



Luthra and Luthra
LAW OFFICES INDIA

COMPETITION LAW ALERT

NOVEMBER EDITION

INSIDE

Digital Competition Law likely to be introduced after Lok Sabha polls 2

CCI approves acquisition of shareholding of Lanco Amarkantak pursuant to CIRP 2

CCI dismisses allegations of profiteering against M/s Ashdan Developers Pvt. Ltd. and orders further investigation against M/s Uttar Pradesh Avas Evam Vikas Parishad 2

CCI organized 8th BRICS International Competition Conference 2023 3

CCI becomes member of the Steering Group of International Competition Network 3

NCLAT sets aside CCI order imposing penalty on sugar mills and their trade associations for bid rigging 3

Madras High Court dismisses petition challenging CCI’s steel cartel investigation 5

CCI releases Draft Lesser Penalty Regulations 2023 5



We wish our readers a very happy and prosperous Diwali.

In the November Edition of the Luthra and Luthra Law Offices India – ‘Competition Law Newsletter’, we cover some of the most pertinent developments in the competition law space over the last month.

Digital Competition Law likely to be introduced after Lok Sabha polls

According to [news reports](#), a decision on the proposed Digital Competition law might be deferred until after the upcoming general elections in May 2024, amidst the anticipated imposition of the model code of conduct.

The Committee responsible for formulating the Digital Competition Law, consisting of legal experts, government representatives, and the Competition Commission of India’s (CCI) chairperson, has convened approximately nine times without reaching a consensus.

CCI approves acquisition of shareholding of Lanco Amarkantak pursuant to CIRP

The CCI vide its order of [03.10.2023](#) has approved the acquisition of shareholding of Lanco Amarkantak Power Limited (**Lanco Amarkantak/Target**) which is currently undergoing corporate insolvency resolution process (**CIRP**)

under the Insolvency and Bankruptcy Code, 2016 (**IBC**) by PFC Projects Limited (**PPL**), REC Limited (**REC**), SJVN Limited (**SJVN**) and Damodar Valley Corporation (**DVC**) (**collectively, Acquirers**) (**Proposed Combination**).

The notice was filed pursuant to the submission of a resolution plan by the Acquirers. The CCI observed that the activities of the parties exhibit horizontal overlaps as well as vertical overlaps in the business of power generation in India and certain related markets.

However, the CCI held that the total power generating capacity of the Target is less than 1 percent of the overall installed capacity of power stations in India. Further, considering that the Target is undergoing CIRP and has not been active in the bidding of Power Purchase Agreements in the last 3 years, the CCI observed that the Proposed Combination is not likely to change the competition dynamics of the power sector and approved the Proposed Combination under Section 31(1) of the Competition Act, 2002 (**Act**).

CCI dismisses allegations of profiteering against M/s Ashdan Developers Pvt. Ltd. and orders further investigation against M/s Uttar Pradesh Avas Evam Vikas Parishad

The CCI vide order dated 04.10.2023 dismissed the proceedings initiated under Section 171 of CGST Act against M/s Ashdan Developers Pvt. Ltd. The Director



General, Anti Profiteering (**DGAP**) had found that allegations of profiteering were unsubstantiated and had recommended that the proceedings against M/s Ashdan Developers be dropped. The CCI accepted the DGAP's recommendation and closed the proceedings.

In the investigation against M/s Uttar Pradesh Avas Evam Vikas Parishad, however, the CCI ordered the DGAP to conduct further investigation since the requisite evidence had not been collected.

CCI organized 8th BRICS International Competition Conference 2023

The BRICS International Competition Conference (**Conference**) is an important event under the framework of the BRICS Leaders' Meeting and is held biennially by the BRICS Competition Authorities on a rotation basis. This year the CCI hosted this prestigious event after 10 years.

The Conference saw participation from more than 600 delegates including heads of BRICS Competition Authorities, practitioners, competition policy experts, representatives of international organisations, and other stakeholders from BRICS and non-BRICS nations.

The Conference was marked as an important event wherein views amongst speakers from BRICS and other

jurisdictions on a range of emerging issues related to competition law and policy were discussed.

A joint statement was signed by the heads of BRICS Competition Authorities, which *inter alia* acknowledged the importance of continuing to share information, experience and best practices to strengthen enforcement capabilities and promote fair competition practices within BRICS jurisdictions.

CCI becomes member of the Steering Group of International Competition Network

The CCI has become a member of the Steering group of the International Competition Network (**ICN**) for the first time at the ICN Annual Conference 2023 at Barcelona, Spain.

The ICN comprises of 140 competition agencies from 130 countries and is guided by its apex body, the Steering Group, which has 18 members who serve renewable two-year terms. The ICN is a global body devoted exclusively to competition law enforcement and its members produce work through their contribution in working groups.

NCLAT sets aside CCI order imposing penalty on sugar mills and their trade associations for bid rigging

The National Company Law Appellate



Tribunal (**NCLAT**) vide its order dated 10.10.2023 set aside the CCI order that imposed penalty of INR 38 crores on 18 sugar mills and their two trade associations (**collectively, Appellants**).

The CCI vide order dated 18.09.2018 had imposed a penalty on the Appellants for contravention of Section 3(1) and 3(3) of the Act by rigging the bids in respect of a joint tender floated by oil marketing companies (**OMCs**) for procurement of ethanol for blending with petrol.

Before the NCLAT, the Appellants submitted that the matter was heard on various occasions by six members of the CCI, but the final judgment was signed and pronounced by only three members showing non-adherence to the principle of 'one who hears must decide'. Further, they submitted that the oral hearings were not consistently heard by all the members and there was inordinate delay by the CCI in passing the order after the hearing. Finally, it was argued that the CCI should have provided an opportunity for oral hearing to the parties post submission of the supplementary investigation report and that the order was passed in violation of the principles of natural justice.

The CCI submitted that mere technical infringement of principles of natural justice may not be a sufficient ground for invalidating a judgment or order. Further, no real prejudice has been caused to the Appellant and the hearing by a larger body and decision by a smaller body for compelling reasons,

while undesirable, has been allowed by the Delhi High Court in its jurisprudence on the subject.

With respect to giving an opportunity for oral hearing post submission of supplementary investigation report, it was argued that the CCI was not obligated to provide such an opportunity and the plea taken by the Appellants regarding the challenge to the non-adherence to the principle of natural justice should have been raised while the hearing was going on before the CCI as the same cannot be raised at the appellate stage.

The NCLAT held that the impugned order does not comply with the principles of natural justice as the coram of CCI that heard the final arguments did not pass the final order within reasonable period of time.

The NCLAT held that the delay in pronouncing the impugned order resulted in serious infirmity in that 'one who hears must decide' was not followed in letter and spirit. Further, the NCLAT also observed that the CCI should have afforded an opportunity of oral hearing to the opposite parties after the supplementary investigation report was received from the Director General (**DG**), and before pronouncing the final order. The NCLAT held that the impugned order passed by the CCI does not satisfy the basic tenet of adherence to the principles of natural justice which was ingrained in Section 36 of the Act.

Thus, the NCLAT set aside the CCI's order



imposing penalty on the Appellants and remanded the matter back to the CCI for re-hearing.

Madras High Court dismisses petition challenging CCI's steel cartel investigation

A division bench of the Madras High Court (**MHC**) vide order dated [19.10.2023](#) dismissed the writ petition filed by Agni Steels Pvt. Ltd. (**Agni Steels/ Petitioner**) challenging the investigation being conducted by the CCI against certain steel manufacturers. The investigation by the CCI was initiated in pursuance of an order by the MHC itself, wherein the MHC on a complaint made by Coimbatore Corporation Contractors Welfare Association had directed the DG to initiate an investigation against the alleged steel cartel. Accordingly, the DG initiated the investigation, conducted search and seizure operations, and sent various probe notices to the various steel companies, including Agni Steels.

Agni Steels challenged the proceedings primarily on two grounds. Firstly, the Petitioner contended that investigation was *void ab initio*, since no *prima facie* order was passed by the CCI under Section 26(1) of the Act, which is a mandatory requirement before any investigation can commence. Secondly, the Petitioner submitted that the DG arbitrarily cherry-picked certain steel manufacturers and proceeded against them, while some others named in the original complaint before the MHC had

not been proceeded against.

The MHC dismissed these contentions and held that since the investigation was initiated in pursuance of an order of a higher court, the legal requirement under Section 26(1) stood fulfilled. Further, on the issue of cherry picking, the Madras HC held that such contention was premature and could be agitated only at a later stage.

Thus, the MHC dismissed the petition challenging the investigation by the DG against the Petitioner.

CCI releases Draft Lesser Penalty Regulations 2023

The Competition (Amendment) Act, 2023 (**Amendment Act**) had introduced new provisions including lesser penalty plus (**leniency plus**) and withdrawal of lesser penalty applications under Section 46 of the Act.

The leniency plus mechanism is aimed at encouraging entities who have applied for lesser penalties, also known as leniency, in connection with their involvement in a first cartel to provide complete, accurate, and critical information about a second cartel that is unknown to the CCI. In return, the applicant will be eligible for an additional reduction in penalties related to the first cartel, in addition to the reduction based on priority status, subject to meeting specified terms and conditions in the second cartel.

In line with the changes introduced by the Amendment Act, the CCI released the [draft](#)



[Competition Commission of India \(Lesser Penalty\) Regulations, 2023 \(Draft Lesser Penalty Regulations 2023\)](#) to replace the existing Competition Commission of India (Lesser Penalty) Regulations, 2009. The Draft Lesser Penalty Regulations 2023 cover various aspects, including:

- (i) **Content of the leniency plus application:** The applicant has to make full, true and vital disclosure of information which is sufficient for the CCI to establish a prima facie opinion on the existence of a newly disclosed cartel along with details of the investigation with respect to the existing cartel wherein it has obtained priority status and justify how the newly disclosed cartel is distinct from the existing cartel;
- (ii) **Benefit of Leniency Plus:** The applicant may avail additional benefit of up to 30% reduction in the penalty in the first cartel by providing information relating to second cartel;
- (iii) **Timeline for availing lesser penalty plus:** The applicant has to submit the lesser penalty plus application before the DG submits the investigation report to the CCI in respect of the existing cartel in order to avail leniency plus;
- (iv) **Factors for granting leniency**

plus: The Draft Lesser Penalty Regulations 2023 provide that while granting leniency plus, the CCI will consider the likelihood of the newly disclosed cartel being detected by the CCI / DG in the absence of the leniency plus application or any other factor that the CCI may feel is relevant;

- (v) **Timeline for withdrawal of application:** The Draft Lesser Penalty Regulations 2023 provide applicants an option to withdraw their application at any time before the receipt of the investigation report of the DG by the CCI;

- (vi) **Forfeiture of benefit:** An applicant forfeits the benefits of leniency/ leniency plus upon non-compliance of the conditions on which the leniency/ leniency plus was granted, submission of false evidence or willfully omitting material information and disclosures that do not qualify as 'vital'. In case of forfeiture, the leniency / leniency plus applicant will be treated at par with any other opposite party who has not availed the benefit of leniency / leniency plus.

The CCI had launched public consultation for the Draft Lesser Penalty Regulations 2023 inviting stakeholders to provide their comments and suggestions.

This newsletter is only for general informational purposes, and nothing in this edition of the newsletter could possibly constitute legal advice (which can only be given after being formally engaged and familiarizing ourselves with all the relevant facts). However, should you have any queries, require any assistance, or clarifications with regard to anything contained in this newsletter (or competition law in general), please feel free to contact G.R. Bhatia/ Arjun Nihal Singh, at the below mentioned coordinates. © Luthra & Luthra Law Offices India 2023. All rights reserved.

The Team:



G.R. BHATIA

Partner and Head – Competition Law Practice
Email: - GBhatia@luthra.com
Ph.: +91 11 4121 5192



ARJUN NIHAL SINGH

Partner Designate
Email: - ansingh@luthra.com
Ph.: +91 11 4121 5192



MANAV GUPTA



SANYAM JUNEJA



TOSHIKA SONI