



Luthra *and* Luthra
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In the September 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.

No uniformity in prices, no ‘agreement’ - Gauhati High Court sets aside one of the cement cartel investigations

The Gauhati High Court (“**GHC**”) vide judgment dated 30.08.2024 set aside the order passed under Section 26(1) of the Competition Act, 2002 (“**Act**”) by the Competition Commission of India (“**CCI**”) against Star Cements Ltd. (“**Star**”) and other cement manufacturers in the Northeast region of India for alleged cartelization. The GHC also set aside the penalty of INR 5 lakhs imposed by the CCI on Star Cements for non-compliance of the directions of the Director General, CCI (“**DG**”).

Star challenged the very initiation of the investigation by the CCI, and the penalty of INR 5 Lakhs imposed upon it for non-compliance of the DG’s directions. Star’s primary contention was that the CCI ordered the investigation without a proper *prima facie* case and without establishing that there was an agreement amongst the alleged cartelists as required under Section 3 of the Act. It was argued that consequently the imposition of penalty was also without jurisdiction. While the CCI’s contention was that the challenge to the investigation by Star was pre-mature and the investigation directed by the CCI is only on the basis of a *prima facie* opinion without involving an adjudicatory process.

After hearing the parties, the GHC observed that the basic requirement before initiating an investigation is that the CCI should be of the *prima facie* opinion as regards existence of anti-competitive activities though it is not required to conduct a mini trial. However, the test of *prima facie* is to take the information received at its face value and examine whether there has been any *prima facie* violation of Section 3 and/or 4 of the Act.

The GHC went into the merits of the matter and reviewed the price increases by the cement manufacturers and observed that there does not appear to be any uniformity in prices and consequently no ‘agreement’ between the parties can be established. In- fact the GHC noted that the different prices of all the three bags of cement are indicative of a better competition instead of having an adverse effect of competition. Basis these observations the investigation and penalty imposed by the CCI was quashed.

This judgment will have huge ramifications on the pending cases before the CCI as well as constitutional courts given that the bar of what constitutes *prima facie* has been raised.



‘CCI Must Honour Mediation Settlements’, Delhi HC Terminates CCI Proceedings Against JCB India Ltd.

The Delhi High Court (“**DHC**”) observed that the CCI must honour the outcomes of mediation and respect the settlements reached between the parties and consequently terminated the long-drawn proceedings being conducted by the CCI against JCB India Limited (“**JCB**”).

The case involved a legal dispute between JCB and M/s Bull Machines Private Ltd (“**Bull**”) concerning allegations of copyright infringement, piracy of registered designs, and passing off. JCB had initially filed a suit against Bull seeking an injunction to restrain these activities. In response, Bull filed cancellation petitions before the Controller of Designs. While these proceedings were ongoing, Bull approached the CCI by way of an information, which consequently led to initiation of an abuse of dominance proceedings against JCB. JCB challenged the order of investigation, and the ‘search and seizure’ operation conducted by the DG pursuant to the investigation ordered by the CCI before the DHC. During the midst of these proceedings, the parties entered into settlement discussions and reached an amicable solution.

The DHC noted that the CCI, must respect the outcomes of mediation and the settlements reached between the parties. It noted that the CCI's over-involvement after a settlement could undermine the mediation process, disrupt the harmony and finality achieved through mediation, and erode trust in both the mediation process and the regulatory body. The DHC observed that the continuation of the CCI's proceedings would involve further participation by the parties, production of documents, evidence submission, and report preparation, potentially leading to unintended consequences.

The DHC further observed that competition authorities should respect the boundaries of their jurisdiction, ensuring their role complements, rather than conflict with the resolution of disputes. Additionally, the DHC highlighted that Intellectual Property rights, which recognize and enforce monopoly rights, should not be conflated with competition disputes. The DHC cautioned against converting every IP dispute into a competition issue, as this could severely impinge upon statutory rights recognized under various IP protection statutes.

The DHC ultimately allowed JCB's plea, taking on record the settlement between the parties, and set aside the CCI's order, terminating the proceedings before the CCI.

UP Soil Sample Testing Tender Collusion: NCLAT Upholds CCI Order Against Entities Involved In Bid Ridding

The National Company Law Appellate Tribunal (“**NCLAT**”), vide its order dated 22.08.2024, upheld the CCI's findings against certain entities which indulged in bid rigging. The Department of Agriculture, Uttar Pradesh invited tenders for soil sample testing and in response to the tenders, several entities participated. Following a suspicious bidding pattern, the Department filed an information with the CCI which consequently led to an investigation. The CCI ultimately



held the entities to be in violation of Section 3(3) of the Act for indulging in bid rigging and imposed monetary penalties on the cartelists.

The cartelists approached the NCLAT in appeal and the NCLAT found significant instances of collusion and bid rigging as well. It found that these entities worked together to submit fake experience certificates and work orders to mislead rival bidders and falsely enhanced their technical qualifications. The bids were supported by counterfeit invoices and documents, with confirmations indicating that no actual sales had occurred with some of the bidders. The proprietors and directors of these entities confirmed the use of fraudulent documents. Additionally, the entities were found to have divided the tenders geographically to prevent competition from each other.

The evidence of cartelization was further supported by the use of identical IP addresses for submitting bids. The NCLAT concluded that while direct evidence of a formal agreement was not necessary, the circumstantial evidence was sufficient to prove collusion and bid rigging. Conclusively, the NCLAT upheld the findings of the CCI and dismissed the appeal filed by the cartelists.

CCI Imposes INR 10 Lakh Penalty On India Business Excellence Fund-IV under Section 43A of the Act

The CCI, vide its order dated [16.08.2024](#), imposed a penalty on India Business Excellence Fund – IV (“**IBEF-IV**”) for gun jumping in relation to its acquisition of VVDN Technologies Private Limited (“**VVDN**”). The CCI also directed IBEF-IV to file a fresh notification form with the CCI.

On 17.04.2023, the CCI received a notice from IBEF-IV, in relation to its acquisition of a stake in VVDN. IBEF-IV is part of the Motilal Oswal group, which operates across various financial services, while VVDN engages in electronic manufacturing services, including 5G, IoT, and cloud-based solutions. The notification was filed under the green channel route since the parties did not exhibit any significant product / service overlaps. The submission noted a minor, temporary supply arrangement between VVDN and a portfolio company of IBEF-IV related to Printed Circuit Board (“**PCB**”) assembly, which was deemed non-material and non-strategic.

On 06.06.2024, the CCI sought further clarifications from IBEF-IV regarding this supply arrangement. The responses, received by 25.07.2023, reiterated that the PCB assembly services were *ad hoc* and did not constitute a vertical or complementary relationship.

However, on 31.10.2023, the CCI issued a Show Cause Notice (“**SCN**”) suggesting that the activities of IBEF-IV's portfolio company and VVDN did indicate a vertical/ complementary relationship, thus questioning the eligibility of the Green Channel Route. The SCN sought explanations on why the notice should not be deemed void or why IBEF-IV should not be penalized for providing false information.



In its response to the SCN, IBEF-IV argued that there was no violation of Section 43A or Section 44 of the Act. It asserted that the PCB supplies were non-strategic and *ad hoc* and did not affect competition significantly. Further, it contended that the green channel filing was valid based on existing legal standards and market conditions.

The CCI heard the parties on 30.04.2024, where IBEF-IV submitted additional affidavits. The CCI found that despite the *ad hoc* nature of the PCB supplies, a vertical/ complementary relationship existed due to the specific role of these components in Covid-19 testing kits. Therefore, the green channel approval criteria were not met.

Ultimately, the CCI concluded that the transaction did not qualify for the green channel route and consequently imposed a penalty of INR 10 Lakh on IBEF-IV under Section 43A of the Act, for failing to notify the CCI. The CCI also directed the parties to refile the notice under Regulation 8 of the Combination Regulations.

CCI Approves Merger Of Reliance Industries And Walt Disney Subject To Voluntary Conditions

The CCI has accorded a conditional approval to a significant INR 70,350 crore merger involving Reliance Industries Ltd. ("**RIL**") and its subsidiaries Viacom18 Media Private Limited and Digital 18 Media Limited with The Walt Disney Co.'s ("**TWDC**") entities, Star India Private Ltd. ("**SIPL**") and Star Television Productions Ltd. ("**STPL**"). This approval is contingent upon the companies complying with voluntary modifications outlined by the CCI.

Although the CCI has yet to release a detailed order specifying the modifications, it is understood that RIL may have committed to certain concessions, including avoiding "unreasonable" rate hikes for advertisements during cricket broadcasts.

As part of this transaction, SIPL, currently a wholly owned subsidiary of TWDC, will transition into a joint venture co-owned by RIL, Viacom18, and existing TWDC subsidiaries. This merger is poised to create a significant consolidation in India's television and streaming markets, potentially controlling around 40% of the advertising market in these sectors.

The deal also marks a consolidation in cricket broadcasting, with both Star and Viacom18 currently sharing rights to major events like the Indian Premier League and other key tournaments. This merger will bring together major platforms like JioCinema and Disney+ Hotstar, along with around 120 television channels under the combined entity's umbrella.



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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