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I. CARTELS AND ANTICOMPETITIVE AGREEMENTS

INDIA

Competition Commission of India (CCI) imposes penalty of INR 200 Crore on Maruti Suzuki Ltd for resale price maintenance

The CCI by way of an order dated 23 August 2021 has imposed a penalty of INR 200 Crores on Maruti Suzuki India Ltd (MSIL) for imposing a Discount Control Policy (DCP) on its dealers.

The CCI's investigation was initiated on the basis of an anonymous email dated 17 November 2017 purportedly sent by MSIL dealers in the west region in India (State of Maharashtra-except Mumbai and Goa), alleging violation of Section 3(4)(e) read with Section 3(1) of the Competition Act, 2002 (Act). It was alleged that MSIL was restricting its dealers from offering discounts over certain pre-determined levels. It was also alleged that dealers offering discounts exceeding those prescribed by MSIL were penalized by MSIL by way of monetary penalties as well as with suspension of supplies.

On the basis of the allegations, the CCI by way of an order dated 04 July 2019 under Section 26(1) of the Act directed the Director General (DG) to undertake a detailed investigation into the allegations.

Findings in the DG Report

On the basis of emails exchanges between MSIL and its dealers between August 2012 and July 2019, the DG observed that MSIL indulged in resale price maintenance (RPM) through the implementation of its DCP on its dealers across India. It was also observed that MSIL appointed Mystery Shopping Agencies (MSA) to keep track of discounts offered by dealers.

The DG further observed that the practice of RPM caused an appreciable adverse effect on competition (AAEC) within India, and that it lowered inter-brand and intra-brand competition, thereby denying the benefit of lower prices to consumers.

CCI's Findings

It was argued by MSIL that the Dealership Agreement does not restrict discounts that could be offered by the dealers, and that the dealers are free to charge a price lower than the Maximum Recommended Retail Price from consumers. Therefore, MSIL did not have any agreement with its dealers regarding the DCP. The CCI, however, rejected MSIL's arguments regarding the absence of a formal agreement,

by holding that the agreement between the dealers and MSIL on the DCP exists *de hors* the Dealership Agreement, and that the 'agreement' as defined under Section 2(b) of the Act is wide enough to include even a mutual understanding or action in concert.

Secondly, it was argued by MSIL that the DCP was a form of self-regulation/policing amongst the dealers themselves, and that MSIL did not have any role in formulating such a policy, except to enforce the same on behalf of dealers as an independent third party. However, the CCI, relying on documentary evidence adduced in the DG Report, held that MSIL was the approving authority of the maximum discounts that may be offered by its dealers to customers, despite its claim that it had a principal-to-principal relationship with its dealers. The CCI also held that the documentary evidence clearly demonstrated that MSIL not only imposed the DCP on its dealers, but also enforced the same by monitoring dealers through Mystery Shopping Agencies (MSAs), imposing penalties on them and threatening strict action like stoppage of supplies.

After concluding that there existed an agreement between MSIL and its dealers in terms of Section 3(4) of the Act regarding the DCP, the CCI undertook an analysis of the AAEC that has been caused or was likely to be caused as a result of the agreement between MSIL and its dealers.

The CCI concluded that by fixing the maximum discount that can be offered, the DCP is setting the minimum prices at which the sale can be made by the dealer, thereby restricting MSIL dealers ability to compete effectively on price. The CCI also observed that when a significant player such as MSIL imposes minimum selling price restrictions on its dealers, RPM can decrease the pricing pressure on competing manufacturers. The trickle- down effect of such a model-results in the end-customers being denied the benefit of lower prices. *(Source: CCI decision dated 23 August 2021; for full text see CCI website)*

CCI finds Tamil and Telugu film producers associations guilty of anti-competitive practices

By way of an order dated 22 June 2021, the CCI found that the Tamil Film Producers Council (TFPC) and Telugu Film Chamber of Commerce (TFCC) (collectively OPs) had violated the provisions of Section 3(1) read with Section 3(3)(b) of the Act by issuing boycott calls to their respective members. Accordingly, the TFPC and the TFCC were directed to cease and desist from indulging in such practices in the future. However, the CCI refrained from imposing any monetary penalty on the OPs.

The investigation by the CCI was initiated on allegations that the OPs were involved in collectively boycotting the production, supply, exhibition, distribution and technical development of Tamil and Telugu films in the State of Tamil Nadu. It was also alleged that the OPs refused to deal with several

stakeholders in the film industry in Tamil Nadu, and spearheaded a protest in respect of alleged high Virtual Print Fee (VPF) charged by the Digital Cinema Service Providers/Digital Service Providers (DCSPs/ DSPs) and called for an absolute industry wide ban on release of films

On the basis of circulars, letters, press releases and e-mails issued by the TFPC, the CCI noted that TFPC not only issued a strike call of Tamil Producers, but even exhorted other associations to join the strike call. Similarly, the CCI observed that the TFCC took a collective decision to issue a call for strike of Telugu movie producers and that the strike happened during 02 March 2018 to 07 March 2018. When Telugu movies started releasing from 08 March 2018, TFPC requested TFCC to stop releasing such movies in the State of Tamil Nadu upon which the release of Telugu movies stopped in the State of Tamil Nadu.

The CCI observed that although the impugned conduct of the OPs were actuated for bargaining better commercial terms for their members, and was in response to the perceived high VPF charges by Qube and UFO, yet it can amount to anti-competitive conduct if it results in directly or indirectly determining prices or limits or controls the value chain and results in the sharing of the market. The CCI also issued a reminder that although trade associations play an important role in promoting the interests of the members and industry they serve, however, since members are typically competitors, they must be sensitive to anti-trust risks involved in the participation in such associations.

Accordingly, the CCI directed the Opposite Parties and its office bearers to cease and desist from indulging in anti-competitive conduct but did not impose any monetary penalty considering the nature, duration, and level of participation in the strike. *(Source: CCI decision dated 22 June 2021; for full text see CCI website)*

CCI dismisses allegation of cartelization in the airline industry

By way of an order dated 03 June 2021, the CCI dismissed allegations of cartelization against Jet Airways, SpiceJet, Indigo, Go Airlines (India) Limited and Air India Limited.

The Informant alleged that during the period of the Jaat Agitation in the month of February 2016, domestic airlines started charging exorbitant fares, particularly, between Delhi-Chandigarh and Delhi-Amritsar routes. The Informant alleged that there was an emerging trend in the aviation industry to increase air ticket prices by airlines to exploit the passengers during extraordinary conditions.

The CCI contemplating the possibility of algorithmic collusion with or without the need of human intervention or coordination between competitors, believed that there existed a prima facie case for investigation. Accordingly, vide order dated 09 November 2018 under Section 26(1) of the Act, the DG was directed to cause an investigation into the matter.

The DG in its investigation report, however, concluded that no contravention of Section 3(3) read with Section 3(1) of the Act was found against Spice Jet, Air India, Go Air and Indigo during the period of Jaat Agitation, i.e. between 18to 23 February, 2016.

The CCI agreed with the findings of the DG and inter alia noted that: (i) the sectors witnessed high demand for air tickets due to Jat agitation which led to non-availability of alternative modes of transport like rail, road etc. Therefore, the air tickets were sold at higher price.; (ii) There was no price parallelism or identical pricing of tickets by the Airlines for any of the sectors; (iii) There was no evidence of any form of communication among the Airlines to suggest any concerted action; and (iv) while the Airlines used algorithm which could be used for potential anti- competitive conduct, in the instant case, the algorithm software used by the Airlines were different from each other and the inputs for these algorithms were provided by the Airlines based on their historical data which varied across Airlines. Accordingly, the CCI agreed with the DG's findings and closed the case. *(Source: CCI decision dated 03 June 2021; for full text see CCI website)*

CCI closes investigation against taxi unions in Goa for preventing entry of app-based taxi aggregators

By way of an order dated 22 June 2021, the CCI closed its *suo moto* investigation into alleged concerted action by tourist taxi unions operating in the State of Goa, preventing the entry of app-based taxi aggregators like Ola and Uber, in contravention of Section 3(3)(b) of the Competition Act.

Commission vide its order dated 13 June 2018 had directed the DG to cause an investigation into the allegation that app-based service providers in the State of Goa, was putting a restraint on services based on technology and limiting the competition, technical development as well as investment in provision of the relevant services.

DG in its investigation concluded that the South Goa Tourist Taxi Association, North Goa Tourist Taxi Association and Centre for Responsible Tourism (together referred to as the 'Opposite Parties')

prevented the entry of app-based taxi service providers in the State of Goa and thereby violated the provisions of the Act.

The CCI considered the report by the DG and observed that the conclusion arrived at by the DG is mainly based on You-tube videos, Facebook blogs and news clippings, and as such, such material remained uncorroborated and unauthenticated. Further CCI noted that DG has failed to examine the reasons mentioned by the OPs during the course of investigation for resorting to strikes.

It was also noted that the major player UBER had not applied for any license for starting app-based taxi services in the State of Goa. With regard to the second aggregrator i.e., OLA, it was observed by the CCI that the DG had failed to examine the reasons behind its exit from the Goan market after entering the said market as early as 2013. Further the DG failed to consider the guidelines issued by the State of Goa permitting the operation of app-based taxi aggregators like Ola and Uber in Goa despite the opposition from the taxi unions. Accordingly, the CCI closed the investigation. *(Source: CCI decision dated 22 June 2021; for full text see CCI website)*

INTERNATIONAL

EC fines car manufacturers €875 million for restricting competition in emission cleaning for new diesel passenger cars

The European Commission has found that Daimler, BMW and Volkswagen group (Volkswagen, Audi and Porsche) breached EU antitrust rules by colluding on technical development in the area of nitrogen oxide cleaning. The Commission has imposed a fine of € 875 189 000. Daimler was not fined, as it revealed the existence of the cartel to the Commission. All parties acknowledged their involvement in the cartel and agreed to settle the case.

The car manufactures held regular technical meetings to discuss the development of the selective catalytic reduction (SCR)-technology which eliminates harmful nitrogen oxide (NOx)-emissions from diesel passenger cars through the injection of urea (also called "AdBlue") into the exhaust gas stream. During these meetings, and for over five years, the car manufacturers colluded to avoid competition on cleaning better than what is required by law despite the relevant technology being available.

More specifically, Daimler, BMW and Volkswagen group reached an agreement on AdBlue tank sizes and ranges and a common understanding on the average estimated AdBlue-consumption.

This is the first time that the EC concluded that collusion on technical development amounts to a cartel. In view of this novelty, the Commission provided the parties with guidance on aspects of their SCR-

system related cooperation which raise no competition concerns, such as the standardisation of the AdBlue filler neck, the discussion of quality standards for AdBlue or the joint development of an AdBlue dosing software platform. (Source: *European Union press release dated 8 July 2021*)

II. ABUSE OF DOMINANCE

INDIA

CCI directs yet another investigation against Google

By way of an order dated 22 June 2021, the CCI has directed an investigation Google on allegations that the restrictions imposed by the Television App Distribution Agreement (TADA) and the Android Compatibility Commitment (ACC) on the smart TV OEMs are in violation of Section 4 and Section 3 of the Act.

The allegations pertained to the "*Market for licensable smart TV device operating systems in India*". Further, the CC delineated an associated relevant market for "*app store for Android smart TV operating systems in India*" to assess the impugned conduct and held Google dominant in the relevant market for licensable smart TV device operating systems in India.

The CCI observed that the two agreements, in conjuction essentially impose the following restrictions on smart TV OEMS:

(i) Mandatory commitment to comply with the ACC for all devices based on Android manufactured/distributed/sold by them, as a pre-requisite to pre-install Google's proprietary apps;
(ii) Preinstallation of the entire suite of Google apps in order to install any proprietary app of Google, e.g. Play Store.

Google argued that the licensing of the Android operating system is not conditional upon signing either the TADA or the ACC. However, the CCI observed that the license to pre-install the Google Play Store is dependent upon the execution of TADA and ACC, and that the Google Play Store is a 'must have' app, in the absence of which the marketability of Android devices may get restricted. Thus, as opposed to Google's submissions, the CCI observed that TADA and ACC are *de facto* compulsory.

The CCI noted that by making pre-installation of Google's propreitory apps (particularly Google Play) conditional upon signing of ACC for all android devices manufactured/distributed/sold by them, Google has reduced the ability and incentive of device manufacturers to develop and sell devices operating on alternative versions of Android i.e., Android forks, and thereby limited technical or scientific development of goods in contravention of Section 4(2)(b) of the Act. The same also denies market access to developers of forked Android operating systems in violation of Section 4(2)(c) of the Act.

It was also observed that since the obligations imposed by the ACC restrict the whole of the OEM's device portfolio and not just the device category on which the Android OS is installed, it amounts to imposition of supplementary obligations in violation of Section 4(2)(d) of the Act.

With respect to the mandatory pre-installation of all Google applications under TADA, it was observed that the said condition amounts to imposition of unfair condition on smart TV device manufacturers in contravention of Section 4(2)(a)(i) of the Act, and leveraging of Google's dominance in Play Store to protect relevant markets such as video hosting services offered by YouTube in contravention of Section 4(2)(e) of the Act.

Accordingly, the CCI observed that a detailed investigation into the allegations were necessary. *(Source: CCI decision dated 22 June 2021; for full text see CCI website)*

CCI directs investigation against the Amateur Baseball Federation of India for its alleged abuse of dominant position

By way of an order dated 03 June 2021, the CCI has directed an investigation against the Amateur Baseball Federation of India (ABFI) for alleged abuse of dominant position. The CCI directed the investigation on the basis of allegations by the Confederation of Professional Baseball Softball Clubs (Informant) that ABFI abused its dominant position by:

(a) Issuing communication dated January 7, 2021 (Communication) to its affiliated state baseball associations asking them not to deal with unrecognized bodies and not to allow state level players to participate in any of the events organized by them; and

(b) Threatening to take strict action against the players who participate in such events (referred to as 'Alleged Conduct')

In response, ABFI challenged the jurisdiction of the CCI on the ground that it does not qualify as an 'enterprise' under the Competition Act, 2002. The CCI rejected the jurisdictional plea and noted that even non-commercial economic activities/philanthropic activities will be subject to the Act as it does not distinguish economic activities based on commercial or non-commercial nature. Given that ABFI is inter alia involved in controlling baseball, therefore, ABFI is an 'enterprise' under the Act.

The CCI defined the relevant market as the "market for organization of baseball leagues/events/ tournaments in India" and noted that ABFI, prima facie, is in a dominant position given its linkages/ affiliations with international baseball and softball organizations, and it plays a decisive role in the governance of baseball in India. On allegation regarding the abuse of dominant position, the CCI inter alia noted that by indulging in the alleged conduct, ABFI is imposing an unfair condition and denying market access to other bodies/federations. The CCI also directed the DG to examine whether ABFI's conduct in issuing the impugned communication resulted in limiting or controlling the provision of services under section 3(3) of the Competition Act.

Further, the CCI granted interim relief to the Informant pursuant to an application filed by it:

(i) Restraining ABFI from issuing any communication to its affiliated state associations disallowing their players to participate in events organised by other bodies/federations; and

(ii) Directing ABFI not to threaten the players who want to participate in such events. *(Source: CCI decision dated 03 June 2021; for full text see CCI website)*

CCI Closes case against UBER for the alleged Abuse of Dominant Position

By way of an order dated 14 July 2017, the CCI has closed an investigation against Uber, primarily, because, as per the statutory framework of Section 4 of the Act, Uber cannot be held as "dominant "due the presence of a strong competitor, OLA , another major taxi cab aggregator in India.

The investigation by the CCI was initiated on the basis of allegations made by the Informant, Meru that Uber, being a dominant player in the market for radio taxi services in Delhi-NCR has abused its dominant position by: (i) offering huge discounts to the customers leading to predatory pricing to oust its competitors; and (ii) entering into exclusivity contracts with its driver partners, restraining them from working with any other competing radio taxi operators.

The CCI vide its order dated 10 February 2016 closed the case under Section 26(2) of the Act. Meru filed appeal before COMPAT, who held that the facts on the record are sufficient to trigger an investigation by the DG and directed the DG to conduct to investigate the matter.

Uber appealed the COMPAT's decision before the Supreme Court, upon which the Hon'ble Supreme Court vide judgment dated 03 September 2019 held that there existed a prima facie case under Section 26(1) as to infringement of Section 4 of the Act by Uber.

DG's Findings

The DG on analysis of the market found that in an aggregator's model, the operator does not own the radio cabs but only acts as an aggregator (platform) that connects the drivers with the prospective consumers. Uber and its biggest competitor Ola work under the aggregator model. Mega and Meru are a mix of both. Accordingly, the DG delineated the relevant product market as *'the market for radio taxi services'*. The relevant geographic market was held to be '*Delhi NCR*'. Hence, DG determined the relevant market as the *market for Radio Taxi services in Delhi NCR*. It was noted that the relevant market is competitive with fluctuating market shares of Uber and ANI Technologies Private Limited (Ola). Based on other factors such as Ola and Uber being close competitors and significant competitive constraint on Uber posed by Ola in the Relevant Market, the DG noted that Uber is not a dominant player. Accordingly, in the absence of dominance, Uber cannot be said to have abused its dominant position.

CCI's Findings

The CCI concurred with the findings of the DG and *inter alia* noted that the aggressive pricing strategy adopted by Uber i.e., discounts and incentives to riders and drivers respectively, was to compete for the market and build its network just as its nearest competitor, Ola did. The discounts are a penetrative pricing strategy adopted by Uber to induce drivers and create a network since it does not have a fixed fleet of drivers like Meru's asset-based model.

On exclusive contracts, the CCI noted that unlike players operating under the asset-owned model like Meru, the pure cab aggregators like Uber do not have fixed fleet of cabs or drivers working for them. To create a fleet of cabs that attach themselves on the platform simulating a fleet model, these incentives in the early stages are essential to attract cab-owning drivers. Given that a cab aggregator competes in the Relevant Market on the network, and its operational efficiency is directly proportional to the network strength it has, it may be counterproductive for an antitrust regulator to intervene in such an instance.

It was also held that Uber was not dominant in the relevant market, and that in the absence of a dominant position, the examination of abuse or any analysis of pricing strategy by Uber is

not warranted under Section 4 of the Act. *(Source: CCI decision dated 14 July 2021; for full text see CCI website)*

CCI closes case of abuse of dominance and exclusivity against Volleyball Federation of India

The CCI vide its order dated 03 June 2021 dismissed allegations of refusal to deal and denial of market access under Section 3(4) and Section 4 of the Act against the Volleyball Federation of India (VFI) and Baseline Ventures (India) Pvt. Ltd (Baseline) .

The CCI initiated the investigation on the basis of an information filed by three international volleyball players, registered with the VFI who alleged that VFI has abused its dominant position and also entered into an anti-competitive agreement with Baseline which is prejudicial to the volleyball players in India and also lead to monopolization in the volleyball services market. It was also alleged that VFI further restricted volleyball players from participating even in global events like Asian Games, Olympics or Volleyball World Cup if the dates of the said events clash with Baseline's Volleyball League.

The CCI found the conduct of both VFI and Baseline as prima facie anti-competitive and directed a probe by the DG vide its prima facie order dated 07 August 2019.

In order to examine the allegations under Section 4 of the Act, the CCI deliniated the relevant markets as-(i) '*market for organisation of professional volleyball tournaments/events in India*' and (ii) '*market for organisation of professional volleyball tournaments/events in India*'. VFI being the de facto regulator and an exclusive body responsible for the conduct and governance of all volleyball events in India, enjoying both regulatory powers and the right to carry out economic activity (such as organising professional leagues) was held to be a virtual monopoly enjoying dominant position in both the relevant markets.

On the question of abuse of dominant position, the CCI disagreed with the DG's findings and inter alia noted that there is neither any evidence to show that VFI restricted the organisation of other volleyball leagues in India nor any evidence that they restricted volleyball players from participating in leagues in India or abroad. Accordingly, the CCI closed the case. *(Source: CCI decision dated 03 June 2021; for full text see CCI website)*

III. COMBINATIONS

INDIA

CCI approves acquisition of acquisition of Yes Mutual Fund by White Oak Group

By way of an order dated 17 May 2021, the CCI approved the acquisition of YES Asset Management (India) Limited (YES AMC) and YES Trustee Limited (YES Trustee) by GPL Finance and Investments Limited (GPL).

The proposed combination envisaged the acquisition of 100% equity shares of YES AMC and YES Trustee by GPL. By way of these acquisitions, GPL will acquire Yes Mutual Fund and become its sole sponsor.

The CCI noted that there are no horizontal, vertical, or complementary overlaps or links between the activities of the parties. However, there are: (i) potential vertical links as the Targets are present in the upstream market for the supply of mutual funds in India and White Oak Group is present in the downstream market for the distribution of mutual funds in India; and (ii) potential complementary links as White Oak Group is engaged in providing discretionary portfolio management services in India and Yes Mutual Fund is engaged in the market for mutual funds in India. However, given the insignificant presence of parties in these markets, it was held that the Proposed Transaction was not likely to raise foreclosure concerns. *(Source: CCI decision dated 17 May 2021; for full text see CCI website)*

CCI approves acquisition of of 70% equity share of Aakash Educational Service Limited by BYJU'S

By way of an order dated 07 June 2021, the CCI approved the acquisition of approximately 70% of the equity shareholding (on a fully diluted basis) of Aakash Educational Service Limited (AESL) by Think & Learn Private Limited ('BYJU'S'/ 'Acquirer') followed by a merger of AESL with BYJU's. As a consequence, BYJU'S shall effectively acquire sole control over AESL.

The Proposed Transation pertains to the educational sector in India, which can be further segmented into formal and informal segments. Based on the information on record, it was held that the Proposed

Transaction pertains to the market for non-formal educational services provided to students throughout India including through online platforms and that the Parties are competing on a pan-India basis. However, the CCI noted that combined market share of the parties and the incremental market share in all segments/sub-segments is less than 10%. Further, the non-formal education sector in India is characterized by the presence of several players, such as, Allen Career Institute, FIITJEE, Rao Academy, Bansal classes, Career Point, Resonance Eduventures, MT Educare, Vibrant Academy, Brilliant Tutorials, Elite Academy, PACE, Vidya Mandir classes, Udemy, Khan Academy, etc. which will continue to pose significant competitive constraints.

Accordingly, CCI held that the Proposed Combination is not likely to have any appreciable adverse effect on competition in India. *(Source: CCI decision dated 07 June 2021, For full text see CCI website)*

CCI approves acquisition of majority shareholding of Kamachi Industries by Suryadev Alloys and Power

By way of order dated 17 June 2021 the CCI approved the acquisition of majority equity share capital and control of Kamachi Industries Limited **(Target)** by Suryadev Alloys and Power Limited **(Acquirer)** (referred to as the 'Proposed Transaction').

The CCI notice was filed pursuant to a resolution plan filed by the Acquirer on 08 February 2021 in the Corporate Insolvency Resolution Proceedings (CIRP) initiated against Target under the Insolvency and Bankruptcy Code, 2016 (IBC)

The CCI noted that there are horizontal overlaps between the activities of the parties in the markets for manufacture and sale of:

(a) TMT bars; and

(b) steel billets in India.

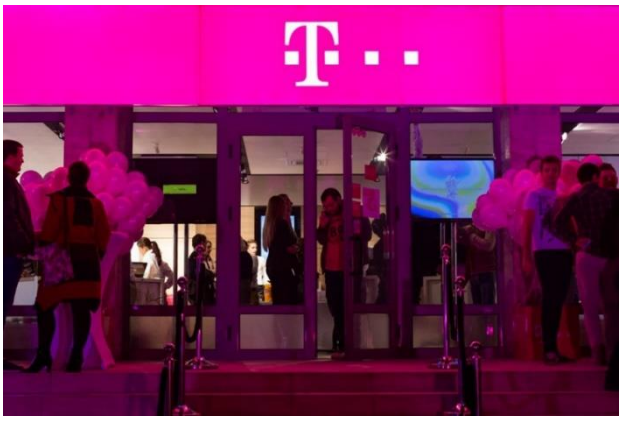
However, it was observed that the combined market share of the parties in the said markets is less than five percent in terms of (a) installed capacity, (b) domestic sales and (c) gross production. Further, incremental market share is insignificant for all parameters, and there are other players, such as JSW Steel, SAIL, Tata Steel and RINL, in the Relevant Markets who will continue to pose the competitive constraints to the Parties post the Proposed Combination. And therefore, the Proposed Transaction is not likely to raise competition concerns.

With respect to the vertical relationship, it was noted that although there is a potential vertical link between the activities of the parties in the upstream market for manufacture and sale of sponge iron (pig iron) in India and downstream market for manufacture and sale of steel billets in India, the insignificant presence of the parties in these markets is not likely to raise foreclosure concerns. *(Source: CCI decision dated 17 June 2021, For full text see CCI website)*

Note- Vaish Associates & Advocates' Competition Team represented Suryadev Alloys and Power Limited in the Proposed Transaction before the CCI.

INTERNATIONAL

European Union: Commission approves acquisition of Telekom Romania by Orange, subject to conditions



The EC has approved the proposed acquisition of Telekom Romania Communications ("TKR") by Orange SA ("Orange"). The approval is conditional on the divestiture of TKR's 30% minority shareholding in Telekom Romania Mobile Communications ("TRMC"), which is a direct competitor of Orange.

Following its investigation the EC found that the transaction, as initially notified, would have raised serious competition concerns on the market for retail mobile telecommunications services. In particular, Orange would have acquired TKR's 30% minority shareholding in TRMC, one of its key competitors on this market. This may have reduced Orange's incentives to compete with TRMC, would have given Orange access to commercially sensitive information about its competitor, and allowed it to block important investments by TRMC or the operator's acquisition by a strategic buyer.

In addition, the Commission investigated potential competition concerns in other markets, such as the provision of fixed-mobile convergent ("FMC") services, the retail market for business connectivity services and the wholesale market for the supply and acquisition of TV channels.

In all these markets, the EC found that the merged entity would continue to face significant competition from other players and customers would have sufficient alternatives. In particular with regard to FMC services, the transaction would bring benefits, allowing the merged entity to offer this type of services more efficiently.

In order to address the competition concerns identified by the EC in relation to Orange's proposed acquisition of the 30% minority shareholding in TRMC, Orange offered to:

- secure the divestment of TKR's 30% minority shareholding in TRMC to Hellenic Telecommunications Organization S.A. ("OTE"), which is the current controlling shareholder of TRMC and a subsidiary of DT;

- not to implement the transaction before TKR and OTE have reached a binding agreement on the divestment, before the Commission has approved both OTE as a suitable purchaser, and the divestment agreement, and finally before the minority stake has been transferred to OTE. (*Source: European Union press release dated 28 July 2021; for full text see EC website*)

EC approves the acquisition of Eaton Hydraulics by Danfoss, subject to conditions

The European Commission has approved, under the EU Merger Regulation, the proposed acquisition of Eaton's hydraulics business ("Eaton Hydraulics") by Danfoss. The EC's decision follows an in-depth investigation of the proposed acquisition, which combines the activities of Danfoss and Eaton Hydraulics. Danfoss and Eaton Hydraulics are both leading manufacturers of hydraulic components that are used to make hydraulic systems for various kinds of machinery.

Following its investigation, the Commission had concerns that the transaction, as initially notified, would have harmed competition, due to the combination of both companies' hydraulic components businesses for mobile machinery, also known as "mobile applications" (for example, agricultural and construction machinery). In particular:

- The Commission found that the transaction would lead to a reduced choice in suppliers, as well as higher prices, for certain hydraulic components for mobile applications, including (i) hydraulic steering units (HSUs), (ii) electrohydraulic steering valves (ESVs), and (iii) orbital motors.

- For each of the above hydraulic components the transaction would lead to high combined market shares, in already concentrated markets, where limited credible alternative suppliers to the companies are present. Furthermore, strong entry barriers exist which would prevent the emergence of new entrants.

- The market investigation also suggested that customers faced strong difficulties in switching suppliers.

To address the Commission's competition concerns, Danfoss offered the following commitments:

- The divestment of parts of Danfoss' HSU, ESV and orbital motors businesses. These include Danfoss plants in Wroclaw (Poland), Parchim (Germany) and Hopkinsville (U.S.).

- The structural divestiture will be complemented by the transfer of Eaton's production lines for medium power orbital motors (HP and VIS models), Eaton's Series 10 production line for HSUs, and production assets for Eaton's ESV portfolio, to the Hopkinsville plant.

- In order to enhance the competitiveness of the divestment business, and in addition to structural divestitures, Danfoss also committed to transfer additional Danfoss and Eaton technology for HSUs.

The EC found that the commitments offered by Danfoss fully address the competition concerns raised by the proposed transaction. The Commission therefore concluded that the proposed transaction, as modified by the commitments, would no longer raise competition concerns. The Commission's decision is conditional upon full compliance with the commitments. (*Source: European Union press release dated 18 March 2021; for full text see EC website*)

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