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High Courts

Guwahati High Court quashes Competition Commission of India's investigation against cement companies

On August 31, 2024, Guwahati High Court (“GHC”) quashed an investigation initiated by Competition Commission of India (“CCI”) against 3 (three) cement companies i.e., Calcom Cement India Limited, TOPCEM India and Star Cement Limited (“Petitioner”) (collectively referred to as “Cement Companies”) for indulging in alleged cartelisation, in contravention of Section 3(3) of the Competition Act, 2002 (as amended) (“Competition Act”). GHC also set aside the penalty of INR 5,00,000 (Indian Rupees five lakh) imposed by CCI on the Petitioner for non-cooperation with Director General’s (“DG”) investigation.

Brief Background

The complainants alleged that the Cement Companies *inter alia* indulged in cartelisation whereby: (a) they increased the price of cement in the north-eastern region without any corresponding increase in the input cost; and (b) they availed subsidies from the Government but did not pass on the benefit to the consumers. Basis the complaint, CCI directed the DG to investigate the matter (“Investigation Order”).

During the investigation, DG issued notices to the Cement Companies, seeking certain information from them. After reviewing the Investigation Order, the Petitioner filed an application with CCI, seeking review/recall of the Investigation Order arguing that CCI failed to establish the *prima facie* case against it, which was rejected by CCI *vide* order dated August 8, 2018 (“Recall Order”).

Subsequently, on August 27, 2018, CCI also imposed a penalty of INR 5,00,000 (Indian Rupees five lakh) on the Petitioner for failing to provide complete information requested by DG (“Penalty Order”).

Proceedings before GHC

Aggrieved, Petitioner filed the writ petition challenging the aforesaid orders *inter alia* contending that CCI while passing the Investigation Order failed to establish a *prima facie* case against the Cement Companies, which is a pre-condition before initiating an investigation.

Agreeing with the Petitioner’s submissions, GHC *inter alia* noted that establishing a *prima facie* case against a party is an essential pre-condition, which needs to be fulfilled by CCI before ordering an investigation. Further, GHC reviewed the evidence against the Cement Companies and noted that in the absence of a uniform price increase, coupled with variations in price hikes and sale prices, it cannot be concluded that the Cement Companies indulged in cartelisation. Rather, the evidence indicates the presence of competitive practices among the Cement Companies. Accordingly, GHC quashed CCI’s investigation against Cement Companies and also set aside the Penalty Order.

(Source: GHC judgment dated August 31, 2024)

Delhi High Court quashes CCI's investigation against JCB India Limited and affirms sanctity of mediation process

On August 14, 2024, the division bench of Delhi High Court (“DHC”) held that CCI must respect mediation outcomes and settlements reached between the parties and quashed the investigation against JCB India Limited (“JCB”)¹.

¹ JCB and Bull Machines both manufacture heavy equipment vehicles (backhoe loaders) that are used for road construction.

In November 2011, JCB filed a suit before DHC against Bull Machines Private Limited (“**Bull Machines**”) for design infringement. In response, Bull Machines filed cancellation petitions before the Controller of Designs.

In December 2013, while negotiations were ongoing, Bull Machines complained to CCI, accusing JCB of abusing its dominant position through bad faith litigation/vexatious litigation, which amounted to denial of market access in contravention of Section 4 of the Competition Act.

CCI ordered an investigation and subsequently DG conducted a ‘search and seizure’ operation against JCB, which JCB contested in a writ petition before DHC.

During the pending petition, Bull Machines’ attempt to dismiss the design infringement suit was rejected, leading to an appeal and subsequent referral to mediation by the Supreme Court. On August 26, 2021, DHC recorded the settlement between the parties. Following this, JCB and Bull Machines jointly sought to quash CCI’s investigation against JCB. CCI argued against the closure of the pending investigation. Its primary contention was that the terms of the settlement could be unfair and anti-competitive, just as litigation could be abusive/predatory.

Despite CCI’s opposition, DHC allowed the said application and terminated the proceedings before CCI on the ground that mediation, as a part of dispute resolution, brings finality to disputes, and allowing an investigation before CCI to continue would undermine the significance of the same. It further discouraged CCI against pursuing investigations relating to sham or vexatious litigation, particularly when the underlying intellectual property dispute is pending before DHC. It clarified that CCI’s intervention would be appropriate only if the underlying dispute were proven to be frivolous.

(Source: DHC judgment dated August 14, 2024)

Competition Commission of India

Enforcement

CCI dismisses complaint against National Internet Exchange of India for alleged abuse of dominant position

CCI received a complaint against the National Internet Exchange of India (“**NIXI**”)² for indulging in alleged abuse of dominant position, in contravention of Section 4 of the Competition Act.

Extreme Infocom Private Limited (“**Complainant**”), *inter alia* engaged in the business of providing internet exchange services to customers and provides Internet Exchange Points (“**IXP**”) connecting internet service providers and local and international content providers/content delivery networks (known as peering). For the provision of such service and hardware, entities providing IXPs are usually paid a fee called ‘port fee’.

The Complainant *inter-alia* alleged that NIXI, being a dominant enterprise, has indulged in predatory pricing i.e., it offered internet exchange services to its customers for free, or, below cost which resulted in denial of market access to the Complainant.

Relying on the *Bharti Airtel* case³, NIXI argued that CCI lacks jurisdiction in the present matter since any complaint regarding NIXI’s alleged conduct has to be adjudicated by the sectoral regulator i.e. TRAI/DoT.

On the issue of jurisdiction, CCI rejected the Complainant’s submissions and noted that the ruling in the *Bharti Airtel* case was basis the specific facts of the case and a universal application of the law laid down in the said case would

² It is a non-profit organization aimed at provision of better internet services across India.

³ *CCI v. Bharati Airtel Limited*, (2019) 2 SCC 521

deprive CCI of its jurisdiction in every matter where there is an overlap with a sectoral regulator which is not the intended purpose.

On merits, CCI noted that NIXI is not dominant in the market for the provision of internet exchange services in India due to the presence of several significant players in the said market. In fact, in terms of volume of traffic and number of connected networks, the Complainant has significant presence *vis-à-vis* NIXI and despite NIXI being the oldest IXP, the Complainant has been able to increase its relative presence in the relevant market which suggests that the relevant market remains contestable. Absent dominance, CCI noted that no case of Section 4 of the Competition Act is made out against NIXI.

Accordingly, CCI dismissed the case.

(Source: CCI order dated August 20, 2024)

CCI dismisses complaint against Procter & Gamble Hygiene and Health Care Limited for alleged abuse of dominant position

CCI received a complaint against Procter & Gamble Hygiene and Health Care Limited (“**P&G**”)⁴ and Procter & Gamble Company, USA (“**P&G USA**”) for indulging in alleged abuse of dominant position, in contravention of Section 4 of the Competition Act.

Mr. Rajiv Rai Sachdev (“**Complainant**”) claimed that he invented a disruptive green technology called ‘Enliven’, promoting it with all kinds of garments and textile products manufacturers.

The Complainant *inter alia* alleged that: (a) P&G collected information from the Complainant about Enliven and its application to P&G’s sanitary pads under the ‘PG Connect + Develop program’ and utilised the same to develop and launch a product without collaborating with the Complainant or seeking his permission; and (b) P&G denied market access to the Complainant as he lost the first mover’s advantage towards bringing Enliven into the market irrespective of being its innovator, supported by duly registered patents in his name.

CCI noted that while P&G holds a sizable market share in India’s disposable sanitary pad market, it does not qualify as a dominant player, with Johnson & Johnson’s Stayfree brand serving as a close competitor with comparable resources. Absent dominance, CCI noted that no case of Section 4 of the Competition Act is made out against P&G.

On merits, CCI noted that: (a) there is no evidence to suggest that P&G’s product was based on the information and idea of the Complainant; (b) P&G had not obstructed the Complainant from launching a similar product based on his own ideas; and (c) there was no such product in the making by the Complainant that was awaiting a launch.

Accordingly, CCI dismissed the case.

(Source: CCI order dated August 9, 2024)

⁴ It is the Indian subsidiary of P&G USA, a consumer goods corporation, dealing in personal health/ consumer health and personal care and hygiene products.

Merger Control

CCI approves several combinations in the month of August 2024; detailed approval orders to be published

1. combination involving Reliance Industries and Walt Disney, subject to certain modifications;
2. acquisition of Home Credit India Finance Private Limited by TVS Holdings and others;
3. acquisition of shareholding of Shriram Housing Finance Limited by Mango Crest Investment Limited;
4. combination involving Rasmeli Limited, Apollo Hospitals and Keimed Private Limited;
5. acquisition of shareholding of MTC Business Private Limited by Mitsui;
6. combination involving Accenture and Vodafone;
7. acquisition of Juniper Networks Inc. by Hewlett Packard; and
8. acquisition of shareholding of Vastu Holding Finance Corporation Limited by 360ONE.

(Source: CCI website)

CCI penalises India Business Excellence Fund-IV for gun-jumping

CCI imposed a penalty of INR 10,00,000 (Indian Rupees ten lakh) on India Business Excellence Fund-IV (“**IBEF**”)⁵, belonging to the Motilal Oswal group, for wrongly notifying the acquisition of minority shareholding in VVDN Technologies Private Limited (“**VVDN**”)⁶ (referred to as the “**Transaction**”) under the green channel route (“**GCR**”).

The parties can notify their transaction under the GCR if there are no overlaps between the business activities of the acquirer group, target and their affiliates in India.

Brief Background

On April 17, 2023, IBEF notified the Transaction under GCR and disclosed that there were no overlaps between the activities of Motilal Oswal group and VVDN, in India. In the GCR notification form, IBEF disclosed a temporary supply arrangement between VVDN and one of the portfolio companies of Motilal Oswal group (“**Relevant Portfolio Company**”) concerning the supply of Printed Circuit Boards (“**PCBs**”), classifying it as non-strategic and non-material in nature. Basis the acknowledgement received from the CCI; the parties closed the Transaction on April 19, 2023 .

On October 31, 2023, CCI issued a Show Cause Notice (“**SCN**”) questioning IBEF's eligibility for GCR, citing a potential vertical/complementary relationship with VVDN concerning PCBs. In response to the SCN, IBEF asserted that PCB supplies were non-strategic, *ad hoc*, and did not significantly impact competition.

CCI Order

CCI *inter alia* noted that: (a) PCB provided by VVDN is a strategic input for the COVID-19 kits manufactured by the Relevant Portfolio Company and not a basic input as contended by the parties, making it a vertical relationship and thus, GCR is not available; (b) although the notice under GCR was filed after availing pre-filing consultation with CCI, the same is merely a non-binding guiding tool for parties basis the disclosures made by them at that and without prejudice to the assessment of the case on receipt of the formal notice.

Accordingly, CCI invalidated the GCR notice, imposed a nominal penalty of INR 10,00,000 (Indian Rupees ten lakh) on IBEF for gun-jumping, and directed it to file a fresh notice with the CCI.

⁵ It is a Category II Alternate Investment Fund registered with the Securities Exchange Board of India and is managed by MO Alternate Investment Advisors Private Limited, a subsidiary of Motilal Oswal Financial Services Limited.

⁶ It is engaged in provision of electronic manufacturing services, original design manufacturing and product design services.

(Source: CCI order dated August 16, 2024)

CCI approves acquisition of shareholding of TVS Certified Private Limited and TVS Vehicle Mobility Solution Private Limited by Mitsubishi Corporation

CCI approved the acquisition of: (a) 35% shareholding of TVS Certified Private Limited (“**TVS Certified**”)⁷ by Mitsubishi Corporation (“**Mitsubishi**”)⁸ (referred to as the “**Auction Transaction**”); and (b) 32.26% shareholding of TVS Vehicle Mobility Solution Private Limited (“**TVS VMS**”)⁹ by Mitsubishi (“**Auto Retail Transaction**”). The Auction Transaction and the Auto Retail Transaction are collectively referred to as the “**Proposed Transaction**”.

As a condition precedent to the Auto Retail Transaction, certain businesses of the TVS group will be transferred to TVS VMS and its subsidiary.

CCI noted that there were no horizontal overlaps between the activities of the parties.

CCI examined the following vertical links between the activities of the parties¹⁰ in the:

1. upstream market for manufacture and sale of Passenger Vehicles (“**PVs**”) and downstream market for sale of vehicles and provision of ancillary services through automobile dealerships in India; and
2. upstream market for manufacture and sale of Commercial Vehicles (“**CVs**”) including the narrow market for manufacture and sale of light commercial vehicles and downstream market for sale of vehicles and provision of ancillary services through automobile dealerships in India.

Given: (a) the low market shares of the parties in each of the vertical markets; and (b) the dealerships operated by TVS VMS are not multi-brand and sell vehicles of only 1 (one) original equipment manufacturer (“**OEM**”). If TVS VMS were to sell vehicles of the Mitsubishi group, it would need to establish a new dealership exclusively for Mitsubishi and TVS VMS would not be able to leverage its existing market position from operating dealerships for other OEMs. Thus, CCI noted that the Proposed Transaction is not likely to raise foreclosure concerns.

CCI approved the Proposed Transaction in 60 (sixty) calendar days.

(Source: CCI order dated June 11, 2024)

CCI approves acquisition of Global Infrastructure Management, LLC by Blackrock group

CCI approved the acquisition of 100% shareholding in Global Infrastructure Management, LLC (“**GIM**”)¹¹ by Blackrock Funding, Inc. (“**BFI**”)¹² (referred to as the “**Proposed Transaction**”). Post the Proposed Transaction, BFI will become the ultimate parent company of the Blackrock group.

CCI examined the horizontal overlaps between the activities of the parties¹³ in the market for:

⁷ It is newly incorporated company and will be engaged in sale of used CV and PV.

⁸ It is the ultimate parent company of the Mitsubishi group.

⁹ It is a wholly owned subsidiary of TVS Mobility Private Limited and is currently not engaged in any business activity. It is authorised to deal and distribute, CVs, PVs including electrical vehicles, construction equipment and material handling vehicles, and provide motor vehicle services and dealer and distribute spare parts for vehicles.

¹⁰ (a) Mitsubishi group (including its affiliates) and TVS Certified (including its affiliates); and (b) Mitsubishi group (including its affiliates) and TVS VMS (including its affiliates).

¹¹ It is newly formed wholly owned subsidiary of BlackRock, Inc.

¹² It is a global independent infrastructure fund manager managing investment funds operating under the trading name Global Infrastructure Partners.

¹³ Blackrock group (including its affiliates) and GIM (including its affiliates).

1. provision of asset management services and the narrow market for private equity (including through alternative investment funds set-up in India);
2. provision of passive telecommunication infrastructure services through telecom towers; and
3. power generation and the narrower markets for generation of power through renewable sources which can be further segmented into: (a) generation of power through solar energy; and (b) generation of power through wind energy in India.

CCI noted that: (a) the combined market shares of the parties are low; and (b) several significant players are present in each of the relevant markets which will pose competitive constraints on the parties. In view of the same, the Proposed Transaction is not likely to raise competition concerns.

CCI examined the following potential vertical links between the activities of the parties in the:

1. upstream market for engineering, procurement, and construction services in the power generation market and downstream market for power generation, in India; and
2. upstream market for provision of solar modules and downstream market for generation of power through solar energy, in India.

Given the low market shares of the parties with the presence of several significant players in each of the vertical markets, CCI noted that the Proposed Transaction is not likely to raise foreclosure concerns.

CCI approved the Proposed Transaction in 90 (ninety) calendar days.

(Source: CCI order dated June 11, 2024)

CCI approves acquisition of shareholding of Napino Auto and Electronics Limited by International Finance Corporation

CCI approved the acquisition of approximately 18-20% shareholding of Napino Auto and Electronics Limited (“**Napino**”)¹⁴ by International Finance Corporation (“**IFC**”)¹⁵ (referred to as the “**Proposed Transaction**”).

CCI noted that there were no horizontal overlaps between the activities of the parties¹⁶.

CCI examined the following vertical links between the activities of the parties in the:

1. upstream market for sale of engine control unit and battery management system for 3 (three) wheeler and downstream market for manufacture and sale of 3 (three) wheeler vehicles (“**3W Market**”);
2. upstream market for owning, setting up and operating data centre facilities and providing colocation data centre facilities, and the downstream market for network infrastructure and related services for the implementation/management of data centres and, manufacture of data servers for OEM brands, in India; and
3. potential vertical links in upstream market for the supply of e-throttle (an auto component) and the downstream market for 3W Market.

Given the low market shares of the parties with the presence of several significant players in each of the vertical markets, CCI noted that the Proposed Transaction is not likely to raise foreclosure concerns.

¹⁴ It *inter alia* manufactures auto electrical and electronic products primarily for 2 (two) wheeler and a small segment of 3 (three) wheeler and 4 (four) wheeler vehicles.

¹⁵ It was established in 1956 by an international treaty called the articles of agreement among its member countries, including India to further economic growth in its developing member countries by promoting private sector development.

¹⁶ IFC (including its affiliates) and Napino (including its affiliates).

CCI approved the Proposed Transaction in 56 (fifty-six) calendar days.

JSA represented Napino before CCI.

(Source: CCI order dated April 23, 2024)

CCI approves acquisition of shareholding of Annapurna Finance Private Limited by Piramal group

CCI approved the: (a) acquisition of 10.39% shareholding of Annapurna Finance Private Limited (“**Annapurna Finance**”)¹⁷ by Piramal Alternatives Trust (“**Piramal Alternatives**”)¹⁸, belonging to the Piramal group¹⁹; and (b) subscription of certain debentures of Annapurna Finance (referred to as the “**Proposed Transaction**”).

Pursuant to the Proposed Transaction, Piramal Alternatives will have the right to appoint a director and an observer on the board of Annapurna Finance and an observer on the committees of the board of Annapurna Finance.

CCI examined the horizontal overlaps between the activities of the parties²⁰ in the broad market for provision of loans in India and the narrower market for provision of retail loans which can be further segmented as: (a) housing and home improvement loans; (b) micro small and medium enterprises loans; (c) consumer durables loans; (d) microfinance loans; and (e) personal loans.

CCI also examined the vertical links between the activities of the parties in the upstream market for the provision of credit facilities for micro financing in India and the downstream market for provision of loans in India.

Given the low market shares of the parties with the presence of several significant players in each of the identified markets, CCI noted that the Proposed Transaction does not raise competition/foreclosure concerns.

CCI approved the Proposed Transaction in 62 (sixty-two) calendar days.

(Source: CCI order dated April 2, 2024)

CCI approves acquisition of shareholding of Continuum Green Energy Private Limited by JC Infinity (B) Limited under GCR

CCI approved the acquisition of certain shareholding of Continuum Green Energy Private Limited²¹ by JC Infinity (B) Limited²² (referred to as the “**Proposed Transaction**”). The parties²³ notified the Proposed Transaction under GCR as there were no horizontal, vertical, or complementary overlaps between the activities of the parties in India.

(Source: CCI order dated August 27, 2024)

¹⁷ It is engaged in business of fund management and belongs to Piramal Enterprises Limited (“**PEL**”) which is a part of the Piramal Group.

¹⁸ It is a non-deposit-taking non-banking financial company (“**NBFC**”) and is engaged in the business of microfinance.

¹⁹ Piramal group has two separate listed entities i.e., PEL and Piramal Pharma Limited. PEL is an NBFC engaged in the business of retail and wholesale lending, alternative funds and life insurance.

²⁰ Piramal group (including its affiliates) and Annapurna Finance.

²¹ It is engaged in the renewable energy sector. It develops, owns, operates and maintains wind and solar farms in India and sells renewable energy generated from such farms.

²² It is created for the purpose of the Proposed Transaction and has no business activities in India. It is owned by Generation Investment Management LLP (“**GIM LLP**”) which is engaged in the business of sustainable investing.

²³ Continuum, JC Infinity (B) and JC Infinity (A) Limited (“**JCIAL**”). JCIAL is also created for the purpose of the Proposed Transaction and has no business activities in India. It is owned by GIM LLP.

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 with its dedicated competition law practice group. The Competition team at JSA advises on all aspects of the Indian competition law including merger control, cartels, leniency, abuse of dominance, dawn raid, compliance, and other areas of complex antitrust litigation. 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.

On the **enforcement/ litigation**, the team's in-depth understanding of antitrust and the competition law, coupled with its commercially focused litigation skills has been the cornerstone on which it deals with matters relating to abuse of dominance, vertical restraints, and cartelisation (including leniency and dawn raid) before CCI and appellate courts. On the **merger control**, the team helps clients navigate the merger control and assessment process including obtaining approval of CCI in Green Channel Form, Form I and Form II.

The team regularly advises clients on general competition law issues arising from day-to-day business strategies and conducts competition compliance programs. Notably, the team has conducted forensic reviews of documents and created step-by-step procedures for companies on how to respond to both internal antitrust violations as well as investigations by the regulator, including dawn raids.

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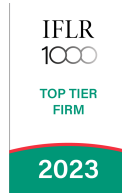
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