

Competition

June 17, 2015

CCI APPROVES BIG CINEMAS' CARNIVAL RIDE

- CCI holds that different cities where films are exhibited may be considered as distinct 'relevant geographic markets', as market conditions in one city cannot be easily equated with another.
- 'Relevant geographic market' for exhibition of films could be narrowed down within a city, based on the size of the city and factors such as availability of transportation, purchasing power of consumers, travelling distances.
- CCI recognizes the dynamics of film exhibition industry and that there are differences between multiplexes and single screen cinemas.

The Competition Commission of India ("CCI") in its recent order dated March 24, 2015¹ ("**Order**") approved the "**Proposed Combination**" involving:

- the transfer of the film exhibition business along with the food and beverages business of Reliance Media Works Limited ("**RMWL / Target**") to Cinema Ventures Private Limited ("**CVPL**"), a subsidiary of RMWL; and,
- acquisition of 100% shares of CVPL by Carnival Films Private Limited ("**Carnival / Acquirer**") and a director of Carnival.

Determining that the relevant market would be relevant market for multiplexes in the cities where the Proposed Combination would take effect and examining the dynamics of these relevant market, CCI concluded that the Proposed Combination was not likely to have an '*appreciable adverse effect*' on competition within the relevant market in India.

BACKGROUND Business of Acquirer

Carnival is engaged in the business of film exhibition through the cinemas operated by it, food and production business and provision of advertising space on and off the screen.

Carnival operates 7 cinemas, consisting of 4 multiplexes and 3 single screen cinemas. In all, Carnival has 17 screens in **Kerala, Karnataka and Tamil Nadu**. Carnival Films Entertainment Private Limited ("**CFEPL**"), a subsidiary of Carnival operates 6 cinemas (all multiplexes) having 24 screens in **Madhya Pradesh, Maharashtra, West Bengal and Uttar Pradesh**.

Business of Target

RMWL is engaged in the business segments of film and media services, television content production and film exhibition. RMWL operates one of India's largest cinema chains under the brand 'BIG Cinemas' with 99 cinemas consisting of 80 multiplexes and 19 single screen cinemas, having a total of 269 screens across India.

PROPOSED COMBINATION The effect of the Proposed Combination is captured in the table below:

Prior to Proposed Combination

Particulars	Carnival (independently / through CFEPL)	CVPL	RMWL
Multiplexes	10	0	80
Single Screen Cinemas	3	0	19
Total Screens in India	32	0	269

Subsequent to the Proposed Combination

Particulars	Carnival (independently / through CFEPL)	CVPL	RMWL
Multiplexes	10	72	8
Single Screen Cinemas	3	16	3
Total Screens in India	32	238	31

A notice was filed by Carnival under Section 6(2) of the Competition Act, 2002 ("**Competition Act**")² on January 2, 2015 pursuant to a share purchase agreement dated December 15, 2014 between Carnival, RMWL and CVPL. The

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Proposed Combination consisted of two legs.

First, the film exhibition business was to be transferred pursuant to a business transfer agreement between RMWL and CVPL ("**Business Transfer Agreement**") which included the food and beverages business but excluded all forms of film exhibition through internet, mobile or television of RMWL. A total of 72 multiplexes and 16 single screen cinemas (totaling 238 screens) operated by RMWL were proposed to be transferred by RMWL to CVPL in terms of the Business Transfer Agreement.

The second leg of the Proposed Combination envisaged acquisition of 98% shareholding in CVPL by Carnival and a 2% shareholding in CVPL by a director of Carnival, pursuant to the share purchase agreement signed between the parties.

Carnival also disclosed to CCI that it proposed to acquire 10 multiplexes having 30 screens from Stargaze Entertainment Private Limited ("**Stargaze**"). Although this was not part of the Proposed Combination, CCI nevertheless took the same into consideration to examine the effect on competition in the relevant market.

CCI'S ORDER

CCI observed that the film industry in India consists of three stages, namely, production, distribution and exhibition. CCI also noted that exhibition channel was an important component of the film industry. CCI further observed the rise in the number of multiplex cinemas, usually owned by corporations as compared to traditional single screen theatres, which were generally owned by small businesses or sole proprietorships. CCI noted that facilities in cinemas had changed and multiplexes were characterized by "*modern infrastructure, good ambience and quality of food and beverages*" and that these factors coupled with other factors such as rising consumerism, increase in disposal income played a vital role in the rapid increase in the number of multiplexes in the country.³

The CCI referred to the FICCI-KPMG Indian Media and Entertainment Industry Report 2014 ("**FICCI-KPMG Report**") wherein it was mentioned that "*multiplexes accounted for approximately 25% of the total number of screens in the country with a low screen density of around 8 screens per million in comparison with 117 per million in the U.S.A.*" It was observed that "*major growth of multiplexes in India has mostly occurred in Tier II and Tier III cities and factors like rising consumerism, increase in disposable income, favorable demographics and lower penetration of multiplexes within the country throw up excellent opportunities for the multiplex sector in India. This is also because over the last few years, multiplex cinemas are changing the way the movies are viewed, particularly in the big cities of India.*"

In considering the 'relevant geographic market' for the Proposed Combination, the CCI observed that multiplexes are to be classified as being distinct from the single screens. CCI made this observation after taking into account the fact that multiplexes are usually costly, in comparison to the single screen theatres, and nature of services are different. The CCI further noted that due to the reluctance of consumers to travel long distances, different cities where films are exhibited may be considered to be different 'relevant geographical markets'. It further notes that even the conditions within one city cannot be equated with those in another, and that the geographical market may be narrowed down even within a city, based on its size and consumer-oriented factors such as transportation and purchasing power.

The CCI concluded that though there were overlaps in respect to multiplexes between Carnival, Stargaze and RMWL in 7 cities,⁴ the Proposed Combination was not likely to have an "*appreciable adverse effect on competition within the relevant market in India*" within the meaning under Section 6(2) of the Competition Act, as there were other multiplexes in each of these cities. In respect to the relevant market for exhibition of films, the CCI singled out the city of Dindigul and observed that there were 3 other prominent single screen cinemas in addition to a multiplex. The CCI also specified that in Dindigul, along with the existence of competitors to Carnival pursuant to the Proposed Combination, the Tamil Nadu state government has regulated⁵ the rate of admission to theatres, with maximum and minimum rates of admission fixed with respect to amenities provided. Hence, it was unlikely that the Proposed Combination would result in increase in prices or have an adverse impact on amenities provided to consumers in Dindigul.

ANALYSIS

As per media reports, the acquisition was made for an enterprise valuation of slightly north of INR 700 crores (approximately USD 110 million).⁶ With the addition of 242 screens, the Proposed Combination would catapult Carnival into the top 3 film exhibition companies in India.⁷ Carnival doesn't seem to be putting its foot on the brakes, with its Chairman stating that they are "*targeting to achieve 1000 screens by 2017 and look forward to the continued support of Reliance Group in future growth.*"⁸ However, the Proposed Combination excluded real estate owned by RMWL at IMAX Wadala and other properties, which are intended to be separately monetized for an approximate value of INR 2 billion (approximately USD 32 million).⁹

One of the significant consequences of CCI's Order is that though the Proposed Combination was found to not be likely to raise any anti-competitive concerns, the issue of a precise delineation of the separate 'relevant geographical markets' within the same city, on consideration of issues like availability of transport, distances and purchasing power of consumers, has been left open for future consideration. This leaves the door open for further consideration on these principles in future orders, possibly even in markets analogous to the film exhibition market. The CCI, as required to, determined whether the Proposed Combination would have an 'appreciable adverse effect on competition' in the relevant market, by looking into various aspects under Section 20(4) of the Competition Act. These included factors such as likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins, extent of effective competition likely to sustain in the market, nature and extent of innovation etc.¹⁰

CCI has adopted a pragmatic approach to its reasoning in the Order. CCI has also appreciated the nuances of multiplexes and single screen cinemas in concluding that the Proposed Combination would not have an appreciable adverse effect on competition in the relevant market.

These are welcome measures and indicate an approach in favor of commerce and augur well for acquisitions in the media and entertainment industry in India. In this industry, with the advent of new technologies and modes of distribution of content various factors need to be taken into consideration for determining 'relevant geographic

markets'. Single screen theatres cannot be equated with multiplexes anymore, due to differences in technologies, ambiances and quality of related services and CCI has rightly recognized these factors. Further, factors such as transportation, purchasing power and travelling distances in respect to film exhibition play a role in determining the 'relevant geographic market', even if within the same city. Although the Proposed Combination did not involve transfer of the film exhibition business through internet, mobile or television, the CCI may need to consider more complex matters involving online streaming, video-on-demand, over-the-top, peer-to-peer and mobile application models, in respect to determining the 'relevant geographic market' in future cases.

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You can direct your queries or comments to the authors

¹ Available at: <http://www.cci.gov.in/May2011/OrderOfCommission/CombinationOrders/C-2015-01-236.pdf>.

² Regulation of Combinations:

(2) Subject to the provisions contained in sub-section (1), any person or enterprise, who or which proposes to enter into a combination, shall, give notice to the Commission, in the forms may be specified, and the fee which may be determined, by regulations, disclosing the details of the proposed combination, within thirty days of:

(a) approval of the proposal relating to merger or amalgamation, referred to in clause (c) of section 5, by the board of directors of the enterprises concerned with such merger or amalgamation, as the case may be;

(b) execution of any agreement or other document for acquisition referred to in clause (a) of section 5 or acquiring of control referred to in clause (b) of that section.

³ Para 8 of Order.

⁴ The seven cities are Indore, Mumbai, Dindigul, Ghaziabad, Dehradun, Raipur and Ajmer.

⁵ Via Notification dated May 20, 2009 issued under the Tamil Nadu Cinemas (Regulation) Rules, 1957.

⁶ As per a media release by Reliance Capital available at: http://www.reliancecapital.co.in/pdf/RMW_Media_Release.pdf

⁷ *Blockbuster deal in multiplex space: Carnival acquires Anil Ambani's Big Cinemas for Rs 710 crore*, dated: December 16, 2014.

Available at: http://articles.economictimes.indiatimes.com/2014-12-16/news/57112434_1_new-screens-shrikant-bhasi-carnival-group.

Last accessed: June 3, 2015.

⁸ *Anil Ambani's Reliance Group to sell Big Cinemas to Carnival Films*, dated: December 15, 2014. Available

at: <http://www.vccircle.com/news/media-entertainment/2014/12/15/anil-ambanis-reliance-group-sell-big-cinemas-carnival-films>. Last

accessed: June 3, 2015.

⁹ Supra note 6.

¹⁰ For the purposes of determining whether a combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market, the Commission shall have due regard to all or any of the following factors, namely:–

(a) actual and potential level of competition through imports in the market;

(b) extent of barriers to entry into the market;

(c) level of combination in the market;

(d) degree of countervailing power in the market;

(e) likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;

(f) extent of effective competition likely to sustain in a market;

(g) extent to which substitutes are available or are likely to be available in the market;

(h) market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination;

(i) likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market;

(j) nature and extent of vertical integration in the market;

(k) possibility of a failing business;

(l) nature and extent of innovation;

(m) relative advantage, by way of the contribution to the economic development, by any Combination having or likely to have appreciable adverse effect on competition;

(n) whether the benefits of the combination outweigh the adverse impact of the combination, if any.

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