

Competition Law Hotline

November 19, 2015

COMPAT CHASTISES MECHANICAL APPLICATION OF LAW BY DIRECTOR-GENERAL AND CCI

- COMPAT dismisses claims of abuse of dominance and anti-competitive practices by Andhra Pradesh Film Chamber of Commerce.
- Holds that Director-General does not have power to strike down rules of an organization.
- Rejects Commission's mechanical approach of approving findings of Director-General.
- This ruling once again reiterates fundamental principles which both the Commission and Director-General should follow.

BACKGROUND

The Competition Appellate Tribunal ('COMPAT') allowed the appeal of Andhra Pradesh Film Chamber of Commerce ('APFCC') and held that APFCC was not guilty of anti-competitive practices ('COMPAT Order').¹ APFCC challenged an order of Competition Commission of India ('CCI') which held that the internal rules of APFCC and other parties placed restrictions on dealings with non-members ('CCI Order').² COMPAT held that CCI had mechanically accepted the findings of the Director-General ('DG') and did not satisfactorily apply the law to the facts. COMPAT Order provides clarity with respect to the test to be applied to analyze if anti-competitive practices are adopted by organizations. The observations of COMPAT on the manner in which DG should examine the case will also be of assistance in future cases of abusive of dominance and anti-competitive practices.

FACTS

Informant, Cinergy Independent Film Service Pvt. Ltd. ('Cinergy'), had sub-distribution rights in respect of a film 'Mausam', which it proposed to release. Prior to the release, a complaint was filed before APFCC against Cinergy by Suresh Productions Pvt. Ltd. ('Suresh Films') that INR 25 million was due to it from Friday Entertainment Ventures, Big Bang Media Ltd. and its associate, Cinergy ('Complaint'). APFCC forwarded the Complaint to The Film & Television Producers Guild of India Ltd. and M/s. Indian Motion Picture Producers Association. Telangana Telugu Film Distributors Association, another Opposite Party ('OP') issued a circular to its members which, among other things, requested members to not release *Mausam* till the dispute in the Complaint was resolved. Karnataka Film Chamber of Commerce ('KFCC', another OP) also issued a letter to its members informing them of the Complaint. Indian Film Exporters Association ('IFEA', another OP) also issued a similar letter to its members requesting that the Complaint be resolved. Based on these letters, Cinergy filed the information with CCI alleging that by denying release of *Mausam*, OPs had formed a cartel and were abusing their dominant position. It was alleged that the circulars and the denial of release of films were anti-competitive and hence, OPs had violated the Competition Act, 2002 ('Competition Act').

PROCEEDINGS BEFORE CCI

CCI came to the conclusion that a prima facie case was made out and directed the DG to investigate. CCI also granted interim relief under section 33 of the Competition Act restraining OPs from interfering with the release of *Mausam*. The DG issued notices to all parties and came to the conclusion that OPs had indulged in anti-competitive practices and had violated the Competition Act. DG also issued notice to PVR Pictures Ltd. ('PVR') and in its testimony, an officer of PVR stated that they were pressurized to not release *Mausam*. He further stated that an officer of APFCC had played a key role in instigating various members against release of *Mausam*. DG concluded that only APFCC, KFCC and TTFDA were guilty of violating provisions of the Competition Act and further, DG also held that the Memorandum and Articles of Association of APFCC ('Memorandum') were in violation of the Competition Act since it restricted its member's dealings with non-members. CCI considered the report of the DG and placing substantial reliance on the letters of OPs came to the conclusion that OPs were in violation of the Competition Act. CCI held that the letters showed that OPs intended to restrict access of *Mausam* to the market. CCI concluded that there was an agreement for the purpose of section 3(3) of the Competition Act and that a presumption of appreciable adverse effect was drawn against OPs. CCI observed that while the presumption was rebuttable, OPs did not adduce any evidence to rebut the same.

COMPAT ORDER

In the appeal before COMPAT, appellant, APFCC argued that its letter to members which provided that the Complaint relating to INR 25 million, could not be treated as causing appreciable adverse effect or otherwise violating the Competition Act. It was further argued that CCI Order was premised on presumptions and that there was no evidence to justify the conclusions reached in CCI Order. Cinergy reiterated the findings and observations of DG and CCI Order.

On an examination of the record, COMPAT concluded that there was no evidence to justify the conclusion of CCI.

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COMPAT criticized and struck down the DG's observations regarding conduct of APFCC and the legality of its Memorandum. COMPAT held that these observations of DG were ex-facie perverse since the material on record did not justify the conclusions. COMPAT concluded that there were bald allegations made by some of the parties examined and there was no evidence to justify the conclusion that APFCC was in a dominant position or that it had abused its position. COMPAT noted that even the information filed before CCI, the only allegation made against APFCC was that it had forwarded letters to all of its members. COMPAT further observed that CCI had merely agreed with the conclusions of DG without independently applying its mind to the material on record.

OUR ANALYSIS

The COMPAT Order makes the right observations regarding the role of CCI and scope of analysis CCI should undertake while examining allegations against a party and the report of DG.³ COMPAT Order's observation on the manner in which DG should investigate and powers of the DG are also instructive and should ensure that analysis of material before the DG is as per the principles laid down by COMPAT. COMPAT has made these observations in the past as well and these observations would aid in better enforcement of the law.⁴ Supreme Court of India has emphasized the role of quasi-judicial authorities to ensure that there is consistency, predictability and uniformity in the adjudicatory process of such authorities.⁵ The observations would also serve well to ensure that cases that do not meet the test under Competition Act are rejected. The observations of COMPAT should have a positive effect on adjudication before CCI and in the investigation by DG as well.

— **M.S. Ananth & Pratibha Jain**

You can direct your queries or comments to the authors

¹ Andhra Pradesh Film Chamber of Commerce v. M/s. Cinergy Independent Film Service Pvt. Ltd. & Ors., Appeal No. 15 of 2013.

² Order dated January 1, 2013, in Case No. 56 of 2011.

³ For a more detailed analysis, see Competition Law in India – A Report on Jurisprudential Trends, Nishith Desai Associates, June 2015, available at http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Competition_Law_in_India.pdf.

⁴ See Nishith Desai Articles, *Director General and Commission Powers Clarified*, April 1, 2015, available at http://www.nishithdesai.com/information/research-and-articles/nda-hotline/nda-hotline-single-view/article/director-general-and-competition-commission-powers-madras-high-court-sets-precedent.html?no_cache=1&cHash=7ab965ee0e103bc8698779f7df9527a5 and *Apex Competition Regulator Declares BCCI Not-Out On Appeal*, April 10, 2015, available at http://www.nishithdesai.com/information/research-and-articles/nda-hotline/nda-hotline-single-view/article/apex-competition-regulator-declares-bcci-not-out-on-appeal.html?no_cache=1&cHash=e745a7d5086fbcacf33055d699d5d64c.

⁵ *Namit Sharma v. Union of India* (2013) 1 SCC 745.

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