



The Quarterly Newsletter of Competition Commission of India (CCI)

# Fair Play

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Shri Arun Jaitley, Hon'ble Minister of Finance and Corporate Affairs inaugurating the new office premises of CCI on 30th August, 2018, accompanied by Shri Injeti Srinivas, Secretary, Ministry of Corporate Affairs and Shri Sudhir Mital, Chairperson, CCI.

## **IN-FOCUS : BID-RIGGING IN PUBLIC PROCUREMENT**

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## FROM THE DESK OF CHAIRPERSON



At the outset, I would like to thank and congratulate each and everyone as well as the agencies who have worked hard towards shaping the new office premises which was recently inaugurated by Shri Arun Jaitley, Hon'ble Union Minister of Finance and Corporate Affairs. Our office has state of the art working facilities including hearing rooms, a Bar room, inspection rooms, Library, canteen and cordoned off areas to maintain confidentiality.

Our focus continues to be effective enforcement coupled with pro-active advocacy. The Commission has dealt with many cases relating to bid rigging in public procurement. The Commission has found that often the process of tendering becomes vulnerable to distortions by bidders who tend to form cartels, which cause immense harm to competition, consumers and the economy in general. Busting of such cartels would contribute largely to the government budget, as about 30% of our GDP is accounted for by public procurement. One way to bust cartels is to give a fillip to our leniency programme. With this in mind, we had recently amended our leniency regulations. Leniency is one of the tools whereby the members of the cartel can approach the Commission, divulge information pertaining to the cartel activities and seek lesser penalty. The 'In-focus' article in this issue, attempts to provide a summary of cases and manner of evaluation of evidences in the cases

involving bid rigging and cartelization in public procurement, wherein the Commission has passed orders penalising the contravening parties.

During this quarter, on the anti-trust front, the Commission pronounced some important enforcement decisions relating to various sectors like sports, pharma distribution, medical equipment manufacturing and bid rigging. On the combinations front, some important mergers and acquisitions were looked into and approved by the Commission including the combination between Linde Aktiengesellschaft and Praxair, Inc. which work in the field of industrial and speciality gases. This case had gone into a Phase II investigation and concerns were found in geographic market of the South and Eastern India and certain modifications were ordered.

Another important area is the competition assessment of legislations. The Government has formed an Inter-Ministerial Committee under the Chairmanship of Secretary, DIPP to review Act, Rules, Policies and Regulations from a competition perspective. At our end, the Commission has published a 'Competition Assessment Toolkit' with an aim to provide stakeholders, especially the policy makers and government officials an effective tool for a comprehensive assessment of policies, legislations, rules and regulations in India through the lens of competition.

Healthcare sector in India is facing significant issues relating to competition. A Technical Workshop on "Competition Issues in the Healthcare and Pharmaceutical Sector" was organised by the Commission on August 28-29, 2018, wherein representatives of all stakeholder groups, including the pharmaceutical industry, healthcare service providers, civil society organisations, regulators, healthcare and think tanks etc., participated and focused deliberations were made on the issues having serious implications on the market and competition in the sector.

In order to give a major thrust to advocacy, the Commission has decided to conduct five Road Shows on competition in the current financial year. The first one, with a focus on Mergers and Cartels, has been planned at Mumbai, the financial capital of the country on 15<sup>th</sup> October 2018. The second Road Show, with a focus on Public Procurement is proposed to be organised on 5<sup>th</sup> November, 2018 in New Delhi will be inaugurated by Shri Arun Jaitley, Hon'ble Union Minister of Finance and Corporate Affairs and attended by Secretaries to the GOI, Chief Secretaries of State Governments, Heads of PSUs among others.

Recognizing the importance of exploring newer channels of communication to reach out to our stakeholders, and strengthening its Competition Advocacy Outreach, the Commission has extended its presence on social media by launching its official pages on Facebook and LinkedIn apart from its already active official Twitter handle. We hope that this enhanced presence of the Commission on popular platforms will bring it closer to the stakeholders and will aid in dissemination of information in a more effective manner.

  
(Sudhir Mital)

## Bid Rigging in Public Procurement- Evaluation of Evidences in the Orders of the Commission

### Introduction

The Competition Act, 2002 (the 'Act') has been enacted with an objective of preventing practices which have an adverse effect on competition by promoting and sustaining competition within markets, protecting the interests of consumers and also ensuring freedom of trade carried on by other participants in markets. The Act empowers the Competition Commission of India (CCI/Commission) to deal with market failures ex-post that can be caused by enterprises either through unilateral conduct (Abuse of Dominance)<sup>1</sup> or by concerted practice through anti-competitive agreements.<sup>2</sup>

Such agreements or practices resulting in pernicious effects on competition are presumed to be unreasonable, even without any elaborate inquiry as to the precise harm they have caused or the business excuse for their use.<sup>3</sup> Cartels<sup>4</sup> fall in this category of pernicious agreements having the potential to cause considerable harm to consumers and economy in general. Cartels involve unfair practices by the competitors in the form of price collusion, through which they try to influence the market by distorting the competitive process of price discovery.

According to Section 3(3)<sup>5</sup> of the Act, agreement (including cartels) which— (a) directly or indirectly determines purchase or sale prices; (b) limits or controls production, supply, markets, technical development, investment or provision of services; (c) shares the market or source of production or provision of services by way of

allocation of geographical area of the market, or type of goods or services, or number of customers in the market or any other similar way; (d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition in India.<sup>6</sup> The severity of this conduct is evidenced by the fact that cartels have been subjected to the highest penalty under the Act.<sup>7</sup>

Section 3(3d) of the Act deals with specific type of cartels called as bid rigging agreements. Bid rigging agreements are agreements amongst competing bidders or potential bidders affecting the prices of the bids and the outcome of the contract that they bid for, and is presumed to have appreciable adverse effect on competition. The competitive process of tendering involved in procurement of goods and services can be compromised in various ways by bid rigging agreements.

The nature of bid rigging agreements may envisage the following terms with respect to the tenderer's winning bid that one bid may be lower than all other bids; or it will be the only bid containing the terms that will have to be accepted (involving an agreement between bidders wherein they do not participate in the tender process at all). Bid rigging is illegal under the law, and penalty is levied on all the members involved in it, irrespective of who wins the final contract, who made the lowest bid and what quantum of bid was quoted by other members.<sup>8</sup>

Bearing in mind the severity of the consequences, members of the bid rigging agreements make every efforts to hide their collusion and,

for the same reason- it becomes equally pressing for the competition regulatory authorities to bust them. Since these agreements are so secretive, it is quite difficult to detect them and to prove their existence. For this, gathering cogent evidences becomes one of the most crucial tasks.

### Evidences

The existence of a cartel may be proved by direct evidence, indirect (circumstantial) evidence, or a combination of both. Direct evidence includes written agreement among cartel members or the statement of a cartel member who has attended a meeting and reached an agreement with the competitors by way of a written memorandum.<sup>9</sup> These memoranda may be helpful in establishing a meeting of competitors where an agreement was reached, and can be manifested by tracing records of telephone conversations with the competitors, or a statement of a person who was approached by the cartel to join it.<sup>10</sup> However, direct evidence is scarcely found because the cartel members rarely enter into a written agreement. Indirect (circumstantial) evidence may be useful in supporting direct evidence in such circumstances. Indirect evidences may even be used to prove the existence of a cartel, but it is important to be careful in interpreting them.

Circumstantial evidence is most useful when there is only one explanation for a fact. It is possible to apply this theory to investigating cartels. One should look for behaviour that makes sense only if there is a cartel. For example, if all the

<sup>1</sup>Section 4 of the Act.

<sup>2</sup>Section 3 of the Act.

<sup>3</sup>Competition law in India, Roy, Eastern Law House

<sup>4</sup>Section 3 of the Act.

<sup>5</sup>Section 3(3) of the Act deals with specific types of agreements/ arrangements among persons or enterprises or associations thereof which are engaged in identical or similar trade of goods or provision of services which are considered per se illegal.

<sup>6</sup>Section 3(3) of the Act.

<sup>7</sup>Section 27 of the Act.

<sup>8</sup>Case no 52/2010 Decision dated 16.02.2012

<sup>9</sup>Competition law in India, Roy, Eastern Law House

<sup>10</sup>See Policy Brief published by Organisation For Economic Co-operation and Development

<sup>11</sup>Study of Cartel Case Laws in Select Jurisdictions – Learnings for the Competition Commission of India, CUTS International & National Law University, Jodhpur

competitors in a market announce on the same day that their prices will increase by exactly the same amount, it is suspicious behaviour. It leads one to suspect that they all agreed to raise their prices. But there are other possible explanations, such as an input price increase that affected all of them equally, or a sudden change in demand for their product, or a sudden change in the price of a substitute product.<sup>11</sup> Other 'plus factors' - i.e. some additional evidence tangible enough to come to the conclusion that prices have been quoted as a result of concerted action or as a result of meeting of minds - such as price parallelism and identical pricing despite differences in cost, increase in price by all players without any increase in cost etc., may be useful in establishing the existence of any alleged cartel in absence of any direct evidence. In-Depth investigation is envisaged by the Act to eliminate the other possible explanations.

In the case of *Foundation for Common Cause & People Awareness vs. PES Installations Pvt. Ltd. & Ors.*<sup>12</sup>, the Commission examined inter alia allegations of bid rigging by the bidders in the tender floated by Hospitals Services Consultancy Corporation, for supply, installation, testing and commissioning of Modular Operation Theatre and Medical Gases Manifold System to Sports Injury Centre, Safdarjung Hospital, New Delhi. The Commission found commonality of mistakes (such as common typographical errors) in the tender forms by the bidders as indicative of collusion amongst them to manipulate the process of bidding. The Commission imposed a penalty upon each of the contravening party @ 5% of the average turnover of the company which were reduced to 3% of the average turnover by COMPAT, after considering the aggravating and mitigating factors.

In the case of *Aluminum Phosphide Tablets Manufacturers*<sup>13</sup>, the Commission examined the allegation of anti-competitive acts and conduct in the tender for procurement of Aluminum Phosphide Tablets required for preservation of central pool

food grains by Food Corporation of India (FCI). In this case, the Commission *inter alia* noted that the identical bid price was not possible unless there was some sort of prior understanding. The Commission found the collective action of identical bids and simultaneous entry into the premises of FCI before submission of bids as indicative of 'plus' factors to support the alleged existence of an understanding between the parties. The Commission apart from issuing a 'cease and desist' order, imposed a penalty upon each of the contravening party @ 9% of the average turnover of the company.

In the case of *Sports Broadcasters vs. Essel Shyam Communication Limited (ESCL) and Ors.*<sup>14</sup> involving lesser penalty application, allegations of cartelisation and bid rigging were made against the broadcasting service providers. Wherein, service providers viz. Globe cast and ESCL were ostensibly competing for provision of broadcasting services. However, there was exchange of commercially sensitive information related to bidding between the two, which enabled them to co-ordinate their bids. As a result, they did not effectively compete in the bidding process and gave pretence of competition to broadcasters. Such conduct adversely affected and manipulated competitive process for bidding by eliminating/reducing competition for bids. It was held that collusion for even for one event was enough for purposes of establishing contravention of provisions of Act by ESCL and Globecast and that it was immaterial which OP derived higher benefit from collusion.

In the case of *Director, Supplies & Disposals, Haryana vs. Shree Cement Limited and Ors.*<sup>15</sup> the Commission was of the view that the Opposite Parties (OPs) through their impugned conduct had contravened the provisions of Section 3 (3) (d) read with Section 3 (1) of the Act by acting in a collusive and concerted manner which had eliminated and lessened the competition besides manipulating the bidding process in respect of the impugned tender

floated by the State of Haryana. Their conduct was established from the series of actions taken by the OPs which includes quoting of unusually higher rates than the rates quoted in the previous tender, determining different basic prices for supply of cement at the same destination through reverse calculation, quoting of quantity by 7 out of 9 participating parties in a manner that the total bid quantity almost equalled the tendered quantity which was in departure from bidding pattern of previous years, etc. The SMS exchanged and calls made and their heightened frequency during the period close to the date of tender amongst the officials of the OPs, reaffirmed their anti-competitive conduct.

In the case of *Cartelization in Tender No. 59 of 2014 of Pune Municipal Corporation for Solid Waste Processing*, the Commission held that the Opposite Parties (OPs) have engaged in practices which directly or indirectly resulted in bid rigging or collusive bidding in Tender no. 59 of 2014 in contravention of the provisions of Section 3(3)(d) of the Act. During investigation, it was found that even though OP-2 (Ecoman Enviro Solutions Private Limited) and OP-3 (Fortified Security Solutions) were separate legal entities and had bid as competitors, they had a common place of business. Also, both were being managed by a common person Shri Bipin Vijay Salunke. In pursuance of leniency application, opposite parties also admitted to having formed a cartel to rig the bid and accepted the exchange of documents for submission of cover bids. The Commission perused the facts of the case, the investigation report of DG, submissions made in Lesser Penalty Applications and submissions of the OPs thereon and established that there was meeting of mind and collusion amongst the members of the cartel and accordingly penalized the parties.

In the *Delhi Jal Board case*<sup>16</sup> the information was filed by Delhi Jal Board, which has been procuring Poly Aluminium Chloride (PAC) from the Opposite Parties for purification of water through tendering process.

<sup>12</sup>Case No. 43 of 2010

<sup>13</sup>Suo Moto Case No. 02 of 2011

<sup>14</sup>Case No. 02 of 2013

<sup>15</sup>Case No. 05 of 2013

<sup>16</sup>Ref. Case Nos. 03 & 04 of 2013

The Informant alleged that in case of negotiations over the bid price of PAC, the Opposite Parties were colluding by negotiating/ decreasing the prices, to an equal extent. After a detailed investigation, Commission established that though parallel prices were not *per se* enough to establish collusion, yet certain circumstantial evidences were enough to be considered as 'plus factors' to affirm that the Opposite Parties had acted in concert. The fact that the bid prices offered by the Opposite Parties were close to each other with simultaneous increases over the years and that the three bidders having huge variation in variable cost of production, transportation, taxes etc. were quoting bids in close margins of each other, could not be a matter of mere coincidence. The Commission held that this could only happen when there is a meeting of mind with the objective of bidding in collusive manner for profit maximization.

In the case of *Cartelization in respect of tenders floated by Indian Railways for supply of Brushless DC Fans and other electrical items*<sup>17</sup>, the Commission found contravention against the Opposite parties, penalized them

<sup>17</sup>Suo Moto Case No. 03 of 2014

<sup>18</sup>Suo Moto Case No. 02 of 2014

under Section 27 of the Act and directed them to cease and desist from indulging in such anticompetitive conduct in future. The Commission took on record the circulation of e-mail proposing the rate to be quoted by various OPs in the impugned tenders, telephonic conversations between the OPs and the admission by leniency applicant into record. The leniency applicant had revealed the role of the various parties operating the cartel, the design and modus operandi of the cartel, duration of the cartel, incentives for formulating cartel, mode and manner for deciding the prices of Brushless DC Fans to be quoted for forth-coming tenders of railways and mode of deciding about the name of the proposed winners in the forth-coming tenders for BLDC fans.

In the case of *cartelization by public sector insurance companies (OPs) in rigging the bids submitted in response to the tenders floated by the Government of Kerala for selecting insurance service provider for Rashtriya Swasthya Bima Yojna*<sup>18</sup>, the Commission found manipulation of the bidding process in contravention of the provisions of section 3(1) read with section 3(3)(d) of the Act and

penalized the Opposite Parties. Such manipulation was established by analysing the bidding pattern exhibited by OPs, minutes of the meeting held one day prior to submission of bids and exchange of emails. The Commission noted that the evidences clearly and unequivocally establish that the OPs entered into an anticompetitive agreement to rig the bids.

## Conclusion

From the above mentioned orders it can be inferred that gathering cogent evidences are crucial in cases of cartels. Direct evidences are undeniably best evidences in the eyes of law, however, due to their absence the Commission has given due regard to circumstantial evidences, at the same time emphasizing the need for them (circumstantial evidences) to be persuasive in nature. Mere price parallelism can be coincidental and may not be enough to establish collusion and in such cases, some other corroborating evidence might be necessary. The Commission has in its decisional practice, duly taken such 'plus factors' into consideration.

## SECTION 3 & 4 ORDERS

### Competition Commission of India imposes Penalty on Federation of Gujarat State Chemists & Druggists Associations and its three constituent Associations (in Gujarat) and three Pharmaceutical companies and a C&F Agent and their office bearers

The Competition Commission of India ('the Commission/CCI') found the Federation of Gujarat State Chemists & Druggists Associations ('FGSCDA'), Chemists & Druggists Association of Baroda ('CDAB'), Surat Chemists & Druggists Association ('SCDA') and Amdavad Chemist Association ('Amdavad') to be in contravention of the provisions of the Competition Act, 2002 ('the Act'). In separate cases, but entailing similar issues, filed by M/s Alis Medical Agency, M/s Stockwell Pharma, M/s ApnaDawa Bazar and M/s Reliance Medical

Agency, it was brought to the notice of the Commission that all the above associations have restrained pharmaceutical companies from appointing new stockists in the State of Gujarat unless a No Objection Certificate ('NOC') was obtained from them. It was also alleged that certain pharmaceutical companies refused to supply drugs to the aggrieved parties on account of not having obtained NOC from the aforesaid associations.

Based on the evidence collected by the Director General ('DG') during investigation, the Commission concluded that the FGSCDA and the aforesaid district level associations have been indulging in the practice of NOC prior to the appointment of stockists by pharmaceutical companies, which has the effect of limiting and controlling of the supply

of drugs in the market, and is in contravention of the provisions of Section 3(3)(b) read with 3(1) of the Act.

The Commission also observed the conduct of pharmaceutical companies and the C&F Agent, namely, Glenmark Pharmaceutical Ltd. ('Glenmark'), Divine Saviour Pvt. Ltd. ('Divine Saviour') and Hetero Healthcare Ltd. ('Hetero') and Glenmark's C&F Agent M/s B.M. Thakkar & Co. ('B.M. Thakkar'), to be in contravention of the provisions of Section 3(1) of the Act, for facilitating the practice of NOC mandated by these associations.

Further, the Commission held certain office bearers and officials of the erring associations and pharmaceutical companies, respectively, to be responsible under Section 48 of the Act, for their active

involvement in the anti-competitive practice of the aforesaid entities and/ or on account of the positions of responsibility held by them during the period of contravention.

Accordingly, the aforesaid associations, pharmaceutical companies, the C&F agent and their respective office bearers/officials were directed to cease and desist from indulging in the practice of mandating NOC prior to stockist appointment.

The Commission also imposed a monetary penalty at the rate of 10% of their average income of three financial years, on the erring associations and its office bearers; and a penalty at the rate of 1% of their average income of three financial years on contravening pharmaceutical companies and their officials, amounting to a total of Rs. 6.08 crores.

#### **CCI imposes penalty on All India Chess Federation for indulging in the anti-competitive conduct by abusing their dominant position**

The Commission received information from four chess players who were subjected to disciplinary action by All India Chess Federation ('AICF') for participating in a chess event not authorised by it. The case concerned several stipulations of AICF on chess players, organisation of chess tournaments, discretionary nomination of players, etc.

After a detailed investigation by the DG, and further inquiry by CCI, AICF was found to be enjoying dominant position in the markets for organization of professional chess tournaments/ events in India and services of chess players in India. In its Order under Section 27 of the Act, CCI observed that AICF's restriction on chess players to participate in unauthorised events and subsequent punitive consequences restricted the movement of chess players and placed them and the potential organisers of chess tournaments in a disproportional disadvantage. Hence, such stipulation was held as an unreasonable restriction on chess players and denial of market access to organisers of chess events/ tournaments, in contravention of the provisions of Section 4(1) read with 4(2)(b)(1) and Section 4(2)(c) of the Act. The restrictions on chess players was further held to be in the nature of exclusive distribution and refusal to deal, in contravention of Section 3(4)

(c) and Section 3(4)(d) of the Act. Accordingly, CCI directed that:

- (a) AICF shall cease and desist from the conducts that are found anti-competitive;
- (b) AICF shall lay down the process and parameters governing authorisation/ sanctioning of chess tournaments. In doing so, AICF would ensure that they are necessary to serve the interest of the sport and shall be applied in a fair, transparent and equitable manner. Besides, AICF shall take all possible measure(s) to ensure that competition is not impeded while preserving the objective of development of chess in the country;
- (c) AICF shall establish prejudice caused by a chess player before taking any disciplinary action against him. Needless to say, the disciplinary actions taken shall be proportional, fair and transparent. The disciplinary actions against the Informant and other similar players shall be reviewed by AICF on these lines; and
- (d) AICF shall file a report to the Commission on the compliance of the aforesaid directions from (a) to (c) within a period of 60 days from the receipt of this order.

A penalty of Rs. 6.92 lakhs was also imposed on AICF for indulging in the anti-competitive conduct.

#### **CCI imposes penalty on Karnataka Film Chamber of Commerce, and others for anti-competitive conduct**

The Commission found that Karnataka Film Chamber of Commerce(KFCC) and others have acted in concert and impeded entry and screening of dubbed movies and in particular the Informant's film – "Sathyadev IPS" in State of Karnataka, thereby violating the provisions of Section 3(1) and Section 3(3)(b) of the Act.

Such anti-competitive practices were found to have an appreciable adverse effect on competition and adversely affected the consumers, producers and exhibitors of dubbed cinema in the State of Karnataka and resulted in limiting and restricting the market for dubbed cinemas there. The Commission also found that KFCC had violated the provisions of the Act, on earlier occasions too, for which it was penalised in Case No.58 of 2012.

Resultantly, the Commission, besides passing cease and desist orders against the Opposite Parties ('OP'), also directed KFCC (OP-1) to bring in place a Competition Compliance Manual to educate its members about the basic tenets of competition law principles.

A penalty of Rs.9,72,943/-, Rs. 15,121/- and Rs.2,71,286/- was respectively imposed on KFCC (OP-1), Mr. Sa Ra. Govindu (OP-5) and Mr. Jaggesh, (OP-3) calculated @ 10% of their average income.

With regard to other Opposite Parties being Kannada Okkuta (OP-2) and Mr. Vatal Nagraj (OP-4), since they failed to furnish their financial details despite sufficient opportunities, the Commission decided that a separate order regarding penalty would be passed in respect of these OPs in due course.

#### **CCI imposes penalty on South Asia LPG Company Pvt. Ltd for contravening Section 4 of the Act**

The case primarily concerned access to upstream LPG terminalling infrastructure at Vishakhapatnam Port, which comprised several components viz. unloading arms at the jetty, blender, heat exchanger and cavern (storage facility). This infrastructure being operated by South Asia LPG Company Pvt. Ltd. ('SALPG') is used for handling imports of propane and butane and their blending into LPG.

East India Petroleum Pvt. Ltd. ('EIPL') filed an information with CCI under Section 19(1)(a) of the Act alleging that while allowing it to use the blender, SALPG has been insisting on mandatory use of cavern. This resulted in paying significant charges to SALPG. The Oil Marketing Companies ('OMCs') were thus not finding the LPG terminalling services offered by EIPL economically viable and were constrained to avail the terminalling services offered by SALPG only. To address this, EIPL first proposed to use the blender of SALPG and thereafter, take the output directly to the cross-country pipeline, bypassing the cavern. Since this was not agreeable to SALPG which allowed bypass of cavern to the extent of 25 percent only, EIPL proposed to install its own blender, and sought a tap-out and tap-in from the propane and butane lines to discharge blended LPG, bypassing the cavern. This was also not acceptable to SALPG. Another

proposal seeking tap-out from the propane and butane lines at jetty to EIPL; own blender and construction of its own infrastructure between the blender and storage facility, was also refused by SALPG. All this was alleged to be abuse of dominant position by SALPG

After a detailed investigation by the Director General, CCI conducted further inquiry in the matter and found SALPG to be enjoying dominant position in the market for upstream terminalling services at Visakhapatnam Port. SALPG sought to justify its conduct on the grounds of safety as well as efficiency and business requirements. However, after a detailed examination of claims made and hearing the parties, the Commission held the impugned conduct of SALPG to be in contravention of the provisions of Section 4 of the Act. Accordingly, CCI directed that:

- (a) SALPG shall not insist mandatory use of its cavern and shall allow bypass of cavern for both pre-mixed and blended LPG, without any restrictions;
- (b) SALPG shall allow access to its competitors, potential as well as existing, to the terminalling infrastructure at Visakhapatnam Port, subject to compliance with all safety integrity and other requirements under applicable laws and regulations framed thereunder. Such an access should avoid additional cost burden on SALPG, and the entity seeking access shall bear the cost, if any, towards necessary changes to the existing infrastructure. Under this option also, SALPG shall not insist on mandatory use of cavern and it shall allow bypass of cavern, without any restriction. SALPG shall extend full cooperation for the study/audit undertaken by VPT in relation to the remedies ordered herein. Needless to say, SALPG shall not do anything raising rival's cost.

A penalty of Rs. 19.07 crore was also been imposed on SALPG for indulging into the anticompetitive conduct.

### CCI imposes penalty upon Esaote S.p.A and Esaote Asia Pacific Diagnostic Pvt. Ltd. for abusing dominant position

The Commission imposed penalty upon Esaote S.p.A and Esaote Asia Pacific Diagnostic Pvt. Ltd. ('Esaote') for abusing their dominant position in supplying dedicated standing/ tilting MRI machines.

The final order was passed by CCI on 27.09.2018 based on an information filed by House of Diagnostics LLP ('HoD')- which is engaged in the business of medical diagnostic imaging services. The informant filed information before CCI against Esaote alleging *inter alia* supply of old machines with various manufacturing and other defects. The Informant also alleged that Esaote charged huge sum of money for supplying spare parts and by refusing to perform its obligations under the contract. Essential terms of the contract were also alleged to have been changed unilaterally by Esaote.

Holding Esaote to be the only manufacturer of standing/ tilting MRI machines in India, CCI held Esaote to be dominant in this market. The Commission further found Esaote to have misled HoD by supplying old machines instead of new machines as ordered by the latter. The Commission also held that Esaote acted unfairly and thereby abused its dominant position by refusing to provide Head Coils with the machines to the Informant.

It also noted that Esaote S.p.A has given exclusive distribution rights to its Indian subsidiary in respect of G-Scan MRI machines. Such exclusivity was found to limit provision of services in after sale market besides denying market access to third party service providers.

Accordingly, following the principle of relevant turnover, a penalty of Rs. 9.33 lakhs @ 10% of the average relevant turnover of the preceding three financial years was imposed upon Esaote, along with a cease and desist order.

The final order was passed by a 2-1 majority with the Chairperson issuing a Dissenting Note. In his Dissenting Note, the Chairperson held that the

relevant market cannot be narrowed to standing/ tilting MRI machines alone as any market delineation would have to necessarily include all MRI machines irrespective of some additional features or functionalities and that in the absence of market power, the question of abuse of dominance did not arise.

### CCI imposes penalties upon Sugar Mills and their Associations for big rigging in respect of joint tender floated by Oil Marketing Companies (OMCs) for procurement of ethanol for blending with petrol

The Commission imposed penalties upon 18 sugar mills and 2 Associations (Indian Sugar Mills Association and Ethanol Manufacturers Association of India) for rigging the bids in respect of a joint tender floated by Oil Marketing Companies (HPCL/ BPCL/ IOCL) on 02.01.2013 for procurement of ethanol for blending with petrol. The final order was passed by CCI on 18.09.2018 on a separate information filed by India Glycols Limited and 5 other Informants.

Pursuant to a notification dated 02.01.2013 issued by Ministry of Petroleum & Natural Gas, Government of India; regarding mandatory 5% blending of ethanol with motor spirit/ gasoline, the government owned public sector OMCs *viz.* IOCL/ HPCL/ BPCL invited quotations from alcohol manufacturers for supply of ethanol through a joint tender under the two bid system *i.e.* technical bid and price bid. The supply was to be made available to various depots/ terminals of OMCs across the country for a period of one year *w.e.f.* 01.03.2013.

The Informant (India Glycols Limited), however, alleged that Indian Sugar Mills Association ('ISMA') and Ethanol Manufacturers Association of India ('EMAI') persuaded the OMCs to come out with a joint tender for the purpose of procuring ethanol. The said joint tendering by OMCs was alleged to be an agreement amongst horizontal players to procure ethanol from various suppliers in contravention of the provisions of Section 3 of the Act which was likely to cause appreciable adverse effect on competition within India in supply and distribution of ethanol. It was also alleged that the sugar manufacturers who had participated in the said



joint tender manipulated the bids by quoting similar rates and in some cases identical rates through an understanding and collective action, in violation of the provisions of Section 3 of the Act.

The Commission, noted that the bidders, have contravened the provisions of Section 3(3)(d) read with Section 3(1) of the Act by acting in a collusive and concerted manner which lessened competition besides manipulating the bidding process. This was evidenced from the prices quoted, quantities offered and the explanations given by the parties. Such collusion was further strengthened from the fact that the bidders utilized the platform of ISMA.

Accordingly, a total penalty of Rs. 38.05 crore was imposed upon 18 sugar mills and the two associations *i.e.* ISMA and EMAI. Furthermore, a cease and desist Order was also issued against them. While imposing penalties, the Commission applied the principle of relevant turnover and based the penalties on the revenue generated by the sugar mills from sale of ethanol only.

#### CCI issues Order against Google in Remote Technology Support Sector, finds no contravention

The final Order in this matter was passed by the Commission on 12.07.2018 on a batch of information filed by Mr. Vishal Gupta (in Case No. 06 of 2014) and Albion InfoTel Limited (in Case No. 46 of 2014) against Google LLC, Google Ireland Limited and Google India Private Limited (collectively, 'Google') for alleged abuse of dominant position with respect to suspension of AdWords accounts of the Informants.

Aggrieved by termination of AdWords accounts, certain remote technology support ('RTS') service providers ('the Informants') approached the Commission alleging abuse of dominant position by Google. AdWords is a program wherein the persons/entities desirous of hosting their advertisements on Google's online search advertising platform can do so. These ads appear on Google's search engine results page which is the first page displayed by Google in response to a search query. In this case, the Informants' AdWords accounts were terminated by Google *inter alia* on account of

violation of Google's User Safety Policy. The User Safety Policy was designed by Google for the safety of end users by preventing advertisers from making false and misleading claims and representations. The Informants alleged that Google User safety and AdWords policies were extremely arbitrary and vague. It was further alleged that the inherent ambiguity in these policies enabled Google to unilaterally terminate its AdWords account in abuse of Google's dominance.

The Commission, in its decision, noted that Google's policies clearly defined minimum standards applicable to AdWords which cannot be left without a regulatory mechanism. The Commission held that a platform is within its rights to ensure that advertisements on it conform to its quality and safety standards. Therefore, termination of relationship between the platform and the user is a commonly used mechanism to legitimately enforce such standards. On the argument that Google terminated the AdWords accounts of RTS service providers at large because RTS service was substitutable with the services being provided by Google on its own product *i.e.* Google HelpOuts, the Commission noted that HelpOuts did not have the ability to remotely access a user's computer which is a key functional feature of the RTS service.

The Commission, with regard to the suspension and termination clauses in Google's Advertising Program Terms, observed that without having the ability to suspend or terminate dangerous advertisers, the platform owner would not be able to take immediate action to protect consumers and its platform. In view of this, the Commission found Google's conduct to be justified and accordingly closed the case. However, the Chairperson dissented from the majority's decision stating that the Commission should have sent the matter back to the DG for further investigation on the issue of substitutability between RTS and HelpOuts.

#### CCI imposes penalty upon PECIN and Geep Industries for Cartelization

Upon receiving the lesser penalty application filed under the Competition Commission of India (Lesser Penalty) Regulations, 2009 from Panasonic

Corporation on behalf of itself, its Indian subsidiary PECIN and their individuals, the Commission initiated a *suo motu* case of cartelisation in the dry cell batteries market in India. *Vide* an order dated 08.02.2017, the Commission referred the matter for investigation to the DG. The DG, after making a comprehensive investigation, gave its report to the Commission concluding that PECIN and Geep Industries (India) Pvt. Ltd. had indulged into cartelisation from 01.10.2010 to 30.04.2016.

Upon such report, objections were called for and oral hearing was held before the Commission wherein after, the Commission passed the final order dated 30.08.2018. In the order, the Commission has held that PECIN, who was the supplier of batteries to Geep Industries, along with Geep Industries, had coordinated the market prices of dry cell batteries in India and even monitored the same by exchanging commercially sensitive information. Thus, the Commission held that the two companies – PECIN and Geep Industries, had indulged into contravention of the provisions of Section 3 (3) (a) read with Section 3(1) of the Act. The Commission found evidence in the form of e-mail communications between the Key Managerial Personnel of the two companies as well as the presence of an anti-competitive clause in the Product Supply Agreement entered into between them.

For the aforesaid contravention, the Commission calculated the penalty amount to be imposed upon the two companies – Rs. 73.93 crores upon PECIN @ 1.5 times the profit for each year of continuance of the cartel, and Rs. 9.65 crores upon Geep Industries @ 4% of the turnover for each year of continuance of the cartel. Further, penalty @ 10 % of the average income for the three preceding financial years was imposed upon the 'persons' of PECIN and Geep Industries, found liable by the Commission for the anti-competitive conduct of their respective companies, under the provisions of Section 48 of the Act. However, PECIN and its individuals were granted 100% reduction in the penalty amount as Panasonic Corporation had filed the lesser penalty application in the case and had provided full, true and vital disclosures as well as full co-operation in the matter.

## INVESTIGATION INITIATED

### CCI initiates investigation against Star India Pvt. Ltd. and Sony Pictures Network India Pvt. Ltd. for price discrimination

On 27 July 2018, the Commission passed an order initiating investigation against Star India Pvt. Ltd. (Star), Sony Pictures Network India Pvt. Ltd. ('Sony') based on an information filed by Noida Software Technology Park Ltd. ('NSTPL') under the Act.

The Informant in this case i.e. NSTPL is a public limited company engaged in the business of satellite communication *viz.* broadcasting and data services. It holds a 'Head-End In The Sky' ('HITS') license issued by the Ministry of Information and Broadcasting. In its information, NSTPL alleged that Star and Sony, in concert with and facilitated by Indian Broadcasting Federation ('IBF'), were engaging in concerted systematic tactics of price discrimination in favour of their preferred distributor(s) in contravention of the provisions of Section 3(3), Section 3(4) and Section 4(2) of the Act. Further, it alleged that the conduct of Star, Sony and IBF, apart from being in violation of the non-discriminatory mandate of the Regulatory framework of the Telecom Regulatory Authority of India Act, 1999 ('TRAI Act') and Interconnect Regulations framed thereunder, was also in violation of the provisions of the Act.

On examination of the information filed by NSTPL and the arguments of Star, Sony and IBF thereupon, the Commission noted that though the Informant had levelled the allegation of contravention of Section 3(3), 3(4) as well as Section 4 of the Act, its primary grievance was with respect to price discrimination by OP-1 and OP-2 in supply of television content to it in comparison to

similarly placed Multi-System Operators / distributors/ operators. The Commission noted that since the Act does not envisage the concept of collective dominance, Section 4 the Act would not be applicable in the instant case. Thus, the only provision under which the allegations of the Informant could be examined was Section 3(4) of the Act. However, even for examining conduct under Section 3(4) of the Act, determination of market power of the firm alleged to be indulging in price discrimination had to be considered first, for which the market was required to be identified.

Accordingly, in order to consider the issue of price discrimination, the Commission identified the market as the "*market for broadcasting of television channels in India*". Further, it was noted that, in this market, narrower markets on the basis of 'genres' and regional preferences also existed. With respect to the market power of Star and Sony in this market, the Commission noted that both of them were leading broadcasters and owners of premium content in the market for broadcasting of television channels in India. Both offered some of the most popular television channels with high ratings in terms of viewership across various genres. Thus, the overall market position of Star and Sony and the bouquet of channels owned by them, showed that both of them enjoyed significant market power, particularly in the two genres of 'Sports' and 'Entertainment'. As regards the allegation of price discrimination, the Commission was of *prima facie* view that insistence of the broadcasters to

deal with the Informant only on Reference Interconnect Offer basis, a practice which has been held to be discriminatory by Hon'ble Telecom Disputes Settlement and Appellate Tribunal in '*M/s Noida Software Technology Private Limited v M/s Media Pro Pvt. Ltd. & ors.*' (Petition No. 295(C)/2014 decided on 07.12.2015) indicates a constructive refusal by them to deal with the Informant, which was in contravention of the provisions of Section 3(4) of the Act.

On the issue of the jurisdiction, the Commission observed that while TRAI is the sectoral regulator for regulating tariff and ensuring non-discriminatory conduct by market participants in the telecom sector, the Competition Act imposes a duty on the Commission to take cognisance of anti-competitive behaviour. Under the Act, the powers of the Commission are in addition to and not in derogation of the TRAI's mandate to regulate the practices of the broadcasters in the sector. Further, in the instant matter, the issue under the Telecommunication laws had been decided finally by both TDSAT and TRAI. Thus, there remained nothing to restrict the Commission's jurisdiction to look into the aspect of violation of provisions of the Act by OP-1 and OP-2.

In view of the foregoing, the Commission passed an order under Section 26(1) of the Act directing the DG to cause an investigation into the matter to ascertain whether Star and Sony had indulged in refusal to deal by way of price discrimination with NSTPL in contravention of the provisions of the Section 3(4) of the Act.

## ■ INAUGURATION



Shri Arun Jaitley, Hon'ble Minister of Finance and Corporate Affairs inaugurating the new office premises of CCI on 30th August, 2018, accompanied by Shri Injeti Srinivas, Secretary, Ministry of Corporate Affairs and Shri Sudhir Mital, Chairperson, CCI.



Chairperson, Members, Director General and Advisers of the Commission at the inauguration of the new CCI office.

(From the left in front row: Shri G.P. Mittal, Shri Augustine Peter, Shri Sudhir Mital, Shri U. C. Nahta. From the left side in back row: Ms Jyoti Jindgar, Shri Rakesh Bhanot, Ms. Payal Malik, Shri Nitin Gupta, Ms. Smita Jhingran, Shri Manoj Pandey, Shri Manish Govil, Shri P.K. Singh.)



Glimpses of new premises of CCI

## Inauguration of new office premises of CCI

Shri Arun Jaitley, Union Minister of Finance and Corporate Affairs inaugurated the new office of the Competition Commission of India on 30.08.2018. Shri Jaitley on this occasion stated that the function of the Competition Commission of India is going to expand further as the size of our economy is becoming large. Shri Injeti Srinivas, Secretary, Ministry of Corporate Affairs, Members of the Commission, senior Government officials and advocates also attended the inauguration ceremony.

## SECTION 5 & 6 ORDERS

### CCI approves acquisition of consumer health business of Merck by Procter & Gamble

On 26<sup>th</sup> June, 2018, the Commission received a Notice from Procter and Gamble Overseas India B.V. (P&G) for a proposal for acquisition of the consumer health business of Merck group globally. The Indian component of this combination comprised of:

(a) acquisition of assets related to consumer health business of Merck Specialities Pvt. Ltd. and (b) acquisition of up to 77.80% equity share capital of Merck India Limited.

P&G is a global manufacturer of consumer goods such as (a) beauty care, (b) grooming, (c) health care (oral care and personal health care), (d) fabric and home care, and (e) baby, feminine and family care. In India it provides, through its subsidiaries, a broad range of these consumer products.

Merck is a multinational pharmaceutical, chemical and life sciences group and it supplies both over the counter ('OTC') and prescription based products. Merck is the ultimate holding company of Merck India, which is headquartered in Mumbai and is listed on Bombay Stock Exchange and National Stock Exchange. It is engaged in the business of manufacturing, marketing, distribution, imports and exports of pharmaceutical products and chemical products.

Both the parties viz. P&G and Merck India were dealing in 'pain and cold segment' of consumer health business in India. While Merck India was manufacturing and selling syrups, tablets, nasal sprays and nasal drops, P&G was selling tablets, vaporub, inhaler and oral cough drops. Both the parties sold tablets in the said segment hence exhibiting a horizontal overlap. While P&G was selling its tablets under the brand name Vicks Action 500, Merck was selling them under Nasivion and Cosome.

The parties to the combination were

not engaged in activities that were at different levels of the production chain i.e. no vertical overlaps in the businesses of the parties was observed.

The Commission noted that these came under the category of 'cold preparations' based on Anatomical Therapeutic Chemical (ATC) 3 classification and 'cold preparations without anti-infectives' based on ATC 4 classification. However, based on data of IMS Health Database for cold preparations comprising of both prescription drugs and OTC products, the combined market share of the parties was found to be less than a percent, which was insignificant. Even if separate markets were to be defined for prescription drugs and OTC products, the market share of the parties still remained insignificant. This coupled with the presence of several other brands with similar formulation reinforced that the markets for the concerted products were fragmented and incremental change, if any, on account of the proposed combination was not likely to raise competition concerns. The Commission, therefore, approved the combination under sub-section (1) of Section 31 of the Act.

### CCI approves acquisition of Twenty-First CenturyFox by The Walt Disney Company and TWDC Holdco 613 Corp. under Section 31(1) of the Act

On 9<sup>th</sup> July, 2018, the Commission received a notice from The Walt Disney Company (TWDC) and TWDC Holdco 613 Corp. (Holdco), a wholly owned subsidiary of TWDC, in relation to their proposed acquisition of Twenty-First CenturyFox (21CF). The notice was filed pursuant to 21CF and TWDC (Parties to the agreement).

TWDC, a publicly listed company, is engaged in: (a) theatrical distribution of films, (b) supply/licensing of audio-visual and interactive content, (c) operation and wholesale supply of TV channels *etc.* TWDC is present in India through its subsidiary UTV Software Communications Limited ('UTV')

and operates under the brand names Disney, The Walt Disney Company, UTV, Pixar, ESPN, Bindass, Hungama TV *etc.*

21CF, also a publicly listed company, is active in, (a) theatrical distribution of films, (b) supply/licensing of audio-visual content and (c) operation and wholesale supply of TV channels both at global level and in India. 21CF provides its services under the brand names Twenty-First Century Fox, Star, National Geographic, Hotstar, Asianet, Maa *etc.* 21CF also holds certain equity interest in Tata Sky Limited, a direct-to-home broadcast ('DTH') satellite television provider.

The Commission noted that activities of the Parties overlapped in the following business segments in India: (i) production and supply of films to third-party distributors and exhibitors for theatrical release; (ii) licensing of audio-visual contents; (iii) operation and wholesale supply of TV channels; (iv) retail supply of audio visual content; (v) supply of advertising airtime on TV channels; (vi) supply of consumer products; (vii) licensing of music rights; (viii) licensing of publication rights; and (viii) interactive media.

With respect to overlap between the activities of the Parties in production and supply of films to third-party distributors and exhibitors for theatrical release in India, the Commission observed that the films can be sub-segmented based on language. Accordingly, the Commission assessed overlap in this business segment separately for English films, Bollywood films and Regional films.

On the aspect of overlap in the business of licensing of audio-visual contents in India, the Commission noted that it can be sub-segmented on the basis of genre, namely, business for the licensing of film-content rights, business for the licensing of sports-content rights and business for the licensing of 'non-film and non-sports' content.

Another business segment that the Commission assessed in detail was operation and wholesale supply of TV channels. The Commission noted that while TWDC is active in the business of operation and wholesale supply of TV channels in India through UTV. The other party 21CF is active through Star channels. Thus, the activities of the Parties overlap in the business of operation and wholesale supply of TV channels. However, given that the wholesale supply of TV channels can be sub-segmented such as, film, kids, Hindi general entertainment channels ('GEC'), English GEC, and infotainment and lifestyle channels, competition assessment was carried out for the above said sub-segments based on the market share figures provided by TWDC based on viewership data.

With respect to the above said overlapping business activities of the Parties, the Commission noted that either there are competitors of the Parties, which would continue to provide competitive constraint to the Parties. Further, for some business segment and its sub-segments, incremental market share of the Parties, post-combination is not likely to raise any AAEC concern in India.

As already stated, both the Parties are large mass media corporation and are active across the value chain in the media and entertainment business. Accordingly, following vertically related markets, *inter alia*, were identified for competition analysis:

- i. Upstream segment of licensing of audio-visual content rights and downstream segment of (a) wholesale supply of TV channels, and (b) retail supply of audio-visual content;
- ii. Upstream segment of advertising on TV channels and downstream segment of sale of advertising airtime on TV channels by over-the-top (OTT);
- iii. Upstream segment of licensing of music and downstream segment of sub-licensing of music; and
- iv. Upstream segment of operation and wholesale supply of TV channels and downstream

segment of retail supply of audio-visual content through DTH.

The Commission noted that each of the above-mentioned markets is characterized by presence of other competitors and therefore, post-combination, TWDC would not have the ability to foreclose the market for other competitors. The Commission approved the combination under sub-section (1) of Section 31 of the Act.

### CCI approves the combination between Linde Aktiengesellschaft and Praxair, Inc. subject to modifications

Linde Aktiengesellschaft ('Linde') and Praxair, Inc. ('Praxair') (collectively Parties) filed a notice for their proposed combination under a newly incorporated holding company Linde Plc, which will be owned by the Parties' current shareholders.

Linde, headquartered in Munich, Germany, and Praxair, headquartered in Connecticut, USA, are international gas companies primarily active in industrial gases, medical gases and specialty gases.

The Commission observed that Linde and Praxair are involved in sale of various: (i) industrial gases; (ii) medical gases; (iii) specialty gases; and (iv) helium in India. It was observed that from the demand side, each of industrial gases, medical gases and specialty gases are not substitutable with any other gases as each gas has different chemical and physical properties and that they constitute separate relevant product markets. Further, depending on the needs of the customers, gases can be supplied by gas companies in liquid and gaseous form and through different supply modes *viz.*, tonnage, bulk or cylinder. Since, the category of customers served by various modes of supply are different from each other, each gas market is further classified by the mode of supply. Thus, considering the specificities of helium value chain, the Commission observed that it is important to assess the overall helium market encompassing various levels of operations *viz.*, access, wholesale and retail.

The Commission observed that the industrial and medical gas markets in India primarily comprises of three major players *viz.* Linde, Praxair and Inox AP. Linde and Praxair are market leaders in the market for tonnage gases *viz.*, oxygen, nitrogen and argon in India and market for various bulk industrial and medical gases in South and East Regions in India. It was further observed that all competitors of the Parties in relevant markets are significantly weaker and that the Proposed Combination has the impact of further widening the gap between the market leader and other competitors and the merger would lead to elimination of most significant competitive constraints. The Commission observed that the Proposed Combination is likely to cause AAEC in market for tonnage supplies of oxygen, nitrogen and argon in India and markets for bulk and cylinder supplies of various gases in South and East Regions in India and market for bulk supply of argon in India.

As regards Helium, the Commission examined the Helium market primarily in terms of access to sources of helium (worldwide and specifically in Qatar considering almost entire helium sold in India in retail is sourced from Qatar) and in terms of helium retail market in India. The Commission observed that helium capacity access is concentrated primarily in the hands of 4 industrial gas companies *viz.*, Linde (15-20%), Praxair (15-20%), Air Products (20- 25%) and Air Liquide (20-25%) which account for around (80-85%) of the worldwide capacity of helium and that post the Proposed Combination, the same capacity would be shared amongst three companies with the combined entity emerging as a clear market leader with significant market share of around 35-40%. In this regard, the Parties submitted details of divestitures of helium sources that would be required by other jurisdictions and considering the same, the Commission formed an opinion that the Proposed Combination is not likely to cause AAEC in helium market.

The Commission did not find any concerns in the markets for various specialty gases. The Commission was of the opinion that the competition concerns emanating from the Proposed Combination in various industrial and medical gas markets in India can be eliminated by proposing a suitable modification. The Commission decided that modifications should be such that they allow for establishment of independent competitor(s) in the relevant market(s) or strengthen the existing competitor(s) for each of the aforementioned relevant markets and such competitors must have an integrated presence in each of

the relevant markets encompassing tonnage, bulk and cylinder businesses.

Accordingly, the Commission decided that the Parties be required to divest the following businesses in the East Region and South Region respectively:

- i. Praxair's Tata 1 and Tata 2 and 3 on-site plants located in Jamshedpur and Praxair's cylinder filling stations located in Kolkata and Asansol; and
- ii. Linde's stake in Belloxy (a joint venture of Linde and Inox AP), Linde's JSW -2 on-site plant located in Bellary and cylinder filling stations located in Chennai and Hyderabad.

The modification aimed to eliminate overlaps in various gases markets to a considerable extent. Besides, the acquirer of the aforesaid businesses is likely to have the required presence in terms of revenues which allows it to present requisite competitive constraints to the combined entity.

The Parties submitted unconditional acceptance of the proposal for modification. Pursuant to the same, the Commission approved the Proposed Combination under Section 31(7) of the Act, subject to the Parties carrying out the modification to the Proposed Combination

## JUDICIAL PRONOUNCEMENTS

### No separate proceedings in respect of key persons of the company

The Division Bench of Delhi High Court *vide* judgment dated 12.09.2018 in LPA 160/2018 confirmed the judgment of the Single Judge in *Pran Mehra v. CCI*.

Cadila Healthcare Ltd. ('Cadila') filed application seeking review/ recall of direction under Section 26(1) of the Act, which was rejected by the Commission. Aggrieved by the rejection, Cadila filed a writ petition before Delhi High Court alleging that CCI's direction under Section 26(1) was unsustainable. The Ld. Single Judge of Delhi High Court *vide* judgment dated 09.03.2018 dismissed the said writ petition and upheld the orders passed by the Commission. Thereafter, LPA was preferred by Cadila before the Division Bench of the Delhi High Court alleging *inter alia* that without first recording the complicity of a company, its Directors or employees/officials cannot be issued notice for contravention of the Act. The Division Bench, however, confirmed the reasoning given in *Pran Mehra* as being correct and rejected Cadila's grievance with respect to issuance of notice to its Directors.

#### Cartelisation in cement industry upheld by NCLAT

Hon'ble National Company Law Appellate Tribunal ('NCLAT') *vide* its order dated 25.07.2018 dismissed the appeals filed by the Cement Manufacturers' Association ('CMA') and the cement companies and upheld the order passed by the Commission.

CCI, upon information filed by the Builders Association of India, initially *vide* order dated 20.06.2012, held CMA and 11 cement manufacturing companies to be in contravention of the provisions of the Act. Accordingly, cease and desist order was passed and penalties were imposed upon them. The matter was then appealed before the *erstwhile* Competition Appellate Tribunal ('COMPAT') whereby it was remitted to CCI *vide* order dated 11.12.2015. After remand, CCI heard the parties again and *vide* order dated 31.08.2016 held that the CMA and the 11 cement companies contravened the provisions of Section 3(1) read with Section 3(3) (a) and 3(3)(b) of the Act.

Aggrieved by the same, appeals were preferred before the NCLAT by the CMA and the cement companies. NCLAT found that the cement companies, using the platform of CMA, met at regular intervals and discussed pricing and sensitive information relating to production, capacity, dispatch *etc.* with each other. Thus, NCLAT held that there was meeting of minds between the cement companies with regard to fixation of sale price of cement and for regulating its supply and production. Also, from the price charts placed on record by the cement companies, active price parallelism was evident. Further, it was held that the test to be adopted for proving a cartel under competition law in India as well as globally was one of 'balance of probabilities' as distinguished from 'beyond reasonable doubt' as envisaged under criminal law. The cement companies have now preferred appeals against the order of NCLAT before the Hon'ble Supreme Court.

## Making Market Work in the Healthcare and Pharmaceutical Sector

The Government of India has announced the “Ayushman Bharat Scheme” on September 25<sup>th</sup>, 2018 which is an attempt to move from sectoral and segmented approach of health service delivery to a comprehensive need-based health care service. Ayushman Bharat comprises two inter-related components - creation of 1,50,000 Health and Wellness Centres which will bring health care closer to homes of the people and the Pradhan Mantri Jan Arogya Yojana (PM-JAY) which provides health protection cover to poor and vulnerable families. The scheme is comprehensive and is termed as the world’s largest government funded healthcare scheme.

However, despite the scheme, a large portion of the population will continue to depend on markets for their healthcare needs. Hence, making markets work well in the critical sector of healthcare assumes importance. The Commission, while adjudicating matters in the pharmaceutical and healthcare sector, has observed the distinctive features of the pharmaceutical/healthcare sector such as ‘information asymmetry’ and ‘supplier-induced demand’ significantly circumscribes consumer choice, a condition necessary for well-functioning markets. In the absence of agency with the consumer, various industry practices flourish which have the effect of choking competition and are detrimental to consumer interest.

As the antitrust regulator of the country, the Commission felt the need for focused deliberations on these issues, which have serious implications for markets and competition in this sector of critical importance. Accordingly, a Technical Workshop on “Competition Issues in the Healthcare and Pharmaceutical Sector” was organised on August 28-29, 2018, with representatives of all stakeholder groups, including the

pharmaceutical industry, healthcare service providers, civil society organisations, regulators, healthcare think tanks etc.

### Glimpses of the Technical Workshop on “Competition Issues in the Healthcare and Pharmaceutical Sector” organised by CCI on August 28-29, 2018 at New Delhi

The key issues that emerged from the deliberations and the recommendations for policy/regulatory reform suggested by the workshop participants included the following:

**High drug prices:** A major factor that contributes to high drug prices in India is the unreasonably high trade margins. Reportedly, the two main reasons for the prevalence of high trade margins are: high margins offered by drug manufacturers to the traders for pushing their drugs as against their competitors’ products into the market and to the customers and also the self-regulatory role played by trade associations. The association of traders (stockists/chemists/druggists) control and restrict the entire drug distribution system, which often have the effect of muting price competition between traders. Besides the margin issue, the other factor that affects drug prices is the anomalies in the price-control framework. The pharmaceutical companies are able to circumvent the price ceiling fixed under DPCO 2013 by producing different dosages of the same formulation, which are out of the ambit of price regulation. Efficient and wider public procurement of essential drugs through competitive bidding process can supplant sub-optimal regulatory instruments such as price control and allow for access to essential medicines at lower prices, thereby having a significantly positive impact on overall public health. The model adopted by Tamil Nadu Medical Services Corporation (TNMSC) can be emulated by other states in tackling the problem of drug distribution and high trade margins. Further,

the promotion of e-pharmacy, with appropriate regulatory safeguards, can bring in transparency and spur price competition among platforms and among retailers, as has been witnessed in other product segments.

**Brand generics- limiting competition:** Worldwide, low-cost generic drugs are seen as the key competitive force against the patent-expired brand name drugs marketed at monopoly prices. However, the pharmaceutical market in India is unique and dominated by “branded” generics, which enjoy a price premium owing to their perceived quality assurance. The two narratives around this unique feature are:

- a) in case of branded generic drugs marketed by large MNCs, the quality of drugs is assured and the doctors act in the interest of patients when they prescribe expensive branded generics instead of the salt name and
- b) though there exists little or no difference in the quality and efficacy of branded and unbranded generics given the same regulatory rigour applied to both, doctors prescribe or pharmacists sell the expensive branded drugs in order to gain incentives and higher margins respectively.

As per the recommendations, policy response to this issue should include reforms in the regulatory framework with a view to ensure consistent application of statutory quality control measures across states and better regulatory compliance for superior quality and efficacy of the drugs. Further, the practice of creating artificial product differentiation for exploitation of consumers may be addressed through a one-company-one drug-one brand name-one price policy.

### Vertical arrangements in healthcare services and lack of transparency:

The issues of information asymmetry and lack of agency do not allow consumers to make an informed choice of hospitals and also that of various services such as diagnostics, procedures etc. provided by the



hospitals. Hospitals often have exclusive arrangements with in-house pharmacies, diagnostic labs etc. Multiple services are also commonly provided in a bundle or a package. Such arrangements driven purely by efficiencies are reasonable but when guided by the private interests of the healthcare providers, they result in vitiating the market dynamics. Moreover, in most cases there is complete lack of transparency, which makes it difficult to understand the rationale of a particular prescription, procedure or pricing and to identify

or question any irrational care or profiteering. Given that a larger section of our population is out of the ambit of insurance, the bargaining power of these consumers vis-à-vis hospitals is nil. In this regard, issuing of periodic validated data by the hospitals relating to mortality rate, infection rate, cost of each procedure, etc. could help patients to make informed decisions instead of simply following the referral of the GP (General Practitioners). Further, regulatory requirements may be brought in to mandate the hospitals to allow consumers to

buy standardised products from the open market which are not required on an urgent basis or which do not involve any high degree of quality issue from medical procedure point of view. All accredited diagnostic labs should meet the same quality standards in terms of infrastructure, equipment, skilled manpower etc. for getting accreditation. This will ensure the same degree of reliability and accuracy of test results across labs and hospitals can in turn be mandated to accept and initiate treatment based on test reports of outside labs.



Glimpses of the Technical Workshop on “Competition Issues in the Healthcare and Pharmaceutical Sector” organised by CCI on August 28-29, 2018 at New Delhi

# KNOW YOUR COMPETITION LAW

## Proceedings against office bearers of a company

Section 48 of the Act contains provisions relating to contravention by companies. Section 48(1) provides that where a person committing contravention of the Act is a company, every person who, at the time when the contravention was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. However, such person shall not be liable to punishment if he proves that contravention was committed without his knowledge or that he had exercised all due diligence to prevent such contravention. Sub-section (2) of Section 48 provides that where it is proved that the contravention took place with the consent or connivance of or attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. 'Company' for the purpose of Section 48 means a body corporate and includes a firm or other association of individuals.

In *Pran Mehra v. CCI and Ors*<sup>19</sup>, the contention was that only after a finding is returned *vis-à-vis* contravention by the company, any process can be commenced against the petitioners, on the ground that they were key-persons engaged by the company. Reliance was placed on the Supreme Court's judgement in *Aneeta Handa v. Godfather Travels & Tours (P) Ltd.*<sup>20</sup> *Vide* order dated 26.02.2015, the Single Judge of the High Court of

Delhi held that there cannot be two separate proceedings in respect of the company and the key-persons as the scheme of the Act, does not contemplate such a procedure. The Court also observed that the procedure suggested by the petitioner is both inefficacious and inexpedient.

It was also noted by the Court that in the course of the proceedings *qua* a company, it would be open to the key-persons to contend that the contravention, if any, was not committed by them, and that, they had in any event employed due diligence to prevent the contravention. Such arguments can easily be advanced by key-persons without prejudice to the main issue, as to whether or not the company had contravened, in the first place, the provisions of the Act.

The Competition Appellate Tribunal ('COMPAT') *vide* its order dated 10.05.2016 in *Alkem Laboratories Ltd, v CCI and others*<sup>21</sup>, held that in the absence of a determination by the Commission that the company has committed contravention of any of the provisions of the Act or any rule, regulation etc., the deeming clause contained in Section 48(1) and 48(2) cannot be invoked for punishing the person in-charge of and responsible to the company for the conduct of its business. COMPAT observed that since the provision contained in Section 48(1) raises a presumption of guilt against every person, who, at the time of contravention of the provisions of the Act by the company, was in-charge of, and was responsible for the conduct of its business and imposes penalty upon him, the same deserves to be construed strictly. It further noted that the use of the

word 'committed' in the two sub-sections of Section 48 necessarily imply that before any person in-charge of and responsible to the company or director, manager etc. of the company can be proceeded against and punished by invoking the deeming provisions contained in Section 48(1) and/or (2), there must exist an affirmative finding by some competent authority that the company has contravened the provisions of the Act or any rule, regulation etc.

The same view was held by the COMPAT in other cases such as *Shib Sankar Nag v. CCI & Ors*<sup>22</sup> and *Bengal Chemists & Druggists Association v CCI & Ors*<sup>23</sup> and *CCI v. A.N. MohanaKurup*<sup>24</sup>.

However, the recent decision of the Division Bench of the Delhi High Court in *Cadila Healthcare Limited and Anr. v. Competition Commission of India and Ors*<sup>25</sup> has clarified the position of law. Cadila Healthcare Ltd. ('Cadila') filed an application for review/recall of the direction passed under Section 26(1) of the Act, which the Commission dismissed. It had also alleged that without first recording the complicity or otherwise of a company, its directors or employees/officials cannot be issued notice for contravention of the Act. The Division Bench *vide* its judgment dated 12.09.2018 held that the correct interpretation of law as given in *Pran Mehra* is confirmed and Cadila's allegation was rejected. Therefore, arguments raised by the parties that the Commission cannot initiate concurrent investigation proceedings against the company and its office bearers no longer holds water.

<sup>19</sup>WPs No 6258/2014, 6259/2014 & 6669/2014

<sup>20</sup>2012 5 SCC 661

<sup>21</sup>Appeal No. 09/2016

<sup>22</sup>Appeal No. 34/2014

<sup>23</sup>Appeal No. 37/2014

<sup>24</sup>Appeal No. 05/2016

<sup>25</sup>LPA No. 160/2018

## ENGAGING WITH THE WORLD

CCI officials participated in various workshops/seminars/meetings:



- i) Five officers attended Competition Summer School under EU-India Competition Cooperation Project during 2<sup>nd</sup>-13<sup>th</sup> July, 2018 in Bruges, Belgium.
- ii) Mr Manoj Pandey, Adviser (Law) participated in the 17<sup>th</sup> Session of Intergovernmental Group of Experts 2018 meeting during 11<sup>th</sup>-13<sup>th</sup> July, 2018 in Geneva, Switzerland.



- iii) Ms. Smita Jhingran, Secretary, participated in the 2018 China Competition Policy Forum during 31<sup>st</sup> July -1<sup>st</sup> August, 2018 in Beijing, China.

- iv) One officer participated in the OECD-KPC Competition Law Workshop on Market Definition during 5<sup>th</sup>-7<sup>th</sup> September, 2018 in Kuala Lumpur, Malaysia.



- v) Two day training on Cartel was organized in collaboration with US Department of Justice during 6<sup>th</sup>-7<sup>th</sup> September, 2018 at the CCI.
- vi) Mr. Rakesh Bhanot, Advisor (FA) participated in the 10<sup>th</sup> Seoul International Competition Forum organised by Korea Fair Trade Commission on 13<sup>th</sup> September, 2018 in Seoul, Korea.
- vii) One officer is on secondment with the US Federal Trade Commission from 17<sup>th</sup> September to 26<sup>th</sup> October, 2018 in Washington DC, USA.
- viii) Two officers participated in the 2018 Regional Antitrust Seminar on E-Commerce and Competition organised by the Taiwan Fair Trade Commission during 26<sup>th</sup>-27<sup>th</sup> September, 2018 in Bali, Indonesia.
- ix) Mr. Nitin Gupta, Director General along with an officer participated in the Russian Competition Week during 25<sup>th</sup>-27<sup>th</sup> September, 2018 in Sochi, Russia.

## FORTHCOMING EVENTS

- i) An officer from CCI would deliver lecture on competition law during a training program on 18<sup>th</sup> October, 2018 at Mahatma Gandhi State Institute of Public Administration (MGSIPA), Chandigarh.
- ii) An officer from CCI would deliver lecture on competition law during a training program for senior IA&AS officers on 25<sup>th</sup> October, 2018 at National Academy of Audit and Accounts (NAAA), Shimla.
- iii) An officer from CCI officer would deliver lecture on competition law during a training program for Indian Telecom Service (ITS) Officers on 25<sup>th</sup> October, 2018 at National Telecommunications Institute for Policy Research, Innovation & Training (NTIPRIT), Ghaziabad.
- iv) CCI is to organise 2<sup>nd</sup> Road Show on Competition Law on 5<sup>th</sup> November, 2018 at New Delhi. The Road Show will be inaugurated by Shri Arun Jaitley, Hon'ble Union Minister of Finance and Corporate Affairs. The 1<sup>st</sup> Road Show on Competition Law was organized on 15<sup>th</sup> October, 2018 at Mumbai.

## DEVELOPMENTS IN OTHER JURISDICTIONS

### Korea Fair Trade Commission (“KFTC”) sanctions waterworks, damweir repair & maintenance company for bid rigging (9th July, 2018)

As per the facts of the case, there were uncovered bid riggings by seven companies in the waterworks, damweir repair and maintenance service bid placed by Korea Water Resources Corporation worth 309.5 billion won. The Korea Resources Engineering being an exclusive company after the liquidation of subsidiary of Korea Water Resources Corporation was awarded with three regions either as a sole-winner or a representative of co-contractors. For the rest four regions, Korea Resources Engineering participated as a member of co-contractors so as to maintain the quantity of service. Other six companies tried to share the benefits with Korea Resources Engineering by forming within themselves a group of co-contractors and these seven companies attempted to participate as cover bidders, for the sake of appearance, thereby making it look like a normal competition on the outside. These seven companies including Korea Resources Engineering agreed to pre-determine the winner and participate as false bidders in the bids placed on five separate occasions from 2011 to 2016 by Korea Water Resources Corporation. The false bidders carried out the agreement by submitting bids that were higher in amount than that of an agreed-upon winner and they also monitored each other’s execution of the agreement. The bidding institution tried to foster competition by restricting the number of regions one company could be awarded, however, the seven companies undermined competition through collusion where they shared benefits and participated as cover bidders. Through forming a cartel with six other companies, Korea Resources Engineering, which was exclusively obtaining orders up until 2010 since its privatization in 2001, evaded the efforts by the bidding institution to promote competition by changing the bidding system in 2011. Hence, finding them liable for indulging into the activities of bid rigging, the KFTC imposed penalty

of 20.4 billion won in surcharges and referred five companies and three individuals to the prosecution.

#### **European Commission fines Google €4.34 billion for illegal practices regarding Android mobile devices to strengthen dominance of Google’s search engine (18<sup>th</sup> July 2018)**

The three main issues which required the Commission to investigate against Google were:

- i) The licensing Google’s app store (the Play Store), wherein it imposed a condition on manufacturers that they must pre-install the Google Search app and browser app (Chrome);
- ii) It has made payments to large manufacturers and mobile network operators on condition that they exclusively pre-installed the Google Search app on their devices; and
- iii) It has prevented manufacturers wishing to pre-install Google apps from selling even a single smart mobile device running on alternative versions of Android that were not approved by Google (so-called “Android forks”).

These acts of Google had enabled it to use Android as a vehicle to cement the dominance of its search engine. Google was acting arbitrarily while entering into a contract with device manufacturers imposing a number of restrictions on those who were wishing to obtain Google’s proprietary Android apps and services.

The Commission also investigated to check whether the Apple and Android device users could constrain market power of Google in granting licence of Android to device manufacturers in order to curb competition affects. The Commission found that they were not sufficient in constraining Google for a number of reasons:

- i) end user purchasing decisions are influenced by a variety of factors such as hardware features or device brand which are independent from the mobile operating system;

- ii) Prices of Apple devices are much higher than Android devices and therefore, it may not be accessible to a large part of the Android device user base;
- iii) Android device users face switching costs when switching to Apple devices, such as losing their apps, data and contacts.
- iv) Further, if end users were to switch from Android to Apple devices, this would have very less effect on Google’s core business because Google Search is set as the default search engine on Apple devices and therefore they are likely to continue using Google Search for their searches

After considering all the facts, the Commission concluded that Google is dominant in the markets for general internet search services, licensable smart mobile operating systems and app stores for the Android mobile operating system. Furthermore, Google’s practices also harmed competition and further innovation in the wider mobile space, beyond just internet search. Additionally, Google prevented other mobile browsers from competing effectively with the pre-installed Google Chrome browser. Hence, the European Commission fined Google €4.34 billion for breaching EU Antitrust Rules.

#### **The Competition Commission of South Africa imposed penalty of R30M on Fertilizer producer for cartel conduct (7<sup>th</sup> September, 2018)**

The Commission approved the decision of the Competition Tribunal to confirm as an order a settlement agreement reached with Omnia Fertilizer Limited. Omnia has agreed to pay R30M administrative fine for contravening the Competition Act. The agreement follows an admission by the fertiliser producer, Omnia, that between 1998 and 2005, its Nitrochem division, fixed prices and allocated markets in the fertilizer market in contravention of the Competition Act.

The facts of the case are that in 2003

Nutri-Flo CC and Nutri-Fertilizer CC complained to the Commission that Sasol Chemical Industries Limited's was involved in anti-competitive conduct. They also made allegations of collusive conduct against Omnia and its Nitrochem business. Subsequently, the Competition Tribunal conducted an investigation which disclosed that there was an arrangement to make Sasol the exclusive supplier of limestone ammonia nitrate (LAN) to the wholesale market. Further, it was also revealed that there were arrangements to fix the prices of LAN and other fertilizers as well as allocating customers, suppliers and volumes. These collusive arrangements were facilitated through meeting platforms such as Nitrogen Balance Committee, Import Planning Committee and the Export Club. In May 2005 Sasol, Yara South Africa (PTY) Limited and Omnia, were charged with market allocation and price fixing. In May 2009, Sasol paid an administrative penalty of about R251M after it signed a settlement agreement with the Commission in which it admitted to have contravened the Competition Act.

**France Competition Authority fines medical waste company for high prices (21<sup>st</sup> September, 2018)**

France's Competition Authority has fined a medical waste treatment company Sanicorse, €199,000 for abusing its dominant position in the Corsican market by raising prices

"abruptly, durably and significantly". The enforcer opined that Sanicorse abused its position as the only company offering specialist infectious medical waste disposal for hospitals and clinics in the French overseas territory between 2011 and 2015, and tried to deter new competitors from entering the market and also the average price was approximately increased by 88% by the company which they were charging to its customers. The competition authority said that the combined result was an "unjustified additional cost for healthcare establishments", as Corsica's hospitals and clinics had "no other choice than to agree to the conditions imposed by Sanicorse". While imposing fine on the Sanicorse, the authority was of the view that the impact had been harmful because some hospitals on the island were facing serious financial difficulty.

**USFTC passes final order requiring Grifols S.A. to divest assets as condition of acquiring Biotest US Corporation (18<sup>th</sup> September, 2018)**

United States Federal Trade Commission ("USFTC") passed a final order that settles charges that Grifols S.A.'s acquisition of Biotest US Corporation is anticompetitive and violates federal antitrust law. Grifols is a global healthcare company based in Spain and Biotest US is a healthcare company based in Florida. According to the complaint filed, the acquisition as originally proposed would have

given Grifols a monopoly, in the markets for collection of human blood plasma in Lincoln, Nebraska, Augusta, Georgia, and Youngstown, Ohio because in December 2017, when Grifols announced its proposed acquisition of Biotest US, Biotest US owned 41% of ADMA Biologics, Inc., which has the largest share of HBIG sales in the U.S. The complaint also alleged that the acquisition would have harmed the U.S. market for hepatitis B Immune Globulin (HBIG), a plasma-derived injectable medicine. Grifols supplies HBIG in the U.S. and Biotest US have transferred its ownership share to its parent company thus, Grifols is only acquiring Biotest US and neither its parent nor shares of ADMA.

US FTC while approving the merger, proposed the settlement in order to curb the anti-merger affects which required Grifols to divest its plasma collection centers in these three cities to KedPlasma, which is a subsidiary of Kedrion Biopharma Inc. which is a leading manufacturer of protein products and is the fifth-largest producer of plasma proteins worldwide.

The settlement also required Grifols to provide prior notice to the Commission if it sought to purchase any ADMA stock or re-purchase any of the divested plasma collection centers.

## CAPACITY BUILDING EVENTS

### Capacity Building Events during July-September 2018

- i) CCI organized lecture by Shri Sanjeev Sanyal, Principal Economic Adviser, Ministry of Finance on the topic 'Rethinking Economics for a New India' under the Distinguished Visitor Knowledge Sharing Series (DVKS) on 13<sup>th</sup> July, 2018.
- ii) CCI organized a short In-house Workshop on 'Analysis of Supreme Court Judgments in Competition Law Cases' for the professional officers of CCI on 16<sup>th</sup> July, 2018.
- iii) CCI organized a Peer-to-Peer session on the topic 'Basic Economics in Anti-trust Cases' by Sh. Saurabh, Deputy Director (Eco) and Sh. Ashutosh Kumar, Deputy Director (Eco) on 3<sup>rd</sup> August, 2018.
- iv) CCI organized a Peer-to-Peer session on the topic 'Overview of Federal Trade Commission (FTC)' by Ms. Julie Carlson, Economist, US-FTC on 31<sup>st</sup> August, 2018.
- v) CCI organized two day attachment programme for Indian Corporate Law Service (ICLS) Officer Trainees (8<sup>th</sup> Batch) during 24<sup>th</sup> -25<sup>th</sup> September 2018.



## ADVOCACY INITIATIVES



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

- i) Mr. Manish Mohan Govil, Adviser, delivered lecture on competition law at Administrative Training Institute, on 20<sup>th</sup> July, 2018 in West Bengal, Kolkata.
- ii) Mr. Gaurav Kumar, Director delivered lecture on competition law on 2<sup>nd</sup> and 3<sup>rd</sup> August, 2018 at GIPARD Goa.
- iii) Mr. Manish Mohan Govil, Adviser, delivered lecture on competition law at National Academy of Customs, Indirect Taxes & Narcotics on 14<sup>th</sup> August, 2018 in Faridabad, Haryana.
- iv) Mr. Sachin Goyal, Deputy Director delivered lecture on competition law during a workshop organised by Himachal Pradesh Institute of Public Administration (HIPA) on 18<sup>th</sup> September, 2018 in Shimla.
- v) Mr. Manish Mohan Govil, Adviser delivered lecture on competition law during an Orientation Program organised by Department of Public Enterprises on 18<sup>th</sup> September, 2018 at Mysuru.
- vi) Mr. Anand Vikas Mishra, Deputy Director made a presentation at GeM: Legal Framework event on 26<sup>th</sup> September, 2018 at CII, Lodhi Road, New Delhi.

### Advocacy Initiatives with Trade Associations and Institutions

- i) Ms. Payal Malik, Adviser delivered Guest of Honour address during the Inaugural Session at ASSOCHAM 2<sup>nd</sup> Global Summit on "Data Protection, Privacy & Security – Reforms, Challenges & Opportunities" on 27<sup>th</sup> July, 2018 at Bangalore.
- ii) Ms. Payal Malik, Adviser delivered Guest of Honour address during the Inaugural Session at ASSOCHAM 3<sup>rd</sup> Global Summit on "Data Protection, Privacy & Security – Reforms, Challenges & Opportunities" on 24<sup>th</sup> August, 2018 at Mumbai.
- iii) Secretary-CCI delivered Inaugural Speech at 'Mergers, Acquisitions and Restructuring Summit 2018' organized by Confederation of Indian Industry (CII) at Hotel St. Regis, Mumbai on 31<sup>st</sup> August, 2018. Mr Manish Mohan Govil, Adviser (Law) also attended the Summit

### Advocacy Initiatives with Universities/Institutes

Dr. Bidyadhar Majhi, Director delivered lecture on competition law at VIT School of Law on 4<sup>th</sup> July, 2018 in Chennai.

- i) Mr. Yogesh Kumar Dubey, Deputy Director delivered lecture on Competition Law and Related Issues on 6<sup>th</sup> July, 2018 at Institute for Social Economic Change, Bengaluru.
- ii) Mr. Gaurav Kumar, Director and Mr. Mukul Sharma, Deputy Director delivered lecture on competition law at Institute of Economic Growth on 11<sup>th</sup> July, 2018 in New Delhi.
- iii) Mr. Mukul Sharma, Deputy Director delivered lecture on competition law at Amity University on 30<sup>th</sup> July, 2018 in Gurugram.
- iv) Ms. Jyotsna Yadav, Deputy Director delivered lecture on competition law on 31<sup>st</sup> August, 2018 at Geeta Institute of Law, Panipat.
- v) Mr. P.K. Singh, Adviser was the judge for the finals and Mr. K.D. Singh, Joint Director was the judge for the semi-finals of the Moot Court Competition organised on 2<sup>nd</sup> September, 2018 by NIRMA University, Ahmedabad.

### Other Major Events

32 students interned during the months of July-September, 2018.


## HR CORNER

- i) In pursuance of the 6<sup>th</sup> round of direct recruitment in CCI, four officers, namely Sh. Rahul Ravindran, Director (Law), Ms. BulbuliRichong, Deputy Director (Law), Sh. Anshul Jain, Deputy Director (FA) and Sh. Vinayak, OM(CS) joined CCI during the above mentioned period.
  - ii) Three officers, namely, Sh. Raj Kumar Badde, Joint Director (FA), Sh. Sanjay Sood, PPS and Sh. N. Chandrasekaran, OM (CS) were permanently absorbed in the Commission.
  - iii) A vacancy advertisement was issued on 10.08.2018 to invite applications to fill up 16 posts of Professional Staff and 02 posts of Support Staff in DG's office on deputation basis. Another vacancy advertisement was issued on 14.09.2018 to invite applications to fill up the post of Secretary in CCI.
  - iv) Three officers namely Smt. Sibani Swain, Adviser (Eco.), Shri Gaurav Kumar, Director (Eco.) and Shri Madan Lal, OM (CS), were relieved on their own request/on completion of their tenure in the Commission.
2. "Proposed Forthcoming Events" for the quarter October - December, 2018:-  
Completion of selection process to fill up vacant posts in CCI and in DG's office.


## MISCELLANEOUS

### 1. Social Media Presence-


With an endeavour to increase the Commission's visibility among the stakeholders and public at large and to keep them acquainted with the latest updates regarding the activities of the Commission; the Commission made a foothold of its presence on social media platforms by flag-shiping its official pages on Facebook and LinkedIn in furtherance of its pre-existing page on Twitter. The official pages of the Commission can be accessed through the following links:

- i) Facebook: 

<https://www.facebook.com/Competition-Commission-of-India-529934074122118/>

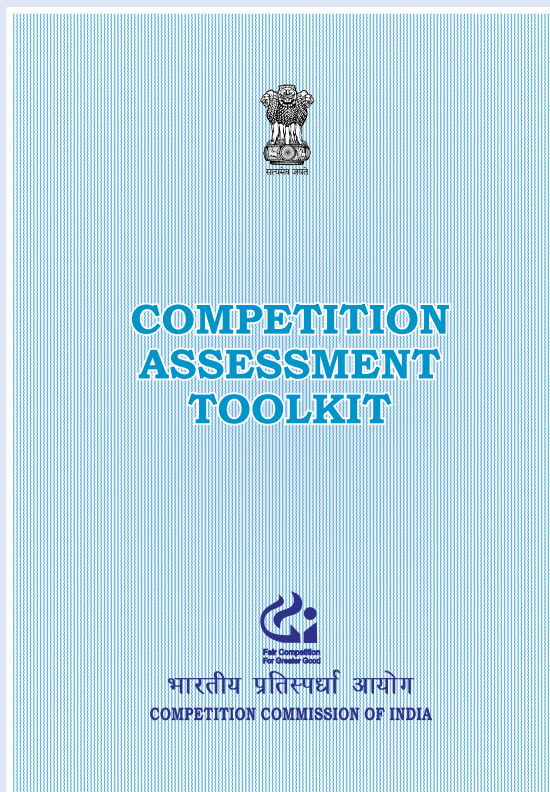
- ii) LinkedIn: 

<https://www.linkedin.com/company/competition-commission-of-india>

- i) Twitter: 

[https://twitter.com/cc\\_i\\_india?lang=en](https://twitter.com/cc_i_india?lang=en)

### 2. Competition Assessment (CA) Toolkit-



The objective of Competition Commission of India is to prevent anti-competitive practices that have an appreciable adverse effect on competition. Competition can also be inhibited by the certain legislations/

regulations governing the markets. The Commission has come up with a Competition Assessment Toolkit, which provides a roadmap for a comprehensive Competition Assessment of policies, legislations, rules and regulations in India. This toolkit provides a standardised and simplified expression of principles that can be used for identifying competition concerns cutting across all sectors.

The toolkit has been presented with the objective of sensitising policy makers towards competition concerns in legislations and promoting a competition culture by ways of non-enforcement mechanism. It is

envisaged that availability of this toolkit would motivate to introspect at the level of policy formulation and drive competition assessment in India. It would also serve as an advocacy tool for the CCI.



## CCI Parivar

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Please visit [www.cci.gov.in](http://www.cci.gov.in) for more information about the Commission.  
For any query/comment/suggestion, please write to [advocacy@cci.gov.in](mailto:advocacy@cci.gov.in)

Follow us on : [!\[\]\(6605b201d6f14d9b3bcb8ab5f274d107\_img.jpg\)](#) [!\[\]\(f4056bb2e5acf0a782fb9d812dad489d\_img.jpg\)](#) [!\[\]\(23e633620764e54910cf7e601ab387fc\_img.jpg\)](#)

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