



Luthra and Luthra
LAW OFFICES INDIA

COMPETITION LAW ALERT

DECEMBER EDITION

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In the December edition of the Luthra and Luthra Law Offices India - Competition Law Newsletter, we discuss some interesting developments in the field of Competition Law in India and abroad.

“Domestic Tyre Industry should get a chance at reformation instead of being put to weak health” – NCLAT sets aside CCI penalty against tyre manufacturers

The National Company Law Appellate Tribunal (**the NCLAT**) vide its judgment of 1st December 2022 has set aside the decision of the Competition Commission of India (**the CCI**) order of 31st August 2018 wherein the CCI had found 5 domestic tyre manufacturers (and their key managerial personnel), along with the Automotive Tyre Manufacturers Association (**ATMA**) guilty of violating Section 3(3)(a) and 3(3)(b) of the Competition Act, 2002 (**the Act**) and had imposed penalties of approximately INR 1789 crores. ATMA was represented by Luthra and Luthra Law Offices India before the NCLAT.

The tyre manufacturers and ATMA *inter alia* had pleaded that price parallelism is a natural consequence of the oligopolistic nature of the tyre industry and is not the result of an “agreement” between the Opposite Parties (OPs). The NCLAT held that there is no violation of Section 3(3)(a) merely due to price parallelism owing to the reason that the

findings of the CCI were laced with arithmetical errors and the corrected data has revealed absence of price parallelism. With regards to the finding of limiting & controlling the production of tyres in violation of Section 3(3)(b) of the Act, the CCI had admitted that it was a typographical error and no such conclusion could have been drawn given the facts of the case. The NCLAT further held that mere forwarding of a letter by MCA does not amount to reference u/s 19(1)(b) of the Act and whenever a reference is received, the CCI may like to consider the compliance of CCI (General) Regulations 2009 apart from the provisions of the Act.

Based on the aforementioned and other reasons, the NCLAT remitted the matter back to the CCI to re-examine the calculation of arithmetical errors. The NCLAT further directed the CCI to consider reviewing the penalty to save the domestic industry in view of the fact that the domestic industry is under a lot of pressure from global tyre manufacturing companies. The NCLAT observed that while the violation by the domestic industry should be penalized, however, they should also be given an opportunity for reformation instead of virtually putting them in weak health.

NCLAT dismisses appeal by Karnataka Film Chamber of Commerce

The NCLAT, vide order dated 18 October 2022, upheld the CCI’s decision in Case



No. 42 of 2017 wherein the CCI had found Karnataka Film Chamber of Commerce (KFCC) guilty of engaging in anti-competitive practices in violation of Section 3(3)(b) of the Act, and had imposed a penalty of approximately INR. 10 Lakhs on it.

Before the CCI, the informant (a film producer) had alleged that he had purchased the dubbing rights of a Tamil film into Kannada language, and that KFCC and other OPs caused several hindrances and threatened his technical workers and dubbing artist to road block the movie to be dubbed in Kannada.

During the investigation, the Director General (**DG**) had found that KFCC conducted a press meet on 01 March 2017 which provided the OPs (including its key office bearers) a platform to protest against the film and issue statements which instigated public sentiments. It ran an anti-dubbing campaign through social media, news reports and protest rallies which prevented the screening of the informant's movie and caused him huge financial loss.

The NCLAT agreeing with the DG's report and the CCI's findings, noted that there was enough circumstantial evidence to suggest that there was a meeting of minds or a tacit agreement amongst the OPs. Thus, the NCLAT affirmed the CCI's conclusion that this anticompetitive conduct resulted in limiting production,

supply and screening of dubbed movies in Karnataka which caused appreciable adverse effect on competition by foreclosing competition.

Telangana HC vacates interim stay and allows investigation to continue against GMR

The Telangana High Court (**THC**), vide judgment dated [12 October 2022](#), dismissed a writ petition filed by GMR Hyderabad International Airport (**GMR**), wherein GMR sought to set aside a) the CCI's order dated 03 October 2019 under section 26(1) of the Act directing the DG to conduct investigation on allegations of abuse of dominance by GMR and; b) the CCI's order dated 04 October 2019 directing the parties to appear for a hearing for grant of interim reliefs. Further, the Court also vacated the interim stay on the abovementioned orders of the CCI, which the Court had granted on [16 October 2019](#).

The THC, placing reliance upon a plethora of Supreme Court (the SC) and High Court judgments held that an order passed under section 26(1) of the Act directing investigation by the DG is an administrative order rather than a quasi-judicial/ judicial one. Reiterating the observations of the SC in [CCI v. Steel Authority of India Limited](#), the THC noted that at the stage of ordering investigation, the parties are not entitled to a notice and opportunity of hearing. It further held that a High Court can only interfere where there is an abuse of



process and if *prima facie* it appears that the investigation was marred by mala fides. Thus, the writ petition was held to be premature, as no final opinion was expressed on the merits of the case which affected the rights of the parties.

Karnataka HC dismisses petition filed by Karnataka Chemists and Druggists Association

The Karnataka High Court (**KHC**), vide order dated [10 November 2022](#), quashed a writ petition filed by Karnataka Chemists and Druggists Association (**KCDA**). KCDA was seeking a writ of prohibition to restrain the CCI from continuing the proceedings against it in Case No. 06 of 2012 for alleged anti-competitive practices. It also sought to quash the notice dated 28 June 2012 by the Assistant DG of the CCI asking KCDA to provide certain requisite information failing which, KCDA would be liable to be penalized under Section 43 read with Section 45 of the Act. KCDA's contention was that since the present CCI case was based on the subject matter of another proceeding which were under challenge before the court in W.P. No. 2882/2012, the same amounted to violation of rule of double jeopardy.

The Court held that the case was at a preliminary stage and notice by DG was essential for conducting a thorough fact finding exercise so as to be able to collect, assimilate and analyze all the credible data and information for the purpose of rendering its findings. Thus, it

is not an order determining the rights/obligations of the parties but a mere show cause notice, non-compliance of which can attract a penalty. Holding that the plea was premature, the court granted the petitioner liberty to submit their objections along with the information and documents to the CCI within 4 weeks.

“CCI has the jurisdiction to investigate cartelization by debenture trustees” – SEBI submits before the Bombay HC

As [per news reports](#), the Securities and Exchange Board of India (**the SEBI**) has given its go-ahead to the CCI to investigate debenture trustees for alleged cartelization.

Earlier this year, the CCI had *prima facie* found that Debenture trustee units of SBI, Axis and IDBI bank along with Debenture Trustee Association of India had indulged in cartelization/ price fixation in respect of fees charged from debenture issuers. Accordingly, the CCI had directed the DG to launch an investigation.

The Debenture Trustees had challenged this order before the Bombay High Court (**BHC**). The BHC noted that the SEBI is the sectoral regulator, and vide interim order dated [11 April 2022](#) asked the CCI/DG to not take any coercive action against the Debenture trustees in pursuance of the 26(1) order, until the SEBI forms a prima



facie opinion on the issue. Now, the SEBI has filed an affidavit before the BHC, stating that the CCI is the competent authority to investigate this issue. Therefore, it is expected that the BHC will vacate its interim order dated 11 April 2022 wherein it had ordered the DG to not take any coercive action.

BRICS Working Group releases “A study on Competition Issues in the Automotive Sector”

On [1 November 2022](#), Competition Authorities of BRICS Working Group released “*A Study on Competition Issues in the Automotive Sector*” (the Study). The Study was carried out under the aegis of Automotive Working Group of BRICS with the CCI as Chair with Competition Commission of South Africa as Co-chair.

The Study analyses issues that arise due to technological developments in the automotive sector like denial of data access, charging of monopolistic and unfair prices for granting access to data, tying in of various products and services in the automobile ecosystem and personalised pricing. Additionally, the Study identifies certain IPR related issues in the automotive sector and highlights the need to harmonise anti-trust laws and IPR. The Study comprehensively deals with potential competition issues in the sector in light of the role of emerging digital technologies, with a special focus on BRICS countries. The Study primarily focuses on identification of the existing and potential competition issues arising

out of the passenger car industry.

The Study also suggests various tools to combat the emerging issues such as advocacy as a pillar to strengthen trust between various stakeholders to foster growth of innovation. Further, the Study impresses upon the importance of competition agencies to support and cooperate with each other to unearth cartelisation as well as cooperation for multi-jurisdictional filings of several transactions in the automotive sector pertaining to mergers. Finally, the Study highlights the need for comity amongst competition agencies and sectoral authorities through harmonious and inter-sectional approaches in perceived areas of divergence.

CCI added to the list of entities with whom ED can exchange information under PMLA

The Union Finance Ministry vide a notification dated [22 November 2022](#) under Section 66 of the Prevention of Money Laundering Act, 2002 has added the CCI to a list of entities with whom the Enforcement Directorate (**ED**) can share information pertaining to ongoing or concluded cases.

This newsletter is only for general informational purposes, and nothing in this edition of 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 Mr. Rajiv K. Luthra/ Mr. G.R. Bhatia/ Mr. Arjun Nihal Singh, at the below mentioned coordinates. © Luthra & Luthra Law Offices India 2022. All rights reserved.

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