



Indian Competition Law Roundup: May 2022

In this Roundup, we highlight some important developments in Indian competition law and policy in May 2022.

In summary:

- During the Annual Day commemoration of the Competition Commission of India (CCI), the Hon'ble Union Minister for Finance and Corporate Affairs inaugurated the CCI's Regional Office (East), Kolkata.
- A number of new members have joined the National Company Law Appellate Tribunal (NCLAT), enhancing its ability to hear an increasingly large volume of cases, including competition appeals.
- Competition challenges in the digital era were addressed by the Hon'ble Union Minister of Finance and others during the Annual Day.
- Continuing a "new wave" of dawn raids, the CCI raided a number of small mining services companies for allegedly colluding on prices while offering services to Coal India Limited (*Coal India*).
- The CCI found that a clause in an invitation for tender disqualifying bidders who had a "conflict of interest" was not anti-competitive.
- In two cases, the CCI found that acquirers of shareholdings had failed to notify proposed acquisitions to the CCI in the mistaken belief that the Target Exemption applied.

- The CCI initiated a market study on film distribution in India.

Institutional Developments

Minister of Finance Inaugurates CCI Regional Office, Kolkata

On 20 May 2022, the 13th Annual Day commemoration of the CCI,¹ the Hon'ble Union Minister of Finance and Corporate Affairs, Smt. Nirmala Sitharaman, inaugurated the CCI's Regional Office (East), Kolkata. She also launched the CCI's upgraded website, with improved searchability, and released the CCI's Competition Advocacy Booklets translated into Kannada and Malayalam.

Increase in Number of NCLAT Members

On 12 May, four new members joined the NCLAT after taking oath. Justice Rakesh Kumar Jain and Justice Rakesh Kumar joined as Judicial Members, and Mr. Barun Mitra and Mr. Naresh Salecha joined as Technical Members.

Justice Rakesh Kumar Jain is a retired judge of the Punjab and Haryana High Court, while Justice Rakesh Kumar is a retired judge of the Andhra Pradesh High Court. Mr. Barun Mitra is a former Secretary of the Department of Justice and Mr. Naresh Salecha is a former Member (Finance) of the Railway Board.

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¹ <https://www.cci.gov.in/media-gallery/press-release/details/212/0>



With these appointments, the total strength of the members at the NCLAT has increased to 11, including the Chairperson. This will enable it to address the increasingly large volume of cases before it, including competition appeals.

Competition Challenges in Today's World

The challenges posed by digitisation were addressed by speakers in the 13th Annual Day commemoration of the CCI. Pointing out that India was at the forefront of the digital revolution, the Hon'ble Union Minister of Finance and Corporate Affairs, Smt. Nirmala Sitharaman, called upon the CCI to understand the technological nuances of the new era and whether new markets were being effectively, fully and transparently used for the benefit of the consumer. This was echoed by the Secretary of the Ministry of Corporate Affairs, Shri Rajesh Verma, who stated the need for the CCI to keep abreast of developments in technology markets and to redefine the antitrust toolkit.

The Finance Minister also underlined two other areas where action was needed to achieve the public policy goal of competition. First, she emphasised that, in order to speed up recovery, companies needed to scale up. She said that scaling up was already happening and the CCI should have a proactive understanding of what was shaping markets in this process, especially in M&As. Second, in today's context, when the government was pushing infrastructure growth to scale up demand, there was a possibility of threat from cartelisation. She underlined her concerns that input costs were rising despite India having a huge capacity to cater to both domestic and export demands. She said that there was a need to look into these and ensure that there were no monopolistic/duopolistic tendencies leading to price rise and supply side manipulations.

The CCI Chairperson, Shri Ashok Gupta,

recognized that new skillsets were needed in areas such as artificial intelligence, machine learning, data analytics and algorithm design. In view of the size and rapid growth of India's digital consumer bases, the regulatory toolkit for antitrust and merger control cases had to be sharpened and chiseled to account for data-centric ecosystems; whilst market distortions had to be promptly corrected, it was equally important not to compromise incentives for innovation.

The CCI Chairperson emphasized the importance of looking at global developments, where *ex-ante* measures were increasingly supplementing *ex-post* antitrust tools, in order to explore the feasibility of adopting such approaches in India.

Horizontal Agreements

CCI Raids Mining Services Companies

According to public reports,² on 6 May 2022 the CCI conducted raids at several small mining services companies in Kolkata, Ranchi and Dhanbad for allegedly colluding on prices while offering services to Coal India. The raids were conducted as part of an investigation following an information filed by Bharat Coking Coal Limited (BCCL), a subsidiary of Coal India engaged in coal mining and allied activities. The information primarily pertained to an allegation of bid rigging in tenders floated by BCCL for removal of over-burden, extraction and transportation of coal.

Abuse of Dominant Position

CCI Finds "Conflict of Interest" Exclusion in Tender Not Anti-Competitive

The CCI rejected a complaint by a cargo-handling company, *Swastik Road Carrier (Swastik)*, that the *Central Railside Warehouse Company (OP)* had rejected its bid in a tender for handling cargo at a railside warehousing complex in Madhya Pradesh on grounds of "conflict of interest" since it was engaged in

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² <https://www.reuters.com/world/india/india-raids-engineering-firms-after-coal-india-antitrust-complaint-2022-05-06/>



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the same line of business as the OP.³ The CCI considered that a term in the notice inviting tenders providing for disqualification where there was a “conflict of interest” did not appear to be unfair or anti-competitive. The rationale for such a term was clearly spelt out and similar provisions were found in tenders floated by other procurers. In any case, there were many players procuring similar services and a number of players bidding for providing such services on a pan-India and well as regional basis. The OP did not therefore appear to command any market power and the issue of dominance did not arise.

The CCI reiterated its long-standing view that a procurer, as a consumer, could stipulate certain technical specifications in a tender document as it required, which could not be deemed anti-competitive if commercially justifiable. However, if any stipulation made by a dominant procurer was found to be unfair or anti-competitive appropriate action could be initiated against the procurer under the Competition Act, 2002 (*Competition Act*).

Merger Control

The CCI issued two orders under Section 43A of the Competition Act finding failures to notify combinations under the Competition Act and imposing penalties.

CCI Finds Failure to Take Account of Consolidated Turnover in Applying Target Exemption

The CCI found that *Allcargo Logistics (Allcargo)* had failed to notify its proposed acquisition of a shareholding in *GATI Ltd (Target)*.⁴ Looking at the *standalone* assets and turnover of the Target, Allcargo had considered that the transaction was covered by the Target Exemption and was thus not notifiable. The CCI held that Allcargo should have considered the assets and turnover of the Target and its

subsidiaries on a consolidated basis and the Target Exemption would therefore not apply. In view of the cooperation extended by Allcargo, and the material provided by it, the CCI decided to take a lenient view and imposed a penalty of INR 20 lakhs (approx. USD 25,800).

Veolia Fined for Failure to Notify Engie Block Transaction

The CCI also found that *Veolia Environnement S.A. (Veolia)* had failed to notify its proposed acquisition of a 29.9% shareholding in *Suez S.A. (Suez)* from an existing Suez shareholder, *Engie S.A (Engie Block Transaction)* as part of its proposed takeover of Suez.⁵ This was a hostile takeover and Suez had raised the question of non-notification with the CCI. The CCI directed Veolia to make submissions on the question. Veolia argued that, relying on publicly available financial statements and information on Suez and its own knowledge and best estimates, it had understood that the Target Exemption was available. However, Suez claimed that the Target Exemption was not available and argued that Veolia had not conducted proper due diligence on Suez’s activities and subsidiaries in India.

In subsequent Section 43A proceedings, the CCI rejected Veolia’s arguments that it had acted in a *bona fide* manner and had made reasonable attempts to ascertain Suez’s assets and turnover in order to assess the applicability of the Target Exemption. The CCI pointed out that its communication to Veolia together with Suez’s submissions *before* the consummation of the Engie Block Transaction indicated the inapplicability of the Target Exemption and that Veolia could have engaged with the CCI to seek clarification. In any case, regardless of whether its conduct was or was not *bona fide*, it was not necessary to show any intention or bad faith – the Supreme Court had made it clear that

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3 *Swastik Road Carrier v Central Railside Warehouse Company Limited*, CCI, Case No. 04 of 2022 (2 May 2022).

4 *Proceedings against Allcargo Logistics Limited under Section 43A of the Competition Act*, CCI (2 May 2022).

5 *Proceedings Against Veolia Environnement S. A. under Section 43A of the Competition Act*, CCI (17 May 2022).



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the mere breach of the requirement to file would attract the penalty.⁶

Treating cooperation from Veolia and its provision of material/documents in response to CCI information requests as mitigating factors, the CCI imposed a penalty of INR 1 crore (approx. USD 129,000).

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Market Study on Film Distribution in India

Based on a recent media report,⁷ it appears that the CCI initiated a market study on

film distribution in India. This study was intended to “gain insights into various aspects of the state of competition and concerns over anti-competitive practices in the film distribution chain... and explore whether there can be a self-regulatory mechanism within the industry for ensuring a competitive landscape”.

The study was initiated against the backdrop of digitization and over the top (OTT) platforms becoming key factors in the film space.

6 See *Competition Commission of India v. Thomas Cook (India) Limited*, Supreme Court, Civil Appeal No. 13578 of 2015 (17 April 2018).

7 <https://www.thehindu.com/news/national/market-study-on-film-distribution-to-explore-self-regulation-cci-chief/article65417065.ece> (15 May 2022).

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