



Gun-Jumping Concerns Raised by Interim Covenants

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Gun-Jumping Concerns Raised by Interim Covenants

Introduction

Almost always, there is an interval between parties signing a deal and closing it. Such intervals between deal execution and deal completion can often be quite significant, especially if the deal requires regulatory approvals (including merger control approvals). For an investor, this raises substantial commercial risks, such as depletion of investment value during this interval. Negotiating “interim covenants” in deal documentation is one contractual solution to mitigate such commercial risks. These “interim covenants” typically require the target (and/or target promoters) to *act*, or *not to act*, in a manner agreed amongst the parties, during that interval of uncertainty.

Under the (Indian) Competition Act, 2002 (‘Act’), any transaction requiring an approval from the Competition Commission of India (‘CCI’), cannot be given effect to (even partially) before it is approved (‘Standstill Obligation’). A failure to abide by this Standstill Obligation, often called ‘gun-jumping’, is an infringement that can attract a significant penalty¹ under the Act. However, by their very nature, “interim covenants” come into effect from the date of “execution” of the transaction documents. Accordingly, as a CCI filing can only be made *after* the definitive deal documents are signed, such interim covenants come into effect before CCI approval. Clearly, there is a tension between the Standstill Obligation on the one hand and the use of “interim covenants” on the other.

In this article, we explore this tension in light of (so far limited) decisional guidance from CCI, and the legal position in other mature merger control jurisdictions such as the EU. We conclude with some key takeaways for deal planners to help them better balance the commercial risks against the risk of non-compliance for a transaction that requires notification to the CCI.

CCI’s approach towards interim covenants and the Standstill Obligation

The Standstill Obligation seeks to ensure that until CCI assesses and approves a transaction, the parties continue to operate independently of each other. If the parties happen to be competitors, the Standstill Obligation also effectively ensures that there is no dampening of competition between them. While assessing whether the transacting parties have “jumped the gun”, CCI checks whether the parties “*ceased to compete as they were competing earlier*” or “*ceased to act independently*”².

Recently, in its order under Section 43A of the Act against Bharti Airtel Ltd.³ (‘**Airtel/Tata decision**’), CCI shed some light on its approach towards the use of interim covenants in transactions. In 2017, Bharti Airtel Limited (‘**Airtel**’) notified CCI of its proposed acquisition of 100% of the consumer mobile business run by Tata Teleservices Limited and Tata Teleservices (Maharashtra) Limited. After approving the transaction in November 2017, and based on a review of certain clauses (specifically, what was referred to as the ‘ER clause’) in the underlying transaction documentation (which are redacted in the published decision), CCI initiated an examination into whether Airtel had violated gun-jumping rules. CCI ultimately concluded that Airtel violated gun-jumping rules and imposed a penalty of ₹ 1 million.

While the impugned clause in the Airtel/Tata decision was not a typical interim covenant, CCI’s decision nonetheless provides helpful guidance on how CCI is likely to assess whether an interim covenant is compliant with the Standstill Obligation. In this decision, CCI acknowledged that certain clauses in transaction documentation are necessary to ensure preservation of the value of the target business, as well as to ensure certainty of valuation. To this extent, transacting parties may “*be permitted to impose customary standstill and interim arrangements on the target*”. However, CCI also stated that it is incumbent on parties to ensure that the form and scope of such interim arrangements must be *inherent and proportionate* to the objective of preserving investment value, and not in violation of the Standstill Obligation.

European Commission’s approach towards interim covenants and the Standstill Obligation

Although the CCI’s decision in Airtel/Tata decision provides some guidance on its likely approach, there is still significant ambiguity when it comes to deciding when exactly an interim covenant with a value preservation objective morphs into a clause infringing the Standstill Obligation.

¹ Under Section 43A of the Act, gun-jumping can attract a penalty which may (in theory) extend to 1% of the total turnover or the assets, whichever is higher, of the combining parties. In practice, the highest penalty imposed by the CCI for gun-jumping is ₹ 50 million.

² Order under Section 43A of the Act in C-2017/10/531 (Bharti/Tata).

³ Combination Registration No. C-2017/10/531



gation. A decision of the European Commission ('EC'), in *Altice/PT Portugal*⁴, can provide some helpful guidance when it comes to interpreting CCI's approach, where the EC examined in detail what approach a merger control regime should take towards interim covenants/arrangements.

In 2014, Altice s.a. and Altice Portugal s.a. (collectively, 'Altice') entered into a share purchase agreement with Oi s.a. under which Altice was to acquire sole control of PT Portugal SGPS SA ('PT Portugal'). Altice subsequently notified its proposed acquisition to the EC in February 2015. EC conditionally cleared the acquisition in April 2015 but raised concerns in 2017 that Altice implemented its acquisition of PT Portugal before obtaining its clearance, and in some instances, even before its notification of the acquisition.

In April 2018, EC concluded that Altice breached the EU Merger Regulation and imposed a fine of €124.5 million on Altice. Specifically, EC found that certain provisions (including interim covenants) in the transaction documentation resulted in Altice acquiring the legal right to exercise decisive influence over PT Portugal. For example, certain interim covenants granted Altice veto rights over decisions concerning PT Portugal's ordinary business. Additionally, Altice was also found to have "actually exercised decisive influence" over aspects of PT Portugal's business, by (i) giving PT Portugal instructions on how to carry out a marketing campaign; and (ii) seeking and receiving detailed commercially sensitive information about PT Portugal outside the framework of any confidentiality agreement. Key takeaways from EC's decision in *Altice/PT Portugal* are that interim covenants must (a) be limited to items *outside* the target's ordinary course of business; and (b) be coupled with materiality thresholds which accurately represent such transactions being outside the ordinary course of business.

Use of 'interim covenants' – takeaways for deal planners

Given the legal context discussed above, parties must be cognizant of the Standstill Obligation while negotiating and drafting interim covenants. Overbroad interim covenants may attract unwelcome scrutiny and/or sanctions from CCI. While each transaction and set of interim covenants would need to be examined closely on a case-by-case basis, the following 'rules of thumb' may be helpful as a starting point. *First*, avoid putting in any 'control conferring' rights as a part of the interim covenants. This must be done while accounting for CCI's expansive interpretation of control which includes negative control *via* veto rights over certain aspects of a company's management/business. *Second*, interim covenants aimed at removing the risk of out-of-ordinary transactions (e.g., encumbrances, loans, investments, etc. which could siphon off, or otherwise deplete, investment value) must have appropriately high materiality thresholds to avoid interfering with the target's business-as-usual. Parties could also consider confining the scope of the interim covenants in such cases to a 'material detriment to investment value' criterion. *Third*, interim covenants should not provide for granular transparency over the commercial operations of the target, as that may be viewed as competition-dampening information exchange. If such level of information access is somehow indispensable to preserve investment value, dedicated 'clean team' arrangements could be explored as a way to access such sensitive information while mitigating the risk of infringing the Standstill Obligation. *Finally*, when faced with boundary-cases where it is difficult to decouple a certain interim covenant from the risk of infringing the Standstill Obligation, parties could explore putting in place 'indemnity' arrangements to manage the investor's risk.

Behavioural Orders—CCI

CCI Dismisses Allegations of Anti-Competitive Agreements and Abuse of Dominant Position against Home Automation Solution Providers⁵

On April 22, 2019, CCI dismissed allegations (made by Sun Electronics Private Limited, ('Informant')) of infringement of Sections 3 and 4 of the Act against certain home automation solution providers, namely, ElecTek Solutions Private Limited, Mumbai ('ElecTek'), Miantic AV Distribution Private Limited, Hyderabad ('Miantic'), RTI India Private Limited, Bengaluru ('RTI') and Remote Technologies Incorporated, Minnesota, USA ('Remote Technologies'). ElecTek is an integrator and supplier of RTI products, Miantic is RTI's sole authorised dealer and a supplier to ElecTek and RTI is the Indian subsidiary of Remote Technologies.

The Informant alleged deficiencies in service and non-completion of work resulting in breach of the purchase order under which ElecTek was bound to provide RTI with home automation solutions. According to the Informant, ElecTek made unreasonable demands, such as

⁴ Case M. 7993 – Altice/PT Portugal

⁵ Case No. 2 of 2019



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forcing it to purchase additional equipment and pay additional fees. The Informant also alleged that when it sought to engage the services of Miantic, it was refused and was asked to get a no-objection certificate ('NOC') from ElecTek. The Informant argued that this conduct of the home automation solution providers infringed Section 3(3) (anticompetitive horizontal agreements), Section 3(4) (anticompetitive vertical restraints) and Section 4 (abuse of dominance) of the Act.

CCI did not find any 'agreement' between ElecTek, Miantic, RTI and Remote Technologies, and accordingly dismissed the allegation of anticompetitive agreement (i.e., breach of Section 3(3) of the Act). Since the Informant was not part of the vertical production chain for home automation solutions (and was essentially an end-customer), CCI did not find any merit in allegation of breach of Section 3(4) of the Act. Analysing the allegation of abuse of dominance, CCI reiterated that 'collective dominance' was not envisaged under Section 4 of the Act. Further, CCI noted that none of the impugned enterprises could be considered dominant in the relevant market for 'supply and installation of smart home solutions in India'. Therefore, no case of abuse of dominance could stand against them.

CCI Dismisses Allegations of Anti-Competitive Agreements and Abuse of Dominant Position against M/S Sana Realtors Limited⁶

On April 23 2019, CCI dismissed allegations (made by Dejee Singh and 9 other individuals, (the 'Informants')) of infringement of Sections 3 and 4 of the Act against M/S Sana Realtors Limited ('Sana Realtors').

The allegations pertained to delay in handing over possession of small office / home office ('SOHO') units in a project launched by Sana Realtors in Gurugram, Haryana in the year 2009. The Informants further alleged that Sana Realtors, *inter alia*, imposed one-sided, arbitrary and unfair clauses in its sale agreements amounting to an abuse of dominance. The Informants' claim was supported by distinguishing the market for SOHO units from purely residential apartments and commercial/office units.

CCI disagreed with the Informants' proposed market definition and disregarded their attempt to showcase SOHO units as a separate relevant market. CCI defined the relevant market as "market for commercial units for office space in Gurugram" and did not find Sana Realtors to be dominant in this market (taking into account competition from large players like DLF, Omaxe, and others.) Accordingly, CCI summarily dismissed the allegations of abuse of dominance .

CCI Dismisses Allegations of Anti-Competitive Agreements and Abuse of Dominant Position against Licensed Commission Agents Operating in New Sabzi Mandi, Azadpur⁷

On May 10, 2019, CCI dismissed allegations (made by Bablu & Company the ('Informant')) of infringement of Sections 3 and 4 of the Act, against Fatehchand & Company and 10 other licensed commission agents operating in the New Sabzi Mandi, Azadpur (collectively 'Commission Agents').

The Informant alleged that the Commission Agents had abused their role statutorily assigned to them under Section 2(g) of the Delhi Agricultural Produce Marketing (Regulation) Act, 1998 ('Delhi APMC Act') by rigging bids, imposing arbitrary and unfair terms, and charging an excessive commission. The Informant also sought a relief of ₹ 55 billion from the Commission Agents as compensation for the commercial and reputational harm resulting from the aforementioned conduct of the Commission Agents.

CCI noted that the concerned *Mandi* (marketplace) was a 'market of national importance' ('MNI') under the provisions of Delhi APMC Act, and the Agricultural Produce Marketing Committee ('APMC') is vested with the powers to regulate it with a view to safeguard the interest of farmers, producers/ sellers and consumers. Accordingly, it was found that the Informant's contention did not relate to an issue of competition law. CCI further noted that it had already dismissed similar allegations in an earlier matter (*Case No. 15 of 2017 In Re: Bablu & Company v. Fatehchand & Company And Ors.*).

CCI Dismisses Allegations of Abuse of Dominance against Oriental Insurance Company Limited⁸

On May 10, 2019, CCI dismissed allegations (made by Anil Rathi, Partner, M/S Laxmi Polymers ('Informant')) of infringement of Section 4 of the Act against Oriental Insurance Company Limited ('Oriental').

6 Case No. 6 of 2019

7 Case No. 7 of 2019

8 Case No. 13 of 2019

The Informant alleged that Oriental, a public sector general insurance company, abused its dominance by unfairly repudiating the Informant's insurance claim against a fire in the premises of the Informant's company.

CCI did not find Oriental to be a dominant enterprise in the 'market for provision of fire insurance services in India' since Oriental had a relatively low market share and faced competition from several other larger players. Accordingly, CCI dismissed the allegations of abuse of dominance against Oriental.



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CCI Dismisses Allegations of Anti-Competitive Agreements and Abuse of Dominant Position against Cipla Limited and the Bengal Chemists and Druggists Association⁹

On May 10, 2019, CCI dismissed allegations (made by Mr. Kalyan Chowdhary, a proprietor of M/s Kamala & Sons ('Informant')), of infringement of Sections 3 and 4 of the Act against Cipla Limited ('Cipla') and Bengal Chemists and Druggists Association ('BCDA').

The Informant alleged that Cipla failed to supply medicines to the Informant for the orders placed by him due to an existing litigation between the Informant and BCDA before the National Company Law Tribunal ('NCLT Litigation'), and further that, Cipla conveyed false reasons such as 'delay in payments' to justify the non-supply. However, per the Informant, when he showed Cipla emails demonstrating no delay in payments, he was verbally informed that the non-supply was because of the NCLT Litigation. The Informant also alleged that Cipla and BCDA together manipulated drug prices.

CCI noted that Cipla did not, in fact, stop supplying medicines to the Informant and simply insisted on an advance payment, given earlier instances of delayed payment by the Informant and had not terminated the Informant as its stockist. Further, CCI also did not find evidence of any price manipulation by BCDA and Cipla. In conclusion, CCI noted that the informant had tried "to give a commercial dispute, a colour of competition dispute", and accordingly, dismissed all allegations against Cipla.

Behavioural Orders—NCLAT

NCLAT Dismisses an Appeal on Account of Settlement Between the Parties¹⁰

On May 17, 2019, National Company Law Appellate Tribunal ('NCLAT') dismissed an appeal filed by Mr. Ranjit Singh Gujral ('Appellant') against a CCI order¹¹, dismissing the allegations of violation of Section 3 and 4 of the Act made by the Appellant against Vatika Limited ('Vatika') and Confederation of Real Estate Developers' Associations of India ('CREDAI'). The Appellant decided to withdraw the appeal due to an out-of-court settlement with Vatika and CREDAI. Therefore, NCLAT decided to dismiss the appeal. However, the dismissal order did not record the terms of settlement.

NCLAT Affirms CCI's Order Dismissing Allegations of Abuse of Dominance by Bureau of India Standard & Ors.¹²

On May 2, 2019, NCLAT dismissed an appeal against a CCI order, dismissing allegations of abuse of dominance against Director General, Bureau of Indian Standards and the Secretary, Department of Consumer Affairs, Food and Public Distribution ('DCAFPD').¹³

The appellant, a proprietor of a material testing laboratory, alleged that the BIS Laboratory Recognition Scheme ('BIS-LRS') amounted to an abuse of dominant position and was violative of Section 4 of the Act as BIS-LRS mandated compliance with accreditation standards (e.g., IS/ISO/IEC-17025, ISO-IEC-17025) and referred to accreditation bodies (such as Asia Pacific Laboratory Accreditation Corporation, International Laboratory Accreditation Corporation) which was not provided for in the BIS Act or the rules framed thereunder.

NCLAT dismissed the allegations on the preliminary ground that BIS is not an 'economic entity', and therefore could not be construed as an 'enterprise' under Section 2(h) of the Act and further noted that its impugned conduct will not be subject to Section 4 of the Act. NCLAT relied on the fact that the imposition of the impugned criteria by BIS fell squarely within its statutory authority and mandate to ensure harmonious development of standardization, marking and quality certification, including quality certification of laboratory testing services.

9 Case No. 43 of 2018

10 Competition Appeal (AT) No. 01 of 2019

11 Case No. 23 of 2018

12 Competition Appeal (AT) No. 16 of 2017

13 Case No. 14 of 2017



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NCLAT Affirms CCI's Order Under Section 26(1) of the Act Dismissing an Application Seeking Interim Relief¹⁴

On April 23, 2019, NCLAT dismissed an appeal filed by Ashokbhai Manilal Mehta ('Appellant') against a CCI order, dismissing the Appellant's request for an interim relief in relation to the Appellant's allegations of cartelization against leading presses/printers. CCI had examined the Appellant's allegations that certain leading presses/printers had rigged the e-bidding process in a tender for textbook printing issued by the Gujarat State Board of School Text Books, Gandhinagar ('GSBSTB').¹⁵ While CCI found *prima facie* merit in the Appellant's allegations and directed the Director General, CCI to start an investigation, it did not find any merit in the Appellant's request to cancel the already awarded tenders as an interim relief under Section 33 of the Act. CCI's decision to reject the request for interim relief was primarily based on the fact that the process of printing had already commenced and cancelling the tender at such a stage would hurt students by disrupting the supply of textbooks.

CCI argued that the appeal should be summarily dismissed because an order initiating an investigation (under Section 26(1) of the Act) was not appealable under the Act. NCLAT dismissed CCI's argument, stating that the appeal only related to that part of the CCI order which denied grant of interim relief to the Appellant, and such denial was appealable under the Act. Ultimately, NCLAT agreed with CCI's conclusion on facts and dismissed the appeal.

Combination Orders

CCI Approves Acquisition of MindTree Limited by Larsen and Toubro Limited.¹⁶

On April 4, 2019, CCI approved the acquisition of up to 66.15% of the equity share capital of Mindtree Limited ('Mindtree') by Larsen and Toubro Limited ('L&T'). The proposed acquisition was to be given effect via acquisition of: (i) 20.15% of the equity share capital of Mindtree collectively from Coffee Day Enterprises Limited, Coffee Day Trading Limited and Mr. V.G. Siddhartha with the intention to acquire control over Mindtree; (ii) up to 31% of the total equity share capital of Mindtree through an open offer under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011; and (iii) up to 15% of the equity share capital of Mindtree by way of stock exchange purchases.

L&T is the holding company of its subsidiaries Larsen and Toubro Infotech Limited ('LTI') and Larsen and Toubro Technology Services Limited ('LTTS') which offer IT Services and IT enabled services. Mindtree is engaged in the business of providing IT and IT enabled services ('ITES') including IT consulting, digital services, engineering research and development services and cloud services.

CCI noted that both L&T and MindTree overlapped in the IT and ITES segments. CCI approved the transaction unconditionally since the parties' combined market share in IT and ITES was minimal (i.e. 0 to 5%) and they faced strong competition from large players like Tata Consultancy Services, Wipro, Infosys, HCL and Tech Mahindra.

CCI Approves Acquisition of Star Health and Allied Insurance Company Limited.¹⁷

On March 22, 2019, CCI approved the acquisition of 90.57% of equity share capital of Star Health and Allied Insurance Company Limited ('Star Health') by a group of acquirers, namely, Westbridge AIF 1 ('Westbridge'), Rakesh Jhunjunwala ('RJ'), MIO Star ('Madison 1'), MIO IV Star ('Madison 2'), Madison India Opportunities Trust Fund ('Madison 3'), University of Notre Dame DU LAC ('UNDDL'), Massachusetts Institute of Technology ('MIT'), GP Emerging Strategies LP ('GP') and Snowdrop Capital Pte. Limited ('Snowdrop') (collectively the 'Acquirers').

Star Health is a licensed general insurer and is engaged in the business of providing general insurance, health insurance, personal accident insurance, medi-claim and overseas travel insurance through its corporate agents, brokers and insurance agents.

CCI cleared the transaction unconditionally since it observed that: (i) the Acquirers did not have horizontal or vertical overlaps with Star Health's businesses; and (ii) while some of the Acquirers (WestBridge, RJ, MIT, UNDDL and GP) had certain investments related to the business of Star Health, these investments were insignificant.

¹⁴ Competition Appeal (AT) No. 17 of 2019

¹⁵ Case No. 32 of 2018

¹⁶ Combination Registration No. C-2019/03/652.

¹⁷ Combination Registration No. C-2019/02/643

CCI Approves Acquisition of Future Retail Limited by Future Coupons Limited.¹⁸

On April 15, 2019, CCI approved the acquisition of 73.0% of the equity share capital of Future Retail Limited ('FRL') by Future Coupons Limited ('FCL').

FCL is in the business of making and distributing coupons, vouchers, cards, smart cards, prepaid and loyalty cards and business-to-business wholesale trading of fabrics. FRL is a public listed company and operates stores under multiple retail formats such as hypermarkets, supermarkets and home segments with different brand names including Big Bazaar, Big Bazaar Genext, Hypercity, FBB, Easy day.

Both FCL and FCRPL are "promoter group" entities and are owned and controlled by Mr. Kishore Biyani ('Promoter Group'). The Promoter Group owns 46.92% of the equity share capital of FRL and following this transaction would increase that ownership to 50.79% of FRL's equity share capital.

CCI unconditionally approved the transaction, noting that the Promoter Group would continue to be the single largest shareholder in FRL and there would be no change in control. Accordingly, the transaction was found to have no effect on competition.

CCI Approves the Acquisition of National Projects Construction Corporation Limited by WAPCOS Limited.¹⁹

On March 28, 2019, CCI approved the acquisition of 98.89% of the equity share capital of National Projects Construction Corporation Limited ('NPCC') by WAPCOS Limited ('WAPCOS'). WAPCOS and NPCC are both Central Public Sector Enterprises under the control of Ministry of Water Resources, River Development and Ganga Rejuvenation, Government of India ('MOWR').

WAPCOS provides engineering consultancy services ('ECS') for developmental projects in India and abroad. NPCC's services include project management consultancy services ('PMCS') for civil construction projects, real estate development, construction of roads etc.

CCI approved the transaction unconditionally since it found that the parties did not have significant horizontal or vertical overlaps. While WAPCOS and NPCC are active in the PMCS segment, they are insignificant players (by market share) as compared to other players like NBCC (India) Limited, Uttar Pradesh Rajkiya Nirman Nigam Limited, Bridge & Roof Co. (India) Limited etc. Further, while examining the vertical linkages between ECS and PMCS, CCI found no cause for concern since: (i) ECS offered by WAPCOS related primarily to water, power and irrigation infrastructure, while NPCC's PMCS business was focused on general infrastructure like school, border fencing and road transportation; and (ii) WAPCOS faces strong competition in the ECS segment from players like Tata Consulting Engineers, Ramboll, etc.

CCI Approves the Acquisition of PepsiCo Indian Holdings Private Limited by Varun Beverages Limited.²⁰

On March 22, 2019, CCI approved the acquisition of 9 manufacturing plants and franchise rights for 7 States and 5 Union Territories of PepsiCo India Holdings Private Limited ('PepsiCo.') by Varun Beverages Limited ('VBL') on a slump sale basis ('Proposed Combination'). The Proposed Combination is pursuant to a Business Transfer Agreement executed between VBL, PepsiCo. and RJ Corp. Limited ('RJ Corp.').

VBL is a subsidiary of RJ Corp. and a franchise of PepsiCo. VBL manufactures, distributes, markets and sells beverage products of PepsiCo under brands licensed by PepsiCo. PepsiCo. is a subsidiary of PepsiCo. Inc. and is in the business of marketing, manufacturing, distributing and selling of carbonated beverages, concentrate syrup mix and food products. PepsiCo. has its own bottling facilities in certain territories in India.

CCI noted that VBL and PepsiCo. are not competitors in any market in India and further noted that the proposed transaction was merely an expansion of VBL's bottling activities for PepsiCo to territories which were earlier operated by PepsiCo. Accordingly, CCI approved the proposed transaction unconditionally.

CCI Approves the Acquisition of Sunfresh Agro Industries Private Limited by Tirumula Milk Products Private Limited from Cheese Land Agro India Private Limited and Prabhat Dairy Limited.²¹

On March 22, 2019, CCI approved the acquisition of the entire equity share capital of Sunfresh Agro Industries Private Limited ('SAIPL') by Tirumula Milk Products Private Limited ('TMPPL'). The transaction involved: (i) a share purchase agreement ('SPA') under which TMP-



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18 Combination Registration No. C-2019/03/653.

19 Combination Registration No. C-2019/03/655.

20 Combination Registration No. C-2019/02/645.

21 Combination Registration No. C-2019/02/644



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PL would acquire the entire equity share capital of SAIPL from Prabhat Dairy Limited ('PDL') (70.71%) and, a PDL subsidiary, Cheese Land Agro India Private Limited ('CLAIPL') (29.29%); and (ii) a business transfer agreement ('BTA') whereby SAIPL would acquire PDL's dairy business as a going concern, leading to indirect acquisition of PDL's dairy business by TMPPL.

TMPPPL is a part of BSA International Lactalis ('Lactalis Group'), a family-owned dairy group based in France. It is engaged in the business of selling milk and milk products in India. The Lactalis Group also owns 100% shares in Anik Industries Limited ('AIL') which is also engaged in the dairy business in India.

PDL, through its subsidiary SAIPL, is involved in the procurement, manufacture, processing and packaging of milk and milk products and in wholesale trading of milk and milk products and in the business of third party labels for brands such as Britannia, Mother Dairy, Nandini, Future Group and D-mart. CLAIPL, a PDL subsidiary, trades in cattle feed and is not engaged in selling of dairy products.

While assessing the transaction, CCI noted that dairy products can be split into two categories: (i) perishable dairy products (for short term consumption like milk, curd, paneer etc.); and (ii) non-perishable dairy products (for long term consumption like ghee, milk powder etc.). CCI further observed that the relevant product market could also be defined more narrowly, on a product-wise basis. Assessing the relevant geographic market, CCI observed that for non-perishable dairy products, the relevant market was India-wide, while for perishable dairy products, the relevant markets were state-wide.

Based on CCI's assessment, the parties overlapped in the following products – Curd, Lassi, Milk; and Fresh Paneer – in the perishable product category; and the following – Ghee; Butter, skimmed milk powder, dairy whitener, ultra-high temperature processed milk, and ice-cream in the non-perishable category. CCI reviewed parties' combined market share and/or incremental market share for the perishable products and non-perishable products, and found them to be too insignificant to cause any adverse effect on competition in any relevant market.



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India Business Law Journal, 2018 & 2017

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Best Law Firm of the Year – India
Corporate USA Today – Law Awards, 2018

❖
India Deal Firm of the Year
ALB SE Asia Law Awards, 2018

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Asialaw Profiles, 2018

❖
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for the Indian M&A Announced Deals League Table by Value and Volume
Ranked No. 1
for the Indian M&A Completed Deals League Table by Value and Volume
Thomson Reuters' Emerging Markets M&A Legal rankings Q1 2018

❖
Ranked No. 1
for India in the M&A Announced Deals League Table
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Bloomberg's Global M&A, Legal rankings Q1 2018

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Ranked No. 1
for India in the M&A Rankings by Deal Value and Deal Count
Mergermarket's Global and Regional M&A League Tables of Legal Advisors Q1 2018

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Venture Intelligence League Tables of Legal Advisors 2017

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