Competition Law

April 02, 2024	**Sundaram Brake Linings Ltd & Others (Appellant) Vs. Chief Materials Manager, South Eastern Railway & CCI (Respondents)**	**National Company Law Appellate Tribunal** **Competition Appeal (AT) NO.19/2020**

Even an attempt to rig a bid is sufficient to attract the definition of cartelisation under Section 2(c) of the Competition Act, 2002

In the above case Hon'ble NCLAT relienced placed upon the case of State *of Maharashtra V Kamal Ahmed Mohammed Vakil Ansar and others (2013) 12 SCC 17, wherein* it was held in a proceeding under the Competition Act, the strict rules of evidence are not applicable. Admittedly, all the statements are made by witnesses who were the authors/recipients of the emails and have confirmed their interaction with each other. Admittedly the appellant had never challenged the correctness of statements made by the other members and never sought a permission to cross examine them. All the evidence has been construed holistically by the Commission before giving its justification. The oral statements and the email are completely consistent with each other. Moreso in view of the very definition of cartelisation in Section 2(c) of the Act, even an attempt to rig a bid is sufficient to attract the provision.

In alleged anti-competitive conduct in the *Beer Market in India, suo Motu Case No.6 of 2017 and in Federation of Corrugated Box Manufacturers of India etc, Case No.24 of 2017,* it has clearly been held in bid rigging cases mere exchange of information is sufficient to attract the provisions of the Act. The Appellant argued it had never sent any such email and only 'received' such emails and mere 'receipt' of the emails does not amount to 'exchange' of emails, is not acceptable. The appellant continuously 'received' emails for over five years without any protest and never requested the cartel to stop sending such emails to it. This itself indicates a *meeting of mind*…… .

August 14, 2024	**JCB India Limited and Anr (Petitioners) Vs. Competition Commission of India and Anr (Respondents)**	**High Court of Delhi** **W.P.(C) 2244/2014 & CM APPL. 31397/2021**

Brief Facts:

The dispute arose after a suit was filed by JCB India Limited against M/S Bull Machines Private Ltd. seeking an injunction restraining infringement of copyright, piracy of registered design, passing off etc. M/S Bull Machines Private Ltd. then filed cancellation petitions before the Controller of Designs. However, parallelly, an interim settlement was arrived at between the parties.

While the settlement talks were underway, M/S Bull Machines Private Ltd. filed Information under Section 19(1)(a) of the Competition Act, 2002, before the CCI which was registered as a case. The CCI then passed an order directing an inquiry into the matter.

Judgement

The Hon'ble Delhi High Court inter alia observed that continuation of the CCI's proceedings would in effect mean participation by both parties in the inquiry, production of documents, adducing of evidence, reports being prepared by the CCI which could also result in various unintended consequences to the parties. Such a consequence is not even contemplated under the Act. In essence, the CCI's over-involvement, post-settlement would disrupt the harmony and finality that mediation seeks to achieve, undermining trust

in both the mediation process and the regulatory body itself. Competition authorities ought to respect the boundaries of their jurisdiction, ensuring that their role complements rather than conflicts with the resolution of disputes, thereby maintaining a fair competitive market environment without overstepping their mandate.

Further, the Hon'ble High Court said that mediation processes and settlements have to be recognised and acknowledged by all Courts/fora where disputes are pending. Regulatory authorities such as the CCI are no exception to the same. It is imperative that the CCI and similar bodies honour the outcomes of mediation and respect the settlements reached between parties. By doing so, they not only uphold the legitimacy and reliability of the mediation process but also foster a legal environment where parties are encouraged to resolve disputes amicably without fear of subsequent regulatory interference. Furthermore, when regulatory authorities like the CCI respect mediation settlements, it prevents the undermining of negotiated agreements and protects parties from the threat of ongoing inquiries. This recognition reinforces the concept that mediation is not merely a preliminary step but a conclusive process that provides binding and enforceable outcomes.

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03/01/2024	Yogesh Pratap Singh vs. PVR Ltd	Competition Commission of India Case No. 40 of 2022

Brief facts:

The Informant alleged that the OP, by virtue of controlling more than half of the upscale multiplex screens in India, is in a dominant position in the film exhibition market and has abused its dominance by according special treatment to films of powerful and monetarily affluent production houses and constraining the entry of films by independent filmmakers. It is also stated that OP has indulged in cartelization and vertical integration by entering into business of film production, film distribution and film exhibition with the big production houses.

Judgement

The Commission notes that the primary grievance of the Informant stems from the alleged discriminatory treatment by OP in allocation of screens for exhibition of movies. It has been alleged that OP allocates almost all of its screens to films produced by large production houses which leaves no place for films produced by independent filmmakers. Furthermore, vertical integration by OP in the film exhibition industry which may squeeze out competition has also been alleged by the Informant.

With regard to the allegation of allocating almost all its screens to films produced by large production houses, the Commission notes that OP has submitted evidence of exhibiting Informant's film titled as 'Kya Yahi Sach Hai' alongside blockbuster commercial movie 'Don 2'. Further, it has been submitted that the Informant's film earned a collection of merely Rs. 3 lakhs in 90 allocated shows across 11 different locations.

With regard to the allegation that the OP has vertically integrated itself with production, distribution and also exhibition of films, the Commission notes that the vertical integration per se is not prohibited under the provisions of the Act. Furthermore, the Informant has not adduced any evidence in this regard to substantiate the allegations. On the other hand, OP has submitted that films produced by independent filmmakers were exhibited alongside exhibition of films produced by large production houses. It has also been submitted that in FY 2022-23, majority of the films exhibited at the OP's theatre as well as revenue earned from them were produced or distributed by third-party. Accordingly, OP has submitted that there can be no question of foreclosure to the films produced or distributed by the third- party. The Commission finds force in the argument of OP.

With regard to the allegation of preferential treatment being afforded to the large production houses, the Commission notes that OP has stated that most of the terms including the revenue sharing terms, agreed to with all producers/distributors are largely the same, regardless of whether they are independent filmmakers or large production houses. Further, OP has submitted that the agreement for exhibition of movies at OP's multiplexes is prepared by the producers/distributors of the films themselves and not the exhibitors like the OP.

As far as allegations of discriminatory screen allocations, the Commission notes that the OP has submitted that the allocation of screens is being done following criteria such as revenue generating potential of the movie, excitement/buzz around the film, marketing, advertising and promotions done, historical data (admission/box office revenue) of films of similar genres, previous review of the film maker, selection team's estimate of box office collection, language of the film and cast & crew etc. It has further been submitted that the guiding factor for selection of films and screen allocation is maximization of footfalls and revenue.

The Commission is of the view that the commercial wisdom of the exhibitors is largely governed by

consumer demand and unless harm to competition is apparent, any intervention will only lead to undesirable consequence by taking away the autonomy of such undertaking and substituting the decision of such entity by the decision of the regulator. In the realm of competition law, it is widely understood that firms have an autonomy to choose their trading partners as long as the exercise of such autonomy does not affect the fair functioning of the markets. The Commission in its various orders has upheld the freedom enjoyed by the enterprises in the market subject to compliance of the provisions of the Act.

Based on the justifications provided in preceding paragraphs, the Commission is of the view that there must be autonomy available to the exhibitors to deal with movies the way they want, in alignment with their business requirements and subject to provisions of the Act. In this vein, nobody can ask for an absolute right to deal with a particular business. Similarly, there is no absolute right of refusal. This will depend upon the facts and circumstances of each case. Thus, the right to choose a movie for exhibition lies with OP and this freedom cannot be curtailed by compelling it to exhibit the movie of the Informant unless and until it causes any harm to competition.

Against the aforesaid backdrop, the Commission is of the opinion that, prima facie, as there appears no discernible competition concern in the matter.

15/03/ 2024	**People Interactive India Private Limited vs. Alphabet Inc & Ors**	**Competition Commission of India** **Case No. 37 of 2022**

Brief Facts:

The Informants have alleged that the OPs have abused their dominant position in the relevant markets in the following manner:

- Google is charging 11% or 26% commission from the app developers even on payments made through ABS and thus, Google is charging commission for the services which it is not even providing. The same is alleged to be unfair for app developers.
- Google's imposition of an excessive service fee / commission on app developers for processing payments through the GPBS and for processing payments through ABS under UCB.
- Google's imposition of an excessive service fee leads to app developers having less resources at their disposal to improve/develop their app offerings, restricting development in the app market.
- Google imposes a discriminatory and disproportionate service fee / commission on app developers who offer paid downloads and IAPs and reduce the incentives of app developers to monetise their apps or develop paid apps thereby denying market access to such app developers in the market.

Judgement

It is noted that the Informants are primarily aggrieved by the billing policy of Google for in-app purchases and paid apps. The Informants have alleged that Google is abusing its dominant position in the relevant market by imposing its payment policy and thus, is in violation of various provisions of Section 4 of the Act.

The Commission is of the prima facie view that Google has imposed unfair price in violation of Section 4(2)(a)(ii) of the Act which warrants a detailed investigation. Moreover, it appears that such imposition results in app developers having fewer resources to enhance or develop their app offerings, thereby constraining the growth of the app market, which appears to be in violation of Section 4(2)(b)(ii) of the Act.

Additionally, Google's imposition of unfair service fee on app developers could force them out of the market

or deter them from entering due to increased operational costs, thus denying market access to these developers. This behaviour also curtails the freedom of app developers to select their business model and user engagement methods. Furthermore, Google's discriminatory and disproportionate service fee on developers offering paid downloads and IAPs appears to be diminishing incentives for app monetization and paid app development, further obstructing market access for such developers, potentially violating Section 4(2)(c) of the Act.

The Commission notes that Google claims that service fee is charged for multitude of services provided by Play Store to app developers. Taking this forward, if the service fee is for the services rendered to app developers, then the reasoning given by Google i.e., consumption of content within the app, for not charging Physical Delivery Apps, does not appear to be reasonable. This issue assumes importance in view of the fact that various Physical Delivery Apps are very large in size and yet do not contribute towards recoupment of Google's investment in Play Store (as claimed by Google). Extending this further, it is not clear as to why consumption only apps have been allowed relaxation when their content is consumed within the app. On the whole, the applicability of service fee seems to be arbitrary and discriminatory.

In this regard, the Commission also takes cognisance of submissions made by the Informants that Google has not provided any objective metric or rationale for distinguishing between digital content/services and physical content/services, and it arbitrarily determines whether a particular content/service is physical or digital, leading to inconsistent categorizations.

It has been further submitted that the primary function of apps categorized as "dealing in physical goods" is to operate an online platform connecting users with goods or service providers. For instance, dating apps which enable users to connect with others digitally and then meet in person, are considered as offering digital content/services by Google. Conversely, apps providing transportation services (like Uber and Ola), online shopping (like Amazon and Flipkart), food ordering (like Zomato and Swiggy), or home services (like Urban Company) allow users to connect with and book the service providers. Subsequently, users of these apps meet these providers in the physical world to avail themselves of the services. These apps are classified by Google as offering physical content/services.

It has also been alleged by IBDF/IDMIF that Google is also discriminating amongst similarly placed apps in the OTT industry itself. For example, the app Amazon Prime Video app offers IAPs (subscription of its Prime service, movies for rent and access to other channels such as BBC iPlayer, Lionsgate Play) but the use of GPBS has not been mandated on that app so it is free to use its own embedded payment system. It is therefore, alleged that Google is selectively and arbitrarily imposing its Payments Policy upon certain app developers in a discriminatory manner.

In view of the foregoing, the Commission is of the prima facie view that Google has violated the provisions of Section 4(2)(a), 4(2)(b) and 4(2)(c) of the Act, as elaborated supra which warrants detailed investigation.

18/12/2023	**Ultratech Cement Ltd vs. Competition Commission of India & Anr**	**Delhi High Court** **W.P.(C). No. 9854of 2023**

Brief facts:

The present Writ Petition was filed under Article 226 seeking the issuance of a writ of certiorari or any appropriate writ for quashing the impugned Order passed by Respondent No.1, Competition Commission of India (CCI), allowing the impleadment application of the Respondent No. 2, Builders Association of India, in an ongoing proceeding before the CCI titled, Suo Moto Case No. 2 of 2019, to investigate allegations of cartelisation and price manipulations of Grey Cement Manufacturers.

Judgement

An impleadment of a party even at subsequent stages, therefore, is not a conclusive effective determination of any rights and obligations of parties involved, but is merely an action effectuating the enablement of the CCI to reach an informed conclusion on the question of violations under the competition law framework in the country. This is more so relevant in the present scheme of the Competition Act, 2002, under which proceedings are in the nature of rights in rem, as seen above, thereby making the nature of the impleadment not for the benefit of the party being impleaded but rather for the benefit of the CCI to conclusively reach an appropriate decision on the matter before it. This can be clearly seen from the language of Regulation 25 which places the complete onus of satisfaction on CCI as to the twin-test of substantial interest in the proceedings outcome and the necessity in public interest.

It is therefore noted that the nature of the proceedings before CCI being that of 'in rem' and not 'in personam' does not bear a bar on the impleadment of BAI and the provisions of the General Regulations 2009 being Regulation 25 which grants the power to CCI to allow persons or enterprises to take part in the proceedings as done in the present case with Suo Moto Case No. 2 of 2019.

It is to be noted at this juncture that after the rejection of the initial impleadment application of BAI dated 29.11.2021 via an Order dated 29.12.2021 by CCI, BAI approached this Hon'ble Court by way of Writ Petition titled, W.P. No. 8958 of 2022, whereby this Hon'ble Court, in its Order dated 26.09.2022, granted liberty to BAI to approach CCI to participate in the proceedings before Suo Moto Case No. 2 of 2019 in terms of Regulation 25 of the General Regulations 2009 which may be considered by CCI. It is only in view of this Order did BAI, on 27.09.2022, file a fresh application before CCI seeking permission to be impleaded as a party in terms of Section 18 and Section 36 of the Act read with Regulation 25 of the General Regulations 2009. This was finally accepted via the impugned Order dated 05.07.2023.

The application dated 27.09.2022 is therefore, not in the nature of a review application of a previous decision without any intervening facts and circumstances, but it is a fresh impleadment application filed in view of the liberty granted by this Hon'ble Court in its Order dated 26.09.2022. Moreover, the adequacy of the satisfaction of CCI at this juncture, keeping in mind the context of the case such as orders by this Hon'ble Court including the proceedings of the Suo Moto Case No. 2 of 2019 being at a different stage that before, cannot be interjected by this Court via its writ jurisdiction.

The procedural safeguards for sharing information obtained under the proceedings of CCI with different parties to such proceedings within the framework of the Competition Act is dealt with under Section 57 of the Act. The intent of the provision as extracted below can be construed in the backdrop of enquiries under the Act being more often than not, necessarily conducted on the basis of sensitive commercial information of the players involved to determine whether they are indeed offending parties under the Act.

The Petitioner contended that the impugned Order dated 05.07.2023 is ultra vires Section 57 of the Act as it entails sharing information obtained via the course of the proceeding in the Suo Moto Case No. 2 of 2019, despite lack of written consent of the enterprises involved. The impugned Order categorically mentions that in addition to the application for impleadment by BAI, the request made by BAI to allow the inspection of non-confidential record ought to be done in terms of Regulation 37(1) of the General Regulations 2009.

It is therefore clear that the impugned Order passed by CCI does not ensue the grant of confidential records of proceedings to BAI. Moreover, it is also clear that the grant of non-confidential information is also explicitly recorded to be done within the bounds of Regulation 37(1) which can only be exercised subject to conformity with the safeguards enumerated within Section 57 of the Act and Regulation 35 of the General Regulations 2009 as noted above.

The contention of the Petitioner that adequate safeguards under Section 57 have been ignored by CCI in its passing of the impugned Order cannot be accepted by this Court. The requisite procedural provisions on

sharing information with parties to the proceedings have been duly paid attention to and followed by CCI as far as the impugned Order dated 05.07.2023 challenged in the present Writ is concerned. Finally, the Petitioner's claim that a compensation application may be filed by BAI under Section 53N of the Act instead of pressing for impleadment under Regulation 25 and that it is an effective alternate remedy, cannot be accepted by this Court.

It is evident that the stage at which compensation under Section 53N can be invoked is that of an Appellate Stage, post the final orders of CCI in any proceedings initiated before it. Therefore, at the present stage of proceedings in the Suo Moto Case No. 2 of 2019, invoking Section 53N is neither an option for the Petitioner, nor is there any reason to prefer an application for compensation when there exists a carved-out provision in the form of Regulation 25 which allows the party to take part in the proceedings before the CCI after its satisfaction. The fact that the proceedings under the Competition Act apply in rem is of no consequence when the CCI is adjudicating the allegations regarding the cartelization and price manipulation.

In the view of the above, this Court is not inclined to entertain the present Writ Petition which prays for quashing of the impugned Order dated 05.07.2023 passed by the CCI. This Court is not in agreement with the contentions put forth by the Petitioner, and the petition is therefore dismissed. Pending applications, if any, also stand dismissed.

15/12/2023	**Deepak Kumar vs. AIR India Ltd & Anr**	**Competition Commission of India** **Case No. 32 of 2023**

Brief facts:

The Informant is an individual who is a former pilot with Air India Limited. The OP is an airlines company operating domestic and international flights in India. In 2022, OP was acquired by Tata group. Subsequently, the Commission vide its order dated 01.09.2023 approved the merger of Tata SIA Airlines Limited into the OP, and the acquisition of certain shareholding by Singapore Airlines Limited in the OP, subject to compliance of voluntary commitments offered by the parties.

The Informant seems to be aggrieved by such merger of Tata SIA Airlines Limited and Air India Limited. As per the Informant, the same has led to an adverse impact on his career and service record. The Informant has alleged that under the garb of the said transaction, the Informant's service records have been maliciously destroyed by the OP. The Informant has also made allegations of criminal nature against certain individuals, alleging their complicity in such actions of the OP.

Based on the above, the Informant has filed the present Information seeking relief that merger of Air India Limited with any other airline or business group be not approved by the Commission.

Judgement

The Informant has inter alia alleged contravention of the following provisions of the Act by the OP:

- Tata Group and the OP have formed a cartel as Singapore Airlines is trying to acquire share in the OP by concealing all material facts related to the service of the Informant.
- There exists bid-rigging in the process adopted for acquisition of Air India Limited.
- Principal Employer of the Informant i.e., the OP, is refusing to deal with the Informant.
- The OP is abusing its dominant position by (i) directly and indirectly imposing prohibitory orders upon the Informant; (ii) limiting and restricting the scientific and technical development of the Informant's

career as a pilot; (iii) adopted predatory practices against the Informant; and (iv) denying him market access by withholding his service records/ not approving his flying records/ destroying his service records/ fabricating the public registers/ creating false documents, to screen the accused persons and defaming the Informant by making grave remarks about him in his removal from service records, which is not only to the prejudice of the Informant but also to the end consumers and passengers who are general public not knowing such dishonest intentions.

From the documents annexed with the Information, the Commission notes that there is no evidence placed on record by the Informant which may suggest any case of cartelisation or bid rigging. Rather, there seems to exist an inter-se dispute relating to the service of the Informant between the Informant and the OP.

In view of the Commission, no competition issue or concern arises from the facts and allegations stated by the Informant. As such, the Commission is of the considered opinion that no prima facie case of contravention of any provisions of the Act can be made out against the OP in the present matter. Hence, the matter is directed to be closed in terms of the provisions contained in Section 26(2) of the Act.