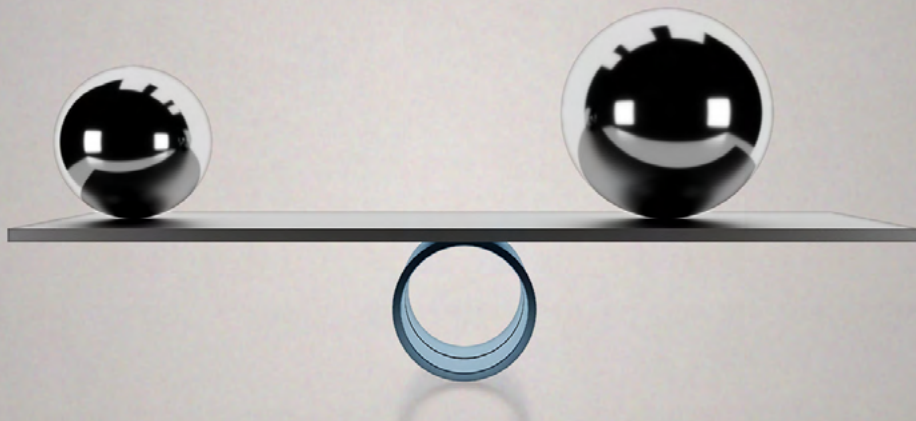


January 2024



Indian Competition Law Roundup: November - December 2023

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

- By the end of December, public consultations on several draft regulations implementing various provisions of the Competition Act, 2002, as amended by the Competition (Amendment) Act, 2023, had closed and the Competition Commission of India (CCI) was considering feedback and the ramifications of the proposed changes before deciding on the final regulations. Additionally, in December, draft regulations on determining turnover and income for the purposes of imposing penalties were published for public consultation.
- The Delhi High Court held that the CCI had the power to implead parties at any stage provided that the two-fold test of 'substantial interest' and 'public interest' under the Competition Commission of India (General) Regulations, 2009 (*General Regulations*) was met.
- In December, the CCI published its report on the market study examining the competition dynamics in India's mining sector. It had previously initiated a market study on the cement sector in October. The CCI Chairperson also stated, in an interview in December by the Economic Times, that the CCI would soon launch a market study on artificial intelligence and competition.

Implementation of New Competition Act Provisions

In the course of 2023, the CCI published several draft regulations implementing various provisions of the Competition Act, 2002, as amended by the Competition (Amendment) Act, 2023, for public consultation. These included draft regulations on: (a) the settlements/commitments regime (August 2023); (b)

merger provisions, including the new deal value threshold and the regime for open market purchases (September 2023); and (c) lesser penalties (October 2023). These consultations had all closed by the beginning of November. The CCI was still considering the stakeholder feedback and the ramifications of the proposed changes at the end of the year. It is not clear when the final regulations will be ready for notification.

In December, the CCI published for public consultation draft regulations on the determination of turnover or income for the purpose of imposing penalties. Comments may be submitted by stakeholders till 25 January 2024 using the form specified by the CCI.

Competition Procedures

CCI has Power to Implead Parties at any Stage

The Delhi High Court held that the CCI had the power to implead any party to a proceeding at any stage provided the two-fold test of 'substantial interest' and 'public interest' under Regulation 25 of General Regulations was satisfied.¹ In this case, the CCI had permitted the impleadment of the *Builders Association of India* as an informant in ongoing proceedings against cement manufacturers even after the investigation report of the Director General was submitted to the CCI. The High Court found that the CCI's order was adequately reasoned and satisfied the two-fold test of 'substantial interest' and 'public interest' under Regulation 25 of the General Regulations. It also observed that due notice had been given to the cement manufacturers before the order was passed. The High Court rejected arguments that such impleadment adversely affected the rights of the opposite parties. It held that impleadment,

¹ *Ultratech Cement v. Competition Commission of India and Another*, High Court of Delhi, W.P.(C) 9854/2023 etc. (18 December 2023).



even at a later stage, did not prejudice the rights or obligations of the parties involved. Instead, it allowed the CCI to reach an informed decision on potential violations of competition law.

Market Studies

Publication of Mining Sector Report

In December, the CCI published the Market Study Report (*Report*) on competition dynamics in the mining sector with a focus on iron ore.² The Report: (a) identified the macro trends in the mining industry in general and the iron ore sector in particular; (b) delineated the regulatory framework relevant to the mining industry and the way it had evolved over time; (c) critically reviewed the nature of market concentration in the iron ore industry and the regional concentration of iron ore resources; (d) highlighted the share of public sector companies, Indian business groups, and standalone companies in the iron ore sector as well as how concentration and profitability in this sector affected cost structure and profitability in the steel industry; and (e) empirically examined some of the issues highlighted by the respondents to a survey. The Report then set out policy recommendations to: (a) address bottlenecks in the availability of iron ore and promote transparency in fixing base

prices through e-auctions; (b) promote self-regulation through competition awareness programmes; and (c) discourage iron ore exports and encourage domestic production of steel to control prices.

CCI Launches Market Study on Cement Sector

In October, the CCI initiated a market study on the cement sector in India.³ The CCI emphasized the significance of a well-functioning and competitive cement market given the crucial role cement played in vital sectors such as housing and infrastructure. Considering this, and the observation that structural features of the cement market across regions in India made it susceptible to collusion, the market study would be a fact-finding exercise to develop a comprehensive understanding of the cement sector and its competition dynamics across regions in India.

Forthcoming Study on Artificial Intelligence

The CCI Chairperson, Mrs. Ravneet Kaur, stated in an interview by the Economic Times that the CCI would soon commission a market study on artificial intelligence to understand the sector and identify any anti-competitive concerns, including potential stifling of innovation.⁴

² CCI, *Market Study Report on Dynamics of Competition in the Mining Sector with a Focus on Iron Ore* (31 July 2023).

³ CCI, *'Competition Commission of India launches Market Study on the Cement Sector in India'*, Press Release No. 37/2023-24 (3 October 2023).

⁴ Economic Times, *'No new interim norms to regulate big tech players: CCI chairperson'* (18 December 2023).

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