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COMPETITION COMMISSION DECLINES TO INTERFERE WITH THE HARYANA GOVERNMENT'S REAL-ESTATE POLICY

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In yet another case involving the real estate sector, the Competition Commission of India (CCI) dismissed allegations of abuse of dominant position by Haryana Urban Development Authority. (HUDA), a statutory urban planning agency.

Background

Gurgaon Institutional Welfare Association (GIWA) is an association of institutional plot purchasers. Members of GIWA (Buyers) had been allotted institutional plots by HUDA on a "freehold basis". Pursuant to the allocation, the Buyers approached HUDA for the execution of conveyance deeds to close the purchase. Per the Buyers, among other conditions, the conveyance deed:

- restricted their ability to sell, mortgage, or lease the purchased plots (or any construction on such plots). As such, the Buyers would have to obtain certain permissions before effecting any transfers; and
- reserved HUDA's right to recover additional costs in relation to the plot, from the Buyers in the future.

Aggrieved, the Buyers (through GIWA) lodged an information¹ with the CCI. They alleged that HUDA had abused its dominance on multiple counts, including the imposition of unfair conditions and supplementary obligations in relation to the sale of institutional plots.² In October 2017, the CCI found *prima facie* merit in GIWA's averments and directed the Director General (DG) (i.e., investigative wing of the CCI) to investigate HUDA's conduct.

Investigative Findings

The DG delineated the relevant market as "*the provision of services for development and sale of institutional plots in the State of Haryana*".³ HUDA was found dominant in the relevant market owing to its overwhelming market share of 81.18% for a cumulative period of 9 years⁴ and significant financial resources.

The DG noted that the allotment letter and conveyance deed were in accordance with the statutory framework under which HUDA was constituted.⁵ Therefore, the impugned requirements imposed on the Buyers were legally tenable. However, the DG found

HUDA's rejection of applications for transfer of institutional plots as unfair abusive conduct.

The CCI's Findings

As a first step, the CCI addressed HUDA's jurisdictional challenge. *Per* HUDA, it performed "sovereign functions" and was hence, not an "enterprise" in terms of Section 2(h) of the Act. Therefore, HUDA's activities were not amenable to the CCI's jurisdiction. While rejecting the challenge, the CCI noted that HUDA's activities did not constitute "sovereign" functions (i.e., inalienable functions). Simply put, "sovereign" functions are functions that private persons cannot perform (for e.g., maintenance of law and order).

Subsequently, the CCI agreed with the DG's delineation of relevant market and findings on dominance. The CCI also confirmed that the allotment letter and conveyance deed were in accordance with the State of Haryana's statutory framework and could not be faulted. However, it differed on the findings of rejection of transfer application. The CCI held that HUDA's rejection of the transfer application was a matter of State policy and did not warrant interference by the CCI.

The CCI was also persuaded by HUDA's submission that the institutional plots were allotted at prices much lower than market rates. Therefore, the Buyers could not be allowed to profit through sales to third parties at prices higher than the original purchase price. In any case, the conditions for allotment of institutional plots were being deliberated by the relevant authorities during pendency of the case before the CCI.

For these reasons, the CCI deferred to the State of Haryana's policy *re* institutional plots and no allegation of abuse of dominant position was sustained against HUDA.

Comment:

In an interesting case, the Buyers (through GIWA) brought a challenge to the State of Haryana's institutional plot allotment policy through allegations of abuse of dominance by HUDA. However, the CCI opined that such determination falls outside the scope of the CCI's review. Therefore, so long as a statutory authority (such as, HUDA) operates within the limits of the relevant statute, allegations of anticompetitive conduct may not be tenable.

The CCI Order can be accessed [here](#).

1. An information is a "complaint" filed in terms of Section 19(1) of the Competition Act, 2002 (Act).
2. The allegations pertained to sub-clauses (b)-(e) of Section 4(2) of the Act.
3. The DG also found that institutional plots sold by private builders for residential projects were not substitutable with institutional plots sold by statutory bodies (such as, HUDA) due to differences in use case and size. Accordingly, an alternate market for "*the provision of services for development and sale of institutional plots in the State of Haryana (other than in residential plots) in the State of Haryana*" was defined. HUDA was found dominant in the alternate market, as well.
4. Market share in terms of allocation of area for institutional plots in square meters.
5. The statutory framework include, the Haryana Urban Development Authority Act, 1977 (as amended), Haryana Urban Development Authority Regulations, 1978, and Haryana Urban Development (Disposal of Land and Building) Regulations, 1978.

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