COMPETITION LAW NEWSLETTER

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AND MORE…

It's been a relatively quiet month for the Competition Commission of India (**CCI**) celebrating its 13th anniversary with two unremarkable complaint dismissals and four relatively routine approvals on the combinations front. CCI also launched a market study into the film distribution sector, while the Central Government is preparing itself to make amendments in the Competition Act, 2002 (**Act**) in the ensuing monsoon session of the Parliament.

The standout orders of the month are perhaps the gun-jumping penalties imposed on Veolia and Allcargo, covered in our Gun-Jumping special edition, to be released later this month.

CCI conducts a market study on the film distribution industry in India, while the Central Government contemplates amending the Act to regulate *inter-alia* the digitalization and issues incidental and attendant thereto

The CCI, as per media reports, has come across certain new issues which have emanated from the digitalization of cinema and increased use of technology. To understand the role of federations and associations in the film distribution industry in India, the CCI has undertaken a market study on film distribution industry, with the broader agenda of creating a self-regulatory mechanism within the digital space to target and maintain the competitive fabric.

To ensure that the digital markets remain open to new entrants and there is competition on merits between/amongst digital platforms, the Central Government is considering to bring changes in the Competition Act, 2002 to oversee digital and related upcoming markets from the lens of competition and to prescribe legal tests beyond what have been applied in traditional markets. A 'deal value' threshold may also be adopted to tackle high value targets in the digital sector that do not generate significant turnover or have a sufficient asset base but have high valuations due to their large customer base and data. Long awaited provisions relating to 'settlements & commitments' are also expected to be covered as captured in the proposed draft Competition (Amendment) Bill, 2020.

CCI approves the acquisition of additional shareholding in Escorts by Kubota

The CCI *vide* order dated 01.02.2022 approved the acquisition of approximately 35% additional shareholding in Escorts Limited (**Target**) by Kubota Corporation (**Acquirer**). Post the acquisition, the Acquirer's shareholding in the Target increased from 9.09% to 44.80%.

The Acquirer is a multi-product company, and its various product offerings include *inter alia* tractors, combine harvesters and rice transplanters, utility vehicles, turf equipment, engines, and waste water treatment plants. The Target is an Indian company engaged in the business of manufacturing and sale of agri-machinery, construction equipment and railway equipment in India.

In India, the Acquirer's presence is through two joint ventures with the Target, thereby leading to the inference that both had horizontal overlaps in manufacture/sale of (i) tractors, (ii) combine harvesters, (iii) diesel engines, (iv) implements (rotavators only), and (v) spare parts & lubricants.

While assessing the competition in the segments considered, the CCI noted that the combined market share of the parties was ranging between 10-15% approximately in terms of volume and value in the segments of tractors and combine harvesters, and between 0-5% in the diesel engines segment. Further, the CCI noted that there were other significant players present in such segments thereby maintaining competition.

While undertaking an assessment of vertical overlaps, the CCI noted that such overlaps were present between the Acquirer's business of trading and assembly of agricultural machinery/equipment (upstream) and Target's subsidiary in the business of sales, renting advanced agricultural equipment and providing agricultural after-sales services (downstream). However, the CCI observed that Acquirer's sale to the Target in such a business is insignificant.

As per the CCI's observations, such a combination was unlikely to cause appreciable adverse effect on the competition in any of the possible alternative relevant markets which could have been delineated. Accordingly, the CCI approved the acquisition.

CCI approves acquisition of shareholding in health technology services provider by Bain Capital, GIC and Hellman & Friedman

The CCI *vide* order dated 07.02.2022 approved the acquisition of shareholding and joint control in athenahealth Group Inc. (**Target**) by Bain Funds, GIC and Hellman & Friedman (**Acquirers**).

The acquirers submitted that although the Target provides healthcare related technology services such as maintaining medical records, revenue cycles, patient engagement, etc., it does not identify as an information technology company.

However, the CCI observed that the Acquirers through their portfolio companies, were providing similar services as the Target. In its market assessment, the CCI's examination considered (i) the '*provision of IT and ITeS services*' as the broad category, (ii) the '*provision of BPO services*' and '*provision of ITO services*' as the narrow category, and (iii) the '*provision of healthcare technology services*' as the narrowest category.

The CCI noted that the technology services provided by the Target related specifically to the healthcare industry, which differentiates it from other market players in the IT and / or BPO services markets, which are primarily information technology companies serving customers in multiple domains and industries. Further, the CCI noted that the activities undertaken in the healthcare BPO segment are special services which require expertise and domain knowledge related to the healthcare industry.
Accordingly, the CCI concluded that the combined market share of the parties, as well as the incremental market share in the broad and narrow categories are not significant to raise any competition concerns in India. It was observed that the competitors in the broad category include TCS, IBM, and Wipro, amongst others, whereas the narrow categories had competitors such as FIS, Hitachi, TCS and Concentrix.

With respect to the narrowest category, it was noted that the two operational subsidiaries of the Target through which it is present in India, do not provide products / services to any customer located in India and only provide services to their holding companies located outside India. Accordingly, the CCI concluded that the acquisition is unlikely to raise any competition concerns in India at the narrowest category too. Therefore, having observed no competition concerns in any of the market segments / categories, the CCI approved the acquisition.

CCI approves HSBC Asset Management's acquisition of the L&T Asset Management Company, its Sponsor and Trustee

The CCI *vide* its order dated 09.03.2022 approved the acquisition of 100% share capital of L&T AMC from L&T Sponsor and its nominees (**Target**) by HSBC AMC and its nominees (**Acquirer**). The acquisition would also result in a change in the sponsorship, trusteeship, management, and administration of the L&T Mutual Fund schemes (**L&T MF**) managed by L&T AMC, whereby the L&T MF schemes will be managed and operated by HSBC AMC and the HSBC Trustee shall be appointed the as trustee of the L&T MF.

The CCI analyzed the submissions of the Acquirers and observed that parties had horizontal overlaps at the (a) broad level of market for mutual funds in India (**Broad Relevant Market**); and (b) narrow level of (i) market for equity-oriented mutual funds schemes in India; (ii) market for debt-oriented mutual funds schemes in India; and (iii) market for hybrid mutual funds schemes in India (collectively, **Narrow Relevant Markets**). However, the CCI left the delineation of relevant market open as it observed that the acquisition is unlikely to cause an appreciable adverse effect on competition in any of the plausible relevant market(s).

The CCI undertook an assessment of the impact on competition on the basis of volume (number of schemes) and value (by Average Assets Under Management). The CCI further observed that the combined market share of the parties in both the Broad Relevant and Narrow Relevant Markets stood in the range of 0 to 5%. Additionally, the CCI also observed that the presence of other players in the market would keep the competition intact post the acquisition.

The CCI found vertical overlaps in relation with the supply and distribution of mutual fund products in India by the Target and the Acquirer in the upstream and downstream markets. However, it was observed that the Acquirer's market share in distribution of mutual funds in India was insignificant and there was also a presence of other players which nullified any threats to competition.

Furthermore, the CCI also examined complementary relationships and observed that a complementary relationship existed by virtue of activities of parties since the Acquirer was engaged in portfolio management services in India while the Target was engaged in the market of mutual funds in India. However, on the basis of submissions of the Acquirers, the CCI observed that the presence of the parties in the given markets / segments does not raise any competition concern. Alongside, the CCI also noted that the presence of several players in these markets / segments also keeps the competition in check.

Therefore, in light of all such factors, the CCI approved the acquisition, observing that it is unlikely to cause an appreciable adverse effect on competition.

CCI approves the acquisition of shareholding in Xpressbees by TPG Growth

The CCI *vide* order dated 23.03.2022 approved the acquisition of 6.92% shareholding of Busybees Logistics Solutions Private Limited (**Target**) by TPG (**Acquirer**), along with a right to nominate a director to the Target's board of directors, and to participate in matters requiring consent of certain threshold of the investors.

In an attempt to claim the exemption from notification available when the shareholding acquired is less than 10%, as provided under Item 1, Schedule I of the CCI's Combinations Regulations, 2011, the parties submitted that the proposed acquisition was in the ordinary course of business and thus eligible for the exemption.

In such context, the CCI observed that transactions in the ordinary course of business are done with the sole intent to derive benefit from short term price movements. It was further observed that the proposed acquisition did not intend to solely benefit from short term price movements, and that the Acquirer's right to nominate a director in the Target's board alongside its right to participate in matters requiring consent of certain threshold of investors, was not found to be an activity done in the ordinary course of business.

With regards to the existence of possible overlaps, it was found that certain portfolio companies of the Acquirer were involved in the business of B2B/B2C sales of products. It was noted that such portfolio companies can, as some of them do, avail of logistics services offered by the Target, thereby resulting in a vertical interface. However, similar to its reasoning while approving Kubota's acquisition in Escorts, the CCI left the delineation of relevant market open and approved the acquisition, due to an adverse effect on competition resulting from the acquisition being unlikely

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This newsletter is only for general informational purposes, and nothing in this newsletter could possibly constitute legal advice (which can only be given after being formally engaged and familiarizing ourselves with all the relevant facts). However, should you have any queries, require any assistance, or clarifications with regard to anything contained in this newsletter (or competition law in general), please feel free to contact the Competition Law Team at competitionlaw@luthra.com or any of the contacts listed below.

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