



Luthra and Luthra
LAW OFFICES INDIA

COMPETITION LAW ALERT

JUNE EDITION

INSIDE

Central Government appoints Chairman and extends tenure of DG, CCI for further 3 months.....	2
SC stays INR 202 Crores penalty imposed by CCI on Amazon	2
DHC quashes CCI’s investigation against ICAI.....	2
Madras High Court restrains Minda from raising stake in Pricol	3
Central Government enforces certain provisions of the Competition (Amendment) Act, 2023.....	4
Cabinet approves MoU between CCI and Egyptian Competition Authority ...	5



In the June Edition of the Luthra and Luthra Law Offices India – ‘Competition Law Newsletter’, we cover some of the most pertinent developments in the competition law space over the last month.

Central Government appoints Chairman and extends tenure of DG, CCI for further 3 months

The Central Government on [16.05.2023](#) has appointed Ms. Ravneet Kaur as Chairperson of the Competition Commission of India (**CCI**) for five years. Ms. Ravneet Kaur is a Punjab Cadre IAS officer from the 1988 batch. Ever since ex chairperson of the CCI, Mr. Ashok Kumar Gupta demitted office in October 2022, CCI has not been fully functional and could not pass any orders due to lack of quorum mandate. Media reports and recent tweets by the CCI suggest that the CCI will henceforth start performing all judicial and administrative functions shortly.

Separately, the Central Government on [01.06.2023](#) has also extended the tenure of Mr. Atul Verma, the Director General (**DG**) of the CCI for a period of three months.

SC stays INR 202 Crores penalty imposed by CCI on Amazon

The Supreme Court of India (**SCI**) vide order dated [08.05.2023](#) has stayed the penalty of INR 202 crores imposed by the CCI on Amazon.com NV Investment Holdings LLC (**Amazon**). The penalty was imposed in relation to the acquisition of

49% stake in Future Coupons Private Limited (**FCPL**). The CCI in its order had referred to various agreements between the entities of Amazon and the Future group and noted that Amazon failed to notify certain agreements and commercial arrangements involving Future group and suppressed the actual purpose and particulars of the deal from the CCI.

DHC quashes CCI’s investigation against ICAI

The Delhi High Court (**DHC**) vide judgment dated [02.06.2023](#) quashed the investigation ordered by the CCI against the Institute of Chartered Accountants of India (**ICAI**). The writ petition was filed by ICAI challenging the order dated 28.02.2014 passed by the CCI under Section 26(1) of the Act where the CCI directed DG to conduct an investigation against ICAI for abusing its dominant position by imposing unfair and discriminatory conditions in rendering of Continuing Professional Education (**CPE**) services by insisting its members to only attend seminars organized by ICAI and not allowing any other organization to conduct such Seminars.

ICAI argued before the DHC that it is a non-profit organization and not an ‘enterprise’ under the Act; thus CCI does not have jurisdiction over its activities. It was also argued that ICAI is exercising its statutory powers under the Chartered Accountants Act, 1949 and therefore CCI would have no jurisdiction to review its decisions, policies, or the manner in



which it discharges its functions. It was further argued that ICAI is empowered to regulate the profession of accountancy and it is not involved in an open commercial market for conducting professional development activities and therefore its actions cannot attract any regulation by CCI. On the other hand, the CCI argued that ICAI has created a monopoly in providing services of the CPE structured learning activities and has rejected the applications of several reputed non-profit organizations for holding and organizing such CPE seminars, thus violating provisions of Section 4 of the Competition Act, 2002 (**Act**).

The DHC held that ICAI is an 'enterprise' and falls within the ambit of Section 2(h) of the Act. However, the DHC held that the decision of ICAI to formulate or structure CPE Program for the maintenance of professional standards cannot be considered as an abuse of dominant position as it pertains to its functions as a 'regulator' and not as a service provider. CCI's power is for regulating markets and it does not extend to addressing any grievance regarding arbitrary action by any statutory authority. Further, it was also observed that the CCI cannot act as an appellate court or a grievance redressal forum against such decisions which are taken by other regulators, in the exercise of their statutory powers. The DHC made some important remarks such as that the CCI cannot force a statutory body to

outsource its functions and create an open market simply because it performs an economic activity. Further, the DHC held that the CCI does not hold the power to review decisions made by statutory bodies or a foreign government, merely because they are not relatable to a sovereign function of the Government. The scope of the CCI's examination was limited to only those areas of economic activities, which have a bearing on the market that engages entities involved in trade and commerce.

Madras High Court restrains Minda from raising stake in Pricol

The Madras High Court (**MHC**) on 24.05.2023 passed an interim order restraining the CCI to adjudicate Minda Corporation's (**Minda**) notification in relation to acquisition of 24.5% shares in Pricol Limited (**Pricol**) and issued notices to the CCI and Minda. The writ petition was filed by Pricol before the MHC challenging the notification of Minda before the CCI seeking approval of acquisition of shares in Pricol from open market.

In February 2023, Minda had acquired 15.7% stake in Pricol by purchasing 1.91 crores shares from the open market. Thereafter, Minda filed a notification to the CCI for increasing its stake upto 24.5% in Pricol. It is pertinent to note that both Pricol and Minda are direct competitors and compete in the two-wheeler instrument cluster business.



Central Government enforces certain provisions of the Competition (Amendment) Act, 2023

The Central Government on 18 May 2023 enforced certain provisions of the Competition (Amendment) Act, 2023 (**2023 Act**):

- i. Limitation period in filing of an information:** The 2023 Act provides that the CCI shall not entertain an information or a reference by the Government unless it is filed within three years from the date of the alleged contravention. However, the CCI has been given the power to condone such delay if it is satisfied that there has been sufficient cause shown by the party for not filing the information within such timelines. Furthermore, the 2023 Act empowers the CCI to dismiss complaints of similar facts and circumstances or which have already been dealt by the CCI.
- ii. Inclusion of 'Hub and Spoke' Cartels:** The 2023 Act clarifies that the CCI is empowered to investigate an enterprise or an association if such an enterprise or association participates or intends to participate in a cartel even if they are not engaged in identical or similar trade.
- iii. Enhanced powers of DG:** The 2023 Act empowers the DG to examine on oath any person acting on behalf of the party (including bankers, auditors, Company Secretaries and 'in house' legal advisors) during the course of investigation. Furthermore, all agents, officers and employees of a party under investigation are duty bound to preserve and produce all information, books, papers etc. relating to the party and to provide all assistance to the DG in connection with the investigation.
- iv. Appeals before the NCLAT:** The 2023 Act mandates the parties to deposit 25% of the penalty amount which has been imposed by the CCI as a condition precedent before any appeal is admitted by the NCLAT.
- v. Widening the scope of vertical anti-competitive agreements:** The 2023 Act clarifies that all business agreements entered between an enterprise or a person will be under scrutiny if they cause or are likely to cause any Appreciable Adverse Effect on Competition (**AAEC**) in India.
- vi. Increase in penalty for false statements in M&A cases:** The 2023 Act has increased the amount of monetary penalty which the CCI can impose on parties furnishing false information or omitting any information from INR 1 crore to INR 5 crore.

Other Changes:

- The 2023 Act clarifies that a condition or price imposed by a dominant entity to meet competition will not be treated as “unfair or discriminatory”.
- The 2023 Act empowers the CCI to call for a supplementary investigation report from the DG, if required.
- The 2023 Act empowers the CCI to enter into a Memorandum of Understanding with any statutory authority or department of government, in addition to any foreign agency/ regulator.
- The 2023 Act has omitted the provision relating to “casting vote” of CCI’s chairperson in the event of equality of votes. Now, the voting will be determined on the basis of simple majority.
- The 2023 Act provides that parties may call experts from the field of economics, commerce and trade or other similar background to provide their suggestions/ opinion to the CCI.
- The 2023 Act provides that the CCI shall invite public comments before issuing any regulations under Section 64 of the Act.

Cabinet approves MoU between CCI and Egyptian Competition Authority

The Union Cabinet on [17.05.2023](#) has approved the signing of Memorandum of Understanding (**MoU**) between the CCI and the Egyptian Competition Authority (**ECA**). This would enable CCI to emulate and learn from the experience and lessons of its counterpart competition agency in Egypt. Section 18 of the Act allows CCI to enter into any memorandum or arrangement with any agency of any foreign country to discharge its duties or perform its functions under the Act. The CCI in the past has entered into MoUs with several overseas competition authorities of countries such as Europe, Australia, USA, Japan, Brazil, Russia, China, South Africa and Canada.

This newsletter is only for general informational purposes, and nothing in this edition of newsletter could possibly constitute legal advice (which can only be given after being formally engaged and familiarizing ourselves with all the relevant facts). However, should you have any queries, require any assistance, or clarifications with regard to anything contained in this newsletter (or competition law in general), please feel free to contact Mr. G.R. Bhatia/ Mr. Arjun Nihal Singh, at the below mentioned coordinates. © Luthra & Luthra Law Offices India 2023. All rights reserved.

The Team:-



G.R. BHATIA

Partner and Head – Competition Practice

Email: - GBhatia@luthra.com

Ph.: +91 11 4121 5192



ARJUN NIHAL SINGH



MANAV GUPTA



SANYAM JUNEJA



TOSHIKA SONI