

A. JUDICIAL PRONOUNCEMENTS

1. NCLAT upholds penalty on Amazon

Future Coupons Private Limited ("FCPL") filed an application before CCI, dated 25th March, 2021 alleging that Amazon has taken a contradictory stand in the arbitration and constitutional court proceedings as compared to the representations and submissions made by them before the Commission in relation to transfer of assets of Future Retail Limited ("FRL"), a company in which FCPL holds 9.82% of the shareholding.

On consideration of the application the CCI issued a show-cause notice to Amazon as they were of a prima facie view that: (a) Amazon failed to identify and notify FRL SHA as a part of the Combination, in terms of Regulation 9(4) and Regulation 9(5) of the Combination Regulations; (b) Amazon had concealed its strategic interest over FRL; and (c) Amazon had made false and incorrect representations and concealed/suppressed material facts in contravention of the provisions of the Competition Act, 2002 ("Act").

The primary issue before the CCI was whether Amazon had indulged in misrepresentation, making false statement and/ or suppression material facts in relation to the scope and purpose of the Combination; and failed to identify and notify FRL SHA as an inter-connected part of the Combination, in terms of Regulations 9(4) and 9(5) of the Combination Regulations.

The CCI observed that the facts, particulars and documents required to be furnished under Form I, including the purpose of the combination (Item 5.3), inter-connected transactions (Item 5.1.2) and documents considered by boards of the parties or key managerial personnel (Item 8.8), are essential to have a full, clear and complete picture of the notified combination. CCI concluded that Amazon's suppression of relevant information amounted to having obtained its consent by fraud. Hence, CCI suspended its order of approval granted vide Order dated November 28, 2019, directed Amazon to request for approval by filing Form II (Long Form) and imposed penalty of INR 202 crores on it as well

Amazon challenged this order before the NCLAT.

Conclusion: NCLAT upheld the order of the CCI and directed Amazon to deposit the penalty within 45 days and comply with the CCI order.

[Case : Order of the Hon'ble NCLAT dated June 13, 2022 Competition Appeal (AT) No. 01 of 2022]

2. CCI warns Amateur Baseball Federation of India ("ABFI")

Confederation of Professional Baseball Softball Clubs ("CPBSC") filed the complaint against ABFI for abusing its dominant position by issuing a letter 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 and tournaments not recognized by it.

Conclusion : CCI held that ABFI was enjoying dominant position in "the market for organizing baseball leagues/events/ tournaments in India."

It noted that "once an entity is found to be dominant, it is immaterial whether the impugned restrictions were implemented or not, as the very fact of imposition of such unfair and restrictive condition by a dominant undertaking stands captured within the framework of Section 4 of the Act which proscribes abuse of dominant position." Accordingly, CCI held that ABFI had abused its dominant position. However, since ABFI had retracted its letter, CCI decided against imposing any penalty.

[Case : Order of the Hon'ble CCI dated June 3, 2022 in Case No. 03 of 2022]

3. CCI dismisses Information against Atos India Private Limited ("Atos")

Hexa Communications Private Limited ("Hexa"), an independent service provider in universal communication solutions market, filed an Information before the CCI alleging that Atos India Private Limited was abusing its dominant position and imposing vertical restraints by restricting availability of spare parts for its products to independent service providers and preventing its consumers from taking services for independent service providers.

Conclusion: Dismissing the Information, the CCI recognized a manufacturer's right to protect its distribution route and brand. The CCI noted that Atos's hardware, software, and services were partially interchangeable and that it had not prohibited sales of spare parts to independent service providers or prohibited consumers from taking supplements. The CCI also rejected Hexa's allegation that Atos' refusal to deal with Hexa would have foreclosure consequences.

[Case: Order of the Hon'ble CCI dated June3, 2022 in Case No. 07 of 2022]

4. Firms penalized for bid rigging in Indian Railways Tender

The matter was initiated by the CCI pursuant to receipt of an application under Section 46 of the Act read with Regulation 5 of the Competition Commission of India (Lesser Penalty) Regulations, 2009 (LPR), on behalf of Jai Polypan Private Ltd. (including its individuals), for alleged cartelization in the supply of protective tubes to the Indian Railways.

Conclusions: CCI noted that a Section 3(3) agreement is presumed to have an appreciable adverse effect on competition ("AAEC") in India. CCI relied on the Supreme Court of India's decision in Rajasthan Cylinders and Containers Ltd. v. Union of India and Others, 2018 (13) SCALE 493 holding that the CCI need not investigate an agreement under Section 3(3) of the Act if it falls into one of the four categories.

The CCI concluded that the OPs' basic operandi amounts to bid rigging in violation of Section 3(3)(d) of the Act, and that the OPs' claim that Indian Railways is a monopolist with the power to set pricing and quantities is pointless. Accordingly, CCI imposed penalties under Section 27 of the Act.

[Case : Order of the CCI dated June 9, 2022 in Suo Moto Case No. 06 of 2022]

5. CCI initiates investigation against Bookmyshow.com

Big Tree Entertainment Private Limited operates Bookmyshow, an online movie ticketing portal. A social activist and the founder of Showtyme alleged that BookMyShow was abusing its dominant position in the market.

Conclusions: The CCI prime facie concluded that the relevant market in this case was internet movie ticket booking in India, and that BookMyShow's services were available pan-India and experienced comparable competitive restraints and competition conditions. BookMyShow's exclusive agreements with cinemas/multiplexes demonstrate its strength, and its deals with cinemas/multiplexes demonstrate its better bargaining power in deciding contractual conditions. These facts seem to support BookMyShow's dominant position in the Indian online cinema ticket market. The CCI noted that BookMyShow's agreement with a vast number of theaters/multiplex chains ban cinemas and moviegoers from using alternative ticketing systems. Further, BookMyShow has reserved the right to acquire, own, and store data without the cinemas having any right, title, or interest in such data, even though the agreements provide for data exchange.

Directing an investigation into the conduct of Bookmyshow, the CCI noted that exclusivity relating to data ownership can increase the bargaining power of the platform over time. Data further strengthens and entrenches the network effects limiting inter platform competition.

Moreover, exclusivity arrangements by BookMyShow may result in softening of competition and therefore bolster the market power of BookMyShow without any incentive for it to lower convenience fees in future.

[Case : Order of the CCI dated June 16, 2022 in Case No. 46/2021]

B. COMBINATION ORDERS

During June 2022, three green channel filings for the following transactions were made and deemed approved by the CCI:

- **C-2022/06/948** - Proposed acquisition of the entire shareholding of Tenneco Inc. by Pegasus. The proposed combination will result in the indirect acquisition by Pegasus of Federal-Mogul Goetze (India) Ltd. (a listed company), which is an indirect subsidiary of Tenneco. On account of Pegasus' acquisition of Tenneco, an open offer to the public shareholders of Federal-Mogul Goetze (India) Ltd., pursuant to the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Regulations), has been triggered. (Proposed Transaction).
- **C-2022/06/940** - Trian Fund Management, L.P.'s representatives joining the board of directors of Unilever pursuant to an invitation. On 31 May 2022, Unilever extended an invitation to Trian's representative, Mr. Nelson Peltz, CEO and Founding Partner of Trian, to join the board of directors of Unilever, and Mr. Peltz was desirous of accepting the invitation.
- **C-2022/06/937** - CFM ARC acquired the non-performing assets with respect to JBF Industries Limited (JBFI) from banks and financial institutions along with the underlying security interest on the Assets. Post successful acquisition of the Assets, CFM ARC seeks to realise and resolve the non-performing assets with respect to JBFI by selling the Assets by way of private treaty to Madelin Enterprises Private Limited under the provisions

of SARFAESI. The Madelin Enterprises Private Limited and Nepean Investment Trust II (acting through the Nepean Capital LLP, Investment Manager) are investing in the Assets as JBFI is a stressed company. Given the very nature of Nepean Investment Trust II, there is a requirement to sell off the investments in the Madelin Enterprises Private Limited before the expiry of life cycle of the Nepean Investment Trust II.

This update is intended merely as a concise compilation of recent developments. The information is general and should not be considered or relied on as legal advice.

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