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A Look Back at 10 Years of CCI's Penalties

Introduction

The behavioural provisions of Competition Act, 2002 ('CAO2'), i.e., Section 3 relating to anti-competitive agreements and Section 4 relating to abuse of dominant position, were operationalised on May 20, 2009. Section 27 of CAO2 empowers Competition Commission of India ('CCI') to impose penalties on any person or enterprise violating these provisions. Given the passage of nearly a decade since the behavioural provisions of CAO2 were operationalised, this article attempts to analyse the penalties levied by CCI.

Types of Penalties that CCI may Impose

Section 27 of CAO2 empowers CCI to use the following metrics to impose penalties:

- i. **For vertical restraints and abuse of dominant position:** penalty of up to 10% of the average turnover for the last three preceding financial years upon the infringing person or enterprise ('Average Turnover Metric'); and
- ii. **For cartels:**
 - (a) penalty of up to 10% of the average turnover for the last three preceding financial years upon the infringing person or enterprise ('Cartel Average Turnover Metric'); or
 - (b) penalty of up to three times of the profit of the infringing producer, seller, distributor, trader, or service provider for each year of the continuance of cartel or 10% of its turnover for each year of the continuance of cartel, whichever is higher ('Cartel Profit Metric').

Further, Section 48 of CAO2 also allows CCI to penalise individuals in-charge of and responsible to the enterprise for the conduct of the business of the enterprise or any a director, manager, secretary or other officer of the enterprise whose consent, connivance, or negligence resulted in the contravention by the enterprise.

A Look at the Penalties on Enterprises in relation to Cartels

CCI imposed its first penalty on May 25, 2011¹—two years after the enforcement of the behavioural provisions. A review of the 55 decisions issued by CCI in relation to cartels so far² shows that lowest penalty imposed by CCI on an enterprise in the last decade is approximately ₹15,000 (approximately US\$ 211³)⁴ and the highest penalty imposed by CCI on an enterprise is ₹1,323.6 crores (approximately US\$ 186.06 million), with the highest cumulative being approximately ₹6,300 crores (approximately US\$ 885.58 million).⁵

A further analysis indicates that CCI prefers to use the Cartel Average Turnover Metric, having done so in approximately 80% of the cases. CCI has started imposing penalties using the Cartel Profit Metric only recently, having used it in only 6 out of the 55 aforementioned cases.

It is also noteworthy that while CCI has not hesitated to use the highest possible Cartel Average Turnover Metric of 10% (25 cases), its decisions do not provide any rationale for meriting imposition of high penalties on these enterprises. However, a visible pattern apparent is that CCI has imposed the highest possible Cartel Average Turnover Metric in cases where the absolute value of the turnover of the enterprise was relatively low. Accordingly, despite the use of the highest possible metric, the final penalty amount in each of these cases was less than/approximately ₹1 crore (approximately US\$ 140,000).

When using the Cartel Profit Metric to determine penalty, CCI has only gone up to two times the profits of the enterprise over the last three years and has not imposed the maximum possible penalty of up to three times the profits of the enterprise in the last three years.

Based on the nature of offence, CCI has consistently used a higher Cartel Average Turnover Metric in cases involving limitation of production, with the average being approximately 9.5%. CCI has used a broad range of 3%-10% when using the Cartel Average Turnover Metric to determine penalties in price-fixing cases.

1 FICCI–Multiplex Association of India v. United Producers/Distributors Forum, Case Number 01 of 2009.

2 This number reflects the final decisions issued by CCI i.e. where cases were remanded back to CCI, this analysis only takes into account the final penalty imposed by CCI. This analysis does not take into account the sole CCI decision relating purely to vertical restraints. Further, the data in this article only reflects cases published on CCI's website until January 11, 2019.

3 All US\$ figures are as of January 2019.

4 M/s Arora Medical Hall Ferozpur v. Chemists & Druggists Association Ferozpur, Case Number 60 of 2012.

5 Builders Association of India v. Cement Manufacturers' Association, Case Number 29/2010. CCI issued its first decision on June 20, 2012, which was remanded by the Competition Appellate Tribunal on procedural grounds. Subsequently, CCI reissued its decision on August 31, 2016 albeit with the same penalties.



A leniency regime was introduced in India in 2009.⁶ CCI has issued five decisions involving varying reductions in penalty from 20%-100%, pursuant to this regime in the last two years. However, CCI's decisions do not detail the rationale for the reduction in penalty. For instance, in Brushless DC Fans case⁷, CCI granted a penalty reduction of 75% to the first applicant (who was eligible for a reduction of up to 100%). CCI's reasons for granting a lesser reduction were: (a) the applicant approached CCI at a later stage in investigation; and (b) CCI already possessed some evidence. However, it is not clear why the CCI chose to reduce the penalty by 75% in particular rather than, for instance, 85% or even 70%.

Analysis of Abuse of Dominance ('AoD') Penalties

In AoD cases, CCI is only empowered to use the Average Turnover Metric. A review of CCI orders relating to AoD suggests that CCI has imposed fines in fewer AoD cases, as compared to cartels—a total of only 16 orders.⁸ The lowest penalty imposed by CCI is ₹7 lakh (approximately US\$ 9,840).⁹ The lower figure was possibly on account of the recent decision of the Supreme Court of India ('Supreme Court') clarifying that penalties must be calculated only on the basis of relevant turnover.¹⁰ The highest penalty imposed by CCI on an enterprise, Tata Motors, is ₹1,346.46 crores¹¹ (approximately US\$ 189.27 million as of January 2019), with the highest cumulative penalty being nearly ₹3,000 crores (approximately US\$ 421.7 million) in the same CCI decision.¹² Further, unlike cartel cases, CCI has used the highest possible Average Turnover Metric of 10% sparingly (only 2 out of 16 cases). In one such case,¹³ CCI noted that the '*quantum of penalties imposed must correspond with the gravity of the offence and the same must be determined after having due regard to the mitigating and aggravating circumstances of the case*'. However, CCI decision failed to apply this test to the facts of the case. The table below also shows the penalty imposition trend based on allegations against the enterprise:

Allegation	Number of cases	Lowest penalty percentage	Highest penalty percentage	Average
Discriminatory pricing	5	1% of average turnover	7% of average turnover	approx 3.6%
Discriminatory conditions	1	NA	5% of average turnover	5%
Denial of market access	2	4.48% of average turnover	6% of the average turnover	approx 5.24%
Multiple allegations	8	2% of average turnover	10% of average turnover	approx 5.38%

As may be discerned from the table above, CCI has usually imposed higher penalties in cases involving multiple allegations of AoD. A review of all the penalties imposed by CCI in AoD cases reveals that the average penalty imposed by CCI has been 4.78% of the average turnover of the enterprise for the preceding three years.

Penalties on individuals

CCI first imposed penalties on individuals in 2014¹⁴—approximately three years after it began imposing penalties on enterprises for contravention of the provisions of CA02. The penalties imposed on individuals largely mirror the penalties imposed on the corresponding enterprises in the same case and are based on the individuals' income statements. It is noteworthy that CCI has so far not imposed penalties on individuals in AoD cases.

6 Section 46 of CA02 provides an opportunity to producer, seller, distributor, trader or service provider included in the cartel to approach CCI and claim a reduction in the penalty by making full and true disclosure in respect of the alleged violations. CCI (Lesser Penalty) Regulations, 2009 provide detailed guidelines in this respect.

7 In Re: Cartelisation in respect of tenders floated by Indian Railways for supply of Brushless DC Fans and other electrical items, Suo Moto Case Number 03 of 2014.

8 This number reflects only the final AoD-related decisions issued by CCI i.e. where cases were remanded back to CCI, this analysis only takes into account the final decisions issued by CCI.

9 Hemant Sharma v. All India Chess Federation, Case Number 79 of 2011.

10 In Excel Crop Care Limited v. Competition Commission of India, Civil Appeal Number 2480 of 2014 ('Excel Crop'), the Supreme Court held that for multi-product companies, the penalty provisions of CA02 apply to the turnover generated from the product/service at issue. The Supreme Court further held that including all products' turnover (which were not a part of the arrangement/cartel) for the purpose of imposition of penalties is not justified. This principle was then adopted by the CCI in its subsequent decisions.

11 As Tata Motors was penalised prior to the Supreme Court's decision in Excel Crop, the penalty was computed on the basis of its total turnover and not the relevant turnover.

12 Shri Shamsher Kataria v. Honda Siel Cars India Limited, Case Number 03 of 2011.

13 House of Diagnostics LLP v. Esaote S.p.A, Case Number 09 of 2016.

14 M/s Arora Medical Hall Ferozpur v. Chemists & Druggists Association Ferozpur, Case Number 60 of 2012.

Conclusion

CCI has been imposing penalties for over a decade. Its decisions during this period should have yielded some trends and guidance on its methodology in calculating the appropriate penalty level. Unfortunately, the analysis does not provide much clarity. CCI's orders also do not provide any reasoning on the parameters applied by CCI in choosing the metric to calculate fines or calculating the quantum of the fine. Thus, it is imperative that CCI issues clear guidelines detailing (i) how it chooses the appropriate metric to impose fines; and (ii) how it calculates the quantum of the fine. Such guidelines would encourage more leniency applications by giving businesses greater certainty on how the quantum of penalty and any reductions to it will be calculated and will also be instrumental in safeguarding due process.

Behavioural Cases

CCI Dismisses Information filed by Individuals against Indiabulls Housing Finance¹⁵

On January 2, 2019, CCI dismissed information filed by four individual informants against the Mumbai and Ahmedabad branch of Indiabulls Housing Finance Limited ('IHFL') alleging violation of Section 3 and Section 4 of the CA02.

In the context of a loan agreement between the informants and IHFL, the informants alleged that IHFL abused its dominant position by arbitrarily increasing the loan tenure, principal due amount and rate of interest during the pendency of the loan agreement. The informants further alleged that IHFL never revised the rate of interest as per the Reserve Bank of India's repo rate and charged the informants the highest possible interest rate, which was at substantial variance to that charged to other consumers. When the informants tried to switch their loan to another financial institution, they were informed that they would be charged a switching fee and pre-payment and other charges which the informants could not afford to pay.

CCI defined the relevant market as that for 'provision of loan against property in India'. It found that IHFL was not dominant in the relevant market given the presence of many strong players like banks, non-banking financial companies, housing finance companies and other financial institutions and therefore did not contravene Section 4 of the CA02. The Informants also failed to show existence of an 'agreement' as envisaged under Section 3 of the CA02 and therefore CCI found that there was no *prima facie* case of contravention of Section 3 of the CA02. Accordingly, the matter was closed by CCI.

CCI Dismisses Allegations against Laxven Systems and Medha Servo Drives for Contravention of Section 3¹⁶

On January 2, 2019, CCI dismissed allegations of contravention of Section 3 of the CA02 filed by Chief Materials Manager/Sales of Eastern Railway against M/s Laxven Systems ('Laxven') and M/s Medha Servo Drives Private Limited ('Medha').

Pursuant to delisting of certain vendors from a tender issued for procurement of 'Micro-processor Control and Fault Diagnostics System for Electric Locos', it was alleged by the informant that the remaining 2 parties i.e. Laxven and Medha, were acting as a cartel where Laxven decided not to participate in the tender resulting in a monopoly and the quotation of a high price by Medha. Further, Laxven also did not participate in other contemporaneous tenders floated for procurement of a similar item by other railway zones. The resulting monopoly led to a situation where the informant had no other option but to accept Medha's high rate which it did not reduce even after negotiation.

CCI perused the technical specifications prescribed by Research Designs and Standard Organisation ('RDSO') for procurement of such instruments/machinery related to the tender and the minutes of the tender committee meeting. CCI noted that the tender specifications per RDSO's specifications change with every tender. Further, the minutes of the meeting showed that Laxven did not have the required technology to manufacture the instrument related to the tender. The minutes of the meeting also noted the statements made by the technical member of the committee who clarified that the item to be produced under the said tender involved many changes in the software and hardware resulting in a significant increase of manufacturing costs compared to that quoted in previous tenders. Therefore, CCI dismissed the allegations against Laxven and Medha noting that the informant had failed to substantiate its case.

¹⁵ Case Number 6 of 2018.

¹⁶ Reference Case Number 6 of 2018.

CCI Grants Relief of Lesser Penalty in a Bilateral Ancillary Cartel Case¹⁷

On January 15, 2019, CCI had imposed penalty on Godrej and Boyce Manufacturing Company Limited ('Godrej') and four of its officials for colluding to fix prices of zinc-carbon dry cell batteries in India in violation of Section 3 of the CA02.

In a leniency application made by Panasonic Corporation, Japan ('Panasonic Japan'), it disclosed the existence of bilateral ancillary cartel between Panasonic Energy India Co. Limited ('Panasonic India') and Godrej for the institutional sales of dry cell batteries in India from 2012 till 2014 in order to fix prices and maintain price parity.

The director general noted that the evidence gathered demonstrated that Panasonic India and Godrej were engaged in anti-competitive behavior by way of a clause in the product supply agreement ('PSA') which imposed a mutual obligation on both parties not to take any step that would be detrimental to the market interests of the other party. Further, Panasonic Japan admitted that its subsidiary Panasonic India was engaged in an arrangement to exchange commercially sensitive information with Godrej for price coordination in consonance with prices determined by the primary cartel which lasted till the date when Godrej stopped taking supplies of dry cell batteries from Panasonic India. In this regard, Panasonic Japan submitted that Panasonic India and Godrej used to monitor the market operating price ('MOP') of each other and the other manufacturers in order to point out each other's deviations from the agreed price. Email communications between Panasonic India and Godrej in regard to the MOP monitoring were provided by Panasonic Japan along with its leniency application which led to the director general's finding that Panasonic India and Godrej exchanged commercially sensitive pricing strategies in order to maintain price parity.

CCI concluded that the email communications provided by Panasonic Japan showed that the MOP of Godrej's products were decided jointly by Panasonic India and Godrej in order to maintain price parity, ultimately leading to a very high level of increase in prices of dry cell batteries, causing losses to consumers. In reaching its conclusion, CCI specifically noted certain emails where both Panasonic India and Godrej expressed their disappointment towards each other's low prices and directed each other to increase their MOP. Interestingly, CCI rejected Godrej's argument that it was in a buyer-supplier relationship with Panasonic India due to (i) a clause of the PSA that specified that both parties would operate as two independent principals in commercial transactions and (ii) the fact that the distribution arm of Panasonic India was horizontally related to Godrej from a demand-side perspective.

After considering the aggravating and mitigating factors in the case, CCI imposed on Panasonic India a penalty of 1.5 times its profits for each year of the duration of the cartel amounting to approx. ₹31 crores (approx. US \$4.36 million). However, given that Panasonic India and its officials had provided genuine, full, continuous and expeditious cooperation during the course of the investigation which helped CCI in establishing the contravention of Section 3 of the CA02, CCI granted Panasonic India and its officials a 100% reduction of the penalty. With regard to Godrej, CCI noted that Godrej (being a relatively small player) was in a position to get dictated by Panasonic India, and had complained to Directorate General of Anti-Dumping and Allied Duties about the possibility of cartel. It therefore imposed a penalty of 4% of turnover for each year of the duration of the cartel on Godrej amounting to approx. ₹85 lakhs (approx. US \$120,000). Finally, CCI imposed a penalty of 10% of the average income of the officials of Godrej for the three preceding financial years under Section 48 of the CA02.

CCI Imposes Penalty on Chemists and Druggists Association of Baroda for Indulging in Restrictive Trade Practices¹⁸

On January 15, 2019, CCI passed an order under Section 27 of the CA02 imposing a penalty on the Chemists and Druggists Association of Baroda ('CDAB') for contravention of Section 3 of the CA02 by restricting the supply of drugs.

In 2012, CCI had imposed a fine of ₹53,837 (approx. US \$760) following information filed by M/s Vedant Bio-Sciences, Baroda alleging involvement of CDAB in fixing trade margins and mandating no-objection certificates for the appointment of stockists and launch of new drugs. The penalty was set aside by the Competition Appellate Tribunal in 2016 on the basis that CCI had violated principles of natural justice and the case was remanded back to CCI. After hearing the case again, CCI concluded that the pre-requisite for stockists to obtain no-objection certificates and the requirement to pay 'product information service' charges prior to the introduction of new products in the market, limits and controls the supply of drugs in the market.

In light of the above, CCI passed an order directing CDAB to cease and desist from such anti-competitive conduct and further imposed a penalty of ₹32,724 (approx. US \$460) on CDAB for violation of Section 3(3)(a) and Section 3(3)(b) of the CA02.



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¹⁷ Suo Moto Case Number 02 of 2017.

¹⁸ Case Number C-87/2009/DGIR.



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CCI Dismissed Case against NSE Alleging Violation of Section 4 of CAO2¹⁹

On January 7, 2019, CCI dismissed information filed by Jitesh Maheshwari against National Stock Exchange of India Limited ('NSE') alleging violation of Section 4. The informant highlighted that the current case ongoing with Securities Exchange Board of India ('SEBI'), Income Tax Department ('ITD') and Central Bureau of Investigation should also be investigated by CCI for contravention of Section 4 of the CAO2.

The information pertained to co-location services provided by NSE to traders where the traders availing the service were granted access to confidential information about traded prices of shares ahead of other traders. It was alleged that from the year 2010-2014, NSE abused its dominant position by providing preferential access to some trading members of its co-location services thereby distorting competition with the trading members not availing of such facility.

CCI noted that the case is currently under adjudication by SEBI, and the exact role of NSE with respect to the alleged contravention is being investigated and that the information available against NSE was insufficient to find a contravention of Section 4 of the CAO2. Accordingly, CCI ordered the matter to be closed.

CCI Dismisses Allegations Against Ministry of Health and Central Medical Services Authority for Contravention of Section 4²⁰

On December 26, 2018, CCI dismissed allegations of contravention of Sections 3 and 4 of the CAO2 filed by Cupid Limited against the Ministry of Health and Family Welfare ('MHFW') and Central Medical Services Authority ('CMSA').

The information was filed against the alleged abusive conduct of CMSA involving a long-term agreement ('LTA') which contained one-sided, unfair and arbitrary terms and conditions regarding the supply of condoms, including (i) rigid timelines for delivery of the product; (ii) imposition of damages for delay in supply; (iii) submission of security deposit before signing of the LTA; (iv) unilateral discretion of CMSA to increase/decrease the production quantity; and (v) the inability to sub-contract manufacturing of the product. The informant alleged that CMSA forced it to sign the agreement without giving it any opportunity to negotiate. The informant also alleged violation of Section 3(4) by complaining against CMSA's packaging specification requirements which ensured that the product could not be sold to any other customer other than CMSA.

On a perusal of the allegations and the Government of India's contraceptive policies, CCI noted that MHFW undertakes policy functions on behalf of the Government of India and hence, cannot be considered an 'enterprise' that can be held liable under Section 4 of the CAO2. With respect to CMSA, CCI noted that it undertakes commercial functions and is therefore, an enterprise under Section 4 of the CAO2. Noting its own prior decisions on abuse of buyer power²¹, CCI noted that the relevant market has to be delineated by applying 'demand side substitutability' inversely i.e. by assessing the availability of substitutes for suppliers and their ability to switch to alternative sales opportunities. Therefore, CCI decided the relevant market to be 'market for male condoms in India'.

CCI held that the market shares of CMSA identified by the informant did not reveal a true picture and hence failed to establish dominance of CMSA. CCI further held that having social objectives, CMSA did not have any incentive to influence the relevant market particularly when it procures 75% of its requirements from a single company. With regard to the allegation under Section 3(4), CCI held that the printing requirements of CMSA do not restrict the informant from dealing with other customers. Therefore, CCI dismissed the complaints.

Combinations

CCI Approves Acquisition of 26% by Shell Gas B.v. in Hazira LNG and Hazira Port from Total Gaz Electricité²²

On December 6, 2018, pursuant to a share purchase agreement signed on November 6, 2018, CCI approved acquisition of 26% shares by Shell Gas B.V. ('Shell') in Hazira LNG Private Limited ('HLPL') and Hazira Port Private Limited ('HPPL') from Total Gaz Electricité Holdings France ('Total'). The combination increased Shell's shareholding in HLPL and HPPL from 74% to 100% and changed Shell's control in HLPL and HPPL (from joint control to sole control).

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¹⁹ Case Number 47 of 2018.

²⁰ Case Number 45 of 2018.

²¹ Case Number 70 of 2014, Case Number 16 of 2013 and Case Number 80 of 2015.

²² Combination Registration Number C-2018/11/615.



Shell is a Dutch company with businesses including oil and natural gas exploration, production and marketing, manufacturing, and marketing and shipping of oil products and chemicals. Shell group companies are engaged in India in the activities of: (i) exploration and production of oil and natural gas; (ii) supply of liquid natural gas ('LNG') into India; (iii) provision of LNG regasification (and related storage) services; (iv) wholesale and downstream supply of natural gas; (v) provision of port facilities to LNG terminals; and (vi) supply of fuel products.

HLPL and HPPL are joint venture companies set up by Shell and Total. HLPL provides LNG regasification services (and related storage) to large LNG importers and also has activities in the wholesale and downstream sale of natural gas in India. It operates and manages the re-gasification terminal at the Hazira Port, Gujarat. HPPL owns and manages the Hazira port used for unloading and receipt of LNG and receives a fee from HLPL for access to the facilities at Hazira port and other allied activities.

In its competitive assessment, CCI observed that HLPL is primarily engaged in LNG regasification (and related storage) services and Shell does not have any presence in the product segment other than through HLPL. As regards the activities of HLPL relating to wholesale and downstream supply of natural gas, CCI observed that Shell has independent presence but the extent of presence of HLPL is not significant enough to cause any change in competition dynamics. CCI further observed that HPPL is engaged in provision of port facilities at LNG terminals and Shell does not have any presence in previously mentioned product segment other than through HPPL.

In light of the above, CCI approved the combination as it is not likely to have any appreciable adverse effect on competition ('AAEC') in India in any of the markets catered to by HLPL and HPPL.

CCI approves combination between LIC & IDBI²³

On November 22, 2018, CCI approved acquisition of 51% shareholding and management control rights in IDBI Bank Limited ('IDBI') by Life Insurance Corporation of India ('LIC'). LIC is engaged in the provision of various schemes of life insurance to retail and corporate customers. IDBI operates as a full service universal bank and provides financial products and services, encompassing deposits, loans, payment services and investment solutions.

In its competitive assessment, CCI found that the combination would not have an AAEC in India in the markets for (i) provision of life insurance; (ii) provision of housing finance; and (iii) banking services (other than housing finance), in particular the segments relating to deposits, home loans, agricultural banking, card business, retail banking services other than card business, deposits and home loan, medium and small business banking, and wholesale banking (other than retail business banking), on account of IDBI having an insignificant presence in these markets. Further, CCI found that while LIC's and IDBI's activities overlapped in the market for mutual funds, in particular the segments relating to (i) growth /equity oriented scheme; (ii) income/debt oriented scheme; (iii) balanced fund scheme; (iv) money market/liquid fund scheme; and (v) gilt funds, neither LIC's nor IDBI's presence in these markets was significant enough to result in an AAEC. With regard to a potential vertical relationship between LIC and IDBI in relation to bancassurance services, CCI held that considering the nature of bancassurance services and presence of IDBI in the segment, the combination will not confer any ability or provide any incentive to LIC to foreclose other banks engaged in the provision of bancassurance services. Based on the above, CCI decided to approve this combination.

CCI Approves Acquisition by Ageas Insurance International from Royal Sundaram General Insurance²⁴

On December 19, 2018, CCI approved acquisition of 40% of the equity share capital of Royal Sundaram General Insurance Company Limited ('RSGI') by Ageas Insurance International N.V. ('Ageas') pursuant to the execution of a share purchase agreement and shareholders agreement entered into between the RSGI, Ageas, Sundaram Finance Limited ('SFL') and other selling shareholders of RSGI.

Ageas is a Dutch company engaged in provision of international insurance solution to retail and business customers. In India, Ageas is present through IDBI Federal Life Insurance Company Limited ('IFLI') which engages in provision of life insurance services in India. RSGI is a subsidiary of SFL and is engaged in provision of general (non-life) insurance services to individuals and businesses. It offers motor, health, personal accident, home and travel insurance to individuals and also offers insurance products in fire, marine, engineering, liability, motor and business interruption risks to commercial customers.

In its competition assessment, CCI observed that since there was no horizontal overlap or

²³ Combination Registration Number C-2018/10/605.

²⁴ Combination Registration Number C-2018/11/618.



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vertical relationship between Ageas and RSGI, the combination was not likely to have any AAEC in India and therefore approved the acquisition.

CCI Approves Acquisition by Integral Corporation from Toyo Engineering Corporation²⁵

On December 19, 2018, CCI approved subscription to optionally convertible preferential stock (without voting rights) amounting to 34.65% of shares of Toyo Engineering Corporation ('Toyo') by Integral Corporation ('Integral') pursuant to the execution of a share subscription agreement dated November 28, 2018. Integral also acquired a right to appoint two nominee directors in Toyo.

Integral, a Japanese private equity firm based in Tokyo, is engaged in making long-term equity investments and providing support to investee companies in terms of management and finance. In India, Integral is present through its stake of 29.2% shares of Ohizumi Manufacturing Company Limited, a Japanese corporation which is engaged in manufacture and sale of electronic parts and electronic equipment/devices such as thermistors which are primarily used for measurement and control of temperature. Toyo is a Japanese engineering, procurement and construction ('EPC') company engaged in the provision of EPC services and R&D support, design, engineering, procurement, construction, commissioning and technical assistance for industrial facilities. It provides EPC services in various sectors such as oil & gas development, petrochemicals, chemicals and biotechnology. In India, Toyo is present through its subsidiary namely Toyo Engineering India Private Limited which is also engaged in providing EPC services in India.

In its competition assessment, CCI observed that there is no horizontal overlap or vertical relationship between the activities of the parties. Therefore, CCI approved the combination as it was unlikely to have any AAEC in India.

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²⁵ Combination Registration Number C-2018/12/619.



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