



Luthra and Luthra
LAW OFFICES INDIA

COMPETITION LAW ALERT

AUGUST EDITION

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In the August Edition of 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.

Investigation arm of the CCI finds Apple guilty of abusive conduct

As per [media reports](#), the investigation arm of the Competition Commission of India (CCI) – the Director General (DG), has found Apple guilty of violation of Section 4 of the Competition Act, 2002 (Act).

The DG, who has been investigating Apple since 2021 has reportedly gave its findings that Apple abused its dominance in the apps market by forcing developers to use its proprietary in-app purchase system. While Apple has contended that it ought not be held guilty of abuse of dominance since it claims to be a smaller player in comparison to Google’s Android, it seems unlikely that the CCI will get convinced by this contention as it has already held that iOS Operating System forms a separate relevant market from the Android Operating System.

It is also important to note that the CCI has held Google guilty of abuse of dominance for a similar practice in 2022; wherein Google was found to have forced developers to route all in-app payments through its own proprietary payment system (Google Pay). An appeal filed by Google against the CCI’s decision is still pending before the National Company Law Appellate Tribunal (NCLAT)

Apple potentially faces huge monetary fines and adverse directions in case the CCI agrees with the DG’s findings. However, a final decision would be made by the CCI only after hearing all the parties.

CCI directs DG to widen the scope of investigation against Amazon and Flipkart

As per media reports, the CCI has directed the DG to widen the scope of investigation being conducted against Amazon and Flipkart. It appears that the DG had submitted the investigation report before the CCI a few months ago; but the CCI has decided to seek more information from the DG for further enquiry against the E-commerce giants.

The investigation against on Amazon and Flipkart dates to 2019 when the CCI initiated the investigation on the basis of an Information filed by the Delhi Vyapar Mahasangh (a trade association) against the e-commerce majors for violating provisions of the Act by promoting their own brands and preferred sellers, giving steep discounts, and discriminating against other sellers on their respective platforms. Both Amazon and Flipkart had challenged the investigation before the Karnataka High Court (KHC) and the Supreme Court of India (SC); however, both the KHC and SC refused to interfere with the investigation after noting that the CCI should be allowed to complete its investigation and an order under Section 26(1) normally should not be interfered with.

The DG is likely to submit a supplementary report to the CCI; which will then take a final decision after obtaining objections/ comments followed by oral hearings of all parties concerned.



CCI dismisses allegations against Saint Gobain India Pvt. Ltd

The CCI vide its order dated 22nd July 2024 dismissed the allegations of contravention of Sections 3 and 4 of the Act against the Saint Gobain India Pvt. Ltd. and Compagnie De Saint-Gobain.

A public-spirited informant alleged that Saint Gobain India had entered into agreements with processors, fabricators, and distributors, having clauses/ conditions violative of Sections 3(4) and 4 of the Act.

Upon examining the documents placed on record by the Informant, the CCI at the outset questioned the authenticity of the documents and on merits noted that there was no violation of the Act. In this regard, the CCI noted that exclusivity benefitted both parties, there was no refusal to deal and that volume discounts cannot be termed as anti-competitive. On resale price maintenance, the CCI noted that the Propel Agreement allowed Saint Gobain to determine product pricing, and processors were allowed to charge for their processing over and above Saint Gobain's price. Accordingly the CCI closed the case.

CCI dismisses allegations against Toyota Kirloskar Motors and Uttam Toyota

The CCI, through its order dated 12th July 2024 dismissed allegations of contravention of Sections 3 and 4 of the Act by Toyota Kirloskar Motors Pvt. Ltd. (**Toyota**) and its authorized dealer, Uttam Toyota.

The informant, an individual, alleged that the delivery time for his booked car, "Innova Hycross Hybrid ZX(O)", was arbitrarily changed from two months to eight months post-booking. He further claimed that other customers received their cars earlier, despite booking on the same or later dates, and that a Direct Sales Agent (DSA) demanded a premium for expedited delivery, suggesting a deliberate artificial scarcity.

The CCI noted that Toyota had communicated the eight-month waiting period at the time of booking and attributed delays to semiconductor shortages, which were beyond the manufacturer's control. Toyota also clarified that its relationship with Uttam Toyota was on a principal-to-principal basis and not as an agent. Uttam Toyota denied employing DSAs and prioritizing other customers.

The CCI observed that the Informant's grievances appeared to be an *inter se* dispute without market-wide anti-competitive ramifications and consequently dismissed the matter.

CCI dismisses allegations against the Principal Chief Materials Manager, Integral Coach Factory, Chennai, Super Steels, Mohali, and Alvind Industries, Chandigarh

The CCI vide its order dated 12th July 2024 dismissed allegations of contravention of Sections 3 and 4 of the Act by the Principal Chief Materials Manager (**PCMM**), Integral Coach Factory, Super Steels, and Alvind Industries.

In this case, the Informant alleged that the PCMM's tender for procurement of 'Lower Spring Beam with vertical brackets' (which are used *inter alia* for manufacturing shock absorbers in trains



operated by the Indian Railways) contained restrictive Eligibility Criteria (EC) that favored a limited number of vendors, thereby contravening the Act. Specifically, the Informant pointed out that the EC favored vendors on the Unified Vendor Approval Module (UVAM) or those with significant past supply volumes, and thereby excludes potential competitors and did not align with Railway Board guidelines requiring a minimum of five active vendors. Additionally, the Informant also made allegations against Super Steel and Alvind of collusion and bid-rigging.

The CCI considered the submissions and noted that while there was a notable difference in bids between Super Steel and that of Alvind in the impugned tender, there was insufficient evidence to make out a prima facie case of cartelization. The CCI also observed that mere price parallelism does not constitute evidence of collusion without 'plus factors'. Furthermore, allegations of abusive conduct against the PCMM were also dropped due to inadequate evidence.

CCI reverses its decision against Sugar Mills and its Associations

The CCI vide its order 22nd July 2024 dismissed an Information filed by India Glycols Ltd., Ester India Chemicals Ltd., Jubilant Life Sciences Ltd., AB Sugars Ltd., Wave Distilleries and Breweries Ltd. and Lords Distillery Ltd. (collectively, **Informants**) against several Oil Marketing Companies (**OMC**), 3 sugar mills' associations, and 14 sugar mills in Uttar Pradesh (collectively, **Opposite Parties**).

The Information was filed in 2013, in relation to a joint tender dated 02.01.2013 (**Impugned Tender**) issued by the above-mentioned PSU OMCs for procurement of 'Ethanol', which is a by-product of sugar production. The Informants alleged price fixation and bid-rigging by various sugar mills, most of whom are members of the above-mentioned three associations, in the Impugned Tender. Other allegations in the nature of, inter alia, the sugar mills limiting the production of Ethanol to create artificial scarcity in the market were also levelled and it was also averred that joint tendering by the OMCs itself is anti-competitive.

Based on the above, the CCI directed the DG to conduct an investigation into the allegations; who in 2015 submitted his investigation report and found the sugar mills and its associations guilty of violation of Section 3(3) of the Act. The CCI concurred with the DG's findings and passed an order under Section 27 of the Act dated 18.08.2018. However, on appeal, the NCLAT vide order dated 10.10.2023 remanded the matter back to the CCI for re-consideration – hence the present case.

After conducting a rehearing, the CCI in the present order differed from its earlier order and concluded that apart from price parallelism in the bids submitted in relation to the impugned tenders, there were no other 'plus factors' and thus there was insufficient evidence to hold the Opposite Parties guilty of violation of Section 3(3) of the Act. With respect to joint tendering, the CCI noted that the same was on account of commercial and operational considerations and did not lead to any anti-competitive effect on the market. Accordingly, the CCI closed the matter, effectively reversing its own order dated 18.08.2018.



CCI increases scrutiny over Reliance – Disney’s Merger

The \$18.5 Billion Reliance – Disney Merger which includes cricket and Wimbledon rights, creating the largest entertainment player with 120 TV Channels, aiming at 40% ad market share, is under scrutiny of the CCI.

As per Media reports, the CCI has sent over 100 queries to Reliance Industries Limited (**RIL**) and The Walt Disney Company (**TWDC**) in relation to the contemplated merger.

The queries raised by the CCI are in relation to a Form – II filed by RIL, Viacom18 Media Private Limited (Viacom18), Star India Private Limited (SIPL) and Star Television Productions Limited (STPL) on 24.05.2024 for seeking approval from the CCI for the proposed combination; which envisages a merger of the entertainment businesses (along with certain other identified businesses) of Viacom18, part of RIL group and SIPL, wholly owned by The Walt Disney Company (TWDC). The merging businesses primarily include media activities including TV broadcasting and the production of AV content and motion pictures, operation of OTT platforms, and selling commercial advertisement space on TV channels and OTT platforms.

Given that the proposed combination also includes a merger of ‘Hotstar’ and ‘Jio Cinema’, which are the two of the most popular OTT platforms in India and which hold substantial sports broadcasting rights, the CCI’s queries focus on how the proposed combination could potentially affect the sports streaming market in India.

Considering the high market shares held by the parties in certain relevant markets and potential antitrust concerns, the CCI is unlikely to grant approval to the merger anytime soon. It is possible that the CCI may also ask the parties to offer behavioral commitments / structural modifications to allay these concerns.

Landmark ruling against Google by US District Court

In a landmark ruling on 05.08.2024, Judge Amit Mehta of the US District Court of Columbia ruled in favour of the US Department of Justice (**DOJ**) and held that Google has maintained a monopoly in the search and advertising markets, thereby violates US antitrust laws.

The ruling stated that Google is a monopolist and has acted to maintain its monopoly, violating Section 2 of the Sherman Act. While the judge did not agree with all of the DOJ’s arguments, he concurred that Google has monopoly power in "general search services" and "general search text advertising". However, the subsequent ruling is expected to address potential remedies, resulting in a lot of uncertainty regarding Google's future business practices and potential structural changes.

The court found Google's exclusive agreements with phone and browser makers, such as Apple, to be exclusionary in nature and resulting in reduction of competition and reinforcement of its monopoly. The Court also highlighted that Google's exclusive agreements allowed it to raise prices on search text advertising without meaningful competitive constraints.

This landmark ruling is likely to embolden antitrust authorities worldwide to frown upon abusive conduct of the tech giants.



European Commission publishes Draft Antitrust Guidelines on Exclusionary Abuses for public consultation.

The European Commission (**EC**) has recently released the [Draft Antitrust Guidelines](#) on Exclusionary Abuses under Article 102 of the Treaty on the Functioning of the European Union (TFEU) for public consultation. These draft Guidelines aim to increase legal certainty for consumers, businesses, and national competition authorities by clarifying the application of Article 102 TFEU, which prohibits dominant companies from engaging in exclusionary behavior such as predatory pricing, margin squeeze, exclusive dealing, and refusal to supply. Interested parties can submit their comments on the draft Guidelines by 31 October 2024, with the finalization of the Guidelines planned for 2025. These guidelines, once finalized are expected to have persuasive value for the CCI.



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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