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Competition Commission of India imposed a penalty of Rs. 52.24 Crore on BCCI for abuse of dominant position

On November 29, 2017, the Competition Commission of India ('Commission'/ 'CCI'), passed a penalty order, under section 27 of the Competition Act, 2002 (the 'Act'), by imposing a penalty of Rs. 52.24 Crore on the Board of Control for Cricket in India ('BCCI') for abusing its dominant position by denying the market access to non-members and placing a blanket restriction for organization of professional domestic cricket league, in contravention of Section 4(2)(c) of the Act.

As per the details provided in the order, on February 8, 2013, the Commission had passed a penalty order against BCCI because an impugned clause in the IPL Media Rights Agreement was found to be in contravention of section 4(2)(c) of the Act. Aggrieved by the order of CCI, BCCI preferred an Appeal before the erstwhile, Competition Appellate Tribunal ('COMPAT'). The COMPAT, vide its order, dated 23.02.2015, had set aside the order of Commission on the grounds of violation of principle of natural justice and remitted the matter to the Commission for fresh disposal.

As per the directions of the COMPAT, the CCI instructed the Director General (the 'DG') to conduct a further investigation in the matter. The DG, in his supplementary investigation report, concluded that BCCI enjoys a dominant position in the relevant market for '*organization of professional domestic cricket leagues/events in India',* Further, the DG found certain regulations of BCCI Rules to be anticompetitive as they restricted any enterprise, other than BCCI or its members, to organize professional domestic cricket league/events in India that resulted in denial of market access and was in contravention of Section 4(2)(c) of the Act.

The Commission, after considering the supplementary investigation report of the DG, the suggestions/ objections filed by BCCI and third parties and also other material available on record, framed three issues:

(i) Whether the DG is correct in concluding that the relevant market is the market for *'organization of professional domestic cricket leagues/events in India'?*

(ii) If the relevant market defined by the DG is correct, whether BCCI enjoys a dominant position therein?

(iii) If answer to Issue No. 2 is in affirmative, whether BCCI has abused its dominant position in the relevant market?

Before determining the above framed issues, the Commission dealt with the preliminary issue raised by BCCI regarding its status i.e. *whether BCCI is an 'enterprise' within the meaning of Section 2(h) of the Act and therefore, whether Section 4 of the Act applies upon?*. The CCI stated that the term *'person'* defined under Section 2(l) of the Act includes *'a co-operative society registered under any law relating to cooperative societies'.* Further, the Commission noted that BCCI is a society registered under the Tamil Nadu Societies Registration Act, 1975 and was, hence, a 'person'. It was concluded that organization of IPL and the attendant activities are economic in nature and thus are covered within the ambit of Section 2(h) of the Act.

For determining the first issue, the Commission stated that each and every sport has its unique characteristics and its own fan-following, while popularity of each sport depends upon the players, teams and the tournament involved, therefore, no sport is interchangeable with the other by virtue of characteristics. Thus, the Commission concluded that cricket is not substitutable with any other sport in India because of the strong consumer preference for cricket in India. Further, it differentiated amongst different forms of cricket leagues/events that are organized in India and stated that professional domestic leagues like IPL differ from other formats of cricket in several ways. The Commission based its reasoning on distinctive characteristics and consumer preferences and, at last, concurred with the relevant market delineated by the DG.

For determining the second issue, the Commission noted that the historical evolution of BCCI had enabled it to attain a monopoly status in the organization of cricket events in India. Further, it was stated that the BCCI assumed the role of *de facto* regulator of cricket in India and BCCI acts like the 'custodian' of cricket in the concerned territory. Thus, CCI concluded that BCCI enjoyed a dominant position in the relevant market.

For determining the third issue, the CCI noted that BCCI's imposition of restrictive conditions, in certain circumstances, might be indispensable to preserve the interest of the sport in the country. However, in the instant case, it was noted that the restrictions imposed were to protect commercial interest of the media companies and the intention of BCCI was to foreclose competition and such restrictions had no nexus to the objective/ interest of cricket. Thereafter, the Commission concluded that, it amounts to denial of market access for organization of professional domestic cricket leagues/ events in India, thus, in contravention of Section 4(2)(c) read with Section 4(1) of the Act.

The Commission passed cease and desist orders and directed the BCCI not to place blanket restriction on organization of professional domestic cricket league/ events by non-members and directed BCCI to issue appropriate clarification regarding the rules applicable for them.

For determining the quantum of penalty, the CCI noted that denial of market access is one of the severe forms of abuse of dominant position and observed that there were no mitigating factor existed in the facts and circumstances of the case. Since, the Commission, vide its earlier order dated 8th February, 2013 had imposed a penalty of Rs. 52.24 Crore on BCCI, thus, the Commission, in this case also preferred to maintain the penalty of Rs. 52.24 Crore. *(Case No. 61/2010 order dated 29.11.2017)*

Heard at the BAR

Legal news from India and the world

CMA imposes a fine of £1.71m on 2 suppliers of 'cleanroom' laundry services for allocating the market

On 14.12.2017, the UK competition regulator, Competition and Markets Authority (CMA), imposed a fine of £1.71m on 2 suppliers of 'cleanroom' laundry services, *viz.* Micronclean Limited and Berendsen Cleanroom Services Ltd. for violating the provisions of competition law by allocating the market and agreeing not to compete for each other's customers. Both the companies were involved in the business of the cleaning of garments worn by people working in 'cleanrooms'. Micronclean Limited served customers in the northern area of London and Anglesey, and Berendsen Cleanroom Services Limited served customers located in south. The companies had agreed not to compete for certain customers, irrespective of their location. CMA found market-sharing arrangements between the two to be anti-competitive and imposed a penalty of £510,118 on Micronclean Limited and £1,197,956 on Berendsen Cleanroom Services Ltd. *(Press release 14.12.17)*

Government exempts Oil and Gas sectors from the merger control regime On 22.11.2017, the Ministry of Corporate Affairs ('MCA'), vide notification, exempted the Central Public Sector Enterprises (CPSEs) operating in Oil and Gas sectors from the application of the provisions of sections 5 and 6 of the Competition Act, 2002 (the 'Act') for a period of five years from the date of the notification. Earlier, in the month of August 2017, the MCA, vide notification, exempted all the nationalized banks and regional rural banks from the application of the provisions of sections 5 and 6 of the Act for a period of ten years and five years respectively. In June 2017, the MCA, vide notification, also exempted shipping industry from the merger regime in India for a period of one year. Thus, presently, oil and gas sector (till 2022), both nationalized (till 2027) and rural regional banks (till 2022) and shipping industry (till June, 2018) are exempted from the application of section 5 and 6 of the Act. *(Press release 22.11.17)*

Italian Competition Authority imposes a penalty of 60m Euros on Unilever for abuse of dominant position On 6th December, 2017, the Italian competition authority, imposed a fine of more than 60m Euros on Unilever Italy Mkt. Operations Srl, for violating Art. 102 of the Treaty on the Functioning of the European Union (TFEU), and abusing the dominant position by indulging into exclusionary practices to hinder the growth of competitors in the market of pre-packed single-dose impulse ice cream, in which the Italian company of the Anglo-Dutch multinational holds a dominant position, mainly through the sale of *"Algida"* brand ice creams. *(Press release 6.12.2017)*

Russian Competition Authority (FAS) cleared the merger between Yandex.Taxi and Uber, subject to conditions On 24.11.2017, the competition authority of Russia, agreed on the merger of two taxi aggregator companies, Yandex N.V. and Uber International C.V., subject to conditions. FAS, while analyzing the merger, considered the increasing role of digital technologies in the economy and social sphere, the increasing penetration of wireless access to the internet and thereafter, decided to impose remedies aimed at promoting competition. FAS imposed the conditions that the companies should provide users with the most complete and accessible information of the person carrying out the transportation, with the preservation of the history of trips and they should not limit the ability of partners, drivers and passengers to work with other taxi aggregators. *(Press release 24.11.2017)*

Competition Commission of Singapore imposes a penalty on three companies for bid-rigging in electrical services and asset tagging tenders On 28.11.2017, the Competition Commission of Singapore (CCS) passed an infringement order and imposed fines on three companies, *viz.* Cyclect Group of companies ('Cyclect Group'), HPH Engineering Pte. Ltd.("HPH") and Peak Top Engineering Pte. Ltd. ("Peak Top"), for rigging the bid process in two tenders, *viz.* Formula 1 Singapore Grand Prix ("F1 Tender"), and asset tagging services for GEMS World Academy (Singapore) ("GEMS Tender"). CCS found Cyclect Group HPH and Peak to be participants of bid rigging in F1 Tender and imposed a penalty of S $609,118 on the three companies. CCS also imposed fines on Cyclect Group and HPH for bid rigging the GEMS Tender and imposed a fine of S $17,000 on both the companies. *(Press release 28.11.2017)*

CCI approves the acquisition of Tata Teleservices Limited and Tata Teleservices (Maharashtra) Limited by Bharti Airtel Limited

On 16.11.2017, the Competition Commission of India (the 'Commission'/ 'CCI'), approved the acquisition of Tata Teleservices Limited ('TTSL') and Tata Teleservices (Maharashtra) Limited ('TTML') by Bharti Airtel Limited. The Commission opined that the proposed combination does not cause an appreciable adverse effect on competition in India.

As per the order, the proposed combination envisaged 100 percent acquisition of the consumer mobile business run by **Tata Teleservices Limited ("TTSL")**, a part of Tata Group, engaged in the business of wired telephone service, and **Tata Teleservices (Maharashtra) Limited ("TTML") (Tata CMB)**, an associate company of TTSL, by **Bharti Airtel Limited**, a part of Bharti Enterprises group ("Bharti Group") which is a publicly traded global telecommunications corporation with operations in 17 countries across Asia and Africa ("Proposed Combination").

The Commission analyzed the Proposed Combination and observed that that the issue of concentration and market shares was also dealt in the guidelines for transfer/merger of service licences on compromises, arrangement amalgamation of companies, issued by Ministry of Communications and Information Technology, Government of India in 2014 ("DoT Merger Guidelines").

According to DoT Merger Guidelines, in case of merger or acquisition or amalgamation proposals that result in market share in any service area exceeding 50 percent, the resultant entity should reduce its market shares to 50 percent within a period of one year from the date of approval of merger or acquisition or amalgamation ("Market Share Caps"). Further, the Commission noted that the spectrum holding in a licensed service area is subject to cap of 25 percent of the total spectrum assigned and 50 percent of the spectrum assigned in a specific band. ("Spectrum Caps"). The Parties thereby submitted before the Commission that they will comply with the Spectrum Caps and the Market Share Caps.

The Commission, as a first step in analyzing the Proposed Combination, considered the revenue market shares, and observed that market was highly concentrated in all telecom circles (except Haryana, Mumbai and Punjab). As a next step in competition assessment, the Commission examined the impact of the Proposed Combination in the market. CCI examined 17 telecom circles wherein the combined market share was estimated to be more than 30 percent.

The Commission noted that the spectrum holding of the Airtel may exceed Spectrum Caps in terms of total spectrum assigned in Bihar telecom circle. However, the Commission noted that the spectrum seems to be fairly distributed between the various telecommunications service providers ('TSPs').

The Commission was of the opinion that the combination would result in the removal of a vigorous and effective competitor or competitors in the market. For this concern, the Commission assessed as to how Tata CMB is placed in terms of closeness of competition to Airtel and its overall effectiveness as a competitor. The following points were noted: (i) Tata CMB has a limited product offering, (ii) the diversion ratio from Airtel to Tata CMB is negligible, and (iii) the market share of Tata CMB has been steadily declining in almost all the overlapping telecom circles. The Commission concluded that Tata CMB was neither a close competitor of Airtel nor an effective competitor going forward.

The Commission also analyzed the buying power, where they relied on the assessment done in its earlier decision in the combination case of Idea and Vodafone, where it had observed that that there was significant constraint on the TSPs from the buyer side in the mobile retail telephony services market. The Commission with regard to the extent of competition likely to be maintained after the Proposed Combination observed that the size and resources of the competitors would exercise adequate competitive constraints on the Acquirer.

The Commission was finally of the opinion that the Proposed Combination will not cause significant change in competition dynamics and the Commission approved the same under Section 31(1) of the Competition Act, 2002. *(Case C-2017/10/531)*

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