

I. Delhi High Court refuses to set aside CCI's order initiating investigation against WhatsApp's latest privacy policy.

The Delhi High Court ("Delhi HC") has refused to set aside CCI's order dated March 24, 2021 ("Impugned Order") where CCI had issued a *suo-moto* investigation against messaging service WhatsApp Inc. for alleged abuse of dominance in relation to its recently updated privacy policy regarding data-sharing between WhatsApp and Facebook.

The CCI in the Impugned Order had considered that WhatsApp was *prima-facie* dominant in the market for over-the-top messaging apps through smartphones in India. Further, 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, required a detailed investigation in view of the market position and market power enjoyed by WhatsApp.

Before the Delhi HC, it was argued by WhatsApp and Facebook that CCI should not have interfered and started the probe, since this was not a competition issue.

It was further argued that since the issue with respect to personal data of users, sharing of personal data etc. was already pending before

II. Competition Commission of India initiates investigation against Tata Motors Ltd. for imposing unfair terms and conditions in dealership agreements

The Competition Commission of India ("CCI") by a common order has initiated investigation against Tata Motors Ltd. for imposing unfair terms and conditions in dealership agreements entered into with its dealers.

In the first case, i.e., case no. 21 of 2019, Varanasi Auto Sales Pvt. Ltd. was appointed as an authorized dealer of Tata Motors to sell commercial vehicles ("CVs"), spare parts,

the Supreme Court of India, CCI should not have intervened.

The Delhi HC observed that merely because of the pendency of proceedings before the Supreme Court and other Courts, CCI could not be said to be bound to necessarily hold its hands and not exercise the jurisdiction otherwise vested in it, under the statute. The Delhi HC also observed that the order passed by the CCI was purely administrative in nature and did not entail any consequence on the civil rights of the petitioner(s).

The Delhi HC accordingly held that the Impugned Order could not be said to be without jurisdiction or so perverse so as to be quashed by the court in exercise of its extraordinary jurisdiction.

As per current information available, this judgement is under appeal before a division bench of the Delhi HC.

[Case: WhatsApp LLC Vs. Competition Commission of India & Anr. W.P.(C) 4378/2021 and W.P.(C) 4407/2021. Order dated 22 April 2021. The full text of the judgment may be accessed [here](#)]

accessories etc. in various district of Uttar Pradesh. It was alleged that for meeting business needs, every authorised dealer of Tata Motors was obligated to raise finance/ loan from banks and/ or NBFCs such as Tata Capital and Tata Motors Finance. Further, to sustain and retain the market share, Tata's business model encompasses both manufacturing and financing of CVs, which was abusive and anti-competitive. It was also alleged that the OPs, viz., Tata Motors Ltd., Tata Capital Financial Services Ltd., Tata Motors Finance Ltd. dictated and restricted the finance facility as per their discretion.

In the second case, i.e., case no. 16 of 2020, it was alleged that the OPs had abused their dominant position by compelling the Informant to start the dealership of passenger/utility vehicle segment of Tata Motors. It was also alleged that the finance facility extended by Tata Capital and Tata Motors Finance took away the decision-making power of the dealer and unfairly imposed liability of unpaid instalments of the borrower on the dealer.

The CCI was of a *prima facie* view that Tata Motors has indulged in the practice of coercing the dealers to bill vehicles as per its own needs and requirements, which resulted in swarming dealers with a stock of slow-moving vehicles and may further impair the financial health of the dealer. The CCI was also of a view that there are certain clauses in the dealership agreement which are in the form of unfair imposition upon dealers besides resulting in denial of market access.

In light of the above findings, the CCI held that a *prima facie* case of contravention of the provisions of Section 3(4) and Section 4 of the Competition Act, 2002 ("the Act") was made out against Tata Motors, and the matter was required to be investigated. In light thereof, the CCI has directed the DG to for an investigation to be made into the matter as per Section 26(1) of the Act.

[Case: In Re: Neha Gupta Vs. Tata Motors Ltd. and Ors., Case No. 21/2019 and Case No. 16/2020, decision dated 4 May 2021.] The full text of the decision may be accessed [here](#)]

III. CCI dismisses case of alleged abuse of dominant position by the Greater Noida Industrial Development Authority

The CCI by a common order dismissed cases where allegations were made regarding abuse of dominant position by Greater Noida Industrial Development Authority ("GNIDA")

pursuant to lease deed, which allegedly also contained one-sided conditions.

In the case no. 34 of 2020, it was alleged that OP, i.e., GNIDA abused its dominant position in contravention of the provisions of Section 4 of the Act. The principal grievance against GNIDA included non-disclosure and allotment of encumbered land to the developers and charging of premium as well lease rent for the same; one-sided clause in the lease deed such as, no liability on GNIDA of providing clear land to the developers, no clause which granted the developer any choice to opt for cancellation and refund of the deposited amounts in the event of any deviation or breach on part of GNIDA etc.

In the case no. 38 of 2020, it was alleged that GNIDA had abused its dominant position by acting in a completely abusive and arbitrary manner. The principal grievance against GNIDA included demand of discretion; inclusion of patently one-sided clauses in the lease deed such that the developer had no right but to succumb to the impositions by GNIDA etc.

The CCI considered the allegations and response of GNIDA and was of the view that no interference was warranted in the matters. The CCI considered the reasons placed on record by GNIDA and observed that the justifications offered by GNIDA appeared to have some merit and the same had be seen and appreciated in a holistic manner. Further, the CCI observed that the lease deeds referred in the matters date back to as early as July 2010, October 2010, June 2014 and no justifiable reasons was offered for approaching the Commission at this belated stage.

As such, the CCI was of the view that there was no *prima facie* case and the matters were ordered to be closed forthwith in terms of the provisions of Section 26(2) of the Act.

[Case: In Re: Confederation of Real Estate Developers Association of India Vs. Greater Noida Industrial Development Authority, Case No. 34/2020; Case No. 37/2020 and Case

No. 38/2020, decision dated 4 May 2021. The full text of the decision may be accessed [here](#)]

IV. Competition Commission of India dismisses case of alleged abuse of dominance by Asian Paints

The CCI has dismissed a case of alleged abuse of dominance filed against Asian Paints Limited.

It was alleged that the Ops, viz., Asian Paints Ltd., Mr. K.B.S. Anand (MD & CEO) and Mr. K. Sundaram (Addl. Manager) had filed a police complaint against the Informant for selling damaged products and for saying that it was Asian Paints. This resulted in a criminal case being filed in the court of the Learned District Munsif-cum- Judicial Magistrate, Arcot against M/s. Arcus Enterprises.

The Informant stated that this was patently false allegation raised by Asian Paints in abuse of its dominant position to drive small scale competitors out of the market by creating barriers to entry and denying market access.

V. CCI dismisses allegation of abuse of dominance against Chettinad International Coal Terminal (P) Ltd.

The CCI has dismissed the case of alleged abuse of dominance against the OP, i.e., Chettinad International Coal Terminal (P) Ltd ("CICTPL") in the relevant product market of 'provision of common user coal terminal services at sea-ports in and around Kamarajar Port and common user coal terminals at Krishnapatnam Port'.

CICTPL, a special purpose vehicle, is a terminal operator at Kamarajar Port. The Informant is an association of power producers located around Chennai which utilizes the CICTOL's services.

It was alleged that prior to commencement of CICTPL in March 2011, its members as well as other buyers of coal in the adjoining areas

The CCI observed that the allegations related to a criminal complaint being instituted against the Informant by the OPs, in which the investigation was underway. Further, it cannot be said that the filing of criminal complaint was with a view to oust competition and such an action was an abuse under Section 4 of the Act.

The CCI further noted that no facts or evidence had been brought on record which indicated violation of either of Section 3 or Section 4 of the Act. In addition, there was no relationship either of horizontal or vertical nature, which existed between the parties which could be examined under Section 3 of the Act. Consequently, CCI observed that there existed no *prima facie* case and no indulgence from CCI was required.

[Case: S. Kannan Vs. Asian Paints Ltd. Case No. 53 of 2020. Order dated 12 April 2021. The full text of the order may be accessed [here](#)]

were importing coal through Chennai Port Trust ("CHPT"). Pursuant to an order of the Madras High Court, prohibiting the import of coal from CHPT, CICTPL allegedly catapulted to the position of dominance and drastically increased its common user coal terminal charges.

By an order dated January 4, 2016, the CCI directed the DG to investigate the matter and to submit an investigation report, pursuant to which, a report was submitted.

The CCI observed that the presence of the Krishnapatnam Port poses significant competitive constraints on CICTPL, so much so that it could not be held as dominant. Further, from the percentage of common users using Krishnapatnam port, it was apparent that users were using both these ports simultaneously. Therefore, to say that CICTPL held a position of strength so as to enable it to

act independent of the market forces, was not appropriate.

The CCI also observed that although total quantity of coal imported at both CICTPL and Krishnapatnam had increased over the years, the share of CICTPL had declined from 2013-14 onwards, whereas share of Krishnapatnam had increased during same period.

Therefore, the conduct of CICTPL, regardless of being opportunistic, was not found to be dominant in the relevant market and the case was directed to be closed.

[Case: Tamil Nadu Power Producer Association Vs. Chettinad International Coal Terminal (P.) Ltd. Case No. 73 of 2015. Order dated 9 April 2021. 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.

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