Treatment of Joint Ventures under Indian competition law

The Competition Commission of India (CCI) has been active in regulating joint ventures (JVs) under Section 3 of the Competition Act, 2002. The CCI has endorsed the need for a clear framework for regulating JVs to ensure that they do not lead to anticompetitive outcomes. JVs are considered to be a form of horizontal cooperation among competitors and can lead to market power if not properly regulated.

Under the Indian Competition Act, any JV would have to be notified under the Act if it meets the requisite thresholds given under the Act. The CCI has cleared JVs under Combinations and in certain cases given reasons for doing so, which include low market share of JV

Treatments of Joint Ventures in other Jurisdictions

In US, any JV meeting the criteria of Section 7, Clayton Act and financial thresholds of HSR Act will have to be notified to FTC and DOJ for approval.

Under substantive analysis of Section 7, JVs are on a case-by-case basis, usually analyzed under the rule of reason but can be held under per se violations in certain circumstances (Shoney Kissing and Coca Cola). Furthermore, third parties (hereafter referred to as parents) are involved under Antitrust Act if a JV meets the requisite thresholds given under the Act. The JVs after the first hand law of a qualifying criterion to the JVs have to be notified under the EBPPV (101 F) following a "full functional" JV meaning financial thresholds and having a union dimension will have to be notified. A "full functional" JV is defined as a JV having a management structure to its day-to-day operations and access to sufficient resources including finances, staff, and assets (Chloroprene and ICI) in order to conduct its business on a business activity that is separate and independent from its parents. The JV after the advice of the Court of Justice of the European Union, 26 September 2013, in Case C-172/12 P, El du Pont de Nemours and Co. v. Commission of the European Communities, has huge practical implications for JVs and thus corporations have to be more careful about antitrust liabilities while forming a JV.

In cases given reasons for doing so, which include low market share of JV

CCI Case No. 31 of 2011 on 21.03.2013

CCI Case No. 107 of 2013 on 04.01.2016

CCI Combination Registration No. C-2013/07/126 on 06.11.2013

CCI Combination Registration No. C-2015/10/333 on 04.02.2016

Available at http://www.cci.gov.in/revised-thresholds

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September 20, 2016

Comprehensive OECD report on JVs available at http://www.compass-europe.org/joint-ventures


Enforcement of the Cartelism Act of 1980 and Case C-172/12 P, El du Pont de Nemours and Co. v. Commission of the European Communities

The OECD describes a JV as a situation where participating firms agree by contract or otherwise to combine, or to arrange between them to combine, their respective resources or activities in a business. A JV may consist of a broader spectrum of arrangements and agreements than just a 50-50 shareholding vehicle (company with common shareholders).

The OECD has observed that JVs that might fall in a separate class in antitrust to state of economic efficiencies generated by (which are sometimes known as other forms of collaborative agreements). Some of these benefits include achievement of economies of scale, spreading the risks and costs of R & D, reducing investors for research and execution, acquisitions of new technologies or skills and synergies from pooling of complementary resources or capabilities. On the other hand, CCI can fail certain joint and competitive effects analysis, based on whether the overall anticompetitive effect of the agreement or arrangement outweighs any procompetitive benefits.

Whether CCI would follow the EU approach or carve out a different interpretation remains to be seen. Violations but in cases where a JV and its parents act like a group, they can escape Section 3 liabilities. Whether CCI would follow the EU approach or carve out a different interpretation remains to be seen. Violations but in cases where a JV and its parents act like a group, they can escape Section 3 liabilities.