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CCI conducts workshop following a release of Report on the Market Study on the Telecom Sector in India; India

In January 2020, the Competition Commission of India ('the Commission') launched a '*Market Study on the Telecom Sector in India*' ('Market Study') with an objective to assess the level of concentration and competition in the telecom sector. The Market Study was aimed at highlighting changes in competition strategies, analysing the dynamics of competition and cooperation between telecom services and related industries such as over-the-top (OTT) services, tower companies and infrastructure providers and, lastly, to examine the regulations and policy developments from a competition standpoint.

The Market Study of the Commission has highlighted various issues causing impact on industry competition, such as Price-based Competition and Value Destruction, Non-Price Based Competition, Vertical Integration, Content Delivery and Traffic Management, Unbundling Service and Infrastructure, Active and Passive Infrastructure Sharing and the Argument for Same Service-Same Rule.

The Market Study by the Commission also revealed rapid transformation of the telecom sector both in terms of market structure and technology. It noted that the consumer preferences over the last decade had evolved into data-rich content, replacing the voice dominated telecom market.

After publishing the Market Study on 22.01.2021, the Commission announced to conduct a workshop on 5th of February 2021. The aim of the workshop is to bring all stakeholders together on a platform to reflect on the evolving telecom landscape in the country and deliberate on issues that are relevant for regulation and competition law enforcement. As an extension to the Market Study on the telecom sector in India, the workshop attempts to preserve and promote competition in the sector so as to foster a strong, reliable and dynamic telecommunications ecosystem in India.

(Report on Market Study dated 22.01.2021)

SEBI challenges jurisdiction of the CCI in a case against Credit Rating Agencies; India

Lately, the Competition Commission of India ('Commission') has closed a case against 4 Credit Rating Agencies (CRAs) viz. CRISIL Ltd., India Ratings and Research Pvt. Ltd., CARE Ratings Ltd. and ICRA Ltd. for allegedly cartelizing in the tenders floated by National Highways Authority of India ('NHAI') to rate its upcoming ₹ 75,000 bond issuances. CRA is a company that rates debtors and provides information on the creditworthiness of the debt issuers, NHAI in the present case, based on their ability to pay back their interests and loan amount in time and the probability of them defaulting.

The Informant ('Brickwork Ratings India Pvt. Ltd') , in the Information, alleged that in the 2019-20 tender invited by NHAI, CRAs cartelised and quoted identical/ similar rates. As the allegations were levelled against CRAs, the Commission invited comments from the Security Exchange Board of India ('SEBI') and the NHAI for examining the Information.

SEBI, in its comments, challenged the jurisdiction of the Commission by relying on the 'Code of Conduct' prescribed under the SEBI (CRA) Regulations, 1999. These regulations enable SEBI to monitor whether CRAs conduct their business with high standards of integrity, dignity and fairness and that the CRAs do not indulge in any unfair competition.

Relying on the said provision, the SEBI stated that the Information should not be entertained by the Commission. According to SEBI the allegations, levelled in the Information against the CRAs, attract the provisions of the SEBI (CRA) Regulations, 1999.

The Commission , before proceeding to decide the case on merits , deemed it fit to decide the question raised, not just by SEBI, but by CRAs too, on the jurisdiction of the Commission to entertain the allegations against CRAs.

The Commission noted that the Hon'ble Supreme Court of India had already established a precedent, *in the matter of Competition Commission of India v. Bharti Airtel Limited and Others, (2019) 2 SCC 521* clarifying that the presence of a sectoral regulator does not oust the jurisdiction of the Commission. The Commission further noted that though regulation of CRAs may be the subject-matter domain of SEBI, but examining any anticompetitive conduct on part of CRAs falls within the jurisdiction of the Commission.

With regard to allegations of the Informant against CRAs, the Commission noted that there was no material available on record which could have shown meeting of minds amongst the CRAs. Apart from the alleged price parallelism in the NHAI tender for the FY 2019-20, no other material was available on record to indicate collusion or any concerted action amongst the CRAs.

Before closing the case, the Commission also brushed aside the allegation of abuse of dominance by the CRAs by stating that the concept of 'collective dominance' is not recognisable in the extant competition law in India and hence, the allegation of abuse of dominance could not be proceeded with.



Amendment to German Competition Act enhances Bundeskartellamt power to control abuse by large digital platforms; Germany

A new provision i.e. Section 19a, has been introduced in the German Competition Act, which enables the Bundeskartellamt to intervene at an early stage in cases where competition is threatened by certain large digital companies.

The amendment provides for preventive measure for cases where the Bundeskartellamt has reasons to believe that certain types of conduct by companies, having strategic position and resources, may distort competition across markets in Germany.

The examples of such conducts include, self-preferencing of a group's own services or impeding third companies from entering the market by denying them access to specific data.

Another important feature of the amendment is that now, under certain preconditions, the Bundeskartellamt has the power to pass an order in favour of dependent companies, who may need access to important data in return for adequate compensation.

Interestingly, soon after coming into force the Section 19a of the German Competition Act, Bundeskartellamt extended the scope of its proceedings against Facebook initiated in December 2020, due to the linkage between Oculus and the Facebook network.

(Press Release 19th & 28th of January 2021)

CAB dismisses appeal by Uber against decision of CCCS penalising Uber for gun-jumping; Singapore

The Competition Appeal Board (CAB) of Singapore has upheld the Infringement Decision of the Competition and Consumer Commission of Singapore ('CCCS') passed in the year 2018 against Uber and Grab for gun-jumping.

The CCCS on 24 September 2018 had concluded that Uber's sale of its Southeast Asian business to Grab for a 27.5% stake in Grab ('**Transaction**')

resulted in a substantial lessening of competition ('SLC') in the ride-hailing platform market in Singapore and infringed section 54 of the Singapore Competition Act.

Upholding CCCS's decision, CAB noted that the merger regime in Singapore provides for voluntary merger notification to the CCCS.

The CAB stated that voluntary notification does not imply that there could be no risks to the merged party for proceeding with a merger before notifying it to the CCCS first.

The CAB, in its judgment, emphasised that in situations where the merger is difficult to reverse, the merged party run a risk of infringing section 54 of the Competition Act also known as 'Gun Jumping' in the competition law parlance.

The CAB clarified that, it is within the discretion of the CCCS to reject the subsequent remedy offered by the merged party, if the same, as per the CCCS, are inadequate or inappropriate. The CAB made it clear that CCCS is within its power to reject the remedy offered even if the commitments by the merged party are in fact sufficient to remedy or prevent any SLC arising from the completed merger.

The financial penalties imposed by CCCS on Uber and Grab were \$6,582,055 & \$6,419,647 respectively. Grab did not contest CCCS's Infringement Decision, paid the financial penalty and complied with CCCS's Directions whereas, Uber brought an appeal against the Infringement Decision to the CAB, seeking to either set aside the Infringement Decision or reduce the financial penalty imposed.

(Press Release 13th January 2021)

CMA to investigate Google's 'Privacy Sandbox' browser changes; UK

The Competition and Market Authority (CMA) has opened an investigation into Google's proposals to remove third party cookies and other functionalities from its Chrome browser.



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Google had earlier announced that they would disable third party cookies on the Chrome browser and Chromium browser engine and replace them with a new set of tools for target advertising and other functionality that they say will protect consumers' privacy to a greater extent.

The CMA, in its recent market study, into online platforms digital advertising, had highlighted a number of concerns about the potential impact of proposed changes including the one that these changes could undermine the ability of publishers to generate revenue and undermine competition in digital advertising, entrenching Google's market power.

The CMA has also received complaints from a group of newspaper publishers and technology companies which allege that Google is abusing its dominant position by removing third party cookies and other functionalities from the Chrome browser.

The investigation by the CMA will assess whether the proposed changes by Google could cause advertising spend to become even more concentrated on Google's ecosystem at the expense of its competitors or not.

(Press Release 8th January 2021)

Metallurgy firms abandon merger during CMA investigation; UK

Soon after the Competition and Market Authority of UK raised competition concerns relating to Tronox's anticipated purchase of TiZir Titanium & Iron (TTI), Tronox decided to abandon its deal with TTI.

Tronox and TTI are companies involved in the supply of materials used in the production of titanium dioxide, a white powder found in every-day items such as paint, sunscreen, paper and plastics. TTI is one of the 2 main global suppliers of chloride slag, one of the most important minerals used to make titanium dioxide pigment and Tronox is one of the main producers of titanium dioxide pigment.

In the initial Phase 1 investigation, CMA found that Tronox intends to use all of TTI's chloride slag in its own production of titanium dioxide and halt future sales of chloride slag to third parties. This would leave Rio Tinto, TTI's main chloride slag competitor, with a monopoly position in the market for the sale of chloride slag.

The CMA also found that the removal of TTI as a main competitor from the market could significantly limit customer supply and lead to higher prices for chloride slag globally as well as for titanium dioxide in the UK and Europe. Although other minerals are available to make titanium dioxide the CMA found that customers would have limited substitutes for chloride slag.

Before CMA could initiate in-depth 2nd phase investigation, Tronox abandoned proposed buyout of TTI.

(Press Release 4th and 18th January 2021)

Lack of Competition in digital advertising technology supply chain; ACCC's Interim Report

The Australian Competition and Consumer Commission (ACCC) has released Interim Report on 'Digital Advertising Services Inquiry' on 28th January 2021.

As per this Interim Report, digital advertising technology supply chain in Australia lacks competition and transparency. Google is by far the largest provider of all of the key ad tech services examined by the Interim Report and is the only provider across the full ad tech supply chain that also sells ad inventory. The ACCC, in the Interim Report, has estimated that Google's share of the revenue or ads traded in each of the required services in Australia ranges from 50-60 per cent to between 90-100 per cent, depending on the service.

The ACCC mentioned that, over time, Google has made a series of acquisitions that have cemented its strong position in the ad tech supply chain which is further reinforced by its unrivalled access to data from its wide range of consumer-facing services, including Google Search, Chrome and Android, and from its wide network of trackers on third-party websites and apps.

Rod Sims, the Chairman of ACCC, had stated that *"Google's significant presence across the whole ad tech supply chain, combined with its significant data advantage, means Google is likely to have the ability and the incentive to preference its own ad tech businesses in ways that affect competition"*

The ACCC is also aware about the competitive effect of Google's restrictions on rivals' access to third party cookies already under investigation by Competition and Market Authority, UK (CMA). The ACCC's preliminary report sets out a series of possible options for addressing the issues in the ad tech industry based on suggestions received during this inquiry and other industry developments.

(Press Release 28th January 2021)

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An initiative of Kaushal Kumar Sharma, ex-IRS, former Director General & Head of Merger Control and Anti Trust Divisions, Competition Commission of India, former Commissioner of Income Tax



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