

## 1. Karnataka High Court dismisses Amazon and Flipkart's petitions challenging the probe ordered by the Competition Commission of India against their business practices

The Karnataka High Court ("Kar HC") has dismissed the writ petitions filed by Amazon Seller Services Pvt. Ltd. ("Amazon") and Flipkart Internet Pvt. Ltd. ("Flipkart") challenging an order passed by the Competition Commission of India ("CCI") dated 13 January 2020 ("Impugned Order") directing investigation under Section 26(1) of the Competition Act, 2002 ("the Act") by the Director General.

Before the Kar HC, it was argued by Amazon and Flipkart that the Impugned Order was ultra vires the object and purpose of the Act and the said order suffers from non-application of mind. It was also argued that the CCI had not formed any prima facie opinion with regard to contravention of any provision and no notice was provided to them by CCI, which was not the practice in earlier cases.

The CCI responded by stating that an order made under Section 26(1) of the Act by the Commission was an 'Administrative Order' directing conducting of departmental proceedings and it does not determine any right or obligation of parties nor entail any civil consequences. Further, the Petitioners, among other things, have not challenged the inherent jurisdiction of the CCI to direct investigation.

The Kar HC observed that an order under Section 26(1) of the Act passed by the CCI was an 'administrative direction' to one of its wings departmentally and without entering upon any adjudicatory process. Further, the said provision does not mention about issuance of any notice to any party before or at the time of formation of an opinion by the CCI on the basis of information received by it.

The Kar HC also observed that the CCI had examined the material produced by the informant, information available in public domain etc. and had looked into the information in detail and applied its mind. Further, in a writ petition filed under Article 226 of the Constitution of India, seeking judicial review, the High Court can examine only the decision-making process

with the exception namely the cases involving violation of fundamental human rights.

The Kar HC accordingly dismissed the writ petitions.

As per current information available, this judgement is under appeal before a division bench of the Kar HC. Arguments have been heard by the Hon'ble Division Bench of the Kar HC in the matter, and order is reserved.

[*Case: Amazon Seller Services Private Limited and Ors. vs. Competition Commission of India and Ors., W.P. Nos. 3363 of 2020 and 4334 of 2020 (GM-RES). Order dated 11 June 2021.* The full text of the judgment may be accessed [here](#)]

## 2. Delhi High Court refuses to stay the notice issued by Director General, Competition Commission of India, demanding more information on WhatsApp's Privacy Policy

The Delhi High Court ("Delhi HC") has refused to stay the operation of notice dated 4 June 2021 issued by the Director General, Competition Commission of India ("DG") demanding from WhatsApp LLC ("Appellant") more information on its new Privacy Policy.

A Letter Patent Appeal ("LPA") has been filed before the Delhi HC (division bench) by the Appellant, against the decision dated 22 April 2021 passed by the single judge of the Delhi HC.

By the said order dated 22 April 2021, the Delhi HC refused to set aside Competition Commission of India ("CCI") order dated 24 March 2021 where CCI had directed a suo-moto investigation against WhatsApp Inc. for alleged abuse of dominance in relation to its recently updated privacy policy regarding data-sharing between WhatsApp and Facebook.

The Appellant had filed an application bearing C.M. No.18800/2021 before the Delhi HC in the LPA, seeking stay of notice dated 4 June 2021 issued by DG and also sought restraint against any further action pursuant to the order dated 24 March 2021 made by the DG in Suo-Motu case No.1/2021, during the pendency of the LPA.

The Delhi HC observed that the impugned notice by the DG was a step-in furtherance of the investigation commenced in Suo-Motu case No.1/2021 pursuant to order dated 24 March 2021.

The Court further observed that an application seeking stay of further steps in the investigation already stood filed previously by the application bearing C.M. No.15908/2021 along with the LPA, on which notice had already been issued; in which no interim relief was given by the Division Bench, and which was already listed before the Division Bench for further consideration on 9 July 2021. The Court, accordingly, did not consider it appropriate to stay the operation of impugned notice dated 4 June 2021, at this stage. During the hearing on 9 July 2021, no interim relief was granted to the Appellant.

[Case: *WhatsApp LLC Vs. Competition Commission of India & Anr.*, C.M. No.18800/2021 in LPA 163/2021, decided on 21 June 2021 by the Delhi High Court. The full text of the judgment may be accessed [here](#)]

### 3. Competition Commission of India initiates investigation against Google for being *prima facie* dominant in Smart TV market

The Competition Commission of India (“CCI”) has ordered an investigation into the conduct of Google LLC (“OP-1”), Google India Pvt. Ltd. (“OP-2”) (Collectively “Google”), and other Opposite Parties (Collectively “Opposite Parties”/ OPs), pursuant to a complaint filed by the Informants, who alleged abuse of dominant position by the OPs in the smart TV market in contravention of Sections 3 and 4 of the Competition Act, 2002 (“the Act”).

It was argued by the Informants that a smart TV required an Operating System (“OS”) to provide the consumer with an user-interface for facilitating the use of smart TV functions, and the said pre-installed OS cannot be changed. It was also argued by the Informants that Google was guilty of anti-competitive practices which violated Section 4 read with Section 32 of the Act. In this context, it was alleged by the Informants that Google entered into two agreements with smart TV Original Equipment Manufacturers (OEMs) Xiaomi, i.e., OP-3 and TCL, i.e., OP-4, and certain clauses of the said agreements amounted to abuse of dominant

position by Google, in violation of various provisions of the Act.

The CCI considered the submissions of the Informants, Google and other OPs and observed that it was of the *prima facie* opinion that by making pre-installation of Google’s proprietary apps conditional upon signing of Android Compatibility Commitments for all android devices manufactured/distributed/marketed by device manufacturers, Google had reduced the ability and incentive of device manufacturers to develop and sell devices operating on alternative versions of Android i.e., Android forks, and thereby limiting technical or scientific development relating to goods or services to the prejudice of consumers in contravention of Section 4(2)(b) of the Act. Further, given the dominance of Google in the relevant markets and pronounced network effects, developers of such forked Android operating system were denied market access resulting in violation of Section 4(2)(c) of the Act.

The CCI also observed that it was of the *prima facie* opinion that mandatory pre-installation of all the Google Applications under Television App Distribution Agreement amounted to imposition of unfair condition on the smart TV device manufacturers and thereby was in contravention of Section 4(2)(a)(i) of the Act.

In view of the aforesaid, CCI directed the Director General to cause an investigation to be conducted into the matter under the provisions of Section 26(1) of the Act.

[Case: *In Re: Kshitiz Arya & Anr. Vs. Google LLC and Ors.*, Case No. 19/2020, decision dated 22 June 2021. The full text of the decision may be accessed [here](#)]

### 4. Competition Commission of India directs investigation into Amateur Baseball Federation of India for abuse of dominant position

The Competition Commission of India (“CCI”) has ordered an investigation into Amateur Baseball Federation of India (“ABFI” / “OP”) under the provisions of the Competition Act, 2002 (“the Act”), upon the information filed by Confederation of Professional Baseball Softball Clubs (“CPBSC”/ ‘the Informant’), alleging violation of Section 4 of the Act.

As per the Informant, as a member of the baseball ecosystem, it engages with players, coaches, clubs, and other partners in India and abroad. The Informant had scheduled to organise 'Club National 2021' Championship in Hyderabad during 16 to 21 February 2021, and accordingly it shortlisted 8 clubs in the final pool for the event. However, a letter was sent by ABFI to the Presidents/ Secretaries of State Baseball Associations throughout the country, prohibiting the State Associations from dealing with bodies and leagues not recognised by it and threatening with disciplinary action if any of the players took part in the leagues. Thereafter, clubs which were to participate in the event, started withdrawing their participation due to the fear of getting banned and threats by the OP. Resultantly, the

Informant had to cancel the ground, transportation, accommodation bookings made for the event leading to severe financial distress. The Informant rescheduled the event from 30 March 2021 to 4 April 2021.

Subsequently, a communication dated 1 March 2021 was issued by the OP to its State Associations announcing the 34th Senior National Baseball Championship from 29 March 2021 to 3 April 2021. Aggrieved by the conduct of OP, the Informant filed the information before the CCI alleging abuse of dominance.

The CCI after considering rival submissions observed that ABFI was an 'enterprise' within the meaning of Section 2(h) of the Act, and it was therefore subjected to the discipline of Section 4 of the Act which prohibited abuse of dominant position. The CCI, after examining various factors under the Act, *prima facie* delineated the relevant market to be 'market for organization of baseball leagues/events/tournaments in India'. In addition, the CCI after considering that ABFI plays a decisive role in the governance of this sport discipline in the country, held that it was of a *prima facie* opinion that ABFI was in a dominant position in the 'market for organization of baseball leagues/events/tournaments in India'.

As regards the alleged abusive conduct, the CCI observed that the OP by issuing communication to its affiliated State Baseball Associations requesting them not to entertain the unrecognised bodies and further by requesting them not to allow their

respective State players to participate in any of the tournaments organised by such unrecognised bodies, had violated the provisions of Section 4(2)(c) of the Act as it resulted in denial of market access to other federations. Further, such conduct resulting in limiting and restricting the provision of services and market therefor, were in contravention of the provisions of Section 4(2)(b)(i) of the Act.

The CCI was of the *prima facie* opinion that ABFI had violated the provisions of Section 4 of the Act through its conduct and the matter warranted investigation.

Accordingly, the CCI directed the DG to cause an investigation to be made into the matter under the provisions of Section 26(1) of the Act.

[Case: *In Re: Confederation of Professional Baseball Softball Clubs Vs. Amateur Baseball Federation of India*, Case No. 3/2021, decision dated 3 June 2021. The full text of the decision may be accessed [here](#)]

### 5. Competition Commission of India dismisses SAIL's complaint alleging cartelization at Paradip Port by stevedoring contractors

The Competition Commission of India ("CCI") has dismissed a complaint by Steel Authority of India Limited ("Informant No. 1/SAIL") and Paradip Port Trust ("Informant No. 2") seeking investigation into alleged cartelisation in stevedoring at the Paradip Port.

As per SAIL, it follows a transparent process of open tender for engaging the services of stevedoring contractor at Paradip Port, and despite of the same, illegal cartelisation seems to have occurred among the stevedoring agencies.

It was averred that the OPs (OP-2 to OP-4) are partners in the firm M/s. Mahimanand Mishra (OP-1), and the said individuals were also the shareholders and Directors of Orissa Stevedores Ltd., one of the stevedoring agencies. The scrutiny of the tender documents by SAIL revealed that both the legal entities, despite having a common management, are separate legal entities and were possessed of separate experience certificates and distinct licenses from Paradip Port Trust. Further, while there was nothing in the regulations and tendering process to eliminate such entities with common Directors, or to restrict tendering process

to one such entity, nevertheless the same seems to point towards illegal cartelisation.

The CCI after considering the submissions observed that the allegations raised by the Informants against the OPS were not concrete in nature and merely contained general allegations of existence of cartel between the stevedores in Paradip Port involving the OPs without indicating the nature of the cartel, who all were the members of cartel, how the cartel operated, the restrictions brought about by the cartel in terms of Section 3(3) of the Competition Act, 2002 ("the Act") and how bids issued by SAIL have been manipulated or rigged by the members of the cartel including the OPs. CCI further held that bald allegations not supported by any kind of supporting material/documents could not be the basis for initiating an investigation under the provisions of Section 26(1) of the Act.

The CCI accordingly held that there was no *prima facie* case, and the information filed was directed to be closed forthwith against the OPs.

[**Case:** *In Re: Steel Authority of India Limited & Anr. Vs. M/s. Mahimanand Mishra & Ors., Case No. 12/2021, decision dated 7 July 2021.* The full text of the decision may be accessed [here](#)]

### 6. Competition Commission of India dismisses a complaint against National Stock Exchange which alleged abuse of dominance

The Competition Commission of India ("CCI") has rejected a complaint filed by a retail investor, Mr. Manoj K Sheth ("Informant") against National Stock Exchange ("NSE") alleging grant of preferential market access to select brokers, thereby creating artificial information asymmetry and market manipulation in relation to NSE co-location facilities.

As per the Informant, NSE has indulged in practices of granting preferential market access to select brokers thereby creating artificial information asymmetry and market manipulation in relation to co-location facilities. The said co-location facility creates a divide between two classes of trading members, i.e., ones who can afford and pay for such facility and set up their infrastructure inside the exchange so as to get faster information, and others - who receives trade information later than the privileged members of

the exchange. Accordingly, the said provision of co-location facility by NSE is per se in violation of the provisions of Sec. 4 of the Competition Act, 2002 ("the Act").

The CCI after considering the submissions of the Informant and NSE, observed that NSE appeared to be dominant in the relevant market, i.e., *market for providing co-location services for Algo-trading in securities to the trading members*'.

As regards the allegations that co-location facility in itself was anti-competitive and that the facility should be stalled, the CCI observed that the commission could not be oblivious to the strides being taken by technology in all walks of life, leave alone the financial field.

The CCI further observed that a robust exchange acts as a backbone of the financial system and the provision of co-location facility by exchanges help increase volumes of trades manifold and provides liquidity to investors. This augurs well for the market, companies and the economy. It was further observed that any intervention by the CCI to stop the co-location facility which have in place since 2009 and was on offer not just by NSE, but by BSE as well, would be retrograde.

The CCI accordingly held that there existed no *prima facie* case, and the information filed was directed to be closed forthwith against NSE under Section 26(2) of the Act.

[**Case:** *In Re: Manoj K. Sheth Vs. National Stock Exchange of India Ltd., Case No. 35/2019, decision dated 28 June 2021.* The full text of the decision may be accessed [here](#)]

### 7. Competition Commission of India has held that the mere existence of price parallelism is not sufficient to establish bid-rigging

The Competition Commission of India ("CCI") has dismissed a complaint alleging anti-competitive conduct by Sankeshwar Synthetics Pvt. Ltd. and KKK Mills ("OPs") and has held that a "mere existence of price parallelism or identical prices is not per se sufficient to hold the parties liable for act of manipulation of bids/ bid rigging".

The Informant, CP Cell, Directorate General Ordnance Service, Master General of Ordnance Service, had issued RFP in a Tender for

procurement of underpants woollen. After opening the commercial bids, it was observed that the rate quoted by two firms i.e., the OPs may have been quoted after collusion.

Accordingly, the Informant sought an investigation into the matter under Section 26(1) of the Competition Act, 2002 ("the Act"), to examine if there was any contravention of the provisions of Section 3 of the Act, so that further action may be taken.

The CCI observed that bid rigging or collusive bidding in a tender could be done by unscrupulous bidders in myriad ways, including clandestine arrangements to submit identical bid or deciding *inter se* as to who shall submit lowest bid amongst them or who shall refrain from submitting a bid and even includes designation of bid winners in advance on rotational basis/ geographical basis or on customer allocation basis. Further, any such agreement would be clearly in contravention of Section 3(3)(d) read with Section 3(1) of the Act.

The CCI after perusal of the information available, observed that other than mere existence of an identical L-1 rate there was no other evidence to buttress the allegations of collusion or suggest any *inter se* relationship between the OPs.

The CCI accordingly held that a mere existence of price parallelism or identical prices was not per se sufficient to hold the parties liable for act of manipulation of bids/ bid rigging. Further, price parallelism had to be accompanied by some plus factor in order to substantiate the presence of 'collusion'/ or 'any agreement' on part of the bidders which stands unsubstantiated even after seeking additional information, in the present case.

In view of the aforesaid, the CCI was of the opinion that there existed no *prima facie* case and the information filed was closed under Section 26(2) of the Act.

[**Case:** *In Re: CP Cell, Directorate General Ordnance Service, Master General of Ordnance Service Vs. M/s Sankeshwar Synthetics Pvt. Ltd. & Anr., Case No. 1/2020, decision dated 20 May 2021.* The full text of the decision may be accessed [here](#)]

## **8. Competition Commission of India dismisses a complaint alleging price parallelism between Jet Airways, SpiceJet and IndiGo**

The Competition Commission of India ("CCI") has dismissed a complaint by Ms. Shikha Roy ("Informant") alleging contravention of Section 3 of the Competition Act, 2002 ("the Act") among Jet Airways (India) Ltd. (OP-1), SpiceJet Ltd. (OP-2) and InterGlobe Aviation Ltd. (OP-3), and has held that there was no evidence on record to establish cartel amongst the airlines during the period of Jat agitation that blocked the grand-trunk road between Delhi and Chandigarh, i.e. from 18 to 23 February 2016.

The Informant averred that during the period of Jat agitation in the month of February 2016, domestic airlines tickets skyrocketed to exorbitant rates, particularly between Delhi-Chandigarh and Delhi-Amritsar routes. It was averred that there had been a trend in the aviation industry that the airlines had increased their ticket price as per their will to exploit the passengers during extraordinary conditions, as evidenced in the past during the Chennai floods and Nepal earthquake. The Informant alleged that steep and simultaneous fluctuation in air tickets prices by airlines was violative of the provisions of Section 3 of the Act.

The CCI, by its order dated 9 November 2018 passed under Section 26(1) of the Act, had directed the DG to cause an investigation to be made into the matter. The DG in its investigation report concluded that no contravention of Section 3(3) read with Section 3(1) of the Act was found against the conduct of OPs.

The CCI after perusal of DG Report observed that there was no uniformity with regard to the total revenue, average ticket price, peak demand experienced by various airlines, classification of various fare buckets, seating capacity of aircrafts and openings of buckets. Further, the said investigation also did not reveal any evidence of collusive behaviour or agreement among the OPs. The CCI further noted that the DG investigation also did not reveal any price parallelism or identical pricing of tickets by the airlines for any of the sectors relevant for the case.

In light thereof, the CCI held that there was no evidence on record to establish cartel amongst the airlines during the period of Jat Agitation, i.e.,

from 18 to 23 February 2016 and the CCI found no reason to differ with the findings recorded by the DG.

[**Case:** *In Re: Ms. Shikha Roy Vs. Jet Airways (India) Limited & Ors.*, Case No. 32/2016, decision dated 3 June 2021. The full text of the decision 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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