



Luthra *and* Luthra
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COMPETITION LAW ALERT

APRIL EDITION

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In the April 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.

MCA publishes its draft report on Digital Competition Law and Digital Competition Law Bill for public consultation

The Ministry of Corporate Affairs (**MCA**) vide press release dated March 12, 2024 released the draft report of the Committee on Digital Competition Law (**CDCL**) and a draft bill on Digital Competition Law (**DCL**). The MCA has invited comments on the DCL from the public at large. Some of the salient features of DCL are as follows:

- (i) The CCI may designate an enterprise as Systemically Significant Digital Enterprise (**SSDE**) based on their domestic and global turnover, market capitalization, user base etc. Further, the CCI can designate any other enterprise as SSDE if it has significance presence in the core digital market;
- (ii) SSDEs obligations include (a) no self-preferencing; (b) no restriction on usage of third party applications; (c) not engaging in tying and bundling and anti-steering policies; (d) non usage of private data, crossing of personal data of users, (e) fair and transparent dealing with end users and business users; (d) effective complaint handling and compliance mechanism;
- (iii) CCI can impose penalty on SSDE for non-compliance which can range up to 10% of the enterprises’ global turnover; and
- (iv) The Central Government has the power to issue notifications exempting an enterprise to comply with the provisions of the DCL.

MCA issues certain Draft Rules relating to ‘combinations’ for public comments

The MCA on March 11, 2024 published three Draft Rules for public consultation, namely (i) Draft Green Channel Rules, 2024; (ii) Draft Exempted Combination Rules, 2024; and (iii) Draft De-Minimis Rules, 2024.

The Draft Green Channel Rules amend the test on the basis of which overlaps are required to be mapped between the affiliates of the parties.

The Draft Combination Exemption Rules exempt certain combinations from being notified to the CCI. For instance, minority acquisitions not amounting to control, acquisitions made in the ordinary course of business, intra group mergers / amalgamations, acquisitions of incremental shareholding etc.



The Draft De-Minimis Rules codify the new de-minimis thresholds that have been notified by the MCA. These Rules provide that a transaction need not be notified to the CCI for its prior approval, if the target has either assets of not more than INR 450 crore or turnover of not more than 1250 crore.

CCI initiates inquiry against Google

On [15.03.2024](#), the Competition Commission of India (**CCI**) initiated its 5th inquiry against Google. The CCI passed an order under Section 26(1) of the Act directing the Director General (**DG**) to conduct an investigation against Google for violating Section 4 of the Act on the basis of an information filed by two Indian startups and two industry associations (**Informants**).

The Informants alleged that Google introduced new payment policies in September 2022 namely User Choice Billing (**UCB**) under which Google allowed app developers to use Alternative Billing System (**ABS**) along with Google Play Billing System (**GPBS**). It was alleged that Google imposed 15%-30% commission on app developers for transactions which were processed through GPBS and 11%-26% for the transactions which were processed through ABS.

The CCI noted that the relevant market for app stores for Android OS is characterized by significant entry barriers and virtual absence of any competition in the market. Thus, Google enjoys a strong 'network effect' of a large base of users and apps developers in the market of app store for Android OS, which makes Google's position unassailable.

The CCI *prima facie* observed that Google was charging 4 to 5 times of its cost to app developers which appeared to be disproportionate to the economic value of services being rendered to the app developers. It was also observed that the revenue distribution model within the Google Play Store appeared to be skewed in favour of Google, with app developers potentially facing substantial operating costs.

It was also observed in the order of investigation that Google's imposition of the service fee on app developers could force them out of the market or deter them from entering the market due to increased operational costs, thus denying market access to these developers.

CCI conducting enquiries against Fintech Companies

In a recent interview, the Chairperson of the CCI disclosed that an enquiry is being conducted against fintech companies to check whether their conduct of leveraging technologies is impacting competition in the market. The Chairperson also stated that the Digital Market Data Unit (**DMDU**), a specialized interdisciplinary center of expertise for Digital Markets with the composition of various officers from the different divisions and multiple streams of CCI is now functional and looking into the conduct of big tech giants operating in the market. In view of the amended regulations, the CCI has been increasingly focused on the anti-competitive and unfair conduct of big tech players and online intermediary service providers.



CCI files appeal against Delhi High Court Order in Monsanto/ Ericsson case before the Supreme Court

The CCI has filed an appeal before the Supreme Court of India (**SCI**) challenging the order dated 13.07.2023 passed by the Division Bench of Delhi High Court (**DHC**) wherein the DHC had held that CCI cannot exercise jurisdiction over matters pertaining to exercise of rights by patentees as the same lies with the Patents Controller under the Patents Act, 1970 (**Patents Act**). The DHC had also held that the Patents Act is a complete code on all issues pertaining to imposition of unreasonable conditions in license agreements for patents, abuse of status as a patentee, inquiry in respect thereof and relief that is to be granted. Though the SCI has not granted any stay on the DHC's order.

Telangana High Court halts CCI's investigation against GMR

The Telangana High Court (**THC**) vide order dated 19.03.2024 granted an interim stay on the CCI's investigation against GMR Hyderabad International Airport (**GMR**) and GMR Aerotechnic Ltd (**GAT**). The THC opined that once a settlement has been reached between the Informant and the person against whom the information is filed, the very substratum of the proceedings by the CCI is lost.

The case before the CCI had been initiated on the basis of an information filed by Airworks India (Engineering) Private Limited (**Informant**) against GMR and GAT for violating Section 4 of the Act.

CCI dismisses allegations against Laerdal Medical Private Limited

The CCI vide order dated [12.03.2024](#) dismissed an information against Laerdal Medical Private Limited (**OP 1**), Adison Equipment Company (**OP 2**), Tulips Global (**OP 3**), Shreya Enterprises (**OP 4**) (**collectively referred to as OPs**) for alleged violation of Section 3 of the Act.

It was alleged that OPs colluded in the submission of bids in relation to a tender floated by Government Medical College, Haldwani, Uttarakhand wherein OP 2 and OP 4 submitted bids on behalf of OP 1. It was also alleged that the purchase order submitted by OP 3 was fake and prepared in collusion with OP 1 and OP 2. It was also alleged that the name of OP 3 on the purchase order of Apollo Medics was edited and that the original name on the order was of M/S Delhi Surgical and Dressings.

After considering the allegations made by the Informant, the CCI observed that the material and documents furnished by the informant does not substantiate the allegations with respect to bid rigging/ collusive bidding against OPs.



NCLAT dismisses Sundaram Brakes plea against CCI's Order

The National Company Law Appellate Tribunal (**NCLAT**) vide judgement dated 02.04.2024 dismissed an appeal filed by the Sundaram Brakes Lining (**SBL**) challenging the 'cease-and-desist' order passed by the CCI. The NCLAT dismissed the said appeal and held that there exists a clear meeting of minds amongst the opposite parties as there were discussions amongst them in relation to prices to be quoted for different tenders, and allocation of quantities. Further, the NCLAT also held that a receipt of an email indicates 'meeting of minds' amongst the Parties and an attempt to rig bids attracts Section 3 of the Act.

The case was against suppliers who had indulged in bid rigging in relation to different types of Composite Brake Blocks (**CBBs**) to be supplied to the Indian Railways during the period 2009 to 2017. The CCI vide its order dated 10.07.2020 passed a 'cease and desist' order against the parties but no monetary penalty was imposed considering the economic crises faced by the suppliers.

CCI issues SCN to Muthoot Finance for 'regulatory shopping'

As per [News Reports](#), the CCI has reportedly issued a Show Cause Notice (**SCN**) to Muthoot Finance (**Muthoot**) for furnishing incomplete information in its information against debenture trustees in 2021.

In September 2021, Muthoot had filed an information against debenture trustees before the CCI alleging cartelization and accordingly, an investigation was initiated by the CCI. A similar show cause notice was earlier sent by the CCI to Muthoot, however, the same was challenged before the Kerala High Court (**KHC**) wherein KHC directed the CCI to consider the matter after hearing the parties. Thus, this is the second SCN which has been issued by the CCI to Muthoot.



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 2024. All rights reserved.

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