



The Quarterly Newsletter of Competition Commission of India (CCI)

# Fair Play

Volume 38: July- September 2021

**IN FOCUS**  
Workshop on Competition  
Issues in the Pharmaceutical  
Sector in India



*Dr. Vinod K. Paul, Member, NITI Aayog, delivering the Keynote Address during the workshop on Competition Issues in the Pharmaceutical Sector in India, conducted through the virtual mode on 27.08.2021.*

## *In this Issue...*



**3**  
**From the Desk  
of the Chairperson**



**22**  
**Know your  
Competition Law**



**5**  
**In-Focus**



**24**  
**Engaging with  
the World**



**8**  
**Cartels**



**26**  
**Developments in  
Other Jurisdictions**



**8**  
**Abuse of  
Dominant Position**



**28**  
**Advocacy Initiatives**



**11**  
**Vertical Agreements**



**34**  
**Advocacy  
with States**



**13**  
**Mergers and  
Acquisitions**



**37**  
**Public Consultation with  
Stakeholders  
(Confidentiality Regime)**



**19**  
**Judicial  
Pronouncement**



**37**  
**Capacity Building  
Events**





**21**  
**Eco-Watch**



**39**  
**HR Corner**

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## FROM THE DESK OF THE CHAIRPERSON

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It gives me immense pleasure to share with you the developments in the area of competition law and policy that have taken place during the third quarter of 2021 through this 38<sup>th</sup> volume of Fair Play.

On 12.03.2021, the Prime Minister Shri Narendra Modi inaugurated Azadi Ka Amrit Mahotsav from Sabarmati Ashram, Ahmedabad. Azadi Ka Amrit Mahotsav is an initiative by the Government of India to celebrate and commemorate 75 years of progressive India and the glorious history of its people, culture, and achievements. The celebrations started 75 weeks before our 75th anniversary of Independence and will end on 15.08.2023. The Competition Commission of India (CCI) will actively contribute to this festival, which is being celebrated as a “people's movement”, by organising a series of programmes to engage with our stakeholders. The first programme in this series was the “Stakeholder Consultation on Review of Confidentiality Regime”, which was held on 02.09.2021.

CCI is conducting a market study in the pharmaceutical sector with a view to develop an in-depth understanding of factors that influence competition in the sector in India. As a part of this ongoing market study, a multi-stakeholder workshop on Competition Issues in the Pharmaceutical Sector in India was conducted on 27.08.2021, the details of which you can find in the “In-focus” article of this volume. The event, held virtually, was graced by the august presence of Dr. Vinod K. Paul, Member, NITI Aayog, and Dr. K. Srinath Reddy, President, Public Health Foundation of India. The workshop also featured three technical sessions that saw engaging discussions on competition issues in the pharmaceutical sector and the opportunities and challenges for e-pharmacies in India.



In July 2021, CCI signed a Memorandum on Cooperation with the Japan Fair Trade Commission (JFTC). This MoU will enable the establishment and promotion of closer and long-term cooperation between the two countries in the field of competition and promote and strengthen cooperation in competition law and policy through the exchange of information as well as through various capacity building initiatives in the areas of technical cooperation, experience sharing, and enforcement cooperation.

In this quarter, the Commission found Grasim Industries Limited to be in contravention of the provisions of Section 4 of the Competition Act, 2002, for abusing its dominant position by charging discriminatory prices as well as imposing supplementary obligations on spinners. The Commission also issued an order and imposed an appropriate penalty on Maruti Suzuki for restricting discounts by dealers, resulting in appreciable adverse effect on competition within India, which was found to be in contravention of the provisions of the Competition Act, 2002.

On the combinations front, CCI approved the acquisition of Ingram Micro Inc. together with its parent companies and subsidiaries by Imola Acquisition Corporation; the acquisition of stake in Adani Krishnapatnam Port Limited by Adani Ports and Special Economic Zones Limited; the acquisition of AvanaLogistek Limited, Transworld Feeders Private Limited, and Transworld Feeders FZCO by Unifeeder ISC FZCO; the acquisition of certain stakes by Think & Learn Private Limited (BYJU'S) in Aakash Educational Services Limited (AESL) followed by a merger of the two entities; and the acquisition of Goa plant of Zuari Agro Chemicals Limited by Paradeep Phosphates Limited.

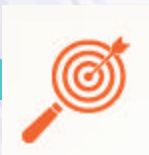
This quarter also saw a landmark judgement concerning the issue of nature of orders passed by the Commission under Section 26(1) of the Competition Act, 2002. The Hon'ble Karnataka High Court upheld the investigation ordered by the Commission against Amazon and Flipkart. The Court said that an order passed by the Commission for investigation under Section 26(1) of the Act is an administrative direction to one of its wings departmentally without entering upon any adjudicatory process.

In the time to come, we hope that the enforcement and advocacy efforts of the Commission will go a long way in fostering a culture of competition compliance cutting across sectors for the benefit of the consumers and economy as a whole. I hope the readers find this volume of *Fair Play* enriching and engaging.



**Ashok Kumar Gupta**





## Workshop on Competition Issues in the Pharmaceutical Sector in India



*Dr. Vinod K. Paul, Member, NITI Aayog, delivering the Keynote Address during the workshop on Competition Issues in the Pharmaceutical Sector in India, conducted through the virtual mode on 27.08.2021.*

The pharmaceutical sector plays a pivotal role in healthcare delivery. For improved access to affordable healthcare, it is imperative to have well-functioning markets in the sector, where firms can compete on the basis of merits, innovation can thrive, and consumers can benefit from competitive market outcomes. However, the atypical economics and distinctive features that characterise the sector are known to have attenuating effects on competitive forces and market discipline. In India, where out-of-pocket-expenditure (OOPE) on

health accounts for more than 60% of total health spending and pharmaceuticals account for the largest share of OOPE, healthy competition across the pharmaceutical supply chain to keep drug prices low assumes critical importance. With a view to develop an in-depth understanding of factors that influence competition in the pharmaceutical sector in India, the Competition Commission of India (CCI) is conducting a market study in the sector. As part of this ongoing market study, a multi-stakeholder workshop on

“Competition Issues in the Pharmaceutical Sector in India” was conducted on 27.08.2021. The event was held virtually and brought together all the relevant stakeholders, including pharmaceutical companies, stockists, chemists, trade association representatives, doctors, sector experts, lawyers, and policymakers, to deliberate on the focus areas of the market study from different perspectives.

Dr. Vinod K. Paul, Member, NITI Aayog, was the Keynote Speaker at the workshop. Referring to the critical role that drugs play in health delivery, Dr. Paul highlighted access to drugs without financial hardship and the assurance of quality of drugs as the two pillars for achieving the public policy goal of universal health coverage. He pointed to the critical role that CCI plays in addressing market distortions that can affect access. On the issue of drug prices and access to drugs, Dr. Paul discussed the regulatory instrument of trade margin rationalisation implemented by the government for 42 anti-cancer drugs in India on a pilot basis in 2019. Since trade margins are one of the focus areas of the ongoing CCI market study, Dr. Paul said that the NITI Aayog and CCI could join efforts in this area. He added that feedback received from stakeholders during the course of the market study on the issue of trade margins and margin





*Prof. K. Srinath Reddy, President, Public Health Foundation of India, delivering his address during the inaugural session of the workshop on Competition Issues in the Pharmaceutical Sector in India, conducted through the virtual mode on 27.08.2021.*

rationalisation would also be useful. He further sought suggestions from industry participants on ways for the effective expansion of Janaushadhi. To build the trust and confidence of prescribers and patients in unbranded generic drugs, he suggested the introduction of standard compliance marks for drugs in India.

The Inaugural Session of the Workshop was also addressed by Dr. K. Srinath Reddy, President, Public Health Foundation of India, which was the Knowledge Partner for the event. In his address, Dr. Reddy highlighted the core issues in the pharmaceutical sector from the consumers' perspective. Given the information asymmetry that characterises the sector, he emphasised the criticality of protecting consumers from market imperfections and the role CCI could play in this regard. Referring to industry practices such as camouflaged competition between brands, marked variation in the

pricing of the same drugs, etc., Dr. Reddy said that there was a great need to promote generic competition through quality-assured unbranded generics. He also highlighted the significance of

large-scale public procurement in bringing down drug costs.

Shri Ashok Kumar Gupta, Chairperson, Competition Commission of India, CCI in his address at the inaugural session, underlined the importance of well-functioning markets in the pharmaceutical sector. In the context of price competition in pharmaceuticals, Shri Gupta highlighted the role that generic drugs could play in creating competitive pressures required for bringing down prescription drug prices, thereby reducing healthcare costs and improving access. While discussing some of the findings of the market study, Shri Gupta mentioned that, despite the presence of several players in generic formulations, consumers in India ostensibly paid a premium for brands. On the issue of the prevalence of branded generics in the pharmaceutical market in India,



*Shri Ashok Kumar Gupta, Chairperson, CCI, with Dr. Sangeeta Verma and Shri Bhagwant Singh Bishnoi, Members, CCI, and Ms. Payal Malik, Adviser (Economics), during the workshop on Competition Issues in the Pharmaceutical Sector in India, conducted through the virtual mode on 27.08.2021*



he pointed to the key role that quality expectations and perceptions of variations in efficacy across drugs play in fuelling brand competition and diluting the price-reducing effect of generics in India. Besides the quality aspect, he alluded to the significant role that Janaushadhi and emerging private generic retail chains in the country could play in improving the uptake of generics. Speaking with reference to trade association practices in the distribution segment, such as the mandatory requirement of No Objection Certificates for the appointment of stockists and mandatory charges for Product Information Services, which have been found to be in contravention of the provisions of the Competition Act, 2002, Shri Gupta stated that Commission would complement its enforcement with proactive engagement with associations across India to create awareness and prevent violations of the Act.

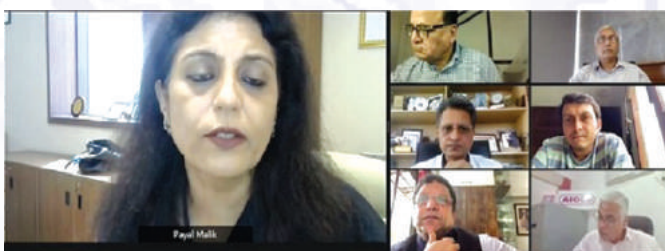
The workshop also featured three technical sessions. The first session, “Pharmaceutical Distribution: Trade Practices and



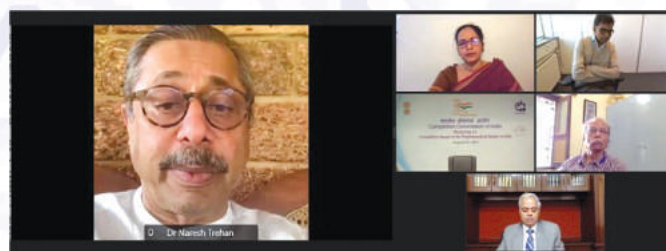
*Ms. Jyoti Jindgar Bhanot, Adviser (Economics), moderating Technical Session I on “Pharmaceutical Distribution: Trade Practices and Competition” during the workshop on Competition Issues in the Pharmaceutical Sector in India, conducted through the virtual mode on 27.08.2021.*

Competition”, was moderated by Ms. Jyoti Jindgar Bhanot, Adviser, CCI. The session saw engaging discussions on competition issues in respect of distribution of drugs, the roles and functions of trade associations, and the opportunities and challenges for e-pharmacies in India. The panel comprised representatives of national and state-level associations, e-pharmacies, stockist, and chemists. The second session, “Generic Competition in Indian Pharmaceuticals: Price and Non-Price Issues”, was moderated by Ms. Payal Malik, Adviser, CCI. The session brought together doctors, representatives of associations, pharmaceutical companies, and

sector experts to deliberate on the implications of the prevalence of branded generics in India for competition and drug prices. Since the pharmaceutical sector is a regulated sector, market conditions in the sector are influenced by the laws and regulations that govern all aspects of the life cycle of drugs. In the third session, “Competition in the Pharmaceutical Sector: Role of Regulation and Antitrust”, moderated by Ms. Rema Nagarajan, Journalist, Times of India, sector experts, antitrust practitioners, and regulators deliberated on the regulatory pathways for promoting competition in the Pharmaceutical sector.



*Ms. Payal Malik, Adviser (Economics), CCI, moderating Technical Session II on “Generic Competition in Indian Pharmaceuticals: Price and Non-Price Issues” during the workshop on Competition Issues in the Pharmaceutical Sector in India, conducted through the virtual mode on 27.08.2021.*



*Dr. Naresh Trehan, Chairman and Managing Director, Medanta Heart Institute, and other panellists engaging in a discussion during Technical Session III on “Competition in the Pharmaceutical Sector: Role of Regulation and Antitrust” during the workshop on Competition Issues in the Pharmaceutical Sector in India, conducted through the virtual mode on 27.08.2021.*





## CARTELS

### CCI issues order against three beer companies for indulging in cartelisation [Suo Motu Case No. 06 of 2017 (Order dated: 24.09.2021)]

The present matter was initiated by CCI on the basis of a lesser penalty application received under the provisions of Section 46 of the Act from Crown Beers India Private Limited ('Crown Beers') and SABMiller India Limited ('SABMiller'), both ultimately held by Anheuser Busch InBev SA/NV ('Ab InBev'), for alleged cartelisation in relation to the production, marketing, distribution, and sale of beer in India.

CCI passed an order dated 31.10.2017 under Section 26(1) of the Act, forming a *prima facie* view of contravention of the provisions of Section 3 of the Act by four beer companies, namely, United Breweries Limited ('UBL'), Crown Beers, SABMiller, and Carlsberg India Private Limited ('CIPL'), as well as the association All India Brewers' Association ('AIBA'), and hence, referred the matter to the DG for investigation. During investigation, the DG conducted

search and seizure operations on the premises of the parties, pursuant to which UBL and CIPL also approached CCI by filing lesser penalty applications.

The DG, on the basis of evidence of regular communications between the parties collected during search and seizure operations or submitted by the parties themselves as part of their lesser penalty applications, found contravention of the provisions of Section 3(3)(a), 3(3)(b), and 3(3)(c) read with Section 3(1) of the Act by UBL, SABMiller, CIPL, and AIBA in various States and Union Territories ('UTs').

On 24.09.2021, CCI, after taking cognizance of the evidence collected by the DG, and on the basis of the disclosures made in the lesser penalty applications, concluded that the three beer companies indulged in cartelisation in the sale and supply of beer in

various States and UTs in India, including through the platform of AIBA, which was also found to be actively involved in facilitating such cartelisation. The period of cartel was held to be from 2009 to at least 10.10.2018, with CIPL joining in from 2012 and AIBA serving as a platform for facilitating such cartelisation since 2013. Further, several individuals of the four parties were also held by CCI to be liable in terms of the provisions of Section 48 of the Act for the anti-competitive conduct of their respective companies/associations.

Following a reduction in penalty under the provisions of Section 46 of the Act of 100% to AB InBev and its individuals, 40% to UBL and its individuals, and 20% to CIPL and its individuals, CCI directed UBL and CIPL to pay penalties of approximately INR 750 crores and INR 120 crores respectively, besides passing a cease-and-desist order.



## ABUSE OF DOMINANT POSITION

### CCI finds no contravention in the Case related to the alleged abuse of dominance by Quality Council of India (Case No. 25 of 2020)

Shri Prem Prakash filed an Information before Commission alleging, *inter alia*, that any lab

seeking accreditation from the National Accreditation Board for Testing and Calibration Laboratory

(NABL) has to undertake compulsory participation in the Proficiency Testing (PT) programme



for the calibration of equipment/ machines from NABL-accredited calibration labs only. Further, the PT programme charges excessive fees, which amounts to a contravention of provisions of Section 4 of the Act. The NABL is the constituent board of the Quality Council of India (QCI).

On the basis of the response/ clarification provided by QCI, the Commission noted that if any laboratory wishes to avail of accreditation, it has the option to participate in the PT programme either with an NABL- accredited PT-provider or any other body providing such accreditation under

the International Laboratory Accreditation Cooperation (ILAC) arrangement.

With respect to calibration requirements, Commission noted that NABL under QCI has not made it compulsory for equipment/ machines to be calibrated only from NABL-accredited laboratories; further, it recognises calibration of equipment and reference standards from other accreditation bodies covered by the ILAC arrangement. Based on the above, it emerged that laboratories have the option to choose from accreditation bodies to get their equipment/machines calibrated.

In respect of allegations of excessive pricing of the PT programme, Commission found that NABL does not conduct the PT programme anymore and does not play any role in determining the fee charged by service providers conducting such a programme.

Commission, therefore, concluded that no *prima facie* case of contravention of provisions of Section 4 of the Act can be stated to have arisen on the part of QCI, and the information filed was closed *vide* order 05.07.2021, under Section 26(2) of the Act.

### **CCI finds no contravention in the case related to the non-supply of KRIBHCO Fertilisers (Case No. 12 of 2020)**

The Information was filed by Vardaan Agriculturist Development Cooperative Society Limited against the Deputy Commissioner and Deputy Registrar (Cooperative), Saharanpur Division, and Assistant Commissioner and Assistant Registrar (Cooperative), Muzaffarnagar, alleging non-supply of KRIBHCO fertilisers to the Informant at the behest of officials of the Registrar (Cooperative), Uttar Pradesh.

The Commission noted that the Informant and KRIBHCO were in a distributor manufacturer relationship, but the non-supply of

agri-inputs emanated from the state machinery, i.e., officials of the Registrar Cooperative, Uttar Pradesh. Considering the nature of the information and the allegations, the Commission made a reference under Section 21A of the Act to the Joint Secretary (Cooperative) and Central Registrar, Department of Agriculture, Cooperation and Farmers Welfare, Ministry of Agriculture, Government of India, to seek its opinion before proceeding with the matter. The Commission observed that the State Government had taken a decision affecting the Informant as part of its policy in the spirit of cooperative

movement to strengthen Primary Agriculture Credit Cooperative Societies (PACCS) centres at the grassroots level and make available agricultural inputs, including fertilisers of the cooperative sector, to farmers at reasonable/subsidised prices.

Thus, in the Commission's view, the restrictions, if any, were administrative directions resulting from the implementation of a policy decision, which did not warrant an investigation under the provisions of the Act, and the matter was directed to be closed under Section 26(2) of the Act.

### **CCI directs Grasim to cease, desist from discriminatory conduct (Case Nos. 51, 54 & 56 of 2017)**

CCI has found Grasim Industries Limited (GIL) to be in contravention of the provisions of Section 4 of the Competition Act, 2002, for abuse of

dominant position in the "market for supply of Viscose Staple Fibre (VSF) to spinners in India". GIL was found to be charging discriminatory

prices as well as imposing supplementary obligations on spinners. CCI noted that GIL has been discriminating by withdrawing



credit notes/not providing discounts to the spinner, thereby distorting competition in the downstream domestic VSF yarn market. Such conducts were found to be in violation of the provisions of Sections 4(2)(a)(ii), 4(2)(c) and 4(2)(d) read with 4(1) of the Competition Act, 2002 ('Act'). CCI also observed that, in the relevant market, GIL could not show that the market dynamics in VSF have changed during the period 2017–18 vis-à-vis the earlier period, 2012–2017, examined in Case No. 62 of 2016.

With regard to dominance, CCI observed that the consistent market share of GIL indicated that imports did not act as a significant, economically viable alternative source for spinners, much less as a countervailing force. GIL is enjoying an excess production capacity of around 25%, thus making it difficult for a new entrant to offer any sort of price competition to GIL in the relevant market. Thus, CCI held that GIL was in a position of dominance in the relevant market of supply of VSF to spinners in India.

Considering that a penalty of Rs. 301.61 crore had already been imposed on GIL in Case No. 62 of 2016 with respect to substantially similar conduct, and the period of contravention in the previous case partly overlapped with the present case, the Commission refrained from imposing a monetary penalty and directed GIL to cease and desist from indulging in discriminatory practices found to be in contravention of the provisions of the Act.

### **CCI issues order and imposes penalty on Maruti Suzuki for restricting discounts by dealers (Suo Motu Case No. 01 of 2019)**

CCI passed a final order against Maruti Suzuki India Limited (MSIL) for indulging in the anti-competitive conduct of Resale Price Maintenance (RPM) in the passenger vehicle segment by way of implementing Discount Control Policy vis-à-vis dealers, in contravention of the provisions of Section 3(4)(e) read with Section 3(1) of the Act.

CCI found that MSIL had an agreement with its dealers, whereby dealers were restrained from offering discounts to customers beyond those prescribed by MSIL. In other words, MSIL had a Discount Control Policy in place for its dealers, whereby dealers were discouraged from providing extra discounts, freebies, etc. to consumers beyond those permitted by MSIL. If a dealer wanted to offer additional discounts, the prior approval of MSIL was mandatory. Any dealer found to be violating the

Discount Control Policy was threatened with a penalty, not only upon the dealership but also upon its individual persons, including the Direct Sales Executives, Regional Manager, Showroom Manager, Team Leader, etc.

To enforce the Discount Control Policy, MSIL appointed Mystery Shopping Agencies (MSAs), who used to pose as customers to MSIL dealerships to find out if any additional discounts were being offered to customers. If found offered, the MSA would report to MSIL management with proof (audio/video recording) who, in turn, would send an e-mail to the errant dealership with a "Mystery Shopping Audit Report", confronting them with the additional discount offered and asking for clarification. If a clarification was not offered by the dealership to the satisfaction of MSIL, a penalty would be imposed on the dealership and its

employees, accompanied, in some cases, by the threat of stopping supplies. MSIL would also dictate to the dealership where the penalty had to be deposited, and the utilisation of the penalty amount was also done as per the *diktats* of MSIL.

Thus, CCI found that MSIL not only imposed the Discount Control Policy on its dealers but also monitored and enforced the same by monitoring dealers through MSAs, imposing penalties on them, and threatening strict action such as stopping supply, collecting and recovering penalty, and utilising the same. Hence, such conduct of MSIL, which resulted in appreciable adverse effect on competition within India, was found by CCI to be in contravention of the provisions of the Act, and accordingly, CCI imposed a penalty of Rs. 200 crores on MSIL, in addition to passing a cease-and-desist order.



## Odisha State Civil Supplies Corporation found to be abusing its dominant position (Case No. 16 of 2019)

The Information in the case was filed by M/s. Maa Metakani Rice Industries ('Informant') against the State of Odisha and Odisha State Civil Supplies Corporation Ltd. (OSCSC), (hereinafter collectively referred to as 'Opposite Parties/' Ops') alleging, *inter alia*, that OSCSC was directly /indirectly imposing unfair and discriminatory conditions in the purchase of services from the Informant and acted in contravention of the provisions of Sections 4 of the Act.

The Commission directed an investigation into the matter on 01.11.2019. During the investigation, the DG examined the market for the procurement of custom milling services of rice in the state of Odisha and found that OSCSC was dominant in the said relevant market. Consequently, the DG found OSCSC to have abused its dominant position in the relevant market, *inter alia*, by abruptly modifying the eligibility criteria in Rabi season of KMS 2017–18, delaying/denying payment of the

differential custody and maintenance charges for KMS 2017–18 which were due to the millers, and deliberately delaying the settlement of millers' dues.

After examining the investigation report and the submission of the Parties in the matter, the Commission found OSCSC to be dominant in the relevant market. As far as withholding the milling and ancillary charges of the Informant by OSCSC was concerned, the Commission noted that, in the facts and circumstances of the case, the issue relating to the tenability of the insurance claim and the withholding of the amounts was *sub judice* in another forum, and thus, the Commission did not delve into it. Further, the Commission did not find the modification of eligibility criteria pertaining to Rabi season of KMS 2017–18 to be a contravention since it had not caused serious injury prejudicing the millers. The Commission held that non-payment of differential custody and maintenance charges

pertaining to KMS 2017–18 was unfair as OSCSC introduced unfair terms that were not in consonance with the provisions of Section 4(2)(a)(i) of the Act. Further, the Commission did not find the conduct of OSCSC to be an abuse of its dominant position as far as communication of rates to the millers was concerned. Lastly, the Commission noted that the conduct of OSCSC in deliberately delaying the settlement of dues of custom millers was an abuse of its dominant position.

*Vide* order dated 05.08.2021, the Commission found the conduct of OSCSC to be in violation of the provisions of Section 4(2)(a)(i) of the Act and directed it to desist from indulging in such practices that were found to be in contravention of the provisions of the Act.



## VERTICAL AGREEMENTS

### CCI orders investigation against Qube Cinema Technologies in alleged anti-competitive agreement case (Case No. 11 of 2020)

An Information in the present case was filed by PF Digital Media Services Ltd. ('PF Digital Media') and Mr. Ravinder Walia under Section 19(1)(a) of the Act against UFO Moviez India Ltd. ('UFO

Moviez'), Scrabble Digital Ltd. ('Scrabble Digital'), and Qube Cinema Technologies Pvt. Ltd. ('Qube Cinema Technologies'), alleging contravention of the provisions of Sections 3 and 4 of

the Act.

The present matter concerns the alleged imposition of technological fetters and restrictions in the Digital Cinema Equipment (DCE) given on



lease by UFO Moviez to Cinema Theatre Owners (CTOs) through an Equipment Lease Agreement. By virtue of restriction, UFO Moviez ensures that only the Key Delivery Message (KDM), which is necessary for displaying the film on a DCE as per international standards, generated by Scrabble Digital is incorporated into the digital format of the cinematograph film. It has been alleged that KDM inserted by PF Digital Media is not accepted by DCE supplied by UFO Moviez in order to garner/maintain the business of Scrabble Digital, which is a subsidiary of UFO Moviez. Thus, the clauses of the agreement as entered into by UFO Moviez with the CTOs, as well as its aforementioned conduct, is alleged to be in violation of the provisions of Sections 3 and 4 of the Act.

As regards contravention of provisions of Section 4 of the Act, the Commission noted that in the facts and circumstances of the present case, it cannot be countenanced at this stage that UFO Moviez holds a position of dominance in the first relevant market, i.e., the market of supply of DCE by a digital cinema service provider on lease/rent to CTOs in India. The Commission noted that, as regards the second relevant market, i.e., market for provision of post-production processing services in India, it was observed that the dominance of Scrabble Digital is not relevant, as Scrabble Digital only appears to be the beneficiary of alleged anti-competitive practices of its holding company, i.e., UFO Moviez. The Commission also

noted that, as UFO Moviez is *prima facie* not dominant in the first relevant market, it may not be germane to ascertain the dominance of Scrabble Digital in the second relevant market.

The Commission also noted that UFO Moviez has introduced clauses in the Equipment Lease Agreement such that PPP services have to be mandatorily availed from its subsidiary, i.e., Scrabble Digital. The Commission was *prima facie* satisfied that the imposition of restraints amounts to contravention of Sections 3(4)(a), 3(4)(b), and 3(4)(d) read with Section 3(1) of the Act by UFO Moviez, which is *prima facie* found to enjoy market power in the market. The Commission also noted that the said arrangement has the potential to cause appreciable adverse effect on competition.

As regards the contravention of provisions of Section 3(3) of the Act, the Commission observed that, as there is no horizontal relationship between UFO Moviez and Scrabble Digital, the provisions of Section 3(3) of the Act may not be attracted. The Commission also noted that Qube Cinema Technologies is a significant player in the market and *prima facie* enjoys market power.

The Commission further noted that, *prima facie*, the practice of supplying DCE along with film content and putting fetters on CTOs/distributors/producers on the procurement of such content from another entity as aforementioned appears to be in violation of the provisions of Section 3(4) read with

Section 3(1) of the Act. The Commission observed that, *prima facie*, this conduct has the potential to cause appreciable adverse effect on competition. Accordingly, the Commission observed that, for a holistic appreciation of the facts and circumstances of the case, the restraints, if any, imposed by Qube Cinema Technologies in its agreements with CTOs/distributors/exhibitors may also be looked into through the lens of investigation for alleged contravention of provisions of Section 3(4) read with Section 3(1) of the Act.

Accordingly, the Commission directed the Director General to investigate the matter under Section 26(1) of the Act.





## MERGERS AND ACQUISITIONS

### **CCI Approves acquisition of Ingram Micro Inc. together with its parent companies and subsidiaries by Imola Acquisition Corporation. (Combination Registration No. C-2021/03/820)**

On 07.05.2021, the Commission approved the combination in relation to the acquisition of 100% shareholding and sole control of Ingram Micro Inc. together with (i) its parent companies, viz., GCL Investment Management Inc. and GCL Investment Holdings Inc., and (ii) its direct and indirect subsidiaries (collectively referred to as 'Ingram Micro') by Imola Acquisition Corporation ('Imola'/'Acquirer').

Imola was created specifically for the purpose of the Proposed Combination. It is wholly owned by certain entities that are directly or indirectly managed and/or advised by Platinum Equity Advisors, LLC, and ultimately controlled by Platinum Equity, LLC. Platinum Equity Group is a global firm specialising in the merger, acquisition, and operation of companies that provide services and solutions to customers in a broad range of businesses, including information technology, telecommunications, logistics, metal services, manufacturing, and distribution. Ingram Micro is a U.S.-headquartered company that specialises in technology distribution and logistics, cloud

#### **IN A NUTSHELL**

Imola, the Acquirer, is advised by Platinum Equity Advisors, LLC. Platinum Equity Group is a global firm specialising in the merger, acquisition, and operation of companies that provide services and solutions to customers in a broad range of businesses. Ingram Micro, the target, specialises in technology distribution and logistics, cloud solutions, and e-commerce supply chain services, and is engaged in the wholesale distribution of IT products, consumer electronics, mobility products, and related services in India.

It was observed that the vertical relationship exhibited between the Parties was not significant enough to raise any competition concerns.

solutions, and e-commerce supply chain services. The distribution chain of Ingram Micro extends to North America, Europe, the Middle East and Africa, Latin America, and the Asia-Pacific, with local offices in several countries. Ingram Micro is engaged in the wholesale

distribution of IT products, consumer electronics, mobility products, and related services in India.

Activities of the Parties exhibited vertical interface through Vertiv Energy Private Limited ('Vertiv'), in which Platinum Equity Group has shareholding. Vertiv is engaged in the manufacture and supply of power management products, thermal management products, and infrastructure management and solutions, and made sales through the distribution channel of Ingram Micro in India. However, the vertical relationship was not significant enough to raise any competition concerns in India.



## CCI approves acquisition of stake in Adani Krishnapatnam Port Limited by Adani Ports and Special Economic Zones Limited (Combination Registration No. C-2021/04/828)

On 17.05.2021, the Commission approved the acquisition of 25% shareholding in Adani Krishnapatnam Port Limited ('Target') by Adani Ports and Special Economic Zones Limited (APSEZ/'Acquirer'). The Commission received the notice on 06.04.2021, under Section 6(2) of the Act from the Acquirer, which already holds 75% shareholding in the Target.

The Acquirer is a private multi-port operator which provides integrated port infrastructure services. The facilities of the Acquirer are said to be equipped with the latest infrastructure capable of handling large vessels. Besides these, the Acquirer has a fleet of support vessels and equipment such as multi-utility crafts, survey vessels, floating cranes, jack up barges, etc.

The Target is engaged as a developer and operator of an all-weather, deep-water multi-purpose port located at Krishnapatnam,

Andhra Pradesh, under a 30-year (extendable for a period of another 20 years in two blocks of 10 years each) Build-Operate-Share-Transfer concession from the Government of Andhra Pradesh. It provides integrated cargo handling and marine services including but not limited to pilotage, berth hire, wharfage, stevedoring, railway rake loading, transporting, storing, and other activities within the port premises.

The earlier acquisition of 75% of the Target by the Acquirer was approved by the Commission, wherein it was found that the combination does not raise any competition concerns in the affected markets. The Proposed Combination results in joint control to sole control of the Target. Thus, the findings of the Commission regarding the factors governing the assessment of the Proposed Combination and the earlier acquisition remained largely the same. Therefore, it is observed that,

### IN A NUTSHELL

APSEZ is a private multi-port operator which provides integrated port infrastructure services. Krishnapatnam Port Ltd. is engaged as the developer and operator of an all-weather, deep-water multi-purpose port providing integrated cargo handling and marine services located at Krishnapatnam, Andhra Pradesh. The findings of the Commission regarding the factors governing the assessment of the Proposed Combination and the earlier acquisition of 75% of the target largely remained the same, and therefore, it is observed that the Combination is not likely to cause appreciable adverse effect on competition in India.

in line with the assessment in the earlier acquisition, the Proposed Combination is also unlikely to raise any competition concerns.

## CCI approves acquisition of Avana Logistek Limited, Transworld Feeders Private Limited, and Transworld Feeders FZCO by Unifeeder ISC FZCO (Combination Registration No. C-2021/04/829)

On 02.06.2021, Commission approved the Proposed Combination in relation to (i) acquisition of 100% of the share capital of Avana Logistek Limited ('Avana') by Unifeeder ISC FZCO ('Unifeeder/'Acquirer'); (ii) acquisition of 100% of the equity

share capital of Transworld Feeders Private Limited (TFPL) by Unifeeder; and (iii) acquisition of 99.99% equity share capital of Transworld Feeders FZCO (TWF), leading to an indirect acquisition of 100% of the share capital of Transworld Shipping Agencies

Private Limited (TSAPL). The Proposed Combination also envisaged two interconnected transactions: (i) acquisition of 100% equity capital of TFPL by Shreyas Shipping and Logistics Limited (SSLL) followed by a transfer of domestic coastal and export and



import (EXIM) feeder shipping business of SSSL to TFPL; and (ii) acquisition of 17% stake in Unifeeder by Transworld Holdings Limited (Transworld) as part consideration.

Unifeeder is indirectly held by DP World and Shimin Holding Pte. Limited (Shimin). DP World is, in turn, a wholly owned subsidiary of DP World Limited (DPW) which, in turn, is indirectly and wholly owned by the Government of Dubai. In India, Unifeeder provides EXIM short sea feeder services and EXIM short sea NVOCC services through its subsidiaries FeedertechPte. Limited and Perma Shipping Line Pte. Limited, respectively. DPW Group operates terminal ports, container freight stations, private freight terminals with internal container depot (ICD), free trade warehouse zones, cold chain facilities, non-container surface express, and third-party logistics

('3PL') services, and provides container rail transport in India. Shimin does not carry out any activities other than holding stake in the Acquirer.

Activities of the Transworld group include ship owning (container, multi-purpose vessels, and bulk carriers), feeder services, NVOCC services, project logistics, supply chain management, ship management, shipping agencies, freight forwarding, and information technology. Avana is an integrated logistics solutions provider offering customised and end-to-end solutions. TSAPL provides port agency and husbandry services to its group entities. Activities of the Parties exhibited horizontal overlap in the segment of short sea EXIM container shipping and cold chain activities.

Considering the market position of the Parties, the volume handled,

### IN A NUTSHELL

Activities of the Parties exhibited horizontal overlap in the segment of short sea EXIM container shipping and cold chain activities. Considering the market position of the Parties, the volume handled, and the presence of the competitors, the Commission observed that the horizontal overlaps are not likely to raise competition concerns. The Commission observed that the vertical interface is also not such as to raise competition concerns.

and the presence of the competitors, the Commission observed that the horizontal overlaps are not likely to raise competition concerns. Activities of the DPW group and Targets also exhibit vertical interface. The Commission observed that vertical interfaces are not such that raise

## CCI approves the proposed acquisition of certain stakes by Think & Learn Private Limited (BYJU'S) in Aakash Educational Services Limited (AESL), followed by a merger of the two entities (Combination Registration No. C-2021/04/831)

On 07.06.2021, the Commission approved the Proposed Combination pertaining to the acquisition of approximately 70% of the equity shareholding of AESL by BYJU'S followed by a merger of AESL with BYJU'S. As a consequence, BYJU'S shall effectively acquire sole control over AESL.

BYJU'S, a private limited company incorporated in India, offers a technology based (online)

education platform for primary and secondary school subjects, as well as overseas and domestic test preparatory coaching services for entrance examinations for engineering, medical, etc.

AESL, a public limited company incorporated in India, provides curriculum-based coaching for K-12 students and test preparatory services for various competitive examinations, such as engineering, medical, Olympiads, National Talent

Search Examination, etc. AESL offers its services through multiple modes, including classroom-based coaching, online learning, distance learning, and hybrid learning programmes.

The Proposed Combination pertained to the education sector in India, which was segmented into formal and non-formal segments by the Parties. Both Parties were only present in the non-formal education segment in India. At the narrow



level, the Parties exhibited overlaps in the test preparatory coaching services for medical examinations, test preparatory coaching services for engineering examinations, coaching services for classes 1 to 7, coaching services for classes 8 to 10, and coaching services for the Commerce stream for classes 11 to 12.

It was noted that the combined market share of the Parties and the incremental market share in all segments/sub-segments is less than 10%. Further, the non-formal education sector in India is characterised by the presence of

#### IN A NUTSHELL

BYJU'S provides online educational services under the brand names of "BYJU'S", "The Learning App", "Disney BYJU'S Early Learn", "WhiteHat Jr", and "Osmo". AESL provides educational services through several brands, including "Aakash Engineering", "Aakash Medical", "Aakash Foundation", "Aakash Digital", "Meritnation", "AakashiTutor", etc.

The combined as well as the incremental market shares of the Parties in each segment/sub-segment were not significant to raise any competition concerns.

several other players, which will continue to pose significant competitive constraints.

Based on the foregoing, the Commission approved the

Proposed Combination under subsection (1) of Section 31 of the Act.

### CCI approves acquisition of Goa plant of Zuari Agro Chemicals Limited, by Paradeep Phosphates Limited (Combination Registration No. C-2021/05/840)

On 24.06.2021, the Commission approved the combination in relation to the acquisition of the Zuari Agro Chemicals Limited (ZACL/Seller) plant by Paradeep Phosphates Limited (PPL/Acquirer).

PPL is engaged mainly in the manufacture and sale of non-urea/complex fertilisers, namely, di-ammonium phosphate ('DAP') and NPK fertilisers. The company also imports and sells Muriate of Potash ('MoP'). PPL is owned by ZuariMaroc Phosphates Pvt. Ltd. ('ZMPL') and the Government of India. ZMPL is a joint venture between ZACL and OCP S.A. ('OCP'). OCP is largely owned by the Government of Morocco.

ZACL belongs to the Adventz Group. The Adventz Group is engaged in agri-business through

#### IN A NUTSHELL

Paradeep Phosphate is engaged mainly in the manufacture and sale of non-urea/complex fertilisers, namely, di-ammonium phosphate (DAP) and NPK fertilisers. Zuari Agro Chemicals belongs to the Adventz Group, which is engaged in agri-business through the production of a range of complex fertilisers and other agricultural inputs. It is observed that the vertical interface of OCP with Zuari in supply of DAP and phosphoric acid are not likely to cause foreclosure concerns.

PPL, and Mangalore Chemicals and Fertilisers Limited.

Activities of the Parties exhibit horizontal overlap in the segment of

non-urea fertilisers, which includes DAP, MoP, and NPK. At the all-India level, the combined market shares of Parties in the non-urea fertilisers segment and its overlapping sub-segments were less than 10%, with an incremental market share less than 5%. Further, for states where the activities of PPL and Target exhibit horizontal overlap, the combined market shares of Parties in the non-urea fertilisers segment and its overlapping sub-segments amounted to 30% or less, with incremental market share less than 5%. Commission observed that the Acquirer, Seller, and ZMPL are already under the control of the Adventz Group. As a result of the Proposed Combination, OCP would acquire control over the target business through ZMPL. OCP does not have a stake, except through ZMPL, in any of the businesses



operating in India that exhibit a horizontal overlap with the Target business.

OCP is engaged in the supply of DAP, rock phosphate, and phosphoric acid to India, which deserved competition assessment

for vertical interface with the Target business. The Target business vertical does not consume rock phosphate. Phosphoric acid supplied by OCP to the Seller comprises a very small proportion of the total supplies made by OCP to India. Further, the phosphoric

acid requirement of the Target business is not significant vis-à-vis total market size. This was similar in the case of DAP. Thus, Commission observed that the Proposed Combination is not likely to cause foreclosure concerns.

### **CCI approves the proposed acquisition of Lighthouse India Fund III, Limited ('Fund III') and Lighthouse India III Employee Trust ('Trust') in Bikaji Foods International Limited ('Bikaji'/'Target') C-2021/07/851**

On 09.08.2021, the Commission approved the proposed acquisition of 2.697% and 0.03% of the total share capital of the Target by Fund III and Lighthouse Employee Trust respectively, by way of share subscription.

Fund III is a private equity fund sponsored by Lighthouse Funds, LLC ('Lighthouse Funds'), a U.S.-based private equity firm that acts as a sponsor and controls private equity funds that make investments in consumer companies in India. Lighthouse Employee Trust is a trust settled in India formed for the benefit of certain employees of Lighthouse Funds. It makes investments alongside Fund III based on investment decisions taken by Fund III.

Bikaji is engaged in the

manufacture and sale of snacks such as *bhujia*, *namkeen*, *papad*, chips, sweets, and cookies. Bikaji's products are sold in India and exported to countries like Australia, U.S., Singapore, and Mauritius. Bikaji also runs two retail outlets under the name Bikaji Food Junxon in Mumbai, which also offer the services of a quick service restaurant ('QSR').

The Commission noted that the only potential horizontal overlap between the activities of Bikaji and Lighthouse Funds is in the broader area of the QSR segment; Wow Momo Foods Private Limited ('Wow Momo'), a portfolio company of Lighthouse Funds, runs a chain of QSR restaurants across India. However, the same was assessed as insignificant, considering the limited presence of Bikaji in the

#### **IN A NUTSHELL**

- Lighthouse Funds currently holds around 7.5% equity shareholding in Bikaji.
- Pursuant to the Proposed Combination, Lighthouse Funds and Trust would increase their collective shareholding in Bikaji to around 10%.

QSR segment.

Thus, the Commission was of the opinion that the Proposed Combination was not likely to cause an appreciable adverse effect on competition in any of the plausible relevant markets that could be delineated, and accordingly, the delineation of the relevant market was left open.

### **CCI approves the proposed acquisition by Zomato Limited ('Zomato') of approximately 9.3% stake in Grofers India Private Limited ('Grofers India') and Hands on Trades ('HoT')**

On 13.08.2021, CCI approved Zomato's acquisition of approximately 9.3% stake in Grofers India and HoT.

Zomato ('Acquirer') is a public limited company primarily operating in the food services market. It provides a platform that

connects customers, restaurant partners, and delivery partners, and serves their multiple needs. Zomato's subsidiary, Zomato



Internet Private Limited, also operates Hyperpure, which largely supplies fresh, high-quality ingredients (such as vegetables, fruits, meats, etc.) primarily to Zomato's restaurant partners. Grofers India is a private limited company operating an e-commerce marketplace in India. It provides a platform that acts as a facilitator between third-party sellers of various products (such as grocery, fruits and vegetables, bakery items, personal care, health and hygiene, pet care, baby care, etc.) and potential buyers of goods.

HoT is a private limited company engaged in the business of B2B wholesale trading with third-party merchants; contract manufacturing of food products, grocery, and other goods for the purpose of onward sale on a wholesale basis; and providing warehousing services, including storage of grocery goods and food-related products, to third-party merchants.

Grofers International Pte Ltd ('Grofers International') is the holding company of Grofers India and HoT. It is incorporated in Singapore and operates as an investment holding company. (Grofers International, Grofers India, and HoT are collectively referred to as 'Target').

The Acquirer and Target are both active in the overall market for the supply of groceries, household items, general merchandise, personal hygiene products, and fruits and vegetables in India, as well as the narrower segment of

### IN A NUTSHELL

The proposed acquisition is related to Zomato's acquisition of approximately 9.3% stake in Grofers India and HoT. The Parties are active within the overall market for the supply of groceries, household items, general merchandise, personal hygiene products, and fruits and vegetables in India, as well as the narrower segment of B2B supply of groceries, household items, general merchandise, personal hygiene products, and fruits and vegetables in India. The Commission approved the Proposed Combination as it was not likely to have an appreciable adverse effect on competition in India.

B2B supply of groceries, household items, general merchandise, personal hygiene products, and fruits and vegetables in India.

The relevant markets were identified as: (a) the market for supply of groceries, household items, general merchandise, personal hygiene products, fruits, and vegetables in India ('Broad'); (b) B2B supply of groceries, household items, general merchandise, personal hygiene products, and fruits and vegetables in India ('Narrower'); (c) market for supply of groceries, and fruits and vegetables in India ('Narrowest'); and (d) the market for services provided by online platforms for the sale of groceries, household items, general merchandise, personal hygiene products, and fruits and

vegetables in India ('Online Marketplace'). The Commission decided to leave the delineation of the relevant market open. It was observed that the combined market shares of the Parties in Broad, Narrower, as well as Narrowest market were less than 1%. Though the combined market share of the Parties in the Online Marketplace was in the range of 10–15%, the incremental market share was less than 1%.

Additionally, no significant vertical relationships were found. Thus, the Commission was of the opinion that the Proposed Combination is not likely to have any appreciable adverse effect on competition in India and hence, approved the same.





## JUDICIAL PRONOUNCEMENT

### Karnataka High Court upheld the investigation ordered by Commission against Amazon and Flipkart

CCI, *vide* order dated 13.01.2020, directed an investigation by the DG under Section 26(1) of the Act to determine whether Amazon and Flipkart were causing an appreciable adverse effect on competition (AAEC) by acting in contravention of Section 3(1) of the Act read with Section 3(4) of the Act. The allegations of joint dominance were discarded against Amazon and Flipkart after observing that the same were not envisaged under provisions of the Act.

Aggrieved by the same, Amazon and Flipkart moved before the Karnataka High Court, challenging the *prima facie* order passed by CCI and directing the DG to cause an investigation, *inter alia*, on the grounds of jurisdiction. Ld. Single Judge of Karnataka High Court dismissed the petitions filed by Amazon and Flipkart, and relying upon the judgment of Hon'ble Supreme Court in the *CCI v. SAIL* case, held that an order under Section 26(1) of the Act passed by Commission is an administrative direction without entering upon any adjudicatory processes, and Section 26(1) does not require the issuance of a notice to any party before or at the time of formation of an opinion by Commission on the basis of information received by it. Further, the Single Judge held that, in a writ petition filed under Article 226 seeking judicial

review, the High Court can examine only the decision-making process with exceptions, namely, cases involving a violation of fundamental human rights. Ld. Single Judge also held that Commission has fulfilled the expectation that an order directing an investigation be supported by some reasoning as laid down by the Hon'ble Supreme Court's judgement in the *SAIL* case, and therefore, it would be unwise to prejudge the issues raised in the writ petitions at this stage and scuttle the investigation. The Court, holding that the Commission has looked into the information in detail and applied its mind correctly, refused to interfere in the 26(1) order passed by it.

Aggrieved by the said order passed by Ld. Single Judge, writ appeals were filed by Amazon and Flipkart before the Division Bench of the Hon'ble Karnataka High Court. The Division Bench, *vide* a common judgment dated 23.07.2021 in the matter of *Flipkart Internet Pvt. Ltd. v. CCI & Ors.*, held the same to be devoid of any merit and substance and accordingly, dismissed the appeals. The Hon'ble Division Bench noted that, *inter alia*; i) the Competition Act was enacted to curb anti-competitive practices and Commission, as a regulator, has to ensure that no such anti-competitive practices are

undertaken; ii) Amazon and Flipkart do not want to participate in the proceedings initiated by the Commission, and the Commission is to proceed in accordance with law; iii) the Court failed to understand the abstention of Amazon and Flipkart in the enquiry, wherein they will have an opportunity to produce the material before the DG, on the basis of which, after hearing the appellants and following the due process of law, the DG shall be able to conduct an enquiry; iv) Amazon and Flipkart want to crush the proceedings at a preliminary stage in a similar manner like quashing an FIR; v) the Apex Court has held that, until and unless the show cause notice is vague or has been issued by an authority that is not competent to do so, interference cannot be made in the matter. In the present case, the order passed by the Commission directing an enquiry is the first stage of initiating the process under the Competition Act, and the enquiry is yet to commence; vi) the order passed under Section 26(1) is neither an adjudication nor determinative, but merely an inquisitorial, departmental proceeding in the nature of direction to the DG to make an investigation; vii) the order under Section 26(1) of the Act can be passed where there is *prima facie* material available to direct enquiry,



and detailed reasons are not required as Commission is required to express only a tentative view; viii) writ petitions filed before the Single Judge were certainly premature petitions, and without permitting the DG to look into various agreements executed by Amazon and Flipkart with the other persons, Amazon and Flipkart want this Court to hold that there has been no violation of the statutory provisions of the Act committed by them. The Hon'ble Court stated that, until and unless a detailed enquiry is conducted by the Commission, the question of giving a finding in respect of the violation of the statutory provisions does not arise; ix) the question of adjudicating the validity of an order passed under Section 26(1) does

not arise; x) intent of the Informant filing the information is not a relevant consideration to approach Commission, as held by the Apex Court in Samir Agarwal; xi) issue relating to deep discounting and exclusive tie-ups will be looked into in depth at the time of enquiry by the DG, and, at this stage, the petitions/appeals filed are premature and deserve to be dismissed; xii) by no stretch of the imagination can the law laid down by the decision in the SAIL matter be diluted by a judgement of the Delhi High Court in the Google case; xiii) principles of *Res Judicata* are inapplicable to the proceedings before the Commission; xiv) by no stretch of the imagination is the 26(1) order passed by Commission going to

cause harm to the business reputation of Amazon and Flipkart; xv) the process of enquiry cannot be crushed at this stage, and if Amazon and Flipkart are not guilty, they should not feel shy to face the enquiry and should welcome such an enquiry by the Commission; xvi) the writ petitions filed against the 26(1) order and the present writ appeals are nothing but attempts to ensure that the action initiated by the Commission does not attain finality, which is impermissible under the law, as the Act itself provides the entire mechanism of holding an enquiry, granting the opportunity of a hearing and passing a final order, as well as an appeal against the order passed by the Commission.

## Supreme Court declined to interfere in the probe against Amazon and Flipkart

An information was filed on 24.10.2019 with CCI under Section 19(1)(a) against Flipkart Internet Private Limited and Amazon Seller Services Private Limited, alleging their involvement in anti-competitive practices and conduct, such as deep discounting, preferential listing, sale of private label brands through preferential sellers, and exclusive tie-ups, alleged to be in violation of Section 3(1) r/w Section 3(4) of the Act. Based on the information received, the Commission formed a *prima facie* opinion and passed an order dated 13.01.2020 in CCI case no. 40/2019 directing an investigation under Section 26(1) of the Act by the Director General.

The said order of CCI was

challenged before the Single Judge Bench of High Court of Karnataka at Bengaluru. The Hon'ble High Court, *vide* order dated 11.06.2021, dismissed the writ petition and stated that, as per the judgement of the Hon'ble Supreme Court of India in the *Competition Commission of India vs. Steel Authority of India Ltd. and Anr. (2010) 10 SCC 744*, an order under Section 26(1) of the Act passed by the Commission is an "administrative direction" to one of its wings departmentally and without entering upon any adjudicatory process. Further, the Court stated that Section 26(1) of the Act does not mention the issuance of any notice to any party before or at the time of formation of opinion by the Commission on the basis of information received by it.

Therefore, the Court found it unwise to prejudge the issue raised and scuttle the investigation.

The order dated 11.06.2021 was further challenged by way of writ appeal in WA No. 562/2021 and 563/2021 before the Division Bench of High Court of Karnataka. The Hon'ble High Court, *vide* order dated 23.07.2021, dismissed the writ appeals as being devoid of merits and substance, and opined that petitioners should welcome the enquiry by CCI and that the writ appeals filed by them are nothing but an attempt to ensure that an action initiated by CCI does not attain finality.

The order of the Division Bench of the Hon'ble High Court was



challenged by the petitioners before the Hon'ble Supreme Court by way of Special Leave Petition (Civil) no. 11558/2021 *Flipkart Internet Private Limited Vs. CCI & Ors.* and 11615/2021 *Amazon Seller*

*Services Private Limited Vs. CCI & Ors.* After hearing both Parties, the Hon'ble Supreme Court, *vide* order dated 09.08.2021, was pleased to dismiss the Special Leave Petitions in favour of CCI, and upheld the

order passed by the High Court of Karnataka dismissing the writ appeals of the petitioners.



## ECO-WATCH

### National Monetisation Pipeline (NMP)

Recently, the Government of India launched the National Monetisation Pipeline (NMP) for central ministries and public sector entities. Asset monetisation, based on the philosophy of creation through monetisation, is aimed at tapping private sector investment for new infrastructure creation. The multiplier effects of infrastructure expansion through the creation of employment opportunities enables high economic growth. The NMP is estimated to have an aggregate monetisation potential of 6 lakh crores over a four-year period (FY 2022-2025). The strategic objective of the programme is to unlock money from brown field public sector assets, which can then be leveraged for further public investments. It is envisaged as a medium term roadmap for identifying potential monetisation-ready projects across various infrastructure sectors, including roads, railways, power, oil, gas pipelines, and the telecom sector.

The NMP is being viewed as a major policy initiative of the government to improve infrastructure in the country and is expected to ease major bottlenecks in the growth of the Indian

economy. Nonetheless, some of the key challenges in the effective implementation of NMP may include streamlining operational modalities, encouraging investor participation, and facilitating commercial efficiency, among others. Thus, in order to ensure an efficient and effective process of asset monetisation, the instruments/ tools for asset monetisation be it direct contractual instruments or capital market instruments have to be prudently structured keeping in mind the sector, nature of asset, target investor profile, and level of operational/investment control envisaged to be retained by the asset owner. The modalities also need to be mindful of creating a level playing field for potential investors. This is a complex task and involves a fine balancing of the interests of multiple stakeholders as well as numerous trade-offs. Embedding competition principles in the design of the concession agreement can help with this process. The core elements of the structure of a concession/contract agreement, i.e., bidding parameter, length of contract, presence of other commercial revenue streams, horizontal/vertical bundling/splitting of services, and renegotiation

possibilities, require a balancing of incentives between the private and public partner.

In the past, the Commission has had the occasion to review Model Concession Agreements (MCAs) in various public delivery services and infrastructure sectors prepared by NITI Aayog from a competition perspective. The idea is to assist the concessionary agency in appending competition law principles that can help inform the process and account for foreseeable concerns. Competition law enforcement experience shows that clear, precise, and unambiguous stipulation of the obligations, expectations, and limits of the rights in the contracts may bridge information asymmetry in the market. This will reduce uncertainties for bidders and enable them to make an informed assessment of investment and recoupment possibilities. Thus, a well-defined concession or contract agreement, with a proper structuring of the transaction and a balanced risk-reward framework, will stimulate private participation and enhance competition for the market.



## Open Network Digital Commerce (ONDC): An initiative to democratise digital commerce

Recently, the Department for Promotion of Industry and Internal Trade (DPIIT) under the Ministry of Commerce initiated Open Network Digital Commerce (ONDC) to democratise digital commerce by moving it from a platform-centric to an open-network model with the aim of allowing all online retailers to be discoverable across multiple platforms as opposed to being available on only one e-commerce platform. This will provide retailers a wider reach to customers.

ONDC will have a structure similar to the Unified Payments Interface (UPI), which is a domain for digital payments. This will digitise the value chain, standardise operations, promote inclusion of suppliers, derive efficiencies in logistics, and enhance value for

stakeholders and consumers. Thus, the platform is expected to promote a level playing field for all buyers and sellers.

It is important to note that, once the ONDC is implemented, it is expected to curb digital monopolies wherein e-commerce giants and big technology companies tend to dominate. Currently, few players in the market have built their own proprietary platforms for operations; the ONDC will enable consumers to search for products or services and access a list of sellers based on their location, along with product details and prices. Small businesses would also be able to use ONDC-compatible applications instead of relying on e-platforms. Thus, the initiative is expected to enhance competition in retail

markets, both by increasing the access and scale of operations.

The task of implementing DPIIT's ONDC project has been assigned to the Quality Council of India. The Government of India considers ONDC to be something novel, which has not been implemented by any other country. Going forward, there are plans to focus on *kirana* stores, delivery service providers, and FMCG players in major cities. Thus, ONDC is expected to digitise the entire value chain, standardise operations, promote inclusion of suppliers, derive efficiencies in logistics, and enhance value for consumers. Going forward, it would be interesting to see how ONDC spurs competition in retail markets.



## KNOW YOUR COMPETITION LAW

### Supreme Court reaffirms that the order passed by CCI u/s 26(1) is an “administrative direction” that ought not to be stayed

Section 19 of Act states that CCI may inquire into any alleged contravention of the provisions on its own motion; on receipt of any information from any person, consumer, or their association or trade association; or by way of a reference made to it by the Central Government, a State Government, or a statutory authority. Further, Section 26 of the Act provides the procedure for inquiry under Section 19. Subsection (1) of Section 26 provides that, upon receipt of a

reference from the Central Government, a State Government, or a statutory authority, or on its own knowledge or information received under Section 19, if the Commission is of the opinion that there exists a *prima facie* case, it shall direct the Director General to cause an investigation to be made into the matter.

Thus, contravention of the provisions of the Competition Act, 2002 sets into motion the

mechanism as prescribed under Section 26 of the Act. The issue with regard to the nature and scope of the order passed under Section 26(1) of the Act was discussed in great length by the Hon'ble Supreme Court in the matter of *CCI v. Steel Authority of India Limited*. The Hon'ble Supreme Court, by way of the said judgement, held that a direction under Section 26(1) after formation of a *prima facie* opinion is a direction simpliciter to initiate an investigation into the



matter, and that issuance of such a direction, on the face of it, is an administrative direction to one of its own wings departmentally without entering into any adjudicatory process. The scheme as envisaged under Section 26(1) is a mere fact-finding enquiry that does not affect the determination of the rights or obligations of the Parties to the *lis*. Such a direction does not entail any civil consequences. Further, the Court held that neither is there any statutory duty for Commission to issue a notice or grant a hearing, nor can any Party claim, as a matter of right, notice, and/or hearing at the stage of formation of opinion by the Commission, in terms of Section 26(1) of the Act, that the Commission is expected to record at least some reasons, even while forming a *prima facie* view.

Though the judgement in the SAIL matter covered all aspects with regard to the nature and scope of Section 26(1) of the Act in depth, the Hon'ble Supreme Court, by way of its judgement in another matter, CCI v. Bharati Airtel, while taking note of the earlier judgement in the SAIL matter, held that an order passed under Section 26(1) of the Act would be an administrative and not a quasi-judicial order, and that the High Court would not be competent to adjudicate the validity of such an order on merits.

Once again, the Hon'ble Supreme Court, in the matter of the *Flipkart Internet Private Limited v. CCI & Ors.* and *Amazon Seller Services Private Limited v. CCI & Ors.*, upheld the decision passed by the

Division Bench of the Karnataka High Court and dismissed the SLPs filed without interfering in the order of investigation passed by CCI against Flipkart and Amazon. The judgement arises out of CCI Case No. 40/2019, whereby the investigation was directed by Commission against Amazon and Flipkart upon allegations that they were causing an appreciable adverse effect on competition (AAEC) in terms of Section 3(1) read with Section 3(4) of the Act in India. In the appeal, the Ld. Single Judge of the Hon'ble Karnataka High Court dismissed the writ petitions filed by Amazon and Flipkart, and held that an order under Section 26(1) of the Act passed by Commission is an administrative direction to one of its wings departmentally without entering upon any adjudicatory process. The Court held that Section 26(1) of the Act does not mention the issuance of any notice to any Party before or at the time of formation of an opinion by Commission on the basis of the information received by it. The Ld. Single Judge also held that, in a writ petition filed under Article 226 of the Constitution of India seeking judicial review, the High Court can examine only the decision-making process, with the exception of cases involving violations of fundamental human rights. The Ld. Single Judge further held that CCI has fulfilled the expectation that an order directing investigation be supported by some reasoning, as laid down by the Hon'ble Supreme Court judgement in the SAIL case, and therefore, it would be unwise to

prejudge the issues raised in the writ petitions at this stage and scuttle the investigation. Thus, the court denied interfering in the 26(1) order passed by Commission. Aggrieved by the said judgment, Amazon and Flipkart moved to the Division Bench of the Karnataka High Court.

The Division Bench of the Karnataka High Court held that the order passed under Section 26(1) of the Act is neither an adjudication nor determinative, but merely an inquisitorial departmental proceeding in the nature of direction to the DG to make an investigation. It is neither a judicial nor a quasi-judicial proceeding as held by the Hon'ble Supreme Court in the judgement of the SAIL matter. The order under Section 26(1) of the Act can be passed where there is *prima facie* material to direct enquiry, and elaborate reasons are not required, as Commission is required to express only a tentative view. Providing elaborate reasons will surely prejudice the case of the person against whom a complaint has been made, and therefore, the statute has provided a safeguard for holding an enquiry after an order is passed under Section 26(1), and the Director General, CCI, is certainly required to grant an opportunity of hearing while holding an enquiry in the matter. Unless a detailed enquiry is conducted by Commission, the question of giving a finding in respect of the violation of the statutory provisions does not arise.

Reading Sections 19 and 26 of the



Act, the Division Bench held that the 26(1) order is certainly administrative in nature and has been passed at a preliminary/preparatory stage. Section 26(1) is passed at the pre-enquiry stage, as held by the Hon'ble Supreme Court in the judgment of SAIL. The Division Bench, in view of the Supreme Court's judgment in the Bharti Airtel Ltd. matter, held that the question of adjudicating the validity of an order passed under Section 26(1) on merits does not arise.

It was also held that the order passed under Section 26(1) does not set into motion an unstoppable process that necessarily culminates in adjudication against the entity against whom an enquiry is initiated. In fact, Section 26 of the Act read as a whole discloses a comprehensively and thoughtfully construed stepwise scheme which contemplates not only a fair hearing to the concerned Parties at the appropriate stage but is characterised by an inherent robustness by which the

proceedings may culminate in closure. The order passed under Section 26(1) is only the starting point of the process, which ought not to be crushed at the threshold. The said judgement of the Division Bench of Karnataka High Court was denied interference by the Hon'ble Supreme Court, leaving no doubt that the order passed under Section 26(1) is an "administrative direction" that should not be stayed at such an early stage, and the Commission should not be restrained from proceeding with the

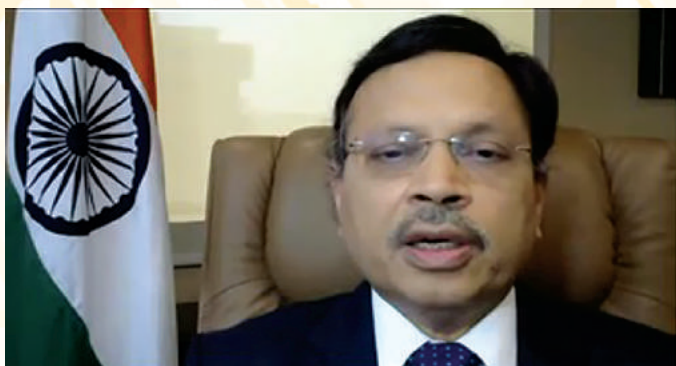


## ENGAGING WITH THE WORLD

### CCI participated in various international meetings/seminars/conferences, as follows:

1. Ten Officers from CCI participated virtually in the Competition Summer School hosted by the College of Europe from 28.06.2021– 09.07.2021 under the EU India Competition Cooperation Project.

The 19<sup>th</sup> session of the United Nations Conference on Trade and Development (UNCTAD) Inter governmental Group of Experts (IGE) on Competition Law and Policy was held during 07.07.2021– 09.07.2021. The CCI delegation participated virtually and was led by Shri Ashok Kumar Gupta, Chairperson, CCI, accompanied by Dr. Sanjay Kumar Pandey, Adviser (Law), and Shri Kamal Sultanpuri, Deputy Director (Law). During the UNCTAD IGE, the Chairperson addressed the 09.07.2021 session on competition advocacy during and in the aftermath of the COVID-19 crisis.

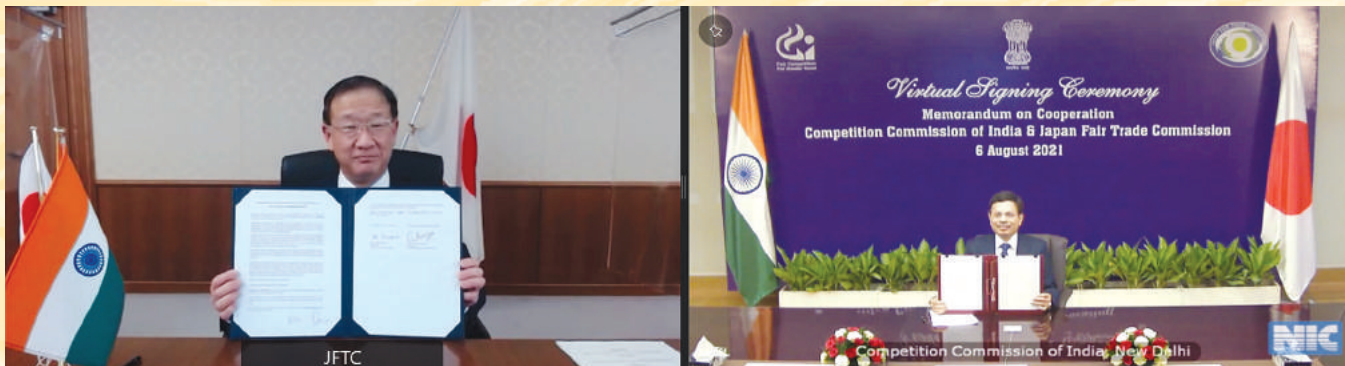


*Shri Ashok Kumar Gupta, Chairperson, CCI, delivering his address during the UNCTAD IGE session on competition advocacy during and in the aftermath of the COVID-19 crisis, conducted through the virtual mode on 09.07.2021.*

2. Mr. Hiroyuki Yamashita, First Secretary, Embassy of Japan, New Delhi, visited CCI on 19.07.2021 for a meeting to discuss the signing of the Memorandum on Cooperation between CCI and the Japan Fair Trade Commission (JFTC). Dr. Sanjay Kumar Pandey, Adviser (Law), and International Cooperation Division Officers attended the meeting.



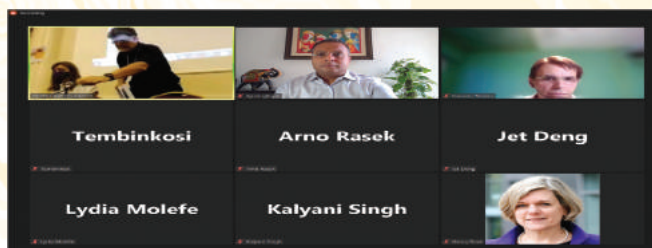
- Shri Ashok Kumar Gupta, Chairperson, CCI, and Mr. Kazuyuki Furuya, Chairperson, JFTC, signed a Memorandum on Cooperation virtually on 06.08.2021. The event was also graced by the Ambassador of India to Japan, H.E. Shri Sanjay Kumar Verma, and Mr. Shingo Miyamoto, Minister, Head of Economic Section, Embassy of Japan in India.



*Mr. Kazuyuki Furuya, Chairperson, JFTC, and Shri Ashok Kumar Gupta, Chairperson, CCI, during the signing ceremony of the Memorandum on Cooperation between CCI and JFTC, conducted through the virtual mode on 06.08.2021.*

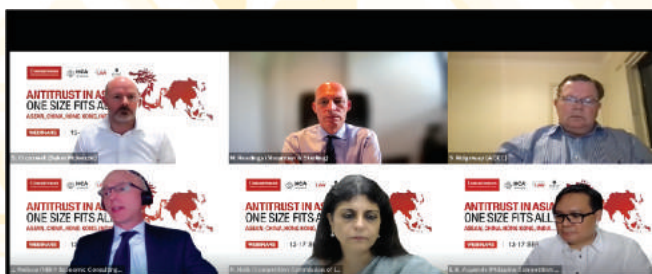
- Four Officers participated in the International Competition Network (ICN) Virtual Promotion & Implementation Workshop Skills Series held every Thursday of September 2021 (2<sup>nd</sup>, 9<sup>th</sup>, 16<sup>th</sup>, 23<sup>rd</sup>, and 30<sup>th</sup>). The workshop provided practical training using ICN work products and ITOD video training modules and addressed investigative planning, developing reliable evidence, cooperation, and procedural fairness in merger review and conduct cases.

- Mr. Sachin Goyal, Joint Director (FA), was a panel speaker in an online special policy session on “Competition Policy Developments in Digital Markets: The BRICS” on 05.09.2021 at the CRESSE Conference 2021, organised by the Competition and Regulation European Summer School and Conference (CRESSE), held under the 15<sup>th</sup> International Conference on Competition and Regulation during 03.09.2021–05.09.2021.



*Mr. Sachin Goyal, Joint Director (FA), was a panel speaker in the Special Policy session on “Competition Policy Developments in Digital Markets: the BRICS” held under the 15<sup>th</sup> International Conference on Competition and Regulation (CRESSE Conference 2021) conducted through the virtual mode on 03.09.2021-15.09.2021.*

- Ms. Payal Malik, Adviser (Economics), was a panel speaker in an online session on “Merger Control in Asia: Sharing Experience of New and Emerging Regimes and Trends” on 13.09.2021, held during the 7<sup>th</sup> edition of the Antitrust in Asia conference, organised by Concurrences Antitrust Publications and Events.



*Ms. Payal Malik, Adviser (Economics), at the Antitrust in Asia conference organised by Concurrences and conducted through the virtual mode on 13.09.2021.*





## DEVELOPMENTS IN OTHER JURISDICTIONS

### GERMANY

#### **Bundeskartellamt examines whether Facebook/Kustomer merger is subject to notification**

The Competition Authority of Germany, Bundeskartellamt, has initiated a proceeding against Facebook to examine whether its planned acquisition of the start-up Kustomer falls under the scope of German merger control. Kustomer is based in New York, USA, and provides a cloud-based customer management platform for business customers.

Mergers where companies or assets that generate little or no turnover (at the time of the merger) are acquired at a purchase price of more than 400 million euros can now be examined under competition law. The high purchase price in such takeovers is often an indication of innovative business ideas with great competitive market potential. Such acquisitions may require a preventive merger investigation, especially with regard to protecting innovation potential and innovation competition in technology markets.

The proposed merger between Facebook and Kustomer is currently being examined by EU Commission in a parallel proceeding after the case had been referred to it by the Austrian competition authority. Germany did not join the application for referral to EU Commission because, in Bundeskartellamt's

general practice, a referral requires a merger to be subject to notification based on national competition law, which has yet to be clarified in the present case.

### UNITED KINGDOM

#### **Competition and Market Authority (CMA) launches investigation into the supply of electric vehicle charge points on or near motor ways**

The UK's antitrust enforcer, CMA, is currently investigating suspected breaches of competition law by way of exclusive agreements between an electric vehicle charging provider and three major UK service station operators after a market study found that a lack of charge points may prevent drivers from switching to electric cars.

The enforcer opened a probe into Electric Highway, which operates about 80% of electric vehicle charge points on UK motor ways, as well as service station operators Road chef, Extra, and Moto, over concerns that their long-term exclusivity arrangements prevent rival charging operators from setting up along the country's major roads. The probe stems from the findings in the agency's electric vehicle charging market study, which has also been published by CMA alongside multiple recommendations for the government to ensure that the UK has a national network of electric vehicle charge points before the

ban on the sale of new diesel and petrol cars comes into effect in 2030. The UK currently has around 25,000 charge points, but CMA has warned the country that it will need at least ten times that number by 2030.

#### **A Digital Markets Unit (DMU) has been established within CMA to begin work to operationalise the future pro-competition regime for digital markets**

A DMU has been established within CMA on a non-statutory basis to focus on operational signs and preparing for the new regime. DMU under CMA will oversee a new regulatory regime for the most powerful digital firms, promoting greater competition and innovation in these markets and protecting consumers and businesses from unfair practices.

The powers of DMU and the new regulatory regime will require legislation. The government of UK recently published its consultation on proposals for the new pro-competition regime; the consultation will remain open until 01.10.2021. The government also committed to legislating in accordance with the time allowed by the Parliament.

### RUSSIA

#### **Federal Antimonopoly Service (FAS), Russia, fined Booking.com B.V. of 1.3 billion Rub**

In December 2020, FAS completed the consideration of the antimonopoly case against



Booking.com, initiated as a result of the consideration of the appeal of the All-Russian Public Organisation of Small and Medium-Sized Businesses “OPORA RUSSIA”. FAS determined that Booking.com abused its dominant position in the Russian market for the provision of services by aggregators of information about accommodation facilities (hotel aggregators). It was found that Booking.com imposed on hotels and hostels the terms of an agreement on the need to provide and comply with the parity of prices and rooms, as well as the terms of interaction with closed-user groups. For hotels, this meant that they could not price their services in other sales channels lower than on Booking.com.

FAS imposed a turnover fine on Booking.com equal to 1.3 billion Rub for abuse of its dominant position in the market. FAS found that such actions restrict competition in the market and lead to infringement of the interests of hotels.

## **UNITED STATES**

**The Federal Trade Commission (FTC) of the United States alleged that Facebook resorted to illegal buy-or-bury scheme to crush competition after string of failed attempts to innovate**

On 19.08.2021, FTC filed an amended complaint against Facebook in the agency's ongoing federal antitrust case. The complaint alleged that, after repeated failed attempts to develop innovative mobile features for its network, Facebook resorted to an

illegal buy-or-bury scheme to maintain its dominance, unlawfully acquiring innovative competitors with popular mobile features that succeeded where Facebook's offerings fell flat or fell apart. To further moat its monopoly, Facebook lured app developers to the platform, surveilled them for signs of success, and buried them when they became competitive threats. Lacking serious competition, Facebook has been able to hone a surveillance-based advertising model and impose ever-increasing burdens on its users. Facebook's actions have suppressed innovation and product quality improvements. FTC's action seeks to put an end to this illegal activity and restore competition for the benefit of Americans and honest businesses. FTC filed the amended complaint in the U.S. District Court for the District of Columbia following the Court's 28.06.2021 ruling on the FTC's initial complaint. The amended complaint includes additional data and evidence to support FTC's contention that Facebook is a monopolist that abused its excessive market power to eliminate threats to its dominance.

The amended complaint bolsters FTC's monopoly power allegations by providing detailed statistics showing that Facebook has dominant market shares in the U.S. personal social networking market. The suit also provides new direct evidence

that Facebook has the power to control prices or exclude competition, significantly reduce the quality of its offering to users without losing a significant number of users or a meaningful amount of user engagement, and exclude competition by driving actual or potential competitors out of business.

According to the amended complaint, Facebook continues to monitor the industry for competitive threats to its personal social networking monopoly. Facebook is likely to impose anti-competitive conditions on the access to its platform and seek to acquire companies it perceives as potential threats, especially when it next faces “acute competitive pressures from a period of technological transition,” the amended complaint alleges.

## **AUSTRALIA**

**Australian Competition and Consumer Commission (ACCC) concludes that Google's dominance in ad tech supply chain harms businesses and consumers**

As per ACCC's press release dated 28.09.2021, the ACCC inquiry report ('the report') on the advertising technology (or 'ad tech') sector has identified significant competition concerns and likely harms to publishers, advertisers, and ultimately, consumers. Ad tech services facilitate complex transactions for selling and buying advertising space on websites or apps, resulting in ads displayed to consumers. Ad tech services



perform an important role in the digital economy, helping businesses to reach consumers and publishers to fund online content.

The report states that Google's dominance in the ad tech supply chain is underpinned by multiple factors, including its access to consumer and other data, access to exclusive inventory, and integration across its ad tech services.

The report also found that Google has a dominant position in key parts of the ad tech supply chain and estimates that more than 90% of ad impressions traded via the ad tech supply chain passed through at least one Google service in 2020. The report states that Google used its position to preference its own services and shield them from competition.

As per the press release, the report was published on 28.09.2021 and concludes that enforcement action under Australia's existing competition laws alone is not sufficient to address the competition issues in the sector, and that ACCC should be given the powers to develop specific rules in

response. This report will further look at whether the proposed rules for ad tech need to form part of a broader regulatory scheme to address common competition and consumer concerns that have been identified in digital platform markets.

## **BRAZIL**

### **Administrative Council for Economic Defense ('CADE') launches proceeding to investigate cartel in outsourced services procurement**

As per the CADE press release dated 16.09.2021, it has launched an administrative proceeding against 42 companies and 43 individuals to probe allegations of a cartel in public and private procurement for outsourced services.

It is further informed that the investigation began in 2015 based on a complaint by a member of CADE's procurement and contracts unit, who found signs of potential wrongdoings in an online reverse auction for hiring fire brigades and outsourcing firefighting and fire prevention services.

It is also mentioned that, after the

initial investigation, the Office of the Superintendent General (SG) found evidence that a group of companies operated in coordination in at least 4,700 procurement processes. SG shared this evidence with the Department of the Federal Police ('DPF'), which resulted in a police operation named Ponto de Encontro, initiated in October 2018. During the probe, investigators executed search and seizure warrants at 13 companies established in the federal district. The press release also mentioned that additional signs of communication between companies were collected. In examining the extensive evidence produced by the criminal investigation, SG and DPF detected collusive behaviour in more than 50 (private and public) procurement processes, which may have been affected by the alleged cartel.

The press release concluded that defendants will be notified to file their answers only after the administrative proceeding commences.



## **ADVOCACY INITIATIVES**

1. Dr. K. D. Singh, Director (Law), delivered a lecture on "Implementation of Competition Law during COVID-19 Pandemic" at the Refresher Course for Law Teachers, organised by the Faculty of Law, Jagran Lakecity University, Bhopal, through the virtual mode on 03.07.2021.
2. Ms. Bhawna Gulati, Joint Director (Law), delivered a lecture on "Competition Law and Public Procurement" for officials of the Centre for Training & Development (CENTRAD), Office of the CGDA, Ministry of Defence, through the virtual mode on 05.07.2021.



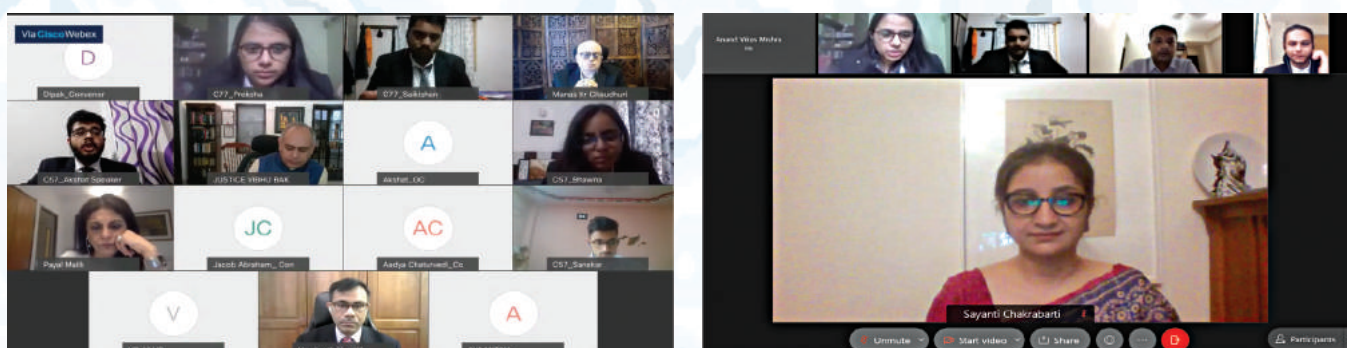
3. Shri Ashok Kumar Gupta, Chairperson, CCI, delivered the inaugural address at a webinar organised by FICCI Karnataka State Council on “Competition Act: Revolutionising Corporate & Legal Strategies” through the virtual mode on 08.07.2021.



4. Shri Manish Mohan Govil, Adviser (Law), was a panellist during a session on “Competition Act: Revolutionising Corporate & Legal Strategies”, organised by FICCI Karnataka State Council, Bangalore, through the virtual mode on 08.07.2021.



5. Ms. Payal Malik, Adviser (Economics), and Ms. Sayanti Chakrabarti, Director (Economics), judged the semi-final and final rounds of the third online Moot Court Competition on Competition Law, organised by NUJS Kolkata through the virtual mode on 11.07.2021.



6. Ms. Payal Malik, Adviser (Economics), delivered a lecture on “What is the Indian experience with Antitrust Enforcement in the Digital Economy And How Successful Are (Or Could Be) the Remedies Devised by the Indian Competition Commission (CCI)?”, organised by the School of Law, Bennet University, Greater Noida, through the virtual mode on 12.07.2021.



7. Shri Mukul Sharma, Joint Director (Economics), delivered a lecture on “Competition Law” at the valedictory ceremony of the 3<sup>rd</sup> International Conference on Self-Reliant India, organised by Indore Institute of Law through the virtual mode on 18.07.2021.
8. Ms. Payal Malik, Adviser (Economics), delivered a lecture on “Economic Analysis of Competition Law”, organised by Rajiv Gandhi National University of Law, Punjab, through the virtual mode on 27.07.2021.
9. Ms. Bhawna Gulati, Joint Director (Law), delivered a lecture on “Holistic Aspect of Competition Law in Contemporary Times”, organised by the School of Law, Galgotia University, Greater Noida, through the virtual mode on 28.07.2021.
10. Dr. Sanjay Kumar Pandey, Adviser (Law), delivered a lecture on “Advocacy as Enforcement Tool” during the one-week Summer School on Perspective of Competition Law in Asian Countries, organised by the School of Legal Studies, Cochin University of Science & Technology, Cochin, through the virtual mode on 28.07.2021.



11. Shri Ashok Kumar Gupta, Chairperson, CCI, delivered a keynote address at the launch of the Initiative on “Choice, Competition and Innovation”, organised by the Centre for the Digital Future, Gurugram, through the virtual mode on 29.07.2021.



12. Ms. Payal Malik, Adviser (Economics), was a panellist during a session on “Economics of Competition Regulation in the Digital Economy” during the launch of the Initiative on “Choice, Competition and Innovation”, organised by the Centre for the Digital Future, Gurugram, through the virtual mode on 29.07.2021.



13. Dr. K. D. Singh, Director (Law), delivered a lecture on “Evolution of Competition Law Regime in India”, organised by ICAI Jaipur through the virtual mode on 30.07.2021.
14. Shri Anand Vikas Mishra, Joint Director (Law), delivered a lecture on “Public Procurement & Competition Law” during the one-week Summer School on Perspective of Competition Law in Asian Countries organised by the School of Legal Studies, Cochin University of Science & Technology, Cochin, through the virtual mode on 30.07.2021.



15. Dr. K. D. Singh, Director (Law), delivered a lecture on “Consumer Protection and Competition Law”, organised by the Centre for Study of Consumer Law & Policy, National Law University, Delhi, through the virtual mode on 05.08.2021.

16. Ms. Jyoti Jindgar, Adviser (Economics), delivered the inaugural address at the opening ceremony of the 6 Months Advanced Professional Course in Competition Law & Market Regulations conducted by the School Of Competition Law & Market Regulations, IICA, Manesar (Haryana), through the virtual mode on 07.08.2021.



17. Dr. K. D. Singh, Director (Law), delivered the lecture on “Contemporary Issues in Competition Law” at the one-day webinar on competition law organised by Manav Rachna University, Faridabad, through the virtual mode on 13.08.2021.

18. Shri Mukul Sharma, Joint Director (Economics), delivered a lecture on “The Economics of Competition: An Overview”, organised by Shri Venkaeshwara College, Delhi University, Delhi, through the virtual mode on 23.08.2021.

19. Shri K. P. Anand, Joint Director (Law), delivered a lecture on “Competition Law Legal Frame work and Regulations”, organised by Pravin Gandhi College of Law, Mumbai, through the virtual mode on 23.08.2021.

20. Ms. Bhawna Gulati, Joint Director (Law), delivered a lecture on “Competition Issues in E-Commerce”, organised by Pravin Gandhi College of Law, Mumbai, through the virtual mode on 24.08.2021.



21. Ms. Sunaina Dutta, Joint Director (Law), delivered a lecture on “Vertical Restraints & Competition”, organised by the Pravin Gandhi College of Law, Mumbai, through the virtual mode on 25.08.2021.

22. Shri V. Sriraj, Joint Director (Law), SRO Chennai, participated as a panellist at a webinar on Competition Act: Corporate & Legal Strategies-II organised by FICCI, Bengaluru, through the virtual mode on 25.08.2021.

23. Shri Yogesh Dubey, Joint Director (Economics), delivered a lecture on “Market Definition, Measuring Market Power and Abuse of Dominance”, organised by Pravin Gandhi College of Law, Mumbai, through the virtual mode on 26.08.2021.



24. Ms. Jyotsna Yadav, Joint Director (FA), delivered a lecture on “Intellectual Property Rights and Competition Law”, organised by Pravin Gandhi College of Law, Mumbai, through the virtual mode on 27.08.2021.



25. Shri Ashok Kumar Gupta, Chairperson, CCI, delivered a keynote address as the Chief Guest at the launch of the Centre for Competition Law and Policy (CCLP) at GLA University, Mathura, through the virtual mode on 28.08.2021.



26. Shri Mukul Sharma, Joint Director (Economics), was a speaker at the Asia Pacific panel discussion on “Blockchain and Crypto currencies”, organised by The Journal of Law and Technology, NLSIU Bengaluru, through the virtual mode on 03.09.2021.

27. An advocacy programme was conducted for the Chemist and Druggist Association, Bhiwandi, and MSCDA by the Advocacy and the Research and Trend Analysis Division through virtual mode on 06.09.2021.

28. Shri Ashok Kumar Gupta, Chairperson, CCI, addressed the convocation ceremony of the New Delhi Institute of Management as a distinguished guest on 16.09.2021.

29. Ms. Sanskriti Jain, Deputy Director (Law), delivered a guest lecture on “Recent Draft & Policies Under Competition Law”, organised by The Institute of Chartered Financial Analysts of India (ICFAI), Dehradun, for students and faculty of the institution through the virtual mode on 16.09.2021.

30. Shri Ashok Kumar Gupta, Chairperson, CCI, delivered a keynote address on “Data and Non-Price Factors Under Competition Law” at the U.S.India Business Council (USIBC) event on digital issues through the virtual mode on 17.09.2021.



31. Ms. Jyoti Jindgar Bhanot, Adviser (Economics), was a panellist at the USIBC event on digital issues through the virtual mode on 17.09.2021.



32. Ms. Payal Malik, Adviser (Economics), was a panellist at the USIBC event on digital issues through the virtual mode on 17.09.2021.
33. Shri Ashok Kumar Gupta, Chairperson, CCI, delivered the chief guest address on “Competition Law Risk, Challenges and the Way Forward” at the ASSOCHAM International Competition Law Conference held through the virtual mode on 23.09.2021-24.09.2021.
34. Ms. Jyoti Jindgar Bhanot, Adviser (Economics), chaired the session on “Collision of Anti-Trust and Data Privacy” during the competition law conference on “Competition Law Risk, Challenges and The Way Forward”, organised by ASSOCHAM through the virtual mode on 23.09.2021-24.09.2021.
35. Ms. Payal Malik, Adviser (Economics), chaired the session on “Algorithmic Collusion: Fiction v. Reality” during the competition law conference on “Competition Law Risk, Challenges and The Way Forward”, organised by ASSOCHAM through the virtual mode on 23.09.2021- 24.09.2021.
36. Dr. K. D. Singh, Director (Law), was a panellist at the session on “Unfair and Discriminatory Conduct Harmonizing Competition Law and Consumer Protection” in the conference on “Competition Law Risk, Challenges and The Way Forward”, organised by ASSOCHAM through the virtual mode on 23.09.2021- 24.09.2021.
37. Shri Manish Mohan Govil, Adviser (Law), chaired the inaugural session on “Mergers and Acquisitions” during the competition law conference on “Competition Law Risk, Challenges and The Way Forward”, organised by ASSOCHAM through the virtual mode on 23.09.2021- 24.09.2021.
38. Ms. Neha Raj, (Law), was a panellist at the session on “Data Driven Mergers: Challenges and Solutions” during the conference on “Competition Law Risk, Challenges and The Way Forward”, organised by ASSOCHAM through the virtual mode on 23.09.2021-24.09.2021.
39. Shri Vipul Puri, Joint Director (Law), was a panellist at the session on “Investigating Digital Mergers and Theories of Harm” during the conference on “Competition Law Risk, Challenges and The Way Forward”, organised by ASSOCHAM through the virtual mode on 23.09.2021-24.09.2021.
40. Shri Shekhar, Joint Director (FA), was a panellist at the session on “Killer Acquisitions and Reworking Merger Control Rules” during the conference on “Competition Law Risk, Challenges and The Way Forward”, organised by ASSOCHAM through the virtual mode on 23.09.2021- 24.09.2021.
41. Ms. Savitri Baburao Kore, Joint Director (Economics), delivered a lecture on “Competition Issues in India” at Gobi Arts & Science College, Erode, Tamil Nadu, through the virtual mode on 25.09.2021.
42. Dr. Sangeeta Verma, Member, CCI, participated in the Colloquium for the Chairpersons of the Central Sector Regulatory Member Organisations of FOIR on 29.09.2021.







## ADVOCACY WITH STATES

**State: Assam**

**Resource Persons: Shri Umesh Kumar and Shri Tanuj Goswami, Topic: Competition Law and Public Procurement**

S. No.	Date	Organisation for which programme was conducted
1.	02.07.2021	The Officers of Brahmaputra Valley Fertilizer Corporation Limited
2.	28.07.2021	The Officers of Assam Chambers of Commerce
3.	04.08.2021	The Officers of Royal Global University, Guwahati
4.	09.08.2021	The Officers of Assam State Transport Corporation and Assam Inland Water Transport Department
5.	23.08.2021	The Officers of North Eastern Coalfield (A Maharatna PSU under MoC, Margherita)
6.	22.09.2021	The Officers and staff of the Rain Forest Research Institute.
7.	27.09.2021	The District Deputy Commissioner
8.	29.09.2021	The Officers of Guwahati Municipal Corporation

**State: Haryana**

**Resource Person: Shri S. P. Arora, Topic: Competition Law and Public Procurement**

S. No.	Date	Organisation for which programme was conducted
1.	07.07.2021	The Officers of Directorate, Supplies and Disposal
2.	30.07.2021	The Officers of Directorate of Sarva Shiksha Abhiyan
3.	10.08.2021	The Officers of Department of Health and Family Welfare
4.	27.08.2021	The Officers of Development of Urban Local Bodies
5.	17.09.2021	The Officers of the Chandigarh Chapter of PHD, Chamber of Commerce and Industry

**State: Uttarakhand**

**Resource Person: Shri Rajiv Rautela, Topic: Competition Law and Public Procurement**

S. No.	Date	Organisation for which programme was conducted
1.	07.07.2021	The Officers of the Power Department
2.	05.05.2021	The Officers of Irrigation Department
3.	23.08.2021	The Officers of Nagar Nigam Uttarakhand
4.	03.09.2021	The Officers of Pay Jal Nigam
5.	16.09.2021	The Officers of Jal Sansthan



**State: Telangana**

**Resource Persons: Shri R. C. Kumar and Shri Prasanna Kumar, Topic: Competition Law and Public Procurement**

S. No.	Date	Organisation for which programme was conducted
1.	07.07.2021	Telangana State Agro Development Corporation
2.	12.07.2021	Factory Department
3.	13.07.2021	Telangana State Agro Development Corporation
4.	30.07.2021	The Officers of Directorate of Sarva Shiksha Abhiyan
5.	10.08.2021	The Officers of Department of Health and Family Welfare
6.	27.08.2021	The Officers of Development of Urban Local Bodies
7.	17.09.2021	The Officers of the Chandigarh Chapter of PHD, Chamber of Commerce and Industry

**State: Kerala**

**Resource Person: Shri Krishna Kumar K. N., Topic: Competition Law and Public Procurement**

S. No.	Date	Organisation for which programme was conducted
1.	14.07.2021	The Officers of Malabar Cements Ltd., Walayar
2.	29.07.2021	The Officers of Kerala State Industrial Enterprises
3.	27.08.2021	The Officers of District Industries Centre
4.	17.09.2021	The Officers of the Directorate of Industries and Commerce and District Industries Centre.
5.	22.09.2021	The Officers and staff of M/s Kerala Kera Karshaka Sahakarana Federation Ltd. (Kerafed)
6.	29.09.2021	Trade and Industry Association

**State: Odisha**

**Resource Person: Shri Mahendra Kumar Mallick, Topic: Competition Law and Public Procurement**

S. No.	Date	Organisation for which programme was conducted
1.	28.07.2021	The Officers of Employees' State Insurance (ESI) Bhubaneswar
2.	27.08.2021	The Officers of ORMAS: Odisha Rural Development and Marketing Society
3.	28.09.2021	The Officers of Directorate of Cooperative Audit



**State: Himachal Pradesh**

**Resource Person: Shri Rangilu Ram Patyal, Topic: Competition Law and Public Procurement**

S. No.	Date	Organisation for which programme was conducted
1.	22.07.2021	The Officers of Higher Education, Mandi
2.	23.07.2021	The Officers of Horticulture Department, Mandi
3.	06.08.2021	The Officers of G.B. Pant Memorial Govt. P.G. College, Rampur Bushahr, District Shimla
4.	18.08.2021	The Officers of Directorate of Ayurveda, Ayush Bhavan, SDA Complex, Shimla
5.	08.09.2021	The Officers of the Government College, Daulatpur Chowk, District Una
6.	10.09.2021	The Officers/staff/students of the Directorate of Language, Arts and Culture

**State: Uttar Pradesh**

**Resource Person: Shri Laxmi Shanker Singh, Topic: Competition Law and Public Procurement**

S. No.	Date	Organisation for which programme was conducted
1.	22.07.2021	The Officers of Bareilly Vikas Pradhikaran
2.	27.07.2021	The Officers of Bareilly Vikas Pradhikaran
3.	27.07.2021	The Officers of Nagar Nigam Shahjahanpur
4.	02.08.2021	The Officers of Nagar Nigam Bareilly
5.	10.08.2021	The Officers of Nagar Nigam Moradabad
6.	03.09.2021	The Officers of Nagar Nigam, Municipality
7.	10.09.2021	The Officers of various Departments (mixed) of District Hardoi

**State: Puducherry**

**Resource Person: Dr. S. Vaithianadane, Topic: Competition Law and Public Procurement**

S. No.	Date	Organisation for which programme was conducted
1.	26.08.2021	The Officers of the Puducherry Chapter of ICAI, The Institute of Cost Accountants of India

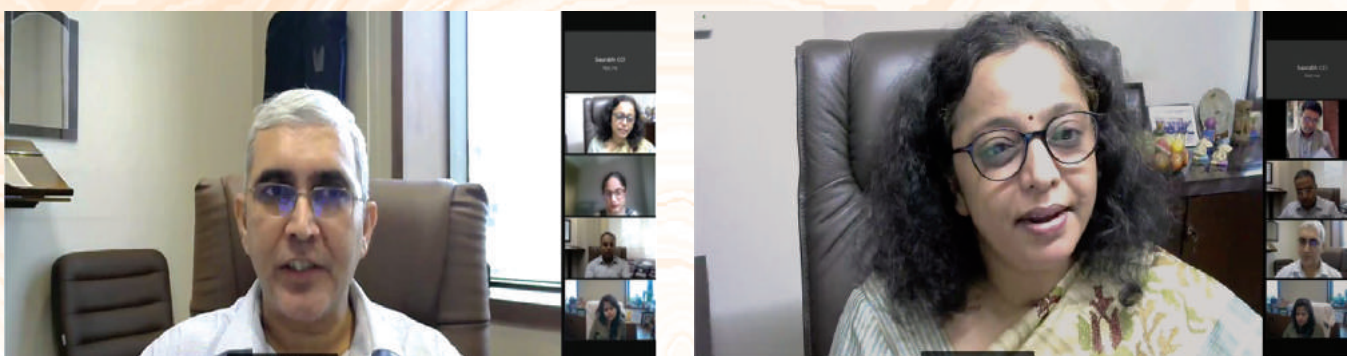




## PUBLIC CONSULTATION WITH STAKEHOLDERS (CONFIDENTIALITY REGIME)

Competition Commission of India (CCI) organised a Stakeholder Consultation on Review of Confidentiality Regime on 02.09.2021. The half-day virtual consultations were conducted by CCI as part of Azadi Ka Amrit Mahotsav celebrations to establish a robust information-sharing regime that allows Parties to effectively present their cases in the interest of justice without compromising the sanctity of confidential information. The virtual consultation was a follow-up to the written comments/feedback provided by stakeholders on the draft proposal circulated earlier by CCI. The event elicited active participation from stakeholders, who provided valuable feedback on the proposal.

The consultation was attended by more than 50 participants, including representatives from law firms, business chambers, industry associations, and think tanks. CCI was represented by Ms. Jyoti Jindgar Bhanot, Adviser; Dr. K. D. Singh, Director, Antitrust Division; and other Officers of CCI.



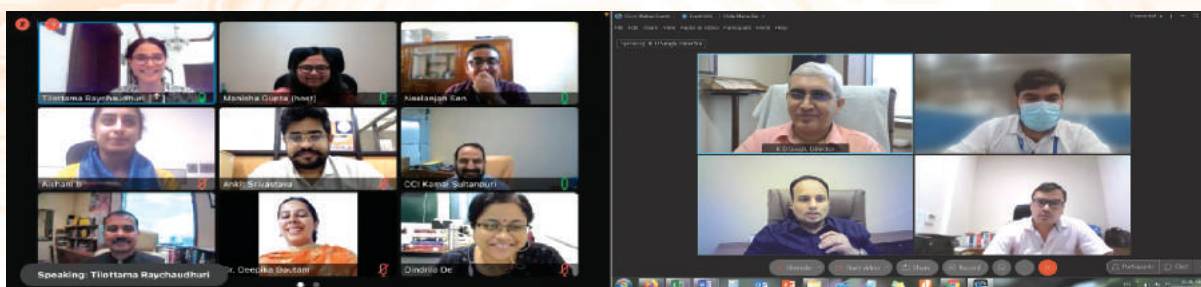
## CAPACITY BUILDING EVENTS

### Webinars/Trainings/Workshops:

1. Two Officers attended the Chief Information Security Officers (CISOs) Deep Dive Online Training Programme under the Cyber Surakshit Bharat Initiative, organised by the National e-Governance Division (NeGD), Ministry of Electronics and Information, during 05.07.2021–10.07.2021.
2. Five Officers attended an online training on Advance Course on Preventive Vigilance, organised by the National Productivity Council (NPC), New Delhi, during 06.07.2021– 07.07.2021.
3. A virtual session by Ms. Aishani Bidani, Research Associate (Law), on the topic “Competition Law and Consumer Protection Law: Two Sides of Same Coin or Two Different Coins?” was organised on 14.07.2021 under CCI's Peer-to-Peer (P2P) initiative.
4. Two Officers attended an online training on Tendering and Contract Management organised by the National Productivity Council (NPC), Jaipur, during 15.07.2021–16.07.2021.
5. Four Officers attended an online training programme on “Public Procurement (Basic)”, organised by the Arun Jaitley National Institute of Financial Management (AJNIFM), from 09.08.2021–12.08.2021.
6. A virtual workshop on “Gender Sensitisation” was organised for the Officers/RAs of CCI & O/o DG, CCI, on 18.08.2021. Shri Moloy Sanyal, Deputy Secretary, Institute of Secretariat Training and Management (ISTM), conducted the aforesaid workshop. A total of 34 Officers and Research Associates attended the workshop.

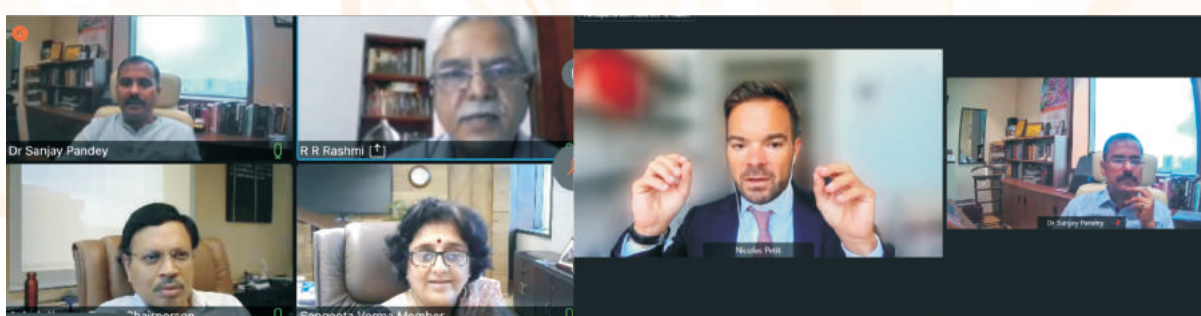


7. Four Officers attended an online training programme on “Public Procurement (Basic)”, organised by the Arun Jaitley National Institute of Financial Management (AJNIFM), from 23.08.2021-26.08.2021.
8. The 37<sup>th</sup> lecture under CCI's Distinguished Visitor Knowledge Sharing (DVKS) was delivered virtually by Shri Bimal Julka, former Chief Information Commissioner, on the topic “RTI Challenges and Opportunities” on 03.09.2021 for the Officers of CCI & O/o DG, CCI.
9. Two Officers attended the two-week online capacity building program, Shaping the Future of Regulations in the Emerging Digital Era, organised by the Indian Institute of Corporate Affairs (IICA) for the Forum of Indian Regulators (FOIR).
10. CBD conducted a virtual in-house induction training programme (the first of 2021–22) for 25 newly joined Officers and Research Associates during 13.09.2021–15.09.2021.
11. The first virtual meet of Cartel Working Group (CWG) 2021–22 under the Network of Indian Competition Experts (NICE) was held on 17.09.2021. Researchers deliberated on competition concerns in cartel and other related issues.



### Special Lecture Series (SLS):

1. The 21<sup>st</sup> lecture under CCI's Special Lecture Series (SLS) was delivered virtually on 06.08.2021 by Shri Rajani Ranjan Rashmi, Distinguished Fellow and Programme Director, Earth Science and Climate Change, The Energy and Resource Institute (TERI), on the topic “Carbon Footprint Reduction: What Is At Stake & How Do We Do It” for the Officers of CCI & O/o DG, CCI.
2. The 22<sup>nd</sup> lecture under CCI's Special Lecture Series (SLS) was delivered by Prof. Nicolas Petit, European University Institute, Italy, on “Innovating Big Tech Firms and Competition Policy: Favouring Dynamic over Static Competition” on 10.09.2021 for the Officers of CCI & O/o DG, CCI.
3. The 23<sup>rd</sup> lecture under CCI's Special Lecture Series (SLS) was delivered on 27.09.2021 by Shri Dilip Asbe, MD & CEO, National Payments Corporation of India (NPCI), on the topic “e-RUPI”.







## HR CORNER

### A. Selection on deputation basis:

1. Selection made for the post of Director (Economics) In CCI on deputation basis.
2. Offer of appointment issued in respect of 2 posts each of Deputy Director General and Office Manager (CS) in DG's office on deputation basis.
3. Offer of appointment issued in respect of 1 post of Deputy Director (Law) and 3 posts of Office Manager (CS) in CCI on deputation basis.

### B. New joining in CCI on deputation basis:

1. Five Officers, namely Shri Davinder Singh Kakkar (Private Secretary); Ms. Rashmi Bhartiya, Assistant Director (LS); Ms. Preeti Kamal, Office Manager (CS); Shri Naval Kumar, Office Manager (CS); and Shri Dheeraj Malhotra, Office Manager (CS) joined CCI on deputation basis in July 2021.
2. A Copy Editor and a Research Associate joined CCI in July 2021.

### C. Selection of Research Associates/Experts:

35 Research Associates/Experts in Law, Economics, FA, and IT streams were selected during July 2021.

### D. Other HR matters:

Extension of deputation tenure of Shri Sidharth, Assistant Director (CS); Shri Sonjoy Banerjee, Assistant Director (CS); Shri Arun T., Office Manager (F&A); Shri Vikrant, Office Manager (CS); Shri Sunil Varghese, Office Manager (CS); and Shri Kuldeep Kumar, Office Manager (CS) in CCI.

1. Extension of deputation tenure of Shri Manish Kumar as Assistant Director General (CS) in the O/o. DG, CCI.
2. Extension of term of part-time Medical Officers at CCI, Dr. Pramod Kumar Sharma (Allopathic) and Dr. Nirmal Kumar Jain (Homeopathic), was made for a further period of one year, w.e.f. 01.09.2021.
3. Extension of deputation tenure of Shri Dilip Kumar and Shri Mukesh Kumar, Office Managers (CS), CCI.
4. Final Seniority List for the year 2021 in respect of all regular Officers of CCI was issued.

### E. New joining in CCI/DG's office on deputation basis:

1. Ms. Jyotsna Yadav joined as Joint Director General, and Shri Sanjeet Kumar joined as Office Manager (CS) in the O/o. DG, CCI, on deputation basis.
2. Shri Manish Sharma joined as Assistant Director (CS) in CCI on deputation basis.
3. Dr. Naresh Ramkrishna Bodkhe joined as Director (Economics), Shri Davander Prasad as Deputy Director (Law), and Shri Narayan Modal as Assistant Director (CS) in CCI on a deputation basis.
4. Dr. V. Siva Prasad Ganjala joined as Additional Director General in the O/o. DG, CCI, on deputation basis.

F. Shri Shishupal Kumar Singh was permanently absorbed as Office Manager (CS) at CCI.

### G. Joining of Research Associates/Experts:

17 Research Associates/Experts [Law: 10, Economics: 01, FA: 03, IT: 03] joined CCI in August 2021.

H. A vacancy circular to invite applications to fill up 05 posts of DDG in the O/o. DG, CCI on deputation basis was issued on 23.09.2021. The last date prescribed for receipt of applications in this regard is 22.11.2021.



*Shri Ashok Kumar Gupta, Chairperson, CCI taking over the additional charge as Chairperson, National Financial Reporting Authority (NFRA)*





**Shri Ashok Kumar Gupta, Chairperson, CCI, and Mr. Kazuyuki Furuya, Chairperson, JFTC, signing the Memorandum on Cooperation, on 06.08.2021.**

**Competition Commission of India**

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

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)

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