



Competition Law

Newsletter - June 2024

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In the June edition of the DSK Legal Competition Law Newsletter, we bring to our readers an order from the National Company Law Appellate Tribunal (**NCLAT**), significant orders of the Competition Commission of India (**CCI**), and a regulatory update.

NCLAT TO CONSIDER AN APPEAL AGAINST THE APPROVED ACQUISITION OF RELIGARE BY THE BURMAN FAMILY

Vide an order dated [01 May 2024](#), NCLAT admitted an appeal filed by Religare Enterprises against the order of the CCI approving a hostile acquisition of 5.27% of Religare Enterprises from the open market by the Burman Family, triggering an open offer under the provisions of the Takeover Regulations, for the acquisition of an additional 26% of the target, as reported in the [April edition of the Newsletter](#).

It was alleged that the transaction had five tranches, out of which one wasn't notified, and since the investigation was also ongoing even after the release of the impugned order, it ought to be rendered premature and illegal. The CCI, however clarified that non-filing of an application for prior acquisition would at best trigger consequences under Section 43A of the Competition Act, 2002 (**Act**) and not affect the approval granted by the CCI on the merits.

The NCLAT while refusing to interfere with the order of the CCI at the interim stage, noted that under Section 31(1) of the Act, the CCI is only mandated to opine whether any combination has an appreciable adverse effect on competition.

CCI DISMISSES THE COMPLAINT AGAINST MARUTI SUZUKI

The CCI, *Vide* order dated [06 May 2024](#), dismissed a complaint filed against Maruti Suzuki India Limited (**Maruti**) for allegedly abusing its dominant position.

The primary grievance of the informant stemmed from the reduction of the price of a new variant of Maruti' SUV 'Jimny' and the denial of freebie accessories and extended warranty free of cost, which were not available to the initial customer of the car. According to the informant, Maruti ought to refund the excess amount charged to the initial consumers.

The CCI noted that although Maruti appeared to hold a commanding market presence in the passenger vehicle segment, it does not have enough market

share in the narrower SUV segment to act independently of the competitive forces with the presence of other competitors like Mahindra and Mahindra, Hyundai etc.

Secondly, the CCI held that the conduct alleged did not raise any competition concerns and further that "...Once a buyer purchases a product from a seller at a given price, it cannot insist to avail benefit of any future discount which may be offered on such product by the seller. The discounted price alleged also does not seem to be predatory in nature."

CCI DISMISSES COMPLAINT AGAINST DEPARTMENT OF ATOMIC ENERGY AND IREL (INDIA) LTD.

Vide order dated [29 May 2024](#), the CCI dismissed a complaint filed against the Department of Atomic Energy (**DAE**) and IREL (India) Ltd. (**IREL**) alleging that DAE abused its dominant position in the relevant market of 'disposal of Uranium-bearing Leach Residue produced during the processing of Columbite and Tantalite ores in India' by not renewing Metallurgical Products India Private Limited's (**Informant**) off-take agreement, and rejecting its import license application and alternative disposal plan. This resulted in limiting the business and operations of the Informant.

The CCI noted that the main grievance of the Informant lay against DAE, which did not qualify as an 'enterprise' in terms of the Act, since activities relating to atomic energy, currency, defence, and space had been specifically excluded. Moreover, it was noted that the IREL had no role to play in the renewal of the off-take agreement, rejection of import licenses, and non-approval of the alternate disposal plan. Consequently, no *prima facie* case was made out against DAE or IREL and the complaint was dismissed.

CCI APPROVES THE ACQUISITION OF THE CEMENT BUSINESS OF KESORAM INDUSTRIES BY ULTRATECH

The CCI, *vide* order dated [19 March 2024](#), approved the acquisition of the cement business of Kesoram Industries Limited by UltraTech Cement Limited. The

proposed combination involved, *inter-alia*, the acquisition of, (a) grey cement units at Sedam, Karnataka, and unit at Basantnagar in Telangana, (b) Cement packing plant at Solapur, Maharashtra, and lastly, land as acquired by Kesoram in Solapur, Maharashtra.

The CCI noted that business of grey cement in India involves significant transportation costs and is generally clustered around the source of production. While CCI normally used the Elzinga Hogarty Test, the last available inter-state cement dispatch data was for the year 2011-12. The CCI therefore considered, *inter alia*, the plant-wise dispatch data of the parties and the dynamics of location of cement production clusters in India and the consumption centres these clusters are most likely to serve, and defined the market as the states of Karnataka, Telangana, Maharashtra and Andhra Pradesh.

While approving the proposed combination, the CCI noted that the combined market share was in the range of 22-26 % and not sufficient to cause any appreciable adverse effect on competition. It therefore unconditionally approved the transaction.

CCI APPROVES MERGER OF GARAGEPRENEURS INTERNET WITH NORTH-EAST SMALL FINANCE BANK

Vide order dated [12 March 2024](#), CCI approved the merger of Garagepreneurs Internet Private Limited (**GIPL**) (including Quadrillion Finance Private Limited (**QFPL**) and Intergalactory Foundry Private Limited (**IFPL**) with North-East Small Finance Bank Limited (**NESFB**) [including RGVN (North-East) Microfinance Limited (**RGVN**)], pursuant to the composite scheme of amalgamation.

GIPL operates under the brand name 'slice' and focuses on facilitating payments and credit products through digital means in India, primarily focused on underbanked customers. It provides lending services and facilitates loans to borrowers on its digital lending application (**DLA**) and offers slice pre-paid instrument (**PPI**) cards, UPI services as a Third-Party Application Provider (**TPAP**) and is a master policyholder of its insurance partner's products through its platform. On the other hand, NESFB is a private sector small finance bank (**SFB**). It is headquartered in Guwahati, Assam and has branches in the North-Eastern states (Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Tripura, and Sikkim), and West Bengal.

Overlaps between the activities of the NESFB and GIPL were held to be minimal in qualitative terms. Even though, NESFB and GIPL both offered 'digital payments services', NESFB offered debit cards as opposed to GIPL's digital slice PPI card and UPI services as a TPAP service. The difference in activities indicated that though the activities may exhibit overlaps in a broader market, the parties would not be the closest competitors of each other at the activity level. Similarly, while both GIPL and NESFB offered loans and lending services at the broader level and unsecured personal loans at the narrower level, GIPL was focused on the financial technology sector and did not offer typical/traditional banking services in India. Moreover, GIPL was a lending service provider and housed a DLA to facilitate loans between lenders and borrowers while NESFB operated as a SFB and provided traditional banking services. The difference was indicative of differences in the respective customer bases of GIPL and NESFB which also implied a lack of closeness of competition between them.

Moreover, the Commission noted that the parties had a negligible presence as reflected in their actual volumes, turnover and/or market share estimates. As the combination would not lead to any significant change in the competition dynamics of the concerned markets, the commission approved the combination. However, the CCI kept the door open for proceedings that may be initiated against GIPL under Section 43A of the Act for gun-jumping.

CCI APPROVES MERGER OF MAINI PRECISION AND JK FILES

Vide order dated [06 March 2024](#), CCI approved the creation of a joint venture between the promoters of Raymond Limited (Gautam Singhanian and affiliates) and Maini Precision (Gautam, Sandeep, and Chetan Maini) by essentially merging the relevant businesses of JK Files and Engineering Limited (**JK Files**) and JK Talabot Limited (**JKTL**) and Maini Precision Products Ltd (**MPPL**).

CCI noted that JK Files, a wholly owned subsidiary of Raymond, is engaged in the business of manufacturing, sale and distribution of hand tools, files, cutting tools and importing and onward sale of power tools and power tool accessories, while MPPL is engaged in manufacturing precision products for different industries leading to potential complementary and vertical overlaps. For instance, tools manufactured by JK Files could potentially be used by MPPL for its manufacturing activities, however, as the overlaps were not likely to cause any appreciable adverse effect on competition in India

and due to minuscule market shares in the relevant markets, CCI unconditionally approved the combination.

CCI APPROVES THE MINORITY ACQUISITION IN NORTHERN ARC BY IFC

Vide order dated [02 April 2024](#) approved of an acquisition of approximately 6% shareholding in Northern Arc Capital Limited by the International Finance Corporation, along with certain affirmative voting rights and board nomination rights.

IFC, a member of the World Bank Group, is one of the largest global development institutions focused on the private sector in emerging markets, while Northern Arc, is a NBFC, engaged in the provision of loans and lending services and offers a variety of services in the financial services sector.

While leaving the delineation of relevant market open, the CCI found that the parties exhibit certain horizontal overlaps in the broad segment of loans and lending services in India; and the narrow segments of provision of loans, inter alia, in consumer finance, microfinance, supply chain finance, MSME loans and agriculture finance.

However, the combined market shares of the parties in the broad as well as overlapping sub-segments

were minuscule and insignificant, with the existence of other large players such as State Bank of India, HDFC Bank, ICICI Bank, Punjab National Bank, Axis Bank, etc. in the market.

REGULATORY UPDATE

Following the receipt of the stakeholder comments, on [10 May 2024](#), the Competition Commission of India (General) Amendment Regulations, 2024, was enforced, finalizing the amendments under Regulations 35, 37, and 50 of the Competition Commission of India (General) Regulations, 2009. As reported in [March Newsletter](#), the amendments intend to tighten the timelines for access to confidential documents, inspections, and copies.

Some of the prominent proposed changes include:

- i. Setting up of a Confidentiality Ring;
- ii. Inspection of confidential documents; and
- iii. Undertakings not to share or disclose confidential information to now be filed in the form of an affidavit and is required to be filed within 7 days from the order setting up the Confidentiality Ring.

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