

# Inter alia...



**AZB & PARTNERS**  
ADVOCATES & SOLICITORS

MARCH 2018 • SPECIAL EDITION • STRICTLY FOR PRIVATE CIRCULATION

## In This Issue

PAGE

- 2 : Competition Commission of India Examines  
Google's Products in India
- 3 : Behavioral Cases
- 8 : Combination

*Inter alia...* is a legal newsletter published each quarter by AZB & Partners for a select list of clients and colleagues. Each issue aims to provide a snapshot of the recent legal developments in certain critical areas: infrastructure, foreign direct investment, securities law, exchange control regulations, corporate law, media and entertainment, intellectual property and banking. When a significant development demands it, *Inter alia...* is published as a Special Edition to provide an indepth analysis of that development. We hope you will find the content informative and useful. If you have any questions or comments, please email us at: [editor.interalia@azbpartners.com](mailto:editor.interalia@azbpartners.com) or call AZB & Partners.



**AZB & PARTNERS**  
ADVOCATES & SOLICITORS

**MUMBAI:** AZB House | Peninsula Corporate Park | Ganpatrao Kadam Marg | Lower Parel | Mumbai 400013 | India | TEL +91 22 66396880 | FAX +91 22 66396888 | E-MAIL [mumbai@azbpartners.com](mailto:mumbai@azbpartners.com)

**MUMBAI:** Sakhar Bhavan | 4th Floor | Nariman Point | Mumbai 400021 | India | TEL +91 22 66396880 | FAX +91 22 49100699 | E-MAIL [disputeresolution.mumbai@azbpartners.com](mailto:disputeresolution.mumbai@azbpartners.com)

**DELHI:** AZB House | Plot No. A8 | Sector 4 | Noida 201301 | National Capital Region Delhi | India | TEL +91 120 4179999 | FAX +91 120 4179900 | E-MAIL [delhi@azbpartners.com](mailto:delhi@azbpartners.com)

**GURGAON:** Unitech Cyber Park | 602 Tower-B | 6th floor | Sector 39 | Gurgaon 122001 | National Capital Region Delhi | India | TEL +91 124 4200296 | FAX +91 124 4038310 | E-MAIL [gurgaon@azbpartners.com](mailto:gurgaon@azbpartners.com)

**BANGALORE:** Embassy Icon | 7th Floor | Infantry Road | Bangalore 560 001 | India | TEL +91 80 42400500 | FAX +91 80 22213947 | E-MAIL [bangalore@azbpartners.com](mailto:bangalore@azbpartners.com)

**PUNE:** Onyx Towers | 1101-B | 11th floor | North Main Road | Koregaon Park | Pune 411001 | India | TEL +91 20 67256666 | FAX +91 20 67256600 | E-MAIL [pune@azbpartners.com](mailto:pune@azbpartners.com)



AZB & PARTNERS  
ADVOCATES & SOLICITORS

*Inter alia...*

## Competition Commission of India Examines Google's Products in India

After an inquiry spanning over six years, Competition Commission of India ('CCI') has examined a number of Google products offered in India—ranging from its search designs and ads platform to its syndication agreements and trademark policies, and issued its decision pursuant to such examination on February 8, 2018. Continuing with its recent enforcement trend in the technological sector, CCI has acknowledged that intervention in technological markets should be limited, and recognized that Google has been instrumental in revolutionizing the manner in which users access information on the internet. In its decision, CCI has endorsed most of Google's products and practices in India that it reviewed – including some of Google's popular products like Google maps, ad platforms, OneBox, etc.

On three counts, however, majority composition of CCI (i.e. four out of six commissioners who examined the case) ('Majority Commissioners') has identified certain concerns with three components of Google's services in India – (a) Google's historic (i.e. pre-2010) display of universal results; (b) labeling of Google's flight units; and (c) one clause in Google's direct search intermediation agreement which Google negotiates with publishers who wish to have Google's search functionality on their website. The two dissenting commissioners ('Minority Commissioners') did not agree with the Majority Commissioner's views on the three infringement counts noted above, observing that much of what the Majority Commissioners had held was entirely hypothetical and called for an effects-based analysis in abuse of dominance cases rather than applying the *per se* rule. The key findings of CCI are summarized below.

### Search designs

On examining Google's internet search products, CCI defined two separate relevant markets, i.e. the market for 'Online General Web Search Services in India' and for 'Online Search Advertising in India'. On the former, which relates to the display of free search results, CCI noted that users offer 'indirect consideration' to Google in the form of their attention and personal information. CCI then departed from the findings of contravention of the Director General ('DG'), and held that: (a) it was not necessary for the 'More Results' link on Google's universal results<sup>1</sup> to lead to third-party service providers since doing so would confuse users, rather than serve any useful purpose; (b) the display of Google Maps alongside a search query enhances user-experience; and (c) the information contained in Google OneBox are focused on providing the most relevant result to a user.

Although CCI found no concerns with Google's existing search results designs, the Majority Commissioners found that prior to October 2010 (i.e. well before the commencement of CCI's investigation against Google), Google's search design displayed universal results at certain 'fixed' positions on its search page. Despite noting Google's submission that it did not have requisite technology at the time to carry out relevant comparison for positions on the result page, CCI held that the display of 'fixed positions' back in October 2010, on account of these 'fixed positions' raised concerns as to its relevance. The Minority Commissioners disagreed with the Majority Commissioners and noted that the conduct itself was historical and the harm caused purely speculative, since limiting the display of universal results to fixed positions did not, by itself, mean that they were any less relevant. The Minority Commissioners further noted that Google's voluntary transition to the fully-floating regime well before the initiation of CCI's inquiry obviates the need for any regulatory intervention.

### Commercial units

Commercial Units are result types that Google sets apart in ad space and distinguishes from search results with a "Sponsored" label. CCI considered whether Google's display of commercial units in India (i.e. for shopping and flights) misled users. Majority Commissioners observed that Google's flight unit (but not shopping), which allows users to compare flights from various airlines, mislead users. Finding that flight units were appropriately labelled as being 'Sponsored', the Majority Commissioners nevertheless found that flight units are prominently placed on Google's results page, take up a disproportionate space, and contain a link which leads to a 'Google's Flights page' as opposed to a third-party website. Accordingly, the Majority Commissioners found the flights unit to be 'misleading' and directed Google to indicate that the 'Search Flights' link leads to Google's Flights page and not that of a third-party service provider.

The Minority Commissioners pointed out that an examination into Google's flight unit and the apprehension that it was misleading users, ought to have been carried out after analyzing actual user behavior, user preferences, flow of user traffic, etc. The Minority Commissioners

<sup>1</sup> Universal Results group results for a specific type of information such as news, images, local businesses etc.

noted from review of data on file that: (i) Google's users are able to distinguish between free and paid results (as Google's top-ads do not attract maximum clicks, but generic search results do); (ii) users clicked far less on the Google Flights results page as compared to clicks that went through to leading travel and flight comparison sites such as Makemytrip, Goibibo, Cleartrip, etc. Absent evidence of foreclosure or users being misled, the Minority Commissioners did not find Google flights unit to be anti-competitive.

### Google's advertising platform and policies

Google's AdWords enables advertisers to bid for ads that appear alongside search results. The primary complaint of Bharat Matrimony.com, one of the complainants in this case, was against Google's AdWords platform and policies, alleging them to be anti-competitive. However, after examining Google's AdWords platform in the market for 'Online Search Advertising in India', CCI held AdWords Platform (and related policies) to be fully compliant with the Competition Act, 2002 ('Competition Act'). In doing so, CCI noted that Google's keyword bidding policy that permits advertisers to bid on keywords, including those that may be trademarked, along with its trademark policy, do not infringe provisions of the Competition Act. CCI also found no fault with Google's terms and conditions for the use of its 'AdWords Application Programming Interface' (which allows advertisers and third-party developers to use automatic ad campaign management tools). CCI noted that advertisers had several tools that allow them to export their AdWords campaign data.

### Google's distribution and syndication agreements

CCI also examined a range of clauses in Google's agreements with its distribution and syndication partners. Google's distribution agreements allow web browser providers to incorporate 'Google search' functionality into their web browsers. CCI found that Google being the 'default search engine' on web browsers such as Apple's Safari and Mozilla Firefox does not result in exclusivity since partners were free to provide their users with other search options. Further, Google's intermediation agreements permitted website owners to incorporate Google's search and ad technologies on their websites. CCI found no exclusivity concerns with a range of clauses that it examined in (a) Google's online intermediation agreements; and (b) Google's search ad intermediation agreements. It also rejected other allegations against Google's agreements in relation to disclosure of revenue share and providing arbitration outside India, as they presented no antitrust concerns.

CCI did however find exclusivity concerns with one template clause in Google's online direct search intermediation agreement as per which publishers were not to implement search technologies on their sites that are "same or substantially similar" to Google's. On this finding too, the Minority Commissioners pointed out *inter alia* that the Majority Commissioners had not defined a relevant market for search syndication services, and therefore a finding of anti-competitive leveraging was not sustainable. Minority Commissioners also noted the lack of any testimony or evidence that suggests that this clause hindered competition or was "imposed" by Google on any partner.

---

## Behavioral Cases

---

### CCI orders investigation against Gujarat State Load Dispatch Centre for abuse of dominance<sup>2</sup>

On January 31, 2018, CCI directed investigation against Gujarat Energy Transmission Corporation Limited ('GETCO'), State Load Dispatch Centre, GETCO Gujarat ('SLDC-GETCO'), and Paschim Gujarat Vij Company Limited ('PGVCL') based on an information filed by HPCL-Mittal Pipelines Limited ('HPCL') alleging abuse of dominance under Section 4 of the Competition Act.

HPCL, an industrial electricity consumer, had sought permission from SLDC-GETCO to procure electricity through 'open access mechanism' as provided for under the Electricity Act, 2003 ('Electricity Act'). The open access mechanism allows large users of electricity to purchase cheaper power from a source other than the distribution licensee licensed to supply power to a particular area. Pursuant to the Electricity Act, SLDC-GETCO is the sole authority entrusted with the power to approve or disapprove open access requests. It was alleged by HPCL that SLDC-GETCO indiscriminately rejected its requests for open access transmission on 12 different occasions, even though HPCL had satisfied all the pre-requisites, on various grounds that were unfair, un-

---

<sup>2</sup> Case No. 39 of 2017.



AZB & PARTNERS  
ADVOCATES & SOLICITORS

*Inter alia...*

reasoned and reflected non-application of mind. Further, HPCL alleged that the requests were rejected by SLDC-GETCO in order to ensure that HPCL only sourced its demand of electricity through PGVCL, a subsidiary of SLDC-GETCO, engaged in the downstream market for distribution and retail sale of electricity. HPCL alleged that SLDC-GETCO imposed unfair and discriminatory conditions by denying open access permission and thereby restricting the production of electricity, denying market access to the power generators, and manipulating the downstream distribution market in favor of its subsidiary (i.e. PGVCL).

CCI delineated the relevant market as the ‘market for services relating to use of transmission facility for availing open access electricity in the State of Gujarat’. It observed that SLDC-GETCO held 100% market share in this market, being the nodal agency having the sole prerogative to allow open access permission. Therefore, SLDC-GETCO was held to be in a dominant position in the relevant market.

CCI found irregularities and lack of a justifiable cause in SLDC-GETCO’s conduct. CCI was of the *prima facie* view that SLDC-GETCO had leveraged its dominant position in the relevant market for use of transmission facility to adversely affect the competition in the downstream market, where it was present through its group entity PGVCL. CCI found that such unreasonable and exclusionary conduct warranted investigation under Section 4 of the Competition Act.

### **CCI dismisses allegations of abuse of dominance filed by plot owner against real estate developer in Bengaluru<sup>3</sup>**

On January 4, 2018, CCI dismissed an information filed against DS-Max Properties Private Limited (‘DS-Max’) by Mr. Induhar M. Patil. The informant alleged the contravention of Section 4 of the Competition Act by DS-Max.

Mr. Patil had purchased a plot of land under the ‘Charming Heights’ project of DS-Max in Bengaluru for a total consideration of ₹14,92,500, of which ₹10,00,000 had to be paid in cash as DS-Max had refused to take this amount by way of a cheque. CCI noted that Mr. Patil was aggrieved with the fraudulent sale of land as a residential plot by DS-Max, which was originally allotted by the Karnataka Government to Scheduled Castes/Scheduled Tribes free of cost. DS-Max allegedly misled the buyers into purchasing the residential plots by promising to provide various amenities on this land and, subsequently, did not provide the concerned services which rendered the plot unlivable for Mr. Patil.

CCI opined that though the agreement and the sale deed were entered into in 2006-2007 (before the relevant provisions of the Competition Act came into effect), the effects of the agreement and the sale deed were continuing, and the same could therefore be examined under the Competition Act. CCI opined that the case related to money laundering, corruption, and unfair practices, and did not raise any competition concerns. Moreover, no case under Competition Act could be made out since DS-Max was not in a position of dominance in the relevant market of ‘provision of services for development and sale of residential plots in Bengaluru’. Within this relevant market, there were several other real estate developers, selling residential plots, along with many plot owners selling their property through dealers or on online platforms, such as *magicbricks.com* and *99acres.com*. In the presence of a number of players in the relevant market, DS-Max was held not to be dominant.

### **CCI dismisses allegations of abuse of dominance against SKF India Limited<sup>4</sup>**

On January 24, 2018, CCI dismissed an information filed by Asmi Metal Private Limited (‘Asmi’) against SKF India Limited (‘SKF’), alleging abuse of dominance under Section 4 of the Competition Act. Asmi was *inter alia* engaged in the business of supplying customized bearings to SKF as per its specific requirements, which SKF further sold in the market for automobiles and electrical products. It was alleged that SKF forced Asmi to make irrelevant expenditures on expansion of manufacturing facilities based upon assurances of refunds and subsequently defaulted on these payments. Further, it was alleged that SKF induced Asmi into undertaking various commitments at its behest and thereafter indiscriminately, denied any liability towards the losses incurred by the Asmi. The entire chain of events occurred over a period of time spanning from 2004 until 2017.

CCI noted that most of the instances of the alleged abuse of dominance took place before the Competition Act came into effect in the year 2009 and therefore, only assessed the conducts that either continued or took place post 20 May 2009.

CCI referred to its earlier decisions to define the market as the ‘market for industrial bearings in India’ without further distinguishing between various classes of such bearings. In its examination of the key players in the relevant market, CCI noted that while there were three top companies in the relevant market, including SKF, none of the players enjoyed a position of

<sup>3</sup> Case No. 64 of 2017.

<sup>4</sup> Case No. 66 of 2017.

strength for a long duration. Further, CCI also noted that imports accounted for around 44.8% of the market for mechanical bearings and posed competitive constraint on domestic manufacturers' ability to raise prices. Accordingly, CCI held that SKF was not in a dominant position and therefore, its conduct could not be examined under Section 4 of the Competition Act.

### CCI dismisses allegations of bid-rigging in UP electricity tender<sup>5</sup>

On January 24, 2018, CCI dismissed an information filed by Mr. Arun Mishra, against 17 individuals and companies ('OPS'), for participation in an alleged bid rigging in contravention of Section 3(3)(d) of the Competition Act. The alleged bid rigging related to a tender floated by UP Power Corporation Limited ('UP Power Corp') in 2013 for procurement of 6000 MW of electricity. OPS No. 1 to 4 were the erstwhile government officials of various government departments or companies in the State of Uttar Pradesh, whereas OPS No. 5 – 17 were the companies that participated in the tender and engaged in the business of power generation.

It was contended that OPS No. 1 to 4 colluded with OPS No. 5-17 in accepting a new higher tariff of ₹5.90 per unit, against the previously decided tariff of ₹5.09 per unit. It was further alleged that such increase in the tariff was achieved on account of collusion between the bidders.

As also in the case involving GETCO discussed above, the OPS raised the objection that CCI had no jurisdiction in the instant matter as the issues fell within the purview of Electricity Act, where the Uttar Pradesh Electricity Regulatory Commission was the concerned authority. CCI took the view that it had the jurisdiction to proceed with issues that pertained to anti-competitive conduct and proceeded on this basis.

As regards the collusion alleged between OPS No. 1-4 and OPS No. 5-17, CCI held that OPS No. 1-4 were only government officials and were not engaged in the same business as that of OPS No. 5-17. As such, Section 3(3)(d) of the Competition Act covers an anti-competitive agreement between parties that are engaged in the same trade or area of practice. Further, as regards the alleged collusion between OPS No. 5 – 17, CCI held that the only evidence provided by the informant related to a meeting in Hotel Leela, Gurgaon, but the said meeting was only attended by officials of one enterprise i.e. OP No. 6 and therefore, could not be viewed as an evidence of meeting with competitors for fixing bid prices. Therefore, CCI held that no substantiating evidence was brought on record to prove even a *prima facie* indication of an agreement and passed a closure order under Section 26(2) of the Competition Act.

### CCI dismisses information by Industries and Commerce Association against coal companies<sup>6</sup>

On February 6, 2018, CCI dismissed an information filed by the Industries and Commerce Association ('ICA'), comprising of 72 small scale industries that are involved in the manufacture and sale of hard coke, against Coal India Limited ('CIL'), its subsidiary Bharat Coking Coal Limited ('BCCL'), and the Ministry of Coal ('MoC') alleging contravention of Section 4 of the Competition Act.

By way of background, National Coal Distribution Policy, 2008 ('NCDP') was introduced by the MoC basis which the ICA was required to procure coal through following mechanism: 75% of its total requirement through Fuel Supply Agreements ('FSAs') at notified prices to be fixed/declared by CIL, and the remaining 25% through e-auction/imports. More recently, the MoC issued guidelines in 2016 ('2016 Guidelines') addressed to CIL, directing that none of the existing FSAs would be renewed and the members of ICA would be required to procure coal through e-auction process post expiry of the existing FSA.

The ICA challenged various terms of the existing FSAs that were due to expire in 2018 ('Existing FSAs'), relating to calculation of the price of coking coal, deemed delivery quantity, renewal terms, and security deposits, as being unfair. The ICA challenged the e-auction process (through which it procured 25% of its requirement) as being (i) unfair in imposing 10%-20% higher prices on coal and (ii) discriminatory between those purchasers who procure coal by way of FSAs and those who don't. The ICA also alleged that the proposed 2016 Guidelines which required ICA to procure its entire requirement through e-auction is unfair and would lead to excessive pricing of coal, given that CIL is a monopolist. The ICA further challenged the certain terms of the model FSA proposed to be entered into as part of the e-auction as per the 2016 Guidelines.

In order to bring the above challenge to 2016 Guidelines within the purview of the Competition Act, ICA alleged that MoC is an 'enterprise' within the meaning of Competition Act and the purpose of 2016 Guidelines was to generate supra-normal profits by generating profits through companies under its control. Further, ICA alleged that BCCL, CIL and MoC formed a part of same group under the provisions of the Competition Act.



**AZB & PARTNERS**  
ADVOCATES & SOLICITORS

*Inter alia...*

<sup>5</sup> Case No. 43 of 2017.

<sup>6</sup> Case No. 60 of 2017.



As regards the allegation pertaining to unfair condition under the Existing FSAs, CCI was of the view that the ICA, which had entered into two consecutive FSAs since the introduction of the NCDP in 2013, had filed the information at a belated stage i.e. at the time only when the second FSA was expiring. CCI noted that the actual trigger for the information was the update in the policy as per the 2016 Guidelines.

Further, CCI rejected ICA's contention that the MoC is an 'enterprise' under the provisions of the Competition Act, reasoning that the policy making function of MoC did not fall within the category of economic activity in order to satisfy the definition of the term 'enterprise'. In view of the above, ICA's contention that CIL, BCCL, and the MoC constituted a 'group' was categorically dismissed. CCI held that the challenge to the 2016 Guidelines was speculative and premature since the e- auction had not yet taken place, the model FSA was not yet implemented and, therefore, the allegations did not merit an investigation.

### **NCLAT dismisses allegations of abuse of dominance against Lucknow Developers for lack of substantial evidence<sup>7</sup>**

On January 22, 2018, the NCLAT dismissed an appeal filed by Ms. Usha Roy against an order of CCI dismissing the information filed against ANS Developers Private Limited ('ANS') and Shalimar Corporation Limited ('Shalimar'). Ms. Roy had raised similar allegations against ANS and Shalimar in a previous case that was closed by CCI as no *prima facie* case was made out. Ms. Roy argued that CCI's decision to dismiss the present information was incorrect since the present decision was based entirely on the reasoning of the previous case, and new evidence brought on record in the present case was not considered.

Ms. Roy alleged that the agreement entered into with ANS for the purchase of residential property had certain anti-competitive clauses, which placed excessive liabilities on Ms. Roy for delays in payment, whereas the ANS had no liability to pay interest for any delay on its part. It was also alleged that the agreement by ANS and Shalimar to use their position as the developer of the integrated township to enter into the market of providing medical facilities was anti-competitive. However, CCI opined that there were several significant and major real estate developers in the relevant market, and ANS and Shalimar could not be held to be in a dominant position.

The NCLAT took the view that the instant case was not maintainable merely on the ground that certain new information was provided as no new facts or substantial evidence for the same set of allegations had been brought to the notice of CCI that could differentiate the instant case from the previous one.

### **NCLAT dismisses appeal of real estate buyers alleging abuse of dominance by Earth Infrastructure Private Limited<sup>8</sup>**

On January 23, 2018, the NCLAT dismissed an appeal filed by Ms. Nikunj Sisondia and Ms. Rashmi Raj against an order of CCI dismissing an information alleging abuse of dominant position by Earth Infrastructure Private Limited ('Earth Infrastructure'). Ms. Sisondia and Ms. Raj had booked retail shops in a commercial project of Earth Infrastructure, wherein Earth Infrastructure had agreed to pay an interest of 12% every month till the possession of the retail shops was given. Ms. Sisondia and Ms. Raj alleged that Earth Infrastructure had defaulted on the aforementioned promise and had not made any interest payment since October, 2015.

CCI, while delineating the relevant product market, referred to its previous orders, wherein a distinction had been drawn between residential and commercial real estate as the intention and considerations are different when buying a commercial property when compared with buying a residential property. The relevant geographic market was held to be 'Noida and Greater Noida'. The relevant market was thus delineated as the market for 'provisions of services of development and sale of commercial space in Noida and Greater Noida'. CCI had noted that no data has been provided to support the assertion that Earth Infrastructure was in a dominant position and found that no *prima facie* case was made out in this case.

The NCLAT agreed with the opinion of CCI and held that no evidence was brought on record to assert that Earth Infrastructure was indeed in a position of dominance in the relevant market.

<sup>7</sup> Competition Appeal 34 of 2017.

<sup>8</sup> Competition Appeals 02 and 03 of 2018.

## NCLAT dismisses appeal against M/s Concept Horizons Infra Private Limited alleging abuse of dominance<sup>9</sup>

On January 23, 2018, the NCLAT dismissed an appeal filed by Wing Commander Jai Kishan and Ms. Nikunj Sisondia ('Buyers'), against an order of CCI dismissing an information alleging abuse of dominant position by M/s Concept Horizons Infra Private Limited ('Concept Horizons'). As in the case against Earth Infrastructure discussed above, it was alleged that Concept Horizons was liable to pay an interest of 12% per month to the Buyers but had stopped making these payments since July, 2016. CCI found that in the market for 'residential properties' in the relevant geographic market of 'Noida and Greater Noida', Concept Horizons was not in a position of dominance and that the Buyers had failed to bring on record any evidence to support the same. CCI noted that there were several established large real estate developers in this market and Concept Horizons did not possess market power to act independently of the competitive forces or have the ability to affect its competitors or consumers in the relevant market in its favour.

The NCLAT agreed with the reasoning of CCI and dismissed the instant appeal.

## NCLAT sets aside CCI penalty against D.V. Rajasekhar for non-compliance with DG's investigation<sup>10</sup>

On January 29, 2018, the NCLAT allowed an appeal filed by D.V. Rajasekhar against an order of CCI imposing a penalty of ₹5,00,000 imposed on him for non-cooperation with the investigation of the Director General ('DG'). It was alleged that Mr. Rajasekhar had shown aggressive behavior, delayed his scheduled appearance before the DG, failed to provide documents to the DG as promised, and denied access to his emails. CCI accepted the DG's request to initiate proceedings against Mr. Rajasekhar under Section 43 of the Competition Act and found that Mr. Rajasekhar was attempting to further deny access to the emails. In appeal to the NCLAT, Mr. Rajasekhar was given the opportunity to file an undertaking to provide access to the DG to the disputed documents. The undertaking was filed by Mr. Rajasekhar, and the NCLAT held that subject to compliance to the undertaking, the penalty would be quashed. Taking cognizance that the investigation report had already been filed by the DG, the NCLAT allowed for a supplementary report to be filed by the DG if the new information provided further details.

## Supreme Court passes its judgment in CCI v M/s Fast Way Transmission Private Limited & Ors<sup>11</sup>

On January 24, 2018, the Hon'ble Supreme Court of India ('Supreme Court') quashed the decision of the Competition Appellate Tribunal ('COMPAT') which overturned the order passed by CCI against Fast Way Transmission Private Limited ('Fast Way').

On August 1, 2010, the broadcasters of the news channel 'Day & Night News' ('Broadcasters') entered into a channel placement agreement with the Multi System Operators ('MSOs'), forming part of the Fast Way group, for a period of one year. A notice of termination was served on the Broadcasters, which was alleged to be an act of abuse of dominant position by the MSOs in denying market access to the Broadcasters.

In its order, CCI found that the MSOs were dominant in the relevant market, having 85% of the total subscriber share. CCI opined that the MSOs' reason for termination, that the Broadcasters had low television rating points ('TRP'), and that the MSOs were facing spectrum constraint, were insufficient and mere afterthoughts put forth by the MSOs. Accordingly, a penalty of ₹8,40,01,141 was imposed by CCI on the MSOs.

In appeal before the COMPAT, CCI's order was reversed. The COMPAT held that a broadcaster cannot be said to be a competitor of MSOs, and denial of market access can be caused only by one competitor to another.

The Supreme Court observed that CCI has a positive duty to eliminate all practices that lead to an adverse effect on competition. Distinguishing from the opinion of the COMPAT, the Supreme Court held that for there to be an abuse of dominant position, once dominance is made out, it becomes irrelevant whether the parties are competitors or not. The Supreme Court observed that Section 4(2)(c) of the Competition Act would be applicable for the simple reason that the Broadcasters were denied market access due to an unlawful termination of the agreement between the Broadcasters and MSOs. The Supreme Court noted that the position of dominance of the MSOs was clearly made out, owing to subscriber share of 85% enjoyed by the MSOs in the relevant market of 'Cable TV market in Punjab and Chandigarh' and held that the MSOs acted in breach of Section 4(2)(c) by terminating the agreement, but found that the reasons for



**AZB & PARTNERS**  
ADVOCATES & SOLICITORS

*Inter alia...*

<sup>9</sup> Competition Appeal 04 of 2018.

<sup>10</sup> Competition Appeal 07 of 2017.

<sup>11</sup> Civil Appeal 7215 of 2014 (Order dated January 24, 2018).



AZB & PARTNERS  
ADVOCATES & SOLICITORS

*Inter alia...*

termination provided by the MSOs were justified, and therefore quashed the penalty imposed by CCI.

---

## Combination

---

### CCI approves acquisition of shares by Dai-ichi Life Holdings Inc. in Union Asset Management Company Private Limited<sup>12</sup>

On December 19, 2017, CCI approved an acquisition of 39.62% of shares in Union Asset Management Company Private Limited ('UAMPCL') by Dai-ichi Life Holdings Inc. ('Dai-ichi').

Dai-ichi is a financial services holding company incorporated in Japan, and carries out insurance and non-insurance businesses both in Japan as well as overseas. Dai-ichi has a presence in India by way of Star Union Dai-ichi Life Co. Limited, its joint venture with Bank of India and Union Bank of India. UAMPCL is a wholly-owned subsidiary of Union Bank of India.

CCI, without providing any description of the facts relating to non-compete, observed that the non-compete covenant, to the extent it relates to the scope of products or services of the proposed combination, is beyond what is necessary for the implementation of the proposed combination and therefore, is not ancillary to the proposed combination.

CCI noted that there were no horizontal or vertical overlaps between Dai-ichi and UAMPCL. CCI therefore opined that the proposed combination was not likely to have an appreciable adverse effect on competition in India and issued its approval.

---

<sup>12</sup> C-2017/12/537.





**AZB & PARTNERS**  
ADVOCATES & SOLICITORS

*Inter alia...*

---

FOR FURTHER INFORMATION RELATING TO THIS SPECIAL EDITION, PLEASE CONTACT:



MUMBAI

**ZIA MODY** [zia.mody@azbpartners.com](mailto:zia.mody@azbpartners.com)

**RAHUL RAI** [rahul.rai@azbpartners.com](mailto:rahul.rai@azbpartners.com)



NEW DELHI

**SAMIR GANDHI** [samir.gandhi@azbpartners.com](mailto:samir.gandhi@azbpartners.com)



BANGALORE

**ADITYA BHAT** [aditya.bhat@azbpartners.com](mailto:aditya.bhat@azbpartners.com)



AZB & PARTNERS  
ADVOCATES & SOLICITORS

*Inter alia...*

❖  
Competition & Antitrust Law Firm of the Year  
*Global Leading Lawyers 2017*

❖  
Law Firm of the Year  
*VC Circle, 2017, 2016 & 2015*

❖  
Client Service Law Firm of the Year  
*Chambers Asia-Pacific Awards, 2017*

❖  
Ranked No. 1  
for the M&A Announced League Table by Deal Value and Deal Count  
*Bloomberg's Global M&A, Legal rankings Q1, 2017*

❖  
Rank 1  
for India in the M&A Rankings by Deal Count and Deal Value  
*Mergermarket's Global and Regional M&A League Tables of Legal Advisors, Q1, 2017*

❖  
Rank 1 for PE and M&A Rankings by Deal Count and Deal Value  
*Venture Intelligence League Tables of Legal Advisors, Q1, 2017*

❖  
Ranked No. 1  
for the Indian M&A Announced League Table  
by Deal Completed by Value and Volume  
Ranked No.1  
for the Indian M&A Announced League Table  
by Deal Announced by Volume  
*Thomson Reuters' Emerging Markets M&A Legal rankings Q1, 2017*

❖  
Ranked No. 1  
for the Asia- Pacific M&A Announced League Table by Deal Volume  
*Experian Business Research, M&A Legal Rankings Q1, 2017*

❖  
Best Overall Law Firm of the Year  
*India Business Law Journal, 2016*

❖  
Best National Corporate Law Firm  
Best Overall National Law Firm of the Year  
*Legal Era Awards, 2016*

❖  
M&A Law Firm of the Year  
Private Equity Law Firm of the Year | Overall Law Firm of the Year  
*Deal Makers – Global Awards, 2016*

**Disclaimer** For private circulation to the addressees only and not for re-circulation. Any form of reproduction, dissemination, copying, disclosure, modification, distribution and/or publication of this Special Edition is strictly prohibited. This Special Edition is not intended to be an advertisement or solicitation. The contents of this Special Edition are solely meant to inform and is not a substitute for professional advice. Legal advice should be obtained based on the specific circumstances of each case, before relying on the contents of this Special Edition or prior to taking any decision based on the information contained in this Special Edition. AZB & Partners disclaim all responsibility and accept no liability for the consequences of any person acting, or refraining from acting, on such information.

If you have received this Special Edition in error, please notify us immediately by telephone +91 22 6639 6880.

**Copyright** © AZB & Partners. All rights reserved. Replication or redistribution of content, including by caching, framing or similar means, is expressly prohibited without the prior written consent of AZB & Partners. Any queries on this Special Edition may be addressed to: [editor.interalia@azbpartners.com](mailto:editor.interalia@azbpartners.com)