



## Indian Competition Law Roundup: July 2020

In this Roundup, we highlight the main developments in Indian competition law in July 2020.

### Statement of the BRICS Competition Authorities on COVID-19

The Heads of the BRICS Competition Authorities of Brazil, Russia, India, China and South Africa issued a Statement on COVID-19.<sup>1</sup> The Authorities noted the significant impact of the pandemic on all aspects of global economic stability, especially in developing countries and recognised the integral role of competition policy and enforcement in protecting consumers and supporting business during the pandemic and optimally overcoming the consequences of the Post-COVID economic crises. After expressing their intention to join efforts in combating negative economic consequences, by sharing their experiences, information and practices on developing competition, the Authorities agreed to extend cooperation and exchange information on the elaboration of competition measures aimed at resuming economic sectors. They also pointed to promoting awareness of citizens by increasing the transparency of enforcement procedures.

The Authorities confirmed their readiness to collaborate in these exceptional circumstances and to exchange information and practices on competition enforcement activities – in particular antitrust cases and merger review with possible transnational impacts in order to protect the BRICS socially significant markets.

### Institutional Matters

#### *Extension of NCLAT Chairperson's Term of Office*

The term of office of Justice Bansi Lal Bhat as the officiating Chairperson of the National Company Law Appellate Tribunal (NCLAT) has been extended for three months with effect from 15 June 2020 or until a regular Chairperson is appointed or until further orders, whichever is the earliest.<sup>2</sup> As was noted in last month's *Roundup*, Justice Bansi Lal Bhat's appointment has been challenged in a petition to the Delhi High Court, essentially on the ground that a more senior member of the NCLAT should have been appointed. On 21 July 2020, the Central Government asked for more time to reply and the matter has been listed for further hearing on 28 August 2020.

### In this Issue

**Statement of the BRICS Competition Authorities on COVID-19**

**Institutional Matters**

**Horizontal Agreements**

**Abuse of Dominant Position**

**Information Sharing between Agencies**

<sup>1</sup> Statement of the BRICS Competition Authorities on COVID-19 (available at <https://www.cci.gov.in/sites/default/files/event%20document/brics.pdf>).

<sup>2</sup> Ministry of Corporate Affairs Notification S.O. 2226(E) (6 July 2020).



## Horizontal Agreements

### *No Penalty at the Time of COVID-19*

Following references by procurement officials of a number of railway companies, the Competition Commission of India (CCI) found that 10 suppliers of composite brake blocks had, at least from 2009 to 2017, engaged in cartelization, by means of directly or indirectly determining prices, allocating markets, coordinating bid responses and manipulating the bidding process, which had an appreciable adverse effect on competition (AAEC) in India.<sup>3</sup> In addition to the supplying companies, the CCI found 37 officers to be liable for these anti-competitive acts, whether as persons in charge of the companies or as other persons who had consented to, connived at or been negligent in relation to the breach.

The CCI directed the guilty companies and officials to cease and desist in future from indulging in the practices found to be in contravention of Section 3 of the Competition Act, 2002 (*Competition Act*). The CCI decided not to impose penalties, observing that the parties had not only cooperated but had even admitted their respective role/conduct in the tenders. It also noted that some of the parties were Micro Small and Medium Enterprises (MSMEs) and that most of them had small annual turnover for composite brake blocks. The CCI stated that it was also cognizant of the prevailing economic situation due to COVID-19 and the various measures taken by the Government of India to support the liquidity and credit needs of viable MSMEs to help them withstand the impact of the current shock. The CCI therefore, in the interest of justice, refrained from imposing a monetary penalty, “*in the peculiar circumstances of the case*”.

Referring to the cooperation of the opposite parties and the resulting benefits (optimising investigative resources, expediting the adjudicatory process and lessening the regulatory burden), the CCI stated that the ultimate object of the Competition Act was to correct market distortions and to discipline the behaviour of the market participants. These objectives would be met by a “*cease and desist*” requirement. The parties were, however, cautioned to ensure that their future conduct was strictly in accordance with the Competition Act.

This is the second case in two months where the CCI has decided not to impose a fine.<sup>4</sup>

## Abuse of Dominant Position

### *Legitimate Assertion of Trademark Rights not Abusive*

The CCI rejected at *prima facie* stage a complaint that SPS Steels Rolling Mills (SPS) and other related entities/individuals had abused their dominant position by making an announcement threatening civil and criminal prosecution of any person using the trademark ‘ELEGANT’ or associated trademarks.<sup>5</sup> The informant, *Prashant Properties*, had previously been permitted to use these trademarks but, as a result of insolvency proceedings, was no longer able to do so at the time the announcement was made. The CCI held that the informant had been unable to show it had any legal rights in relation to the trademarks. It noted that, in order to bring a competition concern before it, the informant, “*ought to have shown some right that it possessed and that such right has been infringed in terms of the provisions of Section 4 of the [Competition] Act*”. The CCI considered that the announcement was a mere reflection of the rights claimed to be vested in the

## In this Issue

Statement of the BRICS Competition Authorities on COVID-19

Institutional Matters

Horizontal Agreements

Abuse of Dominant Position

Information Sharing between Agencies

<sup>3</sup> *Chief Material Manager, South Eastern Railway v Hindustan Composites Limited and Others*, etc., CCI, Reference Case No. 03 of 2016, etc. (10 July 2020).

<sup>4</sup> As reported in our June 2020 *Roundup*, participants in a ball-bearing cartel were not subject to penalties given the, “*peculiar facts and circumstances*” of that case.

<sup>5</sup> *Prashant Properties Private Limited v SPS Steels Rolling Mills Limited and Others*, CCI, Case No 17 of 2020 (8 July 2020).



# Competition Matters

opposite parties, which they wished to safeguard against misuse. The CCI affirmed that a public announcement by a party of the existence of a legal right that it validly possessed may not be tantamount to an abuse. In these circumstances, the CCI felt it was unnecessary to define a relevant market and assess the dominance of the opposite parties.

## *Prescribing Eligibility Criteria for Tendering Not Abusive*

In dismissing a complaint at *prima facie* stage against the *National Highways Authority of India (NHAI)*,<sup>6</sup> the CCI reaffirmed that the prescription of eligibility criteria by a procurer/buyer of a product or service will not, unless demonstrably unfair or discriminatory, be regarded as abusive. The CCI “*acknowledged the prerogative of the procurer/buyer to decide the tender conditions/technical specifications/ clauses in the tender document as per its requirements*”. In this case, a would-be supplier of consultancy services had been unable to tender to the NHAI as it did not have the specified required experience.

6 *Sandeep Mishra v National Highways Authority of India*, CCI, Case No. 13 of 2020 (8 July 2020).

7 Ministry of Finance Notification S.O. 2528(E) (30 July 2020)

The CCI found that the prescription of eligibility criteria did not appear to be unfair or discriminatory.

## **Information Sharing between Agencies**

### *Income Tax Information Now Available to the CCI*

The Central Board of Direct Taxes has specified the Director General (DG)/ Secretary of the CCI as persons to whom relevant information may be given by specified income-tax authorities.<sup>7</sup> Such information must be relevant and precise and may be supplied only where it is necessary to enable the CCI to carry out its functions. The CCI must also maintain utmost confidentiality in relation to the information supplied. The CCI frequently requires detailed financial information in performing its enforcement and merger control functions. Information provided by the income-tax authorities can now be used to verify or supplement information provided to the CCI by parties to proceedings before it.

## In this Issue

**Statement of the BRICS Competition Authorities on COVID-19**

**Institutional Matters**

**Horizontal Agreements**

**Abuse of Dominant Position**

**Information Sharing between Agencies**

## COMPETITION LAW TEAM

**Pallavi Shroff**

Managing Partner  
pallavi.shroff@AMSShardul.com

**John Handoll**

National Practice Head - Competition Law  
john.handoll@AMSShardul.com

**Naval Satarawala Chopra**

Partner  
naval.chopra@AMSShardul.com

**Shweta Shroff Chopra**

Partner  
shweta.shroff@AMSShardul.com

**Harman Singh Sandhu**

Partner  
harman.sandhu@AMSShardul.com

**Manika Brar**

Partner  
manika.brar@AMSShardul.com

**Aparna Mehra**

Partner  
aparna.mehra@AMSShardul.com

**Gauri Chhabra**

Partner  
gauri.chhabra@AMSShardul.com

**Yaman Verma**

Partner  
yaman.verma@AMSShardul.com

**Rohan Arora**

Partner  
rohan.arora@AMSShardul.com

**Disclaimer**

This is intended for general information purposes only. It is not a substitute for legal advice and is not the final opinion of the Firm. Readers should consult lawyers at the Firm for any specific legal or factual questions.