns.

3. Commission grants approval to acquisition of KSK Mahanadi Power Company by JSW

Commission has approved the acquisition of 100% shareholding in KSK Mahanadi Power Company Limited ("**KMPCL**") by JSW Energy Limited ("**JSWEL**") through JSW Thermal Energy One Limited ("**JSW Therma**l"). KMPCL is stated to be undergoing insolvency resolution proceedings initiated under the Insolvency and Bankruptcy Code, 2016. JSWEL is a public listed company engaged in power generation, power transmission, power trading, coal mining and power equipment manufacturing. JSW Thermal is a newly formed wholly owned subsidiary of JSWEL and currently does not have any business activities. KMPCL is involved in the business of generation and sale of power. Commission found that the individual and combined market share of JSWEL and KMPCL in the market for power generation and its sub-segments in India were insignificant to raise competition concerns. Further, it was noted that the markets are highly competitive and regulated, with several large players with significant market shares.

4. Commission approves acquisition of 15% equity shares in Bharti Axa Life Insurance Company by 360 One

The Commission has granted approval to 360 One Private Equity Fund ("**360 One**") for its acquisition of 15% equity shares in Bharti Axa Life Insurance Company Limited ("**BALIC**"). As a result of the acquisition, 360 One and Bharti Life Ventures Private Limited ("**BLVPL**") will hold 15% and 85% shareholding in BALIC. The Commission approved the combination after noting that the market share of BALIC in the upstream market for the provision of life insurance products and services in India and 360 One's presence in the downstream marker for distribution of life insurance products and services is insignificant to foreclose competition.

Supreme Court ("SC")

1. SC rules in favour of Schott Glass; mandates effects-based analysis for abuse of dominance

The origin of the case dates to May 2010 when Kapoor Glass, a glass converter, filed an information against Schott India alleging abuse by way of granting exclusionary volume-based discounts, imposing discriminatory contractual terms and refusing supply of neutral USP-1 borosilicate glass tubes ("**NB tubes**"). Schott India was then the principal domestic manufacturer of NB tubes producing it in three grades: Fiolax-Clear, Neutral Glass Clear ("**NGC**") and Neutral Glass Amber ("**NGA**"). Converters re-heat these to manufacture ampoules, vials, syringes etc., and supply them to pharmaceutical companies. Schott India, in the supply of NB tubes, used to offer two rebate schemes: (i) volume rebates slabbed at 2%, 5%, 8% and 12% depending on the aggregate annual purchases of NGC and NGA ; and (ii) functional rebates of 8% to converters that (a) met annual purchase plans; (b) refrained from using Chinese tubing; and (c) adhered to fair pricing commitments in their container sales. Pertinently, in May 2008 a Schott group company had entered into a joint venture with Kaisha Manufacturers thereby creating Schott Kaisha Pvt Ltd ("**JV/Schott Kaisha**"), India's largest converter. In the same year, Schott India and Schott Kaisha executed a three-year agreement under which Schott Kaisha agreed to source at least 80% of its requirements from Schott India (~30% of Schott India's capacity) in consideration of a price concession of 2% over the slab rate, a three-year base price freeze and priority dispatch in periods of constrained furnace capacity ("**Long Term Tubing Supply Agreement/LTTSA**"). With effect from April 2010, the qualifying conditions for functional rebates were restated in a Trademark License Agreement ("**TMLA**") coupled with a Marketing Support Agreement which conferred a loyalty free right to emboss the "SCHOTT" mark on finished containers in exchange for limited inspection rights and a bank guarantee of INR 70 lakh in favour of Schott India. Only one converter, i.e., Schott Kaisha executed the TMLA.

In March 2012, Commission found that the volume rebates, functional rebates and LTTSA taken together tilted the playing field in favour of Schott Kaisha and foreclosed effective competition; aggregation of NGC and NGA for volume rebates operated as a tying arrangement; and the temporary curtailment of supplies to certain converters reinforced the exclusionary strategy of Schott India. Accordingly, a penalty of INR 5.66 crore was imposed on Schott India in addition to a cease-and-desist order ("**Commission's order**"). Both Schott India and Kapoor Glass appealed against the Commission's order before the Competition Appellate Tribunal ("**COMPAT**") with Kapoor Glass praying for higher penalty and wider behavioural remedies. The COMPAT, in April 2014, set aside the Commission's order noting that the evidence against Schott India was not subjected to cross examination and that every converter, barring one, grew its output after 2009 which dispelled the charge of foreclosure. Consequently, Kapoor Glass and the Commission filed appeals before the SC.

SC held that differential pricing by a dominant firm is abusive only if it lacks an objective commercial justification or results in unequal treatment of equivalent purchasers. Schott Glass had transparently communicated and made available its volume-based rebate thresholds to all purchasers without any discrimination. Moreover, it was noted that market witnessed increased procurement from both Schott Glass and its competitors as well as imports during the relevant period. Further, the container prices to pharma companies remained broadly stable. It also upheld the functional discounts offered by Schott Glass, observing that these discounts were tied to specific functions and uniformly offered to all purchasers. The conditions aimed at legitimate objectives such as patient safety and brand integrity and were therefore not discriminatory or unfair. SC dismissed the tying-in allegation observing that the two variants of borosilicate tubing were alternative specifications of the same product rather than independent products, and hence, conditioning rebates on the purchase of both variants did not amount to anti-competitive tying.

SC emphasized that an effects-based approach is necessary for assessing abuse of dominance under the Competition Act. Mere classification of conduct within the categories of anti-competitive practices set out under Section 4 is insufficient in the absence of demonstrable harm to the market. It was categorically observed that the Competition Act contemplates two separate findings: (i) that the conduct falls within one of the descriptive clauses of Section 4; and (ii) that it results in, or is likely to result in, AAEC. Besides, the SC also observed that denial of cross-examination of witnesses whose testimonies were relied for adverse findings by the Commission was a major procedural lapse.

2. SC clarifies that investigation by the DG is not mandatory prior to Phase II review of Combinations

In a review petition filed against the judgment of January 2025, the SC has accepted the Commission's contention that an investigation by the DG is not mandatory when the Commission has formed a *prima facie* opinion that a combination is likely to cause anti-competitive outcome. The SC held that, although the Commission is mandatorily required to issue a show cause notice ("**SCN**") to the parties to the Combination on being *prima facie* convinced that a combination is likely to cause AAEC, the provision requiring an investigation by the DG is directory in nature. It was observed that the word "shall" in Section 29(1) of the Competition Act makes it mandatory to issue an SCN to the parties and receive their response. However, after the receipt of the response and/or modifications proposed, in view of the word "may" in Section 29(1A), the Commission is not under an obligation to necessarily send the matter to DG for investigation. The SC noted that where the legislation uses two words "may" and "shall" in two different fronts of the same provision, the legislature manifested its intention to make one party directory and another mandatory.

The January 2025 judgment of the SC had, in a landmark ruling, held that resolution plans involving combinations need prior approval of the Commission before being considered by the Committee of Creditors in a Corporate Insolvency Resolution Process ("**CIRP**") initiated under the Insolvency and Bankruptcy Code, 2016 ("**IBC**"). A summary of the judgment can be found in our January 2025 newsletter.

High Court

Kerala High Court ("Kerela HC") confirms jurisdiction of the Commission over competition issues in regulated sectors

Kerala HC has upheld a *prima facie* order issued by the Commission, directing an investigation into allegations of abuse of dominant position and denial of market access in the broadcasting sector. The matter arose from an information filed before the Commission by Asianet Digital Network Pvt. Ltd. ("**ADNPL**"), a multi-system operator ("**MSO**") primarily operating in Kerala. ADNPL alleged that Star India Pvt. Ltd. ("**SIPL**") had abused its dominant position by offering discriminatory discounts to ADNPL's competitor- Kerala Communicators Cable Limited ("**KCCL**"). Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 and the Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017, (collectively, "**TRAI Regulatory Framework**") had capped the total discount that broadcasters could offer to distributors at 35% of the MRP (15% discount and a 20% distribution fee). ADNPL alleged that SIPL, bypassing the regulatory price cap imposed by Telecom Regulatory Authority of India ("**TRAI**"), provided KCCL with indirect discounts exceeding permissible limits under the guise of marketing and advertising agreements. This conduct denied market access to ADNPL and distorted the level playing field.

The writ petitions before the Kerala HC challenged the Commission's order, primarily on jurisdictional grounds, arguing that TRAI and Telecom Disputes Settlement and Appellate Tribunal ("**TDSAT**") are the appropriate adjudicatory authority to deal with the allegations. Kerala HC held that the Competition Act and the TRAI Act, 1997 are both special statutes operating in distinct spheres. TRAI regulates licensing, interconnection, and technical service delivery, and the Commission addresses broader issues of competition, including abuse of market power. The Kerala HC noted that there may be some overlapping while discharging the functions by the Commission and TRAI in respect of the telecom market in India, however, there is no provision under the TRAI Act to deal with the three anti-competitive practices as mentioned under the Competition Act. The Kerala HC concluded that the Commission is the sectoral regulator for dealing with anti-competitive practices and will have the jurisdiction to deal with the allegations and there exists no conflict in so far as the jurisdiction of the two sectoral regulators is concerned.

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