



Luthra and Luthra
LAW OFFICES INDIA

COMPETITION LAW ALERT

MAY EDITION

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In the May 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.

Intervention Application filed in the tyre cartel matter pending before the Supreme Court of India

The All-India Kisan Sabha (**AIKS**) and Kerala Karshaka Sangham (**KKS**), along with 4 other Natural Rubber (**NR**) farmers have filed an Intervention Application (**IA**) before the Supreme Court of India (**SCI**) in the tyre cartel matter.

The intervenors alleged *inter alia* that the tyre manufacturers and their Association (**ATMA**) have indulged in fixing of price of tyres and also formed a cartel in the procurement of Natural Rubber.

It has been further alleged that the activities of tyre manufacturers under the aegis of ATMA, have ensured that the domestic price of rubber is pulled down through imports and market manipulations which has hit the interests of rubber farmers in India.

Delhi High Court clarifies that ‘interest’ on penalty imposed by the CCI ought to be calculated from the date of issuance of demand notice

The Delhi High Court (**DHC**) vide order dated 26.04.2024 held that ‘interest’ on the penalty imposed by the Competition Commission of India (**CCI / Commission**) must be calculated from the date of issuance of the demand notice by the CCI to the parties and not from the date of CCI’s finding of the infringement.

On 30.08.2018, the CCI passed an order penalizing Geep Industries (**Geep**) for engaging in anti-competitive behavior and accordingly imposed a penalty.

The said order was challenged by Geep before the National Company Law Appellate Tribunal (**NCLAT**) wherein the NCLAT upheld the order passed by the CCI but reduced the penalty from 4% of the turnover to 1% of the turnover.

Thereafter, CCI issued a demand notice directing Geep to deposit the penalty amount along with simple interest @ 1.5% for every month of default made, commencing from 10.12.2018 till the date on which the demand is paid. Geep requested the CCI to withdraw the demand notice insofar as it related to the interest component and to allow them to pay the penalty amount in installments. However, the CCI turned down these requests.

Aggrieved by the order dated 18.07.2023 passed by the CCI, Geep filed a writ petition before the DHC on the ground that CCI had directed payment of ‘interest’ on the penalty amount without following the procedures laid down under Competition Commission of India (Manner



of Recovery of Monetary Penalty) Regulations, 2011 (**Regulations**).

The DHC held that 'interest' can be levied only in a manner provided by the statute. Accordingly, the order dated 18.07.2023 passed by the CCI was set aside in as much as it levies interest on the delayed payment of penalty amount from 10.12.2018 till the date of payment.

AIMRA demand's CCI investigation in POCO's business conduct

[News Reports](#) suggest that that All India Mobile Retailers Association (**AIMRA**) has raised concerns about Xiaomi owned smartphone brand POCO India's business practices favoring e-commerce platforms and discriminatory distribution practices. AIMRA along with other associations has raised this issue before the Ministry of Finance and Commerce and the CCI to investigate into POCO's operations.

DG submits Investigation Report to the CCI in Amazon-Flipkart matter

[News Reports](#) suggest that the Director General, CCI (**DG**) has submitted its investigation report which has found Amazon and Flipkart in violation of antitrust laws. News Reports also state that the investigation report is yet to be shared with the parties to file their objections to the same.

An information was filed against Amazon and Flipkart alleging violation of Section 3(4) read with Section 3(1) and Section 4 of the Act, owing to the existence of preferred sellers and preferential listing on the online market places of Amazon and Flipkart.

CCI dismisses allegations against Covai Property Centre

The CCI vide order dated [05.04.2024](#) dismissed an information against Covai Property Centre Private Limited (**Covai**), Covai Senior Citizen Services Pvt. Ltd (**CSCS**) and Ozone Urbana Infra Developers Private Limited (**Ozone**) (**OPs**) for contravening the provisions of Section 3 (4) and 4 the Competition Act, 2002 (**Act**). The CCI observed that due to the presence of numerous players such as TATA Housing Development, Sushruta Vishranthi Dhama Ltd., Columbia Pacific Communities, M/s Bahri Estates Pvt. Ltd., Ozone was not dominant and thus no case of abuse of dominance was made out.

The CCI also observed that since CSCS is a service provider for the allottees of Urbana Irene, there is no tie-in-arrangement in violation of Section 3(4) of the Act. The CCI noted that for applicability of Section 3(4) of the Act, the entities in question must operate at different stages or levels of the production chain in different markets. The Commission also noted that the agreement alleged to be in contravention of Section 3(4) of the Act is between Ozone and the informant and that the informant is the owner of the residential flat i.e., end consumer. Given that the impugned agreement is between an enterprise and an end consumer, the same is not covered within the ambit of Section 3(4) of the Act.



CCI dismisses allegations against various entities engaged in the healthcare sector

The CCI vide order dated [25.04.2024](#) dismissed an information against several entities including hospitals, pharmaceutical companies, e-pharmacies, associations and certain Government departments/ authorities (**Opposite Parties**) for contravening the provisions of Section 3(4) read with Section 3(1) of the Act. The CCI noted that the informant was primarily aggrieved by non-marketing of its patented dietary supplement sold under the brand name 'Protestin' due to the alleged non-cooperation of the opposite parties.

The CCI while finding no evidence of contravention, observed that for triggering the provisions of Section 3(4) of the Act, there has to be an agreement between vertically related players and that the said agreement should have caused or should be likely to cause Appreciable Adverse Effect on Competition (**AAEC**) in India. Thus, the CCI held that in the absence of any agreement, the decision to purchase and sell (marketing) depends upon commercial considerations of the market players.

CCI approves acquisition of 15.43% by Sanyo in SSMI

The CCI approved the acquisition of 15.43% shareholding by Sanyo Special Steel Co. Ltd. (**Sanyo**) in Sanyo Special Steel Manufacturing India Private Limited (**SSMI**) from Mitsui & Co. Ltd.

Sanyo is a Japan-based company that manufactures and sells steel products globally. It has manufacturing hubs in Europe and India. It is engaged in manufacturing and marketing of various special steel products, including bearing steel, engineering steel, stainless steel, heat resistant steel and tool steel. Sanyo is part of the Nippon Steel Corporation Group.

SSMI was a joint venture company which was incorporated in September 2012 between Mahindra & Mahindra Limited (India), Sanyo Special Steel Co., Ltd (Japan) and Mitsui & Co., Ltd (Japan). In March 2019, the shareholding of the Target underwent a change and Sanyo Special Steel Co., Ltd. became the majority shareholder. Presently, SSMI is a subsidiary of the Acquirer / Sanyo Special Steel Co. Ltd. SSMI is engaged in the market for manufacture of forged products, hot rolled products and cast products.

CCI approves acquisition of stake in Asian Institute of Nephrology and Urology Private Limited by TPG Group V SF Markets Pte. Ltd.

The CCI vide order dated 12.03.2024 approved the acquisition of stake in Asian Institute of Nephrology and Urology Private Limited by TPG Growth V SF Markets Pte. Ltd. and Waverly Pte. Ltd. through Asia Healthcare Holdings Pte. Ltd.



While approving the Combination, the CCI observed that the notifying party excluded certain investee companies for the purpose of identifying overlaps on the ground of limited revenue, investee company being engaged in ancillary services or in case of purely debt investments.

However, the CCI noted that while these factors may be relevant for the purpose of assessing the potential impact of the Combination on competition, they do not negate the need for identifying overlaps. Thus the CCI has clarified that identification of overlaps is a formalistic requirement and the parties cannot pre-empt whether or not an entity can be excluded on the basis of above mentioned factors.

Pernod Ricard facing CCI inquiry

[News Reports](#) suggest that the CCI is investigating the conduct of France based liquor company namely Pernod Ricard for gaining market share by asking retailers in Delhi to stock more of its goods in return for helping them secure loans to bid for store licenses. The said allegations rely on the Enforcement Directorates findings as it looks into Pernod Ricards alleged role in a graft case centered on Delhi's liquor policy that led to the 2022 arrest of company officials. The allegations against Pernod Richard before the CCI relate to providing corporate guarantees to its bankers in 2021 in order to help retailers in availing of loans which in turn ensured that 35% of the stock in retailers shops consisted of their brands.

CCI invites proposals to launch Market Study on Artificial Intelligence

The CCI issued a notification on [22.04.2024](#) for "Request for Proposal (RFP) to undertake a Market Study on "Artificial Intelligence and Competition". The objective of the RFP is to examine the emerging and potential competition issues in AI systems/ ecosystems, understanding the existing and evolving regulatory/legal frameworks governing AI systems and applications in India and other major jurisdictions. The last date for submission of bids for RFP is 03.06.2024. The interested or intended agency may seek clarification, if any, on or before 10.05.2024.



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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