



Indian Competition Law Roundup: February 2021

In this Roundup, we highlight the main developments in Indian competition law in February 2021.

Institutional Developments

New Competition Commission of India (CCI) Office in Chennai

On 26 February, Finance Minister Smt. Nirmala Sitharaman inaugurated the CCI's Regional Office (South) in Chennai.¹ The new Chennai office will act as an office to facilitate enforcement, investigation and advocacy in coordination with the Delhi office. It will cater to the requirements of the states of Tamil Nadu, Kerala, Karnataka, Andhra Pradesh and Telangana as well as of the Union Territories Puducherry and Lakshadweep. CCI Chairperson Ashok Kumar stated that this was a step towards the CCI's regional presence and its duties as a federal regulator. Closer engagement with States would foster greater competition in the economy. The CCI also indicated that regional offices are planned to be established in Mumbai and Kolkata.

Restrictive Agreements

CCI Penalises Restrictive Measures by Trade Association

The CCI found that the *Federation of Publishers' and Booksellers' Associations in India (FPBAI)* had acted in breach of Section 3(3)(a) and (b)

together with 3(1) of the Competition Act, 2002 (*Competition Act*) by restricting the level of discount that could be offered by members to institutional buyers and by issuing "advisories" directing its members not to participate in advertisements that did not satisfy certain conditions.² Finding that the discount policy was coercive in nature, the CCI rejected FPBAI's arguments that the discount policy was only recommendatory. It also rejected arguments that the policy was intended to counter the sale of pirated copies and other malpractices. As regarded the "advisories", the CCI again found they were coercive in nature, as members had been directed not to participate in certain advertisements with offending conditions. The CCI rejected arguments that there was no appreciable adverse effect on competition; the practices affected an indirect membership of 4,000 booksellers and, in fact, membership of the FPBAI or associated associations was necessary to participate in most institutional advertisements for supply of publications. The CCI imposed a penalty of INR 200,000 on the FPBAI (approx. USD 2,740) and of INR 100,000 (approx. USD 1,370) on two individuals (a former and the current president of the FPBAI).

CCI Finds No Cartelisation in the Airlines Sector

In February 2014, the CCI received a letter from the *Lok Sabha Secretariat*³ requesting it to examine whether there was any evidence of cartelisation in the airlines sector. The CCI

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¹ Government of India Press Release (26 February 2021).

² Case No. 33 of 2019 *International Subscription Agency v Federation of Publishers' and Booksellers' Associations in India* (23 February 2021).

³ The lower house of India's Parliament.



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opened an investigation on its own motion and in March 2015, finding a *prima facie* case of breach by a number of airlines, referred the matter to the Director General(DG) for investigation. In September 2016, the DG submitted an investigation report to the CCI finding that no breach was made out. The CCI directed the DG to conduct further investigation into the matter and a new report was submitted in October 2019 again finding no evidence of breach.

The CCI found that there was no evidence to establish a cartel amongst airlines during the relevant period (April 2012 to March 2014).⁴ In its summary analysis, the CCI found that there was no pattern of stability or parallelism between the airlines; rather there was a significant variation in market shares of the airlines and there was no evidence of communications between the airlines. The CCI also noted that different airlines followed different bucket systems, with only one fare available to customers at a given time; these fare buckets were for internal consumption and customers and competing airlines were not privy to them. Finally, the CCI noted that all airlines used algorithmic software programs to predict demand and assign seats to fare buckets. Though four of the five airlines investigated used similar software, manual intervention played a pivotal role in the determination of final prices. Although the algorithms could cover demand fluctuations due to the seasons and festivals, they could not be modified to cover unforeseen events like cyclones, IPL matches, international conferences and cultural events. Revenue management personnel played a key role in determining fares, with software merely used to facilitate decision making.

[No Bid-Rigging Despite Close Links between Bidders](#)

The CCI closed a case against three printers who had been investigated for alleged bid-rigging in tenders for the printing, packing and dispatch of confidential documents.⁵ The CCI had ordered an investigation after reaching a *prima facie* view that two of the printers, though purportedly competing in the market,

were under common ownership/management and had exchanged funds, and that funds had been transferred from one of them to the third during the relevant period, and that advantage had been taken of their close linkages to manipulate the process of bidding. The CCI noted that the investigation had brought out close linkages between the three printers on the basis of common ownership, shareholdings and commercial transactions. Two of them were related parties in terms of the Companies Act, 2013 and had common directors. The dealing between the three printers were on account of their historic business linkages and thus appeared to be in the ordinary course of business. There was nothing to suggest that they had joined hands to manipulate the bidding process. In the absence of collusion, the CCI ordered the matter to be closed.

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[CCI Clears Reliance/Future Acquisition](#)

The CCI published its November 2020 clearance of the acquisition by *Reliance Group (Reliance)* of the retail business of *Future Group (Future)*, along with its wholesale, logistics and warehousing business.⁶ The transaction was the largest deal in the brick-and-mortar retail sector in India, involving the acquisition of over 1,500 stores in food and grocery (F&G), apparel/footwear/accessories (AFA) and general merchandise (GM) across India. In relation to retail, the CCI considered that the market as a whole as well as the F&G, AFA and GM segments included both organised and unorganised retail. It conducted its competition assessment at an all-India level and city-wide and catchment area levels for all the segments. Although the parties overlapped in all these segments, the CCI found that there were limited overlaps between the parties in cities/towns, that combined market shares did not exceed 10% and the incremental increase in market share was under 5%. In F&G and AFA, organised players would impose competitive constraints on the combined entity. The CCI considered that, in *all* segments, the large unorganised retail sector would also pose competitive constraints.

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⁴ *Alleged Cartelization in the Airlines Industry, Suo Motu Case No. 03 of 2015 (22 February 2021).*

⁵ *Alleged Bid-Rigging in Tenders Invited by Department of Printing for Printing, Packing and Despatch of Confidential Documents, Suo Motu Case No. 03 of 2019 (12 February 2021).*

⁶ *Reliance Retail Ventures Limited, Reliance Retail and Fashion Lifestyle Limited and Future Enterprises Limited, CCI, Combination Reg. No. C-2020/09/771 (20 November 2020).*



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In relation to wholesaling, the CCI looked at the market as a whole and the above segments on a pan-India and city basis. The parties primarily overlapped in the F&G segment. In all markets/segments, low entry barriers due to 100% foreign direct investment being allowed in the B2B sales market had resulted in a significant growth in the number of players. Apart from organised players, the unorganised wholesale sector also posed a significant constraint. In relation to logistics and warehousing (3PL), Future's market share was less than 5%. The CCI found that there were several players in the 3PL segment/business segment and that Reliance's presence in the market was minimal. The vertical relationship between the two was also not likely to raise any competition concern.

Green Channel Availed of Despite Vertical Overlap

Deemed approval under the Green Channel route was also given to the acquisition by *International Finance Corporation (IFC)* of an equity shareholding in *Dodla Dairy (Dodla)*.⁷ The Green Channel enables clearance to be deemed given on notification and can be availed of where there is no horizontal overlap between the parties, no vertical relationship and no complementary businesses. The summary of the transaction provided by the parties noted that there was a vertical relationship between the parties as IFC had a "miniscule shareholding" of 5% (and certain rights which did not amount to major control rights) in online food retailer

Big Basket through which Dodla sold some of its products. It was argued that this was limited to the state of Tamil Nadu, and that the revenue generated through such sales was negligible and was an insignificant portion of Dodla's annual revenue. It was therefore submitted that the Green Channel route was available, specifically in light of the insignificant nature of the overlap. As matters stand, it appears that the CCI may be willing in individual cases to accept use of the Green Channel route even where there is some (albeit insignificant) vertical overlap. It is unclear whether the same approach will be taken to horizontal overlaps and complementary businesses.

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Market Study in the Pharma Sector

On 19 February 2021, the CCI announced that it was conducting a market study on the pharmaceutical sector in India with a view to developing a better understanding of the competition landscape in the sector.⁸ To this end, the CCI will consult with various stakeholders - such as pharmaceutical companies, stockists, chemists, trade associations, doctors, sector experts and regulators - to gather insights on issues that may have a bearing on competition within the pharmaceutical market in India. Stakeholders willing to participate in the consultation have been invited to reach out to the CCI at pharmastudy@cci.gov.in by 19 March 2021.

⁷ *International Finance Corporation*, CCI, Combination Reg. No. C-2021/02/812.

⁸ CCI, Public Announcement (19 February 2021).

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