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Analysing developments impacting business

CCI INVESTIGATES STAR INDIA FOR DISCRIMINATORY PRICING, REFUSES INTERIM RELIEF TO COMPLAINANT

9 March 2022

On 28 February 2022, the Competition Commission of India (CCI) directed the Director General (DG) to investigate Star India Private Limited (Star India), Disney Broadcasting (India) Limited (Disney India), and Asianet Star Communications Private Limited (Asianet Star) for charging discriminatory prices from TV distributors for its bouquet of indispensable TV channels in Kerala.¹

Background

Asianet Digital Network (P) Ltd. (Informant) filed an information against Star India, Disney India, and Asianet Star on 31 January 2022, alleging anti-competitive conduct.

The Informant is a multi-system operator, which provides digital TV services primarily in Kerala, as well as in Karnataka, Andhra Pradesh, Telangana, and Odisha.

Star India is a broadcaster of satellite-based TV channels in India, with multiple channels in different languages and genres, like general entertainment, movies, kids, entertainment, sports, and infotainment. Star India is a subsidiary of Disney India, while Asianet Star is Star India's subsidiary.

The Informant, under certain agreements, receives broadcasting signals from Star India for a monetary consideration to supply its channels to customers.

Allegations

The Informant alleged that Star India was offering higher and discriminatory discounts in the form of promotion and advertisement payments (through marketing agreements) to the Informant's competitor, Kerala Communicators Cable Limited (KCCL). The Informant submitted that the discounts offered to KCCL breached the caps imposed by the Telecom Regulatory Authority of India through its regulations, under which broadcasters cannot offer discounts to distributors above a certain percentage and must offer them on fair, transparent, and non-discriminatory terms to all distributors.

The Informant claimed that by offering such additional discounts, Star India was conferring an unfair advantage upon KCCL in the market for distribution of TV channels, hindering the Informant's ability to compete in the market. It submitted that Star India

¹ Asianet Digital Network (P) Ltd. v. Star India Private Limited and Others, Order dated 28.02.2022 in Case No. 09 of 2022.

was distorting the level playing field in the marketplace and acting in a manner detrimental to competition.

The Informant also sought interim relief under Section 33 of the Competition Act, 2002 (Act), requesting the CCI to direct Star India to (i) disclose the additional discounts it grants to KCCL, and (ii) provide broadcasting signals to the Informant at the same effective license fee that it charges KCCL.

CCI's Observations and Conclusion

Investigation

The CCI *prima facie* determined the relevant product market to be the market for the provision of broadcasting services. As regards the relevant geographical market, the CCI limited it to the State of Kerala, considering that price discrimination had been alleged in that State as well as State-specific factors like language and consumer preferences.

To ascertain dominance, the CCI looked at Star India's number of channels, the exclusivity of content, popularity, viewership, closest competitors, countervailing power, and its size and resources (globally and in India). The CCI additionally observed the presence of Star India and its group companies across the entire value chain of the media industry and concluded that Star India was *prima facie* dominant in the relevant market.

On abuse of dominance, the CCI stated that Star India allegedly provided its channels to the Informant's competitors at higher and discriminatory discounts, given indirectly via promotion and advertisement payments, which granted an unfair advantage to them. It noted that the Informant allegedly lost a significant subscriber base between April 2019 and September 2020 to KCCL because of Star India's discriminatory conduct. Given this, the CCI opined that Star India's conduct *prima facie* amounted to discriminatory pricing and denial of market access to the Informant in violation of Section 4 of the Act. Hence, the CCI directed the DG to investigate the matter under Section 26(1) of the Act.

Interim Relief

On interim relief, the CCI concluded that the Informant failed to satisfy any of the parameters for granting interim protection. Specifically, the Informant was not able to (i) prove a higher degree of a *prima facie* case to warrant an interim order, (ii) demonstrate that the alleged conduct would cause irreparable harm that could not be compensated through monetary redressal, or (iii) show that the balance of convenience was in the Informant's favour. Unconvinced, the CCI dismissed the request.

Comment

Given the CCI's initial views on the geographical market, Indian channel broadcasters, even if not market leaders in the country, may have to reconsider if they hold a significant market position in any Indian State. The decision signifies that agreements between broadcasters and digital TV services providers in narrower geographies may be subject to the CCI's scrutiny.

Further, as opposed to the *MakeMyTrip-Go Ibibo* case,² interim relief has been refused in this case. However, the CCI's swift adjudication of the claim demonstrates its continued recognition of the importance of early intervention and corrective action

² *Federation of Hotel & Restaurant Associations of India and Another v. MakeMyTrip India Private Limited and Others*, Order dated 09.03.2021 in Case No. 14 of 2019.

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(where required) to redress competitive harm in dynamic markets and prevent permanent distortion of the competitive landscape.

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