



## Indian Competition Law Roundup: March 2022

In this Roundup we highlight some important developments in Indian competition law and policy in March 2022. During this month:

- For want of evidence, the Competition Commission of India (CCI) dismissed, at *prima facie* stage, allegations that Amazon had engaged in “deep discounting” in breach of Section 3(4) of the Competition Act, 2002 (*Competition Act*). In another case, the CCI decided “not to proceed” against Amazon in relation to allegations pertaining to private label brands sold on its India marketplace.
- The CCI also dismissed allegations of “deep discounting” by e-commerce platform Shopee; it found *prima facie* that, as a new entrant to a market with established players, Shopee did not have significant market power, let alone dominance.
- The CCI, *prima facie*, found that several vehicle manufacturers who also provided motor insurance had not abused their dominant position by denying cashless claims to car buyers who did not purchase insurance from them or related channels. There were no tie-in arrangements since customers could freely buy policies from other companies/brokers. Further, allegations of collective dominance could not be entertained under the Competition Act.
- The CCI dismissed, at *prima facie* stage, a complaint that Inox had abused its dominance by bringing copyright infringement proceedings against Cryogas in bad faith. The CCI concluded that the proceedings could not be said to be fraught with any lack of good faith.
- The Government of India extended the 2017 Target Exemption to 28 March 2027 without any changes to the assets or turnover thresholds.
- The CCI cleared Tata’s acquisition of shareholding in and control of Air India. Increases in market concentration for certain origin-destination pairs were, in the CCI’s view, countered by several mitigating factors considered in the context of concerns about the viability of debt-laden Air India were it not acquired by a private entity.
- The CCI found that Adani Green Energy had, in its acquisition of S. B. Energy, engaged in gun-jumping before CCI approval. The parties had agreed to discuss the target’s ongoing business and operations of the target and to allow Adani to make inputs into its business; despite “clean team” arrangements, and the inputs given being non-binding on the target, this could facilitate exchanges of competitively sensitive information with the potential for tacit collusion.
- The CCI found that Tata Power Company had failed to notify acquisitions in the electricity distribution sector on the mistaken grounds that the relevant electricity regulator had exclusive jurisdiction to regulate combinations in the sector.

### Restrictive Agreements

#### CCI Dismisses Cases against Amazon

The CCI dismissed, at the *prima facie* stage, allegations by the All India Online Vendors

### In this Issue

#### Restrictive Agreements

- CCI Dismisses Cases against Amazon

#### Abuse of Dominant Position

- CCI Dismisses Complaint of Deep Discounting by Shopee
- CCI Closes Case against Vehicle Manufacturers
- Copyright Infringement Litigation not Anti-Competitive

#### Merger Control

- Target Exemption Extended to 28 March 2027
- CCI Clears Acquisition of Air India
- CCI Finds Gun Jumping by Adani Green Energy
- CCI Affirms that Electricity Act Does Not Oust CCI’s Merger Control Powers



# Competition Matters

Association (AIOVA) that Amazon Seller Services Private Limited (Amazon) and a number of related companies had acted in breach of Section 3(4) of the Competition Act by engaging in “deep discounting” and failing to ensure “platform neutrality”.<sup>1</sup> The CCI observed that AIOVA had failed to provide certain information and clarifications sought and to follow directions to file a certificate in compliance with the provisions of the Indian Evidence Act, 1872 in relation to certain electronic evidence. AIOVA had also chosen not to respond to a number of CCI orders. The CCI concluded that the allegations were devoid of admissible/requisite evidence and the Information (complaint) lacked actionable material for further examination. Since there was not sufficient material to form a *prima facie* view, the CCI directed that the matter be closed.

The CCI decided “not to proceed” in another case involving Amazon.<sup>2</sup> Following media reports, the CCI considered allegations on private label brands related to Amazon sold on the Amazon India Market place. A short order stating that the CCI decided not to proceed was made on 7 March. On 11 March, the CCI made another order summarising evidence provided on affidavit by Amazon and stating, without any detailed reasoning, that it had decided not to proceed in the matter. However, it made it clear that, if the conduct of Amazon or related entities was not in consonance with the Competition Act or Amazon’s submissions were found to be incorrect, the order would not come in the way of examining the conduct of Amazon or any of its related entities.

## Abuse of Dominant Position

### CCI Dismisses Complaint of Deep Discounting by Shopee

The CCI summarily dismissed, at *prima facie* stage, allegations that Spinn India Private Limited (Shopee), which operated the

e-commerce platform Shopee, had, in offering “deep discounts” for various products on its platform, abused its dominant position.<sup>3</sup> The CCI noted that Shopee was launched in November 2021 and was a recent entrant into a market that already included established e-commerce companies like Amazon, Flipkart, Myntra and Nykaa. It did not appear that Shopee possessed significant market power, let alone dominance, the more so since it was a new entrant with established players. The CCI also stated that the Informant had not pointed out the existence of any agreement to be examined under Section 3 of the Competition Act.

### CCI Closes Case against Vehicle Manufacturers

The CCI closed, at *prima facie* stage, a complaint against a number of automobile manufacturers, who also provided motor insurance to buyers of their vehicles, alleging that they had abused their dominant position by disallowing/denying cashless claims to consumers if the insurance policy had not been obtained through them, their dealers or insurance broking companies with whom they had arrangements.<sup>4</sup> The CCI noted that, beyond making bald allegations, nothing concrete had been submitted on the issue of dominance/abuse and that the allegation was one of collective dominance which was not provided for under the Competition Act. In any case, where consumers could purchase their vehicle from various manufacturers and avail of insurance services from various insurance brokers, in addition to the manufacturers’ own broking companies, the requirement to define a market or assess dominance for each manufacturer/broking company did not arise. Referring to an earlier order involving Hyundai Motor India,<sup>5</sup> the CCI also noted that the arrangements that the manufacturers had with their insurance broking companies did not involve tie-in arrangements since customers were able to buy policies from other companies/brokers. The CCI also

## In this Issue

### Restrictive Agreements

- CCI Dismisses Cases against Amazon

### Abuse of Dominant Position

- CCI Dismisses Complaint of Deep Discounting by Shopee
- CCI Closes Case against Vehicle Manufacturers
- Copyright Infringement Litigation not Anti-Competitive

### Merger Control

- Target Exemption Extended to 28 March 2027
- CCI Clears Acquisition of Air India
- CCI Finds Gun Jumping by Adani Green Energy
- CCI Affirms that Electricity Act Does Not Oust CCI’s Merger Control Powers

1 AIOVA v Amazon Seller Services Private Limited and Others, CCI, Case No. 29 of 2020 (3 March 2022).

2 In Re: Allegations pertaining to private label brands related to Amazon sold on Amazon India marketplace, CCI, Suo Motu Case No. 04 of 2021 (7 and 11 March 2022).

3 Vaibhav Mishra v Spinn India Private Limited (Shopee), CCI, Case No. 01 of 2022 and Praveen Khandelwal v Spinn India Private Limited, CCI, Case No. 8 of 2022 (3 March 2022).

4 Manav Seva Dham v Maruti Suzuki India Limited and Others, CCI, Case No. 03 of 2022 (22 March 2022).

5 Fx Enterprise Solutions India Private Limited v Hyundai Motor India Limited and St Antony’s Cars Private Limited v Hyundai Motor India Limited, CCI, Case No. 36/2014 and Case No. 82 of 2014 (14 June 2017).



# Competition Matters

observed that the cashless claim facility was not confined to the broking arms of the manufacturers but could also be extended by certain other brokers.

## Copyright Infringement Litigation not Anti-Competitive

The CCI rejected a complaint by *Cryogas Equipment Private Limited (Cryogas)* that *Inox India Private Limited (Inox)* had abused its dominant position by bringing a civil suit claiming that Cryogas had infringed its copyright over a proprietary engineering drawing in relation to a liquefied natural gas trailer.<sup>6</sup> The CCI noted that, to be termed a sham, litigation had to be initiated by a dominant undertaking to cause anti-competitive harm. Two conditions had to be met. First, it had to be established that the case filed was on an objective view baseless and appeared to be an instrument to harass the other party. Second, it had to be shown that the legal action was conceived with an anti-competitive intent or plan to eliminate/thwart competition in the market. Though anxious not to consider the litigation on its merits – which was for the court where the matter was pending – the CCI was of the *prima facie* view that the litigation was not fraught with any lack of good faith. It noted that Inox had, in informing customers and others of the litigation, gone further than was necessary for the purposes of the litigation. Enjoining Inox to be more careful, the CCI felt that, in the specific facts and circumstances of the case, this was not a fit case warranting investigation and it was thus not necessary to define the relevant market and assess the dominance of Inox.

## Merger Control

### Target Exemption Extended to 28 March 2027

The Government of India extended the 2017 *de minimis* Target Exemption which was scheduled to expire at the end of March 2022 without any changes to the assets or turnover thresholds. This important exemption from notifying combinations under the Competition Act will now be valid until 28 March 2027.<sup>7</sup>

The Competition Act requires acquisitions, mergers and amalgamations (collectively combinations) to be notified in advance to the Competition Commission of India where the parties or their groups exceed specified assets or turnover thresholds. The Target Exemption covers combinations where: (a) the value of the assets being acquired, taken over, merged or amalgamated is not more than INR 350 crores (approx. USD 46 million) in India; or (b) the turnover is not more than INR 1,000 crores (approx. USD 133 million) in India. It should be noted that these conditions are alternative, so the exemption from notification will apply if either the assets or the turnover are below these thresholds.

### CCI Clears Acquisition of Air India

The CCI published its December 2021 order clearing the acquisition by *Talace Private Limited (Talace)*, a wholly owned subsidiary of *Tata Sons*, of 100% of the equity share capital and sole control of *Air India Limited (Air India)* and *Air India Express Limited* and 50% of the equity share capital and joint control of *Air India SATS Airport Services Private Limited (collectively, the Target)*.<sup>8</sup>

The CCI found horizontal overlaps between Tata Sons Group companies and the Target in the provision of passenger air transport services and air cargo services. In relation to passenger air transport services, the CCI considered overlapping Origin-Destination pairs (*O&D pairs*) as separate relevant markets for the purposes of the assessment, but recognised that some routes might be substitutable with others. Although there were certain O&D pairs in domestic and international markets where market concentration was increasing, there were mitigating factors which, taken as a whole, meant that the potential benefits would outweigh the possible harm resulting from the proposed acquisition. Such factors included market forces, such as supply-substitutability, the existence of a strong competitor, availability of indirect flights and likelihood of expansion of capacity in airports, and target-specific factors, including the likelihood of improving operational efficiencies, addressing the sub-optimal

## In this Issue

### Restrictive Agreements

- CCI Dismisses Cases against Amazon

### Abuse of Dominant Position

- CCI Dismisses Complaint of Deep Discounting by Shopee
- CCI Closes Case against Vehicle Manufacturers
- Copyright Infringement Litigation not Anti-Competitive

### Merger Control

- Target Exemption Extended to 28 March 2027
- CCI Clears Acquisition of Air India
- CCI Finds Gun Jumping by Adani Green Energy
- CCI Affirms that Electricity Act Does Not Oust CCI's Merger Control Powers

6 *Cryogas Equipment Private Limited v Inox India Private Limited*, CCI, Case No. 08 of 2021 (8 March 2022).

7 *Gazette of India*, 16 March 2022.

8 *Talace Private Limited*, CCI, Combination Registration No. C-2021/11/883 (20 December 2021).



# Competition Matters

asset utilisation of the target, optimising the route network and the possibility of deriving efficiencies from synergies when the Target was operated by a private company. These mitigating factors were considered in the context of concerns about the viability of debt-laden Air India were it not acquired by a private entity.

In relation to air cargo services, the CCI had no competition concerns given the parties' low incremental market share, their low market shares and the existence of other players. The CCI also considered vertical relationships and complementary relationships, including the provision of ground handling services in several airports, but saw no foreclosure concerns.

## CCI Finds Gun Jumping by Adani Green Energy

In March 2022, the CCI found that *Adani Green Energy Limited (Adani)* had, in its 2021 acquisition of *S.B. Energy Holding Limited*, engaged in gun jumping before approval had been given by the CCI.<sup>9</sup> The share purchase agreement allowed the parties to discuss the ongoing business and operations of the target and provided for acquirer inputs into the target's business. Despite the existence of a "clean team" protocol and the fact that the acquirer inputs were to be non-binding, the CCI considered that these arrangements potentially facilitated the exchange of commercially sensitive information with

the potential for tacit collusion, which went beyond what was required to preserve the economic valuation of the business. A nominal penalty of INR 5 lakhs (approx. USD 6,600) was imposed on Adani.

## CCI Affirms that Electricity Act Does Not Oust CCI's Merger Control Powers

The CCI found that *Tata Power Company Limited (TPCL)* had failed to notify three notifiable acquisitions in the electricity distribution sector.<sup>10</sup> TPCL stated that it believed that the Odisha Electricity Regulatory Commission (OERC), which had regulated the acquisition process, had the exclusive jurisdiction to regulate combinations in the electricity sector. Referring to previous practice, the CCI rejected arguments that provisions in the Electricity Act, 2003 overrode provisions in the earlier Competition Act (2002) and held that the mandate of the older legislation was not ousted by the later one. It also found that the OERC had recognised the CCI's jurisdiction and had in fact directed TPCL to comply with the Competition Act. It therefore found that TPCL had failed to notify the transactions prior to consummation. In setting the level of penalty, the CCI considered as mitigating factors the ambiguity arising from overlapping provisions in the two Acts, the notifications to the CCI when told to do so by the OERC and TPCL's full cooperation during the inquiry. A nominal penalty of INR 5 lakhs (approx. USD 6,600) was imposed for each case of non-notification.

<sup>9</sup> Proceedings against *Adani Green Energy Limited* under Section 43 A of the Competition Act, CCI, Combination Registration No. C-2021/05/837 (9 March 2022).

<sup>10</sup> Proceedings against *Tata Power Company Limited* under Section 43A of the Competition Act, CCI, Combination Registration Nos. C-2021/03/824, C-2021/02/825 and C-2021/03/826 (17 March 2022).

## In this Issue

### Restrictive Agreements

- CCI Dismisses Cases against Amazon

### Abuse of Dominant Position

- CCI Dismisses Complaint of Deep Discounting by Shopee
- CCI Closes Case against Vehicle Manufacturers
- Copyright Infringement Litigation not Anti-Competitive

### Merger Control

- Target Exemption Extended to 28 March 2027
- CCI Clears Acquisition of Air India
- CCI Finds Gun Jumping by Adani Green Energy
- CCI Affirms that Electricity Act Does Not Oust CCI's Merger Control Powers

## 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

Partner  
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.