

### I. CCI dismisses allegations of abuse of dominance against WhatsApp in relation to Unified Payments Interface

The Competition Commission of India (CCI) has dismissed allegations of abuse of dominance against WhatsApp, Inc. in relation to the bundling of WhatsApp's Unified Payments Interface (UPI) application with its messaging platform.

The case, filed by an individual advocate, alleged that the automatic installation of the UPI interface with the messaging application of WhatsApp amounted to bundling and leveraging by a dominant entity in violation of Sections, 4(2)(a)(i), 4(2)(d) and 4(2)(e) of the Competition Act 2002 (Act).

The CCI considered the "market for over-the-top (OTT) messaging applications through smartphones' as the relevant market. The CCI noted that WhatsApp is the most widely used application for social messaging. The CCI opined that given its popularity and wide usage, for one-to-one as well as group communications and its distinct and unique features, WhatsApp seems to be dominant. Further, the network effects enjoyed by WhatsApp lead to increased switching costs, thus disincentivizing new players from entering the market.

As regards the allegations of abuse of dominance, the CCI held that mere pre-installation of the UPI interface in the messenger app does not amount to imposition of unfair terms and conditions on the users. As clarified by WhatsApp, the user has to separately register for it which necessarily requires the users to accept terms of the service agreement and privacy policy. Such registration requires providing additional information and undertaking additional steps to link their bank account, as per the framework laid down by the National

Payments Corporation of India (NPCI) for UPI digital payment apps. Thus, in the absence of any explicit or implicit imposition which takes away this discretion, mere integration does not seem to contravene Section 4(2)(a)(i) of the Act.

On the allegations of bundling/tying, the CCI noted that the users are not mandatorily required to use the WhatsApp Pay feature while using WhatsApp. In the absence of mandatory usage requirement of the tied product, the allegation of tying cannot sustain.

As regards the allegation of leveraging, the CCI held that there exist significant market players with substantial market shares in UPI payments market. In such a market, it seems implausible that WhatsApp Pay will automatically garner a market share, merely on account of its pre-installation. More so, given the fact that WhatsApp ecosystem does not involve paid services as such for normal users, it seems unlikely that the consumer traffic will be diverted by WhatsApp using its strength in the messenger market. Thus, this allegation under Section 4(2)(e) of the Act also does not seem to be made out.

The CCI held that no *prima-facie* case has been made out by the Informant and proceeded to dismiss the matter.

[Case: *Harshita Chawla vs Whatsapp, Inc.* CCI Case No. 15 of 2020, decision dated 18 August 2020]. The full text of the order may be accessed [here](#).

### II. CCI closes case of bid-rigging by manufactures of 14.2 kg LPG cylinders

The CCI has dismissed a case of alleged bid-rigging of tenders of Bharat Petroleum Corporation Limited (BPCL) by cylinder manufacturers for procurement of 14.2 kg LPG cylinders.

The investigation was commenced suo-moto by the CCI in 2014 when the CCI noticed that the price bids of bidders in tender of 2010 for BPCL inviting bids for 55 plants in 18 states were either identical or near identical. The CCI ordered detailed investigation of the conduct of 17 opposite parties in the case. The investigation of conduct of 6 opposite parties was considered as the other 11 parties had already been penalized for a similar conduct in another investigation. The CCI noted that these parties ought to have been investigated for the purpose of completeness of investigation but adopted another course of action due to the peculiar circumstances prevalent in the market. The CCI clarified that this shall not be treated as a precedent in any manner either by any of the parties to the case or any other person or in any other investigation in future. The investigation found the conduct of 5 opposite parties as violative of Section 3(3) of the Act.

The CCI referred to the decision of the Hon'ble Supreme Court in *Rajasthan Cylinders and Containers Limited vs Union of India* to support the view that the investigation in the market in the present case has yielded no different results. The report in this regard based on an examination of the procurer viz. BPCL, finds that for finalising the L-1 rate, BPCL negotiates with the bidders and, it is BPCL which decides the price at which the tender has to be awarded.

In light of the above decision of the Hon'ble Supreme Court, the CCI proceeded to close the case on account of the prevalent market conditions in the industry.

[Case: *Suo Moto Case against Ginni Industries and Ors.* CCI Suo-moto Case No. 09 of 2014, order dated 26 August 2020]. The full text of the order may be accessed [here](#).

*This update is intended merely as an announcement to highlight recent developments. The information is general and should not be considered or relied on as legal advice. For any further enquiries, please contact the following:*



*Kunal Mehra, Partner*  
([kunal@duaassociates.com](mailto:kunal@duaassociates.com))



*Danish Khan, Principal Associate*  
([danish@duaassociates.com](mailto:danish@duaassociates.com))