

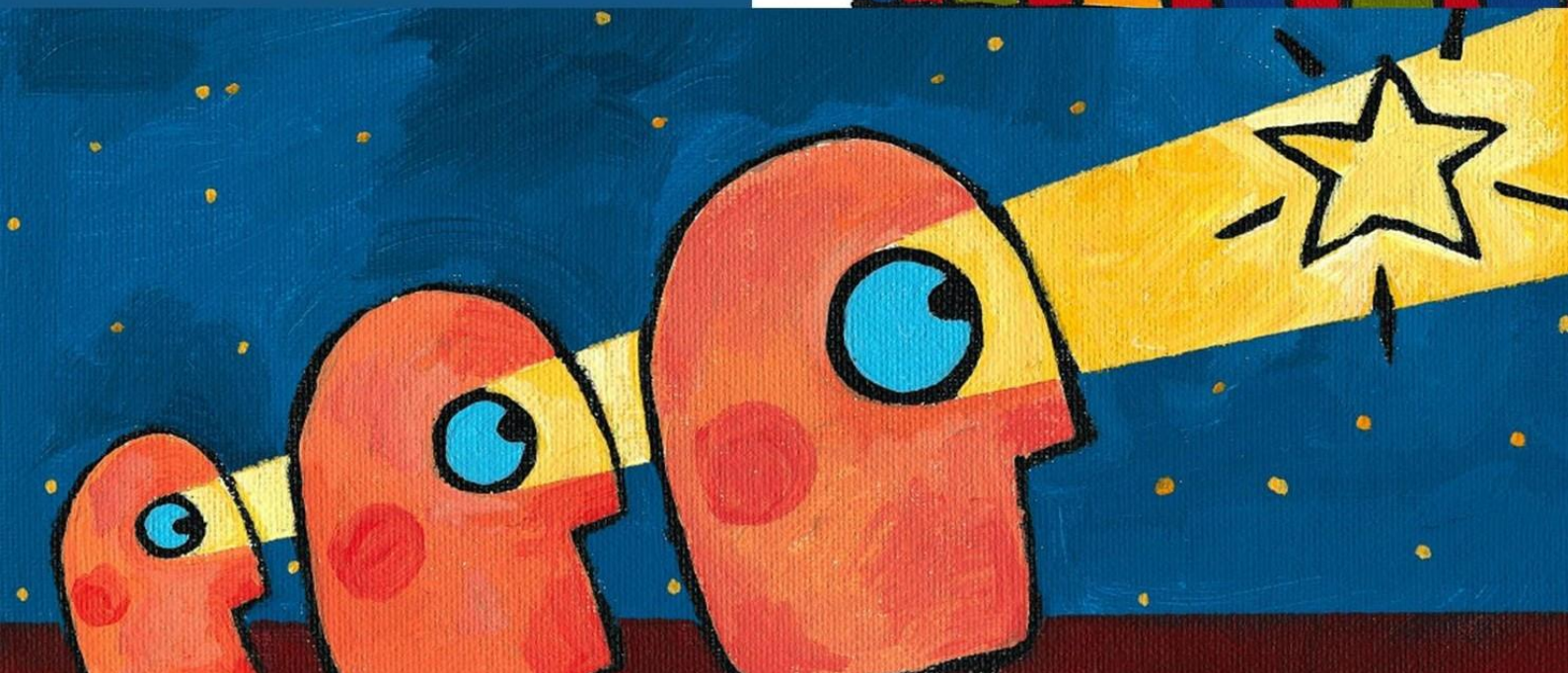


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Monthly Newsletter

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Economic Laws | Governance, Regulations and Risk | Public Affairs and Policy

- Brazil's CADE Signs 'Cease and Desist' Agreement with the App iFood
- Theo Muller Group, Finally, Allowed to Acquire Royal Friesland Campina's Dairy Business

HEARD AT THE BAR

- ACCC Initiates Proceedings Against Swift Networks Pty Ltd Alleging Bid Rigging
- EC Initiates Investigation into Viasat's Acquisition of Inmarsat

- CMA: Acquisitions of 8 Independent Veterinary Businesses by Independent Vetcare may Result in SLC

BETWEEN THE LINES

- CMA: Microsoft's Acquisition of Activision could Potentially Harm Competition FTC and MasterCard reach Settlement to Stop

Brazil's CADE Signs 'Cease and Desist' Agreement with the App iFood

Brazil's competition authority, the Administrative Council for Economic Defence ("CADE"), has entered into a Cease and Desist Agreement ('Agreement') with the online food delivery app, iFood, suspending its administrative inquiry against it for alleged violations of competition law in the '*national market for food delivery marketplaces.*'

During the investigation by CADE, it was seen that circumstantial evidence indicated towards iFood abusing its dominant position in the market by imposing exclusivity deals on the restaurants listed on its platform that raised entry barriers and resulted in exclusionary effects in the market.

To address the competition concerns and foster competition in the food delivery marketplaces by enabling entry of other competitor applications, the CADE signed an Agreement with iFood. The investigation by CADE will be suspended as long as the terms of the Agreement are followed by iFood.

The Agreement, *inter alia*, forbids exclusivity clauses between iFood and restaurant chains having over 30 units since these restaurant chains have enormous number of orders and are a strategic addition to the portfolios of food delivery marketplaces. Restrictions are also imposed on exclusivity deals with restaurants chains having less than 30 units - (i) iFood is prohibited from having exclusivity deals with its listed restaurants that amounts to the exclusivity of more than 25% of gross merchandise value, at the national level; (ii) At the local level, exclusivity with restaurants is limited to 8% of the platform's listed active establishment; (iii) the period of exclusivity is limited to 2 years. Although, this measure can be disregarded in 50% of the exclusive contracts if the investment by iFood in the restaurant partner's business increases the partner's revenue by 40% at least in the food delivery market as compared to the previous year.

Other supplementary measures in the Agreement included prohibition of the use of clauses that impede restaurants from contracting with other platforms, most favoured nation clauses and, further, prevented iFood from offering partners incentive to keep them away from its competitors.

The Agreement between iFood and CADE runs for a period of 54 months and a monitoring trustee has been appointed to oversee the implementation of the Agreement. [\(Press release dated 08.02.2023\)](#)

Theo Muller Group, Finally, Allowed to Acquire Royal Friesland Campina's Dairy Business

After a detailed investigation, Germany's competition authority, Bundeskartellamt, allows Theo Muller Group to acquire brands (including 'Landliebe' and 'Tuffi') and production sites for several dairy products from Royal Friesland Campina. The acquisition plan was cleared only after commitments were offered by Theo Muller Group since the acquisition raised competition concerns according to the Bundeskartellamt.

The two parties to the acquisition are among the ten largest dairies in Germany and involved in the production of milk and dairy products. The Bundeskartellamt initiated its investigation into the proposed acquisition and conducted surveys of market players and empirical analysis to determine the relevant product market involved in the acquisition. It observed that the market share for Theo Muller Group was over 60% in fresh dairy drink, rice pudding and basic dairy drinks market, which was well over the 40% threshold over which there is a presumption of market dominance. The Bundeskartellamt was concerned that the acquisition would add to the market share enjoyed by the Theo Muller Group and strengthen its dominance further due to the takeover of Friesland Campina brands combined with the potential of its best brands, the 'Landliebe' and 'Tuffi' brands.

Considering the competition concerns expressed by the Bundeskartellamt, Theo Muller Group proposed that it would sell the entire 'Tuffi' business to an independent third-party dairy and issue licenses to use the 'Landliebe' brand. They also proposed to grant license to sell rice pudding and fresh dairy drinks under the 'Landliebe' brand on an exclusive, irrevocable and unlimited basis to the licensees. The licensees, and not Theo Muller Group, would be able to launch new 'Landliebe' branded products as covered under the license, and this takeover of the brand by third-party would allow maintenance of competition in the concerned market.

Subsequently, the Bundeskartellamt conducted an investigation to assess the effectiveness of the commitments offered by the Theo Muller Group. The market test confirmed that the commitments are suitable to resolve the competition concerns of the Bundeskartellamt and there are parties that are interested in buying the 'Tuffi' business and the licenses to use the 'Landliebe' brand.

The Bundeskartellamt cleared the proposed acquisition subject to the fulfilment of the commitments, subsequent to the takeover. As a result, Theo Muller Group will enjoy higher market shares in other dairy products (fresh milk, yogurt, etc.) connected with the acquisition, however, the combined market share in those markets is less than 40% and, therefore, it is unlikely to raise competition concerns warranting a prohibition of the acquisition. The acquisition in relation to these product groups is allowed without conditions, whereas, the Theo Muller Group must comply with the commitments, post-acquisition, for the 'Landliebe' and 'Tuffi' brands as non-compliance would result in the withdrawal of clearance by the Bundeskartellamt. [\(Press release dated 22.02.2023\)](#)



ACCC Initiates Proceedings Against Swift Networks Pty Ltd Alleging Bid Rigging

The Australian Competition and Consumer Commission (“ACCC”) has initiated proceedings against Swift Networks Pty Ltd (“Swift”) alleging that the technology company was involved in bid rigging and price fixing for the supply of equipment and services to five Pilbara mining villages’ sites.

Swift specializes in delivering technology infrastructure, entertainment and communications to the mining & resources, aged care and hospitality industries. Swift’s competitor DXC Connect Pty Ltd and DXC Technology Australia Pty Ltd (collectively, “DXC”) is also a global technology company that, *inter alia*, supplies technology infrastructure in the mining sector in Western Australia.

The ACCC alleged that Swift and DXC entered into an agreement to rig bids for supplying technology infrastructure at mining camps in Pilbara region in Western Australia by agreeing that one of the two would submit a higher price than the other in responding to the bids. They also engaged one another as sub-contractors for some projects, but acted beyond the scope of any sub-contracting relationship in fixing prices for five different projects in the Pilbara region. ACCC Commissioner Liza Carver commented, “*Bid rigging and price fixing drive up prices for businesses and harms the economy, which is why cartel conduct is a serious breach of our competition laws.*”

The ACCC has initiated proceedings in the Federal Court against the undertakings, seeking declarations, penalties, costs and other orders.

[\(Press release dated 17.02.2023\)](#)

EC Initiates Investigation into Viasat’s Acquisition of Inmarsat

The European Commission (“EC”), in the European Union (“EU”), has launched an in-depth investigation to analyse the acquisition of Inmarsat Group Holdings Ltd. (“Inmarsat”) by Viasat Inc. (“Viasat”) under the EU

Merger Regulations as the EC is concerned that the acquisition may reduce competition in the “*market for the supply of broadband in-flight connectivity (‘IFC’) services to commercial airlines in the EEA and/or globally.*”

Viasat and Inmarsat are both involved in satellite-based communication services. Viasat is a vertically integrated satellite network operator and satellite service provider, owning and operating four Geostationary Earth Orbit (“GEO”) satellites. It relies on its own capacity from GEO satellites to provide broadband IFC services to commercial airlines. Viasat is involved in the business of satellite services, commercial networks, and government systems.

Inmarsat, another vertically integrated satellite network and satellite service provider, owns fifteen GEO satellites and operates three proprietary satellite networks across these satellites. Inmarsat caters to customers in the sectors of aviation, maritime, enterprise, and government.

The proposed acquisition raised several competition concerns. The EC was concerned that, in the market of supply of broadband IFC services to commercial airlines: (i) the parties are close competitors; (ii) there are very few alternative suppliers currently present in the market; (iii) the market has high entry barriers and; (iv) the satellite market is in a period of transition as the operators of non-geostationary satellites have entered or are planning to enter the IFC services market. The EC has to assess whether the new potential players in the market can exert sufficient competitive pressure on the merged entity.

The EC is concerned that the acquisition of Inmarsat by Viasat will reduce competition in the market of supplying broadband IFC services to commercial airlines and, therefore, the EC has commenced an in-depth investigation into the acquisition to analyse its possible effects on the market.

[\(Press release dated 13.02.2023\)](#)



Heard at the BAR

*Legal news from
India and the world*

CMA: Acquisitions of 8 Independent Veterinary Businesses by Independent Vetcare may Result in SLC

The Competition and Market Authority (“CMA”), United Kingdom (“UK”), decided after conducting its phase 1 investigation into the acquisitions by Independent Vetcare Limited (“IVC”) of 8 independent veterinary businesses that the proposed transactions may result in a Substantial Lessening of Competition (“SLC”) in some local markets in relation to small animal veterinary services, equine veterinary services and Out of Hours (“OOH”) (eg. Emergency) veterinary services.

In conducting its assessment, the CMA considered the industry background, including the fact that there is an increased demand for veterinary services, a shortage of veterinary service providers (vets and veterinary nurses) and a growing trend of consolidation in the industry in the UK.

In the small animal and quine veterinary services market, the CMA considered that competition concerns would arise in local area where IVC and the target company, together, have a combined share of 30% in the relevant local area. The 30% threshold was determined based on all the facts and circumstances of the case, including the lack of constraints from outside the relevant market from other types of practices. The CMA found that the undertakings had 30% or more share in 28 local areas

(Continued on next page)

in small animals' veterinary services and 4 local areas for equine veterinary services. In the OOH veterinary services market, the CMA found that there was a potential that the acquisitions by IVC could give rise to a SLC in 4 local areas due to the high combined share of supply of the parties to the acquisition and the evidence reflecting that alternative suppliers are unlikely to exert sufficient competitive constraint on IVC and the target companies. Due to the competition concerns caused by the horizontal unilateral effects in the small animal and quine veterinary services and the OOH veterinary services, the CMA concluded that the acquisition has resulted or may result in giving rise to SLC in the markets. The undertakings involved in the acquisition were given a week to offer undertakings to the CMA to resolve their competition concerns, failing which, the acquisition will be referred for a phase 2 investigation by the CMA. **(Decision summary dated 17.02.2023)**

CMA: Microsoft's Acquisition of Activision could Potentially Harm Competition

The CMA in the UK has provisionally found that the acquisition of Activision Blizzard, Inc. ("**Activision**") by Microsoft Corporation ("**Microsoft**") may result in a Substantial Lessening of Competition ("**SLC**") in the market of gaming consoles and cloud gaming services in the UK.

In January 2022, Microsoft entered into a deal to acquire Activision for 68.7 billion USD, the largest acquisition that Microsoft has ever made and the largest transaction in the gaming industry till date. Several competition authorities decided to launch an investigation into the acquisition including the authorities in the United States ("**US**") and the European Union ("**EU**"). The CMA, in the UK, initiated its in-depth phase 2 investigation in September 2022 and has come to several provisional findings.

In the supply of cloud gaming services the CMA found, provisionally, that acquiring Activision would reinforce Microsoft's strong position in the market as it already has 60-70% share in the global cloud gaming services and possesses important strengths in the market owing to its ownership of Xbox, Windows operating system and its global cloud computing infrastructure. The evidence gathered by the CMA suggests that it would be beneficial for Microsoft if Activision's games were exclusively available only on Microsoft's cloud gaming services or if they were available on other cloud gaming services also, but under different, worsened conditions. Acquiring Activision, the world's most important game publisher, would result in the reduction of competition that Microsoft would have to otherwise face in the cloud gaming market in the UK. The CMA is concerned that the acquisition can potentially harm consumers, and alters the gaming industry.

In the supply of gaming consoles, the CMA determined that a few key games (including Activision's Call of Duty) are an important factor in determining the level of competition between consoles. Acquiring gaming studios and making the gaming content exclusive to Microsoft's platform is a strategy that has been used by Microsoft in the past as well. Acquiring Activision and making its games exclusive to its own gaming console or to make the games available to other gaming consoles as well, but under different, worsened conditions would be commercially beneficial for Microsoft and would weaken the competition by restricting the access of Activision's games. Currently, Xbox and PlayStation compete closely in the gaming console market in the UK. However, if Microsoft acquires Activision and makes its game, Call of Duty, exclusive to Xbox, then the competition between Xbox and PlayStation will be adversely affected resulting in harm to UK gamers.

Reduction in competition in the gaming consoles and cloud gaming services market will result in consumer harm due to increase in prices, reduced range of products available to consumers, lower quality and worse service. The chair of the independent panel of experts formed to conduct the phase 2 investigation of the proposed acquisition commented, "*Our job is to make sure that UK gamers are not caught in the crossfire of global deals that, over time, could damage competition and result in higher prices, fewer choices, or less innovation. We have provisionally found that this may be the case here.*" **(Press release dated 08.02.2023)**

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