



Luthra and Luthra
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In the February Edition of the Luthra and Luthra Law Offices India – ‘Competition Law Newsletter’, we cover some of the most pertinent developments in the competition law space over the last month.

CCI dismisses allegations against PVR Limited

The Competition Commission of India (**CCI / Commission**) vide order dated [03.01.2024](#) dismissed an information against PVR Limited (**PVR**) for alleged contravention of Section 3 (4) and 4 of the Competition Act, 2002 (**Competition Act/ Act**). The allegations against PVR were that it was abusing its dominant position by favoring big production houses, and creating barriers for independent filmmakers. It was alleged that PVR provided more screens for films backed by large production houses and foreclosed the distribution of smaller, independent films. The Informant had also sought interim relief under Section 33 of the Competition Act restraining PVR from entering into exclusive tie-ups with specific production houses.

The Commission noted that no evidence has been placed on record by the Informant to prove the allegations. The Commission, in its order stressed upon the importance of autonomy and operational freedom for businesses and held that *"the right to choose a movie for exhibition lies with OP and this freedom cannot be curtailed by compelling it to exhibit the movie of the Informant unless and until it causes any harm to competition."*

CCI dismisses allegations against Electric Scooter Manufacturers

The CCI vide order dated [23.01.2024](#) dismissed an information filed by an anonymous individual against Ola Electric Ltd. (**Ola**), VIDA Hero Moto Corp Limited (**VIDA**), TVS Motors (**TVS**) and Ather Energy Private Limited (**Ather**), (together referred to as OPs) alleging contravention of provisions of Section 4 of the Competition Act.

The Informant alleged that the OPs exploited the Faster Adoption and Manufacturing of Electric and Hybrid Vehicles Policy (**FAME**) initiated by the Ministry of Heavy Industries and Public Enterprises. Introduced in 2015, FAME aims to promote electric and hybrid vehicle adoption in India and provides incentives to manufacturers and buyers to enhance affordability and accessibility, supporting the nascent electric vehicle (EV) sector. FAME's eligibility criteria stipulate a maximum ex-factory price of INR 1.5 Lac per 2-wheeler, a condition allegedly unaltered despite a subsidy increase in June 2021. The Informant contended that OPs took undue advantage, undermining the policy's intent and adversely affecting fair competition.

It was further alleged that through predatory pricing, the OPs intentionally separated essential components of electric two-wheelers, offering them at an extra cost while presenting the final product within the specified price limit. The Informant claimed this constituted an abuse of their dominant market position, as it restricted market access for smaller manufacturers.



The Commission perused the Information, and material provided by the Informant as well as publicly available information and observed that the essence of the allegations of the Informant was under-pricing by the OPs of their Equivalent Test Weight to avail the demand incentive/subsidy provided by the Government under the FAME policy, charging for essential components such as charger, software etc. separately from the customer, and consequently foreclosing the benefit of subsidy to other manufacturers whose products fall within the price limit set under the FAME policy.

The Commission recognized the market shares held by Ola, TVS Motors, Ather, and Vida in FY 2022, alongside other major players like Hero Electric and Okinawa and concluded that no single player could exert market power or operate independently of market forces in the relevant market. As a result, none of the OPs, including Ola, TVS Motors, Ather, and Vida, were found to have a dominant position under Section 4 of the Act.

Consequently, the Commission concluded that no prima facie case of contravention of Section 4 of the Act could be established against any of the OPs in the matter.

CCI dismisses allegations of abuse of dominance by Kerala State Road Transport Corporation

CCI vide its order dated [22.01.2024](#) dismissed an information against Kerala State Road Transport Corporation (**KSRTC**) for alleged contravention of Section 4 of the Act.

The Informant, a practicing lawyer in Delhi, raised concerns about the Kerala State Road Transport Corporation's (KSRTC) policies. KSRTC operates buses within and outside the State under a government-approved scheme. The scheme, initially authorized in 2009 and later modified in 2017, designated KSRTC as the exclusive operator for passenger road transport on specific routes, including the Nilakkal-Pamba route frequented by Sabarimala pilgrims.

The Informant alleged that KSRTC abused its dominant position by prohibiting contract vehicles beyond Nilakkal, making pilgrims dependent on KSRTC's services.

In response to the allegations, KSRTC stated that the Government of Kerala, under the authority of Section 100(2) of the Motor Vehicles Act, 1988, issued a nationalization scheme covering 31 routes in the state, including the Sabarimala route. KSRTC argued that the Informant lacked the standing to challenge its operations as the special services during the Sabarimala festival comply with the nationalization scheme. The corporation emphasized that the scheme, aimed at providing efficient and affordable transport, has been in place for decades.

Regarding the allegation of the Informant re extra charges during the Sabarimala festival, KSRTC justified them, citing a 2014 government notification and the need for additional expenditures to cater to the pilgrims. KSRTC argued that the fares for the Nilakkal-Pamba route adhere to the government notification and are lower than the stipulated amounts. KSRTC explained that



the revised fares, issued by the Government of Kerala in April 2022, are applicable to both nationalized and non-nationalized routes, emphasizing a unified fare system for all routes.

The Commission held that the exclusivity granted to KSRTC was a policy decision, and could not be considered anti-competitive. Regarding fare allegations, the Commission noted that KSRTC set fares in line with the April 30, 2022 Notification, which was applicable to both nationalized and non-nationalized routes. Given uniform per-kilometer fares for public and private operators and no discernible competition concerns, the Commission closed the case under Section 26(2) of the Act.

CCI closes case against Punjab Pollution Control Board

The CCI vide order dated [16.01.2024](#) dismissed an information against Madhav KRG Ltd (**OP-1**) and Punjab Pollution Control Board (**OP-2**) (collectively, OPs). OP-1 was stated to be in the business of extracting zinc out of the pollution dust; while OP-2 was stated to be the state pollution control board that has been entrusted with the task of implementation of environmental laws in the State of Punjab.

The Informant alleged that OP-2 mandated all steel induction furnaces to install Air Pollution Control Devices (**APCD**) as the process produced dust containing around 40% zinc. This dust, treated as hazardous waste by OP-2, had limited buyers, with OP-1 being a dominant player permitted to purchase it. The Informant contended that OP-1 (facilitated by OP-2) exploited its dominant position by buying pollution dust from induction furnaces at a low price, resulting in undue profits. The Informant sought Commission directions to reclassify pollution dust, enable market-driven prices, and prayed for legal actions and penalties against OP-1 for alleged violations of Section 4 of the Act.

However, the Commission observed that the entry of two new players and the documented increase in procurement prices from Rs. 8 to Rs. 25 per kg indicated a competitive environment. Furthermore, there was no specific allegation against OP-2 for violating Section 4 of the Act. Consequently, the Commission closed the case under Section 26(2) of the Act.

Market Study on AI's impact on businesses to be floated by the Competition Commission

The Chairperson of the Competition Commission of India (CCI) announced that the Commission will soon release a tender to conduct a study on how artificial intelligence is affecting businesses and services. She emphasized that the CCI recognizes the need for tailored evaluations in technological markets and cannot adopt a "one-size-fits-all" approach to interventions.¹ The

¹ <https://economictimes.indiatimes.com/news/economy/policy/competition-comm-to-soon-float-tender-for-market-study-on-ais-impact-on-businesses/articleshow/107152147.cms?from=mdr>



intent and object of conducting “Market Study” to understand the complexities of specific sector before suggesting policy interventions/ remedial measures under the Act.

Madras High Court dismisses the Indian Startups’ appeals against Google’s billing policy

A Division Bench of the Madras High Court (MHC), vide order dated [19.01.2024](#) dismissed the appeal filed by certain Indian Startups against Google’s new billing policy. In August 2023, a single judge bench of the MHC had dismissed petitions from 14 companies, including Bharat Matrimony and Unacademy, regarding Google's in-app billing policy, stating that the matter falls under the jurisdiction of the Commission.

The startups contended that that the CCI by its order dated October 25, 2022, had directed Google not to restrict the app developers from using any third-party billing/payment processing services. However, Google in an attempt to circumvent the order, permitted the app developers to use “Alternative Billing System/User Choice Billing” alongside and in addition to the GPBS. However, the MHC reiterated the decision of the single judge and held that “civil courts” should not exercise jurisdiction in the present case and considering the issues involved and remedies prayed for, the matter should be dealt with by the CCI.

It has also [been reported](#) that the Indian startups have challenged the dismissal by MHC before the Hon’ble Supreme Court of India, wherein they have *inter alia* accused the CCI of “non-adjudication” in the disposal of their applications challenging new Billing Policy and complaints alleging non-compliance by tech giant of CCI’s previous ruling directing Google to allow third-party billing services providers on Play Store.

CCI approves JSW Group’s acquisition of up to 38% stake in MG Motor India

The Competition Commission approved the acquisition of up to 38% stake in MG Motor India by JSW Ventures Singapore from SAIC Motor. JSW Ventures Singapore is a newly incorporated entity which is a wholly owned subsidiary of JSW International Tradecorp Private Limited of the JSW Group. MG Motor India incorporated in India, is said to be engaged in the manufacturing and sales of passenger cars and electric vehicles under the ‘MG’ brand.

JSW highlighted that the alliance will utilize SAIC Motor's considerable automotive expertise along with JSW Group's widespread presence in both Indian business-to-business (B2B) and business-to-consumer (B2C) sectors to establish a strong supply chain and develop a sustainable automotive ecosystem in India.

European Commission publishes a report on the enforcement of EU antitrust and merger rules in the pharmaceutical sector

The European Commission (EC) has [published a report](#) encompassing medicines and certain medical products in cooperation with the national competition authorities of the 27 EU Member



States. The report spans the impact of antitrust and merger rules between 2018 and 2022. This report is in furtherance of a previous report covering the period between 2009-2017. The primary findings of the report indicate that antitrust enforcement has contributed to fairer prices for medicines, merger control has ensured competitiveness in the market with the medicines' prices being kept lower, and proactive monitoring has aided in guiding market operators which shows that antitrust and merger rules play an important role in providing access to affordable and innovative medicines to European patients.

Delhi High Court upholds constitutional validity of the Anti-Profiteering provisions

The Delhi High court vide its order dated [24.01.2024](#) upheld the constitutional validity of Section 171 of the Central Goods and Services Tax Act, 2017 (**CGST Act**) as well as Rules 122, 124, 126, 127, 129, 133 and 134 of the Central Goods and Services Tax Rules, 2017 (CGST Rules) and disposed of over 100 appeals against various orders passed by the National Anti-profiteering Authority (**NAA**). The primary grounds of challenge were as follows –

- Lack of a judicial member renders the constitution of NAA unconstitutional since it is a quasi-judicial body.
- No set methodology to calculate the amount of profiteering under the Act which leads to arbitrary computation and calculation by the NAA.
- Excessive delegation as the CGST Act does not give the powers to the NAA; rather the CGST Rules provide for setting up of NAA.

The Court, however, dismissed these contentions; however, the court clarified that it is possible that there may be cases of arbitrary exercise of power under the anti-profiteering mechanism; especially cases involving enlargement the scope of the proceedings beyond the jurisdiction or on account of not considering the genuine basis of variations in other factors such as cost escalations on account of which the reduction stands offset, skewed input credit situations etc. However the Court observed that such issues will be dealt on merits and on a case to case basis. It is also important to note that the NAA no longer exercises jurisdiction in Anti-Profiteering matters, and it is the CCI which has been adjudicating cases of profiteering since December 2022.



This newsletter is only for general informational purposes, and nothing in this edition of the newsletter could possibly constitute legal advice (which can only be given after being formally engaged and familiarizing ourselves with all the relevant facts). However, should you have any queries, require any assistance, or clarifications with regard to anything contained in this newsletter (or competition law in general), please feel free to contact G.R. Bhatia/ Arjun Nihal Singh, at the below mentioned coordinates. © Luthra and Luthra Law Offices India 2023. All rights reserved.

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