



## Indian Competition Law Roundup: September - October 2023

In this Roundup, we highlight some important developments in Indian competition law and policy in September and October 2023. In summary:

- The Central Government notified Section 45 of the Competition (Amendment) Act, 2023 (*Amendment Act*) empowering the Competition Commission of India (CCI) to publish guidelines and issue rules on the form of such guidelines.
- The CCI published the draft CCI (Combination) Regulations, 2023 for public consultation. The draft regulations included new provisions on deal value thresholds and derogation from standstill obligations for market purchases.
- The CCI published the draft CCI (Lesser Penalty) Regulations, 2023 for public consultation. The draft regulations introduced new provisions on lesser penalty plus, withdrawal of applications, and forfeiture of lesser penalty benefits.
- Mr. Deepak Anurag was appointed as Member of the CCI. With this appointment, the CCI now has a full complement of Members.
- The Gauhati High Court dismissed an appeal seeking a stay on the Director General's (DG) investigation of alleged collusive tendering for the supply of oil well cement.
- The Madras High Court dismissed a writ

petition seeking the quashing of an investigation directed by the CCI following an order by the High Court highlighting a complaint of cartelisation by certain steel companies.

- The National Company Law Appellate Tribunal (NCLAT) found that a final order of the CCI in proceedings against ethanol producers had breached principles of natural justice through an inordinate delay in issuing the order, and the fact that the order was passed by a fewer number of members than those who heard the case.
- The CCI approved the merger of Tata SIA Airlines Limited (*Vistara*) into Air India Limited (*Air India*), and the acquisition of certain shareholding by Singapore Airlines Limited (*SIA*) in Air India subject to compliance with voluntary commitments offered by the parties.

### Competition (Amendment) Act

#### Central Government Notifies Section 45 of the Amendment Act and Issued Rules for Publication of Guidelines

The Central Government by way of a notification gave effect to Section 45 of the Amendment Act in so far as it enables the CCI to publish guidelines on the provisions of the Competition Act, 2002 (*Competition*

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#### Institutional Matters

- Appointment of Mr. Deepak Anurag as Member of the CCI

#### Enforcement

- Gauhati High Court Rejects an Appeal Requesting a Stay of the DG's Investigation Procedure
- Madras High Court Dismisses a Writ Petition Requesting Quashing of Proceedings Conducted in Absence of a Prima Facie Order
- NCLAT Finds CCI's Order Breaches Principles of Natural Justice

#### Merger Control

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# Competition Matters

Act) or the rules and regulations made under it. The Government also issued rules<sup>1</sup> on the form of such guidelines including the requirement for precise and simple drafting of the provisions.

## Publication of the Draft CCI (Combinations) Regulations, 2023 for Stakeholder Comments

The CCI published the Draft CCI (Combinations) Regulations, 2023 for public consultation.<sup>2</sup> These are intended to replace the existing combination regulations. In addition to addressing various aspects already covered by the existing regulations, the draft regulations propose to implement new provisions on deal value thresholds and derogation from the standstill obligations for on-market transactions.

## Publication of the Draft CCI (Lesser Penalty) Regulations, 2023 for Stakeholder Comments

The CCI published the Draft CCI (Lesser Penalty) Regulations, 2023 for public consultation.<sup>3</sup> The draft regulations are intended to replace the existing lesser penalty regulations. The Amendment Act introduced provisions on 'lesser penalty plus' and withdrawal of 'lesser penalty' / 'lesser penalty plus' applications in the existing leniency framework. In addition to addressing these changes, the draft regulations include provisions on forfeiture of lesser penalty benefits.

## Institutional Matters

### Appointment of Mr. Deepak Anurag as Member of the CCI

The Government of India appointed Mr. Deepak Anurag as a Member of the CCI on 9 October 2023, for a period of five years. With this appointment, the CCI now has a full complement of Members including Chairperson Mrs. Ravneet Kaur together

with Members Mr. Anil Kumar Agrawal, Ms. Sweta Kakkad and Mr. Deepak Anurag.

## Enforcement

### Gauhati High Court Rejects an Appeal Requesting a Stay of the DG's Investigation Procedure

The Gauhati High Court dismissed a challenge filed by *Dalmia Cement Bharat Limited (Dalmia Cement)* against an order of the Single Judge Bench of the Gauhati High Court. The appeal requested a stay on an investigation carried out by the DG.<sup>4</sup> The CCI had *prima facie* found that cement manufacturing companies had engaged in collusion / cartelisation in relation to four tenders for the supply of oil well cement to Oil and Natural Gas Corporation Limited.

Dalmia Cement alleged that the DG's investigation was a roving and fishing inquiry and alleged that the investigation would cause it reputational harm.

The High Court noted that the *prima facie* order reflected the grounds on which the DG investigation was initiated and the nature of investigation by the DG aligned with the *prima facie* order. The High Court held the case premature and the DG's notice requesting information should not be interfered with.

The High Court stated that in the event Dalmia Cement was exonerated from allegations of bid rigging and cartelisation, it could regain and uphold its reputation. Granting some relief to Dalmia Cement, the High Court directed that copies of the complete set of documents relied upon by the CCI, excluding documents for which privilege was claimed, should be provided to Dalmia Cement to allow a proper opportunity of defense.

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<sup>1</sup> Competition (Form of Publication of Guidelines) Rules, 2023 (26 October 2023).

<sup>2</sup> Draft Combination Regulations available at <https://www.cci.gov.in/images/stakeholderstoppingconsultations/en/draft-combination-regulations1697444188.pdf> (5 September 2023).

<sup>3</sup> Draft CCI (Lesser Penalty) Regulations available at <https://www.cci.gov.in/images/stakeholderstoppingconsultations/en/draft-lesser-penalty-regulations1697431514.pdf> (16 October 2023).

<sup>4</sup> *Dalmia Cement (Bharat) Limited v. The Union of India and Others*, Gauhati High Court, Writ Appeal No. 281 of 2023 (19 October 2023).



## Madras High Court Dismisses a Writ Petition Requesting Quashing of Proceedings Conducted in Absence of a *Prima Facie* Order

A Division Bench of the Madras High Court dismissed a writ petition filed by *Agni Steels Private Limited* against an investigation ordered by the CCI into alleged cartelisation by steel companies.<sup>5</sup> Following a complaint filed before the High Court against steel companies, the High Court had directed the CCI to act on the complaint.<sup>6</sup> In accordance with this, the CCI held an urgent meeting, took *suo moto* cognizance of the matter, and directed the DG to investigate the matter in accordance with the order passed by the Madras High Court.

The petitioner argued that the formation of a *prima facie opinion* by the CCI was a necessary condition for any investigation under the Competition Act. Further, the presence of certain officials in the meeting meant that it could not be considered a proper CCI meeting. The petitioner also argued that the CCI arbitrarily chose to proceed against only two companies, even though the complaint specifically mentioned nine steel companies.

The High Court observed that the investigation was not in violation of the Competition Act, as the CCI's satisfaction that there was a *prima facie* case was evident in its decision to institute a *suo moto* case. The High Court also observed that the mere presence of the DG or other officials at the CCI meeting did not render the meeting invalid. These officials were not prohibited from being present. With respect to arbitrary cherry picking of the parties being investigated, the High Court noted that questions as to arbitrariness, malice or discriminatory treatment were premature at the investigation stage.

## NCLAT Finds CCI's Order Breaches Principles of Natural Justice

The NCLAT accepted an appeal brought by a number of ethanol producers against a CCI order finding them guilty of cartelisation.<sup>7</sup> The NCLAT held that all members of the CCI who heard a case had to sign and authenticate the final order, failing which the principles of natural justice were violated. It also held that the 13-month delay from the conclusion of the final hearings to the issuing of the final order was inordinate and went far beyond what was reasonable. It also found that the CCI should have provided the parties with the opportunity to be heard on the supplementary investigation report of the DG, as this was akin to an extension of the main investigation.<sup>8</sup>

The NCLAT set aside the CCI order on these grounds and directed the CCI to consider the case afresh.

## Merger Control

### CCI Approves Tata SIA Airlines (Vistara) / Air India Merger

The CCI approved the combination comprising: (a) the merger of Vistara into Air India, with Air India being the surviving entity (*Merged Entity*); (b) in consideration of the merger, the acquisition of shares in the Merged Entity by SIA and Tata Sons Private Limited (*TSPL*); and (c) the acquisition of additional shares in the Merged Entity by SIA pursuant to a preferential allotment.<sup>9</sup>

The CCI *prima facie* found that post combination, the Merged Entity could enjoy substantial market power in certain domestic and international route pairs, which might result in anti-competitive consequences such as collusive pricing, price increases, and market allocation.

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<sup>5</sup> *Agni Steels Private Limited v. Union of India and Others*, Madras High Court, Writ Petition No. 11911 of 2023 (19 October 2023).

<sup>6</sup> *Coimbatore Corporation Contractors Welfare Association v. The Central Bureau of Investigation and Another*, Madras High Court, Crl O.P. No. 6153 of 2021 (29 July 2021).

<sup>7</sup> *India Glycols Limited v. Indian Sugar Mills Association and Others*, CCI, Case No. 21 of 2013, etc. (18 September 2018).

<sup>8</sup> *Balrampur Chini Mills Limited v. CCI and Others*, NCLAT, Competition Appeal (AT) No. 86 of 2018, etc. (10 October 2023).

<sup>9</sup> *Tata Sons Private Limited, Air India Limited, Tata SIA Airlines Limited and Singapore Airlines Limited*, CCI, Combination Registration No. C-2023/04/1022 (1 September 2023).



# Competition Matters

Accordingly, it issued a show-cause notice (SCN) to the parties.

In response to the SCN, the parties set out arguments on the expected cost and scale efficiencies, existence of credible competition, and low barriers to entry including availability of slots. As part of its response to the SCN, the parties also offered to maintain minimum capacities on certain identified routes to ensure that the Merged Entity would be unable to create any artificial scarcity by reducing supply, thereby increasing fares. This would also ensure that consumers would continue to have choices on these routes.

The CCI took note of the unique characteristics of the airline industry and held that the

Parties would continue to face sufficient competitive constraints from existing players such as Indigo as well as from new entrants such as Akasa Air. Further, the CCI observed that the proposed transaction would enable the Merged Entity to perform better through improved efficiencies, network integration and financial integration.

Considering the arguments put forward and the voluntary commitments offered, the CCI found that the proposed transaction was not likely to have an appreciable adverse effect on competition in India and approved the proposed transaction. This is a significant transaction in Indian aviation history and will have a notable impact on the Indian and global aviation industry.

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