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Open Market Transactions by Competitors in India— A Feasibility Study

Introduction

India follows a mandatory merger control regime under the Competition Act, 2002 ('**Competition Act**') with suspensory effect, i.e. transacting parties are required not to 'give effect' to any part of the notifiable transaction, during the period of review by the Competition Commission of India ('CCI') or else they run the risk of 'gun jumping' and likely penalties for the same.

Parties to every notifiable transaction, which satisfies the statutory thresholds, must not take steps towards operationalization during CCI's review period, barring a few statutory exceptions which do not require prior notification¹. While most notifiable transactions are structured to account for such a period of review by CCI, the purchase of shares in a publicly listed company on a stock market is inherently bound to create gun-jumping risks because of the time-bound nature of such transactions. Short delivery and settlement periods of such publicly traded securities often make it unfeasible to secure CCI approval in advance of purchasing such shares. Further, the acquisition by a competitor of even a minority, non-controlling interest i.e. less than 25% of the equity share capital of the target, is not eligible for an exemption since they are considered 'strategic' in nature and are not exempt from notification or the 'standstill' requirement.

Given the inherent (and systemic) difficulties in completing a public market acquisition transaction without tripping CCI's gun-jumping rules, this article examines whether and how parties can proceed with such transactions.

Legal Background

CCI is empowered to impose significant penalties on parties for gun-jumping as a disincentive from consummating all or any part of a transaction before the completion of the merger review process. Equally, CCI has the power to 'unscramble the egg' for up to one year after its completion and it can block the combination if it were to conclude that it would result in an appreciable adverse effect on competition ('AAEC').

Takeover bids for listed companies, by competitors, are increasingly commonplace and occur in real-time when bulk/block trades become available on the market. When such trades do become available, a potential acquirer has to make a choice of whether to purchase the shares that have become available and risk penalties for gun-jumping, or apply for merger approval from CCI, which could take up to 30 business days and risk missing the window of opportunity. A further complication is that the notification by an acquirer to CCI prior to purchasing shares would be made public and likely result in the increase of the price of such shares. Simply put, CCI filing and approval process would make the acquisition of shares in a publicly traded target company challenging.

Since it cannot be the objective of a market regulator to close all avenues for such public acquisitions, other competition regulators have developed mechanisms to facilitate acquisitions of minority 'non-controlling' shareholdings on the stock exchange without review even in transactions where the purchaser and the target were competitors.² CCI has not yet permitted any exemptions in this regard, and has precluded such acquisitions being made during the pendency of its review, even where the acquirer has surrendered its right to vote such stock by placing such shares in an 'escrow' and the Supreme Court ('SC') in the *SCM case*³ has now upheld this position.

Finding Middle-Ground

The SC appears to have taken a somewhat simplistic approach to the issue of holding shares in escrow, pending CCI approval, by noting that transferring consideration for shares held in escrow is 'gun-jumping' since the Competition Act does not contemplate *post facto* notice, as this would defeat CCI's opportunity to assess whether the proposed combination could cause any appreciable adverse effect on competition. However, if all acquisitions of publicly traded companies through market purchases are not to be entirely disallowed, then the regulator must find middle ground – between its mandate to review all notifiable combinations without having parties complete them, and accommodating the time-bound nature of open market acquisitions. If the central concern of the regulator is that by allowing purchasers to make such an acquisition,

1 Given to banks, public financial institutions, foreign institutional buyers, and venture capital funds who are acquiring shares pursuant to a loan agreement or investment agreement.

2 Case T-411/07, Aer Lingus Group plc/ Ryanair Holdings plc, decision of the General Court dated 6 July 2010; available here: <http://curia.europa.eu/juris/celex.jsf?celex=62007TJ0411&lang=en&type=TEXT&ancre=>

3 *SCM Solifer Limited v. Competition Commission of India*, Civil Appeal Nos. 10678 of 2016.

the suspensory effect of CCI's merger review is being lost and the acquisition is irreversible, then the guidance provided in the General Court and UK Competition Commission's decision in *Ryanair/Aer Lingus*⁴ may be a useful example of how accumulation of shareholding could be reversible in a transaction, should it subsequently fail to receive competition approval.

However, if CCI considers the acquisition of such shares as untidy, if not impossible to unwind, then it may also consider introducing a mechanism which takes away from the beneficial owner the voting rights attached to such shares and places them in an escrow until such time CCI *post-facto* approves the transaction. Should CCI ultimately decide not to approve the combination, the escrow agent could be empowered to sell the shares in the open market. CCI already has a similar mechanism for divestitures supervised by a divestiture trustee, and a similar mechanism may be used in such an escrow mechanism. This could balance the need of CCI to prevent the premature consummation of a public market transaction with the corresponding need to provide some mechanism which facilitates such deals.



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Recent Developments

Ministry of Corporate Affairs Extends Competition Law Exemption to Vessel Sharing Agreements

On July 4, 2018, the Ministry of Corporate Affairs ('MCA') issued a notification granting an additional extension of three years to Vessel Sharing Agreements ('VSAs') of Liner Shipping Industry from the provision of Section 3 of the Competition Act. VSAs are entered into by liner shipping companies to share a specific number of load carrying vessels on popular routes. However, all VSAs will be subjected to monitoring by the Directorate General of Shipping. The exemption is in line with the government's initiative to increase the ease of doing business in India, and in sync with international best practices, which include not indulging in anti-competitive practices, including price fixing, limitation of capacity or sale, and allocation of markets or customers.

CCI Invites Comments on Proposed Amendment to Combination Regulations

CCI invited comments from stakeholders on the proposed draft for amendments to Combination Regulations⁵. Some of the key highlights of the proposed amendments include the introduction of provisions that allow parties to offer voluntary remedies before CCI's forms its *prima facie* opinion. CCI has also replacing the current Explanation on 'solely for investment purposes' Item 1 of Schedule I with a proviso.

Behavioural Cases

CCI Initiates an Investigation Into Alleged Abuse of Dominance by BCCI⁶

On June 1, 2018, CCI passed an order under Section 26(1) of the Competition Act, directing the Director General ('DG') to initiate an investigation into the conduct of the Board of Cricket Control in India ('BCCI') with respect to the organization of professional cricket leagues in India, and the auction of media rights of the Indian Premier League ('IPL').

The informant, a company which was a promoter of the Indian Cricket league ('ICL'), alleged that BCCI held a dominant position in the relevant market of 'organization of private professional league cricket in India' and had abused its dominant position by indulging in conduct which led to denial of market access to the ICL, a rival league to BCCI's IPL. The informant further alleged that BCCI, through its coercive tactics, forced players to opt out of their ICL contracts, and also used its persuasive power at the International Cricket Council ('ICC') (the

⁴ *Supra* Note 2. Ryanair acquired shares in Aer Lingus on the stock exchange and in parallel launched a public bid. Ryan Air notified the bid, but, the EC asserted jurisdiction over the combined stake-plus-offer, treating these as a single concentration, and prohibiting that concentration. While the offer therefore fell away, the question remaining was as to the stake. Aer Lingus argued that the shareholding in Aer Lingus acquired by Ryanair before or during the public bid represents a partial implementation of the concentration declared incompatible by the EC and had to be unwound. Both the EC and the General Court on appeal by Aer Lingus were of the view that the European Commission had the power to order a sell-down on the 'control-conferring' part of the acquisition (i.e., the public bid) which had not been implemented. Ryanair's minority shareholding in Aer Lingus remained unaffected up until the UK Competition Commission's decision requiring Ryanair to divest its stake in Aer Lingus to a mere 5%. The UK Competition Commission on completing its investigation found that by way of its minority non-controlling shares, Ryanair was in a position to influence Aer Lingus.

⁵ <http://www.cci.gov.in/node/3975>

⁶ Case No.91 of 2013



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governing body for the sport of cricket), to promote the IPL and give it the regulatory sanction. It was alleged that these factors along with the decision in the *Surinder Singh Barmi*⁷ case, gave impetus to the fact that BCCI has abused its dominance and contravened Section 4(2)(c) and 4(2)(e) of the Competition Act. It was further alleged that BCCI had consistently, and with *malafide* intention, blacklisted the informant from participating in the bids for allocation of broadcast rights for IPL by issuing a set of highly targeted eligibility criterion for the same, including the non-involvement in any sort of litigation proceedings against BCCI. The informant, who was involved in prolonged litigation due to BCCI's sanctioning of the rival ICL league thus automatically stood disqualified from the IPL bidding process.

CCI determined the relevant market to be 'organization of professional domestic leagues/ events in India'. Further, CCI took into consideration the regulatory control of BCCI, the powers vested in it by the ICC to approve private cricket leagues and the indisputable market share of BCCI, to form a *prima facie* opinion that BCCI was dominant in this relevant market. With regard to abuse, CCI observed that the virtual blacklisting of the informant by BCCI through its exclusionary clause preventing bids for the IPL media right by entities who are involved in litigation with BCCI – IPL, amounted to denial of market access. This, along with the ability of BCCI to sanction private cricket leagues, was cumulatively observed to be abusive. CCI noted that sports federations engaged in the organization of tournaments/ leagues are put to an advantage if they also possess the authority to grant approval for the organization of similar events by others and set conditions for such organization, and that BCCI seemed to have taken advantage of such a situation.

In light of the above, CCI concluded that a *prima facie* case of abuse of dominant position within the meaning of Section 4(2)(c) of the Competition Act had been made out against BCCI and directed an investigation by the DG.

CCI Directs DG to investigate Alleged Unfair Conditions by ONCC in its Offshore Service Provider Agreements⁸

On June 12, 2018, CCI passed an order under Section 26(1) of the Competition Act directing the DG to initiate an investigation into the alleged imposition of unfair and unreasonable terms of contract by the Oil and Natural Gas Company ('ONGC') in its charter hire agreements ('CHAS') for offshore support vessels ('OSVs').

The informant, the Indian National Shipowners' Association, is an association of shipping companies which *inter alia* provides offshore oilfield services including OSVs. ONGC is a Public Sector Undertaking ('PSU') of the Government of India.

The informant alleged that ONGC was the dominant enterprise in the market for hiring of OSVs in the Indian Exclusive Economic zone ('EEZ'). It was alleged that ONGC, a vertically integrated PSU, hired the largest number of OSVs in the Indian EEZ i.e. 69 OSV's out of 84 contractually committed/operational OSVs in India as on January 11, 2018, amounting to around 82% of the relevant market. It was further alleged that ONGC had abused this position of dominance by imposing one sided and unreasonable terms of contract in its CHAS for OSVs, specifically, unilateral right of termination of contract, unilateral termination in case of *force majeure*, and appointment of arbitrators. It was alleged that ONGC used these clauses as a bargaining chip to demand a reduction in service charges by the members of the informant, and had invoked the unilateral termination clause to terminate service contracts of the several of the shipping companies.

CCI observed that to determine the relevant market and the dominance of ONGC within it, it was necessary to determine if the providers of OSVs could switch to alternate buyers/hirers of such services without much difficulty. CCI determined the relevant market to be the 'market for charter hire of OSV's in the Indian EEZ', and given the number of OSVs hired by ONGC, held that it was *prima facie* dominant in this relevant market.

On the question of abuse, CCI opined that the unilateral right to terminate the contract was invoked by ONGC to pressurize the Informants into reducing the rates and was *prima facie* abuse of dominance. With respect to the *force majeure* and arbitration clauses, however, CCI observed there are sufficient safeguards to protect the interest of the informant, and thus they did not appear to be abusive. In light of above, CCI concluded that a *prima facie* case of abuse of dominant position within the meaning of Section 4(2)(a)(i) of the Competition Act had been made out against ONGC and directed an investigation by the DG.

⁷ Case No. 61 of 2010

⁸ Case No. 1 of 2018

CCI Disposes Information Against Producers of ‘Padman’ and ‘Padmavat’⁹

On June 1, 2018, CCI disposed of information filed by Shri Kshitiz Arya and Shri Purushottam Anand against Viacom18 Media Private Limited (**‘Viacom18’**), Bhansali Productions, Ms Twin-kle Khanna, Kriarj Entertainment Private Limited (**‘Kriarj Entertainment’**), Side Films India Limited (**‘Side Films’**), Cape of Good Films Private Limited (**‘COG Films’**) and Hope Productions Private Limited (**‘Hope Productions’**) alleging violation of the provision of Section 3(3) of the Competition Act.

Viacom 18 and Bhansali Productions are the producers of the movie ‘Padmavat’ and the other enterprises are the producers of the movie ‘Padman’. The informants contended that the parties had allocated different time periods to release their respective movies as to avoid competition. ‘Padman’ was scheduled to release on January 25, 2018, the same date as of ‘Padmavat’, but due to protests and the litigation of ‘Padmavat’, the producers of ‘Padman’ agreed to re-schedule the release to February 2, 2018. It was alleged that the sharing and allocation of time period for film releases between different filmmakers was aimed at increasing the profits of the filmmakers by reducing competition, thus amounting to collusion and market sharing within the ambit of Section 3(3)(c) of the Competition Act.

CCI observed that there were legitimate commercial reasons why ‘Padmavat’ and ‘Padman’ were released on the dates on which they were actually released. Releasing a movie is a strategic and tactical business decision taken by the producers based on a number of factors such as revenue sharing, branding, distribution expenditure and piracy. CCI noted that the strategy of production houses releasing mega budgeted movie in a manner whereby they did not compete with each was not unfair as both the movies cannot be released simultaneously in maximum number of screens. It was further observed that such a strategy reduces commercial risks and maximizes earning potential.

In light of the above, CCI opined that such decisions, which are a result of market outcome, are legitimate business decisions rather than an anti-competitive practice. CCI further concluded that no case for the alleged anti-competitive conduct was made out against the makers of ‘Padmavat’ and ‘Padman’, and accordingly disposed off the information under Section 26(2) of the Competition Act.

CCI Disposes Information Alleging Unfair Conditions in an Employment Contract of Client Associates¹⁰

On June 1, 2018, CCI disposed off information filed by Mr. Jaideep Ugrankar against Client Associates, alleging that the company had imposed unfair conditions in his employment contract in violation of the provisions of Section 3 and 4 of the Competition Act.

It was alleged that the employment contract in question included post employment obligations ranging from confidentiality agreements to a series of non-compete clauses. The informant also alleged irregularities in the payment of his salary by the company.

CCI observed that the informant had not made out a case for anti-competitive collusion under Section 3, and decided to assess the information under the provisions of Section 4 alone. CCI noted that the company in question is a private wealth management firm and it manages the financial affairs of its clients. To carry out its operations, the company procures services of professionals to work in wealth management firm, such as the informant in this case. Thus the relevant product market was defined to be the ‘market for procurement of services offered by professionals to the private wealth management firms’.

In this relevant market, CCI held that the presence of Client Associates was marginal, and thus no case for abuse of dominance under Section 4 of the Competition Act was made out. Accordingly, CCI disposed off the information under Section 26(2) of the Competition Act.

CCI Disposes Allegation of Abuse of Dominance Against BMW¹¹

On May 30, 2018, CCI disposed off information filed by Parsoli Motor Works Private Limited (**‘PMWPL’**) against BMW India Private Limited (**‘BMW India’**) and BMW India Financial Services Private Limited (**‘BMW Financial’**) alleging an abuse of dominant position under the provisions of Section 4 of the Competition Act.

PMWPL, an authorised dealer for BMW cars in Gujarat, alleged that BMW India had abused its dominant position by allowing dealers from outside Gujarat to sell cars inside the state without paying the requisite tax, thus causing financial losses to itself as well as the exchequer. Further, it was alleged that BMW India had unfairly terminated the dealership agreement of PMWPL without giving it any time to try and recoup the huge investment it had made.

CCI observed that BMW India had a negligible market share in the market for ‘passenger



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⁹ Case No.3 of 2018

¹⁰ Case No.8 of 2018

¹¹ Case No. 11 of 2018



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cars in India', which was contested by a number of players. In such a market construct, BMW India cannot be said to be a dominant player and as such the question of abuse of dominant position will not arise. With regards to the termination and non renewal of the dealership agreement, CCI observed that no case for abuse was made out since the agreement was renewed annually, and as such was anyway about to lapse due to efflux of time. Lastly, CCI opined that issues regarding non-payment of taxes were outside the purview of the Competition Act. In light of the above, CCI disposed off the information under Section 26(2) of the Competition Act.

CCI Disposes Allegations Against Panchsheel Buildtech and Tata Capital Finance¹²

On June, 11, 2018, CCI disposed off information filed by Shri Ashish Gupta against Panchsheel Buildtech Private Limited ('Panchsheel'), and Tata Capital Housing Finance Limited ('Tata Capital'), alleging anticompetitive collusion and abuse of dominant position under the provisions of Sections 3 and 4 of the Competition Act.

The informant alleged that Panchsheel and Tata Capital had colluded to ensure that the informant defaulted on EMI payments on loans taken from the latter for the purpose of purchasing a flat from the former. Such default, despite reminders by the informant, led to the informant's CIBIL score being adversely affected, and ultimately the allotment of the concerned flat being cancelled by Panchsheel. It was also alleged that Panchsheel had even refused to return the initial booking amount paid by the informant.

CCI observed that Panchsheel and Tata Capital were neither horizontally nor vertically linked, and as such no contravention of Section 3 could be made out. Further, CCI noted that Panchsheel did not occupy a position of dominance in the relevant market of 'provision of services relating to development and sale of residential apartments/ flats in Noida and Greater Noida', and as such any unilateral conduct of Panchsheel in cancelling the informant's booking could not be termed as an abuse of dominance. In light of the above, CCI disposed off the information under Section 26(2) of the Competition Act.

CCI Disposes Allegations Against Sparco Multiplast¹³

On June 19, 2018, CCI disposed off information filed by Singhal Industries Private Limited ('SIPL') against Sparco Multiplast Private Limited ('Sparco') alleging abuse of dominant position and the presence of anti-competitive agreements by Sparco under the provisions of Sections 3 and 4 of the Competition Act.

SIPL alleged that the Gas Authority of India Limited ('GAIL'), one of its important customers, had rejected its 'Warning Mats' in favour of Sparco's 'Wire Mesh' even though its product was technically superior to that of Sparco. It was further alleged that Sparco had entered into an agreement with two French companies, Corelco and Courant, to prevent them from supplying warning mesh manufacturing machines to any other company in India other than Sparco.

CCI noted that the allegation that the allegation that Sparco's product was inferior to that of SIPL was not sustainable. CCI noted that GAIL, as a consumer, had the freedom to choose and opt for a product which suited its requirements. It was further noted that there was no material on record to suggest that Sparco had monopolised warning mesh production by way of an alleged tie-up arrangement or agreement with Corelco and Courant. It was observed that the aforesaid companies were not supplying such products in India to begin with. Accordingly, CCI held that no contravention under Section 3 of the Competition was made out.

CCI further noted that there were several players which were active in the 'market for warning mesh and mat used for protection of the underground pipelines in India'. Further as per the data for the year 2016-17 available in Centre for Monitoring Indian Economy Prowess database, the total sales and assets of SIPL were more than that of Sparco. Accordingly, CCI held that Sparco was not dominant in this market and as such no contravention of Section 4 was made out as well. In light of the above, CCI disposed off the information under Section 26(2) of the Competition Act.

CCI Rejects Allegations of Anti-Competitive Conduct against Uber and Ola¹⁴

On June 20, 2018, CCI disposed off four separate informations alleging contravention of Sections 3 & 4 of the Competition Act, filed by Meru Travel Solutions Private Limited ('Meru') against ANI Technologies Private Limited ('Ola'), Uber India Systems Pvt. Ltd. ('Uber'), Uber BV, and Uber Technologies International Inc. through a common order.

The allegations against the parties in the four sets of information were broadly similar: (a) that the arrangement entered into between Ola, Uber and their driver-partners is an anti-competitive arrangement as it is designed to lock them into the parties' network by providing huge incentives; (b) that Ola and Uber are individually or collectively dominant in cities such as Hy-

¹² Case No.14 of 2018

¹³ Case No.13 of 2018

¹⁴ Case Nos. 25, 26, 27 & 28 of 2017

derabad, Chennai, Mumbai and Kolkata; (c) that, in the alternate, Ola and Uber are dominant as a 'group', due to the presence of common controlling institutional shareholders. The presence of these common shareholders also raises the issue of anti-competitive information exchange; and (d) that the parties had abused this position of dominance by indulging in predatory pricing by offering huge discounts and incentives to customer and driver-partners, and consequentially foreclosing the competition in the market by creating entry barriers.

CCI observed that the incentive model offered to driver-partners by Uber and Ola would not fall within the meaning of the term 'agreement' which is a pre-requisite under Section 3 of the Competition Act. CCI noted, that per its decisional practice, in the radio taxi service market, both drivers and riders have the option of 'multi-homing' by switching easily to a different aggregator by the medium of mobile applications. Further such alleged agreements cannot cause lock-ins and hence, barriers to entry in the radio taxi services market. Accordingly, CCI noted that no contravention of Section 3 of the Competition Act was made out in the case.

With respect to the allegations under Section 4 of the Competition Act, CCI noted that per its past decisional practice, the relevant markets in the present case would be the markets for 'radio taxi services in Hyderabad', 'radio taxi services in Chennai', 'radio taxi services in Mumbai' and 'radio taxi services and yellow taxi services in Kolkata'. Within these markets, CCI observed that, given the nature of competition, *prima facie* dominance of Uber and Ola individually is not made out. CCI further noted that under the scheme of Section 4 of the Competition Act, a dominant position can be enjoyed only by one enterprise or group, and hence the contention of Meru that Uber and Ola were collectively dominant was without any merit.

CCI next considered the allegation that Ola and Uber are dominant as a 'group' due to the presence of controlling institutional shareholders such as Softbank, Tiger Global, Sequoia Capital and Didi Chuxing. CCI noted that the issue at hand was whether the presence of common investors in Ola and Uber would lead to the erosion of competitive restraints that each poses on the other. However, while such a theoretical possibility exists, an investigation under the Competition Act cannot be based on conjectures and apprehensions. CCI noted that there is no evidence on record to suggest that competition between Ola and Uber has been compromised in any manner. In the absence of any such discernible effect, CCI held that it would be legally untenable to hold that the parties were influenced in their operational decisions by the common investors. In light of the above, CCI concluded that a *prima facie* case had not been established against the parties under Section 3 or Section 4 of the Competition Act, and accordingly disposed off the informations under Section 26(2) of the Competition Act.

Interestingly, CCI observed that the effect of common ownership on Ola and Uber (who were the only effective competitors in the radio taxi service industry) is still to be fully examined. Hence, while CCI is legally constrained from initiating an investigation at this time, it would monitor the behavior of the parties to determine if any lessening of competition occurs in the future as a result of the aforementioned common ownership.

CCI Directs Investigation into the Conduct of Country Liquor Procurement in Uttar Pradesh

On July 9, 2018, CCI directed an investigation into the complaint filed by Starlight Bruchem Limited against four licensees ('OPS 1-4') of wholesale liquor in the state of Uttar Pradesh ('UP') and the Government of Uttar Pradesh, alleging contravention of several provisions of Section 3 and 4 of the Competition Act¹⁵. The informant alleged that OPS 1-4 limited and controlled the market of country liquor by sourcing their purchases only from certain manufacturers to the exclusion of others thereby resulting in violation of Section 3(3) of the Competition Act. Further, OP 1-4 belong to the same parent entity i.e. OP-5 and therefore, OP-5 being the exclusive wholesaler of the country liquor in the State of UP was dominant and engaged in conduct that result in denial of market access and discriminatory conduct in violation of Sections 4(2)(c) and 4(2)(a) of the Competition Act, respectively.

CCI delineated five separate relevant markets, namely market for procurement of country liquor from licensed manufacturers in the following zones of UP i.e. Meerut Zone, Lucknow Zone, Gorakhpur Zone, Agra Zone and Varanasi Zone. CCI noted that OPS 1-4 held exclusive licenses in each of the five zones demarcated by the state government, making them the only authority to sell country liquor in wholesale within their respective zones.

CCI noted that each of the licensees were dominant in their respective zones on account of the exclusive license granted to them by the Government of U.P.

In relation to allegation made under Section 3(3) of the Competition Act, CCI noted that the informant had failed to provide any evidence of anti-competitive agreement between OP 1-4. In regard to the allegations pertaining to abuse of dominance, CCI observed that OPS 1, 2 and 4 gave preferential treatment to two distilleries in terms of procurement, coupled with the fact that



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these distilleries were owned by OP-5. CCI was of the *prima facie* view that preferential procurement of country liquor was arbitrary, discriminatory and resulted in denial of market access to other distillers and manufacturers, meriting examination under Sections 4(2)(a)(i) and 4(2)(c) of the Competition Act. In view of the above *prima facie* findings, CCI directed the DG to conduct investigation into the complaint.

CCI Dismisses Residents' Association's Complaint Against Merlin Developers

On July 9, 2018, CCI disposed off the information filed by Cambridge Residents Welfare Association ('Residents' Association') alleging violation of Section 4 of the Competition Act against Merlin Developers Private Limited ('MDPL'), its office bearers, and Merlin Projects Limited ('MPL')¹⁶. The allegation concerned 'Cambridge Residency' which is a group of apartments built in Kolkata by MPL, and marketed by MDPL. It was alleged that the MDPL, its office bearers and MPL had deviated from the terms agreed upon in the sale agreement for apartments in Cambridge Residency, and had made false promises, including the delivery of a smaller super built up area, dishonor of maintenance clause in the sale agreement, and non-transfer of corpus fund to the Residents' Association's account. CCI defined the relevant market as the 'market for provision of services for development and sale of residential flats in Kolkata'.

CCI ascertained the dominance of MPL by comparing it with competing entities on various parameters, including land bank, number of projects, rate per square feet, number of units, and area of the units. CCI found MPL to be a smaller player compared to other real estate players in Kolkata, along with the availability of other similar projects in the vicinity of Cambridge Residency. CCI held that MPL is not dominant in the relevant market and hence, no *prima facie* case was made out by the informant. Accordingly, CCI disposed off the information under Section 26(2) of the Competition Act.

CCI Dismisses Information Alleging Abuse of Dominance Against Tamil Nadu Civil Supplies Corporation

On July 4, 2018, CCI disposed off the information filed by Maheshwari Agro Products ('MAP') against Tamil Nadu Civil Supplies Corporation ('TNCSC'), alleging violation of the provisions of Section 4 of the Competition Act¹⁷.

MAP is a supplier of pulses and other ancillary things, and had been successfully participating in the tenders floated by TNCSC, a public sector undertaking, since 2012. In 2013, TNCSC had introduced stringent conditions in its tender process, including the purchase of stocks from the tenderers at a rate higher than the open market price. Furthermore, in its tender notification dated May 15, 2017, one of the conditions was that the bidder should have executed at least one contract valued at not less than ₹160 million, along with an annual average turnover of ₹320 million in the previous three financial years. It was alleged that imposition of such conditions that helped OP to favour certain bidders while disqualifying the others, is an act of abuse of dominant position.

While delineating the relevant market, CCI noted that the pulses could be supplied from anywhere in India. Therefore the relevant market was delineated as the 'market for procurement of tur dal/Canadian yellow lentil in India'. Within this relevant market, CCI observed that there are many state-run agencies and corporations that operate in this market, exerting considerable competitive constraint on TNCSC. It was further observed that even after the tender conditions were altered, there remained ten bidders which ensured that the tender process was competitive and not arbitrary. Therefore, CCI concluded that no *prima facie* contravention of any provision of the Competition Act was made out, and dismissed the information under Section 26(2) of the Competition Act.

CCI Dismisses BidRigging Allegations against Petroleum Public Sector Undertakings

On July 4, 2018, CCI dismissed information filed against Indian Oil Corporation Limited ('IOCL'), Bharat Petroleum Corporation Limited ('BPCL'), and Hindustan Petroleum Corporation Limited ('HPCL') by certain unnamed informants¹⁸. The information alleged contravention Sections 3 and 4 of the Competition Act by IOCL, BPCL, and HPCL ('OPs'), through collusive tendering, price fixing and abuse of dominant position. The informants are individuals who are engaged in the business of providing services in relation to transportation of bulk LPG through trucks. They alleged that the terms, conditions, and price bands of the Notice Inviting Tenders ('NIT') of the three OPs were identical across different States. It was alleged that the price bands forced the bidders to quote within the arbitrary band with no commercial basis. Moreover, it

¹⁶ Case 50 of 2017

¹⁷ Case 02 of 2018

¹⁸ Case 05 of 2018

was alleged that the OPs had kept the floor as well as ceiling prices of two different truck categories artificially high, thereby restricting competitive bidding.

At the outset, CCI discussed the question of jurisdiction raised by the OPs, who had argued that the correct forum for such complaints was not CCI, but the Petroleum and Natural Gas Regulatory Board ('PNGRB'). The OPs relied on CCI's previous orders¹⁹ granting itself the jurisdiction to deal with issues pertaining to oil/petroleum, which were stayed by the Delhi High Court. However, CCI relied on decisions of the Supreme Court²⁰ to hold that the jurisdiction of the Competition Act extended to all sectors of the economy and sectors regulated by sector-specific laws, for competition-related issues.

On the allegation that the three OPs exercised collective dominance, CCI held that 'collective dominance' was not recognized by the Competition Act, and the existence of two strong players in the market was indicative of competition between them, unless they agree not to compete. As for the contravention of the provisions of Section 3 of the Competition Act, CCI observed that cartels generally comprise of sellers who agree to fix prices, and it may not be appropriate to treat a buyers' cartel at par with a seller's cartel. CCI noted that buyer power through joint purchasing agreements may lead to direct benefits for consumers in the form of lower prices and therefore, in order to investigate a buyer's cartel, the informants need to prove potential theories of harm to *prima facie* establish anticompetitive cartel conduct.

CCI also observed that the OPs had not denied the enforcement of price bands, but had defended them against the calculation of costs of various components and profit margin. In light of the above, CCI concluded that no *prima facie* case was made out, and dismissed the information under Section 26(2) of the Competition Act.

CCI Dismisses Information against Haryana Public Works Department Alleging Abuse of Dominance

On February 2, 2017, CCI concurred with the DG's investigation and dismissed an information filed by Shri Rajat Verma against Public Works Department, Government of Haryana ('PWD'), Secretary, Haryana PWD, and Superintending Engineer, Haryana PWD, alleging contravention of the provisions of Section 4 of the Competition Act in relation to unfair and discriminatory conditions contained in the bid documents floated by PWD.²¹

The DG in its investigation defined the relevant market as 'the market for procurement of construction services for construction/ repair/ maintenance of roads and bridges (other than railway bridges for railway traffic) in the territories of the States of Haryana, Himachal, Rajasthan, Punjab, Bihar, Madhya Pradesh, Uttar Pradesh, Uttarakhand and Delhi'. The DG concluded that PWD was not in dominant position in the relevant market as the contractors were not dependent upon PWD for supplying their services for construction of roads and bridges. Furthermore, there were no entry barriers on participation in tenders floated by other contractors in other States and Union Territories in India.

CCI concurred with the DG's analysis, and concluded that since PWD was not dominant in the relevant market, there remained no requirement to examine the allegations of abuse of dominance under Section 4 of the Act. Accordingly, CCI closed the case under Section 26(6) of the Competition Act.

CCI Imposes Penalty on Glenmark, Chemists and Druggists in Gujarat for Abuse of Dominance

On June 12, 2018, CCI passed an order under Section 27 of the Act imposing penalties on certain chemists and druggists in Gujarat, and pharmaceutical companies for mandating a No-Objection Certificate ('NOC') to be obtained by dealers and distributors from local chemists and druggists associations as a prerequisite to undertake business activities²².

In its investigation, the DG found that sub-clause (a) of Clause 28 of the Drugs (Price Control) Order, 2013 created an obligation on a pharmaceutical company/ distributor to sell drugs unless there was a 'good and sufficient reason' to refuse sale. On the basis of the responses and documentary evidences furnished by the pharmaceutical companies during the investigation, the DG noted some of the pharmaceutical companies and their clearing and forwarding ('C&F') agents did not fall foul of the provisions of the Act, as the refusal for not granting NOC was justified.

CCI observed that the practice of mandating NOCs from stockists prior to their appointment resulted in limiting drug supply in the market, a contravention of Section 3(3)(b) read



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¹⁹ In case 26 of 2010 and *Suo Moto* case 03 of 2013

²⁰ *Ashoka Marketing Limited v. Punjab National Bank* 1990 4 SCC 406; *Competition Commission of India v. Fast Way Transmission Private Limited* (Civil Appeal 7215 of 2014)

²¹ Case 70 of 2014

²² Cases 65 of 2014, 71 of 2014, 72 of 2014 & 68 of 2015



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with Section 3(1) of the Competition Act. Moreover, the parties were not able to provide any evidence to establish any benefits in the distribution channel on account of the NOC requirement. In light of above, CCI concluded that such practice amounted to an anti-competitive agreement under the provisions of the Competition Act, and imposed a penalty of ₹ 0.9 million on Federation of Gujarat State Chemists and Druggists Associations, ₹ 0.1 million on Amdavad Chemists Association, ₹ 0.1 million on Surat Chemists and Druggists Association, and ₹ 0.6 million on Chemists and Druggists Association of Baroda (calculated at the rate of 10% of the income recorded in the financial years from 2011 to 2016). Penalty was imposed at the same rate on the individual office-bearers of these associations as well. CCI also imposed penalty to the tune of 1% of the total average income as recorded in the financial years between 2013 and 2016 on Glenmark Pharmaceutical Limited (₹ 450 million), B.M. Thakkar & Co. (₹ 0.02 million), and Divine Savior Private Limited (₹ 0.5 million), and their individual office bearers.

CCI Imposes Penalty on All India Chess Federation for Abuse of Dominance

On July 12, 2018, CCI passed an order under Section 27 of the Competition Act imposing a penalty on the All India Chess Federation ('AICF'), for contravention of provisions of Section 3 and 4 of the Competition Act.

The information was filed by four chess players contending that the AICF registration form contained a declaration that denied their participation in any tournament / championship that was not authorized by AICF, contravention of which led to the players being banned for a period of one year from such participation along with confiscation of 50% of the prize money by AICF. Further, such participants were also required to issue an unconditional apology along with an undertaking promising the non-participation in any such future events that were not authorized by AICF.

CCI delineated two separate markets while defining the relevant market, namely: (i) market for organization of professional chess tournaments/events in India; and (ii) the market for services of chess players in India. In view of the regulatory powers enjoyed by AICF in organising professional chess tournaments and being the dominant consumer of services that was provided by chess players, CCI observed and concluded that AICF enjoyed a dominant position in both the relevant markets. CCI found certain conditions imposed on the players by way of AICF's mandatory registration form as too harsh, especially Clause Z, which discusses the disciplinary actions of the AICF in the event a player participates in a tournament not authorised by AICF. CCI held that the disciplinary actions were very harsh, especially due to the absence of any opportunity for hearing or a provision whereby a player could take prior permission of the AICF for participating in a non-authorised tournament, leading to a contravention of Section 4(2)(b)(i) of the Competition Act. Furthermore, CCI took note of a caution displayed on AICF's website, prohibiting players from participating in tournaments organized by other rival bodies, including the Chess Association of India. To this end, CCI found AICF to have used its dominance to deny its rivals access to the relevant markets, thereby contravening Section 4(2)(c) of the Competition Act.

CCI further noted that the undertakings mandated by AICF concerning non-participation of its players in non-AICF authorized tournaments were akin to exclusive distribution and refusal to deal as understood under Sections 3(4)(c) and 3(4)(d) of the Competition Act. Accordingly, CCI directed AICF to cease and desist from all such conduct recognized as amounting to abuse of dominance, to formulate procedure for authorizing chess tournaments in a fair, transparent and equitable manner, and to ensure all disciplinary actions against the players are proportional, fair and transparent. CCI directed AICF to file a compliance report within 60 days of the order's receipt. Furthermore, CCI also imposed a penalty of ₹ 0.69 million on AICF for infringing provisions under Section 4 of the Competition Act.

CCI Imposes Penalty on Sports Broadcasters for Bid-Rigging

On July 11 2018, CCI passed an order under Section 27 of the Competition Act against Globecast India Private Limited and Globecast Asia Private Limited ('Globecast') and Essel Shyam Communication Limited ('ESCL') for manipulating the bidding process in tenders floated by sports broadcasters.²³

As per the information provided by Globecast, it had exchanged confidential commercial and price sensitive information with ESCL, which led to bid rigging in tenders for procurement of broadcasting services of various sporting events, especially during the year 2011-12. The arrangement between ESCL and Globecast was facilitated by a consultancy agreement under which certain employees Globecast employees received a share in profits from the contracts obtained through the collusion.

In its report, the DG analysed several communications between the impugned parties to es-

²³ Suo Moto Case 02 of 2013

establish concerted action in the bids submitted for provision of broadcasting services for certain *ad hoc* sporting events in India during 2011-12, amounting to infringement of Section 3(3)(d) read with 3(1) of the Competition Act.

CCI analysed each of the sporting events for which the impugned bids took place to arrive at a conclusion. CCI noted that for each of the events under examination, there was an exchange of commercially sensitive information between ESCL and Globecast that allowed them to co-ordinate their bids. CCI held that the conduct of the two parties adversely affected the competitiveness of the bidding process amounting to a contravention of Section 3(3)(d) of the Competition Act.

CCI imposed penalty on ESCL (₹319.4 million) and Globecast (₹13.2 million) at the rate of 1.5 times of their total profit for the period of contravention. It also penalized 8 individual office bearers of ESCL and Globecast for their role in the collusion at the rate of 10% of their average income in the three financial years preceding initiation of the case. However, since both the parties were leniency applicants, and had assisted in the investigation, CCI granted a 100% reduction in the penalty on Globecast and its office bearers, and 30% to ESCL and its office bearers.

CCI Dismisses Allegations of Unfair Business Practices in Search Advertising Against Google

On July 12, 2018, CCI dismissed two separate information filed against Google for contravention of the provisions of Section 4 of the Competition Act.²⁴ Mr. Vishal Gupta ('Informant 1') and Albion Infotel Limited ('Informant 2') are engaged in providing remote tech support services ('RTS services'), and use Google's advertising platform ('AdWords') for reaching out to their consumers. As part of the sign-up process on AdWords, the advertisers are required to sign a standard document agreement ('AdWords Service Agreement') with Google.

It was Informant 1's allegation that the bidding process of AdWords was opaque. Google's 'User Safety Policy' was ambiguous with a potential of discriminatory treatment. Further, Google had suspended Informant 1's AdWords account to help launch its own rival service, Google Helpout ('Helpouts'). Informant 1 alleged that such practices amounted to denial of market access. Informant 2 raised similar allegations against AdWords, Google's User Safety Policy, and the process of termination of Informant 2's AdWords account.

Based on the information, CCI formed a *prima facie* opinion of infringement and directed the DG to cause an investigation, delineating the relevant market as 'the market for online search advertising in India' ('Initial Order'). Google filed an application with CCI seeking a recall of the Initial Order on the ground that CCI lacked jurisdiction and had incorrectly delineated the relevant market as the Informants advertised their RTS services to consumers based outside India, therefore, negating any concern of AAEC in India ('Recall Application'). The Recall Application was dismissed by CCI, and thereafter Google approached the Hon'ble High Court of Delhi ('DHC') under a writ petition. The DHC remanded the matter to CCI, ordering the Recall Application to be considered afresh by CCI. In response to the DHC's order, CCI considered the Review Application, and consequently dismissed it again, directing the DG to continue its investigation.

In its report, the DG concluded that Google enjoyed a position of strength in the relevant market, allowing it to operate independent of prevailing competitive forces. The DG further submitted that Google had abused its dominant position in the relevant market in violation of the provisions of Section 4(2)(a)(i) of the Competition Act for the following two reasons: (i) opaqueness and lack of transparency in assigning a quality score in the bidding process in AdWords; and (ii) one-sided terms and conditions provided in clause 11 read with clause 4 of the AdWords Advertisement Terms 2013 ('2013 Terms'). However, the DG found that the suspension of the informants' accounts was justified.

In its response, Google agreed with the DG's findings pertaining to the suspension of the informants' accounts. As for the DG's finding on contravention of the Competition Act, Google submitted that these clauses were not unfair or discriminatory, and that they were ubiquitous across the industry. Moreover, it claimed that the DG had failed to show any anti-competitive effect arising out of these clauses.

In its analysis, CCI demarcated the three issues that survived for its consideration: (i) whether the AdWords accounts of the Informants were suspended by Google in an unfair or discriminatory manner amounting to abuse of dominance? ('Issue 1'); (ii) whether Google imposed unfair conditions on its advertisers and whether this amounted to an abuse of dominance? ('Issue 2'); and (iii) whether the bidding process of AdWords can be characterized as extremely opaque and non-transparent? ('Issue 3')

On Issue 1, CCI found Google's termination of the Informants' account fair and justifiable. It took note of over a thousand instances of various AdWords policy violations by the Inform-



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ants, which included abuse of third-party trademarks, incorrect display of uniform resource locator ('URL'), and use of multiple URLs to cause confusion among the users. Moreover, CCI found that Google had a well-established appeal process for advertisers whose accounts are under suspension. Furthermore, CCI found no merit in the allegation dealing with termination of the informants' accounts and the launch of Helpouts, since the Helpouts was not a substitute for RTS services.

On Issue 2, CCI noted that clause 11 of the 2013 Terms instead of being discriminatory, was in fact beneficial in protecting consumers from harm. It noted that not having the ability to suspend or terminate accounts would render a platform like Google unable to deal with advertisers that harm consumers. CCI also noted that the clause was in compliance with local laws concerning prohibition of certain advertisements. Moreover, CCI held that clauses such as Clause 11 are ubiquitous across the industry, and are not one-sided. In the present case itself, both advertisers and Google are free to terminate the relationship, and there are no ongoing advertising obligations on the advertisers.

On Issue 3, CCI held that there was no merit in the DG's finding that the 'Quality Score' given by Google to the advertisers was opaque and susceptible to manipulation. CCI reasserted its finding in *Matrimony.com/CUTS v. Google LLC*²⁵, where it had held that Google provides sufficient data to advertisers on the performance of their advertisements. Based on the above reasoning, CCI concluded that no case for any abuse of dominance was made out against Google, and dismissed the information.

There was also a dissent note, signed by a single member of CCI, which took the view that CCI ought not to have passed a final order, but should have referred the case back to the DG for further investigation on certain aspects such as the reasons for termination of AdWords account of other RTS services providers, and possibility of remote access through Helpouts.

CCI Dismisses Bid Rigging Allegations Against Railway Signaling Cable Suppliers

On July 12, 2018, CCI dismissed a reference filed by the Chief Materials Manager-I, North Western Railway ("NWR"), Jaipur, alleging contravention of Section 3 of the Competition Act, in relation to bid-rigging in tenders for procurement of railway signaling cables.²⁶

The informant had named 37 enterprises, all of whom were Research Designs and Standard Organization ('RDSO') approved suppliers of cables. It was averred that the cable suppliers had formed a cartel for supply of signaling cables to North Western Railways, and quoted high rates in eight tenders floated between 2012 and 2013 by NWR for signaling cables ('Impugned Tenders').

CCI, having found a *prima facie* case, directed the DG to conduct an investigation into the alleged contravention. In its report, the DG concluded that eleven of the cable suppliers in the Impugned Tenders had manipulated the bidding process and had thus contravened the provisions of Section 3(3)(d) read with Section 3(1) of the Competition Act.

In its analysis, CCI found no merit in the DG's conclusion, and agreed with the submissions of the parties that the similar pricing in Impugned Tenders may be due to market conditions. CCI noted that the input costs were common in the market. Therefore, tender quotations invariably reflected similar prices. The same could not be regarded as an evidence of collusion. Furthermore, CCI noted that the prices of raw materials were determined by RDSO-approved vendors. Moreover, CCI found no evidence on record in relation to sharing of price sensitive information with regard to the Impugned Tenders. CCI also noted the submission of the cable suppliers that the abstentions in participation in any of the Impugned Tenders were driven by constraints such as those concerning working capital and labour, and not collusion. Furthermore, CCI found no implicit channel of collusion, such as common management and structural links between the cable suppliers.

In the absence of any direct or circumstantial evidence amounting to anti-competitive agreement amongst the bidders, CCI observed that no tacit or explicit collusion between the cable suppliers was established. Accordingly, CCI held that no contravention of the provisions of Section 3(3)(a) and 3(3)(d) read with Section 3(1) of the Competition Act was made out, and dismissed the information.

However, CCI advised the Railways to modify its procurement policies to harmonize it with competition law principles. CCI suggested that this could be done by reassessing the rules with respect to participation of sister concerns in tenders floated by Railways for procurement of products from various RDSO approved suppliers.

²⁵ Case Nos. 7 & 30 of 2012

²⁶ Reference Case No. 07 of 2013

CCI Imposes Penalty on South Asia LPG Company for Abuse of Dominance

On July 11, 2018, CCI passed an order under Section 27 of the Competition Act imposing a penalty on the South Asia LPG Company Private Limited ('SALPG') for abuse of dominant position. The information was filed by East India Petroleum Private Limited ('EIPL').²⁷ SALPG, an Indian company established in 1999 as a joint venture between Hindustan Petroleum Corporation Limited ('HPCL') and Total Gas & Power India Private Limited ('TGPI'), is engaged in the business of providing terminalling services, which includes receipt, storage and dispatch of propane/butane/liquefied petroleum gas ('LPG') to oil marketing companies ('OMCs') at the Visakhapatnam Port.

As per the information, EIPL alleged three counts of unilateral conduct by SALPG amounting to contravention of the provisions of Section 4 of the Competition Act. First, that SALPG had imposed certain mandatory conditions on the OMCs that resulted in limiting and restricting the provision of services by EIPL as well as the market for such services. Second, that SALPG was charging exorbitant bypass charges, which limited the economic viability of EIPL's services for the users. Third, that SALPG controlled the total volume of pre-mixed LPG that could be imported from Very Large Gas Carrier ('VLGC') to be bypassed for tank-truck loading. This meant that the remaining gas had to be necessarily transported through the underground storage facility of SALPG, and the practice restricted the business volumes of EIPL.

CCI delineated the relevant market as the 'market for upstream terminalling services at Visakhapatnam Port'. CCI further noted that SALPG was the provider of terminalling services at Vishakhapatnam Port, and therefore enjoyed a monopoly for the provision of such services. Additionally, SALPG will continue to be dominant even on a stream-wise segmentation of terminalling services. On the issue of abuse, CCI undertook an examination of allegations of denial of market access to EIPL by SALPG by way of restriction on EIPL's access to terminalling infrastructure. On its part, SALPG submitted that the restrictions on access to terminalling infrastructure were justified as they ensured safety and technical feasibility of the entire apparatus, and created business efficiencies. Based on its analysis, CCI concluded that SALPG's efficiency claims were unfounded, and the denial of access had ensured that a significant capacity of LPG terminal at Visakhapatnam Port remained unutilized over the last seven years. CCI also took note of SALPG's reluctance to undertake an independent study on safety concerns, which CCI construed as an attempt by SALPG to refuse sharing its terminalling infrastructure.

In sum, CCI found SALPG in contravention of Sections 4(2)(a)(i), Section 4(2)(a)(ii), 4(2)(b)(i) and Section 4(2)(c) of the Competition Act, and imposed a penalty at the rate of 10% of SALPG's average annual turnover generated from the relevant market for upstream terminalling services at Visakhapatnam Port for the Financial Years 2014-15, 2015-16 and 2016-17, amounting to ₹192.07 million.



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Combination Cases

CCI Approves Acquisition of UST Holdings Limited by Macritchie Investment Pte. Ltd.²⁸

On May 24, 2018, CCI approved the acquisition of up to 21.3% of the issued and paid-up capital of UST Holdings Limited ('UST') by Macritchie Investment Pte. Ltd. ('MRIPL') pursuant to the execution of a Share Subscription Agreement on May 9, 2018.

MRIPL is an indirectly wholly owned subsidiary of Temasek Capital (Private) Ltd, which is a wholly owned subsidiary of Temasek Holdings. The portfolio companies of the Temasek group are engaged in financial services, telecommunications, media and technology, transportation and industrial consumers and real estate, life sciences and agribusiness, as well as energy and resources. UST is engaged in providing Information Technology services – software development and support services.

CCI observed that while there were no horizontal overlaps between the acquirer and the target, the acquirer and the Temasek group do have investments in Indian companies which operate in the information technology ('IT') space. However, CCI noted that UST did not offer similar services in the IT space as those offered such Indian investee companies of MRIPL and the Temasek Group. Further, the IT space is characterized by high levels of dynamism and innovation. Accordingly, CCI concluded that the proposed transaction was not likely to have any AAEC in any market in India, and approved the same.

²⁷ Case No. 76 of 2011

²⁸ Combination Registration No. C-2018/05/567

CCI Approves Corporate Reorganization of Unilever PLC and Unilever NV²⁹

On May 31, 2018, CCI approved the corporate reorganization of the Unilever Group to simplify the existing legal structure, currently headed by Unilever PLC and Unilever NV, under a single new holding company i.e. 'New NV'. Unilever PLC (along with Unilever NV) is the ultimate parent company of the Unilever group.

The Unilever Group is one of the largest consumer companies and its business is organised in three divisions, which operates through: (i) Beauty & Personal Care, (ii) Home Care and (iii) Foods & Refreshment. In India, the Unilever group is primarily present through Hindustan Unilever Limited ('HUL'), a public limited company and listed on Bombay Stock Exchange Limited and National Stock Exchange of India Limited. HUL is *inter alia*, engaged in manufacture and sale of product such as soaps, detergents, shampoo, skin care, toothpaste, and deodorant.

CCI observed that Unilever PLC and Unilever NV had been operating as a single economic entity. Further, post the proposed transaction the joint control being currently exercised by Unilever PLC and Unilever NV over the Unilever group would subsume into New NV. There would be no change in the shareholding pattern or management of any of the companies of the Unilever group. Accordingly, CCI concluded that the proposed transaction was not likely to have any AAEC in any market in India, and approved the same.

Section 43A Penalty Proceedings

CCI Imposes a 'Gun-Jumping' Penalty on Intellect Design Arena

On May 7, 2018, CCI passed an order under Section 43(a) of the Competition Act imposing a penalty on Intellect Design Arena Ltd. ('IDAL') for consummating a notifiable transaction without prior approval from CCI. While assessing a different notified combination, CCI observed that Polaris Financial Technology Limited ('PFTL') had by way of a scheme of arrangement approved by a board resolution dated 18th March, 2014, demerged its "products business", which was subsequently acquired by IDAL.

CCI observed that the said demerger and the subsequent acquisition *prima facie* met the jurisdictional thresholds under Section 5 of the Competition Act, and issued a show cause notice to IDAL directing it to show why proceedings for 'gun jumping' under Section 43(a) of the Competition Act should not be initiated against it. IDAL's response to the show-cause notice comprised of the following two lines of argument (a) that the benefit of the *de minimis* exemption (which, at the time, exempted acquisitions of shares, voting rights, assets or control of enterprises which had less than ₹2500 million in assets in India, or less than ₹7500 million in turnover in India) was available acquisition was available to the transaction since the turnover of PFTL in India (i.e. from customers in India) was less than ₹7500 million, and (b) that under Section 20(1) of the Competition Act, CCI was precluded from inquiring into any combination after a period of one year had passed from the date the combination came into effect, which it had in the present case.

With respect to the first issue, CCI observed that as per its decisional practice, the value of turnover is to be taken per the enterprise's books of accounts, irrespective of where the revenue was derived from. CCI noted that while the revenue derived by PFTL from exports was substantial, its total revenue as seen in the books of account amounted to ₹18539 million, substantially over the *de minimis* threshold. Accordingly, CCI concluded that IDAL would not be able to take the benefit of the *de minimis* exemption. Further, with respect to the second issue, CCI observed that the provisions of Section 20(1) of the Competition Act applied to the reviewing of combination and not to the initiation of proceedings for 'gun jumping' under Section 43A of the Competition Act. Further, for the application of Section 43(a) the effects of the combination on the market in India were irrelevant.

In light of the above, CCI held that the transaction ought to have notified, and in having consummated the same without CCI approval, IDAL had violated the provisions of Section 43(a) of the Competition Act. Accordingly, CCI imposed a penalty of ₹1 million on IDAL.

CCI Approves Acquisition of IGE Private Limited and Elpro International Limited by Metlife International Holdings, LLC³⁰

On June 21, 2018, CCI approved acquisition of 6.05% of the equity share capital of PNB Metlife India Insurance Company Limited ('PMLI') from IGE Private Limited ('IGE') and Elpro International Limited ('Elpro') by Metlife International Holdings, LLC ('MIHL') pursuant to execution

²⁹ Combination Registration No. C-2018/05/569

³⁰ Combination Registration No. C-2018/06/576

of a share purchase agreement dated May 7, 2018. By way of the proposed transaction, MIHL sought to acquire 4.71% and 1.33% additional equity capital of PMLI from IGE and Elpro respectively, therefore increasing its shareholding in PMLI to 32.05%.

MIHL, a wholly owned subsidiary of Metlife Inc., is a limited liability company incorporated in the United States of America. PMLI, a public unlisted company incorporated in India, is an insurance company and provides life and health insurance services and products, under the brand name PNB Metlife. Elpro, a public listed company, is engaged in the business of manufacturing surge arresters and holds 12.75% of the equity share capital in PMLI. IGE, a private limited company, is engaged in the trade of commodities, wind energy generation and real estate. It holds 8.57% of the equity share capital in PMLI and 46.03% in Elpro.

CCI observed that the parties did not have any horizontal overlaps or vertical arrangements in India. Accordingly, CCI concluded that the proposed transaction was not likely to have any AAEC in any market in India, and approved the same.

CCI Approves Acquisition of Mankind Pharma Limited by Beige Limited and Link Investment Trust³¹

On May 09 2018, CCI approved acquisition of 10% of the equity share capital of Mankind Pharma Limited ('Mankind') by Beige Limited ('Beige') and Link Investment Trust ('Link') pursuant to a share purchase agreement executed between the parties followed by an amended and re-stated shareholder's agreement. As part of the proposed transaction, Mankind would also acquire control over several enterprises which supply pharmaceutical products to Mankind for captive consumption.

Beige, an investment company, is registered in Mauritius and owned by Maize Investments Limited and indirectly controlled by ChrysCapital VII, LLC ('ChrysCapital'). Link, a private trust registered in India, is engaged in making investments. Mankind is a public limited company incorporated in India and is engaged in the business of manufacturing and trading of pharmaceutical and healthcare products.

CCI observed that while there were no horizontal overlaps between the acquirers and Mankind, Beige, Link and ChrysCapital did have certain shareholdings in enterprises that are engaged in pharmaceutical and healthcare business, such as Curatio Healthcare Private Limited ('Curatio'), Torrent Pharmaceuticals Limited, Intas Pharmaceuticals Limited, Ipca Laboratories Limited and GVK Biosciences Limited ('GVK'). Based on the extent of shareholding and nature of rights held, CCI considered only Curatio and GVK for the purpose of its competitive assessment. CCI noted that the relevant market for pharmaceutical products was to be considered at the molecular (i.e. active pharmaceutical ingredient) level and observed that the activities of Mankind and Curatio overlapped in seven formulations viz., (i) Biotin and Comb; (ii) Ketoconazole; (iii) Emollients – Protectives; (iv) Aminexil + Minoxidil; (v) Anti acne soaps; (vi) Other dermatological preparations; and (vii) Lidocaine + Prilocaine.

With respect to the first six markets, CCI observed that the combined market shares of the parties ranged from 0-5%–20-25%. Further, the parties were subject to competitive constraints by other strong market players as well. With respect to the last relevant market i.e., 'Lidocaine + Prilocaine', CCI noted that despite having a combined market share of 60-65%, the products of Mankind and Curatio in this market were different from the perspective of the consumer and thus were not close competitors. Accordingly CCI opined that the proposed transaction was unlikely to cause any AAEC in India, and approved the same.

CCI Approves Acquisition of Siemens Project Ventures GmbH by FIH Mauritius Investments Limited³²

On May 04, 2018, CCI approved acquisition of an additional 6% of the equity share capital of Bangalore International Airport Limited ('BIAL') by FIH Mauritius Investments Limited ('FIH Mauritius'), from Siemens Project Ventures GmbH ('Siemens'), pursuant to a Share Purchase Agreement executed on March 29, 2018.

FIH Mauritius is an investment holding company incorporated in Mauritius for making investments in India and is not engaged in any trading or business. BIAL is a public company incorporated in India and is engaged in operation and maintenance of an international airport at Bangalore. Siemens is an entity incorporated in Germany and is engaged in provision of project finance services.

CCI observed that as a result of the proposed transaction, FIH Mauritius would not acquire and Siemens would not lose any rights in BIAL including the right to nominate members on the board of BIAL. Accordingly, CCI concluded that the combination would not change the competi-



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³¹ Combination Registration No. C-2018/04/565

³² Combination Registration No. C-2018/04/564



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tion dynamics in any markets in which the parties were engaged and accordingly approved the proposed transaction.

CCI approves Acquisition of Electrosteel Steels Limited by Vedanta Limited³³

On May 11, 2018, CCI approved the acquisition of 90% of the equity share capital of Electrosteel Steels Limited ('ESL') by Vedanta Limited ('Vedanta') pursuant to a resolution plan under the Insolvency and Bankruptcy Code 2016 ('IBC'), dated March 29, 2018 entered into between the parties.

Vedanta, a public company incorporated in India, is a subsidiary of Vedanta Resources Plc. which is an entity incorporated in United Kingdom. It is a natural resources company having operations in aluminium, zinc, lead, silver, copper, iron ore and power. ESL, a public company incorporated in India, is a part of Electrosteel Group and is engaged in the business of iron and steel. It manufactures and sells products such as Pig Iron, Billets, TMT Bars and Wire Rods.

CCI noted that both parties were involved in the manufacture and sale of pig iron in India. Further, although there was no existing vertical relationship between the parties, a potential for such vertical relationship did exist. However, CCI noted that the combined market share of the parties was insignificant and there were several competitors which imposed competitive restraints upon the parties. Accordingly, CCI concluded that the proposed transaction was unlikely to cause any AAEC in India, and approved the same.

CCI Approves Acquisition of Monnet Ispat and Energy Limited by AION Investments Private II Limited and JSW Steel Limited³⁴

On May 11, 2018, CCI approved acquisition of 74.29% of the equity share capital and management control of Monnet Ispat and Energy Limited ('Monnet') by AION Investments Private II Limited ('AION') and JSW Steel Limited ('JSW') pursuant to a resolution plan under the IBC dated December 12, 2017. The proposed transaction also involved transfer of Monnet's non-core assets to a newly incorporated entity by way of a slump sale, after which, Monnet proposed to transfer 100% of equity shares of the said newly incorporated entity containing the aforementioned non-core assets.

AION, a special purpose vehicle, is wholly owned and controlled by AION Capital Partners Limited ('APCL') and operates on investments in stressed, distressed and over leveraged assets in India. JSW is listed on the National Stock Exchange of India Limited and BSE Limited and is a flagship company of the JSW group wherein it is an integrated manufacturer of non-alloyed carbon steel, various categories of alloyed steel, etc. Monnet is listed on the NSE, BSE and the Calcutta Stock Exchange Limited, and is engaged in the manufacture and sale of primary steel and sponge iron, steel and ferro-alloys and mining of minerals like coal and iron ore in India.

CCI observed that there were no horizontal overlaps between AION, APCL and Monnet, since neither AION was engaged in the manufacture, production and sale of steel products, nor did APCL hold any investment or exercises any right in any enterprise involved in the steel sector in India. However, CCI noted that activities of JSW and Monnet overlapped in certain activities related to manufacture and sale of: pig iron, sponge iron, semis (specifically billet/blooms), and long products (TMT bars). CCI observed that these products constituted separate relevant markets of their different technical characteristics, price etc. It further noted that the combined market shares of the parties in all the above relevant markets, based on parameters such as installed capacity, gross production and sales, ranged from a miniscule 0-5%–20-25%. The parties were also subject to significant competitive restraints from other strong market players, including integrated and non-integrated steel producers. Lastly, CCI noted that the parties did not have any existing vertical relationship, and in terms of potential vertical relationships, were constrained by large competitors. Accordingly, CCI concluded that the proposed transaction was not likely to have any AAEC in any market in India, and approved the same.

CCI Approves Bayer's Acquisition of Monsanto^{35[1]}

On 14 June, 2018, CCI approved the acquisition of the entire shareholding of Monsanto Company ('Monsanto') by Bayer Aktiengesellschaft ('Bayer') subject to the parties divesting certain lines of businesses in India. Both Bayer and Monsanto are large global agro-chemical companies with substantial business presence in India.

CCI noted that both parties were amongst the largest global vertically integrated companies operating across the entire value chain of supply of agricultural inputs like seeds and traits, crop protection, and digital farming solutions. While reviewing the acquisition, in addition to assessing horizontal and vertical overlaps, CCI also examined conglomerate effects that could

³³ Combination Registration No. C-2018/04/563

³⁴ Combination Registration No. C-2018/03/561

³⁵ ^[1] Combination Registration No. C-2017/08/523

result from the parties' complementary product portfolios.

On 3 November 2017, CCI reached a *prima facie* view that the acquisition could cause AAEC in certain relevant markets. It issued a show cause notice to the parties asking them to demonstrate how the acquisition would not cause AAEC. CCI was not convinced by the parties' response (including their reliance on divestitures offered by them in other jurisdictions), and initiated the detailed second phase review. Finally, after considering the parties' and other stakeholders' submissions, CCI concluded that the acquisition could cause AAEC in the following relevant markets:

- a. *Market for non-selective herbicides in India (i.e. herbicides with broad spectrum applications):* CCI noted that the acquisition would eliminate a strong competitive constraint in an already concentrated market with substantial entry barriers (up-front R&D costs, regulatory know-how, distribution network, intellectual property rights, etc.). This was because, apart from the parties, Syngenta was the only other 'integrated R&D player' (i.e. capable of discovering new active ingredients and developing new formulations) active in this market.
- b. *Market of licensing of herbicide tolerant trait for seeds in India (i.e. traits which allow crop plants to survive the application of non-selective herbicides):* Interestingly, while CCI noted that neither party had commenced commercialization of these traits in India (both parties had pending regulatory approvals), it still concluded that the acquisition was likely to cause AAEC. This was primarily because of the limited number of integrated R&D players with the ability to compete in this market which is marked by high barriers to entry in the form of high innovation costs and regulatory uncertainty (in fact, CCI found no other competitor with a proprietary herbicide tolerant trait). Accordingly, CCI concluded that the acquisition would cause AAEC in this market since it would result in the elimination of the threat to Monsanto from Bayer's innovation activities, effectively removing Monsanto's incentive to innovate.
- c. *'Upstream' market for licensing of Bt. trait for cotton seed in India:* According to CCI, Monsanto enjoyed an extremely high share of this market, and Bayer was amongst the few sources of *potential* competition in this already highly concentrated market with high entry barriers in the form of long and uncertain regulatory process for entry as well as costly and complex R&D requirements.
- d. *'Downstream' market for commercialization of Bt. cotton seed in India:* CCI noted that while in terms of current sales, the parties had relatively low combined market shares, most of their competitors were sub-licensees of Monsanto's Bt. cotton traits. Further, CCI noted that Monsanto had decided not renew these sub-licenses and the ensuing litigation was currently pending at the Supreme Court. Accordingly, per CCI, the parties' competitors' shares (as they stood) were not a good indicator of future market dynamics since their shares could even disappear completely depending on the outcome of the pending litigation. Given that context, and given that the parties were amongst the few vertically integrated market players with a nationwide distribution network, the parties were already in an advantageous position against their competitors. Consequently, the acquisition would only compound the parties' relative advantage in the market. CCI also concluded that post-acquisition, the parties would have a strong incentive to use their market power in the 'upstream' market for Bt. cotton traits to foreclose their competitors in the 'downstream' market for commercialization of Bt. cotton seeds. While concluding that the acquisition could result in vertical foreclosure, CCI also relied on the complaints alleging vertical foreclosure already filed against Monsanto by its downstream competitors.
- e. *Upstream market for licensing of parental lines or hybrids for rice seeds and the Downstream market for commercialization of hybrid rice seeds in India:* The parties would enjoy a large combined share (45-50%) in the downstream market (albeit with a minor increment of less than 5%). However, CCI looked at Bayer's strength in the upstream market for parental lines or hybrids for rice seeds, and concluded that the combined entity was likely to result in AAEC in the downstream market for commercialization of hybrid rice seeds.
- f. *Upstream market for licensing of parental lines or hybrids for corn seeds and the Downstream market for commercialisation of hybrid corn seeds in India:* While CCI noted that Bayer had quit the hybrid corn seeds business in India, it also noted that both parties had potentially competing gene stacks for corn seed upon regulatory approval for genetically modified corn seed. CCI observed that the acquisition would combine the parties' strength of seed traits and trait stacks, which could cause AAEC in the market for licensing of parental lines or hybrids (includ-



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- ing traits) for corn seeds in India.
- g. *Upstream market for licensing of parental lines or hybrids for millet seeds as well as in the Downstream market for commercialization of hybrid millet seeds:* CCI noted Bayer's presence in the upstream market and the parties' combined strength in the downstream market (combined shares of 25-30%, albeit with low increments of less than 5%), and concluded that the acquisition is likely to result in AAEC in the downstream market for commercialization of hybrid millet seed in India.
 - h. *Markets for each specific vegetable crop hybrid seeds in India:* Citing (i) parties' substantial presence in 10 of these specific vegetable crop hybrid seeds markets, (ii) lack of significant competitive constraints posed by minor competitors (with less than 5% shares in the respectively relevant markets), (iii) lack of competitive constraints imposed by the 'secondary' seed competitors (which rely on 'primary' seed companies like the parties), and (iv) the parties' strong distribution network unmatched by most competitors, CCI concluded that the acquisition was likely to cause AAEC in 10 specific vegetable crop hybrid seeds markets (e.g., cabbage, cucumber, bitter-gourd, etc.).

CCI also observed that the acquisition raised the risk of subduing competition in the innovation and development of new GM and non-GM traits, as well as in the downstream licensing industry when it came to innovation, royalty, and competitors'/customers' access to such traits and traits stacks.

Interestingly, CCI also noted that the acquisition was characterized by strong portfolio effects which would allow the combined enterprise to bundle their traits, seeds, and crop protection offerings in a manner as to exploit customers and foreclose competitors (e.g., by developing traits for seeds which the only work with the parties' agrochemical products). According to CCI, post acquisition, the parties could gain market power by adapting their global digital applications for Indian agriculture, and establishing a 'one-shop-platform' in the seed and traits value chain as well as the agrochemical supply chain. CCI also found the parties' pooling of agro-climatic data (which would be far deeper and wider than their competitors' because of the parties' strong presence across the agrochemical, seed and trait, and crop protection value chains) to be another source of increased market power.

Following from the competition concerns outlined above, CCI proposed a modification plan to address them ('Remedies Package'). The Remedies Package comprised both structural as well as behavioural remedies. In terms of structural remedies, the parties are required to sell (to a purchaser to be approved by CCI): (i) Bayer's global glufosinate ammonium business (which relates to the non-selective herbicides market), (ii) Bayer's global broad acre crop seeds and traits business, with limited exceptions (including the millet and cotton seeds business in India), (iii) Bayer's global vegetable seeds business (to be sold as a whole and to a single purchaser to be approved by CCI), and (iv) sell Monsanto's entire shareholding in Maharashtra Hybrid Seed Company Limited ('Mahyco'). The Remedies Package also contained, *inter alia*, the following behavioural commitments applicable for a period of 7 years: (i) broad-based, non-exclusive licensing of GM as well as non-GM traits on a fair, reasonable and non-discriminatory ('FRAND') basis; (ii) non-exclusive licensing of non-selective herbicides or their active ingredients in the case of launch of the GM/non-GM trait in India which restrict the purchasers from using specific non-selective herbicides being supplied only by the parties, on a FRAND basis; (iii) granting access to the parties' digital platforms and parties' agro-climatic database on FRAND terms through non-exclusive, non-transferrable, non-sub-licensable, royalty bearing licenses; (iv) committing to mandatorily extending any better licensing terms offered to one licensee of the parties (e.g., for Bt. cotton technology or other GM/non-GM trait or technology) to all such existing and future licensees in India; (v) undertaking not to bundle products in a manner that could have the effect of excluding competitors; and (vi) maintaining non-exclusive distribution channels for supply of agricultural products.

CCI Approves Carmel Point Investment's Acquisition in IndiaFirst Life Insurance Company

On July 19, 2018, CCI approved Carmel Point Investment Limited's ('CPIL') acquisition of certain shares in IndiaFirst Life Insurance Company Limited ('IndiaFirst').³⁶ The acquisition involved a transfer of 26% of IndiaFirst's shares to CPIL, on a fully diluted basis. CPIL also gained certain affirmative rights in IndiaFirst, and the right to nominate director(s) on IndiaFirst's board.

CPIL is an investment holding company incorporated in Mauritius, engaged in making long term investments in portfolio companies, and a part of the Warburg Pincus Group ('Warburg'), which is a private equity firm based in United States of America. Warburg has investments in companies active in sectors such as energy, financial services, and healthcare. IndiaFirst is an

³⁶ Combination Registration No. C-2018/06/578

Indian public company, established as a joint venture between Bank of Baroda, Andhra Bank and LGMEL, and is engaged in the business of life insurance and related products.

CCI noted that CPIL did not have any investments in India, and no portfolio company of Warburg engaged in life insurance business is based in India as well. Therefore, CCI found no horizontal overlap between the parties. As for vertical overlaps, CCI found that while two portfolio companies of Warburg are registered as corporate agents for distributing life insurance products in India, they do not act as a corporate agent for IndiaFirst. Therefore, it was noted that the total revenue derived by them from the corporate agency business as well as their presence in the corporate agency services was insignificant to raise any competition concern. Based on the above, CCI held that the transaction was not likely to have an AAEC in India, and approved the same.

CCI Approves the Acquisition of Shares in IIFL Wealth Management Limited's Acquisition by General Atlantic Singapore Fund

On July 27, 2018, CCI approved the acquisition of IIFL Wealth Management Limited ('IIFLW') by General Atlantic Singapore Fund Pte. Ltd. ('GASF')³⁷. The proposed transaction involved IIFLW issuing certain equity shares to new investors (including GASF), which would lead to change in the shareholding of GASF in IIFLW, from 21.60% to 21.15%. Furthermore, there would not be any changes in the rights held by GASF, and the new investors were not acquiring any rights in IIFLW.

GASF is an investment holding company, incorporated in Singapore, which is managed by entities controlled by General Atlantic Services Company LLC ('GASC'), a private equity firm based in the United States of America. The principal activity of the GASF is investing through foreign direct investment in portfolio companies in India. GASF is an existing shareholder of IIFLW, with a 21.61% along with certain affirmative rights, and the right to nominate director(s) on the board of IIFLW. IIFLW is a public company incorporated in India and is engaged in portfolio management services, distribution of financial products, and acts as a stock broker.

CCI held that the transaction would not cause any change in the market dynamics in which the parties are involved, and that there is no likelihood of an AAEC in India. CCI accordingly approved the transaction.

CCI Imposes Penalty on Telenor for Gun-Jumping³⁸

On August 03, 2018, CCI passed an order under Section 43(a) of the Competition Act, imposing a penalty on Telenor ASA ('Telenor') for consummating a combination without seeking approval by way of a requisite notification.

Lakshdeep Investments & Finance Private Limited ('Lakshdeep') had filed a notice with CCI for its proposed acquisition of shares of Telewings Communications Services Private Limited ('Telewings'). Per the transaction, Lakshdeep was to acquire 51% of the equity share capital in Telewings, and ultimately hold 26% of its equity share capital. The transaction involved the following steps: (i) Telewings' participation in the 2G spectrum auction to be conducted by the Department of Telecommunications from November 12, 2012 with an intention to acquire the necessary spectrum for carrying telecommunication operations in India; (ii) Upon Telewings being declared successful in the 2G spectrum auction, Lakshdeep's acquisition of 51% of the equity share capital of Telewings ('Lakshdeep Share Transaction'); (iii) After acquiring the 2G spectrum and requisite licenses necessary for carrying on the business operations in India, Telewings' acquisition of business of Unitech Wireless (Tamil Nadu) Private Limited ('Uninor') on a going concern basis ('Uninor Business Transaction'); and (iv) On receiving the approval of the Foreign Investment Promotion Board, Telenor was to increase its shareholding to 74% and consequently Lakshdeep to hold 26% of the equity share capital of Telewings ('Share Transaction 1').

In its review of the transaction, CCI asked Lakshdeep for clarifications with respect to the steps for which the approval of the Commission was being sought including whether the approval was being sought for step (iii) and (iv). Based on Lakshdeep's response, CCI observed that the transaction was not likely to cause any adverse competition concern in India, and accordingly approved the same by way of an order dated November 29, 2012.

CCI further observed that Lakshdeep holding shares in Telewings to the extent of 51%, transfer of business from Uninor to Telewings, and the increase in stake of Telenor in Telewings from 49% to 74 % could not be considered as an intra-group transaction, and therefore the exemption available to intra-group transaction as per Item 8 of Schedule I to the CCI (Procedure in regard to the transaction of Business relating to Combination) Regulations, 2011 ('Combination Regulations') were not applicable to these steps. Telewings appealed this finding before the



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³⁷ Combination Registration No. C-2018/07/582

³⁸ Order dated 03.07.2018 in Combination Registration No. C2012/10/87



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Competition Appellate Tribunal.

In the meantime, CCI received a further notice under Section 6(2) of the Competition Act from Bharti Airtel Limited and Telewings concerning a proposed transfer of 100% of the equity share capital of Telewings to Airtel. CCI observed that Telenor had consummated Share Transaction 1, and subsequently increased its shareholding in Telewings from 74% to 100% ('Share Transaction 2') without notifying it to CCI. CCI further observed that Telewings had also consummated Uninor Business Transaction without notifying it to CCI.

In regard to Share Transaction 2, CCI noted that with 26% shareholding, Lakshdeep still had joint control over Telewings, therefore transfer of the same had the effect of bringing a change in the control of Telewings, from a joint control of Lakshdeep and Telenor to the sole control of Telenor. Thus, Share Transaction 2 was found to not be an intra-group transaction, and therefore not covered under the exemption contained in Item 8 of Schedule I of the Combination Regulations.

CCI held, that given the negative control of Lakshdeep over Telewings, and of Unitech Group over Uninor, Uninor Business Transaction and Share Transaction 1 were *not* intra group acquisition of assets in terms of the erstwhile Item 8 Exemption (which stated that intra-group acquisition of control or shares or voting rights or assets were not ordinarily likely to cause an appreciable adverse effect on competition and are therefore exempted from notification)³⁹. CCI further noted that as regards the amended Item 8 Exemption (which exempt from notification acquisition of shares or voting rights or assets within the same group, except in cases where the acquired enterprise is jointly controlled by enterprises that are not part of the same group), the amendment was only meant as a clarification to the exemption.

While deliberating on the mitigating factors, CCI noted that the disclosure of all the steps in the transaction was insufficient to absolve the parties of their obligations to file separate notices in the event the transactions were not inter-connected, or to a composite notice in the event the transactions were interconnected.

In light of the above, CCI imposed a penalty of ₹ 0.5 million on Telenor.

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³⁹ Amended by Notification F.No. 3-1/Amend/Comb.Reg./2013/CD/CCI, dated April 4, 2013



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Venture Intelligence League Tables of Legal Advisors 2017

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Legal Era Awards, 2016

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Competition Law Firm of the Year
Corporate INTL, 2016

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