



The Quarterly Newsletter of Competition Commission of India (CCI)

# Fair Play

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## IN FOCUS

19<sup>th</sup> Annual International  
Competition Network  
Conference, 2020



Shri Ashok Kumar Gupta, Chairperson, CCI addressing virtually the Plenary of the Merger Working Group at 19<sup>th</sup> Annual International Competition Network Conference, 2020

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## FROM THE DESK OF THE CHAIRPERSON

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As the COVID-19 pandemic rages throughout the globe, hardly any nation has been left untouched by its fallout. Today, it has become more important for the world community to come together and brace itself for the new challenges in wake of the pandemic. The COVID-19 pandemic has reset many economic realities of the world. The challenges for the Competition Commission of India (CCI) and the competition agencies world over would be to balance enforcement of antitrust laws as in the typical traditional sense with the realities of rapidly changing technologies and new socio-economic scenarios emerging in the post-COVID-19 world.

In these dynamic and tough times, I share with you this 34<sup>th</sup> Volume of 'Fair Play'. This volume focusses on international cooperation between competition agencies through BRICS and International Competition Network (ICN) and the developments in the area of competition law that have taken place during the quarter of July to September 2020.

The Competition Commission of India believes in cooperation and communication between the different competition agencies of the world. India strives and is committed to not only study and implement best practices in competition enforcement but also to create new paradigms of its own, suitable to its unique circumstances and utilising these experiences in cooperation with the competition agencies world over. This 34<sup>th</sup> Volume of 'Fair Play', therefore, has a special focus on the 19<sup>th</sup> Annual Conference of the International Competition Network (ICN) being also the first virtual conference of the ICN.

The 19<sup>th</sup> Annual International Competition Network Conference, 2020 was organised through the virtual mode by the US antitrust authority from September 14-17, 2020. Over 2500

delegates participated from 140 competition agencies from 129 jurisdictions. The multi-day conference featured discussions across a range of competition enforcement and policy issues, particularly those that involve the digital economy and highlighted the progress of various ICN Working Groups. The CCI also presented its views and discussed wide-ranging issues in the conference. 'In Focus' of this issue covers proceedings of the various sessions of the Conference in brief.

During the last quarter, on the combinations front, the CCI approved the acquisition of Metso Oyj's Minerals Business by Outotec Oyj (with modifications) and combinations between Aceso Company Pte. Ltd. and HealthCare Global Enterprises Limited and between Kubota Corporation and Escorts Limited. In the enforcement arena, the CCI, in its order dated 10.07.2020 passed under Section 27 of the Act, directed ten Composite Brake Block Manufacturers and their officials to cease and desist from anti-competitive activities.

In a landmark judgement, the Supreme Court affirmed the CCI's order in the matter of cartel case associated with Film Employees' Federation of Kerala, which was earlier upheld by NCLAT, by dismissing the civil appeals filed. This quarter also saw the organisation of 'The Virtual Meeting of the Heads of the BRICS Competition Authorities' on 23<sup>rd</sup> July 2020. The CCI supported the joint statement by the BRICS Competition Authorities on consolidating efforts to combat the negative economic consequences of COVID-19 and the initiative of the FAS Russia to include the issue of combating cross-border cartels in the work of the Intergovernmental group of experts on competition law and policy of the UNCTAD. The issue of adopting draft waiver guidelines that need to be articulated without constricting competition authorities was also discussed. During the meeting, the CCI's efforts of issuing the necessary advisories whereby businesses have been cautioned not to take advantage of the current situation and indulge in conducts which may cause any contravention to the provisions of the Act were also mentioned.

We at the CCI value the importance of international cooperation among the competition agencies of the world and have always been committed towards it. The CCI will continue to liaison with competition authorities regarding potential responses that could be undertaken regarding the COVID-19 pandemic and fruitful engagements on wide-ranging issues.



**Ashok Kumar Gupta**



## IN-FOCUS

### Round up of the 19<sup>th</sup> Annual International Competition Network Conference, 2020

The 19<sup>th</sup> Annual Conference of the International Competition Network (ICN), co-chaired by the Federal Trade Commission (FTC) and the US Department of Justice (DOJ), was held virtually from September 14-17, 2020. The ICN provides competition authorities an informal platform for maintaining regular contact and addressing practical competition concerns. This allows for a dynamic dialogue that serves to build consensus and convergence towards sound competition principles across the global antitrust community.

Originally planned as an in-person conference in Los Angeles in the month of May, the conference was held virtually instead as a result of the COVID-19 pandemic. Over 2500 delegates participated from 140 competition agencies from 129 jurisdictions comprising the ICN. The multi-day conference featured discussions across a range of competition enforcement and policy issues, particularly those involving the digital economy and highlighted the progress of the ICN Working Groups on Mergers, Cartels, Unilateral Conduct, Advocacy and Agency Effectiveness. Conference participants included leaders and staff of ICN member agencies, competition experts from international organisations, and non-governmental advisors (NGAs) from the legal, business, and academic communities.



The keynote address of the conference was delivered by Mr. Herbert Hovenkamp, James G. Dinan University Professor, University of Pennsylvania.

The main focus of the conference was on digital economy as highlighted by Mr. Andreas Mundt, President of the Bundeskartellamt and ICN Chair “The 2020 ICN Annual Conference has a clear focus: the digital economy. This is where we as enforcers are in the spotlight and have to deliver results. We are on track but we need to carry the momentum into our agencies and multiply it in the ICN.”

Mr. Ashok Kumar Gupta, Chairperson, CCI spoke on digital economy, he said, “The digital economy is evolving and so should the approach to look at it. The digital markets being global, the CCI will also have to work with its international counterparts through forums such as the ICN, to share best practices.” Chairperson also

stated that “the CCI recognises the need for international cooperation and information sharing with other jurisdictions to deal more effectively with both conduct and merger cases.”

During the conference, the ICN working groups on Cartels, Unilateral Conduct, Advocacy, Mergers, and Agency Effectiveness highlighted achievements and developments with respect to their projects.

Mr. Ashok Kumar Gupta, Chairperson, CCI addressed the Plenary of the Merger Working Group (MWG) focussing on ‘Digital Mergers’. Mr. Gupta highlighted the Indian experience and challenges in the field of digital mergers. He stated that even in a short period of two years, the relevant market definition of an earlier time may not work in a present-day case. He gave an example of a case considered by the CCI pertaining to a merger between two Online Travel Agencies (OTAs) in 2017,

wherein the CCI incorporated the online and offline modes in the same relevant market. However, two years later in a recent antitrust case related to the same OTAs, it was observed that the intervening period has seen the online travel portals gaining a distinct and significantly more prominent position in the hotel reservation space in India. Accordingly, the CCI found it imperative to consider the online segment as a separate relevant market. He stated further that the legal framework set out in the Competition Act, 2002 for determination of an appreciable adverse effect on competition is broad enough and gives the CCI flexibility to develop and test all such theories of harm that may be relevant in digital markets. The CCI is open to bring in such new dimensions in its substantive assessments. At the same time, the CCI is cautious not to let speculative theories replace objective and evidence-based analysis. He said that the CCI interventions are guided by case-specific economic evidence of competition concerns and the CCI intends to follow the same even in the digital markets.

In regard to notification thresholds, Chairperson stated that in 2018, the government constituted a Competition Law Review Committee (CLRC) to comprehensively examine this issue. In view of the blind spot that asset/turnover based thresholds may leave in digital markets, the committee recommended the introduction of any other criteria for notification that may include a deal-value threshold.

Chairperson, while discussing remedies, stated that designing appropriate and effective remedies that eliminate the potential harming consequences of digital mergers is critical and not without challenges. The guiding principles under which remedies are devised in digital markets remain the same as in any other sectors, i.e. to impose remedies only when a threat to competition has been identified, to devise remedies that are effective as well as proportionate to address the competition concerns and to have a flexible approach in remedy design so as to account for the specificities of the market and the transaction in question. He gave examples of decided cases of Hyundai-Ola remedy and Bayer-Monsanto remedy.

The other panellists of the MWG Ms. Reiko Aoki, Commissioner, Japan Fair Trade Commission; Ms. Cani Fernández, President, National Authority for Competition and Markets, Spain; and Ms. Alejandra Palacios, Chairwoman, Federal Economic Competition Commission, Mexico identified some important aspects of digital mergers and compared them with the non-digital cases. Further, the panellists mentioned that the scale and speed of change can be challenging and network effects of digitisation and innovation play a relevant role in the market. The MWG also issued a report on agency experiences with conglomerate mergers and work exploring the impact of procedural infringements by parties during merger investigations.

The Advocacy Working Group held a plenary on 'Competition advocacy in the digital age'. The panel discussed that as the digital economy has become a more frequent and regionally diversified advocacy topic, there was a commensurate significant increase in number of advocacy entries on markets affected by digital technology. With the consistent use of technology throughout the years as a tool to boost advocacy, the digital economy has both benefited from and supported competition advocacy. Use of market studies to understand digital markets to keep in step with rapid changes in the digital economy, working with other government agencies and through multiple government platforms to address concerns arising from digital markets were highlighted.

The Agency Effectiveness Working Group (AEWG) Plenary delved on the issue of 'Digital Strategy of Competition Agencies'.



It focussed on competition agencies' strategies to address the challenges of the digital economy and on how digitalisation is affecting the design and make-up of competition authorities. The panel discussed the M3/Nihon UltmarcNihon and the ZHD (Yahoo/LINE) cases and issues such as the creation of digital teams and units, the recruitment of non-traditional staff, new demands on staff to be tech-savvy, and implementation of innovative approaches to make competition agencies "digitally ready." The group also led the ICN's efforts, since the outset of the COVID-19 pandemic, to share operational experiences and information on member agencies' adaptation policies.

Unilateral Conduct Working Group Plenary focussed on 'Unilateral Conduct Remedies', and discussed objectives, design, implementation and monitoring of remedies, including injunctive relief and interim measures in unilateral conduct cases in digital markets. The panel devoted particular attention to remedies in zero-price markets and in nascent or fast-evolving high-tech markets. The panellists addressed the question of whether and/or how designing and monitoring remedies in digital markets differ from designing and monitoring remedies in traditional markets and identifying the challenges faced in digital markets.

The Cartel Working Group Plenary focussed on 'Big Data and Cartelization' wherein the panel emphasised the role of 'big data' in business and the collection and processing of large amounts of data as a defining feature of the digitised economy. The panel

focussed on the impact of big data on business strategy and its use in algorithms to implement cartels and market coordination and the way ahead for competition law against cartels in the digital era.

During the conference, ICN announced its "Third Decade Project", a comprehensive organisational review of the ICN's substantive coverage, tools, and operational framework, with a view of preparing for future developments and challenges as the ICN enters its third decade in 2021. It would not be out of place to mention that the CCI is also the Working Group Co-Chair of the Operational Framework Working Group along with Competition Bureau, Canada.

*The AEWG discussed the M3/Nihon UltmarcNihon and the ZHD (Yahoo/LINE) cases and issues such as the creation of digital teams and units, the recruitment of nontraditional staff, new demands on staff to be tech-savvy, and implementation of innovative approaches to make competition agencies "digitally ready."*

The NGA Engagement panel discussed how NGAs contributed to the production, promotion and implementation of ICN work products, and on providing opportunities for members and NGAs to share their experience with NGA engagement. The panel stated that NGAs were an asset to the ICN. The ICN public-private sector participation structure

offered an opportunity for various NGAs to work with ICN and bring value by offering a variety of perspectives and augmenting the limited resources. ICN member agencies of every size, age and jurisdiction were encouraged to take a proactive approach to engaging NGAs and enhancing NGA diversity (e.g. professional backgrounds, gender balance and age group).

The Younger Agency session presented the progress made on the implementation of the 'Bridging Project' since its launch in December 2019. The session included experiences and learnings from the Steering Group Members and Young and Small Agencies involved in the first pilot of the Project and information on the Training on demand and ITOD certificate programmes.

The Economist Session provided perspectives from the economists on their role in this dynamic space and the ways in which they use and adapt their economic toolkit to contribute to these antitrust investigations.

The ICN also announced plans for a full self-evaluation of the network, the "Third Decade Review". Andreas Mundt, ICN Chair and President of the Bundeskartellamt said, "ICN will turn 20 next year and we will look at tools, structure and topics to shape the ICN for its third decade. The ICN is well equipped to keep on improving and developing, maybe the most important skill these days. Quality, spirit and professionalism will enable the ICN to tackle the issues that matter for its members."

A recording of the conference is available on the conference webpage.



## Steering Competition Regulation of Mergers & Acquisitions: The Indian Experience

– *Shri Ashok Kumar Gupta, Chairperson, CCI*

With every industry undergoing new-age transformations, Mergers and Acquisitions (M&As) have become a significant tool for establishing systemic efficiencies in many markets. However, large scale consolidations often present unique market structures that may pose challenges to competition. In these scenarios, competition regulation assumes greater significance to preserve competition and protect consumer welfare. In India, the Competition Commission of India (CCI) looks into M&As from the competition perspective. All M&As above a certain asset and turnover threshold are to be mandatorily notified to the CCI for an *ex ante* assessment of an appreciable adverse effect on competition. While the general philosophy of merger review is not difficult to appreciate, for reviewing a complex M&A transaction, the CCI needs to look into the future structure of the market and this cannot be based simply on crystal-gazing.

The key to success of any merger review regime is to conduct quick assessment so that firms

are able to consummate their transactions and save time and costs on account for the necessary approvals. The CCI has received over 750 combination cases so far and most of them were cleared unconditionally and a few were cleared with modifications. None of the transactions has been blocked. In its assessment, the CCI considers the market dynamics including the level of concentration, degree of countervailing buyer power, the possibility of failing business and contribution to the economic development to examine whether the merger is likely to result in any harm to competition. Such assessment also factors in the synergies that would be derived from the proposed combination.

The CCI's interventions in mergers are aimed to preserve competition in the relevant markets and protect consumer welfare that would be lost otherwise. Remedies were imposed in 21 cases to prevent likely market distortions resulting from the combinations. These were in industries such as cement, pharmaceuticals, seeds, agro-chemicals,

automobile components, electrical equipment, entertainment, industrial gas, e-platforms and mineral processing. Divestments were ordered where the parties were close competitors and their deal would have resulted in increased prices, reduced choices to consumers and/or lesser innovation. Behavioural compliances were stipulated in vertical mergers that were likely to foreclose inputs to competitors or impact the level playing field. Mergers exhibiting both elements were subjected to hybrid remedies.

### **Cross-border mergers**

Global consolidations have resulted in entry of several foreign firms into Indian markets in the recent years. The CCI has been successfully handling various global mergers such as Dow Chemical / Dupont, Holcim / Lafarge, Bayer/ Monsanto and Linde/ Praxair. These cases required interaction with its well-established counterparts and multi-jurisdictional authorities. Continual engagement with other authorities on the platform of International Competition Network (ICN), OECD and BRICS has helped the CCI to keep abreast with the latest developments and apply international best practices in its merger review framework that are grounded in the reality of the Indian markets. The CCI has always endeavoured to adopt a cautious and balanced approach to avoid sub-optimal interventions. In a decade of experience, we believe that a robust framework

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*The key to success of any merger review regime is to conduct quick assessment so that firms are able to consummate their transactions and save time and costs on account for the necessary approvals.*

”



for merger review has been developed. However, like our counterparts, we are also grappling with challenges posed by new age markets, common investments in competing firms and data driven mergers. In digital markets due to low assets or turnover of target companies some acquisitions do not trigger the notification thresholds. We are trying to trace what are the trends of such acquisitions be it e-commerce or other digital companies as in some cases the acquisition of a nascent firm may trigger the loss of a competitive constraint. The role of Market Studies is becoming extremely important in this context.

### **Measures making compliance simpler**

While transactions that are likely to raise competition concerns are investigated to impose remedies that preserve competition and protect consumers, other combinations are cleared expeditiously. Towards this end, several measures have been put in place to make compliance requirement certain and simpler. *Firstly*, the threshold for notification in India is relatively high thus imposing the notification requirement only on larger transactions that have the potential to affect competition. *Secondly*, mergers in certain sectors such as public sector banking and oil & natural gas have been exempted by the government in the public interest. Further, the acquisition of smaller enterprises below a monetary threshold is also likewise exempted. *Thirdly*, our regulations dispense notification for certain categories of combinations that are not likely to raise competition concern. These are largely

“*The ongoing reforms have made India a preferred destination for strategic investments and M&As even during the pandemic.*”

transactions in the ordinary course of business or investments not resulting in control.

### **“Green Channel” – Fast Track approval route**

The CCI has recently introduced a Green Channel for the automatic approval of combinations with effect from 15 August 2019. This is a first of its kind trust-based system in the world, where notifiable transactions having no overlaps, be it horizontal, vertical or complementary between the parties, are deemed approved upon its filing and can be consummated immediately. It is expected to sustain and promote speedy, transparent and accountable merger review, strike a balance between facilitation and enforcement and create a culture of voluntary compliance that supports economic growth. This has caught the imagination of the industry and one out of every five cases is being filed under Green Channel. The CCI has revised its pre-filing consultation guidelines and stakeholders are encouraged to proactively participate in the review process in order to facilitate them in understanding and complying with the filing requirements both under Green Channel and otherwise.

### **Policy changes to drive ease of doing business**

As the market regulator, the CCI is conscious of the larger public

policy milieu and significance of inorganic growth in order for enterprises to attain size, scale and efficiency required for surviving and succeeding in domestic and global markets and against global giants. The CCI has focussed on quick approval of M&As that do not cause appreciable adverse effect on competition.

Several new reforms in corporate and insolvency landscape are driving up domestic consolidations, attracting entry/expansion of foreign entities in India through M&A route, strategic investment by MNCs and investments by foreign funds including sovereign funds, pension funds and private equity funds. Our merger control regime has come of age and we assess these deals by taking cognizance of the relative advantage by the way of contribution to the economic development of the country.

The ongoing reforms have made India a preferred destination for strategic investments and M&As even during the pandemic. The CCI has given timely approval to all notifications filed even in the lockdown period. As India gears up for the post-Covid economic recovery, the stage is set for all enterprises to benefit from the objective, transparent and business-friendly combination review regime of the CCI.



## CARTELS

### The Competition Commission of India (CCI) directs ten Composite Brake Block Manufacturers and their Officials to Cease and Desist from Anti-competitive Activities

*(Ref. Case No. 03 of 2016, Ref. Case No. 05 of 2016, Ref. Case No. 01 of 2018, Ref. Case No. 04 of 2018 and Ref. Case No. 08 of 2018)*

The CCI had received a reference case from Chief Materials Manager, South Eastern Railway against Research Design and Standards Organisation ('RDSO') approved Composite Brake Block (CBB) vendors alleging that identical bids were submitted by these parties in tenders floated for the procurement of composite brake block.

Subsequently, with similar allegations, Information(s) were received from four other railway zones at various times. The first four cases were clubbed together and a composite investigation was ordered to be conducted covering all tenders floated by all Railway Zones with respect to all types of

composite brake blocks procured by them between 2009 and 2017. The DG in the investigation found 10 Opposite Parties ('OPs') and their respective officials to be in contravention of the provisions of Sections 3(3)(a), 3(3)(c) and 3(3)(d) read with Section 3(1) of the Act.

The CCI after analysing the evidence and material gathered by the DG such as emails, SMSes, WhatsApp communications, etc., found OPs to be in contravention of the provisions of Section 3(3) read with Section 3(1) of the Act with respect to the procurement of CBB. The CCI also found the identified officials of OPs to be

in contravention of Section 48 of the Act. While passing the order under Section 27 of the Act, the CCI taking into account the co-operation extended by the parties during investigation, the fact that some of the OPs are Micro, Small and Medium Enterprises (MSMEs) and the prevailing economic situation that has arisen due to the outbreak of global pandemic (COVID-19), refrained from imposing any monetary penalty and directed the parties and their respective individuals identified therein, to cease from such cartel behaviour and desist from indulging in similar behaviour in future.





# MERGERS AND ACQUISITIONS

## The CCI approves acquisition of Metso Oyj's Minerals business by Outotec Oyj, with modifications

On 18.06.2020, the CCI approved acquisition of mineral business of Metso ('Metso Minerals') by Outotec (both Metso and Outotec referred to as 'Parties') subject to carrying out certain modifications proposed by the Parties.

Outotec is a public limited liability company incorporated and registered under the laws of Finland. It is present in India in the supply of equipment for the process(es) of (i) Flotation, (ii) Sedimentation, (iii) Filtration, (iv) Thermal Processing, i.e. Iron Ore Pelletising (IOP), (v) Hydrometallurgy, and (vi) Refining.

### IN A NUTSHELL

*Metso and Outotec are significant players in the Mineral Processing Equipment sector.*

*The proposed combination prima facie appeared to result in the loss of a strong player segment for IOP Equipment.*

*To alleviate the potential concerns, Parties offered to transferring a right to fully use and exploit the Straight Grate (SG) IOP capital equipment drawings, including the related registered IP by way of an exclusive and irrevocable license in India, subject to carrying out of which, the CCI approved the proposed combination.*

Metso is also a public limited liability company incorporated and registered under the laws of Finland. It is present in India in the supply of equipment for the process(es) of (i) Crushers, (ii) Grinding Mills, (iii) Flotation, (iv) Filtration, (v) IOP, (vi) Slurry

handling, (vii) Materials handling, (viii) Size control, (ix) Aggregates Capital Equipment, and (x) Recycling

The Proposed Combination involved a partial demerger of Metso to the effect that all minerals business of Metso (comprising mining, aggregates and recycling businesses) will be acquired by Outotec. In return for the transfer of Metso Minerals to Outotec, the shareholders of Metso will receive newly issued shares in Outotec and hold the majority of the new entity's shares (~78%). Outotec's shareholders will hold 22% of the shares in the combined entity, that will operate under the name Metso Outotec.



The CCI sought responses from competitors and customers of the Parties and based on these, the CCI formed a *prima facie* opinion that the proposed combination is likely to cause an appreciable adverse effect (AAEC) on competition in the segment of IOP in India.

The CCI found that the Proposed Combination is an integration of two strong and close competitors in the market for IOP Equipment Island in India and appears to:

- (a) limit the number of suppliers available to customers in India;
- (b) reduce the intensity of innovation

in the technology for pelletizing technology and equipment;

- (c) perpetuate the substantial market position of the Parties; and reduce or eliminate the competitive pressure that would prevail in the absence of proposed combination;
- (d) reduce the extent of countervailing bargaining power that the customers enjoy on account of the competition exerted by independent presence of Metso and Outotec;
- (e) increase the cost of the entrants and rivals to compete and increase their presence in the market given that there is no likelihood of a timely and sufficient entry that could act as a competitive constraint to the combined entity;
- (f) result in creation of a strong integrated player. Thus, the CCI was of the *prima facie* view that the proposed combination is likely to reduce competition and confer the combined entity the ability to increase price, etc.

**Regulation 25 (1A)** of Combination Regulations provides another opportunity to the parties to offer modifications after the issuance of the show cause notice (SCN) to remove the competition law concerns raised by the CCI in the SCN.

Parties can also offer modification any time prior to issuance of SCN under Regulation 19 (2) of the Combination Regulations.

In order to address the competition concerns arising as a result of the proposed combination,

the Parties proposed voluntary remedies / modifications (VRP). The modification essentially involves transferring a right to fully use and exploit the SG IOP capital equipment drawings including the related registered IP by way of an exclusive and irrevocable license

subject to a lump sum upfront payment and no ongoing royalties. VRP will allow the emergence of a new competitor, thus resolving any concerns whatsoever in relation to this segment.

The CCI noted that VRP given by Parties eliminates the overlap

between the Parties in the IOP segment in India and would effectively transfer Metso Minerals' Indian Straight Grate (SG) IOP capital equipment business to a suitable buyer, thereby preserving the competition.

## The CCI approves Aceso's acquisition of 58.92% stake in HealthCare Global Enterprises Limited

On 15.07.2020, the CCI approved acquisition by Aceso Company Pte. Ltd. ('Aceso'/'Acquirer') of up to 58.92% share capital of HealthCare Global Enterprises Limited ('HCG'/'Target') through subscription of shares and warrants as per the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

Aceso, incorporated in Singapore, is part of the CVC Network. It neither has any physical presence in India nor does it have any portfolio companies or investments in India. The 'CVC Network' consists of (i) CVC Capital Partners SICAV-FIS S.A. ('CVC') (including its subsidiaries) and (ii) CVC Capital Partners Advisory Group Holding Foundation (including its subsidiaries). These are privately owned entities whose activities include providing investment advice to and / or managing investments on behalf of certain investment funds and platforms ('CVC Funds'). The ultimate control over the CVC Funds lies with CVC.

### IN A NUTSHELL

The proposed combination between *HealthCare Global Enterprises and Aceso* relates to healthcare sector. Combined market shares (directly or indirectly) of parties were insignificant to raise any competition concern.

HCG is a provider of specialty healthcare in cancer and fertility. Under the HCG brand, it operates 22 cancer care centres and 4 multispecialty hospitals in India. Through its subsidiary, namely BACC Healthcare Private Limited, it operates 8 fertility centres under the 'Milann' brand. Target also owns approximately 38.2% in Strand Life Sciences Private

Limited which, *inter alia*, provides clinical diagnostic services.

It was observed that there is no direct horizontal, vertical or complementary overlaps between the Acquirer and the Target. However, some portfolio companies of the CVC Funds record sales in India in connection with activities that exhibit potential vertical or complementary relationships to the activities of the Target. The CCI observed that the market share of the portfolio companies is miniscule in their respective segments and there are several players present in each segment. In view of this assessment, the proposed combination was approved by the CCI under Section 31(1) of the Act.



## The CCI approves the proposed combination of Kubota Corporation and Escorts Limited

On 10.07.2020, the CCI approved the proposed acquisition of 9.09% of the total issued, subscribed and paid-up share capital of Escorts Limited ('Escorts') by Kubota Corporation ('Kubota'); and acquisition of 40% of the total issued, subscribed and paid-up share capital of Kubota Agricultural Machinery India Private Limited by Escorts.

Kubota, incorporated in Japan, is a comprehensive agriculture product manufacturer and offers various machinery such as tractors, combine harvesters and rice trans-planters. Kubota also offers engineering, procurement, construction, maintenance services contributing to safety and security of water.

Escorts is a public limited company incorporated in India.

Escorts is engaged in the business of manufacturing and sale of agri-machinery, construction equipment and railway equipment in India.

### IN A NUTSHELL

The proposed combination between Escorts and Kubota relates to agri-machinery such as tractors and combine harvesters. Combined market shares of parties were insignificant to raise any competition concern and thus, the proposed combination was approved by the CCI.

Kubota and Escorts directly or indirectly exhibited horizontal overlaps in the segments of manufacture and sale of (i) tractors, (ii) combine harvesters, and (iii) diesel engines. It was observed that the incremental market share, due to the proposed

combination, is insignificant and there are several players present in each segment.

There were no existing vertical relationships and no supply arrangements between the parties. With regard to potential vertical relationships and complementary relationships, the market share of the parties was not such so as to cause any competition concerns and it appeared that the parties do not have any ability or incentive to foreclose competition in any market.

Since the Proposed Combination was not likely to have an appreciable adverse effect on competition in India, the CCI approved the same under Sub-section (1) of Section 31 of the Act.





## JUDICIAL PRONOUNCEMENTS



### Supreme Court affirmed the CCI's order in the matter of cartel case associated with Film Employees' Federation of Kerala

In the captioned matter, the Informant – Shri T. G. Vinayakumar moved an application under Section 19(1)(a) of the Competition Act, 2002 ('the Act') against the Appellants – Association of Malayalam Movie Artists (AMMA/Opposite Party ('OP-1')); Film Employees' Federation of Kerala ('FEFKA'/'OP-2'); Shri Mammooty ('OP-3'); Shri Mohanlal ('OP-4'); Shri Dileep ('OP-5'); FEFKA Directors' Union ('OP-6'); and FEFKA Production Executives' Union ('OP-7') alleging a contravention of the provisions of Sections 3 and 4 of the Act.

The Informant, in this case, is a director and writer in Malayalam film industry and in his information,

he alleged that owing to some dispute with him in past, the aforementioned Opposite Parties (OPs) tried to force various actors, technicians, producers and financiers not to work or associate with the Informant in any of his projects. For achieving that purpose, the OPs allegedly imposed a ban on actors, technicians, producers, etc., who worked with the Informant, by issuing circulars and show cause notices. As per the information, many artists, technicians, producers and financiers withdrew from the Informant's projects and even the new actors (who came forward to work with the Informant) were threatened by OPs. Such conduct of the OPs,

as per the Informant, had affected fair competition in the market, the interests of consumers and freedom of trade carried on by other participants by limiting and restricting the market in contravention of the provisions of Section 3(3) of the Act. The Informant further alleged that the OPs, by virtue of their dominant position in the Malayalam film industry, had sought to control and abuse it within the meaning of Section 4 of the Act.

After looking into the *prima facie* case, the CCI did not find OP-1, OP-2, OP-6 and OP-7 as such to be qualified to be termed as an 'enterprise' under Section 2(h) of the Act for the purpose of

Section 4 of the Act. Regarding the allegations of Section 3 of the Act, the Commission observed that OP-1, OP-2, OP-6 and OP-7 by way of imposing various directions on its members and other non-members, were limiting and controlling the provision of services in the Malayalam Film Industry. Their conduct was thus, *prima facie*, found to be in contravention of the provisions of Section 3(1) read with Section 3(3)(b) of the Act. However, the CCI did not find sufficient evidence against OP-3, OP-4 and OP-5 while examining the case at the *prima facie* stage. Thereafter, the CCI sent the case to DG for investigation. After conducting the detailed investigation, the DG submitted its investigation report on 16th November 2015.

### **The CCI's Order dated 24.03.2017**

The CCI in its order dated 24.03.2017 under Section 27 of the Act found contravention of provisions of Section 3 of the Act and imposed the penalty on OP-1, OP-2, OP-6 and OP-7 at the rate of 5% of their average income

for three years. Concerning the individuals, the penalty at the rate of 3% of their income for three years was imposed.

### **Judgement of National Company Law Appellate Tribunal (NCLAT)**

Subsequently, OPs filed Appeal before NCLAT challenging the aforesaid order of the CCI dated 24.03.2017 alleging that the CCI has not considered the exculpatory evidence in favour of FEFKA, FEFKA Directors' Union (FEFKADU) and FEFKA Production Executives' Union (FEFKAPEU).

The NCLAT held that there are large number of evidences which have been relied upon by the DG and also by the CCI to come to a definite conclusion that the Appellant(s) indulged in anti-competitive conduct in violation of the provisions of Section 3 of the Act. Accordingly, the appellants – OP-1, OP-2, OP-6, and OP-7 and their office bearers were found to be liable of the anti-competitive conduct. And for the said reason, NCLAT concluded that no case is made out to interfere with the

findings of the CCI and dismissed the said appeals. NCLAT *vide* a common Judgement dated 13.03.2020 in Competition Appeal (AT) No. 05, 08, 09 & 10/2017 dismissed the appeals.

### **Appeal in Supreme Court**

Against the Judgement of NCLAT, three OPs namely OP-2; OP-6; and OP-7, out of aforementioned OPs, had filed three Civil Appeals – Civil Appeal No. 03193/2020 *Film Employees' Federation of Kerala vs CCI*; Civil Appeal No. 03167 *FEFKA Directors' Union vs CCI* and Civil Appeal No. 03167 *FEFKA Production Executives' Union vs CCI* before Hon'ble Supreme Court (SC). The Hon'ble SC dismissed these appeals *vide* order dated 28.09.2020 on first date of hearing itself by holding that, "..... We do not find any reason to interfere with the impugned order dated 13.03.2020 passed by the National Company Law Appellate Tribunal, New Delhi. Accordingly, the appeals are dismissed. Pending applications stand disposed of."

## **IN BRIEF**

The matter was brought before the CCI by Shri T.G. Vinayakumar under section 19(1)(a) of the Competition Act to remove the ban imposed on him by bodies that include FEFKA and Association of Malayalam Movie Artists (AMMA), Film Employees' Federation of Kerala (FEFKA) and others. The CCI, finding the Opposite Parties guilty of contravention of the Competition Act, imposed a total penalty of 11.25 lakh on FEFKA, AMMA, etc., and its representatives for violation of the provisions under the Competition Act, 2002.

Opposite parties had appealed in NCLAT against the order of CCI dated 24.03.2017. The NCLAT dismissed the appeals holding that there were a large number of evidences which have been relied upon by the DG and CCI to come to the conclusion that the opposite parties have violated the Competition Act.

FEFKA, FEFKA Director's Union, FEFKA Production Executives' Union have approached the Supreme Court against this. The Hon'ble Supreme Court dismissed the appeals holding that it did not find any reasons to interfere with the impugned order dated 13.03.2020 passed by the NCLAT.



## Agricultural Reforms

Recently, the Parliament of India has passed farm-sector bills – Farmer’s Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020, and the Farmers (Empowerment and Protection) Agreement of Price Assurance and Farm Services Bill, 2020. Since decades, farmers have been trading their produce mainly in notified wholesale markets run by Agricultural Produce Marketing Committees (APMCs). The APMCs require farmers to only sell their produce to licensed middlemen in these notified markets, which scuttles efficient price discovery and hurt farm profits. In this background, the Farmer’s Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020, allows farmers to sell their produce at places other than the APMC-regulated *mandis*

(markets). The creation of additional trade options outside of these *mandis* will provide farmers with a more competitive eco-system where they have the choice to sell their products in a competitive environment to realise remunerative prices. Here, it is important to note that the idea is not to shut down APMCs but to expand the choices for farmers. Thus, rather than binding farmers and traders to the specific markets, the measure will open up APMCs to the competition.

On the other hand, the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Bill, 2020 provides a framework for farmers to enter into contract farming. It provides for a national framework on farming agreements, enabling a farmer

to engage with agri-business firms, processors, wholesalers, exporters, or large retailers for the sale of future farming produce at a mutually pre-agreed price.

The measure is expected to liberalise the agricultural marketing set up, allowing for efficient price discovery, thus making the whole system more competitive. It provides for opening up of the farm sector to more competition, modernisation of supply chains by enabling bigger agri-businesses to engage with farmers directly and creating seamless access to fragmented markets. However, few underlying structural problems such as lack of information access to farmers and adequate infrastructure to store produce will have to be addressed to realise the benefits fully.

## TRAI’s recommendations for Over-The-Top (OTT) Communication Services

The Telecom Regulatory Authority of India (TRAI) has released recommendations on Regulatory Framework for Over-The-Top (OTT) Communication Services recently. The TRAI has recommended that market forces may be allowed to respond to the situation without prescribing any regulatory intervention; regulatory interventions are not required in respect of issues of privacy and security of OTT services at the moment. Further, it has opined that it is not an opportune moment to recommend a comprehensive regulatory framework for various aspects of services referred to as OTT services, beyond the extant laws and regulations prescribed presently.

This stance on light-touch regulation by TRAI is seemingly welcomed by OTT companies who opposed the need for regulation and contended that it would stifle innovation since they are governed under the IT Act. It is observed that unlike OTTs, Telecom Service Providers (TSPs) enjoy certain exclusive rights like spectrum, network infrastructure, etc., and they charge the direct subscription fee to customers, while OTTs are unlicensed and provide a wide range of functionalities beyond communication and works on minimal/zero pricing. TSPs and OTTs have a symbiotic association with each other since TSPs benefit from increased data usage by

consumers with the use of OTT services. OTTs, on the other hand, benefit from the large subscriber base of the TSPs. With the industry witnessing increasing consolidation of TSPs, the prevalence of bundled offerings (of voice, data and OTT services) of TSPs and vertical integration across service providers and OTT services, the reliance on the principles of net neutrality regime gains prominence. This can provide a safety net to the incumbent OTT player from any kind of adverse conduct by the TSP, given the fact that the market is moving towards technological convergence.





# KNOW YOUR COMPETITION LAW

## Failure to comply with the Orders/Directions of the Commission - Interpretation of Section 42(3)

Section 42 of the Competition Act, 2002, provides for the penalty in cases of contravention of the orders of the Commission. As per Section 42(1), the Commission may cause an inquiry to be made into compliance of its orders or directions made in exercise of its powers under the Act. Section 42(2) deals with the failure to comply with the directions, or orders, of the Commission under Sections 27, 28, 31, 32, 33, 42-A and 43-A and the said failure is made punishable with a fine to be determined by the Commission. Further, the Section 42(3) renders non-compliance with the orders or directions issued, or failure to pay the fine imposed under Section 42(2) a penal offence which is triable by the court of Chief Metropolitan Magistrate, Delhi (CMM), cognizance thereof to be taken on a complaint filed by the Commission.

In the case of Rajasthan Cylinders and Containers Limited<sup>1</sup> a pertinent issue arose, where the petitioners argued before the High Court of Delhi against the criminal complaint before CMM by the Commission against them. It was argued that the provision contained in Section 42 is to deal with the situations arising out of contravention of orders of the Commission and, therefore, the failure to comply with the processes issued by the Director General during the investigation, in the exercise of his power under

Section 41(2) cannot be equated with failure to comply with the orders of the Commission within the meaning of Section 42(3).

The main issue raised was that the penal offence under Section 42(3), triable by a criminal court, has to be construed in light of the clause immediately preceding it that is to say Sub-section (2) of Section 42 which, in turn, refers to the failure in compliance with the orders or directions of the Commission under specified provisions of the Competition Act. It was contended by the petitioners that since failure to pay the penalty under Section 43 is not a failure to comply with the orders or directions within the meaning of Section 42(2), such failure cannot lead to prosecution for the offence under Section 42(3). It was also contended that the failure to comply with processes of the Commission under Section 36 or of the Director General under Section 41 attracts penalty in terms of Section 43 and prosecution for the offence under Section 42(3) would be in the nature of double jeopardy prohibited by Article 20(2) of the Constitution of India.

The High Court of Delhi *vide* its judgement dated 29.03.2020 in the aforementioned Criminal Miscellaneous Cases held that the use of comma (,) in Section 42(3), indicates that a cause of action for a criminal complaint to be filed in the court of CMM arises in two possible situations, viz. (i) there has been a failure on the part

of a person to “comply with the orders or directions” issued to him under the law or (ii) on account of failure to pay the fine imposed for non-compliance with orders or directions of the CCI under specified provisions (i.e. Sections 27, 28, 31, 32, 33, 42A and 43A).

It was further observed by the Hon’ble High Court that the word ‘Commission’ has been conspicuously missing in Section 42(3), the clause which provides for the offence. Thus, the Hon’ble Court held that Section 42(3) has to be given wider connotation as the legislature clearly intended to cover the failure to comply with the “orders or directions issued”, irrespective of whether they had been issued by the Commission or by the DG. Further, while rejecting the plea of double jeopardy, it was held that the penalty under Section 43, as imposed by the CCI in the exercise of its powers, is civil in nature and the criminal complaint alleging offence under Section 42(3) is an additional element of failure to comply further with the said direction.

Hon’ble Supreme Court in the Special Leave to Petition filed, challenging the aforesaid order of the Hon’ble High Court of Delhi, *vide* its Judgement<sup>2</sup>, while rejecting the argument of Appellants, observed that it did not find any ground warranting interference with the impugned order in exercise of its jurisdiction under Article 136 of the Constitution of India.

<sup>1</sup> CRL.M.C. Nos. 4363/2018, 5324/2018 & 5371/2018, Rajasthan Cylinders Containers Ltd. vs CCI & clubbed matters.

<sup>2</sup> In SLP (Crl.) No(s). 3195/2019 & 5489-5490/2019, Rajasthan Cylinders Containers Ltd. vs CCI & clubbed matters, Judgement dated 19.11.2019.



## ENGAGING WITH THE WORLD

### Virtual Meeting of the Heads of the BRICS Competition Authorities



Mr. Ashok Kumar Gupta, Chairperson, CCI addressed the online meeting of the Heads of the BRICS Competition Authorities on 23<sup>rd</sup> July 2020. The meeting saw the presence of Mr. Alexandre Barreto de Souza, President, Administrative Council for Economic Defense, Brazil; Mr. Igor Artemiev, Head, Federal Antimonopoly Service, Russia; Ms. Gan Lin, Vice Minister, State Administration for Market Regulation, China; and Mr. Tembinkosi Bonakele, Commissioner, Competition Commission of South Africa.

Chairperson congratulated FAS Russia for taking the initiative to call for a meeting of all the heads of the competition agencies of BRICS. He stated that the CCI has a proud association with BRICS, since the enforcement of Competition Law began in India in the year 2009. He recalled that in the same year, the CCI had sent a delegation to the inaugural conference of BRICS Competition Agencies at Kazan.

Chairperson mentioned that since the year 2014, Mr. Narendra Modi, the current Prime Minister of India, has strengthened the CCI's commitment to BRICS. Chairperson emphasized that even though BRICS MoU has only been in existence since the year 2016, still it has given an opportunity to all the other authorities to further the cooperation in competition law and policy being by way of working groups such as on pharmaceuticals, digital economy, automotive sector and global food value chain.

Chairperson supported the issuing of the joint statement by the BRICS Competition Authorities on consolidating efforts to combat the negative economic consequences of COVID-19. He informed that India has currently put up an effective action plan to fight the pandemic which has been thoroughly praised by the World Health Organisation. He said that the CCI has also issued the necessary advisories so that the stakeholders are not left to grapple

with the situation by themselves while businesses have also been cautioned not to take advantage of the current situation in place which may cause any contravention to the provisions of the Act.

Chairperson stated on the issue of adopting draft waiver guidelines that those need to be articulated without constricting competition authorities. They need to be worked out and refined at the level of officers so that it can be considered at the level of Heads at a later time.

He also joined the Heads of other BRICS Competition Agencies in supporting the initiative of the FAS Russia to include the issue of combating cross-border cartels in the work of the Intergovernmental group of experts on competition law and policy of the UNCTAD. Chairperson also appreciated the presentation given by the BRICS International Center for Competition Law and Policy.

During the meeting, the Heads of Competition Agencies approved the extension of the BRICS Memorandum of Understanding on Cooperation in the field of Competition Law and Policy for an open-ended period. They also discussed the impact of the COVID-19 pandemic on the markets of the BRICS countries, as well as measures to maintain a healthy competitive environment in the current conditions. It was announced that the 7<sup>th</sup> BRICS Competition Conference shall be held in China during 2021.

## Participation of the CCI in various international Meetings/Seminars/Conferences

- 1 Mr. Ashok Kumar Gupta, Chairperson, CCI participated in online meeting of the Heads of the BRICS Competition Authorities on 23.07.2020. During the meeting, the BRICS Competition Authorities announced release of a joint statement on consolidating efforts to combat the negative economic consequences of COVID-19.
- 2 Four officers attended UNCTAD-UNESCWA-OECD joint webinar on '**Competition Law and Policy: During and in the aftermath of the COVID-19 pandemic, Reflections in the Arab Region**' on 16.07.2020.
- 3 Ms. Payal Malik, Adviser (Eco) participated as panelist in an online panel discussion on '**SA's Economic Future in a Digitized World**' organised by the Competition Commission, South Africa on 11.09.2020.
- 4 ICN Annual Conference was organised virtually by the US Competition Agencies (Federal Trade Commission and Department of Justice) from 14.09.2020 to 17.09.2020. The conference was webcasted for wider participation of the Competition Agencies.
- 5 Mr. Ashok Kumar Gupta, Chairperson, CCI addressed the Merger Working Group (MWG) Plenary on Digital Merger on 15 September 2020. A video message of Chairperson was also shared with the organisers.





# DEVELOPMENTS IN OTHER JURISDICTIONS

## I. SINGAPORE

### *Competition and Consumer Commission of Singapore issues guidance note on collaborations between competitors in response to the COVID-19 pandemic*

The Competition and Consumer Commission of Singapore (CCCS) has issued a guidance note (the "COVID-19 Guidance Note") to provide businesses with more clarity on collaborations between competitors in relation to the supply of essential goods or services in Singapore during these times.

As a result of the COVID-19 outbreak and global lockdowns, logistics and supply chains have been severely disrupted with companies facing great uncertainties over demand. The sudden disruption may necessitate collaborations which may or may not be temporary in nature, which may be between competitors in order to deal with the effects of the COVID-19 pandemic. The disruption arising from the COVID-19 pandemic may require companies to temporarily collaborate to sustain or improve the supply of essential goods or services. Under normal circumstances, such collaborations may require further assessment for net economic benefits. An example of a collaboration that can fall under the COVID-19 Guidance Note would be where businesses agree to share production lines or inputs to increase total production of testing kits or its components for the purposes of addressing the COVID-19 pandemic.

The COVID-19 Guidance Note sets out the CCCS's approach to collaborations between competitors in response to this exceptional period. Further, in the Guidance Note, the CCCS has set out some instances of collaborations that may improve or sustain the supply of essential goods or services in Singapore.

The COVID-19 Guidance Note applies to all such collaborations which are put in place from 1<sup>st</sup> February 2020, and which will expire by 31<sup>st</sup> July 2021.

## II. RUSSIA

### *23.6 million rubles fine paid by PC Aquarius for participation in a cartel*

In 2018, the Moscow Regional Office of the Federal Antimonopoly Service (FAS), Russia considered a cartel case involving PC Aquarius LLC and other individuals and found that they broke the Federal Law on 'Protection of Competition' as under Paragraph 2 of Part 1 of Article 11. The total amount of initial (maximum) contract prices for 11 auctions was 148 million rubles.

The company which was found to be violating the Competition Law appealed against the decision of the Regional Office. However, the appeal was dismissed and the courts of three instances supported the findings of FAS, Russia.

23.6 million rubles is one of the fines paid by the company. The total amount of fines for PC Aquarius and other individuals exceeded 200 million rubles.

## III. BRAZIL

### *CADE convicts a cartel in the anesthesiology service market in the state of Rio Grande do Sul*

The Tribunal of the Administrative Council for Economic Defense (CADE) found one cooperative and three clinics guilty of economic crimes in the anesthesiology service market in the state of Rio Grande do Sul. As per the investigation, the anti-competitive practices started in the year 2002. The fine as imposed amounted to BRL 3.5 million.

During the course of the proceedings, the defendants signed a Cease and Desist Agreement (TCC) with CADE, in 2017. However, even upon the signature of the agreement, the conditions established in the agreement were not fully fulfilled by the signatories, which was the reason why the investigations were resumed by the agency. The breach was caused by the affiliation of the clinics to the cooperative after having signed the TCCs.

In addition to paying fines, CADE determined that the clinics and the cooperative must restrain from promoting collective bargaining aimed at setting prices or conditions of anaesthesiology services. The defendants must also stop promoting, supporting or encouraging boycott movements, collective stoppage of assistance to beneficiaries of health insurance plan and mass credential revocation.

Finally, the Tribunal determined that the defendants must make a summary of CADE's decision available at their websites, in a visible and readable manner, for a minimum of 90 days. The defendants must also disclose the content of the decision to any associated parties and clients, in a manner of their own choosing, proving their compliance to CADE's decision within 15 days from the date of release of the decision.

#### IV. EUROPEAN UNION

##### *European Commission opens in-depth investigation into the proposed acquisition of Fitbit by Google<sup>1</sup>*

The European Commission has opened an in-depth investigation to assess the proposed acquisition of Fitbit by Google under the EU Merger Regulation.

The transaction was notified to the European Commission on 15.06.2020. Google submitted commitments to address the Commission's concerns on 13.07.2020.

The European Commission is concerned that the proposed transaction would further entrench Google's market position in the online advertising markets by increasing the already vast amount of data that Google could use for personalisation of the ads it serves and displays.

Following its first phase investigation, the European Commission has had concerns about the impact of the transaction on the supply of online search and display advertising services (the sale of advertising space on,

respectively, the result page of an internet search engine or other internet pages), as well as on the supply of "ad tech" services (analytics and digital tools used to facilitate the programmatic sale and purchase of digital advertising).

By acquiring Fitbit, Google would acquire (i) the database maintained by Fitbit about its users' health and fitness; and (ii) the technology to develop a database similar to Fitbit's one.

The data collected via wrist-worn wearable devices appears, at this stage of the European Commission's review of the transaction, to be an important advantage in the online advertising markets. By increasing the data advantage of Google in the personalisation of the ads it serves via its search engine and displays on other internet pages, it would be more difficult for rivals to match Google's online advertising services. Thus, the transaction would raise barriers to entry and expansion for Google's competitors for these services, to the ultimate detriment of advertisers and publishers that would face higher prices and have less choice.

At this stage of the investigation, the European Commission is considering that Google:

- Is a dominant player in the supply of online search advertising services in the EEA (European Economic Area) countries (with the exception of Portugal for which market shares are not available);
- Holds a strong market position in the supply of online display advertising

services at least in Austria, Belgium, Bulgaria, Croatia, Denmark, France, Germany, Greece, Hungary, Ireland, Italy, Netherlands, Norway, Poland, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom, in particular in relation to off-social networks display ads; and

- Holds a strong market position in the supply of ad tech services in the EEA.

The European Commission will now carry out an in-depth investigation into the effects of the transaction to determine whether its initial competition concerns regarding the online advertising markets are confirmed.

In addition, the European Commission will also further examine:

- The effects of the combination of Fitbit's and Google's databases and capabilities in the digital healthcare sector, which is still at a nascent stage in Europe; and
- Whether Google would have the ability and incentive to degrade the interoperability of rivals' wearables with Google's Android operating system for smartphones once it owns Fitbit.

During the initial investigation, the European Commission has been closely cooperating with competition authorities around the world, as well as with the European Data Protection Board. The European Commission will continue this cooperation also during the in-depth investigation.

<sup>1</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1446](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1446)



## ADVOCACY INITIATIVES

### Advocacy Initiatives with Central Government, State Governments and PSUs

1. Shri Manish Mohan Govil, Adviser (Law) delivered a lecture on '*Competition Law*' to the Officers Trainees of 70<sup>th</sup> Batch of Indian Revenue Service (Custom and Central Excise) at the National Academy of Customs Indirect Taxes and Narcotics on 02.07.2020.
2. A State Resource Persons Advocacy Programme was organised by the State Resource Person of Odisha, Shri Mahendra Kumar Mallik, IAS (Retd.) on '*Competition Law & Public Procurement*' on 06.07.2020. The programme was attended by senior officers of Directorate of Accounts, Directorate of Treasuries and Inspection of Government of Odisha. During the programme proper social distancing norms were observed.
3. A State Resource Persons Advocacy Programme was organised by the State Resource Person of Telangana, Shri Prasanna Kumar on '*Competition Law & Public Procurement*' through video conferencing on 06.07.2020. The programme was attended by senior officers of Tribal Welfare Department, Government of Telangana.
4. Ms. Jyoti Jindgar, Secretary I/C was a panelist at the web-session '*Regulating Creativity: Overcoming Legacy Challenges to Shape the Future of M&E*' organised during 'FICCI Frames 2020' and delivered the Keynote Address. The event was organised by FICCI at New Delhi on 09.07.2020.



5. A State Resource Persons Advocacy Programme was organised by the State Resource Person of Telangana, Shri Prasanna Kumar on '*Competition Law & Public Procurement*' through video conferencing on 17.07.2020. The programme was attended by the Officers of Telangana State Trade Promotion Corporation Limited (TSTPCL), an undertaking of the Government of Telangana. Shri Mukul Sharma, Joint Director (Eco) addressed the programme.
6. A State Resource Persons Advocacy Programme was organised by the State Resource Person of Kerala, Shri Krishna Kumar on '*Competition Law & Public Procurement*' through video conferencing on 22.07.2020. The programme was attended by stakeholders from Public Sector Undertakings, Trade Associations and officers of the Government of Kerala.
7. Shri Anand Vikas Mishra, Joint Director (Law) took an orientation session on '*Competition Law*' for the students of Christ University, Ghaziabad through video conferencing on 24.07.2020.
8. A State Resource Persons Advocacy Programme was organised by the State Resource Person of Himachal Pradesh, Shri Rangilu Ram Patyal, HPAS on '*Competition Law & Public Procurement*' through video conferencing on 25.07.2020. The programme was attended by stakeholders from Public Sector Undertakings and officers of the Government of Himachal Pradesh.
9. Dr. K. D. Singh, Joint Director (Law) delivered an online lecture on '*Competition Law*' to the students of NEF Law College, Guwahati on 25.07.2020.
10. A State Resource Persons Advocacy Programme was organised by the State Resource Person of Assam, Shri Umesh Kumar, IPS (Retd.) on '*Competition Law & Public Procurement*' through video conferencing on 31.07.2020. The programme was attended by students and faculty members of Indian Institute of Technology, Guwahati.
11. A State Resource Persons Advocacy Programme was organised by the State Resource Persons of Telangana, Shri V. Prasanna Kumar and Shri R.C. Kumar on '*Competition Law & Public Procurement*' through video conferencing on 06.08.2020. The programme was attended by the officers of Telangana State Industrial Infrastructure Corporation Limited.
12. Shri K. P. Anand, Deputy Director (Law) delivered a lecture on '*Latest developments/challenges u/s 3 of the Competition Act, 2002*' to the students and faculty members of NUJS, Kolkata through video conferencing on 08.08.2020.
13. Shri V. Sriraj, Joint Director (Law) delivered a lecture on '*Delineating Relevant Market: CCI v Coordination Committee of Artists and Technicians of West Bengal Film and Television and Ors. (2017)*' to students and faculty of Christ School of Law, Christ University, Bengaluru through video conferencing on 13.08.2020.
14. Shri Sukesh Mishra, Adviser (Law) delivered a lecture on '*Functioning/structure of CCI /Appellate Tribunal and evolution of Competition Act in India*' to the Indian Telecom Service officers undergoing training at National Telecommunications Institute (NTIPRIT), Ghaziabad through video conferencing on 13.08.2020.
15. Shri Anand Vikas Mishra, Joint Director (Law) delivered a lecture on '*Public procurement and handling of Anti-Competitive Practices*' to the Indian Telecom Service officers undergoing training

at National Telecommunications Institute (NTIPRIT), Ghaziabad through video conferencing on 13.08.2020.

16. Shri Rahul Ravindran, Director (Law) delivered a lecture on '*Anti-Competitive agreements/abuse of dominant position, market power and investigative procedures in Competition Law*' to the Indian Telecom Service officers undergoing training at National Telecommunications Institute (NTIPRIT), Ghaziabad through video conferencing on 13.08.2020.
17. Ms. Bhawna Gulati, Joint Director (Law) delivered a lecture on '*Standards, IPR, FRAND Assurance, Interplay of Competition and IP Law*' to the Indian Telecom Service officers undergoing training at National Telecommunications Institute (NTIPRIT), Ghaziabad through video conferencing on 14.08.2020.
18. A State Resource Persons Advocacy Programme was organised by the State Resource Persons of Odisha, Shri Mahendra Kumar Mallick and Shri P.K. Biswal on '*Competition Law & Public Procurement*' through video conferencing on 19.08.2020. The programme was attended by the officers of Veterinary Officers Training Institute (VOTI).



19. A State Resource Persons Advocacy Programme was organised by the State Resource Person of Kerala, Shri Krishna Kumar on '*Competition Law & Public Procurement*' through video conferencing on 21.08.2020. The programme was attended by Officers of Directorate of Industries and Commerce, Government of Kerala.
20. A State Resource Persons Advocacy Programme was organised by the State Resource Person of Himachal Pradesh, Shri Rangilu Ram Patyal, HPAS on '*Competition Law & Public Procurement*' through video conferencing on 22.08.2020. The programme was attended by the officers of different Government Departments and PSUs of Government of Himachal Pradesh.
21. Shri Sukesh Mishra, Adviser (Law) delivered a lecture on '*Competition Regime - Its Need, Legal framework*' for the students and faculty of Pravin Gandhi College of Law, Mumbai through video conferencing on 24.08.2020.



22. Dr. K.D. Singh, Joint Director (Law) delivered a lecture on '*Anti- Competitive Agreements and Abuse of Dominant Position*' for the students and faculty of Pravin Gandhi College of Law, Mumbai through video conferencing on 25.08.2020.
23. Shri Manish Mohan Govil, Adviser (Law) delivered a lecture on '*Regulation of Combinations*' for the students and faculty of Pravin Gandhi College of Law, Mumbai through video conferencing on 26.08.2020.
24. Ms. Bhawna Gulati, Joint Director (Law) delivered a lecture on '*Zero Price Platforms, E – Platforms and Competition Law*' for the students and faculty of Pravin Gandhi College of Law, Mumbai through video conferencing on 27.08.2020.
25. A State Resource Persons Advocacy Programme was organised by the State Resource Persons of Telangana, Shri V. Prasanna Kumar and Shri R.C. Kumar on '*Competition Law & Public Procurement*' through video conferencing on 27.08.2020. The programme was attended by the officers of Telangana State Industrial Development Corporation.
26. Shri Shekhar, Joint Director (FA) and Shri Sachin Goyal, Joint Director (FA) took a session on '*Discussion and Deliberation on Recent case studies*' for the students and faculty of Pravin Gandhi College of Law, Mumbai through video conferencing on 28.08.2020.
27. A State Resource Persons Advocacy Programme was organised by the State Resource Persons of Assam, Shri Umesh Kumar and Shri Tanuj Goswami on '*Competition Law & Public Procurement*' through video conferencing on 28.08.2020. The programme was attended by the officers of Oil and Natural Gas Corporation, Nazira.
28. A State Resource Persons Advocacy Programme was organised by the State Resource Person of Assam, Shri Umesh Kumar, IPS (Retd.) on '*Competition Law & Public Procurement*' for Assam State Forest Department officials through video conferencing on 03.09.2020. Ms. Sunaina Dutta, Joint Director (Law), delivered an online lecture for the participants on the subject.
29. A State Resource Persons Advocacy Programme was organised by the State Resource Person of Assam, Shri Tanuj Kumar, ACS (Retd.) on '*Competition Law & Public Procurement*' through video conferencing on 07.09.2020. The programme was attended by the officers of Tocklai Tea Research Institute, Assam. Shri Anand Vikas Mishra, Joint Director (Law) delivered an online lecture for the participants on the subject.
30. Shri Rahul Ravindran, Director (Law) delivered a lecture on '*Overview of Competition Law & Challenges posed by COVID-19*' to the students and faculty members of K.R Mangalam University, Gurgaon through video conferencing on 17.09.2020.
31. A State Resource Persons Programme was organised by the Kerala Resource Person, Shri Krishna Kumar on '*Competition Law & Public Procurement*' with the Directorate of Industries and Commerce for Project Officers and Assistant Registrars from the Department of Coir Development, Government of Kerala through video conferencing on 17.09.2020. Shri Anand Vikas Mishra, Joint Director (Law) delivered an online lecture on the subject.

32. Dr. K.D. Singh, Joint Director (Law) addressed a webinar on '*Regulator's Response to Cartelization in the Post-COVID-19 Economy*' on 22.09.2020. Students and faculty members of Symbiosis School of Law, Pune participated in the webinar. The event was attended by around 270 students.
33. Shri Mukul Sharma, Joint Director (Eco) delivered a lecture on '*Working of CCI: An Overview of its first Decade of work*' to the students and faculty members of SGT University (Faculty of Law), Delhi NCR through video conferencing on 22.09.2020.
34. A State Resource Persons Advocacy Programme was organised by the State Resource Person of Himachal Pradesh, Shri Rangilu Ram Patyal, HPAS (Retd.) on '*Competition Law & Public Procurement*' for the officers of Technical Education Department through video conferencing on 25.09.2020.
35. A State Resource Persons Advocacy Programme was organised by the State Resource Persons of Odisha, Shri Mahendra Kumar Mullick and Shri P.K. Biswal on '*Competition Law & Public Procurement*' for OTAS probationers from Madhusudan Das Regional Academy of Financial Management, Bhubaneswar through video conferencing on 28.09.2020.
36. A State Resource Persons Advocacy Programme was organised by the State Resource Person of Assam, Shri Umesh Kumar on '*Competition Law & Public Procurement*' for the officials of Department of Finance, Government of Assam through video conferencing on 29.09.2020.
37. A State Resource Persons Advocacy Programme was organised by the State Resource Person of Telangana, Shri Krishna Kumar on '*Competition Law & Public Procurement*' for the officers of Telangana State Leather Industries Promotion Corporation Limited (TSLIPC) through video conferencing on 30.09.2020. Shri Anand Vikas Mishra, Joint Director (Law) delivered the introductory remarks.





# CAPACITY BUILDING EVENTS

## Webinars/ Trainings/ Workshops:

1. Seven officers/RAs from the CCI attended a web lecture by Dr. Pradyumna Bhagwat, Head of Research, Florence School of Regulation, Italy on **'Electricity Tariffs: Choices and Barriers'** jointly organised by School of Competition Law & Market Regulation and Forum of Indian Regulators (FOIR) Centre at Indian Institute of Corporate Affairs (IICA) on 01.07.2020.
2. 03 officers from the CCI attended an online Training Programme on **'Leadership, Team Building & Communication Skills'** conducted by the Indian Institute of Corporate Affairs (IICA) for Ministry of Corporate Affairs (MCA) under MCA's Corporate Data Management (CDM) Project during July 2020 (5 webinars).
3. The Economics Division of the CCI organised a video conference by Prof. Tommaso Valletti on **'Data Practices of Big tech and Antitrust'** on 07.07.2020. This Video Conference was the first session in the series on "Dialogues on Economics of Contemporary Antitrust Issues".
4. 21 officers/RAs from the CCI attended a web lecture by Ms. Tierno Centella, Deputy Head of Unit Cartels, DG Competition, European Union on **'Cartel Enforcement and Competition Law'** jointly organised by School of Competition Law & Market Regulation and Forum of Indian Regulators (FOIR) Centre at Indian Institute of Corporate Affairs (IICA) on 15.07.2020.
5. Ms. Pemala Lama, Deputy Director (Eco) attended a Webinar on **'Competition Law and Policy during and in the aftermath of the COVID-19 Pandemic: Reflections in the Arab Region'** jointly organised by UNCTAD-UNESCWA-OECD on 16.07.2020.
6. An online session on **'Digital Forensics'** by Dr. Vishwas Bhardwaj, Assistant Director (Cyber Forensic), State Forensic Science Laboratory Rajasthan, Jaipur was organised for officers of the CCI and O/o DG, CCI on 21.07.2020.
7. 15 officers/RAs from the CCI attended a web lecture by Dr. Peter Whelan, Professor of Law and Deputy Director, Centre for Criminal Justice Studies, University of Leeds on **'Criminalisation of Cartels'** jointly organised by School of Competition Law & Market Regulation and Forum of Indian Regulators (FOIR) Centre at Indian Institute of Corporate Affairs (IICA) on 22.07.2020.
8. 12 officers/RAs from the CCI attended a web lecture by Ms. Laura Galindo-Romero, Artificial Intelligence (AI) Policy Expert, OECD Artificial Intelligence Policy Observatory on **'Emerging Trends in AI Regulation'** jointly organised by School of Competition Law & Market Regulation and Forum of Indian Regulators (FOIR) Centre at Indian Institute of Corporate Affairs (IICA) on 29.07.2020.
9. 12 officers from the CCI attended an E-certificate Webinar on **'Managing Stress during Turbulent Times'** organised by National Productivity Council (NPC), Regional Directorate, Gandhinagar on 30.07.2020.



10. The CCI conducted online in-house Induction Training Programme for newly joined professional officers at DG Office from 17.08.2020 to 19.08.2020 (included half-day sessions).

11. To discuss and exchange ideas pertaining to conduct of the research on competition law, **'1<sup>st</sup> Webinar of the Cartel Working Group (CWG)'** under the auspices of Network of Indian Competition Experts (NICE) was conducted online on 17.08.2020. Shri Ashok Kumar Gupta, Chairperson, CCI addressed the webinar. The webinar was attended by CWG members - eminent academicians of leading institutions of the country.



12. 05 officers from the CCI attended a webinar on **'Process Mapping, Analysis and Design'** organised by National Productivity Council (NPC), Regional Directorate, Kanpur on 26.08.2020.

13. Ms. Payal Malik, Adviser (Eco) participated in the virtual stakeholder validation workshop on the findings and recommendations of the draft assessment report on **'Public Procurement System of India'** prepared by Procurement Policy Division (PPD), Department of Expenditure, Ministry of Finance in collaboration with the World Bank on 27.08.2020.

14. 05 officers/RAs from the CCI attended a virtual conference on **'Digital Assets Regulation in India: Learning from the Mauritius Model Framework'** organised by Forum of Indian Regulators (FOIR) Centre and School of Competition Law & Market Regulation at Indian Institute of Corporate Affairs (IICA) in collaboration with the Bank of Mauritius and the Financial Services Commission, Mauritius on 27.08.2020.

15. 04 officers from the CCI and O/o DG, CCI attended an online training programme on **'Data Management & Analytics'** conducted by Indian Institute of Management (IICA) for Ministry of Corporate Affairs (MCA) under MCA's Corporate Data Management (CDM) Project through 8 webinars held during 01.09.2020 – 11.09.2020 (first half of the day).

16. 03 officers from Finance and Accounts Division of the CCI attended a training on **'EAT-Expenditure, Advance & Transfer Modules of Public Financial Management System (PFMS)'** organised by Principal Accounts Office, O/o Chief Controller of Accounts, Ministry of Corporate Affairs.

17. 02 officers from HR Division of the CCI attended an online workshop on **'Labour Law & HR Compliances'** organised by National Academy of Human Resource Development (NAHRD) on 04.09.2020 and 05.09.2020.



18. 02 RAs from the CCI attended an online session of The Digital Dialogues on **'Quality of Experience in Broadband'** organised by Broadband India Forum (BIF) along with Bharat Exhibitions (BE) on 14.09.2020.

19. An online Refresher Course on '**Digital Economy Dilemma and Other Competition Law Challenges**' for 30 officers of the CCI and O/o DG, CCI was organised by Indian Institute of Corporate Affairs (IICA) from 28.09.2020 – 30.09.2020 (Half-day sessions). International faculties were roped in for the training programme.



**Lectures:**

20. 11<sup>th</sup> lecture under the CCI's Special Lecture Series (SLS) was delivered online by Dr. Jitender Aggarwal, Founder and CEO, Sarthak Educational Trust, New Delhi on the topic '**Sarthak Disability Orientation**' on 15.07.2020.



21. 12<sup>th</sup> lecture under the CCI's Special Lecture Series (SLS) was delivered online by Dr. Madhu Vij, Professor in Finance, Faculty of Management Studies (FMS), Delhi University on the topic '**Rethinking the Relevance of Credit Rating Agencies**' on 17.07.2020.



22. 13<sup>th</sup> lecture under the CCI's Special Lecture Series (SLS) was delivered online by Shri Mono MG Phukon, General Manager, Pension Fund Regulatory and Development Authority (PFRDA), New Delhi on the topic '**National Pension System (NPS)**' on 31.07.2020.

23. 14<sup>th</sup> lecture under the CCI's Special Lecture Series (SLS) was delivered online by Dr. Deepak Raj Rao G., Assistant Professor, Lok Nayak Jayaprakash Narayan National Institute of Criminology and Forensic Science (LNJN NICFS), Delhi on the topic '**Digital Forensic**' on 07.08.2020.



24. 15<sup>th</sup> lecture under the CCI's Special Lecture Series (SLS) was delivered online by Dr. Nanditesh Nilay, Motivational Speaker and Founder TraNC (Training Requirements & New Concepts) on the topic '**Balancing the Balance**' to the officers of CCI and O/o DG, CCI on 25.09.2020.

25. 34<sup>th</sup> lecture under the CCI's Distinguished Visitors Knowledge Sharing Series (DVKS) was delivered online by Professor N. L. Mitra, Chancellor - School of Public Health - KIIT and Member (Legal Education Committee) of Bar Council of India on the topic '**Post COVID-19 challenges to Financial Sector Regulators with special reference to CCI**' on 28.09.2020.



## HR CORNER

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### Joining on deputation:

- i. Shri Siddharth and Shri Sanjoy Kumar Banerjee joined as Assistant Directors (CS).
- ii. Shri Arun T joined as Office Manager (F&A); Shri Vikrant, Shri Sunil Varghese and Shri Kuldeep Kumar joined as Office Managers (CS).
- iii. Col. Santosh Kumar joined as Additional Director General in DG's office w.e.f. 06.08.2020.
- iv. Ms. Mitali Konwar joined as Joint Director (CS) w.e.f. 20.08.2020.
- v. Smt. Shama Nargis joined as Deputy Director (Law) w.e.f. 09.09.2020.
- vi. Shri Jagdish Kumar joined as Assistant Director (IT) w.e.f. 17.09.2020.

### Relieving from the CCI:

- vii. Shri J. Sriram Murty, Deputy Director General (CS), O/o. DG, CCI was relieved on completion of his deputation tenure.
- viii. Smt. Nutan Kumari, Assistant Director (LS) was relieved on completion of her deputation tenure in the CCI w.e.f. 13.08.2020.
- ix. Shri Surender Singh, Assistant Director (CS) was relieved on completion of his deputation tenure in CCI w.e.f. 15.09.2020 (A/N).
- x. Smt. Meena S. Unnithan and Shri Sanjeev Semwal, Office Managers (CS) were relieved on completion of their deputation tenure in the CCI w.e.f. 30.09.2020 (A/N).

### Selection on deputation made:

- i. Selection of Dr. Archana Goyal Gulati as Secretary, CCI.

### Permanent absorption:

- i. Dr. Anil Singh was absorbed as Assistant Director (LS) in the CCI w.e.f. 14.08.2020.

### Offer of appointment on deputation basis:

Offer of appointment on deputation basis in the CCI were issued in respect of the post of Deputy Director (Law) and Assistant Director (IT).

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भारत सरकार  
Government of India

जब तक दवाई नहीं  
तब तक ढिलाई नहीं  
कोरोना से बचें



सही से मास्क पहनें



हाथ धोएं बार बार

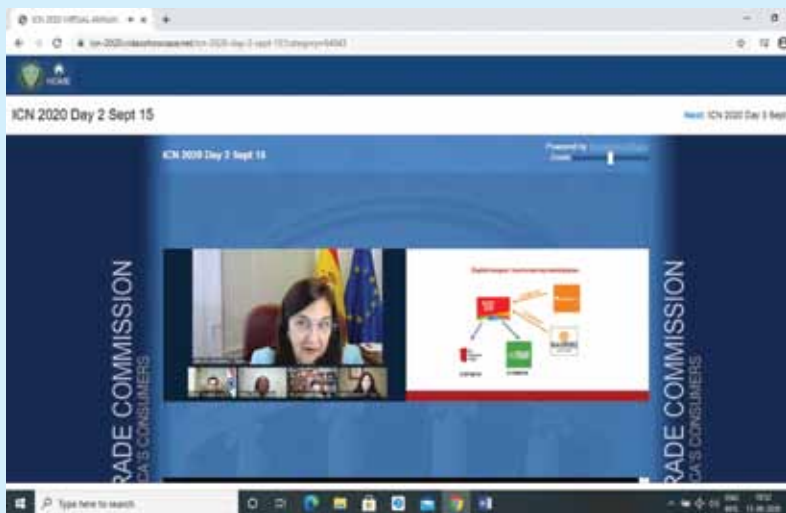
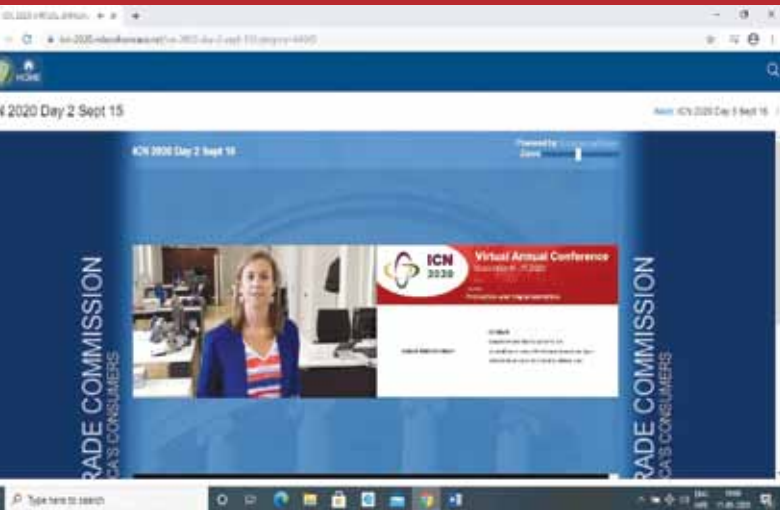


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Competition Commission of India

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### Competition Commission of India

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