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# COMPETITION LAW NEWSLETTER

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## National Company Law Appellate Tribunal (“NCLAT”) upholds Competition Commission of India (“CCI”)’s order on railway tendering

NCLAT dismissed a plea by Sundaram Brake Linings, challenging a cease-and-desist order passed by CCI against Sundaram Brake Linings with regards to bidding process of certain tenders of the Indian Railways. CCI had directed 10 companies including Sundaram Brake Linings and some of their officials to cease and desist from indulging in anti-competitive practices. Sundaram Brake Linings contended that the points raised by Sundaram Brake Linings was wrongly clubbed in the CCI order and that the CCI had passed the order without application of mind and contrary to the fundamental principles of competition law and law of evidence. NCLAT observed that Sundaram Brake Linings had continuously received emails for over five years without any protest, never requested the cartel to stop sending such emails to it and this itself indicates the meeting of the mind. In view of the strong evidence of cartelization in the form of statements made by cartel members which contradicted the argument that Sundaram Brake Linings was merely a receipt of the information, NCLAT dismissed the appeal.

# Supreme Court agrees to hear CCI's appeal against Ericsson and Monsanto

The Supreme Court on March 1, 2024 issued a notice and agreed to consider the CCI's appeal against a Delhi High Court order setting aside anti-trust proceedings against telecom giant Ericsson and agrochemical company Monsanto. The Court has allowed the companies to file a response within four weeks. Ericsson sued the mobile phone manufacturer Micromax, stating that its phones infringed upon its patent and demanded that it pay a royalty. Micromax and Intex filed complaints before the CCI, alleging abuse of dominant position by Ericsson, stating that the company was demanding unfair royalty from them for the use of its technology. The CCI took a primary view that Ericsson was abusing its dominant position because it owns the patents and ordered an investigation into the company's conduct.

Similarly, Monsanto held the patent for a technology to produce genetically modified cotton seeds. It had licensed the technology to certain manufacturers in India such as Nuziveedu Seeds Ltd. These Indian companies had to pay a non-refundable fee and a recurring fee to use its technology. The companies approached the CCI arguing that Monsanto was abusing its dominant position by virtue of holding the patent for this technology. CCI took a prima facie view that Ericsson and Monsanto were abusing its dominant position because it owns the patents and ordered an investigation into the company's conduct. The single judge of Delhi High Court refused to stay the investigation by CCI. The two-judge bench of the Delhi High Court had set aside the inquiry order against Ericsson and Monsanto on the ground that CCI lacks the jurisdiction to investigate whether a company, in the exercise of its patent rights, has abused its dominant position.



## CCI issues notice to Muthoot Finance

CCI had sent a show-cause notice to non-banking financial company (NBFC) Muthoot Finance for alleged misrepresentation of data. The notice dated March 14, 2024 questions Muthoot Finance's omission of key facts in a case concerning debenture trustees. Muthoot Finance filed a complaint in 2021 alleging that debenture trustees were exploiting their market dominance by imposing exorbitant fees for facilitating non-convertible debenture (NCD) issuances. An investigation by the CCI, however, found that

Muthoot Finance had filed a similar complaint with the Securities and Exchange Board of India (SEBI) but didn't inform the CCI. The earlier notice was stayed by Kerala High Court in 2023. Following the court's directive to reconsider the matter and provide Muthoot Finance with a personal hearing, the CCI has now issued a second show-cause notice. Debenture trustees have approached the Bombay High Court, contending that the CCI lacks jurisdiction over the dispute, which falls under the purview of SEBI. The resolution of this dispute remains pending.

## CCI to conduct market study on impact of Artificial Intelligence (AI) on competition

CCI has launched a Market Study on AI and Competition, to gather information from the stakeholders, in view of developing an understanding of AI and its application in the Indian Market, with the study aiming to shape the strategies of the CCI for fostering innovation and fair competition. CCI outlined 6 objectives of the study, which are to - (i) understand key AI systems and markets/ecosystems thereof, (ii) examine emerging and potential competition issues in these markets, (iii)

study the scope and nature of AI applications/use cases, and assess associated opportunities, risks and ramifications from a competition standpoint, (iv) understand regulatory/legal frameworks governing AI systems and applications, (v) reach out to all relevant stakeholders for a holistic understanding of the issues at the intersection of AI and competition, and (vi) understand trends and patterns of AI and ascertain enforcement and advocacy priorities of the Commission with respect to AI and its application in markets.



## CCI is reviewing information filed by an individual with regards to Pernod Ricard

An information filed with CCI has alleged that Pernod Ricard colluded with retailers in New Delhi to boost market share. As per the news reports, Pernod Ricard is accused of gaining market share by asking retailers in the Indian capital to stock more of its goods in return for helping them secure

loans to bid for store licences. The complaint accuses Pernod Richard of providing \$24 million in corporate guarantees to its bankers in 2021 to help city retailers get loans. Retailers then ensured that 35% of the stock in their shops consisted of Pernod brands. CCI may order a full investigation on the findings or dismiss the accusation if there are substantiated.

## Combination Orders:

- CCI approves subscription of compulsorily convertible debentures (CCDs) of Napino Auto and Electronics Ltd. by the International Finance Corporation (IFC)
- CCI approves the acquisition of the additional shareholding of Thyssenkrupp Industries India Pvt. Ltd. (Target) by Protos Engineering Company Pvt. Ltd. and Paharpur Cooling Towers Ltd
- CCI approves the proposed acquisition by PAMP Ventures SA (PAMP Switzerland/ Acquirer) of 100% share capital of PAMP Technologies India Pvt. Ltd. and 72.65 % share capital of MMTC PAMP India Pvt. Ltd. (MMTC PAMP)
- CCI approves Bharti Airtel's acquisition of an additional 20% stake in its direct-to-home (DTH) arm Bharti Telemedia from an affiliate of New York-headquartered private equity firm Warburg Pincus
- CCI approves Sanyo Special Steel Co. Ltd.'s acquisition of a 15.43 per cent shareholding in Sanyo Special Steel Manufacturing India Private Limited from Mitsui & Co. Ltd.



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