



# A Look at the Recent Developments in Competition Law in India

August 2020

Please see below a summary of the recent trends in the Indian antitrust and merger control regime.

## Developments in the enforcement regime

### ***Dismissal of complaints alleging 'common ownership' as a determinant of anti-competitive conduct***

In an alleged bid-rigging matter<sup>1</sup>, it was contended that collusion between some of the parties was facilitated due to the presence of common directors between the parties.

In a separate matter<sup>2</sup>, it was contended that the existence of common directorship between two agents (who represented multiple independent bids on behalf of some parties in a tender floated by a Government agency) could lead to a 'potential' risk of exchange of sensitive commercial information resulting in a tacit collusion between them.

Whilst dismissing the above complaints, the Competition Commission of India (the **CCI**) held that "*mere commonality of directors or ownership of participating firms, in itself, is not sufficient to record*

<sup>1</sup> *Ved Prakash Tripathi vs. ECHS Khanpur and Ors.*,

<sup>2</sup> *Plasser India Pvt. Ltd. vs. Ministry of Railways, Harbour Sales Pvt. Ltd. & Ors.*, Case No. 45 of 2019, order dated 5 February 2020.

*any prima facie conclusion about bid rigging in the absence of any material indicating collusion amongst such bidders while participating in the impugned tender*".

### ***CCI's recent lenient approach towards cartels***

In two of the latest cartel cases<sup>3</sup>, the CCI while holding the parties guilty, merely passed a cease and desist order against the parties but did not impose penalty (not even a token amount!) on any of the parties.

Interestingly, leniency applications were filed in both these matters and the office of the Director General (the investigative arm of the CCI) had found ample evidence of cartelisation.

In one of the cases, the CCI made note of how it was not imposing penalties in light of the 'peculiar facts and circumstances' the case presents but failed to demonstrate clearly what those circumstances were.

<sup>3</sup> *In Re: Cartelisation in industrial and automotive bearings, Suo Moto Case No. 05 of 2017, order dated 5 June 2020 and In Re: Chief Materials Manager, South Eastern Railway vs. Hindustan Composites Limited, Escorts Limited & Ors.*, Reference Case No. 03 of 2016, order dated 10 July 2020.

### **Imposition of penalties in abuse of dominance cases involving Grasim Industries Ltd. and Adani Gas Ltd.**

The CCI imposed a penalty of INR 301.61 crore on Grasim Industries Limited (GIL), the sole producer of viscose staple fibre (VSF) in India, for abusing its dominant position by, *inter alia*, practicing discriminatory pricing policies and imposing ancillary obligations on its customers by seeking details of their production and exports of VSF.<sup>4</sup>

In a separate case, the National Company Law Appellate Tribunal (the **NCLAT**) recently upheld the CCI's order holding Adani Gas Ltd. (Adani) liable for abusing its dominance.<sup>5</sup> However, the NCLAT reduced the penalty imposed by the CCI (i.e. INR 25.67 crores) on Adani from 4% to 1% of the average relevant turnover owing to the existence of mitigating factors.

### **Developments in the merger control regime**

#### **Increase in green channel filings**

The CCI has been quite welcoming of filings made under the green channel route, a mechanism introduced in August 2019 for parties having no horizontal overlaps or vertical and complementary relationships. This year, a total of nine green channel filings have been approved by the CCI till the end of July.

#### **Approval of Facebook's acquisition of a stake in Jio Platforms<sup>6</sup>**

The CCI approved the acquisition of a minority non-controlling shareholding of approx. 9.99% by Facebook Inc. (through its indirect wholly owned subsidiary Jaadhu Holdings LLC) in Jio Platforms. The parties recognised two common segments for competition assessment, *albeit* insignificant in terms of horizontal overlaps: (i) consumer communication applications; and (ii) advertising services.

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<sup>4</sup> XYZ vs. Grasim Industries Ltd. & Ors., Case No. 62 of 2016, order dated 16 March 2020.

<sup>5</sup> Adani Gas Ltd. vs Competition Commission of India & Ors., TA (AT) (Competition) No. 33 of 2017, order dated 5 March 2020.

<sup>6</sup> Combination Registration No. C-2020/06/747.

### **Phase I approval for ZF Friedrichshafen AG with voluntary remedies<sup>7</sup>**

After a preliminary assessment of the acquisition of 100% shares of WABCO Holdings LLC (WABCO) by ZF Friedrichshafen AG (ZF), the CCI was of the view that the transaction could result in an appreciable adverse effect on competition in India in the markets for certain products / components that are ancillary to the automotive sector. To address the concerns of the CCI, ZF initially offered behavioural remedies involving firewalling between WABCO and a joint venture entity of ZF (operating in the same relevant market as WABCO) to avoid any coordination between them, which were not accepted by the CCI. It later offered structural remedies (involving *inter alia*, divestiture of the steering business of WABCO), as were offered to the Department of Justice, United States which the CCI accepted and thereafter, approved the combination in Phase I.

We are closely monitoring developments regarding this and if you would like any further information, we would be happy to assist.

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This material is for general information only and is not intended to provide legal advice. For further information, please contact:

#### **Karam Daulet-Singh**

Partner

[karam.dauletsingh@platinumpartners.co.in](mailto:karam.dauletsingh@platinumpartners.co.in)

#### **Gaurav Desai**

Partner

[gaurav.desai@platinumpartners.co.in](mailto:gaurav.desai@platinumpartners.co.in)

#### **Vinod Dhall**

Senior Adviser

[vinod.dhall@platinumpartners.co.in](mailto:vinod.dhall@platinumpartners.co.in)

#### **Shruti Bhat**

Associate

[shruti.bhat@platinumpartners.co.in](mailto:shruti.bhat@platinumpartners.co.in)

#### **Apurva Badoni**

Associate

[apurva.badoni@platinumpartners.co.in](mailto:apurva.badoni@platinumpartners.co.in)

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<sup>7</sup> Combination Registration No. C-2019/11/703, order dated 14 February 2020.