



JSA Newsletter Competition Law



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Contents

Enforcement

- CCI finds soil testing companies guilty of indulging in bid- rigging
- CCI finds railway bushes manufacturers guilty of indulging in bid- rigging
- CCI orders investigation against Zomato and Swiggy for indulging in alleged anti- competitive practices
- CCI dismisses case against Mercedes and its authorised dealers for indulging in alleged anti- competitive practices
- CCI dismisses case against food contractors for indulging in alleged bid- rigging
- CCI dismisses case against milk suppliers for indulging in alleged anti-competitive practices

Merger Control

- CCI approves acquisition of minority shareholding of Micro Life Sciences by Warburg Pincus group
- CCI approves acquisition of sole control of ISMT Limited by Kirloskar group
- CCI approves acquisition of Sintex by Reliance and ACRE Trust
- CCI approves acquisition of minority shareholding of Shriram General Insurance Company by KKR group under Green Channel

Miscellaneous

CCI raids sellers of Amazon and Flipkart and Mining Service Companies in relation to anti-competitive practices

Enforcement

CCI finds soil testing companies guilty of indulging in bid-rigging

On April 4, 2022, the Competition Commission of India (CCI) penalised 9 companies¹ (collectively referred to as the ‘**Soil Testing Companies**’) including their officer bearers for indulging in a bid-rigging cartel in the e-tenders floated by the Department of Agriculture, Government of Uttar Pradesh for soil sample testing² in 2017 and 2018 (**Tenders**), in contravention of Section 3(3) of the Competition Act, 2002³ (**Competition Act**).

The CCI directed the Director General (**DG**) to investigate the alleged conduct pursuant to a complaint filed by the Department of Agriculture, Government of Uttar Pradesh, *inter alia* alleging that the Soil Testing Companies coordinated and indulged in cover-bidding, bid rotation, and collusive bidding in the tenders in violation of provisions of the Competition Act. The DG, after conducting a detailed investigation *inter alia* concluded that the Soil Testing Companies indulged in bid-rigging and cartelisation.

The CCI agreed with the findings of the DG and *inter alia* noted that Soil Testing Companies: (i) provided fake and fabricated documents to ensure their technical eligibility and submitted cover bids in favour of M/s Yash Solutions; (ii) submitted bids from the same login id and IP address, some submitted demand drafts prepared by competing Soil Testing Companies without any justification; (iii) had common registered addresses, and some had common shareholding (including family members); (iv) formed a consortium by entering into a memorandum of understanding, showcasing that the said companies were not independent entities, but related concerns acting in association with each other, in furtherance of their common object; (v) were in regular touch with each other through their representatives, which was evident from their call data records during the bidding process; and (vi) acknowledged their respective conduct during depositions.

The CCI took a lenient view while determining penalty as the Soil Testing Companies are micro, small and medium enterprises and imposed a penalty at the rate of 5 per cent of their average relevant turnover. The CCI also penalised 5 office bearers who were in charge of and responsible for the conduct of the Soil Testing Companies (at the rate of 5 per cent of their average incomes).

(Source: CCI Order dated April 4, 2022)

CCI finds railway bushes manufacturers guilty of indulging in bid-rigging

On April 4, 2022, the CCI penalised 11 companies⁴ (collectively referred to as the ‘**Railway Bushes Manufacturers**’), including their officer bearers for indulging in a bid-rigging cartel in the tender floated by Indian Railways for the procurement of High-Performance Polyamide (**HPPA**) Bushes and Self-Lubricating Polyester Resin (**SLPR**) bushes⁵, in contravention of Section 3(3) of the Competition Act.

The CCI directed the DG to investigate the alleged conduct pursuant to a reference received from the chief materials

¹ M/s Yash Solutions, M/s Satish Kumar Agarwal, M/s Siddhi Vinayak and Sons, M/s Saraswati Sales Corporation, M/s Austere Systems Pte. Limited, M/s Delicacy Continental Private Limited, M/s Fimo Infosolutions Private Limited, M/s Toyfort and M/s Chaitanya Business Outsourcing Private Limited

² It is the analysis of a soil sample to determine its nutrient content, composition and other characteristics such as acidity and pH level.

³ It deals with anti-competitive horizontal agreement including cartels.

⁴ Moulded Fiberglass Products (**Moulded Fiberglass**), Power Mould, Black Burn and Co. Private Limited (**Black Burn**), Polyset Plastics Private Limited (**Ployset Plastics**), M/s Anju Techno Industries, Calstar Steel Limited, Jai Polypan Private Limited (**Jai Polypan**), Polymer Products of India Limited, M/s Micro Engineers, Quadrant EPP Surlon India Limited (**Quadrant**), and Skylark Projects Private Limited

⁵ Railway Bushes Manufacturers are engaged in the business of manufacture and supply of HPPA and SLPR bushes, that are used in bogie mounted brake cylinder coaches.

manager, North-Western Railway, *inter alia* alleging cartelisation in supply of HPPA and SLPR bushes to the Indian Railways. During the pendency of the investigation, a few Railway Bushes Manufacturers⁶, including their respective office bearers, filed leniency applications disclosing the existence of a cartel with the CCI.

The DG *inter alia* concluded that Railway Bushes Manufacturers: (i) communicated amongst each other through emails/ WhatsApp regarding the price to be quoted in the tenders and the companies were forced to quote the decided price and not to deviate from it; (ii) intended to increase the price to be quoted in the tenders as companies were encouraged to quote high prices; (iii) used common IP address, common login time and date to submit bids; (iv) had common directors/ partners amongst few companies; (v) were controlling and limiting the supply of HPPA/ SLPR bushes as these were the only approved vendors who could bid for tenders floated by Indian Railways; (vi) the representative of Polyset Plastics maintained a record of all the forthcoming tenders and allocated tenders to the companies basis the allotment value and communicated the basic price to be quoted in the tenders by the companies; and (viii) non-allottees were asked to quote 8-10 per cent higher than the mutually agreed basic price

The CCI agreed with the findings of the DG and held the Railway Bushes Manufacturers guilty of cartelisation, in violation of Sections 3(3) of the Competition Act. Accordingly, the CCI imposed a penalty of approx: (i) INR 4.06 lakh (USD 5,406.12) on Black Burn and a separate penalty on its office bearers, after granting 80 per cent reduction in penalty; (ii) INR 9.78 lakh (USD 13,022.64) on Moulded Fiberglass and a separate penalty on its office bearers, after granting 40 per cent reduction in penalty; (iii) INR 8.14 lakh (USD 10,838.89) on Jai Polypan and a separate penalty on its office bearers, after granting 30 per cent reduction in penalty; and (iv) INR 7.16 (USD 9,533.96) on Quadrant and a separate penalty on its office bearers, after granting 20 per cent reduction in penalty.

Additionally, the CCI imposed a total penalty of INR 40 lakh (USD 53,262.31) on the remaining Railway Bushes Manufacturers, including their office bearers, who did not file leniency applications.

(Source: CCI order dated April 4, 2022)

CCI orders investigation against Zomato and Swiggy for indulging in alleged anti-competitive practices

The CCI received a complaint⁷ against Zomato Limited (**Zomato**) and Bundl Technologies Private Limited (**Swiggy**) (collectively referred to as the '**Food Delivery Platforms**') for indulging in anti-competitive practices, in violation of Section 3(4) of the Competition Act⁸.

The complainant *inter alia* alleged that Food Delivery Platforms are: (i) engaging in bundling i.e., forcing the restaurant partners (**RPs**) to take the delivery services with the listing services; (ii) engaging in data masking where the RPs receive no data about the end consumers to whom the food is being delivered and then use such data to their advantage; (iii) listing their own cloud kitchen brands on their platform which is in conflict of interest to them acting as a participant on one hand and an intermediary on the other; and (iv) enforcing price parity clauses in their agreements with the RPs which disallow them from offering lower prices or offering better discounts on another platform or their own websites.

The CCI noted that Zomato and Swiggy are prominent online food delivery platforms, and their conduct is *prima facie* anti-competitive as: (i) they have a conflict of interest which may prevent them from acting as neutral platforms, given their commercial interest in the cloud kitchens; (ii) they enforce price parity clauses on the RPs which appear to indicate wide restrictions on them as they are not allowed to maintain lower prices or provide higher discounts on

⁶ Moulded Fiberglass, Black Burn, Jai Poly Pan and Quadrant

⁷ Complaint received from National Restaurant Association of India.

⁸ It deals with anti-competitive vertical agreements.

any of their own supply channels (like their own website) or on any other aggregator. Such price parity clauses discourage competition among platforms on commission rates as the RPs need to maintain similar prices on all platforms and provide similar prices to the customers, regardless of the commission rates paid to the platform.

The CCI rejected the allegation of bundling since delivery and listing services of the Food Delivery Platforms appear to be a composite service and appear to be in alignment with user interest and preference of availing a hassle-free 'one stop' service. Accordingly, the CCI referred the matter to the DG for investigation and the matter is currently being investigated by DG.

(Source: CCI Order dated April 4, 2022)

CCI dismisses case against Mercedes and its authorised dealers for indulging in alleged anti-competitive practices

The CCI received a complaint⁹ against Mercedes Benz- India (**Mercedes**) and two of its authorised dealers namely Rajasree Motors (P) Limited and Bridgeway Motors LLP (collectively referred to as the '**Authorised Dealers**') for indulging in anti-competitive practices, in violation of Section 3(4) of the Competition Act.

The complainant *inter alia* alleged that: (i) Authorised Dealers divided the geographical market of Kerala between themselves to eliminate competition between themselves and maximize profits; and (ii) as per a new distribution and sales model introduced by Mercedes, the dealers are restricted from selling cars beyond their allocated territories.

The CCI noted that: (i) the complainant did not substantiate allegations with enough evidence; and (ii) the new model does not appear to be anti-competitive as Mercedes is at liberty to devise its own distribution channels and sales model. Accordingly, the CCI dismissed the case.

(Source: CCI Order dated April 4, 2022)

CCI dismisses case against food contractors for indulging in alleged bid- rigging

The CCI received an anonymous complaint against Continental Milkose India Limited (**Continental**), M/s KAG Industries (**KAG**) and Imperial Malts Limited (**Imperial**) for indulging in bid-rigging, in relation to the tenders floated by Army Purchase Organisation (**APO**) for procurement of dry food rations/ malted milk foods between 2015 to 2021, in violation of Section 3(3) of the Competition Act.

The complainant *inter alia* alleged that Continental and KAG have common promoters and directors however, they acted as independent companies and vitiated the bidding process. Further, it was contended that Imperial participated in the said tenders as a cover bidder and has been regularly supplying malt to Continental and KAG Industries.

The CCI relied on its earlier decision¹⁰ and noted that mere common ownership is not sufficient evidence of bid rigging and that having common directors does not by itself give rise to anti-competitive concerns. The CCI also noted that several other companies had also participated in these tenders and secured contracts in the last ten years. Accordingly, the CCI dismissed the case.

(Source: CCI order dated April 4, 2022)

⁹ Mr. Murali Vengly, a former employee of Authorised Dealers.

¹⁰ In Re: Alleged cartelization in road construction work in the State of Uttar Pradesh ([Suo Motu Case No. 03 of 2018](#))

CCI dismisses case against milk suppliers for indulging in alleged anti-competitive practices

The CCI received a complaint¹¹ against Kerala Co – operative Milk Marketing Federation Limited and Thiruvananthapuram Regional Co-operative Milk Producers Union Limited (collectively referred to as '**Milk Suppliers**') for indulging in alleged anti- competitive practices, in violation of Sections 3(4) of the Competition Act.

The complainant *inter alia* alleged that Milk Suppliers: (i) entered into franchisee agreements with several dealers/distributors to give them an exclusive agency for distribution of their milk and milk products. However, these dealers/distributors were prevented from dealing with milk and milk products manufactured by their competitors including the complainant, thereby creating barriers to entry for new entrants; and (ii) penalised dealers/distributors (by imposing monetary penalty, terminating their franchise agreement, and confiscating the security deposit) if they did not comply with the terms and conditions laid down by the Milk Suppliers.

The CCI noted that the Milk Suppliers enjoy market power as they are one of the largest players with the largest distribution network in the market for milk and milk products in the organised dairy market in the State of Kerala. On the allegation of entering into exclusive franchise agreements, the CCI noted that the Milk Suppliers do not enter into any agreement with non-exclusive dealers, and wholesalers are free to distribute the milk through such dealers, which also include supermarkets. Therefore, except for the exclusive agents, the Milk Suppliers do not enter into agreements with other sub-distributors. The CCI also noted that certain restrictions which are placed on exclusive outlets/dealers by the manufacturers may not always be termed as anti-competitive when supported by circumstances warranting such exclusivity when looked at objectively. Accordingly, it dismissed the case.

(Source: CCI order dated March 31, 2022)

Merger Control

CCI approves acquisition of minority shareholding of Micro Life Sciences by Warburg Pincus group

The CCI approved the acquisition of approx. 11.6 to 13.1 per cent equity share capital of Micro Life Sciences Private Limited (**Micro Life Sciences**)¹² by Warburg Pincus group (**WP Group**) (referred to as the '**Proposed Transaction**'). Pursuant to the Proposed Transaction, WP Group will have the right to: (i) nominate a director on the board of Micro Life Sciences; (ii) representation in the shareholder meetings; and (iii) veto certain corporate actions of Micro Life Sciences.

The CCI noted that there is a vertical relationship between the activities of WP Group's portfolio entity i.e., MedPlus Health Services Private Limited (**MedPlus**)¹³ and Micro Life Sciences in the upstream market of manufacture and sale of medical devices, in-vitro diagnostics analyzers & reagents and over-the-counter products; and the downstream market of distribution and sale of pharmaceutical products in India. However, given that MedPlus is not engaged in the distribution of the core products manufactured by Micro Life Sciences and the value of procurement by MedPlus of Micro Life Sciences' other product categories is insignificant, the CCI noted that the Proposed Transaction is not likely to raise foreclosure concerns.

(Source: CCI Order dated March 15, 2022)

¹¹ Complaint received from Muralya Dairy Products (P) Limited, a body corporate engaged in the business of supplying milk and milk products within the Kerala since 2018.

¹² It is engaged in the business of manufacturing and sale of medical devices.

¹³ It is engaged in the business of distribution/ sale of pharmaceutical products in India.

CCI approves acquisition of sole control of ISMT Limited by Kirloskar group

The CCI approved the acquisition of sole control of ISMT Limited (**ISMT**)¹⁴ by the Kirloskar group through its wholly owned subsidiary, Kirloskar Ferrous Industries Limited (**Kirloskar**)¹⁵ (referred to as the '**Proposed Transaction**').

The CCI noted that there are no horizontal overlaps between the Kirloskar group and ISMT (including its subsidiaries). However, there are existing vertical relationships between the activities of the parties in the upstream market of manufacture and sale of pig iron¹⁶ in India and downstream markets of: (i) manufacture and sale of steel billets; and (ii) manufacture and sale of seamless tubes in India. Given that the quantity of raw materials sourced by ISMT from Kirloskar is minuscule along with the presence of significant players in the relevant market, the CCI noted that the Proposed Transaction is not likely to raise foreclosure concerns.

(Source: Order dated February 23, 2022)

CCI approves acquisition of Sintex by Reliance and ACRE Trust

The CCI approved the acquisition of: (i) 70 per cent equity share capital of Sintex Industries Limited (Sintex)¹⁷ by Reliance Industries Limited (RIL)¹⁸; and (ii) 10 per cent equity share capital of Sintex by ACRE-114-Trust (ACRE Trust)¹⁹ under the Insolvency and Bankruptcy Code, 2016 (referred to as the '**Proposed Transaction**')²⁰.

The CCI noted that there are horizontal overlaps between Sintex and RIL group in the market for the manufacture and sale of yarns in India. However, given the low market shares of the parties with the presence of several significant players in the relevant market, the CCI noted that the 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 following markets in India:

- a) manufacture and sale of cotton yarn (upstream) and manufacture of fabrics (downstream);
- b) manufacture and sale of cotton blended yarn (upstream) and manufacture of apparels (downstream);
- c) manufacture and sale of linen yarn (upstream) and manufacture of home textiles (downstream); and
- d) manufacture and sale of polyester staple fibre (upstream) and manufacture of cotton blended yarn (downstream).

However, given the insignificant presence of the parties in each of the vertical markets, the Proposed Transaction is not likely to raise foreclosure concerns.

(Source: CCI Order dated February 7, 2022)

¹⁴ It is engaged in the business of manufacturing steel, carbon steel billets, alloy and carbon casts, hot and cold finished seamless tubes and pipes.

¹⁵ It is engaged in the business of manufacturing iron castings comprising of two products lines i.e., pig iron and grey casting irons.

¹⁶ It is one of the raw materials used in manufacturing steel billets.

¹⁷ It is engaged in the business of manufacture and sale of different varieties of yarns, primarily cotton yarn, cotton blended yarn, and 100 per cent wet linen yarn in India and across the globe.

¹⁸ It is the ultimate holding company of the Reliance group. It holds 40.01 per cent stake in Alok Industries Limited, a textile manufacturer.

¹⁹ ACRE is an asset reconstruction company registered with the Reserve Bank of India. It is engaged in the business of acquisition of non-performing assets from banks/financial institutions through various trusts. The ACRE Trust does not carry out any activities and has been specifically created for the Proposed Transaction.

²⁰ The secured financial creditors (that form a part of the Committee of Creditors of Sintex) are acquiring the remaining 20 per cent equity share capital along with ordinary shareholders' rights.

CCI approves acquisition of minority shareholding of Shriram General Insurance Company by KKR group under Green Channel

The CCI approved the acquisition of 9.99 per cent equity share capital of Shriram General Insurance Company Limited²¹ by KKR group²² (referred to as the '**Proposed Transaction**'). The parties notified the Proposed Transaction under the Green Channel Route as there were no horizontal, vertical, or complementary overlaps between the activities of the parties in India.

(Source: Summary)

Miscellaneous

CCI raids sellers of Amazon and Flipkart and Mining Service Companies in relation to anti-competitive practices

Based on media reports, on April 28, 2022, the CCI raided the business premises of top sellers of Amazon and Flipkart. The raids appear to be pursuant to the investigation ordered by the CCI in [January 2020](#) against Amazon and Flipkart for anti-competitive practices by giving preferential treatment to their sellers, including giving preferential listing to products of their preferred sellers on their platforms and offering deep discounts to them, to the detriment of other sellers.

In a separate case, the CCI raided the office premises of certain mining service companies on May 6, 2022. The raid appears to be pursuant to the investigation ordered by the CCI based on a complaint by Bharat Coking Coal Limited (**Bharat Coking**), alleging that the said companies indulged in bid-rigging in the tenders floated by Bharat Coking.

(Source: Reuters and Business Standard)

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²¹ It is a joint venture between Shriram Capital Limited and Sanlam Limited. It is an insurance provider licensed with the Insurance Regulatory and Development Authority of India and provides variety of non-life insurance services including motor insurance, travel insurance, home insurance etc.

²² It is making the acquisition through its special purpose vehicle i.e., Tangent Asia Holdings II Pte. Ltd.