



Indian Competition Law Roundup: May 2021

In this Roundup, we highlight some important developments in Indian competition law and policy in May 2021.

CCI Annual Day

The Competition Commission of India (CCI) held its 12th Annual Day on 20 May. This was a vibrant event with the involvement of CCI Members and officials, Government ministers, industry participants, lawyers and others. We note below some salient remarks made by the Chairperson, other Members of the CCI and the Minister for Finance.

CCI Chairperson and Minister for Finance Stress Importance of Competition in Recovery from the Pandemic

In the *plenary session*, the CCI Chairperson, Mr. Ashok Kumar Gupta, highlighted the market friendly approach taken by the CCI, intervening only where businesses undermined consumer interest. Referring to achievements over the past 12 years, he mentioned the steps taken by the CCI during the COVID-19 pandemic, including e-filing, virtual hearings, the Advisory on competitor coordination and the pragmatic approach taken to penalties for enterprises in financial distress. Mr. Gupta stressed the importance of market studies in the CCI's toolkit, including the completed e-commerce study and ongoing studies in the pharma sector, the digital sector, common ownership by private equity investors and cab aggregators. The Minister of Finance, Ms. Nirmala Sitharaman, referred to the market-friendly approach taken by the CCI. Amongst other matters, she pointed to the need for a trust-based system as the country moved to a transparent and open-market approach, stating that heavy-handedness might not work

in the "new economy". She also mentioned the importance of the CCI, especially during and after the pandemic, in reviving economic growth and correcting market failures.

Adapting the Enforcement Toolbox to Address Challenges of the Digital Economy

CCI Member Ms. Sangeeta Verma pointed out that competition law was an essential means to achieve the larger goals of innovation and to ensure that goods were sold at a fair price, which could only be done through a synchronised policy. Fast corrections by the CCI were needed to ensure a level playing field, especially in the fast-evolving digital economy. She pointed to the challenges in dealing with the digital economy, akin to hitting a moving target, and stressed the need for the enforcement toolbox to adapt to and keep up with the significant changes in that field. In relation to procedures and due process, efforts were being taken to ensure the CCI's process did not fall foul of the courts. She also spoke about proposed changes to the confidentiality regime, including the introduction of confidentiality rings.

10 Years of Merger Control

1 June was the 10th anniversary of the entry into force of the new regime. The CCI Chairperson recognized the importance of merger activity in India and stated that the CCI had kept abreast of market dynamics and facilitated the ease of doing business. The new Green Channel route was already being recognized as an effective trust-based system for merger notification. The responsible CCI Member, Mr. Bhagwant Singh Bishnoi, emphasized the need to ensure that, as well as promoting competition, the CCI ensured certainty, reduced the compliance burden on the parties, ensured a simple filing

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process, kept in line with international best practices, was flexible enough to adapt to the dynamic nature of the market and responded swiftly to stakeholders. He pointed to the input of stakeholders when the CCI was considering changes in the regime and concluded that regulatory changes had to address the changes in industry.

Anti-Competitive Agreements

No Bid Rigging by Sexed Bovine Semen Producers

The CCI rejected at *prima facie* stage an allegation by a bovine semen sex sorting lab (Informant) that three other producers of sexed bovine semen (Opposite Parties) had engaged in bid rigging in a tender launched by the Uttar Pradesh Livestock Development Board (Board).¹ The Informant had alleged that two of the Opposite Parties had no prior experience in the field and had created sham bids to create a façade of competition to enable the third, Genus Breeding, to emerge as the lead bidder. The CCI found that Genus Breeding owned the relevant technology and the other two Opposite Parties were active in the field as its authorized distributors and that this was well within the knowledge of the Board. The Board had found that all three were technically qualified. There was nothing to suggest that the Board had overtly or covertly allowed the two to participate in the tender process in an anti-competitive way. The CCI noted that only the three Opposite Parties had been invited to tender based on their Global Expression of Interest (EOI). The Informant had not expressed an interest on the grounds that the technical requirements in the EOI were significantly diluted and the CCI stated that it should have taken up its concerns with the Board which was best suited to consider its requirements.

Nor by Woollen Underpants Suppliers

The CCI also found at *prima facie* stage that two suppliers of woollen underpants who quoted the same rates in a tender by the army had not engaged in bid rigging.² The CCI noted that, other than the mere existence of identical rates, there was no evidence to support allegations of collusion or suggest any relationship between the two. Following established practice, it stated

that price parallelism had to be accompanied by some plus factor in order to substantiate collusion or any agreement between the bidders. There was no plus factor and the CCI concluded there was insufficient information to proceed with the matter.

Abuse of Dominant Position

CCI Orders Investigation against Tata Motors

In *prima facie* proceedings, the CCI considered allegations that Tata Motors Ltd. (Tata Motors) and related companies had abused their dominant position by imposing unfair terms and conditions in dealership agreements for commercial vehicles.³

The CCI *prima facie* considered that, in light of its market share (of 43%) and the market structure, Tata Motors was dominant in the relevant market for the manufacture and sale of commercial vehicles in India. It found that Tata Motors had *prima facie* abused its dominant position by coercing the dealers to bill vehicles as per its own needs and requirements and by preventing dealers from being engaged in any new business even if not related to the automobile industry. However, it rejected allegations that Tata Motors had obliged dealers to raise finance from other group companies.

The CCI also *prima facie* found that restrictions on the territories in which dealers could operate amounted to “exclusive distribution agreements” prohibited under Section 3(4) of the Competition Act. Arguments by Tata Motors that the territorial restrictions were justified and not anti-competitive would have to be examined in a detailed investigation.

Finding a *prima facie* case of breach, the CCI therefore directed an investigation by the Director General.

In reaching its decision, the CCI dismissed two preliminary objections raised by Tata Motors. First, it rejected arguments that the disputes with the dealers were purely contractual and commercial in nature and involved no competition concerns. The CCI pointed out

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¹ *Inguran Sorting Technologies LLP v Genus Breeding India Private Limited and Others*, CCI, Case No. 43 of 2020 (20 May 2021).

² *CP Cell, Directorate General Ordnance Service, Master General of Ordnance Service v Sankeshwar Synthetics Pvt. Ltd. and Another*, CCI, Ref. Case No. 01 of 2020 (20 May 2021).

³ *Neha Gupta v Tata Motors Ltd., Tata Capital Financial Service Limited and Tata Motors Finance Ltd., etc.*, CCI, Case No. 21 of 2019 and Case No. 16 of 2020 (4 May 2021).



that the provisions on abuse of dominant position envisaged, amongst other matters, the imposition of unfair or discriminatory conditions/prices in the purchase or sale of goods and services, which necessarily involved entering into contractual arrangements; to exclude such arrangements from the scope of these provisions would deprive them of their purpose. Second, it rejected arguments that it should not consider the matter on account of delays on the part of the Informants. It stated that the concept and application of the principles of limitation or delays/laches was wholly out of context in the case of the inquisitorial proceedings conducted by the CCI, although it accepted that it could decide not to proceed if competition issues became stale due to lapse of time or inconsequential due to changes in market dynamics or scenarios.

No Abuse in Allotment of Land for Development

The CCI found at *prima facie* stage that the *Greater Noida Industrial Development Authority* (GNIDA) had not abused its dominant position vis-à-vis real estate developers.⁴ The CCI dismissed two jurisdictional pleas raised by GNIDA. First, it rejected arguments that the GNIDA was exercising a sovereign function in acquiring and allotting land and could not therefore be regarded as an “enterprise” subject to the Competition Act; the CCI maintained its established approach, maintaining that the

GNIDA was an “enterprise” as defined in the Competition Act and, at least as regards the allotment of land to developers, could not be regarded as exercising sovereign functions bringing it outside the scope of the Act. Second, as in the *Tata Motors* case, it rejected arguments that, as the issues were contractual in nature, the CCI did not have jurisdiction.

Turning to the merits, the CCI *prima facie* defined the relevant market narrowly as that for the allotment of land for development of group housing projects in Greater Noida and determined that the GNIDA was dominant. The informants had argued that there had been a number of abuses, including the non-disclosure and allotment of encumbered land (riddled with disputes), demanding additional farmer compensation from the developers, demanding unreasonable payments when the developers did not have peaceful possession of the land, non-grant of zero-payments, inaction by the GNIDA on developer representations, and one-sided clauses in lease deeds. Addressing these allegations in turn, the CCI concluded that no interference under the Competition Act was warranted. However, given the genuine difficulties faced by developers, the CCI suggested that the development authorities could meet with the developers and its representative body in a non-adversarial manner to address these.

⁴ *Confederation of Real Estate Developers Association of India – Western Unity Promoters v Greater Noida Industrial Development Authority etc.*, CCI, Case Nos. 34,37 and 38 of 2020 (4 May 2021). Allegations against the *New Okhla Industrial Development Authority* were also dismissed in the same set of proceedings.

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