

September 2021



## Indian Competition Law Roundup: September 2021

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

### Anti-Competitive Agreements

#### *CCI Finds Beer Companies Guilty of Cartelisation*

The CCI found that three beer companies – *United Breweries Limited (UBL)*, *Anheuser Busch InBev SA/NV (AB InBev)* and *Carlsberg India Private Limited (CIPL)* – together with the *All India Brewers Association (AIBA)* were involved in cartelisation in the sale and supply of beer in various States and Union Territories.<sup>1</sup>

The CCI held that the three companies had engaged in price coordination, in collectively restricting the supply of beer, and in market sharing. It also found that UBL and AB InBev had coordinated in the purchase of second-hand bottles and in the supply of beer to premium institutions. The CCI held that a number of individuals of UBL, CIPL, AB InBev and the AIBA were also liable for anti-competitive conduct.

The CCI found that the cartel had lasted from 2009 to at least October 2018 (when dawn raids of the companies took place), with CIPL joining the other two beer companies from 2012 and the AIBA providing a platform for the cartel activity since 2013.

In addition to a “cease and desist” order, the CCI, taking account of various mitigating

factors, set a penalty on the three companies of 0.5 times their relevant profit or 2% of their relevant turnover, whichever was the higher, for each year of their participation in the cartel. The AIBA was liable to a penalty of 3% of the average of its turnover for the last three preceding financial years of the cartel and various individuals of the three companies and AIBA who were implicated in the breach were liable to a penalty of 3% of the average of their incomes for the same period.

The three beer companies had applied for leniency and they and relevant individuals were granted reductions in penalty. AB InBev, which had applied for leniency at the very beginning, and its individuals enjoyed a 100% reduction. The second in line, UBL, had applied after the dawn raids and it and its individuals received a 40% reduction (out of a maximum of 50%). The third, CIPL and its individuals, who also applied after the dawn raids, received a 20% reduction. As a result, the CCI imposed a total penalty of approximately INR 873 crores (approx. USD 116.7 million) on UBL, CIPL and the AIBA and their respective individuals, which was later reduced to approximately INR 864 crores (approx. USD 115.5 million) after the CCI rectified its calculation of penalty for CIPL.

#### *CCI Orders Investigation into Supply of Digital Cinema Equipment*

The CCI considered complaints that two suppliers of digital cinema equipment (DCE) – *UFO Moviez India Ltd. (UFO Moviez)* and *Qube Cinema Technologies Pvt. Ltd. (Qube)* – had, in

### In this Issue

**Anti-Competitive Agreements**

**Procedures**

**Merger Review**

<sup>1</sup> *In Re: Alleged Anti-Competitive Conduct in the Beer Market in India*, CCI, *Suo Motu* Case No. 06 of 2017 (24 September 2021).



their agreements with cinema theatre owners (CTOs), acted in breach of Section 3(4) of the Competition Act, which prohibits vertical agreements having an appreciable adverse effect on competition (AAEC).<sup>2</sup>

The CCI first considered the allegation that UFO Moviez had abused its dominant position in the leasing of DCE by denying access to films that had not been processed by its subsidiary *Scrabble Digital Ltd. (Scrabble Digital)*. The CCI found that UFO Moviez was not dominant in this market and proceeded to consider whether there was *prima facie* evidence of prohibited vertical agreements.

In relation to UFO Moviez, the CCI found that it had introduced clauses into the leasing agreement which required post-production processing of cinema films to be provided by *Scrabble Digital Ltd.* The CCI *prima facie* regarded this as tying, an exclusive supply agreement and refusal to deal. It noted that, with a 30-40% share of the market for the leasing of DCE, UFO Moviez appeared to have market power. It concluded that its conduct was likely to cause an AAEC by creating barriers to other suppliers of DCE and by precluding CTOs from availing of other suppliers' services and innovations that could accrue from such supply.

The CCI reached a similar conclusion in relation to exclusive content agreements between Qube and CTO which required films using Qube's DCE to be cloned and mastered by it. Qube was also a significant player in the market and *prima facie* enjoyed market power.

The CCI thus considered that there was a *prima facie* case of breach of Section 3(4) of the Competition Act by both suppliers and ordered an investigation by the Director General (DG).

## Procedures

### [Delhi High Court Hears Google Confidentiality Claims](#)

The High Court of Delhi (*High Court*) heard a writ petition from *Google PLC (Google)* claiming that the CCI/DG had leaked confidential information to the media which had been submitted by Google to the DG during the

investigation into the alleged abuse of its dominant position.<sup>3</sup> In addition to seeking a direction restraining the CCI from making such information public, Google also challenged a CCI order partially rejecting its representations against the DG's order in respect of its confidentiality request.

During the High Court hearing, the CCI stated that, although it stood by the legality of the order and had not breached confidentiality/ leaked information, it was willing to recall the order and accept Google's request for maintaining confidentiality. The CCI had also directed that a fact-finding internal inquiry panel be set up to investigate the alleged leak of information. The High Court considered that this addressed the issues. It made it clear that, if Google still had a grievance about the leaking of confidential information, Google could seek legal recourse. However, it clarified that it had not expressed any opinion on the claim regarding the CCI's role in leaking confidential information which had already taken place.

## Merger Review

### [CCI Approves Zomato Acquisition](#)

The CCI approved the acquisition by *Zomato Limited (Zomato)* of an approximately 9.3% stake in *Grofers India Private Limited (Grofers India)* and *Hands on Trades Private Limited (HoT)*, subsidiaries of *Grofers international Pte. Ltd. (Grofers International)* (collectively, the *Target*).<sup>4</sup> In addition, Zomato would also have one board seat and affirmative voting rights in the *Target* (which meant that the acquisition would be regarded as strategic and not as a mere investment which would ordinarily be exempt from notification).

Zomato primarily operates in the food services market, providing a platform connecting customers, restaurant partners and delivery partners. A Zomato subsidiary also operates *Hyperpure* which supplies fresh ingredients primarily to Zomato's restaurant partners. *Grofers India* operates an e-commerce marketplace in India, which provides an information technology platform facilitating sellers of various products (including grocery, food and vegetables, personal care, pet care

## In this Issue

**Anti-Competitive Agreements**

**Procedures**

**Merger Review**

<sup>2</sup> *PF Digital Media Services Ltd. and Another v UFO Moviez India Ltd. and Others*, CCI, Case No. 11 of 2020 (17 September 2021).

<sup>3</sup> *Google LLC and Another v Competition Commission of India*, High Court of Delhi, W.P.(C) 10924/2021 (27 September 2021). Also see the earlier interim order of 24 September 2021.

<sup>4</sup> *Zomato Limited*, CCI, Combination Reg. No C-2021/06/847 (13 August 2021).



and baby care) and buyers of these products. HoT is in the business of B2B wholesale trading, contract manufacturing and the provision of warehousing/storage services. The parties overlapped in the provision of fruits, vegetables and other food-related products on a B2B level. The CCI considered three potential relevant markets: (a) the broad market for the supply of groceries, household items, general merchandise, personal hygiene products and fruit and vegetables in India; (b) the narrower segments of B2B supply of such products in India; and (c) the narrowest segment of the supply of groceries, fruit and vegetables in India. The CCI left the exact market definition

open as, in all of these, the parties' combined share was less than 1%. There were also other players in the narrower segment who would pose competitive constraints on the parties after the combination.

The parties also overlapped in the market for services provided by online platforms for the sale of groceries, household items, general merchandise, personal hygiene products, fruits and vegetables in India. In this online marketplace market, the parties had combined shares of 10-15%, but the incremental share was less than 1% and there were other players posing competitive constraints.

## In this Issue

**Anti-Competitive Agreements**

**Procedures**

**Merger Review**

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