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Competition Law Updates

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Delhi High Court sets aside anti-trust proceedings against Ericsson and Monsanto

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Cement Manufacturers approaches various High Courts against the Competition Commission of India

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National Company Law Appellate Tribunal upholds Competition Commission of India order approving the acquisition of Hindusthan National Glass & Industries Limited by AGI Greenpac Limited

*& more...*

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# HIGH COURT ORDERS/JUDGMENTS

Delhi High Court sets aside anti-trust proceedings against Ericsson and Monsanto

**Telefonaktiebolaget LM Ericsson (PUBL) & Ors. vs. Competition Commission of India.<sup>1</sup>**

The Delhi High Court *vide* its judgment dated 13.07.2023, set aside anti-trust proceedings against Ericsson and Monsanto and ruled that the Competition Commission of India ("CCI") cannot exercise jurisdiction over actions of an enterprise that are in exercise of their rights as a patentee. In view of the same, it set aside its earlier judgment passed on 30.03.2016 ("2016 Judgment") and 20.05.2020 ("2020 Judgment"), which were impugned in the Letter Patents Appeal ("LPA") and Writ Petition filed before it.

The Delhi High Court held that the Competition Act, 2002 ("Act") is a general act pertaining to Anti-competitive agreements and abuse of dominance, whereas the Patents Act, 1970 ("Patents Act") is a special act. The High Court opined that, Chapter XVI of the Patents Act is a complete code in itself on all issues pertaining to unreasonable conditions in agreements of licensing of patents, abuse of status as patentee, inquiry in respect thereof and relief that is to be granted therefor. Thus, the High Court rejected the argument of the CCI that in terms of Section 3(5)(i)(b) and Section 4 of the Act, only it can consider whether a condition imposed in an agreement licensing a patent is unreasonable. Consequently, the Delhi High Court rescinded its

2016 and 2020 Judgments and held that the Patents Act would prevail over the Competition Act.

Cement Manufacturers approaches various High Courts against the Competition Commission of India

**The India Cements Ltd. vs. Competition Commission of India<sup>2</sup>; Ultratech Cement Ltd. vs. Competition Commission of India<sup>3</sup> & Shree Cement Ltd. vs. Competition Commission of India & Anr.<sup>4</sup>**

The Cement Manufacturers have filed writ petitions before various High Courts against the CCI's order of impleadment of the Builders Association of India ("BAI") in proceeding pending before the CCI which it initiated *suo motu*. India Cements Ltd. and Dalmia Cement (Bharat) Ltd. have filed their writ petitions before Madras High Court whereby an interim order restraining the CCI from allowing further inspection of the documents till the Court decides the maintainability of the petitions has been passed. Whereas, Ultratech Cement Ltd. has approached the Delhi High Court wherein the High Court has reserved its judgment in the matter *vide* its order dated 27.07.2023. Further, a writ petition before Rajasthan High Court has also been filed by Shree Cement Ltd.

# NATIONAL COMPANY LAW APPELLATE TRIBUNAL ORDERS / JUDGMENTS

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National Company Law Appellate Tribunal upholds Competition Commission of India order approving the acquisition of Hindusthan National Glass & Industries Limited by AGI Greenpac Limited

**The U.P. Glass Manufacturers Syndicate & Ors. vs. Competition Commission of India & Ors.<sup>5</sup>**

The National Company Law Appellate Tribunal ("NCLAT") *vide* its judgment dated 28.07.2023, upheld the CCI order of approval of the acquisition of Hindusthan National Glass & Industries Limited ("HNG") by AGI Greenpac Limited ("AGI").

The AGI in pursuant to insolvency proceedings of HNG under the Insolvency and Bankruptcy Code, 2016, filed Form II Notice with the CCI after the approval of its Resolution Plan by the Committee of Creditors ("CoC"). The CCI after considering the Notice, formed a *prima facie* opinion that the proposed combination is likely to cause an Appreciable Adverse Effect on Competition in India ("AAEC") and thus, issued a show cause notice under Section

29(1) of the Act to AGI. The AGI in response to the said show cause notice, proposed certain voluntary modifications which were analysed and approved by the CCI. Thus, the CCI after noting that the proposed combination is not likely to have an AAEC, passed an order dated 15.03.2023 whereby it approved the aforesaid combination under section 31 of the Act. Aggrieved by the said order of the CCI, appeal(s) before NCLAT were filed by U.P Glass Manufacturers Syndicate, Independent Sugar Corporation Ltd., Geeta and Company and HNG Industries Thozilalar Nala Sangam. The appellant(s) in their appeals challenged the order of the CCI on the grounds that it has failed to follow the procedure laid down under Section 29 of the Act and Regulation 25(1)(a) of the CCI (Procedure in regard to the transaction of Business relating to Combinations Regulations, 2011 ("Regulations 2011").

The NCLAT after considering the submissions of the parties, dismissed the aforesaid appeal(s) and held that:

- A show cause notice under Section 29(1) of the Act has to be issued by the CCI to both the parties to combination i.e. acquirer and target entity. However, in the instant case, such show cause notice was only issued to the acquirer by the CCI but that does not ipso facto vitiate the order of the CCI as Form

It was filed by AGI in pursuant to approval of its resolution plan by the CoC and that all the details and information given therein relate to both acquirer and the target which is also available in public domain.

- In terms of Section 29 of the Act and Regulations 2011, after receipt of response of the parties to the show cause notice or receipt of the report from the Director General, the CCI has to form a *prima facie* opinion at the second stage as required under Section 29(2) and a direction to publish the details of the combination is contemplated only when the CCI forms a *prima facie* opinion that combination has an AAEC.

## National Company Law Appellate Tribunal dismisses Appeal of All India Chess Federation

### **All India Chess Federation vs. Competition Commission of India & Ors.**<sup>6</sup>

The NCLAT vide its judgment dated 11.07.2023, dismissed the appeal filed on behalf of the All India Chess Federation ("AICF") due to non-prosecution. The NCLAT noted that the counsel on behalf of AICF has sought an adjournment on multiple occasions and it appears that the appellant is not interested to pursue the appeal. The NCLAT after taking note of the submissions made by the counsel on behalf of the respondent, dismissed the appeal.

# COMPETITION COMMISSION OF INDIA ORDERS

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Competition Commission of India closes information against Insurance Regulatory and Development Authority of India and Indian Institute of Insurance Surveyors and Loss Assessors

**In Re: Shrikant Ishwar Mendke And Insurance Regulatory and Development Authority of India and other.**<sup>8</sup>

The CCI vide its order dated 26.07.2023, closed the information filed against Insurance Regulatory and Development Authority of India ("IRDAI") and Indian Institute of Insurance Surveyors and Loss Assessors ("IIILSA") for alleged contravention of provisions of Section 3 & 4 of the Act.

The Informant, *namely*, Shrikant Ishwar Mendke, a holder of license to act as a Surveyor and Loss Assessor, approached the CCI after IRDAI rejected his request for renewal of his license. The informant alleged that IRDAI and IIILSA has entered into an anti-competitive arrangement due to which his request for renewal was rejected. It was further

alleged that IRDAI has created a statutory monopoly in favour of IILSA by mandating its membership as an eligibility criteria for the grant and renewal of licenses and that IILSA has abused its dominant position by withholding the grant of membership to the Informant due to non-payment of his past dues of the annual subscription fee to IILSA.

The CCI noted that the aforesaid functions of the IRDAI and IILSA are regulatory in nature and thus, in the view of judgment passed by the Hon'ble Delhi High Court in *Institute of Chartered Accountants of India vs. Competition Commission of India & Ors.*, the same is not *per se* amenable to the jurisdiction of the CCI. Hence, the CCI proceeded to close the information and passed an order under Section 26(2) of the Act.

## Competition Commission of India closes information against M3M India Private Limited

### **In Re: Devendra Nath And M3M India Private Limited**<sup>9</sup>

The CCI *vide* its order dated 19.07.2023, closed the information against the real estate developer, M3M India Private Limited ("M3M"). The Informant, *namely*, Mr. Devendra Nath alleged that M3M has abused its dominant position by its conduct of construction of an additional tower in the project M3M Merlin without obtaining prior approval of the residents.

The CCI after considering the information filed by the informant, delineated the relevant market as the "market for provision of services of development and sale of residential flats in Gurgaon". It was observed by the CCI that M3M does not seem to be in dominant position in the relevant market due to presence of other developers in Gurgaon such as DLF, Emaar

India, Godrej Properties, Ansal API, etc. which seem to impose significant competitive constraints on M3M. Thus, in view of the same, the CCI found no *prima facie* case of contravention of Section 4 of the Act and hence, proceeded to close the information.

## Competition Commission of India closes information against Additional Director, Central Government Health Scheme

### **In Re: Shri Ravinder Singh and Dr. Janaki Jangpangi, Additional Director, Central Government Health Scheme (CGHS)**<sup>10</sup>

The CCI *vide* its order dated 17.07.2023, closed the information against Dr. Janaki Jangpangi, Additional Director, Central Government Health Scheme ("OP") alleging contravention of provisions of Section 3 and 4 of the Act. The informant, *namely*, Mr. Ravinder Singh accused the OP of irregularities in the bidding process. The informant alleged that the OP has contravened the provisions of Section 3 and 4 of the Act by favouring one of the bidders and rejecting the bid of a competitor on vague grounds in response to the E-tender invited by it for appointment of Authorised Local Chemists for the supply of allopathic medicines to its wellness centres in Dehradun.

With respect to the allegations pertaining to Section 3 of the Act, the CCI noted that there is no application of provisions of Section 3(1) and Section 3(2) of the Act to the facts and circumstances of the case as Section 3 requires an agreement between two or more enterprises engaged in identical or similar trade of goods or provision of services and in the instant case no such allegation has been made

by the informant. Further, while examining the allegations of contravention of Section 4 of the Act, the CCI noted that the alleged conduct of the OP of selecting one of the bidders and rejecting the bid of the informant cannot be termed as abusive within the meaning of Section 4 of the Act.

## Competition Commission of India closes information against DLF Gayatri Developers

### **In Re: Mr. Jitendra Bathla And M/s DLF Gayatri Developers<sup>11</sup>**

The CCI *vide* its order dated 13.07.2023, closed the information against DLF Gayatri Developers ("OP"). The informant, *namely*, Mr. Jitendra Bathla alleged that the OP has abused its dominant position by imposing one-sided, discriminatory and unfair terms and conditions in its club agreement.

The CCI while examining the aforesaid allegations proceeded to define the relevant market as "*provision of services for development and sale of residential plots in Mahabubnagar district in the State of Telangana*", and observed that there are a number of RERA- approved projects of real estate developers such as Girdhari Constructions, Ashoka Ventures, Siri Sampada Homes etc. having residential plots available for sale in various areas in the district of Mahabubnagar. In view of the same, the CCI found no case of contravention of Section 4 of the Act as the OP does not enjoy the dominant position in the relevant market.

## Competition Commission of India closes information against an e-commerce enterprise

### **In Re: Sanjay Kumar And Karagiri Studios<sup>12</sup>**

The CCI *vide* its order dated 06.07.2023, closed an information against Karagiri Studios ("OP") which is an e-commerce enterprise dealing in ethnic wear such as silk sarees. The informant, *namely*, Mr. Sanjay Kumar alleged that the OP has contravened provisions of Section 4 of the Act by supplying purportedly spurious sarees to his prepaid orders.

The CCI observed that apart from bare allegations of unfair trade practice and abuse of dominant position, the informant has neither suggested any relevant market nor indicated any specific conduct of the OP that falls within the contours of Section 4 of the Act. The CCI further observed that the present matter pertains to a dispute between a consumer and a seller which does not raise competition law concerns. Thus, the CCI found no *prima facie* case of contravention of any provisions of the Act and hence, closed the information.

## Combination cases before Competition Commission of India

- CCI approved the acquisition of the entire share capital of Marnix Lux SA by Concentrix Corporation.<sup>13</sup>
- CCI approved acquisition of up to 59.38% shareholding of Unichem Laboratories Limited by Ipca Laboratories Limited.<sup>14</sup>

<sup>1</sup>LPA 247/2016; Monsanto Holdings Private Limited & Ors vs. Competition Commission of India & Ors. (LPA 150/2020); Competition Commission of India vs. Telefonaktiebolaget LM Ericsson (PUBL) & Anr (LPA 550/2016); Telefonaktiebolaget LM Ericsson (PUBL) vs. Competition Commission of India & Anr (LPA 246/2016); Telefonaktiebolaget LM Ericsson (PUBL) vs. Competition Commission of India (W.P.(C) 8379/2015).

<sup>2</sup>WP/22045/2023; Dalmia Cement (Bharat) Ltd. vs. Competition Commission of India (WP/22263/2023)

<sup>3</sup>W.P. (C) 9854/2023

<sup>4</sup>CW/11670/2023

<sup>5</sup>Competition Appeal (AT) No. 07 of 2023; Independent Sugar Corporation Ltd. vs. Competition Commission of India (Competition Appeal (AT) No. 08 of 2023); Geeta and Company vs. Competition Commission of India & Ors. (Competition Appeal (AT) No. 09 of 2023); HNG Industries Thozilalar Nala Sangam vs. Competition Commission of India & Anr. (Competition Appeal (AT) No. 10 of 2023)

<sup>6</sup>Competition Appeal (AT) No. 74 of 2018

<sup>7</sup>Competition Appeal (AT) No. 61 of 2022

<sup>8</sup>Case No. 15 of 2023

<sup>9</sup>Case No 02 of 2023.

<sup>10</sup>Case No 39 of 2022

<sup>11</sup>Case No 39 of 2022.

<sup>12</sup>Case No. 04 of 2022.

<sup>13</sup>C-2023/05/1031

<sup>14</sup>C-2023/05/1028

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