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CCI closes the case against Heraeus Technologies Pvt. Ltd and 6 others

The Competition Commission of India ('CCI') has closed a case filed against 7 companies alleged of rigging bids and abusing their dominant position by quoting lower prices in different tenders floated by various steel companies in India. As per the Information, Arrdy Engineering Innovations Pvt. Ltd ('Informant') was engaged in the business of manufacturing and marketing of sensors for measurements of temperature, chemical composition etc. of molten metals and was a distributor of Heraeus ElectroNite International N.V. Belgium ('OP-2'). It was alleged that OP-2 illegally terminated its distribution agreement with the Informant in 2014 and started its own company under the name of Heraeus Technologies Pvt Ltd. in Kolkata ('OP-1'). Thereafter, in 2015 and 2018, OP-1/OP-2 acquired small Indian competitors namely, CPP Thermo Devices Pvt. Ltd. ('OP-4') and Shree Ram Measurements Technologies Pvt. Ltd. ('OP-5') respectively. It was further alleged that Heraeus Group of Companies were bidding and taking orders from Indian Steel Plants either as OP-1 or OP-4 or OP-5 or supplying items imported directly from Heraeus Electro-Nite Shanghai, China (OP-3) or their other plants around the world in clear violation of the provisions of Section 3(3) of the Competition Act, 2002 (the 'Act').

The Informant stated that many Indian sensor manufacturing companies viz. Allied Instruments & Thermocouples (OP-7) & Minco Tech (India) Private Limited (OP-6) were working on behalf of International sensor manufacturing companies who were controlled or allied with Heraeus Group of Companies either directly or indirectly.

The Informant also alleged that Heraeus Group had supplied Hydrogen measurement instruments to SAIL's Bhilai Steel Plant and, thereafter, restricted SAIL from buying the spares and consumables from any other vendors by dictating that such instrument shall only be used with their own spare products or else they would not service the instruments. Resultantly, SAIL's Bhilai Steel Plant was forced to buy the spares parts at inflated prices. Lastly, the Informant brought on record similar anti-competitive acts of Heraeus Group of Companies in USA which resulted in an order against Heraeus Group directing them to divest the assets it acquired in a competing company.

The CCI perused the matter and observed that mere business linkages and common directorships *simpliciter* in themselves were not sufficient to form a *prima facie opinion* for bid rigging in the absence of any material indicating concerted action. With respect to allegation of abuse of dominant position, the CCI noted that some of the OPs i.e. OP-6 and OP-7 were alleged to have been supported by Heraeus Group and the same did not qualify for a 'Group' so as to invoke provisions of section 4 of the Act. Therefore, in absence of dominant position, it was unnecessary for the CCI to delve into allegation of abuse of dominant position. Resultantly, the matter was closed by the CCI under section 26(2) of the Act.

(Case No 47 of 2020, Order dated 11th December 2020)

FTC takes a significant step towards possible breakup of Facebook Inc.

The Federal Trade Commission (the 'FTC') on 9th December 2020 filed a complaint against Facebook for illegally maintaining its personal social networking monopoly through long course of anti-competitive conduct. The FTC's complaint alleges that Facebook engaged in a systematic strategy of acquiring potential competitors, which could have threatened Facebook's dominance in personal social networking. FTC's complaint states that in the year 2012, Facebook acquired Instagram at a time when users of personal social networking services were migrating from desktop computers to smartphones and were increasingly embracing photo-sharing app i.e. Instagram. Facebook quickly recognized that Instagram was a vibrant and innovative personal social network and an existential threat to Facebook's monopoly power. As per the FTC's complaint, Facebook initially tried to compete with Instagram on the merits by improving its own offerings, but ultimately chose to buy Instagram for \$1 billion in April 2012 instead of competing with it.

Around the same time, 'over-the-top' mobile messaging app viz. WhatsApp also became a global 'category leader' in mobile messaging. Facebook feared that a successful mobile messaging app could enter the personal social networking market, either by adding new features or by spinning off a standalone personal social networking app. Consequently, Facebook chose to acquire WhatsApp for \$19 billion in a similar fashion in order to eliminate competition in personal social network. This course has been found by FTC to be harming competition, leaving consumers with few choices for personal social networking and depriving advertisers the benefit of competition.

As a result, the FTC is now seeking a permanent injunction in federal court that could, *inter alia*, require divestitures of assets, including Instagram and WhatsApp; prohibit Facebook from imposing anticompetitive conditions on software developers; and may require Facebook to seek prior notice and approval for future mergers and acquisitions.

As a matter of fact, acquisition of Instagram and WhatsApp did raise considerable eyebrows world over. It may be noteworthy to mention that apart from these two well-known acquisitions, Facebook has been acquiring small upcoming rivals in double digits every year and escaping from the eyes of the regulators.

(Press Release 9th December, 2020)



FTC sues to block Procter & Gamble's Acquisition of Billie Inc

An administrative complaint has been filed by the Federal Trade Commission (FTC) against the proposed acquisition of Billie Inc. by the Procter & Gamble Company's (P & G.) in the U.S. District Court for the District of Columbia.

Billie is a new entrant who manufactures and sells women razors to Generation Z and Millennial, whereas, P & G is a market leader supplier of both women's and men's wet shave razors in the US. The complaint alleges that the proposed acquisition would eliminate substantial and growing head-to-head competition between P&G and nascent competitor Billie in U.S. wet shave razor markets. With the entrance of Billie, the competition in wet shave razor market grew rapidly. To cope with the competition, P&G introduced its own direct-to-consumer site promoting its women's system razor brand, Venus.

FTC noticed that the proposed acquisition halted Billie's anticipated expansion into brick-and-mortar retail stores, which could have benefitted consumers through intensified competition between Billie and P&G at retail locations.

Thus, the present complaint is filed by the FTC to seek temporary restraining order and preliminary injunction.

(Press Release 8th December,2020)

Failure to refund cancelled flights: no anticompetitive practices identified

Recently, a complaint was filed by Cediv Travel, along with other members of travel agency, against several airlines before Competition Authority of France i.e. Autorité de la Concurrence alleging anti-competitive practices. Cediv Travel is a travel company which specializes in tourism and travel. The practice implemented by various airlines wherein, they did not

issue refunds for flights cancelled as a result of epidemic, were alleged to be anti-competitive. Further, the airlines imposed the acceptance of credit on customers instead of refunding the ticket price.

The Autorité de la Concurrence after carefully examining the case held that there was no evidence in the complaint which could have highlighted indulgence of airlines in anti-competitive practices. The complaint provided by Cediv Travel was not found sufficient to prove that airlines had entered into an arrangement or agreed to terms and conditions or such concerted practice relating to conditions for the reimbursement of cancelled flights. Further, no evidence was produced on record which suggested abuse of collective dominant position or abuse of a situation of economic dependency.

The Autorité de la Concurrence observed that the parallel conduct was actually because of the major economic shock caused by pandemic. In reality, it was result of autonomous individual responses by the airlines.

(Press Release 8th December, 2020)

The Federal Cartel Office is examining the link between Oculus and the Facebook network

The Federal Cartel Office (the 'Bundeskartellamt') has initiated proceedings for abuse of dominant position against Facebook with an objective to scrutinize the link between Oculus virtual reality products (VR), the social network and the Facebook platform. Before the acquisition by Facebook, Oculus was a limited liability company (LLC) engaged in producing virtual reality headsets for video gaming. The Bundeskartellamt has stated that *'In the future, the use of the new Oculus glasses requires the user to also have a Facebook account. Linking virtual reality products and the*



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group's social network in this way could constitute a prohibited abuse of dominance by Facebook.'

It has been noticed that Facebook had already begun integrating its virtual reality activities into the social network Facebook.com.

The Oculus platform, which was previously been operated separately from Facebook.com, will be offered as an additional function on Facebook's social network, under the name "Facebook Reality Labs". The use of the latest "Quest 2" VR glasses, will require registration using a Facebook.com account.

Distribution of the new VR glasses outside Germany had already begun.

In the present proceedings, the Bundeskartellamt intend to examine whether and to what extent this tying arrangement will affect competition in both areas of activity. As Facebook already holds a dominant position in Germany and is also already an important player in the emerging but growing VR market.

Apart from the present proceedings, in early 2019, the Bundeskartellamt had already imposed extensive restrictions on the Facebook regarding the processing of user data. Facebook was prohibited from extensively collecting and merging user data from different sources.

(Press Release 10th December, 2020)

CCI approves acquisition of certain assets of the Prestige Group by affiliates of Blackstone Group Inc. Airlines Limited (operating under brand name "Vistara")

In October, 2020 Prestige Estate signed a non-binding letter of intent with entities of Blackstone for sale of interest, direct or indirect in either the commercial offices, retail and hotel properties or mall management and identified maintenance business.

Later in November, 2020 the former agreed to sell some entities from its portfolio office including retail and hotel properties. In regulatory filing, all the details including the list of assets which it intends to sell under the deal along with per-cent of stake that US-based investment firm, Blackstone Group Inc. will acquire in Oakwood Residences and Hotel Aloft were provided. The CCI said that the principal activity of acquirer is investment holding and related activities. However, it does not have business operations in India or worldwide. Further, the target entity has diversified portfolio. Thus, The CCI approved the acquisition of such assets by affiliates of **Blackstone Group Inc.**

(Press Release 8th

December, 2020)

Guidance on the functions of the CMA after the end of Transition Period

In the backdrop of the exit of United Kingdom ('UK') from European Union from January 31, 2020 (**Exit Day**). **Article 126** of the agreement was invoked which provides for a 'Transition Period'. This Transition Period will end on December 31, 2020. Simultaneously, The Guidance on the functioning of the CMA has been issued which will come in effect from 31st December 2020 (the 'Guidance').

The Guidance elucidates on how the exit of U.K will impact the power and processes of Competition and Markets Authority (CMA) for anti-trust and cartel enforcement, merger control. Section 2 of the Guidance deals with legal framework addressing issues relating to impact of **European Union (Withdrawal) Act 2018** and consequential domestic legislations on UK's competition law framework. Further, section 3 elucidates on impact and the applicability of stated rules and regulations on merger control post December 31, 2020. Under section 4, the Guidance have been laid down for cases relating to anti-competitive agreements and abuse of dominance which have an element of EU cross-border post December 31, 2020. It also elucidated the approach which the CMA will have to take for abiding by the provisions of the Withdrawal Agreement in so far as they relate to competition law. Lastly, section 5 of the Guidance focuses on the rules and procedures which will apply to consumer cases.

(Date of issue of Guidance, 1st

December, 2020)

CCCS sought public feedback on the Proposed Cooperation between Singapore Airlines Limited and TATA SIA

The Competition & Consumer Commission Singapore ('CCCS') have been looking for feedback from public on the proposed Singapore-India Commercial Cooperation Framework Agreement between Singapore Airlines Limited and TATA SIA Airlines Limited. Under the agreement, the parties have agreed to cooperate on, *inter alia*, scheduling, pricing, sales and marketing and other commercial area. The Parties have submitted that they overlap on 16 Origin-Destination routes in the provision of air passenger transport services between Singapore and India, prior to COVID-19, both on a direct and non-direct basis. The CCCS will examine whether or not the proposed agreement violates section 34 of the Competition Act (Cap. 50B) which prohibits practices that might prevent, restrict or distort competition within the concerned market in the country.

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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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