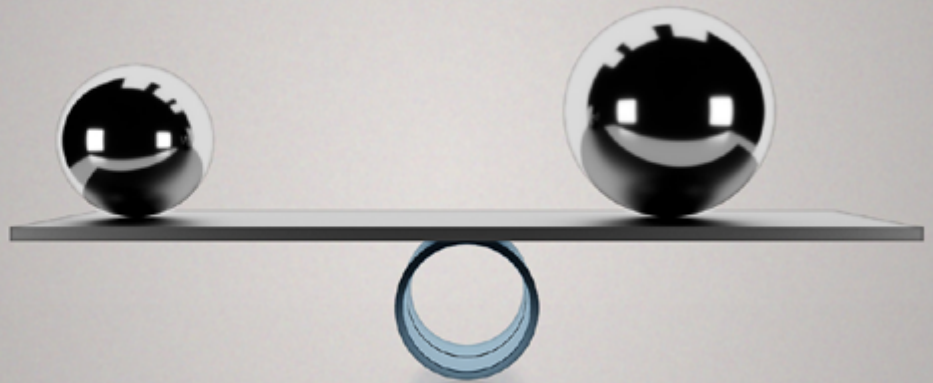


June 2025



Indian Competition Law Roundup - May 2025

In this Roundup, we highlight some important developments in Indian competition law in May 2025.

In summary:

- The Supreme Court of India affirmed the 2014 Order of the Competition Appellate Tribunal finding that Schott Glass India Private Ltd. had not abused its dominant position in the supply of glass tubing for use in the pharmaceutical sector.
- The Competition Commission of India (CCI) issued new regulations for determining costs of production in predatory pricing cases.
- The Kerala High Court held that the CCI, rather than the Indian telecoms regulator, had the jurisdiction to deal with cases involving allegations of abuse of dominant position.

Abuse of Dominance

Supreme Court Confirms that Schott Glass Did Not Abuse Its Dominant Position

On 13 May, the Supreme Court of India dismissed an appeal by *Kapoor Glass India Private Ltd.* against the April 2014 order of the Competition Appellate Tribunal¹ overturning the March 2012 order of the CCI² finding that *Schott Glass India Private Ltd. (Schott)* had abused its dominant position in the neutral USP-I borosilicate tubing market (for use in the pharmaceutical sector).³

The Supreme Court affirmed the need for an effects-based analysis in abuse of dominance cases. The CCI had failed to carry out a proper harm analysis.

The Supreme Court found that Schott was dominant in the separate NGC (clear) and NGA (amber) tubing markets.

However, it rejected the CCI's specific findings of abuse:

- It held that *volume rebates* were neutral, applying equally to all purchasers and objectively justified by efficiency considerations. There was no evidence of discrimination or foreclosure of competition.
- *Functional rebates and long-term agreements* were objectively justified and available to all converters meeting the same criteria. There was no evidence of exclusion or of adverse effect on competition.
- None of the three elements of *margin squeeze* were present. First, Schott was not present in the downstream conversion market. Second, the wholesale-to-retail spread was sufficient for an equally efficient competitor to achieve sustainable margins. Third, there was no competitive harm, in particular no suggestion of foreclosure.
- The aggregation of NGC and NGA tubing for rebate purposes did not involve *tying*. They were not independent products, there was no compulsion to buy both, and no foreclosure was shown. In any event, the rebate design was objectively justified.

In making these findings, the Supreme Court referred to jurisprudence of the Court of Justice of the European Union. Its judgment will be a key reference for abuse of dominance cases in India in the future.

The CCI order was also vitiated by procedural errors, in particular the CCI's failure to allow cross-examination of key witnesses.

¹ *Schott Glass India Private Ltd. v Competition Commission of India*, COMPAT, Appeal No. 91 of 2012, etc. (2 April 2014).

² *Kapoor Glass India Private Ltd. v Schott Glass India Private Ltd.*, CCI, Case No. 22 of 2010 (29 March 2012).

³ *CCI v. Schott Glass India Private Ltd. and Another*, Supreme Court of India, Civil Appeal No. 5843 of 2014, etc. (13 May 2025).



Competition Matters

CCI Issues Revised Cost of Production Regulations for Use in Predatory Pricing Cases

On 6 May, the CCI notified the Competition Commission of India (Determination of Cost of Production) Regulations 2025 (2025 Regulations),⁴ replacing the 2009 Regulations. The 2025 Regulations address the determination of the “cost of production” for the purposes of establishing whether there is predatory pricing under Section 4 of the Competition Act (which defines “predatory pricing” based on the benchmark of cost of production).

Significant changes include the omission of “market value” as a cost metric, since it reflected external factors like consumer willingness to pay and perceived value. There is also a more detailed and comprehensive definition of “Long Range Average Incremental Cost” (LRAIC), which now includes the average of all variable and fixed costs, including sunk costs that are directly or indirectly attributable to the production of a specific product of service. These changes are designed to ensure consistency with international best practice and jurisprudence.

CCI’s Jurisdiction

⁴ CCI, Competition Commission of India (Determination of Cost of Production) Regulations 2025 (6 May 2025).

⁵ Asianet Star Communications Private Limited, High Court of Kerala, WP(C) No. 29766 of 2022 (28 May 2025).

Kerala High Court Clarifies the CCI’s Jurisdiction as a Sectoral Regulator

In May 2025, the Kerala High Court rejected arguments that the Telecoms Regulatory Authority of India (TRAI) had jurisdiction in a case involving allegations of an abuse of dominant position by *Asianet Star Communications Private Limited* and that the CCI could address such allegations only if the TRAI referred the matter to it.⁵

The High Court considered that the Competition Act, 2002 and the Telecom Regulatory Authority Act, 1997 (TRAI Act) were each special statutes, respectively addressing anti-competitive practices (including abuses of dominant position) and the regulation of telecoms. It noted that the TRAI Act did not address anti-competitive practices. The CCI and TRAI operated in different and distinct fields. The CCI would have the jurisdiction to deal with allegations of abuse of dominant position, whereas the TRAI would deal with any allegations regarding violation of terms of telecoms licence conditions or of TRAI regulations. The High Court stated that the CCI was competent to deal with the jurisdictional issue. The petitioners should be free to address arguments on jurisdiction before the CCI, which would decide the issue before continuing with the matter on its merits.

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