CRITICAL COMPETITION

COMPETITION LAW NEWSLETTER

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SARAF AND PARTNERS
LAW OFFICES

ENFORCEMENT ORDERS

1. THE COMPETITION COMMISSION OF INDIA (CCI) DISMISSED ALLEGATIONS OF ANTI - COMPETITIVE BEHAVIOUR AGAINST HERO MOTO CORP LIMITED

The CCI dismissed an information filed by Sri Balaji Enterprises (**Informant**), which is a hero genuine part distributor (**HGPD**). The Informant alleged anti-competitive conduct (Section 3) and abuse of dominance (Section 4) by Hero Moto Corp Ltd. (**OP 1**) including its wholesalers (**OPs**).

The Informant *inter alia* alleged that the trade discount policy issued by OP 1 for the year 2019-20 is unfair and discriminatory. Further, a cap on purchase of stock was imposed on HGPDs and such restriction on purchasing of stock was not applicable to the wholesalers. The Informant further alleged that the operational guidelines issued by OP 1 are against the interests of the HGPDs including the Informant and the same are lenient against the OPs thereby, allowing them to maintain a dominant position over the Informant in the market. Moreover, the wholesalers availed discounts to the tune of 21% whereas the Informant was only provided with an 18% discount on the billing amount.

The CCI observed that the Informant's allegations pertain to the alleged conduct of the OPs and the dominance of the wholesalers specifically. The CCI further observed that the appointment of the Informant was on a non-exclusive basis by OP 1 in the district of Mahabubnagar, Telangana and the other OPs appear to be in the vertical chain of business. Further, after considering the operational guidelines available on record, the CCI noted that the discounts suggested by OP 1 are in the nature of minimum discounts for entities in the vertical chain of business and as far as the alleged agreement between some of the OPs is concerned, no case was made out under Section 3 of the Competition Act, 2002 (**Act**).

The CCI also noted that the allegations pertaining to abuse of dominance have been made by the Informant for more than one entity i.e., OP-5 to OP-7, which does not merit consideration under Section 4 of the Act. Therefore, no prima facie case of contravention of the provisions of Section 3 and Section 4 of the Act was made out against the OPs and the information was dismissed under Section 26(2) of the Act.

2. THE CCI DISMISSED ALLEGATIONS PERTAINING TO ABUSE OF DOMINANCE AGAINST DEN NETWORKS LIMITED

The CCI dismissed an information filed by Sobhagya Media Pvt. Ltd. (**Informant**) against Den Networks Ltd. (**DEN**) alleging contravention of Section 3 and Section 4 of the Act. The Informant runs its news channel with the brand name 'APN' and DEN has been described as the agent or intermediary of several broadcasters including ETV-UP and is stated to be distributing around 100 channels of different broadcasters.

The Informant alleged that DEN abused its dominance by charging excessive carriage fee for carrying the Informant's channel on its network. The Informant also alleged that it had entered into an agreement with DEN whereby DEN was carrying Informant's channel on its Digital Addressable Networks and Informant made multiple payments to DEN under the belief that the carriage fee charged is not more than the fee applicable to other Hindi TV channels. However, the Informant got to know that the amount charged by DEN from other media companies running numerous channels like News Nation Network Pvt. Ltd., Zee Media Corporation Ltd., ABP News etc. was much lower than what is charged to the Informant. The Informant also made various representations to DEN regarding refund of excess money, non-execution of agreement, poor signals to APN (a free to air channel), but DEN did not pay any heed to any of the reminders. Moreover, it was also alleged that DEN's action amounted to constructive refusal to deal in the violation of Section 3(4)(d) of the Act as discounts offered to other channels are not extended to the Informant.

The CCI defined the relevant market as the 'market for cable TV service in Uttar Pradesh'. The CCI observed that cable TV service is a distinct product and is not a substitute for other platforms of TV channel transmission such as DTH, IPTV etc. However, the CCI held that the Informant failed to establish DEN's dominance in the aforementioned relevant market and also noted the presence of multiple significant players as an indicator of minimal entry barriers in the relevant market.

Furthermore, with respect to the allegations of constructive refusal to deal by DEN, the CCI noted that the Informant has not placed on record any evidence to substantiate its allegations. Therefore, no prima facie case of contravention of the provisions of Section 3 and Section 4 of the Act was made out against the OP and the information was dismissed under Section 26(2) of the Act.

COMBINATION ORDERS

3. THE CCI APPROVES ACQUISITION OF ADDITIONAL UNITHOLDING IN HIGHWAYS INFRASTRUCTURE TRUST BY ONTARIO

The CCI approved the acquisition of additional unitholding in Highways Infrastructure Trust (**Target Trust**) by 2452991 Ontario Limited (**OTPP 1**) and separately acquisition of equity stake in Highway Concessions One Private Limited (**HC One**) by 2743298 Ontario Limited (**OTPP 2**). The acquirers are solely controlled by Ontario Teachers' Pension Plan Board (**OTPPB**).

OTPPB administrates pension benefits and the investment of pension plan assets of active and retired teachers in the Canadian province of Ontario worldwide. The Target Trust is an infrastructure investment trust registered with SEBI and is engaged in the business of operating roads and highways in India. HC One is the investment manager of Target Trust under the InvIT Regulations and undertakes activities in accordance with Reg. 10 of the InvIT Regulations, including making investment decisions with respect to the underlying assets/projects of the Target and overseeing the activities of the project manager of the Target.

4. THE CCI APPROVED THE ACQUISITION OF APPROXIMATELY 72.49% EQUITY SHAREHOLDING OF QUALITY CARE INDIA LIMITED BY BCP ASIA II TOPCO IV PTE. LTD.

The CCI approved the acquisition of approximately 72.49% equity shareholding of Quality Care India Limited (**QCIL**) by BCP Asia II Topco IV Pte. Ltd (**Acquirer**). QCIL is a multi-specialty healthcare provider, operating hospitals under the brand name 'CARE Hospitals' across various cities in India. The Acquirer has no business operations in India and is ultimately controlled by Blackstone Inc. While there are no horizontal overlaps in the activities of the parties, there exists an ancillary vertical interface. One of Blackstone Inc's affiliate is engaged in the business of supply of surgical/hospital consumables in India at the upstream level whereas QCIL is in the market for healthcare services in India at the downstream level. Notwithstanding, the CCI held that the acquisition is unlikely to raise any competition concerns in any of the plausible markets.

5. THE CCI APPROVED THE ACQUISITION OF 24.16% SHAREHOLDING OF QUALITY CARE INDIA LIMITED BY CENTELLA MAURITIUS HOLDINGS LTD.

The CCI approved the acquisition of approximately 24.16% equity shareholding in Quality Care India Limited (**QCIL**) by Centelia Mauritius Holdings Limited (**CMHL**). QCIL is a multi-specialty healthcare provider, operating hospitals under the brand name 'CARE Hospitals' across various cities in India. CMHL is a special purpose vehicle, controlled by one of TPG Inc.'s affiliates (ultimate holding company of TPG Group). The TPG Group operates in India through its various investments with a primary focus on sectors such as financial services, technology, consumer, travel, media, real estate, and healthcare.

6. THE CCI APPROVED THE ACQUISITION OF TVS CREDIT LIMITED BY PI OPPORTUNITIES FUND I – SCHEME II & CERTAIN INDIVIDUAL ACQUIRERS

The CCI approved the acquisition of 10.98% equity shareholding of TVS Credit Limited (**TVSCL**) by PI Opportunities Fund I – Scheme II (**PIOF-II**) along with certain Individual Acquirers (collectively "**Acquirers**"). TVSCL is a non-deposit taking systemically important non-banking financial company, primarily engaged in the business of providing vehicle loans, MSME loans, consumer durable loans and personal loans. The PIOF-II is an affiliate of the Premji Invest, which has been set up to manage the investment corpus of the Azim Premji Foundation, a not-for-profit organization.

7. THE CCI APPROVED THE MERGER OF TATA SIA AIRLINES LIMITED INTO AIR INDIA LIMITED

The CCI approved the proposed combination of Tata SIA Airlines Ltd. (**TSAL/Vistara**) into Air India Ltd. (**AIL**), with AIL being the surviving / merged entity. TSAL is a joint venture between Tata Sons Private Ltd. (**TSPL**) and Singapore Airlines Ltd. (**SIA**), with TSPL and SIA holding 51% and 49% of the total shareholding, respectively, and operates under the brand name "Vistara". In consideration of the proposed combination, SIA and TSPL will acquire shares in the merged entity and SIA will acquire additional shares in the merged entity pursuant to a preferential allotment, subject to compliance of voluntary commitments offered by the parties.

TSAL is engaged in the business of providing domestic scheduled air passenger transport service, international scheduled air passenger transport service, air cargo transport services and charter flight services (domestic and international). TSPL is an investment holding company, which is registered as a core investment company with the RBI, which completed the acquisition of AIL in January 2022. AIL is engaged in the business of providing domestic and international scheduled air passenger transport service, air cargo transport services, and charter flight services. SIA is the parent entity for the SIA Group of companies, is engaged in the business of passenger and cargo air transportation, and that the principal activities of the SIA Group consist of passenger and cargo air transportation, engineering services, training of pilots, air charters, tour activities, sale of merchandise and related activities.

The CCI *inter alia* observed that the merged entity may have the ability and incentive to unilaterally increase prices on some routes. Additionally, the parties are the only two players operating business class services on the domestic routes, which is likely to lead to a monopoly like situation. In response, the parties provided various voluntary commitments to address the likely competition concerns arising from the merger. The commitments included maintaining minimum capacity on 8 international routes of which 4 were routes between India and Singapore as well as 4 international routes including Delhi – Sydney, Delhi – Paris, Delhi – Frankfurt and Delhi – Melbourne. The CCI noted that the same would ensure that the merged entity is not able to create any artificial scarcity by reducing supply (and thereby increasing fares), while also ensuring that customers continue to have choices on these routes.

Additionally, certain domestic commitments were also given which included maintaining minimum annual scheduled air passenger transport capacity on 7 domestic routes.

Consequently, the CCI approved the merger on the basis of the voluntary commitments offered by the parties.

8. THE CCI APPROVED THE PROPOSED ACQUISITION OF RHI MAGNESITA N.V. BY IGNITE LUXEMBOURG HOLDINGS S.À R.L.

The CCI approved the acquisition of 29.9% of the shareholding of RHI Magnesita N.V. (**RHIM**) by Ignite Luxembourg Holdings S.À R.L (**Ignite**). The CCI identified three possible vertical overlaps between the activities of RHIM and Ignite's parent company, i.e., Rhône

Capital L.L.C (**Rhône**). Firstly, RHIM is engaged in the supply of magnesite as a raw material in India at the upstream level whereas Rhône, through one of its portfolio entities, is engaged in the manufacture of sand additives and refractories coatings for the foundry industry in India at the downstream level. Secondly, RHIM is engaged in the manufacturing of non-basic unshaped refractory products and non-basic shaped refractory products in India at the upstream level whereas one of Rhône's portfolio entities is engaged in the manufacturing of fired process heaters (furnaces) in India at downstream level. Lastly, one of Rhône's portfolio entities is engaged in the supply of phenolic resins for use in refractory products in India at the upstream level whereas RHIM is engaged in the manufacturing of basic and non-basic shaped refractories at the downstream level.

The CCI observed that the market shares of the parties in vertical interfaces is less than 10% except in the third interface wherein the market share of RHIM is more than 20-25% in the market of basic shaped unfired refractory products from magnesite. However, taking the market structure into account, the CCI held that the vertical overlaps are unlikely to raise any foreclosure concerns.

9. THE CCI APPROVED THE ACQUISITION OF CARLSBERG SOUTH ASIA PTE. LTD. BY CARLSBERG BREWERIES A/S

The CCI approved the acquisition of an additional 33.33% equity share capital in Carlsberg South Asia Pte. Ltd. (**CSAPL**) by Carlsberg Breweries A/S (**CBAS**) under the green channel route. CBAS is a limited liability listed company incorporated in the Kingdom of Denmark. It is involved in the business of manufacturing, marketing, and distributing alcoholic beverages under numerous brands worldwide. Specifically in India, CBAS is only present through Carlsberg India Private Limited (**CIPL**) and does not have any other direct or indirect business presence in India. CSAPL is a limited liability private company incorporated in Singapore which is engaged in the business of owning and managing its current and future investments in the beer and beverage industry. Currently, CSAPL is the holding company of South Asian Breweries Pte. Ltd., Singapore (which in turn is the holding company of CIPL).

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