



Competition Law Newsletter

June 2023

1. Anti-trust probe faced by Apple in Italy

Italy's antitrust agency, Autorità Garante della Concorrenza e del Mercato (AGCM), has initiated an investigation into Apple Inc, the U.S. tech giant, for suspected abuse of its dominant position in the apps market. The AGCM claims that Apple unfairly treated third-party app developers by enforcing a stricter privacy policy on them compared to its own policies, starting from April 2021. The authority also alleges that external app developers are at a disadvantage due to the limited quality of data provided by Apple. Under EU competition law, companies found guilty of abusing market dominance can face fines up to 10% of their annual turnover. Apple, along with other U.S. tech giants, has faced repeated scrutiny from European regulators.

According to the Italian AGCM, users of non-Apple apps are presented with more prominent and strongly worded prompts to block data tracking. Additionally, third-party app developers receive less comprehensive information about the effectiveness of their advertising campaigns. The AGCM suggests that Apple's actions could result in a decline in advertising revenues for third-party advertisers, benefiting Apple's own commercial division. Furthermore, the authority argues that this behaviour may deter competitors from entering the app development and distribution market, ultimately favouring Apple's internal apps, mobile devices, and iOS operating system. In 2021, the AGCM imposed a fine on e-commerce giant Amazon.com Inc for alleged abuse of its dominant position in the Italian market, favouring its own logistics service.

2. 5 major global banks broke competition law finds British competition authority.

The British Competition and Markets Authority (CMA) has issued a statement indicating that it has provisionally discovered that Citi, Deutsche Bank, HSBC, Morgan Stanley, and Royal Bank of Canada engaged in unlawful sharing of information. This sharing occurred through one or more sets of individual discussions in Bloomberg chatrooms involving a limited number of traders. The conversations revolved around the buying and selling of UK government bonds, specifically gilts and gilt asset swaps. The information shared included details on pricing and various aspects of their trading strategies.



3. The European Union (EU) court has dismissed Meta's challenge against EU antitrust requests for information.

The European Union's second-highest court dismissed Meta Platforms' legal challenge against EU antitrust regulators. The European Commission had requested information as part of its investigation into Facebook's data and online marketplace. In response, Meta Platforms likened the competition enforcer to a fishing super trawler that indiscriminately gathers data.

"The General Court finds that Meta Platforms Ireland has not successfully demonstrated that the request to provide documents to be identified by search terms went beyond what was necessary or that establishing a virtual data room failed to ensure that sensitive personal data was sufficiently protected," the Luxembourg-based General Court said.

4. Supreme court reserves judgment on Coal India's plea seeking exemption from the applicability of competition law

(COAL INDIA LTD & ANR. VERSUS COMPETITION COMMISSION OF INDIA & ANR. Civil Appeal No. 2845/2017, Supreme court of India)

The Competition Commission of India (CCI) has refuted Coal India's argument that the Competition Act of 2002 cannot possibly apply to it because it is a statutory corporation with the stated purpose of carrying out the State's obligations under Article 39(b) of the Constitution in its submission to the Supreme Court.

The Coal Mines (Nationalisation) Act of 1973 (Nationalisation Act), according to Coal India, established the company as a statutory monopoly with the intention of carrying out the State's constitutional duties.

The Competition Commission of India (CCI) has emphasized that public sector companies fall under the scope of the Competition Law and must adhere to the provisions of the Competition Act, including the prohibitions on anti-competitive agreements (Section 3) and abuse of dominant position (Section 4). Hence, public sector enterprises cannot claim exemption from these laws and must comply with them.

N Venkatraman, the Additional Solicitor General representing the Competition Commission of India (CCI), opposed Coal India's request for complete immunity from the Competition Act. He argued before the Supreme Court that granting such immunity would enable Coal India, a monopolistic



company, to abuse its dominant position. Venkatraman asserted that allowing an anti-competitive practice of dominance abuse would have adverse effects for the public interest, and parliamentary legislation (the competition law) aimed at preventing and regulating such practices should not be deemed inapplicable.

The Competition Commission of India (CCI) has emphasized that there is no inconsistency in subjecting a statutory monopoly like Coal India to the provisions of the Competition Act. The CCI clarified that the Competition Act does not prohibit dominance itself, but only the abuse of a dominant position. Therefore, it is justified and appropriate for Coal India to be held accountable under the Competition Act, as it is the abuse of dominance that is regulated, not the mere existence of dominance.

The judgment of the Supreme Court in the Coal India case is expected to establish a precedent regarding the application of competition law to public sector enterprises. This is particularly significant in the context of India's transition to a free market economy over the past thirty years. The outcome of this case is likely to shape the approach towards competition law enforcement for public sector firms and set a trend for future cases in similar contexts.

5. The Ministry of Corporate Affairs (MCA) plans to introduce the new provisions of the competition law in a phased manner.

The Competition (Amendment) Bill 2022 was introduced in the Lok Sabha on August 5 of the previous year and received parliamentary approval in April of the current year after being assented to by President Droupadi Murmu on April 11, 2023. The Rajya Sabha approved the amendment on April 3, 2023 and the Lok Sabha passed the bill on March 29, 2023 after Finance Minister Nirmala Sitharaman proposed around 13 amendments in the Lower House.

The Act includes several significant provisions, such as the adoption of "global turnover" as a criterion for imposing penalties in cases of abuse of dominant position by enterprises. It also introduces a Settlement and Commitment Framework aimed at expediting market corrections. Additionally, a Deal Value Threshold concept is introduced to determine the notification requirement for mergers and acquisitions (M&As), particularly addressing concerns related to "killer acquisitions" in the digital market. Furthermore, a new tool called "leniency plus" regime is introduced, which encourages companies currently under investigation for one cartel to disclose other cartels unknown



to the competition regulator, thereby enhancing cartel detection efforts. Another change is that companies will now have to notify any merger or acquisition to the CCI if the deal value exceeds Rupees 2000 crore and if the target firm has substantial business operations in India.

In addition to reducing the approval timelines for mergers and acquisitions (M&A) from 210 days to 150 days, the revised law now allows the Competition Commission of India (CCI) to appoint the Director General (Investigation), a role previously appointed by the Central Government. Another significant change is the requirement for a 25% penalty deposit for appeals. The amended law also expands the scope of the law to include facilitators of certain anti-competitive agreements, specifically hub-and-spoke arrangements.

However, the implementation of these recent amendments will not occur simultaneously. Instead, the Ministry of Corporate Affairs (MCA) plans to adopt a staggered approach, with different implementation dates for various provisions. The specific dates for the initial phase of implementation are expected to be announced soon.

6. Supreme Court stays CCI order for ₹202-cr penalty recoup from Amazon

(AMAZON.COM NV INVESTMENT HOLDINGS LLC VERSUS COMPETITION COMMISSION OF INDIA & ORS. IA No.92452/23 in Civil Appeal No(s).4974/2022)

The Supreme Court issued a stay on the Competition Commission of India (CCI)'s order to recover a penalty of ₹202 crore from Amazon for its acquisition of a 49% stake in a Future Group entity in 2019. Amazon had requested a stay on the recovery proceedings, and the Additional Solicitor General, N Venkataraman, representing the Competition Commission of India (CCI), informed the court that the concerned officers had been appropriately informed about the ongoing matter before the Supreme Court.

Justice Dinesh Maheshwari, leading the Bench, considered the overall circumstances of the case and ruled that no coercive actions should be taken regarding the April 25 notice against Amazon until the next hearing on July 17, 2023.

In December 2021, the Competition Commission of India (CCI) suspended its previous approval granted more than two years ago to the e-commerce company for the acquisition of a 49% stake in Future Coupons (FCPL). This action was taken after a review of allegations that the e-commerce firm had concealed information during the regulatory approval process for the deal. Additionally, the



Competition Commission of India (CCI) imposed a penalty of Rs 202 crore on the company for allegedly not being transparent about the true extent and purpose of the acquisition.

7. Google faces inquiry by CCI for not complying with its Play Store billing order

The Competition Commission of India (CCI) has initiated an inquiry into Google's alleged non-compliance with the CCI order regarding the Play Store user choice billing policy. This action follows a submission by the Alliance of Digital India Foundation (ADIF) to the Indian market regulator, claiming that Google has not adhered to the CCI directions and has implemented an unfair, irrational, and discriminatory user choice billing (UCB) system. In January, Google introduced changes to its Play Store policies, including the introduction of user choice billing, as part of its efforts to comply with the CCI's directives. The CCI had previously penalized Google for engaging in unfair practices and had instructed the company to implement corrective measures. In October of the previous year, the CCI imposed a penalty of Rs 936.44 crore on Google for abusing its dominant position in relation to its Play Store policies.

8. Pricol moves Madras HC challenging validity of Minda's application to CCI

Pricol Ltd, an auto components manufacturer, has taken the step of filing a legal challenge against Minda Corporation, its rival, for its application to the Competition Commission of India (CCI) to acquire a 24.5% ownership in Pricol. Earlier this month, Minda Corporation expressed its intention to increase its stake in Pricol up to 24.5% after already acquiring a 15.7% stake by purchasing over 1.91 crore shares from the open market on February 17, 2023.

Pricol Ltd has submitted a writ petition to the Madras High Court regarding Minda Corporation Ltd's application to the CCI. The petition questions the legitimacy of Minda's application to the CCI, which seeks to invest in up to 24.5% of Pricol's total equity shares.

The High Court's Division Bench, on May 24, 2023, acknowledged and accepted the writ petition filed by Pricol Ltd. The court issued an interim order, prohibiting the consideration and adjudication of Minda Corporation Ltd's application to the CCI, and served notices to the opposing parties, namely the Union of India, CCI, and Minda. Following the stake acquisition in February, Minda stated that it was purely a financial investment.



9. CCI approves investment by CPPIB, Multiples Private equity in Acko Technology

CPP Investment Board Private Holdings (4) Inc, a company fully owned by the Canada Pension Plan Investment Board (CPPIB), and Multiples Private Equity Fund III, an Alternative Investment Fund (AIF) registered with Sebi, are involved in the financial investment sector.

Acko Technology provides a wide range of services, including technology outsourcing, data processing, and the development of IT products. Additionally, it offers comprehensive protection plans for electronic devices and facilitates vehicle sales and purchases through its platform, 'Acko Drive'. The company's affiliates are active in the non-life insurance industry in India.

The Competition Commission of India (CCI) on 25th May 2023 cleared the deal involving the acquisition of securities of Acko Technology & Services by a subsidiary of Canada Pension Plan Investment Board, and Multiples Private Equity Fund III.

10. CCI approves merger of credit Suisse group with UBS group.

The UBS Group AG (UBS) is a multinational investment bank and financial services company founded and based in Switzerland, and active globally. UBS' businesses comprise wealth management, asset management, investment banking services, and retail and corporate banking. In India, UBS' business is primarily focused on brokerage services.

Credit Suisse Group AG (Credit Suisse) is a multinational investment bank and financial services company founded and based in Switzerland. Credit Suisse is active globally and its businesses comprise wealth management, asset management, investment banking services, and retail and corporate banking. In India, Credit Suisse's businesses comprise wealth management and investment banking services.

The Competition Commission of India (CCI) on 18th May 2023, granted approval for the proposed merger of Credit Suisse Group AG with UBS Group AG.

11. CCI approves acquisition of shareholding of Tower Vision India Private Limited by Ascend Telecom Infrastructure Private Limited and GIP EM Ascend 2 Pte. Ltd.

The proposed combination pertains to acquisition Ascend Telecom Infrastructure Private Limited (**Ascend**) and GIP EM Ascend 2 Pte. Ltd. (**GIP EM**) (collectively, **Acquirers**) of 100 percent of the shareholding of Tower Vision India Private Limited (**Target**) (**Proposed Combination**).



The Target is controlled by Tower Vision Mauritius Limited and is engaged in the provision of passive telecommunication infrastructure services through towers in India.

The Acquirers are entirely owned by funds/investment vehicles managed by entities that are ultimately controlled by Global Infrastructure Management LLC (GIM LLC). Ascend is engaged in providing passive telecommunication infrastructure services through towers in India while GIP EM is presently not engaged in any business operations.

The Competition Commission of India (CCI) approved the acquisition of shareholding of Tower Vision India Private Limited by the acquirers on 3 May 2023.

12. **CCI Appointment:**

Ms. Ravneet Kaur assumes charge as Chairperson of CCI.

The Government has extended the tenure of Atul Verma as the Director General of the Competition Commission of India (CCI) for three months.

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