



Luthra *and* Luthra
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In the October 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.

‘Writ cannot be allowed unless statutory remedies are exhausted’, Telangana High Court dismisses Dr. Reddy’s writ petition

The Telangana High Court (“**THC**”) vide judgment dated 19.09.2024 dismissed a writ petition filed by Dr. Reddy’s Laboratories (“**Dr. Reddy’s**”) challenging the order passed by the Competition Commission of India (“**Commission/ CCI**”) dated 31.05.2024 in Case No. 6 of 2012, wherein the CCI directed Dr. Reddy’s to furnish its audited financial statements for Financial Years for FY 2021-22, 2022-23, and 2023-24. Dr. Reddy’s sought to declare the said order, the investigation report dated 03.04.2024, and the initiation of proceedings as arbitrary, illegal, and unconstitutional, while also questioning the absence of a judicial member in the CCI’s constitution.

The CCI passed an order dated 07.02.2012 under Section 26(1) of the of the Competition Act, 2002 (“**Act**”) Act directing Director General (“**DG**”) to cause investigation into certain anti-competitive practices by pharmaceutical companies. The DG submitted its report and CCI passed an order dated 31.05.2024 directing the Dr. Reddy’s to file objections/ suggestion to the DG Report and submit duly audited financial statements for the aforementioned years. Aggrieved by the order dated 31.05.2024 passed by the CCI, Dr. Reddy’s filed a writ petition before the THC on the ground that there were no adverse findings against it in the DG report and the CCI’s order was arbitrary and illegal, as it was based solely on the issue of No Objection Certificates (“**NOC**”) from stockists.

The THC observed that Dr. Reddy’s challenged the order dated 31.05.2024 via a writ petition without first utilizing the statutory remedies available under the Act. Thus, THC observed that when statutory remedies are available, a writ petition should not be entertained unless there are exceptional circumstances, such as a violation of principles of natural justice or lack of jurisdiction.

Sellers of Amazon and Flipkart get interim relief from various High Courts.

High courts across the country, including the Karnataka High Court (“**KHC**”), Madras High Court and Punjab & Haryana High Court have granted interim relief to various sellers of Amazon and Flipkart in relation to the proceedings being conducted by the CCI against Amazon, Flipkart, their “preferred sellers” and mobile phone manufacturers. The DG had submitted his investigation report to the CCI on 9th August, which was later forwarded to all parties, including the sellers.

The sellers have claimed before the High Courts that the DG committed serious procedural errors in conducting the investigation, especially qua the sellers listed on Amazon and Flipkart. The sellers argue that the DG unilaterally altered seller’s status from “third parties” to “opposite parties” without CCI approval, leading to a violation of standard procedures as required under Regulation 24 of the erstwhile CCI (General) Regulations, 2009 as well as Sections 16(1) and 26(1) of the Act, read in conjunction with Section 41 of the Act.



For instance, the KHC, vide an interim order 27.09.2024 noted that Regulation 24 of the erstwhile CCI (General) Regulations, 2009 mandates that permission from the CCI must be obtained before a third party is treated as an opposite party in an investigation. It further noted that Section 16(1) of the Act ensures procedural fairness during investigations, and Section 26(1) of the Act requires the CCI to be satisfied of a prima facie case before ordering an investigation. The DG's role, under Section 41 of the Act, is to investigate based on the CCI's directives, without altering the status of any party unilaterally. The KHC in its interim order therefore held that by classifying petitioners as opposite parties without approval, the DG exceeded his authority and violated the procedural safeguards outlined in the Act and the General Regulations. The other High Courts have also granted an interim stay on the CCI's proceedings based on similar grounds.

Competition Commission of India notifies Competition Commission of India (General Regulations), 2024

The CCI has notified the amended Competition Commission of India (General) Regulations, 2024 ("**General Regulations**").

The notified General Regulations specify that applications filed during the pendency of a case under Section 19 of the Act will be considered Interlocutory Applications. In contrast, applications filed after the final order in a case under Section 19 will be classified as Miscellaneous Applications.

Additionally, one of the key change is that the Director General is now required to provide an opportunity for cross-examination to any party against whom evidence is being used. Minor procedural adjustments have also been made, including modifications regarding inquiries, confidentiality provisions, and rules on hiring multiple legal representatives.

The method for submitting information or references to the CCI has been clarified as well. These can be presented in person, by registered post, courier service, or facsimile transmission, addressed to the Secretary or an officer authorized by the Secretary. Any additional documents required to support the reference has to be filed within 14 days in the form of a 'Paper Book', properly indexed and verified by affidavit.

Another important provision that has been introduced is the authorization to appoint external agencies to monitor compliance with CCI orders. These agencies, which include professionals such as company secretaries, management consultants, and accountants, will be tasked with overseeing compliance, especially in matters related to settlements and mergers under the Act. By delegating monitoring duties, the CCI aims to ensure stricter adherence to its orders, reducing non-compliance through closer scrutiny by third-party agencies.

CCI clarifies, that Section 3 of the Competition Act is not triggered without an agreement restricting competition

The CCI, vide its order dated [25.09.2024](#), dismissed the allegations of Sections 3 and 4 against the Union of India, State of Chattisgarh, GST authorities and several private cable operators.



M/s Vande Mataram Cable TV Network and Jaipal Singh Gulati filed an information against alleging contraventions of Sections 3 and 4 of the Competition Act, claiming that Taranjeet Singh Hora and Gurucharan Singh Hora, along with their associates, had engaged in anti-competitive practices by coercing local cable operators to transfer their networks through intimidation and false criminal complaints. The Informants asserted that these practices resulted in a monopolistic hold over the cable television market in Chhattisgarh, severely impacting competition and the financial viability of other operators.

The CCI noted that the allegations centred around the unlawful seizure of shares and monopolization by the parties involved. Furthermore, the allegations included the misappropriation of revenue and fraudulent practices that allegedly resulted in substantial financial losses to the Informants and other local operators.

With regards to the allegation of violation of Section 3 of the Act, the CCI observed that the provisions were not violated as the case did not involve two or more enterprises engaged in identical or similar trade. The CCI clarified that Section 3(3) of the Act requires an agreement that further restricts trade or competition, and in this case, the relationships and actions of the parties did not meet this threshold. The CCI further explained that there was insufficient evidence to support claims of abuse of dominance.

Ultimately, the CCI concluded that no prima facie case of contravention of Sections 3 and 4 of the Competition Act had been established. Consequently, the CCI directed that the matter be closed in accordance with Section 26(2) of the Act.

CCI dismisses allegations of abuse of dominance against Mitera Hospital

The CCI, vide its order dated [10.09.2024](#), dismissed the Information filed by Dr. Sabine S., Managing Director of Sabine Hospital and Research Centre, against Mitera Hospital for alleged violation of Section 4 of the Act.

The primary contention revolved around Mitera Hospital's video on YouTube, which allegedly spread misinformation regarding the cost of infertility treatments, specifically IVF, with claims that cheaper treatments involve hidden costs or inferior quality. The Informant argued that such misinformation harms competition by discouraging affordable treatment providers.

The CCI observed that the allegations related primarily to false claims and misinformation, which, while concerning, did not fall within the ambit of the Competition Act. The CCI noted that the allegations made by Mitera Hospital on its social media platform did not constitute an abuse of a dominant position under the provisions of Section 4 of the Act, as there was no evidence presented to establish Mitera's dominance in the relevant market.

Accordingly the CCI closed the case under Section 26(2) of the Act.



CCI approves the acquisition of Bharat Serums and Vaccines Limited by Mankind Pharma Ltd.

The CCI, on 01.10.2024 approved the proposed transaction involving Mankind Pharma Ltd. ("**Mankind**") and Bharat Serums and Vaccines Limited ("**BSV**"), with Mankind acquiring 100% shareholding of BSV.

Mankind is a public listed company engaged in developing, manufacturing, and marketing pharmaceutical finished dosage formulations ("**FDFs**") across various acute and chronic therapeutic areas. It also produces consumer healthcare products such as condoms, emergency contraceptives, pregnancy tests, vitamins, and through its subsidiaries, it is involved in the manufacture and sale of active pharmaceutical ingredients, pharmaceutical intermediaries, and packaging products. BSV, along with its subsidiaries, is engaged in research, development, licensing, manufacturing, importing, exporting, and marketing pharmaceutical formulations, APIs, biotech formulations, health supplements, medical devices, and ayurvedic medicines.

For assessing the potential impact of the Combination, the relevant markets the CCI noted that there were horizontal overlaps in the market for manufacture and sale of FDFs belonging to the same Anatomical Therapeutic Chemical categories in India and the vertical overlaps in the upstream market for the manufacture and sale of packaging materials for pharmaceutical products and the downstream market for the manufacture and sale of FDFs in India

The CCI noted that the proposed transaction is not expected to cause any appreciable adverse effect on competition in India and approved the Combination under Section 31(1) of the Act.

CCI approves the merger of Tata Motors Finance Limited with and into Tata Capital Limited.

The CCI, on 10.09.2024 approved the proposed transaction consisting of Tata Capital Limited ("**TCL**") and Tata Motors Finance Limited ("**TMFL**"), involving the merger of TMFL into TCL, the surviving entity being TCL.

TCL, a subsidiary of Tata Sons Private Limited, operates as a non-banking financial company (NBFC-ICC), offering services in lending, leasing, factoring, financing, and distributing financial products, including consumer finance, commercial finance, microfinance, wealth management, and credit cards. TMFL is also an NBFC-ICC, primarily engaged in providing loans for purchasing new and pre-owned vehicles, working capital loans, and factoring services to transporters, dealers, and vendors of Tata Motors Limited.

In terms of the relevant markets, the parties had proposed defining the relevant markets as the market for the provision of loans and lending services in India, which was further segmented into the market for retail loans, including vehicle/auto loans, and sub-categories for four-wheeler passenger car loans and commercial vehicle loans, the market for MSME loans in India and the market for wholesale loans in India. The CCI observed that the proposed transaction is not expected



to cause any appreciable adverse effect in competition and approved the Combination under Section 31(1) of the Act.

Parliamentary Standing Committee on Finance raises concerns over reduced budget allocation for CCI and other issues

[As per news reports](#), the Parliamentary Standing Committee on Finance (“PSC”) has written to the Ministry of Corporate Affairs (“MCA”), wherein the PSC has raised concerns with respect to various issues, including the revised budget allocation for the CCI and status of pending competition cases.

As per the reports, the PSC has questioned the MCA as to the reasons for the reduction in CCI’s budget this year, highlighting that while the CCI’s budget was INR 80 crore in FY 2019-20, the same has been reduced to around INR 50 crore this year, despite there being an increase in the CCI’s workload. The PSC has also sought details of the overall pendency of cases before the CCI and steps being taken by the CCI to reduce the backlog.



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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