

**MS. VIJAYACHITRA KAMALESH (INFORMANT) AND RCI INDIA PRIVATE LIMITED
(OPPOSITE PARTY)**

Decision date: 29/10/2019

Keywords: effects doctrine, territoriality, anti-competitive agreements

Rule: Sec. 3 and 4 of the Competition Act, 2002.

It was submitted that RCI was an Indian subsidiary of RCI Inc. and looked after the business of time share exchange in India. The Informant had alleged that RCI by virtue of various agreements was making illegal transactions with its clients including Mahindra Holidays & Resorts India Ltd (“Mahindra (India)”). An agreement was entered into between Covington S.A.R.L. (a subsidiary of Mahindra (India)), Mahindra (India) and RCI Europe, on 04.08.2014.

As per the said agreement, RCI Europe acted as beneficial protector and guardian of the business interests of RCI. Further, by means of the said agreement, it was agreed that RCI Europe would provide interest free loan of 10 million Euros to Mahindra (India) for the purposes of buying Holiday Club Resorts OY (“**Holiday Club**”).

It was averred that RCI and Mahindra (India) had earlier entered into another agreement on 13.12.2013 by means of which they agreed on certain terms of engagement. It was alleged that agreement dated 04.08.2014, mentions that in consideration of the continuing relationship under the agreement dated 13.12.2013, between RCI and Mahindra (India), RCI Europe had agreed to provide the interest free loan to Covington. Further, it was alleged that the effect of the said loan transaction was that it creates barriers to competition for its rival in the timeshare exchange market, *i.e.* Interval International.

Analysis of the Commission

The Commission observed that the matter pertains to ‘Timeshare’ sector. Briefly, a timeshare was a model in which customers own a right to use certain property/ properties, owned by timeshare companies, for a fixed duration every year for a certain number of years, subject to availability. The timeshare model can apply to many different types of properties, such as condominiums, homes, campgrounds, vacation resorts *etc.*

The Informant had alleged contravention of the provisions of Section 3 and Section 4 of the Act due to an agreement dated 04.08.2014, entered into between Covington, RCI Europe and

Mahindra (India). It was pertinent to note that as per the Informant, RCI was not even a formal party to the said agreement. The Commission observes that the primary grievance of the Informant was that RCI Europe, Mahindra (India) and Covington joined hands and purchased the shares of Holiday Club which disrupted competition in the timesharing market. The impugned transaction, *ipso facto*, appears to be an acquisition by Covington and did not seem to raise any competition concern.

The Commission notes that the provisions of the Act were only attracted when the impact of the alleged/impugned conduct had some nexus to the competition in markets in India and was likely to cause an appreciable adverse effect on competition in such market. Though the presence of such entities in India was not a *sine qua non*, however, the impact of their conduct must have an appreciable adverse effect on competition in India to trigger the machinery under the Act.

The Commission observed that the abovementioned position of law (enshrined in Sec. 32 of the Act) was based on what was commonly known as the “*effects doctrine*”, which empowers competition regulators to extend jurisdiction beyond the “*principle of territoriality*”. The pith of this doctrine was that the domestic competition law captures anti-competitive acts by enterprises even if the violating enterprise was not located within the territory of the country or the alleged conduct had taken place outside the territorial jurisdictions, provided that the anti-competitive act had an effect in the country.

The Commission notes that the acquisition, alleged to be anti-competitive, had taken place outside India and was in the context of a product meant for consumption outside India *i.e.* sale of resorts/part of resorts on time share basis. Though Mahindra (India) seems to be the ultimate acquirer of the Holiday Club, this case did not seem to have any impact on the competition in the Indian markets. Given that Holiday Club had resorts only in Finland, Sweden and Spain, the impugned acquisition of Holiday Club did not appear to bring any material change in the position of Mahindra (India) as a competitor in the Indian markets. Thus, this case did not appear to raise any competition concern in India, to warrant scrutiny under the Act.

It was further observed that in order to establish a *prima facie* case for contravention of the provisions of Section 3 and Section 4 of the Act, it was important that besides allegations, the Information contains some evidence which shows an anti-competitive conduct, warranting investigation.

Conclusion

In view of the foregoing, the Commission was of the opinion that there exists no *prima facie*

case and the information filed was closed under Section 26(2) of the Act.