



CRITICAL COMPETITION
COMPETITION LAW NEWSLETTER
JANUARY, 2024

ENFORCEMENT ORDERS

1. THE COMPETITION COMMISSION OF INDIA DISMISSED COMPLAINT AGAINST AIR INDIA LIMITED ALLEGING ANTI-COMPETITIVE PRACTICES

The Competition Commission of India (CCI) dismissed a complaint against Air India Ltd. (OP), filed by an ex-employee (Informant) under Section 19(1)(a) of the Competition Act, 2002 (Competition Act). The Informant alleged that the merger of Tata SIA Airlines Limited and the OP has led to an adverse impact on his career and service record. Further, it was also alleged that under the garb of said merger, the OP has also maliciously destroyed the service records of the Informant.

The Informant alleged that the OP has contravened Section 3 and Section 4 of the Competition Act. The Informant alleged that the formation of a cartel between Tata Group and the OP lead to bid-rigging in the acquisition process of Air India Limited. The Informant also alleged that the OP abused its dominant position by imposing prohibitory orders, limiting his career development, adopting predatory practices, and denying market access by withholding his service records.

The CCI observed that there is no evidence placed on record by the Informant which may suggest any case of cartelization or bid rigging, rather there seems to exist an inter-se dispute relating to the service of the Informant between the Informant and the OP. Thus, the CCI noted that no competition issue or concern arises from the facts and allegations stated by the Informant. Therefore, the CCI closed the matter under Section 26(2) of the Competition Act holding that no prima facie case for investigation was established by the Informant.

2. THE DELHI HIGH COURT DISMISSED ULTRATECH CEMENT'S PLEA CHALLENGING CCI'S ORDER OF ALLOWING BUILDERS ASSOCIATION OF INDIA'S IMPLEADMENT IN THE CEMENT CARTEL CASE

The Delhi High Court (DHC) dismissed a writ petition filed by Ultratech Cement Ltd. (Ultratech/Petitioner) challenging the order of the CCI dated 05.07.2023 (Impugned Order). The Impugned Order allowed the Builders Association of India (BAI) to be impleaded as a party in the ongoing proceedings before the CCI pertaining to an investigation into allegations of cartelization by cement manufacturers.

The DHC held that that it is not inclined to substitute its conclusion to the one arrived by the CCI and dismissed Ultratech's submission that the Impugned Order is devoid of adequate reasoning towards the satisfaction of the requirements under Regulation 25 of the Competition Commission of India (General) Regulations 2009 (General Regulations). The DHC held that it sees no merit in breaking down the adequacy of the reasoning unless it is *prima facie* malafide, perverse or arbitrary. In the instant case, the DHC upheld the reasoning of BAI for impleadment before the CCI that it is an all-India association of builders and the largest consumer of cement. Therefore, BAI suffers a direct impact every time the cement manufacturers engage in anti-competitive practices.

The Petitioner also alleged that the Impugned Order of the CCI was passed ex-parte despite it affecting the rights of the Petitioner. The DHC held that the CCI has the power to allow any person or an enterprise to take part in proceedings before it and also relied on the decision of the Hon'ble Supreme Court in *Samir Agarwal vs. Competition Commission of India*, wherein it was held that the



nature of proceedings before the CCI are 'in rem' and not 'in personam' and therefore, impleadment of BAI is justified.

It was also observed by the DHC that the Impugned Order does not grant access of the confidential records of proceedings to BAI, and grant of non-confidential information is also explicitly recorded to be done as per Regulation 37(1) of the General Regulations. The DHC dismissed the allegation of the Petitioner that safeguards under Section 57 of the Competition Act (which states that no information relating to any enterprise obtained by the CCI shall be disclosed without the prior permission of such enterprise) have been ignored by CCI and held that the requisite procedural provisions on sharing information with parties to the proceedings have been duly followed by the CCI and that the Impugned Order does not grant BAI to gain access to the confidential records of the proceedings.

COMBINATION ORDERS

3. THE CCI APPROVED 100% ACQUISITION OF THE SHAREHOLDING OF CONSTANTIA FLEXIBLES HOLDING GMBH BY CAPRIPACK BIDCO GMBH UNDER THE GREEN CHANNEL ROUTE

The CCI approved the proposed acquisition of sole control by Capripack BidCo GmbH (**Capripack**) over Constantia Flexibles Holding GmbH (**Constantia**) by way of acquisition of 100% of the shareholding and voting rights from Constantia Lux S.à r.l, under the green channel route. Capripack is an acquisition vehicle indirectly majority owned by investment funds managed by One Rock Capital Partners, LLC, which manages funds that invest in portfolio companies operating within various industries, including chemicals and process industries, specialty manufacturing and healthcare products

etc. Constantia is wholly owned by Constantia Lux S.à r.l and is a global producer of flexible packaging products headquartered in Austria.

4. THE CCI APPROVED THE PROPOSED SLUMP SALE OF A BUSINESS UNDERTAKING OF IND SWIFT LABORATORIES LIMITED AND ESSIX BIOSCIENCES LIMITED TO SYNTHIMED LABS PRIVATE LIMITED

The CCI approved the proposed slump sale of a certain business undertaking of Ind Swift Laboratories Limited (**ISLL**) and Essix Biosciences Limited (**Essix**) to Synthimed Labs Private Limited (**Synthimed**). Subsequently, ISLL would acquire a minority non-controlling shareholding in Synthimed. Synthimed is a recently incorporated company set up to facilitate the proposed transaction and is not engaged in any business activity. The business undertaking of ISLL and Essix is engaged in the business of manufacturing and selling active pharmaceutical ingredients and intermediates; providing contract research and manufacturing services; and supporting research & development.

5. THE CCI APPROVED THE PROPOSED SHARE SUBSCRIPTION BY INDIA BUSINESS EXCELLENCE FUND – IV IN NIVA BUPA HEALTH INSURANCE LIMITED

The CCI approved the proposed acquisition of the equity shares by India Business Excellence Fund – IV I (**IBEF IV**) In Niva Bupa Health Insurance Limited (**Niva**) in furtherance of the Deed of Adherence entered into by IBEF IV with Niva, Fettle Tone LLP and Bupa Singapore Holdings Pte. Limited. IBEF IV is a category II Alternative Investment Fund (AIF) registered with the Securities and Exchange Board of India (SEBI) and primarily invests in equity and equity-linked instruments and/or debt and/or mezzanine or other instruments of



Indian or India related companies. Niva is a standalone health insurance company which is engaged in offering insurance policies in the health and travel insurance segment in India.

6. THE CCI APPROVED THE PROPOSED SUBSCRIPTION OF EQUITY SHARES OF NIVA BUPA HEALTH INSURANCE COMPANY LIMITED BY V-SCIENCES INVESTMENTS PTE LTD.

The CCI approved the proposed transaction in relation to the subscription of equity shares of Niva Bupa Health Insurance Company Limited (**Niva**) by V-Sciences Investments Pte Ltd (**V-Sciences**), along with certain minority investor protection rights. V-Sciences is an investment holding company and is an indirectly wholly owned subsidiary of Temasek Holdings (Private) Limited, which is an investment company based in Singapore. Temasek's portfolio spans a broad spectrum of industries: transportation and industrials, financial services etc. Niva offers health insurance policies which includes health indemnity, health fixed benefit and travel insurance.

7. THE CCI APPROVED THE PROPOSED ACQUISITION OF MINORITY EQUITY STAKE IN VVDN TECHNOLOGIES PRIVATE LIMITED BY APPLIED MATERIALS SOUTHEAST ASIA PTE. LTD UNDER THE GREEN CHANNEL ROUTE

The CCI approved the acquisition of a minority equity stake in VVDN Technologies Private Limited (**VVDN**) by Applied Materials Southeast Asia Pte. Ltd. (**Acquirer**). The Acquirer is a Singapore-based company which is involved in developing, manufacturing, and marketing equipment, services, and software for advanced semiconductor devices, flat panel displays, and solar panels. VVDN is a private limited company based in India, specializes in

providing EMS and ODM services to both domestic and global customers.

8. THE CCI APPROVED THE PROPOSED TRANSACTION INVOLVING THE SUBSCRIPTION OF PREFERENCE SHARES OF TRUSTROOT INTERNET PRIVATE LIMITED BY THE LUXEMBOURG SPECIALIST INVESTMENT FUND FCP-RAIF – M&G CATALYST CAPITAL FUND, M&G FUNDS (I) ASIA PACIFIC (EX JAPAN) EQUITY FUND AND THE PRUDENTIAL ASSURANCE COMPANY LIMITED

The CCI approved the proposed transaction involving the: (i) subscription of certain preference shares of Trustroot Internet Private Limited (**Trustroot**), and, (ii) conversion of the existing convertible bonds and warrants held by them into the share capital of Trustroot as per the terms and conditions set out in the Series E and Series F Share Subscription and Shareholders' Agreement, by Luxembourg Specialist Investment Fund FCP-RAIF – M&G Catalyst Capital Fund (**Catalyst Fund**), M&G Funds (I) Asia Pacific (Ex Japan) Equity Fund (**Asia Pacific Fund**) and the Prudential Assurance Company Limited (**PAC**) (together referred to as the Acquirers). Post the conversion, the Acquirers would hold 11% of the share capital of Trustroot on a fully diluted basis. The proposed transaction was approved under the green channel route. The Acquirers are funds that invest in both public and private enterprises around the world across a wide variety of different sectors. Trustroot, through its affiliates in India, is primarily engaged in providing an online Business to Business e-commerce marketplace platform by the name of 'Udaan', for the facilitation of sale and purchase of goods between sellers and purchasers.



9. THE CCI APPROVED THE PROPOSED ACQUISITION BY PCBL LIMITED OF 100% EQUITY SHARE CAPITAL OF AQUAPHARM CHEMICALS PRIVATE LIMITED UNDER THE GREEN CHANNEL ROUTE

The CCI approved the proposed acquisition by PCBL Limited of 100% equity share capital of Aquapharm Chemicals Private Limited (**Aquapharm**) from its existing shareholders (members of the Desai Group and the Mangwani Group), under the green channel route. Post the proposed combination, Aquapharma would become a part of the RP – Sanjiv Goenka Group and also enable PCBL Limited to enter the global specialty segments of: (i) water treatment chemicals, and (ii) oil and gas chemicals. Aquapharm is a leading specialty chemicals company, engaged in the manufacture of: (i) water treatment chemicals with key products such as: (a) phosphonates, (b) biodegradable chelating agents, (c) polymers etc, while PCBL Limited is one of the largest manufacturers of carbon black in India and is engaged in the manufacture and sale of carbon black, and green power in India.

10. THE CCI APPROVED THE PROPOSED ACQUISITION OF EQUITY SHAREHOLDING IN RELIANCE CAPITAL LTD. BY IIHL, BFSI, AND AASIA

The CCI approved the proposed acquisition of shares in Reliance Capital Ltd. (**Reliance**) by IndusInd International Holdings Ltd. (**IIHL**), BFSI (India) Ltd. (**BFSI**) and Aasia Enterprises LLP (**AASIA**) (**Acquirers**). Reliance is undergoing Corporate Insolvency Resolution Process (CIRP) pursuant to the Order of the National Company Law Tribunal, Mumbai (NCLT) dated 06.12.21. IIHL is a Global Business License (Category 1) licensee company incorporated in the Republic of Mauritius and is regulated by the Financial Services Commission of Mauritius. Reliance is a Non-Banking

Financial Company Core Investment Company (CIC) - Non-Deposit Taking Systemically Important (NBFC-CIC-ND-SI) under Section 45-IA of the Reserve Bank of India Act, 1934 and it holds investments in its subsidiaries, associates, and other group companies which are engaged in various businesses in the financial service sector.

OTHER RECENT DEVELOPMENTS

11. THE CCI PUBLISHED DRAFT COMPETITION COMMISSION OF INDIA (DETERMINATION OF TURNOVER OR INCOME) REGULATIONS, 2023

On 22 December 2023, the CCI published the draft Competition Commission of India (Determination of Turnover or Income) Regulations, 2023 (**Draft Amendment Regulations**) for public consultation and invited comments from stakeholders. The Draft Amendment Regulations defines the scope and ambit of the terms “turnover or income for enterprises” and “income of individuals”, as provided under Section 27 and Section 48 of the Competition Act.

The Draft Amendment Regulations provides for the manner of determination of penalty to be levied on enterprises and individuals. The regulations provide that turnover or income would include the total value of sales or revenue or receipts and other operating income, as per the audited financial statements maintained by such enterprise. However, it shall exclude indirect taxes, trade discounts, and intra-group sales, if any.



12. THE CCI PUBLISHED DRAFT COMPETITION COMMISSION OF INDIA (GENERAL) AMENDMENT REGULATIONS, 2023

On 12 December 2023, the CCI published the draft Competition Commission of India (General) Regulations, 2023 (**Draft Regulations**) for public consultation and invited comments from stakeholders.

The Draft Regulations proposes that every interlocutory application filed in a case being investigated under Section 19 of the Competition Act shall be accompanied with filing fees as set out below:

- a) INR 500 in case of individual or Hindu Undivided Family (HUF), or,
- b) INR 1000 in case of Non-Government Organisation (NGO), or Consumer Association, or Co-operative Society, or Trust or,
- c) INR 1000 in case of firm (including proprietorship, partnership, or Limited Liability Partnership) or company (including one person company) having turnover in the preceding year up to rupees two crores, or,

d) INR 5000 in all other cases.

13. THE CCI PUBLISHED A MARKET STUDY REPORT ON 'DYNAMICS OF COMPETITION IN THE MINING SECTOR WITH FOCUS ON IRON ORE'

The CCI published a market study report titled “*Dynamics of Competition in the Mining Sector in India with a Focus on Iron Ore*” (**Study**). One of the key findings of the Study pertains to the allocation of captive mines to certain players, which creates entry barriers in the iron ore and steel sector. The CCI also conducted an analysis of Odisha Mining Corporation’s auction process, noting that it may result in collusion. Addressing the competition concerns, the study proposes allowing captive mines to sell 50% surplus iron ore in the open market; imposition of a suitable maximum limit on iron ore ownership; transition towards clean technology; and, curbing of compliance costs. The recommendations emphasize upon the need to discourage exports, promote domestic steel production, and implement a clear regulatory framework to foster fair competition and sustainable mining practice.

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