



## Indian Competition Law Roundup – April 2021

In this Roundup, we highlight some important developments in Indian competition law in April 2021.

### Institutional Developments

#### *New Officiating Chairperson for NCLAT*

Justice AIS Cheema was named as the Officiating Chairperson of the National Company Law Appellate Tribunal (NCLAT) with effect from 19 April 2021, replacing Justice Bansi Lal Bhat who retired on 18 April.<sup>1</sup>

### Abuse of Dominance

#### *A Tale of Two Ports*

After a lengthy investigation, which started in January 2016, the Competition Commission of India (CCI) rejected allegations by the *Tamil Nadu Power Producer Association* that *Chettinad International Coal Terminal Pvt. Ltd.* (CICPTL) had abused its dominant position in the provision of coal terminal services at Kamarajar Port by drastically increasing its common user coal terminal charges.<sup>2</sup> The investigating Director General (DG) initially considered that the relevant market covered two ports, Kamarajar Port and Krishnapatnam Port and that CICPL was not dominant. The CCI directed the DG to reassess the relevant geographic market and, this time, the DG

considered that the relevant market was limited to Kamarajar Port with no competition from other ports; CICPTL was dominant as it was the only common user coal terminal operator at Kamarajar Port. In a rather circular turn of events, the CCI disagreed with this second analysis and considered that there was an overlap in the hinterlands of both ports (Karamajar Port and Krishnapatnam Port), with each acting as a competitive constraint on the other. This meant that CICPTL could not be regarded as dominant. Although the CCI considered that CICPTL had acted “opportunistically” in increasing the charges, in the absence of dominance there could be no abuse.

#### *No Abuse by Liquor Wholesalers*

In the latest of a line of cases involving the liquor sector, the CCI found that a number of exclusive licensees for the wholesale trade in country liquor in the state of Uttar Pradesh had not abused their dominant position in failing to source liquor from the Informant, *Starlight Bruchem Ltd.*<sup>3</sup> The Informant alleged that the licensees had discriminated against it and had refused to give it access to the market, resulting in closure of its distillery. It also argued that they had leveraged their dominant position in the liquor procurement market by favouring their own distilleries. Before dealing with the merits of the case, the

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<sup>1</sup> Ministry of Corporate Affairs, Notification, The Gazette of India No. 1545 (20 April 2021).

<sup>2</sup> *Tamil Nadu Power Producer Association v Chettinad International Coal Terminal Pvt. Ltd. and Another*, CCI, Case No. 73 of 2015 (9 April 2021).

<sup>3</sup> *Starlight Bruchem Ltd. v Flora and Fauna Housing & Land Developments and Others*, CCI, Case No. 53 of 2017 (15 April 2021).



CCI rejected several preliminary arguments including an argument that it did not have jurisdiction in the matter as there was no right to trade in alcoholic beverages such as country liquor, trade in which was inherently immoral or criminal; the CCI pointed to the broad definition of “goods”, “services” and “trade” in the Competition Act, 2002 (**Competition Act**) which included even products seen as “outside the sphere of trade”. The CCI defined the relevant market as that for procurement of country liquor in the state of Uttar Pradesh. It considered that it was unnecessary to decide conclusively on the question of dominance as there was no abuse. The CCI found that closure of the Informant’s distillery resulted from the violation of pollution norms rather than discriminatory treatment by the exclusive licensee, that there was no denial of market access and that the licensee had not sought to leverage its dominance in the procurement market in the market for the manufacture and supply of country liquor in the state. The CCI found that multiple procurers and multiple distilleries were present in the market and there was no preferential treatment of the opposite parties’ own distilleries. The CCI also noted that the Informant had failed to show that it had tried to secure orders to supply liquor.

## *Making a Criminal Complaint Not Abusive*

The CCI dismissed at *prima facie* stage allegations that *Asian Paints* had abused its dominant position by filing a criminal complaint against the Informant, *Arcus Enterprises*, alleging that it sold damaged products as *Asian Paints*.<sup>4</sup> The CCI concluded that the filing of a criminal complaint was not made with a view to oust competition and was not an abuse. It also concluded that there was no horizontal or vertical relationship between the two which could be examined under Section 3 of the Competition Act.

## **Procedures**

### *New Undertaking for CCI Filings*

The CCI issued a public notice advising that, in order to streamline filings in anti-trust matters, to avoid unwarranted difficulties/inconveniences to parties and the CCI, and to facilitate the efficient maintenance of records, all filings in the ATD registry should be made strictly in accordance with the requirements of the CCI General Regulations.<sup>5</sup> An undertaking to this effect in the prescribed format is now to accompany all filings.

### *CCI Requires Hard Copies of Electronic Filings*

As part of its response to the COVID-19 pandemic, the CCI has accepted filings to be made electronically but has made it clear that hard copies are to be filed by dates to be notified by it. On 6 April, the CCI directed that hard copies of all documents filed in electronic form until 31 March 2021 were to be filed immediately but not later than 30 April 2021.<sup>6</sup> The due date has now been extended until 30 June 2021.<sup>7</sup> The CCI noted that it would continue to accept electronic filings as per its current practice.

### *Limitation Periods Extended Again*

In light of the COVID-19 situation, in March 2020 the Supreme Court of India had directed that the period of limitation in proceedings should be extended with effect from 15 March 2020 until further orders. On 8 March 2021, the Supreme Court had noticed that the country was returning to normalcy and brought the extension of limitation to an end with effect from 15 March 2021. However, in view of the second wave of the COVID-19 pandemic, the Supreme Court on 27 April restored the March 2020 Order and extended the period of limitation from 14 March 2021 until further orders.<sup>8</sup> All periods of limitation in competition cases are covered by the Order, which will be reviewed on 19 July 2021.

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<sup>4</sup> S. Kannan, *Arcus Enterprises v Asian Paints Limited and Others*, CCI, Case No. 53 of 2020 (12 April 2021).

<sup>5</sup> CCI, Public notice (1 April 2021).

<sup>6</sup> CCI, *Measures in view of threat of CORONAVIRUS/COVID-19 pandemic* (6 April 2021).

<sup>7</sup> CCI, *Measures in view of threat of CORONAVIRUS/COVID-19 pandemic* (28 April 2021).

<sup>8</sup> *In re cognizance for extension of limitation*, Supreme Court, Misc. Application No. 665/2021 (27 April 2021).



## Competition Advocacy

### *Blockchain Technology and Competition*

The CCI published a discussion paper written with Ernst & Young on blockchain technology and competition.<sup>9</sup> The paper recognizes that this emerging technology can result in efficiencies and cost savings that can promote competition across different sectors of the Indian economy. At the same time, blockchains may potentially be used as vehicles for collusion between competitors (including exchanges of competitively-sensitive information), vertical restraints (subject to a rule of reason analysis), and abuse of dominance. The paper makes it clear that stakeholders in blockchain

arrangements need to be mindful of competition concerns in designing and participating in these arrangements.

## International Cooperation

### *CCI/CADE Memorandum of Understanding*

The Union Cabinet approved a proposed Memorandum of Understanding (MoU) between the CCI and the Brazilian competition regulator, the Administrative Council for Economic Defence of Brazil (CADE). This MoU is similar to MoUs already entered into by the CCI and competition authorities in the US, the EU, Russia, Australia, Canada and other BRICS countries.<sup>10</sup>

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<sup>9</sup> CCI/EY Discussion Paper on Blockchain Technology and Competition (April 2021).

<sup>10</sup> PIB Press Release ID: 1712863 (20 April 2021).

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