



## Indian Competition Law Roundup: October 2022

In this Roundup, we highlight some important developments in Indian competition law and policy in October 2022. During this period:

- The Chairperson of the Competition Commission of India (CCI), Ashok Kumar Gupta, has retired and Member Sangeeta Verma has been appointed as Acting Chairperson pending the appointment of a new Chairperson.
- The Regional Office (West) of the CCI was inaugurated by the Union Minister of Finance and Corporate Affairs.
- The CCI found that manufacturers of axle-bearings had engaged in bid rigging in tenders issued to Eastern Railway but, in light of the effects of the COVID-19 pandemic and other factors, refrained from imposing any financial penalty.
- The CCI also found that three associations of corrugated box manufacturers and individual mills had been involved in increasing and deciding the price of kraft paper and in the collective shutdown of kraft paper mills. Again, it decided not to impose any financial penalty.
- In two orders respectively relating to the Android mobile device ecosystem and Google Play Store payment policies, the CCI found that Google had abused its dominant position in a number of markets. Along with detailed “cease and desist” and modification orders addressing these breaches, the CCI imposed substantial financial penalties on Google, amounting to 10% and 7% of its average relevant turnover over three years.
- The CCI found that online travel agency MakeMyTrip and its subsidiary Ibibo (together *MMT-Go*) had abused its dominant position in the market for intermediation services provided by online travel agencies.
- Whilst finding no prima facie violation of the Competition Act by a Swiss pharmaceutical company in relation to licensing its patented iron injectable medicines, the CCI reasserted its jurisdiction over foreign companies operating in India and in matters relating to patents issued under the Indian Patents Act, 1970.
- The CCI cleared the Sony/Zee merger subject to modifications entailing the divestment of three TV channels. It also approved the amalgamation of two holding companies each controlled by separate branches of the broad Birla family. Initial concerns about the effects of horizontal overlaps were addressed by voluntary undertakings.
- In approving a buyback arrangement under which the Canadian Pension Plan Investment Board would increase the percentage of its voting rights in ReNew Energy Global plc, the CCI made it clear that the exemption from notification for the buyback of shares would not apply where it led to the acquisition of

### In this Issue

#### Institutional Matters

- CCI Chairperson Leaves and Acting Chairperson Appointed
- CCI Office in Mumbai Opens

#### Anti-Competitive Agreements

- Cartels

#### Abuse of Dominant Position

- Google Abuses Dominance in Multiple Markets

#### CCI Jurisdiction

- CCI Asserts Jurisdiction in Competition Case Involving Patents

#### Merger Control

- CCI Clears Sony/Zee Merger Subject to Certain Modifications
- Umang/Aditya Amalgamation Cleared Subject to Undertakings
- Buyback of Shares Notifiable where it Results in Acquisition of Negative Control
- CCI Finds that Minority Acquisition was not Made Solely as Investment or in Ordinary Course of Business

#### Competition Advocacy

- Film Distribution Study – CCI Recommends Charter of Self-Regulation



# Competition Matters

control, including negative control of special resolutions of the target.

- The CCI held that alternative investment funds acquiring a 6.03% shareholding in Future Retail Limited had failed to notify the transaction to the CCI. It found that the acquisition was not covered by the exemption relating to an acquisition of less than 25% of the shares/voting rights where such an acquisition is made solely as an investment or is in the ordinary course of business and does not lead to acquisition of control of the target.
- The CCI published its key findings and observations in its Market Study on the Film Distribution Chain in India. As well as committing to addressing competition issues within the scheme of the Competition Act, 2002 (*Competition Act*), it recommended a number of self-regulatory measures to be taken by players in the markets concerned.

## Institutional Matters

### CCI Chairperson Leaves and Acting Chairperson Appointed

The CCI Chairperson, Ashok Kumar Gupta, retired on 25 October. Pending the appointment of a new Chairperson, CCI Member Sangeeta Verma has been appointed as Acting Chairperson. The search for a new chairperson is currently under way. Section 22 of the Competition Act requires a quorum of three Members at meetings. There are currently only two members. Therefore, until the appointment of a new member, the CCI will not be quorate and will be unable to exercise its adjudicatory role or make orders in relation to combinations.<sup>1</sup>

### CCI Office in Mumbai Opens

The Union Minister of Finance and Corporate Affairs, Smt. Nirmala Sitharaman, inaugurated the Regional Office (West) of the CCI located near Mumbai, on 6 October.<sup>2</sup> This is the CCI's third regional office, following the opening of the Regional Office (South) in Chennai in February 2021 and the Regional Office (West) in Kolkata in May 2022. This will facilitate access to the CCI by businesses and other stakeholders and is intended to enhance competition enforcement.

## Anti-Competitive Agreements

### Cartels

#### ***Axle-Bearing Manufacturers Guilty of Bid Rigging but Escape Penalty***

The CCI found that a number of manufacturers of axle-bearings had agreed to share orders offered in tenders issued by Eastern Railway from 2012 to 2019 for the procurement of axle-bearings and to rig these tenders by quoting mutually decided prices and by providing cover bids.<sup>3</sup>

The CCI directed the opposite parties and their respective officials to cease and desist from indulging in the practices found to have breached the Competition Act. It found that all the manufacturers were micro, small and medium enterprises (MSMEs) and that some had admitted their involvement and sought leniency. Noting that the MSME sector was already under stress and bearing the impact of the economic situation arising from the COVID-19 pandemic, it stated that any penalty might render the firms economically unviable. Some firms

## In this Issue

### Institutional Matters

- CCI Chairperson Leaves and Acting Chairperson Appointed
- CCI Office in Mumbai Opens

### Anti-Competitive Agreements

- Cartels

### Abuse of Dominant Position

- Google Abuses Dominance in Multiple Markets

### CCI Jurisdiction

- CCI Asserts Jurisdiction in Competition Case Involving Patents

### Merger Control

- CCI Clears Sony/Zee Merger Subject to Certain Modifications
- Umang/Aditya Amalgamation Cleared Subject to Undertakings
- Buyback of Shares Notifiable where it Results in Acquisition of Negative Control
- CCI Finds that Minority Acquisition was not Made Solely as Investment or in Ordinary Course of Business

### Competition Advocacy

- Film Distribution Study – CCI Recommends Charter of Self-Regulation

<sup>1</sup> It appears that combinations notified under the "Green Channel" route are still being "deemed approved" upon filing, since such transactions are not put up for approval at CCI meetings.

<sup>2</sup> *Regional Office (West) of CCI in Mumbai inaugurated by Smt. Nirmala Sitharman, Hon'ble Union Minister of Finance & Corporate Affairs*, CCI, Press Release (6 October 2022).

<sup>3</sup> *Chief Materials Manager (Stores), Eastern Railway v. Krishna Engineering Works and Others*, CCI, Reference Case No. 02 of 2020 (11 October 2022). The CCI had earlier found bid rigging in the supply of axle-bearings to Eastern Railways in *Eastern Railway, Kolkata v. Chandra Brothers and Others*, CCI, Reference Case No. 02 of 2018 (12 October 2021).



might even exit the market, which would reduce competition in a market with few players given the procurement policy of Indian Railways. It also noted that the opposite parties had stopped the conduct immediately after an investigation had begun in a previous case. The CCI decided not to impose any monetary penalties “in the peculiar circumstances of this case”.

## **CCI Finds Associations and Mills Involved in Kraft Paper Cartel**

The CCI found that three associations of corrugated box manufacturers had been involved in increasing and deciding the price of kraft paper and in deciding the collective shut-down of kraft paper mill from at least 2011 to 2017/18.<sup>4</sup> It also found that a large number of kraft paper mills were involved in implementing the directives of the association they belonged to. There was ample documentary evidence of such conduct, not least in WhatsApp messages, and oral depositions made by various representatives of the mills. In addition, 31 lesser penalty applicants had admitted to the conduct.

The CCI noted that several of the opposite parties were micro, small and medium enterprises and first-time offenders. Several mills had closed or were in difficulties, especially as a result of the COVID-19 pandemic. The parties had also argued that the cartel was formed as a result of prevailing market circumstances due to rising input costs and lack of individual bargaining power. In addition to the leniency applicants, several members of the associations had admitted to wrongdoing. The CCI therefore refrained from imposing any monetary penalty, deciding that a cease and desist order would meet the objectives of the Competition Act.

## **Abuse of Dominant Position**

### **Google Abuses Dominance in Multiple Markets**

In two separate orders the CCI found that *Google* had abused its dominant position in relevant markets and imposed substantial financial penalties and detailed “cease and desist” and modification orders.

### **Abuses in the Android Mobile Device Ecosystem**

In the first case, the CCI found that *Google* had abused its dominant position in a number of markets in the Android mobile device ecosystem.<sup>5</sup> After lengthy analysis, it found that *Google* was dominant in the markets in India for: (a) licensable operating systems (OS) for smart mobile devices; (b) app store for Android smart mobile OS; (c) general web search services; (d) non-OS specific mobile web browsers; and (e) online video hosting platforms (OVHP).

The CCI considered the question of abuse in the context of *Google*’s business model. It found that *Google*’s business was driven by the ultimate intent of increasing the users on its platforms so that they interacted with its revenue-earning service (online search) which directly affected the sale of online advertising services by *Google*. It found that *Google* had imposed various restrictions in various agreements with the manufacturers of mobile devices (OEMs) in order to protect its dominant position in general search services and various other segments.

The CCI concluded that *Google* had committed a number of specific abuses:

- It had required the mandatory pre-installation of the entire *Google* Mobile Suite (with no option to uninstall) and prominent placement of its apps;
- It had perpetuated its dominant

## **In this Issue**

### **Institutional Matters**

- CCI Chairperson Leaves and Acting Chairperson Appointed
- CCI Office in Mumbai Opens

### **Anti-Competitive Agreements**

- Cartels

### **Abuse of Dominant Position**

- *Google* Abuses Dominance in Multiple Markets

### **CCI Jurisdiction**

- CCI Asserts Jurisdiction in Competition Case Involving Patents

### **Merger Control**

- CCI Clears *Sony/Zee* Merger Subject to Certain Modifications
- *Umang/Aditya* Amalgamation Cleared Subject to Undertakings
- Buyback of Shares Notifiable where it Results in Acquisition of Negative Control
- CCI Finds that Minority Acquisition was not Made Solely as Investment or in Ordinary Course of Business

### **Competition Advocacy**

- Film Distribution Study – CCI Recommends Charter of Self-Regulation

<sup>4</sup> *Federation of Corrugated Box Manufacturers of India and Others v. Gujarat Paper Mills Association and Others*, CCI, Case No. 24 of 2017 (12 October 2022).

<sup>5</sup> *Umar Javeed and Others v. Google LLC and Another*, CCI, Case No. 39 of 2018 (20 October 2022).



# Competition Matters

- position in the market for online search;
- It had leveraged its dominant position in the market for app store for Android smart mobile OS to protect its position in the market for online general search;
- It had leveraged its dominant position in the market for app store for Android smart mobile OS to enter into and protect its position in the market for non-OS specific web browsers through its Chrome apps;
- It had leveraged its dominant position in the market for app store for Android smart mobile OS to enter into and protect its position in the market for OVHP through YouTube; and
- In making the pre-installation of its proprietary apps (in particular, Google Play Store conditional to signing up to a non-fragmentation agreement/ Android Compatibility Commitment Agreement) for all Android devices of the OEMs, it had reduced the ability of the OEMs to develop and sell devices operating on alternative versions of Android, such as Android forks.

In addition to detailed “cease and desist” and modification orders addressing these breaches, the CCI imposed a penalty on Google of 10% of its average relevant turnover for three years. The amount of penalty was set on a provisional basis, pending the provision of requisite financial details and supporting documentation by Google. This provisional amount was set at INR 1337.76 crores (approx. USD 164 million).

## **Abuse in the Google Play Store Billing System**

In the second case,<sup>6</sup> the CCI found that Google had abused its dominant position with respect to its Play Store policies and the mandatory use of Google Play’s Billing System (GPBS). As in the first case, it found that Google was dominant in the markets in India for licensable OS for smart mobile

devices and for app stores for Android smart mobile OS.

The CCI concluded that Google had committed a number of specific abuses:

- It had made access to the Play Store for app developers dependent on the mandatory use of GPBS for paid apps and in-app purchases. The CCI considered this as an unfair condition on app developers;
- It had discriminated by not using GPBS for its own app, YouTube. YouTube was not paying the service fee imposed on other apps using GPBS;
- The mandatory imposition of GPBS adversely affected innovation and technical development by other payment processors and app developers. It also resulted in denial of market access for payment aggregators and app developers;
- It had leveraged its dominance in both relevant markets to protect its position in downstream markets; and
- It had used different methodologies to integrate its own Unified Payment Interface (UPI) payment app (Google Pay) vis-à-vis other rival UPI apps to the detriment of the latter.

In addition to “cease and desist” and modification orders addressing these breaches, the CCI imposed a penalty on Google of 7% of its average relevant turnover for three years. The amount of penalty was set on a provisional basis, pending the provision of requisite financial details and supporting documentation by Google. The provisional amount was set at INR 936.44 crores (approx. USD 114.5 million).

## **Abuse of Dominant Position by Online Travel Agency: CCI Targets Wide Price Parity Clauses**

The CCI found that online travel agency

## In this Issue

### **Institutional Matters**

- CCI Chairperson Leaves and Acting Chairperson Appointed
- CCI Office in Mumbai Opens

### **Anti-Competitive Agreements**

- Cartels

### **Abuse of Dominant Position**

- Google Abuses Dominance in Multiple Markets

### **CCI Jurisdiction**

- CCI Asserts Jurisdiction in Competition Case Involving Patents

### **Merger Control**

- CCI Clears Sony/Zee Merger Subject to Certain Modifications
- Umang/Aditya Amalgamation Cleared Subject to Undertakings
- Buyback of Shares Notifiable where it Results in Acquisition of Negative Control
- CCI Finds that Minority Acquisition was not Made Solely as Investment or in Ordinary Course of Business

### **Competition Advocacy**

- Film Distribution Study – CCI Recommends Charter of Self-Regulation

<sup>6</sup> XYZ (Confidential) v. Alphabet Inc. and Others, CCI, Case No. 07 of 2020, etc. (25 October 2022).



# Competition Matters

(OTA) MMT-Go had abused its dominant position.<sup>7</sup>

In defining the relevant market, the CCI determined that online and offline were not part of the same market. It considered that the relevant online market covered only online intermediation services provided by the OTA. Other online distribution channels, such as direct bookings made on hotel websites, corporate sales, metasearch services and unorganised intermediaries, did not constrain MMT-Go and could not be part of the same online market. The CCI considered that MMT-Go was dominant in the online intermediation market during the period of inquiry, 2017-2020, taking account of its high market share relative to competitors, the dependence of hotels on MMT-Go for their survival and growth and barriers to entry and expansion (including those created by network effects).

The CCI considered a number of allegations of abuse including abuse in relation to price and room parity obligations, predation, misrepresentation and exclusivity.

In relation to parity, the CCI distinguished between *wide* room rate parity (applying to all other platforms, including the provider's own website) and *narrow* parity (applying only to the provider's own website). Following practice in other jurisdictions, the CCI stated that wide rate parity was the more restrictive form of parity agreement. The CCI found that MMT-Go imposed wide room rate parity obligations on its hotel partners. These existed together with room volume parity obligations, deep discounting strategies and exclusivity conditions and the CCI considered that this warranted a simultaneous assessment of the impact and reinforcing nature of such impositions. It concluded that the parity obligations coupled with the deep discounts created an ecosystem that reinforced MMT-Go's dominant position and amounted to an abuse.

The CCI found that allegations of predation were not substantiated. It considered that misrepresentation of information by MMT-Go as regarded hotels that were wrongly shown as "sold out" on its portal could cause damage to such hotels and was exploitative in nature. However, it made no formal finding of abuse.

The CCI also considered allegations that MMT-Go and franchisee service provider *Oravel Stays Private Limited (OYO)* had agreed to the delisting on MMT-Go's portal of certain franchisee hotels. The CCI held that this was covered by Section 3(4) of the Competition Act, which prohibits vertical agreements with an appreciable adverse effect on competition (AAEC).

The CCI imposed penalties on MMT-Go and OYO at the rate of 5% of their relevant turnover, amounting to INR 223.48 crores (approx. USD 27.4 million) on MMT-Go and INR 168.88 crores (approx. USD 20.7 million), respectively. In addition, it prescribed a number of broad behavioural remedies on MMT-Go to return to an environment that supported fair competition.

It should be noted that, while assessing the "relevant turnover" for the purposes of levying penalties, the CCI considered the total turnover of both parties, noting that, for such digital platforms, turnover of only certain products / segments could not be seen in isolation given the close dependence and interactions of several different products on the platforms.

## CCI Jurisdiction

### CCI Asserts Jurisdiction in Competition Case Involving Patents

The CCI dismissed at *prima facie* stage allegations that Swiss pharmaceutical company *Vifor International (AG) (Vifor)* had refused to grant a licence to the Informant

## In this Issue

### Institutional Matters

- CCI Chairperson Leaves and Acting Chairperson Appointed
- CCI Office in Mumbai Opens

### Anti-Competitive Agreements

- Cartels

### Abuse of Dominant Position

- Google Abuses Dominance in Multiple Markets

### CCI Jurisdiction

- CCI Asserts Jurisdiction in Competition Case Involving Patents

### Merger Control

- CCI Clears Sony/Zee Merger Subject to Certain Modifications
- Umang/Aditya Amalgamation Cleared Subject to Undertakings
- Buyback of Shares Notifiable where it Results in Acquisition of Negative Control
- CCI Finds that Minority Acquisition was not Made Solely as Investment or in Ordinary Course of Business

### Competition Advocacy

- Film Distribution Study – CCI Recommends Charter of Self-Regulation

<sup>7</sup> *Federation of Hotel & Restaurant Associations of India and Another v. MakeMyTrip India and Others*, CCI, Case No. 14 of 2019, etc. (19 October 2022).



# Competition Matters

of its patented soluble FCM Iron Injectables medicines, in breach of Section 3(4) and 4 of the Competition Act.<sup>8</sup>

The CCI dismissed two preliminary arguments related to the jurisdiction of the CCI. First, it rejected arguments that the CCI's direction for the provision of certain information including certain documents was illegal under Swiss law and that Vifor's officers might be exposed to the risk of criminal liability under the Swiss Code. The CCI stated that what really mattered was the effect on competition in India and not any disability under any foreign law. If an entity did business in India, it had to act within the confines of competition law as it applied in India, and there was no escape from this.

Second, the CCI dismissed arguments that Section 3(5) of the Competition Act meant that the CCI had no jurisdiction to deal with the allegations as they fell within the exclusive domain of the Patents Act 1970. Section 3(5) provides that nothing in Section 3 (on anti-competitive agreements) shall restrict the right of any person to restrain any infringement of, or to impose reasonable conditions, necessary for protecting any rights under specified legislation, including the Patents Act. Following its past practice, it reiterated that, where there was a question of anti-competitive conduct arising out of an intellectual property right, the CCI was able to consider the existence or non-existence of the right and whether its exercise was reasonable. The CCI also rejected arguments that its jurisdiction was limited to cases involving standard essential patents.

## Merger Control

### CCI Clears Sony/Zee Merger Subject to Certain Modifications

The CCI cleared the amalgamation of *Zee Entertainment Enterprises Limited*

(*ZEEL*) and *Bangla Entertainment Private Limited (BEPL)* with and into *Culver Max Entertainment Private Limited (CME)* (previously known as Sony Pictures Networks India Private Limited) subject to certain voluntary structural modifications.<sup>9</sup> Both CME and BEPL are indirect wholly owned subsidiaries of the Sony Group Corporation.

The CCI found horizontal overlaps between the activities of CME (including BEPL) and ZEEL in the: (a) operation and wholesale supply of TV channels in India (including the narrower markets of: (i) Hindi general entertainments channel (*GEC*), (ii) Regional GEC, (iii) films channels and (iv) infotainment & lifestyle channels (collectively, *TV Market*); (b) retail supply of over-the-top (OTT) audio-visual (AV) content in India; (c) supply of advertising airtime on TV channels in India (*Ads Market*); (d) licensing of AV content in India; (e) production and supply of films to third-party distributors and exhibitors for theatrical release in India; and (f) licensing of music rights in India.

Based on its *prima facie* review, the CCI issued a show cause notice to the parties, observing that the proposed combination was likely to result in an AAEC. The CCI's position was that, pursuant to the proposed amalgamation, the resultant entity would be the largest broadcasting house in India with vast content and higher market shares across Hindi GEC, Hindi Films, Marathi GEC, and Bengali GEC. The CCI also raised concerns on the resultant entity's ability to increase the prices for downstream players which, in turn, would be recovered from viewers at large. To allay the CCI's concerns, the parties filed comprehensive submissions, including evidence on declining combined market shares of the parties in the TV Market and Ads Market. The parties also presented their arguments/submissions during an oral hearing before the CCI.

## In this Issue

### Institutional Matters

- CCI Chairperson Leaves and Acting Chairperson Appointed
- CCI Office in Mumbai Opens

### Anti-Competitive Agreements

- Cartels

### Abuse of Dominant Position

- Google Abuses Dominance in Multiple Markets

### CCI Jurisdiction

- CCI Asserts Jurisdiction in Competition Case Involving Patents

### Merger Control

- CCI Clears Sony/Zee Merger Subject to Certain Modifications
- Umang/Aditya Amalgamation Cleared Subject to Undertakings
- Buyback of Shares Notifiable where it Results in Acquisition of Negative Control
- CCI Finds that Minority Acquisition was not Made Solely as Investment or in Ordinary Course of Business

### Competition Advocacy

- Film Distribution Study – CCI Recommends Charter of Self-Regulation

<sup>8</sup> *Swapan Dey v. Vifor International (AG) and Another*, CCI, Case No. 05 of 2022 (25 October 2022).

<sup>9</sup> *Culver Max Entertainment Private Limited, Zee Entertainment Enterprises Limited, Bangla Entertainment Private Limited, and Essel Group Participants*, CCI, Combination Registration No. C-2022/04/923 (4 October 2022).



# Competition Matters

The CCI cleared the transaction subsequent to structural modifications offered by the parties entailing the divestment of three TV channels engaged in the Hindi GEC and Hindi Films channels market segment.

## Umang/Aditya Amalgamation Cleared Subject to Undertakings

The CCI approved the amalgamation of *Umang Commercial Company Private Limited (Umang)* with *Aditya Marketing and Manufacturing Private Limited (Aditya)* under which the shares held by Aditya in 15 entities in various industrial sectors would be vested in Umang.<sup>10</sup>

During its review of the proposed combination, the CCI raised possible concerns in relation to the markets for the manufacture and sale of viscose fibre yarn in India and of grey cement in various Indian states. The parties submitted that, after the proposed amalgamation, the companies concerned would continue to function as independent entities as control of these companies would remain with distinct groups (separate branches of the Birla family). Umang, under the control of the Kumar Mangalam Birla family, would also not *de facto* acquire any special right or material influence over the relevant Aditya companies, which would remain, despite Umang's higher shareholding, under the control of the Basant Kumar Birla family.

Umang offered a number of modifications, undertaking for each company that it would: (a) not engage in the management and affairs of the board of directors or decision making; (b) not nominate or appoint any key managerial person to the board or any committee; (c) initiate removal of any existing director from the board; (d) use any non-confidential information only for lawful or compliance purposes and not share or exchange such information with

relevant Umang companies; and (e) not exercise rights other than rights of ordinary shareholders. In addition, there would be no business arrangement/commercial understanding, data sharing or technical/operational coordination between the relevant Umang and Aditya companies. Umang also undertook, in relation to one of the Aditya companies, that it would dilute its shareholding to below 25% within six months and, in the meantime, it would limit its voting rights accordingly. Umang made it clear that these undertakings would cease if the direct or indirect shareholding fell below 10% and did not carry any rights not available to ordinary shareholders.

## Buyback of Shares Notifiable where it Results in Acquisition of Negative Control

The CCI approved an increase in the voting rights percentage in *ReNew Energy Global plc (ReNew)* by the *Canadian Pension Plan Investment Board (CPPIB)* pursuant to a buyback programme announced by ReNew.<sup>11</sup> Under Item 6 of Schedule 6 read with Regulation 4 of the Combination Regulations, a buyback of shares will not ordinarily be notifiable unless it leads to the acquisition of control. In this case, voting rights of the CPPIB would, on completion of the buyback, be likely to exceed 25%. As the CPPIB would thereby acquire the ability to block any special resolution in ReNew, it would acquire negative control of special resolutions in ReNew; the exemption could thus not apply.

## CCI Finds that Minority Acquisition was not Made Solely as Investment or in Ordinary Course of Business

The CCI found that two alternative investment funds (*Acquirers*) acquiring a 6.03% shareholding in *Future Retail Limited* had failed to notify the transaction to the CCI.<sup>12</sup> Item 1 in Schedule 1 to the Combination

## In this Issue

### Institutional Matters

- CCI Chairperson Leaves and Acting Chairperson Appointed
- CCI Office in Mumbai Opens

### Anti-Competitive Agreements

- Cartels

### Abuse of Dominant Position

- Google Abuses Dominance in Multiple Markets

### CCI Jurisdiction

- CCI Asserts Jurisdiction in Competition Case Involving Patents

### Merger Control

- CCI Clears Sony/Zee Merger Subject to Certain Modifications
- Umang/Aditya Amalgamation Cleared Subject to Undertakings
- Buyback of Shares Notifiable where it Results in Acquisition of Negative Control
- CCI Finds that Minority Acquisition was not Made Solely as Investment or in Ordinary Course of Business

### Competition Advocacy

- Film Distribution Study – CCI Recommends Charter of Self-Regulation

<sup>10</sup> *Umang Commercial Company Private Limited and Aditya Marketing and Manufacturing Private Limited*, CCI, Combination Registration No. C-2022/07/952 (30 August 2022).

<sup>11</sup> *Canada Pension Plan Investment Board*, CCI, Combination Registration No. C-2002/06/936 (15 July 2022).

<sup>12</sup> *Proceedings against PI Opportunities Fund – I and Pioneer Investment Fund under Section 43A of the Competition Act, 2002*, CCI, Ref. No. M&A/Q1/2018/18 (30 September 2022).



# Competition Matters

Regulations provides that acquisitions of shares or voting rights of less than 25% of the total shares/voting rights will normally not need to be filed where the acquisition is made solely as an investment or is in the ordinary course of business and does not lead to acquisition of control of the target. The Explanation to Item 1 states that the acquisition of less than 10% of the total shares/voting rights will be treated solely as an investment, provided: (a) the acquirer is able to exercise only the rights exercisable by ordinary shareholders to the extent of their shareholdings; and (b) the acquirer is not a member of the target's board, does not have a right or intention to nominate a director on the board and does not intend to participate in the target's affairs or management.

The CCI found that the second condition for treating the acquisition solely as an investment had not been met. Although no existing Board seat was held by the Acquirers, they were offered and accepted a Board seat within one month of the sale and purchase agreement. Given the sequence of events, the CCI considered that the intention of the Acquirers to participate in the affairs and management and target could not be ruled out. The CCI rejected arguments that the target had, of its own accord, invited the Acquirers to nominate a director, that the Acquirers had no right to appoint a director and that the Acquirers were not aware that the acquisition would automatically result in the Acquirers having the right to appoint a director. Stating the principle of "substance over form", it stated that, whatever the scenario, the substance was the parties gaining the ability to participate in management or affairs and the mechanism employed was just a matter of form. Even if the argument that the obtaining of a Board seat was an unrelated development was considered, the Acquirers should have notified before accepting the board seat. The burden to prove that the developments were subsequent to the

acquisition of shares/voting rights was on the acquirer.

The CCI also considered whether the transaction was in the "ordinary course of business". It drew a distinction between "revenue" and "capital" transactions. As regarded the acquisition of shares, it had earlier held that this would only be in the ordinary course of business where this was done "solely with the intent to get benefited from short term price movement of securities". In this case, it held that the acquisition involved an investment, which constituted a capital transaction. It made it clear that, once it was determined that the acquisition entailed an investment, it could not by implication be considered to be in the "ordinary course of business".

The CCI imposed a penalty of INR 2 million (approx. USD 24,500) on the Acquirers.

## Competition Advocacy

### Film Distribution Study – CCI Recommends Charter of Self-Regulation

The CCI published its key findings and observations in its Market Study on the Film Distribution Chain in India.<sup>13</sup> Drawing on a number of cases, the CCI identified a range of competition issues including: (a) unequal bargain power between producers/distributors and exhibitors (in particular multiplexes) in revenue sharing arrangements; (b) the lack of transparency in box office collections for the theatrical exhibition of films, which favoured producers/distributors over single screen cinemas; (c) issues relating to competition in the digital equipment segment, including the virtual print free paid by producers/distributors to exhibitors to enable their conversion to digital modes and exclusive dealing with providers of digital cinema equipment; and (d) anti-competitive conduct by trade associations, including prohibition of members working with non-

## In this Issue

### Institutional Matters

- CCI Chairperson Leaves and Acting Chairperson Appointed
- CCI Office in Mumbai Opens

### Anti-Competitive Agreements

- Cartels

### Abuse of Dominant Position

- Google Abuses Dominance in Multiple Markets

### CCI Jurisdiction

- CCI Asserts Jurisdiction in Competition Case Involving Patents

### Merger Control

- CCI Clears Sony/Zee Merger Subject to Certain Modifications
- Umang/Aditya Amalgamation Cleared Subject to Undertakings
- Buyback of Shares Notifiable where it Results in Acquisition of Negative Control
- CCI Finds that Minority Acquisition was not Made Solely as Investment or in Ordinary Course of Business

### Competition Advocacy

- Film Distribution Study – CCI Recommends Charter of Self-Regulation

<sup>13</sup> CCI, *Market Study on the Film Distribution Chain in India: Key Finding and Observations* (14 October 2022).





# Competition Matters

members, the discriminatory treatment of regional films and bans/boycotts.

The CCI noted that, given the complex pattern of asserting rights by competing interests in the film distribution value chain, bargaining power imbalances made competition dynamics in the film industry complex. Promoting fair competition required the attenuation of such imbalances. Whilst committing to continue addressing these issues within

the scheme of the Competition Act, the CCI saw a vast potential for players in the various markets to adopt self-corrective mechanisms. It therefore devised a charter of self-regulation for stakeholders in order to minimise future interventions by the CCI and to encourage the development of a thriving film industry with minimum friction. It accordingly recommended a number of self-regulatory measures to address the above competition-related issues.

## In this Issue

### Institutional Matters

- CCI Chairperson Leaves and Acting Chairperson Appointed
- CCI Office in Mumbai Opens

### Anti-Competitive Agreements

- Cartels

### Abuse of Dominant Position

- Google Abuses Dominance in Multiple Markets

### CCI Jurisdiction

- CCI Asserts Jurisdiction in Competition Case Involving Patents

### Merger Control

- CCI Clears Sony/Zee Merger Subject to Certain Modifications
- Umang/Aditya Amalgamation Cleared Subject to Undertakings
- Buyback of Shares Notifiable where it Results in Acquisition of Negative Control
- CCI Finds that Minority Acquisition was not Made Solely as Investment or in Ordinary Course of Business

### Competition Advocacy

- Film Distribution Study – CCI Recommends Charter of Self-Regulation

## 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

### Aman Singh Sethi

Partner  
aman.sethi@AMSShardul.com

### Nitika Dwivedi

Partner  
nitika.dwivedi@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.