



## ERGO

*Analysing developments impacting business*

PREMIUM PRICING DOES NOT SIGNIFY DOMINANT POSITION

14 August 2018

The Competition Commission of India (CCI) on 9 July 2018 closed a case involving allegations of abuse of dominant position against Merlin Developers, Merlin Projects Limited (Merlin Developers and Merlin Projects Limited have been collectively referred to as Merlin), Merlin group companies and their office bearers (In Re: Cambridge Residents Welfare Association & Others And Merlin Developers & Others; Case No. 50 of 2017). The informants in this case, Cambridge Residents Welfare Association, an association registered under the West Bengal Apartment Ownership Act, 1972, and its office bearers (collectively referred to as Informants), alleged that the Merlin Group had abused its dominant position inter alia by adopting one-sided agreements and terms in respect of sale of residential apartments in their project Merlin Cambridge. The Informants argued that the Merlin Group was in a dominant position because it occupied the top position in terms of total number of residential real estate projects in Kolkata and was able to charge a premium of 20% above the market rate in all their projects.

The CCI, in line with its decisional practice, held that it was first necessary to delineate the relevant market and ascertain whether the Merlin Group enjoyed a dominant position. The CCI defined the relevant market as the market for provision of services for development and sale of residential flats in Kolkata and then proceeded with its assessment of the allegation of dominant position being enjoyed by the Merlin Group. The CCI agreed with the contentions raised by Merlin and held that number of projects is not an appropriate criterion to assess dominant position and premium pricing cannot on its own be accepted as a factor signifying the ability to operate independent of market forces.

The CCI found that in the relevant market there were several resourceful and well-established developers to constrain Merlin, and therefore, they were not in a dominant position. Consequently, the CCI closed the case as Merlin was not found to be in a dominant position. It is important to note that the CCI in this case had directed Merlin to obtain certain data on the real estate sector of Kolkata from PropEquity, a real estate database, to find out if Merlin was dominant in the relevant market. In compliance with the CCI's directive, Merlin sought a financial quote from PropEquity for supply of necessary data but found that the same was exorbitantly high. Hence, Merlin prayed for a suitable Order from the CCI including imposing cost on the Informants should the inquiry get closed on merits on the basis of PropEquity's data. The CCI, after receipt of Merlin's prayer, on its own, held that the information available on record was adequate

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to take a prima facie view of dismissing the allegations against Merlin, and therefore, also dispensed Merlin from the requirement of procuring data from PropEquity.

## Comment

There are several decisions of the CCI on assessment of dominant position in the real estate sector but this decision is important because it affirms that charging a price above the market price cannot on its own be accepted as a factor indicating dominant position and this may be related to offering better quality products and services.

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