



Penalties in Combination Cases Under the Competition Act, 2002

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Penalties in Combination Cases Under the Competition Act, 2002

Under the Indian merger control regime, a 'combination' (i.e., an acquisition, merger or amalgamation (collectively, 'Combination'), must be notified to and approved by the Indian competition law authority, Competition Commission of India ('CCI'), if it breaches the prescribed asset and turnover thresholds and does not qualify for any statutory exemptions. The requirement to notify CCI is mandatory and such Combinations are subject to a standstill or suspensory obligation, until approved by CCI. There are some cases where CCI has reprimanded parties for violating provisions under the Competition Act, 2002 ('CA02') relating to Combination. This article analyses CCI's decisional practice in such cases.

Types of Penalties that CCI can Impose in Combination Cases

CA02 prescribes various types of penalties in Combination cases on individuals and companies such as: (i) **gun-jumping and/or failure to notify**: consummation of a notifiable transaction before CCI's approval or failure to notify a notifiable transaction may attract a penalty of up to 1% of the worldwide turnover or value of assets of the parties to the proposed Combination, whichever is higher; (ii) **material omission by enterprises/individuals**: where the parties/individuals make material false statements (knowing it to be false) or omit to disclose material facts in the notification, penalties between ₹ 50 lakhs (approx. US\$ 0.06 million) to ₹ 1 crore (approx. US\$ 0.135 million) can be imposed; and (iii) **non-compliance**: failure to pay penalties prescribed at (i) above, may result in additional penalties and/or imprisonment of up to three years.

CCI's Decisional Practice

On a review of CCI's decisional practice in Combination cases, the following trend emerges:

As of last week, CCI had passed 51 orders in Combination cases and found a contravention in all but one case¹. Out of the 50 orders where CCI found a contravention, it imposed penalties in 39 cases. In the remaining 11 cases, CCI: (i) did not impose a penalty in 10 cases² as it was the first year of implementation of the enforcement provisions relating to Combinations; and (ii) decided not to impose a penalty under CA02 in one case, after hearing the explanation provided by the parties.³

- i. **Quantum**: The lowest penalty imposed by CCI till date is ₹ 1 lakh (approx. US\$ 1,357), imposed in four cases⁴ and the highest is ₹ 5 crores (approx. US\$ 0.67 million), imposed in two cases⁵.
- ii. **Gun Jumping**: In five cases⁶, CCI imposed penalties for gun jumping on parties who made pre-payment of consideration or advanced a loan, which had the effect of consummating a part of the Combination before CCI's approval. The penalties in these cases vary from ₹ 5 lakhs (approx. US\$ 6,788) to ₹ 10 lakhs (approx. US\$ 13,575). Pertinently, CCI did not take into account the amount of pre-payment or loan advanced by the parties as an aggravating/mitigating factor while imposing a penalty, which varied from ₹ 1.7 crores (approx. US\$ 0.23 million) to ₹ 2502 crores (approx. US\$ 339.66 million) in these cases.
- iii. **Change in Law**: There have also been few instances where CCI imposed penalties for 'technical' contraventions. For instance:
 - **Removal of the requirement to notify within 30 days of the trigger event**: CCI imposed penalties in four instances⁷ ranging from ₹ 5 lakhs (approx. US\$ 6,788) to ₹ 5 crores (approx. US\$ 0.67 million) for not notifying a notifiable Combination within 30 days of the trigger event, as earlier required under CA02. The requirement to notify within a period of 30 days was later made inapplicable on

¹ Sundaram Finance Limited/ Royal & Sun Alliance Insurance plc, C-2015/03/257

² Uttam Galva Steels Limited/Shree Uttam Steel and Power Limited, C-2013/11/140; Infosys Limited/Infosys Consulting India Limited, C-2012/03/44; Reckitt Benckiser Investments India Private Limited/Paras Pharmaceuticals Limited, C-2012/02/39; Siemens Limited/Siemens Power Engineering Private Limited, C-2014/02/43; Thesys Technologies Private Limited/Capgemini India Private Limited, C-2012/02/36; Sterlite Opportunities and Ventures Limited/Sterlite Industries (India) Limited, C-2012/02/30; Sasan Power Infrastructure Limited/Reliance Power Limited, C-2012/02/29; Alok Industries Ltd/Grabal Alok Impex Ltd, C-2012/01/28; Viscount Management Services (Alpha) Ltd/Reliance Capital Ltd, C-2012/01/24; Electromags Automotive Products Private Limited/The Bombay Burmah Trading Corporation Limited, C-2011/02/26

³ Sumitomo Mitsui Trust Bank Ltd/ Reliance Capital Limited, C-2014/12/235

⁴ Claridges Hospitality/Akira Marketing, C-2017/05/508; Gurgaon Gramin Bank/Haryana Gramin Bank, C-2015/12/344; Marudhara Gramin Bank/Mewar Anchalik Bank, C-2016/02/377; Clariant Chemical/Laxness India, C-2016/02/373

⁵ Piramal Enterprise/Shriram Transport, C-2015/02/249; and GE Energy BV/General Electric, C-2014/01/241

⁶ Chhatwal Group /Dilip Buildcon, C-2018/01/544; Adani Transmission / Reliance Infrastructure, C-2018/01/547; LT Foods / LT Foods Middle East, C-2016/04/387; UltraTech Cement / Jaiprakash Associates, C-2015/02/246; Hindustan Colas / Shell India Markets, C-2015/08/299

⁷ Sundaram Finance/Royal&Sun Insurance, C-2015/03/257; GE Energy BV/General Electric, C-2014/01/241, Google/Ethicon, C-2015/06/283, Trent Hypermarket, C-2014/03/162



June 29, 2017 for a period of five years.

- **Acquisition of a business division under the De Minimis Exemption**⁸: CCI imposed penalties in six⁹ cases ranging from ₹ 2 lakhs (approx. US\$ 2,715) to ₹ 1 crore (approx. US\$ 0.135 million) for failing to notify transactions where the value of assets and turnover attributable to the relevant asset(s) or business being acquired was below the *de minimis thresholds*. In these cases, CCI was of the view that for the assessment of *de minimis thresholds*, the value of the entire assets and turnover of the target enterprise (and not just the relevant assets or business being acquired) were to be considered. On March 29, 2017, a Government of India notification clarified that where a portion of an enterprise or division or business is being acquired, only the relevant assets and turnover attributable to that portion of enterprise or division or business is to be considered when considering the De Minimis Exemption.
- **Sector-specific exemptions**: CCI passed two orders¹⁰ against various Rural Regional Banks ('RRB') imposing nominal penalties of ₹ 1 lakh (approx. US\$ 1,357) in each order. On August 10, 2017, the Government of India through a notification exempted RRB from the application of the relevant provisions of CAO2.
- iv. **Material Omission by Enterprises/Individuals**: CCI has passed only one order¹¹ for material omissions by enterprises/individuals, where after hearing the explanation provided by the parties decided not to impose any penalty.
- v. **Appeals**: Based on publicly available information, there are a total of seven cases¹² where CCI imposed penalties and the parties appealed this decision. Out of these, so far two cases¹³ have been appealed to the Supreme Court of India ('SC'), which upheld CCI's orders. Only in one case¹⁴, the appellate court has set aside the findings and the penalty imposed by CCI in Combination cases.

Conclusion

CCI has the power to impose severe penalties for breach of provisions relating to Combinations. However, the trends suggest that CCI has rightly shown great self-restraint in exercising their powers in Combination cases and has only imposed nominal penalties after giving due consideration to mitigating factors.

Behavioural Cases

CCI Dismisses Allegations of Abuse of Dominance against Security Printing and Minting Corporation of India and Security Paper Mill¹⁵

On November 12, 2020, CCI dismissed information alleging contravention of the provisions of the CAO2 against Security Printing and Minting Corporation of India ('SPMCI') and its unit, Security Paper Mill ('SPM') (collectively, 'OPS').

The informant alleged that SPM included unfair terms in a tender for the procurement of various types of bearings. The terms of the tender required bidders to be either: (i) one of the four original equipment manufacturers ('OEMs'); or (ii) their authorized industrial distributors. This effectively limited the tender to the four OEMs and their authorized industrial distributors.

The informant delineated the relevant market as the *market for procurement of bearings in the Territory of India*. On dominance, CCI observed that OPS cannot be said to be a monopsonist or a buyer with significant market power as bearings are of a wide variety, used across different

8 De-Minimis Exemption exempts acquisitions of shares, voting rights, assets or control of enterprises which: (i) holds assets of less than ₹ 350 Crore in India; or (ii) generates a turnover of less than ₹ 1000 Crore in India from the mandatory pre-notification requirement.

9 ITC/Johnson, C-2017/02/485; Future Group/Grasim, C-2016/03/384; Shulke India, C-2015/12/349; Diasys Diagnostic/Piramal, C-2015/09/313; SRF Limited/Dupont, C-2015/15/347; Eli Lilly/Novartis AG, C-2015/07/289

10 Gurgaon Gramin Bank/Haryana Gramin Bank, C-2015/12/344; Marudhara Gramin Bank/Mewar Anchalik Bank, C-2016/02/377

11 Sumitomo Mitsui Trust Bank Ltd/ Reliance Capital Limited, C-2014/12/235

12 Ultratech Limited, C-2015/02/246 (order under Section 43A); ITC/Johnson & Johnson, C-2017/02/485; Eli Lilly/Novartis AG, C-2015/07/289; Piramal Enterprise/Shriram Transport, C-2015/02/249; SCM Solifert Limited/Deepak Fertilizers and Petrochemicals Corporation Limited/Mangalore Fertilizers and Chemicals Limited C-2014/05/175; Thomas Cook (India) Limited/ Thomas Cook Insurance Services (India) Limited/Sterling Holiday Resorts (India) Limited C-2014/02/153 and Ultratech Limited, C-2015/02/246 (order under Section 44)

13 SCM Solifert Limited & Anr. v. Competition Commission of India (2018) 6 Supreme Court Cases 631; Competition Commission of India v. Thomas Cook (India) Limited & Anr. (2018) 6 Supreme Court Cases 549

14 Eli Lilly & Novartis AG, Competition Appeal (AT) No. 3 of 2016

15 Case No. 41 of 2020, order dated November 12, 2020



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industries and there are numerous buyers and sellers of this product in the market and some of the bearings are even imported into India.

On conduct, CCI observed that while calling out certain brands (either by themselves or only through one of its authorized distributor) to bid and supply, prejudicially affects both inter-brand and intra brand competition, in this case there appeared to be no concerns as: (i) the procurer/consumer, based on its requirement and other commercial considerations, has the right to specify the kind of product, quantity thereof, timelines, mode and the manner in which it requires the same and the same cannot be dictated by the bidders/suppliers; (ii) OPS were not the only buyers in the market for the relevant product and the market seemed to be fragmented; and (iii) bearings were widely used in many industries including automobile, agriculture, earth moving equipment, energy and power industries, manufacturing plants units and not by the OPS alone.

Accordingly, CCI rejected the information.

CCI Initiates an Investigation against Google on Allegations of Abuse of Dominance¹⁶

On November 9, 2020, CCI initiated an investigation against Alphabet Inc., Google LLC, Google Ireland Limited, Google India Private Limited and Google India Digital Services Private Limited (collectively, 'Google').

The informant alleged that Google, through its control over the Play Store and Android Operating System ('OS'), favoured its Unified Payment Interface ('UPI') based payment app, Google Pay, to the disadvantage of: (i) competing apps facilitating payment through UPI; and (ii) users. In particular, Google was: (i) unfairly privileging Google Pay by allowing it prominent placement on the Play Store, Android OS and Android based smartphones, by pre-installing and prominently placing Google Pay on Android smartphones at the time of initial set-up; (ii) mandating apps to use Play Store's payment system and Google Play In-App Billing for charging their users for purchase of apps on Play Store and in-app purchases ('IAPS'); and (iii) imposing unfair terms on users by requiring them to use Google Pay in contravention of data localization regulations.

CCI considered the relevant markets to be the: (i) market for licensable mobile OS for smart mobile devices; (ii) market for app stores for Android OS; and (iii) market for apps facilitating payment through UPI. Taking into account, *inter alia*, the order passed by it in a previous case (Case No. 39 of 2018), CCI observed that Google appeared to be dominant in the first two relevant markets. CCI also observed that the market for apps facilitating payment through UPI was indeed a distinct market and could be differentiated from other forms of payment.

CCI noted the following, with respect to allegations under CA02:

- i. Mandatory use of Play Store's payment system for paid apps & IAPS restricted the choice available to the app developers to select a payment processing system of their choice, especially since Google charges a commission of 30% (15% in certain cases) for all app purchases and IAPS;
- ii. Google's conduct of encouraging pre-installation and prominent placement of Google Pay could harm competition in the market for UPI based payment apps, and therefore required further investigation;
- iii. Google's use of its market position in applications relating to licensable mobile OS, search engine, app store, browser, to enter into contractual arrangements with OEMs for pre-installation of Google Pay, could disturb the level playing field and merited a detailed investigation;
- iv. Allegations regarding search manipulation and bias in favour of Google Pay were unsubstantiated, as the search result screenshots provided by the informant and Google showed different results suggesting that the search ranking on Play Store may be dynamic in nature; and
- v. Allegations regarding Google Pay violating certain data localization norms were not under the jurisdiction of CCI.

Accordingly, CCI passed an order directing the Director General ('DG') to initiate an investigation.

CCI also rejected the informant's request of not allowing Google to cross-examine the informant and observed that the issue of cross-examination of the informant would be decided by the DG. Any refusal by the informant to subject itself to cross-examination would result in the forfeiture of the limited rights of the informant to participate in the proceedings before DG and CCI.

¹⁶ Case No. 07 of 2020, order dated November 9, 2020



CCI Dismisses Allegations of Abuse of Dominance against Uppal Chadha Hi-Tech Developers Pvt Ltd¹⁷

On October 29, 2020, CCI dismissed two sets of information filed against Uppal Chadha Hi-Tech Developers Pvt Ltd, ('UCHDPL') and its director, alleging contravention of the provisions of the CAO2.

The informants alleged that UCHDPL had imposed unfair and discriminatory conditions concerning allotment of plots in the Wave City Township Project. UCHDPL had allegedly also imposed unfair and discriminatory conditions by seeking payments related to allotment over a span of 15 years, without completing the project and imposed arbitrary one-sided clauses via offer of allotment.

CCI delineated the relevant market as the market for "the provision of services for development and sale of plots of land for residential use in Ghaziabad region" and observed that several real estate developers, such as Unitech, Supertech, Eldeco, Amrapali Group and Omaxe operated in the relevant market. The presence of such developers indicated that the buyers had options to choose from in the relevant market and UCHDPL could not be said to possess the market power to enable it to act independently of competitive forces prevailing in the relevant market.

Thus, CCI found that UCHDPL was not in a dominant position in the relevant market and no further assessment was required to be undertaken in relation to the alleged abuses. A closure order was accordingly passed by the CCI.

NCLAT Upholds CCI's Order Dismissing Allegations of Abuse of Dominance against Hexagon Geosystems India Pvt. Ltd¹⁸

On November 4, 2020, the NCLAT upheld CCI's order dismissing allegations of abuse of dominance against Hexagon Geosystems India Pvt. Ltd. ('Hexagon').

M/s Sowil Limited ('Sowil'), the informant, had alleged that Hexagon contravened the provisions of the CAO2 by charging high prices for the supply of rolling stock mounted ground penetrating radar ('GPR') for ballast inspection at high speeds. While Sowil had failed to delineate a relevant market, CCI observed that there were at least four other major global players in the market for rolling stock mounted GPR for ballast inspection in India. Accordingly, CCI dismissed the information, noting that Hexagon did not appear to command any market power.

Sowil appealed this order stating that CCI, in its prima facie order, failed to follow the required three step process of: (i) delineation of relevant market; (ii) establishing dominant position in the delineated relevant market; and (iii) establishing a prima facie case for abuse of dominant position.

The NCLAT noted that Sowil was attempting to put the burden of delineating the relevant market on CCI instead of itself defining or suggesting a relevant market with *prima facie* material. The NCLAT noted that, in any event, CCI's order showed the existence of other players in the market and therefore agreed with CCI's reasoning and dismissed the appeal.

NCLAT Upholds CCI's Order Dismissing Allegations of Abuse of Dominance against Kerala Agro Machinery Corporation Ltd Pvt. Ltd¹⁹

On November 4, 2020, the NCLAT upheld CCI's order dismissing allegations of abuse of dominance against Kerala Agro Machinery Corporation Ltd ('KAMCO') brought by the informant.

It was alleged that KAMCO had appointed authorized dealerships to other dealers for Guntur, Vijayawada and Srikakulam, even though the informant was still an authorized dealer and arbitrarily ceased to provide additional stock to the informant.

CCI observed that KAMCO was well within its rights to appoint additional dealers in the above-mentioned areas and this did not raise any competition law concerns. In fact, this could improve intra-brand competition. CCI also observed that the informant did not provide any evidence to substantiate the allegations that KAMCO not providing additional stock to the informant.

The NCLAT agreed with CCI's reasoning and dismissed the appeal.

¹⁷ Case Nos. 31 & 33 of 2020, order dated October 29, 2020

¹⁸ Competition Appeal (AT) No. 17 of 2020, order dated November 4, 2020

¹⁹ Competition Appeal (AT) No. 18 of 2020, order dated November 4, 2020



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Combination Orders

CCI Approves Demerger of GHCL Ltd.'s Textiles Business Division into its Wholly Owned Subsidiary GHCL Textiles²⁰

On September 29, 2020, CCI approved the demerger of the textiles business of GHCL Ltd. ('GHCL') into its wholly owned subsidiary, GHCL Textiles ('GHCL Textiles').

GHCL, a listed company, is, *inter alia*, engaged in: (i) 'chemical business' which involves manufacture and sale of inorganic chemicals, sodium bicarbonate, industrial salt and consumer products; and (ii) 'textile business' which is an integrated setup that supports activities from spinning yarn to weaving, dyeing, printing, and processing until shaping and export of finished products.

GHCL Textiles, a public limited company incorporated in India, is a wholly owned subsidiary of GHCL with no business activity.

The transaction involved an internal restructuring as a result of which shareholders of GHCL would receive shares in GHCL Textiles on the basis of swap ratio of 1:1. Accordingly, the shareholding pattern of GHCL would be mirrored in GHCL Textiles.

The Parties submitted that the proposed combination did not squarely fall within ambit of the intra-group exemption under sub-rule 8 of Schedule 1 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011.

CCI approved the combination, given that the transaction would not result in any change in competition dynamics in the market.

CCI Approves MCPI Private Limited's Acquisition of Garden Silk Mills Limited²¹

On September 18, 2020, CCI approved MCPI Private Limited's ('MCPI') acquisition of Garden Silk Mills Limited ('GSML'), through MCPI Polyester Private Limited, pursuant to proceedings under the Insolvency and Bankruptcy Code, 2016 ('IBC').

MCPI is part of the Chatterjee Group ('TCG') and is engaged in the business of manufacturing and supply of Purified Terephthalic Acid ('PTA'). TCG is a strategic investor with investments in various sectors such as petrochemicals, biotech, real estate, technology, pharmaceuticals and financial services.

GSML, part of the Praful Shah Group, manufactures polyester yarn and textile products, which falls in the category of man-made fibres. GSML is engaged in the production and sale of: (i) polyethylene terephthalate ('PET') chips; and (ii) polyester yarn in India. It commercially supplies PET chips as well as captively consumes the same for manufacturing different kinds of polyester filament yarns ('PFY').

CCI observed that there were no horizontal overlaps. With regard to vertical relationships, CCI observed one between MCPI and GSML. MCPI was engaged in the manufacturing and sale of PTA in India (*upstream market*) and GSML utilizes this PTA, as a raw material to manufacture polyester (*downstream market*). CCI observed that at a narrower level, the market for manufacturing and sale of PTA could be sub-segmented into manufacturing and sale of: (i) PFY; and (ii) PET chips.

MCPI's market share in the upstream market was between 15-20% (in terms of both installed capacity and actual production), and GSML's market share in the broad segment of polyester was between 5-10% in terms of installed capacity, and between 0-5% in terms of total production. GSML's market shares in each of the sub-segments were in a similar range.

CCI approved the transaction, noting that the parties did not have any ability or incentive to foreclose competition in any segment/sub-segment.

CCI Approves Acquisitions of Sole Control over DuPont De Nemour's nutrition and Biosciences Business by International Flavors and Fragrances Inc.²²

On September 18, 2020, CCI approved International Flavors & Fragrances Inc.'s ('IFF') acquisition of sole control over Nutrition & Biosciences, Inc. ('SpinCo'), a recently incorporated company to which DuPont de Nemours ('DuPont') would transfer its nutrition & biosciences businesses ('N&B Business').

The combination involved the following steps:

- i. DuPont's N&B Business would be transferred to SpinCo in return for a dividend of US\$ 7.3 billion paid to DuPont. DuPont would distribute the stock of SpinCo to DuPont's public shareholders;
- ii. Merger Sub I, a newly incorporated wholly owned subsidiary of IFF, would merge with and into SpinCo, which would become a direct wholly owned subsidiary of

²⁰ Combination Registration No. C-2020/08/766

²¹ Combination Registration No. C-2020/09/767

²² Combination Registration No. C-2020/07/756



IFF. In consideration for the acquisition of SpinCo, IFF would issue new shares of its common stock to SpinCo's public shareholders such that, following such issuance, SpinCo's public shareholders will own 55.4% of IFF. Existing IFF shareholders would own 44.6% of the shares of IFF; and

- iii. SpinCo would be merged with and into a newly incorporated wholly owned subsidiary of IFF, Neptune Merger Sub II LLC1 ('Neptune'), with Neptune continuing as the surviving entity and as a wholly owned subsidiary of IFF. Resultantly, Neptune would hold the N&B Business.

IFF, a company based in the United States of America, is active worldwide in the development, creation, and sale of flavours and fragrances that are used in consumer goods industries (such as food and beverage, personal care, home care industries). In India, IFF is engaged in the manufacture, trade and sale of fragrances, flavours and related products. It is also engaged in the manufacture and sale of certain food ingredients.

The N&B Business is active worldwide in the development, production, and marketing of food science, taste, and texture applications, and biotechnology products that are used in various industries, including food and beverage, dietary supplements, home and personal care, animal nutrition and pharmaceutical excipients.

CCI noted overlaps between the parties in the production, manufacture, supply and distribution of: (i) antioxidants for food applications; (ii) plant-based proteins; (iii) cosmetic ingredients; and (iv) systems for food and beverages. Only in the segment of sale of plant-based proteins, the combined market share of the parties was 15-20% in terms of value, but the incremental market share was negligible.

There were no existing vertical relationships or supply arrangements between IFF and the N&B Business in India. Further, the parties did not have any direct or indirect shareholding or control over any enterprises which was engaged in the production, distribution or trading of goods or services which constitute a vertical or complementary relationship, in India. Accordingly, CCI granted its approval.

CCI Approves Acquisitions of Reliance Communications Limited and Reliance Telecom Limited by UV Asset Reconstruction Company Limited's²³

On September 18, 2020, CCI approved UV Asset Reconstruction Company Limited's ('UVARCL') acquisition of the entire existing business operations and assets of Reliance Communications Limited ('RCOM') and Reliance Telecom Limited ('RTL'), pursuant to proceedings under the IBC.

UVARCL is an asset reconstruction company, which acquires non-performing assets from banks and other financial institutions and resolves the acquired assets with a resolution strategy as deemed fit in each case.

RCOM was previously engaged in the provision of various telecommunications services in India such as global systems for mobile communication services (voice, 2G, 3G, 4G), fixed line broadband and voice services, and direct-to-home services. However, at the time of filing notification with CCI, RCOM was active only in the enterprise business, i.e. providing solutions designed to integrate multiple facets of a company's business through the interchange of information from various business process areas and related databases. Similarly, its subsidiary, RTL, was active only in the bulk SMS business.

CCI observed that UVARCL had also submitted a resolution plan to acquire and monetize Aircel Limited ('Aircel') and its two wholly owned subsidiaries Aircel Cellular Limited and Dishnet Wireless Limited (collectively, 'Aircel Entities').

CCI observed certain overlaps with the Aircel Entities. However, in light of the Aircel Entities no longer being operational, and RCOM also ceasing most of its operations, CCI left the exact delineation of the relevant market open. Nevertheless, the parties submitted market shares showing low concentration, and minor increases in combined market shares. Accordingly, CCI granted its approval.

CCI Approves an Acquisition of Additional 6.51% Equity Shareholding in Clariant AG by SABIC International Holdings BV²⁴

On September 2, 2020, CCI approved the acquisition of additional 6.51% shareholding in Clariant AG ('Clariant') by SABIC International Holdings B.V. ('SABIC BV').

SABIC BV is a wholly owned affiliate of Saudi Basic Industries Corporation ('SABIC') and is the holding company of SABIC's international operations, including SABIC's investments in the specialties sector.

SABIC is primarily active in the product segments of petrochemicals, agri-nutrients, metals

²³ Combination Registration No. C-2020/08/761

²⁴ Combination Registration No. C-2020/05/746



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and specialties materials. SABIC's Indian subsidiaries are engaged *inter alia*, in: (i) compounding of engineering plastics and polycarbonate film and sheets; (ii) captive research; and (iii) development services. Additionally, Saudi Arabian Oil Company ('**Saudi Aramco**') had proposed to buy 70% shareholding in SABIC. Saudi Aramco is engaged in the exploration, production and marketing of crude oil and natural gas. In India, Saudi Aramco is active in the supply of crude oil, base oil, liquefied petroleum gas, polymers, synthetic rubbers and other petrochemical products.

Clariant, a Swiss chemicals company, is the parent company of the Clariant Group and is active in the production and distribution of specialty chemicals globally. Clariant, through its Indian subsidiaries operates in the business areas of: (i) care chemicals; (ii) natural resources; and (iii) catalysis, in India.

CCI observed that horizontal overlaps existed in the broader segments of: (i) non-ionic surfactants; and (ii) polyalkylene glycol ('**PAG**'). The broader segment of PAGs could further be subdivided into polyethylene glycol ('**PEG**'), polypropylene glycol ('**PPG**') and PAG-ethylene oxide/propylene oxide. At a narrower level, the parties exhibited overlaps only in the sub-segment of PEG. CCI noted that the relevant geographical market would be limited to India.

The combined market share of the parties in the broad market segment of non-ionic surfactants was between 0-5% by both volume and value, and the combined market share of the parties in the broad segment of PAG was between 5-10% by volume and 0-5% by value. In the narrower sub-segment of PEG, the combined market share of the parties was between 5-10% by both volume and value. CCI observed that a large number of players were present in each of the segment / sub-segments in India. CCI left the delineation of the relevant market open, as the combination was not likely to cause an appreciable adverse effect on competition ('**AAEC**') in any of the possible alternative relevant markets that could be delineated.

With regard to vertical relationships, CCI observed that SABIC and Clariant supplied two products to each other pursuant to pre-existing global supply arrangements. Accordingly, CCI observed vertical relations between the parties in the product segments of: (i) linear low-density polyethylene; and (ii) masterbatches. CCI noted that the sales made by the parties to each other were insignificant, and several other players were present in both these segments. Additionally, it was noted that Clariant had divested its entire masterbatches business unit to PolyOne Corporation. Accordingly, CCI granted approval.

CCI Approves Lightstone Global Fund's Acquisition of Equity Shareholding in Ascent Health and Wellness Solutions Private, Aahaan Commercials Private Limited, Lokprakash Vidhya Private Limited, 91streets Media Technologies Private Limited and API Holdings Private Limited.²⁵

On August 26, 2020, CCI approved Lightstone Global Fund's ('**Lightstone**') acquisition of: (i) 2.10% equity shareholding in Ascent Health and Wellness Solutions Private Limited ('**Ascent**'); (ii) 10.44% equity shareholding in Lokprakash Vidhya Private Limited ('**Lokprakash**'); (iii) 2.43% equity shareholding in Aahaan Commercials Private Limited ('**Aahan**'); (iv) 0.01% equity shareholding in 91streets Media Technologies Private Limited ('**91streets**'); and (v) 6.31% of the equity shareholding in API Holdings Private Limited ('**API**') (collectively, '**Targets**'). The acquisition was made pursuant to a scheme for the restructuring and consolidation of the businesses of Ascent, Aahaan, Lokprakash and API, filed before the National Company Law Tribunal.

Lightstone is a sub-fund of Lightstone Fund S.A., which is part of the LGT group of companies ('**LGT Group**'). The LGT Group is a leading international private banking and asset management group controlled by the Liechtenstein Princely Family.

Ascent is incorporated in India and, along with its subsidiaries, is engaged in wholesale sale and distribution of pharmaceutical products, medical devices and over the counter FMCG and nutraceutical products ('**OTC drugs**'). 91streets provides: licensing of technology and intellectual property required to develop e-commerce platforms, wholesale sale and distribution of pharmaceutical products, medical devices, over the counter drugs, sale and distribution of diagnostic tools, provision of electronic medical records, and provision of logistics services. Aahaan and Lokprakash do not carry out any business activities and do not have any subsidiaries.

API has an indirect stake in Instinct Innovations Private Limited, which is engaged in the business of developing software and enterprise resource planning solutions for healthcare business as well as non-healthcare space, *inter alia*, and customized application services for the retail pharmacies on which sales can also be made.

CCI observed that horizontal overlaps existed between Lighthouse and the Targets, specifically in the broad segment of wholesale sale and distribution of drugs in India and in narrower segments in wholesale and distribution of: (i) pharmaceuticals; (ii) medical devices; and (iii) OTC drugs. The combined market shares of the parties were between 0-5% in all these segments/

²⁵ Combination Registration No. C-2020/06/753

sub-segments, with an insignificant incremental market share. CCI left the delineation of the relevant market open as it observed that the combination was not likely to cause an AAEC in any of the possible alternative relevant markets.

Regarding vertical relationships, CCI observed that there were various existing and potential vertical relationships between the LGT Lightstone India and the Targets. CCI observed that the combined market shares of the parties were between 0-5% and there were several players present in each segment. CCI was of the view that parties did not appear to have any ability or incentive to foreclose competition and accordingly approved the combination.



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CCI Approves Acquisition of up to 58.92% in HealthCare Global Enterprises Limited by Aceso Company Pte. Ltd.²⁶

On July 15, 2020, CCI approved the acquisition of up to 58.92% of the equity shareholding in HealthCare Global Enterprises Limited ('HCG') by Aceso Company Pte. Ltd. ('Aceso').

Aceso, incorporated in Singapore, forms part of the CVC Network. It is indirectly owned by CVC Asia Fund V, which is controlled by its general partner CVC Capital Partners Asia V Limited, which in turn is ultimately controlled by CVC Capital Partners SICAV-FIS S.A. ('CVC').

HCG, incorporated and operating in India, provides speciality healthcare in cancer and fertility. It operates 22 cancer care centres and four multispecialty hospitals in India. Through its subsidiary, it operates eight fertility centres.

There were no direct horizontal, vertical or complimentary overlaps between the parties. However, CCI observed that certain activities of portfolio companies of funds controlled by CVC, particularly: (i) Recordati SpA ('Recordati'); (ii) Sebia S.A. ('Sebia'); (iii) Alvogen Pharma India Pvt. Ltd. ('Alvogen'); and (iv) Norwich Clinical Services Pvt. Ltd. ('Norwich'), exhibited potential vertical or complementary relationships with HCG. Recordati (and its subsidiaries) was present in the upstream market of sale of medicinal products, while Sebia was present in the upstream market of distribution of in vitro diagnostic instruments and reagents. Additionally, Alvogen and Norwich were engaged in clinical trial services, which was complementary to HCG's business. CCI observed that the market shares of the portfolio companies were miniscule in their respective segments and several players were present in each segment. Accordingly, CCI approved the combination.

CCI Approves Acquisitions of Metso OYJ's Mineral Business by Outotec OYJ²⁷

On July 18, 2020, CCI approved acquisition of Metso OYJ's ('Metso') mineral business by Outotec OYJ ('Outotec'). The combination involved a partial demerger of Metso's assets, rights, debts, and liabilities related to its minerals business ('Metso Minerals'), which would be acquired by Outotec. In return for the transfer of Metso Minerals, Metso's shareholders would receive newly issued shares in Outotec, and hold 78% of the new entity's shareholding, with Outotec's shareholders holding the remaining 22%. The combined entity would operate under the name Metso Outotec.

Outotec is present in India in the supply of equipment for the processes of: (i) flotation; (ii) sedimentation; (iii) filtration; (iv) thermal processing, i.e., iron ore pelletizing ('IOP'); (v) hydrometallurgy; and (vi) refining.

Metso is present in India in the supply of equipment for the processes of: (i) crushers; (ii) grinding mills; (iii) magnetic separation; (iv) flotation; (v) filtration; (vi) IOP; (vii) slurry handling; (viii) materials handling; (ix) size control; (x) aggregates capital equipment; and (xi) recycling.

CCI formed a prima facie opinion that the combination was likely to cause an AAEC in the segment of IOP in India, and issued a show cause notice to the parties under the provisions of the CAO2.

With respect to delineation of the relevant product market, the parties submitted that sub-segmentation beyond IOP was not required. The IOP process involves the agglomeration of iron ore fines to 'pellets' suitable for iron making furnaces. This involves a thermal processing step referred to as indurating. While there are two indurating technologies, namely straight grate and grate kiln, the parties submitted that: (i) customers did not differentiate between the two; (ii) the same quality of ore would yield the same results, irrespective of technology; (iii) both served the customer's purpose; and (iv) certain customers might prefer to continue with the same technology purely as a matter of convenience. Additionally, the parties submitted that it was not necessary to offer both technologies to establish a market position. While both parties offered straight grate equipment, Metso also offer grate kiln equipment globally, although it hadn't sold grate kilns in India for several years. Further, the parties submitted that sub-segmentation on account of type, size, pressure etc., was not required, as the supplier's point of view did not change on the basis of scale of a customer. A complete set up involved various processes (process islands), and requests for quotations were usually on a product/island wise basis.

²⁶ Combination Registration No. C-2020/06/749

²⁷ Combination Registration No. C-2020/03/735



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Inter alia...

CCI, relying on the parties' submissions, along with submitted bidding data and responses from competitors and customer, restricted the product market to separate process/island of IOP equipment. CCI noted that the European Commission too, conducted analysis on separate processes/islands in industries with features similar to the IOP segment.

With respect to the relevant geographic market, the parties submitted that: (i) equipment sold to customers in India were largely sourced from abroad; (ii) the parties did not manufacture a lot of equipment in India; (iii) very few technical or regulatory barriers existed between geographies; (iv) transportation costs were insignificant; and (v) local physical presence was not required to service a customer. However, CCI noted that while customers in India bought equipment from global players, the operations of global players (who are not present in India, do not currently sell in India, or do not intend to sell in India) might not be relevant to assess AAEC in India. Additionally, the varying market shares of the parties and their competitors in different regions of the world showed a lack of homogeneity, which was noted to be crucial in identifying the relevant geographic market. CCI noted that the conditions for competition as prevailing in India were different from the rest of the world. Accordingly, the CCI noted that the relevant geographic market was that for India.

CCI observed that the parties had a combined market shares between 35-40%, with the nearest competitor having a market share of 5-10%. The Herfindahl-Hirschman Index was 4500-4600, with a delta of 500-600. CCI also observed that the requirement for references in the relevant market acted as a barrier to entry. Additionally, the relevant market being a bidding market, CCI carried out bid data analysis such as frequency analysis, win-loss analysis and runner-up analysis. CCI also noted that that the parties to the combination enjoyed an incumbency advantage. Accordingly, CCI observed that the combination could raise competitive concerns in the relevant market such as, limiting the number of suppliers available to customers, reducing innovation, perpetuating the parties' market position, reducing the countervailing position enjoyed by consumers, and increasing the cost of entrants and rivals to compete and increase their presence in the market.

In order to address the competition concerns arising as a result of the proposed combination, the parties made certain voluntary remedy proposals. CCI was satisfied that the voluntary remedy proposals eliminated the overlap between the parties in the IOP segment in India since it would effectively transfer Metso Minerals' Indian straight grate IOP capital equipment business to a suitable buyer, thereby preserving the competition.

CCI Approves Merger between Eros International Plc, STX Filmworks, Inc. and Marco Alliance Limited²⁸

On July 8, 2020, CCI approved the merger between Eros International Plc ('**Eros Plc**'), STX Filmworks, Inc. ('**STX**') and Marco Alliance Limited ('**Marco**'). The Agreement and Plan of Merger was entered into among Eros Plc, England Holdings 2 Inc ('**England Holdings 2**'), England Merger Corp ('**Merger Sub**') and STX.

The combination involved the following steps: (i) Merger Sub, a wholly owned subsidiary of Eros Plc would merge with and into STX, and STX would become a wholly owned subsidiary of Eros Plc., which would then change its name to Eros STX Global Corporation. ('**Combined Company**'); and (ii) pursuant to Eros Plc entering into a PIPE Subscription Agreement with certain investors, Hony Group Management Limited ('**Hony Capital**') through Marco (an existing investor in STX), would be expected to acquire an economic interest and voting interest along with board nomination rights and certain contractual rights in the Combined Company.

Eros Plc, the ultimate entity controlling the Eros group of companies ('**Eros Group**') is engaged in *inter alia* the acquisition, co-production and distribution of Indian films in formats such as cinema, television and digital new media. It also owns and operates the over-the-top ('**OTT**') platform Eros Now which owns rights to films across Hindi and regional languages. England Holdings 2, an indirect, wholly owned subsidiary of Eros Plc, has been incorporated for the purposes of the combination.

STX, the ultimate parent entity of the STX group of companies, does not have any physical presence in India. In India, STX is indirectly engaged solely in the licensing of English language film content to third parties for theatrical and non-theatrical exploitation. The activities of STX are: (i) licensing of film content to third party distributors for theatrical exhibition; and (ii) licensing of film content to third party distributors for television broadcasting (linear and non-linear), through digital formats (rental and purchase), including on OTT platforms, and through physical formats (rental and purchase), such as on BluRay.

Marco is an investment holding company and a wholly owned subsidiary of Hony Capital Fund v, L.P., which is controlled by Hony Capital, an investment management firm. Hony Capital is, *inter alia*, engaged in private equity buyouts and has a presence in areas including real

²⁸ Combination Registration No. C-2020/05/745

estate, hedge funds, mutual funds, and innovation investment. Hony Capital has an investment in PCCW International OTT (Cayman Islands) Holdings Limited ('PCCW OTT'), which launched its OTT platform i.e., Viu in India.

Overlaps were noted in the OTT segment, the theatrical production market, and the audio-visual ('AV') licensing market.

With respect to the OTT segment, CCI noted that PCCW OTT had decided to shut down operations in India. CCI did not find any competitive concerns in the OTT segment.

With respect to the theatrical production market, CCI observed that the parties' market shares were insignificant and that the incremental market share was miniscule. Additionally, CCI observed the presence of various other players such as DreamWorks UTV, Wave, Red Chillies Entertainment, Amir Khan Productions, Bhansali Productions, Vinod Chopra Films, RK Films, Nadiadwala Grandsons Entertainment, Dharma Productions and Reliance Entertainment.

With respect to the AV licensing market, the parties had a combined market share between 5-10%. CCI noted that the incremental market shares were insignificant and several other players such as Yash Raj Films, Excel Entertainment, T-series, Rohit Shetty Films Pvt Ltd and Nadiadwala Grandsons Entertainment, Viacom Inc., and The Walt Disney Company were present in the AV licensing market.

CCI observed a vertical relationship between Eros Plc (present in the upstream markets of theatrical and AV licensing) and Eros (present in the downstream markets of theatrical distribution and OTT). However, CCI observed that the presence of the parties was too insignificant to raise any concerns of competition foreclosure.

Accordingly, CCI granted its approval.

CCI Approves the Merger of Peugeot SA into Fiat Chrysler Automobiles N.V.²⁹

On June 4, 2020, CCI approved the merger of Peugeot S.A. ('PSA') with and into Fiat Chrysler Automobiles N.V. ('FCA').

PSA is the holding company of a French-based group, which is primarily a global OEM and dealer of: (i) motor vehicles; (ii) passenger cars; and (iii) light commercial vehicles. It also provides ancillary services such as financing solutions for the acquisition of motor vehicles, and mobility services and solutions. In India, PSA (through a joint venture) is *inter alia*, active in the manufacturing of MB6 gearboxes (a component of powertrains) for the captive consumption of the PSA's group. FCA is engaged in designing, engineering, manufacturing, distributing and selling vehicles, components and production systems worldwide. It is also engaged in retail and dealer financing, leasing and rental services through its subsidiaries, joint ventures, and commercial arrangements with third party financial institutions.

CCI observed no existing overlaps between PSA and FCA. However, since PSA planned to enter the Indian automobile market in the first quarter of 2021, CCI observed potential overlaps in the passenger vehicles segment. CCI observed that the market of passenger vehicles in India could be broadly segmented as: (i) passenger cars; (ii) utility vehicles; and (iii) vans, and further sub-segmented on the basis of other factors such as price and features. CCI noted that the potential overlaps were not likely to raise any competition concerns, considering the overall presence of the parties and the presence of other players such as Maruti Suzuki, Honda, Toyota, and Tata. CCI left the exact definition of relevant market open, since the combination would not give rise to competition concerns irrespective of the manner in which the market is defined.

Additionally, CCI noted a potential future overlap in the automotive finance segment. Since the financing services provided by the parties were intended for their respective brands of cars, and there were various other players such as banks and non-banking financial companies present in the segment, CCI did not find any competitive concerns.

Accordingly, CCI granted its approval.



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Inter alia...

²⁹ Combination Registration No. C-2020/04/740



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❖
'Band 1 Firm'
for Competition/Antitrust
Chambers & Partners Asia-Pacific, 2021

❖
Outstanding Law Firm for Competition & Antitrust
Asialaw Profiles, 2021

❖
Firm of the Year – Antitrust & Competition
Asian Mena Counsel, 2019

❖
Competition & Antitrust Law Firm of the Year
Lawyers Worldwide Awards, 2019

❖
Competition & Antitrust Law Firm of the Year
Global Leading Lawyers, 2017

❖
Competition Law Firm of the Year
Corporate INTL, 2016

❖
'Band 1 Firm'
for Corporate/M&A and Dispute Resolution
Chambers & Partners Global, 2021

❖
'Band 1 Firm'
for Corporate/M&A, Dispute Resolution, Private Equity,
Real Estate and Restructuring & Insolvency
Chambers & Partners Asia-Pacific, 2021

❖
Law Firm of the Year | Best Overall Law Firm of the Year
India Business Law Journal, 2020

❖
Ranked No.1
by Deal Value in Any Indian Involvement Announced League Table
Refinitiv Emerging Markets M&A Review -Legal Rankings, Q1-Q3 2020

❖
Ranked No. 1
by Deal Volume and Deal Count in the India M&A Announced Deals League Table
Bloomberg's Global M&A Market Review-Legal Rankings, Q1-Q3 2020

❖
Ranked No. 1
for PE by Deal Value
Venture Intelligence League Tables of Legal Advisors, Q1-Q3 2020

❖
Law Firm of the Year
VC Circle, 2020, 2018, 2017, 2016 & 2015

❖
Corporate Law Firm of the Year
Chambers Forum India Awards, 2019

❖
Ranked No.1
RSG Top 50 Indian Law Firms Ranking, 2019
RSG Top 40 Indian Law Firms Ranking, 2017

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