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CCI's impact on competition in question as companies file appeals against penalties - CCI

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As companies increasingly file appeals against penalties imposed by the Competition Commission of India (CCI), antitrust officials are worried about the impact of its orders on competition in the market, said CCI member Geeta Gouri.

Penalties should reflect the gravity of the violation, but as companies appeal to the Competition Appellate Tribunal (COMPAT) and even take the matter to the Supreme Court level and pay the fine, the real concern is whether CCI orders have any impact on competition, Gouri pointed out.

Gouri cited the INR 63.07bn cement cartel case, which is currently being heard by COMPAT. The cement companies implicated of cartel activities have challenged the penalty imposed on them. In June 2012 the CCI found that ACC, Ambuja Cements Limited, UltraTech Cement, Grasim Cements (now merged with UltraTech), JK Cement, India Cements, Madras Cements, Century Cements, Binani Cement, Lafarge India, Jaypee Cement, and the Cement Manufacturers' Association were parties to an alleged cement cartel. In the following month, 30 July 2012, it added Shree Cement as an alleged party to the cement cartel.

Pratibha Jain, a partner with Nishith Desai Associates (NDA), said that following the cement order and imposition of the penalty amount, talks among the cement companies have reduced. Both Jain and Gouri were speaking at a one-day conference on Competition Law in India: Jurisprudential Trends and the Way Forward, organised by Nishith Desai Associates in New Delhi on 6 April.

Over the last three years CCI has imposed penalties of INR 73.54bn (USD 1.36bn) in cases pertaining to anti-competitive behaviour.

Lawyers told *PaRR* that the number of appeals filed with the tribunal is likely to escalate and could also go to the Supreme Court regardless of whether COMPAT upholds CCI's orders or dismisses them. In the event COMPAT dismisses CCI an order, the Indian regulator can challenge the tribunal.

Some chief financial officers (CFOs) from cement companies implicated in the cement cartel highlighted the likelihood of the case being in court for well over 10 years, as it is based on circumstantial evidence. CCI's order is unlikely to stand up to judiciary enquiry, one of the CFOs added.

The ad hoc penalty imposed on cement companies has been a major bone of contention since there has been no proper scientific methodology, one of the in-house general counsels said.

"If the apex judicial body, the Supreme Court, throws out a case, what will be the image of CC?," asked Pradeep S Mehta, secretary general at CUTS International.

Citing the DLF case as not being an abuse of dominance but a consumer case, Mehta pointed to the likelihood of it being dismissed by the Supreme Court.

COMPAT is also likely to scrutinize all CCI orders in the case, given the fact that the Supreme Court could rule

against these orders on merit and technical grounds, Manas Kumar Chaudhuri, partner at Khaitan & Co, previously told *PaRR*.

In the formative years of competition law in the country, COMPAT and the Supreme Court of India are likely to be careful in deciding matters arising out of CCI's orders and are likely to examine every fact, as well as the reasons advanced in the orders issued by the antitrust regulator, as final orders of the Supreme Court would be the law of the land, Chaudhuri said. This would enable stakeholders to review and modify their business methods following such decisions, he pointed out.

by Freny Patel in New Delhi