

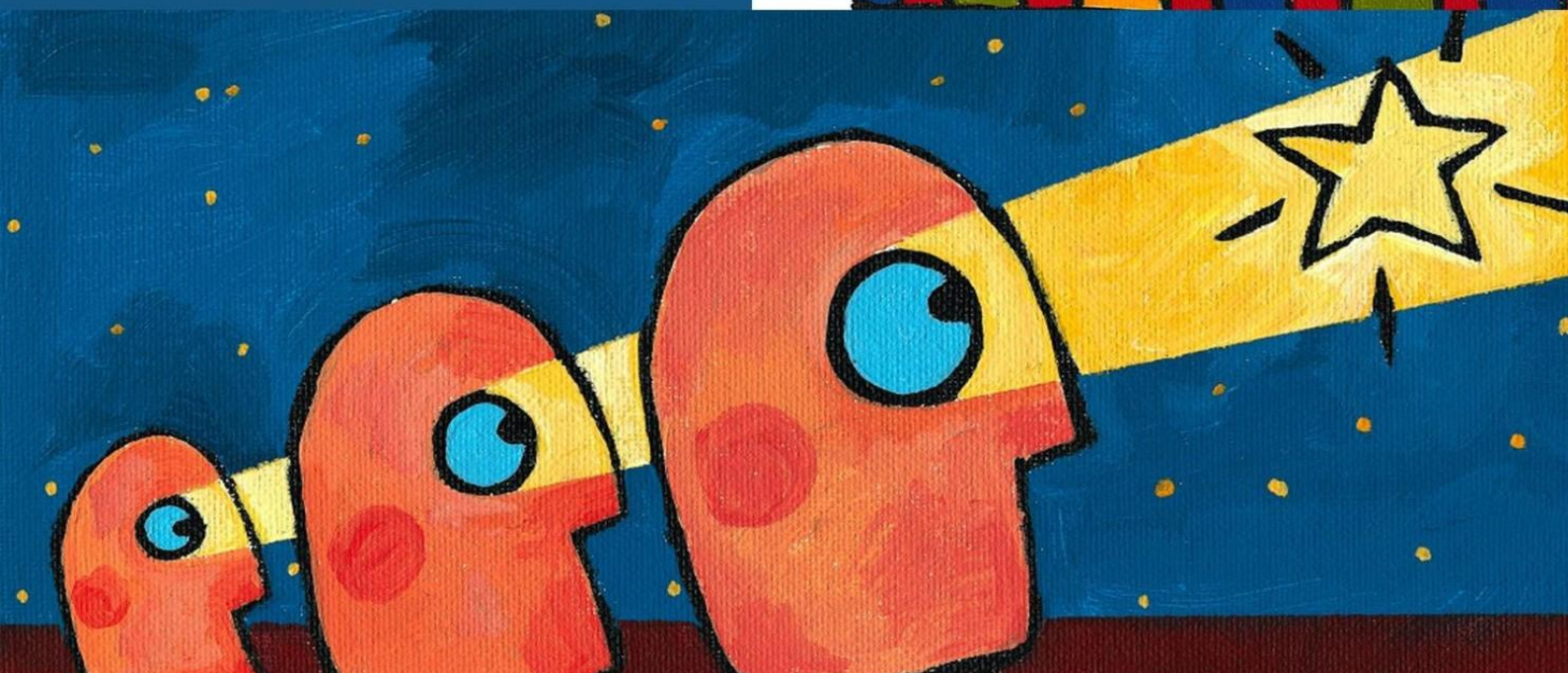


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The Competition Commission of India Dismisses Allegations of Anti-Competitive Conduct against Asian Paints

The Competition Commission of India (**'CCI'/'Commission'**) closed a case under Section 26(6) of the Competition Act, 2002 (**'the Act'**) filed against Asian Paints Limited (**'Asian Paints'**), a company engaged in the manufacture and sale of decorative and industrial paints, alleging contravention of section 3(4) and 4 of the Act. The Informant, JSW Paints Private Limited (**'JSW Paints'**), an innovator in the Indian paints industry, is part of the JSW group of companies engaged in several sectors.

The allegations against Asian Paints were that: **i)** it imposed unfair restrictions on dealers to not deal with JSW Paints and punished the dealers who dealt with them by stopping supplies/ withdrawing support/ withholding incentives; **ii)** Asian Paints, by virtue of its dominance in the market, hindered market entry by restricting access to the distribution network and infrastructural facilities, restricted the freedom of contract for dealers and limited consumers' choice by enforcing an exclusive supply agreement in contravention of section 3(4) of the Act.

Another Information was filed by a retailer of Asian Paints against it alleging the contravention of section 3(4) and 4 of the Act. It was alleged that Asian Paints changed the Informant's retailer category from 'Critical Retailer' and downgraded it to a lower category, 'Colour World' after it started dealing with JSW Paints. Further, Asian Paints attempted to coerce the retailer into signing a certificate stating that Asian Paints did not take any coercive steps because the retailer dealt with JSW Paints.

The CCI, based on the two Information filed, directed an investigation into the matter. After getting the investigation report from the Director General, the CCI observed the following:

On violation of section 3(4) of the Act, the CCI observed that: **i)** the conduct of Asian Paints with regard to its dealers who chose to deal with JSW Paints was due to reasonable business decisions based on objective and uniformly applied criteria and not due to restraints imposed by Asian Paints on dealers for associating with their competitor; **ii)** Reduction in credit for some dealers was due to reduction in the off-take of the dealer or unpaid accumulated dues. While in a few cases, the substantial reduction in credit limit was not commensurate of the dealers' defaults, Asian Paints resumed or increased the credit limit of dealers when their off-take improved; **iii)** Asian Paints provided evidence to support that the stoppage of supply to some dealers was based on the performance of the dealer and not because they started business with a competitor brand. Therefore, the Commission concluded that there was insufficient evidence to establish that the restraints were in the nature of exclusive supply agreement and refusal to deal under section 3(4) of the Act.

On violation of section 4 of the Act it held that: **i)** Asian Paints is by far the biggest player in the market with superior financial strength and exercises great influence over its dealers' decision-making indicating an absence of countervailing buying power; **ii)** JSW Paints and Asian Paints have many common dealers and JSW Paints has continued to add new dealers; **iii)** out of 1378 allegedly common dealers, only 15 dealers levelled allegations against Asian Paints and these 15 dealers did not provide sufficient evidence to substantiate their allegations; **iv)** JSW Paints added 1591 dealers over 2019-2020 and 2020-2021 while Asian Paints only added 1217 new dealers and 86.6% of JSW Paints' new dealers also deal with Asian Paints; **v)** the evidence on record did not substantiate the allegation of denial of market access to infrastructural facilities. The termination of agreement between the lessor and the lessee, JSW Paints, for the lease of a warehouse was a result of dispute between the two and the termination cannot be attributed towards Asian Paints.

Based on this, the CCI concluded that: **i)** Asian Paints is dominant in the '*market for manufacture and sale of decorative paints by the organised sector in India*' based on its high market share that is considerably higher than the manufacturer with the second largest share, its financial strength compared to that of its competitors, entry barriers, market structure and the absence of countervailing buyer power; **ii)** the high figure of common dealers between Asian Paints and JSW Paints indicate that JSW Paints' entry to market has not been impeded by Asian Paints and the allegation has not been substantiated through credible evidence; **iii)** Asian Paints did not violate section 4 of the Act by denying access to infrastructural facilities or the distribution network to JSW Paints.

Regarding the Information filed by the retailer, the CCI observed that: **a)** based on the evidence on record, the dealer's status of 'Critical Retailer' was restored prior to the filing of the Information; **b)** the retailing tier of the dealer was changed based on objective criteria after Asian Paints conducted a review exercise as the dealer was consistently reducing off-take from Asian Paints. The CCI, therefore, concluded that the allegation by the retailer that its retailing status was downgraded by Asian Paints due to it starting a business relationship with JSW Paints is misplaced.

Asian Paints was able to satisfy the CCI that its conduct and practices were in pursuance of it doing business with the dealers and was not motivated to keep JSW Paints from entering the market. It did not hinder the dealers from conducting business with any other paint company. Therefore, the CCI concluded that there was no contravention of the Act.



NortonLifeLock & Avast Merger Approved by the Competition & Markets Authority

The Competition and Markets Authority ('CMA'), United Kingdom ('UK'), approved the merger worth £6 billion of NortonLifeLock Inc. and Avast Plc. Both the companies are involved in offering cyber safety software to consumers.

In Phase 1 investigation, the CMA was of the view that the merger had the potential of causing a Substantial Lessening of Competition ('SLC'). However, it reversed its conclusion on conducting the Phase 2 investigation that requires a more stringent test to assess whether the deal raises competition concerns in the market.

After the Phase 2 investigation, the CMA observed that: **i)** the merged company faces significant competition from its main rival, McAfee, other suppliers and security applications provided by Microsoft Corporation itself; **ii)** Microsoft Corporation has improved its bundled security applications to provide protection that is at par with the specialist suppliers of cyber security software and given its unique position in the market as the owner of the Windows operating system, it is likely that this improvement in security applications will strengthen Microsoft Corporation as a competitor in the market; **iii)** the supply of cyber security software is a rapidly evolving market and consumer choices will not be worsened by the deal as the merged business will continue to face sufficient competition after the deal is implemented. Based on the above, the CMA cleared the deal, concluding that the merger will not cause a SLC in the market. ([Press release dated 02.09.22](#))

Joint Venture between Warner Bros. and BT Group Gets the Go-Ahead by the CMA

The CMA, allowed the Joint Venture ('JV') between Warner Bros. Discovery, Inc. ('WBD') and BT Group plc ('BT') which combines WBD's Audio-Visual ('AV') sports content business in the UK and Ireland (Eurosport UK&I), and BT's AV sports content business (BT Sport). The CMA,

considered the effect of the JV and, observed that: **i)** BT Sport has a wider strategic focus acquiring both premium and non-premium sports content whereas Eurosport UK&I only focuses on non-premium AV sports content; **ii)** the parties are not close competitors in the business of acquiring non-premium sports content and there are a range of competitors present in the market to continue competing with the JV; **iii)** BT Sport and Eurosport UK&I are also not close competitors in the wholesale supply of AV sports content or the retail supply of AV sports content. The JV will face competition from competitors like SKY and a degree of competitive restraint from Over-The-Top ('OTT') platforms as well, in both the wholesale and retail markets.

Based on the above analysis, the CMA concluded that the JV will not result in a SLC and approved the JV.

[\(Decision dated 28.09.22\)](#)

Amalgamation of Jio Cinema with Viacom 18 Approved by the CCI

The CCI approved the amalgamation of Jio Cinema OTT platform with Viacom 18 Media Private Limited ('Viacom 18'), following an investment by BTS Investment 1 Pte. Ltd. ('BTS1') and Reliance Projects & Property Management Services Limited ('RPPMSL').

BTS1 has no presence in India and is in the process of raising capital from investors. RPPMSL, a wholly owned subsidiary of Reliance Industries Limited ('RIL') Group, currently owns and operates Jio Cinema. Viacom 18, a JV by RIL Group and Paramount Group, is engaged in the media and entertainment business.

RIL Group, currently, has sole control over Jio Cinema and joint control over Viacom 18 with Paramount Global. Post amalgamation, the RIL Group will have joint control over Viacom 18 (including Jio Cinema), along with Paramount Group and BTS1.

The notifying parties submitted before the CCI that after the amalgamation: **a)** Viacom 18 OTT platform subscribers can continue to access content on the amalgamated OTT platform;



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b) there will be no exclusivity for the amalgamated OTT platforms; **c)** Viacom 18 will be free to offer the amalgamated OTT platforms to third parties/users. The CCI, on assessing the business operations of the parties, observed that: **i)** there was horizontal overlap in the market for retail supply of AV content through OTT platforms in India between Jio Cinema OTT platform, Viacom 18 OTT platforms and the platforms of RIL Group Affiliates; **ii)** based on total watch time, revenue generated from operations of OTT platform and, online advertisements, the combined market share, of these platforms, is 0-5% in the market of retail supply of audio-visual content through OTT platforms and the combined market shares on the basis of monthly active users is less than 20%; **iii)** there are various competitors (like Netflix, Amazon Prime Video, ZEE5, Disney+ etc.) with a larger viewer base and more content; **iv)** there is a vertical overlap in the licensing of content by Viacom 18 (upstream market), and retail supply of audio-visual content through Jio Cinema OTT (downstream market). However, the combined market share of the parties in the upstream market is 0-5% based on revenue. Further, the combination in the downstream market, due to the low market share, does not raise competition concerns.

Based on the above, the CCI approved the amalgamation concluding that it would not have an Adverse Appreciable Effect on Competition.

[\(Order dated 19.09.22\)](#)

The Australian Federal Court Sentences Individuals for Criminal Cartel Conduct for the First Time

The Australian Federal Court imposed a penalty of One Million Australian Dollars on Vina Money Transfer Pty Ltd (**‘Vina Money’**), a Sydney based money remittance business, and sentenced four individuals linked with Vina Money and its competitors for fixing prices of Australian Dollar/Vietnamese Dong exchange rate.

The Australian Competition and Consumer Commission & the Australian Federal Police conducted a joint investigation and found that Vina Money and its competitors agreed to common exchange rates for currency exchanged between Australian Dollar and Vietnamese Dong and to common prices for services offered by them to customers. Vina Money and the four individuals who acted as representatives of Vina Money and its competitors pleaded guilty before the Federal Court.

The four individuals were sentenced to different terms of imprisonment under section 44ZZRG of the Competition and Consumer Act, 2010. However, their prison terms were suspended and they were released immediately on recognisance orders to be of good behaviour. They are the first individuals to be sentenced under the criminal cartel offence since the criminalization of cartels back in 2009.

[\(Press release dated 08.09.22\)](#)

Acquisition of GRAIL by Illumina, Denied by the European Commission

The European Commission (**‘EC’**) has prohibited Illumina, Inc. (**‘Illumina’**) from acquiring GRAIL, Inc. (**‘GRAIL’**) to prevent anti-competitive effects in the early cancer-detecting test market. Illumina is an unrivalled supplier of Next-Generation Sequencing (**‘NGS’**) systems for genetic and genomic analysis while GRAIL develops cancer detection tests using Illumina’s NGS systems. These detection tests are crucial for fighting against cancer as the tests can detect different cancers in asymptomatic patients at an early stage.

The EC observed that: **i)** it was important to protect the current innovation race to develop cancer detection tests even while there is uncertainty about the exact results of the innovation race; **ii)** there were no other credible alternatives to Illumina and the market entry barriers were significantly high; **iii)** Illumina has the incentive to foreclose GRAIL’s rivals as the market has high potential and is expected to become very lucrative; **iv)** Illumina can benefit from foreclosing the market due to the high growth potential in the market. Several players are developing cancer detection tests like GRAIL’s and are expected to compete with it in the future if the transaction does not take place.

Further, concerns were raised by market players that Illumina could cut access to its NGS technology or disadvantage them in other ways by increasing prices, degrading quality, or delaying supplies of the NGS systems to gain control of the early cancer-detecting test market.

The EC concluded that the acquisition, if approved, had the potential to cause harm to competition as Illumina would have the ability and the incentive to foreclose GRAIL’s rivals by denying them access to the NGS systems, which is an essential input in developing cancer detection tests.


Illumina submitted remedies for the concerns raised by the EC: **a)** it proposed to open license of some of its NGS patents to other NGS suppliers and not file patent lawsuits to reduce intellectual property related barriers to entry; **b)** it also proposed to commit to conclude agreements with GRAIL’s rivals according to conditions set in a standard contract to ensure access to Illumina’s NGS systems to GRAIL’s rivals.

However, the EC rejected the remedies proposed stating that: **i)** reduced patent related barriers are not sufficient to ensure the emergence of credible alternatives to Illumina’s NGS systems. The patents are due to expire in the short term and even if there are alternatives to Illumina’s NGS systems, switching providers of NGS systems is a long and costly process for GRAIL’s rivals and, therefore, the remedy of open license is insufficient; **ii)** the commitment proposed by Illumina to conclude agreement with GRAIL’s rivals would not be effective in practice as the agreement proposed does not address all possible foreclosure strategies that Illumina could potentially use; **iii)** it would be easy for Illumina to circumvent their obligations and grant preferential treatment to GRAIL. Therefore, the EC prohibited the acquisition of GRAIL by Illumina.

[\(Press release dated 06.09.22\)](#)

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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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