



THE SENTINEL THE QUARTERLY NEWS BULLETIN IN COMPETITION LAW

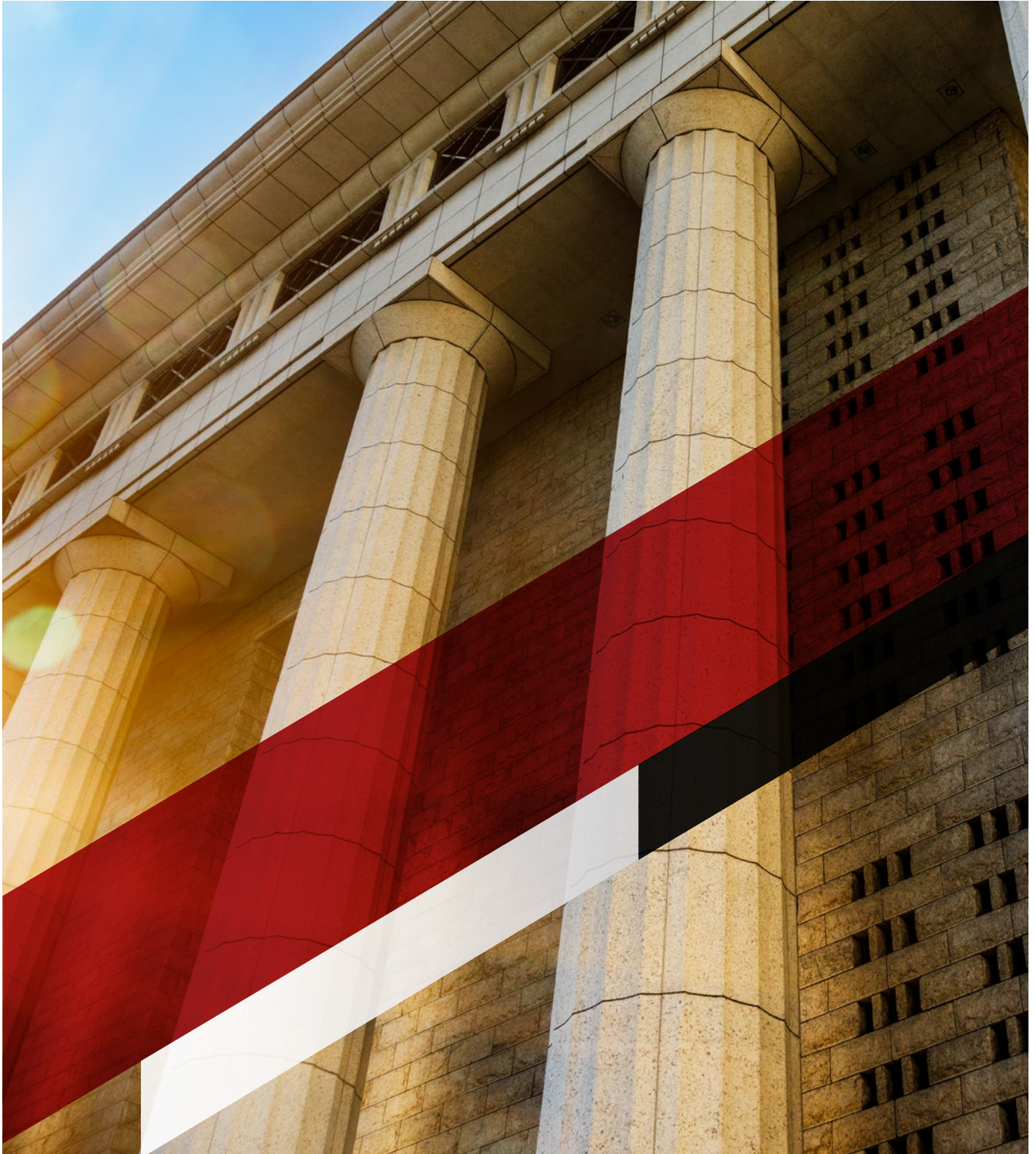
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INTRODUCTION

INDUSLAW presents the second edition of its quarterly competition law newsletter, 'The Sentinel'. As the name suggests, by way of this short yet extensive compilation of updates, we keep a watch for significant decisions passed by the Competition Commission of India ("CCI"), the National Company Law Appellate Tribunal ("NCLAT"), various High Courts, as well as regulatory

and institutional updates which will help you navigate the competition law space with ease.

Separately, for our friends who appreciate the crisp and the sweet, a ready reckoner of the noteworthy developments is set out in the flowchart below.



SUMMARY OF KEY DEVELOPMENTS IN Q2 OF FY 2024-2025

JULY – SEPTEMBER 2024

May 7

CCI partially approves Greenko group's acquisition of additional stake in Sikkim Urja.

July 2

NCLAT reduces penalty on soil sample testing company in bid rigging case.

July 18

CCI approves the indirect controlling acquisition of Arjas Steel and its wholly owned subsidiary, Arjas Modern Steel, by Sandur Manganese & Iron Ores and BAG Holdings.

August 14

Delhi High Court quashed CCI's investigation against JCB India Limited and affirmed the sanctity of the mediation process.

July 22

CCI reverses its earlier decision and exonerates sugar mills in a case involving a bid-rigging cartel.

July 22

CCI dismisses complaint against Saint Gobain India Pvt. Ltd and Compagnie De Saint-Gobain for imposition of vertical restraints.

August 16

CCI penalizes India Business Excellence Fund – IV for making incorrect statements in their filing to the CCI and gun-jumping.

August 20

CCI dismisses complaint against National Internet Exchange of India for predatory pricing and denial of market access.

August 20

CCI released a market study relating to diagnostic medical imaging industry in India with a focus on CT Scan machines and MRI machines.

September 9

The MCA notified and implemented multiple merger control provisions, resulting in the overhaul of merger control regime in India.

August 30

Guwahati High Court quashes CCI's investigation against cement companies.

August 28

CCI approves Walt Disney-Reliance merger.

OVERVIEW OF ENFORCEMENT CASES

Decisions by the CCI:

In the second quarter ("Q2") of the financial year ("FY") 2024-25, the CCI declined to investigate approximately 11 (eleven) information filings relating to allegations of abuse of dominance and anti-competitive agreements. Separately, the CCI also reversed one of its initial penalty orders upon second scrutiny, once NCLAT remanded the matter back to CCI. A summary of the noteworthy cases is set out below:

CCI reverses its earlier decision and dismisses cartel allegations against Sugar Mill Association and its members¹:

On July 22, 2024, the CCI, post the remand by NCLAT, reversed its earlier findings and dismissed the information against various sugar mills ("**Sugar Mills**") and their associations ("**OPs**").²

As background, in 2018, the CCI had imposed a penalty³ ("**CCI Order**") on Sugar Mills and OPs for rigging bids in relation to tenders floated by the Oil Marketing Companies ("**OMCs**") for procurement of anhydrous alcohol ("**Ethanol**"). The OPs challenged the CCI Order before the NCLAT and inter alia contended that the CCI failed to provide an opportunity of hearing to the OPs after the Director General, CCI ("**DG**") submitted the supplementary report ("**Supplementary Report**") to the CCI, pursuant to the cross-examination.⁴ The NCLAT found merit in the OPs submissions and held that the CCI Order was not in compliance with the principles of natural justice as the CCI ought to have provided an opportunity of hearing to the OPs. Based on this, the NCLAT disposed off the appeal and remanded the matter back to the CCI.⁵

Pursuant to the NCLAT order, the CCI provided an opportunity of hearing to the OPs and noted that: (i) owing to similar cost of production, the likelihood of sugar mills quoting prices in the similar range was high and justifiable; (ii) mere price parallelism cannot be the sole criteria to establish a cartel and evidence of parallel pricing must be supplemented with "*plus factors*" showing that alleged conduct is conscious and not the result of independent business decisions; (iii) the *plus factors* identified, i.e., the meetings of some of the Ethanol manufacturers and exchange of a few calls between the OPs with the representative of Sugar Mills Associations, could be justified on the grounds that the meetings were held to discuss policy changes and the calls had been made to understand the nuances of the

tenders floated by the OMC's (the format of which was unprecedented and therefore, a novelty); and (iv) there is not sufficient evidence to prove cartelization or bid manipulation. Thus, the CCI closed the investigation.

View: The CCI has consistently held that mere price parallelism, in the absence of plus factors, is insufficient for finding of cartelisation. Further, direct contact between competitors for legitimate purpose such as discussion of government policy, and promotion and protection of their business interests (without discussion of any commercially sensitive information) doesn't raise competition law concern.

CCI dismisses complaint against Saint Gobain India Pvt. Ltd. and Compagnie De Saint-Gobain for imposition of vertical restraints⁶:

On July 22, 2024, the CCI dismissed an information⁷ filed against Saint Gobain India Pvt. Ltd. and Compagnie De Saint-Gobain ("**Saint Gobain**") alleging: (i) imposition of vertical restraint; and (ii) abuse of dominance position.

Allegedly, Saint Gobain in one of its agreements with a processor⁸ had: (i) imposed conditions that required processors to purchase glass exclusively from Saint

1. Case No. 21, 29, 36, 47, 48 & 49 of 2013, *India Glycols Ltd. v. Indian Sugar Mills Association and Ors.*, order dated July 22, 2024, available at: <https://www.cci.gov.in/antitrust/orders/details/1122/0>.
2. The CCI Order was issued based on separate informations filed by India Glycols Ltd., Ester India Chemicals Ltd., Jubilant Life Sciences Ltd., AB Sugars Ltd., Wave Distilleries and Breweries Ltd. and Lords Distillery Ltd., against (i) 3 sugar mills' associations namely Indian Sugar Mills Association, National Federation of Co-operative Sugar Factories, and Ethanol Manufacturers Association; (ii) 3 Public Sector Undertakings Oil Marketing Companies, namely Indian Oil Corporation Ltd., Bharat Petroleum Corporation Ltd., and Hindustan Petroleum Corporation Ltd.; and (iii) 14 sugar mills of the State of Uttar Pradesh.
3. Case No. 21, 29, 36, 47, 48 & 49 of 2013, *India Glycols Limited Vs. Indian Sugar Mills Association & Ors.*, order dated September 18, 2018 available at: <https://www.cci.gov.in/antitrust/orders/details/761/0>.
4. Pursuant to the DG investigation, few of the OPs filed an application before CCI seeking cross-examination of a few witnesses, which was allowed by CCI and hence, the DG submitted the Supplementary Report.
5. Competition Appeal (AT) No. 103 of 2018 (along with other batch matters), *Indian Sugar Mills Association v. CCI and Ors.*, order dated October 10, 2023.
6. Case No. 16 of 2023, *XYZ Vs. Saint Gobain India Pvt. Ltd. and Anr.*, available at: <https://www.cci.gov.in/antitrust/orders/details/1121/0>.
7. The informant, the identity of whom was granted confidentiality by the CCI, is stated to be a public-spirited person.
8. The informant submitted that the services provided by glass processors included: (a) cutting and shaping; (b) tempering; (c) laminating; (d) insulating; (e) engraving and etching; (f) drilling and edging; (g) sandblasting; (h) fabrication; and (i) quality control, of glass. Further, the interrelationship between glass manufacturer and processor can be understood through various aspects such as supply of raw material by glass manufacturers, customization of the product by the glass processors through cutting, shaping, tempering, laminating, coating, or other processes to meet specific design or functional needs, value addition by glass manufacturers at the time of manufacturing and by glass processors after that, which cater to specific applications and industries, enhancing the functionality, safety, or aesthetics of the glass through various processing techniques, assurance of quality, investment, innovation and technology by the glass manufacturers and leveraging of the same by the processors and management of logistic and supply chain by the manufacturers and processors.

Gobain; (ii) forced processors to co-brand their products with Saint Gobain; (iii) offered significant discounts to the processors/distributors that purchased exclusively from Saint Gobain, while denying products to those who engaged with Saint Gobain's competitors; and (iv) directly engaged with large customers, such as real estate companies, to negotiate prices on behalf of the processors and later compelled the processors to issue invoices reflecting these negotiated prices.

The CCI noted that the informant relied heavily on an undated and unsigned agreement, which could not establish the authenticity or binding nature of the alleged conduct and despite multiple opportunities, the informant could not provide a copy of a valid and subsisting agreement. Notwithstanding the absence of a valid agreement, based on its review of the available agreement, the CCI observed that: (i) any exclusive supply obligations were limited to specific high-performance glass products and did not extend to all glass types, allowing processors some flexibility in sourcing non high-performance glass/clear float glass products from other manufacturers; (ii) the exclusivity imposed by Saint Gobain with respect to high-performance glass products was justified as it was undertaking technical training and support for processors, to enhance product quality, thereby benefiting both parties; (iii) co-branding did not raise competition concerns, as processors could use their trademark/branding alongside Saint Gobain's under certain terms and conditions; (iv) offering differential discounts based on volume of purchase is not *per se* anti-competitive and the informant failed to substantiate the allegation regarding Saint Gobain's refusal to deal with processors that engaged with its competitors; and (v) the processors were free to charge the price from the end users for the value addition/enhancement they carried out in the glass received from Saint Gobain and there was no evidence to suggest that the price of the end product was being controlled by Saint Gobain since it only charged for the products it sold to the processors. Hence, no *prima facie* case was made out.

CCI dismisses information against Employees' State Insurance Corporation for cartelisation⁹:

On August 9, 2024, the CCI dismissed an information¹⁰ against 5 (five) individuals and the Deputy Medical Commissioner, Employees' State Insurance Corporation ("ESIC"), alleging cartelization in the procurement of medicines by the ESIC. ESIC, a multifaceted social security scheme, procures medicines through an

e-tendering process for its extensive healthcare network, which includes hospitals and clinics across India.

The informant claimed that the 5 (five) individuals, officials of ESIC and 29 (twenty-nine) other drug manufacturing companies through their directors/representatives/employees, and other departments directly/indirectly involved in the tendering process, colluded to significantly inflate prices of the medicines and healthcare products during procurement processes. Since government bodies considered ESIC prices as a benchmark for their respective procurements, such inflation of prices resulted in huge loss of public money to the government and made it difficult for a common man to purchase medicines.

The CCI observed the absence of evidence and gave the informant 3 (three) weeks to submit specific details, including: (i) details of individuals or enterprises involved in the alleged anti-competitive conduct and the requirement to array them as opposite parties in the information; (ii) details of specific tenders where cartelization was claimed; and (iii) any other relevant information. The CCI further noted that despite multiple opportunities given to the informant to provide further details regarding specific tenders and parties involved, no substantial evidence was presented. Therefore, due to a lack of cogent evidence, the CCI dismissed the information.

CCI dismisses the information filed against National Internet Exchange of India for predatory pricing and denial of market access¹¹:

On August 20, 2024, the CCI dismissed an information¹² against National Internet Exchange of India ("NIXI") alleging that NIXI had: (i) abused its dominant position in the market for internet exchange services in India ("**Relevant Market**") by engaging in predatory pricing, i.e., offering its services free of charge or below cost,

9. Case No. 41 of 2023, *Vijay Halder Vs. Chetan and Ors*, available at: <https://www.cci.gov.in/antitrust/orders/details/1127/0>.

10. The 5 individuals named were Mr. Ramesh, Mr. Chetan, Mr. Sandeep Gupta, Mr. Lakhwinder Singh (Nova Pharma) and Mr. Rajan Sukhija (Hospimax Health Care Pvt. Ltd.). The Informant, Mr. Vijay Halder, also alleged contravention of Section 3(3) of the Competition Act, 2002 (as amended) by the Commissioner ESIC, the Secretary, Ministry of Labour and Employment, and 29 pharmaceutical companies, but did not specifically mention them as opposite parties.

11. Case No. 10 of 2023, *Extreme Infocom Pvt. Ltd. and National Internet Exchange of India*, available at: <https://www.cci.gov.in/antitrust/orders/details/1128/0>.

12. The information was filed by Extreme Infocom Pvt Ltd., a company engaged in the business of providing internet exchange services to customers through its trade name 'Extreme IX'.

leading to a denial of market access to its competitors like the informant, which was losing customers to NIXI; and (ii) leveraged its financial capability to absorb costs, unlike smaller competitors and thus, distorting competition in the market.

NIXI raised the preliminary objection that the sectoral regulator, i.e. the Telecom Regulatory Authority of India ("**TRAI**") had the exclusive jurisdiction to adjudicate on issues pertaining to the telecom sector and that the CCI lacked jurisdiction. NIXI further stated that only once the sectoral regulator had concluded that competition law had been violated, could the CCI assess the matter. In this regard, the CCI observed that the obligation to comply with the provisions of the Competition Act, 2002 (as amended) ("**Act**") and maintain fair competition in the market is independent of the obligation to comply with the provisions of TRAI Act, 1997. The CCI reiterated that compliance with the TRAI regulatory framework remains independent of the possibility of any practice of an entity operating in the telecom sector falling afoul of the provisions of the Act.

On merits, the CCI observed that: (i) while NIXI had a significant presence in the Relevant Market, the informant actually had more traffic volume and connected networks in certain key cities; (ii) the data showed that the Relevant Market remained contestable, with no clear dominance established by NIXI; and (iii) the informant had the ability to grow its business despite NIXI's alleged practices, which indicated that NIXI did not have a monopolistic influence on the market. Therefore, given the lack of NIXI's dominance, the CCI dismissed the information.

Decision by the NCLAT

NCLAT reduces penalty on soil sample testing company for bid rigging¹³:

On July 2, 2024, the NCLAT upheld the CCI order penalizing 9 (nine) companies¹⁴ including M/s Toyfort ("**Toyfort**"), for indulging in a bid rigging in the e-tenders floated by the Department of Agriculture, Government of Uttar Pradesh for soil sample testing but reduced the penalty imposed on Toyfort.

As background, the CCI had imposed a penalty of approximately INR 2.19 crores (approximately USD 0.26 million)¹⁵ on 9 (nine) companies for bid rigging in relation to public procurement in soil testing tenders. The CCI observed that some of the companies, without having any prior experience, had resorted to the production and

submission of fake invoices and grant of false certificates to demonstrate their eligibility for participating in the bid process to effectively act as cover bidders in respect of the winning bidders. With respect to imposition of penalty, the CCI stated that since bid rigging is a pernicious form of anti-competitive practice, a penalty was required to be imposed to reflect the seriousness of the infringement and ensure deterrence for future conduct. Accordingly, based on the factual circumstances, the CCI imposed a penalty on the 9 (nine) companies computed at 5% of the average total turnover of the respective companies for 3 (three) years (from FY 2017-18 to FY 2019-20).

Aggrieved, Toyfort challenged the CCI order alleging that the DG failed to provide concrete evidence of coordination between Toyfort and other bidders like M/s Austere Systems Pte. Limited ("**Austere System**") and M/s Fimo Infosolutions Private Limited beyond family relations, which alone does not disqualify them from bidding independently. Further, penalties are imposed based on relevant turnover, i.e. turnover derived from the product affected by cartel. Given that Toyfort had no involvement or income from soil testing, their relevant turnover was zero, and therefore, no penalty should be imposed.

The NCLAT upheld the CCI's finding that Toyfort was involved in the bid rigging cartel as: (i) Toyfort, primarily a toy seller with no soil testing experience, submitted bids for soil testing tenders despite being ineligible; (ii) the bids submitted by Toyfort for the 2017 soil testing tenders were merely cover bids intended to support Austere System, who was the beneficiary of the cartelized tenders. This arrangement was made to prevent the cancellation of the tender due to insufficient participation.

With respect to the imposition of penalty based on total turnover as opposed to the relevant turnover, the NCLAT stated that the factual matrix of the matter was peculiar since almost all bidders for soil testing were first-time bidders and accordingly, the relevant turnover

13. Competition Appeal (AT) No. 34 of 2022 & IA Nos. 2607, 2608 of 2022, *Toyfort Vs. Competition Commission of India*.

14. *Suo Moto Case No. 01 of 2020, In Re: Alleged bid-rigging in E-Tenders invited by the Department of Agriculture, Government of Uttar Pradesh for soil sample testing*, order dated April 4, 2022, available at: <https://www.cci.gov.in/antitrust/orders/details/623/0>. The companies against whom the allegations were made were: (i) M/s Yash Solutions; (ii) M/s Satish Kumar Agarwal; (iii) M/s Siddhi Vinayak and Sons; (iv) M/s Saraswati Sales Corporation; (v) M/s Austere Systems Pte. Limited; (vi) M/s Delicacy Continental Private Limited; (vii) M/s Fimo Infosolutions Private Limited; (viii) M/s Toyfort; and (ix) M/s Chaitanya Business Outsourcing Private Limited.

15. All INR figures converted to USD at USD 1 = INR 84.

of these companies would have been nil. Accordingly, the computation of penalty based on relevant turnover would be incorrect since it would lead to no penalty and allow the parties involved to go scot-free. Hence, the NCLAT agreed with the CCI's approach of taking the total turnover for computation and imposition of penalty. However, since Toyfort was involved as a secondary participant in the cartel, *i.e.*, by providing the cover bids, the NCLAT observed that the penalty for Toyfort should be less than for those involved as primary participants. Accordingly, the NCLAT reduced Toyfort's penalty from 5% to 3% of its average total turnover for FY 2017-18 to FY 2019-20.

View: *Given that any government procurement impacts the public at large, conduct such as bid rigging and providing cover bids for tenders need to be actively discouraged. Accordingly, the CCI and NCLAT were correct in their decision of imposing penalties even on such companies that did not previously derive any income from the relevant business.*

Decisions by the High Courts

Delhi High Court quashes CCI's investigation against JCB and affirmed the sanctity of the mediation process¹⁶:

On August 14, 2024, the division bench of the Delhi High Court ("**DHC**") held that the CCI must respect the outcomes of mediation and settlements reached between JCB India Limited ("**JCB**") and Bull Machines Private Ltd. ("**BMPL**"), thereby quashing the CCI investigation against JCB.

Background of litigations between parties

On November 24, 2011, JCB filed an intellectual property infringement case against BMPL before the DHC where JCB sought an injunction against BMPL restraining them from infringement of copyright, piracy of registered design, passing off, etc. ("**Original IP Case**"). An *ex-parte* injunction was granted in favor of JCB, which led to local commissioners being appointed to seize products from BMPL. In response and considering that the Original IP Case by JCB was based on its registered designs, BMPL challenged the validity of JCB's designs before the Controller of Designs.

In December 2013, while negotiations for the settlement regarding the designs were ongoing, BMPL filed a complaint before the CCI accusing JCB of abusing its

dominant position through bad faith litigation, which amounted to a denial of market access under Section 4 of the Act. On March 11, 2014, the CCI initiated an inquiry and issued a *prima facie* order directing the DG to investigate ("**CCI Investigation Order**"). This prompted JCB to file a writ petition before the DHC, challenging the CCI Investigation Order. Subsequently, JCB filed another writ petition before the DHC contesting the legality of the search and seizure conducted by the DG at JCB's premises.

Mediation and subsequent developments

During this time (*i.e.*, while the writ petition proceedings were ongoing), BMPL's attempt to have the Original IP Case summarily dismissed was rejected by DHC, followed by BMPL filing the appeal with the Supreme Court of India ("**SC**"). The SC referred the matter to mediation, which was successful.

On August 26, 2021, the DHC recorded a settlement between JCB and BMPL regarding the Original IP Case. Following this settlement, both parties, *i.e.*, BMPL and JCB sought to quash the CCI Investigation Order by filing an application before the DHC (in addition to the already ongoing 2 writ petitions filed by JCB). In response to these petitions and application, the CCI argued that the investigation was essential for maintaining competition in the market.

Findings by DHC

The DHC, after considering all the facts and circumstances of the case, quashed the CCI Investigation Order. The DHC emphasized that CCI must respect mediation settlements reached between parties and cautioned against transferring intellectual property disputes from a High Court or commercial court to a competition authority. Further, given that mediation as a dispute resolution method brings finality to disputes, allowing an ongoing investigation by CCI would mean that despite the settlement, the CCI can proceed with its inquiry, thereby prejudicing the settlement. This possibility would undermine the core principles of mediation by creating uncertainty and instability for the parties involved. It further discouraged the CCI from pursuing investigations related to sham or vexatious litigation when an underlying intellectual property dispute is still pending before it.

16. W.P.(C) 2244/2014 & CM APPL 31397/202, *JCB India Ltd. and Anr. vs. CCI and Anr.*, order dated August 14, 2024, available at: https://dhccaseinfo.nic.in/jsearch/judgement.php?path=dhc/PMS/judgement/20-08-2024/&name=PMS14082024CW22442014_131705.pdf.

View: The ruling sets out in detail that regulatory agencies like the CCI must respect the process of mediation and settlement between the parties *inter se* so that finality over matters is achieved (irrespective of the fact that such a possibility may not be enunciated explicitly in the statute). This recognition reinforces the concept that mediation is not merely a preliminary step but a conclusive process that provides binding and enforceable outcomes.

Guwahati High Court quashes CCI's investigation against cement companies¹⁷:

On August 30, 2024, the Guwahati High Court ("GHC") quashed a CCI investigation which was based on an information alleging that 3 (three) cement companies *i.e.*, Star Cement Limited ("**Star Cement**"), Calcom Cement India Limited, and TOPCEM India and (collectively, the "Cement Companies") had engaged in cartelization by: (i) increasing cement prices in the northeastern region without a corresponding rise in input costs; and (ii) receiving government subsidies without passing the benefits to consumers.

Based on these allegations, the CCI on December 6, 2016, issued a *prima facie* order that the Cement Companies had engaged in anti-competitive practices and directed the DG to investigate the matter ("**Investigation Order**"). During the investigation, the DG issued notices to the Cement Companies requesting specific information. In response, Star Cement filed an application with the CCI to review or recall the Investigation Order as the CCI had failed to establish a *prima facie* case against the Cement Companies. This request was rejected by the CCI by way of an order dated August 8, 2018. Additionally, the CCI imposed a penalty of INR 5,00,000 (approximately USD 6,000) on Star Cement for failing to comply with the directives issued by the DG ("**Penalty Order**").

Proceedings before GHC

Aggrieved by the Penalty Order, Star Cement filed a writ petition before the GHC challenging the legality of the CCI's orders, arguing that no *prima facie* case had been established before initiating the investigation.

The GHC noted that the Penalty Order found its genesis in the Investigation Order. Further, it noted that the Act specifically requires the CCI to form a *prima facie* opinion before issuing any order for investigation. Given this, the GHC reviewed the evidence against the Cement Companies based on which the CCI had made the *prima facie* finding that the Cement Companies had cartelized. The GHC found that there was no consistent price increase or uniformity in price hikes, which undermined the claims of cartelization. Further, the evidence indicated competitive practices rather than collusion among the Cement Companies.

Based on the above, the GHC quashed the CCI's Investigation Order against the Cement Companies, concluding that the lack of uniform price increases and variations in pricing did not support *prima facie* finding of cartelization. The court also set aside the Penalty Order against Star Cement, reinforcing the necessity for a *prima facie* case as a prerequisite for further action by the CCI.

View: This is a first of its kind decision wherein a High Court has analysed the merits of the case and quashed a CCI order (instead of remanding the matter back to the CCI). One hopes that this decision encourages the CCI to issue *prima facie* orders only after detailed consideration so that parties are not unduly subjected to lengthy and rigorous investigations.

17. WP(C)/6343/2018, *Star Cement Ltd. vs. CCI and Ors.*, order dated August 30, 2024.



OVERVIEW OF MERGER CONTROL CASES

The CCI approved more than 36 (thirty-six) combinations in the Q2 of FY 2024-25. These included- 1 conditional approval, and 6 deemed approvals for combinations, that were filed under the green channel route ("GCR"). Further, the CCI also issued one order relating to gun-jumping. A summary of the noteworthy combinations approved during this period (including for combinations approved in the preceding quarter but the detailed orders of which were published during Q2 of FY 2024-25) is set out below:

CCI partially approves Greenko groups' acquisition of additional stake in Sikkim Urja¹⁸:

On May 7, 2024, the CCI approved the acquisition of additional equity shares of Sikkim Urja Limited ("Sikkim Urja") by Greenko Energies Private Limited ("Greenko Energy") (an indirect subsidiary of Greenko Energy Holdings¹⁹ ("GEH")) proposed to be carried out by: (i) acquisition of the entire 60.08% equity shares of Sikkim Urja held by Sikkim Power Investment Corporation Limited ("SPICL Transaction"); and (ii) acquisition of the entire 5.62% equity stake in Sikkim Urja held by PTC India Limited ("PTC Transaction").

The parties submitted that no definitive document had been executed in relation to the PTC Transaction. Accordingly, the CCI only considered the SPICL Transaction for competition assessment. The CCI noted that the activities of parties exhibited horizontal overlaps in the broad market for power generation and transmission, which could be further segmented into power generation from renewable sources and finally to hydro-power generation. The CCI also noted vertical links between the parties in terms of activities of power generation and transmission. In its competition assessment, the CCI observed that the total power generating capacity of Sikkim Urja is less than: (i) 1% of the installed capacity of power generating stations in terms of both overall power generation and renewable power generation; and (ii) 3% of the installed capacity of hydropower generation. Accordingly, considering the insignificant presence of Sikkim Urja and given that Greenko Group (through GEH) was already an existing shareholder of Sikkim Urja, the CCI concluded that the impact of the transaction is limited to change in control of Sikkim Urja from existing joint control to sole control of GEH and the SPICL Transaction is not likely to result in any significant change in competition dynamics of the power generation sector. Accordingly, the CCI approved the SPICL Transaction.

View: The CCI has once again made it clear that is unlikely to undertake premature assessment of transactions, although interconnected, that have not reached a determinative stage. However, the parties should disclose the details of all interconnected transactions to the CCI in the merger notification.

CCI approves the indirect controlling acquisition of Arjas Steel and its wholly owned subsidiary, Arjas Modern Steel, by Sandur Manganese & Iron Ores and BAG Holdings²⁰:

On July 18, 2024, the CCI approved: (i) the acquisition of 80% and 19.12% shareholding in Arjas Steel Private Limited ("ASPL") by Sandur Manganese & Iron Ores Limited ("SMIORE") and BAG Holdings Private Limited ("BHPL"), respectively; and (ii) the indirect acquisition of control over Arjas Modern Steel Private Limited ("AMSPL") by both SMIORE and BHPL.

The CCI noted that the activities of parties exhibited horizontal overlaps in the market for the production and sale of coke in India. The CCI also noted certain vertical links between the parties in terms of: (i) production and sale of coke by SMIORE in the upstream segment and production of steel by ASPL and/or AMSPL in the downstream segment; and (ii) production and sale of ferroalloys by SMIORE in the upstream segment and production of steel by ASPL and/or AMSPL in the downstream segment. Further, the CCI also noted potential vertical linkage between the parties in terms of the production and sale of iron ore by SMIORE in the upstream market segment and the manufacture and sale of steel products, pig iron, billets, and heavy ingots by ASPL in the downstream segment.

In its competition assessment, with respect to the horizontal overlaps, the CCI observed that: (i) the combined market share of the parties is in the range of only 5-10% based on production volume, installed capacity, and value; (ii) most of the coke produced by the target group, i.e., the Arjas group, is consumed by it captively (i.e., ~87%) with only the excess quantity being sold to third parties; and (iii) the market is characterized by the presence of some of the major and established

18. Combination Registration No. C-2024/04/1131, Greenko Energy/Sikkim Urja, order dated May 07, 2024, available at: <https://www.cci.gov.in/combination/order/details/order/1401/0/orders-section31>.

19. GEH is the holding company and ultimate parent entity of Greenko group and indirectly holds 34.3% equity stake in Sikkim Urja along with certain associated rights in Sikkim Urja and Sikkim Power Transmission Limited.

20. Combination Registration No. C-2024/06/1156, Sandur Manganese & Iron Ores / BAG Holdings, order dated July 18, 2024, available at: <https://www.cci.gov.in/combination/order/details/order/1436/0/orders-section31>.

companies. Further, in relation to the vertical linkages and potential vertical linkages between the parties, the CCI observed that the market shares of SMIORE and Arjas group in their respective markets are also within the range of 0-5% based on volume of domestic sales. Given the negligible presence of the parties in their respective market segments, the CCI observed that the parties did not seem to possess the ability or incentive to cause any foreclosure in any of the markets, and therefore the CCI approved the proposed combination.

CCI penalizes India Business Excellence Fund – IV²¹:

On August 16, 2024, the CCI imposed a penalty of INR 10,00,000 (approximately USD 12,000) on India Business Excellence Fund - IV ("**IBEF**") for: (i) making false and incorrect statements in their merger notice filed with the CCI, under the GCR; and (ii) gun-jumping.²²

By way of background, on April 17, 2023, IBEF had filed a merger notification under the GCR in relation to its acquisition of 8.12% to 10.57% shareholding in VVDN Technologies Private Limited ("**VVDN**") after undertaking a pre-filing consultation ("**PFC**") with the CCI. The CCI observed that the combination did not satisfy the criteria for approval under the GCR since VVDN had provided printed circuit boards to a portfolio company of the Motilal group (i.e., the group to which IBEF belongs) for use by the portfolio company in its machines to undertake several tests including Covid-19 tests. Hence, the CCI concluded that the acquirer group and the target, i.e., VVDN, had a vertical relationship at the time of the merger notification and thus the combination was ineligible for the benefit of the GCR, irrespective of the fact that the parties had undertaken a PFC with the CCI. Accordingly, the CCI concluded that the deemed approval granted to the combination is void *ab initio* and directed IBEF to file a fresh application for CCI's review and approval, besides imposition of penalties.

View: Interestingly, this is only the second instance where the CCI has: (i) imposed a penalty due to non-adherence to the qualifying conditions of the GCR; and (ii) set aside a combination approved through the GCR. Previously, while imposing penalties on Platinum Jasmine A 2018 Trust and TPG Upswing Ltd. for similar conduct, the CCI clarified that the GCR is a trust-based mechanism based on self-assessment and correct declaration and going forward any disregard to the conditions for availing the GCR facility would be dealt with seriously with attendant consequences²³. It is heartening to see that despite the past warning, the CCI, *inter alia*, took into consideration

the exceptional circumstances under which the services were provided by VVDN to the acquirer group portfolio entity (i.e., during Covid-19) and imposed only a nominal penalty on the acquirer (i.e., IBEF). However, it is pertinent for the notifying parties to exercise caution and ensure that the qualifying criteria are met before making filing merger notification through the GCR irrespective of engaging in a PFC with the CCI since PFCs are typically considered by the CCI as being merely informal assistance to provide non-binding guidance to the parties.

CCI conditionally approves Walt Disney-Reliance merger²⁴:

On August 28, 2024, the CCI, subject to voluntary modifications offered by the parties, approved the merger of the entertainment businesses of Viacom18 Media Private Limited ("**Viacom18**") and Digital18 Media Limited, part of Reliance Industries Limited ("**RIL**") group, and Star India Private Limited ("**SIPL**"), the wholly owned subsidiary of The Walt Disney Company ("**TWDC**"). As a result of the merger, SIPL, through its subsidiaries, shall become a joint venture which will be jointly held by RIL, Viacom18 and existing TWDC subsidiaries ("**Merger**").

View: While the detailed order is yet to be published by the CCI, the conditional approval of the complex Merger by the CCI, marks a significant development, not only in the Indian entertainment industry, but also in the Indian competition law landscape, as it cements CCI's place as a mature regulatory who adopts a facilitative approach in clearing complex transactions basis voluntary modifications offered by the parties. Previously, the CCI had expressed concerns that the merged entity, owing to its dominance over cricket broadcasting rights, could engage in unfair pricing adversely affecting advertisers. It appears that both the parties and the CCI have engaged in meaningful discussions to come up with a solution to alleviate the competition concerns arising out of this Merger.

21. Available at: https://www.cci.gov.in/combination/order/details/order/1462/0/orders-section43a_44.

22. The Indian merger control regime is mandatory and suspensory; therefore, if a combination (or a part thereof) is notifiable to the CCI, the parties cannot consummate the combination or any part thereof prior to receiving approval of the CCI or until the lapse of 150 days from the date of notification of the combination. The act of the parties to consummate a notifiable transaction (in full/ part) without prior approval of the CCI (or until the lapse of 150 days from the date of notification) is popularly referred to as 'gun-jumping'.

23. Combination Registration No. C-2022/12/995, Platinum Trust/TPG Upswing, order dated August 18, 2023, available at: August 18, 2023, available at: https://www.cci.gov.in/combination/order/details/order/1234/0/orders-section43a_44.

24. Available at: [https://www.thehindu.com/business/Industry/competition-commission-clears-merger-of-rils-media-assets-with-walt-disney/article68576729.ece#:~:text=The%20Competition%20Commission%20of%20India,TWDC\)%20Star%20India%20Private%20Ltd.](https://www.thehindu.com/business/Industry/competition-commission-clears-merger-of-rils-media-assets-with-walt-disney/article68576729.ece#:~:text=The%20Competition%20Commission%20of%20India,TWDC)%20Star%20India%20Private%20Ltd.)

REGULATORY DEVELOPMENTS

The second quarter of 2024 saw some major regulatory developments in competition law in India as set out below:

MCA notifies key merger control amendments to the Act:

The Ministry of Corporate Affairs ("**MCA**"), through notification dated September 9, 2024, implemented multiple merger control provisions of the Competition (Amendment) Act, 2023 ("**Amendment Act**"). These provisions came into effect from 10 September 2024 and have revamped the Indian merger control regime. These changes were accompanied with the relevant regulations, *i.e.*, Competition Commission of India (Combinations) Regulations, 2024, and rules, *i.e.*: (i) Competition (Criteria for Exemption of Combinations) Rules, 2024; (ii) Competition (Minimum Value of Assets or Turnover) Rules, 2024; and (iii) Competition (Criteria for Combination) Rules, 2024.

The Amendment Act, has *inter alia*: (i) introduced a deal value threshold (DVT), under which the CCI will be able to review transactions exceeding a global deal value of INR 2,000 crore (approximately USD 240 million) and where the target enterprise has 'substantial business operations in India', even if the transaction can otherwise claim *de minimis* exemption; (ii) broadened the scope of "control" to the lowest standard, *i.e.*, the ability to exercise "material influence" over the management/ affairs/ strategic commercial decisions of an enterprise; (iii) introduced a list of transactions that are exempt from notification to the CCI; (iv) introduced derogation for capital market transactions by allowing open offers and acquisitions of securities on stock exchanges without prior CCI approval, provided that specific conditions are fulfilled; (v) amended the definition of "affiliate" to include only entities with access to commercially sensitive information, instead of all the entities whose rights exceeding those of an ordinary shareholder are available, when assessing overlaps in notifiable transactions; and (vi) expedited the approval process by reducing the review timelines, with the CCI now required to give a *prima facie* finding in relation to a combination within 30 (thirty) days (reduced from 30 (thirty) working days) and in case of initiating detailed investigation, issue a final ruling within 150 (one hundred and fifty) days (reduced from 210 (two hundred and ten) days).²⁵

CCI releases the revised CCI (General Regulations), 2024

The CCI through its notification dated September 17, 2024, released the revised CCI (General Regulations), 2024 ("**Revised General Regulations**") which will, from the date of its publication, *i.e.*, September 17, 2024, replace the CCI (General Regulations), 2009. By way of the Revised General Regulations, the CCI has provided procedural guidelines for newly implemented substantive changes brought about by the Amendment Act. In June earlier this year, the CCI had released a draft of the Revised General Regulations for stakeholder consultation.²⁶

Notably, the new changes *inter alia* include: (i) clarity on the definition of interlocutory application and miscellaneous application²⁷; (ii) extending the time period of requirement of passing the final order from the erstwhile 90 (ninety) days of the interim order to 180 (one hundred and eighty) days; and (iii) establishment of monitoring agencies responsible for monitoring and scrutinizing implementation of orders issued by the CCI in cases of conditional merger control orders, settlements, and commitments.

25. Our detailed alert on the changes to merger control regime can be accessed at: https://induslaw.com/publication/908/changes_to_the_merger_control_regime_initiated_by_the_competition_amendment_act_2023_now_complete.

26. Our detailed alert on the draft Revised General Regulations can be accessed at: https://induslaw.com/publication/887/the_pulse_the_quarterly_news_bulletin_in_competition_law.

27. The definitions now specify that applications filed during the pendency of a case instituted under Section 19 of the Act or proceedings initiated pursuant to a Miscellaneous Application are Interlocutory Applications and applications filed post passing of the final order in a case instituted under Section 19 of the Act are 'Miscellaneous Application'.

COMPETITION ADVOCACY

CCI launches market study on Diagnostic Medical Imaging equipment industry in India²⁸:

To understand existing and emerging issues in the Diagnostic Medical Imaging ("DMI") equipment market, the CCI commissioned a market study to gain insights into trends, practices, and issues, relevant to the competition law. The study covers aspects such as the market structure, functioning and role of manufacturers in the DMI equipment market, specifically focusing on CT scan and MRI machines, and regulatory framework therein.

Additionally, the study seeks to analyse the contractual dynamics between manufacturers and service providers such as diagnostic centres and hospitals. The proposed recommendations inter alia include: (i) enhancing competition by promoting local manufacturing capabilities in a phased manner; (ii) facilitating infrastructure development and quality advancements by promoting public-private partnerships (PPP) to catalyze investment in the sector; (iii) implementing self-regulatory measures by original equipment manufacturers to promote transparency with respect to price and availability of spare parts and after-sales services.

28. Available at: <https://www.cci.gov.in/public/images/marketstudie/en/market-study-of-diagnostic-medical-imaging-equipment-industry-in-india1724145632.pdf>.



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