



## ERGO

*Analysing developments impacting business*

### CCI FINDS GRASIM ABUSED DOMINANCE AGAIN

17 August 2021

Grasim Industries Limited (Grasim) abused its dominance again by charging discriminatory prices, denying market access, and imposing supplementary obligations in the viscose staple fibre (VSF) market from 2017 to 2018, held the Competition Commission of India (CCI) on 6 August 2021. (*Informant (Confidential) v Grasim Industries Limited (Case No. 51 of 2017, Case No. 54 of 2017, Case No. 56 of 2017).*)

On 16 March 2020, the CCI in *XYZ v Association of Man-Made Fibre Industry in India (Case No. 62 of 2016.)* (MMF Case) had earlier imposed a penalty of INR 301.61 crores on Grasim.

#### **Facts**

In 2017, three informants engaged in the business of spinning and marketing yarns / fibre complained separately to the CCI that Grasim had abused its dominance in the VSF market. VSF is a man-made biodegradable material used as an alternative to cotton.

Informants have made various allegations that Grasim did not disclose its discount policies, provided differential treatment to customers, and contractually forced its customers to disclose information like production and export as a precondition for supply and discounts. Informants also alleged that Grasim had withdrawn or delayed sales terms (credits / discounts) and refused to supply VSF, resulting in a wipe-out of business of one of the informants.

The CCI found a *prima facie* case on 16 May 2018 under the Competition Act, 2002 (Act) and given the substantially same subject matter, clubbed the complaints together and directed the Director General (DG) to investigate the allegations. Based on the DG Investigation Report dated 27 March 2020 and submissions by the parties, the CCI made its assessment as detailed below.

#### **Analysis by the CCI**

The CCI order can be summarily divided into three issues: (i) what is the relevant market; (ii) whether Grasim held dominance in the relevant market; and (iii) whether Grasim had abused its dominance in the relevant market.

#### Relevant Market

The CCI noted that various types of industrial fibres are used by spinners for manufacturing yarn, which in turn is the input for fabric manufacturers and then garment manufacturers. Relying on *MMF Case*, the CCI noted that VSF is distinct from other fibres.

In *MMF Case*, the CCI had observed that natural fibres and man-made fibres (MMF) are distinct in physical characteristics, and within MMF, VSF differs from all other fibres, including cotton and polyester, because of its unique characteristics, distinct advantages, and relatively higher pricing.

Refuting Grasim's submission that there is an ease of switching between fibres and that market should be defined in terms of MMFs and cotton used in spinning to produce blended yarns, textiles, and apparel, the CCI clarified that substitutability has to be seen from the perspective of the immediate buyer, i.e., spinners, and not fabric / garment manufacturers or end consumers. It noted that if fabric manufacturers demand 100% VSF yarn or VSF-blended yarn, the spinners cannot tweak the fibre proportion or substitute one fibre with another. The CCI therefore held "*the market for supply of VSF to spinners in India*" as the relevant market.

#### Dominance

On the issue of dominance, the CCI stated that Grasim is the sole producer of VSF in India and it faces competition only from imports. Grasim claimed that it faced competition from imported VSF yarn and VSF. Negating Grasim's argument, the CCI observed that imported VSF from China and Indonesia are subject to anti-dumping duty, making them an expensive choice. Further, even after accounting for imports, Grasim consistently held a market share above 80% from 2015 to 2018.

Besides, the CCI also noted that factors like the size and economic power of Grasim, the dependence of consumers, limited countervailing power of spinners, the excess production capacity of Grasim, and high entry barriers including high capital requirements further fortified its dominance in the noted relevant market.

#### Abuse of Dominant Position

It is relevant to note that the CCI in *MMF Case* had held that Grasim abused its dominance by charging spinners unfair and discriminatory prices and compelled them to submit unnecessary business information. The CCI then had directed Grasim to make its discount policy transparent and publicly accessible.

In the present case, the CCI again observed that Grasim had charged discriminatory prices for VSF from equivalently placed spinners. The disparity in discounts, according to the CCI, had resulted in competitive disadvantage among spinners, adversely affected their production efficiency, and distorted the entire downstream supply chain leading to higher prices and lesser choices. Thus, the CCI held the practice violated Section 4(2)(a)(ii) read with Section 4(1) of the Act. Further, the CCI added that Grasim's practice of withdrawing / not providing discounts or credit notes to informants was also discriminatory.

Regarding Grasim's abrupt stopping of VSF supply to one of the informants since 2017, the CCI observed that firms in a competitive market can decide independently not to deal or supply to certain companies. It then caveated that a dominant firm however has a special responsibility to supply. Noting VSF as an "indispensable input" for producing yarn, the CCI rejected Grasim's contention that refusal to supply was on account of a commercial dispute and held that such exclusionary abuse violates Section 4(2)(c) read with Section 4(1) of the Act.

As to the collection of business information by Grasim, like VSF consumption and export data, the CCI held that such behaviour was an attempt by Grasim to control the

entire market and interfered with the spinners' freedom to trade. Notably, the CCI in *MMF Case* had found such requirements onerous, unrelated, invasive, and *ex facie* unfair. It had remarked that Grasim failed to justify how such data is relevant to compute discount and went on to note that to the contrary, a volume may have some nexus with discounts. It had also dismissed Grasim's plea that such terms were agreed with spinners. Thereby, the CCI held such supplementary obligations on spinners to have no nexus to the primary sale, and therefore, in violation of Section 4(2)(d) read with Section 4(1) of the Act.

### Penalty

Given the penalty imposed on Grasim in *MMF Case* and considering the close time frame of the two cases, the CCI did not impose a penalty on Grasim.

The decision can be accessed [here](#).

### **Comment**

Pricing and discount policies, contractual terms and conditions, and dealings with customers are fairly standard features of any business. For entities holding substantial market power however, the CCI decision is a timely reminder to behave extra cautiously since they have "special responsibility" to maintain fair competition in market.

Further, defining a product market is key to determining market power. Given that, the CCI's approach to considering different fibres as complementary to each other (*common end-use and can be blended*) but not substitutable illustrates that identifying the correct market is critical to any anti-trust assessment. In this regard, the CCI maintained that market should be determined from the perspective of the immediate buyer and not the end consumer. Another interesting point is CCI upholding refusal to deal despite the claim that it was on account of a commercial dispute, which begs clarity about under what circumstances a dominant entity/ monopolist can legitimately refuse to supply.

Bearing in mind that the CCI decision in *MMF Case* is under appeal before the National Company Law Appellate Tribunal (NCLAT), it would be interesting to see NCLAT's take on the abovementioned issues.

- Sagardeep Rathi (Partner), Swati Bala (Principal Associate), Siddharth Bagul (Associate)

For any queries please contact: [editors@khaitanco.com](mailto:editors@khaitanco.com)

We have updated our [Privacy Policy](#), which provides details of how we process your personal data and apply security measures. We will continue to communicate with you based on the information available with us. You may choose to unsubscribe from our communications at any time by clicking [here](#).