



## **JSA Newsletter** **Competition Law**



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## National Company Law Appellate Tribunal

### NCLAT dismisses appeal against Bar Council of India for alleged abuse of dominant position

The National Company Law Appellate Tribunal ('NCLAT') dismissed the appeal filed against the Bar Council of India and its members (together referred to as 'BCI') alleging abuse of dominant position.

#### Brief Background

The Competition Commission of India ('CCI') received a complaint against the BCI alleging that it had imposed a maximum age restriction on new entrants to enter legal education which has created indirect barriers to entry. The complainant stated that Clause 28 of Schedule III, Rule 11 to Part IV - Rules of Legal Education, 2008, restricts a person/candidate belonging to the general category who has attained the age of more than 30 years, from pursuing legal education. It was further alleged that the BCI regulates the legal practice as well as legal education in India. It enjoys dominant position in controlling the legal education as well as the legal practice in India.

On [January 20, 2021](#), the CCI dismissed the complaint against BCI as it is not an 'enterprise' under the Competition Act, 2002 ('**Competition Act**') as the functions performed by it are neither economic nor commercial in nature ('**CCI Order**'). Aggrieved, the complainant filed an appeal challenging the CCI Order before the appellate tribunal, the NCLAT.

#### NCLAT Observations

The NCLAT dismissed the appeal and held that the definition of 'enterprise' under the Competition Act is wide enough to cover all entities that perform economic and/or commercial functions. However, given that the BCI is only a regulatory body to set standards of legal education, it cannot qualify as an 'enterprise' under the Competition Act as it does not perform any economic or commercial functions.

*[Source: NCLAT order dated November 8, 2021]*

## Competition Commission of India

### Enforcement

#### CCI finds paper manufacturers guilty of cartelisation

The CCI found nine paper manufacturers and the Indian Agro and Recycled Paper Mills Association ('IARPMA') (together referred to as the '**Opposite Parties**'), including their office bearers guilty of cartelisation in relation to the sale and supply of non-wood-based paper in contravention of Section 3(3) of the Competition Act.

The CCI initiated the investigation against 20 non-wood based paper manufacturers (including Satia Industries Limited) and the IARPMA pursuant to a request from the Director General (DG) disclosing the existence of a cartel based on the discovery of e-mails while investigating a separate matter. Subsequently, Trident Limited, one of the Opposite Parties, filed a leniency application with the CCI disclosing the existence of a cartel amongst all paper manufacturers.

The DG noted that: (i) the Opposite Parties and their office bearers met and used the IARPMA as a platform to discuss price increases; and (ii) the increase in prices of paper indicated price parallelism among the Opposite Parties; (iii) office bearers of the Opposite Parties admitted to attending the meetings in their depositions before the DG. Accordingly, the DG concluded that the Opposite Parties indulged in cartelisation in contravention of Section 3(3) of the Competition Act. In relation to the remaining paper manufactures, the DG did not find any evidence of cartelisation.

The CCI agreed with the findings of the DG and noted that various meetings were organised under the umbrella of IARPMA which were attended by the Opposite Parties where prices were discussed and a roadmap for future increase of prices was drawn, implemented, and monitored. The CCI further noted that the attendance by competitors at meetings where Commercially Sensitive Information (CSI) like prices is discussed, takes away the independent decision-making ability of such competitors and raises a presumption of appreciable adverse effect on competition (AAEC) which the Opposite Parties failed to discharge in the instant case.

Accordingly, the CCI imposed a penalty of INR 5 lakh (USD 6712.13) on each of the Opposite Parties and INR 2.5 lakh (USD 3356.07) on the IARPMA for facilitating the cartel. Further, it granted 100 per cent reduction in penalty to Trident Limited for disclosing the existence of the cartel and its cooperation with the DG. Further, the CCI exonerated the other eleven paper manufacturer but cautioned them to be careful in meetings of trade associations where activities prohibited under the Competition Act take place and directed them to bring the same to the attention of the CCI in future.

JSA represented Shreyans Industries Limited and *Satia Industries Limited* before the CCI.

*[Source: CCI Order dated October 12, 2021]*

### CCI finds Mersen and Assam Carbon Products guilty of indulging in cartelisation

The CCI found Mersen (India) Private Limited (**Mersen**)<sup>1</sup> and Assam Carbon Products Limited (**ACPL**)<sup>2</sup> including their office bearers (collectively referred to as the '**Opposite Parties**'), guilty of bid rigging under Section 3(3)(d) of the Competition Act.

The CCI initiated the investigation based on a reference received from the Deputy Chief Materials Manager of Southern Railway (**Complainant**) who, *inter alia* alleged that the Opposite Parties colluded in the tenders issued by Southern Railway for procurement of carbon brushes for Hitachi Traction Motor Type HS 15250A<sup>3</sup> (**Carbon Brushes**) thereby leading to exorbitant increase in the purchase price of Carbon Brushes over the years.

The DG concluded that the Opposite Parties exchanged CSI and indulged in bid rigging. During the pendency of the investigation, Marsen and ACPL filed leniency applications with the CCI disclosing the existence of a cartel.

The CCI agreed with the findings of the DG and *inter alia* noted that the Opposite Parties: (i) discussed every detail of the tender including the prices to be quoted *via* WhatsApp messages and e-mail communication; (ii) were the only two approved vendors for supplying Carbon Brushes and Southern Railways had no option but to procure Carbon Brushes at an inflated price; and (iii) the Chairman of ACPL, after deciding the price with Mersen, expressly communicated the same to its employees to be quoted in the forthcoming tenders, thereby leading to collusion.

The CCI decided not to impose any monetary penalty basis mitigating circumstances, namely: (i) the Opposite Parties filed leniency application and accepted their conduct; (ii) the Opposite Parties were medium and small enterprises and ACPL was a loss-making entity; and (iii) the prevailing economic situation arising due to COVID-19 and the various measures undertaken by the Government to protect Micro, Small and Medium Enterprises (**MSME**). Accordingly, the CCI directed the Opposite Parties and their respective office bearers to cease and desist from indulging in bid rigging.

*[Source: CCI Order dated November 1, 2021]*

<sup>1</sup> It is engaged in the business of manufacturing brushes and brush holders for industrial electric motors.

<sup>2</sup> It is engaged in supply of carbon brushes for Hitachi Traction Motor Type HS1520A to Indian Railways.

<sup>3</sup> It is used for the propulsion of locomotives or electric roadway vehicles and is an equipment used in an electric locomotive

## CCI dismisses case against durrie suppliers for indulging in alleged cartelisation

The CCI dismissed the case of bid rigging against UP State Handloom Corporation Limited (**UP State Handloom**), J&K State Handloom Development Corporation, Women Development Organisation and Manmohan Commercial Limited (**Manmohan Commercial**) (together referred to as the '**Durrie<sup>4</sup> Suppliers**) in relation to the supply of durries in response to the tender (**Tender**) issued by CP Cell, Directorate General of Ordnance Service (**DGOS**) in 2015.

The CCI initiated the investigation basis the reference received from DGOS which alleged that the Durrie Suppliers engaged in bid rigging in relation to the alleged Tender.

The CCI referred the matter to the DG for investigation who *inter alia* concluded that Durrie Suppliers engaged in bid rigging as: (i) they exchanged CSI through various in-person contacts, phone calls, e-mails etc., discussed bid prices and allocated quantities in the Tender; (ii) UP State Handloom and Manmohan Commercial had an MoU whereby Manmohan Commercial prepared and processed bids on behalf of UP State Handloom for which UP State Handloom received 2.5 per cent of the total consideration amount; (iii) the Durrie Suppliers submitted identical prices and the quantities supplied by them exactly added up to the total quantity of the Tender, which could not be a coincidence; and (iv) Manmohan Commercial received financial and technical information in relation to the Tender and other CSI from an office bearer of DGOS.

The CCI disagreed with the findings of the DG and noted that: (i) there was no contact or communication, or meeting amongst Durrie Suppliers immediately before or after the submission of bids in the Tender; (ii) the evidence that the DG relied upon to come to a finding of bid-rigging was of a much later period; (iii) the UP State Handloom was not a manufacturer of durries and only procured the same from Manmohan Commercial to supply the same in the Tender; (iv) exchange of CSI between Manmohan Commercial and an office bearer of DGOS is not the kind of collusion as contemplated under the Competition Act. Accordingly, the CCI dismissed the case.

[Source: [CCI Order dated November 3, 2021](#)]

## CCI dismisses case against contractors of road transportation in Uttar Pradesh for indulging in alleged cartelisation

The CCI dismissed a case of bid rigging against certain contractors engaged in road construction pursuant to the tenders issued by the Public Works Department of Uttar Pradesh (**PWD**).

The CCI took *suo motu* cognizance basis the report of Comptroller and Auditor General which indicated collusion among contractors in relation to several tenders issued for construction of roads between 2011-2016 as: (i) bidders with related or common ownership took part in the tenders; (ii) the tender was awarded to all the bidders who quoted same prices; (iii) no re-tendering was done in case of participation by only single bidder. Accordingly, the CCI referred the matter to the DG for investigation.

The DG concluded that there was no evidence to substantiate the allegation of bid rigging.

The CCI agreed with the findings of the DG and *inter alia* noted that: (i) mere commonality of ownership does not in itself constitute collusion; (ii) in absence of any rule pertaining to re-tendering in cases of participation by a single bidder, allotment of tenders to a single bidder is not enough to establish any anti-competitive conduct. Accordingly, the CCI closed the case.

[Source: [CCI Order dated November 11, 2021](#)]

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<sup>4</sup> Durries are handwoven rugs or thin flat carpets.

## CCI orders investigation against table tennis associations for alleged abuse of dominant position

The CCI received a complaint against The Suburban Table Tennis Association<sup>5</sup>, Maharashtra State Table Tennis Association and Table Tennis Federation of India <sup>6</sup> (collectively referred to as the '**Opposite Parties**') for denying market access to the complainant as the Opposite Parties restricted their players from joining or playing for tournaments organised by the complainant and threatened to take action against them if they did not comply. Complainant is a non-governmental organisation engaged in promoting table tennis in India, by conducting friendly matches in and around Mumbai.

The Opposite Parties challenged the maintainability of the case on the ground that the CCI does not have jurisdiction as they are not an 'enterprise' under the Competition Act. The CCI rejected this contention and noted that the Opposite Parties are an enterprise as they organise table tennis tournaments and receive sponsorships and donations, besides collecting yearly subscription fees. Accordingly, they are engaged in economic/ commercial activities for the purposes of the Competition Act.

The CCI delineated the relevant market as the '*market for organisation of table tennis leagues/events/tournaments in India*' and noted that: (i) the Opposite Parties appear to be dominant in the relevant market as they are organised in a pyramidal structure and regulate/govern the sport of table tennis in India; (ii) Opposite Parties *prima facie* abused their dominant position by threatening to take actions against players/clubs/coaches who were willing to participate in the tournaments organised by the complainant.

Accordingly, the CCI referred the matter to the DG for investigation.

[\[Source: CCI Order dated November 17, 2021\]](#)

## Merger Control

### CCI approves acquisition of sole control of Indiabulls AMC and Indiabulls Trustee by Nextbillion

The CCI approved the acquisition of 100 per cent equity share capital and sole control of Indiabulls Asset Management Company Limited (**Indiabulls AMC**)<sup>7</sup> and Indiabulls Trustee Company Limited (**Indiabulls Trustee**)<sup>8</sup> by Nextbillion Technology Private Limited (**Nextbillion**)<sup>9</sup> (referred to as '**Proposed Transaction**'). Indiabulls AMC and Indiabulls Trustee are collectively referred to as the '**Targets**'.

Nextbillion is a wholly owned subsidiary of Groww Inc. (**Groww**). Sequoia holds more than 10 per cent shareholding in Groww and Tiger Global holds less than 5 per cent shareholding in Groww with certain special rights. For mapping overlaps, the CCI considered the activities of Targets on one hand and Groww along with Sequoia and Tiger Global (through their relevant portfolio companies) on the other hand.

The CCI noted that there are no horizontal or existing vertical overlaps between the activities of the parties. However, there are potential vertical links between the activities of parties in the: (i) upstream market for operation of an online trading platform<sup>10</sup> where investors can invest in mutual funds and downstream market for provision of mutual funds<sup>11</sup>; and (ii) upstream market for provision of mutual funds<sup>12</sup> and downstream market for distribution of mutual

<sup>5</sup> It is a registered society, registered with the State Body and has jurisdiction over Mumbai Suburban Districts.

<sup>6</sup> It is a National Sports Federation for the sport of table tennis in India and is recognised by Ministry of Youth Affairs.

<sup>7</sup> It is engaged in the business of mutual funds, alternate investment fund and portfolio management.

<sup>8</sup> It is engaged in the business of providing trusteeship services to the mutual funds business of Indiabulls AMC.

<sup>9</sup> It is a subsidiary of Groww Inc. and operates an online trading platform by the name Groww that allows investors to invest in stocks and mutual funds.

<sup>10</sup> Nextbillion operates an online platform called 'Groww' where investors can invest in mutual funds.

<sup>11</sup> Targets are present in this market.

<sup>12</sup> Targets are engaged in this market.

funds<sup>13</sup>. However, given the insignificant presence of parties in these markets with number of players present in these markets, the Proposed Transaction is not likely to raise foreclosure concerns.

*(Source: CCI Order dated September 9, 2021)*

### CCI approves acquisition of sole control of Fullerton India by Sumitomo Mitsui

The CCI approved the acquisition of 100 per cent equity share capital and sole control of Fullerton India Credit Company Limited<sup>14</sup> by Sumitomo Mitsui Financial Group, Inc.<sup>15</sup> (referred to as the '**Proposed Transaction**').

The CCI noted that there are horizontal overlaps between the activities of the parties in the broad market for the provision of loans in India and the narrow market for: (i) MSME loans; (ii) commercial vehicles loans; (iii) housing finance; and (iv) personal loans (collectively referred to as the '**Relevant Markets**'). However, given the low market shares of the parties with presence of several significant players in the Relevant Markets, the CCI noted that the Proposed Transaction is not likely to raise competition concerns.

*(Source: CCI Order dated September 23, 2021)*

### CCI approves acquisition of majority shareholding in pigment business of Clariant and Heubach Holding by SK Capital

The CCI approved the acquisition of majority shareholding in pigment businesses of Clariant AG (**Clariant**)<sup>16</sup> and Heubach Holding GmbH (**Heubach**)<sup>17</sup> by SK Capital Partners, LP (**SKCP**)<sup>18</sup> with Clariant and Heubach holding minority stakes in the said business (referred to as the '**Proposed Transaction**').

The CCI noted that there are horizontal overlaps between the activities of the parties in the market for manufacture and sale of: (i) organic and inorganic pigments; (ii) pigment preparations; and (iii) (re-)sale of dyes in India (collectively referred to as '**Relevant Market**'). However, given the low market shares of the parties with presence of several significant players in each Relevant Market, the CCI noted that Proposed Transaction is not likely to raise competition concerns.

Further, the CCI noted that there are existing vertical relationships between the activities of the parties in the: (i) upstream market of sale of input material by Clariant (through pigment business) to SKCP's portfolio companies; (ii) upstream market of purchase of input material from Heubach from downstream market of manufacturing pigment preparations and diarylide pigments by Clariant's pigment business; and (iii) upstream market of purchase of products by Clariant (for its pigment business) used for downstream market of manufacturing dyes by SKCP portfolio company. The CCI also noted that there are potential vertical links between the activities of the parties. However, given the insignificant presence of the parties and presence of several players in these markets, the same is not likely to raise foreclosure concerns.

*(Source: CCI Order dated October 4, 2021)*

<sup>13</sup> Nextbillion is present in this market.

Sequoia through its shareholding in Amica Financial Technologies Private Limited and Turtlemint Mutual Funds Distributors Private Limited is present in this market.

Tiger Global through its shareholding in RKS SV Securities India Private Limited is present in this market.

<sup>14</sup> It is registered as a non-banking financial company with the Reserve Bank of India.

<sup>15</sup> It is the holding company of Sumitomo Mitsui Banking Corporation. It is *inter alia* engaged in the provision of banking and financial services in India.

<sup>16</sup> Consisting of business of production and/or commercialization of organic pigments, pigment preparations, and dyes conducted by Clariant's wholly owned subsidiaries.

<sup>17</sup> Consisting of business of the production, manufacturing, and trading of corrosion protection pigments as well as organic and inorganic colour pigments, hybrid pigments, and pigment preparations.

<sup>18</sup> It is a private investment firm focused on the specialty materials, chemicals, and pharmaceuticals sectors.



## CCI approves the acquisition of certain shareholding of Tendril Ventures by Genera Group under Green Channel

The CCI approved the acquisition of certain shareholding equity share capital of Tendril Ventures Pte. Limited<sup>19</sup> from Trafigura Pte. Limited by Genera Group Holding S.p.A<sup>20</sup> (referred to as the '**Proposed Transaction**'). The parties notified the Proposed Transaction under the Green Channel Route (**GCR**) as there were no horizontal, vertical, or complementary overlaps between the activities of the parties in India.

*(Source: Summary)*

## Miscellaneous

### CCI releases its findings in relation to its study on pharmaceutical sector

On November 18, 2021, the CCI released its findings on a market study conducted by it in the pharmaceutical sector in India (**Pharma Report**). The Pharma Report focuses on: (i) generic drugs; (ii) role of trade associations; and (iii) online pharmacies. The key findings are as follows:

1. **Generic Drugs:** In India, generic drugs dominate the pharmaceutical sales and there are multiple manufacturers manufacturing generic drugs. Generic drug manufacturers fiercely compete on brand rather than price. High priced generic drugs are able to sustain high market shares even with presence of low-priced alternatives because of: (a) brand differentiation; and (b) higher trade margins provided to pharmacies that influence the retail sale of drugs. In this regard, the CCI observed that:
  - **Brand differentiation and quality:** To shift the focus from brand competition to price competition, the CCI suggested certain measures such as: (a) ensuring consistent and uniform application of quality standards by Central Drugs Standard Control Organisation; (b) ensuring transparency at every stage of drug approval; (c) ensuring periodic, systematic and scientific drug testing over time to keep the quality of drugs in check; (d) creating a National Digital Drugs Databank and making it available to regulators, industry, physicians and consumers to address information asymmetry; (e) ensuring quality control across supply chain and in public procurement; (f) introducing standard compliance marks on unbranded generic drugs; (g) increasing awareness regarding generic drugs; and (h) strengthening the supply chain management, increasing visibility and widening the network of Janaushadhi Kendras in order to enhance the reach of generic drugs.
  - **Trade margin:** One of the primary ways in which generic drug manufacturers compete to have their products stocked and sold by pharmacies is by offering them high margins. The CCI stated that it shall continue to preserve and promote effective competition among players across the pharmaceutical supply chain, including retailers, and prevent collective determination of trade margins by the pharmaceutical companies.
2. **Trade Association Practices:** While emphasising on the importance of trade associations, the CCI urged them to adopt an effective competition compliance programme to ensure that they and/or their members, directly or indirectly, do not engage in anti-competitive activity.

<sup>19</sup> It is present in India through a company, Nayara. It is an energy company that is engaged in processing and refining of crude oil and the manufacturing and supply of fuel products.

<sup>20</sup> It is incorporated in Italy. It is the holding company for a group of companies that is engaged in sustainable investments, circular economy, energy efficiency operations, and real estate investments. It does not have any business activities in India.

3. **Online Pharmacies:** Online pharmacies are relatively new but a rapidly growing segment in India. The key concerns raised in respect of online pharmacies are: (a) discounts offered by these platforms; and (b) concentration of personal health data with few platforms. The CCI urged the online pharmacies to adopt self-regulatory measures in the areas of collection, use, sharing of data and privacy.

*(Source: Pharma Report dated November 18, 2021)*

For more details, please contact [km@jsalaw.com](mailto:km@jsalaw.com)

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