



# Competition Law

Newsletter - September 2024

# IN THIS ISSUE...

<b>GAUHATI HIGH COURT QUASHES 2016 CCI ORDER IN CEMENT CARTEL CASE</b>	<b>Page 3</b>
<b>DELHI HIGH COURT ASKS CCI TO RESPECT SETTLEMENTS</b>	<b>Page 3</b>
<b>ANOTHER SET BACK FOR COMPANIES INVOLVED IN BID RIGGING IN SOIL SAMPLE TESTING IN UTTAR PRADESH</b>	<b>Page 4</b>
<b>CCI DISMISSES ABUSE CASE AGAINST NATIONAL INTERNET EXCHANGE OF INDIA</b>	<b>Page 4</b>
<b>CCI DISMISSES ALLEGATIONS OF ABUSE AGAINST P&amp;G IN THE SANITARY PADS &amp; DIAPERS MARKET</b>	<b>Page 4</b>
<b>CCI APPROVES THE ACQUISITION OF GLOBAL INFRASTRUCTURE BY BLACKROCK</b>	<b>Page 4</b>
<b>CCI APPROVES THE COMBINATION INVOLVING APAC AND KOTAK FUND</b>	<b>Page 5</b>
<b>CCI APPROVES IFC's INVESTMENT IN NAPINO AUTO</b>	<b>Page 5</b>
<b>CCI APPROVES THE ACQUISITION OF NAGARJUNA FERTILIZERS ASSETS BY GREENKO GROUP AND MULTIPLE INVESTORS</b>	<b>Page 5</b>
<b>CCI INVALIDATES GREEN CHANNEL NOTIFICATION AND IMPOSES A PENALTY ON MOTILAL OSWAL</b>	<b>Page 5</b>

In this edition of the Newsletter, we cover the most relevant enforcement and combination orders passed by the Competition Commission of India (**CCI/Commission**), important judgments passed by the Delhi and Gauhati High Courts, and another cartel decision of the CCI upheld by the Appellate Tribunal.

## **GAUHATI HIGH COURT QUASHES 2016 CCI ORDER IN CEMENT CARTEL CASE**

The Gauhati High Court, vide a Judgment dated [30 August 2024](#), quashed and set aside an order passed by the CCI of December 2016 initiating an investigation into alleged cartelization by three cement manufacturers operating in North-East India.

The Writ Petition was filed by Star Cement on the grounds that the material before the CCI did not justify the CCI's *prima facie* opinion that a possible case of cartelization existed. The CCI argued that the Court could not enter into an adjudication of the issue at this stage since it is merely a *prima facie* administrative order.

Primarily, there were two issues for consideration before the Court – (a) whether at the stage of CCI directing investigation under Section 26(1) of the Act, a writ petition under Article 226 of the Constitution of India is maintainable, and (b) whether a *prima facie* case existed for the CCI to direct investigation by the DG.

With regard to the first, the Single Judge held that the Court was “*certainly empowered to intervene if the investigation is directed under Section 26(1) of the said Act, 2002 without the existence of the prima facie case.*”

With regard to the second, the Court held that “*the test is to take the information received at its face value and examine whether there has been any prima facie violation of Section 3 and/or 4 of the said Act, 2002. By applying the aforesaid test, if it appears that a prima facie case exist, this Court shall not thereafter go into the merits of the matter. However, if it appears that no prima facie case exists, then in such a situation, this Court ... is entitled to quash such proceedings....*”

The Court then examined the material before the CCI and noted that the while all three cement companies had indeed raised the price simultaneously the increase was of different amounts ranging from 20-40 Rupees. Therefore, it concluded that the CCI could not have come to a conclusion that a *prima facie* case of cartelization existed. Since the same is

*sine qua non* for directing an investigation, and was not fulfilled, the order stood null and void.

## **DELHI HIGH COURT ASKS CCI TO RESPECT SETTLEMENTS**

Vide judgement dated [14 August 2024](#), the Delhi High Court set aside the proceedings initiated by the CCI against UK based construction equipment major JCB and its Indian subsidiary for abuse of dominance and the Order passed by the trial court issuing search warrants against JCB.

The dispute started in 2011 when Bull Machines Private Limited (**Bull**) introduced its backhoe loader “*Bull Smart HD60*”. JCB believed Bull copied registered certain design elements of JCB’s “*3DX Backhoe Loader*” in violation of JCB’s copyright and design rights. JCB therefore brought a civil suit before the DHC seeking an injunction and damages against Bull. In response to the Civil Suit, Bull filed applications to cancel five designs before the Controller of Designs and Patents and (two years later) approached the CCI with a claim that JCB abused its dominant position by filing a ‘sham’ suit.

CCI *vide* its order dated 11 March 2014 passed under Section 26(1) of the Act, directed its DG to conduct an investigation. JCB challenged this order before the High Court by way of a writ petition claiming CCI did not have the jurisdiction to look into such a complaint at the time when the underlying civil suit was still pending adjudication. Following a dawn raid on JCB, a second petition challenging this, and certain intermediate proceedings in the civil suit that travelled all the way to the Supreme Court, JCB and Bull arrived at a settlement in July 2021, which was blessed by the Supreme Court and all pending proceedings between the parties were closed, save the writ petitions challenging the CCI actions, which was to be dealt with by the High Court.

JCB and Bull filed a joint application in the Writ Petitions asking the Court to set aside the *prima facie* order passed by the CCI .

CCI took the position that its proceedings were *in rem* and any private settlement does not bind them.

In a strongly worded judgment, the High Court reminded the CCI of the importance of settlements in the judicial system, observing that regulatory authorities such as CCI must honour the outcomes of mediation and respect the settlements reached between parties. This is necessary for a legal environment where parties are encouraged to resolve disputes amicably without fear of subsequent regulatory interference. The Court was of the opinion that the threat of continued investigation by the CCI could compel parties to engage in prolonged and costly legal battles, defeating the purpose of settlements.

Consequently, the Court set aside the *prima facie* order passed by the CCI and all subsequent proceedings including the raid and directed that all the materials seized were to be returned forthwith.

### **ANOTHER SET BACK FOR COMPANIES INVOLVED IN BID RIGGING IN SOIL SAMPLE TESTING IN UTTAR PRADESH**

In another judgment, the NCLAT vide order dated [22 August 2024](#) dismissed the appeal filed by Yash Solutions against the [2022 order](#) of the CCI imposing penalties on Yash Solutions and eight other companies for bid rigging in the tenders floated by the Department of Agriculture, UP, for soil sample testing in contravention of Section 3(3) of the Act.

As covered in our [August Competition Law Newsletter](#), the NCLAT had previously dismissed the appeal filed by Toyfort against the same CCI orders. The Tribunal had upheld the CCI's decision but reduced the penalty imposed on Toyfort from 5% of the average annual turnover for the last three years to 3%.

This time around, the Tribunal not only affirmed the findings of the Commission but also the penalty of 5% noting that as opposed to Toyfort, the CCI had given reasons for imposing the quantum of penalty since Yash Solution was the '*leader of the pack*'.

### **CCI DISMISSES ABUSE CASE AGAINST NATIONAL INTERNET EXCHANGE OF INDIA**

Vide an order dated [20 August 2024](#), the CCI dismissed a complaint filed by a competitor against the National Internet Exchange of India (NIXI) for abusing its dominance through predatory pricing in the market for internet exchange services for peering

between content providers, content delivery networks (CDN), and internet service providers.

The CCI chose to reject the informant's suggested market definition being '*internet exchange services for peering between content providers, CDNs and ISPs in towns/cities in India in which CDNs/content providers are not present/do not have their data centres*', and rather went with a broader definition being '*the provision of internet exchange services in India*' without assigning any reasons for doing so.

NIXI first argued that the Telecom Regulatory Authority of India had jurisdiction to determine any disputes between the parties and hence CCI should hold its hands in terms of the Supreme Court's earlier decision in [Bharti Airtel](#). However, this was brushed aside observing that "*the obligation to comply with the provisions of the Act and maintain fair competition in the market is independent of the obligation to comply with the provisions of TRAI Act / Regulations, and violation of one need not ipso facto result in violation of the other. ...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 [Competition] Act.*"

The CCI also asked (a) NIXI for its comments on the complaint, and (b) both parties for data of the total market size on certain parameters and the parties' share.

Both parties submitted certain data though not the exact data requested by the CCI. Again, without assigning any particular reason, the CCI chose to rely on NIXI's data and held that based on the number of IX points and number of connected networks, NIXI is not dominant in the relevant market, and thus a case of abuse did not arise.

### **CCI DISMISSES ALLEGATIONS OF ABUSE AGAINST P&G IN THE SANITARY PADS & DIAPERS MARKET**

CCI vide order dated [09 August 2024](#), dismissed the complaint filed against Procter & Gamble Hygiene and Health Care Limited and its holding company (P&G) regarding the alleged abuse of dominant position.

The informant alleged that P&G had copied the 'green technology' developed by the informant and incorporated it into the production of sanitary pads and diapers without the prior consent of the

informant. As per the informant, such alleged conduct resulted in the denial of market access to the informant, prevented the informant from gaining the first-mover advantage, and stifled innovation in the market.

While the informant cited a dated 'Euromonitor' report which showed P&G held a 55% market share, the CCI took it upon itself to look up more recent publicly available data from '[botreesoftware.com](http://botreesoftware.com)' and held that Johnson & Johnson appeared to be a close competitor. Hence, the CCI concluded that P&G was not dominant.

Moreover, CCI noted that the informant had not provided any actual evidence in support of its allegation that P&G had used its confidential data. Consequently, the Commission dismissed the case.

### **CCI APPROVES THE ACQUISITION OF GLOBAL INFRASTRUCTURE BY BLACKROCK**

CCI vide an order dated [11 June 2024](#), approved an acquisition of 100% of the limited liability company interests in Global Infrastructure Management (**GIM**) by BlackRock Funding Inc. (**BFI**), followed by an internal reorganization thereby making BFI a public listed company (listed on the New York Stock Exchange) and the parent of the BlackRock group.

While approving of the proposed combination, CCI found several horizontal and vertical overlaps between the combining entities and their portfolio companies.

Horizontally in the broader segment (a) BlackRock and GIM overlap in asset management services; and (b) BlackRock portfolio companies and GIM portfolio companies overlap in power generation and passive telecommunication infrastructure services. Between BlackRock and GIM – at a narrower level, the overlap in the activities of BlackRock and GIM relates only to the private equity segment of the overall asset management services. However, since the combined market share of the entities is less than 5%, and players like Carlyle Group, GIC, TPG Group, Brookfield, etc. were present in the market, no possible adverse effect was seen.

Between BlackRock and GIM portfolio companies – the Commission noted that the activities of 2 portfolio entities of each BlackRock and GIM (through their relevant subsidiaries) exhibit horizontal overlaps in the market for generation of power in India at broader level. Within the Power Generation Market, an overlap was found in the narrower segment of generation of power through renewable sources in

India since both the portfolio companies of BlackRock and one of GIM were engaged in power generation through solar and wind energy.

Vertically, portfolio companies of BlackRock are present in the upstream activity level of engineering, procurement, and construction (EPC) solutions in the power generation segment, while the portfolio companies of GIM are present in the downstream activity level of power generation.

However, again, the market presence was insignificant as to warrant any further scrutiny.

### **CCI APPROVES THE COMBINATION INVOLVING APAC AND KOTAK FUND**

CCI vide order dated [28 May 2024](#) approved the nomination of Mr. Arvind Kathpalia as the director on the board of Embassy Office Parks Management Services Private Limited (manager of Embassy REIT) by APAC Company XXIII Limited (**APAC**) and Kotak Performing RE Credit Strategy Fund I (**Kotak**) pursuant to the recent amendment to the Securities Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014.

The CCI noted that Kotak Group and Embassy REIT overlap in the business of development of commercial office spaces in five cities in India. Moreover, there is also vertical overlap with Kotak Group engaged in the development of office spaces and Embassy REIT present in the leasing of such properties.

However, CCI approved the combination as the market share of the parties is minuscule and not likely to raise any competition concerns.

### **CCI APPROVES IFC's INVESTMENT IN NAPINO AUTO**

Vide order dated [23 April 2024](#), the CCI approved the combination involving the acquisition of 25,00,000 Compulsory Convertible Debentures of Napino Auto and Electronics Limited (**Napino**) by International Finance Corporation (**IFC**) aggregating to approx. 18-20% of the equity shareholding in the company.

The CCI noted that the business of the parties exhibits vertical relationships as IFC, though its affiliate Mahindra Last Mile Mobility Limited is engaged in the manufacturing and sale of 3-wheel, 4-wheel vehicles, and other ancillary activities i.e., design, development and sale of electrical equipment and Napino through its affiliates is engaged in the business of manufacturing of Engine

Control Unit and Battery Management System for 3 Wheelers.

Moreover, CCI also noted that parties also exhibit vertical relationships as one of the affiliates of IFC and Napino are engaged in providing data centre facilities and network infrastructure respectively.

However, CCI unconditionally approved that transaction as the parties do not command sufficient market share to cause any appreciable effect on competition.

### **CCI APPROVES THE ACQUISITION OF NAGARJUNA FERTILIZERS ASSETS BY GREENKO GROUP AND MULTIPLE INVESTORS**

Vide order dated [02 April 2024](#), the CCI approved the acquisition of Nagarjuna Fertilizers and Chemicals Limited's (NFCL) urea and micro-irrigation assets for the purposes of production of green hydrogen and green ammonia pursuant to an auction sale by the lenders to NFCL.

The Greenko group, one of India's largest renewable energy companies, will utilize the assets for the generation and supply of green ammonia and green hydrogen through a subsidiary company with investments from GIC, Petronas, and ADIA.

The Commission noted that there are no horizontal overlaps between the Greenko group (including the affiliate companies of the promoters of Greenko) and the Target assets. However, a portfolio company of GIC was in the business of sale of non-green hydrogen in India and both Petronas ADIA planned to enter into the business shortly.

The Commission held that there was unlikely to be any competition concerns given that the market share of GIC portfolio company in the market for hydrogen was in the range of [0-5] % and several other players were present including Reliance

Industries Limited, GAIL (India) Limited, Air Liquide, with other planning to enter.

Similarly, although a Petronas entity was engaged in the sale of green ammonia in India was less than 5% with several other large players and new entry planned.

Potential vertical relationships were also identified between power generation and green hydrogen and green ammonia, as well as the inputs for production of green hydrogen (Electrolysers) and green ammonia (Nitrogen). The Commission concluded that due to the relatively low market shares of the parties in the relevant markets and the presence of competitors there would be no significant change in the competition dynamics and the transaction was not likely to have an adverse effect on competition.

### **CCI INVALIDATES GREEN CHANNEL NOTIFICATION AND IMPOSES A PENALTY ON MOTILAL OSWAL**

Vide order dated [16 August 2024](#), the CCI penalised Motilal Oswal for failing to disclose a vertical overlap in relation to their minority investment in VVDN Technologies Private Limited (VVDN), and wrongly filing a green channel notification.

The Commission held that the proposed combination did not qualify for the Green Channel route as there had been ad hoc supply of Printed Circuit Board (PCB) between a Motilal Oswal portfolio entity and VVDN, and even absent such ad hoc supply, there was a potential overlap.

The Commission imposed a nominal penalty of INR 1 million, invalidated the Notice filed and directed the parties to file a fresh notification.

This is the second occasion on which a green channel notification has been invalidated, first being in [2022](#).

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