

I. Supreme Court clarifies on the issue of “locus standi” to file information before the Competition Commission of India

In a landmark decision, the Hon’ble Supreme Court of India has clarified the requirement of “locus standi” to file information before the Competition Commission of India (CCI).

In a case filed in the CCI, against cab-aggregators Ola and Uber by an individual, it was alleged that the cab drivers have formed a cartel amongst each other by utilizing the connectivity features of the software/applications of Ola and Uber. The CCI dismissed the case on account of lack of evidence against the drivers or the cab aggregators.

On appeal, the National Company Law Appellate Tribunal (NCLAT) upheld the CCI decision on merits. However, the NCLAT held that the informant did not have any locus standi to file information before the CCI pertaining to this matter as he has not suffered any legal injury on account of the alleged conduct of the cab-aggregators. Consequently, he could not have filed information before the CCI.

The Supreme Court disagreed with the findings of the NCLAT as far as the issue of locus standi was concerned. The Court held that the information may be received from any person, whether such person is or is not personally affected. The Court noted the 2007 Amendment to the Competition Act, 2002 (Act) through which the word “Complainant” was substituted with the word “Informant”.

Further, the Court also held that there is no “locus standi” requirement to file an appeal before the appellate tribunal against the order of the CCI by a person who has filed an information with the CCI. The Court held that:

“Further, it is not without significance that the expressions used in sections 53B and 53T of the Act are “any person”, thereby signifying that all persons who bring to the CCI information of practices that are contrary to the provisions of the Act, could be said to be

aggrieved by an adverse order of the CCI in case it refuses to act upon the information supplied.”

The Court concluded as follows:

“When the CCI performs inquisitorial, as opposed to adjudicatory functions, the doors of approaching the CCI and the appellate authority, i.e., the NCLAT, must be kept wide open in public interest, so as to subserve the high public purpose of the Act.”

The Court disposed off the matter in terms of the above observations.

[Case: *Samir Agrawal vs Competition Commission of India & Ors* Civil Appeal No. 3100 of 2020, decision dated 15 December 2020]. The full text of the judgment may be accessed [here](#).

II. CCI dismisses case of alleged collusion between credit rating agencies

The CCI has dismissed a case of alleged cartelization between various credit rating agencies (CRA) in relation to tenders for rating of financial instruments floated by National Highway Authority of India (NHAI).

In a case filed by Brickwork Ratings India Pvt. Ltd., a competing CRA, it was alleged that certain CRAs i.e. CRISIL Ltd, India Ratings and Research Pvt. Ltd., CARE Ratings Ltd. and ICRA Ltd. were colluding in their bids for the tenders for NHAI by quoting an exact same bid of INR 1100 for Initial Rating Fee. It was alleged that such identical bid was a result of meeting of minds between the opposite parties in violation of Section 3(3) of the Act.

The CCI noted that the identical bid of INR 1100 by the parties was a result of the historical price transparency based on the bids made by them in the previous tender, and not as a result of collusion. As such, the allegation of cartelization and meeting of minds does not stand. Consequently, the case was closed at the *prima-facie* level.

[Case: *Brickwork Ratings India Pvt. Ltd. vs CRISIL Ltd. & Ors* Case No. 47 of 2019, order dated 29

December 2020. The full text of the order may be accessed [here](#).]

III. CCI dismisses allegations of bid-rigging in sensors for molten metals

The CCI has dismissed allegations of cartelization and abuse of dominance against Heraeus Group and other entities engaged in supplies/services to steel industry for measurement, monitoring of temperature, oxygen activity, chemical composition, etc.

In a case filed by Arrdy Engineering Innovations Pvt. Ltd., a competitor of Heraeus Group, it was alleged that Heraeus Group has a strategy of acquiring smaller competitors in the industry and it has acquired a dominant position in the market.

It was alleged that Heraeus Group exercises its dominant position to impose unfair obligations on the buyers of its products/services such as exclusive purchasing. Further, it was alleged that Heraeus Group has indulged in predatory pricing to exclude competitors from the market.

The CCI noted that the informant has failed to specify any of the products which form part of the market. Further, mere acquisition of competitors does not amount to abuse of dominance. On account of the above, the CCI closed the case at the *prima-facie* level

[Case: *Arrdy Engineering Innovations Pvt. Ltd. vs Heraeus Technologies Pvt. Ltd. & Ors.* Case No. 47 of 2020, order dated 11 December 2020. The full text of the order may be accessed [here](#).]

IV. CCI approves acquisition of 49% shareholding in Odisha Power Generation Corporation Ltd. by Odisha Hydro Power Corporation Ltd.

The CCI has unconditionally approved the acquisition of 49% shareholding in OPGCL by OHPCL.

OHPCL is an unlisted state government company engaged in the business of generation

of power from renewable sources namely, hydroelectric and solar power.

OPGCL is an unlisted state government company engaged in the business of generation of power from coal based thermal power plants as well as mini-hydro power projects.

The CCI has approved the said combination as per the information available on the website of the CCI. The detailed order of the CCI is yet to be made public.

[Case: *Notice given by Odisha Hydro Power Corporation Limited* Notice No. C-2020/11/787.] The summary of the notice can be accessed [here](#).

This update is intended merely as an announcement to highlight recent developments. The information is general and should not be considered or relied on as legal advice. For any further enquiries, please contact the following:



Kunal Mehra, Partner
(kunal@duaassociates.com)



Danish Khan, Principal Associate
(danish@duaassociates.com)