Treatment of Joint Ventures under Indian competition law

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The CCI has recently considered whether a JV would be treated as a CCI combination for the purposes of the CCI Act. The Authority has held that a JV is not a single group, nor is it a vertically related entity. A JV is treated as a single group for the purposes of the CCI Act if it is treated separately in the hands of its owners, and not together as a single group. This was confirmed in 2013 by CJEU where parents of a 50-50 JV were held jointly liable for JV’s competition law violations if they exercise “significant influence” over the JV.

The treatment of JVs under substantive provisions requires special mention to presumption provided under Section 3(3) of the CCI Act (101(3)). This presumption is more readily accepted in case of JVs than other agreements. Apart from merger regime, JVs can be analyzed for 101 and 102 violations as well. However, it would appear that defense of 101(3) regarding efficiencies is more readily accepted in case of JVs than other agreements.

The treatment of JVs under substantive provisions requires special mention to presumption provided under Section 3(3) of the CCI Act, which does not grant blanket immunity to a JV but does raise presumption in its favor. However, the CJEU has held that this presumption only applies to horizontal JVs and that a JV does not have any special treatment accorded to them in Section 6. CCI has considered the pro-competitive efficiencies claimed by JVs in broadcasting sector as two separate occasions. In the Benelux v EU Case C-599/10 (2013) (“Chloroprene Rubber”), the CJEU held that a JV was a single economic entity even though the JV, its owners, and its joint venture contract were all subject to national competition laws. But, CCI also held that the JV was a single economic entity.

Under the Indian Competition regime, any JV would have to be notified under CCI Act if it meets the criterion of Section 7, Clayton Act and financial thresholds of HSR Act. Apart from merger regime, JVs can be analyzed for 101 and 102 violations as well. However, it would appear that defense of 101(3) regarding efficiencies is more readily accepted in case of JVs than other agreements. Apart from merger regime, JVs can be analyzed for 101 and 102 violations as well. However, it would appear that defense of 101(3) regarding efficiencies is more readily accepted in case of JVs than other agreements.

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