

I. Competition Commission of India initiates investigation against Whatsapp for latest privacy policy

The Competition Commission of India (CCI) has issued a *suo-moto* investigation against messaging service Whatsapp, Inc. for alleged abuse of dominance in relation to its recently updated privacy policy in relation to data-sharing between Whatsapp and Facebook.

The CCI considered that Whatsapp is *prima-facie* dominant in the market for over-the-top messaging apps through smartphones in India. The CCI considered that unlike previous policy updates of Whatsapp, the latest update does not provide the consumers with an option to reject the policy. Instead, users who choose to reject the policy shall be prevented from using Whatsapp from May 15, 2021. The CCI noted that consent to sharing and integration of user data with other Facebook companies for a range of purposes including marketing and advertising, has been made a precondition for availing WhatsApp service.

The CCI was of the *prima-facie* opinion that the 'take-it-or-leave-it' nature of privacy policy and terms of service of WhatsApp and the information sharing stipulations mentioned therein, merit a detailed investigation in view of the market position and market power enjoyed by WhatsApp. The CCI has ordered an investigation against Whatsapp for abuse of dominant position.

[Case: *In Re: Updated Terms of Service and Privacy Policy for WhatsApp Users* *Suo Moto* Case No. 01 of 2021, decision dated 24 March 2021. The full text of the decision may be accessed [here](#).]

II. CCI imposes penalty on sewing-machine suppliers for cartelisation

The CCI has imposed a penalty on three suppliers of sewing machine of brand 'Usha' for cartelisation in a tender for procurement of sewing machines issued by Pune Zilla Parishad (PZP). The sewing machines were meant to be distributed to backward sections of the society.

It was alleged that in a tender issued by PZP in 2015 for procurement of the machines, the three OPs, viz., M/s Klassy Computers, M/s Nayan Agencies, and M/s Jawahar Brothers, had submitted identical bids and they also agreed as

to who will submit the lowest bid and determined the common norms to calculate prices and terms of the bids. Further, the price quoted by the OPs was almost double the Maximum Retail Price (MRP) of the same machine marketed and distributed by the manufacturer in the open market.

The detailed investigation report revealed that the OPs were in active collusion and there was meeting of minds between them and thereby, they have violated the provisions of Section 3(3)(d) read with Section 3(1) of the Act. Further, individuals of the OPs were found to be responsible under Section 48 of the Act for their conduct.

The CCI noted that the three OPs had essentially submitted cover-bids for each other where the bids were submitted from a single computer. Klassy Computers had submitted bids from its own account in the name of the other two bidders, and the bids quoted very extremely close to each other. The analysis of the call data records revealed that the management of the companies were in touch with each other.

In light of the above findings, the CCI held that the bidders had indulged in bid-rigging in violation of Section 3(3)(d) of the Act. A penalty of INR 10,00,000/- has been imposed on each of the three bidders. Further, a penalty of Rs. 10,000/- (Rs. Ten Thousand only) has also been imposed upon each of the individuals of Jawahar Brothers as identified by the DG in terms of the provisions of Section 48 of the Act.

[Case: *People's All India Anti-Corruption and Crime Prevention Society Vs. Usha International Ltd. & Others* Case No. 90 of 2016, order dated 17 March 2021. The full text of the order may be accessed [here](#).]

III. CCI imposes penalty on Uttarakhand Agricultural Produce Marketing Board for abuse of dominance

The CCI has imposed a penalty of INR 1,000,000 (One Crore only) on Uttarakhand Agricultural Produce Marketing Board (UAPMB) for abuse of dominant position in relation to procurement of domestic and foreign liquor for sale in the state of Uttarakhand. The

case was filed by International Spirits and Wines Association of India (**ISWAI**), a company representing interests of various liquor manufacturers in India.

UAPMB was appointed as the exclusive wholesale licensee for foreign liquor/beer/wine for the State Government of Uttarakhand in 2015. It was alleged that such appointment granted UAPMB the status of monopoly in the relevant market “for procurement, supply and distribution of alcoholic beverages in the State of Uttarakhand.”

It was alleged that UAPMB abused its dominant position by arbitrarily placing orders for supply of liquor on certain brands regardless of the market demand. On account of this, the market shares of various liquor manufacturers went down despite there being public demand for their liquor in the State. Further, the OPs were not maintaining minimum stock levels and were not supplying Indian Manufactured Foreign Liquor (**IMFL**) brands in accordance with the retailers' demand.

The detailed investigation report found that UAPMB was dominant in the market for wholesale procurement of branded alcoholic beverages in the State of Uttarakhand. Further, analysis of the market shares of various liquor manufacturers revealed that procurement of liquor by UAPMB was arbitrary as it resulted in procurement of brands for which there was lesser demand. As such, the investigation report found that the conduct of UAPMB was in violation of Section 4(2)(c) and 4(2)(b)(i) of the Act.

The CCI held that the UAPMB was dominant in the relevant market for wholesale procurement of branded alcoholic beverages in the State of Uttarakhand. The CCI took note of the market shares of United Spirits Limited (**USL**) and Pernod Ricard to see that their market shares had significantly decreased between 2015 and 2016 despite the fact that significant orders were placed by retailers on UAPMB for the procurement of such brands. The CCI noted that the arbitrary and capricious procurement

undertaken by UAPMB led to a situation where the preferences of the end consumers were not taken into account while placing purchase orders of certain brands of alcoholic beverages, thereby distorting the market to the detrimental of manufacturers of certain brands of alcoholic beverages. The CCI finally held that limiting or restricting wholesale procurement and distribution of IMFL in the State of Uttarakhand and denial of market access to producers of certain brands of IMFL in the State of Uttarakhand by UAPMB was in violation of Section 4(1) read with Section 4(2)(a)(i) and 4(2)(b)(i) and Section 4(2)(c) of the Act. A penalty on UAPMB was imposed accordingly for the said violation.

[Case: *In re: International Spirits and Wines Association of India Vs. Uttarakhand Agricultural Produce Marketing Board and others* Case No. 02 of 2016, order dated 30 March 2021. The full text of the order may be accessed [here](#).]

IV. CCI dismisses case of alleged abuse of dominance by Urban Company

The CCI has dismissed a case of alleged abuse of dominance and vertical restraints filed against Urbanclap Technologies India Private Limited (owner of trademark “Urban Company”).

The OP is engaged in providing an online platform via web and mobile app whereby various beauty and housekeeping services such as electricians, plumbing, cleaning, pests, etc., are provided to customers.

It was alleged that OP forces the service providers on its platform to mandatorily purchase spares and service items from the OP itself. Further, these products are stated to be of selected brands as arbitrarily decided by the OP and in case the professional fails to procure the desired quantity, the OP deducts the amount from the account of the professional and dispatches the product arbitrarily. The desired quantity is stated to be quantified by the OP on the basis of the services given by the professional and roughly calculating the number of products that may have been used for the

services. Such conduct was alleged to be in violation of Section 3(4) and Section 4 of the Act.

The CCI considered the conduct and found that there was justification for alleged mandatory purchase of some items/spares from the OP. CCI noted that OP identifies reputed quality products and makes them available to its partners(service-providers) to assure quality and reliability. In such a quality-driven market where brand image and goodwill are paramount, the conduct of the OP cannot be held as unfair and abusive on its service-providers. As such, the conduct was not held to be abusive or unfair. Consequently, the CCI did not seem it necessary to determine relevant market and abuse of dominance.

[Case: *Prachi Agarwal Vs. Urbanclap Technologies India Private Limited* Case No. 93 of 2016, order dated 24 March 2021. The full text of the order may be accessed [here](#).]

V. CCI approves acquisition of Principal Mutual Fund (PMF) by Sundaram Mutual Fund (SMF)

The CCI has unconditionally approved the acquisition of hundred percent shareholding in Principal Asset Management Private Limited, Principal Trustee Company Private Limited and Principal Retirement Advisors Private Limited (collectively, the “Targets”) by Sundaram Asset Management Company Limited (**Acquirer**).

As part of the proposed transaction, the schemes of the PMF shall be transferred to SMF and the trusteeship and management of the PMF schemes shall be transferred to Sundaram Trustee Company Limited and the Acquirer, respectively.

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 Sundaram Asset Management Company Limited* Notice No. C-2021/02/816.

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:



Kunal Mehra, Partner
(kunal@duaassociates.com)



Danish Khan, Principal Associate
(danish@duaassociates.com)