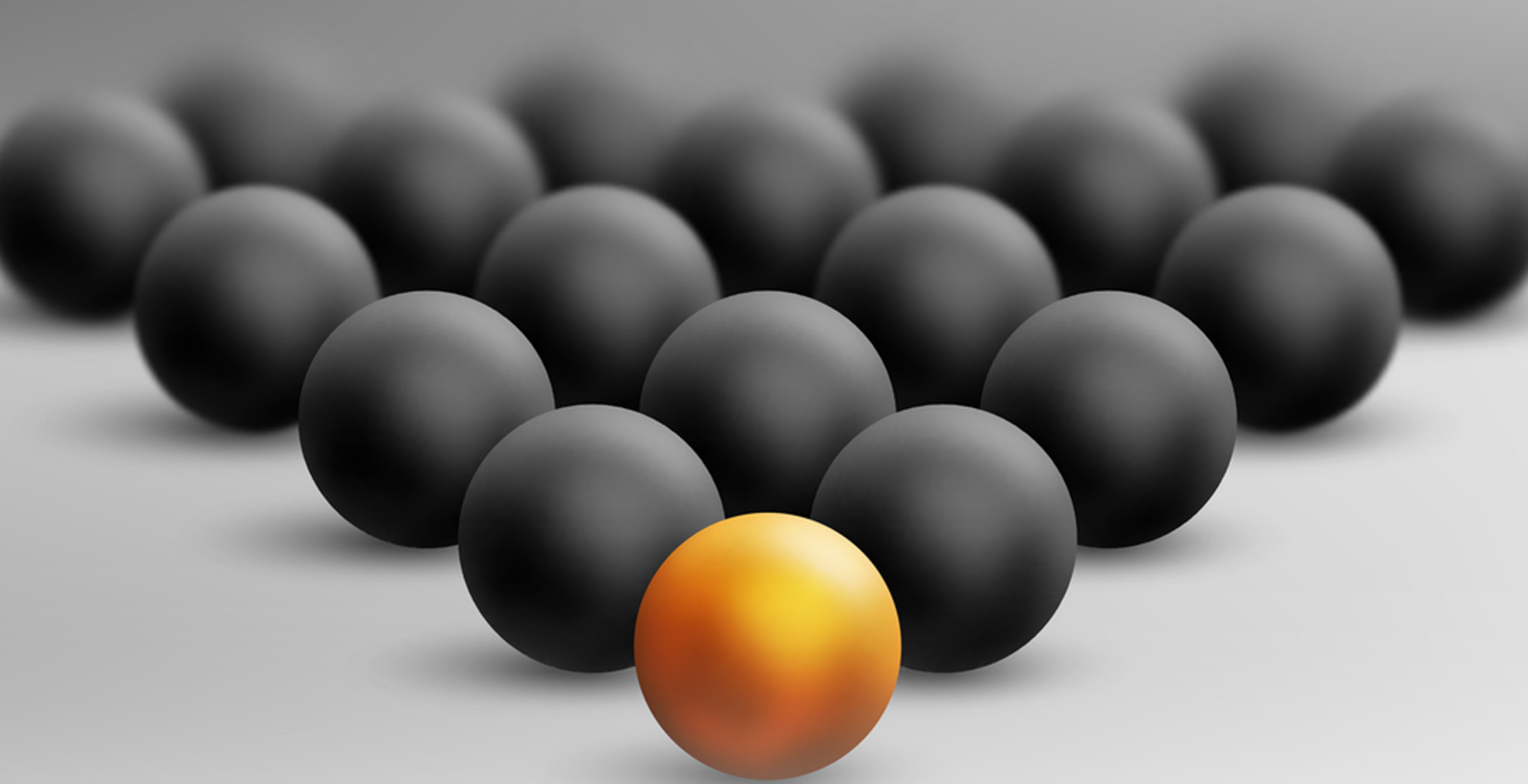




ECONOMIC
LAWS
PRACTICE
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COMPETITION LAW & POLICY UPDATE

QUARTER 4 OF 2019



SNAPSHOT

CCI follows Supreme Court guidance to find no price cartel

02

Applying the Supreme Court's decision, the CCI held that no price cartel exists between seller, when market is oligopsony

CCI to investigate GMR Hyderabad International Airports Limited for alleged abuse of dominance

03

Finding airport premises at the Rajiv Gandhi International Airport to be an essential facility under GMR's control, CCI directed investigation into possible abuse of dominant position by GMR

Parties utilize CCI's Green Channel mechanism for speedy approvals of combinations

05

A look at the road so far

Delhi High Court clarifies that freely negotiated contracts would be vital to determine contravention of Section 3 or 4 of the Act

06

Upholding the CCI's order, the High Court stated that commonly used clauses in commercial contracts shall fall outside the ambit of the Act unless established that the impugned terms and conditions are inherently unfair.

ELP Insights

09

CCI examines the conduct of MMT and OYO in the Online Hotel Booking Sector. Is the regulator equipped to intervene in the evolving market?

SECTORS COVERED IN THIS ISSUE



Oil and
Natural Gas



Procurement



Airport Services



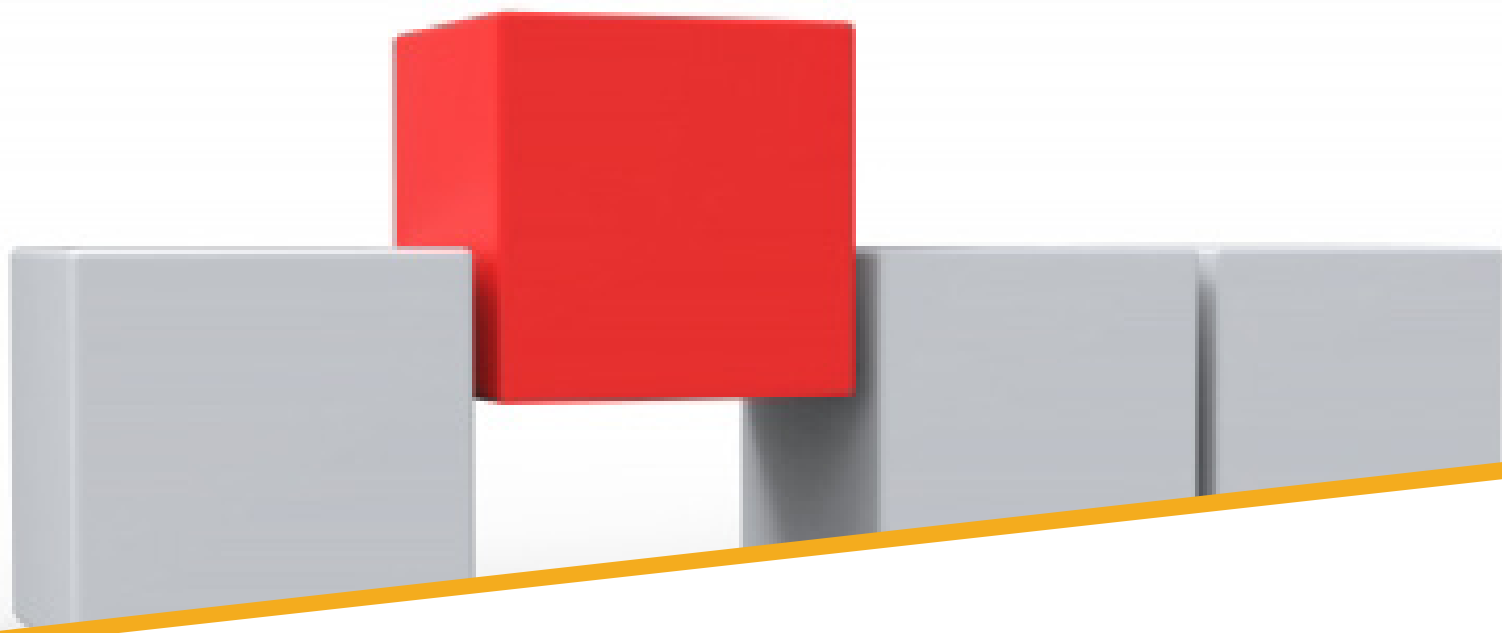
Automobile



Energy



Hospitality
and Media



Cartels and Horizontal Agreements

CCI dismisses allegations of cartelization against LPG cylinder manufacturers, recognizes monopsony nature of market

On November 15, 2019, the Competition Commission of India (**CCI**) decided not to proceed against LPG cylinder manufacturers in a *suo moto* case relating to the alleged cartelization in a tender floated by Hindustan Petroleum Corporation Limited (**HPCL**). The CCI's decision came after three manufacturers/bidders challenged the order of CCI directing investigation in the present case before the Delhi High Court (**DHC**) on the ground that punitive measures for cartelization had already been ordered against them by CCI in an earlier case. The DHC set aside the order of the CCI and remanded the case back for re-consideration.

On remand, the CCI observed that the conduct of the three manufacturers/bidders was not a subject of its consideration in the earlier case and therefore, the DG was directed to investigate the matter afresh with respect to the three bidders under Section 26(1) of the Competition Act, 2002 (**Act**). The DG, upon investigation, did not find two out of the three bidders to be in contravention of the Act. With respect to the third

bidder - Prathima Industries, the DG noted that the submission of identical prices by Prathima Industries along with other bidders (not parties to the present case) amounted to cartelization. The CCI, after giving an opportunity of hearing to Prathima Industries, relied on the Supreme Court's decision in Rajasthan Cylinders and observed that the nature of the market was of a monopsony/oligopsony as the LPG cylinders could not be supplied by manufacturers in the open market. Further, irrespective of the price bids quoted by the bidders, HPCL had the power to negotiate with the manufactures and decide the final price at which the tender was to be awarded.

Interestingly, on the question of the DG report being time barred in nature, the CCI stated that as per the Act and Regulations framed thereunder, the CCI is empowered to grant appropriate time to the DG to investigate and submit the report and there is no period of limitation prescribed for this purpose.

The order of the CCI can be accessed [here](#).

Abuse of Dominance

CCI directs investigation into allegations of abuse of dominance against GMR Hyderabad International Airport Limited

On October 03, 2019, the CCI directed an investigation into allegations of abuse of dominance by GMR Hyderabad International Airport Limited (**GMR**). GMR is a concessionaire till the year 2034 for exclusive rights to maintain, manage and operate the Rajiv Gandhi International Airport, Hyderabad (**RGIA**). Air Works India (Engineering) Private Limited (**Air Works**), a licensee of GMR, which handled maintenance, repair and overhaul services of aircrafts (**MRO Services**) at RGIA for a few airlines approached the CCI challenging the non-renewal of its license by GMR to operate at RGIA. Air Works alleged that GMR, by refusing to renew its license is attempting to promote its wholly owned subsidiary GMR Aero Technic Limited (**GAT**), which is a direct competitor of Air Works in providing MRO Services at RGIA. Air Works further alleged that the non-renewal of license by GMR was an act of denying market access to Air Works and was limiting and restricting the provision of services at RGIA.

The CCI noted that as a concessionaire, GMR did not have competitors in the relevant market for “*provision of access to airport facilities/premises at RGIA*” (**upstream market**) and held GMR to be dominant in that market. Air Works alleged that GMR was abusing its dominance in the upstream market to secure an ancillary market for “*provisions of line maintenance services at RGIA*” (**downstream market**) for its subsidiary GAT. GAT was competing with Air Works in the downstream market.

On abuse, the CCI categorized Air Works’ allegations under the following three provisions of the Act:

- **Section 4(2)(c):** Denial of market access (i.e. denying access to the space at the airport premises)
- **Section 4(2)(e):** Leveraging of dominant position in the upstream market to protect the downstream market; and
- **Section 4(2)(b):** Limiting and restricting provision of services by Informant and adversely affecting competition in the market for such services.

As per the CCI, all these allegations stemmed from a single conduct i.e. GMR not extending its Licensing Agreement with Air Works (and disallowing its presence at the RGIA). In this context, the CCI applied the principle of essential facility and noted that an asset can be an essential facility if the following economic conditions are met:

- The facility cannot reasonably be duplicated by the competitor;
- The dominant entity denies access to the competitor;
- There should be no alternative means of entering the relevant market at a reasonable cost without having access to the facility;
- There must be spare capacity available on the facility in question.

The CCI considered the airport premises/RGIA to be an essential facility which was under GMR’s control. Given the physical presence at airport premises is indispensable to provide Line Maintenance Services, the CCI noted that non-renewal of the license arrangement by GMR with Air Works seems to exclude Air Works’ from the downstream market. According to the CCI, such alleged denial of market access *prima facie* warranted an investigation under Section 4(2)(c) as well as Section 4(2)(e) of the Act, as the denial seems to be aimed at leveraging of the dominant position by GMR in the upstream relevant market to adversely affect the competition in the downstream market. The CCI further directed the investigation under Section 26(1) of the Act noting that the alleged conduct by GMR has the potential to limit and restrict the provision of Line Maintenance Services and the technical development relating to provisioning of such services to the prejudice of consumers within the meaning of Section 4(2)(b) of the Act.

The decision of the CCI can be accessed [here](#).

CCI finds State Procurer's conduct towards rice miller to be *prima facie* abusive

Upon assessing information filed against the Odisha State Civil Supplies Corporation Limited (**OSC**) by a local rice miller, the CCI found that OSC's conduct towards the informant in non-settling of past dues and imposition of unfair conditions to be *prima facie* an abuse of OSC's dominant position in the market.

The CCI noted that the activity of procurement of paddy and its custom milling were regulated activities in the state of Odisha and OSC entered into agreements with custom millers such as the Informant whereby OSC delivered paddy to the Informant. The paddy so delivered was kept under joint-custody of the miller and OSC for storage/milling before being delivered to OSC and/or Food Corporation of India. The bone of contention in the matter revolved around an agreement between the Informant and OSC, laying out the terms and conditions relating to custom milling of paddy for the Kharif season 2015-16 and provision of insurance over for the stock. The stock lying with the Informant suffered damage on account of floods and subsequently, OSC allegedly changed the terms of the insurance in the agreement and withheld the custom milling dues liable to be paid to the Informant.

The CCI while defining the relevant market to be the *market for procurement of custom milling services for rice in State of Odisha*, observed that OSC was dominant in the market on account of high market share (almost 90%) for the Kharif season of 2015-16 as well as being the primary procuring agency for the state of Odisha for subsequent years as well. While directing investigation, the CCI noted that acts such as:

- withholding dues (amounting to INR 88 lakhs) payable to the Informant; and
- unilaterally incorporating details about the scope of work and rates payable in the agreement before the formulation of the requisite policy

seem to be *prima facie* in violation of Section 4 of the Act. The CCI noted this conduct to be 'high handedness' on part of OSC.

In 2012, the CCI had while assessing the conduct of the State Procurement Corporation in Punjab in the same relevant product market of custom milling services of paddy, **dismissed the case** as the State Corporation was not deemed to be dominant in the market on account of low market shares and presence of other paddy procurers in the market.

The CCI's order can be accessed [here](#).

NCLAT upholds CCI's dismissal of abuse of dominance complaint against BMW

Vide order dated November 25, 2019, the National Company Law Appellate Tribunal (**NCLAT**) refused to intervene in the CCI's order dismissing an information against BMW India Private Limited and its subsidiary (together **BMW**).

Originally, the Informant (a car dealership) had alleged BMW to have abused its dominant position by not renewing the dealership agreement between the parties. The CCI assessed the information and dismissed the case due to lack of evidence to *prima facie* establish BMW's dominance in any relevant market.

In its order, NCLAT did not find merit in the Informant's submission that BMW's conduct was abusive and held that it is *inconceivable that an automobile company would setup a dealership solely for the benefit of the dealer*.

The NCLAT's order is available [here](#)

Mergers and Acquisitions



Update on Green Channel approvals

On August 13, 2019, the CCI, in order to facilitate mergers and acquisitions, amended the Competition Commission of India (Procedure in Regard to the Transaction of Business Relating to Combinations) Regulations, 2011 (**Combination Regulations**) and introduced an automatic channel for approval (**Green Channel Route**) based on self-assessment by parties. The recommendation for introducing an automatic route was made by the Competition Law Review Committee (**Committee**) as well, but was implemented by the CCI, a day before the submission of the Committee's report.

Considering the amendment came into force fairly recently, parties have been actively taking benefit of the automatic route for approval and approaching the CCI. Since August 2019, six transactions have been “deemed approved” pertaining to different sectors, *inter alia*, market for mutual funds, renewable energy sector, power generation, health insurance etc. The Green Channel Route which was incorporated in furtherance of the Government's initiative of ease of doing business, seems to have met its purpose of speedier approvals for transactions which present no apparent adverse effect on competition, as per the parties in terms of Section 6(1) of the Act.

Enforcement And Policy Update

The Delhi High Court holds that the free and fair negotiations constitute a vital factor while determining contravention of provisions of the Act

On October 10, 2019, a Single Judge Bench of the DHC dismissed a petition filed against the CCI's order holding that Great Eastern Energy Corporation Ltd. (**GEECL**) was not abusing its dominant position in contravention of Section 4 of the Act. GEECL entered into a Gas Sale Purchase Agreement (the **Agreement**) with SRMB Srijan Ltd. (**SMRB**). The Petitioner, an employee of SMRB, challenged the CCI's order before the then Appellate Tribunal – COMPAT – and subsequently before the DHC.

Justice Bhakru's judgment dealt with the issues of: (a) maintainability; (b) recommendatory nature of the DG's report; and most importantly, (c) relevance of free and fair negotiations in cases of imposition of unfair terms and conditions between contracting parties in contravention of Section 4(2)(a)(i) of the Act. On the issue of maintainability, Justice Bhakru noted that since the CCI disagreed with the DG's recommendations after hearing the parties and decided to close the case, no appeal under the Act is provided against such an order. Justice Bhakru also rejected the Petitioner's contention that if the DG report recommends that there are contraventions under the Act, CCI cannot close the case straightaway. Therefore, on the nature of DG's findings, Justice Bhakru held that the DG's report is not binding on the CCI.

Addressing the merits of the case, Justice Bhakru agreed with the CCI that GEECL has not abused its dominant position. Justice Bhakru noted that in cases where none of the parties to the contract have complained against it or where there is no allegation of coercion, the fact that the contract has been freely negotiated would be of vital importance in determining whether Sections 3 or 4 of the Act have been violated. Therefore, Justice Bhakru observed that clauses which are commonly used and found in various commercial contracts would not fall within the scope of Section 4(2)(a)(i) of the Act since for a violation of this provision to be found it must be established that the impugned term(s) or condition(s) are patently unfair and one that, no party, who has negotiating ability, would accept.

The decision of the DHC is available [here](#).

Supreme Court holds initiation of criminal proceedings by CCI for failure to pay penalty is maintainable

On November 19, 2019, the Supreme Court dismissed a special leave petition preferred by M/s. Rajasthan Cylinders, M/s. Cinemax India and an individual (**Petitioners**) against a decision of the DHC. The DHC had held that the proceedings under Section 42(3) of the Act for imposing a criminal liability on the failure to pay the penalty imposed by CCI were maintainable. The Petitioners had filed three separate petitions before the DHC for quashing the criminal proceedings initiated against them before the Chief Metropolitan Magistrate, Delhi by the CCI.

The CCI had imposed a penalty on the Petitioners for the non-compliance with the directions of the DG to furnish information for investigation. Subsequently, the Petitioners failed to pay the penalty imposed on them for non-compliance with the directions of the DG under Section 43 of the Act. Therefore, the CCI initiated the proceedings against the Petitioners under Section 42(3) of the Act. The DHC, while interpreting Section 42(3) of the Act held that the power of imposition of penalty under the said provisions was not limited to non-compliance with the directions or orders of the CCI and could extend to non-compliance with the directions of the DG. It further clarified that a proceeding under Section 43 of the Act attracted a civil liability and the proceeding under Section 42(3) of the Act attracted a criminal liability, hence, subsequent proceedings under Section 42(3) of the Act could not be considered to have caused a double jeopardy.

The decision of the Supreme Court can be accessed [here](#) and the decision of the Delhi High Court can be accessed [here](#).

Bombay High Court quashes CCI's orders directing investigation against Star and Sony

On October 16, 2019, the Bombay High Court (**Court**) allowed the writ petitions filed by Star India Private Limited (**Star**) and Sony Pictures Network India Pvt. Ltd. (**Sony**) thereby quashing CCI's orders directing the DG to investigate the matter under Section 26(1) of the Act.

The CCI through its orders dated [July 27, 2018](#) and [July 31, 2018](#) had directed detailed investigation by the DG into the allegations levied by Noida Software Technology Park Ltd. (**NSTPL**) against Star and Sony. The investigation directed by CCI pertained to allegation of price discrimination between similarly placed entities amount to refusal to deal in contravention of Section 3(4) of the Act.

Star and Sony (**Petitioners**) through separate writ petitions challenged the orders of CCI on the grounds that:

- the decision of the Supreme Court in the matter of *Competition Commission of India v. Bharti Airtel Limited & Ors*, (**Bharti Airtel**) prevented the CCI from exercising its jurisdiction; and
- the CCI had failed to arrive at a *prima facie* finding regarding the existence of an “agreement” and that such agreement causes or is likely to cause appreciable adverse effect on competition (**AAEC**) in

On CCI’s exercise of jurisdiction, the Court concluded that Bharti Airtel applies to inter-party disputes and is therefore, applicable to the disputes pending between the petitioners and NSTPL before the Telecom Disputes Settlement and Appellate Tribunal (**TDSAT**). Thus, according to the Court, the bar over exercise of jurisdiction by CCI existed and that the impugned orders could not have been passed.

On the existence of an agreement and AAEC, the Court held that while considering the contravention of Section 3(4) of the Act, the CCI ought to render a *prima facie* finding regarding the existence of an agreement refusing to deal and that the same causes or is likely to cause AAEC by applying the factors under Section 19(3) of the Act. Based over the aforementioned analysis, the Court held that CCI’s orders were improper and could not be sustained under the Act.

The order of the Bombay High Court can be accessed [here](#).

CCI’s amends the General Regulations to inter alia discourage forum shopping

On November 20, 2019 certain amendments to the Competition Commission of India (General) Regulations,

2009 (**General Regulations**) came into force. The amendments, outlined below, were made to discourage forum shopping and avoid jurisdictional overlaps with sectoral regulators.

a. **Disclosure of pending disputes while filing an information:** Regulation 10(2) of the General Regulations has been amended to require an Informant, while filing an information, to include details of any pending disputes with respect to the subject matter of the information.

b. **Disclosure of identity of the informant:** Regulation 35(1) of the General Regulations has been amended to include a proviso which provides CCI with power to disclose the identity of an informant in matters where such disclosure is considered expedient for the purposes of the Act. The CCI previously did not have the said discretion.

c. **Increase in fees for filing information:** Regulation 49 of the General Regulations has been amended to increase the fees for filling of information. While the fee has remained unchanged for an individual or Hindu Undivided Family, it has been increased for all other entities. The fee for Non-Government Organizations, Consumer Associations, Co-operative Society and Trust has been increased to INR 10,000 and the fees for firms (based on their turnover) has increase by INR 20,000 to up to INR 4.5 lacs. While this increase in fees may discourage frivolous litigants, it will also increase the cost of litigation for *bonafide* litigants.

d. **Limitation on appeals against confidentiality order:** Regulation 35(10) of the General Regulations allows a party claiming confidentiality over certain documents or parts thereof to prefer an appeal before the CCI against the decision of the DG, rejecting such claims. By amending this regulation, the period for preferring an appeal before the CCI is limited to 30 days from the receipt of the order of the DG.

The gazette notification containing these amendments can be accessed [here](#).

The CCI organizes "Roadshow on Competition Law and Practice" in association with CII in Mumbai

On November 30, 2019, the CCI organized its fifth Roadshow on Competition Law and Practice in association with the Confederation of Indian Industry (CII) in Mumbai. The CCI's Chairperson, Mr. Ashok Gupta, in his speech covered 3 major themes – enforcement against cartels, digital industries/e-commerce and advocacy.

Regarding cartels Mr. Gupta noted that there has been a surge in leniency applications involving cartels and the CCI has received more than 100 leniency applications over the past few years. He also noted that very recently, the CCI has decided its [first international cartel](#) case wherein certain Japanese companies and their Indian subsidiaries were cartelizing in relation to the supply of Electric Power Steering Systems to three automotive Original Equipment Manufacturers.

In relation to digital industries and allegations of abuse surrounding them, Mr. Gupta characterized the CCI's interventions in such markets as nuanced and cautious – to preserve innovation incentives and intervene only in cases where harm is evident. Mr. Gupta highlighted the various advocacy initiatives that have been undertaken by the CCI. He then focused on market studies and announced that the CCI's findings on its e-commerce market study will be released shortly. Such studies, according to Mr. Gupta, help the CCI ascertain enforcement and advocacy priorities in the sector. Mr. Gupta added that the CCI will also conduct market studies in telecom and some other sectors.

The Chairperson's speech is available [here](#).

CCI suggests amendments to spare stock purchases from being seen as gun-jumping

In an effort to promote efficient business transactions, the CCI has suggested exempting combinations which involve acquisition of shares pursuant to a public bid or on the stock exchange from being seen as giving effect to the combination.

In the final quarter of 2018, the CCI has invited public comments on the draft amendment to the Combination Regulations that any combination involving acquisition of shares on the stock exchange would not be in contravention of the extant provisions, provided,

- the acquirer gives notice under Regulation 5 or Regulation 5A without delay; and
- the acquirer does not exercise any right attached to the shares and/ or influence the target enterprise, in any manner.

The language of the amendment is ambiguous with terms such as 'without delay' not being defined, especially when the CCI has already done away with the erstwhile requirement of notifying combinations within 30 days of signing the definitive agreement. Given that the CCI follows a suspensory regime, such provisions would simplify market purchases by multi-sectoral investors, especially in case of hostile takeovers. The CCI has in the past penalized companies for violating the standstill obligation, by failing to notify the CCI of certain steps of transaction involving open market share purchases.

Comments from stakeholders to the aforementioned amendment were to be provided to the Secretary at CCI by December 15, 2019.

The draft amendments are available [here](#).

ELP Insights

CCI scrutinizes the Online Hotel Booking Sector

The big question before competition regulators across jurisdictions is whether or not to intervene in digital markets. This question is a difficult one to answer since these markets are evolving and any intervention may disincentivize innovation in such markets. In that context, recently, at the fifth Roadshow on Competition Law Practice organized by the CCI, the Chairperson – Mr. Ashok Gupta commented that the CCI's approach to digital markets has been nuanced and cautious. Mr. Gupta mentioned that the CCI decides to intervene in such markets only where harm is evident. Against this background, we analyze CCI's approach to the Online Hotel Booking Sector.

The CCI dealt with two complaints in the last year pertaining to the Online Hotel Booking Sector. The first complaint was filed by RKG Hospitalities Pvt. Ltd. alleging abuse of dominant position by Oravel Stays Private Limited (**OYO**) as a service provider for budget hotels to customers through online booking in India (**OYO case**). The second complaint was filed by Federation of Hotel & Restaurant Associations of India (**FHRAI**) alleging abuse of dominant position by the combined entity of MMT and Golbibo (**MMT-Go**) in the market of Online Travel Agencies (**OTAs**) in contravention of Section 4 of the Act. FHRAI also alleged that MMT-Go and OYO entered into anti-competitive agreements in contravention of Section 3 of the Act.

CCI's assessment of the Online Hotel Booking Sector in the OYO case

In the OYO case, RKG contended that certain clauses in its agreement with OYO, were one-sided, unfair and discriminatory and that OYO was able to impose such clauses solely due to its dominant position. CCI defined the relevant market as the "*market for franchising services for budget hotels in India*". CCI made a distinction between OTAs such as MMT-Go and players like OYO which operate on a franchise business model. The CCI also observed that OYO provides distinct services to hoteliers including: (i) access to identifiable brand recognition, (ii) access to existing distribution channels and (iii) access to a compelling customer base.

Based on these observations, the CCI vide its [order dated July 31, 2019](#) found that OYO was a “leading player” in the relevant market. CCI also found that OYO had a “significant market share” (in terms of number of rooms and number of hotels). Despite its findings, the CCI concluded that OYO is not a dominant player in the relevant market, since franchising is only one of the many business models under which a hotel can operate. Notably, in its relevant market assessment, the CCI indicated that the “dynamics in the relevant market are still unfolding”, and therefore, according to the CCI “a deterministic assessment of the relevant market and OYO’s position in it” is hindered.

CCI’s assessment of the Online Hotel Booking Sector in the MMT-Go case

In the MMT-Go case, FHRAI contended that MMT-Go and OYO abused their dominant positions by charging excessive commissions from the hotel partners and providing deep discounts to consumers. FHRAI also alleged that MMT-Go charges discriminatory service fee from hotels and imposes parity clauses on hotel partners whereby:

- they cannot refuse to provide rooms to MMT-Go if they are being provided on another platform (**room parity clauses**); and
- they are restricted from selling their rooms at a price below which they are being offered on MMT-Go’s platform (**price parity clauses**).

Further, MMT-Go and OYO were alleged to have indulged in predatory pricing and misrepresentation of information on availability of rooms in contravention of Section 4 of the Act. Additionally, the agreement between MMT-Go and OYO was alleged to be anti-competitive and in contravention of Section 3 of the Act for giving preferential treatment to OYO and thereby denying market access to Treebo and Fab Hotels (competitors of OYO).

The CCI vide its [order dated October 28, 2019](#) ordered an investigation against MMT-Go for *prima facie* abusing its dominant position in contravention of Section 4 of the Act. With respect to the commercial agreement between OYO and MMT, the CCI directed investigation into (a) whether the agreement entails preferential treatment to OYO; (b) whether such agreement results in the exclusion of any hotel chain and (c) the effect of the exclusion, if any, on competition in contravention of Section 3 of the Act.

The following paragraphs discuss the (a) delineation of relevant market; (b) assessment of dominance; and (c) the assessment of allegations of abuse of dominant position by MMT-Go in relation to Section 4 of the Act.

(a) Relevant Market Delineation

For defining the relevant market, like in the OYO case, the CCI noted that OYO does not compete with MMT-Go. According to the CCI, MMT-Go acts as an intermediary between customers and hotels and is therefore, purely an aggregator. Based on these observations, the CCI delineated the relevant market for MMT-Go as the “market for online intermediation services for bookings of hotels in India”.

(b) Assessment of Dominance

On the issue of dominance, CCI relied on MMT-Go’s investor presentation to note that it held 63% of domestic hotel online market share in 2017. CCI further noted that other market players such as PayTM, HappyEasyGo and Thomas Cook did not appear to pose a competitive restraint on MMT-Go. Therefore, the CCI *prima facie* found MMT-Go to be dominant in the relevant market for online intermediation services for bookings of hotels in India.

Relying on its own decision in the previous OYO case, CCI continued to find OYO to be a “significant” but not a dominant player in the relevant market for franchising services for budget hotels in India.

(c) Assessment of Allegations of Abuse of Dominant Position

On the allegations of abuse as outlined above, CCI directed investigation into the following aspects:

- Exclusion of OYO’s competitors from MMT-Go’s platform due to the agreement between the two;
- Deep discounting by MMT-Go despite being present in the market for a significant period of time;
- Across Platform Parity Agreements (**APPAs**) between MMT-Go and hotels containing room parity clauses and price parity clauses vis-à-vis another OTA/platform or the hotel’s own online portal.
- Misrepresentation of information on availability of rooms and discriminatory service fee charged from hotels by MMT-Go.

Conclusion

From a larger perspective, some of the important issues are related to the on-going debate about the potential implications of regulatory intervention in a case that may not necessarily require such intervention. More so, the negative impact on competition and innovation of such intervention in absence of complete understanding of the technology markets in question. More specifically, the decision of the CCI, while is of *prima facie* nature, provides some insight into the CCI's take on the two issues of deep discounting and parity clauses on which limited jurisprudence is available in India.

- **Deep discounting:** One of the most important factors to be considered while assessing allegations of deep discounting (or predatory pricing) seems to be the period of existence of the player in the relevant market. While introductory offers or justifications such as network building might work for new entrants, it may not work for established players. Additionally, while assessing such allegations, CCI may potentially consider factors such as the costs incurred by the players, effect on competitors and the prices charged vis-à-vis discounts offered in the sector.
- **Parity clauses:** CCI distinguish between parity clauses based on the extent of restrictions they impose. The restrictions imposed vis-à-vis the hotel's own website/portal are classified as 'narrow' restrictions while the restrictions imposed vis-à-vis other OTAs/-competitors are classified as 'wide' restrictions. After making this categorization, the CCI analyzed only wide restrictions implying that narrow restrictions might be permissible.

The issue of deep discounting is very relevant for digital markets and that of parity clauses is especially relevant for the online hotel industry. While other jurisdictions, most prominently - the EC, have analyzed such clauses imposed by Booking.com, this is the first decision of the CCI directing investigation into parity clauses in the hotel industry, that too against an Indian company.

On the larger issue of regulatory intervention in the sectors involving new technology markets, the CCI approach so far appears to be "nuanced" and "cautious". While the CCI earlier dismissed allegations of abuse of dominance against OYO in the OYO case citing reasons such as nascency of the market, the CCI in the MMT-Go case decided to direct an investigation against OYO specifically on the issues of exclusion of competitors and the effect of such exclusion on competition in the market. A combined reading of the OYO case and the MMT-Go case reflects the CCI's approach to achieve a delicate balance between intervening where harm is evident while preserving the incentives for innovation in digital markets. It will be interesting to see the CCI's final order in the MMT-Go case, especially on how it deals with OYO. Further, with increasingly more businesses entering the disruptive technology markets, it will be important that the CCI is prepared not only from a regulatory approach perspective, but also steps up its understanding of the technical aspects of these markets. Last but not the least, the technology sector is facing the regulatory heat at a global level and new issues are being raised that lead to ripple effects across jurisdictions, and India will be no exception to it either. The CCI will therefore have to carefully identify the appropriate cases that demand intervention in Indian economic scenario and the cases that may lead to chilling effects on innovation and competition.



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