



# Competition Law

Newsletter - February 2024

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January was a busy month for the Competition Commission of India (CCI) with four Combination orders published and four enforcement orders and Market Study, while the Madras High Court sent app developers back to the CCI in their fight against Google. In the latest edition of the DSK Legal Competition Law Newsletter, we cover the most relevant orders, a regulatory update, and a Market Study on the Mining Sector in India.

## **CCI CLEARS PVR OF PREFERENTIAL TREATMENT CHARGES**

Vide an order dated [03.01.2024](#), CCI cleared PVR of the allegation of giving special treatment to films of large production houses.

The primary allegation was of discriminatory treatment in allocation of screens for the exhibition of movies. PVR argued that most of the terms including the revenue sharing terms, agreed to with all the producers / distributors were largely the same, regardless of whether they were independent filmmakers or large production houses, and the allocation of screens is decided depending on numerous factors such as revenue generating potential of the movie, excitement/buzz around the film, marketing, language of the film etc.

The CCI was of the view that commercial wisdom of exhibitors is largely governed by consumer demand and unless harm to competition is apparent, any intervention would lead to undesirable results and autonomy must be available to the exhibitors to deal with movies the way they want. As there were no discernible competition concerns, no case of contravention of the Competition Act, 2002 (**Act**) was made out and the information was closed forthwith.

## **CCI DISMISSES ALLEGATIONS OF ABUSE OF DOMINANCE AGAINST OLA ELECTRIC, VIDA, TVS & ATHER**

Vide an order dated [23.01.2024](#), CCI dismissed abuse of dominance allegations raised against Ola Electric Limited (**OLA**), VIDA, Hero MotoCorp Limited, TVS Motors and Ather Energy Private Limited.

The primary allegation was that the electrical vehicle manufacturers had taken an undue and illegal advantage of the Faster Adoption and Manufacturing of Electric & Hybrid Vehicles Policy of the Central Government, which promotes the adoption of electric and hybrid vehicles in India.

The CCI delineated the relevant market as the '*market for manufacture and sale of Electric Two Wheelers in India*', but noted that none of the market players had a stable market share or position, and the market was growing with several players introducing new options for consumers. Consequently, the complaint was dismissed.

## **CCI DISMISSES ALLEGATIONS OF ABUSE OF DOMINANCE LEVIED AGAINST KERALA STATE ROAD TRANSPORT CORPORATION**

Vide an order dated [22.01.2024](#), CCI dismissed the allegations of abusive conduct levied against the Kerala State Road Transport Corporation (**KSRTC**) for exclusively operating buses on a Nilakkal-Pamba route which is used to reach Sabarimala temple, and charging of exorbitant fares from passengers on the said route.

The CCI noted that it was the Government of Kerala that had granted exclusivity to KSRTC to run and operate passenger road transport for providing adequate, economical and properly coordinated passenger road transport service in the public interest. It found that such a policy decision of the Government cannot be considered anti-competitive in nature.

Lastly, with regard to the allegations of exorbitant fares being charged by KSRTC, the CCI said that they were too in accordance with

a notification released by KSRTC applicable since April 2022, wherein enhancement of fares for both nationalised and non-nationalised routes was well within its purview for buses operating on ghat roads, and during festivals/occasions. In fact, the fares on a per kilometre basis were also being charged on a uniform basis as per the April 2022 notification, by both public and private operators.

The order marked the 25<sup>th</sup> such order passed by the CCI since the new Chair took office in May 2023, dismissing complaints at the threshold, while one was closed after negating the recommendations of the DG to the contrary. Only two orders were passed under Section 27 finding a contravention, but no monetary penalty was levied in either case. In the same period there have been no published orders initiating a fresh investigation into anti-competitive practices or abuse of dominance.<sup>1</sup>

### **CCI APPROVES MINORITY STAKE ACQUISITIONS IN NIVA BUPA**

Vide two separate orders dated 12.12.2023 ([here](#) and [here](#)), CCI approved minority stake acquisitions of 2.85% and 2.63% in Niva Bupa Health Insurance Company Limited by Motilal Oswal and Temasek respectively, with some reserved matter and information rights.

While the Motilal Oswal investment posed a potential vertical overlap in distribution of healthcare insurance products, the CCI found several portfolio companies of Temasek had not only vertical overlaps involving distribution of insurance products but also complimentary overlaps noting that *"linkages between health insurance providers and hospitals ensure increased patient footfall as well as revenue generation for hospitals. Thus, the interlinkage between Temasek's affiliates and Niva Bupa has been considered as a complementary overlap for assessment purposes, with regard to present filing, as health insurance schemes of the Target are combined with the healthcare*

*services of Temasek's affiliates by the end consumer, to make the service more cost effective."*

However, the market shares of the overlaps, being insignificant, the transaction was approved unconditionally.

### **CCI APPROVES THE ADDITIONAL STAKE ACQUISITION IN VODAFONE BY EMIRATES TELECOMMUNICATION**

The CCI, vide an order dated [29.11.2023](#), approved increase in shareholding in Vodafone Group Plc. by the Emirates Telecommunications Group (formerly Etisalat and now e&) from 14.6% to approximately 25%.

The CCI found that apart from a majority stake in e&, the Emirates Investment Authority also had 50.12% shareholding in Emirates Integrated Telecommunications Company (du) which offered services in the UAE. Two complementary relationships were for the provision of (a) wholesale international roaming services, and (b) interconnection services were assessed in terms of e& and du being customers of Vodafone India, and vice versa.

The CCI found that despite Vodafone's presence in 22 service circles in India, e&/du had entered into roaming agreements with other Indian mobile network operators for a comprehensive, nationwide coverage for its travelling customers. Further, presence of several other competitors such as Jio, Bharti Airtel, MTNL and BSNL present in India which actively provide wholesale international roaming services to non-Indian mobile network operators, for an uninterrupted service.

The CCI noted that any potential exclusivity between e&/du on one hand and VI India on the other for interconnection services was unlikely since, e&'s/du's customers would not be able to make calls to 95-100% of fixed line users in

<sup>1</sup> Note that investigations into cartel practices are normally not published by the CCI at the time of initiation.

India and make calls or send SMSs to 75-80% of the mobile users in India.

### **CCI APPROVES THE COMBINATION INVOLVING SYNTHIMED LABS AND IND SWIFT LABORATORIES**

The CCI vide order dated [19.12.2023](#), approved the (a) slump sale of certain Active Pharmaceutical Ingredients (API) and intermediaries to Synthimed (which belonged to the Bain and Piramal groups), and (b) acquisition of the shareholding of 8.42 per cent in Synthimed by Ind Swift.

The CCI noted that the APIs are primary inputs for the manufacturing of different formulations and each such API would constitute a separate market and only one API was substitutable between the two groups, for which the Target's sales accounted for less than 5% in India.

While assessing the possible vertical overlaps, the CCI noted that the same is unlikely to raise any competition concerns given the minuscule market share of the parties.

### **MADRAS HIGH COURT DISMISSES THE APPEALS FILED BY THE APP DEVELOPERS AGAINST GOOGLE**

The Division Bench of the Madras High Court, vide its judgment dated [19.01.2024](#), dismissed the bunch of appeals filed by the app developers against the Google Payment Terms and conditions, relating to the implementation of the Google Play Billing System vis-à-vis the mobile application.

By way of brief background, the app developers approached the Madras High Court against the Alternative Billing System/User Choice Billing introduced by Google. As covered in our [September 2023 Newsletter](#), the single-judge bench of the Madras High Court, vide judgment dated 03.08.2023 dismissed the suit observing that the same is barred by Section 61 of the Act.

<sup>2</sup> Carried out by the Institute for Studies in Industrial Development.

On appeal, the Divisional Bench upheld the decision of the single judge noting that the reliefs claimed by the app developers by way of the suit have already been adjudicated by the CCI and thus directed the parties to bring the same before the market regulator. The Court held that "*Sections 61 and 62 of the Act of 2002 should be read in conjunction to give a holistic meaning to the applicability of these provisions. Merely because Section 62 states that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force, it cannot be interpreted to mean that any individual can institute proceedings in a commercial court alleging abuse of dominance, while completely ignoring Section 61 of the Act of 2002*".

Noting that the payment/billing system between the parties had already been tested before the CCI, which had passed an exhaustive order, if certain further terms are executed, the same ought to be tested by the CCI and not by another fora.

### **REGULATORY UPDATE**

The CCI released the [Competition Commission of India \(General\) Amendment Regulations, 2024 on 12.01.2024](#) introducing a definition of 'Interlocutory Applications' and prescribing a fee to be paid for filing such applications ranging from INR 500 in case of an individual or Hindu Undivided Family to INR 1000 (for NGOs, Consumer Associations, Proprietorships, Partnerships, and Companies having turnover in the preceding year up to INR 2 crore), and finally INR 5000 in all other cases.

### **CCI MARKET STUDY MINING SECTOR WITH A FOCUS ON IRON ORE**

In January, the CCI published its [Market Study on Dynamics of Competition in the Mining Sector in India with a focus on Iron Ore](#).<sup>2</sup> According to the Report, India is home to 1513 operating mines, and produces 95 minerals including 4 fuel minerals, 10 metallic minerals,

23 non-metallic minerals, 3 atomic minerals, and 55 minor minerals.

Iron ore holds a dominant position, accounting for 79 percent of the total mineral value produced in the country. It forms an essential raw material for the iron and steel industry, forming the backbone India's growing economy.

The Report finds that the iron ore sector is highly concentrated, and is dominated by two public sector companies – central government owned National Mineral Development Corporation (NMDC) and state-owned Odisha Mining Corporation (OMC), which together account for 65 percent shares in the iron ore sector. OP Jindal and Aditya Birla are the top private business groups in the sector. Odisha accounts for more than half (53.82 percent) of the iron ore production, followed by Chhattisgarh (16.3 percent), Karnataka (15.9 percent), and Jharkhand (9.7 percent).

One of the major issues, the Report states, is the pricing of iron ore in Odisha. Non-captive users can purchase iron ore through: (i) participating in the auction process of the public sector companies like OMC, (ii) engaging in Long Term Linkage Agreements (**LTL**) with the OMC, or (iii) purchasing from private merchant mines. However, 80% of the iron ore is sold

through LTL leaving only 20% open for auction. The base price for the auction was revealed to be extremely high leading to losses and forcing small steel producers to close operations.

An analysis of the financials of both OMC and NMDC, revealed that they generate significant revenue from iron ore sales, resulting in remarkably high profits even as the high prices of iron ore were adversely impacting the profitability of user industries such as pellets, sponge iron, and steel. While the auction process implemented after Mines & Minerals (Development and Regulation) Amendment 2015 brought transparency, iron ore blocks auctioned after 2015 were dominated by some private companies like JSW accounting for nearly 47 percent of the total quantity of the reserves auctioned since 2015. Given that the LTL contracts span an initial 50-year period, the Study recommends that a suitable maximum limit on the ownership of these mines be imposed in terms of the quantity of reserves held by a steel producer at a given time.

The Study further proposes that to compensate for those without captive mines, preferential treatment should be granted to entities without captive mines when allocating iron ore through LTL by OMC in Odisha.

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