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CONTENTS

Gauhati High Court rejects Dalmia Cement’s appeal against Competition Commission of India’s (“CCI”) probe	1
Madras High Court dismisses the writ petition filed by Agni Steels against a probe issued by CCI	2
CCI introduces Lesser Penalty (Plus) Regulations	2
Tenure of the Committee on Digital Competition Law to conclude in October	3
CCI dismisses complaint of abusive dominance against Hero MotoCorp	4
Ministry of Corporate Affairs clears CCI to issue Penalty Guidelines	4
CCI becomes Member of the Steering group of the International Competition Network	5
Combination Orders	5

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Gauhati High Court rejects Dalmia Cement’s appeal against Competition Commission of India’s (“CCI”) probe.

The Gauhati High Court dismissed Dalmia Cement (Bharat) Ltd.’s (Appellant) writ appeal against the order passed by a Single Judge, which had upheld the CCI order directing the Director General (DG) to investigate allegations of cartelization by the Appellant and other cement companies during the bidding process for four tenders floated by ONGC to purchase oil well cement. The Gauhati High Court observed that the case was at a premature stage.

The Appellant had argued that:-

- they were unaware of the investigation until they received the notice;
- the notice did not meet legal standards and should be set aside because it exceeded the statute of limitations and constituted a roving and fishing inquiry; and
- certain crucial documents relied upon by the CCI were not provided to the Appellant despite repeated requests, which violated the principles of natural justice.

The Gauhati High Court refrained from declaring that the notice did not meet legal standards and was issued as part of a roving and fishing inquiry. The Gauhati High Court asserted that, “At this point, the operation of the notice could not be stayed, as the appellant feared being placed in a disadvantageous position and damaging their reputation. The CCI and the learned Single Judge have opined that



a prima facie case necessitating an investigation exists.”

The Gauhati High Court stated that apart from a mere denial, the Appellant had failed to challenge these statements at this early stage. It expressed that interference in the merits of the

case without a specific denial by the Appellant was not warranted in the initial stages. The court added that if the Appellant Company were to be exonerated from the allegations of rigging and cartelization, it could regain its reputation.

Madras High Court dismisses the writ petition filed by Agni Steels against a probe issued by CCI.

Coimbatore Corporation Contractor's Welfare Association had alleged that the steel companies had indulged in anti-competitive activities and collectively sought to control supply of steel, creating artificial scarcity. The CCI had ordered an investigation into the matter by the Director General of the CCI. The investigation had however, been challenged by Agni Steel before the Madras

High Court on the ground that the same was commenced in absence of “prima facie” case, which is a prerequisite for an investigation under the Competition Act, 2002 (“Competition Act”). The Madras High Court dismissed the writ petition citing that the question as to arbitrariness or malice or discriminatory treatment is premature at this stage of inquiry and investigation.

CCI introduces Lesser Penalty (Plus) Regulations

Earlier this year, the Competition (Amendment) Act, 2023 (‘Amendment Act’) introduced several new provisions, including the ‘lesser penalty plus’ regime, into the existing leniency framework of the Competition Act, 2002 (“**Competition Act**”). This ‘lesser penalty plus’ model allows a leniency applicant to make a ‘full, true, and vital’ disclosure regarding an undisclosed cartel, which, in turn, provides them with an additional benefit of being granted a lesser penalty for both the initial cartel and the newly disclosed one.

On October 16, 2023, the CCI released draft regulations concerning the lesser penalty to incorporate and implement these amendments into the CCI's existing leniency framework. These draft regulations aim to provide guidance on the procedure for granting a lesser penalty and ‘lesser penalty plus’, which covers aspects such as the format, content, procedure, and withdrawal of the application.

The draft regulations introduce two significant amendments:

- Expansion of the Definition of ‘Applicant’: The Amendment Act broadened the definition of a cartel to encompass entities at various levels of a value chain, even those that do not directly compete. In alignment with this change, the CCI has also expanded the definition of an applicant, allowing an enterprise, person, or their associations to approach the CCI with ‘full, true, and vital’ disclosures of a cartel, even if they are not engaged in identical or similar trade but participate or intend to participate in furthering such a cartel.
- ‘Lesser Penalty Plus’: As per the draft regulations, an applicant who has already provided ‘full, true, and vital’ disclosure of one cartel (“Cartel 1”) may be eligible to receive an additional reduction in monetary penalties if they also disclose another cartel, enabling the CCI to become aware of this newly disclosed cartel (“Cartel 2”). Meeting these requirements allows the applicant to receive: (i) a reduction of up to 100% in penalties for Cartel 2 (consistent with existing leniency regulations); and (ii) a reduction of up to 30% in penalties for Cartel 1.

Tenure of the Committee on Digital Competition Law to conclude in October

In February of this year, the Ministry of Corporate Affairs initiated the formation of a Committee on Digital Competition Law (CDCL) with the objective of evaluating whether there is a requirement for distinct legislation to govern competition in digital markets. The report from the CDCL is currently pending. The establishment of the CDCL reflects a series of initiatives taken by the Indian government to address the necessity for digital space regulation, aiming to ensure equitable, open, and healthy competition within the digital arena.

In December 2022, the Standing Committee on Finance had previously recommended the enactment of a Digital Competition Act and the restructuring of the competition law oversight body. This involved creating a specialized unit for monitoring and addressing issues related to Systemically Important Digital Intermediaries (SIDIs). The extent to which the proposed framework aligns with the Digital Markets Act enacted by the European Union (EU) remains

uncertain. This is noteworthy as there has been considerable speculation that India’s forthcoming digital competition law will draw inspiration from the EU’s Digital Markets Act (DMA).

The CDCL has been assigned the task of assessing the necessity for an ex-ante regulatory mechanism tailored for digital markets, potentially through distinct legislation. Furthermore, the committee is responsible for preparing a draft Digital Competition Act.

The Panel’s responsibilities also encompass evaluating whether the existing provisions within the Competition Act and the accompanying rules and regulations are adequate to effectively address the challenges that have arisen in the context of the digital economy.

The Ministry of Corporate Affairs had formally extended till the end of October the tenure of the 16-member Committee on CDCL. The report of the CDLC is still awaited.

CCI dismisses complaint of abusive dominance against Hero MotoCorp

The CCI dismissed the complaint filed by a partnership firm, which had been appointed as a Hero Genuine Part Distributor (“HGPD”) and had alleged anti-competitive conduct and abuse of dominance by Hero Moto Corp Ltd. (Opposite Party 1), as well as other parties including various Hero Moto Corp offices and wholesalers (other Opposite Parties/ OPs).

The Informant raised several allegations, including:

- the unfairness of the trade discount policy for the year 2019-20 issued by Hero MotoCorp,
- the imposition of a stock purchase limit on HGPDs, which did not apply to the wholesalers,
- the issuance of operational guidelines by Hero MotoCorp that were perceived to be against the interests of the HGPDs, including the Informant, and favorable to the OPs, thereby allowing the OPs to maintain a dominant position over the Informant in the market.

The CCI determined that the core of the Informant’s allegations related to the conduct and dominance of the other OPs (wholesalers). The appointment of the Informant by Opposite Party 1 was on a non-exclusive basis in the Mahabubnagar district of Telangana, and the wholesalers appeared to be part of the vertical business chain.

The CCI determined that no competition concerns seemed to arise in the present matter based on the nature of the allegations and the conduct of the parties involved, as presented by the Informant. Therefore, the CCI concluded that there is no prima facie case of contravention of the provisions of Section 3 and Section 4 of the Competition Act against the Opposite Parties in this case”, and therefore, the matter was closed.

Ministry of Corporate Affairs clears CCI to issue Penalty Guidelines

The Ministry of Corporate Affairs has paved the way for the CCI to create and release comprehensive guidelines covering various aspects of competition law. Under recent notifications issued by the Ministry of Corporate Affairs, specific competition law guidelines must be made available on CCI’s official website. These guidelines are required to conform to a specified format provided by the Ministry of Corporate Affairs

The introduction of penalty guidelines is a significant development that offers clarity regarding the principles that the CCI will apply when penalizing violations of the Competition Act. This move is laudable as it adds stability and predictability to the principles employed by the CCI. It’s essential to note that these guidelines are non-binding explanations that detail the methodology used by the CCI to calculate antitrust penalties.

These guidelines assume particular importance since the CCI has been granted increased authority to impose penalties, which can now reach up to 10% of a company's global turnover. The notifications effectively put into operation

the provisions of Section 64B of the Competition Act, which empower the CCI to establish penalty (and other) guidelines and specify the form and manner in which these guidelines will be made public.

CCI becomes Member of the Steering group of the International Competition Network

CCI has become a member of the steering group of the International Competition Network (ICN), which is an informal and virtual network designed to promote collaboration among global competition law authorities. It was established in 2001 following the publication of the Final Report of the International Competition Policy Advisory Committee to the US Attorney General and

Assistant Attorney General for Antitrust, often referred to as the ICPAC report. The ICN holds the distinction of being the sole global organization exclusively dedicated to the enforcement of competition law, with its membership consisting of both national and multinational competition authorities. These members actively participate in project-oriented and results-driven working groups to produce valuable work.

Combination Orders

- CCI approved the acquisition of certain shareholding in Hitachi Astemo Ltd. by JICC-01 Limited Partnership and Honda Motor Co. Ltd. and that of certain shareholding of Hitachi Astemo Electric Motor Systems by Hitachi Astemo Ltd.
- CCI approved the acquisition of approximately 72.49% of the total equity shareholding of Quality Care India Ltd. on a fully diluted basis, by BCP Asia II Topco IV Pte. Ltd. from Touch Healthcare
- CCI allows the acquisition of additional unitholding in Highways Infrastructure Trust (Target) by 2452991 Ontario Ltd. and of equity stake in Highway Concessions One Pvt. Ltd. by 2743298 Ontario Ltd., both affiliates of the Ontario Teachers' Pension Plan Board.
- CCI approved acquisition of up to 29.9% equity shares of RHI Magnesita N.V. by Ignite Luxembourg Holdings S.à r.l.
- CCI allowed acquisition of approximately 24.16% of the total equity shareholding in Quality Care India Ltd. (Target) by Centella Mauritius Holdings Ltd.
- CCI allowed the rebalancing of the cross shareholding between Renault SA and Nissan Motor Co Ltd and changes to the shareholding in the Indian Joint Ventures in Renault Nissan Automotive India Private Limited and Nissan Technology and Business Centre India Private limited.
- CCI allowed the purchase of 30.93% shareholding by IDFC in IDFCI Bank.



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