



## JSA Newsletter Competition Law

December 2024

# Contents

## Supreme Court

- SC transfers writ petitions filed by resellers of Amazon Seller Services Private Limited and Flipkart Internet Private Limited to KHC
- SC upholds DHC decision to quash CCI inquiry against JCB Limited

## High Courts

- DHC imposes cost on Forech India Private Limited for attempting to stall CCI proceedings

## National Company Law Appellate Tribunal

- NCLAT upholds CCI's order against Ghaziabad Development Authority for abusing its dominant position

## Competition Commission of India

### Enforcement

- CCI finds table tennis associations guilty of indulging in anti-competitive practices
- CCI dismisses complaint against Astrotalk Services Private Limited for alleged anti-competitive practices

### Merger Control

CCI approves 16 (sixteen) combinations in December 2024

## Supreme Court

### Supreme Court of India transfers writ petitions filed by resellers of Amazon Seller Services Private Limited and Flipkart Internet Private Limited to Karnataka High Court

On January 6, 2025, Supreme Court of India (“**SC**”) passed an order transferring all writ petitions filed by various resellers of Amazon Seller Services Private Limited (“**Amazon**”) and Flipkart Internet Private Limited (“**Flipkart**”) challenging Competition Commission of India’s (“**CCI**”) investigation from various high courts to Karnataka High Court (“**KHC**”).

#### Background

The case stems from an investigation initiated by CCI against Amazon and Flipkart for alleged violations of the Competition Act, 2002 (“**Competition Act**”). During the investigation, Director General (“**DG**”) issued notices to various resellers of these platforms as ‘third parties’.

Subsequently, CCI forwarded the copy of the investigation report to Amazon and Flipkart and their resellers reclassifying the resellers as ‘opposite parties’ i.e., status of resellers was changed from ‘third parties’ to ‘opposite parties’ (“**Impugned Order**”).

Aggrieved, the resellers, *inter alia*, filed writ petitions before KHC, Punjab & Haryana High Court, Telangana High Court, and Madras High Court challenging the Impugned Order. KHC stayed the Impugned Order, followed by similar stay orders from the other high courts.

#### SC observations

On December 3, 2024, CCI filed a transfer petition before SC seeking transfer of all writ petitions pending before various high courts to SC. After hearing all the parties, SC disagreed with CCI and directed the transfer of all the writ petitions to KHC, where the matter is part-heard.

*(Source: SC order dated January 6, 2025)*

### SC upholds Delhi High Court decision to quash CCI’s inquiry against JCB Limited

SC dismissed an appeal filed by CCI challenging the order of Delhi High Court (“**DHC**”), through which it set aside the inquiry initiated by CCI against JCB Limited (“**JCB**”) for alleged abuse of its dominant position.

#### Background

On August 14, 2024, DHC quashed CCI’s inquiry against JCB as well as a trial court order authorizing search warrants against JCB after Bull Machine Private Limited, the informant, withdrew its information/complaint from CCI following a settlement with JCB. DHC noted that mediation provides finality to a dispute and allowing an investigation before CCI would undermine the significance of the same (“**DHC Decision**”). Summary of the DHC Decision is available at [JSA Competition Newsletter \(August, 2024\)](#)

## SC observations

On November 14, 2024, CCI challenged the DHC Decision before SC, which SC refused to interfere with.

*(Source: SC order dated December 20, 2024)*

## High Courts

### DHC imposes cost on Forech India Private Limited for attempting to stall CCI proceedings

DHC dismissed the contempt petition filed by Forech India Private Limited ("**Forech**"), requesting DHC to initiate contempt proceedings against CCI for alleged non-compliance of certain directions imposed by DHC on CCI ("**Contempt Petition**"). DHC while dismissing the Contempt Petition, imposed a cost of INR 1 lakh on Forech for trying to stall the ongoing CCI proceedings.

## Background

On November 6, 2013, CCI initiated proceedings against several conveyor belt manufacturers including Forech for indulging in an alleged bid-rigging cartel. As part of the investigation, DG issued multiple notices to Forech seeking certain information from it. Subsequently, Forech sought inspection of the case records, which was denied by CCI. Aggrieved, Forech filed a writ petition before DHC seeking access to the documents.

On December 2, 2015, DHC disposed of the writ petition, recording CCI's consent to provide all non-confidential documents related to the investigation while withholding those marked confidential by any party.

On March 16, 2021, CCI issued an order directing parties to submit non-confidential versions of their documents to facilitate inspection and certified copies for all parties. Aggrieved, Forech filed an application with CCI arguing that CCI cannot ask parties to furnish fresh confidential documents and once again sought all non-confidential documents that existed in 2015. On May 8, 2024, CCI dismissed the application filed by Forech ("**May 2024 Order**").

Aggrieved, Forech filed the Contempt Petition *inter alia* alleging that *vide* the May 2024 Order, CCI is attempting not to comply with the undertaking given by it before DHC i.e., it will supply all documents to Forech.

## DHC observations

DHC noted that the May 2024 Order simply required parties to submit non-confidential versions of documents, allowed them to conduct inspection and to take certified copies, without creating new evidence. It rejected Forech's claim for copies of all case records, deeming it unreasonable to expect CCI/DG to provide such a voluminous record when inspection of case record is already allowed.

*(Source: DHC judgment dated December 16, 2024)*

## National Company Law Appellate Tribunal

### National Company Law Appellate Tribunal upholds CCI's order imposing penalty on Ghaziabad Development Authority for abusing its dominant position

National Company Law Appellate Tribunal (“**NCLAT**”) upheld the order passed by CCI whereby it imposed a penalty on Ghaziabad Development Authority (“**GDA**”) for abusing its dominant position, in violation of Section 4 of the Competition Act.

#### Background

On February 28, 2018, CCI fined GDA INR 1 crore for abusing its dominant position by: (a) arbitrarily raising the prices of flats for economically weaker sections of the society (“**EWS**”); and (b) imposing a penal interest of 10.5% on delayed payments by allottees when a similar penalty was not applicable on GDA for delay in handing over the possession of the flats to the allottees (“**CCI Order**”). Summary of the CCI Order is available at [\*JSA Competition Law Newsletter \(February 2018\)\*](#).

Aggrieved, GDA challenged the CCI Order before NCLAT, arguing that: (a) it is not an ‘enterprise’ for the purposes of the Competition Act but part of the State of Uttar Pradesh, operating as a non-profit entity for EWS housing; (b) the relevant geographic market should include the Delhi-NCR region, as allotments were not limited to Ghaziabad residents; (c) GDA is not dominant, given similar schemes provided by other competitors; (d) the price increase was due to unforeseen circumstances, duly notified, and accepted by allottees with a refund option; and (e) CCI ignored the mitigating factors, such as GDA’s good faith, and first-time offence.

#### NCLAT observations

NCLAT upheld the CCI Order, noting that: (a) GDA qualifies as an ‘enterprise’ as it is engaged in economic activities for commercial purposes; (b) GDA is dominant in the Ghaziabad market for EWS housing, holding a 77.4% market share considering flats offered between 2008-2015; (c) GDA abused its dominance by arbitrarily increasing flat prices from INR 2,00,000 (Indian Rupees two lakh) to INR 7,00,000 (Indian Rupees seven lakh) without justification and imposing one-sided interest penalties on allottees for payment delays while lacking reciprocal penalties for its own delays; and (d) the monetary penalty of 5% of GDA’s relevant turnover for EWS housing services was reasonable and appropriate.

Accordingly, NCLAT dismissed the appeal.

*(Source: NCLAT order dated December 18, 2024)*

## Competition Commission of India

### Enforcement

#### CCI finds table tennis associations guilty of indulging in anti-competitive practices

On December 13, 2024, CCI passed an order wherein it found Table Tennis Federation of India (“**TTFI**”)<sup>1</sup>, The Suburban Table Tennis Association (“**TSTTA**”)<sup>2</sup>, Maharashtra Table Tennis Association (“**MSTTA**”)<sup>3</sup>, and Gujarat State Table Tennis Association (“**GSTTA**”)<sup>4</sup> (together referred to as the “**Opposite Parties**”<sup>5</sup>) guilty of indulging in anti-competitive practices in violation of Sections 3 and 4 of the Competition Act. CCI noted that the Opposite Parties denied market access to the complainant i.e., TT Super Friendly League<sup>6</sup> (“**Complainant**”) by restricting players from joining or playing table tennis (“**TT**”) tournaments organised by it.

#### Background

The Complainant *inter alia* alleged that the following advisories/clauses were anti-competitive:

- a) Opposite Parties issued WhatsApp advisories and public notices prohibiting players, coaches, and clubs from participating with unaffiliated organisations, threatening suspension;
- b) clause 22(d) of MSTTA’s constitution granted its managing committee the right to prohibit unauthorised TT tournaments in Maharashtra; and
- c) certain clauses of the memorandum of association (“**MoA**”) of TTFI restricted TT players from participating in any unrecognised tournaments.

Basis the allegations and evidence provided, CCI directed DG to investigate (“**Prima-Facie Order**”). Summary of the Prima-Facie Order is available at [\*JSA Competition Newsletter \(November 2021\)\*](#).

DG examined the conduct of the Opposite Parties in the markets for: (a) organisation of TT leagues/events/tournaments in India; and (b) provision of services by the players for TT leagues/events and tournaments in India (together referred to as the “**Relevant Markets**”).

DG found the Opposite Parties dominant in the Relevant Markets due to their pyramidal structure of regulating TT in India. It concluded that they abused their dominant position by restricting players from participating in unauthorised tournaments and threatening consequences such as suspension, for non-compliance. Such conduct constituted exclusive distribution and refusal to deal under Section 3(4) of the Competition Act, thereby, creating entry barriers and hindering competition.

#### CCI observations

The Opposite Parties *inter alia* argued that: (a) CCI does not have jurisdiction as they are not an ‘enterprise’ under the Competition Act; and (b) the advisories and certain clauses in their MoA and by-laws are implemented to protect the

<sup>1</sup> It organises open-state TT tournaments in India.

<sup>2</sup> It is a society responsible for conducting open district ranking TT tournaments in the Mumbai Suburban District.

<sup>3</sup> It is a state body headquartered in Pune and is responsible for conducting open state TT tournaments in Maharashtra.

<sup>4</sup> It is a Gujarat state body founded with the aim of developing and promoting TT in the state of Gujarat

<sup>5</sup> GSTTA was added as an opposite party during the course of the investigation as DG had found clause 25 of its by-laws and a circular dated February 15, 2021, issued by it to be anti-competitive.

<sup>6</sup> It is a non-governmental organization instated with the objective of promoting TT across India.

rights of professional TT players from unauthorized tournaments which may be conducted in a casual manner without strict adherence to the international standards and rules of the game.

Rejecting the argument, CCI noted that the Opposite Parties are 'enterprise' under the Competition Act, as they organise TT tournaments and receive donations and sponsorship, besides collecting yearly subscription fee. Accordingly, they are engaged in economic / commercial activities.

CCI concurred with DG's findings, noting that the Opposite Parties abused their dominant position through restrictive MoA clauses and prohibitive advisories. However, it disagreed with DG on certain TSTTA and MSTTA constitutional rules being violative of the Competition Act, finding them to be regulatory measures ensuring consistency in tournaments and professional standards, not violative of Section 4 of the Competition Act.

CCI observed that the Opposite Parties took corrective steps during the investigation, including withdrawing advisories, amending clauses, and issuing a circular against penalizing players for unaffiliated events. Consequently, CCI ordered them to cease anti-competitive practices without imposing monetary penalties.

*(Source: CCI order dated December 13, 2024)*

### **CCI dismisses complaint against Astrotalk Services Private Limited for alleged anti-competitive practices**

CCI received a complaint against Astrotalk Services Private Limited ("**Astrotalk**")<sup>7</sup> for indulging in alleged anti-competitive practices, in contravention of Sections 3 and 4 of the Competition Act.

The complainant<sup>8</sup> *inter alia* alleged that Astrotalk: (a) abused its dominant position by poaching the consultants of the complainant as well as its competitors by offering them better remuneration, spreading false news, and coercing them to terminate their contracts with existing employers; and (b) entered into an agreement with the consultants, restricting them from contacting their previous employers.

CCI defined the relevant market as the market for the provision of astrology-related goods and services through online applications in India and *inter alia* noted that Astrotalk is not dominant in the said market due to the presence of several significant players and rejected the allegation of any abuse, thereof. CCI also noted that the allegations made by the complainant fall within the purview of the contract law as consultants have the freedom to provide services to any enterprise that offers better opportunities. Accordingly, CCI rejected the allegation under Section 3 of the Competition Act.

*(Source: CCI order dated December 11, 2024)*

## **Merger Control**

### **CCI approves 16 (sixteen) combinations in December 2024**

1. Acquisition of shareholding of Kellanova by Mars, Incorporated.
2. Acquisition of shareholding of Prataap Snacks Limited by Authum Investment & Infrastructure Limited.
3. Acquisition of shareholding of Fourth Partner Energy Private Limited by International Finance Corporation, Asian Development Bank and DEG – Deutsche Investitions – und Entwicklungsgesellschaft mbH.
4. Acquisition of shareholding of Speed JVco S.à r.l. (VFS Global) by Ramon Investments Pte. Ltd (Temasek).
5. Acquisition of shareholding of Shiprocket Private Limited by MUFG Bank, Ltd.

<sup>7</sup> It is an online platform that offers on-demand astrology services.

<sup>8</sup> It is an app-based platform, offering on demand astrology services through 'InstaAstro' which enables users to schedule sessions with astrologers and provides diversified services *inter alia* tarot and horoscope readings, etc.

6. Acquisition of shareholding of Shiprocket Private Limited by KDT Venture Holdings, LLC.
7. Acquisition of shareholding of GMR Infra Enterprises Private Limited and GMR Airport Limited by Platinum Stone A 2014 Trust.
8. Acquisition of shareholding of VVDN Technologies Private Limited by India Business Excellence Fund - IV.
9. Acquisition of shareholding of Covestro AG by Abhu Dhabi National Oil Company P.J.S.C, ADNOC International Limited and ADNOC International Germany Holding AG.
10. Acquisition of shareholding of Bagmane Developers Private Limited and Bagame Rio Private Limited by BREP Asia III India Holding Co VIII Pte. Ltd.
11. Acquisition of shareholding of Thyssenkrupp Electric Steel India Private Limited by Jsquare Electric Steel Nashik Private Limited.
12. Acquisition of shareholding of MHM Holding Gesellschaft mit beschränkter Haftung (GmbH) by Avenue India Emergence Pte. Ltd. and Mavco Investments Private Limited under Green Channel.
13. Acquisition of shareholding of Hyva III B.V. by Jost Werke International Beteiligungsverwaltung GmbH under Green Channel.
14. Acquisition of shareholding of Jellinbah Group Pty. Ltd. by Zashvin Pty. Ltd. under Green Channel.
15. Acquisition of shareholding of Rebel Foods Private Limited by Royce Asia Holdings II Pte. Ltd. under Green Channel.
16. Acquisition of shareholding of McDermott International Ltd. by Baupost Group Securities, LLC under Green Channel.

*(Source: CCI website)*

## 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 with its dedicated competition law practice group. The Competition team at JSA advises on all aspects of the Indian competition law including merger control, cartels, leniency, abuse of dominance, dawn raid, compliance, and other areas of complex antitrust litigation. 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.

On the **enforcement/ litigation**, the team's in-depth understanding of antitrust and the competition law, coupled with its commercially focused litigation skills has been the cornerstone on which it deals with matters relating to abuse of dominance, vertical restraints, and cartelisation (including leniency and dawn raid) before CCI and appellate courts. On the **merger control**, the team helps clients navigate the merger control and assessment process including obtaining approval of CCI in Green Channel Form, Form I and Form II.

The team regularly advises clients on general competition law issues arising from day-to-day business strategies and conducts competition compliance programs. Notably, the team has conducted forensic reviews of documents and created step-by-step procedures for companies on how to respond to both internal antitrust violations as well as investigations by the regulator, including dawn raids.



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14 Practices and 38 Ranked Lawyers		
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