



Competition Law

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IN THIS ISSUE...

CCI PENALISES META FOR ABUSING ITS DOMINANT POSITION

Page 3

CCI DIRECTS YET ANOTHER INVESTIGATION AGAINST GOOGLE

Page 3

CCI APPROVES KEIMED'S MERGER WITH APOLLO HOSPITALS ALONG WITH ADVENTS INVESTMENT

Page 4

CCI DISMISSES BID RIGGING ALLEGATIONS AGAINST BAREILLY NAGAR NIGAM

Page 4

CCI APPROVES ACQUISITION OF ATC INDIA BY BROOKFIELD, BCI, AND GIC

Page 4

CCI APPROVES THE COMPOSITE COMBINATION INVOLVING PARADEEP PHOSPHATES AND MANGALORE CHEMICALS AND FERTILIZERS

Page 5



The Competition Commission of India (**CCI/Commission**) wrapped the year up in style by imposing its first penalty for over two years. The victim again belonged to Big Tech – Meta. Simultaneously, it opened yet another investigation into Google.

We wish all our readers a very Happy, Healthy, Prosperous, and Fun-filled New Year! See you in 2025!

CCI PENALISES META FOR ABUSING ITS DOMINANT POSITION

Vide its order dated [18 November 2024](#), the CCI penalised Meta with a hefty penalty of INR 213.14 crores (INR 2131.4 million) for abusing its dominant position in the market for OTT messaging apps through smartphones in India.

The issue started in 2021, when WhatsApp introduced a new policy which included sharing vast amounts of data with Meta and other sister entities and made it mandatory for users to accept if they wished to retain their WhatsApp account.

In January 2023, the Director General submitted the investigation report to the CCI finding Meta to have contravened the provisions of the Competition Act, 2002 (**Act**).

Dealing with a preliminary jurisdictional issue with data privacy laws and pending proceedings before the Supreme Court, the Commission held that “...*the Commission’s jurisdiction operates independently and concurrently with other authorities, including Constitutional Courts, even in instances where there may be a potential overlap in the subject matter of inquiries. The objectives of competition law, as set out in the Act, focus on promoting economic efficiency. Mere existence of parallel proceedings or the involvement of other authorities does not strip the Commission of its jurisdiction. Thus, the Commission retains the authority under the Act, irrespective of any ongoing legal proceedings in other forums, reaffirming its role as the market regulator and guardian of competition principles.*”

The Commission concluded that WhatsApp, by providing a limited window for accepting the update, created a sense of urgency among the users, thereby coercing them into acceding to the ‘take-it or leave-it terms’ out of fear of losing access to the platform which is the dominant mode of OTT messaging in India. Consequently, the Commission concluded that WhatsApp had indulged in exploitative abuse by imposing unfair and discriminatory conditions on its users.

The Commission also held Meta guilty to exclusionary abuse with Meta’s practice of data sharing across platforms (in this matter, from WhatsApp to Meta) leading to both the denial of market access to advertisers in the display advertising market and amounting to leveraging its dominance in the OTT messaging market to protect and consolidate its position in display advertising.

While imposing a hefty penalty, the CCI also directed WhatsApp to implement policy corrections with respect to data collection and sharing, including (a) requiring a detailed explanation of the user data shared by WhatsApp with other Meta companies, along with the purpose, (b) prohibiting the sharing of data for purposes other than for providing WhatsApp services, and (c) an option to opt-out prominently placed through an in-app notification.

CCI DIRECTS YET ANOTHER INVESTIGATION AGAINST GOOGLE

Vide an order dated [28 November 2024](#), the CCI directed an investigation into Google, this time for allegedly restricting gaming applications that offer Real Money Games (**RGM**) other than Daily Fantasy Sports (**DFS**) and Rummy in India, on its platform and displaying warnings to end users.

The relevant markets stayed the same as in the previous cases – (a) licensable OS for smart mobile devices in India; (b) app store for Android smart mobile OS in India; and (c) online search advertising services in India and found Google dominant in these markets.

After asking Google to file responses to certain specific queries and obtaining inputs from the Ministry of Electronics and Information Technology (MEITY), the CCI *prima facie* concluded that the prolonged deployment of selective RMG apps, even on a ‘pilot basis’ lead to a potential denial of market access to non-DFS and non-Rummy RMG applications. The CCI also found that Google blocked access to important advertising channels to the Informant while giving preferential treatment to real-time multiplayer gaming apps like Zupee and Mobile Premier League/MPL, finding that Google’s

justifications and conduct appeared to be contradictory. Finally, the CCI held that display of 'payment warnings' for the non-DFS and non-Rummy apps on Play Store appeared to be unfair and discriminatory, warranting an investigation.

With this order, currently there are four investigations pending against Google (the others being [digital news publishers](#), [smart TVs](#), and [billing policy for in-app purchases & paid apps](#)).

CCI APPROVES KEIMED'S MERGER WITH APOLLO HOSPITALS ALONG WITH ADVENTS INVESTMENT

CCI vide an order dated [20 August 2024](#) approved a combination consisting of several interconnected transactions involving Advent, Apollo Hospitals Enterprise Limited (**AHEL**), Apollo Healthco Limited (**AHL**), which operates a platform that helps customers book doctor appointments and diagnostic tests, and Keimed Private Limited (**Keimed**), which is in the business of: (i) wholesale sale and distribution of pharmaceutical products, OTC products, medical equipment, and the marketing and sale of pharmaceutical products.

The CCI assessed the combination at two levels – Advent's investment in AHL and the subsequent merger with Keimed, and AHL's acquisition of Keimed's share capital and the subsequent merger with AHL. The CCI noted that Keimed, through its subsidiary Auspharma Private Limited, is engaged in the marketing and sale of certain pharmaceutical products, and there was a horizontal overlap at the molecular level between a product manufactured by Bharat Serum and Vaccines Limited (an Advent 'affiliate'), and a product marketed by Auspharma. Additionally, there was an overlap with two products at the therapeutic level.

The Commission also identified several vertical relationships but since the combined market shares of the parties were less than five percent in both the horizontal and vertical overlaps, the CCI unconditionally approved the transaction.

CCI DISMISSES BID RIGGING ALLEGATIONS AGAINST BAREILLY NAGAR NIGAM

Vide an order dated [11 November 2024](#), the CCI dismissed the allegations of collusion and bid rigging levelled against local government body, Bareilly Nagar Nigam, and certain participants in its tender

for registration of advertisement agencies. The main allegations included: (i) the setting of unfair tender criteria that favoured specific companies, and (ii) bid rigging, since the two companies that participated were 'dummy' entities set up to support Adtek in the bidding process. It was further alleged that these firms shared directors, business addresses, and other operational links, suggesting collusion.

After looking at the explanation provided by the government body, the CCI concluded that there was insufficient evidence of anti-competitive behaviour or collusion in the tendering process. The commission noted that the authority to set tender conditions, including turnover requirements, typically lies within the discretion of the procurer and does not inherently violate competition laws. The CCI concluded that the informant's claims lacked substantial proof of bid rigging or unfair practices that would warrant an investigation under Section 3(3) of the Act, and consequently dismissed the complaint.

CCI APPROVES ACQUISITION OF ATC INDIA BY BROOKFIELD, BCI, AND GIC

Vide an order dated [06 August 2024](#) the CCI approved the acquisition of 100% shareholding of ATC Telecom Infrastructure Private Limited (**ATC India**) by Data Infrastructure Trust (**DIT**), which would in turn issue units to Brookfield, BCI, and GIC.

The CCI segregated the market into passive telecom infrastructure services through telecom towers for macro towers/sites and micro towers/sites, while leaving the geographic market as pan-India.

While the market shares for micro sites were not significant, the market shares for macro sites on the basis of number of towers and tenancies were around the 40% mark. The CCI also sought comments from the telecom service providers, one of whom raised concerns.

However, the CCI agreed with the parties' submissions that the commercial reality suggested that passive telecommunications infrastructure service providers are highly incentivised to add tenants to existing towers, and conversely have no incentive to not provide towers and high quality of services to any of the TSPs on whom they are entirely dependent.

The parties also provided an undertaking that it will provide passive infrastructure services to customers and potential customers, including TSPs such as Reliance Jio Infocomm Limited, Vodafone Idea

Limited, Bharat Sanchar Nigam Limited and Bharti Airtel Limited, in a non-discriminatory manner.

Based on this, the CCI approved the transaction.

CCI APPROVES THE COMPOSITE COMBINATION INVOLVING PARADEEP PHOSPHATES AND MANGALORE CHEMICALS AND FERTILIZERS

CCI, *vide* order dated [30 July 2024](#), approved the composite transaction involving: (a) the amalgamation of Mangalore Chemicals & Fertilizers Limited (**MCFL**) with Paradeep Phosphates Limited (PPL), and (b) the acquisition of up to 33.08% shareholding in MCFL by Zuari Maroc Phosphates Private Limited (**ZMPPL**).

The CCI observed that the parties exhibit horizontal overlaps in the manufacture and sale of urea and

non-urea fertilizers, including Di-ammonium Phosphate (DAP), Nitrogen Phosphorus and Potassium (NPK), and Muriate of Potash (MoP), which were examined on a state-wide basis, and in state of Karnataka, the combined market shares of the merging parties were in the range of 20-25 percent but the incremental increase was not significant and the market exhibited competition from other major players like IFFCO, KRIBHCO, and Coromandel International Limited.

In terms of vertical overlap, CCI noted that although PPL manufactures sulphuric acid and ammonia for self-consumption, the same has been supplied to MCFL on an ad-hoc basis. However, given the absence of a formal supply arrangement and the presence of strong competitors in the businesses of the parties, the Proposed Combination is not likely to raise any concerns.

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