



Indian Competition Law Roundup: April – May 2023

In this Roundup, we highlight some important developments in Indian competition law and policy in April and May 2023. In summary:

- Certain provisions of the Competition (Amendment) Act, 2023 (*Amendment Act*) entered into force. These included provisions on facilitators of cartels, participants in 'hub and spoke' cartels and expanding the powers of the Director General (*DG*). Important provisions on the merger control and enforcement fronts – including deal value thresholds and the settlements/commitments regime – are yet to enter into force.
- Ms. Ravneet Kaur was appointed Chairperson of the Competition Commission of India (*CCI*). With this appointment, the CCI became quorate and is now able to resume all of its decision-making functions.
- The Calcutta High Court refused interim protection to a steel producer which was the subject of an investigation initiated following a direction from the Madras High Court.
- The National Company Law Appellate Tribunal (*NCLAT*) dismissed an appeal by a company and one of its directors against a CCI order finding that a number of companies and individuals had engaged in bid rigging in the provision of signage to the State Bank of India.
- The NCLAT set aside the penalty imposed by the CCI on ITC Limited for its failure

to notify the acquisition of certain trademarks in 2015. The case turned on the manner for calculating the assets/turnover of the seller when only a part of the business of the seller was acquired, in determining whether the *de minimis* exemption applied. The NCLAT held that a clarification issued in 2017 that only the assets/turnover attributable to the part transferred should be counted and not that for the entire selling entity applied retrospectively and that the acquisition fell within the exemption.

- The CCI cleared the acquisition by AGI Greenpac Limited of 100% of the equity share capital of Hindustan National Glass & Industries Limited (*HNG*) subject to the latter divesting a part of its business. The CCI expressed concerns about the impact on competition in the glass container sector where the parties were leading players but felt that these concerns would be removed by a voluntary modification involving the divestiture of HNG's Rishikesh plant.

Competition (Amendment) Act

Parts of the Amendment Act Enter into Force

The Amendment Act was passed in April 2023. The wide-ranging changes made to the Competition Act, 2002 (*Competition Act*) are to come into effect through separate Government notifications. On 18 May, the

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Government brought several provisions into force.¹ These provisions include those: (a) imposing liability on facilitators of cartels as well as participants in ‘hub and spoke’ cartels; (b) extending the ‘meeting of competition’ defence in abuse of dominance cases; (c) expanding the powers of the DG; (d) limiting the period for filing a complaint; and (e) increasing penalties for certain breaches.

Important provisions on the merger control and enforcement fronts are yet to come into force. These include the introduction of deal value thresholds, expedited merger review timelines, the framework for settlements and commitments, changes to the leniency regime and penalties based on global turnover. It is expected that draft regulations in these areas will be published soon.

Institutional Matters

Appointment of CCI Chairperson

Ms. Ravneet Kaur was appointed as the Chairperson of the CCI on 15 May and assumed charge on 23 May. This ended a hiatus caused by the retirement of the previous Chairperson in October 2022, since when the CCI had been inquorate. As a result, it considered that it was unable to pass orders in the enforcement area, though it employed the ‘doctrine of necessity’ in February 2023 to examine and clear combination cases. With Ms. Kaur’s appointment as Chairperson, the CCI became quorate again and has resumed business on all fronts.

Horizontal Agreements

Calcutta High Court Refuses Interim Protection in Steel Cartel Case

In May, the Calcutta High Court (*Court*) dismissed an application for interim protection in relation to a writ petition filed by Shyam Steel Industries Limited (*Shyam*

Steel) challenging summons issued by the DG to its officials.² The DG’s investigation was triggered by a 2021 order of the Madras High Court directing the DG to investigate allegations of a steel cartel.³ The DG had investigated these allegations on foot of this order without, as would usually be the case, the CCI making a *prima facie* order directing an investigation.

Shyam Steel challenged the summons on the grounds that: (a) it was not named in the Madras High Court order; and (b) the CCI had not passed a *prima facie* order.

In considering an application for interim protection, the Court held that the Madras High Court had, exercising its extraordinary jurisdiction, thought it fit to by-pass the requirement on the CCI to form a *prima facie* opinion and direct an investigation by the DG. There was no requirement for a CCI order.

In relation to the failure by the Madras High Court to name Shyam Steel in its order, the Court noted that Section 26(1) of the Competition Act mentions that an investigation could be made into a “matter” and might not necessarily be confined to a particular company or group of companies. The Madras High Court order had not been challenged and, further, following the Supreme Court’s view in the *SAIL* case, Section 26(1) did not involve any adjudicatory process. The section excluded the principles of natural justice by necessary implication and, in the absence of a jurisdictional error, Shyam Steel had no ground to obstruct the investigation or seek to interrupt/interfere with the process. The Court held that Shyam Steel’s officials would have the opportunity to disprove the charges made against them.

On the question of balance of convenience, the Court was of the view that the writ petition had been filed to block the

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¹ See our briefing of 20 May 2023 [[here](#)] for a summary of the main provisions coming into force.

² *Shyam Steel Industries Ltd. and Another v. Union of India and Others*, Calcutta High Court, WPA 10107 of 2023 (18 May 2023).

³ *Coimbatore Corporation Contractors Welfare Association v. The Central Bureau of Investigation and Another*, Madras High Court, CrI O.P. No. 6153 of 2021 (29 July 2021).



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investigation – the investigation should continue in the public interest and time was of the essence. The matter was listed for further hearing on 28 June.

NCLAT Dismisses Appeal in Big Rigging Case

The NCLAT dismissed an appeal brought by a company and one of its directors against an order finding that they had participated in bid rigging in a tender for providing signage to the State Bank of India.⁴ The CCI had found e-mails which made it clear that the director concerned was involved in the bid rigging and the NCLAT held that these could be relied on by the CCI even where they had come from another party and the company and director had not been copied in on them.

Merger Control

NCLAT Holds that Clarification on Target Exception Has Retrospective Effect

On 27 April, the NCLAT set aside the penalty imposed in 2017 by the CCI under Section 43A of the Competition Act on *ITC Limited (ITC)* for its failure to notify the 2015 acquisition of certain trademarks from Johnson & Johnson.⁵ At that time, a *de minimis* exemption issued in October 2011 provided that transactions would not be notifiable where the target enterprise had assets or turnover in India below INR 2.5 billion and INR 7.5 billion respectively.⁶ In applying this exemption, the CCI considered that, where the sale involved a part, a division or business of the selling entity, the assets/turnover figures of the entire seller entity, rather than those of the part, etc. being transferred, should be taken into account. Applying this approach, the exemption was not available and ITC should have notified the acquisition.

In March 2017, the Ministry of Corporate Affairs issued a notification extending the

duration of the exemption and stating that only the assets/turnover attributable to the portion, division or business being transferred should be counted for the target.

In upholding ITC's appeal against the CCI order, the NCLAT rejected the CCI's arguments that the provision had only prospective effect. The notification was *clarificatory* in nature and applied with retrospective effect. As a result, the relevant turnover of the target fell below the threshold and the exemption therefore applied.

CCI Accepts Voluntary Modification in Container Glass Acquisition

The CCI cleared the acquisition by *AGI Greenpac Limited (AGI)* of 100% of the equity share capital of *Hindustan National Glass & Industries Limited (HNG)* subject to HNG divesting a part of its business.⁷

Both AGI and HNG manufactured and supplied container glass. The CCI found that the parties had a high combined market share with a significant increment arising from the combination. This would significantly affect the level of concentration in the market. The competitive structure of the market would also change, as the parties imposed strong competitive constraints on each other, and the next largest player would have a relatively low market share. The CCI also found that the parties were the market leaders in the *alco-beverage* and *food & beverages (F&B)* segments, with high market shares and significant increases in levels of concentration. It found that: (a) competitors would be able to impose only limited competitive constraints on the parties; (b) there was limited countervailing buyer power; (c) imports did not seem to be a significant factor; and (d) there had been limited expansion of

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⁴ *Hith Impex Pvt. Ltd. and Another v. CCI and Others, etc.*, CCI, Competition App. (AT) No. 21 of 2022, etc. (23 May 2023). The NCLAT had dismissed appeals by another party and one of its directors against the same order in July 2022.

⁵ *ITC Limited v. Competition Commission of India*, NCLAT, Competition Appeal (AT) No. 11 of 2018 (27 April 2023).

⁶ The thresholds have since been increased to INR 3.5 billion and INR 10 billion.

⁷ *AGI Greenpac Limited*, CCI, Combination Registration No. C-2022/11/983 (15 March 2023).



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existing competitors. Although AGI raised the failing firm defence, this was left open by the CCI.

In response to a show cause notice, the parties offered the divestiture of HNG's Rishikesh plant. In assessing the adequacy and suitability of this proposed remedy in addressing competition concerns, the CCI considered it crucial that the divested assets were present in the alco-beverage

and F&B segments. The Rishikesh plant was involved in all container glass segments, the assets were self-contained, and divestiture appeared to incentivise new entry or augment capacity of an existing competitor. A new entrant or competitor would gain an overall presence of 5% in the container glass market and a presence in all segments. The CCI approved the proposed combination subject to compliance with this voluntary modification.

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