

### **I. Competition Commission of India dismisses case of leveraging against Google in India**

The Competition Commission of India (CCI) has dismissed allegations of abuse of dominance against internet major Google in relation to alleged leveraging of its dominance position in the E-mail services market to enter/strengthen its position in the video conferencing application market in India.

In a case filed by a law student, it was alleged that Google is dominant in the E-mail services market in India through its email service “Gmail”. It was alleged that Google has leveraged its dominance to enter into or strengthen its position in the specialized video conference (VC) market by incorporating its VC service (Google Meet) into the email services. Such conduct was alleged as violation of Section 4(2)(e) of the Competition Act, 2002 (Act).

The CCI noted that regardless of the dominance of Google in the primary market, its conduct does not appear to be in violation of Section 4(2)(e) of the Act on account of mere integration of the VC facility in the email service. Consumers are not forced to use the VC facility and can use any other competing VC services of their choice. Further, to use the Google VC service, the user need not be a user of Gmail services either. Thus, as Google Meet is available as an independent app outside the Gmail ecosystem also, the CCI held that the conduct cannot be held to be an abuse.

[Case: *Baglekar Akash Kumar Vs. Google LLC and another* Case No. 39 of 2020, decision dated 29 January 2021]. The full text of the judgment may be accessed [here](#).

### **II. CCI dismisses case of alleged abuse of dominance by General Insurance Corporation of India (GIC)**

The CCI has dismissed a case of alleged abuse of dominance by state-owned reinsurer GIC. The case was filed by Automotive Tyre Manufacturers Association, alleging that the

excessive increase of reinsurance premiums by GIC has resulted in increased premium payout by the members of the association to their insurers. Such allegedly arbitrary and exorbitant increase in prices by GIC was stated by the informant to be in violation of Section 4(2) of the Act.

It was also alleged that GIC has directed insurance companies to exclude coverage for infectious/contagious diseases from all continuing insurance policies. Failure to do so on part of the insurance companies would result in GIC waiving its reinsurance coverage. This ‘take it or leave it’ practice of GIC was alleged to be ‘refusal to deal’ under the provisions of Section 3(4)(d) of the Act.

The CCI held that setting of premium rates for reinsurance policies would be based on many factors and without proper evidence being furnished, the allegations of ‘excessive pricing / unfair pricing’ cannot be analysed.

The CCI also noted that the refusal of GIC to offer reinsurance to policies involving indemnity against contagious diseases is a commercial decision of GIC and does not prevent insurers from offering policies for such contingencies. As such the conduct of GIC cannot be held as violative of Section 3(4)(d) of the Act.

[Case: *Automotive Tyre Manufacturers Association vs General Insurance Corporation of India* Case No. 21 of 2020, order dated 27 January 2021. The full text of the order may be accessed [here](#).]

### **III. CCI closes case of cartelization in procurement of surgical disposal items by AIIMS**

The CCI has closed a case of alleged cartelization by two bidders in procurement / tender for purchase of surgical disposal items on two-year contract basis by All India Institute of Medical Studies (AIIMS). The alleged cartel members were Romsons Scientific & Surgical Industrial Pvt. Ltd. and BSN Medical Pvt. Ltd.

For a tender for procurement of surgical items in 2016, it was noticed by AIIMS that Romsons

and BSN had quoted identical prices upto last two decimals. It was noted by the CCI that the two firms were located in different areas of the country and had vastly different costs, including transportation and procurement costs, etc. As such, identical prices indicated collusion between the two firms. A detailed investigation was ordered by the CCI based on its own research.

The investigation concluded that quoting of price for the tendered items in two different patterns (OP-1 quoting rate per box and OP-2 quoting rate per piece) appeared to be a pre-decided strategy to win the bid and consequently to share the quantity. The investigation opined that input factors of both the OPs were so varied that the question of identical prices did not arise. Accordingly, the investigation concluded that OP-1 and OP-2 colluded and acted in contravention of provisions of Section 3(3)(a) and Section 3(3)(d) read with Section 3(1) of the Act.

While analysing the investigation report, the CCI noted that mere price parallelism is not enough to establish a contravention of the Act. The CCI concluded that apart from analysing the identical prices, the investigation has not adduced any cogent evidence to establish that identical prices were the outcome of collusion amongst OP-1 and OP-2. The CCI accordingly closed the case.

[Case: *In re: Alleged cartelisation by two bidders/firms in procurement/tender for purchase of surgical disposal items on two-year contract basis by AIIMS* Suo Moto Case No. 01 of 2018, order dated 14 January 2021. The full text of the order may be accessed [here](#).]

#### **IV. CCI closes case of abuse of dominance against Haryana Urban Development Authority (HUDA)**

The CCI has closed a case of alleged abuse of dominance against HUDA in relation to sale/allotment of institutional plots in Gurgaon, Haryana. The case was filed by an association of plot owners who had been sold institutional plots on free hold basis in Gurgaon by HUDA.

However, it was alleged that when the allottees approached HUDA for execution of conveyance deeds, HUDA allegedly imposed additional illegal terms and conditions for execution of conveyance/ sale deed in favour of the allottees. It was stated that HUDA imposed an ex-facie illegal and void condition manipulating the terms and conditions of the allotment which was contrary to the statutory provisions, thereby restricting the rights of the allottees to further sell, mortgage, lease out the plots purchased and buildings constructed by them, allegedly in violation of the provisions of Sections 4(2)(b), 4(2)(c), 4(2)(d) and 4(2)(e) read with Section 4(1) of the Act.

The investigation concluded that HUDA is dominant in the 'market for provision of services for development and sale of institutional plots in the State of Haryana' and enjoyed a 78% market share.

The investigation also concluded that imposition of certain conditions by HUDA in the conveyance deeds which are drawn from statutory framework did not put any absolute restriction on transfer of institutional plots and were neither unfair nor discriminatory in terms of Section 4 of the Act. However, the restriction on transfer of institutional plots by allottees was deemed unfair and abusive conduct by HUDA.

The CCI agreed with the findings of the investigation in relation to relevant market and assessment of dominance of HUDA. However, on the issue of abuse, the CCI disagreed with the investigation report.

It was noted that the purpose of allotment of institutional plots, in the facts and circumstances of the present case, was not to allow the allottees to transfer them subsequently, with a view to earn profits out of the same. The plots have been statutorily barred from alienation/transfer by allottees as such plots have been earmarked for a specific institutional purpose.

The CCI also noted that, post the final hearing in the matter, HUDA had permitted transfer of

ownership of institutional plots, by specifying certain conditions therein. Consequently, the CCI closed the case.

[Case: *Gurgaon Institutional Welfare Association Vs. Haryana Urban Development Authority* Case No. 94 of 2016, order dated 19 January 2021. The full text of the order may be accessed [here](#).]

#### **V. CCI approves minority investment of Total SE into Adani Green Energy Limited (AGEL)**

The CCI has unconditionally approved the acquisition of minority shareholding in AGEL by Total SE through its wholly owned subsidiary Total Renewables SAS.

Total SE is the ultimate parent entity in the Total Group. Total SE (along with its subsidiaries and affiliates) (**Total Group**) is an international integrated energy producer with operations in every sector of the oil and gas industry. Total Group is also involved in the renewable energy and power generation sectors.

AGEL is a public listed company incorporated in India. AGEL is engaged in power generation through renewable energy in India (i.e., through solar and wind energy). AGEL is also engaged in the business of development of solar parks.

The percentage of shareholding being acquired has not been specified. The CCI has approved the said combination as per the information available on the website of the CCI. The detailed order of the CCI is yet to be made public.

[Case: *Notice given by Total SE* Notice No. C-2020/12/800.] The summary of the notice can 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:*



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