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In re: Alleged anti-competitive conduct by Maruti Suzuki India Limited (MSIL) in implementing discount control policy vis-à-vis dealers:[1]

S&A Observation: The CCI appears to have launched the investigation merely on the ground that the conduct of MSIL amounts to RPM. Since RPM is prohibited under the Competition Act only if it causes an appreciable adverse effect on competition, it was incumbent upon the CCI to have stated as to how any diminution of intra-brand competition on account of RPM, in the face of robust inter-brand competition in the relevant market, is prima facie anti-competitive. The issue that consumers cannot bargain for a lower price should not ipso facto attract the disapproval of competition authorities unless the entity indulging in RPM is dominant or there are entry barriers in the market or there is absence of vigorous inter-brand competition, none of which appears to be the case here. If the pro-competitive benefits of RPM - such as retaining dealers and aligning their interests with the OEM, as in the instant case - are undermined and businesses are prevented from adopting appropriate strategies in conducting themselves in the relevant market, then it is most likely to hinder their ability to continuously innovate and offer more competitive goods and services to the consumers, causing enormous harm to the economy.

The CCI received an anonymous email alleging resale price maintenance ("RPM")[2] against Maruti Suzuki India Limited ('MSIL') and its dealers in the West-2 Region (Maharashtra State other than Mumbai & Goa). The email disclosed that RPM was being implemented through a fixed discounting policy and that the dealers giving discounts below the mandated rate were penalised. Copies of emails in which penalties had been imposed (after redacting the names of the senders and recipients) was also enclosed. It was further alleged that the MSIL was collecting discounting information by sending "Mystery Shopping Audit Report" to its dealers seeking clarification regarding the discount being offered. Further, fake customers at various dealerships were also sent with the help of an independent agency to see whether extra discounts were being offered or not. It was also stated that the amount of penalty being collected was being deposited in the name of Ms. Swati Kale, wife of Mr. Vinod Kale (Vice-President of Wonder Cars Pvt. Ltd. - one of the MSIL dealers in Pune City).

The CCI held a preliminary conference with MSIL and sought its explanations regarding emails demanding penalty payment. MSIL denied such email communication stating that it had not imposed or received, directly or indirectly, any alleged penalty from dealers for giving extra discounts to end consumers. MSIL further stated that it did not exercise control or supervision over the dealers, except to maintain a balance between satisfaction of consumers and uniformity in schemes. In fact, they submitted that it encouraged dealers to give discounts to the consumers, and at times even contributed to such schemes when the margin of a particular vehicle was not sufficient to take care of the schemes offered to consumers. MSIL further stated that the emails did not pertain to any agreement/understanding between MSIL and the dealers, and the dealership agreement entered into allowed the dealers to provide discounts as they deemed fit. It argued that the stated penalties were in no way related to the dealership agreement and that they were in relation to the schemes and guidelines launched by the dealers to ensure consumer satisfaction, as MSIL makes contribution to several schemes and compliance to such consumer offers had to be monitored. It further contended that the agreement did not lead to any AAEC either. Thus, it was the stand of MSIL that it had no discount control policy and that the information lacked substance which did not meet the prima facie standard.

The CCI conducted a preliminary competition assessment and took the market for sale of passenger cars as upstream market and distribution of passenger cars as the downstream market in India. MSIL was observed to be the market leader in passenger cars segment in India with more than 50% share in 2017-18, followed by Hyundai Motors with a 19.65% market share in 2017-18.

The CCI observed that just because there wasn't any express agreement for a discount control policy, it does not mean that a tacit agreement did not exist. The CCI was of the view that it needed to be determined whether Clause 28.1 of the dealership agreement, which allowed dealers to provide additional discounts, was being allowed to be followed properly or not. The CCI found the examples given by MSIL of the discounts it offered over consumer offers to be very limited and too few to arrive at a conclusion that there was no RPM, as it was in relation to only 9 dealers in the western region while MSIL admittedly has 2627 dealers across India. The CCI also was not convinced with the argument of MSIL that the penalties were imposed because of the violation of schemes and guidelines launched by the dealers and their failure to ensure consumer satisfaction. It also found MSIL's denial that it was not involved in appointing 'Mystery Shopping Agencies' to be contradictory as MSIL itself had submitted that it was involved in ensuring compliance of Sales Operating Procedure (SOP) amongst dealers through independent third parties. The CCI also observed that the argument taken by MSIL, that dealers themselves appointed Mystery Shopping Agencies to check quality standards and consumer satisfaction, lacked rationale. In view of the above, the CCI observed that further investigation was needed and passed an order accordingly.

[1] *Suo Moto Case No. 01 of 2019*
[2] *As defined under Section 3(4)(e) of the Competition Act, 2002 (hereinafter referred to as "the Act")*

Mr. Umar Javeed and others vs Google LLC and Google India Private Limited;[3]

The Informants, who are consumers of Android smartphones, have alleged that Google LLC and Google India Private Limited (´OP´s´/´Opposite Parties´) have abused their dominant position in the mobile operating system related markets.

It has been stated that Android Open Source Project (AOSP) is the fundamental Android source code subject to a basic license. It has also been stated that a vast majority of smartphone and tablet manufacturers in India use Android operating system and that a large number of them use it with a range of Google's proprietary applications and services i.e., the Google Mobile Services (GMS).

GMS is a collection of Google applications and Application Programme Interface (APIs) that help support functionality across devices and includes a wide range of Google apps such as Google Maps, Gmail, and YouTube. The Informants have alleged that Google Apps are available only through GMS and cannot be downloaded separately by device manufacturers or the end users. Thus, depending upon which "Android" device OEMs/ device manufacturers want to offer, they have to sign one or more agreements:

Android without GMS: wherein an OEM desirous to manufacture a ´bare" Android device needs to only pass technical tests and accept the Android License agreement but without the permission to include any of GMS such as Google Maps, Gmail and YouTube, and

Android with GMS: wherein to obtain GMS, an OEM has to enter into two additional agreements with Google (a) Mobile Application Distribution Agreement ("MADA") and (b) Anti Fragmentation Agreement ("AFA").

In order to highlight Googles´ dominance, the Informant delineated four relevant markets:

- **Licensable Smart Mobile OS:** Android is a licensable OS and is distinguishable from the IOS and Windows OS that are used exclusively by vertically integrated companies and are not available for licensing by third party device manufacturers. The Informant, quoting Economic Times article and statista.com, has further stated that Android OS accounted for more than 80% of India´s mobile OS market.
- **App stores for the Android Mobile OS:** The Informant further stated the Google App Store is the biggest app in the world with more than 3.6 million apps, and as per the Android EU decision, accounted for more than 90% of the apps downloaded on android devices.
- **Online Video Hosting Platform (OVHP):** The Informants stated that OVHP, e.g. Google´s YouTube app, which provides free access to consumers is a distinct market and is not substitutable with video on Demand services of Netflix and others being based on subscription-based business model. It was further stated that while YouTube offered user uploaded content, Netflix offered TV shows and movies. It was also submitted that YouTube had 930 million subscribers in India and that 85% of its content was streamed on mobile phones. Based on the above, it was averred that Google is dominant in the OVHP market in India, with a market share of 80%.

- **Online General Web Search Service:** Reliance was placed on the case of Matrimony.com Ltd. v. Google LLC & Ors., where the Commission defined the market for "Online General Web Search Service" as a distinct relevant product and found Google to be dominant in that market.

The Informants delineated India to be the relevant geographic market.

As regards abuse, the Informants stated that Google was engaged in different kinds of anti-competitive practices:

- Mandating smartphone / tablet manufacturers to pre-install google applications or services in order to get access to GMS services for phones being used in India, hindering the development of and market access of rivals' mobile phones.

- Tying-in or bundling certain Google applications and services (eg, Google Chrome, YouTube, Google Search etc.) distributed on Android devices in India with other Google applications, services and/ or application programming interfaces of Google, which hinders the development of and market access of rivals' mobile phones.

- Preventing smartphone and tablet manufacturers from developing and marketing modified and potentially competing versions of Android (so called 'Android Forks') on other devices, which restricts access to innovative smart mobile devices based on potentially superior versions of the Android operating system.

In the preliminary conference called by the CCI, Google submitted as follows:

• OEMs can offer Android devices without pre-installing any Google apps but if OEMs choose to pre-install Google mobile apps, the MADA allows them to preinstall a suite of Google mobile apps and services referred to as Google Mobile Services (GMS).

- Pre-installation requirement is limited in scope as the Google apps do not take much screen space and allow the OEM to preinstall and promote their own app as well as third party apps. Further, MADA is not exclusionary in nature as it allows OEM's to pre-install rival apps and offer them in the same way and even superior placement.

- Android users have considerable freedom to install and use third party apps that compete with google and customise their phones according to their own preferences. Disabling apps makes it disappear from the home screen and usage, to be used later, while still giving it an option to be restored at a later time.

- Google's Android licence allows anyone to change the code and make it adaptable to their needs, which provides OEMs with considerably more freedom than a proprietary licensing model. It further submitted that if companies make changes to the Android source code that create incompatibilities, apps written for Android will not run on these incompatible variants, and fewer developers will write apps for android, as a result the platform will become less attractive to users and fewer developers will support android. Thus, to prevent the same, google has a Compatibility Definition Document ("CDD") and OEMs that comply with the CDD through an agreement called the Android Compatibility Commitment ("ACC") (previously the AFA) are free to differentiate their devices on top of that baseline. ACC signatories commit that all of their Android devices will comply with the COD. The ACC seeks to ensure that all Android apps work on all compatible Android devices, allowing Android to compete with rival platforms for app developers, and improving the availability and reliability of apps for consumers. ACC is entirely optional, though agreeing to CDD is a condition of MADA.

The CCI identified the primary relevant market as "market for licensable smart mobile device operating systems in India" and observed that Google is prima facie dominant in this market. The CCI also agreed with the Informants analysis of associated relevant markets for app stores for android mobile operating systems and observed that Google is dominant prima facie in the said relevant market. The CCI also observed that Google was dominant in the relevant market for online general web search service. The CCI further stated that for each app such as online video hosting platform, browser, map, music etc., there will be separate relevant market.

As regards abuse, the CCI opined that under the GMS suite under MADA, Google offers its entire range of mobile apps and services to device manufacturers as a bouquet and device manufacturers cannot pick and choose from amongst the GMS suite of apps for preinstallation. Further, since Google Play Store is a 'must have' app which users expect it to be preinstalled on their devices, the optional requirement to sign MADA and ACC are rendered de facto compulsory. This reduces the ability and incentive of device manufacturers to develop and sell devices operating on alternative versions of Android i.e. Android forks, and thereby limits technical or scientific development relating to goods or services to the prejudice of consumers. Further, this entails compulsory tying of 'must have' Google apps (such as Play Store), which the device manufacturers would like to have on their devices with other apps where other credible alternatives may be available. This also amounts to prima facie leveraging of Google's dominance in Play Store to protect the relevant markets such as online general search, resulting in denial of market access for competing search apps.

[3] *Case No. 39 of 2018*

Kanhaiya Singhal vs. Indiabulls Housing Finance Ltd. & others.[4]

The Informant, Mr. Kanhaiya Singhal, an Advocate-on-Record, in Supreme Court of India ('informant') had availed a Home Loan facility from Indiabulls Housing Finance Limited, OP-1, and entered into a Loan Agreement for an amount of Rs. 1,00,00,000/- at a rate of interest of 8.75% p.a. repayable in 240 equated monthly instalments ('EMI') of Rs. 88,372/-. Within a period of four months, OP-1 increased the interest rate to 11% and extended the loan period to 364 months.

Aggrieved at the refusal by OP-1 to lower the interest rates, the Informant alleged abuse of dominance. The Informant also alleged certain clauses in the loan agreement to be anti-competitive and contrary to RBI guidelines stating that the rate of interest cannot be altered/ reviewed/ changed without prior intimation to the borrower or without borrower's consent and that the interest rate should be annualised so that the borrower knows the exact interest rate payable. The Informant also alleged that OP-1 had misused the blank Electronic Clearing Service (ECS) authorisation.

However, due to the presence of large number of players in the market, the CCI did not find OP-1 to be dominant in the "market for provision of home loans in India". Further, based on the facts of the case, the CCI did not find the existence of any kind of horizontal/ vertical agreement that could said to be anti-competitive and hence closed the matter.

[4]*Case No. 11 of 2019*

Oil Country Tubular Ltd. (OCTL) vs Maharashtra Seamless Ltd. (MSL)[5]

Oil Country Tubular Ltd. ('OCTL'), filed an Information against Maharashtra Seamless Limited ('MSL'), alleging violation of Section 3(4) and Section 4 of the Competition Act.

The Informant is engaged in the business of processing a wide range of oil country tubular goods and drilling products required for the oil drilling and exploration industry in India. The Informant does not have any manufacturing facility for green pipes and it takes unprocessed, plain end seamless pipes, also known as 'green pipes', and processes them into 'seamless casing pipes' conforming to the American Petroleum Institute specifications, and supplies them to ONGC and OIL.

As per the Informant, no entity other than MSL is currently manufacturing green pipes of above 7" OD size in India and if OCTL wants to participate in ONGC/ OIL tenders for sizes above 7" OD, it is completely dependent on MSL for the same as green pipes are required to be procured only from the Indian green pipes manufacturers for ONGC/ OIL tenders having the value of more than INR 50 crores.

It is the case of the Informant that in respect of a tender floated by ONGC (Tender No. ZNCVC18004), it approached to MSL by way of e-mail dated 17.10.2018 stating its requirement therein in detail for procurement of green pipes and had also requested for a price quote but MSL did not respond to its said e-mail. Further, the Informant has alleged that it also sent 3 more e-mails on 25.10.2018, 26.10.2018 and 01.11.2018 to obtain competitive prices for green pipes. However, it was submitted by the Informant that MSL did not respond to these e-mails as well.

Finding lack of bonafide on the part of the Informant, as it had kept on waiting to write an e-mail to MSL till the last date of submission of tenders, the CCI did not find any merit in the Informants arguments that the conduct of MSL amounted to refusal to deal besides denial of market access. The CCI also noted the submission of MSL it does not supply green pipes to any other entity in India, neither does it export any green pipes, as claimed by the Informant. Accordingly, the CCI closed the matter.

[5]*Case No. 48 of 2018*

Kuntal Chowdhary vs. Macleods Pharmaceuticals Ltd.:[6]

Mr. Kuntal Chowdhary, proprietor of M/s Kamala Agency, alleged that it has been working as a stockist of Macleods Pharmaceuticals Limited since 2012-13 in in Asansol town of Burdwan district in West Bengal and that at the behest of Bengal Chemists and Druggists Association ('OP-2'), an affiliate of All India Organization of Chemist and Druggist ('AIOCD'), OP-1 was refusing to supply medicines to the Informant and denying market access to it as the Informants' brother had a filed a case against OP2 before the NCLT, Kolkata Bench. It was also alleged that in the beginning of their relationship, OP-1 started supplying medicine to the Informant only after OP-2 issued an introduction letter (allegedly a type of no objection certificate or NOC) dated 20.04.2013 to the Informant after receiving Rs. 50,000/- in cash under the guise of a donation on 05.04.2013.

Per contra, OP-1 stated that supply to Informant was stopped because he had habitually defaulted on his payments in the past and refused to make advance payment. Further, the Informant was still acting as its stockist for the previous paid orders. The OP's also denied the allegation regarding demand of NOC/Introduction letter from them. As the allegations were found to be unsubstantiated, the CCI closed the matter.

[6]*Case No. 44 of 2018 (a similar case with the same facts was also closed by the CCI, Case No. 44 of 2018 Mr. Kalyan Chowdhary vs. Cipla Limited and Bengal Chemist & Druggists Association, had not been repeated for the sake of brevity.)*

In Re: Mr. Vijay Gopal And Inox Leisure, Hindustan Coca-Cola Beverages:[7]

Mr. Vijay Gopal ('Informant') filed an Information against Inox Leisure Ltd ('OP1') and Coca-Cola Beverages Pvt. Ltd ('OP2'), alleging that many "Multiplex Malls" including OP-1 have colluded with "Beverage Companies" including OP-2, to sell water/beverages, within such multiplexes, at higher prices, with a special packing, contrary to the price of the same brand available in retail market. It was further alleged that OP-1 only sells OP-2's products and doesn't sell products of OP-2's competitors. Similarly, in PVR Cinemas, only products of Pepsi Co and in McDonald restaurants only OP-2's beverages are sold. It was also alleged that OP-1 doesn't permit the consumers to carry their own eatables or drinking water inside its movie halls which has to be purchased at higher prices from OP-1. Accordingly, it was alleged that there is exclusive supply and distribution agreement between OP-1 and OP-2, which falls within the vertical restraint as defined under the provisions of Section-3(4) (b) and (c) of the Act.

Placing reliance on similar cases decided in the past, the CCI observed that the impugned agreement was for a period of three years initially and the words 'exclusive partner' removed from the successive agreements signed in the year 2011, 2014 and 2017, each executed for a period of 3 years. Further, the agreements entered into by the OPs inter-se can be terminated by giving 60 days' notice and thus there are no exit barriers. Further, the CCI observed that in relation to the agreement between the OPs, OP-2 cannot be said to have a significant market power and OP-1 can switch to sell the brands of competitors, if it gets better commercial terms and conditions. The CCI observed that there is presence of other brands in the open retail market as well as inside other multiplexes which makes the market highly contestable, ruling out possibility of appreciable adverse effect on competition due to the agreements between OP-1 and OP-2.

The CCI thus found no merit in the case and closed the matter.

[7]*Case No. 29 of 2018*

In Re: Ravi Pal vs. All India Sugar Trade Association, Mr.Praful Jagvindar Vithalani:[8]

Mr. Ravi Pal, an Informant, alleged that All India Sugar Trade Associations (OP1) and its Chairman, Mr. Praful Jagvindar Vithalani (OP2) and others had formed a cartel and that price sensitive information pertaining to sugar prices over the WhatsApp group was being shared to quote lower prices in the tenders floated by the sugar millers for sale of sugar in the state of Maharashtra. The Informant sought to establish that there is a link between sugar prices (of S-30/M-30) circulated on the alleged WhatsApp group and the average ex-factory S-30 and M-30 net prices at Agricultural Produce Market Committee ("APMC").

However, the CCI did not find any such link, as previous sugar prices were already present in the public domain, no evidence had been submitted to show that there was meeting of minds and collusion amongst the OP's, and nothing in the WhatsApp discussion, which also included few millers, indicated towards the same. The CCI further stated that sugar came under the Essential Commodities Act, 1955 and hence there were many factors involved in determining the market price of sugar. Accordingly, it ordered for closure of the matter.

[8]Case No. 25 of 2018

Bablu & Company vs. Fatehchand & Company & others.[9]

Bablu & Company, a proprietorship fruit merchant located in New Sabzi Mandi, Azadpur, filed an information against Fatehchand & Company ('OP-1'), and other alleging abuse of dominant position by the Ops. It was alleged that the Ops were not selling high quality fruits despite winning the bid, non- disclosure of bidding outcome, selling fruits to others at the same price offered by the Informant i.e. at the winning bid price, unilateral cancellation of contracts, destroying bills if higher prices were offered by other buyers etc. It was further alleged that the OP's also collected partial commission from farmers and charged commission in excess of the permissible rate, which was in direct contravention of the order of Hon'ble Delhi High Court (did not specify which order).

The CCI observed that the information did not raise any competition issue and that no evidence was given by the Informant to show a prima facie contravention of the Act. It was also observed that the Informant had raised similar issues in an earlier case (Case No. 15 of 2017 In Re: Bablu & Company v. Fatehchand & Company And Ors.), to conclude that no case of contravention is made out by the OP's, and hence decided to close the matter.

[9]Case No. 7 of 2019

Shri Anil Rathi vs. Oriental Insurance Company Limited.[10]

Mr. Anil Rathi, a partner of M/s. Laxmi Polymers, filed an Information against Oriental Insurance Company Limited ('OP'), a public sector general insurance company, alleging abuse of dominant position. The Informant had taken a fire insurance policy for a period of one-year w.e.f. 12.04.2016 to 11.04.2017. The Informant dealt primarily in leather and rubber goods which, as per the Informant, was known to the Insurance Company as they had done an inspection of the premises before the insurance policy had been issued. Subsequently a fire broke out on the night of 20/21.12.2016 in the Informants premises, which was reported immediately to the fire department and the police.

Thereafter, the Informant filed a claim for the Fire Insurance. After the report of a third independent agency, the claim of the Informant was rejected by the OP on the ground that the firm of was in breach of condition Nos.1 & 3 of Standard Fire and Special Perils Policy. The Informant appealed against the same to the Insurance Regulatory and Development Authority ("IRDA") and sent a legal notice to the OP to re-examine its decision which was nullified by the OP vide its reply dated 12.11.2018.

In order to assess dominance, the CCI delineated the relevant market as 'market for provision of fire insurance services in India' and observed that the market for general insurance/ non-life insurance was competitive with presence of about 25 general insurers who offered fire insurance policies. The CCI observed that in the relevant market OP had a market share of about 9.5% in the year 2016-17, which declined to about 8.6% in 2017-18 and in terms of gross premium earned from fire segment of non-life insurance, the OP had a market share of about 10.1% during 2016-17, which declined to about 8.6% during 2017-18, and concluded on the basis of this information that the OP was not in a dominant position in the relevant market. Accordingly, the CCI closed the matter.

[10]*Case No. 13 of 2019*

RKG Hospitalities Pvt. Ltd. vs Oravel Stays Pvt. Ltd.:[11]

RKG Hospitalities Pvt. Ltd filed an Information against Oravel Stays Pvt. Ltd. ("Opposite Party"/"OP"/"OYO"), alleging that it had entered into a contract with OYO on 25.08.2017 under which it was permitted (i) to utilize the know-how and (ii) be listed on OYO platform or any other online website, as may be expressly permitted by OYO in writing but that OYO had imposed certain unfair and discriminatory conditions on it which were tantamount to abuse of dominance. The conditions imposed included terms such as empowering OYO to unilaterally modify the structure of the Informant's hotel, allowing exclusive signage of OYO brand and/or signage for co-branding of OYO with Informant's hotel's name, subjecting the partner hotel to incentives and disincentives as per OYO's policy based on its performance, GST and Platform fees requirements, entering into an agreement with the aggregators such as MMT, Goibibo, Fab hotels etc.

The CCI observed that OYO was dominant in the 'Market for franchising services for budget hotels in India'. However, the CCI found that conditions imposed had valid business justifications. The CCI concluded the said terms in the agreement were not unfair and that OYO has not abused its dominant position.

[11]*Case No. 03 of 2019*

M/s SOWiL Limited vs Bentley Systems India Private Limited:[12]

SOWiL Limited ("Informant"), engaged in the business of consultancy services in preliminary planning, feasibility studies, traffic studies, railway works, bridges, structures and tunnelling filed an information against Bentley Systems India Pvt. Ltd. ("Opposite Party/ OP"), engaged in the business of providing software solutions to engineers, architects, geospatial professionals, constructors for design construction, and allied operation of infrastructure.

The Informant was aggrieved by the alleged one-sided conditions in the SELECT Agreement entered with the OP by virtue of which the Informant, despite its requirements of only 03 licenses had to renew all the 08 licenses on payment basis for the year 2018-19, which it had been using from 2010. The Informant further stated that it executed the above agreement under protest, and believed that the OP was abusing its dominant position. In order to analyse the allegations, the CCI delineated the market as "supply of CAD software services in civil engineering works in India" and observed that there are many software companies in this segment that are providing CAD based software solutions that are developed for the purposes of civil engineering, making the market competitive. Accordingly, it held that the OP did not have a dominant position in the relevant market. It further held that since the Informant is a captive consumer of the software purchased from the OP for its own use, no vertical agreement of the nature as mentioned in Section 3(4) of the Act exists in the present matter. It thus closed the matter.

[12]Case No. 08 of 2019

Unilazer Ventures Private Ltd. vs PVR Ltd., Inox Leisure Ltd. and Ors.:[13]

Unilazer Ventures Private Ltd. ("Informant") filed an Information against PVR Ltd. ("OP-1"), Inox Leisure Ltd. ("OP-2"), Cinepolis India Pvt. Ltd. ("OP-3"), Carnival Motion Pictures Pvt. Ltd. ("OP-4) and FICCI Multiplex Association of India ("OP-5") (collectively referred to as "OP's"), alleging that the OP's had colluded together with regard to (i) charging of virtual print fee, which only Indian producers were paying but not the Hollywood producers and that despite a sunset period, this fee was still being charged. (ii) one sided Revenue Sharing Agreement without allowing any scope for the other parties to negotiate it (iii) Delay in payments to the producers i.e. the revenue share collected by the OP's from customers from ticket sales, was not being remitted on time by the OP's. (iv) Lack of transparency in exhibition of trailers and promotions during Intervals.

The CCI observed (i) that there is no evidence to indicate that OP-1, OP-2, OP-3 and OP-4 met under the aegis of OP-5 or used its platform to arrive at a common VPF to be charged from producers. It also observed that what should be charged as VPF/fees is not within the ambit of the CCI. Further, at the time of imposition of such fees individual efforts were made to negotiate it, which further shows that there was no collusion. With regard to issue (ii) the CCI observed that the revenue sharing agreements were put in place after due deliberations between producers and multiplex owners and the Informant has not put anything on record to the contrary. With regard to issue (iii) the CCI observed that the Informant has placed no evidence on record to show that such delay in payment was due to concerted practices amongst the OP's. It also noted that multiplexes are obligated to pay an interest at the rate of 18% per annum to the film producers (including the Informant) for delay in such payments. On issue (iv) the CCI observed that such an argument is not within the its ambit, and did not deliberate on it further. Thus, the CCI closed the matter.

[13]Case No.10 of 2019

Indian Chemical Council vs. General Insurance Corporation of India:[14]

Indian Chemical Council ("Informant") had filed a case against General Insurance Corporation of India ("Opposite Party"/"OP") alleging abuse of dominance by virtue of the circular dated 12.02.2019 ("Circular") issued by the GIC, which changed the way premiums would be calculated in the fire insurance segment and increased the premium multiple times than the existing premium. The circular came into force on 01.03.2019, and subsequently the Informant approached the CCI over the same. The Informant alleged abuse of dominance, but the CCI did not go into the merits and referred the same to the IRDAI, stating that it was the sectoral regulator which was equipped to handle such matters. It thus closed the matter.

[14]Case No. 12 of 2019

Madhya Pradesh Chemists and Distributors Federation (MPCDF) vs Madhya Pradesh Chemists and Druggist Association (MPCDA) and others:[15]

The Madhya Pradesh Chemists and Distributors Federation (MPCDF) ("Informant") filed an Information against Madhya Pradesh Chemists and Druggist Association (MPCDA) ('OP -1'), Bhopal Chemist Association ('OP-2') and District Gwalior Chemist Association ('OP - 3') alleging that they were mandating the practice of No Objection Certificate ("NOC") /Letter of Consent ("LOC") for the appointment of the stockist being made by pharmaceutical companies ("OP-4 to OP-10") which was stifling competition in the market by limiting access of consumers to various pharmaceutical products and controlling supply of drugs in the market by ensuring that only those distributors which are favoured by OP-1 to OP-3 are selected by the pharmaceutical companies to do business with them. On the basis of the material submitted before it, the CCI prima facie found merits in the allegations and ordered an investigation into the matter. After the submission of the Main Investigation Report, response of the parties to it, and the supplementary investigation report, the following issues were identified by the CCI for adjudication:

Relying on various email communications and telephonic transcripts of conversations between OP1 and OP11 (Indore Chemist Association), OP12 (Himalaya) and OP14 (Intas), the CCI observed that the practice of demanding clearance/consent/LOC/Welcome Letters etc. prior to appointment of stockists, resulting in limiting and controlling the supply of drugs in the market, was being practised and that the decision making process of pharmaceutical companies regarding whom to appoint as stockists by third parties was not an independent choice.

Though the CCI found the allegations made against OP-4 to OP-10 (i.e., Apex lab, Win Medicare, Fourrts India, Meyer Organics, Cipla, Eris life sciences and Mankind respectively), unsubstantiated and devoid of merit, as no adverse finding was made out against them in the Main Investigation Report as well as in the Supplementary Investigation Report, it found OP 12 (Himalaya drugs) to have indulged in anti-competitive conduct and liable for rejecting stockists on account of non-availability of NOC/LOC. No concrete evidence was found against OP-13 (Torrent) to make it liable, rather the CCI observed that it tried to resolve disputes with OP-1 in order to ensure that there was no disruption in supply of medicines. In case of OP-14 (Intas), reliance was once again placed on the communication it had with OP-1, in which LOC/NOC was being given for appointment of stockists approved by OP-1 and to stop supply to the unapproved ones. Communication between OP-1 and OP-11 (Indore Chemist and Druggist Association) asking how much discounts were being offered to the stockists was also seen as a red flag by the CCI. Thus, the CCI concluded that OP-14 had acted in connivance with OP-1 and OP-11.

Accordingly, the CCI ruled that pharmaceuticals companies i.e. OP-12 and OP-14 and the trade associations i.e. OP-1 and OP-11, had engaged in anti-competitive conduct. Further, the CCI also found the office bearers/key persons of the contravening association viz. OP-1, OP-11 and officials/key persons of contravening pharmaceutical company's viz. OP-12 and OP-14 guilty under the provisions of the act. The CCI imposed a penalty of 10% of their average incomes on the associations i.e. OP-1 and OP-11 and its 3 key persons. As regards the pharmaceutical companies i.e. OP-12 and OP-14 and the key persons responsible, a penalty at the rate of 1% of their average income was imposed on them.

S&A Observation: The imposition of penalties on the pharmaceutical companies by invoking the independent existence of Section 3(1), dehorse Section 3(3) and Section 3(4) of the Act, and making it an offending Section in itself appears to be grossly misplaced, as this sub-section merely prohibits anti-competitive conduct. It is Section 3(3) and Section 3(4) that enumerates the offending conduct, considered to be anti-competitive under the Act. Thus, without evidencing violation of Section 3(3) or Section 3(4), the CCI could not have applied the prohibition contained under Section 3(1) to impose penalties under the Act.

Further, the CCI appears to have overlooked the larger picture that pharmaceutical companies are the victims of the conduct of AIOCD and its affiliates. CCI's emphasis that pharma companies ought to report coercive tactics of AIOCD or its affiliates pertaining to NOC/LOC/PIS et al to CCI also does not appear to have any force of law.

[15] *Case No. 64 of 2014 (A similar penalty order was also passed, based on similar facts, by the CCI, in Case No. Case No. 61 of 2015, Mr. Nadie Jauhri ("Informant") vs. Jalgaon District Medicine Dealers Association (JDMDA)("Opposite Party"/"OP"), where a penalty of @10 percent of their average income as imposed on the OP and the key persons involved)*

1. CCI approves formation of JV between GSK and Pfizer Inc.;[16]

With the notice filed for execution of Stock and Asset Purchase agreement in December 2018, the proposed combination between GlaxoSmithKline ("GSK") and Pfizer Inc. ("Pfizer") was done to form a new joint venture ('JV') that would have comprised of certain consumer healthcare products, each holding 68% and 32% shares respectively. The CCI observed that the parties would be overlapping in three market segments, namely, Non-narcotics and anti-pyretics (including Paracetamol + Caffeine), antacids and anti-flatulents, and calcium preparations along with Colecalciferol Solids. In the proposed merger GSK would have been contributing Crocin, Crocin Pain Relief, ENO and Sandocal to the merger, and Pfizer would be contributing only Anacin to the proposed merger. Pfizer's products i.e. the antacids and anti-flatulents, calcium preparations along with Colecalciferol Solids related products were being retained by it. The products of the parties also overlapped in the anatomical therapeutic chemical 3 and 4 segment, which is a level of medicine as per the EU classifications. The CCI left the exact definition of the relevant market open it as it was of the view that the proposed combination would not lead to AAEC. With regard to each of the market segments the CCI observed that the market share of the new JV was negligible and faced sufficient competitive restraint form other players, both at ACT3 and ACT4 level, also did not look into vertical overlaps, as none existed between the merging parties. The CCI accordingly approved the merger.

[16]Combination Registration No. C-2019/03/654

2. CCI approves acquisition of shares in Indo Rama Synthetics (India) Ltd. By Indorama Netherlands B.V.

The notice had been filed pursuant to an investment agreement between Indorama Netherlands B.V. ('INBV') and Indo Rama Synthetics (India) Limited ('IRSL') and certain others which had been executed in January 2019. The proposed combination involved acquiring 31.79% of equity shares of IRSL by INBV by way of preferential allotment and acquisition of equity shares of upto 25.06% of share capital of IRSL by INBV. INBV is a subsidiary held by Indorama Ventures Public Company Limited ('IVL'). IVL is engaged in the business production and worldwide distribution of petrochemicals particularly feedstock, Polyethylene Terephthalate (PET), and fibres and in India, the IVL group supplies Purified Terephthalic Acid (PTA), Polyester Staple Fibre (PSF), PET Chips, Partially Oriented Yarn (POY) and Fully Drawn Yarn (FDY), whereas as IRSL is involved in the manufacture and supply of polyester fibres and yarns in India. Both IRSL and IVL Group companies are engaged in the supply of PSF, PET Chips (Textile Grade), POY and FDY, in India, i.e. in supply of similar or identical or substitutable products or services. Due to the insignificant market share and the fact that both the companies were engaged in supply of similar or substitutable products/services of manufacturing and supply of polyester fibres and yarns. The combined market share of the parties in each of the overlapping product segments was observed as insignificant, hence not resulting in incentives to foreclosure of competition.

3. CCI finds no AAEC in respect of JSW Steel Coated Products Limited's ("JSWSCPL") acquisition of Asian Colour Coated Ispat Limited:[17]

The notice was filed following a resolution plan by JSWSCPL ("Acquirer") to the Resolution Professional as per IBC provisions in March 2019 in order to acquire Asian Colour Coated Ispat Limited ("Target") (collectively referred to as "parties"). Both the companies were engaged in the manufacture of steel products. The CCI observed that the activities of parties overlapped within segments regarding sale of steel products in India and segregated the relevant products market into (i) Hot rolled coils and sheets and plates (HR-CSPs); (ii) cold rolled coils and sheets ("CRCSs"); (iii) galvanized products ("GPs") and (iv) colour coated products ("CCPs") based on the type of steel product manufacturing both the companies were engaged in and the type of production process they applied. It was noted that the technical characteristics, intended use of each product segments constitute separate relevant product market and the relevant geographic market was taken as the territory of India. The CCI observed that the combined market share of the Parties, in terms of installed capacity, did not exceed 30 percent in any of the aforesaid product segments, except for CCPs, in which the combined market share was estimated to be around 35-40 %. The relevant product market segment had significant competitors present as well. Based on the aforesaid, the CCI was of the opinion that the present combination did not raise any AAEC concerns and hence approved the merger.

[17]Combination Registration No. C-2019/03/650)

4. CCI approves the proposed combination of Max Healthcare Institute Limited, Radiant Life Care Private Limited and Kayak Investments Holding Private Limited.

The proposed combination involved subscription of shares by Kayak Investments Holding Private Limited (an investment management company/ "Acquirer") in Radiant (a company based in India involved in developing, redeveloping, managing and operating health care facilities/ "Target"). The acquisition entailed Radiant acquiring the entire shareholding of Life Health Care International proprietary limited ('LHIPL') in Max Healthcare Institute Limited ("MHIL") amounting to 49.70% of total issued and subscribed share capital, a composite scheme of arrangement consisting of demerger of all non-healthcare business assets/ and other non-MHIL related assets of Max India Limited ('MIL') into New Company (NewCo.), which would be a wholly owned subsidiary of MIL, demerger of Radiant's healthcare business into MHIL and the merger of MIL into MHIL ('MergedCo'), the intent being to consolidate the entire healthcare businesses of MIL and Radiant in MHIL. Kayak was also set to purchase from Max Ventures (promoter entity of MIL) 4.99% of issued and paid up capital of the MergedCo, once the scheme was approved. The relevant market was taken as "market for provision of healthcare services through hospitals", based on the fact that consumers did not differentiate the type of healthcare service and availed the services on an integrated level. The Parties exhibited a horizontal overlap in four broad segments of care namely primary, secondary, tertiary and quaternary. With regard to primary care, the market power was assessed on the basis of the number of operational beds in hospitals as a metric, in case of secondary/tertiary care, the market power was assessed on the basis of procedures or specialities offered by the hospital which attracts the patients, the volume of procedures carried out, and the number of specialist doctors available; the quaternary level comprised of organ and tissue transplants procedures for assessment of market share/power. The CCI decided to leave the exact description of relevant product and geographic market open, as the proposed combination was unlikely to cause any AAEC. Primary and Secondary care service providers had very low individual market shares. It was noted that the combined entity will face competitive pressure from other market players. The combination resulted in a negligible increment in the market share as well. The parties did not have any vertical overlap, besides an investment of KKR being involved in in-vitro diagnostic devices and life science devices and services, which was insignificant and did not raise any AAEC concerns. Also, with regard to diagnostic services, the CCI noted that Radiant did not operate any standalone diagnostic centres / pharmacies etc. and many tertiary hospitals already had inbuilt diagnostic capabilities apart from other players already present in this segment. In each of the horizontal segment delineated above, the CCI observed that the market share of the proposed entity was very low and that it faced significant competitive restraint from various other players present in each segment, and hence did not pose any AAEC concern. The CCI hence approved the merger.

5. CCI approves acquisition of 52% shares in REC Ltd by Power Finance Corporation Ltd.:[18]

The notice had been filed in relation to the decision of the Cabinet Committee on Economic Affairs granting approval for sale of Govt. Of India 52.3% shares in REC Ltd. ("REC") to Power Finance Corporation Limited ("PFC" / "Acquirer") in December 2018 along with a resolution passed by the Board of Directors ("BOD") of PFC granting approval to the proposed combination. CCI observed that PFC and REC have common shareholding in certain entities namely; Energy efficiency services Ltd ("EESL"), Shree Maheshwar Hydel Power Corp. Ltd ("SMHPCL") & NHPC Limited ("NHPC"), but the same does not raise any AAEC concerns because there was no overlap between the activities of REC and EESL, SMHPCL was as a NPA, and the total installed capacity of NHPC is negligible, hence the CCI observed that the shareholding did not raise any competition concern. The parties were overlapping in two segments namely (i) provision of credit for power sector in India; and (ii) provision of consultancy services in the power sector in India. With regard to the first segment the CCI observed that it had a lot of varied market segments attached to it, even though the CCI assessed the proposed combination under the market for provision of credit disbursement for the power sector, it decided to leave the definition of relevant market open, as it was unlikely to cause any AAEC. The CCI looked into the bidding data, as the Commission believed that it was more accurate representation of the current competition dynamics, and observed that it was insignificant and presence of other parties-imposed constraints on the combination and won't cause AAEC. With regard to the latter, i.e. Market for provision of consultancy services for the power sector in India the CCI also observed the same as well. Stating that there was no competition concern, the CCI approved the proposed combination.

[18]Combination Registration No. C-2019/01/628)

6. CCI approves acquisition of 90.57% of equity share capital in Star Health & Allied Insurance Company Ltd. By Westbridge AIF I, Rakesh Jhunjhunwala & Ors.:[19]

Westbridge AIF I, Rakesh Jhunjhunwala & Ors. ("Acquirers") had entered into various share purchase agreements in February 2019 in order to purchase 90.57% of the paid-up equity share capital of the Star Health and Allied Insurance Company Limited ("Star Health"/" Target"). A few of the acquirer parties had certain investments in the Target, but they were not horizontally or vertically placed to Star Health, and the investments were negligible/ insignificant as they did not influence the business in any manner. The CCI stated that the proposed combination is unlikely to raise any competition concern and approved it.

[19]Combination Registration No. C-2019/02/643

7. CCI approves acquisition of shares in TJ Holdings (III) Pte. Ltd. And indirect acquisition of shares in CapitaLand Limited by Glenville Investments Pte. Ltd:[20]

The notice was filed pursuant to a (A) Framework Agreement executed between Glenville Ascendas-Singbridge Pte. Ltd. ("Ascendas-Singbridge") and TJ Holdings (III) Pte. Ltd ("TJ Holdings"/"Target 1") and (B) Share Purchase Agreement ("SPA") dated 14th January, 2019 between CapitaLand Limited ("CapitaLand"/"Target 2") and Ascendas-Singbridge. Pursuant to the FA, Glenville and Ors., [an indirectly wholly-owned subsidiary of Temasek Holdings (Private) Limited ("Temasek")], was set to acquire sole control over TJ Holdings and increase its shareholding in CapitaLand from 40.79% to 51% (Proposed Combination). The SPA was executed in order to transfer all of Ascendas Pte. Ltd. ("Ascendas") and Singbridge Pte. Ltd. ("Singbridge") to Target 2 in exchange for cash and newly issued ordinary shares in Target 2 ("Sale Shares"), as Acendas-Singbridge would then be holding 100% of the shares in Ascendas and Singbridge. Since Temask was holding 40.79% of the issued shares of Target 2 already pursuant to the completion of the merger, Temasek's share would have become ~ 51%. The Parties to the combination are broadly engaged in the businesses of providing real estate development and related services, the CCI observed that the parties exhibited overlap in the segment of commercial real estate development and related services, commercial real estate rental services and hospitality services, accordingly, the CCI was of the opinion that there is no need to define the market, considering that the Proposed Combination does not raise any competition concern. With regard to relevant geographic market the parties exhibited overlap at city level, in the relevant markets of Chennai, Hyderabad, Mumbai, Gurgaon and Pune. The CCI then assessed that the combined market power of the parties is negligible and very low in the market for commercial real estate development, especially in Chennai, where it operated on a much larger scale than other cities, and post the merger, the market share would have increased by 5% in all segments. On a horizontal overlap, Oakwood, a subsidiary of Temaseks provided similar services as CapitaLand, but none of the entities from the merger took any services from CapitaLand nor does Singbridge avail these services from Oakwood. Even down the supply chain a subsidiary of the acquirer was engaged in building/project consultancy services, but the CCI stated that the same did not raise foreclosure concerns and hence approved the merger.

[20]*Combination Registration No. C-2019/03/647*

8. CCI approves acquisition by Varun Beverages Ltd. of 9 manufacturing plants and franchise rights as a going concern on a slump-sale basis from PepsiCo.:[21]

Varun Beverages Ltd ("VBL"/"Aquirer") filed a notice before the CCI in order to acquire 9 manufacturing plants and franchise rights for 7 States and 5 Union Territories as a going concern on a slump sale basis from PepsiCo. India Holdings Private Limited ("PepsiCo"/ "Seller") ("Proposed Combination"). For executing the same, a Business Transfer Agreement ("BTA") was entered into between VBL, PepsiCo and RJ Corp Limited ("RJ Corp"). VBL is a part of RJ Corp and was a franchiser of PepsiCo. PepsiCo was in the business of manufacturing and selling Carbonated Soft Drinks and Non – Carbonated Soft Drinks in India. The CCI noted that since VBL and PepsiCo are not competitors, they did have a vertical relationship as VBL as a franchiser bottler of PepsiCo, at certain places. The CCI concluded that the proposed combination is only an expansion of VBL's bottling activities and is unlikely to cause any significant change in the market structure or the competition dynamics, hence the CCI approved the merger.

[21]*Combination Registration No. C-2019/02/645)*

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