



Indian Competition Law Roundup: June 2023

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

- The Supreme Court of India held that *Coal India Limited* was subject to the provisions of the Competition Act, 2002 (*Competition Act*).
- The Delhi High Court held that the Competition Commission of India (CCI) did not have the power to review decisions taken by regulators in discharge of their regulatory functions or to compel a statutory body to outsource functions performed in discharging its statutory duties.
- The CCI found that the *Bank of Baroda* had failed to notify its acquisition of a minority shareholding in *India First Life Insurance Company Limited* and imposed a penalty of INR 5 lakhs (approx. USD 6,000).

Jurisdiction of CCI

Supreme Court Holds that Coal India is Subject to the Competition Act

The Supreme Court of India held that Coal India Limited (CIL) was subject to the provisions of the Competition Act.¹ It rejected arguments by CIL that the Competition

Act was inapplicable to it on the grounds that it was governed by the Coal Mines (Nationalisation) Act, 1973 (*Nationalisation Act*) and operated to further the “common good” which would be prejudiced were the Competition Act to apply to it.

The Supreme Court reviewed the scheme of the Competition Act and noted that the composition of the CCI went a long way in assuring the Court that the decision-making process would be “meticulous, fair and informed”. It held that CIL’s wide powers were subject to limitations arising from binding laws. As a state monopoly, CIL could be an “enterprise” under the Competition Act. Whilst it recognised the potential for conflict between the “common good” goal in Article 39(b) of the Constitution and Section 4(2) of the Competition Act, it found that subjecting a state monopoly to competition law in the current economic regime would not deviate from the “common good” objective. The “common good” was also a goal of the Competition Act.

The Supreme Court further held that the Competition Act would prevail as it was a later act, enacted with awareness of existing laws. It also held that the CCI could be invited to consider all factors under Section 19(4) of the Competition Act

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¹ *Coal India Limited and Another v. Competition Commission of India and Another*, Supreme Court of India, Civil Appeal No. 2845 of 2017 (15 June 2023).



while considering the dominance of CIL and CIL could raise all *bona fide* defences available to it against allegations of abuse of dominance. Given CIL's duty to act in the "common good", the Competition Act could not reduce CIL's status to a mere profit-making entity or constrain it in a way that was oblivious to its obligations under the Constitution of India. The Court recognised that any division of CIL under Section 28 of the Competition Act would be inconsistent with the Nationalisation Act, but Section 28 operated notwithstanding anything contained in any other law in force and the power was not to be operated lightly. Finally, the Supreme Court also noted that the Central Government could make exemptions from the Competition Act (under Section 54), which it had not done in the case of CIL.

The Supreme Court made it clear that its rejection of CIL's arguments were subject to it having all the rights to defend its actions under the law. The judgment was limited to the question whether the Competition Act applied to the operations of CIL. It has yet to adjudicate on the merits of CIL's appeal from the 2016 COMPAT² order³ upholding the CCI's finding that CIL had abused its dominant position.⁴ A number of other cases before the National Company Law Appellate Tribunal (NCLAT) transferred to the Supreme Court for the purpose of deciding whether the Competition Act applied were sent back to the NCLAT for disposal.

Delhi High Court Holds that CCI Cannot Compel Statutory Body to Outsource Training Functions

The Delhi High Court (*High Court*) set aside a 2014 order of the CCI directing investigation by the Director General of allegations that the *Institute of Chartered Accountants of India (ICAI)* had abused its dominant position by restricting to itself the provision of continuing professional education (CPE) seminars.⁵ The High Court held that, whilst ICAI was an 'enterprise' within the meaning of the Competition Act, its decision that members should attend its CPE programme and that it should itself conduct the programme was taken in the exercise of its regulatory functions and had no interface with trade or commerce. The CCI did not enjoy the power to review decisions taken by regulators in discharge of their regulatory functions and in exercise of their statutory powers. The High Court was unable to accept that the CCI's jurisdiction extended to compel a statutory body to outsource functions that it performed in discharge of its statutory duties even if this fell within the sphere of economic activity.

Merger Control

Bank of Baroda Penalised for Failure to Notify Before Completion of Transaction

In an order under Section 43A of the Competition Act,⁶ the CCI found that the *Bank of Baroda (BOB)* had failed to notify its acquisition of 21% of the shares of *India First Life Insurance Company Limited (IFLIC)* from *Union Bank of India (UBI)*. BOB had mistakenly filed a Form III under Section 6(5) of the Competition Act, which allows (if the prescribed conditions are met) certain financial transactions to be notified after the event, rather than filing under Section 6(2) of the Act, which requires filing and

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² The Competition Appellate Tribunal.

³ *Coal India Limited and Another v. Competition Commission of India and Another*, Competition Appellate Tribunal, Appeal No. 80 of 2014 (9 December 2016).

⁴ *M/s Sai Wardha Power Company Ltd. v. Western Coalfield Limited*, CCI, Case No. 88 of 2013 (27 October 2014).

⁵ *Institute of Chartered Accountants of India v. Competition Commission of India and Others*, High Court of Delhi, W.P.(C) 2815/2014 (2 June 2023), setting aside the Order in *Mr. Arun Anandagiri v. The Institute of Chartered Accountants of India*, CCI, Case No. 93/2013 (28 February 2014).

⁶ *Proceedings against Bank of Baroda under Section 43A of the Competition Act, 2022*, CCI (20 June 2023).



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approval of notifiable transactions before consummation. Realising its error, BOB filed a Form I notice with the CCI sometime after consummation of the transaction and the CCI gave its approval in September 2022.

The CCI found that BOB had failed to file a notice prior to consummation of the

transaction and was liable to a penalty. Taking account of the fact that it had made a Form III filing, subsequently filed a Form I notice and fully cooperated during the inquiry, the CCI decided to impose a penalty of only INR 5 lakhs (approx. USD 6,000) on BOB.

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