

NATIONAL LAW UNIVERSITY, DELHI

LL.M., Semester-II (Batch of 2021)

End Semester Examinations, April-2022

Paper: Advanced Competition Law

Time: 3 Hours

Total Marks: 50

Instructions:

1. All questions are compulsory.
2. No clarification shall be sought on the question paper.
3. This is an open book examination. Students can bring their own materials. No materials will be supplied by the University. Laptops cannot be used by the students.

Q.1 In the year 2017, the Government of Attica entrusted the responsibility of implementation of Health for All scheme (HFA) to 'Comprehensive Health Insurance Agency of Attica' ('CHIAA'). HFA is the health insurance scheme introduced by the Central Government for below poverty line ('BPL') families. On 18.11.2017, CHIAA issued a tender for the selection of the insurer for a period of three years commencing from 01.04.2018 under HFA scheme. The closing date for submission of the completed bid documents was 08.12.2017.

In this regard, bids were invited from: (a) insurance companies licensed and registered with the Insurance Regulatory and Development Authority; and (b) agencies enabled by any central legislation to undertake health insurance related activities. Seven insurance companies submitted the tender documents for the abovementioned tender.

Mr. A filed an information with Competition Commission of Attica (CCA) alleging that Health Tree Co. Limited (OP-1), Amber-shield Co. Limited, (OP-2), Pulse Health Insurance Co. Limited (OP-3), and Cure Health Co. Limited (OP-4), submitted the tender documents and rigged the tender. It was alleged that prior to submission of the bids, OPs had held a meeting under the auspices of Bi-Annual Meeting of Public Insurance Companies of Attica (BMPIC) on 07.12.2017 at Attica with the sole agenda to discuss the 'Tender Notice on HFA dated 18.11.2017 of Government of Attica'. The meeting was held "to discuss about sharing of business and submission of quotation for the above business". The said meeting was attended by: (a) Shri Ram, the then Chief Regional Manager of OP-1; (b) Shri Shyam, the then Chief Regional Manager of OP-2; (c) Shri Ajay, the then Regional Manager of OP-3; and (d) Shri Mahesh, the then Deputy General Manager of OP-4. In fact, the minutes of the meeting were signed by aforementioned company officials where a decision was taken 'to share the business among the four PSUs with Cure Health Co. Limited (OP-4) as Leader with 70% and other Companies with 10% each.....Cure Health Co. Limited (OP-4) will be L1 and other three PSUs will be L-2 to L-4 in the quotation being submitted on 8th December, 2017'. OPs quoted price bids in accordance with the decision taken in the meeting held on 07.12.2017.

It was also alleged that OP-4 is in concert with the other PSUs to exit from the tender year after year forcing re- tendering and consequent quotation of higher quotation of premium in collusion is a virtual fraud perpetrated upon the State of Attica with regard to a social welfare scheme which was directed at BPL families.

Based on the above facts answer the following:

1. Whether there is any agreement involved in the case? Discuss in reference to relevant provisions and case laws. (Marks 5)
2. Whether the conduct of OPs have resulted in the contravention of the Competition Act, 2002? (Marks 10)

- Q 2.** An information was filed by Unity Auto Dealers against Kart Motors Limited (KML), (OP). OP was engaged in manufacturing and distribution of motor vehicles and their parts in India. Informant had a KML dealership for sale and service of KML cars.

Informant alleged that the OP enters into exclusive dealership arrangements with its dealers, and dealers were required to obtain prior consent of the OP before taking up any dealerships of another brand. It was also alleged that KML's dealers were bound to procure spare parts, accessories and all other requirements, either directly from OP or through vendors approved by the OP.

Also, OP imposed a "Discount Control Mechanism" through which dealers were only permitted to provide a maximum permissible discount and the dealers were not authorised to give discount which is above the imposed upper limit.

KML through dealership agreements advises the dealer on margin to be allowed on maximum selling price defined in standard provision and this margin to be revised on sole discretion of OP. OP ensured compliance of its policy of discount control mechanism by engaging "mystery shopping" agencies for policing its dealers through fake customers.

Lastly, it was alleged that KML had control over the sources of supply for the dealer's products and tied the manufacture and sale of cars to supply and retrofitting of CNG kits, supply of lube oils, and provision of insurance policies as well.

Based on the above facts:

- 1. Discuss whether the agreement between the Informant and OP has resulted in the contravention of the Competition Act, 2002? Discuss in light of relevant decision of CCI? (Marks 10)**

- Q3.** Collective Hands, a non-government organisation, filed an information with Competition Commission of India against Mito Inc. ('OP-1') and Mito India Private Limited ('MIPL') (OP-2). Mito is engaged in designing, marketing and selling smartphones (MiMob), personal computers (including MiComp), tablets (including the MiTab), wearables and accessories, and selling a variety of related services. Further, Mito is stated to own and operate the Mito's App Store (the 'App Store') to distribute applications (apps) through the App Store.

The Informant has alleged –

- a) Mito, through its App Store Review Guidelines ("Guidelines"), forced developers seeking to enter into the app store market to accept unilaterally imposed contracts.
- b) Mito required app developers who wish to sell digital in-app content to their consumers to use a single payment processing option offered by Mito, which carries a 30% commission, thereby, restricted the use of alternate payment mechanisms.
- c) Mito imposes unreasonable and unlawful restraints on app developers from reaching users of its mobile devices (e.g., MiMob and MiTab) unless they go through the 'App Store' which is controlled by Mito.
- d) Mito mandatorily required developers to use In-App Purchase (IAP) for paid apps and restricted the use of alternate payment mechanism.
- e) Further, Mito's marketing restrictions made it difficult for the multi-platform apps to inform their users of the ability to make out-of-app purchases.
- f) Lastly, it was alleged that Mito's Guidelines conditioned the use of its app store on the use of its IAP to the exclusion of alternative payment solutions.

Based on the above facts:

- 1. Discuss whether the conduct of Mito has resulted in the contravention of the Competition Act, 2002? (Marks 10)**

- Q.4.** A Share Purchase and Share Swap Agreement was entered between LiveWell Life Insurance Company (Acquirer) and Fortune Shield Life Insurance Company Limited ("Target/Fortune Shield Life"), and Fortune Shield Industries Limited (Fortune Shield Industries). Pursuant to this agreement, an acquisition is by Livewell Life of 100% share capital of Fortune Shield Life from Fortune Shield Industries. As a part of the consideration for share sale, Fortune Shield Industries will be issued equity shares of Livewell Life amounting to 4.1% of the shareholding of the Acquirer. Fortune Shield Life is proposed to be merged with Livewell Life such that Livewell Life will be the only surviving entity ('Proposed Combination'). This was notified to the Competition Commission of India. Following information was also provided in the said notice:

"Livewell Life is a life insurance company registered with the Insurance Regulatory Development Authority of India ("IRDAI"). Its product portfolio comprises of various life insurance and investment products such as protection, pension, savings, investment, annuity, and health. It also provides certain riders pertaining to health benefits along with its primary life insurance policies.

Fortune Shield Life, a wholly owned subsidiary of Fortune Shield Industries, is also a life insurance company registered with IRDAI. It covers various individual and group life insurance products including protection plans (term insurance, child insurance plans), savings and investment plans (including ULIPs), retirement and pension plans. It also provides certain riders pertaining to health benefits along with its primary life insurance policies."

Based on the above facts, discuss the following:

- a) **How are such agreements regulated under the Competition Act, 2002? (Marks 5)**
- b) **What factors will CCI consider while assessing the proposed combination between LiveWell Life Insurance Company and Fortune Shield Life Insurance Company Limited? Discuss the relevant provisions of Competition Act, 2002. (Marks 10)**

OR

- Q.4** X is an enterprise engaged in the business of manufacturing and selling cosmetic products through its own retail outlets and is in the business for last 40 years. It is a pioneer enterprise and has been a leader for last several decades with its valuation nearing 4500 Crores in the preceding financial year. Over last few years, with the growth of online marketplaces, more and more customers have shifted to buying the products online. Several other competitors have gradually shifted to the online marketplaces seeing the change in consumer preferences. Recently, the Board of Directors have taken a decision to venture into Ayurvedic cosmetics products along with the decision of building a strong online presence. Company Y is a company incorporated in 2015, dealing exclusively with Ayurvedic products and has in last few years acquired a loyal consumer base. It's turnover for preceding financial year was 2000 Crore. Another Company Z is an enterprise engaged in online marketing strategy and even though nascent in its operation, has handled many national and international assignments. It's turnover for the preceding year was 600 Crores. X intends to acquire both Company Y and Company Z and has initiated the process. The Board of Directors passed the resolution on 20-04-2022. The Competition Act, 2002 requires the parties to notify the Commission of any combination having breached the thresholds.

In the light of the above-mentioned facts:

- a) **Elaborate in the light of relevant provisions, the procedure to be followed by the enterprises in filing of the present combination. (Marks 5)**
- b) **Are there any exemptions available to the enterprises, if yes, elaborate giving justifications? (Marks 5)**
- c) **Elaborate upon the relevant factors to be taken into consideration by Commission while assessing the combination. (Marks 5)**