



JSA Newsletter Competition Law

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High Court

Madras High Court dismisses writ petition filed by Agni Steels challenging the CCI's investigation

The Madras High Court (“**MHC**”) dismissed a writ petition filed by Agni Steels Private Limited (“**Agni Steels**”), challenging the investigation initiated by the Competition Commission of India (“**CCI**”) for alleged cartelisation.

Brief Background

In March 2021, Coimbatore Corporation Contractors Welfare Association (“**Complainant**”) filed a complaint before the Central Bureau of Investigation (“**CBI**”) alleging that 9 (nine) steel companies have formed a cartel through which they significantly increased the price of several steel products for illegal and wrongful gain.

Having received no response from the CBI, the Complainant approached the MHC seeking directions against the CBI to initiate the investigation. The CBI informed the MHC that it has already shared a copy of the complaint with the Director General (“**DG**”). Accordingly, the MHC disposed of the matter (“**MHC Order**”).

On August 17, 2021, in compliance with the MHC Order, the CCI convened a special meeting wherein it directed the DG to investigate the matter basis the MHC Order (“**Meeting**”). Subsequently, on March 14, 2023, the DG commenced investigation and issued the summons to the officers of Agni Steels to record their statement on oath.

On March 23, 2023, Agni Steels conducted inspection of case record available with the CCI and discovered that the CCI has not passed an investigation order under Section 26(1) of the Competition Act, 2002 (“**Competition Act**”) (referred to as the “**Prima-Facie Order**”). Thereafter, Agni Steels requested the CCI to provide a certified copy of the Prima-Facie Order and also sought exemption from appearing before the DG for recording the statement. However, on April 6, 2023, the CCI rejected Agni Steels’ request in relation to seeking exemption from appearing before the DG for recording their statement.

Proceedings before the MHC

Aggrieved, Agni Steels filed a writ petition before the MHC wherein it *inter alia* contended that: (a) the CCI is obligated to pass the prima-facie order before initiating an investigation, which is missing in this case; and (b) the DG cherry-picked the companies for investigation, even though their names were not there in the original complaint. Accordingly, it requested the MHC to quash the investigation.

MHC Judgment

The MHC dismissed the writ petition and *inter alia* held that:

1. the CCI *vide* the Meeting had deliberated upon the issues and concluded that a *prima-facie* case exists for the DG to investigate. Accordingly, the initiation of investigation is not in contravention of Section 26(1) of the Competition Act.
2. merely because the DG is investigating companies who are not part of the original complaint, cannot lead to a conclusion that the investigation is being conducted in an arbitrary manner. The investigation is ongoing and therefore, it would be premature to interfere with the ongoing investigation.

(Source: [MHC judgment dated October 19, 2023](#))

Madras High Court dismisses appeals filed by cement companies against the CCI order

The Division Bench (2 (two) judge bench) of the MHC dismissed appeals filed by Dalmia Cement (Bharat) Limited (“**Dalmia Cement**”), and India Cements Limited (“**India Cements**”) (together as “**Appellants**”), challenging the order of the Single Judge of the MHC. The Single Judge, *vide* the said order dismissed the writ petitions filed by the Appellants challenging the order of the CCI, through which it impleaded Builders’ Association of India (“**BAI**”) as an interested party in the ongoing cartel proceedings before the CCI against cement companies.

Brief Background

On July 1, 2019, the CCI initiated *suo motu* investigation against several cement companies for alleged cartelisation. On December 7, 2021, BAI filed an application before the CCI seeking to be impleaded as a complainant in the investigation, which was rejected by the CCI (“**Rejection Order**”). Aggrieved, BAI filed a writ petition challenging the Rejection Order before the Delhi High Court (“**DHC**”). The DHC passed an order, whereby it granted liberty to BAI to submit an application to the CCI to seek a copy of the investigation report and provide its views/inputs, if desired (“**DHC Order**”).

Subsequently, the CCI *vide* order dated July 5, 2023 impleaded BAI as an interested party in the ongoing proceedings and accepted BAI’s request to conduct the inspection of the non-confidential version of the case records and also to file its response to the investigation report, if desired (“**Impleadment Order**”).

Aggrieved, the Appellants filed writ petitions challenging the Impleadment Order before the Single Judge of the MHC. In parallel, UltraTech Cement Limited (“**Ultratech**”) filed a writ petition before the DHC challenging the Impleadment Order.

The Single Judge of the MHC held that: (a) the cause of action arose from the Impleadment Order, which was passed on the basis of the DHC Order; and therefore, MHC has no territorial jurisdiction; and (b) UltraTech Cement Limited has also filed the writ petition before the DHC, challenging the Impleadment Order. The DHC heard the matter at length and reserved its judgment. Therefore, applying the principle of ‘comity of courts’, the Single Judge dismissed the writ petitions (referred to as the “**Single Judge Order**”).

Proceedings before the Division Bench of the MHC

Aggrieved, the Appellants filed an appeal before the Division Bench of the MHC challenging the Single Judge Order. The Appellants primarily contended that: (a) the CCI has contravened the principles of natural justice by failing to provide an opportunity of hearing to the Appellants before passing the Impleadment Order; and (b) if BAI is impleaded as a party, it would have access to commercially sensitive information of the Appellants and that would be detrimental to their commercial interest.

Division Bench Judgment

The Division Bench of the MHC dismissed the appeals and *inter alia* held that the CCI ought to have provided an opportunity of hearing to the Appellants before passing the Impleadment Order. However, by the time the appeals were filed, BAI had already conducted the inspection and received the non-confidential version of the investigation report. Therefore, the contention of the Appellants that BAI would have access to the certain information of the Appellants has become otiose.

(Source: [MHC Judgment dated September 11, 2023](#))

National Company Law Appellate Tribunal

NCLAT sets aside the CCI order against sugar mills for alleged bid rigging cartel

The National Company Law Appellate Tribunal (“NCLAT”) disposed of the appeal filed by several sugar mills and their trade association (“Appellants”) by setting aside the order passed by the CCI against them for indulging in alleged bid rigging, in contravention of Section 3(3) of the Competition Act.

Brief Background

On September 18, 2018, the CCI passed a final order (“CCI Order”) against the Appellants for indulging in bid rigging in relation to the supply of ethanol, in contravention of Section 3(3) of the Competition Act. Accordingly, the CCI imposed a monetary penalty of INR 38.05 crore on the Appellants. For a detailed summary of the CCI Order, refer to [JSA Newsletter of September 2018](#).

NCLAT Observations

Aggrieved, the Appellants challenged the CCI Order and *inter alia* contended that: (a) the CCI Order is in violation of principles of natural justice as 6 members heard the matter, and 3 (three) members passed the CCI Order. This is against the principle that ‘one who hears must decide’; and (b) the CCI ordered the DG to conduct a supplementary investigation, however, the CCI failed to provide an opportunity of hearing to the Appellants after the DG submitted its supplementary report to the CCI.

The NCLAT *inter alia* held that: (a) there was non-compliance of natural justice by the CCI as the same quorum who heard the matter did not pass the CCI Order. This is in violation of the principle of ‘one who hears must decide’. The CCI Order was passed 13 (thirteen) months after the hearing was concluded during which time, 3 (three) out of the 6 (six) CCI members who started hearing the matter retired from the CCI. It may be entirely possible that the members, who did not sign the CCI Order may have held a different point of view; and (b) the CCI should have provided an opportunity of oral hearing to the Appellants after the DG submitted its supplementary report and before passing the CCI Order especially when further investigation was initiated pursuant to request of the Appellants.

Given that the CCI Order was not in compliance with the principles of natural justice, the NCLAT did not deem it necessary to hear the appeals on merit. Accordingly, the NCLAT dismissed the appeals, thereby setting aside the CCI Order and remanded the matter back to the CCI for a fresh hearing.

(Source: [NCLAT Judgment dated October 10, 2023](#))

Competition Commission of India

Merger Control

CCI approves acquisition of minority shareholding of BusyBees Logistics by Ontario Limited under Green Channel

The CCI approved the acquisition of minority shareholding of BusyBees Logistics Solutions Private Limited¹ by 1000632564 Ontario Limited² (“Proposed Transaction”). The parties notified the Proposed Transaction under green channel as there were no horizontal, vertical, or complementary overlaps between the activities of the parties in India.

¹ It is an express logistics service provider, catering to end-to-end supply chain solutions.

² It is controlled by Ontario Teachers’ Pension Plan Board (“OTPP”). OTPP administers pension benefits and the investment of pension plan assets of active and retired teachers in the Canadian province of Ontario worldwide.

(Source: [Summary](#))

CCI approves internal restructuring of IDFC group under Green Channel

The CCI approved the internal restructuring of IDFC group (“**Proposed Transaction**”). The Proposed Transaction entailed the following steps:

1. merger of IDFC Financial Holding Company Limited (“**IDFC Holding**”)³ with and into IDFC Limited (“**IDFC**”)⁴, with IDFC being the surviving entity.
2. merger of IDFC with IDFC First Bank Limited (“**IDFC Bank**”)⁵, with IDFC Bank being the surviving entity (“**Step 2**”).
3. cancellation of the existing shareholding of IDFC Holding in IDFC Bank and issuance of new shares of IDFC Bank to the shareholders of IDFC, as a consideration for step 2.
4. reduction of the securities premium account of IDFC Bank.

The parties notified the Proposed Transaction under green channel as there were no horizontal, vertical, or complementary overlaps between the activities of the parties in India.

(Source: [Summary](#))

CCI approves acquisition of shareholding of Quest Global Services by Carlyle group and Bequest under Green Channel

The CCI approved the: (a) acquisition of shareholding of Quest Global Services Pte. Limited (“**Target**”)⁶ by CA Plume Investments⁷ belonging to the Carlyle group; (b) acquisition of additional shareholding of the Target by Bequest Inc.⁸; and (c) buyback of shareholding by the Target (referred to as the “**Proposed Transaction**”). The parties notified the Proposed Transaction under green channel as there were no horizontal, vertical, or complementary overlaps between the activities of the parties in India.

(Source: [Summary](#))

CCI approves acquisition of shareholding of TBO Tek by General Atlantic under Green Channel

The CCI approved the acquisition of upto 27.5% shareholding of TBO Tek Ltd.⁹ by General Atlantic Singapore TBO Pte. Ltd.¹⁰, belonging to the General Atlantic group (referred to as the “**Proposed Transaction**”). The parties notified the Proposed Transaction under green channel as there were no horizontal, vertical, or complementary overlaps between the activities of the parties in India.

(Source: [Summary](#))

³ It is a non-operative financial holding company and is not permitted directly to undertake any business activities in India. It is a wholly owned subsidiary of IDFC.

⁴ It is a non-banking financial company and is not directly engaged in any business operations. It is the ultimate holding company of IDFC Bank.

⁵ It is engaged in the business of providing banking services.

⁶ It provides engineering services to for products and services across product lifecycle.

⁷ It is an investment vehicle directly controlled by funds managed by affiliates of The Carlyle Group Inc.

⁸ It is the holding company of the Target’s co-founder and Chief Executive Officer

⁹ It is an investment holding company and is owned and controlled by the General Atlantic.

¹⁰ It is engaged in the business of providing services related to tours and travel to travel agents and independent travel advisors over its two-sided business-to-business technology platform namely “travelboutiqueonline.com”.

Miscellaneous

CCI publishes draft lesser penalty (Leniency) regulations for public consultation

On October 16, 2023, the CCI released the draft [CCI \(Lesser Penalty\) Regulations, 2023](#) (“**Draft Lesser Penalty Regulations**”) for public comments. The Draft Lesser Penalty Regulations will replace the existing CCI (Lesser Penalty) Regulations, 2009 (as amended) and incorporate the changes brought by the Competition (Amendment) Act, 2023 (“**Amendment Act**”).

The key changes introduced in the Draft Lesser Penalty Regulations are as follows:

1. **Leniency Plus:** The Amendment Act includes the mechanism for leniency plus where an enterprise who is a leniency applicant in 1 (one) cartel and helps in discovering a new/separate cartel, will be eligible to receive reduction in penalty for both the existing and the new cartel.
 - a) **Reduction in Penalty:** If the leniency plus applicant makes full, true and vital disclosures about the new cartel which the CCI is unaware of, enabling the CCI to form its *prima facie* opinion, the applicant will be eligible for an additional reduction in monetary penalty of up to or equal to 30% in the first cartel in addition to the existing reduction in penalty as per its priority status; and up to 100% reduction in penalty in the new cartel.
 - b) **Information to be Provided:** The leniency plus applicant must provide: (i) full, true and vital disclosures sufficient for the CCI to form a *prima facie* view about the new cartel; (ii) details of the first cartel where the leniency plus applicant has obtained a priority status; ; (iii) justification in relation to how the new cartel is a new / separate cartel; and (iv) any other information.
 - c) **Timeline:** The applicant can make an application for leniency plus at any time prior to the DG submitting the investigation report (“**DG Report**”) in the first cartel to the CCI. In the case of more than 1 (one) applicant applying for leniency plus in respect of a new cartel, the CCI will not consider the application of a subsequent applicant unless the application of the first leniency plus applicant has been rejected.
 - d) **Factors that the CCI should consider:** While granting reduction in penalty in leniency plus regime, the CCI must consider: (i) the likelihood of the CCI / DG detecting the new cartel in the absence of the leniency plus application; (ii) the factors differentiating the first and new cartel; and (iii) any other relevant factors.
2. **Withdrawal:** The leniency / leniency plus applicants will have an option to withdraw their applications any time prior to the CCI receiving the DG Report. However, the DG or the CCI can use the information or evidence submitted by the applicant except for the admission of guilt.
3. **Forfeiture:** The benefit of leniency / leniency plus to the applicant will stand forfeited if the applicant: (a) fails to comply with the conditions on which the CCI granted the benefit of the leniency / leniency plus to the applicant; or (b) gave false information or omitted to submit any material information knowing it to be material; or (c) makes a disclosure which is not vital.

In case of forfeiture, the applicant will be subjected to an inquiry in relation to the contravention in relation to which the leniency / leniency plus was granted and maybe liable to penalty.
4. **Confidentiality:** The CCI may disclose the evidence filed by the leniency / leniency plus applicant after the receipt of the DG Report by the CCI in accordance with Regulation 35 of the CCI general regulations which allows the disclosure of confidential information to members of a “confidentiality ring”.

5. **Cartel Facilitators:** The Amendment Act expands the scope of cartel provisions to include facilitators of cartels, even if they are not engaged in identical or similar trade, where they participate or intend to participate in furtherance of the cartel. The Draft Lesser Penalty Regulations allow cartel facilitators to apply for leniency/leniency plus.

Government issues rules for the CCI to issue guidelines

On October 26, 2023, the Government of India issued Competition (Form of Publication of Guidelines) Rules, 2023 ("**Rules**") enabling the CCI to issue guidelines in relation to the provisions of the Competition Act.

Under Section 64B of the Competition Act, the CCI is empowered to issue non-binding guidelines in relation to the provisions of the Competition Act (including the rules and regulations) and computation of penalty amount. The Rules clarify that the guidelines will be published on the CCI's website and in the official gazette. The guidelines published will be in English and *inter alia* specify: (a) title of the guidelines; (b) date from which such guidelines shall be effective; and (c) any other details relevant to the guidelines.

(Source: [Notification dated October 26, 2023](#))

CCI launches market study on the cement sector

The CCI has launched a pan-India market study on the cement sector. Given that cement is a critical input to several industries and that the structural features of cement market makes it susceptible to collusion, the CCI proposes to develop a comprehensive understanding of the market and the competition therein. The main objectives of the study are to:

1. examine the evolving market structure in the cement sector across regions including *inter alia* market concentration, entry/exit and consolidation.
2. study the market trends including *inter alia* trends/movements in cement price, cost, production, capacity, capacity utilisation and profitability.
3. understand cement pricing in trade and non-trade segments including an in-depth analysis of the determinants of movements in cement price.
4. reach out to all relevant stakeholders for a holistic understanding of the sector and identify impediments to competition, if any.
5. ascertain enforcement and advocacy priorities for the CCI in the cement sector.

(Summary: [Press Release dated November 3, 2023](#))

Competition Practice

Since the inception of the Indian competition regime, JSA has been a one-stop shop for all types of competition and anti-trust-related matters. As such, the team's in-depth understanding of the competition law, coupled with its commercially focused litigation skills has been the cornerstone on which it deals with matters relating to cartelisation (including leniency), abuse of dominance, vertical agreements, and dawn raid before the Competition Commission of India and appellate courts. The team regularly advises clients on general competition law issues arising from day-to-day business strategies and conducts competition compliance training for clients. Given the team's continued involvement with the regulator, coupled with its balanced and practical approach to competition law, it has been instrumental in shaping the competition law jurisprudence in India.

Over the years, the team has developed a reputation of not only being well regarded by its peers but also for having developed a good working relationship with the regulatory authorities. As such our lawyers have been involved in drafting statutory regulations and have represented the Indian competition law fraternity at various competition law seminars, workshops, and advocacy & public awareness programs across the world. The team's expertise (including team members) has been widely recognised by various leading international rankings and publications including Chambers and Partners, Who's Who Legal, Global Competition Review, Benchmark Litigation, Asialaw, and the Legal 500.

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<p>17 Practices and 24 Ranked Lawyers</p>	<p>16 Practices and 11 Ranked Lawyers</p>	<p>19 Practices and 19 Ranked Lawyers</p>
		
<p>11 Practices and 39 Ranked Partners IFLR1000 APAC Rankings 2022</p> <p>-----</p> <p>Banking & Finance Team of the Year</p> <p>-----</p> <p>Fintech Team of the Year</p> <p>-----</p> <p>Restructuring & Insolvency Team of the Year</p>	<p>Among Top 7 Best Overall Law Firms in India and 9 Ranked Practices</p> <p>-----</p> <p>11 winning Deals in IBLJ Deals of the Year</p> <p>-----</p> <p>10 A List Lawyers in IBLJ Top 100 Lawyer List</p>	<p>Banking & Financial Services Law Firm of the Year 2022</p> <p>-----</p> <p>Dispute Resolution Law Firm of the Year 2022</p> <p>-----</p> <p>Equity Market Deal of the Year (Premium) 2022</p> <p>-----</p> <p>Energy Law Firm of the Year 2021</p>
		
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