

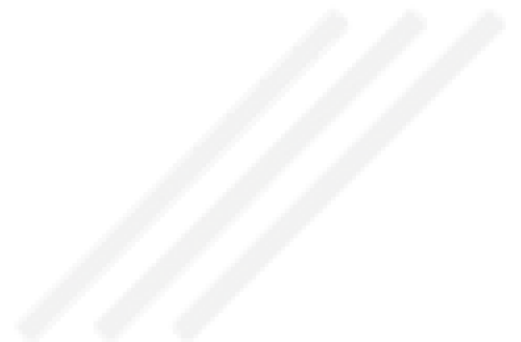


Competition Law

Newsletter - October 2023

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Setting aside fears of another long spell of inaction for the Competition Commission of India (CCI), the Central Government swiftly appointed [three new members](#) to the CCI on 19 September 2023, namely Mr. Anil Agarwal, Ms. Sweta Kakkad, and Mr. Deepak Anurag. This was followed up with the appointment of Ms. Anupama Anand as the Secretary, a position that had been vacant since March.

The CCI released two enforcement orders (albeit with only two members as signatories, not including the new appointees) and three combination orders in September.

CCI APPROVES VISTARA – AIR INDIA MERGER

The CCI vide its order dated [01.09.2023](#), approved the series of inter-connected transactions involving the merger of Tata SIA Airlines (which operates Vistara Airlines) into Air India Limited, and the acquisition of a minority shareholding by Singapore Airlines in Air India and a board seat. Vistara and Air India and the two ‘full-service’ national airlines operating in the country.

The CCI assessed horizontal overlaps in (i) domestic and internal passenger air transport, (ii) air cargo, (iii) charter flights; (iv) ground handling; and (v) in-flight catering services. While the CCI concluded there were no concerns in the latter four services but found that *prima facie* the transaction is likely to raise concerns in 36 domestic and 15 international origin & destination (O&D) routes.

Of these, however, the CCI narrowed it down to only 7 domestic and 7 international routes. The parties committed to maintain a minimum annual passenger capacity on these routes for a period of four years from the date the merger took effect, with Singapore Airlines also offering commitments on the Singapore oriented routes. The parties also committed to appointing an independent third-party

auditor, who would submit annual compliance reports to the CCI.

In approving the transaction subject to the commitments offered, the CCI did not draw a distinction between full-service and low-cost airlines, nor between business and economy class services. Further, it took into consideration the fact that there was some (limited) recent entry of new airlines in the market, and that post combination, the merged entity would benefit from the network effects, ‘plausible’ synergies, and will provide enhanced choices for the customers.

CCI DISMISSES ALLEGATIONS AGAINST HERO MOTOR CORP AND OTHERS

In the first of two enforcement orders signed by only two members, the CCI vide order dated [14.09.2023](#), dismissed the allegations against Hero Motor Corp in a complaint filed by a parts dealer in the State of Telangana.

The grievances ranged from an unfair trade discount policy and placing a cap on purchase of the stock beyond 150% of the assigned target, to providing higher discounts to some of the other respondents (wholesale parts dealers).

The CCI summarily dismissed the complaint noting that admittedly the dealer

has been appointed on a non-exclusive basis and there appears to be no material to establish dominance of any party, particularly, where the allegation is that multiple parties are dominant, since the Act does not recognize such a concept.

CCI DISMISSES COMPLAINT AGAINST DEN NETWORKS

The complaint was filed by a news broadcaster running its channel under the name 'APN'. It was alleged that Den, as a distributor of channels in the State of UP, was charging excessive and discriminatory carriage fees for cable TV services and thereby abusing its dominant position.

However, the CCI noted that no substantive material had been provided regarding Den's market positions, and after reviewing TRAI statistics, noted that are other established distributors in the state such as SITI, IMCL, and Fastway, and thus it did not appear that Den had held a dominant position. Consequently, vide an order dated [14.09.2023](#), the CCI dismissed the complaint.

CCI APPROVES ACQUISITION OF A 30% STAKE IN BRILLIO HOLDINGS BY OROGEN-BRUNSON

Vide Order dated [29.08.2023](#), the CCI approved the acquisition of up to 30% shareholding in Brillio Holdings Inc. by Orogen-Brunson L.P.

Orogen Holdings and the Atairos Group (the entities controlling the immediate acquirer company) are present in India through EXL Service.com which provides digital operations and analytics to various sectors while Brillio provides technology and business consulting, including bog data analytics.

Interestingly, while the parties submitted that the GIC and Comcast did not control Orogen or Atairos, the CCI cryptically noted the "*extent of shareholding and information on record*" and decided to evaluate overlaps between portfolio companies of GIC and Comcast as well.

The CCI observed that the activities of the parties to the combination overlapped in the area of data analytics, however, the overall position of the combined entity in this market were insignificant to cause any change in competition dynamics. Consequently, the CCI unconditionally approved the transaction.

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