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# COMPETITION LAW NEWSLETTER

## JULY EDITION

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**AND MANY MORE...**

June turned out to be quite a busy month for the CCI, with several enforcement orders and merger approvals being published. In this July edition of the L&L Partners Competition Law Newsletter, we cover seven significant enforcement orders passed by the Competition Commission of India (**CCI**).

## CCI dismisses allegations of anti-competitive practices and abuse of dominance against Atos India

CCI *vide* [order dated 03.06.2022](#), found that there existed no *prima facie* case in the allegations made by Hexa Communications Private Ltd. (**Hexa**) against Atos India Private Limited (**Atos**) regarding Atos's alleged attempt to indulge in anti-competitive practices and abuse of dominant position whereby it restricted the supply of its spares and provision of after-sales services in the open market.

Atos is a manufacturer of telecommunication and media equipment. Hexa alleged that the genuine spares and support services in relation to Atos' products were not made freely available to the consumers in the open market, leaving Atos the only viable source for supply of those products and services. The Informant also complained of stringent warranty conditions that required customers to get their Atos-Unify Systems serviced only through their authorised channel partners, and if such services are not availed, the warranty for such products was invalidated.

CCI took note of all the submissions made by both the parties. With regards to the allegation that the Atos does not warrant any service and support in respect of its products in India as provided by the Informant, the CCI was of the view that a manufacturer has no legal obligation to warrant genuineness of products/services offered outside its distribution channel, and any insistence that the same be bought from its authorised distributors in itself cannot *prima facie* be considered abusive or exclusionary. The CCI further held that the rights available to a manufacturer to protect the sanctity of its distribution channel and its goodwill in relation to the goods or services offered under its brand names.

In relation to the allegations of restriction of sale in the open market, the CCI noted that Atos had never prevented the sale of genuine spare parts to independent service providers or prohibited its consumers from taking support and services from independent service providers.

CCI further observed that there was no inherent right with the Informant to become an authorised channel partner of the Atos, especially when the Atos has expressed its apprehensions qua the bona fide business dealings of the Informant. Additionally, CCI noted that the absence of dealing with the Atos, which claims to have a very small market share, does not typically indicate any foreclosure effects or any absolute restraints in the presence of other major players.

Thus, the CCI was of the *prima facie* view that the allegations under Section 3(4) read with Section 3(1) of the Competition Act, 2002 (**Act**) remained unsubstantiated and also that no case of violation of any of the provisions of Section 4 of the Act was made out against the Opposite Party.

### CCI finds Baseball Federation guilty of abusing its dominant position

The CCI *vide* its [order dated 03.06.2022](#) found the Amateur Baseball Federation of India (**ABFI**) guilty of abusing its dominant position in the market for organization of Baseball leagues in India but refrained from imposing any monetary penalty on ABFI. The Information was filed by Confederation of Professional Baseball Softball Clubs (**CPBSC**).

The CPBSC stated that ABFI prohibited State Associations from dealing with bodies and leagues not recognized by it and threatening them with disciplinary action if any of the players took part in the leagues and tournaments not recognized by it. Further, the ABFI announced that it would conduct the 34th Senior National Baseball Championship just one day prior to the beginning of the Club Nationals 2021 and closing one day prior to the closing of the same, with the clear motive of sabotaging the event of the Informant.

CCI took note of all the submissions made by the parties and analysed the two sets of allegations made by the CPBSC. With regard to the allegations

under Section 4, the CCI firstly delineated the relevant market as the *market for organization of Baseball leagues/events/ tournaments in India*. The CCI noted that ABFI is the apex body for baseball activities in India in the pyramidal structure, and its dominance was evident as it governs all the activities in relation to the baseball events undertaken in India such as organizing national championships, training programs, and the selection of teams for various international tournaments in different age categories.

The CCI held that the ABFI, by requesting its affiliated State Baseball Associations not to entertain the unrecognized bodies and further requesting them not to allow their respective state players to participate in any of the tournaments organized by such bodies, had violated the provisions of Section 4(2)(c) of the Act as it results in denial of market access to other associations who wish to conduct such tournaments. Further, CCI held that such conduct also results in limiting and restricting the provision of services and market therefore, in contravention of the provisions of Section 4(2)(b)(i) of the Act.

It was further noted by the CCI that the Communication dated 07.02.2021 had warned of strict action against the players who participate in the tournaments organized by bodies which are not 'recognized' by the ABFI. CCI held that such conduct imposes an unfair condition upon the players and thereby falls foul of the provisions of Section 4(2)(a)(i) of the Act.

Thus, CCI directed the ABFI to cease and desist from indulging in such conduct. However, the CCI refrained from imposing any monetary penalty upon ABFI since it had already withdrawn the impugned letter and to that extent, the necessary market correction had already taken place.

### CCI penalises firms for cartelisation in Indian Railway tenders

CCI, *vide* its [order dated 09.06.2022](#), found seven firms guilty of bid rigging in the tenders issued by the various zonal railways for the procurement of polyacetal protective tubes for axle box guide, under Section 3(3) of Act.

The matter was initiated by the CCI *suo motu*, pursuant to receipt of a leniency application. In its report, the DG had observed that the parties had exchanged regular email communications discussing the prices to be quoted, tender quantity to be allocated among themselves, and thereby manipulated the bidding process.

With regard to the penalty, the CCI imposed a fine on the parties at the rate of 5% of the average of their turnover generated from the sale of protective tubes for the last three preceding years, as well as on the individuals involved (based on the average of their incomes). However, the leniency applicant received a 100% reduction in the penalty amount imposed upon it as it had extended full and continuous co-operation not only during the course of investigation before

the DG, but also during the subsequent proceedings before the CCI.

### CCI dismisses allegations against Punjab State Warehousing Corporation

The CCI, *vide* its [order dated 16.06.2022](#), found that there existed no *prima facie* case in the allegations of violation of the provisions of Sections 3 and 4 of the Act made by Private Entrepreneurs Godowns Association (**PEGA**) against Punjab State Warehousing Corporation (**PSWC**) and the State of Punjab (collectively, **OPs**).

The PEGA is an association of private entrepreneurs in the State of Punjab that provides storage space for storage of foodgrains to various warehouse agencies in the state. It alleged, *inter alia*, that the OPs were not revising the rents paid to the private godown owners in the State of Punjab in accord with the amounts disbursed by the Food Corporation of India. It was averred that the agreement between the OPs of not increasing private godown prices directly/indirectly determines the purchase rentals of godown services through overt means, and results in limitation and/or control of supply of services. It was also alleged that PSWC was a dominant player in the relevant market *for availing godown services for storage of foodgrains within the territory of State of Punjab* and its imposing of unfair conditions in the purchase of godown storage space limits the provision of services in the relevant market.

CCI took note of all the submissions made by the parties and analysed the two sets of allegations made by PEGA, i.e., contravention of Section 4 and contravention of Section 3, separately. With regard to the allegation of abuse of dominant position, the CCI noted that, PSWC is an 'enterprise' and its conduct can be analysed under Section 4 of the Act. The CCI delineated the relevant market as the "*market for hiring godown services for storage of foodgrains in the State of Punjab*", and observed that under the current division of shares of various State Procuring Agencies in the storage capacity hiring market in the State of Punjab, PSWC did not hold a dominant position in the relevant market, and thus, in its absence, allegations of abuse made against it need not be examined.

With regard to the allegations of anti-competitive agreement, the CCI noted that PEGA had not placed on record any material, which may even *prima facie* show at there existed an 'agreement' between the OPs for not increasing the rates of rent for hiring of godowns from private parties. Thus, it was held that no case of contravention of even the provisions of Section 3 of the Act, was made out against the OPs. Accordingly, the CCI dismissed all allegations against the OPs.

**CCI dismisses allegations against Neurologica Corporation and Schiller Healthcare India**

The CCI, *vide* its [order dated 16.06.2022](#), dismissed allegations of abuse of dominant position against Neurologica Corporation (**Neurologica**), and allegations of vertical anti-competitive agreements against Neurologica, Samsung Electronics Co. Ltd., Samsung India Electronics Private Ltd., and Schiller Healthcare India Pvt. Ltd. (collectively, **OPs**) by M/s House of Diagnostics LLP (**HOD**).

HOD stated that Neurologica is the only supplier of Portable CT Scan machines in India and provides exclusive aftersales services through Schiller. It alleged that the OPs imposed unfair prices and conditions for renewal of the annual maintenance contract related to the machines. They also argued that the agreements between Neurologica and Schiller amounted to tie-in arrangement as well as an exclusive supply and distribution agreement.

CCI took note of all the submissions made by the parties and analysed the two sets of allegations made by HOD, i.e., contravention of Section 4 and contravention of Section 3, separately. With regard to the allegations under Section 4, the CCI firstly delineated the relevant market as the *market for portable CT scan machines in India*. The CCI observed that the OPs were not in a monopoly position in the delineated market, as alleged by the Informant and that multiple other players existed.

Further, it was noted that the entire market for portable CT scan machines appears to be import based and with the availability of other manufacturers, the purchasers of these machines are free to

import similar/identical machines from other manufacturers. Therefore, it was held that Neurologica did not enjoy any dominance in the market and, consequently, the issue of abuse of dominance did not arise.

With regard to the allegations of vertical anti-competitive agreements, the CCI observed that Neurologica held rights over the various patents related to their machines and as far as technical know-how of the machine is concerned, the same forms part of the Exclusive Distributorship Agreement entered between the OPs. These were proprietary to the manufacturer and the CCI noted that Schiller was not required to disclose them to HOD. Therefore, the CCI held that the allegation with regard to contravention of Section 3 is devoid of any merit and disposed of the matter with no further investigation required.

### CCI launches investigation against BookMyShow for alleged abuse of dominance

The CCI, *vide* its [order dated 16.06.2022](#), ordered a probe against BookMyShow to determine whether there was any contravention of the provisions of Section 4 of the Act. The Information was filed by Mr. Vijay Gopal (**Informant**) Act alleging contravention of Sections 3 & 4 of the Act by BookMyShow and six other multiplexes (collectively, **OPs**), for blocking the entry of a rival portal *Showtyme*.

After collecting material requisitioned from BookMyShow, the CCI noted that the relevant market in the matter is that

of 'market for online intermediation services for booking of movie tickets in India'. It was observed that, as per market reports, BookMyShow had a market share of between 70%-75%. Further, its position to enter into exclusive agreements with certain multiplexes further corroborated its position of strength. Thus, *prima facie*, it appeared that BookMyShow enjoyed a dominant position in the relevant market.

The CCI also looked into various clauses in its agreements with theatres and noted that the exclusivity agreements with certain theatres do not allow them to directly or indirectly engage any entity for providing services similar to BookMyShow. It observed that such exclusive agreements have the potential to foreclose competition, as they may make rivals or new entrants incur significant additional cost to induce the cinemas to give up their exclusive contracts. Further, the CCI also observed that as per the agreement clauses, BookMyShow had reserved the right of data collection/data sharing and noted that exclusivity relating to data ownership can increase the bargaining power of the platform over time.

Thus, the CCI held that there exists a *prima facie* case against BookMyShow which required an investigation by the DG to determine whether there was any contravention of the provisions of Section 4 of the Act. The CCI dropped the other respondent's multiplexes that had been arrayed as parties however as they had a limited role and no allegations had been made against them.

## CCI dismisses allegations of anti-competitive refusal to deal and abuse of dominance by Britannia

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The CCI, *vide* [order dated 16.06.2022](#), dismissed allegations of refusal to deal and abuse of dominant position against Britannia Industries Limited (**Britannia**) on a complaint filed by Hiveloop Technology Private Limited (**Hiveloop**).

Hiveloop is a business-to-business marketplace involved in the trade of several products, and had raised a dispute with the biscuit maker to get the right mix of Britannia's products. It claimed Britannia was discriminating against it, which was in stark contrast to its arrangement with its other distributors.

With regard to dominance, the CCI noted that segmentation of a relevant market cannot be done merely due to the presence of certain popular brands of a product. Hence, the relevant market as delineated by the CCI in this case was broadly '*market for biscuits in India*'. Further, CCI observed that though Britannia was facing competition from other brands, considering its pan India presence and a strong distribution network, it has a certain amount of market power.

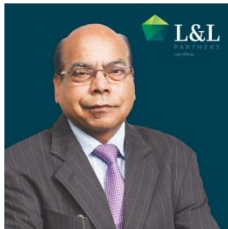
With regard to abuse, however, the CCI found that there was no evidence that Britannia has instructed any of its distributors not to deal with the Informant. Moreover, CCI noted that there was no appreciable adverse effect on competition that had materialized or was likely to materialize as a result of the impugned conduct. The CCI noted that demands of retailers and end consumers did not appear to have been affected and there were also several B2B players similarly placed as that of the Informant. The ill-effects on the competition ought to be perceived depending on the overall market conditions present at that particular time.

Turning to the alleged vertical restraints, the CCI, after perusing all the information submitted by the parties, noted that the relationship between the parties was relatively recent and no agreement appears to exist between them except for a brief period when the pilot project was in operation. The CCI also observed that the alleged non-dealing of Britannia with the Informant did not have any deleterious effects on competition. In this regard, the CCI was of the *prima facie* view that Hiveloop faced no market foreclosure dismissing the argument that one brand of biscuits is a 'must stock' or so indispensable, that not directly dealing with Britannia would pose existential threat to Hiveloop.

*This newsletter is only for general informational purposes, and nothing in this edition of newsletter could possibly constitute legal advice (which can only be given after being formally engaged and familiarizing ourselves with all the relevant facts). However, should you have any queries, require any assistance, or clarifications with regard to anything contained in this newsletter (or competition law in general), please feel free to contact the Competition Law Team at [competitionlaw@luthra.com](mailto:competitionlaw@luthra.com) or any of the contacts listed below. © L&L Partners 2022. All rights reserved.*

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