

August 2021



Indian Competition Law Roundup: August 2021

In this Roundup, we highlight the main developments in Indian competition law in August 2021.

Horizontal Agreements

[Madras High Court Directs Director General to Take Action on Alleged Steel Cartel](#)

In a petition filed by the *Coimbatore Corporation Contractors Welfare Association (CCCWA)* against the *Central Bureau of Investigation (CBI)* before the Madras High Court, it was alleged that a number of steel manufacturers had fixed the price of steel and had sought to restrict the supply of steel, causing artificial increases in the price. The CBI stated that it had no jurisdiction in the matter and that it had forwarded the complaint to the Director General (DG) of the Competition Commission of India (CCI). In view of this, the High Court directed the DG to take necessary and appropriate action on the complaint within four weeks from the date of receipt of the order.¹

Vertical Agreements

[CCI Finds Maruti Engaged in RPM](#)

The CCI found that automobile manufacturer *Maruti Suzuki India Limited (MSIL)* had entered into an agreement with its dealers in India which restricted the discounts that

could be offered by dealers to customers.² This was regarded by the CCI as resale price maintenance (RPM), prohibited under Section 3(4)(e) of the Competition Act. The CCI found that, in addition to imposing its discount control policy on dealers, MSIL enforced this by monitoring dealers through mystery shopping agencies, by imposing penalties and threatening strict action such as stoppage of supply. The CCI found that the RPM had an appreciable adverse effect on competition. In fixing a minimum retail price, there had been a significant reduction in intra-brand competition and a softening of inter-brand competition, leading to higher prices for consumers. In reaching this conclusion, the CCI rejected arguments by MSIL that the discount control policy had pro-competitive effects such as the elimination of the free-riding problem.

The CCI imposed a penalty of INR 200 crores (approx. USD 27.2 million) on MSIL and directed it to cease and desist from indulging in RPM directly or indirectly.

Abuse of Dominance

[CCI Finds Abuse in the Viscose Staple Fibre Market](#)

Following its approach in an earlier order,³ the CCI held that that *Grasim Industries Limited (GIL)* had abused its dominant position in the

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¹ *Coimbatore Corporation Contractors Welfare Association v The Central Bureau of Investigation*, Madras High Court, Cr.L.O.P. No. 6153 of 2021 (29 July 2021).

² *In Re: Alleged anti-competitive conduct by Maruti Suzuki India in implementing discount control policy vis-à-vis dealers*, CCI, *Suo Motu* Case No. 01 of 2019 (23 August 2021).

³ *XYZ v Association of Man-Made Fibre Industry and Others*, CCI, Case No. 62 of 2016 (16 March 2020). This related to the period 2012-2017.



market for the supply of viscose staple fibre (VSF) in India.⁴ The CCI rejected arguments that a broader market definition was appropriate, finding there had been no change in market dynamics since the earlier order, and held that, with a market share in excess of 80%, the lack of competition from imports and barriers to entry, GIL was dominant in the market for supply of VSF to spinners in India. The CCI found that, in withdrawing discounts/credit notes to one of the informants and giving such discounts/credit notes to other competing spinners, GIL had discriminated between buyers and had denied market access to the spinner concerned. It also found that, by requiring spinners to provide details on production and exports of VSF cloth in order to obtain discounts, GIL had imposed supplementary obligations on the spinners having no connection with the primary sale. The CCI directed GIL to cease and desist from these practices. As a penalty had been imposed in the earlier case with respect to substantially similar conduct, and the periods of infringement partly overlapped, the CCI imposed no further monetary penalty on GIL.

[Procurement of Rice Milling Services Held Abusive](#)

The CCI found that the *Odisha State Civil Supplies Corporation (Corporation)* had abused its dominant position in the market for the procurement of custom milling services for rice in the State of Odisha.⁵ It held that the Corporation had abused its dominant position in two ways. First, linking the payment of amounts already due to be paid to millers to the execution of a future contract was regarded as the imposition of unfair terms. Second, the Corporation had withheld legitimate dues from millers without a justifiable reason; this also amounted to the imposition of unfair terms. In relation to the second breach, the CCI noted that the Corporation had since developed an on-line billing management system (OBMS) to facilitate the quick processing and settlement of millers' bills. It made it clear that the non-settlement of legitimate dues in time could tend to jeopardise the competitiveness of the millers and their ability to provide their services. On a holistic assessment and taking

account of factors such as the introduction of the OBMS, the CCI considered that a desist order would serve the ends of justice and did not therefore impose a monetary penalty.

[No Abuse in Medical Scanners Market](#)

The CCI dismissed at *prima facie* stage a complaint that *Siemens* had abused its dominant position in the primary market for the manufacture and supply of CT scan machines and MRI machines and in the secondary market for the sale of spare parts and repair services.⁶ The CCI rejected the argument that there were separate primary and secondary markets. As buyers were able to estimate the life-cycle costs of such machines at the time of purchase, they were able to make an informed choice taking account of the cost of the machine, spare parts and after-sales services. The market thus had to be seen as a unified systems market. The CCI felt it unnecessary to define precise relevant markets, finding that there was substitutability with other types of CT Scan and MRI machines. The CCI found that Siemens was not dominant, as there were other big international players with a strong presence in the market and some domestic players had also entered it. The complainants had not shown that there were no alternatives available from other manufacturers. Indeed, they had sourced machines from other manufacturers. In addition, the CCI noted that, from the point of view of switching, some of the machines concerned had been used for many years and might have reached the end of their life. Furthermore, spare parts and services were available in the open market.

Given the absence of dominance, the CCI stated that a separate finding on abuse was not required. However, it found that the allegations of abuse made by the complainants were unfounded.

Merger Control

[CCI Approves Swiggy Investment](#)

The CCI approved the acquisition by *SVF II Songbird (DE) LLC* (Acquirer), a member of the Softbank Group (Acquirer Group), of a 8.37%

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⁴ *Informant (Confidential) v Grasim Industries Limited*, CCI, Case No. 51 of 2017 (6 August 2021), etc. This related to the period 2017-2018.

⁵ *Maa Metakani Rice Industries v State of Odisha and Odisha State Civil Supplies Corporation Ltd.*, CCI, Case No. 16 of 2019 (5 August 2021).

⁶ *Star Imaging and Path Lab Pvt. Ltd. and Janta X-Ray Clinic Pvt. Ltd. v Siemens Ltd. and Others*, CCI, Case No. 06 of 2020 (13 August 2021).



shareholding in *Bundl Technologies Private Limited (Target)*, which provides hyperlocal on-demand food delivery services through the “Swiggy” brand and engages in other ancillary businesses.⁷ The CCI found that the Target and the Acquirer Group overlapped in markets for the retail sale of groceries and daily essentials, organised food services and food packaging materials. However, the horizontal overlaps were not significant, the parties’ presence in these markets was not substantial when compared to the overall size of these markets and other players were also present.

The CCI also considered actual and potential vertical relationships. There was a vertical relationship between Swiggy, as a procurer of digital payment services and *PayTM Payments Bank Limited (PayTM)*, a portfolio

company of the Acquirer group providing digital payments services. There was also the possibility of a potential vertical relationship between Swiggy and *OlaMoney*, another provider of digital payment services. The CCI considered that there was no risk of foreclosure given the market shares of these players in the upstream and downstream markets and the limited vertical relationships between Swiggy and PayTM. The CCI also identified a vertical relationship in the online advertising services market, with *InMobi Pte Limited (InMobi)* providing services to Swiggy, but had no competition concerns given the low market shares in the upstream and downstream market, the significantly higher shares of other players such as Google and Facebook in the upstream market and the insignificant vertical relationship between Swiggy and InMobi.

⁷ SCF II Songbird (DE) LLC, CCI, Combination Registration No. C-2021/06/842 (12 July 2021).

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