



Indian Competition Law Roundup: November 2019

In this Roundup, we highlight the main developments in Indian competition law in November 2019.

Institutional Developments

New Judicial Member for the CCI

Justice Sangita Dinghra Sehgal, a judge in the Delhi High Court, was appointed as the judicial member of the Competition Commission of India (CCI). Since the CCI performs adjudicatory/quasi-judicial functions, the absence of a judicial member for some time had given rise to concern and, in April 2019, a Division Bench of the Delhi High Court directed the CCI to ensure that a judicial member was present and participated at all times in final hearings.¹ Although the Delhi High Court held in July 2019 that an order made in the absence of a judicial member could not be called into question,² the appointment of a judicial member is to be welcomed.

Cartels

No Cartel in LPG Cylinder Case

Continuing the long saga of cartel proceedings against LPG cylinder manufacturers accused of bid-rigging in tenders to oil marketing companies, the CCI held in a recent order³ that one of the opposite parties – *Prathima Industries (Prathima)* – had quoted identical rates to those quoted by other bidders,⁴ raising a strong suspicion of cartelisation. However, following the approach of the Supreme Court in the *Rajasthan Cylinders* case,⁵ the CCI found that, in spite of the quoting of identical prices by the tenderers, the market was oligopsonistic

in nature and, in such a market, it was the oil marketing company which decided the price. The CCI therefore decided not to proceed against *Prathima*.

Penalties

Supreme Court Confirms that Failure to Follow CCI/DG Directions is a Criminal Offence

In March 2019, the Delhi High Court interpreted Section 42(3) of the Competition Act, which criminalises non-compliance with orders or directions, to cover directions issued by the Director General (DG).⁶ The High Court also rejected arguments that to allow criminal proceedings under Section 42(3) as well as civil proceedings under Section 43 amounted to double jeopardy prohibited by the Constitution of India. In November, the Supreme Court dismissed an appeal against the High Court judgment.⁷ It simply stated that it saw no ground for interfering with the High Court's order and gave no reasons why it had arrived at that view. The Section 42(3) proceedings brought by the CCI before the Chief Metropolitan Magistrate, Delhi against the appellants before the Supreme Court can now continue. The Supreme Court's judgment means that the CCI and the DG are armed with this power to secure compliance with any direction they make.

Procedures

Amendment of General Regulations

The CCI amended its General Regulations resulting in a number of important changes.⁸ The requirement that the CCI maintain

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confidentiality on the identity of an informant (complainant) has been qualified; it may now disclose the identity of the informant where expedient and “for the purposes of the Act” provided the informant is given the opportunity to be heard. There is now a time limit of 30 days to challenge a rejection of a request for confidential treatment by the investigating DG. An informant is now required to disclose details of other disputes/litigation between the parties relating to the subject-matter of the information, allowing the CCI to identify jurisdictional clashes and to avoid wasting time on disputes with no competition law element. Finally, the fee to accompany an information has increased between 100% and 1000% depending on the class of informant.

Merger Control

CCI Consults on Dilution of Standstill Obligations

The CCI invited public comments on a proposed amendment to the Combination Regulations

relating to the acquisition of shares pursuant to a public bid or on a stock exchange.⁹ At present, such an acquisition cannot, where it qualifies as a notifiable transaction, be completed until CCI clearance (or the default 210-day review period has passed), which could result in the prices of these shares rising in the interim. This has meant that would-be purchasers have been unable to acquire such shares for fear of this being regarded as “gun jumping”. Under the proposed amendment, the acquisition of shares would not amount to gun-jumping provided a notification is made without delay and the acquirer does not exercise any right attached to the shares and/or influence the target enterprise in any manner. This should enable would-be acquirers of shares in listed companies to purchase such shares without incurring gun-jumping risks. Public comments are to be sent to combinations@cci.gov.in by 15 December 2019.

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- 1 W.P.(C) 6610/2014 Mahindra & Mahindra v CCI and another (10 April 2019).
- 2 W.P.(C) 6661/2019 CADD Systems and Services v CCI (17 July 2019).
- 3 Suo Motu Case No. 4 of 2014 In Re: Formation of a cartel in the supply of 14.2 kg LPG cylinders (15 November 2019).
- 4 The CCI had initially proceeded against all bidders in this contract. However, following a challenge to this investigation before the Delhi High Court, the conduct of the other bidders was not investigated as their conduct (in relation to another contract) had already been investigated by the CCI in an earlier case.
- 5 Civil Appeal No. 3456 of 2014 Rajasthan Cylinders and Containers Limited v Union of India and another (1 October 2018).
- 6 CRL.M.C. 4363/2018 Rajasthan Cylinders and Containers Limited v CCI and others (29 March 2019).
- 7 SLP No. 3195/2019 Rajasthan Cylinders and Containers Limited v CCI etc. (19 November 2019).
- 8 The Competition Commission of India (General) Amendment Regulations, 2019. For a more detailed outline, see our briefing of 22 November 2019.
- 9 https://www.cci.gov.in/sites/default/files/whats_newdocument/Combination-Regulation-Market-Purchases-For-Public-Comments.pdf.

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