



Luthra and Luthra
LAW OFFICES INDIA

COMPETITION LAW ALERT

MARCH EDITION

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In the March edition of the Luthra and Luthra Law Offices India - Competition Law Newsletter, we discuss some of the interesting developments in the Competition Law space.

MCA proposes additional amendments by introducing the Competition (Amendment) Bill, 2023

On 08.02.2023, the Ministry of Corporate Affairs (**MCA**), introduced certain additional amendments to the Competition Bill, 2022 (**2022 Bill**) by way of the Competition (Amendment) Bill, 2023 (**2023 Bill**). The 2023 Bill proposes certain far-reaching changes which can be a matter of debate, such as the imposition of penalty on the 'global turnover' of the delinquent parties. This proposal seems to be in contradiction to the decision rendered by the Supreme Court of India (**SCI**) in *Excel Crop Care Ltd. v. CCI, (2017) 8 SCC 47*, which settled the interpretation of the term 'turnover' confining it to "relevant turnover" as opposed to "total turnover". The proposed amendment has come as a total surprise to all the stakeholders since it was neither recommended by the [Competition Law Review Committee \(CLRC\)](#) nor by the [Parliamentary Standing Committee \(Committee\)](#).

With respect to cartels, the 2023 Bill proposes to further expand the scope of cartel prosecution to include non-participants who had '*intended to participate*' in the cartel. In simpler words, parties not actively facilitating the cartel

but have an intention of doing so will also be held liable.

The 2023 Bill has proposed to entertain compensation claims even in 'settlement' cases. Thus, given that a settlement applicant may be liable not only to pay a "settlement amount" to the Competition Commission of India (**CCI**) but also compensation to those who have suffered loss/ damage on account of violation of law.

The 2022 Bill had proposed a deal value threshold wherein, any transaction breaching the deal value of INR 2000 crores would require notification to the CCI if the parties who are part to the transaction have "*substantial business operations in India*". The 2023 Bill proposes to clarify the scope of '*substantial business operations in India*' by narrowing it down to the target entity only.

The 2022 Bill proposed to reduce timeline for the CCI to form a prima facie opinion on whether a transaction causes or is likely to cause appreciable adverse effects on competition in India (**AAEC**) from thirty (30) *working days* to twenty (20) calendar days. The 2023 Bill proposes to change the timeline from the existing 30 working days to 30 calendar days for the CCI to form its prima facie opinion whether the transaction causes or is likely to cause AAEC.

Lastly, the 2023 Bill proposes to narrow



down the scope of powers of the Director General (**DG**) to examine only inhouse legal advisors of a party, instead of external legal advisors, as proposed in the 2022 Bill. This change is consistent with the sacrosanct 'attorney client privilege' and the provisions of the Evidence Act, 1872.

CCI moves Supreme Court of India against NCLAT order in tyre cartel matter

The CCI has filed an [appeal](#) before the SCI against the order dated 01.12.2022 passed by the NCLAT wherein it remanded the matter back to the CCI for its review. The matter is yet to be heard. Earlier, the CCI vide its order dated 31 August 2018 held that five of the largest domestic tyre manufacturers namely, Apollo, Ceat, JK, MRF and Birla (including their KMP's), were guilty of cartelization. The CCI concluded that the tyre manufacturers under the aegis of Automotive Tyre Manufacturers Association (**ATMA**) had indulged in information exchange and thereby violated Section 3 of the Act. In addition to 'cease and desist' directions, a penalty of approx. INR 1789 crores was levied on the tyre companies and ATMA including their officers/ KMP's.

The NCLAT observed that the findings of the CCI were laced with arithmetical errors, incorrect calculation of penalty, errors with respect to violation of Section 3(3)(b) of the Act, amongst other reasons.

Supreme Court stays NCLAT's order on United Breweries

On 17.02.2023, the Supreme Court of India stayed an order passed by the NCLAT affirming penalty of INR 751.83 crores on United Breweries Limited (UBL) imposed by the CCI in the beer cartel case. The SCI, however, directed the appellants to deposit an additional 10% of the penalty amount (over and above the amount already deposited before the NCLAT) for granting stay on the recovery proceedings. In a BSE filing, UBL stated that it will comply with the directions and the said additional 10% penalty amount shall be deposited within the stipulated time.

Bombay High Court directs CCI to decide on jurisdiction before proceeding in the debenture trustee cartel matter.

A Division Bench of Bombay High Court (**BHC**) vide order dated [21.02.2023](#), allowed the Trustee Association of India (**TAI**) and three leading debenture trustees (**Axis, SBICap, and IDBI**) to approach the CCI to decide on the issue of its jurisdiction. As a matter of background, in 2021, an information was filed by Muthoot Finance before the CCI alleging cartelization in the debenture trustee sub-segment. Pursuant to the information, the CCI passed an order directing the DG to cause an investigation into the matter. Consequently, in 2022, the TAI, along with the debenture trustees, had approached the Bombay High Court challenging the CCI's jurisdiction to

investigate the matter. Though the BHC has directed the CCI to decide the question of jurisdiction first, it is pertinent to note that the matter may be deferred due to the lack of coram at the CCI. It is important to note that the Chairman demitted office on 25.10.2022 and there has been a vacancy ever since.

CCI to examine HNG's acquisition over monopoly concerns

[News reports](#) suggest that various complaints have been filed before the CCI in relation to the acquisition of Hindustan National Glass (**HNG**) by AGI Greenpac, which was approved by the Committee of Creditors (**COC**) which were formed as per HNG's ongoing insolvency process. The CCI is said to have received complaints against the proposed acquisition as HNG and AGI Greenpac will have a combined market share of approx. 60 percent in the container glass industry, which can result in competition concerns.

CCI approves 12 pending M&A transactions.

The CCI has approved 12 pending M&A's, which include global transactions as well. These cases had been pending approval since October 2022 due to lack of quorum. The CCI approved these transactions by [invocation](#) of 'doctrine of necessity' principle.

Other developments/ updates BRICS Conference

The CCI will be hosting the VIII BRICS ICC (International Competition Conference) in October 2023. BRICS provides a very useful platform for competition authorities to exchange views on various facets of competition regulation.

National Logistics Policy

Efficient logistics are extremely important for a growing economy, such as India. As per the World Bank Logistics Performance Index 2018, Germany is at the top, whereas India is at the 44th position. India spends 13-14% of its GDP on logistical costs, whereas Germany spends approx. 8-9%. It is in this background that the National Logistics Policy (**NLP**) was launched by the Ministry of Commerce and Industry on 17.09.2022. The synergies flowing from the coordinated approaches under the NLP will encourage technical innovation. These changes are expected to enhance competitiveness of the Indian industries and MSMEs.

Supreme Court of India upholds the 'cease and desist' order passed by the CCI

The SCI vide its order dated [23.11.2022](#) partly modified the order dated 20.12.2021 passed by the NCLAT in an appeal filed by PMP Infratech (**PMP**) against the CCI's order wherein it imposed a penalty for anti-competitive practices and was directed to 'cease and desist' from indulging in such practices..



PMP appealed to the NCLAT that the CCI has erred in passing the order and prayed for a stay on the directions passed by the CCI. The NCLAT vide its order stayed the CCI's order in entirety, subject to a deposit of 10% of the penalty imposed. The CCI challenged the NCLAT's order before the SCI. The SCI vide its order, clarified that the cease-and-desist direction in the CCI's order has not been stayed.

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. Rajiv K. Luthra/ Mr. G.R. Bhatia/ Mr. Arjun Nihal Singh, at the below mentioned coordinates. © Luthra & Luthra Law Offices India 2023. All rights reserved.

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