



## Indian Competition Law Roundup: September 2020

In this Roundup, we highlight the main developments in Indian competition law in September 2020. We also mention the recent introduction of virtual hearings by the Competition Commission of India (CCI).

### COVID-19

#### *Introduction of Virtual Hearings*

During the COVID-19 crisis, physical hearings before the CCI have been suspended. This has resulted in a backlog of cases awaiting hearing. Given concerns about the safety of physical hearings during the COVID-19 outbreak, the CCI has now decided to hold virtual hearings. It has introduced a Standard Operating Procedure (SOP) for Virtual Hearings together with a set of General Instructions.<sup>1</sup> Participants in virtual hearings will have to provide an undertaking strictly to maintain the *in camera* nature of CCI proceedings, not to inappropriately share links to access the virtual hearing, not to make recordings and to ensure that unauthorised persons will not be present at virtual hearings. The CCI has also restricted the number of persons who can attend the virtual hearings. On 8 October, the CCI tweeted that it had held the first virtual hearing.

### Anti-Competitive Agreements

#### *Supreme Court Affirms NCLAT Order in Malayalam Films Case*

In March 2020, the National Company Law Appellate Tribunal (NCLAT) had upheld an order of the CCI<sup>2</sup> finding that a number of Malayalam filmmaking associations and office bearers had collectively engaged in a boycott against a movie director, T. G. Vinayakumar, in breach of Section 3 of the Competition Act, 2002 (*Competition Act*).<sup>3</sup> The Supreme Court dismissed appeals against the NCLAT order, stating in a one-paragraph order that it did not find any reason to interfere.<sup>4</sup>

<sup>1</sup> Competition Commission of India, *Standard Operating Procedure (SOP) for Virtual Hearings* (6 October 2020).

<sup>2</sup> *T. G. Vinayakumar v Association of Malayalam Movie Artists and others*, CCI, Case No. 98 of 2014 (24 March 2017).

<sup>3</sup> *Association of Malayalam Movie Artists v CCI and others, etc.*, NCLAT, Competition Appeal No. 05 of 2017 (13 March 2020).

<sup>4</sup> *FEFKA Production Executives Union and another v CCI and others, etc.*, Supreme Court, Civil Appeals 3186, 3193 and 3167 of 2020 (28 September 2020).

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## Abuse of Dominant Position

### *On-Line Fashion Platforms - Amazon Not Dominant*

The CCI closed at *prima facie* stage a case brought against *Amazon Seller Services* and related companies (*Amazon*) by two companies in the fashions business, *Lifestyle Equities CV* and *Lifestyle Licensing BV (Lifestyle)*, selling under the Beverly Hills Polo Club brand.<sup>5</sup> Lifestyle alleged that Amazon had abused its dominance in the market for “online fashion retail in India” by selling counterfeit, unlicensed and unauthorised products at unfair, discriminatory and/or predatory prices. The CCI followed earlier cases where it had noted the distinguishing characteristics of platforms where sellers would be interested in selling when increasingly high numbers of buyers visit such a platform; it therefore defined the relevant market as that for “services provided by online platforms for selling fashion merchandise in India”. The CCI stated that there were many players providing such online platforms and that “looking at the current market construct” no one platform was occupying a dominant position. Amazon did not therefore seem to be a dominant entity and the question of abuse under Section 4 of the Competition Act did not arise. However, the CCI stated that this assessment of dominance was specific to the relevant market delineation owing to the product-focused allegations in the case. Defining markets and making competitive assessments would depend on market realities at the time of assessment. In rapidly changing markets, market assessment could not have a static approach. The CCI also pointed out that the issue of the online sale of counterfeit product was not one for antitrust law, but it pointed out that it could be addressed under other regulatory instruments.

The CCI also dismissed allegations of anti-competitive vertical agreements under Section 3(4) of the Competition Act. Agreements between Amazon and other brands were not exclusive in nature and there were plenty of channels of intermediation available for fashion brands, sellers/retailers and consumers to connect with each other. Given the market dynamics, it seemed unlikely that the alleged conduct would have an appreciable adverse effect on competition (AAEC).

### *Yamaha not Dominant in Scooters/Motor-Cycles Markets*

The CCI also rejected allegations that *India Yamaha Motor Private Limited (Yamaha)* had abused its dominant position by abruptly and unreasonably terminating a dealership in 2017.<sup>6</sup> The CCI *prima facie* found that, in the relevant markets for the manufacture and sale of scooters and of motor-cycles in India, Yamaha did not have significant market power (with less than a 10% market share) and that there was well entrenched inter-brand competition between a number of players. Since Yamaha was not dominant, the question of abuse did not arise.

## Merger Control

### *Voluntary Remedies Accepted in Finnish Minerals Equipment Deal*

The CCI published its June 2020 Order approving the acquisition by *Outotec OYJ (Outotec)* of the minerals business of *Metso OYJ (Metso)*.<sup>7</sup> Both parties are Finnish companies present in India in the supply of equipment for various mineralogical processes. After a detailed enquiry, the CCI reached the *prima facie* view that the acquisition would cause an AAEC in the market for “Iron Ore Pelletisation (IOP) Equipment Island” in India. In considering the parties’ response to the consequent Show Cause Notice, the CCI was of the view that the integration of two

5 *Lifestyle Equities C.V and Lifestyle Licensing B.V v Amazon Seller Services Private Limited and others*, CCI, Case No. 9 of 2020 (11 September 2020).

6 *Vijay Chaudhry v India Yamaha Motor Private Limited*, CCI, Case No. 27 of 2020 (7 September 2020).

7 *Outotec OYJ and Metso OYJ*, CCI, Combination Registration No. C-2020/03/735 (18 June 2020).

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strong and close competitors in the market appeared to: (a) limit the number of suppliers to Indian customers; (b) reduce the intensity of innovation; (c) perpetuate the substantial market position of the parties and reduce or eliminate the competitive pressure that would otherwise prevail; (d) reduce the countervailing bargaining power of customers; (e) increase the costs of entrant and rivals to compete and increase market presence (given that there was no likelihood of a timely and sufficient entry to act as a competitive constraint); and (f) result in the creation of a strong integrated player.

In responding to the CCI's Show Cause Notice, the parties had proposed voluntary remedies under which Metso India would transfer its Indian Straight Grate IOP capital equipment business to a suitable buyer. This divestiture would consist of an effective transfer of this business by way of an exclusive and irrevocable licence of the technology in India and the clearance order contained detailed provisions on the implementation of the remedy proposal. This is the first time that the CCI accepted transfer of rights for a technology (for a specified duration) as a remedy to address AAEC concerns. Taking account of this voluntary commitment, the CCI concluded that the proposed transaction was not likely to have an AAEC in India and approved the transaction.

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