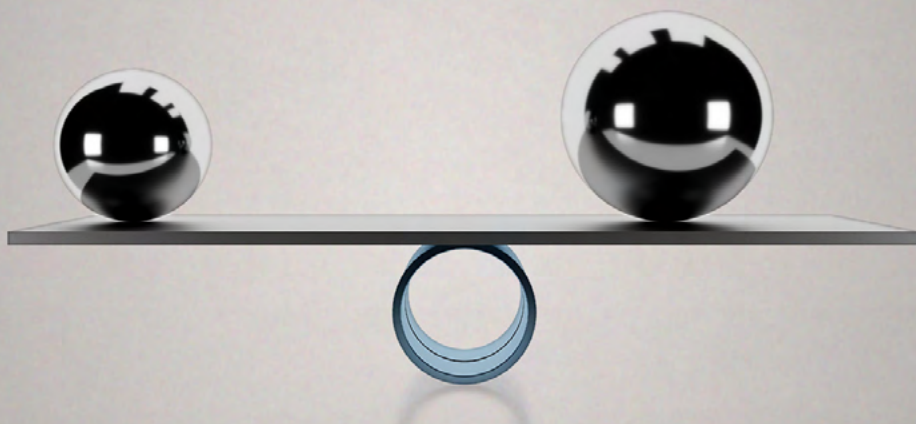


September 2024



## Indian Competition Law Roundup – August 2024

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

- The Gauhati High Court quashed a *prima facie* order of the Competition Commission of India (CCI) directing an investigation of an alleged cartel by cement manufacturers on the ground that the CCI had failed to make out a *prima facie* case.
- The CCI rejected an allegation of abuse of dominant position by a provider of internet exchange services on the ground of absence of dominance. It also rejected a claim that it lacked jurisdiction vis-à-vis the Telecommunications Regulatory Authority of India (TRAI).
- The CCI held that a notification of an acquisition under the Green Channel had been wrongly made, as a portfolio company of the acquirer had a vertical relationship with the target.
- The CCI published key findings and observations of a market study on diagnostic medical imaging equipment in India, focusing on MRI and CT scan.

### Cartels

The Gauhati High Court (*High Court*) quashed a *prima facie* order of the CCI ordering an investigation against *Star Cement Limited (Star)* and a subsequent order imposing a penalty on Star for failing to comply with directions of the DG.<sup>1</sup> The CCI had directed an investigation on the grounds that Star and two other cement companies in the North Eastern States: (a) simultaneously raised prices in August 2016 without any corresponding increase in input costs or demand-supply mismatch in the market; (b) were not passing on the benefits of subsidies for cement production; and (c) charged higher prices than they charged in neighbouring States.

The High Court found that the CCI had failed to make out a *prima facie* case. It found that the three companies had raised their prices by differing amounts and the end prices also differed; where there

was no uniform increase in price, there could be no agreement directly or indirectly determining the sale price. It found that the subsidies were granted as an incentive to the companies and were not to be passed on to customers. It also considered the third ground to be misplaced as prices to the wholesaler were fixed subject to a discount which the wholesaler was free to pass on to the customer. In any case, it could not be a factor in arriving at a finding of an adverse effect on competition.

### Abuse of Dominant Position

The CCI rejected an Information filed by *Extreme Infocom Private Limited (Extreme)*, a provider of internet exchange services, that a competing provider, *National Internet Exchange of India (NIXI)* had abused its dominant position by providing services for free or below cost.<sup>2</sup> The CCI *prima facie* found that NIXI was not dominant in the relevant market for provision of internet exchange services in India, taking account of the lack of entry barriers in the market, market data showing the significant presence of Extreme vis-à-vis NIXI in six major cities, and the ability of Extreme to increase its relative presence in the market.

The CCI also rejected NIXI's argument, based on the judgment of the Supreme Court of India in the *Bharti Airtel* case, that the CCI had no jurisdiction to consider the matter as the Telecoms Regulatory Authority of India (TRAI) as sectoral regulator was the appropriate forum to consider complaints or disputes. The CCI pointed out that the Supreme Court in the *Bharti Airtel* case had accepted that the CCI had jurisdiction to consider matters falling within the Competition Act and its finding that the CCI could not consider cases in parallel with TRAI was limited to the facts of that case.

### Merger Control

The CCI held that a notification of an acquisition by *India Business Excellence Fund - IV (the Acquirer)* of a stake in *VVDN*

<sup>1</sup> *Star Cement Limited v. The Competition Commission of India and Others*, Gauhati High Court, Case No: WP(C)/6343/2018 etc. (30 August 2024).

<sup>2</sup> *Extreme Infocom Private Limited v. National Internet Exchange of India (NIXI)*, CCI, Case No. 10 of 2023 (20 August 2024).



*Technologies Limited* (the *Target*) had been wrongly made under the Green Channel.<sup>3</sup> The Green Channel is available only where the parties have no horizontal overlap, no vertical relationship and no complementary relationship. The CCI found that the Acquirer belonged to the *Motilal Oswal Group* (*Group*) and that the Target had provided printed circuit boards to a portfolio company of the Group for use in Covid-19 test kits. The CCI found that the Target and the portfolio company had a vertical relationship at the time of notification and that the Green Channel route was not therefore available. This conclusion was not affected by the fact that there had been a pre-filing consultation with the CCI. The conditions for using the Green Channel had to be satisfied in each case. The notification and deemed approval were therefore void. The CCI imposed a penalty of INR 1,000,000 (approx. USD 11,900) on the Acquirer under Section 43A of the Competition Act and required the Acquirer to make a fresh filing.

## Market Studies

The CCI published key findings and observations of a *Market Study on Diagnostic Medical Imaging Equipment in India*, focusing on MRI and CT scan.<sup>4</sup>

The CCI noted that, although the industry was growing in India, it was largely import driven and it was essential to encourage domestic manufacture of the equipment. It noted that the level of competition in the equipment market varied at different levels of the supply chain. The market for new equipment showed oligopolistic characteristics with market power concentrated in a few (foreign) OEMs. The market in refurbished equipment, with independent suppliers and some OEMs, was more fragmented and

competitive. The aftersales market was complex, with competition based on a variety of factors including packaged offerings and difficulties in costing over the lifecycle of equipment. The market at the level of hospitals and diagnostic centres was competitive. As buyers, they were able to negotiate with the OEMs. As service providers, they were also competing in relation to the type of equipment and technology used. End patients were able to compare prices and were able to avail of discounts. The CCI also noted various challenges being faced by the industry in India, including the shortage of skilled personnel, the availability of spare parts, complex procurement processes and the high levels of investment required. These factors potentially had an adverse effect on competition dynamics in the industry.

A number of recommendations were proposed to promote competition and efficiency in the market:

- Local manufacturing capabilities should be promoted in a phased manner.
- Public-private partnerships should be used to catalyze investment in the sector.
- Additional accredited testing laboratories should be established.
- OEMs should take self-regulatory measures to promote transparency on price and availability of spare parts and after-sale services.
- OEMs should be encouraged to give original equipment suppliers and independent service operators access to spare parts. Independent dealers should foster a competitive environment for the sale and purchase of spare parts and ancillary components.

<sup>3</sup> Notice under Section 6(2) of the Competition Act, 2002 filed by India Business Excellence Fund – IV, CCI, Combination Registration No. C-2023/04/1021 (Order under Section 43A of the Competition Act, 2002) (16 August 2024).

<sup>4</sup> Market Study of Diagnostic Medical Imaging Industry in India (Focused on MRI and CT scan): Key Findings and Observations, CCI (August 2024).

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