



**Luthra *and* Luthra**  
LAW OFFICES INDIA

## COMPETITION LAW ALERT

MARCH EDITION

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As we dive into the March Edition of our Competition Law Newsletter, we are thrilled to connect with you once again. This month we have curated a blend of exciting updates and noteworthy CCI Orders that happened last month.

### **CCI dismisses allegations of abuse of dominance against Microsoft**

The Competition Commission of India (“**CCI**”), vide order dated March 03, 2025, dismissed allegations that Microsoft's practice of bundling its antivirus software, Microsoft Defender, with the Windows Operating System (“**OS**”) amounted to an abuse of dominant position and violated Section 4 of the Competition Act, 2002 (“**Act**”).

The Informant had argued that the bundling of Windows OS with Microsoft Defender restricted market access for third-party antivirus developers and limited user choice and therefore violated the various sub provisions of Section 4 of the Act.

In order to examine the allegations, the CCI delineated two relevant markets, namely ‘market for Licensable Operating Systems (OSs) for desktops/laptops in India’ and ‘market for Computer security (antivirus) software for Windows OS in India’ and found Microsoft to be dominant in the first relevant market based on market share, dependence of consumers, and vertical integration of Microsoft.

On the allegations, the CCI observed that users are not compelled to use Microsoft Defender exclusively and they retain the option to install and use any third-party antivirus software without restrictions. Additionally, the CCI noted that the Original Equipment Manufacturers (OEMs) are permitted to pre-install alternative antivirus solutions on devices running Windows OS. Despite the inclusion of Microsoft Defender, multiple well-established third-party antivirus providers continue to operate in the market without significant barriers to entry or exclusion.

The CCI also observed that there was no indication that the alleged practices have hindered technical or scientific development in the antivirus sector or that they have placed restrictions on users regarding the use of third-party antivirus solutions.

Based on these observations, the CCI concluded that there was no prima facie case of contravention of Section 4 of the Act and closed the matter under Section 26(2) of the Act.

### **CCI dismisses case against M/s Gokul Agro Resources Ltd. and M/s Gokul Agri International Ltd.**

The CCI, vide the order dated February 04, 2025, dismissed allegations of bid rigging against M/s Gokul Agro Resources Ltd. and M/s Gokul Agri International Ltd.

The Reference in this matter was filed by the Army Purchase Organization (“**APO**”) alleging that the Opposite Parties i.e. M/s Gokul Agro Resources Ltd. and M/s Gokul Agri International Ltd. engaged in collusive bidding in relation to the procurement of edible oil for the armed forces by



the APO. The allegation was based on the observation that both OPs were emerging as the lowest bidders in the tendering process for multiple schedules and also had commonality of management/ ownership.

The CCI, however found no evidence indicating bid-rigging or cartelization. The CCI pointed out that mere commonality of ownership or linkages between companies is not sufficient to prove anti-competitive behavior without substantial evidence of collusion. Moreover, the presence of multiple entities participating in the tendering process and winning various bids, including firms other than OPs, further supported the conclusion that competition was not restricted. Thus, the CCI closed the matter under Section 26(2) of the Act.

### **CCI dismisses case against Victor Hospital**

The CCI, vide order dated March 03, 2025, dismissed the allegations of violation of Section 3 and 4 of the Act by Victor Hospital, Goa.

The Informant, Moses Pinto, alleged that Victor Hospital engaged in continuous public promotion of Dr. Ravi Teja as a qualified "Consultant Surgeon", despite his lack of proper credentials, which amounted to a deliberate attempt to mislead patients and secure a competitive position in the healthcare market by unfair means. It was further alleged that this misrepresentation undermined consumer choice and prevented patients from making informed decisions about their healthcare and distorted consumer choice, thereby affecting market dynamics.

The CCI observed that while the Informant's allegations of misleading practices and misrepresentation were concerning, they did not raise a competition issue under the provisions of the Act. The CCI found no evidence of significant restriction of competition or abuse of dominance to establish a contravention under Sections 3 and 4 of the Act and stated that the complaint primarily concerned medical negligence and regulatory compliance rather than violation of competition law.

### **CCI notifies the Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations, 2025**

The CCI, on February 25, 2025, notified the (Manner of Recovery of Monetary Penalty) Regulations, 2025 ("**Recovery Regulations**") which outlines the procedure for recovering monetary penalties imposed under the Act. Some of the key features of these Regulations are outlined below:

- In the event that the CCI imposes a penalty on an enterprise for violating the provisions of the Act, the CCI may issue a demand notice to the enterprise. The demand notice will specify a minimum of 60 days for the payment of the penalty from the date the enterprise receives the order passed by the CCI.
- The enterprise may apply for an extension of time or request installment-based payments before the specified deadline. If an extension is granted and the penalty remains unpaid, the enterprise will be considered in default.



- If the penalty is not paid within the prescribed period, a simple interest of 1% per month will be charged on the outstanding amount. The CCI may, however, waive or reduce the interest if it determines that the delay was caused by unavoidable circumstances.
- If the penalty is reduced by the NCLAT, High Court, or Supreme Court, the interest will be reduced proportionally, and any excess payment will be refunded.
- To prevent parallel proceedings, these Regulations empower the CCI to ensure that if the income tax authority, to which the CCI has referred the case, initiates recovery proceedings, the recovery actions initiated by the CCI will be deferred sine die (indefinitely).

### **CCI issues Draft Regulations on Determination of Cost of Production**

The CCI has issued the draft CCI (Determination of Cost of Production) Regulations, 2025, which aims to establish a framework for determining production costs for assessing cases under Section 4 of the Act, specifically relation to allegations of predatory or excessive pricing. The draft regulations are open for public consultation until March 10 2025, and stakeholders are invited to provide their comments or suggestions.

The draft Regulations also allow the CCI may seek expert assistance in evaluating the cost. If an enterprise disputes the cost determined by the CCI, it may request the appointment of an independent expert, who shall be selected by the CCI (the cost however, will be borne by the enterprise).

Since the enactment of the Act and the introduction of CCI (Determination of Cost of Production), 2009 the Competition Law in India and also globally, has undergone significant development. Accordingly, the CCI thought of reviewing these Regulations wherein certain changes are proposed to keep the Regulations in sync with the evolution of competition law jurisprudence. It is also proposed to align the Cost Regulations with modern economic theories, judicial interpretations and global antitrust practices.

### **CCI issues draft rules on conduct of its staff**

The Competition Commission of India (CCI) has introduced the Draft Competition Commission of India (Conduct) Rules, 2025, aiming to uphold high ethical standards and maintain confidentiality among its employees. These rules are open for stakeholder comments until April 6, 2025.

Key provisions of the draft rules include prohibition on employees from making direct or indirect investments in commodity derivatives, equity, and equity-related instruments. Such restriction will also extend to spouses, dependent children and parents / parents -in law. However, investments in mutual funds, non-convertible bonds and debentures, IPOs have been permitted.



Further, the Rules also prohibit employees from engaging in speculative trading activities, including badla transactions, and from encouraging others to trade based on unpublished price-sensitive information.

These Rules have been framed and designed to prevent conflicts of interest and ensure the integrity of the regulatory process within the CCI

### **CCI approves the acquisition of certain interest in Blackwater Coal Mine by NS Blackwater Pty Limited and JFE Steel Australia (BW) Pty Ltd.**

The CCI has approved the proposed acquisition of certain interests in Blackwater Coal Mine (“**BW Coal Mine**”) by NS Blackwater Pty Limited and JFE Steel Australia (BW) Pty Ltd. under Section 31(1) of Act.

The proposed transaction involves the acquisition of a 20% interest by NS Blackwater and a 10% interest by JFE Steel BW in the BW Coal Mine, which operates as an open-cut mine in Queensland, Australia. The BW Coal Mine is an important supplier of coking coal to India through imports. The CCI's scrutiny of the transaction was focused on whether the acquisition would negatively affect competition in the relevant markets, particularly in the coal supply and steel industries.

The concluded that the proposed combination would not result in an appreciable adverse effect on competition in India under Section 20(4) of the Act and therefore approved the transaction.

### **NCLAT dismisses appeal filed by Shri Balaji Traders against Asian Paints Limited**

The National Company Law Appellate Tribunal (“**NCLAT**”), vide order dated February 19, 2025 dismissed the appeal filed by Sri Balaji Traders against the CCI's order wherein it had held that Asian Paints Limited (“**Asian Paints**”) had not engaged in anti-competitive practices or abused its dominant position. The appellant had alleged that Asian Paints arbitrarily downgraded its Critical Retailer (“**CR**”) status after it started dealing with a rival of Asian Paints i.e. JSW Paints, leading to financial losses and reputational harm for the appellant. According to the appellant, this downgrade was a retaliatory measure aimed at discouraging dealers from associating with competing brands, thereby violating Sections 3(4) and 4 of the Act.

The dispute arose when Sri Balaji Traders, a long-time dealer of Asian Paints, took dealership of JSW Paints in February 2021. Shortly after, Asian Paints revoked the appellant's CR status, rendering stock held by the appellant worth ₹3.5 lakhs unsellable. However, in June 2021, Asian Paints restored the CR status following an internal review, which the appellant claimed was a tactical move to weaken its case. Importantly, the appellant failed to disclose before the CCI that its CR status had already been restored before filing the information. Consequently, the CCI dismissed the complaint on September 8, 2022, prompting the appeal before NCLAT, where the



appellant alleged procedural lapses in CCI's investigation and inadequate opportunity to present evidence.

The NCLAT upheld the CCI's findings and concluded that the downgrade in Sri Balaji Traders' retailer status was due to a decline in sales volume rather than retaliation for taking JSW Paints' dealership. The NCLAT also noted that other dealers selling JSW Paints' products had not faced downgrades, and Sri Balaji Traders had a history of tier changes based on sales performance. Furthermore, the appellant's concealment of the fact that its CR status had been restored before filing the complaint significantly undermined its credibility. Finding no evidence of abuse of dominance or anti-competitive behaviour, NCLAT dismissed the appeal, stating that no further interference with the CCI's order as warranted.



*This newsletter is only for general informational purposes, and nothing in this edition of the newsletter could possibly constitute legal advice (which can only be given after being formally engaged and familiarizing ourselves with all the relevant facts). However, should you have any queries, require any assistance, or clarifications with regard to anything contained in this newsletter (or competition law in general), please feel free to contact G.R. Bhatia/ Arjun Nihal Singh, at the below mentioned coordinates. © Luthra and Luthra Law Offices India 2025. All rights reserved.*

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