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COMPETITION LAW

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Rajasthan Cylinders and Containers Limited v Union of India and Another (Civil Appeal No. 3546 of 2014)

The Supreme Court allowed the appeals filed by 45 liquified petroleum gas cylinder manufacturers, setting aside CCI orders and order of the former Competition Appellate Tribunal (COMPAT), which had held that the manufacturers indulged in bid rigging in the tender floated by the Indian Oil Corporation (IOCL). The CCI and the COMPAT, came to the conclusion of bid-rigging based on factors such as, the manufacturers' quoting identical or similar prices, even distribution of bids to every supplier through various states across India, meeting amongst 19 suppliers one day prior to the bid submission date, etc.

On appeal, the Supreme Court disagreed, noting that the market in which the manufacturers operated was an oligopsony¹ market, with only three buyers (i.e., IOCL, Bharat Petroleum Corporation Ltd. (BPCL) and Hindustan Petroleum Corporation Ltd. (HPCL)). IOCL negotiated the prices with the lowest bidder, based on its own internal estimates, and arrived at a final price which was less than the price quoted by the lowest bidder. Accordingly, the prices were subject to the IOCL's countervailing buying power. Due to the oligopsonistic nature of the market and the cylinders being an essential commodity², the suppliers were dependent on IOCL for their survival. Hence, IOCL ensured that all manufacturers should receive a part of the order to ensure uniform supply of the cylinders. This meant that even distribution of bids was not due to a bid rotation strategy by the bidders, but due to IOCL's commercial decision. The Supreme Court also noted that there was lack of evidence to show that concerted action had replaced independent action, since the nature of the market and the factors considered by the CCI in fact justified the similarity in prices by the suppliers. Based on the above, the Supreme Court disagreed with the findings of the CCI and held that there was insufficient evidence to prove concertation.

[Click here for the order](#)

Hyundai Motor India Ltd. v CCI & Ors. (Competition Appeal (AT) No. 06 of 2017)

By way of its order dated 19 September 2018, the NCLAT set aside the CCI's order dated 14 June 2017, penalising Hyundai Motors India Ltd. (Hyundai) an amount of INR 87

¹ The Supreme Court stated that the essential ingredients of an oligopsony market is where there are very few buyers, and the buyers have countervailing power on the prices with the products being homogeneous.

² An essential commodity is a commodity which has been declared essential under the Essential Commodities Act 1955. The Essential Commodities Act 1955, was enacted to ensure delivery of certain products which it declares essential, at fair prices to the consumers.##

crores (USD 11.87 million), for indulging in resale price maintenance and tie-in agreements.

The NCLAT set aside the order, predominantly on the ground that, the CCI did not conduct an independent analysis and inquiry based on the material/evidence placed on record, and solely relied upon the report of the Director General.

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Linde Aktiengesellschaft and Praxair, Inc. (Combination Registration No. C-2018/01/545)

The CCI granted conditional approval to the merger of industrial gas firms, Linde Aktiengesellschaft (Linde) and Praxair, Inc. (Praxair). In its assessment, the CCI identified significant overlaps and directed divestments between the products produced and supplied by the parties in the markets for industrial gases, medical gases and helium.

The CCI observed that each gas type is different and is not substitutable with any other gas. Further, the gases were supplied primarily via three modes, namely tonnage, bulk, and cylinder, depending upon the size and the specific needs of the users. The prices and the contract of supply differed, on the basis of the modes of supply. Accordingly, the CCI delineated the market based on the type of gas and further on the mode of supply.

The assets identified for divestment were Linde's industrial gas plants and cylinder filling stations, operated in the eastern and southern regions of India, and the divestment of Linde's share in Bellary Oxygen Company Private Limited, a joint venture between Linde and Inox Air Products Limited. With respect to the market for helium, the CCI granted a conditional approval based on the global commitment that, Linde and Praxair would divest their stake in the helium sourcing units in Qatar.

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Bharti Airtel Limited (Combination Registration No. C-2017/10/531)

The CCI passed an order imposing penalty on Bharti Airtel Limited (Airtel) for consummating its acquisition of the consumer mobile business of Tata Teleservices Limited (TTSL) and Tata Teleservices (Maharashtra) Limited (TTML) (Tata CMB), before seeking its approval.

While analysing the notice filed by the parties, the CCI observed that the definitive agreement prescribed a mechanism for Airtel to exercise operational control over Tata CMB, prior to the grant of approval by the CCI. The CCI observed that this mechanism had the effect of limiting the independence of the parties and disincentivised them from competing. Accordingly, the CCI fined Airtel an amount of INR 10,00,000 (Indian Rupees Ten Lakhs only) (approximately USD 13,600 (US Dollars Thirteen thousand six hundred)).

[Click here for the Order](#)

Telenor ASA, Telenor (India) Communications Private Limited and Telenor South Asia Investments Pte Limited (Combination Registration No. C-2012/10/87)

The CCI passed an order imposing penalty on Telenor ASA (Telenor), for consummating a series of interconnected transactions pursuant to a Share Subscription and Shareholders' Agreement (SSHA) entered into amongst Telenor, Telewings Communications Services Private Limited (now Telenor (India) Communications Private Limited, Telewings / Telenor India), Lakshdeep Investments & Finance Private Limited

(Lakshdeep) and Telenor South Asia Investment Pte Limited (Telenor South Asia), without seeking its approval.

The SSHA prescribed four distinct transactions, of which, the first two envisaged the acquisition of 51% of the shareholding of Telewings by Lakshdeep. As a result, Telewings would be jointly controlled by Telenor and Lakshdeep. Lakshdeep notified its acquisition of Telewings to the CCI, which was unconditionally approved by the CCI.

At the time of the notice, Lakshdeep informed the CCI of certain subsequent transactions to be undertaken by the parties to the SSHA, which were claimed to be exempt, due to availability of intra-group exemption. However, the CCI held that the subsequent steps were not exempted transactions. Despite the CCI observation, Telenor failed to notify the subsequent acquisitions to the prescribed in the SSHA to the CCI and was accordingly penalised for an amount of INR 5,00,000 (Indian Rupees Five lakhs only) (USD 6,800 (US Dollars Six thousand eight hundred)) for consummating such subsequent transactions without seeking prior approval of the CCI.

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[Vivek Sharma v Becton Dickinson India \(P\) Ltd. & Max Super Speciality Hospital \(Case No. 77 of 2015\)](#)

The CCI directed the Director General to conduct further investigation to assess the conduct of super specialty hospitals indulging in abuse of their position in the after-market once the patients are admitted to hospitals and are forced to purchase products from the hospital pharmacies at higher prices. The CCI held that the concept of "aftermarket abuse" should be used to define the relevant market as "the market for healthcare services/ facilities in the after-market for in-patients in super speciality hospitals". The CCI further observed that Delhi may be taken to be the relevant geographic market, and the scope of investigation should be broadened to cover all aftermarket healthcare products and services provided by super speciality hospitals across Delhi to their in-patients.

[Click here for the Order](#)

[India Glycols Limited v Indian Sugar Mills Association & Ors. \(Case Nos. 21, 29, 36, 47, 48 & 49 of 2013\)](#)

The CCI passed an order against 18 sugar mills in the States of Uttar Pradesh, Gujarat, and Andhra Pradesh for colluding during the submission of bids for the supply of ethanol to Oil Manufacturing Companies (OMCs). The CCI also held the Indian Sugar Mills Association (ISMA) and the Ethanol Manufacturers Association of India (EMAI) liable for facilitating the rigging of tenders for the supply of ethanol to the OMCs.

Accordingly, the CCI found the parties to have indulged in cartelisation and bid rigging, thereby imposing a penalty at the rate of 7% of the average relevant turnover for the preceding three years, on the sugar mills. The CCI also imposed a penalty on ISMA and EMAI at the rate of 10% of their average receipts of the preceding three financial years.

[Click here for the Order](#)

[House of Diagnostics LLP v Esaote S.p.A & Anr. \(Case No. 9 of 2016\)](#)

A two-member majority order of the CCI penalised Esaote S.p.A (Esaote) for abusing its dominant position by imposing unfair conditions in the sale of dedicated/non-conventional MRI - machines (DST Machines).

In its assessment, the CCI found that Esaote was dominant in the market for "Dedicated Standing/Tilting MRI machines in India" and its practice of unilaterally modifying the

terms of purchase orders and restricting the supply/sale of after-market services amounted to an abuse of their dominance.

Accordingly, a monetary penalty of INR 933,000 (Indian Rupees Nine lakh and thirty-three thousand only) (approximately USD 12,700 (US Dollars Twelve thousand seven hundred)) at the rate of 10% of the average relevant turnover of the parties was imposed.

Interestingly, the Chairperson of the CCI dissented, observing that the conventional machines which cannot be tilted, were also substitutable with DST Machines, and therefore, Esaote was not found to be dominant.

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