

# Competition Law Newsletter

- August 2024

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## Recent Case Laws

### High Courts

#### 1. [Delhi High Court's Recent Verdict Endorses Finality of Alternative Dispute Resolution, Halts Competition Commission of India's Proceedings.](#)

The Delhi High Court, in the case of *JCB India v. Competition Commission of India*<sup>1</sup>, addressed concerns regarding the Competition Commission of India's ("CCI") excessive involvement in cases where parties had settled their disputes. The court examined whether filing a design infringement action could be considered an anti-competitive practice or vexatious litigation that violates antitrust laws. It emphasized the specific boundaries within which the CCI should exercise its powers concerning Intellectual Property ("IP") issues.

This case originated from an IP dispute between JCB India Limited and JC Bamford Excavators Limited (collectively referred to as "JCB") and Bull Machines Private Limited ("Bull Machines"). During the pendency of this dispute, Bull Machines filed a complaint with the CCI, alleging that JCB engaged in abusive practices and denied market access through bad faith litigation. However, following court-mandated mediation, the parties successfully settled their dispute and sought to have the CCI proceedings dismissed.

In its ruling, the Court limited the CCI's jurisdiction over IP matters, asserting that not every IP dispute should automatically be classified as a competition issue, as IP laws inherently recognise monopolies to foster innovation. Notably, given that the underlying dispute was centered on design infringement and had been settled by the parties themselves, the Court emphasized that the CCI is obliged to honour mediation agreements.

The Delhi High Court also noted the importance of encouraging alternative dispute resolution mechanisms, as they are not only quicker and more cost-effective for businesses but also alleviates the burden on the judicial system. The Court thus, ruled that the settlement terms were binding and could not be interfered with.

As a result, the Delhi High Court terminated the proceedings before the CCI.

Please find a [copy](#) of the judgement, here.

#### 2. [Guwahati High Court quashes CCI's orders, Emphasizes Need for Prima Facie Case before Directing Investigations under Section 26\(1\) of the Competition Act, 2002.](#)

The allegations in the instant case revolved around: (i) cartelisation amongst the cement manufacturers, (ii) maintainability of a writ petition at the stage of CCI directing investigation under Section 26 of the Competition Act, 2002 ("the Act") and (iii) benefit of subsidy availed by cement companies not being passed to the consumers.

Regarding the maintainability of a writ petition under Article 226 of the Constitution of India and the powers of the CCI, the High Court observed that the CCI cannot direct an investigation under Section 26(1) of the Act in a routine manner. The Court emphasized that there must be a *prima facie* case showing a violation of Section 3 and/ or Section 4 of the Act before the CCI can order an investigation. Consequently, the High Court stated that the CCI's authority to direct an investigation relies on the existence of this *prima facie*

<sup>1</sup> *JCB India v. Competition Commission of India*, [W.P.(C) 2244/2014 & CM APPL. 31397/2021].

case. If an investigation is initiated without such evidence, it is outside the CCI's jurisdiction, and the Court can intervene to quash those proceedings.

Regarding cartelization, it was alleged that the companies created a cartel to raise cement prices within a specific range. However, the High Court indicated that there was no consistent price increase; instead, differing price hikes would promote better competition in the market. Additionally, concerning the claim that the companies failed to pass on subsidy benefits to consumers, the High Court noted that the subsidy was intended for establishing new industries in the region and therefore, did not need to be passed on to consumers. As a result, the Court concluded that these allegations did not negatively affect competition and were insufficient to justify an investigation under Section 26(1) of the Act.

Please find a [copy](#) of the judgement, here.

## **National Company Law Appellate Tribunal**

### **3. *NCLAT, Delhi analyses the significance of direct evidence and circumstantial evidence in the matters of bid rigging and cartels.***

The National Company Law Appellate Tribunal (NCLAT) in New Delhi addressed the need for direct evidence of an agreement between parties to prove cartelization or anti-competitive practices in the case of *M/s Yash Solutions v. Competition Commission of India (CCI)*<sup>2</sup>. The NCLAT also considered whether penalties could be based on the principle of 'relevant turnover,' as established by the Supreme Court in *Excel Crop Care Limited v. Competition Commission of India*<sup>3</sup>, ("**Excel Corp**") in instances involving collusive bidding, market sharing, and bid rigging allegations.

The NCLAT, Delhi while acknowledging the ratio held in *Rajasthan Cylinders and Containers Limited v. Union of India*<sup>4</sup>, stated that direct evidence of an agreement is not necessary to prove anti-competitive practices or cartelization. The court determined that a probabilistic standard of proof is sufficient to establish the existence of a cartel. Based on the case's facts and circumstances, the court concluded that cartel existence could be inferred from circumstantial evidence or behaviour, which was applicable in this case.

The NCLAT distinguished the current case from the Excel Corp case by noting that, in Excel Corp, the companies had been in the same business since 2002, making 'relevant turnover' a logical method for calculating penalties, as it aligns with the principle of proportionality under the Competition Act, 2002. In contrast, in the current case, most bidders were first-time participants with no business turnover. Therefore, using 'total turnover' for calculating penalties was deemed the appropriate approach; otherwise, the penalty would effectively be zero.<sup>5</sup>

Please find a [copy](#) of the order, here.

<sup>2</sup> *M/s Yash Solutions v. Competition Commission of India*, Competition Appeal (AT) No. 38 of 2022 & I.A. Nos. 3017, 3018 of 2022

<sup>3</sup> *Excel Corp Limited v. Competition Commission of India*, (2017) 8 SCC 47.

<sup>4</sup> *Rajasthan Cylinders and Containers Limited v. Union of India*, (2020) 16 SCC 615.

<sup>5</sup> The law for determination of penalty under the Act has been amended with effect from March 3, 2024, *vide* Section 20 of the Competition (Amendment) Act, 2023. Further, the Competition Commission of India (Determination of Turnover or Income) Regulations, 2024 have been introduced for determining turnover or income for the purposes of Section 27 of the Act.



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## **Competition Commission of India**

### **Anti-Trust**

#### **1. Adherence to Telecom Regulatory Authority of India (“TRAI”) Regulations does not lead to exclusion of violations under Competition Law**

The CCI has recently dismissed allegations against the National Internet Exchange of India (“NIXI”) for abusing its dominant position in the market for internet exchange services in India. The main question was whether violating the TRAI Act/Regulations automatically constitutes a violation of the Competition Act. In simpler terms, the issue was whether compliance with TRAI regulations is separate from the potential for anti-competitive behaviour by companies in the telecom sector. Additionally, there were claims that NIXI engaged in predatory pricing that denied market access to Extreme Infocom Private Limited, the informant in this case.

Regarding the allegations about the CCI's jurisdiction given the presence of the sectoral regulator TRAI, the Commission clarified that its authority to address agreements violating the Competition Act remains exclusive, even though the involved company was established based on TRAI's recommendations. The CCI also acknowledged the ruling in *Competition Commission of India v. Bharti Airtel Limited*<sup>6</sup> case and opined that the Commission's jurisdiction to address competition issues remains intact despite the presence of a sectoral regulator.

To analyse NIXI's conduct under Section 4 of the Act, the Commission defined the relevant market as the ‘provision of internet exchange services in India.’ The Commission found no prima facie case against NIXI under Section 4, noting that the Informant had a significant presence in the market, indicating it is competitive. Therefore, NIXI does not hold an advantage over its competitors, and dominance in the relevant market has not been established.

Please find a **copy** of the order, [here](#).

#### **2. CCI dismisses allegations of cartel in ESIC Medicine Procurement Due to Lack of Substantial Evidence**

Aggrieved by the conduct of Nova Pharma, Hospimax Care Private Limited, and Employees' State Insurance Corporation (“ESIC”), the Informant alleged cartelization in the procurement of medicines by ESIC contravening Section 3(3) of the Competition Act, 2002. It was alleged that the individuals from these companies and various pharmaceutical companies had inflated prices through collusion, resulting in a 40% overpricing in medicine procurements, resultantly causing significant losses to the public exchequer and increased healthcare costs for ordinary citizens.

Post brief analysis of the circumstances of the case, the Commission concluded that the allegations based on vague and limited information and remains unsubstantiated by the Informant as the Informant failed in providing further details and evidence. Thus, observing lack of concrete evidence and the Informant's failure to respond to CCI's requests for additional information, the Commission concluded the Commission held that there was no

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<sup>6</sup> *Competition Commission of India v. Bharti Airtel Limited*, (2019) 2 SCC 521.

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*prime facie* case of violations of the provisions of the Act and no grounds to grant the reliefs sought by the Informant.

Please find a **copy** of the order, [here](#).

3. **CCI finds no abuse of dominance by Procter and Gamble in the sanitary pads market**

The allegations in this case revolve around a patented environment-friendly technology called 'Enliven' developed by the informant startup company Advantage Nature. The allegations were levelled against Procter & Gamble Hygiene and Health Care Limited ("P&G") for incorporating Advantage Nature's *Enliven* in the development of sanitary pads which was shared by Advantage Nature with P&G under the PG Connect + Develop initiative wherein P&G used the said shared information without authorization from Advantage Nature. Advantage Nature thus alleged that the conduct of P&G collecting and compiling such innovation data of tech-innovators under schemes like P&G Connect + Develop and then using the said data in its own products without approvals from innovators amounted to denial of market access and abuse of dominant position by P&G.

Delineating the relevant product market to be '*market for disposable sanitary pads*' and as per the information available in public domain, the CCI determined that P&G did not emerge as a dominant player in the said market. Thus, noting the lack of substantial evidence and given the lack of a dominant position held by P&G in the delineated relevant market, the allegations levelled against P&G did not warrant examination by the Commission. Consequently, the Commission found no *prima facie* case of contravention under Section 4 of the Act and ordered the case to be closed under Section 26(2) of the Act.

Please find a **copy** of the order, [here](#).

## Merger Control

4. **CCI approves 11 (eleven) new combinations in August 2024. The same are as follows:**

a. **360 ONE Private Equity Fund**

CCI, *inter-alia*, approves acquisition of Vastu Housing Finance Corporation Limited ("VHFCL") by 360 ONE Private Equity Fund, acting through its investment Manager, 360 ONE Alternates Asset Management Limited through effecting secondary purchase of equity shares in the VHFCL.

Read more, [here](#).

b. **Accenture Holdings B.V. and Vodafone Shared Operations Limited ("VSOL")**

Aimed at accelerating the commercialisation of the group of Vodafone companies, the transaction involving acquisition of shares of VSOL by Accenture Holdings B.V., acquisition shares of Vodafone India Services Private Limited by VSOL and Vodafone Global Services Private Limited has been approved by the CCI.

Read more, [here](#).

c. **Mitsui & Co. (Asia Pacific) Pte. Limited.**

CCI approves the combination transaction in nature of acquisition relating to acquisition of equity share capital of MTC Business Private Limited by Mitsui & Co. (Asia Pacific) Pte. Limited.

Read more, [here](#).

d. **Re Sustainability Limited, Mumbai Waste Management Limited, Ramky Sustainability Solutions Private Limited, Metropolis Investment Holdings Pte. Limited and Members of the Founding Group**

Combination relating to the restructuring of the existing business of Re Sustainability Limited, its subsidiaries and joint ventures through demerger of the municipal solid waste business and waste to energy business to Ramky Sustainability Solutions Private Limited (“RSSPL”) has been approved by the CCI. The transaction does not involve acquisition of any new businesses and thus will have no effect on the market dynamics.

Read more, [here](#).

e. **Reliance Industries Limited, Viacom18 Media Private Limited, Star India Private Limited, Star Television Productions Limited**

Aimed at combining the entertainment and identified businesses of Viacom18 Media Private Limited (“Viacom18”) and Star India Private Limited (“SIPL”), the transaction effecting SIPL becoming a joint venture to be held jointly by Reliance Industries Limited (“RIL”), Viacom18 and existing subsidiaries of the Walt Disney Company has received approval from the CCI.

Read more, [here](#).

f. **IndusInd International Holdings Limited and IIHL AMC Holdings Limited**

CCI approves the combination relating to the acquisition of 60% (sixty percent) of the shareholding in Invesco Asset Management (India) Private Limited and Invesco Trustee Private Limited by the acquirers IndusInd International Holdings Limited and IIHL AMC Holdings Limited.

Read more, [here](#).

g. **Mango Crest Investment Limited, INQ Holding LLC and Shriram Finance Limited**

Combination relating to acquisition of control in Shriram Housing Finance Limited by INQ Holdings LLC and acquisition of up to 100% (hundred percent) of the issued and paid-up share capital of the Shriram Housing Finance Limited by the Mango Crest Investment Limited has been approved by CCI.

Read more, [here](#).



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h. ***Rasmeli Limited, Apollo Hospitals Enterprise Limited, Apollo Healthco Limited, and Keimed Private Limited***

CCI approves the transaction involving bundles of investment by and among the involved parties. The transaction entails minority investment along with certain rights in Apollo Healthco Limited (“**AHL**”) by Rasmeli Limited, acquisition of shares in Keimed Private Limited (“**Keimed**”) by AHL, merger of Keimed into AHL and preferential allotment and bonus issuance of fresh equity shares by AHL to Apollo Hospitals Enterprise Limited.

Read more, [here](#).

i. ***Hewlett Packard Enterprise Company***

Transaction facilitating the acquisition of sole control and 100% (hundred percent) of the outstanding shares of Juniper Networks, Inc. by Hewlett Packard Enterprise Company has been approved by the CCI. The transaction is proposed to be effected by way of a reverse triangular merger of Jasmine Acquisition Sub, Inc. with and into Juniper Networks, Inc.

Read more, [here](#).

j. ***Highway Infrastructure Trust, Galaxy Investments II Pte. Limited and Nebula Asia Holdings II Pte. Limited***

The CCI, *inter-alia*, approves acquisition of 100% (hundred percent) of equity stake, management and control in twelve (12) special purpose vehicles of PNC Infratech Limited and PNC Infra Holdings by Highways Infrastructure Trust.

Read more, [here](#).

k. ***Data Infrastructure Trust, BIF IV Jarvis India Pte. Limited, Brookfield Manager Holdings Limited, BCI IRR India Holdings Limited Partnership, BCI IRR India Holdings Inc., Varese IRR LP, Anahera Investment Pte. Limited and Valkyrie Investment Pte. Limited***

Along with involving the inter-connected transactions between the parties, the transaction proposing the purchase of 100% (hundred percent) of the share capital of ATC Telecom Infrastructure Private Limited by Data Infrastructure Trust has been approved by CCI.

Read more, [here](#).

## **News Snapshots**

### **International**

1. ***‘U.S. District Court Labels Google a Monopolist in a ruling on Google’s dominance in online search business***

Judge Amit Mehta upheld the Department of Justice's claims that Google holds a monopoly in the search and advertising markets. Regarding the search market, he rejected

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Google's defense that its agreements with companies like Apple were not exclusionary, emphasizing that these agreements have, in fact, crossed the liability threshold established by the Sherman Act. Mehta reiterated that there is no true substitute for Google, even among the largest companies in the U.S. In his assessment of the search text advertising market, he found that Google's exclusive agreements significantly diminished competitive pressure, allowing the company to increase its prices..

Read more, [here](#).

## **2. Musk's X Files Lawsuit, Claims Advertisers Boycott Platform**

A federal antitrust lawsuit was filed by Elon Musk's X Corp. against a leading advertising industry coalition and some of its members, including major companies such as CVS Health, Mars, Orsted, and Unilever. The lawsuit alleges that the coalition misused its influence over marketers and ad agencies, generated an ad boycott against X Corp., and is guilty of unfair discrimination.

Read more, [here](#).

## **3. Feedback Sought by European Commission on the New Antitrust Guidelines Targeting Exclusionary Abuses**

The European Commission has released its draft Guidelines on exclusionary abuses of dominance and invited public comments. The draft Guidelines provide guidance on dealing with single as well as collective dominance and also the standard of evidence that is required to prove that an action causes exclusionary effects.

Read more, [here](#).

## **4. UK Watchdog Closes Investigations into Apple and Google App Store**

The investigations launched by Britain's Competition and Markets Authority ("CMA") into Apple and Google's app stores in 2022 have been closed by the authority in wait for the new legislation to be rolled out governing the digital markets in Britain. The scrutiny was faced by the stores stemming from the market study conducted by the CMA into the mobile ecosystems in Britain which had led to the conclusion that both the tech giants had effective monopolies in the distribution of applications in Britain.

Read more, [here](#).

## **5. CMA Postpones Vodafone/ Three Merger Review Citing Industry Complexity**

The UK's antitrust watchdog has delayed an investigation into Vodafone and Three's €17.5 billion joint venture until December 7, citing the "technical and regulatory complexity" of the mobile telecommunications sector.

Read more, [here](#).

## **6. Bunge and Viterra's \$34 Billion Merger Gets Green Light from EU**

The European Commission has approved the merging of Bunge with Glencore-backed Viterra in a deal valued at \$34 billion, pending the latter's compliance with certain

conditions. The new entity would be one of the largest agriculture trading companies, increasing rivalry with Archer-Daniels-Midland and global leader Cargill. This approval was in accordance with the EU Merger Regulation. Details of this transaction were announced a year ago by the companies.

Read more, [here](#).

#### **7. IAG Halts Acquisition of Air Europa**

British Airways owner IAG terminated its proposed takeover of Spain's Air Europa on August 1, citing regulatory environment concerns, less than two months after it offered remedies to antitrust regulators to secure approval for the deal. IAG had offered concessions to the European Commission in June, after the watchdog warned the deal could reduce competition

Read more, [here](#).

#### **8. Elanco Sued for Alleged Price-Fixing on Flea and Tick Products**

Animal health giant Elanco is facing a new lawsuit accusing it of monopolizing the market for some flea and tick treatments, causing pet owners to pay higher prices for the company's Advantix products. The proposed class action was filed on August 2, 2024 by a Kansas resident who said Elanco was controlling the market by unfairly pressuring pet specialty retailers not to sell rival, generic versions of topical flea and tick treatments containing the insecticide Imidacloprid.

Read more, [here](#).

#### **9. US Court Rules in Favor of Bayer in Flea and Tick Treatment Competition Case**

A former unit of German life-sciences giant Bayer convinced a federal jury in California on August 2, 2024 that it did not block a pet care startup from competing in the retail market for a type of topical animal tick and flea treatment. Tevra, the petcare startup, had urged the jury to hold Bayer liable for allegedly blocking generic competition for topical flea and tick treatments containing the insecticide imidacloprid as their active ingredient.

Read more, [here](#).

#### **10. Hungary Slaps Wizz Air with Fine Over Misleading Communication**

Hungary's competition authority has imposed a fine of 770,000 euros (\$839,916) on Wizz Air for misleading communication. They said Wizz Air breached professional due diligence and was misleading in how it described its automatic check-in service and pushed consumers towards more expensive packages.

Read more, [here](#).

#### **11. UK's CMA Provisionally Clears T&L Sugars' Deal with Tereos**

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The CMA of the United Kingdom has provisionally accepted a failing firm rationale in the case of a merger between two sugar companies, T & L Sugars and Tereos Sugars. The CMA remarked that without an acquisition by T&L Sugars, Tereos would leave the market. Therefore, it is more inclined to approve the deal.

Read more, [here](#).

**12. *UK Competition Watchdog to Commence Review of the IBM-HashiCorp Merger Deal***

HashiCorp, Inc. has reached an extremely critical stage in its merger with IBM after the United Kingdom's Competition and Markets Authority announced on August 6, 2024, that it would begin a Phase I review for the proposed case. This comes after an April 24, 2024, agreement between HashiCorp, IBM, and McCloud Merger Sub, Inc. This will make HashiCorp an entirely owned subsidiary of IBM.

Read more, [here](#).

**13. *Duke Energy Must Defend Against Rival's Antitrust Claims, Court Rules***

A U.S. appeals court on August 5, 2024, restored an antitrust lawsuit versus Duke Energy on charges of monopolizing North Carolina's wholesale power market and unlawfully impeding rivalry from NTE Carolinas. It is alleged that Duke Energy violated antitrust laws by ending an agreement that permitted access to its energy transmission network.

Read more, [here](#).

**14. *Musk Sues Unilever and Mars Over X Platform Boycott***

The World Federation of Advertisers orchestrated an illegal boycott of X in violation of US antitrust law, the social media platform has claimed. By doing this, X claims the companies acted against their own economic self-interests in a conspiracy against the platform that breached US antitrust, or competition, law. Elon Musk's X/ Twitter is thus suing the group of advertisers and major companies, accusing them of unlawfully agreeing to "boycott" the site.

Read more, [here](#).

**15. *D.C.'s Antitrust Case Against Amazon Proceeds, Rules Appeals Court***

The District of Columbia Court of Appeals reverses the findings of the lower court which dismissed the lawsuit filed against Amazon by the Washington D.C. and has allowed the lawsuit to proceed further. The lawsuit was originally filed in May 2021 alleging that the company effectively bans third-party sellers from offering their products at lower prices on other platforms.

Read more, [here](#).

**16. *EU Court of Justice gives its ruling on how exchange of information could constitute part of a by object infringement***

The competition authority of Portugal had earlier made a decision to impose a fine on several credit institutions for infringement of national competition law and of Article 101 TFEU, in light of their participation in a concerted practice to restrict competition on the

home loans market, the consumer credit market and the corporate lending market, through an exchange of information on the current and future conditions applicable to transactions, in particular credit spreads and risk variables, and on the individual production figures of the participants in that exchange. This was referred before the EU Court of Justice (“**The Court**”).

The Court examined Article 101(1) of TFEU and held that comprehensive and reciprocal monthly exchange of information between competing credit institutions, which took place in markets where (i) concentration is high; (ii) there are barriers to entry, relating to the conditions applicable to transactions carried out on those markets, in particular current and future credit spreads and risk variables; and (iii) individual production figures of the participants in that exchange, in so far as, at the very least, the spreads thus exchanged are those which those institutions intend to apply in the future, must be classified as a restriction of competition by object.

Read more, [here](#).

## National

### 17. [India’s Antitrust Body Orders Rare Recall of Reports on Apple Antitrust Investigation](#)

India's antitrust body has taken the unusual step of recalling two reports that detailed alleged breaches of competition law by Apple, which complained that the regulator had disclosed commercial secrets to competitors including Tinder-owner Match. In an August 7, 2024 confidential order, the CCI asked all Apple's opponents in the case for the return of the reports. “*It is imperative that such information be maintained confidential, ensuring that no unauthorised disclosure occurs,*” the CCI said in a four-page order signed by its top four officials.

Read more, [here](#).

### 18. [MeitY may proposes Temporary Exclusion of Ex-Ante from Digital Competition Bill](#)

The Ministry of Electronics and Information Technology (“**MeitY**”) is likely to direct the Ministry of Corporate (“**MCA**”) affairs that the *ex-ante* provision in the proposed draft of the Digital Competition Bill (“**DCB**”) shall be excluded from the legislation for now. Unlike the present *ex-post* framework of the CCI, DCB proposes that the competition regulator be vested with pre-emptive powers in addition to its existing *ex-post* enforcement authority. The IT ministry’s suggestion would come as a part of its feedback on the draft DCB.

Read more, [here](#).

### 19. [CCI Recommends Recruitment Rule Revisions to Boost Operational Efficiency](#)

The CCI has proposed changes to the recruitment rules, aiming to support the regulator's professional and administrative capacities. The draft amendments pertain to the CCI (Salary, Allowances, Other Terms and Conditions of Service of the Secretary and Officers and Other Employees of the Commission and the number of such Officers and Other Employees) rules.

Read more, [here](#).



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