Fair Competition for Greater Good

The Quarterly Newsletter of Competition Commission of India (CCI)

Fair Play

Volume 50: July-September 2024

IN FOCUS
Merger Control Regime: 2.0

Merger Control Regime: 2.0

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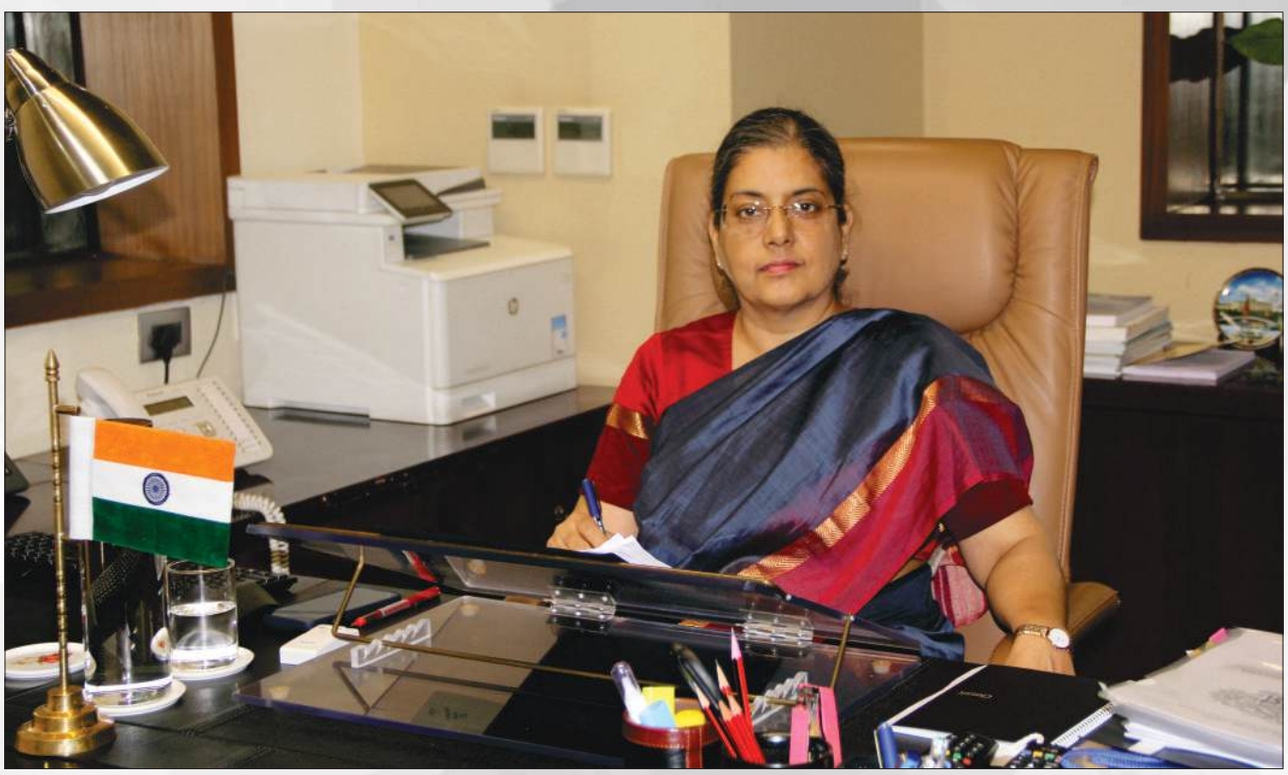
FROM THE DESK OF THE CHAIRPERSON



It gives me immense pleasure to present the 50th Volume of Fair Play, the quarterly newsletter of the Competition Commission of India (CCI). This milestone edition highlights key developments in competition law and policy, both domestic and international, over the past quarter.

The past quarter marked the achievement of a key milestone - the culmination of the process of review of regulatory framework relating to mergers and acquisitions set in motion by the Competition Amendment Act 2023. The past quarter saw notification of all the provisions introduced by the Amendment Act relating to regulation of combinations. Along with the same, three sets of rules relating to the criteria for exemption of combination, minimum values of assets and turnover of the target enterprise required to constitute a combination and criteria for making a filing under the deemed approval route were also notified as to come into effect on 10.09.2024. Concurrently, after extensive consultations with a broad range of stakeholders, CCI also notified a new set of regulations in sync with the revised regulatory framework introduced by the Amendment Act, namely, The Competition Commission of India (Combinations) Regulations, 2024 replacing the Competition Commission of India (Procedure in regard to the transactions of business relating to Combinations) Regulations, 2011.

The revised regulatory framework complements the asset/turnover threshold based notification criteria with a newly introduced 'deal value test'. The test seeks to make transactions where the

consideration for the deal exceeds ₹2,000 crores and the target has 'substantial business operations' in India as notifiable and subject to approval of the Commission regardless of the assets/turnover of the enterprises. The regulations issued provide a framework for ascertaining 'substantial business operations'. The change is intended to empower the Commission to review the transactions in areas where the competition dynamics are not captured in terms of the financials of the concerned enterprises. Another important amendment is introduction of provision to allow the parties to implement an open offer or acquire shares through transactions on a regulated stock exchange without contravention of standstill obligations contained in the Competition Act. The regulations issued by the Commission regulate the timing and manner of filing/notification for such transactions.

The new set of rules introduced pursuant to the amendment to the Competition Act also go further in providing legal certainty to the stakeholders as regards the scheme of exemptions etc. and are aimed to ensure the optimal regulatory balance. These new set of regulations are designed to streamline competition law enforcement in India, enhance clarity for businesses during the merger process. The Commission has continued to ensure that combinations do not harm competition in the market. In this quarter, the Commission approved several key mergers and acquisitions after a detailed analysis of their potential impact on market competition.

In addition to regulatory reforms, CCI continues to engage in active advocacy efforts. Our various outreach initiatives, including workshops, training programs, and seminars, have helped promote a deeper understanding of competition law and foster a culture of compliance across industries. The Commission remains dedicated to encouraging voluntary compliance and raising awareness among stakeholders about the benefits of a competitive market environment.

As we move forward, I am confident that the changes brought by the Competition Amendment Act, 2023 will strengthen the enforcement of competition law in India. The CCI will continue to prioritize its mandate of promoting competition and protecting consumer welfare in a rapidly changing global economy.

Ravneet Kaur

MERGER CONTROL REGIME: 2.0

▶ The Competition (Amendment) Act, 2023, passed on 11.04.2023, amended *inter alia* the regulatory framework relating to mergers and acquisitions significantly to make the regulatory regime more efficient and effective. The amendments introduced were comprehensive and encompassed the all-pervasive aspects of notification criteria and procedure for assessment of combinations, besides introducing new timelines for review. The salient features of the Amendment Act regarding the regulatory framework relating to mergers and acquisitions included:

- deal value threshold, for mergers and acquisitions where the value of the transaction exceeds ₹ 2000 crore with the target having substantial business operations in India;
- issue of statement of objections by the CCI, allowing the parties to propose modifications *etc.* to address any likely competition concerns;
- reduction in the overall timeline for assessment of combinations from 210 to 150 days and a time limit of 30 days for forming a *prima facie* opinion failing which the transaction shall be deemed to have been approved;

- relaxation from the application of provisions relating to mandatory pre-transaction notification and approval in cases of implementation of an open offer or purchase of securities on a regulated stock exchange;
- incorporation of enabling clause for deemed approval on filing in certain cases; and
- incorporation of an enabling clause for exempting certain categories of transactions from notification to the CCI.

▶ On 09.09.2024, the Ministry of Corporate Affairs (MCA) notified amendments to the Competition Act, 2002 in respect of the regulatory framework for mergers and acquisitions, including those on deal-value thresholds, and introduced the following rules which have taken effect from 10.09.2024.

- Competition (Criteria for Exemption of Combinations) Rules, 2024.
- Competition (Criteria of Combination) Rules, 2024
- Competition (Minimum Value of Assets or Turnover) Rules, 2024.

MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, the 9th September, 2024

S.O. 3846(E).—In exercise of the powers conferred by sub-section (2) of section 1 of the Competition (Amendment) Act, 2023 (9 of 2023), the Central Government hereby appoints the 10th day of September, 2024 as the date on which the provisions of the following sections of the said Act shall come into force, namely:—

(1) sections 6 to 8 (both inclusive);
(2) sections 21 to 24 (both inclusive);
(3) section 28;
(4) section 30;
(5) section 34; and
(6) section 38.

[F. No. Comp-05/4/2023-Comp-MCA]

MANOJ PANDEY, Addl. Secy.

▶ Consequent upon the significant changes introduced by the Amendment Act relating to the regulation of combinations, the CCI has repealed the existing Combination Regulations and introduced a revised set of comprehensive new Combination Regulations 2024, which also came into effect from 10.09.2024.

THE COMPETITION COMMISSION OF INDIA

NOTIFICATION

New Delhi, the 9th September, 2024

The Competition Commission of India (Combinations) Regulations, 2024

(No. 07 of 2024)

F.No.CCI/CD/Comb. Regl./2024-- In exercise of the powers conferred by sub-section (1) and clauses (b), (c), (ca), (cb), (cc), (f) and (fc) of sub-section (2) of section 64 read with sub-sections (2) and (4) of section 6, section 6A and sub-section (2) of section 29A of the Competition Act, 2002 (12 of 2003), the Competition Commission of India hereby makes the following regulations, namely: -

1 1. Short title and commencement.

(1) These regulations may be called the Competition Commission of India (Combinations) Regulations, 2024.

(2) They shall come into force on 10th day of September, 2024.

DEAL VALUE THRESHOLDS

▶ All transactions where the value of the transaction (including direct, indirect, immediate, and deferred consideration) exceeds ₹ 2,000 crore and the target has 'substantial business operations' in India, will require prior approval from the CCI, even if they can otherwise benefit from the *de minimis* exemption (Small Target Exemption).

▶ As per the Combination Regulations 2024, a target is considered to have 'substantial business operations' in India if it meets any of the following thresholds:

- for digital services, the number of its business users or end users in India is 10% or more of its total global number of such users; or
- its Gross Merchandise Value (GMV) for the period of 365 days preceding the relevant date in India is: (i)10% or more of its total GMV, and (ii) more than ₹500 crores; or
- its turnover during the preceding financial year in India is: (i)10% or more of its total global turnover derived from all the products and services, and (ii) more than ₹500 crores.

However, the requirement of turnover or GMV being more than ₹500 crores in India would not apply to digital services.

EXEMPTED COMBINATIONS

▶ Criteria for Exemption of Combinations Rules provide the categories of combinations exempt from notification to the CCI that include:

MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, the 9th September, 2024

G.S.R. 549(E).– In exercise of the powers conferred by clause (ad) of sub-section (2) of section 63 of the Competition Act, 2002 (12 of 2003), the Central Government hereby makes the following rules, namely:—

1. Short title and commencement.— (1) These rules may be called the Competition (Criteria for Exemption of Combinations) Rules, 2024.

(2) They shall come into force with effect from the 10th day September, 2024.

- Acquisitions in the ordinary course of business, of unsubscribed shares upon devolvement, by registered underwriters or stockbrokers are exempt, provided it does not entitle the acquirer to more than 25% shares/voting rights in the target. Further, acquisitions of shares in the ordinary course of business by registered mutual funds are exempt, provided it does not entitle the acquirer to more than 10% shares/voting rights in the target.
- Acquisitions of less than 10% shares/voting rights in a target exempt from notification where there is:
  - → No acquisition of control; and
  - → No director or observer right or ability; and
  - → No access to commercially sensitive information.
- Acquisitions of 10% or more but up to 25% shares/voting rights in a target exempt from notification where there is:
  - → No acquisition of control; and
  - → No director or observer right or ability; and
  - → No access to Commercially Sensitive Information (CSI); and
  - → No horizontal, vertical, or complementary overlap between the acquirer group and their affiliates; and the target, its downstream group entities, and their affiliates.
- Incremental acquisitions in the target are exempt, where an existing shareholder maintains only upto 25% shares/voting rights in the target where there is:
  - → No acquisition of control; and
  - → No gain of a right or ability to director or observer first time; and
  - → No access to the CSI (except where the acquirer already has director/observer right); and
  - → In case of overlapping businesses, acquisitions of up to 5% are exempt where the acquirer and its group entities do not move from holding less than 10% to more than 10% of shares/voting rights in the target.

- Incremental share acquisitions in the range of 25-50%, and above 50% are exempt as long as there is “no change in control”.
- Bonus Issues/Stock Splits/Consolidation/ Buy-Back/Rights issues are exempt, provided that there is “no change in control”.
- Intra-group asset acquisitions are exempt, provided that there is no change in control over assets being acquired.
- Intra-group mergers are exempt, provided that there is no “change in control”.
- Exemption to demergers and consequent issuance of shares by a resultant company to the demerged company or its shareholders, where issuance of shares is in the same proportion of shares held in the demerged company, prior to the demerger, except for the discharge of fractional shares.
- Acquisition of shares, control, voting rights, or assets by a purchaser approved by the CCI pursuant to its order under Section 31 of the Competition Act 2002.
- An acquisition in the ordinary course of business of stock-in-trade, raw materials, stores and spares, trade receivables, or other similar current assets that do not constitute business.

AUTOMATIC APPROVAL ROUTE

- The Competition (Criteria of Combination) Rules, 2024 provide for an automatic approval route for transactions where the acquirer and target have no horizontal overlaps or vertical and complementary relations

MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, the 9th September, 2024

G.S.R. 548 (E).—In exercise of the powers conferred by clause (ac) of sub-section (2) of section 63 of the Competition Act, 2002 (12 of 2003), the Central Government hereby makes the following rules, namely:-

1. **Short title and commencement.**— (1) These rules may be called the Competition (Criteria of Combination) Rules, 2024.

(2) They shall come into force with effect from the 10th day of September, 2024.

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- Such transactions are deemed to have been approved on the day of their notification to the CCI.
- It allows parties to notify the CCI of a transaction while dispensing with the waiting period for approval.
- As per the said rules, the business of the parties to the transaction, their respective groups, and their affiliates should not exhibit horizontal overlap or have any vertical or complementary interface.

SMALL TARGET EXEMPTION

- In 2011, the Government of India introduced the Small Target Exemption, exempting transactions where the target's assets or turnover were below a certain value. These transactions did not require the approval of CCI.

MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, the 9th September, 2024

G.S.R. 547(E).— In exercise of the powers conferred by clause (a) of sub- section (2) of section 63 of the Competition Act, 2002 (12 of 2003), the Central Government hereby makes the following rules namely:-

1. **Short title and commencement.**— (1) These rules may be called the Competition (Minimum Value of Assets or Turnover) Rules, 2024.

(2) They shall come into force with effect from the 10th day of September, 2024.

- The amended Competition Act 2002 gives statutory recognition to this exemption and allows the value of assets and turnover to be set throughRules.
- The Competition (Minimum Value of Assets or Turnover) Rules, 2024 confirm the existing thresholds *viz*., transactions where targets have assets up to ₹450 crores or turnover up to ₹1250 crores in India do not require notification to the CCI.

The Competition Commission of India approves proposed combination involving BlackRock, Inc. and Global Infrastructure Management, LLC (Combination Case No. C -2024/03/1121)

On 11.06.2024, the Commission approved a notice filed by BlackRock Funding, Inc. (BFI), a wholly owned subsidiary of BlackRock, Inc. (BlackRock). The proposed transaction involves acquisition of 100 percent of the limited liability company interests in Global Infrastructure Management, LLC, (GIM) by BFI.

BlackRock is active in the provision of global investment management, risk management, and advisory services to institutional and retail clients around the world. GIM is a global independent infrastructure fund manager which directly or through its affiliates manages certain investment funds operating under the trading name Global Infrastructure Partners (GIP Funds).

The activities of BlackRock and GIM in India overlap in the broader segment of asset management services and narrower segment of private equity. However, the presence of BlackRock and GIM in India as reflected in the deal values for the period 2021-2023 was found to be insignificant (with a combined market share estimated to be less than 5%) to cause any change in competition dynamics. Further, the market was found to comprise several other large and well-established global players, including the Carlyle Group, GIC, TPG Group, Brookfield, Tiger Global Management, Blackstone Group, KKR & Co., etc.

Further, the Commission considered the overlaps/linkages between the activities of investee entities of BlackRock and GIM in India (Portfolio Companies). The relevant entity segments were identified as: (i) power generation; (ii) passive telecom infrastructure through telecom towers; (iii) engineering, procurement, and construction (EPC) solutions in the power generation sector; and (iv) supply of solar photovoltaic modules. However, considering, inter alia, presence of the Portfolio Companies in respective market segments, nature and extent of shareholding of BlackRock and GIM, the resulting horizontal overlaps/vertical linkages were found to be insignificant to cause change in competition dynamics of any plausible market(s).

Considering the above, the Commission concluded that the transaction is not likely to have appreciable adverse effect on competition and accordingly approved the transaction.

IN A NUTSHELL

- **The Proposed Combination is in asset management services sector, specifically, the private equity segment.**
- **Assessment revealed insignificant presence of combined entity in the private equity segment.**
- **The presence of Portfolio Companies also found to be insignificant to cause any competition concerns.**
- **Transaction was approved unconditionally.**

The Competition Commission of India approves the acquisition in IRB Infrastructure Trust and MMK Toll Road Private Limited by Cintra InvIT Investments B.V. and Cintra IM Investments B.V. (Combination Case No. C-2024/03/1124)

The Commission, *vide* its order dated 04.06.2024, approved:(a) acquisition of approximately 24% of the issued and outstanding unit holding along with certain commercially negotiated rights in the IRB Infrastructure Trust (Private InvIT) by Cintra InvIT Investments B.V. (Cintra SPV 1) (InvIT Transaction) and (b) simultaneous acquisition of approximately 24% of the equity shareholding along with the right to nominate a director on the board of directors MMK Toll Road Private Limited (IM) and protective shareholder rights in the IM by Cintra IM Investments B.V. (Cintra SPV 2) (IM Transaction)[Cintra SPV 1 and Cintra SPV 2 are collectively referred to as the "Acquirers". InvIT Transaction and IM Transaction are collectively referred to as the "Proposed Combination"].

The Acquirers are SPVs incorporated in Netherlands. They are wholly-owned subsidiaries of Cintra Global S.E. (Cintra). Cintra is a Dutch-based infrastructure company, which is a wholly owned subsidiary of Ferrovial S.E. (Ferrovial).The Acquirers do not have any direct presence or business activities in India, other than Cintra's existing shareholding in IRB ListCo. Further, the Ferro vial Group is a global developer of transport infrastructure, mobility solutions, engineering and is engaged in the construction of civil works and buildings.

Private InvITis a private trust registered as an infrastructure investment trust (InvIT) with Securities Exchange Board of India (SEBI). The sponsor and project manager of the Private InvIT is IRB ListCo, and the trustee is IDBI Trusteeship Services Limited. The Private InvIT invests in road infrastructure assets in India and the road projects of the Private InvIT are held through SPVs.

IM is the investment manager of the Private InvIT. It does not carry out any activities in India, except as the investment manager of the Private InvIT.

Private InvIT and the IM are a part of the IRB Group. IRB Group collectively refers to the IRB ListCo and each of its affiliates. IRB ListCo holds 51% in both the Targets.IRB ListCo is engaged in carrying out construction works in Engineering, Procurement and Construction contracts (EPC), providing operation and maintenance services mainly with its subsidiaries and joint ventures.

The Parties exhibited overlap in the market for provision of concessionaire services for roads and highways including the provision of O&M services in India; and a vertical relationship between affiliates of IRB ListCo and Targets in the market for provision of EPC services for roads and highways in India at the upstream level and market for provision of concessionaire services for roads and highways in India at the downstream level, respectively.

IN A NUTSHELL

- **The Proposed Combination is related to roads and concessions services sector.**
- **The Parties exhibited insignificant horizontal and vertical relationship. No likely AAEC.**

Based on the submissions of the Parties, it was noted that with respect to both horizontal and vertical relationships, the market shares of the Parties in each of the relevant markets were insignificant. Further, each of the markets has presence of other players. Thus, the Commission was of the opinion that the Proposed Combination is not likely to have Appreciable Adverse Effect on Competition in India.

The Commission approved the Proposed Combination under Section 31(1) of the Competition Act 2002.

NCLAT upheld order of CCI on merits and reduced the penalty in Toyfortv. Competition Commission of India (Competition Appeal (AT) No. 34 of 2022 arising out of Suo Moto Case No. 01 of 2020)

The matter arose out of a general complaint dated 07.08.2018 received by the Commission alleging bid-rigging in tenders invited by the Department of Agriculture, Government of Uttar Pradesh for soil sample testing. The complaint pertained to alleged bid-rigging in respect of two e-tenders. After an investigation by the DG CCI and hearing the parties, the Commission *vide* its order dated 04.04.2022 held Opposite Parties (OPs) and their proprietors i.e. M/s Yash Solutions, M/s Satish Kumar Agarwal, M/s Siddhi Vinayak, M/s Saraswati Sales Corporation, M/s Austere System Pvt. Ltd., Delicasy Continental Pvt. Ltd, Fimo Infosolutions Private Limited, M/s Toyfort and Chaitanya Business Outsourcing Pvt. Ltd. to be in contravention of the provisions of Section 3 of the Competition Act, 2002. Further, in terms of the provisions of Section 27 (a) thereof, the Commission directed the OPs and their respective proprietors to cease and desist from indulging in practices found in contravention of the provisions of the Competition Act, 2002 and imposed penalty upon the OPs, under the provisions contained in Section 27(b) thereof. However, no separate penalty was imposed on the respective proprietors of M/s Satish Kumar Agarwal, M/s Siddhi Vinayak, M/s Saraswati Sales and M/s Toyfortas these were sole proprietorship concerns.

Aggrieved by the aforesaid order (Impugned Order), M/s Toyfort filed an appeal before the Hon'ble National Company Law Appellate Tribunal (NCLAT).

In this appeal, after conclusion of hearing, Hon'ble NCLAT held that, *"In the present case, the appellant was acting as a member of the cartel and was providing cover bid for the successful bidder Austere Systems. In view of peculiar facts and circumstances of the present case, where almost all bidders for soil testing are first time bidders and relevant turnover of firms from the aforesaid business is NIL, the concept of relevant turnover in such cases would not be correct, as it would lead to NIL penalty and allow the parties involved to go scot-free. Hence, we agree with the Commission's approach of taking the total turnover for computation and imposition of penalty.*
At the same time considering the fact that the Appellant was in a supporting role in this cartel, by providing the cover bids, we are of the view that the penalty in such cases should be less than from those in the main role.

Based on the above discussion, we hold (i) The order of the

Commission in respect of holding the appellant guilty under Section 3(3)(c) and 3(3)(d) read with section 3(1) and order passed under Section 27(a) regarding cease-anddesist order are upheld. (ii) The penalty under Section 27 (b) is reduced to 3% of average annual turnover for last 3 years, instead of 5% as imposed by the Commission."

Thus, the Hon'ble NCLAT disposed of the aforementioned appeal on 02.07.2024.
Hence, in Competition Appeal (AT) 34 of 2022 Toyfortv. Competition Commission of India, Hon'ble NCLAT upheld the CCI order on merits with some modifications in the quantum of penalty imposed on Toyfort.

NCLAT upheld the order and the penalty imposed by CCI in *Yash Solutions & Ors. v. Competition Commission of India* (Competition Appeal (AT) No. 28 of 2022 arising out of Suo Moto Case No. 01 of 2020)

The matter arose out of a general complaint dated 07.08.2018 received by the Commission alleging bid-rigging in tenders invited by the Department of Agriculture, Government of Uttar Pradesh for soil sample testing. The complaint pertained to alleged bid-rigging in respect of two e-tenders. After an investigation by the DG CCI and hearing the parties, the Commission *vide* its order dated 04.04.2022 held Opposite Parties (OPs) and their proprietors i.e. M/s Yash Solutions, M/s Satish Kumar Agarwal, M/s Siddhi Vinayak, M/s Saraswati Sales Corporation, M/s Austere System Pvt. Ltd., Delicasy Continental Pvt. Ltd, Fimo Infosolutions Private Limited, Toyfort and Chaitanya Business Outsourcing Pvt. Ltd. to be in contravention of the provisions of Section 3 of the Competition Act, 2002. Further, in terms of the provisions of Section 27 (a) thereof, the Commission directed the OPs and their respective proprietors to cease and desist from indulging in practices found in contravention of the provisions of the Competition Act, 2002 and imposed penalty upon the OPs, under the provisions contained in Section 27(b) thereof. However, no separate penalty was imposed on the respective proprietors of M/s Satish Kumar Agarwal, M/s Siddhi Vinayak, M/s Saraswati Sales and M/s Toyfortas these were sole proprietorship concerns.

Aggrieved by the aforesaid order (Impugned Order), M/s Yash Solutions and M/s Chaitanya Business Outsourcing Pvt. Ltd., and their office bearers filed appea lbefore the Hon'ble National Company Law Appellate Tribunal (NCLAT).

After the detailed hearing, the Hon'ble NCLAT *vide* its order dated 22.08.2024 in Competition Appeal (AT) No. 28 of 2022 observed that: "*In the same competition matter Suo Moto Case No. 1 of 2020 in appeals filed by two other bidders viz. M/s Delicacy Continental Pvt. Ltd. and M/s Toyfort who provided only the cover bid, we have reduced the penalty to 3% of average annual turnover, instead of 5% as imposed by the Commission, keeping in mind the fact that they were not the winning bidders*."

Further, the Hon'ble NCLAT held that "*In this case, the Appellant 1 is the leader of the pack, who has organised the bid rigging and collusion, and was the winning bidders in 5 tenders. Appellant 2 is a group company of Appellant 1 where the wife of the owner is the majority shareholder and the Director of Appellant 2 is the CEO of Appellant 1. Sh. Praveen Kumar Agarwal (Appellant 3) and Sh. Nitish Agarwal (Appellant 4) have also been individually found responsible for collusion and bid rigging. Accordingly, we find no reason to reduce the penalty imposed by the Commission against the petitioners in this appeal.*"

Thus, Hon'ble NCLAT dismissed the aforementioned appeal.

Hence, in Competition Appeal (AT) No. 38 of 2022 *M/s Yash Solutions & Ors. v. Competition Commission of India*, the Hon'ble NCLAT upheld the order and the penalty imposed by CCI on merits.

ADVOCACY INITIATIVES

1. Smt. Ravneet Kaur, Chairperson, delivered special remarks at Roundtable Discussion on “Taking Stock: Evaluating the Progress of India's Draft Digital Competition Bill 2024” organised by ESYA centre at New Delhi on 16.07.2024.

2. Ms. Jyoti Jindgar Bhanot, Adviser, (Economics) conducted sensitization session for senior officers of South Western Railway (SWR) on “Competition Issues in Public Procurement with special reference to Railways” at South Western Railway Head Quarter, Hubballi, Karnataka on 26.07.2024.

3. Shri Rakesh Kumar, Adviser (Economics), judged the final round and Shri Anand Vikash Mishra, Joint Director (Law), & Shri Anuj Verma, Deputy Director (Financial Analysis), judged the semi- final round of 3rd IFIM National Moot Court Competition 2024, organised by IFIM Law School Bengaluru, on 28.07. 2024.

4. Smt. Ravneet Kaur, Chairperson delivered keynote address during the Annual Directors' Conclave, organized by the Institute of Directors at New Delhi on "Emerging Trends in Corporate Governance & Building Inclusive Boards" on 09.08.2024.

5. Shri Arvind Kumar Anand, Joint Director (Economics), delivered a Talk on Competition Law at Narayan School of Law, Gopal Narayan Singh University, Sasaram, Bihar on 09.08.2024.

6. Shri Shekhar, Director (FA), Shri Kuldeep Kumar, Joint Director (Law) & Dr. Navdeep Singh Suhag, Deputy Director (Law) judged Final and Semi- Final Rounds of National Moot Court Competition organised by Amity Law School, Noida at its campus, in association with CCI during 22-23.08.2024.

7. Shri Rakesh Kumar, Adviser (Economics), Dr. Mini S, Adviser (Law), conducted a Session on “Public Procurement and Competition Issues” for the Officer Trainees and Probationers (IAS/ DANICS) on 28.08.2024 at Directorate of Training, Union Territories Civil Services, Delhi.

8. On 20.09.2024, Dr. Sanjay Kumar Pandey, Adviser (Law), conducted a Session on Competition Law at Guru Ghasidas Vishwavidyalaya, Bilaspur, Chhattisgarh, to sensitize students about Competition Law.

9. On 25.09.2024, Ms. Pemala Lama, Deputy Director (Economics) conducted a Session on Competition Law at Karnavati University, United World School of Law, Gandhinagar, Gujarat to sensitize students about Competition Law.

10. A Total of 44 students underwent the internship programme at CCI during July-Sep, 2024.

Interns of July, 2024 Batch

Interns of August, 2024 Batch

Interns of September, 2024 Batch

ADVOCACY WITH STATES

State	Resource Person(s)	Date	Organisation for which programme was conducted
Andhra Pradesh	Shri N.V. Ramana Raju	31.07.2024	Office of Principal Accountant General, Vijayawada
		30.08.2024	Office of Director of Factories and Boilers, Vijayawada
Assam	Shri Umesh Kumar and Shri Tanuj Goswami	05.07.2024	Numaligarh Refinery Limited, Guwahati
		16.07.2024	State Institute Panchayati Raj & Rural Development Department , Guwahati
		20.07.2024	Panchayat & Rural Development Department, Jorhat
		29.07.2024	10th Assam Police Battalion, Guwahati
		09.08.2024	National Highways Authority of India, Guwahati
		21.08.2024	Office of Mission Director Samagra Shiksha Assam, Guwahati
		22.08.2024	Office of the Commandant 1st Commando Battalion, Guwahati
		30.08.2024	Office of the Superintendent of Police, Jorhat
		06.09.2024	Bharat Sanchar Nigam Limited, Guwahati
		24.09.2024	North East Sector, Central Industrial Security Force, Guwahati
		26.09.2024	3rd Assam Police Battalion at Titabar, Jorhat
Chhattisgarh	Shri. D.R. Wadhwani	09.07.2024	Department of Revenue, PWD, Irrigation, Panchayat,
		23.07.2024	Department Revenue, Industries, Education, Police etc, Bemetra
		06.08.2024	Department Revenue PWD Irrigation Panchayat, Pendra District
Himachal Pradesh	Shri Rangilu Ram Patyal	16.07.2024	Staff of Youth Services and Sports Department HP, Mandi District
		20.07.2024	Department of Agriculture, Sundarnagar, District
		05.08.2024	Department Agriculture Department, Hamirpur District
		12.08.2024	Department of Health and Family Welfare Department and National Health, Hamirpur District
		10.09.2024	Office of Director of Horticulture, Hamirpur District
		21.09.2024	Department of Rural Development and Panchayati Raj, Mandi District

Karnataka	Dr. M.N. Karur and Shri H. Prakash	30.07.2024	Department of Women & Child Development, Government of Karnataka, Bengaluru
		31.07.2024	Department of Mines & Geology-South Zone, Mysore District
		07.08.2024	Department of Mines & Geology, Mysore
		08.08.2024	Department of Technical Education, Bengaluru
		09.08.2024	Department of Women and Child Development, Bengaluru
		22.08.2024	Bureau of Public Enterprises, Bengaluru
		04.09.2024	Department of Handlooms &Textiles, Bengaluru
		05.09.2024	Department of Technical Education, Bengaluru
		05.09.2024	Department of Agriculture, Bengaluru
		12.09.2024	Department of Animal Husbandry & Veterinary Services, Bengaluru
		26.09.2024	Jal Shakti Vibhag, Mandi, Himachal Pradesh
Kerala	Shri Krishnakumar K.N.	26.07.2024	Taluk Industries Office and panchayat, Kottayam
		31.07.2024	Taluk Industries Office, Moovattupuzha
		24.08.2024	Taluk Industries Office, Vaikom and Panchayaths Vaikom Taluk
		31.08.2024	Taluk Industries, Ernakulam
		30.09.2024	Office of Mannarkkad Municipality and Taluk Industries Office, Palakkad, Kerala
Odisha	Shri Chudamani Seth	17.07.2024	Veterinary Officers Training Institute, Laxmisagar, Bhubaneswar
		29.07.2024	Department of Fisheries & Animal Resources Development, Puri
		12.08.2024	Madhusudan Das Regional Academy of Financial Management, Madhusudan, Bhubaneswar
		27.09.2024	Fisheries Department, Barbagh, Odisha
Meghalaya	Shri Bhupesh Hajong	26.07.2024	Departments of Mineral Resources, Animal Husbandry etc, Shillong
		03.09.2024	Departments of Labour, Employment and Skills Development, Shillong
Telangana	Shri R.C. Kumar and Shri V. Prasanna Kumar	05.07.2024	National Skill Training Institute (NSTI), Hyderabad
		12.07.2024	Press Information Bureau (PIB) Ministry of Information, Government of India,Secunderabad
		13.07.2024	Telangana Foods, Department of Women and Child Welfare, Secunderabad
		19.07.2024	Employees State Insurance Corporation Medical College & Hospital, Hyderabad

		16.08.2024	Department of Central Detective Training Institute (CDTI), Hyderabad
		22.08.2024	Department of Crime Investigation Department (CID), Hyderabad
		27.08.2024	Security Printing Press, Hyderabad
		31.08.2024	Industrial Area Local Authority (IALA), District Industries Center, Panchayati Raj etc.Turkapally
		10.09.2024	Office of Director of School Education, Hyderbad
		28.09.2024	Department of Sainik Welfare , Hyderabad, Telangana
		30.09.2024	Department of Legal Metrology, Hyderabad, Telangana
Uttarakhand	Shri Rajiv Rautela	03.07.2024	Panchayati Raj Department, Dehradun
		22.07.2024	Agriculture Department, Dehradun
		02.08.2024	Department of Uttarakhand Medical Health, Dehradun

CAPACITY BUILDING

1. A virtual peer-to-peer (P2P) session was conducted by Shri Yogesh Kumar Dubey, Joint Director (Economics) on 18.07.2024 on the key takeaways from the "16th Annual Competition Law, Economics and Policy Conference" attended by the Officer from 31.08.2022 to 01.09.2022 at South Africa.

2. 46th Lecture under CCI's Distinguished Visitor Knowledge Sharing Series (DVKS) was delivered by Prof. R. Kavita Rao, Director of the National Institute of Public Finance and Policy on "Tax Competition: Emerging Issues and Ideas" on 19.07.2024.

3. A virtual peer-to-peer (P2P) session was conducted by Shri Arvind Kumar Anand, Joint Director (Economics) on 23.07.2024 on the key takeaways from "Digital Markets Advocacy workshop: An In- Depth discussion of Market Studies and Inquiries" attended by the Officer on 21.02.2024 at Nairobi, Kenya.

4. A virtual peer-to-peer (P2P) was conducted by Ms. Sunaina Dutta, Joint Director (Law), on 09.08.2024, on the key takeaways from the "OECD Workshop on Hub-and-Spoke Cartels" attended by the Officer during 11-12.05.2022 in Latvia.

5. A virtual peer-to-peer (P2P) session was conducted by Shri Arpan Sharma, Deputy Director (Law), on 16.08.2024, on the key takeaways from the "Annual Enforcers Summit & ABA Spring Meeting 2024" attended by the Officer during 08-11.04.2024 in Washington, DC, USA.

6. 53rd Lecture under Special Lecture Series (SLS) was delivered by Shri Amit Pradhan (Regional Director, SEBI, Delhi), Shri Surya Bhatia (Financial Expert), and Shri Jasdeep Singh Kohli (Senior Manager, Bombay Stock Exchange) on "SEBI's Financial Awareness Program" on 23.08.2024.

7. Shri Anuj Verma, Deputy Director (Financial Anaylsis), attended a three-day residential training program/workshop on "Big Data Analytics in Government - Advanced," organized by Institute of Secretarial Training & Management (ISTM) during 02-04.09.2024.

8. Following sessions were conducted by CCI officers for 20 ITS (Group-A batches 2021 & 2022) probationers during their one-week training module on “Dispute Settlement and Competition Issues in Telecom” as part of their Induction Training at NCA, Ghaziabad, on 03.09. 2024:

   - Evolution of Competition Law and Market Regulation in India/Competition Act, 2002 by Dr. Sanjay Kumar Pandey, Advisor (Law).
   - Investigation Framework under CCI & Competition Issues in Telecom (Case Study) by Dr. K.D. Singh, Director (Law).

9. 54th Lecture under Special Lecture Series (SLS) was delivered by Dr. Ritu Gupta, Professor of at National Law University, Delhi, on “Prevention of Sexual Harassment at the Workplace (POSH)” on 06.09.2024.

10. A virtual peer-to-peer (P2P) session was conducted on 13.09.2024 by Shri Shiv Ram Bairwa, Director (Law), on key takeaways from “OECD-KPC 20th Anniversary Workshop on Advocacy,” attended by the Officer during 28-30.05.2024 in Seoul, Korea.

11. Ms. Manisha Gupta, Deputy Director (CS), attended a four-day residential training program on “Reservation in Services for SC/ST/OBC/EWS/ExSM/PWDs,” organized by Institute of Secretarial Training & Management (ISTM) during 17-20.09.2024

12. A virtual peer-to-peer (P2P) session was conducted on 20.09.2024 by Shri Sukesh Mishra, Director (Law), Shri Sachin Goyal, Joint Director (FA), and Ms. Shama Nargis, Deputy Director (Law), on key takeaways from the “Competition Summer School under the EU-India Competition Project,” attended by the officers during 01-12.07.2024 in Bruges, Belgium.

13. A virtual peer-to-peer (P2P) session was conducted on 27.09.2024 by Ms. Sayanti Chakrabarti, Director (Economics) on the key takeaways from “23rd International Competition Network Annual Conference" attended by the Officer during 14-17.05.2024 in Sauipe, Brazil.

ENGAGING WITH THE WORLD

1. Smt. Ravneet Kaur, Chairperson, attended the BRICS Coordination Committee meeting on Antimonopoly Policy on 02.07.2024 in Geneva, Switzerland.

2. Shre Sukesh Mishra, Director (Law), Mr. Sachin Goyal, Joint Director (Financial Analysis) and Ms. Shama Nargis, Deputy Director (Law) participated in the Competition Summer School during 01-12.07.2024 at College of Europe in Bruges, Belgium.

3. Smt. Ravneet Kaur, Chairperson, and Ms. Bhawna Gulati, Joint Director (Law) attended International Bar Association's 'Annual Competition Conference' during 06-07.09.2024 in Florence, Italy. During the Conference, She delivered the Keynote Address, highlighting key aspects of recent developments in competition law and policy in India.

4. A Parliamentary delegation led by the Chairperson of the Commerce Committee of Parliament of Finland interacted with Chairperson, Members and Officers of Competition Commission of India on 10.09.2024 New Delhi.

ECO-WATCH

DIGITAL AGRICULTURE MISSION

The Union Cabinet Committee recently approved the 'Digital Agriculture Mission' with a substantial financial outlay of ₹ 2,817 Crore. The Digital Agriculture Mission is designed as an umbrella scheme to support various digital agriculture initiatives. These include creating Digital Public Infrastructure (DPI), implementing the Digital General Crop Estimation Survey (DGCES), and supporting IT initiatives by the Central Government, State Governments, and Academic and Research Institutions. The Scheme is based on two core pillars of Agristack and Krishi Decision Support System and seeks to provide farmer-focused digital services that deliver timely and reliable information for the agriculture sector.

Agri Stack with a motto of “Kisan Ki Pehchan”, is designed as a farmer-centric Digital Public Infrastructure (DPI) which aims to provide comprehensive data on farmers, including demographic details, land holdings, and crops sown. The DPI will integrate with state and central digital infrastructures to offer a range of farmer-centric services, including information on livestock, fisheries, soil health, and available benefits.AgriStack also introduces the 'Farmer ID', similar to Aadhaar card, serving as a trusted digital identity for farmers. These IDs, created and maintained by the State Governments/ Union Territories, will be linked to various farmer-related data, including land records, livestock ownership, crops sown, and benefits availed.

The second pillar, the Krishi Decision Support System (DSS) will integrate remote sensing data on crops, soil, weather, and water resources into a comprehensive geospatial system. Additionally, the mission includes 'Soil Profile Mapping' and aims to create detailed soil profile maps for approximately 142 million hectares of agricultural land.

Further under the mission, the Digital General Crop Estimation Survey (DGCES) will be used for crop-cutting experiments to provide precise yield estimates, enhancing agricultural production accuracy. Overall, the mission aims to leveraging modern technologies like data analytics, AI, and remote sensing, the mission to improve service delivery for farmers, including streamlined access to government schemes, crop loans, and real-time advisories.

The Mission is expected to benefit farmers in various ways such as expediting various processes,digital authentication for accessing services and benefits, reducing paperwork and the need for physical

visits. It is also expected to lead to enhanced efficiency and transparency in government schemes, crop insurance, and loan systems through accurate data on crop area and yield. Crop map generation and monitoring will also help related stakeholders in adaptation for better disaster response and insurance claims. Development of digital infrastructure in agriculture may also assist in optimsing the value chains and provide tailored advisory services for crop planning, health, pest management, and irrigation.

It is pertinent to note that digital agriculture mission based on DPI has potential to revolutionize agriculture and food systems by allowing public and private sector stakeholders access to these datasets and innovate. Public and private organisations can innovate using theses trusted data sources and efficiently build agriculture solutions for farmers. The success of the mission may spur the growth of agri-startups led by young entrepreneurs in rural areas. The development of these startups and the influx of new entrants will foster competition, bringing dynamism to agricultural markets and offering innovative solutions to enhance consumer welfare. This will cultivate an ecosystem of enterprises leveraging technological advancements to improve farm yield and efficiency. Enhanced competition among agri-tech companies and innovators may also lead to more affordable services for farmers, thereby lowering their production costs.

The launch of the Digital Agriculture Mission is thus a step in the right direction. It is expected to provide essential infrastructure that can help innovation which will lead to faster agricultural development. It may also foster competition by scaling innovations from India's rural areas and encouraging the entry of new firms. This could usher in a new era in India's agricultural development narrative by driving it to an information technology backed higher and sustainable growth trajectory.

To conclude, the Digital Agriculture Mission is a comprehensive scheme aimed to promote efficiency and transparency in the agriculture sector. It is an extension of India's digital revolution that has significantly transformed governance and service delivery in recent years. However, as other components of the ecosystem evolve and come together, it will be essential to enhance capacity within both the public and private sectors, and motivate stakeholders to engage with the ecosystem. Moreover, successful policy implementation and efforts to raise awareness and encourage the adoption of digital services will be crucial for building trust and success of the mission.

DEVELOPMENTS IN OTHER JURISDICTIONS

I. Anticompetitive Conduct

1. ACCC accepts undertakings from Telstra and Optus during its ongoing investigation into Google's search service

The Australian Competition and Consumer Commission (ACCC) has accepted undertakings from Telstra and Optus as part of the ACCC's ongoing competition investigation into Google's search services in Australia. During the investigation into Google's conduct, the ACCC became aware of agreements that Google had initiated and entered into with Telstra and Optus, which meant Google's search services were pre-installed as the default search service on Android devices supplied by these companies. Google developed the Android operating system, and Google's agreements with Telstra and Optus, in place since at least 2017, limited the ability for rival search engines to be pre-installed and promoted on Android devices, in return for a share of Google's advertising revenue. These agreements expired on 30.06.2024.

They have each undertaken that, after 30.06.2024, they would not renew or enter any new arrangements with Google that require its search services to be pre-installed and set as the default search function on an exclusive basis on devices they supply. The undertakings from Telstra and Optus resolve the ACCC's concerns in relation to their involvement in the alleged anticompetitive conduct. ACCC is continuing the

investigation into Google's conduct in entering into such agreements more broadly, as it considers this raises potential competition concerns.

2. The European Commission opens investigation into possible anticompetitive agreements in the online food delivery sector

The European Commission (EC) has opened a formal antitrust investigation to assess whether Delivery Hero and Glovo have breached EU competition rules by participating in a cartel in the sector of online ordering and delivery of food, grocery and other daily consumer goods in the European Economic Area ('EEA').

Delivery Hero and Glovo are two of the largest food delivery companies in Europe. From July 2018, Delivery Hero held a minority share in Glovo, and in July 2022 it acquired its sole control. The EC is concerned that, before the takeover, Delivery Hero and Glovo may have allocated geographic markets and shared commercially sensitive information (e.g., on commercial strategies, prices, capacity, costs, product characteristics). The EC is also concerned that the companies may have agreed not to poach each other's employees. These practices could have been facilitated by Delivery Hero's minority share in Glovo. The opening of a formal investigation does not prejudge its outcome.

The investigation is the first on no-poach agreements formally initiated by the EC. It is also the first by the EC into anti-competitive agreements that may have occurred in the context of a minority shareholding by one operator in a competitor.

3. Italian Competition Authority: investigation launched against Google for unfair commercial practices

The Italian Competition Authority *Autorità Garante della Concorrenza e del Mercato* (AGCM)has opened investigation proceedings against Google and its parent group Alphabet with respect to the submission to users of a request for consent to the “linking” of the services offered. This request would in fact appear to provide no relevant information - or would provide it inadequately and imprecisely - as to the real effect that consent has on Google's use of personal data of users. The same critical issues would arise with respect to the variety and number of Google's services for which “combination” and “cross-use” of personal data may occur, and with respect to the possibility of modulating (and thus limiting) consent to only some services.

The Authority also alleges that Google may use techniques and methods for requesting consent, and also for setting up the mechanisms for obtaining consent itself, which could condition the freedom of choice of the average consumer. Indeed, the customer would be induced to take a commercial decision that he/she would not have taken otherwise, by consenting to the combination and cross-use of his/her personal data among the plurality of services offered.

4. South African Competition Commission halts tuberculosis (TB) drug investigation as intervention leads to 40% price decrease

The Competition Commission of South Africa (CCSA) has decided not to prosecute a complaint of alleged anticompetitive conduct initiated against Johnson & Johnson (Pty) Ltd and its subsidiary company, Janssen Pharmaceutica (Pty) Ltd. The CCSA investigated allegations of abuse of dominance against Johnson & Johnson (Pty) Ltd and its subsidiary company, Janssen Pharmaceutica (Pty) Ltd, after the companies had filed a secondary patent for Bedaquiline (trading as Sirturo®), a drug used in the treatment of TB, effectively restricting the entry of generic alternatives. The companies, have agreed not to enforce the Bedaquiline patent in 134 low- and middle-income countries, including South Africa. This opens the market allowing for the entry of generic suppliers. In addition, the companies renegotiated the Bedaquiline prices charged to the National Department of Health as the procurer of Bedaquiline in South Africa. Accordingly, the price of Bedaquiline has been reduced by approximately 40%. The CCSA does, however, reserve the right to investigate should new evidence emerge suggesting the possible abuse of dominance in the provision of Bedaquilline.

5. FTC Outlines Remedy Concerns in Amicus Brief After Jury Finds Google Illegally Monopolized App Store

The US Federal Trade Commission (FTC) filed an amicus brief in a case brought by online video game maker Epic Games Inc. against Google LLC's app store, which outlines how the court should consider potential remedies when determining effective relief to restore competition after Google was found liable for illegal monopolization. Effective relief shouldn't allow Google to reap the rewards of illegal monopolization, the FTC's brief says.

Google's App Store serves as an essential platform used by developers, which includes Epic, to market their software. Google's App Store is also critical for users that seek to purchase applications, such as Epic's online game Fortnite.

Looking forward in cases like Epic v. Google often requires the consideration of network effects, data feedback loops, and other key features of digital markets. This could help ensure that potential competitors can overcome the advantages established digital platforms often gain, which include network effects and data incumbency. These advantages allow established digital platforms to lock-in users, advertisers, and other stakeholders, which create barriers to entry for future competition.

In the Epic case, Google has raised several concerns about the administrability of potential injunctions that impose duties to deal with competitors and the implications of any requirement that Google provide access to its Application Programming Interfaces to non-customers for free. Despite these concerns, courts still have wide latitude to impose these sorts of requirements on monopolists when crafting remedies to restore competition, the FTC stated in its brief.

Google also has expressed concern that the cost of complying with Epic's proposed remedy may be overly burdensome. Complaints about the burdens of compliance are no excuse, the FTC stated in its brief. Google's monopolistic behavior has significantly harmed millions of users in the United States. Allowing monopolists to reap the rewards of illegal monopolization while avoiding the costs of restoring the competition that they unlawfully eliminated would undermine deterrence, the FTC stated in its brief.

6. Italian Competition Authority publishes Commitments submitted by Booking.com in relation to alleged Abuse of Dominant position

The Italian Competition Authority AGCM decided to publish the commitments submitted by the companies Booking.com International B.V., Booking.com B.V., Booking.com (Italia) S.r.l. (Booking) during the investigation launched last March for alleged abuse of a dominant position. Booking would have attempted to exclude other Online Travel Agencies (OTAs) from the online hotel intermediation services market by exploiting its market power towards accommodation facilities. Specifically, the strategy adopted by Booking would have consisted in making Italian hotel structures less autonomous to differentiate their own rates between booking.com and other online sales channels by joining certain programmes. These are Partner Preferiti and Preferiti Plus, that have advantages of visibility in search results upon payment of higher fees and commitment to offer “competitive” prices on booking.com, and the so-called Booking Sponsored Benefit, which allows Booking to apply - without the consent of the accommodation facility - a discount to align the offer on its platform with the best available online.

Booking submitted commitments to ensure that prices charged by accommodation facilities on online sales channels other than booking.com are not taken into account in the operation and promotion of the said programmes. The Italian competition authority sought comments from interested third parties on the submitted commitments no later that 13.09.2024. Only at the end of this procedure, the Authority will decide whether or not to accept the commitments in question.

7. Turkish Competition Authority Rekabet Kurumu imposes 20.675.810,53 TL on HATTAT for setting the resale prices at final sales points

With the decision of the Competition Board dated 08.09.2022, a preliminary inquiry was launched about AGCO Tarım Makineleri

Ticaret Ltd. Şti. (AGCO), Argo Tractors Turkey Traktör San. ve Tic. Ltd. Şti. (ARGO), Başak SatışPazarlamaveYatırım AŞ (BAŞAK), ErkuntTraktörSanayii AŞ (ERKUNT),

HattatTraktör Sanayi veTicaret AŞ (HATTAT), IPSO Tarım AŞ (IPSO), Kubota Turkey MakineTicaret Ltd. Şti. (KUBOTA), Same Deutz Fahr Traktör San. ve Tic. AŞ (SDF), Tümosan Motor veTraktör Sanayi AŞ (TÜMOSAN) and Türk TraktörveZiraatMakinaları AŞ (TÜRK TRAKTÖR), which are operating in the sector for manufacturing and marketing tractors, concerning the claim that they violated article 4 of the Act no 4054 on the Protection of Competition (the Act no 4054) by means of restricting their dealers' passive sales.

With the decision of the Board dated 05.01.2023 it was decided that an investigation would be opened

- About AGCO, BAŞAK, ERKUNT, HATTAT, IPSO, KUBOTA, SDF and TÜMOSAN with respect to region and customer restriction claims,
- About HATTAT with respect to resale price maintenance claim,
- About AGCO, ARGO, BAŞAK, ERKUNT, HATTAT, IPSO, KUBOTA, SDF, TÜMOSAN and TÜRK TRAKTÖR with respect to anticompetitive exchange of information and/or anticompetitive agreement claims to determine whether they violated article 4 of the Act no 4054.

Finally, with the Competition Board decision dated 18.07.2024, it has been decided that

- AGCO, ARGO, BAŞAK, ERKUNT, HATTAT, IPSO, KUBOTA, SDF, TÜMOSAN and TÜRK TRAKTÖR did not violate the Act no 4054 by means of anticompetitive exchange of information and/or agreement; thus, it is not necessary to impose administrative fines to the said undertakings per article 16 of the same Act,
- HATTAT violated article 4 of the Act no 4054 by setting the resale prices at final sales points; thus, the undertaking shall be imposed 20.675.810,53 TL administrative fines and the investigation shall be terminated.

8. CMA wins drug market sharing appeal

The Court of Appeal (CoA) has upheld the Competition and Markets Authority (CMA)'s finding of cartel infringement relating to an illegal market sharing agreement in the supply of an essential medicine. It ruled in favour of the CMA's appeal of the Competition Appeal Tribunal (CAT)'s decision to overturn its finding of a market sharing agreement on procedural grounds.

In July 2021, the CMA found that pharmaceutical firms Auden Mckenzie and Actavis UK had charged excessive and unfair prices for hydrocortisone tablets. It also found that to protect its position as sole supplier of the drug, Auden/Actavis UK paid another pharmaceutical firm called AMCo (now called Advanz) to stay out of the market.

The CMA imposed over £260 million in penalties to reflect the seriousness of this conduct and its impact on the NHS.

Despite upholding the CMA's findings of excessive and unfair pricing and the existence of a “flagrantly anti-competitive” market sharing agreement in September 2023, the CAT issued a further judgment in March 2024 which found that the CMA had failed to observe due process by not fully putting its case on the market sharing agreement to former CEO of Advanz John Beighton in cross-examination at trial.

Following an appeal by the CMA, the CoA has overturned that judgment and endorsed the cross-examination by CMA counsel as demonstrating “precisely how a case of anti-competitive conduct can and should be put to a recalcitrant witness”.The CoA further decided that the procedure adopted by the CAT, in making findings and then engaging in “an entirely fresh examination and analysis of the CMA's case” leading it to reverse those findings, was “inappropriate” and “unjust”.

9. One-year sentence for Construction DJL executive who rigged bids for public contracts in Québec, Canada

Following a Competition Bureau investigation, criminal charges were laid against the vice-president of operations for Construction DJL and the vice-president for Pavages Maska Inc. in connection with bid-rigging for paving contracts related

to the case.

The vice-president of operations for Construction DJL at the time of the offence has been sentenced to twelve months of house arrest after pleading guilty in the Superior Court of Québec to rigging bids for paving contracts awarded by the ministère des Transports du Québec in and around the Granby region. He admitted to participating in the scheme from 2008 to 2009, in which he colluded with competitors Sintra Inc. and Pavages Maska Inc. to submit rigged bids.The scheme enabled the conspirators, rather than market forces, to dictate contract winners, prices and the quality of products and services.

10. CMA objects to Google's ad tech practices in bid to help UK advertisers and publishers

An investigation by the Competition and Markets Authority (CMA) has provisionally found that Google is using anti-competitive practices in open-display ad tech, which it believes could be harming thousands of UK publishers and advertisers.

The CMA has provisionally found that, when placing digital ads on websites, the vast majority of publishers and advertisers use Google's ad tech services in order to bid for and sell advertising space. The CMA is concerned that Google is actively using its dominance in this sector to preference its own services. Google disadvantages competitors and prevents them competing on a level playing field to provide publishers and advertisers with a better, more competitive service that supports growth in their business.

The US Department of Justice and European Commission have also opened separate investigations into Google's activities in ad tech. These proceedings are currently ongoing.

The CMA's investigation has focused on Google's role as an intermediary in three key parts of the chain, where it has a powerful market position with high market shares. For advertisers, Google operates two ad buying tools, known as “Google Ads” and “DV360”. For publishers, it operates a publisher ad server, known as “DoubleClick For Publishers” (DFP). In the centre of the ad tech stack, Google operates an ad exchange, known as “AdX”. Ad exchanges typically receive requests for bids from publishers and responding bids from advertisers, and then conduct an auction to match these two sides.

The CMA's provisional findings relate to anti-competitive 'self-preferencing' by Google. The CMA has provisionally found that, since at least 2015, Google has abused its dominant positions through the operation of both its buying tools and publisher ad server in order to strengthen AdX's market position and to protect AdX from competition from other exchanges. Moreover, due to the highly integrated nature of Google's ad tech business, the CMA has provisionally found that Google's conduct has also prevented rival publisher ad servers from being able to compete effectively with DFP, harming competition in this market.

The CMA has provisionally found that this anti-competitive conduct is ongoing. The CMA is therefore considering what may be required to ensure that Google ceases the anti-competitive practices, and that Google does not engage in similar practices in the future.The CMA will now carefully consider representations from Google before reaching its final decision.

II. Mergers and Acquisitions

11. CCCS Singapore Issues Provisional Decision on Grab Holdings Limited's Proposed Acquisition of Trans-cab Holdings Ltd.

The Competition and Consumer Commission of Singapore (“CCCS”) has issued a Statement of Decision (Provisional) (“SDP”) that the proposed acquisition by Grab Holdings Limited (“Grab”) through GrabRentalsPte.Ltd. (“GrabRentals”) of Trans-cab Holdings Ltd. (“Trans-cab”) is likely to result in a substantial lessening of competition in the market for the supply of ride-hail platform services to drivers and passengers in Singapore (the “Ride-Hail Platform Market”); thereby infringing section 54 of the Competition Act 2004 (the “Act”), which prohibits anti-competitive mergers.

CCCS has found that Grab is dominant in the Ride-Hail Platform Market, and the proposed acquisition is likely to entrench and strengthen Grab's already dominant position in the Ride-Hail Platform Market to the detriment of drivers and passengers.

CCCS noted that Grab's plans to acquire Trans-cab, which is one of the largest fleets (taxi or private-hire car) not owned by or in partnership

with any ride-hail platform in Singapore, to increase the availability of drivers on its ride-hail platform comes at a time when rival ride-hail platforms are facing driver supply shortages.

The Proposed Acquisition is likely to (a) affect the ability of rival ride-hail platforms to fulfil trip requests and, over time, make them less attractive to passengers and drivers due to indirect network effects (i.e. drivers tend to prefer ride-hail platforms with a larger number of passengers, and passengers tend to prefer ride-hail platforms with a larger number of drivers) and (b) affect the ability of rival ride-hail platforms to expand the scale of ride-hail platform services offered.

12. Aurizon's proposed acquisition of Flinders Logistics raises concerns

The Australian Competition and Consumer Commission ("ACCC") has identified preliminary competition concerns with Aurizon's proposed acquisition of Flinders Logistics Pty Ltd in a Statement of Issues published on 11.07.2024. Flinders Logistics operates a stevedoring and logistics business for bulk and limited break-bulk cargo at Port Adelaide and at Port Pirie, South Australia. Aurizon is a national freight company which provides rail haulage to and from Port Adelaide.

The ACCC is concerned that the proposed acquisition may substantially lessen competition in the supply of rail haulage services for the import and export of containerised bulk minerals in South Australia. Berth 29 is a critical berth at Port Adelaide for the import and export of certain mining products and minerals sands, and is the only berth in South Australia capable of handling these products, according to feedback received by the ACCC.

The proposed acquisition would bring together Australia's largest rail freight operator with a key provider of stevedoring and port logistics services at Berth 29. Following the proposed acquisition, Aurizon would be responsible for the loading and unloading of all trains at Berth 29. The ACCC is concerned that this may provide Aurizon with the ability and incentive to limit the access of competing rail haulage providers to Berth 29.

13. The European Commission clears proposed acquisition of stake in ITA Airways by Lufthansa, subject to conditions

The European Commission (EC) has approved the proposed acquisition of joint control of ITA Airways (ITA) by Deutsche Lufthansa AG (Lufthansa) and the Italian Ministry of Economy and Finance (MEF). The approval is conditional upon full compliance with the remedies offered by Lufthansa and the MEF.

Lufthansa and ITA operate an extensive network of routes from their respective hubs in Austria, Belgium, Germany, Switzerland and Italy. Their operations are to a significant extent complementary as they operate from different hubs in Central Europe and Italy respectively. Lufthansa has joint ventures with United Airlines and Air Canada for transatlantic routes as well as with All Nippon Airways for routes to Japan. Whilst ITA is performing well, ITA's long-term sustainability as a stand-alone carrier would have remained highly uncertain absent the transaction.

To address the EC's competition concerns, Lufthansa and the MEF submitted a remedy package consisting of:

- **Commitments for short-haul routes:** Lufthansa and the MEF will make available to one or two rival airlines the necessary assets to enable them to start non-stop flights between Rome or Milan and certain airports in Central Europe. Lufthansa and the MEF will also ensure that one of those rival airlines will have access to ITA's domestic network to offer indirect connections between certain airports in Central Europe and certain Italian cities other than Rome and Milan.
- **Commitments for long-haul routes:** The merged company will enter into agreements with rivals to improve their competitiveness on the long-haul routes of concern through interlining agreements or slot swaps.
- **Commitments for Milan Linate airport:** Lufthansa and MEF will transfer take-off and landing slots at Linate airport to the remedy takers for the short-haul routes. This will allow the remedy taker to establish a sustainable base at Linate airport and to potentially offer its own one-stop connections between Italy and Central Europe.

14. GlaxoSmithKline can acquire rights to CureVac's COVID and influenza vaccines

The Bundeskartellamt, Germany's national competition regulatory agency, has cleared the planned acquisition by GSK plc (GlaxoSmithKline) of intellectual property and patent rights relating to certain vaccine candidates from CureVac SE in the first phase of merger control.

GSK is a global biopharma company offering a wide range of vaccines, general medicines and specialty medicines. CureVac is a biopharmaceutical company headquartered in Tübingen which is developing a new class of mRNA-based drugs.

The notified transaction relates to vaccines for COVID and seasonal influenza, in particular, but also pandemic and universal influenza as well as to combined influenza and COVID vaccines. The vaccine candidates are currently still in different phases of clinical trials, meaning none of the vaccines in question have been approved yet.

The Bundeskartellamt's investigations have shown that even post-pandemic, COVID vaccines continue to be the subject of extensive research worldwide. According to the World Health Organization, there are as many as 15 ongoing mRNA-based COVID vaccine projects, and approximately 70 COVID vaccine candidates with other mechanisms of action. With regard to seasonal influenza, the investigations have also shown that the research landscape is very competitive. The project is not expected to significantly impede competition in any of the segments affected.

15. CADE signs agreement with Vanz, SZ, and Britali for gun jumping

On 05.06.2024, the Administrative Council for Economic Defense (CADE) signed an agreement with the companies Vanz Holding, SZ ParticipaçõesSocietárias, and Indústria e Comércio de Couros Britali for completing a transaction before the clearance from the Brazilian antitrust authority, a practice known as gun jumping.

In December 2023, an administrative proceeding was launched to ascertain whether the creation of a joint venture (Gelprime) among Grupo Vancouros, Grupo Viposa, and Britali was completed before CADE's clearance. The parties submitted the transaction to CADE for review. In the notification, the companies informed that the business was formally established in July 2019 and Gelprime started the activities by the end of 2022.

The companies committed to pay more than BRL 700,000 to the Brazilian Fund for De Facto Joint Rights.

16. CADE launches administrative procedure to investigate airlines

On 15.07.2024, CADE launched an administrative procedure related to a code share agreement between Azul and Gol, announced in May 2024. By the end of the investigation, CADE can decide to dismiss the procedure, decide that the transaction was completed in disagreement with the Brazilian Competition Law or open an administrative procedure. Thus, if CADE finds the defendants guilty, a fine can be established, in addition to a required notice.

The Brazilian antitrust authority uses administrative procedures to investigate merger agreements with required notice consummated before CADE's clearance.

17. CCCS consults on the potential release of Qantas Airways and Emirates from capacity commitments on the Singapore-Brisbane and Singapore-Melbourne routes

The Competition and Consumer Commission of Singapore (CCCS) has invited public feedback on the release of Qantas Airways Limited (QF) and Emirates (EK) (the Parties) from capacity commitments on the Singapore-Brisbane (SIN-BNE) and Singapore-Melbourne (SIN-MEL) routes, and the release of QF from capacity commitments on the SIN-MEL route.

On 28.03.2013, CCCS issued a conditional clearance decision for the proposed alliance between the Parties after they provided CCCS with a voluntary undertaking to maintain minimum weekly seat capacities for passengers on the SIN-BNE and SIN-MEL routes. Under the Alliance, the Parties will coordinate on various aspects of their flight services such as pricing (relating to fares, rebates, incentives and discounts), scheduling, marketing, planning, operating capacity and airport facilities across

the global networks of both Parties across routes from Australia to Europe, via Singapore and Dubai.

18. FTC Staff Opposes Proposed Indiana Hospital Merger

The US Federal Trade Commission (FTC), on 05.09.2024, submitted a comment urging the Indiana Department of Health to deny an application that seeks to combine Union Hospital, Inc. (Union Health) and Terre Haute Regional Hospital, L.P. (THRH).

Union Health and THRH are proposing to merge under a proposed certificate of public advantage, also known as a COPA. The COPA could shield the proposed merger from antitrust scrutiny, leading to a deal that would likely impose higher costs and could lead to worse healthcare outcomes for Indiana patients, as well as lower wage growth for hospital workers, the comment states. In Vigo County, Indiana, where the effects of the proposed merger would likely be felt most acutely by area patients and hospital workers, the merged entity would have a combined share of nearly 74% of all commercially insured inpatient hospital services.

Union Health's proposed acquisition of THRH raises substantial risk of serious competitive harm and there is insufficient evidence to conclude that the potential harms from the merger would outweigh the claimed potential benefits, the FTC's comment states.

FTC staff evaluated the financial conditions of Union Health and THRH, and concluded that both hospitals are financially stable and able to continue operations absent the proposed merger. FTC staff also performed a labour analysis and determined that the proposed merger would likely depress wage growth for registered nurses due to increased employer consolidation.

19. CMA sets out Provisional View on Vodafone /Three Merger

An in-depth investigation by the UK Competition and Markets Authority (CMA) has provisionally found competition concerns over Vodafone's planned merger with Three in the UK.

The investigation, led by an independent inquiry group, has provisionally concluded that the merger would lead to price increases for tens of millions of mobile customers, or see customers get a reduced service such as smaller data packages in their contracts. The CMA has particular concerns that higher bills or reduced services would negatively affect those customers least able to afford mobile services as well as those who might have to pay more for improvements in network quality they do not value.

The CMA has also provisionally found that the merger would negatively impact 'wholesale' telecoms customers – Mobile Virtual Network Operators (MVNOs) such as Lyca Mobile, Sky Mobile and Lebara – which rely on the existing network operators to provide their own mobile services. The merger would reduce the number of network operators from 4 to 3 making it more difficult for MVNOs to secure competitive terms, restricting their ability to offer the best deals to retail customers. The 4 mobile network operators in the UK are Vodafone UK, Three UK, BTEE and Virgin Media O2.

While identifying these concerns, the CMA has also found that the merger, by integrating the Vodafone and Three networks, could improve the quality of mobile networks and bring forward the deployment of next generation 5G networks and services, as claimed by Vodafone and Three. But the CMA currently considers that these claims are overstated, and that the merged firm would not necessarily have the incentive to follow through on its proposed investment programme after the merger. As a result, the CMA has provisionally concluded that the merger would lead to a substantial lessening of competition in the UK – in both retail and wholesale mobile markets.

The CMA invited responses to its provisional findings by 04.10.2024 and its notice of possible remedies by 27.09.2024. These will be considered ahead of the CMA issuing its final report, which is due by 07.12. 2024.

20. The French Authority clears the acquisition of Kindred (Unibet) by La Française des Jeux, subject to separation between its monopoly and competitive activities, in particular with regard to brands

The French Competition Authority i.e. *Autorité de la concurrence* has cleared the proposed acquisition of sole control of Kindred Group by La

Française des Jeux,subject to conditions. To address the risks of harm to competition identified, FDJ has enter into behavioural remedies.

La Française des Jeux and its various subsidiaries form the FDJ group (FDJ). FDJ is active primarily in the games of chance and gambling sector. In France, the group has exclusive rights to organise and manage lottery games at points of sale and online, and to offer sports betting games at points of sale. FDJ is licensed for its online sports betting and online poker activities.

Kindred Group (Kindred) heads an international group active in the games of chance and gambling sector, primarily in Europe. In France, through SPS Betting France, the group offers online sports betting, online horse race betting and online poker under the Unibet brand.

The proposed transaction would take place a few months after FDJ strengthened its position in the online betting sector with the acquisition of Zeturf, cleared by *Autorité* in September 2023. The merger brought FDJ into the online horse race betting market, the only market in the online gambling sector in which the group was not yet present, and increased its market share in online sports betting.

Given Kindred's activity in the related markets of online sports and horse race betting and online poker, the *Autorité* considers that the acquisition of sole control of Kindred is likely to present the same types of conglomerate risks as those identified in the examination of the ZEturf transaction.

However, the commitments made in September 2023, which apply to the online horse race betting, online sports betting and online poker activities marketed in France by FDJ following the ZEturf transaction, do not include Kindred's activities and are therefore not sufficient to offset the risks raised by the new transaction. The new entity could be tempted to create links between the monopoly games offered by FDJ and the games offered by the target by promoting online sports and horse race betting and online poker to monopoly game players, deploying commercial offers encouraging monopoly game players to play online horse race and sports betting and online poker, maintaining confusion between the customer paths of monopoly game players and online horse race and sports betting players and online poker players, and using a single customer account for all the games offered.

To mitigate the risks raised, FDJ undertook to apply and supplement the commitments made in September 2023 in connection with the clearance of the acquisition of ZEturf. In addition, FDJ has made a new brand separation commitment, whereby all competitive games will eventually be marketed under one or more brands specific to competitive games and not sharing a common root or logo with the FDJ or Parions Sport Point de Vente brands or any other brand under which FDJ markets its monopoly games in France.

21. Brazil's CADE to investigate big tech's acquisitions of AI startups

On 22.08.2024, the Administrative Council for Economic Defense (CADE) launched four administrative procedures to investigate antitrust reports involving big techs' acquisitions of artificial intelligence (AI) start-ups.

The administrative procedures aim to understand if these acquisitions, which would not require mandatory notifications, are to be investigated due to potential competitive harm. The launching of an administrative procedure to investigate mergers can occur before an administrative proceeding. The Brazilian antitrust authority can use this document to check mergers that do not require a mandatory notification, but that could have their submissions requested, under Paragraph 7, Article 88, of Law 12529/2011.

The procedure openings do not necessarily mean that the mergers are to be notified or that there were competitive harms. At the end of the investigation, the Office of the Superintendent General is to decide to dismiss the case, consummate the transaction, or launch the administrative proceeding for the submission of mergers and review of the possible competitive harm of the transaction.

22. CCSA recommended approval of proposed transaction involving Metier Capital Growth Fund III GP (Pty) Ltd (“MCGF III”)/ Blinkwater Meule (Pty) Ltd. (“Blinkwater”), with conditions

The Competition Commission of South Africa (CCSA) has recommended that the Competition Tribunal ("Tribunal") approves the proposed transaction whereby MCGF III intends to acquire Blinkwater, with conditions. The primary acquiring firm is MCGF III, comprising the Metier Capital Growth International Fund III LP ("MCGF III (MU)"), a Mauritian limited partnership, investing through MCGF III Investments, and Metier Capital Growth Fund III Partnership ("MCGF III (SA)"), a South African encommandite partnership. The Acquiring Group (MCGF III and its associates) is a growth capital private equity investor managing third-party capital from various investors.

The primary target firm Blinkwater is an integrated maize milling business that produces maize meal and hominy chop. It distributes its maize meal at retail level, including via approximately 325 spaza stores, as well as through independent wholesalers and retailers. Blinkwater also supplies (in small amounts) other staple foods such as rice, flour and sugar at its spaza stores. Blinkwater conducts its business activities throughout South Africa, mostly focussed on the Mpumalanga and Limpopo provinces.

The Commission was of the view that the proposed transaction is unlikely to substantially lessen or prevent competition in any market. In order to benefit employment, the merged entity would expand an existing Blinkwater milling facility in Stoffberg, Mpumalanga and recommission an inactive mill in Mbombela, Mpumalanga. In addition, the Acquiring Group would establish new spaza shop depots. The Acquiring Group has also committed to job creation over a set period.

23. ACCC authorises collaboration to support cash-in-transit services

The ACCC has granted authorisation to allow the Australian Banking Association (ABA), its member banks, Australia Post, retailers, supermarkets and other industry participants to collaborate so they can ensure there is continuity of cash-in-transit services.Cash-in-transit services involve providing cash transport, management, and processing services. These services are provided to banks, retailers, and independent ATM operators. The ACCC's authorisation allows the parties to collaborate and prepare for any suspension or disruption of cash-in-transit services.

In relation to a further ABA application, the ACCC has decided to grant interim authorisation to allow the ABA, banks and retailers to provide financial contributions to Armaguard, discuss, share information, and reach in-principle agreement on operational sustainability. This interim authorisation also allows parties to agree on efficiency measures and discuss, share information and reach, but not implement, in-principle agreement about an independent pricing mechanism.

ACCC authorisation provides statutory protection from court action for conduct that might otherwise raise concerns under the competition provisions of the Competition and Consumer Act 2010.

III. Developments in Competition law and Policy

24. GPAI and OECD unite to advance coordinated international efforts for trustworthy AI

The OECD and the Global Partnership on Artificial Intelligence (GPAI) are joining forces to advance an ambitious agenda for implementing human-centric, safe, secure and trustworthy Artificial Intelligence (AI) embodied in the principles of the OECD Recommendation on AI. This renewed vision for GPAI, announced at the New Delhi Summit convened on 03.07.2024-04.07.2024 by GPAI Chair India, combines the respective expertise and capabilities of the GPAI and OECD to expand their collective reach.

The announcement follows close co-operation between the OECD and GPAI. The integrated partnership builds important bridges between AI policy development and research, and among countries on an equal footing that share similar approaches to AI opportunities and risks. It aims to pave the way for the global development of safe, secure and trustworthy AI. The partnership will also capitalise on the extensive, multi-disciplinary and multi-stakeholder expertise of an AI expert community, pooling the networks and groups currently contributing to the GPAI and OECD.

25. The EC seeks feedback on draft

antitrust Guidelines on exclusionary abuses

The European Commission (EC) has launched a public consultation inviting all interested parties to comment on draft Guidelines on exclusionary abuses of dominance by 31.10.2024. Examples of such exclusionary abuses of dominance include predatory pricing, margin squeeze, exclusive dealing and refusal to supply.

- In particular, the draft Guidelines provide guidance on various key issues concerning exclusionary abuses by dominant companies, including:

- The purpose of competition law enforcement and the concept of consumer welfare under EU law, including in relation to exclusionary abuses.

- The main principles applicable to the assessment of single and collective dominance.

- The application of general principles to determine if a conduct by a dominant company is likely to constitute an abuse and, in particular, on the concepts of “competition on the merits” and “exclusionary effects.

- The evidence necessary to show that a conduct is capable of producing exclusionary effects. In particular, the draft Guidelines identify: (i) categories of conduct for which it is necessary to demonstrate the capability of producing exclusionary effects; (ii) categories of conduct that have a high potential to lead to exclusionary effects, and (iii) naked restrictions, which by their very nature lead to exclusionary effects.

- The substantive legal standard to establish a conduct's capability to produce exclusionary effects.

- The analytical framework applicable to certain types of conduct by dominant companies. The draft distinguishes between: (i) conduct subject to a specific legal test set out in EU case law (i.e. exclusive dealing, tying and bundling, refusal to supply, predatory pricing and margin squeeze); and (ii) conduct not subject to a specific legal test (i.e. conditional rebates, multi-product rebates, self-preferencing and access restrictions).

- The general principles applicable to the assessment of objective justifications that the dominant company may argue.

26. Competition Bureau Canada seeks feedback on competitor property controls guidance

The Competition Bureau Canada invited comments on its preliminary enforcement approach to competitor property controls following recent changes to the Competition Act.

Competitor property controls are restrictions on the use of commercial real estate. They can harm competition by making it difficult, or even impossible, for businesses to open new stores. The Government of Canada recently made significant changes to the Competition Act as part of its efforts to modernize Canada's competition laws. In December 2023, important changes were made to expand the scope of reviewable collaborations between firms and to strengthen the Bureau's ability to prevent abuse of dominance. More changes to the Act were made in June 2024 that further strengthen the Bureau's ability to act on competitor collaborations. Some of these changes came into effect immediately, while others do not come into effect until December 2024.

27. FTC Supports USDA's Efforts to Protect Farmers, Growers, Ranchers, and Consumers from Unlawful Conduct by Dominant Meat Processors

The US Federal Trade Commission (FTC), on 11.09.2024, submitted a comment supporting a U.S. Department of Agriculture (USDA) proposed rule to protect against unfair practices by dominant meat processors that can harm farmers, growers, ranchers, and consumers.

The USDA's proposed rule seeks to clarify the scope of what constitutes unfair practices under the Packers and Stockyards Act (PSA), which assures fair competition and fair-trade practices to protect farmers, ranchers, growers, and consumers.

The comment notes that imposing a difficult-to-meet competitive injury requirement is counter to the plain text of the PSA. At a time when lower food costs to consumers and supply chain resilience are critically needed, interpretations of the PSA should not put access to justice out of reach for farmers. The proposed rule correctly recognizes that, based on the PSA's plain text and its

relationship to the FTC Act, competitive injury is not required for a PSA violation.

28. EC Publishes finding of evaluation of EU antitrust enforcement framework

The European Commission (EC) has published a staff Working Document ('SWD') summarising the findings of the evaluation of the EU Regulations which lay out the procedures for the application of EU competition rules (Regulation 1/2003 and Regulation 773/2004, together the 'Regulations').

Between 01.05.2004 and August 2024, the EC has adopted 225 enforcement decisions, either finding an infringement of EU competition rules or accepting commitments that would remove its preliminary concerns. The EC has imposed fines of over €42 billion under Regulation 1/2003, approximately €37 billion of which has been upheld by the EU Courts. Between 2012 and 2021, the estimated total customer savings from all cartel and antitrust interventions by the EC were between €50 to €87 billion.

- The evaluation has shown that: The Regulations have generally achieved their objective of effective, efficient and uniform application of EU competition rules. They continue to have EU added value and remain relevant.

- The main changes brought about by Regulation 1/2003 consisted in:

- First, the removal of the old system that required the notification of agreements to the EC in order for companies to benefit from an exemption under Article 101(3) TFEU, is viewed very positively.

- Second, the implementation of a decentralised system of parallel enforcement of EU competition rules by the EC and NCAs. NCAs and the EC have together adopted over 1,650 decisions of which more than 85% were adopted by NCAs. This shows that NCAs have become key enforcers of EU competition law.

- The European Competition Network ('ECN') has been pivotal to achieving a uniform and effective application of EU competition rules, even if the cooperation within the ECN could be enhanced further. The evaluation showed the need to avoid unnecessary parallel investigations and further improve the relationship between EU and national competition laws to ensure a coherent enforcement of all available legal instruments.

- The evaluation also underlines the need for faster investigations. It identified several issues, some of which are connected to digitalisation, which may impact the effectiveness of investigation tools and powers that were written for 'paper world' investigations. For example, the system of creating and granting access to a non-confidential version of the EC's file in order to ensure parties' rights of defence was conceived at a time when investigations were much smaller in size. With the proliferation of data and larger files that we are looking at, the creation of a non-confidential version of the file creates a significant burden on parties, information providers and the EC alike.

During the evaluation, the EC collected evidence to understand how the Regulations have functioned since they entered into force in 2004. This evidence included feedback gathered in a public consultation, in a conference organised by the EC on the 20 years of Regulation 1/2003 and in a stakeholder workshop. The EC also commissioned an external evaluation support study. The final report of the support study is also published together with the summaries of the National Competition Authorities ('NCAs') feedback and the stakeholder workshop.

In parallel, the EC has adopted, on 05.09.2024, a Report to the Council and the European Parliament on the legal framework for and the use of interim measures by NCAs. Interim measures ensure that competition is preserved while an antitrust investigation is ongoing. The ECN+ Directive provides the NCAs with a minimum set of enforcement powers, including the power to impose interim measures. The report finds that NCAs that make more use of interim measures often have lighter procedural rules, sometimes coupled with less stringent legal requirements to impose those measures.

During the next months, the EC will reflect on the evaluation results and decide whether to launch a process for the revision of the Regulations.

DEAL VALUE THRESHOLD CRITERIA FOR MERGER REVIEW

The Competition Act, 2002 was amended on 11.04.2023, *vide* the Competition (Amendment) Act, 2023 (Amendment Act). Among other things, the Amendment Act introduced an additional notification criterion *i.e*. Deal Value Threshold (DVT) for mergers and acquisitions. This provision of the DVT is enforced with effect from 9th September 2024 through a notification by the Ministry of Corporate Affairs. To enable this provision and other changes introduced by the Amendment Act, the Commission, after extensive stakeholder consultations, notified, the Competition Commission of India (Combinations) Regulations, 2024 (Combination Regulations)on 09.09.2024.

Previously, the Competition Act, 2002 required transactions to be notified to the Commission only where the value of assets or turnover of the parties to the transaction or the group to which they belong met/exceeded the specified threshold limits on a domestic or worldwide basis, as prescribed in section 5 of the Competition Act, 2002 (Act) and the *de minimis*/target exemption notification issued by the Ministry of Corporate Affairs. The DVT comes in as an additional threshold test for transactions that need to be notified to the CCI as per the amended Sections 5 of the Act. Parties that were previously benefitting from the *de minimis*/target exemption, will now have to seek prior mandatory approval from the CCI if the value of their “deal” meets the twin DVT criteria of value threshold and the target having a Substantial Business Operations (SBO) in India. Further, DVT notification provisions would apply to all the transactions where the transaction documents have been signed but the transaction has not been closed before 10.09.2024. However, the multi-step deals will not attract gun-jumping provisions if some of the intermediate steps/transactions have been closed but may still require notification to and approval from the CCI if the remaining steps attract DVT.

The above-mentionedCombination Regulations lay down the criteria for determination of value of transaction under section 5(d) of the Act which will be key in assessing notification requirements under the new DVT provision , subject to the target having SBO in India. The Combination Regulations provide that the value of a transaction for purposes of section 5(d) of the Act includes every valuable consideration direct or indirect, immediate or deferred, in cash or otherwise, including consideration: for any covenants imposed on the seller; for interconnected transactions, call options; for licensing of intellectual property or technological assistance etc. The Combination Regulations also offer explanations on the calculation of the value of any transaction such as the value of future payments must not be discounted to the present value; 'value of transaction' will include the full subscription to the offer in case of an open offer; in case 'value of transaction' cannot be established with “reasonable certainty”, the DVT threshold of ₹2,000 crore may be deemed to be met;'value of transaction' will exclude cost towards legal advice, fee payable to investment banks, regulators, statutory authorities etc.

As per the Combination Regulations, the criteria for SBO in India would be met if:

- the target's Gross Merchandise Value (GMV) in India, in the 12 months preceding the relevant date of the transaction is 10% or more of the global value AND more than ₹500 crores; or

- the target's turnover in India in the preceding financial year is 10% or more of its global turnover AND more than ₹500 crores.

Specifically, for transactions involving digital services. which has been broadly defined to include any service or content provided by means of the internet for consideration or otherwise, the Combination Regulations exclude the ₹500 crore monetary threshold set out above. For such entities, the criteria for SBO in India would be met if:

- the target has 10% or more of its business users or end users in India compared to the global number; or
- the target's GMV in India, in the 12 months preceding the relevant date of the transaction is 10% or more of the global value; or
- the target's turnover in India in the preceding financial year is 10% or more of its global turnover.

HR CORNER

A. Extension of deputation tenure in CCI and Director General's office:

- Shri Vikrant, Office Manager (CS) w.e.f. 03.07.2024 to 02.07.2025.
- Shri Arun T., Office Manager (F&A) w.e.f. 01.07.2024 to 30.06.2025.
- Shri Sanjeet Kumar, Office Manager (CS) in O/o Director General, CCI w.e.f. 16.08.2024 to 15.08.2025.

B. Joining on deputation basis in CCI and Director General's office:

- Dr. Mini S., Adviser (Law) joined CCI w.e.f. 15.07.2024.
- Shri Sunil Joshi, Deputy Director General, joined O/o Director General, CCI w.e.f 02.07.2024.
- Shri Syed Shahbazul Haque, Deputy Director General, joined O/o Director General, CCI w.e.f. 03.07.2024.
- Shri Pradeep Kumar Meel, Adviser (FA) joined CCI w.e.f. 29.07.2024.
- Shri Pradipta Dutta, Deputy Director General joined O/o Director General, CCI w.e.f. 12.08.2024.
- Shri Rakesh Bhanot, Adviser (FA) joined back CCI w.e.f. 09.09.2024 after completing his deputation tenure at NFRA.

C. Relieving from CCI and Director General's office:

- Shri Dumpala Ramakrishna Rao, Office Manager (CS) was relieved w.e.f. 01.07.2024 who was on deputation in O/o Director General, CCI.
- Shri Dheeraj Malhotra, Office Manager (CS) was relieved w.e.f. 22.07.2024 who was on deputation in CCI.
- Shri Naval Kumar, Office Manager (CS) was relieved w.e.f. 23.07.2024 who was on deputation in CCI.
- Shri Manu Chhoker, Office Manager (CS) was relieved w.e.f. 23.07.2024 who was on deputation in O/o Director General, CCI.
- Ms. Ranjana Chaudhary, Deputy Director General was relieved w.e.f. 08.08.2024 who was on deputation in O/o Director General, CCI.
- Shri Davender Prasad, Deputy Director (Law) was relieved w.e.f. 31.08.2024 who was on deputation in CCI.
- Dr. V. Siva Prasad Ganjala, Additional Director General was relieved w.e.f. 19.09.2024 who was on deputation in O/o DG, CCI.

D. Offer of joining on deputation in CCI:

- Offer of appointment on deputation basis in respect of a post of Joint Director (IT) in CCI was issued on 25.07.2024. However, the candidate did not join CCI.
- Offer of appointment on deputation basis in respect of a post of PS in CCI was issued on 20.08.2024.

E. Nasha Mukt Bharat Abhiyaan (NMBA) Pledge-taking ceremony held in CCI on 12.08.2024.

F. Promotions in CCI:

One (01) Deputy Director (F&A), six (06) Office Managers (CS) and one (01) Office Manager (LS) were promoted to the higher grade pay of Joint Director (F&A), Assistant Director (CS) and Assistant Director (LS) respectively vide promotion order dated 10.07.2024.

G. Vacancy circular for engagement of twenty-two (22) Young Professionals in the Competition Commission of India on contract basis was issued on 29.08.2024.

H. Medical Health Camp for Eye & Dental check-up was organised on 06.09.2024 in the CCI office premise.

I. CCI organised Swachhata pledge-taking ceremony on 18.09.2024 under Swachhata Pakhwada - Swachhata Hi Seva (SHS) campaign being celebrated from 17.09.2024 to 01.10.2024.

Smt. Ravneet Kaur, Chairperson of the CCI, delivered keynote address during the Annual Directors' Conclave, organized by the Institute of Directors at New Delhi on "Emerging Trends in Corporate Governance & Building Inclusive Boards" on 09.08.2024.

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