



Indian Competition Law Roundup: September 2019

In this Roundup, we highlight the main developments in Indian competition law in September 2019.

Abuse of Dominance

Supreme Court Requests Director General to Continue Investigation

Deciding on an appeal from the National Company Law Appellate Tribunal (NCLAT), the Supreme Court requested the Director General, CCI (DG) to continue investigating allegations relating to abuse of dominance by Uber in the National Capital Region (NCR).¹ In considering whether the Competition Commission of India (CCI) had made out a *prima facie* case of abuse of dominance for the DG to investigate, the Court found that the losses allegedly incurred by Uber each trip made it difficult to say that there was no *prima facie* case of abuse. If, in fact, Uber incurred a loss for trips made, this would be *prima facie* indicative of dominance and of a pricing abuse. It should be stressed that this case only addressed what was required for the CCI to make a *prima facie* finding of breach. The CCI has considered competition in this sector on several occasions, always finally finding neither Uber nor its local competitor Ola Cabs to be dominant, on account of the fierce competition between them.

Penalties

Payment of Interest

The Delhi High Court dismissed a writ petition filed by *United India Insurance Company* challenging demand notices issued by the CCI requiring payment of interest on penalties imposed by the CCI which were the subject of a stay order by the Competition Appellate Tribunal (COMPAT) hearing an appeal.² The High Court made it clear that where the COMPAT's final order upheld the penalty, whether in full or of a reduced amount, and the stay had been lifted, interest (of 18% per year) was

due in respect of the period of stay. The High Court made it clear that this was the default position, and that the unsuccessful appellant could seek to persuade the appellate body that a different order should be made on the interest due.

Due Process

Court Affirms Broad Powers of the Director General

In its Judgment in the *Grasim* case,³ a Division Bench of the Delhi High Court held that the DG had broad powers of investigation going beyond the specific subject matter of the CCI's *prima facie* order directing an investigation.

In June 2011, the CCI had passed an order under Section 26(1), considering *prima facie* that there was a breach by Grasim of Section 3(3) of the Competition Act which prohibits anti-competitive agreements. In his 2013 report to the CCI, the investigating DG found there was no breach of Section 3(3), but observed that Grasim had abused its dominant position under Section 4 of the Act. In May 2013, the CCI rejected arguments by Grasim that the DG's investigation was limited to the allegation pertaining to Section 3(3). In December 2013, a single judge of the Delhi Court upheld a writ petition by Grasim,⁴ finding that the DG could not extend the investigation to cover an abuse of dominance case. The CCI then appealed this to a Division Bench.

Relying on judgments of the Supreme Court in the *SAIL* and *Excel Crop Care* cases,⁵ and the Delhi High Court in the *Cadila Healthcare* case,⁶ the Division Bench found that the powers of the DG to investigate extended beyond the subject-matter of the original complaint and that the language of the Section 26(1) order was broad enough to cover an investigation into a breach of Section 4.

In this Issue

Abuse of Dominance

- Supreme Court Requests Director General to Continue Investigation

Penalties

- Payment of Interest

Due Process

- Court Affirms Broad Powers of the Director General

Merger Control

- First Use of the "Green Channel"
- CCI Clears Health Insurance Merger



Competition Matters

The Division Bench therefore restored the CCI's May 2013 order and ruled that the CCI should continue to proceed against Grasim.

Merger Control

First Use of the "Green Channel"

In August 2019, the CCI introduced a "green channel" under which combinations would, subject to certain safeguards, be deemed to be approved where the parties have no horizontal overlaps, no vertical relationships and no complementary businesses. The CCI has just "approved" the first notification received under the green channel,⁷ the acquisition of the *Essel Mutual Fund* by an entity forming a part of the *Sachin Bansal Group*, simply stating on its website that the transaction was "deemed approved" under Section 5A of the Competition Act. No order to this effect has been published, though the CCI's website provides a link to the summary of the transaction prepared by the parties, indicating that the green channel route was being used given the absence of horizontal/vertical overlaps and of complementary businesses.

CCI Clears Health Insurance Merger

The CCI cleared the proposed merger of health insurer *Apollo Munich Health Insurance*

Company (Apollo Munich) into *HDFC ERGO General Insurance Company (HDFC ERGO)*.⁸ HDFC ERGO is a joint venture between HDFC and ERGO International AG. The CCI found that Apollo Munich and the HDFC Group overlapped in the health insurance business in India, including personal accident insurance and travel insurance. There were several general insurance companies in these business segments and the incremental market shares were not significant either in the broader health insurance segment or in the narrower business segments of personal accident insurance, travel insurance and other health insurance. In terms of vertical relationships, banking affiliates of the HDFC Group distributed insurance products. The CCI noted that health insurance products were largely distributed through individual agents and by means of direct sales, with only 8% of such products in terms of value distributed by banks. Apollo Munich also had an insignificant presence in personal accident and travel insurance products. The CCI therefore found that the proposed transaction was unlikely to have an appreciable adverse effect on competition in India.

In this Issue

Abuse of Dominance

- Supreme Court Requests Director General to Continue Investigation

Penalties

- Payment of Interest

Due Process

- Court Affirms Broad Powers of the Director General

Merger Control

- First Use of the "Green Channel"
- CCI Clears Health Insurance Merger

- 1 Civil Appeal No. 641 of 2017 *Uber India Systems Private Limited v CCI* (3 September 2019).
- 2 W.P. (C) 1100 of 2019 *United India Insurance Company Limited v CCI* (11 September 2019). Please note that, since May 2017, the National Company Law Appellate Tribunal (NCLAT) has taken over the appellate functions of the COMPAT.
- 3 LPA 137 of 2014 *CCI v Grasim Industries Ltd.* (12 September 2019).
- 4 W.P. (C) 4159 of 2013 *Grasim Industries Ltd. v. CCI* (17 December 2013).
- 5 *CCI v Steel Authority of India Limited and Another* (2010) 10 SCC 744 and *Excel Crop Care Limited v CCI* (2017) 8 SCC 47.
- 6 LPA 160 of 2018 *Cadila Healthcare v CCI* (12 September 2018).
- 7 Combination Reg. No. C-2019/10/691 BAC Acquisitions Private Limited & Chaitanya India Fin Credit Private Limited.
- 8 Combination Reg. No. C-2019/07/761 HDFC, HDFC ERGO General Insurance Company and Apollo Munich Health Insurance Company (20 August 2019).

COMPETITION LAW TEAM

Pallavi Shroff

Managing Partner
pallavi.shroff@AMSShardul.com

John Handoll

National Practice Head - Competition Law
john.handoll@AMSShardul.com

Naval Satarawala Chopra

Partner
naval.chopra@AMSShardul.com

Shweta Shroff Chopra

Partner
shweta.shroff@AMSShardul.com

Harman Singh Sandhu

Partner
harman.sandhu@AMSShardul.com

Manika Brar

Partner
manika.brar@AMSShardul.com

Aparna Mehra

Partner
aparna.mehra@AMSShardul.com

Gauri Chhabra

Partner
gauri.chhabra@AMSShardul.com

Yaman Verma

Partner
yaman.verma@AMSShardul.com

Rohan Arora

Director
rohan.arora@AMSShardul.com

Disclaimer

This is intended for general information purposes only. It is not a substitute for legal advice and is not the final opinion of the Firm. Readers should consult lawyers at the Firm for any specific legal or factual questions.