



## Indian Competition Law Roundup: July 2023

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

- The Central Government notified the provision of the Competition (Amendment) Act, 2023 (*Amendment Act*) empowering the Competition Commission of India (CCI) to appoint the Director General (DG).
- The Delhi High Court ruled that disputes relating to alleged anti-competitive conduct in the licensing of patent rights must be examined under the Patents Act, 1970 (*Patents Act*) and not under the Competition Act, 2002 (*Competition Act*).
- Dr. Bidyadhar Majhi was appointed as Adviser (the head of the Division) at the Combination (Merger Control) Division of the CCI.
- The Ministry of Corporate Affairs (MCA) exempted Regional Rural Banks from the application of Section 5 and 6 of the Competition Act.
- The Madras High Court held that the CCI cannot be stalled from conducting a statutory inquiry while examining a combination.
- The National Company Law Appellate Tribunal (NCLAT) clarified the procedure to be followed by the CCI while approving modifications to a proposed combination after the issuance of a

show cause notice to the Parties.

- The CCI approved the proposed acquisition of a 4.04% shareholding of Acko Technology and Services Private Limited (*Acko Tech*) by General Atlantic Singapore Ack Pte. Ltd. (*GASACK*) subject to certain voluntary modifications by GASACK, reflecting the CCI's concerns regarding shareholdings of the acquirer in two competing firms.

### Institutional Matters

#### Notification of the Power of the CCI to Appoint the DG

The Central Government notified the amendment to the Competition Act which empowers the CCI, and no longer the Central Government to appoint the DG.<sup>1</sup> The CCI shall appoint the DG after scrutiny by a three-member search and selection committee which will include representatives of the Central Government.

### Abuse of Dominance

#### Delhi High Court Bars the Jurisdiction of the CCI in Examining Disputes Relating to the Licensing of Patents

The Division Bench of the Delhi High Court (which sits in appeal against decisions of a single judge of the High Court) ruled that the disputes relating to anti-competitive

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<sup>1</sup> Available at <https://egazette.gov.in/WriteReadData/2023/247428.pdf>.



# Competition Matters

conduct in the licensing of IPRs (specifically patent rights) should be examined under the Patents Act and not under the Competition Act.<sup>2</sup>

The Division Bench closed proceedings before the CCI against Ericsson (filed by a number of mobile handset manufacturers alleging abuse of dominance in the licensing of its Standard Essential Patents), and Monsanto (filed by a number of seed companies and other parties alleging abuse of dominance in the licensing of its Bt. cotton technology) for lack of jurisdiction. The Division Bench overturned previous decisions of a single judge of the High Court which had ruled in the CCIs favour.<sup>3</sup>

Separately, the Division Bench observed that, in cases where parties to a case before the CCI settle their dispute, the CCI cannot proceed with an inquiry based on such a complaint. Once a settlement has been reached between the complainant and the person against whom the complaint before the CCI is filed, the very basis of the proceedings before CCI is lost.

## Merger Control

### Appointment of an Adviser

Dr. Bidyadhar Majhi was appointed as Adviser at the Combination (Merger Control) Division of the CCI. Previously, Dr. Majhi has held various positions at the CCI, including with the Antitrust Division.

### Exemptions for Regional Rural Banks

The MCA issued a notification extending the exemption for Regional Rural Banks from the application of Section 5 and 6 of the

Competition Act for a period of five years till July 2028. The earlier exemption expired in August 2022.

### Madras High Court Holds that the CCI Cannot be Stalled from Conducting a Statutory Inquiry

The Madras High Court dismissed an earlier injunction<sup>4</sup> granted in favour of *Pricol Limited (Pricol)* and refused to interfere with the inquiry by the CCI in the notice filed by Minda Corporation to acquire shareholding in Pricol.<sup>5</sup> The High Court held that the CCI being a statutory authority was conducting a legal inquiry which should not be stalled.

The Madras High Court observed that, even if prior notice of a combination was not given to the CCI, the CCI had the power under Regulation 8 of the CCI (Procedure regarding the transaction of business relating to combinations) Regulations, 2011 (*Combination Regulations*) to conduct an inquiry.

### NCLAT Upholds the CCI Approval of Proposed Combination of HNG and AGI Greenpac

The NCLAT dismissed the appeals filed against the CCI's order of 15 March 2023 approving *AGI Greenpac's* acquisition of *HNG*.<sup>6</sup> The appeals alleged that the CCI did not follow the procedure set out under the Competition Act and the Combination Regulations while examining the transaction. Rejecting these contentions, the NCLAT held that the CCI had considered all material on record and had not committed any error in approving the acquisition.

The NCLAT additionally held that, under Section 29(1) of the Competition Act, the

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<sup>2</sup> *Telefonaktiebolaget LM Ericsson (Publ) v. Competition Commission of India and Another*, Delhi High Court, LPA No. 247 of 2016, etc. (13 July 2023).

<sup>3</sup> *Telefonaktiebolaget LM Ericsson (Publ) v. Competition Commission of India and Another*, Delhi High Court, W.P. No. 464 of 2014, etc. (30 March 2016).

<sup>4</sup> *Pricol Limited v. Union of India and Others*, Madras High Court, WMP No. 15510 of 2023 and WMP No. 15512 of 2023 (24 May 2023).

<sup>5</sup> *Pricol Limited v. Union of India and Others*, Madras High Court, WP No. 16079 of 2023 and WP No. 16081 of 2023 (11 July 2023).

<sup>6</sup> *The U.P. Glass Manufacturers Syndicate v. Competition Commission of India and Others*, NCLAT, Competition Appeal (AT) No. 07 of 2023, etc. (28 July 2023).



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show cause notice must be issued to both the parties of the combination, i.e., the Acquirer and the Target entity. However, the non-issuance of the show cause notice to the Target did not vitiate the approval by the CCI.

## The CCI Accepts Voluntary Modification in Container Glass Acquisition

The CCI cleared the acquisition by GASACK of 4.04% shareholding in Acko Tech subject to certain voluntary modifications by GASACK.<sup>7</sup> GASACK already held some shareholding in Acko Tech along with affirmative voting rights, information rights and right of representation on the board of directors of Acko Tech. The proposed combination envisaged additional rights for GASACK including the right to appoint an additional director on the board of Acko Tech, and appoint an observer on the boards of directors of Acko Tech's regulated subsidiaries.

Separately, Acko Tech held a 2.95% stake in Vivish Technologies Private Limited (*Vivish*) and the right to appoint an observer to the board of directors of Vivish. GASACK separately had a substantial interest

in NoBroker. Vivish and NoBroker were competitors in a separate market for platforms for buying, selling and renting immovable property. The CCI was concerned that GASACK's shareholding and ability to exert direct or indirect influence in both Vivish and NoBroker might raise the risk of softening of competition between two prominent players.

To allay the concerns of the CCI, GASACK offered voluntary modifications, undertakings that GASACK and any other entity in the General Atlantic group would not directly or indirectly: (a) participate in, associate with or exert influence on any matter or affair related to Vivish or investments of Acko Tech; (b) access, knowingly receive or become privy, to any non-public information relating to Vivish which was accessed or possessed by Acko Tech; and (c) influence or engage with any person appointed by Acko Tech, as an observer on the board of Vivish or in any capacity vis-à-vis Vivish. The CCI approved the proposed combination subject to compliance with this voluntary modification.

<sup>7</sup> General Atlantic Singapore ACK Pte. Ltd., CCI, Combination Registration No. C-2023/04/1017 (6 June 2023).

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