



JSA Newsletter Competition Law

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High Court

Guwahati High Court dismisses appeal filed by Dalmia Cement against the CCI investigation

The Division Bench of the Guwahati High Court (“**GHC**”) dismissed the appeal filed by Dalmia Cement (Bharat) Limited (“**Dalmia Cement**”), challenging the dismissal of the writ petition by the Single Judge. Dalmia Cement, by filing the writ petition before the GHC challenged the order of the Competition Commission of India (“**CCI**”) through which, it initiated investigation against Dalmia Cement and other cement companies¹ (together referred to as ‘**Cement Companies**’) for indulging in alleged bid-rigging cartel.

Brief Background

On July 30, 2020, Oil and Natural Gas Corporation Limited (“**ONGC**”) filed a complaint against the Cement Companies *inter alia* alleging that these companies indulged in a bid-rigging cartel wherein they quoted similar rates in the tenders floated by ONGC for the procurement of oil well cement.

Basis the complaint, the CCI directed the Director General (“**DG**”) to investigate the matter (“**CCI Order**”). Subsequently, the DG issued a notice to the Cement Companies seeking certain information (“**DG Notice**”).

Aggrieved by the manner in which the investigation was initiated and that certain vital documents were not provided to Dalmia Cement, Dalmia Cement filed a writ petition seeking to set aside the CCI Order and the investigation.

On June 23, 2023, the Single Judge, while dismissing the writ petition held that the CCI Order is well-reasoned and does not require interference at this stage (“**Single Judge Order**”).

Proceedings before the Division Bench

Aggrieved, Dalmia Cement filed an appeal against the Single Judge Order wherein it *inter alia* contended that: (a) the DG is conducting the investigation in a fishing and roving manner; and (b) the CCI contravened the principle of natural justice as it failed to provide certain vital documents relied upon by the CCI to Dalmia Cement despite repeated requests.

Division Bench Judgment

The Division Bench dismissed the appeal and *inter alia* held that: (a) for conducting investigation, the DG require certain information from the parties. Therefore, the DG cannot be held to be conducting the investigation in a fishing and rowing manner; and (b) the CCI has not contravened the principles of natural justice as the CCI Order clearly captures the grounds on which the investigation was initiated. However, the Division Bench directed the CCI to provide Damia Cement complete set of documents relied on by the CCI to initiate investigation except those documents on which confidentiality has been sought.

(Source: GHC Order dated October 19, 2023)

¹ Shree Digvijay Cement Company Limited, and India Cements Limited.

Competition Commission of India

Enforcement

CCI dismisses case filed against Survey of India for indulging in alleged anti-competitive practices

The CCI received a complaint against the Surveyor General of India, Survey of India, Department of Science and Technology ("**Survey of India**")² and Technical Committee of Purchase Order, Survey of India (together referred to as the '**OPs**'), for indulging in alleged anti-competitive practices, in violation of Section 3 of the Competition Act, 2002 which deals with anti-competitive agreements.

The complainant³ *inter alia* alleged that the OPs have imposed certain conditions in the tender floated by the Survey of India for the procurement of 4 (four) LED plotters with folders ("**Tender**") which favoured a few bidders to the detriment of the complainant.

The CCI *inter alia* noted that a procurer is entitled to prescribe technical criteria, conditions or provisions within the tender documentation in accordance with its particular need and that the CCI does not interfere unless the procurer is a dominant player. Further, the CCI noted that while the complainant has failed to raise any allegation pertaining to the abuse of dominance of Survey of India, from the publicly available information, it can be seen that the market is competitive with several buyers procuring LED plotters apart from the Survey of India.

Accordingly, the CCI dismissed the case.

(Source: [CCI order dated October 30, 2023](#))

Merger Control

CCI approves acquisition of majority shareholding of Indira IVF by EQT

The CCI approved the acquisition of up to 65.8% shareholding of Indira IVF Hospital Private Limited ("**Indira IVF**")⁴ by Zonnebaars Netherlands B.V. ("**Zonnebaars**")⁵ belonging to the EQT group ("**Proposed Transaction**").

The CCI examined the horizontal overlaps between the activities of the parties⁶ in the broad market for the provision of healthcare services through hospitals in India and narrow market of provision of hysteroscopy procedures in Hyderabad. On the competition assessment, the CCI noted that: (a) the combined market shares of the parties are low; and (b) several significant players are present which will pose competitive constraints on the parties. In view of the same, the Proposed Transaction is not likely to raise competition concerns.

The CCI examined the potential vertical links between the parties⁷ in the upstream market for the manufacture and sale of pharmaceutical products⁸ and the downstream market for the provision of healthcare services through

² It was set up in 1767 and in its assigned role as the nation's principal mapping agency, it bears a special responsibility to ensure that the country's domain is explored and mapped suitably.

³ The identity of the complainant is confidential.

⁴ It provides fertility and in vitro fertility fertilisation treatment through its hospitals/ centers throughout India.

⁵ It is ultimately owned by entities forming the investment fund BPEA Private Equity Fund VIII which is controlled, managed and advised by entities affiliated with EQT AB.

⁶ EQT group (through its affiliates) and Indira IVF.

⁷ EQT group (through its affiliates) and Indira IVF.

⁸ Nitin Lifesciences Private Limited, an affiliate of the EQT group, is primarily engaged in the contract development and manufacturing of pharmaceutical products.

hospitals in India. Given the low market shares of the parties with the presence of several significant players, the CCI noted that the Proposed Transaction is not likely to raise foreclosure concerns.

The CCI approved the Proposed Transaction in 46 (forty six) calendar days.

JSA represented EQT before the CCI in seeking its approval.

(Source: [*CCI Order dated October 3, 2023*](#))

CCI approves acquisition of Lanco Amarkantak Power Limited by PFC Projects Limited and others

The CCI approved the acquisition of Lanco Amarkantak Power Limited (“**Lanco**”)⁹ by PFC Projects Limited (“**PPL**”)¹⁰, REC Limited (“**REC**”)¹¹, SJVN Limited (“**SJVN**”)¹² and Damodar Valley Corporation (**DVC**)¹³, under the Insolvency and Bankruptcy Code, 2016¹⁴ (“**Proposed Transaction**”).

The CCI examined the horizontal overlaps between the activities of the parties¹⁵ in the broad market for power generation and the narrow market of power generation from non-renewable sources, in India.

On the competition assessment, the CCI noted that: (a) the total power generating capacity of Lanco amounts to less than 1% of total installed capacity of all power stations; and (b) Lanco is undergoing insolvency and has not been active in the bidding of power purchase agreements in the last 3 (three) years. In view of the same, the Proposed Transaction is not likely to raise competition concerns.

Further, the CCI examined vertical links between the activities of the parties in the: (a) upstream market of power generation and downstream market of power transmission; (b) upstream market of power generation and downstream market of power trading; (c) upstream market of provision of consultancy services to power sector entities and downstream market of power generation; and (d) upstream market of provision of credit services to power sector entities and downstream market of power generation. However, the Proposed Transaction is not likely to raise foreclosure concerns.

The CCI approved the Proposed Transaction in 42 (forty two) calendar days.

(Source: [*CCI Order dated October 3, 2023*](#))

⁹ It is engaged in thermal power generation in India.

¹⁰ It is a wholly owned subsidiary of Power Finance Corporation Limited (“**PFC**”), a Government of India (“**GoI**”) undertaking. It has been incorporated to, *inter alia*, carry out the business of generation, accumulation, distribution, and supply of electricity generated.

¹¹ It is a subsidiary of PFC and is a non-banking financial company categorised as an infrastructure finance company by the Reserve Bank of India.

¹² It is a company held by the GoI, Government of Himachal Pradesh and public shareholders. It *inter alia* operated power generation and transmission projects.

¹³ It is a statutory corporation and is engaged in the businesses of power generation, power transmission, water management, mining, and provision of related consultancy services in India.

¹⁴ The notice was filed pursuant to the submission of a resolution plan for Lanco before the resolution professional on August 11, 2022. The said resolution plan was modified on November 1, 2022 and December 5, 2022.

¹⁵ PPL, SJVN and DVC group (including their respective affiliates) and Lanco.

CCI approves acquisition of shareholding of Lenskart by Kedaara Capital Fund

The CCI approved the acquisition of 1.74% shareholding of Lenskart Solutions Private Limited ("**Lenskart**")¹⁶ by Kedaara Capital Fund III LLP¹⁷, belonging to the Kedaara group ("**Proposed Transaction**").

The CCI examined the horizontal overlaps between the activities of the parties¹⁸ in the: (a) broad market for the manufacture and/ or sale of eyewear products in India; (b) narrow market for manufacture and/or sale of eyewear products in organised segment in India; and (c) narrow market for eyewear products such as spectacles, sunglasses, contact lenses etc.

On the competition assessment, the CCI noted that: (a) the combined market shares of the parties are low; and (b) several significant players are present in each of the relevant markets which will pose competitive constraints on the parties. In view of the same, the Proposed Transaction is not likely to raise competition concerns.

The CCI approved the Proposed Transaction in 55 (fifty five) calendar days.

(Source: CCI Order dated October 3, 2023)

CCI approves acquisition of shareholding of Highway Infrastructure Trust by Ontario Teachers' Pension Plan Board

The CCI approved the acquisition of up to approximately 20% of: (a) unitholding of Highways Infrastructure Trust ("**Target Trust**")¹⁹ by 2452991 Ontario Limited ("**OTPP 1**")²⁰; and (b) Highway Concessions One Private Limited ("**HC One**")²¹ by 2743298 Ontario Limited ("**OTPP 2**")²² (referred to as the '**Proposed Transaction**'). OTTP 1 and OTTP 2 belong to Ontario Teachers' Pension Plan Board.

The CCI examined the horizontal overlaps between the parties²³ in the market for operation and maintenance of highways in the road infrastructure sector in India ("**O&M Market**"). On the competition assessment, the CCI noted that: (a) the combined market shares of the parties are low; and (b) several significant players are present which will pose competitive constraints on the parties. In view of the same, the Proposed Transaction is not likely to raise competition concerns.

The CCI approved the Proposed Transaction in 50 (fifty) calendar days.

(Source: CCI Order dated September 20, 2023)

¹⁶ It is engaged in manufacture, wholesale and retail sale of eyewear products, including eyeglasses, sunglasses and eyewear accessories in India. Lenskart sells products and services through online and offline mode.

¹⁷ It is a category II alternative investment fund registered with the Securities and Exchange Board of India ("**SEBI**") and engaged in investing in companies. It is a part of the Kedaara group. The Kedaara group has investments several sectors such as manufacturing, industrials, auto components, retail and wholesale trading, micro-finance, banking, non-banking financial services, logistics, packaging and health care.

¹⁸ Kedaara group (including its affiliates) and Lenskart (including its affiliates).

¹⁹ It is an India infrastructure investment trust registered with the SEBI. It proposes to invest in road infrastructure assets and is sponsored by Galaxy Investments II Pte. Ltd. It owns the special purpose entities incorporated in India, engaged in the business of operating (through governmental concessions) roads and highways in India.

²⁰ It is an investment holding company. It currently holds 7.5% of the Target Trust. It does not carry out any business operations in India or worldwide.

²¹ It is a private limited company incorporated in India. It is the investment manager of the Target Trust, whose objective is to manage and operate roads assets held directly or indirectly by the Target Trust.

²² It is an investment holding company. It does not carry out any business operations in India or worldwide.

²³ Ontario Teachers' Pension Plan Board (including its affiliates) and the road assets of the Target Trust and HC One.

CCI approves acquisition of shareholding of TVS Credit Services Limited by Premji Invest group

The CCI approved the acquisition of 10.98% shareholding of TVS Credit Services Limited²⁴ (“**TVS Credit**”) by PI Opportunities Fund I- Scheme II²⁵, belonging to the Premji Invest group, along with certain individuals who are senior level management employees, partners and consultants of Premji Invest and its affiliates and trustees²⁶ (“**Proposed Transaction**”).

The CCI examined the horizontal overlaps between the activities of the parties²⁷ in the: (a) broad market for the provision of loans and lending services in India; (b) narrow market for the provision of retail loans in India; and (c) narrowest markets for the provision of: (i) loans to micro, small and medium enterprises in India; and (ii) personal loans in India.

On the competition assessment, the CCI noted that: (a) the combined market shares of the parties are low; and (b) several significant players are present in each of the relevant markets which will pose competitive constraints on the parties. In view of the same, the Proposed Transaction is not likely to raise competition concerns.

The CCI approved the Proposed Transaction in 55 (fifty five) calendar days.

(Source: [CCI Order dated September 20, 2023](#))

CCI approves acquisition of additional shareholding of Niva Bupa by Bupa Singapore under Green Channel

The CCI approved the acquisition of additional shareholding of Niva Bupa Health Insurance Company Limited (“**Niva Bupa**”) ²⁸ by Bupa Singapore Investments Pte. Ltd. (“**Bupa Singapore**”) ²⁹, belonging to the Bupa group (“**Proposed Transaction**”). Post the Proposed Transaction, the shareholding of Bupa Singapore in Niva Bupa will be approximately 63%.

The parties notified the Proposed Transaction under green channel as there were no horizontal, vertical, or complementary overlaps between the activities of the parties in India.

(Source: [Summary](#))

²⁴ It is a non-deposit taking systemically important non-banking financial company and is primarily engaged in providing lending services.

²⁵ It is a category II alternative investment fund, registered with the SEBI. It is engaged in investing in several companies that are in the development stage.

²⁶ Mr. Lakshminarayana Kollengode, Mr. Tekkethalakal Kurien Kurien, Mr. Pramit Jhaveri, Mr. Saravanan Nattanmai, Mr. Manoj Jaiswal, Mr. Vinayan Nambiar, Mr. Rajeev Eyunni, Mr. Ajitesh Nair, Mr. Mukeeta Jhaveri and Mr. Srividya Nambiar.

²⁷ Premji Invest group (including its affiliates) and TVS Credit (including its affiliates).

²⁸ It is engaged in the business of providing insurance services in India.

²⁹ It is the wholly owned subsidiary of British Union Provident Association Limited (“**Bupa**”). Bupa is an international healthcare group, active in care homes, health centers, dental centers and hospitals, health insurance, workplace health services, health assessment and chronic disease management services.

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.

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<p>Global Competition Review (GCR) has recognized JSA's Competition Law Practice in its latest 2023 edition of 'GCR 100'</p>	<p>17 Practices and 24 Ranked Lawyers</p>	<p>16 Practices and 11 Ranked Lawyers</p>
		
<p>11 Practices and 39 Ranked Partners IFLR1000 APAC Rankings 2022</p> <p>-----</p> <p>Banking & Finance Team of the Year</p> <p>-----</p> <p>Fintech Team of the Year</p> <p>-----</p> <p>Restructuring & Insolvency Team of the Year</p>	<p>Among Top 7 Best Overall Law Firms in India and 9 Ranked Practices</p> <p>-----</p> <p>11 winning Deals in IBLJ Deals of the Year</p> <p>-----</p> <p>10 A List Lawyers in IBLJ Top 100 Lawyer List</p>	<p>Banking & Financial Services Law Firm of the Year 2022</p> <p>-----</p> <p>Dispute Resolution Law Firm of the Year 2022</p> <p>-----</p> <p>Equity Market Deal of the Year (Premium) 2022</p> <p>-----</p> <p>Energy Law Firm of the Year 2021</p>
		
<p>19 Practices and 19 Ranked Lawyers</p>	<p>7 Practices and 2 Ranked Lawyers</p>	<p>Ranked #1 The Vahura Best Law Firms to Work Report, 2022</p> <p>-----</p> <p>Top 10 Best Law Firms for Women in 2022</p>

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