



The Quarterly Newsletter of Competition Commission of India (CCI)

Fair Play

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IN FOCUS
**State Resource
Person Scheme**



Dr. Bibek Debroy, Chairman, Economic Advisory Council to the Prime Minister, delivering the Keynote Address at the National Conference on Economics of Competition Law

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FROM THE DESK OF THE CHAIRPERSON



The entire world including India is facing Novel Covid-19 pandemic. However, under the inspiring leadership of Hon'ble Prime Minister Shri Narendra Modi, India is putting up a concerted fight to win this battle. In these testing times, I share with you, through this 32nd Volume of 'Fair Play', the developments in the area of competition law that have taken place during the period January-March 2020.

The Competition Commission of India reiterates the benefits of robust competition in the economy and has been constantly striving to take appropriate enforcement and advocacy efforts to ensure and sustain the same. The Commission recently launched an important advocacy initiative, the 'State Resource Person Scheme'. This scheme manifests the federal competition outreach of CCI. Through this Scheme, we aim to make the States active partners in our endeavour to promote competition advocacy in every part of the country. The Scheme has taken off well and we hope that it will be a game changer in terms of carrying forward advocacy initiatives to all the States/UTs in the country. We look forward to augment the depth of our advocacy efforts through this engaging partnership. This 32nd volume of 'Fair Play' therefore, will have a special focus on this scheme and developments therein so far.

In this quarter, the Commission undertook some important enforcement measures. After an in-depth inquiry conducted by the Director General (DG), the Commission directed the Bengal Chemists and Druggists Association and its District Committees of Murshidabad and Burdwan, their office bearers, pharmaceutical companies viz. Alkem and Macleods, and their respective officials to cease and desist in future from anti-competitive conduct. In another

enforcement action, the Commission imposed monetary penalty on Grasim Industries Limited for abusing its dominant position in the market for supply of viscose staple fibre to spinners in India.

Further, the Commission directed an investigation into the conduct of Asian Paints Limited for denying JSW Paints access to distribution channels in the relevant market for manufacture and sale of decorative paints by the organised sector in India. In another case, the Commission opened an investigation into the practices of Flipkart Internet Services Pvt. Ltd. and Amazon Seller Services Pvt. Ltd. with respect to a series of vertical agreements with their respective preferred sellers.

On the combinations front, the Commission received a Green Channel notice for acquisition of certain equity share capital of Star Health and Allied Insurance Company Limited by ROC Star Investment Trust. The Commission received another Green Channel notice pertaining to the internal restructuring of family shareholding in Hibiscus Investment and Finance Private Limited, Peach Blossom Investment Private Limited, Rosario Investment Private Limited and Yokoha Investment Private Limited.

In the last quarter, a number of judicial pronouncements were delivered by various judicial forums and appellate authorities. A judicial pronouncement by the Karnataka High Court cleared the air on issuance of writ of prohibition against CCI, prohibiting it from exercising jurisdiction due to the fact that several sections of the Act were under judicial challenge. The Karnataka High Court held that it was an undisputed fact that the Competition Act, 2002 is in force, and therefore, no such writ can be issued against the Commission. In several other cases, orders of CCI were upheld by the NCLAT.

In this quarter, CCI also successfully organized the fifth edition of National Conference on Economics of Competition Law. The Conference is an endeavour of the Commission to stimulate research and debate on contemporary issues in the field of economics of competition law. I am glad to underscore that it has been receiving an enthusiastic response from research scholars and stakeholders over the years. Lastly, this volume of 'Fair Play' includes competition law developments in other jurisdictions, engagement with the global antitrust community, advocacy events, capacity building initiatives undertaken and forthcoming events.

The Commission has always been committed to foster a healthy competition culture in India. We will continue to embark on this journey with zeal while keeping our stakeholders abreast of the latest developments in the competition ecosystem in India and abroad.



(Ashok Kumar Gupta)



IN FOCUS (State Resource Person Scheme)

Chapter VII, Section 49 of the Competition Act, 2002 provides for an efficient tool of competition compliance in the economy, i.e. Competition Advocacy. Unlike enforcement provisions which are used ex-post, Competition Advocacy is effective in all situations and with the same vitality. In pursuance of this mandate, CCI has been conducting various focused advocacy measures. These include - interactive workshops, seminars, moot courts, training and awareness programmes, essay competitions etc. for stakeholders including government officials (both Central and State governments), representatives of the industry, academia etc.

Public procurement has been a focus area of the Commission's advocacy efforts. Apart from organizing advocacy events in various departments of Central and State governments, the Commission has published a Diagnostic Toolkit for Public Procurement Officers. Using this toolkit, procurement officers can self-assess their procurement systems for robustness from a competition perspective and get guidance for suitably amending the same.

Although the Commission has held several advocacy events in various States, the need of sustained efforts towards increasing awareness on competition issues at the State level was felt. Accordingly, a State Resource Person Scheme was launched. The scheme aims to disseminate awareness on

competition law by imparting training and organising workshops/seminars in each State/UT for the procurement officers.

On a closer look, it appears that engagement with States was very much warranted. State Governments and PSUs are large procurers and the procurement processes can be time-consuming, afflicted by delays and judicial challenges. A transparent public procurement system will go a long way in bringing about value for money for the public exchequer and boost the overall output of the public sector. Efficient and transparent governance has been the focus of the Central Government and this approach, when complemented by the States, will be a major boost in India's efforts to achieve a US\$ 5 trillion economy by 2024, as outlined by the Prime Minister in his vision for the Indian economy.

The State Resource Person Scheme reflects the new ground realities and a collective consensus when it comes to accomplishing the growth-oriented goals of the Indian economy. This Scheme is an illustration of Centre-State cooperation and mirrors the earnestness with which the principle of "cooperative federalism" has been implemented. This approach will help CCI to liaise with the States and help the departments and PSUs working in the State, develop a deeper understanding of competition law nuances.

Such an understanding goes a long way in augmenting the enforcement efforts of the Commission, particularly in the area of procurement.

Until a few years ago, the engagement at the State Level was largely an institution-centric affair. That is, the advocacy events were held in close consultation and collaboration with an institution situated in a State. This began to change with the commencement of CCI's 'Roadshows' - an initiative that necessitated closer cooperation between CCI and State Governments. Further cooperation in form of the State Resource Person Scheme will yield manifold benefits and it would not be premature at this stage to list some apparent advantages of the State Resource Person Scheme.

Firstly, advocacy efforts will be more effective when they have the support of State Government apparatus. Secondly, this has a signalling effect by demonstrating to the other States the benefits of reforms in the procurement system. Thirdly, in a vibrant democracy which rests on the edifice of "cooperative federalism", this measure seems appropriate. Lastly, the scheme will help the Commission in sensitizing the procurement officials at the State level to design their procurement systems to be competition-friendly. It will also enhance their skills to detect possible warning signals of bid rigging in specific cases and refer the same to the Commission.



The Commission with Nodal Officers after the successful conclusion of their training programme held on 31.01.2020

For executing this scheme, the nodal officers of a given State will nominate two Resource Persons who are retired officers not below the rank of Joint Secretary. These Resource Persons will be entrusted with the task of organising at least 2 advocacy events per month in their State for procurement officers of Government Departments and PSUs. In order to facilitate the Resource Persons to carry out competition activities in the States, many States have appointed Nodal Officers. With these Nodal Officers, the Commission will coordinate the State advocacy activities including the State Resource Person Scheme.

While procurement officers would be skilled about competition issues in public procurement, in cases of suspected bid rigging/ manipulation of bidding process, the State Government may also make a reference under section 19(1)(b) of the Act to the Commission. "This approach is in addition to the 'Diagnostic Toolkit' released in 2019 by the Commission for public procurement officers for self-assessment of their public procurement process.

Till date, 7 States/Union Territories (UTs) have nominated Resource Persons to carry out and undertake effective advocacy measures in their respective State/UT. Further, 13 States/UTs have appointed Nodal Officers to coordinate competition advocacy initiatives with the Commission.

On 31.01.2020 as well as 14.02.2020, training programmes were organized by the Commission at its office in New Delhi for Nodal Officers and Resource Persons nominated under the State Resource Person Scheme. The training programmes were aimed at providing a broad overview of competition law and public procurement, along with enforcement and advocacy

efforts of the Commission. Since these training programmes, seven successful advocacy programmes have been organised and conducted by the Resource Persons with initial hand-holding by the Officers of the Commission.

The State Resource Person Scheme has clearly evinced a healthy response from State Governments. It has also demonstrated the apparent need felt by State Governments towards competition advocacy and awareness. The attendee officers of advocacy programmes under the State Resource Person Scheme were appreciative of the nuanced approach adopted by the Commission in reaching out to stakeholders. Stakeholders have recognised that this initiative has helped them develop a deeper understanding of Competition Law and its compliance. In addition, the materials provided by the Commission during such programmes were appreciated for its coherence and utility.



The Commission with senior officers and State Resource Persons after the successful conclusion of their training programme



The Commission during the training programme for State Resource Persons held on 14.02.2020



Training programme under State Resource Person (SRP) Scheme at the Office of Director General of Police, Hyderabad on 05.02.2020.



Training under SRP scheme at the Police Housing Corporation Ltd., Hyderabad, Telangana on 12.02.2020.



Training under the SRP scheme at the Commissionerate of Industries, Hyderabad on 20.02.2020.



Training programme under SRP scheme for Heads of various Departments of Odisha Government at Bhubaneswar on 27.02.2020.



Training programme under SRP scheme at Nalagarh Development Authority, Baddi, Himachal Pradesh on 29.02.2020.



Training programme under SRP scheme at the Police Housing Corporation Ltd., Guwahati, Assam on 29.02.2020.



Training programme under SRP scheme at the Department of Industries, Union Territory of Puducherry on 13.03.2020



National Conference on Economics of Competition Law 2020



Shri Ashok Kumar Gupta, Chairperson, CCI delivering the Special Address at the National Conference on Economics of Competition Law

The Competition Commission of India organised the fifth edition of National Conference on Economics of Competition Law on 06.03.2020 at India Habitat Centre, New Delhi. The Conference, an annual feature since 2016, is an endeavour of the Commission to stimulate research and debate on contemporary issues in the field of economics of competition law, to develop a better understanding of competition issues relevant to the Indian context and also to create a critical mass of antitrust economists in the country.

Dr. Bibek Debroy, Chairman, Economic Advisory Council to the Prime Minister, delivered Keynote Address of the Conference. Dr. Debroy stated that the issues of competition extend beyond the ambit of competition law. Functioning of markets and the extent of competition are predicated on the institutional structure and system of laws that undergird markets, he said, while adding that there are elements in several statutes in India that inhibit

competition. Economic reforms, he emphasised, have been about markets and increasing competition. Nonetheless, while entry has been eased in manufacturing pursuant to economic liberalisation, barriers still exist in services and agriculture, he pointed out.

Referring to the structure-conduct-performance framework, he mentioned that market structure and market

shares do not provide complete picture of competition. He further alluded to the inherently dynamic nature of markets, and also underlined the need to account for the level of evolution of markets in India in comparison to markets of the developed economies. Recognition of these differences are important for the application of competition principles, he emphasised. Finally, he advised against looking at markets and conduct in terms of two extreme outcomes of perfect competition and a monopoly. According to him, allowing for various strategic market interactions in oligopolistic markets would help harness innovation for consumer welfare. Self-regulation by industry could preclude the need for regulatory intervention. Government or the CCI needs to step in when the requisite action is not taken by the industry. In this context, he alluded to Kautilya's Arthashastra, during which markets used to function by self-

“The issues of competition extend beyond the ambit of competition law. Functioning of markets and the extent of competition are predicated on the institutional structure and system of laws that undergird markets.....there are elements in several statutes in India that inhibit competition.”

Dr. Bibek Debroy, Chairman, Economic Advisory Council to the Prime Minister



Dr. Sangeeta Verma, Member, CCI delivering her opening remarks at the National Conference on Economics of Competition Law

compliance rather than government's intervention.

Shri Ashok Kumar Gupta, Chairperson, CCI, in his Special Address, stressed on the need for antitrust to match the economic realities of the time. In digital markets, enforcement priorities and remedies should generate optimal deterrence of anticompetitive conduct while preserving the incentives for innovation, he said. Highlighting the Commission's current ongoing advocacy initiatives, Shri Gupta mentioned that seventeen legislations/rules/regulations were undergoing an assessment from the competition perspective to identify inadvertent policy-induced restrictions on competition, if any. On the combination review front, he stated that around 30% of the cases notified to CCI this year were under the recently introduced deemed approval system of Green Channel. He added that the Commission hopes that the Green Channel will promote a speedy and transparent process for approval of combinations as also to create a culture of self-compliance.

In her opening remarks, **Dr. Sangeeta Verma**, Member, CCI,

emphasised that the discipline of economics provides a common enforcement framework to global competition authorities but the application of this economic framework is constrained by national contexts, the level of economic development and the market realities. Referring to the e-commerce market study conducted by the Commission, she stressed on the importance of market studies for facilitating an evidence-based approach to antitrust policy. According to her, market studies would go a long way in achieving better market outcomes and mitigating potential competition concerns without the need of antitrust intervention.

The Conference consisted of a Plenary, two Technical Sessions and a Special Session. The key points that emerged from the deliberations are summarised below.

Plenary – 'Competition for the Market'

The plenary on 'Competition for the Market' brought forth a range of relevant issues pertaining to competition for the market. The plenary session was chaired by Shri Ashok Kumar Gupta, Chairperson, CCI and moderated by Ms. Payal Malik, Advisor, CCI. Shri Tuhin Kanta Pandey, Secretary, Department of Investment and Public Asset Management (DIPAM); Shri Ajit Pai, Consultant to Vice Chairman, NITI Aayog; Dr. Sebastian Morris, Professor, Indian Institute of Management Ahmedabad (IIMA); Shri Ashok Kumar Agrawal, Executive Director (Tech), Airports Authority of India; Shri Pradeep S. Mehta, Founder Secretary General, CUTS International and Shri Shailesh Pathak, CEO, L&T Infrastructure Development Projects Limited were the distinguished speakers during



The Panel for the Plenary Session chaired by Shri Ashok Kumar Gupta, Chairperson, CCI related to discussion on "Competition for Market"

this session.

Following observations emerged during the engaging session -

- 'Competition for the Market' occurs when products and services exhibit characteristics for market as a whole and not for market shares and 'Competition in a Market' is not feasible in such cases e.g. natural monopolies and public funded monopolies.
- The operators who have been awarded concession rights of certain infrastructure which include building up of the physical asset, operating the asset and selling the service to government, indulged in potentially anti-competitive conduct in the related markets from provision of services related to the physical asset.
- The success of the process lies in design of the concession agreement which brings forth the broad question to be addressed i.e. how should the concession agreement be designed so as to maximize efficiency and minimize post award abuse.

Technical Session I – 'Economic Issues in Competition Enforcement'

The Technical Session-I was chaired by Dr. Aditya Bhattacharjea, Professor, Delhi School of Economics. Dr. Nathan Wilson, Deputy Assistant Director, USFTC was the discussant in the Session. Three Papers were presented in this session. The first paper on '**Optimal Antitrust Penalty**' pointed out two economic approaches to optimal anti-trust penalty, i.e. the deterrence approach and the internalization approach. Authors of the paper suggested that the penalty cap be removed and penalties

determined based on an economic rationale, especially stressing upon the use of the economic approaches. The paper emphasized that although it is difficult to reliably determine the theoretically optimal penalty, it can still be used as a general guidance and be used to achieve close to optimal penalty estimation. The second paper on '**Application of Event Studies and Competition Enforcement**' discussed the event study methodology and assessed whether it can be employed in complex mergers and investigations in order to derive useful insights which may not be obtained via traditional methodologies. The third paper on '**Defining A 'Maverick' Firm: Assessing the Concept's Global Use in Antitrust Law to Explore Its Applicability in The Indian Scenario**' tried to gauge the role of a maverick firm in aiding to reduce the likelihood of tacit collusion in the market and thereby promoting market competition.

Technical Session II – 'Competition Issues in Digital Markets'

The Technical Session-II was chaired by Shri Augustine Peter, Former Member, Competition Commission of India. Dr. Kaushik Krishnan, Visiting Fellow, Indira Gandhi Institute of Development Research was the discussant of the session. Three

Papers were presented in this session. The first paper on '**The Economic Impact of Open Source Technology: How Open Source Mobile Platforms Drive Competition and Innovation in India**' observed that the key characteristics of software industry are - high fixed costs for software development and low marginal cost. Incentives to create open source software (OSS) by firms are - visibility and reputation, monetization of technical support at a later stage, ability to attract talented developers, increase in productivity and network effects etc. whereas software developers can display their skills and have better opportunities. While explaining the impact of OSS on developing economies, the presenter explained that low prices are particularly important for countries where large population is not able to afford proprietary software. The second paper was on '**Insights into Platform Markets and Abuse of Dominance: Innovation versus Competition in India**'. Authors of this paper used a theoretical Industrial Organisation (IO) model involving buyers, sellers and a dominant platform. Common antitrust issues involving platform markets include concentration of market power and abuse of dominant position including predatory pricing.



The Technical Session I chaired by Dr. Aditya Bhattacharjea



The Technical Session – II chaired by Shri Augustine Peter

Other considerations of such market power include firm's market share in the relevant market, direct and indirect network effects, switching costs to the alternative firms, entry barriers for the new firms into the market and availability of multi-homing etc. The rise of dominant platforms paves way for an array of questions such as barriers to entry in terms of big data, potentially exploitative behaviour, exclusions or foreclosure of the players etc. The third paper on '**Competition Assessment of Mergers in Digital Markets**' highlighted the market characteristics of digital markets and discussed some big M&A deals in the digital space, namely Facebook's acquisition of WhatsApp and Instagram, Google's acquisition of YouTube and DoubleClick, Microsoft's acquisition of Skype and LinkedIn, and Apple's acquisition of Shazam etc. Authors of the paper

recommended the following suggestions to assess digital mergers: revisiting the adequacy of turnover based thresholds; adjusting market definition to account for specific features of digital markets **and** focusing on the alleged anticompetitive conduct and its likely effects by analysing whether concentration of data creates barriers to entry, presence of competition and role of innovation.

Special Session – 'Economics of Contemporary Antitrust Issues'

The Special Session included four independent lectures on the economics of different contemporary antitrust issues. Dr. Geeta Gouri, former Member, Competition Commission of India, chaired this session. Dr. Nathan Wilson, Deputy Assistant Commissioner, Federal Trade Commission (FTC), Dr. Divya Mathur, Vice President, Analysis

Group, Ms. Aastha Mantri, Senior Consultant, Economic Insight and Dr. Ajeet Narain Mathur, Professor, Indian Institute of Management Ahmedabad (IIM-A) were the other distinguished speakers.

Dr. Nathan Wilson talked about the assessment of vertical mergers. Dr. Divya Mathur highlighted the threat from big data to antitrust jurisdictions around the world. Ms. Aastha Mantri suggested the use of consumer surveys as a tool of merger assessment. Dr. Ajeet N Mathur talked about unregulated corporate misconduct and limited corporate liability. He also highlighted the need to work on behavioural foundations of economics.

The National Conference was attended by one hundred sixty delegates including Indian and foreign speakers, policymakers, members of econo-legal fraternity and academia.



The Special Session at the National Conference wherein contemporary antitrust issues were discussed



The Bengal Chemists and Druggists Association (BCDA) *et al* found guilty of anti-competitive conduct

Three separate Information(s) were filed by Shri Suprabhat Roy, Proprietor, M/s Suman Distributors, Murshidabad, Shri Sankar Saha, Branch Secretary, Pharmaceuticals Traders Welfare Association of Bengal–Burdwan Branch and Shri Joy Deb Das, Proprietor, M/s Maa Tara Medical Agency, Murshidabad before the Commission alleging anti-competitive practices being followed by Bengal Chemists and Druggists Association ('BCDA'), its two District Committees i.e. Murshidabad District Committee and Burdwan District Committee and their office-bearers, in agreement with pharmaceutical companies Alkem Laboratories Ltd. ('Alkem') and Macleods Pharmaceuticals Ltd. ('Macleods'). The Commission, upon finding a *prima facie* case of contravention of the provisions of Section 3 of the Competition Act, 2002 (the 'Act') directed the Director General ('DG') to cause an investigation in these matters and submit a consolidated report. The DG submitted its report finding contravention of the provisions of Section 3(3) of the Act read with Section 3(1) of the Act by BCDA and its office bearers and of Section 3(1) of the Act by Alkem and Macleods. The DG also identified several individuals of Alkem and

Macleods to be liable in terms of Section 48 of the Act for the anti-competitive conduct of their respective companies.

The Commission found the BCDA and its two District Committees i.e. Murshidabad District Committee and Burdwan District Committee and their office-bearers, to be indulging in anti-competitive practices in contravention of the provisions of Section 3(3)(b) read with Section 3(1) of the Act. Such anti competitive practices were in the nature of: (i) requiring pharmaceutical companies in at least some Districts of the State of West Bengal have their new stockists obtain a prior Stock Availability Information ('SAI')/ No Objection Certificate ('NOC') from BCDA before supply of drugs can be commenced to them; (ii) collecting monetary considerations from the prospective stockists against issuance of SAI to them, through its District Committees; and (iii) the Promotion cum Distributor agents of pharma companies had to obtain Product Availability Information ('PAI') from BCDA after payment of monetary considerations to it in the form of donations. Further, the Commission found that pharmaceutical companies Alkem and Macleods had entered into an anti-competitive agreement with BCDA whereby these companies, after issuing

the offer letter of stockist-ship to prospective stockists, demanded from them SAI/ NOC/ Approval Letter/ Circulation Letter from BCDA, before supplies of drugs can be commenced to them. For their such conduct, the Commission found Alkem and Macleods liable for contravention of the provisions of Section 3(1) of the Act and their various officials were also found liable by the Commission for such conduct in terms of Section 48 of the Act.

The Commission, in terms of Section 27(a) of the Act, directed BCDA, its District Committees of Murshidabad and Burdwan, their office bearers, pharmaceutical companies *viz.* Alkem and Macleods, and their respective officials who were held liable in terms of the provisions of Section 48 of the Act, to cease and desist in future from indulging in practices that were found to be in contravention of the provisions of Section 3 of the Act. However, no penalty was imposed on any party.



ABUSE OF DOMINANCE

Inquiry ordered against Flipkart Internet Services Pvt. Ltd and Amazon Seller Services Pvt. Ltd.



The Commission received an Information relating to contravention of Section 3(4) read with Section 3(1) and Section 4(2) read with Section 4(1) of the Act, by Flipkart Internet Services Pvt. Ltd. and Amazon Seller Services Pvt. Ltd., through a series of vertical agreements with their respective preferred sellers, which led to foreclosure of other non-preferred traders or sellers from these online marketplaces.

After examining the allegations, the Commission directed the DG to cause an investigation and passed an order dated 13.01.2020 under section 26(1) of the Act.

While passing the 26(1) Order, the Commission *prima facie* opined that the conduct of Amazon & Flipkart has resulted in contravention of the provisions of Section 3(1) of the Act read with Section 3(4). The exclusive arrangements between smartphone/mobile phone brands and ecommerce platform through their select sellers selling exclusively on either platforms, coupled with the linkages between these

preferred sellers and Amazon & Flipkart merited an investigation.

Inquiry ordered against Asian Paints



The Commission received an Information from JSW Paints Private Limited under Section 19(1)(a) of the Act relating to abuse of dominant position and imposition of vertical restraints by Asian Paints Limited alleging violation of provisions of Section 4 and 3(4) of the Act.

After examining the allegations, the Commission passed an order under section 26(1) of the Act dated 14.01.2020 directing the DG to cause an investigation.

The Commission *prima facie* opined that the relevant market could be delineated as the “market for manufacture and sale of decorative paints by the organised sector in India” and Asian Paints appeared to be in a dominant position and has a market share of 55.92% in the aforesaid relevant market. The Commission was of the view that evidence provided by JSW Paints was *prima-facie* sufficient to indicate that Asian Paints had denied access to the distribution channels in the relevant market to JSW Paints by threatening and coercing such dealers through various means. The Commission further

opined that the alleged conduct of Asian Paints also appeared to create barriers to entry and restricted choice of consumers which was likely to result in appreciable adverse effect on competition resulting in higher prices for consumers.

Inquiry ordered against Make My Trip (MMT) and OYO Rooms



The Commission received Information from Rubtub Solutions Pvt. Ltd., operating under the name of Treebo Hotels, under section 19(1)(a) of the Act, relating to abuse of dominant position and imposition of vertical restraints by Make My Trip and OYO Rooms, alleging violation of provisions of Section 4 and 3(4) of the Act.

After examining the allegations, the Commission passed an order under section 26(1) of the Act directing the DG to cause an investigation. The Commission had examined some of these allegations against MMT and OYO specifically in an Information filed by Federation of Hotel & Restaurant

Associations of India ('FHRAI') in a recent case, i.e. Case No. 14 of 2019. The Commission noted that two of the allegations were similar to the Information filed in Case No.

14 of 2019.

Accordingly, the Commission felt that separate assessment with regard to relevant market delineation, assessment of dominance and abuse was not necessary. Regarding the allegation that MMT imposed an 'exclusivity condition' on Treebo through 'Exclusivity Agreement' which restricted it from listing its properties on Booking.com and Paytm (MMT's competitors) for a period of 72 hours and 30 days prior to check-in for hotels situated in Category A and Category B cities, respectively, the Commission observed that the aforesaid restriction *prima facie* appeared unfair, and hence exploitative, under Section 4(2)(a)(i) of the Act, as it denies Treebo partner hotels an opportunity to list on other platforms/OTAs and to gain access to those platforms, especially Booking.com which appears to be the closest competitor of MMT.

Accordingly, the Commission was of the view that the present case may be clubbed with Case No. 14 of 2019 forthwith.

Grasim Industries Limited penalised for abuse of dominant position and indulging in unfair and discriminatory pricing of Viscose Staple Fibre



Information was filed by XYZ against Association of Man Made Fibre Industry of India & Ors. alleging contravention of the

provisions of Section 4 of the Act. The Informant alleged that Grasim Industries Limited (GIL) is the sole producer of VSF in India and is misusing its position in the domestic market to squeeze the textile industry consumers. It was averred that GIL is charging dissimilar prices from different customers in the domestic market and is following the same practice between domestic and foreign customers. Further, it was alleged that GIL is forcing its domestic customers to submit their monthly yarn production data before deciding on the discount rate applicable to them. It was also stated that GIL follows a non-transparent practice while invoicing and refuses to disclose its discount policy to its customers.

In the investigation report, the DG determined the relevant market as '*the market for supply of Viscose Staple Fibre (VSF) to spinners in India*' and found that GIL was dominant on the basis of market share, size and resources and production capacity. Further, the DG found GIL to have abused its dominant position in the said relevant market.

The Commission agreed with the definition of the relevant market identified by the DG and found GIL to be dominant therein. Further, the Commission found that GIL has been practising price discrimination amongst its domestic customers. With respect to the pricing and discount policy adopted by GIL, the Commission observed that plethora of discount parameters coupled with non-transparency of the same to its buyers

indicate unilateral and abusive behaviour by GIL in the relevant market in contravention of Section 4(2)(a)(ii) read with Section 4(1) of the Act. With respect to the allegation of seeking the details of production and exports from Indian spinners for sale of VSF by GIL, the Commission observed that seeking such details acted to prevent the resale and trading of its products and thereby hindered the emergence of an alternate source of competition in the market in contravention of Section 4(2)(d) read with Section 4(1) of the Act.

Commission directed GIL to cease and desist from indulging in such practices which were found to be in contravention of the provisions of the Act. Further, GIL was directed to refrain from adopting unfair and discriminatory pricing practices and also refrain from seeking the consumption details of VSF from its buyers. GIL was directed to put in place a discount policy which is transparent and non-discriminatory to all the market participants, to make it easily and publically accessible/available and not place any endues restriction on the buyers of VSF. Commission also imposed a penalty at the rate of 5% of the average relevant turnover for the period 2014-15 to 2016-17 amounting to INR 301.61 Crore on GIL.



MERGERS AND ACQUISITIONS

Green Channel notice received for acquisition of certain equity share capital of Star Health and Allied Insurance Company Limited by ROC Star Investment Trust.



horizontal, vertical, or complementary overlap between parties to the Combination, the notice was filed under Regulation 5A of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 *i.e.* Green Channel.

Trust (**Family Trust**) in relation to internal restructuring of family shareholding in Hibiscus Investment and Finance Private Limited, Peach Blossom Investment Private Limited, Rosario Investment Private Limited and Yokoha Investment Private Limited (collectively referred to as **Companies**). By way of the combination, the existing family shareholding in the Companies would be transferred to the Family Trust. The Companies are private limited companies that have been set up as investment holding companies engaged in the business of holding shares, debentures, advances and other securities of BNK group companies.

The transaction was pertaining to the acquisition by ROC Star Investment Trust (**Acquirer/ROC**) of 2.39% of equity share capital of Star Health and Allied Insurance Company Limited (**Star Health/Target**) from Snowdrop Capital PTE Limited, as a result of which ROC would acquire certain rights including non-control conferring veto rights in Star Health.

Acquirer was an investment vehicle managed by ROC Capital Pty Limited ("**ROC Capital**"). Target was licensed as a general insurer by the Insurance Regulatory Development Authority of India (**IRDA**). It is currently engaged in the business of health insurance and deals in personal accident, medi-claim as well as in overseas travel insurance.

In absence of the any

CCI received a Green Channel notice for restructuring of the Babasaheb Kalyani family shareholding in Hibiscus Investment et al.



The Commission received a notice, under Section 6(2) of the Act jointly filed by Mr. Babasaheb N. Kalyani (**BNK**) and Babasaheb Kalyani Family

In the absence of any horizontal, vertical, or complementary overlap between parties to the Combination, the notice was filed under Regulation 5A of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 *i.e.* Green Channel.



JUDICIAL PRONOUNCEMENTS



1. Writ of prohibition cannot be passed against statutory commission, viz., CCI, when Competition Act, 2002 is in force

Writ petitions (W.P. No. 39479 – 82/ 2012) were filed in Hon'ble Karnataka High Court by Karnataka Film Chamber & Commerce and other associations. The subject matter of the petition was orders passed by the Commission in case numbers 25/2010, 41/2010, 45/2010, 47/2010 and 48/2010, wherein Commission had found the acts and conducts of Karnataka Film Chamber & Commerce and other associations to be in contravention of the provisions of Section 3 of the Competition Act, 2002.

The petitioners had prayed for issuing writ of prohibition or any other appropriate writ or direction and prohibit the Commission from exercising its jurisdiction under the Competition Act, 2002.

Hon'ble Karnataka High Court, in

its order dated 02.01.2020 ruled that *it is an undisputed fact that the Competition Act is in force. Hence, no writ of prohibition can be issued against statutory commission from exercising its jurisdiction*, and the writ petitions were accordingly dismissed.

2. NCLAT upheld the final order passed by CCI in respect of tenders floated by the Indian Railways

CCI, taking cognizance of a letter sent by CBI under Section 19 (1) (b) of the Act, *suo moto* initiated inquiry into alleged cartelization in respect of the tenders floated by the Indian Railways and the Bharat Earth Movers Limited for the supply of Brushless DC fans and other electrical items. DG submitted its report concluding that a case of contravention of Section 3(3) (d) of the Act was established.

CCI, after consideration of the DG report, found contravention of the provisions of the Act and accordingly, imposed penalties under Section 27 of the Act upon M/s Pyramid Electronics, M/s R. Kanwar Electricals (RK

Electricals), M/s Western Electric and Trading Company (Western Electric). However, M/s Pyramid Electronics was granted 75% reduction in penalty under Section 46 owing to the disclosure made by it at the investigation stage. Aggrieved by the order of the CCI, Western Electric and RK Electricals filed appeals before the *then* COMPAT which were later transferred to NCLAT.

Hon'ble NCLAT *vide* common judgment dated 17.02.2020 dismissed the appeals and held that in view of the evidence on record and the CCI having dealt with the matter in detail based on the evidence, no case was made out to interfere with the findings of the CCI as well as with the penalty imposed.

3. CCI directed by NCLAT to order an investigation against Flipkart India Private Limited for alleged unfair practices

Information was filed by All India Online Vendors Association (AIOVA) against Flipkart India Pvt. Ltd. (Flipkart India) and Flipkart Internet Pvt. Ltd. (Flipkart Internet) alleging Flipkart Internet to have abused its dominance in the marketplace platforms for selling goods online in India by facilitating discounts and by further leveraging its position to enter into another market of manufacturing products through private labels. It was alleged that Flipkart India was purchasing goods and selling the same to vendors owned by founders of Flipkart Internet who in their turn sold the same at discounts on

the platforms operated by Flipkart Internet.

CCI found that the business practices of Flipkart were *prima facie* not in violation of competition norms and held that no case of contravention of the provisions of Section 4 of the Act was made out.

Hon'ble NCLAT *vide* judgment dated 04.03.2020 in *All India Online Vendors Association Vs. Competition Commission of India & Ors.* held that the only question which was required to be looked into by CCI was whether the Informant made out "*prima facie*" case of contravention of Section 4 of the Act. It was held that AIOVA did make out a *prima facie* case which required CCI to direct the DG to cause an investigation to be made in the matter. Accordingly, CCI was directed to direct the DG to cause an investigation to be made into the matter.

4. NCLAT upheld the finding of CCI that Adani Gas Limited has abused its dominant position in the relevant market for supply of natural gas to industrial consumers in Faridabad area.

CCI had ordered an investigation into the alleged abuse of dominance by Adani Gas Ltd. (AGL) on an Information filed by Faridabad Industries Associations (FIA) alleging that AGL was abusing its dominance by incorporating unreasonable and one sided terms in the Gas Supply Agreement (GSA) to which FIA sought modification.

CCI, after consideration of the DG report, found that AGL had abused its dominant position by imposing unfair conditions under following clauses of the GSA: (i) Clause on Billing and Payment; (ii) Expiry and Termination; and

(iii) Force Majeure Clause. Further, AGL was directed to desist from indulging in such practices and to modify the GSA and a penalty amounting to Rs.25.67 Crores was imposed upon AGL. Aggrieved by the order of the CCI, AGL and FIA filed appeals before the *then* COMPAT which were later transferred to NCLAT.

Hon'ble NCLAT *vide* common judgment dated 05.03.2020 in *Adani Gas Ltd. Vs. CCI & Anr. and Faridabad Industries Associations Vs. CCI & Anr.* upheld the findings of the CCI and accepted the amendments to GSA as proposed by AGL after finding the said amendments to be consumer friendly and taking care of all the objections raised against AGL. However, the penalty was modified from the earlier 4% of the average turnover of last three financial years to 1% of the average turnover of the last three financial years and it was opined that this reduction in penalty would be commensurate with the contraventions/conduct of AGL. Lastly, AGL was directed to deposit the penalty amount, as directed, within 30 days of the date of pronouncement of the judgment.

5. Appeal against CCI orders not maintainable if the orders are not passed under sections specifically enumerated in Section 53A of the Competition Act, 2002.

CCI had ordered investigation into the alleged arbitrary procurement of IMFL brands by Uttarakhand Agricultural Produce Marketing Board (UAPMB), Garhwal Mandal Vikas Nigam Ltd. (GMVNL), Kumaun Mandal Vikas Nigam Ltd. (KMVNL) thereby contravening the

provisions of Section 4 of the Act. The DG noted that UAPMB being the sole procurer of alcoholic beverages in the State of Uttarakhand, having 100 percent market share and having undisputed dominance, deliberately ignored the relevance of different brands of alcoholic beverages. Thus, the DG found UAPMB to have contravened the provisions of Section 4(2)(c) read with Section 4(2)(b)(i) of the Act. However, no finding of contravention was given against GMVNL & KMVNL. CCI *vide* impugned order dated 30.08.2018, after detailed discussion, issued a show cause notice to GMVNL & KMVNL as to why their conduct should not be held to be in contravention of Section 4 of the Act. Aggrieved by the same, an appeal was filed before the NCLAT.

Hon'ble NCLAT *vide* judgment dated 12.03.2020 in *Uttarakhand Agricultural Produce Marketing Board Vs. CCI & Ors.* held that it is clear from the impugned order that CCI issued show cause notice to GMVNL & KMVNL to show cause as to why their conduct should not be held to be in contravention of the provisions of Section 4(2)(b)(i) and 4(2)(c) read with Section 4(1) of the Act. No specific finding had been given by the CCI against UAPMB. Further, the NCLAT observed that it was also clarified by the CCI in its order that nothing stated therein shall tantamount to a final expression of opinion on the merits of the case and the final view would be taken after considering the replies and arguments of the parties and the material on record. It was held by NCLAT that the impugned order did not amount to passing of an order under Section 27 of the Act and thereby the appeal under Section 53B read with Section 53A was not maintainable.

6. CCI rightly approved acquisition of Flipkart Private Limited (Flipkart) by Wal-Mart International Holdings, Inc. (Walmart), a subsidiary of Walmart Inc.

CCI had approved the combination in terms of Section 31(1) of the Act finding that the same was not likely to have an appreciable adverse effect on competition in India. The combination related to the acquisition of Flipkart Private Limited (Flipkart) by Wal-Mart International Holdings, Inc. (Walmart), a subsidiary of Walmart Inc.

The Confederation of All India Traders (CAIT) challenged the approval of the said combination alleging that CCI has been ignoring the alleged predatory activities of both Walmart and Flipkart carried out in the past and CCI has also ignored detailed objection by CAIT against the proposed combination.

Hon'ble NCLAT vide judgment dated 12.03.2020 in *Confederation of All India Traders Vs. CCI & Anr.* dismissed the appeal and held that (i) CCI made proper assessment of the combination and of the business activities of Walmart and Flipkart before passing its Order approving the combination; (ii) CCI rightfully came to a finding, in absence of any evidence on record, that the combination was not resulting in elimination of any major player in the relevant market; (iii) there is no requirement on the part of CCI to follow the procedure under Sections 29 and 30 of the Act and CCI rightly passed order of approval under Section 31 of the Act as in the present case no *prima facie* case has been made out on the facts of the case or by

CAIT. Hon'ble NCLAT also observed that though the allegation had been made against Flipkart but since it was not impleaded as a party to the present appeal, no specific finding could be given against the Flipkart in the present appeal.

7. Appreciable Adverse Effect on Competition presumed if evidences suggest existence of anti-competitive agreement

CCI had ordered an investigation against Association of Malayalam Movie Artists (AMMA), FEFKA Production Executive Union, FEFKA Director's Union and Film Employee federation of Kerala (together as 'appellants) for their alleged anti-competitive conduct in the Malayalam Film Industry thereby contravening Sections 3 of the Act. Upon investigation, CCI held that the impugned decisions and practice of appellants were found to be in contravention of Section 3 of the Act and their five responsible office bearers were found to be liable u/s 48 of the Act for the anti-competitive conduct of their respective associations. Accordingly, a cease and desist order was passed from indulging in anti-competitive practices/ conduct and penalties were imposed on the appellants and their office-bearers.

Hon'ble NCLAT vide a common judgment dated 13.03.2020 in *Association of Malayalam Movie Artists (AMMA) Vs. CCI & Ors.* and three tagged appeals upheld the order of CCI and dismissed the appeals. NCLAT held that there were large number of evidences in the form of minutes of meetings, circulars issued, letters exchanged and the statements of various witnesses, which had been relied upon by the DG and also by CCI. Further, NCLAT clarified that as long as there was

evidence to suggest the existence of an anti-competitive agreement, there would be a presumption of 'Appreciable Adverse Effect on Competition' as explicitly stated in Section 3 (3) (d) of the Act.

8. Abuse of dominance by Verifone India Sales Private Limited upheld by NCLAT

CCI had imposed a penalty of Rs.4,48,40,236/- upon Verifone India Sales Pvt. Ltd. in CCI Case No. 56/2012 for its alleged abusive conduct and imposing unfair, restrictive and discriminatory conditions in relation to use of Software Development Kits (SDKs) and enhancements to core applications. In another case (Case No. 13/2013) filed against Verifone India Sales Pvt. Ltd., CCI held that the conduct of the Verifone India was abusive in terms of Section 4 of the Act. However, CCI refrained from imposing any penalty upon Verifone India in view of the penalty imposed upon the same party in CCI Case No. 56/2012. Appeals were filed against the said order(s), however, in view of a similar background, Hon'ble NCLAT decided to hear them together.

Hon'ble NCLAT vide a common judgment dated 13.03.2020 in *Verifone India Sales Pvt Ltd. Vs. CCI and Atos Worldline India Pvt Ltd. and Verifone India Sales Pvt Ltd Vs. CCI & Three D Integrated Solutions Ltd.* held that Verifone India was having a dominant position in the relevant market of Point of Sale/Electronic Ticketing Machines. NCLAT declined to interfere with the findings as well as the penalty imposed holding that CCI has taken a lenient view by imposing penal cost in one case and not imposing any penal cost in the other case.



‘Developed’ Tag for India by U.S.A

In February 2020, the U.S.A removed more than a dozen countries, including India, from its list of countries that are classified as “developing” for trade purposes. These countries will now be classified as ‘developed’ economies. The ‘developing’ status for a country in the USA is associated with US Trade Act, 1974. This Act authorized General System of Preferences (GSP) which sought to help poor countries to develop faster. The GSP seeks to promote economic development by eliminating duties on thousands of products when imported from designated beneficiary countries and territories.

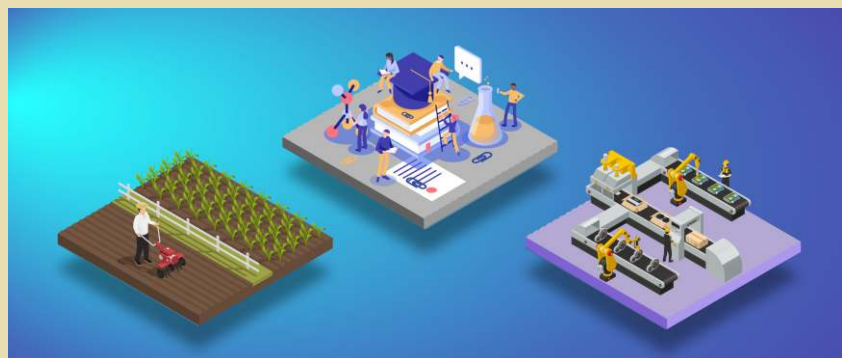
India has been one of the largest beneficiaries under the GSP, with over 2,000 goods having been exempted from import tariffs. The 'developed' tag being assigned to India will pave the way to end duty free access of US territory to Indian exports. However, this move may also force Indian exports, taking the

benefit of GSP so far, to become more competitive. The competitiveness can also lead to cost-cutting and innovative ways to enhance quality which can also lead to enhanced competition in India. Thus, the 'developed' tag may harm the exports in short run, though in long run it needs to be seen as an opportunity to enhance competitiveness.

National Mission on Quantum Technologies & Applications (NM-QTA)

The Union Government in Budget 2020 announced a National Mission on Quantum Technologies & Applications (NM-QTA) with a total budget

outlay of Rs 8000 Crores for a period of five years. The new mission will oversee the development of quantum technologies for communications, computing, materials development and cryptography. The mission will coordinate the work of scientists, industry leaders and government departments. The mission will lead to using the quantum theory principles for engineering solutions to extremely complex problems in computing, communications, sensing, chemistry, cryptography, imaging and mechanics. Quantum technologies are rapidly developing globally and they are seen as having huge disruptive potential. It is expected to change the entire paradigm of computation, communication and other cutting edge markets. Thus, the mission is a need of the hour as it will pave the way for creation of new markets and changing the competition landscape of traditional markets.





KNOW YOUR COMPETITION LAW

Right to Legal Representation in the proceedings before DG, CCI



Section 35 of the Competition Act, 2002 refers to appearance before the Commission only and provides that a person or an enterprise or the Director General (DG) may either appear in person or can be represented by four categories of representatives, viz. chartered accountants, company secretaries, cost accountants or legal practitioners to present his or its case before the Commission. Further, Regulation 46 of the Competition Commission of India (General) Regulations, 2009 (General Regulations) lays down the manner in which a person can be authorised to appear.

Under the regime of Competition Law, initially there was no provision in the Act which provides for appearance of an Advocate before the DG. The question was first raised before the Single Judge of the Hon'ble High Court of Delhi *whether person summoned for*

investigation (and whose statement may be recorded) has the right to be represented by an advocate. The learned Single Judge held (in Decision dated 22.04.2016 in WP 11411 of 2015) that the officials of the enterprise summoned by the DG would be entitled to be accompanied by advocates.

Upon challenge, the Division Bench dismissed the LPA (Letters Patent Appeal) filed by the Commission and held that Section 36(2) of the Act provides the DG powers similar to that of a Civil Court and allows him to take evidence. That being the case, the DG would fall under Section 30(ii) of the Advocates Act, as being a person "*legally authorized to take evidence*". Therefore, advocates under Section 30 would have the right to practice before such individual. Keeping in mind the concerns of the Commission for gathering evidence, the Division Bench held that the Commission or the DG, as the case may be, prescribe an appropriate

procedure to be followed during such investigation, where the counsel may be allowed to accompany the party, but not continuously confer with him when the DG is taking his or her testimony or asking questions. Therefore, while the party is allowed his right to be accompanied by an advocate, the DG's investigations are not unnecessarily hindered. The Division Bench also advised that the DG shall ensure that the counsel does not sit in front of the witness; but is at some distance away and the witness should be not able to confer, or consult her or him. While concluding the judgment, the Division Bench left it to the Commission to decide the future course of such proceedings in light of its afore-said decision.

Resultantly, the Commission introduced Regulation 46A *vide* the Competition Commission of India (General) Amendment Regulations, 2018 (No. 2 of 2018) authorizing an Advocate to accompany any person summoned by the DG subject to the following conditions: (a) a request in writing accompanied by a Vakalatnama or Power of Attorney is duly submitted to the DG, in this regard, prior to commencement of the proceedings; b) the Advocate shall not sit in front of the person so summoned; and c) the Advocate shall not be at a hearing distance and shall not interact, consult, confer or in any manner communicate with the person, during his examination on oath. [Regulation 46A(1)] Further, Regulation 46A (2) states that in case of any misconduct on the part of the

Advocate, the DG for reasons to be recorded in writing shall forward a complaint to the Commission whereupon the Commission, if satisfied with the complaint of the DG, may pass necessary order debarbing the Advocate, guilty of misconduct, from appearing in the proceedings before the DG as well as before the Commission in future or till such time as the Commission deems necessary. Regulation 46A(3) states that in the event of the misconduct being committed by any Advocate, the Secretary, if the Commission directs, shall forward a complaint to this effect in writing to the Bar Council of the State of which the Advocate is member. The explanation to Regulation 46A specifies that the

term 'Misconduct' shall have the same meaning as assigned to it in explanation to sub-regulation(4) of Regulation 46 of General Regulations.

The provisions contained in sub-regulations (2) and (3) of Regulation 46A are similar to the provisions in sub-regulation (3) and (4) of Regulation 46 that was already a part of the General Regulations. Due to absence of a similar provision in case of proceedings before the DG, sub-regulations (2) and (3) of Regulation 46A were incorporated. Regulation 46A was incorporated so that proceedings before the DG are not stalled by the advocates. Thus, it is to be understood that the said Regulation was given

effect so that the investigation by the DG is carried out balancing, the rights of the parties to legal representation, with smooth conduct of investigation.

Although, Regulation 46A of General Regulations was introduced as a direct consequence of a judgment rendered by the Division Bench of Delhi High Court, yet there have been instances wherein the vires of Regulation 46A have been challenged before different High Court(s). Hon'ble Madras High Court in a writ petition (W.P. 34313 of 2018) on the issue has granted interim relief to the extent that Regulation 46A(2) of the General Regulations alone is stayed and the same is pending adjudication.



ENGAGING WITH THE WORLD

Participation of CCI in various workshops / seminars / meetings:

1 **Shri V. Sriraj, Joint Director (Law)** participated in the American Bar Association (ABA) International Cartel Workshop during 19.02.2020 – 21.02.2020 in San Francisco, USA. He also spoke at the roundtable on “Evolution of Competition Law in India” organised by U.S – India Business Council (USIBC) and Khaitan & Co. on 18.02.2020 in Palo Alto, California, USA.

2 **Shri Manish Mohan Govil, Advisor (Law) & Shri Saurabh, Joint Director (Eco)** participated in International Competition Network (ICN) Merger Workshop during 27.02.2020 – 28.02.2020 in Melbourne, Australia.

3 **Mr. Nathan Wilson, Economist, United States Federal Trade Commission (US FTC)** conducted sessions on 'Working of Economics Bureau and Challenges faced by it' and 'An economist's take on digital economy enforcement' on 05.03.2020 at CCI office in Kidwai Nagar (East), New Delhi.

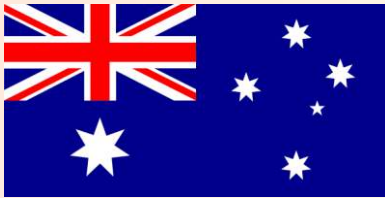




DEVELOPMENT IN OTHER JURISDICTIONS

AUSTRALIA

Australian Competition and Consumer Commission (ACCC) seeks feedback on competition issues in upcoming 5G Spectrum Allocation.



ACCC is seeking feedback on any competition issues associated with an upcoming spectrum allocation which will impact rollout of 5G services across the Australian economy as Australia's auction of the 26 gigahertz (GHz) spectrum band will take place in early 2021, run by the Australian Communications and Media Authority (ACMA).

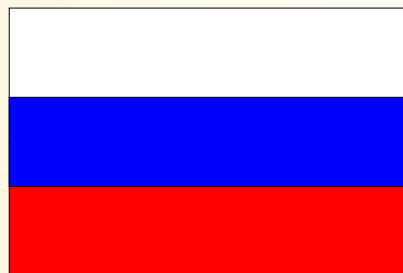
The ACCC has been asked to advise the Minister for Communications, Cyber Safety and the Arts on whether limits should be imposed in the auction in order to protect and promote competition and, if so, how those limits should be applied. In developing its advice to the Minister, the ACCC will take into account the Government's Communications Policy Objectives for the Allocation of the 26 GHz band.

Under the Radio communications Act 1992, the Minister for Communications may direct the ACMA to develop procedures to impose allocation limits (also known as competition limits) on the sale of spectrum licenses. In making such a direction, the Minister may seek the ACCC's advice on the allocation limits that should apply.

To promote the competition amongst spectrum users, opinion of industries and stakeholders has been requested for by the ACCC including opinions from organisations outside the telecom sector. ACCC is also seeking feedback on potential competition issues associated with the allocation of licences for spectrum in the wider 26-28 GHz band by 27.03.2020.

RUSSIA

The Federal Antimonopoly Service (FAS) Guidelines on Exposing and Investigating Cartels.



The FAS has taken an initiative

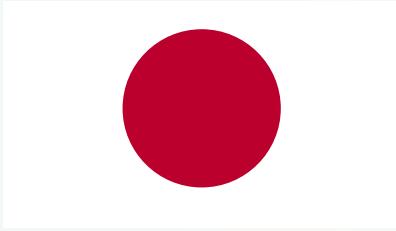
to draft the guidelines on exposing and investigating cartels. The Guidelines are designed to help with correct qualification of such acts and resolve the issues emerging in the course of cartel investigation. For instance, defining and delineating a procedural status of an officer of the antimonopoly body, involved in a case, who, depending on a situation, can act as a witness to the case, or an expert with special knowledge and skills will require certain procedural guidelines.

It has been stated that the above mentioned guidelines should not be taken as a binding instructions manual for investigators. The Guidelines summarize the multi-year practice of investigating cartel cases and experience of interaction between the antimonopoly and law enforcement bodies in exposing cartels.

JAPAN

Japan Free Trade Commission (JFTC) approved Commitment Plan submitted by Nihon Medi-Physics Co., Ltd.

JFTC had initially issued a notice dated 15.01.2020 to Nihon Medi-Physics Co. (hereinafter referred to as "Nihon Medi-Physics") on the



subject pertaining to commitment procedures. This notice was issued by the JFTC as it was suspected that the activities by Nihon Medi-Physics violated the Article 3 (Private Monopolization) or the Article 19 {paragraph 14 [Interference with a Competitor's Transactions]} of the Antimonopoly Act. Nihon Medi-Physics in response to the notice sent on 15.01.2020, made an Application for Commitment Approval.

The JFTC has recognized that the Commitment Plan would conform to the Approval Requirements and hence approved it on 11.03.2020.

UNITED STATES OF AMERICA

The Federal Trade Commission (FTC) Releases 2019 Privacy and Data Security Update.



FTC released its annual privacy and security update for 2019, as on 25.02.2020. The Commission levied the largest consumer privacy penalty of \$5 billion against Facebook for violating the FTC's 2012 privacy order and imposed new restrictions on

the social network's business operations. The FTC also obtained a record \$170 million penalty against YouTube and Google for alleged violations of the Children's Online Privacy Protection Act (COPPA). In its first case involving a stalking app, the Commission alleged that Retina-X enabled its apps to be used for illegitimate purposes and in violation of COPPA. On the data security front, the FTC along with 50 states and territories and the Consumer Financial Protection Bureau announced a global settlement totalling as much as \$700 million with Equifax related to a 2017 data breach that affected approximately 147 million consumers.

The FTC also continued its strong enforcement of the EU-U.S. Privacy Shield framework by bringing 13 cases in 2019 against companies that allegedly made false promises related to the Privacy Shield.

EUROPEAN UNION

European Commission approves acquisition of Raytheon by United Technologies Corporation (UTC), subject to conditions.



The Commission has approved, under the EU Merger Regulation,

the proposed acquisition of Raytheon by UTC. The merger transaction was notified to the Commission on 24.01.2020. The approval is conditional on the divestiture of a remedy package. The said transaction combines UTC's aerospace businesses and Raytheon's defence business. Both companies are global suppliers of military systems and equipment to aircraft and guided munition producers, as well as armed forces.

During its investigation, the Commission gathered extensive information from a broad range of defence contractors, as well as directly from armed forces of the European Economic Area (EEA). The Commission had concerns that the transaction, as originally notified, would have reduced competition in the markets for military GPS receivers and airborne radios.

The Commission, on conclusion of its investigation, stated that vertical links between UTC and Raytheon's (the two merged entities) activities did not result harm to competition, mainly because the merged entity would have neither the ability nor the incentives to restrict competitors' access to essential input or to a sufficient customer base.



ADVOCACY INITIATIVES



1. Shri Rahul Ravindran, Director (Law) delivered a lecture during the National Summit of Public

Procurement, at the Indian Institute of Materials Management, Mumbai, Maharashtra on 10.01.2020.

2. Shri Ashok Kumar Gupta, Chairperson, CCI was a guest speaker at a conference on the topic “The Clash of Titans - Conference on Competition Law and Intellectual Property Rights” organised by the PHD Chambers of Commerce, New Delhi on 11.01.2020.



3. Shri Anuj Verma, Deputy Director (FA), participated in a conference on ‘Competition Issues in Public Procurement’ held at NIFM, Faridabad on 16.01.2020.

4. Shri Rakesh Kumar, Adviser (Eco) delivered a lecture on competition law at Mahindra & Mahindra, New Delhi on 17.01.2020.



5. Shri Shekhar, Joint Director (FA) attended a conference on ‘Competition Issues in Public

Procurement’ held at NIFM, Faridabad on 17.01.2020.

6. Shri Ashok Kumar Gupta, Chairperson, CCI presided over the ‘Training Program in Advocacy for State Nodal Officers’ at the CCI on 31.01.2020.



7. Shri Suresh Mishra, Director, (Law) gave a special guest lecture at the BS Goyal Memorial Moot Court held at IPEM Law Academy, Ghaziabad on 31.01.2020.



8. Shri Anshul Jain, Deputy Director (FA), delivered a lecture on ‘CCI - Experiences of a decade’ at the University School of Law and Legal Studies, GGSIP University, New Delhi on 03.02.2020.



9. Shri Mukul Sharma, Joint Director (Eco), delivered a lecture on competition law at Geeta Institute of Law, Panipat on 03.02.2020.



10. Ms. Payal Malik, Adviser (Eco), participated in a panel discussion on “New Age Competition & Regulatory Challenges and Way Forward” organised by CUTS International, New Delhi on 05.02.2020.



11. Shri Pankaj, Joint Director (FA), conducted an advocacy programme under the State Resource Person Scheme at the Office of Director General of Police, Hyderabad on 05.02.2020.



12. Ms. Sunaina Dutta, Joint Director (Law) participated in the “National Conference on latest trends in corporate laws” at Ansal University, Gurgaon on 07.02.2020.



13. Shri Manish Govil, Adviser (Law) participated in a seminar on the topic of “Competition Law and Intellectual Property in the Age of Platforms and New Technology” at VIT (Vellore Institute of Technology) School of Law, Vellore on 07.02.2020.



14. Shri Saurabh, Joint Director (Eco), participated in a panel discussion on competition law at VIT School of Law, Vellore on 07.02.2020.



15. Shri Anand Vikas Mishra, Joint Director (Law), conducted an advocacy programme under the State Resource Person Scheme at Police Housing Corp, Hyderabad on 12.02.2020.



16. Shri Ashok Kumar Gupta, Chairperson, CCI, along with CCI members delivered an address at the ‘Advocacy Training Program for State Resource Persons on 14.02.2020.



17. Shri Mukul Sharma, Joint Director (Eco), participated as a panelist in a Panel Discussion on ‘Competition Law 2.0 – the way forward’ at the Damodaram Sanjivayya National Law University, (DSNLU), Vishakapatnam on 15.02.2020.



18. Ms. Payal Malik, Adviser (Eco), participated as a judge in the final round of the “Moot Court on Competition Law” organised by the Damodaram Sanjivayya National Law University, (DSNLU), Vishakapatnam on 16.02.2020.

19. Shri Mukul Sharma, Joint Director (Eco), participated as a judge in the semifinal rounds of the “Moot Court on Competition Law” organised by the Damodaram Sanjivayya National Law University, (DSNLU), Vishakapatnam on 16.02.2020.

20. Shri Saurabh, Joint Director (Eco) and Shri Anil, Deputy Director (Eco) participated in a conference on the topic of “Competition Law - Challenges and Issues” at Rajiv Gandhi National University of Law (RGNUL), Patiala on 18.02.2020.

21. Shri Sukesh Mishra, Director (Law), conducted an advocacy programme under the State Resource Person Scheme at the Commissionerate of Industries, Hyderabad on 20.02.2020.



22. Shri Mukul Sharma, Joint Director (Eco), delivered a lecture on competition law at Sharda University, Greater Noida on 21.02.2020.

23. Shri Rakesh Kumar, Adviser (Eco), participated as a judge in the “Moot Court on Competition Law” organised by the West Bengal National University of Juridical Sciences (NUJS), Kolkata from 21.02.2020 - 23.02.2020.



24. Ms. Sayanti Chakrabarti, Joint Director (Eco), participated as a judge in the “Moot Court on Competition Law” organised by the West Bengal National University of Juridical Sciences (NUJS), Kolkata from 21.02.2020 - 23.02.2020.



25. Ms. Jyotsana Yadav, Joint Director (FA), participated in the CCI - NLUO Competition Advocacy Workshop organised by National Law University Odisha, Bhubaneswar on 22.02.2020.



26. Dr. K.D. Singh, Joint Director (Law), delivered a lecture on competition law at Gita Rattan International Business School, New Delhi on 24.02.2020.



27. Shri Rakesh Kumar, Adviser (Eco), delivered a lecture on competition law at NIFM, Faridabad on 25.02.2020.

28. Dr. Bidyadhar Majhi, Adviser (Eco) conducted an advocacy programme under the State Resource Person Scheme for the Heads of various Departments, Odisha Government, Bhubaneswar on 27.02.2020.



29. Shri Mukul Sharma, Joint Director (Eco) conducted an advocacy programme on the topic of “Spectrum of Competition Law & Social Justice” at Amity University, Noida on 27.02.2020.

30. Shri Anand Vikas Mishra, Joint Director (Law) delivered a lecture on competition law at Kautilya Foundation, New Delhi on 28.02.2020.



31. Shri Mukul Sharma, Joint Director (Eco), delivered a lecture on the topic of “Competition Law 2.0 - Way Forward” ICFAI Law School, Hyderabad from 28.02.2020 - 29.02.2020.



32. Shri Mukul Sharma, Joint Director (Eco), participated in a panel discussion on competition law at ICFAI Law School, Hyderabad from 28.02.2020 - 29.02.2020.

33. Shri Pankaj, Joint Director (FA), conducted an advocacy programme under the State Resource Person Scheme at Police Housing Corp, Assam, Guwahati on 29.02.2020.

34. Shri Kuldeep Kumar, Joint Director (Law), conducted an advocacy programme under the State Resource Person Scheme at Nalagarh Development Authority, Baddi, Himachal Pradesh, on 29.02.2020.



35. Shri Ved Prakash Mishra, Adviser (Law), participated as a judge in the final round of the “Moot Court on Competition Law” organised by Tamil Nadu National Law University (TNNLU), Tiruchirapalli, Tamil Nadu from 06.03.2020 - 08.03.2020.



36. Shri Pankaj Kumar, Joint Director (FA), participated as a judge in the semi-final round of the “Moot Court on Competition Law” organised by Tamil Nadu National Law University (TNNLU), Tiruchirapalli, Tamil Nadu from 06.03.2020 - 08.03.2020.

37. Shri Mukul Sharma, Joint Director (Eco), conducted an advocacy programme on the topic of “Mergers and Acquisitions” at Amity Law School, New Delhi on 12.03.2020.

38. Shri Anand Vikas Mishra, Joint Director (Law), conducted an advocacy programme under the State Resource Person Scheme in the Union Territory of Puducherry, on 13.03.2020.

39. Ms. Bhawna Gulati, Joint Director (Law) participated as a judge in the “Moot Court on Competition Law” organised by National Law University (NLU), Jodhpur, Rajasthan from 13.03.2020 - 15.03.2020.



40. Ms. Sanskriti Jain, Deputy Director (Law) participated as a judge in the “Moot Court on Competition Law” organised by National Law University (NLU), Jodhpur, Rajasthan from 13.03.2020 - 15.03.2020.



41. Ms. Yakshi Jaisingh Chauhan, Deputy Director (Law), delivered a lecture on competition law at NIFM, Faridabad on 19.03.2020.



CAPACITY BUILDING EVENTS

1. Shri Rakesh Kumar, Adviser (Eco) attended a workshop on **“Economic Growth & Income Generation”** organised by National Capital Region Planning Board on 08.01.2020 at Jacaranda Hall, India Habitat Centre, New Delhi.
2. CCI organized a half-day workshop on **“HR & Service Matters”** for officers of CCI & DG, CCI on 10.01.2020 at CCI. Shri Arun Gaur, Former Director, UPSC was the resource person of the workshop.
3. Shri Rahul Ravindran, Director (Law) and Ms. Varsha Bisht, Office Manager (CS)- Members of CCI’s Internal Complaints Committee (ICC) for dealing with sexual harassment of women at CCI & O/o DG, CCI attended a residential workshop on **“Prevention of Sexual Harassment of Women at Working Place”** organized by National Academy of Human Resource Development (NAHRD) at Puducherry from 30.01.2020 – 01.02.2020.
4. Shri Mohan Rao Ronanki, Joint Director (Eco), Shri Anuj Verma, Deputy Director (FA) and Shri Jhoney Sebastian, Deputy Director General attended a residential training program on **“Financial Technologies (Fintech) for Leadership in Digital World”** organised by Indian Institute of Corporate Affairs (IICA) during 12.02.2020 – 14.02.2020 for Ministry of Corporate Affairs (MCA) under MCA's Corporate Data Management (CDM) Project at Indian Institute of Management (IIM), Calcutta.
5. Ms. Jyotsna Yadav, Joint. Director (FA), Shri Jaideep Singh, Deputy Director (Law) and Ms. Yakshi Jaisingh Chauhan, Deputy Director (Law) attended 23rd Appreciation Course in **“Legislative Drafting”** organised by Institute of Legislative Drafting and Research (ILDR), Legislative Department, Ministry of Law and Justice during 14.02.2020 – 28.02.2020 at ILDR, Shastri Bhawan, New Delhi.
6. Nine officers from CCI attended an appreciation Course on **“Parliamentary Processes & Procedures”** during 17.02.2020 – 18.02.2020 organised by Parliamentary Research and Training Institute for Democracies (PRIDE) erstwhile Bureau of Parliamentary Studies & Training (BPST) at PRIDE campus, Parliament Library Building, New Delhi.
7. Dr. Sanjay Kumar Pandey, Adviser (Law) attended a one-day workshop on **“The Global Competitive Index (GCI)”** organised by Department for Promotion of Industry and Internal Trade (DPIIT) in association with World Economic Forum on 19.02.2020 at Garvi Gujarat Bhavan, New Delhi.
8. Shri Anand Vikas Mishra, Joint Director (Law) and Ms. Sunaina Dutta, Joint Director (Law) attended a residential training program on **“Indian Accounting Standard (IND AS)”** during 24.02.2020 -



26.02.2020 organised by Indian Institute of Corporate Affairs (IICA) for Ministry of Corporate Affairs (MCA) under MCA's Corporate Data Management (CDM) Project at Hotel Ibis, Pune.

9. During the period, CCI organized following lectures under its Distinguished Visitors Knowledge Sharing Series (DVKS):

- 30th Lecture on 24.01.2020 by Dr. Geeta Gouri, Former Member, Competition Commission of India on the topic **“Standard Essential Patents (SEPs) and Standard Setting Organizations (SSOs): Competition Concerns, Public Interest and Competition Policy in India”** at CCI.



- 31st Lecture on 07.02.2020 by Shri G. N. Bajpai, Former Chairperson, SEBI & Former Chairperson, LIC where Shri Bajpai shared his perspective of **“CCI as a Regulator”** at CCI.
- 32nd Lecture on 27.02.2020 by Shri T. V. Ramachandran, President, Broadband India Forum (BIF) on the topic **“Relevance of Competition**

Aspects in developing Digital Infrastructure” at CCI.

10. During the period, CCI organized following lectures under its Special Lecture Series (SLS):

- 8th lecture on 31.01.2020 by Shri Naveen Kumar, Advocate-on-Record, Supreme Court of India on the topic **“Overview of Mining Sector in India and Competition Issues Involved Therein”** at CCI.



Dr. Geeta Gouri being felicitated by Dr. Sangeeta Verma, Member (CCI) at the 30th DVKS lecture held at CCI

- 9th lecture on 28.02.2020 by Shri Amit Govil, Principal Commissioner, Tax Policy Research Unit (TPRU), Department of Revenue, Ministry of Finance on TPRU's study titled **“User Contribution in the Digital Economy in India”** at CCI.



Shri T. V. Ramachandran, President, Broadband India Forum (BIF), delivering the 32nd DVKS lecture to CCI officers



Shri G.N. Bajpai, former Chairperson, SEBI and former Chairperson, LIC, delivering the 31st DVKS lecture to CCI officers

11. Ms. Bulbuli Richong, Dy. Director (Law) attended a residential training program on **“Provisions of Companies Act 2013, Understanding Governance, Regulatory and Compliance Management with respect to Goals & Function of MCA”** during 02.03.2020 – 04.03.2020 organised by Indian Institute of Corporate Affairs (IICA) for Ministry of Corporate Affairs (MCA) under MCA's Corporate Data Management (CDM) Project at Goa.



Shri Naveen Kumar, Advocate-on-Record, Supreme Court of India, being felicitated by Shri Ashok Kumar Gupta, Chairperson, CCI at the 8th SLS lecture



Shri Amit Govil, Principal Commissioner, TPRU, Ministry of Finance addressing the CCI officers at the 9th SLS lecture

12. CCI, in collaboration with Indian Institute of Corporate Affairs (IICA) for the first time organized one week **“Residential Induction Training Program”** for newly joined Research Associates and deputationist officers from 27.01.2020 – 31.01.2020 at IICA campus, Manesar.



Shri Ashok Kumar Gupta, Chairperson, CCI addressing the trainees through video conferencing at the Training Program.



Trainees at the Training Program with Dr. Sanjay Kumar Pandey, Adviser (Law) and members of IICA faculty.



HR CORNER

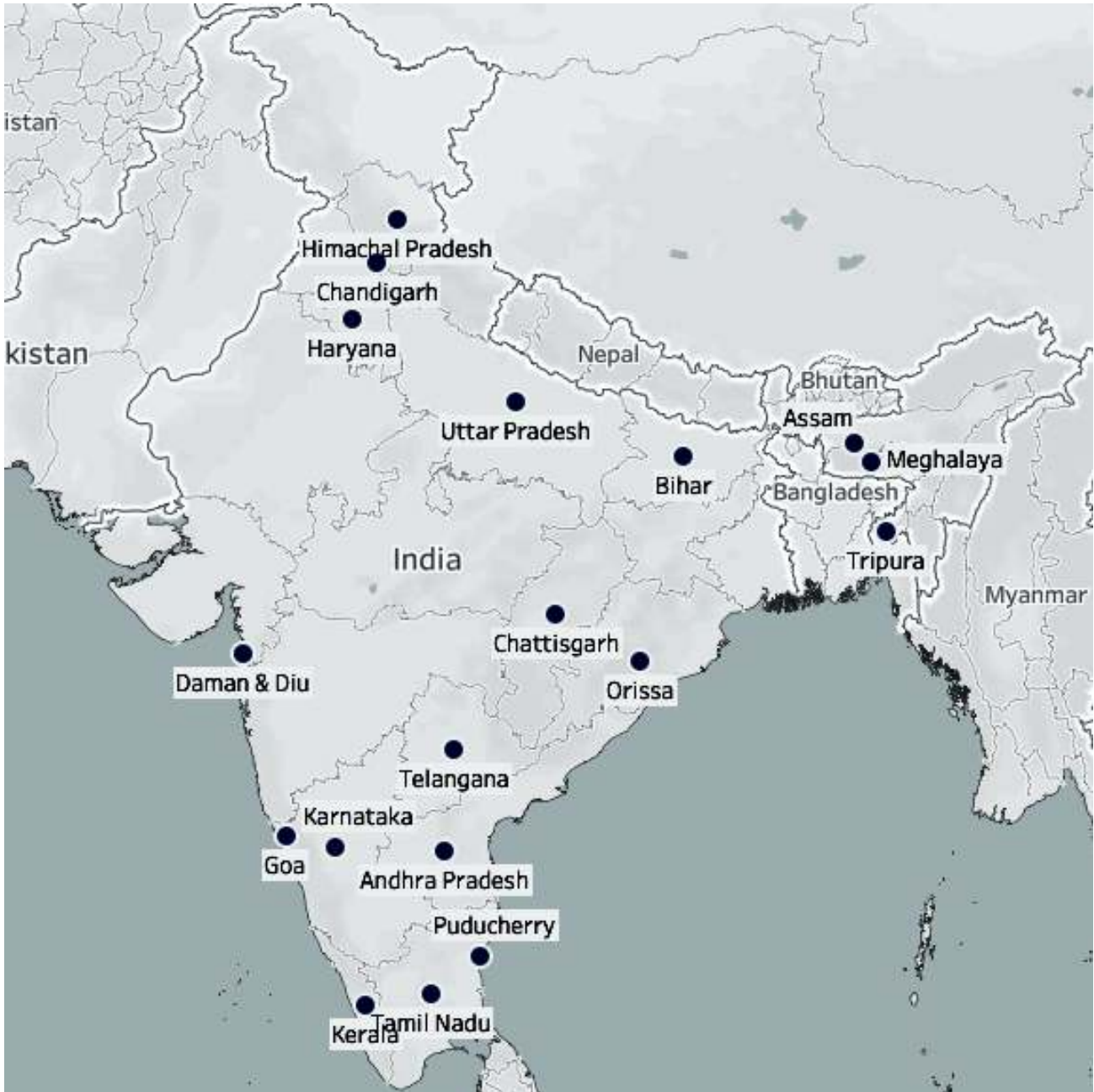
1. Order promoting following officers in CCI were issued:
 - a) Shri Rakesh Kumar and Shri Bidyadhar Majhi as Adviser (Eco)
 - b) Shri Ved Prakash Mishra and Dr. Sanjay Kumar Pandey as Adviser (Law)
 - c) Shri S.R. Bairwa as Director (Law)
 - d) Shri Sachin Goyal and Vipul Puri as Joint Director (FA)
 - e) Shri Anand Vikas Mishra and Ms. Sunaina Dutta as Joint Director (Law)
 - f) Shri Saurabh and Shri Mukul Sharma as Joint Director (Eco)
 - g) Smt. Vibha Arora as PPS.
2. An advertisement to fill up 15 posts in CCI on deputation basis was issued on 13.01.2020.
3. A Notice for engagement of an Expert (Copy Editor) in CCI on contract basis was issued.
4. Application were invited to fill up the post of DG, CCI on deputation basis vide MCA vacancy circular dated 03.02.2020. The extended last date for receipt of applications by MCA is 16.03.2020.
5. Shri Pranav Satyam, Deputy Director (Eco) resigned w.e.f 07.02.2020.
6. Meeting of the Selection Committee held on 26.02.2020 to make selection to fill up 03 posts each of Addl. DG and Jt. DG in the O/o DG, CCI on deputation basis.
7. Smt. Jyotsana Yadav was promoted as JD (FA) on ad-hoc basis w.e.f 26.02.2020.
8. Shri Ram Avtar JD (F&A) was relieved on 27.02.2020 on completion of his deputation tenure in CCI.
9. Smt. Philomena Joseph retired as PPS on 29.02.2020 on attaining the age of superannuation.



FORTHCOMING EVENTS



Annual Day Lecture on 20.05.2020 on the occasion of CCI's 11th Annual Day.



Map showing States/UTs where CCI's State Resource Person Scheme is being implemented

Competition Commission of India

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

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

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