



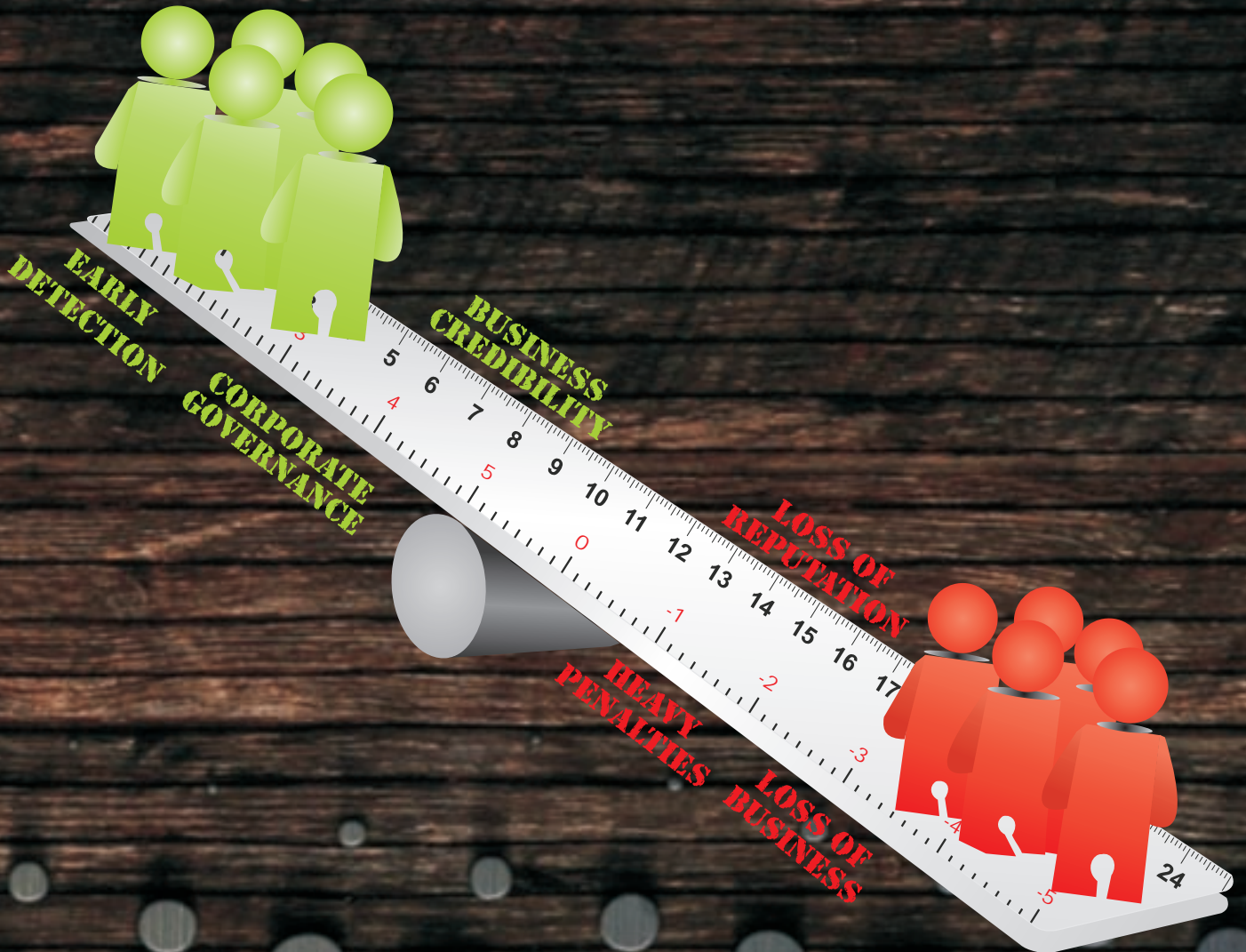
The Quarterly Newsletter of Competition Commission of India (CCI)

# Fair Play

PROMOTING AND SUSTAINING COMPETITION IN MARKETS

VOLUME 4 : JANUARY - MARCH 2013

## COMPLIANCE



## NON COMPLIANCE

**In Focus: Competition Law Compliance**

***BCCI levied penalty of Rs 52 cr for abuse of its dominance***

# IN THIS ISSUE...



3

**FROM THE DESK OF THE CHAIRPERSON**



4

**IN FOCUS**



8

**FIGURES SPEAK**



10

**SECTION 3 & 4  
ORDERS**



13

**SECTION 5 & 6  
ORDERS**



15

**INVESTIGATIONS  
INITIATED**



17

**ADVOCACY  
INITIATIVES**



18

**EVENTS**



20

**ENGAGING WITH  
THE WORLD**



22

**DEVELOPMENTS IN  
OTHER JURISDICTIONS**



23

**KNOWING CCI**

**EDITOR:  
DR. SEEMA GAUR**

**SUB EDITOR:  
DR. SANJAY PANDEY**

# FROM THE DESK OF THE CHAIRPERSON

---



Let me bring to you the fourth and the last edition of 'fair play' for the year 2012-13. This issue focuses on the urgent need for "competition compliance" by enterprises.

The Competition Act, 'inter alia', seeks to "promote and sustain competition in markets". To achieve this, CCI has been mandated [S.49(3)] to take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues. A Competition Compliance programme for enterprises is, in pursuance, a critical building block for the edifice of "Competition Culture". This operates on the age-old principle of prevention being better than the cure, which can visit corporate entities consequent to a finding of violation of the Act.

Competition compliance is rapidly gaining acceptance at the level of corporates. I understand that most large entities are actively adopting the programme and sensitizing their employees. We held a workshop with the CEOs/senior functionaries of top 100 companies of India to sensitize them about the importance of instituting competition law compliance programme.

While compliance with the law is required in legal sense, it is beneficial to the corporates and the entire economic system in the long run. The international experience of country after country shows that economic growth comes through improvements in productivity. Productivity itself flows from incentives arising out of fair play and competition. Hence, the criticality of robust Competition Compliance programmes, which we in the Commission fervently support.

Ashok Chawla

## Competition Law Compliance



The fundamental rationale of competition law lies in the proposition that competition yields social benefits. Competition is beneficial to consumers, businesses and the economy as a whole. Effective competition regulation in an environment of competition culture acts as a catalyst for trade liberalisation, foreign direct investment, and other economic policies, which have the like objectives of promoting economic growth, equity and welfare of the common man. In India, the Competition Act, 2002 (the Act) provides rules of competition for the enterprises and aims to punish those, who violate them.

### I. Competition Compliance

Compliance means respecting the law. The maxim "*ignorantia juris non excusat*" implies that ignorance of the law is no excuse. Compliance with laws of land is legal obligation for every business and is applicable to competition law as well. Competition compliance implies a systemic and active approach to run a business in compliance with the written legal and unwritten ethical rules of competition and minimise risk of infringement of the law. Competition compliant enterprises cut down enforcement costs

significantly as well as help in development of competitive markets and creation of "culture of competition" in the economy.

### Risks of non-compliance

It is the prime responsibility of all enterprises, irrespective of the size, to be aware of the risks of infringing competition law in the course of running their business and develop a compliance strategy that best suits their needs. The law vests the Competition Commission with adequate powers of investigation and orders. The chances of conviction are, therefore, high for non-compliant enterprises. The costs associated

with non-compliance can be monetary as well as non-monetary and far outweigh any perceived advantages from infringement of the law. These costs are briefly described below:

**Cease & desist:** In case of CCI determining violation, CCI can order the violator to stop implementing anti-competitive agreement or abusing its dominant position.

**Heavy penalties:** Companies that infringe competition law can face heavy penalties, which can be as high as ten per cent of their turnover or up to three times of the profits in case of cartels (whichever is higher).

## Risks of Non-compliance include:

- ❖ **Imposition of heavy penalties.**
- ❖ **Agreements being void and unenforceable.**
- ❖ **Heavy compensation to be paid.**
- ❖ **Heavy legal costs to handle investigation and its consequences.**
- ❖ **Damage to reputation.**
- ❖ **Loss of shareholder value and business.**

**Liability of officers of company:** In case of infringement, individual officers of company responsible for the conduct of business of company shall also be deemed to be guilty of that infringement and shall be liable to be proceeded against and punished accordingly.

**Award of compensation:** In case an infringement is determined by CCI, affected parties can approach the Competition Appellate Tribunal for compensation, which can be quite large depending on the kind of violation involved and impose a heavy burden on the violating enterprise.

**Division of dominant enterprise:** Abuse of dominance can also result in division of the dominant enterprise being ordered by the Commission.

**Unenforceability of agreements:** Any agreement, which infringes competition law is generally void and cannot be enforced in the courts.

**Significant legal costs:** Handling competition law investigation, infringement and related appeal cases may impose huge legal costs and cause significant drain of financial resources.

**Loss of management time and distraction:** In case of competition law investigation, senior management may need to devote significant amount of its time and energy on handling the investigation and its consequences. This may adversely affect management of enterprise and its performance.

**Damage to reputation:** Negative publicity resulting from infringement of competition law may cause serious damage to image and reputation built over years at high cost.

**Loss of business:** Damage to reputation may subsequently lead to loss of business or shareholder value as potential customers and investors may be repelled.

## Competition compliance as a critical beneficial tool

Achieving a culture of competition compliance requires an investment by the business, including a real commitment of management time, and its benefits far exceed the cost. A competition compliant business not only avoids the risks associated with non-compliance (described above), but also benefit from several potential advantages:

**Early detection:** It can help in early detection of violation by educating employees as to signs of illegal conduct by co-workers and providing clear procedures for reporting suspected violations and taking remedial measures. For example, in case of cartel, this may allow lesser penalty application to be made at an early stage and potentially help to reduce penalty.

**Increased awareness of employees:** As fear of violating the law can frighten employees and sometimes unwittingly chill perfectly legitimate competition, a compliant company will educate and empower employees to carry their duties confidently as per 'the rules of the game'. Further,

## Benefits of Compliance

- ❖ **Helps avoid the risks/costs associated with non-compliance.**
- ❖ **Helps early detection of violation and take corrective measures**
- ❖ **Helps educate employees to confidently handle business as per "rules of game".**
- ❖ **Inculcates culture of compliance and enhances business credibility.**

employees will be well-informed to recognize the potential signs that their own business might be the victim of anti-competitive conduct by others and better-placed to protect its interests by making a reasoned complaint to CCI.

**Culture of Compliance:** A culture of compliance is inculcated throughout the organization at all levels, which allows companies to pursue their business with confidence and without fear.

**Enhancement of reputation and goodwill:** Compliance establishes the company as having ethics and integrity and enhances reputation and goodwill offering benefits in terms of long term growth and sustainability.

## II. CCI's Approach to Competition Compliance

### Competition compliance as part of corporate governance

CCI strives to prevent practices having adverse effect on competition in India. Since inception, CCI is focusing on aggressive enforcement of the Act and sending strong signals to economic actors to follow mandate of the law. CCI is also encouraging companies to institute competition compliance as a new but critical component of corporate governance. This will not only help companies ward off the unfriendly eye of CCI, but actually pay dividends in the long run. Good corporate governance is valued by the markets (competition compliance as an essential part of it), which can provide reputational advantages.

CCI is actively engaging stakeholders through workshops, seminars and roundtables on competition compliance. In January 2013, CCI conducted a roundtable on 'Competition Compliance for Good Corporate Governance' with senior management of top 100 companies in India to convey the urgency of being competition compliant.

### Competition Compliance Programme (CCP)

Competition Compliance Programme (CCP) implies active efforts on the part of an enterprise to comply with the provisions of the Act, and taking necessary steps to ensure not to infringe the Act knowingly or unknowingly. The existence of a compliance programme is an indication of the

consciousness about competing in accordance with the law. A compliance programme provides a formal internal framework for ensuring that businesses, i.e., the management and individual employees comply with competition law. A compliance programme can also help a business identify any possible infringements early on, allowing it to take appropriate remedial action. In the case of cartels, early detection is crucial, if the business is to benefit fully from the leniency programme, which can offer 100% immunity from financial penalties in certain circumstances. CCI has placed in public domain a quick guide on 'Competition Compliance Program for Enterprises' to provide broad guidance to companies in developing CCPs.

## III. International Experience

Competition authorities across the world are aggressively advocating competition compliance and many authorities have initiated innovative CCPs. Generally, it is recognised that compliance programme differs according to size/sophistication/risk profile of the company. Apart from leading competition enforcement jurisdictions such as Australia, USA, UK, many young and emerging competition jurisdictions have also initiated competition compliance programmes. For example, Office of Fair Trading, UK has suggested a four step process for CCP comprising of risk identification, risk assessment, risk mitigation and review. Recently, International Chamber of Commerce has brought out "The ICC Antitrust Compliance Toolkit" for providing

practical guidance for larger companies and SMEs.

## IV. Introduction of CCP

### Objectives

The Competition Compliance Programme should have broadly the following objectives:

- ▶ Prevent violation of law, i.e. the Competition Act 2002 and all Rules, Regulations & Orders made there-under;
- ▶ Promote a culture of compliance;
- ▶ Encourage good corporate citizenship.

### Components - the 5 'C's

There is no one-size-fits-all CCP. The design of an effective CCP depends on the activity, size, structure, geographic presence and risk profile of a specific company and must be tailored to its particular requirements. Companies in India may study quick guide provided on CCI website as well as wide range of other guidance available in public domain and use them for designing a CCP suitable to their specific needs. Companies may also seek professional legal advice. Key elements of an effective CCP include:

- ▶ **Commitment:** Top management need to demonstrate visible and active commitment to compliance, identify it as part of company's core values and communicate a zero tolerance policy for illegal/unethical behavior.
- ▶ **Culture of compliance:** A culture of compliance needs to

be encouraged at all levels in the company, so that everybody understands the rules and the need to follow them.

- ▶ **Compliance know-how:** This requires knowledgeable people to administer the CCP as well as includes compliance manuals, Do's and Don'ts, guidance on the intranet, training on-line / face to face, seminars, videos etc. for avoidance of actions/decisions violating the competition law.
- ▶ **Controls:** There is need to enhance internal control systems aimed at deterring anti-competitive practices.
- ▶ **Constant monitoring and improvements:** Compliance should be periodically monitored, evaluated and updated to ensure that it remains relevant to the company's business.

### How to implement CCP

The following broad steps are suggested for implementation of CCP:

- ▶ Constitution of high-level "Competition Compliance Committee" to drive the compliance agenda in the company
- ▶ Putting in place a voluntary "Compliance Manual"
- ▶ Carrying competition impact assessment/competition audit
- ▶ Reviewing compliance programme periodically by the Board of Directors

- ▶ Evaluating the compliance programme regularly

## V. Conclusion

From a commercial point of view, it is a choice between adopting a CCP or facing the risks of ever increasing costs of legal proceedings, considerable time and resources to be wasted in defending such proceedings, imposition of heavy penalties and loss of reputation and business. The Commission believes that the majority of businesses wish to comply with the competition law and supports efforts by the business community towards this objective. The best reward for a good compliance strategy is not infringing the law. Competition compliance programmes cannot succeed without the unambiguous commitment of top management of the company on an on-going basis. By building a culture of compliance based on ethics and performance, companies can reinforce their reputation with their customers, investors and wider public and become a source of pride and motivation for their employees.

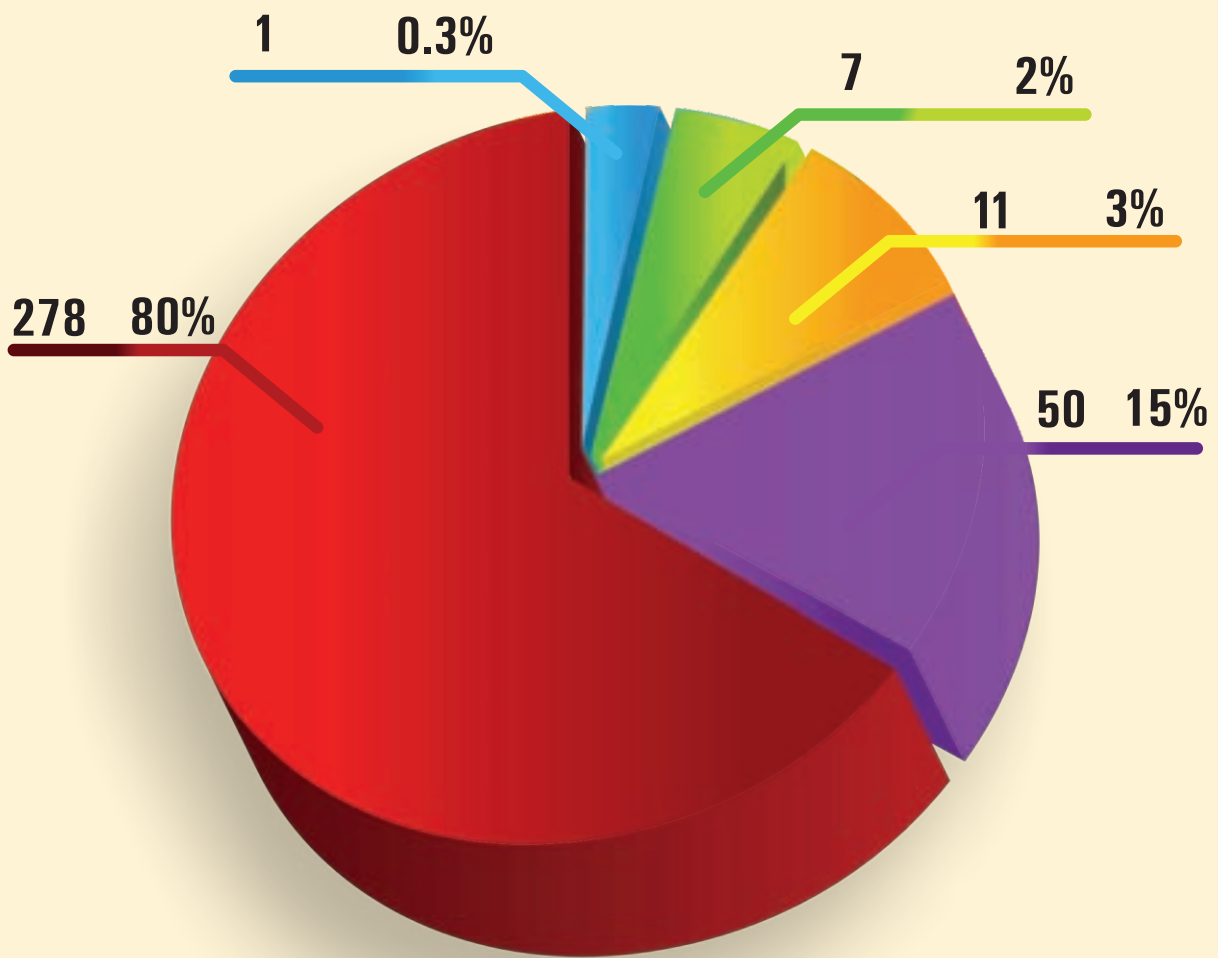
**By building a culture of compliance based on ethics and performance, companies can reinforce their reputation with their customers, investors and wider public and become a source of pride and motivation for their employees.**

# FIGURES SPEAK

---

## Cases in CCI : March 31,2013

Total Cases : 347

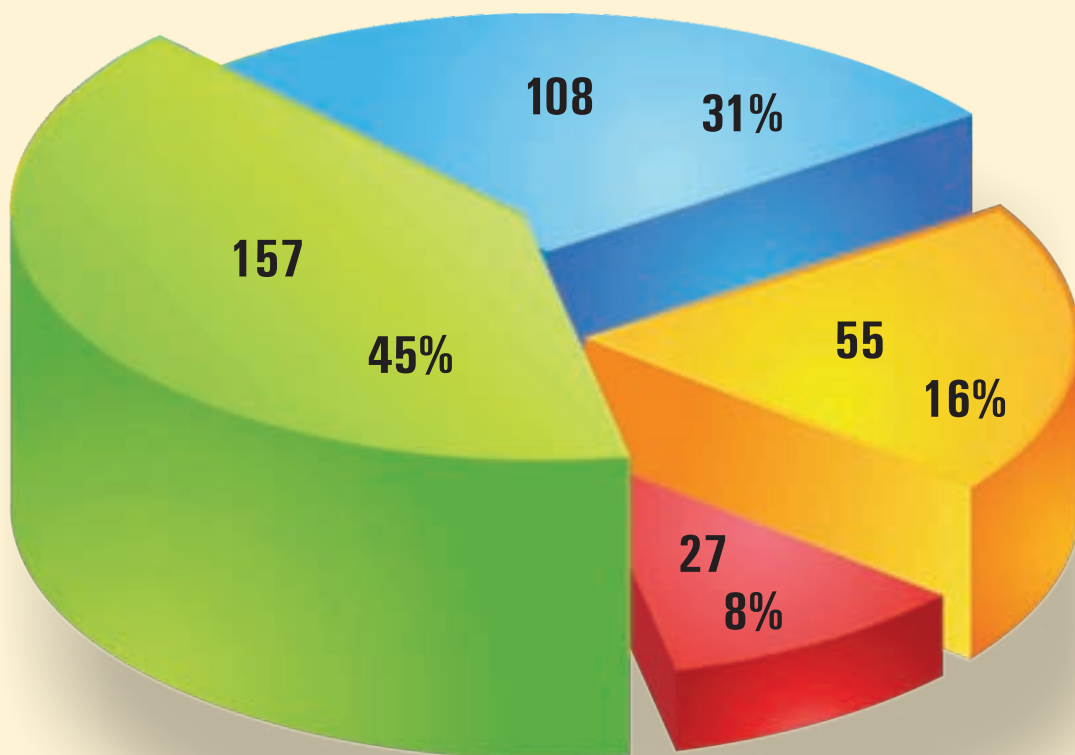






- Information filed u/s 19(1)(a)
- Cases from MRTPC / DGIR u/s 66(6)
- Suo moto cases u/s 19(1)
- Ref. from Government u/s 19(1)(b)
- Ref. from Statutory Authorities u/s 21



## Status of Cases: March 31, 2013

Total Cases: 347



-  Cases closed at prime facie stage
-  Cases decided or disposed off after DG's report
-  Cases under consideration before Commission
-  Cases pending before DG

# SECTION 3 & 4 ORDERS

## Board for Control of Cricket in India (BCCI) Penalised for Abuse of Dominant Position

Board for Control of Cricket in India (BCCI) is the de facto regulator of sport of cricket in India as well as an organiser of cricket events and associated activities such as media broadcasting. BCCI has been found guilty of abusing its dominant position in contravention of Section 4(2)(c) of the Competition Act, 2002.

Mr. Surinder Singh Barmi, a cricket fan from New Delhi, filed information against BCCI in November 2010. His allegations were related to Indian Premier League (IPL), a Twenty-20 professional cricket league tournament conducted by BCCI. He alleged irregularities in the grant of franchise rights for team

ownership, media rights for coverage of the league and award of sponsorship rights and other local contracts.

CCI noted that BCCI enjoys a dominant position in the market for organising private professional league cricket events in the country. BCCI has gained tremendously from the IPL format in financial terms, and its economic power was enormous as a regulator, enabling it to pick winners. CCI remarked in its decision that:

“The policy of BCCI to keep out other competitors and to use their position as a defacto regulatory body has prevented many players

who could have opted for the competitive league. The dependence of competitors on BCCI for sanctioning of the events and dependence of players and consumers for the same reason has been total.”

CCI imposed a penalty on BCCI amounting to six per cent of the average turnover of the BCCI in 2007-08, 2008-09 and 2009-10 for abusing its dominant position, which comes to Rs. 52.24 crores. CCI also directed BCCI to cease and desist from any practice in future denying market access to potential competitors and to refrain from inclusion of similar clauses in its future agreements.

# CCI Modifies "Apartment Buyers Agreement"

(Belaire Owner's Association vs DLF Ltd., HUDA and Dept. of Town and Country Planning, State of Haryana)



In August 2011, CCI imposed a fine of Rs. 630 Crore on DLF for abuse of dominant position in the relevant market of 'High End Residential Units'. DLF was penalised for violating the provisions of Section 4 of the Competition Act, 2002 by entering into an agreement with apartment allottees that was one-sided, abusive and unfair to the allottees. Presently, Competition Appellate Tribunal (COMPAT) is hearing DLF's appeal against the penalty and other sanctions imposed on it by CCI.

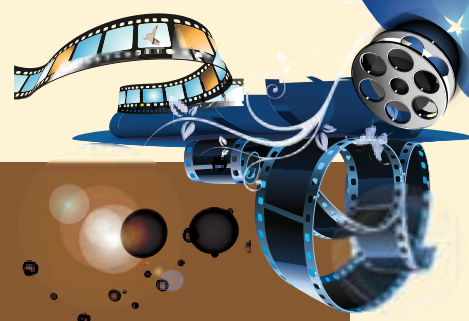
In January 2013, CCI passed a supplementary order to modify the agreement between DLF and buyers of its apartments, pursuant to a direction from COMPAT. After

considering the modified terms of the Apartment Buyers Agreement submitted by both the parties, CCI modified the terms of the agreement in a manner that it considered fair and reasonable and is in interest of both the parties. Sale of parking lots as separate units to allottees, a highly differential rate of interest charged by developers on delayed payments and the rate of interest paid by them on delayed possession of a property or refunds post cancellation of allotments are prominent among the modified terms.

CCI barred DLF from selling parking slots and stated that the allottees of Belaire Complex jointly would have undivided ownership

rights over land area in floor area ratio (FAR) inclusive of the footprint of the building and not alone on the footprint of the building as asserted by DLF in the agreement. CCI also stated that if the company substantially changes the layout plan, resulting in more than two per cent increase or decrease in super area, the allottees' consent should be obtained for such changes in the layout plans.

CCI also considered the relevant provisions of the laws applicable to the development of group housing projects in Haryana, particularly the mandatory requirements, which must be followed by every developer/builder, but which were not followed by DLF in this case.



## Cinergy Independent Film Services Pvt. Ltd. vs Telangana Telugu Film Distributors Association & Others

**CINERGY**



CCI directed Telanagana Telugu Film Distributors Association (TTFDA), Karnataka Film Chamber of Commerce (KFCA) and Andhra Film Chamber of Commerce

(AFCC) to cease and desist from pressurizing the distributors to settle the monetary disputes with its members. Cinergy Independent Film Services Pvt. Ltd., the informant had alleged that these associations make it compulsory for every film distributor to become their member or register its film with them before the release. It was also submitted that a distributor, who refuses to become a member or register his film with them is not allowed to distribute and exhibit his film in the territory,

which is governed or regulated by these associations.

The Commission also levied a penalty of about Rs. 12.90 lakhs upon AFCC for violation of section 3(3)(b) of the Competition Act, 2002 and also asked it to suitably modify its articles, rules etc. in the light of the findings given in the order. No penalty was imposed on TTFDA and KFCA by the Commission as they have been already fined in previous cases for similar conducts.

## M/s Santuka Associates Pvt. Ltd. vs All India Organization of Chemists and Druggists (AIOCD) & Others

All India Organization of Chemists and Druggists (AIOCD) was found guilty by CCI for fixing trade margins and limiting and controlling the supply and market. Organisation of Pharmaceutical Producers of India (OPPI), Indian Drug Manufacturers' Association (IDMA) and a drug manufacturer USV Ltd. were also parties to the case. However, they were not found liable for the violation of the provisions of the Competition Act, 2002. The information against AIOCD was filed by a Cuttack based firm Santuka Associates, which is a clearing and forwarding agent in medicines of various pharmaceutical companies.

The Commission found that the practices followed by AIOCD and its affiliates create restraint on

freedom of trade on account of No Objection Certificate (NOC) through Memorandum of Understanding's (MOU), which has the effect of limiting or controlling the market or supply; Product Information Service (PIS) approvals by delaying or withholding them; fixing trade margins and boycotting pharmaceutical companies on various issues contained in the MOUs, thereby contravening Section 3(3)(a) and Section 3(3)(b) of the Act.

The Commission observed that AIOCD being the apex body of chemists and druggists is having full control over the stockists / retailers of drugs and medicines all over the country and because of its position is able to continuously engage in limiting and controlling the supply

and market and influencing the prices of the drugs and pharmaceutical products by insisting upon NOC for appointment of stockists, fixation of trade margins etc. It further observed, " it cannot be doubted that had these practices not been there, the consumers at large would have been benefitted in monetary terms and otherwise and, accordingly, the conduct of AIOCD needs to be sternly dealt with". Therefore, the Commission after considering the facts and circumstances of the case decided to impose penalty @ ten per cent of the average of the receipts for financial years 2008-09, 2009-10 and 2010-11 amounting to Rs. 47.4 lakhs on AIOCD.

# SECTION 5 & 6 ORDERS

## CCI Approves the Acquisition of Majority Stake in Gujarat Gas Company by GSPC Gas Company Limited

GSPC Distribution Networks Limited (GDNL/Acquirer) and Gujarat Gas Company Limited (GGCL) jointly filed notice for the acquisition of 65.12 per cent of the equity share capital of GGCL by GDNL for Rs. 2,463.8 crore. GDNL is a wholly-owned subsidiary of GSPC Gas Company Limited (GSPC Gas), jointly promoted by Gujarat State Petroleum Corp (GSPC) and Gujarat State Petronet Ltd (GSPL). GDNL, being a recently incorporated company, is not engaged in any business activity. GSPC Gas is engaged in the business of distribution of natural gas to customers in the form of Compressed Natural Gas (CNG) and Piped Natural Gas (PNG) via its City Gas Distribution (CGD) network in ten districts in Gujarat. GSPC, the ultimate holding company of the GSPC Group, has presence across the entire energy value chain including oil and gas exploration, development & production, gas trading, gas transmission & distribution and power generation. GGCL, a subsidiary of BG Group plc, is primarily engaged in the distribution of natural gas in the form of PNG and CNG in three districts in Gujarat. GGCL also operates a 73.2 km transmission pipeline network from Hazira to Ankleshwar in Gujarat.

As regards the market for transmission of natural gas in Gujarat, CCI observed that GGCL has only 73.2 km transmission

pipeline, which is primarily being used for supplying gas to its own CGD network; whereas, GSPL operates 2,065 km transmission pipeline network on an open access basis, providing access to various customers in Gujarat. Further, (as per the publicly available information on November 30, 2011) the capacity utilisation of GSPL's transmission pipelines was only 44 per cent and therefore,



sufficient pipeline capacity was available on the GSPL network for utilisation by the third parties on an open access basis.

As regards the market for the distribution of natural gas in Gujarat, CCI observed that the CGD entities have monopoly in their respective geographical areas by virtue of the exclusivity granted under the PNGRB Act. However, post-exclusivity, that CGD entity would be under an obligation to allow third party access on a non-discriminatory basis to any entity in its CGD network, at network tariff determined by the PNGRB, as specified in the relevant regulations. Further, PNGRB (Access Code for City or Local Natural Gas Distribution Networks)

Regulations, 2011 provides that the capacity in a CGD network for open access on cumulative basis shall be 20 per cent of the capacity of the CGD network or the quantity of the gas flowing in the CGD network, whichever is higher. CCI observed that both GSPC Gas and GGCL, which are engaged in the distribution of natural gas in the state of Gujarat, operate in different geographical areas.

Post-merger, GSPC Gas and GGCL will together create India's largest CGD venture with over seven lakh customers and close to eight MMSCMD of gas market. It will be much bigger than the total strength of Delhi Indraprastha Gas Limited and Mumbai's Mahanagar Gas Limited. Further, the acquirer

has given an undertaking under Regulation 19 of the Combination Regulations that it will review the contracts entered into between GGCL and its customers to ensure that such contracts are in compliance with the provisions of the Competition Act and the Petroleum and Natural Gas Regulatory Board (PNGRB) Act, 2006 and submit a compliance report to the Commission within six months after consummation of the said combination.

CCI approved the combination under Section 31(1) of the Act as the deal is unlikely to have any adverse impact on competition in the natural gas distribution market in Gujarat.

## CCI Approves Diageo's Acquisition of Majority Stake and Control in United Spirits

In December 2012, Diageo Plc. (Diageo) through its indirect wholly-owned subsidiary, Relay B.V. (Acquirer), and United Spirits Limited (USL) jointly filed a notice for proposed acquisition of majority stake and control of USL. Diageo would acquire 27.4 per cent stake for Rs 5,725.4 crore through a combination of share purchase from existing promoters and preferential allotment of shares and an additional 26 per cent stake for Rs 5,441.07 crore through an open offer for public shareholders.

Diageo Plc. is a company incorporated under the laws of England and Wales and is the ultimate parent company of the Diageo Group. Diageo is engaged in the manufacturing and

distribution of spirits, beer and wine in around 180 countries across the world and is the world leader in the business of premium alcoholic drinks. Its brands, which are popular across the globe include Johnnie Walker, Bushmills Whiskies, Smirnoff, Ciroc, Captain Morgan, Baileys, Guinness etc.

USL, a company incorporated in India and part of the UB Group is engaged in the manufacturing and distribution of alcoholic beverages, bottled water and bottled soda in India and around the world. USL is stated to be the largest spirits company in the world in terms of volume. USL's main brands include Antiquity, McDowell's, Signature, Bagpiper, Royal Challenge, DSP Black, Black Dog, Whyte &

Mackay, Romanov, White Mischief, Four Seasons etc.

The proposed combination is related to the Indian alcoholic beverages industry. Alcoholic beverages are classified into beer, wine and spirits. The branded spirits include whisky, rum, vodka, brandy and gin. The market for alcoholic beverages is a considerably differentiated market and is driven by the consumer's preference for different products and brands in each product category. The alcoholic beverages can be generally differentiated either on the basis of intrinsic quality or on the grounds of perceived quality. Therefore, in such a market, the propensity of the consumer to switch to a

different product depends upon the availability of substitutes. In this scenario, products which are close substitutes compete more vigorously with each other in comparison to others that are distant substitutes.

In a differentiated product market, the key variables that a player considers are the characteristics of the brand and its price. The products are priced close to the competitors' price so that the brand is included in the consumers' consideration set, enabling the consumer to choose a brand of a certain quality and characteristic within the price range that satisfies his affordability criteria.

For the proposed combination, the relevant geographic market for the purpose of the assessment was considered to be the whole of India. The competitive assessment focused on the wine and branded spirits segment. To assess the degree of substitutability among the brands, the differentiated products for each type of branded spirits were further segmented on the basis of narrow price bands.

CCI observed that USL and Diageo are mostly present in different price spectrums with negligible overlap between their products in each of the branded spirits segment. In the narrow price sub-segments of the overall whisky market, where the brands of USL and Diageo are close competitors, there are other players

operating with multiple brands and effectively competing with the brands of USL and Diageo. Also, the volume in these price segments is miniscule in comparison to the overall volume of the whisky segment. Diageo's acquisition of USL may give a boost to the premiumisation strategy in the alcoholic beverages industry and may further lead to brand proliferation and brand extension, thereby enhancing the choice basket of the consumers.

CCI approved the acquisition of majority stake of 53.4 per cent worth Rs. 11,167 Crore of USL by Diageo Plc. under Section 31(1) of the Act stating that the deal will not have any adverse effect on competition in India.

# INVESTIGATION INITIATED

---

## Alleged Abuse of Dominant Position by TAM Media Research in “Popularity Evaluation of TV Programmes”

TAM Media Research evaluates popularity of TV programmes on a commercial basis by way of TRP/TVR ratings. Prasar Bharati (Broadcasting Corporation of India) approached CCI alleging that in the process of popularity evaluation, TAM Media Research was abusing its dominant position.

Popularity of the programme is directly related to the advertisement revenue a broadcaster can generate from the programme, as the advertisement rates for a program are generally decided by the advertisers on the basis of TRP/TVR ratings. The data about channels being watched and the duration for which they are watched is collected by an electronic device called People’s Meter installed in sample homes. The collected data is compiled by TAM Media Research and published as weekly/monthly reports in the form of TRP/TVR ratings. The advertising agencies and broadcaster rely on this data for fixing the rates of advertisement. About thirty four per cent of the revenue in television industry in India comes from advertisements.

Therefore, the TRPs generated become very important criteria in this industry.

CCI, *prima facie*, found TAM Media Research dominant in the service market of ‘popularity evaluation of TV programmes’. The Commission observed in its *prima facie* opinion directing investigation that TRP ratings by TAM Media Research through the people’s meter installed only in cities gave a distorted picture of the viewership pan India and amounts to misrepresentation, as the people’s meter is not installed in rural areas. Furthermore, the sample size of 8000 homes in a vast country like India having population of more than 126 crores was also miniscule and misleading. In a country as vast as India with diverse culture,

different languages, where the urban population is only thirty per cent and rural population about seventy per cent, not installing people meters in rural areas, *prima facie*, amounted to restricting use of technology of measuring viewer’s choice to the prejudice of customers (in this case Doordarshan). Thus, it was found that TAM Media Research was *prima facie* indulging in practice of denial of advertisement market by discriminating between the Doordarshan and other similar channels by not providing ‘People’s Meter’ in rural areas and basing its rating only on the data of urban area. Matter is under investigation by DG for the alleged abuse of dominant position.



# ADVOCACY INITIATIVES

## Roundtable on 'Competition Compliance for Good Corporate Governance'



*Mr. Sachin Pilot, Minister of State of Corporate Affairs (I/C) delivering the key note address at the Roundtable*

CCI organised a roundtable on the theme 'Competition Compliance for Good Corporate Governance' on January 24, 2013. Chief Executive Officers and senior functionaries of top 100 companies of India as well as representatives of apex business chambers were invited for the event. Mr. Sachin Pilot, Hon'ble Minister of State of Corporate Affairs (I/C) graced the occasion as the chief guest. The main objective of roundtable was to sensitize the captains of industry and business about the need for competition law awareness, its compliance as a tool for good corporate governance and for promoting internalisation of competition compliance programme.

Mr. Ashok Chawla, Chairperson, CCI stated in his welcome address that CCI would make a request to SEBI for inclusion of competition compliance by the companies in the 'Clause 49' of the Listing Agreement. This was followed by a brief presentation on competition compliance programme. Thereafter, there was open interaction, wherein participants interacted with the Hon'ble Minister and the Commission on various issues pertaining to compliance of provisions of the Competition Act, 2002. The gathering was addressed by the Hon'ble Minister.

# EVENTS

## Second meeting of Knowledge Partnership Initiative (KPI)



Second meeting of Knowledge Partnership Initiative (KPI) was held with prominent economic & management schools in India on January 11, 2013 at CCI. The meeting chaired by Mr. Ashok Chawla, Chairperson, CCI was attended by Directors & Professors from IIM Kolkata, IIM Lucknow, IIFT Delhi, MDI Gurgaon, Delhi School of Economics, JNU - Centre for International Trade and Development & Centre for Economic Studies and Planning. The partnership aims to focus on research, education and training, advocacy, publications and organization of academic events.

## Sixth Distinguished Visitor Knowledge Sharing (DVKS) Lecture

Prof. Eleanor Fox delivered the sixth lecture under the Distinguished Visitor Knowledge Sharing Series (DVKS) on 'Competition Law in India and the World: Convergence in Perspective' in March 4, 2013. Prof. Fox has distinguished herself globally in the field of competition regulation and is currently Walter J. Derenberg Professor of Trade Regulation at New York University School of Law.



## Capacity Building Events



A workshop on 'Competition Assessment' was organised for government officials jointly by Indian Institute of Corporate Affairs (IICA), Competition Commission of India (CCI) and Organisation for Economic Co-operation and Development (OECD) during January 22-23, 2013 in New Delhi.



CCI organised a two-day workshop on 'Cartel Enforcement' and 'Technology and Antitrust' for its officials in collaboration with American Bar Association (ABA) and International Bar Association (IBA) during February 14-15, 2013 at CCI.



An interactive meeting between CCI economists and Ms. Natalie Timan, Deputy Director, Office of the Chief Economist, Office of Fair Trading, UK was organised on March 12, 2013 at CCI.



Mr. Matt Crooke, Minister-Counsellor (Economic), Australian High Commission made a presentation on "Access to Essential Infrastructure: Australian Experience" to the officials of CCI on March 14, 2013.

# ENGAGING WITH THE WORLD

## Chairperson Chaired a Session at "Twelfth OECD Global Forum on Competition"



Mr. Ashok Chawla, CCI  
Chairperson attended OECD  
Competition Committee's meetings  
and the meeting of Global Forum  
on Competition (GFC) during

February 25 - March 1, 2013 in  
Paris, France. Global Forum on  
Competition is a reputed annual  
event and provides an opportunity  
for policy dialogue between  
competition authorities, adoption  
of best practices, establishment of  
networks of enforcement  
authorities and enhanced

co-operation in international  
competition cases.

Mr. Chawla chaired the second  
session of GFC on 'Competition  
issues in television and  
broadcasting'. He also discussed  
the trends in the sector in India  
along with current and future  
challenges for CCI.

## International Events

CCI officials participated in various workshops/ seminars/ meetings, some of which are:



OECD- Korea Policy Centre's  
workshop on 'Practice and Procedure  
in Competition Cases'during March  
6-8, 2013 in Busan, Korea.



Bundeskartellamt (German Competition  
Authority)'s 16th international  
conference on competition during  
March 20-22, 2013 in Berlin, Germany.

# DEVELOPMENTS IN OTHER JURISDICTIONS

---

## Telefónica and Portugal Telecom Penalised for Illegal Non-Compete Contract by European Commission (EC)

*Telefónica*

---



In January 2011, European Commission (EC) started an investigation into an agreement, whereby Telefónica and Portugal Telecom contracted not to compete with each other in the Iberian market. The agreement was concluded in July 2010 as part of Telefónica's acquisition of Brazilian mobile operator Vivo, previously jointly owned by both parties. It was effective from September 2010 till February 2011. The companies repealed the non-compete agreement in February 2011 after EC initiated antitrust proceedings against them. EC argued that terminating the agreement does not erase the fact that it existed in the first place.

Telefónica is a Spanish broadband and telecommunications provider with operations in 25 countries across Europe, US and Latin America. Operating globally, it is the fifth largest mobile network provider in the world. Portugal Telecom is the largest telecommunications service

“

**“We will not tolerate anti-competitive practices by incumbents to protect their home markets, as they harm consumers and delay market integration.”**

**Joaquín Almunia, EU Competition Commissioner**

”

provider in Portugal. Although, it operates mainly in Portugal and Brazil, it has a significant presence in Europe, America, Asia and Africa. Both Telefónica and Portugal Telecom are the largest telecom operators in their home countries. In 2011, Telefónica accounted for almost half of the revenue generated by the Spanish telecoms sector. Each of the parties has a very limited presence in the other party's home country.

EC fined Telefónica €66.89 million and Portugal Telecom €12.29 million for illegally agreeing not to compete in their home markets. This attempt to carve up markets is detrimental to the interests of the consumers. It also hindered European Union (EU) efforts to integrate its already highly fragmented telecom sector. Non-compete agreements are serious violations of EU competition rules, as they potentially result in higher prices and lower choices for consumers.

# Mercedes-Benz and Three Dealers Fined for Rigging Sales



Office of Fair Trading (OFT), United Kingdom's competition authority, penalised Mercedes-Benz and three of its commercial vehicle dealers (Ciceley, Enza and Road Range) a total of £2.6 million for breaching competition law. The decision includes three separate admitted infringements of competition law involving distribution of Mercedes-Benz commercial vans and trucks between January 2008 and January 2010. The nature of the infringements includes some element of market sharing, price coordination or exchange of commercially sensitive information. The dealers are mainly active in areas within the North of England

and parts of Wales and Scotland.

Mercedes-Benz will pay a fine of £1.49million, whilst the rest of the fine will be paid by dealers Ciceley Commercials Ltd (£659,675), Enza Motors Ltd (£347,198) and Road Range Ltd (£115,774).OFT has reduced the fines by 15 per cent from the total penalties of £3.07 million reflecting companies' admissions and agreement to a streamlined administrative procedure.

A fourth dealer, Northside, which also admitted infringing the competition law was not fined as it provided evidence of collusion in return for immunity under the OFT's leniency policy.

**“These cases send a clear signal that the OFT will take firm action against companies that collude to deny customers the benefit of fair competition regardless of the size of the firms involved or geographic scope of the investigation.”**

Ali Nikpay, OFT Senior Director of Cartels

# KNOW YOUR COMPETITION ACT

In this issue, let us get introduced to

## The Competition Act, 2002 (the Act)

### Features of the Act

- Aims at fostering competition in the markets and protecting the interests of the consumers.
- Prohibits anti-competitive agreements and abuse of dominant position.
- Regulates combinations including acquisitions of shares, voting rights or assets; acquiring of control; and mergers and amalgamations.
- Provides for establishment of Competition Commission of India (CCI) and vests it with inquisitorial, investigative, regulatory, adjudicatory and limited advisory jurisdiction.
- Mandates the Commission to undertake competition advocacy with stakeholders to create awareness about benefits of competition.
- For infringement of the Act, heavy penalties are prescribed under the Act.
- Non-compliance of the orders/directions of the Commission amounts to contravention and are punishable with penalty under the Act.

The Act is a modern legislation and aims to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets in India. To fulfil these objectives, the Act prohibits anti-competitive agreements

(Section 3) and abuse of dominant position (Section 4) by enterprises and regulates combinations (Sections 5 and 6). Wherever an agreement/combination causes, or is likely to cause appreciable adverse effect on competition in markets in India or there is abuse of dominant position by any enterprise or group, the Act empowers CCI to take remedial actions including imposition of heavy penalties. Sections 3 and 4 have come into force on May 20, 2009, while Sections 5 and 6 have come into force on June 1, 2011.

### Anti-competitive agreements (Section 3)



In the course of business, firms enter into agreements, some of which may cause or have the potential of restricting competition. Such agreements are called anti-competitive agreements. As per the Act, an 'agreement' includes any agreement, understanding or concerted action entered into between parties whether or not, it is formal or in writing; or it is intended to be enforceable by legal proceedings. Anti-competitive agreements may be horizontal i.e. between enterprises, persons, associations etc. engaged in identical or similar trade of goods or provision of services, or vertical i.e. amongst enterprises or persons at different stages or levels of the production chain in different markets. The Act prohibits an enterprise or a person from entering into any agreement

in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services that causes or is likely to cause an appreciable adverse effect on competition in India and provides that agreements entered into contravention of the Act shall be void.

## Abuse of dominant position (section 4)



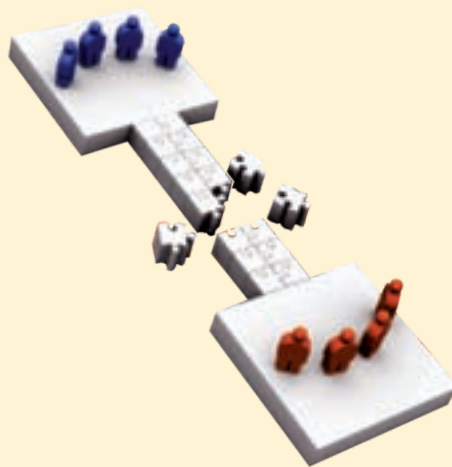
Dominance of a firm is measured in terms of market power it commands. Dominant position as per the Act

means a position of strength enjoyed by an enterprise in the relevant market in India, which enables it to operate independently of competitive forces prevailing in the relevant market or affects its competitors or consumers or the relevant market in its favour. Being a dominant enterprise is not a violation of the law. The Act provides for various factors for assessing dominance such as

market share, size, resources, dependence of consumers, size and importance of competitors etc. Abuse of a dominant position occurs, when a dominant firm in a market engages in conduct that is intended to impede fair competition between firms or affect the consumers adversely. The Act provides a list of various kinds of abuses, which will be discussed in a subsequent issue of "Fair Play".

## Combination regulation (section 5 & 6)

The term 'combination' for the purposes of the Act is defined very broadly and includes i) any acquisition of shares, voting rights or assets of an enterprise; and control over management or assets of an enterprise; and ii) merger or amalgamation of enterprises. The Act provides for mandatory filing of the combination based on asset/turnover thresholds. It is based on an ancient English maxim "Prevention is better than cure". While combination seems to be reasonable, it may often lead to



creation of a concentration in the market and increase in market power of the combined entity. Combination review is ex-ante in nature and is designed to ensure that firms do not acquire such a degree of market power in the market so as to harm the interests of consumers, the economy and society as a whole. Accordingly, any combination which causes or is likely to cause appreciable adverse effect on competition is void, will not be cleared and hence shall not take effect.

### Competition Commission of India

The Hindustan Times House  
18-20, Kasturba Gandhi Marg  
New Delhi- 110001

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 [capacitybuilding@cci.gov.in](mailto:capacitybuilding@cci.gov.in)

**Disclaimer:** The contents of this publication do not necessarily reflect the official position of the Competition Commission of India. Contents of this newsletter are only informative in nature and not meant to substitute for professional advice. Information and views in the newsletter are fact based and incorporate necessary editing.