Fair Competition
for Greater Good

The Quarterly Newsletter of Competition Commission of India (CCI)

Fair Play

Volume 46: July-September 2023

IN FOCUS
Draft Settlement & Commitment Regulations

CCI released drafts of Settlement & Commitment Regulations on 23.08.2023, for comments of stakeholders. This resolution framework, as envisioned under the Competition (Amendment) Act, 2023, seeks to ensure faster market correction.

In this Issue...

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FROM THE DESK OF THE CHAIRPERSON

I am delighted to present the 46th Volume of Fair Play, which summarizes the developments in competition law and policy over the past quarter.

During this period, CCI took proactive steps to implement the provisions of the Competition (Amendment) Act, 2023, by releasing draft regulations for public consultations. The In-Focus article in this edition delves into the newly introduced Settlement & Commitment framework, highlighting the benefits of CCI's robust regulatory system through these resolution tools.

In the previous quarter, on the anti-trust front, the Commission closed cases against Tata Motors, which was accused of dictating vehicle off-takes by its authorized dealers, imposing obligations to acquire NOCs before starting new ventures, and setting territorial restrictions on its dealers. After reviewing the Director General's investigation report and hearing the involved parties, the Commission determined that there was no contravention of the Competition Act, 2002.

Regarding mergers and acquisitions, CCI approved the combination envisaging the merger of Tata SIA Airlines (Vistara) into Air India and acquisition of certain shareholding by Singapore Airlines in Air India, subject to voluntary commitments offered by the parties to the Combination. The Commission also approved a combination in the pharmaceutical sector between Ipca Laboratories Ltd. and Unichem Laboratories Ltd., subject to the parties' voluntary modifications. CCI also approved the acquisition of Marnix Lux by Concentrix Corporation and the purchase of approximately 22% of Concentrix shares by

Marnix Lux shareholders, noting that the combination is not likely to cause appreciable adverse effect on competition.

In terms of competition law jurisprudence, two writ petitions, *Dalmia Cement (Bharat) Ltd*. v. *CCI & Ors.* and *The India Cements Ltd.* v. *CCI & Anr*., which challenged CCI's order allowing Builders Association of India's impleadment application, were dismissed by the Hon'ble High Court of Madras. Another writ petition, *Indian Netizens and Internet Entrepreneurs Welfare Association* (INIEWA) v. *CCI*, which contested CCI's rejection of INIEWA's impleadment application, was filed before the Hon'ble Delhi High Court. The same was disposed of by the Hon'ble High Court considering that INIEWA had already furnished the information before the Director General. In the case of AGI Greenpac Limited (AGI), where CCI's approval of a proposed combination was challenged at NCLAT, the Commission's decision was upheld.

The CCI has actively fulfilled its advocacy mandate by undertaking numerous outreach initiatives. These include hosting seminars and lectures in educational institutions, sponsoring moot courts on competition law, offering competition compliance training to corporations, and promoting competition law awareness in States through CCI's State Resource Persons Scheme. Through its advocacy efforts, the CCI aims to foster a culture of competition compliance.

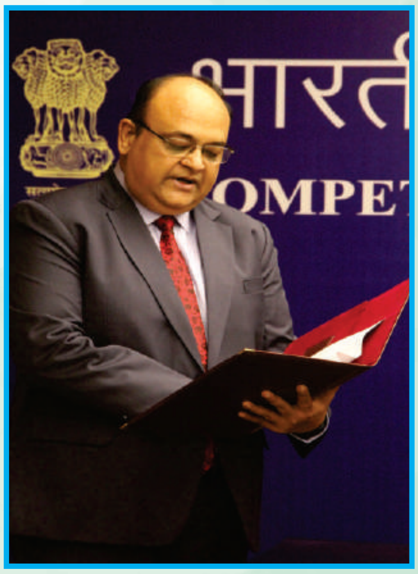
The past quarter has been fruitful for the Commission, and we eagerly anticipate the next quarter, highlighted by the 8th BRICS International Conference 2023 hosted by CCI. This prestigious three-day event, from October 11-13, 2023, aspires to foster a collaborative competition culture across borders.

The CCI remains committed to addressing competition challenges in the market and will continue its efforts to promote healthy and fair competition in the future.

Ravneet Kaur

TAKING CHARGE

Mrs. Ravneet Kaur, Chairperson, CCI, during the oath ceremony of newly appointed Members of CCI viz. Shri Anil Kumar Agrawal and Ms. Sweta Kakkad on 19.09.2023.



Shri Anil Kumar Agrawal taking the oath of office of Member, Competition Commission of India, on 19.09.2023.

Ms. Sweta Kakkad taking the oath of office of Member, Competition Commission of India, on 19.09.2023.

Shri Anil Kumar Agrawal, Member, CCI, took charge on 19.09.2023.

Ms. Sweta Kakkad, Member, CCI, took charge on 19.09.2023.

BIDDING ADIEU

Mrs. Ravneet Kaur, Chairperson, CCI, felicitating Shri Bhagwant Singh Bishnoi, Member, CCI, on his retirement on 23.08.2023.

Mrs. Ravneet Kaur, Chairperson, CCI, felicitating Dr. Sangeeta Verma, Member, CCI, on her retirement on 15.09.2023.

Shri Bhagwant Singh Bishnoi, Member, CCI, delivering farewell speech on his retirement on 23.08.2023.

Dr. Sangeeta Verma, Member, CCI, delivering farewell speech on her retirement on 15.09.2023.

Mrs. Ravneet Kaur, Chairperson, CCI, along with retiring Members, Shri Bhagwant Singh Bishnoi and Dr. Sangeeta Verma, and officers of CCI, during the farewell ceremony of Sh. Bhagwant Singh Bishnoi on 23.08.2023.

IN-FOCUS

CCI released draft Regulations in August for public comments to operationalise Settlement & Commitment framework proposed under the Competition (Amendment) Act, 2023

Introduction

Traditionally, antitrust proceedings can terminate either with the Competition Agencies finding sufficient evidence of an infringement of the competition law followed by appropriate remedies that may include a cease & desist order, monetary penalties, modifications, divestitures etc.; or they could close the case with a non-infringement decision. However, increasingly, Competition Agencies also have a third option i.e. they can accept remedies (commitments or settlements) proposed by the parties to address the identified competition concerns. If accepted, the commitments/ settlements are binding on the party and the proceedings are closed forthwith.

Such consensual dispensation for early termination procedures in competition regimes is described variously in different jurisdictions such as “commitment decisions”, “settlement”, “consent decrees”, “consent orders”, “undertakings” or “written undertakings” etc.

Such resolution framework provides myriad benefits. It facilitates quicker resolutions as compared to full-fledged antitrust investigations. This not only saves time but also the substantial resources involved in the inquiry process and subsequent follow up litigation. They also allow for the crafting of remedies tailored to the specifics of the market and the behaviour under scrutiny, which might not be possible in infringement decisions imposed after a full investigation. By swiftly addressing antitrust concerns, commitment/ settlement mechanisms can help maintain a level playing field and foster healthy competition, ensuring stability in market dynamics. When firms can swiftly rectify antitrust concerns, they can redirect their focus towards innovation and improvement rather than getting

BENEFITS OF RESOLUTION THROUGH COMMITMENT & SETTLEMENT FRAMEWORK

- Faster Market Corrections
- Reduces Litigation
- Enables Tailoring of Remedies
- Saves Time and Resources
- Allows Businesses to keep Focus on Innovation and Growth
- Cooperative Approach between Regulator and Firms
- Fosters Better Compliance Culture

embroiled in lengthy regulatory and legal battles. By opting for commitment decisions, companies can avoid the risk and uncertainty associated with legal battles, where the outcomes might be unfavourable and entail hefty fines. These mechanisms encourage a cooperative approach between regulators and firms, which can potentially foster better compliance cultures within industries, as firms work together with regulators to find solutions to competition concerns.

Competition Law Review Committee Recommendations

Recognising the benefits of negotiated outcomes, the Competition Law Review Committee in its report submitted to the Government of India in 2019 opined that under the then existing framework, while CCI has been empowered to grant leniency in cartel cases, subject to satisfaction of certain conditions, the Competition Act did not expressly recognise settlements or commitments. Against this background, the Committee deliberated if there is a need to amend the Competition Act to empower CCI to pass settlement or commitment decisions or both. The Committee agreed that procedural economy and efficiency of enforcement actions are driving factors for recognising settlements and commitments in the Competition Act. Such mechanisms are likely to enable the CCI to resolve antitrust cases faster and consequently, also free up its scarce resources. Further, businesses can avoid long investigations and uncertainty. Such negotiated remedies also enable authorities to impose innovative deterrents upon respondents while achieving equitable remedies for victims. Therefore, the Committee recommended that such a mechanism should be introduced in India.

The Committee further discussed the settlement mechanism as envisaged under the SEBI Act, 1992 and regulations issued thereunder. Under the SEBI framework, the settlement terms may include a settlement amount and/or non-monetary terms. The non-monetary terms may include suspension of business activities, exit from management, disgorgement on account of action or inaction of the applicant, lock-in of securities, etc. Other than SEBI, the Income Tax Act, 1961 also sets out a settlement framework. The Committee also took note of the position in other jurisdictions and noted that EU, UK and Singapore also provide for a settlement mechanism for antitrust cases.

The Committee also recommended that settlement framework should be applicable for alleged contraventions of agreements under Section 3(4) and the abuse of dominance under Section 4 of the Competition Act. The Competition Act should empower CCI to pass settlement orders subject to certain conditions which may include settlement amount and for non-monetary terms. With regard to timelines for submission of an application for settlement, it was agreed that the application may be filed only after receipt of the DG Report and within such time before the passing of a final order by the CCI, as may be specified by subordinate legislation. The Committee also agreed that an order granting or rejecting a settlement application should not be made appealable.

It was brought to the attention of the Committee that certain jurisdictions like the EU, the UK and Singapore also provide for commitment decisions. Typically, commitments may be structural or behavioural in nature, or a combination of both. Against this background, the Committee "deliberated if an enabling provision empowering the CCI to accept commitments may be introduced in the Competition Act. The Committee noted that commitments may enable the CCI to save its resources and may also lead to a swifter resolution of cases".

Accordingly, the Committee "recommended that the Competition Act should be amended to empower the CCI to accept commitments from parties alleged to have contravened the provisions of Section 3(4) and Section 4 of the Competition Act. The Committee also recommended that the CCI should have the discretion to accept or reject the application for commitments. Further, it was agreed that the law should enable the CCI to review its decision to accept commitments in certain circumstances, including where the concerned party has acted contrary to the terms of commitment, when there is a material change in facts on the basis of which the commitment decision was passed or where the commitment decision was based on false, misleading or incomplete information provided by the concerned party".

Introduction of Settlement & Commitment Framework under the Competition (Amendment) Act 2023

The Competition Act, 2002 (Act) aims to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India.

The Competition (Amendment) Bill, 2022, inter alia, provided for introduction of Settlement and Commitment framework to reduce litigations.

The Competition (Amendment) Bill, 2022 was introduced in the Parliament and was referred to the Parliamentary Standing Committee on Finance. The Committee submitted its report with its recommendations in December 2022. The Bill was passed by the Lok Sabha on 29 March 2023 and by the Rajya Sabha on 03 April 2023. The Bill received the Presidential assent on 11 April 2023.

Accordingly, CCI released drafts of Settlement & Commitment Regulations for public consultations on 23 August 2023 and the stakeholders were invited to submit their written comments within 21 (twenty-one) days from August 24, 2023 to September 13, 2023.

> **"The Competition (Amendment) Bill, 2022, *inter alia*, provided for introduction of Settlement & Commitment framework to reduce litigations."**

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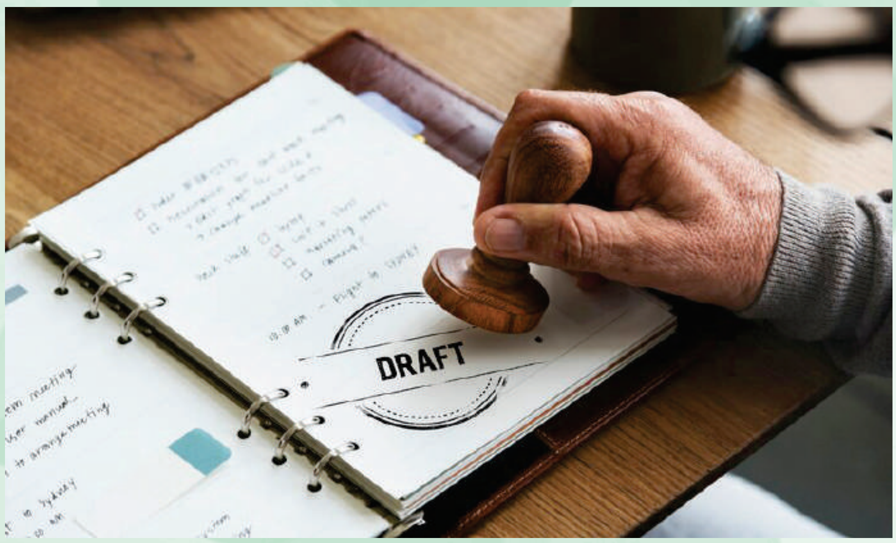
Draft Settlement & Commitment Regulations

Settlement Framework

The Competition (Amendment) Act, 2023 introduced Section 48A of the Act to create a settlement mechanism. Section 48A of the Act enables an enterprise against whom an inquiry under Section 26(1) of the Act is initiated for an alleged contravention of Section 3(4) or 4 of the Act, as the case may be, to apply for settlement before the CCI. It provides that a settlement application may be submitted at any time after the receipt of the report of the Director General but prior to such time before the passing of final order as may be specified by regulations. The intent of creating a procedure for settlement is driven by the need to reduce litigation and to ensure quicker market correction.



"The Competition (Amendment) Act, 2023 introduced Section 48A of the Act to create a settlement mechanism. Section 48A of the Act enables an enterprise against whom an inquiry under Section 26(1) of the Act is initiated for an alleged contravention of Section 3(4) or 4 of the Act, as the case may be, to apply for settlement before the CCI. It provides that a settlement application may be submitted at any time after the receipt of the report of the Director General but prior to such time before the passing of final order as may be specified by regulations. The intent of creating a procedure for settlement is driven by the need to reduce litigation and to ensure quicker market correction."

Accordingly, the CCI proposed the Competition Commission of India (Settlement) Regulations, 2023 (Settlement Regulations) and the same were released for public consultations on 23 August 2023.

The Settlement Regulations provide the procedure to be followed during settlement proceedings including the following:

a) Form and contents of the application for settlement along with fee payable;

b) Procedure of settlement proceedings;

c) Period during which settlements may be proposed;

d) Manner in which the CCI will invite objections and suggestions to the settlement terms;

e) Factors to be considered by the CCI in assessing the settlement terms;

SETTLEMENT REGULATIONS - AT A GLANCE

- Form and contents of the application for settlement along with fee payable
- Procedure of settlement proceedings
- Period during which settlements may be proposed
- Manner in which the CCI will invite objections and suggestions to the settlement terms
- Factors to be considered by the CCI in assessing the settlement terms
- Manner of determining the settlement amount
- Nature and effect of the settlement order
- Implementation and monitoring of the terms of the settlement order
- Revocation of the settlement order

f) Manner of determining the settlement amount;

g) Nature and effect of the settlement order;

h) Implementation and monitoring of the terms of the settlement order; and

i) Revocation of the settlement order.

"The Competition (Amendment) Act, 2023 introduced Section 48B of the Act to create a commitment mechanism. Section 48B of the Act enables an enterprise against whom an inquiry under Section 26(1) of the Act is initiated for an alleged contravention of Section 3(4) or 4 of the Act, as the case may be, to offer commitments before the CCI. It provides that an offer for commitments may be submitted at any time after an order directing investigation has been passed by the Commission but within such time prior to the receipt by the party of the report of the Director General, as may be specified by regulations. The intent of creating a procedure for commitment is also driven by the need to ensure quicker market correction."

Analogously, the Competition (Amendment) Act, 2023 introduced Section 48B of the Act to create a commitment mechanism. Section 48B of the Act enables an enterprise against whom an inquiry under Section 26(1) of the Act is initiated for an alleged contravention of Section 3(4) or 4 of the Act, as the case may be, to offer commitments before the CCI. It provides that an offer for commitments may be submitted at any time after an order directing investigation has been passed by the Commission but within such time prior to the receipt by the party of the report of the Director General, as may be specified by regulations. The intent of creating a procedure for commitment is also driven by the need to ensure quicker market correction.

Accordingly, the CCI proposed the Competition Commission of India (Commitment) Regulations, 2023 (Commitment Regulations) and the same were also released for public consultations on 23 August 2023.

The Commitment Regulations provide the procedure to be followed during commitment proceedings including the following:

a) Form and contents of the application for commitment along with fee payable;

b) Procedure of commitment proceedings;

c) Period during which commitments may be offered;

d) Manner in which the CCI will invite objections and suggestions to the commitment terms;

e) Nature and effect of the commitment order;

f) Factors to be considered by the CCI in assessing the commitment terms;

g) Implementation and monitoring of the terms of the commitment order;

h) Revocation of the commitment order.

Conclusion

The Settlement & Commitment framework proposed by the CCI

COMMITMENT REGULATIONS - AT A GLANCE

- Form and contents of the application for commitment along with fee payable
- Procedure of commitment proceedings
- Period during which commitments may be offered
- Manner in which the CCI will invite objections and suggestions to the commitment terms
- Nature and effect of the commitment order
- Factors to be considered by the CCI in assessing the commitment terms
- Implementation and monitoring of the terms of the commitment order
- Revocation of the commitment order

stands as a potentially transformative blueprint for ushering a new era of regulatory diligence in India. The ensuing public consultation period offers an opportunity where stakeholders including domain experts and the public at large can provide their valuable feedback which will go a long way in fine-tuning the framework, nurturing a regulatory environment which is conducive to economic growth and prevents anti-competitive practices.

As the CCI assimilates the rich tapestry of feedback garnered during this exercise, the blueprint may undergo refinements that align with the statutory framework. CCI has ensured that regulation making process remains both transparent and inclusive.

CCI published updates on release of draft Settlement & Commitment Regulations on its social media accounts to ensure mass dissemination of information to and consequent participation of stakeholders.

VERTICAL AGREEMENTS & ABUSE OF DOMINANT POSITION

CCI closed cases filed against Tata Motors (Case No. 21 of 2019 and Case No. 16 of 2020) (Date of Order 23.08.2023)

Two separate Information (s) were filed against Tata Motors Limited (Tata Motors) on behalf of two authorised dealers *inter alia* alleging that Tata Motors dictated the off-take of vehicles by its authorised dealers and imposed an obligation of acquiring an NOC before venturing into a new business in contravention of Section 4 of the Competition Act, 2002 (Act) and also imposed territorial restrictions on its dealers in contravention of Section 3(4) of the Act.

The matter was referred to the Director General (DG) for investigation and the DG found Tata Motors to be in contravention of Section 3(4) as well as Section 4 of the Act. However, the Commission, on consideration of the investigation report, found that the allegation that Tata Motors coerced its dealers to offtake vehicles as per its demands were not substantiated by the material available on record and the statements of various other dealers of Tata Motors had, in fact, refuted the allegations. The Commission agreed with the finding of DG that the mere mentioning of a clause requiring dealers to seek an NOC from Tata Motors prior to starting a new business in the absence of anything on record to show that such NOC has been withheld is not in itself in contravention of the provisions of the Act. Resultantly, no case of violation of provisions of Section 4 of the Act, was made out.

Further, the Commission observed that there was no sufficient material on record for the Commission to arrive at a finding that Tata Motors enforced its territory clause leading to an appreciable adverse effect on competition in violation of Section 3(4)(c) of the Act. Consequently, the Commission held that there was no case of contravention of the provisions of the Act by Tata Motors. Accordingly, the Commission *vide* Order dated 23.08.2023 closed the two cases against Tata Motors.

Detailed order is available at https://www.cci.gov.in/antitrust/orders/details/1090/0

MERGERS AND ACQUISITIONS

CCI approves the merger of Tata SIA Airlines into Air India and acquisition of certain shareholding by Singapore Airlines in Air India subject to compliance of voluntary commitments offered by the parties (Combination Case No. C-2023/04/1022)

The Commission, *vide* its order dated 1st September 2023, approved (a) the merger of Tata SIA Airlines Limited (Vistara) into Air India Limited (AIL/Air India) with AIL being the surviving entity (Merged Entity) and (b) in consideration of the merger, the acquisition of shares in the Merged Entity by Singapore Airlines Limited (SIA) and Tata Sons Private Limited (TSPL) and (c) acquisition of additional shares in the Merged Entity by SIA pursuant to a preferential allotment.

TSPL is an investment holding company, which is registered as a core investment company with the Reserve Bank of India and classified as a "Systemically Important Non-Deposit Taking Core Investment Company".

AIL (including its wholly owned subsidiaries Air India Express Limited and AIX Connect Private Limited) is engaged in the business of providing (a) domestic scheduled air passenger transport service, (b) international scheduled air passenger transport service, (c) air cargo transport services; and (d) charter flight services.

Vistara is a joint venture between TSPL and SIA, with TSPL and SIA holding 51% and 49% of the total shareholding, respectively. Vistara is engaged in the business of providing (a) domestic scheduled air passenger transport service, (b) international scheduled air passenger transport service, (c) air cargo transport services; and (d) charter flight services.

SIA is the parent entity for the SIA group of companies (SIA Group). The principal activities of the SIA Group consist of passenger and cargo air transportation, engineering services, training of pilots, air charters, tour activities, sale of merchandise and related activities.

The activities of the parties to the proposed combination exhibit horizontal overlaps in the areas of (a) passenger air transportation services (domestic and international), (b) air cargo transportation services (domestic and international), and (c) provision of charter flight services. Further, the parties exhibit vertical relationships in ground handling services and in-flight catering services which can used as an input by passenger air transportation service providers.

The preliminary assessment of the Commission suggested that the proposed combination is likely to result in appreciable adverse effect on competition (AAEC), as the proposed combination entails combination of two large players in the aviation sector leading to increase in level of concentration, resulting in a duopoly structure in some domestic and international O&D pairs and near monopoly in some routes between India and Singapore. Accordingly, the Commission issued show cause notice (SCN) to the parties, with the direction to respond within 30 days as to why investigation should not be conducted.

The observations from the submissions of the parties include: (i) no requirement for assessing business class services segment separately; (ii) sufficient competition in charter flight services and air cargo transportation services; (iii) discontinuation of services in certain routes by the parties are independent decisions based on commercial considerations; (iv) cost and scale efficiencies that can be achieved which would enable better planning and optimised flight schedules and frequencies; (v) presence of a large credible competitor Indigo, with large number of slots, fleet size and expansive network; (vi) supply side substitutability in terms of slots, and network character of the industry providing contestability (vii) economies of scale, scope and density in the industry (viii) instances of entry by new player Akasa and likely entry by TruJet and Fly 91.

Further, in order to address any competition concerns, the parties offered voluntary commitments which include: AIL to maintain minimum capacity/supply level on certain overlapping O&D routes *viz.* BBIDEL (Bhubaneshwar-Delhi), BLRGAU (Bengaluru-Guwahati), COKDEL (Cochin-Delhi), DELTRV (Delhi-Thiruvananthapuram), ATQDEL (Amritsar-Delhi), BBIBOM (Bhubaneshwar-Mumbai) and BLRDEL (Bengaluru-Delhi) in the domestic passenger air transportation services; and certain international routes, namely, DELSYD (Delhi-Sydney), DELMEL (Delhi-Melbourne), DELCDG (Delhi-Paris) and DELFRA (Delhi-Frankfurt) routes; AIL and SIA to maintain minimum capacity/supply level in relation to certain overlapping O&D pairs between India and Singapore *viz.* DELSIN (Delhi-Singapore), BOMSIN (Mumbai-Singapore), TRZSIN (Tiruchirappalli-Singapore) and MAASIN (Chennai-Singapore) in the international passenger air transportation services.

The Commission noted that the voluntary commitments offered by

IN A NUTSHELL

- The proposed combination envisages merger of Vistara into AIL, with AIL being the merged entity; and acquisition of additional shares in the Merged Entity by SIA.
- As the proposed combination appeared to raise prima facie competition concerns, an SCN was issued.
- Along with response to SCN, parties submitted voluntary commitments on certain domestic and international routes, to address the competition concerns, if any.
- Commission approved the combination subject to compliance of the voluntary commitments by the parties.

the parties seem to address the concerns of a likely adverse effect on competition, and thus decided not to proceed further with investigation in the matter. The Commission approved the proposed combination under subsection (1) of Section 31 of the Act, subject to compliance of voluntary commitments offered by the parties.

The detailed order of the commission can be accessed from the website of the Commission at: https://www.cci.gov.in/combination/order/details/order/1272/0/orders-section31

CCI approves the proposed combination involving Ipca Laboratories Limited and Unichem Laboratories Limited (Combination Case No. C-2023/05/1028)

The Commission *vide* its order dated 26.07.2023, approved the proposed combination comprising of: (a) Share Purchase (Pursuant to the Share Purchase Agreement-SPA), whereby Ipca Laboratories Limited (Acquirer) will purchase ~33.38% of the issued and paid-up equity voting share capital (on a fully diluted basis) of Unichem Laboratories Limited (Unichem/ Target) from Dr. Prakash Amrut Mody (Seller), and (b) Open Offer. Given that (i) the Target is a listed company and (ii) the Acquirer is acquiring >25% shareholding in the Target pursuant to the SPA, the Acquirer is required to make an open offer for the purchase of equity shares of up to 26% of the Target's equity share capital in accordance with the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. The Share Purchase and Open Offer are collectively, the Proposed Combination. Accordingly, the Acquirer will acquire ~ 59.38% shareholding of the Target on account of the Proposed Combination.

The Acquirer is a publicly listed pharmaceutical company incorporated in India and engaged in manufacture of formulations and Active Pharmaceutical Ingredients (API) for various therapeutic segments. The Acquirer also manufactures and sells APIs and intermediates in India. Further, the Godha Family directly and indirectly exercises ~36.72% shareholding in the Acquirer and is the ultimate parent entity of the Acquirer. The Acquirer Group is also engaged in business activities in the pharmaceutical sector in India.

The Target is a publicly listed pharmaceutical company incorporated in India. Dr. Prakash Amrut Mody and his family members directly and indirectly exercise ~50.93% shareholding in the Target. Globally, the Target is active in the sale of formulations, APIs, intermediates, and contract manufactured finished formulation.In India, the Target is involved in the manufacture of APIs. The Target's formulations business is completely export-oriented and the Target does not sell any formulations in India.

The Parties exhibited overlap in the overall market for the manufacture and sale of APIs at the broad level and at the narrower level in the following APIs: (i) Biosprolol Fumarate (BFu), (ii) Hydrochlorothiazide (HChl), (iii) Bendroflumethiazide (BFlu), (iv) Metoprolol Succinate (MSuc), (v) Amlodipine Besylate (ABes), (vi) Quetiapine Fumarate (QFum), (vii) Phenylephrine Hydrochloride (PHyd), and (viii) Meloxicam. Further, the Parties also exhibited a vertical relationship between the APIs i.e. (i) Amlodipine Besylate (ABes) (ii) Fenofibrate (FFrib) (iii) Lamotrigine (LTrig) (iv) Quetiapine Fumarate (QFum) and (v) Zolpidem Tartrate (ZTar) and their use as inputs in the manufacture of formulations. The Commission assessed the Proposed Combination in the segments identified by the Parties. However, exact delineation of the relevant market was left open.

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- The Proposed Combination related to pharmaceutical sector.
- The Parties exhibited insignificant horizontal overlap and vertical relationship.
- To address the potential competition concern, Parties proposed voluntary modifications, subject to which, CCI approved the Proposed Combination.

Based on the submissions of the Parties, it was noted that the incremental market shares of the Parties were insignificant both in Broad API Market as well as in each Relevant API Markets (at narrower level). Further, in relation to the vertical relationships, it was noted that the individual market shares of the Target in each of the downstream markets was insignificant and both the upstream markets and the downstream markets were characterized by the presence of other players.

Further, to address any potential competition concerns that may arise on account of Target's formulations business (given the potential horizontal overlap in formulations manufactured by the Parties and potential vertical relationship between APIs manufactured by the Acquirer and the formulations manufactured by the Target), the Parties voluntarily submitted an undertaking under Regulation 19(2) of the Competition Commission of India (Procedure regarding the transaction of business relating to combinations) Regulations, 2011, wherein it has been *inter alia* stated that Unichem will not re-enter the Indian formulations market for at least 36 months from the date of closing of the Proposed Combination.

The Commission approved the Proposed Combination under Section 31(1) of the Act subject to compliance of undertaking voluntarily submitted by the Parties. A copy of the order is available at https://www.cci.gov.in/combination/order/details/order/1278/0/orders-section31

CCI approves acquisition of Marnix Lux by Concentrix Corporation and shareholding in Concentrix by the shareholders of Marnix Lux (Combination Case No. C-2023/05/1031)

The Commission *vide* its order dated 04.07.2023, approved, direct and indirect, acquisition of Marnix Lux SA (Marnix Lux) by Concentrix Corporation (Concentrix), and acquisition of ~ 22% shareholding in Concentrix by the shareholders of Marnix Lux.

Concentrix is a USA based publicly listed customer experience (CX) services company. It offers information technology services, with a focus on business process outsourcing (BPO) services. It uses technology to provide outsourcing and information technology services to enable its clients to manage their end-customer and end-user experience. Within the ambit of BPO services, it is particularly active in the segment consisting of customer experience management (CXM) BPO and, to a lesser extent, Finance and Accounting BPO services. The CXM services encompass a range of customer experience or customer management focussed services, consisting mainly of customer relationship management (CRM) services (also referred to 'customer care' services) and other additional services such as revenue generation services, payment collection services or content moderation services.

Marnix Lux is the parent company of Webhelp S.A.S. (Webhelp). Webhelp is said to be active in the provision of BPO services and specialised services. It is active in India through two of its subsidiaries that provide BPO services such as interactive communication support services, call centre services as well as back-office processing and other BPO services.

The activities of Concentrix and Webhelp exhibit horizontal overlap broadly in the Information Technology and Information Technology enabled Services (IT and ITeS) business in India. Within IT and ITeS business, the activities of Concentrix and Webhelp overlap only in the BPO sub-segment in India. Further, within BPO sub-segment, the activities of

IN A NUTSHELL

- The Proposed Combination envisaged acquisition of Marnix Lux by Concentrix and acquisition of ~22% shareholding in Concentrix by the shareholders of Marnix Lux.
- The activities of Concentrix and Webhelp exhibit horizontal overlap broadly in IT and ITeS, BPO and CXM BPO services in India.
- Considering the limited market facing presence of Webhelp in India, the Commission observed that the proposed combination is not likely to cause an AAEC.

Concentrix and Webhelp exhibit overlap only in CXM BPO services in India.

The combined market shares of Concentrix and Webhelp for IT and ITeS, BPO and CXM BPO is 0-5%, 5-10 % and 10-15 %, respectively with insignificant incremental market share. The Commission observed that in view of the limited market facing presence of Webhelp in India, the Proposed Combination is not likely to raise any competition concerns in India.

The Commission approved the combination under sub-section (1) of Section 31 of the Act, as it was not likely to have an appreciable adverse effect on competition in India.

JUDICIAL PRONOUNCEMENT

NCLAT upheld the order of CCI in the matter of AGI Greenpac Limited (AGI)

The Hindustan National Glass & Industries Limited (HNG) was admitted to insolvency by an order dated 21.10.2021 passed by the National Company Law Tribunal, Kolkata. On 21.07.2022, AGI filed a Resolution Plan for acquisition of HNG. The AGI filed a Notice under Form-1 of the Competition Commission of India (the Commission) seeking approval of proposed Combination. The CCI on 21.10.2022 declared Form-1 filed by AGI as invalid. On 03.11.2022, AGI gave a Notice under Section 6, sub-section (2) of the Act regarding the proposed combination in Form-2.

Further, CCI formed a *prima facie* opinion that the proposed combination is likely to cause an Appreciable Adverse Effect on Competition (AAEC) in relevant market(s) in India. Therefore, a show-cause notice dated 10.02.2023 under Section 29, sub-section (1) of the Act was issued to the Acquirer, wherein the Acquirer was directed to respond as to why investigation in respect of the proposed combination should not be conducted. The Acquirer/AGI then submitted a response to show-cause notice. Along with reply to show-cause notice, AGI submitted certain voluntary modifications.

The Commission considered the response to the show-cause notice and voluntary modification submitted by AGI and after analysis of modification proposed by AGI came to the conclusion that modification proposed by the Acquirer *prima facie* addressed the concern of the likely AAEC by the Acquirer. Consequently, an order was passed on 15.03.2023 under Section 31, sub-section (1) of the Act, approving the proposed combination.

The order dated 15.03.2023 approving the combination in response to the notice given by AGI, was challenged before the Hon'ble NCLAT.

The Hon'ble NCLAT *vide* judgement dated 28.07.2023 upheld the order of CCI and held that the Commission adopted the practice which was throughout followed by the Commission in taking a decision after receipt of the modification proposal from the Acquirer. The Hon'ble NCLAT also held that order of the Commission dated 15.03.2023 had been passed in accordance with the procedure prescribed under the Act and the Regulations and the Commission in its order had considered all relevant aspects and the materials on record and has not committed any error in approving the combination in exercise of its power under Section 31, sub-section (1). As no grounds had been made out to interfere with the order dated 15.03.2023, the appeals were dismissed.

Madras High Court dismissed the Writ Petitions filed by Dalmia Cement (Bharat) Ltd. [Dalmia Cement (Bharat) Ltd. v. CCI & Ors. WP No. 22263/2023] & The India Cements Ltd. [The India Cements Ltd. v. CCI & Anr. WP No. 22045/2023]

The writ petitions were filed before the Hon'ble High Court of Madras challenging the order dated 05.07.2023 passed by CCI in Suo Motu Case No. 02/2019, by which the impleadment application filed by Builders Association of India (BAI) was allowed and BAI was impleaded as a party in proceedings pending before CCI.

The first issue before the Court was whether any part of the cause of action had arisen within the territorial jurisdiction of Madras High Court. The second issue was whether the High Court can entertain the writ petition as similar issue is pending before the Delhi High Court.

After detailed arguments, the Hon'ble High Court dismissed the writ petitions vide final order dated 14.08.2023 on the ground of lack of territorial jurisdiction.

Delhi High Court disposed of the Writ Petition filed by Indian Netizens & Internet Entrepreneurs Welfare Association [Indian Netizens and Internet Entrepreneurs Welfare Association (INIEWA) v. CCI WP No. 11052/2023]

A writ petition was filed by INIEWA challenging the order dated 22.06.2022 passed by CCI rejecting its application for impleadment under Regulation 25 of CCI General Regulations, 2009 in CCI Case No. 16/2021.

The said application was rejected by CCI on the ground that the investigation was at an advanced stage and INIEWA was not able to show any satisfactory cause in the matter. However, CCI gave liberty to INIEWA to submit all the documents/information before the DG.

Considering the fact that INIEWA had already furnished information before the DG in view of the liberty granted by the Commission, the Hon'ble High Court disposed of the writ petition vide order dated 21.08.2023. The Court further directed that it is open for INIEWA to seek audience before CCI by filing application under Regulation 25 of CCI Regulations as and when the investigation is complete and it is open for CCI to entertain the application on its own merits and in accordance with law.

ADVOCACY INITIATIVES

1. Shri Sukesh Mishra, Director (Law), addressed the participants on the topic “Practical Aspects of Competition Law” during the Faculty Development Programme (FDP) on “Changing the Contours of Teaching and Research: Approaches Towards Outcome Based Legal Education” organized by School of Law, Christ (Deemed to be University) Delhi-NCR, Ghaziabad on 03.07.2023.

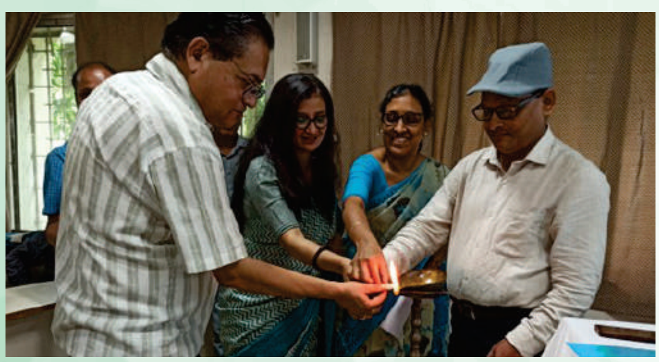
2. Ms. Payal Malik, Adviser (Economics), addressed the participants as Keynote Speaker in the International Conference on "Competition Law in the Digital Age: Adapting to New Realities" organised by The Dialogue at New Delhi on 06.07.2023.

3. Shri K. P. Anand, Joint Director (Law), delivered a lecture on "An Overview and evolution of Competition Law in India" in the Lecture Series on Competition Law conducted by School of Legal Studies, Central University of Tamil Nadu, Thiruvarur on 07.07.2023.

4. Ms. Sayanti Chakrabarti, Director (Economics), delivered a lecture on "Competition Law" at a programme organized by The Indian Chamber of Commerce and Industry, Coimbatore, Tamil Nadu on 07.07.2023.

5. Mrs. Ravneet Kaur, Chairperson, CCI, delivered the Valedictory Address as Chief Guest, at the concluding session of Two-Days Workshop on "Leadership Development for Women Executives in CPSEs" organized by SCOPE at SCOPE Convention Centre, New Delhi, on 14.07.2023.

6. Ms. Sayanti Chakrabarti, Director (Economics), conducted an Advocacy Session on "Economics of Competition Law" at the University of Kalyani, Nadia, West Bengal on 17.07.2023.



7. Dr. Sangeeta Verma, Member, CCI, addressed the participants on “Competition Law for Shaping the Future of the Indian Economy” at the 49th Advanced Professional Programme in Public Administration conducted by Indian Institute of Public Administration at New Delhi on 21.07.2023.

8. Shri K. P. Anand, Joint Director (Law), addressed members of NASSCOM, Tamil Nadu & Puducherry at an advocacy programme at Chennai on 24.07.2023.

9. Shri Anuj Verma, Deputy Director (FA), addressed the participants at Arun Jaitley National Institute of Financial Management (AJNIFM), at Faridabad, Haryana on “Competition Issues in Public Procurement” on 26.07.2023.

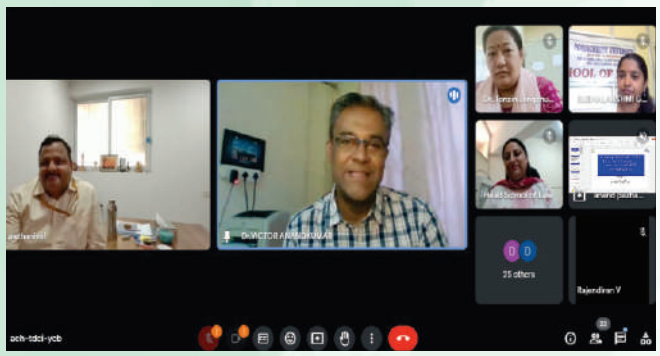
10. Mrs. Ravneet Kaur, Chairperson, CCI, delivered keynote address as Guest of Honour, on the topic “Role of the Competition Commission in the Digital Business Era: Issues and Challenges” during an event organised by EBG Federation at New Delhi on 26.07.2023.

11. Ms. Payal Malik, Adviser (Economics), delivered a lecture in the Knowledge Sharing Session on Competition Law and Practice organized by the Department of Investment and Public Asset Management (DIPAM), Ministry of Finance at New Delhi on 28.07.2023.

12. Shri Rajinder Kumar, Director (Economics), delivered a lecture on “Competition Law: Emerging Issues & Challenges” at MNLU, Nagpur on 28.07.2023.

13. Shri Mukul Sharma, Joint Director (Economics), addressed students and faculty of Bharati Vidyapeeth (Deemed to be University) on “Career in Competition Law and its Overview” in an orientation program at New Delhi on 03.08.2023.

14. Shri K. P. Anand, Joint Director (Law), delivered a lecture on “Balancing Innovation and Market Dynamics: A Discussion on the Interplay between IPR and Competition Law” in the lecture series organised by School of Law, Pondicherry University, Puducherry in virtual mode on 04.08.2023.

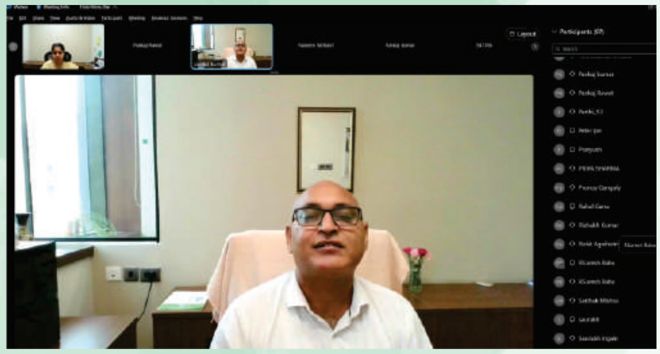


15. Shri V. Sriraj, Joint Director (Law), delivered a lecture on “Latest Amendments in Competition Law” in the lecture series organised by School of Law, Pondicherry University, Puducherry in virtual mode on 11.08.2023.

16. Ms. Sayanti Chakrabarti, Director (Economics), delivered a lecture on “Competition Law” in the Workshop organised by ICSI Guwahati (North Eastern Chapter), at Guwahati, Assam on 19.08.2023.

17. Ms. Sunaina Dutta, Joint Director (Law), delivered a lecture on “Overview of Competition Law and its Role in the Indian Economy” at Faculty of Law, SGT University, Gurugram on 21.08.2023.

18. Shri Pankaj Kumar, Joint Director (FA), delivered lecture on "Competition Compliance for Enterprises" for the employees of Maruti Suzuki India Limited through virtual mode on 24.08.2023.



19. Shri Rajinder Kumar, Director (Economics), addressed students & faculty members of School of Development Studies, Tata Institute of Social Sciences (TISS), Mumbai on “Competition Law & Digital Platform Markets” on 25.08.2023.

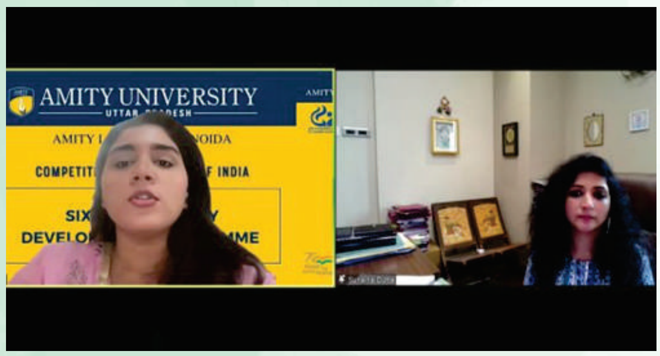
20. Shri K.P. Anand, Joint Director (Law), delivered a lecture on “Competition Law, its latest developments and its impact towards MSME Industry” in the programme organised by Tamil Nadu Small and Tiny Industries Association, Chennai and Friedrich Naumann Foundation (FNF), Germany during their Annual Day celebration at Chennai on 26.08.2023.

21. Dr. Navdeep Singh Suhag, Deputy Director (Law), addressed participants of AJNIFM on “Competition issues in Public Procurement” at Faridabad, Haryana on 30.08.2023.

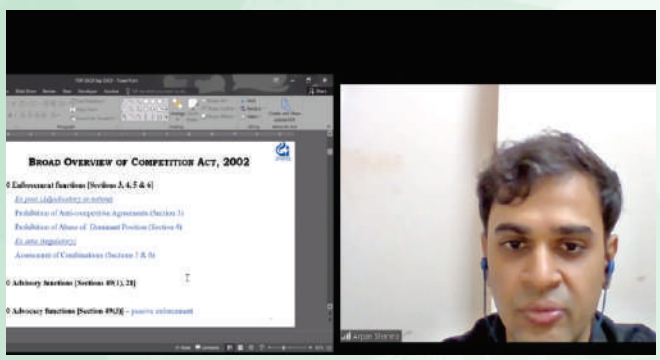
22. Ms. Sayanti Chakrabarti , Director (Economics), delivered a lecture on “Regulation of Competition in Digital Markets” as a part of CCI-NUJS Expert Guest Lecture Series at the West Bengal National University of Juridical Sciences, Kolkata on 01.09.2023.

23. Shri Mukul Sharma, Joint Director (Economics), delivered a lecture on “Economics of Competition Law” in the Faculty Development Programme (FDP) at Amity University, Noida in virtual mode on 06.09.2023.

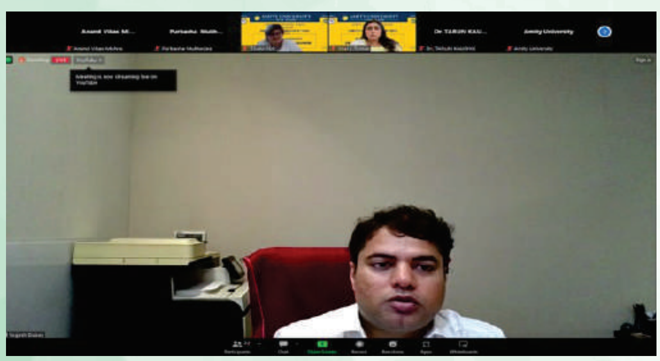
24. Ms. Sunaina Dutta, Joint Director (Law), delivered a lecture on “Amendments to the Competition Act, 2002- Way forward” in the FDP at Amity University, Noida in virtual mode on 06.09.2023.



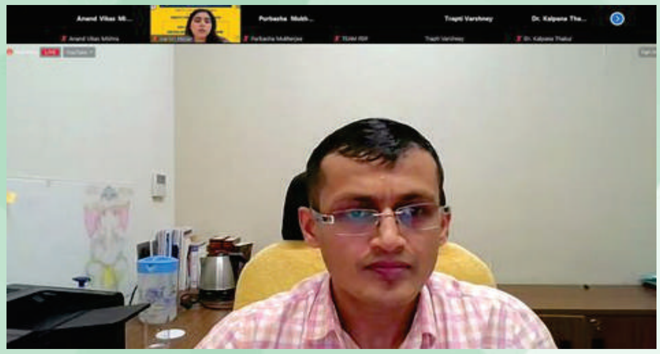
25. Shri Arpan Sharma, Deputy Director (Law), delivered a lecture on “Contours of Anti-Competitive Agreements and Developments so Far” in the FDP at Amity University, Noida in virtual mode on 08.09.2023.



26. Shri Yogesh Kumar Dubey, Joint Director (Economics), delivered a lecture on “Exclusionary and Discriminatory Conduct under Competition Law- an analysis” in the FDP at Amity University, Noida in virtual mode on 11.09.2023.



27. Shri Anshul Jain, Deputy Director (FA), delivered a lecture on "Regulation of Combinations and its working in India" in the FDP at Amity University, Noida in virtual mode on 11.09.2023.



28. Shri V. Sriraj, Joint Director (Law), addressed the members of Indo-Amercian Chamber of Commerce (IACC), on "Competition Law" at Chennai on 12.09.2023.

29. Mrs. Ravneet Kaur, Chairperson, CCI was the Chief Guest and addressed the participants on "Digital Competition Law" in the Competition Law Townhall organised by Competition Advisory Services (COMPAD) in virtual mode on 13.09.2023.

30. Shri Rajinder Kumar, Director (Economics), delivered a lecture on "Competition Law & Public Procurement- Issues & Challenges" in the National Summit on Public Procurement organised by Indian Institute of Material Management (IIMM), Mumbai on 15.09.2023.

31. Mrs. Ravneet Kaur, Chairperson, CCI, delivered a keynote address during the Conference on "What's next in Competition Law and Regulations of the Digital Economy in India" organised by NLU Delhi in association with Competition Policy International at New Delhi on 15.09.2023.

32. Shri Sachin Goyal, Joint Director (FA), was a panelist in the panel discussion on “Crafting Effective Remedies: Insights from Commitments, Settlements and Global Best Practices” in the Conference organised by NLU Delhi in association with Competition Policy International (CPI) at New Delhi on 15.09.2023.

33. Ms. Bhawna Gulati, Joint Director (Law), was a panelist in the panel discussion on “Refining Fine Guidelines: Proportionality, Mitigating Circumstances and Unintended Consequences in Leniency Plus Regime” in the Conference organised by NLU Delhi in association with CPI at New Delhi on 15.09.2023.

34. Shri Shiv Ram Bairwa, Director (Law), delivered a lecture on “Competition Compliance” for the employees of Paytm, at Noida, on 15.09.2023.

35. Ms. Jyotsna Yadav, Joint Director (FA), delivered a lecture on “Competition Law and Public Procurement” at the Vendor's Meet organised by Indian Oil Corporation Limited (IOCL) at New Delhi on 15.09.2023.

36. Shri Anuj Verma, Deputy Director (FA) , delivered a lecture on "Competition Law, Historical Evolution, Mandate & latest Amendments" in the Executive Programme in Business and Corporate Laws (EPBCL) organised by IIM Calcutta in virtual mode on 17.09.2023.

37. Shri Shekhar, Director (FA), delivered a lecture on "Analysis of anti-competitive agreements with case laws" in the Executive Programme in Business and Corporate Laws (EPBCL) organised by IIM Calcutta in virtual mode on 17.09.2023.

38. A total of 46 students underwent the internship programme at CCI in July, August and September 2023.

Interns of July, 2023 Batch

Interns of August, 2023 Batch

Interns of September, 2023 Batch

ADVOCACY WITH STATES

State	Resource Person(s)	Date	Organisation for which programme was conducted
Andhra Pradesh	Shri N.V. Ramana Raju	31.07.2023	Andhra Pradesh Pollution Control Board, Vijayawada
		31.07.2023	Andhra Pradesh State Co-operative Marketing Federation Limited, Vijayawada
		28.08.2023	Andhra Pradesh State Housing Corporation Limited (APSHCL), Vijayawada
		29.08.2023	Office of Director of Backward Classes Welfare A.P, Vijayawada
Assam	Shri Umesh Kumar and Shri Tanuj Goswami	19.07.2023	Office of Superintendent of Police, Kokrajhar district
		22.07.2023	Office of Superintendent of Police, Dhubri district
		27.07.2023	Office of The Director General of Civil Defence and Commandant General of Home Guards, Guwahati
		28.07.2023	Assam Police Radio Organisation, Guwahati
		07.08.2023	Office of the Director of Fire & Emergency Services, Guwahati
		09.08.2023	Office of Superintendent of Police, Morigaon District
		21.08.2023	Office of Additional Chief Engineer Assam Power Distribution, Jorhat District
		30.08.2023	Directorate of Geology and Mining, Guwahati
		02.09.2023	Office of the District Commissioner, Jorhat
		12.09.2023	Office of the Basin Manager,Oil and Natural Gas Corporation, Jorhat
		14.09.2023	Superintendents of Police, Tinsukia District
Himachal Pradesh	Shri Rangilu Ram Patyal	06.07.2023	Himachal Pradesh State Audit Department, Shimla
		18.07.2023	Office of Commissioner of Municipal Corporation, Mandi district
		08.08.2023	Directorate of Health Safety and Regulation, Shimla
		11.08.2023	Office of Chief Medical Officer, Shimla
		11.09.2023	Office of Mission Director, Himachal Pradesh National Health Mission, Shimla
		18.09.2023	Rural Development Department and Panchayati Raj Department, Mandi District
Karnataka	Dr. M.N. Karur and Shri H. Prakash	03.08.2023	District Industries Centre and Hosakote Industrialists Welfare Forum in Hosakote, Bengaluru Rural District
		19.08.2023	District Industries Centre and industrialists, Mandya District

Odisha	Shri Chudamani Seth and Shri Ananda Satpathy	07.07.2023	Directorate of Health Services, Bhubaneshwar
		07.07.2023	Odisha State Warehousing Corporation, Bhubaneshwar
		21.07.2023	Odisha Small Industries Corporation, Bhubaneshwar
		21.08.2023	Odisha Tribal Empowerment & Livelihood Programme, ST & SC Development Department, Bhubaneshwar
		18.09.2023	Revenue Officers Training Institute under Revenue & Disaster Management Department , Government of Odisha, Bhubaneswar
Puducherry	Dr. S. Vaitianadane	23.08.2023	Institute of Cost and Management Accounts of India, Puducherry
Telangana	Shri R.C. Kumar and Shri V. Prasanna Kumar	06.07.2023	Telangana State Co-operative Apex Bank Limited (TSCAB), Hyderabad
		14.07.2023	Telangana State Medical Services & Infrastructure Development Corporation (TSMSIDC), Hyderabad
		21.07.2023	Bharat Dynamics Limited (BDL), Hyderabad
		26.07.2023	National Institute of Rural Development and Panchayati Raj (NIRDPR), Hyderabad
		09.08.2023	ICMR- National Animal Resource Facility for Bio-Medical Research (NARFBR), Hyderabad
		23.08.2023	Federation of Indian Chambers of Commerce & Industry (FICCI), Hyderabad
		24.08.2023	Mishra Dhatu Nigam Ltd. (MIDHANI), Hyderabad
		31.08.2023	Centre for Materials for Electronics Technology (C-MET), Hyderabad
		12.09.2023	Telangana State Disaster Response and Fire Services Department, Hyderabad
		13.09.2023	Scientific and Industrial Research-Indian Institute of Chemical Technology (CISR-IICT), Hyderabad
		14.09.2023	Council of Scientific and Industrial Research-National Geophysical Research Institute (CISR-NGRI), Hyderabad
Uttarakhand	Shri Rajiv Rautela	03.07.2023	Social Welfare Department, Government of Uttarakhand in Dehradun
		04.07.2023	Uttarakhand Transport Corporation, Dehradun
		01.08.2023	Minor Irrigation Department, Government of Uttarakhand, Dehradun
		08.08.2023	Power Transmission Corporation of Uttarakhand Limited, Dehradun
		04.09.2023	Department of Irrigation, Govt of Uttarakhand, Dehradun
		05.09.2023	Uttarakhand Jal Sansthan, Dehradun

Uttar Pradesh	Shri Laxmi Shanker Singh	26.07.2023	Departments of Panchayati Raj, Animal Husbandry, Rural Development, Municipal Council, etc., Basti district
		27.07.2023	Departments of Panchayati Raj, Rural Development, Municipal Council, Health, Education, etc., Sant Kabir Nagar district
		02.08.2023	Departments of Panchayati Raj, Animal Husbandry, District Panchayat, Village Development, Rural Engineering, Local Body and Urban Development, Education, Public Works, Medical and Health, etc, Shahjahanpur District
		10.08.2023	Departments of Panchayati Raj, Animal Husbandry, Rural Engineering, Local Body & Urban Development, Education, Public Works, Health, etc, Moradabad District

8th BRICS ICC 2023

BRICS, an acronym for Brazil, Russia, India, China, and South Africa, represents a dynamic and influential bloc of emerging economies on the global stage. BRICS brings together five of the largest developing countries of the world, representing around 41% of the global population, around 24% of the global GDP and around 16% of global trade.

The group formally came into existence in the year 2009 with the first meeting of BRIC leaders in Yekaterinburg, Russia. The leaders issued a declaration calling for the establishment of an equitable, democratic and multipolar world order. The group became BRICS with the joining of South Africa in 2011 at Sanya summit. Since then, BRICS leaders regularly meet in annual summits. Over a period of time, BRICS countries have come together to deliberate on important issues under the three pillars of political and security, economic and financial, and cultural and people to people exchanges.

The 15th BRICS Annual Summit held under the theme: "BRICS and Africa: Partnership for Mutually Accelerated Growth, Sustainable Development and Inclusive

Multilateralism" on 22-24 August, 2023 at Johannesburg, South Africa. The theme emphasises the continued value of BRICS as a partnership of leading emerging markets and developing countries providing leadership and momentum towards global growth and sustainable development. On the issue of competition, BRICS countries agreed to continue to deepen cooperation on competition amongst BRICS countries and create a fair competition market environment for international economic and trade cooperation.

The 15th BRICS Summit has also marked a historic turning point for this influential coalition of nation as the leaders have agreed to include six additional countries, namely, Argentina, Egypt, Iran, Saudi Arabia, Ethiopia, and UAE into BRICS which will take effect from 1st January, 2024.

BRICS Competition Cooperation

The BRICS countries, known for their prominent position in the global economy and competition policy landscape, have consistently endeavoured to advance and fortify cooperation in the domain of competition law and policy. The ever-evolving dynamics and transformations experienced by global markets have underscored the paramount importance of fostering cooperation and open dialogue among BRICS nations. Nonetheless, the establishment of fair and competitive markets is not without its challenges. In light of these challenges, there arises a need for enhanced cooperation in competition law and policy, particularly among BRICS competition authorities. Accordingly, the BRICS International Competition Conference (BRICS ICC) was contemplated in 2009 with a focus on challenges of competition policy development in BRICS countries.

BRICS ICC is aimed at promoting cooperation, experience sharing and mutual learning amongst the competition authorities of BRICS countries. The genesis of the conference can be traced to the BRICS (then BRIC) Summit in Yekaterinburg, Russia on 16th June 2009, wherein a joint declaration was issued highlighting the need for cooperation in various aspects of economic growth and sustainable development. The first BRICS ICC was hosted in September, 2009 in Kazan, Russia, by the Federal Antimonopoly Service of Russia. Subsequently, the conferences were organised by China in 2011, India in 2013, South Africa in 2015, and Brazil in 2017. The second round of BRICS ICC began with Russia hosting the conference in 2019, followed by China in 2021. The 8th BRICS ICC 2023 is now to be hosted by India.

8th BRICS ICC

The Competition Commission of India (CCI) will be organising the 8th BRICS ICC during 12-13 October 2023 at The Ashok, New Delhi, on the theme "*New Issues in Competition Law and Policy - Dimensions. Perspectives. Challenges*". This two-day international conference commences with registration and reception dinner in the evening of 11th October 2023.

BRICS 2023 will be a seminal event for CCI as it will be held in India after a decade. Around 350 delegates from the competition authorities of BRICS as well as non-BRICS nations, eminent competition experts, non-government advisors and domestic

invitees are expected to attend the conference. CCI has extended an invitation to the Hon'ble Prime Minister of India to inaugurate the event. Smt. Nirmala Sitharaman, the Hon'ble Union Minister of Finance and Corporate Affairs will deliver the keynote address during the inaugural session.

The conference will aim to discuss various emerging issues and challenges in competition enforcement in BRICS countries and take forward the agenda of cooperation among the BRICS competition authorities.

CAPACITY BUILDING

1. CCI organised 2nd Virtual Meet/Webinar of Network of Indian Competition Expert (NICE) on 05.07.2023. This year's research theme is Competition and Sustainability. During the webinar, NICE Members shared their views and developments on their proposed studies on Competition & Sustainability.

2. Shri Vikrant, Office Manager (CS) and Shri Dharma Dasari, Office Manager (CS), attended a residential Management Development Program on Public Procurement (Basic) organised by Arun Jaitley National Institute of Financial Management (AJNIFM), Faridabad during 10-15.07.2023.

3. CCI organized five days' *Attachment Programme* for 13 Indian Corporate Law Services (ICLS) Officer Trainees (Batch-12) as part of their Professional Course under On the Job (OTJ) Training Programme during 19-25.07.2023.

4. A virtual Peer-to-Peer (P2P) session was conducted by Ms. Bhawna Gulati, Joint Director (Law), on 17.08.2023 on the key takeaways from the International Competition Networks (ICN) Annual Conference, attended by the officer during 04-06.05.2022, in Berlin, Germany.

5. 42nd lecture under CCI's Special Lecture Series (SLS) was delivered by Dr. Alka Chawla, Professor of Law, University of Delhi on “Copyright, Plagiarism and Fair Dealing: Balance Between Private and Right of Public” on 18.08.2023.

6. In-house workshop on “Preventive Vigilance” was conducted for the officers & staff of CCI, on 25.08.2023 by Shri Praveen Prakash Ambashta, Dy. Chief Commissioner for Persons with Disabilities.

7. Shri Dheeraj Malhotra and Ms. Savita, Office Managers (CS) attended residential Program on “Facilitation Skill” organised by Institute of Secretarial Training & Management (ISTM), Delhi from 28-30.08.2023.

8. Mrs. Ravneet Kaur, Chairperson, CCI and Dr. Sangeeta Verma, Member, CCI, along with the senior officers of CCI, interacted with IAS officers (Assistant Secretaries of MCA Batch-2021) on Competition Law and Policy, in a briefing session and visit organised by CCI.

ENGAGING WITH THE WORLD

1. Shri Ashutosh Kumar, Joint Director (Economics), participated in the WTO Workshop on Competition Policy, Trade and Development during 10-12 July 2023 in Geneva, Switzerland.

2. Mrs. Ravneet Kaur, Chairperson, CCI and Shri Sachin Goyal, Joint Director (FA), participated in the Conference on "Antitrust Enforcement: Between Globalisation and Deglobalisation" organized by International Chamber of Commerce (ICC) on 21st July, 2023 in Tokyo, Japan. On the sidelines, a bilateral meeting was held with Mr. Kazuyuki Furuya, Chair, Japan Fair Trade Commission (JFTC), on mutual cooperation.

Mrs. Ravneet Kaur, Chairperson, CCI and Mr. Kazuyuki Furuya, Chair, JFTC

3. Ms. Neha Raj Kochhar, Joint Director (Law), attended online webinar on draft 2023 merger guidelines organized by U.S. Department of Justice's Antitrust Division and Federal Trade Commission during 25-26 July, 2023. The webinar was also attended by Shri Vipul Puri, Joint Director (FA) and Shri Arpit Gupta, Deputy Director (Economics), through virtual mode on 26.07.2023.

4 Dr. Anil Kumar, Joint Director (CS), attended online webinar on thirteenth anniversary of the entry into force of the first Federal Economic Competition Law, Mexican Competition Authority, during 07-08.09.2023.

ECO-WATCH

National Green Hydrogen Mission: Creating Competitive Markets

International Conference on Green Hydrogen' (ICGH) was organised in July 2023 by the Ministry of New and Renewable Energy, Government of India (GoI). The conference is being seen as part of the GoI's endeavour towards energy transition. The ICGH 2023 brought together stakeholders from India and across the world, in order to explore how we could establish a green hydrogen ecosystem and foster a systemic approach for meeting the global goals for decarbonisation. Apart from domain-specific research interactions on hydrogen production, storage, distribution and downstream applications, the conference also discussed green financing, human resource up skilling, and start-up initiatives in this area. It is pertinent to note that India's National Green Hydrogen Mission is already underway to help achieve India's target of Net Zero by the year 2070. The Mission envisages building capabilities to produce at least five million metric tonnes (MMT) of Green Hydrogen per annum by 2030, with a potential to reach ten MMT per annum with the growth of export markets.

As India's growth story unfolds, its demand for energy and resources is set to rise. The rising threat of global warming and our dependence on fossil fuels necessitates a shift towards renewable sources in the energy mix. Transition to Green Hydrogen is, therefore one of the major requirements for the reduction of emissions, especially in the hard to abate sectors.

The Green Hydrogen Mission focuses on making hydrogen price-competitive in comparison to other energy fuels. The Mission outlines the guidelines for transparent competitive bidding for the procurement of Green Hydrogen and its derivatives, in order to achieve scale and stability. A competitive bidding process will have the capability of enabling an efficient and transparent price discovery of Green Hydrogen.

Further, under the Strategic Intervention for Green Hydrogen Transition (SIGHT) Programme of the Mission, selection process for the procurement of Green Hydrogen would be facilitated through a competitive bidding process in different modes. Two modes of implementation identified so far include bidding on least incentive demanded over the three-year period and another is calling for bids at lowest cost after aggregating overall demand for Green Hydrogen. Such a process will facilitate competition in procurement by promoting efficiency and providing a level playing field to the market players. This process will entail selection of suppliers providing the best 'value for money' through a market mechanism avoiding administered pricing. Eventually, fair dealing & competition in procurement will not only help the procurer to get the best deal but will also help our country to use the resources effectively.

Further, under the National Green Hydrogen Mission, innovative MSMEs and startups working on indigenous technology development and adaptation will be encouraged through specific support mechanisms. This is expected to promote new entry of firms in the green energy sector. Start-up or nascent firms will play a vital role in promoting competition with their focus on innovation, new markets/products, thereby making the green energy market more dynamic. New Entry in the market will foster competition based on price, quality, and innovation. Ultimately, the use of Green Hydrogen will play a crucial role in ensuring India's energy independence and Net Zero goals.

It is pertinent to note that innovation and focus on developing more efficient and cost-effective electrolysis processes, storage solutions, and transportation methods for hydrogen will drive down the production costs and improve the overall competitiveness of Green Hydrogen. Moreover, as demand for Green Hydrogen grows, economies of scale come into play. Larger production facilities can often produce hydrogen more cost-effectively than smaller ones. This encourages competition among companies to build larger, more efficient production facilities, further driving down costs.

The Green Hydrogen Mission can contribute to the country's long-term economic competitiveness and growth via facilitating competition through market creation of Green Hydrogen, enabling technological innovation in the green energy market and allowing new players to enter thereby increasing efficiency.

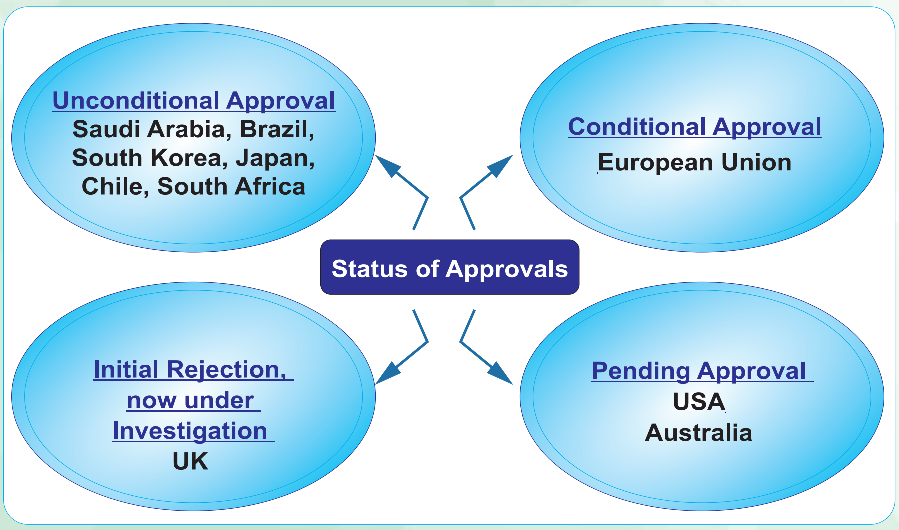
The role of competition policy and enforcement in supporting and incentivizing sustainable business practices is increasingly becoming important. Competition accompanied with pro-competitive regulations, technology, and well-functioning markets can ensure success of the Mission and help India reach the designated carbon-neutrality targets.

DEVELOPMENTS IN OTHER JURISDICTIONS

I. Digital Markets

1. Microsoft – Activision Blizzard: A Multi-Billion Dollar Acquisition to create a Goliath in the Gaming Industry

Microsoft Corp. announced in January 2022 that it had agreed to acquire Activision Blizzard Inc., a leading video game developer, and its blockbuster gaming franchises such as *Call of Duty* for a purchase price of USD 68.7 billion. It is Microsoft's largest ever acquisition as well as the largest ever acquisition in the video gaming industry. Activision is one of the three major video game developers in the world along with Microsoft and Sony that creates and publishes high-quality video games for multiple devices and has millions of monthly active users around the world. The concern surrounding this proposed acquisition is that it would enable Microsoft to foreclose competitors to its Xbox gaming consoles and its rapidly growing subscription content and cloud-gaming business. The acquisition was conditional on receiving a clearance from several global competition agencies. Following is the representation of status of approvals across jurisdictions so far:



Microsoft submits a restructured Activision acquisition deal for review after CMA confirms original deal is blocked

The CMA has opened a new phase 1 investigation into a new, restructured deal by Microsoft to buy Activision. Previously, CMA had blocked the deal to protect innovation and choice in cloud gaming. Microsoft has stated that the restructured deal is intended to address the concerns set out in the CMA's Final Report which had also included the binding commitments agreed to in EU and a licensing deal agreed between Sony and Microsoft.

Under the restructured deal, Microsoft will not acquire cloud rights for existing Activision PC and console games, or for new games released by Activision during the next 15 years (this excludes the European Economic Area). Instead, these rights will be divested to Ubisoft Entertainment SA (Ubisoft) prior to Microsoft's acquisition of Activision. In other words, Microsoft will sell the cloud streaming rights for all current and new Activision games released over the next 15 years to French game studio Ubisoft Entertainment.

In particular, the transaction is intended to provide an independent third-party content supplier, Ubisoft, with the ability to supply Activision's gaming content to all cloud gaming service providers (including to Microsoft itself). Ubisoft will be able to license out Activision's content under different business models, including subscription services. The deal also proposes that Ubisoft would have the ability to require Microsoft to provide versions of games on operating systems other than Windows.

2. Proposed Acquisition of iRobot by Amazon

Brief background

Amazon provides an online marketplace (Amazon Stores), which allows retailers to advertise and sell products including Robot vacuum cleaners (RVCs) to customers. Amazon is active as a retailer of various products (including RVCs) on its marketplace. Amazon also offers the Alexa voice assistant.

iRobot manufactures RVCs and sells them also on Amazon's online marketplace.

EC opens in-depth investigation

EC has opened an in-depth investigation to assess, under the EU Merger Regulation, the proposed acquisition of iRobot by Amazon.

EC's preliminary investigation indicates that the transaction may allow Amazon to:

i. restrict competition in the market for the manufacturing and supply of RVCs; and

ii. strengthen its position in the market for online marketplace services to third-party sellers (and related advertising services) and/or other data-related markets.

EC's preliminarily investigation found that-

i. Amazon's online marketplace is a particularly important channel to sell RVCs in several EU Member States.

ii. Amazon may have the ability and the incentive to foreclose iRobot's rivals by preventing them from selling RVCs on Amazon's online marketplace and/or by degrading their access to it through several strategies.

iii. Amazon may have the ability and the incentive to foreclose iRobot's rivals by preventing them from accessing the existing and/or future Application Programming Interfaces of Amazon's Alexa software as well as the 'Works with Alexa' ('WWA') certification and/or by degrading such access. Interoperability with the Alexa software and access to the WWA certification appear to be important selling points for RVC manufacturers and suppliers to compete.

iv. Amazon would obtain access to iRobot's users' data, including: (i) information provided by iRobot's RVCs users; (ii) information collected by iRobot's RVCs; and (iii) information collected by iRobot from third parties. This data may provide Amazon with an important advantage in the market for online marketplace services to third-party sellers (and related advertising services) and/or other data-related markets.

UK's CMA clears the proposed acquisition

CMA cleared the proposed acquisition after a Phase-I investigation. CMA has found that there would be sufficient remaining competitive constraints to ensure that the acquisition does not give rise to competition concerns in relation to loss of future competition. Further, CMA found that Amazon's strong position in online retail in the UK means that though it would have the ability to disadvantage RVC competitors following the acquisition, but given the size of the market in the UK, and the limited strategic benefit to be gained means that it would not have the incentive to do so.

3. Limits of Data Breach in The Realm of Antitrust Law: CJEU's Take on Meta

In its recent judgment against Meta (formerly Facebook), the Court of

Justice of European Union (CJEU) held that a national competition authority can rule on infringement of General Data Protection Regulation (GDPR) in the context of examination of abuse of dominant position by an enterprise.

The proceedings against Meta began at the German Federal Cartel Office (Bundeskartellamt) in 2019 wherein Meta was prohibited from combining user data from several sources without the users' consent. Bundeskartellamt held that the infringement of the GDPR constituted an abuse of Meta's dominant position.

The court noted the fact that the operator of an online social network, as controller, holds a dominant position on the social network market does not, as such, prevent its users from validly giving their consent, within the meaning of the GDPR, to the processing of their personal data by that operator. However, since that position is liable to affect the freedom of choice of those users and create a clear imbalance between them and the data controller, it constitutes an important factor in determining whether the consent was in fact validly and, in particular, freely given. Further the burden of proof of consent lies on the operator.

CJEU also emphasises on the importance of personal data for competition and clarified that national competition authorities must assess an ongoing proceeding at the respective data protection authorities.

Considering the CJEU's decision in the matter, the Meta proceedings pending before the Düsseldorf Higher Regional Court will now continue.

4. Amazon offers to change Marketplace rules to address CMA concerns

The CMA launched an investigation in July 2022 into concerns that Amazon was abusing its position as the UK's leading online retail platform by giving an unfair advantage to its own retail business over competing sellers that use Amazon marketplace, or to sellers that use Amazon's own warehousing and delivery services, rather than rival logistics businesses.

In response to competition concerns raised by the CMA, Amazon has offered commitments not to use marketplace seller data and to treat all sellers' offers equally when selecting which to feature in the 'Buy Box'. The commitments offered propose to:

i. Ensure Amazon does not use rival sellers' marketplace data to gain an unfair advantage over other sellers.

ii. Guarantee all products offered are treated equally when Amazon decides which will be featured in the ‘Buy Box’.

iii. Allow third-party businesses using marketplace to negotiate their own rates directly with independent providers of Prime delivery services so that customers can benefit from lower delivery costs where better rates are negotiated.

iv. Require Amazon to appoint an independent trustee who will monitor the company's compliance with these commitments.

5. CMA's Investigation into Google's 'Privacy Sandbox' browser changes

The CMA has accepted commitments offered by Google that address the CMA's competition concerns in its investigation into Google's use of third-party cookies and other functionalities in Chrome browser. These commitments involve the CMA working with Google on the design and assessment of the Privacy Sandbox proposals before a final decision is taken to remove third-party cookies from Chrome. A sandbox is an isolated testing environment that enables users to run programs or open files without affecting the application, system or platform on which they run. Software developers use sandboxes to test new programming code.

6. EC opens investigation into possible anticompetitive practices by Microsoft regarding tying and bundling of Teams with Office

EC has opened a formal investigation against Microsoft regarding tying and bundling of Teams with Office to assess whether Microsoft breached TFEU by tying and bundling 'Microsoft Teams' with Microsoft Office 365 and Microsoft 365. It is alleged that Microsoft may be abusing and protecting its dominant position in Office productivity software such as MS Office Excel, *inter alia* by restricting competition for 'communication and collaboration' products such as Microsoft Teams.

II. Interlocking Directorates in competing firms– Section 8 Clayton Act

1. US FTC's first case in 40 years to Prevent Interlocking Directorate – Section 8 of the Clayton Act

'Section 8 of the Clayton Act prohibits interlocking directorates, an arrangement that occurs when an officer or director of one firm simultaneously serves as an officer or director of a competing firm'.

Private equity firm Quantum Energy Partners, LP (Quantum) and EQT Corp. (EQT), the biggest US natural gas producer, are competitors in the production and sale of natural gas in the Appalachian Basin, the largest natural gas-producing region in the United States. EQT and a Quantum affiliate also had an existing joint venture (JV), TMC.

EQT and Quantum entered into a Purchase Agreement for a total purchase price of approximately $5.2 billion. Roughly half of the consideration to Quantum would take the form of up to 55 million shares of EQT stock. The proposed acquisition would make Quantum one of EQT's largest shareholders and give Quantum – an active investor in natural gas production in the region – a seat on EQT's board of directors.

The FTC alleges that the deal would give Quantum the ability to sway EQT's competitive decision-making and access EQT's confidential and competitively sensitive information. Thus, this arrangement would create an unfair method of competition in violation of the FTC Act. Mr. VanLoh, CEO of Quantum, also sits on the Board of Directors of another natural gas company in which Quantum invests.

As a result, Mr. VanLoh's or any other Quantum designated director's appointment to EQT's Board of Directors while Mr VanLoh simultaneously serving as CEO of Quantum and Chair of Quantum's Investment Committee would create an illegal interlocking directorate between EQT and Quantum. The Complaint's second theory of harm addresses the TMC JV specifically, as well as information exchange more generally. TMC receives competitively sensitive information relating to EQT's mineral rights. Quantum's participation in TMC management provided it with access to this information as well. Thus, the JV creates additional opportunities for sharing competitively sensitive business information.

The FTC's consent order delivers structural relief that prohibits Quantum from occupying an EQT board seat directly or indirectly or any of its agents or representatives simultaneously as an officer or director of EQT or in a decision-making capacity of any EQT entity and vice-versa; requires Quantum to divest its EQT shares; prevents anticompetitive information exchange; unwinds the existing anticompetitive JV between the two entities (TMC); and imposes additional restraints to protect competition. Second, Order prohibits Quantum from serving on the Board of any of the top seven Appalachian Basin natural gas producers. Third, Quantum shall sell its EQT shares which are to be held in a voting trust, effectively rendering Quantum's shares a passive investment until the shares are sold. For the duration of the proposed ten-year Order, Quantum is prohibited from acquiring additional EQT shares without prior approval of FTC.

2. Two Pinterest Directors Resign from Nextdoor Board of Directors

The US Department of Justice (DOJ) announced that two directors of Pinterest Inc. have resigned their positions on the Board of Directors of Nextdoor Holdings Inc. in response to the Antitrust Division's ongoing enforcement efforts regarding Section 8 of the Clayton Act which prohibits simultaneous service of directors and officers on the boards of competitors. So far, this initiative has led to a total of fifteen interlocking director resignations from eleven different boards.

Nextdoor is a Delaware corporation headquartered in San Francisco. It is a large social network that connects users, businesses and other neighbourhood stakeholders. Pinterest is a Delaware corporation headquartered in San Francisco. It is a leading social network and image sharing service.

As a result of this investigation, the app developers were offered various payment choices. Presently, the CMA has published a notice of intention to accept commitments offered by Google and invited representations from interested third parties on the proposed commitments.

III. Antitrust Developments

1. Five Amazon Marketplace Sellers and Four Amazon Marketplace Companies Sentenced for Price Fixing

Five individuals and four companies have been sentenced for participating in a conspiracy to fix the prices of DVDs and Blu-Ray Discs sold on the Amazon marketplace. The investigation has resulted in a total of six individual guilty pleas and four corporate guilty pleas.

According to court documents, the defendants agreed with co-conspirators to raise and maintain the prices of DVDs and Blu-Rays sold through Amazon marketplace storefronts, resulting in those products being sold at collusive and non-competitive prices.

2. *Autorité* fined six companies for anticompetitive agreements in calls for tender organised by the French Alternative Energies and Atomic Energy Commission for the Marcoule nuclear site

Following a leniency application by ONET group and dawn raids, the French Competition Authority *Autorité de la concurrence (Autorité)* fined six companies in the engineering, maintenance, decommissioning and nuclear waste treatment services sector for engaging in anticompetitive agreements during calls for tender issued by the French Alternative Energies and Atomic Energy Commission for its Marcoule site in the Gard region.

The *Autorité* found that disrupting the normal course of tendering procedures by hindering the free market pricing process and misleading the public authority as to the reality and extent of competition between tenderers, is detrimental to the sector in which such practices take place, and constitutes a serious breach of economic public policy. Due to this reason, it was concluded that, given the nature, the purpose and the context in which the agreement took place, these practices were anticompetitive by their very nature.

The *Autorité*, therefore imposed penalties totalling 31,239,000 euros on Nuvia Process, ENDEL, Bouygues Construction Expertises, SNEF and SPIE Nucléaire. The *Autorité* granted the ONET Group the benefit of the leniency procedure and was granted a full exemption from financial penalties.

IV. Soft Law

1. EC: New Horizontal Block Exemption Regulations and Horizontal Guidelines

EC has adopted revised Horizontal Block Exemption Regulations on Research and Development and Specialisation agreements (HBERs), accompanied by revised Horizontal Guidelines. The revised HBERs and Guidelines provide businesses with clearer and up-to-date guidance to help them assess the compatibility of their horizontal cooperation agreements with EU competition rules. The new HBERs will enter into force on 1 July 2023, while the Guidelines will do so following their publication in the Official Journal of the EU. The HBERs exempt R&D and specialisation agreements that meet certain conditions from the prohibition in Article 101(1) TFEU, thus creating a safe harbour for such agreements.

The revised rules introduce the following changes-

(i) expand the scope of the Specialisation Block Exemption Regulation to cover more types of production agreements concluded by more than two parties.

(ii) increase clarity and flexibility as regards the calculation of market shares for the purpose of applying the R&D Block Exemption Regulation and include guidance on how to apply it.

(iii) update the Introductory Chapter of the Guidelines with the latest case law on key concepts such as concerted practices, potential competition, restrictions by object and by effect, and ancillary restraints.

(iv) introduces a new section on Mobile Telecommunications Infrastructure Sharing Agreements reflecting recent enforcement practice in the chapter of the Horizontal Guidelines on Production Agreements.

(v) expand and clarify the chapter of the Guidelines on Purchasing Agreements to reflect recent case practice.

(vi) expand the chapter of the Guidelines on Commercialisation Agreements to include a new section on bidding consortia and guidance on the distinction with bid rigging.

(vii) restructure and expand the chapter of the Guidelines on Information Exchange to reflect the latest case law and enforcement experience.

(viii) amend the chapter of the Guidelines on Standardisation Agreements.

(ix) a new chapter to the Horizontal Guidelines covering Sustainability Agreements to clarify that the antitrust rules do not stand in the way of agreements between competitors that pursue a sustainability objective.

2. CMA publishes Guidance on Horizontal Agreements

The published guidance provides for procedure as to how CMA applies the Chapter I prohibition in the Competition Act 1998 (the Act) to horizontal agreements.

Chapter I of the Act prohibits agreements between two or more businesses that prevent, restrict or distort competition within the UK and that might affect trade within the UK. This prohibition applies to all arrangements, whether or not they're in writing. The Act lists specific types of provisions in agreements that are likely to breach the Act. The Chapter also provides for various block exemptions that provide guidelines to be followed for certain types of agreement to be exempt.

Additionally, the guidance describes the application of the Competition Act 1998 (Specialisation Agreements Block Exemption) Order 2022 and the Competition Act 1998 (Research and Development Agreements Block Exemption) Order 2022.

It also provides guidance on the application of the Chapter I prohibition in the Competition Act 1998 to other common types of horizontal agreements which are not covered by these two block exemptions.

V. Sustainability

1. Germany's Bundeskartellamt publishes 2022/23 report on the market power situation in electricity generation

The Bundeskartellamt has published its report on the conditions of competition in the generation of electricity, the “Market Power Report”. The report analyses the market power situation in the generation and first-time sale of electricity in the period from 1 October 2021 to 31 March 2023.

The report states that the market power situation in the generation of electricity has consolidated. RWE remains the largest electricity producer in Germany. RWE is indispensable for meeting the electricity demand in Germany and thus clearly exceeds the threshold for the presumption of a dominant market position. EnBW and LEAG have come close to this threshold.

The Bundeskartellamt's Market Power Report does not include a formal determination of a dominant position as such a finding would require a specific decision made by the authority in an individual case. Exceeding the threshold for the presumption of a dominant market position is a strong indication for companies – in this case RWE – that they must comply with the prohibition of abusive practices.

2. Japan Fair Trade Commission (JFTC) publishes a Market Study Report on the Electric Vehicle (EV) Charging Service on Expressways

The JFTC has conducted a market study on EV charging services on Expressways. From competition perspective, in addition to providing EV users using Expressways with more EV charging options, it is expected that EV chargers installed off-Expressways will exert competitive pressure on EV chargers installed at Expressway, thereby promoting competition in EV charging services and fees. Therefore, when considering the requirements for allowing temporary exit (i.e., exiting the expressway temporarily to charge the vehicle), it is desirable that the EV chargers that can be used after temporary exit are not limited to those installed by a specific operator or to EV charging services provided by a specific operator.

It was noted that none of the EV chargers currently installed in Japan are compatible with ETC (Electronic Toll Collection System) card billing and payment. In light of the explanation that other methods are possible if the purpose is to link usage information such as the date, time, and location of EV charger use with highway usage information, it is recommended that a flexible system be designed to meet actual conditions in terms of the requirements for allowing temporary exit in order to promote the entry of companies providing off-Expressway EV charging services. It is desirable from a competition policy perspective to consider measures that do not require large capital investments and that allow, as far as possible, payment methods other than ETC cards. Furthermore, for making EV chargers installed off-Expressways function effectively as a competitive pressure against EV chargers installed at Expressway, it is desirable from the point of view of competition policy not to limit the target but to include as many EV users as possible.

KNOW YOUR COMPETITION LAW

Procedure for investigation of combinations

As per the scheme of the Competition Act, 2002 (the Act), Section 5 and Section 6 cover the definition and provisions for regulation of combinations. The parties to the combination have an obligation to notify the Competition Commission of India (the Commission) regarding the merger or combination as prescribed under Section 6(2) of the Act. The review of combinations by Commission can broadly be divided into two phases i.e. Phase I investigation and Phase II investigation.

During the Phase I investigation the Commission under Regulation 19(1) of The Competition Commission of India (Procedure in regards to the Transaction of Business relating to Combinations) Regulations, 2011(the Combination Regulation), is required to form its *prima facie* opinion as to whether a combination is likely to cause or has caused an AAEC within the relevant market in India within 30 working days of receipt of notice. At this stage, the Commission can seek additional information relevant to combination from the parties. Where the information or documents contained in the notice is incomplete in any respect, the parties to the combination may be asked to remove such defects or furnish the required information, including documents under Regulation 14(3) of the Combination Regulations. Under Regulation 19(3) of the Combination Regulations, the Commission can also seek information from third parties for which it has an additional 15 working days' time limit. Further, Section 29 deals with the "procedure for investigation of combination". Section 29 (1) of the Act states that where the Commission is of the *prima facie* opinion that a combination is likely to cause, or has caused an appreciable adverse effect on competition within the relevant market in India, it shall issue a notice to show cause to the parties to combination calling upon them to respond within fifteen days of the receipt of the notice, as to why investigation in respect of such combination should not be conducted.

Phase I investigation terminates either with CCI approving a combination (with or without modifications) after receipt of response to show cause notice or with the CCI forming a *prima facie* view under section 29(2) that a combination is likely to have AAEC in a relevant market. Accordingly, Phase II investigation begins if the response of the parties to the show cause notice is not found to be satisfactory and the commission is of *prima facie* opinion that the combination has or likely to have an appreciable adverse effect on competition, the commission, within 7 days from the date of the receipt of the response to the show cause notice direct the parties to the said combination to publish details of the combination within ten working days of such direction for bringing the combination to the knowledge or information of the public and persons affected or likely to be affected by such combination. Therefore, it can be observed that there are two stages at which *prima facie* opinion is formed under Section 29(1) and Section 29(2). The said interplay of two stage *prima facie* opinion was under the scrutiny of Hon'ble NCLAT wherein the Hon'ble NCLAT, in case of *The U.P. Glass Manufacturers Syndicate Vs Competition Commission of India & Ors* **(**Competition Appeal (AT) No. 07 of 2023), on the issue of whether after formation of *prima* *facie* opinion under Section 29(1), there was any requirement of formation of *prima facie* opinion at the second time under Section 29(2). It was held that as per the statutory provisions contained in Section 29 and the Combination Regulations, after receipt of the response to show-cause notice under Section 29(1), the Commission has to form *prima facie* opinion at the second stage as required by Section 29(2), and in cases where prima facie opinion at the second stage under Section 29(2) has not been formed and the Commission is satisfied with the response to the show cause notice including modification, if any, submitted by the Party, the Commission can proceed to approve the combination without proceeding further under Section 29(2).

HR CORNER

A. Joining of new Members, CCI:

1. Shri Anil Kumar Agrawal assumed the charge of Member, CCI, w.e.f. 19.09.2023.
2. Ms. Sweta Kakkad assumed the charge of Member, CCI, w.e.f. 19.09.2023.

B. Completion of tenure:

1. Shri Bhagwant Singh Bishnoi, Member, CCI completed his tenure on 23.08.2023.
2. Dr. Sangeeta Verma, Member, CCI completed her tenure on 16.09.2023.

C. Vacancy Advertisement:

A vacancy circular has been issued on 26.07.2023 to invite applications to fill up the post of Director General, CCI on deputation basis. The last date prescribed for receipt of applications is 15.09.2023.

D. Amendment of Recruitment Rules:

1. The Competition Commission of India (Director General) Recruitment Amendment Rules, 2023 were notified by the Government on 18.07.2023.

2. The Competition Commission of India (Number of Additional, Joint, Deputy or Asstt. Director General, other officers and employees, their manner of appointment, qualification, salary, allowances and other terms & conditions of service) Amendment Rules, 2023 were notified by the Government on 04.08 2023.

E. Appointment of part time CVO in CCI:

Shri Shiv Ram Bairwa, Director (Law) has been appointed as part time CVO for a period upto 30.09.2025 vide office order dated 14.07.2023.

F. Joining on deputation basis in CCI:

Shri Narender Kumar joined as Office Manager (CS) in CCI on deputation basis w.e.f. 10.07.2023.

G. **Extension of deputation tenure in CCI and DG's office:**

1. The deputation tenure of Dr. Atul Verma, Director General, CCI was extended for a further period of three months w.e.f. 01.09.2023 to 30.11.2023 or till the appointment of new DG, CCI or until further orders, whichever is earlier.

2. Shri Naval Kumar, Office Manager (CS), CCI w.e.f. 22.07.2023 to 21.07.2024.

3. Shri Manu Chhoker, Office Manager (CS), O/o. DG, CCI w.e.f. 24.07.2023 to 23.07.2024.

H. **Relieving from CCI and DG's office:**

1. Shri Sonjoy Banerjee, Assistant Director (CS), CCI w.e.f. 06.07.2023.

2. Ms. Rashmi Bhartiya, Assistant Director (LS), CCI w.e.f. 11.07.2023.

3. Shri Rajeev Ranjan, Office Manager (CS), O/o. DG, CCI w.e.f. 24.07.2023.

4. Shri Kundan Bharti Sinha, Deputy Director General (CS) w.e.f. 31.08.2023.

5. Shri Romi N Pynadan, Deputy Director General w.e.f. 15.09.2023.

6. Shri Dheeraj Rohilla, Additional Director General (CS) w.e.f. 04.08.2023.

I. **Engagement of Young Professionals/Experts:**

02 Experts (1 Law and 1 Eco.) and 1 Young Professional (IT) joined CCI on contract basis.

J. **Extension of term of Part Time Medical Officer (Allopathic & Homeopathy):**

The term of engagement of Dr. Pramod Kumar Sharma as Part Time Medical Officer (Allopathic) in CCI was extended for a further period of six months from 01.09.2023 to 28.02.2024 and term of engagement of Dr. Nirmal Kumar Jain (Homeopathy) was extended for a further period of one year from 01.09.2023 to 31.08.2024.

K. **A complimentary Health Check-up Camp for Officers and other staff of CCI and DG's office was organised at CCI, EKN office on 21.07.2023.**

Mrs. Ravneet Kaur, Chairperson, CCI, administering oath to Shri Anil Kumar Agrawal and Ms. Sweta Kakkad as Members, CCI on 19.09.2023.

Competition Commission of India
9th Floor, Office Block - 1, Kidwai Nagar (East),
New Delhi- 110023, India

Please visit www.cci.gov.in for more information about the Commission. For any query/comment/suggestion, please write to advocacy@cci.gov.in

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