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Competition Law NEWSLETTER

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Competition Commission of India ("CCI") closes information against Eternal Limited alleging unfair pricing and abuse of dominance:

Shri R Ramesh filed an information against Eternal Limited (formerly Zomato Limited) alleging contraventions of Sections 3 and 4 of the Competition Act, 2002 ("Act"), alleging that Eternal imposed unfair and discriminatory pricing by charging inflated food prices, platform fees, delivery charges and additional taxes on orders placed through its online food delivery platform. It was further alleged that the platform compelled restaurant partners to inflate menu prices owing to high commission charges and adopted "drip pricing" practices, thereby abusing its dominant position in the market for online food delivery platform services in India. CCI observed that the allegations essentially pertained to pricing practices which required examination only under Section 4 of the Act and found no basis for analyzing an alleged contravention under Section 3 of the Act. CCI held that food ordered through an online delivery platform includes additional platform

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and delivery services, making it inappropriate to directly compare prices with those charged by restaurants. It further noted that platform fees, delivery charges and restaurant commissions are integral components of the platform's multi-sided business model, while any resulting variation in menu prices reflects commercial considerations rather than abuse of dominance. With respect to allegations of drip pricing, CCI observed that the additional charges were disclosed before the order was placed and consumers retained the option to either proceed with or reject the transaction. Accordingly, CCI held that no prima facie case of contravention of Sections 3 or 4 of the Act was made out against Eternal Limited and closed the information under Section 26(2) of the Act. The application seeking interim relief under Section 33 was also rejected.

CCI penalizes HP India and its resellers for bid-rigging in Government e-Marketplace (GeM) tenders in regard to sale and supply of Personal Systems Products and HP supplies products:

The proceedings originated from HP India's lesser penalty application and covered two separate suo motu cases relating to the supply of Personal Systems Products (such as laptops, desktops and workstations) and HP Supplies Products (including ink and toner cartridges). The case regards the sale and supply of Personal Systems Products (defined hereinbelow) pertains tocartelisation amongst HP India Sales Private Limited ('HP India'/'OP-1') and its resellers viz. Delphi Infosolutions Pvt. Ltd. ('OP-2'/ 'Delphi'), Comnet Vision (I) Pvt. Ltd. ('OP-3'/'Comnet'), Digitech Computers ('OP-4'/ 'Digitech), Softlabs Solution ('OP-5'), Orbit Techsol India Pvt. Ltd. ('OP-6'/ 'Orbit'), Thoughtsol Infotech Pvt. Ltd. ('OP-7'/'Thoughtsol'), Hind Technocare ('OP-8'), Intensity Global Technologies Pvt Ltd. ('OP-9'/'IGTPL'), M Integraph System Pvt. Ltd. ('OP-10'/ 'M Integraph') and Krishna Computer ('OP-11') in the sale and supply of personal system products laptops, desktops, workstations, thin clients, notebooks, mobility devices, retail Point of Sale systems etc. as well as related software and accessories such as monitors, keyboards, mouse and docks ('Personal Systems Products'), to the commercial and retail customers in India. It was alleged that the Opposite Parties engaged in bid-rigging and collusive bidding in Government e-Marketplace ("GeM") tenders for the supply of HP Personal Systems Products, the value of which exceeds INR 1 crore. The Director General found that HP India and its resellers coordinated bids, allocated customers based on legacy accounts, manipulated the issuance of Manufacturer's Authorization Forms (MAFs), submitted cover bids and exchanged commercially sensitive information to influence the outcome of GeM tenders. The DG analyzed 60 tenders floated on GeM out of which 41 met the criteria set out in the prima facie order i.e. Delhi based tender of value of INR 1 crore or more for procurement of Personal Systems Products. Out of 41, thirty (30) tenders were shortlisted in which both HP India and its resellers, or HP resellers participated (excluding those in which only HP India or resellers for other OEMs participated). Out of these, the DG found incriminating emails in relation to 7 GeM tenders which established collusion among HP India and its resellers in contravention of Section 3(3) of the Act. The case regards the sale and supply of HP Supplies Products (defined hereinbelow) pertains to alleged cartelisation amongst HP India Sales Private Limited ('HP India'/'OP-1') and its resellers viz. DD Enterprises ('OP-2'), Ascent Information Systems (P) Ltd. ('OP-3'/'Ascent'), Kaypee Enterprises ('OP-4'/ 'Kaypee'), Britex Enterprises ('OP-5'), Alankar Distributors ('OP-6'), Vijay Stationary Mart ('OP-7'/ 'VSM'), G R Enterprises('OP-8'), Perfect Innovative Computers (P) Ltd. ('OP-9'/ 'Perfect Innovative'), Khandelwal Traders('OP-10'), A Square Technologies ('OP-11'), Innovative Solutions ('OP-12'), Pioneer Technologies ('OP-13'), Delphi Infosolutions (P) Ltd ('OP-14'/ 'Delphi'), Shakti Marketing Associates ('OP-15'/ 'Shakti Marketing'), International Computer Resources ('OP-16'/ 'ICR') and Arms Peripherals ('OP- 17') in the sale and supply of HP India Supplies Products, comprising of ink and toner cartridges and other consumables such as graphic and digital manufacturing supplies that are used with print hardware products ('HP Supplies Products'), to the commercial and consumer customers in India. It was alleged that the Opposite Parties engaged in bid-rigging and collusive bidding in Government e-Marketplace ("GeM") tenders for the supply of HP Supplies Products in Delhi, the value of which exceeds IRN 20 Lakhs. During investigation, the DG found evidence of collusion among the OPs in respect of various GeM tenders of Government departments including 29 tenders meeting the twin criterion of value more than INR 20 Lakhs floated on GeM for Delhi region. CCI observed that the evidence on record, including emails, WhatsApp communications, video recordings, internal correspondence and statements of the parties, established a coordinated arrangement between HP India officials and its resellers to suppress competition in government procurement. CCI held that the parties had engaged in customer allocation, bid coordination, price-related discussions and cover bidding through a structured mechanism designed to preserve incumbent reseller relationships after the introduction of the GeM platform. While considering the quantum of penalty, CCI also took note of the lesser penalty applications and the cooperation extended by HP India and certain other applicants during the investigation. Accordingly, CCI held HP India and the concerned resellers liable for bid-rigging in violation of Section 3(3)(d) read with Section 3(1) of the Act, imposed monetary penalties after granting applicable lesser penalty benefits to eligible applicants, and also held the concerned individuals liable under Section 48 of the Act.

CCI dismisses allegations of anti-competitive supply arrangements against Jindal Stainless:

CCI dismissed the information filed against Jindal Stainless Limited ("JSL") and its Indonesian joint venture partners, namely Eternal Tsingshan Group Co. Ltd. and its affiliates and held that no prima facie case of contravention of Sections 3(4) or 4 of the Act was made out. The Informant had alleged that JSL entered into exclusive supply arrangements with Indonesian entities for the procurement of stainless-steel slabs ("SS Slabs") and stainless-steel hot rolled coils ("SS HRC"), resulting in input foreclosure, refusal to deal with competing Indian manufacturers, and abuse of dominant position. It was further alleged that JSL's "Jindal Saathi" programme and associated Memoranda of Understanding ("MoUs") created de facto exclusivity and denied market access to competitors. Upon examining the material on record, CCI observed that the Informant failed to produce any evidence showing that it or any other manufacturer had sought and been denied access to SS Slabs or SS HRC. CCI noted the existence of multiple domestic and international suppliers of stainless-steel inputs, the availability of BIS-certified overseas manufacturers, and the legitimate commercial rationale underlying JSL's joint venture with the Eternal Tsingshan Group to secure long-term supplies of critical raw materials. CCI held that the alleged exclusive off-take arrangement formed part of a backward integration strategy and did not demonstrate appreciable adverse effect on competition or foreclosure of competing manufacturers. Consequently, no violation of Sections 3(4)(b) or 3(4)(d) of the Act was established. CCI further observed that although JSL appeared, prima facie, to enjoy a position of strength in the downstream market for cold rolled stainless steel ("CRSS") in India, the allegations of abuse of dominant position were unsupported by evidence. CCI found no material to show denial of market access, production constraints suffered by competitors, or exclusionary conduct resulting from JSL's sourcing arrangements. It also held that participation in the Jindal Saathi programme and the associated MoUs was voluntary, did not impose exclusivity or minimum purchase obligations, and primarily served legitimate objectives of product traceability and anti-counterfeiting. Accordingly, CCI concluded that there was no prima facie contravention of Sections 3(4) or 4 of the Act and closed the matter under Section 26(2) of the Act.

CCI closes proceedings against Nissan Motor India; dealership dispute held to be contractual in nature:

CCI closed the information filed by Rajeev Bakshi, the Informant against Nissan Motor India Pvt. Ltd. alleging contravention of Sections 3(4) and 4 of the Act. The Informant, an authorized Nissan dealer, alleged that Nissan had arbitrarily terminated its dealership agreement despite substantial investments, while also imposing resale price maintenance, exclusive distribution, refusal to deal, coercive pricing policies and unfair contractual conditions amounting to abuse of dominance. It was further alleged that Nissan's conduct resulted in foreclosure of dealer competition and denial of market access. CCI observed that the dealership agreement did not impose an exclusive supply obligation, noting that the Informant had, during the subsistence of its Nissan dealership, acquired a dealership for another automobile manufacturer. CCI further held that the agreement permitted dealers to sell vehicles below the maximum recommended retail price, thereby negating the allegation of resale price maintenance. It observed that the dealership had been terminated in accordance with the contractual termination clause, making the dispute contractual rather than anti-competitive. With respect to the abuse of dominance allegations, CCI delineated the relevant market as the market for the distribution and sale of passenger cars in India and observed that Nissan held less than 1% market share, thereby lacking a dominant position in the relevant market. Accordingly, CCI held that no prima facie case of contravention of Sections 3(4) or 4 of the Act was made out against Nissan Motor India Pvt. Ltd. and closed the information under Section 26(2) of the Act. The Informant's application seeking interim relief under Section 33 of the Act was also rejected.

CCI finds no prima facie case in multi-sector competition complaint against Reliance Jio and others

CCI closed an information filed by Goutam Mohanta, the Informant against Reliance Jio Infocom Limited and over 4,500 other entities alleging contraventions of Sections 3 & 4 of the Act. The Informant alleged the existence of ant-competitive practices across multiple sectors, including logistics, telecommunications, Government e-Marketplace ("GeM") procurement, energy, steel, FMCG and real estate. It was alleged that the Opposite Parties engaged in coordinated pricing, route allocation, bid-rigging, exclusionary arrangements, parallel tariff structures, vertical integration and other practices resulting in market concentration, foreclosure of competition and barriers to entry for MSMEs. CCI observed that the allegations were generic, speculative and unsupported by any cogent material identifying the role of individual Opposite Parties or establishing any agreement, coordination or meeting of minds. CCI held that the Informant had failed to furnish documentary evidence, empirical data or specific instances of anti-competitive conduct in any of the sectors concerned. It further reiterated that mere parallel pricing or similarity in commercial practices, particularly in oligopolistic markets, cannot by itself give rise to an inference of collusion or cartelization under the Act. CCI also noted that directing an investigation on the basis of such unsubstantiated allegations would amount to a roving and fishing inquiry, which is impermissible in the absence of foundational facts indicating a prima facie contravention. Accordingly, CCI held that no prima facie case of contravention of Sections 3 or 4 of the Act was made out against the Opposite Parties and closed the information under Section 26(2) of the Act.

CCI closes proceedings against Airports Authority of India, Ministry of Civil Aviation and DIAL over airport security tender allegations:

CCI closed an information filed by Swam Kartik Sharma against the Airports Authority of India ("AAI"), the Ministry of Civil Aviation ("MoCA") and Delhi International Airport Limited ("DIAL") alleging contraventions of Sections 3 and 4 of the Act. The Informant alleged that DIAL had abused its dominant position by repeatedly awarding security service contracts at the Indira Gandhi International Airport ("IGIA") to RAXA Security Services Limited, a subsidiary of the GMR Group, without following a fair and transparent competitive bidding process. It was further alleged that such conduct denied market access to competing security service providers, restricted competition and violated the Operation, Management and Development Agreement ("OMDA") governing the operation of IGIA. CCI observed that the material placed on record demonstrated that the impugned contracts had been awarded through competitive tendering processes in accordance with the OMDA. CCI noted that multiple bidders had participated in the relevant tenders, RAXA had emerged as the lowest bidder, and the tender process had been monitored by an independent probity auditor and approved by DIAL's Board of Directors with AAI representation. CCI further held that the OMDA expressly permits contracts with group entities, subject to safe-

safeguards ensuring arm's-length transactions, all of which had been complied with. It also reiterated that procuring entities are free to take commercial decisions in the procurement of goods and services unless such decisions raise demonstrable competition concerns. As reagrds Section 3 of the Act, CCI found no material indicating bid-rigging or collusive bidding. Accordingly, CCI held that no prima facie case of contravention of Sections 3 or 4 of the Act was made out against the Opposite Parties and closed the information under Section 26(2) of the Act. The application seeking interim relief under Section 33 of the Act was also rejected.

Combination Orders:

- CCI approved acquisition of units by Brookfield Asset Management Ltd. (BAM) of Oaktree Capital Group Holdings, L.P. (OCGH), and Oaktree Equity Plan, L.P. (OEP). The proposed combination envisages the indirect acquisition of units of OCGH and OEP and, therefore, the Oaktree operating group of entities by BAM.

- CCI approved the acquisition of certain shareholding in Sorting Hat Technologies Private Limited and its merger with and into upGrad Education Private Limited

- CCI approved acquisition by Opal Bidco Pte. Ltd. of 100% shareholding in STT GDC Pte. Ltd. The proposed combination involves the acquisition by Opal Bidco Pte. Ltd. (Opal Bidco) of 100% shareholding in STT GDC Pte. Ltd. (STT GDC) with Ruby Asia Holdings II Pte. Ltd. (Ruby), Singtel Interactive Pte. Ltd. (Singtel), Sunstone Investment Pte. Ltd. (Sunstone) and One Hundred And Thirty First Investment Company – Sole Proprietorship LLC (MIC Entity) acquiring economic interest (on a see-through basis) in STT GDC.

- CCI approved acquisition of 100% of the equity share capital of NCR Atleos Corporation by The Brink's Company

- CCI approved the amalgamation of Go Digit Infoworks Services Private Limited, the holding company of Go Digit General Insurance Limited, with Go Digit General Insurance Limited such that Go Digit General Insurance Limited will be the surviving entity.

- CCI approved the merger of 51 Malabar Group's companies with and into Malabar Gold and Diamonds Limited.

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