



Indian Competition Law Roundup: January - March 2023

In this Roundup, we highlight some important developments in Indian competition law and policy from January to March 2023. During this period:

- The Indian Parliament passed the Competition (Amendment) Bill, 2023 (*Bill*) which proposed important changes to the Competition Act, 2002 (*Competition Act*). The Bill incorporated some suggestions provided by the Parliamentary Standing Committee on Finance. The Bill has since received assent from the President of India and is now the Competition (Amendment) Act, 2023 (*Amendment Act*). The amended provisions will come into effect through separate Government notification(s).
- The Ministry of Corporate Affairs (MCA) extended the tenure of the Acting Chairperson of the Competition Commission of India (CCI), Dr. Sangeeta Verma.
- The CCI invoked the “*doctrine of necessity*” to clear combinations pending approval as it was inquorate.
- Enforcement cases remain held up at the CCI due to the lack of quorum.
- The Supreme Court of India (*Supreme Court*) stayed the decision of the National Company Law Appellate Tribunal (NCLAT) in the *Beer Cartel* case.
- The Bombay High Court directed the

CCI to decide on a matter of its own jurisdiction in a challenge to parallel investigations by the CCI and a sectoral regulator.

- *Google* failed to obtain a stay on the CCI’s behavioural remedies in the *Android Mobile Device Ecosystem* case and the *Play Store Billing System* case. *Google* announced compliance (although delayed) with these remedies. The NCLAT heard and decided *Google’s* appeal in the *Android Mobile Device Ecosystem* case, largely upholding the CCI’s decision.

Competition (Amendment) Act, 2023

The *Lok Sabha* (lower house of the Indian Parliament) on 29 March 2023 passed the Competition (Amendment) Bill, 2023 (*Bill*). The Bill was passed by the *Rajya Sabha* (upper house of the Indian Parliament) on 3 April and received Presidential assent on 11 April.¹ The amended provisions of the Competition (Amendment) Act, 2023 (*Amendment Act*) will come into effect through separate Government notification(s) to be issued subsequently.

The Amendment Act reflects the proposals originally introduced by the Government in August 2022 together with some amendments made in February 2023 following the report of the Parliamentary

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¹ The Competition (Amendment) Act, 2023 (<https://egazette.nic.in/WriteReadData/2023/245101.pdf>).



Standing Committee on Finance on the Bill.

The Amendment Act brings significant changes to the merger control regime, including the introduction of deal value thresholds, expedited merger review timelines, the formal introduction of the “material” standard of control, the derogation of the standstill obligation for open market purchases and an expanded scope of the prohibition on gun jumping.

In relation to enforcement, changes will include the introduction of a framework for settlements and commitments, updates to the leniency regime and specific provisions on “facilitators” of cartels and “hub and spoke” cartels. The Amendment Act empowers the CCI to levy penalties for infringement on the basis of “global” turnover rather than “relevant” turnover.² Provision is also made for detailed penalty guidelines.

Institutional Matters

Tenure of Acting Chairperson Extended

In January, the MCA extended the tenure of the Acting Chairperson of the CCI, Dr. Sangeeta Verma, till a new Chairperson is appointed or till further orders.³ The MCA also issued a notification inviting applications for filling up three member posts for the CCI.⁴ In February, the MCA issued an additional notification inviting applications for the post of Chairperson (the deadline to submit applications was extended till 27 March).⁵

Mechanism for Approving Combinations

As there are currently only two Members (including the Acting Chairperson), the CCI has been inquorate and has been unable to exercise its adjudicatory role in enforcement or combinations cases.

With several combinations being held up,⁶ the CCI in February started to invoke the “doctrine of necessity” to allow it to examine and clear combination cases.

Enforcement Cases Continue to be Held Up

Enforcement cases continue to remain held up before the CCI. A writ petition was filed by *Ulink Agritech Private Limited (Ulink)* before the Delhi High Court, challenging the inaction of the CCI in a complaint filed by it. The Delhi High Court issued a notice and directed the CCI to file a status report on: (i) the complaint filed by Ulink; and (ii) the appointment of a new Chairperson at the CCI by 23 June 2023.⁷

Anti-Competitive Agreements

Supreme Court Grants Relief in the Beer Cartel Case

The NCLAT dismissed an appeal against the 2021 decision of the CCI finding certain beer companies and their individuals liable for cartelisation. The NCLAT rejected the argument that the CCI’s decision⁸ was liable to be set aside in the absence of a judicial member, reasoning that the Competition Act did not expressly provide for the inclusion of a judicial member. The NCLAT also held that, since the appellants had already admitted their involvement in a cartel in

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2 Please see our separate briefing for a more detailed analysis (<https://www.amsshardul.com/insight/indian-competition-amendment-bill-new-challenges-and-opportunities/>).

3 Government extends tenure of Sangeeta Verma as CCI’s acting Chairperson (<https://www.ptinews.com/news/business/govt-extends-tenure-of-sangeeta-verma-as-ccis-acting-chairperson/500328.html>).

4 Inviting Applications for filling up 3 Posts of Member in the Competition Commission of India (<https://www.cci.gov.in/images/career/en/inviting-applications-for-filling-up-03-posts-of-member-in-the-competition-commission-of-india1674551526.pdf>).

5 Inviting Applications for filling up the Post of Chairperson in the Competition Commission of India (<https://www.cci.gov.in/images/whatsnew/en/inviting-applications-for-the-post-of-chairperson-cci1677153946.pdf>).

6 Even when the CCI was inquorate, combinations notified under the “Green Channel” route were being “deemed approved” upon filing, since such transactions are not put up for approval at CCI meetings.

7 *Ulink Agritech Private Limited v. Competition Commission of India and Others*, Delhi High Court, Writ Petition No. 3386 of 2023 (20 March 2023).

8 *Alleged Anti-Competitive Conduct in the Beer Market in India*, CCI, *Suo Motu* Case No. 06 of 2017 (24 September 2021).



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their (successful) leniency applications, they were not able to challenge the CCI order in appeal. The NCLAT noted that, in any event, a lenient approach had been taken by the CCI in imposing penalties.⁹ In February, the Supreme Court, in an appeal against the NCLAT decision, conditionally stayed the recovery of penalty proceedings, subject to the deposit of an additional 10% of the total penalty over and above the amount already deposited.¹⁰

CCI to Decide Matter of Own Jurisdiction

On 21 February 2023, the Bombay High Court disposed of writ petitions challenging a CCI order finding *prima facie* that a number of trusteeship companies had cartelised in the debenture trustee sub-segment.¹¹ The challenge stemmed from the fact that the sectoral regulator, the Securities and Exchange Board of India (SEBI), was already investigating the matter and, in April 2022, the Bombay High Court considered that there was a risk of conflicting orders if parallel investigations were to proceed.¹² However, in its February 2023 order, the Bombay High Court directed the CCI to decide on the issue of its own jurisdiction.

Abuse of Dominant Position

Google Remains in the Limelight

In October 2022,¹³ the CCI had passed orders finding that *Google* had abused its dominant position in markets in: (i) the Android Mobile Device Ecosystem;¹⁴ and

(ii) the Google Play Store Billing System.¹⁵

In January 2023, Google challenged the CCI's order in the *Android Mobile Device Ecosystem* case before the NCLAT including seeking a stay of the behavioural remedies directed. Both the NCLAT¹⁶ and thereafter the Supreme Court¹⁷ refused to stay these remedies. However, the Supreme Court directed the NCLAT to conclude the appellate proceedings by 31 March 2023.

On 29 March 2023, the NCLAT disposed of Google's appeal and upheld the CCI's order, except for certain behavioural remedies directed by the CCI on: (i) allowing app developers to port their apps into Android forks; (ii) allowing app store developers to distribute their app stores through the Play Store; (iii) allowing app developers to distribute their apps through side-loading; and (iv) uninstallation of Google's pre-installed apps by users. The NCLAT directed Google to implement the other behavioural remedies and deposit the full penalty imposed within 30 days.¹⁸

Google separately challenged the CCI's order in the *Play Store Billing System* case, including seeking a stay of the behavioural remedies directed. However, it has been unsuccessful in obtaining an interim relief against these directions before the NCLAT.¹⁹

On failing to obtain any interim relief on the behavioural remedies before either the NCLAT or the Supreme Court in these

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⁹ *Pawan Jagetia v. Competition Commission of India and Others*, NCLAT, Competition Appeal (AT) No. 16 of 2021, etc. (23 December 2022).

¹⁰ *United Breweries Limited v. Competition Commission of India*, Supreme Court, Civil Appeal No(s). 747 of 2023 (17 February 2023).

¹¹ *Trustees Association of India v. Competition Commission of India and Others*, Bombay High Court, Writ Petition No. 3781 of 2022 (21 February 2023).

¹² *Trustees Association of India v. Competition Commission of India and Others*, Bombay High Court, Writ Petition No. 3781 of 2022, etc. (8 & 11 April 2022).

¹³ Please see our October 2022 briefing for a more detailed discussion (<https://www.amsshardul.com/insight/indian-competition-law-roundup-october-2022/>).

¹⁴ *Umar Javeed and Others v. Google LLC and Another*, CCI, Case No. 39 of 2018 (20 October 2022).

¹⁵ *XYZ (Confidential) v. Alphabet Inc. and Others*, CCI, Case No. 07 of 2020, etc. (25 October 2022).

¹⁶ *Google LLC v. Competition Commission of India*, NCLAT, Competition Appeal (AT) No. 01 of 2023 (4 January 2023).

¹⁷ *Google LLC v. Competition Commission of India*, Supreme Court, Civil Appeal No. 229 OF 2023 (19 January 2023).

¹⁸ *Google LLC v. Competition Commission of India*, NCLAT, Competition Appeal (AT) No. 01 of 2023 (29 March 2023).

¹⁹ *Alphabet Inc. v. Competition Commission of India*, NCLAT, Competition Appeal (AT) No. 04 of 2023 (11 January 2023).



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cases, Google announced several changes, asserting that these were in compliance with these remedies.²⁰

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CCI Approves Acquisition of Shareholding by SALIC

The CCI approved the proposed acquisition of: (i) up to 20% shareholding of *LT Foods Limited (LT Foods)* by *Saudi Agricultural and Livestock Investment Company - International Investment Company (SALIC)*; and (ii) certain additional shareholding of *Daawat Foods Limited* by *LT Foods*. The CCI noted that the only relevant presence of SALIC in India was through an investment in *Olam Agri*.²¹ The CCI identified overlaps in: (i) the distribution and sale of basmati rice in India; (ii) the distribution and sale of

non-basmati rice in India; (iii) production and sale of oil seeds in India; and (iv) wholesale trading of edible oils in India. The CCI noted that the overall market share resulting from the transaction was insignificant in the identified overlaps.

This case highlighted that incremental market share is an important factor to consider while determining the type of notification form to file. In this case, even though *LT Food's* market share was in the range of 25-30% in one of the markets (typically requiring a Form II, long form notification to be made), the notice was filed and approved under Form I (the short form notification) since the entity with which there was an overlap had a miniscule presence in the market of less than 1 percent).

²⁰ Updates to Android and Google Play in India (<https://blog.google/intl/en-in/updates-to-android-and-google-play-in-india/>); Changes to Google Play's billing requirements for developers serving users in India (<https://support.google.com/googleplay/android-developer/answer/13306652#zippy=%2Cwhat-is-the-service-fee-for-digital-transactions-using-an-alternative-billing-system>).

²¹ *SALIC International Investment Company and LT Foods Limited*, CCI, Combination Registration No. C-2023/01/996 (14 February 2023).

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