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Antitrust Analysis of Termination and Force Majeure Clauses in Agreements

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Introduction

Covid-19 has disrupted demand and supply chains across the country. Even at early stages of the nationwide lockdown in March 2020, 53% of Indian businesses faced losses with sectors such as tourism, hospitality and aviation being hit the hardest[1]. Stressed supply chains have made it difficult for parties to perform their obligations under contracts. As a result, businesses have started exercising *force majeure* clauses in their contracts. *Force majeure* clauses are contractual clauses which alter parties' obligations and/or liabilities under a contract upon the occurrence of an extraordinary event or an event beyond the parties' control. These clauses may have a variety of consequences and often include the right for a party to terminate the contract. In this article, we review the likely antitrust scrutiny of *force majeure* or termination clauses and suggest some mitigating measures to stay compliant with competition laws.

CCI's Scrutiny of a Force Majeure or Termination Clause

As a general matter, disputes between parties are resolved based on the dispute settlement mechanism provided under the agreement. However, if an agreement is in violation of the Competition Act, 2002 ('**Act**'), the Competition Commission of India ('**CCI**') will have jurisdiction to review the terms of the agreement. The CCI is empowered to initiate an inquiry on its own accord, on receipt of any information or on the basis of a reference received from the Central or State Government or a statutory authority. If the CCI finds a contravention, it can levy a penalty of up to 10% of an enterprise's average relevant turnover for the previous 3 financial years (calculated from the date of the CCI's decision).

Termination/ exit clauses are generally reviewed by the CCI under Section 4 of the Act which prohibits abuse of dominant position. More specifically, Section 4 prohibits dominant enterprises from imposing unfair prices or terms in their contracts. If a termination/ exit clause is viewed as the dominant entity imposing an unfair or 'one-sided' term on its contracting partner, the CCI has the power to impose penalties. By the same token, a *force majeure* clause that is unreasonably in favour of the dominant entity may be viewed as an unfair condition imposed on the other party. This type of conduct is regarded in antitrust literature as an 'exploitative' abuse of dominant position where consumers are harmed directly by the dominant firm. By contrast, an 'exclusionary' abuse affects competitors and consumers due to exclusion of competitors (for example, through loyalty rebates or tying and bundling products).

CCI's Decisional Practice in Reviewing Force Majeure and Termination/ Exit Clauses

We set out below the key takeaways regarding the CCI's approach to *force majeure* and exit clauses.

1. Whether the drafting of a termination clause is in favour of a dominant entity?

As a first step, the CCI is likely to consider whether the drafting of the termination clause provides an undue advantage to the dominant entity. For instance, in *Faridabad Industries Association*[2], Adani supplied gas sourced from its upstream suppliers to downstream consumers. The termination clauses in the gas sale agreements with Adani's upstream supplier and its consumers provided different time periods for compliance in case of a default. The CCI held that such clauses amounted to imposition of unfair conditions, in contravention of Section 4(2)(a)(i) of the Act.

Similarly, in *Naveen Kataria v Jaiprakash Associates Limited*[3], the CCI held that a clause making a dominant entity the sole judge on whether any event was *force majeure* allowed no leeway to the other party regarding an arbitrary decision made by the dominant entity and was therefore, an abuse of dominant position. By contrast, in *Saurabh Tripathy v CCI*[4], the Delhi High Court upheld a termination clause as being fair since it provided for termination of a contract on the failure of the other party in performing its material obligations. Further, the CCI is also likely to review the bargaining power of the parties in analyzing if a termination clause is in favour of a dominant entity[5].

1 See http://www.ficci.in/ficci-in-news-page.asp?nid=20956.

2 *Faridabad Industries Association v. Adani Gas Limited*, Case 71 of 2012, order delivered on 3 July 2014.

3 *Naveen Kataria v. Jaiprakash Associates Limited*, Case No. 99 of 2014, order delivered on 9 August 2019.

4 *Saurabh Tripathy v.* CCI, W.P.(C) 2079/2018, order delivered on 10 October 2019.

5 *Indian National Shipowners' Association v. Oil and Natural Gas Corporation*, Case 1 of 2018, order delivered on 2 August 2019 ('**ONGC**').

2. Whether the dominant entity is justified in exercising the termination clause?

The second issue that the CCI may consider is if the exercise of the termination clause was in good faith and necessary. In CCI *v Fast Way Transmission Private Limited*[6], the Supreme Court held that the termination of a broadcast agreement before its expiry without following the applicable telecom regulations amounted to an abuse of dominant position. However, since the broadcast agreement was terminated due to poor performance of the broadcaster, the illegal termination was found to be justified and no penalty was imposed.

Similarly in ONGC, the CCI observed that a 'termination for convenience' clause will not generally be construed as unfair or abusive unless it is used in an unfair manner, without meeting the tests of 'good faith' and 'change in circumstances'. Here, the exercise of the clause in order to renegotiate the contract to bring it in line with prevailing competitive prices, was held to be an exercise in good faith. Similarly, the CCI noted that the use of termination clause was prompted by change in circumstances due to a drastic fall in crude oil prices that impacted projects in oilfield activities.

3. Whether the exercise of the termination clause causes an effect on competition in the market?

The competition authority in the European Union *i.e.* the European Commission is likely to review effect on competition in the market before a finding that a termination clause amounts to an abuse of dominant position. The CCI has not considered the effect on competition in a majority of the cases it has reviewed with respect to termination clauses. However, in *Tata Power Delhi Distribution Limited v* NTPC *Limited*[7], the allegations against NTPC involved imposition of unfair conditions in power purchase agreements ('**PPA**') and not providing an exit clause to power distribution companies in the PPAs. The CCI observed that in cases of abuse of dominant position, the seminal issue is what harm is caused to the end consumer due to the behaviour of the dominant player. Applying this test, the CCI noted that the presence of a sectoral regulator in this case meant that no harm could be caused to the consumer through increased tariffs for electricity.

Conclusion

In sum, competition laws can apply if a dominant enterprise is viewed as using its position to impose unfair conditions on its contracting partners. To avoid scrutiny, dominant enterprises (or enterprises with market shares in any market) should ensure that the drafting of termination clauses with business partners do not appear skewed in their favour. Similarly, the exercise of a termination clause should be objectively justified and clearly communicated to the other party.

Behavioral Orders

CCI Penalises Grasim Industries Limited for Abuse of Dominance

On March 16, 2020, the CCI imposed a penalty on Grasim Industries Limited ('**Grasim**') for abusing its dominance in relation to the supply of viscose staple fibres ('**VSF**'), by charging discriminatory prices from its customers and imposing supplementary obligations on them, in contravention of the Act[8].

Grasim is the largest producer and seller of VSF in India. It was alleged by Mr. XYZ ('**Informant**') that Grasim sells VSF at lower rates to its international customers while charging much higher rates from its domestic customers. It was also alleged that Grasim segments its domestic customers into two groups, namely: (i) domestic customers who are manufacturing and supplying yarn for the domestic market; and (ii) domestic customers who are manufacturing and supplying yarn for export, in order to effectuate its discriminatory pricing policy. In addition to differential pricing and unfair conditions, the Informant alleged that Grasim forces its domestic customers to submit their monthly yarn production data to it before deciding on the discount rate applicable to them.

For determination of the relevant market, the CCI noted that textile fibres can be classified into two broad categories based on the source from which they are obtained: natural fibres and man-made fibres. Owing to the difference in characteristics such as composition, resilience, moisture absorption power, and resistance to moth, the CCI opined that natural and man-made fibres ought to be considered as two distinct categories of products which are used as raw materials by spinners to manufacture yarn. Further, the CCI noted that within man-made fibres, VSF

6 CCI *v. Fastway Transmission Pvt. Ltd.*, Civil Appeal No. 7125/2014, order delivered on 24 January 2018.

7 *Tata Power Delhi Distribution Limited v.* NTPC *Limited*, Case No. 20 of 2017, order delivered on 12 October 2017

8 XYZ *v. Association of Man Made Fibre Industry of India & Ors.*, Case No. 62 of 2016, order delivered on 16 March 2020.

possessed characteristics which made it distinct from natural and other man-made fibres. The CCI also relied on an order of the Director General of Anti-Dumping and Allied Duties which specifically distinguished VSF from other fibres based on its characteristics[9]. Further, the CCI relied on the testimony of retailers such as BIBA, Shoppers Stop, and Fab India which stated that fibres could not be substituted with each other based on cost or any other parameter. Additionally, the CCI observed that statistical tools such as correlation and regression, which were relied upon by Grasim to ascertain substitutability and define the relevant market have to be used in conjunction with other relevant facts of the case. The CCI also observed that the demand for VSF is homogenous across the country and there exist no geographical advantages or disadvantages in relation to VSF. Based on the above, the CCI defined the relevant market as the market for supply of VSF to spinners in India ('**Relevant Market**').

The CCI observed that Grasim is the sole producer of VSF in India, and had a market share consistently above 87% for the period of alleged violation, with the remaining market share being attributed to imports. The CCI also noted that the group companies of Grasim were present at various stages of the value chain of VSF and possessed significant size, strength, and economic power. Lastly, the CCI also observed that the manufacturing of VSF involved high barriers to entry, owing to such activity being capital intensive and subject to stiff environmental restrictions and regulations. Accordingly, based on high market share, size and resources of Grasim, lack of competitors in the Relevant Market, and entry barriers, the CCI opined that Grasim held a dominant position in the Relevant Market.

On abuse, the CCI observed that Grasim charges different rates per kilogram to customers even in similar transactions involving the same month, manufacturing plant, and grade of VSF. The CCI opined that such discriminatory pricing at an upstream level had the ability to not only distort downstream markets but also have an adverse effect on production efficiency of downstream firms. The CCI noted that Grasim has absolute discretion in relation to prices. The CCI also noted that the domestic buyers of VSF were unclear about the prices and discounts applicable to them and their similarly placed competitors, as these figures were communicated by Grasim confidentially to each customer. Such actions, according to the CCI created information asymmetry which adversely affected the ability of the spinners to supply yarn at competitive prices. Accordingly, the CCI opined that such conduct of Grasim amounted to imposition of unfair and discriminatory prices, in violation of Section 4(2)(a)(ii) of the Act.

Further, the CCI opined that Grasim's practice of seeking details of VSF bought and used for production from its customers as a condition for sale of VSF, under the garb of offering discounts could be interpreted as preventing the resale of VSF in India as well as the export of VSF by its customers. The CCI was of the view that such practice amounted to imposition of supplementary unconnected obligations, in violation of Section 4(2)(d) of the Act.

For the above contraventions, the CCI imposed a penalty of Rs. 301.61 crore on Grasim.

CCI Dismisses Allegations of Abuse of Dominance against KAMCO

On May 5, 2020, the CCI dismissed a complaint alleging abuse of dominance under Section 4 of the Act against Kerala Agro Machinery Corporation Limited ('**KAMCO**'), filed by Venkateswara Agencies ('**Informant**'). KAMCO, an undertaking of the Government of Kerala is engaged in the manufacturing of agricultural machineries[10]. The Informant has been the authorised dealer of KAMCO to customers in West Godavari, East Godavari, Krishna, Srikakulam and Guntur Districts of Andhra Pradesh (collectively referred to as '**Districts**') since 2006.

The Informant alleged that it built the foundation for the KAMCO brand in the Districts by spending a considerable amount of money in advertising. It was alleged that despite this, KAMCO opted to authorise other dealers for some of the Districts along with the Informant, and that KAMCO arbitrarily stopped issuing new stocks to the Informant. The Informant further alleged that to meet the demand for new stocks, it had to procure the same from unauthorised dealers by paying excessive amounts.

The CCI noted that the Informant sought relief in relation to two allegations, the first relating to KAMCO giving authorised dealerships to other dealers, and the second relating to KAMCO refusing to supply new stocks to the Informant. The CCI found no competition concern in relation to the first allegation as the dealership agreement entered into between KAMCO and the Informant granted KAMCO the right to appoint other authorised dealers. Further, the CCI opined that such appointment would improve intra-brand competition and ensure wider choice to consumers In relation to the second allegation, the CCI observed that based on evidence KAMCO had made supply of machineries and spare parts to the Informant. Consequently, the CCI held that the dealership agreement could not be said to raise any anti-competitive concerns, and dismissed the complaint accordingly.

9 Order No. 1416/2009-DGAD.

10 *Venkateswara Agencies v. Kerala Agro Machinery Corporation Limited*, Case No. 38 of 2019, order delivered on 5 May 2020.

CCI Dismisses Complaint Against Director General Armed Forces Medical Services

On May 6, 2020, the CCI dismissed complaint alleging the existence of anti-competitive bid-rigging in contravention of Section 3(3)(d) of the Act against Director General Armed Forces Medical Services ('**OP1**'), ECHS Khanpur ('**OP2**'), Anant Pharmaceuticals ('**OP3**), Saransh Biotech Private Limited ('**OP4**'), Aarav Pharmaceuticals ('**OP5**'), Laxmi Pharma ('**OP6**'), M C Pharma ('**OP7**'), Maa Ambey Enterprises ('**OP8**'), Goyal Pharma ('**OP9**'), and MD Medical Store ('**OP10**'), filed by Ved Prakash Tripathi ('**Informant**'). OP1 was responsible to the Ministry of Defence for the overall medical policy related to the Armed Forces. OP3 to OP10 were wholesalers of pharmaceutical products[11].

As per the Informant, OP2 had invited applications from suppliers for supply of generic and branded medical supplies to medical stores. The enterprises applying for supply of the medical equipment had to meet certain criteria, and submit a list of documents for registration. The Informant made three fold allegations: (i) the selection of bidder who allegedly provided forged documents, (ii) the commonality of directors of technically qualified bidders and (iii) increase in prices of medicines due to bid rigging.

The CCI noted that any issue relating to submission of forged documents as part of the application process could be taken up by the Informant before the appropriate forum. Further, the CCI noted that having common ownership, linkages, and being located in the same area could not in themselves be evidence of any collusive behaviour, in the absence of any material evidence indicating collusion. Lastly, there was no material on record which could suggest collusion amongst the bidders. Accordingly, the CCI opined that no case of bid-rigging in contravention of Section 3(3)(d) of the Act was made against the OPs and dismissed the complaint.

CCI Dismisses Complaint against the Department of Expenditure, Ministry of Finance

On May 8, 2020, the CCI dismissed a complaint alleging the existence of anti-competitive agreements in contravention of Sections 3(4) and 3(1) of the Act against the Department of Expenditure, Ministry of Finance, Government of India ('**DOE**'), Balmer Lawrie & Co. Limited ('**Balmer Lawrie**'), and Ashok Travels and Tours ('**Ashok Travels**'), by Travel Agents Association of India ('**TAAI**') [12].

TAAI is an association of travel agents created with the objective of protecting the interests of the tourism and travel industry. TAAI also liaisons with the Ministry of Tourism, Government of India ('**GoI**'). DOE is the nodal department of the Ministry of Finance and oversees the public financial management system and matters related to the finances of the GoI. Balmer Lawrie and Ashok Travels are the only two exclusive travel agencies approved by the DOE. As a result of this approval, DOE, through several internal circulars had mandated that all travel arrangements by government employees be made through either Balmer Lawrie or Ashok Travels. Further, any non-compliance with the DOE's circulars would result in the rejection of the travel claims of the government employees. The Informant alleged that mandating the procurement of such services exclusively through Balmer Lawrie and Ashok Travels amounted to a vertical "refusal to deal agreement" under the Act, resulting in foreclosure of the market for private travel agents.

The CCI opined that DOE's principal activities involved policy making and interface with various ministries, which could not be considered commercial in nature. Accordingly, the CCI held that DOE could not be viewed as an "enterprise" under the Act, especially in relation to circulars which were a manifestation of government policy relating to availing of services as a consumer. The CCI also noted the absence of a vertical relationship between DOE, and Balmer Lawrie and Ashok Travels, owing to which, the arrangement between them could not be assessed as a vertical agreement under the Act. Consequently, the CCI was of the view that no case of contravention of the Act was made against the DOE, Balmer Lawrie, and Ashok Travels, and dismissed the complaint.

CCI Dismisses Complaint against Sony India Private Limited

On May 11, 2020, the CCI dismissed a complaint alleging abuse of dominance under Section 4 and entry into anti-competitive agreements under Section 3(4) against Sony India Private Limited ('**SIPL**') and Sony Corporation, Japan ('**SCJ**')(together, '**Sony**'), filed by Accessories World Car Audio Private Limited ('**Informant**'). The Informant is a distributor of Sony car audio products engaged in the business of sale and marketing of car audio and related accessories. SIPL is engaged in the manufacture of electronic multimedia products, with SCJ being its holding company[13].

11 *Ved Prakash Tripathi v. Director General Armed Forces Medical Services & Ors.*, Case No. 10 of 2020, order delivered on 6 May 2020.

12 *Travel Agents Association of India v. Department of Expenditure, Ministry of Finance, Government of India & Ors.*, Case No. 04 of 2020, order delivered on 8 May 2020.

13 *Accessories World Car Audio Private Limited v. Sony India Private Limited & Anr.*, Case No. 03 of 2020, order delivered on 11 May 2020.

The Informant alleged that it was appointed as a distributor for Sony car audio products for the territories of South, East, and Central Delhi. Prior to such appointment, the Informant was allegedly asked to deal exclusively in Sony products. Per the Informant, the requirement to not deal with competing brands, which was implemented in 2012, was imposed solely on it, and not on any other distributor. The Informant also alleged the existence of an arbitrary territorial restriction imposed solely on the Informant and not other distributors. The Informant alleged that any violation of Sony's terms resulted in steps such as denial of incentives, denial of billing, and termination of the distribution agreement.

The CCI noted that based on public information, the market for car audio products was fragmented, with existence of players such as JBL, Kenwood, Bose, etc. Owing to the nature of the market, CCI opined that Sony did not appear to enjoy a dominant position of strength. Accordingly, the CCI refused to go into questions of abuse of dominance, since dominance of Sony was not established.

In relation to vertical agreements, the CCI noted that market power of the imposing enterprise would be an important consideration while assessing the anti-competitive impact of vertical restraints. Further, the CCI also noted that vertical restraints are not generally perceived as being anti-competitive when substantial portion of the market remains unaffected. The CCI observed that market for car audio was such that the presence of a large number of players exerted competitive restraints on Sony. Accordingly, the CCI held that owing to Sony's lack of market power, vertical restraints imposed by Sony were unlikely to have an appreciable adverse effect on competition ('**AAEC**').

In light of the above, the CCI found no contravention of Section 3(4) or Section 4 of the Act arising out of Sony's conduct and dismissed the complaint accordingly.

CCI Dismisses Complaint against Directorate of State Lotteries, West Bengal

On May 11, 2020, the CCI dismissed a complaint alleging contravention of Sections 3 and 4 of the Act against Directorate of State Lotteries, West Bengal ('**OP1**') and the West Bengal Lottery Stockists Syndicate Private Limited ('**OP2**'), filed by Mr. XYZ ('**Informant**'). OP1 is established under the Finance Department of West Bengal and organises, promotes and conducts lotteries on behalf of the Government of West Bengal. OP2 is a private company which has been the sole and exclusive distributor of paper lotteries in West Bengal since 2014, as appointed by OP1[14].

As per the Informant, the arrangement between OP1 and OP2 allowed OP2 to purchase lotteries from OP1 at a discount to the exclusion of the general public and other stockists, after which OP2 was free to sell the paper lotteries at face value. The Informant alleged that this arrangement was in the form of an exclusive distribution arrangement in violation of the Act. The Informant further alleged that by appointing OP2 as the exclusive distributor, OP1 was abusing its dominance by denying market access to other competitors involved in the business of lotteries.

The CCI took the view that "lotteries" would be considered as "goods" under the Act and that OP1's activity *i.e.* appointment of distributors for marketing and sale of State lotteries fell within the definition of "service" under the Act. The CCI then noted that OP1 would be considered as an "enterprise" under the Act despite being a Department of the Government, since it was not engaged in any activity relating to the sovereign functions of the Government.

The CCI noted that OP2 was initially appointed as a sole distributor for a period of three years, and that in 2018, OP1 had taken a policy decision to award tender for distribution for sale of lottery tickets, and that the tenure of OP2 as the sole distributor kept getting extended due to the inability of OP1 to carry out a tender process due to a multitude of reasons. The CCI also noted that the tendering process for selecting a distributor of State lotteries in West Bengal was to be initiated soon. Thus, the CCI was of the opinion that no case of contravention of the Act was made out against the OPs and dismissed the complaint. The CCI also directed OP1 to file a status report within one week of the completion of the tendering process.

CCI Dismisses Complaint against Eicher Polaris Private Limited

On May 11, 2020, the CCI dismissed a complaint alleging contravention of Sections 3 and 4 of the Act, against Eicher Polaris Private Limited, New Delhi ('**EPPL**'), Eicher Motors Limited, New Delhi ('**Eicher Motors**'), and Polaris Industries Inc. ('**Polaris**'), filed by Multix Owners and Users Welfare Society ('**Informant**'). The Informant is a social organisation registered for the purpose of redressal of grievances of Multix vehicle owners before various authorities, executive and judicial bodies. Eicher Motors is engaged in the business of manufacture, sale, distribution, and servicing of passenger motor vehicles. Polaris is engaged in the manufacture of motorcycles, snowmobiles, etc. EPPL is a joint venture between Eicher Motors and Polaris. However, in 2018, EPPL was closed down due to poor sales performance[15].

14 XYZ *v. Directorate of Sate Lotteries, West Bengal & Ors.*, Case No. 28 of 2019, order delivered on 11 May 2020.

15 *Multix Owners and Users Welfare Society v. Eicher Polaris Private Limited &* Ors. Case No. 05 of 2020, order delivered on 11 May 2020.

The Informant alleged that despite assurance, Eicher Motors failed to provide spare parts and service support for the fleet of Multix vehicles on the road subsequent to the closure of EPPL. Consequently, per the Informant, Multix vehicles have been condemned to garages due to lack of genuine spare parts, and inadequate repair services. The Informant alleged that by restricting supply of spare parts, Eicher Motors and Polaris had created a monopoly over the supply of such parts, indirectly determining the prices of the spare parts and maintenance services.

The CCI noted that the Informant had failed to present any evidence or material to substantiate its allegations. Further, the CCI noted that EPPL had closed its business operations due to insufficient demand and an unviable business proposition. Accordingly, owing to the above-mentioned circumstances and the absence of any material to support the allegations of the Informant, the CCI refused to interfere with the matter and dismissed the complaint.

NCLAT Dismisses Appeal Challenging CCI's Approval of Walmart's acquisition of shares in Flipkart

On March 12, 2020, the National Company Law Appellate Tribunal ('**NCLAT**') dismissed an appeal challenging CCI's approval of Walmart International Holdings' ('**Walmart**') acquisition of between 51% and 77% of the shareholding in Flipkart Private Ltd. ('**Flipkart**') ('**Proposed Combination**'). The appellant, Confederation of All India Traders ('**CAIT**') had also raised objections when the CCI was reviewing the Proposed Combination[16].

Per CAIT, the Proposed Transaction would be detrimental to Flipkart's non-preferred sellers. CAIT alleged that subsequent to the Proposed Transaction, Walmart would have effective control over Flipkart's e-commerce platform and web of preferential sellers. This, according to CAIT, would result in Walmart's inventory getting preference and being sold through preferred sellers.

Additionally, CAIT alleged that: (i) some of the preferred sellers of Flipkart have common directors, investors, employees, etc. with Flipkart; (ii) Flipkart has a history of entering into exclusive tie-ups in markets where it has high market shares, which are only available to its web of preferential sellers; (iii) Flipkart gives preferential listing to its preferred sellers, with the non-preferred sellers being pushed down in the listings to subsequent pages, despite having products of the same quality as those of the preferred sellers; and (iv) non-preferred sellers are forced to partner with Flipkart at highly discriminatory terms and conditions since they are blocked at times and their listings are made inactive. CAIT alleged that these practices of Flipkart, which resulted in denial of market access, would be magnified post the Proposed Combination.

The NCLAT reviewed the CCI's order approving the Proposed Combination ('**CCI Order**') in order to assess whether the appeal had any merits. The CCI had opined that competition assessment of a combination arises out of an endeavour to address potential concerns as a result of the combination, and not any pre-existing conditions that are not attributable to the combination. Consequently, the CCI had held that any issue relating to Flipkart's discounting practices, preferential sellers, etc. were not related to the Proposed Combination and existed in the market even without the Proposed Combination. The review process, per the CCI, is not to resolve concerns that are not incidental to or arise from the Proposed Combination, and such concerns could be examined under the relevant sections at another point of time.

Accordingly, the NCLAT observed that the CCI was right in approving the Proposed Combination, and CAIT had failed to provide evidence that the Proposed Combination would lead to any major player in the relevant market being eliminated. Moreover, Flipkart's platform would remain under Walmart, thereby preserving a successful e-commerce platform and enhancing its financial strengths, a fact which was also discussed in detail while dealing with the third party representations and objections to the Proposed Combination. Accordingly, the NCLAT opined that CAIT had failed to demonstrate any *prima facie* AAEC arising as a result of the Proposed Combination and dismissed CAIT's appeal.

16 *Confederation of All India Traders v.* CCI *&* Ors., Competition Appeal (AT) No. 62 of 2018, order delivered on 12 March 2020.

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