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In the November 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.

CCI dismisses complaint against IREL

The Competition Commission of India (“**CCI**”) vide order dated [08 October 2024](#) dismissed an Information against IREL (India) Limited (“**IREL**”) for alleged violation of Section 4 of the Competition Act, 2002 (“**Act**”).

It was alleged that IREL abused its dominant position in the relevant market of “mining and supply of Beach Sand Sillimanite in India” by increasing excessive prices of Sillimanite from INR 9000 per metric ton (“**PMT**”) to INR 14000 PMT. It was further alleged that IREL imposed higher rates on domestic Micro, Small, and Medium Enterprises (“**MSMEs**”) at INR 14000 PMT, while it favoured multinational corporations and foreign companies by charging them a lower rate of INR 11000 PMT which results in discriminatory pricing against domestic MSMEs. It was also alleged that IREL imposed arbitrary limitations on the quantity of Sillimanite supplied to MSMEs and other domestic businesses while allegedly favoring multinational corporations with higher and more consistent supply quantities.

In response to the allegations, IREL submitted that it does not fall within the ambit of an “enterprise” under the Act as its main activity is extracting strategic minerals for India’s atomic energy program, which is overseen by the Department of Atomic Energy (“**DAE**”) and thus exempt from provisions of the Act. Furthermore, it was argued that price differences between domestic MSMEs and foreign customers were based on volume and long-term nature of contracts with international buyers, which enable bulk purchase discounts.

After considering the above, the CCI held that IREL is an ‘enterprise’ as per the Act as its actions in the mining and commercial sale of Sillimanite constitute economic activities, however, it was observed that no allegation of discriminatory pricing is made out as difference in prices by IREL were based on volume and long-term contract. Thus, the CCI closed the matter against the IREL as no contravention of Section 4 of the Act, was found.

NCLAT dismisses appeal filed by TAAI

The National Company Law Appellate Tribunal (“**NCLAT**”) vide order dated 25 October 2024 has dismissed an appeal filed by Travel Agents Association of India (“**TAAI**”) challenging the order dated 08 May 2020 passed by the CCI wherein the CCI closed the matter under Section 26(2) of the Act against Department of Expenditure, Government of India (“**DoE**”), Balmer Lawrie & Co. Ltd. (“**Balmer**”) and Ashok Travels and Tours (“**Ashok**”).

TAAI filed an information before the CCI against DoE, Balmer and Ashok for violating the provisions of Section 3 and 4 of the Act. It was alleged that DoE, through various circulars mandated all travel arrangements by government employees, be made through either Balmer or



Ashok which amounted to refusal to deal and resulting in foreclosure of the market for other private travel agents.

However, after considering the allegations and arguments by the parties, the CCI closed the matter on the ground that DoE does not fall within the ambit of 'enterprise' as enshrined under the Act as DoE was engaged in activities in relation to policy purposes and no vertical arrangement is made out between DoE, Balmer and Ashok.

The NCLAT vide its order dismissed the appeal filed by TAAI and held that the CCI has observed in the impugned order and in another matter that DoE is not an enterprise within the framework of the Act. Further, it was observed that no vertical arrangement has been made out between DoE, Balmer and Ashok. Furthermore, the NCLAT directed TAAI to deposit INR 5 lacs with the Prime Minister Relief Fund within 15 days from the receipt of this order as it was reagitating issues which have already been settled.

CCI files appeal against Star Cement Order

The CCI has filed an appeal before the Division Bench of Gauhati High Court ("**GHC**") challenging the order dated 30 August 2024 passed by the Single Judge of GHC wherein the order passed by the CCI under Section 26(1) of the Act against Star Cements Ltd. and other cement manufacturers in the Northeast region of India for alleged cartelization was set aside on the ground 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.

It was further observed that there does not appear to be any uniformity in prices by cement manufacturers 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. The Single Judge of GHC also set aside the penalty of INR 5 lakhs imposed by the CCI on Star Cement for non-compliance of the directions of the Director General, CCI ("**DG**").

AICPDF files complaint against Blinkit, Swiggy and Zepto

[News reports](#) suggest that All India Consumer Products Distributors Federation ("**AICPDF**") has filed an information before the CCI against leading quick commerce platforms Blinkit, Swiggy and Zepto, alleging that these companies are engaged in predatory pricing by offering products at unsustainably low prices, undermining the competitiveness of traditional retailers and livelihood of small businesses.

It has been alleged that rapid rise of quick commerce platforms, have disrupted conventional retail by allowing these platforms to establish direct ties with manufacturers, further endangering traditional distributors. This complaint comes at a time when the quick commerce sector is



booming, with Zomato's Blinkit experiencing substantial gains and Swiggy preparing for a high-profile IPO.

CCI invites bids for empanelment of Digital Forensic Service Providers to assist in probes

The CCI vide notice dated [24 October 2024](#) has invited bids to appoint an agency for carrying out digital forensics (“**Service Provider**”) that will aid the CCI to conduct its investigation. The Service Provider will have to acquire, extract and analyse digital evidences from various electronic devices such as mobile, computers, tablets, storage devices, media, etc. Furthermore, the Service Provider must have certain capabilities as outlined in the notice such as capability to locate, identify and analyse encrypted files, break encryption, crack password, access hidden data, extraction of text messages, voice notes, call records, documents etc.

EC fines Teva over misuse of patent system and disparagement to delay rival multiple sclerosis medicines

The European Commission (“**EC**”) has fined Teva, a global pharmaceutical company €462.6 million for abusing its dominant position in relation to its blockbuster medicine Copaxone (containing the active pharmaceutical ingredient - glatiramer acetate). The EC found that Teva misused European Patent Office’s rules and procedures to artificially prolong legal uncertainty over its patents and, potentially, hinder the entry of competing glatiramer acetate medicines. More importantly, the EC further found that Teva “implemented a systematic disparagement campaign against a competing glatiramer acetate medicine for the treatment of multiple sclerosis, by spreading misleading information about its safety, efficacy and therapeutic equivalence with Copaxone”. False disparagement by a dominant enterprise of a competing product trigger abuse of ‘denial of market access’.

CCI approves acquisition of additional shareholding by AP Funds and Temasek in Thoughtworks Holdings

The CCI has approved the proposed combination involving acquisition of additional shareholding by Apax Partners LLP (AP) (“**AP Funds**”) and Temasek Holdings (Private) Limited (“**Temasek**”) in Thoughtworks Holding, Inc (“**Target**”)

Tasmania Midco LLC (“**Acquirer**”) is an SPV indirectly wholly owned by the AP Funds which is a limited liability partnership incorporated under the laws of United Kingdom and the parent of a number of entities which provide investment advisory services to private equity funds investing in a range of industry sectors.

Nevado Investments Pte. Ltd. (“**Nevado**”) is a limited company incorporated in Singapore and is an indirect wholly owned subsidiary of the Target. Target is a global technology consultancy corporation, providing IT consultancy and application implementation and managed services.



CCI approves acquisition of additional 31.52% share capital of Agilus by Fortis

The CCI has approved the acquisition of additional 31.52% share capital of Agilus Diagnostics Limited (“**Agilus**”) by Fortis Healthcare Limited (“**Fortis**”). Post the Proposed Combination, the shareholding of FHL in Agilus will increase from 57.68% to 89.2%.

Fortis is primarily engaged in providing integrated healthcare delivery services such as medicare, healthcare, diagnostics and its businesses include managing and operating a network of multi-specialty hospitals and providing preventive healthcare and diagnostics services. The diagnostics services business of FHL is being undertaken primarily through Agilus.

Agilus is, inter alia, engaged in establishing, managing, maintaining clinical reference laboratories and other laboratories for providing testing and diagnostic services. It offers a range of routine and specialized diagnostics tests as well as wellness packages that cover an extensive range of specialties.



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.

KEY CONTACTS



G.R. BHATIA

Partner

Email - GBhatia@luthra.com



ARJUN NIHAL SINGH

Partner

Email - ansingh@luthra.com



MANAV GUPTA

Associate

Email - manavg@luthra.com



SANYAM JUNEJA

Associate

Email - sjuneja@luthra.com



NEW DELHI

1st and 9th Floors, Ashoka Estate,
24 Barakhamba Road, New Delhi - 110 001
T: +91 11 4121 5100 F: +91 11 2372 3909
E: delhi@luthra.com



MUMBAI

20th Floor, Indiabulls Finance Center,
Tower 2 Unit A2, Elphinstone Road,
Senapati Bapat Marg, Mumbai - 400 013
T: +91 22 4354 7000 / +91 22 6630 3600,
F: +91 22 6630 3700
E: mumbai@luthra.com



BENGALURU

3rd Floor, Onyx Centre, No. 5, Museum Road,
Bengaluru - 560 001
T: +91 80 4112 2800 / +91 80 4165 9245
F: +91 80 4112 2332
E: bengaluru@luthra.com



HYDERABAD

Regus Midtown, Office No.131
Level 1, Midtown Building
Road No.1, Banjara Hills,
Opp. Jalgam Vengal Rao Park
Hyderabad, Telangana - 500034
T: +91 40 7969 6162
E: hyderabad@luthra.com



CHENNAI

Prestige Palladium Bayan,
8th Floor, Greams Road, Nungambakkam Division,
Egmore, Chennai - 600 006,
Tamil Nadu
T: +91 95604 88155
E: chennai@luthra.com