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In the December Edition of the Luthra and Luthra Law Offices India – ‘Competition Law Newsletter’, we cover some of the most pertinent developments in the competition law space over the last month.

CCI fines Meta and WhatsApp for implementing its updated Privacy Policy 2021

The Competition Commission of India (“**CCI**”) vide order dated [18.11.2024](#) passed an order under Section 27 of the Competition Act, 2002 (“**Act**”) against WhatsApp LLC (“**WhatsApp**”) and Meta Platform Inc. (“**Meta**”) for implementing an updated Privacy Policy for WhatsApp users in 2021.

The CCI had initiated a suo motu investigation against the updated Privacy Policy and also received information alleging that the new policy makes it mandatory for the users to accept the terms and conditions in order to retain their WhatsApp account information and provides as to how WhatsApp will share personalized user information with Meta. This, it was alleged, amounted to an imposition of an unfair condition on the users and amounted to an abuse of dominant position. The CCI decided to club the cases together and directed the Director General, CCI (“**DG**”) to investigate the matter. During the course of DG’s investigation, WhatsApp and Meta challenged the CCI’s investigation order before the Delhi High Court (“**DHC**”) and thereafter the Supreme Court of India (“**SC**”). Both the DHC and the SC, however declined to interfere with the investigation.

The CCI agreed with DG’s definition and delineation of the two relevant markets i.e. market for Over The Top (“**OTT**”) messaging apps through smartphones in India (“**Relevant Market 1**”) and market for online display advertising in India (“**Relevant Market 2**”). The CCI found that WhatsApp was dominant in the Relevant Market 1 on the basis of several factors, including market shares, number of users, financial strength, dependence of users etc.

With regards to violation of Section 4 of the Act, the CCI found that unlike the previous privacy policies, the updated Privacy Policy 2021 was on a ‘take it or leave it’ basis and forced users to accept the terms, including mandatory sharing of their data with Meta and its subsidiaries, to retain access to their platform. The CCI held that this lack of an “opt-out” option, and excessive data sharing with Meta / Facebook amounted to an imposition of unfair condition and violated Section 4(2)(a)(i) of the Act.

The CCI also held that sharing of WhatsApp users’ data between Meta companies for purposes other than providing WhatsApp service creates an entry barrier for the rivals of Meta and thus, results in denial of market access in the display advertisement market, in contravention of the provisions of Section 4(2)(c) of the Act.

Finally, the CCI also held that Meta has engaged in leveraging its dominant position in the OTT messaging apps through smartphones to protect its position in the online display advertising



market and the same is in contravention of Section 4(2)(e) of the Act.

WhatsApp's and Meta's contention that these issues should be decided under the Data Protection Laws was dismissed by the CCI and it held that competition issues arising out of unfair use of data would be liable to be investigated by the CCI. Further, Meta's contention that the DG failed to conduct an effects-based analysis before holding the parties guilty was also rejected by the CCI and it held that even if there is a likelihood of anti-competitive market foreclosure, the conduct may be classified as abusive as the harmful effects have not yet fully developed.

Based on the foregoing the CCI held WhatsApp and Meta guilty of abuse of dominance and imposed a penalty of INR 213 crore (Approx. USD 25 million).

Furthermore, in case the WhatsApp challenges the said order of the CCI before the National Company Law Appellate Tribunal ("**NCLAT**"), as per the Competition (Amendment) Act, 2024, 25% of the penalty amount has to be deposited as condition precedent for the NCLAT to adjudicate the appeal.

CCI initiates investigation against Google

The CCI on [28.11.2024](#) passed an order under Section 26(1) of the Act directing the DG to initiate an investigation against Google LLC, Alphabet Inc., Google India Pvt. Ltd, and Google India Digital Service Private Limited (collectively, "**Google**") for violating the provisions of Section 4 of the Act.

The Informant, a digital gaming company operating under the brand name 'WinZo', claimed that Google's Play Store imposes restrictive policies on apps offering Real Money Games ("**RMGs**") in India. According to the WinZo, Google's Developer Distribution Agreement ("**DDA**") and Developer Program Policies ("**DPP**") are one-sided and unreasonable. As a result, WinZo's app can only be downloaded via side-loading from their website, which displays a warning message on Android devices. The Informant stated that this warning is misleading, damages their market reputation, and results in business losses.

It had been alleged that when a user makes a payment to the Informant to play skill based games and attempts to use 'Google Pay' to make such payment, Google displays another baseless warning. As per WinZo, such payment warnings are arbitrary as Google has not set any criteria for displaying such warnings. It was further alleged that the decision to limit the Program's scope to only Daily Fantasy Sports (DFS) and Rummy apps and disallow all other RMGs, is devoid of any reason and is thus, discriminatory and arbitrary constituting abuse of its dominant position by Google.

It was also submitted by the Informant that from 21.11.2022, Google has restricted its advertisements policy (modified Ad policy) by only allowing DFS and Rummy app advertisers to host advertisements. As per WinZo, given the unprecedented potential to increase business by accessing users through Google Ads, Google's modified Ad policy restricts Informant's advertisements from being hosted as part of Google's Ad program, and constitutes an abuse of



its dominant position.

It was further alleged that Google restricted RMG apps (excluding DFS and Rummy) from the Play Store, depriving WinZo of a critical distribution channel, Google Pay displayed arbitrary warnings for payment to WinZo, creating barriers for user's transactions, Google Ads permitted advertisements only for DFS and Rummy, limiting the Informant's ability to advertise and Google's warnings during side loading of RMG apps were misleading and harmed the Informant's reputation.

In response to the allegations posed against Google, Google submitted that Google permits advertisements of all online games insofar they do not involve the opportunity to win anything with real world value (i.e., non-RMGs), and in compliance with Google's policies while abiding by applicable laws. Furthermore, it was submitted that Google has permitted ads for Rummy and DFS, for objective and non-discriminatory reasons and Google has no commercial interest in refusing ad revenue unnecessarily and its approach reflects both its decision to mitigate legal risk and its obligation to comply with the law. Google explained that warnings displayed on Google Pay are part of fraud prevention and regulatory compliance. It stated that these warnings are not specific to the Informant and are based on transaction pattern, velocity and other risk factors. However, the Informant alleged inconsistency in displaying these warnings only for certain RMG apps.

After considering the arguments by both the parties, the CCI held that Google is dominant in the Market for licensable OS for smart mobile devices in India, market for app store for Android smart mobile OS in India; and market for online search advertising services in India and has prima facie violated the provisions of Section 4(2)(a)(i), 4(2)(b), and 4(2)(c) of the Act. Furthermore, the CCI held that Google's payment warnings are claimed to comply with regulatory guidelines from authorities like RBI and NPCI. However, since these warnings are not shown for Rummy and DFS apps on the Play Store, the CCI found it necessary to investigate if these warnings are related to the selection of these RMG app categories for Google's RMG Pilot. Thus, the CCI directed the DG to investigation into the conduct of Google.

CCI issues draft Amendments to CCI Regulations on Recovery of Monetary Penalties for public consultation

On [07.11.2024](#), the CCI published Amended draft to the 2011 Penalty Recovery Regulations for comments from public and stakeholders. Some key changes and their possible implications:

- **Revised timing for issuing Demand Notice by CCI:** Under the original Recovery Regulations, the CCI could issue a demand notice for payment of penalty only after the time specified in its order had expired. This notice provided an additional 30 days for payment, after which a 1.5% monthly interest would apply. The Proposed Amendments allow the CCI to issue a demand notice at the same time as the penalty order and set a



discretionary, possibly shorter, payment period. If the penalty is not paid within this period, 1% monthly interest will be charged.

- **Practical Implications of the Amendment:** The Proposed Amendments allow the CCI to issue a demand notice at the time of passing the order penalizing the delinquent parties, preventing such parties from appealing the order and obtaining an interim stay before the notice is issued. This change is expected to discourage routine or frivolous appeals, as dismissals could lead to significant interest accruals on the original penalties. Additionally, the said amendment may encourage enterprises to seek settlements or commitments (in non-cartel violation cases) under the new regime, as these options would likely result in reduced penalties.
- **Extension of Penalty Obligations to Legal Heirs:** The Proposed Amendment extends penalty obligations to the legal heirs of individuals, clarifying the continuation of proceedings. The liability of legal heirs will be limited to the extent of the deceased person's estate. If legal heirs fail to pay the penalty, they will be classified as "persons in default," and appropriate proceedings will be initiated against them.

CCI files a transfer petition before SC against delay tactics by Amazon and Flipkart

[News Reports](#) state that the CCI has filed a transfer petition before the Supreme Court of India ("SCI") to consolidate multiple writ petitions related to an antitrust investigation involving e-commerce giants Amazon, Flipkart, and certain sellers on their platforms.

High courts across the country, including the Karnataka High Court, Madras High Court, Telangana High Court and Punjab & Haryana High Court have granted interim relief to various sellers of Amazon and Flipkart in relation to the proceedings initiated by the CCI against them. The DG had submitted his investigation report to the CCI which was later forwarded to all parties, including the sellers.

The sellers have claimed before the High Courts that the DG committed serious procedural errors in conducting the investigation, especially qua the sellers listed on Amazon and Flipkart. The sellers argue that the DG unilaterally altered seller's status from "third parties" to "opposite parties" without CCI approval, leading to a violation of standard procedures as required under the CCI General Regulations.

CCI approves acquisition of standard unsecured personal loans portfolio of Standard Chartered Bank, India Branch by Kotak Mahindra Bank Limited

The CCI has approved the proposed combination involving the acquisition of standard unsecured personal loans portfolio of Standard Chartered Bank, India Branch ("**Standard Bank**") by Kotak



Mahindra Bank Limited (“**Kotak Bank**”).

Kotak Bank is a public limited company, with its equity share capital listed on BSE Limited and National Stock Exchange of India Limited. The Acquirer is registered with the Reserve Bank of India as a banking company and is engaged in the business of providing a range of banking and financial services including retail banking, wholesale banking and treasury operations through various branches in India.

The Business of Standard Bank comprises of unsecured personal loans advanced to various individual borrowers in India.

CCI approves acquisition of shares in Rebel Foods Private Limited by Jongsong Investments Pte. Ltd.

The CCI has approved the proposed acquisition of shares in Rebel Foods Private Limited (“**RFPL**”) by Jongsong Investments Pte. Ltd (“**JIPL**”).

JIPL, an investment holding company, is an indirect wholly owned subsidiary of Temasek Holdings (Private) Limited (Temasek). Temasek is an investment company headquartered in Singapore. Temasek’s global portfolio covers a broad spectrum of industries.

RFPL is engaged in the organised food services business and, inter alia, operates cloud kitchens, restaurants, food courts, and cafes.



This newsletter is only for general informational purposes, and nothing in this edition of the newsletter could possibly constitute legal advice (which can only be given after being formally engaged and familiarizing ourselves with all the relevant facts). However, should you have any queries, require any assistance, or clarifications with regard to anything contained in this newsletter (or competition law in general), please feel free to contact G.R. Bhatia/ Arjun Nihal Singh, at the below mentioned coordinates. © Luthra and Luthra Law Offices India 2024. All rights reserved.

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