S&R Update

COMPETITION/ANTITRUST

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The PVR-INOX Merger: Bouncing Back from the Pandemic

On March 27, 2022, PVR Limited ("**PVR**") announced that it proposes to merge with INOX Leisure Limited ("**INOX**"). Pursuant to the merger, the shareholders of INOX will receive shares of PVR at the approved share exchange (swap) ratio (the "**PVR-INOX Transaction**").

While existing screens of PVR and INOX are proposed to continue their present branding (i.e., 'PVR' or 'INOX', respectively), new cinemas opened following the merger will be branded as 'PVR-INOX'. The PVR-INOX Transaction is expected to bring together two of India's largest cinema brands with a combined network of more than 1,500 screens.[1]

Ordinarily, a deal of this magnitude would require the prior approval of the Competition Commission of India ("**CCI**"). In fact, PVR's acquisition of 39 screens from DT Cinemas (the "**PVR-DT Transaction**") in 2016 also required the approval of the CCI.

However, owing to the decreased revenues of the parties (and the cinema industry generally) caused by the pandemic, the PVR-INOX Transaction has been able to benefit from a revenue based statutory exemption to CCI approval requirements.

MARKET POSITIONS OF PVR AND INOX

According to the press release issued by PVR, it currently operates 871 screens in 73 cities and INOX operates approximately 675 screens across 72 cities. The combined entity is headed to become the largest film exhibition company in India operating 1,546 screens across 109 cities.[2]

1 Press Release "*PVR Limited and INOX Leisure Limited Announce Merger*" dated 27 March 2022, available at https://archives.nseindia.com/corporate/PVR_27032022150923_PVR_PressRelease.pdf

2 Press Release "*PVR Limited and INOX Leisure Limited Announce Merger*" dated 27 March 2022, available at https://archives.nseindia.com/corporate/PVR_27032022150923_PVR_PressRelease.pdf

Based on publicly available information, the combined entity will have around 50 per cent multiplex screen market share and around 42 per cent box office collection market share.[3]

The creation of such an entity, particularly given that its market shares will cross 50% on a nation-wide basis, could potentially have effects on competition in the markets where the parties are present.

REVIEW OF TRANSACTIONS BY THE CCI

The CCI was established under the Competition Act, 2002 ("**Competition Act**") to prevent practices that have an appreciable adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets in India.

Transactions involving enterprises which cross certain asset and turnover values (as prescribed under the Competition Act), are required to be notified to, and approved by the CCI prior to completion (unless any exemptions apply).

Pursuant to an exemption notified by the Ministry of Corporate Affairs, transactions are exempt from the approval requirements under the Competition Act where: (a) the value of assets being acquired, taken control of, merged or amalgamated is not more than INR 350 crore in India; or (b) the turnover of the target (i.e., the enterprise whose control, shares, voting rights or assets are being acquired) or the turnover attributable to the assets being acquired, taken control of, merged or amalgamated (as applicable), is not more than INR 1,000 crore in India (the "**Target Based Exemption**").[4] Recently, the applicability of the Target Based Exemption was extended to March 2027.[5]

Based on the financial statements for the year ended 2020-21, the revenue for PVR was INR 280 crore[6], and INOX was INR 106 crore[7]. These revenue numbers are below the

[3] "*Merger boost: Inox Leisure zooms 20%, hits record high; PVR jumps 10%*", Deepak Korgoankar, dated 28 March 2022, available at https://www.business-standard.com/article/markets/merger-boost-inox-leisure-zooms-20-hits-record-high-pvr-jumps-10-122032800195_1.html#:~:text=The%20new%20cinemas%20opened%20post,box%20office%20collection%20market%20share.

[4] Notification S.O. 988(E), issued by the Ministry of Corporate Affairs on 27 March 2017, available at http://cci.gov.in/sites/default/files/notification/S.O.%20988%20%28E%29%20and%20S.O.%20989%28E%29.pdf

[5] Notification S.O. 1192(E), issued by the Ministry of Corporate Affairs on 16 March 2022, available at https://egazette.nic.in/WriteReadData/2022/234300.pdf

[6] Page 159 of the audited consolidated financial statements of PVR Limited for year ended 2020-21, available at https://originserver-static1-uat.pvrcinemas.com/pvrcms/financial/59092021162700059_218.pdf

[7] Page 19 of the audited consolidated financial statements of INOX Leisure Limited for year ended 2020-21, available at https://s3.ap-southeast-1.amazonaws.com/cdn.inoxmovies.com/Downloads/08e7ba98-3e1f-4502-b717-c828b04df236.pdf

thresholds provided in the Target Based Exemption, and allow the PVR-INOX Transaction to be exempt from notification and approval requirements under the Competition Act.

As stated above, in 2016, the CCI reviewed the PVR-DT Transaction and found that it was likely to have an appreciable adverse effect on competition in India due to a large increase in market shares in certain locations such as Noida, Gurgaon, and South Delhi. Therefore, the CCI directed divestiture of 7 screens belonging to DT, along with other commitments to be undertaken by PVR, prior to the completion of PVR-DT Transaction.[8]

Given that the Competition Act does not grant the CCI powers to examine transactions that are exempt from approval requirements, the PVR-INOX Transaction is unlikely to be reviewed by the CCI.

However, the subsequent conduct of the combined entity could be examined under the provisions relating to (i) the abuse of dominance under Section 4 of the Competition Act (for example, by way of imposing unfair prices or conditions) or (ii) anti-competitive agreements under Section 3(4) of the Competition Act (including, for example, with respect to tie-in arrangements, exclusive agreements, etc.)

Accordingly, it appears that due to revenue losses owing to the pandemic, the PVR-INOX Transaction will escape the CCI's scrutiny, and could result in an asset heavy company that would otherwise have been subject to the CCI's view on whether divestitures are needed based on competition concerns.

Since the film distribution industry was not the only industry hit hard by the pandemic, this transaction may also serve as a pointer for enterprises to re-examine deals which may have otherwise invited close regulatory scrutiny.

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8 *PVR/ DT Cinemas*, Combination Registration No. C-2015/07/288, dated 4 May 2016, available at https://www.cci.gov.in/sites/default/files/whats_newdocument/C-2015-07-288.pdf