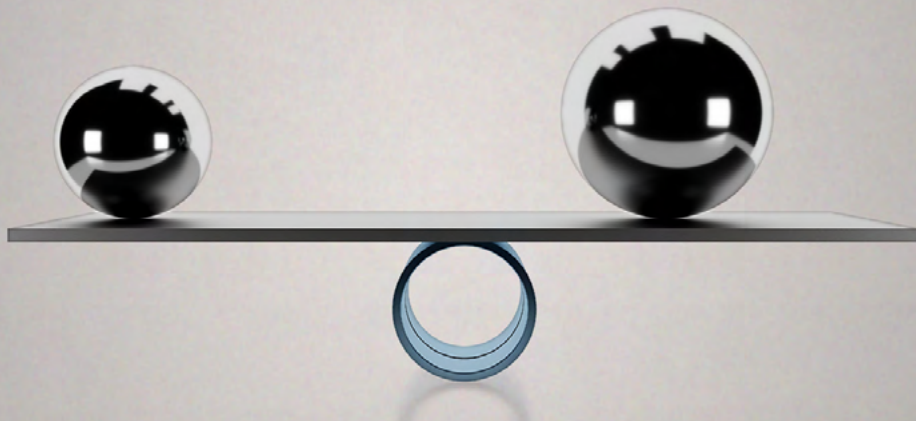


August 2024



Indian Competition Law Roundup – June and July 2024

In this Roundup, we highlight some important developments in Indian competition law in June and July 2024. In summary:

- After rehearing a case with allegations that ethanol producers, their associations and their customers (oil companies) had engaged in cartelisation, the CCI passed a final order finding that no breach of the Competition Act had been made out.
- The CCI *prima facie* rejected allegations that *Saint Gobain* had breached Section 3(4) of the Competition Act, which prohibits anti-competitive vertical agreements.
- The CCI *prima facie* held that *Google India Private Limited* (*Google*) had not abused its dominant position by granting Truecaller (a caller ID and spam blocking app) special access to Android users' contact book details to the detriment of other apps.

Cartels

CCI Changes Position in Ethanol Case

In July 2024, the CCI passed a final order finding that several producers of ethanol, associations and oil companies (together, *opposite parties*) had not engaged in collusive tendering or associated anticompetitive behaviour.¹ This followed a September 2019 order of the CCI finding that the opposite parties had breached the Competition Act.² This was appealed to the National Competition Law Appellate Tribunal which set aside the order on natural justice grounds and directed the CCI to conduct a fresh hearing.³

The CCI rejected several findings in the Director General's (DG) 2015 report that individual sugar mills had fixed prices and

allocated quantities in breach of the Competition Act. Cases of identical or similar pricing could be explained without leading to an inference of cartelisation, for example where the sugar mills were geographically close. In relation to a few instances of identical pricing, the CCI pointed to the need for price parallelism to be supported by plus factors before breach could be established; these were lacking in this case. The CCI also held that limited instances of identical freight rates could not lead to an inference of cartelisation and expressly gave the "benefit of the doubt" to the producers concerned.

The CCI also found that the DG had wrongly found that trade associations had facilitated cartelisation. Meetings called by the Indian Sugar Mills Association (ISMA) attracted few attendees and appeared to have been intended to discuss a policy change regarding ethanol blended petrol. ISMA's attendance at a pre-bid meeting reflected the novelty of this meeting. E-mails in the e-mail account of a ISMA director did not show that ISMA was involved in cartelisation. The CCI also held that statements made by the President of the Ethanol Manufacturers Association (EMA) to the press could not give rise to a finding of breach. There was also no evidence that two meetings of EMA members involved anti-competitive discussions.

The CCI held that the issuing of a joint tender for procuring ethanol by the oil companies was not anticompetitive. As public sector undertakings, such joint tendering was justified on commercial and operational grounds and had not been found to have resulted in an appreciable adverse effect on competition.

¹ *India Glycols Limits v India Sugar Mills Association and Others*, CCI, Case No. 21 of 2013, etc. (22 July 2024).

² *India Glycols Limits v India Sugar Mills Association and Others*, CCI, Case No. 21 of 2013, etc. (18 September 2018).

³ *Balrampur Chini Mills Limited v CCI and Others*, NCLAT, Competition Appeal (NT) No. 86 of 2019, etc. (10 October 2023).



Vertical Agreements

Saint Gobain Cleared in Prima Facie Proceedings

In July, the CCI *prima facie* rejected allegations that *Saint Gobain* had breached Section 3(4) of the Competition Act, which prohibits anti-competitive vertical agreements.⁴ The Informant alleged that Saint Gobain had, in agreements with processors, imposed exclusive supply, forced co-branding, refused to deal and engaged in resale price maintenance. The CCI observed that the exclusive supply obligation, which was limited to specialised products, was imposed in return for the provision of technical and marketing training and guidance and was not *prima facie* anticompetitive. Co-branding did not, in itself, raise competition issues. It noted that the Informant had not provided any evidence of refusal to deal but noted that offering volume-based discounts might not in itself be anticompetitive. Finally, the allegation of resale price maintenance was rejected as Saint Gobain did not control the

⁴ XYZ (Confidential) v Saint Gobain India Private Limited, CCI, Case No. 16 of 2023 (22 July 2024).

⁵ Ms. Rachna Khaira v Google India Private Limited, CCI, Case No. 03 of 2023 (24 June 2024).

price of end products supplied by distributors and processors to end-users.

Abuse of Dominant Position

CCI Finds that Truecaller not Given Preferential Treatment by Google

In June, the CCI *prima facie* rejected allegations that *Google India Private Limited (Google)* had abused its dominant position by granting Truecaller (a caller ID and spam blocking app) special access to Android users' contact book details to the detriment of other apps.⁵ Based on earlier orders, the CCI found that Google was *prima facie* dominant in the market for app stores for Android smart mobile OS in India. However, the Informant had failed to provide evidence that Google was either giving preferential treatment to Truecaller or discriminating by allowing access to users' contact data to Truecaller while denying access to competing applications.

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