



Competition Law

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In this edition of the Newsletter, we cover some of the most significant orders passed by different High Courts of India, the National Company Law Appellate Tribunal (**NCLAT/Tribunal**), and the relevant enforcement and combination orders published by the Competition Commission of India (**CCI/Commission**).

TELANGANA HIGH COURT DISMISSES WRIT FILED BY DR. REDDYS

The Telangana High Court vide order dated [19.09.2024](#), dismissed the Writ Petition filed by Dr Reddy's Laboratories Limited against the order of the CCI dated 31.05.2024 in a case over a decade old.

The matter started in 2012 with a complaint against the All-India Organisation of Chemists and Druggists and other pharmaceutical manufacturers for mandating a No-Objection Certificate (**NOC**) for the appointment of stockists.

After a lengthy delay due to other court proceedings, the Director General (**DG**) submitted its Investigation Report in which it came to a finding that Dr. Reddy's (amongst several others) had contravened the provisions of the Act. As per standard process, the CCI sent the report to the Opposite Parties for their comments and asked for financial statements to be submitted.

Dr. Reddy's contended that there were absolutely no findings against it in the Report and it should not be made to participate in the proceedings. The High Court however summarily dismissed the Petition holding that *"...where statutory remedies are available, a writ petition should not be entertained unless exceptional circumstances, such as a violation of natural justice or lack of jurisdiction, are demonstrated. The petitioner has not made a case for such exceptional grounds in this matter"*

AMAZON AND FLIPKART RESELLERS CRY FOUL OVER DG AND CCI ACTION

Following the release of the DG's Report, the resellers of Amazon and Flipkart have approached various High Courts across the country including Karnataka, Madras, Telangana, and Punjab.

By way of a brief background, the CCI vide prima facie order dated [13.01.2020](#) directed the Director General to investigate into (*inter alia*) giving preference to certain sellers on the marketplace. The DG concluded that the online marketplaces did give preference to certain sellers and had exclusive

agreements with certain mobile phone manufacturers, both sets of which were included as respondents to the matter, inviting monetary penalties should the CCI concur with the Report.

Aggrieved by this inclusion without any cogent evidence or direction from the CCI, the resellers of Amazon approached the Karnataka High Court, which passed orders dated 27.09.2024 and 30.09.2024 staying further proceedings before the CCI. Similar Writ Petitions were filed by the Flipkart resellers before Karnataka, Telangana, Madras, and Punjab and were extended similar reliefs.

Detailed arguments are set to occur later this month although they may take considerable time to conclude.

NCLAT DISMISSES AMREESH NEON'S APPEAL FOR PENALTY REDUCTION

The NCLAT vide order dated [16.10.2024](#) dismissed the appeal filed by Amreesh Neon Private Limited (**Amreesh Neon**) and Mr. Manish Thakkar against the [2022 order](#) of the CCI imposing penalties on Amreesh Neon, Mr. Thakkar, and 14 others for bid rigging and cartelisation in a tender process initiated by SBI Infra Management Solutions Pvt. Ltd.

The impugned order passed by the CCI and the penalties imposed had already been upheld by the NCLAT in similar appeals decided on [27.07.2022](#) and [23.05.2023](#). Initially, Amreesh Neon and Mr. Thakar had prayed for setting aside CCI's 2022 Order, however, they changed their tune midway and only asked for a reduction of penalty.

The Tribunal rejected the Amreesh Neons' arguments and accepted the CCI's view in relation to the Supreme Court of India's Judgement dated [08.05.2017](#) in *Excel Crop Care Ltd. vs CCI*. The principle of proportionality was only in the context of multi product companies and in the present matter Amreesh Neon was engaged in the business of supply of printed advertising / marketing material which includes signages. It was accepted that in such situations, it is not possible to classify different types of signages, and thus the total turnover of the company would be taken into consideration.

NCLAT DISMISSES APPEAL FILED BY THE TRAVEL AGENTS' ASSOCIATION

The NCLAT, vide order dated [25.10.2024](#), dismissed an appeal filed by the Travel Agents Association of India (TAAI), against the order of the CCI dated [08.05.2020](#) dismissing the complaint.

By way of brief background, the TAAI had approached CCI against the Department of Expenditure's mandate that government employees should avail the services of Balmer Lawrie and Ashok Travels when travelling. The CCI noted that similar conduct had been analysed on a previous occasion, where it had held that the Department of Expenditure was not an 'enterprise' under the purview of the Competition Act. The current complaint met the same fate.

On appeal, the NCLAT noted that in terms of the established judicial pronouncements 'no man should be vexed twice for the same cause which has been adjudicated' not only affirmed the findings of the CCI imposed a cost of INR 5 lakhs on TAAI while dismissing the appeal.

CCI DISMISSES ALLEGATIONS OF ABUSE AGAINST IREL

Vide an order dated [08.10.2024](#), the CCI dismissed allegations against IREL (India) Limited (IREL) that it had abused its dominant position in the relevant market for *mining and supply of Beach Sand Sillimanite in India*, by (a) indulging in prohibitive increase in the prices of Sillimanite from INR 9000/- to INR 14000/- per metric tonne (in three years), (b) discriminating against MSMEs by charging them a price higher than that being charged from foreign companies/multi-nationals; and (c) fixing arbitrary quantities for supplying to customers.

The Commission found that the Department of Atomic Energy had granted the operating rights in respect of atomic minerals in offshore areas in India to only two entities – IREL, and one Kerala Minerals and Metals Ltd. (KMML). It also found that IREL has the largest market share in terms of sales volume and value during the impugned period between 2016-17 to 2021-22. Thus, it agreed with the conclusion of the DG regarding the dominance of IREL.

However, it apparently found the DG's investigation incomplete since it asked IREL to file additional information regarding its (a) demand, supply, and

prices for the period 2016-2022, and (b) customer-wise sales data for the same period. According to the CCI a "*pricing decision is a complex mechanism which takes into account the dynamics of the market such as demand and its elasticity, possible rival reaction, availability of imported substitutes etc.*" Further, KMML appeared to have charged a higher price with a relatively lower market share. Given that the disposal of Sillimanite "*had an inextricable nexus with its core and strategic operations of supplying Monazite to Government of India*", the CCI concluded that no case of unfair pricing was established.

With regard to discriminatory pricing and conditions, the CCI found IREL had provided sufficient justifications viz. a long-standing commercial relationship which has mutually benefited the parties. Further it stated that every commercial enterprise enjoys freedom to carry out trade and take appropriate business decisions, and "*unless and until there are manifest contravention of the provisions of the Act, the freedom of enterprise remains sacrosanct and the Commission would not like to dictate the terms of the trade.*"

CCI CONDITIONALLY APPROVES THE RELIANCE-DISNEY MERGER

Vide an order dated [27.08.2024](#), approved of one of biggest merger deals in the entertainment business in India, between Viacom18 Media Private Limited (Viacom18) and the Walt Disney Company (Disney). The media undertaking of Viacom18 is being merged into Star India Private Limited (Star India) through a composite scheme of arrangement among Viacom18, Digital18 Media Limited (Digital18), and Star India, and their respective shareholders and creditors.

While assessing the transaction, the CCI found several horizontal, vertical, and complimentary overlaps between the businesses of the parties. The horizontal overlaps included (a) operation and wholesale supply of TV Channels in India, (b) retail supply of AV content through OTT streaming platforms in India, (c) supply of advertising airtime in India, (d) licensing of AV content in India, (e) production and supply of films for theatrical release in India, (f) provision of fixed broadband internet services in India, and (g) distribution of broadcast TV channels to viewers in India.

Anticipating trouble, the parties voluntarily undertook to divest one parties' general entertainment TV channels in Bengali, Marathi, Kannada and Kids sub-

segments since the combined market shares ranged between 40-55 percent in these sub-segments.

While the CCI accepted these divestments as addressing the competition concerns in so far as these channels were concerned, sports remained a big issue. The CCI noted that the parties held exclusive rights for all the major cricketing events for the next three to four years, which was significant in a cricket crazy country. Advertisers would be left with no suitable competing options, which would be true for both their TV and OTT platforms.

The parties therefore submitted another set of voluntary commitments – this time behavioural. The parties committed that they would not bundle their ad slot sales for the cricketing rights available with the parties (BCCI, ICC, and IPL) for TV and OTT, and not increase the advertising rates “to an unreasonable level” till the current rights expire. On the viewers side, the parties undertook to charge subscription fees “commensurate with industry standards”.

The Commission also suggested to the BCCI that it should explore auctioning of media rights for some IPL matches on a non-exclusive basis only.

CCI APPROVES HEWLETT PACKARD'S ACQUISITION OF JUNIPER NETWORKS

CCI, vide an order dated [14.08.2024](#), approved the acquisition of 100% of the outstanding shares and sole control over Juniper Networks Inc. by Hewlett Packard Enterprise.

HP specializes in business information technology and offers infrastructure products to support IT systems, while Juniper is a networking technology company which provides networking, infrastructure, security and other related solutions. The Commission noted that the parties overlap in the broader area of networking products / infrastructure and in the narrower segments of campus switches, data center switches, enterprise wireless access points and software-defined wide area networking products.

While three of the overlaps did not pose concerns, the Commission noted that in Enterprise WAPs the combined market shares were over 40 percent. However, an analysis of the bidding data suggested that Cisco was HP's closest competitor and not Juniper. The CCI also analyzed whether any conglomerate effects would result post the combination, HPE's portfolio of products would expand by way of an addition of three new products, (i) routers, (ii) firewall solutions and (iii) cloud networking software. HPE assured the commission that this expansion would make it a more competitive company globally and it would not result in any bundling or tying strategy since in this industry, customers do not purchase all products in one negotiation, and they source products from various companies in order to spread risk.

Satisfied, the Commission unconditionally approved the combination.

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