

Contents

High Court

- Gujarat High Court dismisses writ petition filed by JK Paper challenging CCI's jurisdiction
- Bombay High Court directs CCI to decide on its jurisdiction in debenture trustees' case

National Company Law Appellate Tribunal

NCLAT upholds CCI order against Google for abusing its dominant position

Competition Commission of India

Merger Control

- CCI approves acquisition of shareholding in LT Foods and Daawat Foods
- CCI approves acquisition of sole control of R Systems by Blackstone
- CCI approves acquisition of textile dyes and chemicals business of Huntsman International by SK Capital
- CCI approves acquisition of HFE Global by KKR
- CCI approves acquisition of GMR Infrastructure, GMR Infra Developers and GMR Airports by Aéroports de Paris under Green Channel
- CCI approves acquisition of Lenskart by ADIA under Green Channel
- CCI approves acquisition of Vaicom18 by QIA under Green Channel
- CCI approves acquisition of VVDN Technologies by Kotak Mahindra and Motilal Oswal under Green Channel

Miscellaneous

Parliament passes the Competition (Amendment) Bill, 2023

High Court

Gujarat High Court dismisses writ petition filed by JK Paper challenging CCI's jurisdiction

The High Court of Gujarat (“**GHC**”) dismissed the writ petition filed by JK Paper Limited (“**JK Paper**”) *inter alia* challenging orders passed by the Competition Commission of India (“**CCI**”) directing investigation against them for indulging in alleged cartelisation in the paper industry¹ in violation of Section 3(3) of the Competition Act, 2002 (“**Competition Act**”).

Brief Background

In 2014 and 2015, M/s Sivakasi Master Printers and M/s All India Federation of Master Printers (together referred to as the “**Complainants**”) filed separate information with the CCI, alleging that paper mills (including JK Paper) formed a cartel to increase prices of different types of paper.

Subsequently, in August 2014 and November 2015, the CCI passed 2 (two) separate orders under Section 26(1) of the Competition Act (“**Prima Facie Orders**”) directing an investigation against the paper mills and clubbed the 2 (two) cases. Pursuant to the Prima Facie Orders, the Director General (“**DG**”) issued notices to JK Paper seeking information.

In February 2019, the DG submitted its investigation report to the CCI (“**DG Report**”) basis which the CCI directed JK Paper to submit its objections to the DG Report and its relevant financial information. Subsequently, JK Paper requested the CCI for cross-examination of the Complainants, however the said request was rejected by the CCI vide order dated July 4, 2019 (“**Rejection Order**”).

Aggrieved, JK Paper challenged the Prima Facie Orders, the Rejection Order and the DG Report before the GHC. JK Paper *inter alia* contended that: (a) the information (complaint) was restricted to only writing and printing paper, but the DG expanded the scope of the investigation to include copier paper; (b) the CCI failed to define the relevant market while forming a *prima facie* opinion; and (c) JK Papers was denied the right of cross-examining the Complainants.

GHC Decision

The GHC dismissed the writ petition and *inter alia* held that: (a) JK Paper accepted the Prima Facie Orders when they were passed and actively participated in the investigation proceedings. It only approached the GHC when its request for cross-examination was rejected. Having voluntarily furnished the information, including for copier paper, JK Papers cannot contend that the scope of the investigation was expanded; and (b) the determination of the relevant market is not a mandatory pre-condition for assessing the violation of cartelisation under Section 3 of the Competition Act; (c) even though the request for cross-examination of the Complainants was rejected, the CCI granted liberty to JK Papers to file its objections to the DG Report. Further, a *prima facie* order being an administrative order merely directs an investigation. It does not affect the rights and liabilities of a party. Accordingly, the writ petition is misconceived.

(Source: GHC Judgment dated April 3, 2023)

¹ Case No. 30 of 2014 and Case No. 85 of 2015

Bombay High Court directs CCI to decide on its jurisdiction in debenture trustees' case

The High Court of Bombay (“**BHC**”) disposed of the writ petitions filed by IDBI Trusteeship Services Limited, Axis Trustee Services Limited, SBICAP Trustee Company Limited (together referred to as “**DTs**”) and their association, Trustees’ Association of India (“**TAI**”) (DTs and TAI are together referred to as the “**Petitioners**”) and directed the CCI to decide on the issue of its jurisdiction.

Brief Background

The investigation against the Petitioners was initiated pursuant to the complaint filed by Muthoot Finance Limited (“**MFL**”) wherein it was *inter alia* alleged that the DTs under the aegis of TAI have allegedly fixed and exorbitantly increased the trusteeship fee charged by the DTs for providing trusteeship services to bond issuers (“**CCI Complaint**”). Before filing the CCI Complaint, MFL approached the Securities Exchange Board of India (“**SEBI**”) raising the same/ similar issues against the Petitioners.

Meanwhile, the SEBI informed the CCI and the DG that it is examining the issues raised by MFL and requested the CCI/ DG to hold off its investigation against the Petitioners. Despite the same, the CCI continued with the investigation. Aggrieved, the Petitioners approached the BHC challenging the jurisdiction of the CCI for initiating an investigation against them on the ground that the Petitioners are governed by the SEBI, being the specialised sectoral regulator, who was already seized of the matter and had the appropriate jurisdiction. Further, in terms of the judgment of the Supreme Court of India in *CCI v Bharti Airtel*², it is only after a sectoral regulator returns findings which lead to the *prima facie* conclusion that any anti-competitive conduct has occurred, can the CCI’s jurisdiction be activated.

On April 11, 2022, the BHC granted interim relief to the Petitioners thereby staying the CCI’s investigation. Further, it directed the SEBI to complete its inquiry and form its *prima facie* view within 2 (two) months (“**Report**”). Subsequently, the SEBI submitted the Report to the CCI and the BHC.

BHC Order

On February 21, 2023, the BHC passed an order whereby it disposed of the writ petitions and gave liberty to the Petitioners to approach the CCI on the issue of jurisdiction. It further stated that the Petitioners’ objection to the CCI’s jurisdiction would be decided first by the CCI, and it would pass a written order in this regard.

The BHC refrained from making any observations in relation to the merits of the case.

JSA represented the Petitioners before the BHC.

(Source: Order dated February 21, 2023)

² (2019) 2 SCC 521.

National Company Law Appellate Tribunal

NCLAT upholds CCI order against Google for abusing its dominant position

On March 29, 2023, the National Company Law Appellate Tribunal (“NCLAT”) upheld the order passed by the CCI penalizing Google for abusing its dominant position in relation to android mobile devices in contravention of Section 4 of the Competition Act. However, it set aside a few remedial directions imposed on Google by the CCI.

On [October 20, 2022](#), the CCI imposed a penalty of INR 1,337,76,00,000 (Indian Rupees one thousand three hundred thirty seven crore seventy six lakh)³ along with 10 (ten) remedial directions on Google for abusing its dominant position in relation to android mobile devices (“CCI Order”). For a detailed summary of the CCI Order, refer to [JSA Newsletter of October 2022](#).

Appeal before NCLAT

Aggrieved, Google approached the NCLAT challenging the CCI Order. The NCLAT agreed with the findings of the CCI and observed as follows:

- 1) Google abused its dominant position by: (a) mandating the pre-installation of Google’s entire Google Mobile Services (“GMS”)⁴ suite on smartphones/tablets (“Device”) amounts to imposing an unfair condition on the Device manufacturers in breach of Section 4(2)(a)(i) and 4(2)(d) of the Competition Act; (b) tying Play Store with Google Chrome and Youtube as this denied market access to competing applications resulting in Google leveraging its dominance in the market for licensable operating system (“OS”) to protect its position in the online general search market and YouTube; and (c) mandating the execution of anti-fragmentation agreement (“AFA”) and android compatibility commitment agreement (“ACC”) for the pre-installation of Google’s proprietary apps for all Devices as this restricts scientific and technical development in the OS market
- 2) The CCI is required to undertake an effects-based analysis under which it must demonstrate that the abusive conduct had the actual effect of causing appreciable adverse effect on competition in India.
- 3) The NCLAT rejected the argument that the CCI Order suffers from confirmation bias as it extensively relies on the findings of the European Commission in its proceedings against Google. The NCLAT observed that the CCI Order was passed after independently applying its mind based on the extensive information on record.
- 4) The NCLAT rejected the argument that the report of the DG violates the principles of natural justice as it asked ‘leading’ questions to the Device manufacturers to elicit desired responses. The NCLAT observed that DG’s function is merely inquisitive in nature and the said questions were to elicit the relevant information.
- 5) The NCLAT affirmed 6 (six) out of 10 (ten) directions but set aside the following 4 (four) directions:
 - a) The CCI directed Google to allow third party app developers to distribute the apps using Google Play Store. However, the NCLAT noted that the CCI did not find any abusive conduct by Google in the Play Store market and hence, no directions can be imposed by the CCI.

³ Approx. USD 162,000,000 (US Dollar one hundred sixty two million).

⁴ GMS includes wide range of apps such as Google Maps, Gmail, Google Drive, Google search and YouTube.

- b) The CCI directed Google to allow third party app developers to distribute their apps through sideloading⁵. The NCLAT noted that the users are already able to download apps by sideloading (i.e., not using Play Store to download the apps) and that Google only issues a warning to guard users against potential threats of malware (which Google is required to do as per statutory provisions). Accordingly, the NCLAT set aside this direction.
- c) The CCI directed Google to share its play services app programming interface (“**API**”) with third party app developers and competitors so that they can port their apps easily onto Android forks. The NCLAT noted that play services and the APIs are proprietary items of Google and should remain an incentive for a technology company like Google to monetise it through commercial use. Accordingly, the NCLAT set aside this direction.
- d) The CCI directed Google not to restrict un-installing of the GMS suite apps (which are pre-installed) by its users. However, given that these apps can be uninstalled and disabled as per the user’s choice, the NCLAT set aside this direction.
- 6) On the issue of penalty, the NCLAT noted that, while calculating the ‘relevant turnover’, the CCI has: (a) correctly considered the sum total of revenue of various segments/heads in India arising out of the entire business of Google India’s operations of Android OS based mobiles; (b) prudently calculated the penalty based on best estimates and relied on the lower of the 2 (two) possible turnover figures (provided by Google) although Google did not provide the requisite financial details to the CCI; (c) levied ‘provisional penalty’ on Google, however, given that the Competition Act does not provide for ‘provisional penalty’, the NCLAT treated the penalty imposed by the CCI to be final.

(Source: [NCLAT Judgment dated March 29, 2023](#))

Competition Commission of India

Merger Control

CCI approves acquisition of shareholding in LT Foods and Daawat Foods

The CCI approved the acquisition of: (a) up to 20% shareholding of LT Foods Limited (“**LT Foods**”)⁶ by Saudi Agriculture and Livestock Investment Company (“**SALIC**”)⁷; and (b) additional 29.52% shareholding of Daawat Foods Limited (“**DFL**”)⁸ by LT Foods (“**Proposed Transaction**”). Pursuant to the Proposed Transaction, LT Foods will hold 100% shareholding in DFL.

The CCI noted that there are horizontal overlaps between the activities of the parties⁹ in the broad market for: (a) distribution and sale of basmati rice, and in the narrow markets for branded basmati rice and non-branded basmati rice; (b) distribution and sale of non-basmati rice; (c) production and sale of oil seeds; and (d) wholesale trading of edible oils in India. However, given the low market shares of the parties with the presence of several significant players in each of the relevant markets, the Proposed Transaction is not likely to raise competition concerns.

⁵ It is the installation of applications which are not downloaded through Google’s Play Store.

⁶ It is engaged in the business of production and sale of basmati, non-basmati and other specialty rice, and rice food products etc. It is also engaged in other segments such as organic food and ingredients, easy to cook rice-based/rice allied products etc.

⁷ Through SALIC International Investment Company. SALIC is an investment company with holdings in various international companies specialised in the fields of agriculture and trading of food commodities.

⁸ It is an existing subsidiary of LT Foods.

⁹ SALIC group (including its affiliates) and LT Foods.

(Source: CCI Order dated February 14, 2023)

CCI approves acquisition of sole control of R Systems International by Blackstone

The CCI approved the acquisition of up to 100% shareholding¹⁰ of R Systems International Limited (“**RSIL**”)¹¹ by Blackstone (“**Proposed Transaction**”).

The CCI noted that there are horizontal overlaps between the activities of the parties¹² in the broad markets of information technology, and IT enabled service in India, and in the narrow markets of: (a) consulting services; (b) application implementation services; (c) application managed services; and (d) business process outsourcing services. However, given the low combined market shares of the parties with the presence of several significant players in each of the relevant markets, the CCI noted that the Proposed Transaction is not likely to raise competition concerns.

(Source: CCI Order dated February 13, 2023)

CCI approves acquisition of textile dyes and chemicals business of Huntsman International by SK Capital

The CCI approved the acquisition of the textile dyes and chemicals business (“**Textile Effects Division**”) of Huntsman International LLC (“**Huntsman International**”)¹³ by SK Capital¹⁴ (“**Proposed Transaction**”).

The CCI noted that there are horizontal overlaps between the activities of the parties¹⁵ in the broad markets for manufacture of:

- a) Textile chemicals including the narrow markets for: (i) sizing agents; (ii) bleaching auxiliaries; (iii) dyeing and printing auxiliaries; (iv) optical brighteners; (v) finishing agents; and (vi) surfactants including the narrower markets of the above; and
- b) Textile dyes including the narrow markets for: (i) acid dyes; (ii) disperse dyes; (iii) reactive dyes; (iv) digital inks.

The CCI noted that the combined market shares of the parties do not exceed 30% in any market¹⁶. Further, given the presence of several significant players in each of the relevant markets, the CCI noted that the Proposed Transaction is not likely to raise competition concerns.

The CCI also examined the existing vertical relationship between the activities of the parties as SK Capital¹⁷ supplies aluminium chloride¹⁸ to the Textile Effects Division. Given the insignificant market presence of SK Capital¹⁹ with the

¹⁰ Acquisition of: (a) up to 51.67% shareholding from promoter of R Systems International Limited; and (b) additional shareholding pursuant to a composite offer.

¹¹ RSIL and its subsidiaries are engaged in the provision of information technology and IT enabled services.

¹² Blackstone group (including its affiliates) and RSIL.

¹³ It is engaged in global supply of differentiated and specialty chemicals and operates four business divisions, polyurethanes, performance products, advances materials, and the Textile Effects Division. It is a direct subsidiary of Huntsman Corporation.

¹⁴ Archroma Operations S.à.r.l (“**Archroma**”) and Archroma Germany GmbH.

¹⁵ Textile Effects Division and SK Capital group (including its affiliates).

¹⁶ The combined market share of the parties does not exceed 25% in any of the broad, narrow or narrower market except in the market for the manufacture and sale of bleaching auxiliaries, where the market share of the parties does not exceed 30%.

¹⁷ Through Archroma.

¹⁸ For the manufacture of textile chemicals.

¹⁹ Through Archroma.

presence of several significant players, the CCI noted that the Proposed Transaction is not likely to raise foreclosure concerns.

(Summary: CCI Order dated February 9, 2023)

CCI approves acquisition of HFE Global by KKR

The CCI approved the subscription of compulsorily convertible preference shares²⁰ of Hero Future Energies Global Limited (“**HFE Global**”)²¹ by KKR & Co. Inc. (“**KKR**”)²² (referred to as the “**Proposed Transaction**”).

The CCI noted that there are horizontal overlaps between the activities of the parties²³ in the broad market of power generation in India including narrow markets for solar power generation, in India. However, given the low combined market shares of the parties with the presence of several significant players in each of the relevant markets, the CCI noted that the Proposed Transaction is not likely to raise competition concerns.

Further, the CCI examined the potential vertical links between the activities of the parties²⁴ in the upstream market for power generation and the downstream market for power transmission, in India. Given the low market shares of the parties with the presence of several significant players in each of the relevant markets, the CCI noted that the Proposed Transaction is not likely to raise foreclosure concerns.

JSA represented HFE Global before the CCI.

(Source: CCI Order dated February 9, 2023)

CCI approves acquisition of GMR Infrastructure, GMR Infra Developers and GMR Airports by Aéroports de Paris under Green Channel

The CCI approved the acquisition of GMR Infrastructure Limited (“**GIL**”)²⁵, GMR Infra Developers Limited (“**GIDL**”)²⁶ and GMR Airports Limited (“**GAL**”)²⁷ by Aéroports de Paris (“**ADP**”)²⁸ (“**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)

²⁰ Upon conversion of the compulsorily convertible preference shares, it is expected that the equity shareholding of KKR in HFE Global will be between 40-80%. However, the exact equity shareholding will depend on the valuation of HFE Global at the time of the conversion of the compulsorily convertible preference shares.

²¹ It is a private company incorporated in England and Wales. It is part of the renewable energy arm of the Hero group. In India, it is primarily engaged in implementation of power projects and renewable power generation of energy.

²² Through Ardor Holdings II Pte. Ltd.

²³ KKR (including its affiliates) and HFE Global (including its affiliates).

²⁴ KKR (including its affiliates) and HFE Global (including its affiliates).

²⁵ It is a global infrastructure conglomerate engaged in designing, building and operating airports in India and overseas. It primarily operates through its subsidiary, GAL.

²⁶ It is an unlisted public limited company.

²⁷ It is a Systematically Important Core Investment Company and investment holding company. It is engaged through its subsidiaries in developing, managing, and operating airports in India and around the world, while also being engaged in associated business activities.

²⁸ Through ADP and its subsidiary GMR Infra Services Private Limited. ADP is an international airport operator based in Paris, which is majority owned by the Government of France. It carries out the following principal businesses in the airport value chain: (a) financing, (b) designing and (c) operating infrastructure, for a network of 28 (twenty eight) airports.

CCI approves acquisition of Lenskart by ADIA under Green Channel

The CCI approved the acquisition of certain shareholding of Lenskart Solutions Private Limited²⁹ by Abu Dhabi Investment Authority³⁰ (“**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)

CCI approves acquisition of Vaicom18 by QIA under Green Channel

The CCI approved the acquisition of: (a) BTS Investment 1 Pte. Ltd.³¹ (“**BTS**”) by Qatar Investment Authority³²; and (b) acquisition of shareholding of Viacom 18 Media Private Limited³³ by BTS (“**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)

CCI approves acquisition of VVDN Technologies by Kotak Mahindra and Motilal Oswal under Green Channel

The CCI approved the acquisition of shareholding of VVDN Technologies Private Limited³⁴ by funds belonging to Kotak Mahindra³⁵ and Motilal Oswal³⁶ (“**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

Parliament passes the Competition (Amendment) Bill, 2023

In a significant development, the Indian Parliament has passed the much-awaited Competition Amendment Bill, 2023 (“**Bill**”) on April 3, 2023. The Bill will now be placed before the President of India for her assent.

The Bill was first introduced in the Lok Sabha on August 5, 2022 and was referred to the Parliamentary Standing Committee on Finance (“**PSC Committee**”), which issued its [report](#) on December 13, 2022. The Bill is largely based on the

²⁹ It is engaged in the business of manufacture, wholesale and retail sale of eyewear products including eyeglasses, sunglasses, contact lenses and eyewear accessories.

³⁰ Through Platinum Jasmine A 2018 (Trust) (acting through its trustee, Platinum Owl C 2018 RSC Limited).

³¹ It is a company incorporated under the laws of Singapore and is currently in the process of raising capital from various investors.

³² Through, INQ Holding LLC.

³³ It is engaged in the media and entertainment sector in India including provision of: (a) broadcasting of channels across genres, (b) OTT video streaming through Voot and Voot Kids, (c) production and distribution of feature films, (d) production and licensing of digital content, and (e) other allied businesses.

³⁴ It is engaged in providing Electronic Manufacturing Services and Original Design Manufacturing services.

³⁵ Kotak Special Situations Fund and Kotak Pre-IPO Opportunities Fund.

³⁶ India Business Excellence Fund – IV.

recommendations made by the Competition Law Review Committee, PSC Committee as well as the extensive public consultations held with various stakeholders in 2019.

The Bill proposes far-reaching amendments to the Indian competition law and aims to streamline legal provisions and integrate the learnings of the CCI over the past 14 (fourteen) years. It is designed to bring the law into sync with international best practices, and changing economic reality, not least the growth of new technologies. For summary of the key amendments proposed to the Competition Act, refer to the [JSA Prism of April 6, 2023](#).

Competition Practice

Since the inception of the Indian competition regime, JSA has been a one-stop shop for all types of competition and anti-trust-related matters. As such, the team's in-depth understanding of the competition law, coupled with its commercially focused litigation skills has been the cornerstone on which it deals with matters relating to cartelisation (including leniency), abuse of dominance, vertical agreements, and dawn raid before the Competition Commission of India and appellate courts. The team regularly advises clients on general competition law issues arising from day-to-day business strategies and conducts competition compliance training for clients. Given the team's continued involvement with the regulator, coupled with its balanced and practical approach to competition law, it has been instrumental in shaping the competition law jurisprudence in India.

Over the years, the team has developed a reputation of not only being well regarded by its peers but also for having developed a good working relationship with the regulatory authorities. As such our lawyers have been involved in drafting statutory regulations and have represented the Indian competition law fraternity at various competition law seminars, workshops, and advocacy & public awareness programs across the world. The team's expertise (including team members) has been widely recognised by various leading international rankings and publications including Chambers and Partners, Who's Who Legal, Global Competition Review, Benchmark Litigation, Asialaw, and the Legal 500.

This Newsletter has been prepared by:



Vaibhav Choukse

Partner & Head of Practice
(Competition Law)



Ela Bali

Partner



Aditi Khanna

Senior Associate



Global Competition Review (GCR) has recognized JSA's Competition Law Practice in its latest 2023 edition of 'GCR 100'



17 Practices and 24 Ranked Lawyers



16 Practices and 11 Ranked Lawyers



7 Practices and 2 Ranked Lawyers



11 Practices and 39 Ranked Partners
IFLR1000 APAC Rankings 2022

Banking & Finance Team of the Year

Fintech Team of the Year

Restructuring & Insolvency Team of the Year



Among Top 7 Best Overall Law Firms in India and 10 Ranked Practices

13 winning Deals in IBLJ Deals of the Year

10 A List Lawyers in IBLJ Top 100 Lawyer List



Banking & Financial Services
Law Firm of the Year 2022

Dispute Resolution Law
Firm of the Year 2022

Equity Market Deal of the
Year (Premium) 2022

Energy Law Firm of the Year 2021

Ranked #1

The Vahura Best Law Firms to Work Report, 2022

Top 10 Best Law Firms for
Women in 2022

For more details, please contact km@jsalaw.com

www.jsalaw.com



Ahmedabad | Bengaluru | Chennai | Gurugram | Hyderabad | Mumbai | New Delhi



This Newsletter is not an advertisement or any form of solicitation and should not be construed as such. This newsletter has been prepared for general information purposes only. Nothing in this Newsletter constitutes professional advice or a legal opinion. You should obtain appropriate professional advice before making any business, legal or other decisions. JSA and the authors of this prism disclaim all and any liability to any person who takes any decision based on this publication.