



The Quarterly Newsletter of Competition Commission of India

# Fair Play

VOLUME 13 : April-June 2015



## IN FOCUS

# 6th Annual Day Commemoration

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# FROM THE DESK OF THE CHAIRPERSON

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India adopted a new economic order in the early 1990's. This empowered the invisible hands of the market, namely, demand for and supply of goods and services to determine two major outcomes, namely, quantities to be produced in the economy and prices at which these are to be exchanged.

The invisible hands may occasionally malfunction in the presence of information asymmetry or externalities. State usually intervenes to address these concerns. However, two sets of visible hands may also interfere in the working of the invisible hands. The first set is the enterprises themselves: one or a few of them, rather than the invisible hands, use market power to influence either the quantity and / or the price of goods or service. The second is the State: the authorities pursue public interest through various policies and legislation which, if not carefully crafted and implemented, restrict the economic liberty of enterprises. These visible hands need to be guided to ensure that they don't become an unnecessary hindrance to free and fair rivalry. Competition policy and competition law guide and moderate the influence of visible hands and thereby strengthen the invisible hands.

Competition law in India aims at preventing practices having adverse effect on competition, promoting and sustaining competition in markets, protecting the interests of consumers and ensuring freedom of trade carried on by other participants in markets. It does so by two instruments: advocacy and sanctions targeted at enterprises. While these two measures are complementary, advocacy 'ex ante' ensures freedom of trade by enterprises that brings in economic prosperity. Exclusive reliance on sanctions, may not necessarily help achieve the ultimate objective of 'fair competition for greater good'.

As a part of our advocacy initiatives, we engage with enterprises to support them in designing and implementing a competition law compliance programme. This can prevent bad days in terms of penalty and loss of reputation of the enterprises concerned on the one hand, and also protects them from becoming victims of anti-competitive practices by others. An enterprise must have an institutional mechanism that reviews the agreements to purge these of anti-competitive elements. It must ascertain if the enterprise enjoys dominance and, if so, the care it should exercise to be on the right side of competition law. It must continuously assess if its relationship with other enterprises or its conduct has the potential to adversely affect competition in the relevant market. An enterprise may choose not to set up a competition law compliance programme; but it will be doing so at its own peril.

Ashok Chawla

# IN FOCUS

## Creating a better India-Musings on Economic Governance of India



Mr. Ashok Chawla, Chairperson, CCI delivering Welcome address at 6th Annual Day Lecture

The Competition Commission of India (CCI / Commission) celebrated its 6<sup>th</sup> Annual Day on 20<sup>th</sup> May, 2015 in New Delhi to commemorate the enforcement of substantive provisions of the Competition Act, 2002 (Act), which began from May 20, 2009. The event was attended by distinguished guests from Government, Regulatory bodies, Advocates, Law firms, Academics and Media.

Since 2013, CCI invites a distinguished person to deliver the Annual Day lecture on this occasion. This year, Mr. N.R. Narayana Murthy, the doyen of IT Industry in India and a globally recognized personality delivered the lecture on "Creating a better India: Musings on Economic Governance of India".

The event began with a welcome address by Mr. Ashok Chawla, the

Chairperson, CCI. He highlighted the importance of the Annual Day of CCI as it was on this day in 2009 that it became fully functional. He gave a brief review of CCI's functioning so far. Over 600 cases of anti-competitive behaviour comprising cartel, bid-rigging, abuse of dominance, etc. have been filed so far and in many cases, CCI has penalized the individuals, companies and their associations. So far, approximately 275 combination filings were dealt with by CCI with average filling of 10 matters every month. He highlighted the importance given by CCI to its advocacy mandate for creating wider awareness of competition law. He announced that CCI would soon be launching a comprehensive e-Governance project which would facilitate electronic filing of anti-trust information and M & A proposals.

The Secretary, Ministry of Corporate Affairs, Ms. Anjuly Chib Duggal, IAS in her speech congratulated CCI for sincerely implementing the mandate given under the Act since its enforcement. She emphasized that competition is not a goal in itself, rather a means to achieve larger societal goals of sustaining competitive markets and providing goods and services at a reasonable price. She enumerated three challenges, the first challenge is to remove barriers to the competition, the second is to facilitate effective competition in the supply chain process and the last pertains to cost and pricing.

Mr. Narayana Murthy addressed the gathering. He said that CCI as a regulator is largely responsible for ensuring and fostering a healthy competition in the economy to create a prosperous India. He

referred to “The Theory of Moral Sentiments” and “An Inquiry into the Nature and Causes of the Wealth of Nations” by Adam Smith, which are not merely economic treatises but manuals for policy makers for creating a prosperous society. He stated that the India had the largest number of illiterates in the world with over 400 million people unable to read or write, over 250 million Indians not having access to safe drinking water and more than 750 million Indians being deprived of reasonable sanitation. He also highlighted other social issues adversely affecting the people of this country. He suggested that to become a civilized society, each generation has to work hard and sacrifice their self interest for ensuring a better quality of life for the next generation. He also emphasized that the next generation must acquire new skills that are higher in value chain. He laid emphasis on the role of entrepreneurship as an entrepreneur converts the ideas into jobs for others and wealth for self. He also suggested that we could improve the contribution of agriculture to our Gross Domestic Product by improving the worker productivity and reducing the number of Indians involved in agriculture, who can possibly be moved from agriculture to low-tech manufacturing and low-tech services.

To make sure that the 'invisible hands' work to the advantage of the society, he referred to mechanisms of competition and regulation. He emphasized that competition is perhaps the most powerful instrument for the survival and success of a company as it brings out the best in any



*Mr. N. R. Narayana Murthy delivering Annual Day Lecture*

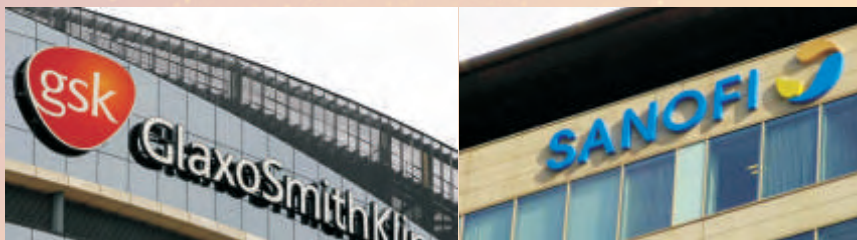
enterprise and leads to new ideas, innovation, better services and products, reduction of prices, improvement in quality and also enhances the prosperity of the entrepreneurs. He said that regulation is like an umpire in soccer game. Therefore, unless there is a good regulator, serious problems and unethical business practices are bound to happen in the economic activities which in the long run would hurt the good players, the competition and even the reputation of the country. He asserted that the rules of the game must be fair, transparent and easy to follow and decisions must be taken swiftly and without fear or favour. He asserted that the role of the Government in business should be minimum and mostly pertain to defence, law and order, monetary and taxation policy, judiciary, allocation of public resource and running the public institutions, public works like road and transport, etc. Services like education, healthcare, nutrition, ports, Airports, etc. need to be ideally run by the private sector.

He stressed the need of creating a sense of responsibility on the part of the businesses to earn trust and goodwill of the society and suggested that the simplest way to earn trust of the society by the businesses is to take into account as to whether the decisions of businesses would enhance the social welfare and make the governance transparent, fair and accountable towards all the stakeholders of the company, such as, its customers, employees, investors, government and the nation. He concluded that for giving better life to our children, each of us have to work very hard and see the interest of the society ahead of our personal interests.

Ms. Smita Jhingran, Secretary, CCI delivered vote of thanks. She stated that it was an honour to have Mr. Narayana Murthy on this important occasion, who shared his views on economic growth for making a better India. She further stated that the CCI is committed to fair and transparent competition and regulation.

## SECTION 3 & 4 ORDERS

### M/s. Glaxo Smith Kline Pharmaceutical Ltd. and M/s Sanofi were penalised for their Anti-Competitive Conduct



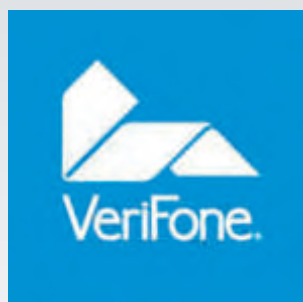
The Commission vide order dated 4<sup>th</sup> June, 2015 found that the M/s. GlaxoSmithKline Pharmaceutical Ltd. and M/s. Sanofi have acted in contravention of the provisions of section 3(3)(d) read with section 3(1) of the Act.

The information filed by M/s. Bio-Med Pvt. Ltd. alleged cartelization by M/s. GlaxoSmithKline Pharmaceutical Ltd. and M/s. Sanofi through bid rotations and geographical allocations

(international) **in the tender floated by the Ministry of Health and Family Welfare, Government of India for procurement of 'Quadrivalent Meningococcal Meningitis Vaccines (QMMV) from 2002 to 2012.** The Commission formed a prima facie opinion of contravention of the Act and accordingly, passed an order under section 26(1) of the Act directing the Director General (DG) to cause an investigation to be made into the matter.

After considering the DG investigation report, the materials available on record, and the oral arguments advanced by the parties, the Commission concluded that M/s. GlaxoSmithKline Pharmaceutical Ltd. and M/s. Sanofi, through their collusive conduct, have contravened the provisions of section 3(3) (d) read with section 3(1) of the Act. Accordingly, it imposed penalties of Rs. 60.5 crore and Rs. 3.04 crore on M/s. GlaxoSmithKline Pharmaceutical Ltd. and M/s. Sanofi respectively. It also directed them to cease and desist from indulging in the practices which were found to be in contravention of the provisions of the Act.

### M/s. Verifone India Sales Pvt. Ltd. was penalised for Abuse of its Dominant Position



The Commission vide order dated April 10, 2015 imposed a penalty of Rs. 4.5 crore on M/s. Verifone

India Sales Pvt. Ltd. for abusing of its dominant position in Point of Sale (POS) terminal market in India in contravention of the provisions of section 4 of the Act.

On basis of information filed by M/s. Altos Worldline India Pvt. Ltd., the Commission formed a prima facie opinion of violation of the provisions of section 4 of the Act by M/s. Verifone India Sales Pvt. Ltd. and others and directed the DG to cause

an investigation into the matter.

Considering the DG report, written and oral submissions of the parties and materials available on record, the Commission concluded that M/s. Verifone India Sales Pvt. Ltd. was in a dominant position in POS terminal market in India and its conduct in imposition of unfair terms and conditions on VAS/ TPP service providers through its SDK (software development kits) license

agreement was abusive in terms of section 4 of the Act. The Commission held that M/s. Verifone India Sales Pvt. Ltd. had restricted the provision of VAS services as well as limited/restricted the technical and scientific development of VAS services. Further, the conduct of M/s. Verifone India Sales Pvt. Ltd.

in seeking disclosure of sensitive business information from its customers in the downstream market in order to enter into the downstream market of VAS services was found to be anti-competitive. The Commission held that M/s. Verifone India Sales Pvt. Ltd. has violated the provisions of section 4(2)(a)(i), 4(2)(b)(i), 4(2)(b)(ii) and

4(2)(e) of the Act. Accordingly, a penalty of Rs. 4.5 crore was imposed and M/s. Verifone India Sales Pvt. Ltd. was directed to cease and desist from indulging in the activities which were found to be in contravention of the provisions of section 4 of the Act.

## M/s. DLF Gurgaon Home Developers Private Limited was directed to Cease and Desist

**DLF**  
**BUILDING INDIA**



In the matter of information filed by Mr. Pankaj Aggarwal & Others against M/s. DLF Gurgaon Home Developers Private Limited (DLF), the Commission vide order dated May 12, 2015 found DLF to be in contravention of the provisions of section 4 of the Act. The Informants had approached the Commission alleging imposition of unfair and onerous terms and conditions in the Buyer's Agreement by DLF. The Commission, prima facie, found merit in the allegations and directed the DG to carry out investigation.

Subsequent to detailed investigation by the DG, the Commission found that DLF was

dominant in the relevant market of the provision of services for development/ sale of residential apartments in Gurgaon and it was found to be engaged in unfair and abusive conduct. It was found that some of the terms of the Buyer's Agreement, such as, unilateral increase in the number of floors, unfair cancellation policy and forfeiture of booking amount, unfair additional demands on account of increase in super area, unfair financial pressure on the apartment buyers, etc. were unfair in terms of the provisions of section 4(2) (a) (i) of the Act.

Accordingly, the Commission directed DLF and its group companies operating in the

relevant market to cease and desist from indulging in abusive and unfair conduct. However, the Commission did not impose any monetary penalty under section 27 of the Act on DLF considering the fact that a penalty of Rs. 630 crore had already been imposed on DLF in the case of *Belaire Owners' Association v. DLF Limited, HUDA & Ors.* (Case No. 19 of 2010) for the same time period to which contravention in the present cases belong. It, however, directed DLF and its group companies operating in the relevant market to cease and desist from indulging in the conduct which was found to be abusive and unfair in terms of section 4 of the Act.

# SECTION 5 & 6 ORDERS

## CCI approves the acquisition of the Chloroprene Rubber ('CR') business of Dupont by a joint venture company, namely, Denka Performance Elastomers



1. The notice was filed on 6th January, 2015 by Denki Kagaku Kogyo Kabushiki Kaisha (Denka) and Mitsui & Co. Ltd. (Mitsui). The combination related to the acquisition of the Chloroprene Rubber (CR) business of E.I. du Pont de Nemours and Company (Dupont) by a joint venture company, namely, Denka Performance Elastomers incorporated by Denka and Mitsui for this purpose.
2. Denka and DuPont, both publicly held corporations, are stated to be manufacturing and selling a wide range of chemical products. Mitsui on the other hand is engaged only in the distribution of the various types of products, including chemicals.
3. CR is a general purpose synthetic rubber with some specific technical properties including weather and ozone resistance which make CR preferable over natural rubber and other types of synthetic rubbers for certain applications. It is used for adhesives, car parts, general industrial products and other miscellaneous products. It was observed that there are certain products / applications, such as, premium wet suits, conveyor belts in mines where CR cannot be easily substituted.
4. It was observed that the entire consumption of CR in India is met through imports as there are no manufacturing facilities for CR in India. Apart from Denka and DuPont, the other major players supplying CR in India are Lanxess AG, Tosoh Corporation and Showa Denko. The Commission noted that the other suppliers did not face significant barriers in increasing CR supply to customers in India. Further, customers would continue to have the option of purchasing CR at negotiated prices.
5. This is also a case wherein the officials of the Commission engaged in international cooperation with Australian Competition & Consumer Commission (ACCC) to carry out non-confidential discussions with ACCC. It was noted that like India, Australia too is dependent on imports of CR.
6. On the basis of above, the Commission was of the opinion that there are no AAEC concerns in the case. It approved the proposed combination vide its order dated 20th April, 2015 under Section 31(1) of the Act.



## CCI approves the combination between GE and Alstom

1. On 14th January, 2015, the Commission received a notice under sub-section (2) of Section 6 of the Act, given *inter alia* by General Electric Company (**GE**) and Alstom.
2. The proposed combination relates to the (i) acquisition of Alstom's thermal power, renewable power and grid businesses by GE and its group companies (**Primary Acquisition**), (ii) the formation of joint ventures (JVs), i.e., the Grid and Digital Energy JV, the Renewables JV and the Global Nuclear and French Steam JV, between GE and Alstom in which Alstom would hold a minority shareholding, and (iii) acquisition of the signalling business of GE by Alstom (*Signalling Transaction*).
3. GE is a company incorporated in New York, USA. It is engaged in various businesses. Alstom is a *société anonyme* incorporated under the laws of France and is engaged in various businesses in power, transport, etc. Both, GE and Alstom have presence in different sectors in India through their respective subsidiaries and joint ventures.
4. It was observed from the submission of the parties that the businesses of the parties involved in the proposed combination could be classified into: (i) thermal power business, (ii) renewable energy business, (iii) grid business, and (iv) signalling business.
5. Within the thermal power business, GE and Alstom have overlapping activities primarily in supply of Gas Turbines (GTs) and Steam Turbines (STs). In relation to GTs, it was observed that incremental market share due to the proposed combination was not more than 5 percent. Further, there were other competitors present in the relevant market, i.e., Siemens and Mitsubishi. The Commission also analyzed the bidding data submitted by the parties and noted that in the market for GTs in India, GE and Siemens were the closest competitors, whereas Alstom was not a close competitor of GE. Further, the shortage of gas may dampen any future demand of GTs in India.
6. With respect to STs, it was observed that the combined market share of GE and Alstom is less than seven percent. Further, there were other significant competitors in the market, i.e., BHEL, Siemens, Harbin, Dongfang, Toshiba, etc. The bidding data analysis also suggested that both the Parties had never competed with each other in the same bid, thus indicating that Alstom and GE were not close competitors in the market for STs in India.
7. In relation to renewable energy, it was observed that there was no overlap between the parties as they had no presence in tidal energy and solar energy in India. Further, Alstom had presence in hydro energy segment and GE had limited presence in wind energy segment.
8. The grid business may be divided according to their applications at different stages of the power transmission and distribution chain, i.e., (a) High Voltage Products, i.e., Transformers and Other High Voltage Products, (b) Flexible Alternating Current Transmission System, (c) Substation Automation System, and (d) Network Management Systems / software solutions, i.e., Energy Management System and Distribution Management System. In this regard, it was observed that in none of these segments, the proposed combination would result in any appreciable adverse effect on competition in India.
9. Further, with respect to signalling business, it was observed that Alstom was present only in the signalling projects in urban segment (i.e. mass transport/ light railway-metro rail, mono rail and trams) and GE was present in mainline segment consisting of heavy railways. Hence, there was no horizontal overlap between the Parties in India for the purposes of the Signalling Transaction.
10. The Commission approved the proposed combination under sub-section (1) of Section 31 of the Act.

## CCI approves the acquisition of Hospira by Pfizer

1. Pfizer, Inc. (**Pfizer / Acquirer**) filed a notice for acquisition of 100 percent of the equity share capital of Hospira, Inc. (**Hospira / Target**). The said notice was filed pursuant to the execution of an Agreement and Plan of Merger between Pfizer, Hospira, and Perkins Holding Company (**Perkin'**), a wholly owned subsidiary of Pfizer, on 5th February, 2015.
2. Pfizer, a multinational pharmaceutical corporation, is based in New York. It develops and produces medicines and vaccines for a wide range of medical disciplines, including immunology, oncology, cardiology, diabetology/ endocrinology and neurology. It is operating in India through its various subsidiaries, including Pfizer Limited.
3. Hospira, a multinational pharmaceutical and medical device company, is based in Illinois. It is a manufacturer of generic injectable pharmaceuticals. It also manufactures generic acute-care and oncology injectables as well as integrated fusion therapy and medication management systems. It is present in India through its subsidiary, Hospira Healthcare India Pvt. Ltd., which manufactures injectable formulations and active pharmaceutical ingredients (APIs). Further, it has a 50-50 joint venture with Cadila Healthcare Limited, called Zydus Hospira Oncology Private Limited (**ZHOPL**). ZHOPL manufactures oncology drugs, which are, in turn, sold by Hospira outside India and by Cadila in India.
4. With regard to horizontal overlap between the parties, it was observed that there was no horizontal overlap between them since Hospira did not sell any formulations in India and it only manufactured and sold a few APIs in India, whereas, Pfizer did not manufacture or sell any APIs in India and imported the APIs to manufacture formulations that it sold in India. As a result, Pfizer was not present in the market for APIs, while Hospira was not present in the market for formulations.
5. Similarly, with respect to horizontal overlap between Pfizer and ZHOPL, it was observed that there was limited overlap in relation to formulations based on Epirubicin at the molecule level, i.e., medicines / formulations based on the same API. However, this overlap was insignificant since incremental market share in the market of formulations based on Epirubicin, was less than [1-5] percent in India.
6. With respect to the vertical foreclosure, it was observed that the majority of the APIs manufactured by Hospira in India were for its captive consumption. However, there were certain APIs which were manufactured by Hospira for supply to another pharmaceutical company in India. It was observed that amongst these APIs, there was only one API, i.e., Tadalafil, which might have the potential usage for Pfizer, as Pfizer sold formulations based on Tadalafil at present. In this regard, it was observed that there were other suppliers who supplied Tadalafil to the entities engaged in the downstream market of formulations based on the said API and that the merged entity would not have the ability to foreclose access to inputs for such entities.
7. The Commission also noted that Hospira manufactured oral cephalosporin formulations on a contract manufacturing basis for a pharmaceutical company in India and Pfizer also sold some of the formulations based on cephalosporin in India. However, it was noted that the said pharmaceutical company was an insignificant player in the market as its market share in each of these markets was even less than one percent. Thus, the proposed combination would not likely to result in any vertical foreclosure in this regard also.
8. The Commission approved the proposed combination vide its order dated 11th June, 2015 under Section 31 (1) of the Act.

# CCI approves IndusInd Bank's acquisition of Royal Bank of Scotland's Gems and Jewellery Business

1. IndusInd Bank Limited (**IndusInd**) filed a notice with the Commission on 22nd April, 2015 of its proposed acquisition of Royal Bank of Scotland N.V.'s (**RBS**) banking portfolio of Indian customers engaged in the cutting and polishing of gems and manufacture of jewellery (**Gem and Jewellery Business**). IndusInd is a banking company having 801 branches in India, providing a range of banking services to its customers. RBS is an international bank providing banking services in India through its 10 branch offices in India.
2. In the notice, IndusInd had defined the relevant product market as the market for provision of banking services to commercial enterprises by scheduled commercial banks. However, the Commission observed that the financing requirements of Gem and Jewellery Business customers would be different from other traditional banking customers as the services provided in the banking portfolios to such customers form a standalone bouquet of services. Accordingly, the relevant product market was defined as banking services to customers engaged in the Gem and Jewellery Business.
3. In terms of the relevant geographic market, it was observed that most customers engaged in the Gem and Jewellery Business would be small and medium enterprises dependent on local banks, and, therefore, the geographic market would be local. In this regard, the Commission analysed the average distances travelled by the gems and jewellery customers of the parties located in Mumbai (the only horizontal overlap between the activities of the parties was vis-à-vis customers based in Mumbai). It was noted that the average distances travelled by Gem and Jewellery Business customers of both IndusInd and RBS in Mumbai is approx. 15-20 kilometres. This radius of approx. 15-20 kilometres was taken to be the primary service area. It was additionally observed that customers falling within this 15-20 kilometres radius area could be sensitive to a small but significant increase in the service charges and/or credit rates by their respective banks. Thus, there is the possibility of a chain reaction sequence where even those competitors not having a direct overlap in the primary service area of the parties may also form part of the relevant geographic market. Accordingly, given the well-established connectivity between the districts of Mumbai and Mumbai sub-urban, the relevant geographic market was considered to comprise of at least the districts forming part of Mumbai.
4. In this relevant market, the Commission noted that that there is high density of branches of scheduled banks, where most banks provide credit to gem and jewellery businesses. In fact, the primary service area of the parties itself was noted to have approx. 1000 plus branches. In Mumbai, there are more than 2500 branches of all banks, of which only 30 branches are of IndusInd Bank. Thus, the post combination market shares of IndusInd were observed to be insignificant. Further, the relevant market was observed to have larger competitors, such as, the State Bank of India, Bank of India, ICICI Bank and Union Bank of India, which would continue to compete with IndusInd Bank post combination. It was observed that IndusInd had stated that those RBS gem and jewellery customers who did not wish to migrate to IndusInd, would continue to be serviced by RBS and governed by their existing contracts with RBS. In this regard, IndusInd had also stated that for those customers wishing to migrate to other banks (due to RBS' exit from this business in India), no charges and/or penalty would be levied on such customers.
5. The Commission thus held that the combination is not likely to have an appreciable adverse effect on competition in India and approved the combination under sub-section (1) of Section 31 of the Act.

# CCI amends Combination Regulations



Competition Commission of India

As a part of its ongoing and regular efforts to make M&A filing requirements simpler and more transparent, the Commission amended its Combination Regulations on 1st July 2015 making them more forward looking, in keeping with the best practices in other jurisdictions. The amendments now provide greater clarity and certainty with respect to M&A filings and would help in avoiding undue delays in the approval process.

The amendments provide that parties to a combination shall give notice in Form I or Form II in accordance with the notes to forms published on the website of CCI. The publication of detailed notes (introductory as well as notes to Form I) is a landmark for competition jurisprudence in India as it provides guidance on the information required by the Commission while assessing a combination. **Highlights** of the amendments are as under:

- (a) To bring in more certainty, scope of the term “other document” has now been limited to a communication conveying the intention to make an acquisition to a Statutory Authority.
- (b) The number of copies of the forms to be filed (along with the

original) with the Commission has been reduced to one instead of the earlier requirement of submitting two copies. Further, the pool of the signatories to the forms has been significantly expanded to include any person who is duly authorized by the Board for the said purpose. Earlier, only directors or company secretaries could sign the forms.

- (c) The Commission, under the present amendments, can direct the parties to notify the combination in Form I or Form II based on the facts of each case. Previously, in cases where the Commission took *suo motu* cognizance of a failure to notify a combination, it was mandatory to notify the combination in Form II.
- (d) In order to reduce multiple filings regarding the same transaction, the Commission has now mandated that inter-connected or inter-dependent transactions should be filed in a single notice covering all steps of the combination.
- (e) Procedures for claiming confidentiality have been detailed in the Combination Regulations. The parties are required to provide an affidavit in support of their claims regarding confidential treatment of information submitted to the Commission.
- (f) To enhance transparency of the review process, the amendments provide that a summary of every combination under review will be published on the website of CCI. Such publication will provide stakeholders an opportunity to submit their comments on the proposed combination to CCI. In a similar vein, in another move to improve the efficacy of the review process, a clock stop of 15 working days has been introduced for seeking comments on a proposed combination from third parties, such as, competitors and customers.
- (g) In order to bring in more clarity to procedure regarding invalidation of notices that are either not in conformity with the Combination Regulations or not complete, the Commission has, *inter alia*, provided that the decision to invalidate a notice will be communicated by way of a speaking order within seven days of the decision.
- (h) The timelines for Phase I review have been revised to thirty working days.
- (i) Keeping in view the requirements of Section 31 of the Act, a new exemption has been introduced in Schedule I. The said exemption pertains to the acquisition made by a purchaser approved by CCI in cases wherein CCI has directed the parties to a combination to carry out structural remedies. Further, with the present amendments, in combinations which are conditional upon carrying out modification by the parties to the combination, the proceedings shall terminate upon acceptance of the compliance report by CCI.

# INVESTIGATION INITIATED

## CCI Orders Investigation into Alleged Abusive Conduct by OLA Cabs

M/s. Fast Track Call Cab Pvt. Ltd., a radio taxi services provider, submitted an information alleging abuse of dominant position by M/s. ANI Technologies Pvt. Ltd. through imposition of unfair conditions and prices. The Commission ordered for DG investigation against M/s. ANI Technologies Pvt. Ltd. engaged in the provision of services of radio taxi under the brand name 'OLA' for abuse of its dominant position.

The Commission holds the market of 'radio taxi services in Bengaluru' as the relevant market as factors,

such as, convenience of time saving, point-to-point pick and drop, pre-booking facility, ease of availability even at obscure places, round the clock availability, predictability in terms of expected waiting/ journey time, etc. are exclusively associated with the radio taxi services. The city of Bengaluru was considered as the relevant geographic market as the conditions of competition for the relevant product in the city of Bengaluru is homogenous and is distinct from the adjacent areas of Bengaluru because of factors, such

as, distance, consumer preference, etc. Based on its market share, the Commission *prima facie holds* M/s. ANI Technologies Pvt. Ltd. as dominant in the above said relevant market and its conduct in imposition of unfair conditions and prices were *prima facie* found to be in violation of the provisions of the section 4 of the Act. It observed that M/s. ANI Technologies Pvt. Ltd. was spending more money on discounts and incentives on customers and drivers compared to the revenue it was earning.

## CCI orders Investigation into Alleged Abusive Conduct by M/s. Telefonaktiebolaget L M Ericsson

Based on the information received from M/s. Best IT World (India) Private Limited (iBall), the Commission has initiated an investigation against M/s. Telefonaktiebolaget L M Ericsson (Publ) and M/s. Ericsson India Private Limited (collectively, Ericsson) for abuse of its dominant position.

The Commission considered the market of 'standard essential patents for 2G, 3G and 4G technologies in GSM standard compliant mobile communication devices in India' as the relevant

market and holds Ericsson as dominant in the said relevant market. It observed that Ericsson has 33,000 patents to its credit, of which 400 patents were granted in India and it is the largest holder of SEPs used in mobile communications like 2G, 3G and 4G patents used for smart phones, tablets etc. Since there was no other alternate technology available in the market in India, Ericsson enjoys a complete dominance over its present and prospective licensees in the relevant market. Having examined the alleged

conduct of Ericsson, it observed that forcing a party to execute NDA (non-disclosure agreement) and imposing excessive and unfair royalty rates, *prima facie*, amounts to abuse of dominance and imposing a jurisdiction clause debarring the Informant from getting the disputes adjudicated in the country where both the parties are doing business and vesting the jurisdiction in a foreign land, *prima facie*, appear to be unfair in terms of the provisions of section 4 of the Act.

# DEVELOPMENTS IN OTHER JURISDICTIONS

## CADE Brazil fines € 19.3 million on fuel cartel



Brazil's Administrative Council for Economic Defence (CADE) penalised € 19.3 million (approx.) to the participants of fuel cartel. It was alleged that 27 gas stations of Vitoria, Espirito Santo were increasing the price of fuel during 2006-2007 by creating a cartel.

CADE found on its investigation that the increase of price of fuel in Vitoria between 2006 and 2007 was not a coincidence or parallelism of prices. The CADE reached on the conclusion, on the basis of economic

and direct evidences, that 27 gas stations and nine individuals were engaged in fixing the price of fuel. They were organised and discussed their business strategies with one another before implementing any change. Their coordinated actions to fix prices and share price sensitive information breached the antitrust law. CADE fined € 17.8 million on 27 gas stations and € 1.5 million on nine individuals for breaching the antitrust rules.

## US DoJ fines \$ 2.5 billion on Banks accused of rigging the Foreign Exchange Rates



US DoJ imposed a criminal fine of \$2.5 billion on Banks, viz., Citicorp, Barclays, JP Morgan Chase and the Royal bank of Scotland for their engagement in manipulation of the Euro and Dollar exchange rate. It is the largest ever fine for an antitrust crime in United States of America.

The US DoJ found in its investigation that Dollar – Euro spot market was manipulated by several multinational investment banks. They violated the antitrust provisions by using a chat room to manipulate foreign exchange rate (FER). Their actions not only distorted the

competition in Dollar – Euro spot market but also exploited individual trader.

In setting the level of fines, the US DoJ penalised \$ 925 million on Citicorp, \$ 650 million on Barclays, \$ 550 million on JP Morgan Chase and \$ 395 million on the Royal bank of Scotland.

## Bulgarian Commission on Protection of Competition fines three Electricity Companies for abusing regional monopolies

Bulgarian competition regulator imposed a fine of € 600,000 (approx.) on three electricity distribution companies, viz., CEZ Distribution Bulgaria, JSC Energy Pro Networks and EVN Bulgaria. It was alleged that these three companies abused their dominance by charging discriminatory and arbitrary prices to 'cable operators' to use their low voltage grid.

The Bulgarian Commission on Protection of Competition initiated an investigation on the complaint of Bulgaria's

association of cable operators. It found in its investigation that each company holds a regional monopoly over electricity grids in three of six geographical planning regions of Bulgaria. The three alleged companies violated the antitrust provisions by imposing discriminatory and arbitrary prices on cable operators for using their low voltage network. The Commission observed that the three alleged companies not only distorted the competition in the market, but also harmed the consumers.

The Bulgarian Competition Authority, in view of seriousness of infringement, imposed fines on CEZ Distribution Bulgaria, JSC Energy Pro Networks and EVN Bulgaria amounting € 285527, € 85516 and € 225672 respectively.

## European Commission fines producers and distributors € 115 865 000 for operating retail food packaging cartels



The European Commission fined eight manufacturers and two distributors of retail food packaging trays a total of € 115, 865, 000 for having participated in one or more of five separate cartels. The eight manufacturers are Huhtamäki of Finland, Nespak and Vitembal of France, Silver Plastics of Germany, Coopbox, Magic Pack and Sirap-Gema of Italy and Linpac of the UK. The two distributors are Ovarpack of Portugal and Propack of the UK. The companies fixed prices and allocated customers of polystyrene foam or polypropylene rigid trays, in

breach of EU antitrust rules. Polystyrene foam and polypropylene rigid trays are used for packaging food sold in shops or supermarkets, for products such as cheese, meat, fish or cake. Linpac benefited from full immunity under the Commission's 2006 Leniency Guidelines as it revealed the existence of the cartels to the Commission.

## ENGAGING WITH THE WORLD

1. Dr. K. D. Singh, DD (Law) and Ms. Neha Raj, DD (Law) participated in International Visitor Leadership Program (IVLP) during April 13-24, 2015 in USA.
2. Mr. Ashok Chawla, Chairperson, CCI; Ms. Smita Jhingran, Secretary and Dr. Seema Gaur, Adviser participated in the Meetings of the Heads of BRICS Competition Authorities on 28 April, 2015 in side-line of ICN annual conference 2015 in Sydney, Australia.
3. Mr. Ashok Chawla, Chairperson, CCI; Ms. Smita Jhingran, Secretary and Dr. Seema Gaur, Adviser participated in ICN Annual Conference 2015 in Sydney during 28th April - 1st May, 2015.
4. Ms. Garima Bhagat, Joint Director General and Mr. Anand Vikash Mishra, Deputy Director (Law) attended GAI Economics Institute for Competition Enforcement officials during May 2-7, 2015 in Sydney, Australia.
5. Mr. Peter Augustine, Member, CCI participated in OECD Competition Committee Meeting, Working party No. 2 and Working party No 3 in Paris, France during June 15-19, 2015.
6. Mr. Rakesh Bhanot, Director and Mr. Ashutosh Kumar, DD (Eco) participated in "Leadership Seminar on Advocacy" organised by CCS-OECD/KPC in Singapore during June 24-26, 2015.
7. Mr. Pranav Satyam, DD (Eco) participated in Lear Conference during June 25-26, 2015 in Rome, Italy.

# ADVOCACY INITIATIVES



Standing in Centre Mr. S L Bunker, Member, CCI at the 3rd International Conference "Competition Law"



Panelists at 'National Conference on Competition Compliance for listed Companies' held on 29th, June, 2015 at Mumbai



Advocacy Initiative with Tamil Nadu State Judicial Academy

## ADVOCACY INITIATIVES WITH PARLIAMENT

- ❖ Mr. Ashok Chawla, Chairperson, CCI delivered a lecture on "Competition Law and its Journey so far" at the Parliament Library Building organised on 07th May, 2015, in association with the Bureau of Parliamentary Studies and Training (BPST), as a part of the lecture series for Hon'ble Members of Parliament.

## ADVOCACY INITIATIVES WITH STATE GOVERNMENT

- ❖ Ms. Renuka Jain Gupta, Adviser had a meeting with Smt. Raji P. Shrivastava, Director, Mahatma Gandhi State Institute of Public Administration (MGSIPA), Punjab, on 28th May, 2015 at Chandigarh, to chalk out the strategy for implementation of advocacy initiatives in the state of Punjab.

## ADVOCACY INITIATIVES WITH TRADE ASSOCIATIONS

- ❖ Ms. Renuka Jain Gupta, Adviser held a session on "Competition Aspects of Public Procurement" on 7th April 2015 at Hotel Royal Plaza, New Delhi, during the 9th Public Procurement Summit organised by ASSOCHAM.
- ❖ Mr. U. C. Nahta, Member, CCI addressed an interactive session on "Good Corporate Governance and Competition Compliance are Complementary" on 21st April, 2015 organised by MCC Chamber of Commerce and Industry, at Kolkata.
- ❖ Mr. Rakesh Kumar, Director attended a panel discussion organised by FICCI-Financial Express on the topic "Decoding Net Neutrality" on 22nd April, 2015.
- ❖ Mr. Sukesh Mishra, Director (Law), Mr. Saurabh, DD (Eco) and Mr. Arun Dhall, DD (Eco) attended the 3rd International Conference on "Competition Law – Successes, Challenges and Reforms" organised by ASSOCHAM India on 2nd May, 2015.
- ❖ Mr. Ashok Chawla, Chairperson, participated in the 40th SKOCH Summit held on 12th May, 2015 and delivered the Keynote address on "The Role of Competition in a growing Economy".
- ❖ Mr. Sukesh Mishra, Director (Law), participated as a representative of CCI in the Seminar jointly organised by the EXIM Bank, World Bank and the FIEO in Bengaluru on 14th May, 2015 and made a Presentation on "Procurement Aspects of Competition Law".





Mr. M.S. Sahoo, Member, CCI speaking at 'National Conference on Competition Compliance for listed Companies' held on 29th, June, 2015 at Mumbai



Mr. Ashok Chawla, Chairperson, CCI at 'National Conference on Competition Compliance for listed Companies' held on 29th, June, 2015 at Mumbai

### ADVOCACY INITIATIVES WITH UNIVERSITIES/INSTITUTES

- ❖ Ms. Payal Malik, Adviser (Eco) attended Conference for Fourth National Reference Group (NRG) as Key Speaker organised by CUTS, Centre for Competition Investment and Economic Regulations (CUTSCCIER), Jaipur, on 08th April, 2015 at India Habitat Centre, New Delhi.
- ❖ Mr. U. C. Nahta, Member, CCI held a session in EIRC of the Institute of Company Secretaries of India, Kolkata on 22nd April, 2015.
- ❖ Dr. K. D. Singh, DD (Law) delivered a lecture on "Symposium on Competition Law in the National Law School of India University, Bangalore on 2nd May, 2015.
- ❖ Mr. M.S. Sahoo, Member, CCI delivered a talk on Competition Advocacy and also the valedictory address at the Capacity Development Programme for Corporate Laws at National Law University, Delhi on 13th June, 2015.
- ❖ Mr. Rakesh Kumar, Director (Eco) participated in the ICSI-SCOPE Programme on Secretarial Audit at New Delhi on 16th June, 2015.
- ❖ Mr. M. S. Sahoo, Member, delivered a talk on Competition Law and Profession of Company Secretaries at CCGRT, ICSI, Belapur, Mumbai on 27th June, 2015.
- ❖ Mr. M. S. Sahoo, Member, delivered a talk on Competition Issues in Securities Markets at NISM, Vashi, Mumbai on 27th June, 2015.
- ❖ Mr. Ashok Chawla, Chairperson, CCI inaugurated the National Conference on Competition Compliance for Listed Companies organised by ICSI, BSE, FICCI, NISM and CNBC TV18 on 29th June, 2015 at Mumbai. Mr. S. L. Bunker, and Mr. M. S. Sahoo, Members addressed as speakers in the Event.

### ADVOCACY INITIATIVES WITH JUDICIAL ACADEMIES

- ❖ Mr. Sukesh Mishra, Director (Law), conducted a session on Competition Law for the newly recruited Junior Civil Judges of Chandigarh Judicial Academy at Chandigarh on 16th May, 2015.
- ❖ Mr. Sukesh Mishra, Director (Law) delivered a Lecture at Tamil Nadu State Judicial Academy, Chennai on 20th June, 2015, on "An Overview of Competition Law and its Implementation".

### INTERNSHIP PROGRAMME

- ❖ In order to familiarize students with competition law, the CCI conducts an internship programme wherein students of law, economics, management, regulatory governance, etc. get an opportunity to do research on various issues concerning competition law under the guidance of a mentor from the CCI. During this Quarter, 19 students have been trained under the internship programme.

# ECO WATCH



- › The Government of India recently decided to de-reserve the last twenty items that were reserved exclusively for micro and small scale enterprises. The process of pruning the reserved list of 800 items began in the 1980s, accelerated in the 1990s and has now been completed. In view of the liberalised import regime, continuation of the reservation policy was viewed as an impediment in harnessing the potential of domestic manufacturing. The move levels the playing field for these industries to reap scale economies, upgrade technological capabilities and thereby improve their overall competitiveness. It is also expected to encourage large-scale investments and enhance competition in these sectors.
- › The permissible limit of FDI in the insurance sector and the pension sector has recently been increased from 26% to 49%. The step is likely to bring in new investments and unleash fresh competitive impulse in these sectors.
- › Government has launched the 'Make in India' initiative which

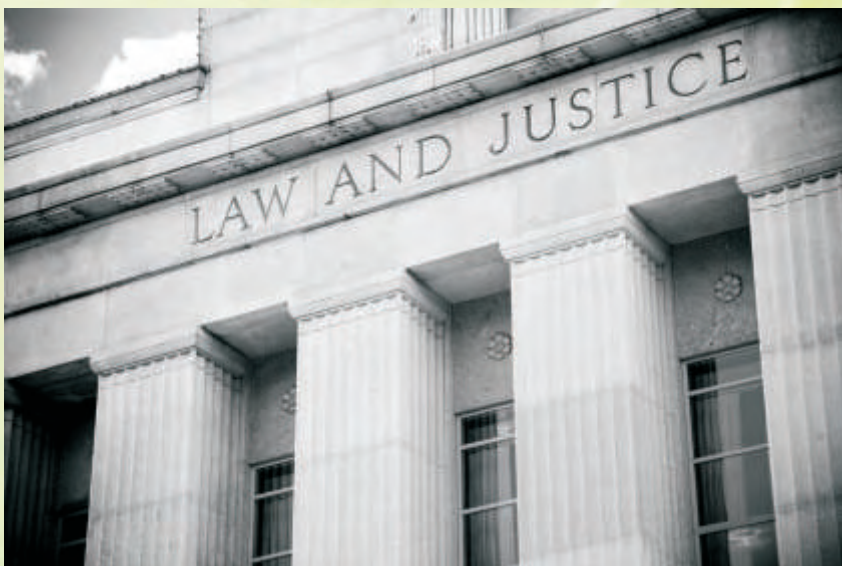
aims at promoting India as an investment destination and to establish India as a global hub for manufacturing design and innovation. A number of steps have been taken by the Government in recent times to improve ease of doing business. Rules and procedures have been simplified and a number of products has been taken off licensing requirements. India's labour laws - numbering around 250 both at central and state level - are restrictive in nature and hurt investments in the manufacturing sector. In the 2015, doing Business Report (World Bank Group Flagship Report), India ranked 142 amongst 189 with the country's labour laws seen as an impediment to business. The recently passed labour law reforms in Rajasthan are indicative of the new competitive dynamics. These changes, are designed to give firms more flexibility in hiring and firing workers. Since the implementation of these reforms in Rajasthan, a larger nationwide debate on the issue of labour reform has begun with national and state leaders

considering similar changes. A comprehensive labour reform is critical for the success of "Make in India" programme that aims to make the country a manufacturing hub.

- › India's poor and declining world ranking on ease of doing business is seen to be a hurdle in attracting foreign investments into the economy. The Government of India has recently introduced a series of measures to bring about improvement on this front, the launch of e-biz portal being one of them. The G2B portal, envisaged as a one-stop shop for online delivery of government services to the investors, constitutes a major step towards simplification of business procedures. The portal, which is to integrate and implement 50 services (26 central and 24 state) online, is now offering a bouquet of 14 central government services, including the process of applying for Industrial Licence (IL) and Industrial Entrepreneur Memorandum (IEL) and the process of Registration with Employees State Insurance Corporation (ESIC).

# JUDICIAL PRONOUNCEMENTS

## THE COMMISSION HAS POWERS TO RECALL/REVIEW ITS ORDERS ISSUED UNDER SECTION 26(1)



The Delhi High Court ruled that the Commission has the power to recall/review its orders passed under Section 26(1) of the Act.

Google filed an application for recall of a direction passed by the Commission against it under Section 26(1) of the Act, alleging that the informant had procured the said *prima facie* order by concealment and non-disclosure of material facts. The Commission dismissed the recall application as not maintainable stating that acceding to the prayers made in the recall application would tantamount to review of the *prima facie* order which power had not been conferred upon the Commission. Writ petition and subsequently letters patent appeal were then filed by Google impugning the *prima facie* direction and the order refusing recall. The question considered by

the High Court was whether there is anything in the statute which indicates that an order under Section 26(1) of the Act ought not to be reviewed/recalled.

The Court ruled that the order of the Commission in exercise of power under Section 26(1) of the Act is capable of review/recall and that the Commission does not become *functus officio* upon passing an order under Section 26(1) of the Act. The Court stated that the view taken in this case does not impinge on the Supreme Court's order and reasoning in *CCI v. SAIL*<sup>1</sup>. The Court clarified that the right to apply for review/recall will not be available in every case in which the Commission has ordered investigation without hearing the person against whom complaint is made and such power must be sparingly used on the well-

recognized parameters of the power of review/recall and without lengthy arguments and without the investigation already ordered being stalled indefinitely.

The Court also specified that a petition under Article 226 will be considered on the parameters prescribed by the Supreme Court in *State of Haryana v. Bhajan Lal*<sup>2</sup>, i.e., where treating the allegations in the reference/information/complaint to be correct, still no case of contravention of Section 3(1) or Section 4(1) of the Act would be made out or where the said allegations are absurd and inherently improbable or where there is an express legal bar to the institution and continuance of the investigation or where the information/reference/complaint is manifestly attended with mala fide and has been made/filed with ulterior motive or the like. However, the Court has advised that rather than approaching the Court directly under Article 226 against a directive under Section 26(1) of the Act, it will be better if the party against whom (and in whose absence) a Section 26(1) direction has been passed approach the Commission first and approach the Court with the views of the Commission.

The writ petition and letters patent appeal were disposed of and the Court remanded Google's application for review/recall to the Commission for consideration afresh.

<sup>1</sup>(2010)10SCC744

<sup>2</sup>1992 Supp (1) SCC 335

# COURT HOUSE



## REGISTRAR OF COOPERATIVE SOCIETIES IS AN 'ENTERPRISE'

*The COMPAT ordered that Registrar of Cooperative Societies is an 'enterprise' under Section 2(h) of the Competition Act, 2002.*

The appellant, Malwa Industrial & Marketing Ferti-Chem Cooperative Society Ltd. had averred before the **Commission** that the Registrar, Co-operative Societies, was not allowing different co-operative agricultural societies to purchase micro-nutrients and agro-chemicals from the appellant and had issued instructions making it mandatory to make such purchases from Punjab State Co-operative Supply and Marketing Federation only. The Commission had passed an order

under Section 26(2) on the ground that the Registrar, Co-operative Societies did not fall within the ambit of the term 'enterprise'.

The COMPAT analyzed the definition of 'enterprise' and 'goods' in the Act and observed that though the Registrar, Cooperative Societies, Punjab had issued circulars in the purported exercise of his powers under the Punjab Cooperative Societies Act 1961 and the Rules and

Regulations framed thereunder, the fact remains that the same were definitely relating to the goods which could be purchased by primarily agricultural societies from Punjab State Co-operative Supply and Marketing Federation only. Therefore, the Registrar would fall within the ambit of term 'enterprise' as defined in Section 2(h) for the purpose of the Act and will be amenable to the jurisdiction of the Commission.

# EVENTS



Participants at workshop in collaboration with OECD on "Leniency"

The Commission organised a workshop in collaboration with OECD on "Leniency" during June 2-3, 2015 at Delhi.

Annual Day of CCI celebrated on 20th May, 2015. Mr. N. R. Narayana Murthy, Founder, Infosys delivered the Annual Day Lecture on "Creating a Better India: Musings on Economic Governance of India" at New Delhi.

A training programme on "Theory and Application of Econometric Methods" for the officers of the Commission was organised during May -June 2015.

# HR CORNER



- i) During this quarter, 07 officers (02 Professionals and 05 Support Staff) joined the Commission on deputation basis. During this period, offer of appointment on deputation basis were also issued to two more officers.
- ii) An advertisement was issued on 27th April, 2015 inviting applications to fill up two posts of Adviser (Economics) in the Commission on deputation basis. The applications received have been scrutinized and selection process is in progress.
- iii) So far four rounds of direct recruitment have been conducted by the Commission and the Commission is having a fair number of direct recruits from Office Manager to Director level. The process in respect of fifth round of direct recruitment has been initiated during this quarter by identifying the number of vacant posts of direct recruitment quota to be filled up.
- iv) During the above quarter 20 persons were engaged as Research Associates in the field of Law to assist the CCI in the discharge of its functions under the Competition Act, 2002. Likewise, an advertisement was issued on 7th April, 2015 for engagement of Research Associates in the field of Economics and 08 candidates were selected.
- v) A Gazette Notification was issued on 18.05.2015 for amendment of the Competition Commission of India (Procedure for engagement of Experts/Professionals) Regulations, 2009 for providing enhancement of remuneration of Experts/Research Associates/ Professionals engaged in the Commission.
- vi) An advertisement has been issued on 09.06.2015 inviting applications for engagement of a Specialist HR Manager/Expert on contract basis and the selection process has been initiated.
- vii) A Gazette Notification was published on 05.06.2015 amending the Competition Commission of India (Salary, allowances, other terms and conditions of service of the Secretary and officers and other employees of the Commission and the number of such officers and other employees) Rules, 2009 with respect to eligibility criteria, qualification, etc. for the posts of Joint Director (IT), Deputy Director (IT), Deputy Director (CS) and Assistant Director (IT).

# KNOW YOUR COMPETITION LAW

## Leniency Programme for Cartels



Leniency programme is a type of whistle-blower protection, i.e., an official system of offering lenient treatment to a cartel member who reports to the Commission about the cartel. It is a protection to those who come forward and submit information honestly, who would otherwise have to face stringent action by the Commission if existence of a cartel is detected. Parties availing the leniency programme are rewarded by a reduction of or complete amnesty from penalty in exchange for their help in discovering the cartel.

Section 46 of the Act, provides for leniency provisions. To effectuate the leniency programme, the Commission has made Competition Commission of India (Lesser Penalty) Regulations, 2009 (Lesser Penalty Regulations).

### Conditions for Leniency

The applicant must:

- provide the information before the receipt of the report of

investigation directed under section 26 of the Act;

- provide vital disclosure in respect of violation under section 3 of the Act. Vital disclosure means full and true disclosure of information or evidence by the applicant to the Commission, which is sufficient to enable the Commission to form a *prima facie* opinion about the existence of a cartel or which helps to establish the contravention of the provisions of section 3;
- cease to further participate in the cartel from the time of its disclosure unless otherwise directed by the Commission;
- provide all relevant information, documents and evidence, as may be required by the Commission;
- co-operate genuinely, fully, continuously and expeditiously throughout the investigation and other proceedings before the Commission; and
- not conceal, destroy, manipulate

or remove the relevant documents in any manner, which may contribute to the establishment of a cartel.

The reduction in monetary penalty will depend upon following situations:-

- the stage at which the applicant comes forward with the disclosure;
- the evidence already in possession of the Commission;
- the quality of the information provided by the applicant; and
- the entire facts and circumstances of the case.

### Quantum of Immunity

- Benefit of reduction in penalty under section 27 of the Act upto or equal to 100% is available to the applicant if it is the first to make a vital disclosure enabling the Commission to form a *prima facie* opinion regarding the existence of a cartel which is alleged to have violated section

3 of the Act and the Commission did not, at the time of application, have sufficient evidence to form such an opinion.

- Benefit of reduction in penalty upto or equal to 100% is available even if the matter is under investigation but the applicant is the first to make vital disclosure establishing contravention of section 3 of the Act and neither the Commission nor the Director General had sufficient evidence to establish such a contravention.
- Benefit of reduction in penalty upto or equal to 100% will only be considered, if at the time of the application, no other applicant has been granted such benefit by the Commission.
- The second or third applicant in the priority status may also be granted benefit of reduction in penalty upto 50% and 30% respectively of the full leviable penalty on making a disclosure by submitting evidence, which provide significant added value to the already available evidence with the Commission or Director General for establishing the contravention.

### **Procedure for Lesser Penalty**

- The applicant can make an application containing information specified in the Schedule to the Lesser Penalty Regulations either orally, or through e-mail or fax to the designated authority (Secretary of the Commission).
- The designated authority shall within 3 working days put up the matter before the Commission for its consideration.
- The Commission shall mark the priority status of the applicant and the designated authority shall convey the same to the applicant. However, mere acknowledgement shall not entitle the applicant for grant of lesser penalty.
- If the application and necessary documents are not received within a period of 15 days of the first contact or such further period as extended by the Commission, the applicant may forfeit its claim for priority status and the benefit of grant of lesser penalty.
- The date and time of receipt of the application by the Commission shall be the date and time as recorded by the designated authority.

- Unless the evidence submitted by the first applicant has been evaluated, the next applicant shall not be considered by the Commission.
- Lack of continuous cooperation entitles the Commission to reject the application after providing due opportunity of hearing to that applicant.
- After rejection of the priority status of first applicant, the subsequent applicants shall move up in order of priority for grant of priority status by the Commission.
- The decision of the Commission of granting or rejecting the application for lesser penalty shall be communicated to the applicant.

### **Confidentiality**

The identity of the applicant and information obtained shall be treated as confidential and will not be disclosed except:-

- when the disclosure is required by law; or
- when the applicant has agreed to such disclosure in writing; or
- there has been a public disclosure by the applicant.

## **Competition Commission of India**

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Please visit [www.cci.gov.in](http://www.cci.gov.in) for more information about the Commission.

For any query/comment/suggestion, please write to [cci-sukesh@nic.in](mailto:cci-sukesh@nic.in) | [advocacy@cci.gov.in](mailto:advocacy@cci.gov.in)

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