

Competition & Antitrust - India

Latest Competition Commission activity

Contributed by **Vaish Associates Advocates**

September 18 2014

DFL fined Rs24.1 million for non-compliance
COMPAT sets aside commission's order in Schott Glass case
Delhi High Court stays commission investigation against JCB
Investigation into ICAI over unfair and discriminatory education scheme
Investigation into Indian Railways and IRCTC for abusive practices

Author

Man Mohan Sharma



DFL fined Rs24.1 million for non-compliance

The informant in Case 67/2010 filed an application with the Competition Commission under Section 42 of the Competition Act, alleging that Delhi Land & Finance (DLF) had not complied with the commission's final order dated January 31 2012, which included a cease and desist order.

DLF had sent a demand letter to the members of the applicant association, demanding exorbitant sums of up to Rs12.7 million from the members and allottees on the grounds of 'super area' – a concept declared illegal and abusive by the commission. DLF had been banned from imposing such measures via the commission's cease and desist order. The commission held that DLF had contravened the order by issuing the impugned demand letter (dated November 28 2012) and that DLF had failed to show reasonable cause for non-compliance. The commission thus imposed a penalty of Rs24.1 million on DLF for non-compliance.⁽¹⁾

COMPAT sets aside commission's order in Schott Glass case

By way of its order dated April 2 2014, the Competition Appellate Tribunal (COMPAT) set aside the Competition Commission's findings against Schott Glass.⁽²⁾

In March 2012 the commission imposed a fine of Rs56.6 million on Schott Glass for abusing its dominant position by imposing unfair and dissimilar discounts, which resulted in an adverse effect on converters in the downstream market. Schott Glass appealed to COMPAT; Kapoor Glass also filed a cross-appeal against the commission's order for an increase in the penalty.

Relying on the minority order passed by Commissioner Geeta Gouri, COMPAT observed that the functional discount policy adopted by Schott Glass had been uniformly applied to all converters at the same flat rate since its inception and was thus non-discriminatory. On the issue of cross-examination, COMPAT observed that the commission should have accepted the parties' application for cross-examination, even at the final stage of the inquiry, and should not have insisted that the parties make a separate application before the directorate general at an earlier stage. Interestingly, COMPAT fined Kapoor Glass Rs100,000 for lack of good faith.⁽³⁾

Delhi High Court stays commission investigation into JCB

The Competition Commission has initiated an investigation into JCB India Ltd and JC Bamford Exavators Ltd for alleged abuse of dominance pursuant to information filed by Bull Machines Pvt Ltd. In November 2011 JCB alleged before the Delhi High Court that the informant had infringed its design registrations and copyright in developing the Bull Smart backhoe loader and thus obtained a temporary *ex parte* injunction against the informant. The informant filed information before the commission, alleging that the temporary *ex parte* injunction was obtained based on a misrepresentation of images, the design registration number, documents and reliance on fraudulent design registrations that were available in the public domain. The commission *prima facie* observed that JCB was a dominant player in the relevant market, with more than 75% of the market share. The commission further observed that predation through abuse of judicial processes presents an increasing threat to competition, particularly due to its relatively low antitrust visibility. Therefore, the commission directed the director general to investigate the matter. JCB approached the Delhi High Court, challenging the commission's jurisdiction. The Delhi High Court, by way of its order dated April 4 2014,⁽⁴⁾ restrained the commission and director general from passing any final order or preparing an investigative report into the commission's case (105/2013) until the question of its jurisdiction was decided by the court.⁽⁵⁾

Investigation into ICAI over unfair and discriminatory education scheme

The Competition Commission has initiated an investigation into the Institute of Chartered Accountants of India (ICAI) for alleged abuse of dominance by imposing unfair and discriminatory conditions with respect to its Continuing Professional Education Scheme. The informant alleged that the ICAI's education scheme policy allowed only the ICAI's recognised programme organising unit to organise education seminars. The commission *prima facie* observed that ICAI, as a dominant player, had created an entry barrier for other players in the market by preventing them from conducting education seminars for continuing professional education credits, which was not aligned with the policy's objectives. The commission further observed that ICAI, as a regulator of the accounting profession, has the power to prescribe a policy for continuous progression of its members through its education scheme policy and recognition of the programme organising unit. However, regarding its non-regulatory function of organising education seminars, restricting the same to itself and its organs appears constitutes an arbitrary exercise of its powers. The commission has directed the director general to conduct an investigation into the matter.⁽⁶⁾

Investigation into Indian Railways and IRCTC for abusive practices

The Competition Commission has initiated an investigation against Indian Railways and Indian Railway Catering and Tourism Corporation (IRCTC) for abusing its dominant position. The informant had alleged that IRCTC was abusing its dominant position by:

- charging a premium on e-ticket prices;
- charging a non-refundable service charge on e-tickets;
- providing no discount for online bookings;
- charging unfair and discriminatory cancellation and clerkage charges;
- providing compulsory food on Rajdhani and Shatabdi Express;
- charging unreasonable fees to be appointed an IRCTC agent;
- establishing long-term contracts for food vendors at railway stations; and
- having inadequate public information system.

The commission *prima facie* observed that, due to the statutory and regulatory framework, the dominance of Indian Railways in this market was indisputable. Further, the commission observed that the above allegations appeared to breach Section 4 of the Competition Act. The commission has directed the director general to investigate the matter.⁽⁷⁾

For further information on this topic please contact MM Sharma at Vaish Associates by telephone (+91 11 4929 2525), fax (+91 11 2332 0484) or email (mmsharma@vaishlaw.com). The Vaish Associates website can be accessed at www.vaishlaw.com.

Endnotes

- (1) Competition Commission order dated March 26 2014.
- (2) Case 22/2010.
- (3) COMPAT order dated April 2 2014.
- (4) WP (C) 2244/2014.
- (5) Competition Commission order dated March 11 2014 and Delhi High Court order dated April 4 2014.
- (6) Competition Commission order dated February 28 2014.
- (7) Competition Commission order dated February 28 2014.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at www.iloinfo.com.

Online Media Partners

