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CCI GREEN LIGHTS MERGER OF ZEE-SONY SUBJECT TO DIVESTMENTS

1 November 2022

On 26 October 2022, the Competition Commission of India (**CCI**) published its order approving the amalgamation of Zee Entertainment Enterprises Limited (**ZEEL / Zee**) and Bangla Entertainment Private Limited (**BEPL**), with and into Culver Max Entertainment Private Limited (**CME**) (collectively, "**Parties**") (the "**Proposed Combination**").[1]

To alleviate the *prima facie* concerns of the CCI arising out of a deal between industry behemoths and to expedite the approval process, the Parties voluntarily offered modifications to the Proposed Combination to conduct sale of Hindi General Entertainment Channel (**GEC**) *Big Magic*, and Hindi film channels *Zee Classic* and *Zee Action*.

We have set out a brief overview of the CCI's competition assessment below.

The Parties

CME is an indirect wholly owned subsidiary (**IWOS**) of Sony Group Corporation (**SGC / Sony**), with several GEC, film, sports, and kids' entertainment channels in India. Along with such channels, CME has an over-the-top (**OTT**) platform as well, ie *Sony LIV*. Similarly, BEPL is also an IWOS of SGC which is engaged in the acquisition of rights for motion pictures, events, and other TV content; and generating advertising revenue from the telecast of TV content. BEPL also has 2 (two) regional channels, namely, *Sony AATH* (Bengali) and *Sony Marathi*.

ZEEL is a media and entertainment company, engaged in the business of *inter alia* TV content development, broadcasting of regional and international entertainment satellite television channels, movies, music, and digital business. Similar to CME, ZEEL also has an OTT platform named *ZEE 5*.

Horizontal Overlaps

The activities of the Parties overlap with respect to operation and wholesale supply of television channels in India. Accordingly, the Relevant Markets (**RM**) submitted by the Parties and CCI's competition assessment of each market are given below.

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1 Combination Registration No. C-2022/04/923 (order dated 4 October 2022).

1. Operation and wholesale supply of TV channels in India (narrow markets: (i) Hindi GEC; (ii) Regional GEC; (iii) film channels; and (iv) infotainment & lifestyle channels) (**RM 1**)

CCI observed that Parties have a high combined market share (40-45%) in relation to Hindi language-based television channels, based on the Gross Rating Point (**GRP**) as estimated by the Broadcast Audience Research Council (**BARC**).

Further, RM 1 was already concentrated with the top 4 (four) players (ie, Sony, Zee, Disney-Star, Viacom) cumulatively holding 65-70% market share. The Proposed Combination would further reduce the number of top players and increase the cost of competition as well as entry.

2. Retail supply of OTT AV content in India **(RM 2)**

The Parties are present in RM 2 through their respective OTT platforms *ZEE 5* and *Sony LIV*. However, their combined market share is less than 10%, which would face competition from other major players such as *MX Player* and *Disney+ Hotstar*.

3. Supply of advertising airtime on TV channels in India (RM 3)

On analysis of pricing of advertisement time slots by the Parties, CCI observed that costs are differentiated and vary across: (i) television channels of the same group; (ii) different programmes on the channel; (iii) programmes broadcasted at different time slots; and (iv) modes / quality of streaming. Thus, the relevant market suggested by the Parties for advertising airtime on TV channels in India did not translate into market reality.

But the CCI observed that from a demand / advertiser's perspective, a relevant market would constitute the relevant viewership for the purpose of an entity's marketing. Thus, CCI concluded that the relevant market for advertisement should be based on language and nature of content ie, in alignment with BARC's classification of channels such as Hindi GEC and Hindi Films.

Further, CCI observed that post-Proposed Combination, the RM 3 will be dominated by the Parties and Disney-Star which would lead to increased market concentration, strengthen the Parties' market power *vis-à-vis* advertisers and may create incentive for the Parties to raise the prices of its advertisement slots. Consequently, rival firms may follow suit and decrease advertisement airtime while increasing prices.

4. Licensing of AV content in India (**RM 4**)

Generally, AV content refers to: (i) short films and feature films; (ii) documentaries; (iii) TV shows; (iv) live events, etc. The Parties produce and license AV content to their group companies, third-party TV channels and OTT platforms. However, the changing market dynamics indicate that AV content is licenced by various entities only for a limited period, in order to continuously procure and supply fresh content for their viewers.

5. Production and supply of films to third-party distributors and exhibitors for theatrical release in India **(RM 5)**

RM 5 combines production, distribution, and exhibition of films, for viewing by audiences, primarily for an entertainment experience in theatres. The Parties are present in RM 5 as films produced by them are often licensed to theatres, TV broadcasters, and OTT services in India.

6. Licensing of music rights in India **(RM 6)**

As per the CCI, Parties are engaged in licensing of a bundle of rights such as right to play the music and associated AV content such as music videos to the public across different forums and mediums (ie, internet, TV, music streaming apps, radio, etc.).

The CCI did not specifically elucidate upon competitive concerns arising in RM 4, RM 5, and RM 6.

Vertical Overlaps

Vertical overlaps between activities of the Parties exist in similar markets. For example, operation and wholesale supply of TV channels, or retail supply of OTT AV content by an entity requires it to source / license AV content rights from another entity. Similarly, both the Parties are involved in sale of advertising airtime on TV channels which they can provide for each other's TV channels. Further, even the music rights being licensed in RM 6 can be sub-licensed to other entities.

The CCI noted that while Telecom Regulatory Authority of India (**TRAI**) has set the upper ceiling price for subscription of individual channels, there is scope for competition in the pricing of bouquets of channels by the broadcasters. Thus, CCI observed that the combined entity will be the largest broadcasting house and an indispensable partner for Distribution Platform Operators (**DPOs**). It would have the ability to increase the price of its channel bouquets to DPOs which would eventually be recovered from the end-consumers / viewers.

CCI's Prima Facie view

The CCI observed that the Proposed Combination is likely to cause AAEC in India, given that it is a horizontal combination between two competing broadcasting houses present across the TV and digital platforms value chain. The combined entity would have approximately 92 TV channels, with high market shares in Hindi GEC, Hindi Films, Marathi GEC, and Bengali GEC. It will end up being a dominant entity and an indispensable partner to DPOs. Thus, it will have the ability to increase prices for advertisers, DPOs, and the viewers as well. Accordingly, a show cause notice (**SCN**) was issued on 10 August 2022 to Parties under Section 29(1) of the Competition Act, 2002 (**Act**).

Response to SCN and Remedies

The Parties submitted their response to CCI's SCN in September 2022, along with certain behavioural commitments. Interestingly, the Parties made a voluntary remedy submission on 4 October 2022, which superseded previous remedy submissions.

The divestiture offered by the Parties and accepted by the CCI related to sale of *Big Magic* (engaged in the Hindi GEC market) and *Zee Action* and *Zee Classic* (engaged in the Hindi Films channels market) by ZEEL. Such sale will include licensing trademarks, channel names, logos, etc. and transfer of applicable licenses, permits and authorisations. The agreements relating to licensing of content will also be transferred to the purchaser along with employees working with the said TV channels.

Amongst others, the CCI has disqualified Star India Private Limited or Viacom18 Media Private Limited (including their respective affiliates), from bidding for the divestment channels. An eligible purchaser would be one with no connection with the combined entity but must have financial resources and expertise to maintain the said channels sustainably.

Comment

The CCI continues to showcase its expertise in navigating combination approvals within record timelines regardless of the size of the merging parties. The trend of offering voluntary modifications during a Phase I review process remains popular with parties and CCI alike, so as to avert a lengthy and in-depth Phase 2 review process.

While the order is silent on whether the CCI approached third parties to elicit views of the market participants in relation to the Proposed Combination, the experience of the CCI in tackling issues in the media space is visible. Dynamism in the industry with the rise of OTT platforms, adequate regulatory oversight, etc. are some factors that have been budgeted in while predicting the competitive concerns that the combined entity can pose in the future and remedies that are proportionate to such likely harm have been accepted.

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