

i. The Competition (Amendment) Bill introduced in Parliament in monsoon session

The Competition (Amendment) Bill, 2022, cleared by the Union cabinet has been introduced in Parliament. The Competition (Amendment) Bill proposes to:

- introduce an additional “deal value” threshold, so that transactions: (a) with a deal value in excess of INR 2,000 crore; and (b) where either party has “substantial business operations in India”, will require to be notified in India (assuming no exemption is available);
- sharply reduce timelines for assessment of combinations;
- exempt combinations from the standstill obligations under Section 6(2A) of the Act, if the combinations involve: (a) an open offer; or (b) an acquisition of shares or securities, through a series of transactions on a regulated stock exchange. The acquirer, in the above cases, would be allowed to acquire shares but cannot exercise any ownership or beneficial rights or voting rights or receive dividends / any other distributions, till the Competition Commission of India (“CCI”) approves such acquisition;
- increase the penalty for providing false information or failing to furnish material information in relation to a combination from the current INR 1 crore to INR 5 crore. Separately, where there is a failure to notify a reportable transaction or respond to a notice from the CCI as to why a transaction was not notified, the CCI has the power to impose a penalty of up to 1% of the total turnover or assets or value of the transaction;
- expands the scope of section 3(3) (horizontal agreements), which will allow CCI to treat facilitators (who are not competitors) at par with the actual cartelists, irrespective of the

level of their involvement or their intentions;

- impose a limitation period of 3 years from the date of cause of action, for filing of any Information before the CCI;
- introduce an element of double jeopardy by permitting CCI to refuse to inquire into a conduct if the same or substantially the same facts and issues has already been decided by the CCI in its previous order.
- permit the CCI to appoint the Director General (“DG”), with the prior approval of Central Government;
- expands the powers to the DG to conduct an investigation while giving parties an opportunity to access documents/ records before the DG;
- expand the scope of leniency so that where a party implicated in a cartel investigation makes a true and vital disclosure of another undisclosed cartel, the CCI is empowered to grant an additional lesser penalty for the cartel already being investigated;
- introduces provisions allowing parties to offer settlements and voluntarily undertake certain commitments;
- a pre-deposit of 25% of the penalty imposed by the CCI in order to file an appeal before National Company Law Appellate Tribunal.; and
- allows CCI to publish guidelines on various provisions of the statute, including penalties. .

ii. NCLAT dismisses appeal in SBI Bid-Rigging

[Mr. Naresh Kumar Dasari v Competition Commission of India, Order of the Hon’ble Tribunal dated July 27, 2022, in Case No. 24 and 26 of 2022]

Background: -

CCI after receiving a complaint suo moto decided to look into the alleged bid-rigging and cartelization in the tender floated by SBI Infra Management Solutions Pvt. Ltd, in 2018.

CCI formed a prima facie view that a case of contravention of the provisions of section 3(1) read with section 3(3) of the Competition Act, 2002 ("Act") was made out against the seven entities including Appellant Company concerning the Impugned Tender. Thus, CCI directed the DG to investigate the matter.

On the basis of extensive evidences collected including, Call Data Records ("CDRs") and emails exchanged between the entities, DG concluded that the alleged entities indulged in anti-competitive agreement/conduct and concerted practices to rig the Impugned Tender, as well as geographically where they allocated amongst themselves the circles for which the tender was issued, thereby contravening the provisions of sections 3(3)(c) and 3(3)(d) read with section 3(1) of the Act. The DG also identified certain individuals of the entities to be liable in terms of section 48 of the Act.

While passing the impugned order, CCI observed the following:

- Several emails exchanged between the entities under investigation, revealed that the final bid price matched the figures previously discussed and shared among the entities for most geographical circles.
- CCI also reviewed the CDRs which again revealed that the Appellants were in constant touch with each other's before, during, and post the e-reverse bidding process of the Tender and that the timing of the actual bid submissions closely matched the calls made among the entities.
- For the presumption of entities having an appreciable adverse effect on competition ("AAEC"), CCI observed

that any manipulation in the competitive price discovery process, in this case, the e-reverse auction system, would affect the final price to be paid by the tendering authority.

- Regarding, Involvement of the Appellant company, Macromedia Digital Imaging Pvt Ltd ("MDIPL"), dismissing the contention that they were not involved in actual tender, CCI clarified that actual participation in the tender is not a sine qua non for a finding of bid rigging in terms of section 3(3)(d) of the Act. CCI also stressed upon the depositions which again concluded that MDIPL executed the Tender work on behalf of the other entities who participated in the tender.
- On the same grounds, CCI also dismissed the argument of the Appellant who led the preparation of the excel worksheet, clarifying again that financial gain from collusion was not a prerequisite to finding a violation.

CCI passed an order under section 27 of the Act, finding the entities in contravention of section 3 of the Act, for bid rigging and imposed a penalty of INR 12.447 million on seven entities including the Appellant Company, and identified the managing director of each entity to be liable under Section 48(1) of the Act for the roles played by them in cartelization including the Appellant.

This appeal was filed by Mr. Naresh Kumar Dasari ("Appellant") and Macromedia Digital Imaging Pvt Ltd ("Appellant Company") against the CCI's order (Suo Moto Case No. 2 of 2020, decided on 03.02.2022).

Conclusion: -

Hon'ble Tribunal appreciated the extensive evidence collected and discussed by CCI, holding that there was no room for error. Additionally, the Appellant himself admitted his involvement in the Association and Cartel

showing an appreciable adverse effect on competition, leaving no space for the Appellant company to take a plea that such act was done by the Appellant in his individual capacity. NCLAT noted the CCI's observation that Appellant Company also formed a joint venture with one of the beneficiaries who was involved in the case, leaving no doubt about the involvement of the Appellant Company. Accordingly, the Hon'ble Tribunal concluded the involvement of both Appellant and Appellant company and dismissed the appeal.

iii. CCI warns National Association of Container Freight Stations, Chennai

[National Association of Container Freight Stations, Chennai Chapter Vs. Trailer Owners Association and Others. Order of the Hon'ble CCI dated July 20, 2022, in Case No. 04 of 2018]

Background: -

A complaint was filed by the Chennai chapter of the National Association of Container Freight Stations, which alleged that the associations had imposed certain restrictions concerning the movement of trailers. The trailer owners had set a cap of 20 trailers that each container freight station ("CFS") could own and operate. They also forced unsustainable freight rates on the CFSs, which are an important constituent of an elaborate logistics supply chain in a manufacturing process.

Conclusion: -

CCI examined the role of trade associations and the legitimacy of actions taken by them under the Act. CCI also took note of submissions made by the Informant that the Associations were using strikes and lock-outs as a means to make the members of the Informant agree to their illegal demands. Further, since the Chennai Port was following a practice of issuing passes for the entry of trailers and drivers only when such passes were endorsed by one of the trailer Associations, members of the Informant had no option but to agree to the demands of the Associations. Rejecting the OPs submission on

the participation of Informant and Chennai Port Trust, CCI held that the participation of both did not alter the characterisation of an otherwise collusive conduct/practice by the Associations. CCI concluded that fixing prices and restricting the provision of services under the aegis of trade associations cannot be held as a legitimate activity under the Act. Accordingly, CCI held that the Associations' conduct was in contravention of the provisions of section 3(3)(a) and section 3(3)(b) read with section 3(1) of the Act, and directed to cease and desist in respect of the anti-competitive conduct committed by them.

iv. CCI dismisses Information against Chhattisgarh Chemist and Druggist Association ("CCDA")

[In Re: Alleged anti-competitive practices by the Chhattisgarh Chemist and Druggist Association in limiting supply of drugs/medicines in the State of Chhattisgarh, Order of the Hon'ble CCI dated July 5, 2022, in Suo Motu Case No. 04 of 2020]

Background:

A complaint was filed before CCI alleging that members of the Chhattisgarh Chemist and Druggist Association ("CCDA") collectively ensured that no new medicines could be launched by any pharma companies in the markets of Chhattisgarh unless a sum of Rs. 5000/- per medicine was given to the said association. According to the Information, CCDA issued receipts against these charges which were collected towards Product Information Services (PIS) and Letter of Consent/No Objection Certificate (LOC/NOC) thus, illegally collecting crores of rupees. Furthermore, owing to the unity of the association, no pharma company was able to take any steps against them. Even if some companies raised any issues, they were boycotted in the State of Chhattisgarh. Based on the Information, the DG carried out an investigation and concluded that CCDA has indeed violated section 3 read with section 3(3) of the Act.

Conclusions of the CCI:

CCI observed that DG's conclusion on mandatory PIS payment to CCDA was drawn from the statement made by Macleods Pharmaceutical, which stated that "PIS payment was mandated by CCDA and that it was never a voluntary exercise". CCI recognized DG's failure to appreciate that in the same statement it was also put forth by Macleods that CCDA did not thwart the launch of any product for want of PIS and there had been instances wherein PIS was paid after the launch of a medicine. Furthermore, CCI concluded that there was no cogent evidence on record to suggest that the collection of PIS charges by CCDA from pharmaceutical companies was mandatory; especially after many such affected companies came forward during the investigation to say that there has been no compulsion to pay such charges. Thus, the CCI rejected DG's report and concluded that no case of contravention of provisions of section 3 was made out against CCDA.

V. CCI dismisses Information against Parle Products Private Limited

[Order of the Hon'ble CCI dated July 6, 2022, in Case No. 28 of 2021]

Background:

The matter was initiated by the CCI based on an information alleging that Parle Products Pvt. Ltd. ("Parle") refused to engage in negotiations with the Informant in contrast to engagement with other distributors in the market. According to the Informant, Parle was a high consumer demand product in the market and owned "Must have" stock for distributors and retailers. Thus, Parle's refusal to negotiate with the Informant forced the latter to procure the products from Parle's existing distributors in the open market (secondary market) or risk the chance of rapidly losing out to its retailers. Informant alleged that this conduct of Parle was in contravention of section 3(4)(d) and section 4(2)(c) of the Act.

Conclusions of the CCI:

CCI concluded that the relevant market in the instant case would be the 'market for biscuits in India'. It was also observed that even though Parle has a market share of approximately 27% in the overall biscuits category, the existence of other big competitors like Britannia, ITC, Cremica, Patanjali, etc. also offering products similar to Parle, posed competitive restraints on it.

CCI observed that the type and nature of distributors or manufacturers desire to partner with, is an essential part of the autonomy of its business and that CCI cannot ipso facto substitute its regulatory wisdom to that of the commercial wisdom of the businesses unless the commercial wisdom is palpably in the face of the provisions of the Act. Moreover, CCI duly noted that there were no barriers to entry either in the manufacturers' market or in the distributors' market, considering the presence of a large number of biscuit manufacturers upstream as well as the presence of Parle's distributors downstream. Accordingly, the commission dismissed the case by passing an order under section 26(2).

COMBINATION ORDERS

In July 2022, the below-mentioned transaction was filed through the green channel and deemed approved by the CCI:

- C-2022/07/950- The proposed combination relates to certain inter-connected transactions involving the proposed acquisition of (i) equity stake in Highway Concessions One Private Limited, ("HC One") (ii) unitholding in Highways Infrastructure Trust ("Target Trust"), and (iii) certain rights in Galaxy Investments Pte. Ltd. ("Galaxy"), by the Acquirers.