

January 2024



## Indian Competition Law Roundup: January 2024

In this Roundup, we highlight some important developments in Indian competition law and policy in January 2024. In summary:

- The Competition Commission of India (CCI) dismissed a complaint that several electric two-wheeler (ETW) manufacturers had acted in breach of Section 4 of the Competition Act, 2002 (*Competition Act*). It *prima facie* found that no single player appeared to be dominant in the ETW market in India.
- The Division Bench of the High Court of Madras rejected civil suits brought by several app developers against Google holding that its jurisdiction was barred as the issues raised were covered by the Competition Act and the Payment and Settlement Systems Act, 2007.
- The CCI adopted new provisions on the making of Interlocutory Applications.
- In two merger control cases, the CCI considered the competition implications of complementary relationships. It made it clear that the idea of a complementary relationship was to be broadly defined.

### Abuse of Dominant Position

#### CCI Dismisses Complaint Against Electric Two-Wheeler Manufacturers

The CCI dismissed a complaint that Ola Electric Limited (Ola) and several other manufacturers / sellers of electric two-wheelers (ETWs) had in breach of Section 4 of the Competition Act underpriced their ETWs to benefit from government incentives and charged separately for essential components such as chargers and software. The CCI *prima facie* found that the relevant market was that of manufacture and sale

of ETWs in India. While defining the market, the CCI observed that consumers viewed ETWs as a separate segment as they were affordable, convenient, environment-friendly and had low maintenance costs. In assessing dominance, the CCI noted that the market shares of Ola and other players varied from 28.23% to 4.09% in 2022 and pointed to the increasing intensity of competition since the electric vehicles market was in the growth stages. It therefore found that no single player appeared to have a dominant position in the ETW market.

The Informant in the case had claimed confidentiality over its identity in view of its limited means and resources, and concerns for its personal safety and well-being. The CCI directed that the identity of the Informant and documents revealing its identity should be kept confidential for three years.

### Jurisdiction of the High Court

#### Division Bench of Madras High Court Dismisses Civil Suits Against Google

The Division Bench of the High Court of Madras (*the Division Bench*) dismissed an appeal against an August 2023 order of a single judge of the High Court rejecting for want of jurisdiction a number of civil suits filed by app developers against Google.<sup>1</sup> The Division Bench found that, in bringing the suits, the app developers had relied heavily on the 2022 order of the CCI in the *Google Payments Case* finding that Google had abused its dominant position in relation to its Play Store billing and payment policies, imposing substantial penalties and directing a wide range of behavioural remedies.<sup>2</sup> It found that the grievances of the app developers could be addressed under

<sup>1</sup> *Info Edge v. Google India Pvt. Ltd. and Others*, etc., High Court of Madras (Division Bench), O.S.A(CAD) No. 97 of 2023 etc. (19 January 2024).

<sup>2</sup> *XYZ (Confidential) v. Alphabet Inc. and Others*, CCI, Case No. 07 of 2020, etc. (25 October 2022).



# Competition Matters

the Competition Act and that the High Court's jurisdiction was accordingly barred under Section 60 of the Competition Act. There was nothing to prevent the app developers seeking relief from the CCI, and indeed some of them had already done so.

The Division Bench reached a similar conclusion in relation to issues relating to the Payments and Settlements Systems Act, 2007 (PSS Act). Matters falling within the scope of the PSS Act were also barred from the jurisdiction of the High Court.

The Division Bench also held that the exclusive jurisdiction clause in Google's Developer Distribution Agreement, that excluded the jurisdiction of Indian courts in favour of the courts of the county of Santa Clara, California, was unenforceable as it amounted to a restraint of legal proceedings which violated the provisions of the Indian Contract Act, 1872.

The single judge initially hearing the case had granted interim relief to the app developers by directing Google not to delist them from the Google Play Store, subject to monthly payments to Google of 4% of the revenues generated, until the passing of a final order. The Division Bench allowed this interim order to remain in force for three weeks, to enable the appellants to exhaust the remedy of appeal.

## Competition Procedures

### New Provisions on Interlocutory Applications

An amendment to the CCI General Regulations 2009 introduced provisions on the filing of Interlocutory Applications (IAs).<sup>3</sup> IAs are defined as an application filed before the CCI in a case instituted under Section 19 of the Competition Act, except those filed in compliance with an order or direction of the CCI. The process for filing and for dealing with any defects in an IA is set out. The amendment also sets out the filing fees for an IA, varying from INR 500 to INR 5,000 depending on the nature of the party (for example, individuals, NGOs and partnership firms) making the filing. The amendment is in effect from 13 January 2024.

## Merger Control

### CCI's Treatment of Complementary Relationships

Two approval orders published in January demonstrate that the CCI considers the competitive effect of acquisitions where the acquirer and target have *complementary* relationships.

### Atlas/Vodafone order

An acquisition by *Atlas 2022 Holdings Limited (Atlas)*, a subsidiary of *Emirates Telecommunications Group Company PJSC (e&)*, of an additional shareholding in *Vodafone Group plc (Vodafone)* (going from 14.6% to less than 25%) involved no horizontal overlap or vertical relationship.<sup>4</sup> However, e& and another company majority-owned by the *Emirates Investment Authority (EIA)*, *Emirates Integrated Telecommunications Company (du)* provided services seen by the CCI as complementary to those of *Vodafone Idea Limited (VI India)* which offered mobile network operator (MNO) services in India as VI India's Indian customers relied on telecommunication networks of e& and du when travelling to certain countries. Having identified these relationships in some detail, the CCI found there was no likelihood of an appreciable adverse effect on competition and cleared the transaction.

Both e& and du offered wholesale international roaming services and interconnection services to MNOs operating in India, including VI India. In both cases, the CCI considered that e& and du did not have the incentive to stop procuring services from other Indian MNOs. In relation to international roaming services, the CCI found that e& and du had entered into agreements with other Indian MNOs and competitors in India could provide such services to non-Indian MNOs. In relation to interconnection services, the CCI noted VI India's relatively low market shares in the retail fixed telecoms market (0-5%) and retail mobile market (20-25%); exclusivity was not practicable since this would result in e&/du customers being cut off from most customers in India.

e& also had bilateral interconnection and international roaming agreements with VI India for certain countries and du had a bilateral international and roaming and interconnection agreement with VI India for UAE. In relation to wholesale international roaming services, the CCI pointed to the market shares of e& and du and noted that other players were present in the countries involved. There was unlikely to be foreclosure of Indian MNOs or their customers. In relation to interconnection services, VI India's low market shares meant there was no incentive to stop or degrade the provision of services to other Indian MNOs or give preferential treatment to VI India.

### V-Sciences/Niva Bupa order

The CCI also cleared the acquisition by *V-Sciences Investments Private Limited (V-Sciences)* of a 2.6% shareholding in *Niva Bupa*

<sup>3</sup> *The Competition Commission of India (General) Amendment Regulations, 2024* (No. 1 of 2024), 12 January 2024 (Published in the *Gazette of India*, 12 January 2024).

<sup>4</sup> *Atlas 2022 Holdings Limited*, CCI, Combination Registration No. C-2023/10/1059 (29 November 2023).



*Health Insurance Company Limited (Niva Bupa)*.<sup>5</sup> Niva Bupa was licensed to sell health, personal accident and travel insurance to persons resident in India and NRI customers. V-Sciences was indirectly wholly owned by *Temasek Holdings (Private) Limited (Temasek)*. With regard to vertical relationships, the CCI observed that Temasek, through certain affiliates, was engaged in the downstream market for the distribution of insurance products in India. Given the low market shares of each of the parties and the existence of other well-established players, the CCI found that neither Niva Bupa nor Temasek had the ability or incentive to foreclose any market.

The CCI also observed that other affiliates of Temasek operated hospitals in India. Health insurers like Niva Bupa had entered into agreements with such healthcare service providers enabling them to provide cashless services to policyholders. V-Sciences argued that these were not 'complementary' as they

were not combined and used together. The CCI rejected this argument and regarded the interlinkage between Temasek's affiliates and Niva Bupa as a complementary overlap as the end consumer combined health insurance schemes with the healthcare services to make the service more cost-effective. Moreover, the CCI found that linkages between health insurance providers and hospitals ensured increased patient footfall as well as revenue generation for hospitals. However, considering that only 5% of the 10,000 plus hospitals serviced by Niva Bupa were operated by the Temasek affiliates, less than 5% of the claims paid/settled by Niva Bupa benefited these companies, and the affiliates' combined market share was less than 5%, the CCI concluded that neither Niva Bupa nor the Temasek affiliates seemed to have the ability or incentive to foreclose in their respective markets.

<sup>5</sup> V-Sciences Investments Pte Ltd., CCI, Combination Registration No. C-2023/10/1070 (12 December 2023).

## COMPETITION LAW TEAM

### Pallavi Shroff

Managing Partner  
pallavi.shroff@AMSShardul.com

### John Handoll

Senior Advisor – European  
& 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

### Ritwik Bhattacharya

Partner  
ritwik.bhattacharya@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.